



## Department of Energy

Bonneville Power Administration  
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INTERGOVERNMENTAL AFFAIRS

In reply refer to: DI-7

September 17, 2021

Filed via Email and Web Portal: [Electronic Filing \(wa.gov\)](https://www.wa.gov)

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Re: Docket UE-210183, Comments by Bonneville Power Administration (BPA) as follow-up to Clean Energy Transformation Act "Use" Workshop August 12, 2021.

My colleagues and I want to thank you for hosting the August 12, 2021 workshop for interested parties to further discuss the possible interpretations of the word "use" in the Clean Energy Transformation Act (CETA), RCW 19.405.040(1)(a). Below are some follow-up comments that BPA asks the state leads to consider as they prepare rule language on this topic.

BPA's current long-term contracts with our Firm Power customers (typically referred to as Preference customers) extend through 2028 and indicate that BPA sells the same mix of resources for every megawatt-hour it sells. BPA commonly refers to this as selling "one system mix" of power. The Federal Columbia River Power System is a multi-state, integrated system of generation, transmission, and power purchases from which BPA meets its federal statutory obligations to serve its customers. BPA's Firm Power customers are located in seven Western states, though primarily these customers are located in Washington, Oregon, Idaho, and Western Montana.

The discussion at your August 12 workshop regarding the possibility of imputing what the fuel type and attributes are of the power that a utility sells in the market is prompting BPA to share the following information regarding constraints on BPA Firm Power customers' abilities to resell

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Firm Power they have purchased from BPA. Currently, BPA provides three power service product choices to its Preference Firm customers in the Northwest through 2028: Load Following, Block, and Slice. All three products are sales from BPA's system.<sup>1</sup>

Section 5(b) of the Northwest Power Act, 16 U.S.C. § 839c(b)(1), provides that the Firm Power BPA sells to its preference customers is to be used "to meet the firm power load" of such customers. Thus, the statute *precludes* utilities from reselling this power. This is the power that BPA's customers purchase when they buy BPA's Block or Load Following products. With regard to the Slice product, there are also constraints on the quantity of Slice power that BPA's customers can resell. Generally, Slice customers are required to take a minimum amount of slice energy to their load each month to ensure they are only reselling power that is surplus to the slice power needed to meet their retail loads. This is determined through the application of a complicated monthly test, known as the "requirements slice output" test (see below). Customers can market only the remaining surplus slice power. The quantity of surplus slice power available to re-market could vary significantly from year to year, depending on the water year, fish operations, and other factors.

#### Requirements Slice Output Test:

The amount of Slice energy delivered to a customer's load for a given month must be greater than or equal to the Customer's Requirements Slice Output. Requirements Slice Output is equal to the *lesser* of the customer's: (1) Critical Slice Amount, (2) Annual Net Requirement for such month, less monthly amounts purchased under the Block Product, or (3) Total Retail Load metered for such month, less Dedicated Resources.

This is a relatively simple, informal description of the constraints on reselling the Slice product; the actual application of this test is more complicated. The Appendix includes the actual language from the Slice contract to provide the detailed terms as well as a link to BPA's website that includes the standard contract language.

In conclusion, it would be incorrect to imply that a Preference customer is reselling federal power when Preference customers are statutorily prohibited from doing so except for a minimal amount of surplus slice power.

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<sup>1</sup> The following links to BPA's site for the Regional Dialogue contracts includes lists of utility customers that purchase Load Following or Slice/Block or just Block.

- Link to BPA's Regional Dialogue Contracts policies and data: [Regional Dialogue \(Post-2006\) \(bpa.gov\)](https://www.bpa.gov/Regional-Dialogue/Post-2006).
- Link to a list of BPA's Load Following customers: [https://www.bpa.gov/p/Power-Contracts/Regional-Dialogue/rdi/FY21\\_LoadFollowing\\_NetRequirements\\_Transparency\\_2020.08.07.xlsx](https://www.bpa.gov/p/Power-Contracts/Regional-Dialogue/rdi/FY21_LoadFollowing_NetRequirements_Transparency_2020.08.07.xlsx).
- Link to a list of BPA's Slice/Block customers [https://www.bpa.gov/p/Power-Contracts/Regional-Dialogue/rdi/FY22\\_SliceBlock\\_NetRequirements\\_Transparency.xlsx](https://www.bpa.gov/p/Power-Contracts/Regional-Dialogue/rdi/FY22_SliceBlock_NetRequirements_Transparency.xlsx).

Another item to reiterate is that not all of BPA's power sales to preference customers are accompanied by an e-tag. A Washington utility will receive BPA system sale e-tags along with its power purchase if the utility is either (1) located outside BPA's Balancing Authority and buys BPA power; or (2) purchases a BPA Slice power product.

Thank you for your on-going consideration of the federal statutes that govern BPA and the long-term power service contracts that BPA has in place that deliver on BPA's statutory obligations. CETA indicates in multiple sections that it intends to permit utilities to continue purchasing power from BPA. We believe there are interpretations of CETA that continue to permit BPA to sell its power service products to Washington utilities. We appreciate the opportunity to continue to provide comments on the implementation of this important new law. If you have questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth C. Klumpp". The signature is fluid and cursive, with the first name being the most prominent.

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## APPENDIX

BPA Slice Contract Language under “20-Year Regional Dialogue Contracts” [Regional Dialogue \(Post-2006\) \(bpa.gov\)](#).

Definitions are in the contract Section 2.121.

Section 5.5 and 5.6 of the contract include the details of the RSO test.

### 5.4 Critical Slice Amount

PA shall determine «Customer Name»’s Critical Slice Amount for Fiscal Year 2012 no later than 15 days prior to the first day of Fiscal Year 2012, and for each subsequent Fiscal Year no later than 15 days prior to the first day of each such Fiscal Year, using the procedure described in section 2 of Exhibit I.

### 5.5 Disposition of Surplus Slice Output

- 5.5.1 All sales, exchanges, or other dispositions of federal power are subject to and governed by federal law including, but not limited to, the Bonneville Project Act, P.L. 75-329 as amended, the Pacific Northwest Consumer Power Preference Act, P.L. 88-552, the Federal Columbia River Transmission System Act, P.L. 93-454, and the Northwest Power Act, P.L. No. 96-501, as amended.
- 5.5.2 All sales of Surplus Slice Output by «Customer Name» for use outside the Region, or to parties not serving firm retail load in the Region, are subject to the provisions of the Pacific Northwest Consumer Power Preference Act and section 9(c) of the Northwest Power Act, and BPA and «Customer Name» acknowledge their respective responsibilities thereunder.
- 5.5.3 The following uses of Surplus Slice Output shall not constitute a sale of Surplus Slice Output outside the Region:
  - 5.5.3.1 Leaving the Surplus Slice Output in Storage or placing it in «Customer Name»’s Storage;
  - 5.5.3.2 Exchanging Surplus Slice Output with another utility customer in the Region, or a statutorily enumerated type of exchange with a utility outside the Region;

5.5.3.3 Using Surplus Slice Output to displace «Customer Name»'s nonfederal resources identified in Exhibit A, or «Customer Name»'s market purchases that would have been made for serving its Total Retail Load; and

5.5.3.4 A sale of Surplus Slice Output to a BPA utility customer for service to that utility's Total Retail Load in the Region, consistent with sections 3(14) and 9(c) of the Northwest Power Act.

«Customer Name» may demonstrate such uses of Surplus Slice Output by means of a storage account, executed contracts for binding sales or exchanges, or another form of offer and acceptance.

5.5.4 Pursuant to the Pacific Northwest Consumer Power Preference Act and section 9(c) of the Northwest Power Act, BPA shall have the right to curtail all or a portion of «Customer Name»'s: (1) Surplus Slice Output capacity upon 60 months written notice to «Customer Name», and (2) Surplus Slice Output energy upon 60 days written notice to «Customer Name». Any such notice shall specify the amounts and duration of the curtailment, and whether such capacity or energy is needed to meet BPA's capacity and energy requirements in the Region. Prior to issuing any such curtailment notice, BPA and «Customer Name» shall consult in order to determine the quantity, if any, of Surplus Slice Output energy and capacity that may be subject to such curtailment. Such curtailments shall be limited to «Customer Name»'s proportional share of the amount needed, and for the duration necessary, to cover BPA's projection of its needs within the Region. Such curtailments are subject to sections 5.5.5 and 5.5.6.

5.5.5 If BPA issues a notice of curtailment pursuant to section 5.5.4, then it shall concurrently issue notices of curtailment, recall, or termination to all other extra regional and non-preference purchasers to whom BPA has sold Surplus Firm Power, or surplus capacity, for durations longer than specified in the notice, provided that such sales agreements contain provisions that allow for recall, curtailment or termination.

5.5.6 Following each month that Surplus Slice Output is curtailed pursuant to section 5.5.5 above, Power Services shall include a line item credit on «Customer Name»'s monthly customer bill issued equal to the amount of Surplus Slice Output energy curtailed during the preceding month, multiplied by the Monthly Reimbursement Value for the month during which the curtailment was in effect.

## 5.6 Disposition of Requirements Slice Output and Requirements Slice Output Test

### 5.6.1 Disposition of Requirements Slice Output *(10/17/08 Version)*

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. «Customer Name» shall maintain monthly documentation establishing the delivery of RSO to serve its Total Retail Load, 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 Requirements Slice Output Test

#### 5.6.2.1 Submission of Monthly Actual Total Retail Load Data

On or before the 10<sup>th</sup> Business Day of each calendar month, «Customer Name» shall submit to BPA its actual Total Retail Load for the preceding calendar month, expressed in MWh.

#### 5.6.2.2 RSO Test

BPA shall compare: (1) «Customer Name»'s Slice Output Energy delivered to its actual Total Retail Load plus loss return schedules to Transmission Services (Slice-to-Load Delivery) during each month with (2) «Customer Name»'s RSO for each such month. Such comparison is the monthly RSO Test.

#### 5.6.2.3 Notification of Results of RSO Test

On or before the 20<sup>th</sup> Business Day of each calendar month, BPA shall notify «Customer Name» in writing of the results of the RSO Test conducted pursuant to section 5.6.2.2.

#### 5.6.2.4 Conditions that Result in Passage of RSO Test *(10/17/08 Version)*

- (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.

**5.6.2.5 Conditions Under Which BPA May Deem «Customer Name» to Have Satisfied the RSO Test**

- (1) If «Customer Name» has not satisfied the requirements of the RSO Test pursuant to section 5.6.2.4, then «Customer Name» may, within 14 calendar days after BPA provides «Customer Name» with written notice of the RSO Test results pursuant to section 5.6.2.3, provide BPA with data that demonstrates «Customer Name» took reasonable and prudent actions to otherwise satisfy the RSO Test for such month. Such data may include analysis indicating «Customer Name» satisfied the RSO Test in each of two distinct periods of ten or more consecutive days within the month. If Power Services determines such data and/or analysis demonstrates such compliance, then BPA shall deem «Customer Name» to have satisfied the RSO Test for such month. BPA shall have the sole discretion to determine whether «Customer Name» shall be deemed to have satisfied the RSO Test pursuant to this section 5.6.2.5(1). BPA shall, no later than 14 calendar days following the day «Customer Name» provides such supporting data and/or analysis, notify «Customer Name», in writing, of its decision as to whether or not «Customer Name» shall be deemed to have satisfied the RSO Test, and the basis for such decision.
- (2) If recurring conditions exist that result in BPA repeatedly deeming «Customer Name» to have satisfied the RSO Test, BPA and «Customer Name» shall collaboratively develop documentation, through a separate letter agreement, that establishes for a specified prospective time period the conditions under which BPA shall deem «Customer Name» to have satisfied the RSO Test.

**5.6.2.6 Conditions that Result in Failure of RSO Test and Associated Penalty (07/21/09 Version)**

If «Customer Name» fails to satisfy the RSO Test per section 5.6.2.4, and is not deemed by BPA to have satisfied the RSO Test pursuant to section 5.6.2.5 for any month, then a penalty charge shall be assessed as follows for that month:

- (1) The penalty charge shall be equal to «Customer Name»'s under-delivered amount for such month multiplied by the UAI Charge for energy for each such month.
- (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 percent of «Customer Name»'s ASOE for the month.