

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

**R.E. GINNA NUCLEAR POWER PLANT, LLC'S
POST-HEARING BRIEF IN SUPPORT OF THE JOINT PROPOSAL**

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Pursuant to Administrative Law Judge (“ALJ”) Sean Mullany’s Ruling Adopting Revised Schedule¹ and 16 NYCRR § 4.8, R.E. Ginna Nuclear Power Plant, LLC (“Ginna”) respectfully submits this post-hearing brief in support of the joint proposal (the “Joint Proposal”) and accompanying amended reliability support services agreement (the “Settlement RSSA”) filed by Rochester Gas and Electric Corporation (“RG&E”) with the Public Service Commission (the “Commission”) in this proceeding concerning Ginna’s nuclear electric generating facility (the “Ginna Facility” or the “Facility”), which is located in RG&E’s service territory.²

The Joint Proposal is the negotiated product of the Commission’s prior order determining that 1) the Ginna Facility is “needed for system reliability purposes,” 2) Ginna’s notice of retirement was “satisfactory because it serves the purposes of the [Commission’s] generation retirement requirements and policies,” 3) Ginna “justified [the Commission] directing RG&E to commence negotiations” for a reliability support services agreement (“RSSA”), and 4) an RSSA

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*, Ruling Adopting Revised Schedule (Nov. 3, 2015).

² The parties to the Joint Proposal are RG&E, Ginna, Department of Public Service Staff (“DPS Staff”), the Department of State Utility Intervention Unit (“UIU”), and Multiple Intervenors (“MI”) (collectively, the “Signatory Parties”).

is in the public interest.³ The Joint Proposal resolves all of the remaining issues in this proceeding among normally-adversarial parties and ensures that the Ginna Facility will be available to provide necessary reliability support services to RG&E and that Ginna will be compensated for providing such services for the minimum amount of time required for RG&E to complete certain transmission reinforcements.

For these reasons and as detailed below, the Joint Proposal is a fair settlement of the issues in this proceeding, satisfies the Commission's Procedural Guidelines for Settlement (the "Settlement Guidelines"), and is in the public interest.⁴ Accordingly, Ginna respectfully requests that the Commission adopt the Joint Proposal in its entirety without modification or conditions.

I. BACKGROUND

A. The Ginna Facility

The Ginna Facility is a 581 megawatt ("MW") single-unit pressurized water reactor located in Ontario County, New York. Prior to expiration on June 30, 2014, the Ginna Facility operated under a purchase power agreement (the "PPA") with RG&E for a majority of its energy and capacity. Upon expiration, the Ginna Facility became a fully-merchant generator in the wholesale markets.

B. Commission Proceeding

In early 2014, in light of the upcoming expiration of the PPA with RG&E and because the Ginna Facility had sustained cumulative losses of nearly \$100 million for calendar years 2012 and 2013, Constellation Energy Nuclear Group, LLC ("CENG"), the parent company of

³ 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*, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings (Nov. 14, 2014) (the "November 14th Order").

⁴ Case 90-M-0255: *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements* (Opinion 92-2), Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (Mar. 24, 1992), Appendix B, Procedural Guidelines for Settlement.

Ginna, analyzed the revenues that the Ginna Facility was expected to receive as a fully-merchant generator. CENG determined that the expected revenues from sales of energy and capacity into the markets administered by the New York Independent System Operator (“NYISO”) would be insufficient to cover the costs of continued operation, including required new capital investment.

Beginning in January 2014, CENG management representatives met separately with individual Commissioners, DPS Staff, RG&E, and the NYISO to discuss CENG management’s determination that market revenues would be insufficient to cover the Ginna Facility’s costs going forward and that, as a result, CENG’s management would recommend retirement of the Ginna Facility to the CENG board absent a confirmed reliability need and acceptable RSSA.

On May 12, 2014, the NYISO produced the final results of its independent 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 (the “2014 Reliability Study”). RG&E also conducted a local reliability analysis, the results of which are included in the NYISO study and confirm the need for the Ginna Facility’s continued operation to support local electric reliability in RG&E’s service territory.

On July 11, 2014, Ginna filed a petition requesting 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 DPS Staff, RG&E, and the NYISO, including, but not limited to, the petition and the 2014 Reliability Study, constituted 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 Ginna to negotiate and file an RSSA for the Ginna Facility's continued operation to support electric system reliability in RG&E's service territory.⁵

On November 14, 2014, the Commission issued an order determining, among other things, that Ginna "justified entry into RSSA negotiations because retention of its Facility is necessary for the preservation of electric system reliability."⁶ More specifically, the Commission stated:

"Ginna has demonstrated that its facility is needed for system reliability purposes and that its notice should be deemed satisfactory because it serves the purposes of the generation retirement requirements and policies. Given the size, location, and importance of the Ginna Facility as a generation resource, Ginna has also justified directing RG&E to commence negotiations over [sic] for an RSSA, albeit further procedures are required to ensure that an RSSA is the best and most cost-effective alternative for maintaining reliability."⁷

The Commission further determined that an RSSA between Ginna and RG&E is in the public interest, stating, "[w]ith the essential reliability need predicate to obtaining an RSSA satisfied, it may be noted that an RSSA is otherwise in the public interest, in that loss of the Ginna Facility would adversely affect the local economy, and the adverse impact would ripple out into the surrounding region as well."⁸ In sum, in this order, the Commission determined 1) the need for the Ginna Facility to maintain electric system reliability, 2) the sufficiency of Ginna's retirement notice, 3) the justification for an RSSA, and 4) that an RSSA is in the public interest.

On December 23, 2014, RG&E filed with the Commission the results of a prior solicitation seeking proposals to replace the capacity and electricity generated by the Ginna Facility.⁹ RG&E determined that none of the six bids it received would adequately maintain local

⁵ 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*, Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant (Filed Jul. 11, 2014), at 3.

⁶ November 14th Order, at 15.

⁷ *Id.*

⁸ *Id.* at 22.

⁹ RG&E filed a less-redacted version of the solicitation results on March 25, 2015.

electric system reliability if the Ginna Facility were retired. RG&E did, however, identify a transmission solution set that RG&E could construct that would allow for the retirement of the Ginna Facility (the “Ginna Retirement Transmission Alternative” or the “GRTA”).¹⁰ RG&E has stated that the GRTA can be constructed and in service by March 31, 2017.¹¹ Until such time as construction of the GRTA is complete, RG&E determined that an RSSA with Ginna is the only viable solution to maintain electric system reliability.¹²

On February 13, 2015, RG&E filed an executed RSSA with the Commission (the “Initial RSSA”). In its accompanying petition, RG&E requested that the Commission 1) accept the negotiated RSSA without modification, and 2) approve full and immediate cost recovery by RG&E from its customers of all amounts payable to Ginna under the RSSA via a cost-recovery surcharge.

On April 1, 2015, Ginna began providing reliability support services to RG&E pursuant to the Initial RSSA.

On May 14, 2015, the ALJs assigned to the proceeding issued a ruling defining the issues that may be addressed by the parties at any subsequent evidentiary hearing.¹³ These issues include: 1) jurisdiction, 2) reasonableness of the RSSA in light of available alternatives including costs and benefits, 3) term, 4) RG&E’s reliability planning processes, 5) cost allocation, and 6) use of customer credits. The ALJs excluded the following purported issues: 1) the need for the

¹⁰ Case 11-T-0534: *Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the “Rochester Area Reliability Project,” Approximately 23.6 Miles of 115 Kilovolt Transmission Lines and 1.9 Miles of 345 Kilovolt Line in the City of Rochester and the Towns of Chili, Gates and Henrietta in Monroe County*, Letter to ALJs Regarding Modification of Schedule (Filed Dec. 23, 2014).

¹¹ 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*, Request for Proposals – RG&E Contingency Alternative to Ginna RSSA (Filed Nov. 2, 2015), at 1.

¹² 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*, RG&E Solicitation Evaluation (Dec. 23, 2014).

¹³ 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*, Ruling on Scope of Issues for Hearing (May 14, 2015) (the “Ruling on Scope”).

Ginna Facility for reliability purposes, 2) the need for an RSSA to prevent retirement of the Ginna Facility, and 3) continued operation of the Ginna Facility after expiration of the RSSA term and decommissioning.¹⁴

On June 4, 2015, RG&E filed a petition requesting Commission approval to implement a temporary rate in the form of an electric surcharge for its electric customers.¹⁵ RG&E did so because Ginna had begun providing reliability support services to RG&E pursuant to the Initial RSSA on April 1, 2015, but the costs for these services were not yet being collected from ratepayers. Instead, these costs were accumulating as a Deferred Collection Amount. By seeking a temporary rate surcharge, RG&E sought to mitigate the rate compression effect on ratepayers that would occur upon the payment obligation from RG&E to Ginna being triggered.

On August 14, 2015, the Commission approved RG&E's implementation of a temporary rate.¹⁶ The Commission reasoned that, "in light of the potential rate impacts the [RSSA] may cause, the public interest requires a temporary rate for this purpose, pending the Commission's final determination on the petition filed by RG&E in this case on February 13, 2015 seeking approval of the RSSA with related cost recovery."¹⁷

After lengthy negotiations between the parties to this proceeding, on October 21, 2015, RG&E filed the Joint Proposal and the Settlement RSSA with the Commission. The Settlement RSSA amends the Initial RSSA to reflect the Joint Proposal's terms.

As required by the Joint Proposal, on October 30, 2015, RG&E issued a second solicitation seeking alternative reliability solutions in the event of a potential delay in the

¹⁴ *Id.* RG&E and Citizens' Environmental Coalition/Alliance for a Green Economy filed interlocutory appeals of the Ruling on Scope. Those appeals remain pending.

¹⁵ 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*, Petition for Temporary Rate Surcharge (Filed Jun. 4, 2015).

¹⁶ 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*, Order Approving Establishment of Temporary Rates (Aug. 14, 2015).

¹⁷ *Id.* at 1.

implementation of certain GRTA components.¹⁸ Responses to this solicitation are due December 29, 2015. RG&E will publish a report evaluating proposed alternatives by February 26, 2016.

As further required by the Joint Proposal, RG&E conducted a second reliability study in coordination with the NYISO and with oversight of DPS Staff to confirm that the GRTA would solve reliability issues if the Ginna Facility were to retire (the “GRTA Study”). RG&E filed the results of the GRTA Study with the Commission on November 10, 2015.¹⁹ The GRTA Study concludes that the GRTA “will solve violations which would be caused by the retirement of [the] Ginna [Facility].”²⁰

On November 19, 2015, the Signatory Parties to the Joint Proposal (*i.e.*, RG&E, Ginna, DPS Staff, UIU, and MI) filed statements in support of the Joint Proposal. Citizens Environmental Coalition (“CEC”) and the Alliance for a Green Economy (“AGREE”) filed a combined statement in opposition to the Joint Proposal. Entergy Nuclear Fitzpatrick, LLC (“Entergy”); NRG Energy, Inc. (“NRG”); and FirstEnergy Solutions Corp. (“FirstEnergy”) did not support or oppose the Joint Proposal.

An evidentiary hearing was held on December 3, 2015. The Secretary’s notice on the hearing states that “[t]he primary purposes of the hearing are to allow the signatories to the Joint Proposal (JP) that was filed in this proceeding on October 21, 2015, to present a witness or witnesses and evidence in support of the JP, and to allow parties to cross-examine such witness or witnesses and to present a rebuttal or witnesses and evidence in response. Related procedural

¹⁸ 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*, Request for Proposals – RG&E Contingency Alternative to Ginna RSSA (Filed Nov. 2, 2015).

¹⁹ 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*, Ginna Retirement Reliability Study (Filed Nov. 10, 2015).

²⁰ GRTA Study, at 18.

matters will also be discussed.”²¹ RG&E and DPS Staff each offered a panel of witnesses who testified in support of the Joint Proposal and Settlement RSSA. Notably, neither CEC nor AGREE offered any witnesses or testimony in opposition. Instead, CEC and AGREE merely sought to introduce certain responses to information requests by different parties from the discovery phase of the proceeding. Some of those proposed exhibits were excluded by the ALJ as irrelevant to the proceeding, while others were admitted for the limited purpose of addressing “whether or not the Joint Proposal or adoption of the terms of the Joint Proposal would be in the public interest and would be otherwise consistent with the Commission’s settlement guidelines.”²²

C. Federal Energy Regulatory Commission Proceeding

Concurrent with RG&E’s filing of the Initial RSSA with the Commission, Ginna submitted this executed RSSA to the Federal Energy Regulatory Commission (“FERC”) for acceptance as a cost-justified settlement rate pursuant to Section 205 of the Federal Power Act²³ and Part 35 of FERC’s regulations.²⁴ Ginna’s rate filing with FERC explains that, “concurrently with the instant filing, RG&E will be making a filing with the [Commission] seeking authorization of cost allocation and recovery for the costs that RG&E will incur under the RSSA.”²⁵

In its filing with FERC, Ginna provided an analysis demonstrating that the cost recovery proposed in the Initial RSSA was substantially below what would otherwise be authorized from a full cost-of-service rate during the period from April 1, 2015 to September 30, 2018.²⁶ Ginna’s

²¹ 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*, Notice of Evidentiary Hearing (Nov. 25, 2015).

²² Hearing Transcript, p. 80, lines 15-18.

²³ 16 USC § 824d.

²⁴ 18 CFR pt. 35.

²⁵ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Application (Feb. 13, 2015), at 2.

²⁶ *Id.* at 13.

filing states that “[t]he purpose of providing a cost-of-service analysis here is to satisfy the substantial evidence standard by framing the upper end of the range of reasonable outcomes.”²⁷ Based on the full cost-of-service analysis, Ginna averred that “[t]he settlement rate is cost-justified because it is within the range of reasonable outcomes as demonstrated by the full cost-of-service analysis presented here.”²⁸

D. Settlement Process

i. Commission Proceeding

On May 5, 2015, a Notice of Impending Settlement Negotiations was sent to all active parties and other interested persons and filed with the Commission. A settlement conference in this proceeding was held in person on May 11, 2015.²⁹ The ensuing settlement process culminated in the negotiation, execution, and filing of the Joint Proposal and Settlement RSSA.

ii. FERC Proceeding

Following a FERC order issued April 14, 2015, which accepted in part and suspended Ginna’s proposed rate schedule, subject to refund, and established hearing and settlement procedures,³⁰ the parties unanimously requested the appointment of Judge Jennifer Whang as the settlement judge to assist in efforts to resolve the disputed issues. On April 28, 2015, the Chief Administrative Law Judge appointed Judge Whang as settlement judge in this proceeding.³¹

The parties, including DPS Staff and FERC Staff, attended settlement conferences before Judge Whang on the following dates: May 13, 2015; July 15, 2015; and July 27, 2015. Over the

²⁷ *Id.* at 4.

²⁸ *Id.* at 3.

²⁹ Because the Joint Proposal mirrors the Settlement Agreement filed with FERC, the multiple settlement conferences held in the FERC proceeding effectively settled issues in this proceeding as well.

³⁰ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Order Rejecting In Part, And Accepting in Part and Suspending Proposed Rate Schedule, Subject to Refund, and Establishing Hearing and Settlement Procedures (Apr. 14, 2015).

³¹ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference (April 28, 2015).

course of these settlement conferences and multiple additional informal telephonic conferences, the parties engaged in good-faith negotiations and ultimately reached a settlement that is memorialized in the Joint Proposal and Settlement RSSA.

Ginna now submits its post-hearing brief in support of the Joint Proposal.

II. ARGUMENT

THE COMMISSION SHOULD ADOPT THE JOINT PROPOSAL IN ITS ENTIRETY WITHOUT MODIFICATION OR CONDITIONS

A. The Joint Proposal Resolves All Of The Remaining Issues In This Proceeding

As an initial matter, the Commission has already determined certain significant issues in this proceeding. Based on the established reliability need and satisfaction of the retirement notice requirements, the Commission already has determined that the Settlement RSSA is justified. Specifically, in its November 14th Order, the Commission stated:

“Ginna has justified entry into RSSA negotiations because retention of its Facility is necessary for the preservation electric system reliability. Moreover, by affidavit dated October 23, 2014, Ginna now certifies that the revenues it expects from the sale of capacity and energy into NYISO markets will not be sufficient to cover the costs of continued operation, which includes new capital investments that must be made. Absent an RSSA, the Facility would be retired as soon as would be practicable. This affirmation buttresses the conclusion that the commencement of negotiations over an RSSA for the Ginna Facility is warranted.”³²

For this reason, the Commission directed Ginna and RG&E to negotiate and file what ultimately became the Settlement RSSA.³³

The Commission has also already determined that an RSSA is in the public interest under the circumstances here. Specifically, the Commission held that, “[w]ith the essential reliability

³² *Id.* at 22.

³³ As DPS Staff correctly observed earlier in this proceeding, Ginna needs to be compensated for providing reliability reasons because “[a]bsent compensation for the costs of that reliability service, imposing the obligation for [the] Ginna [Facility] to operate would be an unconstitutional ‘taking.’” 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*, DPS Staff’s Brief in Support of the Petition of Rochester Gas and Electric Corporation for a Temporary Rate Surcharge (Filed Jul. 13, 2015), at 7.

need predicate to obtaining an RSSA satisfied, it may be noted that *an RSSA is otherwise in the public interest*, in that loss of the Ginna Facility would adversely affect the local economy, and the adverse impact would ripple out into the surrounding region as well.”³⁴

The Joint Proposal resolves all of the remaining issues in this proceeding that were raised by the parties and included in the ALJs’ Ruling on Scope, including 1) term; 2) reasonableness of RG&E entering the RSSA in light of available alternatives, including costs and benefits, and RG&E’s planning processes; 3) cost; and 4) use of customer credits.

i. Term

Under the Joint Proposal and at the request of multiple Signatory Parties, the Term³⁵ of the Settlement RSSA has been significantly reduced from the Initial RSSA. In the 2014 Reliability Study, the NYISO determined that the Ginna Facility would need to remain in operation through at least October 1, 2018, to maintain electric system reliability.³⁶ For this reason, the Term in the Initial RSSA ran from April 1, 2015 through September 30, 2018. Under the Joint Proposal and consistent with the new GRTA Study, however, the Term in the Settlement RSSA runs from April 1, 2015 through March 31, 2017, a reduction of 18 months. The Term is now limited to the minimum amount of time necessary for RG&E to complete the GRTA system upgrades. As of the date the Joint Proposal was filed, RG&E anticipated that the GRTA will be in service by March 31, 2017, and no later than October 31, 2017.³⁷

The Term strikes a fair balance of the parties’ positions and promotes the public interest because it compensates Ginna for the reliability support services that it has provided to RG&E

³⁴ November 14th Order, at 22 (emphasis added).

³⁵ This section utilizes certain capitalized terms that are defined in the Settlement RSSA.

³⁶ 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*, Reliability Study (Filed July 11, 2014).

³⁷ 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*, Request for Proposals – RG&E Contingency Alternative to Ginna RSSA (Filed Nov. 2, 2015), at 1.

since April 1, 2015, and will continue to provide through March 31, 2017, and maintains adequate electric system reliability for the minimum amount of time necessary to put the GRTA in service. Additionally, this shorter Term results in less overall cost to ratepayers from the reduced number of fixed monthly payments by RG&E to Ginna. As discussed below, ratepayer costs are further reduced significantly through the application of certain credits by RG&E.

The Joint Proposal and Settlement RSSA also contain adequate disincentives for Ginna to continue to operate after expiration of the Term. For example, if Ginna continues to operate after expiration of the Term on March 31, 2017, it must repay RG&E the Capital Recovery Balance of \$20,140,090.97 over 2 years, as opposed to 7 years provided in the Initial RSSA.

ii. Reasonableness Of The RSSA In Light Of Available Alternatives, Including Costs, Benefits, And RG&E's Planning Processes

No alternative to the Ginna Facility has been identified despite RG&E's solicitation for replacements. In October 2014, RG&E conducted a solicitation for alternative solutions to meet the identified reliability need if the Ginna Facility retired. Based on its evaluation of the six bids received, RG&E determined that the Ginna Facility's continued operation was the only viable option to maintain electric system reliability until the GRTA was constructed and placed in service.³⁸ Indeed, RG&E's conclusion was consistent with the Commission's prediction that, "[g]iven the size, location and reliability of the Ginna Facility, and that it is currently needed, it is unlikely that any alternative proposed could eliminate entirely reliance upon an RSSA here, at least during the earlier portion of the RSSA term."³⁹ Accordingly, the issue of whether an RSSA with Ginna is the best alternative given cost and benefits has been resolved by this open and inclusive process.

³⁸ See 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*, Rochester Gas and Electric Corporation Solicitation Results and Other Alternatives (Filed Mar. 25, 2015).

³⁹ November 14th Order, at 15.

Further, as part of the extended settlement negotiations in this proceeding, the Signatory Parties have resolved all issues regarding RG&E's planning processes. Specifically, the Joint Proposal resolves all issues/claims regarding RG&E's prudence in relation to the RSSA through the execution date of the Joint Proposal and all issues and/or claims related to RG&E's prudence with respect to planning or pursuit of the GRTA for RG&E's actions or omissions prior to the Commission's November 14th Order in this proceeding.⁴⁰

Additionally, the Joint Proposal reflects certain Signatory Parties' requests that RG&E again solicit alternatives to an RSSA with Ginna if the GRTA upgrades are not timely completed. Pursuant to the Joint Proposal, on October 30, 2015, RG&E issued a new solicitation for alternative solutions to maintain reliability between March 31, 2017, and the date the GRTA is in service, which RG&E has anticipated will be no later than October 31, 2017. Under the terms of the Joint Proposal and Settlement RSSA, Ginna is required to submit a bid in response to this solicitation. By February 26, 2016, RG&E will release the results of its analysis of the bids received. The Joint Proposal provides that RG&E may unilaterally determine that the Ginna Facility will continue to provide reliability service beyond March 31, 2017, if RG&E and Ginna do not achieve a mutual agreement on rates, terms, and conditions by March 31, 2016 (or by June 30, 2016, in the event that RG&E exercises its option under the Joint Proposal to extend the deadline for announcing its decision whether continued operation of the Ginna Facility after March 31, 2017, is necessary for reliability purposes).

There was no similar requirement in the Initial RSSA that RG&E conduct the GRTA Study and a second solicitation. These requirements were added to the Joint Proposal and Settlement RSSA at the request of various parties to the proceeding.

⁴⁰ 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*, Joint Proposal (Filed Oct. 21, 2015), Section 3.1.

iii. Cost

In its filing with FERC, Ginna requests approval of the settlement rate in the Initial RSSA as a reasonable amount in light of, among other things, the demonstrated full cost-of-service rate. In a fully-litigated proceeding, Ginna would have sought recovery of its full cost of service. According to Ginna's filing with FERC, the full cost-of-service rate for the Term of the RSSA is:⁴¹

Period	Monthly Revenue Requirement	Period Revenue Requirement
4/1/2015 to 12/31/2015	\$31,792,178	\$286,129,602
1/1/2016 to 12/31/2016	\$28,910,194	\$346,922,328
1/1/2017 to 3/31/17	\$30,954,495	\$271,847,511

The monthly payment in the Initial RSSA of \$17,504,118 per month already represents a significant reduction from the full cost-of-service rate. The fixed monthly payment in the Settlement RSSA has been further reduced to \$15,420,000. This new fixed monthly payment in Joint Proposal is the result of substantial negotiation between the parties, represents a fair balancing of all parties' interests, and is in the public interest as it is sufficient to cover Ginna's operating costs during the Term of the Settlement RSSA while saving ratepayers approximately one half of the full cost-of-service rate, before revenue sharing and application of customer credits. In addition, Ginna's total compensation is capped at \$510,000,000, which is significantly less than a prorated share of Ginna's total as-filed full cost-of-service with FERC of \$1,276,000,000. At the same time, if market prices decline, the Joint Proposal and Settlement RSSA provide for a total revenue floor of \$425,000,000.

⁴¹ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER15-1047, Application (Feb. 13, 2015), at 13.

The Initial RSSA also provided that Ginna and RG&E would share in revenues from Ginna's sale of energy and capacity into the NYISO markets at 15% and 85%, respectively. The Settlement RSSA changes the parties' share of market revenues to 30% and 70%, respectively. By changing each party's percentage of market revenues, the Settlement RSSA shifts a greater portion of the market risk to Ginna.

iv. Customer Credits

When RG&E filed the Initial RSSA, multiple parties requested that RG&E use regulatory liabilities in deferred collection accounts to offset RSSA payments to Ginna, thereby reducing ratepayer contributions. As of July 20, 2015, RG&E opposed these requests.⁴²

Under the Joint Proposal, however, RG&E now agrees to use these credits to offset the RSSA payments. Specifically, RG&E will use deferred credit amounts to offset the full amount of the Deferred Collection Amount (including carrying costs), plus credit amounts to offset all RSSA costs that exceed \$2.25 million per month, not to exceed a total use of credits in the amount \$110 million, applicable through June 30, 2017.

In sum, the Joint Proposal resolves all of and is a fair settlement of the remaining issues in this proceeding.

B. The Joint Proposal Is Consistent With And Satisfies The Commission's Settlement Guidelines And Is In The Public Interest

The Commission's Settlement Guidelines⁴³ set forth the following criteria for deciding whether a settlement is in the public interest:

- i. "A desirable settlement should aspire to achieve a balance among (1) protection of ratepayers, (2) fairness to investors and (3) the

⁴² 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*, Post-Hearing Reply Brief of RG&E Regarding its Petition for a Temporary Rate Surcharge (Filed Jul. 2, 2015).

⁴³ Case 90-M-0255: *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements* (Opinion 92-2), Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (Mar. 24, 1992), Appendix B, Procedural Guidelines for Settlement, at 8.

long-term viability of the utility; should be consistent with sound environmental, social and economic policies of the Commission and the State; and should produce results that were within the range of reasonable results that would have likely arisen from a Commission decision in a litigated proceeding, and

- ii. In judging a settlement, the Commission gives weight to the fact that a settlement reflects agreement among normally adversarial parties.”

Additionally, the Commission will consider 1) whether there is a rational basis for its decision, 2) the completeness of the record, and 3) whether the settlement is contested.⁴⁴

As demonstrated below, the Joint Proposal is consistent with and fully satisfies the Commission’s Settlement Guidelines and other factors and is in the public interest. Accordingly, Ginna respectfully requests that the Commission adopt the Joint Proposal in its entirety without modification or conditions.

- i. **The Joint Proposal Achieves A Balance Among The Protection Of Ratepayers, Fairness To Investors, And RG&E’s Long-Term Viability**

The Joint Proposal “strikes a fair balance among the interests of ratepayers and investors and the long-term soundness of the utility.”⁴⁵ Indeed, this is demonstrated by the composition of the Signatory Parties alone, which includes ratepayer advocates (DPS Staff, UIU, and MI), the utility (RG&E), and the affected generator (Ginna). Further, as discussed above, compared to the Initial RSSA, the Settlement RSSA will be less costly to ratepayers and provides for the use of \$110 million in customer credits to mitigate rate impacts and will maintain electric system reliability only until such time as the GRTA is in service. In total, the Joint Proposal strikes a fair balance among the interests of ratepayers, Ginna, and RG&E.

⁴⁴ Opinion 92-2, at 30.

⁴⁵ *Id.*

ii. The Joint Proposal Is Consistent With Commission’s And The State’s Environmental, Social, And Economic Policies

The Joint Proposal is “consistent with sound environmental, social and economic policies of the Commission and the State.”⁴⁶ For example, the Joint Proposal and Settlement RSSA are consistent with the State’s environmental policy. As Ginna notes in its July 11, 2014 petition initiating this proceeding, 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 Regional Greenhouse Gas Initiative (“RGGI”) carbon-reduction goals. In the absence of the Ginna Facility’s output, increased RGGI costs would likely result in higher electricity prices Statewide. In fact, these environmental benefits from generators such as Ginna were recently recognized by Governor Andrew Cuomo. On December 2, 2015, Governor Cuomo directed the DPS to design and enact a Clean Energy Standard mandating that 50 percent of all electricity consumed in New York by 2030 result from clean and renewable energy sources. As part of initiating this new program, the Governor further directed the DPS to develop a process to “prevent the premature retirement of safe, upstate nuclear power plants” during the State’s energy system transition envisioned by the Reforming the Energy Vision and related proceedings.⁴⁷ Specifically, the Governor stated that, “[a]s New York State continues to aggressively add new renewable resources, it cannot lose

⁴⁶ Settlement Guidelines, at 8.

⁴⁷ GOVERNOR CUOMO DIRECTS DEPARTMENT OF PUBLIC SERVICE TO BEGIN PROCESS TO ENACT CLEAN ENERGY STANDARD, Press Release, *available at*, [http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/0A4633115B1B677685257F0F006D8F7C/\\$File/gov%2012.2.15.pdf?OpenElement](http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/0A4633115B1B677685257F0F006D8F7C/$File/gov%2012.2.15.pdf?OpenElement).

ground in the fight to reduce carbon pollution through the unnecessary retirement of safely operating nuclear power plants in Upstate New York.”⁴⁸

The Joint Proposal and Settlement RSSA are also consistent with the State’s social goals. The Ginna Facility currently employs approximately 600 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. During the Settlement RSSA’s Term, these significant social benefits will be preserved.

Likewise, the Joint Proposal and Settlement RSSA are consistent with the State’s economic policy. Over the past few years, the Commission has determined that RSSAs are an appropriate vehicle to compensate generators to remain in service to provide reliability support services to maintain electric system reliability in a particular service territory for a period of time.⁴⁹ Consistent with this recent precedent, the terms of the Joint Proposal and Settlement RSSA sufficiently compensate Ginna to remain in operation at the least cost and impact to ratepayers and only for the time necessary to implement a viable transmission alternative to maintain reliability.

In sum, the Joint Proposal is consistent with the Commission’s and the State’s environmental, social, and economic policies.

iii. The Joint Proposal Is Within The Reasonable Range Of Results That Would Have Likely Arisen From A Commission Decision In A Litigated Proceeding

As an initial matter and as explained below, the circumstances of this proceeding require an understanding of the parties’ initial litigation positions before the standard analysis of the

⁴⁸ *Id.*

⁴⁹ *See e.g.* Case 12-E-0400: *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery; *see also* Case 12-E-0136: *Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements*, Order Deciding Reliability Need Issues and Addressing Cost Allocation and Recovery (May 20, 2013).

Joint Proposal under this factor of the Commission’s Settlement Guidelines may be performed. From there, it follows that the Joint Proposal satisfies this element of the Settlement Guidelines.

The current phase of this proceeding effectively commenced when RG&E filed the Initial RSSA and petition with the Commission. Although the ALJs have treated this phase as a major rate case under the Public Service Law, unlike the utility’s initial filing of testimony in a “typical” major rate case, the Initial RSSA may not properly be considered RG&E’s (or Ginna’s) opening litigation position(s). That is because the Initial RSSA was the result of extensive negotiations between RG&E and Ginna. Accordingly, the Initial RSSA does not accurately reflect either party’s opening litigation position. For example, although the Initial RSSA provides for a fixed monthly payment to Ginna in the amount of \$17,504,118, as set forth in its concurrent FERC filing, Ginna’s initial litigation position would have been its full cost-of-service rate of approximately \$30,000,000 per month.

The Joint Proposal and accompanying Settlement RSSA “compares favorably with the likely result of full litigation and is within the range of reasonable outcomes.”⁵⁰ For example, the Settlement RSSA’s fixed monthly payment of \$15,420,000 is far less than the full cost-of-service rate of approximately \$30,000,000 per month. The Settlement RSSA also reflects movement and compromise on many other key issues in the proceeding, including the Term and RG&E’s use of ratepayer credits. Although it is impossible to predict exactly how the Commission might have resolved the numerous issues in dispute had the Joint Proposal not been negotiated, it is well within a range of reasonable outcomes under the particular circumstances here.

⁵⁰ Opinion 92-2, at 8.

iv. There Is A Complete Record And A Rational Basis Upon Which The Commission May Adopt The Joint Proposal

There is a complete record and a rational basis for a Commission decision adopting the Joint Proposal. From the outset of this proceeding, there has been significant process afforded to the parties, resulting in a robust and complete record. Specifically, this proceeding has included a lengthy and substantial discovery period, motion practice, interlocutory appeals, two evidentiary hearings, and multiple briefing opportunities, including submission of statements of issues of material facts, statements in support and opposition to the Joint Proposal, and the instant post-hearing briefs. Altogether, it is this extensive record then that provides the Commission with a sufficient and rational basis to adopt the Joint Proposal. For example, as demonstrated above, the record fully addresses all of the remaining issues in this proceeding, providing the Commission with a rational basis to adopt the Joint Proposal.

v. The Joint Proposal Is Supported By A Majority Of The Parties To This Proceeding

The parties to this proceeding include RG&E, Ginna, DPS Staff, UIU, MI, Entergy, NRG, FirstEnergy, and CEC/AGREE. A majority of these parties support the Joint Proceeding.

The Signatory Parties to the Joint Proposal are RG&E, Ginna, DPS Staff, UIU, and MI. Entergy, NRG, and FirstEnergy did not file statements in support or opposition to the Joint Proposal. CEC/AGREE filed a combined statement in opposition to the Joint Proposal. Importantly, however, as noted above, neither CEC nor AGREE offered any witnesses or testimony in opposition to the Joint Proposal at the recent evidentiary hearing. Instead, they continue to try to advance certain issues, such as decommissioning, that the ALJs previously and specifically excluded from this proceeding as irrelevant.⁵¹

⁵¹ Ruling on Scope, at 12.

Taking into consideration the parties' diverse—indeed, adverse—positions and goals, the majority backing that the Joint Proposal enjoys supports its adoption by the Commission.

III. CONCLUSION

In sum, the Joint Proposal is a fair settlement of the issues in this proceeding, satisfies the Commission's Settlement Guidelines, and is in the public interest. Accordingly, Ginna respectfully requests that the Commission adopt the Joint Proposal in its entirety without modification or conditions.

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