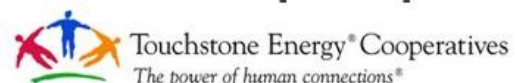


Group of Four North Carolina Electric Membership Corporations

Request for Proposals



**Rutherford Electric
Membership Corporation**



Release Date:	September 29, 2023
Bids Due:	December 15, 2023, 5:00 PM EST

Group of Four North Carolina Electric Membership Corporations Request for Proposals

Introduction:

A group of four electric membership corporations (“EMCs”) located in North Carolina referred to herein as the “NC4” are collectively seeking proposals for their individual power supply needs. Specifically, the NC4 is comprised of Blue Ridge Electric Membership Corporation (“Blue Ridge”), Haywood Electric Membership Corporation (“Haywood”), Piedmont Electric Membership Corporation (“Piedmont”) and Rutherford Electric Membership Corporation (“Rutherford”). Collectively, the NC4 EMCs serve 222,136 residential, commercial and industrial meters throughout their respective assigned service territories. Their collective winter peak for 2022 was 1,135MW, and their collective summer peak for 2022 was 695 MWs with annual energy purchases of 3,567 GWhs. The NC4 EMCs provide affordable and reliable electric service to serve their member-owners. On behalf of the NC4, EnerVision, Inc. (“EnerVision”) and Ashby Consulting, LLC (“Ashby Consulting”) are issuing this Request for Proposal (“RFP”) to solicit power supply proposals from market participants (“Respondents”).

The NC4, each an electric distribution cooperative, became members of North Carolina Electric Membership Corporation (“NCEMC”) in 1959 upon its inception. Historically, the NC4 purchased all their requirements for electric capacity and energy from NCEMC pursuant to a long-term wholesale power contract. Effective January 1, 2003, NCEMC adopted Board Policy 340 (the “Member Choice Policy”) to permit its members to elect to serve a portion of their respective retail load requirements with generation or contract resources of their own choice.

Blue Ridge, Piedmont and Rutherford made their respective elections to become Independent Members of NCEMC effective January 1, 2004. Haywood made its election to become an Independent Member of NCEMC effective January 1, 2009.

Under the Member Choice Policy, an “Independent Member” is a member of NCEMC which has elected to assume responsibility for independently arranging for additional power supply resources, over and above its allocated portion of the NCEMC Committed Resources. “NCEMC Committed Resources” are power supply resources, which are owned or are the subject of valid and enforceable contracts between NCEMC and another party as of the effective date of the NCEMC member’s election to become an Independent Member. Each of the NC4 EMCs purchases electric capacity and energy from NCEMC pursuant to a Wholesale Power Supply Agreement (“WPSA”) with a term that extends through December 31, 2046. Under the WPSAs, each of the EMCs are allocated a share of each NCEMC Committed Resource. As NCEMC Committed Resources expire or are terminated, the EMCs assume responsibility for replacing the expired or terminated NCEMC Committed Resource. The only NCEMC Committed Resource remaining under the WPSA of Blue Ridge, Piedmont and Rutherford is their allocation of NCEMC’s interest in the Catawba Nuclear Station. In addition to an allocation of NCEMC’s interest in the Catawba Nuclear Station, Haywood has allocations in other NCEMC Committed Resources. Each of the EMCs has an allocation of electric capacity and energy from the Southeastern Power Administration (“SEPA”).

The assigned service territories of Blue Ridge and Rutherford reside solely within DEC's balancing authority area. The assigned service territories of Haywood and Piedmont are located partially in the DEC balancing authority area and partially in the DEP balancing authority area. Blue Ridge, Piedmont and Rutherford became partial requirements customers of Duke Energy Carolinas, LLC ("DEC") in 2006. Blue Ridge and Piedmont converted their respective partial requirements service agreements into full requirements agreements with DEC in 2007. Rutherford continues as a partial requirements customer of DEC. Haywood became a full requirements customer of DEC in 2009.

Haywood became a partial requirements customer of Progress Energy Carolinas, Inc., the predecessor to Duke Energy Progress, LLC ("DEP") in 2009. Piedmont has purchased partial requirements from DEP or its predecessor since 2006. Haywood and Piedmont have each entered into a Network Integration Transmission Service Agreement ("NITSA") with DEC and DEP. Blue Ridge and Rutherford have each entered into a NITSA with DEC.

Under each of the respective partial requirements contracts, DEC or DEP, as applicable schedules each of the EMCs' share of their respective allocations of NCEMC Committed Resources and their respective allocations from SEPA, and supplies all incremental capacity, energy and load following needs. Under each of the full requirements contracts, the EMC makes its existing NCEMC Committed Resources and respective SEPA allocation available to DEC. DEC schedules the EMC's resources and DEC assumes cost responsibility for the EMC's resources that are made available by way of a credit mechanism defined in the power purchase agreement. These individual requirements contracts expire after December 31, 2031, and are public documents filed at the Federal Energy Regulatory Commission. Pursuant to rate cases pending at the North Carolina Utilities Commission ("NCUC"), DEC and DEP are seeking to change their respective existing retail cost allocation methodologies. The issuance of a non-appealable order by the NCUC changing the retail cost allocation methodology of DEP and/or DEC triggers early termination provisions in each of the requirements contracts, except for Piedmont's requirements contract with DEP. Each Respondent will be provided detailed information pertaining to the early termination provisions once they have completed the Registration Form and executed and delivered a Mutual Confidentiality and Non-Disclosure Agreement.

The NC4 are considering a range of power supply options in the form of requirements, standard industry products, asset-based or unit contingent products, and creative products, such as renewable resources and distributed energy resources ("DER") that provide economic value and flexibility. The NC4 will also require scheduling agent services and may consider services to comply with the North Carolina renewable energy portfolio standard pursuant to Session Law 2007-397 (Senate Bill 3).

Even though each EMC requires an individual contract(s), collectively the NC4 are aligned with similar goals and interests that are outlined in this RFP and expect that individual contract provisions and characteristics will be substantially similar.

Each of the NC4 EMCs is a borrower from the Rural Utilities Service ("RUS"). Any power purchase agreement entered into with a Respondent will require approval from each of the EMCs Board of Directors and from the RUS.

Request for Proposals:

This RFP is designed to engage Respondents to offer competitive proposals (“Proposals”) such that the EMCs may procure electric capacity, energy, ancillary services, scheduling agent services and other energy services to meet their respective requirements. For purposes of responding to this RFP, NC4 is requesting Proposals include at least one of four different product categories described in the “Scope of Supply” section of this RFP. Respondents are encouraged to respond with Proposals that include any combination of the various products outlined in this RFP, in the event NC4 chooses to implement a power supply plan involving multiple products and Respondents. Through this RFP approach, each NC4 EMC expects to be able to assess a broad range of potential alternatives and select the best option that satisfies its needs and requirements.

NC4 reserves the right, in its sole judgment and discretion, to modify or to cancel this RFP. In such event, EnerVision and Ashby Consulting will provide notice of such action by sending e-mails to participants through the RFP e-mail and will make reasonable attempts to directly notify all Respondents who have filed a timely Respondents Registration Form and entered into a Mutual Confidentiality and Non-Disclosure Agreement of any such modifications or cancellation. NC4, EnerVision, and Ashby Consulting shall have no liability or responsibility for failing to make such direct notification to any Respondent.

Respondents may submit questions regarding this RFP to the official RFP email address (“NC4RFP@enervision-inc.com”), but are encouraged to do so as far in advance as possible of the RFP deadlines, in order to allow NC4 to have adequate time to respond to the questions.

The RFP will be managed in two stages, defined as “Part One” and “Part Two”.

Part One will be managed by NC4, EnerVision, and Ashby Consulting to screen, evaluate, and identify the Proposals within each product category that addresses Part One evaluation criteria and the EMCs’ business objectives. The Proposals that satisfy NC4’s evaluation criteria will be short-listed and asked to participate in Part Two of the RFP.

Part Two will be managed by NC4, EnerVision and Ashby Consulting to engage Respondents short-listed in Part One to refine and revise their respective Proposals with the intended purpose of finalizing a definitive set of supply options that address NC4’s Part Two evaluation criteria and the EMCs’ business objectives.

Evaluation Criteria:

The NC4 EMCs seek to implement a power supply plan to create, protect, and enhance value for their respective members/owners and will seek power supply options that meet the following evaluation criteria which include, but are not limited to the following:

- *Capability to Respond to Changing Loads and Technology* – Proposals should address distributed technologies, anticipate emerging disruptive technologies, and facilitate changes during contractual transitions that promote mutual benefits.

- *Competitive Costs* – Continually seek competitive wholesale costs from selected power supply plan to consistently achieve low costs as compared to the neighboring utilities and within specified risk parameters.
- *Delivery Points* – All products contemplated by this RFP will be delivered by the Respondent to the “Delivery Points”. For purposes of this RFP the “Delivery Points” mean any available points on the DEC and/or DEP transmission system, as applicable, from which electric energy is delivered to the NC4 EMCs’ distribution system pursuant to their respective NITSA. Respondent will be responsible for all transmission costs to the Delivery Point(s). NC4 EMCs will be responsible for transmission costs from the Delivery Point(s) to their respective electric distribution systems.
- *Economic Development* – Options and flexibility to design products, rates for economic development loads. Respondents should offer alternatives that facilitate competitive and creative processes to attract and retain economic development and large loads.
- *Flexibility* – Ability of the selected supply plan to adapt to NC4’s power supply strategy based on changing market conditions and technology while at the same time allowing the NC4 EMCs to maintain control over supply decisions and options.
 - Demonstrate maximum agility and adaptiveness through forward-looking plans, versatile, innovative programs and business models, and diverse power supply options as NC4 responds to changes in our environment as well as the needs of their respective members/owners.
 - Respondents should include a plan in their Proposals for one or more collaborative meetings with the NC4 EMCs.
- *Robustness* – Ability of the power supply plan to respond to changes in factors affecting power costs, such as impacts to energy markets, economy, and other energy environments.
- *Reliability* – The power supply plan will be structured such that underlying products are of the highest reliability so that uninterrupted electric service is provided to the NC4’s member/owners.
- *Renewable Power Generation* – North Carolina has enacted a renewable energy and energy efficiency portfolio standard (“REPS”). The REPS is set forth in Section 62-133.8 *et seq.* of the General Statutes of the State of North Carolina, as amended. DEC currently provides REPS compliance services to Blue Ridge and Rutherford. Haywood and Piedmont have contracted with an affiliate of NCEMC for their REPS compliance services. Proposals should address whether or not the Respondent will provide REPS compliance services.
- *Responsibility* – Act honestly, ethically, sustainably, and in the best interest of our members/owners as NC4 manages operations and secures power supply resources.

- *Risk Management Tools* – Proposals should provide tools to mitigate fluctuation in fuels and other variable costs.
- *Seasonal and Economy-Driven Load Variations* – Each of the NC4 EMCs experience significant variations in load that are typically predictable by season, and/or such variations may be extended due to economic changes. Proposals will be evaluated on their ability to respond to such changes.
- *Stability* – Selected power supply plan will be structured to achieve a stable, reliable, and predictable cost outcome with minimal exposure to unacceptable risk or unplanned events.
- *Transparency* – Provide unbundled costs, capacity, energy, transmission, A&G, and any other costs associated with the Respondent’s Proposal.

Scope of Supply:

Full or Partial Requirements

- Requirements Proposals shall include electric capacity, energy, scheduling agent services, including load following services for the DEC and/or DEP balancing authority area, as applicable. Requirements Proposals may be “Full Requirements” or “Partial Requirements.” Under a Full Requirements Proposal, the NC4 EMCs will make their existing NCEMC Committed Resources, SEPA allocation, and may make other existing resources (such as DERs, renewable energy or PURPA resources) available to the Respondent, and the Respondent will assume cost responsibility for the existing EMC’s resources that are made available by way of a credit mechanism defined in the power purchase agreement. Under a Full Requirements Proposal, the Respondent will assume responsibility to provide all capacity, energy, and load following services to meet each of NC4 EMC’s hourly real-time load obligations. NC4 will also consider “Partial Requirements” Proposals. Under a Partial Requirements Proposal, the Respondent will be required to schedule the EMC’s existing resources (as described above) and supply all the requirements for electric capacity and energy of each EMC which exceed its existing resources.
- Requirements service, whether Full Requirements or Partial Requirements, will be managed and supplied by a sole Respondent under the terms and conditions of a power purchase agreement.
- Minimum term of 5 years and maximum term of 15 years are preferred.
- A Proposal should include an exception and/or flexible contract option to the requirements purchase obligation with respect to new economic development loads. Economic development loads are load additions, typically large commercial and industrial type loads, with technical and commercial terms that may be different than retail or commercial loads normally served under requirements power purchase agreements. In general, an economic development load is a load that requires

advanced planning and has specific requirements for power supply that are not typical in the normal course of system planning and operations.

- NC4 requests that Respondents provide flexibility for the EMCs to purchase, own, generate or operate renewable energy, DERs, energy efficiency programs, battery storage systems, demand response programs, and other technologies. NC4 EMCs desire to have the flexibility to implement and utilize such programs without undue restrictions under the terms of the requirements power purchase agreement. NC4 will also consider proposals from Respondents to optimize NC4's existing renewable resources, DERs, energy efficiency programs, battery storage systems and demand response programs as a part of an overall power supply strategy.
- Energy delivered under a requirements Proposal (whether Full Requirements or Partial Requirements) will be delivered to the Delivery Points.

Standard Industry Products

- For purposes of this RFP, "Standard Industry Products" are firm capacity and energy supplied in increments for various load shapes, volumes, durations, and time periods, including seasonal, monthly and hourly shaped firm capacity and energy products.
- Standard Industry Products do not include day-to-day scheduling agent services, ancillary services, or other services. However, NC4 will require scheduling agent services and load following services to support a power supply portfolio which is comprised of all or in part of Standard Industry Products and the Respondent's Proposal should include whether or not the Respondent will provide scheduling agent services.
- NC4 is seeking Standard Energy Products with the following characteristics:
 - Minimum quantity of 25 MWs.
 - Baseload, firm, 24x7 capacity and energy in increments of at least 25 MWs.
 - Intermediate and peaking, firm, 7x16 and 5x16.
 - Load following Proposals based on a percentage slice-of-system requirement for capacity and energy.
- NC4 prefers fixed pricing but will consider flexible or index pricing structures.
- All Standard Industry Products shall be delivered to the Delivery Points.
- Various terms and conditions are negotiable.

Asset Based or Unit Contingent

- Asset Based or Unit Contingent Proposals are products that specify capacity, energy, and other products from a designated generating facility.
- NC4 will require scheduling agent services and load following services to support a power supply portfolio based all or in part on Asset Based and/or Unit Contingent options which may be combined with a partial requirements proposal.
- NC4 does not contemplate participating as an owner or operator of any generating facility.
- Minimum term of 5 years and up to 20 years are preferred.
- Delivery of the capacity and energy will be to the Delivery Points.
- Proposals shall include descriptions of the generating facility, technical characteristics, operating characteristics, capacity capabilities, and energy production capabilities.
- Respondents are encouraged to provide any additional necessary information to support evaluation of project capability and viability, including but not limited to:
 - Location of project
 - Description of project
 - Project schedule
 - Description of site control
 - Interconnection status
 - Status of environmental and project permitting
 - Project financing plan if any
 - Ownership structure
 - Description of major equipment
 - Description of operations and maintenance plan

Other Energy Solutions

- NC4 will consider innovative energy solutions which include variations or combinations of the products previously listed in this RFP.
- NC4 will consider Proposals that include scheduling agent services and load following services.
- NC4 will consider Proposals that include REPS compliance services.

RFP Part One:

Part One of this RFP is open to Respondents to provide one or more Proposals for products described in this RFP. Respondents must submit Part One Proposals consistent with the instructions and time requirements specified in this RFP. Part One permits NC4, EnerVision, and Ashby Consulting to screen Respondents and their respective Proposals and to develop a short-list of Respondents and Proposals determined in NC4's sole discretion that are most likely to meet the evaluation criteria outlined in this RFP.

During Part One of this RFP, EnerVision and Ashby Consulting reserve the right to contact Respondents to clarify Proposal terms and/or request additional information. To that end, EnerVision and Ashby Consulting may send written questions to any Respondent to clarify its Proposal and to help ensure that there is a full understanding of the Proposal. A Respondent must provide responsive answers to EnerVision and Ashby Consulting in writing and in a timely fashion. The Respondent's answers to NC4's questions will be considered in the evaluation of its Proposal.

The purpose of Part One of this RFP is to provide the NC4 EMCs with sufficient information to reach a decision on which combination of Respondents, Proposals, and products are most likely to meet the evaluation criteria and business objectives of the NC4 EMCs.

To evaluate Proposals and products on a fair and equitable basis, a product-by-product evaluation will be performed tailored to the preferred tenor of the product proposed. In addition, to the product-by-product evaluation, NC4 will evaluate various combinations of products combined to create a power supply plan or power supply portfolio that meets NC4's business objectives in a manner consistent with the Part One evaluation criterion. NC4 may decide to pursue one or multiple power purchase agreements based on this evaluation process.

Respondents short-listed from Part One will be notified and requested to confirm their continued interest in participating in the RFP process through Part Two. Respondents not selected from the Part One process will be notified and may be requested to hold their Proposal open for consideration should NC4 determine to reconsider the Respondent's Proposal.

Proposal Requirements:

- For each Proposal, at a minimum, specify:
 - Quantity – annual capacity/energy; monthly, hourly or seasonal volumes of energy to be delivered.
 - Term – proposed start and termination, including any potential staggered terms or extension period(s). For Haywood load in the DEP balancing authority area, service is expected to commence 1/1/2027. For Blue Ridge, Haywood, Piedmont and Rutherford load in the DEC balancing authority area, service is expected to commence 5/1/2027. With respect to Piedmont's load in the DEP balancing authority area, service is expected to commence beginning January 1, 2032.

- Delivery Points - Respondent is responsible for all costs to deliver energy to the Delivery Points.
- Qualification of capacity as a “Network Resource” as such requirements are specified in the DEC and/or DEP Open Access Transmission Tariffs.
- Pricing:
 - Demand and/or energy charges;
 - Indexes and/or price escalators upon which demand/fuel/other pricing components are based;
 - Applicable ancillary services;
 - Any market-based or pass-through components of power supply;
 - Pricing to be based on market close on Friday, December 8, 2023, 5:00 pm EDT; and
 - Any other information required to calculate individual NC4 EMC’s total cost.
- Any unit contingencies or assets backing the sale of capacity and/or energy.
- Expectations regarding credit and creditworthiness of each party.
- History of doing business in North Carolina.

RFP Part Two:

Respondents short-listed by NC4 from Part One may participate in Part Two of the RFP. Part Two will enable NC4 and the short-listed Respondents to interact on a bilateral basis and for Part Two Respondents to revise and refine their Proposals. NC4 anticipates that the conclusion of Part Two of this RFP process will result in NC4 selecting and recommending one or more power purchase agreements for approval by each of NC4’s respective Board of Directors. Notwithstanding the foregoing, NC4 is not obligated, nor required to pursue any power supply option or power purchase agreement by way of issuing and proceeding with this RFP.

To participate in Part Two of the RFP process, short-listed Respondents will be required to confirm their continued commitment to participating in Part Two. NC4, EnerVision and Ashby Consulting will engage with each of the Respondents in one or more informational meetings. The purpose of these meetings is for each Respondent to present their Proposal(s) and to answer questions from NC4, EnerVision and Ashby Consulting. Once the initial Respondent meetings have concluded, EnerVision and Ashby Consulting will provide the Respondents with feedback on their respective Proposals. Following receipt of the feedback, Respondents will have an opportunity to revise, restructure, reprice and resubmit their Proposal(s). Once all revised Proposals have been received, NC4 expects to select Respondents with which to engage in contract negotiations. Respondents selected to engage in contract negotiations will be requested to provide multiple pricing scenarios, including low, mid-range, and high natural gas pricing, if applicable. A Respondent not selected for the contract negotiation stage of Part Two may be asked to hold its Proposal open if NC4 subsequently determines to re-engage with the Respondent during the negotiation process.

Communications:

- Prior to the Submission of Proposals – Respondents may submit written questions concerning this RFP to the following email address: NC4RFP@enervision-inc.com. Any questions submitted and NC4’s responses shall be provided to all Respondents.
- Following the Submission of Proposals – All communications between any Respondent and EnerVision or Ashby Consulting regarding any Proposal shall be confidential and subject to the Mutual Confidentiality and Non-Disclosure Agreement. Such communications may include face-to-face meetings with a Respondent. EnerVision and Ashby Consulting may conduct telephonic conference calls with any Respondent to clarify terms and conditions of Proposals or resolve concerns with any Proposal.

Schedule:

Request for Proposal Release Date	Friday, September 29, 2023
Respondent Registration and Execute NDA	Wednesday, October 18, 2023, 5:00 PM EDT
RFP Response Date	Friday, December 15, 2023; no later than 12:00 PM EST
Identify Part 2 Respondents*	Wednesday, February 29, 2024
Identify Respondents for Contract Negotiations*	Tuesday, April 30, 2024
Initiate Contract Negotiations*	May 2024
Contract(s) Finalized, Sent to RUS for Approval*	December 2024

- Target Dates May Change Based on Results of Part 1

Additional Information:

- All Respondents have the obligation and responsibility to clearly mark and identify all proprietary and confidential information. Confidentiality will be governed by the terms and conditions of the Mutual Confidentiality and Non-Disclosure Agreement.
- All Respondents are solely responsible for their costs related to the preparation of their respective Proposal(s) and any costs associated with contract negotiations and contract implementation.
- This RFP is not an offer nor a contract. The NC4 EMCs, EnerVision and Ashby Consulting reserve the right to accept or reject any or all Proposals, or combination of Proposals, and are not limited to any of the products/services described in this RFP. The NC4 EMCs are under no obligation to accept any Proposal, nor are the NC4 EMCs obligated to accept the lowest cost Proposal, as there are many other factors which will be considered in the review and analysis of the Proposals submitted pursuant to this RFP. The NC4 EMCs may at their discretion determine to revise or terminate this RFP at any time. All Respondents, by

submitting a proposal, agree that they will not seek any legal recourse against any of the NC4 EMCs, EnerVision or Ashby Consulting, for rejection of their respective Proposal, or for any other matter related to actions or inactions with respect to a Proposal.

- The submission of a Proposal to the NC4 EMCs shall constitute a Respondents' acknowledgment and acceptance of all the terms, conditions, and requirements of this RFP.
- Proposals that meet the requirements of this RFP will be considered responsive to this RFP. A Proposal that is non-responsive or non-compliant with the terms of this RFP is a basis for rejecting a Respondent's Proposal.
- All Proposals must be properly completed and submitted as required by the RFP schedule.
- Upon receipt of an executed Mutual Confidentiality and Non-Disclosure Agreement, the following data will be provided to Respondents:
 - 15-year projection of individual EMC peak load (both summer and winter).
 - 15-year projection of individual EMC annual energy purchases.
 - 3 years of historical hourly load per EMC, by balancing area authority, as applicable.
 - Existing NCEMC Committed Resources, SEPA allocation and other existing resources including resource scheduling characteristics.
 - A copy of NCEMC's Independent Member Resource Scheduling Services which are the scheduling rules and processes related to NCEMC Committed Resources.
 - Information regarding early termination of existing DEC and/or DEP requirements service agreements.

Contact Information:

- Address all RFP questions, correspondence, NDA, and Proposals to:
 - NC4RFP@enervision-inc.com
 - Ryan Stevenson, Manager
EnerVision, Inc.
4170 Ashford Dunwoody Road, Ste 550
Atlanta, GA 30319
678-510-2919
ryan.stevenson@enervision-inc.com

NC4 Historical Peaks and Energy

EMC Overview			2022			2021			2020		
Map Key	EMC	Meters (Approx.)	Summer Peak	Winter Peak	Energy	Summer Peak	Winter Peak	Energy	Summer Peak	Winter Peak	Energy
1	Haywood	28,518	64	127	357	63	85	343	60	100	334
2	Rutherford	80,237	303	441	1,445	287	308	1,407	282	324	1,370
3	Blue Ridge	79,531	203	385	1,223	192	279	1,203	193	293	1,168
4	Piedmont	33,850	125	182	542	121	125	525	126	124	506

*Load is measured at the Transmission Level Delivery Point

*Peak values are in MWs

*Energy values are in GWhs

Territory Map

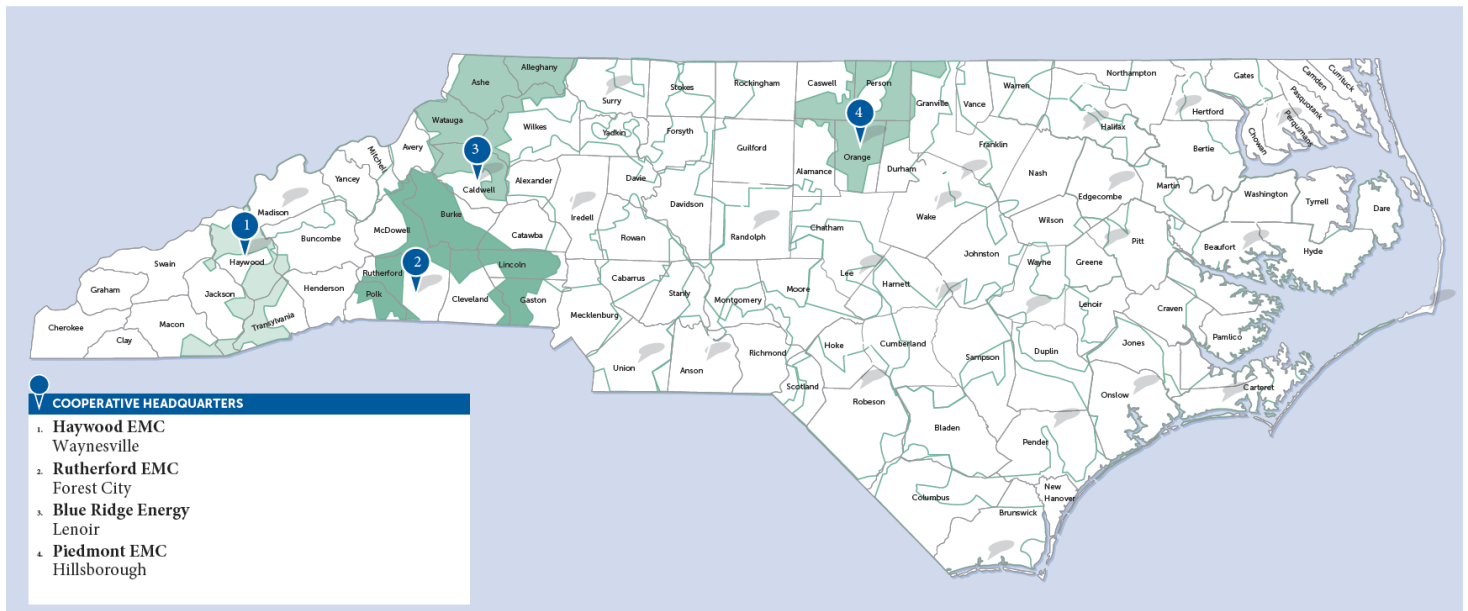


Exhibit A – Respondent Registration Form

Respondents interested and intending to respond to this Request for Proposal shall send the following information via email to this address: “NC4RFP@enervision-inc.com”.

Submission of this information by a Respondent will formally register the Respondent pursuant to the process outlined in this RFP. The Respondent will receive a registration confirmation email to confirm their information was received.

Respondents that register will receive email notices with updates on the RFP. All RFP communications from NC4 to the Supplier will be provided through the information provided with the registration.

Respondents may update their registration information by sending an email with the updates to “NC4RFP@enervision-inc.com”.

- Respondent’s Name:
- Respondent’s Location and Address:
- Respondent’s Contact Name:
- Respondent’s Contact Email:
- Respondent’s Contact Phone Number:
- Supplier’s Authorized Representative Name and Title:

Exhibit B – Mutual Confidentiality and Non-Disclosure Agreement (“NDA”)

The following document is a mutual non-disclosure agreement to be executed between the Respondent and each of the EMCs. The Respondent shall execute two NDA’s and return one executed copy to each EMC.

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement (this "Agreement") is entered into by and between _____ (the "Company"), and _____ Electric Membership Corporation, a North Carolina electric cooperative (the Cooperative"), as of _____, 2023, ("Effective Date"). The Company and the Cooperative are each sometimes referred to herein as a "Party" and together as the "Parties." A Party disclosing Proprietary Information (as such term is defined below) is sometimes referred to herein as "Discloser" and a Party receiving Proprietary Information is sometimes referred to herein as "Recipient."

In connection with investigation, discussions and negotiations concerning an evaluation of the potential sale of electric energy, capacity, ancillary services, scheduling services, and other related physical or financial products (the "Potential Transaction") to the Cooperative by the Company, each Party is willing to provide the other Party with access to certain Proprietary Information (as such term is defined below), subject to the provisions of this Agreement. As a condition to being furnished with such information, the Recipient agrees that all "Proprietary Information" shall be treated as confidential and proprietary to the Discloser in accordance with the provisions of this Agreement. The term "Proprietary Information" means all information or data, whether in written, recorded, electronic or oral form (including without limitation research, developmental, engineering, manufacturing, technical, geological, marketing, sales, financial, operating, performance, cost, business and process information or data, trade secrets, discoveries (whether or not patentable), ideas, designs, samples, data, customer information, development plans, forecasts, financial models, strategies, source code, object code, processes, computer programs, developments, flow diagrams, know-how, and computer programming and other software and software techniques) provided to the Recipient by the Discloser or its Representatives (as such term is defined below) during the term of this Agreement in the course of the exchange of such information or data between the Parties. Without limiting the aforesaid, (i) the fact that information has been made available to the Recipient or its Representatives; (ii) the existence or contents of this Agreement; and (iii) the fact that investigations, discussions, or negotiations are taking or have taken place in connection with the Potential Transaction, including the status or contents thereof shall constitute Proprietary Information.

The term "Representatives" of a Party means such Party's affiliates and such Party's and its affiliates' respective directors, officers, employees, agents (including, without limitation, actual and potential financing parties), insurers, and advisors (including, without limitation, financial advisors, attorneys, consultants, and accountants).

Commencing on the Effective Date, the Recipient agrees that Proprietary Information shall be kept strictly confidential and, except as provided in this Agreement, shall not be disclosed to anyone in any manner whatsoever without the Discloser's prior written consent which consent shall not be unreasonably withheld, conditioned, or delayed. The Recipient may disclose Proprietary Information to those of its Representatives who have a need to know the Proprietary Information in connection with the Proposed Transaction and who are actively and directly participating in the evaluation of the Proprietary Information with respect to the Proposed Transaction. The Recipient and its Representatives shall maintain the confidentiality of the Proprietary Information under the same standard of care that the Recipient uses to maintain its own

proprietary or confidential information, which shall not be less than a commercially reasonable standard of care. The Recipient and its Representatives shall use the Proprietary Information disclosed by the Discloser under this Agreement only in connection with the Proposed Transaction and shall not use or permit use of such Proprietary Information for any other purpose, including, without limitation, in violation of any applicable law.

The Recipient shall be responsible for any breach of this Agreement and for any breach of this Agreement by its Representatives. Should the Recipient or its Representatives become aware or reasonably believes a breach (including without limitation by any phishing or cybersecurity incident) has occurred, the Recipient shall notify the Discloser within forty-eight (48) hours of discovery, and reasonably cooperate with the Discloser to regain possession of the Proprietary Information and prevent further unauthorized use or disclosure.

Proprietary Information does not include information which (i) was or becomes generally available to the public other than as a result of disclosure by the Discloser, (ii) was or becomes available to the Recipient on a non-confidential basis from a source other than the Discloser, provided that such source is not, to the knowledge of the Recipient, itself bound by a confidentiality agreement with the Discloser, or (iii) was in the Recipient's possession without any obligation of confidentiality prior to its disclosure by the Discloser or is developed by the Recipient independently.

In the event that either Party or any of its Representatives is required by law or the rules of a securities exchange, market or automated quotation system to disclose any Proprietary Information of this Agreement, such Party will, if and to the extent allowed by such law or rule, provide the other Party with prompt prior written notice of such requirement so that the other Party may waive the requirements of this Agreement or seek an appropriate protective order at such Party's sole expense. If, in the absence of a waiver or protective order, a Party or any of its Representatives is nonetheless, in the opinion of its counsel, required to disclose Proprietary Information, disclosure may be made only as to that portion of the Proprietary Information or such other information that counsel advises such Party or Representative is required to be disclosed. The disclosing Party will exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to the disclosed information. Notwithstanding the foregoing, the Recipient or any of its Representatives may disclose Proprietary Information to banking, governmental and other regulatory authorities pursuant to examination, audit, inquiry, request, or supervisory oversight without providing notice to the Discloser.

Proprietary Information, including all intellectual property rights therein, is and shall remain the sole property of the Discloser. Except as expressly provided herein, nothing in this Agreement grants the Recipient any proprietary rights, by license or otherwise, to any such Proprietary Information, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue. The existence of this Agreement does not require either Party to disclose any particular Proprietary Information or proceed with any transaction.

THE DISCLOSER IS PROVIDING PROPRIETARY INFORMATION ON AN "AS IS" BASIS FOR USE BY THE RECIPIENT AT ITS OWN RISK. THE DISCLOSER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-

INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

The Proprietary Information may include certain forward-looking statements and projections provided by the Cooperative. Any such statements and projections reflect various estimates and assumptions by the Cooperative concerning anticipated results. Neither the Cooperative nor any of its affiliates makes any representation or warranty as to the accuracy of any such forward-looking statements or projections. Whether or not any such forward-looking statements or projections are in fact achieved will depend upon future events, some of which are not within the control of the Cooperative. Accordingly, actual results may vary from the projected results and such variations may be material.

As soon as practicable after being so requested by Discloser, Recipient agrees to return or destroy, at Recipient's option, all of Discloser's Proprietary Information in tangible form, including all written material, memoranda, notes and other writings or recordings whatsoever prepared by Recipient or its Representatives based upon, containing or otherwise reflecting Discloser's Confidential Information. Recipient shall confirm any destruction of Confidential Information upon receipt of a written request from Discloser. Notwithstanding the foregoing, Recipient may retain (a) one copy of Discloser's Confidential Information and materials containing Discloser's Confidential Information for evidentiary purposes in the event of any dispute or proceeding based on or arising from this Agreement and as may be required to comply with applicable law or regulation, and (b) copies of any computer records and files containing any Proprietary Information that have been created pursuant to Recipient's or any of its Representatives' automatic electronic archiving and back-up procedures until such computer records and files have been deleted in the ordinary course. Any Proprietary Information that is not returned or destroyed, including, without limitation, any oral Proprietary Information, will remain subject to the confidentiality obligations set forth in this Agreement.

Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Agreement by either Party or any of its Representatives and that each Party is entitled to seek specific performance, including, without limitation, injunctive relief, as a remedy for any such breach by the other Party or any of its Representatives. Such remedy will not be deemed to be the exclusive remedy for breach of this Agreement but will be in addition to all other remedies available at law or equity. EACH PARTY AGREES THAT NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR KIND RESULTING FROM, ARISING FROM OR RELATED TO THIS AGREEMENT.

Unless sooner terminated by mutual written Agreement of the Parties, the Recipient's obligations under this Agreement will remain in effect for two (2) years from the Effective Date. Any Proprietary Information that is not returned, deleted, or destroyed in accordance with this Agreement shall remain subject to the terms and confidentiality obligation set for in this Agreement.

Neither Party shall be obligated to enter into any further agreements with the other Party or its parents, subsidiaries or affiliates of any nature whatsoever as a result of this Agreement. The Cooperative acknowledges and understands that the discussions between the Parties regarding the Proposed Transaction and the confidentiality obligation set forth herein are not intended to obligate, and will not be construed as an obligation on the part of, the Company or

any of its affiliates to refrain from (i) evaluating or entering into any discussions, negotiations, agreements or relationships with other parties covering or touching upon subjects or issues that are the same or similar to those covered hereby or otherwise relating hereto, or (ii) engaging at any time in transactions similar to the Proposed Transaction with other parties, including, without limitation, transactions involving, or in the same line of business or any business similar to the business in which the Cooperative is now or in the future may be engaged (in any region) or otherwise to refrain from engaging in brokerage, discretionary money management, corporate finance, investment banking, investment advisory, private investment, risk management activities, arbitrage and sales and trading activities (including without limitation activities within any commodities markets) undertaken in the ordinary course of their respective businesses so long as Proprietary Information is not disclosed to any third party in violation of this Agreement in connection with such activities.

The Company acknowledges that the Cooperative shall be free at all times to hold negotiations or enter into agreements with any other persons whatsoever in addition to or in lieu of the discussions hereunder and any such activities shall not be a breach of this Agreement, or any obligations owed by the Cooperative to the Company. The Cooperative reserves the right, in its sole discretion, to decline, retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Cooperative and the Company with respect to the Proposed Transaction, or with respect to any further agreements or business arrangements with the Company, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations.

This Agreement represents the entire understanding and agreement of the Cooperative and the Company and supersedes all prior communications, agreements and understandings between the Parties relating to the subject matter hereof. All amendments and supplements to this Agreement must be made in writing and signed by a duly authorized representative of each Party. Neither the Cooperative nor the Company may assign or transfer this Agreement, or any rights granted hereunder, by operation of law or otherwise, without the other Party's prior written consent, and any attempt to do so without such consent will be void and have no effect. No waiver or modification of this Agreement will be binding unless made in writing signed by both Parties and no failure or delay in enforcing any right will be deemed a waiver. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. In connection with this Agreement, each Party is an independent contractor and as such will not have any authority to bind or commit the other Party.

Any notices under this Agreement must be given in writing to the person(s) listed below or such other address as a Party provides from time to time by written notice and sent via a nationally recognized overnight courier service with signature required upon receipt, or certified mail with return receipt requested. Such notices shall be deemed given upon actual receipt.

If to the Company:

If to the Cooperative:

This Agreement is made subject to and shall be governed by and construed under the laws of the State of North Carolina, without giving effect to its principles or rules regarding conflicts of laws, and the state and federal courts serving the State of North Carolina shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement or the Proprietary Information. Each Party, to the fullest extent permitted by law, irrevocably consents to the jurisdiction thereof for any actions, suits or proceedings arising out of or relating to this Agreement or the Proprietary Information, and each party irrevocably waives its rights to jury trials with respect thereto. In the event of any litigation hereunder, the prevailing Party shall be entitled to costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date by their respective officers thereunto duly authorized.

_____ **ELECTRIC MEMBERSHIP CORPORATION**

Name:
Title:

[_____]

Name
Title: