



ARKANSAS ELECTRIC COOPERATIVE CORPORATION

Reliable · Affordable · Responsible

Effective January 01, 2017

OUTSIDE COUNSEL STANDARD TERMS AND CONDITIONS

Arkansas Electric Cooperative Corporation (AECC) is the wholesale power provider to Arkansas' 17 electric distribution cooperatives, who in turn serve more than 500,000 retail members across Arkansas. In order to effectively fulfill this role, AECC relies upon contributions from both inside and outside legal counsel. In those instances where AECC retains Outside Counsel (OC)¹, AECC seeks to ensure the highest quality legal representation is retained while engaging in effective supervision and cost controls.

These Outside Counsel Terms and Conditions (Agreement) applies to OC representing or advising AECC, including any employee of AECC in his/her official capacity, board or board member of AECC in his/her official capacity, subsidiary of AECC, or any other AECC-owned entity (collectively referred to as AECC). This Agreement is effective for all work performed beginning on or after January 1, 2017, until such time as this Agreement is revised. This Agreement supersedes any previously-issued policies, retention agreements, or oral representations pertaining to outside legal representation of AECC's interests. OC shall inform all attorneys, senior managers and billing team members working on AECC matters of this Agreement and shall ensure their compliance.

BY ACCEPTING NEW OR CONTINUING REPRESENTATION OF AECC, OC SHALL BE DEEMED TO HAVE (A) FAMILIARIZED HIM/HERSELF WITH THIS AGREEMENT AND (B) AGREED TO ADHERE TO THIS AGREEMENT IN ALL RESPECTS.

ARTICLE I FORMATION

1. Offer. Any engagement letter we issue is our offer and is subject to the terms and conditions of this Agreement. Our issuance of an engagement letter is not an acceptance of any offer you have provided to us.

2. Acceptance. Acceptance by you of our engagement letter may be expressed, or implied from any conduct by you recognizing the existence of a contract pertaining to the subject matter of the engagement letter, including but not limited to any compliance by you with any term and/or condition of this Agreement. Your acceptance of an engagement letter will constitute your acceptance of the engagement letter **and** this Agreement. Any terms or conditions proposed in your acceptance of an engagement letter that add to, vary from or conflict with any of the terms and conditions of this Agreement are deemed material and are hereby rejected. If an engagement letter offered by us is deemed an acceptance of your prior offer, then our issuance of such engagement letter will constitute an acceptance of such offer subject to the express condition that you agree to the terms and conditions of this Agreement that are additional to or different from any terms and conditions in your offer.

3. Entire Agreement. You acknowledge that except as otherwise provided in this Agreement, an engagement letter, together with this Agreement, constitutes the entire agreement between us with respect to the subject matter of an engagement letter.

¹ As used herein and throughout this Agreement, the terms "Outside Counsel," "OC," and/or "Team Member(s)" shall include any member, employee, contractor, or affiliate of Outside Counsel's firm, including the outside lead attorney, as well as any other person identified to AECC pursuant to Article III, Section 2 of of this Agreement.

4. Conflict. In the event of a conflict between an engagement letter and this Agreement, this Agreement shall control.

ARTICLE II RETENTION OF OUTSIDE COUNSEL

AECC retention of OC shall only occur by an engagement letter issued by AECC's General Counsel (GC), or his/her designee, which may be delivered in electronic form. Once an engagement letter is signed by both parties, the terms of this Agreement shall apply throughout the entirety of the engagement.

ARTICLE III REPRESENTATION AND SCOPE

1. Primary Contact. Unless instructed otherwise in writing from the GC, OC shall communicate directly with the Lead Inside Counsel (LIC) at the beginning of the representation on each matter or proceeding. As needed, the LIC shall: (1) direct the representation; (2) serve as the liaison between OC and AECC personnel; and (3) ensure that appropriate AECC personnel are informed about and make the necessary substantive decisions required in connection with OC's representation.

2. Staffing. Upon retention, OC shall submit in writing for preapproval a lead OC, as well as any other professional, staff member, contractor, consultant, expert, or vendor that will be handling AECC's representation for the relevant matter (collectively referred to as Team Members). Team Members shall: (1) have a developed knowledge of AECC or, at a minimum, a developed knowledge of regulated public utilities, including electric cooperative utilities; (2) have appropriate subject matter expertise; (3) be assigned matters appropriate for their position; and (4) absent extraordinary circumstances, be able to provide continuous representation throughout the duration of the retention. At the request of OC, Additional Team Members may be added during the retention with AECC's written consent.

3. Decision Making, Timing and Approval. All strategic, tactical, staffing and significant resource allocation decisions concerning AECC's representation shall be made in collaboration with the LIC and the affected AECC Division Vice President(s).² OC shall keep LIC regularly informed of any significant decision that must be made or deadline that must be met and ensure LIC is notified sufficiently in advance of any important decisions or deadlines. Documents prepared for service or filing, or documents that will be provided to third parties on AECC's behalf, shall be sent to the LIC with enough time for AECC to adequately review and approve such documents. Substantive briefs or testimony shall be submitted at least one week in advance of filing, and only in exceptional circumstances should the lead time for any non-urgent matter be less than three (3) business days.

- a. Settlement Authority.** OC shall have no settlement authority unless and until such authority is explicitly conferred in writing by LIC. OC shall not pursue formal or informal settlement discussions without LIC's approval. OC shall immediately notify LIC of any settlement proposal offered by the opposing party or counsel.
- b. Ownership, Use of Information, Proprietary or Otherwise.** All materials in any form (written, graphic, electronically stored or other) generated or prepared in the course of representing AECC and all copyrights therein shall belong to AECC. By accepting retention, OC agrees to assign all right, title, interest and copyrights, as applicable, in all such materials to AECC and agrees to execute all documents necessary for AECC to perfect its ownership and copyright interests.
- c. Budgets.** When requested, or when professional fees are expected to exceed \$25,000, on any given matter, OC shall submit a budget for approval that addresses the total estimate of projected fees and expenses for the duration of the retention. OC shall charge fees and expenses that are consistent with task-based budgets and shall seek AECC's approval prior to incurring any unbudgeted fees.

² Vice President is defined as the relevant Divisional Vice President(s) and/or the Vice President's designee.

- d. Technology.** OC shall use software and technology compatible with AECC's technology and systems. AECC will not be responsible for any costs associated with OC's purchase or installation of hardware or software for AECC matters. In addition, OC shall provide all documents for review in native file format, e.g. Microsoft Word or Excel.
- e. Media Relations and Advertising.** **AECC DOES NOT AUTHORIZE OC TO COMMENT PUBLICLY IN ANY MANNER ON ANY ASPECT OF AECC'S LEGAL MATTERS.** All media inquiries relating to AECC should be referred promptly to the Vice President of Public Affairs. This lack of authorization includes even "no comment" or other non-substantive responses. If time is of the essence and the LIC cannot be reached, OC shall contact the GC. AECC does not permit OC to advertise or promote their relationship with AECC, other than by listing AECC as a representative client.
- f. Good Business Practices and Conflicts of Interest.** OC shall use good business practices and comply with the rules of ethics and professional conduct. If requested by AECC, OC shall provide evidence of such practice and compliance in the following areas: (1) Protection of AECC's confidential and/or proprietary information; (2) File retention; (3) Malpractice insurance; and (4) Conflicts of interest identification and prevention. In the instance of a conflict of interest or a potential conflict of interest, OC shall notify the LIC immediately. The LIC and the GC may waive such conflict in writing.

ARTICLE IV INVOICING

OC must submit monthly invoices within thirty days of the conclusion of the billing period, in a format of OC's choosing but consistent with the billing practices of this Agreement. At a minimum, invoices must include: a detail of fees broken down by each Team Member, including the number or increments of hours spent by task, per matter; a description of the services rendered; the relevant AECC personnel with whom contact was made; and a list of reimbursable expenses by category. AECC will remit payment for all non-disputed invoices within thirty (30) days of receipt. AECC reserves the right to deduct rates, fees, and charges that are inconsistent with this Agreement. If a deduction is made, the invoice shall be returned to OC. If OC wishes for AECC to reconsider the deductions, OC may request reconsideration within 30 calendar days from the date the invoice is returned. On the 31st day after the reduced invoice is returned to OC, AECC shall consider the deductions final. Where AECC and OC discuss deductions, AECC will ask OC to resubmit a new invoice reflecting the agreed amounts.

ARTICLE V RATES, FEES AND CHARGES

1. Retained Work. AECC shall only pay for actual services retained and rendered, at rates established by the engagement letter in effect at the time of billing. Unless GC otherwise agrees in writing, billable rates will remain fixed for the duration of retention for a particular docket or matter. Time shall be billed in 0.1 hour increments and on a per-task basis. Team Member fees shall be computed by applying the negotiated hourly rate to the time for the services expended. Hours shown shall accurately reflect the time spent on the described activity and shall either be the exact amount of time or the exact time rounded down to the nearest one-tenth of an hour. AECC will not accept block billing—grouping multiple activities under a single time charge. AECC will not pay for any time recorded in a block fashion.

2. Non-Retained Work. OC shall not bill time, and AECC shall not pay for work that is not subject to a docket-specific or matter-specific engagement letter.

3. Monitoring and Solicitation. Unless GC provides a written agreement stating otherwise, AECC shall not pay for any time billed by OC for actively monitoring legislation, or docket or case filings that the GC has not specifically retained OC to monitor. Should OC unilaterally monitor such matters and the GC

subsequently retain OC as a result of such monitoring, the GC and OC shall negotiate a reasonable flat fee for OC's pre-engagement work prior to retention.

4. Non-billable Work.

- a. Non-Commensurate Work.** Work tasks shall be commensurate to the skill and training of the assigned Team Member. AECC shall not pay for time billed by senior Team Members to perform tasks that could and should have been handled by junior Team Members, or other non-attorney Team Members. If the LIC determines that an assignment is inappropriate for particular tasks performed, the hourly rate charged may be reduced to a rate consistent with that of the lower-rate Team Member. Similarly, if the LIC determines that excessive time was spent on a particular task, the time billed may be reduced.
- b. Continuity.** AECC shall not pay for any time billed that resulted from the substitution or training of new Team Members.
- c. Duplication.** Duplicative document review/editing, research and drafting shall be avoided. AECC will not pay for time that the LIC determines is duplicative.
- d. Excess Attendance.** Unless preapproved by the LIC, AECC shall only pay for the attendance and/or participation of one Team Member, for calls, meetings, depositions, negotiations, mediations, arbitrations, hearings, or other matters.
- e. Legal Research.** All non-incident legal research shall be preapproved by LIC. AECC shall not pay for time billed for basic legal research, or for research previously generated for AECC. Legal research shall be conducted and billed by junior Team Members or non-attorney Team Members. If legal research benefits other clients, only the proportionate share of that cost shall be billed to AECC.
- f. Internal Conferencing.** AECC shall only pay for reasonable internal conferencing. Internal conferencing exceeding 10% of the total billings over the span of one month or for a particular representation shall not be billable and will not be paid, if billed.
- g. Per Day Cap.** Absent prior consent, AECC shall not pay for more than ten (10) hours of time by a single Team Member in a single day.
- h. Standby.** AECC shall not pay for time billed on "standby," without advance approval of the LIC.

5. Out-of-pocket costs.

- a. General.** AECC shall reimburse OC for actually incurred, reasonable out-of-pocket costs to the extent those cost are directly related to AECC business and provided there is a receipt for all charges in excess of \$25.00. OC's reimbursement request for such costs should reflect the actual cost and shall not include any markup. AECC may refuse to pay for costs billed as "miscellaneous," billed in a group (e.g., Travel Expenses - \$4,000.00) or costs without descriptions or explanations.
- b. Travel Expenses.** For travel mandated by AECC business, AECC will reimburse only for reasonable, actual airfare and airline baggage fees, ground transportation from/to the airport, hotel accommodations and the cost of meals, as more fully described herein. All air travel shall be booked at the lowest logical fare routing and economy class; travel upgrades are at the traveler's own expense. AECC will not reimburse the use of private aircraft or non-approved charter aircraft. OC shall use good judgment in selecting hotels and restaurants and incurring travel-related expenses. AECC will reimburse for reasonable business-related meal expenses, accompanied by an original receipt. AECC shall reimburse the actual costs of taxicab, train or bus travel, or tolls, parking

charges, and mileage expense³ in excess of 30 miles one-way for personal car use, if necessitated by AECC business. AECC shall not reimburse for, among other things, incidental travel fees such as recreation/salon/spa charges, personal entertainment, travel agency expenses, etc. AECC shall not pay for travel time.

- c. Administrative Cost and Overhead.** AECC shall not pay administrative costs and overhead that are already built into and a part of OC's rates, including, but not limited to: (1) Rent/Mortgage, including temporary office space; (2) Cost or usage of computers, mobile devices, internet and/or other communication services; (3) Equipment rental; (4) Storage charges; (5) Catering for internal meetings; (6) Maintaining internal databases; (7) Mileage for trips less than 30 miles one way; (8) Bates stamping; (9) Telephone or facsimile charges; (10) Billing inquiries; (11) Opening and closing files; (12) Internal filing; (13) Secretarial services (including overtime charges); (14) Word processing or proofreading; (15) Maintenance of a calendar or tickler system; (16) Investigating potential conflicts; (17) Indexing pleadings; (18) Budget preparation; (19) Library usage (including book purchases or subscriptions) or library staff time; (20) Westlaw, Lexus, PACER or other online services; (21) Office supplies; (22) Conference room charges; (23) Allocated charges from a blanket service agreement; (24) Scheduling meetings or travel arrangements; (25) Billing audits; (26) time billed for copying, scanning, digital impression or related duplication costs; and (27) any other matter reasonably considered to be the cost of doing business as a law firm.
- d. Budgeted Matters.** In instances where a budget is requested or required under this Agreement, AECC shall not pay for any fee, rate or charge unbudgeted, in excess of budget, or associated with the preparation or consultation of a budget.

ARTICLE X MISCELLANEOUS

1. Noncompliance. Failure to comply with this Agreement may result in: (a) a denial of a request to represent AECC; (b) termination of legal services; (c) disallowance in whole or in part of fees for services rendered (including for failure to comply with the billing requirements provided herein); or (d) other action, including referral to the appropriate attorney licensing authority. The rights and remedies reserved by us in this Agreement will be cumulative and in addition to any other rights or remedies provided by law or equity.

2. Exceptions to this Agreement. Except with regard to billing, the LIC shall have the authority to modify or waive this Agreement during the conduct of a matter. If an exception to the billing aspects of this Agreement is deemed necessary by OC, a request must be submitted and approval must be obtained in writing from the GC. AECC will not reimburse OC for any rates, fees, or expenses incurred in violation of this Agreement. A waiver of any right or remedy will not affect any right or remedy subsequently arising under the same or similar clauses. A waiver of nonperformance under this Agreement must be in writing and will apply only to the specific instance addressed in the waiver and to no other past or future nonperformance.

3. Dispute Resolution. An attempt to resolve any dispute, claim or controversy arising out of these Terms and/or the Agreement must first be made, in good faith, between the GC, and an executive of OC's firm, by phone or in person. If such attempt fails, then the dispute, claim or controversy shall be submitted to mediation. If mediation fails, then final resolution of any dispute, claim or controversy arising out of this Agreement shall be made before a court of law in the State of Arkansas, Pulaski County. Each party shall bear its own costs, fees and expenses (including attorney fees) during and for any dispute resolution, unless otherwise provided herein.

³ Mileage expense shall be determined and reimbursed in accordance with the most recent standard mileage rate published by the IRS.

4. Governing Law/Jurisdiction. These Terms and/or the Agreement will be construed and interpreted according to the laws of the State of Arkansas, without regard to the laws regarding conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

10. Assignment. This Agreement may not be assigned or delegated without AECC's written consent. Any such assignment or delegation will, at AECC's option, be deemed a cancellation of such Agreement.