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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for U.S. Geothermal, Inc.
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

U.S. GEOTHERMAL, INC., an Idaho
corporation,

Complainant,

vs.

IDAHO POWER COMPANY, an Idaho
corporation,

Respondent.

Case No. *IPC-E-04-08*

COMPLAINT

Complainant U.S. Geothermal, Inc. ("U.S. Geothermal"), through its attorneys, Givens Pursley LLP, complains against Respondent Idaho Power Company ("Idaho Power") and alleges as follows:

INTRODUCTION AND SUMMARY

1. This Complaint is a formal complaint, filed in accordance with Rule 54 of the IPUC Rules of Procedure, IDAPA 31.01.01.054.

PARTIES TO THE PROCEEDING

2. U.S. Geothermal is an Idaho corporation with its principal place of business located in Boise, Idaho. U.S. Geothermal's representatives in this proceeding are:

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P.O. Box 2720
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Daniel Kunz, President
U.S. Geothermal, Inc.
1509 Tyrell Lane, Ste. B
Boise, ID 83706
Telephone: (208) 424-1027
Fax: (208) 424-1030
dkunz@usgeothermal.com

3. Idaho Power is an electric utility with its principal place of business located in Boise, Idaho.

COMMISSION JURISDICTION

4. Idaho Power is subject to the Idaho Public Utilities Commission's ("Commission") jurisdiction pursuant to Title 61, Idaho Code and 16 U.S.C § 824a-3. The Commission has subject matter jurisdiction over this Complaint pursuant to Idaho Code § 61-612 and 16 U.S.C. § 824a-3(g)(2).

STATEMENT OF FACTS

5. U.S. Geothermal is the owner and developer of the Raft River Geothermal Power Plant, an air-cooled, closed cycle geothermal electric generating plant to be constructed in Cassia County, Idaho ("Raft River Facility"). The Raft River Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR § 292.207.

6. In early 2003, U.S. Geothermal initiated discussions with Idaho Power with regard to a proposed sale of the electric output of the Raft River Facility to Idaho Power. Idaho Power is required by the Federal Public Utility Regulatory Policies Act of 1978 ("PURPA") to

purchase the Raft River Facility's power pursuant to just, reasonable and nondiscriminatory rules established by the Federal Energy Regulatory Commission and this Commission.

7. On October 24, 2003, U.S. Geothermal and Idaho Power began exchanging draft contracts, and such exchanges continued through March 4, 2004. On February 20, 2004, U.S. Geothermal tendered the draft contract attached as Exhibit A to Idaho Power. (A "clean" copy of the February 20th draft, with redlining omitted, is attached as Exhibit B.) On March 4, 2004, Idaho Power delivered to U.S. Geothermal the draft contract attached as Exhibit C. Subsequent discussions on March 5, 2004, between U.S. Geothermal's representative, Mr. Kip Runyan, and Idaho Power's representative, Mr. Randy Allphin, revealed that further negotiations would be fruitless because Idaho Power is insistent on three unreasonable and unjust provisions in the proposed power purchase agreement.

CAUSES OF ACTION

Count One

8. Idaho Power's contract demands are unjust, unreasonable and contrary to law because Idaho Power refuses to purchase an annual average of 10 megawatts of power from U.S. Geothermal at the Commission approved non-levelized posted rates. Instead, Idaho Power insists that it will only purchase a maximum of 10 megawatts in any given hour at the posted rates. There is no basis in law or in fact for such a limitation.

Count Two

9. Idaho Power's contract demands are unjust, unreasonable and contrary to law because Idaho Power insists on extreme financial penalties if U.S. Geothermal's total output in any month falls below 90%, or above 110%, of its projected output. There is no basis in law or fact for such penalties.

Count Three

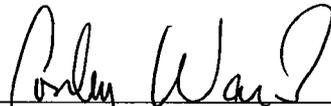
10. Idaho Power's contract demands are unjust, unreasonable and contrary to law because Idaho Power insists that it must have the ability to terminate its contractual obligation to purchase U.S. Geothermal's power if (1) Idaho law is modified to permit any other party to sell electricity at retail in Idaho Power's service territory, and (2) such change in law results in Idaho Power being unable to recover in its retail revenue requirement all costs attributable to the agreement with U.S. Geothermal. There is no basis in law of fact for Idaho Power's position, and it would effectively nullify this Commission's rules by making it extremely costly, if not impossible, to finance PURPA projects.

PRAYER FOR RELIEF

WHEREFORE, Complainant prays for a Commission order granting relief as follows:

1. Finding that Idaho Power's proposed contract is unjust, unreasonable and unlawful; and,
2. Directing Idaho Power to execute the contract with U.S. Geothermal attached hereto as Exhibit B; and,
3. Such further relief as the Commission deems just and proper.

RESPECTFULLY SUBMITTED This 25th day of March 2004.



Conley Ward
GIVENS PORSLEY LLP
Attorneys for U.S. Geothermal, Inc.

CERTIFICATE OF SERVICE

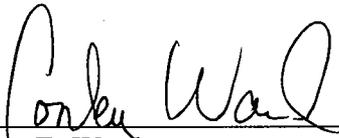
I HEREBY CERTIFY that on this 25th day of March 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Jean Jewell
Idaho Public Utilities Secretary
472 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Barton L. Kline
Idaho Power Company
1221 W. Idaho Street
P.O. Box 70
Boise, ID 83707

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile



Conley E. Ward

EXHIBIT A

0000-1-2

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

US GEOTHERMAL, INC

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FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this _____ day of _____ between
US GEOTHERMAL, INC a ~~Delawarean~~ Idaho 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 will design, construct, own, maintain and operate 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.~~
- 1.2 “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. The Loss calculation formula is specified in Appendix B of this Agreement.
- 1.8 “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.
- 1.9 “Material Breach” – A Default (paragraph 21.2.1) subject to paragraph 21.2.2
- 1.10 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility to be used to supply this contract will be +12.7 MW.
- 1.11 “Metering Equipment” - All equipment specified in Schedule 72, this Agreement and any additional equipment specified in Appendix B required to measure, record or telemeter power provided by the Seller’s Facility.
- 1.12 “Net Energy” - The electric energy to be used to supply this contract produced by the Facility, less Station Use and less Losses, expressed in kilowatt hours (KWh), which Seller and the Transmitting Entity will deliver to Idaho Power at the Point of Delivery for the full term of the Agreement. Net Energy deliveries to be used to supply this contract in any month will not exceed 10,000 kWh in a single hour. the corresponding Maximum Monthly Energy amounts specified in paragraph 6.2.
- 1.13 “Operation Date” – The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.3 have been completed.

- 1.14 “Point of Delivery” – The location specified in Appendix B, where the Transmitting Entity delivers the Facility’s Net Energy to Idaho Power.
- 1.15 “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.
- 1.16 “Scheduled Operation Date” – The date specified in Appendix B when Seller anticipates achieving the Operation Date.
- 1.17 Schedule 72” – Idaho Power’s Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.
- 1.18 “Season” – The three periods identified in Article VI.
- ~~“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.~~
- ~~“Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the facility.~~
- 1.19 ~~1.22~~ “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 and all Net Energy which is delivered by the Seller to Idaho Power prior to the Operation Date.
- 1.23 “Total Cost of the Facility” - The total cost of structures, equipment and appurtenances.
- 1.24 “Transmitting Entity” - The signatory(s) (other than the Seller) to the Transmission Agreement referred to in paragraph 10.1 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. 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 ACCEPTANCE OF ENERGY

- 4.1 Prior to the Operation Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller, 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 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 - Submit an 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 XV.
- 4.1.5 Transmission Agreement - Provide Idaho Power with a copy of the 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 where the Facilities generation will be delivered to the Idaho Power. 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

Maximum Capacity Amount at the requested Point of Delivery. This study will include a study of the Idaho Power electrical system at this Point of Delivery and estimation of costs as specified in Appendix B.

4.1.7.1 If said study results in Idaho Power being unable to receive the Maximum Capacity Amount at the requested Point of Delivery, the Seller and Transmitting Entity may request a different Point of Delivery or revise the Maximum Capacity Amount 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 Maximum Capacity Amount at a Point of Delivery that Idaho Power has identified as being unable to receive the Maximum Capacity Amount, 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 Maximum Capacity Amount at the requested Point of Delivery.

4.1.7.3 Seller will be responsible for all reasonable expenses associated with all Idaho Power studies, upgrades and/or modifications required to enable delivery of the Maximum Capacity Amount 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 any and all studies, upgrades and/or modifications required to accommodate the Seller's request, Idaho Power will reconcile the actual expenses with the previously paid deposit and the appropriate refund or additional billing will be processed.

ARTICLE V: TERM 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 from the Operation Date.

5.2 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.

5.3 Seller's failure to achieve the Operation Date within ten (10) months of the Scheduled Operation Date 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 and Seller will sell up to an average of 10,000 kWh per hour of Net Energy delivered by the Transmitting Entity to the Point of Delivery. ~~Under this Agreement~~ Except upon mutual agreement, Idaho Power is only shall not be obligated to purchase Net energy from Energy in any month that exceeds the Seller Maximum Monthly Energy amounts specified in paragraph 6.2.

~~6.2~~ Net Energy and Net Energy will not exceed 10,000 kWh per hour.

~~6.2~~ Net Energy Maximum Monthly Energy Amounts - Seller intends to deliver Net Energy in the following monthly amounts. Seller agrees that the maximum Net Energy delivered in any month to supply this contract will not exceed the following Maximum Monthly Energy Amounts:

	<u>Month</u>	<u>Kwh</u>
Season 1	March	xxxxxx
	April	xxxxxx

Season 2	May	xxxxxx
	June	xxxxxx
	July	xxxxxx
	November	xxxxxx
Season 3	December	xxxxxx
	August	xxxxxx
	September	xxxxxx
	October	xxxxxx
	January	xxxxxx
	February	xxxxxx

		<u>Net Energy</u>	<u>Maximum Monthly Energy</u>
	<u>Month</u>	<u>Kwh</u>	<u>Kwh</u>
<u>Season 1</u>	<u>March</u>	<u>7,649,000</u>	<u>8,051,500</u>
	<u>April</u>	<u>7,097,000</u>	<u>7,470,500</u>
	<u>May</u>	<u>6,718,000</u>	<u>7,071,500</u>
<u>Season 2</u>	<u>June</u>	<u>5,951,000</u>	<u>6,264,500</u>
	<u>July</u>	<u>5,510,000</u>	<u>5,800,500</u>
	<u>November</u>	<u>7,587,000</u>	<u>7,986,500</u>
	<u>December</u>	<u>8,166,000</u>	<u>8,595,500</u>
<u>Season 3</u>	<u>August</u>	<u>5,677,000</u>	<u>5,975,500</u>
	<u>September</u>	<u>6,235,000</u>	<u>6,563,500</u>
	<u>October</u>	<u>7,219,000</u>	<u>7,598,500</u>
	<u>January</u>	<u>8,166,000</u>	<u>8,595,500</u>
	<u>February</u>	<u>7,303,000</u>	<u>7,687,500</u>

6.2.1 Seller's Adjustment of Net Energy Amount – By written notice given to Idaho Power in accordance with paragraph 27.1, 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

- Prior to the Operation Date
- Last day of the 6th month after the Operation Date
- Last day of the 12th month after the Operation Date
- Last day of the 3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, and 19th Contract Year
- Last day of any subsequent month, as long as only one revision occurs in

any two consecutive year period.

6.3 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 shall constitute an event of default.

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

7.1 BaseNet Energy Purchase Price – For all BaseNet Energy which is delivered by the Seller to Idaho Power prior to the Operation Date, Idaho Power will pay the Seller the Market Energy Cost. For all other Net 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
2014	42.54	69.46	57.88
2015	43.56	71.11	59.26
2016	44.59	72.79	60.66
2017	45.64	74.52	62.10
2018	46.73	76.30	63.58
2019	47.83	78.10	65.08
2020	48.97	79.96	66.63
2021	50.13	81.85	68.21
2022	51.33	83.80	69.83
2023	52.55	85.79	71.49
2024	53.79	87.83	73.19
2025	55.07	89.90	74.92

~~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.

7.2 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 actually delivered to Idaho Power as specified in Appendix A.

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.

7.6 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 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 The Parties have not agreed on the ownership of the Environmental Attributes. The Parties have agreed to present this issue to the Commission for resolution. If the Commission accepts Idaho Power's position that its customers own the Environmental Attributes, the following language would be included in the Agreement and Seller reserves the right to cancel this Agreement.

Idaho Power retains all rights and will own any and all beneficial fuel, emission or other environmental attributes currently or in the future attributable to the Net Energy delivered from this Facility during the term of this Agreement. These attributes will include but are not limited to Green Credits, Green Tags, Renewable Energy Credits (REC) and Emission Credits.

- 8.2 If the Commission accepts the Seller's position that the Seller owns any Environmental Attributes, the Agreement will contain the following language:

The Seller retains all rights and will own any and all beneficial fuel, emission or other environmental attributes currently or in the future attributable to this Facility. These attributes will include but are not limited to Green Credits, Green Tags, Renewable Energy Credits (REC) and Emission Credits.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 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 and reliable generation and delivery of electric energy to the Transmitting Entity for the full term of the Agreement.
- 9.2 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 Energy to Idaho Power.

ARTICLE X: TRANSMISSION AGREEMENT

- 10.1 Transmission Agreement - The Seller will arrange and pay for the delivery of Net Energy over

the facilities of the Transmitting Entities (the Bonneville Power Administration (“BPA”) and the Raft River Rural Electric Cooperative (“Raft River”)) to the Point of Delivery. The delivery of Net Energy from the Facility to the Idaho Power Point of Delivery shall be in accordance with the terms and conditions of a Transmission Agreement between the Seller and the Transmitting Entities.

10.2 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 will be identified within the Transmission Agreement as an intended third ~~part~~party beneficiary of the Transmission Agreement and a material default by Seller under the Transmission Agreement will be a default under this Agreement.

10.3 Losses - Idaho Power will only purchase the Net Energy that is delivered by the Transmitting Entity to Idaho Power at the Point of Delivery. Losses will be calculated as provided in Appendix B of this Agreement.

ARTICLE XI: METERING

11.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain Metering Equipment as required to determine the amount of Net Energy delivered to Idaho Power at the Point of Delivery. The metering will be installed at the locations as specified in Appendix B of this Agreement. If required by Idaho Power, metering will also include measurement of kilovar-hours in a manner agreed to by both Parties. All reasonable Metering Equipment and installation costs shall be borne by Seller, including costs incurred by Idaho Power for inspecting and testing such equipment at reasonable intervals at Idaho Power's actual cost of providing this Metering Equipment and services. 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.

11.2 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.

- 11.3 Telemetry – Idaho Power will install, operate and maintain at Seller's expense metering, communications and telemetry equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of the Facility's generation and Net Energy amounts delivered, to Idaho Power's Designated Dispatch Facility.

ARTICLE XII - RECORDS

- 12.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate total generation and Net 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 total generation and Net Energy delivery records pertaining to the Seller's Facility.

ARTICLE XIII - PROTECTION

- 13.1 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 XIV - OPERATIONS

- 14 .1 Communications - Idaho Power, the Transmitting Entity and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.

- 14 .2 Energy Acceptance –

14.2.1 Idaho Power shall be excused from accepting and paying for Net Energy produced by the Facility and delivered by the Transmitting Entity 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 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, provided that during such curtailment, interruption or reduction, Idaho Power shall cooperate with the Seller and the Transmitting Entity in rescheduling Net Energy deliveries to an alternative point of delivery if reasonably possible. 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.

14.2.2 Under no circumstances will the Seller permit the Transmitting Entity to deliver energy from the Facility in an amount that exceeds the Maximum Capacity Amount: unless such

energy is delivered pursuant to a separate transmission agreement. Seller's failure to limit deliveries by the Transmitting Entity pursuant to this contract to the Maximum Capacity Amount will be a Material Breach of this Agreement.

- 14.3 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.
- 14.4 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.
- 14.5 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.

ARTICLE XV: INDEMNIFICATION AND INSURANCE

- 15.1 Indemnification - Each Party ~~shall agree~~ agrees to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company 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, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

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

15.2.1 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.

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

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

15.3 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.

15.4 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 an 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.

15.5 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by

paragraph 15.2 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 and to expeditiously reinstate or replace the coverage will constitute a Material Breach of this Agreement.

ARTICLE XVI. FORCE MAJEURE

16.1 As used in this Agreement, “force Majeure” or “an event of force Majeure” means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of force Majeure, both Parties shall be excused from whatever performance is affected by the event of force Majeure, provided that:

- (1) The non-performing Party shall, as soon as is reasonably possible after the occurrence of the force Majeure, give the other Party written notice describing the particulars of the occurrence.
- (2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of force majeure.
- (3) No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

ARTICLE XVII: LIABILITY: DEDICATION

- 17.1 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 or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XVIII: SEVERAL OBLIGATIONS

- 18.1 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 XIX: WAIVER

- 19.1 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 XX: CHOICE OF LAWS AND VENUE

- 20.1 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.
- 20.2 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.

