

Bonneville Power Administration

Slice of the System Product

Team Report on Responses to Public Comments
on the Final Detailed Product Description
August, 1999

“SLICE OF THE SYSTEM” PRODUCT TEAM REPORT
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History of the “Slice of the System” Product Development

BPA announced its decision to offer a Slice product in the Power Subscription Strategy. The rationale and justification for BPA’s decision to offer the Slice product is explained in the Power Subscription Strategy, Administrator’s Record of Decision, dated December 1999 (Subscription ROD) on pages 83-85. The description of Slice in the Subscription Strategy contained only enough detail to allow evaluation of moving forward with Slice as a product offering. Further product details needed development and specific issues required resolution before BPA could solicit public comment on the Slice product.

During December 1998 and January 1999, BPA conducted working sessions for the purpose of fleshing out the issues and details of the Slice product. These sessions were open to all interested parties. On January 28, 1999, BPA held a final public meeting to present the Slice product as it had been developed up to that point. BPA published a Final Detailed Product Description (Slice Product Description) for Slice on February 22, 1999. BPA held a two-week public comment period, which ended on March 10, 1999. During that comment period, BPA received numerous comments from regional parties. BPA conducted a public meeting on March 4, 1999, to discuss the Slice Product Description and to receive oral comment on this description.

This report summarizes the issues raised in comments received from regional parties and BPA’s response to those comments. Some comments did not raise issues, but proposed wording for use in drafting of the Slice contract. BPA’s review of comments concluded that most of the comments of the Western Public Agencies Group, for instance, fit that characterization as did several comments from other parties.

Resolution of issues and details remaining following this report and the 2002 power rate case will be dealt with and documented in future reports or Records of Decision.

Discussion of Issues

Issue 1: Eligibility for the Slice Product

Should the Slice product be offered to Investor-owned utilities (IOU)?

Background:

The Subscription Strategy stated that Slice purchases will be used to meet the net firm power requirements loads of public agencies and cooperatives in the Pacific Northwest. The Subscription ROD supporting that strategy stated that BPA would not offer the Slice product to IOUs and would not develop a special “Slice” product for service to IOUs.

Parties’ Comments:

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Puget Sound Energy commented that refusal to offer the Slice product to all Pacific Northwest utilities would constitute discriminatory pricing and raise the possibility of cost shifting. PSE at 1, SLICE-006. Puget Sound Energy commented, also, that BPA’s refusal to offer the product to IOUs is inconsistent with BPA’s statutory responsibilities and fails to provide fair benefits to residential and small-farm customers of IOUs. PSE at 2, SLICE-006.

Discussion and Response:

Puget Sound Energy’s comments raise an issue that was previously raised and addressed in BPA’s Subscription ROD. The issue is the same in spite of the fact that the arguments are slightly different. Since the Slice product is a meld of requirements and surplus power, and surplus power must be offered first to public bodies and cooperatives, Slice cannot be provided to IOUs in a way that protects public agency preference rights to surplus power. The decision in the ROD and the reasons for that decision are unchanged. The Slice product may only be offered to public agency and cooperatives in order to comply with their preference right to Federal power and may not be offered to a different set of participants.

Issue 2: Regional Preference

Does the Slice product represent a shift in BPA policy on the implementation of regional preference?

Background:

The Subscription Strategy stated that the Slice product would be used to meet net firm power requirements loads of public agencies and cooperatives in the Pacific Northwest, as well as provide surplus firm power and nonfirm energy to purchasers. The Slice Product Description notes that Slice has a component that is firm power to meet part of the customer’s regional consumer loads, and a nonfirm or surplus firm component. The Slice Product Description describes the nonfirm and surplus firm components of the product sale as advance sales of surplus power on a planning basis.

Parties’ Comments:

Kaiser commented that the Slice product is not consistent with statutory obligations. “BPA appears to believe that its only obligations are to entities to whom it must offer contracts and that it has no broader obligation for conserving energy for use within the region.” Kaiser at 3, SLICE-007. Kaiser further opined that discussion in the product description indicates that BPA has abandoned regional preference, a major policy shift that BPA has inappropriately hidden in the Slice forum. Kaiser at 3, SLICE-007.

Springfield commented that public preference supersedes any argument for regional preference according to Section 10(c) of the Northwest Power Act. Springfield at 2, SLICE-009.

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Discussion and Response:

The Slice product complies with statutory requirements that BPA offer to sell power to meet the needs of public body and cooperative customers that are in excess of the customers' resources. BPA also sells nonfirm and surplus firm power as available to Pacific Northwest customers, giving preference and priority to public customers. Congress defined a BPA customer under the Pacific Northwest Power Planning and Conservation Act (Northwest Power Act) as an entity having a contract with BPA for the purchase of power. 16 U.S.C. §839 a(7). Although BPA sells surplus power and nonfirm energy to its non-preference customers, its public agency and cooperative customers have first call on the power that BPA determines it has available to sell.

The Slice product also complies with the statutory requirements of public and regional preference by making an advance sale of surplus power to public and cooperative customers. BPA consistently has applied public and regional preference by offering surplus power first to in-region publics, then to in-region IOUs and direct-service industries (DSI), then to out-of-region publics, then out-of-region non-publics. This product is consistent with the statutory directives and does not represent a policy shift on the issue of regional preference.

Issue 3: Direct/Dynamic Signaling

Should BPA offer Slice within the BPA control area with the ability to be accessed by a direct or dynamic signal?

Background:

The Subscription Strategy was silent on whether the Slice product would be operated by direct/dynamic signal, also known as dynamic scheduling. The Subscription ROD stated that initially, access to the Slice product would be by schedule only. Once hourly Slice is working to everyone's satisfaction, work can begin on direct signaling. The Subscription ROD noted that direct signal capability for customers in BPA's control area would be problematic.

The Slice Product Description reflected the ROD language:

Power will be scheduled hourly within the (pro rata) limits of the energy capabilities of the "Slice System," calculated for each Participant . . . Once everyone is satisfied that the algorithm developed to determine "Slice System Capability" is satisfactory, interested Participants will be able to work with the PBL to develop a strategy for sending a dynamic signal to schedule their Slice Entitlement subject to the final approval of the TBL in doing a dynamic signal for the Participants . . . It is recognized that there will be special issues for Participants in BPA's load control area that schedule Slice and who purchase dynamic load service from BPA. This will be one of the items worked out in developing a strategy for sending a dynamic signal. For example, with appropriate metering and

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communications facilities, it is technically feasible to treat such a customer as a nested control area. The PBL is not committing to this approach since the final decision would rest with TBL.
Slice Product Description at 14.

Parties' Comments:

Springfield stated, “(f)or those customers within BPA’s control area, Slice . . . (should) . . . have the ability to be accessed on a near-instantaneous basis - similar to direct signaling. These customers would pay for the cost of implementing this system.”
Springfield at 2, SLICE-009.

Discussion and Response:

As indicated in both the Subscription ROD and the Slice Product Description, BPA will initially offer the Slice product as an hourly scheduled product. Subsequently, the BPA Power Business Line (PBL) will work with interested parties to attempt to establish dynamic schedules. However, BPA’s PBL may not be able to offer the feature if BPA’s TBL or any regional transmission organization (RTO) in the Pacific Northwest does not agree to provide the service. As noted in the Subscription ROD, direct signal capability for Slice participants in BPA’s load control area will be problematic and the PBL is not committing to this approach.

Issue 4: Load-Following Product

Should BPA offer a cost-based product enabling customers to use the hourly scheduled Slice product to follow actual loads?

Background:

The Subscription Strategy and Subscription ROD stated that the Slice product could not be purchased in combination with full service or actual partial service; products that follow actual loads.

The Slice Product Description noted that, “(t)he Participant may not add Factoring, Capacity or any other staple-on product that shapes the Slice or block products. These products can, however, be purchased at market prices from PBL outside of Subscription.”

Parties' Comments:

Springfield opined that, “BPA should provide a cost-based service to bridge the gap in power needs between preschedule and actual load until Slice (is) able to be used for this purpose, particularly for those customers within BPA’s control area.”
Springfield at 2, SLICE-009.

Discussion and Response:

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Springfield’s proposal that BPA provide a cost-based integration service for the Slice product, enabling the Slice participant to use the Slice product to follow its load, is problematic. Customers requested a product to be made available based on the shape of Federal system generation and not based on a customer’s load shape. To modify the Slice product to a load-shaped product, or one that provides load shaping, significantly alters the nature and risks inherent in providing a Slice-type of power service.

BPA consistently has stated that the Slice product will not be offered with other Subscription products that follow customer load. Offering such products would alter the basic nature of the product and the cost risks of the product for both BPA and Slice participants.

Issue 5: Combination with Other Products

Can the Slice product be purchased in combination with shaped monthly blocks and with any cost-based block staple-on products?

Background:

The Subscription Strategy and the Subscription ROD stated that the Slice product could be purchased in combination with annual firm blocks, but not with full service or actual partial service. The Subscription ROD also stated that BPA would consider bilateral negotiations to offer the Slice product in combination with variable monthly blocks under the FPS rate schedule.

In subsequent product development discussions BPA concluded that the Slice product could be offered in combination with shaped monthly blocks. The shaped monthly blocks would have hour-by-hour megawatt amounts the same for all hours of a calendar month.

The Slice Product Description reflected that conclusion:

The (Slice) Participant can also purchase . . . (a) . . . shaped block of PF energy from BPA and/or negotiate for monthly blocks of energy (under the FPS rate). The Participant may not add Factoring, Capacity or any other staple-on product that shapes the Slice or block products. These products can, however, be purchased at market prices from PBL outside of Subscription.

Slice Product Description at 25.

Parties’ Comments:

Idaho Falls supported BPA allowing the Slice product to be combined with annual flat block or shaped block products. Idaho Falls at 1, SLICE-001.

Kaiser Aluminum (Kaiser) noted that in the product description, BPA modified the Subscription ROD by allowing combination purchases of Slice and monthly shaped

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block purchases. Kaiser opined that BPA has done this in a forum having limited participation by parties not eligible to purchase the Slice product. Kaiser at 2, 17, SLICE-007.

Kaiser also opined that combining the Slice product with monthly shaped block purchases appears to allow Slice participants to transfer very significant risks to BPA. Furthermore, Kaiser asserted that BPA has not developed the criteria for determining the shape of the monthly blocks that may be purchased with the Slice product, and that it appears that Slice participants have avoided most or all of the risks of the monthly shape of the Slice product. Kaiser expressed concern that the details of how the combination would work are being developed in a forum that may not address the compound effect of Slice decisions and monthly shaped block decisions. Kaiser at 10, 17, 18, SLICE-007.

Kaiser also stated that even without combination purchases, requiring market prices for staple-on products is appropriate. An essential element of the Slice concept is that the Slice participants accept the risks of the shape of the hydro system. Any ability to purchase below-market factoring or capacity products would transfers costs or risks back to BPA. Kaiser at 10, 18, SLICE-007.

Discussion and Response:

The Slice Product Description represents an expansion but not a change from the Subscription Strategy and the Subscription ROD. Upon further examination of the product descriptions and the risks inherent in the Slice and block products, BPA concluded that the combination of the Slice product and monthly block products did not increase BPA's overall risks over those that BPA would have had if BPA were serving a flat block.

The product description for Block Partial Service defines the limits on the monthly shape of block purchases, "(t)he monthly amounts of the product may be distributed . . . proportional to the distribution of the customer's load net of 5(b)(1)(A) and 5(b)(1)(B) resources." (December 1998 BPA Power Products Catalog at 15.) The monthly shape of block purchases is determined by the combined shape of the customer's load and the customer's resources prior to consideration of the Slice resource. This order of determination of the allowable monthly blocks will protect BPA and BPA's other customers from additional risk from the Slice participant.

BPA will not revisit the decision not to offer factoring or block staple-on capacity products in combination with Slice at less than market-based prices.

Issue 6: Replacements for Reductions in Slice Capability

Can reductions in Slice capability be replaced with purchases of other Subscription products, in the future?

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Background:

The Subscription Strategy was silent about what coverage the purchaser can obtain for reductions in Slice capability or energy.

The Subscription ROD states that a Slice participant must agree to provide sufficient resources for the remainder of consumer loads not served by the Slice product. The Subscription ROD also states that the Slice participant would accept risk of reductions in Federal system capability by agreeing to acquire its own non-Federal resources to compensate for any de-rating of its own or FCRPS resources. Subscription ROD at 84.

Parties' Comments:

Kaiser stated that BPA should be unambiguous with respect to the fact that Slice participants cannot buy future Subscription products to replace reduction in Slice capability. If this is not the case, then Slice participants would place significant risks on BPA and other customers, and consequently, new resource acquisitions, spot market purchases and future inventory solution costs would have to remain in the Slice revenue requirement. Kaiser at 10, 11, SLICE-007.

Kaiser also commented that BPA must enforce the obligation that the Slice purchaser will declare sufficient firm resources to meet its load in periods when Slice power is insufficient. Kaiser at 3, SLICE-007.

Discussion and Response:

The Subscription ROD is clear that reductions in Slice capability cannot be replaced with purchases of other Subscription products, in the future. The Slice contract will be explicit in requiring that a Slice participant agree to make firm resource commitments for its load not covered by its Slice and block purchases from BPA. However, BPA has stated that if the Slice contracts are challenged and not upheld, then a Slice participant can replace its Slice purchase with other power products and services at BPA's PF rate.

Issue 7: Additional Blocks for Load Growth

Can Slice participants acquire additional blocks in future Subscriptions to serve load growth?

Background:

The Subscription Strategy was silent about what coverage the Slice participant can obtain for load growth.

The Subscription ROD states that a Slice participant must agree to provide sufficient resources for the remainder of consumer loads not served by Slice. The Subscription ROD also states that a Slice participant will accept risk by agreeing to acquire its own non-Federal resources to meet its system load growth. Subscription ROD at 84.

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The Subscription ROD also states that the Slice product puts the responsibilities and choices of how the customer's net firm power requirements load will be met directly into the hands of the Slice participant and removes the risks from BPA. The Subscription ROD states that the Slice product removes BPA's responsibility for meeting a Slice participant's load growth.

The Slice Product Description modified the position taken in the Subscription ROD:

It is anticipated that the customer may experience load growth over the term of the Slice Contract. Load growth is not covered by the Slice Product. The Participant may supplement Slice with a PF block product in a future Subscription process to cover load growth. The PF block product can be flat or a shaped block where the delivery rates vary by month and each month's delivery is at a 100% load factor. Factoring, Capacity or any other staple-on product that shapes the block product will not be allowed. The Participant will pay the prevailing PF rate for the block product purchased. There is no guarantee that the Participant will be entitled to the lowest PF rate for the block product.

Slice Product Description at 25.

Parties' Comments:

Kaiser stated that BPA should not allow purchases of blocks in future Subscriptions by Slice participants to serve load growth. If such purchases are allowed, costs for future new resource acquisitions and spot market purchases for load growth, and future inventory solution costs must remain in the Slice Revenue Requirement. Kaiser at 11, SLICE-007.

Discussion and Response:

The Subscription ROD indicated an intent that the Slice participant should not be able to acquire additional blocks from BPA to serve load growth. However, discussions with interested parties in January and February 1999, modified BPA's view. Because Slice participants would be unable to avoid system augmentation costs for load growth in the period after the 2001 – 2006 rate period, BPA felt that it would be equitable to also allow participants to participate in that augmentation. This could be accomplished by allowing participants to purchase additional blocks from BPA to meet their load growth that occurred prior to the start of the 2007 – 2011 rate period. However, BPA's final decision with respect to Slice participants' ability to purchase blocks in future Subscriptions to meet load growth for the 2007 – 2001 rate period will be based on guidance from BPA's 5(b)/9(c) policy.

Issue 8: Modification of Administrator Decisions

Can informal working team discussion and Slice contract discussions, with limited parties, be used to modify some Subscription decisions of the Administrator?

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Background:

The discussions that occurred in the Slice work group during January 1999 resulted in further definition of the Slice product and in very limited instances, in small modifications to pronouncements in the Subscription Strategy and the Subscription ROD.

Parties' Comments:

Kaiser commented that BPA has not set up a forum or rules for revisiting decisions in the Subscription ROD or announced that issues are open for renewed debate. BPA should articulate why some decisions are open to reversal and others not. BPA should not reopen the Subscription process in an ad hoc piecemeal fashion in limited forums. Kaiser at 2, SLICE-007.

Discussion and Response:

BPA disputes Kaiser's characterization of the discussions. The implication of Kaiser's concern is that BPA or others selectively chose which aspects of the Slice product to discuss at these meetings at the expense of others. Given the lack of specificity in Kaiser's comment, it is difficult to respond. However, the implication that BPA or some other party dictated the topics of discussion is incorrect. The areas of discussion, other than the basic framework matters decided in the Subscription ROD, were open for discussion and Kaiser or any other party was free to raise them. BPA's 2002 power rate case also will resolve cost and rate issues of the Slice product, and that forum is open to participation by all interested parties.

Issue 9: Characterization of Slice as a Requirements and Surplus Product

Does BPA need to demonstrate that the surplus component of the Slice product is surplus to other BPA obligations and can be sold in combination with requirements power?

Background:

The Subscription Strategy was silent about how BPA would demonstrate that the power was surplus or how the combination of surplus and requirements power could be sold. However, the Subscription Strategy said that BPA would contractually establish a mechanism to buy back the surplus power if and when necessary to assure service to BPA's other statutory or contractual commitments in the Pacific Northwest.

The Subscription ROD stated that “BPA must be able to buy-back the amount of power that would have been provided as surplus to a Slice . . . (participant) . . . in order to assure service to BPA's other Pacific Northwest customers.” Also, “BPA will not limit its use of a buy-back only to meet its firm obligations to preference customers in the Pacific Northwest. Firm obligations to IOUs and DSIs, if any, also are firm obligations that must be met before BPA has any surplus power to deliver to any regional customer.”

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Subscription ROD at 94-95. The Subscription ROD also was silent on how BPA would demonstrate that the power was surplus.

The Slice Product Description, under “Load Loss Provisions,” discusses the situation where, on a prospective (annual planning) basis, the requirements portion of the participant’s Slice Entitlement exceeds the participant’s net annual firm load requirement. In this case,

BPA may need to take corrective action. The treatment for Slice should parallel the treatment of a customer facing similar net annual firm load reduction circumstances with a block requirements product. However, the treatment can not be exactly the same since the Slice Product has unique characteristics. If the block amounts are reducible within the contract term to reflect a load loss, then a similar adjustment would be made under the Slice purchase. If on the other hand, BPA and the customer take into account the probability of load loss (such as retail access load loss) by using other means when determining the amount the customers may purchase, then the same consideration will be applied to the Slice customer.

The Slice Product Description is otherwise silent regarding determining if and when components of Slice are surplus to other BPA obligations. The documents also are silent about the ability to sell the combination of surplus and requirements power.

Parties’ Comments:

Kaiser commented that BPA needs to demonstrate, in an open forum, that the surplus component of the Slice product actually is surplus to BPA obligations and can be sold in the proposed combination. “BPA needs to address the questions of the definition and determination of surplus in a forum designed to develop fully the concepts.” Kaiser at 3, SLICE-007.

Discussion and Response:

The type of forum envisioned by Kaiser for addressing definitions and determinations of surplus, and the combinations of product sales, is not clear. BPA’s Subscription policy determination was in an open forum and was accompanied by extensive negotiations with parties representing virtually all Pacific Northwest customer interests. BPA’s 5(b)/9(c) policies for determining requirements obligations also have been and are open forums allowing consideration and discussion of issues related to determination of BPA’s surplus resources. BPA will address the cost-related elements of Slice in an open forum in its 2002 power rate case. Further, the Slice discussions that have occurred over nearly two years and the development of the Subscription Strategy have afforded opportunities to discuss the combination of products to be sold in Slice. BPA’s ability to sell the proposed combination of requirements and surplus power was discussed in detail in the Subscription ROD at 89-90. See, also, **Issue 1**, above.

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In the Slice product, BPA is meeting its obligation to determine that firm FCRPS resources are being used to serve net annual firm load requirements. The participant's maximum Slice percent is based on the participant's prospective net annual firm load requirement. The percent is a percent of the “firm” portion of FCRPS (Slice) resources. There are no surplus firm resources included in a Slice participant's share of Subscription inventory. In the event of a loss of net annual firm load requirement, the requirements portion of a participant's Slice share will be decreased, or, if BPA has an overall surplus of resources, it will be deemed surplus and no further action is required. The determination of whether the excess share is decreased or deemed surplus will depend on BPA's balance of obligations and resources at the time the participant's net annual firm load requirement is known to decrease.

At the time power is subscribed to by Slice participants, neither BPA nor any customer will know whether any surplus energy will be available in any particular year. However, due to BPA operations to provide flows for fish stocks, BPA has, on an annual planning basis in the spring periods of each year, an amount of power that is in excess of BPA's total firm load obligations. BPA does not anticipate that this pattern of excess generation in the spring period will change in the near future. Each year, BPA revises and updates its firm loads and resources study (Pacific Northwest Loads and Resources Study), which is a planning document that shows the months and years in which BPA anticipates having surplus energy in excess of its firm loads.

In any particular year during the Slice contract term, if surplus energy becomes available in other periods, Pacific Northwest public agencies and cooperatives will have first rights to purchase the surplus power, regardless of their firm requirements or the firm service they receive. The Slice product will be a contractual agreement in which BPA sells a calculatable amount of surplus energy available within a year to those customers that have first right to the energy.

BPA concludes that adequate public forums have been, continue to be, and will be made available to discuss questions of the definition and determination of surplus. BPA does not believe that an additional forum is necessary and does not anticipate conducting a separate forum to address these concepts.

Issue 10: Load/Net Requirements Losses

How will BPA deal with losses of net requirements experienced by Slice participants?

Background:

In its first Straw Proposal for the Slice product, BPA had proposed a “buy back” provision that gave BPA the right to buy back the surplus power portion of a Slice purchase if and when necessary to assure that BPA could provide service to BPA's other regional firm power loads, consistent with BPA's statutory or contractual commitments. The surplus power portion of a Slice purchase was defined to be the

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portion in excess of the participant’s firm load. This surplus would have been measured on an ongoing, hourly basis.

After consultation within BPA and with customers, BPA modified the “buy back” provision, and replaced it with a “load loss” provision. The Slice Product Description provided for situations where load losses are forecast to cause the requirements portion of the Slice product to exceed the participant’s net annual firm load requirement. If, on a prospective (annual planning) basis, the requirements portion of Slice exceeds the participant’s net annual firm load requirement, one of two provisions would apply. BPA would either: (1) use the excess Slice power to meet BPA’s other firm regional firm load obligations; or (2) take no action if BPA is meeting its regional firm load obligations, and deem the power to be surplus power. These provisions are similar to the way load losses are handled for the purchasers of the Block Partial Service product.

If BPA used the excess requirements Slice power to meet its other obligations, it would be used in the monthly shape of the Federal system generation.

Parties’ Comments:

Kaiser commented that while the load loss provisions are an improvement over the previous “buy back” provisions, BPA needs to recognize that a Slice participant’s net annual firm load requirement can change, not only from retail load loss, but from the ability some preference customers have to recall shares of non-Federal hydroelectric generation to serve their load. Kaiser noted that if this recalled power exceeded the customer’s load growth, BPA should be able to recall Slice because of the decreased net requirement. Kaiser at 4, 15, SLICE-007.

Seattle City Light commented that adjustments for added resources need to be balanced with a corresponding way to adjust for subtracting resources. Parrish, Weber, March 4 meeting.

Springfield Utility Board (Springfield) pointed out that Slice is a unique, customized product, and trying to link Slice and the Block Partial Service product too vigorously may disrupt the balance between customer risk and benefits for the Slice product, thereby shifting more risk to the customer. Springfield opined that: (1) the recall of sales to public agencies based on arguments in the Northwest Power Act may not be legally sound if the arguments contravene other statutes; (2) the recall of Slice should not be subject to marketing activities to non-preference entities and should only be limited to serving firm Subscription needs of preference agencies; and (3) if marketing activities to non-preference agencies are a basis for recalling Slice, this issue should be added to the list of issues for dispute resolution. Furthermore, Springfield declared that Slice customers would not be kept whole by crediting their costs for recalled amounts because a cost-based credit does not reflect the true cost to the utility. Springfield opined that the option to recall exposes customers to risks whether ever exercised or not. Springfield, at 5–6, SLICE-009.

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Discussion and Response:

BPA recognizes that issues related to changes in a Slice participant's declared resources need to be addressed in terms of whether these changes will require adjustments in a Slice participant's Slice entitlement. The public process on BPA's 5(b)/9(c) policy will address the entire range of issues that affect requirements determinations of BPA's Pacific Northwest customers. The Slice product will reflect the results of that process.

The Subscription ROD addressed Springfield's comment regarding recall of Slice shares, noting that firm obligations to IOUs and DSIs, if any, also are firm obligations that must be met before BPA has any surplus power to deliver to any regional customer. Subscription ROD at 95. BPA does not conclude that recall of Slice should be added to the list of issues for dispute resolution. Moreover, from a legal perspective, BPA is not "recalling" power in the same terms as a "recall" of an out-of-region sale by BPA. Rather, under Section 5(b)(1), BPA is not obligated to deliver more power to a customer at a PF rate, than that customer's net firm load requirement.

Throughout the Slice development process, the product has evolved, though it remains a package of risks and benefits that maintains a balance between the interests of potential Slice participants and BPA and its other customers. Adding additional ways to account for perceived risks, as implied by Springfield, would cloud its fundamental simplicity and be inimical to the package envisioned by BPA and the original proponents of the Slice product. Consequently, BPA will not engage in calculating and constructing new ways to account for risks that a participant's Slice portion will be decreased by the amount of decreases in the participant's net requirement.

Issue 11: Conversion Rights

What rights do Slice participants have to "convert" their Slice purchases to other Subscription products?

Background:

The Slice Product Description included provisions for the Slice participant to request and receive other Subscription products from BPA to serve its net requirements load, under the same rates, terms, and conditions as other preference customer requirements loads that had continuously received service from BPA commencing on October 1, 2001. Slice participants could do this upon the occurrence of any of the following events: (1) the Slice contract is held to be invalid or unenforceable, or enjoined by a final order of a court, and such order is not stayed, pending appeals, (2) the Slice contract expires according to its terms, or (3) there is no transmission service available for the Slice product.

Parties' Comments:

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The Public Generating Pool (PGP) commented that BPA should not limit the conditions that would trigger the rights of Slice participants to convert their contracts to contracts for other Subscription products. The PGP proposed that the Slice participant and BPA be able to agree on specific conditions related to transmission rates, terms, etc., that would trigger this conversion right. PGP at 2, SLICE-005.

Kaiser opposed the conversion rights described in the Slice Product Description because they represented an “off-ramp” for Slice participants to get out from under their Slice contracts, thereby violating a principle that BPA had asserted earlier, that the Slice product have no off-ramps. Kaiser at 3, SLICE-007. Kaiser asserted that the only condition that would allow a Slice participant to convert its Slice purchase to other Subscription products should be if the Slice product is found to be unlawful. In addition, Kaiser asserted, BPA is exacerbating the problem of inadequate inventory when it allows Slice customers to walk away from their Slice contract, placing added risks of returned power on BPA. Kaiser at 8, SLICE-007. Kaiser advocated that BPA not consider conditions related to transmission rates and terms as a trigger to conversion rights. Kaiser at 8-9, SLICE-007. Kaiser asserted further that conversion rights should specify that Slice contracts can only be converted to other BPA products, and that Slice contracts cannot be terminated altogether without such a replacement purchase. Kaiser at 9, SLICE-007. Kaiser proposed that Slice participants should have to convert their Slice product to other Subscription products in the same magnitude as their Slice product. Mizer/Kaiser, March 4 customer meeting.

Seattle City Light commented that conversion rights need to be clarified further with respect to how much of the Subscription product can be purchased upon termination of the Slice contract, and whether the Slice participant can choose whether or not to convert its Slice purchase to another Subscription product. Parrish, March 4 customer meeting.

Discussion and Response:

After consideration of the parties’ comments, BPA will hold to the terms and conditions specified in the Slice Product Description that allow Slice participants to convert their Slice contracts to contracts for other Subscription products if one of the above-referenced preconditions occurs. BPA believes that consideration of factors other than availability of transmission services to deliver the Slice product, such as whether the transmission rates and terms would be economic for Slice product delivery, would be a difficult and subjective process to implement. It would be difficult to specify in advance what level would constitute “uneconomic” transmission rates and terms for all Slice participants, and what might be economic for one Slice participant, may not be economic for another.

With respect to mandatory conversion to contracts for other Subscription products, the Slice Product Description did not contain specific language on this subject. The contract drafting process that BPA is conducting with Slice participants will clarify this language in the Slice contract. BPA believes that there is no legal obligation on the part

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of Slice participants to convert their Slice products to contracts for other Subscription products. However, BPA proposes to request information from Slice participants, upon Slice contract execution, related to what choices the participants would make for other Subscription products, should their conversion rights be triggered. BPA would be able to examine the amounts and types of products that would be substituted, to ensure that the amount and types of other Subscription products were appropriate and did not cause cost shifts to other customers.

All Slice participants will be public preference customers. Therefore, if BPA is requested to replace the Slice product with other products for the reasons stated in the contract, then BPA must do so, since these requests would be for service to the Slice participants' net firm load obligations. BPA cannot refuse to provide firm requirements service to its preference customers in the Pacific Northwest to the extent that these customers' loads are in excess of the firm resources they dedicate to serve their loads.

Issue 12: Cost and Risk Shifts

In the development of its Slice product proposal, has BPA adequately avoided risk or cost shifts to or from other customers?

Background:

The Slice Product Description assured that BPA will develop Slice so as to avoid a cost shift to or from other customers.

Parties' Comments:

Kaiser raised concern that specific situations related to the implementation of the Slice contract would cause cost or risk shifts back to BPA or to other regional customers. For example, if actual Slice deliveries were less than the net firm requirements load of the Slice participant in any given month, Kaiser wants to assure that the Slice participant cannot “ride the system” and shift risks back to BPA and other customers. Kaiser at 3, SLICE-007. Kaiser wants to assure that decisions such as eliminating planned net revenues for risk from the Slice participants' revenue requirement and not applying the Cost Recovery Adjustment Clause (CRAC) to the Slice participants, are not detrimental to other customers. Kaiser suggested that BPA demonstrate, in a forum such as the upcoming 2002 power rate case, that these decisions will not shift costs or risks to other customers. Kaiser at 5-6, SLICE-007.

Discussion and Response:

As discussed in detail in the Subscription ROD, BPA conducted analyses demonstrating that the Slice product would diversify BPA's risk exposure and lessen the risks of financial under-performance. Subscription ROD at 83-85. Moreover, the analyses were presented and discussed during the customer workgroup meetings in December, 1998. Analyses of cost and risk shifts will be fully documented in the 2002 power rate case, where interested parties will have the opportunity for closer scrutiny and clarification.

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BPA believes that it held closely to the stated goals of: (1) avoiding cost shifting among customers, (2) avoiding shifting of risks among customers, and (3) complying with applicable statutes, during the development of the Slice Product Description. While individual product design decisions may be criticized as causing cost shifts from Slice participants to other customers, BPA ensured that risks and costs were balanced in both directions, to and from Slice participants. The entire Slice product package was equitable and fair to BPA, Slice participants, and other regional customers.

Issue 13: Development and Implementation Costs

Will BPA and “latecomers” pay a share of the development and implementation costs for the Slice product?

Background:

The Slice Product Description stated that Slice participants would pay for all overhead costs incurred by BPA that are attributable to implementing Slice. These costs will be categorized into general costs (payable by all Slice participants in proportion to their Slice percentages) and specific costs (attributable to individual Slice participants as they were incurred specifically for the benefit of such participants, such as costs of direct signaling).

Parties’ Comments:

Grant County PUD expressed concern that Slice participants will pay for a methodology that BPA’s power marketing staff will have access to. Grant opined that if BPA receives benefits from this methodology, then BPA should help pay for the related development and implementation costs as well. Knitter, March 4 customer meeting.

Kaiser commented that it is inappropriate for BPA to share in some of the development and implementation costs and doing so would violate a fundamental principle of having Slice participants pay for implementation costs. Kaiser at 16, SLICE-007.

Concerns were expressed regarding how “latecomers” to the Slice development and implementation process would be charged for their share of the costs. Seattle City Light asked whether a latecomer fee is referenced in the Slice Product Description. Clark, March 4 customer meeting. Springfield suggested that the development and implementation costs paid by Slice participants should be included in the Slice Revenue Requirement to allow participants who paid up-front to recover costs from those who did not. Springfield at 6, SLICE-009.

Discussion and Response:

BPA is developing a short-term model for its internal operational and scheduling needs. BPA would have expended this effort in the absence of Slice. Therefore, BPA will not charge Slice participants for the development of a model that will benefit BPA. BPA will,

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however, charge Slice participants for the incremental costs of adapting the new model to implement Slice.

With respect to latecomer fees, BPA has drafted a contract that will facilitate the purchase of technical products and services from BPA by Slice participants for the development and implementation of the Slice product. This contract will allocate costs to each Slice participant in accordance with their relative Slice shares and the contract will readjust these cost allocations in the event that customers arrive late to the process.

Issue 14: Slice Storage and Accounting Details

How will the storage and accounting details be handled for the Slice product?

Background:

The Slice Product Description included provisions that set forth a method for implementing the technical aspects of the Slice product. BPA and eligible customers are continuing efforts through the set-up phase to streamline and simplify the methodology for implementing the Slice product.

Parties' Comments:

The PGP opined that the proposed storage and accounting approach for managing Slice accounts is too complex. The PGP suggested revisiting the original PGP proposal for a storage and accounting approach and merging it with the current Slice proposed approach. The PGP suggested that small changes to existing system forecasting models can minimize the time and cost of implementation in this area. PGP at 2, SLICE-005.

Discussion and Response:

Flexibility will be provided in the Slice contract to allow BPA and Slice participants to alter the algorithms for accounting of the Slice system storage account.

BPA agrees with the PGP's assessment that the current storage and accounting approach is too complex. BPA is working toward its goal, as stated in the Slice Product Description, of “streamlining and simplifying the methodology for implementing the Slice product.”

Issue 15: BPA Use of Storage Information

Should BPA power marketing staff have access to participant storage account information?

Background:

The Slice Product Description did not discuss this issue.

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Parties’ Comments:

Seattle City Light expressed a concern that BPA would share the minimum and maximum storage information with BPA power marketing staff. Weber, March 4 public meeting. Kaiser opines that BPA has the right to use information about its system and should not have to build artificial barriers to the flow of information within the PBL. Kaiser suggests that customers need to evaluate the risks and costs associated with the information flow before purchasing the Slice product. Kaiser at 17, SLICE-007.

Discussion and Response:

BPA agrees with Seattle City Light, and will limit the access to the storage and account information to those individuals necessary to administer the Slice product, so long as this action does not interfere with BPA’s other statutory obligations.

Issue 16: Federal Operating Decisions

Must Slice participants agree to accept the results of operating decisions of the Federal government regarding the Federal power system?

Background:

The Slice Product Description specified in Section VIII. that Slice participants must agree to accept, and not contest, challenge, or litigate the results of the operating decisions of the Federal government (acting through relevant Federal agencies and other entities) regarding the Federal system, including decisions relating to any non-power requirement being added to or deleted from the Federal System Obligations. Examples of non-power constraints on the Federal system could include: (i) the Biological Opinion (BO); (ii) maximum and minimum rates of change on a forebay, tailwater, or discharge at a project; and (iii) BPA’s decision to operate conservatively in January and February to ensure that the Federal system will meet the flood control requirements in April under the BO.

Parties’ Comments:

The PGP voiced concern that the language in Section VIII. of the Slice Product Description implied a waiver of a Slice participant’s broad statutory rights to challenge the National Marine Fisheries Service’s (NMFS) actions on a BO. Furthermore, the PGP did not agree that discussions of operational decisions by Federal agencies should be prohibited in the Contract Implementation Group (CIG). PGP at 2, SLICE-005; Parrish, March 4 customer meeting.

Kaiser expressed concern that Slice participants wanted an explicitly stated obligation for BPA to explain its operating decisions and actions. Kaiser opined that existing processes that BPA employs to receive comments and explain its actions are adequate, and if a new process for this is created, it should be a forum available to all BPA customers, and not just Slice participants. Kaiser at 9, SLICE-007.

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Discussion and Response:

BPA agrees that the language in Section VIII. of the Slice Product Description does not imply a waiver of a Slice participant’s right to challenge NMFS actions, under NMFS statutes.

BPA does not believe that it is creating special rights for the Slice participants to understand, clarify, or challenge BPA’s operating decisions and actions. All BPA customers have a right to ask and understand why an operating decision was made. BPA is neither enhancing nor diminishing the rights of its customers regarding the understanding of its operating decisions by offering the Slice product. At times, however, BPA may have to enter into discussions about operating decisions relative to an individual Slice participant or group of Slice participants. Since potential proprietary information specific to the Slice participant may be discussed, BPA believes that a more global discussion forum as Kaiser suggests is not appropriate in this circumstance.

Issue 17: Determination of Net Requirements

How will net requirements be calculated for determining how much of the Slice product or other Subscription products our customers can buy?

Background:

The Slice Product Description specified that a customer’s net entitlement for the Slice product would be based on the annual average quantity of an eligible customer’s regional net firm load requirement, measured in average megawatts of energy. This annual average quantity would be calculated, using the same methodology and operating year as used to determine entitlements to purchase the Block Partial Service product. Slice methodology for calculating net firm load requirements will be consistent with decisions coming out of the Subscription process.

Parties’ comments:

Kaiser commented that until the process for calculating net requirements for customers who intend to purchase Slice and other Subscription products is clarified, it is not possible to determine whether BPA has developed reasonable policies for allocation of its inventory within the Subscription process. Kaiser suggests that BPA provide an opportunity for customers to comment on this subject, either for Slice issues alone, or together with Block Partial Service issues. Kaiser at 4, SLICE-007. Kaiser also commented that any method for determining net requirements for Slice participants needs to be consistent with the methodology used for the Block Partial Service product. Kaiser opined that if the methods are not consistent, BPA needs to set up a forum for comment and discussion. Kaiser, March 4 public meeting.

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Springfield commented that since BPA internal policymaking is not complete on the subject of net requirements calculations, it is premature to establish how Slice entitlements will be established. Springfield at 4, SLICE-009.

Discussion and Response:

BPA agrees with Kaiser that the methodology used for the Block Partial Service product to calculate net requirements for customers needs to be consistent with the methodology to calculate net requirements for the Slice product.

BPA recognizes that issues related to calculation of net requirements for Slice participants and for purchasers of other Subscription products will require discussion and review by interested parties in the region. BPA is in the midst of conducting a public process to determine what its Subscription policy will be with respect to Northwest Power Act Sections 5(b) and 9(c) issues. BPA proposed a method for determining a customer's net requirements as they related to Sections 5(b) and 9(c) of the Northwest Power Act. BPA is providing information on this proposal to interested parties in the region.

Issue 18: Inventory Solution Costs

Is the Slice participants' responsibility for payment of inventory solution costs for the pre- and post-2006 period appropriate?

Background:

BPA stated in its Subscription Strategy that it would provide a contractual guarantee of BPA's lowest cost-based rate beyond 2006 for those customers who make commitments greater than five years.

The Slice Product Description stated that the Slice Revenue Requirement for 2002 to 2006 will include the estimated net cost for the inventory solution, as identified in the 2002 power rate case. The Slice Product Description also said that costs would be net of any expected revenues for the sale of such inventory enhancement.

The Slice Product Description also says that for subsequent rate periods, the inventory solution costs will be determined in a manner that is equitable to the treatment of such costs in rates for other 10 year (or longer) Subscription requirements contracts. Slice Product Description at 10-11.

Parties' Comments:

Kaiser opined that the decision to make Slice participants responsible for paying future costs of inventory augmentation is consistent with other Slice decisions. Kaiser at 5, SLICE-007. Furthermore, Kaiser opined that the determination of inventory solution costs in each applicable rate case for the pre- and post-2006 periods of the Slice contracts is appropriate. Kaiser at 13, SLICE-007.

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Springfield expressed concern that waiting until BPA’s next rate case to determine the relevant inventory solution costs for the post-2006 period increases the risk exposure for Slice participants. Springfield commented that if this issue is not resolved in the near term, BPA should offset this risk by decisions on other Slice issues to the advantage of Slice participants. Springfield at 4, SLICE-009.

In relation to the determination of relevant inventory solution costs for the post-2006 period, the PGP reminded BPA that the Subscription Strategy stated that there would be a contractual guarantee of rate protection for customers who sign other long-term Subscription contracts (for longer than five years). Peters, March 4 customer meeting. Seattle voiced expectation that BPA will treat Slice participants in an equivalent manner. Parrish, March 4 customer meeting.

Discussion and Response:

BPA believes that its decisions with respect to the determination of inventory solution costs that the Slice participants will be responsible for paying is fair and equitable in relation to customers who sign other long-term Subscription contracts. BPA acknowledges that there is risk exposure for Slice participants, as they must sign 10-year contracts, with no certainty with respect to the magnitude of the inventory solution costs they will be responsible for in the post-2006 period. However, BPA made a policy decision to not determine what inventory solution costs Slice participants will be responsible for in the post-2006 period, prior to the rate case for that period. Although BPA committed to provide a contractual guarantee to lowest cost-based rates for those committing to purchase for longer than five years, BPA has not guaranteed a rate for the post-2006 period.

Regarding the suggestion that BPA make adjustments to further advantage Slice participants; BPA believes that the Slice product, as reflected in the Slice Product Description, already consists of a fair and equitable package for Slice participants, with no potential cost or risk shifts to other regional customers.

Issue 19: Transmission Surcharge

Is a transmission surcharge for recovering PBL costs due to load loss effects of retail access and electricity market restructuring, or other large unanticipated costs, fair and equitable for Slice participants and other BPA customers?

Background:

The Slice Product Description stated that the revenue raised through transmission surcharges levied by the TBL would be credited towards PBL’s total revenue requirement and reflected in the Slice participants’ true up adjustment to the Slice Revenue Requirement. Any repayment to the TBL also would be included in PBL’s total revenue requirement and the Slice participants would pay their proportionate share.

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Parties’ Comments:

Kaiser expressed concern that an inequitable situation arises when credits are applied to the Slice Revenue Requirement for the Slice participants’ proportionate share of any transmission surcharges levied by the TBL for recovering PBL transition costs. Kaiser opined that the credits would effectively shelter Slice participants from paying any surcharges altogether. Kaiser commented that BPA should not get in the middle of transactions between the TBL and the Slice participant. Kaiser at 6-8, SLICE-007.

Seattle City Light opined that the credits to Slice Revenue Requirement for the Slice participants’ proportionate share of transmission surcharges levied by the TBL are appropriate because Slice participants could pay more than their share of PBL transition costs if they use the transmission system in excess of their use of BPA energy. Parrish, March 4 public meeting.

Discussion and Response:

BPA has no intention of levying any transmission surcharges to cover any large PBL revenue shortfalls due to retail load loss effects or any large unanticipated PBL cost. The Slice Product Description and comments do not pertain to a real issue because BPA is not making plans or proposals to levy such a surcharge.

Issue 20: Credit for Financial Reserves

Will Slice participants be given any credit for existing financial reserves when facing capital expenditures or investments?

Background:

The Slice Product Description did not specifically address the use of Slice participant “credits” for existing financial reserves to pay for capital expenditures or capital investments. However, the Slice Product Description did state that capital investments will be recovered through depreciation expense as reflected in the PBL revenue requirement and likewise in the Slice Revenue Requirement. Treatment of costs depreciated beyond the term of the Slice contract will be consistent with the manner in which other ratepayers are treated for such depreciated costs.

Parties’ comments:

Kaiser commented that Slice participants have no more claim on any specific portion of existing financial reserves than any other customer or former customer. If BPA begins identifying portions of its financial reserves with specific customers, this could establish a significant new precedent, and other customers could establish similar claims, in order to get allocations that can be used prior to owing additional payments. Kaiser at 12, SLICE-007.

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Springfield advocated that there should be recognition of the fact that, historically, Slice participants have contributed to BPA’s financial reserves. Therefore, Springfield expressed the opinion that there should be some credit for existing financial reserves when BPA faces capital expenditures or investments. Springfield at 4, SLICE-009.

Discussion and Response:

BPA will address this issue in the 2002 power rate case, as this is a cost allocation and product pricing issue. However, BPA’s financing practices, whether to borrow for capital expenditures or temporarily utilize funds from cash reserves, have little bearing on the costs paid by Slice participants or other customers. Depreciation, the annual cost for recovery of investments, is unaffected by financing. Interest expense, the financing cost, would be affected only marginally by the financing decisions. If BPA borrows for capital costs, interest expense would increase by the interest on the incremental borrowing. If capital costs are financed from cash reserves, interest expense would increase by the reduction of offsetting interest income from cash balances. These treatments are roughly equivalent, but, in either case, Slice participants and other ratepayers are treated the same.

Issue 21: Transmission Services

What is PBL’s responsibility for ensuring that the necessary decisions are made by the TBL to ensure provision of adequate transmission services to deliver the Slice product to participants?

Background:

The Slice Product Description recognizes that there are several TBL issues that will affect the cost and availability of services necessary to deliver the Slice product. The Slice Product Description did not propose any solutions, but remained flexible, pending the outcome of TBL decisions.

Parties’ Comments:

Kaiser expressed concern that the PBL may inappropriately be involved in TBL decisions, regarding whether Slice participants can use their Slice entitlements to provide reserves. Kaiser noted its belief that the PBL needs to abide by the applicable TBL determination and not get inappropriately involved in TBL decisions. Kaiser at 17, SLICE-007.

Seattle expressed concern that transmission is still an unknown part of the equation for purchasing the Slice product, and that the FERC-approved pro-forma point-to-point and network tariffs do not adequately provide transmission to purchase the Slice product. SCL at 2, SLICE-008. In addition, the City of Idaho Falls noted that they will be unable to purchase Slice until the transmission over the Pacificorp/South Idaho Exchange is resolved, and is effective through the term of the Slice contract. Idaho Falls at 1, SLICE-001.

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Discussion and Response:

The PBL believes that it cannot influence the timing or outcome of TBL decisions (such as transmission rates and provision of reserves from Slice entitlements) that are necessary to facilitate the sale of the Slice product. The Slice Product Description, however, contains provisions for conversion of the Slice purchase to another Subscription requirements purchase, should transmission services not be available. The PBL anticipates that the TBL will make the necessary decisions on various issues during its upcoming rate case.

Issue 22: Application of the CRAC to Slice

In the 2002 power rate case, should BPA demonstrate that not applying the CRAC to Slice is not a detriment to other customers?

Background:

The Slice Product Description described a true-up process that would obviate the need for application of the CRAC to Slice.

Parties' Comments:

Kaiser asserted that the true-up process needs to be discussed in the 2002 power rate case to demonstrate its adequacy in these areas. Kaiser at 8, SLICE-007. Kaiser proposed that in the rate case BPA should demonstrate that not applying the CRAC to Slice is not a detriment to other customers. Kaiser at 6, SLICE-007.

Discussion and Response:

BPA believes that the true-up process design will be sufficient, in combination with the Slice participants assuming risks associated with power market and power supply uncertainties, to allow BPA to not apply CRAC or include Planned Net Revenues for Risk (PNRR) in the Slice Revenue Requirement. However, the final decision on this matter will be made in BPA's 2002 power rate case.

Issue 23: Slice Purchase Window

When can customers purchase the Slice product?

Background:

The Slice Product Description specified that the Slice product can be purchased only during the Subscription window.

At the March 4 public meeting, BPA stated that the Slice product only can be purchased “during limited offerings and only to the extent offered by BPA.”

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Parties’ comments:

Grant County PUD (Grant) and the PGP requested clarification on comments made by BPA during the March 4 public meeting regarding customers’ ability to purchase the Slice product in the post-Subscription period. Grant questioned whether BPA’s comments meant that the Slice product would not be offered 3 years beyond the Subscription window. Knitter, March 4 public meeting. PGP requested clarification on the difference between “limited offerings” and “to the extent offered.” Peters, March 4 public meeting.

Discussion and Response:

After assessing the complexity of the pricing issues associated with the sale of the Slice product during subsequent periods outside the Subscription window, BPA decided to offer the Slice product only during the Subscription window. Payments for the Slice product are based on PBL revenue requirements determined in the relevant rate case. If Slice product sales were to be made at different times, BPA would need several sets of PBL revenue requirements for Slice payment tracking purposes.

Issue 24: Economic Displacement of the WNP-2 Resource

Should Slice participants be given the option to not participate in economic displacement of the WNP-2 resource?

Background:

The Slice Product Description described a process for Slice participants to decide whether or not to participate in economic displacement of the WNP-2 resource. The Slice Product Description stated that when BPA reduces the WNP-2 generation for economic reasons to a level other than zero, BPA will give the Slice participants notice of such reduction. Participants then must decide whether to participate in the reduction or to continue to receive the current level of energy attributed to the plant. This decision on the part of the Slice participant is for the duration of the economic reduction.

The Slice Product Description also stated that for economic reductions that take the plant’s generation down to zero, the Slice participant will have the option of either participating in the reduction or purchasing energy at an indexed price from BPA in the amount that is being displaced.

Parties’ comments:

Kaiser maintains that BPA is giving away “free energy” in its offer of options for Slice participants not to participate in the reduction of WNP-2 generation. Kaiser posits that this is not appropriate because this energy will eventually be resold and compete with BPA sales during the same time period. Kaiser maintains that BPA should negotiate a price for this replacement energy that would be equitable. Kaiser at 5, SLICE-007.

Discussion and Response:

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From time to time, BPA may decide that it is economically beneficial to reduce the output of WNP-2 (referred to as “economic displacement”) when the market value of power is expected to be less than the incremental cost of running WNP-2. Slice participants would realize the savings of reduced operating costs of WNP-2 through the true-up adjustment. Slice participants may have different expectations of market prices and may not perceive the displacement of WNP-2 to be economically beneficial. On the other hand the Slice participants should not be in a position where they can realize a share of the reduced costs and still get a share of the full generating capability of WNP-2.

BPA concluded that so long as the displacement is discretionary (that is, not required for operational or non-power purposes), the Slice participant’s right to energy should be based on the anticipated level of generation of the WNP-2 project. If the Slice participant wishes to participate in the economic displacement then the Slice participant would realize a share of the savings. BPA concluded that it is not appropriate for the Slice participant to realize the benefit of a reduction in operating costs that resulted from the economic displacement if the displacement was not reflected in the Slice participant’s Slice capability.

Therefore BPA will give Slice participants an option whether or not to participate in the economic displacement of WNP-2. BPA will allow the Slice participant to either (1) have BPA reduce its Slice capability to reflect such displacement, or (2) have BPA reverse the effect of the displacement and adjust the participant’s entitlement to what it would have been absent the displacement. If the Slice participant chooses the second option BPA will make appropriate adjustments to the Slice participant’s true-up adjustment to reflect the increased fuel cost and incremental operations and maintenance costs.

Issue 25: Newly Annexed or New Public Load

Should BPA allow newly annexed or new public load to be served with the Slice product?

Background:

The Slice Product Description stated that BPA assumed that Slice would not be used to serve new public loads or newly annexed loads. BPA assumed this because the pricing construct in Slice has no way to deal with the possibility that the cost of serving the new or annexed loads may exceed the planned revenue recovery of BPA for these new costs in a melded rate. BPA would modify the Slice product to provide treatment for such load, similar to the block product, should Slice participants include newly annexed or new public load in their net requirements.

Parties’ comments:

Many customers commented that BPA should allow newly annexed or new public load to be served with the Slice product and to not do so would be discriminatory. Kaiser at

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4, SLICE-007. Some customers commented that such load is already eligible to be served by the Slice product if it is eligible to purchase Subscription products, or if it is covered by the inventory solution for the 2001-2006 rate period, or if it is known to be on-line by October 1, 2001. Springfield at 7, SLICE-009, Kaiser at 21, SLICE-007, Peters, March 4 public meeting. Some customers opined that BPA may have no legal right to charge two different rates for preference power, and that the proposed policy is inconsistent with the Subscription ROD which stated that if load is acquired during the Subscription window, then it is eligible for being served with Subscription products. Kindley, Smith, March 4 public meeting.

Several parties expressed confusion over when a load would be considered to be a “new” load. Questions were raised as to whether “new” load would be defined as on-line and acquired during the Subscription window, or as anything known to be on-line by October 1, 2001. Kindley, Smith, Clark, Mizer, March 4 public meeting.

Some customers agreed that load eligibility rules for the Slice product should be consistent with the treatment for full requirements customers or consistent with the 5(b)/9(c) policy. Arkills, Knitter, March 4 public meeting.

Discussion and Response:

For the net requirements calculation for the Slice product, BPA intends that it will be consistent with the calculation as defined by the public process on the 5(b)/9(c) policy and its application to all Subscription products.

Issue 26: Slice Revenue Requirement

What PBL revenue requirement line items should be included in the Slice Revenue Requirement?

Background:

The Slice Product Description contained a detailed discussion of the PBL’s revenue requirement line items that will be included in the Slice Revenue Requirement.

Parties’ comments:

Kaiser stated that the subject of the Slice Revenue Requirement needed to be discussed in a rate case setting, and that BPA must clearly demonstrate in this forum that no cost shifts to other customers are caused by its decision not to include Planned Net Revenues for Risk (PNRR) in the Slice Revenue Requirement. Kaiser at 5, SLICE-007.

The PGP suggested that the treatment of capital investments and depreciation should include an appropriate depreciation amount as a proxy in the Slice participants’ revenue requirement when BPA chooses to revenue-finance a long-term capital addition. PGP at 2, SLICE-005.

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Discussion and Response:

BPA recognizes that all issues related to the PBL revenue requirement and the related Slice Revenue Requirement for Slice product costing and pricing will be addressed in studies, testimony, and documentation on this subject, and decisions will be made through the 2002 power rate case process.

Issue 27: Load Pooling

Will BPA allow customers to pool their loads to purchase the Slice product?

Background:

The Slice Product Description stated that BPA would apply the same policy to Slice as applied to other firm requirements products. That is, BPA will understand its net firm load obligation as individual to that customer and sold for use in that customer's load. That statement is consistent with the policy in the Subscription Strategy, which states that customers cannot pool their 5(b)(1) net firm power load requirements purchases through the creation of a joint operating entity. Legislation has not been passed to allow BPA to sell power to such an entity.

Parties' comments:

PRM advocated that BPA should permit combined operation/management of Slice accounts. PRM opined that this would produce the same results as if Slice participants exchanged their Slice energy to better match their respective loads, which BPA recognizes that they already can do. PRM posited that this would reduce the amount of paperwork and account management by BPA, since only one account would need to be managed by BPA instead of several accounts and BPA would receive only one "net" delivery schedule, instead of several delivery schedules. PRM at 1-2, SLICE-003. Furthermore, PRM pointed out that joint accounts for scheduling purposes are not the same as pooling loads, for several reasons. Individual customers still contract directly with BPA, Slice purchases are still based on individual 5(b)(1) net firm power load requirements, and there is no "middle man" taking possession of the Slice energy and reselling it to customers. PRM at 2, SLICE-003.

Kaiser proposed that pooling of loads to purchase the Slice product should not be allowed in order for BPA to capture the benefits of the load diversity of its customers. Kaiser opined that if BPA allows load pooling, BPA would be shifting costs and risks to its other customers from Slice participants. Kaiser at 11, SLICE-007. Kaiser affirmed that BPA's decision to allow only joint scheduling agents at this time is consistent with precedent and with the concept that Slice is not a sale of resources, but a requirements product indexed to the capability of the Federal system. Kaiser at 15, SLICE-007.

Discussion and Response:

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BPA will not allow customers to pool their loads to purchase the Slice product. However, BPA will allow joint scheduling agents to manage multiple Slice entitlements. BPA will place the burden of any coordination or after-the-fact accounting reconciliation associated with this arrangement upon the joint scheduling agent. BPA will not consolidate these accounts that are managed by the joint scheduling agent into one account, but will maintain separate accounts and delivery schedules for each Slice participant.

Issue 28: Dispute Resolution Process

Is the proposed dispute resolution process for the Slice product sufficient to adequately and fairly address disputes by Slice participants?

Background:

The Slice Product Description specified a process by which disputes by Slice participants concerning BPA’s implementation and sale of the Slice product would be handled. Slice participants would first bring the dispute to the Slice Contract Implementation Group (CIG), which will take steps to seek a mutually agreeable resolution of the dispute. The Slice participant can make a one-time election of either litigation or binding arbitration. Binding arbitration is limited to specific topics. The scope of the dispute resolution process is also limited to specific topics. This process is different from the general dispute resolution provision for other Subscription products.

Parties’ comments:

Springfield commented that due to the complex nature of the Slice product and the associated risks that Slice participants are assuming, the dispute resolution process should specify the topics that are excluded from the dispute resolution process, instead of specifying only the topics that are included. Springfield at 7, SLICE-009. Lon Peters asserted that by limiting arbitration to only “specific topics,” BPA may be creating a category of disputes with no way to deal with them. Peters, March 4 public meeting.

Discussion and Response:

BPA understands that by limiting the scope of the dispute resolution process to specific topics that by default, the remaining topic areas related to the implementation and sale of the Slice product are not subject to dispute resolution.

The Slice product is a power sale, and not a sale of resources or a sale of rights to operate or control the Federal system resources. The timeframe for decisions to be made with respect to Federal system reservoir operations is short, and the introduction of numerous decisionmaking entities and any lengthy arbitration process would be detrimental to the quality of the operation of the Federal system resources. BPA has determined that the decisions and actions of the Federal government with respect to operation of the Federal system resources are not subject to dispute resolution, and are not topics to be discussed by the CIG. BPA believes that the scope of the dispute

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resolution defined in the Slice Product Description is appropriate and consistent with that determination.

Issue 29: Remarketing Fee

Should Slice participants be charged a remarketing fee by BPA when their excess Slice power is used by BPA to meet BPA's other firm load?

Background:

The Slice Product Description stated that the portion of the excess critical Slice entitlement that is not excess to BPA's regional firm load will be used by BPA to meet its other firm load obligations. The Slice participant will receive a credit on its Slice payment in the amount received by the PBL resulting from the sale of the energy, less any BPA remarketing fees.

Parties' Comments:

The Western Public Agencies Group (WPAG) commented that the remarketing fee proposed to apply when BPA reduces deliveries to a Slice participant to serve other regional load is redundant, since the Slice participant already pays costs of BPA's marketing activities through its Slice payment. WPAG noted, in addition, that BPA in taking the power to meet its own delivery obligations is not remarketing at the request or benefit of the Slice participant. WPAG at 2, 3, SLICE-002.

Discussion and Response:

The purchasers of other products are charged a remarketing fee for any power sold on their behalf by BPA at the same time they pay for BPA's marketing activities through the rates that they are charged for their power products. BPA recognizes, however, that by taking Slice to meet its own delivery obligations, BPA is not remarketing on behalf of the Slice participant. Although the WPAG argument seems reasonable, the issue must be addressed in the rate case because its resolution may involve potential cost shifts between customer types.

Issue 30: Public Purpose Resources

How will "public purpose resources" be defined and treated in the sale of the Slice product?

Background:

The Slice Product Description briefly addressed this issue by stating that the costs of any "public purpose resource" acquisition will be included in the Slice Revenue Requirement.

Parties' Comments:

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Kaiser commented that any discussion of a definition for a public purpose resource should be consistent with the definition as it is used for other BPA policies, and should be meaningful to other interests. Moreover, Kaiser asserted that the definition should be developed in a forum that receives input from all interested parties. Kaiser at 19, SLICE-007.

Discussion and Response:

BPA believes that this is a contract negotiation issue and therefore, BPA is developing a definition for “public purpose resources” in its ongoing discussion with the contract negotiation work group.