

RECEIVED  
FILED



2004 JUN 25 PM 4:31

IDAHO PUBLIC  
UTILITIES COMMISSION

MONICA MOEN, ISB # 5734  
BARTON KLINE, ISB # 1526  
Idaho Power Company  
1221 West Idaho Street  
P. O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-2692  
FAX Telephone: (208) 388-6936

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR APPROVAL )  
OF AN AGREEMENT FOR SALE AND )  
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 1<sup>st</sup>.

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](mailto:mmoen@idahopower.com)  
[bkline@idahopower.com](mailto:bkline@idahopower.com)

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

TABLE OF CONTENTS

<u>Article</u>	<u>TITLE</u>	
1	Definitions	1
2	No Reliance on Idaho Power	4
3	Warranties	4
4	Conditions to Continued Acceptance of Energy	5
5	Term	6
6	Purchase and Sale of Net Energy	7
7	Purchase Price and Method of Payment	8
8	Environmental Attributes	10
9	Facility and Interconnection	10
10	Disconnection Equipment	11
11	Metering	11
12	Records	12
13	Protection	13
14	Operations	13
15	Reliability Management System	16
16	Indemnification and Insurance	19
17	Force Majeure	20
18	Land Rights	21
19	Liability; Dedication	22
20	Several Obligations	22
21	Waiver	23
22	Choice of Laws and Venue	23
23	Disputes and Default	23
24	Governmental Authorization	24
25	Commission Order	25
26	Successors and Assigns	25
27	Modification	25
28	Taxes	25
29	Notices	26
30	Additional Terms and Conditions	26
31	Severability	26
32	Counterparts	27
33	Entire Agreement Signatures	27
	Appendix A	28
	Appendix B	31
	Appendix C	34
	Appendix D	38

## 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 1<sup>st</sup> 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 28<sup>th</sup>, 2005. Seasonalization factors will be applied as follows;

	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
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,

