

**AGGREGATOR AGREEMENT
FOR APPALACHIAN POWER COMPANY'S
VIRGINIA RETAIL ACCESS PROGRAM**

THIS AGGREGATOR AGREEMENT is made and entered into as of _____, 20__, (the “Effective Date”) between Appalachian Power Company, a Virginia corporation (“Company”) and _____, a _____ (the “Aggregator”). The Company and the Aggregator are sometimes herein referred to individually as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, the Company is a public utility subject to the jurisdiction of the Virginia State Corporation Commission (“Commission”) as to retail electric service provided within its Virginia service territory;

WHEREAS, the Commission, has promulgated the Rules Governing Retail Access to Competitive Energy Services, 20VAC-5-312-10 through 20VAC-5-312-120, and the Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges, 20VAC 5-313-10 through 20VAC 5-313-40 of the Virginia Administrative Code (collectively, the "Rules");

WHEREAS, the Aggregator i) intends to provide such services as are authorized in the Rules to be performed by an Aggregator (“Aggregation Service”) within the Company’s service territory, and (ii) has been issued License Number _____ by the Commission to provide Aggregation Service to customers in Virginia; and

WHEREAS, an agreement between the Company and the Aggregator is needed as part of the Company's aggregator registration process to establish and govern the business relationship between the Parties under the Company's Choice Program.

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, and subject to the terms and conditions herein contained, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

1.1 Whenever used herein, the following terms shall have the respective meanings set forth below, unless a different meaning is plainly required by the context:

- A. "Agreement" shall mean this Aggregator Agreement for Appalachian Power Company's Virginia Choice Program.
 - B. "Business Day" shall mean any calendar day or computer processing day in the Eastern U.S. time zone, on which the general office of the Company is open for business with the public.
 - C. "Choice Program" shall mean the program implemented by the Virginia State Corporation Commission to provide electric utility customers with choice pursuant to the Virginia Electric Utility Restructuring Act of 1999.
 - D. "Commission" shall mean the Virginia State Corporation Commission.
 - E. "Company's Retail Tariff" shall mean the Company's tariff on file with the Commission, including all standard terms and conditions of service, terms and conditions of service for Choice Program participants, and open access distribution rate schedules.
 - F. "FERC" shall mean the Federal Energy Regulatory Commission, or any successor thereto.
 - G. "PJM OATT" shall mean The Open Access Transmission Tariff of the PJM Interconnection LLC or any successor thereto, on file with the FERC.
- 1.2 Additional definitions controlling this Agreement are contained in the Rules and/or the Company's Retail Tariff, or appear in subsequent parts of this Agreement, as required.
- 1.3 Unless the context plainly indicates otherwise, words imparting the singular number shall be deemed to include the plural number (and vice versa); terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular part of the same.

ARTICLE 2. SCOPE OF AGREEMENT.

- 2.1 The Parties are bound by the terms set forth herein and otherwise incorporated herein by reference.
- 2.2 This Agreement shall govern the business relationship between the Parties and constitutes a part of the Company's registration process, the successful completion of which is necessary before the Aggregator is authorized to begin providing Aggregation Service in the Company's Virginia service territory.
- 2.3 This Agreement is not applicable to any transmission or ancillary services that are necessary to provide any competitive energy service. Any such services shall be obtained, either by a competitive service provider or its customer, in accordance with PJM's OATT, as required by the Company's Retail Tariff.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES.

- 3.1 The Company represents and warrants that it is a public service corporation, duly organized and existing under the laws of the Commonwealth of Virginia.
- 3.2 The Aggregator represents and warrants that it is a _____, duly organized and existing under the laws of the State of _____, and that it is authorized to do business, and is in good standing, in the Commonwealth of Virginia.
- 3.3 As of the Effective Date, the Aggregator represents and warrants that it (i) is licensed as an “Aggregator” only as defined by the Rules; (ii) does not seek to provide Electricity supply service, as that term is defined by the Rules, in the Company's service territory; and (iii) does not require services that permit the type of interface and coordination in connection with the delivery of electricity supply to Retail Customers located in the Company's service territory.
- 3.4 Each person executing this Agreement on behalf of the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 3.5 Each Party represents and warrants that (a) it has the full power and authority to execute and deliver this Agreement and to fulfill its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 3.6 Each Party represents and warrants that 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.
- 3.7 Each Party represents and warrants that it is and shall remain in compliance with all applicable laws and tariffs, including applicable rules and regulations of the Commission.
- 3.8 The Aggregator represents and warrants that it has obtained a license from the Commission to provide Aggregation Service to customers located within the Company's Virginia service territory under the Choice Program in accordance with Virginia Code Section 56-577 and that it will maintain that license in good standing throughout the life of this Agreement. In the event the Aggregator seeks to become licensed as a Competitive Service Provider, the Aggregator will notify the Company as soon as practical and commence the Competitive Service Provider application process with the Company.

- 3.9 The Aggregator represents and warrants that the information provided by the Aggregator in the Aggregator Registration Application is true and accurate. The Aggregator further represents and warrants that, within 21 days of becoming aware of such facts, it will notify the Company in writing, in accordance with Article 14 hereof, if there are any material changes to the information supplied on that Application. Such notification will necessarily apply to but is not limited to changes or additions of Competitive Service Provider relationships as identified in the Aggregator Registration Application.
- 3.10 The Aggregator represents and warrants that it will obtain authorization from each of its customers or prospective customers before it seeks to obtain from the Company any customer usage information not included on the Company's Virginia mass customer list.
- 3.11 If either Party learns that any of the representations and/or warranties contained in this Agreement have been violated, such Party shall immediately notify the other Party in writing.
- 3.12 All representations and warranties contained in this Article 3 shall continue for the term of this Agreement.

ARTICLE 4. OBLIGATIONS OF THE PARTIES.

- 4.1 The Parties shall cooperate in order to ensure the provision of any Aggregation Service by the Aggregator to the Company's customers in accordance with the Rules and the Company's Retail Tariff as applicable. The Aggregator shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.
- 4.2 The Parties shall supply to each other all data, materials or other information specified in this Agreement, or that may otherwise be reasonably required by the Aggregator or the Company in connection with their obligations under this Agreement, in a thorough and timely manner.
- 4.3 The Aggregator shall (a) obtain and maintain a license from the Commission and any licenses, permits or other authorizations from any other federal, state or local agencies required to offer Aggregation Service in the Company's Choice Program; and (b) complete all applications and/or forms, and execute any agreements required for the Aggregator's participation in the Company's Choice Program. The foregoing requirements represent conditions precedent to the Company's obligations hereunder.

ARTICLE 5. LOAD PROFILES.

5.1 During the term of this Agreement, the Company intends to post average customer load profile information, for classes that will utilize load profiling to its website at <http://www.appalachianpower.com>. These profiles are for informational purposes only and the Company makes no representations or warranties of any kind regarding either the availability or use of such load profiles.

ARTICLE 6. CONFIDENTIALITY OF INFORMATION.

6.1 The Parties will comply with the provisions of 20VAC 5-312-60 governing the treatment of customer information. The Aggregator shall adequately safeguard all customer information and shall not disclose such information unless the customer authorizes disclosure in accordance with 20VAC 5-312-60A.

6.2 All Company information made available by the Company to the Aggregator pursuant to this Agreement, including, without limitation, class load profile data and information regarding the Company's computer systems or communications systems, shall not be disclosed to third parties without prior written consent from the Company.

6.3 If the Aggregator becomes legally compelled to disclose any of the information required to be kept confidential pursuant to Sections 6.1 and 6.2, the Aggregator shall immediately notify the Company of the required disclosure. In such case, the Aggregator shall cooperate with the Company to enable it to obtain protective treatment of the information. If the Aggregator is nonetheless required to disclose information, the Aggregator shall furnish only that portion of the information which is legally required.

ARTICLE 7. EFFECTIVE DATE AND TERMINATION OF AGREEMENT.

7.1 The term of this Agreement shall commence on the Effective Date above and shall continue for a period of one year, unless sooner terminated as provided in Section 7.2. Notwithstanding the Effective Date, the Aggregator acknowledges that it may not begin supplying Aggregation Service prior to the time it is in compliance with the provisions of this Agreement, the Rules, and the Company's Retail Tariff.

- 7.2 This Agreement shall or may be terminated as follows:
- 7.2.1 In the event the Aggregator ceases to provide any Aggregation Service to customers in the Company's service territory or otherwise withdraws from the Choice Program, and so notifies the Company in writing in accordance with the notice requirements of Article 14, this Agreement shall terminate thirty (30) days following the date on which the Aggregator ceases to have any active customers.
- 7.2.2 In the event the Aggregator offers to customers within the Company's service territory a Competitive energy service beyond Aggregation Service, this Agreement shall terminate; provided, however, that the Aggregator and Company may enter into a Competitive Service Provider Agreement in the event the Aggregator becomes licensed as a Competitive service provider.
- 7.2.3 In the event of a Default (as defined in Section 8.1 of Article 8) by either Party ("Defaulting Party"), the other Party ("Non-Defaulting Party") may terminate this Agreement by providing written notice to the Defaulting Party, without prejudice to any remedies at law or in equity available to the Non-Defaulting Party by reason of the event of Default.
- 7.3 Upon termination of this Agreement, the Aggregator shall no longer be registered with the Company or authorized to provide Aggregation Service in the Company's service territory.
- 7.4 The termination of this Agreement for any reason shall not relieve the Company or the Aggregator of any obligation accrued or accruing prior to such termination, including but not limited to any obligation arising under Article 6.

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES.

- 8.1 A Default under this Agreement shall occur if either Party (a) is the subject of a bankruptcy, insolvency or similar proceeding; (b) makes an assignment for the benefit of its creditors; (c) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets; (d) violates any material federal, state or local code, regulation and/or statute applicable to the supply of Competitive Energy Services; (e) fails to pay the other Party when any payment is due; (f) breaches any of the representations and warranties in Article 3; or (g) fails to satisfy any other material obligation under this Agreement, the Rules, the Company's Retail Tariff, or any other applicable rules, within the requisite time frames; provided, however, that if the Aggregator offers to customers within the Company's service territory a Competitive Energy Service beyond Aggregation Service , the Aggregator will immediately be in Default of this Agreement.
- 8.2 In the event of a Default, the Non-Defaulting Party shall be entitled to (a) suspend enrolling any new Aggregator customers; (b) pursue any and all available legal and equitable remedies available to it, and/or (c) terminate this Agreement by written notice to the Defaulting Party, without any liability or responsibility whatsoever, except for obligations arising prior to the date of termination.

ARTICLE 9. DISPUTE RESOLUTION.

- 9.1 The Parties shall address complaints alleging violations of, or disputes arising under, this Agreement in accordance with the Company's dispute resolution procedures as approved by the Commission.
- 9.2 Any disputes involving transmission service shall be handled in accordance with PJM's OATT.
- 9.3 Disputes between an Aggregator's customer and the Aggregator shall be the sole responsibility of the Aggregator.
- 9.4 Disputes between a customer of the Company and the Company shall be subject to the Company's existing customer dispute resolution procedures.

ARTICLE 10 . FORCE MAJEURE.

- 10.1 Neither Party shall be liable for any delay in performing or for failing to perform its respective obligations under this Agreement due to any event of Force Majeure, including a catastrophic weather condition (but not fluctuations in temperature no matter how extreme), flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, walkout, lockout or other labor dispute, work stoppage caused by jurisdictional and/or similar disputes, restraint by court order or public authority, or action or non-action by, or inability to obtain authorization or approval from, any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. Financial loss or other economic hardship of either Party shall not constitute an event of Force Majeure under this Agreement.
- 10.2 The obligations of either Party, so far as they are affected by the Force Majeure event, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied within a reasonable period of time. During such Force Majeure event, both Parties shall take all reasonable steps to comply with this Agreement notwithstanding the occurrence of the event. This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the strike, walkout, lockout or other labor dispute.

ARTICLE 11. REGULATORY AUTHORIZATIONS AND JURISDICTION.

- 11.1 The Company and the Aggregator are subject to, and shall comply with, all existing or future applicable federal, state and local laws, and all existing or future duly promulgated orders or other duly authorized actions of governmental authorities having jurisdiction over the matters covered by this Agreement.
- 11.2 This Agreement is subject to change in the future to reflect any relevant changes required by the Commission or other Virginia state agency having jurisdiction, or by virtue of any federal or state law or regulation, and such changes shall be deemed to be binding upon the Parties, except where the right to terminate is exercised in accordance with the terms of this Agreement.

- 11.3 Any references to FERC-jurisdictional matters in this Agreement are intended solely for informational purposes and are not intended to accord any jurisdictional authority over such matters to the Commission. If anything stated herein is found by the FERC to conflict with or to be inconsistent with any provision of the Federal Power Act ("FPA"), or any rule, regulation, order or determination of the FERC under the FPA, the applicable FERC rule, regulation, order or determination of the FERC shall control.

ARTICLE 12. LIMITATION OF LIABILITY.

- 12.1 The Company shall have the same duties and limitations on liability for distribution service to the Aggregator's customers as to those customers receiving electric service from the Company under standard rate schedules.
- 12.2 The Company shall have no liability to the Aggregator for any consequential, indirect, incidental, special, ancillary, punitive, exemplary, or other damages, including lost profits, lost revenues, interest, or other monetary losses arising out of any errors or omissions.
- 12.3 The Company shall switch customers to a CSP consistent with the Rules and the Company's Retail Tariff, and shall have no liability to the CSP or Aggregator arising out of or related to a customer's decision in switching among competitive service providers and/or the Company, unless the Company is grossly negligent in switching or failing to switch a customer.
- 12.4 The Company shall not have any duties or liabilities other than those specifically set forth in this Agreement.

ARTICLE 13. INDEMNIFICATION.

- 13.1 To the fullest extent permitted by law, the Aggregator shall defend, indemnify and hold harmless the Company 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 Company's employees or any third parties, or any other liability incurred by the Company, 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 grossly negligent or willful act of omission of the Company.

13.2 The Aggregator's obligation to defend, indemnify and hold harmless 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 Aggregator under any statutory scheme, including any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

ARTICLE 14. NOTICES.

14.1 Any written notice required or appropriate hereunder shall be deemed properly made, given to, or served on the Party to which it is directed, when sent by overnight mail or United States mail, postage prepaid, and addressed as follows:

If to the Aggregator:

If to the Company:

Appalachian Power Company
Choice Operations Support
700 Morrison Road
Gahanna, OH 43230

14.2 Notice of any change in any of the above addresses shall be given in writing in the manner specified in this Article.

14.3 Notices received after the close of a Business Day shall be deemed received on the next Business Day.

ARTICLE 15. NOT A JOINT VENTURE.

15.1 Unless specifically stated in this Agreement to be otherwise, the duties obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

ARTICLE 16. CONFLICTS BETWEEN THIS AGREEMENT AND THE COMPANY'S RETAIL TARIFF.

16.1 In the event of a conflict between the provisions of this Agreement and the relevant provisions of the Company's Retail Tariff, as approved by the Commission, the provisions of the Company's Retail Tariff shall prevail.

ARTICLE 17. AMENDMENTS OR MODIFICATIONS.

17.1 Except as provided in Section 11.2 of Article 11 of this Agreement, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.

ARTICLE 18. TAXES.

18.1 All present or future federal, state, municipal or other taxes imposed on the Aggregator by any taxing authority shall be the liability of the Aggregator. The Aggregator shall pay all such taxes to the applicable taxing authority to the extent required or permitted by law. If the Company is required to remit any taxes imposed upon customers directly to any applicable taxing authority, other than taxes collected by the Company directly from the Aggregator's customers, then the Aggregator shall indemnify the Company against, and will pay the Company for, all such tax amounts upon demand.

ARTICLE 19. WAIVER OF RIGHTS.

19.1 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 such 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.

ARTICLE 20. GENERAL PROVISIONS.

- 20.1 The Parties agree that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting Party, shall not be employed in the interpretation of this Agreement.
- 20.2 To the extent not subject to the exclusive jurisdiction of the FERC, the formation, validity, interpretation, execution, amendment and termination of this Agreement shall be governed by the laws of the Commonwealth of Virginia.
- 20.3 The 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.
- 20.4 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.
- 20.5 Neither Party shall have any right, power, or authority to enter 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.
- 20.6 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.
- 20.7 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.
- 20.8 Each of the Parties hereto acknowledges that it has read this Agreement, the Rules, and the Company's Retail Tariff, 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 or offers pertaining to this Agreement are hereby abrogated and withdrawn.

ARTICLE 21. ASSIGNMENT AND DELEGATION.

21.1 This Agreement may not be assigned by either the Company or the Aggregator without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. However, the Company may assign any or all of its rights and obligations under this Agreement, without the Aggregator's consent, to any entity succeeding to all or substantially all of the transmission and/or distribution facilities of the Company.

21.2 When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Article shall be void.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials on the dates written below.

Appalachian Power Company
(the "Company")

(the "Aggregator")

By: _____

By: _____

Printed

Printed

Name: Brian Abraham

Name: _____

Title: President & COO - Appalachian

Title: _____

Date: _____

Date: _____