



October 30, 2015

Re: Invitation to Participate in an RFP for Reliability Services

Dear Developer:

Rochester Gas and Electric Corporation (“RG&E”) is issuing the attached Request for Proposals (“RFP”) for proposals from qualified and experienced developers (“Developers”) with the capability to deliver innovative solutions that address RG&E’s transmission system reliability needs.

This RG&E Contingency Alternative to the Ginna RSSA is being offered for consideration to Developers. RG&E is issuing this RFP in the event that RG&E believes, in its sole discretion, that Ginna will no longer be operating and the system upgrades listed below will not be completed in a timely manner to avoid a continuing reliability need.

1. Circuits 623, 735, 770 and 718 upgrades.
2. Station 122 upgrades including three transformer replacements

Highlights of this opportunity include:

- *Resource Need:*

RG&E anticipates that it will complete the above items prior to March 31, 2017. RG&E is issuing this RFP in the event that RG&E believes, in its sole discretion, that Ginna will no longer be operating and system upgrades listed above will not be completed in a timely manner to avoid a continuing reliability need.

- Failure to complete either of the above items creates a resource need of 580 MW under an N-1-1 contingency.
- Failure to complete item 2 above creates a resource need of 420 MW under an N-1-1 contingency and an 80 MW need under an N-1 contingency.

RG&E is seeking 580 MW to address the potential need created by failure to complete either of the above items.

18 Link Drive, Binghamton, NY 13902





- *Resource Period:* The resource period is April 1, 2017 until completion of the above projects, although the resource need is primarily a summer issue. Absent a force majeure event, RG&E does not foresee the above projects being completed any later than October 31, 2017.
- *Eligible Project Structures:* RG&E will consider proposals from generating resources, distributed energy resources, demand response resources, energy efficiency resources, energy storage resources and other resources that can demonstrate the ability to meet the identified reliability need.
- *Location:* The resource requirement for the MW need specified is based upon the resources being located at the Ginna interconnection. Resources at locations other than the Ginna interconnection will be considered, but will need to be evaluated to determine if they meet the reliability need.
- *Preliminary Schedule:*

October 30, 2015	Issue RFP
November 13, 2015	Pre-bid conferences
December 29, 2015	RFP responses due
January 30, 2016	Short list bidders
February 26, 2016	Publish Report

Should the Developer wish to submit its response to the RFP as confidential information, a form of confidentiality agreement is included in the attached RFP package. To indicate your desire to participate in the RFP, please respond via e-mail to jmconverse@nyseg.com. Upon RG&E's receipt of a Developer's interest, RG&E will provide the Developer with details regarding the RFP pre-bid conference.

Sincerely,

Jeffrey M. Converse
Manager - Electric Supply
NYSEG/RG&E

Attachments

Request For Proposal

Contingency Alternative to Ginna RSSA

October 30, 2015



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I. Introduction and Overview

A. Overview

Rochester Gas and Electric Corporation (“RG&E”) is issuing this Request for Proposals (“RFP”) for proposals (“Proposals”) from qualified and experienced developers (“Developers”) with the capability to deliver innovative solutions that address RG&E’s transmission system reliability needs.

This RG&E RFP is being submitted for consideration to accommodate a potential delay in the implementation of the following components:

1. Circuits 623, 735, 770 and 718 upgrades.
2. Station 122 upgrades including three transformer replacements

B. Proposal Purpose

RG&E anticipates it will complete the necessary system upgrades listed above prior to March 31, 2017. RG&E is issuing this RFP in the event that RG&E believes, in its sole discretion, that Ginna will no longer be operating and the above items will not be completed in a timely manner to avoid a continuing reliability need. RG&E will consider the following Proposals in response to this RFP:

- Generation (Central Station and/or Distributed Resources)
- Demand Response
- Energy Efficiency
- Energy Storage
- Other resources that are able to meet the identified reliability need

Proposals must be capable of providing the reliability support and satisfying the other requirements indicated within this RFP. Any transaction resulting from this RFP will be subject to RG&E receiving all required regulatory approvals, including, but not limited to, acceptance by the NYPSC of the transaction and as well as approval for complete and immediate cost recovery by RG&E. Participants in this RFP agree to execute a definitive agreement (“Agreement”) with terms customary in the industry and appropriate under the circumstances within 30 days of NYPSC acceptance and approval. A form of Agreement is provided as Attachment A.

C. General Guidelines

RG&E reserves the right to make changes to this RFP by issuance of one or more addenda or amendments and to distribute additional clarifying or supporting information relating thereto. RG&E may ask any or all Developers to elaborate or clarify specific points or portions of their submission. Clarification may take the form of written responses to questions or phone calls or in-person meetings for the purpose of discussing the RFP, the responses thereto, or both.

It is solely the responsibility of each Developer to ensure that all pertinent and required information is included in its submission. RG&E reserves the right to determine at its sole discretion whether a submission is incomplete or non-responsive.

Developers should clearly state all assumptions they make about the meaning or accuracy of information contained in this RFP. If you do not ask questions or clarify any assumptions, RG&E will assume that you agree with and understand the requirements in the RFP. While RG&E has endeavored to provide accurate information to Developers, RG&E makes no such warranty or representation of accuracy.

Developer is encouraged to provide and release necessary authorizations for RG&E to verify any of such Developer's previous work, except where it is contractually prohibited from doing so pursuant to customer agreements.

This RFP shall not be construed to create an obligation on the part of RG&E to enter into any contract, or to serve as a basis for any claim whatsoever for reimbursement of costs for efforts expended by Developers. Furthermore, the scope of this RFP may be revised at the option of RG&E at any time, or this RFP may be withdrawn or cancelled by RG&E at any time. RG&E shall not be obligated by any responses or by any statements or representations, whether oral or written, that may be made by RG&E or its employees, principals or agent.

D. Expected Schedule

The following schedule is subject to adjustment. Any updates to the schedule will be distributed via email to interested Developers. All Developers should indicate to RG&E the latest date by which RG&E must notify Developer in order for the Developer to be available to provide service under its Proposal.

October 30, 2015	Issue RFP
November 13, 2015	Pre-bid conferences
December 29, 2015	RFP responses due
January 30, 2016	Short list bidders
February 26, 2016	Publish Report

E. Disclaimers for Rejecting Proposals

This RFP does not constitute a proposal to buy and creates no obligation to execute any agreement or to enter into a transaction under an agreement as a consequence of this RFP. RG&E shall retain the right at any time, in its sole discretion, to reject any Proposal provided in response to this RFP. RG&E also retains the discretion, in its sole judgment, to: (a) reject any Proposal on the basis that it does not provide sufficient ratepayer benefit or that it would impose conditions that RG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of Proposals; (c) negotiate with Developer(s) to maximize ratepayer benefits; (d) modify this RFP as it

deems appropriate to implement the RFP and to comply with applicable law or other direction provided by the NYPSC; and (e) terminate the RFP should the NYPSC not authorize RG&E to execute agreements of the type sought through this RFP. In addition, RG&E reserves the right to either suspend or terminate this RFP at any time for any reason whatsoever. RG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to Developer(s).

II. RFP Parameters and Goals

A. Reliability Need

The follow projects need to be completed in order to allow for reliable system operation without Ginna:

1. Circuit 718, 735, 770 and 623 Upgrades
2. Station 122 upgrades including three transformer replacements

B. Required Resources

1. Failure to complete the above items creates a resource need of 580 MW under an N-1-1 contingency.
2. Failure to complete item 2 above creates the resource need of 420 MW under an N-1-1 contingency and an 80 MW need under an N-1 contingency. The identified MWs at risk reflect the fact that 1) stuck breaker work at Station 80 and Station 122 is required whether or not Ginna continues to operate and 2) there is a viable operational protocol to address the Station 80 and Station 122 stuck breaker reliability need.

The resource requirement for the MW need specified is based upon the resources being located at the Ginna interconnection. Resources at locations other than the Ginna interconnection will be considered, but will need to be evaluated to determine if they meet the reliability need. The resource period is April 1, 2017 until completion of the listed upgrades; however, the resource need is primarily a summer issue. Absent a force majeure event, RG&E does not foresee the above projects being completed any later than October 31, 2017.

C. Eligible Resources

The resource(s) will be required to operate as needed to support the system. RG&E will consider Proposals that may include one or more or a combination of the following resources in this RFP:

- Generation (Central Station and/or Distributed Resources)
- Demand Response
- Energy Efficiency
- Energy Storage

- Other resources that are able to meet the identified reliability need

Developer(s) may submit multiple Proposals for any combination of the resources listed above. RG&E will not be obligated to, but may aggregate Proposals from various Developers.

As applicable, the resource shall be required to:

- Meet North American Electric Reliability Corporation (“NERC”) requirements (cyber, site security, other)
- Comply with NYISO interconnection requirements including metering and ancillary service provisions and all applicable operating policies, criteria, rules, guidelines and tariffs of the NYISO and Good Utility Practice.
- Demonstrate that they can obtain and comply with all required environmental and operating permits while meeting the requested reliability needs.

D. Electric Transmission Interconnection (as applicable)

1. Overview

Interconnection of a resource to the electric system grid and the ability of the grid to deliver the resource to serve load reliably will be integral components of RG&E’s evaluation of Proposals. This section describes the interconnection requirements that Developer’s Proposals are required to meet.

- a. The resource must meet all applicable planning and operation standards as described in RG&E Standard Generator Interconnection Agreement and NYSEG/RG&E Bulletin 86-01 available at <http://www.rge.com/SuppliersAndPartners/interconnectioninfo.html>
- b. RG&E’s transmission system must be able to reliably deliver the output of the resource to serve load. This ability and the associated costs are determined from the NYISO Large Generator Interconnection Procedures. (http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Planning/tei_mnl.pdf).
- c. Developer must comply with all RG&E and NYISO interconnection requirements;

2. Standards of Care (as applicable)

Proposals will be required to meet the following standards of care:

- a. NYISO Standards. Facilities must be designed and constructed such that all generation, scheduling and transmission services shall be performed in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs of the NYISO, Good Utility Practice and meet RG&E’s design and construction criteria. Developer, at its own expense, shall fulfill all contractual,

metering and interconnection requirements as set forth in RG&E's applicable tariffs, the NYISO tariff and implementing NYISO standards and requirements. The resource will be expected to comply with any conditions, modifications, amendments or additions to the applicable NYISO tariffs and protocols throughout the term of its Agreement.

- b. Reliability Standards. The project must be designed and constructed to comply with all NERC, Northeast Power Coordinating Council ("NPCC"), and NYISO reliability requirements.
- c. Protective Apparatus. The project must include all relays, meters, power circuit breakers, synchronizers and other control and protective apparatus that RG&E, in its sole judgment, determines are reasonably necessary for proper and safe operation of the Developer's Facility in parallel with RG&E's system.

3. Dedicated Facilities and Transmission Charges (as applicable)

Dedicated Facilities are those facilities needed to interconnect a generation facility to the point of interconnection (which is defined as all facilities between the point change of ownership and the point of interconnection) with the RG&E transmission system. Dedicated Facilities may include but not limited to the transformer bank used to step-up the generation output to the appropriate voltage, breakers, switches, and associated auxiliary equipment for the outlet line between this step-up transformer bank and the transmission system, and protection and communication facilities needed for interconnection and safe operation of the generator. Developer is solely responsible for installation costs of the Dedicated Facilities and ongoing operation and maintenance after interconnection.

4. NYISO Tariffs – OATT Attachment S (as applicable)

All proposed large generation interconnections (>20MW) must follow the NYISO Tariff OATT Attachment S and Attachment X for Large Facility Interconnection Procedures. System Impacts relate to the capability of the transmission system to deliver the full output of the project from the point of interconnection with the Transmission Owner's transmission system to serve RG&E's load reliably. This includes both NYISO Interconnection Service and Deliverability Assessment (as defined by the NYISO tariff). If there is insufficient capability, system upgrades would be needed. System upgrades may include, but not be limited to, transmission lines, transformer banks, special protection systems, substation breakers, capacitors, and other equipment needed to transfer the generation output to the consumer. Pursuant to FERC Order 2003, as modified by FERC in March of 2004, Developer will be required to fund the full cost of all facilities necessary to interconnect to RG&E's system, including network upgrades.

- a. Completed and Current NYISO Interconnection Studies. For resources that have already obtained cost estimates from completed and current NYISO Interconnection Studies through the applicable NYISO Interconnection

Procedure, Developer shall submit copies of the completed studies with the Proposal.

- b. Projects without Completed NYISO Interconnection Studies. Projects will be required to submit an Interconnection Request to the NYISO and follow the NYISO Large Facility Interconnection Procedures. Copies of the completed NYISO Interconnection Studies must be received by RG&E when they are available.

E. Representations and Warranties, Binding Proposal

Developer's Proposal(s) shall be deemed to have made the following representations, warranties, and covenants to RG&E, which representations, warranties, and covenants shall be deemed to be incorporated in their entirety into Developer's Proposal(s). Any Proposal shall include Developer's agreement to be bound by the conditions of the RFP, including these conditions, in submitting Developer's Proposal.

1. Developer has read, understands and agrees to be bound by all terms, conditions and other provisions of this RFP and associated documents ("Documents");
2. Developer has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFP, the RFP Documents, including any attachments;
3. Developer acknowledges and agrees that, in RG&E's evaluation of Proposals pursuant to this RFP, RG&E reserves the right to disqualify Developer if it is unwilling or unable to meet RG&E's credit requirements;
4. Developer has obtained all necessary authorizations, approvals and waivers, if any, required by Developer as a condition of submitting its Proposal and, if Developer's Proposal is selected, Developer will execute an Agreement with RG&E;
5. Developer is submitting its Proposal subject to all applicable laws and regulations;
6. Developer has not engaged, and covenants that it will not engage, in any communications with any other actual or potential participant in the RFP concerning this RFP, price terms in Developer's Proposal, or related matters and has not engaged in collusion or other unlawful or unfair business practices in connection with this RFP;
7. The information submitted by Developer to RG&E in connection with this RFP, and all information submitted as part of the Proposal is true and accurate as of the date submitted by Developer. Developer covenants that any information requested herein, but not provided to RG&E as part of the Proposal, will be provided to RG&E on or before the date that Developer specified for provision of the information in

the timeline provided. Developer also covenants that it will promptly update such information upon any material change thereto;

- 8.** In addition, Developer's submission of a Proposal is Developer's acknowledgement and agreement that:
 - a. RG&E will rely upon all representations, warranties, and covenants in the Proposal Submittal Package; and
 - b. RG&E may disclose information as set forth in the Confidentiality Agreement;
- 9.** Developer represents and warrants that each project that is the subject of Developer's Proposal meets the design-life requirements of this RFP;
- 10.** Developer covenants that it will provide information requested not longer than one week following Developer's receipt of RG&E's request for such information;
- 11.** Developer covenants that it will promptly provide RG&E with any changes or updates to the implementation schedule;
- 12.** Developer covenants that it will promptly provide RG&E with any changes to its proposal between the date of the Proposal and the execution of an Agreement;
- 13.** Developer agrees and acknowledges that RG&E reserves the right at any time, in its sole discretion, to abandon this RFP, to change any dates specified in this RFP, to change the basis for the evaluation of Proposals, to terminate further participation in this process by any party, to accept any Proposal or to enter into any Agreement, to evaluate the qualifications of Developer and/or the terms and conditions of any Proposal, to reject any or all Proposals, to prohibit or limit mutually exclusive Proposals, to consider additional products, to change any form, document, term or condition used in this RFP at any time during the RFP process, or waive any irregularities, all without notice and without assigning any reasons and without incurring liability of RG&E, or any of their respective subsidiaries, affiliates, or representatives to Developer or any other party. RG&E shall have no obligation to consider any Proposal submitted. RG&E will not reimburse Developer for its expenses related to this RFP under any circumstances, regardless of whether the bidding process proceeds to a successful conclusion or is abandoned. RG&E shall not be deemed to have accepted any Proposal, and shall not be bound by any term thereof, unless and until an authorized representative of RG&E executes an Agreement with Developer;
- 14.** Developer agrees and acknowledges that information provided by it to RG&E pursuant to this RFP will be subject to the disclosure requirements of the New York State Public Service Commission or other applicable law or regulation; and

15. Developer represents that it has obtained a current (up to date) Interconnection Feasibility and System Impact Study, as applicable, and has obtained or will obtain a current (up to date) Interconnection Facilities Study from the NYISO. Furthermore, Developer represents that these studies meet all of the Interconnection Study Requirements that are required by the NYISO. Finally, Developer covenants that if requested by RG&E it will, within five Business Days of a request, request the electronic power-flow file of the base case study from the NYISO, or third party consultant for Developer responsible for the Interconnection Studies and provide this data in electronic form to RG&E within five Business Days of Developer's receipt of the data.

F. Developer's Waiver of Claims and Limitations of Remedies

Except as expressly set forth in this RFP, by submitting an Proposal, Developer knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, including the NYPSC, the FERC, the Supreme Court or any other court in the State of New York ("State Court") or United States District Court or any other United State's Court ("Federal Court") concerning or related in any way to the RFP and/or any attachments to the RFP ("Waived Claims"). The assertion of any Waived Claims by Developer at the NYPSC, FERC, State Court, Federal Court, or otherwise shall, to the extent that Developer's Proposal has not already been disqualified, provide RG&E the right, and may result in RG&E electing, to reject such Proposal or terminate the RFP.

By submitting a Proposal, Developer further agrees that the sole forum in which Developer may assert any challenge with respect to the conduct or results of the RFP is the NYPSC. Developer further agrees that the sole means of challenging the conduct or results of the RFP is a protest to RG&E's filing before the NYPSC seeking approval of one or more Agreements entered into as a result of the RFP. Developer further agrees that the sole basis for any such protest shall be a challenge to the conduct or results of the RFP on the ground that RG&E failed in a material respect to conduct the RFP in accordance with the RFP rules and procedures outlined in this document, and the exclusive remedy available to Developer in the case of such a protest shall be an order of the NYPSC that RG&E again conduct any portion of the RFP that the NYPSC determines was not previously conducted in accordance with the RFP rules and procedures outlined in this document. Developer expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorneys' fees. Unless RG&E elects to do otherwise in its sole discretion, during the pendency of such a protest, the RFP and any related regulatory proceedings related to the RFP will continue as if the protest had not been filed, unless the NYPSC has issued an order suspending the RFP or RG&E has elected to terminate the RFP.

G. Confidentiality Agreement

Information labelled Confidential Information provided pursuant to this RFP will be subject to the terms of the confidentiality agreement between the parties (“Confidentiality Agreement”). As applicable, all Confidential Information provided in connection with this RFP shall remain subject to the provisions of such Confidentiality Agreement. A form of Confidentiality Agreement is provided as Attachment B.

H. Credit and Performance Assurances

As discussed in Section IV, in its evaluation of an Proposal, RG&E will consider Developer’s capability to perform all of its financial and other obligations including, without limitation, Developer’s ability to provide performance assurance that the resource would be available and operate as required under the executed Agreement (“Performance Assurance”). This Performance Assurance will be provided to RG&E by the expected effective date in the Agreement. This Performance Assurance includes the ability of Developer to fund the reliability Proposal as described in this RFP. Developer is required to provide the credit and finance information as requested in this RFP.

Developer will be required to post collateral to support its ability to provide the reliability service by the date noted in the Agreement and, depending on its credit standing, may need to post collateral acceptable to RG&E to support performance of other obligations under the Agreement. As set forth above, Developer will be required to provide funding for any network upgrade costs.

III. Information Required from Developers

A. Introduction

Developers must provide the information described below in order for RG&E to consider the Proposal(s). Information required is described according to eligible resource categories:

- Generation (Central Station and/or Distributed Resources)
- Demand resources including demand response and energy efficiency
- Energy Storage
- Other resources

B. Generation (Central Station and/or Distributed Resources)

RG&E will entertain Proposals for generation resources meeting the requirements described within this RFP, including being located in the specified transmission areas.

Any generation resource must demonstrate to RG&E that they have the capability to respond to automated generation control signals provided by RG&E’s System Operations.

If applicable, Developer(s) shall provide the following information for each resource proposed:

1. Location;

2. The period, in minutes, between shutdown and start up and the available number of start-stop cycles per day;
3. Minimum run time per start;
4. Operational Constraints;
5. For energy storage applications: Maximum run time/start and load curve during maximum run time; minimum recharge time and load curve during minimum recharge;
6. Developer must demonstrate the ability to obtain fuel supply to the facility;
7. If applicable, Developer shall indicate whether it plans to seek Market Based Rate Authority, and the timetable for receiving such authority;
8. Developer must detail any Article X and Article VII filings, or State Environmental Quality Review (SEQR) as required;
9. Developer must provide the annual environmental impacts, including air (NO_x, SO_x, CO, CO₂ and particulates, water (thermal) and soil (ash storage), associated with each Proposal;
10. Developer must explain any market power impacts associated with each Proposal; and
11. Developer must provide total and monthly capital construction costs associated with each Proposal, temporary (construction) and permanent jobs created with each Proposal, and expected property tax payments associated with each Proposal.

C. Demand Response/Energy Efficiency/Other

If applicable, Developer(s) shall provide the following information for each resource proposed:

1. Project description including measure type;
2. Location(s);
3. Types of facilities at which the measure(s) will be implemented, including customer classes and end users served;
4. Operational Constraints;
5. Estimated Minimum and maximum reduction in megawatts as measured at the customer meter and not including losses or reserve margin credit;
6. Minimum and maximum reduction time;
7. Time to reach minimum and maximum reduction amounts;
8. Description of ability to receive orders to reduce or respond to dispatch instructions;

9. Measurement and verification plan which substantiates the reasonableness of the estimated reduction values ; and
10. Documentation of verified savings from comparable projects to substantiate the reasonableness of the estimated reduction values.

D. All Resources

If applicable, Developer(s) shall provide the following information for each resource proposed:

1. All Developers should indicate to RG&E the latest date by which RG&E must notify the Developer in order for the Developer to be available to provide service under its Proposal.
2. For resources proposed that are not 100% available, Developer shall include a description of the redundancy included to ensure that the proposed services will be provided. RG&E will require the redundancy necessary to ensure the adequate level of reliability service is provided. RG&E reserves the right, but not the obligation to aggregate Proposals to meet the reliability need;
3. Developer must demonstrate compliance, or detail plans to comply, with the NYISO Tariffs;
4. Developer must agree to: (i) provide reliability support to RG&E; (ii) operate and maintain the facility in accordance with Good Utility Practice; and (iii) interface and comply with NYISO scheduling deadlines and requirements, as well as comply with RG&E or NYISO dispatch instructions;
5. Developer must fill out the attached Bid Evaluation Form (Attachment C);
6. RG&E will evaluate the corporate structure which Developer proposes for this project. Regardless of Developer's form, Developer shall provide the information requested below as part of its Proposal.
 - a. Developer will provide Developer's exact and complete name, form of organization (e.g., corporation, Limited Liability Company).
 - b. Developer will provide State of incorporation or organization.
 - c. Developer will provide copies of corporate or equivalent documents (e.g., articles of incorporation, by-laws or membership agreements) containing customary corporate separateness provisions.
 - d. Developer's Principal Business: Developer will provide a detailed description.
 - e. Parent or Consortium Information: If applicable, Developer will provide the information with respect to: Developer's ultimate corporate parent if Developer is a subsidiary of any other corporation; and/or each of Developer's members, partners, or participants if Developer is a partnership, limited liability company, or other association or organization

(identifying the controlling member); and each member of the group of persons acting in concert if Developer is a group or member of a group acting in concert for purposes of this Proposal (identifying the controlling member).

- f. Guarantor Information: If Developer proposes to provide a guaranty to RG&E, Developer will provide the information required above with respect to Developer's Guarantor, if any. In addition, Developer has provided or will provide a copy of the proposed form of guaranty.
- g. Developer's Organization: Developer will provide its organizational chart showing each level of ownership up to the ultimate parent.
- h. Annual Report, Form 10-K, Form 10-Q, Audited Financial Statements: If applicable, Developer will provide copies of Developer's or Guarantor's Annual Report to shareholders and Form 10-K for the past two years and all subsequent quarterly filings on Form 10-Q as filed with the Securities and Exchange Commission ("SEC") containing audited, in the case of Form 10-K, or unaudited, in the case of Form 10-Q, financial statements of Developer or Guarantor, or if applicable, each member of the bidding group (or if any member is a consortium or other association or organization whose controlling member(s) is (are), or a group acting in concert whose controlling member(s) is (are), required to file reports under the Securities Exchange Act of 1934, the most recent Annual Report to shareholders or Annual Report on Form 10-K as filed with the SEC containing audited financial statements of each such reporting person). If none of the foregoing applies, Developer has attached copies of the two most recent audited annual financial statements, including certified independent accountants report thereon, and subsequent quarterly financial statements of Developer or Guarantor, or if applicable, each member of the bidding group and, Developer's or each member of the bidding group's controlling member for at least the three prior full fiscal years or, if shorter, the life of such Developer or member of a bidding group or such controlling persons. Developer has included with the audited financial statements, information related to the history of Developer or member of the bidding group and a description of its business and material matters relating to such business, including the level of detail that would be required if Developer or member of the bidding group were subject to the disclosure requirements of Items 3 and 7 of Form 10-K. If available, Developer has provided a web link to the statements provided in this Attachment.
- i. Developer's Debt Ratings: Developer will provide its or its Guarantor's Moody's and Standard and Poor's senior unsecured debt rating or, if such entities do not have a senior unsecured debt rating, then Developer's or Developer's Guarantor's corporate credit rating or long term issuer rating, if any.

7. Developer's Experience Information: if applicable, Developer will provide a description of its experience in developing projects such as contemplated in the Proposal, particularly in New York. Developer shall list its references by name, address and contact number;
8. Project Financial Information: if applicable, Developer will provide the following project finance information:
 - a. Amount and type of financing for the project (sources and amount of debt and equity);
 - b. A description of construction and operating period financing for the project including expected debt to equity ratios, debt coverage ratios, liens, and restricted covenants;
 - c. Any report of an independent engineer or other consultant regarding the project prepared for, or as part of, the project financing; and
 - d. The identification and description of other transactions by Developer that have been leveraged, either prior or subsequent to the construction or commercial operation date, including, without limitation, all financing arrangements for such transactions, loan to equity ratios, coverage ratios, liens, and restrictive covenants agreed to by the Developer.
9. Developer will provide a description (quantity, size, manufacturer etc.) of the main mechanical and electrical pieces of equipment used for the project.

IV. Evaluation of Proposals

To evaluate Proposals, RG&E may primarily consider:

1. **Reliability** – the ability of the resource to alleviate the identified reliability problems;
2. **Ratepayer cost** – total ratepayer revenue requirements and ratepayer bill impacts associated with the Proposal(s);
3. **Environmental impacts** – including but not limited to, air, water and soil impacts;
4. **Economic impacts** - temporary and permanent jobs created, economic development, and property tax payments; and
5. **Electric market competitiveness** – the ability of the facility to economically operate in the applicable NYISO market and the effect of the proposed reliability resource on the competitive market.

RG&E may also consider the following other factors as applicable to each reliability need:

1. **Credit** - Developer's capability and willingness to perform all of its financial and other obligations under the Agreement, including, without limitation, Developer's ability to provide Performance Assurance under the Agreement. RG&E will consider Developer's financial strength, as determined by RG&E, as well as any credit enhancements acceptable to RG&E that Developer may submit with its Proposal;
2. **Developer Qualification** – the experience of the developer, Engineering, Procurement and Construction ("EPC") contractor, prime subcontractors and, if applicable, O&M operator or other entity responsible for the development of the proposed resource. This may include their experience (demonstrated track record) in successfully developing and operating similar projects in North America and New York;
3. **Project Viability** - the probability that the resource(s) associated with a Proposal can be financed and completed as required by the Agreement. This will include an assessment of the degree of detail and feasibility of schedules (e.g. engineering, procurement plan and lead times, equipment delivery, construction, start-up and testing), plans (procurement plan, site access/equipment delivery, engineering/construction division of responsibility ("DOR")), construction plan/subcontractors, existing labor agreements in place, labor availability, construction facility and laydown, water supply, wastewater discharge), adequacy of financing during construction and operation of the plant, lender commitment provided, equity commitment provided, the controls provided to prevent construction cost overruns, debt coverage ratios are adequate, interest rates and fees are reasonable, quality and completeness of financing package, ownership structure, interest rate risk, whether Developer has commitment letters from project participants or financial institutions indicating that the project will be able to obtain financing, and Developer's project financing experience. The project's progress in the Department of Environmental Conservation ("DEC") permitting process will also be evaluated, including its Environmental Characteristics such as Air Quality, Water Supply, Land Use, Hazardous Material usage, Wetlands & other Waters, Biological Resources, Cultural Resources, Socioeconomics, degree of control of property, and other aspects that would help ensure project completion. The project's progress in the gas and electric interconnection processes will be evaluated. The quantities and potential costs to RG&E and to society associated with all of these characteristics will be considered;
4. **Technical Reliability** – the type of technology and the equipment being proposed. This will examine whether there is high reliability due to plant construction design that is tried and proven with historical evidence of high availability in comparison to NERC national averages, with significant additional enhancements that may add to the plant's availability, such as multiple systems and redundancy. Also evaluated here are plant performance parameters such as heat rate and capacity estimates, availability guarantees, unplanned outage factor guarantee, fixed and variable O&M costs, start-up times and costs. Plant operations factors that would be evaluated would be plans for staff training program, staffing requirements, maintenance

support availability, permit limitations on operations, Long Term Service Agreement (“LTSA”) terms, maintenance outage requirements (impacts on availability), spare parts and labor agreements;

5. **Environmental Considerations** - the quantities and potential costs associated with a Proposal's environmental characteristics will be considered. RG&E will also assess Developer’s local community outreach plans to evaluate how it plans to work with the local community to resolve potential issues of concern; and
6. **Conformance with RG&E’s non-price terms and conditions** - the degree to which Developer accepts RG&E’s proposed terms and conditions. Terms and conditions evaluated elsewhere will not be considered in this evaluation criterion (e.g. credit terms). RG&E reserves the right to specify non-price terms and conditions for any reason including, but not limited to, the specific characteristics of the Facility proposed or the ability of Developer to meet other requirements of the RFP. The RFP evaluation may impute for the purposes of evaluation an additional amount to Developer’s Proposal price to reflect Developer’s proposed modifications to the non-price terms and conditions that result in RG&E incurring additional costs or risks.

V. Participation Protocols

A. Overview

All Proposals from Developer(s) must be received in both hard copy and electronic form by Tuesday, December 29, 2015 at 5:00 p.m. (EPT) via hand-delivery or overnight delivery to:

Jeffrey M. Converse – Manager - Electric Supply
18 Link Dr.
Binghamton, NY 13904

If there is disagreement between the electronic and hard copies, the hard copy will prevail.

Hard copy documents: Developer must submit one (1) bound and one (1) unbound copy.

Electronic Documents: The electronic documents must be in a Microsoft Word (standard edition 2010) and/or Excel file (standard edition 2010), as applicable. Developer should not provide documents in other electronic formats, versions, and/or in hard copy alone. Electronic Documents must be in the form of compact disks (CD) or USB removable flash drives, accompanying the hard copy documents.

B. Communications:

To insure accuracy and transparency of the information provided, RG&E strongly prefers that all communications take the form of an e-mail. All communications regarding this RFP should be directed to Jeff Converse (JMConverse@nyseg.com) with a copy to Noelle Kinsch (Noelle.Kinsch@Iberdrolausa.com). RG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

VI. Negotiations and Contract Approval

A. Execution of Agreement

By submitting a Proposal, Developer agrees, if its Proposal is selected, to negotiate and execute a definitive Agreement. Execution of Agreement will follow the New York Public Service Commission's Agreement's acceptance and approval of cost recovery. Among other things, the Agreement will include 1) Time is of the Essence provisions and damages provisions for failure to meet schedule requirements and 2) provisions to hold the Developer liable for any NERC penalties assessed to RG&E resulting from Developer's failure to meet the Agreement's schedule/performance requirements. RG&E's evaluation of Developer's Proposal will not constitute a contract by RG&E to enter into an Agreement with Developer.

B. Agreement by Developer

Developer must agree to be bound by its Proposal(s) for a period of three (3) months from the date RG&E files the unexecuted Agreement(s) with the NYPSC. If the NYPSC grants (subject to appeal) regulatory approval of the Agreement(s) within the three-month period, Developer must agree to be bound by its Proposal(s) for any additional period of time required for the NYPSC order granting regulatory approval to become final and non-appealable.

C. Regulatory Approval:

The effectiveness of any Agreement is expressly conditioned on RG&E's receipt of Regulatory Approval. "Regulatory Approval" means a final and non-appealable order or orders of each regulatory or other governmental body designated by RG&E, including without limitation the NYPSC and if applicable FERC, without conditions or modifications unacceptable to RG&E, which, in the case of Regulatory Approval by a governmental body other than the NYPSC grants the approvals requested in the application therefore, and in the case of Regulatory Approval by the NYPSC, does the following:

1. Accepts the Agreement in its entirety, with explicit approval of payments to be made by RG&E with complete and immediate cost recovery, subject only to NYPSC review with respect to the reasonableness of RG&E's administration of the Agreement, and finds RG&E's entry into and performance under the Agreement to be reasonable; and,

2. Authorizes RG&E to recover payments under the Agreement in utility revenue subject only to NYPSC review with respect to the reasonableness of RG&E's administration of the Agreement.

D. Termination of the RFP and Related Matters

RG&E reserves the right at any time, in its sole discretion, to terminate the RFP for any reason whatsoever without prior notification to Developer and without liability of any kind to or responsibility of RG&E or anyone acting on RG&E's behalf. Without limitation, grounds for termination of the RFP may include the assertion of any Waived Claims by Developer or a determination by RG&E that, following evaluation of the Proposals, there are no Proposals that provide adequate ratepayer benefit.

RG&E reserves the right to change the Proposal evaluation criteria for any reason, to terminate further participation in this process by Developer, to accept any Proposal or to enter into any definitive Agreement, to evaluate the qualifications of Developer, and to reject any or all Proposals, all without notice and without assigning any reasons and without liability to RG&E or anyone acting on RG&E's behalf. RG&E shall have no obligation to consider any Proposal.

In the event of termination of the RFP for any reason, RG&E will not reimburse Developer(s) for any expenses incurred in connection with the RFP regardless of whether Developer's Proposal is selected, not selected, rejected or disqualified.

Unless earlier terminated, the RFP will terminate automatically upon the execution of one or more Agreements by Developer(s) as described herein. In the event that no Agreements are executed, then the RFP will terminate automatically on July 1, 2016.

RELIABILITY SUPPORT SERVICES AGREEMENT

dated as of Month, Day, Year

between

Developer

and

Rochester Gas and Electric Corporation

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RELIABILITY SUPPORT SERVICES AGREEMENT

Pursuant to the rates, terms and conditions of this Reliability Support Services Agreement (this “Agreement”), dated as of Month, Day, Year (the “Effective Date”), Developer shall provide reliability support services to Rochester Gas and Electric Corporation (“RG&E”) from the Developer’s Facility (as defined below).

RECITALS

WHEREAS, RG&E issued a request for proposals dated October 30, 2015 (“RFP”) seeking contingency alternatives to the Amended and Restated Reliability Support Services Agreement between RG&E and R.E. Ginna Nuclear Power Plant, LLC;

WHEREAS, Developer was a successful bidder in response to RG&E’s RFP;

WHEREAS, Developer is the owner of _____ (the “Facility”), which is interconnected to RG&E’s transmission system; and

WHEREAS, the New York State Public Service Commission (“NYPS”) has accepted this Agreement and provided RG&E with complete and immediate recovery of the costs associated with this Agreement.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound by this Agreement, the Parties covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

“**Agreement**” shall have the meaning set forth in the Preamble.

“**Applicable Laws**” shall mean all applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, decision or determination of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality.

“**Confidentiality Agreement**” shall have the meaning set forth in Section 10.14.

“**Developer**” shall have the meaning set forth in the Preamble.

“**Effective Date**” shall have the meaning set forth in the Preamble.

“Environmental Laws” shall mean any and all federal, state, or local, statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of hazardous materials or wastes into surface water, ground water or land, or (iv) the manufacturing, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials or wastes or the cleanup or other remediation thereof.

“EPT” shall mean the prevailing time in the eastern time zone of the United States.

“Facility” shall have the meaning set forth in the Recitals.

“FERC” shall mean the Federal Energy Regulatory Commission.

“Force Majeure Event” shall have the meaning set forth in Section 7.1(a).

“Force Majeure Outage” shall mean the condition, other than during any period of Planned Outage or Unplanned Outage, in which due to a Force Majeure Event the Facility is unavailable or available at an hourly average capacity level that is less than 300 megawatts.

“Force Majeure Performance Adjustment” shall mean, for a given hour in a month, an amount equal to the pro-rata portion of the Monthly Fixed Payment, equivalent to the ratio of one (1) hour to the total amount of hours in such month.

“FPA” shall mean the Federal Power Act.

“GAAP” shall mean the generally accepted accounting principles in the United States, as in effect from time to time.

“Good Utility Practice” shall mean any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice or method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region. Without limitation of the foregoing, “Good Utility Practices” shall include the applicable operating policies, standards, criteria, practices and/or guidelines of FERC, NERC, NYISO, NYSRC, NPCC, and any Governmental Authority, including those practices required by FPA Section 215(a)(4).

“Governmental Authority” shall mean the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government, including FERC, NERC, NYSRC, and NPCC.

“Interconnection Agreement” means the Interconnection Agreement, dated MM/DD/YYYY, as amended, restated or supplemented, between RG&E and Developer.

“Interest Rate” shall have the meaning set forth in Exhibit 1.

“Market or Regulatory Change” shall mean any action by the NYPSC, FERC or any successor Governmental Authority or the NYISO that is not subject to a stay and would cause supplemental capacity payments or other additional payments, revenues or credits to be provided with respect to the Facility due to the Facility being deemed to run partly or wholly for the benefit of additional constituencies (e.g., the State of New York or the region) and not exclusively for the benefit of RG&E’s customers.

“Monthly Fixed Amount” shall mean \$\$\$\$ for each month during the Term, as such amounts may be adjusted in accordance with Section 4.1.

“NERC” shall mean the North American Electric Reliability Corporation.

“NPCC” shall mean the Northeast Power Coordinating Council, Inc.

“NYISO” shall mean the New York Independent System Operator, Inc., or successor organization charged with operating the transmission system and markets in the State of New York.

“NYISO Day-Ahead Energy Market” shall mean the NYISO-administered day-ahead energy market.

“NYISO ICAP Spot Market Auction” shall mean the “ICAP Spot Market Auction” as defined in the NYISO Tariffs.

“NYISO Outage Scheduling Manual” shall mean the “Outage Scheduling Manual” published by the NYISO.

“NYISO Tariffs” shall mean, collectively, the published tariffs of the NYISO, including the Open Access Transmission Tariff and the Market Administration and Control Area Services Tariff, as such tariffs may be amended by the NYISO.

“NYPSC” shall have the meaning set forth in the Recitals.

“NYSRC” shall mean the New York State Reliability Council, L.L.C.

“Party” shall mean either Developer or RG&E. **“Parties”** means both Developer and RG&E.

“Planned Outage” shall mean a planned interruption, in whole or in part, in the electrical output of the Developer’s Facility to permit Developer to perform maintenance and repair of the Facility, pursuant to the process for providers and suppliers of installed capacity set forth in the NYISO Tariffs and NYISO Outage Scheduling Manual.

“**Reliability Support Services**” shall mean the services required to be provided by Developer to RG&E pursuant to this Agreement and shall include but not be limited to Developer (a) keeping the Facility available, capable of being committed and operating for reliability purposes as requested by RG&E or the NYISO, (b) offering the Facility’s energy into the NYISO Day-Ahead Energy Market and capacity into NYISO ICAP Spot Market Auctions, and (c) providing reactive power consistent with the capability of the Facility pursuant to the Interconnection Agreement and the procedures specified under voltage support service provisions of the NYISO Tariffs.

“**RFP**” shall have the meaning set forth in the Recitals.

“**RG&E**” shall have the meaning set forth in the Preamble.

“**Staff**” shall mean the staff of the New York State Department of Public Service.

“**Term**” shall have the meaning set forth in Section 2.1(a).

“**Unplanned Outage**” shall mean the condition, other than during any period of Planned Outage or Force Majeure Outage, in which due to unanticipated failure the Developer’s facility is unavailable or available at an hourly average capacity level that is less than 300 megawatts.

“**Unplanned Outage Performance Adjustment**” shall mean, for a given hour in a month, an amount equal to the pro-rata portion of the Monthly Fixed Payment, equivalent to the ratio of one (1) hour to the total amount of hours in such month.

ARTICLE II CONDITIONS TO PAYMENT OBLIGATIONS; TERM; SURVIVAL OF OBLIGATIONS

2.1 Term

- (a) Reliability Support Services shall be provided commencing at the start of the hour ending 0100 EPT on MM/DD/YYYY and remain in effect through hour ending 2400 EPT on MM/DD/YYYY, unless the Agreement is otherwise terminated pursuant to Section 9.1 (the “Term”).
- (b) This Agreement shall be effective as of the Effective Date and no provision of this Agreement shall terminate earlier than the expiration of the Term, except as relating to Termination for Default (Section 9.1).

2.2 Survival of Obligations

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement that by their nature are intended to, and shall, survive such termination.

**ARTICLE III
OBLIGATIONS AND OPERATIONS**

3.1 Scheduling and Bidding

- (a) Developer shall cause the Facility to be fueled, operated and maintained in accordance with Good Utility Practice and the NYISO Tariffs and with due regard for the reliability purpose of this Agreement.
- (b) Developer shall interface and comply with NYISO scheduling deadlines and requirements for maintaining the Facility as eligible energy, capacity and ancillary services providers, as well as comply with the NYISO's dispatch instructions and the Interconnection Agreement. The Parties acknowledge that the Reliability Support Services shall not include the purchase by RG&E of any physical energy-related products or services (energy, capacity or ancillary services).

3.2 Energy, Capacity and Ancillary Services

- (a) Developer shall at all times bid the Facility in compliance with NYISO market rules.
- (b) Developer shall offer the full amount of the Facility's expected hourly output into the NYISO Day-Ahead Energy Market subject to compliance with NYISO market rules. Developer shall comply with any dispatch instruction issued by the NYISO under established NYISO protocols or by RG&E under the Interconnection Agreement; to the extent such dispatch instructions are consistent with the operating parameters of the Facility and are in accordance with the NYISO Tariffs.
- (c) Developer shall offer the Facility's capacity into the NYISO ICAP Spot Market Auction; such offers shall be subject to compliance with NYISO market rules.
- (d) Developer shall offer ancillary into the NYISO subject to compliance with NYISO requirements.
- (e) Developer (or its affiliates with respect to any portion of the Facility owned by affiliates of Developer) shall be solely responsible, without contribution from RG&E, for any penalties, fines or imbalance charges that relate to the bidding, scheduling and operation of the Facility or the operations of the Facility.
- (f) Each Party shall bear its own bad debt losses under the NYISO Tariffs.

3.3 Operating Characteristics and Environmental Compliance

Developer shall have no obligation to cause the Facility to be operated in a manner that would be inconsistent with or in violation of the NYISO Tariffs, NERC, NPCC or NYSRC rules or would cause Developer to violate the terms of any applicable environmental regulations,

restrictions, orders or decrees or any operating permit, which determination shall be made by Developer in its reasonable discretion. Developer shall have the obligation to ensure that the Facility is operated in accordance with the NYISO Tariffs, NERC, NPCC or NYSRC rules and consistently with the terms of any applicable environmental regulations, restrictions, orders or decrees or any required operating permits.

ARTICLE IV PRICING

4.1 Monthly Fixed Amount

The billing period during the Term shall be each calendar month. Not later than the twentieth (20th) day of each month, Developer shall prepare and provide to RG&E an invoice showing for the preceding month the Monthly Fixed Amount, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by either Party under this Agreement, together with reasonable documentation supporting the invoiced amounts. Unless subject to dispute pursuant to Section 9.1 of this agreement, within 10 days of receipt of the invoice, RG&E shall pay Developer the invoiced amount.

4.2 Capital Expenditures and Operating Costs

In consideration of the Monthly Fixed Amount, Developer shall be responsible, at its sole cost and without additional payment from RG&E, for all capital expenditures and operating costs (including fuel), whether or not currently anticipated, required to operate and maintain the Facility in accordance with Good Utility Practice, including, but not limited to any capital expenditures or operating costs (including fuel) attributable to the enactment of any Applicable Laws, or any changes in existing Applicable Laws, after the date hereof.

4.3 Billing and Payment

Billing and payment terms for invoices issued under Sections 4.1 shall be as set forth in Exhibit 1.

4.4 Other Costs

Each Party shall bear its own attorneys' and consultants' fees incurred in connection with the preparation, negotiation, regulatory approval and administration of this Agreement.

4.5 Books and Records

RG&E shall have the right to reasonable access to, review of, and audit of Developer's books and records as well as perform site visits for the purpose of proper administration of this Agreement.

ARTICLE V
OUTAGES AND MAINTENANCE; ACCESS

5.1 Planned Outages

- (a) Developer shall provide to RG&E a detailed major outage plan and schedule involving maintenance or restoration of the Facility from a Planned Outage. Upon reasonable notice to RG&E, Developer may alter the commencement and/or completion dates for Planned Outages.
- (b) Developer shall be permitted to take the Facility out of operation, or reduce the capability of the Facility, during Planned Outages as permitted by the NYISO Tariffs and policies and the Interconnection Agreement.
- (c) Developer shall provide RG&E a monthly report on the tenth (10th) business day of each successive month of the Term on the current and projected operating status of the Facility and any upcoming items of note, including any forecasted changes to the Planned Outage schedule.

5.2 Unplanned Outages

In the event of an Unplanned Outage, Developer shall notify RG&E, pursuant to established practice under the NYISO Outage Scheduling Manual, of the nature and expected duration of such Unplanned Outage as soon as practicable and shall keep RG&E timely advised of any developments associated with such Unplanned Outage and the estimated timing of the return of the Facility to full capability. Developer shall use commercially reasonable efforts to remedy and to mitigate the consequences of an Unplanned Outage as soon as reasonably practicable. An Unplanned Outage that occurs and continues for a period of fifteen (15) consecutive days or more shall be considered a failure to perform a material obligation under this Agreement by Developer that is subject to termination for default pursuant to Section 9.1.

5.3 Unplanned Outage Performance Adjustment

- (a) Developer's failure to return the Facility to service from a Planned Outage within the allotted duration set forth shall result in the excess hours associated with such Planned Outage being treated as an Unplanned Outage and the application of the Unplanned Outage Performance Adjustment as set forth in Section 5.3(b) below, but shall not be deemed a failure to perform a material obligation under this Agreement under Section 9.1 unless Developer fails to exercise Good Utility Practices and act in accordance with the NYISO Tariffs in returning the Facility to service.
- (b) For each hour (or portion thereof) of an Unplanned Outage that exceeds a total of 168 hours for a calendar year (pro-rated for any partial years) during the Term, an Unplanned Outage Performance Adjustment amount shall be credited against the Monthly Fixed Amount on the monthly invoice that is issued for the month in which such hour occurs.

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES**

6.1 Representations and Covenants of Developer

Developer hereby represents and warrants to RG&E as of the Effective Date and covenants to RG&E that:

- (a) Developer is a _____ duly organized, validly existing and in good standing under the laws of _____. Developer has full limited liability company power and authority to own and lease all of the properties and assets it now owns and leases and to carry on its business as now being conducted. To the knowledge of Developer, Developer is in substantial compliance with Applicable Laws.
- (b) Developer has full power and authority ([corporate] and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which Developer is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by Developer of this Agreement and the operative documents, and the consummation of the transactions will not violate Developer's organizational documents or other obligations, and no other proceedings on the part of Developer are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by Developer and constitutes the legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). Developer shall take, and cause to be taken, all action that is necessary for Developer to complete the actions to be completed by Developer pursuant to this Agreement.
- (c) There are no known issues, defects, problems or other issues involving or related to the ownership and/or operation of the Facility and the Facility as a whole that would preclude or prevent Developer from fully performing its duties and obligations in accordance with this Agreement.
- (d) No citations, fines, or penalties have been asserted against Developer under any Environmental Law or by the regulatory authority or jurisdiction in which Developer operates. Developer has not received notice (verbal or written) of, nor is it aware of, any person making allegations that all or any part of the Facility or the Facility as a whole, or the use, operation or ownership thereof, are in violation of any applicable Environmental Law.

- (e) Developer shall keep in force throughout the duration of the Term policies of insurance related to the Facility of the types and in the amounts set forth in Exhibit 2.
- (f) Developer is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by Developer before or coincident with the Effective Date.

6.2 Representations and Covenants of RG&E

RG&E hereby represents and warrants to Developer as of the Effective Date and covenants that:

- (a) RG&E is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full corporate power and authority to own property and carry on its business as now being conducted.
- (b) RG&E has full power and authority (corporate and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which RG&E is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by RG&E of this Agreement and the operative documents, and the consummation of the transactions will not violate RG&E's organizational documents or other obligations, and no other corporate proceedings on the part of RG&E are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by RG&E and constitutes the legal, valid and binding obligation of RG&E enforceable against RG&E in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). RG&E shall take, and cause to be taken, all corporate action that is necessary for RG&E to complete the actions to be completed by RG&E pursuant to this Agreement.
- (c) RG&E is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by RG&E before or coincident with the Effective Date.

ARTICLE VII FORCE MAJEURE EVENTS

7.1 Force Majeure Event

- (a) Any delay or failure in the performance by a Party, other than payment of undisputed amounts, shall be excused if and to the extent caused by the

occurrence of a Force Majeure Event. A “Force Majeure Event” means acts of God, fires, floods, explosion, riots, wars, unusually inclement weather, sabotage, vandalism, terrorism, terroristic acts, restraint of government, governmental acts, changes in laws, regulations or orders or injunctions, labor strikes, breakage or accident of machinery or equipment resulting from an event or circumstance that would otherwise constitute a Force Majeure Event hereunder, and other like events or circumstances that are beyond the reasonable control of the Party affected thereby, despite such Party’s commercially reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party’s negligence or failure to perform its obligations under this Agreement. In no event shall “Force Majeure Event” include economic hardship of any kind.

- (b) RG&E’s obligation to pay Developer the Monthly Fixed Amount shall not be affected by the occurrence of a Force Majeure Event, but the amount of the Monthly Fixed Amount may be adjusted for a Force Majeure Outage pursuant to this Section 7.1(b). For each hour (or portion thereof) of a Force Majeure Outage (other than due to a Force Majeure Event with respect to the transmission or distribution systems of RG&E or by equipment owned by RG&E) that exceeds a total of one hundred sixty eight (168) hours per year for the Term, a Force Majeure Performance Adjustment amount shall be credited against the Monthly Fixed Amount on the monthly invoice that is issued for the month in which such hour occurs.
- (c) The Party unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party’s sole discretion, are contrary to its interests and (ii) the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

ARTICLE VIII LIMITATIONS OF LIABILITY

8.1 Indemnification, Limitation of Liability

- (a) Each Party shall release, indemnify and hold harmless the other Party and its directors, managers, officers, agents, contractors, sub-contractors and representatives against and from any and all loss, claims, actions or suits, including costs and attorneys’ fees, both at trial and on appeal, resulting from, or arising out of or in any way, the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party and its

directors, managers, officers, agents, contractors, sub-contractors and representatives, including, but not limited to, any loss, claim, action or suit, for or on account of injury or death of persons, or for damage to, or destruction or economic loss of, property, excepting only such loss, claim, action or suit as may be caused solely by the negligence or willful misconduct or breach of this Agreement of the Party seeking indemnification or its directors, managers, officers, agents, contractors, sub-contractors or representatives.

- (b) Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public.
- (c) Neither Party shall be liable to the other for incidental, consequential, special, indirect, multiple or punitive damages, loss of revenue, profits, fees or costs arising out of, or connected in any way to the performance or non-performance of a Party under this Agreement, whether arising from contract, tort (including negligence), strict liability or otherwise, unless such damages are the result of a Party's gross negligence or willful misconduct and except as may be included in the calculation of Unplanned Outage Performance Adjustments or Force Majeure Event Performance Adjustments.

ARTICLE IX REMEDIES

9.1 Termination for Default

- (a) If any Party shall fail to perform any material obligation imposed on it by this Agreement, and that obligation has not been suspended pursuant to the terms of this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within thirty (30) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement; provided that, if the default is reasonably expected to take more than thirty (30) days to remedy, the defaulting Party shall notify the non-defaulting Party of its plan for remedying the default and must take actions to begin remedying the default within thirty (30) days. The Party not in default shall have a duty to mitigate damages. Notwithstanding anything to the contrary in this Section 9.1, termination of this Agreement pursuant to this Section 9.1 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.
- (b) Any NERC penalties assessed to RG&E as result of the Developer's default under this Agreement shall be paid by Developer to RG&E. Developer may be required

by RG&E to provide an appropriate credit instrument to support Developer's compliance with this Section 9.1(b).

9.2 Waiver

The failure to exercise any remedy or to enforce any right provided in this Agreement or Applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the Party against whom such waiver is to be enforced.

9.3 Beneficiaries

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third-party, nor give any third-person any rights of subrogation or action against any Party.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Assignment

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, upon the occurrence of a Market or Regulatory Change, RG&E may assign this Agreement to one or more parties that are the beneficiaries identified in the appropriate Governmental Authority's or NYISO's determination of benefits, subject to Developer's approval of such party's creditworthiness, which shall not be unreasonably withheld, conditioned or delayed and need not be equivalent to RG&E's creditworthiness. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this section, the assigning Party shall be relieved of liability under this Agreement and this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties. Without limiting the foregoing, Developer may not sell or transfer the assets comprising substantially all of the Facility unless the purchaser or transferee agrees in writing with RG&E to assume all rights, obligations and liabilities under this Agreement.

10.2 Notices and Correspondence

Except as otherwise expressly provided in this Agreement, permitted by NYISO rules or required by law, all invoices, notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by email, followed by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (i) upon receipt if delivered in person or facsimile; (ii) two (2) days after having been delivered to a courier for overnight delivery; or (iii) seven (7) days after having been

deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this Section):

TO DEVELOPER:

Name
Address
Address
Attention:
Email Address:
Telephone No.:
Facsimile No.:

TO RG&E:

RG&E
c/o NYSEG
James A. Carrigg Center, 18 Link Drive
P.O. Box 5224
Binghamton, New York 13902-5224
Attention: David J. Kimiecik, Vice President - Energy Services
Email Address: djkimiecik@nyseg.com
Telephone No.: (607) 762-8701

with a copy to:

Iberdrola USA Management Corporation
99 Washington Ave, Suite 2018
Albany, NY 12210
Attention: Noelle Kinsch, Deputy General Counsel
Email Address: noelle.kinsch@iberdrolausa.com
Telephone No.: (518) 434-4977

10.3 Parties' Representatives

Each Party to this Agreement shall ensure that throughout the Term duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Developer and RG&E shall be entitled to assume that the duly appointed representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party.

10.4 Taxes

- (a) Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement insofar as it applies to the Reliability Support Services in accordance with the intent of the Parties to minimize all taxes, so long as

neither Party is materially adversely affected by such efforts. If any of the transactions hereunder are to be exempted from or not subject to any particular taxes, the Parties shall cooperate in good faith to promptly provide each other with all necessary documentation to evidence and qualify for such exemption.

- (b) RG&E shall pay or cause to be paid all taxes, if any, on or with respect to the sale of the Reliability Support Services (other than ad valorem, franchise or income taxes, or similar taxes measured by or based upon net income, which are related to the sale of the Reliability Support Services and are, therefore, the responsibility of Developer). In the event Developer is required by Applicable Law to remit or pay taxes which are RG&E's responsibility hereunder, RG&E shall promptly reimburse Developer for such taxes. If RG&E is required by Applicable Law to remit or pay taxes which are Developer's responsibility hereunder, RG&E may deduct the amount of any such taxes from the sums due to Developer under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under Applicable Law.

10.5 Independent Parties

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party.

10.6 Choice of Law

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, excluding any choice of law provisions or rules which may direct the application of the laws of another jurisdiction.

10.7 Effect of Invalidation, Modification, or Condition

Each covenant, condition, restriction, and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority or the NYISO, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the

determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement.

10.8 Amendments

Any amendments or modifications of this Agreement shall be made only in writing and duly executed by the Parties to this Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from FERC for the amendment or modification. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the New York markets that are approved by FERC from time to time.

10.9 Dispute Resolution

Except where otherwise provided for in this Agreement, disputes under this Agreement shall be submitted to representatives of each Party for resolution. If the dispute remains unresolved after forty-five (45) days, either Party may pursue any legal remedies available to it by law.

10.10 Injunctive Relief

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

10.11 Entire Agreement

This Agreement consists of the terms and conditions set forth herein, as well as the Exhibits hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior negotiations, undertakings, agreements and business term sheets.

10.12 Confidentiality

Information provided by any Party to the other pursuant to this Agreement may, at the Party's discretion, be provided subject to the terms of the Confidentiality Agreement dated MM/DD/YYYY, between Developer, and RG&E ("Confidentiality Agreement"). RG&E may disclose information provided under Section 4.6 to the NYPSC and Staff pursuant to regulatory requests received in the ordinary course of RG&E's business, and shall use at least the same degree of care (which in no event shall be less than reasonable care) in connection with demands or requests for the disclosure of any confidential information of Developer as RG&E uses to protect its own similar confidential information in connection with similar regulatory requests. Disclosure of such information pursuant to regulatory requests not received in the ordinary course of business shall remain subject to all of the terms and conditions of Section 4 of the Confidentiality Agreement. All information provided to either Party in connection with the

negotiations regarding this Agreement shall remain subject to the provisions of such Confidentiality Agreement.

10.13 Communications; Press Releases

The Parties shall reasonably cooperate and coordinate with each other with regard to any communications in respect of the Reliability Support Services or the transactions contemplated by this Agreement with state and local community organizations and groups or the public generally, whether through press releases or otherwise. Each Party agrees to inform the other Party with respect to all such matters and shall promptly provide the other Party with copies of any communications sent, delivered or received; provided that nothing in the foregoing shall operate to prevent a Party from complying with Applicable Law or the requirements of any Governmental Authority or the NYISO concerning such matters.

10.14 Standard of Review

The standard of review for any modifications to this Agreement requested by a Party will be subject to the “public interest” standard of review set forth in United Gas Pipe Line Company v. Mobile Gas Service Corporation, 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Company, 350 U.S. 348 (1956). See also Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish County, 554 U.S. 527 (2008). The standard of review for any modifications to this Agreement requested by a non-party to this Agreement or initiated by FERC will be the most stringent standard permissible under applicable law. See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm’n, 558 U.S. 165 (2010).

10.15 Counterparts

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Facsimile or PDF signature shall be an acceptable form of execution.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Rochester Gas and Electric Corporation

By: _____

Name:

Title:

By: _____

Name:

Title:

[Developer]

By: _____

Name:

Title:

Exhibit 1
to
Reliability Support Services Agreement
Between RG&E and [Developer]

Billing and Payment

Billing Period. As designated in Section 4.1.

Timeliness of Payment. Unless otherwise agreed by the Parties in a transaction contemplated by this Agreement, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the last day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a business day, then on the next business day. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

Interest Rate. "Interest Rate" shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this section within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a transaction contemplated by this Agreement occurred, the right to payment for such performance is waived.

Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions applicable to this Agreement through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of products during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.

US Federal Tax Forms. Each Party to this Agreement shall upon signing provide the other Party a completed W-9.

Dollars. Unless otherwise stated all dollars in this Agreement refer to U.S. Currency.

Exhibit 2
to
Reliability Support Services Agreement
Between RG&E and [Developer]

Insurance Requirements

[To be determined]

CONFIDENTIALITY AGREEMENT

This Agreement is effective as of the ____ day of _____, 2015 between Rochester Gas and Electric Corporation, a New York corporation with an office for business at 89 East Avenue, Rochester, NY 14604 ("RG&E") and _____, a _____ corporation with an office for business at _____ ("Developer"). RG&E and Developer shall be considered jointly as "the Parties" and each individually as a "Party."

WHEREAS, RG&E desires to engage Developer in the Contingency Alternative to Ginna RSSA Request for Proposals to provide reliability services (the "RFP");

WHEREAS, the Parties desire to keep their discussions and the nature and scope thereof confidential;

WHEREAS, such discussions will of necessity involve the disclosure by one Party ("Disclosing Party") to the other Party ("Receiving Party") of confidential and proprietary information; and

WHEREAS, the Parties desire to reach an understanding with respect to the disclosure of such information and with respect to the confidentiality of the discussions in general;

THEREFORE, the Parties agree as follows:

1. For the purpose of this Agreement, unless the context indicates otherwise, the term "Confidential Information" means any and all information which the Disclosing Party considers to be proprietary, secret and/or confidential and that (a) relates to the Disclosing Party's past, present and future business activities, research, development, products, software, services or technical knowledge or (b) has been identified, either in writing or orally, as confidential or other similar term or would be understood to be confidential by a reasonable person under the circumstances.
2. Each Party agrees that the Confidential Information it receives from the Disclosing Party is proprietary, the property of the Disclosing Party, and shall be kept strictly confidential. The Confidential Information shall not be sold, traded, duplicated, published or otherwise disclosed by the Receiving Party to anyone in any manner whatsoever. Except as permitted under paragraph 5 hereof, the Receiving Party shall not use the Confidential Information for any purpose, without the consent of the Disclosing Party, other than in connection with the RFP. The Parties acknowledge that they and their Representatives may form and retain mental impressions based upon the Confidential Information disclosed to each Party, and agree that it is not the intent of the Parties that the non-use restrictions contained in this Agreement will prevent these Representatives from performing their other work assignments for their respective employers, provided that such other work that does not involve the use or disclosure of the Confidential Information. The term "person" as used in this Agreement shall broadly be interpreted to include, without limitation, any individual, corporation, company, group, partnership or other entity.
3. Confidential Information does not include any information which:

- (a) was known to the Receiving Party prior to the date of its disclosure pursuant to this Agreement and to which there is no existing obligation of confidentiality; or
- (b) is or becomes generally available to the public other than through the act or omission of the Receiving Party or its Representatives; or
- (c) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided that such source is not bound by a confidentiality agreement with the Disclosing Party or its Representatives or otherwise prohibited from transmitting such Confidential Information to the Receiving Party or the Receiving Party's Representatives by a contractual, legal or fiduciary obligation; or
- (d) is independently developed by the Receiving Party or any of its Affiliated Companies without the use of or reliance upon the Confidential Information.

4. In the event that a Receiving Party or anyone to whom the Receiving Party transmits such Confidential Information pursuant to this Agreement is legally requested or required to disclose any Confidential Information of a Disclosing Party, the Receiving Party will provide the Disclosing Party with notice, prior to disclosing such information, so that the Disclosing Party may seek an appropriate protective order and/or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, a Receiving Party is nonetheless advised by counsel that it is legally compelled to disclose such information, it may, without liability hereunder, furnish that portion of such Confidential Information that is legally required and will reasonably cooperate with actions by the Disclosing Party, including making any applications or requests, at the Disclosing Party's sole cost and expense, for confidential treatment in the event that the Disclosing Party has no standing to make such application or request.

5. The Receiving Party shall be entitled to disclose the Confidential Information of the Disclosing Party and provide copies of the same, without the Disclosing Party's prior written consent, to its Representatives who have a need to know for the purpose of the RFP or to engage in discussions or negotiations with the Disclosing Party involving the RFP, and who are informed by the Receiving Party of the confidential nature of such Confidential Information and agree to abide by the terms of this Confidentiality Agreement. The Receiving Party shall be responsible for any violations of the provisions of this Agreement caused by any of the Receiving Party's Representatives. In this Agreement, "Representatives" means a Party's parent companies, Affiliated companies, its and their respective directors, officers, employees (permanent or contract), agents or representatives, including, without limitation, its and their respective attorneys, lenders, subcontractors, accountants, consultants and financial advisors, and the Party's Representatives. An "Affiliated Company" of any Party shall mean any company or legal entity which (a) controls, either directly or indirectly, such Party; or (b) which is controlled, directly or indirectly, by such party; or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party. "Control" means the right to exercise 50% or more of the voting rights in the appointment of the directors (or other managers having duties similar to those of directors) of such company.

6. Upon thirty (30) days prior written notice, the Receiving Party shall promptly return or destroy (at the option of the Disclosing Party), the Confidential Information including all copies

or other reproductions thereof, which are in the Receiving Party's possession or the possession of its Representatives, and destroy any notes, analyses, summaries, compilations, studies, reports or other documents that contain Confidential Information and were prepared by the Receiving Party or its Representatives. In the event that the Receiving Party or its Representatives have destroyed any Confidential Information or copies, such Receiving Party shall confirm the destruction of such Confidential Information or copies in a letter, signed by an officer of the Receiving Party, accompanying the return of the documents and copies which were not destroyed, or in a separate letter if all Confidential Information was destroyed. Notwithstanding the foregoing:

- (a) RG&E will not be obligated to return or destroy any documents that reflect or refer to Confidential Information provided directly by the Disclosing Party and are retained by RG&E for the purpose of filings with regulatory agencies in connection with, related to, or involving the RFP or the cost thereof. With respect to any such retained Confidential Information, RG&E will be subject to the restrictions of this Agreement; and
- (b) the Parties may retain any Confidential Information they deem necessary to comply with the provisions of Section 4 of this Agreement.

7. Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, mailed certified mail, return receipt requested, or transmitted by facsimile with date and sending Party identified to the following addresses:

Rochester Gas and Electric Corporation
c/o New York State Electric & Gas Corporation
Attn: Jeffrey Converse
18 Link Drive
Binghamton, New York 13904
Telephone: 607-762-8675
Facsimile: 607-762-8885
Email: jmconverse@nyseg.com

Developer
Attn:
Address
Address
Telephone:
Facsimile:
Email:

8. In the event of any breach or threatened breach by a Party of the terms hereof, the other Party shall be entitled to injunctive and other equitable relief, and the breaching Party shall not plead in defense thereto that there would be an adequate remedy at law. Such remedy shall be cumulative and in addition to all other remedies available to the non-breaching Party. The Parties acknowledge that the Confidential Information is valuable and unique and that

disclosure in breach of this Confidentiality Agreement may result in irreparable injury to the Disclosing Party.

9. Developer acknowledges that execution and delivery of this Agreement is required to allow Developer to participate in the RFP. Other than a claim arising from a breach of this Agreement, Developer acknowledges that by submitting an Offer, Developer knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, including the NYPSC, the FERC, the Supreme Court or any other court in the State of New York ("State Court") or United States District Court or any other United State's Court ("Federal Court") concerning or related in any way to the RFP and/or any appendices to the RFP ("Waived Claims"). The assertion of any Waived Claims by Developer at the NYPSC, FERC, State Court, Federal Court, or otherwise shall, to the extent that Developer's Offer has not already been disqualified, provide RG&E the right, and may result in RG&E electing, to reject such Offer or terminate the RFP.

10. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other for any consequential, indirect, incidental, reliance, exemplary, punitive, special or indirect losses or damages.

11. No amendments, changes or modifications to this Agreement shall be valid unless the same are in writing and signed by a duly authorized representative of each of the Parties hereto.

12. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

13. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied.

14. This Agreement shall be binding upon the successors and assigns of the Parties.

15. Nothing in this Agreement nor the furnishing of Confidential Information pursuant hereto shall be construed in any way as an offer or as obligating either Party to enter into any further agreement, negotiation or transaction with the other or to refrain from entering into an agreement, negotiation or transaction with any other person, including without limitation any person engaged in the same or similar line of business as the other Party hereto.

16. This Agreement shall be in effect commencing on the last date of execution by a Party hereto for a period of three (3) years unless superseded at an earlier date by the confidentiality provisions of a definitive agreement, and shall be construed and governed by the laws of the State of New York, without regard to choice of law or conflicts of law provisions that would allow or require the application of the law of another jurisdiction.

17. Although the Receiving Party understands that the Disclosing Party has endeavored to include in such Confidential Information those materials that are believed to be reliable and relevant for the purpose of the Receiving Party's evaluation, the Receiving Party acknowledges

that neither the Disclosing Party nor its Representatives makes any representation or warranty as to the quality, accuracy, fitness, reliability or completeness of such Confidential Information. The Receiving Party agrees that neither the Disclosing Party nor its Representatives shall have any liability to the Receiving Party or to any of the Receiving Party's Representatives as a result of the use of such Confidential Information by the Receiving Party and the Receiving Party's Representatives, it being understood that only those particular representations and warranties that may be made to the Receiving Party by the Disclosing Party or its affiliates in a definitive transaction agreement, when, as and if it is executed, and subject to such limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect. Notwithstanding the foregoing, the Disclosing Party does represent and warrant to the Receiving Party, that the Disclosing Party has the unqualified right to disclose and to provide the Confidential Information to the Receiving Party.

18. Each Party understands and agrees that no failure or delay by the other Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder.

<Signature Page Follows>

IN WITNESS WHEREOF, this Agreement is effective as of the day and year first above written.

Rochester Gas and Electric Corporation

By: _____
Name: _____
Title: _____
Date: _____

Internal Control:

By: _____
Name: _____
Title: _____
Date: _____

[Developer]

By: _____
Name: _____
Title: _____
Date: _____

