

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition for Initiation of Proceeding to Examine Proposal
for Continued Operation of R.E. Ginna Nuclear Power
Plant

Case 14-E-_____

**PETITION FOR INITIATION OF PROCEEDING TO EXAMINE PROPOSAL FOR
CONTINUED OPERATION OF R.E. GINNA NUCLEAR POWER PLANT**

Maria Korsnick
CNO, SVP – Chief Operations Officer
CONSTELLATION ENERGY NUCLEAR GROUP, LLC
111 Market Place
Baltimore, MD 21202
Tel: (410) 470-5133
E-mail: maria.korsnick@cengllc.com

John T. McManus
Steven D. Wilson
HARRIS BEACH PLLC
677 Broadway, Suite 1101
Albany, NY 12207
Tel: (518) 427-9700
Fax: (518) 427-0235
E-mail: jmcmanus@harrisbeach.com
swilson@harrisbeach.com

*Attorneys for Exelon Corporation, Constellation
Energy Nuclear Group, LLC, and R.E. Ginna
Nuclear Power Plant, LLC*

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INTRODUCTION

R.E. Ginna Nuclear Power Plant, LLC (“GNPP”) hereby petitions the New York State Public Service Commission (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”).

GNPP, which is a subsidiary of Constellation Energy Nuclear Group, LLC (“CENG”), owns the Ginna Facility. Prior to expiration on June 30, 2014, the Ginna Facility was operating under a purchase power agreement (the “PPA”) with Rochester Gas and Electric Corporation (“RG&E”) for a majority of its output. The Ginna Facility is now a fully merchant generator in the wholesale market. On a forward-looking basis, CENG management has analyzed the revenues the Ginna Facility would expect to receive for energy and capacity sales in the New York Independent System Operator (“NYISO”) markets following the PPA’s expiration. CENG management determined that the expected revenues from the Ginna Facility’s sale of capacity and energy into the NYISO markets will not be sufficient to cover its costs of continued operation, including required new capital investment.

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 following the PPA's expiration and that, as a result, the Ginna Facility's retirement was under consideration by CENG management. 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 the board of directors of CENG and by the Commission of an acceptable Reliability Support Services Agreement ("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 12, 2014, the NYISO produced the final results of its independent reliability study, attached as Exhibit 1 (the "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.

Given this reliability need, CENG management is willing to continue the Ginna Facility's operations upon negotiation and approval by the board of directors of CENG and by the Commission of an acceptable RSSA. RG&E is making a concurrent filing with the Commission recognizing there would be a reliability need in the NYISO control region for the greater Rochester area if the Ginna Facility ceased operations. In the absence of this confirmed reliability need and an acceptable RSSA, and given CENG's management's conclusion that projected market revenues are insufficient to support the Ginna Facility's continued operation, CENG management would recommend to CENG's board to authorize the Ginna Facility's

retirement as soon as practicable. The execution of an RSSA would, however, forestall the Ginna Facility's retirement during the agreement's term.

GNPP respectfully requests that the Commission: (1) find that the Ginna Facility's continued operation is necessary to assure electric service reliability; (2) find that CENG management's communications with individual Commissioners and Staff, RG&E, and the NYISO, including, but not limited to, this Petition and the attached Reliability Study, constitute full and sufficient notice to the Commission to satisfy the advance notice requirements with respect to consideration of retirement generally and the Ginna Facility specifically; and (3) direct RG&E and GNPP to negotiate and file an RSSA for the Ginna Facility's continued operation to support electric system reliability in RG&E's service territory by December 1, 2014.¹

BACKGROUND

A. The Ginna Facility is a Critical Baseload Power Resource and Provides 581 MW of Reliable and Clean Energy to New York

The Ginna Facility is a 581 MW single-unit pressurized water reactor located on 426 acres along the south shores of Lake Ontario in Ontario, N.Y., about 20 miles northeast of Rochester, N.Y. In 2004, the Ginna Facility's license to operate was extended until September 2029.²

Following Commission approval, CENG, through its subsidiaries, acquired the Ginna Facility from RG&E on June 10, 2004.³ CENG, a joint venture between Exelon Corporation

¹ In making this filing with the Commission, GNPP reserves its right to take any alternative actions and make other filings in connection with recovery of GNPP's costs, including, but not limited to, filing of a Reliability-Must Run Agreement with the Federal Energy Regulatory Commission.

² See Issuance of Renewed Facility Operating License No. DPR-18 for R.E. Ginna Nuclear Power Plant, Operating License, Nuclear Regulatory Commission, issued May 19, 2004 (Adams Accession No. ML041330109).

³ See Case 03-E-1231: *Petition of Rochester Gas and Electric Corporation, Constellation Generation Group, LLC, and R.E. Ginna Nuclear Power Plant, LLC for Authority Under Public Service Law Section 70 to Transfer by Auction Sale the R.E. Ginna Nuclear Generating Plant and Related Assets and for Related Approvals*, Order Approving Transfer, Subject to a Modification (May 20, 2004).

(“Exelon”) and EDF Group (“EDF”), owns 100% percent of GNPP and, in turn, the Ginna Facility.⁴ Exelon, through its subsidiaries, owns 50.01% of CENG. EDF, through its subsidiaries, owns 49.99% of CENG.

On May 20, 2004, the Commission approved the transfer of the Ginna Facility and the related PPA and Interconnection Agreement.⁵ In a companion order, the Commission directed that “owners of nuclear wholesale generating facilities must file a notice of termination of operations at least six months prior to a shutdown for economic reasons, unless the generator can demonstrate that a shorter period for notice was unavoidable.”⁶ The Commission reasoned that the “notice would allow time to devise measures for mitigating [generation planning and community impacts] of a shutdown.”⁷

B. Market Revenues are Insufficient to Cover the Ginna Facility’s Expected Operating Costs

In recent years, the Ginna Facility’s revenues from the sale of capacity and energy have not been sufficient to cover the costs of operation.⁸ In the two preceding calendar years (*i.e.*,

⁴ In 2012, Exelon acquired Constellation Energy Group, Inc. *See* Case 11-E-0245: *Exelon Corporation, Constellation Energy Group, Inc., Constellation Energy Nuclear Group LLC, Nine Mile Point Nuclear LLC, and R.E. Ginna Nuclear Power Plant LLC – Joint Petition for a Declaratory Ruling Regarding a Stock Transaction or, In the Alternative, An Order Approving the Stock Transaction*, Declaratory Ruling on Review of a Stock Transfer Transaction (Dec. 20, 2011).

⁵ *See* Case 03-E-1231: *Petition of Rochester Gas and Electric Corporation, Constellation Generation Group, LLC, and R.E. Ginna Nuclear Power Plant, LLC for Authority Under Public Service Law Section 70 to Transfer by Auction Sale the R.E. Ginna Nuclear Generating Plant and Related Assets and for Related Approvals*, Order Approving Transfer, Subject to a Modification (May 20, 2004).

⁶ Case 04-E-0030: *Petition of R.E. Ginna Nuclear Power Plant, LLC for a Declaratory Ruling on Regulatory Regime*, Order Providing for Lightened Regulation of Nuclear Generation Facility Owner (May 20, 2004)(“*Lightened Regulation Order*”).

⁷ *Id.*

⁸ It is well documented in various analyst reports (*e.g.* UBS, Credit Suisse) and analyses by the Nuclear Energy Institute that small, single-unit reactors such as the Ginna Facility are facing considerable economic challenges. For example, the shutdown of the Kewaunee and Vermont Yankee nuclear generating facilities can be attributed to the same economic challenges that the Ginna Facility faces. *See e.g.* Nuclear Energy Institute, NUCLEAR INDUSTRY CITES ‘PRESSING NEED’ FOR ELECTRICITY MARKET REFORMS (May 21, 2014), *available at*: <http://www.nei.org/News-Media/News/News-Archives/Nuclear-Industry-Cites-Pressing-Need-for-Electricity>; UBS, SOME MERCHANT NUCLEAR PLANTS COULD FACE EARLY RETIREMENT (Jan. 9, 2013), *available at*:

2012 and 2013), CENG has sustained cumulative losses at the Ginna Facility of nearly \$100 million (including the allocation of CENG corporate overhead). Over the last three calendar years (*i.e.*, 2011-2013), losses have significantly exceeded \$100 million (including the allocation of CENG corporate overhead). Further, in addition to incurring these losses, CENG has not been compensated for any operational risk or an appropriate return on its investment over this period.

On a forward-looking basis, CENG management analyzed the revenues the Ginna Facility would expect to receive for energy and capacity sales in the NYISO markets following the PPA's expiration. CENG management determined that the expected revenues from the Ginna Facility's sale of capacity and energy into the NYISO markets will not be sufficient to cover its costs of continued operation, including required new capital investment.

Despite the Ginna Facility's losses, at no point has CENG decreased its emphasis on safety, reliability, or commitment to the environment.

In January 2014, CENG management met separately with individual Commissioners, Staff, RG&E, and the NYISO to discuss CENG management's conclusion that market revenues will be insufficient to cover the Ginna Facility's costs going forward and that, as a result, its retirement was under consideration. 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 operation upon negotiation and approval by the board of directors of CENG and by the Commission of an acceptable RSSA.

<http://www.platts.com/latest-news/electric-power/newyork/some-merchant-nuclear-plants-could-face-early-6007202>.

C. The Ginna Facility is Needed for Reliability and Other Benefits

On February 21, 2014, GNPP, RG&E, and the NYISO entered into a Reliability Study Agreement to determine the potential reliability impacts on the New York State Transmission System and the local transmission system of retiring the Ginna Facility. The NYISO assessment of the retirement of the Ginna Facility was performed in accordance with applicable North American Electric Reliability Corporation Reliability Standards, Northeast Power Coordinating Council Design Criteria, New York State Reliability Council Reliability Rules and Procedures, and NYISO planning and operation practices. On May 12, 2014, the NYISO produced the final results of its independent Reliability Study, attached as Exhibit 1, confirming a reliability need at least through October 1, 2018, were the Ginna Facility to retire. RG&E also conducted a local reliability analysis, which is included in the NYISO study, and confirms the local electric reliability need in RG&E's service area.

The need for the Ginna Facility is partially tied to the in-service date for RG&E's proposed Rochester Area Reliability Project (the "RARP").⁹ As described in RG&E's application, the RARP includes 1.9 miles of new 345 kV transmission line, 23.6 miles of new or rebuilt 115 kV transmission line, a new 345 kV/115 kV substation, and equipment upgrades at several existing substations in Monroe County, and equipment upgrades at two substations in Niagara County.¹⁰ The RARP was proposed, in part, to address a possible long-term outage of the Ginna Facility, which is the largest single source to the Rochester system.¹¹

⁹ See Case 11-T-0534: *Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need*, Application (Filed Sep. 30, 2011).

¹⁰ See *id.* p. 1.

¹¹ See *id.* p. 7.

No alternatives have been identified, including merchant generation or transmission, to replace the full output of the Ginna Facility and address the reliability need that would result from its retirement between now and October 2018. GNPP is unaware of any proceeding or publicly-announced alternative designed to fill the generation shortfall created by the Ginna Facility's retirement. Although the risk of an extended outage at the Ginna Facility formed the basis for the RARP, no formal consideration or long-term planning analysis has specifically evaluated the impact of the Ginna Facility's retirement or otherwise solicited supply or demand-side alternatives that might mitigate the reliability consequences of such an early retirement. Given this established reliability need and lack of any alternatives, CENG management is willing to continue the Ginna Facility's operations upon negotiation and approval by the board of directors of CENG and by the Commission of an acceptable RSSA.

In addition to alleviating adverse electric system reliability impacts in RG&E's service territory, the Ginna Facility's continued operation will provide further benefits at the state and local level. For example, the Ginna Facility employs about 700 people during normal operations and an additional 800 - 1,000 people during refueling outages. Further, the Ginna Facility is the largest taxpayer in Wayne County, contributing more than \$10 million in state and local property taxes in 2012. Additionally, the Ginna Facility provides significant environmental benefits for the state. Electricity generated by the Ginna Facility rather than by fossil-fueled generators prevents the release of 2 million tons of carbon dioxide annually – a significant amount compared to the 30 million tons of total carbon dioxide emissions produced annually by New York's electric sector. Nuclear facilities, like the Ginna Facility, provide nearly 60% of New York's carbon-free electricity, helping New York meet its RGGI carbon-reduction goals. In the absence of the Ginna Facility's output, increased RGGI costs would likely result in higher

electricity prices statewide. Also, the Ginna Facility's operation, rather than fossil-fueled generators' operation, prevents the emission of more than 1,000 tons of nitrogen oxide and 1,040 tons of sulfur dioxide annually. Sulfur dioxide and nitrogen oxide are precursors to acid rain and smog. Finally, the Ginna Facility's continued operation greatly assists in maintaining the critically-important balanced electric portfolio in New York. Nuclear facilities produce approximately 30% of New York's electricity. Over the past 10 years, the Ginna Facility has operated at over 95% capacity, and its reliable production has also assisted in offsetting price volatility of other generation sources. As demonstrated by the recent 2014 winter impacts, the Ginna Facility provides a substantial stabilizing effect against volatile and expensive natural gas prices, particularly in the winter.

Despite the Ginna Facility's many benefits, CENG management has concluded that projected market revenues are insufficient to cover the Ginna Facility's operating costs going forward. As a result, in the absence of a confirmed reliability need and acceptable RSSA, CENG management would recommend to CENG's board that the Ginna Facility cease operations and retire as soon as practicable. In light of the established reliability need for the Ginna Facility, however, CENG management is willing to continue the Ginna Facility's operations subject to the negotiation and approval by the board of directors of CENG and by the Commission of an acceptable RSSA.

PETITION

GNPP respectfully requests that the Commission promptly consider this Petition and issue an order consistent with this Petition.

Specifically, GNPP requests that the Commission find that the NYISO and RG&E Reliability Study establishes the need for the Ginna Facility's continued operation. GNPP

requests that the Commission direct RG&E and GNPP to negotiate and file by December 1, 2014, an RSSA of an appropriate duration and with a commencement date of no earlier than January 11, 2015, to provide for continued electric system reliability.

GNPP also requests that the Commission find that GNPP's communications with individual Commissioners and Staff, RG&E, and the NYISO, including, but not limited to, this Petition and the attached Reliability Study, constitute full and sufficient notice to the Commission to satisfy the advance notice requirements with respect to consideration of retirement generally and the Ginna Facility specifically. The intent behind the Commission's *Generation Unit Retirement Order* and *Lightened Regulation Order* is to ensure that the Commission and interested parties be given sufficient notice of a possible retirement so that system reliability and community impacts can be identified and addressed, respectively.¹² Since January 2014, GNPP has been working with RG&E and the NYISO to study the reliability impacts associated with long-term shut down of the Ginna Facility. The proposed RSSA between GNPP and RG&E addresses and resolves the reliability impacts identified in the attached Reliability Study and forestalls any community impacts. Accordingly, the procedural requirements in and intent behind these Commission orders for advance notice of generator unit retirements have been fully satisfied.

¹² See Case 05-E-0889: *Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (Dec. 20, 2005), p. 14; Case 04-E-0030: *Petition of R.E. Ginna Nuclear Power Plant, LLC for a Declaratory Ruling on Regulatory Regime*, Order Providing for Lightened Regulation of Nuclear Generation Facility Owner (May 20, 2004).

CONCLUSION

Based on the foregoing, GNPP respectfully requests that the Commission consider the instant Petition and issue an order:

- (1) finding and determining that the NYISO and RG&E Reliability Study establishes the need for the Ginna Facility's continued operation;
- (2) directing RG&E and GNPP to negotiate and file by December 1, 2014, an RSSA of an appropriate duration and with a commencement date of no earlier than January 11, 2015, along with supporting documentation, to provide for continued electric system reliability in RG&E's service territory;
and
- (3) finding that GNPP's communications with individual Commissioners and Staff, RG&E, and the NYISO, including, but not limited to, this Petition and the attached Reliability Study, constitute full and sufficient notice to the Commission to satisfy the advance notice requirements with respect to consideration of retirement generally and the Ginna Facility specifically.

Respectfully submitted,

CONSTELLATION ENERGY NUCLEAR GROUP, LLC

s/ Maria Korsnick

By: Maria Korsnick
CNO, SVP – Chief Operations Officer
Constellation Energy Nuclear Group, LLC
111 Market Place
Baltimore, MD 21202
Tel: (410) 470-5133
E-mail: maria.korsnick@cengllc.com

HARRIS BEACH PLLC

*Attorneys for Exelon Corporation, Constellation
Energy Nuclear Group, LLC, and
R.E. Ginna Nuclear Power Plant, LLC*

s/ John T. McManus

By: John T. McManus
Steven D. Wilson
677 Broadway, Suite 1101
Albany, NY 12207
Tel: (518) 427-9700
Fax: (518) 427-0235
E-mail: jmcmanus@harrisbeach.com
swilson@harrisbeach.com

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Albany, New York