

Attachment C

Cover Letter to FERC Filing of
Revised RSSA Between
R.E. Ginna Nuclear Power Plant, LLC and
Rochester Gas and Electric Corporation

**Contains Request for Critical Energy Infrastructure Information Treatment and
Request for Expedited Commission Action**

March 22, 2016

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20246

**Re: R.E. Ginna Nuclear Power Plant, LLC
Compliance Filing Concerning Reliability Support Services Agreement,
FERC Rate Schedule No. 1 and Settlement Agreement and Request for
Shortened Comment Period and Expedited Review
Docket No. ER15-1047-___**

Dear Secretary Bose:

In compliance with the order issued by the Federal Energy Regulatory Commission (“Commission”) on March 1, 2016, in the above-captioned proceeding,¹ and pursuant to Section 205 of the Federal Power Act (“FPA”),² and Part 35 of the Commission’s regulations,³ R.E. Ginna Nuclear Power Plant, LLC (“Ginna”) respectfully submits this compliance filing containing proposed revisions to Ginna’s FERC Rate Schedule No. 1 and related Settlement Agreement, to become effective as of April 1, 2015.⁴ **Because Ginna has been providing reliability service for nearly a year but has not yet been compensated,⁵ and because Ginna has strictly and without divergence followed the Commission’s compliance filing directives and has been authorized to state that the Settling Parties concur with the changes herein, Ginna respectfully requests a shortened notice period of 10 days and issuance of an order on delegated authority on an expedited basis, no later than April 8, 2016.**

¹ See *R.E. Ginna Nuclear Power Plant, LLC*, 154 FERC ¶ 61,157 (2016) (“*Ginna Settlement Order*”).

² 16 U.S.C. § 824 (2012).

³ 18 C.F.R. Part 35 (2015)

⁴ See *id.* at P 1 and Ordering Paragraph A.

⁵ Pursuant to Section 2.1(a)(i) of the Reliability Support Services Agreement (“RSSA”), Rochester Gas and Electric Corporation’s (“RG&E”) payment obligation is conditioned on a final order by the Commission.

I. Background

On October 21, 2015, Ginna filed, on behalf of the Settling Parties,⁶ an Offer of Settlement and Settlement Agreement intended to resolve all issues related to the RSSA originally filed by Ginna on February 13, 2015, in Docket No. ER15-1047-000 (“Original RSSA”). The Original RSSA was signed by Ginna and RG&E, and set forth terms by which Ginna would provide Reliability Support Service to RG&E to maintain reliability in the Rochester, New York area. The Settlement Agreement included a revised RSSA that modified several components of the rates, terms, and conditions of the Original RSSA (“Settlement RSSA”) and also included terms related to the retail rate proceedings ongoing before the NYPSC with respect to the RSSA.

On October 21, 2015, Judge Jennifer Whang, the presiding settlement judge in these proceedings, issued a “Report of Partially Contested Settlement.”⁷ In her report, Judge Whang identified issues raised by the Alliance for a Green Economy but noted that there did “not appear to be any genuine issues of material fact in dispute.”⁸ The Acting Chief Administrative Law Judge terminated settlement judge procedures on January 6, 2016.⁹ On March 1, 2016, the Commission issued the *Ginna Settlement Order* approving the Settlement Agreement, subject to conditions, and directing the Settling Parties to submit a compliance filing.

II. Compliance amendments

Pursuant to the *Ginna Settlement Order*, with this compliance filing, Ginna is submitting for Commission acceptance the changes to the Settlement Agreement and to the Settlement RSSA¹⁰ set forth below. Clean and redline versions of the Settlement Agreement and the Settlement RSSA, as revised, are attached as Attachments A through D. RG&E concurs with those changes.

A. NYPSC Approval of the RSSA

The Commission ordered Ginna to modify Article 2.1.2 of the Settlement Agreement and Section 2.1(a)(ii) of the Settlement RSSA to “make clear that the New York Commission’s

⁶ The Settling Parties are Ginna, RG&E, the New York Department of State Public Service Commission (“NYPSC”), the New York Utility Intervention Unit, and Multiple Intervenors.

⁷ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047-000, “Report of Partially Contested Settlement” (Dec. 16, 2015).

⁸ *Id.* at P 1.

⁹ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047-000, “Order of Chief Judge Terminating Settlement Judge Procedures” (Jan. 6, 2016).

¹⁰ In accordance with Section 10.9 of the Settlement RSSA, which required RG&E and Ginna to negotiate in good faith to restore the benefit of the bargain in the event of material modification to the RSSA, the changes required by the Commission have also been reflected in the Settlement RSSA.

approval of the Settlement RSSA is limited to ‘the aspects of the Settlement RSSA that are within the New York Commission’s jurisdiction.’”¹¹

In compliance with this directive, Ginna is submitting the following revisions to Section 2.1.2 of the Settlement Agreement (shown in bold and underlined):

2.1.2 The RSSA shall be revised such that the Parties’ payment obligations under the RSSA shall be subject to the Parties obtaining the following: (i) the issuance on or after the Restatement Date by FERC of an order accepting the RSSA under Section 205 of the Federal Power Act, 16 U.S.C. §824d and the regulations promulgated thereunder, without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party’s reasonable discretion (“FERC Authorization”); and (ii) the issuance on or after the Restatement Date by the NYPSC of an order (A) accepting the RSSA **with respect to aspects of the RSSA that are within the NYPSC’s jurisdiction** and (B) approving cost recovery by RG&E through the “RSSA surcharge” described in Article 3.2 of this Settlement Agreement on the terms and conditions set forth herein, in each case, without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party’s reasonable discretion (the “Rate Recovery Order”). The date, if any, upon which both of the foregoing conditions precedent set forth in clauses (i) and (ii) above are satisfied or waived by the Parties shall be referred to as the “Acceptance Date.” See RSSA Section 2.1(a). If clauses (i) and (ii) above are satisfied or waived on different dates, the later date shall be the Acceptance Date.

Additionally, Ginna is submitting the following revision to the Section 2.1(a)(ii) of the Settlement RSSA (shown in bold and underlined):

the issuance on or after the Restatement Date by the NYPSC of an order (A) accepting this Agreement **with respect to aspects of the RSSA that are within the NYPSC’s jurisdiction** and (B) approving cost recovery by RGE through the “RSSA surcharge” described in Article 3.2 of the NYPSC Settlement Agreement and Article 3.2 of the FERC Settlement Agreement on the terms and conditions set forth therein, in each case, without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party’s reasonable discretion (the “Rate Recovery Order”).

In addition to these revisions the Settlement RSSA, Ginna has made conforming changes to the Table of Contents to reflect accurate pagination.

¹¹ *Ginna Settlement Order* at P 31.

B. Standard of Review

In the *Ginna Settlement Order*, the Commission ordered Ginna to add the requirement to Article VI Standard of Review in the Settlement Agreement and Article 10.17 of the Settlement RSSA:

to “clarify that, (i) if there is a change to the Settlement RSSA as a result of the New York Commission’s review of the Settlement RSSA, Ginna must submit the change under section 205 of the FPA to the Commission to ensure that the Commission reviews any changes to the rates, terms and conditions of the Settlement RSSA within the Commission’s jurisdiction, and (ii) the Commission’s standard of review that will apply to such a filing will be the ordinary just and reasonable standard.”¹²

In compliance with this directive, Ginna is submitting the following revisions to the Settlement Agreement:

1. Modification of Article VI such that the existing text in Article VI will become Section 6.1 of the Settlement Agreement with the heading “Standard of Review for Settlement Agreement”; and
2. Addition of a Section 6.2 to Article VI that provides:

6.2 Standard of Review for Changes Resulting from NYPSC Review. If there is a change to the Settlement RSSA as a result of the NYPSC’s review of the Settlement RSSA, Ginna shall submit the change under Section 205 of the FPA to FERC for review of any change in rates, terms, and conditions within FERC’s jurisdiction. The standard of review that will apply to such filing will be the ordinary just and reasonable standard.

With respect to the Settlement RSSA, Ginna is submitting the following revisions to Section 10.17:

1. Modification of Section 10.17 such that the existing text in Section 10.17 will become subsection (a) to Section 10.17 of the Settlement Agreement; and
2. Addition of a subsection (b) to Section 10.17 that provides:
 - (b) If there is a change to the Settlement RSSA as a result of the NYPSC’s review of the Settlement RSSA, Ginna shall submit the change under Section 205 of the FPA to FERC for review of any change in rates, terms, and conditions within FERC’s jurisdiction. The standard of review that will apply to such filing will be the ordinary just and reasonable standard.

¹² *Ginna Settlement Order* at P 31.

C. Cost Recovery

In the *Ginna Settlement Order*, the Commission addressed RG&E's recovery of RSSA costs from its retail customers, emphasizing that "under long-standing Supreme Court precedent ... once the Commission approves a wholesale rate, a state commission must allow 100 percent of the wholesale rate to be passed through to customers in the utility's retail rate design."¹³ The Commission also took official notice of the NYPSC's February 24, 2016 order approving the related Joint Proposal and authorizing RG&E's full recovery of the RSSA costs through a retail surcharge to RG&E's retail customers.¹⁴ The Commission also directed Ginna to delete the provision in Article 2.3.8 of the Settlement Agreement and Section 10.3(b) of the RSSA providing "that the \$15.4 million Fixed Monthly Payment under the Settlement RSSA will be immediately reduced to reflect the amount the New York Commission determines RG&E can recover from its retail customers through the RSSA surcharge."¹⁵

In compliance with this directive, Ginna is deleting Section 2.3.8 of the Settlement Agreement and Section 10.3(b) of the Settlement RSSA, and replacing each with "[RESERVED]".

D. RSSA Term

In the *Ginna Settlement Order*, the Commission directed Ginna to "eliminate [Section] 4.1.3.5 of the Settlement Agreement."¹⁶ Section 4.1.3.5 provides that any extension of the RSSA would not be subject to the NYISO RMR tariff provisions currently under development in Docket No. EL15-37-000.

In response to this directive, Section 4.1.3.5 of the Settlement Agreement has been deleted in its entirety. Section 4.1.3.5 now reads "[RESERVED]."

III. Request for Expedited Review

Ginna respectfully requests a shortened notice period and expedited review of this compliance filing. Because payment obligations under the RSSA are conditioned on review and approval by the Commission, Ginna has provided RG&E with Reliability Support Services for nearly a year without receiving any compensation. This compliance filing exactly adopts the few specific changes that the Commission ordered in the *Ginna Settlement Order*. The revisions contained herein do not deviate from the Commission's directives in any way. Furthermore, the Settling Parties have advised Ginna that Ginna can represent that each of them supports this

¹³ *Ginna Settlement Order* at P 29.

¹⁴ *Ginna Settlement Order* at P 25 (citing Case No. 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 Adopting the Terms of a Joint Proposal (issued February 24, 2016)).

¹⁵ *Ginna Settlement Order* at P 31.

¹⁶ *Ginna Settlement Order* at P 33.

filing, and Ginna does not anticipate any protests to this compliance filing. Only one party filed a protest of the Settlement RSSA, and that protest was denied.¹⁷ Accordingly, that party's recourse, should it choose to pursue it, is to file a request for rehearing of the Ginna Settlement Order, rather than protest this compliance filing.¹⁸ Accordingly, Ginna requests a shortened notice period of 10 days and issuance of a delegated order on this compliance filing no later than April 8, 2016, so that Ginna can begin to receive compensation under the RSSA for the critical reliability service that is already providing.

IV. Request for Waiver

If approved by the Commission, the agreement filed as Attachment C will supersede the RSSA that was conditionally accepted by the Commission by order issued April 14, 2015, as amended.¹⁹ Ginna is not filing the tariff records in Appendices C and D in eTariff format at this time and renews its request for waiver of Rule 602(c)(2).²⁰ Ginna proposes to make a compliance filing in eTariff format to implement any tariff changes approved by the Commission within 30 days of the date that the Commission issues an order approving the Settlement Agreement.

¹⁷ See *Ginna Settlement Order* at PP 26-27.

¹⁸ As the Commission knows, the only issue that may be addressed in a proceeding on a compliance filing is whether the compliance filing accurately executes the revisions directed by the Commission. See, e.g., *Transource Wisc., LLC*, 149 FERC ¶ 61,010 at P 31 (2016) (“compliance filings must be limited to the specific directives ordered by the Commission; their only purpose is to make the directed revisions, and the sole issue in reviewing them is whether they comply with those directives”).

¹⁹ See *R.E. Ginna Nuclear Power Plant*, 151 FERC ¶ 61,023 (2015) (“Filed RSSA”). During the course of settlement negotiations, Ginna and RG&E amended the Filed RSSA on six occasions. See *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047-002, “Compliance Filing Concerning Reliability Support Services Agreement, FERC Rate Schedule No. 1” (May 14, 2015); *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-2353-000, “Amendment to the Reliability Support Services Agreement, FERC Rate Schedule No. 1” (July 31, 2015) (“First Extension Filing”); *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-2469-000, “Amendment No. 3 to the Reliability Support Services Agreement, FERC Rate Schedule No. 1” (Aug. 17, 2015) (“Second Extension Filing”); *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-2544-000, “Amendment No. 4 to the Reliability Support Services Agreement, FERC Rate Schedule No. 1” (Aug. 27, 2015) (“Third Extension Filing”); *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-2645-000, “Amendment No. 5 to the Reliability Support Services Agreement, FERC Rate Schedule No. 1” (Sept. 11, 2015) (“Fourth Extension Filing”); *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER16-15-000, “Amendment No. 6 to the Reliability Support Services Agreement, FERC Rate Schedule No. 1” (Oct. 2, 2015) (“Fifth Extension Filing”).

²⁰ 18 C.F.R. § 385.602(c)(2) (2015) (“If an offer of settlement pertains to a tariff or rate filing, the offer must include any proposed change in a form suitable for inclusion in the filed rate schedules or tariffs, and a number of copies sufficient to satisfy the filing requirements applicable to tariff or rate filings of the type at issue in the proceeding”).

V. Documents submitted with this filing

Pursuant to Section 35.13(b)(1) of the Commission's regulations, 18 C.F.R. § 35.13(b)(1) (2015), the following is a list of the documents being submitted with this filing in addition to this transmittal letter:

- A. Attachment A: Clean revised Settlement Agreement;
- B. Attachment B: Redlined revised Settlement Agreement;
- C. Attachment C: Clean revised Settlement RSSA (both public and Critical Energy Infrastructure Information ("CEII") versions); and
- D. Attachment D: Redlined revised Settlement RSSA (both public and CEII versions).

VI. Proposed effective date

Ginna respectfully requests that the proposed RSSA revisions be made effective on April 1, 2015, the effective date granted by the *Ginna Settlement Order*²¹ and as set forth in Article V of the Settlement Agreement. Ginna does not believe that waiver of prior notice is required to permit this effective date, because the changes proposed here are in compliance with the Commission's *Ginna Settlement Order*, and the proposed changes do not result in a rate increase from the rate as initially filed and made effective April 1, 2015, subject to refund. However, to the extent that the Commission determines that waiver of the sixty day notice requirement as set forth in Section 35.3(a)(1) of the Commission's regulations²² is necessary in order to grant the requested effective date of April 1, 2015 for the changes proposed in this compliance filing, Ginna respectfully requests such waiver.²³ Good cause exists for this request because the proposed RSSA revisions have been agreed to by Ginna and RG&E and have no rate impact. Moreover, and to the extent necessary, extraordinary circumstances exist in that Ginna has been undercompensated for nearly a year pending final resolution of this proceeding.²⁴ Ginna has

²¹ See *PacifiCorp*, 149 FERC ¶ 61,057 at PP 95, 97 (2014) (denying rehearing of order conditionally accepting in part, subject to modifications, and rejecting in part, tariff revisions submitted by PacifiCorp, conditionally accepting compliance filing in part, and granting retroactive effective dates for compliance filing consistent with effective dates granted in the initial order).

²² See 18 C.F.R. § 35.3(a)(1) (2015).

²³ See *PacifiCorp*, 149 FERC ¶ 61,057 at PP 95, 97, *reh'g denied*, 150 FERC ¶ 61,084 (2015) (granting waiver of prior notice requirement to permit new tariff provision to become retroactively effective on the same effective date as other changes contained in compliance filing).

²⁴ See *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on clarification and reh'g*, 65 FERC ¶ 61,081 (1993); see also, e.g., *Mirant Americas Energy Marketing, L.P.*, 112 FERC ¶ 61,056 at P 15 (2005) (noting that, when deciding waiver requests, "the Commission should balance the need to deter violations of the FPA filing requirements with the requirements that rates not be confiscatory" and finding extraordinary circumstances where "not

been authorized by RG&E to inform the Commission that RG&E – the counter-party to the RSSA – supports Ginna’s request that the proposed RSSA revisions be made effective on April 1, 2015.

VII. Request for CEII treatment

Ginna requests CEII treatment for Exhibit 3 (Planned Outage Schedule) to the Settlement RSSA. Exhibit 3 to the Agreement contains “specific engineering, vulnerability, [and] detailed design information about . . . existing critical infrastructure that . . . [r]elates details about the production, generation, transportation, or distribution of energy,” and therefore meets the definition of CEII in 18 C.F.R. § 388.113(c)(1). As such, Ginna is submitting both a clean and a redlined public, redacted version of the RSSA and both a clean and a redlined complete, CEII version of the Settlement RSSA as Attachments C and D.

VIII. Service

Ginna will serve this filing on all parties on the official service list in this docket, as well as on NYISO, and it will be posted in accordance with the Commission’s regulations.²⁵

granting waiver would inequitably penalize [] resource owners, who ran [RMR units at the RTO’s] direction to meet a reliability need”), *aff’d in relevant part and remanded on other grounds sub nom, NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794 (2007) (finding that FERC properly “relied on a number of factors in finding extraordinary circumstances”).

²⁵ See 18 C.F.R. § 35.2(e) (2015).

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IX. Conclusion

Ginna respectfully requests that the Commission accept this filing as complying with the directives contained in the *Ginna Settlement Order* with respect to the Settlement Agreement and the Settlement RSSA, effective April 1, 2015. Furthermore, Ginna requests expedited action on this compliance filing, with an order issued no later than April 8, 2016.

Respectfully submitted,

/s/ Noel Symons

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