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**From:** Blank, Cynthia [Cynthia\_Blank@nstaronline.com]  
**Sent:** Tuesday, May 16, 2006 3:24 PM  
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**Cc:** 'Abby Arnold'; Jean Clements  
**Subject:** RE: DG I/I Working Group - 5/9/06 - Next Steps  
**Attachments:** Insurance Provision redlined.doc

Hi All,

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Sorry for the delay in getting this section to you. Attached are the changes to be made to Section 11 to allow the pooling of multiple units under one policy, to allow the reduction of the aggregate insurance limit required when pooling multiple limits in line with the table provided, and to allow the purchase of a policy which will cover only the utility company. You will notice that some other changes have been made to clarify language and align the subsections. If you have any questions, let me know.

Cindy

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**From:** Evans, Rachel (ENE) [mailto:Rachel.Evans@state.ma.us]  
**Sent:** Wednesday, May 10, 2006 1:33 PM  
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**Cc:** Abby Arnold; Jean Clements

**Subject:** DG I/I Working Group - 5/9/06 - Next Steps

Here is an update of tasks from yesterday's meeting. *The following timelines are very strict and comport with the DG Collaborative Next Steps Memo and Timeline circulated by Fran last Friday.* Also, please note that while I have agreed to facilitate these meeting, Pete Wilson and Steve Klionsky are still the "Team Leaders" of this working group (and should feel free to bump me at any time!).

1. **Proposed Language Change for Pooling.** Cindy, Jim and John will work to draft a proposed table of insurance limits for pooling multiple DG facilities into one policy. Cindy will circulate this language to the working group for immediate comment (e.g. 1-2 days). The group will respond with timely comments for Cindy to revise and send to Fran by May 15<sup>th</sup>. Fran will send revised draft to the full DG Collaborative for immediate comments.
2. **Tariff Change Request #7.** Amy will propose additional language to address Stan's ongoing concerns regarding lender liability.
3. **Reasonableness Question** - DOC and DCAM are still drafting a request for DTE to investigate the reasonableness of requiring insurance.

**Our Next Working Group Meeting - Friday, May 19<sup>th</sup> at 2:30 at DOER.** At this meeting we will hash out the language for a proposed tariff change. Hopefully most of this work will have already been accomplished through the comment process.

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Thank you all for allowing us to comprehensively work our way through these issues today. We have scheduled our next meeting for the morning of May 9<sup>th</sup> (details on that will come shortly). Here is my summary of next steps:

1. **Insurance Provisions-** a subgroup has formed and will gather information regarding available policies and premiums and how a public entity could implement this provision. The subgroup consists of Cindy Blank (Cynthia\_Blank@nstaronline.com), Todd Gundlach, Pete Wilson, and Jonathan Klavens. This subgroup will circulate its information to the larger working group by May 5<sup>th</sup> and then, if a language change is deemed appropriate, circulate draft language before the group meets again on May 9<sup>th</sup>.
2. **Indemnification Language** - Rachel has verified that Change Request #7 includes the latest language. DCAM has reserved its right to object until after it reviews the possibilities for implementing the insurance provisions.
3. **Tariff Change Request #7** - Stan will work with Amy & Steve to determine whether it is possible to incorporate a language change to specifically exclude a lender from the term "Interconnecting Customer."
4. **Self-Insurance Provision** - John DiModica will draft a simple change request to change first sentence of paragraph 11.4: "If interconnecting customer ~~is a company with~~ has a self-insurance program. . ."]
5. **Reasonableness of Insurance** - Todd and John will draft a paragraph requesting the DTE to conduct an investigation as to the reasonableness of requiring insurance and submit it to the Working Group at the May 9<sup>th</sup> meeting.

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## 11.0 Insurance Requirements

### 11.1 General Liability:

In connection with Interconnecting Customer's performance of its duties and obligations under the Interconnection Service Agreement, Interconnecting Customer shall maintain, during the term of the Agreement, general liability insurance with a combined single limit of not less than:

- a. Five million (\$5,000,000)<sup>1</sup> dollars for each occurrence and ten million (\$10,000,000)<sup>2</sup> in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than (5) MW.
- b. Two million dollars (\$2,000,000)<sup>3</sup> for each occurrence and ~~five~~<sup>4</sup> four<sup>5</sup> million (\$4,000,000)<sup>6</sup> dollars ~~(\$5,000,000)~~<sup>7</sup> in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than one (1) MW and less than or equal to (5) MW;
- c. One million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000)<sup>8</sup> in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than one hundred (100) KW and less than or equal to 1 MW;
- d. Five hundred thousand dollars (\$500,000) for each occurrence and one million dollars (\$1,000,000)<sup>9</sup> in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than ten (10) KW and less than or equal to one hundred (100) KW.

No insurance is required for Facilities less than or equal to ten (10) KW. However, the Company recommends that the Interconnecting Customer obtain adequate insurance to cover potential liabilities.

If the term of the Interconnection Service Agreement is longer than five (5) years, in the fifth year, and every five (5) years thereafter, the General Liability insurance limits required above shall be increased by the percentage increase in the Consumer Price Index from the month the Agreement was executed to the month immediately preceding the first month of the year in which the increase is required.<sup>10</sup>

### 11.2 ~~Insurer~~<sup>11</sup> Blanket Insurance Coverage<sup>12</sup>

In the event Interconnecting Company has more than one Facility, the Interconnecting Customer may provide coverage for such Facilities under a blanket policy. If a blanket policy is utilized, the following coverage limits shall apply:<sup>13</sup>

<u>Unit Size – Name Plate Rating (MW)</u> <sup>14</sup>	<u>1-5 units</u> <sup>15</sup>	<u>Over 5 Units</u> <sup>16</sup>

<u>Greater than 5 MW</u> <sup>17</sup>	<u>\$5,000,000 per Occurrence per Facility;</u> <sup>18</sup> <u>\$10,000,000 Aggregate</u> <sup>19</sup>	<u>\$5,000,000 per Occurrence per Facility; with an Aggregate of</u> <sup>20</sup> <u>(number of units x \$5,000,000)/2</u> <sup>21</sup>
<u>Greater than one (1) MW and less than or equal to (5) MW;</u> <sup>22</sup>	<u>\$2,000,000 per Occurrence per Facility;</u> <sup>23</sup> <u>\$4,000,000 Aggregate per facility</u> <sup>24</sup>	<u>\$2,000,000 per Occurrence per Facility;; with an Aggregate of</u> <sup>25</sup> <u>(number of units x \$2,000,000)/2</u> <u>Aggregate</u> <sup>26</sup>
<u>Greater than one hundred (100) KW and less than or equal to 1 MW</u> <sup>27</sup>	<u>\$1,000,000 per Occurrence per Facility;</u> <sup>28</sup> <u>\$2,000,000 Aggregate per Facility</u> <sup>29</sup>	<u>\$1,000,000 per Occurrence per Facility; with an Aggregate of</u> <sup>30</sup> <u>(number of units x \$1,000,000)/2</u> <u>aggregate</u> <sup>31</sup>
<u>Greater than ten (10) KW and less than or equal to one hundred (100) KW.</u> <sup>32</sup>	<u>\$500,000 per Occurrence per Facility;</u> <sup>33</sup> <u>\$1,000,000 Aggregate per Facility</u> <sup>34</sup>	<u>\$500,000 per Occurrence per Facility; with an Aggregate of</u> <sup>35</sup> <u>(number of units x \$500,000)/2</u> <u>aggregate</u> <sup>36</sup>

[Following sentences are moved from Section 11.1]No insurance is required for Facilities less than or equal to ten (10) KW. However, the Company recommends that the Interconnecting Customer obtain adequate insurance to cover potential liabilities.<sup>37</sup>

In the event Interconnecting Customer has multiple Facilities with different Name Plate ratings, the Aggregate limit shall be determined by applying their highest Name Plate rating to all of their Facilities as if they were all the same.<sup>38</sup>

If the term of the Interconnection Service Agreement is longer than five (5) years, in the fifth year, and every five (5) years thereafter, the General Liability insurance limits required above shall be increased by the percentage increase in the Consumer Price Index from the month the Agreement was executed to the month immediately preceding the first month of the year in which the increase is required.<sup>39</sup>

Should the Interconnecting Customer choose this option, it is agreed that: (1) Interconnecting Customer shall notify Company of any third party claim that is filed against any of the insured Facilities, whether arising out of or in any way connected with the insured Facilities, or in the event any required coverage is reduced as a result of any claim payments, expense payments, or both and (2), shall provide Company with copies of any accident or incident report(s) sent to Interconnecting Customers insurance carriers covering such accidents, incidents or events occurring at any of the insured facilities.<sup>40</sup>

### **11.3 Insurance**<sup>41</sup> **Requirements and Endorsements**

All required insurance shall be carried by reputable insurers qualified to underwrite insurance in MA and<sup>42</sup> having a Best Rating of at least<sup>43</sup> "A-". In addition, all insurance shall, (a) include Company as an additional insured under ISO endorsement CG 20 26 or its equivalent<sup>44</sup>; (b) contain a severability of interest clause or cross-liability clause; (c) provide that Company shall not incur liability to the insurance carrier for payment of premium for such insurance; ~~and (c)~~<sup>45</sup> (d) be written on an occurrence basis; and (e)<sup>46</sup> provide for thirty (30) calendar days' written notice to Company prior to cancellation, termination, or ~~material change~~<sup>47</sup> diminution<sup>48</sup> of such insurance; provided that to the extent the Interconnecting Customer is satisfying the requirements of subpart (~~d~~<sup>49</sup> e<sup>50</sup>) of

this paragraph by means of a presently existing insurance policy, the Interconnecting Customer shall ~~only~~<sup>51</sup> be required to ~~make good faith efforts to~~<sup>52</sup> satisfy that requirement and will assume the responsibility for notifying the Company as required above.

If the requirement of clause (a) in the paragraph above prevents Interconnecting Customer from obtaining the insurance required ~~without added cost or~~<sup>53</sup> due to written refusal by ~~the~~<sup>54</sup> ~~its~~<sup>55</sup> insurance carrier(s)<sup>56</sup>, then upon Interconnecting Customer's written Notice to Company, the requirements of clause (a) shall be waived. Notwithstanding the forgoing, this waiver shall not apply to the Commonwealth of Massachusetts and any governmental subdivisions (collectively hereinafter referred to as "Governmental Entities") that are not able to provide self-insurance to the limits required by Section 11.1 or Section 11.2, as applicable, due to the Massachusetts Tort Claims Act, G.L. c. 258 § 1 or other statute, or other Interconnecting Customer which is not able to provide satisfactory evidence of self-insurance, as required by Section 11.6 below.<sup>57</sup>

If the requirement of clause (d) in the paragraph above prevents Interconnecting Customer from obtaining the insurance required due to written refusal by its insurance carriers, then upon Interconnecting Customer's written Notice to Company the required coverage may be written on a claims-made basis. Such claims-made policy shall include coverage for all claims dating back to the date the Interconnecting Facility was first energized (continuity date). [Following sentence was moved from 11.3] . In the event that a claims-made policy is terminated and not replaced, or is either renewed or replaced and the replacing insurer declines to recognize the same continuity date as shown on the terminating policy, the Interconnecting Customer shall obtain and maintain an extended reporting period (tail coverage) for three years from the date the policy is terminated.<sup>58</sup>

In the event Interconnecting Customer elects to only purchase general liability insurance for the direct benefit of the Company (hereinafter referred to as an "Owners Protective Liability"), all of the above requirements will still apply with the exception of clause (a). In addition, the Company will be the primary and only "Named Insured" under this policy.<sup>59</sup>

#### 11.4 Sovereign Immunity Endorsement<sup>60</sup>

~~11.3~~<sup>61</sup> Insurance purchased by a Governmental Entity subject to the Massachusetts Tort Claims Act, G.L. c. 258 shall contain an endorsement that strictly prohibits the insurance company from using the Massachusetts Tort Claims Act as a possible defense in the adjustment of any claim or in the defense of any suit directly asserted by the Company.<sup>62</sup>

#### 11.5<sup>63</sup> **Evidence of Insurance**

~~Evidence of the insurance required shall state that~~<sup>64</sup> ~~coverage provided is primary and is not in excess to or contributing with any insurance or self insurance maintained by~~<sup>65</sup> ~~Interconnecting Customer.~~<sup>66</sup>

~~The Interconnecting Customer is responsible for providing the Company with evidence of insurance in compliance with this Tariff on an annual basis~~<sup>67</sup> ~~.~~<sup>68</sup>

[Moved from 3<sup>rd</sup> paragraph to 1<sup>st</sup>] <sup>69</sup> Prior to the Company commencing work on System Modifications, the Interconnecting Customer shall have its insurer furnish to the Company certificates of insurance evidencing the insurance coverage required above. ~~The Interconnecting Customer shall notify and send to the Company a certificate of insurance for any policy written on a "claims-made"~~ <sup>70</sup> Evidence of the insurance required shall state that <sup>71</sup>(1) <sup>72</sup>coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by <sup>73</sup>Company and (2) shall indicate if the coverage is written on an occurrence or claims-made <sup>74</sup>basis. The Company may at its discretion ~~require~~ <sup>75</sup> requires <sup>76</sup> the Interconnecting Customer to maintain tail coverage for three years on all policies written on a "claims-made" basis.

The Interconnecting Customer is responsible for providing the Company with evidence of insurance in compliance with this Tariff on an annual basis <sup>77</sup>, or sooner if the coverage or the insurance carrier providing the coverage is changed. <sup>78</sup>

A copy of the policy, including any endorsements, shall be provided to the Company upon Company's request. In the event that an Owners Protective Liability policy is provided, the original policy shall be provided to the Company. <sup>79</sup>

#### ~~11.4~~ <sup>80</sup> 11.6 <sup>81</sup> **Self Insurance**

If Interconnecting Customer ~~is a company with~~ <sup>82</sup> has <sup>83</sup> a self-insurance program established in accordance with commercially acceptable risk management practices. <sup>84</sup> which are actuarially based. <sup>85</sup> Interconnecting Customer may comply with the following <sup>86</sup> in lieu of the above requirements <sup>87</sup> as reasonably approved by the Company:

- a. Interconnecting Customer shall provide to Company, at least thirty (30) calendar days prior to the Date of Initial Operation, and annually thereafter, <sup>88</sup> evidence of such program to self-insure to a level of coverage equivalent to that required.
- b. If Interconnecting Customer ceases to self-insure to the standards required hereunder, or if Interconnecting Customer is unable to provide continuing evidence of Interconnecting Customer's financial ability to self-insure, Interconnecting Customer agrees to promptly obtain the coverage required under section 11.1.
- c. Interconnecting Customer shall agree to provide defense and self-insurance coverage for the Company as if the Company were an additional insured under ISO endorsement CG 20 26 or equivalent. <sup>89</sup>

d. Interconnection Customer shall notify Company of any third party claim that is filed against any of the insured Facilities, whether arising out of or in any way connected with the insured Facilities, or in the event any required coverage is reduced as a result of any claim payments, expense payments, or both, and shall provide Company with copies of any accident or incident report(s) sent to Interconnecting Customers insurance carriers covering such accidents, incidents or events occurring at any of the insured facilities. <sup>90</sup>

e. This Section 11.6 shall not apply to Governmental Entities who are subject to the limitations of the Massachusetts Tort Claims Act, GL c. 258, § 1 or other statute which would preclude the Governmental Entity from self-insuring at the levels required under Sections 11.1 and 11.2. Such Governmental Entities must purchase insurance at the limits set forth in Section 11.1 and/or Section 11.2 hereunder, and comply with the requirements of Section 11.1 or 11.2, as applicable, and Sections 11.3, 11.4 and 11.5.<sup>91</sup>

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