



November 10, 2015

**VIA ELECTRONIC FILING**

Honorable Sean Mullany  
Honorable Julia Smead Bielawski  
Honorable Ashley Moreno  
Administrative Law Judges  
New York State Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223

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

Dear Judges Mullany, Bielawski and Moreno:

Paragraph 9 of the Protective Order in the above-referenced proceeding (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, Ruling on Process and Adopting Protective Order (Mar. 12, 2015)) states, in relevant part: “A party who creates a document for use in these proceedings that contains Protected Information and is to be filed with the [New York State Public Service Commission] Secretary will produce two versions, an unredacted version including the Protected Information and a redacted version from which the Protected Information has been omitted or blacked out...[B]oth the redacted and unredacted versions of the document are to be filed electronically, along with the request for protected status and comprehensive brief required by 16 NYCRR §6-1.4(a)(2).”

Rochester Gas and Electric Corporation (“RG&E” or the “Company”), by and through its undersigned attorneys, hereby submits this letter in support of the Company’s request to protect from public disclosure certain portions of the Company’s “Ginna Retirement Reliability Study” dated October 27, 2015 (“Confidential Information”)<sup>1</sup> in the above-captioned matter pursuant to the New York State Freedom of Information Law (“FOIL”) (N.Y. Pub. Off. Law §§ 84 *et seq.* (McKinney 2015) and Part 6 of the New York State Public Service Commission’s (“Commission”) regulations. 16 NYCRR § 6.1 *et seq.*

**I. ARGUMENT**

The Confidential Information should be protected from public disclosure because it qualifies as Critical Infrastructure Information (“CII”) pursuant to the Commission’s regulations and is thus exempt from disclosure under FOIL. Section 89(5) of the New York State Public

<sup>1</sup> A public redacted version of the Confidential Information is also being submitted herewith.

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Officers Law (“POL”) states, in relevant part, that a person or entity who submits records to any agency may identify those records or portions thereof that may contain CII and request that the agency that maintains such records except such information from disclosure. N.Y. Pub. Off. Law § 89(5)(a)(1-a) (McKinney 2015). Critical infrastructure is defined as the systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy. POL § 86(5) (McKinney 2015). Consistent with POL, the Commission’s regulations allow CII to be protected from public disclosure. 16 NYCRR § 6-1.3(b)(3).

The Commission has recognized that utility infrastructure is a critical component in maintaining national security and sustaining the economy and that it is important to safeguard public utility assets. See Case 02-M-0953 - Proceeding on Motion of the Commission as to Telephone and Energy Utility Arrangements for Safeguarding the Security of their Physical Equipment and Cyber Systems, Order Directing Further Action (Sept. 30, 2003). Information that provides specific details regarding utility infrastructure constitutes CII. In this instance, the Confidential Information provides confidential data relating to overloads at RG&E at certain load levels, including load information for specific RG&E stations. This information should be protected because someone with malicious intent could pinpoint the substations and/or times of day when damage to the Company’s system could cause the greatest disruption of service, thereby jeopardizing the health, safety, welfare or security of the state, its residents and/or the economy.

## II. CONCLUSION

In summary, the Confidential Information must be protected from public disclosure because it constitutes CII. Should you have any questions regarding this filing, please contact me.

Respectfully submitted,



Brian T. FitzGerald  
Gregory G. Nickson

Enclosures

cc: Honorable Kathleen Burgess (via e-mail w/o enclosures)  
Parties who have are entitled to receive Protected Information under the terms of the  
Protective Order (via e-mail w/ confidential enclosure)  
Noelle M. Kinsch (via e-mail w/ confidential enclosure)  
Jeffrey M. Converse (via e-mail w/ public enclosure)  
DMM Party List (via e-mail w/ public enclosure)