February 13, 2017

Proposed SIR Contract Provisions

Responsible Party

The commercial general liability insurance requirement shall apply to the system generator-owner operating the electric generating equipment. In the event that the systems owner/operator is not the named applicant, the application shall include an attestation signed by the owner/operator demonstrating proof of commercial general liability insurance in compliance with the requirements outlined herein.

1. Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever,.

2. Indemnity

2.1. This provision protects each Party from liability incurred to third parties arising from actions taken pursuant to the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Section 1.

2.2 Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Party (the “Indemnified Party”) harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, to the extent arising out of or resulting from the Indemnifying Party's action or failure to meet its obligations under this Agreement , except in cases of negligence, gross negligence or intentional wrongdoing by the Indemnified Party.

2.4 If a Party is obligated to indemnify and hold the Indemnified Party harmless under this section, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual loss, as adjudicated by the Indemnifying Party’s insurance carrier, net of any insurance or other recovery.

2.5 Promptly after receipt by a Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this section may apply, the Party shall notify the other Party of such fact. Any unintentional failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

3. Consequential Damages

Other than as expressly provided for in this Agreement or pursuant to the utility tariff., neither Party shall be liable to the other Party under any provision of this Agreement for any losses, damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

4. Insurance

4.1 The Customer shall, at its own expense, maintain in force commercial general liability insurance ~~without any exclusion~~ for liabilities related to the interconnection undertaken pursuant to this Agreement. ~~The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. The Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility.~~ Such insurance shall be obtained from an insurance provider authorized to do business in New York State. Certification that such insurance is in effect shall be provided upon request of the Utility~~, except that the Customer shall show proof of insurance to the Utility no later than ten (10) Business Days prior to the anticipated commercial operation date~~. If the Customer is of sufficient credit-worthiness, the Customer may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

4.2 The Customer shall maintain, during the term of the Agreement, commercial general liability insurance with ~~a combined single limit of~~limits not less than:

4.2.1 2 million dollars ($2,000,000) for each occurrence and two million dollars (2,000,000) in the aggregate if the Gross Nameplate Rating of the Interconnecting Customer’s Facility is greater than one (1) MW and less than or equal to 5MW;

4.2.2 One million dollars ($1,000,000) for each occurrence and ~~five~~ one million dollars ($~~5~~1,000,000) in the aggregate if the Gross Nameplate Rating of Interconnecting Customer’s Facility is greater than three hundred (300) kW and less than or equal to one (1) MW;

4.2.3 Five hundred thousand ($500,000) for each occurrence and in the aggregate if the Gross Nameplate Rating of Interconnecting Customer’s Facility is greater than fifty (50) kW and less than or equal to three hundred (300) kW;

4.2.4 No requirement for systems less than or equal to 50kW. The system owner is encouraged to insure the systems in an amount sufficient to cover all reasonably foreseeable direct liabilities.

4.3 Any combination of commercial general liability insurance and excess/umbrella liability insurance may be used to meet the requirements of Section 4.2.

4.4 The Utility agrees to maintain general liability insurance or self-insurance consistent with its existing commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility’s liabilities undertaken pursuant to this Agreement.

4.5 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.