

CON-022

**Larson, Cheryl A - PS-6**

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**From:** Burbank, Nita M - PFP-6  
**Sent:** Friday, May 09, 2008 4:56 PM  
**To:** Larson, Cheryl A - PS-6  
**Subject:** FW: Comments of draft Regional Dialogue Slice Contract Template  
**Attachments:** Slice Regional Dialogue contract customer comments rev clean 050908.doc

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**From:** Terry Mundorf [mailto:TerryM@millcreeklaw.com]  
**Sent:** Friday, May 09, 2008 4:55 PM  
**To:** Burbank, Nita M - PFP-6; Gendron, Mark O - PS-6  
**Subject:** Comments of draft Regional Dialogue Slice Contract Template

Mark----Attached are the comments of the Bonneville customers currently purchasing power under the Slice contract. These comments are submitted on behalf of the Slice customer group, and may be supplemented by additional comments by individual utilities. terry

**COMMENTS OF THE SLICE CUSTOMERS ON THE  
REGIONAL DIALOGUE DRAFT SLICE CONTRACT**

**May 9, 2008**

**1. Introduction**

The Slice Customers understand that a group of public power attorneys are working with Bonneville staff to rectify many of the organizational and substantive problems that are common to the Load Following, Block and Slice contract templates. We also understand that many public power organizations are foregoing detailed comments on the Regional Dialogue contract templates in order to use their limited time on making the contracts better, rather than preparing comments. We support this effort, and expect that the improvements made to the contract templates will be used in the Slice contract as well.

Nevertheless, we feel that it is important to communicate to Bonneville the issues we have identified in the draft Slice contract that are peculiar to that contract. Although we know that efforts are getting started to address Slice specific contract issues, documenting these issues is appropriate at this time.

**2. Contract Comments**

**a. Major Slice Contract Issues**

There are a number of issues in the draft Slice contract that are comprehensively discussed later in these comments. Presented here, to focus attention on them, is a list of the most important issues in the draft Slice contract.

• **Section 3(b)(13) – True-Up for Actual Costs**

There is no draft language for the Annual True-Up for Actual Costs. However, it is anticipated that the current True-Up, audit and dispute resolution process will not be included. The TRM proposal making customers liable for any True-Up amounts, without audit rights and with recourse limited to the next rate case or the 9<sup>th</sup> Circuit is not an acceptable business proposition.

• **Section 3(b)(12) – Slice Implementation Group/Slice Computer Application**

Bonneville would have the ability to revise the Slice Computer Application (including the Water Routing Simulator), and any simulator model inputs, without the consent of the customers. By such action, Bonneville can alter the quantity and timing of the Slice energy output and affect the flexibility available to customers without their consent, and without recourse to dispute resolution. It is not reasonable to expect customers to sign a

contract for power when the counterparty has the right to unilaterally alter the energy available, and the customer has no recourse.

- **Exhibit A, Section 1(c) – Capacity Net Requirement**

The contract requires customers to agree to the imposition, at a later date, of a “capacity net requirement” based on a methodology to be developed after contract execution that would set a limit on, or eliminate entirely, the amount of surplus capacity that is available to the customer. This would be done unilaterally by Bonneville without customer consent or recourse, and apparently without price adjustment. Such a “capacity net requirement” would severely impact the ability of Slice customers to follow load and to access their Selected Slice Percentage of surplus energy.

- **Section 14(c) – Net Requirements Determination**

The net requirement determination for each Slice customer will be made in a public comment process that will require the posting of utility specific information, including actual loads by month and diurnal period for the prior year, forecasts of monthly and diurnal loads for the next year, and non-federal resource energy and peak amounts. Customer has no recourse to Bonneville’s decision after public comment process. In contrast, under the current contract, each purchaser’s net requirement is established by negotiation with the Bonneville Account Executive, and the reasonableness of the net requirement load forecast is subject to binding dispute resolution.

- **Section 19 – Dispute Resolution**

The contract only provides binding dispute resolution before a neutral third party when Bonneville consents to it, and only when the dispute is strictly a matter of fact. As a consequence, the contract provides less dispute resolution than the current Slice contract, and essentially consigns customers to pursuing their remedy in the Ninth Circuit. It is unclear whether the Ninth Circuit would accept jurisdiction over contract business disputes, and it is clear that obtaining a decision would take years. This is not a sensible approach to conducting business, which requires timely dispute and fair handed resolution of disputes.

- **Section 2 – Subjective Changes to Slice System**

This section contains definitions for Operating Constraints, Federal Operating Decisions, Prudent Operating Decisions and System Obligations. All of these definitions are fairly loose, and all allow Bonneville to reduce the size of the Slice System available to purchasers based either on Bonneville’s subjective judgment (Operating Constraints, Federal Operating Decisions and Prudent Operating Decisions) or based on Bonneville’s decision to take on additional energy or capacity obligations (System Obligations). The

ability of Bonneville to alter the available output from the Slice System is more overt than in the current Slice contract. The definition of System Obligations as proposed, allows Bonneville the opportunity to include, without limit, both revenue motivated sales and renewal of, or origination of, new capacity peaking contracts, all of which would reduce the Slice System. These provisions introduce significant uncertainty into the quantity and timing of power available under this product, with no provisions for accountability on Bonneville for actions taken. It is not reasonable to require Slice customers to pay a fixed percentage of system costs when the value of what they receive can be reduced at Bonneville's unilateral discretion.

● **Section 23(c)(3) – Water Routing Simulator/Termination**

The right to terminate the contract when the Water Routing Simulator becomes available, in late 2009, well after contract execution, is based on a test of the model's accuracy. There are concerns that the accuracy test may be subject to manipulation or reverse engineering, and that the criteria and degrees of accuracy are not appropriate. Further, the section is silent on who decides whether the test was passed, and provides no mechanism for resolving any disputes about the test. Customers are willing to work with Bonneville to develop an appropriate accuracy test to verify the simulator results. Absent this, a customer should be allowed to elect an alternative product once the Water Routing Simulator and Computer Application become available, for whatever reason.

● **Section 3(b)(11)(B) – Treatment of DSI Augmentation**

The draft Slice contract would have Slice customers pay the costs for DSI augmentation in their rates, and also have their Selected Slice Percentage reduced as well. The result is that Slice customers suffer a loss of surplus rights as a result of this treatment, which could total over 500 aMW. There is no rationale supporting the notion of loss of surplus rights by Slice customers to support augmentation for DSI customers. The Slice customers should pay their share of DSI augmentation costs, and the Slice System should not include the power associated with DSI augmentation.

**b. Missing Slice Contract Provisions**

Even though the Slice Contract was released a week later than the other drafts, it contains *no* draft contract language on the following topic areas:

- Annual True-Up for Actual Costs
- Index and penalty rates
- Creditworthiness
- Treatment of Load Loss

These items are of obvious importance, and their omission from the draft Slice contract is cause for serious concern. The language for these sections should be provided to the Slice customers at the earliest possible date.

**c. Additional Slice Contract Provisions**

What follows is a listing of the provisions in the Slice Contract body that have raised concerns. It is not a list of every single area that has a problem, but rather attempts to focus on those provisions that pose a threat to the usefulness of the product, or which create uncertainty regarding the availability or cost of the product. The provisions are listed as they appear in the Slice Contract, and not in order of importance.

**Section 3(b)(2) – Product Description**

The contract needs to contain a clear and concise statement of the nature of the product. Under the current Slice contract, this statement has provided an anchor point when Bonneville and the Slice customers are confronted with a new and unanticipated development that must be resolved. The absence of such a statement makes it much more difficult to decide how to deal with unanticipated developments. During the contract discussions with Bonneville staff, the language set out below was negotiated. It should replace the language currently in section 3(b)(2):

«Customer Name» shall have a right to the capability and hourly scheduling flexibility equal to its Selected Slice Percentage of the Slice System capability, including energy production, peaking, storage and ramping capability available after System Obligations and Operating Constraints are met. This is accomplished by indexing «Customer Name's» Delivery Limits to the capability of the Slice System utilizing a water-routing model, which is intended to reasonably replicate the capabilities of the Federal Base System available to PS within applicable Operating Constraints. Notwithstanding «Customer Name's» rights under this contract, BPA shall retain operational control of all Slice System generating resources and reservoir storage.

«Customer Name's» access to its Selected Slice Percentage of the Slice System capability will be conveyed using a water routing model which will reasonably replicate the capabilities of the Federal Base System, including (without limitation) access to the system inflows, system water-to-power conversion capability and flexibility, all equivalent to that available to PS. «Customer Name» may receive an amount of energy over the term of this Agreement that is not equal to the product of its Selected Slice Percentage and the Slice System ASSG.

### **Section 3(b)(3) – Determination of Available Slice Output**

The flexibility available under Slice (storage, pondage, schedule changes, surplus capacity) is described as a “service”, rather than being an inherent aspect of the product. It would be an unacceptable change to the fundamental nature of the Slice product to include terms suggesting that Bonneville could validly impose an additional rate for this “service”.

### **Section 4 – Tiered Rates Methodology**

Section 4 has general language regarding Bonneville’s commitment to the Tiered Rates Methodology that mimics the other Regional Dialogue contract templates. However, it fails to address with specificity the portion of the Tiered Rates Methodology that deals with the Slice product, and does not provide the contractual commitment to assure customers that the Slice portion of the Tiered Rates Method will not be changed without their consent. It is also silent regarding the how and to what degree the Slice costing table can be changed in rate cases, which has been a subject of some controversy over the years. The contract needs to contain the conditions under which the Slice portion of the Tiered Rate Methodology can be changed, the requirement of some degree of customer consent to such changes, and a description of what and how the costs included in Slice product can be modified in a rate case.

### **Section 6(a) & (b) – Order of Tier 2 Remarketing and Resource Removal**

Non-federal resource removal in a load loss situation is proscriptive in nature, and does not permit any customer the choice in managing its statutory requirements, such as resource portfolio standards. In contrast, under the current contract the customer has the right to select which and how much of its non-federal resource(s) are removed during load loss.

### **Section 12(e) – Metering**

The metering section appears to be taken from the Load Following contract, and has not been modified to reflect the nature of the Slice product, which is billed on a fixed amount per month, without regard to metered amounts.

### **Section 13(e) – Billing**

The dispute resolution provisions of the Slice contract are not applicable to billing disputes. In contrast, the current Slice contract permits such billing disputes to be subject to dispute resolution processes.

### **Section 14(b) – Information Exchange**

Data that must be preserved and provided to Bonneville is substantially more than under the current Slice contract. The data requested includes all information Bonneville deems necessary to determine CHWM and CDQ, hourly Total Retail Load data for 2002-2009, and every year during the term, the customer's ten year monthly energy and peak forecast, a ten year conservation plan, complete renewable resource information (such as name, location, date of contract, capacity, capacity factor, and remaining contract term), all RECs purchased, the long-term renewable resource plan, and whatever data PNUCC requires for resource adequacy purposes. The amount of data required far exceeds any information reasonably needed by Bonneville to administer the contract.

### **3. Conclusion**

Customers interested in the Slice product are committed to working with Bonneville to develop a Slice contract that is clear and even handed, is free of ambiguity, and maintains a workable business relationship that is not subject to unilateral control by either party. The Slice customers look forward to working with Bonneville to develop such a Slice contract.