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IDAHO PUBLIC  
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR APPROVAL )  
OF A FIRM ENERGY SALES AGREEMENT )  
FOR THE SALE AND PURCHASE OF )  
ELECTRIC ENERGY BETWEEN IDAHO )  
POWER COMPANY AND DRY CREEK L.L.C. )  
\_\_\_\_\_ )

CASE NO. IPC-E-05-13

APPLICATION

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and, pursuant to RP 52, hereby applies for an Idaho Public Utilities Commission ("IPUC" or the "Commission") Order approving a Firm Energy Sales Agreement between Idaho Power and Dry Creek, L.L.C ("Dry Creek") under which Dry Creek would sell and Idaho Power would purchase electric energy generated by the Broadwater Hydroelectric Project located near Toston, Montana ("Facility").

This Application is based on the following:

## I.

The Broadwater Hydroelectric Project is an existing hydroelectric generation facility with a nameplate rating of 10 MW. Dry Creek has acquired a long-term lease to operate and maintain this Facility. The Facility will be a qualified small power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA").

## II.

On March 29, 2005, Idaho Power and Dry Creek entered into a Firm Energy Sales Agreement ("Agreement") pursuant to the terms and conditions of Commission Order Nos. 29632 and 29646. Under the terms of that Agreement, Dry Creek elected to contract with Idaho Power for a 20-year term. Dry Creek further elected to contract with the Company using the Non-Levelized Published Avoided Cost Rates established by the Commission for energy deliveries of less than 10 average MW.

## III.

In many respects, this Agreement is similar to the agreement entered into by Idaho Power and US Geothermal that was approved in Commission Order 29692, dated January 24, 2005 and the other agreements recently filed with the Commission for approval (e.g., Lewandowski Farms - IPC-E-05-03; Pilgrim Stage Wind Park - IPC-E-05-7; Thousand Springs Wind Park - IPC-E-05-6; Oregon Trail Wind Park - IPC-E-05-8; Tuana Gulch Wind Park - IPC-E-05-9; Pristine Springs - IPC-E-05-11 and Pristine Springs #3 - IPC-E-05-12). The Dry Creek Agreement contains the various PURPA terms and conditions previously approved by the Commission in other PURPA agreements and as

revised by Commission Order No. 29632 in Case No. IPC-E-04-8 (US Geothermal complaint).

#### **IV.**

The nameplate rating of this Facility is 10 MW. As defined in Paragraph 1.6 of the Agreement and as described in Paragraph 4.1.3 of the Agreement, Dry Creek will be required to provide data on the Facility that Idaho Power will use to determine whether, under normal and/or average conditions, the Facility will not exceed 10 average MW on a monthly basis.

#### **V.**

This Facility is located in NorthWestern Energy's service territory. Therefore, as specified in Paragraph 4.1.6 of the Agreement, Dry Creek is required to provide Idaho Power a copy of the Transmission Agreement (Copy attached – Exhibit 2) between the Facility and NorthWestern Energy, the Transmitting Entity, for Idaho Power's review and acceptance. Article 10 of this Agreement specifies the details that must be included in the Transmission Agreement. One condition requires the Transmitting Entity to provide Idaho Power a month ahead constant flat energy schedule of deliveries for this Facility. During that month, the Transmitting Entity is required to deliver the previously scheduled flat hourly energy amounts to Idaho Power. Thus, the energy deliveries to Idaho Power on behalf of this Facility are a flat monthly firm energy delivery.

#### **VI.**

Because this Facility is physically interconnected to NorthWestern Energy's system, no physical interconnection costs will be assessed as specified in Schedule 72. However, as specified in Paragraph 9.2 of the Agreement, the Seller is required to pay all

costs associated with integrating the Facility's energy deliveries into the Idaho Power electrical system. For example, Dry Creek would be responsible for any energy scheduling costs that Idaho Power incurs as a result of accepting this Facility's energy.

#### **VII.**

The Facility will deliver energy to Idaho Power nine months of the year (January, February, June, July, August, September, October, November and December). Paragraph 4.1.8 of the Agreement specifies the delivery points and quantity of energy the Facility may deliver to Idaho Power at these delivery points.

#### **VIII.**

Article 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 Dry Creek for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

#### **IX.**

Because this Facility is an existing facility, Dry Creek has elected June 1, 2005 as the Operation Date for this Facility (Appendix B). Various requirements have been placed upon Dry Creek in order for Idaho Power to accept energy deliveries from this Facility. Idaho Power will monitor compliance with these initial requirements. In addition, Idaho Power will monitor 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 29, 2005.

**X.**

The Agreement, as signed and submitted by the Parties thereto, contains Non-Levelized Published Avoided Cost Rates in conformity with applicable IPUC Orders.

**XI.**

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

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

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

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

- (1) Approving the Firm Energy Sales Agreement between Idaho Power Company and Dry Creek L.L.C without change or condition; and
- (2) Declaring that all payments for purchases of energy under the firm Energy Sales Agreement between Idaho Power Company and Dry Creek L.L.C be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 31<sup>st</sup> day of March 2005.



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MONICA B. MOEN  
Attorney for Idaho Power Company

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 31<sup>st</sup> day of March 2005, 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:

Ted Sorenson, Manager  
Dry Creek, L.L.C  
5203 South 11<sup>th</sup> East  
Idaho Falls, ID 83404

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



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MONICA B. MOEN

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-05-13**

**IDAHO POWER COMPANY**

**EXHIBIT 1**

FIRM ENERGY SALES AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
DRY CREEK LLC  
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FIRM ENERGY SALES AGREEMENT  
(10 aMW or Less)

BROADWATER HYDROELECTRIC PROJECT

Project Number: 41719141

THIS AGREEMENT, entered into on this 29 day of March 2005 between DRY CREEK LLC an Idaho Limited Liability Company (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Seller will Lease and ensure the maintenance and operation of an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is willing to purchase, firm electric energy produced by the Seller's Facility.

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

ARTICLE I: DEFINITIONS

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

- 1.1 "Commission" - The Idaho Public Utilities Commission.
- 1.2 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.3 "Designated Dispatch Facility" - Idaho Power's System Operations Group, or any subsequent group designated by Idaho Power.
- 1.4 "Facility" - That electric generation facility Leased by the Seller and described in Appendix B of this Agreement.

- 1.5 "Interconnection Facilities" - All facilities required to be installed to interconnect and deliver energy from the Facility to the Transmitting Entity's system including, but not limited to, connection, switching, metering, relaying, communications and safety equipment.
- 1.6 "Initial Capacity Determination" – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than 10 average MW per month and is therefore eligible to be paid the published rates in accordance with Commission Order No. 29632.
- 1.7 "Lease" – Acquisition of all the rights to the entire electrical energy output of the Facility and the Interconnection Facilities. The Lease will obligate the Seller to ensure maintenance and operation of the Facility and all associated equipment in a manner that will allow the Facility to deliver energy to the Transmitting Entities in a safe and reliable manner in the amounts specified in paragraph 6.2 of this Agreement for the full term of this Agreement. Expiration or termination of the Lease, for any reason, during the term of this Agreement will be a Material Breach of this Agreement.
- 1.8 "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 Idaho Power electrical system.
- 1.9 "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.
- 1.10 "Material Breach" – A Default (paragraph 20.2.1) subject to paragraph 20.2.2.
- 1.11 "Maximum Capacity Amount" – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.

- 1.12 “Monthly Net Energy Average MW” – Net Energy as defined in paragraph 1.14 divided by 1,000 divided by the hours in the month ((Net Energy / 1000) / hours in the month). Hours in the month are the calendar days of the month times 24 hours.
- 1.13 “Monthly Net Energy Amount Average MW” – Monthly Net Energy Amounts as defined in paragraph 6.2 divided by 1,000 divided by the hours in the month. ((Net Energy Amount / 1000) / hours in the month). Hours in the month are the calendar days of the month times 24 hours.
- 1.14 “Net Energy” – All of the electric energy produced by the Facility less Station Use, less Losses and energy supplied by the Transmitting Entity on behalf of the Seller so that the energy deliveries to Idaho Power will comply with the Transmitting Entity’s scheduling requirements specified in Article 10.1.1 of this Agreement, expressed in kilowatt hours (kWh), which Seller commits to deliver as specified in Article VI and the Transmitting Entity(s) schedules and delivers to Idaho Power at the Point(s) of Delivery for the full term of the Agreement. The amount of Net Energy scheduled and delivered to the Idaho Power electrical system will never exceed the Idaho Power Electrical System Allocation specified in paragraph 4.1.8 of this Agreement.
- 1.15 “Operation Date” – The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.16 “Point of Delivery” – The location specified in Appendix B, where the Transmitting Entity(s) deliver the scheduled Net Energy to the Idaho Power electrical system.
- 1.17 “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.
- 1.18 “Scheduled Operation Date” – The date specified in Appendix B when Seller anticipates achieving the Operation Date.
- 1.19 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.20 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.

- 1.21 “Surplus Energy” – (1) Net Energy scheduled and delivered by the Transmitting Entity(s) on the Seller’s behalf 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. or (2) If the Net Energy scheduled and delivered by the Transmitting Entity(s) on the Seller’s behalf and accepted by Idaho Power during the month is less than 90% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2. then all Net Energy scheduled and delivered by the Transmitting Entity(s) to Idaho Power on the Seller’s behalf for that given month or (3) All Net Energy scheduled and delivered by the Transmitting Entity(s) on the Seller’s behalf and accepted by Idaho Power prior to the Operation Date.
- 1.22 “Total Cost of the Facility” - The total cost of structures, equipment and appurtenances.
- 1.23 “Transmitting Entity(s)” - The signatory(s) (other than the Seller) to the Transmission Agreement(s) referred to in paragraph 10.1 and its successors and assigns.

#### ARTICLE II: NO RELIANCE ON IDAHO POWER

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

#### ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller’s design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of

Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

- 3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR §292.207. After initial qualification, Seller will take such steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Seller's Qualifying Facility status and associated support and compliance documents at anytime during the term of this Agreement.
- 3.3 FERC License - Seller warrants that the Facility possesses a valid license or exemption from licensing from the Federal Energy Regulatory Commission ("FERC") for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license or exemption is a material part of the consideration for Idaho Power's execution of this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or exemption for the Facility during the term of this Agreement and Seller's failure to maintain a valid FERC license or exemption will be a Material Breach of this Agreement.

#### ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 Prior to the Operation Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.207.
- 4.1.2 Opinion of Counsel - Submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial

compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

- 4.1.3 Initial Capacity Determination - Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data may include but not be limited to, equipment specifications, prime mover data, resource characteristics, normal and/or average operating design conditions and Station Use data. Upon receipt of this information, Idaho Power will review the provided data and if necessary, request additional data to complete the Initial Capacity Determination within a reasonable time.
- 4.1.4 Engineer's Certifications - Submit an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy as described in Commission Order No. 21690. These certificates will be in the form specified in Appendix C but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.
- 4.1.5 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIV.
- 4.1.6 Transmission Agreement(s) - Provide Idaho Power with a copy of all Firm Transmission Agreements executed by the Seller and the Transmitting Entity(s) to enable the Seller to deliver the Net Energy from this Facility to the Idaho Power electrical system at the Point(s) of Delivery identified within Appendix B and in the energy amounts designated in paragraph 4.1.8 of this Agreement. These Firm Transmission Agreements must be in a form acceptable to Idaho Power. Idaho Power's acceptance will not be unreasonably withheld.
- 4.1.7 Written Acceptance - Request and obtain written confirmation from Idaho Power that all

conditions to acceptance of energy have been fulfilled. Such written confirmation shall not be unreasonably withheld by Idaho Power.

4.1.8 Idaho Power Electrical System Allocation – As of the date of this Agreement, the Seller has requested to deliver energy to Idaho Power in the following maximum amounts at the designated Points of Delivery on the Idaho Power electrical system for the designated calendar months:

Jan	9 MW	Jefferson line	Jul	7 MW	LOLO
Feb	9 MW	Jefferson Line	Aug	7 MW	LOLO
Mar	0 MW		Sep	9 MW	Jefferson line
Apr	0 MW		Oct	9 MW	Jefferson line
May	0 MW		Nov	9 MW	Jefferson Line
Jun	7 MW	LOLO	Dec	9 MW	Jefferson Line

Idaho Power agrees to accept the Seller's energy from the Transmitting entity(s) at the requested Points of Delivery at these maximum amounts and for the requested calendar month as designated, contingent upon the Seller complying and maintaining all other requirements of this Agreement. Under no circumstances will the Idaho Power Electrical System Allocation exceed the Maximum Capacity amount.

4.1.8.1 Idaho Power Adjustment of Electrical System Allocation –

a.) Annual Review Reduction – Annually, at the end of each Contract Year, Idaho Power may review the Seller's Net Energy deliveries to Idaho Power Company. If Idaho Power Company determines that any of the Monthly Net Energy Average MW are less than the month's MW amount designated in paragraph 4.1.8 and this pattern is consistent with previous months and/or years, Idaho Power may, after notice to the Seller, reduce the monthly Idaho Power Electrical System Allocation for this Facility at the identified Point(s) of Delivery for the individual months. These revised monthly MW amounts will then replace the amount in paragraph 4.1.8 for the specific month for the remaining term of the Agreement or until such time as the amount is revised as provided herein.

- b.) Net Energy Amount Reduction - If at any time during the term of this Agreement the Monthly Net Energy Amount Average MW is less than 90% of the corresponding Idaho Power Electrical System Allocation designated in paragraph 4.1.8 the monthly Idaho Power Electrical System Allocation in paragraph 4.1.8 will be reduced to be 110% of the currently calculated Monthly Net Energy Amounts Average MW. These revised monthly Idaho Power Electrical System Allocation amounts will then replace the Idaho Power Electrical System Allocation amounts in paragraph 4.1.8 for the specific month(s) for the remaining term of the agreement or until such time as the Idaho Power Electrical System Allocation is revised as provided herein.
- c.) Increase in Idaho Power Electrical System Allocation - Under no circumstances will the Seller request to deliver energy that exceeds the Maximum Capacity Amount. If the Seller wishes to increase the monthly Idaho Power Electrical System Allocation designated in paragraph 4.1.8 to a level equal to or less than the Maximum Capacity Amount;
- i. The Seller must provide Idaho Power with acceptable written documentation verifying that the Seller's Facility is capable of consistently and reliably delivering the energy amounts as requested by the Seller.
  - ii. The Seller must provide Idaho Power with acceptable written verification that the Seller is able to obtain sufficient Firm capacity on a Transmitting Entity (s') electrical system to enable the Seller to deliver the energy to the Idaho Power electrical system.
  - iii. Seller and Transmitting Entity(s) will request, in writing, a specific Point of Delivery to Idaho Power for the Seller's energy deliveries specified in paragraph 6.2 to be scheduled to Idaho Power as

specified in paragraph 10.1 of this Agreement. Upon receipt of this request, at Seller's expense, Idaho Power will complete an electrical system study to determine Idaho Power's ability to receive the Seller's energy at the Seller and Transmitting Entity's requested Point of Delivery.

- iv. If said study shows that Idaho Power will be unable to receive the Seller's energy at the requested Point of Delivery, the Seller and Transmitting Entity may request a different Point of Delivery or revise the energy amounts, and a similar study, at the Seller's expense, will be conducted.
- v. If the Seller and Transmitting Entity request permission to deliver the Seller's energy at a Point of Delivery that Idaho Power has identified as being unable to receive the Seller's energy, at Seller's request and expense, Idaho Power will conduct a study to determine the necessary upgrades and/or modifications required to enable receipt of the Seller's energy at the requested Point of Delivery.
- vi. Seller will be responsible for all customary and reasonable expenses associated with all Idaho Power studies, upgrades and/or modifications required to enable delivery of the Seller's energy at the requested Point of Delivery and integration into the Idaho Power Company electrical system. An initial deposit will be calculated based upon the estimated cost of each individual study, upgrade or modification and will be required to be paid by the Seller prior to Idaho Power conducting any work associated with the Seller's request. Upon completion of the Seller's request, Idaho Power will reconcile the actual expenses with the previously paid deposit and the appropriate refund or additional billing will be processed. Seller

will be required to pay any additional billing due Idaho Power within 30 days of Seller's receipt of the billing invoice.

#### ARTICLE V: TERM AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date.
- 5.2 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:
- a) Completed all Conditions to Acceptance of Energy as specified in Article IV.
  - b) Commission approval of this Agreement in a form acceptable to Idaho Power has been received.
  - c) Seller has demonstrated to Idaho Power's satisfaction that the Lease documents are complete and the Facility is complete and able to provide energy in a consistent, reliable and safe manner and has requested an Operation Date in written form.
  - d) Seller has received written confirmation from Idaho Power of the Operation Date. This confirmation will not be unreasonably withheld by Idaho Power.
- 5.3 Seller's failure to achieve the Operation Date within ten (10) months of the Scheduled Operation Date will be an event of default.

#### ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

- 6.1 Delivery and Acceptance of Net Energy - Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy as defined in section 1.14 of this Agreement and subsequently scheduled and delivered to Idaho Power by the Transmitting Entity(s) on the Seller's behalf to the Point of Delivery during the Calendar months of January, February, June, July, August, September, October, November and December. At no time will the total amount of Net Energy delivered by the Transmitting Entity(s) to the Point of

Delivery exceed the Idaho Power Electrical System Allocation.

6.2 Net Energy Amounts - Seller intends to produce and Transmitting Entity(s) shall deliver Net Energy in the following monthly amounts:

6.2.1 Initial Year Monthly Net Energy Amounts:

	<u>Month</u>	<u>kWh</u>
Season 1	March	0
	April	0
	May	0
Season 2	July	5,208,000
	August	5,208,000
	November	6,480,000
	December	6,696,000
Season 3	June	5,040,000
	September	6,480,000
	October	6,696,000
	January	6,696,000
	February	6,048,000

6.2.2 Ongoing Monthly Net Energy Amounts - Seller shall initially provide Idaho Power with one year of monthly generation estimates (Initial Year Monthly Net Energy Amounts) and beginning at the end of month nine and every three months thereafter provide Idaho Power with an additional three months of forward generation estimates. This information will be provided to Idaho Power by written notice in accordance with paragraph 26.1, no later than 5pm of the 5<sup>th</sup> day following the end of the previous month. If the Seller does not provide the Ongoing Monthly Net Energy amounts in a timely manner, Idaho Power will use the most recent 3 months of the Initial Year Monthly Net Energy Amounts specified in paragraph 6.2.1 for the next 3 months of monthly Net Energy amounts.

6.2.3 Seller's Adjustment of Net Energy Amount -

6.2.3.1 No later than the Operation Date, by written notice given to Idaho Power in accordance with paragraph 26.1, the Seller may revise all of the previously provided Initial Year Monthly Net Energy Amounts.

6.2.3.2 Beginning with the end of the 3<sup>rd</sup> month after the Operation Date and at the end of every third month thereafter; (1) the Seller may not revise the immediate next three months of previously provided Net Energy Amounts, (2) but by written notice given to Idaho Power in accordance with paragraph 26.1, no later than 5pm of the 5<sup>th</sup> day following the end of the previous month, the Seller may revise all other previously provided Net Energy Amounts. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

6.2.4 Idaho Power Adjustment of Net Energy Amount – If Idaho Power is excused from accepting the Seller's Net Energy as specified in paragraph 13.2.1, Transmitting Entity(s) are excused from scheduling and delivering Net Energy as specified in paragraph 13.2.2, or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 13.3.1 and the Seller's declared Suspension of Energy Deliveries is accepted by Idaho Power, the Net Energy Amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 13.2.1, 13.2.2 or 13.3.1 occurs will be reduced in accordance with the following:

Where:

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- NEA = Current Month's Net Energy Amount (Paragraph 6.2)
- SGU = a.) If Idaho Power is excused from accepting the Seller's Net Energy as specified in paragraph 13.2.1 or the Transmitting Entity is excused from delivering Net Energy as specified in paragraph 13.2.2 this value will be equal to the percentage of curtailment as specified by Idaho Power multiplied by the TGU as defined below.
- b.) If the Seller declares a Suspension of Energy Deliveries as specified in paragraph 13.3.1 this value will be the sum of the individual generation units size ratings as specified in Appendix B that are impacted by the circumstances causing the Seller to declare a Suspension of Energy Deliveries.
- TGU = Sum of all of the individual generator ratings of the generation units at this Facility as specified in Appendix B of this agreement.
- RSH = Actual hours the Facility's Net Energy deliveries were either reduced or suspended under paragraph 13.2.1 or 13.3.1
- TH = Actual total hours in the current month

Resulting formula being:

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

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

6.3 Unless excused by an event of Force Majeure, Seller's failure to deliver Net Energy in any Contract Year in an amount equal to at least ten percent (10%) of the sum of the Initial Year Net Energy Amounts as specified in paragraph 6.2 shall constitute an event of default.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Net Energy Purchase Price – For all Net Energy, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 29646 with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2005	37.00	60.41	50.34
2006	37.85	61.80	51.50
2007	38.73	63.23	52.69
2008	39.62	64.68	53.90
2009	40.53	66.17	55.14
2010	41.46	67.69	56.41
2011	42.42	69.25	57.71
2012	43.39	70.85	59.04
2013	44.39	72.48	60.40
2014	45.42	74.16	61.80
2015	46.47	75.86	63.22
2016	47.54	77.62	64.68
2017	48.63	79.40	66.17
2018	49.76	81.24	67.70
2019	50.91	83.11	69.26
2020	52.07	85.02	70.85
2021	53.28	86.99	72.49
2022	54.51	88.99	74.16
2023	55.76	91.04	75.87
2024	57.05	93.14	77.62
2025	58.37	95.29	79.41

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 Net Energy Purchase Price specified in paragraph 7.1, whichever is lower.

7.3 Payment Due Date – Energy payments to the Seller will be disbursed within 25 days of the date which Idaho Power receives acceptable documentation of the monthly Net Energy actually

scheduled and delivered to Idaho Power by the Transmitting Entity(s) on the Seller's behalf as specified in Appendix A.

- 7.4 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 - Seller will Lease the Facility and ensure ongoing operation and maintenance of the Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy to the Transmitting Entity(s) for the full term of the Agreement.
- 9.2 Interconnection Facilities - Seller will Lease and/or construct, install, own and maintain all Interconnection Facilities other than those owned, installed or maintained by the Transmitting Entity(s). Seller will pay all costs of interconnecting with the Transmitting Entity(s) and transmitting Net Energy to Idaho Power, scheduling energy into the Idaho Power system and any other costs associated with integrating the Seller's Net Energy into the Idaho Power electrical system.

ARTICLE X: TRANSMISSION AGREEMENT

10.1 Transmission Agreement - The Seller will arrange and pay for the firm delivery of Net Energy over the facilities of the Transmitting Entities (Northwestern Energy and AVISTA to the Idaho Power Point(s) of Delivery. The delivery of Net Energy from the Facility to the Idaho Power Point(s) of Delivery shall be in accordance with the terms and conditions of the firm Transmission Agreements between the Seller and the Transmitting Entities, which will include provisions requiring the Transmitting Entities to provide the following:

10.1.1 Monthly Scheduled Energy Deliveries – The Transmitting Entities will provide Idaho Power with a schedule of the next month’s hourly scheduled Net Energy deliveries, at a minimum of 7 days prior to the beginning of the month. The hourly scheduled Net Energy delivery will be a constant value for every hour of the month and will remain unchanged for all hours of the month. The Transmitting Entities will never schedule or deliver more energy than the amounts designated in paragraph 4.1.8 of this Agreement to Idaho Power for the Facility. The Transmitting Entity(s) shall be excused from scheduling Net Energy to Idaho Power if the Seller declares and Idaho Power accepts the Seller’s Facility Declaration of Suspension of Energy Deliveries as described in paragraph 13.3 or the Transmitting Entity(s) determines that curtailment, interruption or reduction of Net Energy deliveries is necessary because of line construction, maintenance requirements, emergencies, electrical system operating conditions on its system, or as otherwise required by Prudent Electrical Practices. When reasonable to do so, the Transmitting Entity(s) shall notify Idaho Power of any curtailment, interruption or reduction of the Net Energy deliveries, prior to the curtailment, interruption, or reduction of Net Energy deliveries to the Point(s) of Delivery. This notification will include the estimated duration and reason for the event. In the case of unplanned events, the Transmitting Entity will promptly notify Idaho Power of the estimated duration and reason of the event upon occurrence of the event.

10.1.2 Energy Reserve Requirements – The Transmitting Entity(s) will provide all generation

reserves as required by the Western Electricity Coordinating Council (WECC) and/or as required by any other governing agency or industry standard to deliver the Net Energy to the specified Point(s) of Delivery.

- 10.2 Acceptance of Transmission Agreement - This Agreement is expressly conditioned and contingent upon Idaho Power's acceptance of the Transmission Agreements. Such acceptance will not be unreasonably withheld. Idaho Power will be identified within the Transmission Agreement as an intended third party beneficiary of the Transmission Agreement and a material default by Seller under the Transmission Agreement will be a material default under this Agreement.
- 10.3 Losses - Idaho Power will only purchase the Net Energy that is scheduled and delivered by the Transmitting Entity(s) to Idaho Power at the Point(s) of Delivery as shown on Idaho Power's daily system logs. Any electrical energy losses between the Seller's Facility and the Idaho Power electrical system will be deducted from the Facility's electrical generation in determining the Net Energy scheduled and delivered to Idaho Power.
- 10.4 Documentation - Seller will provide Idaho Power with monthly documentation in a form acceptable to Idaho Power showing the Points of Delivery, amount of energy scheduled and delivered to Idaho Power.

#### ARTICLE XI - RECORDS

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

## ARTICLE XII - PROTECTION

- 12.1 Seller will Lease the Facility and ensure ongoing operation and maintenance of the Facility and any Interconnection Facilities in accordance with Prudent Electrical Practices, the National Electric Safety Code and any other applicable local, state and federal codes.

## ARTICLE XIII - OPERATIONS

- 13 .1 Communications - Idaho Power and the Transmitting Entity(s) on behalf of the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility and Seller shall require the Transmitting Entity(s) to report to Idaho Power at the times and in the manner established in the Transmission Agreements described in paragraph 10.1.

- 13 .2 Energy Acceptance –

- 13.2.1 Idaho Power shall be excused from accepting and paying for Net Energy produced by the Facility and delivered by the Transmitting Entity(s) to the Point(s) of Delivery, if it is prevented from doing so by an event of Force Majeure, or if Idaho Power determines that curtailment, interruption or reduction of Net Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system or as otherwise required by Prudent Electrical Practices provided that during such curtailment, interruption or reduction Idaho Power, the Transmitting Entity(s) and the Seller shall within reasonable limits attempt to coordinate, schedule and deliver Net Energy to the Idaho Power electrical system at other Points of Delivery if Idaho Power is capable of accepting the Net Energy deliveries at other Points of Delivery. The Seller will be responsible for all costs associated with coordinating, scheduling and delivering Net Energy to the Idaho Power electrical system at other Points of Delivery. 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.

13.2.2 The Seller and Transmitting Entity(s) shall be excused from scheduling and delivering Net Energy produced by the Facility to the Idaho Power Point(s) of Delivery, if the Transmitting Entity is prevented from scheduling and delivering Net Energy by an event of Force Majeure, or if the Transmitting Entity determines that curtailment, interruption or reduction of Net Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system or as otherwise required by Prudent Electrical Practices provided that during such curtailment, interruption or reduction Idaho Power, the Transmitting Entity(s) and the Seller shall within reasonable limits attempt to coordinate, schedule and deliver Net Energy to the Idaho Power electrical system at other Points of Delivery if Idaho Power is capable of accepting the Net Energy deliveries at other Points of Delivery. The Seller will be responsible for all costs associated with coordinating, scheduling and delivering Net Energy to the Idaho Power electrical system at other Points of Delivery.

13.2.3 Under no circumstances will the Transmitting Entity(s) schedule and/or deliver Net Energy on behalf of the Seller to the Point(s) of Delivery in an amount that exceeds the energy amounts designated in paragraph 4.1.8. Either the Transmitting Entity(s)' or Seller's failure to limit scheduling and/or deliveries of Net Energy to the Point of Delivery to these amounts will be a Material Breach of this Agreement.

### 13.3 Seller Declared Suspension of Energy Deliveries

13.3.1 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 lack of adequate preventative maintenance of the Seller's Facility, Seller may, after giving notice as provided in paragraph 13.3.2 below, temporarily suspend all deliveries of Net Energy to Idaho Power from the Facility or from individual generation unit(s) at the Facility

impacted by the forced outage for a period of not less than 48 hours to correct the forced outage condition ("Declared Suspension of Energy Deliveries"). The Seller's 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 13.3.2 and will continue for the time as specified (not less than 48 hours) 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 6.2.4.

13.3.2 If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in paragraph 13.3.1, 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 XXVI 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 initiate a Declared Suspension of Energy Deliveries. Idaho Power will review the documentation provided by the Seller to determine Idaho Power's acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries as specified in paragraph 13.3.1. Idaho Power's acceptance of the Seller's forced outage as an acceptable forced outage will be based upon the clear documentation provided by the Seller that the forced outage is not due to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility.

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 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, lease, 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.

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

14.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to \$1,000,000, each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.

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

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

14.3 Seller to Provide Certificate of Insurance - As required in paragraph 4.1.5 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.

14.4 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 14.2 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 XV. FORCE MAJEURE

15.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause

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

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

#### ARTICLE XVI: LIABILITY; DEDICATION

16.1 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 XVII: SEVERAL OBLIGATIONS

- 17.1 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 XVIII: WAIVER

- 18.1 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 XIX: CHOICE OF LAWS AND VENUE

- 19.1 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.
- 19.2 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 XX: DISPUTES AND DEFAULT

- 20.1 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.
- 20.2 Notice of Default -
- 20.2.1 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.

20.2.2 Material Breaches – The notice and cure provisions in paragraph 20.2.1 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.

20.3 Security for Performance - Prior to the Operation Date and thereafter for the full term of this Agreement, Seller will provide Idaho Power with the following:

20.3.1 Insurance - Evidence of compliance with the provisions of paragraph 14.2. 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;

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

20.3.3 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 XXI: GOVERNMENTAL AUTHORIZATION

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

ARTICLE XXII: COMMISSION ORDER

22.1 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 XXIII: SUCCESSORS AND ASSIGNS

23.1 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 XXIV: MODIFICATION

24.1 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 XXV: TAXES

25.1 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 XXVI: NOTICES

26.1 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:                   Manager  
                                  Dry Creek L.L.C.  
                                  5203 South 11<sup>th</sup> East  
                                  Idaho Falls, Idaho 83404

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

ARTICLE XXVII: ADDITIONAL TERMS AND CONDITIONS

27.1 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

ARTICLE XXVIII: SEVERABILITY

28.1 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 XXIX: COUNTERPARTS

29.1 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 XXX: ENTIRE AGREEMENT

30.1 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

Dry Creek L.L.C.

By



\_\_\_\_\_  
N. Vern Porter – Mgr Power Supply Operations

By



\_\_\_\_\_  
Ted S. Sorenson, Manager

Dated

MARCH 29, 2005

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

Dated

2/18/2005

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

APPENDIX A

A -1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

At the end of each month, the Seller will provide Idaho Power with monthly documentation acceptable to Idaho Power showing the Point(s) of Delivery and the amount of energy actually scheduled and delivered to Idaho Power by the Transmitting Entity(s). In accordance with paragraph 10.4, such documentation, subject to subsequent review by Idaho Power, will be the basis of payment for energy purchased by Idaho Power from the Seller.

Submit this documentation to:

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

Seller's Contact Information

24-Hour Project Operational Contact

Name: Ted S. Sorenson  
Telephone Number: 208-522-8069  
Cell Phone: 208-589-6908

Project On-site Contact information

Telephone Number: \_\_\_\_\_

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. 41719141

BROADWATER HYDROELECTRIC PROJECT

B-1 DESCRIPTION OF FACILITY

Broadwater Hydroelectric Plant, Total Capacity 10 MW, FERC Project # 2853. The Facility consists of one 1988 vintage Voith Pit Turbine and one Villares Synchronous generator nameplate rated at 9,660 kW.

B-2 LOCATION OF FACILITY

Broadwater Dam on the Missouri River, Southeast of Toston Montana, Township 4 North, Range 3 East.

B-3 SCHEDULED OPERATION DATE

Seller has selected June 01, 2005 as the Scheduled Operation Date.

B-4 MAXIMUM CAPACITY AMOUNT: 9.66 MW

B-5 POINT OF DELIVERY

“Point of Delivery” means, unless otherwise agreed by both Parties, the point on the Idaho Power Company electrical system where the Transmitting Entity(s) schedule and deliver energy to Idaho Power Company. For the months of January, February, September, October, November and December the Point of Delivery will be the point known as the Jefferson Line, for the months of June, July and August the Point of Delivery will be the point known as LOLO. There is no Point of Delivery for the months of March, April and May as the Seller will not be delivering energy to Idaho Power during these months. .

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 \_\_\_\_\_, Inc as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the

Project's producing at or near the design electrical output, efficiency and plant factor for a twenty (20) year period.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

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 \_\_\_\_\_, Inc as Seller, dated \_\_\_\_\_
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located at \_\_\_\_\_
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. It is Engineer's professional opinion, based on the Project's appearance, that its ongoing O&M has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the

remaining \_\_\_\_\_ years of the Agreement.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
DESIGN & CONSTRUCTION ADEQUACY

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_, hereinafter collectively referred to as "Engineer", hereby states and certifies to Idaho Power as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_, Inc as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

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

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

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

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

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

Date \_\_\_\_\_

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-05-13**

**IDAHO POWER COMPANY**

**EXHIBIT 2**

**DELIVERY AGREEMENT  
BETWEEN  
DRY CREEK, L.L.C.  
AND  
NORTHWESTERN ENERGY**

This Agreement, entered into this 10<sup>th</sup> day of February, 2005, is by and between Dry Creek, L.L.C., a Montana Limited Liability Company, ("Dry Creek"), and NorthWestern Corporation d/b/a NorthWestern Energy, a Delaware Corporation ("NWE"). Dry Creek and NWE are sometimes referred to in this Agreement collectively as "Parties" and individually as "Party."

**RECITALS**

- I. WHEREAS, Dry Creek maintains the rights to all QF energy from an electric hydro generation project at Broadwater Dam located near Toston, Montana with a nameplate capacity of 9.6 MW ("Facility"); and
- II. WHEREAS, Idaho Power ("QF Buyer") desires to purchase from Dry Creek, and Dry Creek desires to sell to QF Buyer, a quantity of firm energy produced from the Facility, and energy provided by NWE so that the energy deliveries to Idaho Power will be in compliance with item 2 listed below and as identified in Attachment A of this Delivery Agreement ("Attachment A") or as modified by mutual agreement of the Parties, during the months of June through February, inclusive each calendar year beginning in 2005 and continuing for a period of twenty (20) years; and
- III. WHEREAS, NWE will facilitate such deliveries to QF Buyer, as long as the agreement between the QF Buyer and Dry Creek is in effect in accordance with the general terms and conditions set forth herein.

Therefore, the Parties agree to the following basic terms and conditions:

1. NWE will accept the Dry Creek energy generated by the Facility into its energy portfolio.
2. NWE will provide a hourly flat, firm QF energy schedule from its system to the Point of Delivery ("POD") with the QF Buyer on behalf of Dry Creek, as identified in Attachment A, beginning on the Contract Date and subsequently each period for each year for the duration of 20 years.
3. NWE has obtained and agrees to maintain firm transmission capacity reservations (or like reservations) from the NWE system and any other required transmission entity in order to deliver the energy as specified in the Firm Energy Sales Agreement between Idaho Power Company and Dry Creek L.L.C. to the QF Buyer's POD in the amount equal to the quantity each month, as designated in Attachment A, and consistent with the general terms and conditions of the NWE Open Access Tariff.

**Appendix A**

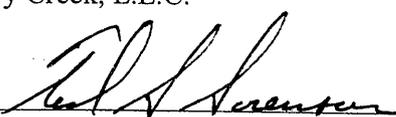
4. NWE, as scheduling agent for Dry Creek, will provide a pre-schedule of the QF energy deliveries to the QF Buyer in accordance with the scheduling, remedial action and checkout protocols of the Western Energy Coordinating Council (WECC) and North American Reliability Council (NERC). Dry Creek will maintain timely access to the final checkout of the energy schedules each month.
5. The hourly firm energy schedule facilitated by the firm transmission reservation shall be equal to the quantity set forth in Attachment A and shall remain unchanged for the duration of the month, unless such deliveries are interrupted by an event of force majeure, or are curtailed by the QF Buyer or by the transmitting entity consistent with its Open Access Tariff and Prudent Electric Practices on firm transmission.
6. NWE will provide all necessary ancillary services, such as reserves, to provide the product described in Paragraph 2, above.
7. Dry Creek shall compensate NWE for the firm transmission, energy losses, shaping and scheduling services.
8. The Parties agree that the QF Buyer is a third party beneficiary of this Agreement.
9. Nothing in this Agreement shall supersede anything in the Firm Energy Sales Agreement between Idaho Power Company and Dry Creek L.L.C.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their authorized officers.

NorthWestern Corporation, d/b/a  
NorthWestern Energy

  
By: MARK THOMPSON  
Title: ENERGY SUPPLY

Dry Creek, L.L.C.

  
By: Ted S. Sorenson  
Title: Managing Partner

## Attachment A

<u>Month</u>	<u>Hourly Exchange Energy</u>	<u>Monthly Exchange Energy</u>	<u>POD</u>
January	9	6,696	Jefferson
February	9	6,048	Jefferson
March	0	0	n/a
April	0	0	n/a
May	0	0	n/a
June	7	5,040	LOLO
July	7	5,208	LOLO
August	7	5,208	LOLO
September	9	6,480	Jefferson
October	9	6,696	Jefferson
November	9	6,480	Jefferson
December	9	6,696	Jefferson

- Daylight Savings and Leap year schedules will reflect the hourly nomination stated above.
- Monthly Exchange Energy is defined for easy calculation purposes only.
- POD may be modified as mutually agreed by QF Buyer and Dry Creek.