

Attachment 3

Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

In reply refer to: PSW-6

Date

Contract No. 09PB-XXXX
CREDITWORTHINESS AGREEMENT
WITH CONTINUING CREDIT REVIEW
BY BPA

Dear <<CUSTOMER NAME>> :

The Bonneville Power Administration (BPA) and <<Customer Name>> intend to enter into Contract No. 09PB-XXXX, Slice/Bock Power Sales Agreement (Slice Agreement).

In recognition of the unique features of the Slice Agreement and as an accommodation to BPA, <<CUSTOMER NAME>> hereby agrees to enter into this Letter Agreement (Agreement).

At least prior to the execution of the Slice Agreement, BPA and <<CUSTOMER NAME>> will execute this Agreement. BPA and <<CUSTOMER NAME>> are sometimes referred to individually as "Party" and jointly as "Parties".

Accordingly, BPA and <<CUSTOMER NAME>> agree as follows:

1. **TERM.** This Agreement takes effect on the date signed by BPA and <<CUSTOMER NAME>> , and shall continue in effect until the earlier of the following:
 - (a) Either BPA or <<CUSTOMER NAME>> has not executed the Slice Agreement before <<Date>>.
 - (b) The date, after termination or expiration of the Slice Agreement, on which all payment obligations of <<CUSTOMER NAME>> to BPA in connection with the purchase of electric power by <<CUSTOMER NAME>> under section 5 of the Slice Agreement have been satisfied.
2. **DEFINITIONS.**
 - (a) "Acceptable Credit Support" means the following, as reasonably determined by BPA, provided that BPA may in its discretion agree that other arrangements qualify as Acceptable Credit Support:

(1) The deposit of cash by <<CUSTOMER NAME>> in an escrow or trust account managed by a bank; provided, that, such deposit shall qualify as Acceptable Credit Support only if the amounts required under this Agreement have been deposited in such account for a minimum of six continuous months (or such other continuous period as shall defeat a voidable preference under Federal bankruptcy law then in effect);

(2) An irrevocable standby letter of credit (“LOC”) issued by: (A) a federally insured bank having at least \$1 billion in deposits and whose senior unsecured debt is rated “A” or better by at least two Major Credit Rating Companies; (B) the National Rural Utilities Cooperative Finance Corporation, so long as its senior unsecured debt is rated “A” or better by at least two Major Credit Rating Companies; or (C) an institution of equivalent creditworthiness, as reasonably determined by BPA. The terms and conditions of the LOC shall provide that:

(A) It must be payable in full solely to BPA not later than three Business Days after written demand by BPA and without further conditions;

(B) It must guarantee payment and not performance;

(C) It must waive diligence, presentment, demand, protest, notice of acceptance or any other notice;

(D) It must not be terminable by <<CUSTOMER NAME>> without BPA’s approval;

(E) It must be subject to amendment only with BPA’s approval;

(F) It must be non-transferable and the issuer of the LOC must be obligated to notify BPA of any assumption or assignment thereof;

(G) Except as otherwise stated herein section 2(a)(2)(A)-(F), this letter of credit is subject to International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (ISP98), and as to matters not addressed by the ISP98 this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws, except that to the extent the parties’ rights and obligations are required to be governed by United States Federal law, then such rights and obligations shall be governed by United States Federal law.

No. 09PB-XXXXX, <<Customer Name>>

From time-to-time, the Parties may agree to attach hereto a form of LOC to be used by <<CUSTOMER NAME>> if Acceptable Credit Support must be posted pursuant to this Agreement.

(b) “Business Day” means any day that is normally observed by <<CUSTOMER NAME>> as a workday. If the last day of a period during which an action is to be taken under this Agreement falls on a day that is not a Business Day, the last day of such period shall be the next Business Day.

(c) “Major Credit Rating Companies” means Standard & Poor’s, Moody’s Investors Services, Inc., Fitch Ratings, or their respective affiliates and successors.

(d) “Maximum Annual Power Billing” means the Slice Payment, as specified in the Slice Agreement, multiplied by 12.

(e) “Unenhanced” means, with respect to debt of <<CUSTOMER NAME>>, that such debt is secured by the revenues of <<CUSTOMER NAME>> only and is not supported by another entity whether through bond insurance, guarantee, or another financial product. In addition, the term is meant to exclude project financed debt and debt that is outstanding but defeased or escrowed to maturity.

3. COMPREHENSIVE CREDIT REVIEW AND ACCEPTABLE CREDIT SUPPORT.

(b) **Comprehensive Credit Review.** BPA will conduct an **Comprehensive** credit review of <<CUSTOMER NAME>> to determine the amount of Acceptable Credit Support, if any, that <<CUSTOMER NAME>> must post on or before the date power deliveries by BPA commence under the Slice Agreement.

(c) **When Acceptable Credit Support Will Not Be Initially Required.** If, as of <<Date>>, <<CUSTOMER NAME>>’s senior, unenhanced debt, if any, is rated by one or more of the Major Credit Rating Companies; and: (1) none have rated such debt below investment grade (BBB- or its equivalent); and (2) in the case of any such debt having a rating at the lowest investment grade (BBB- or its equivalent), <<CUSTOMER NAME>> is not on negative credit watch, then <<CUSTOMER NAME>> will have no obligation to post Acceptable Credit Support at the time power deliveries by BPA commence under the Slice Agreement; or after completion of a Comprehensive Creditworthiness Evaluation by BPA internally rates the <<CUSTOMER NAME>> BBB- or greater.

No. 09PB-XXXXX, <<Customer Name>>

(d) **When Acceptable Credit Support May Be Required.** If BPA determines that <<CUSTOMER NAME>> does not meet the criteria outlined in 3(c) then Acceptable Credit Support is required to be posted by <<CUSTOMER NAME>> at the time power deliveries by BPA commence under the Slice Agreement, assuming timely provision of information by <<CUSTOMER NAME>> under section 3(a), BPA will notify <<CUSTOMER NAME>> of the result of such a determination no later than August 1, 2011. If BPA timely notifies <<CUSTOMER NAME>> that Acceptable Credit Support is required at the time power deliveries by BPA commence under the Slice Agreement, <<CUSTOMER NAME>> must post Acceptable Credit Support on or before the time power deliveries by BPA commence under the Slice Agreement in the amount, if any, determined by BPA, **provided, however,** that the amount of Acceptable Credit Support may not at any time exceed the product of 0.120 and the Maximum Annual Power Billing

(e) **<<CUSTOMER NAME>>'s Failure to Submit Credit Application and Related Information.** If BPA has not received a completed credit application and other information to BPA's satisfaction by April 1, 2011, BPA, without any credit review, may require that <<CUSTOMER NAME>> post Acceptable Credit Support in an amount equal to the product of the Maximum Annual Power Billing and 0.120 at the time power deliveries by BPA commence under the Slice Agreement. In such event, <<CUSTOMER NAME>>, must maintain that amount of Acceptable Credit Support until such time as BPA determines otherwise; **provided, however,** that BPA will complete the comprehensive credit review of <<CUSTOMER NAME>> as soon as practicable after the receipt of the information described in subsection 3(a).

4. **CONTINUING CREDIT REVIEW.** From the time power deliveries by BPA commence under the Slice Agreement until the termination or expiration of this Agreement, <<CUSTOMER NAME>> will be subject to continuing credit review by BPA. BPA may periodically review <<CUSTOMER NAME>>'s creditworthiness and determine, consistent with the terms of this Agreement, the amount, if any, of Acceptable Credit Support that <<CUSTOMER NAME>> must post and maintain; **provided, however,** that <<CUSTOMER NAME>> will not be required to post or maintain Acceptable Credit Support in excess of the product of 0.120 and the Maximum Annual Power Billing. Within three Business Days of receipt by <<CUSTOMER NAME>> of notice by BPA to post or increase the amount of Acceptable Credit Support, <<CUSTOMER NAME>> shall post or increase the amount of Acceptable Credit Support to the amount determined and provided in the notice by BPA. BPA will promptly review any Acceptable Credit Support proposed by <<CUSTOMER NAME>> to determine whether it satisfies the requirements of this Agreement. From time-to-time during the term of this Letter Agreement, BPA may request and <<CUSTOMER NAME>> shall provide updated information of the type described in section 3(a), **provided, however,** that such information must be reasonably necessary to BPA's evaluation of <<CUSTOMER NAME>>'s

No. 09PB-XXXXX, <<Customer Name>>

creditworthiness, and, provided further, that <<CUSTOMER NAME>> shall have no obligation to provide BPA with any confidential or business sensitive information.

The following events or conditions are grounds for BPA to determine that <<CUSTOMER NAME>> post or increase the amount of Acceptable Credit Support under this section 4:

- (a) BPA has knowledge that <<CUSTOMER NAME>> has defaulted on or is not performing its payment obligations under power marketing contracts, or loans, notes, bonds, or other evidences of indebtedness;
- (b) <<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;
- (c) The enactment, by any legislative body with competent jurisdiction over <<CUSTOMER NAME>>, of legislation that would render unlawful: (1) the performance by <<CUSTOMER NAME>> of any absolute or contingent obligation to make a payment or to receive delivery in respect of the Slice Agreement, or of any other material provision of the Slice Agreement; or (2) the performance by <<CUSTOMER NAME>> of any material contingent or other obligation that <<CUSTOMER NAME>> has under this Agreement, the Slice Agreement or any Acceptable Credit Support relating to this Agreement;
- (d) <<CUSTOMER NAME>> takes an official position in any legal proceeding to which it is a party that its performance under the Slice Agreement is unlawful or unauthorized;
- (e) Any litigation filed against <<CUSTOMER NAME>>, or the filing by <<CUSTOMER NAME>> of litigation, contesting: (1) the enforceability of <<CUSTOMER NAME>>'s obligations to make payments under the Slice Agreement; (2) the obligation to obtain Acceptable Credit Support under this Agreement; and (3) or to comply with any other material provision of this Agreement or the Slice Agreement;
- (f) Substantial changes in market prices occur that materially and adversely impact <<CUSTOMER NAME>>'s ability to make payments under the Slice Agreement;
- (g) Other material changes in <<CUSTOMER NAME>>'s financial condition have occurred that may adversely impact <<CUSTOMER NAME>>'s ability to make payments under the Slice Agreement; and

No. 09PB-XXXXX, <<Customer Name>>

(h) Failure of <<CUSTOMER NAME>> to provide BPA with information requested by BPA and to the extent that <<CUSTOMER NAME>> does not provide the requested information, BPA is free to draw any conclusion about the creditworthiness of <<CUSTOMER NAME>> with respect to the subject matter of the request.

5. OBLIGATION TO PROVIDE EVIDENCE OF ACCEPTABLE CREDIT SUPPORT. <<CUSTOMER NAME>> must provide BPA with copies of any Acceptable Credit Support provided hereunder immediately upon execution of such Acceptable Credit Support and must provide to BPA within two Business Days of notice by BPA reasonably reliable evidence that Acceptable Credit Support is in effect in the amount provided hereunder.

6. DISPUTES.

(a) <<CUSTOMER NAME>> may dispute BPA's determinations for the posting of or an increase in the amount of Acceptable Credit Support under this Agreement only if <<CUSTOMER NAME>> timely posts the amount so determined by BPA, not to exceed the product of 0.120 and the Maximum Annual Power Billing. <<CUSTOMER NAME>> will maintain such Acceptable Credit Support until the dispute is finally resolved or BPA agrees otherwise.

(b) <<CUSTOMER NAME>> may dispute whether BPA's requests for information are consistent with the terms of this Agreement only if <<CUSTOMER NAME>> posts Acceptable Credit Support in an amount determined by BPA, not to exceed the product of 0.120 and the Maximum Annual Power Billing. <<CUSTOMER NAME>> must maintain such Acceptable Credit Support until the dispute is finally resolved or BPA agrees otherwise.

(c) <<CUSTOMER NAME>> may dispute a determination by BPA whether a LOC or other form of security meets the requirements of an Acceptable Credit Support only if <<CUSTOMER NAME>> posts or maintains security acceptable to BPA and in an amount determined by BPA, not to exceed the product 0.120 and the Maximum Annual Power Billing.

(d) In the event of a dispute arising under this section, the dispute resolution procedures of the Slice Agreement will apply.

7. REQUESTS TO REEVALUATE CREDITWORTHINESS. <<CUSTOMER NAME>> may request, at any time during the term of this Agreement, that BPA reevaluate <<CUSTOMER NAME>>'s creditworthiness. Upon such request, BPA shall determine, consistent with the provisions of this Agreement, whether to reduce the amount of Acceptable Credit Support then required to be posted or maintained by <<CUSTOMER NAME>> .

No. 09PB-XXXXX, <<Customer Name>>

8. FAILURE TO POST OR MAINTAIN SECURITY. In the event <<CUSTOMER NAME>> does not: (a) post or maintain Acceptable Credit Support in the amount required hereunder; or (b) provide reasonably reliable evidence thereof, in each case as provided in this Agreement, <<CUSTOMER NAME>> is in default of this Agreement. <<CUSTOMER NAME>> has three Business Days from the date of receipt by <<CUSTOMER NAME>> of notification by BPA of such default to cure such default by posting Acceptable Credit Support in the amount required hereunder, or, as the case may be, by providing BPA with reasonably reliable evidence thereof. If the default is not so cured within such period, <<CUSTOMER NAME>> is in material breach of this Agreement and the Slice Agreement and BPA may terminate its obligation to deliver electric power under section the Slice Agreement as provided in section [26.1] thereof.

9. ACCESS TO AND USE OF FUNDS.

(a) **Access to Funds Available Under Acceptable Credit Support.** BPA is entitled under this Agreement to draw on or receive the funds available under an Acceptable Credit Support only if <<CUSTOMER NAME>> has been billed under section 16.1 of the Slice Agreement, and the amount so billed remains unpaid, in whole or in part, after the End of the Cure Period outlined in section 16.4. This section shall not be interpreted to require that BPA meet any condition of demand, satisfaction, presentment or other notice prior to drawing on or receiving the funds provided under any credit support provided under this Agreement.

(b) **Use of Funds Available Under Acceptable Credit Support.** If BPA draws on or receives the funds available under an Acceptable Credit Support, such funds shall be used by BPA first to satisfy all liabilities due and owing from <<CUSTOMER NAME>> to BPA pursuant to the terms of the Slice Agreement arising from or related to the delivery of power to <<CUSTOMER NAME>> under section 5 of the Slice Agreement, and second to any other amounts that are due and owing BPA, but that are unpaid under the Slice Agreement including without limitation amounts billed to <<CUSTOMER NAME>> thereunder, any interest thereon, and any True-Up Adjustment Charge (as that term is defined in the Slice Agreement). If the amount of the funds provided to BPA exceeds the sum of all such liabilities, the amount remaining after all such liabilities are satisfied will be promptly returned by BPA to <<CUSTOMER NAME>>, with interest on the excess funds from the date BPA took possession of those funds to the date the excess funds are returned to <<CUSTOMER NAME>>. Such interest shall be calculated by dividing the Prime Rate for Large Banks as reported in the Wall Street Journal on the date BPA took possession of those funds by 365, and applying the resulting interest rate to the excess funds returned to <<CUSTOMER NAME>> for each day of the period for which interest is due under this section.

No. 09PB-XXXXX, <<Customer Name>>

10. FORM OF NOTICE. Unless otherwise specified, notice under this Agreement shall be in writing and shall be effective when received. Notice may be transmitted by hand delivery or by mail. Notice may also be transmitted by facsimile or electronic mail, provided that such transmission shall have been followed by hand or mail delivery of the original notice.

No. 09PB-XXXXX, <<Customer Name>>

If the foregoing is acceptable to <<CUSTOMER NAME>> , please sign and date all three originals of this Agreement and return two sets to me. The remaining original is for your files.

Sincerely,

Account Executive

Name
(Print/Type)

ACCEPTED:

By _____

Name _____
(Print/Type)

Title _____

Date _____

No. 09PB-XXXXX, <<Customer Name>>