

CON - 024



May 9, 2008
Via Electronic Mail

Kirsten Watts, Power Services Account Executive
Bonneville Power Administration

Re: Comments on Draft Load Following and Exhibits to Slice/Block Contracts

Dear Ms. Watts,

Thank you for the opportunity for Grays Harbor Public Utility District to provide comments on the draft Regional Dialogue contract documents. These comments deal specifically with the current draft of the Regional Dialogue Load Following contract and with certain exhibits pertaining to the draft Slice/Block contract. Comments on other portions of the Regional Dialogue contract that deal directly with the Slice product will be submitted at a later date.

We are aware that representatives of public power, including legal counsel for the Western Public Agencies Group, are working with BPA staff to resolve some of the issues in the contracts. Given that the time to resolve these issues is short, we have asked our representatives to focus on resolving contract issues rather than making detailed comments on the contracts. However, we have serious concerns with the draft contracts, and we feel it is very important to highlight some of these concerns to BPA.

After our initial review of the draft Load Following contract, we believe there are issues that need to be resolved before we could present them to our Commission for consideration. The issues highlighted below should not be considered a complete list. As we have time for a more thorough review, we will likely have additional concerns. Given the long-term nature of these contracts and the value at stake, we believe it is imperative that BPA spend the time necessary to make these agreements viable and acceptable to its public power customers.

It is worth noting that many of the concerns highlighted below are representative of a list of "must-haves" that public power developed prior to BPA beginning work on the post-2011 products. We don't believe that BPA has come close to delivering on many of these issues, especially in the areas of contract enforceability and dispute resolution. Indeed, if one of the goals of these contracts is truly to "secure the cost-based value of the system for (BPA's) customers for 20 years," as the Administrator states in his May 8, 2008 letter to customers, it is absolutely essential that customers are provided this security via a contract that is enforceable and that includes meaningful provisions for resolving disputes that may arise.



Our concerns are discussed below. The first section contains issues and comments pertaining primarily to the draft Load Following Contract and sections common to the Load Following and Slice contracts. The second group of comments pertain to specific exhibits in the draft Slice/Block contract.

SECTION I: GENERAL COMMENTS ON DRAFT LOAD FOLLOWING CONTRACTS AND COMMON SECTIONS

Issue: The contract does not provide adequate means for raising and resolving disputes.

Comment: BPA retains the right to make numerous future decisions and determinations on matters that may have profound impacts on customers, but there are no meaningful provisions in the contract for customers to dispute or otherwise contest these decisions or determinations before a neutral third party. Some examples of these are determination of High Water Marks, net requirements, utility load forecasts, and non-federal resource amounts. The customer has no contractual right to binding dispute resolution, since it is only available if BPA agrees to it. Grays Harbor PUD and other public power customers asked for improvement in this area, but the draft actually weakens the customer's rights to enforceability through dispute resolution compared to the current contracts. Specifically, the contract should include a provision for binding arbitration at the request of either party following a good faith effort at mediation between the parties' decision makers.

Issue: There are important features not defined in the contract.

Comment: BPA intends to include the methodologies for determining key components of the business arrangement, including the Contract High Water Mark (CHWM) and Requirements High Water Mark (RHWM), in the Tiered Rate Methodology (TRM) rather than in the contract. These methodologies will be used to determine the quantity and price of power available to customers, and having the methodologies determined in a rate-making proceeding leaves the door open for BPA to make changes that would materially affect a customer's contract rights. The contract establishes the business deal between BPA and the customer, and as such the methodologies for making these determinations should be included in the contract rather than in the TRM. Failure to include these material terms in the contract document raises significant questions as to the validity of the contract.

Compounding this problem, the mechanism for changing the TRM is not defined in the contract. The TRM is central to the new business relationship, and the mechanism for changing it should be clearly set out in the contract. This mechanism must include provisions subjecting changes to the TRM to an approval process by the customers.



Issue: There is no warranty against subsequent changes due to legislation or agency regulation.

Comment: The contract explicitly provides that there is no warranty against change because of subsequent legislation or agency regulation. The current contract is silent on this issue, which is preferable in that the specific language eliminates any defenses a customer would have to resist legislative or agency regulatory change. This also calls into question whether the TRM can be sustained over the term of the contract.

Issue: BPA is allowed to unilaterally amend the contract.

Comment: BPA is allowed to amend many exhibits to the contract without the consent of the customer and, as noted previously, the customer has no opportunity for meaningful dispute resolution defined in the contract. What responsible party would agree to a contract that could be changed unilaterally by the other party? The consent of both parties must be required before exhibits to the contract can be altered.

Issue: There is a general lack of clarity and the contract is poorly organized.

Comment: The contract lacks clarity in important areas and is poorly organized, rendering it extremely difficult for customers to understand what their rights and duties are, much less when and how they are required to take action to exercise those rights and perform those duties. This will undoubtedly lead to disputes and misunderstandings that could be avoided. The contract should be well organized, using clear language to simply state the nature of the business deal between BPA and the customer.

Issue: Customers are required to give up certain statutory rights to retain others.

Comment: The contract requires that customers waive the right to obtain billing credits. Billing credits were included in the Northwest Power Act to encourage non-federal resource development, which should also be a goal of the Regional Dialogue contracts. This provision does not appear to make sense in that light. Regardless of BPA's intent, preference customers have a statutory right to power contracts with BPA, and BPA has no authority to require a customer to waive one statutory right in order to retain another.

Issue: There are unreasonable restrictions on changing products.

Comment: Customers have only one opportunity to change products, and all customers must do so on the same date. It is difficult to understand how this will help BPA or its customers. A single opportunity for each customer to change products during the contract term may be reasonable and acceptable, but each customer should have the ability to individually choose the time at which the change takes place.



SECTION II: COMMENTS ON EXHIBITS TO DRAFT SLICE/BLOCK CONTRACT

Exhibit A

1(a) - Forecast of Total Retail Load

Issue: BPA makes the sole determination on the validity of the customer's load forecast and has the unilateral right to change it without justification.

Comment: We support the comments of the joint slice customers.

Issue: The specified September 30 annual date for completion of the upcoming Fiscal Year's load forecast table is problematic.

Comment: September 30 is too late to be workable given that new exhibits will need to go to management and boards for approval before Fiscal Years begin. Contracts for other non-BPA resources may be affected as well. This table needs to be completed and agreed upon at least by August 31, if not earlier.

Issue: The public process for Slice customers' net requirements requires too much detail be made public.

Comment: Although this is actually covered in Section 14(c) of the body of the Slice contract, it is related to Exhibit A. We wish to reiterate our support of the joint Slice Customers comments expressing concern over the level of detail required to be made public and our desire to maintain the current method of working with BPA Account Executives on Net Requirements determinations.

1(c) - Forecast of Peak Net Requirement:

Issue: BPA may impose a peak monthly demand limitation on the amount of capacity that a customer can take under the Slice product prior to May 31, 2017. BPA has not presently established a methodology to do this.

Comment: We support the comments of the joint slice customers.

8 – List of Resource not dedicated to Total Retail Load

Issue: This section does not belong to the Slice/Block contract and should be removed.

Comment: The reasons to remove section 8 are as follows:

- Any generation resources that are in WECC's footprint would have registered with WECC per NERC's February 2008 Version 4 Registry requirement. The customers who own those resources are directly responsible for WECC compliance.
- For generating resources that are in BPA's control area, they would be required to sign an interconnection agreement with BPA TS and the physical



characteristics of these generating resources would have been fully disclosed to TS, which is the Balancing Authority.

- Resources that are not dedicated to total retail load have no material impact to the customer's right to purchase requirements power from BPA and they shouldn't be included in this contract.
- For Canadian Treaty reporting purposes, the data is available from TS. For generating resources outside BPA's footprint, BPA can request that information from the customer. This is a secondary need of BPA that has nothing to do with the power sales contract.

Exhibit C

2(a) – Block Power at Tier 1 Rates

Issue: FY 2012 Block amount should be estimated and entered into subsection (2) table prior to contract signing, and later updated.

Comment: Although the Block amount (the "shock absorber") is subject to revision when FY 2010 actual load is known, the estimated amount should be included in Section 2(a)(2) prior to contract signing in 2008.

2(b) – Determination of Monthly Distribution Factors

Issue: The methodology as described in the exhibit locks the customer's monthly distribution factors to its 2010 net requirement load shape.

Comment: The customer's net requirement load shape will likely change over the years and this methodology will produce artifacts of monthly surpluses and deficits in the customer's net requirement computation in the future years.

- It places undue burden on the customers to go through an exercise of adding small odd amount of unspecified resource to serve deficits in some months and then partially remove declared resource to get rid of surplus in other months.
- There is no clear solution to deal with the situation when a customer doesn't have enough resources to remove in order to get rid of the artificially created surplus in any given month.

2(c) – Monthly Amounts of Block Power at Tier 1 Rates

Issue: Similar to the comment regarding Section 2(a), FY 2012 monthly Block amounts should be estimated and entered into subsection (2) table prior to contract signing, and later updated.

Comment: Although the Block amount (the "shock absorber") is subject to revision when the customer's FY 2010 actual load is known, the estimated monthly amounts should be included in Section 2(c) prior to contract signing in 2008.



Issue: October 1 is too late of a deadline to find out the amount of block.

Comment: It needs to be Sept 1. (Similar to other comments on the timing of the annual NR process)

5 – Revisions

Issue: Language in this section should be consistent with dispute resolution language currently being negotiated between public customers and BPA.

Comment: Anticipating that changes will be made affecting dispute resolution on matters in this Exhibit, this section will need to be modified accordingly.

Again, thank you for the opportunity to provide comments on the draft contracts.

Sincerely,

A handwritten signature in cursive script that reads "Richard D. Lovely".

Richard D. Lovely
General Manager
Grays Harbor PUD