

Safeguarding Solar Projects: New Insurance Offerings Require Close Examination

Insurers have descended on the solar market, but not every provider and policy will provide appropriate coverage.

■ Robert L. Sobel

Many insurance companies have begun offering products for risk management and loss control in the solar market. These offerings are designed to meet the needs of property owners and operators, as well as those of solar product manufacturers, distributors and contractors.

This trend has been a direct response to companies' growing awareness that the number of solar energy installations will continue to increase in the coming decades. For insurance companies, which have been challenged by industry consolidation - primarily through mergers - there has been an increased focus on gaining greater market share, and the burgeoning solar sector represents tremendous opportunity for several specific reasons.

First, solar is a relatively young industry, and the promise of growth is compelling. Second, it aligns with many insurance companies' public relations goals to position themselves as responsible corporate citizens. Third, solar energy is a vertically integrated business with unique risk-management exposures at every level, from manufacturers to installers. Understanding these exposures and how to mitigate these risks is essential for any business or in-

dividual involved in solar applications.

With the rapid construction of solar installations, there are several unique features in the builder's risk property coverage form that are worth noting. Coverage traditionally offered for conventional risks, while broad in scope, is often expanded to include broadly described solar equipment as well as its piping, mountings, surge protectors, batteries, transmission lines, converters, panels and computers. These policies can be applied to address the needs of rooftop, canopy or ground-mounted systems.

Coverage is also available at unnamed temporary storage locations for this aforementioned equipment. In instances in which a particular type of property that is unique to the project falls outside the definition of covered property, it can be included and separately described with a value ascribed on the policy.

The builder's risk property coverage forms currently available in the marketplace are designed to be flexible enough to meet new or developing risks. For example, we have recently seen a rash of solar panel thefts from completed installations nationwide.

Potential business interruptions

Another area of rising claims for solar installation operators are those

associated with loss of business income. Typically, this is a misunderstood coverage component, and many insured companies do not have a full understanding of it. New customized solar-specific policies' coverage goes beyond the actual loss of income and continuing operating expenses and payroll. It also includes the tax credits that would have been earned, as well as other financial incentives presented in the insurance policy based on the insured's operating agreements.

When a company is completing a business-interruption worksheet, it is important to include these unique industry components (e.g., credits and incentives) in the calculations so that the proper limits are established.

It should also be noted that, in many states, gaining these incentives is predicated on the basis of solar installers' meeting certain requirements (e.g., previous experience installing photovoltaic systems, completion of training and certification programs, and agreeing to comply with the municipal agency's photovoltaic incentive program).

To receive the awards, some states - such as New York - also require proof of insurance by the insured, listing the agency (New York State Energy Research and Development Authority (NYSERDA)) and the State of New York as additional insured parties. In addition to naming the agency and state as additional insureds, eligible installers under the NYSERDA photovoltaic incentive program must meet its insurance requirements.

These requirements include proof of \$1 million in general liability insurance; \$500,000 for claims arising out of personal injury, or sickness or death of any one person; \$1 million for claims arising out of personal injury, sickness or death in any one ac-

cident or disaster; and \$500,000 for claims arising out of property damage in any one accident or disaster. Other states have similar requirements for their incentive programs.

When a company is assessing the various limits of liability against which to insure, the focus is generally on the limits relating to the more obvious areas of construction in solar installations or the value of these installations once they are operating. These points of evaluation include such areas as the replacement cost of the solar array and the business-interruption values. Less obvious, but equally important, are the costs of debris removal and recycling, which can be substantial after a covered loss.

The costs of transporting the waste and the associated dumping fees are usually more than most business owners imagine. The debris-removal limit is in addition to the replacement value of the equipment being installed, the inventory being distributed or the actual operating solar installation.

Other essential coverages

Equipment breakdown coverage fills an important coverage void by covering the direct physical loss that results from a mechanical breakdown, which, in the case of solar installations, includes explosion, electrical arcing, rupture or bursting. This coverage is marginalized somewhat by the number of perils that are excluded in the coverage form.

Under commercial general liability coverage, which encompasses product liability, the potential exists for property-damage losses arising from design defects or the manufacturer's improper installation by contractors. For instance, in a case where water damage resulting from leaks in poorly designed or manufactured solar panels gives rise to mold or other fungi claims, the standard commercial general liability will exclude coverage.

There are, however, insurance products available that respond to losses stemming from a design defect that results in a poorly manufactured panel that causes bodily injury or property damage, including mold and other fungi.

Solar installation contractors can also purchase a contractor's pollution liability policy that would respond to such allegations, because a typical commercial general liability contract specifically excludes - or has a woefully inadequate limit for - mold and fungi losses caused by a contractor's negligence. Generally speaking, pollution liability policies need to have the microbial exclusion removed in order for coverage to be granted.

Many states have been hesitant to require insurance for solar system installations. Some have prevented utilities from requiring insurance prior to interconnecting grid-tied systems. In other states, such as Colorado, the utilities require additional personal liability insurance before approving a grid-tie agreement.

On the residential solar side, in some of these states, adding solar panels to insurance policies has become common. Many well-known carriers are covering traditional grid-tied solar installations. According to a report by the Interstate Renewable Energy Council, there are now more than 50,000 grid-tied solar installations in the country, with minimal damage reported.

Although commercial solar installations represent a smaller share of the total number of solar installations, they have much larger capacities and represent the majority of U.S. solar photovoltaic production. The risks, too, can be far greater.

Lawsuits involving solar projects are already on the rise. Some of these lawsuits have been between homeowners wherein one homeowner claims another homeowner's home addition would obstruct sunlight from reaching his solar panels. Other lawsuits have involved solar product manufacturers' misrepresentation of cost savings, product damage to solar products, and faulty installation of solar products. ☞

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