

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

Case 14-E-0270

**R.E. GINNA NUCLEAR POWER PLANT, LLC'S RESPONSE TO MOTION FOR
RECONSIDERATION OF THE SCHEDULE BY CITIZENS ENVIRONMENTAL
COALITION AND ALLIANCE FOR A GREEN ECONOMY**

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Pursuant to Section 3.6 of the Public Service Commission’s (the “Commission”) rules, R.E. Ginna Nuclear Power Plant, LLC (“GNPP”) respectfully responds to the motion by Citizens Environmental Coalition (“CEC”) and Alliance for a Green Economy (“AGREE”) (together, the “Movants”) filed April 1, 2015, in the above-referenced proceeding (the “Motion”). The Motion seeks (1) a one-month extension until May 15, 2015, to file statements of material issues of fact requiring hearing (“Statement of Issues”), with replies due thereafter on May 29, 2015;¹ (2) an extension of the 45-day public comment period under the State Administrative Procedure Act (“SAPA”);² and (3) that the April 1, 2015 effective date in the Reliability Support Services Agreement (“RSSA”) executed by GNPP and Rochester Gas and Electric Corporation (“RG&E”) be “voided” or, in the alternative, that RG&E bear the cost of reliability support services provided by GNPP from April 1st until such time as the Commission issues an order accepting the RSSA and approving full and immediate cost recovery by RG&E.³

As discussed in more detail below, the Motion should be denied.

¹ Motion, at 2.

² Motion, at 3.

³ *Id.* Movants also request that this proceeding be pursued on a reasonable timeline.(Motion, at 3) This request is too ambiguous and premature to be considered as part of the Motion, particularly where the only date set in this proceeding is for the submission of Statements of Issues requiring hearing due April 15, 2015.

I. FACTS

On July 11, 2014, GNPP petitioned the Commission to initiate a proceeding to examine a proposal for the continued operation of the R.E. Ginna Nuclear Power Plant (the “Ginna Facility”).⁴ According to the July 11th Petition, Constellation Energy Nuclear Group, LLC (“CENG”) analyzed the revenues that the Ginna Facility was expected to receive as a fully-merchant generator following the expiration of a power purchase agreement (“PPA”) with RG&E and 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 costs of continued operation, including required new capital investment.⁵ Indeed, even before the PPA’s expiration, the Ginna Facility had sustained cumulative losses of nearly \$100 million for calendar years 2012 and 2013.

Beginning in January 2014, CENG management representatives met separately with individual Commissioners, Department of Public Service Staff (“Staff”), RG&E, and the NYISO to discuss CENG’s management’s determination that market revenues will be insufficient to cover the Ginna Facility’s costs going forward and that, as a result, the Ginna Facility’s retirement was under consideration by CENG management. Further, CENG management advised RG&E that, to the extent that it was subsequently determined that the Ginna Facility was needed to support electric system reliability, CENG management was willing to continue the Ginna Facility’s operations upon negotiation and approval by CENG’s board of directors and by the Commission of an acceptable RSSA.

On February 21, 2014, GNPP, RG&E, and the NYISO entered into a Reliability Study Agreement to determine the potential reliability impacts of retiring the Ginna Facility. On May

⁴ 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 (Filed Jul. 11, 2014) (the “July 11th Petition”).

⁵ July 11th Petition, at 1.

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. RG&E also conducted a local reliability analysis, the results of which are included in the NYISO study, which confirms the need for the Ginna Facility's continued operation to support local electric reliability in RG&E's service area.

By order issued November 14, 2014, the Commission found, among other things, that GNPP "justified entry into RSSA negotiations because retention of its Facility is necessary for the preservation of electric system reliability."⁶ Based on this finding, the Commission directed RG&E and GNPP to negotiate an RSSA.

Following extensive negotiations between GNPP and RG&E, on February 6, 2015, RG&E filed a petition requesting 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 GNPP under the RSSA via a cost recovery surcharge.⁷ As RG&E states in its petition, the RSSA "became effective upon execution on February 13, 2015" with a term running from April 1, 2015 through September 30, 2018.⁸ The petition states that RG&E's payment obligation does not commence until (1) the issuance of an order by the Federal Energy Regulatory Commission ("FERC") accepting the RSSA, without adverse modification or condition, and (2) the issuance by the Commission of an order (a) accepting the RSSA, and (b) approving full and immediate cost recovery by RGE of all RSSA amounts without adverse modification or condition.⁹

⁶ 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), at 22 (the "November 14th Order").

⁷ 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 (Filed Feb. 13, 2015), at 1.

⁸ *Id.* at 5-6.

⁹ *Id.* at 6.

Also on February 13, 2015, GNPP submitted the executed RSSA to FERC for rate approval. According to GNPP's petition to FERC, "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. Notwithstanding the [Commission's] prior assertions of jurisdiction over RSSA contracts, out of an abundance of caution and to avoid uncertainty and to address third party challenges, Ginna asks [FERC] to accept the RSSA as a cost-justified rate."¹⁰ GNPP requested that FERC accept the RSSA by April 1, 2015, stating that "[i]t is critical that the [RSSA] be accepted expeditiously to provide Ginna with the revenue stream that it needs to cover its costs of operating the plant."¹¹

A Notice of Procedural Conference was issued in this proceeding on February 24, 2015.¹² The appointed Administrative Law Judges ("ALJ") held a Procedural Conference on March 10, 2015, at the Commission's Albany offices.

On March 12, 2015, the ALJs issued a *Ruling on Process and Adopting Protective Order*.¹³ Pursuant to the March 12th Ruling, discovery was to begin immediately and Statements of Issues are due April 15, 2015.

Since the March 12th Ruling, active parties, including CEC and AGREE, have engaged in extensive discovery. In addition to certain specific questions, CEC made a broad request for copies of all documents RG&E filed in this proceeding under requests for confidentiality under the Commission's rules. This information has been provided to CEC.

On April 1, 2015, CEC and AGREE filed this Motion.

¹⁰ FERC Docket ER15-1047: R.E. Ginna Nuclear Power Plant, LLC (Filed Feb. 13, 2015), Transmittal Letter, at 2.

¹¹ *Id.*, at 1.

¹² 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*, Notice of Procedural Conference (Feb. 24, 2015).

¹³ 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 Process and Adopting Protective Order (Mar. 12, 2015) (the "March 12th Ruling").

II. ARGUMENT

THE MOTION SHOULD BE DENIED

A. The Date For Submission of Statements of Issues Should Not Be Extended

The March 12th Ruling establishes an April 15, 2015 due date for active parties to submit a Statement of Issues. Movants now seek a 30-day extension of time to May 15th to file Statements of Issues.¹⁴ Movants' request is without support and would cause unnecessary "rate compression."

Since the March 12th Ruling, Movants have had ample time (approximately five weeks) to conduct discovery and prepare their Statements of Issues. Despite this period of time and substantial discovery, Movants provide no specific justification for an extension. Instead, Movants generally opine that the "scope of the evidentiary hearing should not be decided until the parties have sufficient time to conduct discovery and analyze the responses."¹⁵ As demonstrated by the number and scope of discovery that Movants have sought and received from RG&E and GNPP to date, there has been sufficient time to date and more remains before the anticipated hearing. Extending this time any further simply encourages discovery requests that are irrelevant to the narrow issue presented by RG&E's petition. Indeed, this is evidenced in the nearly daily discovery requests that Movants make on RG&E and GNPP. The progression of this proceeding, however, should not be unnecessarily delayed by Movants' failure to tailor their discovery requests to focus on the narrow issue presented here. Any claimed inability to

¹⁴ Motion, at 2.

¹⁵ Motion, at 1. Movants contend that, in a typical major rate case, parties have three to four months to conduct discovery (Motion, at 2). Although RG&E states in its February 13, 2105 petition that its proposed recovery of RSSA costs may result in a major increase in rates, RG&E does not refer to this proceeding as a major rate case. 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*, Petition (Filed Feb. 13, 2105), at 9-11.

complete review of discovery responses is attributable to Movants' own multiple, overly-broad discovery requests. Accordingly, the Motion should be denied.

Further, substantial delays, such as an additional 30 days to file Statements of Issues could jeopardize the RSSA. GNPP has the ability, under the terms of the RSSA, to terminate the RSSA and this proceeding if an order accepting the RSSA is not received by the Commission by July 1, 2015.¹⁶ As a result, RG&E's request for cost recovery must be presented to the Commission in sufficient time to issue an order before July 1st. The Motion makes such timing difficult, if not impossible, to achieve.

The Motion would also unnecessarily create rate compression issues. As ALJ Prestemon correctly recognized at the Procedural Conference, a short schedule in this case is necessary due to "implications of the RSSA," which would essentially create a "second surcharge if RG&E has to begin paying [GNPP] on April 1st and is not able to recover its costs on a substantially contemporaneous basis."¹⁷ For these reasons as well, the Motion should be denied.

B. There is No Need for Extension of the 45-Day Comment Period Under SAPA

Movants further request that the public comment period, as published in the New York *State Register* and expiring on April 17, 2015, be extended.¹⁸ According to the Movants, "there is still ongoing activity in this case and information continues to be released. Further, evidentiary hearings have yet to be scheduled. The public should be given adequate time to review all of this information and provide input."¹⁹ Movants, however, conflate public participation through the

¹⁶ 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 (Filed Feb. 13, 2105), Exhibit A, Executed RSSA, § 2.1.c.

¹⁷ 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*, Transcript (Mar. 19, 2015), at 74.

¹⁸ Motion, at 3.

¹⁹ *Id.*

submission of comments under SAPA and the participation of active parties to this proceeding. Accordingly, Movants' request should be denied.

Contrary to Movants' assertions, the purpose of the SAPA public comment period is not to allow the general public access to all information in a proceeding in order to formulate comments. Active parties to a proceeding, such as CEC and AGREE, are entitled to review information provided through discovery – not members of the general public.²⁰ As active parties, Movants' participation in this proceeding and their ability to review discovery and submit comments will extend beyond April 15th. Accordingly, Movants request should be denied.

C. The RSSA's Effective Date Should Not Be "Voided"

Movants argue that the April 1, 2015 effective date of the RSSA should be "voided."²¹ In the event that the effective date is not voided, Movants request that RG&E "bear the full costs of these retroactive payments, as the utility company took it upon themselves to enter into the contract with an effective date of April 1, knowing that there would not be adequate opportunity for their customers to give input through the Public Service Commission process."²² Movants' request is premature and should be denied.

Movants' mischaracterize the purpose of the April 1st start date and are patently incorrect in their assertion that there is not adequate opportunity for customers or the public to provide comments during this process. Indeed, RG&E's payment obligation under the RSSA does not commence until the Commission issues an order accepting the RSSA and allowing RG&E cost recovery.²³ Until such time as the Commission issues an order, parties and the public customers

²⁰ Indeed, much of the information that has been provided pursuant to information requests to date has been subject to the Protective Order that the ALJs issued in this proceeding. As a result, members of the public could not have access to this information.

²¹ *Id.*

²² *Id.*

²³ 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 (Filed Feb. 13, 2105), Exhibit A, Executed RSSA, § 2.1.a.

are provided ample opportunity to submit comments on the RSSA and RG&E's request for cost recovery either through the SAPA public comment period and/or participation in this proceeding as an active party. There is nothing in the Motion to support or explain Movants' allegations that anyone has been denied an opportunity to participate, and Movants' request should be denied.

Regardless, Movants' request to "void" the April 1st effective date is premature. This stage of the proceeding allows parties to establish whether any material issues of fact exist, conduct discovery, and to explore any material issues of fact at hearings. Movants will have the opportunity to present their arguments regarding the RSSA's effective date to the ALJ's after which, presumably, the ALJs will make a recommendation to the Commission. The decision whether to accept the RSSA, with or without modification, will then be made by the Commission. Accordingly, Movants request that the effective date be "voided" is premature.

III. CONCLUSION

For the reasons set forth above, the Motion should be denied in its entirety.

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