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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for the Industrial Customer of Idaho Power

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

BOB LEWANDOWSKI AND MARK	)	CASE NO. IPC-E-04- <u>10</u>
SCHROEDER	)	
Complainants	)	COMPLAINT
vs	)	
IDAHO POWER COMPANY, an Idaho	)	
Corporation	)	
Respondent	)	
<hr/>		

Complainants, Bob Lewandowski and Mark Schroeder, through their attorneys, Richardson and O'Leary, complains against Respondent Idaho Power Company ("Idaho Power" or the "Company") and allege as follows:

1.

This is a formal complaint filed pursuant to Rule 54 of the Rules of Procedure of the Idaho Public Utilities Commission ("Commission"), IDAPA 31.01.01.054.

2.

Mark Schroeder and Bob Lewandowski are individuals living in Idaho Power's service territory in Southern Idaho.

3.

Idaho Power is an electric utility with its principle place of business in Boise, Idaho.

4.

Idaho Power is subject to the Commission's 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).

5.

Mark Schroeder is the owner of a farming operation located within the Bell Rapids Irrigation District in Southern Idaho.

6.

Bob Lewandowski is the owner of a home and an acreage located between Mountain Home and Boise, Idaho south of Interstate 84.

7.

Both Mr. Lewandowski and Mr. Schroeder are in the process of developing wind projects on their land that will be qualifying facilities pursuant to PURPA.

8.

Both Mr. Lewandowski and Mr. Schroeder have sought to obtain a power purchase agreement from Idaho Power Company for the sale of the output from their wind projects.

9.

Both Mr. Lewandowski and Mr. Schroeder have sought to sell the output from their respective projects pursuant to this Commission's implementation of the Public Utilities Regulatory Policies Act of 1978 ("PURPA").

10.

Idaho Power Company is insisting on contract provisions in its draft power purchase agreement that obviate the requirement that it purchase all of the output from these projects at full avoided cost rates when said output is less than 90% or more than 110% of projected output in the contract. Said provisions are contrary to PURPA and this Commission's prior orders.

11.

Idaho Power Company is insisting on a provision in the draft contract called "shortfall energy" which would actually require the developer to pay Idaho Power for electricity not produced by the project with no cap or ceiling on the price – both concepts are contrary to PURPA and this Commission's prior orders.

12.

Contract negotiations have stalled because neither Idaho Power nor Mr. Lewandowski nor Mr. Schroeder are willing to move off of their respective positions on these issues.

13.

Attached at Exhibit A is a copy of the offending draft power purchase agreement.

14.

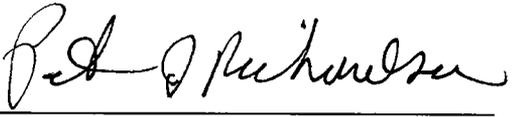
Attached at Exhibit B is a copy of a letter dated April 9, 2004, from Idaho Power's counsel in this matter informing Mr. Lewandowski and Mr. Schroeder that further negotiations would not make progress.

#### PRAYER FOR RELIEF

WHEREFORE Mr. Lewandowski and Mr. Schroeder respectfully pray for this Commission's order requiring Idaho Power to enter into a power purchase agreement by which it

honors its legal obligation to purchase all of the output from these projects at full  
administratively determined avoided cost rates.

RICHARDSON & O'LEARY PLLC

By:   
Peter J. Richardson, ISB #3195  
Attorneys for the Industrial Customers  
of Idaho Power

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of April 2004, I caused to be served a true and  
correct copy of the foregoing Complaint by hand to the following:

Jean Jewell  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho

Barton L. Kline  
Idaho Power Company  
1221 West Idaho Street  
Boise, Idaho

# EXHIBIT

A

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

Lewentowski/Schroeder

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Hand out  
3/2/04

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Draft  
For discussion purposes only

FIRM ENERGY SALES AGREEMENT

\_\_\_\_\_

Project Number: \_\_\_\_\_

THIS AGREEMENT, entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2004 between \_\_\_\_\_ (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

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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 produced by the Seller's Facility.

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

ARTICLE I: DEFINITIONS

**For discussion purposes only**

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 each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.

- 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.
- 1.7 “Facility” - That electric generation facility described in Appendix B of this Agreement.
- 1.8 “First Energy Date” - The day commencing at 0001 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and the Seller begins delivering energy to Idaho Power’s system at the Point of Delivery.
- 1.9 “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.
- 1.10 “Interconnection Facilities” - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B.
- 1.11 “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.
- 1.12 “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.
- 1.13 “Material Breach” – A Default (paragraph 22.2.1) subject to paragraph 22.2.2.
- 1.14 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be \_\_\_\_ MW.
- 1.15 “Metering Equipment” - All equipment specified in Schedule 72, the Generation Interconnection Process, this Agreement and any additional equipment specified in Appendix B required to

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For discussion purposes only

measure, record or telemeter power flows between the Seller's electric generation plant and Idaho Power's system.

- 1.16 "Net Energy" - 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. Net Energy will never exceed the Maximum Capacity Amount and will not include Optional Energy.
- 1.17 "Operation Date" - The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.18 "Optional Energy" - Electric energy produced by the Facility, less Station Use, and less Losses, expressed in kWh, which Seller delivers to Idaho Power at the Point of Delivery that exceeds 10,000 kWh in any single hour. Optional Energy will never exceed the Maximum Capacity Amount.
- 1.19 "Point of Delivery" - The location specified in Appendix B, where Idaho Power's and the Seller's electrical facilities are interconnected.
- 1.20 "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.
- 1.21 "Scheduled Operation Date" - The date specified in Appendix B when Seller anticipates achieving the Operation Date.
- 1.22 "Schedule 72" - Idaho Power's Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.
- 1.23 "Season" - The three periods identified in Article VI.
- 1.24 "Shortfall Energy" - If the month's Net Energy is less than 90% of the monthly Net Energy Amount as specified in paragraph 6.2 of this Agreement for the corresponding month, Shortfall Energy will be the difference between 90% of the monthly Net Energy Amount same month's actual Net Energy delivered to the Point of Delivery.

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- 1.25 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Appendix B, Schedule 72 or the Generation Interconnection Process required to safely interconnect the Seller's Facility to the Idaho Power system.
- 1.26 "Station Use" – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the facility.
- 1.27 "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.
- 1.28 "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 ACCEPTANCE OF ENERGY

- 4.1 Prior to the First Energy 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 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.

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 XV.

4.1.5 Interconnection - Provide written proof to Idaho Power that all Schedule 72 and Generation Interconnection Process requirements have been completed.

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.

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#### 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 \_\_\_\_\_  
(maximum of 20 years) 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:

- For discussion purposes only
- a) Achieved the First Energy Date.
  - b) Commission approval of this Agreement in a form acceptable to Idaho Power 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 all of the Net Energy and Optional Energy produced by the Facility and delivered by the Seller to the Point of Delivery that does not exceed the Maximum Capacity Amount. All energy produced by the Seller's Facility will be delivered to Idaho Power at the Point of Delivery as designated in Appendix B of this Agreement and the rate of delivery will never exceed the Maximum Capacity Amount.

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

**For discussion purposes only**

6.2.1 Seller's Adjustment of Net Energy Amounts - By written notice given to Idaho Power in accordance with paragraph 28.1, 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

- Last day of the 6th month after the Operation Date
- Last day of the 12th month after the Operation Date
- Last day of the 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, and 19<sup>th</sup> 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 Net 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 an event of 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

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
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

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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 and the Optional 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 - 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 Net Energy and Optional Energy to the Point of Delivery for the full term of the Agreement.
- 9.2 Interconnection Facilities - Except as specifically provided for in this Agreement, the required Interconnection Facilities will be in accordance with Schedule 72, the Generation Interconnection Process and Appendix B. The Seller is responsible for all costs associated with this equipment as specified in Schedule 72 and the Generation Interconnection Process, including but not limited to initial costs incurred by Idaho Power for equipment costs, installation costs and ongoing monthly Idaho Power operations and maintenance expenses.

ARTICLE X: DISCONNECTION EQUIPMENT

- 10.1 Except as specifically provided for in this Agreement, the required Disconnection Equipment will be in accordance with Schedule 72, the Generation Interconnection Process and Appendix B. The Seller is responsible for all costs associated with this equipment as specified in Schedule 72 and the Generation Interconnection Process, including but not limited to initial costs incurred by Idaho Power for equipment costs, installation costs and Idaho Power ongoing monthly operations and monthly maintenance expenses.

ARTICLE XI: METERING AND TELEMETRY

- 11.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain Metering Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with Schedule 72, Generation Interconnection Process and Appendix B of this Agreement. The Metering Equipment will be of the type required to measure, record and report the Facility's energy production in a manner to provide Idaho Power adequate energy measurement data to administer this Agreement and to

integrate this Facility's energy production into the Idaho Power electrical system. All 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. The Metering Equipment shall be at the location described in Appendix B of this Agreement. 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 installations annually and test meters on the applicable periodic test schedule relevant to the equipment installed as specified in Appendix B of this Agreement. 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 Seller's net electrical energy production 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 metering and related power production 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 metering and power production records pertaining to the Seller's Facility.

ARTICLE XIII - PROTECTION

- 13.1 Seller shall construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Schedule 72, the Generation Interconnection Process, Appendix B of this Agreement, Prudent Electrical Practices, the National Electrical Code, the National Electrical Safety Code and any other applicable local, state and federal codes. Seller acknowledges receipt of the Generation Interconnection Process. 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, the Generation Interconnection Process or take such other reasonable steps as Idaho Power deems appropriate. Except in the case of an emergency, Idaho Power will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 14.8. 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 circumstances, Idaho Power may not be able to provide notice to Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

#### ARTICLE XV: INDEMNIFICATION AND INSURANCE

15.1 Indemnification - Each Party shall agree 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 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.

# Draft

## ARTICLE XVII 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 occurring after the Operation Date, 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: LAND RIGHTS

17.1 Seller to Provide Access - Seller hereby grants to Idaho Power for the term of this Agreement all necessary rights-of-way and easements to install, operate, maintain, replace, and remove Idaho Power's Metering Equipment, Interconnection Equipment, Disconnection Equipment, Protection Equipment and other Special Facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of Seller. Seller warrants that it has procured sufficient easements and rights-of-way from third parties so as to provide Idaho Power with the access described above. All documents granting such easements or rights-of-way shall be subject to Idaho Power's approval and in recordable form.

17.2 Use of Public Rights-of-Way - The Parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho Power's compliance with paragraph 17.4, Seller agrees that should Seller seek and receive from any local, state or federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho Power of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho Power may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 17.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 17.2.

17.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 17.4, Idaho Power may use and attach its distribution and/or transmission facilities to Seller's Interconnection Facilities, may reconstruct Seller's Interconnection Facilities to accommodate Idaho Power's

usage or Idaho Power may construct its own distribution or transmission facilities along, over and above any public right-of-way acquired from Seller pursuant to paragraph 17.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 17.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 17.3.

- 17.4 Conditions of Use - It is the intention of the Parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho Power's exercising its rights under this Article XVII. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 17.2 and 17.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the Parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the Parties, and (3) shall provide Seller with an interconnection to Idaho Power's system of equal capacity and durability as existed prior to Idaho Power exercising its rights under this Article XVII.

#### ARTICLE XVIII: LIABILITY; DEDICATION

- 18.1 ~~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 XIX: SEVERAL OBLIGATIONS

- 19.1 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 XX: WAIVER

- 20.1 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.

Draft

ARTICLE XXI: CHOICE OF LAWS AND VENUE

- 21.1 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.
- 21.2 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 XXII: DISPUTES AND DEFAULT

- 22.1 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.

For discussion purposes only

- 22.2 Notice of Default -

- 22.2.1 Defaults. 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, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially

reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the nondefaulting Party may, at its option, terminate this agreement and/or pursue its legal or equitable remedies.

22.2.2 Material Breaches – The notice and cure provisions in paragraph 22.2.1 do not apply to defaults identified in this Agreement as Material Breaches. Material Breaches must be cured as expeditiously as possible following occurrence of the breach.

22.3 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:

22.3.1 Insurance - Evidence of compliance with the provisions of paragraph 15.2. If Seller fails to comply, such failure will be a Material Breach and may only be cured by Seller supplying evidence that the required insurance coverage has been replaced or reinstated;

22.3.2 Engineer's Certifications - Every three (3) years after the Operation Date, Seller will supply Idaho Power with a Certification of Ongoing Operations and Maintenance (O and M) 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

22.3.3 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 an event of default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

ARTICLE XXIII: GOVERNMENTAL AUTHORIZATION

- 23.1 This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party of this Agreement.
- 23.2 Idaho Power may terminate this Agreement on sixty (60) days prior written notice if (1) 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, and (2) such change in law results in Idaho Power being unable to fully recover all costs associated with this Agreement.

**Draft**  
ARTICLE XXIV: COMMISSION ORDER

- 24.1 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 XXV: SUCCESSORS AND ASSIGNS

- 25.1 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, obligations 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.

**For discussion purposes only**

ARTICLE XXVI: MODIFICATION

26.1 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 XXVII: TAXES

27.1 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 XXVIII: NOTICES

28.1 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

ARTICLE XXIX: ADDITIONAL TERMS AND CONDITIONS

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

**For discussion purposes only**

- Appendix A - Generation Scheduling and Reporting
- Appendix B - Facility and Point of Delivery
- Appendix C - Engineer's Certifications

ARTICLE XXX: SEVERABILITY

30.1 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 XXXI: COUNTERPARTS

31.1 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 XXXII: ENTIRE AGREEMENT

32.1 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.

Draft

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

By **For discussion purposes only** By

\_\_\_\_\_  
John Prescott - Vice President, Power Supply

Dated

Dated

\_\_\_\_\_  
"Idaho Power"

\_\_\_\_\_  
"Seller"

APPENDIX A

A-1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

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

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

**Draft**

The Meter readings required on this report will be the reading on the Idaho Power Meter Equipment measuring the Facilities Net Energy and Optional Energy delivered to Idaho Power at the Point of Delivery and/or any other required energy measurements to adequately administer this Agreement.

**For discussion purposes only**

Idaho Power Company

Cogeneration and Small Power Production

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month \_\_\_\_\_

Year \_\_\_\_\_

Project Name \_\_\_\_\_

Project Number: \_\_\_\_\_

Address \_\_\_\_\_

Phone Number: \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Draft  
 Facility Output    Local Service    Auxiliary Service

Meter Number: \_\_\_\_\_

End of Month kWh Meter Reading: \_\_\_\_\_

Beginning of Month kWh Meter: \_\_\_\_\_

Difference: \_\_\_\_\_

Times Meter Constant: \_\_\_\_\_

kWh for the Month: \_\_\_\_\_

Metered Demand: \_\_\_\_\_

Net Generation

**Breaker Opening Record**

**Breaker Closing Record**

<u>Date</u>	<u>Time</u>	<u>Meter</u>

*	<u>Reason</u>

<u>Date</u>	<u>Time</u>	<u>Meter</u>

For discussion purposes only

- \* **Breaker Opening Reason Codes**
- 1 Lack of Adequate Prime Mover
  - 2 Forced Outage of Facility
  - 3 Disturbance of IPCo System
  - 4 Scheduled Maintenance
  - 5 Testing of Protection Systems
  - 6 Cause Unknown
  - 7 Other (Explain)

I hereby certify that the above meter readings are true and correct as of Midnight on the last day of the above month and that the switching record is accurate and complete as required by the Energy Sales Agreement to which I am a Party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

A-2 ROUTINE REPORTING

Idaho Power Contact Information

Daily Energy Production Reporting

Call daily by 10 Am, 1-800-356-4328 or 1-800-635-1093 and leave the following information:

- Project Identification - Project Name and Project Number
- Current Meter Reading
- Estimated Generation for the current day
- Estimated Generation for the next day

Planned and Unplanned Project outages

Call 1-800-345-1319 and leave the following information:

- Project Identification - Project Name and Project Number
- Approximate time outage occurred
- Estimated day and time of project coming back online

Seller's Contact Information

24 Hour Project Operational Contact

Name: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

Project On-site Contact information

Telephone Number: 208-861-9830

For discussion purposes only

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. \_\_\_\_\_

\_\_\_\_\_

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as:

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Draft

B-2 LOCATION OF FACILITY

The Facility is located at:

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B-3 SCHEDULED OPERATION DATE

Seller has selected \_\_\_\_\_, as the Scheduled Operation Date and \_\_\_\_\_ as the First Energy Date. In making these selections, Seller recognizes that to allow for an adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho Power, based on the information supplied by the Seller, will schedule its construction in accordance with Schedule 72 and the Generation Interconnection Process.

For discussion purposes only

B-4 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, where Idaho Power's and the Seller's electrical facilities are interconnected at:

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B-5 LOSSES

If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering is unable to measure the exact energy deliveries by the Seller at the Point of Delivery, a Losses calculation will be established to measure the energy losses (kWh) between the Seller's Facility and the Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc) of all of the electrical equipment between the Facility and the Point of Delivery Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the kWh Losses for the remaining term of the Agreement. If at anytime during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual kWh losses attributed to the electrical equipment between the Facility and the Point of Delivery, Idaho Power may adjust the calculation and retroactively adjust the previous months kWh loss calculations.

B-6 METERING AND TELEMETRY

The Idaho Power Generation Interconnection process will determine the specific metering and telemetry requirements for this Facility. At the minimum the Metering Equipment and Telemetry equipment must be able to provide and record hourly energy deliveries to the Point of Delivery and any other energy measurements required to administer this Agreement. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment, design and installation of the Idaho Power provided equipment. The entire Generation Interconnection process, including but not limited to the equipment specifications and requirements will become an integral part of this Agreement. Seller will arrange for and make available at Seller's cost a telephone circuit(s) dedicated to Idaho Power's use terminating

at the Idaho Power facilities. Idaho Power provided equipment will be owned and maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller. Payment of these costs will be in accordance with Schedule 72 and the total metering cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

B-7 SPECIAL FACILITIES

The Idaho Power Generation Interconnection process will determine the Special Facility requirements for this Facility. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment design and installation of the Idaho Power provided equipment. The entire Generation Interconnection process, including but not limited to the equipment specifications and requirements will become an integral part of this Agreement. Idaho Power owned equipment will be maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller. Payment of these costs will be in accordance with Schedule 72 and the total Special Facility cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

B-8 REACTIVE POWER

The Idaho Power Generation Interconnection process will determine the reactive power required to be supplied by Idaho Power to the Seller, based upon information provided by the Seller. The Generation Interconnection process will specify the equipment required on the Idaho Power system to meet the Facility's reactive power requirements. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment, design and installation of the Idaho Power provided equipment. The entire Generation Interconnection process, including but not limited to the equipment specifications and requirements will become an integral part of this Agreement. Idaho Power owned equipment will be maintained by Idaho

Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller. Payment of these costs will be in accordance with Schedule 72 and the total reactive power cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

B-9 DISCONNECTION EQUIPMENT

Disconnection Equipment is required to insure that the Seller's Facility will be disconnected from Idaho Power's system in the event of (1) the Seller's delivery of energy exceeds the Maximum Capacity Amount or (2) Idaho Power or the Seller require interruption or curtailment of energy deliveries to Idaho Power or (3) a disturbance on either Idaho Power's system or the Seller's Facility. The Idaho Power Generation Interconnection process will determine the Disconnection Equipment specifications and requirements for this Facility, this equipment is for protection of the Idaho Power system and equipment only. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment, design and installation of the Idaho Power provided equipment. Seller will install all Seller provided equipment, control wire and conduit necessary for the operation of the Disconnection Equipment. Through the Generation Interconnection process, Idaho Power will supply details for the disconnection panel and will test the equipment prior to any operations of the Facility, Seller will provide drawings of their interconnection wiring for engineering approval prior to installation. The entire Generation Interconnection process, including but not limited to the equipment specifications and requirements will become an integral part of this Agreement. Idaho Power owned equipment will be maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller. Payment of these costs will be in accordance with Schedule 72 and the total Disconnection Equipment cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

B-10 COSTS

The Idaho Power Generation Interconnection process and this Agreement will identify all cost for this Facility to interconnect to the Idaho Power system, including but not limited to the cost of Metering equipment, Telemetry equipment, Special Facilities, Reactive Power, Disconnection equipment, Protection equipment and Interconnection Equipment. As specified in the Generation Interconnection process and in accordance with Schedule 72 and this Agreement the Seller will reimburse Idaho Power for all costs associated with this equipment. In addition to the equipment, installation and construction charges as specified above, during the term of this Agreement, Seller will pay Idaho Power the monthly operation and maintenance charge specified in Schedule 72 or its successor schedules(s). The monthly operations and maintenance charge will begin on the first day of the month following the date which Idaho Power has completed installation of the Idaho Power provided equipment and the interconnection equipment is available for use by the Facility. The monthly operations and maintenance charge will be based upon the initial cost paid by the Seller in accordance with Schedule 72. Upon reconciliation of the actual costs, in accordance with Schedule 72 the monthly operations and maintenance charge will be adjusted to reflect the actual cost incurred by Idaho Power and previously charged monthly operation and maintenance expense will be revised to reflect the actual cost incurred by Idaho Power. Idaho Power will refund or Seller will remit any underpayment of the adjusted monthly operations and maintenance charge within sixty (60) days of the determination of this amount.

B-11 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho Power will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities as required under Schedule 72, the Generation Interconnection Process and/or described in this Agreement, less the cost of removal and transfer to Idaho Power's nearest warehouse, if the Interconnection Facilities will be removed. If Seller

elects not to obtain ownership of the Interconnection Facilities but instead wishes that Idaho Power reimburse the Seller for said Facilities the Seller may invoice Idaho Power for the net salvage value as estimated by Idaho Power and Idaho Power shall pay such amount to Seller within thirty (30) days after receipt of the invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho Power

# Draft

## For discussion purposes only

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 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 hereinafter referred to as the "Project."

4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) 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 twenty (20) year period.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 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.

Draft  
By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

For discussion purposes only

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 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 twenty (20) 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 5.2 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.

# Draft

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

## For discussion purposes only

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
DESIGN & CONSTRUCTION ADEQUACY

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_, hereinafter collectively referred to as "Engineer", hereby states and certifies to Idaho Power 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 hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
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 and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

9. That the Project has been constructed in accordance with said plans and specifications, all applicable codes and consistent with Prudent Electrical Practices as that term is described in the Agreement.

10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices for a \_\_\_\_\_ (\_\_\_\_) year period.

11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.3(2) of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

12. 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.

**Draft**

By \_\_\_\_\_  
(P.E. Stamp)

**For discussion purposes only**

Date \_\_\_\_\_

# **EXHIBIT**

**B**



IDAHO POWER COMPANY  
P.O. BOX 70  
BOISE, IDAHO 83707

**BARTON L. KLINE**  
Senior Attorney

April 9, 2004

RECEIVED  
APR 11 2004

Peter J. Richardson  
Richardson & O'Leary  
P.O. Box 1849  
Eagle, ID 83616

Re: Lewandowski and Schroeder Wind Farm Proposals

Dear Peter:

This letter is written in response to your letter dated March 23, 2004 in which you advise Idaho Power that your clients are unwilling to accept the contract offered by Idaho Power on March 3 of this year. That is unfortunate because Idaho Power genuinely believes that the contract structure it has proposed would permit a wind generation resource, a resource that is inherently intermittent in nature, to receive firm energy prices under very flexible contract terms.

I should note that your March 23, 2004 letter criticizes the provisions of Section 14.1 "Emergency Conditions" as being unfair. As you may recall, at our meeting Idaho Power agreed that Section 14.1 could be removed because a wind resource, by its very nature, cannot provide energy on demand.

In conclusion, Idaho Power is certainly willing to continue to negotiate with your clients. However, unless there is some recognition on the part of your clients that the purchase prices for wind generated energy need to reflect the intermittent nature of the resource, it is unlikely that much progress will be made.

Very truly yours,

Barton L. Kline

BLK:jb