

BARTON L. KLINE, ISB #1526  
 MONICA MOEN, ISB #5734  
 Idaho Power Company  
 1221 West Idaho Street  
 P. O. Box 70  
 Boise, Idaho 83707  
 Telephone: (208) 388-2682  
 FAX Telephone: (208) 388-6936

RECEIVED   
 FILED

2003 FEB 20 PM 5:04

IDAHO PUBLIC  
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF ) IDAHO POWER COMPANY FOR APPROVAL ) OF AN AGREEMENT FOR SALE AND PUR- ) CHASE OF FIRM ELECTRIC ENERGY ) BETWEEN IDAHO POWER COMPANY ) AND TIBER MONTANA LLC ) _____ )	CASE NO. IPC-E-03- <u>01</u> APPLICATION FOR APPROVAL OF AGREEMENT FOR SALE AND PURCHASE OF FIRM ELECTRIC ENERGY BETWEEN IDAHO POWER COMPANY AND TIBER MONTANA LLC
--	--

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and hereby applies for an Idaho Public Utilities Commission ("IPUC" or the "Commission") Order approving an Agreement between Idaho Power and Tiber Montana LLC ("Tiber") under which Tiber would sell and Idaho Power would purchase, during certain months of the year, net firm electric energy and surplus energy generated by Tiber's electric generation facility.

This Application is based on the following:

## I.

Tiber proposes to design, construct, install, own, operate and maintain a 7.5 MW hydroelectric generating facility located on the outlet works of the existing Tiber Dam, approximately 15 miles south of the City of Chester, Montana in Liberty County, Montana (the "Tiber Dam Hydroelectric Plant" or the "Project"). The Project will be a qualified small power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA").

## II.

On February 3, 2003, Idaho Power and Tiber entered into a Firm Energy Sales Agreement ("Agreement") pursuant to the rates, terms and conditions approved by the Commission in Order Nos. 29069 and 29124. In the Agreement, Tiber elected to contract with Idaho Power for a 20-year term and committed to deliver energy to the Company only during the months of May, June, July, August, September and October of each contract year. NorthWest Energy will purchase the plant's output during the balance of the year. Tiber further elected to contract with the Company using the non-levelized published avoided cost rate as currently established by the Commission ("Posted Rates"). A copy of the Agreement between Idaho Power and Tiber is attached hereto as Exhibit 1.

## III.

The Tiber Project is located outside Idaho Power's service territory. The entity transmitting the Project's power to Idaho Power's transmission system ("Transmitting Entity"), NorthWestern Energy, has agreed to "firm" all energy deliveries

from Tiber to Idaho Power as specified in Section 9 of the Agreement. This will result in flat monthly firm energy scheduled into the Idaho Power system.

#### IV.

The Agreement between Idaho Power and Tiber is the first cogeneration, small power production (“CSPP”) Firm Energy Sales Agreement to be executed by the Company since the mid 1990s. When compared to other CSPP Firm Energy Sales Agreements approved by the Commission prior to the mid 1990s, certain terms and conditions of the Agreement between Idaho Power and Tiber have been updated and/or revised in conformance with (1) current IPUC orders, (2) current technologies and (3) current utility industry standards. The following is a brief description of these changes:

A. Measurement of the 10 MW Rating: IPUC Orders No. 29069 and 29124 permit Qualifying Facilities (“QFs”) up to 10 MW in size to be eligible for the Posted Rates. However, these Orders did not specify the manner in which the size of the QFs was to be measured. Measurement of the size of a QF can be determined on the basis of such methods as nameplate designation, net generation and gross generation. To address this uncertainty, Idaho Power and Tiber have agreed to include the concept of “Optional Energy” in lieu of the reference to the nameplate rating used in prior CSPP firm energy agreements.

“Optional energy” is defined in Section 1.10 of the Agreement as “Energy which is produced by the Facility, scheduled by the Transmitting Entity and delivered to the Point of Delivery in an amount that exceeds 10,000 kWh in any single hour.” The Agreement provides that Idaho Power is not obligated to purchase Optional Energy.

Prior to its delivery, the parties have the option to mutually agree on both the purchase and the sales price for Optional Energy. Including the concept of Optional Energy allows Tiber to install generating capacity with a nameplate rating of 10 MW or more while still qualifying to be paid at the Posted Rates the Commission has established for projects smaller than 10 MW. In the present case, because the nameplate rating of the Tiber Project is proposed to be 7.5 MW, Optional Energy is not likely to be an issue.

B. Encouraging Increased “Firmness” of QF Contracts: Traditionally contracts between Idaho Power and QFs have been denominated as “Firm Energy Sales Agreements.” In fact, the energy purchased under these contracts is not firm energy as that term is commonly defined by the electric energy industry. Firm energy purchases Idaho Power makes from non-QF suppliers specify the amounts to be delivered during heavy-load or light-load hours for the term of the agreement. If the energy is not delivered in the specified amounts, at the specified times, liquidated damages provisions in the purchase agreements allow Idaho Power to acquire the energy from other sources and receive reimbursement from the defaulting supplier for all of the Company’s costs. In a similar manner, the combined cycle combustion turbine (CCCT), which is the surrogate avoided resource the Commission has used to set the Posted Rates, is also a dispatchable producer of firm energy. If Idaho Power constructs a CCCT, the energy from that CCCT resource would be dispatched on a firm basis to meet customer loads or to allow for surplus sales.

In Tiber’s case, the arrangement with NorthWest Energy to firm Tiber’s generation makes the agreement more like a true firm -energy purchase. However, Idaho Power recognizes that holding most QFs to the same standard of firmness as

Idaho Power would receive from a utility-owned generating plant or from a non-QF power supplier is not realistic. However, in an effort to bring QF performance more in line with actual firm energy production and to provide an opportunity for QFs using various generating technologies to receive the posted firm rates based upon the QF's actual performance, Idaho Power and Tiber have included in the Agreement provisions which will encourage Tiber to provide energy with a greater degree of "firmness" while at the same time allowing a reasonable amount of flexibility to Tiber in operating its facility. These provisions are found in Sections 1.15 and 7.1.2 of the Agreement.

Section 1.15 Surplus Energy: Under the concept of "Surplus Energy," Tiber is required to estimate its monthly kWh generation (Section 6.2 of the Agreement). Each month, the actual net kWh of Tiber's generation will be compared to the monthly kWh of generation estimated by Tiber and included in Section 6.2 of the Agreement. If Tiber's actual kWh of generation exceeds 110% of a month's estimated kWh of generation, the energy in excess of 110% is valued at the Surplus Energy Price as described in Section 7.2 of the Agreement. The Surplus Energy Price is a market-based price.

Section 7.1.2 Adjustment to Net Firm Energy Purchase Price: Under this provision, Tiber's actual net monthly kWh of generation is compared to the estimated monthly kWh of generation as described in the foregoing paragraph. In accordance with Section 7.1.2 of the Agreement, if the amount of Net Firm Energy is ninety percent (90%) or less of the month's estimated kWh of generation, all of that month's generation will be deemed to be Surplus Energy for which Idaho Power will pay Tiber the Surplus Energy Price as defined by the Agreement.

Whether energy produced by Tiber is Surplus Energy or not is at the sole discretion of Tiber since Tiber sets the monthly estimated generation levels indicated in Section 6.2 of the Agreement. Tiber can reset the monthly estimated generation amounts every two years to reflect its increased operating experience and to allow Tiber to respond to changes in water supplies, etc. The only limitation placed on Tiber by the Company is that the Net Firm Energy estimated for each month cannot exceed the nameplate rating of the generation equipment.

C. Seasonality: Previous IPUC orders and QF agreements recognized that the value of energy generated differs in accordance with the season in which it is actually delivered to Idaho Power. As an incentive for a QF to deliver energy to the Company during times when it is of greater value to the Company, the Posted Rates have historically been “seasonalized.” Idaho Power has “seasonalized” the rates in the Agreement. However, to better align the seasons with the months in which Idaho Power has identified actual energy needs, the months within each “season” have been modified from prior QF contracts to account for those periods of higher demand. Thus, the months of August and September have been moved to “Season 3” and the months of November and December have been moved to “Season 2” as reflected in Section 6.2 of the Agreement. This adjustment does not change the overall annual average payment – the average payment continues to be the Posted Rate. The seasonal rates are identified in Section 7.1.1 of the Agreement.

## V.

Section 19 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement’s terms and

conditions and declared that all payments Idaho Power makes for purchases of energy to Tiber will be allowed as prudently incurred expenses for ratemaking purposes.

## **VI.**

Tiber has elected an Operation Date of May 15, 2004 as specified in Appendix B of the Agreement. Idaho Power will monitor compliance with this Agreement and approve an Operation Date provided the conditions of Section 5.3 of the Agreement have been met by the Tiber Project. Should the Commission approve this Agreement, Idaho Power intends to consider the Effective Date of the Agreement to be February 3, 2003.

## **VII.**

The Agreement, as signed and submitted by the Parties thereto, contains non-levelized Posted Rates in conformity with the applicable IPUC Orders. Because the Project is located outside the Idaho Power service territory, no interconnection charges or monthly Operation and Maintenance charges under Schedule 72 will be assessed Tiber.

## **VIII.**

Idaho Power respectfully requests that this Application be processed under RP 201, et al, allowing for consideration of issues to be processed under Modified Procedure, i.e., by written submission rather than by an evidentiary hearing.

## **IX.**

Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following:

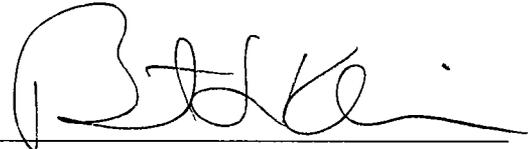
Barton L. Kline, Senior Attorney  
Monica B. Moen, Attorney II  
Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707

Randy C. Allphin  
Contract Administrator  
Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707

NOW, THEREFORE, based on the foregoing, Idaho Power Company hereby requests that the Commission issue its order:

- (1) Approving the Firm Energy Sales Agreement between Idaho Power Company and Tiber Montana LLC without change or condition; and
- (2) Declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power Company and Tiber Montana LLC shall be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 20<sup>th</sup> day of February, 2003.

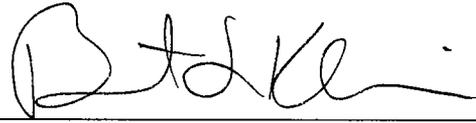


BARTON L. KLINE  
Attorney for Idaho Power Company

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I have this 20th day of February, 2003, mailed a true and correct copy of the within and foregoing APPLICATION FOR APPROVAL OF AGREEMENT FOR SALE AND PURCHASE OF FIRM ELECTRIC ENERGY BETWEEN IDAHO POWER COMPANY AND TIBER MONTANA LLC to the following named individuals by mailing a copy thereof, properly addressed with postage prepaid, to:

Ted S. Sorenson, Manager  
Tiber Montana LLC  
5203 S. 11th East  
Idaho Falls, Idaho 83404



---

BARTON L. KLINE

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-03-\_\_\_\_\_**

**IDAHO POWER COMPANY**

**EXHIBIT 1**

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

TIBER MONTANA, LLC

TABLE OF CONTENTS

<u>Article</u>	<u>TITLE</u>
1	Definitions
2	No Reliance on Idaho Power
3	Warranties
4	Conditions to Acceptance of Energy
5	Term, Early Termination and Operation Date
6	Purchase and Sale of Net Firm Energy
7	Purchase Price and Method of Payment; Adjustment of Purchase Price
8	Facility and Interconnection
9	Transmission Agreement
10	Protection
11	Operations
12	Indemnification and Insurance
13	Liability; Dedication
14	Several Obligations
15	Waiver
16	Choice of Laws and Venue
17	Disputes and Default
18	Governmental Authorization
19	Commission Order
20	Successors and Assigns
21	Modification
22	Taxes
23	Notices
24	Additional Terms and Conditions
25	Severability
26	Counterparts
27	Entire Agreement Signatures
	Appendix A
	Appendix B
	Appendix C

FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 3 day of February between TIBER MONTANA LLC (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party".

WITNESSETH:

WHEREAS, Seller will design, construct, own, maintain and operate an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho Power has agreed to purchase, firm electric energy from Seller's Facility.

THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and the appendices attached hereto, the following terms shall have the following meanings:

- 1.1 "Annual Net Firm Energy" – Sum of monthly Net Firm Energy Amounts specified in paragraph 6.2 for a single Contract Year.
- 1.2 "Commission" - The Idaho Public Utilities Commission.
- 1.3 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.4 "Designated Dispatch Facility" - Idaho Power's Control Area Operations Group, or any subsequent group designated by Idaho Power.
- 1.5 "Facility" - That electric generation facility described in Appendix B of this Agreement.

- 1.6 “Interconnection Facilities” - All facilities required to be installed to interconnect and deliver energy from the Facility to the Transmitting Entity’s system including, but not limited to, connection, switching, metering, relaying, communications and safety equipment.
- 1.7 “Losses” - The loss of energy expressed in kilowatt hours (Kwh) occurring as a result of the transformation and transmission of energy between the Facility and the Point of Delivery.
- 1.8 “Net Firm Energy” - The electric energy produced by the Facility, less Losses, expressed in kilowatt hours (“Kwh”), not including Optional Energy, which Seller commits to deliver and the Transmitting Entity schedules to Idaho Power at the Point of Delivery for the full term of the Agreement.
- 1.9 “Operation Date” - The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.3 have been completed.
- 1.10 “Optional Energy” - Energy which is produced by the Facility, scheduled by the Transmitting Entity and delivered to the Point of Delivery in an amount that exceeds 10,000 Kwh in any single hour.
- 1.11 “Point of Delivery” - The location specified in Appendix B, where the Transmitting Entity delivers the scheduled energy deliveries to Idaho Power.
- 1.12 “Prudent Electrical Practices” - Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.
- 1.13 “Replacement Cost” - The replacement value of the Facility without deduction for depreciation.
- 1.14 “Season” - The three periods identified in Article VI.
- 1.15 “Surplus Energy” - Electric energy scheduled by the Transmitting Entity to Idaho Power, not including Optional Energy, and accepted by Idaho Power during the month which exceeds 110% of the Monthly Net Firm Energy amount for the corresponding month specified in paragraph 6.2 of this Agreement and all electric energy scheduled by the Transmitting Entity to Idaho Power prior to the Operation Date.

- 1.16 “Total Cost of the Facility” - The total Replacement Cost of structures, equipment and appurtenances.
- 1.17 “Transmitting Entity” - The signatory (other than the Seller) to the Transmission Agreement referred to in paragraph 9.1 and its successors and assigns.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

- 2.1 Seller Independent Investigation - Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.
- 2.2 Seller Independent Experts - All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

## ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller’s design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power, and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller’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 - Seller warrants that the Facility is a “qualifying facility,” as that term is used and defined in 18 CFR §292.207. After initial qualification, Seller will take such steps as may be required to maintain the Facility’s Qualifying Facility Status during the term of this Agreement and Seller’s failure to maintain Qualifying Facility Status will be a material breach of this Agreement.
- 3.3 FERC License - Seller warrants that Seller possesses a valid license or exemption from licensing

from the Federal Energy Regulatory Commission ("FERC") for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license or exemption is a material part of the consideration for Idaho Power's execution of this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or exemption for the Facility during the term of this Agreement, and Seller's failure to maintain a valid FERC license or exemption will be a material breach of this Agreement.

#### ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 Prior to the Operation Date and as a condition of Idaho Power acceptance of deliveries of Net Firm Energy from the Transmitting Entity, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller'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.
- 4.1.2 Opinion of Counsel - Submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller, and based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will 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).
- 4.1.3 Engineer's Certifications - Executed Engineer's Certification of Design & Construction Adequacy, and an Engineer's Certification of Operations and Maintenance ("O&M")

Policy as described in Commission Order No 21690. These certificates 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.

- 4.1.4 Insurance - Submit written proof to Idaho Power of all insurance required in Article XII.
- 4.1.5 Transmission Agreement - Provide Idaho Power with a copy of the Firm Transmission Agreement executed by the Seller and the Transmitting Entity in a form acceptable to Idaho Power. Idaho Power's acceptance will not be unreasonably withheld.
- 4.1.6 Written Acceptance - Obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall not be unreasonably withheld by Idaho Power.
- 4.1.7 Idaho Power Electrical System Study – Seller and Transmitting Entity will request, in writing, a specific Point of Delivery to Idaho Power for the Seller's energy deliveries specified in paragraph 6.2, and to be scheduled to Idaho Power as specified in paragraph 9.1 of this agreement. Upon receipt of this request, at Seller's expense, Idaho Power will complete an electrical system study to determine Idaho Power's ability to receive the Seller's energy at the Seller and Transmitting Entity's requested Point of Delivery.
  - 4.1.7.1 If said study results in Idaho Power being unable to receive the Seller's energy at the requested Point of Delivery, the Seller and Transmitting Entity may request a different Point of Delivery and a similar study, at the Seller's expense, will be conducted.
  - 4.1.7.2 In the event, the Seller and Transmitting Entity request to deliver the Seller's energy at a Point of Delivery that Idaho Power has identified as being unable to receive the Seller's energy, at Seller's request and expense, Idaho Power will conduct a study to determine the necessary upgrades and/or modifications required to enable receipt of the Seller's energy at the requested Point of Delivery.

4.1.7.3 Seller will be responsible for all expenses associated with all Idaho Power studies, upgrades and/or modifications required to enable delivery of the Seller's energy at the requested Point of Delivery. An initial deposit will be calculated based upon the estimated cost of each individual study, upgrade or modification and will be required to be paid by the Seller prior to Idaho Power conducting any work associated with the Seller's request. Upon completion of the Seller's request, Idaho Power will reconcile the actual expenses with the previously paid deposit and the appropriate refund or addition billing will be processed.

#### ARTICLE V: TERM, EARLY TERMINATION AND OPERATION DATE

5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written, and shall continue in full force and effect for a period of twenty (20) Contract Years.

5.2 Early Termination – In addition to any other remedies allowed by law, this Agreement may be terminated upon the occurrence of any of the following:

5.2.1 Either Party may terminate this Agreement on one hundred twenty (120) days prior written notice if existing Idaho law is modified to allow persons or entities other than Idaho Power to sell electric capacity or energy at retail in Idaho Power's exclusive service territory.

5.2.2 Idaho Power may terminate this Agreement on thirty (30) days prior written notice if, in any two (2) consecutive Contract Years, Seller's deliveries of Net Firm Energy in each Contract Year are less than fifty percent (50%) of the sum of the twelve (12) Monthly Net Firm Energy amounts specified in paragraph 6.2 of this Agreement.

5.2.3 Idaho Power may terminate this Agreement on thirty (30) days prior written notice if the Operation Date as specified in paragraph 5.3 is not attained within

365 days of the Scheduled Operation Date specified in Appendix B.

5.3 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:

- a) Completed all Conditions to Acceptance of Energy as specified in Article IV.
- b) Commission approval of this Agreement has been received.
- c) Seller has demonstrated to Idaho Power's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable and safe manner.
- d) Seller has received written confirmation from Idaho Power of the Operation Date, this confirmation will not be unreasonably withheld by Idaho Power

ARTICLE VI: PURCHASE AND SALE OF NET FIRM ENERGY

6.1 Delivery and Acceptance of Net Firm Energy - Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy scheduled to Idaho Power by the Transmitting Entity and delivered by the Transmitting Entity to the Point of Delivery during the calendar months of May, June, July, August, September and October.

6.2 Net Firm Energy Amounts - Seller intends to deliver Net Firm Energy in the following monthly amounts:

	<u>Month</u>	<u>Kwh</u>
Season 1	March	0
	April	0
	May	4,910,400
Season 2	June	4,752,000
	July	4,910,400
	November	0
	December	0
Season 3	August	4,910,400
	September	4,752,000
	October	4,910,400
	January	0
	February	0

6.2.1 Adjustment of Net Firm Energy Amount – By written notice given to Idaho Power, no later than January 31<sup>st</sup> of every second (2<sup>nd</sup>) Contract Year, the Seller may revise the Monthly Net Firm Energy Amounts specified in paragraph 6.2 for the ensuing two Contract Years. Failure to provide written notice of changed amounts will be deemed to be an election of no change. If a Net Firm Energy adjustment results in the Annual Net Firm Energy being 25 % or less of the Annual Net Firm Energy specified for the first two contract years, all Net Firm Energy delivered to Idaho Power will be deemed to be Surplus Energy.

**ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT;  
ADJUSTMENT OF PURCHASE PRICE**

7.1 Net Firm Energy Purchase Price - The price to be paid to Seller for Net Firm Energy will be as follows:

7.1.1 Non-Levelized Energy Price - in accordance with Commission Order 29124 and after application of the seasonalization factors:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/Kwh</u>	<u>Mills/Kwh</u>	<u>Mills/Kwh</u>
2004	30.75	50.20	41.83
2005	31.52	51.46	42.88
2006	32.30	52.74	43.95
2007	33.11	54.06	45.05
2008	33.93	55.40	46.17
2009	34.79	56.80	47.33
2010	35.65	58.21	48.51
2011	36.55	59.68	49.73
2012	37.46	61.16	50.97
2013	38.40	62.70	52.25
2014	39.37	64.27	53.56
2015	40.35	65.88	54.90
2016	41.37	67.54	56.28
2017	42.40	69.23	57.69
2018	43.46	70.96	59.13
2019	44.56	72.74	60.62
2020	45.67	74.57	62.14
2021	46.82	76.44	63.70

2022	47.99	78.35	65.29
2023	49.19	80.32	66.93
2024	50.43	82.33	68.61
2025	51.69	84.40	70.33

- 7.1.2 Adjustment to Net Firm Energy Purchase Price - If, the amount of Net Firm Energy scheduled to Idaho Power in a calendar month is ninety percent (90%) or less of the Net Firm Energy Amount for that month specified in paragraph 6.2 of this Agreement, the entire month's energy delivery will be deemed to be Surplus Energy and the Surplus Energy Price as defined in paragraph 7.2 will be the applicable energy price.
- 7.2 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller eighty-five percent (85%) of (1) the monthly weighted average non-firm Dow Jones Mid-Columbia Index Price or (2) the Non Levelized Energy Price as specified in paragraph 7.1.1 of this Agreement, whichever is lower. If the Dow Jones Mid-Columbia Index price is not reported for a particular period, day or days, the average of the immediately preceding and following report periods or days will be used to set the Surplus Energy Price. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index which is similar to the Dow Jones Mid-Columbia Index.
- 7.3 Optional Energy Price – Idaho Power is not obligated to purchase Optional Energy. Idaho Power may purchase Optional Energy at a price that is mutually agreeable to the Parties. The Optional Energy Price will be agreed upon prior to the delivery of Optional Energy to the Point of Delivery by the Seller.
- 7.4 Payment Due Date – Energy payments to the Seller will be disbursed within 30 days of the date which Idaho Power receives acceptable documentation of the monthly Net Firm Energy actually scheduled and delivered to Idaho Power as specified in Appendix A.
- 7.5 Continuing Jurisdiction of the Commission .This Agreement is a special contract and as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc. 107 Idaho 781, 693 P2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107

Idaho 1122, 695 P2d 1 261 (Idaho 1985), Afton Energy, Inc, v. Idaho Power Company, 111 Idaho 925, 729 P2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

#### ARTICLE VIII: FACILITY AND INTERCONNECTION

- 8.1 Design of Facility - Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe reliable generation and delivery of electric energy to the Transmitting Entity for the full term of the Agreement.
- 8.2 Interconnection Facilities - Seller will construct, install, own and maintain all Interconnection Facilities other than those owned, installed or maintained by the Transmitting Entity. Seller will pay all costs of interconnecting with the Transmitting Entity and transmitting Net Firm Energy to Idaho Power.

#### ARTICLE IX: TRANSMISSION AGREEMENT

- 9.1 Transmission Agreement - To deliver the Net Firm Energy generated by the Facility to Idaho Power, Seller will arrange and pay for the firm transfer of the Net Firm Energy over the transmission facilities of NorthWestern Energy (Transmitting Entity) to the Point of Delivery. The transfer of Net Firm Energy from the Facility to the Idaho Power Point of Delivery shall be in accordance with the terms and conditions of the Firm Transmission Agreement, which will include provisions requiring the Transmitting Entity to provide the following:
- 9.1.1 Monthly Scheduled Energy Deliveries – The Transmitting Entity will provide Idaho Power with a schedule of the next month's hourly scheduled energy deliveries, at the minimum 7 days prior to the beginning of the month. The hourly scheduled energy delivery will be a constant value for every hour of the month and will remain unchanged for all hours of the month. The Transmitting entity will never schedule more than 7.5 Mw to Idaho Power for the Facility. The Transmitting Entity shall be excused from scheduling Net Firm Energy to Idaho Power if the Transmitting Entity determines that

curtailment, interruption or reduction of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system, or as otherwise required by Prudent Electrical Practices.

9.1.2 Energy Reserve Requirements – The Transmitting Entity will provide all required generation reserves as are currently required by the Western Electricity Coordinating Council (WECC) and/or as required by any other governing agency or industry standard.

9.2 Acceptance of Transmission Agreement - This Agreement is expressly conditioned and contingent upon Idaho Power's acceptance of the Transmission Agreement. Such acceptance will not be unreasonably withheld. Idaho Power is an intended third part beneficiary of the Transmission Agreement and a default by Seller under the Transmission Agreement will be a default under this Agreement.

9.3 Losses - Idaho Power will only purchase the energy that is scheduled by the Transmitting Entity to Idaho Power as shown on Idaho Power's daily system logs. All Losses will be attributed to Seller.

9.4 Documentation - Seller will provide Idaho Power with monthly documentation in a form acceptable to Idaho Power showing the amount of energy scheduled to Idaho Power at the Point of Delivery. All energy scheduled to Idaho Power at the Point of Delivery, which has been generated by this Facility is deemed delivered.

#### ARTICLE X - PROTECTION

10.1 Seller will construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Prudent Electrical Practices, the National Electric Safety Code and any other applicable local, state, and federal codes.

#### ARTICLE XI - OPERATIONS

- 11.1 Emergency Conditions - Seller agrees that, in the event of and during a period of a shortage of power on Idaho Power's system as declared by Idaho Power in its reasonable discretion or in the event that the wholesale market prices for energy delivered to Idaho Power are higher than the energy prices specified in paragraph 7.1.1 herein, Seller shall, at Idaho Power's request, within the limits of the Firm Transmission Agreement and reasonable safety requirements as determined by Seller, use its best efforts to provide the requested energy, and shall, if necessary, delay any scheduled shutdown of the Facility, provided such delay of scheduled shutdown will not damage Seller's facilities. All additional energy delivered by the Seller to Idaho Power at the request of Idaho Power during the identified Emergency Condition will be priced in accordance with paragraph 7.1.1. Additional energy will only be the incremental increase in energy scheduled to Idaho Power that exceeds the previously planned schedule of energy to Idaho Power.
- 11.2 Communications - Idaho Power and the Transmitting Entity on behalf of Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility, and Seller shall require the Transmitting Entity to report to Idaho Power at the times and in the manner established in the Transmission Agreement described in paragraph 9.1.
- 11.3 Energy Acceptance - Idaho Power shall be excused from accepting and paying for Net Firm Energy delivered by Seller, produced by the Facility, to the Point of Delivery if Idaho Power determines that curtailment, interruption or reduction of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system, or as otherwise required by Prudent Electrical Practices.
- 11.4 Scheduled Maintenance - No routine maintenance of the Facility will be scheduled during the month's of June, July or August without prior written approval from Idaho Power.

## ARTICLE XII: INDEMNIFICATION AND INSURANCE

- 12.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's

construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity.

12.2 Insurance - During the term of this Agreement, Seller shall secure and continuously carry the following insurance coverage:

12.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to fifteen percent (15%) of the Total Cost of the Facility, or - \$1,000,000, whichever is greater, each occurrence, combined single limit. The deductible for such insurance shall not exceed one-half of one percent (0.5%) of the Total Cost of the Facility.

12.2.2 The above insurance coverage shall be placed with an insurance company with an A.M. Best rating of A- or better and shall include:

- (a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable;
- (b) A provision stating that such policy shall not be canceled or their limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

12.3 Seller to Provide Certificate of Insurance - As required in paragraph 4.1.4 herein and annually thereafter, Seller shall furnish Idaho Power a certificate of insurance, together with the endorsements required therein, evidencing the coverage as set forth above.

12.4 Seller to Provide Copies of Policy of Insurance - Within one hundred twenty (120) days after the Operation Date, and within ninety (90) days of the effective date of any modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of the insurance policy and any endorsements for the insurance coverage described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have been no changes to the policy in lieu of providing the required certified copy of the policy.

12.5 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 12.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing.

The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage. Failure to provide this notice will constitute a material breach of this Agreement.

#### ARTICLE XIII: LIABILITY: DEDICATION

- 13.1 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Idaho Power as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XIV: SEVERAL OBLIGATIONS

- 14.1 Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

#### ARTICLE XV: WAIVER

- 15.1 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

#### ARTICLE XVI: CHOICE OF LAWS AND VENUE

- 16.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of

Idaho, without reference to its choice of law provisions.

- 16.2 Venue for any litigation arising out of or related to this Agreement will lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

#### ARTICLE XVII: DISPUTES AND DEFAULT

- 17.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.
- 17.2 Notice of Default - If either Party fails to perform any of the terms or conditions of this Agreement, (an "event of default") the nondefaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice then, the nondefaulting Party may, at its option, terminate this Agreement, and/or pursue its legal or equitable remedies.
- 17.3 Security for Performance - Prior to the Operation Date and thereafter for the full term of this Agreement, Seller will provide Idaho Power with the following:
- 17.3.1 Insurance - Evidence of compliance with the provisions of paragraph 12.2. If Seller fails to comply, such failure will be an event of default under Article XVII. Such default will be a material breach and may only be cured by Seller supplying evidence that the required insurance coverage has been replaced or reinstated;
- 17.3.2 Engineer's Certifications - Every three (3) years after the Operation Date, Seller will supply Idaho Power with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the State of Idaho, which Certification of Ongoing O & M shall be in the form specified in Appendix C. Seller's failure to supply the required certificate will be an event of default. Such a default may only be cured by Seller providing the required certificate; and
- 17.3.3 Licenses and Permits - During the full term of this Agreement, Seller shall maintain

compliance with all permits and licenses described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses. At least every fifth Contract Year, Seller will update the documentation described in Paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be a default and a material breach and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

#### ARTICLE XVIII: GOVERNMENTAL AUTHORIZATION

18.1 This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party of this Agreement.

#### ARTICLE XIX: COMMISSION ORDER

19.1 This Agreement shall become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

#### ARTICLE XX: SUCCESSORS AND ASSIGNS

20.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any party which Idaho Power may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of Idaho Power's rights and interests under this agreement. This article shall not prevent a financing entity with recorded

or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

#### ARTICLE XXI: MODIFICATION

21.1 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

#### ARTICLE XXII: TAXES

22.1 Each Party shall pay before delinquency all taxes and other governmental charges, which if failed to be paid when due could result in a lien upon the Facility or the Interconnection Facilities.

#### ARTICLE XXIII: NOTICES

23.1 All written notices under this Agreement shall be directed as follows, and shall be considered delivered when deposited in the U S Mail, first-class postage prepaid, as follows:

To Seller: Ted S. Sorenson  
Manager, Tiber Montana LLC  
5203 S 11<sup>th</sup> E  
Idaho Falls, ID 83404

To Idaho Power: Vice President, Power Supply  
Idaho Power Company  
P O Box 70  
Boise, Idaho 83707

#### ARTICLE XXIV: ADDITIONAL TERMS AND CONDITIONS

24.1 This Agreement includes the following appendices, which are attached hereto and included by reference:

Appendix A - Generation Scheduling and Reporting

Appendix B - Facility and Point of Delivery  
Appendix C - Engineer's Certifications

ARTICLE XXV: SEVERABILITY

25.1 The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

ARTICLE XXVI: COUNTERPARTS

26.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

ARTICLE XXVII: ENTIRE AGREEMENT

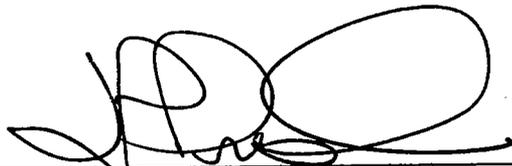
27.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed in their respective names on the dates set forth below:

Idaho Power Company

Tiber Montana, LLC

By



John Prescott - Vice President, Power Supply

By



Ted S. Sorenson, Manager

Dated

Feb 7, 2003

"Idaho Power"

Dated

February 03, 2003

"Seller"

## APPENDIX A

### GENERATION SCHEDULING AND REPORTING

Seller will provide Idaho Power with monthly documentation acceptable to Idaho Power showing the amount of Net Firm Energy actually scheduled and delivered to Idaho Power by the Transmitting Entity at the Point of Delivery. In accordance with paragraph 9.3 such documentation, subject to subsequent review by Idaho Power will be the basis of payment for energy purchased by Idaho Power from the Seller.

At the end of each month the required documentation will be mailed to:

Idaho Power Company  
Attn: Cogeneration and Small Power Production  
P O Box 70  
Boise, Idaho 83707

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. 41717139

TIBER DAM

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as:

Tiber Dam Hydroelectric Plant: Power Plant is located on the outlet works of the existing Tiber Dam. A single Vertical Francis Turbine, a single 7.5 Mw Type "SAVB" Vertical Brushless Synchronous Generator.

B-2 LOCATION OF FACILITY

The Facility is located at:

Tiber Dam, 15 miles south of the City of Chester, Montana. Liberty County, Montana, located in the NW ¼, MW ¼, Section 33, Township 30 N, Range 5 E,

B-3 SCHEDULED OPERATION DATE

Seller has selected May 15, 2004, as the Scheduled Operation Date.

B-3 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of interconnection between Idaho Power and the Transmitting Entity: Known as the Jefferson Line.

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
OPERATIONS & MAINTENANCE POLICY

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_, hereinafter collectively referred to as "Engineer", hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in \_\_\_\_\_ Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the

Project's producing at or near the design electrical output, efficiency, and plant factor for a \_\_\_\_\_ (\_\_\_\_) year period.

9. That Engineer recognizes that Idaho Power, in accordance with Article 2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his knowledge and therefore sets his hand and seal below.

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

\_\_\_\_\_

STATE OF IDAHO )

)ss

County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he/she is the individual who executed the within instrument, and acknowledged to me that he/she executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho

Residing at: \_\_\_\_\_

Commission Expires \_\_\_\_\_

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
ONGOING OPERATIONS AND MAINTENANCE

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_ hereinafter collectively referred to as "Engineer", hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located at \_\_\_\_\_.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. It is Engineer's professional opinion, based on the Project's appearance, that its ongoing O&M has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency, and plant

factor for the remaining \_\_\_\_\_ years of the Agreement.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 17.3.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his knowledge and therefore sets his hand and seal below.

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

\_\_\_\_\_

STATE OF IDAHO )

)ss

County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he/she is the individual who executed the within instrument, and acknowledged to me that he/she executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_

Notary Public for Idaho

Residing at: \_\_\_\_\_

Commission Expires \_\_\_\_\_