

NYSEG and RG&E - Energy Storage Services Agreement ("ESSA") Outline of Commercial Terms

This term sheet (this "**Term Sheet**") is provided for informational purposes for respondents evaluating the non-binding request for proposals issued by New York State Electric & Gas Corporation ("**NYSEG**") and Rochester Gas and Electric Corporation ("**RG&E**") for energy storage services. The Term Sheet does not (a) create any obligation on the part of any person, including NYSEG or RG&E, or (b) purport to address all of the terms that may be reflected in, and would be qualified in all respects by, definitive binding agreements. This Term Sheet does not entitle any person any right of specific performance or to any payment or damages for failure to negotiate or consummate a transaction. References made herein to a "**Company**" refers to either NYSEG or RG&E and to "**Companies**" refers to NYSEG and RG&E, together. References made herein to a "**Party**" or jointly as the "**Parties**" refers to NYSEG or RG&E and an undesignated owner of an energy storage system ("**Owner**") that will provide energy storage services to NYSEG or RG&E.

Product	Capacity, Energy, Ancillary Services, and any other products or benefits associated with the Project.
Project	Owner's Energy Storage System, including Interconnection Facilities, Prevention Equipment and System Protection Facilities, together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the Project.
Term	Up to 10 years from Commercial Operation of the Project.
Payment Structure	The "Total Compensation Amount" is equal to the product of the \$ per MW agreed to by Owner and Company multiplied by the Contract Capacity bid by Owner.
Incentives	Company has no obligation to pay or reimburse Owner for any incentives offered by NYSERDA or any other entity.
Capacity and Requirements	Owner must meet certain performance requirements to achieve Commercial Operation and maintain certain performance guarantees throughout the Term, subject to liquidated damages and, if applicable, termination by Company.
Exclusive Use	Company shall have the exclusive right to dispatch the Energy Storage System from Substantial Completion through the Term.

Owner Credit Support	<p>At execution, Owner shall post Performance Assurance.</p> <p>Performance Assurance shall be an amount not less than (i) during the first Contract Year, the Commercial Operation Payment and (ii) during each subsequent Contract Year, the Commercial Operation Payment minus the product of (y) one-[tenth] of the amount of the Commercial Operation Payment multiplied by (z) the number of completed Contract Years.</p> <p>Credit support shall be in the form of cash or a Letter of Credit.</p>
Substantial Completion and Guaranteed Commercial Operation Deadlines	<p>Substantial Completion. The deadline for Substantial Completion for the Project is June 1, 2025, which date may be extended under certain circumstances. If Owner is unable to achieve Substantial Completion by such date, then Owner shall pay Company liquidated damages equal to \$[xxx] per MW of the Contract Capacity bid per day.</p> <p>Guaranteed Commercial Operation Deadline: The guaranteed deadline for Commercial Operation for the Project is December 31, 2025, which date may not be extended. Failure to achieve Commercial Operation by such date constitutes an Event of Default by Owner and will result in the automatic termination of the ESSA.</p>
Substantial Completion	<p>Substantial Completion means, among other things:</p> <ul style="list-style-type: none"> • the Project has been interconnected to the grid in compliance with an executed Interconnection Agreement; • Owner has delivered to Company a certificate of an Independent Engineer certifying the Project is mechanically completed in all material respects; • Owner has received all Permits necessary for Owner to perform its obligations under the ESSA and such Permits are in final form and in full force and effect; • Owner has FERC market-based rate authority and is registered as a market participant in NYISO for the Project; • the Project has been registered with the NYISO as a dispatchable energy storage resource capable of operating in NYISO; • Owner has completed registrations with NERC as the owner and operator of the Project; • if applicable, a NYSERDA Agreement (between NYSERDA and Owner) shall be in full force and effect; and • other conditions as set forth in the definitive agreements.
Commercial Operation	<p>Commercial Operation means, among other things:</p> <ul style="list-style-type: none"> • testing and commissioning of the Project to verify mechanical, electrical and structural performance per the specifications in the ESSA, including verification of Contract Capacity and Guaranteed Round-Trip Efficiency, among other performance criteria, shall have been completed; • Owner shall have obtained all Permits necessary for Owner to perform its obligations under the ESSA;

	<ul style="list-style-type: none"> • Owner shall have delivered Performance Assurance; • Owner shall have designated Company as the Financially Responsible Party for the Project; • Owner shall have obtained confirmation from NYISO that it has satisfied all NYISO requirements to obtain Capacity Resource Interconnection Service (or CRIS) and Energy Resource Interconnection Service (or ERIS) and in amounts not less than the Contract Capacity and the commensurate Contract Capacity Energy; • if applicable, NYSERDA shall have confirmed that Owner has satisfied all conditions to Commercial Operation under the NYSERDA Agreement; • the Project is not subject to any Encumbrances other than Permitted Encumbrances; and • Owner is not in default under the ESSA.
Construction Milestones / Recovery Plan	<p>Owner will comply with a schedule of milestones for development of the Project, to help ensure the Project will achieve Commercial Operation before the deadline for Commercial Operation.</p> <p>In the event Owner misses a milestone designated as critical, Owner may cure its failure pursuant to a written recovery plan.</p>
Charging Costs	<p>Owner shall be responsible for costs associated with (1) charging the Project (i) before Substantial Completion and (ii) arising out of or pertaining to any dispatch of the Project not for the benefit of Company, and (2) any distribution service charges.</p> <p>Company shall be responsible for costs associated with charging the Project (i) between Substantial Completion and before Commercial Operation at certain allocations and (ii) during the Contract Term, unless such costs arise from any dispatch of the Project not for the benefit of Company.</p>
Access	<p>Owner shall grant Company access to the Project and the Project site, from and after execution of the ESSA and during the Term, to inspect the Project, witness testing, verify conditions have been met, evaluate circumstances regarding outages or other unavailability, or for any other reasonable purpose.</p>
Owner Obligations	<p>Owner shall, among other things:</p> <ul style="list-style-type: none"> • obtain site control by the milestone date specified and maintain site control for the Term; • design, construct, own, operate and maintain the Project as required under the ESSA, in accordance with Good Utility Practice and in compliance with all Applicable Laws, Permits, site agreements, a Company-approved Environmental, Health, and Safety Plan and the applicable Interconnection Agreement; • modify the Project only after obtaining prior written consent from Company; • retain exclusive ownership over the entirety of the Project, except as otherwise expressly permitted; • not make any use of the Project other than as directed by Company; • obtain and maintain all Permits required for siting, construction, operation and maintenance of the Project during the Term; • complete environmental impact assessments, statements, or studies required by Applicable Laws; • obtain and maintain electric service for station use and Charging Energy Requirements;

	<ul style="list-style-type: none"> • obtain and maintain manufacturer's warranties on the components of the Project for the duration of the Delivery Period; • not withdraw the Interconnection Queue Position without Company's prior written consent; • ensure the Interconnection Facilities are sufficient to enable delivery of the Contract Capacity of the Project; • comply with NERC reliability standards applicable to the Project, including registering with NERC as the Generator Owner and Generator Operator and implementing all applicable processes and procedures required by FERC, NERC, NPCC, the NYISO or other Governmental Authorities; • comply with the Interconnection Agreement, including furnishing and installing sufficient facilities for power system protection for proper and safe operation of the Project in parallel with Transmission Owner's electric system; • comply with Company's cybersecurity requirements and Federal Acquisition Regulations compliance requirements; • provide Company such data and information requested by Company from time to time, as it concerns the sale of the Product and to substantiate the costs for the Project, which costs may be part of an inquiry or investigation by a Governmental Authority; • pursue all incentives or benefits (including but not limited to tax incentives or benefits) available to the Project; • comply with its obligations under the NYSERDA Agreement; • obtain and maintain Market-Based Rate Authority from FERC as applied to sales made within the NYISO Markets; • take all actions necessary to register and maintain the qualification of the Project under all NYISO tariffs required to sell Products; and • comply with all requirements to qualify for and maintain CRIS and ERIS as required at Commercial Operation.
Performance Guarantees	<p>The Project will be designed for the following levels of reliability and availability (excluding in each case planned maintenance outages in accordance with the ESSA):</p> <ul style="list-style-type: none"> • 98% availability for all hours in a calendar quarter (Guaranteed Availability); • [XXX]% of the Contract Capacity (Guaranteed Capacity); • [XXX]% round-trip efficiency (Guaranteed Round-Trip Efficiency); and • [XXX]% minimum Ramp Up Rate and Ramp Down Rate of the Contract Capacity per minute. <p>Liquidated damages shall apply to each of Guaranteed Availability, Guaranteed Capacity, and Guaranteed Round-Trip Efficiency as follows:</p> <ul style="list-style-type: none"> • Guaranteed Availability. The sum of (a) the (Guaranteed Availability – Actual Availability per quarter expressed as a %) x Contract Capacity x \$[XXX] per MW and (b) buyout costs incurred by Company • Guaranteed Capacity. (Contract Capacity – Storage Capacity Rating) x \$[XXX] per MW-day x the number of days before Owner cures the deficiency • Guaranteed Round-Trip Efficiency. The shortfall round-trip efficiency x locational-based marginal pricing proximate to the Project x charging energy.
Operations and Maintenance	<p>Owner shall operate, maintain, repair and, if necessary, replace the Project and any portion thereof, in accordance with Good Utility Practice, Applicable Laws, Permit Requirements, and Warranty Requirements as necessary to make the Product available to Company in accordance with the terms of the ESSA.</p>

Planned Outages	<p>Owner shall periodically deliver non-binding 36-month schedules of planned maintenance outages during the Term, showing (i) a description of the work to be performed, (ii) start date and time, (iii) end date and time, (iv) recall time, and (v) the availability of the affected Project (if any).</p> <p>Planned Outages in a calendar year may not exceed the lesser of 6 hours for each MW of the Contract Capacity and 336 hours.</p> <p>Owner shall not conduct any Planned Outages from May 15 through September 30 in any year during the Contract Term.</p> <p>Unplanned Outages. An unplanned outage is any outage of the Project other than a Planned Outage. Owner shall notify Company of any unexpected Unplanned Outage within 15 minutes.</p>
Force Majeure	<p>A Party may be excused from performance or a delay in the performance of its obligations due to the occurrence of Force Majeure.</p> <p>“Force Majeure” means any occurrence that (a) was not reasonably foreseeable as of the Effective Date; (b) in whole or in part (i) delays a Party’s performance under the ESSA, (ii) causes a Party to be unable to perform its obligations or (iii) prevents a Party from complying with or satisfying the conditions of the ESSA; (c) is not within the reasonable control of that Party; (d) is not the result of the negligence or fault of that Party or a lack of due diligence, a breach of the ESSA or a failure to comply with Good Utility Practice by that Party; and (e) the Party has been unable to overcome such occurrence by the exercise of due diligence.</p> <p>Provided the above criteria are met, Force Majeure includes typical events (including acts of God, hurricanes, tornadoes, lightning, earthquakes, flood, landslides, unusually severe weather and drought, acts of war, acts of terrorism, civil disturbance, insurrection or riot, fire (not caused by the Project), pandemic or plague (except COVID-19 to the extent excluded below), and other similar events).</p> <p>Force Majeure does not include:</p> <ul style="list-style-type: none"> • failure to comply with Applicable Laws; • change in Applicable Laws after the execution of the ESSA; • inability to obtain sufficient labor, equipment, materials or other resources to construct, own, operate or maintain the Project; • change in market conditions affecting the cost or availability of labor, equipment, materials or other resources; • Reductions in the ability of the Project to store, charge or discharge energy resulting from ordinary wear and tear, deferred maintenance, operator error, or the failure of equipment or parts,; • curtailment or reduction when the basis of the curtailment or reduction ordered by a Transmission Owner or NYISO is congestion arising in the ordinary course of operations of the Transmission Owner’s system or the New York Transmission System, including congestion caused by outages or capacity reductions for maintenance, construction or repair; • Owner’s inability to obtain or maintain, or delay in obtaining, any approvals or consents of any Governmental Authority or other third party, including any Permits, for the construction, operation or maintenance of the Project; • Any equipment failure or equipment damage; • Any delay in providing, or cancellation of, interconnection service by a Transmission Owner; • A failure of performance of any other entity, including Owner’s contractors, suppliers or vendors;

	<ul style="list-style-type: none"> Owner's failure to obtain additional funds, whether authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company under the ESSA; Owner's failure to obtain or retain any tax credits or incentives with respect to any portion of the Project; any event, whether directly or indirectly, related to the COVID-19 pandemic (including but not limited to, economic loss, supply chain disruptions, labor restrictions or any other mandate, whether suggested or required by a Governmental Authority), unless such event or circumstance (x) occurs after the Effective Date, (y) could not reasonably have been known or anticipated by a Party given the impacts and effects of the COVID-19 pandemic known as of the Effective Date and (z) otherwise meets all of the requirements of the definition of Force Majeure event set forth above; and changes in temperature or humidity conditions.
Safety Event	<p>If a Governmental Authority takes action with respect to the Project due to safety concerns or an adverse event (including fire) occurs with respect to any energy storage system (other than the Project) that shares the same manufacturer or substantially similar design as the Project, Owner must (a) force the Project into an Unplanned Outage, (b) engage an independent engineer to evaluate remediation options, if any, and (c) implement any remediation efforts identified by the independent engineer, at Owner's cost.</p>
Defaults	<p>Events of Default with respect to either Company or Owner include customary events of default. As specific to Owner, Events of Default include:</p> <ul style="list-style-type: none"> transfer of the Interconnection Queue Position or the Interconnection Agreement; failure to achieve Commercial Operation by the Guaranteed Commercial Operation Deadline; failure to provide and maintain credit support as required by the ESSA; occurrence of any event for which Company's consent is required, including the use of the Project for the benefit of any Person other than Company, without Company providing prior written consent; performance of the Project: (A) Actual Availability is less than [XXX]% in any calendar quarter; (B) the aggregate hours of unavailability in any calendar year due to Unplanned Outages exceeds [XXX] hours; (C) the Storage Capacity Rating is less than the Contract Capacity for a period of 180 or more consecutive days; or (D) the Round-Trip Efficiency demonstrated during any Storage Rating Test is less than the Guaranteed Round-Trip Efficiency by [XXX] % or more; Owner delivers a product to Company that is not produced by the Project; Owner is unable to implement a remediation identified by an Independent Engineer to resolve a safety event; An uncured default under the NYSERDA Agreement has occurred; and Owner does not have Site Control.
Default Remedies	<p>Remedies available to the non-defaulting Party shall be typical remedies, including: termination of the ESSA, acceleration of all amounts owed by the Defaulting Party under the ESSA, withholding of any payments due to the Defaulting Party under the ESSA, suspension of performance pending termination of the ESSA, and pursuit of any and all remedies available at law or in equity against the Defaulting Party.</p> <p>A Termination Payment applies to any early termination, other than a termination resulting from an extended Force Majeure.</p>
Owner Indemnification	<p>The ESSA will impose customary indemnification obligations on Owner, for losses, claims or liabilities related to, resulting from or arising out of:</p>

	<ul style="list-style-type: none"> any breach made by Owner of any representation, warranty, covenant or agreement contained in the ESSA; NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority or other Person to assess such NERC Standards Non-Compliance Penalties against Company in connection with the Project; injury or death to Persons, including Company employees, and physical damage to property, including Company property, where the damage arises out of, is related to, or is in connection with, Owner's design, development, construction, ownership, operation or maintenance of the Project, or obligations or performance under the ESSA; an infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party resulting from the use of any equipment, software, applications or programs (or any portion of same) in connection with the Project; any violation of Applicable Laws, failure to obtain and maintain Permits, or failure to perform Permit Requirements related to the Project or Owner's performance, or failure to perform, under the ESSA; any (i) storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Material by Owner or any of Owner's subcontractors; (ii) alleged, threatened, or actual violation of any environmental law by Owner or any of Owner's subcontractors, including, without limitation, any enforcement or compliance proceeding relating to or in connection with any such alleged, threatened or actual violation and any action reasonably necessary to abate, investigate, remediate or prevent any such violation or threatened violation; (iii) presence, release or cleanup of any Hazardous Materials at, from, to, under, or on real property or equipment; or (iv) environmental compliance costs, in each case in connection with the Project; the failure to pay any taxes, fees or charges imposed by any Governmental Authority on the Project or Project site or environmental compliance costs in connection with the Project for which Owner is responsible; any financial settlement for Products requiring payment by Company, monetary penalties or fines assessed against Company by the NYPSC, the NYISO or any other entity having jurisdiction, resulting from: Owner's failure to dispatch the Project in accordance with a Dispatch Notice, other than due to a Force Majeure; Owner's failure to provide notice of the non-availability of any portion of the Contract Quantity for any portion of the Term; or any non-Company dispatch, including all (i) charges, sanctions, and penalties imposed by the NYISO, and (ii) the related Charging Energy Requirements.
Company Standards Applicable	Company requires counterparties to comply with a series of contract requirements, including: <ul style="list-style-type: none"> compliance with cybersecurity requirements; compliance with Federal Acquisition Regulations requirements; compliance with Company-approved Environmental, Health, and Safety Plan requirements.
Data	Company shall have access to and Owner shall grant Company a license to operational data of the Project.

Assignment and Change of Control	<p>Owner may not assign the ESSA or its interest in the Project without the prior written consent of Company, which consent may be given or denied in its sole discretion.</p> <p>In addition, any change in equity ownership of Owner due to (i) tax equity financing or (ii) direct or indirect change of control of Owner, shall require the prior written consent of Company, which consent shall not be unreasonably withheld.</p> <p>Owner may collaterally assign its rights under the ESSA for debt financing for the Project.</p>
Confidentiality	<p>To the extent permitted by Applicable Laws, each Party shall maintain the confidentiality of information and data transmitted under the ESSA, provided that Company and Owner may disclose information required to apply for and comply with the requirements of any regulatory obligations.</p>
Dispute Resolution	<p>Any disputes between Company and Owner will be advanced informally to authorized representatives for negotiation and resolution, followed by negotiation of senior officers if the authorized representatives are unable to reach resolution within 20 days. If the Parties are unable to resolve the dispute informally, either Party may initiate mediation before a mutually acceptable mediator with energy sector expertise from JAMS. If neither Party initiates mediation, or if mediation does not result in a settlement within 60 days, either Party is free to seek remedy from a court of competent jurisdiction.</p>