

CON-068

**Barham, Theodore J - PGL-5**

**From:** Roberts, Timothy C - PGL-5  
**Sent:** Tuesday, August 26, 2008 12:46 PM  
**To:** Norman, Paul E - P-6; Oliver, Stephen R - PG-5; Gendron, Mark O - PS-6  
**Cc:** Miller, Thomas - LP-7; Barham, Theodore J - PGL-5; Busse, Patty J - PGL-5; Hanlon, Douglas W - PSS-5  
**Subject:** FW: Slice Customer Comments on 8/19 Contract Draft  
**Attachments:** Major Outstanding Slice Issues - Aug 26 2008.doc

Attached are the Slice customer comments. In my initial review items 1 – 5 were discussed on Friday 8/22. For item 7 the change from binding to non-binding arbitration was made by OGC, this was a customer request which was never committed to by BPA staff. Still reviewing items 6, 8 – 10 in prep for the 5pm meeting.

*Timothy*

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**From:** HELGESON Dick [mailto:Dick.HELGESON@eweb.org]  
**Sent:** Tuesday, August 26, 2008 11:51 AM  
**To:** Oliver, Stephen R - PG-5; Roberts, Timothy C - PGL-5  
**Cc:** BERGGREN Randy; bgeddes@popud.com; Ed Brost; gregb@clatskaniepub.com; HELGESON Dick; Jo Elg; john Grubich; John Prescott; jorge.carrasco@seattle.gov; rlovely@ghpub.org; SANDERSJ@bentonpub.org; sjklein@snopud.com; Steve Kern; ajmiles@snopud.com; BEDBURY Dan; Brenda Preddie (preddieb@bentonpub.org); Carolyn Belfer; castille@landsenergy.com; Colleen Kimsey; datoulson@snopud.com; Debbie Bone-Harris; debbie.palmason@seattle.gov; Doug Brawley; ejohnson@rejpc.com; HEUSER Jason; Ineke de Lange; Jack Mayson; Jessica Wilcox; joe\_nadal@pngcpower.com; jscheel@popud.com; Karen Miller; lboomer@franklinpub.com; Loren Baker; Mike Hill; power@clatskaniepub.com; Randy Gregg; Ray Camacho; shunt@popud.com; slewis@landsenergy.com; Sue Kuehl; Sylvia Hubbard; TerryM@millcreeklaw.com; Tom Haymaker; VARNER Dick  
**Subject:** Slice Customer Comments on 8/19 Contract Draft

Steve and Timothy,

Attached are the Slice Customer's comments on the most recent BPA draft of the Slice Contract Template released to us on the afternoon of August 19.

As I indicated at Friday's meeting with you and BPA staff, we have been given an extremely limited amount of time to respond to this latest draft, and the revisions proposed are very substantial and significant. In addition, our ability to respond fully in such a short time frame is severely compromised by the fact that our lead counsel Terry Mundorf is on vacation in Europe and many of our negotiating team principals were not available to meet with you on such short notice last week.

Nonetheless we do appreciate your offer to consider these additional comments and take them into account in BPA's continued work on the contract draft. Given that we have only had at best two work days to prepare our comments since Friday's meeting, we have attempted to simply summarize the main issues that remain for us, and where possible to point to language offered previously or generally characterize our desired means of resolution.

9/10/2008

We understand regrettably that BPA intends to issue what will be portrayed as its final version of the Slice template on Friday, August 29. Given the scope of our remaining issues with last week's draft, please be advised that the Slice Customers are not presently in agreement with the terms of the current draft, and we fully expect that additional negotiations will be needed to resolve significant outstanding issues.

Thank you again for this opportunity to offer our comments.

Dick Helgeson  
Slice CEO Committee Chair and  
Director, Power Resources Division  
Eugene Water & Electric Board

**SUMMARY OF MAJOR SLICE CUSTOMER CONCERNS  
RELATED TO BPA REVISIONS INCORPORATED INTO  
AUGUST 19, 2008 DRAFT OF SLICE TEMPLATE**

*Introductory note:* The summary below is intended to identify key issues that current and prospective Slice customers believe require immediate management-level attention. It is not a list of all outstanding issues raised by the August 19, 2008 draft Slice Template. We have not listed issues we hope can be resolved through staff-level efforts to fine-tune language to more accurately reflect both parties' intent, as well as additional provisions for which there has been no opportunity for discussion with BPA to understand underlying reasons and potential implications. We have also omitted discussion related to the Slice true-up, audit, and dispute resolution procedures because these matters are part of BPA's proposed Tiered Rate Methodology.

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1. **Provisions:** Definitions of "Federal Operating Decision," "Prudent Operating Decision," and "Tier 1 System Obligations."

**Concern:** Taken together, these terms as modified in the August 19, 2009 BPA draft confer virtually unlimited discretion on BPA to enter into new obligations and take actions to the detriment of Slice customers, subject only to the limitation that they cannot be taken "solely to enhance surplus power marketing." Over the course of a 17-year take-or-pay contract, this creates far too much risk that the value of the Slice Product could be substantially impaired, with no recourse available to the Slice customers.

**Proposed Resolution:** Restore language consistent with previous negotiations among senior BPA and Slice customer management, as shown in the August 11, 2008 draft of the Slice Template.

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2. **Provisions:** Section 3.4 (Language providing for establishment of a new standard related to peak resource determinations).

**Concern:** Although BPA has indicated in discussions that this provision is intended to deal only with regional standards that implicate resource adequacy assessments, the language as written is much broader and leaves open the possibility that BPA could impose standards that essentially shift capacity shortage problems off of BPA and onto Slice customers by operation of the newly imposed standard.

**Proposed Resolution:** Restore language from the August 11, 2008 draft of the Slice Template or clarify language so that it is clearer the creation of a new standard cannot operate to the detriment of Slice customers. Also, if this language is really designed to have the broad regional

application BPA has proposed, it should be in all Regional Dialogue contracts, not just the Slice Template.

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3. **Provisions:** Section 3.7 (Imposition of new methodology for determining peak net requirements).

**Concern:** The provisions in Section 3.7 (which replace language that has been stricken from Section 1.3 of Exhibit A) are not consistent with what was previously negotiated between senior BPA and Slice customer management. The current language gives BPA unfettered discretion to impose a new methodology for determining Slice customers' peak net requirement with no governing principles whatsoever, other than that it be done in a public process. It is not tied into statutory provisions in Section 5(b)(1) of the Northwest Power Act or BPA experiencing conditions that would permit it to issue an insufficiency notice under Section 5(b)(5) of the Northwest Power Act.

**Proposed Resolution:** Restore language shown in Exhibit A, section 1.3 of the August 11, 2008 draft of the Slice Template or revise section 3.7 to be much more clearly tied to statutory recall terms.

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4. **Provisions:** Section 5.5.6 (Language concerning payment to be made to Slice customers if Slice Output energy or capacity is recalled by BPA under the Preference Act).

**Concern:** The language in the August 19, 2008 Slice Template is a major departure from the terms of the current Slice agreement, which require BPA to recall surplus from other purchasers inside and outside the Pacific Northwest (not just outside) and require BPA to pay Slice customers fair market value for both energy AND capacity that is recalled under this provision.

**Proposed Resolution:** Restore language from section 5.5.6 of the August 11, 2008 draft of the Slice Template or revert to language that maintains the concepts from the current Slice agreement (which would require the right to have binding arbitration if BPA and the Slice customer disagree on what is fair market value).

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5. **Provisions:** Section 5.6.2.5 (Slice-to-Load Test).

**Concern:** The operation of the test in section 5.6.2.5(1) could unfairly penalize customers that, in aggregate over time, do in fact take the full amount of Requirements Slice Output to load, but, when viewed in shorter time frames, can't always force their load to match their share of the Slice Output.

**Proposed Resolution:** Revise section 5.6.2.5(1) to better recognize customer load and resource profiles over time or employ a method similar to the one currently used to implement section 4(b)(3)(A) of the existing Slice agreement.

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6. **Provisions:** Section 5.12.2.3 (Changes to the Slice Computer Application (SCA)).

**Concern:** Under this section, BPA has unilateral rights to change, replace, or upgrade the SCA at its discretion. While the language includes nominal assurances that BPA will demonstrate an upgrade does what is intended and does not cause other parts of the SCA to malfunction, there is no assurance that the Performance and Functionality Tests will be rerun as part of the upgrade. In fact, the section states that BPA's decisions in this area are not subject to SIG approval. BPA's discretion to make unilateral changes of this nature to the essential tool defining Slice customers' hour-to-hour contract rights and obligations is very troubling. Also, the language has been modified so that now BPA determines whether a change to the SCA is consistent with the Slice Product description in section 5.1. The test must be whether a change to the SCA is consistent with the Slice Product definition, not whether BPA says it is.

**Proposed Resolution:** BPA should be able to update the model when needed, but the plan for executing the update, and for testing the sufficiency, accuracy and soundness of the change, replacement, or upgrade should be reviewed with the SIG and subject to SIG approval based on simple Majority. In addition, the language concerning the requirement that changes conform to the Slice Product description in section 5.1 should be restored to the language as provided in the August 11, 2008 draft of the Slice Template.

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7. **Provisions:** Exhibit A, Section 1.1 (Determination of Net Requirement).

**Concern:** Language has been modified to remove the clear requirement that arbitration concerning the reasonableness of a BPA Net Requirement determination that overrides a customer determination must be binding on BPA. Consistent with the rights Slice customers have under the current Slice agreement, customers must be assured that they have access to binding arbitration on this critical issue.

**Proposed Resolution:** Restore language from Exhibit A, section 1.1 of the August 11, 2008 draft of the Slice Template.

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8. **Provisions:** Section 11.2 (Option to terminate for new transmission scheduling requirements).

**Concern:** Earlier drafts of the proposed Slice Template, as well as the current Slice agreement, provide customers with an option to terminate (and switch to another product) if transmission scheduling practices are modified in a way that renders the Slice Product essentially infeasible. Although BPA's perception that this risk could materialize may have changed for the moment, the Slice Agreement will be in effect for 20 years. It is important that if scheduling Slice becomes infeasible, Slice customers have the right to switch products.

**Proposed Resolution:** Restore language from section 11.2 of the August 11, 2008 draft of the Slice Template

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9. **Provisions:** Exhibit M, Section 3.5.3 (Simulator Performance Test).

**Concern:** BPA determined recently that it would have difficulty passing the Performance Test as had been defined in previous drafts of the Slice Template. The joint BPA/customer technical working group has held conference calls and exchanged revised test language once in an effort to make the Performance Test more practical, but has not had sufficient time to carefully work through the new processes related to the Performance Test to ensure they are meaningful.

**Proposed Resolution:** Given the importance of the Performance Test in the Agreement (failure of the test potentially triggers operation under Exhibit O), BPA should provide additional time for the technical working group to complete a careful and considered review of the new provisions before they are finalized.

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10. **Provisions:** Exhibit N, Section 5 (Operating Constraint Violations).

**Concern:** In this final draft, BPA has made major changes to the nature of the SCA and how the model will address operational difficulties in the simulated system. Originally, BPA and the customers had devised a model approach and penalty process that provided a number of layers ensuring customers could reliably schedule in a way to meet all the various non-power Operating Constraints on the hydro system. In the most recent draft BPA has, in one fell swoop, removed these layers of caution from the Simulator and replaced them with the provisions of Section 5, Exhibit N, which allow Power Services, at some later date, to define the operating guidelines a customer will follow if there is a violation of Operating Constraints. Power Services also reserves the right to zero out the generation requests a customer is to receive for the duration of the violation.

**Proposed Resolution:** Customers have not had sufficient time to consider how the new provisions would be applied, given the latitude provided to BPA to work out the consequences later. At a minimum, the outcomes in these situations should be better defined in the Agreement so that Customers have reasonable certainty rather than negotiating these provisions later. This will require adequate time for Customer review and consideration and BPA willingness to help develop more workable provisions.