

Rule 22

DIRECT ACCESS SERVICE

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Advice Letter No. 28-E

Issued by

Michael R. Smart

Date Filed July 15, 2013

Name

Decision No. _____

President

Effective July 15, 2013

Title

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The following terms and conditions apply to both Utility customers and electric energy service providers who participate in Direct Access. Direct Access shall refer to any end-use Utility customer electing to procure its electricity, and any other CPUC-authorized energy services, directly from electric service providers (ESPs) as defined in Rule 1. ESPs who serve Small Customer service accounts, as defined in Rule 1, shall be registered with the State of California and meet any certification requirements established by the appropriate State agencies.

A. CUSTOMER SERVICE ELECTIONS

All Utility customers will have the opportunity to acquire their electric power needs under two options.

1. Default Utility Services

This service preserves traditional Utility electric services, where the Utility performs all energy services for the end-use customer. All customers who have not chosen to use direct access remain on default Utility services. Customers may choose to return to default Utility services after having elected direct access.

2. Direct Access

This service election allows customers to purchase electric power and, at the customer's election, additional energy services from non-Utility entities known as ESPs.

Direct Access customers who are not defined as Small Customers, as defined in Section B, General Terms, will be required to have in place Interval Metering, as defined below, at no expense to the Utility. Pursuant to D. 97-05-039, these customers will be eligible to choose either the Utility or ESP to provide meter services. After 1998, the CPUC will extend meter service elections to remaining customers. Meter service options are described in Sections H and I.

Direct Access customers, who have individual service accounts with a maximum demand between 20 and 50 kW may be exempt on an interim basis from Interval Metering requirements pursuant to CPUC rules as yet undetermined.

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Issued by

Advice Letter No. 28-E

Michael R. Smart

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B. GENERAL TERMS

1. Definitions

The definitions of principal terms used in this rule are found either herein or in Rule 1, Definitions. Unless otherwise stated, all references to "customer" in this rule will refer to Utility customers who have elected Direct Access. Unless otherwise stated, all references to "small commercial customers" in this rule will be defined in Rule 1, Definitions. Unless otherwise stated, all references to "service account" shall refer to individual customer meters.

The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

2. General Obligations of the Utility

a. Non-Discrimination

The Utility shall discharge its responsibilities under this tariff in a neutral manner as to providers of all commodities and services which are subject to customer choice. Unless otherwise authorized by the CPUC, the FERC, or the affiliate transactions rules, a Utility shall not:

- (1) represent that its affiliate or customers of its affiliate will receive any different treatment with regard to the provision of Utility services than other non-affiliated service providers as a result of affiliation with the Utility; or
- (2) provide its affiliate, or customers of its affiliate, any preference (including but not limited to terms and conditions, information, pricing or timing) over non-affiliated suppliers or their customers in the provision of Utility services.

b. Requests for Utility Services

A Utility shall process requests for similar Utility services, such as DASRs, in the same manner and within the same period of time for its

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B. GENERAL TERMS (cont'd.)

2. General Obligations of the Utility (cont'd.)

b. Requests for Utility Services (cont'd.)

affiliate and for all other market participants and their respective customers.

c. Timeliness and Due Diligence

Consistent with state law and CPUC decisions, the Utility shall exercise due diligence in meeting its obligations and deadlines under this tariff so as to facilitate customer choice as quickly as possible.

d. Transmission and Distribution Service

Subject to the terms of the Service Agreement, applicable tariffs and applicable FERC rules and ESP's and customer's compliance with their terms, the Utility will provide transmission and distribution services under applicable tariffs and contracts for delivery of electric power to Direct Access customers.

3. General Obligations of ESPs

a. Timeliness and Due Diligence

ESPs shall exercise due diligence in meeting their obligations and deadlines under this tariff so as to facilitate customer choice as quickly as possible. ESPs shall make all payments owed to the Utility under this tariff in a timely manner subject to applicable payment dispute provisions.

b. Arrangements with ESP Customers

ESPs shall be solely responsible for having appropriate contractual or other arrangements with their customers necessary to implement direct access consistent with all applicable laws, CPUC requirements and this tariff. The Utility shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements.

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B. GENERAL TERMS (cont'd.)

3. General Obligations of ESPs (cont'd.)

c. Scheduling Coordinator

As a requirement of this tariff, ESPs providing electric power shall have one or more Scheduling Coordinators, with no more than one Scheduling Coordinator per service account, for the purpose of reporting all of the ESP's end-use meter readings to the transmission service provider. ESPs shall disclose the identity of the Scheduling Coordinator to the Utility. The Utility shall not be responsible for enforcing requirements applicable to the performance of the Scheduling Coordinator.

4. Transfer of Cost Obligations Between ESPs and Customers

Nothing in this tariff is intended to prevent ESPs and customers from agreeing to reallocate between them any costs for Direct Access services which are designated in this tariff to be paid by either of them.

5. Responsibility for Electric Purchases

ESPs will be responsible for the purchase of their Direct Access customers' electric power needs and the delivery of such purchases to designated receipt points as set forth on the schedules given to the Scheduling Coordinators (SC).

6. Utility Not Liable for ESP Services

To the extent the customer takes service from an ESP, the Utility has no obligations to the customer with respect to the services provided by the ESP. The customer must look to the ESP to carry out the responsibilities associated with that service.

7. ESP Not Liable for Utility Services

To the extent the customer takes service from the Utility, an ESP has no obligations to the customer with respect to the services provided by the Utility.

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B. GENERAL TERMS (cont'd.)

7. ESP Not Liable for Utility Services (cont'd.)

The customer must look to the Utility to carry out the responsibilities associated with that service.

8. Load Aggregation for Procuring Electric Power

Customers or ESPs may aggregate individually metered electric loads for procuring electric power only. Load aggregation will not be used to compute Utility charges or for tariff applicability. The right of customers to physically aggregate by combining multiple accounts into a single metered account as permitted under CPUC-approved tariffs is not restricted by this section.

9. Split Loads Not Allowed

Customers requesting Direct Access services may not partition the electric loads of a service account among electric service options or providers. The entire load of a service account must be nominated to only one of the electric service options or providers available to customers.

10. Small Customers

All Small Customers as defined in Rule 1, Definitions, except for agricultural and lighting customers, are eligible for a 10% reduction in rates effective January 1, 1998. Service accounts of small customers, as defined in Rule 1, are eligible for statistical load profiling effective January 1, 1998. Small customer service accounts will not be eligible for meter services provided by non-Utility parties until January 1, 1999.

For new customers without a history of electric use, the Utility will estimate new meter loads using existing criteria and use these estimates to evaluate the customer's eligibility for unbundled meter services and statistical load profiles.

11. Interval Metering

"Interval Metering" shall refer to the purchase, installation and maintenance of a meter device capable of recording minimum data required. Minimum data

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B. GENERAL TERMS (cont'd.)

11. Interval Metering (cont'd.)

requirements include (a) hourly data required for the Direct Access settlement process; or (b) data required to bill Utility distribution tariffs, including any communication systems needed to allow the customer access to meter reading usage data.

12. Statistical Load Profiles

The Utility will provide statistical load profiles, in place of Interval Metering, to permit the Utility or ESP to compute the bills for all Direct Access customers who have service accounts that do not require, or are exempt from, Interval Metering as specified above. Load profiles will not apply to service accounts where Interval Metering is in place and used for billing. Statistical load profiles will be applied as authorized by the CPUC.

13. Master Metered Customers

Individual master metered customers who provide sub-metered tenant billings may participate in Direct Access as a single account. A master metered customer may not partition the electric loads of a single master meter among several electric service options or providers. The entire load of a single master meter must receive service under one electric service option and provider.

14. Service Fees and Other Charges

a. For services for which the CPUC determines that there are insufficient providers to ensure customer choice ("Non-discretionary Services"), service fees shall be established by the Utility based on incremental cost and shall be approved by the CPUC. Once approved, these fees will be included in the appropriate Utility rate schedule.

b. During the interim period between the start of Direct Access and a CPUC decision approving specific fees for Non-discretionary Services, the Utility will charge the net incremental costs associated with providing Non-discretionary services to a memorandum account pending the CPUC's decision approving specific service fees. An ESP or customer shall be

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B. GENERAL TERMS (cont'd.)

14. Service Fees and Other Charges (cont'd.)

responsible for payment of such fees upon the CPUC's approval. If the Utility is unable to collect such fees due to the insolvency of an ESP or customer, the Utility shall collect such fees under a Direct Access implementation charge, with appropriate treatment under Section 376 of the Public Utilities Code.

- c. For services for which the CPUC determines that there are sufficient providers to ensure customer choice ("Discretionary Services"), service fees shall be established by the Utility via an advice letter effective thirty (30) days following filing of the advice letter and included in the appropriate Utility rate schedule.
- d. The Utility may charge interim fees for the metering and billing services described in this Rule based on the incremental costs associated with providing these services as set forth in Schedule No. DAS. During the interim period between November 1, 1997 and a CPUC decision regarding such fees, the Utility will track the fees and costs associated with providing these billing and metering services in a one-way memorandum account. If the service fees are approved by the CPUC, and such fees are lower than those included in the appropriate rate schedule the fees previously charged will be reconciled against the approved fees and subject to refund.
- e. Service charges approved by the CPUC such as, but not limited to, service connection fees, special meter reads etc. and which are contained within or authorized by other tariffs are not affected by this Rule.
- f. Fees for Direct Access services are described in utility Schedule No. DAS.
- g. The Utility can recover the costs of Direct Access Service once (i.e., any cost recovered under one cost recovery mechanism [fees, charges, direct access implementation rates or existing rates] should not also be recovered through another mechanism).

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B. GENERAL TERMS (cont'd.)

15. CTC Obligations

As a condition of receiving Direct Access service, Direct Access customers will be responsible to pay for all Competition Transition Charges (CTC) and other non-bypassable charges authorized by the CPUC for the Utility to recover from customers in accordance with state law. Direct Access customers are required to confirm this responsibility in writing provided to the ESP, unless the customer is exempt from the requirement to provide such a writing pursuant to Public Utilities Code Section 370. Where the customer disputes its obligations to pay CTC for a particular account, the customer may condition its agreement on resolution of the dispute, provided that the customer has formally requested the CPUC to grant such relief. However, the existence of such a dispute does not relieve the customer from the obligation of paying CTC while the dispute is pending. The Utility will continue to bill the customer directly for such charges. The customer must pay all charges, but may pay any amounts in disputes in accordance with Rule 10, pending resolution of the dispute.

16. Franchise Fees And Other Charges

Direct Access customers continue to be responsible to pay all applicable fees, surcharges and taxes as authorized by law. The Utility will bill for franchise fees as set forth in Public Utilities Code Sections 401 to 410. The ESP and Utility will each be responsible for calculating other fees, taxes, and surcharges for their respective services. The billing party will be responsible for billing these charges.

17. Liability In Connection With ESP Services

- a. In this Section, "damages" shall include all losses, harm, costs, and detriment, both direct and consequential, suffered by the customer.
- b. The Utility shall not be liable to the customer and ESP for any damages caused by the Utility's conduct in compliance with, or as permitted by, the Utility's electric rules and tariffs, the Utility/ESP Service Agreement and associated legal and regulatory requirements related to DA Service.

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Issued by

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B. GENERAL TERMS (cont'd.)

17. Liability In Connection With ESP Services (cont'd.)

c. The Utility shall not be liable to the customer for any damages caused to the customer by any failure by ESP to comply with the Utility's electric rules and tariffs, the Utility/ESP Service Agreement and associated legal and regulatory requirements related to DA Service.

The CPUC shall have initial jurisdiction to interpret, add, delete or modify any provision of this tariff or the Utility/ESP Service Agreement, and to resolve disputes regarding the Utility's performance of its obligations under the Utility's electric rules and tariffs, the Utility/ESP Service Agreement and requirements related to Direct Access service, including any disputes regarding delays in the implementation of Direct Access.

d. The Utility shall not be liable to the customer for any damages caused by ESP's failure to perform any commitment to the customer, including, but not limited to the obligation to provide Electric Supply services to the customer. The ESP shall not be liable to the customer for any damages caused by the Utility's failure to perform any commitment to the customer.

e. An ESP is not the Utility's agent for any purpose. The Utility shall not be liable to the customer for any damages resulting from any acts, omissions, or representations made by ESP in connection with soliciting customers for DA Service or performing any of its functions in rendering DA Service.

f. A Utility is not the ESP's agent for any purpose. The ESP shall not be liable to the customer for any damages resulting from any acts, omissions, or representations made by Utility in connection with soliciting customers for DA Service or performing any of its functions in rendering DA Service.

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C. CUSTOMER INQUIRIES AND DATA ACCESSIBILITY

1. Customer Inquiries

For customers requesting information on Direct Access, the Utility will make available the following information:

- a. Customer information packets, explaining the customer's choices for electric services, and the procedures and forms needed to implement these services.
- b. A list of CPUC-registered ESPs eligible to serve small customers as well as a list of all ESPs with service agreements to do business in the Utility's service territory. The Utility will endeavor to update its lists periodically, but the Utility is under no obligation to assure the accuracy of these lists.

New customers will receive general information concerning their choices for electric services by contacting the Utility.

2. Customer Request To Initiate Service

For customers initiating a request for electric service from the Utility, the Utility shall inform customers of their ability to choose their electric provider and that the information described in Section C.(1) is available. The Utility shall also inform customers of the toll-free number of the Electric Education Call Center so long as it remains in operation.

3. Access to Customer Usage Data

The Utility will provide customer-specific usage data to parties specified by the customer, subject to the following provisions:

- a. Except as provided in Section E, the inquiring party must have written authorization from the customer to release such information to the inquiring party only. At the customer's request, this authorization may also indicate if customer information may be released to other parties as specified by the customer.

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C. CUSTOMER INQUIRIES AND DATA ACCESSIBILITY (cont'd.)

3. Access to Customer Usage Data (cont'd.)

- b. Subject to customer authorization, the Utility will provide a maximum of the most recent 12 months of customer usage data or the amount of data for that specific service account in a format approved by the CPUC. Customer information will be released to the customer or its authorized agent up to two times per year per service account at no cost to the requesting party. Thereafter, the Utility will have the ability to assess a processing charge only if approved by the CPUC.
- c. As a one-time requirement at the initiation of Direct Access, the Utility will make available a database containing a 12-month history of customer-specific usage information with geographic and SIC information, but with customer identities removed. The Utility will have the ability to assess a charge only if approved by the CPUC.
- d. By electing to take Direct Access service from an ESP, the customer consents to the release to the ESP of metering information required for billing, settlement and other functions required for the ESP to meet its requirements and 12 months of historical usage data.

4. Customer Inquiries Concerning Billing Related Issues

Customer inquiries concerning the Utility's charges or services charge should be directed to the Utility.

Customer inquiries concerning the ESP's charges or services should be directed to the ESP.

5. Customer Inquiries Related To Emergency Situations And Outages

- a. The Utility will be responsible for responding to all inquiries related to distribution service, emergency system conditions, outages and safety situations. Customers contacting the ESP with such inquiries should be referred directly to the Utility.

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C. CUSTOMER INQUIRIES AND DATA ACCESSIBILITY (cont'd.)

5. Customer Inquiries Related To Emergency Situations And Outages (cont'd.)

- b. It may be necessary for the Utility to shed or curtail customer load at the request of the transmission service provider, or as otherwise provided by Commission tariffs. In such cases, the Utility will give both the affected customer and ESP as much notice as reasonably possible.
- c. The Utility will notify the customer and ESP of planned distribution system outages for maintenance work prior to commencement of such outages if feasible.
- d. The Utility will be responsible for implementing Commission-approved load curtailment programs, including providing notification to participating "non-firm" customers who are the Direct Access customers of the ESP.
- e. The ESP will be responsible for notifying its Scheduling Coordinator of any notice received from the Utility under section C.4.

D. ESP SERVICE ESTABLISHMENT

The ESP must satisfy the following requirements before an ESP can provide Direct Access services in the Utility's service territory:

- 1. All ESPs must submit an executed standard Utility/ESP Service Agreement in the form attached hereto as Appendix B.
- 2. The ESP must warrant to the Utility that the ESP has registered with the CPUC if it intends to serve Small Customers and selected an Independent Verification Agent (IVA) for all transactions for which independent verification is required by law.
- 3. The ESP must satisfy Utility credit worthiness requirements as specified in Section S, Credit Requirements.

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Issued by

Advice Letter No. 28-E

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D. ESP SERVICE ESTABLISHMENT (cont'd.)

- 4. The ESP must satisfy applicable CPUC Electronic Data Exchange requirements, including:
 - a. ESP must complete all necessary electronic interfaces for the ESP and Utility to communicate for DASRs, general communications and if providing Metering and Data Management Agent (MDMA) services, to satisfy meter reading communications including communicating to and from MDMA Servers for sharing of meter reading and usage data.
 - b. The ESP must have the capability to exchange data with the Utility via the Internet. Alternative arrangements may be allowed if mutual agreement is made between the Utility and ESP.
- 5. If the ESP will be offering Meter Services or MDMA Services, the ESP must demonstrate the ability to perform the functions required by this Rule. The Utility will continue to provide those services until compliance testing has been completed. The ESP's failure to complete such compliance testing shall not affect its ability to provide electric power to customers.

E. DIRECT ACCESS SERVICE REQUEST (DASR)

- 1. Direct Access Service Requests (DASRs), in the form attached hereto as Appendix A, must be submitted electronically (unless the Utility has also approved of some alternative means of submittal) to the Utility by the customer's authorized ESP, or the customer if it is acting as its own ESP. The DASR process described herein is used for customer Direct Access elections, customer-initiated returns to default Utility service and ESP initiated termination of a customer agreement. ESPs must execute the Utility/ESP Service Agreement before submitting DASRs.
- 2. A separate DASR must be submitted for each service account. Upon request, the Utility will provide timely updates on the status of the DASR processing to the submitting ESP and customer.

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Issued by

Advice Letter No. 28-E

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E. DIRECT ACCESS SERVICE REQUEST (DASR) (cont'd.)

- 3. DASRs must identify the service account participating in Direct Access, including its billing and meter service elections. A DASR that does not contain this information is materially incomplete.
- 4. DASR forms will be available through electronic means (e.g., the Utility's website).
- 5. An ESP which is providing meter services must satisfy, and specify in the DASR process, the following meter and data communications provisions that are contained on the DASR form attached hereto as Appendix A.
- 6.
 - a. For a residential or small commercial customer, a DASR shall not be submitted to the Utility until three days after the verification required under Public Utilities Code Section 366.5 has been performed. It is the responsibility of the ESP to ensure that the requests of the residential and small commercial customers to cancel service pursuant to Public Utilities Code Section 395 are honored.
 - b. If a customer cancels an agreement pursuant to Public Utilities Code Section 395, DASR shall not be submitted for that customer. If a DASR has already been submitted, the submitting party shall, within 24 hours, direct the Utility to cancel the DASR.
- 7. The Utility will provide an acknowledgment of its receipt of the DASR to the ESP within 2 working days of its receipt. The Utility will exercise best efforts to provide, within 3 working days thereafter (and no later than 5 working days), the ESP and the customer with a DASR status notification informing them as to whether the DASR has been accepted, rejected or deemed pending for further information. As of July, 1998, the Utility will provide this DASR status notification within 3 working days. If accepted, the switch date determined in accordance with paragraphs 12 or 13 of this section, will be sent to the ESP, the former ESP if applicable, and the customer. If a DASR is rejected, the Utility will provide the reasons for the rejection. If a DASR is held pending further information, it shall be rejected if the DASR is not completed within 11 working days following the status notification.

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Issued by

Advice Letter No. 28-E

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E. **DIRECT ACCESS SERVICE REQUEST (DASR)** (cont'd.)

- 8. In accordance with the provisions of Rule 3, the Utility has the right to deny the ESP's request for service if the information provided by the applicant is false, incomplete, or inaccurate in any material respect.
- 9. The Utility will begin accepting requests for Direct Access no later than November 9, 1997.
- 10. If a submitted DASR complies with the DASR requirements, the DASR will be accepted and scheduled for Direct Access implementation.
- 11. For a specific service account to qualify for priority queues in the processing of Direct Access requests if backlogs are experienced by the Utility, the ESP must warrant to the Utility that at least 50% of its electric power to that customer will come from a state certified renewable energy resource supplier meeting the requirements of PU Code Section 365(b)(2). In other cases, DASRs shall be handled on a first-come, first-served basis. Each request shall be time-stamped by the Utility. The Utility has no responsibility for verifying the customer's or ESP's compliance with Section 365(b)(2).
- 12. If more than one DASR is received for a service account within a single DASR processing period (16th of the month until the 15th of the following month), only the first valid DASR received will be processed in that period. All subsequent DASRs will be rejected.
- 13. Accepted DASRs that do not require a meter change and that are received by the Utility on or before the 15th of the month will be switched over no later than the next month's scheduled meter reading date for that service account.
- 14. Accepted DASRs that require a meter change by the Utility will be switched over to Direct Access on the date of installation. The Utility will endeavor to complete the meter change request within 15 days after acceptance of the DASR in the absence of a meter installation backlog. The Utility will provide notice of any current meter service backlog or the next available installation date.
- 15. Accepted DASRs that require a meter change by an ESP will be switched over to Direct Access on the date the meter is installed.

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Advice Letter No. 28-E

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E. **DIRECT ACCESS SERVICE REQUEST (DASR)** (cont'd.)

16. A maximum of twelve (12) months of customer usage data, or the amount available for that customer, will be sent from the Utility, or existing ESP currently serving that customer, to the new ESP no later than five (5) days before the scheduled switch date.
17. In the event that the ISO governing board declares an emergency and institutes a moratorium of Utility processing of Direct Access requests, the Utility will comply with such requests and inform ESPs or customers of the details of emergency plans.
18. The Utility, ESP and customer, on mutual agreement, may agree to a different service change date for the service changes requested in a DASR.
19. A DASR is submitted pursuant to the terms and conditions of the Utility/ESP Service Agreement and this Rule, and will also be used to define the Direct Access services that the ESP is providing the customer.
20. Customers returning to Utility bundled service will follow the same process and timing as DASRs to establish Direct Access service.
 - a. ESPs requesting to return a Direct Access customer to Utility bundled service will submit a DASR and be responsible for the continued provision of the customer's electric supply service, and metering services until the service change date. In this case, the ESP will also be responsible for paying any Commission-approved DASR charge.
 - b. Customer's requesting return to Utility bundled service may do so either by contacting their ESP or directly contacting the Utility. In this latter case, the customer will be responsible for paying any Commission-approved DASR charge.
21. The Utility will have the ability to assess a charge for accepted DASRs only, and only if such a fee is approved by the CPUC. This charge will be billed to the ESP unless the customer is requesting to return to Utility service where the charge will be billed to the customer.

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E. DIRECT ACCESS SERVICE REQUEST (DASR) (cont'd.)

- 22. Following the removal of system limitations, a customer moving to new premises may retain or start Direct Access immediately, and in any event no later than two days after a DASR has been submitted, provided that the applicable metering requirements have been met. Due to current system limitations, a customer moving to new premises who wants to retain or start Direct Access must have the ESP submit a DASR to the Utility for the new premises no less than ten (10) business days before the customer's scheduled start date at the new premises. This DASR will need a special "new customer" notation. If the DASR is received after that date or without the notation of "new customer", the customer will receive the Utility's bundled service until the DASR is processed under the procedures set forth in Section E.13.
- 23. Metering options are requested through a submission of a DASR and cannot be changed more frequently than once per billing cycle.
- 24. The Utility will not hold the ESP responsible for any customer unpaid billing charges prior to the customer's switch to Direct Access. Unpaid billing charges will not delay the processing of DASRs and will remain the customer's responsibility to pay the Utility. The Utility will follow current CPUC credit rules in the event of customer non-payment, which includes the disconnection of service.

F. INDEPENDENT VERIFICATION

A request for a change in ESPs representing residential or small commercial customers shall not be submitted by an ESP until three days after the provisions of Sections 366(a) and 366(b) of the Public Utilities Code have been satisfied. These provisions are not repeated herein.

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DIRECT ACCESS SERVICE

(continued)

G. METERING SERVICES

1. Definitions

- a. Meter services have been proposed to be grouped into three packages for initial DA implementation. These three packages are:

- Meter Ownership
 - Meter Services (Installation, maintenance, and testing)
 - Meter Data Management Agent (MDMA) Services

These packages are subject to CPUC approval. These package services may be provided by the Utility or an ESP, and the parties may subcontract these services to third parties. An ESP may also subcontract with the Utility for the provision of any component service of any package, and the Utility may provide such service.

- b. Interval meter is defined as a meter capable of reading and storing electric consumption data at specified time intervals of no greater than one hour as required for DA settlement and data required to bill applicable Utility tariffs. The CPUC-approved DA meter data requirements are for 15 minute interval data. Hourly data may be divided by four so that 15-minute interval data is available. Utilities, ESPs or customers may own or lease interval meters used for billing purposes for direct access services, but shall (if leasing meters) continue to be responsible for the obligations of a meter owner under this Section G. Potential and current transformers shall be considered part of the distribution system and shall remain the responsibility of the Utility.

- c. Eligible Customers

Customers who have individual service accounts and do not qualify for statistical load profiling must have interval meters prior to receipt of direct access service. ESPs may provide, install, read and service interval meters for any customer other than a Small Customer pursuant to CPUC regulations. For Small Customers, meter services will be unbundled on 1/1/99, as approved by the CPUC, and all meter services will continue to be provided by the Utility until that date.

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DIRECT ACCESS SERVICE

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G. METERING SERVICES (cont'd.)

1. Definitions (cont'd.)

d. Meter Conformity

All meters and meter services must conform to CPUC regulations. To the extent a customer taking DA Service under this tariff elects or is required to return to bundled Utility Service, such customer may continue to use the same meter provided it conforms to CPUC regulations, provided the meter is compatible with current Utility meter reading systems.

2. Meter Specifications

The ESP or Utility, acting as the meter service provider (MSP) will be responsible for ensuring that all the interval meters comply with CPUC-approved meter specifications. No interval data meter will be set or allowed to remain in service if it is determined that the meter does not or did not meet the CPUC-approved specifications.

Either party may test its own meters or those owned by its customers for conformance to CPUC-approved meter specifications. Either party may request the other party to test their meter. The requesting party will receive notification of the test date, and written test results from the other party. The requesting party will also have the right to witness the testing. If the meter is found to be within CPUC approved standards, the requesting party shall pay the other party for all expenses related to the test.

If a manufacturer's sealed meter has not been previously set, and the meter was tested within the last year and found to comply with CPUC specifications, the meter shall be deemed in compliance with CPUC specifications without additional testing. Subsequent to initial installations each meter must be tested for accuracy prior to being used again. All parties will be subject to CPUC-approved testing specifications as recommended in the MDCS workshop. Records on testing shall be provided within (5) working days of a request to either party.

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G. METERING SERVICES (cont'd.)

3. Installation

When the MSP installs a meter for a direct access customer, the meter installer must be CPUC certified to perform meter installation. The MSP will install all Interval Meters in compliance with CPUC-approved specifications and the Utility's installation and safety standards. Within three (3) working days of installation, the MSP will provide the non-MSP (i.e. the ESP or the Utility as the case may be) with the results of the initial meter calibration test, the ending read for the meter which was removed (if applicable), the starting read for the new meter, and information on meter identification, voltage, meter constants and other parameters required under CPUC-approved standards. The Utility must receive a copy of the MDCR (Meter and Data Communications Request) worksheet at least five working days prior to the meter set. Joint meets will be required between the Utility and an ESP for the first 50 installations completed by the ESP, but not thereafter, providing the installations meet CPUC-approved standards. Also, joint meets will be required for the existing Utility's IDR meters if the ESP is unable to obtain the final meter read. The Utility reserve the right to waive the joint meet.

When the Utility has reason to believe an ESP installation does not satisfy CPUC-approved standards, the Utility retains the right to perform on-site inspections subsequent to initial meter installations. The ESP shall be charged the costs of these subsequent inspections only to the extent approved by the CPUC and only if the inspections uncover any material noncompliance with CPUC-approved standards.

The customer may elect to have the ESP or Utility remove an existing meter at the customer's premises. Except as provided in section G.1.d above, the Utility will not require removal of a meter meeting CPUC-approved specifications as a condition of a customer's return to bundled Utility service. The Utility and ESP will coordinate the removal and installation of the new meter.

The MSP shall return any meter it removes to the owner in the same condition that the meter was in prior to removal within five (5) working days, or such other time as may be mutually agreed upon.

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G. METERING SERVICES (cont'd.)

3. Installation (cont'd.)

Where telephone lines are required for the utility to read the meter, installation of such lines is the responsibility of the customer. Such installation must be completed before the utility can schedule the meter installation work.

4. Meter Calibration and Testing

Either party may test its own meters or those owned by its customers for conformance to CPUC-approved meter specifications. Either party may request the other party to test its meter. The party whose meter has been requested to be tested by the other party may require a \$50 deposit prior to such testing. The requesting party has the right to witness the testing. The requesting party will receive notification of the test date and written test results from the other party. If the meter is found to be within CPUC-approved standards, the requesting party shall pay the other party for all expenses related to the test.

The MSP shall be responsible for ensuring that all Interval Meters are calibrated in accordance with CPUC-approved specifications. Records of calibration will be provided to the appropriate parties within five (5) working days of a request to the other party.

5. Testing of Meter Functions

The MSP will ensure that all meters used for billing purposes for their respective customers are functioning in conformance with CPUC regulations.

Records of meter function tests will be provided to the appropriate parties within five (5) working days of the request.

6. Regular Meter Maintenance And Testing

The MSP, for all meters used for billing purposes, is responsible for the routine maintenance of the meter, including, but not limited to, testing and record keeping, in accordance with CPUC regulations.

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G. METERING SERVICES (cont'd.)

7. MDMA Services

The MDMA must be authorized in writing by the Utility prior to performing MDMA services. MDMA services will be performed in accordance with CPUC regulations and will be the responsibility of the party so indicated in the customer's DASR. MDMA obligations include but are not limited to the following:

- a. Meter data for DA Customers shall be read, validated, edited, and transferred pursuant to Commission-approved standards.
- b. Regardless of whether ESP or Utility perform MDMA services both Utility and ESP shall have access to the MDMA server.
- c. The MDMA shall provide Scheduling Coordinators (or their designated agents) reasonable and timely access to Meter Data as required to allow the proper performance of billing, settlement, scheduling, forecasting and other functions.
- d. The MDMA is required to keep the most recent 12 months of Customer consumption data for each DA Customer. Such data must be retained for a period of 36 months. Such data must be released on request to the customer or, if authorized by the customer, to any ESP or to the Utility.
- e. Within five days after installation of the meter, the MDMA must confirm that the meter and meter reading system is working properly and that the billing data gathered is valid.
- f. No more than 10 percent of the accounts will contain estimated data or no more than one percent of all the data will be estimated, except as set forth in Rule 9, section 2.

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G. METERING SERVICES (cont'd.)

7. MDMA Services (cont'd.)

- g. ESPs and the MDMA are required to use the Utility's Metering Exchange Protocol when exchanging settlement-quality validated consumption data. This protocol is intended to be used for transmitting metering, billing and administrative information between the ESP, the Utility and the MDMA.
- h. The MDMA must comply with the pertinent electrical safety provisions of CalOSHA and the Utility's safety requirements as they apply to the reading of electric meters.

8. Failure to Comply With CPUC Requirements For Meters or Meter Services

- a. Failure is defined as the circumstance wherein the apparent absence of appropriate usage data or testing, conducted by either party or a third party reveals non-conformance with any applicable CPUC regulation governing meters or meter and MDMA services.
- b. Upon the occurrence of undisputed failure, the party responsible for the non-complying meter or MDMA service must make corrections within three (3) calendar days.
- c. Failure to make corrections within three (3) calendar days may result in the following sequential series of actions and penalties:
 - (1) Whichever party is not the party responsible for the non-conformance may cure the defect at the other party's expense.
 - (2) Upon a demonstrated pattern of non-conformance as defined below and failure to timely cure, the party not responsible for the non-conformance may give written notice of such non-conformance, and, after five (5) days, provide all meters and meter services required by the customer as determined by the DASR or as required to receive Utility bundled service.

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G. METERING SERVICES (cont'd.)

8. Failure to Comply With CPUC Requirements For Meters or Meter Services
(cont'd.)

c. (cont'd.)

(3) Demonstrated pattern of non-conformance by an ESP is defined as more than one percent (1%) of the service accounts served by an ESP, or five (5) accounts, whichever is greater, are found to be non-conforming and are not cured during the first six months of Direct Access participation; more than one half of one percent (0.5%), or three (3) accounts, whichever is greater, are found to be non-conforming and are not cured during any six consecutive months thereafter.

d. A Utility may refuse to enter into a new ESP-Utility Service Agreement with any ESP which has a demonstrated pattern of non-compliance and has failed to cure as provided in Section G.8.c above for a period of no more than six (6) months from the date of such a determination as defined herein. This provision shall not apply where the alleged demonstrated pattern of non-compliance and failure to cure is disputed and such dispute is pending before any agency or entity with jurisdiction to resolve the dispute.

e. Whenever the ESP or the Utility becomes aware of any non-conforming meters or errors in the provision of meter services affecting billing, it shall promptly notify the customer and one another. Bills found to be in error due to non-conforming meters or errors in meter services may be corrected as follows:

(1) The Utility or the ESP may adjust their charges pursuant to CPUC-approved rules, if any, if such charges are affected by any non-conforming meters or erroneous meter service. In such circumstances the party providing the billing shall cooperate with the other party to correct billing errors. The Utility will notify the affected Scheduling Coordinator.

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DIRECT ACCESS SERVICE

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G. METERING SERVICES (cont'd.)

8. Failure to Comply With CPUC Requirements For Meters or Meter Services
(cont'd.)

e. (cont'd.)

(2) Under dual billing, the ESP and Utility shall be separately responsible for correcting billing errors in accordance with applicable CPUC rules.

9. Charges for Metering Services

a. The Utility may charge the customer or the ESP for the provision of metering services only to the extent such charges are authorized by the CPUC. The installation of interval metering shall be at the customer's expense.

H. UTILITY METER SERVICE OPTIONS AND OBLIGATIONS

1. For Direct Access customers who acquire Interval Metering, the customer may elect from the Utility three grouped meter service options as described in Section G.1.a. The three groupings are: the Utility will own the meter, the Utility will perform the meter installation, maintenance and testing, and the Utility will perform the meter reading services. The scope and costs of these groupings listed in section G.1.a will vary by Utility and will be approved by the CPUC, and will be provided in a separate schedule. The utilities shall offer at a minimum a tariffed service for each grouping listed in G.1.a.

2. As an alternative to 1., ESP's may subcontract to the Utility's for any combination of the following unbundled meter services:

- (a) Meters supplied by the Utility.
- (b) Meter installations, testing, and maintenance.
- (c) Meter Data Management Agent (MDMA) Services

These unbundled meter services may vary by Utility and all services will be approved by the CPUC.

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H. UTILITY METER SERVICE OPTIONS AND OBLIGATIONS (cont'd.)

- 3. If the Utility installs the meter, the meter will be installed according to the implementation schedule for Valid DASRs as set forth in Section E, Direct Access Service Requests.
- 4. The Utility reserves the right to extend its normal installation period due to meter and installation personnel availability. Under these circumstances, the Utility shall apprise the customer of the specific reasons for the delay and the anticipated schedule for installation. The Utility shall work with the customer to find mutually agreed upon alternatives to provide metering and to expedite meter installations, if necessary. Such alternatives may include, but not be limited to, allowing the customer to have the meter installed by a non-Utility supplier.
- 5. If the Utility provides meter maintenance services only, the Utility will be responsible for the accuracy, calibration, and other maintenance needs for the meter. Utility standards or meter maintenance will conform to the existing rules on such Activities for all Utility customers. Under this specific itemized service, the Utility will not be responsible for replacing a non-Utility meter. Upon request and for a fee, the Utility may replace a faulty meter.
- 6. The MDMA shall read Interval Meters on the utility's scheduled meter read date, or on such other date as may be mutually determined by the MDMA and the utility. At the customer's request, the customer or the customer's ESP may elect a different meter read date. The utility may provide this service at its option on a first-come, first-served basis (by geographic area as appropriate), subject to existing resource, capacity, and other system constraints which may exist in the geographic area where the customer is located. The utility may assess a charge for this election only to the extent approved by the CPUC. If the Utility provides meter reading services, the Utility will determine the appropriate meter reading dates. Upon the customer's request, the Utility will make available to the customer, or the customer's ESP, the data obtained from the meter in a timely manner, as agreed to between the customer and the Utility.

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J. METER READING DATA OBLIGATIONS (cont'd.)

1. Accuracy For All Meters (cont'd.)

- c. No more than 10% of the accounts will contain estimated data or one percent of all data will be estimated, except as set forth in Rule 9, section 2.
- d. All meter reading data will be validated following CPUC-approved requirements.
- e. The MDMA will provide an infrastructure that supports retrieval of all data currently available to a MDMA client within a two-hour window.

2. Timeliness For Validated Meter Read Data

The following standards, once they have been adopted by the CPUC, shall be used to establish the time requirements for posting validated meter reading data on the MDMA server.

a. Interval Meters:

- (1) 80% of all usage data must be available on the first day after the scheduled reading date of the meter.
- (2) 90% of all usage data must be available within two days of the scheduled reading date of the meter.
- (3) 99.99% of all usage data must be available within four days of the scheduled reading date of the meter.

b. Non-Interval (Monthly) Data:

- (1) 85% of all monthly meter readings must be available by 6:00 AM on the 3rd working day after the scheduled meter reading date.
- (2) 95% must be available by 6:00 AM on the 5th working day after the scheduled meter reading date.

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J. METER READING DATA OBLIGATIONS (cont'd.)

1. Accuracy For All Meters (cont'd.)

b. Non-Interval (Monthly) Data: (cont'd.)

(3) 99.99% must be available by 6:00 AM on the 8th working day after the scheduled meter reading date.

3. Retention and Format For Meter Reading Data

a. Meter reading data will remain posted on the MDMA server for 3 days and will be recoverable for at least 3 years.

b. Meter reading data posted to the MDMA, server will be stored in the MDMA data exchange format as approved by the CPUC.

K. BILLING SERVICE OPTIONS AND OBLIGATIONS

1. Introduction

At this time, the Utility offers the dual billing option for Direct Access customers.

In addition, this section states the Utility and ESP obligations for billing information and legal and safety notices in section 2 herein.

a. Description

The Utility and the ESP will separately send their bills directly to the customer.

b. Utility Obligations

(1) The Utility will calculate Utility charges, prepare the Utility bill, and send the Utility bill to the customer by electronic or other means. The billing method is the sole responsibility of the Utility and its customers.

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K. **BILLING SERVICE OPTIONS AND OBLIGATIONS** (cont'd.)

1. **Introduction** (cont'd.)

b. **Utility Obligations** (cont'd.)

(2) The Utility does not have any obligations regarding the accuracy of ESP charges or related payment disputes. Accurate and timely meter reading data must be shared between the ESP and Utility.

c. **ESP Obligations**

(1) The ESP will calculate the ESP charges, prepare the ESP bill, and send the ESP bill to the customer by electronic or other means. The billing method is completely independent of the billing method selected by the Utility.

(2) The ESP has no obligations regarding accuracy of Utility charges or related payment disputes. Accurate and timely meter reading data must be shared between the ESP and the Utility.

d. **Timing**

(1) Meter reading data is required by the Utility on the scheduled meter reading date which conforms to existing Utility billing cycles under this billing option.

2. **Billing Information and Inserts**

a. **Identify Utility and ESP Charges**

The Utility bill, at a minimum, will identify Utility charges as specified by the CPUC or its codes.

b. **Required Legal and Safety Notices**

All Utility customers, including Direct Access customers, will receive mandated legal and safety notices, and the Utility will be responsible for the creation of these notices.

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K. BILLING SERVICE OPTIONS AND OBLIGATIONS (cont'd.)

2. Billing Information and Inserts (cont'd.)

c. Utility Obligations

The Utility will continue to mail mandated safety and legal notices in the billing envelope and may use the billing envelope as it does in current practice for providing information to all Utility customers, including Direct Access customers, equally.

d. ESP Obligations

The ESP has no obligation for Utility-mandated safety and legal notices under this option.

e. Notice of Consumer Rights

Regardless of the supplier of direct access to the end-use customer, the entity billing the end-use customer shall be responsible for providing the special information required on forms that is stated in section B.2 of the Utility's Rule 5. Such information shall appear on the back of the bill.

3. Billing Adjustments for Meter Error and Billing Error

a. Adjustment of Bills for Meter Error

(1) Meter error is the incorrect registration of the Customer's electrical usage resulting from a malfunctioning or defective meter. Meter error can result from a fast meter, a slow meter, or a non-registering meter. Meter error is defined in the Utility's Rule 17.

(2) Utility will adjust its bill for meter error pursuant to the Utility's Rule 17 and for utility charges. The Customer will be solely responsible for obtaining refunds of both current and prior ESP Energy Supply overcharges attributable to a fast meter from its current and prior ESPs, as appropriate

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K. **BILLING SERVICE OPTIONS AND OBLIGATIONS** (cont'd.)

4. **Unauthorized Usage of Energy** (cont'd.)

- d. At the conclusion of its investigation, if the Utility determines there has been unauthorized use, the Utility shall have the legal right to recover, from any customer, ESP, or other person who caused or benefited from such unauthorized use, the total estimated amount of the undercharge, including the Direct Access electric power component, for the full period of such unauthorized use. The Utility will calculate the amount of the undercharges in accordance with the Utility's Rule 17 and as otherwise provided by law.
- e. Utility will issue adjusted bills for unauthorized use (including but not limited to all the costs and charges referenced in this Section) to the customer in accordance with the Utility's Rule 17.
- f. Whenever possible, upon completion of the Utility's investigation, the Customer, ESP, or other person being billed for an unauthorized use adjustment will be advised of Utility's claim. The Customer, or other person being billed will be given an opportunity to respond to the claim.
- g. Utility retains its right to collect from the customer causing or benefiting from unauthorized use associated costs resulting from the unauthorized use as provided in the Utility's Rule 17, or otherwise allowed by law.

L. **PAYMENT AND COLLECTION TERMS**

- 1. The Utility is responsible for payment of miscellaneous charges imposed by the ESP, as per their service agreement with the Utility for Direct Access services, but the Utility has no payment obligations with respect to customer charges.
- 2. The Utility has no payment or collection obligations to the ESP for customer payments of ESP charges. However, the Utility must remit, within 30 days, payment of any charges due the ESP for services provided by the ESP in accordance with the service agreement. A late payment penalty may be assessed on past due charges.

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L. PAYMENT AND COLLECTION TERMS (cont'd.)

- 3. The ESP has no payment or collection obligations to the Utility for customer payments of Utility charges. However, the ESP must remit within 30 days payment of any charges, approved by the CPUC, due the Utility for services provided by the Utility. If authorized by the CPUC, a late payment penalty may be assessed on past due charges.
- 4. The customer must remit payment in full to the Utility for Utility charges due within the terms of sale as provided in CPUC rules.
- 5. If the customer disputes any Utility charges, it shall nevertheless pay the amount billed; provided, however, that the customer may, at its election, pay that portion of the charges that the customer disputes to the CPUC in accordance with the Utility's Rule 10. If the customer disputes any ESP charges, the provisions of its agreement with the ESP shall control.

M. LATE OR PARTIAL PAYMENTS AND UNPAID BILLS

- 1. The Utility and the ESP are responsible for collecting their respective unpaid balances, sending notices to customers informing them of the unpaid balance, and taking appropriate actions to recover their respective unpaid balances. Customer disputes with ESP charges must be directed to the ESP, and customer disputes with Utility charges must be directed to the Utility. Late fees and fees for collections may be charged by the Utility as approved by the CPUC.
- 2. Late payment of Utility charges by customers will be handled in accordance with applicable CPUC rules.

N. INVOLUNTARY SERVICE CHANGES.

1. Service Changes

The customer may have service of electricity or metering from an ESP changed involuntarily in the following circumstances:

- a. The ESP Has Been Decertified by the CPUC or receives a CPUC order that otherwise prohibits the ESP from serving that customer;

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N. INVOLUNTARY SERVICE CHANGES. (cont'd.)

1. Service Changes (cont'd.)

- b. The ESP has materially failed to meet its obligations under the terms of the Service Agreement (including applicable tariffs) so as to constitute an event of default and the Utility exercises a contractual right to terminate the agreement;
- c. The ESP has materially failed to meet its obligations under the terms of the Service Agreement (including applicable tariffs) so as to constitute an event of default and the Utility exercises a contractual right to change metering options;
- d. The ESP ceases to perform by failing to provide schedules through a Scheduling Coordinator wherever such schedules are required.
- e. The customer fails to meet its direct access requirements and obligations under the utility's rules and tariffs.
- f. Notices of involuntary service changes or termination in Direct Access will be sent to the ESP, the MDMA if different from the ESP, and to each customer under contract as described in this section N, and to the CPUC.

2. Change of Service Election In Exigent Circumstances

In the event the Utility finds that an ESP or the customer has materially failed to meet its obligations under this tariff or the Utility/ESP Service Agreement such that the Utility seeks to invoke its remedies under this section N. (other than metering under section N.5), and the failure constitutes an emergency (i.e. the failure poses a substantial threat to the reliability of the electric system or to public health and safety or the failure poses a substantial threat of irreparable economic or other harm to the Utility or the customer), or the failure relates to ESP's unauthorized energy use, then the Utility may initiate a change, or, in some cases, terminate a customer's service election, or an ESP's ability to provide certain services under Direct Access. In such case, the Utility shall initiate the change or termination by preparing a DASR, but the change or termination may be made immediately notwithstanding the applicable DASR processing times set

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N. INVOLUNTARY SERVICE CHANGES. (cont'd.)

2. Change of Service Election In Exigent Circumstances (cont'd.)

forth in this tariff. The Utility shall provide such notice and/or opportunity to cure the problem to the ESP and/or the affected customer as is reasonable under the circumstances of this section , if any is reasonable. The ESP or the affected customer shall have the right to seek an order from the CPUC restoring the customer's service election and/or the ESPs ability to provide services. Unless expressly ordered by the CPUC, these provisions do not disconnect electric service provided to the customer.

3. Changes of Service Election Absent Exigent Circumstances

In the event the Utility finds that an ESP has materially failed to meet its obligations under this tariff or the Utility/ESP Service Agreement such that the Utility seeks to invoke its remedies under this section N. (other than metering under section N.5), but the failure does not constitute an emergency (as defined in section N.2) or involve ESP's unauthorized energy use, the Utility shall notify the ESP and the affected customer of such finding in writing stating specifically:

- a. The nature of the alleged non-performance;
- b. The actions necessary to cure it;
- c. The consequences of failure to cure it and remedy the Utility proposes to invoke in the event of a failure to cure; and
- d. The name, address and telephone number of a contact person at the Utility authorized to discuss resolution of the problem.

The ESP shall have 30 days from receipt of such notice to cure the alleged non-performance or reach an agreement regarding it with the Utility. If the problem is not cured or an agreement is not reached following this 30 day period, the Utility may initiate the DASR process set forth in this tariff to accomplish the remedy set forth in the notice; provided that the Utility shall suspend the exercise of such remedy if, before the end of the cure period, the ESP has filed an application with the CPUC requesting an order from the CPUC that the ESP is entitled to continue

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N. INVOLUNTARY SERVICE CHANGES. (cont'd.)

3. Changes of Service Election Absent Exigent Circumstances (cont'd.)

the Service Agreement and the Utility is not entitled to exercise the remedy it has identified in its notice. The status of the ESP shall not change pending the CPUC's review of the Utility's request provided that an emergency, as described in Section N.2 does not arise. Unless expressly ordered by the CPUC, these provisions do not disconnect electric service provided to the customer. The Utility's action to defer the exercise of its remedies in accordance with this section does not constitute a waiver of any rights.

4. Termination of ESP Metering Services

The Utility will terminate an ESP's eligibility to provide metering services in the Utility's service territory if the ESP fails to comply with industry-accepted standards approved for the Utility by the CPUC for metering services. The Utility shall provide the ESP with 15 days written notice prior to such termination. ESP failures to comply is defined in Section G, Metering Services. The ESP or the affected customer shall have the right to seek an order from the CPUC restoring the ESP's eligibility to provide metering services.

5. Burden of Proof Before CPUC

In any case before the CPUC the party bearing the burden of going forward and the party bearing the burden of proof shall be established in the manner normally established at the CPUC.

6. Action in the Event of Termination

Upon termination of ESP Direct Access services pursuant to this section N, the customer will be returned to default Utility services, unless the customer has previously selected another ESP under the procedures set forth in section E. The customer shall thereafter have the right at any time to select another ESP pursuant to section E.

(continued)

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(continued)

N. INVOLUNTARY SERVICE CHANGES. (cont'd.)

7. Prohibition

The Utility is prohibited from using any of the involuntary services changes in an anti-competitive manner.

O. SERVICE DISCONNECTIONS AND RECONNECTIONS

1. In accordance with CPUC rules, the Utility may disconnect electric service to the customer for the non-payment of Utility charges by the customer, but the Utility will not disconnect electric service to the customer for the non-payment of ESP charges. If a customer has been disconnected, and is not reconnected within two days, the Utility will promptly notify the ESP. In the event of non-payment of ESP charges by the customer, the ESP may submit a DASR requesting transfer of the service account to bundled Utility service according to section E. In the event of non-payment of Utility charges, and to the extent authorized by the CPUC, a service charge will be imposed on the customer if a field call is performed to disconnect electric service.
2. The Utility will reconnect electric service for a service fee when the criteria for reconnection, as specified in Rule 11 have been met.

P. CREDIT REQUIREMENTS

1. The Utility may require the ESP to establish its creditworthiness through evaluations, deposits, or other security in the manner described in Section P.2, to cover CPUC-approved charges incurred as a result of Direct Access participation. That is, the creditworthiness only applies to the Utility charges that are billed directly to the ESP.
2. The ESP may establish its creditworthiness through any one of the following. Upon the establishment of such creditworthiness, the Utility upon request will refund, in accordance with CPUC requirements, the customer's security deposits then being held to secure payment of those energy services being assumed by the ESP.

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(continued)

P. CREDIT REQUIREMENTS (cont'd.)

2. (cont'd.)

a. Credit Evaluation

An ESP with a demonstrable current credit rating of Baa2 or higher from Moody's or BBB or higher from Standard and Poor's, Fitch or Duff & Phelps, is deemed to be creditworthy unless the Utility determines that a material change in the ESP's creditworthiness has occurred. The Utility requires ESPs to complete a credit application including financial information reasonably necessary to establish credit. The credit worthiness evaluation may be conducted by an outside credit analysis agency, determined by the Utility, with final credit approval granted by the Utility. This evaluation will be completed within 10 business days. Credit reports will remain strictly confidential between the credit analysis agency and the Utility. A credit application processing fee, as approved by the CPUC, may be charged to offset the cost of determining the ESP's credit worthiness.

b. Security Deposits

The ESP may submit and maintain a cost-based security deposit in lieu of submitting to or being qualified under a credit worthiness evaluation. The amount of the security deposit required to establish credit will be twice the estimated monthly maximum bill for Utility charges, where such estimate is based on the last 12 months of historical usage. The initial value of the security deposit will be estimated by the ESP to cover its expected customer base and will be adjusted as necessary from time to time to meet the security requirements based on changes in the ESP's customer base. Security deposits may be in the form of (1) cash deposits, with interest earned at the 3-month commercial paper rate, (2) letters of credit, defined as irrevocable and renewable issued by a major financial institution acceptable to the Utility, (3) surety bonds, defined as renewable and issued by a major insurance company acceptable to the Utility, or (4) guarantees, with guarantors with a credit rating of Baa2 or higher from Moody's or BBB or higher from Standard and Poor's, Fitch or Duff & Phelps, unless the Utility determines that a material change in the

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(continued)

P. CREDIT REQUIREMENTS (cont'd.)

2. (cont'd.)

b. Security Deposits (cont'd.)

guarantor's creditworthiness has occurred, or, in other cases, through the credit evaluation process described above. Security deposits must be posted with the Utility prior to the ESP's participation in Direct Access. Security deposits posted with the Utility which are in excess of outstanding unpaid bills owed to the utility will be returned to the ESP within approximately 60 days after the ESP has terminated consolidated ESP billing services in the Utility's service territory.

c. Security Deposit Payment Timetable

ESPs are obligated to post security deposits with the Utility prior to the ESP's participation in Direct Access. Such a deposit shall not be required until three days before the ESP's customers begin receiving direct access service. If the deposit in the required amount as specified in section P.2.b has not been received from the ESP, the Utility will continue to bill the customer under the same conditions prior to the scheduled change of service.

d. Interest on Cash Deposit

The Utility will pay interest on cash deposits, except as provided below, calculated on a daily basis, and compounded at the end of each calendar month, from the date fully paid to the date of refund by check or credit to the ESP's account. The interest rate applicable in each calendar month shall be set forth in Rule 7; except that when a refund is made within the first fifteen days of a calendar month the interest rate applicable in the previous month shall be applied for the elapsed portion of the month in which the refund is made.

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(continued)

P. CREDIT REQUIREMENTS (cont'd.)

2. (cont'd.)

d. Interest on Cash Deposit (cont'd.)

No interest will be paid if the ESP's right to continue providing ESP Consolidated Billing services is temporarily or permanently discontinued for nonpayment of bills. No interest will be paid for periods covered by bills paid after becoming past due

e. On-going Maintenance of Credit

To assure continued validity of established unsecured credit, the ESP shall promptly notify the Utility of any material change in its credit rating or financial condition. ESP shall also furnish evidence of an acceptable credit rating or financial condition, as set forth above, to the Utility upon request.

3. Additional Documents

The ESP shall execute and deliver all documents and instruments (including, without limitation, security agreements and Utility financing statements) reasonably required from time to time to implement the provisions set forth above and to perfect any security interest granted to Utility.

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Appendix A

DIRECT ACCESS SERVICE REQUEST (DASR) FORM

Listed below are the minimum data elements that are required for DASR approval as set forth in section E of the Utility’s Rule 22 (Table 1). If these elements are omitted or inaccurate, the DASR will be rejected. If credit establishment is required, additional data will be required as shown on Table 2. If a meter change is required, additional interim data elements will be required by the Utility in order to complete the assignment of an effective date for the meter change in the Utility’s system (see Table 3). At the present time, this additional metering information is not submitted with the DASR, but must be submitted through a separate manual process.

TABLE 1 - Administrative Data Type 1 - DASR - MEPAD01

Required DASR Data Element	Example Data
Record Type	MEPAD01
Record Version	
Sender Identifier	
Sender Customer Identifier	
Receiver Identifier	
Receiver Customer Identifier	
Time Stamp	
Record Identifier	
Operation Type	
Service Relationship Count	
Type of Service Relationship	
Reason	
Comment	
UDC Identifier	
UDC Account Identifier	
Effective Start Date	
Effective End Date	
Account Status	
Pending Status	
Pending ESP Identifier	
Reading Estimation Method	
Commodity	

(continued)

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Appendix A

**DIRECT ACCESS SERVICE REQUEST (DASR) FORM
 (continued)**

TABLE 1 - Administrative Data Type 1 - DASR - MEPAD01 (cont'd)

Customer Name	
Contact Last Name	
Contact First Name	
Contact Middle Initial	
House/Bldg No.	
House/Bldg. Fraction No.	
Street Prefix	
Street Name	
Street Suffix City	
Unit Number	
City	
State	
ZIP	
Zip Extension (+4)	
Billing Options (for future use)	
UDC Rate Name	
SP Rate Name	
Phone International Access	
Phone Area Code	
Phone Number	
Fax Number	
Renewable Energy Provider	
Meter Count	
Life Support Equipment	Yes or No

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**DIRECT ACCESS SERVICE REQUEST (DASR) FORM
 (continued)**

TABLE 2 - Administrative Data Type 2 - Credit Data - MEPAD02

Required DASR Data Element	Example Data
Record Type	MEPAD02
Record Version	
Sender Identifier	
Sender Customer Identifier	
Receiver Identifier	
Receiver Customer Identifier	
Time Stamp	
Record Identifier	
Operation Type	
Service Relationship Count	
Type of Service Relationship	
Reason	
Comment	
UDC Account Identifier	
Social Security Number	
Drivers License Number	
Spouse Name	
Spouse's Social Security Number	
Spouse's Driver's License Number	

TABLE 3 - Required Equipment Configuration Data - Type 1 - MEPEC01 (If a Meter Change is Required).

Required DASR Data Element	Example Data
Record Type	MEPBD01
Record Version	
Sender Identifier	
Sender Customer Identifier	

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Appendix A

**DIRECT ACCESS SERVICE REQUEST (DASR) FORM
 (continued)**

TABLE 3 - Required Equipment Configuration Data - Type 1 - MEPEC01 (cont'd.)

Receiver Identifier	
Receiver Customer Identifier	
Time Stamp	
Record Identifier	
Operation Type	
Purpose	
Comment	
Commodity	
Meter Type	
Separate KVAR	
Separate kwh/kw	
Separate Recorder	
Manufacturer	
Model	
Mfg. Serial Number	
Meter Identifier: Company Meter Number (a Utility-approved number until RISF Universal Identifier can be implemented)	
Date of Purchase	
Date of Installation	
Owner	
Parameter Count	
Parameters	
Use Code	
Usage reading interval - Time Interval (minutes)	
Units Parameters	
Disc. Constant	
Dial Constant	
Register Ratio	
Meter Constants (Demand, KWH, RKVA)	
Meter Read	

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Appendix A

**DIRECT ACCESS SERVICE REQUEST (DASR) FORM
 (continued)**

TABLE 3 - Required Equipment Configuration Data - Type 1 - MEPEC01 (cont'd.)

Star or Delta	
Correction Factors (provide numeric only if field is performed - otherwise note No Field Test)	
Remove or set reads (including TOU reads. KWH and Demand if required)	
Meter Time	
Action Taken Code	
Condition Codes (as found conditions)	

This Attachment A is not intended to be a technical specification. Complete technical detail and specifications for DASR submission can be obtained from the Utility.

This is an interim list and is subject to changes based upon the upcoming Retail Settlement Information Forum (RSIF) Workshop Decision. Updated information will be made available.

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Appendix B

UTILITY/ESP SERVICE AGREEMENT

Agreement Number: _____

This Energy Service Provider Service Agreement (the "Agreement") is made and entered into as of this ____ day of _____, _____, by and between "_____" ("ESP"), a _____ organized and existing under the laws of the state of _____, and "_____" ("Utility"), a corporation organized and existing under the laws of the state of _____. From time to time, ESP and the Utility shall be individually referred to herein as a "Party" and collectively as the "Parties".

Section 1: General Description of Agreement

- 1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which ESP shall offer electrical energy services, including, but not limited to, account maintenance and billing services, electrical meter installation, meter reading services and/or any other services that may be approved by the California Public Utilities Commission ("CPUC") in Direct Access transactions with customers in the Utility's service territory ("Direct Access Services"). Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledge that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Except where explicitly defined herein (including Attachment A hereto) the definitions controlling this Agreement are contained in Utility's Rule 1 and Rule 22.
- 1.2 The form of this Agreement has been developed as part of the CPUC regulatory process, was intended to conform to CPUC directions, was filed and approved by the CPUC for use between the Utility and ESPs and may not be waived, altered, amended or modified, except as provided herein or in the Utility's Rule 22, or as may otherwise be authorized by the CPUC.

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Issued by

Advice Letter No. 28-E

Michael R. Smart

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Appendix B

UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 2: Representations

- 2.1 Each Party represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.
- 2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 2.4 Each Party shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date ESP informs Utility that it is no longer operating as an ESP in the Utility's service territory; (b) the earlier termination pursuant to Section 4 hereof; or (c) the effective date of a new Utility/ESP Service Agreement between the Parties hereto. Notwithstanding the Effective Date of this Agreement, the ESP acknowledges that it may only offer Direct Access Services to customers effective January 1, 1998, or such other date as may be directed by the CPUC for commencement of such services by ESPs, and only after it has complied with all provisions of this Agreement and Utility's applicable tariffs.

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Issued by

Advice Letter No. 2-E

Michael R. Smart

Date Filed July 15, 2013

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Appendix B

UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 4: Events of Default and Remedy for Default

- 4.1 An Event of Default under this Agreement shall include either Party's material breach of any provision of this Agreement, including those incorporated by reference herein, and failure to cure such breach within thirty (30) calendar days of receipt of written notice thereof from the non-defaulting Party; or such other period as may be provided by this Agreement or the Utility's Rule 22.
- 4.2 In the event of such an Event of Default, the non-defaulting Party shall be entitled (a) to exercise any and all remedies available under the Utility's Rule 22; (b) to the extent not inconsistent with the Utility's Rule 22, to exercise any and all remedies provided for by law or in equity; and (c) in the event of a material Event of Default, to terminate this Agreement upon written notice to the other Party, which shall be effective upon the receipt thereof.
- 4.3 Breach by any Party hereto of any provision of the Utility's Rule 22 shall be governed by applicable provisions contained therein and each Party will retain all rights granted thereunder.

Section 5: Billing, Metering and Payment

- 5.1 Billing options and metering services which are available to ESP shall be as described in the Utility's Rule 22. Billing and metering options applicable to a particular customer shall be designated in the Direct Access Service Request submitted by the ESP for such customer.
- 5.2 Utility will bill and the ESP agrees to pay Utility for all services and products provided by Utility in accordance with the terms and conditions set forth in the Utility's Rule 22 Any services provided by the ESP to the Utility shall be by separate agreement between the Parties and are not a subject of this Agreement.

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UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 6: Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred, except as provided for in this Section. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability, except in the event of an action covered by the Indemnification provisions of Section 7 of this Agreement, in which event this Section 6 shall not be applicable.

Section 7: Indemnification

7.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 6 of this Agreement, each Party (the "Indemnifying Party") shall indemnify and hold harmless, the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively, the "Indemnified Party") and at the Indemnified Party's option, the Indemnifying Party shall defend the indemnified Party from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates' employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party, its officers, directors, employees, agents or assigns arising out of this Agreement except to the extent caused wholly or in part by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in, and unless in the opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the

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Advice Letter No. 28-E

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UTILITY/ESP SERVICE AGREEMENT
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Section 7: Indemnification (cont'd.)

7.2 (cont'd.)

Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any direct, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 8: Assignment and Delegation

8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 8 shall be void.

8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for
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UTILITY/ESP SERVICE AGREEMENT
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Section 8: Assignment and Delegation (cont'd.)

8.2 (cont'd.)

performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require, and provided further that each Party may subcontract its obligation to provide Metering or Meter Reading Services under this Agreement only to subcontractors who have complied with all certification or registration requirements described in applicable law, CPUC rules and the Utility's Rule 22. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party s designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Energy Service Provider Service Agreement and all attachments hereto, all Direct Access Service Requests submitted pursuant to this Agreement and the Utility's Rule 22. This Agreement supersedes all other agreements or understandings, written or oral, between the Parties related to the subject matter hereof. This Agreement may be modified from time to time only by an instrument in writing, signed by both Parties.

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Issued by

Advice Letter No. 28-E

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UTILITY/ESP SERVICE AGREEMENT
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Section 11: Nondisclosure

11.1 Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

11.2 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

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Advice Letter No. 28-E

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Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) U.S. Mail, first class postage pre-paid; or (c) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to ESP:

Contact Name: _____

Business Address: _____

Facsimile: _____

If the notice is to Utility:

Contact Name: _____

Business Address: _____

Facsimile: _____

13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.

13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to Direct Access service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

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Issued by

Advice Letter No. 28-E

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UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

15.1 The form of this Agreement has been filed with and approved by the CPUC as part of the Utility's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the Utility's obligations hereunder (including the performance of Billing Services, Metering Services and MDMA Services by the Utility) shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution. Should such a dispute arise, the parties shall be required to meet and confer in an effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within a reasonable period of time, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes.

15.2 Any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the ESP's obligations hereunder (including the performance of Billing Services, Metering Services and MDMA Services by the ESP) shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution. Should such a dispute arise, the parties shall be required to meet and confer in an effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within a reasonable period of time, the parties may mutually agree to pursue mediation or arbitration to resolve such issues.

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Advice Letter No. 28-E

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UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in _____ County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any notification of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and Utility's applicable tariffs despite occurrence of a force majeure event.

Section 18: Unauthorized Use of Energy (Energy Theft)

18.1 The ESP represents and warrants that for each of its Customers, and at all times during which it provides Direct Access services as an Energy Service Provider, the

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UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 18: Unauthorized Use of Energy (Energy Theft) (cont'd.)

18.1 (cont'd.)

ESP shall completely, accurately, and in a timely manner account for each of its Customer's loads with a duly authorized Scheduling Coordinator. Load data not accounted for in this manner may provide grounds for termination of this Agreement. For verification purposes only, the Utility shall have complete access to the identity of the Scheduling Coordinator and the load data provided to it by the ESP. The information is to remain confidential and shall not be disclosed to any unauthorized person.

18.2 The Utility shall notify the ESP immediately and the ESP shall notify the Utility immediately of any suspected unauthorized energy use. The Parties agree to preserve any evidence of unauthorized energy use. Once unauthorized energy use is suspected, the Utility, in its sole discretion, may take any or all of the actions permitted under Utility's applicable tariffs.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be severable and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or be joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Conflicts Between this Agreement and the Utility's Rule 22

Should a conflict exist or develop between the provisions of this Agreement and the Utility's Rule 22, as approved by the CPUC, the provisions of the Utility's Rule 22 shall prevail.

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UTILITY/ESP SERVICE AGREEMENT
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Section 21: Amendments or Modifications

21.1 Except as provided in Section 21.2, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.

21.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, ESP may elect to terminate this Agreement upon written notice to Utility, which shall be effective upon the receipt thereof. Utility retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in Utility's rates, charges, classification, service, principles, or any agreement relating thereto.

Section 22: Billing Option(s) Offered to End-Use Customers by ESP

Check which billing option(s) (as described in the Utility's Rule 22) ESP intends to provide its Customers under this Agreement. The provisions of this section 22 shall be applicable only if the billing option is offered by the Utility as set forth in the Utility's Rule 22. At present, only the dual billing option is available.

- _____ Consolidated Billing by Utility. (if the ESP is selecting this billing option, indicate the primary method for notifying the Utility of the ESP charges.)
- _____ EDI
- _____ Other electronic exchange

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UTILITY/ESP SERVICE AGREEMENT

(continued)

Section 24: Audits

- 24.1 The Utility and the ESP shall each retain such specific records as may be required to support the accuracy of meter data provided in their respective consolidated billings (if available). When either Party reasonably believes that errors related to metering or billing activity may have occurred, a Party may request the production of such documents as may be required to verify the accuracy of such metering and consolidated billing (if available). Such documents shall be provided within ten (10) business days of such request. In the event the requesting Party, upon review of such documents, continues to believe that the other Party's duty to accurately meter and provide consolidated billing (if available) for usage has been breached, the requesting Party may direct that an audit be conducted. The Utility and the ESP shall designate their own employee representative or their contracted representative to audit the other party's records.
- 24.2 Any such audit shall be undertaken by the Utility, the ESP, or their contracted representative at reasonable times without interference with the audited Party's business operations, and in compliance with the audited Party's security procedures. The Utility and the ESP agree to cooperate fully with any such audit.
- 24.3 Specific records to support the accuracy of meter data provided in the consolidated billings (if available) may require examination of billing and metering support documentation maintained by subcontractors. The Utility and the ESP shall include a similar clause in their agreements with their subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to consolidated billing (if available) to Direct Access Customers.
- 24.4 The auditing Party will notify the audited Party in writing of any exception taken as a result of an audit. The audited Party shall refund the amount of any undisputed exception to the auditing Party within ten (10) days. If the audited Party fails to make such payment, the audited Party agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the

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UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 24: Audits (cont'd.)

24.4 (cont'd.)

applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date the audited Party reimburses the auditing Party for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then the audited Party shall reimburse the auditing Party for the cost of the audit.

24.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 25: Miscellaneous

25.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and its subsections; and (c) the words "include," "includes," and "including" when used in this Agreement shall be deemed in each case to be followed by the words "without limitations." The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

25.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.

25.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

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UTILITY/ESP SERVICE AGREEMENT
(continued)

Section 25: Miscellaneous (cont'd.)

- 25.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.
- 25.5 Each Party shall be responsible for paying its own attorney's fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof. If a dispute exists hereunder, the prevailing Party, as determined by the CPUC, or as may otherwise be determined by the dispute resolution procedure contained in Section 15 hereof, if used, or by a court of law, shall be entitled to reasonable attorneys' fees and costs.
- 25.6 To the extent that the CPUC has a right under then-current law to audit either Party's compliance with this Agreement or other legal or regulatory requirements pertaining to Direct Access transactions, that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.
- 25.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of ESP

On Behalf of Utility

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

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UTILITY/ESP SERVICE AGREEMENT
(continued)

ATTACHMENT A

A. Definitions:

Billing Services - The consolidated billing services described in the Utility’s Rule 22 provided by the Utility and/or ESP. At present, only the dual option billing is available as set forth in the Utility’s Rule 22.

Consolidated ESP Bill - The consolidated bill prepared and presented by ESP to an end-use customer which includes the customer's ESP Charges and the Utility Charges.

Consolidated Utility Bill - The consolidated bill prepared and presented by the Utility to an end-use customer which includes the Customer's ESP Charges and the Utility Charges.

Direct Access Customers - An end-use customer located within the Utility's service territory who purchases Direct Access Services through the ESP.

ESP Charges - Charges for Direct Access Services provided by the ESP.

Metering Services - The meter installation, maintenance and related services described in the Utility’s Rule 22 are provided by the Utility and/or ESP.

Meter Reading Services - The meter reading and related services described in the Utility’s Rule 22 which are provided by the Utility and/or ESP.

Utility Charges - Charges (a) for services provided by the Utility, or (b) which are energy-related and which are approved by the CPUC or the Federal Energy Regulatory Commission (including any Competition Transition Charges or Fixed Transition Amount Charges owing to Utility or its affiliates, as those terms are defined under the California Public Utilities Code).

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Appendix B

UTILITY/ESP SERVICE AGREEMENT
(continued)

ATTACHMENT A (cont'd.)

B. Contact Persons (Section 13.3):

1. Billing Services

Utility Contact: _____

ESP Contact: _____

2. Metering and Meter Reading Services

Utility Contact: _____

ESP Contact: _____

C. Parties' Representatives (Section 15.1):

Utility Representative: _____

ESP Representative: _____

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