

RELIABILITY SUPPORT SERVICES AGREEMENT

dated as of February 13, 2015,

between

R.E. Ginna Nuclear Power Plant, LLC

and

Rochester Gas and Electric Corporation

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## **RELIABILITY SUPPORT SERVICES AGREEMENT**

Pursuant to the rates, terms and conditions of this Reliability Support Services Agreement (this "Agreement"), dated as of February 13, 2015 (the "Effective Date"), R.E. Ginna Nuclear Power Plant, LLC ("Ginna") shall provide reliability support services to Rochester Gas and Electric Corporation ("RGE," and together with Ginna, the "Parties") from the R.E. Ginna Nuclear Power Plant which is interconnected with RGE's transmission system.

### **RECITALS**

WHEREAS, Ginna owns the R.E. Ginna Nuclear Power Plant, a nuclear generating station located in Ontario, New York, which consists of one (1) pressurized water reactor unit (PTID 23603) with a capacity of 581 MW (the "RSS Unit," and together with all appurtenant facilities, the "Facility"). Since being placed into service, the RSS Unit has supplied energy, capacity and ancillary services in New York;

WHEREAS, RGE is the transmission owner to which the Facility is interconnected;

WHEREAS, in January 2014, Ginna communicated to the New York State Independent System Operator ("NYISO") and RGE its intent to potentially retire the RSS Unit due to insufficient revenues projected to be earned by the Facility;

WHEREAS, the NYISO and RGE conducted a reliability study, dated as of May 12, 2014, which determined that retirement of the RSS Unit would result in bulk transmission system and non-bulk local distribution system reliability violations in 2015 and 2018;

WHEREAS, on July 11, 2014, Ginna submitted a petition to the New York State Public Service Commission ("NYPSC") requesting that the NYPSC direct RGE and Ginna to negotiate and file an agreement by which Ginna would provide Reliability Support Services from the RSS Unit to Ginna;

WHEREAS, on November 14, 2014, the NYPSC ordered RGE and Ginna to negotiate and file an agreement with the NYPSC by which Ginna would provide Reliability Support Services from the RSS Unit to RGE; and

WHEREAS, both Parties desire to ensure that the RSS Unit remains available to support system reliability in New York until certain transmission upgrades are completed or other reliability remedies are identified and implemented.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound by this Agreement, the Parties covenant and agree as follows:

## ARTICLE I DEFINITIONS

**1.1 Definitions.** Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

- (a) “**Acceptance Date**” shall have the meaning set forth in Section 2.1(a).
- (b) “**Agreement**” shall have the meaning set forth in the Preamble.
- (c) “**Ancillary Service Revenues**” shall have the meaning set forth in Section 3.2(d).
- (d) “**Applicable Laws**” shall mean all applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, decision or determination of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality.
- (e) “**Applicable Revenues**” shall mean RGE’s eighty-five percent (85%) share of any Energy Revenues, RGE’s eighty-five percent (85%) share of any Capacity Revenues and one hundred percent (100%) of any Ancillary Service Revenues, subject to Ginna’s right to retain such Applicable Revenues under the circumstances described in Section 5.3(b) and in Section 7.1(b).
- (f) “**Capacity Revenues**” shall have the meaning set forth in Section 3.2(c).
- (g) “**Capital Recovery Balance**” shall mean the applicable amount set forth in Exhibit 5 for the applicable date of termination or expiration of this Agreement, as such amount may be adjusted pursuant to the last sentence of Section 4.3(a).
- (h) “**Confidentiality Agreement**” shall have the meaning set forth in Section 10.14.
- (i) “**Deferred Collection Amount**” shall have the meaning set forth in Section 4.1(b).
- (j) “**Effective Date**” shall have the meaning set forth in the Preamble.
- (k) “**Energy Revenues**” shall have the meaning set forth in Section 3.2(b).
- (l) “**Environmental Laws**” shall mean any and all federal, state, or local, statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of hazardous materials or wastes into surface water, ground water or land, or (iv) the manufacturing, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials or wastes or the cleanup or other remediation thereof.

- (m) “**EPT**” shall mean the prevailing time in the eastern time zone of the United States.
- (n) “**Excess Force Majeure Outage Hour**” shall have the meaning set forth in Section 7.1(b)
- (o) “**Facility**” shall have the meaning set forth in the Recitals.
- (p) “**FERC**” shall mean the Federal Energy Regulatory Commission.
- (q) “**FERC Authorization**” shall have the meaning set forth in Section 2.1(a).
- (r) “**Force Majeure Event**” shall have the meaning set forth in Section 7.1(a).
- (s) “**Force Majeure Outage**” shall mean the condition, other than during any period of Planned Outage or Unplanned Outage, in which due to a Force Majeure Event the RSS Unit is unavailable or available at an hourly average capacity level that is less than 400 megawatts.
- (t) “**Force Majeure Performance Adjustment**” shall mean, for a given hour in a month, an amount equal to the pro-rata portion of the Monthly Fixed Payment, equivalent to the ratio of one (1) hour to the total amount of hours in such month.
- (u) “**FPA**” shall mean the Federal Power Act.
- (v) “**GAAP**” shall mean the generally accepted accounting principles in the United States, as in effect from time to time.
- (w) “**Generation Attributes**” means any and all attributes associated with the capability of the RSS Unit or the Facility to produce capacity, energy or ancillary services or the generation of energy by the RSS Unit, including current or future credits, credit privileges, emissions reductions, offsets, allowances and other benefits, rights, powers or privileges, however denominated, including as such may be provided for in any currently existing or subsequently enacted Applicable Laws, attributable to the RSS Unit or the Facility. Examples of Generation Attributes include, but are not limited to: (i) renewable energy credits, offsets or other similar benefits allocated, assigned or otherwise awarded by any Governmental Authority, program administrator or other certification board and (ii) the avoidance of the emission of any gas, chemical or other substance into the air, soil or water, or the reduction, displacement or offset of emissions resulting from fuel combustion at another location pursuant to any federal, state or local legislation or regulation addressing “greenhouse gases” or similar emissions as well as environmental or renewable energy credit trading program or any similar program currently existing or subsequently enacted under Applicable Laws. “Generation Attributes” shall not include energy, capacity and ancillary services produced by the RSS Unit.
- (x) “**Ginna**” shall have the meaning set forth in the Preamble.

- (y) “Ginna Annual Revenue Cap” shall mean, for any calendar year during the Term, the lesser of (i) the amount set forth in Exhibit 7 (attached hereto) applicable to such calendar year and (ii) the amount determined by FERC (either through settlement proceedings or final adjudication) to be Ginna’s annual cost of service related to the operation and maintenance of the Facility.
- (z) ~~(y)~~ “Ginna UCAP” shall mean the RSS Unit’s “Unforced Capacity” as determined in accordance with the NYISO Tariffs.
- (aa) ~~(z)~~ “Good Utility Practice” shall mean any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice or method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region. Without limitation of the foregoing, “Good Utility Practices” shall include the applicable operating policies, standards, criteria, practices and/or guidelines of FERC, NERC, NYISO, NYSRC, NPCC, NRC and any other Governmental Authority, including those practices required by FPA Section 215(a)(4).
- (bb) ~~(aa)~~ “Governmental Authority” shall mean the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government, including FERC, NERC, NYISO, NYSRC, NPCC and NRC.
- (cc) ~~(bb)~~ “Initial Term” shall have the meaning set forth in Section 2.2(a).
- (dd) ~~(cc)~~ “Interconnection Agreement” means the Interconnection Agreement, dated November 24, 2003, as amended, restated or supplemented, between RGE and Ginna (as successor to Constellation Generation Group, LLC by assignment).
- (ee) ~~(dd)~~ “Interest Rate” shall have the meaning set forth in Exhibit 2.
- (ff) ~~(ee)~~ “Market or Regulatory Change” shall mean any action by the NYPSC, NYISO, FERC or any successor Governmental Authority that is not subject to a stay and would cause supplemental capacity payments or other additional payments, revenues or credits to be provided with respect to the RSS Unit or the Facility due to (i) the RSS Unit being deemed to run partly or wholly for the benefit of additional constituencies (e.g., the State of New York or the region) and not exclusively for the benefit of RGE’s customers or (ii) the RSS Unit’s status as a nuclear generator or the nature of its energy, capacity, ancillary services or other Generation Attributes having been generated by a nuclear generator.



- (gg) ~~(ff)~~ “**Monthly Fixed Amount**” shall mean \$17,504,118.25 for each month during the Initial Term ~~and \$18,402,166.16 for each month during any Necessary Extension, in each case~~, prorated for any partial month, as such amounts may be adjusted in accordance with Section 4.1.
- ~~(gg) “Necessary Extension” shall mean, if elected by RGE in accordance with a Notice of Necessary Extension pursuant to Section 2.3, the period of time from the start of the hour ending at 0100 EPT on October 1, 2018 through the hour ending at 2400 EPT on March 31, 2020.~~
- (hh) [RESERVED]
- (ii) ~~(hh)~~ “**NERC**” shall mean the North American Electric Reliability Corporation.
- ~~(ii) “Notice of Necessary Extension” shall have the meaning set forth in Section 2.3.~~
- (ij) [RESERVED]
- (kk) ~~(jj)~~ “**NPCC**” shall mean the Northeast Power Coordinating Council, Inc.
- (ll) ~~(kk)~~ “**NRC**” shall mean the Nuclear Regulatory Commission.
- (mm) ~~(H)~~ “**NYISO**” shall mean the New York Independent System Operator, Inc., or successor organization charged with operating the transmission system and markets in the State of New York.
- (nn) ~~(mm)~~ “**NYISO Day-Ahead Energy Market**” shall mean the NYISO-administered day-ahead energy market.
- (oo) ~~(nn)~~ “**NYISO ICAP Spot Market Auction**” shall mean the “ICAP Spot Market Auction” as defined in the NYISO Tariffs.
- (pp) ~~(oo)~~ “**NYISO Outage Scheduling Manual**” shall mean the “Outage Scheduling Manual” published by the NYISO.
- (qq) ~~(pp)~~ “**NYISO Tariffs**” shall mean, collectively, the published tariffs of the NYISO, including the Open Access Transmission Tariff and the Market Administration and Control Area Services Tariff, as such tariffs may be amended by the NYISO.
- (rr) ~~(qq)~~ “**NYPSC**” shall have the meaning set forth in the Recitals.
- (ss) ~~(rr)~~ “**NYSRC**” shall mean the New York State Reliability Council, L.L.C.
- (tt) ~~(ss)~~ “**Party**” shall mean either Ginna or RGE. “**Parties**” means both Ginna and RGE.
- (uu) ~~(tt)~~ “**Planned Outage**” shall mean a planned interruption, in whole or in part, in the electrical output of a generating unit to permit Ginna to perform maintenance

and repair of the RSS Unit, pursuant to the process for providers and suppliers of installed capacity set forth in the NYISO Tariffs and NYISO Outage Scheduling Manual.

- (vv) ~~(uu)~~ “**Property Taxes**” shall have the meaning set forth in Section 4.1(d).
- (ww) ~~(vv)~~ “**Quarterly Installment Payment**” shall have the meaning set forth in Section 4.3(a).
- (xx) ~~(ww)~~ “**Rate Recovery Order**” shall have the meaning set forth in Section 2.1(a).
- (yy) ~~(xx)~~ “**Reliability Support Services**” shall mean the services required to be provided by Ginna to RGE pursuant to this Agreement and shall include but not be limited to Ginna (a) keeping the RSS Unit available, capable of being committed and operating for reliability purposes as requested by RGE or the NYISO, (b) offering the RSS Unit’s energy into the NYISO Day-Ahead Energy Market and capacity into NYISO ICAP Spot Market Auctions, and (c) providing reactive power consistent with the capability of the RSS Unit pursuant to the Interconnection Agreement and the procedures specified under voltage support service provisions of the NYISO Tariffs.
- (zz) ~~(yy)~~ “**RGE**” shall have the meaning set forth in the Preamble.
- (aaa) ~~(zz)~~ “**RSS Unit**” shall have the meaning set forth in the Recitals.
- (bbb) ~~(aaa)~~ “**Scheduling, System Control and Dispatch Charge**” shall mean the charges attributable to the RSS Unit for scheduling, system control and dispatch service calculated in accordance with Schedule 1 of the NYISO Open Access Transmission Tariff and Schedule 1 of the NYISO Market Administration and Control Area Services Tariff.
- (ccc) ~~(bbb)~~ “**Settlement Payment**” shall mean the applicable amount set forth in Exhibit 1 for the applicable date of early termination of this Agreement plus any unpaid balance of any Deferred Collection Amount.
- (ddd) ~~(ccc)~~ “**Staff**” shall mean the staff of the New York State Department of Public Service.
- (eee) ~~(ddd)~~ “**Term**” shall mean the Initial Term, ~~together with any Necessary Extension~~ unless such period is decreased upon the termination of the Agreement pursuant to Section 2.1(c), Section 2.2(c) or Section 9.1.
- (fff) ~~(eee)~~ “**Unplanned Outage**” shall mean the condition, other than during any period of Planned Outage or Force Majeure Outage, in which due to unanticipated failure the RSS Unit is unavailable or available at an hourly average capacity level that is less than 400 megawatts.

~~(ggg)~~ ~~(fff)~~ “Unplanned Outage Performance Adjustment” shall mean, for a given hour in a month, an amount equal to the pro-rata portion of the Monthly Fixed Payment, equivalent to the ratio of one (1) hour to the total amount of hours in such month.

## ARTICLE II CONDITIONS TO PAYMENT OBLIGATIONS; TERM; SURVIVAL OF OBLIGATIONS

### 2.1 Conditions to Payment Obligations

- (a) The Parties’ obligations with respect to payment of the Monthly Fixed Amount (including the obligation to net Applicable Revenues, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by Ginna under this Agreement) shall be subject to the Parties obtaining the following:
- (i) the issuance by FERC of an order accepting this Agreement under Section 205 of the Federal Power Act, 16 U.S.C. §824d and the regulations promulgated thereunder, without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party’s reasonable discretion (“FERC Authorization”); and
  - (ii) the issuance by the NYPSC of an order (A) accepting this Agreement and (B) approving full and immediate cost recovery by RGE through a customer surcharge (without offset or deferral including with respect to items unrelated to this Agreement) of all amounts payable to Ginna under this Agreement on a substantially current basis that coincides with the timing of all payments made by RGE to Ginna hereunder, in each case, without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party’s reasonable discretion (the “Rate Recovery Order”).

The date, if any, upon which each of the foregoing conditions precedent set forth in clauses (i) and (ii) above are satisfied or waived by the Parties shall be referred to herein as the “Acceptance Date.”

- (b) Each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under Applicable Laws to cause the FERC Authorization and the Rate Recovery Order to be obtained as expeditiously as possible. Each of the Parties shall cooperate with each other, and execute and deliver such additional documents, as may be reasonably required in order to achieve the Acceptance Date in accordance with Section 2.1(a) as expeditiously as possible. Notwithstanding the foregoing provisions of this Section 2.1(b), RGE shall be entitled to challenge, in its sole and absolute discretion, including in any

regulatory proceedings before FERC and/or the NYPSC (whether in the context of settlement discussions or otherwise), Ginna's proposed annual cost of service related to the operation and maintenance of the Facility, including pursuing a reduction in the Ginna Annual Revenue Cap derived from Ginna's annual cost of service.

- (c) Ginna shall have the right to terminate this Agreement without liability upon ten (10) days' prior written notice if the Acceptance Date is not achieved by July 1, 2015, but such a termination notice may not be issued later than August 1, 2015. Without limiting the immediately foregoing sentence, during the process to obtain the FERC Authorization or the Rate Recovery Order, if a Governmental Authority modifies or imposes any term or condition that is adverse in any material respect to a Party, as determined in the affected Party's reasonable discretion, then such adversely affected Party shall have the right to terminate this Agreement without liability upon ten (10) days' prior written notice, but such a termination notice may not be issued later than thirty (30) days after the date of such final modification or imposition by a Governmental Authority. Without limiting the foregoing sentences of this Section 2.1(c), RGE shall have the right to terminate this Agreement without liability upon ten (10) days' prior written notice if RGE reasonably determines that the Rate Recovery Order does not provide full and immediate cost recovery to RGE through a customer surcharge (without offset or deferral including with respect to items unrelated to this Agreement) of all amounts payable to Ginna under this Agreement on a substantially current basis that coincides with the timing of all payments made by RGE to Ginna hereunder, but such a termination notice may not be issued later than thirty (30) days after the date of the issuance by the NYPSC of the Rate Recovery Order; provided, that RGE's failure to exercise such termination right within such thirty (30) day period shall be deemed to constitute RGE's acknowledgement that the Rate Recovery Order satisfies the condition precedent set forth in Section 2.1(a)(ii). Notwithstanding the foregoing provisions of this Section 2.1(c), the Parties expressly acknowledge and agree that any modification by FERC of the Ginna Annual Revenue Cap in a manner that is reasonably likely to preclude Ginna from recovering the amount of Energy Revenues and Capacity Revenues contemplated by the Parties in the version of the Agreement originally executed by the Parties shall be considered an imposition of a term or condition in a manner that is adverse in a material respect to Ginna.
- (d) The Parties expressly acknowledge, except for the payment obligations described in Section 2.1(a), the other rights and obligations of the Parties under this Agreement, including Ginna's obligation to provide the Reliability Support Obligations during the Initial Term, are not contingent upon satisfaction of the conditions precedent set forth in Section 2.1(a). In consideration for RGE executing this Agreement prior to the Acceptance Date, Ginna expressly agrees to accept the risk that, unless and until this Agreement is terminated in accordance with Section 2.1(c) or otherwise, Ginna may perform the Reliability Support Obligations in accordance with this Agreement without any compensation, or with reduced compensation, if the FERC Authorization or Rate Recovery Order

are not received in accordance with Section 2.1(a). Ginna hereby waives to the fullest extent possible any rights under this Agreement and at law and in equity (including under any theory of unjust enrichment, restitution, quantum meruit or similar legal theory or any claim under the Federal Power Act, the New York Public Service Law or the rules and regulations of the NYPSC) to recover the Monthly Fixed Amount from RGE with respect to the Term in the event that this Agreement is terminated without achievement of the Acceptance Date. This Section 2.1(d) shall survive any termination of this Agreement.

## 2.2 Term

- (a) Reliability Support Services shall be provided commencing at the start of the hour ending 0100 EPT on April 1, 2015 and remain in effect through the hour ending 2400 EPT on September 30, 2018, unless the Agreement is otherwise terminated pursuant to Section 2.1(c), Section 2.2(c) or Section 9.1 (the “Initial Term”).
- (b) This Agreement shall be effective as of the Effective Date and no provision of this Agreement shall terminate earlier than the expiration of the Initial Term, except as otherwise provided in Section 2.1(c), Section 2.2(c) or pursuant to the provisions relating to Termination for Default (Section 9.1).
- (c) Upon at least twelve (12) months’ prior written notice, RGE, in its sole discretion, may terminate this Agreement prior to the expiration of the Initial Term. ~~Upon the provision of such written termination notice, RGE no longer shall have the right to require a Necessary Extension pursuant to Section 2.3.~~ Upon the termination date specified in such notice, RGE shall pay to Ginna the Settlement Payment and shall have no further liability to Ginna under this Agreement except for liabilities incurred prior to such termination date.
- (d)

## 2.3 ~~Necessary Extension~~ [RESERVED]

~~RGE may provide written notice to Ginna (“Notice of Necessary Extension”) indicating that RGE has reasonably determined, in consultation with the NYISO and the NYPSC and subject to any order or requirement of the NYPSC, that the continued operation of the RSS Unit is required for reliability purposes after the expiration of the Initial Term and any such extension shall be for a period of eighteen (18) months (“Necessary Extension”). Such Notice of a Necessary Extension shall be provided no later than January 31, 2017. Ginna shall acknowledge receipt of the Notice of Necessary Extension in writing to RGE within five (5) business days of receipt. Upon RGE sending such Notice of Necessary Extension, the Term shall be extended by a period of eighteen (18) months through the hour ending at 2400 EPT on March 31, 2020.~~

## 2.4 Survival of Obligations

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement that by their nature are intended to, and shall, survive such termination.

**ARTICLE III  
OBLIGATIONS AND OPERATIONS**

**3.1 Scheduling and Bidding**

- (a) Ginna shall cause the RSS Unit and the Facility to be fueled, operated and maintained in accordance with Good Utility Practice and the NYISO Tariffs and with due regard for the reliability purpose of this Agreement.
- (b) Ginna shall interface and comply with NYISO scheduling deadlines and requirements for maintaining the Facility and the RSS Unit as eligible energy, capacity and ancillary services providers, as well as comply with the NYISO's dispatch instructions and the Interconnection Agreement. The Parties acknowledge that the Reliability Support Services shall not include the purchase by RGE of any physical energy-related products or services (energy, capacity or ancillary services); provided that Ginna shall be obligated to provide such energy products and services to the NYISO as described in this Agreement, with the Applicable Revenues derived therefrom to be applied as a credit against RGE's obligation for the Monthly Fixed Amount in accordance with Section 3.2.
- (c) The Parties acknowledge that as a consequence of the provision of the Reliability Support Services under this Agreement, Ginna will need to run the RSS Unit for testing and diagnostic purposes, including for demonstrating the RSS Unit's Dependable Maximum Net Capability (as defined in the NYISO Tariffs) and relative accuracy test audit testing, reactive capability testing, environmental compliance testing, or as otherwise required by plant management for health, safety, environmental or operational reasons. As permitted under the NYISO Tariffs and as warranted by system conditions, the Parties shall coordinate the scheduling of the RSS Unit for these purposes so that RGE will either designate the related RSS Unit as the Day-Ahead Reliability Unit (as defined in the NYISO Tariffs) or commit that RSS Unit pursuant to the Supplemental Resource Evaluation (as defined in the NYISO Tariffs). Such designation shall be coordinated between the Parties so that the most appropriate designation is selected. Ginna shall use reasonable best efforts to perform these tests during periods already scheduled by RGE or the NYISO. Ginna shall coordinate with RGE to schedule any testing required to meet operational requirements. In the event that such testing cannot be accomplished during a period of time the RSS Unit is in operation, Ginna shall provide RGE with at least fourteen (14) days advance written notice requesting written authorization from RGE for Ginna to self-commit the RSS Unit. Authorization by RGE shall not be unreasonably withheld.

**3.2 Energy, Capacity and Ancillary Services**

- (a) Ginna shall at all times bid the RSS Unit in compliance with NYISO market rules.

- (b) Ginna shall offer the full amount of the RSS Unit's expected hourly output into the NYISO Day-Ahead Energy Market consistent with past practice, subject to compliance with NYISO market rules. Ginna shall comply with any dispatch instruction issued by the NYISO under established NYISO protocols or by RGE under the Interconnection Agreement, to the extent such dispatch instructions are consistent with the operating parameters of the RSS Unit and are in accordance with the NYISO Tariffs. All monthly energy revenues, net of the Scheduling, System Control and Dispatch Charge, paid by the NYISO for the account of the RSS Unit ("Energy Revenues") shall be shared such that RGE shall be entitled to eighty-five percent (85%) of Energy Revenues and Ginna shall be entitled to fifteen percent (15%) of Energy Revenues, subject to Ginna's right to retain all Energy Revenues under the circumstances described in Section 5.3(b) and Section 7.1(b).
- (c) Ginna shall offer Ginna UCAP into the NYISO ICAP Spot Market Auction; such offers shall be consistent with Ginna's prior offers into such auction and be subject to compliance with NYISO market rules. All monthly capacity revenues paid by the NYISO for the account of the RSS Unit ("Capacity Revenues") shall be shared such that RGE shall be entitled to eighty-five percent (85%) of Capacity Revenues and Ginna shall be entitled to fifteen percent (15%) of Capacity Revenues, subject to Ginna's right to retain all Capacity Revenues under the circumstances described in Section 5.3(b) and Section 7.1(b).
- (d) RGE shall be entitled to one hundred percent (100%) of any ancillary service (including reactive power) revenues paid for the account of the RSS Unit ("Ancillary Service Revenues"), subject to Ginna's right to retain all Ancillary Service Revenues under the circumstances described in Section 5.3(b) and Section 7.1(b).
- (e) Ginna shall use commercially reasonable efforts, consistent with Good Utility Practice, to maximize the Energy Revenues, Capacity Revenues and Ancillary Service Revenues.
- (f) The Applicable Revenues shall be (i) credited against the Monthly Fixed Amount for the applicable delivery month, with any Applicable Revenues in excess of the Monthly Fixed Amount paid to RGE, and (ii) reflected on the monthly invoice relating to such delivery month in accordance with Section 4.1(a).
- (g) The Parties shall credit or otherwise reimburse each other for any under or overpayments of Energy Revenues, Capacity Revenues and/or Ancillary Service Revenues if any such revenues for any month are modified in the NYISO's close-out invoicing process. This provision shall survive termination of this Agreement until the NYISO has issued a final close-out invoice for every month of the Term.
- (h) Ginna (or its affiliates with respect to any portion of the Facility owned by affiliates of Ginna) shall be solely responsible, without contribution from RGE,

for any penalties, fines or imbalance charges that relate to the bidding, scheduling and operation of the RSS Unit or the operations of the Facility.

- (i) During the Term, Ginna shall not engage in any hedging activities other than non-speculative hedging activities relating to the projected volumes associated with Ginna's fifteen percent (15%) share of any Energy Revenues and fifteen percent (15%) share of any Capacity Revenues. No revenues or losses from any such hedging activities shall be included in the calculation of Energy Revenues, Capacity Revenues or Ancillary Service Revenues. Notwithstanding the foregoing, the provisions of this Section 3.2(i) shall not serve to limit the ability of Ginna's affiliates to enter into any hedging activities so long as Ginna is not obligated under or financially impacted by such hedging activities.
- (j) Each Party shall bear its own bad debt losses under the NYISO Tariffs.
- (k) Notwithstanding any provision in this Agreement to the contrary, in each calendar year during the Term, Ginna shall not receive or retain any amounts otherwise payable to Ginna or retainable by Ginna under this Agreement that are attributable to such calendar year, including but not limited to the Fixed Monthly Amounts, Ginna's share of Applicable Revenues (including pursuant to Sections 5.3(b) and 7.1(b)) and additional revenues, if any, resulting from a Market or Regulatory Change described in Section 10.2, that exceed the Ginna Annual Revenue Cap applicable to such calendar year; provided that in the event that the applicable Ginna Annual Revenue Cap is exceeded, within thirty (30) days of the determination of such excess amount, Ginna shall pay such excess amount to RGE with interest as required by FERC.

### **3.3 Generation Attributes**

Any Generation Attributes and revenues (including any revenues paid by the NYISO) associated therewith (other than energy, capacity and ancillary services and revenues and losses resulting from hedging activities), whether financially settled or otherwise, shall accrue to RGE's benefit, either as a credit to the Monthly Fixed Amount or as a transfer of title of such Generation Attributes to RGE for the duration of the Term, as Ginna may elect. Ginna shall use commercially reasonable efforts, consistent with Good Utility Practice, to maximize such Generation Attributes and revenues associated therewith.

### **3.4 Operating Characteristics and Environmental Compliance**

Ginna shall have no obligation to cause the RSS Unit to be operated in a manner that would be inconsistent with or in violation of the NYISO Tariffs, NERC, NPCC, NRC or NYSRC rules or would cause Ginna to violate the terms of any applicable environmental regulations, restrictions, orders or decrees or any operating permit, which determination shall be made by Ginna in its reasonable discretion. Ginna shall have the obligation to ensure that the RSS Unit is operated in accordance with the NYISO Tariffs, NERC, NPCC, NRC or NYSRC rules and consistently with the terms of any applicable environmental regulations, restrictions, orders or decrees or any required operating permits.



### **3.5 Reactive Power**

Except when the RSS Unit is unavailable, the RSS Unit shall provide reactive power consistent with the capability of the RSS Unit and in accordance with the Interconnection Agreement and the procedures specified under the NYISO's Voltage Support Service.

### **3.6 Retirement of RSS Unit**

Ginna shall be entitled to undertake any actions during the Term that are necessary or advisable to retire the RSS Unit after the Term so long as such actions do not unreasonably interfere with, limit or diminish Ginna's provision of the Reliability Support Services during the Term.

## **ARTICLE IV PRICING**

### **4.1 Monthly Fixed Amount**

- (a) The billing period during the Term shall be each calendar month. Not later than the twentieth (20<sup>th</sup>) day of each month, Ginna shall prepare and provide to RGE an invoice showing for the preceding month the Monthly Fixed Amount (prorated for any partial month), the Applicable Revenues, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by either Party under this Agreement, together with reasonable documentation supporting the invoiced amounts (including the relevant NYISO invoices detailing the revenues and charges related to the RSS Unit). RGE shall pay Ginna the Monthly Fixed Amount (net of Applicable Revenues, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by Ginna under this Agreement) for each month during the Term.
- (b) In the event that the Acceptance Date is achieved after April 1, 2015, (i) Ginna shall track the net amount that would have been owed to or by Ginna under this Agreement had the Acceptance Date been achieved by April 1, 2015 (*i.e.* the Monthly Fixed Amount, net of Applicable Revenues, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by Ginna under this Agreement) for each calendar month (or any partial month) until the day immediately prior to the Acceptance Date (such cumulative net amount for such calendar months, the "Deferred Collection Amount"), (ii) Ginna shall prepare and provide to RGE as soon as reasonably practicable, but not later than the twentieth (20<sup>th</sup>) day of the month after the Acceptance Date is achieved, a calculation of the Deferred Collection Amount, together with reasonable documentation supporting such amount and (iii) RGE or Ginna, as the case may be, shall pay the Deferred Collection Amount, plus interest on the unpaid balance thereof at the NYPSC-published interest rate for customer-provided capital that is applicable to investor-owned utilities, in equal monthly installments as part of Ginna's monthly invoice

amounts such that the final monthly installment of the Deferred Collection Amount is scheduled to be paid on the invoice relating to March 2017. Ginna shall recalculate the Deferred Collection Amount and the monthly installment payments thereof if any component of the Deferred Collection Amount is subsequently adjusted by any final close-out invoice issued by the NYISO. For the avoidance of doubt, any Deferred Collection Amount shall not be considered to be part of the Monthly Fixed Amount for purposes of determining any Unplanned Outage Performance Adjustments or any Force Majeure Event Performance Adjustments for periods on and after the Acceptance Date.

- (c) In the event that the nuclear waste fee established under the Nuclear Waste Policy Act of 1982 is reinstated during the Term (including the establishment of a fee covering time periods prior to the Term that is payable based upon the operation of the RSS Unit during the Term), the Monthly Fixed Amount shall be increased during the period during the Term in which such nuclear waste fee is in effect by the monthly amount of the nuclear waste fee applicable to the RSS Unit, as calculated based on the actual monthly generation output of the RSS Unit. For the avoidance of doubt, no amount shall be payable by RGE for any such nuclear waste fee that is reinstated after the Term that applies retroactively to the Term.
- (d) In the event that Ginna pays (i) annual property tax payments or (ii) in lieu of tax payments applicable to the Facility ((i) and (ii) defined herein as “Property Taxes”) in amounts that are lower than \$8.41 Million in 2015, \$7.25 Million in 2016, \$7.39 Million in 2017 or \$7.54 Million in 2018, respectively, then the Monthly Fixed Amount shall be decreased during the applicable calendar year in the Initial Term by an amount equal to one-twelfth (1/12) of the difference between the amount set forth above for such year and the paid Property Taxes applicable to such year.

#### **4.2 Capital Expenditures and Operating Costs**

In consideration of the Monthly Fixed Amount and the revenues retained by Ginna pursuant to Section 3.2, Ginna shall be responsible, at its sole cost and without additional payment from RGE, for all capital expenditures and operating costs (including fuel), whether or not currently anticipated, required to operate and maintain the RSS Unit in accordance with Good Utility Practice, including, but not limited to the projected expenditures described in Exhibit 6 (if required) and any capital expenditures or operating costs (including fuel) attributable to the enactment of any Applicable Laws, or any changes in existing Applicable Laws, after the date hereof. The Parties acknowledge that the economic terms of this Agreement, including the Fixed Monthly Amount and the revenues retained by Ginna pursuant to Section 3.2, have been established based upon an estimate of such capital expenditures and operating costs (including fuel) and the Parties have agreed that Ginna shall bear the risk and retain the benefit of any savings related to estimated capital expenditures and operating costs during the Term.

### 4.3 Payment of Capital Recovery Balance

- (a) If the RSS Unit delivers energy to the NYISO transmission system or makes available capacity to the NYISO markets after seventy-five (75) days following the end of the Term, Ginna shall pay RGE the Capital Recovery Balance as more particularly described in this Section 4.3(a). The quarterly installment payments of the Capital Recovery Balance shall be calculated according to the following formula:

$$\text{Quarterly Installment Payment} = (i \times B \times (1+i)^n) / ((1+i)^n - 1)$$

Where:

i = the quarterly compounded equivalent of RGE's then-NYPSC approved weighted average cost of capital

B = the applicable Capital Recovery Balance as specified in Exhibit 5

n = the total quarters over which the Capital Recovery Balance is to be recovered (i.e., 24 if the capital recovery balance is less than \$50M, 28 if the capital recovery balance is greater than \$50M)

Such payments (i) shall only include periods after the seventy-five (75) day period following the end of the Term and (ii) shall be prorated for any partial calendar quarter. Ginna's payment obligation under this Section 4.3 shall survive the termination of this Agreement until the earlier of (i) the completion of twenty-four (24) Quarterly Installment Payments, if the Capital Recovery Balance is less than or equal to \$50 million, or twenty-eight (28) Quarterly Installment Payments, if the capital recovery balance is greater than \$50 million, and (ii) such time that the RSS Unit permanently ceases delivering energy to the NYISO transmission system and making available capacity to the NYISO markets. Ginna shall invoice amounts due by Ginna to RGE under this Section 4.3(a) on the tenth (10<sup>th</sup>) business day following the end of each calendar quarter. Ginna shall be entitled to remit prepayments of all or any portion of the Capital Recovery Balance, foregoing the requirement to pay any interest on such amount, and, upon such prepayment, (w) the Capital Recovery Balance shall be decreased by the prepayment amount, (x) Ginna shall not be required to resume making Quarterly Installment Payments until after the equivalent number of prepayment amount quarters has passed, (y) the Quarterly Installment Payment shall be recalculated in accordance with the above formula such that the remaining, post-prepayment Capital Recovery Balance will be recovered over the remaining number of Quarterly Installment Payments after Ginna is required to resume making Quarterly Installment Payments and (z) the remaining Capital Recovery Balance shall continue to accrue interest until repaid.

- (b) If the RSS Unit permanently ceases delivering energy to the NYISO transmission system and making available capacity to the NYISO markets prior to seventy-five (75) days following the end of the Term, Ginna's compensation and

payment obligations set forth in Section 4.3(a) shall not apply, but such obligations shall be reinstated if the RSS Unit subsequently resumes delivering energy to the NYISO transmission system or making available capacity to the NYISO markets.

(c) For each hour in a given month in which an Unplanned Outage Performance Adjustment or Force Majeure Performance Adjustment amount is credited against the Monthly Fixed Amount as specified in Section 5.3(b) or Section 7.1(b), the Capital Recovery Balance shall be reduced by the following amount:

$$\text{Capital Recovery Balance Reduction} = (\text{FH}/\text{H}) * (\text{P} - \text{R}) * \text{RATIO}$$

Where:

FH = hours in such month that are subject to an Unplanned Outage Performance Adjustment or a Force Majeure Performance Adjustment

H = total hours in a given month

P = Fixed Monthly Payment

R= The amount of Applicable Revenues retained by Ginna applicable to such hour, pursuant to Section 5.3(b) or Section 7.1(b)

RATIO = 4.21% for the period April 1, 2015 – September 30, 2018 ~~and 2.66% for the period October 1, 2018 – March 31, 2020~~

The Capital Recovery Balance Reduction shall never be less than zero (0).

#### **4.4 Billing and Payment**

Billing and payment terms for invoices issued under Sections 4.1 and 4.3(a) shall be as set forth in Exhibit 2.

#### **4.5 Other Costs**

Each Party shall bear its own attorneys' and consultants' fees incurred in connection with the preparation, negotiation, regulatory approval and administration of this Agreement.

#### **4.6 Books and Records**

RGE shall have the right to reasonable access to, review of, and audit of Ginna's books and records for the purpose of proper administration of this Agreement, including the satisfaction of any inquiry of RGE by a Governmental Authority relating to this Agreement, subject to Applicable Laws. Notwithstanding the foregoing, RGE shall not be entitled to review any Safeguards Information (as defined in 10 C.F.R. §73.2) relating to the Facility or any information relating to the Facility that is classified as National Security Information or Restricted Data or information or records concerning the Facility's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data (as

discussed in 10 C.F.R. § 2.390(d)(1)) unless (a) Ginna determines in its reasonable discretion that RGE has reason to know such information and the requested information is related to the administration of this Agreement and (b) each individual determined by RGE to have reason to know such information satisfies any security checks required by and other regulatory requirements of any Governmental Authority or generally required by the Facility prior to and/or as a condition of being granted access to, review of, or audit of such information.

## **ARTICLE V OUTAGES AND MAINTENANCE; ACCESS**

### **5.1 Planned Outages**

- (a) The schedule of Planned Outages for the Term is set forth in Exhibit 3. Ginna shall provide to RGE a detailed major outage plan and schedule involving maintenance or restoration of the RSS Unit from a Planned Outage. Upon reasonable notice to RGE, Ginna may alter the commencement and/or completion dates for Planned Outages, provided that increasing the duration of a Planned Outage beyond the applicable duration set forth in Exhibit 3 shall be subject to Section 5.3(a).
- (b) Ginna shall be permitted to take the RSS Unit out of operation, or reduce the capability of the RSS Unit, during Planned Outages as permitted by the NYISO Tariffs and policies and the Interconnection Agreement.
- (c) Ginna shall provide RGE a monthly report on the tenth (10<sup>th</sup>) business day of each successive month of the Term on the current and projected operating status of the RSS Unit and any upcoming items of note, including any forecasted changes to the Planned Outage schedule, substantially in the form set forth in Exhibit 4. Such reports shall not serve to amend Exhibit 3 for purposes of determining Unplanned Outage Performance Adjustments in accordance with Section 5.3.

### **5.2 Unplanned Outages**

In the event of an Unplanned Outage, Ginna shall notify RGE, pursuant to established practice under the NYISO Outage Scheduling Manual, of the nature and expected duration of such Unplanned Outage as soon as practicable and shall keep RGE timely advised of any developments associated with such Unplanned Outage and the estimated timing of the return of the RSS Unit to full capability. Ginna shall use commercially reasonable efforts to remedy and to mitigate the consequences of an Unplanned Outage as soon as reasonably practicable. An Unplanned Outage that occurs and continues for a period of ninety (90) consecutive days or more shall be considered a failure to perform a material obligation under this Agreement by Ginna that is subject to termination for default pursuant to Section 9.1.

### **5.3 Unplanned Outage Performance Adjustment**

- (a) Ginna's failure to return the RSS Unit to service from a Planned Outage within the allotted duration set forth in Exhibit 3 shall result in the excess hours associated with such Planned Outage being treated as an Unplanned Outage and

the application of the Unplanned Outage Performance Adjustment as set forth in Section 5.3(b) below, but shall not be deemed a failure to perform a material obligation under this Agreement under Section 9.1 unless Ginna fails to exercise Good Utility Practices and act in accordance with the NYISO Tariffs in returning the RSS Unit to service.

- (b) For each hour (or portion thereof) of an Unplanned Outage that exceeds a total of 195 hours for a calendar year (pro-rated for any partial years) during the Term, (i) an Unplanned Outage Performance Adjustment amount shall be credited against the Monthly Fixed Amount on the monthly invoice that is issued for the month in which such hour occurs and (ii) Ginna shall be entitled to retain, without credit to RGE, the Applicable Revenues relating to such hour.

#### **5.4 Access**

RGE shall be entitled to have one individual who shall serve as RGE's representative or agent and who shall not be an employee of Ginna or its affiliates located in a work space at the Facility's training building, with badge access (*i.e.* authorized access at all times without escort) to the training building. Such RGE representative or agent shall be given access to the internet at such work space, if so requested, but shall not be entitled to access to any computer system of Ginna or its affiliates. RGE shall be entitled to have its on-site representative or agent given visitor (escorted) access to the other areas of the Facility and a reasonable number of additional representatives or agents given visitor (escorted) access to the Facility, subject to such representatives' or agents' satisfaction of any security and regulatory requirements and other protocols generally required of visitors to the Facility and upon reasonable advance notice to Ginna. RGE's representatives and agents shall at all times comply with all requirements and instructions of Facility personnel while present at the Facility, including but not limited to any requirements of any Governmental Authority. Such access to the Facility shall not unreasonably interfere with the operations of the Facility. RGE shall be solely responsible for, and shall indemnify and hold harmless Ginna for, the acts of or any employment related claims or other claims brought by RGE's employees, representatives or agents, including any loss, claim, action or suit for or on account of injury or death of persons, or for damage to, or destruction or economic loss of, property associated with any (a) injury sustained by RGE's employees, representatives or agents or (b) acts or omissions of any of RGE's representatives or agents while present at the Facility's training building or at the Facility.

### **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

#### **6.1 Representations and Covenants of Ginna**

Ginna hereby represents and warrants to RGE as of the Effective Date and covenants to RGE that:

- (a) Ginna is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland. Ginna has full limited liability

company power and authority to own and lease all of the properties and assets it now owns and leases and to carry on its business as now being conducted. To the knowledge of Ginna, Ginna is in substantial compliance with Applicable Laws.

- (b) Ginna has full power and authority (limited liability company and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which Ginna is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by Ginna of this Agreement and the operative documents, and the consummation of the transactions will not violate Ginna's organizational documents or other obligations, and no other proceedings on the part of Ginna are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by Ginna and constitutes the legal, valid and binding obligation of Ginna enforceable against Ginna in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). Ginna shall take, and cause to be taken, all action that is necessary for Ginna to complete the actions to be completed by Ginna pursuant to this Agreement.
- (c) There are no known issues, defects, problems or other issues involving or related to the ownership and/or operation of the RSS Unit and the Facility as a whole that would preclude or prevent Ginna from fully performing its duties and obligations in accordance with this Agreement.
- (d) The calculation of operating and maintenance costs and capital expenditures anticipated to be incurred by Ginna over the Term included in the cost of service materials and supporting data referenced in the affidavit submitted by Ginna to FERC in connection with its application for approval of this Agreement, attached hereto as Exhibit 6, (i) have been prepared by Ginna in good faith consistent with its historical practices, (ii) represent Ginna's best estimate of such costs consistent with historical practices and the projected operations of the Facility during the Term and (iii) are consistent with the prevailing cost estimates and operating plans presented to the board of directors of Constellation Energy Nuclear Group, LLC on December 9, 2014.
- (e) No citations, fines, or penalties have been asserted against Ginna under any Environmental Law or by the regulatory authority or jurisdiction in which Ginna operates. Ginna has not received notice (verbal or written) of, nor is it aware of, any person making allegations that all or any part of the RSS Unit or the Facility as a whole, or the use, operation or ownership thereof, are in violation of any applicable Environmental Law.

- (f) Ginna shall keep in force all existing policies of insurance, or comparable replacement policies of insurance at existing levels of coverage related to the RSS Unit and the Facility, including the ownership and operation thereof, throughout the duration of the Term.
- (g) Ginna is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by Ginna before or coincident with the Effective Date.

## **6.2 Representations and Covenants of RGE**

RGE hereby represents and warrants to Ginna as of the Effective Date and covenants that:

- (a) RGE is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full corporate power and authority to own property and carry on its business as now being conducted.
- (b) RGE has full power and authority (corporate and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which RGE is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by RGE of this Agreement and the operative documents, and the consummation of the transactions will not violate RGE's organizational documents or other obligations, and no other corporate proceedings on the part of RGE are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by RGE and constitutes the legal, valid and binding obligation of RGE enforceable against RGE in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). RGE shall take, and cause to be taken, all corporate action that is necessary for RGE to complete the actions to be completed by RGE pursuant to this Agreement.
- (c) RGE is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by RGE before or coincident with the Effective Date.

## **ARTICLE VII FORCE MAJEURE EVENTS**

### **7.1 Force Majeure Event**

- (a) Any delay or failure in the performance by a Party, other than payment of undisputed amounts, shall be excused if and to the extent caused by the



occurrence of a Force Majeure Event. A “Force Majeure Event” means acts of God, fires, floods, explosion, riots, wars, unusually inclement weather, sabotage, vandalism, terrorism, terroristic acts, restraint of government, governmental acts, changes in laws, regulations or orders or injunctions, labor strikes, breakage or accident of machinery or equipment resulting from an event or circumstance that would otherwise constitute a Force Majeure Event hereunder, and other like events or circumstances that are beyond the reasonable control of the Party affected thereby, despite such Party’s commercially reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party’s negligence or failure to perform its obligations under this Agreement. In no event shall “Force Majeure Event” include economic hardship of any kind.

- (b) RGE’s obligation to pay Ginna the Monthly Fixed Amount shall not be affected by the occurrence of a Force Majeure Event, but the amount of the Monthly Fixed Amount may be adjusted for a Force Majeure Outage pursuant to this Section 7.1(b). For each hour (or portion thereof) of a Force Majeure Outage (other than due to a Force Majeure Event with respect to the transmission or distribution systems of RGE or by equipment owned by RGE) that exceeds a total of seven hundred twenty (720) hours for the Initial Term (such hour defined herein as an “Excess Force Majeure Outage Hour”), (i) a Force Majeure Performance Adjustment amount shall be credited against the Monthly Fixed Amount on the monthly invoice that is issued for the month in which such hour occurs and (ii) Ginna shall be entitled to retain, without credit to RGE, the Applicable Revenues relating to such hour. ~~Upon the commencement of a Necessary Extension, the amount of Force Majeure Outage hours that can occur prior to the occurrence of an Excess Force Majeure Outage Hour shall be reset to the higher of (i) an amount equal to (x) seven hundred twenty (720) hours minus (y) the number of hours during which Force Majeure Outage(s) occurred during the Initial Term and (ii) three hundred and nine (309) hours.~~
- (c) The Party unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party’s sole discretion, are contrary to its interests and (ii) the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

**ARTICLE VIII  
LIMITATIONS OF LIABILITY**

**8.1 Indemnification, Limitation of Liability**

- (a) Each Party shall release, indemnify and hold harmless the other Party and its directors, managers, officers, agents, contractors, sub-contractors and representatives against and from any and all loss, claims, actions or suits, including costs and attorneys' fees, both at trial and on appeal, resulting from, or arising out of or in any way, the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party and its directors, managers, officers, agents, contractors, sub-contractors and representatives, including, but not limited to, any loss, claim, action or suit, for or on account of injury or death of persons, or for damage to, or destruction or economic loss of, property, excepting only such loss, claim, action or suit as may be caused solely by the negligence or willful misconduct or breach of this Agreement of the Party seeking indemnification or its directors, managers, officers, agents, contractors, sub-contractors or representatives.
- (b) Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public.
- (c) Neither Party shall be liable to the other for incidental, consequential, special, indirect, multiple or punitive damages, loss of revenue, profits, fees or costs arising out of, or connected in any way to the performance or non-performance of a Party under this Agreement, whether arising from contract, tort (including negligence), strict liability or otherwise, unless such damages are the result of a Party's gross negligence or willful misconduct and except as may be included in the calculation of Unplanned Outage Performance Adjustments or Force Majeure Event Performance Adjustments.

**ARTICLE IX  
REMEDIES**

**9.1 Termination for Default**

If any Party shall fail to perform any material obligation imposed on it by this Agreement, and that obligation has not been suspended pursuant to the terms of this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within thirty (30) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement; provided that, if the default is reasonably expected to take more than thirty (30) days to remedy, the defaulting Party shall notify the

non-defaulting Party of its plan for remedying the default and must take actions to begin remedying the default within thirty (30) days. The Party not in default shall have a duty to mitigate damages. If RGE terminates this Agreement pursuant to this Section 9.1, then no Settlement Payment shall be owed to Ginna except that any unpaid balance of any Deferred Collection Amount shall, at RGE's option, (a) continue to be repaid by RGE in monthly installments in accordance with Section 4.1(b) or (b) be repaid in full upon termination of this Agreement. If Ginna terminates this Agreement pursuant to this Section 9.1, its damages shall be limited to the Settlement Payment. Notwithstanding anything to the contrary in this Section 9.1, termination of this Agreement pursuant to this Section 9.1 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.

## **9.2 Waiver**

The failure to exercise any remedy or to enforce any right provided in this Agreement or Applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the Party against whom such waiver is to be enforced.

## **9.3 Beneficiaries**

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third-party, nor give any third-person any rights of subrogation or action against any Party.

# **ARTICLE X MISCELLANEOUS PROVISIONS**

## **10.1 Assignment**

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, upon the occurrence of a Market or Regulatory Change, RGE may assign this Agreement to one or more parties that are the beneficiaries identified in the appropriate Governmental Authority's determination of benefits, subject to Ginna's approval of such party's creditworthiness, which shall not be unreasonably withheld, conditioned or delayed and need not be equivalent to RGE's creditworthiness. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this section, the assigning Party shall be relieved of liability under this Agreement and this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties. Without limiting the foregoing, Ginna may not sell or transfer the assets comprising substantially all of the RSS Unit unless the purchaser or transferee agrees in writing with RGE to assume all rights, obligations and liabilities under this Agreement.

## **10.2 Market or Regulatory Change**

Upon the occurrence of a Market or Regulatory Change, the Parties shall modify the economic terms of this Agreement (which may include adjusting the Monthly Fixed Amount, the revenue sharing percentages set forth in Section 3.2, Exhibit 1 and/or Exhibit 5, as applicable) to preserve, to the maximum extent possible, each Party's economic bargain under this Agreement. Such modifications shall only serve to reallocate, but not limit, the economic costs covered by this Agreement in accordance with the appropriate Governmental Authority's determination of benefits. Any additional revenues received by Ginna due to a Market or Regulatory Change that do not constitute Ginna's entitlement to Energy Revenues and/or Capacity Revenues described in Section 3.2(b) and (c) shall be for RGE's account and shall be credited against the Monthly Fixed Amount, with any such revenues in excess of the Monthly Fixed Amount paid to RGE. Upon notice of a Market or Regulatory Change by one Party to another, the Parties shall negotiate in good faith to determine the required modifications to this Agreement.

## **10.3 Cost Recovery**

- (a) In the event that, after the Rate Recovery Order is obtained, the NYPSC or other Governmental Authority subsequently disallows the recovery from RGE's customers of any amounts paid to Ginna under this Agreement due to the breach or inaccuracy of Ginna's representations and warranties set forth in Section 6.1(d), the Parties shall negotiate in good faith to address the basis for such disallowance and to mitigate the economic impact of such disallowance on RGE. If the Parties fail to agree upon and implement a mechanism or adjustment to this Agreement to fully mitigate the economic effects of such disallowance on RGE, then Ginna shall refund to RGE any such disallowed amount to the extent such disallowance was not a direct result of the willful misconduct or gross negligence of RGE. Any such refund shall be payable by Ginna, at Ginna's option, by means of a cash payment to RGE or by crediting such amount against the next succeeding Fixed Monthly Amount(s).
- (b) If the NYPSC or other Governmental Authority implements a rate recovery mechanism that does not allow RGE to fully recover through a customer surcharge (without offset or deferral including with respect to items unrelated to this Agreement) amounts paid to Ginna under this Agreement on a substantially current basis that coincides with the payments made by RGE to Ginna hereunder, then (i) the Monthly Fixed Amount shall be immediately reduced to be equal to the monthly amount that RGE is reasonably anticipated to recover through such surcharge on a substantially current basis and (ii) the Parties shall modify the other economic terms of this Agreement (which may include adjusting Exhibit 1 and/or Exhibit 5, as applicable) to allow for payment of the unpaid balance of the Monthly Fixed Amount as such amounts are reasonably anticipated to be recovered by RGE through such surcharge (which may include payments made to Ginna after the expiration or termination of the Term). Such modifications shall only serve to modify the timing of, but not limit, the amounts payable to Ginna by RGE under this Agreement. Ginna shall be entitled to financing or carrying costs in connection with such modifications only to the extent that RGE is permitted by

the NYPSC or other Governmental Authority to recover such financing or carrying costs through such surcharge.

#### **10.4 Notices and Correspondence**

Except as otherwise expressly provided in this Agreement, permitted by NYISO rules or required by law, all invoices, notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by email, followed by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (i) upon receipt if delivered in person or facsimile; (ii) two (2) days after having been delivered to a courier for overnight delivery; or (iii) seven (7) days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this Section):

TO GINNA:

R.E. Ginna Nuclear Power Plant, LLC  
100 Constellation Way, Suite 500C  
Baltimore, MD 21202  
Attention: Senior Vice President  
Telephone No.: 410-470-5133  
Facsimile No.: 410-470-2600

With copies to:

R.E. Ginna Nuclear Power Plant, LLC  
4300 Winfield Road  
Warrenville, IL 60555  
Attn: Brad Fewell, Senior Vice President and General Counsel  
Telephone No.: 630-657-3752

And

R.E. Ginna Nuclear Power Plant, LLC  
c/o Exelon Generation Company, LLC  
100 Constellation Way, Suite 500  
Baltimore, MD 21202  
Attention: General Counsel  
Telephone No.: 410-470-3121  
Facsimile No.: 410-470-2600

TO RGE:

Rochester Gas and Electric Corporation  
James A. Carrigg Center, 18 Link Drive  
P.O. Box 5224  
Binghamton, New York 13902-5224  
Attention: David Kimiecik, Vice President - Energy Services  
Telephone No.: (607) 762-8701

with a copy to:

Iberdrola USA Management Corporation  
99 Washington Ave, Suite 2018  
Albany, NY 12210  
Attention: Noelle Kinsch, Deputy General Counsel  
Telephone No.: (518) 434-4977

## **10.5 Parties' Representatives**

Each Party to this Agreement shall ensure that throughout the Term duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Ginna and RGE shall be entitled to assume that the duly appointed representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party.

## **10.6 Taxes**

- (a) Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement insofar as it applies to the Reliability Support Services in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts. If any of the transactions hereunder are to be exempted from or not subject to any particular taxes, the Parties shall cooperate in good faith to promptly provide each other with all necessary documentation to evidence and qualify for such exemption.
- (b) RGE shall pay or cause to be paid all taxes, if any, on or with respect to the sale of the Reliability Support Services (other than ad valorem, franchise or income taxes, or similar taxes measured by or based upon net income, which are related to the sale of the Reliability Support Services and are, therefore, the responsibility of Ginna). In the event Ginna is required by Applicable Law to remit or pay taxes which are RGE's responsibility hereunder, RGE shall promptly reimburse Ginna for such taxes. If RGE is required by Applicable Law to remit or pay taxes which are Ginna's responsibility hereunder, RGE may deduct the amount of any such taxes from the sums due to Ginna under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under Applicable Law.

## **10.7 Independent Parties**

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party.

## **10.8 Choice of Law**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, excluding any choice of law provisions or rules which may direct the application of the laws of another jurisdiction.

## **10.9 Effect of Invalidation, Modification, or Condition**

Each covenant, condition, restriction, and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement.

## **10.10 Amendments**

Any amendments or modifications of this Agreement shall be made only in writing and duly executed by all Parties to this Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from FERC for the amendment or modification. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the New York markets that are approved by FERC from time to time.

## **10.11 Dispute Resolution**

Except where otherwise provided for in this Agreement, disputes under this Agreement shall be submitted to representatives of each Party for resolution. If the dispute remains

unresolved after forty-five (45) days, either Party may pursue any legal remedies available to it by law.

### **10.12 Injunctive Relief**

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

### **10.13 Entire Agreement**

This Agreement consists of the terms and conditions set forth herein, as well as the Exhibits hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior negotiations, undertakings, agreements and business term sheets.

### **10.14 Confidentiality**

Information provided by any Party to the other pursuant to this Agreement may, at the Party's discretion, be provided subject to the terms of the Confidentiality Agreement dated January 23, 2014, between Exelon Generation Company, LLC, an affiliate of Ginna, and RGE ("Confidentiality Agreement"). RGE may disclose information provided under Section 4.6 to the NYPSC and Staff pursuant to regulatory requests received in the ordinary course of RGE's business, and shall use at least the same degree of care (which in no event shall be less than reasonable care) in connection with demands or requests for the disclosure of any confidential information of Ginna as RGE uses to protect its own similar confidential information in connection with similar regulatory requests. Disclosure of such information pursuant to regulatory requests not received in the ordinary course of business shall remain subject to all of the terms and conditions of Section 4 of the Confidentiality Agreement. All information provided to either Party in connection with the negotiations regarding this Agreement shall remain subject to the provisions of such Confidentiality Agreement.

### **10.15 Communications; Press Releases**

The Parties shall reasonably cooperate and coordinate with each other with regard to any communications in respect of the Reliability Support Services or the transactions contemplated by this Agreement with state and local community organizations and groups or the public generally, whether through press releases or otherwise. Each Party agrees to inform the other Party with respect to all such matters and shall promptly provide the other Party with copies of any communications sent, delivered or received; provided that nothing in the foregoing shall operate to prevent a Party from complying with Applicable Law or the requirements of any Governmental Authority concerning such matters.



## **10.16 FERC Proceedings**

Ginna agrees to not seek a reliability must-run agreement (or similar agreement) from FERC with respect to the RSS Unit during the Term. Notwithstanding the foregoing, the Parties agree that Ginna will seek the FERC Authorization in accordance with Section 2.1.

## **10.17 Standard of Review**

The standard of review for any modifications to this Agreement requested by a Party will be subject to the “public interest” standard of review set forth in United Gas Pipe Line Company v. Mobile Gas Service Corporation, 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Company, 350 U.S. 348 (1956). See also Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish County, 554 U.S. 527 (2008). The standard of review for any modifications to this Agreement requested by a non-party to this Agreement or initiated by FERC will be the most stringent standard permissible under applicable law. See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm’n, 558 U.S. 165 (2010).

## **10.18 Counterparts**

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Facsimile or PDF signature shall be an acceptable form of execution.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**ROCHESTER GAS AND ELECTRIC CORPORATION**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**R.E. GINNA NUCLEAR POWER PLANT, LLC**

By: \_\_\_\_\_

Name:

Title:

**Exhibit 1**  
**to**  
**Reliability Support Services Agreement**  
**Between Rochester Gas and Electric Corporation and R.E. Ginna Nuclear Power Plant,**  
**LLC**

**Settlement Payment**

<b>Termination Announcement</b>	<b>Termination Date</b>	<b>Settlement Payment</b>
Apr-15	Apr-16	\$ 43,604,186.91
May-15	May-16	\$ 41,036,836.08
Jun-15	Jun-16	\$ 38,089,342.20
Jul-15	Jul-16	\$ 35,479,110.20
Aug-15	Aug-16	\$ 32,846,981.24
Sep-15	Sep-16	\$ 30,044,584.25
Oct-15	Oct-16	\$ 27,613,402.77
Nov-15	Nov-16	\$ 24,610,419.03
Dec-15	Dec-16	\$ 22,006,732.50
Jan-16	Jan-17	\$ 18,671,045.00
Feb-16	Feb-17	\$ 14,092,324.63
Mar-16	Mar-17	\$ 11,458,030.70
Apr-16	Apr-17	\$ 55,220,372.72
May-16	May-17	\$ 55,045,483.09
Jun-16	Jun-17	\$ 52,185,430.19
Jul-16	Jul-17	\$ 49,030,608.43
Aug-16	Aug-17	\$ 45,845,195.62
Sep-16	Sep-17	\$ 42,255,186.15
Oct-16	Oct-17	\$ 39,033,331.04
Nov-16	Nov-17	\$ 35,381,359.62
Dec-16	Dec-17	\$ 32,096,975.27
Jan-17	Jan-18	\$ 29,066,148.93
Feb-17	Feb-18	\$ 24,487,197.52
Mar-17	Mar-18	\$ 21,164,488.51
Apr-17	Apr-18	\$ 17,344,839.27
May-17	May-18	\$ 14,510,011.86
Jun-17	Jun-18	\$ 10,685,706.68
Jul-17	Jul-18	\$ 7,282,019.75
Aug-17	Aug-18	\$ 3,844,384.87

**Exhibit 2**  
**to**  
**Reliability Support Services Agreement**  
**Between Rochester Gas and Electric Corporation and R.E. Ginna Nuclear Power Plant,**  
**LLC**

**Billing and Payment**

Billing Period. As designated in Section 4.1 or Section 4.3(a), as applicable.

Timeliness of Payment. Unless otherwise agreed by the Parties in a transaction contemplated by this Agreement, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the last day of each month, or tenth (10<sup>th</sup>) day after receipt of the invoice or, if such day is not a business day, then on the next business day. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

Interest Rate. "Interest Rate" shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this section within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a transaction contemplated by this Agreement occurred, the right to payment for such performance is waived.

Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions applicable to this Agreement through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of products during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.

US Federal Tax Forms. Each Party to this Agreement shall upon signing provide the other Party a completed W-9.

Dollars. Unless otherwise stated all dollars in this Agreement refer to U.S. Currency.

**Exhibit 3**  
**to**  
**Reliability Support Services Agreement**  
**Between Rochester Gas and Electric Corporation and R.E. Ginna Nuclear Power Plant,**  
**LLC**  
**Planned Outage Schedule**

**REDACTED**  
**CONTAINS**  
**CRITICAL ENERGY INFRASTRUCTURE INFORMATION**  
**AS DEFINED IN 18 C.F.R. § 388.113 (2014)**