



NHPUC 30NOV'16AM10:11

575 Lexington Avenue New York, NY 10022  
tel 212 779 7000 fax 212 779 3061

November 28, 2016

New Hampshire Public Utilities Commission  
Debra Howland, Executive Director  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

Re: SmartEnergy application to become a Competitive Electric Power Supplier [DM 16-839]

Ms. Howland,

We are writing in response to staff comments on the customer contract provided with the application for SmartEnergy to become a Competitive Electric Power Supplier [CEPS].

We have made changes to the customer contract (attached) which we understand address these comments. We understand this to be the last remaining issue relating to our application.

Please let me know if you need anything else.

Regards,

A handwritten signature in blue ink, appearing to read "Dan Kern".

Dan Kern  
CEO



## SmartEnergy – New Hampshire Terms of Service for Residential and Small Commercial Customers

### 1. **Agreement to Purchase Electricity.**

Subject to acceptance by SmartEnergy and your Utility (“Utility”), you agree to purchase, and SmartEnergy agrees to supply, all of your electricity, as delivered to you by the Utility under the terms and conditions set forth in this document (“Terms and Conditions”).

SmartEnergy will be supplying the generation portion of your electricity, and your Utility will continue to provide the distribution services. The Utility remains responsible for the delivery of power and energy to you, and will continue to respond to any service calls and emergencies. Switching to SmartEnergy will not impact your electric service reliability. As used herein, the words “we”, “us” and “our” refer to SmartEnergy, and the words “you” and “your” refer to the Customer.

### 2. **Agreement and Term.**

The Enrollment Form, Internet Enrollment Form, Telephone Verification Recording or Welcome Letter shall each be referred to herein as the “Agreement”, and the term of your Agreement (“Term”) begins with the next available meter reading by the Utility, after the processing of your enrollment by your Utility and SmartEnergy.

The purchase and sale of energy hereunder shall commence on 00:00:01 EST on the first day that SmartEnergy provides physical delivery to your facilities and shall end at 24:00:00 EST on the last day of the term.

Service commencement lead time may vary depending on utility enrollment requirements, your specific meter-reading schedule, time-of-year pricing and market conditions. For a variable rate product, your services with SmartEnergy will continue on a month-to-month basis until terminated by you or by Smart Energy in accordance with the terms of this Agreement. For a fixed rate product, your services with SmartEnergy will continue for the

period of time defined in the Agreement, after which the Term will continue on a month-to-month basis at a variable rate.

### 3. **Right to Cancel.**

You have three (3) business days after personal or electronic receipt (or if received by United States Postal Service, five (5) business days after the postmarked date) of a written copy of this Agreement to rescind your enrollment with SmartEnergy (“Rescission Period”) without penalty by contacting Smart Energy by telephone at 1-800-443-4440 (toll free) from 9 a.m. to 6 p.m. E.T. (Monday through Friday) or by email to [customer.service@smartenergy.com](mailto:customer.service@smartenergy.com).

SmartEnergy will not submit your enrollment request to the Utility until this Rescission Period has elapsed. You, or your agents or successors, may terminate the Agreement upon Notice to SmartEnergy if you relocate within or outside your Utility’s service area, if disability renders you unable to pay for SmartEnergy electricity or if you are deceased. After your service begins, you may cancel the Agreement at any time, for any reason without an early termination fee. When you cancel the Agreement, you agree to pay for the electricity supplied by SmartEnergy through the date that another company begins to supply electricity to you, which may take up to two (2) billing cycles. You are responsible for all charges incurred through the date that makes your cancellation effective, and for any fees incurred by SmartEnergy in collecting any unpaid amounts due.

### 4. **Disconnection of Service.**

Only the Utility has the ability to disconnect your service. Failure to make full payment of the charges due hereunder may be grounds for disconnection.

### 5. **Pricing.**

Your rate will be set forth at the time of Enrollment and confirmed in the Agreement. For both fixed and variable rate plans, you will continue to incur standard



service and delivery charges from the Utility.

a. **Fixed Rate.** If you have selected a fixed rate, the rate per kilowatt hour (“kWh”) for each billing cycle during the term will be as indicated in the Agreement. The fixed rate price during the initial term will be calculated by multiplying the price of electricity per kWh by the amount of electricity you use in the billing cycle.

b. **Variable Rate.** If you have selected a variable rate product, the initial rate will be as indicated in the Agreement. The variable price per kWh charged by SmartEnergy will be based upon generally prevailing market prices for electricity in the Electric Utility load zone for the applicable period, plus an adder, which will be determined solely by SmartEnergy in its discretion. Subsequent rates assigned to each individual account will be established each month, based upon such factors as load ratio, electricity market pricing, transmission costs, Utility charges, Utility tariffs, grid usage charges, Utility cost allocations to third party suppliers, changes to weather based usage forecasts, and other market price or business related factors. The variable rate will be calculated by multiplying the variable price of electricity per kWh that month by the amount of electricity you use in the billing cycle plus any applicable fees, charges or taxes. Your variable price will include ancillary charges, cost of capacity, generation, line losses, the Electricity Consumption Tax, and other miscellaneous charges, and will exclude other taxes and regulated charges from the Utility, including but not limited to delivery and distribution charges. The initial rate and the monthly rate assigned to each individual account will include Sales and Use Tax and other Utility related charges. The rate assigned to any particular individual account may vary from the rate assigned to any other particular individual account, even though such accounts may be in the same Utility rate

class. You may obtain next month's variable price on the 27th day (or following business day) of the previous month by calling SmartEnergy using the contact information set forth in Section 17 below.

c. Charges for other items including but not limited to the price of transmission and distribution, the system benefits charge, stranded cost recovery charge, and taxes are not included SmartEnergy's rate, and will be billed by your Utility.

d. The initial SmartEnergy electricity rate quoted may be lower than your Utility's Default Service Rate (or other applicable rate) and SmartEnergy's prices may be higher or lower than your Utility's rate in any given month. Current and historical rates should not be taken as a guarantee of future rates. Savings are not guaranteed and may vary from month to month based on weather, market conditions and your electricity usage habits.

d. Depending on the product and plan that you select, you may be billed a monthly customer charge, which if applicable, will be included in the Agreement.

6. **Payment.** Your payment is due by the date specified in the Utility bill, and late payments will be subject to interest at 1.5% per month or the highest amount allowable under applicable law, whichever is lower.

7. **Billing.** You will receive one bill from the Utility monthly, in which your Smart Energy generation price will be listed separately from the Utility's service and delivery charges, including applicable taxes. Your Utility may or may not charge a fee for switching service to SmartEnergy. SmartEnergy does not require a deposit for its service and does not charge a switching fee if you change suppliers. At your option, SmartEnergy will provide a calculated amount, which averages your estimated public



Utility service usage over a rolling 12-month period to eliminate, to the extent possible, seasonal fluctuations in the supply portion of your Utility bill. At least four times per year during the Term of your Agreement, SmartEnergy will review your account and where necessary, at its discretion, recalibrate the calculated budget billing amount. At the conclusion of the budget billing year, SmartEnergy will reconcile your account. Where billing has exceeded SmartEnergy's rate per Kwh, multiplied times your usage, SmartEnergy will issue a credit and/or adjust your budget bill amount over the next quarter. Where billing has fallen short of SmartEnergy's rate per Kwh multiplied by your usage, SmartEnergy will bill you for the difference and/or adjust your budget bill amount over the next quarter.

8. **Credit Requirements.** SmartEnergy reserves the right to conduct a credit review prior to providing you with electricity supply service, and reserves the right to refuse you electricity supply service if you do not meet SmartEnergy's credit standards. You agree to provide SmartEnergy with any information reasonably requested in order to complete the credit review. Once enrolled, Smart Energy reserves the right to report your payment history to a credit reporting agency.

9. **Renewal, Expiration or Change in Terms.** If you have a fixed term Agreement with us and it is approaching the renewal or expiration date, or if we propose a change to our terms of service, at least thirty (30) days prior to the end of the term of service, Smart Energy will send you a written notice, explain your options and the date by which you must take action to exercise your options. If you have selected a fixed term plan, the "Initial Term" of your Agreement is the number of billing cycles set forth at the time you entered into the Agreement with SmartEnergy. If you do not respond to the written notice described

above, your service will continue month-to-month at a variable rate until it is either terminated by you or SmartEnergy in accordance with the terms of the Agreement.

You have the right under New Hampshire law to change electricity suppliers subject to the terms of the Agreement.

10. **Confidential Information and Information Release Authorization.** You authorize SmartEnergy to obtain and review information regarding your credit history from credit reporting agencies and information, including but not limited to the following confidential information from the Utility: account name, account number, billing address, service address, telephone number, email address, standard offer service type, historical and future electricity usage, rate classification, meter readings, characteristics of electricity service, billing and payment information from the Utility. This information may be used by SmartEnergy to determine whether it will commence and/or continue to provide electricity supply to you and will not be disclosed to a third party unless required by law. Submission of the Agreement shall be deemed to represent your authorization for the release of this information to SmartEnergy. This authorization will remain in effect during the Term of the Agreement. You may rescind this authorization at any time by providing Notice thereof to SmartEnergy, or calling 1-800-443-4440 (toll-free) from 9 a.m. to 6 p.m. E.T. (Monday through Friday). SmartEnergy reserves the right to cancel the Agreement on fifteen (15) calendar days' Notice in the event you rescind such authorization.

SmartEnergy is prohibited from disclosing your social security number and/or account number(s) without your written consent, except for Smart Energy's own collections and credit reporting or if assigning your contract to another supplier.

11. **Early Termination.** There is no Early Termination Fee. Should you terminate the Agreement and return to standard offer service with your Utility, you may not be served under the same rates, terms and conditions that apply to other Utility customers. In addition, there is no charge for stopping or starting electric generation service, if done within the terms of the Agreement.

13. **Default Service Availability.** You have the right to default service from the Utility. Default service is power supply you receive from your Utility. The price for this default service is reviewed and approved twice a year by the NH Public Utilities Commission for rate changes.

You are eligible to receive default service at any time and to continue to receive it indefinitely.

14. **Events of Default.** An Event of Default shall mean: (i) failure to make any payment required under the Agreement, when due; (ii) the failure to take electric supply when delivered under the terms of the Agreement, if such failure is not cured within ten (10) business days after SmartEnergy provides you with written Notice; (iii) significant downgrading of your credit rating since the Effective Date of the Agreement, as determined by SmartEnergy in its sole discretion; (iv) if you file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or have such petition filed against you and such petition is not withdrawn or dismissed for twenty (20) days after such filing; or (v) you are unable to pay your debts as they are due and such inability is not cured within ten (10) days after SmartEnergy provides you with written Notice as defined herein.

a. **Remedy for Event of Default.** SmartEnergy has the right to terminate the Agreement according to this Section 14 if an Event of Default occurs.

b. **Collection of Past Due Charges.** SmartEnergy will pass through to you all charges related to the collection of past due charges, including but not limited to, collection agency fees, legal and court fees and account termination fees.

15. **Termination of Service by SmartEnergy.** SmartEnergy may terminate electricity supply service for an Event of Default (defined in Section 14 above) by you, provided that SmartEnergy provides you with at least thirty (30) days' advance, written Notice for you to cure the Event of Default. You will then receive electricity from the Utility or will be given the opportunity to choose a different electricity supplier. You will be responsible to pay for electricity consumed prior to service termination. SmartEnergy may also terminate the Agreement within fourteen (14) days of Notice to the Customer if you fail to pay a bill or meet any other payment requirements. In the event of a change in applicable law or regulation that prevents or prohibits SmartEnergy from performing under the terms of the Agreement, or for any other reason, SmartEnergy reserves the right to terminate the Agreement either by contacting SmartEnergy as specified herein, or by contacting your Utility.

16. **Legal Notice.** All notice to be given hereunder ("Notice") will be in writing and delivered as specified in the Agreement to both you and SmartEnergy, as applicable, by mail (to SmartEnergy at 575 Lexington Avenue, 4<sup>th</sup> Floor, New York, NY 10022), or by email (to SmartEnergy at [customer.service@smartenergy.com](mailto:customer.service@smartenergy.com)). Notice will be effective upon either confirmation of



receipt by the person to whom it is addressed, or when delivery is confirmed by the carrier, whichever is earlier.

17. **Miscellaneous.**

a. Dispute Resolution. You agree to contact SmartEnergy at 1-800-443-4440 (toll-free) from 9 a.m. to 6 p.m. E.T. (Monday through Friday) regarding any dispute related to the Agreement. You should contact the Utility concerning a power outage or any other emergency.

b. Assignment. You may not assign your rights or obligations under the Agreement without SmartEnergy's express written consent. SmartEnergy may sell, transfer, pledge, or assign the accounts, revenues, or proceeds due to it under the Agreement, and may also assign its interest in the Agreement to another electric supplier or other entity as permitted by law and in compliance with the rules of the Commission, by providing you with thirty (30) days advance written notice. At that time, you have the option to either continue services with the new competitive supplier, choose a different competitive supplier or return to default service with no penalty.

c. Publicity. When you provide a testimonial or win a contest, SmartEnergy shall be entitled to disclose and publicize your identify as a customer of SmartEnergy on its website and in any other marketing material.

d. Indemnification. SmartEnergy shall indemnify, defend and hold you harmless from and against any claims arising from or out of any event, circumstance, act or incident occurring or existing before electricity supply is delivered to your home or business. You shall indemnify, defend and hold harmless SmartEnergy from and against any claims arising from or out of any event, circumstance(s), act or incident occurring or existing after electricity is delivered to your

home or business.

e. Limitation of Liability. ALL ELECTRIC GENERATION SERVICE IS PROVIDED BY SMARTENERGY ON AN "AS IS" BASIS. SMARTENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE AGREEMENT, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. SMARTENERGY'S LIABILITY UNDER THE AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, WHICH WILL NOT EXCEED THE AMOUNT OF YOUR SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING TWELVE (12) MONTHS. NEITHER SMARTENERGY NOR ANY OF ITS AFFILIATES OR SUBCONTRACTORS SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON A CLAIM RELATING TO CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, LOST PROFITS, BREACH, NON-PERFORMANCE OR ANY OTHER BASIS. YOU AND SMARTENERGY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. BOTH SMARTENERGY AND YOU AGREE NOT TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT.

f. Force Majeure. SmartEnergy will make commercially reasonable efforts to provide electricity supply but does not guarantee continuous service. SmartEnergy is not responsible for power outages or other events



outside its control that may prevent SmartEnergy from supplying electricity (collectively, “Force Majeure Events”), including without limitation, acts of God or governmental authority, accidents, labor disputes, required maintenance, your Utility’s non-performance, including without limitation, an outage, or changes in laws of any governmental authority or any other cause beyond SmartEnergy’s control. SmartEnergy shall not be liable to you for any interruptions caused by a Force Majeure Event.

**18. Privacy Policy.** SmartEnergy may not release your electricity billing, payment and credit information without your prior written consent; however, SmartEnergy is permitted to disclose to any party, including the Utility, any such information for the purpose of facilitating billing, bill collection and credit reporting. Further, except as described below, SmartEnergy may not release your other proprietary personal information to any other person without your prior written consent. Other proprietary personal information means your name, address, choice ID, type or classification of services, historical electricity usage, (actual or profiled by your Utility), current electricity usage, expected patterns of use, types of facilities receiving service and individual Agreement information. These prohibitions do not apply to the release of your information under certain circumstances: as required by law, including release to the Commission; as required by court order or the Commission; as required by law enforcement agencies or your Utility. Finally, SmartEnergy may also share your other proprietary personal information with its affiliates or a third party for the purpose of, or in connection with, the development, operation, maintenance, marketing, selling or evaluating SmartEnergy’s or any of its affiliates’ products or services, including this generation service if you have provided your written consent to the release of such information. The Federal Trade

Commission maintains a national Do Not Call List. You may be able to place your home or cell phone number on this list to stop unwanted telemarketing calls from business with which you do not have an established relationship. You can register online at [www.donotcall.gov](http://www.donotcall.gov), or by telephone at 1-888-382-1222. For TTY, call 1-866-290-4236.

**19. Consumer Protection Rights.** You may contact the New Hampshire Public Utilities Commission by calling the Commission’s Consumer Assistance Division Hotline at 1-800-852-3793, Monday through Friday, 8:00 a.m. to 4:30 p.m., or by writing the Commission at: New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, NH 03301-2429.

**20. Assistance Program.** Your Utility may have programs available to customers who are on a limited or fixed income to assist them with utility bills. Some of these programs might include bill payment assistance and weatherization services. Information on your Utility’s assistance program, if any, can be obtained by contacting your Utility at the number listed on the Rate Plan Summary, contacting the New Hampshire Public Utilities Commission, or by contacting one of the following programs: Electric Assistance Program, Gas Residential Low Income Assistance Program, Fuel Assistance Program, Weatherization Assistance Program; Neighbor Helping Neighbor; or Project CARE.

**20. Renewable Energy and Renewable Energy Credits.** If you have selected a renewable energy product from SmartEnergy, your rate includes an additional charge for the purchase and sale to you of Renewable Energy Certificates and the following provision applies: SmartEnergy will, either directly and/or through its affiliate(s), retire, on your behalf, non-certified Renewable Energy Credits (“RECs”) resulting from electricity



generated from renewable energy sources, which may include solar, wind, geothermal, biomass, biogas, or low-impact hydro, in an amount matching either all of your usage for a calendar year or the renewable content amount specified in your plan description. Each REC represents 1,000 kilowatt hours. You will not have electricity from a specific generation facility delivered directly to your meters; but, through this product, you can support generators of renewable energy that provide electricity to the nation's electricity grid. Renewable energy source availability and generation varies hour-to-hour and from season-to-season, as does all customer electricity usage. SmartEnergy relies on regional system power from the grid to serve its customers' minute-by-minute consumption. But, through retirement of RECs by SmartEnergy, on behalf of customers, SmartEnergy will cause enough renewable energy to be delivered to the grid to match either all of your usage or the renewable content amount specified in your plan description. SmartEnergy may take up to three (3) months after the end of a calendar year to retire RECs needed to fulfill this product. SmartEnergy will not be liable to you or any other party for any advertising assertions related to this product including, without limitation, any claim or liability arising from a representation made as to the "green" or "carbon free" nature of the electricity or this product.

19. **Environmental Disclosure.** An Environmental Disclosure Label specifying the approximate generation resource mix and environmental characteristics of the power supply being offered under the Agreement can be found on the SmartEnergy website at [www.smartenergy.com](http://www.smartenergy.com). SmartEnergy will also provide a printed copy of the environmental disclosure information upon request.

## 20. **Electric Emergencies and Power**

**Quality.** The Utility will continue to operate the electric transmission lines and to maintain responsibility for power outages and for power quality. You will hold SmartEnergy harmless in the event of a loss of power caused by any entity other than SmartEnergy. If you have an electrical emergency, power outage or reduction in power quality, you should contact the Utility at its telephone number for emergencies.

21. **Arbitration.** If you have a concern or a complaint, please contact our customer service department at 1-800-443-4440. If your complaint or dispute is not resolved through contact with our customer service department, you agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. Please visit [[www.smartenergy.com/resolvingdisputes](http://www.smartenergy.com/resolvingdisputes)] for the full terms and conditions that govern your agreement to resolve any disputes arising under this Agreement through binding arbitration or small claims court.

22. **Entire Agreement.** The Agreement, including these Terms and Conditions, constitute the entire agreement for the purchase of electricity between you and SmartEnergy, and shall take the place of any and all prior agreements and understandings, oral or written, regarding SmartEnergy supplying electricity to you.