

Regional Dialogue Contract Clean-up Amendment

March 13, 2009

Overview

BPA has committed to offer customers a “clean-up” amendment to the Regional Dialogue contracts in Spring of 2009. The purpose of the amendment will be to revise terms in the contract to coordinate with the terms in the final Tiered Rate Methodology, as required by sections 2 and 6.3 of the Load Following and Slice contracts. BPA will also use this opportunity to review any issues that were either not resolved before the contracts were signed or have surfaced since the contract templates were finalized.

Scope of Issues included in Clean-up Amendment

1. Issues identified by customers since August 2008 applicable to classes of customers, and agreed to by BPA. (*See attachment 1 for log of customers that provided comments.*)
2. Exhibit D Public Exchange Clarification (Proposed contract language has already been shared for public review)
3. Slice/Block percentage reallocation calculation
4. Customer-specific issues

With the exception of the optional Exhibit D Public Exchange Clarification language and the changes necessary to make the contract consistent with the TRM, all other contract amendment changes will be offered as a “package deal” available to each customer in their clean-up amendment. This effort will ensure that each customer who accepts the package of changes will have contracts that are standard.

Revisions have currently been identified that would affect: Load Following and Slice/Block contracts, the PF Block template, the RPSA and NR Block templates, and the Slice Creditworthiness Agreements. (*See attachment 2 for the list of contract changes BPA proposes to include in the Clean-up Amendment.*)

Criteria for Making Changes

The following criteria apply to both BPA suggested changes as well as customer suggested changes.

1. Correct misspellings, incorrect section cross-references, and factual inaccuracies. Do not make grammatical or editorial (ie. drafter’s choice) revisions unless they meet criteria #2, below.
2. Other than those included in criteria #1, any proposed changes must identify significant ambiguities or material errors, if any, in the contracts, which are likely to result in significant contract implementation problems later.
3. BPA is willing to listen to customer concerns but does not intend to revisit or renegotiate issues previously discussed unless: 1. BPA determines a fundamental goal of Regional Dialogue is in jeopardy or 2. BPA and customers agree that such a change would be mutually beneficial to all similarly situated customers and BPA.
4. BPA expects that all customers will amend their contracts through the clean-up amendment, but BPA cannot compel them to do so. However, BPA notes that such changes are mutually beneficial in the instances where the agreement to change is already established in the contract, such as aligning the TRM and contract definitions. Because of this, BPA will consider whether the value of a proposed change could be offset by a reduction in the likelihood that some customers might choose not to amend their contracts.

Schedule

Date	Action	
March 6	Customer Meeting	Continued customer discussions.
March 13	Customer Meeting	Continued customer discussions
March 17	Tentative Customer Mtg	Wrap-up customer discussions, if needed
March 23- April 30	Production Time	4 weeks for Account Specialists to prepare amendments.
April 23- May 8	Internal Stakeholder Review	Quality Control check by internal stakeholders and General Counsel
May 11-July 17	60-Day Offer Window	Signed contract amendments due to BPA by COB July 17, 2009. BPA will sign amendments last.

**Log of Customer Suggestions Regarding
Regional Dialogue Clean-up Amendment**

Click below to view the full text of the suggestion:

No.	Customer Name	Date
1	NRU/ PNGC	8/29/08
2	Columbia River PUD	11/24/09
3	Seattle City Light	11/25/08
4	Centralia City Light	11/26/08
5	Puget Sound Energy	12/1/08
6	Customer Tracking Group	12/2/08

CLEAN-UP AMENDMENT
Proposed Customer Changes That BPA
Believes Meet the Criteria

Misspellings

Slice

- Exhibit N, section 5.1.4, change Chief Joesph to Chief Joseph

Load Following Only

1. Section 2.45, Definitions

Add the revision as shown in italics:

“Pacific Northwest Coordination Agreement” or “PNCA” *(08/15/08 Version)* means Contract No. *97PB-10130*~~14-02-4822~~, as such agreement may be amended or replaced, among BPA, the U.S. Army Corps of Engineers, the Bureau of Reclamation, and certain generating utilities in the Region that sets forth the terms and conditions for the coordinated operation of generating resources in the Region.

2. Section 2.82, Definitions

Revise the following definition to ensure the contract is consistent with the TRM, as shown in italics:

Transmission Curtailment Management Service” or “TCMS” means the service ~~Power Services may~~ *BPA will* provide to ~~back up~~ *customers with* a qualifying resource when a transmission curtailment occurs between such resource and the customer load.

3. Section 9.1, Determination and Notice to Serve Above-RHWM Load

Add the sentence as shown in italics:

9.1 **Determination and Notice to Serve Above-RHWM Load**

«Customer Name» shall determine and provide notice, as described below, to BPA whether «Customer Name» shall serve its Above-RHWM Load that is greater than or equal to 8,760 megawatt-hours with either: (1) Firm Requirements Power purchased from BPA at a Tier 2 Rate or rates, (2) Dedicated Resources, or (3) a specific combination of both (1) and (2). «Customer Name» may also provide notice to BPA that it shall use a Dedicated Resource to serve Above-RHWM Load that is less than 8,760 MWh.

4. Section 10, Tier 2 Remarketing and Resource Removal

Add the following paragraph at the beginning of section 10 to clarify BPA's policy on Resource Removal. (This addition was already made in the Slice contract and is discussed as Issue 6 on page 25 of the Regional Dialogue Contract Policy ROD):

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.

5. Section 22.2, Arbitration

Change incorrect cross-reference from 21.1 to section 22.1 as shown in italics:

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section ~~21.1~~ *22.1* above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

6. Section 23.3.6, Service Elections for an NLSL

Add the revisions as shown in italics:

23.3.6 Service Election for an NLSL

Before the Parties add an NLSL to Exhibit D, «Customer Name» shall elect, in writing, to:

- (1) have BPA serve the NLSL at the NR rate; or
- (2) serve the NLSL *by adding with* a Dedicated Resource *to* Exhibit A that is not already being used to serve «Customer Name»'s firm consumer load in the region.

This election shall be binding on «Customer Name» for the remaining term of this Agreement.

7. Exhibit C, Purchase Obligations, section 2.2.4.3

Add the phrase, and delete language, as shown in italics:

2.2.4.3 **Obligation to Apply Dedicated Resources**

If «Customer Name» provides notice to modify its purchases at Tier 2 Load Growth Rates under section 2.2.4.1 of this exhibit, then for the remainder of the effective Purchase Period and all of the next Purchase Period, «Customer Name» shall apply Dedicated Resources to serve all of its Above-RHWM Load that is in excess of *its commitment to purchase at Tier 2 Load Growth Rates pursuant to 2.2.4.2* ~~the sum of all Tier 2 commitments.~~

8. Exhibit C, Purchase Period Non-Federal Resource Elections table in section 2.4.1.1(2)

Revise the title of the table as shown in italics:

Drafter's Note: Leave table blank at contract signing:

Purchase Period Dedicated non-Federal Resource Elections					
Fiscal Year	2012	2013	2014	2015	2016
Election					
Fiscal Year	2017	2018	2019	2020	2021
Election					
Fiscal Year	2022	2023	2024	2025	2026
Election					
Fiscal Year	2027	2028			
Election					
Note: Insert amounts in Average Megawatts rounded to three decimal places for each year of the applicable Purchase Period.					

9. The Tracking Group raised a concern about the Transmission Curtailment Management Service (TCMS) being offered as an RSS, and its conditions for service. BPA recognizes the customers' concerns and plans to discuss this issue as part of both the Clean-up Amendment Process and RSS development.

Load Following and Slice/Block

1. Section 2, Definitions

Revise definitions to ensure the contract is consistent with the TRM, as shown in italics:

~~7(i)~~ **Process** means a public process conducted, *pursuant to section 7(i) of the Northwest Power Act or its successor*, by BPA to establish rates for the sale of power and other products ~~pursuant to section 7(i) of the Northwest Power Act or its successor~~.

Business Day(s) means every Monday through Friday except Federal holidays.

“**Diurnal Flattening Service**” or “DFS” means a service that makes a resource that is variable or intermittent, or that portion of such resource that is variable or intermittent, equivalent to a resource that is flat within each ~~of the 24 HLH and LLH periods of a year~~ *Monthly/Diurnal period, as defined in the TRM*.

2. Section 3.5.8, PURPA Resources

Add the phrase as shown in italics:

3.5.8 **PURPA Resources**

If «Customer Name» is required by the Public Utility Regulatory Policies Act (PURPA) to acquire output from a Generating Resource *to serve its Total Retail Load*, then such output shall be added as a Specified Resource pursuant to Exhibit A.

3. Section 3.6, Consumer-Owned Resources

Add the word as shown in italics:

3.6 **Consumer-Owned Resources**

Except for any Consumer-Owned Resources serving an NLSL, which «Customer Name» has applied to load consistent with section 23.3.7, «Customer Name» shall apply the output of ~~its~~ *the* Consumer-Owned Resources as follows:

4. Section 3.6.3, Application of Consumer-Owned Resources Serving Onsite Consumer Load

Add the word as shown in italics:

Power generated from Consumer-Owned Resources listed in section 7.1 of Exhibit A shall serve *«Customer Name»'s the* Onsite Consumer Load. *«Customer Name»* shall receive no compensation from BPA for excess power generated on any hour from such resources.

5. Section 14.6.1(2), Ancillary Services (only for customers served by Transfer Service)

Add the revisions as shown in italics:

If at any time *«Customer Name»* is not purchasing Ancillary Service(s) from Transmission Services to deliver Firm Requirements Power to one or more of the PODs listed in Exhibit E, then *«Customer Name»* shall ~~reimburse BPA pay Power Services~~ for the Ancillary Service(s) charges ~~BPA has incurred from the Third Party Transmission Provider~~ to deliver power to such POD(s), at the applicable or equivalent Transmission Services Ancillary Services rate, *in accordance with any applicable BPA Wholesale Power Rate Schedules or GRSPs.*

6. Section 18.2.2, Reporting Requirements

Add the phrase shown in italics:

If *«Customer Name»*'s Total Retail Load *from the immediately prior Fiscal Year* is above 25 annual Average Megawatts, the following requirements may be satisfied by submitting plans and reports *«Customer Name»* prepares in the normal course of business as long as such plans and reports include the information required below.

7. Section 23.3.1.3, Determination of an NLSL

(This change will also be made to NR Block and RPSA)

Add the revisions shown in italics:

23.3.1.3 The Parties may agree that the *applicable increase in load of* installed production equipment at a facility will *equal or* exceed ~~10~~^{ten} Average Megawatts consumption over any 12 consecutive months and *that* such *production load shall constitute an NLSL. Any such* agreement shall constitute a binding NLSL determination.

8. Section 23.3.5, Undetermined NLSLs

(This change will also be made to NR Block and RPSA)

Add the phrase shown in italics:

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer under sections 23.3.3 and 23.3.4, BPA may determine any load subject to NLSL monitoring to be an NLSL, in which case «Customer Name» shall be billed and pay in accordance with the last two sentences of the preceding paragraph. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable *increase in* load did not exceed ten Average Megawatts in any 12-month monitoring period.

9. Exhibit H, section 4, Tier 2 RECs

Add the sentence shown in italics:

4. **TIER 2 RECS**

If «Customer Name» chooses to purchase Firm Requirements Power at a Tier 2 Rate, and there are RECs which BPA has determined are associated with the resources whose costs are allocated to the Tier 2 Cost Pool for such rate, then beginning April 15 of the year immediately following the first Fiscal Year in which «Customer Name»'s Tier 2 purchase obligation commences, and by April 15 every year thereafter for the duration of «Customer Name»'s Tier 2 purchase obligation, BPA shall, based on «Customer Name»'s election pursuant to section 5 of this exhibit, transfer to or manage for «Customer Name» a pro rata share of applicable Tier 2 RECs generated during the previous calendar year. *BPA shall, for transferred RECs, provide «Customer Name» with a letter assigning title of such Tier 2 RECs to «Customer Name».* The pro rata share of Tier 2 RECs BPA transfers to «Customer Name» shall be the ratio of «Customer Name»'s amount of power purchased at the applicable Tier 2 Rate to the total amount of purchases under that Tier 2 Rate.

Slice/Block Only

1. Section 2, Definitions

Revise definitions to ensure the contract is consistent with the TRM, as shown in italics:

“**Above-RHWM Load**” means the forecast annual Total Retail Load, less Existing Resources, NLSLs, and the customer’s RHWM, as determined in the RHWM Process. *For the Transition Period (as defined in the TRM), Above-RHWM Load will be established as described in section 4.3.2.2 of the TRM.*

“**Additional CHWM**” means the *sum of all* CHWMs established for DOE-Richland, New Publics formed in whole or in part out of loads previously served by an entity other than an Existing Public, and load growth for New Tribal Utilities. Additional CHWM will not include CHWMs for New Publics formed out of Existing Publics or other Initial CHWMs.

“**Augmentation for Initial CHWM**” means the amount of annual average firm energy BPA forecasts, during the ~~RHWM~~*RHWM* Process, that will be needed (in addition to the ~~Tier 1 System~~*Firm Critical Output of the Tier 1 System*) to meet the Initial CHWM. The amount of energy is restricted by the Augmentation Limit.

“**Federal Columbia River Power System**” or “**FCRPS**” means the integrated power system that includes, but is not limited to, the transmission system constructed and operated by BPA and the hydroelectric dams *in the Pacific Northwest* constructed and operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation ~~in the Pacific Northwest~~.

“**RHWM Augmentation**” means the amount of augmentation to the Tier 1 System Firm Critical Output BPA calculates in each RHWM Process that is needed to meet the total of all RHWMs. This calculation assumes *that* every customer is able to purchase at Tier 1 Rates up to its full RHWM and is determined by adding Augmentation for Initial CHWM and Augmentation for Additional CHWM.

“**RHWM Process**” means ~~a~~ *the* public process ~~BPA conducts,~~ *conducted* during the Forecast Year prior to each 7(i) Process (beginning with the WP-14 7(i) Process), in which BPA will calculate, as described in section 4.2 of the TRM, the following values for the upcoming Rate Period:

- 1) RHWM Tier 1 System Capability, including RHWM Augmentation;
- 2) each customer’s RHWM;
- 3) each customer’s Forecast Net Requirement; ~~and~~
- 4) each customer’s Above-RHWM Load;

“**Slice True-Up Adjustment Charge**” means the amount charged to each Slice Product customer determined in ~~the Slice True-Up Adjustment~~ *in* accordance with section 2.7.4 of the TRM.

2. Section 2.131, Definitions

Revise the definition to include language as shown in italics:

2.131 “Requirements Slice Output” or “RSO” means, for each month, the portion of «Customer Name»’s Slice Output Energy that is equal to the lesser of: (1) «Customer Name»’s Critical Slice Amount for such month; (2) «Customer Name»’s Annual Net Requirement for such month, less monthly amounts purchased under the Block Product, as specified in Exhibit C; or (3) «Customer Name»’s ~~actual Net Requirement~~ *Total Retail Load metered* for such month, less *«Customer Name»’s Dedicated Resources shown in Exhibit A for such month and less* monthly amounts purchased under the Block Product, as specified in Exhibit C.

3. Section 5.6.2.6(2)

Change the percentage from 95 percent to 92.5 percent as shown in italics:

- (2) The under-delivered amount for such month is equal to the lesser of the amount «Customer Name»’s monthly Slice-to-Load Delivery is less than: (1) «Customer Name»’s RSO for the month, or (2) if section 5.6.2.4(2) is applicable, then *92.5* ~~95~~ percent of «Customer Name»’s ASOE for the month.

4. Section 23.3.6, Service Elections for an NLSL

Add the revision as shown in italics:

23.3.6 Service Elections for an NLSL

«Customer Name» shall serve all NLSLs with Dedicated Resource amounts *added* in Exhibit A that are not already being used to serve «Customer Name»'s Total Retail Load in the region.

«Customer Name» agrees to provide such Dedicated Resources on a continuous basis as identified in Exhibit A. Under no circumstances shall BPA be required to acquire firm power for service to such NLSLs.

5. Exhibit L, section 2

Change incorrect cross-reference from 4.4.1 to section 4.1.1 as shown in italics:

The amounts of RHWL Augmentation listed in section 1 of this exhibit will be a component of the BOS Base amount as determined by the BOS Module pursuant to section *4.1.1* ~~4.4.1~~ of Exhibit M, and shall be made available to «Customer Name» in a Flat Annual Shape for the applicable Fiscal Year.

6. Exhibit O, sections 4(c) and 4(d)

Change incorrect cross-references from 8.4 to 9.4 and 7.2 to 8.2, respectively, as shown in italics:

4(c) **12-Month Forecast of Slice Output Energy**

BPA shall provide «Customer Name» the results of a 12-month forecast as set forth in section ~~8.4~~ *9.4* of Exhibit N, except BPA shall provide data associated with the appropriate corresponding terms defined in this Exhibit O rather than data associated with the terms Simulator Project, Snake Complex, BOS, and PSB as defined in Exhibit M.

4(d) **90-Day Forecast of Slice Output Energy**

BPA shall provide «Customer Name» the results of a 90-day forecast as set forth in section ~~7.2~~ *8.2* of Exhibit N, except BPA shall provide data associated with the appropriate corresponding terms defined in this Exhibit O rather than data associated with the terms Simulator Project, Snake Complex, BOS, and PSB as defined in Exhibit M.

RPSA Only

1. Section 2.4, Definitions

Add the phrase shown in italics:

2.4 “Balancing Account” or “BA” means an account maintained by BPA comprised of amounts, if any, carried over from Contract No. DE-MS79-81BP90603, by and between «Customer Name» and BPA, and Contract No. 08PB-11972 (*“Bridge RPSA”*) by and between «Customer Name» and BPA, plus any additional amounts accrued pursuant to section 12 of this Agreement.

2. Section 8.2, Billing and Payment for In-Lieu PF Power

Add the phrase shown in italics:

8.2 **Billing and Payment for In-Lieu PF Power**

In the event monthly amounts of In-Lieu PF Power are physically delivered to «Customer Name», amounts billed under this Agreement shall be *the monthly amounts that are delivered* by BPA to «Customer Name» pursuant to section 12 of this Agreement.

3. Section 9, Accounting Review, and Budgeting

Change the reference from section 19.1 to section 19 as shown in italics:

At BPA’s expense, BPA or its agent may, from time to time, review or inspect, consistent with the provisions of section ~~19.1~~ of this Agreement, «Customer Name»’s records, accounts, and related documents pertaining to this Agreement. BPA’s agent shall be subject to approval by «Customer Name»; such approval shall not be unreasonably withheld. «Customer Name» shall fully cooperate in good faith with any such reviews or inspections. BPA retains the right to take action consistent with the results of such reviews or inspections to require the pass-through of such benefits to Residential Load Eligible for Monetary Benefits.

NR Block and RPSA

1. NR Block: Section 13.3.1.3, Determination of an NLSL
RPSA: Section 16.2.1.3, Determination of an NLSL

(This change will also be made to the Load Following and Slice/Block contracts)

Add the revisions shown in italics:

The Parties may agree that the *applicable increase in load of* installed production equipment at a facility will *equal or* exceed 10 Average Megawatts consumption over any 12 consecutive months and *that* such *production load shall constitute an NLSL. Any such* agreement shall constitute a binding NLSL determination.

2. NR Block: Section 13.3.5, Undetermined NLSLs
RPSA: Section 16.2.5, Undetermined NLSLs

(This change will also be made to the Load Following and Slice/Block contracts)

Add the phrase shown in italics:

13.3.5 Undetermined NLSLs (09/08/08 Version, Revised for NR Block 4/9/08)

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer, under sections 13.3.3 and 13.3.4, BPA may determine any load subject to NLSL monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable *increase in* load did not exceed 10 Average Megawatts in any 12-month monitoring period.

Slice Creditworthiness Agreements

1. Section 2(d), Definition of “Maximum Annual Power Billing”

BPA intends to clarify this provision to assure that the amount of security to be posted by a Customer for Slice purchases will be calculated on the basis of power sold on a Slice basis and not in any way on power sold on a Block basis.

Currently, the provision could be incorrectly interpreted to permit BPA to demand the posting of security in an amount that is based on power sold on a Block basis.

2. Section 4(b), Continuing Credit Review

Clarify rating and “watch” requirement in sentence, delete the phrase shown in italics:

«Customer Name» has senior, unenhanced debt that is rated by at least one Major Credit Rating Company below investment grade (BBB- or its equivalent), or is rated by at least one Major Credit Rating Company below investment grade *at the lowest investment grade* (BBB- or its equivalent) and «Customer Name» is on negative credit watch by that Major Credit Rating Company;

3. Section 9(b), Use of Funds Available Under Acceptable Credit Support

BPA intends to clarify this provision to assure that BPA will apply amounts received under the Slice Creditworthiness Agreements only to pay costs related to the sale of Slice product. Currently, the provision could be incorrectly interpreted to permit BPA to apply amounts so received to arrearages on power sold on a Block basis.

4. Section 9(c) No Affect on Other Credit Support Obligations

BPA intends to clarify this provision to assure that BPA will not apply funds derived from credit support provided under section 24.7 of the GCPs to cover unpaid obligations for which security has been posted under the Slice Creditworthiness Agreement and vice versa.

5. Customers raised other concerns regarding the Slice Creditworthiness Agreement. Those concerns will be discussed during the upcoming meetings with customers.