

BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

Case 14-E-0270

POST-HEARING INITIAL BRIEF OF
ROCHESTER GAS AND ELECTRIC CORPORATION
REGARDING ITS PETITION FOR A TEMPORARY RATE SURCHARGE

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I. EXECUTIVE SUMMARY

Pursuant to the June 25, 2015 Ruling on Schedule in the above-referenced proceeding, Rochester Gas and Electric Corporation (“RG&E” or “Company”) respectfully submits this Post-Hearing Initial Brief regarding the Company’s Petition for a Temporary Rate Surcharge (“Petition”).

The underlying proceeding involves a Reliability Support Services Agreement (“RSSA”) between the Company and R.E. Ginna Nuclear Power Plant, LLC (“Ginna”) which was filed with the New York State Public Service Commission (“Commission”) and the Federal Energy Regulatory Commission (“FERC”) in February 2015.¹ Under the RSSA, RG&E would compensate Ginna through a Monthly Fixed Amount, net Applicable Revenues² for each month, in exchange for reliability support services to help ensure reliability in the Rochester, New York

¹ RG&E and Ginna executed an Amendment No 1. to the RSSA, which was made effective May 14, 2015 and filed with the Commission on May 19, 2015.

² The Monthly Fixed Amount and Applicable Revenues are defined terms discussed in the RSSA. See, e.g., Hearing Exh. 4, pp. 6, 8.

region. In the event that the Acceptance Date³ occurs after April 1, 2015, a Deferred Collection Amount⁴ is calculated to track the net amount that would have been owed to or by Ginna under the RSSA. Hearing Exh. 4, p. 12.

Once the Acceptance Date has occurred, RG&E (or very unlikely Ginna) will pay the Deferred Collection Amount, plus interest, in equal monthly installments as part of Ginna's monthly invoice amounts, with the final monthly installment scheduled to be paid as part of the March 2017 invoice.

RG&E proposed to collect the RSSA costs from customers via a surcharge mechanism. This phase of the proceeding is limited to addressing whether RG&E's proposed surcharge should become effective sooner rather than later. In other words, should the proposed surcharge mechanism become effective in the very near future on a temporary basis, subject to refund, rather than on a permanent basis at the end of this proceeding? The answer to this question is yes.

The Company has demonstrated in its Petition (Hearing Exh. 2) and via the uncontested testimony of its Witness Panel that the public interest would be served by implementing the surcharge now, because delaying the collection of RSSA costs from customers during the pendency of this proceeding would result in harmful rate compression.

Rate compression occurs when payment for a service begins after a service is initially provided. Thus, when monthly payments are finally initiated, they will be greater than if payment had been made all along. In this instance, rate compression is associated with provision 4.1(b) of the RSSA. Hearing Exh. 4, pp. 16-17. Under Section 4.1(b), the cost of reliability

³ The Acceptance Date is addressed in Section 2.1 of the RSSA and is the date upon which various conditions precedent must be satisfied or waived by the parties. See Hearing Exh. 4, p. 11.

⁴ The Deferred Collection Amount is a defined term under the RSSA and is discussed in Section 4.1. See Hearing Exh. 4, pp. 16-17.

services provided by Ginna under the RSSA is being tracked from April 1, 2015 and is accumulating, with interest, as a Deferred Collection Amount which will be recovered from customers if the Commission ultimately accepts the RSSA without modification.⁵ The longer RG&E waits to recover the RSSA costs from its customers, the larger the Deferred Collection Amount becomes and the larger the negative impact of rate compression, as payments for the Deferred Collection Amount must be made by March 2017. Hearing Exh. 4, pp. 16-17.

The Company amply demonstrated that the implementation of a temporary rate surcharge would mitigate rate compression by initiating collection of funds now to satisfy the Deferred Collection Amount for which customers will ultimately be responsible if the RSSA is accepted by the Commission. Tr. 37, 73. No party provided any contrary evidence. The Commission, therefore, should find that the Company's proposed temporary rate surcharge tariffs are in the public interest and authorize the Company to immediately implement the surcharges, subject to refund.⁶

⁵ FERC accepted the RSSA in part, subject to refund. Docket ER15-1047-000 - R.E. Ginna Nuclear Power Plant, LLC, 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) ("In this order, the Commission rejects in part, and accepts in part and suspends the proposed RSSA for a nominal period, to be effective on April 1, 2015, as requested, subject to a compliance filing and refund. We also establish hearing and settlement judge procedures.").

⁶ Pursuant to the RSSA, the amounts collected would be held by RG&E until the RSSA is accepted by the Commission. The amount collected (either via a temporary or permanent surcharge) would be reconciled and trued-up to the actual costs incurred under the RSSA. See Hearing Exh. 3.

II. BACKGROUND

This proceeding was initiated on July 11, 2014 when Ginna filed a petition requesting that the Commission initiate a proceeding to examine a proposal for the continued operation of the R.E. Ginna Nuclear Power Plant (“Ginna Facility”) and asserting that the Ginna Facility’s expected revenues would not be sufficient to cover its costs of continued operation.⁷ On November 14, 2014, the Commission issued an Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings in which it ruled that Ginna had demonstrated that the continued operation of the Ginna Facility is required to maintain system reliability.⁸ The Commission directed RG&E to negotiate an RSSA with Ginna and file it with the Commission. The Commission found that an RSSA was in the public interest and noted that the negotiations “shall conclude with the filing of an RSSA....”⁹

The Company entered into arm’s length negotiations with Ginna, which ultimately resulted in the execution of an RSSA. The executed RSSA was filed with the Commission and FERC on February 13, 2015. The RSSA runs from April 1, 2015 through September 30, 2018. Hearing Exh. 4, p. 12. Under section 4.1(b) of the RSSA, throughout the term of the RSSA, Ginna receives a Monthly Fixed Amount, net Applicable Revenues for each month. The Applicable Revenues represent RG&E’s share of market revenues that are in excess of the monthly fixed charge. Hearing Exh. 4, pp. 13, 15. In the event that the Acceptance Date (i.e., the date upon which various conditions precedent are satisfied or waived by the parties) occurs after April 1, 2015, the RSSA provides that “Ginna shall track the net amount that would have

⁷ See 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, Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC (July 11, 2014).

⁸ Case 14-E-0270, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings at 15 (Nov. 14, 2014).

⁹ Id. at 22, 24.

been owed to or by Ginna under [the RSSA] had the Acceptance Date been achieved by April 1, 2015...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’).” Hearing Exh. 4, p. 16. RG&E is then required to pay the Deferred Collection Amount, plus interest on the unpaid balance thereof, 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.

Hearing Exh. 4, p. 17.

When RG&E filed the RSSA with the Commission in February, it requested the Commission take final action in this matter at or prior to the Commission’s April 2015 session. RG&E was hopeful that the Commission would be able to accommodate this request and thus at the time of the RSSA’s filing, RG&E was not anticipating the creation of a large Deferred Collection Amount balance or rate compression. However, as this proceeding developed, it became clear that the Commission (and FERC) required more time to act on the RSSA than initially anticipated. As a result, the Deferred Collection Amount balance has grown significantly and at the time of the filing of the Petition was estimated to be \$25 million through the end of July 2015.¹⁰ Hearing Exh. 2, p. 9. To mitigate the rate compression that would occur (in the absence of a temporary rate surcharge) by operation of section 4.1(b) of the RSSA, RG&E filed the Petition on June 4, 2015.

¹⁰ RG&E now estimates the Deferred Collection Amount balance to be \$32.5 million through July and \$39.3 million through August.

III. THE IMPLEMENTATION OF A TEMPORARY RATE SURCHARGE IS IN THE PUBLIC INTEREST

New York State Public Service Law (“PSL”) Sections 66(12)(h), 72 and 113 grant the Commission authority to set temporary rate increases before the completion of hearings and other proceedings to consider whether a company’s underlying rate request is just and reasonable, if the public interest so requires.¹¹ As discussed above, in this instance the requested temporary rate surcharge is in the public interest as it mitigates undesirable rate compression. Tr. 35-37, 73. Given the terms of the RSSA, the costs (potential future payments upon satisfaction of various regulatory approvals and other RSSA condition precedents) associated with the provision of reliability support services provided by Ginna to the Company and its customers started on April 1, 2015 and will continue to accumulate with interest until such time as payment is due to Ginna under the RSSA. Hearing Exh. 4, pp. 16-17. The Company initially estimated that through July 2015, this Deferred Collection Amount will be nearly \$25 million.¹² Hearing Exh. 2, p. 9. The Deferred Collection Amount will continue to grow every month that collection is delayed. Because RG&E must pay the Deferred Collection Amount to Ginna by March 2017 (and thus collect such costs from customers by that date), the longer the Company waits to recover RSSA costs from its customers, the greater the rate compression. As a result, unless the Commission authorizes the Company to implement the proposed temporary rate surcharge, RG&E’s customers will experience greater bill impacts than otherwise would be required.

The evidence in this proceeding establishes that by authorizing a temporary rate surcharge, the bill impacts resulting from the Deferred Collection Amount would be mitigated

¹¹ N.Y. Pub. Serv. Law §§ 66(12)(h), 72, and 113 (McKinney 2015).

¹² As noted in footnote 10 supra, RG&E now estimates the Deferred Collection Amount balance to be \$32.5 million through July and \$39.3 million through August.

(Tr. 35-37, 73), thus satisfying the public interest standard required by PSL Section 72.

Importantly, the surcharge would be subject to refund pursuant to PSL Section 113(1) such that the Company would refund to customers all monies collected via the temporary rate surcharge if the Commission does not accept the RSSA or if other preconditions are not satisfied and the Acceptance Date does not occur.

The Company notes that Section 10.3(b) of the RSSA (Hearing Exh. 4, pp. 27-28) does not operate to alleviate the Company's rate compression concerns. Under Section 10.3(b), if the Commission implements a rate recovery mechanism that does not allow RG&E to fully recover through a customer surcharge amounts paid to Ginna under the RSSA on a substantially current basis that coincides with the payments made by RG&E to Ginna under the agreement, then the Monthly Fixed Amount shall be immediately reduced to be equal to the monthly amount that RG&E is reasonably anticipated to recover through such surcharge on a substantially current basis.¹³ Hearing Exh. 4, p. 27. The Company, however, assumes, as it must for planning purposes, that the Commission would authorize full recovery of RSSA costs over the same time period that service is being provided under the agreement (Tr. 75, 82), as it has done in the past in similar proceedings.¹⁴ Thus the Company's rate compression concerns exist notwithstanding Section 10.3(b) of the RSSA.

¹³ It is the Company's position that the Deferred Collection Amount potentially falls within the scope of Section 10.3(b) as it is in part determined based on the Monthly Fixed Amount. Tr. 83-84.

¹⁴ See Case 12-E-0577 - Proceeding on Motion of the Commission to Examine Repowering Alternatives to Utility Transmission Reinforcements, Order Addressing Repowering Issues and Cost Allocation and Recovery (June 13, 2014); Case 12-E-0400 - Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (Dec. 17, 2012); Case 12-E-0400, ARSO (Sept. 20, 2013).

IV. CONCLUSION

Based on the foregoing, RG&E requests that the Commission find that the Company's proposed temporary rate surcharges as set forth in Hearing Exhibit 3 are in the public interest and should be implemented immediately, subject to refund.

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Respectfully submitted,



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