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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR APPROVAL)
OF AN AGREEMENT FOR SALE AND)
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY AND)
THE J. R. SIMPLOT COMPANY)
_____)

CASE NO. IPC-E-04-07
APPLICATION

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and, pursuant to RP 52, hereby applies for an Idaho Public Utilities Commission ("IPUC" or the "Commission") Order approving a Firm Energy Sales Agreement between Idaho Power and the J. R. Simplot Company ("Simplot") under which Simplot would sell and Idaho Power would purchase electric energy generated by the Simplot cogeneration facility located at the J. R. Simplot industrial site near Pocatello, Idaho.

This Application is based on the following:

I.

Simplot currently owns, operates and maintains a 15.9 MW cogeneration facility ("Project") at its industrial site near Pocatello, Idaho. The Project is a qualified small

power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA").

II.

This Project is currently interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility ("QF") in accordance with a Firm Energy Sales Agreement dated January 24, 1991 and subsequently amended on November 30, 1993 and February 23, 2001 and by two letter agreements that extended the term of the Agreement to February 29, 2004 (the "1991 Agreement"). Simplot has requested a new Firm Energy Sales Agreement for this Project to take effect upon the expiration of the 1991 Agreement. On February 19, 2004, Idaho Power and Simplot entered into a Firm Energy Sales Agreement ("Agreement") pursuant to the terms and conditions of Commission Order No. 29391. Under the terms of that Agreement, Simplot elected to contract with Idaho Power for a 10-year term. Simplot further elected to contract with the Company using the Non-Levelized Published Avoided Cost Rates as currently established by the Commission for energy deliveries less than 10 MW and a negotiated price for energy deliveries over 10 MW. A copy of the Agreement between Idaho Power and Simplot is attached hereto as Exhibit 1.

III.

In many respects, this Agreement is similar to the agreement between Idaho Power and Tiber Montana LLC that was approved by the Commission in Order No. 29232 issued on April 25, 2003 and the recently submitted agreements between the Company and United Materials of Great Falls, Inc. (Case No. IPC-E-04-01) and between the Company and Renewable Energy of Idaho, Inc. (Case No. IPC-E-04-05). Following is a brief description of the unique provisions of the Idaho Power/J. R. Simplot Agreement:

A. 10 MW or smaller Project size and eligibility for the published Avoided Cost Rate: Optional Energy is energy that the Project delivers to Idaho Power that exceeds 10,000 kWh in a single hour as defined in paragraph 1.16 of this Agreement. Optional Energy is identified through hourly metering. Because Simplot has made no firm commitments as to the delivery of this Optional Energy, the energy delivered to Idaho Power is considered to be non-firm energy. As non-firm energy, Idaho Power and Simplot have agreed the value of this energy to be the variable current month market based price as defined in paragraph 1.11 of this Agreement (Case No. IPC-E-04-05).

B. Seasonality: Previous IPUC Orders and QF agreements recognized that the value of purchased power differs in accordance with the season in which it is actually delivered to Idaho Power. Thus, as an incentive for a QF developer to deliver energy to the Company during times when it is of greater value to the Company, the published Avoided Cost rate has been historically “seasonalized.” The seasons for the Simplot Agreement are identified in Section 6.2 of the Agreement and are the same as the seasons in the Renewable Energy of Idaho agreement.

C. Environmental Attributes: Idaho Power has filed a petition (IPC-E-04-02) with the Commission to clarify ownership of the Environmental Attributes associated with QF projects from whom Idaho Power purchases energy. As specified in Section 8 of this Agreement, the final Order of the Commission in response to the Company’s petition will be applicable to this Agreement.

IV.

Section 24 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 to Simplot for purchases of energy will

be allowed as prudently incurred expenses for ratemaking purposes.

V.

Within the Agreement, various requirements have been placed upon Simplot in order for Idaho Power to continue to accept energy deliveries from this Project. Idaho Power will monitor compliance with these initial requirements in addition to the ongoing requirements through the full term of this Agreement. Should the Commission approve this Agreement, Idaho Power intends to consider the Effective Date of the Agreement to be March 1, 2004.

VI.

The Agreement, as signed and submitted by the Parties thereto, contains Non-Levelized Published Avoided Cost Rates in conformity with applicable IPUC Orders. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed Simplot.

VII.

The 1991 Agreement between Idaho Power and Simplot for this same Project expired on December 31, 2003. In order to enable the Project to continue to deliver energy to Idaho Power and for Idaho Power to purchase that energy and, in consideration of the fact that the parties were completing negotiations to permit execution of the subject Agreement, Idaho Power and Simplot executed two letter agreements extending the 1991 Agreement to February 29, 2004. Copies of both of these letters were forwarded to the Commission but, in anticipation of this filing, the Company did not make a separate filing of the extensions. As specified in these extension agreements, the rate paid for energy during the months of January and February 2004 was the same rate specified in the 1991 Agreement for December 2003 (0.04201 cents per kWh). The rates paid under the 1991

Agreement for the months of January and February 2004 were less than current published avoided cost rates for those same months.

VIII.

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

Monica B. Moen, Attorney II
Barton L. Kline, Senior Attorney
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 and Simplot without change or condition; and

(2) Declaring that all payments for purchases of energy under the Firm Energy Sales Agreement and the January and February 2004 extensions of the 1991 Agreement between Idaho Power Company and Simplot be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 5th day of March 2004.



MONICA B. MOEN
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of March 2004, I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

David Hawk
J. R. Simplot Company
P.O. Box 27
Boise, ID 83707

<input type="checkbox"/>	Hand Delivered
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	FAX

Monica B. Moen

MONICA B. MOEN

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

J.R. SIMPLOT COMPANY

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FIRM ENERGY SALES AGREEMENT

Simplot – Pocatello

Project Number: 41866112

THIS AGREEMENT, entered into on this 19th day of February 2004 between J R Simplot Company, a Nevada Corporation (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as “Parties” or individually as “Party.”

WITNESSETH:

WHEREAS, Seller has designed, constructed, owns, maintains and operates an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is willing 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 Energy” – Sum of the monthly Net Energy Amounts specified in paragraph 6.2 for a single Contract Year.
- 1.2 “Base Energy” – Monthly Net Energy less than 110% of the monthly Net Energy Amount as specified in paragraph 6.2 of this Agreement.
- 1.3 “Commission” - The Idaho Public Utilities Commission.
- 1.4 “Contract Year” - The period commencing March 1, 2004 and ending the last hour of the last day of February 2005 and each subsequent year period for the full Term of this Agreement.

- 1.5 “Designated Dispatch Facility” - Idaho Power’s Control Area Operations Group, or any subsequent group designated by Idaho Power.
- 1.6 “Disconnection Equipment” - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B or Appendix D.
- 1.7 “Facility” - That electric generation facility described in Appendix B of this Agreement.
- 1.8 “Generation Interconnection Process” – Idaho Power’s generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards.
- 1.9 “Interconnection Facilities” - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B or Appendix D.
- 1.10 “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. The Loss calculation formula is specified in Appendix B of this Agreement.
- 1.11 “Market Energy Cost” – 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 will mutually agree upon a replacement index which is similar to the Dow Jones Mid-Columbia Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.
- 1.12 “Material Breach” – A Default (paragraph 23.2.1) subject to paragraph 23.2.2
- 1.13 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be 15.9 MW.
- 1.14 “Metering Equipment” - All equipment specified in Schedule 72, the Generation Interconnection Process, this Agreement and any additional equipment specified in Appendix B or Appendix D required to measure, record or telemeter power flows between the Seller's electric generation plant and Idaho Power's system.

- 1.15 “Net Energy” - The electric energy produced by the Facility, less Station Use and less Losses, expressed in kilowatt hours (KWh), which Seller commits to deliver to Idaho Power at the Point of Delivery for the full term of the Agreement, not including Optional Energy.
- 1.16 “Optional Energy” - The electric energy produced by the Facility, less Station Use, and less Losses, expressed in Kwh, which Seller deliverers to Idaho Power at the Point of Delivery that exceeds 10,000 Kwh in any single hour.
- 1.17 “Point of Delivery” – The location specified in Appendix B, where Idaho Power’s and the Seller’s electrical facilities are interconnected.
- 1.18 “Prudent Electrical Practices” – Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully, safely, dependably, efficiently and economically.
- 1.19 Schedule 72” – Idaho Power’s Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.
- 1.20 “Season” – The three periods identified in Article VI.
- 1.21 “Shortfall Energy” – The difference between 90% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2 of this Agreement and the same month’s actual Net Energy if the actual month’s Net Energy is less than 90% of the corresponding month’s Net Energy Amount specified in paragraph 6.2.
- 1.22 “Special Facilities” - Additions or alterations of transmission and/or distribution lines and transformers as described in Appendix B, Appendix D, Schedule 72 or the Generation Interconnection Process required to safely interconnect the Seller's Facility to the Idaho Power system.
- 1.23 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the facility.
- 1.24 “Surplus Energy” – Net Energy delivered by the Seller to Idaho Power and accepted by Idaho Power during the month which exceeds 110% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2 of this Agreement.

- 1.25 “Total Cost of the Facility” - The total cost of structures, equipment and appurtenances.

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. Idaho Power reserves the right to review the Seller’s Qualifying Facility Status and associated support and compliance documents at anytime during the term of this Agreement.

ARTICLE IV: CONDITIONS TO CONTINUED ACCEPTANCE OF ENERGY

4.1 Idaho Power may suspend acceptance of deliveries of energy from the Seller's Facility if the Seller fails to comply with the following on or before the dates specified below:

4.1.1 This Facility is currently interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. No later than September 1, 2004 the Seller shall submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller to continue 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. As of the date of this Agreement the Seller has engaged an outside consultant to review the requirements of this paragraph and to provide the required documents.

4.1.2 Opinion of Counsel – No later than September 1, 2004, Seller shall 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 Letter 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 - This Facility is currently interconnected to the Idaho Power system. By September 1, 2004 the Seller will submit an Engineer's Certification of Operations and Maintenance ("O&M") Policy as described in Commission 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. As of the date of this Agreement the Seller has engaged an outside consultant to review these requirements and provide the required documents.

- 4.1.4 Insurance – By March 1, 2004, Seller shall submit written proof to Idaho Power of all insurance required in Article XVI.
- 4.1.5 Interconnection – Seller shall complete all interconnection modifications, upgrades or additions as specified in Appendix D of this Agreement.
- 4.1.6 By September 1, 2004, Seller shall demonstrate to Idaho Power’s reasonable satisfaction that the Facility is capable of delivering Net Energy in the amounts as specified in paragraph 6.2 of this Agreement for the full term of this Agreement in a consistent, reliable and safe manner.
- 4.1.7 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.

ARTICLE V: TERM

- 5.1 Term - Subject to completion of Article IV, Conditions to Continued Acceptance of Energy of this Agreement, this Agreement shall become effective on the date first written, and shall continue in full force and effect for a period of ten (10) Contract Years from March 1, 2004.
- 5.2 Seller’s failure to complete all of the requirements of Article IV, Conditions to Continued Acceptance of Energy, of this Agreement by November 30, 2004 will be an event of default.

ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

- 6.1 Delivery and Acceptance of Net Energy - Except when either Party's performance is excused as provided herein, Idaho Power will purchase all of the Net Energy and Optional Energy produced by the Facility and delivered by the Seller to the Point of Delivery.

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

	<u>Month</u>	<u>Kwh</u>
Season 1	March	5,380,448
	April	5,195,784
	May	5,380,448
Season 2	July	5,380,448
	August	5,380,448
	November	5,195,784
	December	5,380,448
Season 3	June	2,626,199
	September	5,195,784
	October	5,380,448
	January	5,380,448
	February	4,826,457

6.2.1 Seller's Adjustment of Net Energy Amount – By written notice given to Idaho Power in accordance with paragraph 29.1, the Seller may revise the monthly Net Energy Amounts specified in paragraph 6.2 on the following Designated Dates. These notices must be received a minimum 15 days prior to the Designated Dates and failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

Designated Dates

- July 31, 2004
- January 31, 2005
- Last day of the 3rd, 5th, 7th, and the 9th Contract Year

6.2.2 Idaho Power Adjustment of Net Energy Amount – If Idaho Power is excused from accepting the Seller's Net Energy as specified in paragraph 14.3.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 14.4.1, the Net Energy Amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 14.3.1 or 14.4.1 occurs will be reduced in accordance with the following:

Where:

NEA = Current Months Net Energy Amount (Paragraph 6.2)

RSH = Actual hours the Facility's energy deliveries were either reduced or suspended under paragraph 14.3.1 or 14.4.1

TH = Actual total hours in the current month

Resulting formula being:

$$\text{adjusted Net Energy Amount} = \text{NEA} - \text{NEA} \times \left(\frac{\text{RSH}}{\text{TH}} \right)$$

This adjusted Net Energy Amount will be used in applicable Surplus Energy and Shortfall Energy calculations for only the specific month in which Idaho Power was excused from accepting the Seller's Net Energy or the Seller declared a Suspension of Energy.

- 6.3 Unless excused by Force Majeure or by an adjustment as provided in paragraph 6.2.2, Seller's failure to deliver Net Energy in any Contract Year in an amount equal to at least ten percent (10%) of the Annual Net Energy Amount as specified in paragraph 6.2 or as may be adjusted due to paragraph 6.2.2, shall constitute an event of default.

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

- 7.1 Base Energy Purchase Price – For all Base Energy, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 29391 with seasonalization factors applied:

<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	33.66	54.95	45.79
2005	34.46	56.26	46.88
2006	35.27	57.59	47.99
2007	36.11	58.96	49.13
2008	36.96	60.35	50.29
2009	37.84	61.78	51.48
2010	38.73	63.24	52.70
2011	39.65	64.74	53.95
2012	40.59	66.28	55.23
2013	41.56	67.85	56.54

- 7.2 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Cost or the Base Energy Purchase Price specified in paragraph 7.1, whichever is lower.
- 7.3 Shortfall Energy Price - For all Shortfall Energy, if the Market Energy Cost for the month in which the Shortfall Energy occurs is less than the Base Energy Purchase Price for the same month, the Shortfall Energy Price will be 0. If the Market Energy Cost for the month in which the Shortfall Energy occurs is greater than the Base Energy Purchase Price for the same month, the Shortfall Energy Price will be the current month's Market Energy Cost less the Base Energy Purchase Price.
- 7.4 Shortfall Energy Payment - The Shortfall Energy Payment amount is the Shortfall Energy amount multiplied by the Shortfall Energy Price. The Shortfall Energy Payment will be withheld from the current month's energy payment. If the current month's energy payment is less than the Shortfall Energy Payment, the Seller will make payment to Idaho Power of the unpaid balance within 15 days of being notified of the outstanding balance.
- 7.5 Optional Energy Price - For all Optional Energy, Idaho Power shall pay to the Seller the current month's Market Energy Cost or the Base Energy Purchase Price specified in paragraph 7.1, whichever is lower.
- 7.6 Payment Due Date - Energy payments to the Seller will be disbursed within 30 days of the date which Idaho Power receives and accepts the documentation of the monthly Net Energy and Optional Energy actually delivered to Idaho Power as specified in Appendix A.
- 7.7 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 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc, v. Idaho Power Company, 111 Idaho 925,

729 P.2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

- 8.1 As of the date of this Agreement, Idaho Power has pending before the Commission a Petition for a Declaratory Order, IPC Case number IPC-E-04-02. Idaho Power is seeking a Commission ruling concerning whether the Environmental Attributes (i.e., renewable energy credits, green tags, etc.) associated with a QF project are owned by the project or the utility at the time a utility purchases electricity from a QF project. The final Order of the Commission in response to Idaho Power's Petition will be applicable to this Agreement. The Seller reserves the right to cancel this Agreement within 30 days after the date the Commission's final Order in IPC Case number IPC-E-04-02 becomes final and non-appealable. The Seller's failure to provide cancellation notification to Idaho Power within the above described time period will be deemed to be acceptance by the Seller of the allocation of Environmental Attributes as included in the Commission's final order.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. In this previous agreement, Seller was required to design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of electric energy to Idaho Power for the full term of the Agreement. Seller will be required to maintain these same standards in the on-going operations of this facility for the term of this Agreement.
- 9.2 Interconnection Facilities - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated

January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the existing Interconnection Facilities and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE X: DISCONNECTION EQUIPMENT

10.1 This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the existing Disconnection Equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE XI: METERING AND TELEMETRY

11.1 Metering - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the Metering and Telemetry and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72. All meters

used to determine the billing hereunder shall be sealed and the seals shall be broken only by Idaho Power when the meters are to be inspected, tested or adjusted.

11.1.1 Meter Inspection - Idaho Power shall inspect and test all meters upon their Installation and at least once every four (4) years thereafter. If requested by Seller, Idaho Power shall make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both Parties shall be notified of the time when any inspection or test shall take place, and each Party may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired or replaced, at Idaho Power's expense in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test varies by more than two percent (2%) from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the payments will be based on the shorter of (1) a period equal to one-half the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (2) six (6) months.

11.2 Telemetry – metering, communications and telemetry equipment is required which is capable of providing Idaho Power with continuous instantaneous telemetry of Seller's net generation to Idaho Power's Designated Dispatch Facility. This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the Telemetry Equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment in order for the parties to perform under this agreement. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within

Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE XII - RECORDS

- 12.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate Net Energy and Optional Energy records in a form and content recommended by Idaho Power.
- 12.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all Net Energy and Optional Energy records pertaining to the Seller's Facility.

ARTICLE XIII - PROTECTION

- 13.1 This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the existing Protection equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities. In some cases, some of Seller's protective relays will provide back-up protection for Idaho Power's facilities. In that event, Idaho Power will test such relays annually and Seller will pay the actual cost of such annual testing.

ARTICLE XIV - OPERATIONS

- 14.1 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 Article VII herein, Seller shall, at Idaho Power's request, within the limits of reasonable safety requirements as determined by Seller, and when economically viable as determined by the Seller, will 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, unless it is determined by Idaho Power that market energy deliveries to Idaho Power are not physically possible, in which case Idaho Power and the Seller will agree upon the energy price. The Commission will be notified of any energy prices that exceed the energy prices contained within paragraph 7.1 for the additional energy deliveries. Additional energy will only be the incremental increase in energy scheduled and delivered to Idaho Power that exceeds the previously planned energy deliveries to Idaho Power for the specific period agreed to by both parties prior to the deliveries of the additional energy.

14.2 Communications - Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.

14.3 Energy Acceptance -

14.3.1 Idaho Power shall be excused from accepting and paying for Net Energy and/or Optional Energy produced by the Facility and delivered to the Point of Delivery if it is prevented from doing so by an event of force majeure, or if Idaho Power determines that curtailment, interruption or reduction of Net Energy and/or Optional 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. If, for reasons other than an event of force Majeure, Idaho Power requires such a curtailment, interruption or reduction of Net Energy deliveries for a period that exceeds twenty (20) days beginning with the twenty-first day of such

interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

14.3.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may physically interrupt the flow of energy from the Facility as specified within Schedule 72 or take such other reasonable steps as Idaho Power deems appropriate.

14.3.3 Under no circumstances will the Seller deliver Net Energy and/or Optional Energy from the Facility in an amount that exceeds the Maximum Capacity Amount. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

14.4 Seller Declared Suspension of Energy Deliveries

14.4.1 If the Seller's Facility experiences a forced outage due to equipment failure which is not caused by an event of Force Majeure or by neglect, disrepair or a foreseeable failure of the Seller's Facility, Seller may, after giving notice as provided in paragraph 14.4.2 below, temporarily suspend all deliveries of Net Energy to Idaho Power for a period of not less than 72 hours to correct the forced outage condition. The Sellers Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller's telephone notification as specified in paragraph 14.4.2 and will continue for the time as specified in the written notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Net Energy Amount will be adjusted as specified in paragraph 6.2.2.

14.4.2 If the Seller desires to declare a Suspension of Energy Deliveries as provided in paragraph 14.4.1, the Seller will 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 Idaho Power. The Seller will, within 24 hours after the telephone contact, provide Idaho Power a written notice in accordance with Article XXIX, that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Seller to Declare a Suspension of Energy Deliveries.

- 14.5 Voltage Levels - Seller, in accordance with Prudent Electrical Practices shall minimize voltage fluctuations and maintain voltage levels acceptable to Idaho Power. Idaho Power may, in accordance with Prudent Electrical Practices, upon one hundred eighty (180) days' notice to Seller, change its nominal operating voltage level by more than ten percent (10%) at the Point of Delivery, in which case Seller shall modify, at Idaho Power's expense, Seller's equipment as necessary to accommodate the modified nominal operating voltage level.
- 14.6 Generator Ramping - Idaho Power, in accordance with Prudent Electrical Practices, shall have the right to limit the rate that generation is changed at startup, during normal operation or following reconnection to Idaho Power's system. Generation ramping may be required to permit Idaho Power's voltage regulation equipment time to respond to changes in power flow.
- 14.7 Scheduled Maintenance – On or before January 31 of each calendar year, Seller shall submit a written proposed maintenance schedule for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of the Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.
- 14.8 Maintenance Coordination - The Parties shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.
- 14.9 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact Seller prior to exercising its rights to curtail, interrupt or reduce deliveries from Seller for any event that will be in duration of 24 hours or longer. Seller understands that in the case of emergency

