

STC 19. Rochester Gas & Electric Corporation (RG&E) FERC License Requirements

RG&E has a Federal Energy Regulatory Commission (FERC) hydropower license for facilities along the Genesee River Corridor. Any contractors or subcontractors, and the City of Rochester, shall enter into an access agreement with RG&E for any work within the limits of the river (on or within the waterway), or on RG&E property. Any contractors or subcontractors, shall maintain throughout the performance of the work the minimum insurance requirements naming additional insured as specified herein, in addition to the City's policies and procedures for public works construction contracts. In the event these requirements conflict with the City of Rochester's Standard Construction Contract Documents, as revised under section Supplementary Terms and Conditions, all requirements specified herein shall supersede.

1. Rochester Gas and Electric (RG&E) has a Federal Energy Regulatory Commission (FERC) hydropower license for facilities located along the Genesee River Corridor in Rochester.
2. The Contractor and the Project Owner (City) will need to enter into an access agreement with RG&E for any work within the limits of the river (on or within the waterway), or on RG&E property.
3. RG&E maintains levels within the Genesee River in support of hydropower generation and compliance. However, RG&E cannot and will not guarantee the level, rate or condition of flow of the Genesee River during the project. The rate and/or level of flow in the Genesee River is subject to upstream conditions and facilities that are outside of RG&E's control.
4. The project shall be performed and coordinated pursuant to the following communication protocol:
 - a. The LICENSEES shall provide and maintain at all relevant times an on-site supervisor as a point of contact at all times during the work within or in proximity to the river.
 - b. The LICENSEES shall notify RG&E at the start of each work shift prior to entry into the river, or areas in proximity to the river.
 - c. The LICENSEES shall notify RG&E upon completion of the work within, or in proximity to the river during each shift.
 - d. The LICENSEES shall notify RG&E immediately in the event of any emergency.
 - e. The LICENSEES shall be prepared at all times to immediately demobilize/evacuate from the river and areas in proximity to the river in the event of an emergency, and shall immediately do so upon notice from RG&E.
5. To the fullest extent permissible under law, the LICENSEES, as well as well as any contractors and subcontractors of the same, shall jointly and severally defend, indemnify and hold harmless, RG&E, its affiliates, corporate parents and each of their officers, directors, employees, agents and assigns ("the RG&E Indemnified Parties") from and against any and all claims, damages, losses, liabilities, costs and expenses (including attorney fees) whether asserted against or suffered directly by RG&E or its employees or by a third party ("Losses"), for personal injury (including death), property damage, or any other cause of action or Losses directly or indirectly relating to or arising from the project or the access granted hereto, unless such Losses are directly attributable to the negligence or willful misconduct of any of the RG&E Indemnified Parties.
6. Any contractors or subcontractors of the same, shall obtain and maintain throughout the performance of this Agreement the insurance policies and minimum limits of coverage specified below with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-, VII. The minimum insurance requirements specified herein do not in any way limit or relieve Owner of any obligation assumed elsewhere in this Agreement, including Owner's defense and indemnity obligations.
 - a. Commercial General Liability (CGL) Insurance – Such CGL policies shall be written on an "occurrence," not a "claims-made" basis, covering all operations by or on behalf of *[insert name*

of insured licensee] arising out of or connected with this Agreement, including coverage for bodily injury, property damage and/or death. For [insert name of insured licensee], such insurance shall bear a per occurrence limit of not less than Five Million dollars (\$5,000,000), an aggregate combined single limit of not less than Seven Million Dollars (\$7,000,000), for bodily injury and/or property damage.

- b. Automobile Liability Insurance – Such Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of Five Million Dollars (\$5,000,000) per occurrence for bodily injury, including death, and property damage.
- c. Workers' Compensation Insurance – Workers' Compensation Insurance in accordance with the laws and regulations of the State of New York (including the statutory limits required by the State of New York) providing statutory benefits and covering loss resulting from injury, sickness, disability, or death of Owner's employees
- d. Umbrella/ Excess ("U/E") Liability Insurance – Contractor policies must be written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability and Pollution Liability Insurance, and on terms at least as broad as the underlying coverage, with limits of not less than Ten Million dollars (\$10,000,000) per occurrence and in the annual aggregate.
- e. Pollution Liability Insurance. Pollution Liability Insurance, (which, except with the prior written consent of RG&E, may be written on an "occurrence" or a "claims-made" policy form) basis. For [insert name of insured licensee], such policies must have limits of not less than Two Million dollars (\$2,000,000) per occurrence and Six Million dollars (\$6,000,000) in the annual aggregate. All LICENSEE policies required by this paragraph shall cover losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the [insert activity] or under this Agreement or might be required by federal, state, regional, municipal and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. Said policy shall include coverage including the following:
 - Environmental Impairment Liability
 - Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death and mental anguish
 - Property Damage including physical injury or destruction of tangible property including resulting loss of use, clean-up costs, and loss of use of tangible property that has not been physically injured or destroyed
 - Loss, remediation, clean-up costs and related legal expenses
 - Sudden and non-sudden pollution conditions
 - No exclusion for loss occurring over water including but not limited to a navigable waterway
 - Endorsements: Extended Completed Operations – 10 years

7. RG&E as Additional Insured. All insurance policies listed above except for Workers' Compensation shall name "Rochester Gas and Electric Corporation, its Parents and Affiliates" as additional insureds. [insert name of insured licensee] shall and shall cause any contractors or subcontractors to, furnish RG&E with written notice at least thirty (30) days prior to the effective date of cancellation of the insurance or of any material changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory by RG&E or its affiliate companies. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds. For Commercial General Liability Insurance, the following additional insured endorsements shall be required: Additional Insured Endorsements CG 2010 0413 and CG 2037 0413 or, with respect to any Person whose insurer does not issue endorsements on ISO forms, substantially similar or comparable additional insured endorsements which provide the same or better additional insured rights to RG&E as is

provided in the previously specified additional insured endorsements. All Excess or Umbrella Liability Insurance policies will follow form and include all extensions listed under the primary general liability and provide for a waiver of subrogation.