

April 8, 2015

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

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 the Response of Multiple
Intervenors Supporting Motion in Part. Copies of this Response are being served herewith on the
active parties to this proceeding.

Respectfully submitted,

COUCH WHITE, LLP

Michael B. Mager

Michael B. Mager

MBM/dap
Attachment

cc: Hon. Sean Mullany (via E-Mail; w/attachment)
Hon. David L. Prestemon (via E-Mail; w/attachment)
Active Parties (via E-Mail; w/attachment)

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**STATE OF NEW YORK
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

**RESPONSE OF MULTIPLE INTERVENORS
SUPPORTING MOTION IN PART**

Dated: April 8, 2015

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the Rochester Gas and Electric Corporation (“RG&E”) service territory, hereby submits this response to the motion filed on April 1, 2015 in 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*, by Alliance for Green Energy (“AGREE”) and Citizens Environmental Coalition (“CEC”) (hereinafter, the “Motion”).¹ For the reasons set forth below, Multiple Intervenors supports the Motion in part.

In the Motion, the Movants seek an order from the New York State Public Service Commission (“Commission”) and/or presiding Administrative Law Judges Sean Mullany and David L. Prestemon directing that: (a) the public comment period on the Reliability Support Services Agreement (“RSSA”) executed by RG&E and R.E. Ginna Nuclear Power Plant, LLC (“GNPP”) pertaining to the continued operation of the R.E. Ginna Nuclear Power Plant (“Ginna”) be extended beyond April 17, 2015 so that the public is accorded adequate time to review the information presented in this proceeding and comment thereon; (b) the April 1, 2015 effective date proposed in the RSSA be voided or, alternatively, RG&E – and not its customers – be required to bear the expense of any retroactive payments contemplated by the RSSA; and (c) this proceeding “be pursued on a reasonable timeline that gives all parties to the case a reasonable amount of time to conduct discovery, review responses, prepare briefs, prepare for evidentiary hearings, and prepare other filings.” (Motion at 3.)

¹ AGREE and CEC hereinafter are referred to as the “Movants.”

With respect to the schedule, Multiple Intervenors notes that, pursuant to the Ruling on Process and Adopting Protective Order (“Process Ruling”) issued on March 12, 2015 by Judges Mullany and Prestemon, the complete litigation schedule for this proceeding has yet to be finalized. There currently is a pending requirement, however, that parties must “submit statements of material issues of fact requiring hearing” by April 15, 2015. (Process Ruling at 1-2.) Replies to such issue statements currently are due by April 22, 2015. (*Id.* at 2.) Movants seek to extend those dates to May 15 and 29, 2015, respectively. (Motion at 2.) Pursuant to a ruling issued on April 1, 2015, responses to the Motion are due by noon on April 8, 2015.

In response to the Motion, Multiple Intervenors supports a reasonable extension of the deadlines for the submission of statements of material issues of fact requiring hearing and replies thereto. Such an extension is appropriate in light of, *inter alia*, (i) the numerous, complex issues raised by the RSSA, (ii) the enormity of the projected costs of the RSSA, which RG&E proposes to recover entirely from electric customers, (iii) the fact that discovery still is ongoing and is necessitated, in part, based on the fact that interested parties, including Multiple Intervenors, were precluded from any opportunity to participate in the negotiation of the RSSA, and (iv) RG&E and GNPP expended more time than that allotted initially by the Commission for the negotiation of the RSSA and, therefore, customers and other interested parties should not have their rights prejudiced herein merely because the RSSA contains a proposed April 1, 2015 effective date.

From Multiple Intervenors’ perspective, extending the deadline for the submission of statements of material issues of fact requiring hearing from April 15, 2015 to May 15, 2015 is reasonable in light of the foregoing considerations, which are discussed further below. Multiple Intervenors advocates no position as to whether the interim period between the submission of statements of material issues of fact requiring hearing and replies thereto should be extended from one week to two weeks. Importantly, because the proposed effective date of the RSSA does

necessitate a timely – yet not unduly-expedited – litigation schedule for this proceeding, Multiple Intervenors recommends that, absent delays by the contracting parties in responding to discovery and/or extraordinary circumstances, no further extensions to the deadline for the submission of material issues of fact requiring hearing be entertained.

Multiple Intervenors advocates no position on the additional forms of relief sought by the Movants at this time. While it agrees generally that the public comment period for this proceeding should allow for the adequate dissemination of information, Multiple Intervenors primarily is concerned with the deadlines established in this proceeding applicable to the active parties. Additionally, while it shares some of the Movants’ concerns regarding the retroactive payments contemplated by the RSSA and RG&E’s proposal to recover such costs from electric customers, Multiple Intervenors anticipates that such issues will be addressed on the merits later in this proceeding and not in response to a procedural motion.

ARGUMENT

THE CURRENT APRIL 15, 2015 DEADLINE FOR THE SUBMISSION OF STATEMENTS OF MATERIAL ISSUES OF FACT REQUIRING HEARING SHOULD BE EXTENDED BY ONE MONTH

Multiple Intervenors supports a modest, one-month extension of the existing deadline for the submission of statements of material issues of fact requiring hearing. Such deadline should be extended from April 15, 2015 to May 15, 2015 for the reasons set forth below. Multiple Intervenors’ goal in supporting an extension of the existing deadline is not to unduly delay the completion of this proceeding, but, rather, to ensure that it is accorded (i) adequate time to conduct, and complete, discovery so that it can determine the positions it will advocate in response to the RSSA and (ii) a meaningful opportunity to advance such positions during the

litigation of this proceeding. Multiple Intervenors advocates no position as to whether the interim period between the submission of statements of material issues of fact requiring hearing and replies thereto should be extended from one week to two weeks. Finally, Multiple Intervenors recommends that, absent delays by the contracting parties in responding to discovery and/or extraordinary circumstances, no further extensions to the deadline for the submission of material issues of fact requiring hearing be entertained.

Since the March 10, 2015 procedural conference conducted herein, Multiple Intervenors has engaged promptly in discovery. Thus far, it has served: (a) five sets of information requests on RG&E totaling 41 requests; and (b) one set of information requests on New York State Department of Public Service Staff totaling two requests. In response to RG&E's expressed preference, Multiple Intervenors has served its discovery requests on a piecemeal basis, rather than retaining such requests until a very-large number had been accumulated. As of the close of business on April 7, 2015, Multiple Intervenors still is awaiting responses to a number of its information requests as well as those propounded by other parties.² Depending on the responses received to outstanding discovery requests, Multiple Intervenors may seek to conduct additional, limited discovery of RG&E and possibly other parties. Based on the foregoing, Multiple Intervenors has not completed discovery, through no fault of its own, and, therefore, should be accorded additional time before being required to submit a statement of material issues of fact requiring hearing.

In evaluating Multiple Intervenors' support for an extension of time for the submission of statements of material issues of fact requiring hearing, several considerations are

² By this statement, Multiple Intervenors does not intend to imply that RG&E has been dilatory in responding to discovery. Rather, the statement is advanced solely to emphasize that discovery still is ongoing.

particularly noteworthy. First, the RSSA raises numerous, complex issues warranting careful evaluation. Such issues include, but are not limited to: (a) whether the RSSA was necessary or could have been avoided, or a shorter term utilized, had work on a reliability solution associated with the possible deactivation of Ginna been commenced earlier; (b) whether the payments by RG&E to GNPP contemplated by the RSSA are reasonable; (c) whether the other terms of the RSSA – such as provisions governing the term, potentially-retroactive payment obligations, potential incremental payment obligations associated with an early termination, and GNPP’s ability to continue operating Ginna following expiration of the RSSA – are reasonable; (d) whether RG&E’s proposal to recover 100% of the RSSA’s costs from its electric customers is reasonable; and (e) whether RG&E’s proposed methodology for allocating the costs of the RSSA to its various service classifications and then recovering those costs from individual customers is fair and equitable. Given the numerous, complex issues in this proceeding, it would be inequitable, and prejudicial, to expect intervenor parties to be able to conduct discovery, evaluate the relevant facts and law, and advocate positions on such issues in a highly-compressed period of time.

Second, the projected costs of the RSSA, which RG&E proposes to recover entirely from electric customers, are enormous. For instance, the fixed price payments that RG&E would be required to make to GNPP pursuant to the RSSA are estimated to exceed \$735 million. (*See* RG&E Response to Multiple Intervenors Information Request No. 10.) Even if, *arguendo*, RG&E’s estimate of offsetting market revenues is accurate – and at this time there is no way to discern the accuracy of such estimate – the utility still expects the RSSA to have a net cost of over \$175 million. (*See id.*) Additionally, although Multiple Intervenors still is awaiting certain information from RG&E in discovery on the yearly delivery rate impacts of the proposed RSSA surcharge, it appears that for certain S.C. 8 subclasses, the proposed surcharge would constitute an

immediate delivery rate increase in excess of 50%.³ Given the sheer magnitude of the payments contemplated by the RSSA and the potential extraordinary customer rate impacts resulting therefrom, employment of an unduly-expedited procedural schedule would be contrary to the public interest (and also could lessen the quality of the evidentiary record produced herein for the Commission's consideration).

Third, in considering the time reasonably needed by the parties for discovery for purposes of establishing the procedural schedule, it is important to remember that: (a) interested parties such as Multiple Intervenors were accorded no opportunity to participate in the negotiations that led to the RSSA; and (b) unlike a rate proceeding, RG&E has not filed any testimony in support of the utility's proposal to increase existing rates to recover the costs of the RSSA. Thus, it is incumbent upon other parties to attempt to discern, through discovery, the rationale and the justification for certain of RG&E's actions and decisions with respect to the RSSA.⁴

Finally, to the extent the April 1, 2015 effective date proposed in the RSSA has any relevance here, it should not be overlooked that RG&E and GNPP expended more time than was allotted initially by the Commission to negotiate the RSSA. On November 14, 2015, the Commission issued an Order Directing Negotiation of a Reliability Support Services Agreement and Making Related Findings ("Order") in this proceeding. Pursuant to that Order, RG&E and

³ For instance, S.C. 8 Sub-transmission Commercial customers currently are subject to a Customer Charge of \$1,379.62 per month and a Demand Charge of \$9.34 per kW. (See RG&E Electric Tariff, PSC No. 19, Leaf No. 195. In comparison, in a document circulated herein by RG&E on March 2, 2015, RG&E projected an 2015 RSSA surcharge for S.C. 8 Sub-transmission Commercial customers of \$5.03 per kW. (See "RG&E Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant" at 4-5.)

⁴ In a traditional rate proceeding, a utility such as RG&E (or one comparable in size) typically will seek rate relief that is a mere fraction of the costs and rate impacts at issue here, and other parties normally are accorded roughly four months to review supporting testimony and exhibits and conduct discovery thereon before being required to advance positions of their own.

GNPP were directed to negotiate an RSSA and make filings herein by January 15, 2015. (*See* Order at 27.) Those parties were unable to negotiate an RSSA by that time, however, and, on January 14, 2015, requested an extension of time. (*See* Letter, dated January 14, 2015, from counsel for GNPP to the Commission.) By ruling issued on January 15, 2015, the requested extension of time was granted until February 6, 2015. (*See* Letter, dated January 15, 2015, from Commission Secretary to counsel for GNPP.) Notwithstanding such extension, RG&E and GNPP again were unable to negotiate an RSSA within the time allotted and, on February 5, 2015, requested a second extension of time. (*See* Letter, dated February 5, 2015, from counsel to GNPP to the Commission.) Once again, the requested extension was granted, this time until February 13, 2015. (*See* Letter, dated February 6, 2015, from Commission Secretary to counsel for GNPP.) The RSSA then was filed on February 13, 2015. Thus, the one-month extension of time for the submission of statements of material issues of fact requiring hearing requested in the Motion is no longer than the additional time allotted previously to RG&E and GNPP.

Importantly, when RG&E and GNPP negotiated an RSSA with a proposed effective date of April 1, 2015 and filed same on February 13, 2015, they knew – or certainly should have known – that even a reasonably-expedited proceeding would not conclude by that effective date. Moreover, to the extent a fair and equitable schedule for this proceeding extends beyond April 1, 2015 by more than what RG&E and/or GNPP might prefer, the Commission should take notice that those parties spent approximately three months negotiating the RSSA (or longer to the extent negotiations commenced prior to issuance of the Order), and that they expended approximately one month longer than the time allotted initially by the Commission. While Multiple Intervenors has grave concerns about any proposal that would force electric customers to bear the cost of any retroactive payments contemplated by the RSSA, it also objects to the actions and omissions of RG&E and GNPP somehow causing or justifying the adoption of

an unduly-expedited schedule in this proceeding that curtails the ability of customers and other interested parties to meaningfully advance issues and concerns for the Commission's consideration.

For the foregoing reasons, Multiple Intervenors supports a reasonable, one-month extension of the time to submit statements of material fact requiring a hearing in this proceeding.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors supports the Motion in part. Specifically, Multiple Intervenors recommends that the procedural schedule adopted herein be modified such that the deadline for the submission of statements of material issues of fact requiring hearing be extended from April 15, 2015 to May 15, 2015. Multiple Intervenors advocates no position, at this time, on the additional relief sought in the Motion and also recommends that, absent delays by the contracting parties in responding to discovery and/or extraordinary circumstances, no further extensions to the deadline for the submission of material issues of fact requiring hearing be entertained.

Dated: April 8, 2015
Albany, New York

Respectfully submitted,

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