EL11-001
Chesapeake Regulatory Consultants
11-2610-008

CONTRACT BETWEEN CHESAPEAKE REGULATORY CONSULTANTS, INC. AND THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

This Contract is entered into this 4th day of May, 2011, between the **South Dakota Public Utilities Commission**, a state agency, of 500 E. Capitol Ave., Pierre, SD 57501, (the "Commission") and **Chesapeake Regulatory Consultants, Inc.**, of 1698 Saefern Way, Annapolis, Maryland 21401-6529 (the "Contractor"). The terms and conditions are as follows:

1. **Scope of Services**: The Contractor will perform those services described in **Exhibit A** which is attached hereto and hereby incorporated by reference and will remain effective throughout the duration of this Contract.

2. **Consideration**: The Commission agrees to compensate Contractor upon satisfactory completion of services to be rendered. The **TOTAL CONTRACT AMOUNT** is an amount not to exceed twenty-four thousand nine hundred dollars **($24,900)**. Compensation will be made on the basis of services actually performed and for actual out-of-pocket costs at rates consistent with Contractor's proposal dated April 15, 2011, which is incorporated here by reference. The hourly rate shall be controlled by the hourly fee schedule attached hereto as **Exhibit B**.

Payments shall be made pursuant to itemized invoices which shall identify the nature of work performed, hours worked, and out-of-pocket expenses. Receipts for such expenses shall be available to the Commission upon request. No payments shall be made in advance of services performed and Contractor may not receive progress payments more frequently than monthly. It is agreed that the Commission may withhold ten percent of each progress payment until the satisfactory completion of the contract.

If Contractor intends to request additional consideration beyond the total contract amount provided herein, Contractor must notify the Commission in writing not less than thirty (30) days prior to the time when monthly billing requests reach the total contract amount.

3. **Identification Number**: Contractor's employer identification number is

4. **Duration of Contract**: Unless otherwise specifically provided by the terms of this Contract or by amendment hereto, the duration of this Contract shall be one (1) year from the contract date, unless sooner terminated pursuant to the terms hereof.

5. **Indemnity:** The Contractor agrees to indemnify, defend, and hold harmless the Commission, its officers, agents, and employees from any and all claims of and losses resulting to any and all contractors, subcontractors, laborers, any person, firm or corporation, who may be injured or damaged by the Contractor in the performance of this Contract.

6. **Reporting:** Contractor agrees to report to the Commission any event encountered in the course of performance of this Contract which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the Commission to liability. Contractor shall report any such event to the Commission immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the Commission. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the Commission under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities.

7. **Independent Contractor:** The Contractor and the agents of the Contractor in performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of the Commission or the State of South Dakota.

8. **Contractor Responsible for Performance of Services:** Contractor will not use Commission equipment, supplies or facilities in performance of this Contract. Contractor will not be permitted to utilize Commission personnel for the performance of services which are the responsibility of Contractor, unless such utilization is previously agreed to in writing by the Executive Director of the Commission ("Executive Director") and any appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing coordinating or monitoring functions.

9. **Relationship of Commission Staff and Contractor:** Commission Staff will be permitted to work side-by-side with Contractor and Contractor's staff, agents or employees, to the extent and under conditions that may be directed by the Executive Director.

10. **Workers' Compensation Insurance:** The Contractor hereby warrants that it carries workers' compensation insurance for all of its employees who will be engaged in the performance of this Contract, and agrees to furnish to the Commission satisfactory evidence thereof at any time the Commission may request.

11. **Subcontracts:** Contractor shall submit any proposed subcontracts to the Commission for prior written consent before Contractor enters into the same. No work may be subcontracted without the prior approval of the Commission. Upon the termination of any subcontract, the Commission shall be notified immediately.

12. **Contract Not Assignable:** This Contract is not assignable by the Contractor, either in whole or in part, without the written consent of the Commission.

13. **Amendment:** No alteration or variation of the terms of this Contract shall be valid unless made in writing, which writing shall be expressly identified as a part of this Contract and be signed by the parties hereto. No oral understanding, agreement or contract, which are not incorporated herein shall be binding on the parties hereto.

14. **Disclosure and Confidentiality:** Contractor agrees to be bound by all rules of confidentiality affecting the Commission and warrants that it will not disclose data or disseminate the contents of any final or preliminary report or testimony, in any form, confidential or otherwise, without express written consent of the Commission. Permission to disclose information on one occasion shall not authorize Contractor to further disclose or disseminate the same or similar information on any other occasion.

As to this Contract, the Commission is the proper party with respect to publication or dissemination of information acquired in performance of this Contract and any request for information or materials relating to this Contract, received by the Contractor shall be directed to the Commission.

The Contractor shall require any agents, employees or officers who will assist in performance of this Contract to agree to the above terms. Further, any subcontract shall contain provisions similar to the foregoing, related to the confidentiality of data and non-disclosure of the same.

15. **Termination:** In the event Contractor breaches any of the terms or conditions of this Contract, the Commission may terminate this Contract at any time, with or without notice. Upon termination, the Commission will pay the Contractor the reasonable value of services actually rendered by the Contractor. The Commission may proceed with the work covered by this Contract in any manner it deems proper and any cost of securing substitute performance shall be deducted from any sum due the Contractor, with any balance to be paid to Contractor. Any termination effected under this provision shall be in addition to and not in lieu of any other legal remedies provided by this Contract or by law.

16. **Waiver:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce, at any time, any of the provisions of the Contract shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Contract or any part thereof, or the right of the Commission to hereinafter enforce each and every such provision.

17. **Funding:** This Contract depends upon the continued availability of funds. If funds become unavailable by operation of law, or by state or federal legislative action, this Contract will be terminated by the Commission. Termination for any of these reasons is not a default by the Commission nor does it give rise to a claim against the Commission.

18. **Notice:** Any notice or other communication required under this Contract, with reference to any clause contained herein, shall be in writing and sent to the addresses set forth above. All notices or communications to or between the parties shall be in writing and shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. **Data Is Property of the Commission:** Data developed for this Contract shall become the property of the Commission. It shall not be disclosed without the permission of the Executive Director. Each final report submitted shall also become the property of the Commission and shall not be disclosed except in such manner and time as the Executive Director may direct.

20. **Retention of Contractor's Records:** The Contractor shall retain all records relating to direct expenses reimbursed to the Contractor hereunder and to hours of employment on this Contract by any employee of Contractor for which the Commission is billed. Such records shall be maintained for a period of three (3) years after termination of this Contract and shall be available for inspection at any reasonable time by personnel authorized therefore by the State of South Dakota.

21. **Time is Critical:** Time is of the essence in this Contract. In the event Contractor fails to perform under this Contract, at the times identified herein or amendments hereto, the Commission may terminate the Contract.

22. **Compliance Requirement:** The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Contract, and will be solely responsible for obtaining current information on such requirements.

23. **South Dakota Law Controlling:** It is expressly understood and agreed that this Contract shall be governed by the laws of the State of South Dakota, both as to interpretation and performance. Any lawsuit pertaining to or affecting this Contract shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

24. **Interpretation of Inconsistencies:** In the interpretation of this Contract, any inconsistencies between the terms hereof and the attachments shall be resolved in favor of the terms hereof.

25. **Severability:** In the event that any court of competent jurisdiction shall hold any provision of this Contract unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

26. **Merger:** All other prior discussions, communications and representations concerning the subject matter of this Contract are superseded by the terms of this Contract, and except as specifically provided herein, this Contract constitutes the entire Contract with respect to the subject matter hereof.

In Witness Whereof, the parties signify their Contract effective the date above first written by the signatures affixed below.

COMMISSION	CONTRACTOR
BY: [signature]	BY: [signature]
(NAME)	(NAME)
Executive Director SD PUC	President, CRC, Inc.
(TITLE & AGENCY)	(TITLE)
5-3-11	5/3/11
(DATE)	(DATE)

EXHIBIT A

Scope of Services

Contractor agrees to assist Commission Staff in the preparation and presentation of testimony on behalf of Commission Staff in Docket EL11-001 – In the Matter of the Petition of Black Hills Power, Inc. to Establish an Environmental Measures Cost Recovery Tariff including: at hearings before the Commission; in settlement proceedings; and in the preparation of motions and briefs before the Commission. Contractor through its witness or witnesses, Basil L. Copeland Jr., David E. Peterson and/or Robert G. Towers shall be responsible for: review and analysis of Black Hills Power's (BHP) filings, preparation and receipt of data requests necessary to complete the analysis, preparation, filing and, as deemed necessary by Commission Staff, presentation of testimony and exhibits.

Contractor shall also be prepared to respond at hearings and during briefing to intervenors' submissions, if any, which address the issues which are the responsibility of Contractor. Specifically, Contractor Witness Basil L. Copeland Jr. shall, as necessary, prepare, file, and present testimony and exhibits related to the appropriate cost of capital and rate of return. Contractor Witnesses Robert G. Towers and/or David E. Peterson shall prepare, file, and present testimony and exhibits addressing, as necessary, Allowance for Funds Used During Construction (AFUDC), depreciation rates, income taxes, rate design, other accounting issues that may arise, and possibly other issues delegated to Contractor by Commission Staff. Contractor shall provide general assistance on the filing when requested to do so by Commission Staff.

The scope and tasks to be performed shall be consistent with Contractor's proposal dated April 15, 2011, to Commission Staff. Contractor agrees to coordinate their filing with Commission Staff and as directed by Commission Staff, shall consult Commission Staff on requests for BHP data and other submissions or requests to BHP or intervenors. Contractor agrees to complete all tasks and filings within time frames as determined by Commission Staff.

It is understood and agreed that the role of Commission Staff, and in turn the role of the Contractor, shall be to advocate the public interest as Commission Staff views that public interest.

EXHIBIT B

FEE SCHEDULE

		Hourly Rate
Robert G. Towers Annapolis, MD	Senior Consultant	$ 160.00
Basil L. Copeland, Jr. Maumelle, AR	Senior Economist	$ 160.00
David E. Peterson Dunkirk, MD	Senior Consultant	$ 160.00