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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

CASE NO. IPC-E-04-110
APPLICATION

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and, pursuant to RP 52, hereby applies for an Idaho Public Utilities Commission ("IPUC" or the "Commission") Order approving a Firm Energy Sales Agreement dated June 18, 2004 between Idaho Power Company and the J. R. Simplot Company ("Simplot") under which Simplot would sell and Idaho Power would purchase electric energy generated by the Simplot cogeneration facility located at the J. R. Simplot industrial site near Pocatello, Idaho (the "Agreement").

This Application is based on the following:

I.

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

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

II.

This Project is currently interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility ("QF") in accordance with a Firm Energy Sales Agreement dated January 24, 1991 and subsequently amended on November 30, 1993 and February 23, 2001 and by two letter agreements that extended the term of the Agreement to February 29, 2004 (the "1991 Agreement"). Simplot has requested a new Firm Energy Sales Agreement for this Project to take effect upon the expiration of the 1991 Agreement.

III.

On February 19, 2004, Idaho Power and Simplot entered into a Firm Energy Sales Agreement pursuant to the terms and conditions of Commission Order No. 29391. Under the terms of that Firm Energy Sales Agreement, Simplot elected to contract with Idaho Power for a 10-year term. Simplot further elected to contract with the Company using the non-levelized, non-fueled Published Avoided Cost Rates as currently established by the Commission for energy deliveries from projects smaller than 10 MW and a negotiated price for energy deliveries over 10 MW. This Firm Energy Sales Agreement was filed with the Commission for approval on March 5, 2004 and assigned IPUC Case No. IPC-E-04-7.

IV.

During Commission review of Case No. IPC-E-04-7, it became apparent to Idaho Power and Simplot that Commission Staff had significant concerns with the Firm

Energy Sales Agreement as filed. In lieu of revising the Firm Energy Sales Agreement as filed, Idaho Power and Simplot mutually agreed to request that the Commission withdraw consideration of the application to permit the parties to negotiate a new Firm Energy Sales Agreement that would address the concerns raised during the approval process. The request to withdraw the application was granted by the Commission by way of IPUC Order No. 29503 dated May 27, 2004.

V.

On June 18, 2004, Idaho Power and Simplot entered into a new Firm Energy Sales Agreement (“Agreement”). In many respects, this Agreement is similar to the agreement between Idaho Power and Tiber Montana LLC that was approved by the Commission in Order No. 29232 issued April 25, 2003 and the agreement between the Company and United Materials of Great Falls, Inc. that was approved by the Commission in Order No. 29479 issued on April 23, 2004. The following is a brief description of the unique provisions of the Idaho Power/Simplot Agreement:

A. Term: The initial term of the Agreement is for the period of March 1, 2004 through February 28, 2005. The Agreement will automatically renew each March 1 for consecutive one-year periods unless either party terminates the Agreement as provided in paragraph 5.3 of the Agreement. Paragraph 5.3 specifies that either party may terminate the Agreement by providing written notice of termination to the other party on or before December 1st.

Idaho Power recognizes that the “evergreen,” one-year term is unique. Because Simplot does not have to finance construction of the Pocatello Facility, it is willing to accept the risk that its rates will change over time as the Commission publishes new

rates for QFs. The fact that the Company can cancel the Agreement on relatively short notice allows the Company the flexibility to cancel the Agreement as conditions change. For example, if, in the future, the Commission changes the manner in which it structures published QF rates – separate capacity and energy payments are hypothetical examples – the Agreement can be cancelled and the new payment arrangements implemented. The one-year term also obviates the need for the “de-regulation” termination option that was included in the withdrawn agreement.

B. 10 MW or smaller Project size and the published Avoided Cost Rate:

The primary fuel source for the Simplot Facility is only able to provide fuel to sustain operations up to approximately 8 MW. While the nameplate capacity of the Facility is greater than 10 MW, Simplot has agreed to limit energy deliveries to Idaho Power to 10,000 kWhs per hour or less. If Inadvertent Energy (energy in excess of 10,000 kWh per hour as defined in paragraph 1.9 of this Agreement) is accidentally generated, Idaho Power will not purchase or pay for Inadvertent Energy. Because Simplot has agreed to limit its generation below the 10 MW threshold, the parties have agreed that the published non-levelized, non-fueled Avoided Cost rate for a one-year agreement in effect as of March 1st of each year will be the rate used to calculate the energy payments.

C. Environmental Attributes: On February 5, 2004, Idaho Power filed a petition with the Commission requesting a declaratory order determining ownership of the marketable “Environmental Attributes” associated with a PURPA qualifying facility (“QF”) when Idaho Power enters into a contract to purchase the energy produced by that QF. In Order No. 29480 issued on April 27, 2004 in Case No. IPC-E-04-2, the Commission determined that the issue presented by Idaho Power in the declaratory judgment action

“does not present an actual or judicable controversy in Idaho and is not ripe for a declaratory judgment by this Commission.”

Idaho Power’s motivation for filing the declaratory judgment action was to obtain some assurance from the Commission that if the Company contractually agreed not to claim a share of the Environmental Attributes associated with the QF project, Idaho Power would not be subjected to after-the-fact criticism for imprudently failing to retain the Environmental Attributes.

As the Commission noted in its Order No. 29480, the value of the Environmental Attributes is very uncertain at this time. As Staff noted in its comments in Case No. IPC-E-04-02, the State of Idaho has not established a renewable energy portfolio standard for electric utilities. The Idaho legislature has not created green certificates, green tags, renewable energy credits, or tradable renewable certificates or established a market for the same. Thus, whether Environmental Attributes have any value in the State of Idaho is an open question.

On page 16 of Order No. 29480, the Commission states that it will not permit the Company in its contracting practice to condition QF contracts on inclusion of a right of first refusal for ownership of any Environmental Attributes credited to a QF. From this language, Idaho Power assumes that the Commission would not be supportive of the Company conditioning QF contracts on the QF’s agreement to turn over the Environmental Attributes to the Company.

Within Article VIII of the Agreement presented with this Application, Idaho Power waives any claim to ownership of the Environmental Attributes. The Company is willing to agree to waive its ownership claims to encourage the development of additional

cogeneration and renewable energy resources in Idaho without the need to increase energy purchase prices. Thus, Idaho Power is not seeking to retain a right of first refusal to purchase the Environmental Attributes but, instead, is clarifying that the Company will not claim any legal ownership interest in the Environmental Attributes associated with this Agreement.

Idaho Power is willing to waive any legal right to the Environmental Attributes if the Commission is willing to provide the Company with reasonable assurance that the Company will not be penalized in a future revenue requirement proceeding for having agreed to forego any ownership interest or right in the Environmental Attributes. By filing this Agreement, including the language in Article VIII, Idaho Power is presenting the Commission with a real case or controversy and, therefore, the lack of ripeness identified by the Commission in the declaratory judgment action is not present in this case.

VI.

Section 24 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Simplot for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

VII.

Within the Agreement (Section IV, principally), various requirements have been placed upon Simplot in order for Idaho Power to continue to accept energy deliveries from this Project. Idaho Power will monitor compliance with these initial requirements in addition to the ongoing requirements through the full term of this Agreement. Should the

Commission approve this Agreement, Idaho Power intends to consider the Effective Date of the Agreement to be March 1, 2004.

VIII.

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

IX.

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

X.

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

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

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

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

(1) Approving the Firm Energy Sales Agreement between Idaho Power and Simplot without change or condition; and

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

Respectfully submitted this 25th day of June 2004.



MONICA B. MOEN
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25th day of June 2004, I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

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

 x

Hand Delivered
U.S. Mail
Overnight Mail
FAX

Scott Pasley
J. R. Simplot Company
P.O. Box 27
Boise, ID 83707

 x

Hand Delivered
U.S. Mail
Overnight Mail
FAX



MONICA B. MOEN

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-04-_____

IDAHO POWER COMPANY

EXHIBIT 1

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

J.R. SIMPLOT COMPANY

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FIRM ENERGY SALES AGREEMENT

Simplot – Pocatello

Project Number: 41866112

THIS AGREEMENT, entered into as of the 1st day of March, 2004, between J R Simplot Company, a Nevada Corporation (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as “Parties” or individually as “Party.”

WITNESSETH:

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

WHEREAS, Seller wishes to sell, and Idaho Power is willing to purchase, firm electric energy from Seller’s Facility.

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

ARTICLE I: DEFINITIONS

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

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

- 1.5 “Designated Dispatch Facility” - Idaho Power’s Control Area Operations Group, or any subsequent group designated by Idaho Power.
- 1.6 “Disconnection Equipment” - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B or Appendix D.
- 1.7 “Facility” - That electric generation facility described in Appendix B of this Agreement.
- 1.8 “Generation Interconnection Process” – Idaho Power’s generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards.
- 1.9 “Inadvertent Energy” - The electric energy produced by the Facility, expressed in kWh, which Seller delivers to Idaho Power at the Point of Delivery that exceeds 10,000 kWh in any single hour.
- 1.10 “Interconnection Facilities - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B or Appendix D.
- 1.11 “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 23.2.1) subject to paragraph 23.2.2
- 1.14 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be 10 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 or Appendix D

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

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

ARTICLE II: NO RELIANCE ON IDAHO POWER

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

ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.
- 3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR §292.207. After initial qualification, Seller will take such steps as may be required to maintain the Facility's Qualifying Facility Status during the term of this Agreement and Seller's failure to maintain Qualifying Facility Status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Seller's Qualifying Facility Status and associated support and compliance documents at anytime during the term of this Agreement.

ARTICLE IV: CONDITIONS TO CONTINUED ACCEPTANCE OF ENERGY

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

4.1.1 This Facility is currently interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. No later than September 1, 2004 the Seller shall submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller to continue operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.207. As of the date of this Agreement the Seller has engaged an outside consultant to review the requirements of this paragraph and to provide the required documents.

4.1.2 Opinion of Counsel – No later than September 1, 2004, Seller shall submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

4.1.3 Engineer's Certifications - This Facility is currently interconnected to the Idaho Power system. By September 1, 2004 the Seller will submit an Engineer's Certification of Operations and Maintenance ("O&M") Policy as described in Commission Order

No. 21690. This certificate will be in the form specified in Appendix C but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates. As of the date of this Agreement the Seller has engaged an outside consultant to review these requirements and provide the required documents.

4.1.4 Insurance – By March 1, 2004, Seller shall submit written proof to Idaho Power of all insurance required in Article XVI.

4.1.5 Interconnection – Seller shall complete all interconnection modifications, upgrades or additions as specified in Appendix D of this Agreement.

4.1.6 By September 1, 2004, Seller shall demonstrate to Idaho Power's reasonable satisfaction that the Facility is capable of delivering Net Energy in the amounts as specified in paragraph 6.2 of this Agreement for the full term of this Agreement in a consistent, reliable and safe manner.

4.1.7 Written Acceptance - Obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM

5.1 Term - Subject to the completion of the requirements described in Articles IV and XXV, this Agreement shall become effective on March 1, 2004 and shall continue in full force and effect until February 28, 2005. Unless terminated as provided in Paragraph 5.3, this Agreement will automatically renew each March 1 for consecutive one-year terms.

5.2 Seller's failure to complete all of the requirements of Article IV, Conditions to Continued Acceptance of Energy, of this Agreement by November 30, 2004 will be an event of default.

5.3 Termination - Either Party may terminate this Agreement effective on March 1 of the ensuing year by providing written notice of termination to the other Party on or before December 1.

ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

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

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

	<u>Month</u>	<u>kWh</u>
Season 1	March	5,380,448
	April	5,195,784
	May	5,380,448
Season 2	July	5,380,448
	August	5,380,448
	November	5,195,784
	December	5,380,448
Season 3	June	1,862,025
	September	5,195,784
	October	5,380,448
	January	5,380,448
	February	4,826,457

6.2.1 Seller's Adjustment of Net Energy Amount – By written notice given to Idaho Power in accordance with paragraph 29.1 on or before January 15 of each Contract Year, the Seller may revise the monthly Net Energy Amounts specified in paragraph 6.2 for the ensuing contract year. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

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

Where:

NEA = Current Months Net Energy Amount (Paragraph 6.2)

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

TH = Actual total hours in the current month

Resulting formula being:

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

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

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

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

- 7.1 Base Energy Purchase Price – For all Base Energy, Idaho Power will pay the published, less-than-10 MW non-levelized, non-fueled avoided energy price in accordance with the Commission Order in effect as of March 1st of each Contract Year. Commission Order 29391 provides the non-levelized published avoided energy price for the Contract Year of March 1, 2004 through February 28th, 2005. Seasonalization factors will be applied as follows;

<u>Year</u>	<u>Mills/kWh</u> Season 1 - (73.50 %)	<u>Mills/kWh</u> Season 2 - (120.00 %)	<u>Mills/kWh</u> Season 3 - (100.00 %)
2004	33.66	54.95	45.79

- 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 constitutes liquidated damages. The Shortfall Energy Payment will be withheld from the current month's energy payment. If the current month's energy payment is less than the Shortfall Energy Payment, the Seller will make payment to Idaho Power of the unpaid balance within 15 days of being notified of the outstanding balance.
- 7.5 Inadvertent Energy - Seller does not intend to generate and deliver Inadvertent Energy. If Seller accidentally generates and delivers Inadvertent Energy, Idaho Power will not purchase or pay for Inadvertent Energy.
- 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 Idaho Power waives any claim to ownership of Environmental Attributes. Environmental Attributes include, but are not limited to Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) directly associated with the production of energy from the Seller's Facility.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. In this previous agreement, Seller was required to design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of electric energy to Idaho Power for the full term of the Agreement. Seller will be required to maintain these same standards in the on-going operations of this facility for the term of this Agreement.
- 9.2 Interconnection Facilities - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the existing Interconnection Facilities and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE X: DISCONNECTION EQUIPMENT

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

ARTICLE XI: METERING AND TELEMETRY

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

11.1.1 Meter Inspection - Idaho Power shall inspect and test all meters upon their Installation and at least once every four (4) years thereafter. If requested by Seller, Idaho Power shall make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both Parties shall be notified of the time when any inspection or test shall take place, and each Party may have representatives present at the test or

inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired or replaced, at Idaho Power's expense in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test varies by more than two percent (2%) from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the payments will be based on the shorter of (1) a period equal to one-half the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (2) six (6) months.

- 11.2 Telemetry – Metering, communications and telemetry equipment is required which is capable of providing Idaho Power with continuous instantaneous telemetry of Seller's net generation to Idaho Power's Designated Dispatch Facility. This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. Idaho Power has reviewed the Telemetry Equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment in order for the parties to perform under this agreement. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE XII - RECORDS

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

ARTICLE XIII - PROTECTION

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

ARTICLE XIV - OPERATIONS

- 14.1 Emergency Conditions - Seller agrees that, in the event of and during a period of a shortage of power on Idaho Power's system as declared by Idaho Power in its reasonable discretion or in the event that the wholesale market prices for energy delivered to Idaho Power are higher than the energy prices specified in Article VII herein, Seller shall, at Idaho Power's request, within the limits of reasonable safety requirements as determined by Seller, and when economically viable as determined by the Seller, will use its best efforts to provide the requested energy, and shall, if necessary, delay any scheduled shutdown of the Facility, provided such delay of scheduled shutdown will not damage Seller's facilities. All additional energy delivered by the Seller to

Idaho Power at the request of Idaho Power during the identified Emergency Condition will be priced in accordance with paragraph 7.1, unless it is determined by Idaho Power that market energy deliveries to Idaho Power are not physically possible, in which case Idaho Power and the Seller will agree upon the energy price. The Commission will be notified of any energy prices that exceed the energy prices contained within paragraph 7.1 for the additional energy deliveries. Additional energy will only be the incremental increase in energy scheduled and delivered to Idaho Power that exceeds the previously planned energy deliveries to Idaho Power for the specific period agreed to by both parties prior to the deliveries of the additional energy.

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

14.3 Energy Acceptance -

14.3.1 Idaho Power shall be excused from accepting and paying for Net Energy 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 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 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 March 1st 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, no notice will be given to Seller prior to interruption, curtailment, or reduction.

ARTICLE XV: RELIABILITY MANAGEMENT SYSTEM

- 15.1 Purpose. In order to maintain the reliable operation of the transmission grid, the WECC Reliability Criteria Agreement sets forth reliability criteria adopted by the WECC to which this Seller and Idaho Power Company shall be required to comply. Seller acknowledges receipt of and understanding of the WECC Reliability Criteria Agreement and how it pertains to the Seller's facility.

- 15.2 Compliance. This Seller shall comply with the requirements of the WECC Reliability Criteria Agreement, including the applicable WECC reliability criteria set forth in Section IV of Annex A thereof, and, in the event of failure to comply, Seller agrees to be subject to the sanctions applicable to such failure. Such sanctions shall be assessed pursuant to the procedures contained in the WECC Reliability Criteria Agreement. Each and all of the provisions of the WECC Reliability Criteria Agreement are hereby incorporated by reference into this Article 15 as though set forth fully herein, and Seller shall for all purposes be considered a Participant, and shall be entitled to all of the rights and privileges and be subject to all of the obligations of a Participant, under and in connection with the WECC Reliability Criteria Agreement, including, but not limited to the rights, privileges and obligations set forth in Sections 5, 6 and 10 of the WECC Reliability Criteria Agreement.
- 15.3 Payment of Sanctions. Seller shall be responsible for reimbursing Idaho Power Company for any monetary sanctions assessed against Idaho Power Company due to the action or inaction of the Seller by WECC pursuant to the WECC Reliability Criteria Agreement. Seller also shall be responsible for payment of any monetary sanction assessed against the Seller by WECC pursuant to the WECC Reliability Criteria Agreement. Any such payment shall be made pursuant to the procedures specified in the WECC Reliability Criteria Agreement.
- 15.4 Transfer of Control or Sale of Generation Facilities. In any sale or transfer of control of any generation facilities subject to this Agreement, Seller shall, as a condition of such sale or transfer, require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of the Seller with respect to this Agreement or to enter into an agreement with Idaho Power Company imposing on the acquiring party or transferee the same obligations applicable to the Seller pursuant to this Article 15.
- 15.5 Publication. Seller consents to the release by the WECC of information related to the Seller's compliance with this Agreement only in accordance with the WECC Reliability Criteria Agreement.

15.6 Third Parties. Except for the rights and obligations between the WECC and the Seller specified in this Article 15, this Agreement creates contractual rights and obligations solely between the Parties. Nothing in this Agreement shall create, as between the Parties or with respect to the WECC: (a) any obligation or liability whatsoever (other than as expressly provided in this Agreement), or (b) any duty or standard of care whatsoever. In addition, nothing in this Agreement shall create any duty, liability or standard of care whatsoever as to any other party. Except for the rights, as a third-party beneficiary under this Article 15, of the WECC against the Seller for the Seller, no third party shall have any rights whatsoever with respect to enforcement of any provision of this Agreement. Idaho Power Company and the Seller expressly intend that the WECC is a third-party beneficiary to this Article 15, and the WECC shall have the right to seek to enforce against the Seller any provision of this Article 15, provided that specific performance shall be the sole remedy available to the WECC pursuant to Article 15 of this Agreement, and the Seller shall not be liable to the WECC pursuant to this Agreement for damages of any kind whatsoever (other than the payment of sanctions to the WECC, if so construed), whether direct, compensatory, special, indirect, consequential, or punitive.

15.7 Reserved Rights. Nothing in the Article 15 of this Agreement or the WECC Reliability Criteria Agreement shall affect the right of Idaho Power Company, subject to any necessary regulatory approval, to take such other measures to maintain reliability, including disconnection that Idaho Power Company may otherwise be entitled to take.

15.8 Termination of Article 15. Seller may terminate its obligations pursuant to this Article 15:

15.8.1 If after the effective date of this Article 15, the requirements of the WECC Reliability Criteria Agreement applicable to the Seller are amended so as to adversely affect the Seller, provided that the Seller gives fifteen (15) days' notice of such termination to Idaho Power Company and WECC within forty-five (45) days of the date of issuance of a Commission order accepting such amendment for filing, provided further that the forty-five (45) day period within which notice of termination is required may be extended by the Seller for an additional forty-five (45) days if the Seller gives written

notice to Idaho Power Company of such requested extension within the initial forty-five (45) day period; or

15.8.2 For any reason on one year's written notice to Idaho Power Company and the WECC.

ARTICLE XVI: INDEMNIFICATION AND INSURANCE

16.1 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.

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

16.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits of \$2,000,000 each occurrence, combined single limit. Seller will be responsible for any deductible applicable to losses covered by this insurance.

16.2.2 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 thirty (30) days' prior written notice to Idaho Power.

16.3 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.

16.4 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 16.2 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 XVII. FORCE MAJEURE

17.1 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 XVIII: LAND RIGHTS

- 18.1 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, Disconnection 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.
- 18.2 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 18.4, 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 18.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 18.2.
- 18.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 18.4, 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 18.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 18.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 18.3.

18.4 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 XVIII. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 18.2 and 18.3 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 XVIII.

ARTICLE XIX: LIABILITY: DEDICATION

19.1 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 XX: SEVERAL OBLIGATIONS

20.1 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 XXI: WAIVER

- 21.1 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 XXII: CHOICE OF LAWS AND VENUE

- 22.1 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.
- 22.2 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 XXIII: DISPUTES AND DEFAULT

- 23.1 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.
- 23.2 Notice of Default -
- 23.2.1 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.
- 23.2.2 Material Breaches – The notice and cure provisions in paragraph 23.2.1 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.

23.3 Security for Performance - For the full term of this Agreement, Seller will provide Idaho Power with the following:

23.3.1 Insurance - Evidence of compliance with the provisions of paragraph 16.2. 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;

23.3.2 Engineer's Certifications - Every three (3) years after March 1, 2004, 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

23.3.3 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 XXIV: GOVERNMENTAL AUTHORIZATION

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

ARTICLE XXV: COMMISSION ORDER

- 25.1 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 XXVI: SUCCESSORS AND ASSIGNS

- 26.1 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.

ARTICLE XXVII: MODIFICATION

- 27.1 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 XXVIII: TAXES

- 28.1 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 XXIX: NOTICES

29.1 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: J R Simplot Company
Attn: Corporate Secretary
P O Box 27
Boise, ID 83707

Copy to:

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

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

ARTICLE XXX: ADDITIONAL TERMS AND CONDITIONS

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

Appendix A	-	Generation Scheduling and Reporting
Appendix B	-	Facility and Point of Delivery
Appendix C	-	Engineer's Certifications
Appendix D	-	Modifications, Upgrades and Additions

ARTICLE XXXI: SEVERABILITY

31.1 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 XXXII: COUNTERPARTS

32.1 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 XXXIII: ENTIRE AGREEMENT

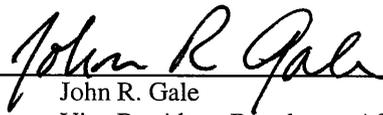
33.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

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

Idaho Power Company

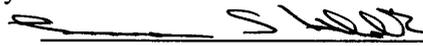
J R Simplot Company

By



John R. Gale
Vice President, Regulatory Affairs

By



President & CEO

Dated

16 Jun 2004
"Idaho Power"

Dated

June 18, 2004
"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

The Meter readings required on this report will be the reading on the Idaho Power Meter Equipment measuring the Facilities energy production delivered to Idaho Power at the Point of Delivery required to administer this Agreement.

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: _____

Project On-site Contact information

Telephone Number: _____

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. 41866112

SIMPLOT POCATELLO

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as one General Electric synchronous generator with a three-phase nameplate rating of 18.75 MVA at 13.2 kV three phase, 60 hertz, driven by a steam turbine.

B-2 LOCATION OF FACILITY

The Facility is located in the South Half of Section 7, Township 6 South, Range 34 East, Boise Meridian, Power County, Idaho.

B-3 POINT OF DELIVERY

The Point of Delivery of energy from the Seller to Idaho Power is the 12.47 kV bushings of the Idaho Power owned phosphate substation metalclad vacuum breaker connected to the Simplot three-phase transformer bank. This isolation transformer bank, which consists of three single phase 5000 kVA/6250 kVA transformers, is connected 12.47 kV Delta to 13.09/7.56 kV grounded wye three phase, and the underground primary conductors connecting the transformer to the metalclad is owned by Simplot.

B-4 METERING

The Metering Equipment is located at Don Substation on the Don 015 metalclad bus and consists of potential and current transformers, and a Scientific Columbus JEM 2 electronic bi-directional demand meter. The meter registers kilowatt-hours and kilowatts of demand.

B-5 SPECIAL FACILITIES

The completion of the fifth distribution feeder bay including metalclad and metering at Don Substation, installation of new substation 12.47 kV underground getaway cables, construction of a section of overhead three phase 12.47 kV distribution feeder, and the installation of a section of

underground three phase 12.47 kV distribution feeder, has been provided by Idaho Power as Special Facilities.

B-6 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 a disturbance on either Idaho Power's system or the Seller's Facility. This equipment is for the protection of Idaho Power's equipment only. Idaho Power has installed the protective equipment in a new substation to be called Phosphate. This equipment consists of a metal clad vacuum breaker, potential transformers, and relaying and associated wiring. Idaho Power will rely on generator emergency batteries and certain generator fault relays for fault detection. Idaho Power did connect and test the equipment prior to the operation of the facility. The total cost of the Disconnection Equipment, connection and testing has been reimbursed to Idaho Power by the Seller.

B-7 COSTS

The total cost of Special Facilities and metering was \$214,989. The total cost of the Disconnecting Equipment was \$84,052. The total cost paid by the Seller was \$299,041. In addition to the installation and construction charges above, during the term of the Agreement Seller will pay Idaho Power an operation and maintenance charge of the sum of the following:

Original Equipment - This Facility has been interconnected and delivering energy to Idaho Power Company under an existing agreement. The monthly Schedule 72 operations and maintenance expense in regards to the equipment originally installed at a total cost of \$299,041 will continue on the same operations and maintenance schedule as specified in Schedule 72 based upon the original installation date of this equipment. Thus, for the March 1, 2004 through February 28, 2005 Contract Year, the Schedule 72 Contract Year to be referenced to the Schedule 72 Operations and Maintenance table will be Contract Year 14. If this Agreement is renewed after the end of the current Contract Year, the Schedule 72 Operation and Maintenance expense will be computed based on Year 15, *et. seq.*

Additional Equipment – any new equipment installations beyond the scope of routine maintenance of the Original Equipment will be considered to be Additional Equipment and the Schedule 72 Contract year will be determined based upon the completed installation date of the Additional Equipment. The complete installed cost of the Additional Equipment will be the bases that the appropriate Schedule 72 Operations and Maintenance percentage shall be applied.

B-8 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 described in this Appendix, less the cost of removal and transfer to Idaho Power's nearest warehouse. If the Interconnection Facilities will be removed, Idaho Power may then be invoiced by Seller for the net salvage value estimated by Idaho Power for the interconnection facilities and shall pay such amount to Seller within thirty (30) days after receipt of said invoice.

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 J R Simplot Company 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 contemplates that the Project will furnish electrical energy to Idaho Power for a multi-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 multi-year period.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.3 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

By _____

(P.E. Stamp)

Date _____

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 J R Simplot Company 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 contemplates that the Project will furnish electrical energy to Idaho Power for a multi-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 5.3 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

By _____

(P.E. Stamp)

Date _____

APPENDIX D

MODIFICATIONS, UPGRADES AND ADDITIONS

PROJECT NO. 41866112

SIMPLOT POCATELLO

This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. The Interconnection Facilities, Disconnection Equipment, Metering Equipment, Telemetry Equipment and Protection Equipment were designed, installed, operated and maintained in accordance with this previous agreement.

Idaho Power has reviewed the existing Interconnection Facilities, Disconnection Equipment, Metering Equipment, Telemetry Equipment and Protection Equipment and listed below are specific modifications, upgrades and /or additions required for these facility to continue to deliver energy to Idaho Power at the Point of Delivery under this new Energy Sales Agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in this Appendix D. All costs of all items identified within this Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

D-1 INTERCONNECTION FACILITIES

Idaho Power has reviewed the existing Interconnection Facilities at the Sellers facility and finds that no upgrades, modifications or additions are required that the Seller would at this time be responsible for. If in the future, Prudent Electrical Practices, regulations, electrical codes or safety codes require upgrades, modifications or additions to the existing equipment, Idaho Power will notify the Seller of these requirements and the Seller will be responsible for all costs of all items identified and payment to Idaho Power will be in accordance with Schedule 72.

D-2 DISCONNECTION EQUIPMENT

Idaho Power has reviewed the existing Disconnection Equipment at the Sellers facility and finds that no upgrades, modifications or additions are required that the Seller would at this time be responsible for. If in the future, Prudent Electrical Practices, regulations, electrical codes or safety codes require upgrades, modifications or additions to the existing equipment, Idaho Power will notify the Seller of these requirements and the Seller will be responsible for all costs of all items identified and payment to Idaho Power will be in accordance with Schedule 72.

D-3 METERING EQUIPMENT

Idaho Power has reviewed the existing Metering Equipment at the Sellers facility and finds that no upgrades, modifications or additions are required that the Seller would at this time be responsible for. If in the future, Prudent Electrical Practices, regulations, electrical codes or safety codes require upgrades, modifications or additions to the existing equipment, Idaho Power will notify the Seller of these requirements and the Seller will be responsible for all costs of all items identified and payment to Idaho Power will be in accordance with Schedule 72.

D-4 TELEMETRY EQUIPMENT

Idaho Power has reviewed the existing Telemetry Equipment at the Sellers facility and finds that no upgrades, modifications or additions are required that the Seller would at this time be responsible for. If in the future, Prudent Electrical Practices, regulations, electrical codes or safety codes require upgrades, modifications or additions to the existing equipment, Idaho Power will notify the Seller of these requirements and the Seller will be responsible for all costs of all items identified and payment to Idaho Power will be in accordance with Schedule 72.

D-5 PROTECTION EQUIPMENT

Idaho Power has reviewed the existing Protection Equipment at the Sellers facility and finds that no upgrades, modifications or additions are required that the Seller would at this time be

responsible for. If in the future, Prudent Electrical Practices, regulations, electrical codes or safety codes require upgrades, modifications or additions to the existing equipment, Idaho Power will notify the Seller of these requirements and the Seller will be responsible for all costs of all items identified and payment to Idaho Power will be in accordance with Schedule 72.

Facility Owned Protective Relays – The facility owns and operates several protective relays that provide protection to the Idaho Power System. As specified in paragraph 13.1 of this Agreement, when the Seller's protective relays provide protection for the Idaho Power system, Idaho Power annually tests these relays at the Seller's expense. Historically, this testing has been accomplished by Idaho Power witnessing the Seller's annual tests of these relays. The Seller being responsible for costs of the tests and the cost of Idaho Power providing a witness to these tests. This arrangement has accommodated both parties in the past and will be continued until such time as either Idaho Power or the Seller request in writing a change in this testing procedure.