MEMORANDUM OF UNDERSTANDING
between the
OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL,
and the
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is executed by and between the Office of the New York State Attorney General ("OAG") and the New York State Energy Research and Development Authority ("NYSERDA") (collectively, "Parties")and shall become effective once it has been executed by each of the signatories for the Parties listed in Article VI of this Agreement.

WHEREAS:

1. On December 22, 2009, the U.S. District Court for the Southern District of Indiana approved and entered a Consent Decree ("Decree") executed and agreed to by the United States, the State of New York, two other states, and two citizen groups ("Plaintiffs"), and Cinergy Corporation, et al. ("Cinergy"), to settle the *United States, et al. v. Cinergy, et al.*, Civil Action No. 1:99-cv-01693-LJM-JMS (the "Action").

2. In the Action, the Plaintiffs alleged that Cinergy violated the federal Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515 and/or 7661-7661(f) by constructing major modifications at their electricity generation facilities which resulted in increased emissions of sulfur dioxide ("SO_2") that harm New York.

3. Pursuant to paragraphs 74-75 of the Decree, Cinergy is required to provide New York Four Hundred Thousand ($400,000.00) Dollars ("Mitigation Funds") for the purpose of carrying out one or more projects to benefit the environment. Cinergy is required to pay the proceeds as designated by New York within seventy-five (75) days after being notified in writing.

4. The environment of New York's Adirondack region has been negatively impacted by acid rain pollution. Sulfur dioxide emissions are a precursor to the formation of acid rain.

5. The New York State Energy Research and Development Agency ("NYSERDA"), through its Environmental Monitoring, Evaluation and Protection ("EMEP") program, funds efforts to research, monitor and address acid rain pollution and its associated impacts on New York's environment, including in the Adirondack region.

6. NYSERDA, prior to engaging with OAG on discussions related to this MOU, intended to announce the availability of a limited amount of funding through EMEP for projects that address acid rain pollution in the Adirondack region and accelerate recovery of the Adirondack environment. The supplementation of that funding with the Mitigation Funds by OAG would provide significant additional benefit

7. As described in more detail in Attachment A to this MOU, the Mitigation Funds, and any accumulated interest income, will be used to assist NYSERDA in administering and implementing the Adirondack Acid Rain Recovery Program ("Program").

8. The OAG and NYSERDA are mutually interested in and desire implementation of the Program in a manner that will benefit the Adirondack environment and the people of the State of New York.

9. NYSERDA has experience in funding and developing programs to fund related projects that benefit the environment, and in the management of those projects subsequently selected through its processes.

10. Based on their mutual interests and beliefs, and their respective areas of expertise and experience, the OAG and NYSERDA have worked together to develop this MOU to implement the Program.

11. OAG and NYSERDA have consulted with the New York State Department of Environmental Conservation (DEC) regarding the development of the Program and DEC's participation in the Program going forward, as appropriate.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is hereby agreed by the OAG and NYSERDA as follows:

ARTICLE I: PROJECT DESCRIPTIONS

The Mitigation Funds, and any accumulated interest income, will be used to establish the Program to fund projects that assess the efficacy of approaches to reducing acid rain pollution, mitigating its effects, and accelerating recovery of the Adirondack environment, as further detailed in Attachment A to this MOU. As also detailed in Attachment A, NYSERDA will administer the Program and fund projects through a competitive, peer-reviewed project solicitation.

ARTICLE II: RESPONSIBILITIES OF THE OAG

1. The OAG will ensure that the required guidance and resources contemplated under this MOU are provided to NYSERDA.

2. Within 30 days of execution of this MOU, OAG shall notify Cinergy that NYSERDA is the designated recipient of the Mitigation Funds, and that such funds shall be paid in a lump sum via a check delivered to OAG and made payable to NYSERDA..

3. The OAG shall review, comment on and approve any notices and contracts developed by NYSERDA for the purposes of implementing the Program..

ARTICLE III: RESPONSIBILITIES OF NYSERDA

1. *Use of the Mitigation Funds*:

   a. NYSERDA will apply the Mitigation Funds, and any accumulated interest income, to implement the Program set forth in Article I above and not for any other purpose.

   b. NYSERDA will apply no more than 8% of the Mitigation Funds, excluding any accumulated interest income, toward the cost of administering the Program.

   c. NYSERDA will apply no more than 2.4% of the Mitigation Funds, excluding any accumulated interest income, toward the Cost Recovery Fee assessed to NYSERDA pursuant to Public Authorities Law Section 2975.[1]

   d. NYSERDA will remit any Mitigation Funds and accumulated interest income not expended during the Term of this MOU (as defined in Article V(1)) to OAG.

2. *Negotiation and Project Management*:

   a. NYSERDA will endeavor to utilize existing processes to the maximum extent practicable to implement the Program as set forth in Attachment A, in a manner that is consistent with the Decree.

   b. NYSERDA shall require any Contractor receiving Mitigation Funds to agree that it (1) will comply with all applicable federal, state and local laws relating to nondiscrimination in employment, (2) will comply with all applicable federal, state, and local labor and employment laws and regulations, and (3) will not discriminate against any individual who applies for employment on this project on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage, or citizenship.

3. *Reports and Deliverables*:

   a. NYSERDA shall report to the OAG twice a year on (1) the status of all work performed to implement the Program and (2) expenditures, until the Mitigation Funds are exhausted. NYSERDA shall submit such semi-annual status reports to the OAG by February 1 (regarding the reporting period July 1-December 31) and August 1 (regarding the reporting period January 1-June 30).

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[1] Under Public Authorities Law section 2975, each public authority, including NYSERDA, is assessed an annual fee (Cost Recovery Fee) for general governmental services in an amount determined by the Director of the Division of the Budget, subject to the maximum amount which may be assessed under the statute. Under generally accepted accounting principles, NYSERDA's Cost Recovery Fee is proportionally allocated among its program expenditures.

b. At least 30 days before the Term of this MOU expires , NYSERDA shall submit to the OAG an end of program report that includes an accounting of all expenditures and a description of all completed projects. This final report will also include an estimated assessment of the environmental benefits derived from the Program.

4. *Insurance*:

a Consistent with its existing programs, NYSERDA shall ensure that its Contractors, at no additional cost to NYSERDA or the OAG, maintain or cause to be maintained throughout the implementation of the Program, insurance of the types and in the amounts specified NYSERDA's Risk Management and Insurance Procedures as detailed in Attachment C.

b. All such insurance shall: (a) name or be endorsed to cover NYSERDA and the State of New York and (b) be satisfactory to NYSERDA in all other respects.

ARTICLE IV: KEY OFFICIALS

1. The personnel specified are considered to be essential to ensure maximum coordination and communication between the Parties. Each Party, on notice to the other Parties, may designate another person or persons to act in his/her place in an emergency or otherwise.

2. The key officials for the OAG are:

Michael J. Myers
Assistant Attorney General

Jeremy Magliaro
Policy Analyst

Environmental Protection Bureau
Office of the Attorney General
The Capitol
Albany, NY 12224
(518) 402-2594

3. The key officials for NYSERDA are:

Mark Watson – Program Manager
Hal Brodie – General Counsel

New York State Energy Research & Development Authority
17 Columbia Circle,
Albany, New York 12203
(518) 862-1090

4. In the event that the OAG or NYSERDA must make a change to a key official, it shall provide timely notice to the other Parties of such change. The notification shall include sufficient information to permit evaluation of any impact of such a change on coordination and communication between the Parties.

ARTICLE V: MISCELLANEOUS

1. *Term*: This MOU shall remain in force from the earlier of (1) 36 months from the time of execution, or (2) all Mitigation Funds have been exhausted and NYSERDA has , submitted the final end of program report. The Parties may extend the term by written agreement.

2. *Availability of Funding*: Nothing contained herein obligates or shall be deemed to obligate the OAG or NYSERDA to expend any funds on the Program other than the Mitigation Funds.

3. *Public Information*: OAG will consult with and notify NYSERDA prior to issuing any press releases, publications or announcements, or making any public statement about the Program. NYSERDA shall not issue any press releases, publications or announcements, or make any public statements about the Program without the prior agreement of OAG. NYSERDA shall ensure that any written statements, including, but not limited to, education or outreach materials describing or distributed in the administration of the program state that funding for the Program was from the settlement of a lawsuit by the New York State Attorney General against the Cinergy company.

4. *Entire Agreement / No Third Party Beneficiaries*: This MOU represents the entire agreement between the parties hereto with regard to the subject matter hereof and supercedes any prior agreements and/or understandings, whether written or oral, between the parties hereto. No third party beneficiaries are intended by this MOU.

ARTICLE VI. AUTHORIZING SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their respective duly authorized officers or representatives:

For OAG:

By: _____
Name: Michael J. Myers
Title: Assistant Attorney General

For NYSERDA:

By: _____
Name: Francis J. Murray, Jr.
Title: President and CEO

ATTACHMENT A:

Adirondack Acid Rain Recovery Program ("Program")

NYSERDA will establish a program to fund projects that reduce acid rain pollution and its impacts on the Adirondack environment with the $358,400, and any accumulated interest income, provided by this MOU, as detailed in Attachment B. The results of projects funded by the program proposed herein would assist resource managers in identifying the most cost-effective approaches for accelerating the recovery of the Adirondacks from the impacts of acid rain pollution, along with the knowledge to optimize their implementation.

1. Adirondack Acid Rain Recovery Program

a. NYSERDA shall establish the Program with the Mitigation Funds as outlined in Attachment B, and any accumulated interest income, to support the conduct of experiments assessing the relative effectiveness of acid rain pollution reduction strategies within the Adirondack Park. The following considerations shall be included in the selection of projects to receive funding under the Program:

   i. Projects funded using Mitigation Funds must have as their primary focus demonstrating cost-effective strategies to prevent and reduce the adverse impacts of acid rain pollution on the Adirondack environment.

   ii. Projects must include a physical demonstration component in the Adirondack environment.

   iii. To the extent possible, projects shall take place on public lands, however, with the recognition that certain activities are not allowed within designated Wilderness Areas within the Adirondack Park.

   iv. In the event that NYSERDA does not receive a sufficient number of viable applications for projects proposed on public lands, NYSERDA may consider projects proposed on privately-owned lands provided that any results would significantly inform subsequent acid rain pollution reduction efforts on public lands.

   v. Projects that have rigorous monitoring components, and that may be potentially transferable to other sections of the Adirondack Park and State impacted by acid rain, including the Catskills region, should be prioritized.

   vi. All projects must be voluntary in nature, and not otherwise required by regulation or law.

b. NYSERDA shall solicit project proposals through an open, competitive application process. NYSERDA shall establish an independent technical evaluation panel and project review committee in order to rank project applications for feasibility and

funding. In establishing such panel(s), NYSERDA shall extend an invitation to DEC and OAG to designate a representative to serve on the panel(s). If appropriate in NYSERDA's judgment, NYSERDA shall also extend an invitation as well to representatives from the Adirondack region.

c. NYSERDA shall consult with OAG prior to making any final selections of projects to be funded using the Mitigation Funds.

d. Upon selection of a project or projects under the Program, NYSERDA will take appropriate reasonable steps to inform the public and solicit feedback regarding its implementation. These steps may include the development of written information pamphlets, public information sessions, or other methods. NYSERDA shall consult with OAG prior to undertaking any of these actions.

e. NYSERDA will establish as appropriate a Project Advisory Committee ("PAC") associated with each project that includes public representatives from a project's geographic vicinity, in addition to representatives from scientific and not-for-profit organizations, and other stakeholders that express interest. NYSERDA shall consult with OAG regarding the potential need to establish a PAC associated with a project.

2. Administration

a. *Budget*: The Program will be funded using the $358,400 in Mitigation Funds, and any accumulated interest income, provided by this MOU, as detailed in Attachment B.

b. Project Benefits:

i. The Adirondack mountains have, and continue to be, significantly impacted by the effects of acid rain pollution. These effects include degradation of the chemical characteristics of the Adirondack region's soils and waters, resulting in ecological impacts such as the loss of fish and other aquatic organisms, and decreasing forest growth.

ii. Although acid precipitation has decreased since the enactment of federal legislation in 1990, and some Adirondack waters have begun to show signs of improved water quality, other areas within the Adirondacks have not recovered as expected because of the legacy of acid pollution that remains in the Adirondack environment.

iii. Limited information is currently available to guide State policy makers and resource managers on the potential options available for acid rain pollution reduction in the impacted environment, including the associated benefits, costs, applications, and other considerations.

iv. In 2007, NYSERDA established a multi-year research plan through a stakeholder driven process with the New York Academy of Sciences that identified and prioritized key research areas that are suitable to be addressed

through NYSERDA's EMEP program and other funding organizations.[1] The plan outlined key research priorities for addressing acid rain pollution in the Adirondacks, and recommended that further research be conducted to fill the information gaps related to various strategies for preventing further acid rain pollution and accelerating recovery of the ecosystem.

v. By undertaking projects that demonstrate the cost-effectiveness of various strategies to reduce acid rain pollution and its impacts on the Adirondack environment, and thus enabling an accelerated recovery of the ecosystem, State policy makers and resource managers will have an enhanced understanding about the efficacy of the various ecosystem management options at their discretion.

vi. Projects undertaken as part of this Program will improve and protect the State's natural resources and reduce the impacts associated with acid rain pollution on State lands.

c. *Project Schedule*: The Program shall begin immediately upon full execution of this MOU and continue for the Term of the MOU as set forth in Article 5(1).

d. *Negotiation and Project Management:* NYSERDA will use its normal project management structure to oversee the Program and conduct appropriate project oversight.

[1] Available at: http://www.nyserda.ny.gov/Environmental-Research/EMEP/~/media/Files/EE/EMEP/Climate%20Change/emepplan2007

ATTACHMENT B:

Budget

Cost Category	Amount
Adirondack Acid Rain Recovery Program	$358,400
Project Implementation Subtotal	**$358,400**
NYSERDA Administration (8%)	$ 32,000
NYS Cost Recovery Fee (2.4%)	$ 9,600
Total	**$400,000**

ATTACHMENT C:

NYSERDA Risk Management and Insurance Procedures

The Project Manager shall evaluate the risks associated with the project early in the development stage. For the purposes of determining adequate liability insurance coverage, the Project Manager shall evaluate a given project's potential risk to NYSERDA of claims resulting from property damage, personal injury or death. Insurance coverage requirements fall into three categories, as are described below:

- Category A -- Low Risk: No insurance or indemnification required.
- Category B -- Medium Risk: $1,000,000 general liability. Indemnification and additional named insured status.
- Category C -- Higher Risk: Liability insurance coverage and/or risk management alternatives shall be developed on a case-by-case basis. Indemnification and additional named insured status shall be standard.

The Project Manager shall identify the recommended insurance/risk category on the Project Summary Memorandum when submitting a negotiation package for team review. For Category B and C projects, the Project Manager shall review the brief descriptions of insurance coverage's and recommend any other insurance provisions that would be necessary based on the unique project characteristics and the period of time such insurance shall be required. The other types of insurance shall be required only when the team members reach consensus on the need for such insurance. Any Category B project for which the B-level insurance requirements cannot be met by the contractor may require special provisions, but shall not be reclassified as a Category C project due to the lack of recommended coverage. For Category B projects where B-level insurance requirements cannot be met and for all C-level projects, the Project Manager, in conjunction with the team, shall:

(1) evaluate the project liability risks;

(2) determine appropriate project provisions designed to control these risks; and

(3) recommend a combination of risk control, insurance, indemnification and any other provisions to address risks and allow the project to proceed.

The Contract Administrator will prepare the contract including the insurance/risk coverage provisions. The contractor will be requested to return the insurance certificate with the signed contract.

After NYSERDA executes the contract, contract administration will include the following activities:

(1) For contractors having concurrent projects with NYSERDA, if one insurance certificate provides documentation of the required coverage for more than one project, the Director of Contract Management may accept the one certificate as adequate documentation.

(2) Expiration dates for insurance coverage for Category B and C contracts will be logged in the NYSERDA Enterprise Information System (NEIS) by contracts staff; if the insurance expires prior to the end of the contract term, the contracts staff will contact the contractor and require them to send notice of continued coverage.

(3) Proof of insurance is required for invoice payment. If the contractor has not provided adequate proof of insurance, payment of invoices for Category B and C projects may not be made until the contractor provides proof of adequate insurance unless the Director of Contract Management, after consultation with the Project Manager, determines that satisfactory resolution of the coverage

problem has been made. Payment will normally be refused for Category C projects without proof of insurance, unless the project team agrees on another course of action.

In the event that a contractor or subcontractor reports to NYSERDA a problem with required insurance, the Contract Administrator shall have the contractor submit a written request for a waiver to the insurance requirements in the existing agreement. The contractor shall include the following information in such request:

(1) A statement as to why the coverage is or has become unavailable, and the alternatives, including costs of insurance from other sources.

(2) A risk justification as to why the available coverage or non coverage is acceptable.

(3) If financial considerations are limiting the availability of the coverage, a statement of the financial affects of obtaining the required coverage.

The Contract Administrator shall present this information to the team members, and the team shall determine a course of action. The team shall proceed as follows:

(1) The team shall determine whether the project as contracted for is a Category A, B or C project.

(2) The team shall determine, based on the category and the justification submitted by the contractor, whether a change in or elimination of the insurance requirements would be in order. The team may also consider other alternatives such as technical risk reduction measures, NYSERDA funding of insurance coverage as a direct expense in the budget, etc.

(3) If the team determines that the project is a Category B project, and that waiver of a contract insurance requirement would be in order, then the team shall recommend that the Contract Administrator prepare a letter waiving such requirement for signature by the Director of Contract Management. The waiver shall be sent to the contractor, and a copy shall be placed in the contract file. The rationale for this decision shall be documented in the contract file.

(4) If the team decides to reduce contract insurance coverage for a Category B project, the Contract Administrator shall prepare a contract modification. The rationale for the change shall be documented in the contract file. A negotiation package or final contract approval package shall not be required.

Funding of insurance as a direct cost to NYSERDA shall require a contract modification, including a negotiation package and final contract approval package review, with execution by NYSERDA's President or other authorized person.

(5) If the team determines that the project is a Category C, any change of insurance shall be handled through a contract modification. Such modification shall originate with a negotiation package prepared by the Project Manager which shall be processed through the complete negotiation package and final contract approval cycle.