

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

RULING ON REVISED SCHEDULE

(Issued September 9, 2015)

SEAN MULLANY, ASHLEY MORENO and JULIA SMEAD BIELAWSKI,
Administrative Law Judges:

On August 31, 2015, trial staff of the Department of Public Service (Staff) advised that an agreement in principle had been reached, and that the parties participating in the agreement in principle expect to file a joint proposal in the near future (Joint Proposal or JP). The agreement in principle was reached between Staff, Rochester Gas and Electric Corporation (RG&E), Multiple Interveners (MI), the Utility Intervention Unit, Division of Consumer Protection, New York State Department of State (UIU), and R.E. Ginna Nuclear Power Plant, LLC (Ginna).

Staff also advised that Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (collectively, Entergy) and NRG Energy, Inc. (NRG) will not oppose the JP. In addition, Staff advised that the Alliance for a Green Economy (AGREE) had stated that it would oppose the JP in part.

On September 3, 2015, a telephone conference was held with the parties to discuss the procedural ramifications of the recently-reached agreement in principle. The discussion included Staff's request for a postponement of the filing deadlines established under the August 18, 2015 Ruling on Schedule; the potential need for an extension of the suspension period; the timing of the filing of an executed JP; the process

to be followed if a JP is filed, including the schedule for holding an evidentiary hearing; the scope and duration of a hearing (including potential support for, or opposition to, the anticipated JP); and the schedule for post-hearing briefs.

During the telephone conference, the parties confirmed that an agreement in principle had been reached and that the parties to that agreement in principle expect to file a Joint Proposal on or before September 23, 2015. Entergy and NRG confirmed that they would neither support nor oppose the JP and AGREE confirmed it would oppose the JP only in part. In addition, the Citizen's Environmental Coalition (CEC) stated that it would oppose the JP in part.

In this case, the Reliability Support Services Agreement (RSSA) filed by RG&E earlier this year would, if approved, result in a major rate increase. Therefore, an evidentiary hearing is required.¹ Some of the parties now intend to file a Joint Proposal before any evidentiary hearing has been held on the merits, while other parties have indicated they intend to oppose the Joint Proposal, in part. In Opinion 92-2, the Commission established guidelines for the sufficiency of the record in a proceeding where active parties reach agreement among themselves on a mutually acceptable resolution of some or all of the contested issues, and submit their proposed resolution for approval by the Commission.² In Opinion 92-2, the Commission said that such agreements, if they are in the public interest, are based upon a record that demonstrably justifies the result proposed.³ The Commission has also said that, on any

¹ PSL §66(12).

² Cases 90-M-0255, et al., Procedures for Settlement and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992), pp. 21-22, and Appendix B at p. 3.

³ Opinion 92-2, supra, p. 22.

issue, such agreements should be supported by data that would allow the participants and the Commission to evaluate whether the agreement is in the public interest.⁴

Although AGREE and CEC have indicated they intend to oppose the JP in part, the JP has not yet been filed and AGREE and CEC have not yet specifically identified the grounds for their opposition. Under these circumstances, the schedule should provide for filing of statements of support or opposition, and the filing of post-hearing briefs.

With respect to the statements of support or opposition, the parties are cautioned that statements have little or no evidentiary value if they merely recite the provisions of Joint Proposal and offer only conclusory statements of support or opposition. Statements of support or opposition should (1) describe the party's litigation position(s); (2) describe, with reference to specific evidence, how and why the Joint Proposal resolves, or fails to resolve, the party's litigation position(s); and (3) explain how and why the Joint Proposal satisfies, or fails to satisfy, the criteria under Opinion 92-2. The parties are directed to file statements in support or opposition consistent with these purposes.

By letter to the Secretary filed September 8, 2015, RG&E agreed to a one-month extension of the suspension period, subject to revocation if an executed Joint Proposal is filed with the Secretary on or before September 23, 2015. In light of the agreement in principle and RG&E's consent to conditionally extend the suspension period, we hereby revise the schedule established in the Ruling on Schedule issued in this proceeding on August 18, 2015. The following schedule is established for

⁴ Opinion 92-2, supra, p. 22.

the remainder of this proceeding, contingent upon the filing of a Joint Proposal on September 23, 2015.⁵

Statements in Support/Opposition filed	September 30, 2015
Evidentiary Hearing held	October 14, 2015
Initial Briefs filed	October 28, 2015

Parties are advised that until the Commission has rendered a decision on the interlocutory appeal of our May 14, 2015 Ruling on Scope of Issues for Hearing, that ruling remains in effect and parties should tailor their arguments accordingly.

(SIGNED) Sean Mullany

(SIGNED) Ashley Moreno

(SIGNED) Julia Smead Bielawski

⁵ This schedule is based on the dates proposed by the parties during the September 3, 2015, telephone conference, with the exception of eliminating reply briefs.