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STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

14-E-0270 - Rochester Gas & Electric Corp.
Reliability Support Services
Agreement with R.E. Ginna Nuclear
Power Plant, LLC

PROCEDURAL CONFERENCE

March 10, 2015
10:30 a.m.
3rd Floor
Three Empire State Plaza
Albany, New York 12223-1350

DAVID PRESTEMON
SEAN MULLANY
Administrative Law Judges
Three Empire State Plaza
Albany, New York 12223-1350

1 Case 14-E-0270 - 3-10-15

2 APPEARANCES:

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30 FOR FIRSTENERGY SOLUTIONS CORPORATION:

31 DAVIS WRIGHT TREMAINE
32 BY: JIM MITCHELL
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2 (The procedural conference
3 commenced at 10:33 a.m.)

4 A.L.J. PRESTEMON: All right.
5 Let's go ahead and get started. I call Case
6 14-E-0270, petition requesting initiation of a
7 proceeding to examine a proposal for continued
8 operation of the RE Ginna Nuclear Power Plant, LLC.

9 As all of you know, this as a
10 case -- is a case that has been going on for a
11 while. It's had several phases. Currently, we are
12 concerned with the petition filed by Rochester Gas
13 and Electric Corporation for acceptance of a
14 reliability support services agreement. It is
15 negotiated with the operatives, the RE -- RE Ginna
16 Nuclear Power Plant and also for approval of the
17 cost allocation and cost recovery surcharge
18 mechanism related to that agreement.

19 This is a procedural conference
20 in that proceeding that was initiated by a notice
21 issued on February 24th and amended last week with
22 another notice that changed the starting time. The
23 purpose of the procedural conference, as we stated
24 in the notice, is to, first of all, determine the
25 parties who are interested in this proceeding and

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2 the interests they represent, to discuss the issues
3 that the parties believe are within the scope of
4 the proceeding and potentially subject to hearing.

5 As you know, RG&E, in its -- in
6 its filing, has acknowledged that the -- that the
7 amount of the surcharge is such that this
8 constitutes a major rate increase which, under the
9 Public Service Law, requires a -- a hearing.

10 We also will discuss the possible
11 schedule for the hearings if -- under the
12 assumption that the issues the parties have raised
13 will need to be litigated. And we'll cover any
14 other outstanding issues that you may have
15 concerning discovery, confidentiality, and other
16 matters.

17 So, let's begin, going clockwise
18 for me. I guess it's clockwise for you, too,
19 around the -- around the room. And if you would
20 just indicate who you are and who you represent,
21 and the interests of the party you represent at
22 this point, not the issues, just get to know who
23 you are and who you represent, if we could start
24 with Mr. Michaels.

25 MR. MICHAELS: Good morning,

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2 judges. Alan Michaels for Staff. Here with me is
3 Dakin Lecakes. And Michael Corso is also here as a
4 member of Staff.

5 A.L.J. PRESTEMON: And Michael
6 Corso, I believe, is the Director of Consumer
7 Service and Consumer Advocate for the Department?

8 MR. CORSO: Yes, your Honors.
9 May I just say the role I'm going to play in this
10 case, I plan on engaging in the case to help think
11 through specific consumer issues and try to work
12 with consumer advocate parties that are represented
13 in the case to assure that the voice of the
14 consumer is being heard loud and clear in this
15 case.

16 And I have Len Silverstein of my
17 staff, one of my lead Staff, here to participate in
18 the case, as well, to make sure our resources are
19 available to assist. Thank you.

20 A.L.J. PRESTEMON: Thank you, Mr.
21 Corso.

22 All right. We'll go back to --.

23 MR. MAGER: Good morning, Judges.
24 My name is Michael Mager from Couch White Law Firm
25 on behalf of Multiple Intervenors. Multiple

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2 Intervenor is an association of some of the
3 state's largest industrial, commercial, and
4 institutional energy consumers. And a number of
5 Multiple Intervenors members have facilities within
6 the RG&E service territory.

7 MR. RIGBERG: Good morning,
8 Judges. My name is Saul Rigberg. I'm an attorney
9 with the Department of State. And I'm representing
10 the Utility Intervention Unit, which has a
11 statutory responsibility to advocate on behalf of
12 residential and small commercial customers.

13 MS. SAIA: Can you hear me or do
14 I need to use the microphone?

15 THE REPORTER: If you can use the
16 microphone.

17 MS. SAIA: Okay. Doreen Saia of
18 the law firm of Greenberg Traurig, LLP, here on
19 behalf of the Entergy entities. They're Entergy
20 Nuclear Fitzpatrick, Entergy Nuclear Indian Point,
21 and Entergy Nuclear Operations, Inc. And we are
22 here generally to monitor the proceeding to see how
23 this case plays itself out and to understand if
24 there are any impacts on the wholesale markets.

25 A.L.J. PRESTEMON: And I should

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2 have mentioned, if you have not given a card to the
3 reporter, please spell your name also when you
4 announce yourself.

5 Okay. Anybody in the back? No?
6 We'll go to the next table then.

7 MR. MITCHELL: I'm Jim Mitchell
8 with the Law Firm of Davis Wright Tremaine in
9 Washington, DC. I'm here representing FirstEnergy
10 Solutions Corporation. FirstEnergy Solutions is a
11 major power marketer, wholesale, and retail power
12 marketer throughout the eastern part of the United
13 States. FirstEnergy Solutions is here to monitor
14 the case with concern that the payments made to
15 Ginna for the --the charges under the RSSA.
16 agreement are not impacting the markets adversely.

17 MR. MCMANUS: John McManus and
18 Steve -- Steve Wilson from Harris Beach, we
19 represent RE Ginna Nuclear Power Plant, LLC., which
20 is the counter party to the RSSA with RG&E.

21 MS. AZULAY-CHASNOFF: Good
22 morning, your Honors. I'm Jessica Azulay-Chasnoff
23 with Alliance for a Green Economy. We are a
24 coalition of environmental and social justice
25 organizations, working statewide for a carbon-free

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2 nuclear-free New York. We are the primary nuclear
3 watchdog organization for Upstate New York. And
4 our interest in this case is around -- we bring a
5 lot of expertise in the areas of nuclear power.
6 And we also have a consumer protection interest.

7 MS. WARREN: Good morning. My
8 name is Barbara Warren. I'm Executive Director of
9 Citizens Environmental Coalition. We're a
10 statewide organization and also a founding member
11 of the Alliance for a Green Economy. And we're
12 here representing the public interest today and
13 consumers.

14 MS. KINSCH: Good morning.
15 Noelle Kinsch, Deputy General Counsel, Iberdrola
16 U.S.A. Management Corporation, here today on behalf
17 of Rochester Gas and Electric Corporation. And we
18 are one of the Petitioners -- or the Petitioner.

19 MR. FITZGERALD: Brian --
20 Petitioner -- the law firm of Cullen Dykman, LLP by
21 Brian FitzGerald, here for the Company.

22 A.L.J. PRESTEMON: And --?

23 MS. KINSCH: That's it. We're
24 good.

25 A.L.J. PRESTEMON: All right.

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2 Thank you. As we mentioned in the notice of
3 prehearing conference, one of -- one -- one of the
4 things we were asking parties to do was, to the
5 extent possible, discuss among yourselves to
6 determine whether there were any possibility of
7 agreeing on some of the issues that will need to be
8 considered in this -- within the scope of this
9 proceeding.

10 I'd like to get a report now of
11 anything that might have been accomplished, if I
12 can ask you, Mr. Michaels?

13 MR. MICHAELS: Yes, Judge. Thank
14 you.

15 Unfortunately, due to lack of
16 time, I've -- I've reached out to a few parties,
17 but not to everyone. It seemed a general consensus
18 to those with whom I spoke that the scope of issues
19 would be very narrow in this, specifically that the
20 issue is prudence, whether it was prudent for RG&E
21 to enter into this contract.

22 A.L.J. PRESTEMON: Generally?

23 MR. MICHAELS: Generally, Judge.

24 A.L.J. PRESTEMON: Okay.

25 MR. MICHAELS: Judge, also it

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2 should come to note to this bench that there is a
3 simultaneous proceeding at the Federal Energy
4 Regulatory Commission, or FERC. And there they are
5 discussing the -- the cost of the matter, which,
6 although the Staff is not commenting on
7 jurisdiction, it -- we don't see that as an issue
8 here. And it's also -- it has not been raised by
9 the Petitioner at FERC, either.

10 A.L.J. PRESTEMON: Okay. Mr.
11 Mager?

12 MR. MAGER: Yeah. I -- I just
13 have a couple of thoughts off the top of my head.
14 I -- I think the scope of issues is going to be a
15 little more broad than that. First, I -- I guess I
16 would disagree with Staff, respectfully, in terms
17 of the cost. I think the cost of the RSSA. is
18 directly before the New York State Public Service
19 Commission as a result of this petition.
20 Otherwise, there wouldn't be a need to have a
21 hearing on the rate impacts of the -- of the RSSA
22 if the costs involved were not relevant.

23 Clearly, we're looking at a very
24 big potential rate increase to RG&E customers. So,
25 I think the reasonableness of the costs embedded,

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2 you know, called for in the RSSA are -- is a
3 relevant issue in this proceeding, as well as the
4 cost recovery of -- of the RSSA costs from
5 customers.

6 MR. MICHAELS: Judge, if I -- if
7 I may respond? I -- I don't disagree with the way
8 that it's been presented by Mr. Mager. He and I
9 discussed this point and I -- I'm saying it worse
10 than he is.

11 Let me put it that way. I -- I
12 think that what he is saying is correct in that
13 that is a part of prudence. So, the issue as to
14 whether or not this was the appropriate choice for
15 RG&E, I think, is -- is part of the prudence issue.

16 A.L.J. PRESTEMON: We -- we may
17 have go -- go back and get organized again.
18 With -- Mr. Mager, you -- I believe your filing
19 with FERC also indicated that the cost of this
20 agreement was before FERC, in your opinion, also.
21 Is that correct?

22 MR. MAGER: Well, it's -- it's
23 not clear. It seems that the -- that RG&E and
24 Ginna have both -- have filed -- have made filings
25 at the Commission and FERC. And until one of those

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2 agencies says it's not ours, I think it's before
3 both of you at the moment.

4 A.L.J. PRESTEMON: All right.
5 Does anyone have any idea of the schedule before
6 FERC, a typical schedule perhaps or anything
7 specific in this case?

8 MR. MICHAELS: Judge, FERC, at
9 this point, has not commented on schedule.
10 There -- there was one ruling on a request for
11 extended period of time of -- of an additional
12 thirty days, which they denied. The result is a
13 request by Petitioner to expedite, which they have
14 not responded to yet. In -- in general, I believe
15 it's -- it's twenty-one days for comment.

16 MR. MAGER: The -- if I can jump
17 in, your Honor. The comments were due this past
18 Friday, and -- and were filed. And so I think the
19 schedule before FERC probably will depend upon
20 whether FERC decides to issue an order based on the
21 filings or set the matter down for hearings and/or
22 negotiations. At this point, they haven't done
23 anything since the filings were made this past
24 Friday.

25 MR. MICHAELS: And I agree.

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2 A.L.J. PRESTEMON: All right. I
3 think it's pretty clear that we have to proceed as
4 though --.

5 MR. MITCHELL: I -- I'll just
6 make one -- one further observation. FERC
7 generally makes its preliminary orders on filings
8 such as this within sixty days after the filing is
9 submitted. So, that's probably the first date
10 where you'll see something as to what FERC thinks
11 about going forward with the matter.

12 A.L.J. PRESTEMON: Well, that
13 just confirms what I was about to say is that we're
14 going to have to proceed as though we have to carry
15 this case forward at a -- a reasonable pace. So,
16 let me start over again.

17 We have -- let's just go around
18 now and, since we don't have any consensus on
19 issues apparently, let's go around and hear from
20 everybody as to what you believe are issues within
21 the scope of this phase of this proceeding.

22 And do you have anything more, Mr. Michaels?

23 MR. MICHAELS: No. Thank you,
24 Judge.

25 MR. MAGER: I think, as I see it,

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2 and I apologize if I'm repeating it, I think the
3 costs of the RSSA are an issue. The cost recovery
4 from customers is an issue. I think the duration
5 of the RSSA is an issue, particularly with respect
6 to how long is it going to take for the reliability
7 issue to be resolved and the RSSA terminated? What
8 is the status of the reliability solutions? Were
9 they started as expeditiously as they arguably
10 should have been? Those are issues in -- in
11 Multiple Intervenors' opinion.

12 A.L.J. PRESTEMON: Mr. Rigberg?

13 MR. RIGBERG: Yeah. This is Saul
14 Rigberg from Utility Intervention Unit. The -- the
15 U.I.U. agrees with the issues raised by Multiple
16 Intervenors. You know, a concern of ours is -- is
17 how this reliability issue developed? Why wasn't
18 it anticipated years ago and -- and steps taken
19 through the Company's expected reliability planning
20 processes over the years? It -- it seems, you
21 know, something we'd like to -- to explore.

22 A.L.J. PRESTEMON: All right.

23 So, both of you seem to be saying
24 that there's a question as to whether or not --
25 whether or not RG&E prudently initiated efforts to

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2 address the possible problem of -- of a Ginna
3 closure.

4 What would you suggest would be
5 the issue as to -- as to a -- a remedy if it were
6 found that this process was not started --?

7 MR. RIGBERG: Well, one remedy
8 would -- would -- would affect cost recovery, you
9 know, who's going to bear the brunt of this
10 contract? If in fact the company should have
11 anticipated that the contract -- I assume they knew
12 that when the contract was going to be ending since
13 they were a party to the contract, and they should
14 have -- maybe they took -- maybe they did do an
15 analysis in this and felt that Ginna was earning
16 sufficient revenues, and there was no need to be
17 concerned.

18 But, maybe not and -- and maybe
19 plans for new transmission should have been
20 developed years ago in anticipation of the end of
21 the contract. And if so, ratepayers should not be
22 bearing the brunt of paying for this RSSA.

23 A.L.J. PRESTEMON: Okay.

24 MR. MAGER: If I could elaborate?
25 I -- and I wouldn't want the record to indicate

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2 that these are necessarily petitions, and I
3 definitely will advocate in the case. I mean,
4 we're kind of at the posture of the case where an
5 agreement almost akin to a settlement has been
6 filed, but none of the other parties have been
7 involved in any of the negotiations. And you know,
8 discovery hasn't really begun on the RSSA. And so,
9 these are all I would characterize as potential
10 positions.

11 But there -- there were reports,
12 financial reports, indicating the possible
13 questions about the economic viability of Ginna, at
14 least as early as the beginning of 2013. And so
15 there's an issue of what steps, if any, were taken
16 to address the potential retirement of Ginna. And
17 that goes to not only should a reliability solution
18 have been in place that would have obviated the
19 need for the RSSA, but it also goes to the
20 potential duration of the RSSA.

21 I mean, even if -- even if an
22 RSSA was necessary, potentially had -- had certain
23 steps been taken earlier, the duration and the
24 total cost of the RSSA maybe -- maybe, arguably,
25 could have been less than what it -- it appears to

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2 be now.

3 So, those are kind of the -- the
4 issues that we at least want to explore in the
5 case.

6 A.L.J. PRESTEMON: Okay. So what
7 all of this boils down to, essentially, your view
8 that there is a possible issue concerning the cost
9 of this solution that might have been mitigated by
10 earlier efforts on the part of RG&E.

11 Mike, is that right?

12 MR. MAGER: Well, I think -- I
13 think that's an accurate way of describing the --

14 A.L.J. PRESTEMON: Okay.

15 MR. MAGER: -- kind of what's
16 been called today as the kind of prudence-related
17 issues. I -- I would say that there's also an
18 issue of understanding the derivation of the costs
19 in this agreement, the costs if -- if the agreement
20 is terminated early, call -- the RSSA calls for
21 significant payments. There's -- there's other
22 cost-related issues.

23 A.L.J. PRESTEMON: All right.
24 Okay. Let's continue to go around. Anybody here
25 have issues they'd like to raise?

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2 MR. MITCHELL: I -- I think I
3 generally concur with the -- the delineation of the
4 issues. I think there is maybe a sub-issue within
5 the cost concern that I'd like to be able to
6 explore a little bit more fully. And that is
7 whether Ginna requires the full amount of the cost
8 recovery that's being proposed in the agreement in
9 order to continue operation of the generating
10 facility or whether there's some lesser known what
11 they call going-forward costs that would be
12 sufficient to keep the Ginna plant in operation.

13 A.L.J. PRESTEMON: And that's
14 just -- that's another aspect of whether the costs
15 of this agreement are correct. So everybody seems
16 to be focusing on whether or not the costs of this
17 contract are -- this agreement are correct and --
18 and necessary.

19 Next?

20 MS. AZULAY-CHASNOFF: Thank you.
21 We have a number of issues we would like to bring
22 forth. We agree with previous speakers around the
23 issue of lack of planning for the expiration of the
24 power purchase agreement and the failure to examine
25 reliability issues and search for alternatives

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2 earlier.

3 We would also like to bring
4 forward the issue of permanent closure of Ginna
5 upon the termination of the contract and
6 decommissioning issues to protect human health and
7 the environment. We think that there's a real
8 public interest here in the State and the Public
9 Service Commission getting involved in negotiations
10 through this contract and how Ginna will be
11 decommissioned.

12 We agree that it should be
13 explored whether RG&E should bear the costs of the
14 contract, instead of ratepayers. And we also have
15 some other consumer protection issues with the
16 contract, including the interest charges on the --
17 basically, the contract is -- is meant to be
18 retroactive to April 1st. And the amount of money
19 that would be collected on payments that should
20 have been made from April 1st, we don't think the
21 ratepayers should have to pay interest on those.

22 We also -- we have just have a
23 few -- we think that if Ginna continues -- we -- we
24 believe there should be a permanent closure as part
25 of this contract. But if Ginna continues operating

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2 after the terms of the -- after the term of the
3 contract, right now there's a sort of clawback part
4 of this contract where Ginna would have to pay back
5 some of the costs related to capital expenses.

6 We would like to discuss them
7 paying back all of the costs back to -- to
8 ratepayers, if that -- if there isn't a closure
9 as -- as part of the contract.

10 And we're also worried about lack
11 of accountability measures. If there is an
12 unplanned shutdown of Ginna that causes a
13 reliability issue, whether, you know, because of a
14 force majeure, or because of equipment failure, or
15 all manner of things that can happen to a nuclear
16 power plant, we would like to see some
17 accountability measures and -- and a possible way
18 that Ginna would -- would pay damages.

19 And then finally, I'm not sure if
20 this fits in this section, we have some process
21 issues that we'd like to bring about the
22 proceeding, itself.

23 A.L.J. PRESTEMON: We'll get to
24 that in a minute. But I think you were essentially
25 raising a number of issues with the RSSA, itself,

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2 essentially asserting that some of the terms of the
3 agreement are unjust and unreasonable.

4 MS. AZULAY-CHASNOFF: Yes.

5 A.L.J. PRESTEMON: Rate terms and
6 conditions under the Public Service Law. All
7 right. Thank you.

8 And now, Petitioners?

9 MS. KINSCH: Thank you, your
10 Honor.

11 MS. AZULAY-CHASNOFF: I'm sorry.
12 I think we have one more speaker
13 here.

14 A.L.J. PRESTEMON: Oh, I'm sorry.
15 I forgot -- yeah.

16 MS. WARREN: I just want to raise
17 the fact that, in trying to act in the public
18 interest, it's been very difficult because there's
19 been so few documents available to us. A large
20 number of documents that are critical to this case
21 in terms of reliability and search for alternatives
22 have not been available. And so that's an issue
23 that we'd like to get into at some point about what
24 documents we can have more access to.

25 A.L.J. PRESTEMON: All right.

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2 Thank you. We'll be getting on
3 to that, later.

4 Ms. Saia -- Saia?

5 MS. SAIA: Your Honor -- your
6 Honor, just quickly. You read M.I.'s pleading at
7 FERC. I'm expecting you read Entergy's, as well.
8 The concern we raised there is the concern we have
9 here as well. It goes to the scope and duration of
10 the contract and, at this point, very limited
11 information coming from RG&E, really, on this
12 latest GRTA identified alternative. There was
13 actually more information provided in the Rochester
14 case, the 2011 case, than in this case.

15 And we need to have some
16 information around the term of that, how long it's
17 going to take. There's references to the potential
18 it could shorten the duration of the contract.
19 There's references in a letter in another case to
20 the fact that they plan to use transformers that
21 they had already ordered and were already
22 commissioned. And I don't even know if they're in
23 Rochester or where they are.

24 All of that information is, I
25 think, helpful information for this proceeding to

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2 understand the duration of the contract.

3 A.L.J. PRESTEMON: I'm very much
4 inclined to agree with you, Ms. Saia, having just
5 read the letter again filed by RG&E on December
6 23rd. It certainly seems that we need to
7 understand what the -- exactly what the
8 relationship is -- the potential relationship of
9 the Ginna reliability transmission alternative is
10 to the RSSA and continued operation of the Ginna
11 plant, and what impact it could have on -- what
12 impact it does, will, or potentially could have on
13 it.

14 As far as I understand, there
15 hasn't been any additional information filed with
16 the Commission since that letter in the Rochester
17 Area Reliability Project case or in this case. So,
18 if you could comment on that, as well, when you
19 discuss whatever issues you believe you need to
20 consider in the case.

21 And we'll move on to you now.

22 MS. KINSCH: Thank you, your
23 Honor. The scope in this proceeding should be very
24 limited and limited to the reasonableness of RG&E
25 entering into this particular RSSA.

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2 And just as a reminder to
3 everyone, this proceeding -- let me back up.
4 January of 2014 was when RG&E was notified that
5 Ginna may be retiring the facility. There was then
6 a petition filed in July of 2014 by Ginna, asking
7 for this proceeding to be opened, and then an order
8 by this Commission that RG&E should negotiate an
9 RSSA. And it was found that RG&E's entering into
10 negotiations was reasonable.

11 What's before us is the
12 reasonableness of that RSSA, which is now in the
13 record. The duration should not be an issue in
14 this proceeding. There's a term in the RSSA. And
15 it is the RSSA may be terminated by Petitioner at
16 their own discretion, should the transmission
17 facilities be put into place sooner than would
18 otherwise be expected.

19 In addition, transmission
20 planning is not -- in our view, not an issue in
21 this proceeding. Prior to the notification by
22 Exelon that they may seek to retire the facility in
23 January 2014, RG&E was planning for a potential
24 outage, long-term outage of the facility. There's
25 a project that had been proposed, which is the

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2 Rochester Area Reliability Project that's been
3 pending before this Commission for quite some time.

4 The -- at the time that the RG&E
5 was notified that there may be an imminent
6 retirement, we took additional steps, including
7 reliability study that shows that the NYISO
8 undertook and that we confirmed, showing that there
9 is a need for this facility in the short term. In
10 the short term, there is no other alternative.

11 In addition, I would argue that
12 the surcharge mechanism, in and of itself, is not
13 relevant to this proceeding. If there was -- the
14 impact was under -- I should say not relevant for a
15 hearing. If the impact was under two and a half
16 percent, there would be no hearing on the
17 surcharge. We'd be discussing the matter on papers
18 before the Commission. So, the particular
19 surcharge mechanism that's been proposed, the
20 impact I think is tied to the reasonableness of
21 whether RG&E should've executed this agreement.

22 Decommissioning and permanent
23 closure of Ginna are outside the scope. Those are
24 issues that should be addressed with the N.R.C.
25 Ginna has, by the way, a license until 2029. And

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2 based on that, that's another reason RG&E would
3 not -- you know, had no reason to believe that it
4 would be retiring sooner.

5 Did I cover? What am I missing?
6 The GRTA, I think your Honor -- excuse me. Sorry.

7 A.L.J. PRESTEMON: I already
8 checked my phone.

9 MS. KINSCH: I'm sorry.

10 (Off-the-record discussion)

11 MS. KINSCH: The GRTA, as parties
12 have referenced, is also, I believe, outside the
13 scope of this proceeding. The GRTA is a
14 transmission project that has been proposed by RG&E
15 that will allow the facility to retire and to
16 retire in, arguably, sooner than it otherwise would
17 be able to.

18 There is evidence on the record
19 in another proceeding regarding that project and
20 I'm happy to answer certain questions, but I don't
21 believe that that should be within the scope of the
22 hearing. And maybe that's best handled by
23 discovery.

24 A.L.J. PRESTEMON: It's a
25 possibility. My -- let's assume -- and I -- that

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2 RG&E -- first of all, RG&E was directed by the
3 Commission to negotiate an agreement. So there is
4 clearly nothing wrong with RG&E having negotiated
5 an agreement. There is, however, certainly a
6 legitimate question for other parties to this case
7 as to whether they did a good job in negotiating
8 that agreement, whether the amounts to be paid are
9 appropriate, whether the term is appropriate and
10 necessary.

11 All of these things, basically,
12 bear on the cost of this of this particular
13 solution to ratepayers. And although RG&E may have
14 done everything entirely properly and as directed
15 by the Commission, it seems to me that when we go
16 to approve or accept this agreement, we have to
17 take into account everything that has happened up
18 until now if we're going to determine whether the
19 term in particular is -- is correct.

20 We also have to have an
21 understanding of the settlement amounts provided
22 for in the agreement. As you mentioned, RG&E has
23 the discretion to terminate this agreement if it
24 doesn't need it, as long as the term is. But in
25 doing so, they have to make a settlement payment.

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2 So that tends to remove some of the benefit of
3 shortening the term, obviously. So, the overall
4 term of this agreement is still an issue as to
5 whether it's necessary.

6 So, it seems to me that although
7 the primary issue is whether or not the agreement
8 is reasonable, of course, that involves
9 investigating the current circumstances.

10 MR. MAGER: I completely agree --
11 agree, your Honor. I think what -- what's happened
12 in this case is the Commission has directed RG&E to
13 enter into an RSSA, and I don't think anybody here
14 is challenging their decision to enter into an
15 RSSA. They were directed to do so. What --
16 there's no Commission approval in terms of, you
17 know, this particular RSSA, its costs, the -- the
18 duration, the -- the timing and schedule of
19 implementing a reliability solution. None of that
20 stuff has been determined by the -- by the
21 Commission.

22 And the fact that the rate
23 impacts are so significant that a hearing is
24 mandated by law, I don't see how that changes the
25 scope at -- at all. I -- you know, even if -- even

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2 if there was no hearing, all these issues would
3 still be before the Commission on papers.

4 A.L.J. PRESTEMON: Mr. Michaels?

5 MR. MICHAELS: Thank you, Judge.

6 One -- one item that must be absolutely clear on
7 this record is that the Commission did not direct
8 any party to enter into an RSSA. What they did is
9 they ordered the parties to negotiate. So, whether
10 or not they entered one is completely separate.

11 Second of all, I just wanted to
12 comment that one item that yet has been discussed
13 by parties but has not been -- been addressed,
14 Judge, is the suggestion that we should also look
15 into the plant closing. And I would agree with
16 other comments that that is beyond the scope of
17 this proceeding.

18 MS. AZULAY-CHASNOFF: We believe
19 it's not in the public interest for consumers to
20 pay a subsidy for any longer than absolutely
21 necessary and that RSSA.s really should be a last
22 resort option, used only after all alternatives are
23 exhausted, and that generators requesting RSSAs do
24 so only as a last resort and as a prelude to
25 closure.

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2 And to ensure that, that's why we
3 are asking for a requirement that Ginna shut down
4 at the end of this contract. In -- in not
5 requiring Exelon to provide a clear notice that it
6 would shut down if it didn't get the subsidy,
7 the -- the Commission opened the door to any
8 generator that doesn't like the current market
9 conditions to try for a similar subsidy.

10 And so, we're asking that now the
11 Commission should really close this door by putting
12 generators on notice that closure at the end of an
13 RSSA is the rule and really ensuring that
14 ratepayers never prop up a generator that would
15 otherwise continue operating without a subsidy.

16 A.L.J. PRESTEMON: And that would
17 be your view, no matter what the circumstances are
18 at the termination of the RSSA?

19 MS. AZULAY-CHASNOFF: Can you
20 clarify the question?

21 A.L.J. PRESTEMON: I just want
22 to -- at -- at -- at the end of the -- at the end
23 of the RSSA, if an objective observer would say
24 that continued operation of the plant was in the
25 best interests of ratepayers, would you say that it

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2 still had to be closed because the RSSA was
3 completed?

4 MS. AZULAY-CHASNOFF: Do you want
5 to answer that one?

6 MS. WARREN: At this point, we
7 haven't determined that this RSSA is in the best
8 interest of ratepayers.

9 A.L.J. PRESTEMON: Well, I know.

10 MS. WARREN: So, first of all,
11 I -- I guess I'd like to step back a little. We
12 have a lot of questions about the reliability study
13 that was done. We're talking about a
14 forty-five-year-old nuclear reactor. We think
15 that -- that putting in place an RSSA for three and
16 a half years is actually threatening the
17 reliability in general because without putting in
18 places alternatives, then this -- this contract
19 could be extended in the future.

20 Not only could it break down in
21 that interim in the three and a half years, but we
22 could be ending up with a situation where we have
23 this reactor on life support and the consumers are
24 paying the bill. A forty-five-year-old reactor is
25 going to have breakdowns. It's -- it threatens

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2 reliability in the future.

3 So, we need to be on a path if we
4 have a firm closure date, we have a path in which
5 RG&E and everyone else knows we have to put in
6 place alternatives.

7 MS. AZULAY-CHASNOFF: I guess
8 just to directly respond to your question about
9 whether it would be in the public interest to keep
10 the plant operating, I -- I think that the only way
11 it would be in the public interest to continue
12 operating is if there continues to be a reliability
13 need. And so, I think that we're -- we -- we do
14 believe that if there's a reliability need, the --
15 an RSSA is appropriate, but as soon as that -- that
16 reliability need goes away, then the plant should
17 close.

18 A.L.J. PRESTEMON: Ms. Kinsch?

19 MS. KINSCH: Your Honor, if I
20 may?

21 A.L.J. PRESTEMON: Yes.

22 MS. KINSCH: Need is -- the
23 reliability need is really outside the scope of
24 this proceeding at this point because it's already
25 been determined by the Commission that there is a

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2 need. The NYISO did a need analysis that was filed
3 with the Commission. And the Commission, in its
4 order in November, determined that there is a
5 reliability need here.

6 A.L.J. PRESTEMON: And I would
7 like to ask right now if there's anyone here who
8 disagrees with that? Is there anyone here that
9 believes we can collaterally challenge the
10 Commission's findings in this case, the Commission
11 having found that there is a need for Ginna for
12 reliability purposes at this time? And I should
13 say other than a demonstration of changed
14 circumstances.

15 MS. AZULAY-CHASNOFF: We do have
16 some questions about the reliability study and also
17 sort of the -- the duration of the need and
18 particularly as it relates to possible other
19 alternatives that could be put in place. So, we --
20 we would like to open the record there and really
21 be able to -- to look at those questions.

22 A.L.J. PRESTEMON: You're saying
23 that there's potentially new information that if
24 the Commission had had at the time that it issued
25 its initial order, it might have come to a

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2 different conclusion?

3 MS. WARREN: Yes.

4 A.L.J. PRESTEMON: You're not
5 saying that the Commission was wrong when it issued
6 its order in the first place, necessarily?

7 MS. AZULAY-CHASNOFF: We're --
8 we're saying that the reliability study that was
9 done was very narrow in scope, and was done at the
10 request of Exelon, and did not have any other
11 parties in the market or -- or the public asking
12 about the -- or contributing to the methodology of
13 that reliability study or the scope of the
14 reliability study.

15 And because the search for
16 alternatives in this case was extremely brief, we
17 think that it's in the public interest to really
18 look at that and to see if there are other
19 alternatives that could shorten the duration of the
20 reliability need.

21 MS. KINSCH: Your Honor, I'd just
22 note that the time to -- for a petition for
23 re-hearing on the question of need has passed. And
24 I don't know what --

25 A.L.J. PRESTEMON: Yes, I --.

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2 MS. KINSCH: -- type of
3 information would be offered.

4 A.L.J. PRESTEMON: No. I'm --
5 I'm disinclined to -- to say that the scope of this
6 proceeding encompasses reexamination of the
7 Commission's findings in its order last year. It
8 found that there was a reliability need based on a
9 reliability study which was, unless someone has
10 something to the contrary, standard performed by
11 New York ISO in accordance with its procedures and
12 found that Ginna was necessary for reliability at
13 that time.

14 Now, things you brought up such
15 as the duration, that may be something that has
16 changed or could be changed, but --.

17 Mr. Mager?

18 MR. MAGER: Your Honor, I'm not
19 sure that this is necessarily an -- an issue that
20 Multiple Intervenors would explore, but I -- just
21 so the record's clear, I -- I'm not sure I would
22 agree with your Honor's characterization of this
23 reliability study as a standard study.

24 Typically, what happens is a
25 generator files a notice of retirement, a written

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2 one with the Commission, which is then posted on
3 the New York ISO's website and the New York ISO
4 works with the transmission owner and does a
5 reliability study, basically independent of the
6 retiring generator.

7 In this instance, it was the
8 owners of Ginna that initiated the study, selected
9 to some extent the scope of the study, in
10 particular the years examined.

11 And it's not totally clear who
12 did what and what. And so I -- I think clearly the
13 Commission has found that there is a need
14 warranting an RSSA. So I -- I -- you know, I think
15 I'm hesitant to open that issue up, at least in
16 terms of MI's participation in the case. But I --
17 I also -- I -- I don't think that this is
18 necessarily the standard reliability study that's
19 done in similar situations.

20 A.L.J. PRESTEMON: All right.

21 MS. WARREN: Your Honor? Your
22 Honor?

23 A.L.J. PRESTEMON: Yes?

24 MS. WARREN: I -- I'd just like
25 to put some of the -- the facts on -- on -- on the

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2 record, if I may. That reliability study predicted
3 an increase in demand of thirty percent in -- in
4 three -- four years. In fact, in that territory
5 the demand had gone down. The peak demand had gone
6 down fourteen percent in three years. So the --
7 the fact that that was going to turn around and
8 grow thirty percent in the next four years was
9 pretty incredible.

10 In addition, we looked at the
11 actual factors that ISOs use -- claims. It's just
12 under one percent for growth and peak demand. With
13 a peak demand of fifteen hundred and eight
14 megawatts, it -- it's pretty incredible to suggest
15 that we needed nineteen hundred and fifty-five
16 megawatts in 2018.

17 MR. LECAKES: Your Honor, with
18 all due respect, the -- the issues that were just
19 mentioned would have been or should have been known
20 at the time that the Commission passed on the
21 reliability study. That's not new information as
22 your Honor was asking for before. Therefore, it's
23 not proper to be put into this proceeding to
24 determine whether there should be a new reliability
25 study done or not. That should be -- that should

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2 have been used to attack the previous reliability
3 study.

4 MR. MCMANUS: Right, Ginna
5 concurs with Staff on that. The issue of need has
6 been resolved. It wasn't challenged by a petition
7 for re-hearing. It wasn't challenged by an Article
8 78 proceeding. It's now resolved and is not
9 subject to collateral attack here at this hearing.

10 We agree with RG&E's statement of
11 the scope this proceeding that it's limited to the
12 reasonableness of RG&E entering into the RSSA.

13 The issue of the rate, itself,
14 that is at FERC. Many of the parties that are here
15 today have already begun participating in that
16 process. So, there is an outlet for that here.
17 But otherwise, the scope for this proceeding is,
18 again, limited to the reasonableness of RG&E
19 entering into the RSSA.

20 A.L.J. PRESTEMON: The
21 reasonableness of entering into it and the
22 reasonableness of the terms of the RSSA, I would
23 assume.

24 MR. MICHAELS: And Judge, just to
25 specify, I started by saying prudence. It's

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2 Staff's position that that's the standard to be
3 used.

4 A.L.J. PRESTEMON: The standard
5 is that in entering into this agreement, RG&E was
6 acting prudently under the circumstances it faced
7 at the time?

8 MR. MICHAELS: Yes, Judge.
9 That's correct.

10 A.L.J. PRESTEMON: Anybody
11 disagree with that?

12 MR. MAGER: I guess I -- I'm
13 still thinking that one over, your Honor.

14 A.L.J. PRESTEMON: I am, too.

15 MR. MAGER: I -- I hate to have
16 my silence be construed as -- as agreement with
17 that. I have not -- I have not specifically
18 researched that.

19 Typically, in terms of the rate
20 recovery, at least from customers, you have -- the
21 Commission isn't required to determine that the
22 rates are at all times just and reasonable. And to
23 the extent this RSSA could result in -- in rates
24 that are not just and reasonable, the Commission
25 would have the authority to reject the RSSA. And

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2 so, I'm not sure that I would agree that as long
3 as -- as RG&E's actions are prudent, that the
4 Commission is precluded from modifying the RSSA or
5 addressing rate recovery from customers.

6 MR. FITZGERALD: Your Honor?

7 MS. KINSCH: Your Honor, if I
8 may?

9 A.L.J. PRESTEMON: Go ahead.

10 MS. KINSCH: Assuming FERC
11 accepts the agreement and proves the rate, then the
12 Commission cannot trap those costs by not allowing
13 RG&E to collect from customers what has already
14 been approved by FERC.

15 MR. MAGER: I disagree with that
16 entirely, your Honor. The FERC could -- FERC could
17 find that the compensation that RG&E is paying to
18 Ginna is reasonable according to FERC's standards,
19 and the PSC could say it's not reasonable for RG&E
20 to recover a hundred percent of those costs from
21 its retail customers.

22 The -- the recovery from end-use
23 customers is a retail issue that's before the PSC,
24 not FERC.

25 MR. RIGBERG: This is Saul

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2 Rigberg. I -- I agree with Mr. Mager. I -- I,
3 too, was puzzled by your -- your question about
4 whether the -- or the statement of Staff about the
5 standard is the prudent standard. And if that --
6 if that raises the bar in terms of protecting
7 ratepayers, I -- I think that's a -- that's an
8 issue.

9 And I think when we use the word
10 prudence, it -- it goes beyond what -- what was
11 just said recently goes to what we talked about
12 earlier about the actions of RG&E before the RSSA
13 was -- was negotiated, you know, the last couple
14 years and -- and that goes to cost-sharing issues.

15 And I also wanted to bring
16 back -- bring us back to the GRTA that was
17 mentioned earlier. And I'm not completely familiar
18 with that proceeding, but it's my understanding
19 that the only information relevant to this
20 proceeding so far is that letter that -- that was
21 talked about.

22 And I think we do need more
23 information to understand what's happening in that
24 proceeding and see how it relates to the term of
25 this RSSA.

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2 A.L.J. PRESTEMON: All right.

3 Let -- let me just say that prudence is a standard
4 that's normally applied to expenditures that have
5 been made by a utility to determine whether the --
6 the expenditures were made properly at the time,
7 given what the utility knew at that time.

8 In this case, it may be there may
9 be a question of prudence as to whether or not RG&E
10 should have entered into an RSSA, negotiated an
11 RSSA. That was pretty much determined by the
12 Commission, which told them to do so. But, the
13 terms of the RSA -- RSSA are not yet in effect.
14 They haven't been accepted by the PSC or by FERC.
15 So, it doesn't seem to me that prudence -- the
16 issue of prudence applies to potential future
17 payments that may not have to be paid.

18 MR. LECAKES: Your Honor, I -- I
19 agree with your characterization of how you
20 presented the prudence standard, although I would
21 mention that, while we do agree with counsel,
22 actually all counsel here, that reasonableness is
23 something that we need to look at, whether
24 something is prudent is -- is the overall
25 determination. And reasonableness is a component

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2 of finally getting to that determination of
3 prudence.

4 If something is unreasonable, it
5 is very likely that it might have been not prudent
6 as well, although there could be mitigating
7 factors. Whereas something cannot be imprudent and
8 yet reasonable, as far as Staff is concerned.

9 A.L.J. MULLANY: Can I -- Can I
10 ask a question?

11 A.L.J. PRESTEMON: Please.

12 A.L.J. MULLANY: I'd like to just
13 go back a little bit to a distinction -- I want to
14 try and clarify a distinction that I had in my mind
15 between the reasonableness of the utility's
16 decision to enter into this particular agreement as
17 distinguished from whether or not the prices paid
18 under the agreement are reasonable.

19 I believe Mr. Mager, a moment
20 ago, you were saying that if FERC were to approve
21 the costs under the RSSA, the PSC could nonetheless
22 examine that question also?

23 MR. MAGER: What I was getting
24 at, your Honor, was if -- if FERC approved the
25 price that -- that RG&E is paying to Ginna to

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2 continue operating, in my opinion, it would still
3 be within the Commission's power to examine whether
4 RG&E should be allowed to recover one hundred
5 percent of those costs from customers -- from
6 retail customers.

7 And to me, that's the retail
8 rate's issue. For instance, hypothetically, and
9 again I -- I at this point, we haven't done
10 discovery, and I don't know any, you know, what
11 RG&E did or did not do. But there -- there were
12 published reports in financial journals, raising
13 the future economic viability of Ginna as early as
14 January 2013. I don't know yet how quickly RG&E
15 acted to plan for the possible closure of Ginna and
16 take steps to implement a reliability solution
17 sooner rather than later.

18 But, certainly I -- in our
19 opinion, we could -- I could envision FERC finding
20 that the total compensation to Ginna is reasonable
21 in terms of compensating Ginna for continuing to
22 operate, whereas the PSC could also find that this
23 reliability solution should have been able to be
24 implemented a year earlier than the scheduled
25 expiration of the RSSA, and in which case perhaps

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2 customers should not have to bear a hundred percent
3 of the RSSA's costs or any of the costs beyond
4 when --.

5 A.L.J. MULLANY: Aren't those
6 separate issues, though? One -- one is the issue
7 of the payments under the agreement. And the other
8 is the issue as to whether or not the agreement
9 should have been entered into at a particular point
10 in time.

11 MR. MAGER: Yeah, am I -- maybe
12 I'm misunderstanding your Honor's question then?

13 A.L.J. MULLANY: My understanding
14 is that under Mississippi Power, if this is a
15 wholesale sale, and the payments under the
16 R.S.A. -- RSSA are for this sale at wholesale of
17 electric energy, that's federal jurisdiction.
18 Under Pike County, there's a limited inquiry as to
19 whether or not it was reasonable for the utility,
20 at the time, to enter into this particular
21 agreement, given the alternatives it had and what
22 it knew at the time.

23 Is there disagreement on that,
24 among the room? I believe -- is that your
25 position, Ms. Kinsch?

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2 MS. KINSCH: Yes, it is.

3 MR. MAGER: Well, your Honor --.

4 A.L.J. MULLANY: Is there -- is
5 there disagreement with that?

6 MR. MAGER: Your Honor, I'm --
7 I'm not saying I -- I agree or disagree. I'm not
8 sure that this is the sale of -- of energy in
9 capacity. My understanding is that all of the
10 output of the Ginna plant is going to be sold into
11 the market and that this is -- this RSSA is -- is
12 the payments are primarily to keep the unit
13 operational, as opposed to retiring. So, it's
14 not --.

15 A.L.J. MULLANY: So the
16 consideration being given by Ginna to RG&E is the
17 agreement not to close the plant?

18 MR. MAGER: That's our
19 understanding. There's a -- yes. There's --
20 there's an offset against the monthly payments
21 based on a percentage of the wholesale market
22 revenues that would flow back to RG&E to reduce the
23 monthly payment. But basically, the monthly
24 payment under the RSSA is -- our understanding is
25 that it's not for any energy or capacity or any

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2 other output product of the unit, but simply to pay
3 Ginna to keep the unit available for reliability
4 purposes.

5 A.L.J. MULLANY: Does Staff have
6 a position on that?

7 MR. MICHAELS: Judge, overall we
8 agree with the way that -- that you opined, as you
9 stated earlier that --.

10 A.L.J. MULLANY: I believe I
11 posited. I don't know that I opined.

12 MR. MICHAELS: That you stated,
13 Judge. And specifically, we find the same thing
14 that, again, it -- it's a reasonable --
15 reasonableness issue as to whether they should have
16 entered into the RSSA.

17 A.L.J. MULLANY: Can I ask
18 whether Staff yet has -- and I'm not binding you to
19 this, obviously. This is a procedural conference,
20 so I understand and I'm mindful of the caveats Mr.
21 Mager offered earlier about positions being taken
22 today. But just in term -- for the limited purpose
23 of figuring out the scope of a hearing and whether
24 or not this will be an issue, does Staff have an
25 issue to whether or not that compensation being

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2 paid under the RSSA is consideration for the energy
3 and capacity output by the plant or, instead,
4 consideration for Ginna's agreement not to retire
5 the plant for reliability purposes?

6 MR. MICHAELS: Judge, it's my
7 understanding it was as Mr. Mager described.

8 A.L.J. MULLANY: Okay. All
9 right. Thanks.

10 MR. MAGER: Your -- your Honor,
11 if I could get back to this issue for a minute, you
12 know, my understanding of -- of the prudence issue
13 when we characterize the real issue in this case is
14 prudence, that really opens the door for a lot of
15 what's been talked about more broadly in other
16 areas, you know, cost and -- and duration of the
17 contract and so on.

18 But I have a little bit of a
19 concern with calling that a prudence issue because,
20 in my experience, prudence generally means, you
21 know, there's -- there's -- there's a presumption
22 of prudence on the part of the utility, and then
23 the burden is on the other parties to show that the
24 action in question was not prudent.

25 And I would hope that in this

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2 case that the burden would not shift by the
3 declaring all these issues to exist under the --
4 under the umbrella of prudence, but instead, that
5 the burden would be on Petitioners to demonstrate
6 that what they did was reasonable and prudent.

7 A.L.J. MULLANY: I mean that may
8 be -- that may be the case in -- in what I'll call
9 a customary prudence inquiry. You know, the LILCO
10 case says that Staff has to at least make
11 credible -- raise a credible question about whether
12 a utility was prudent before the burden shifts to
13 the utility to make a showing of prudence, but this
14 is a different context.

15 This is a request or a petition
16 for review and approval of an RSSA. So I'm not
17 sure I agree with -- with what you stated. How do
18 you reconcile what you just described with the
19 LILCO case and the fact that we're in a different
20 context here?

21 MR. MAGER: I was just, you know,
22 focusing on the -- on the term prudence, and I
23 didn't want the use of the term prudence in this
24 case to shift the burden.

25 MR. RIGBERG: Your Honor, this is

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2 Saul Rigberg again. You know, I think we have to
3 go back to -- you know, to -- because I think we're
4 getting a little blurry in how we're looking at
5 this. I mean, from our perspective, RG&E will be
6 paying a subsidy, in effect, to Ginna so that they
7 can continue running. Just as people subsidize
8 solar generators, you know, they voluntarily sign
9 up with an ESCO that provides -- you know, has a
10 contract with a solar generator. You're paying
11 extra if something happens. So, you can support
12 the solar entity.

13 So here ratepayers are being
14 asked to subsidize the operation of Ginna. And
15 it -- it's -- so, it's not a -- it's not -- we're
16 not involved with, you know, energy and capacity
17 markets and the NYISO markets. This is just a
18 subsidy. And the question is -- one of the
19 questions is are the rates being charged, or
20 proposed to be charged to ratepayers just and
21 reasonable. So the burden is on the utility to
22 show that these rates are just and reasonable.

23 A.L.J. PRESTEMON: Do you have
24 any disagreement with that? Yes, Ms. Kinsch?

25 MS. KINSCH: Yes, because FERC

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2 will determine whether it's reasonable -- whether
3 the rate is reasonable. And that I think we just
4 come back around full circle to what's the standard
5 here? In discussing the standard is whether or not
6 RG&E was reasonable in entering into this RSSA.

7 A.L.J. PRESTEMON: So you're
8 saying that we're not going to consider whether the
9 rates that are established by the agreement are
10 reasonable?

11 MS. KINSCH: No. I think we
12 would establish that, given the circumstances, RG&E
13 entering into this particular RSSA is reasonable.

14 A.L.J. PRESTEMON: There's two
15 parts of that. I mean, does any -- you're
16 saying -- there's a question as to whether or not
17 it was reasonable for RG&E to enter into an RSSA.
18 And does anybody disagree that that question was
19 resolved by the Commission when it directed RG&E to
20 negotiate an RSSA, not this particular RSSA?

21 I think that particular question
22 has been resolved, unless there's some disagreement
23 here.

24 So the question is whether it was
25 reasonable for RG&E to enter into this RSSA. And

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2 how can we consider that question unless we
3 consider the terms of the RSSA under the current
4 circumstances as we know them or will find out
5 about them?

6 MR. MICHAELS: Staff agrees,
7 Judge.

8 A.L.J. PRESTEMON: All right.
9 Staff believes that we are going to be looking into
10 the reasonableness of this term based on what we
11 know now and is not arguing with RG&E about having
12 entered into an RSSA. Is that correct?

13 MR. MICHAELS: That's correct,
14 Judge.

15 A.L.J. PRESTEMON: And
16 Petitioners are saying that we are only to consider
17 whether or not it was reasonable for RG&E to enter
18 into an RSSA, which no one disagrees with, but we
19 can't look into the terms because that's going to
20 be decided by FERC?

21 MS. KINSCH: No. I think we're
22 saying the rate's decided by FERC.

23 A.L.J. PRESTEMON: Can you
24 clarify for me, Ms. Kinsch, what factors would bear
25 on the Commission's inquiry as you've described it?

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2 MS. KINSCH: We would look at
3 whether -- given the circumstances, whether it
4 would be -- whether it was reasonable for RG&E to
5 enter into this RSSA. In other words, are there
6 alternatives? And we've, you know, already said on
7 the -- on the record -- well, it might not be
8 public yet, but there are no other alternatives at
9 this point.

10 So, we -- I think the way we were
11 viewing it is that if there was a hearing, it would
12 be limited in scope. We would present a couple of
13 witnesses who could explain some of the terms,
14 which are negotiated terms, and could explain how
15 there is no other alternative than this -- than
16 entering into this RSSA.

17 A.L.J. MULLANY: So -- so would
18 the utility have the burden to show there was no
19 other alternative, in other words, and would
20 parties be allowed to question that and examine
21 what utilities show? Because that puts
22 alternatives square into the scope of this
23 proceeding; right?

24 MS. KINSCH: Well, I think we --
25 we've made that showing already. Albeit not

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2 necessarily -- there -- there's information that
3 was filed confidentially, so the way we -- yes. So
4 I guess what we were thinking of what would go on
5 the record at a hearing would be the RSSA -- the --
6 the reliability study, the RSSA, our terms for a
7 tariff, and the analysis we had done of the R.F.P.
8 responses.

9 If individuals wanted to question
10 our witnesses on the RFP and that analysis,
11 arguably that could be in the scope, yes.

12 MR. MICHAELS: Judge, if I may?
13 The Staff agrees that within the RFP that was
14 mentioned in the order from November, that was
15 confidential. However, and understandably,
16 everyone in this room is a vet of this material and
17 understands the confidentiality of it.

18 However, I've discussed with RG&E
19 that they can create, for the purposes of this
20 hearing, a document to present to maintain
21 confidentiality of those who presented results to
22 their -- their requests for proposals, so who
23 presented proposals they can keep confidential
24 their names, their company, et cetera, and they
25 can, instead, call the proposed project a number, a

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2 color, the orange project.

3 They can detail what was offered
4 and that way those here in this proceeding can
5 compare this and all the projects that were offered
6 compared to the RSSA.

7 A.L.J. PRESTEMON: Okay. We are
8 going to get -- we're going to talk about
9 confidentiality issues later here, but I wanted to
10 go back to what Ms. Kinsch said.

11 Are you saying that it is
12 sufficient for Ginna to show or RG&E to show that
13 an RSSA agreement was the only alternative
14 available at the time and, if it shows that, that
15 means that this RSSA agreement is necessarily
16 reasonable?

17 MS. KINSCH: Yes, and that that
18 agreement is less than what Exelon could otherwise
19 recover at FERC's full cost -- what it has filed at
20 FERC as its full cost service, recognizing that the
21 rate --

22 A.L.J. PRESTEMON: But that --

23 MS. KINSCH: -- will be approved
24 by FERC.

25 A.L.J. PRESTEMON: -- that's an

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2 argument going to whether or not the agreement is
3 reasonable, which is what we're arguing over as to
4 whether or not RG&E has to show that this agreement
5 is reasonable.

6 Mr. Mager?

7 MR. MAGER: Yeah, just two quick
8 points in response. Even if an RSSA was the only
9 alternative to maintain reliability in the short
10 term, that doesn't mean that this particular RSSA
11 is just and reasonable.

12 There could have been ten other
13 RSSAs that could have been negotiated between the
14 parties, and we'll never know because we weren't
15 involved in the negotiations. But to say that this
16 is the only RSSA that possibly could have been
17 negotiated, I think is a real stretch.

18 And I'm just looking at RG&E's
19 petition to the Public Service Commission. They're
20 asking the Public Service Commission to find that
21 the RSSA is just and reasonable and in the public
22 interest. I mean I -- I -- you know, I -- I think
23 the Commission's authority here and its -- and its
24 obligation to -- to customers and the public
25 interest covers a lot more than just merely noting

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2 the fact that an RSSA was negotiated.

3 A.L.J. PRESTEMON: Well that's,
4 frankly, my concern, as well. I mean if we all
5 agree that an -- a transmission alternative site
6 couldn't be built and let's say miraculously in
7 less than six months, it's probably a lot longer
8 than that, but --

9 MS. KINSCH: Right.

10 A.L.J. PRESTEMON: -- then
11 something else has to be done. But that doesn't
12 necessarily imply that we need a
13 two-and-a-half-year RSSA or that we need an RSSA
14 that has the settlement amounts in it that this
15 does.

16 I'd like to know why those issues
17 could not be raised in this proceeding?

18 MS. KINSCH: One item for
19 consideration is that the contract was negotiated
20 as a whole. So it's a negotiated agreement between
21 two parties with give and take. So to the extent
22 we start cherry picking on specific individual
23 aspects of that agreement, I think that's beyond
24 the scope.

25 A.L.J. PRESTEMON: So you're

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2 saying the Commission has no alternative but to
3 either reject this agreement in its entirety or
4 accept it in its entirety? Has it ever taken that
5 position on any other proposal put before it, joint
6 proposal, for example?

7 It seems to me that the standard
8 language that goes into almost every one of these
9 is that every one of the SAPA notices concerning a
10 joint proposal is that the Commission may modify
11 this agreement, reject it, accept it in whole or in
12 part.

13 I understand that if the
14 Commission started picking apart this agreement, it
15 might reach a point where it became unacceptable to
16 one of the other parties and that's something we'd
17 have to be concerned with. But I'm not sure
18 precludes examination of the individual terms.

19 Does anybody else?

20 MR. MAGER: I -- I agree, your
21 Honor. I mean, clearly, Ms. Kinsch is right. This
22 is -- this was a negotiation between two parties
23 that presumably made concessions to each other and
24 it -- you know, that should be taken into effect.
25 But to say that the Commission doesn't have the

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2 authority to -- to modify it, I think would --
3 would be overstating the case.

4 The RSSA gives the parties the
5 right to terminate the RSSA if it's modified by the
6 Commission in an unacceptable manner. I -- I know
7 from numerous joint proposals in the rate case
8 context, the Commission has from time to time
9 modified the joint proposals and then have
10 requested parties, or at least the utility, to
11 indicate whether accepted the modified terms
12 unconditionally or not. And so, presumably, that
13 would be an option in this case, as well.

14 MS. AZULAY-CHASNOFF: Your Honor,
15 I would also like to add agreement to that and to
16 point out that the public was not a party to this
17 negotiation. And I think that that's part of why
18 this hearing needs to happen and why this -- this
19 process needs to happen, so that the public and the
20 public interest and the ratepayers have a say in
21 what is done with our money.

22 And I think that's also part of
23 why Mr. Mager is making this distinction between
24 whether it's reasonable for RG&E to pay Ginna to
25 continue operating for some period of time and

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2 whether it's reasonable for RG&E to pass those
3 costs on to the ratepayers. And I think those are
4 two different issues.

5 And I -- and I think the
6 reasonableness of passing the -- the -- the costs
7 of this on to the ratepayers really should be
8 subject at the hearing.

9 A.L.J. PRESTEMON: All right.
10 Back on the -- on the issue of the -- the RSSA and
11 its treatment as a whole, can somebody for the
12 Petitioners explain the purpose of Section 10.3 of
13 the agreement? It seems to provide that if -- if
14 the Commission or FERC provided for cost recovery
15 that was not satisfactory to -- to RG&E, then
16 the -- it didn't provide RG&E with a substantially
17 contemporaneous recovery of the costs of the
18 agreement that the recovery time could be extended.

19 I mean is it in lieu of
20 terminating the agreement?

21 MS. KINSCH: Your Honor, will you
22 identify which -- which subsection of 10.3 you were
23 referring to?

24 A.L.J. PRESTEMON: B -- B.

25 MS. KINSCH: B? Okay. Your

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2 Honor, can you pose your question again, please?

3 A.L.J. PRESTEMON: The way --
4 this really goes to the timing of this phase of the
5 proceeding and how quickly this has to be done.
6 But that -- that provision seems to say that if
7 RG&E is not able to collect the amounts it pays on
8 a substantially contemporaneous basis, it will
9 reduce the payments to what it is allowed to
10 recover and then will extend the term of the
11 payments until Ginna has really received the full
12 amounts. But it doesn't -- in other words, the
13 agreement isn't -- the timing of -- of approval of
14 the agreement should not overall have an impact on
15 the parties -- financial impact on the parties.

16 MS. KINSCH: Generally, yes.

17 A.L.J. PRESTEMON: All right.

18 Thank you.

19 MS. KINSCH: There's some
20 specifics around that that I don't think are worth
21 getting into right now.

22 A.L.J. PRESTEMON: Okay.

23 A.L.J. MULLANY: Can I -- can I
24 ask you just to clarify something for me, Ms.
25 Kinsch? In describing what you anticipated your --

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2 your case would look like, you mentioned the RSSA,
3 the reliability study, the terms of the utility's
4 tariffs, and the analysis of the RFP that was
5 conducted. Is it your position that the scope of
6 consideration of potential alternatives is limited
7 to the RFP? I -- I want to understand the basis
8 for your position that the GRTA is outside the
9 scope of --?

10 MS. KINSCH: The GRTA -- the GRTA
11 can -- will not be built in -- will not be built in
12 the short term. So in the short term, for the
13 period of time that we're talking about for this
14 RSSA, there is no transmission alternative.

15 A.L.J. MULLANY: Now, when you
16 say the short term, do you mean the three years of
17 the RSSA, or do you mean something less than that?

18 MS. KINSCH: The proposed
19 in-service date for the GRTA is December -- June
20 2017 -- June 2017.

21 A.L.J. MULLANY: Okay. So,
22 that's --.

23 MS. KINSCH: At -- at the late
24 end.

25 A.L.J. MULLANY: Okay. So it

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2 would be in the third year of this agreement.
3 Wouldn't that put it within the scope of
4 alternatives, potentially?

5 MS. KINSCH: No, because you
6 would need the RSSA in the -- for the period
7 leading up to that.

8 A.L.J. MULLANY: Yes. For the
9 first year, couple -- or two years and some months;
10 right? April to June?

11 MS. KINSCH: But it gives RG&E
12 the -- we have the right to terminate that
13 agreement as soon as that transmission solution is
14 in place.

15 MR. MAGER: Your Honor, if I can,
16 I think that this is a good example of why -- of
17 why some of these issues really need to be examined
18 here. I don't recall ever seeing that the GRTA has
19 a scheduled completion date by June 2017.

20 But as I look at Exhibit One of
21 the RSSA, as I understand this, if the RSSA was
22 terminated in June of 2017, based on the GRTA being
23 completed at that time, as we now understand may be
24 the case, we're looking at a settlement payment of
25 over fifty-two million dollars that RG&E would have

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2 to make to Ginna that it presumably would have to
3 recover from customers.

4 And so I'm sitting here today,
5 wondering why customers should have to pay
6 fifty-two million dollars plus for this RSSA to
7 terminate at the same time that the GRTA is now
8 scheduled to be completed.

9 A.L.J. PRESTEMON: That's --.

10 MS. AZULAY-CHASNOFF: We have the
11 same question.

12 A.L.J. PRESTEMON: I have a lot
13 of questions. Can you perhaps give a real -- a
14 simple explanation of why the settlement payment
15 descends over time from forty-three million to
16 eleven million, then jumps the next month to
17 fifty-five, and begins to descend again from there?
18 I would -- I would think a settlement payment would
19 get smaller over time, linearly, more or less.

20 MS. KINSCH: It ties to a
21 refueling outage at the plant in the spring of
22 2017.

23 A.L.J. PRESTEMON: Okay. So
24 this -- this is a reflection of increased capital
25 costs that the Company would have to incur to keep

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2 the plant in operation for another year under the
3 agreement, in effect?

4 MS. KINSCH: I'm sorry. Can you
5 restate that?

6 A.L.J. PRESTEMON: So, the -- the
7 uptake in the settlement costs reflects capital
8 expenditures the Company would have to make at that
9 point in the agreement in order to keep the
10 agreement in force?

11 MS. KINSCH: Yes, fuel and
12 capital.

13 A.L.J. PRESTEMON: Okay.

14 MR. MAGER: But, your Honor, I --
15 I guess, and this is an issue for discovery as
16 well, is that the June '17 settlement payment is
17 fifty-two million dollars. The March '17 payment
18 is only eleven million. Even if you assume that
19 these are reasonable numbers, if the GRTA can be
20 completed in June of 2017, maybe by speeding it up
21 and throwing a little more money at it, it could be
22 completed three months earlier, and you'd save
23 forty million dollars in the settlement payment.

24 Or, because we don't -- we don't
25 know, based on the reliability study, which only

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2 looked at 2015 and 2018, is there a reliability
3 issue in the period March, April, May, June, which
4 is before this peak summer heating season? During
5 those shoulder months, there might not even be a
6 reliability issue. I don't know. But typically,
7 the reliability issues tend to run during the
8 summer peak heating season. So it's still not a --
9 a complete answer there.

10 MS. AZULAY-CHASNOFF: Your Honor,
11 we completely agree with -- with that. And that's
12 part of why we think sort of the -- the duration of
13 the reliability study and the actual nature of it
14 is important to this case.

15 A.L.J. PRESTEMON: Could I --
16 could I ask the Petitioners is there -- is there
17 any filing that's been made or any report that's
18 been issued that discusses the GRTA and -- and
19 comes up with this June 2017 completion date,
20 perhaps explains it?

21 MS. KINSCH: There's a filing in
22 the RARP proceeding that was made at the end of
23 December.

24 A.L.J. PRESTEMON: I saw that,
25 and it doesn't --.

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2 MS. KINSCH: I don't know that it
3 states --.

4 A.L.J. PRESTEMON: It doesn't
5 have any details like that. It doesn't say
6 anything about --.

7 MS. KINSCH: We have made
8 presentations to Staff and are having discussions
9 with other parties relative to -- of that facility
10 or that project.

11 A.L.J. PRESTEMON: Sir? Could
12 you come up to a microphone and -- and identify
13 yourself for the record?

14 MR. ECKHAUS: My name is Larry
15 Eckhaus. I'm Counsel for the Department of
16 Environmental Conservation, who's a party in the
17 RARP proceeding.

18 We have not decided whether to
19 become a party in this proceeding, depending on the
20 scope of the proceeding. But I've -- I -- I -- I
21 think I need to make the -- your Honors aware that
22 many of the issues regarding prudence have been
23 raised by the Department in the RARP proceeding, as
24 well as a need to investigate the GRTA, which, at
25 this point, is limited to information contained in

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2 that letter, which -- which indicates that it is
3 not -- that it is -- is in a pre-engineering phase,
4 and we don't know whether it will even work or not.

5 As -- and we also have a concern
6 with regard to the impact that the GRTA has on the
7 RARP from an environmental standpoint because we're
8 unclear whether the -- whether one may preclude all
9 or part of the other. And despite statements that
10 both are needed, there seems to be a conflict.

11 The prudence matter arises
12 because the GRTA was filed in 2011. And in 2011 --
13 the RARP was filed in 2011, but the GRTA was only
14 recently filed. There isn't anything that we know
15 that has happened since 2011 that made the GRTA
16 possible that couldn't have been possible in 2011.

17 So there are issues that need to
18 be raised. We're just not sure which docket this
19 is going to be addressed in or in a third docket.
20 I mean we -- we really don't know. And so we're
21 trying to figure out, as you are, what's going on
22 in this docket so we can determine whether to
23 intervene or not.

24 But there's -- there -- there are
25 similar issues in the other docket, and I'm not

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2 sure how one is going to affect the other.

3 A.L.J. PRESTEMON: As I recall in
4 the RARP docket, your position was -- recently, was
5 that you don't know enough about the GRTA to change
6 your position on the RARP case at this time. Is
7 that right?

8 MR. ECKHAUS: That -- that's
9 true. And we also indicated that whether the RARP
10 would even be necessary if the GRTA would be built,
11 and we filed some additional comments this morning
12 suggesting that the Commission really needs to take
13 a closer look at the GRTA before it did anything
14 else because everything is dependent on whether
15 this solution is actually the right one, which none
16 of us knows.

17 MS. KINSCH: Your Honor, the
18 answer is yes, the RARP and the GRTA are both
19 necessary. But that's -- those -- that's being
20 considered in -- the RARP is in a completely
21 different docket, and I don't think either of those
22 transmission projects should be brought into here.

23 The other item I just wanted to
24 mention, I said June 2017, that's an estimated
25 in-service date. Where -- when you start a

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2 project, there are many factors outside the
3 utility's control that can change that in-service
4 date. And that's one of the reasons that this
5 agreement is -- we can terminate at our discretion,
6 depending on when that -- that project is ready.

7 A.L.J. PRESTEMON: I think we've
8 gone about as far as we can on this question of
9 what issues are within the scope of this case. And
10 we'll have to take this under advisement and
11 include something in our procedural ruling that
12 addresses it to the extent that we can.

13 One of the difficulties is,
14 without being able to determine exactly what we're
15 going to be covering in this case, we have to come
16 up with a schedule. And I'm sure there hasn't been
17 any consensus reached on a schedule at this point.

18 MR. MICHAELS: Judge, Staff does
19 have a proposed schedule. And it -- it's more out
20 of consideration of the time in between the dates.
21 The dates were almost set as arbitrary positions
22 based on today's conference.

23 So if I can put this out for
24 entertainment, March 17th all discovery requests
25 would be due. Ten days, March 27th, all responses

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2 are due. After that, roughly -- this will -- will
3 cause discussion -- April 6th, any follow-up
4 discovery due. And I have the hearing set one
5 month after today's conference for the 7th of
6 April, and then filed comments April 21st.

7 Again, the dates set were, more
8 or less, arbitrary, working on the times between
9 them. I believe I set them as all Mondays and then
10 ten days after, et cetera based on discovery.

11 A.L.J. MULLANY: I believe
12 March -- March 17th is St. Patrick's Day. That's
13 a -- that's a holy day.

14 UNIDENTIFIED SPEAKER: I agree,
15 your Honor.

16 MR. MICHAELS: You'll just have
17 to do the work in advance, Judge.

18 A.L.J. PRESTEMON: All right. So
19 follow-up discovery requests would be issued on the
20 day before the hearing?

21 MR. MICHAELS: That's what I came
22 up with based on the dates.

23 A.L.J. PRESTEMON: Well, let me
24 hear any comments first before I think any harder.

25 MR. MAGER: Your Honor, I -- I --

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2 I guess, you know, going into today's conference,
3 I -- I expected a discussion on the scheduling and
4 I -- I can try to engage in one. But I -- part of
5 me really wants to know what the scope of the case
6 is before I agree on a schedule. And I don't know
7 that that -- if that's possible at this time.

8 A.L.J. PRESTEMON: As I said,
9 yeah, that's -- that's a fundamental problem.

10 MR. RIGBERG: Your Honor, from
11 the U.I.U.'s perspective, this schedule is -- is
12 too ambitious. We -- we have four or five or six
13 other proceedings we're doing right now. We have
14 testimony due on the O. and R. case March 20th.
15 All right. So that's -- that's our -- that's my
16 main focus.

17 And also we're negotiating an
18 extension of the Corning rate plan and another
19 meeting was scheduled next week to negotiate an
20 extension of the N.F.G. rate plan. We're involved
21 in the extension of the Con Ed rate plan, as well
22 as the prudence case involving Con Edison. And
23 there's many REV-related proceedings. There's
24 meetings in the next couple weeks on the
25 affordability case and retail access. We have a

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2 REV-related Central Hudson Collaborative on the
3 18th.

4 Then we get into Passover. And
5 then there's many other -- so this schedule, even
6 if the -- even if the scope was as narrow as -- as
7 could possibly be, this schedule would not be
8 doable for us. We haven't had -- even had -- seen
9 the confidential material yet.

10 MR. MICHAELS: Judge, if I may?

11 A.L.J. PRESTEMON: I -- I think
12 almost -- almost everybody can come up with
13 problems like that with this short schedule, so --
14 I think we all know why the short -- this short
15 schedule has been proposed by Staff.

16 It's because of the implications
17 of the RSSA, which essentially creates a -- a
18 second surcharge if RG&E has to begin paying Ginna
19 on April 1st and is not able to recover its costs
20 on a substantially contemporaneous basis. If it
21 does get authorized to recover those costs,
22 there'll be a surcharge on the surcharge. So we
23 have what is typically called, in a rate case,
24 compression issues.

25 Anybody have any comments on

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2 that? What -- what should we do about that?
3 What --?

4 MR. MICHAELS: Judge, speaking
5 for Staff, I -- I agree, and thank you for
6 recognizing it. That -- that is -- I don't
7 disagree with UIU. We are all busy. Throw on that
8 coaching soccer teams. We're all busy. However,
9 this was designed out of the interests of the
10 public.

11 A.L.J. PRESTEMON: Well, let's --
12 I'm really interested in knowing what the
13 representatives of the people that are going to
14 have to pay this have to say about this. You
15 have -- it appears you have a risk to take, either
16 if we delay this hearing substantially beyond April
17 1st and the RSSA is ultimately approved, the
18 surcharge for the balance of the term is going to
19 be substantially higher.

20 On the other hand, if we spend
21 more time on this case, the RSSA might not come out
22 as it's currently written. What is your view as to
23 how you would like to proceed?

24 MR. MAGER: There's a lot of
25 factors to -- to consider here, your Honor. I -- I

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2 think to some extent, we need to move quickly for
3 the reasons you stated. And clearly, the RSSA is
4 scheduled to start and -- and so we need to be very
5 cognizant of that.

6 On the other hand, there are some
7 real issues in this case that should be given short
8 shrift. And also, I -- you know, I guess to
9 these -- there's an issue of whether customers
10 should have to bear any interest-related expenses
11 based on the fact that the Commission needs an
12 adequate amount of time to have a record developed
13 and to decide this case.

14 I mean, from what my recollection
15 is -- is that the Commission directed a filing from
16 Ginna and RG&E, I believe, earlier than the filing
17 and they have -- the sought maybe a one-month
18 extension.

19 I -- I'm not totally clear on the
20 history, but I believe that a one-month extension
21 was sought by the Petitioners, and I don't think
22 that time should come out of customers' pockets now
23 when we're first getting the RSSA to look at and
24 raise concerns about.

25 So I -- I mean Multiple

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2 Intervenor is prepared to, at least, you know,
3 start, you know, working on some discovery demands,
4 assuming a more broad scope, such as at least what
5 we advocated, we can draft discovery demands. If
6 your Honor wants -- thinks the parties should wait
7 on discovery until a procedural ruling on the scope
8 is issued, we're fine to proceed that way, too.

9 I think it's reasonable to expect
10 customers and all parties to move, you know,
11 relatively expeditiously. But I think the need to,
12 you know, do discovery, get responses, look at the
13 responses, have some time for follow-up, and then
14 have a hearing can't be too compressed such that
15 the quality of the record that's developed suffers.

16 MS. AZULAY-CHASNOFF: Your Honor,
17 I would like to find out about the justification of
18 the April 1st start date. I mean, the assumption
19 here on the schedule is that that's a reasonable
20 starting date, but I -- I guess I would have
21 concerns with that.

22 A.L.J. PRESTEMON: No. We're --
23 we're not discussing the reasonableness of the
24 April 1st starting date at this point. That's what
25 the agreement provides, so.

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2 MS. AZULAY-CHASNOFF: I guess I'm
3 just saying that's an assumption, but that doesn't
4 necessarily have to be the starting date. And I
5 think it's in the public interest to, you know,
6 really look at the contract and have enough time
7 to --.

8 A.L.J. PRESTEMON: Well, I agree.
9 It's -- it's -- it's not -- it's not an assumption.
10 It's in the contract and it's going to -- going to
11 happen. You would like to see the costs that
12 consumers bear, because of that assumption,
13 reduced, modified, or eliminated. And that may be
14 an issue you can raise in the proceeding.

15 But the April 1st issue -- April
16 1st date is real at this point, as far as its --
17 its consequences under the agreement. So we do
18 have to consider it and what impact it's going to
19 have. I'm inclined to say that I'd like to see
20 this proceeding get under way right away with
21 efforts by the parties to get information to begin
22 discovery without waiting for anything from us
23 while we deliberate on exactly what we believe the
24 scope of the case may be.

25 Let me discuss this with --.

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2 (Off-the-record discussion)

3 A.L.J. PRESTEMON: All right.

4 Here's what we're thinking. You know, given the
5 terms of the RSSA and the April 1st start date for
6 the obligations of RG&E, we do need to proceed as
7 quickly as possible, but not to cut off rights of
8 the consumer parties to investigate the terms of
9 this agreement.

10 So we'd like to get started
11 immediately. So discovery may begin immediately,
12 and it may encompass issues that parties feel are
13 in dispute as to the appropriateness of their
14 inclusion within the scope of the case. So,
15 discovery related to -- discovery that bears on the
16 reasonableness of the terms of the agreement, in
17 addition to the reasonableness of RG&E's entering
18 into the agreement, will be permissible.

19 In addition, we're going to
20 reduce the time for responses to seven days, rather
21 than ten days provided for.

22 Obviously, respondents can first
23 try to work with the parties, asking the questions,
24 and then come to us if that shortened time presents
25 a burden on any particular discovery request. It

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2 should be sufficient time in most cases.

3 We will -- we will do two rounds
4 of discovery. So we're talking, essentially,
5 fifteen days. Give you a day to think up your
6 second round of discovery. Then, we contemplate
7 asking the parties to present comments or briefs or
8 a filing of some sort in which they can make their
9 case for what they believe to be material issues of
10 fact requiring a hearing, requiring cross
11 examination of witnesses at a hearing.

12 With that information, we can
13 establish the agenda for a hearing. There will be
14 a hearing, regardless of what issues are identified
15 because we need to hold one. But those that
16 actually require cross examination of witnesses,
17 presentation of witnesses may be limited based on
18 what the parties file.

19 I was involved in a very complex
20 case with a lot of parties disputing everything,
21 and when it came time for hearing they all agreed
22 that they had no difference of opinion as to the
23 facts, only a difference as to what the facts
24 meant, and there was no need for a hearing. They
25 all waived it. So I can't hope for that here,

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2 necessarily, but normally -- normally the number of
3 issues that actually have to have a live hearing
4 will be reduced in that way.

5 After that, we will have to --
6 we'll have to define the process. But I mean, I --
7 I'm putting this out now for your thoughts,
8 obviously. This isn't a fiat.

9 Mr. Mager?

10 MR. MAGER: My -- my first motion
11 for reconsideration -- your Honor, I think -- I
12 think it's reasonable to start discover
13 immediately, and I think two rounds of discovery,
14 give or take, makes sense. I mean I don't know if
15 it makes sense to -- for parties to wait and, you
16 know, give one giant list of IRs or -- or do it on
17 a more piecemeal basis. But I -- I don't -- I
18 think we need a little more time in the schedule
19 than one day to kind of get responses and turn
20 around a second set.

21 A.L.J. PRESTEMON: Okay. We
22 can -- we can reconsider that. And I didn't mean
23 to suggest that this was all of discovery. I was
24 saying that I wanted everybody to have a time to at
25 least have their initial questions and follow-up

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2 questions before they tried to formulate what they
3 saw as the remaining material issues of fact that
4 needed to be heard. There could still be discovery
5 after that point, if necessary.

6 Ms. Kinsch?

7 MS. KINSCH: Two thoughts. One,
8 if everyone holds their discovery and presents it
9 all on the same day, and let's say there's fifty
10 questions from each party in this room, seven days
11 will be nowhere near enough time. So I guess I
12 would encourage parties to start sending discovery,
13 rather than serving a block -- a large block at
14 once because there will be no way to get through
15 them all.

16 And in addition, I think seven
17 days for a response is aggressive, but would -- I
18 just wanted to clarify whether you meant seven
19 business days or seven calendar days, just so we're
20 clear?

21 A.L.J. PRESTEMON: I think seven
22 business days turns out to be ten calendar days,
23 and then you're back on the -- on the schedule
24 provided for in the rules. So I was trying to
25 speed things up a little, but maybe we should just

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2 rely on the ten days provided in the rules. It's
3 largely the same, and encourage everybody to
4 respond as rapidly as possible.

5 I think it's a perfectly good
6 idea to serve your IRs. We do this all
7 electronically now anyway, by email, and the rules
8 require you to put each IR on a separate page
9 anyway. So, if you send out three separate pages
10 several hours apart or days apart, that's not much
11 difference, and there's no reason to wait until you
12 have all three ready to go.

13 MS. KINSCH: And preferably in a
14 Word document.

15 A.L.J. PRESTEMON: In a Word
16 document?

17 MS. KINSCH: With the questions.
18 If we send the PDF, then we have to have someone
19 type the response over.

20 A.L.J. PRESTEMON: You don't have
21 a program to convert the --?

22 MS. KINSCH: It doesn't work
23 well. It's not accurate.

24 A.L.J. PRESTEMON: Is there
25 anybody have a problem with using a Word document?

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2 Everybody's got access to something that puts out
3 Word documents? There are free ones now. I use a
4 free one, myself.

5 All right. So, everybody will
6 please serve their -- their interrogatories or the
7 information requests in Word form.

8 MS. KINSCH: Your Honor, to the
9 extent that there's discovery that we believe to be
10 outside the scope of this proceeding or the
11 hearing, before your Honors make the ruling, we
12 would reserve our rights to object and to answer
13 until we see the ruling.

14 A.L.J. PRESTEMON: That tends to
15 defeat the purpose if you're going to object and
16 not answer. I don't have a problem with your
17 reserving your objections and saying that the issue
18 is not one that should be considered in the
19 proceeding. But part of the idea here is to be
20 able to identify the issues more specifically once
21 parties have more information. And if you're not
22 going to provide it, we're not going to get very
23 far.

24 MS. KINSCH: Well, to the extent
25 that there may be matters asked that are far

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2 afield, we have individuals in our company working
3 on answering data requests that are far afield
4 versus spending time responding on what's relevant
5 to this proceeding.

6 A.L.J. PRESTEMON: Well --

7 MS. KINSCH: If we say it's --.

8 A.L.J. PRESTEMON: -- I agree. I
9 mean if it's -- if you get something that's really
10 off the wall, it may be not productive to have you
11 working on it. In that case, you should
12 immediately raise it with the party that served the
13 request as normal procedure. If they still insist,
14 you should bring it to us immediately.

15 MS. KINSCH: Fair enough.

16 A.L.J. PRESTEMON: We'll try to
17 keep these moving as rapidly as possible. But yes,
18 that is a possibility. But anything -- for now,
19 anything that pertains to the reasonableness of --
20 of the terms of the agreement will be permissible
21 discovery.

22 MR. MAGER: Two questions, your
23 Honor. One, is it safe to assume that all
24 responses to all IRs will be served on all parties
25 so we don't have to specifically request copies of

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2 responses to other parties' IRs?

3 A.L.J. PRESTEMON: Yes. That
4 would be the normal procedure. IRs should be
5 served on all the parties, and the responses should
6 be served on the all parties so everyone knows what
7 is going on.

8 MR. MAGER: Okay. And then my
9 second question would be, at some point today,
10 could we -- could there be a discussion on what's
11 considered confidential or not, and what -- what we
12 need to do to get that information in discovery or
13 otherwise?

14 A.L.J. PRESTEMON: Yeah. We --
15 we're going to have that discussion.

16 MS. KINSCH: Before we move onto
17 that, do your Honors want copies of the discovery,
18 or only if there's a dispute?

19 A.L.J. PRESTEMON: Yeah. Yeah.
20 In this case, with the time compression and the
21 fact that we're going to ultimately be deciding
22 what issues are within the scope of this
23 proceeding, I think it would be beneficial for us
24 to be able to keep up with the arguments that are
25 being made and the issues that people are -- are

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2 suggesting by their discovery requests. So include
3 us on the service.

4 A.L.J. MULLANY: And that would
5 be the responses, as well; right?

6 A.L.J. PRESTEMON: Yeah,
7 including the responses in this case.

8 MR. MAGER: I'm hoping that MI
9 already filed something to officially become a
10 party in this case. I'm not sure if everyone in
11 this room has, as well. Is there going to be like
12 a -- an updated party list that we could use for
13 serving IRs or how do you want us to handle that?

14 A.L.J. PRESTEMON: That's an
15 interesting question. I haven't had a case like
16 this before. We've got a party list. I don't know
17 how the -- with people that were interested in the
18 original case, whether or not there should be
19 finding that an RSSA was needed in the first place.

20 Now we have a completely separate
21 case, in effect, which not all the original parties
22 may be interested in. I think maybe what we can do
23 is perhaps put out an email to all parties
24 currently on the party list in 14-E-0270 and ask
25 them to self-designate as to whether or not they

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2 intend to be on the party list for this phase of
3 the proceeding. And to the extent that people
4 respond no, we can let everybody know what the
5 reduced party list is.

6 And anybody here who has not
7 requested party status should do so by going
8 through the -- the Commission website. Is anybody
9 here not listed as a party?

10 All right.

11 MS. KINSCH: Your Honor, would
12 those parties, when they self-designate, state
13 whether or not they want responses to the IRs?

14 A.L.J. PRESTEMON: Sure. We
15 could do that, too. I mean if somebody wants to
16 opt out of receiving the IRs.

17 All right. Okay. So we're going
18 to begin discovery now. We're going to have at
19 least two rounds of discovery before we ask the
20 parties for anything more definitive on the issues
21 in this case. We'll come out with schedule for
22 that that will allow more than one day between the
23 two rounds --

24 MR. MAGER: Thank you.

25 A.L.J. PRESTEMON: -- and come up

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2 with a date by which parties are going to have to
3 provide a more thorough basis for any issues they
4 want to continue into the litigated phase of the
5 proceeding.

6 And as I say, I think we're going
7 to have to define the process after that, later on.
8 I'm not -- I'm not going to try to do that now.
9 Does that sound all right to everyone?

10 Okay. Now, the confidentiality
11 issue.

12 MR. RIGBERG: May we take a short
13 break?

14 MS. KINSCH: Sorry, your Honor --

15 A.L.J. PRESTEMON: You want to
16 take a short break?

17 MS. KINSCH: -- before we -- we
18 respectfully request the ability to respond to the
19 comments that are put in on the scope of the
20 proceeding?

21 A.L.J. PRESTEMON: Yes. We would
22 appreciate your response.

23 MS. KINSCH: Thank you.

24 A.L.J. PRESTEMON: And everyone's
25 response, for that matter. So there will be a --

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2 there will be reply statements, as well.

3 Okay. Now, you'd like to take a
4 break, Mr. Rigberg?

5 MR. RIGBERG: Yes, I would.

6 A.L.J. PRESTEMON: Okay. We have
7 another hour before somebody takes over this room,
8 so let's just make it quick, like five minutes. Is
9 that all right?

10 MR. RIGBERG: That's fine.

11 A.L.J. PRESTEMON: Good.

12 (Off the record)

13 A.L.J. PRESTEMON: All right.

14 Let's get started again. The next issue we wanted
15 to take up would be -- is access to confidential
16 documents. Ordinarily, the way we handle this is
17 to issue a protective order that requires the
18 documents to be maintained as confidential, but can
19 be -- the documents can be used by the party for
20 purpose of participation in this case.

21 The information -- the
22 confidential information cannot be disclosed to the
23 public, cannot be discussed where the public is --
24 is present, but can be used to purpose of this
25 case.

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2 Is there anyone that has concern
3 about the issuance of such a protective order? All
4 right. Then we'll issue one.

5 Under the terms of the protective
6 order, an authorized representative of a party that
7 wants access to confidential documents,
8 confidential information, will have to sign a
9 protection agreement under which they assume full
10 responsibility for ensuring that the party complies
11 with the agreement and maintains the
12 confidentiality of the information.

13 That confidentiality agreement,
14 it's a one-page form, will be filed with the
15 secretary. Once the -- the form is on file with
16 the secretary, the party may request confidential
17 information from anyone who possesses it. And
18 thereafter, any confidential information that is
19 filed with the Commission that would ordinarily be
20 served on all parties will be served in its
21 confidential form on parties who have signed the
22 protection agreement.

23 All right? We can get that out
24 pretty quickly.

25 MS. WARREN: Your Honor, we do

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2 have a question on this. If it's possible, as Mr.
3 Michaels was suggesting, that some of the
4 information can be distilled in a way that it can
5 be made available to the public because we -- we're
6 in a difficult position. We certainly feel that
7 the public should know about the alternatives that
8 RG&E solicited. And if that can be described in
9 that way, it would be good to be able to make that
10 available to the public.

11 MS. KINSCH: I'll address that.

12 The RFP, itself, is public. We can provide that.

13 In November of 2014, per
14 Commission directive, we filed the analysis of the
15 responses we had received from the RFP. At the
16 time we filed that analysis, we had not yet
17 informed the bidders of the outcome. So we filed
18 it, a version that was fully -- was very redacted
19 on the Commission's website and then as a trade
20 secret.

21 Since now bidders have been
22 informed of the outcome, we can post a less
23 redacted version. And we are in the process of
24 reviewing that just to make sure that we don't
25 violate any of the underlying confidentiality

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2 agreements that we had with the respondents. But
3 the goal is to put a much less redacted version of
4 that analysis up on the Commission's website, and
5 we will do that within the next few days.

6 A.L.J. PRESTEMON: All right. So
7 you can be looking for that.

8 Any other questions? Ms. Saia --
9 Saia?

10 MS. SAIA: So I just want to make
11 sure of something. Noelle, did -- you indicated
12 the GRTA had kind of a date of June 2017. I
13 appreciate your -- your couching that in the way
14 you did. I expect that all information about the
15 GRTA will be produced publicly because it would be
16 a regulated project for which you're going to seek
17 rate -- full rate -- some rate recovery?

18 MS. KINSCH: The -- I think the
19 only details around the GRTA that would be
20 confidential is anything that qualifies as critical
21 information, energy information, CCI -- CII, and
22 possibly some very detailed cost information. But
23 under a protective agreement, I don't think we
24 would necessarily have an issue with sharing that,
25 either.

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2 A.L.J. PRESTEMON: All right.

3 MS. SAIA: Thank you, your Honor.

4 A.L.J. PRESTEMON: All right.

5 Then we had one last issue we wanted to cover
6 because of the letter we received from AGREE last
7 week. You asked that intervenor funding be
8 approved for AGREE. We have to tell you that
9 intervenor funding is not available in rate cases,
10 as you're aware. It has been authorized by the
11 legislature only for intervenors in Article 7
12 proceedings that have to do with construction of
13 transmission lines, both gas and electric, and in
14 Article 10 proceedings that have to do with the
15 siting of major electric generating facilities. So
16 there is no intervenor funding available for this
17 case.

18 We do have the consumer advocate
19 as staff who'll be available to assist in this
20 case.

21 MS. AZULAY-CHASNOFF: We very
22 much appreciate the consideration of the issue. We
23 have been arguing in various cases that sort of an
24 expanded intervenor fund should be available in
25 cases so that groups can represent the public

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2 interest. And I think -- you know, I do realize
3 that it's -- that the Commission does not generally
4 provide an intervenor fund for cases like this.

5 But I do think that there are groups like Alliance
6 for a Green Economy and possibly other groups that
7 are important to developing the public record.

8 And so I very much appreciate the
9 consideration, and I hope that we will be able to
10 work with the consumer advocate to make sure that
11 the -- that -- that our unique perspective adds to
12 the record.

13 A.L.J. PRESTEMON: Great. Thank
14 you very much.

15 MR. MAGER: You don't have to
16 hope. You will.

17 MS. AZULAY-CHASNOFF: I look
18 forward to it.

19 A.L.J. PRESTEMON: Put that on
20 the record.

21 MR. RIGBERG: Your Honor, this is
22 Saul Rigberg.

23 A.L.J. PRESTEMON: Yes?

24 MR. RIGBERG: I remember a ruling
25 you issued that, in the NFG case, in which you said

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2 that Public Service Law did not prohibit intervenor
3 funding in rate cases. I mean, you said it didn't
4 authorize it, but you said you -- it didn't
5 prohibit.

6 Now -- it seems now you're saying
7 that the Public Service Law would prohibit funding
8 intervenors in rate cases or this case is in a way
9 a policy case as well, sort of a quasi-approach,
10 but you're saying it's prohibited by the Public
11 Service Law?

12 A.L.J. PRESTEMON: You're not
13 going to get me to rule on that in this case. I
14 mean that was dictum in that case, and fortunately
15 I'm going to retire, so maybe it'll die. All I
16 say -- I'm saying in this case is that intervenor
17 funding is not available at present.

18 MR. RIGBERG: Okay.

19 A.L.J. PRESTEMON: I'm not going
20 to rule on the legality of it. And as you recall,
21 I also said, in that same ruling, that the
22 Commission had never authorized such intervenor
23 funding in over a hundred years of history and that
24 it seemed clear to me that if this kind of a major
25 change in policy where it would be undertaken, it

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2 would be done on a generic basis and not in an
3 individual case like this.

4 MR. RIGBERG: Okay. No; I
5 understand. It -- this -- the request sort of
6 relates to this -- this schedule. And I -- I just
7 hope you take into consideration the lack of
8 resources a -- a group like AGREE has. And when
9 even the company was saying to respond to IRs in
10 fewer than ten days is difficult, you can imagine
11 what it's like for a group of two or three or, you
12 know, a handful of volunteers to participate in a
13 complicated case like this.

14 A.L.J. PRESTEMON: We do
15 understand that, and we take it into account to the
16 extent we can.

17 And is there anything else anyone
18 else thinks we should bring up at this point? Any
19 procedural questions?

20 I'll remind you that it is always
21 permissible for a party to contact the judges on
22 procedural matters. As long as you're not -- don't
23 want to discuss the substance of the case, we can
24 always try to help you with procedural questions.
25 Feel free to contact us by phone or by email.

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2 MS. AZULAY-CHASNOFF: Your
3 Honors, I apologize for dragging this out any
4 longer, but I was wondering if this would be an
5 appropriate venue to discuss the public comment
6 period and the potential for public statement
7 hearings in the case?

8 A.L.J. PRESTEMON: Public comment
9 period is established by the SAPA notice. The fact
10 that you're a party in this case doesn't preclude
11 you from filing comments in response to the -- in
12 response to the notice. So you're free to do that
13 if you wish to.

14 A.L.J. MULLANY: I -- I think the
15 answer is that we haven't yet establish a schedule
16 for the proceeding. What we've described is
17 open-ended and so the proceeding remains open and
18 parties are -- or members of the public are free to
19 file comments at any time with the Department on
20 its website.

21 A.L.J. PRESTEMON: But you had
22 two parts to your question, and I just forgot the
23 second one.

24 MS. AZULAY-CHASNOFF: The
25 public -- a public statement hearing.

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2 A.L.J. PRESTEMON: Public

3 statement hearings, right.

4 MS. AZULAY-CHASNOFF: We would --

5 we would really like to see a public statement
6 hearing happen that's in a location accessible to
7 the ratepayers that are going to be impacted by
8 this agreement. I don't know if this is an
9 appropriate moment to bring that up or whether we
10 should just file a letter with the secretary. But
11 I just wanted to ask if this was the right place to
12 bring it up.

13 A.L.J. PRESTEMON: You can send a
14 letter to the secretary if you'd like to remind her
15 that you'd like to have a public statement hearing.
16 This is -- public statement hearings are normal and
17 typical in rate proceedings, which this is. Public
18 statement hearings are always held, to the extent
19 possible, in the location that's going to be most
20 effective -- affected. So I would say a public
21 statement hearing in this case will be held in
22 Rochester.

23 I don't know at this point what
24 the plans are for such a hearing.

25 A.L.J. MULLANY: But it was

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2 appropriate to raise the question here.
3 MS. AZULAY-CHASNOFF: Thank you.
4 A.L.J. PRESTEMON: Yes.
5 MR. CORSO: Just a comment, your
6 Honors, to the question asked by AGREE. We will --
7 Staff will look into this and help expedite the
8 opportunity for a public statement hearing.
9 A.L.J. PRESTEMON: Very good.
10 MS. AZULAY-CHASNOFF: Thank you
11 very much.
12 A.L.J. PRESTEMON: If there's
13 nothing else, going once, then we are adjourned.
14 Thank you very much.
15 (The procedural conference
16 adjourned at 12:44 p.m.)
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STATE OF NEW YORK

I, Amy Buchanan, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 100, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 17th day of March, 2015.

Amy Buchanan, Reporter

