

504 11th Street Paintsville, Kentucky 41240-1422 (606) 789-4095 • Fax (606) 789-5454 Toll Free (888) 789-RECC (7322)

November 21, 2012

RECEIVED

NOV 26 2012

PUBLIC SERVICE COMMISSION

Mr. Jeff R. Derouen Executive Director Public Service Commission 211 Sowers Boulevard PO Box 615 Frankfort KY 40602-0615

RE: Case No: 2012-00425 APPLICATION OF BIG SANDY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF A PREPAY METERING PROGRAM

Dear Mr. Derouen:

Please find enclosed an original and eight copies of Big Sandy Rural Electric Cooperative Corporation's responses to requests for information. Should you need anything further regarding this matter, please let me know.

Sincerely,

laff Dratar

Operations Superintendent

Steve L. Beshear Governor

Leonard K. Peters Secretary Energy and Environment Cabinet

Albert Burchett, Attorney Big Sandy R.E.C.C. 504 11th Street

Paintsville, KY 41240-1422



Commonwealth of Kentucky

Public Service Commission

211 Sower Blvd. P.O. Box 615 Frankfort Kentucky 40602-0615 Telephone: (502) 564-3940 Fax: (502) 564-3460 psc.ky.gov

November 09, 2012

David L. Armstrong Chairman

> James Gardner Vice Chairman

Linda Breathitt Commissioner

RECEIVED

NOV 26 2012

PUBLIC SERVICE COMMISSION

RE: Case No. 2012-00425

Please see enclosed data request from Commission Staff in the above case.

If you need further assistance, please contact my staff at (502) 564-3940.

Sincerely

Executive Director

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG SANDY RURAL ELECTRIC)	
COOPERATIVE CORPORATION FOR APPROVAL OF)	CASE NO.
A PREPAY METERING PROGRAM)	2012-00425

COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION TO BIG SANDY RURAL ELECTRIC COOPERATIVE CORPORATION

Big Sandy Rural Electric Cooperative Corporation ("Big Sandy"), pursuant to 807 KAR 5:001, is to file with the Commission the original and eight copies of the following information, with a copy to all parties of record. The information requested herein is due within 14 days of the date of this request. Responses to requests for information shall be appropriately bound, tabbed and indexed. Each response shall include the name of the witness responsible for responding to the questions related to the information provided.

Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

Big Sandy shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect. For any request to which

Big Sandy fails or refuses to furnish all or part of the requested information, Big Sandy shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations.

- 1. Refer to the Application, Exhibit A, Terms & Conditions Section, page 1, paragraph 1.
- a. Identify the consequences a prepay customer would be subject to for terminating a prepay contract before the one-year term expires.
- b. Identify and explain the basis for any cost applicable to a prepay customer for damaged prepay equipment and software.
- 2. Refer to the Application, Exhibit C, page 2. Exhibit B of that page includes depreciation based on a 15-year life. Explain why 15 years was used for depreciation.
- 3. Refer to the response to Item 3.b.(1) of the Initial Information Request of Commission Staff ("Staff's First Request"), which asked Big Sandy to confirm that if a customer is unable to receive either email, text, or automated phone messages, the customer will not be able to participate in the prepay program. It is not clear from Big Sandy's response that access to Internet service is a requirement for participating in the proposed prepay program. Confirm that access to the Internet is required, and explain what information will be provided on Big Sandy's Web site.

- 4. Refer to the response to Item 5.a. of Staff's First Request. Explain whether Big Sandy is willing to add a specific reference to the \$20 Returned Check fee to paragraph 13 of the Terms & Conditions section of its proposed tariff.
 - 5. Refer to Big Sandy's response to Item 5.c. of Staff's First Request.
- a. Confirm that participants in the proposed prepay program will be required to set an alert. If not, explain the reasoning for not including this requirement.
- b. Explain whether there have been any instances in the past where Big Sandy has not been able to communicate with a customer through electronic means.
- 6. Refer to Item 6 of Staff's First Request. Provide Big Sandy's definition of "extreme weather conditions," and explain whether adverse weather conditions could give rise to a power outage causing a customer to be unable to make a timely payment toward an arrearage.
- 7. Refer to the response to Item 7.a. of Staff's First Request. Explain whether the participation rate cited is premised on an assumed monthly fee level.
- 8. Refer to the responses to Items 7.b and c of Staff's First Request. Clarify whether it is Big Sandy's intent to propose a decreased customer charge if participation levels exceed expectations.
- 9. Refer to the response to Item 8 and to the Application, Exhibit C, page 3 of6.
- a. Provide details concerning Exceleron's monthly hosting fee and services provided for the \$6 per customer per month fee. The response should include Exceleron's guarantees in terms of down-time, length of maintenance windows, plans

for maintaining power in the event of outages and natural disasters, fire wall security, SSL encryption, etc.

- b. Explain the basis for:
 - (1) The estimated cost of \$1.05 per transaction per month.
 - (2) The estimate of three transactions per month.
- (3) The reasonableness of charging software hosting expense as well as expense for three transactions per month in the monthly charge.
- (4) The decision to use Exceleron's Prepaid Account Management System rather than using Big Sandy's CIS system.
 - 10. Refer to the response to Item 11 of Staff's First Request.
- a. If 2,500 delinquent notices are sent per month, of which approximately 100 of those are subject to disconnect, and Big Sandy had 12,095 residential customers according to its 2011 Annual Report, explain why the 100 disconnects represent 4 percent and not .83 percent of total customers (100 / 12,095). Asked another way, if approximately 20.7 percent (2,500 / 12,095) of residential customers receive disconnect notices each month, and 4 percent (100 / 2,500) are subject to disconnect, explain why the 100 disconnects are not .83 percent (4 percent x 20.7 percent) of total customers.
- b. If the answer to a above is that the percentage of disconnects should be .83 percent of program participants, confirm that the number of estimated avoided field trips should be 4 or 5 instead of 20, and provide all impacts on the calculation of Additional Annual Savings as originally requested in Item 11.

11. Refer to the response to Item 12 of Staff's First Request, and Attachment1 of the Application, Additional Annual Savings.

a. Confirm that the 25 overtime trips used in estimating the savings in overtime due to winter hardship reconnects are not calculated similarly to the 4 percent referenced in Item 6 above. If they are calculated in a similar manner to the 4 percent, and if the percentage should be something different based on the percent of 12,095 residential customers needing winter hardship reconnects, provide any necessary revisions to the calculation of estimated savings in winter hardship reconnect over time.

b. Provide Big Sandy's level of bad debt write-offs corresponding to the \$33,394,000 (12 months' revenue) indicated in the response to Item 12.

c. Explain why 980 kwh was used as the residential average for the purpose of calculating lost margin from kwh sales, rather than the residential average usage of 1,260 provided in Case No. 2012-00030,¹ page 1 of Exhibit 1 of the Prepared Testimony of James R. Adkins.

d.	Explain the calculation of the	.22 used	/n t	the Loss	Margin	from kwh
Sales calculation.			//			

Jeff Derbuen

Executive Director

Public Service Commission

P.O. Box 615

Frankfort, Kentucky 40602

DAT	ED	NOV	0	9	2012		
cc:	Parties	s of R	lec	col	d		

¹ Case No. 2012-00030, Application of Big Sandy Rural Electric Cooperative Corporation for an Adjustment of Rates, filed Apr. 19, 2012.

!		

Refer to the Application, Exhibit A, Terms & Conditions Section, page 1, paragraph 1.

a. Identify the consequences a prepay customer would be subject to terminating a prepay contract before the one-year term expires.

RESPONSE:

The only consequences a prepay customer would be subject to would be no different than a new consumer applying for service. They would be subject to a Credit Risk Assessment through Southeastern Data Corporations' Online Utility Exchange to determine the necessity of a deposit. The necessity of a deposit would be based on Credit Risk Assessment outcome. If deemed necessary, then a deposit would be required from the prepay customer.

b. Identify and explain the basis for any cost applicable to a prepay customer for damaged prepay equipment and software.

RESPONSE:

The meter and disconnect collar would be the only equipment accessible for damage by the prepay customer; therefore, tampering fees would be accessed and handled in the same manner as our current post pay customers. Please refer to PSC NO. 2005-00125, Original Sheet No. 15 and Original Sheet No. 16, #34, Tampering (see attachment). All fees resulting from tampering would be required to be paid prior to service being restored.

Refer to the Application, Exhibit C, page 2. Exhibit B of that page includes depreciation based on a 15-year life. Explain why 15 years was used for depreciation.

RESPONSE:

The reason we used depreciation based on a 15 year life is because that is the life expectancy of the electronic equipment. We also consulted with Blue Grass Energy and they used the same depreciation term. The 15 year depreciation was approved in Case 2012-00260.

Witness: Jeff Prater

Refer to the response to Item 3.b.(1) of the Initial Information Request of Commission Staff ("Staff's First Request"), which asked Big Sandy to confirm that if a customer is unable to receive either email, text, or automated phone messages, the customer will not be able to participate in the prepay program. It is not clear from Big Sandy's response that access to Internet service is a requirement for participating in the proposed prepay program. Confirm that access to the Internet is required, and explain what information will be provided on Big Sandy's Web site.

RESPONSE:

No, Internet service would not be required for participation in the prepay program. If a prepay participant has access to phone service and/or text ability, they would be able to receive alerts that were sent out regarding their account. Although Internet service would be ideal, it is not mandatory to monitor their monetary balance, as they can call into the Big Sandy's office or the toll free number to PAMS software IVR system and obtain that.

Refer to the response in Item 5.a. of Staff's First Request. Explain whether Big Sandy is willing to add a specific reference to the \$20 Returned Check fee to paragraph 12 of the Terms & Conditions section of its proposed tariff.

RESPONSE:

Yes, Big Sandy is willing to add a specific reference to the \$20 Returned Check fee to paragraph 13 of the Terms & Conditions section of its proposed tariff. The modification would read as follows:

"If a payment on a prepay account is returned for any reason, the account is subject to a Returned check fee of \$20.00 as listed in Big Sandy RECC's Rules and Regulations, Case No. 2005-00125 Appendix B. In addition, if any outstanding balance is transferred from another account, the amount of the transfer will be debited to the prepay account. The member will have to apply funds to the account to cover the transfer to keep the account from disconnecting due to a negative balance.

Refer to Big Sandy's response to Item 5.c. of Staff's First Request.

a. Confirm that participant in the proposed prepay program will be required to set an alert. If not, explain the reasoning for not including this requirement.

RESPONSE:

Yes, the participant will be required to set an alert.

b. Explain whether there have been any instances in the past where Big Sandy has not been able to communicate with a customer through electronic means.

RESPONSE:

Big Sandy doesn't presently rely on electronic means to communicate with customers; therefore, we have had no reason to monitor this.

Refer to Item 6 of Staff's First Request. Provide Big Sandy's definition of "extreme weather conditions," and explain whether adverse weather conditions could give rise to a power outage causing a customer to be unable to make a timely payment toward and arrearage.

Response:

Extreme weather includes unusual, severe or unseasonal weather; weather at the extremes of the historical distribution (the range that has been seen in the past). Although adverse weather conditions could give rise to a power outage it would not cause a customer to be unable to make a timely payment toward an arrearage. The customer has numerous options to make a payment such as: calling our afterhours call center; making a payment online; making a payment through Wal Mart; making a payment with a money gram.

Witness: Jeff Prater

Refer to the response to Item 7.a. of Staff's First Request. Explain whether the participation rate cited is premised on an assumed monthly fee level.

Response:

Yes, the participation rate cited premised on an assumed monthly fee level.

Refer to the responses to Items 7.b and c of Staff's First Request. Clarify whether it is Big Sandy's intent to propose a decreased customer charge if participation levels exceed expectations.

Response:

No, it is not Big Sandy's intent to propose a decreased customer charge if participation levels exceed expectations. Just as it is not Big Sandy's intent to propose an increased customer charge if participation level are below expectations.

Although not our initial intent: "If there is an unexpected high level of participation Big Sandy would not be opposed to re-evaluating all aspects of the prepay metering program and requesting an appropriate change from the Commission".

Refer to the response to Item 8 and to the Application, Exhibit C, page 3 of 6.

a. Provide details concerning Exceleron's monthly hosting fee and services provided for the \$6 per customer per month fee. The response should include Exceleron's guarantees in terms of down-time, length of maintenance windows, plans for maintaining power in the event of outages and natural disasters, fire wall security, SSL encryption, etc.

RESPONSE:

We are enclosing a copy of Exceleron's PAMS software access agreement. This is a very detailed agreement with specific language concerning the monthly hosting services.

Page 1, Exhibit A, Terms & Conditions details service level and support and support.

Also, Big Sandy's IT Manager will ensure all data transfers are SSL encrypted, and information is firewall protected.

- b. Explain the basis for:
 - (1) The estimated cost of \$1.05 per transaction per month

RESPONSE:

Big Sandy will incur a cost associated with all payments made by prepay participants. The cost estimate of \$1.05 is based on a Big Sandy Customer Service Representative spending an average of 3 minutes per phone transaction. However, if a payment is processed through our after-hours call center it will cost Big Sandy \$1.57 per transaction. In addition, Big Sandy pays SEDC a monthly hosting fee and is subject to a processing charge for all online payments.

(2) The estimate of three transactions per month.

RESPONSE:

According to Mr. Bob Finley, Director of National Sales, Exceleron Software, Inc., Dallas TX, Phone 972-852-2711, the average prepay customer conducts 4 transactions per month. One of these transactions would be covered under the regular customer charge; therefore, based on Mr. Finley experience, the average prepay customer will require an additional 3 transactions per month.

(3) The reasonableness of charging software hosting expense as well as expense for three transactions per month in the monthly charge.

RESPONSE:

Upon the research conducted on prepay metering (as stated in the previous response 9.b. #2) the likelihood of three transactions each month is a realistic number. Also, the hosting fee is an unavoidable charge through Exceleron (as stated previously in response 9.a.).

(4) The decision to use Exceleron's Prepaid Account Management System rather than using Big Sandy's CIS system.

Response:

Exceleron was established in 1999, produced a prepay software system and have been in the business since. According to NRECA, Cooperative Research network, Prepaid Metering Analytical Report, Project 10-10, June 2012, on page 49-52, Table 10.2 of the 95 prepayment programs nationwide, 47 uses Exceleron. Exceleron's software system will interface with Big Sandy's CIS system. To ensure the program is successful Big Sandy wanted to go with an experience provided such as Exceleron. Although Big Sandy's CIS system has recently introduced a prepay software system, our opinion is that their system is still in the developmental stage and we were not satisfied with their limited exposure.

Witness: Jeff Prater

Refer to the response to item 11 of Staff's First Request.

a. If 2,500 delinquent notices are sent per month, of which approximately 100 of those are subject to disconnect, and Big Sandy had 12,095 residential customers according to its 2011 Annual Report, explain why the 100 disconnects represent 4 percent and not .83 percent of total customers (100/12,095). Asked another way, if approximately 20.7 percent (2,500/12,095) of residential customers receive disconnect notices each month, and 4 percent (100/2500) are subject to disconnect, explain why the 100 disconnects are not .83 percent (4 percent X 20.7) of total customers.

RESPONSE:

It was Big Sandy's desire to find the ratio of the number of delinquent accounts that required a serviceman to physically go out to work their account, which would be in relationship to those receiving a delinquent notice. Therefore, to determine this ratio it was figured by the number of delinquent notices produced by the number that actually was worked (100/2500). The .80 percent (9595/12,095) of customers that are never delinquent had no bearing on this calculation.

b. If the answer to a. above is that the percentage of disconnects should be .83 percent of program participant, confirm that the number of estimated avoided field trips should be 4 or 5 instead of 20, and provide all impacts on the calculation of Additional Annual Savings as original requested in Item 11.

RESPONES:

It is Big Sandy's contingency that the 4 percent is correct for this calculation.

Refer to the response to Item 12 of Staff's First Request, and Attachment 1 of the Application, Additional Annual Savings.

a. Confirm that the 25 overtime trips used in estimating the savings in overtime due to winter hardship reconnects are not calculated similarly to the 4 percent referenced in Item 6 above. If they are calculated in a similar manner to the 4 percent, and if the percentage should be something different based on the percent of 12,095 residential customers needing winter hardship reconnects, provide any necessary revisions to the calculation of estimated savings in winter hardship reconnect over time.

RESPONSE:

Big Sandy still stands by the 4 percent calculation. However, the conclusion of eliminating 25 O.T. trips was based on historical information and the collaborative discussion of Big Sandy's staff and employees.

b. Provide Big Sandy's level of bad debt write-offs corresponding to the \$33,394,000 (12 months' revenue) indicated in the response to Item 12.

RESPONSE:

Big Sandy's bad debt write off for the corresponding time was \$97,601.37. The estimated reduction in bad debt write-off was calculated in the following manner:

33,394,000.00 Total Revenue
97,510.48 .2920% Ratio bad debt /write off to total revenue
64,116.48 .1920% Estimated drop of .10% in the ratio of bad debt/write off to total revenue
33,394.00 Annual Savings

If Big Sandy experiences the same ratio reduction of bad debt write offs to total revenue as Brunswich EMC, in Charlotte, NC, (as mentioned in first response to" Staff's First Request") we will realize an annual dollar savings of \$33,394.00.

c. Explain why 980 kwh was used as the residential average for the purpose of calculating lost margin from kwh sales, rather than the residential average usage of 1,260 provided in Case No. 2012-00030, page 1 of Exhibit 1 of the Prepared Testimony of James R. Adkins.

RESPONSE:

During the process of analyzing the financial impact of prepaid metering, the month of June 2012 was chosen as a typical usage month to analyze the reduction of a prepay program. This should have been changed to the 12 month average which is correctly stated as 1260 in Case No. 2012-00030.

This was a mistake on Big Sandy's part. We should have used the annual average of 1260 kwh.

The calculation used:

980 kwh X 500 prepaid members = 490,000 kwh 10% usage reduction = 49,000 kwh

Difference between wholesale and retail (.022) = 1,078 kwh monthly

12 months = 12,936 Annually

The correct calculation should have been:

1260 kwh X 500 prepaid members = 630,000 kwh 10% usage reduction = 63,000 kwh

Difference between wholesale and retail (.022) = 1,386 kwh monthly

12 months = 16,632 Annually

This is a difference of \$3696.00 annually or an additional loss of \$.62 monthly.

Consequently, since this is only an estimate, Big Sandy does not feel it would be necessary to change our proposed monthly program fee.

d. Explain the calculation of the .22 used in the Loss Margin from kwh Sales calculation.

RESPONSE:

The calculation should have been .022 and .22 was a typographical error. The difference between the blended wholesale rate paid to East Kentucky Power and the retail rate charged to members is actually .022. The actual value on Attachment 1 of the Application, Additional Annual Savings is correct because it was figured on the correct rate of .022.

Witness: Jeff Prater

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FORM FOR FILING RATE SCHEDULES

BIG SANDY RURAL ELECTRIC COOPERATIVE CORPORATION

FOR ALL TERRITORIES SERVED PSC NO. 2005-00125 ORIGINAL SHEET NO. 15 CANCELLING PSC NO. 95-383 ORIGINAL SHEET NO.

31. COLLECTION FEE - \$30.00

When a Cooperative representative calls at a members premises For the purpose of collecting a delinquent bill, it will be assessed When:

- -The service is terminated.
- -Member pays the delinquent bill.
- -Member agrees to a payment schedule.

A maximum of one (1) collection fees will be assessed a member Within a single thirty (30) day period.

32. RECONNECTION FEE - \$35.00 during regular office hours \$52.50 outside regular office hours

Applicable to services which have been disconnected due to non-payment. Due and payable at the time of reconnection.

33. LATE PAYMENT PENALTY - 7% OF NET AMOUNT

7% of net amount due will be assessed if member fails to pay the net amount by the 15th of the month. A penalty may be assessed only once on any bill for service rendered.

34. TAMPERING

If the meter or other property belonging to the Cooperative is tampered or interfered with, the customer being supplied through such equipment shall pay the amount which the Cooperative may estimate is due for service rendered but not registered on the Cooperative's meter and for such testing, replacements, and repairs as are necessary, as well as for costs of inspections, investigation, and protective installation.

DATE OF ISSUE: Sept 07, 2005 ISSUED BY:	DATE EFFECTIVE: October 01, 2005 TITLE: President/General Manager
Issued by authority of an Order of the Public Se 2005-00125 dated	rvice Commission of Kentucky in Case No.

FORM FOR FILING RATE SCHEDULES

BIG SANDY RURAL ELECTRIC COOPERATIVE CORPORATION

FOR ALL TERRITORIES SERVED PSC NO. 2005-00125 ORIGINAL SHEET NO. 16 CANCELLING PSC NO. 95-383 ORIGINAL SHEET NO. 16

\$30.00 labor plus

actual cost of equipment

35. TAMPERING (continued)

"Tampered and Interfeared with" refers to any activity that would prohibit a meter or any other electrical equipment for accurately recording electric consumption at any given metering point. Examples of this would include, but not limited to, drilling holes and inserting objects into meter to "slow down" the meter. Other examples are turning the meter upside down, bypassing the meter and changing/destroying settings or components of a meter.

The process and factors used to estimate the amount due for services not registering on a meter would include determination of the last accurate reading on the consumer's meter, review and analysis of consumer's usage history and any other pertinent information. These factors would be used to apply a method of averaging to determine estimated usage.

The rates for such procedures are as follows:

and meter base lock):

Testing meter for accuracy:	\$30.00
Replacements:	Actual Cost
Repairs:	Actual Cost
Inspections:	\$30.00
Investigations:	\$30.00
Protective Installation (installation of specialized tamper-resistant security band	

DATE OF I	ISSUE: Sept 07, 2005	DATE EFFECTIVE: October 01, 2005 TITLE: President/General Manager
Issued by au	thority of an Order of the	Public Service Commission of Kentucky in Case No.
2005-125	dated	•

PAMS SOFTWARE ACCESS AGREEMENT

This PAMS Software Access Agreement ("Agreement"), dated as of the Effective Date shown below, is entered into by and between Exceleron Software, Inc., a Delaware corporation, with an address of 5440 Harvest Hill Road, Suite 233, Dallas, TX 75230 ("Exceleron"), and Customer identified below. This Agreement consists of this cover page (the "Cover Page") and the terms and conditions on the attached Exhibits A and B.

Customer Name					
Contact Name & Title					
Street Address					
City, State and ZIP					
Telephone					
Fax					
E-mail Address					
Effective Date	Upon Signing	Expiration Date of I	nitial Term		
	·	FEES			
Configuration and Training Fee	d defined on <u>Exhibit A</u>		owing the com	pletion of the Pilot Period (as	
Notification and IVR Fees		ing the completion of or generating and sendi		iod, Customer shall pay the ving notifications:	
	\$0.05 for each toll of	eall \$0.04 per text me	ssage		
Monthly Fees	Upon completion of the Pilot Period Customer shall pay the following monthly fees: \$0.20 per Participating Member per day (the "Fees").				
Artic	upon the completion	of the Pilot Period Cu	stomer shall pa	ers, each month commencing by the greater of (i) the actual Minimum Fees based on the	
	Month following the	e Effective Date:	Monthly Mir Minimum Fe	nimum Fees (the "Monthly res")	
1	1-2 (Pilot Period)				
	3			**************************************	
	4				
	5				
	6-end of Term				
Payment	The above fees and cl	harges are payable as p	rovided in the	attached Exhibit A.	
		SIGNATURES			
the Effective Date.			ement by their	duly authorized officers as of	
Exceleron Software, Inc. Customer:					
Signature: Signature:					
Name (printed): Bob D. C	renshaw, Jr.	Name (printe	ed):		
Title: President		Title:			

EXHIBIT A TERMS AND CONDITIONS

1. Definitions

- 1.1 "Participating Members" means a member of the Customer who participates in the Customer's alternative prepaid program.
- 1.2 "PAMS Software" means that certain Exceleron software called PAMS or Prepaid Account Management System.
- 1.3 "Confidential Information" means this Agreement and all its exhibits, the PAMS Software, documentation, information, data, drawings, specifications, and any other information supplied by one party to the other and which should reasonably be considered confidential. Confidential Information will not include information that is publicly available, becomes publicly available through no fault of the other party, is already in the other party's possession without a confidentiality obligation, is obtained by the other party from a third party without restrictions on disclosure, or is independently developed by the other party without reference to the Confidential Information.
- 1.4 "Customer Data" means all data and information (whether or not Confidential Information) entered into the System by Customer.
- 1.5 "Effective Date" is defined on the Cover Page.
- 1.6 "*Initial Term*" is defined on the Cover Page.
- 1.7 "*Pilot Period*" means the period of time between the Effective Date and sixty (60) days from the Effective Date.
- 1.8 "System" means Exceleron's computer systems that are used to host the PAMS Software.

2. PAMS Software Access

- 2.1 Exceleron hereby grants to Customer a non-exclusive, nontransferable, non-sublicensable license to use the PAMS Software through the System during the Term (as defined below) solely for Customer's internal business purpose related to prepaid electricity service.
- 2.2 Customer must: (a) provide for its own access to the Internet and pay any service fees associated with such access, and (b) provide all equipment necessary to make such connection to the Internet, including a computer, modem and specified browser and plug-in software.
- 2.3 Exceleron will retain sole and exclusive ownership of all right, title and interest in and to the PAMS Software and System and all copies thereof.

2.4 Customer Data shall be and remain the property of Customer. Upon Customer's request, or upon the termination or expiration of this Agreement, such Customer Data shall be promptly returned to Customer by Exceleron in a form then maintained by Exceleron or, if Customer so elects, shall be destroyed.

3. Service Level and Support

- 3.1 Exceleron will use commercially reasonable efforts to make the System available for Customer's access between the hours of 5:00 a.m. and 2:00 a.m. Central Time, seven (7) days a week ("*Operating Hours*"). Except in the case of emergencies, Exceleron will provide Customer with at least twenty-four (24) hours prior notice of downtime required during Operating Hours and will use commercially reasonable efforts to accommodate Customer's schedule for such downtime.
- 3.2 The PAMS Software and System will operate in material conformance to the specifications set forth in Exhibit B. As Customer's sole and exclusive remedy, Exceleron will use commercially reasonable efforts to fix any nonconformities. Customer agrees that Exceleron may, in its reasonable commercial judgment, amend Exhibit B from time to time to further detail the PAMS Software and System. Amendments to Exhibit B are effective upon Customer's receipt of the revised Exhibit B. However, if: (a) the amendment would materially and adversely affect Customer, (b) Customer provides Exceleron with a written notice describing its objection to the amendment in reasonable detail within five (5) business days of the effective date of the amendment, and (c) Exceleron does not agree to waive the amendment as to Customer within five (5) business days of Customer's notice, then Customer may terminate this Agreement without liability.
- 3.3 Exceleron will provide Customer with those error corrections and modifications to the PAMS Software that Exceleron provides without cost to its other customers that access the PAMS Software through the System.
- 3.4 Exceleron will provide telephone call-back support during Exceleron's normal business hours to permit Customer to report problems and seek reasonable assistance in the use of the PAMS Software.
- 3.5 Exceleron will not be in default of this Agreement, or be liable in any way, to the extent the System is unavailable wholly or partly due to: (i) Customer's failure to perform its obligations under this Agreement that affects the performance of the System; (ii) force majeure events set forth in Section 12.9; (iii) the performance of Customer's third party telecommunications network provider(s); (iv) changes made at the request of Customer; (v) unforeseen capacity increases based on changes in Customer's business processes for which

Exceleron has not received at least thirty (30) days prior written notice from Customer; and (vi) Customer's software or hardware.

4. Other Services

4.1 Exceleron will provide Customer with two (2) business days of training on the use and operation of the System. The class will be held in Dallas, Texas at a mutually agreed upon date and time. Training will be "train the trainer" training and may accommodate up to three (3) individuals. Any additional training will be performed according to mutually agreed terms and conditions.

5. Fees and Payment Procedures

- 5.1 Customer shall pay Exceleron the fees in accordance with the fee structure set forth on the Cover Page and as otherwise provided in this Agreement. All amounts will be due and payable within twenty (20) days after the date of invoice. Any amounts owing that are not paid when due will accrue interest from the due date at the rate of eighteen percent (18%), or the maximum rate permitted by law, whichever is less.
- 5.2 All amounts shown in this Agreement are in United States dollars and are net of all sales, use, property and related taxes. Customer shall be responsible for all taxes arising out of or related to this Agreement (except for taxes based upon the net income of Exceleron), regardless of whether Exceleron bills Customer for such taxes.
- 5.3 In the event that Customer has not timely paid fees due under this Agreement or Customer is otherwise in breach of this Agreement, Customer acknowledges that Exceleron may suspend or deny Customer's access to the PAMS Software and System.

6. <u>Term and Termination</u>

- 6.1 This Agreement will take effect on the Effective Date and, unless terminated earlier as provided in this <u>Section 6</u>, will remain in force during the Initial Term. Following the Initial Term, unless terminated earlier as provided in this <u>Section 6</u>, this Agreement will automatically continue for successive annual periods (a "*Renewal Term*"; collectively with the Initial Term, the "*Term*").
- 6.2 Either party may terminate this Agreement at the end of the Initial Term or a Renewal Term by providing the other party with at least thirty (30) days written notice prior to the date of termination.
- 6.3 A party may terminate this Agreement upon written notice to the other party if such other party breaches a material term, condition or provision of this Agreement unless the breach, if capable of being cured, is cured within thirty (30) days (ten (10) days for non-payment) after the non-breaching party gives the breaching party written notice of such breach.

- 6.4 A party may terminate this Agreement upon written notice to the other party if such other party (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.
- 6.5 Notwithstanding <u>Section 6.3</u>, Exceleron may terminate this Agreement immediately upon Customer's breach of the license restrictions in Section 2.1.
- Upon termination for any reason, Customer will immediately cease all use of and access to the System and will pay all amounts due and/or payable through the date of termination. The parties recognize that the harm caused by a breach of this Agreement is incapable or difficult of estimation. Accordingly, in the event of termination of this Agreement by Exceleron pursuant to Sections 6.3, 6.4, or 6.5, those Monthly Minimum Fees that would otherwise become due under this Agreement during the remaining Term will be accelerated and become immediately due and payable. The parties agree that such amounts are a reasonable forecast of the amount necessary to render just compensation. Nothing in this provision is intended to entitle Exceleron to collect unearned interest or to receive an interest rate greater than the Notwithstanding the foregoing, rate allowed by law. Customer may terminate this Agreement with written notice delivered to Exceleron within sixty (60) days of the Effective Date for any reason and without any liability except for the fees accrued prior to termination.

7. Disclaimer of Warranties

- 7.1 EXCELERON MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE PAMS SOFTWARE, THE SYSTEM OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. EXCELERON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.
- 7.2 Customer represents, warrants, and covenants that it shall comply with all federal, state and local laws and rules.

8. Limitation of Liability

8.1 EXCEPT WITH RESPECT TO BREACHES OF <u>SECTIONS 2.1</u>, <u>7.2</u>, <u>9</u>, AND <u>10</u>, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF OR RELATED TO THIS AGREEMENT.

WHETHER ARISING OUT OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 EXCEPT WITH RESPECT TO BREACHES OF SECTIONS 2.1, 7.2, 9, AND 10, IN NO EVENT WILL EITHER PARTY'S AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT. WHETHER **ARISING** OUT CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY. EXCEED THE TOTAL AMOUNT OF ALL FEES ACTUALLY PAID BY CUSTOMER TO EXCELERON UNDER THIS AGREEMENT FOR THE MONTH IN WHICH THE CAUSE OF ACTION AROSE, PROVIDED HOWEVER. THE LIMITATION ON DAMAGES EXPRESSED IN THE PRECEDING SENTENCE SHALL NOT APPLY TO DAMAGES CAUSED BY THE WILLFUL OR WANTON CONDUCT OF THE PARTY CREATING THE DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. Indemnification

- 9.1 Exceleron will, at its expense, defend, indemnify and hold Customer harmless from and against all claims, losses and damages related to or arising out of an allegation brought against Customer that the PAMS Software as used through the System infringes any patent, copyright, trade secret or other proprietary right of any third party. Customer shall give such assistance and information as Exceleron may reasonably require to oppose such claims. Exceleron shall have no obligation for any claims arising out of a combination or use of the PAMS Software as used through the System with non-Exceleron programs, products or data, if such combination or use is the cause of the alleged infringement.
- 9.2 In the event a third party claim of infringement is threatened or occurs, Customer will immediately notify Exceleron. Exceleron may, in its sole discretion, alter or replace the PAMS Software or System with a non-infringing functionally equivalent system. If Exceleron determines that none of these alternatives is reasonably available, Exceleron may terminate this Agreement and refund to Customer any Fees paid in advance for the time following termination.
- 9.3 Customer acknowledges that (i) Customer has the sole discretion whether to provide electricity service to its customers, (ii) Customer has the sole discretion and authority to disconnect electricity service, and (iii) Customer shall not rely upon Exceleron to determine whether to connect or disconnect electricity service. Accordingly, CUSTOMER WILL, AT ITS EXPENSE, DEFEND, INDEMNIFY AND HOLD EXCELERON HARMLESS FROM AND AGAINST

- ALL CLAIMS, LOSSES AND DAMAGES, INCLUDING DEATH, RELATED TO OR ARISING OUT OF AN ALLEGATION BROUGHT AGAINST EXCELERON ARISING OUT OF OR RELATED TO THE PAMS SOFTWARE, THE SYSTEM OR THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, ANY CLAIMS AS A RESULT OF A BREACH BY CUSTOMER OF THIS AGREEMENT OR ANY OTHER AGREEMENTS AND ANY CLAIMS BY CUSTOMER'S CUSTOMERS WITH RESPECT TO CUSTOMER'S ELECTRIC SERVICE PROVIDER OBLIGATIONS), REGARDLESS OF ANY ALLEGED NEGLIGENCE NEGLIGENCE OR EXCELERON **EXCEPT** TO THE **EXTENT** BY**PROXIMATELY CAUSED** THE **GROSS** NEGLIGENCE OR INTENTIONAL MISCONDUCT OF EXCELERON. Exceleron shall give such assistance and information as Customer may reasonably require to oppose such claims.
- 9.4 At Customer's request, Exceleron may record certain customer support calls for quality assurance purposes. Customer is solely responsible for complying with all legal and regulatory requirements related to the recording such calls, including but not limited to obtaining any necessary waivers or providing customers with the appropriate notifications. In addition, Customer is responsible for notifying Exceleron of any legal or regulatory requirements associated with recording such calls. Customer will, at its expense, defend, indemnify and hold Exceleron harmless from and against all claims, losses, fines and damages brought against Exceleron arising out of or related to Exceleron's recording of customer support calls.
- 9.5 At Customer's request and subject to any regulatory restrictions, Exceleron will display Customer's name on the "caller id" display for Customer's Participating Members. Customer is solely responsible for complying with all legal and regulatory requirements related to the display of the caller id, including but not limited to obtaining any necessary waivers or providing customers with the appropriate notifications. In addition, Customer is responsible for notifying Exceleron of any legal or regulatory requirements associated with the display of Customer's name on "caller id". Customer will, at its expense, defend, indemnify and hold Exceleron harmless from and against all claims, losses, fines and damages brought against Exceleron arising out of or related to Exceleron's display of Customer's name on caller id.

10. <u>Confidential Information</u>

10.1 Each party ("Receiving Party") acknowledges that the other party's ("Disclosing Party") Confidential Information constitutes valuable trade secrets and the Receiving Party agrees that it shall use the Disclosing Party's Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the Disclosing Party's prior written consent. The Receiving Party agrees to use the same efforts, but not less

than commercially reasonable efforts, to protect the Disclosing Party's Confidential Information from unauthorized use and disclosure as the Receiving Party takes with respect to its own similar confidential information. The Receiving Party may disclose the Disclosing Party's Confidential Information if required to be disclosed by order of a court or other governmental entity, provided that the Receiving Party promptly notifies the Disclosing Party and assists the Disclosing Party in resisting or limiting such disclosure.

- 10.2 Exceleron may list Customer's name in Exceleron's materials and may otherwise inform third parties that Customer is a customer that uses the PAMS Software and System.
- 10.3 In the event of actual or threatened breach of the provisions of <u>Section 10.1</u>, the Disclosing Party may have no adequate remedy at law and will be entitled to seek immediate and injunctive and other equitable relief.

11. Assignment

11.1 Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, without providing prior written notice to Exceleron. For purposes of this Agreement, a transaction such as a merger, consolidation, reorganization, change of control, stock sale or exchange, sale of any substantial portion of Customer's assets or similar transaction will be deemed to be an assignment. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

12. <u>Miscellaneous</u>

- 12.1 Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight courier, in each case properly posted and fully prepaid to the appropriate address set forth herein. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight courier service.
- 12.2 Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

- 12.3 If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
- 12.4 This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, with respect to said subject matter.
- 12.5 This Agreement is for the sole benefit of Exceleron and Customer and their permitted assigns and nothing herein expressed or implied will give or be construed to give to any person, other than Exceleron and Customer and such assigns, any legal or equitable rights hereunder.
- 12.6 This Agreement may not be amended, except by a writing signed by both parties.
- 12.7 No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.
- 12.8 This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.
- 12.9 Except for the obligations to make payments hereunder, each party shall be relieved of the obligations hereunder to the extent that performance is delayed or prevented by any cause beyond its reasonable control, including, without limitation, acts of God, public enemies, war, civil disorder, communications failures, failures of third parties, fire, flood, explosion, labor disputes or strikes or any acts or orders of any governmental authority, failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.
- 12.10 The provisions of <u>Sections 1</u>, <u>2.3</u>, <u>2.4</u>, <u>5</u>, <u>6.6</u>, <u>8</u>, <u>9</u>, <u>10</u>, and <u>12</u> will survive termination of this Agreement.
- 12.11 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its choice of laws provisions. Exclusive venue for any dispute between the parties arising out of or related to this Agreement shall be with the state or federal courts in Dallas, Texas. Each party consents to the jurisdiction of such courts in any dispute arising out of or related to this Agreement.

Exhibit B Specifications and Functionality

I. Introduction

A. Purpose

This Exhibit defines specific functional and performance requirements of the PAMS Software (also referred to as "PAMS" herein). Any capitalized terms not defined in this Exhibit B shall have the meaning set forth in the Agreement.

B. Scope

PAMS is a web-based system that provides customers with the necessary tools to offer their customers and/or members a prepaid alternative to traditional billing options. Participating Members will have the ability to prepay for electricity, monitor their consumption, credit balance and receive notification of pending disconnections. Payments will be posted to the System as they are made available by Customer. Daily usage charges are calculated based on rates established and maintained by Customer. During the enrollment process, Participating Members will provide the Customer with contact information to be used during the notification process.

II. General Description

A. Product Functions

Accounts will be created in PAMS as Participating Members are enrolled in Customer's prepaid program. An initial payment (as determined by the Customer) will be posted to the account and displayed as service credits. Usage is monitored daily and the calculated cost for such usage is deducted from the Participating Member's current balance. Participating Members can keep abreast of their balance through receipt of notifications for which they select the method and frequency during account creation. An order is created to disconnect the service when the service credit balance reaches zero. If a payment is received prior to the actual disconnection being completed, the order is automatically cancelled in PAMS; therefore, disconnection can be avoided provided the cooperative utilizes the "Order Status" feature of PAMS as opposed to a disconnection process outside of PAMS. If the member has already been disconnected, a reconnect order will be generated. Additional fees or charges will also be applied when applicable such as disconnect charges or reconnect charges. Participating Members will have 7/24 access to their account via the internet or an IVR.

B. User Capabilities and Objectives

- 1. Create new prepaid accounts
- 2. Post payments to accounts and display updated account balance
- 3. Determine unused credit and estimated number of days of unused service
- 4. Perform account maintenance (update contact information, address changes etc.)
- 5. Access pending disconnect and reconnect orders and view their status
- **6.** Insert notes or events on accounts unless business practice dictates insertion of notes or events into CIS only

III. Functional Requirements

A. Create a new account

1. *Description:* Customer's customer service representative, hereafter referred to as a CSR, will enter a new member's name, address, location information and meter information into PAMS to establish a new account. Participating Member account information may already exist in current billing system. If access and connectivity is possible, this information will be pre-populated.

B. Process a payment

1. *Description:* Payments posted to Customer's billing system will be collected on a scheduled interval and posted to PAMS electronically if access and connectivity to the cooperative's billing system is possible. The CSR also has the ability to post member payments to PAMS account. This may be accomplished manually and/or automatically depending upon the cooperative's payment processing vendor(s) and available integration. Payments posted in PAMS will be reported to Customer's CIS system.

C. Account Maintenance

1. Description:

- **a.** The CSR is able to access a Participating Member's record in PAMS in a timely manner and answer questions relative to information contained in PAMS.
- **b.** Participating Member information is organized for quick access.
- c. The account information page allows the CSR to change specific member information (i.e. billing information, contact information etc.).
- **d.** Billing and payment information, agent location information, order history and current order statuses are available to the CSR for the desired Participating Member.
- **e.** Additional functionality such as payment processing, notes or events and agent lookups are also available features of PAMS.

D. Acquisition of Usage Data

1. *Description:* Usage data will be acquired from the Customer's AMR database. Access to client side application to query the desired data and transmit such data to the PAMS application is required.

E. Calculate Usage Debits

- **1.** *Description:* Usage charges will be calculated nightly as new usage is received and inserted into PAMS to debit the Participating Member's balance.
- **2.** *Monitoring:* Each meter will be monitored to ensure that a usage record is received and processed each night. Accounts for which usage was not received will be displayed in an Exceptions Report.

F. PCA (Power Charge Adjustment) True-up

1. *Description:* The PCA, which is used by the rating engine, will initially be entered as an estimate and subsequently updated by Customer. Upon the actual PCA being made available, the appropriate adjustment(s) and/or change(s) will be made. (This portion is applicable only to those Customers utilizing PCA.)

G. Calculate taxes

1. *Description:* Applicable taxes will be calculated and applied to the Participating Member's account.

H. Web Service Interface to Disconnect/Reconnect

- 1. Description: Provide a process that will interface with remote disconnect/reconnect collars if available.
 - a. A disconnection order will be generated based upon Participating Member's account no longer being in good standing as defined by Customer. Disconnect orders may be viewed through a dynamic orders list which provides easy access to individual accounts. Depending upon the disconnection method utilized by Customer, disconnections may occur automatically or manually. If an automatic process is desired, this setting must be controlled by and deployed by Customer.
 - b. A reconnection order will be generated based upon sufficient payment being applied to Participating Member's account to bring account into good standing as established by the cooperative. Reconnect orders may be viewed through a dynamic orders list which provides easy access to individual accounts. Depending upon the reconnection method utilized by the cooperative, reconnections may occur automatically or manually. If an automatic process is desired, this setting must be controlled by and deployed by Customer

I. Create Notification Events

1. *Description:* A list of Participating Members to be notified will be generated based on defined criteria. This list will be used by the notification process to communicate with the Participating Member based upon the Participating Member's selection of method and frequency or based upon the cooperative's mandate of specific notification types and/or frequency.

J. Notification Server

1. Description: The PAMS notification server permits Participating Members to receive selected notifications in the form designated and at the time designated. Notification settings can be accessed both through PAMS and Myusage.com by CSRs and Participating Members. Such notifications also trigger events on individual accounts for tracking purposes. Notification methods available include Interactive Voice Response (IVR), SMS text message, pager and email.

K. IVR Inbound Member Services

1. *Description:* Participating Members will have the ability to call an access number to obtain information pertaining to their usage and current balance. The ability to make a payment via the IVR will also be provided.

L. Online Bill View (myusage.com)

1. *Description:* Participating Members will have access to usage information to include current and limited historical. Payment processing will also be permitted through online bill view (myusage.com).

IV. Interface Requirements

A. User Interface

- 1. GUI User Service representatives access PAMS with a web browser. No additional software is required on the user's workstation.
 - **a.** All PAMS functions are accessible via the Main Menu. Access requires a valid user name and password and levels of access are restricted by various permission levels.
 - b. Navigation is accomplished using standard links and drop down boxes.

B. Interactive Agent (IA)

- 1. Exceleron will make the Interactive Agent available to the cooperative via ftp.
- 2. Customer will ensure that the IA is properly installed on a computer that has uninterrupted internet access.
- **3.** Customer will ensure that the appropriate access to both the CIS and AMR database is provided including a read only user-id and password and that all necessary network connections are available.

C. MyUsage.com

- 1. Exceleron will provide all Participating Members internet access to MyUsage.com.
- 2. Access to MyUsage.com requires a user name and password that is established during account setup in PAMS.
- 3. Customer will have the ability to disable individual account access via the PAMS interface.