

2025

Policyholders' Conference

**Stronger together.**



Breakout Session

# Contractual Risk Review

MODERATOR

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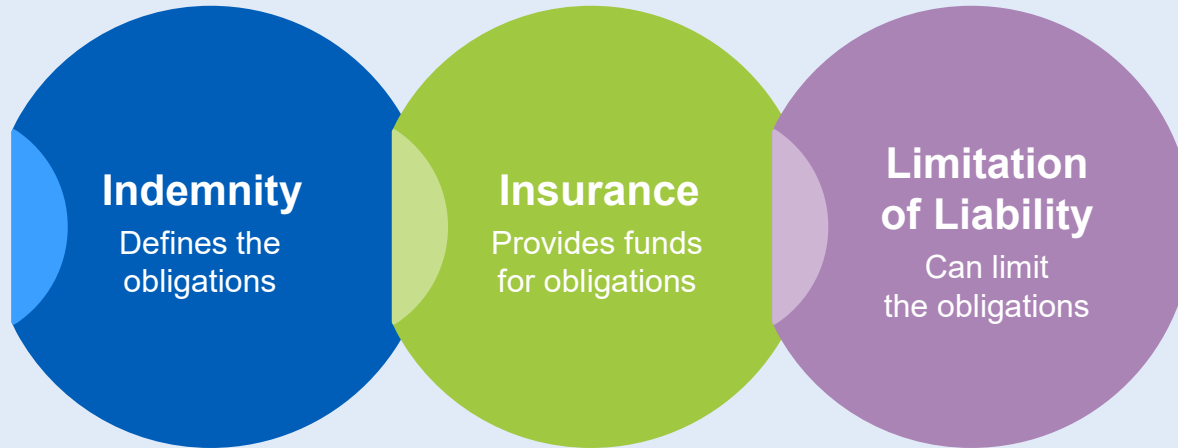
Alliant Insurance Services

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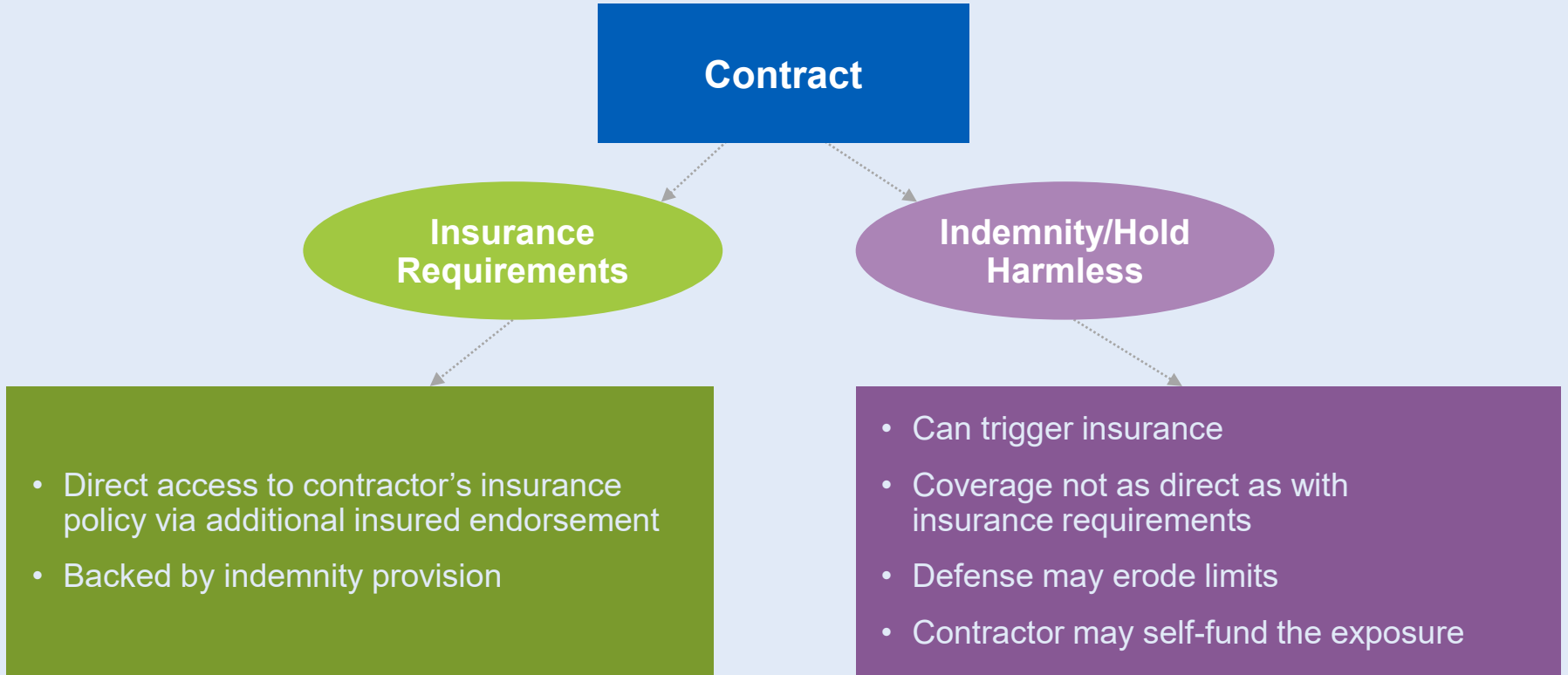
Director, Corporate Risk

TXNM Energy

# The Basics



# Triggering Insurance



# Insurance Requirements

- Limits and specific requirements vary greatly depending on the risk
- Flow down requirements to subcontractors
  - Require subcontractors to carry same limits as the contractor (if appropriate)
  - Specify which lines, if any, can be met solely by a subcontractor's (vs the contractor's) insurance
- Savings Clause — “to the fullest extent permitted by law”
- Affirmative Coverage Requirements — Wildfire, Action-over Claims
- Key Clarifications
  - Insurance limits are a minimum, not a limitation of liability; no assertion limits required are adequate
  - Failure to identify a deficiency in a certificate does not constitute a waiver of the insurance requirements

# Additional Insured Considerations

- Broadest protections under the contractor's insurance
- Direct access to / communication with the contractor's insurer
- Right to immediate defense, and defense typically outside of insurance limits
- Helps prevent subrogation against the utility
- Unless tied or limited to the indemnity provision, is a separate obligation
- Be cognizant of endorsement edition dates and coverage impacts

# Additional Insured Forms – Ongoing Operations

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,  
in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury" or "property damage" occurring after:
  - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

ISO CG 20 33 07 04

# Additional Insured Forms – Ongoing Operations

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN A WRITTEN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable limits of insurance; whichever is less.

This endorsement shall not increase the applicable limits of insurance.

ISO CG 20 33 12 19

# Additional Insured Forms – Completed Operations

ISO CG 20 37 07 04

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

| Name Of Additional Insured Person(s)<br>Or Organization(s):  | Location And Description Of Completed Operations |
|--|--|
| Information required to complete this Schedule, if not shown above, will be shown in the Declarations. |  |

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

# Additional Insured Forms – Completed Operations

ISO CG 20 37 12 19

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

| Name Of Additional Insured Person(s)<br>Or Organization(s) | Location And Description Of Completed Operations |
|--|--|
|  |  |
|  |  |
|  |  |

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance; whichever is less.

This endorsement shall not increase the applicable limits of insurance.



# Indemnity Considerations

- Mutual Indemnity

- Each party agrees to indemnify the other to its own degree of fault
- Fairness argument
- Adds complexity, time and additional expenses to a loss
- May impact indemnity protection for action — over claims
- Impact for public power / those with sovereign immunity

- Indemnity

- Defend, protect, indemnify and hold harmless utility...
- Breadth may be limited by state statutes (ex. anti-indemnity) or via contract negotiations
- If limit to strictly the contractor's negligence, may impact protection for action — over claims
- Indemnity may be broader than insurance coverage

# Limitation of Liability



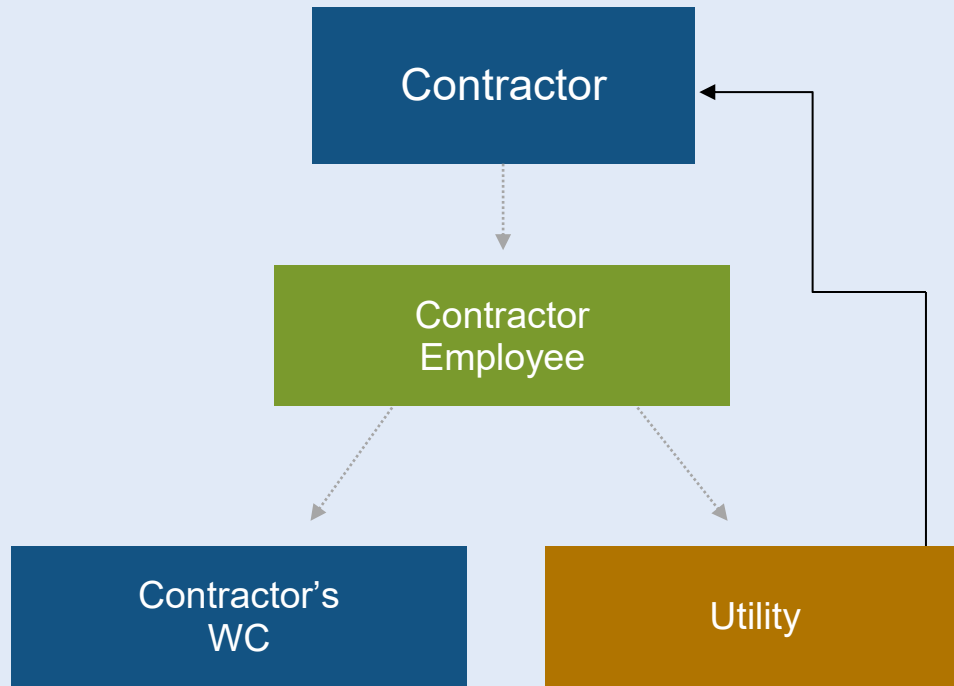
- Limits the Liability of the Contractor to the Utility
  - Third party injury
- Common Asks by Contractor
  - Cap to contract amount
  - Cap to amounts paid/amounts received
  - Cap to insurance payments
  - No liability for consequential or indirect damages
  - No liability for business interruption, failure to supply or loss of use
- Emerging Asks
  - Cap for gross negligence for Hail Stow Services
  - Cap for wildfire liability
- Utility Required Limitations of Liability



## Limitation of Liability Suggested Carve Outs

- Indemnity Obligations
- Breach of Confidentiality
- Insurance Recoverables
- Insurance Deductibles
- Warranty Obligations
- Liquidated Damages
- Gross Negligence / Willful Misconduct / Punitive Damages
- Claims by Employees of Contractor or its Subcontractor(s)

# Action Over Claims



- WC Exclusivity Rule
- Contractual Protections:
  - Additional Insured
  - Waiver of Subrogation
  - Indemnity

# Action Over Claims

## Contract Examples – Potentially Removing Protection for Action-Over Claims

- **Waiver of Subrogation:** “Waiver of subrogation only to the extent of Contractor’s expressly assumed indemnity obligations hereunder, and *except to the extent any loss, claim, damage arises out of the negligence, recklessness or willful misconduct of Owner...*”
- **Additional Insured:** “*...to the extent that the loss or claim in question is caused by the Contractor’s negligence* in its operations in and during the performance of the Work, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by Contractor...”

# Action Over Claims

## Contract Examples – Potentially Removing Protection for Action-Over Claims

- **Mutual Indemnity:**

- Contractor shall defend, indemnify and hold harmless Owner Group from and against all claims and losses incurred by or asserted against any member of Owner Group to the extent and as a result of any and all of the following: (i) any third-party claims for bodily injury, death, or property damage *to the extent arising out of or caused by any negligent act or omission or willful misconduct of Contractor Group*; ... (v) any claims with respect to employer's liability or workers' compensation filed by any employee of Contractor, *except to the extent caused by the negligent acts or omissions of any member of Owner Group.*



# Emerging Contractual Risk Considerations

- Data Centers
  - Failure to Supply
  - Consequential Damages / Force Majeure Provisions
  - Landlord / Tenant Relationship?
  - Regulated or Non-Regulated (Tariff Protection?)
  - Substation — Ownership, O&M
- Action Over Claims
  - Indemnity
  - Additional Insured
  - Waiver of Subrogation
  - Limitation of Liability

# Tips & Suggestions



- Be cognizant of impacts of updated additional insured endorsements
- Seek the broadest indemnification permitted by your state
- Closely review contract language for action-over “triggers”



- Tie indemnity to insurance
- Allow unqualified additional insured, WOS or indemnity to be limited to contractor’s negligence
- Use mutual indemnity only if necessary, with appropriate carve-outs

