



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

RECEIVED
FEB 10 2006
MONICA MOEN
Attorney
2:58 FEB 10 AM 7:59
IDAHO PUBLIC
UTILITIES COMMISSION

February 9, 2006

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P. O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-06-03
Application For Approval of A Firm Energy Sales
Agreement Between Idaho Power Company and
J.R. Simplot Company

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Application for the approval of a Firm Energy Sales Agreement between Idaho Power Company and J.R. Simplot Company.

I would appreciate it if you would return a stamped copy of this transmittal letter in the enclosed self-addressed, stamped envelope.

Very truly yours,

Monica Moen

MM:jb
Enclosures

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

RECEIVED
FEB 10 AM 7:59
UTILITIES COMMISSION

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR APPROVAL) CASE NO. IPC-E-06-03
OF AN AGREEMENT FOR SALE AND)
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY AND) APPLICATION
THE J. R. SIMPLOT COMPANY)
_____)

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and, pursuant to IPUC Rule of Procedure 52, hereby applies for an Idaho Public Utilities Commission ("IPUC" or the "Commission") Order approving an Agreement between Idaho Power 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.

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 in accordance with a Firm Energy Sales agreement dated March 1, 2004. The Project has been selling energy to Idaho Power since January 1991. Prior to the March 1, 2004 agreement, the Project was selling energy to the Company under a Firm Energy Sales agreement dated January 24, 1991 and subsequently amended on November 30, 1993 and February 23, 2001. Simplot has requested a new Firm Energy Sales Agreement for this Project to take effect on March 1, 2006 upon expiration of the March 1, 2004 agreement.

III.

The March 1, 2004 agreement is a one-year agreement which permits automatic renewals of one year on March 1 of each year. The agreement also specifies that, with appropriate notice, either party may terminate the agreement effective March 1. Simplot has timely requested to terminate the March 1, 2004 Firm Energy Sales Agreement for this Project and enter into a new Firm Energy Sales Agreement for this Facility. On February 8, 2006, Idaho Power and Simplot entered into a Firm Energy Sales Agreement ("Agreement") pursuant to the terms and conditions of Commission Order No. 29632 and Commission Order 29646 for energy deliveries of less than 10 average MW. Under the terms of that Agreement, Simplot elected to contract with Idaho Power for a 7-year term. Simplot further elected to contract with the Company using the Non-Levelized Published Avoided Cost Rate as currently established by the Commission for energy deliveries of less than 10 average

MW. A copy of the Agreement between Idaho Power and Simplot is attached hereto as Exhibit 1.

IV.

This Agreement is similar to recent agreements entered into by Idaho Power and approved by the Commission (e.g., Pilgrim Stage Station Wind Park (IPUC Order 29771) Oregon Trails Wind Park (IPUC Order 29772), Tuana Gulch Wind Park (IPUC Order 29773) and the Thousand Springs Wind Park (IPUC Order 29770)). The Simplot 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).

V.

The Maximum Capacity of this Facility is 12 MW as defined in Paragraph 1.13 and specified in Item B-3 of Appendix B of the Agreement. As defined in Paragraph 1.9 of the Agreement and as described in Paragraph 4.1.3 of the Agreement, Simplot 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. Idaho Power has reviewed the historical generation data for this Facility. The data supports Simplot's representation that, under current normal and/or average conditions, the Facility in the recent past has not exceeded 10 average MW in generation on a monthly basis. Furthermore, as described in Paragraph 7.3 of the Agreement, should the Facility exceed 10 average MW on a monthly basis, Idaho Power will accept any energy ("Inadvertent Energy") that does not exceed the Maximum Capacity Amount; however, Idaho Power will not purchase or pay for this Inadvertent Energy.

VI.

Section 25 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 for purchases of energy to Simplot will be allowed as prudently incurred expenses for ratemaking purposes.

VII.

Within this Agreement, 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 February 8, 2006.

VIII.

The Agreement, as signed and submitted by the Parties thereto, contains Non-Levelized 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.

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

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

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

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

(1) Approving the Firm Energy Sales Agreement between Idaho Power Company and J R Simplot Company 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 J R Simplot Company be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 9th day of February 2006.



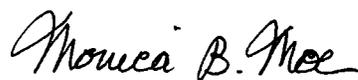
MONICA B. MOEN
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 9th day of February 2006, 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:

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

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



MONICA B. MOEN

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-06-03

IDAHO POWER COMPANY

EXHIBIT 1

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

J.R. SIMPLOT COMPANY

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FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

SIMPLOT - POCATELLO

Project Number: 41866112

THIS AGREEMENT, entered into on this 8 day of February 2006 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 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 Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.4 "Disconnection Equipment" - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B or Appendix D.
- 1.5 "Facility" - That electric generation facility described in Appendix B of this Agreement.

- 1.6 “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.
- 1.7 “Inadvertent Energy” – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.3 of this Agreement.
- 1.8 “Interconnection Facilities” - All equipment specified in Schedule 72 and the Generation Interconnection Process and any additional equipment specified in Appendix B or Appendix D.
- 1.9 “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.
- 1.10 “Losses” – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the point where the Facility’s energy is metered and the point the Facility’s energy is delivered to the Idaho Power electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.11 “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.
- 1.12 “Material Breach” – A Default (paragraph 23.2.1) subject to paragraph 23.2.2.
- 1.13 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.14 “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 and telemeter power flows between the Seller's electric generation plant and Idaho Power's system.

- 1.15 "Net Energy" – All of the electric energy produced by the Facility, less Station Use, less Losses, expressed in kilowatt hours (kWh). Seller commits to deliver all Net Energy to Idaho Power at the Point of Delivery for the full term of the Agreement. Net Energy does not include Inadvertent Energy.
- 1.16 "Operation Date" – The beginning of the day specified in paragraph 5.2 of this Agreement.
- 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 paragraph 6.2.1 of this Agreement.
- 1.21 "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.
- 1.22 "Station Use" – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.23 "Surplus Energy" – (1) Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system 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 produced by the Seller's Facility and delivered to the Idaho Power electrical system 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 delivered by the Facility to the Idaho Power

electrical system for that given month or (3) All Net Energy produced by the Seller's Facility and delivered by the Facility to the Idaho Power electrical system prior to the satisfactory completion of all requirements of Article IV, Conditions to Continued Acceptance of Energy.

1.24 "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 Prior to the Seller requesting an Operation Date and an Operation Date being assigned for this Agreement as specified in paragraph 5.2 of this Agreement, the following requirements shall be completed;
- 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 March 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.
- 4.1.1.1 As a condition of the Firm Energy Sales Agreement dated March 1, 2004, the Seller provided Idaho Power a letter (dated February 1, 2005) certifying that all licenses, permits or approvals necessary for Seller to continue operations were in full force and effect. Idaho Power will rely on this previous letter as still being accurate.
- 4.1.2 Opinion of Counsel – 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).

- 4.1.2.1 As a condition of the Firm Energy Sales Agreement dated March 1, 2004, the Seller provided Idaho Power an acceptable Opinion of Counsel letter (dated February 1, 2005). Idaho Power will rely on this previous letter as still being accurate.
- 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 will 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 - This Facility is currently interconnected to the Idaho Power system. 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.
- 4.1.4.1 As a condition of the Firm Energy Sales Agreement dated March 1, 2004, the Seller provided Idaho Power an acceptable Engineer's Certificate dated August 31, 2004. Idaho Power will accept this previously provided Engineer's Certification to satisfy this requirement.
- 4.1.5 Insurance – Seller shall submit written proof to Idaho Power of all insurance required in Article XVI.
- 4.1.6 Interconnection – Seller shall complete all interconnection modifications, upgrades or additions as specified in Appendix D of this Agreement.
- 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 AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective as of the date of this Agreement and shall continue in full force and effect for a period of seven (7) Contract Years from the Operation Date.
- 5.2 Operation Date – The Operation Date shall be March 1, 2006 contingent upon all requirements of Article IV being completed and accepted by Idaho Power Company no later than March 1, 2006.

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 to Idaho Power at the Point of Delivery. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time will the total amount of Net Energy and/or Inadvertent Energy produced by the Facility and delivered by the Seller to the Point of Delivery exceed the Maximum Capacity Amount.
- 6.2 Net Energy Amounts - Seller intends to produce and 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	5,669,280
	April	5,486,400
	May	5,669,280
Season 2	July	6,233,232
	August	6,233,232
	November	5,486,400

	December	5,669,280
Season 3	June	2,432,819
	September	6,032,160
	October	5,669,280
	January	5,669,280
	February	5,120,640

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 29.1, no later than 5:00 PM of the 5th 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 29.1, 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 3rd 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 29.1, no later than 5:00 PM of the 5th 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 14.2.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 14.3.1 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 14.2.1 or 14.3.1 occurs will be reduced in accordance with the following:

Where:

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 14.2.1 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 14.3.1 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 14.2.1 or 14.3.1

TH = Actual total hours in the current month

Resulting formula being:

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

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>
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

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 Inadvertent Energy –

7.3.1 Inadvertent Energy is electric energy produced by the Facility, expressed in kWh, which the Seller delivers to Idaho Power at the Point of Delivery that exceeds 10,000 kW multiplied by the hours in the specific month in which the energy was delivered. (For example January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440, 000 kWh in this example would be Inadvertent Energy.)

7.3.2 Although Seller intends to design and operate the Facility to generate no more than 10 average MW and therefore does not intend to generate Inadvertent Energy, Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount but will not purchase or pay for Inadvertent Energy

- 7.4 Payment Due Date – Energy payments to the Seller will be disbursed within 30 days of the date which Idaho Power receives and accepts the documentation of the monthly Net Energy and Inadvertent Energy actually produced by the Seller’s Facility and delivered to Idaho Power as specified in Appendix A.
- 7.5 Continuing Jurisdiction of the Commission – This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984); Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985); Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986); Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

- 8.1 Idaho Power waives any claim to ownership of Environmental Attributes. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) directly associated with the production of energy from the Seller’s Facility.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated March 1, 2004. In this previous agreement, Seller was required to design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of electric energy to Idaho Power for the full term of the Agreement. Seller will be required to maintain these same standards in the on-going operations of this facility for the term of this Agreement.
- 9.2 Interconnection Facilities - This Facility is interconnected to Idaho Power and is selling energy to

Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated March 1, 2004. Idaho Power has reviewed the existing Interconnection Facilities and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE X: DISCONNECTION EQUIPMENT

- 10.1 This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated March 1, 2004. Idaho Power has reviewed the existing Disconnection Equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE XI: METERING AND TELEMETRY

- 11.1 Metering - This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated March 1, 2004. Idaho Power has reviewed the Metering and Telemetry and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72. All meters used to determine the billing hereunder shall be sealed and the seals shall be broken only by Idaho Power when the meters are to be inspected, tested or adjusted.

- 11.1.1 Meter Inspection - Idaho Power shall inspect and test all meters upon their Installation and at least once every four (4) years thereafter. If requested by Seller, Idaho Power shall make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both Parties shall be notified of the time when any inspection or test shall take place, and each Party may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired or replaced, at Idaho Power's expense in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test varies by more than two percent (2%) from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the payments will be based on the shorter of (1) a period equal to one-half the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (2) six (6) months.
- 11.2 Telemetry – Metering, communications and telemetry equipment is required which is capable of providing Idaho Power with continuous instantaneous telemetry of Seller's net generation to Idaho Power's Designated Dispatch Facility. This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated March 1, 2004. Idaho Power has reviewed the Telemetry Equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment in order for the parties to perform under this agreement. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72.

ARTICLE XII - RECORDS

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

ARTICLE XIII - PROTECTION

- 13.1 This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated March 1, 2004. Idaho Power has reviewed the existing Protection equipment and has identified specific items that will require modification, upgrades or additions to the existing equipment. These items are documented in Appendix D of this agreement. The Seller will be responsible to complete the modifications, upgrades or additions as specified in Appendix D. All costs of all items identified within Appendix D and payment to Idaho Power will be in accordance with Schedule 72. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities. In some cases, some of Seller's protective relays will provide back-up protection for Idaho Power's facilities. In that event, Idaho Power will test such relays annually and Seller will pay the actual cost of such annual testing.

ARTICLE XIV - OPERATIONS

- 14.1 Communications - Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.
- 14.2 Energy Acceptance -
- 14.2.1 Idaho Power shall be excused from accepting and paying for Net Energy or accepting

Inadvertent Energy produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, or if Idaho Power determines that curtailment, interruption or reduction of Net Energy or Inadvertent Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of Force Majeure, Idaho Power requires such a curtailment, interruption or reduction of Net Energy deliveries for a period that exceeds twenty (20) days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

14.2.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may physically interrupt the flow of energy from the Facility as specified within Schedule 72 or take such other reasonable steps as Idaho Power deems appropriate.

14.2.3 Under no circumstances will the Seller deliver Net Energy and/or Inadvertent Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

14.3 Seller Declared Suspension of Energy Deliveries

14.3.1 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 14.3.2 below, temporarily suspend all deliveries of Net Energy to Idaho Power from the Facility or from individual generation unit(s) within 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 14.3.2 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.

14.3.2 If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in paragraph 14.3.1, 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 XXIX that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Seller to 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 14.3.1. 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 do an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility.

14.4 Voltage Levels - Seller, in accordance with Prudent Electrical Practices shall minimize voltage fluctuations and maintain voltage levels acceptable to Idaho Power. Idaho Power may, in accordance with Prudent Electrical Practices, upon one hundred eighty (180) days' notice to the Seller, change its nominal operating voltage level by more than ten percent (10%) at the Point of Delivery, in which case Seller shall modify, at Idaho Power's expense, Seller's equipment as necessary to accommodate the modified nominal operating voltage level.

- 14.5 Generator Ramping - Idaho Power, in accordance with Prudent Electrical Practices, shall have the right to limit the rate that generation is changed at startup, during normal operation or following reconnection to Idaho Power's electrical system. Generation ramping may be required to permit Idaho Power's voltage regulation equipment time to respond to changes in power flow.
- 14.6 Scheduled Maintenance – On or before January 31 of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of the Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.
- 14.7 Maintenance Coordination - The Seller and Idaho Power shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.
- 14.8 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact the Seller prior to exercising its rights to curtail, interrupt or reduce deliveries from the Seller's Facility. Seller understands that in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

ARTICLE XV: RELIABILITY MANAGEMENT SYSTEM

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

Agreement, including the applicable WECC reliability criteria set forth in Section IV of Annex A thereof, and, in the event of failure to comply, Seller agrees to be subject to the sanctions applicable to such failure. Such sanctions shall be assessed pursuant to the procedures contained in the WECC Reliability Criteria Agreement. Each and all of the provisions of the WECC Reliability Criteria Agreement are hereby incorporated by reference into this Article 15 as though set forth fully herein, and Seller shall for all purposes be considered a Participant, and shall be entitled to all of the rights and privileges and be subject to all of the obligations of a Participant, under and in connection with the WECC Reliability Criteria Agreement, including, but not limited to the rights, privileges and obligations set forth in Sections 5, 6 and 10 of the WECC Reliability Criteria Agreement.

- 15.3 Payment of Sanctions. Seller shall be responsible for reimbursing Idaho Power Company for any monetary sanctions assessed against Idaho Power Company due to the action or inaction of the Seller by WECC pursuant to the WECC Reliability Criteria Agreement. Seller also shall be responsible for payment of any monetary sanction assessed against the Seller by WECC pursuant to the WECC Reliability Criteria Agreement. Any such payment shall be made pursuant to the procedures specified in the WECC Reliability Criteria Agreement.
- 15.4 Transfer of Control or Sale of Generation Facilities. In any sale or transfer of control of any generation facilities subject to this Agreement, Seller shall, as a condition of such sale or transfer, require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of the Seller with respect to this Agreement or to enter into an agreement with Idaho Power Company imposing on the acquiring party or transferee the same obligations applicable to the Seller pursuant to this Article 15.
- 15.5 Publication. Seller consents to the release by the WECC of information related to the Seller's compliance with this Agreement only in accordance with the WECC Reliability Criteria Agreement.
- 15.6 Third Parties. Except for the rights and obligations between the WECC and the Seller specified in this Article 15, this Agreement creates contractual rights and obligations solely between the

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

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

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

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

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

ARTICLE XVI: INDEMNIFICATION AND INSURANCE

- 16.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.
- 16.2 Insurance - During the term of this Agreement, Seller shall secure and continuously carry the following insurance coverage:
- 16.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits of \$2,000,000 each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property. Seller will be responsible for any deductible applicable to losses covered by this insurance.
- 16.2.2 The above insurance coverage shall be placed with an insurance company with an A.M. Best Company rating of A- or better and shall include:
- (a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable; and
 - (b) A provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.
- 16.3 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.

16.4 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 16.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage. Failure to provide this notice and to expeditiously reinstate or replace the coverage will constitute a Material Breach of this Agreement.

ARTICLE XVII. FORCE MAJEURE

17.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation 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 XVIII: LAND RIGHTS

- 18.1 Seller to Provide Access - Seller hereby grants to Idaho Power for the term of this Agreement all necessary rights-of-way and easements to install, operate, maintain, replace, and remove Idaho Power's Metering Equipment, Interconnection Equipment, Disconnection Equipment, Protection Equipment and other Special Facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of Seller. Seller warrants that it has procured sufficient easements and rights-of-way from third parties so as to provide Idaho Power with the access described above. All documents granting such easements or rights-of-way shall be subject to Idaho Power's approval and in recordable form.
- 18.2 Use of Public Rights-of-Way - The Parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho Power's compliance with paragraph 18.4, Seller agrees that should Seller seek and receive from any local, state or federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho Power of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho Power may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 18.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 18.2.
- 18.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 18.4, Idaho Power may use and attach its distribution and/or transmission facilities to Seller's Interconnection Facilities, may reconstruct Seller's Interconnection Facilities to accommodate Idaho Power's usage or Idaho Power may construct its own distribution or transmission facilities along, over and above any public right-of-way acquired from Seller pursuant to paragraph 18.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 18.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this

paragraph 18.3.

- 18.4 Conditions of Use - It is the intention of the Parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho Power's exercising its rights under this Article XVIII. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 18.2 and 18.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the Parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the Parties, and (3) shall provide Seller with an interconnection to Idaho Power's system of equal capacity and durability as existed prior to Idaho Power exercising its rights under this Article XVIII.

ARTICLE XIX: LIABILITY; DEDICATION

- 19.1 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XX: SEVERAL OBLIGATIONS

- 20.1 Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

ARTICLE XXI: WAIVER

- 21.1 Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

ARTICLE XXII: CHOICE OF LAWS AND VENUE

- 22.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions.
- 22.2 Venue for any litigation arising out of or related to this Agreement will lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

ARTICLE XXIII: DISPUTES AND DEFAULT

- 23.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.
- 23.2 Notice of Default -
- 23.2.1 Defaults. If either Party fails to perform any of the terms or conditions of this Agreement (an "event of default"), the nondefaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the nondefaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.
- 23.2.2 Material Breaches – The notice and cure provisions in paragraph 23.2.1 do not apply to defaults identified in this Agreement as Material Breaches. Material Breaches must

be cured as expeditiously as possible following occurrence of the breach.

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

23.3.1 Insurance - Evidence of compliance with the provisions of paragraph 16.2. If Seller fails to comply, such failure will be a Material Breach and may only be cured by Seller supplying evidence that the required insurance coverage has been replaced or reinstated;

23.3.2 Engineer's Certifications – Within 30 days of August 31, 2007 and then every three (3) years after August 31, 2007, 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

23.3.3 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses. At least every fifth Contract Year, Seller will update the documentation described in Paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be an event of default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

ARTICLE XXIV: GOVERNMENTAL AUTHORIZATION

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

ARTICLE XXV: COMMISSION ORDER

- 25.1 This Agreement shall become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

ARTICLE XXVI: SUCCESSORS AND ASSIGNS

- 26.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any party which Idaho Power may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of Idaho Power's rights, obligations and interests under this Agreement. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXVII: MODIFICATION

- 27.1 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

ARTICLE XXVIII: TAXES

- 28.1 Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

ARTICLE XXIX: NOTICES

29.1 All written notices under this agreement shall be directed as follows and shall be considered delivered when deposited in the U. S. Mail, first-class postage prepaid, as follows:

To Seller:

Original document to:

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

Copy of document to:

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

To Idaho Power:

Original document to:

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

Copy of document to:

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

ARTICLE XXX: ADDITIONAL TERMS AND CONDITIONS

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

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

ARTICLE XXXI: SEVERABILITY

31.1 The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

ARTICLE XXXII: COUNTERPARTS

32.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

ARTICLE XXXIII: ENTIRE AGREEMENT

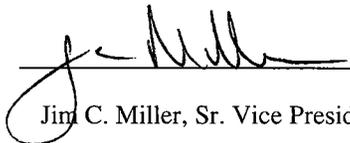
33.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

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

Idaho Power Company

J R Simplot Company

By



Jim C. Miller, Sr. Vice President, Power Supply

By



Dated

2/8/06

"Idaho Power"

Dated

2/6/06

"Seller"

APPENDIX A

A-1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

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

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

The Meter readings required on this report will be the reading on the Idaho Power Meter Equipment measuring the Facility's total energy production, Station Usage, Inadvertent Energy delivered to Idaho Power and the maximum generated energy (kW) as recorded on the Meter Equipment and/or any other required energy measurements to adequately administer this Agreement.

Idaho Power Company

Cogeneration and Small Power Production

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month _____ Year _____

Project Name _____ Project Number: _____
 Address _____ Phone Number: _____
 City _____ State _____ Zip _____

	<u>Facility Output</u>	<u>Station Usage</u>	<u>Station Usage</u>	<u>Metered Maximum Generation</u>
Meter Number:	_____	_____	_____	kW
End of Month kWh Meter Reading:	_____	_____	_____	
Beginning of Month kWh Meter:	_____	_____	_____	
Difference:	_____	_____	_____	<u>Net Generation</u>
Times Meter Constant:	_____	_____	_____	
kWh for the Month:	_____	-	_____	
Metered Demand:	_____	_____	_____	

Breaker Opening Record

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

* <u>Reason</u>

Breaker Closing Record

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

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

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

Signature Date

A-2 ROUTINE REPORTING

Idaho Power Contact Information

Daily Energy Production Reporting

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

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

Planned and Unplanned Project outages

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

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

Seller's Contact Information

24-Hour Project Operational Contact

Name: _____
Telephone Number: _____
Cell Phone: _____

Project On-site Contact information

Telephone Number: _____

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. 41866112

SIMPLOT POCATELLO

B-1 DESCRIPTION OF FACILITY

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

B-2 LOCATION OF FACILITY

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

B-3 MAXIMUM CAPACITY AMOUNT: This value will be 12 MW. This value is the maximum energy (MW) that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

B-4 POINT OF DELIVERY

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

B-5 METERING

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

B-6 SPECIAL FACILITIES

The completion of the fifth distribution feeder bay including metalclad and metering at Don Substation, installation of new substation 12.47 kV underground getaway cables, construction of a section of overhead three phase 12.47 kV distribution feeder, and the installation of a section of underground three phase 12.47 kV distribution feeder, has been provided by Idaho Power as Special Facilities.

B-7 DISCONNECTION EQUIPMENT

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

B-8 COSTS

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

Original Equipment - This Facility has been interconnected and delivering energy to Idaho Power Company under previous agreements. The monthly Schedule 72 operations and maintenance expense in regards to the equipment originally installed at a total cost of \$299,041 will continue on the same operations and maintenance schedule as specified in Schedule 72 based upon the original installation date of this equipment. Thus, for the

calendar year from January 1, 2006 through December 31, 2006 Contract Year, the Schedule 72 Contract Year to be referenced to the Schedule 72 Operations and Maintenance table will be Contract Year 16, January 1, 2007 through December 31, 2007 Contract Year, the Schedule 72 Contract Year to be referenced to the Schedule 72 Operations and Maintenance table will be Contract Year 17 and so on for the term of the this Agreement.

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

B-9 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho Power will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities described in this Appendix, less the cost of removal and transfer to Idaho Power's nearest warehouse. If the Interconnection Facilities will be removed, Idaho Power may then be invoiced by Seller for the net salvage value estimated by Idaho Power for the interconnection facilities and shall pay such amount to Seller within thirty (30) days after receipt of said invoice.

APPENDIX C
ENGINEER'S CERTIFICATION

OF
OPERATIONS & MAINTENANCE POLICY

The undersigned _____, on behalf of himself and _____, hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

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

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

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

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

APPENDIX D

MODIFICATIONS, UPGRADES AND ADDITIONS

PROJECT NO. 41866112

SIMPLOT POCA TELLO

This Facility is interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales Agreement dated March 1, 2004, prior to that agreement this Facility was selling energy to Idaho Power as a Qualifying Facility in accordance with a Firm Energy Sales agreement dated January 24, 1991, first amendment of November 30, 1993 and second amendment dated February 23, 2001. The Interconnection Facilities, Disconnection Equipment, Metering Equipment, Telemetry Equipment and Protection Equipment were designed, installed, operated and maintained in accordance with these previous agreements.

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

D-1 INTERCONNECTION FACILITIES

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

items identified and payment to Idaho Power will be in accordance with Schedule 72.

D-2 DISCONNECTION EQUIPMENT

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

D-3 METERING EQUIPMENT

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

D-4 TELEMETRY EQUIPMENT

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

D-5 PROTECTION EQUIPMENT

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

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