

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on August 13, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman, concurring

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.

ORDER APPROVING ESTABLISHMENT OF TEMPORARY RATES

(Issued and Effective August 14, 2015)

BY THE COMMISSION:

INTRODUCTION

This order approves the establishment of a temporary rate surcharge for Rochester Gas and Electric Corporation (RG&E or the Company) for collection of revenues, subject to refund, to offset the potential costs of a Reliability Support Services Agreement (RSSA or Agreement) between RG&E and R.E. Ginna Nuclear Power Plant, LLC (Ginna), if the RSSA is ultimately approved by the Commission. In light of the potential rate impacts the Agreement 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 (RSSA Petition).

PROCEDURAL BACKGROUND

In the Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings issued

November 14, 2014 (November Order), the Commission determined that the continued operation of the R.E. Ginna Nuclear Power Plant was necessary to preserve the reliability of the New York bulk electric transmission system and the local Rochester electric distribution system.<sup>1</sup> The Commission instructed Ginna that it may not cease operations without the Commission's written permission<sup>2</sup> and directed RG&E to negotiate an RSSA with Ginna.<sup>3</sup>

On February 13, 2015, RG&E filed the RSSA Petition, accompanied by a fully executed RSSA, requesting the Commission accept the RSSA without modification. RG&E asked to implement a surcharge mechanism to recover from its ratepayers all amounts payable to Ginna under the Agreement. The Company advised that the proposed surcharge constituted a major rate change for which an evidentiary hearing was required. Subsequent to the filing of the RSSA Petition, processes were established by the presiding administrative law judges to commence review of the RSSA and develop a record to inform the Commission's decision making.

On June 4, 2015, RG&E filed a petition asking the Commission to establish a temporary rate surcharge that would begin recovery of the costs of the RSSA, subject to refund, pending a final Commission decision on the RSSA Petition (the Temporary Surcharge Petition). The Company requests that rates be implemented on August 1, 2015 and asserts such surcharge

---

<sup>1</sup> Case 14-E-0270, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings (issued November 14, 2014), pp. 15-16.

<sup>2</sup> November Order, p. 22.

<sup>3</sup> November Order, p. 27.

should be adopted on an emergency basis pursuant to SAPA §202(6).<sup>4</sup>

An evidentiary hearing on the Temporary Surcharge Petition was held on July 2, 2015, at which all parties were afforded the opportunity to call witnesses and cross-examine the witnesses of others. RG&E presented a panel of witnesses that was examined by several parties. No other witnesses were offered.

Prior to the establishment of a schedule on the Temporary Surcharge Petition, Multiple Intervenors (MI) and the Utility Intervention Unit of the Division of Consumer Protection of the Department of State (UIU) filed letters in opposition to the petition on June 9 and June 11, 2015, respectively. Initial briefs were filed July 13, 2015 by RG&E, Department of Public Service Staff (Staff), MI, UIU, Alliance for a Green Economy (AGREE) and Citizens' Environmental Coalition (CEC).<sup>5</sup> Reply briefs were filed on July 20, 2015 by RG&E and UIU.

#### PARTIES' POSITIONS

As set forth more fully below, there are three positions taken by the parties in this proceeding. RG&E contends the public interest requires the implementation of a temporary rate surcharge to avoid the effects of rate compression. MI, UIU, AGREE and CEC (Opponents) deny rate compression is an issue in this proceeding and oppose the establishment of a temporary rate surcharge. Those parties argue that RG&E has approximately \$155 million in regulatory

---

<sup>4</sup> As discussed below, the Commission finds this action to be subsumed within the notice of proposed rulemaking previously published in the State Register for the RSSA Petition, SAPA 14-E-0270SP2.

<sup>5</sup> AGREE and CEC filed a joint brief.

liabilities, or customer credits,<sup>6</sup> for the benefit of customers on its books and that such customer credits should be applied to costs arising from the RSSA. Staff proposes a modified temporary rate surcharge, calculated on the assumption that some of the credits will be used to offset a portion of RSSA costs.

Pursuant to the terms of the RSSA, RG&E must pay Ginna a "Monthly Fixed Amount" of approximately \$17.5 million, reduced by certain revenues received by Ginna through the sale of energy, capacity, and ancillary services in the wholesale market. While the term of the Agreement is effective April 1, 2015, and payment obligations pursuant to the RSSA begin to accrue on that date, RG&E's obligation to make such payments to Ginna is not triggered unless and until the RSSA is approved by both the Federal Energy Regulatory Commission (FERC) and the Commission.<sup>7</sup> The RSSA provides that once those approvals are received, RG&E must commence to pay Ginna the Monthly Fixed Amount, plus a "Deferred Collection Amount." The Deferred Collection Amount is equal to the amount RG&E would otherwise have had to pay Ginna if the regulatory approvals had been secured by April 1, 2015 through the date the approvals are received, plus interest.<sup>8</sup> The RSSA requires the Deferred Collection Amount to be paid in equal monthly installments, such that the final payment is made on the invoice relating to March 2017.<sup>9</sup>

In its Temporary Surcharge Petition, RG&E opines that while the regulatory authorities are reviewing the RSSA

---

<sup>6</sup> Hearing Exhibit 6. The customer credits comprise monies identified as Positive Benefit Adjustments, Asset Sale Gains and deferrals.

<sup>7</sup> RSSA, at §2.1(a)(i) and (ii).

<sup>8</sup> RSSA, at §4.1(b).

<sup>9</sup> RSSA, at §4.1(b).

Petition, the Deferred Collection Amount is growing and accumulating interest, raising the concern of rate compression.<sup>10</sup> It asserts that, because FERC has "approved in part" the RSSA,<sup>11</sup> the costs of the reliability services Ginna is providing under the RSSA are being tracked from April 1, 2015. The Company states that each month the Deferred Collection Amount grows larger and, if collection from ratepayers is delayed, there will be a shorter time period available to pay back amounts owed if the RSSA is ultimately approved, which will have a significant impact on ratepayers.

RG&E contends that this rate compression should be mitigated by initiating collection of funds from ratepayers commencing August 1, 2015 by implementing, on a temporary basis, the surcharge mechanism proposed in its RSSA Petition. The Company asserts that institution of a temporary surcharge is in the public interest to alleviate rate shock and suggests that ratepayers are protected because any monies collected from ratepayers by the temporary rate surcharge would be refunded if the Commission does not ultimately accept the RSSA.

RG&E urges the Commission to approve the temporary rate surcharge it proposes without offsetting any RSSA costs with customer credits. RG&E argues against applying these credits to the RSSA costs and in favor of the surcharge, to ensure that cash recovery is matched with cash outlays. It says that use of the customer credits would weaken its cash position when RG&E will be both making net payments to Ginna and spending cash to construct the Ginna Retirement Transmission Alternative (GRTA) project, consisting of upgrades to the RG&E bulk electric

---

<sup>10</sup> It estimates the Deferred Collection Amount at nearly \$25 million through July 2015.

<sup>11</sup> FERC Docket No. ER-15-1047-000, R.E. Ginna Nuclear Power Plant, LLC, 151 FERC ¶61,023 (issued April 14, 2015).

and distribution systems that will allow RG&E to obtain sufficient power from other sources without reliance on Ginna. RG&E also states the Commission should avoid using short-term mitigation measures that could stress its balance sheet and credit quality when, it argues, credit quality will be crucial to the success of industry restructuring through the Commission's Reforming the Energy Vision (REV) proceeding.<sup>12</sup> In addition, it contends that regulatory asset and liability treatment should be symmetrical and addressed as part of a formal rate proceeding.<sup>13</sup> Finally, RG&E argues rate design options should be pursued to address issues with RSSA billing which would be foreclosed if the credits were used in this proceeding.

Staff concurs with RG&E that temporary rates would serve the public interest by mitigating the rate impacts of the RSSA if it is ultimately approved by the Commission. Although payments are not being made to Ginna yet, Staff asserts that FERC has already accepted the RSSA and, therefore, it is prudent to take steps now to protect customers against the possible rate impacts if the Commission also approves the RSSA. Staff argues this remains entirely possible given the Commission's November Order finding a reliability need for continued operation of Ginna's facility and directing RG&E to negotiate an RSSA. Staff argues that the considerable amount RG&E may owe Ginna by December 2015, compared to RG&E's annual delivery revenue of \$436 million, is sufficient justification for adopting temporary

---

<sup>12</sup> Case 14-M-0101, Reforming the Energy Vision.

<sup>13</sup> Hearing Exhibit 10. Indeed, RG&E proposes to use customer credits in the context of its recently filed electric rate proceeding, Case 15-E-0285.

rates to protect customers.<sup>14</sup> According to Staff, its analysis demonstrates that, absent temporary rates, the estimated rate compression would add approximately \$3.8 million per month to customer bills, resulting in an average delivery bill impact, from rate compression alone, of 10.4 percent.<sup>15</sup>

Staff proposes a two-pronged approach to mitigating rate compression and the rate impacts of the RSSA generally. First, Staff proposes applying approximately \$25 million of customer credits to offset the Deferred Collection Amount accrued between the April 1, 2015 RSSA effective date and September 1, 2015, when it suggests temporary rates should be established. Second, Staff proposes the implementation of a temporary rate surcharge at a level based on the projected first full-year revenue requirement for the GRTA.<sup>16</sup> Pointing to testimony pre-filed by RG&E in its recently-filed rate case,<sup>17</sup> Staff says the GRTA is designed and intended to provide a long-term solution to the reliability need created by the retirement

---

<sup>14</sup> See Staff Initial Brief (IB), p. 9. Staff estimates RG&E will owe Ginna approximately \$52 million by December 1, 2015. Attachment A estimates the debt at \$56.9 million by December 31, 2015.

<sup>15</sup> Staff IB, p. 13 and Attachment A. Staff estimated a total bill impact from compression alone of between 8 and 10 percent.

<sup>16</sup> At the time it filed its brief, Staff did not have an estimate of the projected first full-year revenue requirement. Subsequently, Staff moved to enter RG&E's response to an interrogatory, now identified as Hearing Exhibit 7, that shows the projected full first-year revenue requirement for the GRTA and Fifth Bay-Station 80 project. The estimated first year revenue requirement for the project is \$22.613 million.

<sup>17</sup> Case 15-E-0285, Rochester Gas and Electric Corporation - Rates, Direct Testimony of Electric and Hydro Capital Expenditures Panel, p. 25 (May 20, 2015) (describing the GRTA project as having been "initiated in order to maintain reliability absent the continued operation of the Ginna nuclear power plant").

of the Ginna facility. Staff argues that setting temporary rates at a level commensurate with the revenue requirement effects of the first full year of GRTA service will reduce the rate impacts of the RSSA on customers and smooth the transition from paying the RSSA costs to paying the GRTA costs. It contends that such a rate design will protect ratepayers against bill volatility. Since the GRTA costs and RSSA costs do not match exactly, Staff proposes customer credits also be used to offset the difference between the two. Staff argues that use of credits to offset part of the RSSA would be an accepted ratemaking approach, where one-time credits are matched with one-time costs.

Opponents opine that the rate effects of the RSSA and its Deferred Collection Amount provisions are not a guaranteed outcome in this proceeding. They stress that no payments are currently due to Ginna and claim that payments may never become due. RG&E's assertion of rate compression, they maintain, is dependent on the regulatory authorities approving the RSSA in its present form, an outcome they find dubious, given the numerous parties raising what they characterize as credible issues relating to the proposed RSSA. In fact, MI points out, FERC already rejected the RSSA in part.<sup>18</sup> MI further contends that rate compression may not materialize in this proceeding because the RSSA contains provisions allowing termination of the contract by Ginna through August 1, 2015 and by RG&E or Ginna if FERC or the Commission modifies or imposes conditions the parties deem to be adverse in approving the RSSA.

UIU, AGREE and CEC argue that to the extent rate compression is a concern in this proceeding, it is one of RG&E's own making, since RG&E sought approval of the RSSA in late

---

<sup>18</sup> MI IB, p. 3 referencing FERC Docket No. ER15-1047-000, supra, 151 FERC ¶61,023 (issued April 14, 2015).



February, 2015 knowing the RSSA had an April 1, 2015 effective date. This, they opine, was entirely unrealistic, given the magnitude of the rate increase requested. They contend that the Company must have known it was creating the risk of rate compression given these facts and that ratepayers should not have to pay the costs of RG&E's "bad deal."<sup>19</sup>

Opponents assert that even if the RSSA were approved, rate compression can be avoided, so there is no need to set a temporary rate surcharge. Opponents cite the approximately \$155 million of credits that RG&E owes its customers and insist that these credits could be applied to the Deferred Collection Amount to avoid any rate compression. MI asserts the idea of rate compression is "inconceivable" given the amount RG&E presently owes customers, which dwarfs any claimed rate compression. Opponents maintain it would be unreasonable to allow RG&E to collect more money from ratepayers and insist that RG&E should first repay its customers. In fact, UIU argues that the principle of intergenerational equity dictates that credits should be returned to ratepayers as quickly as practicable. UIU agrees with Staff that the RSSA payments represent the type of one-time cost that lends itself to mitigation through the use of credits. It states that while RG&E may prefer to use the credits in the context of its rate case, it is important not to mask the true cost of energy through the use of one-time credits. It also asserts that collecting additional monies from customers in the form of a surcharge in this proceeding would be unjust and unreasonable. Opponents note that the Commission has authorized the use of customer credits to pay for RSSA costs recoverable from customers in other instances, and it could and

---

<sup>19</sup> AGREE/CEC IB, pp. 5-6.

should do so in this case.<sup>20</sup> Opponents also claim rate compression can be avoided by altering the terms of the RSSA and spreading out the payment of the Deferred Collection Amount over a longer time period than prescribed in the RSSA or by structuring rates to recover the costs of the Deferred Collection Amount over a period of time longer than the RSSA contract term.

UIU argues that RG&E has not advanced a satisfactory rationale for its opposition to applying the customer credits. It states that while RG&E claims use of credits would weaken its cash position, every cash expenditure RG&E makes weakens its cash position, but only extraordinary situations warrant the imposition of a temporary surcharge. This situation, it opines, is not such an extraordinary situation. It states that to the extent RG&E is not seeking a temporary surcharge for the GRTA and is paying out dividends to shareholders, it cannot be cash-strapped. In response to RG&E's assertion that credit quality may be impacted by use of customer credits, UIU states that no evidence has been provided that use of such credits would pose the risk of affecting credit quality or that it may impact RG&E's ability to participate in REV-industry restructuring, as the Company suggests.

Opponents argue that a temporary rate surcharge would put additional stress on ratepayer pocketbooks and contend that a surcharge is not in the public interest. They state that the economy in RG&E's service territory is not strong and customers will not be well served by paying costs now when those costs are uncertain and could be offset by the use of credits. UIU argues

---

<sup>20</sup> MI June 9, 2015 letter, p. 3; MI IB, p. 6; UIU June 11, 2015 letter, p. 2. Referencing Cases 12-E-0201 and 12-G-0202, Niagara Mohawk Power Corporation d/b/a National Grid - Rates, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013), p. 15.

such a temporary surcharge would cause significant and immediate harm to low-income customers and customers already taking service under deferred collection agreements. MI characterizes the rate impacts of the proposed RSSA, and therefore the requested temporary rates, as "staggering," stating that S.C.8 customers will experience delivery rate increases of between 23 percent and 50 percent in 2015.<sup>21</sup> Opponents point to RG&E's admission that it did not consider the potential economic impact of the requested temporary surcharge on ratepayers as evidence that it has failed to meet its burden of showing the temporary rates are in the public interest. They claim it is not possible to determine whether temporary rates will promote the public interest when the Company has not considered potential customer impacts.

AGREE and CEC also assert that the adoption of a temporary rate surcharge would "unfairly create an easier path to the rate recovery the utility ultimately seeks through this case." They raise the concern that while RG&E is seeking a significant rate increase in establishing temporary rates, its preference for establishing such rates through an emergency SAPA process does not allow for public comment. They claim RG&E has not sufficiently explained how the proposed temporary rates would be structured and implemented, and should be required to provide a detailed accounting and explanation of the temporary rate it seeks. They urge that no temporary rate surcharge be instituted prior to a final decision of the RSSA by the Commission.

RG&E urges the Commission to reject the proposals of other parties and to institute the temporary rate surcharge as proposed. RG&E contends arguments that the RSSA allows RG&E and

---

<sup>21</sup> MI IB, p. 7.

Ginna to terminate the contract as a basis for denying a temporary rate surcharge should be dismissed addressing one of MI's argument, because, RG&E argues, they fail to take into consideration certain timing issues citing to certain termination rights expiring August 1, 2015.<sup>22</sup> Moreover, RG&E argues, any temporary rate would be implemented after that date, subject to refund. The Commission should reject Staff's proposal to set a temporary rate surcharge at a level based on the first year revenue requirement for the GRTA, RG&E says, contending that Staff's recommendation lacks a rational basis. RG&E claims the surcharge should be set at a level representative of the costs incurred for reliability services provided pursuant to the RSSA, not the revenue requirement associated with a future capital project. RG&E claims that while the GRTA will provide customer benefits, it should not be used against RG&E to offset the costs of providing reliability under the RSSA.

RG&E contends that arguments posed by UIU, AGREE and CEC that the Commission could modify the terms of the RSSA to eliminate rate compression concerns, such as changing the effective date, disallowing retroactive payments, or extending the repayment of the Deferred Collection Amount, should be rejected. It states that the Commission has previously allowed for full recovery of RSSA costs over the same time period that service is being provided under the agreement and such action

---

<sup>22</sup> On July 31, 2015 RG&E filed a second amendment to its RSSA that changed the date by which Ginna can unilaterally terminate the Agreement from August 1, 2015 to August 17, 2015.

should be assumed in this instance.<sup>23</sup> In any event, it states, if the Commission does ultimately modify the RSSA, ratepayers are protected because any authorized temporary surcharge would be subject to refund.

RG&E challenges arguments raised by MI and UIU that a temporary rate surcharge is not in the public interest due to resultant bill impacts. It opines that "the sole purpose of temporary rates is to mitigate rate compression and its resultant negative rate impact on customers,"<sup>24</sup> arguing that a detailed bill impact analysis is not necessary to demonstrate that implementation of temporary rates is in the public interest.

#### DISCUSSION

We approach RG&E's request with several goals foremost in mind. The safety and reliability of the electric system is of primary importance, as is ensuring that ratepayers pay no more than is just and reasonable. An important element of just and reasonable rates is price stability and the avoidance of rate shock to consumers from sudden, significant increases. Furthermore, we have the responsibility to ensure that utilities are fairly compensated for the costs necessary to provide safe and reliable service in order to maintain their fiscal health. The path we choose here is the one that best meets these

---

<sup>23</sup> RG&E Reply Brief (RB), p. 9. Referencing: Case 12-E-0577, Examination of Repowering Alternatives to Utility Transmission Reinforcements - Dunkirk, Order Addressing Repowering Issues and Cost Allocation and Recovery (issued June 13, 2014); Case 12-E-0400, supra, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued January 16, 2012) and Order Regarding Compliance Filing (issued September 20, 2013).

<sup>24</sup> RG&E RB, p. 11.

objectives, because it protects consumers from rate shock and instead provides price stability, both now and in the near future, while affording RG&E the resources necessary to maintain reliable service.

We have carefully reviewed the evidence and arguments submitted in response to the Temporary Surcharge Petition and find that the public interest requires that a temporary surcharge be established, subject to refund, while the RSSA Petition is pending before us.<sup>25</sup> Of the various proposals and arguments, we conclude that the Staff proposal represents an elegant solution to the complex situation before us. We will therefore direct RG&E to begin to surcharge its customers, at a level considerably lower than RG&E proposed, but one that best approximates, at this time, the likely long-term costs of addressing reliability in the service territory through the GRTA project. Doing so best meets our goals, by providing some immediate rate relief to RG&E while smoothing out the impact on customers as much as possible.

PSL §114 grants us the authority to establish temporary rates while a permanent rate case is pending when we are "of opinion that the public interest so requires."<sup>26</sup> A decision to grant temporary rates is discretionary, and based on a balancing of the specific considerations present in each,

---

<sup>25</sup> We do not anticipate that ratepayers would receive a refund in the form of a bill credit or rebate check, even in the event that amounts collected under the surcharge are found to be owed to ratepayers. Rather, amounts collected pursuant to the temporary surcharge will likely be reconciled and accounted for in the context of addressing the RSSA on its merits in this case or in setting new rates in RG&E's pending electric rate case, Case 15-E-0285, and such funds would be applied to costs that ratepayers would otherwise have to bear.

<sup>26</sup> PSL §114; see PSL §§ 66(12)(h), 72; see also 100 Park Ave., Inc. v. Public Service Com., 37 AD2d 404, 405-407 (3d Dept. 1971).

unique case.<sup>27</sup> The circumstances presented here are certainly unique. In November, we found that Ginna's continued operation is necessary to the reliability of RG&E's electric system and directed RG&E to negotiate a contract with Ginna to ensure such continued operation.<sup>28</sup> The resulting RSSA is the source of the Deferred Collection Amount which, in turn, is the basis for RG&E's Temporary Surcharge Petition. However, because RG&E is not currently paying Ginna, it is not seeking temporary relief directly for its own benefit, but rather asserts that such relief is necessary to protect customers from the rate compression that is occurring while the RSSA Petition is pending before us.

Based on the record evidence, we conclude that potential costs related to the RSSA are mounting and that they could result in unacceptable rate shock to customers, if and when the RSSA is approved. Staff's analysis demonstrates that the RSSA payments, without any compression, have the potential to significantly increase customers' average annual delivery bills; on an annual basis the impact could average 11.2 percent.<sup>29</sup> Further, Staff estimates that the compression effect could add an additional 10.4 percent to customers' delivery bills if surcharge authority is delayed until January 2016.<sup>30</sup> In consideration of the potential delivery bill impacts that could exceed 20 percent, we conclude that it is appropriate to approve surcharge collection now. While we are aware that a temporary

---

<sup>27</sup> See Case 13-G-0136, National Fuel Gas Distribution Corporation - Rates, Order Setting Temporary Rates, p. 11 (issued June 14, 2013).

<sup>28</sup> November Order, pp. 24-25.

<sup>29</sup> See Staff IB, Attachment A. Average of 2016 RG&E Electric Delivery Revenues payment without compression.

<sup>30</sup> Staff IB, p. 13 and Attachment A.

rate surcharge will impose a more immediate burden on customers than would occur if we await the outcome of the RSSA Petition, we are satisfied that a temporary rate increase, subject to further reconciliation, is necessary to smooth the potential impact of the RSSA costs.

In opposition to the Temporary Surcharge Petition, MI and UIU argue that the imposition of a temporary surcharge is unnecessary because RG&E is not yet obligated to make payments to Ginna and thus is not suffering any cash flow problem as a result of its obligations under the RSSA. UIU adds that rate compression is illusory because we could modify the terms of the RSSA, including the April 1, 2015 effective date, prior to approval.<sup>31</sup> We are not persuaded by these arguments. The contingencies impacting the RSSA are not sufficient to allay our concerns about rate compression given the magnitude of the Deferred Collection Amount looming on the horizon. Although the accumulating liability is contingent upon our approval of the RSSA, we cannot ignore one potential outcome of our review of the record in the proceeding, that a solution is necessary to preserve reliability for customers in Rochester and we may approve the RSSA. If we later do reach that determination, there may be a serious resulting impact on ratepayers if and when RG&E becomes obligated to reimburse Ginna for service commencing as of April 1, 2015.

Indeed, although the scope and nature of RG&E's ultimate liability to Ginna is uncertain, given that the RSSA may not be approved in its current form or at all, the reasonable costs of the reliability service obligation that was imposed upon Ginna in November ultimately must be recovered in some fashion. It is possible that they could be even more

---

<sup>31</sup> UIU RB, p. 1; UIU IB, p. 4.



significant than those contemplated by the RSSA.<sup>32</sup> Failing to take any action now based on the uncertainties would be short-sighted.

Opponents argue the Temporary Surcharge Petition should be denied based on the bill impacts that imposing the proposed temporary surcharge would have on customers. Given the purpose of the temporary rate surcharge, however, we agree with RG&E that a detailed bill impact analysis is not necessary in this situation. Indeed, it is the concern regarding bill impacts on customers that warrants temporary relief because it will mitigate the more profound bill impacts that would be caused in the future by rate compression. Staff's analysis demonstrates that rate compression, absent a temporary surcharge, would add approximately \$3.8 million per month to customer delivery bills, resulting in a delivery bill impact, from rate compression alone, of 10.4 percent.<sup>33</sup>

We also are not persuaded by the arguments of Opponents that the existence of regulatory liabilities, or customer credits, that RG&E could apply to offset the Deferred Collection Amount renders a temporary rate increase unnecessary. We agree that use of the credits to offset a significant portion of the RSSA costs is a wise course of action. Matching the credits with a one-time cost such as the RSSA is good ratemaking practice, avoiding the distortion that can occur in rates if one-time credits are applied to on-going costs. Moreover, we are mindful of the equity arguments urging us to return the credits as closely as possible in time to the same ratepayers on whose behalf they accrued. Nevertheless, we are also sensitive to the fact that the use of all regulatory liabilities at one

---

<sup>32</sup> Staff IB, pp. 7-8 and n. 8.

<sup>33</sup> Staff IB, Attachment A.

time could have a negative impact on RG&E's cash flow. It is an over-simplification to assume that the existence of customer credits negates the need to collect funds from customers to mitigate the potential RSSA costs. Rather, we believe only partial use of the credits is warranted, coupled with a more modest surcharge to begin some collection from customers now.

A significant factor in our decision is the larger context of Ginna's lack of profitability and proposed retirement. Although the RSSA in isolation represents a one-time cost, it does not, in and of itself, solve the problem of Ginna's retirement. Rather, RG&E's filings in this case, as well as in other dockets pending before us, reveal its plans for the GRTA as the long-term solution to achieve reliable service in the absence of an operating Ginna facility. Because of the looming cost to implement the GRTA, as put forth in RG&E's rate filing, ratepayers are likely to experience rate increases in the near future, even with the use of credits to offset the RSSA. Therefore, although amortizing the costs of the RSSA over a longer period of time might, under different circumstances, smooth potential rate impacts, here it would provide little benefit, if the future payments are to be added onto substantial GRTA costs, creating a significant burden for future ratepayers.

Staff's proposal to establish a temporary surcharge that is based on RSSA costs which are then partially offset with customer credits provides an appropriate balance among the concern over near-term bill impacts on customers, the demonstrated need to address rate compression, RG&E's cash flow and credit quality, and the longer-term impacts on ratepayers of the Ginna facility's potential retirement. Specifically, utilizing customer credits to offset that portion of the Deferred Collection Amount that has accrued to date will mitigate rate compression while having no negative effect on

rate volatility in the future. Accordingly, we anticipate that, in any order approving the RSSA, we would direct RG&E to apply customer credits to offset that portion of the Deferred Collection Amount that represents liability to Ginna beginning April 1, 2015 and ending August 31, 2015. We will ask RG&E to provide us with the balance of the Deferred Collection Amount as of August 31, 2015.

Staff's proposal to establish the temporary surcharge at a level designed to cover the GRTA costs, as opposed to the full costs associated with the RSSA, similarly strikes the appropriate balance among all the competing considerations and is in the public interest. Although at issue in this proceeding are the RSSA costs, and not GRTA, we do not accept RG&E's position that use of the GRTA amount lacks a rational basis. Utilizing the GRTA amount to fix a temporary rate surcharge will permit the recovery of some, but not all, RSSA costs from customers now. The GRTA amount provides a going-forward reliability cost that is likely to be relevant on a longer-term basis than the RSSA costs. Such a temporary surcharge will collect a reasonably modest amount from ratepayers in the near-term while addressing the rate compression issue. We therefore direct RG&E to establish a temporary surcharge at a level designed to collect, on an annual basis, the GRTA estimated first full-year revenue requirement (\$22.613 million).<sup>34</sup> This level of temporary rates results in an immediate 5.2 percent average delivery rate increase,<sup>35</sup> compared to the total impact of the RSSA plus compression, assuming no application of credits, which could equate to an average delivery bill increase of more

---

<sup>34</sup> Hearing Exhibit 7.

<sup>35</sup> 5.2 percent represents the \$22.613 million first full-year cost of the GRTA as estimated by RG&E in Hearing Exhibit 7 divided by RG&E's annual delivery revenues of \$436 million.

than 20 percent.<sup>36</sup> Since the temporary surcharge collections from customers will commence prior to RG&E's payments to Ginna, RG&E shall accumulate such collections as a regulatory liability in an interest bearing account.<sup>37</sup> In compliance with this order, RG&E must file its proposed accounting for the surcharge monies collected prior to making payments to Ginna, including interest.

Staff also proposes that additional credits be earmarked now to offset the difference between the temporary rate surcharge and the full RSSA costs. This aspect of Staff's proposal is not adopted, at this time. Until RG&E is actually making payments to Ginna, there is no need for it to change its accounting entries for these credits. However, it is our expectation that, if and when an RSSA becomes operative and payments begin to flow from RG&E to Ginna, the level of the temporary rate surcharge we order here will continue to represent the appropriate balance between RG&E's need for cash and the substantial credits RG&E owes to its customers. At that point, RG&E would recover the difference between the monthly payments to Ginna and its monthly surcharge recoveries by application of customer credits for as long as monthly RSSA payments are made. Continuing the surcharge at a level approximating the GRTA costs for the years that the RSSA is in effect would create a steady pattern of collection of rates from ratepayers, smoothing out the peaks and valleys that would result from full implementation of RG&E's proposed surcharge

---

<sup>36</sup> Staff IB, Attachment A.

<sup>37</sup> Interest shall be accrued on this regulatory liability or customer credit at the Commission-approved other customer provided capital rate. We traditionally apply the pretax cost of capital on regulatory deferrals for RG&E. However, due to the anticipated short-term nature and magnitude of this deferral, we find the other customer provided capital rate appropriate.

followed by the addition of the GRTA to rate base and a corresponding base rate increase. At this time, neither the exact amount of RSSA costs nor the exact amount of GRTA costs is known, and final numbers must await both further regulatory proceedings here and at FERC as well as actual results.<sup>38</sup> For now, the temporary nature of the surcharge allows for reconciliation.

Finally, we note that, while RG&E urged us to consider its temporary rate petition on an emergency basis pursuant to SAPA §202(6), we do not find it necessary to use that procedure in this instance. In this case, the issues raised in relation to the Temporary Surcharge Petition are all issues implicated by the RSSA Petition. Consequently, interested parties have received sufficient notice of our potential actions through the notice of proposed rulemaking regarding the RSSA petition that was published in the State Register on March 4, 2015.<sup>39</sup>

#### CONCLUSION

The evidence of significant delivery rate impacts in addition to rate compression due to RG&E's projected liability under the RSSA warrants the imposition of a temporary rate surcharge, subject to refund. The surcharge should be fixed at a level approximating the GRTA costs as discussed herein. The appropriate disposition of any temporary rates collected that are determined to have been in excess of just and reasonable

---

<sup>38</sup> Given the uncertainties attending the process before FERC, and the effect developments at FERC may have on the issues that remain undecided here, appeals from the Administrative Law Judges' May 14, 2015 Ruling on Scope of Issues will not be addressed at this time.

<sup>39</sup> SAPA 14-E-0270SP2.

levels will be addressed in the permanent rates phase of this proceeding.

The Commission orders:

1. Rochester Gas and Electric Corporation (RG&E) is directed to file tariff changes as are necessary to effectuate the temporary surcharge as provided in this order on not less than one day's notice, to go into effect on a temporary basis on September 1, 2015.

2. RG&E shall submit a compliance filing with the Secretary by September 30, 2015 providing the Deferred Collection Amount as of August 31, 2015 as defined by the RSSA.

3. RG&E shall file with the Secretary by September 1, 2015 its proposed accounting for the surcharge monies collected, including interest.

4. The Secretary in her sole discretion may extend the deadlines set forth in this order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

5. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS  
Secretary

Commissioner Diane X. Burman, concurring:

I concur with approving the establishment of temporary rates. Ginna Nuclear Power Plant is an important asset in New York State's generation fleet and positively contributes to our overall state grid reliability. In fact, the NYISO found it was currently needed for reliability. I support the need for setting temporary rates because failure to do so will only have compression costs continuing to accrue which may exacerbate the problem. This is a unique situation and the future landscape, especially at the federal level, is still uncertain. We must continue to move forward in order to resolve the remaining issues and ensure we do so appropriately and without putting at risk reliability.