

CON-076

Larson, Cheryl A - PS-6

From: Roberts, Timothy C - PGL-5
Sent: Wednesday, October 22, 2008 3:17 PM
To: Larson, Cheryl A - PS-6; Barham, Theodore J - PGL-5
Subject: FW: redline contract and cover memo
Attachments: Slice Regional Dialogue contract Final Temp Review CEO BPA memo 100208.doc; Slice Regional Dialogue contract BPA Template Color rev 100208.doc

Attached is the memo (small one, not the redline contract) from the Slice CEO meeting on 10/2. This should be a new CON-076

Timothy

From: Terry Mundorf [mailto:TerryM@millcreeklaw.com]
Sent: Thursday, October 02, 2008 2:54 PM
To: Roberts, Timothy C - PGL-5; Oliver, Stephen R - PG-5
Cc: Terry Mundorf
Subject: redline contract and cover memo

Steve and Timothy-----Attached are the explanatory memo and redline (and highlighted) contract that was discussed at the meeting today. One note of explanation, we deleted section 3.4.2 but have not replaced it with alternative language, thinking some conversation first would aid in the resolution of this issue. Terry

10/22/2008

October 2, 2008

Memo

Re: Final Slice Template Review

A. Introduction

Review of the final Slice contract template (“Template”) has uncovered some errors and ambiguities. These are not merely language choices, but are items that are wrong and warrant correction. All of these items are not uniform in their importance or impact, so they have been categorized as follows:

- Category 1 – Would not recommend signing contract if not corrected.
- Category 2 – Are materially detrimental to the business transaction for all parties and should be corrected before contract execution.
- Category 3 – These are clean up issues but are important enough to warrant correction.

The items in each category are listed below. The attached Template contains in redline suggested language to address each item, and the suggested language is highlighted in a specific color to indicate its category.

B. Category 1 Issues

Surplus energy and capacity curtailment compensation – sections 2.102 and 5.5.6

The Slice rate contains a market based payment for the surplus Slice received. The current contract recognizes this fact by providing market based compensation for recalled surplus Slice. The Slice customers seek market based compensation from BPA when it recalls surplus Slice.

RSO Test – section 5.6.2.4(2)

The tolerance band in the Template is too narrow to ensure routine compliance. Slice customers seek a modestly larger tolerance band to make compliance more achievable.

Non-federal Resource Peak Capability – section 3.4.1

Slice customers understand the need to periodically revise the method for determining non-federal resource peak capability, but believe this is a matter between BPA and its customers. While the work of the Regional Council should be considered, its work should not be a contractual basis for such revision.

Net Peak Requirement – 3.4.2, 3.4.3 and Exhibit A sections 1.2 and 8.

BPA seeks access to Slice capacity that is surplus to their requirements loads and pre-existing obligations under emergency situations. Slice customers understand BPA’s interest, and want to work with BPA to resolve this issue before contract execution. There may be better ways to address this issue than through net requirement determinations

C. Category 2 Issues

TRM Defined Terms – Selected sections. The Template relies heavily on TRM definitions, which are still under discussion. These definitions need to be conformed to the final TRM definitions.

Operating Limits – sections 2.4, 2.81, 2.166. These definitions need revision to add substance and indicate how these constraints will be identified.

Surplus Firm Power – section 2.176. The list of BPA obligations that determines availability of Surplus Firm Power needs to be finite, and not an exemplary list.

System Obligations – sections 2.66, 2.112, 2.125, 5.1, 5.2 and 5.12.2.3. The differentiation and use of the various terms needs to be made consistent in the definitions and operative sections of the Template so all parties have a clear understanding of their rights and duties.

Critical Slice Amount – section 2.46. Calculation of Critical Slice Amount should be subject to the Template terms. Parallel changes should be made to the definitions of Delivery Limits, section 2.51, SCA, section 2.139, Slice Energy Output, section 2.159, and Slice Percentage, section 2.160.

Take or Pay – section 3.2. Definition should be changed to ensure that both requirements and surplus Slice were included in the definition of the product.

Priority Firm Power Rates – section 8.1. Section needs to make clear that Priority Firm Rate includes costs of both requirements and surplus Slice.

Definition of Preliminary Net Requirement – section 10.1. Definition should be linked to the method in Exhibit A for determining net requirements.

Exhibit M, General Description – section 3.1.1. Section should indicate that management of Simulator is in accordance with applicable section of Template body.

Exhibit N, Operating Constraint Violations – section 5.14. Sections should clarify that the customer's penalty should not be more severe than the consequences BPA would face in similar circumstances, and to bound the severity of the penalty by the UAI charge.

D. Category 3 Issues

Block Product – section 2.24

Flat Annual Shape – section 2.72

Initial Slice Percentage – section 2.87

Issue Date – section 2.92

RP Augmentation – section 2.139

Simulator – section 2.147

Slice/Block Product – section 2.155

Slice True-Up Adjustment Charge – section 2.165

Adjustments to Slice Percentage – section 5.3.5

Disposition of Surplus Slice – 5.5.4

Requirements Slice Output Test – 5.6.2

Election to Participate in CGS Displacement – section 5.8.4.2

Treatment of RHW Augmentation – section 5.9

Slice Implementation Group – sections 5.12.2.2, 5.12.2.3

Exhibit M, Simulator Accuracy – section 3.5.4.1

Exhibit N – section 2.1

Larson, Cheryl A - PS-6

From: Roberts, Timothy C - PGL-5
Sent: Wednesday, October 22, 2008 3:24 PM
To: Larson, Cheryl A - PS-6; Barham, Theodore J - PGL-5
Subject: FW: BPA Summary of Slice Contract Modifications

Attachments: Slice Excerpted Template Changes 10102008.doc

Response memo for CON-076 add to CON-076

Timothy

From: Oliver, Stephen R - PG-5
Sent: Friday, October 10, 2008 4:48 PM
To: 'HELGESON Dick'
Cc: Roberts, Timothy C - PGL-5; Miller, Thomas - LP-7
Subject: BPA Summary of Slice Contract Modifications

Dick;

The purpose of this e-mail is to summarize this morning's conference call discussion regarding your requested Slice contract modifications, and make you aware of the upcoming schedule and associated timeline for Slice contract finalization.

We have given the four "must have" issues you identified during our October 2, 2008, meeting serious consideration, and have sought to accommodate your interests in several areas as noted below. We did not agree with your request to modify the surplus energy and capacity curtailment compensation provisions.

1) Surplus Energy and Capacity Curtailment Compensation – Sections 2.102 and 5.5.6

BPA has reviewed its present contract proposal to provide Slice customers compensation for recalled surplus energy at the Slice monthly charge converted to a per MWh rate, and considers such offer to be appropriate and consistent with the non-Slice customers' cost exposure to the recall of surplus. Compensating the Slice customers at the market value for surplus power recalled by BPA would effectively indemnify them if BPA were to exercise a recall of surplus power under section 5(f) and the Northwest Preference Act, P.L.88-552 provisions. A market based payment to Slice parties for recalled surplus could result in a cost shift to the non-Slice customers. BPA will retain the current terms of payment based using the method currently stated in the contract. BPA believes this is the correct level of compensation, without cost shifts and expects that actual curtailments of surplus power are based on conditions which rarely occur.

2) Slice To Load Test Tolerance Bandwidth – section 5.6.2.4(2)

After reviewing your concerns with the challenge of regularly meeting compliance with the tight tolerance bandwidth, BPA will accept your proposed changes and has adopted a 107.5 % to 92.5% tolerance bandwidth in section 5.6.2.4 (2).

3) Non-Federal Resource Capability Determination – section 3.4.1

BPA agrees that citing any specific basis for a standard in this provision, including that of the Regional Council is not necessary and has edited section 3.4.1 to remove the references to specific standards while maintaining the right to revise the standard. We want to be clear that removing reference to specific sources does not mean

those sources may not be considered as we propose to initiate future methodology changes.

4) Calculation and Entry of Peaking Energy Amounts – 3.4.2, 3.4.3 and Exhibit A sections 1.2 and 8.

Based upon our conversations, BPA understands that you are concerned about stating peaking energy amounts in Exhibit A and any potential use by BPA to apply these peaking energy values to take surplus capacity from the Slice customers. To address this concern BPA has edited sections 3.4.2 and 3.4.3. Specifically BPA agrees that it will not enter peaking energy amounts into the Exhibit A, Net Requirements Table at the time of execution of the contract, but will wait to do so until after the establishment of a new peak net requirements methodology has occurred consistent with the public process described in section 3.4.

Because BPA has agreed not to include peaking energy amounts in Exhibit A at the time of execution as you have requested, we have included the following sentence as an addition to the third paragraph of Section 5.1, “Customer Name» agrees that it has the obligation to supply nonfederal power to meet it’s Total Retail Load not met by its purchase of Slice Output and power from the Block Product.”

Remaining Contract Issues

Attached for your reference is an excerpted copy of all changes BPA is making to the Slice contract template in response to the four “must have” items. In addition, we have made three corrections of errors or missing provisions identified either by BPA or in your proposed edits. If you have any clarifying questions regarding the attached changes please contact Timothy Roberts before COB Tuesday, October 14, 2008. No other changes proposed in the Slice customer 10/02/2008 redline edit of the Slice/Block template are included in the attached edits. The remaining Slice customer proposed changes may be considered as part of a contract clean-up amendment process to be done in 2009 for both the Slice/Block and Load Following contracts.



Slice Excerpted
Template Chang...

Allocation of the 2000 aMW

As BPA stated in a letter sent last week, interested Slice customers have until COB Wednesday, October 15, 2008 to determine an allocation other than a straight pro-rata allocation of the Slice amount. It is BPA’s intent to enter these values into individual Slice contracts that are submitted to you for your consideration as a contract option. If BPA does not receive a customer allocation by October 15, BPA will enter pro-rata values it determines based BPA’s Slice Percentage Determination Requirements Load values for those customers that have indicated a continued interest in Slice.

Conformed Template Expectations

BPA expects to complete an updated version of the contract template, incorporating the changes described in this document, by October 17, 2008. At that point, BPA’s contract specialists will update each customer’s individual copy to incorporate the changes. Your Account Executive will contact you regarding when you can expect to receive the updated signature ready version.

We greatly appreciate the long hours you have personally placed on the negotiation and development of the Slice product. We look forward to continuing to work closely with you as BPA develops the Slice Computer Application and other aspects of Slice contract implementation.

Stephen R. Oliver
Vice President, Generation Asset Management
Bonneville Power Administration
Ph: (503) 230-7503 or (503) 230-4090

FAX: (503) 230-3986

BPA's Revisions to the Regional Dialogue Slice/Block Template in Response to Slice Customers' October 2, 2008 Proposed Revisions 10/10/08

3.4 Peak Amount Methodologies

3.4.1 Standard for Calculating Resource Peak Amounts

«Customer Name»'s peak amounts are set forth in Exhibit A for its Specified Resources and have been established pursuant to the Declaration Parameters set forth in the BPA Power Product Catalog dated April 2000, consistent with BPA's 5(b)/9(c) Policy. If BPA determines it is necessary to update such Declaration Parameters in order to incorporate different peak capability determination standards: ~~(1) as established by the Northwest Power and Conservation Council as part of its regional resource adequacy process; (2) as used in PNCA regional resource planning; or (3) as used by BPA to determine the peak capability of the Tier 1 System Resources,~~ then BPA may, consistent with BPA's 5(b)/9(c) Policy and in accordance with section 3.4.3, develop revised peak capability determination standards.

3.4.2 Method for Determining Peak Energy Amounts and Implementation

The amounts of peaking energy «Customer Name» has purchased to meet its firm power load will be stated at a future time in Exhibit A. Until such time that peaking energy amounts are stated in Exhibit A, the amounts of peaking energy available to «Customer Name» are as provided under the Block Product and as calculated by the Slice Computer Application. BPA may adopt a methodology for calculating the amounts of peaking energy available to «Customer Name» under this Agreement. Before any revision to peaking energy amounts may be applied in Exhibit A, BPA shall: (1) complete a process to adopt a methodology, pursuant to section 3.4.3, for determination of peak loads, Federal and non-federal resource peak energy capability, and the amount of peaking energy that «Customer Name» can purchase under this Agreement, and (2) upon completion of such process, in consultation with «Customer Name», calculate the peak energy amounts in accordance with the methodology adopted and enter such amounts into Exhibit A. BPA and «Customer Name» shall take such actions and make such modifications, including to the Slice Computer Application, needed to timely implement any such revision. BPA and «Customer Name» acknowledge that section 5(b)(1) of the Northwest

~~Power Act, P.L. 96 501, contains a provision for determining the amount of peaking energy «Customer Name» may purchase from BPA to serve its firm power load. Such amounts of firm power load and peaking energy are stated in Exhibit A. Such peaking energy amounts do not presently limit the peaking energy available to «Customer Name» under this Agreement. BPA and «Customer Name» agree that at any time during the term of this Agreement, BPA may adopt a methodology for calculating and applying a limitation on the amount of peaking energy that can be purchased under this Agreement by «Customer Name» that is in excess of their BPA firm power load pursuant to section 5(b)(1). Before such limitation may be applied BPA shall: (1) complete a process to adopt a methodology, pursuant to section 3.4.3, for determination of BPA's peak energy loads, Federal and non-federal resource peak energy capability, and any limitation on the amount of peaking energy that can be purchased under this Agreement by «Customer Name», and (2) upon completion of such process, in consultation with «Customer Name», recalculate the peak energy amount in Exhibit A in accordance with the methodology adopted. BPA and «Customer Name» shall take such actions and make such modifications, including to the Slice Computer Application, needed to timely implement any such limitation of the peaking energy available under this Agreement.~~

3.4.3 **Process for Modifying Peak Amounts**

Any methodology for determining the peak energy capability of Specified Resources as described in section 3.4.1, or «Customer Name»'s peak energy amounts for determining amounts pursuant to section 5(b)(1) of the Northwest Power Act, P.L. 96 501, of BPA's peaking energy loads, Federal and nonfederal resource peak energy capability and any limitation on peak energy available from BPA to «Customer Name» under this Agreement, as described in section 3.4.2, will be developed by BPA in a public process, including consultation with «Customer Name» and other interested parties, a formal public comment process, and a record of decision. Except as otherwise agreed by «Customer Name» and BPA, any such methodology shall not require modification of the peak amount of any Specified Resource, or the peaking energy amounts listed in Exhibit A, until the first Fiscal Year of the Rate Period following BPA's delivery of written notice to implement the revised peaking capability standard, from BPA to «Customer Name», which shall be given to «Customer Name» at least 180 days before the start of such Fiscal Year, ~~of BPA's intent to implement the revised peak capability determination standards or peaking energy limitation.~~

5. SLICE PRODUCT

3rd Paragraph of section 5.1 - Slice Product General Description

BPA does not guarantee that the amount of Slice Output Energy made available under the Slice Product, combined with Firm Requirements Power made available under the Block Product, will be sufficient to meet «Customer Name»'s regional consumer load, on an hourly, daily, weekly, monthly, or annual basis. «Customer Name» agrees that it has the obligation to supply nonfederal power to meet its Total Retail Load not met by its purchase of Slice Output and power from the Block Product.

5.3.5 Adjustments to Slice Percentage

As set forth in section 1.32 of Exhibit K for each Fiscal Year, «Customer Name»'s Slice Percentage shall be adjusted: (1) when the amount of Additional CHWM for such Fiscal Year is greater than zero, or (2) such that «Customer Name»'s purchase obligation under this Agreement does not exceed «Customer Name»'s Annual Net Requirement for such Fiscal Year.

5.6.1 Disposition of Requirements Slice Output

Requirements Slice Output (RSO) purchased by «Customer Name» under this Agreement and made available by BPA shall be used solely for the purpose of serving «Customer Name»'s Total Retail Load~~Net Requirement~~. «Customer Name» shall maintain monthly documentation establishing the delivery of RSO to serve its Total Retail Load~~Net Requirement~~, such as by schedule or by electronic tag, for each such month. «Customer Name» shall make such documentation available to BPA upon request.

5.6.2.4 Conditions that Result in Passage of RSO Test

- (1) If «Customer Name»'s Slice-to-Load Delivery in a month is greater than or equal to its RSO for such month, then «Customer Name» shall have satisfied the requirements of the RSO Test for such month; or,
- (2) If «Customer Name»'s Slice-to-Load Delivery in a month is less than its RSO for such month, but «Customer Name»'s Actual Slice Output Energy (ASOE) for the month is less than 107.5 percent of its RSO, and «Customer Name»'s monthly Slice-to-Load Delivery is greater than 92.5 percent of its ASOE for such month, then «Customer Name» shall have satisfied the RSO Test for such month.

10. **TIER 2 REMARKETING AND RESOURCE REMOVAL**

For the purpose of this section 10, any Dedicated Resources added to Exhibit A pursuant to section 3.5.3 or 3.5.7 do not have temporary resource removal or remarketing rights under this section. In addition, any Dedicated Resource amounts or amounts purchased at a Tier 2 Rate that would otherwise be made eligible for removal or remarketing due to the addition of resources under section 3.5.3 do not have temporary resource removal or remarketing rights under this section.

[[[Explanation for above change to section 10

Section 10 of the CHWM contract provides for the removal of certain new resources under limited circumstances that are tied to the calculation of a customer's net requirement. The defined term New Resources used in the templates is too broad under the plain reading of the contract because it may include resource amounts added because of 9(c) decrements or to serve New Large Single Loads (NLSLs). BPA's Section 5(b)9(c) Policy does not allow a customer to gain additional resource removal rights for resource amounts added for 9(c) decrements as it would be illogical for BPA to decrement the amount of power a customer is able to take only to have a customer use the resource removal section of the contract to remove resources added for the decrement, essentially bringing back the same load to requirements service. Removal of resources added for NLSLs could conceivably allow the customer to increase its PF purchases when the only additional load it has to serve is an NLSL which would not meet the rate directives of the Northwest Power Act.]]]

Exhibit Q - DETERMINATION OF INITIAL SLICE PERCENTAGE

- 1.3 "Base Critical Slice Amount" means ~~2,000~~^{1,850} annual aMW, which represents the Base Slice Percentage multiplied by the Base Tier 1 System Capability.
- 1.4 "Base Slice Percentage" means ~~27.02~~^{27.25} percent.