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November 19, 2015

**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary  
NYS Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223

**RE: Case 14-E-0270: Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC.**

Dear Secretary Burgess:

Attached for filing in the above-referenced proceeding is R.E. Ginna Nuclear Power Plant, LLC's, Statement in Support of the Joint Proposal. Copies of the attached Statement in Support are being served concurrently on all active parties.

Respectfully submitted,

/s/ *Steven D. Wilson*

Steven D. Wilson

cc: Active Parties

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Petition Requesting Initiation of a Proceeding to  
Examine a Proposal for Continued Operation of the  
R.E. Ginna Nuclear Power Plant, LLC.

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Case 14-E-0270

**R.E. GINNA NUCLEAR POWER PLANT, LLC'S  
STATEMENT IN SUPPORT OF THE JOINT PROPOSAL**

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Dated: November 19, 2015  
Albany, New York

## TABLE OF CONTENTS

I.	BACKGROUND .....	2
A.	The Ginna Facility .....	2
B.	State Proceeding.....	2
C.	Federal Energy Regulatory Commission Proceeding .....	7
D.	Settlement Process .....	8
i.	State Proceeding .....	8
ii.	FERC Proceeding .....	8
II.	SUMMARY OF THE JOINT PROPOSAL .....	9
A.	The Joint Proposal’s Relevant Provisions.....	9
i.	Term .....	9
ii.	Payment Obligation.....	9
iii.	Early Termination.....	10
iv.	Compensation.....	11
v.	Capital Recovery Balance .....	11
vi.	State Settled Matters.....	12
vii.	RG&E Cost Recovery and Use of Credits .....	12
viii.	Study, Solicitation, and Reporting .....	13
III.	ARGUMENT .....	14
A.	Standard of Review.....	14
B.	The Joint Proposal Represents a Fair Settlement of the Issues in This Proceeding and Satisfies the Commission’s Settlement Guidelines .....	16
i.	Term .....	17
ii.	Reasonableness of the RSSA in Light of Available Alternatives, Including Costs and Benefits.....	18
iii.	Cost.....	19
iv.	Customer Credits .....	21
IV.	CONCLUSION.....	21

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Case 14-E-0270

**R.E. GINNA NUCLEAR POWER PLANT, LLC'S  
STATEMENT IN SUPPORT OF THE JOINT PROPOSAL**

Pursuant to Administrative Law Judge (“ALJ”) Sean Mullany’s Ruling Adopting Revised Schedule,<sup>1</sup> R.E. Ginna Nuclear Power Plant, LLC (“Ginna”) respectfully submits its statement in support of the joint proposal (the “Joint Proposal”) filed by Rochester Gas and Electric Corporation (“RG&E”) with the Public Service Commission (the “Commission”) in this proceeding providing for the continued operation of Ginna’s nuclear electric generating facility (the “Ginna Facility”), which is located in RG&E’s service territory. The parties to the Joint Proposal are RG&E, Ginna, Department of Public Service Staff (“DPS Staff”), the Department of State Utility Intervention Unit (“UIU”), and Multiple Intervenors (“MI”) (collectively, the “Signatory Parties”).

The Joint Proposal is the negotiated product of the Commission’s prior order determining that 1) the Ginna Facility is “needed for system reliability purposes,” 2) Ginna’s notice of retirement was “satisfactory because it serves the purposes of the [Commission’s] generation retirement requirements and policies,” 3) Ginna “justified [the Commission] directing RG&E to commence negotiations” for a reliability support services agreement (“RSSA”), and 4) an RSSA

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<sup>1</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Ruling Adopting Revised Schedule (Nov. 3, 2015).

is in the public interest.<sup>2</sup> The Joint Proposal resolves all of the remaining issues in this proceeding among normally-adversarial parties and ensures that the Ginna Facility will be available to provide the necessary reliability support services and that Ginna will be compensated for providing such services for the minimum amount of time required for RG&E to complete certain transmission reinforcements.

For these reasons and as detailed below, the Joint Proposal represents a fair settlement of the issues in this proceeding and satisfies the Commission's Procedural Guidelines for Settlement ("Settlement Guidelines").<sup>3</sup> Accordingly, Ginna respectfully requests that the ALJs recommend to the Commission that the Joint Proposal be adopted in its entirety without modification or conditions.

## **I. BACKGROUND**

### **A. The Ginna Facility**

The Ginna Facility is a 581 megawatt ("MW") single-unit pressurized water reactor located in Ontario County, New York. Prior to expiration on June 30, 2014, the Ginna Facility operated under a purchase power agreement (the "PPA") with RG&E for a majority of its energy and capacity. Upon expiration, the Ginna Facility became a fully-merchant generator in the wholesale markets.

### **B. State Proceeding**

In early 2014, in light of the upcoming expiration of the PPA with RG&E and because the Ginna Facility had sustained cumulative losses of nearly \$100 million for calendar years 2012 and 2013, Constellation Energy Nuclear Group, LLC ("CENG"), the parent company of

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<sup>2</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings (Nov. 14, 2014) (the "November 14<sup>th</sup> Order").

<sup>3</sup> Case 90-M-0255: *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements* (Opinion 92-2), Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (Mar. 24, 1992), Appendix B, Procedural Guidelines for Settlement.

Ginna, analyzed the revenues that the Ginna Facility was expected to receive as a fully-merchant generator. CENG determined that the expected revenues from sales of energy and capacity into the markets administered by the New York Independent System Operator (“NYISO”) would be insufficient to cover the costs of continued operation, including required new capital investment.

Beginning in January 2014, CENG management representatives met separately with individual Commissioners, DPS Staff, RG&E, and the NYISO to discuss CENG management’s determination that market revenues will be insufficient to cover the Ginna Facility’s costs going forward and that, as a result, Ginna’s management would recommend retirement of the Ginna Facility to the CENG board absent a confirmed reliability need and acceptable RSSA.

On May 12, 2014, the NYISO produced the final results of its independent reliability study confirming the need for the Ginna Facility’s continued operation at least through October 1, 2018, to avoid adverse impacts to electric system reliability (the “2014 Reliability Study”). RG&E also conducted a local reliability analysis, the results of which are included in the NYISO study and confirm the need for the Ginna Facility’s continued operation to support local electric reliability in RG&E’s service territory.

On July 11, 2014, Ginna filed a petition requesting that the Commission 1) find that the Ginna Facility’s continued operation is necessary to assure electric service reliability; 2) find that CENG management’s communications with individual Commissioners and DPS Staff, RG&E, and the NYISO, including, but not limited to, the petition and the 2014 Reliability Study, constituted full and sufficient notice to the Commission to satisfy the advance notice requirements with respect to consideration of retirement generally and the Ginna Facility

specifically; and 3) direct RG&E and Ginna to negotiate and file an RSSA for the Ginna Facility's continued operation to support electric system reliability in RG&E's service territory.<sup>4</sup>

On November 14, 2014, the Commission issued an order determining, among other things, that Ginna "justified entry into RSSA negotiations because retention of its Facility is necessary for the preservation of electric system reliability."<sup>5</sup> More specifically, the Commission stated:

"Ginna has demonstrated that its facility is needed for system reliability purposes and that its notice should be deemed satisfactory because it serves the purposes of the generation retirement requirements and policies. Given the size, location, and importance of the Ginna Facility as a generation resource, Ginna has also justified directing RG&E to commence negotiations over [sic] for an RSSA, albeit further procedures are required to ensure that an RSSA is the best and most cost-effective alternative for maintaining reliability."<sup>6</sup>

The Commission further determined that an RSSA between Ginna and RG&E is in the public interest, stating, "[w]ith the essential reliability need predicate to obtaining an RSSA satisfied, it may be noted that an RSSA is otherwise in the public interest, in that loss of the Ginna Facility would adversely affect the local economy, and the adverse impact would ripple out into the surrounding region as well."<sup>7</sup> In sum, by this order, the Commission determined the 1) need for the Ginna Facility to maintain electric system reliability, 2) sufficiency of Ginna's retirement notice, 3) justification for an RSSA, and 4) the RSSA is in the public interest.

On December 23, 2014, RG&E filed with the Commission the results of a prior solicitation seeking proposals to replace the capacity and electricity generated by the Ginna Facility.<sup>8</sup> RG&E determined that none of the six bids it received would adequately maintain local

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<sup>4</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant (Filed Jul. 11, 2014), at 3.

<sup>5</sup> November 14<sup>th</sup> Order, at 15.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 22.

<sup>8</sup> RG&E filed a less-redacted version of the solicitation results on March 25, 2015.

electric system reliability if the Ginna Facility were retired. RG&E did, however, identify a transmission solution set that RG&E could construct that would allow for the retirement of the Ginna Facility (the “Ginna Retirement Transmission Alternative” or the “GRTA”).<sup>9</sup> RG&E anticipates that the GRTA can be constructed and in service by March 31, 2017.<sup>10</sup> Until such time as construction of the GRTA is complete, RG&E determined that an RSSA with Ginna is the only viable solution to maintain electric system reliability.<sup>11</sup>

On February 13, 2015, RG&E filed an executed RSSA with the Commission (the “February 13 RSSA”). In its accompanying petition, RG&E requested that the Commission 1) accept the negotiated RSSA without modification, and 2) approve full and immediate cost recovery by RG&E from its customers of all amounts payable to Ginna under the RSSA via a cost-recovery surcharge.

On May 14, 2015, the ALJs assigned to the proceeding issued a ruling defining the issues that may be addressed by the parties at any subsequent evidentiary hearing.<sup>12</sup> These issues include: 1) jurisdiction, 2) reasonableness of the RSSA in light of available alternatives including costs and benefits, 3) term, 4) RG&E’s reliability planning processes, 5) cost allocation, and 6) use of customer credits. The ALJs excluded the following purported issues: 1) the need for the Ginna Facility for reliability purposes, 2) the need for an RSSA to prevent retirement of the

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<sup>9</sup> Case 11-T-0534: *Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the “Rochester Area Reliability Project,” Approximately 23.6 Miles of 115 Kilovolt Transmission Lines and 1.9 Miles of 345 Kilovolt Line in the City of Rochester and the Towns of Chili, Gates and Henrietta in Monroe County*, Letter to ALJs Regarding Modification of Schedule (Filed Dec. 23, 2014).

<sup>10</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Request for Proposals – RG&E Contingency Alternative to Ginna RSSA (Filed Nov. 2, 2015), at 1.

<sup>11</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, RG&E Solicitation Evaluation (Dec. 23, 2014).

<sup>12</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Ruling on Scope of Issues for Hearing (May 14, 2015) (the “Ruling on Scope”).

Ginna Facility, and 3) continued operation of the Ginna Facility after expiration of the RSSA term and decommissioning.<sup>13</sup>

On June 4, 2015, RG&E filed a petition requesting Commission approval to implement a temporary rate in the form of an electric surcharge for its electric customers.<sup>14</sup> RG&E did so because Ginna had begun providing reliability support services to RG&E consistent with the terms of the RSSA on April 1, 2015, but the costs for these services were not yet being collected; instead, they were accumulating as a Deferred Collection Amount. By seeking a temporary rate surcharge, RG&E sought to mitigate the rate compression effect that would occur upon the payment obligation from RG&E to Ginna being triggered.

On August 14, 2015, the Commission approved RG&E's implementation of a temporary rate.<sup>15</sup> According to the Commission, "in light of the potential rate impacts the [RSSA] may cause, the public interest requires a temporary rate for this purpose, pending the Commission's final determination on the petition filed by RG&E in this case on February 13, 2015 seeking approval of the RSSA with related cost recovery."<sup>16</sup>

After lengthy negotiations between the parties to this proceeding, on October 21, 2015, RG&E filed the Joint Proposal with the Commission. The Joint Proposal includes a revised RSSA (the "Settlement RSSA"), which reflects the Joint Proposal's terms.

As required by the Joint Proposal, on October 30, 2015, RG&E issued a second solicitation seeking alternative reliability solutions in the event of a potential delay in the

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<sup>13</sup> *Id.* RG&E and Citizens' Environmental Coalition/Alliance for a Green Economy filed interlocutory appeals of the Ruling on Scope. Those appeals remain pending.

<sup>14</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Petition for Temporary Rate Surcharge (Filed Jun. 4, 2015).

<sup>15</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Order Approving Establishment of Temporary Rates (Aug. 14, 2015).

<sup>16</sup> *Id.* at 1.

implementation of certain GRTA components.<sup>17</sup> Responses to this solicitation are due December 29, 2015. RG&E will publish a report evaluating proposed alternatives by February 26, 2016.

As further required by the Joint Proposal, RG&E conducted a second reliability study in coordination with the NYISO and with oversight of DPS Staff to confirm that the GRTA would solve reliability issues if the Ginna Facility were to retire (the “GRTA Study”). RG&E filed the results of the GRTA Study with the Commission on November 10, 2015.<sup>18</sup> The GRTA Study concludes that the GRTA “will solve violations which would be caused by the retirement of [the] Ginna [Facility].”<sup>19</sup>

### **C. Federal Energy Regulatory Commission Proceeding**

Concurrent with RG&E’s filing of the February 13 RSSA with the Commission, Ginna also submitted the executed RSSA to the Federal Energy Regulatory Commission (“FERC”) for acceptance as a cost-justified settlement rate pursuant to Section 205 of the Federal Power Act<sup>20</sup> and Part 35 of FERC’s regulations.<sup>21</sup> Ginna’s rate filing with FERC explains that, “concurrently with the instant filing, RG&E will be making a filing with the [Commission] seeking authorization of cost allocation and recovery for the costs that RG&E will incur under the RSSA.”<sup>22</sup>

In its filing with FERC, Ginna provided an analysis demonstrating that the cost recovery proposed in the RSSA was substantially below what would otherwise be authorized from a full

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<sup>17</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Request for Proposals – RG&E Contingency Alternative to Ginna RSSA (Filed Nov. 2, 2015).

<sup>18</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Ginna Retirement Reliability Study (Filed Nov. 10, 2015).

<sup>19</sup> GRTA Study, at 18.

<sup>20</sup> 16 USC § 824d.

<sup>21</sup> 18 CFR pt. 35.

<sup>22</sup> *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Application (Feb. 13, 2015), at 2.

cost-of-service rate during the period from April 1, 2015 to September 30, 2018.<sup>23</sup> Ginna’s filing states that “[t]he purpose of providing a cost-of-service analysis here is to satisfy the substantial evidence standard by framing the upper end of the range of reasonable outcomes.”<sup>24</sup> Based on the full cost-of-service analysis, Ginna averred that “[t]he settlement rate is cost-justified because it is within the range of reasonable outcomes as demonstrated by the full cost-of-service analysis presented here.”<sup>25</sup>

#### **D. Settlement Process**

##### **i. State Proceeding**

On May 5, 2015, a Notice of Impending Settlement Negotiations was sent to all active parties and other interested persons and duly filed with the Commission. A settlement conference in this proceeding was held in person on May 11, 2015.<sup>26</sup> This settlement process culminated in the negotiation, execution, and filing of the Joint Proposal.

On November 3, 2015, ALJ Mullany issued a Ruling Adopting Revised Schedule seeking statements in support of or opposition to the Joint Proposal by November 19, 2015.<sup>27</sup>

##### **ii. FERC Proceeding**

Following a FERC order issued April 14, 2015, which accepted in part and suspended Ginna’s proposed rate schedule, subject to refund, and established hearing and settlement procedures,<sup>28</sup> the parties unanimously requested the appointment of Judge Jennifer Whang as the

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<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> Because the Joint Proposal mirrors the Settlement Agreement filed with FERC, the multiple settlement conferences held in the FERC proceeding effectively settled issues in this proceeding as well.

<sup>27</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Ruling Adopting Revised Schedule (Nov. 3, 2015).

<sup>28</sup> *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Order Rejecting In Part, And Accepting in Part and Suspending Proposed Rate Schedule, Subject to Refund, and Establishing Hearing and Settlement Procedures (Apr. 14, 2015).

settlement judge to assist in efforts to resolve the disputed issues. On April 28, 2015, the Chief Administrative Law Judge appointed Judge Whang as settlement judge in this proceeding.<sup>29</sup>

The parties, including DPS Staff and FERC Staff, attended settlement conferences before Judge Whang on the following dates: May 13, 2015; July 15, 2015; and July 27, 2015. Over the course of these settlement conferences and multiple additional informal telephonic conferences, the parties engaged in good-faith settlement negotiations and ultimately reached a settlement that is memorialized in the Joint Proposal.

## **II. SUMMARY OF THE JOINT PROPOSAL**

The Joint Proposal is the product of months of negotiations among the parties to the FERC and Commission proceedings. Its most-relevant terms are summarized below, along with a notation as to whether and how the accompanying Settlement RSSA's terms differ from the February 13 RSSA.

### **A. The Joint Proposal's Relevant Provisions**

#### **i. Term**

The term of the Settlement RSSA runs from April 1, 2015 through March 31, 2017, which is the anticipated in-service date for the GRTA. The term of the February 13 RSSA ran from April 1, 2015 through September 30, 2018, which was the date identified in the NYISO's 2014 Reliability Study. The term has been reduced by 18 months.

#### **ii. Payment Obligation**

The payment obligation under the Settlement RSSA is subject to the Signatory Parties obtaining 1) an order from FERC accepting the RSSA under Section 205 of the Federal Power

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<sup>29</sup> *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference (April 28, 2015).

Act,<sup>30</sup> and 2) an order from the Commission a) accepting the RSSA, and b) approving cost recovery by RG&E through the RSSA Surcharge.<sup>31</sup> Neither order can modify or impose any term or condition in a manner that is adverse in any material respect to a Signatory Party as determined in the affected Signatory Party's reasonable discretion.

**iii. Early Termination**

a. The Joint Proposal continues the use of a termination payment to be made to Ginna in the event of default by RG&E. This payment is now referred to in the Settlement RSSA as the Default Termination Payment instead of the Settlement Payment.

b. RG&E will make a one-time Settlement Payment to Ginna in the amount of \$11,458,030.70 following expiration of the Settlement RSSA on March 31, 2017. This one-time payment was negotiated and agreed to among the Signatory Parties to compensate Ginna for short-term capital costs and other expenses that Ginna will not be able to recover from the Settlement RSSA because of the shortened term from that originally negotiated. In the February 13 RSSA initially filed with the Commission and with FERC, the term extended through September 2018. That RSSA also provided, in the event RG&E terminated the RSSA early, for RG&E to compensate Ginna for short-term capital costs and expenses that were stranded because Ginna would no longer receive RSSA revenues pursuant to an agreed-upon schedule and dollar amount. The Settlement RSSA simply preserves the same economic bargain struck between RG&E and Ginna by fixing the one-time payment at the amount that Ginna and RG&E had previously agreed was fair compensation for stranded capital and expenses caused by shortening the Settlement RSSA's term by 18 months.

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<sup>30</sup> 16 USC § 824-d.

<sup>31</sup> This section utilizes certain capitalized terms that are defined in the Settlement RSSA.

**iv. Compensation**

a. Under the Joint Proposal and Settlement RSSA, RG&E will pay Ginna a Monthly Fixed Amount throughout the term of the Settlement RSSA in the amount of \$15,420,000. Under the February 13 RSSA, the fixed monthly payment amount was \$17,504,118.

b. Under the Joint Proposal and Settlement RSSA, RG&E will receive 70% of revenues from Ginna's sales into the NYISO's energy and capacity markets. Ginna will receive the remaining 30% of such revenues. Under the February 13 RSSA, RG&E would have received 85% of revenues from energy and capacity sales, with Ginna retaining the remaining 15%.

c. The Joint Proposal provides that Ginna's total revenue under the Settlement RSSA (including any Settlement Payment and any Default Termination Payment) will be capped at \$510,000,000 in the aggregate. Ginna will refund to RG&E any amounts in excess of this cap. The February 13 RSSA did not contain such a revenue cap.

d. To ensure that Ginna is adequately compensated, however, Ginna's total revenues (including any Settlement Payment and any Default Termination Payment) will not be less than \$425,000,000. If Ginna's total revenues are below this amount, RG&E will make an additional payment to Ginna representing the difference between Ginna's total revenues and the Settlement Floor Amount. The February 13 RSSA did not contain such a revenue floor.

**v. Capital Recovery Balance**

a. In the event that the Ginna Facility delivers energy to the NYISO or makes available capacity to the NYISO after 75 days following March 31, 2017, RG&E may recover a Capital Recovery Balance set at \$20,140,090.97, subject to adjustment under the terms of the Settlement RSSA. RG&E may recover the Capital Recovery Balance over two years,

which is a five-year reduction from the seven-year recovery period in the February 13 RSSA. The Capital Recovery Balance becomes inapplicable if Ginna is selected by RG&E to provide reliability services after March 31, 2017, in which case a new Capital Recovery Balance will be calculated.

**vi. State-Settled Matters**

a. The Joint Proposal is intended to resolve all issues among the Signatory Parties in this proceeding.

b. The Joint Proposal resolves all claims regarding the activities of the Signatory Parties related to the RSSA, including any issues/claims regarding RG&E's prudence in relation to the RSSA, through the execution date of the Joint Proposal, including:

1) RG&E's participation in the evaluation for the need for or the commercial terms of the RSSA or the execution or implementation of the RSSA;

2) RG&E's evaluation of alternatives to the RSSA; and

3) RG&E's selection of the GRTA to address reliability issues related to the Ginna Facility's retirement.

c. The Joint Proposal also resolves all issues and/or claims related to RG&E's prudence with respect to planning or pursuit of the GRTA for RG&E's actions or omissions occurring prior to the Commission's November 14<sup>th</sup> Order in this proceeding.

**vii. RG&E Cost Recovery And Use Of Credits**

a. The Signatory Parties recommend that the Commission authorize RG&E to implement a rate surcharge effective January 1, 2016, to recover the amounts paid to Ginna under the Settlement RSSA.

b. RG&E will use deferred credit amounts to offset the full amount of the Deferred Collection Amount (including carrying costs), plus credit amounts to offset all

RSSA costs that exceed \$2.25 million per month, not to exceed a total use of credits in the amount of \$110 million, applicable through June 30, 2017. If credits are insufficient to satisfy the final payment from RG&E to Ginna or after the term of the RSSA, then the RSSA Surcharge may continue past March 31, 2017, to recover up to \$2.25 million per month until the final payment has been recovered by RG&E from ratepayers. Notably, the February 13 RSSA did not provide for the use of customer credits to offset any amounts due from RG&E to Ginna.

c. The \$2.25 million per month payment will continue until the later of the termination of the RSSA or the termination of any solution other than operational protocols.

viii. After termination of the rate surcharge and once the GRTA is placed in service, a \$1.88 million per month surcharge (*i.e.*, the estimated GRTA first year annual revenue requirement divided by twelve) will continue until such time as the GRTA revenue requirement is included in RG&E's electric delivery rates.

## **B. Study, Solicitation, And Reporting**

i. Pursuant to the Joint Proposal, RG&E has already conducted, in coordination with the NYISO and with oversight by DPS Staff, the GRTA Study in accordance with standards set forth by NERC, NPCC, NYSRC, and the NYISO, as well as any RG&E standards for local reliability. The GRTA Study concludes that the GRTA, when fully implemented, will resolve the reliability needs associated with the retirement of the Ginna Facility.

ii. Further under the terms of the Joint Proposal, RG&E released a solicitation on October 30, 2015, seeking alternative reliability solutions for the period from March 31, 2017 through October 31, 2017, in the event the GRTA is not completed timely. The

Joint Proposal requires Ginna to participate in the solicitation, offering rates, terms, and conditions that Ginna deems appropriate.

iii. Unless Ginna is selected through the RG&E solicitation by March 31, 2016, or by June 30, 2016, if RG&E exercises an extension option, then Ginna may retire without further authorization from the Commission. If Ginna is selected by RG&E to provide reliability service beyond the March 31, 2017, Ginna will not be required to obtain further authorization from the Commission to retire within 75 days of the termination date of any agreement for reliability service after this date.

iv. If Ginna is not selected by RG&E for continued reliability service and does not plan on retiring at the expiration of the RSSA, it will file a notice with the Commission by September 30, 2016, advising that it will continue operation.

v. RG&E will provide reports to the Commission related to the GRTA including, among other things, information related to budget, schedule, and permitting updates, and the projected in-service date.

### **III. ARGUMENT**

#### **THE JOINT PROPOSAL SATISFIES THE COMMISSION'S SETTLEMENT GUIDELINES AND IT SHOULD BE ADOPTED BY THE COMMISSION WITHOUT MODIFICATION OR CONDITION**

##### **A. Standard Of Review**

The Commission's Settlement Guidelines set forth the following criteria for deciding whether a settlement is in the public interest:

- i. "A desirable settlement should aspire to achieve a balance among (1) protection of ratepayers, (2) fairness to investors and (3) the long-term viability of the utility; should be consistent with sound environmental, social and economic policies of the Commission and the State; and should produce results that were within the range of reasonable results that would have likely arisen from a Commission decision in a litigated proceeding, and

- ii. In judging a settlement, the Commission gives weight to the fact that a settlement reflects agreement among normally adversarial parties.”<sup>32</sup>

As an initial matter and as explained below, the circumstances of this proceeding require an understanding of the parties’ initial litigation positions before the standard analysis of the Joint Proposal under the Commission’s Settlement Guidelines may be performed. From there, it follows that the Joint Proposal satisfies the Settlement Guidelines and is in the public interest.

The current phase of this proceeding effectively commenced when RG&E filed the February 13 RSSA and petition with the Commission. Although the ALJs have treated this phase as a major rate case under the Public Service Law, unlike the utility’s initial filing of testimony in a “typical” major rate case, the February 13 RSSA may not properly be considered RG&E’s (or Ginna’s) initial litigation position(s). That is because the February 13 RSSA was the result of extensive negotiations between RG&E and Ginna. Accordingly, the February 13 RSSA does not accurately reflect either party’s initial litigation position. For example, although the February 13 RSSA provides for a fixed monthly payment to Ginna in the amount of \$17,504,118, as set forth in its concurrent FERC filing, Ginna’s initial litigation position would have been its full cost-of-service rate of approximately \$30,000,000 per month.

For these reasons, here, the ALJs and the Commission should evaluate the overall settlement as a result within the reasonable range of outcomes had litigation occurred. Further, consistent with the Settlement Guidelines, the ALJs and the Commission should consider

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<sup>32</sup> Case 90-M-0255: *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements* (Opinion 92-2), Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (Mar. 24, 1992), Appendix B, Procedural Guidelines for Settlement, at 8. In order to demonstrate that the Joint Proposal satisfies the Commission’s Settlement Guidelines, in the Ruling on Revised Schedule issued September 9, 2015, the ALJ stated that “[s]tatements of support or opposition should 1) describe the party’s litigation position(s); 2) describe, with reference to specific evidence, how and why the Joint Proposal resolves, or fails to resolve, the party’s litigation position(s); and 3) explain how and why the Joint Proposal satisfies, or fails to satisfy, the criteria under Opinion 92-2.” Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Ruling on Revised Schedule (Sep. 9, 2015), at 3.

whether the settlement was negotiated by normally-adversarial parties; whether it aspires to achieve a balance among protection of ratepayers, fairness to investors, and the long-term viability of the utility; and whether it is consistent with sound social and economic policies of the Commission and the State.

As demonstrated below, the Joint Proposal fully satisfies the Commission's Settlement Guidelines and is in the public interest. Accordingly, Ginna respectfully requests that the ALJs recommend to the Commission that it adopt the Joint Proposal in its entirety without modification or conditions.

**B. The Joint Proposal Represents A Fair Settlement Of The Issues In This Proceeding And Satisfies The Commission's Settlement Guidelines**

As an initial matter, the Commission has already made certain determinations that resolve two of the issues the ALJs identified in this proceeding. Based on the established reliability need and Ginna's intent to retire the Ginna Facility to prevent ongoing significant financial losses, the Commission has already determined that the Settlement RSSA is justified. Specifically, in its November 14<sup>th</sup> Order, the Commission stated:

“Ginna has justified entry into RSSA negotiations because retention of its Facility is necessary for the preservation electric system reliability. Moreover, by affidavit dated October 23, 2014, Ginna now certifies that the revenues it expects from the sale of capacity and energy into NYISO markets will not be sufficient to cover the costs of continued operation, which includes new capital investments that must be made. Absent an RSSA, the Facility would be retired as soon as would be practicable. This affirmation buttresses the conclusion that the commencement of negotiations over an RSSA for the Ginna Facility is warranted.”<sup>33</sup>

For this reason, the Commission directed Ginna and RG&E to negotiate and file what became the Settlement RSSA.<sup>34</sup>

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<sup>33</sup> *Id.* at 22.

<sup>34</sup> As DPS Staff correctly observed earlier in this proceeding, Ginna needs to be compensated for providing reliability reasons because “[a]bsent compensation for the costs of that reliability service, imposing the obligation for [the] Ginna [Facility] to operate would be an unconstitutional ‘taking.’” Case 14-E-0270: *Petition Requesting*

The Commission has also already determined that an RSSA is in the public interest under the circumstances here. Specifically, the Commission held that, “[w]ith the essential reliability need predicate to obtaining an RSSA satisfied, it may be noted that *an RSSA is otherwise in the public interest*, in that loss of the Ginna Facility would adversely affect the local economy, and the adverse impact would ripple out into the surrounding region as well.”<sup>35</sup>

The Joint Proposal represents a fair settlement of the remaining issues raised by the Signatory Parties and included by the ALJs in their Ruling on Scope, including 1) term; 2) reasonableness of both RG&E entering the RSSA in light of available alternatives, including costs and benefits, and its planning processes; 3) cost; and 4) use of customer credits. Further, the Joint Proposal was negotiated and executed by most of the parties to this proceeding, many of whom are normally adverse and whom represent the ratepayers’ interests (*i.e.*, DPS Staff, UIU, and MI). For these reasons, the Joint Proposal satisfies the Commission’s Settlement Guidelines, and it should be adopted in its entirety without modification or condition.

**i. Term**

Under the Joint Proposal and at the request of multiple Signatory Parties, the Term of the Settlement RSSA has been significantly reduced from the February 13 RSSA. In the 2014 Reliability Study, the NYISO determined that the Ginna Facility would need to remain in operation through at least October 1, 2018, to maintain electric system reliability.<sup>36</sup> For this reason, the Term in the February 13 RSSA ran from April 1, 2015 through September 30, 2018. Under the Joint Proposal and consistent with the new GRTA Study, however, the Term in the Settlement RSSA runs from April 1, 2015 through March 31, 2017, a reduction of 18 months.

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*Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, DPS Staff’s Brief in Support of the Petition of Rochester Gas and Electric Corporation for a Temporary Rate Surcharge (Filed Jul. 13, 2015), at 7.

<sup>35</sup> November 14<sup>th</sup> Order, at 22 (emphasis added).

<sup>36</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Reliability Study (Filed July 11, 2014).

The Term is now limited to the minimum amount of time necessary for RG&E to complete the GRTA system upgrades. RG&E anticipates that the GRTA will be in service by March 31, 2017, and no later than October 31, 2017.<sup>37</sup>

The Term strikes a fair balance of the parties' interests because it compensates Ginna for reliability service that it has provided since April 1, 2015, and will continue to provide through March 31, 2017 (or beyond), and maintains adequate electric system reliability for the minimum amount of time necessary to put the GRTA in service. Of course, this shorter Term results in less overall cost to ratepayers from the reduced number of fixed monthly payments by RG&E to Ginna. As discussed below, ratepayer costs are further reduced significantly through the application of certain credits by RG&E.

The Joint Proposal and Settlement RSSA also contain adequate disincentives for Ginna to continue to operate after expiration of the Term. For example, if Ginna continues to operate after expiration of the Term on March 31, 2017, it must repay RG&E the Capital Recovery Balance of \$20,140,090.97 over two years, as opposed to seven years provided in the February 13 RSSA.

**ii. Reasonableness Of The RSSA In Light Of Available Alternatives, Including Costs And Benefits**

No alternative to the Ginna Facility has been identified despite RG&E's solicitation for replacements. In October 2014, RG&E conducted a solicitation for alternative solutions to meet the identified reliability need if the Ginna Facility retired. Based on its evaluation of the six bids received, RG&E determined that the Ginna Facility's continued operation was the only viable option to maintain electric system reliability until the GRTA was constructed and placed in service. Indeed, RG&E's conclusion was consistent with the Commission's expectations, which

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<sup>37</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Request for Proposals – RG&E Contingency Alternative to Ginna RSSA (Filed Nov. 2, 2015), at 1.

anticipated that, “[g]iven the size, location and reliability of the Ginna Facility, and that it is currently needed, it is unlikely that any alternative proposed could eliminate entirely reliance upon an RSSA here, at least during the earlier portion of the RSSA term.”<sup>38</sup> Accordingly, the issue of whether an RSSA with Ginna is the best alternative given cost and benefits has been resolved by this open and inclusive process.

Additionally, the Joint Proposal reflects certain Signatory Parties’ requests that RG&E again solicit alternatives to an RSSA with Ginna if the GRTA upgrades are not timely completed. Pursuant to the Joint Proposal, on October 30, 2015, RG&E issued a new solicitation for alternative solutions to maintain reliability between March 31, 2017, the date on which the GRTA is anticipated to be in service, and October 31, 2017, the outside date for the GRTA’s completion. Under the terms of the Joint Proposal and Settlement RSSA, Ginna is required to submit a bid in response to this solicitation. By February 26, 2016, RG&E will release the results of its analysis of the bids received. If RG&E does not identify viable alternatives to continued operation of the Ginna Facility, the Joint Proposal provides that the Ginna Facility may be selected to continue to operate through October 31, 2017, if the GRTA is not completed by March 31, 2017.

There was no similar requirement in the February 13 RSSA that RG&E conduct the GRTA Study and a second solicitation. These requirements were added to the Joint Proposal and Settlement RSSA at the request of various parties to the proceeding.

### **iii. Cost**

In its filing with FERC, Ginna requested approval of the settlement rate contained in the February 13 RSSA as a reasonable amount in light of, among other things, the demonstrated full cost-of-service rate. In a fully-litigated proceeding, Ginna would have sought recovery of its full

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<sup>38</sup> November 14<sup>th</sup> Order, at 15.

cost of service. According to Ginna’s filing with FERC, the full cost-of-service rate for the Term of the RSSA is:<sup>39</sup>

Period	Monthly Revenue Requirement	Period Revenue Requirement
4/1/2015 to 12/31/2015	\$31,792,178	\$286,129,602
1/1/2016 to 12/31/2016	\$28,910,194	\$346,922,328
1/1/2017 to 3/31/17	\$30,954,495	\$271,847,511

The monthly payment in the February 13 RSSA of \$17,504,118 per month already represents a significant reduction from the full cost-of-service rate. The fixed monthly payment in the Settlement RSSA has been further reduced to \$15,420,000. The fixed monthly payment in Joint Proposal is the result of substantial negotiation between the parties and represents a fair balancing of all parties’ interests as it is sufficient to cover Ginna’s operating costs during the Term of the RSSA while saving ratepayers approximately one half of the full cost-of-service rate, before revenue sharing and application of customer credits. In addition, Ginna’s total compensation is capped at \$510,000,000, which is significantly less than a prorated share of Ginna’s total as-filed full cost-of-service with FERC of \$1,276,000,000. At the same time, Ginna is adequately protected over the two-year term of the RSSA if market prices decline because the Joint Proposal and Settlement RSSA provide for a total revenue floor of \$425,000,000.

The February 13 RSSA also provided that Ginna and RG&E would share in revenues from Ginna’s sale of energy and capacity into the NYISO markets at 15% and 85%, respectively. The Settlement RSSA changes the parties’ share of market revenues to 30% and 70%, respectively. By changing each party’s percentage of market revenues, the Settlement RSSA shifts a greater portion of the market risk to Ginna.

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<sup>39</sup> *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Application (Feb. 13, 2015), at 13.

#### **iv. Customer Credits**

When RG&E filed the February 13 RSSA, multiple Signatory Parties requested that RG&E use regulatory liabilities in deferred collection accounts to offset RSSA payments to Ginna thereby reducing ratepayer contributions. As of July 20, 2015, RG&E opposed these requests.<sup>40</sup>

Under the terms of the Joint Proposal, however, RG&E has now agreed to use these credits to offset the RSSA payments. Specifically, RG&E will use deferred credit amounts to offset the full amount of the Deferred Collection Amount (including carrying costs), plus credit amounts to offset all RSSA costs that exceed \$2.25 million per month, not to exceed a total use of credits in the amount \$110 million, applicable through June 30, 2017.

#### **IV. CONCLUSION**

The Commission previously determined in the November 14<sup>th</sup> Order that the Ginna Facility is needed to maintain electric system reliability and that an RSSA between RG&E and Ginna is justified and in the public interest. Based on RG&E's evaluation of bids received in response to its initial solicitation, there are no alternatives to replace the Ginna Facility and maintain system reliability until the GRTA is in service. Looking at the \$15,420,000 fixed monthly payment in isolation from the other, interrelated provisions of the Joint Proposal, the settlement is a result within the reasonable range of outcomes had litigation occurred, particularly given the full cost-of-service rate of approximately \$30,000,000 per month. Further, the RSSA's wholesale provisions, including the rate, are also pending before FERC for review. The settlement was negotiated by normally-adversarial parties (RG&E, Ginna, DPS Staff, the UIU, and MI); it achieves a balance among protection of ratepayers, fairness to investors, and the

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<sup>40</sup> Case 14-E-0270: *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant*, Post-Hearing Reply Brief of RG&E Regarding its Petition for a Temporary Rate Surcharge (Filed Jul. 2, 2015).

long-term viability of RG&E; and it is consistent with sound social and economic policies of the Commission and the State.

In sum, the Joint Proposal represents a fair settlement of the issues in this proceeding, satisfies the Commission's Settlement Guidelines, and is in the public interest. Accordingly, Ginna respectfully requests that the ALJs recommend to the Commission that the Joint Proposal be adopted in its entirety without modification or conditions.

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