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July 13, 2015

**VIA ELECTRONIC MAIL**

The Honorable Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Empire State Plaza, Agency Bldg. 3  
Albany, NY 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,

Alliance for a Green Economy and Citizens' Environmental Coalition are enclosing our brief opposing RG&E's Petition for a Temporary Rate Surcharge.

Thank you for your attention.

Respectfully submitted,

/s/  
Jessica Azulay Chasnoff  
Alliance for a Green Economy

/s/  
Barbara J. Warren  
Citizens Environmental Coalition

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

-----X  
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

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OPPOSITION TO RG&E PETITION  
FOR A TEMPORARY RATE SURCHARGE

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**Dated:** July 13, 2015

NEW YORK STATE  
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OPPOSITION TO RG&E PETITION  
FOR A TEMPORARY RATE SURCHARGE

**Introduction**

Alliance for a Green Economy and Citizens Environmental Coalition submit this brief in opposition to Rochester Gas & Electric’s (“RG&E”) June 4, 2015 petition to implement a temporary rate surcharge for its electric customers, on an emergency basis.

The petition should be rejected because the “emergency” temporary rate-increase requested is unnecessary and unjustified, and would harm the public interest. Granting this petition would unduly and unjustly punish ratepayers for the ill-advised decision made by RG&E to sign an RSSA with an effective date of April 1, 2015. It would create economic anxiety and hardship when no such sacrifice from RG&E consumers is warranted and can be easily avoided through other measures. Approval of the Temporary Rates Petition could also unduly bias the outcome of the pending case through which RG&E ultimately proposes to charge Rochester-area consumers approximately \$175.4 million above projected market rates in order to subsidize the unprofitable R.G. Ginna Nuclear Power Plant, LLC (“Ginna”).

It should be clearly stated here that RG&E and/or its ratepayers owe no money to Ginna at present, and they will not owe money to Ginna unless or until an RSSA is approved. RG&E is

simply requesting that it be allowed to collect money to hold in an account until the case is resolved in anticipation of an outcome that is favorable to their position in this case. Yet, the outcome of the case remains uncertain. Intervenors are mounting credible challenges to many elements of the RSSA and to RG&E's right to pass costs on to its ratepayers. On the other hand RG&E already owes customers a sizeable amount of money in the form of up to \$155.3 million in customer credits. The use of these customer credits can both cover any deferred collection amounts owed and avoid adding interest, thus fully protecting consumers from rate shock.

No one can predict whether an RSSA will ultimately be approved, what the terms of any final RSSA might be, or how much if any money will be asked of RG&E ratepayers. Nonetheless, frustrated by its inability to get a quick resolution of these questions, RG&E has filed this Temporary Rates petition, which, if approved would unfairly create an easier path to the rate recovery the utility ultimately seeks through this case.

As we will outline below, RG&E has not clearly defined exactly what it is asking for in its Petition for Temporary Rates, nor has it done any analysis of how approval of its petition will impact its customers. Without such an analysis, RG&E's claims that its petition is necessary to protect the public interest is not credible. In fact no payments to Ginna are overdue under the yet to be approved RSSA. Even if the Commission were to decide that the prospect of rate compression rises to the level of emergency status, as claimed by RG&E, and determines that it must act to mitigate rate compression, the Commission has many other options available to mitigate or eliminate the detrimental effects of the rate compression. We discuss those in detail below.

### **Important Context**

On February 13, 2015, RG&E filed with the New York Public Service Commission ("Commission") an executed Reliability Support Service Agreement ("RSSA") it had signed with Ginna. The agreement was written to take effect a mere seven weeks later on April 1, 2015, regardless of whether the necessary approvals from state and federal regulatory agencies had been obtained by that date. In the event that approval was granted after April 1, 2015, the RSSA contains a clause (Exhibit 4, RSSA Public Version, clause 4.1(b), pages 12-13), which commits

RG&E to pay Ginna a Deferred Collection Amount. This amount is equal to the amount that Ginna would have been paid had the RSSA been in effect on April 1, plus interest. The Deferred Collection Amount and interest is scheduled to be collected in monthly installments through March 31, 2017.

The RSSA was known by RG&E to constitute a “major change,” requiring a public comment period and a hearing.<sup>1</sup> Given the need for discovery, filing of pre-hearing briefs, filing of testimony, a hearing, and post-hearing briefs, it was unreasonable for RG&E to assume that the RSSA would be approved by April 1, 2015. Thus, it can be assumed that when RG&E filed the proposed RSSA, the company knew it was setting its customers up for some amount of “rate compression”: double payments as a result of having to pay RSSA costs on a going forward basis as well as paying off the deferred collection amount.

### **Arguments In Opposition of RG&E’s Temporary Rates Petition**

1. **RG&E made a bad deal for its customers and now wants ratepayers to pay the costs.** The possibility for rate compression at the heart of this petition stems from the April 1, 2015 effective date of the RSSA. This date was chosen by RG&E and Ginna. It was not imposed by the Commission Order issued on November 14, 2014, which set in motion the RSSA negotiations.<sup>2</sup> Yet now, RG&E’s own petition implies that the RSSA as written harms the public interest because of the April 1 effective date and the Deferred Collection Amount created through the terms of the agreement. In arguing for emergency action on its petition, RG&E likens the rate compression it created to “unacceptable rate shock.” If RG&E was so concerned about the impact on the public interest of rate compression, why did it agree to an RSSA that would almost certainly result in rate compression if approved? While the company may have assumed that a decision would be issued relatively quickly, it had no guarantee of that. Now, faced with the possibility

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<sup>1</sup> See “Rochester Gas and Electric Corporation’s Response to Order Directing Negotiation of a Reliability Support Service Agreement and Petition for Approval of Cost Allocation and Cost Recovery Surcharge Mechanism” at pages 9 and 10.

<sup>2</sup> Public Service Commission Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings, November 4, 2014.

of the rate implications of its decisions on its customers, RG&E is asking the Commission to pre-empt the evidentiary process by granting its petition on an emergency basis and temporarily raising rates without a public comment period. (Exhibit 2 at Page 5.) **The solution is to remedy the underlying terms of the bad deal, not raise rates temporarily.**

- 2. The Petition for Temporary rates prepared by RG&E fails to provide the necessary detail and their own analysis of the impact on their customers.** Nowhere in the Temporary Rates Petition does RG&E detail what exactly it is requesting. The petition states that RG&E is seeking approval for a “temporary rate surcharge.” (Exhibit 2 at Page 5). Yet, the petition never defines the amount or payment schedule for the temporary rate surcharge that RG&E is seeking. Is RG&E requesting to simply begin charging ratepayers on a monthly basis for what it assumes it would owe Ginna for each month going forward until a decision in this case is made? If so, how would this amount be calculated? Is RG&E also requesting that the Deferred Collection Amount to date be collected in some fashion, or will that be left until later? If the Deferred Collection Amount to date is to be collected, will the payments be spread out over time? If so, how much time? At hearing, RG&E’s Panel of witnesses posited their interpretations of the petition – partially explaining how they assumed it would work – yet could not point out where in the petition these details were spelled out. They acknowledged the details were “not specifically addressed” and that “clarification is worthwhile.” (Hearing Transcript, pages 66-69).<sup>3</sup>

Given RG&E’s entire justification for its request is nothing more than a claim that the temporary rate hike it seeks will be substantially better for the public interest than the alternative, it would seem that parties and the Commission should have the benefit of being provided with a detailed accounting and explanation of the rates RG&E seeks. Without such information, it is impossible to evaluate the merits of the petition or the potential impact on ratepayers.

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<sup>3</sup> Hearing Transcript references refer to the transcript of the Evidentiary Hearing conducted on July 2.

RG&E itself did no analysis of how the Temporary Rates would impact customers, including the most economically vulnerable, such as low income consumers or small businesses. (Hearing Transcript at 40-46 and 70-73).

3. **The Commission has other options at its disposal to avoid rate compression if it ultimately approves an RSSA.** We urge the Commission to reject RG&E's petition for Temporary Rates and then use one or some of a number of available strategies to mitigate rate compression if an RSSA is eventually approved. Below we outline these options:

**Option #1: Preferred Option for Ratepayers: Utilize Customer credits that RG&E has on its books to pay any deferred collection amounts immediately to Ginna upon approval of the RSSA.** The use of existing customer credits is the simplest mechanism and the most logical. However, the primary driver should be that this option avoids millions of dollars in interest that customers would otherwise be forced to pay. The total amount of customer credits is as high as \$155 million,<sup>4</sup> far in excess of any expected deferred collection amount.

In seeking a temporary rate surcharge, RG&E represents that it has a public interest motive to avoid rate compression, yet RG&E has failed to provide any satisfactory justification or rationale for its refusal to use the substantial credits the company owes customers. RG&E's has merely cited vague cash flow and cash position concerns for not wanting to use customer credits to pay for costs associated with the RSSA. (Exhibit 10) We draw attention to the company's 2014 Annual Report filed with the Commission, which shows the utility spent \$100 million in dividends common stock.<sup>5</sup> If RG&E was not worried about the impact that paying these dividends might have on its cash flow and cash position, it is unsupportable now for the company to use a cash flow excuse to avoid using customer credits for the purpose of mitigating the rate compression.

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<sup>4</sup> See Exhibit 6, which describes three accounts holding customers credits totaling approximately \$155.3 million. See also Hearing Transcript at Page 80, in which RG&E's witness panel projects that as of March 2016, the net amount owed to customers will be \$105 million.

<sup>5</sup> Annual Report of Rochester Gas & Electric Corporation for the Year ended 12/31/2014, Page 121.

**Option #2: Spread the payment term of the Deferred Collection Amount over a longer period of time.** The potential of rate compression is worsened partially because of a provision in the RSSA that requires the Deferred Collection Amount to be paid off by March 2017. (Exhibit 4 at Pages 12-13, Section 4.1(b).) This creates a situation in which the longer a final RSSA decision takes, the shorter the period for payment becomes and the higher each monthly installment must be. The RSSA could be amended to ensure that there is at least a two-year period for repayment of deferred collections to begin on the date when/if the RSSA is approved and extending beyond the currently defined March 2017 end date. The term for repayment could also be lengthened further, commensurate with the amount of the Deferred Collection Amount.

To illustrate the issue, we evaluated a few cases:

Case A: RG&E's current estimated Deferred Collection Amount of \$24.9 million (Exhibit 2 at Page 9) spread over the 20 months between August 2015 and March 2017. We calculated payments for deferred collection amounts with 2.9 % interest over the relevant time period.<sup>6</sup> The \$24.9 million Deferred Collection Amount for 4 months becomes \$25.5 million owed with interest. Paid over just 20 months, the payments would be \$1.3 million per month, which would be in addition to the ongoing fixed monthly costs of the RSSA.

Case B: The payments are spread over 24 months, reducing the monthly payment to \$1.1 million per month for deferred collection.

Case C: If the Deferred Collection Amount continues to grow for an additional three months, through October 2015, it is projected to increase to \$45.5 million.<sup>7</sup> As the RSSA is currently written, this would be paid in 17 installments, amounting to an added \$2.7 million per month. If this payment were instead spread out in installments over 24 months, each payment would be reduced to approximately \$2 million per month.

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<sup>6</sup> Payments and interest calculated using calculator.net

<sup>7</sup> Based on per-month estimated costs from Exhibit 5, Page 2. (\$24.9 million, plus \$4.2 million for August, \$6.3 million for September, \$10.1 mil for October.).



**Option #3: Adjust the rate recovery schedule so that the entire Deferred Collection Amount is paid over several months after service agreement ends.** The RSSA already includes a provision that outlines how the payment schedule from RG&E to Ginna can be altered under a circumstance in which the Commission changes the rate-recovery schedule for the RSSA, Section 10.3(b):

*If the NYPSC or other Governmental Authority 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 and (ii) the Parties shall modify the other economic terms of this Agreement (which may include adjusting Exhibit 1 and/or Exhibit 5, as applicable) to allow for payment of the unpaid balance of the Monthly Fixed Amount as such amounts are reasonably anticipated to be recovered by RGE through such surcharge (which may include payments made to Ginna after the expiration or termination of the Term). Such modifications shall only serve to modify the timing of, but not limit, the amounts payable to Ginna by RGE under this Agreement. Ginna shall be entitled to financing or carrying costs in connection with such modifications only to the extent that RGE is permitted by the NYPSC or other Governmental Authority to recover such financing or carrying costs through such surcharge. (Exhibit 4 at Pages 23-24, Provision 10.3(b))*

This provision of the RSSA creates a mechanism through which the Commission could approve a rate recovery schedule different from the preferred schedule outlined in the RSSA, and it sets up the way the companies have agreed ahead of time to handle RSSA payments under such a circumstance. Under questioning, RG&E's Witness Panel agreed with this interpretation of the RSSA and confirmed that 10.3(b) can refer to the Deferred

Collection Amount in addition to other RSSA payments from RG&E to Ginna. (Hearing Transcript at Pages 83-84).

**As illustrated above, there are at least three different ways the Commission could avoid the added negative impacts of rate compression on RG&E's customers, either by amending the RSSA itself or by using the already embedded provision 10.3(b).** The RSSA is certainly not set in stone as written. The RSSA has already been amended to reflect the changes that FERC ordered.

### **Conclusion**

The Commission should reject RG&E's Petition for a Temporary Rate Surcharge now, with the confidence that there are many tools available to avoid rate compression once the proposed RSSA has been fully settled through the standard evidentiary process. To approve RG&E's temporary rate petition, in the absence of necessary details, would allow RG & E to collect more customer funds, when no bills are yet due and final rates have not been determined.

The Petition for a temporary rate surcharge cannot resolve the major concern about excessive subsidies that will surely impact affordability for RG & E customers. We must finalize the overall case to accomplish that objective. Rate compression can pose an additional problem, however there are several available options to reduce the potential impacts. Allowing RG & E to begin collecting even more funds from customers, when no payments are due is not one of them.

We urge the Commission not to approve a temporary rate surcharge ahead of a final decision on the overall case. RG& E holds in its own hands the immediate remedy for any potential rate compression—a large sum of customer credits, large enough to eliminate any additional interest costs.

Thus, for all the reasons outlined above, we urge the Commission to reject RG&E's petition.

Respectfully submitted,

/s/

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July 13, 2015