

**POLE ATTACHMENT AGREEMENT WITH
COMMONWEALTH OF KENTUCKY**

Clark Energy Cooperative, Inc.
Winchester, KY

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POLE ATTACHMENT AGREEMENT WITH Commonwealth OF KENTUCKY

INTRODUCTION

An Agreement for pole attachments dated January 18, 2016 is established between Clark Energy Cooperative, Inc., P.O. 748, 2640 Iron Works Road, Winchester, Kentucky 40392-0748, hereinafter referred to as the "Cooperative", and Commonwealth of Kentucky, Finance and Administration Cabinet, 702 Capital Ave., Room 383, Capitol Annex, Frankfort, KY 40601, hereinafter referred to as "Commonwealth".

APPLICABILITY

Applicable to all Commonwealth pole attachments on all plant owned by the Cooperative.

TERM OF AGREEMENT

- A. This Agreement shall become effective as of the aforementioned date herein stated and shall remain as such for a period of ten (10) years.
- B. At the expiration of the ten (10) year term, this Agreement shall continue in force from year to year until the Cooperative and/or Commonwealth provides the other party six (6) months written notice of their intent to terminate this Agreement.
- C. Commonwealth shall at its expense begin removal of all its pole attachments from the Cooperative's plant upon notification of either party's intent to terminate this Agreement as prescribed within Item (B) of this section.
- D. Commonwealth shall complete removal of all its attachments from the Cooperative's plant prior to the scheduled termination date of this Agreement as prescribed within Item (B) of this section, the, Required Plant Changes provisions and other pertinent provisions of this Agreement.
- E. Commonwealth may remove any of its attachments at any time for any reason upon ten (10) days written notice to the Cooperative.

RIGHTS OF OTHER PARTIES

- A. The Cooperative shall possess the right to confer upon others not a party to this Agreement, rights or privileges to attach to any of its facilities. Nothing contained herein shall be construed as affecting enforceable rights or privileges with respect to existing or future attachments of such outside parties.
- B. The Cooperative shall derive all revenue accruing from the attachments of outside parties on the Cooperative's plant.

ANNUAL ATTACHMENT FEES

- A. Annual attachment fees or rental charges for all Commonwealth attachments shall be \$31.66 per attachment and escalate 3-percent (3%) compounded per annum beginning January 1, 2017.
- B. The Cooperative shall invoice Commonwealth each January for the prior year annual attachment fees for the total number of Commonwealth attachments existing at the end of the preceding calendar year. Annual attachment fees for Commonwealth attachments shall be the total number of pole attachments multiplied by the appropriate rate as prescribed in item (A) of this section.
- C. The Cooperative shall reconcile the invoice for annual attachment fees prescribed in items (A) and (B) of the sections for any unauthorized and/or unreported Commonwealth attachments. Unauthorized and/or unreported Commonwealth attachments shall be invoiced to Commonwealth at twice the rates

prescribed in item (A) of this section that would have been due had the Commonwealth attachment(s) been installed the day following the Cooperative's previously scheduled system inspection.

- D. A Commonwealth attachment to the Cooperative's facilities is defined as any hardware\clamp\or other mechanical device that attaches to or penetrates the Cooperatives facilities in anyway. Multiple attachments to single Cooperative facilities will be counted as such.

DESIGN SPECIFICATIONS

- A. The Cooperative reserves the right to maintain, operate, upgrade, replace, relocate, retire and/or abandon any part of its plant at its discretion and expense at any time without compensation to Commonwealth.
- B. Commonwealth attachments on the Cooperative's plant shall at all times conform to requirements of the current National Electric Safety Code (NESC), and subsequent revisions thereof, except where the requirements of the Rural Utilities Service (RUS), public authorities or the Cooperative may be more stringent, in which case the latter will govern.
- C. The Cooperative may review the adequacy of its plant to withstand additional vertical and transverse loads imposed by Commonwealth attachments using NESC design criteria.
- D. The Cooperative reserves the right to prohibit the use of any and all Cooperative owned anchors by Commonwealth.
- E. Commonwealth must submit all design plans to a State of Kentucky registered and currently licensed Professional Engineer for review and approval.

EASEMENTS AND RIGHTS-OF-WAY

- A. The Cooperative and Commonwealth shall be responsible for obtaining all easements or rights-of-way for their respective facilities. The Cooperative does not warrant and/or assign easements or right-of-ways to Commonwealth.
- B. Commonwealth shall promptly remove any Commonwealth attachments when any public authority or landowner forbids the use of the Cooperative's plant.
- C. The Cooperative shall not refund to the Commonwealth any annual Commonwealth attachment fees or rental charges resulting from any forbidden use prescribed in item (B) of this section of the Easement and Rights-of-Way provisions.

ESTABLISHING COMMONWEALTH ATTACHMENTS

- A. Commonwealth shall comply with all attachment application procedures established by the Cooperative prior to installation of all new or proposed Commonwealth attachments.
- B. Commonwealth shall provide the Cooperative detailed construction plans, prints and/or drawings of all new or proposed Commonwealth attachments prior to their construction or installation. Said plans, prints and/or drawings shall include any maps necessary to illustrate the location of the Cooperative's poles plus the number and character of the proposed Commonwealth attachments. Any anticipated adjustments, additions, relocations and/or replacements of the Cooperative's facilities shall be noted by Commonwealth on its plans, prints, maps and/or drawings.
- C. The Cooperative may perform any make-ready or walk-through inspection necessary to review Commonwealth's plans, prints, maps and/or drawings and provide a cost estimate of all anticipated plant changes required for the proposed Commonwealth attachments. Cost estimates for all anticipated plant changes prepared by the Cooperative shall include overhead and material costs.

- D. Commonwealth incurs the cost of any make-ready, walk-through and/or review inspections required by the Cooperative as prescribed within item (C) of this section of the Establishing Commonwealth Attachments provisions. Commonwealth shall incur said costs regardless of any plant changes that may or may not be required by the Cooperative. Commonwealth shall pay the Cooperative's invoiced cost of expenses and overhead associated with any make-ready, walk-through and/or review inspections.
- E. The Cooperative shall proceed with all necessary electric plant changes prescribed by item (C) of this section of the Establishing Commonwealth Attachments provisions upon receipt of written acceptance by Commonwealth of said cost estimate and payment of a deposit equal to the cost estimate. Commonwealth shall pay the Cooperative or the Cooperative shall refund to Commonwealth the difference between any deposit and actual as-built costs. Alternately, the Cooperative may proceed with necessary plant changes without cost estimates and deposits and invoice Commonwealth all actual as-built costs provided such arrangements are mutually agreeable.
- F. Commonwealth may install its attachments on the Cooperative's plant after items (A) through (E) of this section of the Establishing Commonwealth Attachments provisions and all other pertinent provisions of this Agreement are satisfied. All Commonwealth attachments shall be installed at the expense of Commonwealth and not interfere with the activities or service of the Cooperative.
- G. Commonwealth shall not adjust, modify, replace and/or remove any plant of the Cooperative during the construction or installation of Commonwealth attachments.
- H. Commonwealth shall provide any clearing of existing right-of-ways and/or trimming necessary to install Commonwealth attachments at its own expense. All clearing debris shall be disposed of by Commonwealth in a manner agreeable to landowners and in no case create inconvenient access to the Cooperative's plant.
- I. Commonwealth incurs the cost of any walk-through and/or review inspection that is required by the Cooperative after the installation of Commonwealth attachments is completed. Any walk-through inspection shall review as-built Commonwealth attachments consistent with the Design Specification provisions of this Agreement and verify the quantity of as-built attachments. Commonwealth shall pay the Cooperative's invoiced cost of expenses and overhead associated with any walk-through and/or review inspections of as-built Commonwealth attachments.
- J. Any remedial changes required of the Cooperative's plant identified during item (I) of this section shall be administered per the Required Plant Changes provisions of this Agreement.

OPERATIONS AND MAINTENANCE OF COMMONWEALTH ATTACHMENTS

- A. Commonwealth shall have the right to operate and maintain its attachments on the Cooperative's plant after satisfying all pertinent provisions of this Agreement.
- B. Commonwealth shall provide any clearing of existing right-of-ways and/or trimming incidental to the operations and maintenance of Commonwealth attachments on the Cooperative's plant. All clearing debris shall be disposed of by Commonwealth in a manner agreeable to landowners and in no case create inconvenient access to the Cooperative's plant.
- C. Commonwealth shall not adjust, modify, relocate and/or remove any plant of the Cooperative during the course of operations and maintenance of Commonwealth attachments.
- D. Any Commonwealth attachments determined by the Cooperative not to be operated

or maintained as prescribed by the Design Specifications provisions and all other pertinent provisions of this Agreement shall be brought into conformity by Commonwealth at its expense.

- E. Any Commonwealth attachments requiring remedial correction as prescribed by item (D) of this section of the Operations and Maintenance of Commonwealth Attachments provisions shall be administered per the Required Plant Changes provisions of this Agreement.

REQUIRED PLANT CHANGES

- A. The Cooperative shall provide Commonwealth notification of plant changes involving Commonwealth attachments as prescribed within the Design Specifications, Operations and Maintenance of Commonwealth Attachments, Term of Agreement or any other pertinent provisions of this Agreement. Said notification will specify when Commonwealth must adjust, replace, relocate and/or remove existing Commonwealth attachments.
- B. Commonwealth shall incur the cost to adjust, replace, relocate and/or remove any Commonwealth attachments as prescribed within item (A) of this section of the Required Plant Changes provisions.
- C. The Cooperative may elect to perform any work required, as prescribed within item (A) of this section of the Required Plant Changes provisions, if Commonwealth is unwilling or unable to perform said work within a time specified by the Cooperative. Commonwealth, in such cases, shall reimburse the Cooperative's expenses inclusive of overhead and material costs.
- D. Any work performed by the Cooperative, as prescribed within the Required Plant Changes provisions, involving unauthorized and/or unreported Commonwealth attachments, the repair of any damages to the Cooperative's plant caused by the installation, operation, maintenance and/or removal of Commonwealth attachments will be invoiced to Commonwealth at double the total cost calculated in item (C) of this section of the Required Plant Changes provisions. The Cooperative, at its discretion, may elect to remove any unauthorized and/or unreported Commonwealth attachments from the Cooperative's plant at the expense of the Commonwealth.

LIABILITY

- A. The Cooperative shall not incur liability for any damages or costs associated with any service interruption and/or interference of Commonwealth's cable, equipment and/or appurtenances arising in any manner out of Commonwealth's use of the Cooperative's plant.
- B. The Cooperative shall not incur liability for any damages or costs involving Commonwealth's facilities or operations arising in any manner from any work performed by the Cooperative as prescribed within the Establishing Commonwealth Attachments, Operations and Maintenance of Commonwealth Attachments, Required Plant Changes, Liability Insurance and/or Performance Bond provisions of this Agreement, except to the extent such damages or costs are the result of the Cooperative's negligence or willful misconduct, or the Commonwealth performing such work in a manner mandated by the Cooperative.
- C. The Cooperative shall not incur liability for any damages or costs should Commonwealth be prevented at any time from establishing or maintaining Commonwealth attachments as prescribed within the Easements and Right-of-Ways provisions of this Agreement.
- D. Inspections by the Cooperative of Commonwealth attachments as prescribed in the Establishing Commonwealth Attachments provisions and other pertinent provisions of this Agreement, made or not, shall not operate to relieve Commonwealth of any responsibility, obligation and/or liability assumed under this Agreement.

- E. To the extent permitted by law, including but not limited to Section 177 of the Kentucky constitution, Commonwealth agrees to defend, indemnify and hold harmless the Cooperative from any damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature including, but not limited to, costs of defending against the Cooperative and payment of any settlement or judgment therefrom, by reason of (1) injuries to or the deaths of persons, (2) damages to or destruction of property, (3) contamination, pollution and/or other adverse environmental effects or (4) violations of governmental laws, regulations and/or orders whether suffered directly by the Cooperative itself or indirectly by reason of claims, demands and/or suits against the Cooperative by third parties, resulting or alleged to have resulted from acts and/or omissions of Commonwealth, its employees, agents or other representatives or from their presence on the premises of the Cooperative and it's system. Notwithstanding the foregoing, the Cooperative shall be liable for its own negligence and willful misconduct.

LIABILITY INSURANCE

- A. Commonwealth, or its contractors, will provide and maintain insurance coverage for the protection of its employees to the extent required by workers compensation laws of the Commonwealth of Kentucky.
- B. Commonwealth, or its contractors, will provide and maintain public liability insurance coverage with a minimum aggregate amount of \$2,000,000 (\$2 Million) and \$1,000,000 (\$1 Million) for each occurrence involving injury or death of persons and/or damage or destruction of property.

- C. Commonwealth shall provide the Cooperative a certificate of insurance evidencing insurance coverage for items (A) and (B) of this section of the Liability Insurance provisions. The certificate of insurance shall contain the following contractual endorsement:

"The insurance provided herein shall also be for the benefit of Clark Energy Cooperative, Inc., so as to guarantee, within the coverage limits, the performance by the insured of any indemnity agreement set forth in the Pole Attachment Agreement. This insurance or bond may not be cancelled for any cause without six (6) months advance notice being first given to Clark Energy Cooperative, Inc."

- D. All insurance coverage prescribed within items (A) through (C) of this section of the Liability Insurance provisions shall specify that said coverage shall not be terminated within six (6) months after receipt by the Cooperative of a written notice from the bonding or insurance company of the intent to terminate said coverage.
- E. Upon receipt of a notice to terminate insurance coverage prescribed within items (A) through (C) of this section of the Liability Insurance provisions, the Cooperative shall require Commonwealth to remove its attachments from the Cooperative's plant. If Commonwealth fails to complete removal of its attachments from the Cooperative's plant within six (6) months after receipt of such request from the Cooperative, the Cooperative shall have the right to remove all of Commonwealth's attachments at the expense of Commonwealth.

PAYMENT OF TAXES

The Cooperative and Commonwealth shall pay all taxes, fees and assessments lawfully levied on their respective properties or plant. Any taxes, fees and assessments levied on the Cooperative's plant solely because of Commonwealth's use of the Cooperative's plant for Commonwealth attachments shall be reimbursed the Cooperative by Commonwealth.

PAYMENT OF FEES AND CHARGES

- A. Payments by Commonwealth to the Cooperative for any invoice of expenses, costs and/or fees as prescribed within any provisions of this Agreement shall not entitle Commonwealth to ownership of any part of the Cooperative's plant to which Commonwealth has contributed in whole or in part.
- B. All fees and charges invoiced by the Cooperative to Commonwealth are net and payable within thirty (30) days from the date of the bill or invoice. An amount equal to one percent (1%) per month of the past-due amount shall be added to all invoices, bills and/or accounts that are in a past-due condition. Late payment fees shall apply to the net bill, exclusive of special charges, taxes and other assessments.

CONDITIONS OF DEFAULT

- A. Commonwealth shall be in default of this Agreement should Commonwealth fail to fulfill its obligations and responsibilities with respect to any of the provisions of this Agreement.
- B. The Cooperative may suspend and terminate the rights of Commonwealth with respect to any of the provisions of this Agreement should Commonwealth continue to remain in default thirty (30) days after due notice thereof has been given in writing to the Commonwealth by the Cooperative.
- C. Suspension and termination of the rights of Commonwealth by the Cooperative as prescribed within item (B) of this section of the Conditions of Default provisions shall only prohibit Commonwealth from establishing new or proposed Commonwealth attachments on the plant of the Cooperative except as prescribed within the Liability Insurance and/or Performance Bond provisions of this Agreement.
- D. Suspension and termination of the rights of Commonwealth by the Cooperative as prescribed within item (B) of this section of the Conditions of Default provisions shall not abrogate or terminate the right of Commonwealth to maintain existing attachments on the Cooperative's plant except as prescribed within the Liability Insurance and/or Performance Bond provisions of this Agreement. Commonwealth may continue to operate and maintain its existing attachments on the Cooperative's plant except as provided herein. All provisions of this Agreement shall remain in full force and effect so long as existing Commonwealth attachments are continued, solely for the purpose of administering the rights and obligations of Commonwealth with respect to said attachments.
- E. Any failure of the Cooperative or Commonwealth to enforce or insist on compliance with all provisions of this Agreement shall not constitute a relinquishment or general waiver of any Agreement terms and/or conditions. All provisions of this Agreement shall be and remain in full force and effect.

ASSIGNMENT OF RIGHTS

Commonwealth shall not assign or otherwise dispose of this Agreement or any of its rights or interests herein to any firm, corporation, or individual without

the written consent of the Cooperative, which shall not be unreasonably withheld.

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing in the foregoing shall preclude the Cooperative and Commonwealth from preparing supplemental operating routines, working practices, or amendments to this Agreement as mutually agreed in writing to be necessary or desirable to effectively administer the provisions of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, on the day and year first above stated.

COMMONWEALTH OF KENTUCKY

CLARK ENERGY COOPERATIVE, INC.

William M. Rauden
Officer -

Robert C. Brown
President & CEO

This 27th day of January, 2016

This 29 day of January, 2016

Brandy Bill Ky Franklin
Notary Public State County
490386

Clyssa Rutz KY Clark
Notary Public State County

My Commission Expires May 31, 2017

My Commission Expires 9/7/2016
My Commission Expires Notary ID 471829

APPROVED AS TO
FORM & LEGALITY
Patrick M. De
APPROVED
FINANCE & ADMINISTRATION CABINET