

July 13, 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:

Pursuant to the schedule adopted in the Ruling on Schedule issued on June 25, 2015, Multiple Intervenors hereby submits its attached Initial Brief in Opposition to Temporary Rates in the above-referenced proceeding. Copies of the attached submission 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. Ashley Moreno (via E-Mail; w/att.)
Hon. Sean Mullany (via E-Mail; w/att.)
Hon. Julia Smead Bielawski (via E-Mail; w/att.)
Active Parties (via E-Mail; w/att.)

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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

**INITIAL BRIEF OF MULTIPLE INTERVENORS
IN OPPOSITION TO TEMPORARY RATES**

Dated: July 13, 2015

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PRELIMINARY STATEMENT

On June 4, 2015, Rochester Gas and Electric Corporation (“RG&E”) filed a petition seeking authorization to implement a temporary surcharge on customers (“Petition”) in Case 14-E-0270.¹ Pursuant to a Ruling on Schedule issued by Administrative Law Judges Sean Mullany, Ashley Moreno and Julia Smead Bielawski, a deadline of July 13, 2015 was established for initial briefs in response to the Petition.² Consistent therewith, Multiple Intervenors hereby submits its Initial Brief in Opposition to the Petition. Multiple Intervenors previously opposed the Petition in a letter dated June 9, 2015, the contents of which are incorporated herein by reference. As demonstrated therein, and below, the relief sought by RG&E in the Petition – authorization to implement a temporary surcharge on customers – is wholly unnecessary and contrary to the public interest. Accordingly, the Petition should be denied in its entirety.

This proceeding pertains to: (a) the proposed Reliability Support Services Agreement (“RSSA”), dated as of February 13, 2015, between RG&E and R.E. Ginna Nuclear Power Plant, LLC (“GNPP”), owner of the R.E. Ginna Nuclear Power Plant (“Ginna”);³ and (b) RG&E’s proposal to allocate to and recover from electric customers 100% of the costs of the proposed RSSA.

In its Petition, RG&E seeks authorization to implement a temporary surcharge on customers to recover RSSA costs that currently are not due and owing from RG&E to GNPP and

¹ 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*. The Petition is Hearing Exhibit No. 2.

² Case 14-E-0270, *supra*, Ruling on Schedule (issued June 25, 2015) at 2.

³ The RSSA is Hearing Exhibit 4.

which have yet to be paid by the utility. RG&E asserts that a temporary surcharge is in the public interest to mitigate “rate compression” that customers purportedly will experience in the future when being forced to pay retroactive and current RSSA costs simultaneously. (*See* Petition [Hearing Exhibit No. 2] at 3-4.)

Significantly, however, RG&E’s allegations of rate compression are contingent upon highly-questionable assumptions, such as: (a) the proposed RSSA will be approved in its current form by the New York State Public Service Commission (“Commission”) and the Federal Energy Regulatory Commission (“FERC”), notwithstanding numerous arguments by numerous parties challenging numerous aspects of the proposed RSSA (and a prior decision by FERC rejecting the proposed RSSA in part);⁴ (b) RG&E’s proposals to recover 100% of RSSA costs from customers will be approved in their current form by the Commission, notwithstanding numerous arguments by numerous parties challenging numerous aspects of such proposals; and (c) the Commission will choose to ignore the fact that RG&E currently owes customers over \$155 million,⁵ notwithstanding that such amount dwarfs any claimed rate compression that possibly could occur even if the proposed RSSA and the utility’s cost recovery proposals are approved in their entirety. For the reasons set forth below, RG&E’s Petition should be denied.

⁴ *See* FERC Docket No. ER15-1047-000, *R.E. Ginna Nuclear Power Plant, LLC*, 151 FERC ¶ 61,023, Order Rejecting in Part, and Accepting in Part and Suspending Proposed Rate Schedule, Subject to Refund, and Establishing Hearing and Settlement Procedures (issued April 14, 2015) at ¶ 42 (holding that: “Our preliminary analysis indicates that the proposed RSSA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful”).

⁵ *See* Hearing Exhibit No. 6 (comprised of RG&E’s responses to Multiple Intervenors Information Request Nos. 39-41, acknowledging that as of April 9, 2015, RG&E was in possession of \$155.342 million in customer credits).

ARGUMENT

THE PETITION SHOULD BE DENIED IN ALL RESPECTS

The Petition is seven pages. It contains but a single argument in support of implementing a temporary surcharge on customers – *i.e.*, that the proposed RSSA (assuming it is approved) provides for retroactive payments back to April 1, 2015, and that if RG&E does not start collecting RSSA costs from customers now (assuming such recovery is approved), there will be “rate compression” at such time that RG&E is authorized to recover (i) retroactive RSSA costs back to April 1, 2015, and (ii) RSSA costs on a “real-time” basis moving forward. (*See* Petition [Hearing Exhibit No. 2] at 3-4.) For numerous reasons, RG&E’s arguments and reliance on so-called rate compression are without merit and should be rejected.

First, there is no certainty that the Commission and FERC will approve the proposed RSSA. As illustrated by the submissions of numerous parties on the appropriate scope of evidentiary hearings in this proceeding, there are numerous issues – including numerous objections – to numerous provisions of the proposed RSSA.⁶ As detailed, *supra*, FERC previously issued an order rejecting the RSSA in part. There is no compelling reason for the Commission to authorize customer surcharges in response to a proposed RSSA that has yet to receive the requisite regulatory approvals from either of the relevant governmental agencies.

Second, in light of the still-pending Commission and FERC proceedings evaluating the proposed RSSA and the substantial opposition that exists with respect thereto, there is no certainty that proposed RSSA will not be terminated prior to or after Commission and/or FERC

⁶ *See, e.g.*, Case 14-E-0270, *supra*, Statements of Material Issues of Fact Warranting Hearing submitted by, *inter alia*, Alliance for a Green Economy and Citizens’ Environmental Coalition, Multiple Intervenors, New York State Department of State Utility Intervention Unit (dated and filed on or about April 22, 2015).

action. For instance, pursuant to Section 2.1(c) of the proposed RSSA, because the Acceptance Date (as that term is defined in Section 2.1(a)) did not occur by July 1, 2015, Ginna currently has the right to terminate the RSSA without penalty through August 1, 2015. (*See* RSSA [Hearing Exhibit No. 4] at §§ 2.1(a), 2.1(c).) Ginna and RG&E also each have the right to terminate the RSSA if a “Governmental Authority” (such as the Commission and/or FERC) “modifies or imposes any term or condition that is adverse in any material respect to a Party, as determined in the affected Party’s reasonable discretion.” (*Id.* at § 2.1(c).) There is no compelling reason for the Commission to authorize customer surcharges in response to an RSSA that may be terminated by one or both of the signatory parties.

Third, there is no certainty that the Commission will approve retail rate recovery associated with the proposed RSSA. As also indicated by the previously-referenced submissions of numerous parties on the appropriate scope of evidentiary hearings in this proceeding, there are numerous issues regarding whether RG&E acted prudently in the planning of the electric system and the events leading up to its execution of the proposed RSSA, as well as the manner in which the utility seeks to recover RSSA-related costs from customers. There is no compelling reason for the Commission to authorize customer surcharges in response to an RSSA for which the utility has yet to demonstrate an entitlement to cost recovery.⁷

⁷ Multiple Intervenors notes that pursuant to the proposed RSSA, the Commission can protect customers from any rate compression without need to resort to a premature, temporary surcharge. Section 10.3(b) of the proposed RSSA provides, in pertinent part, that: “If the NYPSC ... implements a rate recovery mechanism that does not allow RGE to fully recover through a customer surcharge (without offset or deferral including with respect to items unrelated to this Agreement) amounts paid to Ginna under this Agreement on a substantially current basis that coincides with the payments made by RGE to Ginna hereunder, then (i) the Monthly Fixed Amount shall be immediately reduced to be equal to the monthly amount that RGE is reasonably anticipated to recover through such surcharge on a substantially current basis” (RSSA [Hearing Exhibit No. 4] at § 10.3(b).)

Fourth, even if, *arguendo*, the Commission were inclined to overlook the aforementioned uncertainties, the Petition still is meritless and should be denied because RG&E's claims of rate suppression are illusory, at best. There is no rate compression and, therefore, there is no need for temporary rates.

RG&E is seeking to start recovering from customers RSSA costs that currently are not due and owing the utility. There certainly is no proof or allegation in the record that RG&E has started paying GNPP under the proposed RSSA. Thus, as opposed to situations where utilities seek recovery of costs that were incurred or are being incurred, by the Petition RG&E is seeking advanced recovery from customers for costs that might (or might not) be incurred in the future.

Even putting that objection aside for the sake of argument, rate compression is an illusion here because of the very large amount of money that RG&E already owes to customers. For instance, if, *arguendo*, RG&E is 100% successful on all issues pertaining to the proposed RSSA and its proposals for complete cost recovery from customers (notwithstanding opposition thereto from Multiple Intervenors and other parties), the utility calculates that the alleged rate compression would be "nearly \$25 million" through July 2015. (Petition [Hearing Exhibit No. 2] at 4.) Significantly, however, that amount is *less than one-sixth* the amount that RG&E owes to customers, which was in excess of \$155 million as of April 9, 2015 (and not including interest from that date). (Hearing Exhibit No. 6.)

Pursuant to the "temporary rates scenario" advanced by RG&E, the utility would collect RSSA costs from customers in advance of making any RSSA payments to GNPP. Thus, whatever RG&E collected from customers under its desired surcharge simply would be added to the over \$155 million in credits (plus interest) that it already owes to customers. Thus, rather than addressing the surplus credits in a manner beneficial to customers, RG&E's proposal would

exacerbate the current situation. On the other hand, pursuant to the “no temporary rates scenario” championed by Multiple Intervenors, if, *arguendo*, the proposed RSSA is approved, any amounts becoming due and owing from customers retroactive to April 1, 2015 simply could (and should) be deferred, and netted against the much, much larger amounts that RG&E owes to customers. Thus, using RG&E’s “nearly \$25 million” example of rate compression advanced in the Petition, the net effect simply would be that the amounts owed to customers by the utility would be reduced to slightly over \$130 million – a far preferable outcome to the premature imposition of a new and substantial surcharge on customers.

Multiple Intervenors also notes that the Petition seeks an outcome different from that approved previously by the Commission. For instance, in the last Niagara Mohawk Power Corporation d/b/a National Grid rate proceeding, the Commission adopted a Joint Proposal that utilized existing amounts owed by the utility to customers to offset the first \$57 million in RSSA costs incurred by that utility.⁸ In this case, the available credits are more than sufficient to cover, *inter alia*, any and all retroactive payments that possibly may become due and owing under the proposed RSSA. Such an approach – *i.e.*, applying one-time credits to offset one-time retroactive RSSA costs (should they even arise) – is entirely appropriate and still would leave ample customer credits to moderate prospective RSSA costs, as well as potential revenue requirement increases that RG&E may (or may not) be able to justify in its pending rate proceeding.

⁸ See Cases 12-E-0201 and 12-G-0202, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013) at 15 (utilizing \$57 million in electric deferral credits to offset the first \$57 million of RSSA costs incurred by the utility).

Any argument by RG&E (or others) that the premature imposition of a new, huge surcharge on customers somehow is in customers' best interests also should be rejected. The rate impacts of the proposed RSSA – which RG&E is seeking to impose on customers as soon as possible via the proposed temporary surcharge – are staggering. For instance, for the various S.C. 8 subclasses, RG&E currently is projecting that actual customers would realize the following delivery rate impacts in 2015 due solely to the RSSA:

S.C. 8 Subclass	Lowest Projected 2015 Delivery Rate Impact	Highest Projected 2015 Delivery Rate Impact
Primary	23.1%	31.6%
Secondary	22.7%	31.1%
Sub-transmission Commercial	37.0%	50.5%
Sub-transmission Industrial	30.1%	47.7%
Transmission	31.4%	31.4%
Substation	23.7%	40.6%

(Hearing Exhibit No. 8 [comprised of RG&E's response to Multiple Intervenors Information Request No. 36] at 10-15.)⁹ Those are the 2015 rate impacts that would be borne by S.C. 8 customers if, *arguendo*, RG&E's \$155 million-plus debt to customers is disregarded and temporary rates are implemented pursuant to the Petition. That outcome surely is NOT in the public interest. At a bare minimum, any and all RSSA costs that are found to be due and owing retroactive back to April 1, 2015 (*i.e.*, the so-called "rate compression" amount) should be offset

⁹ The delivery rate impacts over the entire term of the proposed RSSA are projected to be modestly less than the 2015 impacts, based solely upon RG&E's projection of increasing wholesale market revenues offsetting payments of the Monthly Fixed Amount. (*See id.* at 62-67.) Of course, actual wholesale market revenues flowing back to RG&E under the proposed RSSA could be more or less than what the utility has projected, resulting in lower or even higher customer delivery rate impacts on customers.

by the huge amounts of credits that RG&E currently owes to customers, thereby dispensing with any alleged need for a temporary surcharge.¹⁰

CONCLUSION

For all the foregoing reasons, as well as those set forth in Multiple Intervenors' June 9, 2015 letter submission, RG&E's Petition seeking Commission authorization to implement a temporary surcharge on customers is without merit and should be denied in its entirety. Temporary rates are wholly unnecessary in this proceeding. The alleged rate compression that RG&E seeks to address via a temporary surcharge on customers is illusory, and the magnitude of that alleged retroactive cost is dwarfed by amounts that the utility already owes to customers.

Dated: July 13, 2015
Albany, New York

Respectfully submitted,

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¹⁰ Multiple Intervenors also asserts that such credits should be used to offset a material amount of any RSSA costs that may become due and owing by customers on a going forward basis, but recognizes that such position is not being decided at this time.