

151 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

R.E. Ginna Nuclear Power Plant, LLC

Docket No. ER15-1047-000

ORDER REJECTING IN PART, AND ACCEPTING IN PART AND SUSPENDING
PROPOSED RATE SCHEDULE, SUBJECT TO REFUND, AND ESTABLISHING
HEARING AND SETTLEMENT PROCEDURES

(Issued April 14, 2015)

1. On February 13, 2015, R.E. Ginna Nuclear Power Plant, LLC (Ginna) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ an executed Reliability Support Services Agreement (RSSA or Agreement) between Ginna and Rochester Gas and Electric Corporation (RG&E), to be designated as Ginna's FERC Electric Rate Schedule No. 1.² Under the RSSA, Ginna's R.E. Ginna Nuclear Power Plant (Ginna Plant) will provide Reliability Support Service³ to RG&E to help ensure reliability in the Rochester, New York region. In this order, the Commission rejects in part, and accepts in part and suspends the proposed RSSA for a nominal period, to be effective on April 1, 2015, as requested, subject to a compliance filing and refund. We also establish hearing and settlement judge procedures.

¹16 U.S.C. § 824d (2012).

² R.E. Ginna Nuclear Power Plant, LLC, R.E. Ginna Nuclear Power Plant, LLC, [RSSA, FERC Rate Schedule No. 1 \(0.0.0\)](#).

³ "Reliability Support Service" also referred to here as "must run" service, or "reliability must run" (RMR) service, provides for the continued operation of generation units wishing to deactivate, often because they have become uneconomic, but which are needed for transmission system reliability.

I. Background

2. The Ginna Plant is a 581-MW single-unit pressurized water reactor nuclear power generating facility located approximately 20 miles northeast of Rochester, New York.⁴ The Ginna Plant was originally constructed by RG&E and is interconnected to RG&E's transmission system.⁵ Ginna is owned and operated by Constellation Energy Nuclear Group, LLC (50.01 percent Exelon Corp., 49.99 percent EDF, Inc.). The facility is located within NYISO's Zone B (Genesee). Ginna states that from 2004 until the expiration of a power purchase agreement with RG&E on June 30, 2014, RG&E purchased 90 percent of the generation output of the Ginna Plant. Ginna notes that the Ginna Plant has been operating as a fully merchant generator in the New York Independent System Operator, Inc. (NYISO) wholesale power market since the expiration of the RG&E power purchase agreement.

3. Ginna states that in early 2014, it approached RG&E, NYISO and the New York Public Service Commission (New York Commission) to inform them that the Ginna Plant was not earning enough money in the NYISO markets to justify continued operation, incurring avoidable operating losses in 2014 of \$35 million, and is projected to continue losing money in the future.⁶ In response, NYISO studied the Ginna Plant's potential retirement and issued a report (Ginna Reliability Study), finding that its retirement would result in bulk and non-bulk reliability criteria violations in years 2015 and 2018.⁷ In late 2014, citing an immediate reliability need, the New York Commission directed RG&E and Ginna to negotiate an RSS agreement, noting that no potential alternative would completely obviate the need for the Ginna Plant until 2018, and it also ruled that the Ginna Plant could not retire without its permission.⁸ RG&E and Ginna reached an

⁴ The Ginna Plant began operating in 1970 and its current operating license from the Nuclear Regulatory Commission runs through September 2029. Ginna Filing Letter at 5.

⁵ *Id.* at 6.

⁶ Ginna accumulated losses in excess of \$150 million between 2011 and 2013. Absent an RSSA, Ginna states that the "estimated costs for keeping the Ginna Facility online and operating from 2015-2018 will substantially exceed estimated market revenues ... consistent with the historical performance of the unit[.]" See Ginna Filing, Attachment C, Jeanne M. Jones Test. at 15, 17.

⁷ See Ginna Filing, Attachment G, Ginna Reliability Study at 5-6.

agreement on the terms and conditions of the RSSA, and executed it on February 13, 2015.

4. Ginna requests that the Commission assume jurisdiction in ruling on the RSSA without specifically addressing jurisdictional issues. Ginna states that “[t]he [New York Commission] takes the position that ‘an RSSA is tied exclusively to the adequacy of reliability specifically reserved in the FPA to the States, in that payments made for the purchase of such reliability attributes are no different than tax credits, grants, emissions reductions credits, renewable energy credits, or other methods of compensating generators for the attributes they provide that are outside the scope of FERC’s wholesale markets.’”⁹ Ginna acknowledges that others may have a different view and argues that Commission precedent indicates that the Commission need not rule on its jurisdiction over a matter when acting on a filing. Specifically, Ginna cites to Commission orders under section 203 of the FPA¹⁰ in which, according to Ginna, the Commission did not directly address its jurisdiction over a proposed transaction, but instead assumed jurisdiction over the transaction to rule on whether the proposed transaction was consistent with section 203.¹¹ Ginna asks the Commission to take the same approach here.

5. Ginna states that the RSSA is the product of the extensive pre-filing settlement negotiations between Ginna and RG&E, and characterizes the filing as a settlement between Ginna and RG&E. Ginna contends that the settlement rate is cost-justified because it is within a range of reasonable outcomes as demonstrated by the full cost-of-service analysis included in Ginna’s filing.¹² Ginna states that, if its filing is protested by

⁸ Ginna Filing Letter at 3 (citing *Petition for Initiation of Proceeding to Examine Proposal for Continued Operation of R.E.Ginna Nuclear Power Plant, LLC*, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings at 22, Case 14-E-0270, New York Public Service Commission (Nov. 14, 2014) (*New York Commission Ginna Order*)).

⁹ Ginna Filing Letter at 21 (citing *New York Commission Ginna Order* at 26).

¹⁰ 16 U.S.C. § 824b (2012).

¹¹ Ginna Filing Letter at 21 (citing *Ocean State Power*, 43 FERC ¶ 61,466, at 62,139 (1988), and *MACH Gen, LLC*, 117 FERC ¶ 61,187 at P 1, n.4 (2006)).

¹² *Id.* at 3 (citing *GenOn Power Midwest, LP*, 149 FERC ¶ 61,218 at P 36 (2014) (accepting settlement of contract for reliability service where settlement rate was “within the range of just and reasonable outcomes” framed by a cost-of-service study and protester positions)).

non-RSSA parties, it requests that the Commission accept the RSSA under the *Trailblazer* approach by finding that the RSSA, as an overall settlement package is just and reasonable.¹³ Further, Ginna states that the RSSA addresses the reliability need identified in the Ginna Reliability Study and will only be in place for as long as the reliability need exists.¹⁴

II. RSSA Filing

6. The RSSA, which Ginna designates as Ginna's FERC Electric Rate Schedule No. 1, extends from the requested effective date of April 1, 2015 through September 30, 2018, the earliest date at which the Ginna Reliability Study shows the Ginna Plant will no longer be needed for reliability. The RSSA allows RG&E to terminate the contract early, upon 12 months' notice to Ginna, if more cost-effective solutions to the identified reliability need become available earlier than anticipated. In such circumstances, RG&E must pay Ginna a termination fee, described as an amortized payment to recover amounts already expended on capital, outage costs, and fuel payments at the time of the termination.¹⁵ The RSSA also allows RG&E the option to extend the RSSA until March 31, 2020, if continued operation is necessary to maintain reliability.

7. Section 4.3 of the RSSA further provides that, if Ginna continues to operate after 75 days beyond the expiration of the RSSA, Ginna will repay the capital investment costs Ginna recovers under the RSSA, which the RSSA refers to as the Capital Recovery Balance.¹⁶ Ginna states that the Capital Recovery Balance represents the accrual of capital investments made in the Ginna Plant at certain periods throughout the life of the RSSA.¹⁷ Exhibit 5 to the RSSA prescribes various dollar amounts for the Capital

¹³ *Id.* at 3-4 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,082, *order on reh'g*, 85 FERC ¶ 61,345 (1998), *order on reh'g*, 87 FERC ¶ 61,110 (1999) ("*Trailblazer*").

¹⁴ Ginna notes that RG&E has initiated a local transmission upgrade project and has also issued a request for proposals to address the reliability need that would be created by Ginna's retirement. Ginna states that the RSSA provides RG&E with options for early termination or extension, as appropriate, so that the term of the RSSA will match the duration of RG&E's reliability need. Ginna Filing Letter at 3 n.11.

¹⁵ RSSA § 2.2(c), and Ginna Filing Letter at 20 n.118.

¹⁶ RSSA §§ 1.1(g), 4.3. Otherwise, the RSSA allows Ginna to fully depreciate the Ginna Plant's remaining unamortized capital costs over the three-year term of the RSSA.

¹⁷ Ginna Filing Letter at 20.

Recovery Balance based upon the expiration or termination date of the RSSA. Assuming the RSSA expires under its own terms on September 30, 2018, the Capital Recovery Balance would be \$30,952,564.39, which Ginna would be required to repay to RG&E, with interest, through twenty-four quarterly installment payments.¹⁸

8. Under the RSSA, Ginna proposes to receive a monthly fixed charge of \$17,504,118.25, although Ginna explains that its cost support included in the filing supports a monthly revenue requirement that fluctuates between \$28,910,194 and \$31,792,178, depending on the period.¹⁹ In addition, Ginna proposes to receive 15 percent of its energy and capacity market revenues. Because Ginna will receive all such revenues through the NYISO settlement process, RG&E's 85 percent share of capacity and energy revenues, and 100 percent of any ancillary service revenues,²⁰ shall be credited against the monthly fixed charge for the applicable delivery month.²¹ The RSSA provides that such Applicable Revenues, i.e., RG&E's share of market revenues, that are in excess of the monthly fixed charge shall be paid to RG&E.²² The RSSA also proposes a different monthly fixed charge rate of \$18,402,166.16 for an 18-month extension period to March 31, 2020, if RG&E exercises a unilateral option to extend the agreement upon determining that the unit is needed for reliability beyond the initial term of the agreement.²³ Ginna states that RG&E is seeking authorization from the New York Commission for cost allocation and rate recovery for the RSSA from RG&E's distribution customers in a filing made concurrently with the instant filing before the Commission.²⁴ Ginna states that the RSSA requires both acceptance by this Commission under FPA section 205, as well as an order from the New York Commission approving the RSSA and approving full and immediate cost recovery, but that the RSSA does not

¹⁸ In Exhibit 5 to the RSSA, the Capital Recovery Balance fluctuates from a low of \$20,140,090.97 should the Ginna RSSA be terminated in March 2017, to a high of \$65,266,227.71 if the Ginna RSSA is terminated in May 2017.

¹⁹ Ginna Filing Letter at 13.

²⁰ RG&E's share of market revenues is defined as "Applicable Revenues." RSSA § 1.1 (e).

²¹ Ginna Filing Letter at 11-12, RSSA § 4.1.

²² RSSA § 3.2(f).

²³ Ginna Filing Letter at 12 n.58.

²⁴ *Id.* at 11.

provide for the recovery of any of the RSSA costs from customers other than RG&E's distribution customers. The RSSA itself provides that the parties' obligations with respect to payment of the RSSA charges are subject to both this Commission's acceptance of the RSSA pursuant to FPA section 205, and the New York Commission's approval.²⁵

9. As part of its filing, Ginna includes a cost-of-service study to establish the costs of keeping the Ginna Plant in service over the term of the RSSA in order to cost-justify its proposed RSSA rates. Ginna's cost-of-service study estimated a monthly revenue requirement of \$31,792,178 for the period April 1, 2015 through December 31, 2015; a monthly revenue requirement of \$28,910,194 for the period January 1, 2016 through December 31, 2016; a monthly revenue requirement of \$30,954,495 for the period January 1, 2017 through December 30, 2017; and a monthly revenue requirement of \$30,205,279 for the period January 1, 2018 through September 30, 2018.²⁶ As part of its cost-of-service study, Ginna proposes a 10.7 percent return on equity (ROE), which Ginna asserts is within the ROE zone of reasonableness, as calculated by Ginna's consultant, of between 6.20 percent and 11.58 percent. Ginna asserts that the ROE analysis is consistent with the Commission's Order Nos. 531 and 531-A.²⁷

10. Finally, Ginna states that on February 21, 2014, it, RG&E and NYISO entered into a Reliability Study Agreement to perform the Ginna Reliability Study. Ginna argues that the study found that "for the system as modeled, the retirement of Ginna would result in bulk and non-bulk reliability criteria violations in years 2015 and 2018. A mitigation solution equivalent to the impact of the full output of the Ginna plant would be necessary to maintain reliability in the Rochester area."²⁸

²⁵ RSSA § 2.1(a)(i).

²⁶ We note that Ginna did not submit specific cost support in support of the proposed \$18,402,166.16 monthly fixed charge rate for the RSSA's possible extension period from September 30, 2018 to March 31, 2020.

²⁷ Ginna Filing Letter at 15-17.

²⁸ *Id.* at 6-7 (citing Attachment G, Ginna Reliability Study § 4).

III. Notice, Interventions and Protests

11. Notice of Ginna's filing was published in the *Federal Register*, 80 Fed. Reg. 9708 (2015), with interventions and protests due on or before March 6, 2015.²⁹

12. Timely interventions were filed by FirstEnergy Solutions Corp., NRG Companies,³⁰ PSEG Companies,³¹ TC Ravenswood, LLC, Upstate New York Power Producers, Inc,³² and Dynegy Marketing and Trade, LLC and Sithe/Independence Power Partners, LP (collectively, Dynegy Companies). A motion to intervene out-of-time was filed by the New York State Department of State Utility Intervention Unit (Utility Intervention Unit).³³

13. Timely interventions and comments were filed by Alliance for a Green Economy,³⁴ Entergy Nuclear Power Marketing, LLC (Entergy Nuclear), RG&E, and Empire Generating Co, LLC and the Dynegy Companies (collectively, the Indicated Suppliers). A notice of intervention and comments was filed by the New York Commission.

²⁹ *Notice Denying Extension of Time*, R.E. Ginna Nuclear Power Plant, LLC, Docket No. ER15-1047-000 (issued February 26, 2015).

³⁰ NRG Companies include NRG Power Marketing LLC and GenOn Energy Management, LLC.

³¹ The PSEG Companies are each wholly owned, direct and indirect subsidiaries of Public Service Enterprise Group Incorporated, and they include PSEG Power LLC, PSEG Energy Resources & Trade LLC and PSEG Power NY LLC.

³² Upstate New York Power Producers, Inc. is the sole owner of Somerset Operating Company LLC and Cayuga Operating Company LLC.

³³ The Utility Intervention Unit states that it has been designated by NYISO as the "Statewide Consumer Advocate," representing the interests of the State's residential, small business and farm electricity users in the NYISO governance process.

³⁴ Alliance for a Green Economy represents member organizations, including Citizens' Environmental Coalition, and Nuclear Information & Resource Service.

14. A timely intervention and protest was filed by Multiple Intervenors.³⁵ On March 13, 2015, Ginna filed an answer to the comments and protests. On March 24, 2015, Entergy Nuclear filed a motion for leave to answer and answer to Ginna's answer.

A. Protest

15. Multiple Intervenors argue that Ginna's filing should be dismissed, without prejudice, until such time that Ginna issues a formal written notice of intent to deactivate with NYISO. Multiple Intervenors argue that absent a clear, definitive decision to deactivate, the Commission has no way of knowing whether a reliability must run contract and out-of-market payments truly are necessary. If the Commission does not require such definitive notice, Multiple Intervenors assert that any owner of a generation facility needed for reliability purposes could threaten deactivation whenever market revenues are not satisfactory (while presumably preserving the ability to return to full merchant status if and when market revenues rebound).³⁶

16. Alternatively, Multiple Intervenors urge the Commission to scrutinize Ginna's financial information presented in support of the proposed RSSA payments to ensure that the RSSA rate reflects the lowest possible cost. Multiple Intervenors assert that the proposed RSSA rate is exorbitant, and would impose on RG&E customers a rate increase of almost unprecedented magnitude. Multiple Intervenors report that RG&E estimates that the average residential customer would realize a 4.2 percent bill increase over the term of the RSSA, and the average large primary customer would realize a 6.0 percent bill increase over the term of the RSSA.³⁷ Multiple Intervenors explain that the rate increases are largest in 2015 and 2016, and decline moderately in each subsequent annual period, a distinction that, they state, is attenuated by the averaging of annual bill impacts.

³⁵ Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the RG&E service territory.

³⁶ Multiple Intervenors acknowledged that, notwithstanding the opposition of Multiple Intervenors and other parties, the New York Commission concluded that Ginna's petition before it, the private meetings of Ginna representatives with individual New York Commissioners, Department of Public Service Staff, RG&E, and the NYISO, and the Ginna Reliability Study collectively constituted sufficient notice of a plan to deactivate the Ginna plant. Multiple Intervenors' Protest at 4 n.8 (citing Case 14-E-0270, Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings (issued November 14, 2014)).

³⁷ Multiple Intervenors Comments at 10-11.

For instance, Multiple Intervenors reports that RG&E estimates that one customer class would realize bill increases of 9.05 percent, 5.97 percent, 5.94 percent, and 3.16 percent in 2015, 2016, 2017, and 2018, respectively, and the average bill impact over this period is 6.0 percent.³⁸ Further, Multiple Intervenors estimate that, on a delivery rate only basis, RG&E customers may experience rate increases as high as 20 percent on their monthly bill.³⁹ To view the rate increase in proper context, Multiple Intervenors note that, in September 2010, the New York Commission approved a negotiated three-year electric rate plan for RG&E that included the following annual rate increases (net of commodity): (a) \$15.6 million (4.1 percent) in Rate Year 1; (b) \$10.2 million (2.6 percent) in Rate Year 2; and (c) \$13.2 million (3.2 percent) in Rate Year 3.⁴⁰ In contrast, Multiple Intervenors note that Ginna proposes to recover \$210 million per year (net of RG&E's share of energy, capacity and ancillary services revenues) following a process that, according to Multiple Intervenors, consisted of private meetings with unnamed regulators and private negotiations with the utility that is obligated to sustain Ginna Plant operations until a permanent reliability solution may be implemented.

17. In particular, Multiple Intervenors asserts that the Commission should examine Ginna's proposed 10.7 percent ROE, depreciation methodology, and cost of service analysis and other data, and proposed settlement payment if the RSSA is terminated prematurely, to ensure that the rates are not excessive. With respect to the ROE, Multiple Intervenors note that Ginna argues that the return should be selected from the upper band of returns that Ginna's witness derived. Multiple Intervenors argue that, to the contrary, the out-of-market payments that Ginna may receive pursuant to the RSSA would shift the Ginna Plant's operational and market risks to customers, and, therefore, the ROE should be much lower than the proposed return to reflect the fact that the agreement would reduce, if not largely eliminate, risks to Ginna.⁴¹ Multiple Intervenors argue that the settlement payment, if owed, should be reduced to reflect only actual costs incurred to the date of RSSA termination.⁴²

18. Finally, Multiple Intervenors argue that the Commission should direct RG&E to expedite implementation of a solution to the reliability need associated with Ginna's

³⁸ *Id.* at 11.

³⁹ *Id.*

⁴⁰ *Id.* at 12.

⁴¹ *Id.* at 13 n.34.

⁴² *Id.* at 13 n.36.

threatened retirement so that the RSSA may be terminated as expeditiously as possible.⁴³ Multiple Intervenors assert that, as the Commission has declared, reliability must run contracts should be a last resort option, and the RSSA at issue here, if approved, should be of limited duration to minimize the distortions to the wholesale electricity markets administered by NYISO, and the resulting impacts on RG&E's retail customers.

B. Comments

19. Indicated Suppliers state that they do not object to the RSSA itself, but request that the Commission ensure that the RSSA, in addition to all other similar reliability agreements for generating facilities located in the NYISO balancing authority area, not be allowed to suppress prices in the energy and capacity markets. Referencing the Commission's recent order instituting a section 206 proceeding and directing NYISO to submit tariff revisions governing the retention of and compensation to generating units required for reliability,⁴⁴ Indicated Suppliers state that they are encouraged by the Commission's recognition, in the *NYISO RMR Order*, that "NYISO is uniquely positioned to assess the need for RMR service and the appropriate entity to assess the potential impacts RMR agreements may have on its markets in New York." Indicated Suppliers assert that the Commission should act to ensure that resources that would not remain in the market but for out-of-market payments, like those reflected in the RSSA, are not able to suppress energy and/or capacity market pricing to the detriment of competitive markets.⁴⁵

20. Alliance for a Green Economy asserts that, due to poor planning, Ginna has created the urgency in this proceeding for which it is now seeking expeditious handling and a waiver of the Commission's notice of filing requirements. They also state that RG&E's request for proposals to find a replacement for the Ginna RSSA was rushed, and the Ginna Reliability Study was deficient in analyzing alternatives to the Ginna RSSA. They state that subsequent to the Ginna Reliability Study, RG&E identified a transmission option that can be implemented quickly, referred to as the Ginna Retirement Transmission Alternative. Accordingly, they assert that alternatives to Ginna have not

⁴³ *Id.* at 13.

⁴⁴ *New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116, at P 11 (2015) (*NYISO RMR Order*).

⁴⁵ Indicated Suppliers Comments at 3 (citing *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 3).

been thoroughly considered, and RG&E's ratepayers, who they describe as the real buyers under the RSSA, have received little information about the RSSA.⁴⁶

21. Entergy Nuclear states that Ginna's filing highlights the need for the Commission to eliminate any purported uncertainty regarding the Commission's jurisdiction over the RSSA, and that the Commission should reaffirm that the RSSA is subject to the Commission's jurisdiction. Entergy Nuclear notes that Ginna's filing was submitted prior to issuance of the *NYISO RMR Order* and urges the Commission to forego consideration of jurisdictional questions in order to avoid the delay that might result from unnecessarily attempting to answer such questions. Entergy Nuclear argues that in light of the jurisdictional findings in the *NYISO RMR Order*, as well as prior Commission orders addressing RMR contracts in other regions, answering the jurisdictional question will not prove difficult or delay the issuance of a Commission order in this proceeding.⁴⁷

22. Entergy Nuclear argues that Ginna's filing does not contain sufficient information regarding whether: (1) the scope of the RSSA beyond 2015 is narrowly tailored; (2) alternatives to the RSSA beyond 2015 were adequately evaluated; and (3) appropriate bidding requirements are included to minimize market impacts. Like Alliance for a Green Alternative, Entergy Nuclear complains that the filing has failed to demonstrate that alternatives have been fully considered or that sufficient information has been provided for stakeholders or NYISO to evaluate and track alternatives, such as the Ginna Retirement Transmission Alternative.⁴⁸ Entergy Nuclear also asserts that the adoption of appropriate bidding or mitigation requirements is particularly important in New York due to the unique characteristics of NYISO's capacity market, which is not a long-term forward market. It explains that, because even shorter-term RMR arrangements (e.g., one year) will overlap with the delivery period for all NYISO capacity auctions, the NYISO's capacity market is more exposed to the price suppressive impacts of below-cost capacity bids from RMR units. Moreover, it expresses concern that the terms of the RSSA set up a structure where Ginna has an incentive (and likely, the obligation) to bid as a price taker in NYISO's capacity markets so that it maximizes revenues by ensuring it clears the capacity market.

⁴⁶ Alliance for a Green Economy Comments at 2.

⁴⁷ Entergy Nuclear Comments at 10-11.

⁴⁸ Entergy Nuclear notes that, in the *NYISO RMR Order*, the Commission required that "any future generation resource-specific RMR filing made with the Commission should detail the alternative solutions evaluated and justify the term of the proposed RMR agreement vis-à-vis the timing of alternative solutions to the identified reliability need." *Id.* at 12 (citing *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 16).

23. However, Entergy Nuclear argues that the Commission should accept the RSSA with the proposed April 1, 2015 effective date, subject to the following requirements: (1) the completion of a new NYISO study that performs a comprehensive, transparent analysis of the alternatives to the RSSA; (2) the modification of the terms of the RSSA to specify that the RSSA will terminate if and when an alternative to the RSSA is implemented, and to prohibit extension of the RSSA beyond its initial three-year term,⁴⁹ and (3) Ginna's compliance with bidding and mitigation requirements resulting from the outcome of the Commission's recent *NYISO RMR Order*.⁵⁰ With respect to the third requirement, Entergy Nuclear states that the Commission should clarify that Ginna will be obligated to comply, on a going forward basis, with any changes to applicable bidding or mitigation requirements that apply to NYISO's energy and capacity markets, including any such requirements imposed as part of the *NYISO RMR Order* proceeding.⁵¹ Entergy Nuclear states that such an approach appears consistent with the RSSA provisions with the exception of a portion of Section 3.2(c), which mandates that Ginna shall submit bids "consistent with Ginna's prior offers." Entergy Nuclear states that the Commission's order addressing the RSSA should specify that Ginna will comply with the NYISO energy and capacity market provisions in effect and direct Ginna to remove the cited language from Section 3.2(c) to avoid any future conflict.⁵² Entergy Nuclear asserts that, by imposing these three requirements, the Commission can ensure that the RSSA complies with existing Commission policy regarding RMR arrangements and addresses the concerns that led to the Commission's actions in the *NYISO RMR Order*, without subjecting Ginna to protracted proceedings or uncertainty.

24. The New York Commission supports the Commission's acceptance of the RSSA, stating that continued operation of the Ginna plant is needed to meet local and bulk system reliability. The New York Commission also notes that the Commission does not

⁴⁹ In particular, Entergy Nuclear states that Section 2.3 of the RSSA should be modified to require that in order to extend the RSSA beyond the initial term, the parties must comply with the procedures outlined in the NYISO tariff provisions that the Commission approves in the NYISO RMR proceeding. *Id.* at 15.

⁵⁰ *Id.* at 14-15.

⁵¹ *Id.* at 17.

⁵² *Id.*

need to decide any jurisdictional issue regarding the RSSA at this time in order to accept the RSSA.⁵³

25. RG&E submitted comments in support of the rates, terms and conditions in the RSSA and of the requested effective date of April 1, 2015.

C. Answer

26. Ginna asserts that none of the comments justify modification or rejection of the RSSA. Ginna notes that the New York Commission and RG&E, the wholesale purchaser under the RSSA, supported acceptance of the RSSA, and Entergy Nuclear conditionally supported acceptance of the RSSA.⁵⁴ Ginna also notes that these parties affirmatively supported the requested April 1, 2015 effective date. Ginna argues that comments raising perceived structural flaws in the manner in which all RSS and RMR agreements are developed in the NYISO footprint⁵⁵ should be addressed through either the *NYISO RMR Order* proceeding⁵⁶ or the IPPNY Complaint Case.⁵⁷ To that end, Ginna challenges comments comparing and contrasting the RSSA and the underlying reliability study with statements in the *NYISO RMR Order*. Ginna asserts that it satisfied the New York Commission's process and should not be held to NYISO Tariff provisions that have not yet been filed. For similar reasons, Ginna also takes issue with comments alleging that Ginna failed to provide sufficient notice of its intent to retire. Ginna states that Multiple Intervenors raised the notice issue with the New York Commission and the New York

⁵³ The New York Commission also states that it will continue its proceeding on recovery of RSSA costs by the local utility, RG&E, pursuant to its authority to ensure generation adequacy and set local distribution utility rates. New York Commission Comments at 6-7.

⁵⁴ Ginna Answer at 1.

⁵⁵ Ginna Answer at 2 (citing *Indep. Power Producers of New York, Inc. v. New York Indep. Sys. Operator, Inc.*, Docket No. EL13-62-000, "Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc." (May 10, 2013) ("IPPNY Complaint Case"). Subsequent to Ginna filing its answer, the Commission denied IPPNY's Complaint Case. See *Indep. Power Producers of New York, Inc. v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 (2015).

⁵⁶ Ginna Answer at 2 (citing *NYISO RMR Order*, 150 FERC ¶ 61,116).

⁵⁷ *Id.* at 2.

Commission expressly rejected it, finding that Ginna had satisfied the New York Commission's Generator Retirement Order notice requirements.⁵⁸

27. Ginna states that the Commission generally considers two factors when determining whether a unit qualifies for RMR treatment: (1) whether the unit will lose money in the market, such that it could be expected to retire without an out-of-market payment; and (2) whether it is needed for reliability.⁵⁹

28. Ginna asserts that Multiple Intervenors misinterpret Commission precedent. Ginna points to *Bridgeport*, in which the Commission acknowledged that submitting a request to deactivate is not a prerequisite for approving an RMR contract.⁶⁰ Ginna also argues that the language that other Regional Transmission Organizations use in their RMR tariff provisions is not controlling. Ginna asserts that, in the absence of a tariff provision requiring notice, the Commission evaluates whether a generator is losing money in the market and is likely to continue to do so.⁶¹ Ginna asserts that no party has questioned Ginna's demonstration that it is losing, and will continue to lose money absent the RSSA.⁶²

29. Ginna also argues that no party submitted substantial evidence challenging the cost-of-service analysis or the RSSA rate and, therefore, there is no basis for setting this matter for hearing. Ginna asserts that Multiple Intervenors only recite a list of parts of the cost of service study or the RSSA that they would like the Commission to scrutinize, including a short footnote that the return on equity may be too high. Ginna maintains that nothing in Multiple Intervenors' or any other party's comments cast doubt on Ginna's analysis. Ginna maintains that the RSSA rate is cost-justified because it is below the

⁵⁸ *Id.*

⁵⁹ *Id.* at 5 (citing *Milford Power Co., LLC*, 110 FERC ¶ 61,299 at P 40, *reh'g denied*, 112 FERC ¶ 61,154 (2005)).

⁶⁰ *Id.* at 7 (citing *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077, at PP 1, 5 (*Bridgeport*), *reh'g denied*, 113 FERC ¶ 61,311 (2005)).

⁶¹ *Id.* (citing *Bridgeport*, 112 FERC ¶ 61,077 at P 41; *Mystic Development, LLC*, 114 FERC ¶ 61,200, at P 32 (2006)).

⁶² *Id.*

upper end of the range of reasonable rate outcomes produced by its cost-of-service analysis.⁶³

30. In response to Entergy Nuclear's argument that the Commission should revise certain aspects of the RSSA, Ginna asserts that contract reformation could be harmful to Ginna. Ginna emphasizes that the language of the RSSA allows a party to terminate the agreement if the Commission materially modifies the RSSA. Ginna contends that revising the contract could deprive the settling parties of the benefit of their bargain and cause the affected party to terminate the RSSA.⁶⁴ Ginna reiterates that the Commission should treat the RSSA as a package, and states that no party has "seriously challenged the overall justness and reasonableness of the settlement package."⁶⁵

31. Ginna also challenges Entergy Nuclear's call for a new reliability study. Ginna states that Entergy Nuclear's assertions about the process and independence underlying the Ginna Reliability Study are without merit. Ginna contends that NYISO and RG&E participated in formulating the scope of the study, and the New York Commission rejected arguments that the study was biased, finding that NYISO conducted the study in conformance with its usual methods.⁶⁶ Ginna asserts that it was appropriate for the reliability study to be conducted as the first step in the RSSA process and, therefore, that it was appropriate for Ginna to rely on the reliability study for purposes of the RSSA.⁶⁷

32. Ginna asserts that the Commission should reject Entergy Nuclear's and Indicated Suppliers' arguments about the price at which Ginna makes sell offers into the NYISO markets because (1) the RSSA provisions pertaining to Ginna's offers are an important part of the overall settlement package, and (2) any RSSA-driven financial incentives are

⁶³ *Id.* at 4. Ginna also notes that a few parties have complained that some confidential or CEII materials were submitted under protective seal in its filing, but notes that no party has sought access to this information by signing and complying with the protective agreement included in its filing. *Id.* at 4-5.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.* at 9.

⁶⁶ *Id.*

⁶⁷ *Id.* at 10.

subordinate to the contract language “requiring Ginna to make offers consistent with its ‘prior’ – i.e., pre-RSSA ‘incentive’ – offers.”⁶⁸

33. With regard to Entergy Nuclear’s argument that Ginna did not demonstrate that the alternatives to the RSSA have been appropriately considered, Ginna states it “followed the only New York process available to it, and provided the Commission with all of the information about alternatives that it was able to obtain as a result of that process.”⁶⁹ Ginna further contends that the *NYISO RMR Order*, to which Entergy Nuclear cites, expressly limits the application of the principle to “any *future* generation resource-specific RMR filing.”⁷⁰ Ginna further argues that, contrary to Entergy Nuclear’s assertion, the RSSA does not need to be modified to require RG&E to terminate the RSSA if an alternative is implemented that obviates the need for Ginna’s continued operation. According to Ginna, the RSSA already gives RG&E the ability to terminate the RSSA, and RG&E “can be expected to follow its own economic interests by terminating the RSSA once the need for it is eliminated, without compulsion.”⁷¹

34. Lastly, in response to Entergy Nuclear’s argument that the provision allowing RG&E to extend the RSSA term should be subject to the rules instituted as a result of the *NYISO RMR Order*, Ginna asserts that the Commission has approved extension provisions in other RMR contracts.⁷² Ginna also contends that RG&E might consider a modification to the extension provision to be a material modification that warrants termination of the RSSA. Ginna further asserts that the provisions allowing early termination and contract extension “appropriately provide RG&E with the ability to flexibly implement more efficient reliability solutions.”⁷³

⁶⁸ *Id.* at 10-11.

⁶⁹ *Id.* at 12.

⁷⁰ *Id.* (quoting *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 16) (emphasis added; internal quotations omitted).

⁷¹ *Id.*

⁷² *Id.* at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh’g*, 109 FERC ¶ 61,157 (2004)).

⁷³ *Id.* at 13.

D. Entergy Nuclear's Answer

35. Entergy Nuclear contends that Ginna recognizes, in its answer, that “the lack of transparency around alternatives is not optimal,” but yet Ginna opposes having alternatives studied by NYISO or modifying the RSSA’s termination provisions because doing so would effectively subject Ginna to “future requirements” from the *NYISO RMR Order*.⁷⁴ Entergy Nuclear asserts that requiring NYISO to study alternatives to the RSSA does not subject Ginna to any future requirements, and does not obligate NYISO to use whatever study process NYISO proposes in response to the *NYISO RMR Order*. Entergy Nuclear asserts that Ginna’s answer, as well as its filing, fails to demonstrate that no alternative could address the identified reliability need beyond 2015.⁷⁵ Entergy Nuclear asserts that requiring NYISO to conduct a study of potential alternatives would cure this defect, without preventing the RSSA from going into effect. It asserts that it would be consistent with the Commission's long-standing RMR policy,⁷⁶ as well as the stated intent of the parties to the RSSA that the RSSA should terminate when there is a suitable reliability replacement.

36. Entergy Nuclear asserts that Ginna’s three additional arguments for why Entergy Nuclear’s three conditions should not be imposed should be rejected. First, Entergy Nuclear explains that Ginna argues that modifying the termination provisions is unnecessary because “RG&E can be expected to follow its own economic interests by terminating the RSSA once the need for it is eliminated, without compulsion.”⁷⁷ Entergy

⁷⁴ Entergy Nuclear Answer at 2 & n.7 (citing Ginna Answer at 12-13).

⁷⁵ *Id.* at 3. Entergy Nuclear also notes that, in response to an information request in the New York Commission proceeding, RG&E states that the estimated in service date for its identified transmission solution, the Ginna Retirement Transmission Alternative, is between December 2016 and June 2017, which is before the RSSA's September 1, 2018 termination date. *Id.* at 3 n.9.

⁷⁶ *Id.* at 3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,157, at P 288 (2004) (requiring MISO "to provide a report as part of its Section 205 filing for an SSR contract that details the alternatives the Midwest ISO evaluated")). Entergy Nuclear notes that the *NYISO RMR Order* did not create a new standard, but reaffirmed the Commission's long-standing view that RMR agreements should be used as a last resort, and, therefore, Ginna’s arguments that they should not be held to some as-yet non-existent NYISO tariff standard are incorrect. *Id.* at 4-5.

⁷⁷ *Id.* at 5 & n.18 (citing Ginna Answer at 12).

Nuclear asserts that, if this is true, Ginna and RG&E should have no objection to the Commission requiring termination. Second, in response to Ginna's assertion that it would be "inexplicabl[e] and inefficient[]" for RG&E to "continue to pay for RSSA service that it does not need,"⁷⁸ Entergy Nuclear contends that there is an incentive to continue RMR arrangements even where a transmission alternative is both cheaper and avoids any artificial price suppression that will distort the market's signals, and the Commission has recognized this incentive.⁷⁹ Entergy Nuclear asserts that its proposal to require that the RSSA terminate upon implementation of alternatives that address the reliability need seeks a similar form of relief. Third, Entergy Nuclear asserts that Ginna's argument that the Commission should accept the RSSA as a settlement "package" also lacks merit given that, if the length of the RSSA is not just and reasonable because an alternative is available, it does not become just and reasonable because it is labeled a "settlement" between the contracting parties.

37. Entergy Nuclear asserts that the extension provision of the RSSA is unjust and unreasonable because Ginna has not demonstrated any reliability need for the RSSA beyond the initial term or that alternative solutions to the reliability need cannot be implemented before 2018. While Ginna points out that the Commission has approved standard RMR agreements with extension provisions in Midcontinent Independent System Operator (MISO),⁸⁰ Entergy Nuclear contends that those extension provisions are materially different from the proposed RSSA because they require MISO to perform an annual assessment of the need for the RMR unit prior to granting any extension, and the Commission has rejected proposed standard tariff provisions that would have allowed MISO to enter into any RMR agreements or extensions for longer than one year.⁸¹ Entergy Nuclear therefore asserts that these orders provide no support for the RSSA extension provisions. Finally, Entergy Nuclear asserts that the RSSA's requirements that

⁷⁸ *Id.* at 6 & n.19 (citing Ginna Answer at 12).

⁷⁹ *Id.* at 6 & n.21 (citing *Independent Power Producers of New York, Inc. v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214, at P 69 (2015) (noting longer term of proposal and expressing concern that "if the additional capacity created by the [Dunkirk] repowering agreement above the amount needed for short-term reliability is allowed to offer into the NYISO capacity market at prices below the cost of repowering, such capacity might deter new entry or displace less costly existing capacity"))).

⁸⁰ *Id.* at 7 & n.25 (citing Ginna Answer at 13 & n.56).

⁸¹ *Id.* at 8 & n. 27 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 106 (2012)).

Ginna continue using past bidding practices, and use “commercially reasonable efforts... to maximize Energy Revenues, Capacity Revenues, and Ancillary Service Revenues,”⁸² add confusion to its bidding requirements. Entergy Nuclear requests that the Commission clarify that: (1) Ginna's obligation to comply with NYISO market rules includes an obligation to comply with those rules as they are amended in the future; and (2) Ginna's obligation to comply with NYISO market rules supersedes any RSSA-based requirement “to maximize” market revenues. Entergy Nuclear notes that Ginna fails to provide any valid reason why it should not be subject to any tariff provisions on a going forward basis that result from the *NYISO RMR Order* or the *IPPNY Complaint Order*.⁸³

IV. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the Utility Intervention Unit’s late-filed motion to intervene given its interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

39. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We accept Ginna’s answer and Entergy Nuclear’s answer to the Ginna answer because they have provided information that assisted us in the decision-making process.

B. Commission Determination

40. As an initial matter, we note, as various parties have acknowledged, that by order issued February 19, 2015, the Commission instituted a proceeding under section 206 of the FPA⁸⁴ directing NYISO to establish provisions in its tariff governing the retention of and compensation to generating units required for reliability, including procedures for

⁸² *Id.* at 9 & n.30 (citing RSSA Sections 3.2 (b), (c), and (e)).

⁸³ *Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,214 (2015) (*IPPNY Complaint Order*).

⁸⁴ 16 U.S.C. § 824e (2012).

designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* RMR service agreement.⁸⁵ Ginna's filing of the proposed RSSA includes rates, terms and conditions under which Ginna will provide reliability support services to RG&E to support system reliability in New York until such time that certain transmission upgrades are completed or other reliability remedies are identified and implemented. The RSSA constitutes an agreement for RMR service, and, as such, we have authority to evaluate the justness and reasonableness of the rates, terms and conditions of the RSSA under the FPA.⁸⁶ Given that NYISO has not yet filed its compliance filing to the *NYISO RMR Order*, we will neither require Ginna to enter into a new *pro forma* RMR agreement for the RSSA,⁸⁷ nor will we revisit the reliability determination underlying the agreement. However, because Ginna did not submit evidence demonstrating a reliability need beyond the initial term of the RSSA, it has not shown the extension provision to be just and reasonable.⁸⁸ Therefore, we direct Ginna to remove all provisions in the RSSA related to extension of the RSSA beyond its initial term, and to do so in a compliance filing due within thirty (30) days of the date of this order. We note that, if there is a future reliability need for the RSSA beyond its initial term, Ginna will be subject to the procedures that NYISO establishes, and the Commission approves, in response to the *NYISO RMR Order*. Also, as discussed below, we have concerns regarding the rates, terms and conditions reflected in the RSSA.

41. We do not agree with Ginna that our review should follow the *Trailblazer* approach applicable to settlements.⁸⁹ The *Trailblazer* approach contemplates a record sufficient for the Commission to determine that the "settlement" as a package is just and reasonable. As found in this order, Ginna has not met that standard. We also note that

⁸⁵ *NYISO RMR Order*, 150 FERC ¶ 61,116.

⁸⁶ *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 3 & n.8, and P 9 & n.19 (stating that RMR service helps to ensure the continued reliable and efficient operation of the grid, and of NYISO's markets, and, as such, is subject to the Commission's FPA jurisdiction).

⁸⁷ The Commission's *NYISO RMR Order* does not require Ginna to enter into a new *pro forma* agreement for the RSSA. See *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 11 n.21.

⁸⁸ The initial term of the Ginna RSSA extends from a proposed effective date of April 1, 2015 through September 2018.

⁸⁹ Ginna Filing Letter at 3-4.

the *Trailblazer* approach has generally been applied to contested settlements resulting from the Commission's hearing and settlement judge procedures.⁹⁰

42. Our preliminary analysis indicates that the proposed RSSA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept, in part, the proposed RSSA for filing, suspend it for a nominal period, to become effective April 1, 2015, as requested, subject to a compliance filing and refund, and establish hearing and settlement judge procedures. With the exception of the issues discussed herein, the Commission finds that the proposed RSSA raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

43. Although we are establishing hearing and settlement judge procedures regarding the proposed RSSA, we provide the following guidance. Regarding the RSSA rates, in the *NYISO RMR Order*, the Commission stated that “[c]ompensation to an RMR generator must at a minimum allow for the recovery of the generator’s going-forward costs, with parties having the flexibility to negotiate a cost-based rate up to the generator’s full cost of service.”⁹¹ Consistent with that policy, we direct that, if the settlement judge procedures are not successful and the matter goes to hearing, the presiding judge should ensure that a record is established to support that the RSSA rates are not lower than the level required to recover Ginna’s going-forward costs, but not higher than the level required to recover its full cost of service.⁹²

44. Further, we find that Ginna’s proposed 15 percent share of its NYISO market revenues does not comport with the general principle that rates under an RMR Agreement must be cost-based, and therefore, Ginna has not shown the proposal to be just and reasonable. A compensation structure that provides for both a cost-based monthly fixed rate (whether going-forward costs at the low end, or a full cost of service at the upper end) and a share of market revenues does not meet this principle, as the revenue sharing provision is not cost-based and may allow for Ginna to earn more than its full cost of service. Accordingly, we reject the proposed 15 percent revenue component of the proposed RSSA rates and that issue also should not be addressed at

⁹⁰ *Trailblazer*, 85 FERC ¶ 61,082. See, e.g., *Wyoming Interstate Company, Ltd.*, 85 FERC ¶ 61,183 (1998), *order on reh’g*, 86 FERC ¶ 61,080 (1999); and *GenOn Power Midwest, LP*, 149 FERC ¶ 61,218 (2014).

⁹¹ *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 17.

⁹² *Id.*

hearing. We direct Ginna to submit a compliance filing within thirty (30) days of the date of this order removing from the RSSA the 15 percent share of NYISO market revenues component of the proposed RSSA rates.

45. The RSSA provides for Ginna's repayment of the capital investment costs it recovers under the RSSA in the event it returns to the market after the RSSA's expiration or termination. While the RSSA allows Ginna to return to the market if conditions improve following termination of the RSSA, it requires that if Ginna does so, it repay to RG&E the accrued capital investments made in the Ginna Plant, as represented by the Capital Recovery Balance set forth in the RSSA, with interest.⁹³ The Capital Recovery Balance fluctuates based on the month in which the RSSA terminates or expires, and ranges from \$20,140,090.97 to \$65,266,227.71.⁹⁴ We find that the Capital Recovery Balance provides a sufficient disincentive to Ginna to toggle between compensation under the RSSA and the NYISO markets.⁹⁵ Accordingly, the hearing should not address the issue of toggling between compensation under the RSSA and NYISO's market, but may address whether the amounts in the Capital Recovery Balance are just and reasonable.

46. Finally, we find that Indicated Suppliers' argument that the RSSA, and all other similar reliability agreements, should not be allowed to suppress prices to be beyond the scope of this proceeding. We note, however, that Ginna will be subject to and obligated to comply with any bidding or mitigation requirements that apply to NYISO's energy and capacity markets.⁹⁶

⁹³ RSSA §§ 1.1(g), 4.3.

⁹⁴ See Ginna Filing, Attachment A, Ex. 5.

⁹⁵ See *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 21 (citing *ISO New England Inc.*, 125 FERC ¶ 61,102, at PP 45-48 (2008)). While we find this proposal to be just and reasonable in the instant filing based on the facts in this case, we note that we are not prejudging any proposal that NYISO must file to comply with the *NYISO RMR Order* regarding toggling.

⁹⁶ *NYISO RMR Order*, 150 FERC ¶ 61,116 at P 3. We also note that the Commission recently denied a complaint alleging that by allowing *de minimis* offers from existing capacity resources that would have exited the market but for the determination that those resources are needed to address local reliability issues, NYISO was causing artificial price suppression in the New York Control Area Installed Capacity spot, monthly and strip market auctions. However, based on concerns regarding potential price suppressive impacts of repowering agreements, the Commission directed NYISO to

(continued...)

47. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹⁸ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Ginna's proposed rate schedule, Electric Rate Schedule FERC No. 1, is hereby rejected in part, and accepted in part for filing and suspended for a nominal period, to become effective on April 1, 2015, subject to a compliance filing and refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Ginna's proposed rate schedule, Electric Rate Schedule FERC No. 1. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

establish a stakeholder process to consider whether mitigation measures are needed to address those concerns. *IPPNY Complaint Order*, 150 FERC ¶ 61,214 (2015).

⁹⁷ 18 C.F.R. § 385.603 (2014).

⁹⁸ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(F) Ginna is hereby directed to make a compliance filing within thirty (30) days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.