

AGREE New York

Alliance for a Green Economy
2013 East Genesee Street
Syracuse, NY 13210
315.480.1515
info@agreenewyork.org



Hons. David L. Prestemon and Sean Mullany, Administrative Law Judges
Hon. Kathleen Burgess, Secretary to the Commission
NYS Public Service Commission
Empire State Plaza, Bldg 3
Albany, NY 12223-1350

April 1, 2015

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. – AGREE’s Motion for Reconsideration of the Schedule

Dear Judge Prestemon, Judge Mullany, and Secretary Burgess:

The Alliance for Green Energy (AGREE) and Citizens Environmental Coalition (CEC) file this motion for reconsideration of the schedule for the submission of Issue Statements, established by Your Honors in the “Ruling on Process and Adopting Protective Order, “ issued on March 12, 2015.¹ Additionally, we request an extension to the 45-day public comment period established in a March 4, 2015 State Register Notice.²

AGREE, CEC, and many other parties have engaged in discovery and have begun receiving responses from RG&E. AGREE and CEC, organizations with limited resources, will need adequate time to analyze the emerging documents and information pertinent to this case and to consult with experts where appropriate. Additionally, CEC has still not received the confidential information in the case, despite having executed a Protective Order as instructed.

AGREE and CEC believe that the scope of the evidentiary hearing should not be decided until the parties have sufficient time to conduct discovery and analyze the responses. In a typical “major rate proceeding” Department of Public Service (DPS) Staff and parties have three to four

¹ New York State Public Service Commission (March 12, 2015) "Ruling on Process and Adopting Protective Order" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DFBB0DED-653F-414C-8B06-AC22E0181961}>

² N.Y. St. Reg. PSC-09-15-00003-P. NEW YORK STATE REGISTER. VOLUME XXXVII, ISSUE 9. March 04, 2015.

months to conduct discovery; in prudence proceedings, DPS Staff spends months (and even years on occasion) thoroughly investigating the circumstances resulting in the conduct at issue in the case. We are concerned that in this proceeding, DPS Staff appears not to be taking the time to lead a thorough and comprehensive examination of the utility's filing. Accordingly, resource-constrained consumer advocacy parties are struggling to fill the gap, under severe time-pressures.

The Ruling states that by April 15, 2015, parties must submit statements of material issue of fact requiring hearing and that mere allegations will not be sufficient: "The statements must include sufficient information to demonstrate that an issue is material to the determinations required of the Commission in this case, and that the issue cannot be resolved without the presentation and cross-examination of witnesses at a hearing." From our perspective, the ALJs have set a high bar that we would be hard pressed to meet by April 15. We respectfully request, therefore, a one-month extension of the initial filing to May 15. We also seek a period of at least two weeks—until May 29 to file replies to Issue Statements, rather than the current plan for one week. Two weeks will be tight for us, but one week is completely unrealistic.

On February 13, 2015, RG&E filed a proposed Reliability Support Services Agreement (RSSA), negotiated between the utility company and the owners of the Ginna nuclear reactor.³ The contract, as proposed, would go into effect on April 1, 2015, even though it has not yet been approved by the Public Service Commission and the Federal Energy Regulatory Commission. In anticipation that the contract may not be approved by April 1, the contract provides that the monthly payments to Ginna will begin to accumulate as debt with interest owed. This debt would not be paid back immediately upon approval of a contract, but over several years by RG&E customers.

We write today, April 1, 2015, the day that RG&E customers are to begin owing payments under the proposed contract if it is approved as written. We estimate these payments will amount to approximately \$4 million per month above the market rate of electricity, before interest.⁴ In the procedural conference on this case held on March 10, 2015, the April 1 date was repeatedly used as a justification for a rushed process because of its potential compounding impact on consumers (where consumers will have to pay not just the monthly subsidy to Ginna, but also a monthly payment for any retroactive charges and interest).⁵ It is manifestly unfair to ratepayers to use the term and interest rate part of the RSSA as the justification for a quick, truncated review process that functionally denies due process to parties representing those same ratepayers.

³ Rochester Gas & Electric (February 13, 2015) "RGE Ginna RSSA Petition - Exhibit A - Executed RSSA - Public Version" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D5FC0B9F-4B22-460F-B722-65D433599015}>

⁴ Estimate based on RG&E's response to Multiple Intervenors Discovery Question Set 1, Number 10. Total estimated costs to consumers there is \$175.3 million, which we divided by the 42-month term of the contract.

⁵ New York Department of Public Service (March 10, 2015) "Procedural Conference Transcript" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={974542A7-E883-4F72-8E4D-FCD0374A82D6}>

It is critically important that this proceeding takes sufficient time to carefully review the proposed contract as it poses significant rate impacts over more than three years. Rushing the process does not serve ratepayers. We urge the ALJs and Public Service Commission to conduct this process in a manner that is fair to the public and to the parties in the case. This requires an adequate public comment period, public statement hearings with adequate notice, and sufficient time for discovery, preparation of legal filings, and preparation for hearings.

The April 1, 2015 effective date of the contract has no relevance from a public interest standpoint. It is an arbitrary date that RG&E and Exelon agreed to, and the companies are now trying to impose that on Rochester-area residents. When RG&E and the owners of Ginna filed their proposed contract, nearly a month after it was originally due,⁶ they had to know it was unlikely the Commission would approve the contract before April 1. It is unreasonable to saddle Rochester-area customers with retroactive costs and interest payments that will start accruing before there has been time for public to comment on the proposal or for the Public Service Commission to review the case.

We urge the following actions to ensure a fair process and the protection of the public interest in this case:

1. Extend the public comment period on the proposed contract. As published in the New York State Register, the current public comment period is set to expire as April 17. There is still ongoing activity in this case and information continues to be released. Further, evidentiary hearings have yet to be scheduled. The public should be given adequate time to review all of this information and provide input.
2. The April 1, 2015 effective date of the contract should be voided so that RG&E customers are spared the additional payments with interest that this retroactive date would cause. In the event it is not voided, RG&E should bear the full costs of these retroactive payments, as the utility company took it upon themselves to enter into the contract with an effective date of April 1, knowing there would not be adequate opportunity for their customers to give input through the Public Service Commission process.
3. The proceeding should be pursued on a reasonable timeline that gives all parties to the case a reasonable amount of time to conduct discovery, review responses, prepare briefs, prepare for evidentiary hearings, and prepare other filings. There is an enormous amount of ratepayer money at stake, and multiple parties have raised important questions that must be answered before RG&E customers should be expected to pay

⁶ RG&E's Second Request for Extension of Time (February 5, 2015)

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3B55941F-1B36-4B76-9EFC-AE9361B2CE3A}>

higher rates to subsidize an uneconomic nuclear reactor. The public interest requires a thorough and deliberate process that is not rushed.

We appreciate your granting of AGREE's motion and consideration of these important issues.

Sincerely,

/s/

Jessica Azulay Chasnoff
Program Director
Alliance for a Green Economy

/s/

Barbara Warren
Executive Director
Citizens' Environmental Coalition

cc. New York Governor Andrew Cuomo