

**BARC  
ELECTRIC COOPERATIVE**

**COMPETITIVE SERVICE PROVIDER  
AGREEMENT**

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## **BARC ELECTRIC COOPERATIVE COMPETITIVE SERVICE PROVIDER AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between BARC Electric Cooperative (“Cooperative”), a utility consumer services Cooperative organized and existing under the laws of the Commonwealth of Virginia and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, (“Competitive Service Provider” or “CSP”), (collectively, the “Parties,” individually, each a “Party”).

### **RECITALS**

**WHEREAS**, the Cooperative is currently a utility consumer services cooperative engaged in the distribution and sale of electric energy with an exclusive franchise to serve Customers located within its Service Territory in the Commonwealth of Virginia; and

**WHEREAS**, the Virginia Electric Utility Restructuring Act, Va. Code §§ 56-576 to 56-596 (the "Act"), as amended, provides for the restructuring of the electric industry in Virginia such that regulated public utilities must allow non-discriminatory, direct access to their distribution systems by Competitive Service Providers of retail electric service, and further provides that, with implementation of such access to the distribution system, the Cooperative will continue to serve as the exclusive electric distribution provider within its Service Territory; and

**WHEREAS**, the Virginia State Corporation Commission ("Commission"), acting pursuant to the Act, has issued its Final Order in Case No. PUE-2001-00013, promulgating Rules Governing Retail Access to Competitive Energy Services, 20 VAC-5-312-10 through 20 VAC-5-312-120, as amended (the "Rules"), authorizing the Cooperative to offer such access to its Distribution Facilities, as defined below; and

**WHEREAS**, in connection with the Virginia Electric Utility Restructuring Act ("Act"), the Competitive Service Provider (i) intends to negotiate with Customers for the sale of Competitive Energy Service, as defined below, and to make such sales; (ii) has been licensed to supply Competitive Energy Service to Customers in Virginia; and (iii) has been issued License No. \_\_\_\_\_ by the Commission; and

**WHEREAS**, an agreement between the Cooperative and the Competitive Service Provider is needed in order for the Competitive Service Provider to be registered with the Cooperative to engage in the provision of Competitive Energy Service in the Cooperative’s Service Territory;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below and the above Recitals, which are incorporated herein by reference, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

## **ARTICLE 1: DEFINITIONS**

Terms introduced and subsequently capitalized will have the meanings as indicated herein. Other terms capitalized and used in this Agreement will have the meanings as set forth in the Company's Competitive Service Provider Coordination Tariff on file with the Commission (the "CSP Tariff"), as the same may be revised from time to time. Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Agreement to Govern**

The Parties named in this Agreement are bound by the terms set forth herein, the applicable terms contained in the Cooperative's tariffs, as amended from time to time, the Rules, and the terms otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which the CSP shall provide electric supply services to its Customers via the Cooperative's Delivery System.

### **2.2 Term of Agreement**

This Agreement shall become effective upon the satisfaction of the CSP obligations contained in Section 2.3 (the "Effective Date"). This Agreement shall terminate April 30 each year following the Effective Date unless terminated sooner as provided in the Cooperative's CSP Tariff. This Agreement may be renewed in conjunction with the CSP satisfying the registration renewal requirements pursuant to the CSP Tariff. The Parties named in this Agreement are bound by the terms set forth herein and the terms contained in the CSP Tariff. The CSP acknowledges that it may commence the provision of Electricity Supply Services in the Cooperative's Service Territory only in compliance with the Rules, the Transmission Provider's OATT and the CSP Tariff, all as may be revised from time to time and after such date for instituting such service has been approved by the Commission.

### **2.3 Competitive Service Provider Obligations**

Unless otherwise indicated, a CSP will be required to:

- a. Obtain and maintain a license from the Commission and any licenses, permits or other authorizations from any other federal, state, or local agencies for participation in the Virginia retail electric supply market;
- b. Execute all appropriate applications and agreements required for the CSP's provision of Electricity Supply Services in the Cooperative's service territory;

- c. Furnish the Company proof of licensure from the Commission pursuant to 20 VAC 5-312-40 and licensure renewal by the Commission to provide Competitive Energy Services in the Commonwealth. Additionally, each CSP shall furnish the Company with a copy of all updated information filed with the Commission on March 31 of each year pursuant to 20 VAC 5-312-20.Q, except to the extent such information has been otherwise submitted to the Company within 60 days preceding March 31;
- d. Satisfy the creditworthiness standards of the Cooperative and/or the Commission pursuant to Article 7 of the Cooperative's CSP Tariff;
- e. Meet all applicable reliability standards established by the FERC, the Commission, or any other State, regional, federal, or industry body with authority to establish reliability standards;
- f. Be solely responsible for having all necessary and appropriate contractual or other arrangements with its Customers, consistent with Commission rules and regulations and with the CSP Coordination Tariff. The Cooperative shall not be responsible for monitoring, reviewing, or enforcing such contracts or arrangements;
- g. Make all necessary arrangements for obtaining Competitive Energy Supply Service in a quantity sufficient to serve its Customers;
- h. Procure transmission and other services provided by a Transmission Provider necessary for the delivery of Competitive Energy Service to its Customers and have provided the Cooperative with a completed Transmission Customer Designation Form, to designate the Transmission Customer who will be obtaining transmission service on behalf of the CSP;
- i. Arrange to satisfy all obligations that are imposed on CSPs by the Transmission Provider, including import capability, load scheduling, and reconciliation rights and responsibilities; and
- j. Make all necessary arrangements for scheduling and providing the energy and capacity for its Customers in accordance with the applicable system requirements of the Transmission Provider.

#### **2.4 Cooperative's Obligations**

The Cooperative agrees to satisfy all of its requirements with respect to the CSP as provided in the Act, Rules and the Cooperative's CSP Tariff, all as may be revised from time to time.

#### **2.5 Mutual Obligations**

The Cooperative and CSP will cooperate in order to ensure delivery of energy to Customers as provided for by the applicable legal authorities. The CSP and the Cooperative shall exchange all data, materials or other information that is specified in this Agreement in accordance with Commission standards, and that may otherwise be reasonably required by the CSP or the Cooperative in connection with their obligations under this Agreement, subject to the confidentiality provisions in Article 22 of the Cooperative's CSP Tariff, in a timely manner.

## **2.6 Waiver of Rules**

The Parties agree that if either Party requests a waiver to the provisions of the Rules pursuant to 20 VAC 5-312-20.A, such Party will notify the other Party prior to making such a request for waiver.

## **2.7 Tariffs Incorporated**

The Cooperative's tariffs as filed with the Commission and as modified from time to time, including the Terms and Conditions of Service, and the CSP Tariff are incorporated herein by reference.

# **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

## **3.1 Competitive Service Provider Representations and Warranties**

The CSP hereby represents, warrants, and covenants as follows that:

- a. The CSP is a [corporation/partnership/\_\_\_\_\_] duly organized and validly existing under the laws of the State of \_\_\_\_\_, and is authorized to do business and is in good standing in the Commonwealth of Virginia;
- b. The CSP has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including Commission licensure to provide Electricity Supply Service to Customers located within the Commonwealth of Virginia. Such licensure shall be maintained throughout the life of this Agreement, and the lack of which shall immediately terminate the Agreement;
- c. The execution and delivery of this Agreement and the performance of the CSP's obligations hereunder have been duly authorized by all necessary actions on the part of the CSP and do not and will not conflict with or result in a breach of the CSP's charter documents or bylaws or any indenture, mortgage, other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the CSP is a party or by which the CSP or any of its properties is bound or subject nor any legal proceeding now pending, or to CSP as knowledge, threatened;
- d. This Agreement is the valid and binding obligation of the CSP, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditor's rights generally or by general principles of equity;
- e. There are no actions at law, suits in equity, proceedings or claims pending against it before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the performance of its obligations hereunder; and

- f. The CSP will continue to comply, either directly or through its Transmission Customer, with all obligations, rules and regulations, as established and interpreted by the Transmission Provider, that are applicable to CSPs serving Customers located in the Transmission Provider's control area.

### **3.2 Notice of Violation**

If either Party learns that any of the representations, warranties, or covenants in this Agreement has been violated, then such Party shall immediately notify the other Party via facsimile or electronic mail, with a hard copy of the notice delivered by overnight mail. Such notice shall include the plans of action the Party in violation will take to remedy the violation if it is so able. In the event the Party in violation cannot remedy the violation to the reasonable satisfaction of the other Party, the Parties may terminate this Agreement pursuant to the Cooperative's CSP Tariff.

### **3.3 Cooperative Representations and Warranties**

The Cooperative hereby represents, warrants and covenants as follows that:

- a. The Cooperative is an electric utility Cooperative duly organized and validly existing under the laws of the Commonwealth of Virginia;
- b. The Cooperative has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;
- c. The execution and delivery of this Agreement and the performance of the Cooperative's obligations hereunder have been duly authorized by all necessary actions on the part of the Cooperative and do not and will not conflict with or result in a breach of the Cooperative's charter documents or bylaws or any indenture, mortgage, other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Cooperative is a party or by which the Cooperative or any of its properties is bound or subject, nor any legal proceeding now pending or to the Cooperative's knowledge, threatened;
- d. This Agreement is the valid and binding obligation of the Cooperative; enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect that affect creditors' rights generally or by general principles of equity; and
- e. There are no actions at law, suits in equity, proceedings or claims pending against it before any federal, state foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the performance of its obligations hereunder.

### **3.4 Continuation of Warranties**

All representations and warranties contained in Article 3 shall continue for the term of this Agreement.

## **ARTICLE 4: REMEDY FOR BREACH OF CONFIDENTIALITY**

The Parties agree that it will be impossible or very difficult to measure in terms of money the damages that would accrue due to any breach of the confidentiality provisions of the CSP Tariff or any failure to perform any obligation herein and, for that reason, among others, the Cooperative is entitled to specific performance of the confidentiality provisions of the CSP Tariff, or injunctive or other equitable relief as a remedy for a breach of the confidentiality provisions of the CSP Tariff. If the Cooperative institutes a proceeding to enforce any part of the confidentiality provisions of the CSP Tariff, the CSP hereby waives any claim or defense that an adequate remedy at law exists. Any such relief shall be in addition to, and not in lieu of, money damages or any other legal remedy available to the Cooperative.

## **ARTICLE 5: INDEMNIFICATION**

### **5.1 Indemnification**

To the fullest extent permitted by law, the CSP shall defend, indemnify and hold harmless the Cooperative from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including the Cooperative's employees or any third parties, or any other liability incurred by the Cooperative, including reasonable attorneys' fees, relating to performance under this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, expenses or damage were caused wholly or in part by any negligent or willful act or omission of the Cooperative.

### **5.2 Survives Agreement**

The indemnifications under this Article shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CSP or the Cooperative under any statutory scheme, including any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

### **5.3 Implementation of Change in Indemnifying Party**

It is specifically understood and agreed, without limiting the Cooperative's right to indemnification under this Article, that the CSP shall indemnify the Cooperative from and against all claims and/or liabilities arising out of the switching of Customers to Competitive Energy Supply Service under the procedures in the Rules, including but not limited to "slamming" as that term may be defined by the Commission.

## **ARTICLE 6: MISCELLANEOUS PROVISIONS**

### **6.1 Notices**

Unless otherwise stated herein, all notices, Demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile

transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the CSP to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Cooperative to: BARC Electric Cooperative  
P. O. Box 264  
Millboro, VA 24460-0246  
(Fax: 540.997.9011)

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notices received after the close of the business day shall be deemed received on the next business day.

**6.2 No Prejudice of Rights**

No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to the excuse. The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

**6.3 Gratuities to Employees**

The CSP and its employees shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Cooperative.

**6.4 Assignment**

This Agreement may not be assigned by the CSP without (a) any necessary regulatory approval and (b) the prior written consent of the Cooperative, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the CSP of any of its obligations under this Agreement. The Cooperative may assign any or all of its rights and obligations under this Agreement, without the CSP's consent, to any entity succeeding to all or substantially all of the distribution assets of the Cooperative's system, if such

assignee agrees, in writing, to be bound by all of the terms and conditions hereof, and if any necessary regulatory approvals are obtained.

**6.5 Taxes**

All present or future federal, state, municipal or other taxes imposed on the CSP by any taxing authority by reason of this Agreement shall be the liability of the CSP. The CSP shall pay all such taxes to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such taxes, the CSP will, if requested, provide the Cooperative with valid tax exemption certificates. If the Cooperative is required to remit any such taxes directly to any applicable taxing authority, other than taxes previously collected by the Cooperative directly from the CSP's Customers, the CSP indemnifies the Cooperative against, and will pay the Cooperative for, all such tax amounts upon demand.

**6.6 Governing Law**

To the extent not subject to the exclusive jurisdiction of FERC, the formation, validity, interpretation, execution, amendment and termination of this Agreement shall be governed by the laws of the Commonwealth of Virginia.

**6.7 Headings**

The headings and sub-headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereunto, nor should they be used to aid in any manner in the construction of this Agreement.

**6.8 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

**6.9 Force Majeure**

The obligations of the Parties under this Agreement are subject to the provisions for Force Majeure of the CSP Tariff.

**6.10 Relationship of the Parties and Survival**

- a. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- b. Cancellation, expiration or early termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including, without limitation,

payment of any amounts due, warranties, remedies, promises of indemnity and confidentiality.

- c. Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof, unless it materially changes the Agreement of the Parties.
- d. Each of the Parties hereto acknowledges that it has read this Agreement, the Act, the Rules, and the Cooperative's tariffs understands them, and agrees to be bound by their terms. This Agreement is intended by the Parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. All prior written or oral understandings, offers or other communications or every kind pertaining to this Agreement are hereby abrogated and withdrawn.
- e. The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**BARC ELECTRIC COOPERATIVE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**(Supplier)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_