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IDAHO PUBLIC  
UTILITIES COMMISSION

August 30, 2006

Ms. Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, Idaho 83702

VIA FEDERAL EXPRESS

RE: *Case No. AVU-E-05-7*  
*Thompson River Cogen, LLC v. Avista Corporation*

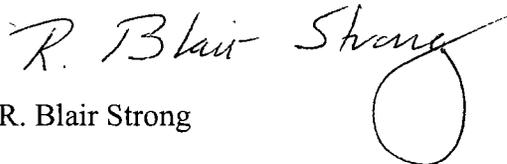
Dear Ms. Jewell:

Enclosed for filing please find the original and seven copies of the *Joint Petition of Thompson River Co-Gen, LLC and Avista Corporation* in the above-referenced matter.

If you should have any questions, please do not hesitate to contact me. Please conform and return the additional copy in the enclosed self-addressed stamped envelope. Thank you for your assistance.

Very truly yours,

PAINE, HAMBLLEN, COFFIN, BROOKE  
& MILLER LLP

  
R. Blair Strong

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Enclosure

cc: Service List

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IDAHO PUBLIC  
UTILITIES COMMISSION

**For Avista Corporation**

DAVID J. MEYER

VICE PRESIDENT, CHIEF COUNSEL FOR REGULATORY  
AND GOVERNMENTAL AFFAIRS

AVISTA CORPORATION

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE JOINT  
PETITION OF AVISTA CORPORATION  
AND THOMPSON RIVER CO-GEN,  
LLC FOR APPROVAL OF A POWER  
PURCHASE AND SALE AGREEMENT

CASE NO. AVU-E-05-07

JOINT PETITION OF  
THOMPSON RIVER CO-GEN, LLC  
AND AVISTA CORPORATION

Avista Corporation ("Avista") and Thompson River Co-Gen, LLC ("TLC")

(Avista and TLC are referred to collectively as the "Parties") hereby petition the Idaho

Public Utilities Commission ("Commission" or "IPUC") for an order approving the

Power Purchase and Sale Agreement between Avista Corporation and Thompson River Co-Gen, LLC dated July , 2006 ("Agreement") which is attached as Exhibit 1. In support of this Petition, the Parties state as follows:

1. Avista is a corporation created and organized under the laws of the State of Washington with its principal office in Spokane, Washington. Avista is an investor-owned utility principally engaged in the business of providing electric and natural gas service in the states of Idaho and Washington.

2. TLC is a limited liability company created and organized under the laws of the State of Montana that operates a thermal wood waste / coal co-generation facility power plant, at Thompson Falls, Montana (hereinafter referred to as the "Facility").

3. TRC's Facility is capable of generating up to approximately 13 megawatts of energy. The Facility is a Qualifying Facility ("QF") pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (1978) ("PURPA") and 18 C.F.R. Part 292 (2003).

4. In January, 2005, Avista and TRC commenced exchanging communications respecting a possible sale of power from the Facility to Avista.

5. The Parties were not able to reach agreement on a power purchase and sale agreement and on August 30, 2005, TRC petitioned the Commission for an order requiring Avista to purchase of TRC's energy at the published non-levelized rates for fueled projects that generate no more than 10 aMW monthly.

6. On or about March 13, 2006, Deputy Attorney General Scott Woodbury advised the Commission on behalf of the Commission Staff and the Parties that the Parties had reached an agreement in principle that resolved the material issues in the case.

7. The Parties have now reached agreement on a power purchase and sale agreement that settles the issues raised in the case and resolves other details of the Agreement. In summary, the essential terms of the Agreement are as follows:

(a) The Purchase and Sale Agreement is for a term of twenty (20) years following the Operation Date of the Facility, unless terminated earlier by terms and conditions contained in the Agreement. Avista may, at its sole discretion, terminate the Agreement should the Operation Date not be reached on or before October 31, 2007.

(b) The Agreement shall not become effective until the Commission determines that the prices to be paid for electric power are just and reasonable, in the public interest, and that the costs incurred by Avista for purchases of electric power from Seller are legitimate expenses.

(c) Avista will be the sole purchaser of TRC's generation, except in exceptional circumstances where transmission is not available from the Facility to Avista's service territory. For all Net Delivered Output received by Avista that is not Surplus Energy, Avista shall pay \$58.50 per megawatt-hour. For all Surplus Energy received by Avista, Avista shall pay to the current month's Market Energy Cost per megawatt-hour or the Net Delivered Output Purchase Price specified above, whichever is lower. The power purchase rates are negotiated as a reasonable compromise to resolve their dispute and do not represent a levelized rate calculated from published avoided cost rates. Other terms of the Agreement represent a settlement of other potential issues of dispute.

**WHEREFORE**, Avista and TRC respectfully request that the Commission issue an order approving the Agreement, including provisions:

(1) approving the Agreement as a settlement of all known existing disputes between the Parties raised in this case; and

(2) allowing deferral and recovery of all power purchase costs subject to Avista's Idaho Power Cost Adjustment ("PCA") or as otherwise recovered by Avista through base rates, and declaring that prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the cost incurred by Avista for purchasing capacity and energy from TRC are legitimate expenses.

(3) approving the Agreement as satisfaction of the entirety of Avista's obligations under PURPA with regard to the Facility.

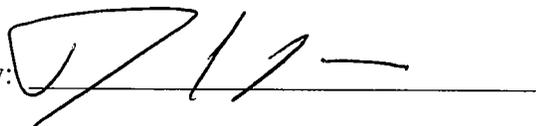
**THE PARTIES FURTHER REQUEST** that the Commission consider this joint petition in accordance with Rule 201, et seq. allowing for disposition by Modified Procedure. IDAPA 31.01.01.201 et seq.

**DATED** this 25<sup>th</sup> day of August, 2006.

Thompson River Co-Gen, LLC

Avista Corporation

By: 

By: 

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of August, 2006, the *Joint Petition of Thompson River Co-Gen, LLC and Avista Corporation* was sent to the following parties as shown:

Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, Idaho 83702  
[jjewell@puc.state.id.us](mailto:jjewell@puc.state.id.us)

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- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Scott Woodbury  
Idaho Public Utilities Commission  
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[swoodbury@puc.state.id.us](mailto:swoodbury@puc.state.id.us)

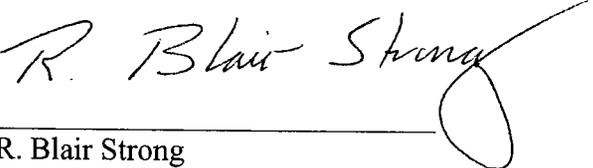
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- Facsimile
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- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

  
\_\_\_\_\_  
R. Blair Strong

# EXHIBIT 1

**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**THOMPSON RIVER CO-GEN, LLC**  
**FOR THE THOMPSON RIVER CO-GEN, LLC PROJECT**  
**AND**  
**AVISTA CORPORATION**

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This Agreement, effective August 25, 2006, is made by and between Avista Corporation, a Washington corporation ("Avista"), and Thompson River Co-Gen, LLC ("Project Developer"). Avista and Project Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, Project Developer is or shall be a Qualifying Facility within the meaning of the Public Utility Regulatory Policies Act of 1978 and the rules and regulations thereunder;

**WHEREAS**, Project Developer owns, operates and maintains a thermal wood waste / coal co-generation facility power plant, as further identified in Exhibit B, hereto.

**WHEREAS**, Project Developer has entered into an agreement for the interconnection of the Facility to NorthWestern Corporation, d/b/a NorthWestern Energy ("NorthWestern");

**WHEREAS**, the Project Developer has entered or shall enter into an agreement ("NorthWestern Transmission Agreement") under which NorthWestern shall provide firm transmission of power to the Primary Point of Delivery;

**WHEREAS**, Avista is obligated under the Public Utility Regulatory Policies Act of 1978 and the rules and regulations of the IPUC to purchase power from Qualifying Facilities;

**WHEREAS**, the Energy Policy Act of 2005 requires that all costs associated with purchase of power from Qualifying Facilities be recovered in the retail rates of the purchasing utility;

**WHEREAS**, the Parties have negotiated a purchase and sale price for Net Delivered Output, security, transmission and other provisions, to resolve a dispute between the Parties as to the applicable avoided cost purchase rate and contract provisions applicable to the sale of power from the Facility to Avista;

**WHEREAS**, Avista shall diligently prepare a filing and submit this Agreement to the IPUC for approval after its execution by the Parties hereto;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows.

## 1. DEFINITIONS

Whenever used in this Agreement and exhibits hereto, the following terms shall have the following meanings:

1.1 "Agreement" means this Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 "Alternative Point of Delivery" means any Bonneville Power Administration transmission interconnection with Avista's transmission system at times when Avista is able to receive Net Delivered Output at that location.

1.3 "aMW" means average MW.

1.4 "Avista", "Project Developer", "Party" and "Parties" shall have their respective meanings set forth above.

1.5 "Facility" means the electric generating facilities, including all equipment and structures necessary to generate and supply power, more particularly described at Exhibit B (Description of the Facility).

1.6 "Facility Service Power" means the electric power used by the Facility during its operation for facility service power, including, but not necessarily limited to pumping, generator excitation, cooling or otherwise related to the production of electricity by the Facility.

1.7 "FERC" means the Federal Energy Regulatory Commission.

1.8 "Independent Engineering Certifications" means certifications provided by a professional engineer registered in Montana, Washington or Idaho, who has no direct or indirect, legal or equitable, ownership interest in the Facility.

1.9 "Interconnection Agreement" means the agreement between Project Developer and NorthWestern by which Net Available Output may be delivered into the transmission system of NorthWestern at the Point of Interconnection.

1.10 "Interconnection Facilities" means all facilities required to interconnect the Facility for delivery of Net Available Output to the NorthWestern transmission system including connection, transformation, switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.11 "IPUC" means the Idaho Public Utilities Commission or its successor.

1.12 "MW" means megawatt. One thousand kilowatts equals one megawatt.

1.13 "**Market Energy Cost**" means eighty-five percent (85%) of the weighted average of the daily On-Peak and Off-Peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both Parties shall mutually agree upon a replacement index, which is similar to the Dow Jones Mid-C Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electric industry.

1.14 "**Net Available Output**" means all electric energy generated by the Facility, net of Facility Service Power, net of power delivered to Thompson River Lumber Company, an adjacent separately owned business, net of transformation losses..

1.15 "**Net Delivered Output**" means the amount of Net Available Output net of any transmission losses associated with the scheduling and delivery of electric energy to Avista at the Point of Delivery that is scheduled to and accepted at the Point of Delivery.

1.16 "**Net Delivered Output Cost**" means the rate in dollars per megawatt-hour, to be paid by Avista for all Net Delivered Output, subject to any limitations under this Agreement. The Net Delivered Output Cost is specified in Section 11.

1.17 "**Off-Peak**" means all hours other than On-Peak hours.

1.18 "**On-Peak**" means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Sunday, including NERC holidays.

1.19 "**Operating Year**" means each 12-month period from January 1 through December 31.

1.20 "**Operation Date**" means the date, as confirmed in writing by Avista, upon which the energy deliveries reliably commence. Project Developer shall have the duty to obtain the confirmation from Avista. Such confirmation shall not be unreasonably withheld by Avista. The Operation Date shall be the first day of the month following the later of the following dates:

1.20.1 The date following the day during which the Facility has reached a degree of completion and reliability, such that it is capable of operating and continuously delivering electric power to Avista.

1.20.2 The day following the day that Avista has verified that Project Developer has fulfilled all of the conditions required by Sections 3 and 4, of the Agreement.

1.21 "**Point of Delivery**" means the Primary Point of Delivery, the Secondary Point of Delivery or any Alternate Point of Delivery.

1.22 "**Point of Interconnection**" means the physical and metering interconnection of the Facility to the NorthWestern transmission system at the high side of the 13.2kV/115kV step-up transformer at the Thompson River Co-Gen Substation.

1.23 "**Primary Point of Delivery**" means the point of interconnection between the transmission systems of Avista and NorthWestern in Idaho at Avista's Burke substation.

1.24 "**Prudent Utility Practices**" means the practices, methods, and acts, including but not limited to practices, methods, and acts engaged in or approved by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

1.25 "**Scheduled Outage**" means any outage which is scheduled by the Project Developer to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than its full tested capability.

1.26 "**Secondary Point of Delivery**" means Avista's transmission interconnection with the NorthWestern transmission system at Hot Springs, Montana, at times when Avista is able to receive Net Delivered Output at that location.

1.27 "**Surplus Energy**" means: (1) Net Delivered Output produced by the Project Developer's Facility and delivered to the Avista electrical system during the month which exceeds 110% of the monthly Net Delivered Output estimate for the corresponding month specified in Section 6.3; (2) If the Net Delivered Output produced by the Project Developer's Facility and delivered to the Avista electrical system during the month is less than 90% of the monthly Net Delivered Output estimate for the corresponding month specified in Section 6.3, then all Net Delivered Output delivered by the Facility to the Avista electrical system for that given month, or (3) All Net Delivered Output produced by the Project Developer's Facility and delivered by the Facility to the Avista electric system prior to the Operation Date. For clarification, Net Delivered Output that is Surplus Energy pursuant to this definition shall be sold to Avista at the price set forth in Section 11.2.

1.28 "**Transmitting Entity**" means NorthWestern or its successors or assignees and other third parties as necessary to provide transmission and interconnection service to deliver power from the Facility to Avista's transmission system at the Point of Delivery.

1.29 "**Transmission Agreements**" means agreements entered into between Project Developer and Transmitting Entities.

## 2. **NO RELIANCE ON AVISTA**

2.1 **Project Developer Independent Investigation**. Project Developer warrants and represents to Avista that in entering into this Agreement and the undertaking by Project Developer of the obligations set forth herein, Project Developer has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement.

2.2 Project Developer Experts. All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Project Developer may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Project Developer.

### 3. WARRANTIES

3.1 No Warranty by Avista. Any review, acceptance or failure to review Project Developer's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Avista, and Avista makes no warranties, expressed or implied, regarding any aspect of Project Developer's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

3.2 Qualifying Facility Status. Project Developer warrants that the Facility is a "Qualifying Facility", as that term is used and defined in 18 CFR §292.207. After initial qualification, Project Developer shall take such steps as may be required to adequately maintain the Facility's Qualifying Facility status during the term of this Agreement, and Project Developer's failure to adequately maintain Qualifying Facility status will be a material breach of or default under this Agreement. Avista reserves the right to review the Project Developer's Qualifying Facility status and associated support and compliance documents at any time during the term of this Agreement.

3.3 Previous Power Sale Agreement. The Project Developer warrants that its obligations have terminated under a previous "Co-Generation Power Sale Agreement" between the Project Developer and NorthWestern Energy, LLC.

### 4. CONDITIONS TO ACCEPTANCE OF ENERGY

Prior to the Project Developer requesting an Operation Date and an Operation Date being assigned for this Agreement as specified in Section 1.20, the following actions must have occurred:

4.1 Licenses, Permits and Approvals. Project Developer shall have submitted proof to Avista that all licenses, permits or approvals necessary for Project Developer's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.207.

4.2 Opinion of Counsel. Project Developer shall have submitted to Avista an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho, Montana or Washington providing an opinion that Project Developer's licenses, permits and approvals as set forth in Section 4.1 above are legally and validly issued, are held in the name of the Project Developer, and based on a reasonable independent review of Project test operations by a qualified engineer, counsel is of the opinion that Project Developer is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion will be in a form acceptable to Avista

and will acknowledge that the attorney rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of the form shall not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

4.3 Security. Project Developer shall have complied with Section 7, Security.

4.4 Transmission. Project Developer shall have provided Avista with a copies of the firm transmission agreements providing for firm transmission of Net Delivered Output from the Facility's Point of Interconnection to the Primary Point of Delivery executed by the Project Developer and the Transmitting Entity in a form acceptable to Avista. Avista's acceptance shall not be unreasonably withheld.

4.5 Written Acceptance. Project Developer shall have obtained written confirmation from Avista that all conditions to acceptance of electric energy have been fulfilled. Such written confirmation shall not be unreasonably withheld by Avista.

4.6 IPUC Approval. The IPUC shall have issued a final order approving this Agreement and determined that costs to be incurred by Avista in purchasing electric energy pursuant to the Agreement are prudent for purposes of determining Avista's retail rates in Idaho. Avista shall utilize best efforts to obtain such approval.

4.7 Engineer's Certifications - This Facility is currently interconnected to the NorthWestern system. The Project Developer shall have submitted an Engineer's Certification of Operations and Maintenance ("O&M") Policy as described in IPUC Order No. 21690. This certificate will be in the form specified in Appendix C but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

4.8 Initial Year Monthly Net Delivered Output Estimates. Project Developer shall have provided to Avista the Initial Year Monthly Net Delivered Output Estimates in accordance with Section 6.3.1.

## 5. TERM OF AGREEMENT

5.1 This Agreement shall become effective on the date when all of the following conditions are met:

5.1.1 Agreement has been executed by both Parties;

5.1.2 Project Developer has received FERC Qualifying Facility Certification;

5.1.3 Approval by the IPUC ("Effective Date"); provided, however, this Agreement shall not become effective until the IPUC has determined that the prices to be paid for electric power are just and reasonable, in the public interest, and that the costs incurred by Avista for purchases of electric power from Seller are legitimate expenses.

5.2 The term of the Agreement shall be for twenty (20) years following the Operation Date, unless terminated earlier by terms and conditions contained herein.

5.3 Unless excused by Force Majeure, Avista may terminate this Agreement on thirty (30) days prior written notice if Project Developer fails to deliver Net Delivered Output equal to 87,600 megawatt-hours during any rolling period of twenty-four (24) consecutive months.

5.4 Notwithstanding any other provision of this Agreement, Avista may, at its sole discretion, terminate this Agreement should the Operation Date not be reached on or before October 31, 2007.

## 6. PURCHASE AND SALE OF POWER

6.1 Project Developer shall sell and deliver and Avista shall purchase all Net Delivered Output.

6.2 The Facility is designed, and the Project Developer shall operate the Facility in a manner such that the hourly scheduled amount of Net Delivered Output does not exceed 13 MW in any hour. Avista shall have the right, but not the obligation, to purchase any Net Delivered Output from the Facility in excess of 13 MW in any hour. The maximum annual amount of electric power that Avista is obligated to purchase hereunder shall be 105,000 megawatt-hours in any Operating Year.

### 6.3 Net Delivered Output Amounts.

6.3.1 Initial Net Delivered Output Estimates. Project Developer shall provide to Avista Net Delivered Output estimates for each of the twelve consecutive months that begin with the month containing the Operation Date, counting the month during which the Operation Date occurs as month one (Initial Year Monthly Net Delivered Output Estimates). Project Developer shall provide to Avista such Initial Year Monthly Net Delivered Output Estimates by written notice in accordance with Section 29 no sooner than twenty (20) calendar days prior to the Operation Date and no later than seven (7) calendar days prior to the Operation Date.

6.3.2 Subsequent Monthly Net Delivered Output Estimates. At the end of month nine following the Operation Date, and at the end of every third month thereafter, Project Developer shall provide to Avista Net Delivered Output estimates pertaining to each of the additional consecutive three months for which Project Developer has not yet delivered to Avista Net Delivered Output estimates, so that Project Developer shall have provided in advance on a rolling basis to Avista six months of Net Delivered Output estimates. Project Developer shall provide such Net Delivered Output estimates to

Avista by written notice in accordance with Section 29, no later than 5:00 p.m. of the last business day of the month during which they are required to be provided.

**6.3.3 Content of Net Delivered Output Estimates.** All Net Delivered Output estimates shall be expressed in kilowatt-hours by month.

**6.3.4 Failure to Provide Net Delivered Output Estimates.** If the Project Developer fails to provide to Avista Net Delivered Output estimates when required herein pertaining to any month or months, Avista shall determine the Net Delivered Output estimates pertaining to such month or months, and the Net Delivered Output estimates shall be binding for purposes of the Agreement as though they were prepared by Project Developer and provided to Avista as required by the Agreement..

**6.3.5 Project Developer's Revisions of Net Delivered Output Estimates.** At the end of month three following the Operation Date, and at the end of every third month thereafter, counting the month during which the Operation Date occurs as month one, Project Developer may provide Avista with revisions to Net Delivered Output estimates previously provided to Avista, except Project Developer may not revise Net Delivered Output estimates that pertain to the three consecutive months that immediately follow the month during which Project Developer provides Avista notice of the revisions. If Project Developer elects to revise Net Delivered Output estimates previously provided to Avista, then Project Developer must provide to Avista the revised Net Delivered Output estimates by written notice in accordance with Section 29, no later than 5:00 p.m. of the last business day of the month during which they are required to be provided.

**6.3.6 Avista Adjustment of Net Delivered Output Estimate.** If Avista is excused from accepting the Project Developer's Net Delivered Output as specified in Section 9.2 or if the Project Developer declares a Suspension of Energy Deliveries as specified in Section 9.3, and the Project Developer declared Suspension of Energy Deliveries is accepted by Avista, the Net Delivered Output estimate as specified in Section 6.3 for the specific month in which the reduction or suspension under Section 9.2 or 9.3 occurs will be reduced in accordance with the following:

Where:

NDO = Current Month's Net Delivered Output estimate

- SGU = (a) If Avista is excused from accepting the Project Developer's Net Delivered Output as specified in Section 9.2 this value will be equal to the percentage of curtailment as specified by Avista multiplied by the TGU as defined below.
- (b) If the Project Developer declares a Suspension of Net Delivered Output as specified in Section 9.3 this value will be the sum of the individual generation units size ratings as specified in Exhibit B that are impacted by the circumstances causing the Project Developer to declare a Suspension of Net Delivered Output.

TGU = Sum of all of the individual generator ratings of the generation units at this Facility as specified in Exhibit B of this Agreement.

RSH = Actual hours the Facility's Net Delivered Output was either reduced or suspended under Sections 9.2 or 9.3.

TH = Actual total hours in the current month

Resulting formula being:

---

$$\text{Adjusted Net Delivered Output} = \text{NDO} - \left( \left( \frac{\text{SGU}}{\text{TGU}} \times \text{NDO} \right) \times \left( \frac{\text{RSH}}{\text{TH}} \right) \right)$$

This Adjusted Net Delivered Output estimate will be used in applicable Surplus Energy calculations for only the specific month in which Avista was excused from accepting the Net Delivered Output or the Project Developer declared a Suspension of Energy

## 7. SECURITY

7.1 Business Insurance Prior to Operating the Facility. Prior to operating the Facility, Project Developer shall obtain and maintain insurance coverage of all of the following types with limits as shown:

<u>Type</u>	<u>Minimum Coverage Limits</u>	<u>Maximum Deductible</u>
Liability	\$1 million, per occurrence	Consistent with current insurance utility practices for a similar property

7.1.1 Commercial general liability insurance for bodily injury and property damage with limits equal to \$1,000,000 for each occurrence, combined single limit. The deductible for such insurance shall be consistent with current insurance utility practices for a similar property.

**7.2 Business Insurance Prior to Operation Date.** Prior to the Operation date, Project Developer shall obtain and maintain insurance coverage of all the following types with limits as shown:

Type	Minimum Coverage Limits	Maximum Deductible
Catastrophic Perils	80% of plant cost	Consistent with current insurance utility practices for a similar property
Boiler/Machinery	80% of equipment cost	Consistent with current insurance utility practices for a similar property
Loss of Income (Business Interruption)	Up to 20% annual	Consistent with current insurance utility practices for a similar property
All Risk Property	80% of Facility cost	Consistent with current insurance utility practices for a similar property.

**7.2.1** All risk property insurance with minimum limits not less than eighty percent (80%) of the total cost of the Facility. This insurance shall be written on a replacement cost basis and shall include the following:

**7.2.1.1** Standard fire policy;

**7.2.1.2** Extended coverage endorsement; and

**7.2.1.3** Vandalism and malicious mischief endorsement.

**7.2.1.4** The deductible for this coverage shall be consistent with current insurance utility practices for a similar property.

**7.2.2** Boiler and machinery insurance with minimum limits not less than eighty percent (80%) of the total cost of the equipment covered in Section 7.2.2.1 below. This insurance shall include the following:

**7.2.2.1** All boiler and machinery coverage must be written on a "comprehensive form" basis to provide coverage against the sudden and accidental breakdown of all boilers, machinery and electrical equipment, turbines, generators and switchgear;

**7.2.2.2** Coverage under this coverage must be written on a replacement cost basis;

7.2.2.3 The deductible for this coverage shall be consistent with current insurance utility practices for a similar property.

7.2.3 Earthquake and flood (catastrophic perils) insurance with limits not less than eighty percent (80%) of the total cost of the Facility. The deductible for this insurance shall be consistent with current insurance utility practices for a similar property.

7.2.4 Business interruption (loss of income) insurance not less than twenty percent (20%) of the Facility's estimated gross annual revenue. This insurance shall include the following:

7.2.4.1 Coverage shall include Project Developer's loss of earnings when business operations are curtailed or suspended because of a loss due to an insured peril.

7.2.4.2 Coverage may be written on an actual loss sustained basis.

7.2.4.3 This insurance must be endorsed to both the All Risk Property Insurance policy and the Boiler and Machinery Insurance Policy.

7.2.4.4 The deductible for this insurance shall be consistent with current insurance utility practices for a similar property.

7.2.4.5 The estimated gross daily revenue and estimated gross annual revenue shall be computed on the basis of the estimated kilowatt-hour production.

7.2.5 The form of all insurance policies, and the insurance companies issuing the policies shall be acceptable to Avista, provided however, that any approval by Avista shall not be unreasonably withheld, and must have an A.M. Best rating of A- or better. Project Developer shall provide copies of all insurance policies to Avista as proof of insurance. All insurance policies required to fulfill the requirements of Sections 7.1 and 7.2 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty (60) days prior to any change or termination of the policies.

7.2.6 In the event Project Developer fails to pay, when due, any premium required to maintain the effectiveness of any insurance policy required under Sections 7.1 and 7.2, Avista may at its option, pay such premiums. In the event that Avista exercises its option to pay such premiums, the amount of such payments shall be immediately due and payable to Avista by Project Developer. Payment shall be made pursuant to Section 11.

7.2.7 Avista shall be named as an additional insured on all insurance policies, subordinate only to the Facility's primary lenders and shall also be named an additional

loss payee on the policies for all risk property insurance, boiler and machinery insurance, catastrophic perils insurance, and business interruption insurance.

7.2.7.1 In the event of catastrophic or boiler/machinery failure, Project Developer shall promptly notify Avista of such loss to the Facility. Avista may make proof of loss if Project Developer fails to do so within forty-five (45) days, prior to the final day that the applicable insurance policy requires that the casualty be reported to the insurer, or if the applicable insurance does not allow for forty-five (45) or more days in which to report a casualty, fifteen (15) days prior to the final day that the applicable insurance policy requires that a casualty be reported to the insurer.

7.2.7.2 Unless the parties agree otherwise, Project Developer shall repair or replace the damaged or destroyed Facility. Proceeds from said casualty insurance policies shall be paid into an account with Avista and Project Developer as joint signatories. Disbursements from such account shall be used first for repairing or replacing the insured property unless otherwise agreed. Upon completion of repairs or replacement of the Facility, the balance, including accumulated interest, if any, remaining in such account shall become property of Project Developer and shall promptly be released to Project Developer by Avista, subject to the rights of primary lenders.

7.2.7.3 In the event that the Parties agree the insured property cannot be economically repaired or replaced, the amount, including accumulated interest, in the joint account described in Section 7.2.7.2 above, shall be used first to satisfy the Project Developer's obligations to primary lenders. Second, any balance shall then be utilized to satisfy the Project Developer's obligations to Avista, if any, as determined herein. Third, any remaining balance, including accumulated interest, if any, remaining in such account shall become property of the Project Developer and shall be promptly released to Project Developer by Avista.

7.2.8 At the end of every fifth Operating Year following the Operation Date, the minimum coverage limits for the liability, catastrophic, and boiler/machinery insurance shall be adjusted by increasing or decreasing the underlying original plant cost to reflect changes in the appropriate regional heavy construction deflator as published by the United States Department of Commerce.

7.2.9 All business insurance coverage listed in Sections 7.1 and 7.2 must remain in place at all times during the contract term. Project Developer shall annually submit evidence of such insurance coverages. Should any of the coverages above lapse, Project Developer shall immediately notify Avista in writing of such lapse of coverage.

7.3 Engineering Certifications. Prior to the Operation Date, Project Developer shall obtain and provide to Avista Independent Engineering Certifications as follows:

7.3.1 as to the adequacy of the design and construction of the Facility to operate reliably during the term of the Agreement in substantially the form shown in Exhibit C; and

7.3.2 as to the adequacy of the Operations and Maintenance Policy substantially in the form shown in Exhibit D.

7.4 Lien and Step-In Rights

7.4.1 Lien Rights. Prior to the Operation Date, Project Developer shall grant to Avista lien rights in the Facility securing Project Developer's obligations under this Agreement, subordinate only to the rights of primary lenders.

7.4.1.1 Upon completion of the Facility, Project Developer shall deliver a mortgagee's policy of title insurance in the face amount of \$25,500,000 obtained at Project Developer's expense insuring Avista's lien as prior to all other liens and encumbrances, except a first mortgage lien granted by Project Developer in an amount not to exceed \$25,500,000.

7.4.1.2 Before Avista shall become obligated to make any payment to Project Developer hereunder, Project Developer shall deliver a commitment from primary lenders agreeing that in the event of a default under any primary lender mortgage, such primary lenders will provide Avista with notice of the default and an opportunity to cure the default. Project Developer agrees that an uncured default under such mortgages shall also constitute a default under this Agreement.

7.4.1.3 Project Developer shall also execute and deliver to Avista such financing statements, fixture filings, or other documents necessary to grant Avista security interests in all personal property, fixtures, contract rights, water rights, permits, licenses, real property interests, or other rights or privileges which Project Developer has obtained or will obtain in conjunction with the construction or operation of the Facility, subject only to the rights of primary lenders to the Project, and further subject to the limitation that the total value of any or all security interests granted to Avista by Project Developer shall not exceed \$25,500,000.

7.4.1.4 Upon any default by Project Developer hereunder, Avista shall have all rights and remedies available at law or in equity to holders of secured interests in personal property or liens on real property, in addition to all rights and remedies specifically provided for herein. Avista, at its option, may advance sums to cure any default under Lender's first mortgage lien, and all such sums advanced by Avista shall be secured by all security interests given by Project Developer to Avista under this Agreement.

**7.4.1.5** Avista shall execute such documents as are necessary to release its security interests in Project Developer's property at the completion of Project Developer's obligations under this Agreement.

**7.4.2 Step-In Rights.** In addition to all of Avista's other rights hereunder, upon the occurrence of an uncured material non-monetary breach of or default under this Agreement by Project Developer, and provided that the operation of the Project has not been assumed by any primary lender pursuant to financing documents applicable to such lender, Avista shall have the right, but under no circumstances the obligation, to assume operational responsibility for the Project in the place and stead of, and as agent for, Project Developer in order to complete construction, continue operation or complete any necessary repairs so as to preserve Avista's right to purchase Net Delivered Output; provided, however, that Avista's rights under this Section 7.4.2 shall be subordinate to the rights of any primary lender. Avista shall give written notice to Project Developer and primary lenders at least thirty (30) days in advance of the contemplated exercise of its rights under this Section 7.4.2. Project Developer shall affirmatively cooperate to deliver the Project and means of operation of the Project to Avista during the thirty (30) day period. In no event shall Avista's election to operate the Project (in the case of an uncured material non-monetary breach of or default under this Agreement on the part of Project Developer) be deemed to be a transfer of title or a transfer of Project Developer's obligations as owner thereof. In the exercise of such operating rights, Avista shall be Project Developer's agent, and all liabilities incurred in the operation of the Project shall be incurred for Project Developer's account without liability to Avista, except for liabilities incurred by Project Developer as a result of the gross negligence or willful misconduct of Avista. For the purpose of implementing the foregoing, Project Developer hereby appoints Avista as Project Developer's attorney in-fact, with power to operate the Project if Avista elects to exercise such operating rights. This power being coupled with an interest is irrevocable until this Agreement is terminated.

**7.4.2.1** During any period that Avista is exercising the step-in rights, Avista shall comply with all applicable laws and shall operate and maintain the Project in compliance with Prudent Utility Practice in the exercise of the step-in rights granted in this Subsection 7.4.2.

**7.4.2.2** During any period that Avista is exercising the step-in rights granted pursuant to this Subsection 7.4.2, Avista shall hold all amounts it would otherwise pay to Project Developer hereunder. Avista shall distribute revenue from such withheld payments in the following priority:

- (i) first, in payment of all of the reasonable operating costs of the Project;
- (ii) second, in payment of insurance premiums to maintain insurance as required by Subsections 7.1 and 7.2;
- (iii) third, in payment of real estate taxes assessed against the Project;

- (iv) fourth, to primary lenders all then-due regularly-scheduled, non-accelerated payments; and
- (v) fifth, to Avista in reimbursement for all reasonable expenses actually incurred in exercising its step-in rights;
- (vi) sixth, the balance to Project Developer; provided, however, in the event of an acceleration of payment obligations by primary lenders such revenue shall be distributed as directed by such primary lenders.

7.4.2.3 During the period Avista exercises such step-in rights,

- (i) Project Developer shall have no right or obligation to operate the Project, nor any right to exercise any rights inconsistent with the exercise by Avista of such rights, or any right to receive any payment otherwise due from Avista in connection with the Project other than in accordance with Subsection 7.4.2.2, and
- (ii) Project Developer shall perform all steps reasonably requested by Avista to facilitate the exercise by Avista of such step-in rights.

7.4.2.4 On each occasion on which Avista elects to exercise such step-in rights, Avista may exercise such rights until the later of:

- (i) thirty (30) days after the date the uncured material non-monetary breach of or default under this Agreement which gave rise to Avista's right to exercise such rights, if any, is cured, or
- (ii) the first anniversary of the date on which Avista began such exercise of such rights; provided, however, Avista may elect at any time to terminate its then exercise of such rights upon the date specified by Avista in a notice to Project Developer (with a copy to primary lenders) as the date on which it will cease exercising such rights, which notice shall be given at least sixty (60) days before such date (except to the extent inconsistent with clause (i), above), unless such shorter period is approved by primary lenders; provided, further, however, that such notice may be given no less than ten (10) days before such date in the event primary lenders accelerate Project Developer's payment obligations under the applicable financing documents. Upon receipt of notice of Avista's intent to terminate its exercise of such rights, Project Developer must notify Avista of its ability to operate the Project or to permit Avista to exercise such other rights as Avista may have under this Agreement.

**7.4.3 Subordinate Rights.** Avista's rights under Section 7 shall be construed as being subordinate only to the rights of primary lenders to the extent set forth in Section 7.4.1.1.

## **8. INTERCONNECTION, TRANSMISSION AND DELIVERY**

**8.1** Project Developer shall design, construct, install, own, operate and maintain the Interconnection Facilities so as to allow safe, reliable generation and delivery of Net Delivered Output to Avista over the full term of the Agreement. Project Developer shall not consent to any modification of the firm transmission agreement referred to in Section 4.4 without Avista's advance written approval, which approval shall not be unreasonably withheld. The Project Developer shall bear the full responsibility and expense for transmission and all associated ancillary services and losses from the Point of Interconnection to the Primary Point of Delivery, Secondary Point of Delivery, and Alternate Point of Delivery.

**8.2** In addition to the above costs where applicable, Project Developer shall reimburse Avista for any costs or expenses, if any, incurred by Avista in accordance with the Transmission Agreements including, but not necessarily limited to, any charges, reimbursable expenses or other amounts payable by Avista to the Transmitting Entities. Further, to the fullest extent permitted by applicable law, Project Developer releases and shall defend, indemnify and hold harmless, Avista from all claims, losses, harm, liabilities, damages, costs, and expenses including, but not necessarily limited to, reasonable attorneys' fees, arising out of any act or omission of Project Developer in connection with the Transmission Agreements, including, but not limited to, any breach of or default under any of the Transmission Agreements by Project Developer.

**8.3** Avista may require Project Developer to curtail, interrupt or reduce delivery of Net Delivered Output to any Point of Delivery if, in accordance with Section 9.2, Avista determines that curtailment, interruption or reduction is necessary because of force majeure or to protect persons and property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista shall use its reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Project Developer operations, Avista shall give Project Developer reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration.

**8.4** In the event that Project Developer is required to curtail, interrupt or reduce deliveries of electric energy to the Primary Point of Delivery, Project Developer shall arrange at its own expense to deliver Net Delivered Output to the Secondary Point of Delivery, and Avista shall use reasonable commercial efforts to accept Net Delivered Output at such point.

**8.5** In the event that Project Developer is unable to arrange delivery of electric energy to the Primary Point of Delivery or Secondary Point of Delivery, Project Developer shall arrange

at its own expense to deliver Net Delivered Output to an Alternate Point of Delivery, and Avista shall use reasonable commercial efforts to accept Net Delivered Output at such point.

8.6 The Project Developer shall arrange for the provision of all required generation reserves and any other ancillary services associated with generation as are now or hereafter may be required by the Western Electricity Coordinating Council (WECC) and/or as required by any other governing agency or industry standard.

8.7 Avista is an intended third part beneficiary of the Transmission Agreement and a default by Project Developer under the Transmission Agreement will be a default under this Agreement.

## 9. OPERATION

9.1 Communications and Reporting. Avista and the Project Developer shall maintain appropriate operating communications through Avista's Designated Dispatch Facility in accordance with Exhibit A of this Agreement.

### 9.2 Excuse From Acceptance of Delivery of Power.

9.2.1 Avista may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of power at the Primary Point of Delivery, the Secondary Point of Delivery, or any Alternative Point of Delivery, if Avista reasonably determines consistent with Prudent Utility Practice that the failure to do so:

9.2.1.1 May endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;

9.2.1.2 May cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers;

9.2.1.3 May interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista's electric system or other property of Avista.

9.2.2 Avista shall promptly notify Project Developer of the reasons for any such interruption, suspension or curtailment provided for in Section 9.2.1, above. Avista shall use reasonable efforts to limit the duration of any such disconnection, interruption, suspension or curtailment. In the event of any such disconnection, interruption, suspension or curtailment at the Point of Delivery, Project Developer shall use reasonable efforts to arrange for delivery of Net Delivered Output to the Secondary Point of Delivery. In the event of any such disconnection, interruption, suspension or curtailment at the secondary Point of Delivery, Project Developer shall use reasonable efforts to arrange for delivery of Net Delivered Output to an Alternative Point of Delivery. In the

event of any such disconnection, interruption, suspension or curtailment at an Alternative Point of Delivery, Project Developer shall use reasonable efforts to arrange for delivery of Net Delivered Output to another Alternative Point of Delivery. In the event that Project Developer is unable to arrange for delivery of Net Delivered Output to another Alternative Point of Delivery, after using reasonable efforts, the Net Delivered Estimate Amount will be adjusted as set forth in Section 6.3.6.

### 9.3 Project Developer Declared Suspension of Energy Deliveries.

9.3.1 If the Project Developer's Facility experiences a force majeure or a forced outage due to equipment failure which is not caused by an event of force majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Project Developer's Facility, Project Developer may, after giving notice as provided in Section 9.3.2 below, temporarily suspend all deliveries of Net Delivered Energy to Avista from the generating unit within the Facility that is impacted by the force majeure or forced outage for a period of not less than 48 hours to correct the force majeure or the forced outage condition ("Declared Suspension of Energy Deliveries"). The Project Developer's Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Project Developer's telephone notification as specified in Section 9.3.2 and will continue for the time as specified (not less than 48 hours) in the written notification provided by the Project Developer. In the month(s) in which the Declared Suspension of Energy occurred, the Net Delivered Energy Amount will be adjusted as specified in Section 6.3.6.

9.3.2 If the Project Developer desires to initiate a Declared Suspension of Energy Deliveries as provided in Section 9.3.1, the Project Developer shall notify the Designated Dispatch Facility by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Avista. The Project Developer shall, within 24 hours after the telephone contact, provide Avista a written notice in accordance with Section 29 that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Project Developer to initiate a Declared Suspension of Energy Deliveries. Avista shall review the documentation provided by the Project Developer to determine Avista's acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries as specified in Section 9.3.1. Avista's acceptance of the Project Developer's forced outage as an acceptable forced outage will be based upon the clear documentation provided by the Project Developer that the forced outage is not due to neglect, disrepair or lack of adequate preventative maintenance of the Project Developer's Facility.

9.4 Scheduled Maintenance. On or before January 31 of each calendar year, Project Developer shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Avista and Project Developer shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of the Project Developer's timetable for scheduled maintenance shall take into consideration Prudent Utility Practices, Avista system requirements and the Project Developer's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance

schedule. Project Developer shall reasonably attempt to schedule down times or maintenance shutdowns in the April 15 through June 30 period.

9.5 Project Developer shall obtain and comply with all permits, licenses, authorization and other rights required to own, operate, use and maintain the Facility, as they may change from time to time. Project Developer shall furnish to Avista upon reasonable notice by Avista, copies of all documents granting, evidencing or otherwise related to such permits, licenses, authorizations and rights.

9.6 Project Developer shall own, operate, use and maintain the Facility at its own risk and expense in compliance with all applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority.

9.7 Project Developer shall permit Avista to inspect the Facility or the operation, use or maintenance of the Facility. Project Developer shall provide Avista reasonable advance notice of any such test or inspection by or at the direction of Project Developer.

9.8 Project Developer shall design, construct, install, own, operate and maintain the Facility and any Project Developer-owned Interconnection Facilities so as to allow reliable generation and delivery of electric energy to the Transmitting Entity for the full term of the Agreement, in accordance with Prudent Utility Practices.

9.9 If the Project Developer is unable to deliver Net Available Output at any Point of Delivery or if Avista is unable to accept Net Available Output at any Point of Delivery despite commercially reasonable efforts by the Project Developer, then the Project Developer, for such specific period only, shall have the right to sell the output to third parties, subject to whatever rights and obligations that Avista may otherwise have under this Agreement, subject further to Avista's prior consent, which consent shall not be unreasonably withheld.

## 10. MONTHLY, DAY-AHEAD AND REALTIME SCHEDULING OF GENERATION

10.1 Monthly Scheduled Energy Deliveries. The Project Developer, or its agent, shall provide Avista with a schedule of the next month's hourly scheduled energy deliveries, a minimum of seven (7) days prior to the beginning of the month. The Project Developer shall be excused from scheduling Net Available Output to Avista at the Points of Delivery if the Transmitting Entity determines that curtailment, interruption or reduction of Net Delivered Output deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system, or as otherwise required by Prudent Utility Practices.

10.2 Day-Ahead Net Delivered Output Estimates: Project Developer or its agent shall provide to Avista's preschedulers its best estimates of hourly Net Delivered Output amounts by 0600 PPT on the business day observed by both Parties immediately preceding the day or days on which electric power is to be delivered, unless otherwise mutually agreed by the Parties.

**10.3 Realtime Net Delivered Output Schedules:** Project Developer or its agent shall provide to Avista's realtime schedulers notice of any material change to the prescheduled amounts of Net Delivered Output. Project Developer or its agent shall use reasonable efforts to provide such changes at least one hour before the scheduled hour begins in which the charges are to be in effect.

## **11. PURCHASE PRICE AND METHOD OF PAYMENT**

**11.1 Net Delivered Output Purchase Price.** For all Net Delivered Output received by Avista that is not Surplus Energy, Avista shall pay \$58.50 per megawatt-hour.

**11.2 Surplus Energy Price.** For all Surplus Energy received by Avista, Avista shall pay to the Project Developer the current month's Market Energy Cost per megawatt-hour or the Net Delivered Output Purchase Price specified in Section 11.1, whichever is lower.

**11.3 Payments to Project Developer.** For each month during the term of this Agreement, so long as there are energy deliveries made and/or payments due hereunder, Avista shall prepare a statement based upon Net Delivered Output and Surplus Energy received by Avista. Payments by Avista for amounts owed shall be paid no later than the 25<sup>th</sup> day of the month following the prior calendar month billing period. Payment shall be made at the location designated by the Party to which payment is due. If the Due Date falls on a non-business day of either Party, then the payment shall be due on the next following business day.

**11.4 Payments to Avista.** If Project Developer is obligated to make any payment or refund to Avista, Avista shall bill Project Developer for such payments. Project Developer shall pay Avista on or before the 20th day of the month following the prior calendar month billing period or ten (10) days after receipt of the bill, whichever is later.

**11.5 Interest.** Any payments by Avista to Project Developer or by Project Developer to Avista, if not paid in full within the limitations set forth in Sections 11.3 and 11.4 above, shall be late. In addition to the remedies for such an event of default pursuant to Section 16, the late-paying Party shall be assessed a charge for late payment equal to the lesser of one percent per month, or partial month, or the maximum rate allowed by the laws of the State of Idaho, multiplied by the overdue amount.

**11.6 Set-Off.** Project Developer agrees that Avista may set off any and all amounts owed by Project Developer to Avista against any current or future payments due Project Developer under this Agreement.

**11.7 Wire Transfer.** All payments shall be made by ACH or wire transfer in accordance with mutual agreement of the Parties.

**11.8 No Overpayment Obligation.** The Parties agree that the prices set forth in Section 11.1 and 11.2 are mutually negotiated, and do not represent levelized rates that have been

calculated from other rates. Therefore, Project Developer shall incur no overpayment obligation under the Agreement as though the prices set forth in Section 11.1 and 11.2 were levelized rates.

**11.9 Sale To Third Party.** In the event that Project Developer sells electric power to a third party pursuant to Section 9.9, Project Developer shall provide to Avista a copy of the transaction record or other documentation reflecting such sale by the fifth (5th) business day following the month during which such sale occurred. If the sale price to a third party during any month exceeds the Net Delivered Output Purchase Price, Avista shall subtract from its payment to Project Developer for Net Delivered Output during such month the amount of such excess, if any. If after subtracting such excess from its payment to Project Developer for Net Delivered Output delivered during such month, there results a negative balance, Project Developer shall pay the amount of such negative balance to Avista pursuant to Section 11.4.

## **12. FORCE MAJEURE**

**12.1** Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any delay in performance due to any of the following events or any delay or failure to produce Net Available Output, or to, receive or accept Net Delivered Output due to any of the following events:

**12.1.1** Any cause or condition beyond such Party's reasonable control which such Party is unable to overcome by the exercise of reasonable diligence (including but not limited to: fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or governmental authority; strike lockout and other labor dispute; riot, insurrection, sabotage or war; breakdown of or damage to facilities or equipment; electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; and, act or omission of any person or entity other than such Party, and Party's contractors or suppliers of any tier or anyone acting on behalf of such Party); or

**12.1.2** Any action taken by such Party which is, in the sole judgment of such Party, necessary or prudent to protect the operation, performance, integrity, reliability or stability of such Party's electric system or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

**12.2** In the event of any force majeure occurrence, the time for performance thereby delayed shall be extended by a period of time reasonably necessary to compensate for such delay. Avista shall not be required to pay for any electric power which, as a result of any force majeure event, is not delivered. Nothing contained in this Section shall require any Party to settle any strike, lockout or other labor dispute. In the event of a force majeure occurrence which will affect performance under this Agreement, the nonperforming Party shall provide the other Party written notice within fourteen (14) days after the occurrence of the force majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the force majeure, and that best efforts are being used to remedy its inability to perform.

12.3 Force majeure shall include an electrical disturbance that simultaneously prevents any electric deliveries from occurring at the Point of Delivery, Secondary Point of Delivery and Alternative Points of Delivery.

### 13. INDEMNITY

13.1 Project Developer shall indemnify, defend and hold harmless Avista, its directors, officers, employees, agents, and representatives, against and from any and all losses, expenses, liabilities, claims or actions (hereafter "Loss"), based upon or arising out of bodily injuries or damages to persons, including without limitation death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with the construction, operation or maintenance of the Facility. Avista shall indemnify, defend and hold harmless Project Developer, its directors, officers, employees, agents, and representatives, against and from any Loss, caused by, arising out of or sustained in connection with the construction, operation or maintenance of its electrical system. In the event that any such Loss is caused by the negligence of both Project Developer and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by Project Developer and Avista in the proportion that their respective negligence bears to the total negligence causing the Loss.

**13.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, PROJECT DEVELOPER AND AVISTA EACH WAIVE ANY IMMUNITY UNDER EXISTING WORKER'S COMPENSATION LAW APPLICABLE TO THE JURISDICTION WHERE THE FACILITY IS TO BE LOCATED AS NECESSARY TO INDEMNIFY AND HOLD HARMLESS THE OTHER FROM SUCH LOSS, TO THE EXTENT SET FORTH IN SECTION 13.1, ABOVE.**

**13.3 PROJECT DEVELOPER AND AVISTA SPECIFICALLY WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.**

### 14. ASSIGNMENT

14.1 Project Developer shall not voluntarily assign its rights or delegate its duties under this Agreement, or any part of such rights or duties, except to secure Project Developer's obligations to primary lenders, as security for initial construction and financing of the Facility, without the written consent of Avista. Such consent shall not unreasonably be withheld. Further, no assignment by Project Developer shall relieve or release it to the extent of any of its obligations hereunder. Subject to the foregoing restrictions on assignments, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, heirs and assigns.

**14.2** Project Developer shall have the right, subject to the obligation to provide security hereunder, without the other Party's consent, but with a thirty (30) days prior written notice to the other Party, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other financing. A collateral assignment shall not constitute a delegation of Project Developers' obligations under this Agreement, and this Agreement shall not bind the collateral assignee. Any collateral assignee succeeding to any portion of the ownership interest of Project Developer shall be considered Project Developer's successor in interest and shall thereafter be bound by this Agreement.

**15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES**

Except as specifically provided in this Agreement, there are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

**16. DEFAULT**

**16.1** In the event that either Party fails to perform the terms and conditions set forth in this Agreement (a breach of or default under this Agreement), including, without limitation, the failure to provide Net Delivered Output at the times or in the amounts required by this Agreement, the following shall apply:

**16.1.1** The non-defaulting Party shall give written notice to the defaulting Party of the breach of or default under this Agreement in accordance with this Agreement.

**16.1.2** If, after thirty (30) days following receipt of such notice, the defaulting Party has not taken the steps necessary to cure the breach or default, the non-defaulting Party may, at its option, terminate this Agreement. Provided, however, that except for the failure to pay sums which are due and payable, if the defaulting Party, within such 30-day period, commences and thereafter proceeds with all due diligence to cure such breach or default, such thirty (30)-day period shall be extended up to ninety (90) days after written notice to the defaulting Party, as may be necessary to cure the breach or default with all due diligence. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity.

**16.2** Notwithstanding any claim of force majeure, Project Developer shall be in default if:

**16.2.1** Project Developer has abandoned the Facility; or

**16.2.2** There have been no energy deliveries to Avista from the Facility for a period of twelve (12) consecutive months; or

**16.2.3** Net Delivered Output delivered to Avista fails to exceed 87,600 megawatt-hours during any rolling period of twenty-four (24) consecutive calendar months; or

**16.2.4** Facility ceases to be a Qualifying Facility.

**16.2.5** With respect to Project Developer's default under Section 16.2.1, or Section 16.2.2, above, Avista shall provide thirty (30) days notice of termination of the Agreement, and Project Developer shall have the opportunity to cure its default only up to and including the day of termination.

**16.2.6** With respect to Project Developer's default under Section 16.2.3 or Section 16.2.4, above, Avista shall provide notice of termination of the Agreement and Project Developer shall have the opportunity to cure the defect as specified in Section 16.1.

**16.3** For purposes of this Agreement, a Party shall also be in default if it:

**16.3.1** Becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets); or

**16.3.2** Makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws; or

**16.3.3** Has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty (60) days after it is filed.

**16.3.4** Is in default under any Transmission Agreement, provided that Avista shall have the obligation to notify Project Developer of any default under any Transmission Agreement, and provide Project Developer with seventy-two (72) hours from the receipt of notice of default to cure such default under any Transmission Agreement.

**16.4** Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach of or default under this Agreement by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

## **17. ARBITRATION**

Each Party shall strive to resolve any and all differences during the term of the Agreement. If a dispute cannot be resolved, each Party shall use arbitration before requesting a

hearing before the IPUC. The arbitration shall be conducted pursuant to the Uniform Arbitration Act, Chapter 9 of the Idaho Code, as the same may have been or may be amended. The Parties agree that the IPUC shall have continuing jurisdiction over this Agreement.

**18. RELEASE BY PROJECT DEVELOPER**

Project Developer releases Avista from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

**18.1** Electric disturbance or fluctuation that migrates, directly or indirectly, from Avista's electric system to the Facility;

**18.2** Interruption, suspension or curtailment of electric service to the Facility or any other premises owned, possessed, controlled or served by Project Developer, which interruption, suspension or curtailment is caused or contributed to by the Facility or the interconnection of the Facility with any electric system; or

**18.3** Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement.

**18.4** Disconnection, interruption, suspension or curtailment of transmission service by a Transmitting Entity or any unforeseen cost or increase in costs to Project Developer imposed by a Transmitting Entity.

**19. GOVERNMENTAL AUTHORITY**

This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over the Facility, this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

**20. EQUAL OPPORTUNITY**

Project Developer shall comply with all applicable equal opportunity laws, ordinances, orders, rules and regulations.

**21. SEVERAL OBLIGATIONS**

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between

the Parties or to impose any partnership obligations or liability upon either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

**22. IMPLEMENTATION**

Each Party shall promptly take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may be reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

**23. NON-WAIVER**

**23.1** The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

**23.2** Execution of the Agreement shall not be deemed to waive any party's right to object to the issuance of any water right or permit to or on account of Project Developer or Thompson River Lumber Company.

**24. AMENDMENT**

No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

**25. CHOICE OF LAWS**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho.

**26. COMPLIANCE WITH LAWS**

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over the Project and the operations of the Parties.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein above set forth.

THOMPSON RIVER COGEN, LLC

AVISTA CORPORATION

[Signature]  
By: MIKE UNDERWOOD

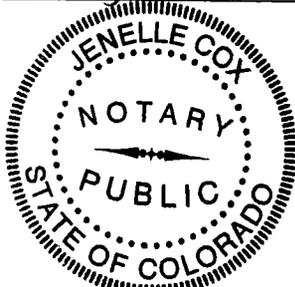
[Signature]  
By: \_\_\_\_\_

MIKE UNDERWOOD  
(Type Name)  
Title: MANAGER

Gary G. Ely  
(Type Name)  
Title: Chairman of the Board and CEO

STATE OF COLORADO )  
County of DENVER ) : ss.

Signed and sworn to before me this 25 day of August, 2006 by MIKE UNDERWOOD the MANAGER of THOMPSON RIVER COGEN, LLC.



Jenelle Cox  
Print Name: Jenelle Cox  
Notary Public in and for the State of CO,  
residing at 1101 Wynkoop St #500, Denver, CO  
My commission expires: 2/3/2007

**Jenelle Cox, Notary Public**  
**State of Colorado**  
**My Commission Expires 2/3/2007**

STATE OF WASHINGTON )  
County of Spokane ) : ss.

I certify that I know or have satisfactory evidence that Gary G. Ely is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged it as the Chairman and CEO of AVISTA CORPORATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Aug. 29, 2006.



Diane L. Kaufman  
Print Name: Diane L. Kaufman  
Notary Public in and for the State of  
Washington, residing at Spokane  
My commission expires: 7-3-08

I:\Spodocs\11150\04137\agree\0041332

**EXHIBIT A**

**Communication and Reporting**

(a) Verbal communications relating to electric power scheduling or generation level changes between Project Developer and Avista shall be between the following personnel:

(1) Pre-Schedule (5:30 a.m. to approximately 1:30 p.m. on normal business days):

Avista Pre-Scheduler: (509) 495-4911  
Alternate Phone Number: (509) 495-4073

Project Developer (406) 827-5441  
Alternate Phone Number: (406) 249-3207

(2) Real-Time Schedule (available 24 hours per day):

Avista Real-Time Scheduler (509) 495-8534

Project Developer (406) 827-5441  
Alternate Phone Number (406) 249-3207

(b) During normal business hours, all verbal communications relating to interruptions and outages:

Avista System Operator (509) 495-4105  
Alternate Phone Number: (509) 495-4934

Project Developer (406) 827-5441  
Alternate Phone Number: (406) 249-3207

(c) Outside of normal business hours (nights, weekends, and holidays), all verbal communications relating to interruptions and outages shall take place between the following personnel:

Avista System Operator (509) 495-4105  
Alternate Phone Number: (509) 495-4934

Project Developer (406) 827-5441  
Alternate Phone Number: (406) 249-3207

Either Party may provide written notice to the other Party setting forth different contact numbers.

## **EXHIBIT B**

### **Description of the Facility**

All real and personal property of Thompson River Co-Gen, LLC located in Section 13, Township 21 North, Range 29 West, P.M.M. Sanders County, Montana, commonly known as real and personal property located at 249 Airport Road, Thompson Falls, Montana 59873, consisting of a thermal wood waste / coal co-generation electric power plant with a turbine capacity of 13 MW and related equipment.

EXHIBIT C

ENGINEER'S CERTIFICATION  
OF  
CONSTRUCTION ADEQUACY FOR A  
PURPA QUALIFYING FACILITY (QF)

1. I, \_\_\_\_\_ am a Professional Engineer  
(Name of Engineer)  
registered to practice in the State of Idaho. I have substantial experience in the design,  
construction and operation of electric power plants of the same type as \_\_\_\_\_  
\_\_\_\_\_ (plant),  
(Title of QF)  
sited at \_\_\_\_\_  
(Description of Project Site)  
in \_\_\_\_\_ County, State of \_\_\_\_\_.

2. I have made and/or supervised periodic inspections of the construction in progress  
and of the completed plant, and it is my professional opinion that the plant was built substantially  
in accordance with Plans and Specifications bearing the words "CERTIFIED FOR IDAHO  
P.U.C. SECURITY ACCEPTANCE" and the Stamp of the Certifying Engineer of the Design,  
and that the plant was built to commercially accepted standards for a plant of this type.

3. I have no economic relationship to the Designer of said plant and have made my  
analysis of the Plans and Specifications independently.

4. I hereby CERTIFY that the above statements are complete, true, and accurate to  
the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

EXHIBIT D

ENGINEER'S CERTIFICATION  
OF  
OPERATIONS AND MAINTENANCE POLICY FOR A  
PURPA QUALIFYING FACILITY (QF)

1. I, \_\_\_\_\_ am a Professional Engineer  
(Name of Engineer)  
registered to practice in the State of Idaho. I have substantial experience in the design,  
construction and operation of electric power plants of the same type as \_\_\_\_\_  
\_\_\_\_\_ (plant),  
(Title of QF)  
sited at \_\_\_\_\_  
(Description of Project Site)  
in \_\_\_\_\_ County, State of \_\_\_\_\_.

2. I have reviewed and/or supervised the review of the Policy for Operation and Maintenance (O&M Policy) for the plant and it is my professional opinion that, provided said plant has been designed and built to appropriate standards, adherence to said O&M Policy will result in the plant's producing at or near the design electrical output, efficiency, and plant factor for \_\_\_\_\_ years (length of the proposed Power Sales Contract), barring unforeseeable Force Majeure.

3. I have no economic relationship to the Designer of said plant and have made my analysis of the Plans and Specifications independently.

4. I have supplied the owner of the plant with at least one copy of said O&M Policy bearing my Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

5. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**SHORT FORM  
POWER PURCHASE AGREEMENT**

This SHORT FORM POWER PURCHASE AGREEMENT ("Agreement"), effective as of August 25, 2006, is made by and between Avista Corporation, a Washington corporation ("Avista"), and Thompson River Co-Gen, LLC ("Project Developer").

Project Developer grants to Avista (i) a second priority lien on the Facility described on Exhibit A, attached hereto and made a part hereof by this reference, securing Project Developer's obligations under this Agreement, and (ii) second priority security interests in all personal property, fixtures, contract rights, water rights, permits, licenses, real property interests, or other rights or privileges which Project Developer has obtained or will obtain in conjunction with the construction or operation of the Facility, in both cases subject only to the rights of first mortgage lien on the Facility, and further subject to the limitation that the total value of any or all of the lien and security interests granted to Avista by Project Developer shall not exceed \$25,500,000. Project Developer shall execute and deliver such financing statements, fixture filings, or other documents necessary to evidence and perfect the liens and security interests granted above and hereby authorizes Avista to file and/or record such financing statements, fixture filings, or other documents. The term of this Agreement shall be for twenty (20) years, unless terminated earlier by terms and conditions contained herein.

Upon any uncured default by Project Developer, Avista shall have all rights and remedies available at law or in equity to holders of secured interests in personal property or liens on real property, in addition to all rights and remedies specifically provided for herein. Avista, at its option, may advance sums to cure any uncured default under Lender's first mortgage lien, and all such sums advanced by Avista shall be secured by all security interests given by Project Developer to Avista under this Agreement.

Upon the occurrence of uncured default under this Agreement by Project Developer, and provided that the operation of the Facility has not been assumed by any primary lender pursuant to financing documents applicable to such lender, Avista shall have the right, but under no circumstances the obligation, to assume operational responsibility for the Facility in the place and stead of, and as agent for, Project Developer in order to complete construction, continue operation or complete any necessary repairs; provided however, in no event shall Avista's election to operate the Facility be deemed to be a transfer of title or a transfer of Project Developer's obligations as owner thereof. For the purpose of implementing the foregoing, Project Developer hereby appoints Avista as Project Developer's attorney in-fact, with power to operate the Facility if Avista elects to exercise such operating rights. This power being coupled with an interest is irrevocable until this Agreement is terminated.

This Agreement is prepared and recorded for the purpose of providing record notice of certain of the terms and conditions of that certain Power Purchase Agreement ("Long Form Agreement"), of even date by and between Avista and Project Developer. Additional terms and conditions are

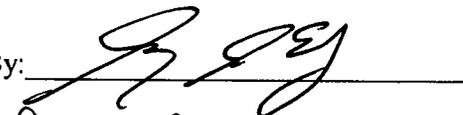
set forth in the Long Term Agreement, all of which are incorporated herein by this reference. This Agreement be not be deemed to modify, supplement or supersede the terms and conditions of the Long Form Agreement. If the terms and conditions of this Agreement conflict with the terms and conditions of the Long Form Agreement, the terms and conditions of the Long Form Agreement shall control.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein above set forth.

THOMPSON RIVER COGEN, LLC

AVISTA CORPORATION

By: 

By: 

MIKE UNDERWOOD  
(Type Name)

Gary G. Ely  
(Type Name)

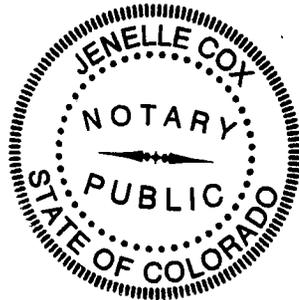
Title: MANAGER

Title: Chairman of the Board  
and CEO

STATE OF COLORADO )

County of DENVER ) : ss.

Signed and sworn to before me this 25 day of August, 2006 by MIKE UNDERWOOD,  
the MANAGER of THOMPSON RIVER COGEN, LLC.



Jenelle Cox  
Print Name: Jenelle Cox  
Notary Public in and for the State of  
Colorado  
residing at 1610 Wynkoop St #500, Denver, CO  
My commission expires: 2/3/2007

**Jenelle Cox, Notary Public  
State of Colorado  
My Commission Expires 2/3/2007**

STATE OF WASHINGTON )  
County of Spokane ) : ss.

I certify that I know or have satisfactory evidence that Gary G. Ely is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged it as the Chairman and CEO of AVISTA CORPORATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Aug. 29, 2006.



Diane L. Kaufman  
Print Name: Diane L. Kaufman  
Notary Public in and for the State of  
Washington, residing at Spokane  
My commission expires: 7-3-08

## **EXHIBIT A**

### **Description of the Facility**

All real and personal property of Thompson River Co-Gen, LLC located in Section 13, Township 21 North, Range 29 West, P.M.M. Sanders County, Montana, commonly known as real and personal property located at 249 Airport Road, Thompson Falls, Montana 59873, consisting of a thermal wood waste / coal co-generation electric power plant with a turbine capacity of 13 MW and related equipment.