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Three Empire State Plaza, Albany, NY 12223-1350
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July 13, 2015

SENT VIA ELECTRONIC FILING
Honorable Kathleen Burgess, Secretary
New York State Public Service Commission
3 Empire State Plaza, 19th Floor
Albany, New York 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:

For filing, please find the New York Department of Public Service Staff's "Brief in Support of the Petition of Rochester Gas and Electric Corporation for a Temporary Rate Surcharge" in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 474-1585.

Very truly yours,

s/*Alan T. Michaels*

Alan T. Michaels
Assistant Counsel

Attachment
Cc: ALJ Mullany
ALJ Moreno
Service List (via e-mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

STAFF'S BRIEF IN SUPPORT OF THE PETITION
OF ROCHESTER GAS AND ELECTRIC CORPORATION
FOR A TEMPORARY RATE SURCHARGE

INTRODUCTION

The New York Department of Public Service Staff (Staff) files this Brief in Support of the Petition of Rochester Gas and Electric Corporation (RG&E) for a Temporary Rate Surcharge (Temporary Rates Petition) filed June 4, 2015. As background, Ginna Nuclear Power Plant, LLC (Ginna) executed a Reliability Support Services Agreement (RSSA or the Agreement) to provide RG&E with electric transmission and distribution reliability support service. Within the RSSA, RG&E's obligation to pay Ginna for its reliability support service is subject to the issuance of an order from the Federal Energy Regulatory Commission (FERC) accepting the RSSA, and the issuance of an order from the New York Public Service Commission (the Commission or the New York Commission) accepting the Agreement and approving full and immediate cost recovery by RG&E. On July 2, 2015, the presiding Administrative Law Judges to this proceeding held a hearing on RG&E's request (July 2 Hearing).

In its Temporary Rates Petition, RG&E correctly notes that FERC approved, in part, the RSSA to become effective April

1, 2015. Pursuant to the RSSA, if the New York Commission approves the RSSA, effective April 1^{st}, the cost of service will also accrue from that date. Therefore, should the Commission accept the April 1^{st} date of service – and, in fact, Ginna has been continuously providing service since that date -- the cost for the service will continue to grow as additional accruals accumulate while the bill remains unpaid. Thus, it is in all parties' best interests to establish, subject to refund, temporary payment for the RSSA service now.

As described in detail below, the Commission should establish temporary rate surcharge effective September 1, 2015, or as soon thereafter as practicable. When setting the design and amount for the surcharge, the Commission should, in consideration of the RSSA's impact on customers: (1) set collection at an amount equal to the first full year revenue requirement associated with RG&E's Ginna Retirement Transmission Alternative (GRTA) project, which would reduce the amount of any interest owed by customers and ameliorate any rate volatility attendant to the replacement of RSSA costs with GRTA costs as the source of future reliability support; (2) use some of RG&E's existing regulatory liabilities (customer credits) to offset the full net costs of the RSSA from April 1, 2015 through August 31, 2015 insuring that customers do not incur the burden of bearing the costs during the time period that has already transpired since the proposed effective date of the RSSA; and (3) use additional customer credits to offset the net cost of the RSSA that is in excess of the temporary rate surcharge level (*i.e.*, the first full year revenue requirement associated with the GRTA) from the effective date of the surcharge, September 1, 2015 or otherwise, until such time that permanent rates begin.

BACKGROUND

On November 14, 2014, the Commission issued in this proceeding an Order finding that the proposed retirement of the R.E. Ginna Nuclear Power Plant would result in bulk transmission system and non-bulk local distribution system reliability violations in 2015 and 2018.[1] Accordingly, the Commission directed RG&E to participate in negotiations with Ginna and to file an RSSA.[2]

In compliance with the Commission's November 14 Order, RG&E filed a petition seeking Commission approval of a surcharge mechanism to cover the RSSA's cost. On the same date that RG&E filed the RSSA with the Commission, Ginna filed the RSSA with the FERC pursuant to Section 205 of the Federal Power Act (FPA).

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[1] Case 14-E-0270, supra, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings (issued November 14, 2014) (November 14 Order).

[2] November 14 Order at 24. Although the Commission initially directed that the RSSA be filed by January 14, 2015, the Secretary granted Ginna two subsequent extensions resulting in a filing date of February 13, 2015.

On April 14, 2015, FERC issued an Order in its proceeding.[3] Pursuant to the FERC Order, FERC accepted, in part, to become effective April 1, 2015, Ginna's proposed rate schedule.[4] Pursuant to the RSSA, payment obligations become effective upon the issuance of an order accepting the Agreement by FERC, and the issuance of an order by the New York Commission accepting the RSSA and approving cost recovery by RG&E.[5] As shown above, the acceptance from FERC that the RSSA requires has been obtained. Thus, the remaining condition precedent to initiate payment under the RSSA is acceptance and approval of cost recovery from the Commission.

Should the Commission accept the RSSA and approve cost recovery, as FERC did, from the effective date of April 1, 2015, then in accordance with the RSSA, the cost for the reliability service will become due. The cost will continue to accrue so long as the service obligation is outstanding, and is not offset

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[3] Docket ER15-1047-000 R.E. Ginna Nuclear Power Plant, LLC, Order Rejecting in Part and Suspending Proposed Rate Schedule, Subject to Refund, ad Establishing Hearing and Settlement Procedures (April 14, 2015) (FERC Order).

[4] FERC Order at 23, Ordering Paragraph (A) (stating "Ginna's proposed rate schedule, Electric Rate Schedule FERC No. 1, is hereby rejected in part, and accepted in part for filing and suspended for a nominal period, to become effective on April 1, 2015, subject to a compliance filing and refund, as discussed in the body of this order.") (emphasis supplied).

[5] Case 14-E-0270, Exhibit A, Reliability Support Services Agreement Between R.E. Ginna Nuclear Power Plant, LLC and Rochester Gas and Electric Corporation, par2.1(a)(i)(ii), p.6-7 (filed February 13, 2015).

with payments, which would be recovered from ratepayers if the RSSA is approved. The potential harm of ignoring the growing cost far outweighs the harm of temporary rates that remain subject to refund pending a final resolution determining the cost. Accordingly, the Commission should grant RG&E's Temporary Rates Petition as modified hereinafter.[6]

DISCUSSION

1. Authority and Need for Temporary Rates

The Commission's authority to establish temporary rates upon an electric utility filing seeking a rate increase flows from Public Service Law §§66(12)(h), 72, and 113. The PSL sections, read together, detail that the Commission may establish temporary rates when a utility files for a rate increase subject to later consideration of permanent rates. In such a situation, temporary rates are permissible where the public interest requires that some temporary mechanism be established, such that rates may be collected while awaiting the Commission's final decision on the utility's filing. Because of their temporary nature, the amounts collected remain subject to refund or reparations pending a final decision determining the proper amount that should have been collected.

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[6] While supporting RG&E's Temporary Rates Petition, Staff makes no representation as to its position on the issues that remain to be determined in future proceedings on the RSSA.

As RG&E indicates in its Temporary Rates Petition, and as its witness panel supported at the July 2 Hearing, the estimate of the deferral amount owed by customers through August 2015 will reach approximately $25 million, and additional costs will continue to accrue until collection and payment commences with the result that compounding will continue even after collection begins. Although the Commission could theoretically extend the recovery period, earning interest would attend that action. Both principle and interest would then be added on to the significant costs that RG&E will incur in building out its Ginna Retirement Transmission Alternative (GRTA).

Multiple Intervenors (MI), in a filing dated June 9, 2015, opposes RG&E's Temporary Rates Petition. MI's opposition is premised on two primary points: that costs under the RSSA are not presently "due and owing" to Ginna, and that even assuming, in arguendo, such accruing costs are eventually passed to customers, sufficient customer credits exist to reduce the impact.

MI's contention that costs are not accruing is simply wrong, notwithstanding that the RSSA's terms require both FERC and New York Commission acceptance and approval, and the latter has not be obtained. While on one hand, Commission acceptance of the RSSA cannot be presumed, on the other hand, rejection cannot be presumed either, and acceptance, if granted, would carry with it the obligation for RG&E to reimburse Ginna for service commencing as of April 1, not some later time as MIS seems to believe. Moreover, even assuming an adverse Commission decision on the RSSA, the foundation of the RSSA costs is the reliability service obligation that was imposed on Ginna, and ratepayers must bear those costs in some form irrespective of any subsequent approvals of the Commission and FERC.

The parties cannot ignore the Commission's determination in the November 14 Order that Ginna provided proper notice of its intent to retire, and the Commission's pronouncements effectively denying permission to Ginna to shut down. Thus, the Commission has required Ginna to continue operations to support reliability in RG&E's territory.[7] Absent compensation for the costs of that reliability service, imposing the obligation for Ginna to operate would be an unconstitutional "taking." Moreover, regardless of the fact that the specific cost is not yet known, a real danger faced by MI, and the other RG&E customers, is that any such amount determined to be owed to Ginna could be increased from what is included in the RSSA if the RSSA were rejected.[8] Based upon the Commission's expressed

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7 November 14 Order at 21.

8 Regardless of disputes over jurisdiction, FERC stated, in its February 19, 2015, Order in Docket No. EL15-37-000, New York Independent System Operator, Inc. (NYISO)), p., ¶17, that "should NYISO choose an exclusively mandatory RMR regime, under which a generator wishing to deactivate but determined by NYISO to be needed for reliability is required to remain

findings of need and its explicit support for some sort of reliability service agreement absent any reasonable alternative, and further noting the fact that Ginna plant was, in effect, ordered to remain in operation, preparations for the possibility that the Commission will approve the RSSA must begin now in the form of cost recovery. Establishing some form of payment for service now on a temporary basis, while reserving the Commission's rights to order refunds, is much more prudent than simply ignoring the present situation.

2. Amount and Design of Temporary Rates

At the July 2 Hearing, Staff introduced exhibits that lay the foundation for its proposal on the design of the temporary rate surcharge. Exhibit 5 sets forth the estimated net monthly cost of the RSSA through the end of the contract term. First and foremost, the RSSA establishes a fixed monthly cost component of $17.5 million for each month the RSSA is in effect. To help offset the fixed costs that are flowed through to RG&E's customers, the RSSA nets market price revenue sharing against the $17.5 million monthly fixed cost. Although the actual amounts of the market payments will not be known until the end of the contract term, Attachment 1 to Exhibit 5 provides

in operation, NYISO's proposal should provide for compensation at a full cost-of-service rate" (emphasis supplied). Staff believes that the RSSA's compensation provisions are below Ginna's full cost of service.

RG&E's best estimates[9] for the anticipated share of market revenues that will be available and the estimated net monthly costs for which customers will be responsible during the entire proposed RSSA term, April 2015 through September 2018. Based on Exhibit 5, the estimated net monthly cost of the RSSA from April to August is approximately $25 million,[10] which is the potential harm already accrued against customers through September 1, 2015. By December 1, 2015, that number grows to $52.0 million. Without a temporary rate surcharge mechanism in place to collect any of that amount, under the RSSA the amount would become due and owing upon Commission action accepting the RSSA and would be collected contemporaneously with the ongoing monthly costs reflected on Exhibit 5 that will occur after such Commission action. The accrual of a sum in the amount of approximately $52.0 for RG&E, a utility whose annual delivery revenues are currently $436 million, justifies a temporary rate response.

In presenting the net monthly costs of the Ginna RSSA to customers that are not being paid or collected, Staff recognizes, as indicated by MI, that significant customer

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9 RG&E explains on Attachment 1 to Exhibit 5 that: market revenues are based upon expected market energy and capacity production provided by Ginna to RG&E multiplied by RG&E's estimate of market prices.

10 In addition to the overall monthly RSSA costs shown in Exhibit 5, Exhibit 7 contains RG&E's estimated customer bill impacts for certain service classes from the RSSA for the years 2015 through 2018. Exhibit 7 presents the impacts both on a delivery bill only basis and a total bill basis.

credits are available to offset some of the RSSA's costs. Use of credits to offset a one-time expense like the Ginna RSSA costs is particularly appropriate because the credits themselves are a one-time benefit, not a continuing cost reduction. Nonetheless, Staff does urge some caution in the application of the customer credits noting that RG&E currently has pending before the Commission, in Case 15-E-0285, tariff leaves that would reduce RG&E's electric delivery rates by approximately $10 million. The $10 million electric delivery rate reduction only becomes possible under RG&E's rate proposal through the application of some of the existing customer credits.[11]

Within this context, Staff notes that Exhibit 6 establishes the amount of credits available for use now. These customer credits may be used either in this case, in Case 15-E-0285 or even held for future use to offset some as yet undetermined future cost, or in some combination of the foregoing. Exhibit 6, through a combination of three RG&E responses to MI information requests, sets forth the Company's belief that it holds in total approximately $105 million in customer credits. While that total has not yet been reviewed through the regulatory process, Staff has crafted a proposal that uses enough credit to ease the impact of temporary rates on

[11] See Iberdrola Filing Letter of Mark S. Lynch to the Secretary, dated May 20, 2015, in Cases 15-E-0286 and 15-G-0287.

customers while leaving a residual balance for the Commission to dispose of in future decisions.[12]

To balance customer interests and reserve to the Commission options for applying the credits in either or both a final decision in this matter and a final decision in Case 15-E-0285, Staff proposes a two-tiered approach to temporary rates. First, Staff urges the Commission to apply approximately $25 million of existing customer credits to offset completely the rate impact of RSSA costs over the time that has elapsed between the proposed effective date of the RSSA, April 1, 2015, and the date the Commission establishes for temporary rates that Staff has requested be September 1, 2015.[13]

Second, Staff proposes that the Commission allow RG&E to set its temporary rate surcharge as of September 1 at the level equal to the projected first full year revenue requirement associated with the GRTA. In pre-filed testimony in Case 15-E-0285, publicly accessible on the Commission's Document Matter Management System, RG&E explains it designed the GRTA "to

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[12] Compare Multiple Intervenors Letter Opposing Temporary Rates Petition, dated June 9, 2015, filed in this matter with Case 15-E-0285, RG&E – Electric Rates, Pre-filed, and as yet unsworn, Direct Testimony of the Policy Panel at p.13 ll.4-9 (noting that the Company estimates net regulatory liabilities of approximately $105 million as of April 2016).

[13] Should the Commission change the date from the September 1, 2015 date proposed by Staff, Staff's proposed approximation of $25 million would also change commensurate with such Commission action. The approximate effect of such change can be determined based on Attachment 1 to Exhibit 5.

maintain reliability absent the continued operation of the Ginna nuclear power plant."[14] Staff reserved Exhibit 7 which is expected to provide estimated annual revenue requirement effects of the GRTA project starting with the first full year of service through the end of its useful life. Staff urges the Commission to establish the temporary rate surcharge such that RG&E collects the first full year's revenue requirement associated with the GRTA project.[15] Setting a surcharge commensurate with the revenue requirement effects of the first full year of GRTA service will both reduce the burden of RSSA costs on ratepayers and smooth the transition from paying the RSSA costs to paying the GRTA costs, reducing bill volatility. As the GRTA costs and the RSSA costs do not match exactly, Staff believes that the application of customer credits is appropriate here to offset the difference.

Based on the Exhibits presented in the hearing, Staff has modeled out the compression of the Ginna RSSA payments. Attachment A and Attachment B, hereto, provide visual examples

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[14] Case 15-E-0285, RG&E – Electric Rates, Prefiled Direct Testimony of the Electric and Hydro Capital Expenditures Panel, p.25 ll.5-7 (explaining further that the GRTA consists of two major elements –- upgrades to Station 122 and uprates to four circuits -- and that the improvements "included in [the GRTA] are needed to solve the thermal overloads at Station 122 and to prevent more than one bulk transformer from being lost in a single contingency."

[15] Cf. Exhibit 9 detailing RG&E's estimated monthly bill impacts for both delivery and total bills for all service classifications in the same format as contained in Exhibit 8.

of Staff's modeling. Attachment A contains a chart showing the costs accrued under the RSSA beginning April 2015 (Payment w/o Compression) and the customer payments, including compression, expected to be made beginning January 1, 2016, assuming Commission acceptance of the RSSA by December 31, 2015, pursuant to the RSSA (Total Paid to Ginna w/ Compression). Attachment A uses above-market payments as contained in hearing record Exhibit 5, and assumes no mitigation through the application of customer credits. Attachment A also shows the impacts on the delivery revenues and on total revenues. Attachment A demonstrates that, absent temporary rates, the estimated compression would add approximately $3.8 million/month to customer bills, equaling a bill impact from compression alone of between 8% and 10%. Attachment B contains visual 2 graphs plotting the information contained in the Attachment A chart.

These charts demonstrate that without the application of credits through temporary rates, RG&E customers will experience unacceptable rate shock and unacceptable rate volatility. Temporary rates are therefore in the public interest.

Finally, beyond the application of credits to RG&E's projected deferral balance by the end of August, which cannot be accomplished without temporary rates, Staff believes approval of a temporary surcharge should be expedited to begin on September

1, 2015 or as soon thereafter as practicable, on an emergency basis under the State Administrative Procedure Act as requested by RG&E. Collection of that surcharge would smooth out continuing rate impacts going forward, a result surely in the public interest, even if the electric rate proceeding and the GRTA proceed as planned and the latter does not experience cost overruns or delays in entering service.

CONCLUSION

In accordance with the foregoing, Staff respectfully requests that the Commission grant RG&E's request to establish a temporary rate surcharge. The amounts collected through the surcharge would offset the potential deleterious impact that rate compression could bring to the Company's customers if the Ginna RSSA is accepted and does them no harm if the RSSA is rejected because the amounts collected can be refunded to ratepayers.

Respectfully submitted,

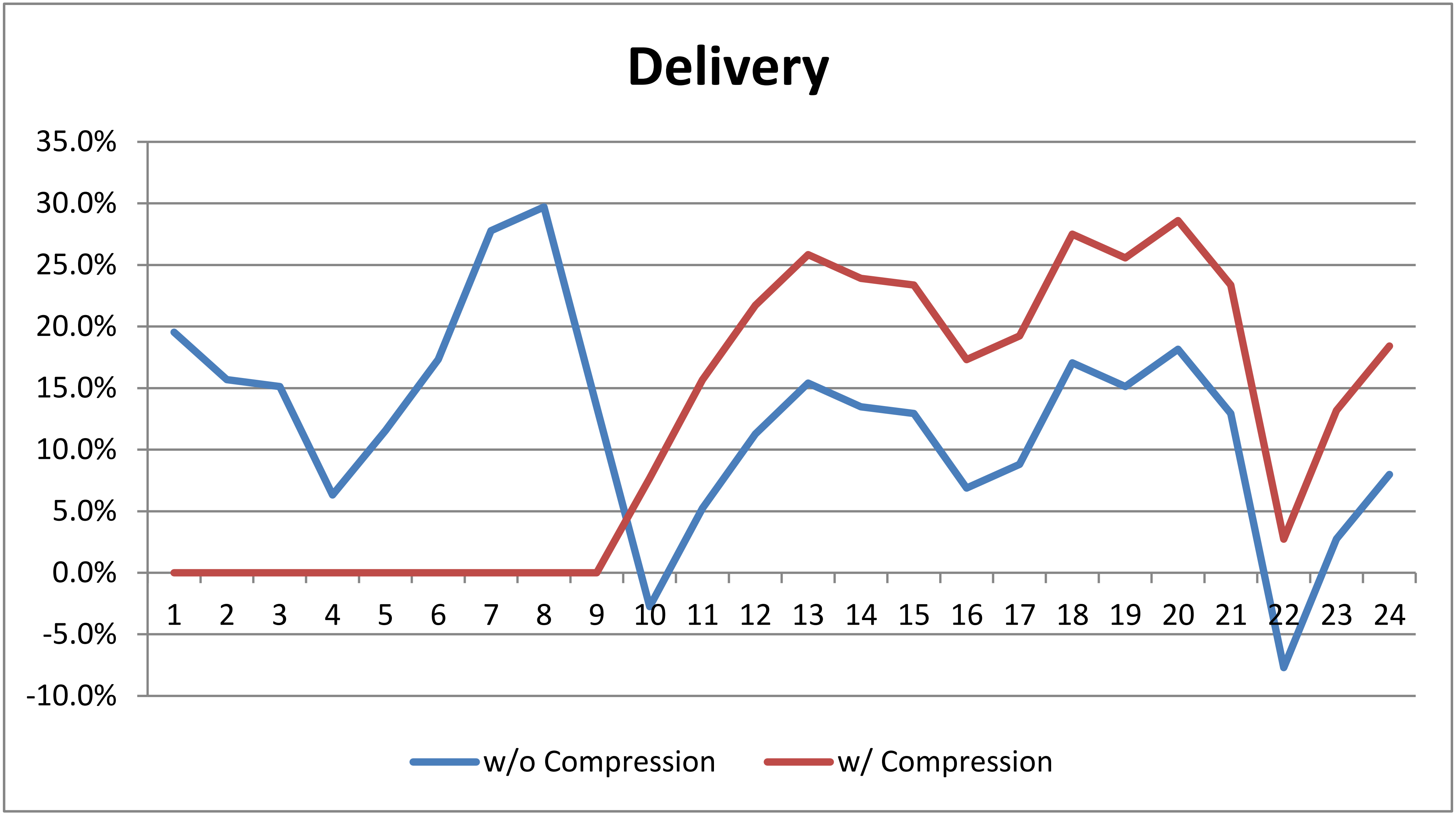
s/*Alan T. Michaels*

Alan T. Michaels
Dakin Lecakes
Staff Counsel

Dated: June 13, 2015
Albany, New York

ATTACHMENT A

#	Month	Yr.	Payment w/o Compression	Compression	# months to collect	Deferred Collection Amount	Total Paid to Ginna w/ Compression	RG&E Electric Delivery Revenues: Payment w/o Compression	RG&E Electric Delivery Revenues: Payment w/ Compression	RG&E Electric Delivery Revenues: Differences	RG&E Electric Total Revenues: Payment w/o Compression	RG&E Electric Total Revenues: Payment w/ Compression	RG&E Electric Total Revenues: Differences
	Ginna Compression												
	Assume 12/31/15 Acceptance Date												
	$ millions												
1	April	2015	$ 7.1	$ 7.1	0	0	$ -	19.5%	0.0%	-19.5%	14.5%	0.0%	-14.5%
2	May		$ 5.7	$ 12.8	0	0	$ -	15.7%	0.0%	-15.7%	11.6%	0.0%	-11.6%
3	June		$ 5.5	$ 18.3	0	0	$ -	15.1%	0.0%	-15.1%	11.2%	0.0%	-11.2%
4	July		$ 2.3	$ 20.6	0	0	$ -	6.3%	0.0%	-6.3%	4.7%	0.0%	-4.7%
5	August		$ 4.2	$ 24.8	0	0	$ -	11.6%	0.0%	-11.6%	8.6%	0.0%	-8.6%
6	September		$ 6.3	$ 31.1	0	0	$ -	17.3%	0.0%	-17.3%	12.9%	0.0%	-12.9%
7	October		$ 10.1	$ 41.2	0	0	$ -	27.8%	0.0%	-27.8%	20.6%	0.0%	-20.6%
8	November		$ 10.8	$ 52.0	0	0	$ -	29.7%	0.0%	-29.7%	22.1%	0.0%	-22.1%
9	December		$ 4.9	**$ 56.9**	0	0	$ -	13.5%	0.0%	-13.5%	10.0%	0.0%	-10.0%
10	January	2016	$ (1.0)	$ -	15	$ 3.8	$ 2.8	-2.8%	7.7%	10.4%	-2.0%	5.7%	7.8%
11	February		$ 1.9	$ -	15	$ 3.8	$ 5.7	5.2%	15.7%	10.4%	3.9%	11.6%	7.8%
12	March		$ 4.1	$ -	15	$ 3.8	$ 7.9	11.3%	21.7%	10.4%	8.4%	16.1%	7.8%
13	April		$ 5.6	$ -	15	$ 3.8	$ 9.4	15.4%	25.8%	10.4%	11.4%	19.2%	7.8%
14	May		$ 4.9	$ -	15	$ 3.8	$ 8.7	13.5%	23.9%	10.4%	10.0%	17.8%	7.8%
15	June		$ 4.7	$ -	15	$ 3.8	$ 8.5	12.9%	23.4%	10.4%	9.6%	17.4%	7.8%
16	July		$ 2.5	$ -	15	$ 3.8	$ 6.3	6.9%	17.3%	10.4%	5.1%	12.9%	7.8%
17	August		$ 3.2	$ -	15	$ 3.8	$ 7.0	8.8%	19.2%	10.4%	6.5%	14.3%	7.8%
18	September		$ 6.2	$ -	15	$ 3.8	$ 10.0	17.1%	27.5%	10.4%	12.7%	20.4%	7.8%
19	October		$ 5.5	$ -	15	$ 3.8	$ 9.3	15.1%	25.6%	10.4%	11.2%	19.0%	7.8%
20	November		$ 6.6	$ -	15	$ 3.8	$ 10.4	18.2%	28.6%	10.4%	13.5%	21.2%	7.8%
21	December	2017	$ 4.7	$ -	15	$ 3.8	$ 8.5	12.9%	23.4%	10.4%	9.6%	17.4%	7.8%
22	January		$ (2.8)	$ -	15	$ 3.8	$ 1.0	-7.7%	2.7%	10.4%	-5.7%	2.0%	7.8%
23	February		$ 1.0	$ -	15	$ 3.8	$ 4.8	2.8%	13.2%	10.4%	2.0%	9.8%	7.8%
24	March		$ 2.9	$ -	15	$ 3.8	$ 6.7	8.0%	18.4%	10.4%	5.9%	13.7%	7.8%
			$ 106.9			**$ 56.9**	**$ 106.9**						
			$ 4.5										
***So: GNP-010 (MI-10) Att. 1													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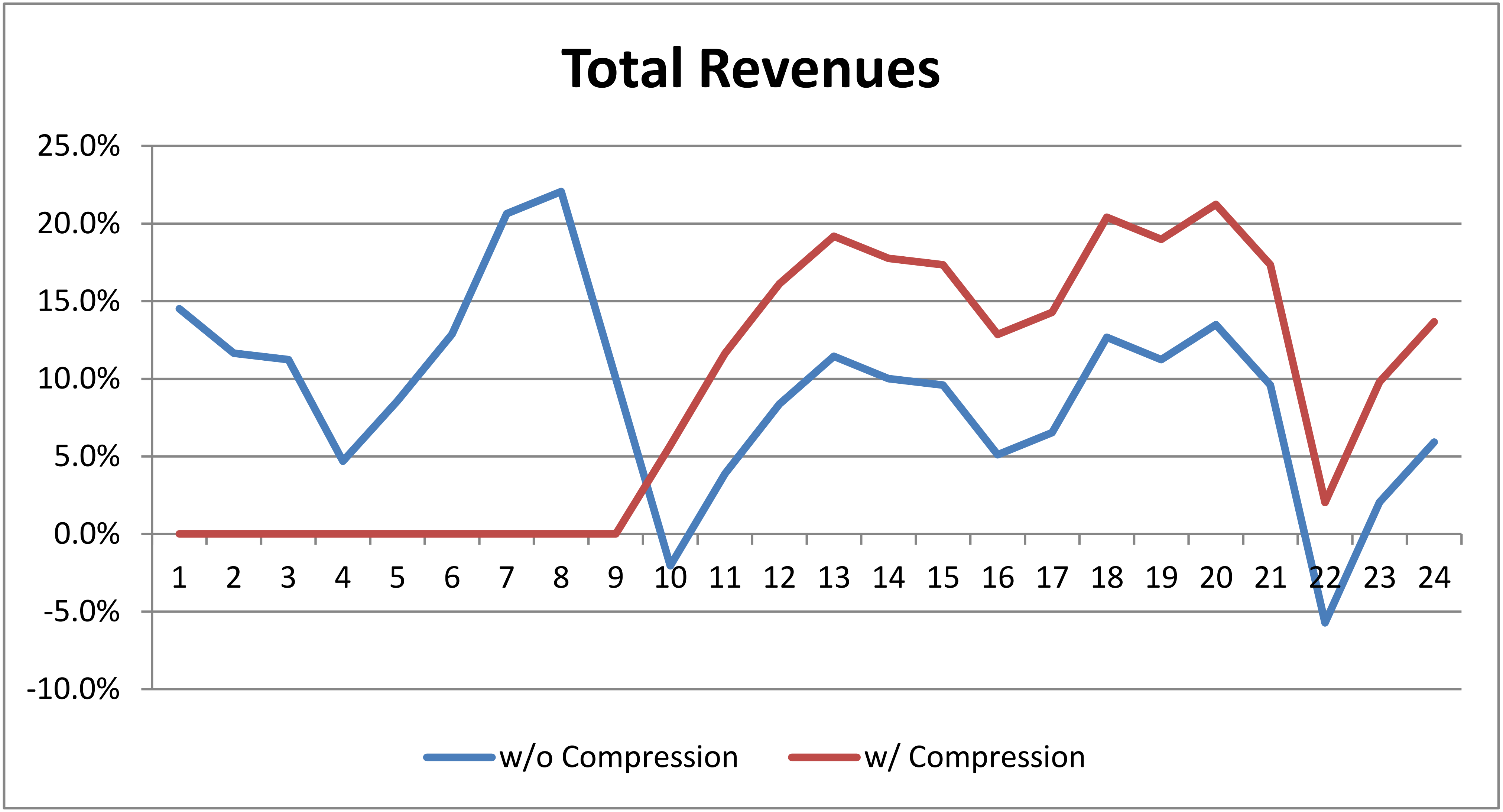
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