

Standard Terms and Conditions - PON 792 (wind)

Attachment B

1. Incentives

(a) Subject to these Terms & Conditions, the New York State Energy Research and Development Authority (“NYSERDA”) will pay incentives to Eligible Installers for the installation of approved, new, grid-connected wind systems for Eligible Customers. Incentive levels are outlined in Section II of Program Opportunity Notice (PON) 792. Incentives are only available to Eligible Installers and incentives must be passed on to customers. Eligible Installers are required to pass the full incentive amount to the customer in a timely manner, consistent with project milestones.

(b) Incentives will be provided for approved end-use electric wind systems as described in Section II and III of PON 792. Eligible Customers are New York electricity distribution customers of: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation who pay the System Benefits Charge.

(c) Notwithstanding any other provision of these Terms and Conditions, NYSERDA reserves the right to seek a refund for incentives paid if, at any time, it learns that the approved wind system was not actually installed or not installed as required under this PON or if a system was partially or completely installed prior to NYSERDA approval of an incentive payment. The Eligible Installer agrees that all systems are to be installed in accordance with sound and currently accepted industry standards and practices.

(d) NYSERDA shall pay 65% of the approved incentive for an approved system, upon receiving proof that all approved system components and equipment have been delivered to a customer’s site and proof that all required permits and approvals are secured. A packing slip verifying delivery of all wind system components, signed by the Customer, is required for proof for payment. The remaining 35% shall be paid once the wind system is operating, has been connected to the utility grid, inspected by all authorities having jurisdiction, and/or after a NYSERDA system inspection to verify whether a system is properly installed. Documentation for all applicable utility, state, city, town, and other inspections and approvals must be attached to Attachment F.

(e) If all the system components are not delivered to the customer’s site within 90 (ninety) days of approval of the incentive, the reservation will be revoked and become void. Exceptions may be made on a limited, case-by-case basis.

(f) NYSERDA reserves the right, for any reason, to stop approving Incentive Application Forms at any time without notice.

(g) Incentives are not available for used equipment or for systems that have been partially or completely installed prior to receiving written approval from NYSERDA that an incentive has been reserved for that particular installation.

(h) NYSERDA reserves the right, for any reason, to reduce the incentives for systems being offered under the program, at any time, through written notice to Eligible Installers. Any reduction in incentive levels will not affect incentives or incentive reservations already approved by NYSERDA.

2. Installer Eligibility

Installer eligibility will be determined and maintained based on factors such as, but not limited to, representing NYSERDA’s program and the installer’s role in the program accurately and responsibly, acceptance of all of the program terms and conditions, training, installation experience, track record related to utility interconnections, overall performance, monitoring, customer references, customer satisfaction, and responsiveness to NYSERDA requests. Eligibility requirements are described further in Section III of PON 792.

3. Pre-Installation Verification

Proper site evaluation should be done by the Eligible Installer to determine the feasibility of installing an end-use wind system.

4. Customer Purchase Agreement

Incentives will only be approved for Incentive Applications that include a Customer Purchase Agreement acceptable to NYSERDA that is signed by the Eligible Installer and the customer. A Customer Purchase Agreement must include, at a minimum the following:

- system information, including: installation location, installation schedule, a description of the system being purchased and an outline of system specifications, the make and model of major system components, estimate of annual energy output, data collection responsibilities, warranty provisions, identification and location of easy-to-read meter, references to UL listing, etc.;
- a realistic installation and interconnection schedule that takes into account NYSERDA and utility review requirements. For example, incentive applications should not have an expected installation date that does not include adequate time for NYSERDA to receive, review, and notify an eligible installer regarding the status or approval of an application (about 21 - 45 days depending on the level and type of SEQRA review required);
- economic analysis, including: total system and itemized costs, applicable incentives, payment schedule, and economic analysis;
- reference NYSERDA's renewables web-site address www.PowerNaturally.org for information on NYSERDA's program;
- a provision stating that 100% of NYSERDA's incentive will be passed on to the customer;
- a provision giving NYSERDA the right to inspect the system;
- a provision giving NYSERDA the right to use photographs of the system in brochures, on its web site, and in other print materials;
- a provision for meter readings and submission of data that outlines who (the customer or the eligible installer) is responsible for data collection and reporting to NYSERDA;
- a provision requiring the Customer to collaborate with NYSERDA's Director of Communications should they prepare any press release or plan any news conference related to the wind system.
- the following language, "Neither NYSERDA nor the State of New York: (1) endorse any Eligible Installer; or (2) guaranty, warranty, or in any way represent or assume liability for any work proposed or carried out by an Eligible Installer. Additionally, NYSERDA is not responsible for assuring that the design, engineering and construction of the project or installation of any wind system is proper or complies with any particular laws, regulations, codes, licensing, certification and permit requirements, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the wind systems or the adequacy or safety of such measures."
- notification that NYSERDA will not make any payments without proof that all required permits and approvals have been obtained.

5. System Output and Economic Analysis

The Eligible Installer shall prepare an estimate of annual energy output and economic analysis of the system with a description of the methodology used to determine the output estimate. This estimate shall be included as part of an Incentive Application Form (Attachment D).

6. Approved Systems

- (a) All system components installed under this program must be new.
- (b) All approved systems, system components, and installations must comply with all and any applicable laws, regulations, codes, licensing and permit requirements, including but not limited to, the New York State Building Code, the National Electric Code, and New York State's Standard Interconnection Requirements and all applicable state, city, town, or local ordinances or permit requirements. All wind systems eligible for an incentive must be grid-connected, end-use applications.
- (c) Qualified Wind Generators - Only Qualified Wind Generators may be installed under this program. In order to be qualified, manufacturers of small wind turbines must provide evidence of 1) certification by a nationally recognized testing laboratory as meeting the safety and performance requirements of a nationally or internationally recognized testing institution, or 2) must provide acceptable evidence to NYSERDA for each model of system they wish to sell under this program of one year of reliable operation of that model of equipment at a site with average annual wind speeds of at least 12 mph. NYSERDA reserves the right to deny qualification of any wind turbine for any reason including but not limited to: poor turbine performance, concerns about turbine design or quality of data presented, lack of manufacturer support for maintenance, warranties, etc., insufficient experience with turbine, etc.
- (d) Inverters- All inverters must be certified as meeting requirements of IEEE Standard 929-2000 and UL 1741.

Inverters that are listed on the New York State Public Service Commission's list of eligible, or type-tested, inverters (www.dps.state.ny.us/SIRDevices.PDF) are preferred. Inverters that are not listed on the New York State Public Service Commission's list of eligible, or type-tested, inverters may be used if the wind system receives an appropriate interconnection agreement and the installation meets New York State's Standard Interconnection Requirements.

(d) Other Electrical Components- All other electrical components of the systems such as charge controllers, batteries, wiring, and metering equipment must be certified as meeting the requirements of any relevant national and New York State codes and standards.

7. Cost of Equipment

The Eligible Installer shall provide NYSERDA with copies of all invoices (including all materials, labor, and equipment costs) reflecting the total costs of purchasing the wind systems in the project (including the incentive). The invoices shall include a breakdown of all wind system components purchased for installation under this Agreement. In addition, NYSERDA may request any other reasonable documentation or verification of the cost to the customer of purchasing and installing the approved wind system.

8. Installation Site Visit / Inspections

(a) NYSERDA reserves the right to make a reasonable number of visits to the customer site during and after installation of the wind system, up to 12 months following the completion date of the project. Such visit(s) will be at a time convenient to the customer and made with at least one-week advance notice to the wind customer by NYSERDA. This provision for site inspections by NYSERDA must be included in the Customer Purchase Agreement.

(b) The purpose of the site visit(s) is to provide NYSERDA with an opportunity to evaluate the installed wind system in order to determine the actual kW production for program evaluation purposes and to verify installation compliance.

(c) NYSERDA will provide a written report summarizing the results of the approved system inspection to the customer and the installer.

9. Post-Installation Verification

If NYSERDA determines that the wind system is not installed in a manner that is consistent with this program, the manufacturers' instructions, generally accepted good practices, and/or that the wind system was not installed by an Eligible Installer, NYSERDA may require changes before making any payments or elect to not pay the incentive. NYSERDA will provide a written report to the customer and the installer summarizing the results of the post-installation inspection.

10. Wind System Meter and Readings

Each Wind system must include, at a minimum, a cyclometer register kilowatt-hour meter (or a meter that can be read numerically by a customer or an "easy read meter") to read total energy output and a digital indication of power output to show instantaneous system output in kilowatts. The meter must have an accuracy of 5% and certificate of compliance from the manufacturer. Meter readings must be conducted by the installer or customer at least once per month for two years and energy and power production data submitted to NYSERDA two times per year for two years for each installed system. This provision for meter readings and submission of data must be included in the Customer Purchase Agreement outlining who (the customer or the eligible installer) is responsible for data collection and reporting to NYSERDA.

11. Limited Scope of Review

The scope of review by NYSERDA of the installation of the wind systems is limited solely to determining whether program terms, conditions, and requirements have been met. It does not include any type of safety review (see No. 14, Warranties).

12. Changes in the Program

The program and these Terms and Conditions may be changed by NYSERDA at any time without notice. Approved

applications, however, will be processed to completion under the Terms and Conditions in effect at the time of the approval by NYSERDA.

13. Indemnification

The Eligible Installer shall protect, indemnify, and hold harmless NYSERDA and the State of New York from, and against, all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorney's fees and expenses) imposed upon, or incurred by, or asserted against, NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Eligible Installer under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

14. Warranties

(a) NYSERDA requires a full 5-year warranty to the purchaser of the wind system. The warranty must cover all components of the generating system against breakdown or degradation in electrical output of more than ten percent from their original rated electrical output. The warranty shall cover the full costs, including labor, of repair or replacement of defective components or systems. NYSERDA does not endorse, guarantee, or warrant any particular manufacturer, products or installer, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Eligible Installer's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, manufacturers, etc.

(b) The Eligible Installer acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the project or installation of the wind systems are proper or comply with any particular laws (including patent laws), regulations, codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the wind systems or the adequacy or safety of such measures.

15. Release by the Applicant

The acceptance by the Applicant of final payment shall release NYSERDA from all claims and liability by the Applicant, its representatives, and assigns might otherwise have relating to this Agreement.

16. Interconnection

The Eligible Installer will be required to ensure that all approved wind systems that are designed to be interconnected to the electric grid have an appropriate interconnection agreement that meets New York State Standard Interconnection Requirements and must ensure that all approved systems are installed in compliance with that agreement.

17. Title to Equipment

Title to all of the equipment purchased under this Agreement shall vest with the customer purchasing the wind system.

18. Application does not Entitle Applicant to Participate

Submission of a completed Installer Eligibility Application Form or Incentive Application Form does not entitle the Applicant to program participation.

19. Miscellaneous

(a) This Agreement is the entire Agreement between the parties and supersedes all other communications and representations.

(b) If either NYSERDA or the Applicant desires to modify this Agreement, the modification must be in writing and signed by an authorized representative of the party against which enforcement of the modification is sought.

20. Insurance

(a) The Eligible Installer, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in Section 20(b) of this Agreement.

All such insurance shall be evidenced by insurance policies, each of which shall: (1) name or be endorsed to cover the Eligible Installer as the insured, and NYSERDA and the State of New York as additional insureds; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and (3) be reasonably satisfactory to NYSERDA in all other respects. If payments are to be made to the company as opposed to the Eligible Installer, the certificate of insurance must be for the company and must list the eligible installer as an additional insured.

(b) The types and amounts of insurance required to be maintained under this Article are as follows: (1) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and (2) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Eligible Installer for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in any one accident or disaster.

(c) Prior to commencing the Work, the Eligible Installer shall deliver to NYSERDA, as an attachment to the Installer Eligibility Application Form (Attachment C) certificates of insurance issued by the respective insurers, evidencing the insurance required in Section 20(b) and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Agreement will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Eligible Installer, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Eligible Installer shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Eligible Installer shall deliver to NYSERDA a certified copy of each policy.

21. Termination

This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Eligible Installer. In such event, compensation shall be paid to the Eligible Installer for Work performed and expenses incurred for approved installations prior to the effective date of termination. Upon receipt of any such notice of termination, the Eligible Installer shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments.

22. Publicity

(a) Eligible Installers shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning wind systems installed in this program or any NYSERDA program information. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which wind systems installed in this program or any NYSERDA program information are referred to or discussed.

(b) Commercial promotional materials, advertisements, informational brochures, and web site content produced by the Contractor shall credit NYSERDA and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor

within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

(c) An Eligible Installer may only post the information about NYSERDA's Wind Incentive Program (PON 792) provided in Attachment B-1 on their website. The website must provide a link to the NYSERDA wind program website (www.PowerNaturally.org).

I certify that I am, or I am authorised to act on behalf of, the Applicant, and I certify that all information provided in this application, including any attachments, is true and correct to the best of my knowledge. I have reviewed the eligibility criteria and I understand that I will be required to provide additional information to NYSERDA and to verify individual system eligibility. I have read and understand the above Terms and Conditions which are part of this application and agree on behalf of the Applicant to abide by them.

Applicant Signature _____ Date _____

Print Name and Title _____

If the Applicant prefers that payments be made payable to the Eligible Installer's company directly as opposed to the Eligible Installer, enter the company name and have a company official sign below.

Company Name _____

Signature of authorized company official Title Date

NYSERDA Authorized Staff Signature _____ Date _____