

BEFORE THE  
NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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Petition Requesting Initiation of a Proceeding to :  
Examine a Proposal for Continued Operation of : Case 14-E-0270  
the R.E. Ginna Nuclear Power Plant, LLC. :

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**POST-HEARING BRIEF OF ROCHESTER GAS AND ELECTRIC CORPORATION**  
**IN SUPPORT OF JOINT PROPOSAL**

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December 18, 2015

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I. INTRODUCTION

On October 21, 2015, a Joint Proposal for the resolution of all issues in the above-captioned case was filed with the New York State Public Service Commission (“Commission”). The Joint Proposal was executed by and among Rochester Gas and Electric Corporation (“RG&E” or “Company”), R.E. Ginna Nuclear Power Plant, LLC (“Ginna”), the New York State Department of Public Service Staff (“Staff”), Multiple Intervenors (“MI”),<sup>1</sup> and the Department of State Utility Intervention Unit (“UIU” and together with RG&E, Ginna, Staff and MI, the “Signatory Parties”). Pursuant to the Joint Proposal, RG&E and Ginna executed an amended and restated reliability support services agreement (“Amended RSSA”) for the R.E. Ginna Nuclear Power Plant (“Ginna Facility”).

Each of the Signatory Parties filed a Statement in Support of the Joint Proposal on November 19, 2015. Alliance for a Green Economy (“AGREE”) and Citizen’s Environmental Coalition (“CEC”) were the only parties to file a Statement in Opposition to the Joint Proposal.

On December 3, 2015, an evidentiary hearing was held on the reasonableness of the Joint Proposal (“Hearing”). RG&E and Staff witnesses testified that the Joint Proposal is reasonable

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<sup>1</sup> MI is an association of approximately 60 industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including in RG&E’s service territory.

and in conformity with the Commission's public interest standard and settlement guidelines for approving Joint Proposals. No other party presented a witness at the Hearing.

Per the November 3, 2015 Ruling Adopting Revised Schedule, RG&E hereby submits this Post-Hearing Brief in Support of the Joint Proposal. The record demonstrates unequivocally that the Joint Proposal benefits customers in numerous ways that would not have been possible in a litigated proceeding; that the Joint Proposal strikes a fair balance between the interests of RG&E's customers, the Company and other Signatory Parties; and that the Joint Proposal is in the public interest. See Hearing Exh. 13; Hearing Exh. 18.

Should AGREE and CEC criticize individual elements of the Joint Proposal and/or urge its rejection on brief, their criticisms must be weighed against the many benefits of the Joint Proposal taken as a whole, particularly given the numerous compromises among normally adversarial parties required to reach agreement on the Joint Proposal. Under such a measure, AGREE and CEC's likely arguments pale in comparison to the Joint Proposal's overall benefits and must be rejected. Accordingly, RG&E respectfully requests that the Commission find that the Joint Proposal is in the public interest and approve it in its entirety without modification.

## II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

This proceeding was initiated on July 11, 2014 by Ginna's petition requesting that the Commission initiate a proceeding to examine a proposal for the continued operation of the Ginna Facility and asserting that the Ginna Facility's expected revenues would not be sufficient to cover its costs of continued operation.<sup>2</sup> Hearing Exh. 13 at 1. Ginna submitted an independent reliability study ("ARS") with its petition which indicated that the retirement of the Ginna

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<sup>2</sup> 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, Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC (July 11, 2014).

Facility would create a reliability need at least through October 1, 2018.<sup>3</sup> Hearing Exh. 13 at 1-2. The ARS was conducted by the New York Independent System Operator (“NYISO”), in conjunction with RG&E, to evaluate the impact of the retirement of the Ginna Facility on the reliability of the New York State Transmission System for the years 2015 and 2018.<sup>4</sup>

Hearing Exh. 13 at 2. The NYISO-RG&E joint ARS results indicated that the retirement of the Ginna Facility would result in bulk and non-bulk reliability criteria violations in 2015 and 2018. Hearing Exh. 13 at 2. The results also indicated that a mitigation solution equivalent to the impact of the full output of the Ginna Facility would be necessary to maintain reliability in the Rochester area. Hearing Exh. 13 at 3. RG&E subsequently issued a Request for Proposals (“RFP”) on October 6, 2014 to solicit alternatives to meet the reliability need that would result from the potential retirement of the Ginna Facility. Hearing Exh. 14.

On November 14, 2014, the Commission issued an Order Directing Negotiation of a Reliability Support Service Agreement (“RSSA”) and Making Related Findings in which the Commission ruled that Ginna and RG&E had demonstrated that the continued operation of the Ginna Facility would be required to maintain electric system reliability.<sup>5</sup> The Commission directed RG&E to negotiate an RSSA with Ginna and file it with the Commission. The Commission held that an RSSA was in the public interest and noted that the negotiations “shall conclude with the filing of an RSSA...”<sup>6</sup>

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<sup>3</sup> Case 14-E-0270, Additional Reliability Study for Exelon Corporation – Evaluation of the Impact of the Retirement of the Ginna Nuclear Generation Station on the New York State Transmission System (July 11, 2014).

<sup>4</sup> While RG&E’s Verified Statement in Support of the Joint Proposal inadvertently characterized the ARS as a separate study from the reliability study submitted with Ginna’s petition, the Company clarifies that the ARS is, in fact, the same reliability study submitted with such petition.

<sup>5</sup> Case 14-E-0270, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings at 15 (Nov. 14, 2014).

<sup>6</sup> Id. at 22, 24.

RG&E received six responses to its RFP, each of which was submitted to the Commission. Hearing Exh. 13 at 3. RG&E also submitted its analysis of the RFP responses to the Commission on December 23, 2014,<sup>7</sup> indicating that in the short-term there were no alternatives to the RSSA. Hearing Exh. 13 at 3. The Company entered into arm's length negotiations with Ginna, which ultimately resulted in the execution of an RSSA. The executed RSSA was filed with the Commission and the Federal Energy Regulatory Commission ("FERC") on February 13, 2015. Hearing Exh. 13 at 3. RG&E requested that the Commission accept the RSSA without modification and approve RG&E's implementation of a surcharge to allow for full and immediate recovery of costs incurred pursuant to the RSSA.<sup>8</sup>

On May 5, 2015, the Company filed with the Commission and served on all parties a Notice of Impending Settlement Negotiations consistent with the Commission's Settlement Guidelines<sup>9</sup> and Section 3.9 of the Commission's regulations.<sup>10</sup> Extensive settlement negotiations began on May 11, 2015 and continued on numerous dates both in person and via teleconference through September. The settlement negotiations were successful and resulted in the filing of the Joint Proposal on October 21, 2015. Hearing Exh. 12.<sup>11</sup> As discussed in the

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<sup>7</sup> Case 14-E-0270, Rochester Gas and Electric Corporation Solicitation Results and Other Alternatives (Dec. 23, 2014) ("RFP Report"). RG&E submitted both a confidential and public version of the RFP Report. On March 25, 2015, RG&E filed a less redacted version of the RFP Report.

<sup>8</sup> On June 4, 2015, RG&E filed a petition asking the Commission to establish a temporary rate surcharge that would begin recovery of the RSSA related costs, subject to refund, pending a final Commission decision on the February 13, 2015 RSSA petition. In response, the Commission determined that the public interest required that a temporary surcharge be established, subject to refund. Case 14-E-0270, Order Approving Establishment of Temporary Rates (Aug. 14, 2015).

<sup>9</sup> 32 NYPSC 71; Case 90-M-0255 et al. - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C11175, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion 92-2 (Mar. 24, 1991) ("Settlement Guidelines").

<sup>10</sup> 16 NYCRR § 3.9.

<sup>11</sup> Hearing Exhibit 12 is the public/redacted version of the Joint Proposal. A confidential/unredacted version was filed with the Records Access Officer.

Joint Proposal, the Signatory Parties were able to agree on an Amended RSSA by which Ginna will continue to provide customers with reliability support services through March 31, 2017.

III. THE JOINT PROPOSAL SATISFIES THE COMMISSION'S PUBLIC INTEREST STANDARD AND SHOULD BE ADOPTED WITHOUT MODIFICATION

The Joint Proposal, when assessed in its entirety, clearly meets the public interest standard pursuant to the Commission's Settlement Guidelines.<sup>12</sup> As discussed below and in the Company's Statement in Support of the Joint Proposal (Hearing Exh. 13),<sup>13</sup> the record evidence in this proceeding establishes that the Joint Proposal and Amended RSSA are in the public interest and should be adopted in their entirety because they: 1) maintain New York State power system reliability for the benefit of New York customers; 2) carefully balance the interests of RG&E's customers, the Company and other Signatory Parties; 3) benefit customers in numerous ways that would not have been possible in a litigated proceeding; 4) are supported by the Signatory Parties who constitute stakeholders with often adversarial interests; and 5) produce a result that is both rational and well within the range of reasonable outcomes had the proceeding been fully litigated. Nothing at the Hearing demonstrated otherwise.

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<sup>12</sup> See Settlement Guidelines. In determining whether a proposed settlement is in the public interest, the Commission has consistently applied the following standard:

- A desirable settlement should strive for a balance among (a) protection of the customers; (b) fairness to investors; and (c) the long-term viability of the utility. Additionally, a settlement should be consistent with sound environmental, social and economic policies of the Agency and the State and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- In judging the settlement, the Commission shall give weight to the fact that a settlement reflects agreement by normally adversarial parties. Settlement Guidelines, Appendix B at 8.

<sup>13</sup> The detailed arguments contained in RG&E's Statement in Support of the Joint Proposal for why the Joint Proposal is in the public interest were adopted at the Hearing by the Company's witnesses as their sworn testimony. For brevity, the Company will not repeat all of those arguments herein. Given the single round of briefs, the Company has sought to anticipate and respond herein to AGREE's and CEC's potential positions.

### A. RSSA Term

The Joint Proposal reduces the term of the initial RSSA by 18 months (Hearing Exh. 13 at 9)<sup>14</sup> resulting in significant savings to customers in avoided RSSA payments. As previously explained (see Hearing Exh. 13 at 8-9; Hearing Exh. 18 at 6), the revised (shorter) term of the Amended RSSA is reasonable because it better aligns with the currently anticipated in-service date of RG&E's Ginna Retirement Transmission Alternative ("GRTA") which RG&E estimates to be between December 2016 and June 2017. Once in service, the GRTA will adequately address the reliability need associated with the retirement of the Ginna Facility. Hearing Exh. 13 at 9. The modified term also compares favorably with the likely result of full litigation and is well within the range of reasonable outcomes for this issue as the termination date falls between the initial RSSA's termination date and the earliest estimate for the GRTA in-service date. Hearing Exh. 13 at 9. There is simply no record evidence that the Amended RSSA term is either unnecessarily long or short in duration or that it is in any way unreasonable.

The reasonableness of the RSSA term is also supported by the fact that the Amended RSSA contains adequate provisions in favor of limiting the term to no longer than necessary. The Joint Proposal removes a provision in the initial RSSA that would have allowed RG&E and Ginna to extend the RSSA for an additional 18-month term without public input.

### B. Compensation

#### 1. *Payment Obligations*

The Amended RSSA establishes a Monthly Fixed Amount paid by RG&E to Ginna during each month of the RSSA's term in the amount of \$15.42 million. Hearing Exh. 12 at 9. This provision is reasonable since Ginna can neither be expected nor compelled to keep the

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<sup>14</sup> The term of the Amended RSSA is from April 1, 2015 through March 31, 2017. Hearing Exh. 12 at 53.

Ginna Facility available for the benefit of RG&E's customers without just compensation. Hearing Exh. 12 at 9. At the Hearing, no party offered any evidence indicating that the cost provisions under the Amended RSSA were either excessive or unreasonable. In fact, the Company's and Staff's witnesses testified to the contrary, noting that the payment obligations were reasonable. See Tr. 58:16 – 59:4; Hearing Exh. 13 at 10-14; Hearing Exh. 18 at 12-18.

Furthermore, the cost provisions under the Amended RSSA compare favorably with the likely result of full litigation and are well within the range of reasonable outcomes. Had this proceeding been fully-litigated, Ginna would have sought recovery of its full cost of service as filed with FERC,<sup>15</sup> which is significantly greater than the Monthly Fixed Amount.<sup>16</sup> Hearing Exh. 13 at 12. As such, there is a rational basis for adopting the Monthly Fixed Amount and other cost provisions set forth in the Joint Proposal and Amended RSSA.

## 2. *Sharing of Energy and Capacity Market Revenues*

Under the initial RSSA, Ginna and RG&E were to share in revenues from Ginna's sale of energy and capacity into the NYISO markets at 15% and 85% respectively. Hearing Exh. 18 at 28. The Joint Proposal and the Amended RSSA revise the allocation of market revenues to 70% for RG&E and 30% for Ginna. Hearing Exh. 13 at 12; Hearing Exh. 18 at 28. The Amended RSSA market revenue sharing mechanism is reasonable because it provides Ginna with an increased incentive to maximize production from the Ginna Facility. Hearing Exh. 13 at 12. Furthermore, the revised 70%/30% allocation also shifts a greater portion of the market risk to Ginna which benefits RG&E's customers. Hearing Exh. 18 at 28. Thus, the Joint Proposal's

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<sup>15</sup> Docket No. ER15-1047-000 - R.E. Ginna Nuclear Power Plant, LLC, Application at 13 (Feb. 13, 2015).

<sup>16</sup> Case 14-E-0270, R.E. Ginna Nuclear Power Plant, LLC's Statement in Support of the Joint Proposal at 19-20 (Nov. 19, 2015).

market sharing revenue mechanism is supported by the record, reasonable and in the public interest.

### 3. *Settlement Floor and Cap*

Under the Joint Proposal and the Amended RSSA, Ginna's total compensation during the term of the RSSA will be subject to a \$425 million "floor" set at negotiated going forward costs ("GFC") and a \$510 million "cap" set at the negotiated full cost of service ("FCOS"). Hearing Exh. 13 at 13; Hearing Exh. 18 at 9. Staff thoroughly reviewed the floor and cap amounts and determined the levels to be reasonable.<sup>17</sup> Hearing Exh. 18 at 12-15. The payments made by RG&E together with the 30% of market revenues shared with Ginna during the term of the RSSA will be reconciled to the floor/cap amounts calculated over the term of the RSSA. Hearing Exh. 18 at 10. Staff does not expect market prices to fall to a level to cause Ginna's compensation to fall below the floor and thus Staff does not expect that any additional amounts will be due to Ginna at the end of the RSSA. Hearing Exh. 18 at 10. As Staff indicated in its Statement in Support of the Joint Proposal (adopted as its testimony), these provisions ensure that Ginna will provide adequate reliability services and will reduce Ginna's compensation in the event the Ginna Facility fails to operate as intended under the RSSA. Hearing Exh. 18 at 10.

These floor and cap provisions satisfy the Commission's standard for settlements for several reasons. First, the settlement cap provision is in the public interest and benefits RG&E's customers because any Ginna revenues in excess of the cap amount will be returned to RG&E customers or preserved for their benefit. This ensures that customers do not pay excessively for Ginna's services. Second, the settlement floor provision is reasonable because it is consistent

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<sup>17</sup> As described in Staff's Statement in Support of the Joint Proposal, which Staff's witnesses adopted as their sworn testimony, Staff made a number of adjustments to the GFC and FCOS contained in the Joint Proposal and asserted that the cap and floor amounts contained therein are reasonable given the uncertainties of a litigated outcome for Staff's adjustments. Hearing Exh. 18 at 15.

with FERC's actions in setting Ginna's GFC to ensure that Ginna is adequately compensated under the RSSA. Third, Staff noted that the settlement floor provisions are unlikely to be triggered given current energy and capacity market prices. Hearing Exh. 18 at 10-11. Specifically, Staff testified that in order to trigger the settlement floor, market prices would have to fall from their current \$30-35/MWh range to \$15.06/MWh, an event that Staff considers improbable. Hearing Exh. 18 at 10; Tr. 58:5-6. Staff concluded that it does not expect any additional amounts to be due to Ginna at the end of the RSSA. Hearing Exh. 18 at 10. The Commission therefore has a rational basis to accept the floor and cap provisions which are in the public interest.

#### C. RSSA Surcharge and Customer Rate Impacts

Pursuant to the Joint Proposal, RG&E would implement a rate surcharge ("RSSA surcharge") effective January 1, 2016 to recover amounts paid to Ginna pursuant to the Amended RSSA. Hearing Exh. 12 at 14. To mitigate customer bill impacts, the Joint Proposal requires RG&E to use deferred rate credit amounts (regulatory liabilities) to offset the full amount of the Deferred Collection Amount retroactive to April 1, 2015 (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 of \$110 million, applicable through June 30, 2017. Hearing Exh. 12 at 57. To the extent that the available credits are insufficient to satisfy the final payment from RG&E to Ginna, then the RSSA surcharge would continue past March 31, 2017 to recover up to \$2.25 million per month until the final payment has been recovered by RG&E from customers. Hearing Exh. 12 at 57. Under the Joint Proposal, costs recovered through the RSSA surcharge would be allocated to the classes using the transmission allocator in the most recently concluded RG&E electric rate case and would be collected on a per kWh basis from non-demand metered customers and on a per kW basis from demand metered customers. Hearing Exh. 12 at 16.

As discussed in the Company's Statement in Support of the Joint Proposal, the use of customer credits to offset RSSA costs was actively debated among the parties. RG&E strongly opposed the use of credits in this manner given the resultant negative impacts on RG&E's cash flows and because doing so would limit RG&E's ability to moderate rates in its pending electric rate case (Case 15-E-0285). Hearing Exh. 13 at 16. In contrast, Staff, UIU and MI all proposed using some or all of RG&E's regulatory liabilities to offset the Amended RSSA's costs. As a result of the Signatory Parties' ultimate compromise, customer bill impacts after mitigation by one-time credits under the Joint Proposal are estimated to produce a 2.3% bill increase for Service Classification No. 1 – Residential customers (see Hearing Exh. 59; Tr. 63:18 – 64:11), while maintaining cash flow to RG&E to help maintain its credit ratings. The specific amount of regulatory liabilities used to mitigate customer bill impacts reflects a balancing of customer rate impact concerns with the interest of the Company and its customers in preserving the Company's credit rating. In a fully litigated proceeding, the outcome on the use of regulatory credits would likely be somewhere between the positions of the Company and that of other parties. Thus, the Joint Proposal compares favorably with the likely result of full litigation and is well within the range of reasonable outcomes.

#### D. Reliability Study and GRTA Oversight

The Joint Proposal further serves the public interest, thereby meeting the Commission's criteria for settlement, because it requires RG&E to complete a reliability study and it provides oversight of the GRTA's construction and progress that would not exist absent the Joint Proposal. See Hearing Exh. 12 at 16-24. Among other things, the purpose of the reliability

study (which has been completed and was filed with the Commission on November 10, 2015)<sup>18</sup> is to confirm that the GRTA will resolve any reliability needs associated with the permanent retirement of the Ginna Facility or, to the extent such reliability needs are not fully resolved, identify and quantify the extent and timing of such unresolved needs.<sup>19</sup> See Hearing Exh. 12 at 16. By requiring RG&E to complete an additional reliability study, the Joint Proposal ensured that RG&E has available critical information for continuing to meet its customers' reliability needs.

During the Hearing, Administrative Law Judge Sean Mullany ruled that the relevance and applicability of the GRTA at this phase of the proceeding was limited to evaluating the reasonableness of the terms and conditions of the Joint Proposal and Amended RSSA.

Tr. 31:24-32:10. In other words, to the extent that the GRTA is relevant to the Amended RSSA, it is limited to the fact that the revised term of the Amended RSSA more closely matches the currently anticipated in-service date of the GRTA (e.g., between December 2016 and June 2017).

The Joint Proposal's GRTA oversight provisions further demonstrate the reasonableness of the Joint Proposal. Under the Joint Proposal, RG&E must use commercially reasonable efforts to construct and place the GRTA in service as soon as practicable. Hearing Exh. 12 at 22. No later than 15 days following regulatory approval of both the FERC Settlement Agreement and the Joint Proposal, RG&E must begin providing GRTA project reports, including an

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<sup>18</sup> Case 14-E-0270, Public-Redacted Version of the Ginna Retirement Reliability Study (Nov. 10, 2015). Pursuant to the Protective Order in this proceeding, a confidential/unredacted version of the Ginna Retirement Reliability Study was submitted to the Administrative Law Judges.

<sup>19</sup> The Joint Proposal provides yet another protection for customers. Should a reliability need be identified for the period after March 31, 2017, the Joint Proposal requires RG&E to release a solicitation seeking solutions to meet any such needs. Hearing Exh. 12 at 18. Proposed solutions must be submitted no later than 60 days following the issuance of the solicitation. Hearing Exh. 12 at 18. RG&E is required to evaluate the proposed solutions and publish a report describing such evaluation no later than 120 days following the issuance of the solicitation. Hearing Exh. 12 at 18. A competitive bidding process would ensue should a reliability need exist after March 2017. Thus, the Joint Proposal provides customers with additional protections to ensure that RG&E will be able to continue to meet its customers' reliability needs.

Executive Management report identifying project leads and an Initial Report to the Commission reflecting the GRTA budget and construction milestones. Hearing Exh. 12 at 22-23. Thereafter, RG&E is required to provide monthly reports to the Commission that will provide GRTA status updates and will hold standing monthly meetings to discuss the monthly reports. Hearing Exh. 12 at 24. The GRTA does not fall within the Commission's Article VII authority. Thus, the reporting requirements, which exist solely due to the Joint Proposal, are in the public interest because they provide additional information regarding the continued progress and status of the GRTA.

Any attempt by AGREE and CEC to utilize and reference the GRTA or the GRTA related exhibits for any other purpose should be rejected. For example, the Company anticipates that AGREE and CEC may attempt to attack the Joint Proposal by challenging the status of the GRTA's various project management steps. Such a challenge, however, must be rejected as it would necessarily be based on mere speculation with no record basis. In fact, the record evidence indicates that the Company is making good progress on the GRTA and that construction of the project is on track. See Hearing Exh. 45. Given that the anticipated in-service date of the GRTA has not changed, the current term of the Amended RSSA is reasonable. As a result, the status of the GRTA's various planning, project management and construction activities are simply irrelevant to the determination now before the Commission in this proceeding – whether to adopt the Joint Proposal as in the public interest.

1. AGREE and CEC Cannot Make a Prima Facie Showing that RG&E's Reliability Planning Actions with Respect to the Retirement of the Ginna Facility Were Imprudent

The Company anticipates that AGREE and CEC will attempt to argue that RG&E's reliability planning process with respect to the closure of the Ginna Facility was imprudent. There is no evidence to support such an argument. Under Long Island Lighting Co. v. Public

Service Commission of the State of New York et al.,<sup>20</sup> “a utility’s actions, undertaken in the ordinary course of business, are considered prudent unless ‘a tenable basis for raising the specter of imprudence’ is provided.”<sup>21</sup> A party alleging imprudence is “obliged to demonstrate a tenable basis for raising the specter of imprudence before the utility can be called upon to defend its conduct.”<sup>22</sup> Once “evidence” of imprudence is put forward, “the burden shifts to the utility to prove either that its actions were reasonable or that they accounted for no additional costs.”<sup>23</sup>

Here, AGREE and CEC have not and cannot provide any evidence of imprudence by RG&E.<sup>24</sup> AGREE and CEC provided no testimony to support any such claims and their cross-examination of the Company’s and Staff’s witnesses during the Hearing did not reveal any facts supporting an assertion of imprudence on the part of RG&E. See Tr. 14:8 – 33:23; 45:20 – 61:11. Should AGREE and CEC put forth such claims, they must be based solely on unsworn statements signed by their representatives which at best represent mere opinion and argument. This level of showing is insufficient to shift the burden to RG&E to show that its actions were reasonable.<sup>25</sup> The uncontroverted record evidence establishes that no party has made (or can

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<sup>20</sup> Long Island Lighting Co. v. Public Serv. Comm’n, 134 A.D.2d 135 (3d Dep’t 1987).

<sup>21</sup> Case 06-E-0894 - Proceeding on Motion of the Commission to Investigate the Electric Power Outages in Consolidated Edison Company of New York, Inc.’s Long Island City Electric Network - Prudence Phase, Ruling on Scope of Company Testimony, Schedule, and Discovery at 1 (Feb. 8, 2008) (quoting Long Island Lighting Co.).

<sup>22</sup> Long Island Lighting Co., 134 A.D.2d at 144; see also National Fuel Gas Distrib. Corp. v. Public Serv. Comm’n, 16 N.Y.3d 360, 369 (2011) (“However, a utility’s decision to expend monetary resources is presumed to have been made in the exercise of reasonable managerial judgment. DPS [or, here, AGREE and CEC] carries the initial burden of providing a rational basis to infer that the utility may have acted imprudently before the burden shifts to the utility to demonstrate that its decision was prudent when made...We conclude that DPS failed to meet its initial burden of rebutting the presumption of prudence.”) (internal citations omitted).

<sup>23</sup> Long Island Lighting Co., 134 A.D.2d at 144.

<sup>24</sup> “Prudence is determined by judging whether a utility acted reasonably, under the circumstances at the time, considering that the company had to solve its problems prospectively rather than in reliance on hindsight.” National Fuel Gas Distribution Corp. v. Public Serv. Comm’n, 71 A.D.3d 62, 66 (3d Dep’t 2009), aff’d, 16 N.Y.3d 360 (2011). Under this standard, RG&E’s actions with respect to Ginna’s retirement were prudent.

<sup>25</sup> See e.g., National Fuel, 16 N.Y.3d at 369 (holding sworn testimony of a Staff public utility accountant was insufficient to rebut the presumption of utility prudence); see also Case 09-E-0862 - Minor Rate Filing by the

make) a prima facie showing of imprudence and any CEC or AGREE's arguments to the contrary must be rejected.

IV. CONCLUSION

The Joint Proposal represents a comprehensive, integrated settlement of all the issues in this proceeding. As evidenced by the record and the multiple Statements in Support, the Joint Proposal reflects not only recommendations and concessions from the Signatory Parties, but also represents a substantial effort to address concerns voiced by all parties. For the reasons discussed above and in the Statements in Support, the Joint Proposal meets the public interest standard of the Commission's Settlement Guidelines, produces an overall reasonable balance of interests, and should be adopted in its entirety without modification.

Dated: December 18, 2015

Respectfully submitted,



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Jamestown Board of Public Utilities to Increase Its Annual Electric Revenues by about \$947,297 or 2.5%, Order at 34 (July 20, 2010) (adopting Staff's recommendation to decline to commence a prudence review since "[s]ufficient facts have not been alleged and causal arguments posited to require the [Jamestown Board of Public Utilities] to submit an affirmative case regarding its prudence.").