

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

July 15, 2008

1. Introduction

These comments are submitted by the preference customers of BPA that currently purchase power from BPA under the Block/Slice Power Sales Contract, and are submitted in response to the request of BPA that comments on the draft Regional Dialogue contract templates be submitted to BPA by July 15, 2008. These comments focus on the draft Slice/Block contract template ("Slice Contract").

The Slice Customers understand that a revised Slice Contract will be released by BPA on or about July 16, 2008, and that discussions on this revised draft will occur in the next two weeks. These discussions may result in significant changes to the Slice Contract. Further, the Slice Customers have been working with BPA to discuss and resolve the issues presented in the Slice Customers' May 9, 2008, comments on the draft Slice Contract available at that time. The efforts made by BPA to resolve these issues in cooperation with the Slice Customers are appreciated. To the extent that any of the issues set forth in the Slice Customers' May 9, 2008 comments are still unresolved, the Slice Customers hereby reiterate those comments.

Notwithstanding the continuing discussions on the Slice Contract that will occur over the next two week, the Slice Customers think it is important to submit comments before the deadline on the topic that has so far remained little understood and unresolved.

2. Exhibit A, Section 1(c) – Forecast of Peak Net Requirement

Section 1(c) of Exhibit A to the Slice Contract contains the following language:

BPA and Customer Name acknowledge the statutory Net Requirements limit both capacity and energy, section 5(b)(1) of the Northwest Power Act, P.L. 96-501. Because BPA has had an energy limited system, rather than a capacity limited system during the current subscription contracts, BPA has not presently established a formal methodology for assessing peak Net Requirements for this Regional Dialog contract, as has been established for energy Net Requirements.

BPA and Customer Name agree that at any time and upon BPA's review of its capacity standard and an evaluation of its capacity needs, BPA may impose a peak monthly demand limitation consistent with the statute, on the amount of capacity that customer has a right to take under the Slice Product. BPA's review and evaluation will be conducted in a public process that is noticed to all regional power customers.

If BPA were to establish a formal peak Net Requirements methodology for application under this contract, it is BPA's intent to do so prior to May 31, 2017, to allow Customer Name knowledge of this prior to the need to exercise its one-time product switching option.

The meaning and purpose of this contractual provision is unclear, even after discussions with BPA. Initially, Slice Customers understood that this was a calculation of peaking capability of non-federal resources under § 5(b) of the Northwest Power Act in order to establish BPA's service obligation to the peak component of preference customers' requirements loads. It was also understood that this provision would apply to all preference customers.

Further discussions with BPA have indicated that the purpose of this language is more far-reaching. Specifically, this provision appears to not apply to all other preference customers purchasing power from BPA under Regional Dialogue contracts, but is likely to be limited to Slice product purchasers, and perhaps those that will purchase the Block product with shaping capacity. Further, this provision does not appear to be aimed at the determination of the peaking capability of non-federal resources in order to determine BPA's peak delivery obligation, which is permitted under § 5(b) of the Northwest Power Act.

Rather, this provision appears to be an effort to establish a limit on the amount of capacity BPA will make available to Slice product purchasers in order to fulfill what BPA considers to be its service obligations to other requirements power purchasers. In other words, this language appears to be an attempt to have Slice purchasers contractually agree to a limitation on the capacity BPA commits to make available to them under the Slice Contract, without revealing either the magnitude to the limitation, or how it will be computed.

Imposing such a limitation on the capacity available to Slice product purchasers would be a material change that would alter the nature of the Slice product. As currently configured, the Slice product provides purchasers federal power in amounts that are indexed by BPA in real-time to a percentage of the energy, capacity and storage capability of the Federal power system. These purchasers bear directly the risks of stream-flows and resource availability at the Federal projects – even if such limitations are insufficient to meet their net requirements load. They are responsible for managing the energy, capacity and storage capability in a manner that best serves their requirements load, and for obtaining non-federal energy and capacity when the Slice product is insufficient. They are not free to call on additional capacity from BPA to meet their requirements load.

At this juncture, it appears that BPA is seeking an unlimited call on the capacity that is an integral part of the Slice product in order to fulfill its obligations to other customers. This is not the only alternative available to BPA to fulfill its obligations to other requirements customers. As it has demonstrated in the TRM provisions for service to new public utilities and the direct service industrial customers, BPA has the ability to acquire resources as necessary to fulfill its

service responsibilities under § 5(b) of the Northwest Power Act. It is neither legally nor operationally necessary for BPA to materially alter the product provided to one group of preference customers in order to fulfill its obligations to other preference customers.

It is also unclear what the statutory basis BPA is relying upon for such a peak requirement other than that stated in § 5(b) of the Northwest Power Act. If this is an effort to impose a limitation on the capacity made available to preference customers under the Slice product that is used to follow load and facilitate sales of surplus energy, based on the theory that BPA has a forecast capacity deficit, that matter is already addressed under the current Slice/Block contract by the inclusion of the statutory recall rights for both energy and capacity. The Slice Customers have no objection to continuing to be subject to these statutory requirements. However, if BPA is seeking to establish an approach for the recall of capacity sold under the Slice Contract that differs from that prescribed by statute, the Slice Customers are not in agreement that such an approach is either necessary or lawful.

At this juncture, given the confusion regarding the purpose, need and statutory basis of the proposed language, the Slice Customers are unable to state that they agree with the substance of this proposed language. It is suggested that BPA delete this paragraph from Slice Contract in its entirety, and let the matter be addressed if and when the need arises. In the alternative, BPA should revise this provision to reflect its understanding of what the law permits and what it intends to do, and delete the provisions indicating that the customers are in agreement with BPA's understandings. When the purpose, need and statutory basis are better understood, the Slice Customers will be in a better position to determine if they are in agreement.