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ADDRESSING

AMR/AMI RISKS

WITH EFFECTIVE

VENDOR NEGOTIATIONS

AND

CONTRACTS

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OVERVIEW

- Pre-Negotiation Risk Management
- Selected Contract Issues
 - Proper Definition of Scope/Requirements
 - Vendor Accountability
 - Incentives and Intermediate Remedies
 - Vendor Strength/Insolvency
 - Dispute Resolution
 - Obsolescence
 - Data Security and Privacy
 - Pricing Protection/Financial Issues
 - Benchmarking
 - Third Party Issues
 - Other Issues



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PRE-NEGOTIATION RISK MANAGEMENT

- Process For Identifying Risks
 - Due Diligence visits to Operational Sites
 - Interviews with Business Process Owners
 - Call Center Personnel
 - IT
 - Field
 - Financial
 - Engineering
 - Lessons Learned/Large Project Implementation
 - Independent Reviews from corporate auditing



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PRE-NEGOTIATION RISK MANAGEMENT

- Understanding Types of Risks Incurred
 - Technical
 - Metering Infrastructure
 - IT infrastructure
 - Operational
 - Support Levels
 - Organizational Structure



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PRE-NEGOTIATION RISK MANAGEMENT

- Understanding Risks (cont.)
 - Implementation
 - Schedule
 - Costs
 - Materials Management
 - Vendor
 - Financial Viability
 - ‘Bench Depth’
 - Number and qualifications of key personnel
 - Change Management
 - Identifying affected people and processes
 - Financial
 - Achieving Business Case Benefits



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PRE-NEGOTIATION RISK MANAGEMENT

- Profiling Risks
 - Develop Risk Profile for each risk
 - Probability of occurrence
 - Impact on project
 - Develop Mitigation Strategies for each risk
 - Examples:
 - Bargaining Unit -- Communication Strategy/Partnering
 - IT Design (Interfaces) -- Contract/Resourcing
 - Tracking meter installs -- Contract
 - Stranded Investment -- Internal Strategy
 - Focus on High Profile Risks



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PRE-NEGOTIATION RISK MANAGEMENT

- RFI
 - Create List of Potential Solution Providers

- RFP
 - Establishes Expectations regarding risk
 - Client form contract



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PRE-NEGOTIATION RISK MANAGEMENT

- Due Diligence
- Negotiating Rules Agreed Upon
- Issue Identification/Impact on Negotiations
- Dual/Multi-Track Negotiations



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AMR CONTRACTS

- Typical Outsourcing Table of Contents and Exhibits (Appendix A)
- Typical System Acquisition Table of Contents and Exhibits (Appendix B)



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PROPER DEFINITION OF SCOPE/REQUIREMENTS

- Comprehensive Description
 - Scope of Service
 - System Integration Responsibilities
 - Warranties
- Acceptance Testing and Remedies
- Changes Over Time
- Service Level Agreements



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- Service Level Agreements
 - Objectives of Service Levels
 - How to Establish
 - Measurement and Reporting



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- Service Level Methodologies
 - Amount at Risk
 - Allocation of Pool Percentage
 - Performance Categories
 - Weighting



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- Service Benchmarking
 - When to apply benchmarking
 - Scope of the benchmark
 - Identification of Peers
 - Identification of Benchmarker
 - Establishment of Benchmarking Methodology



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Service Level Agreements

- Most favored customer clauses
- Customer satisfaction surveys
- Gainsharing



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VENDOR ACCOUNTABILITY

Overview

- Vendor Goal: Limit Exposure/Risk
- Legal Responsibility (w/o contract limitation): Damages Caused by Breach
- Contractual Limitations on Liability
- Importation from Other Contexts
- “Standard” Clauses



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VENDOR ACCOUNTABILITY

Limitation Mechanisms

- Performance Description and Warranty Limitation
- Damage Category Limitations (e.g. “consequential,” “incidental,” etc.)
- Damage Amount Limitations
- Exculpatory Clauses
 - General (Force Majeure)
 - Specific (use, software modification, customer instructions)
 - Bilateral
- Remedy Limitations (“sole remedy”)
- Time Limits
- Notice Requirements



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VENDOR ACCOUNTABILITY

Customer Responses

- Just Say “No”
- List Expressly Covered Damages
- Increase Damage Caps
- Exceptions to Limitations
- Exceptions to Overly Broad Clauses
- Recognition and Revision
- Indemnification
- Intermediate Remedies



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INCENTIVES AND INTERMEDIATE REMEDIES

Overview

- Practical Limits on Termination
- Continuous Product Improvement
- Extended Duration
- Address small problems/avoid big problems



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INCENTIVES AND INTERMEDIATE REMEDIES

- Withhold Payment
- Liquidated Damages
- Performance Debits/Credits
- Performance Incentives/Business Case



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VENDOR STRENGTH/SOLVENCY

- Overview
 - Performance/Accountability Continuum
 - Subsidiaries
 - Extended Term
- Approaches
 - Due Diligence
 - Covenants/Reporting/Early Warnings
 - Guarantees
 - Parent/Affiliates
 - Performance Bonds
 - Insurance
- Assignment/Ownership Limitations



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DISPUTE RESOLUTION

- Overview
 - Termination Not Effective Remedy
 - Extended Duration
 - Imprecise Standards (“material,” “reasonable”)
 - General Obligations (cooperation, product improvement)
- Recommendations
 - Escalation Process
 - Expense Allocation



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OBSOLESCENCE

- Technology Superseded
- Vendor's Failure to Stay Competitive
- Anticipated Future Developments Not Realized



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OBSOLESCENCE

Approaches

- Termination (for convenience, for “obsolescence”)
- State General Obligations
 - Maintain Competitive Edge
 - Periodic Upgrades, New Releases
 - Continuous Product Improvement
- Intermediate Remedies
- Service Benchmarking



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OBSOLESCENCE

Approaches (cont.)

- Payment Schedule of Contract
- Commit Vendor to Compensation Structure that Encourages Product Improvement
- Specific (as possible) R&D Exhibit with Timelines
- User Group/Customer Involvement in R&D
- Dispute Resolution Procedure



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DATA SECURITY & PRIVACY

- AMR data will have economic value
 - Load management planning
 - Vendors of cost management services
 - Real estate brokers/purchasers
 - Vendors of appliance repair services
 - Vendors of appliances
 - Private investigators
 - Thieves



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- Two questions for contracting
 - Who will control the economic value?
 - Customers (may be regulatory rule)
 - Utility alone
 - AMR vendor alone
 - Utility and AMR vendor combined
 - How will that economic value be protected?



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- Need to Protect the Economic Data From:
 - Theft: selling or use of the data by someone who will make economic use of it that diminishes your own
 - Misuse: Taking the data and using it for unauthorized purposes
 - Abuse: Using the data for malicious purposes



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- Steps needed to protect data privacy and security
 - Contractually establish who controls the data
 - Develop appropriate privacy policies, both internal and external
 - Provide notice to data subjects/obtain consent where required
 - Develop appropriate security policies for data collection, transmission, storage, access, use, modification, and destruction
 - Train personnel
 - Establish breach detection and notification systems
 - Draft contractually enforceable provisions applicable to the AMR vendor with real security and privacy protection content
 - Conduct internal and external compliance



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PRICE PROTECTION/FINANCIAL ISSUES

- Creation of the “base case”
- Identification of retained costs



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PRICE PROTECTION/FINANCIAL ISSUES

- Pricing Methodologies
 - Fixed Fee Models
 - Rate Tables
 - Time and Materials
 - Variable Pricing Models
 - Treatment of Pass-Through Expenses
 - Asset Acquisition Expenses
 - Minimum Revenue Commitments



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PRICE PROTECTION/FINANCIAL ISSUES

- Price Protection Strategies
 - Price Benchmarking
 - Automatic Price Reduction Mechanisms
 - Cost of Living Adjustments
 - Extraordinary Event Pricing
 - Most favored customer clauses



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PRICE PROTECTION/FINANCIAL ISSUES

- Managing Change Orders and Price Increases
- Billing and Invoicing Issues
 - Multi-jurisdictional tax issues
 - Chargeback methodologies



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OTHER FINANCIAL CONSIDERATIONS

- Taxes
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- Insurance
- General Expenses



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THIRD PARTY ISSUES

- Transfer of Assets
 - Equipment
 - Hardware
 - Consent requirements
 - Allocation of Costs



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THIRD PARTY ISSUES

- Transfer of Licenses
 - Software licensed by customer
 - Software licensed to third parties and used by third parties on behalf of customer
 - Transfers of licenses at end of contract term
 - Allocation of Costs
 - Access and Confidentiality Issues



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THIRD PARTY ISSUES

- Use of Third Party Facilities or Services
 - Consent requirements
 - Allocation of Costs
 - Allocation of Risk/Indemnities
 - Confidentiality Issues



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OTHER ISSUES

- Extraordinary Events
Clauses/Change Mechanisms
- Step-In Rights and Realities
- Variable Termination Consequences
- Boilerplate



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CONCLUSIONS

- Effective Contracting Processes and Contracts Reduce Risks:
 - Comprehensive definitions of scope and deliverables
 - Effective value propositions (warranties, incentives, liquidated damages)
 - Attention to detail at all levels of contract negotiation process



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- Relevant Publications: “*Contracts: Making the AMR Solution Your Solution*,” Electric Perspectives, Sept/Oct 2006.



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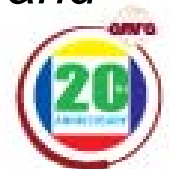
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Acknowledgement

The authors/presenters wish to acknowledge the contributions of **Bernard J. Bujnowski** to this program. Bernie was Director of the AMR Project for PPL Electric Utilities (Allenton, PA). He was actively involved in a predecessor program presented at **Autovation 2006**, particularly on the subject of pre-negotiation risk management and acting as a foil to the lawyers' assertions. Now retired from PPL, Bernie remains active as a consultant on AMR/AMI projects. Among his publications are "Lessons from a Successful AMR Implementation," *Transmission and Distribution*, May 2005. Bernie can be reached at bernie.bujnowski@energyeast.com.



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List of Attachments

<u>Exhibit</u>	<u>Description</u>
-----	Glossary of Terms
A	Description of Services
B	Pricing and Adjustments
C	Installation Schedule
D	Work Plans
E	Service Area
F	Meter Module Purchase Terms
G	Bill of Sale
H	Equipment Lease
I	Technology Escrow Agreement
J	Master Site Terms
K	Integration Phase/Integration Phase Standards
L	Compliance Certificate
M	Guarantee Forms
N	Notification of Phase Election
O	System and Software License and Supply Agreement
P	Communications License Addendum
Q	Short Spacing Agreement
R	Meter Supply Agreement
S	Disaster Recovery and Business Continuity Plan
T	Third Party Hardware and Software



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