

EEI FALL CONFERENCE 2007

Transmission, Metering and Distribution

Managing Risks in AMI Deployments

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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

PRE-NEGOTIATION RISK MANAGEMENT

- Process For Identifying Risks
 - Due Diligence
 - Engage Business Process Owners
 - Lessons Learned/Large Project Implementation
 - Independent Reviews

PRE-NEGOTIATION RISK MANAGEMENT

- Understanding Risks
 - Technical
 - Operational
 - Implementation
 - Vendor Specific
 - Change Management
 - Financial

PRE-NEGOTIATION RISK MANAGEMENT

- Profiling Risks
 - Probability/Impact
 - Mitigation Strategies
- RFI
 - Create List of Potential Solution Providers
- RFP
 - Establishes Expectations regarding risk
 - Client form contract

PRE-NEGOTIATION RISK MANAGEMENT

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

DEFINITION OF SCOPE/REQUIREMENTS

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

VENDOR ACCOUNTABILITY

Overview

- Vendor Goal: Limit Exposure/Risk
- Contractual Limitations on Liability
- Importation from Other Contexts
- “Standard” Clauses

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

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

INCENTIVES AND INTERMEDIATE REMEDIES

Overview

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

INCENTIVES AND INTERMEDIATE REMEDIES

Examples

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

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

DISPUTE RESOLUTION

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

OBSOLESCENCE

Approaches

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

OBSOLESCENCE

Approaches (cont.)

- Payment Schedule
- Compensation Structure
- Specific R&D Exhibit/Timelines
- User Group/Customer Involvement in R&D
- Dispute Resolution Process

DATA SECURITY & PRIVACY

- Who controls economic value?
 - Customers (may be regulatory rule)
 - Utility alone
 - AMR vendor alone
 - Utility and AMR vendor combined
- How protected?

PRICE PROTECTION/FINANCIAL ISSUES

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

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

THIRD PARTY ISSUES

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

OTHER ISSUES

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

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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- Foley & Lardner LLP
- Energy Industry Team
- Information Technology and Outsourcing Group
- Experience
 - Outsourcing and System Acquisition Agreements
 - Investor Owned Utility Clients
 - AMR/AMI Solutions
- Relevant Publications: “*Contracts: Making the AMR Solution Your Solution,*” Electric Perspectives, Sept/Oct 2006.
- AMRA Presentations, Autovation 2006 and 2007, “Addressing AMR/AMI Risks with Effective Vendor Negotiations and Contacts.”
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