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IDAHO PUBLIC  
UTILITIES COMMISSION

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**Attorneys for Idaho Power Company**

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,  
  
Complainant,

vs.

GLENN'S FERRY COGENERATION  
PARTNERS, LTD., a Colorado Limited  
Partnership,

Respondent.

Case No. IPC-E-08-20

**AFFIDAVIT OF COUNSEL IN  
SUPPORT OF IDAHO POWER  
COMPANY'S BRIEF IN OPPOSITION  
TO RESPONDENT'S MOTION TO  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION**

STATE OF IDAHO )  
                          : ss.  
County of Ada     )

I, Bruce C. Jones, being first duly sworn upon oath, depose and state as follows:

1. I am an attorney with the law firm of Jones & Swartz PLLC, and am authorized to practice law before this and all courts of the State of Idaho.
2. I am counsel of record for Idaho Power Company in the above-entitled action.

3. Attached hereto as Exhibit A is a true and correct copy of the Firm Energy Sales Agreement between Idaho Power Company and Glenns Ferry Cogeneration Partners, Ltd. (Dec. 9, 1992).

4. Attached hereto as Exhibit B is a true and correct copy of Idaho Public Utilities Commission Order No. 24674, *In the Matter of the Approval of a Firm Energy Sales Agreement Between Idaho Power Company and Glenns Ferry Cogeneration Partners, Ltd. for the Magic West Cogeneration Project* (Jan. 22, 1993).

5. Attached hereto as Exhibit C is a true and correct copy of the Letter from Steven J. Helmers, Vice President, Glenns Ferry Cogeneration Partners, Ltd., to M. Mark Stokes (June 10, 2008).

6. Attached hereto as Exhibit D is a true and correct copy of Idaho Public Utilities Commission Order No. 21690, *In the Matter of the Investigation on the Commission's Own Motion of Reasonable Terms for Security in Agreements Between Idaho Power Company and Cogenerators and Small Power Producers* (Jan. 11, 1988).

7. Attached hereto as Exhibit E is a true and correct copy of the First Amendment to the Firm Energy Sales Agreement (April 12, 1994).

8. Attached hereto as Exhibit F is a true and correct copy of the Idaho Public Utilities Commission Order No. 25505, *In the Matter of a Proposed Amendment to the Firm Energy Sales Agreement Between Idaho Power Company and Glenns Ferry Cogeneration Partners, Ltd. For the Magic West Cogeneration Project* (May 18, 1994).

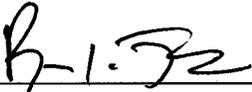
9. Attached hereto as Exhibit G is a true and correct copy of the Second Amendment to the Firm Energy Sales Agreement (Dec. 30, 1995).

10. Attached hereto as Exhibit H is a true and correct copy of the Idaho Public

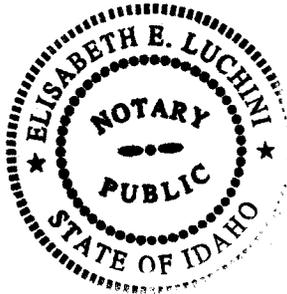
Utilities Commission Minute Entry, *In the Matter of the Application of Rupert and Glenns Ferry Cogeneration Partners for an Order Approving Amendments to Power Sales Agreements* (Jan. 8, 1996).

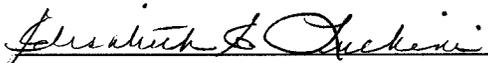
11. Attached hereto as Exhibit I is a true and correct copy of the Idaho Public Utilities Commission Order No. 21800, *In the Matter of the Investigation on the Commission's Own Motion of Reasonable Terms for Security in Agreements Between Idaho Power Company and Cogenerators and Small Power Producers* (March 1988).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
BRUCE C. JONES

SUBSCRIBED AND SWORN TO before me this 12th day of January, 2009.



  
\_\_\_\_\_  
Notary Public for Idaho  
My Commission Expires 1.8.12

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 12th day of January, 2009, served the foregoing AFFIDAVIT OF COUNSEL IN SUPPORT OF IDAHO POWER COMPANY'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION upon all parties of record in this proceeding, by the method indicated, addressed as follows:

Glenns Ferry Cogeneration Partners, Ltd.  
c/o Power Plant Management Services, LLC  
7001 Boulevard 26, Suite 310  
North Richland Hills, TX 76180  
Attn: Fred Barber/Scott Gross

U.S. Mail  
 Fax: (817) 616-0754  
 Overnight Delivery  
 Messenger Delivery  
 Email: fbarber@ppmsllc.com  
sgrossppms@suddenlink.net

National Corporate Research LT  
921 S. Orchard Street, Suite G  
Boise, ID 83706

U.S. Mail  
 Fax:  
 Overnight Delivery  
 Messenger Delivery  
 Email:



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BRUCE C. JONES

**EXHIBIT A**

**IDAHO POWER COMPANY**

**FIRM ENERGY SALES AGREEMENT**

**BETWEEN**

**IDAHO POWER COMPANY**

**AND**

**GLENNS FERRY COGENERATION PARTNERS, LTD.**

**A COLORADO LIMITED PARTNERSHIP**

**FIRM ENERGY SALES AGREEMENT**

**BETWEEN**

**IDAHO POWER COMPANY**

**AND**

**GLENN'S FERRY COGENERATION PARTNERS, LTD.**

**A COLORADO LIMITED PARTNERSHIP**

**TABLE OF CONTENTS**

I	DEFINITIONS .....	1
II	NO RELIANCE ON IDAHO POWER .....	3
III	WARRANTIES .....	4
IV	CONDITIONS TO INTERCONNECTION .....	4
V	TERM, EARLY TERMINATION AND OPERATION DATE .....	10
VI	SALE OF NET FIRM ENERGY .....	11
VII	PURCHASE PRICE AND METHOD OF PAYMENT; ADJUSTMENT OF PURCHASE PRICE .....	13
VIII	FACILITY AND INTERCONNECTION .....	14
IX	DISCONNECTION EQUIPMENT .....	14
X	METERING .....	16
XI	RECORDS .....	17
XII	PROTECTION .....	17
XIII	OPERATIONS .....	18
XIV	INDEMNIFICATION AND INSURANCE .....	19
XV	LAND RIGHTS .....	22
XVI	FORCE MAJEURE .....	24
XVII	LIABILITY; DEDICATION .....	24
XVIII	SEVERAL OBLIGATIONS .....	25
XIX	WAIVER .....	25
XX	CHOICE OF LAWS .....	25
XXI	DISPUTES AND DEFAULT .....	25
XXII	GOVERNMENTAL AUTHORIZATION .....	32
XXIII	COMMISSION ORDER .....	32
XXIV	SUCCESSORS AND ASSIGNS .....	32
XXV	MODIFICATION .....	33
XXVI	TAXES .....	33
XXVII	NOTICE .....	33
XXVIII	ADDITIONAL TERMS AND CONDITIONS .....	34
XXIX	ENTIRE AGREEMENT - SIGNATURES .....	35
	APPENDIX A .....	37
	APPENDIX B .....	43
	APPENDIX C .....	47
	APPENDIX D .....	48
	APPENDIX E .....	50
	APPENDIX F .....	58
	APPENDIX G .....	59
	APPENDIX H .....	60

FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 9th day of December, 1992, is between GLENN'S FERRY COGENERATION PARTNERS, LTD., a Colorado limited partnership (hereinafter referred to as "Seller"), and IDAHO POWER COMPANY, an Idaho corporation (hereinafter referred to as "Idaho Power"). Seller and Idaho Power are hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Seller plans to construct, own and operate a cogeneration facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is legally obligated to purchase firm electric energy generated by Seller's cogeneration facility.

NOW THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I: DEFINITIONS

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

- 1.1 "Annual Net Firm Energy" - The amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Contract Year.
- 1.2 "Commission" - The Idaho Public Utilities Commission.
- 1.3 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.4 "Designated Dispatch Facility" - Idaho Power's Boise Bench System Dispatch Center.
- 1.5 "Disconnection Equipment" - Any device or combination of devices by which

Idaho Power can manually and/or automatically interrupt the flow of energy from the Seller to Idaho Power's system, including enclosures or other equipment as may be required to ensure that only Idaho Power will have access to the devices.

1.6 "Facility" - That cogeneration facility described in Appendix B of this Agreement.

1.7 "First Energy Date" - The date when the Seller begins delivering energy to Idaho Power's system.

1.8 "Interconnection Facilities" - All facilities which are reasonably required by Prudent Electrical Practices and the National Electric Safety Code to interconnect and to allow the delivery of energy from the Seller's electric generation plant to Idaho Power's system including, but not limited to, Special Facilities, Disconnection Equipment and Metering Equipment.

1.9 "Losses" - The loss of energy occurring as a result of the transformation and transmission of energy between the Facility and the Point of Delivery.

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

1.11 "Net Firm Energy" - Electric energy produced by the Facility, less Station Use and less Losses, expressed in kilowatt hours ("Kwh"), which Seller commits to deliver to Idaho Power at the Point of Delivery for the full term of the Agreement.

1.12 "Operation Date" - The day commencing at 0001 hours Mountain Time, following the day on which the Facility demonstrates that it has been completed and reached a degree of reliability such that it is capable of delivering Net Firm Energy continuously into Idaho Power's system.

1.13 "Point of Delivery" - The location specified in Appendix B, where Idaho Power's and Seller's electrical facilities are interconnected.

1.14 "Prudent Electrical Practices" - Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment

lawfully and with safety, dependability, efficiency and economy.

1.15 **"Scheduled Operation Date"** - The date specified in Appendix B when Seller anticipates achieving the Operation Date.

1.16 **"Schedule 72"** - Idaho Power's Tariff No 101, Schedule 72 or its successor schedule(s) as approved by the Commission.

1.17 **"Season"** - The three time periods identified in Article VI.

1.18 **"Seasonal Net Firm Energy"** - The amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Season.

1.19 **"Special Facilities"** - Additions or alterations of transmission and/or distribution lines and transformers to safely interconnect the Seller's electric generation plant to the Idaho Power's system.

1.20 **"Station Use"** - Electric energy which is used solely to operate the Facility's equipment which is auxiliary or directly related to the production of electricity and which, but for the generation of electricity, would not be consumed by Seller.

1.21 **"Surplus Energy"** - Electric energy which is produced by the Facility and is delivered and accepted prior to the Operation Date or which exceeds the amounts specified in paragraph 6.1.

1.22 **"Thermal Energy Metering Equipment"** - Equipment required to measure and record the volume and heat content of fuel delivered to and consumed by the Facility and the amounts of thermal energy produced by the Facility and delivered to the thermal host.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

2.1 **"Seller Independent Investigation"** - Except for the Disconnection Equipment and any other facilities exclusively within the control of Idaho Power, Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligation 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 - Except for the Disconnection Equipment and any other facilities within the exclusive control of Idaho Power, 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 prior to interconnection with Idaho Power the Facility will be 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.

#### ARTICLE IV: CONDITIONS TO INTERCONNECTION

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho Power, Seller shall provide the following:

4.1.1 Licenses and Permits - 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 of 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, provide the rights set forth therein, and are enforceable in accordance with their terms. The Opinion 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 Schedule 72 Payments - Make payment to Idaho Power for all costs of Disconnection Equipment, Metering Equipment and Special Facilities as provided for in Schedule 72 and Appendix B of this Agreement;

4.1.4 Written Acceptance - Obtain written acceptance from Idaho Power as provided in paragraph 8.3;

4.1.5 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIV;

4.1.6 Demonstration of Safe Operation - Demonstrate to Idaho Power's reasonable satisfaction that Seller's Facility has been completed, and is capable of operating safely to commence deliveries of electric energy into Idaho Power's system;

4.1.7 Maintenance Escrow Account - Demonstrate to Idaho Power's satisfaction that the Seller has established a maintenance escrow account in a form and with an escrow manager which complies with Commission Order Nos 21690 and 21800. Said maintenance escrow account shall be structured and funded as follows:

4.1.7.1 The escrow instructions establishing the maintenance escrow account will provide that the funds in the maintenance escrow account will be prudently invested and that all costs of implementing and operating the maintenance escrow account shall be paid by the Seller. All interest earned on the funds of deposit will be retained in the maintenance escrow account. At the end of the term of this

Agreement, any balance remaining in the maintenance escrow account shall be the property of the Seller.

4.1.7.2 Within sixty (60) days after the completion of each Contract Year, the Seller will:

a) provide both the escrow manager and Idaho Power with a report prepared by an independent accounting firm showing the prior Contract Year's actual maintenance expenses, identified by appropriate FERC maintenance account number; and

b) provide an estimate of the Facility's gross income from Net Firm Energy Sales for the ensuing Contract Year, together with documentation supporting that estimate; and

c) deposit cash in the maintenance escrow account in an amount equal to five percent (5%) of the Facility's estimated gross income from Net Firm Energy sales for the ensuing Contract Year, less an amount equal to the Facility's actual maintenance, repair and replacement expense (maintenance expenses) incurred during the prior Contract Year; and

d) provide Idaho Power with evidence of compliance with the maintenance escrow account deposit requirements. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The maintenance escrow fund will be subject to the lien rights described in paragraph 4.1.8 below.

4.1.7.3 If Seller determines that the maintenance expense for a Contract Year will exceed five percent (5%) of the Facility's estimated gross income for that Contract Year, the Seller may request that the escrow manager release funds from the maintenance escrow account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC

maintenance account number, and such documentation shall be submitted to both the escrow manager and Idaho Power. Following receipt of the request and documentation, the escrow manager, shall, within five working days, release the requested funds to Seller.

4.1.8 Security Interests - Provide Idaho Power with acceptable security for Seller's default under this Agreement. Acceptable security will conform to Commission Order Nos 21690 and 21800, and may include, but will not be limited to, security interests in real property, equipment, fixtures, contracts, permits, easements, rights-of-way, prepurchased fuel supplies, fuel supply contracts, thermal energy sales contracts, and fuel supply transportation contracts associated with the Facility. Seller will provide title insurance and other reasonable security arrangements consistent with the Facility's financing and ownership arrangements. Idaho Power's security interests will be superior and senior to all liens other than the first mortgage lien, leasehold, financing statement, security agreement and other security interests permitted in accordance with paragraph 4.1.8.1.

4.1.8.1 If Seller desires to enter into a lease and/or incur a first mortgage lien and other security interests that will be superior to Idaho Power's security interests in the Facility, at least twenty-one (21) days prior to their execution Seller will provide Idaho Power with draft copies of the lease and/or deeds of trust, mortgages and other security agreements that will be used to secure such first lien. Upon their execution, Seller will provide Idaho Power with copies of the executed first lien documents. In no event will the amount of any lease and/or first mortgage lien exceed \$15,000,000.00 without Idaho Power's prior written consent which consent shall not be unreasonably withheld or delayed. The executed first lien documents shall not be assigned, amended, modified, or extended, and no replacement or refinancing of any nature shall be undertaken, without Idaho Power's prior written consent which consent shall not be unreasonably withheld or delayed. The amount of any refinanced

or replaced first liens shall not exceed the unpaid principal balance of the lien they replace.

4.1.8.2 Other than the first mortgage liens permitted herein or temporary mechanics, statutory or similar liens incurred in the ordinary course of business in an amount not to exceed in aggregate ten thousand dollars (\$10,000.00), Seller will not permit any liens or encumbrances of any nature whatsoever to be placed on the Facility without Idaho Power's prior written consent, which consent will not be unreasonably withheld. If any unpermitted lien or encumbrance is placed on the Facility, Seller will provide Idaho Power with a bond, insurance or other security acceptable to Idaho Power in an amount sufficient to secure the full discharge of such unpermitted lien or encumbrance.

4.1.8.3 If, after the initial first lien has been established, Seller desires to assign this Agreement or assign, replace or refinance said first lien, Seller will reimburse Idaho Power for the reasonable out-of-pocket costs Idaho Power incurs for document review and revision including any consents to assignment or subordination agreements that Seller requests from Idaho Power. Idaho Power's out-of-pocket costs will include but not be limited to filing fees, title insurance premiums, and fees of legal counsel.

4.1.9 Debt Service Reserve Account - Demonstrate to Idaho Power's satisfaction that Seller has established and funded a debt service reserve account in a form and with a fund holder which complies with paragraph 21.4.2.

4.1.10 Fuel Supply and Transportation Contracts - Seller will demonstrate to Idaho Power's reasonable satisfaction that Seller has entered into fuel supply and fuel transportation contracts which will provide a firm supply of fuel and fuel transportation in amounts sufficient to allow the Facility to generate the Annual Net Firm Energy amount each Contract Year for the full term of this Agreement. The respective firm fuel supply and fuel transportation agreements will include provisions that recognize that: (1) Idaho Power is an

intended third party beneficiary of the fuel supply and fuel transportation agreements; and (2) that Seller and the fuel supplier and fuel transporter will be jointly and severally liable to Idaho Power under their respective agreements for payment to Idaho Power of damages arising out of Seller's permanent curtailment as described in paragraph 21.3 herein if such permanent curtailment by Seller arises out of an uncured breach of the fuel and/or fuel transportation agreements by the fuel supplier or fuel transporter resulting in a curtailment or termination of the fuel supply or fuel transportation. The contract provisions to be included in the fuel supply and transportation agreements to comply with the requirements of subparagraphs (1) and (2) will be substantially similar to Appendix F.

4.1.11 Thermal Host Contract - Seller will demonstrate to Idaho Power's reasonable satisfaction that Seller has entered into a firm contract for the sale of an amount of thermal energy from the Facility sufficient to ensure that the Facility will comply with paragraph 3.2 (Qualifying Facility Status) for the full term of this Agreement. The thermal energy purchaser will execute an agreement with Idaho Power and Seller providing, among other things, that: (1) Idaho Power is an intended third party beneficiary of the thermal energy sales agreement; and (2) that Seller and the thermal energy purchaser will be jointly and severally liable to Idaho Power for payment to Idaho Power of any damages arising out of Seller's permanent curtailment as described in paragraph 21.3 herein, if such permanent curtailment arises out of an uncured breach of the Thermal Energy Sales Agreement by the thermal host which results in a loss of Seller's qualifying facility status. The contract provision to be executed by the thermal energy purchaser to comply with the requirements of subparagraphs (1) and (2) will be substantially similar to Appendix G.

4.1.12 Obtain written confirmation from Idaho Power that all conditions to interconnection have been fulfilled. Such written confirmation shall not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM, EARLY TERMINATION, AND OPERATION DATE

5.1 Term - Except as otherwise provided, this Agreement shall become effective on the date first above written, and shall continue in full force and effect for a period of Twenty (20) Contract Years.

5.2 Early Termination - Either Party may terminate this Agreement at the end of the fifteenth Contract Years by giving the other Party written notice of termination a minimum of one year prior to the beginning of the fifteenth Contract Years provided, however, that neither party shall be allowed to terminate until at least five (5) years after the date of expiration of the initial lease and/or the initial permanent first lien financing for the Project.

5.2.1 Liquidated Administrative Costs - If either Party exercises its option to terminate, in addition to any payments due under paragraph 5.2.3, the Party initiating termination will pay the other Party liquidated administrative costs which will be determined according to the following formula:

$$(\text{kWh}) \times (\text{Rate/kWh}) \times (\text{Percent}) = \text{liquidated administrative costs}$$

Where:

"kWh" is the Annual Net Firm Energy amount shown in paragraph 6.3; and

"Rate/kWh" is the sum of the base payment shown in paragraph 7.1.1 plus the adjustable payment as set on the July 1st immediately prior to the notification of intention to terminate; and

"Percent" is a multiplier based on the following schedule:

4 Year's prior notice of termination: 1.5%

3 Year's prior notice of termination: 2.0%

2 Year's prior notice of termination: 2.5%

1 Year's prior notice of termination: 3.0%

5.2.2 Idaho Power - Early termination under this paragraph by Idaho Power is not a default by the Seller and will not constitute a permanent curtailment under paragraph 21.3.

5.2.3 Seller - Early termination under this paragraph by the Seller will constitute a permanent curtailment under paragraph 21.3.

5.3 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and reliability has been demonstrated to Idaho Power's reasonable satisfaction, and Idaho Power has confirmed such reasonable satisfaction in writing. The procedure for establishing and confirming eligibility for an Operation Date is set out in Appendix H. Seller shall have the duty to obtain that confirmation and it will not be unreasonably withheld by Idaho Power. Prior to the Operation Date, Seller must provide the following:

- (1) As-built drawings of the Seller-furnished interconnection equipment, and
- (2) Executed Certification of Design Engineer, Engineer's Certification of Design & Construction Adequacy, and Engineer's Certification of Operations and Maintenance Policy as described in Commission Order No 21690. These certificates will be in the form specified in Appendix E, but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.
- (3) Written verification by the Design Engineer that the Thermal Energy Metering Equipment has been installed, tested and is operating satisfactorily.

#### ARTICLE VI: SALE OF NET FIRM ENERGY

6.1 Delivery and Acceptance of Net Firm Energy - Except when prevented by events of force majeure (Article XVI) or otherwise excused as provided herein, Idaho Power will purchase up to 10,000 kWh per hour of Net Firm Energy produced by the Facility and delivered by Seller to the Point of Delivery. All energy produced and delivered by Seller in excess of 10,000 kWh per hour will be purchased as Surplus Energy.

6.2 Seasonal Net Firm Energy Amounts- Based on expected site specific equipment performance and average energy production estimates based thereon, Seller estimates that it can deliver Net Firm Energy in the following seasonal amounts:

Season 1	March April May	20,976,000 kWh's Total
Season 2	June July August September	27,816,000 kWh's Total
Season 3	October November December January February	34,428,000 kWh's Total

6.3 Annual Net Firm Energy Amount - The Annual Net Firm Energy amount shall be 83,220,000 kWh and shall be the sum of the three Seasonal Net Firm Energy amounts Seller specified above. After a reasonable period of operating experience but not later than the end of the fifth (5th) Contract Year, the Parties will review the actual Annual Net Firm Energy production of the Facility. If the Parties determine that there is a material difference between the actual Annual Net Firm Energy production of the Facility and the Annual Net Firm Energy amount specified above, the Annual Net Firm Energy amount and the resulting Appendix C lump sum repayment amount will be amended to recognize actual operating experience.

6.4 Subsequent Determination that Facility Capacity Exceeds Ten Megawatts  
Cogeneration and small power production facilities with generating capacity larger than 10 megawatts ("MW") are not legally entitled to the rates terms and conditions contained in this Agreement. The rates, terms and conditions contained in this Agreement are premised on Seller's representation that the capacity of the Facility is not larger than 10 MW. If, at any time, Idaho Power determines that the Facility's capacity consistently exceeds 10 MW, Idaho Power will notify Seller and the Commission.

If the Commission determines that the Facility's capacity exceeds 10 MW, then this Agreement may be modified by the Commission.

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

**7.1 Net Firm Energy Purchase Price - The price to be paid to Seller for Net Firm Energy will be the sum of the following payments:**

**7.1.1 Base Payment -**

Season 1	35.63 Mills/kWh
Season 2	58.16 Mills/kWh
Season 3	48.47 Mills/kWh

**7.1.2 Adjustable Payment - In addition to the base payment specified in paragraph 7.1.1, Idaho Power shall pay to Seller an adjustable payment which shall be established by the Commission and subject to change pursuant to Commission Order effective on July 1 of each year during the term of this Agreement. While the Parties do not know what the adjustable payment amount will be as of the Operation Date under this Agreement, the Parties acknowledge that the adjustable payments as of the date of the signing of this Agreement are as follows:**

Season 1	7.00 Mills/kWh
Season 2	11.42 Mills/kWh
Season 3	9.52 Mills/kWh

**7.2 Surplus Energy Purchase Price - Surplus Energy will be purchased at the non-firm rate computed in accordance with option B in Idaho Power's Tariff 101, Schedule 86 or with its successor schedule(s) as approved by the Commission.**

**7.3 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 Comm'n and Afton Energy, Inc., 107 Idaho 781, 693 P2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Comm'n, 107 Idaho 1122, 695 P2d 1261 (Idaho 1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.**

## ARTICLE VIII: FACILITY AND INTERCONNECTION

8.1 Design of Facility - Seller shall design, construct, install, own, operate and maintain the Facility and any Seller-owned interconnection facilities so as to allow safe, reliable delivery of electric energy to Idaho Power's system for the full term of the Agreement.

8.2 Interconnection Facilities - Except as specifically provided for in this Agreement, interconnection of the Facility will be in accordance with Schedule 72. Seller will pay all costs of interconnecting the Facility with Idaho Power.

8.3 Idaho Power Review - To assure the Facility and Seller-furnished Interconnection Facilities are of suitable size and are compatible with Idaho Power's system, Seller shall submit the designs, plans, specifications and performance data for the Facility and Seller-furnished Interconnection Facilities to Idaho Power for review. Idaho Power shall, in writing and in conformance with paragraph 4.1.4, notify Seller of its acceptance and confirmation of system compatibility or conversely, notify Seller, in writing, of any changes which, consistent with Prudent Electrical Practices, Idaho Power determines are reasonable and necessary to assure the safe delivery of electric energy from the Facility to Idaho Power's system.

## ARTICLE IX: DISCONNECTION EQUIPMENT

9.1 Disconnect Equipment - Idaho Power will, at Seller's expense, provide, own, operate, and maintain all Disconnection Equipment. At Seller's request, Idaho Power will provide Seller with the general specifications and an itemization by category of the costs of such Disconnection Equipment. Idaho Power will establish the settings of Disconnection Equipment to disconnect automatically from the Facility for the protection of Idaho Power's system and personnel consistent with Prudent Electrical Practices. Upon Seller's request, Idaho Power will notify Seller as to the original setting and any adjustments thereof. Except as otherwise required by Prudent Electrical Practices, Disconnection Equipment will be designed so that the closure of any breaker or other disconnecting device which connects the Facility to Idaho Power's system shall be controlled by equipment which will perform the following:

(1) Automatically monitor the status of the electrical system on Idaho Power's side of the disconnecting device as to voltage and frequency; and

(2) Prohibit closure or reconnection until voltage and frequency have been within approved limits for a continuous period of not less than five (5) minutes; and

(3) Operate so that if Idaho Power's system is de-energized within sixty (60) seconds after closure of the disconnecting device, the disconnecting device will immediately open and not close again until it has been manually reset and/or Idaho Power can safely reclose the Disconnecting Equipment.

9.2 Security of Disconnect Equipment - The Disconnection Equipment will be located in an enclosure secured by a lock or otherwise secured in a manner designed to ensure that only Idaho Power's authorized personnel will have access to the disconnecting devices.

9.3 Remote Disconnection - Other Disconnection Equipment, including equipment which will provide Idaho Power's operating personnel with the ability to remotely control and monitor the status of the breaker or other disconnecting device by radio or hard-wire circuit between the Facility and the Designated Dispatch Facility may be specified by Idaho Power when, in Idaho Power's reasonable judgment, such equipment is required by Prudent Electrical Practices. Seller recognizes that such remote control equipment may not initially be required by Idaho Power, but at such time as operating conditions on Idaho Power's system dictate, Idaho Power will install this remote control equipment at Seller's expense. If Seller disputes Idaho Power's determination that the installation of such remote Disconnection Equipment is required, such dispute shall be submitted to the Commission for resolution.

9.4 Interference with Disconnection Equipment - If Seller attempts to modify, adjust or otherwise interfere with the Disconnection Equipment or its enclosure such action shall constitute an event of default pursuant to Article XXI and a material breach of this Agreement.

## ARTICLE X: METERING

10.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain required Metering Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with the standards set forth in Appendix A of this Agreement. If required by Idaho Power, metering will also include measurement of kilovar-hours in a manner agreed to by both Parties. All Meter Equipment and installation costs shall be borne by Seller, including costs incurred by Idaho Power for inspecting and testing such equipment at reasonable intervals at Idaho Power's actual cost of providing this Metering Equipment and services. The point of metering shall be at the location described in Appendix B of this Agreement. All meters used to determine the billing hereunder shall be sealed and the seals shall be broken only by Idaho Power when the meters are to be inspected, tested or adjusted.

10.2 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.

10.3 Telemetry - Consistent with Appendix A of this Agreement, Idaho Power shall install, operate and maintain, at Seller's expense, metering, communications and telemetry Metering

Equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of Seller's net generation to Idaho Power's Designated Dispatch Facility.

10.4 Thermal Energy Metering Equipment - During the term of this Agreement, Seller will install, operate and maintain or cause to be installed, operated and maintained the Thermal Energy Metering Equipment.

#### ARTICLE XI: RECORDS

11.1 Maintenance and Retention of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties, adequate electric metering and related power production records, thermal energy metering records and fuel delivery and consumption records sufficient to permit corroboration, by Idaho Power, that the Facility continues to meet the operating and efficiency standards required to maintain qualifying cogeneration facility status in compliance with 18 CFR 292.205(a). Seller will maintain these records in a form approved by Idaho Power and will retain them for a period of not less than three (3) years after the date the records are generated.

11.2 Inspection - Idaho Power, after reasonable notice to Seller, shall have the right, during normal business hours, to inspect and audit any or all of the above referenced records.

#### ARTICLE XII: PROTECTION

12.1 Seller shall construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Appendix A, Prudent Electrical Practices, the National Electrical Code, the National Electrical Safety Code and any other applicable local, state, and federal codes. 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 or take such other reasonable steps as Idaho Power deems appropriate under the circumstances. Except in the case of an emergency, Idaho Power will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 13.8. Seller shall provide and maintain adequate protective equipment suffi-

cient 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 XIII: OPERATIONS

13.1 Emergency Conditions - Seller agrees that in the event of and during a period of a shortage of power on Idaho Power's system as declared by Idaho Power in its reasonable discretion, Seller shall, at Idaho Power's request and within the limits of reasonable safety requirements as determined by Seller, use its best efforts to provide the requested energy, and shall, if necessary, delay any scheduled shutdown of the Facility.

13.2 Communications - Idaho Power and Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility, and Seller shall report to Idaho Power at the times and in the manner set forth in Appendix A of this Agreement.

13.3 Energy Acceptance - Idaho Power shall be excused from accepting and paying for Net Firm Energy delivered by Seller to the Point of Delivery under the following circumstances:

13.3.1 If it is prevented from doing so by an event of force majeure.

13.3.2 If Idaho Power determines that curtailment, interruption or reduction of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, 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 Firm Energy deliveries for a period that exceeds twenty (20) consecutive days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Firm Energy at a rate determined by dividing the seasonal Net Firm Energy amount specified in paragraph 6.2 for the season in which the interruption or curtailment occurs by the number of hours in that season. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

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

13.5 Generator Ramping - Idaho Power shall have the right to limit the rate that generation is changed at startup, during normal operation or following reconnection to Idaho Power's system. Generation ramping may be required to permit Idaho Power's voltage regulation equipment time to respond to changes in power flow.

13.6 Scheduled Maintenance - On or before January 1 of each year, Seller shall submit a proposed maintenance schedule for that year and Idaho Power and Seller shall mutually agree as to the acceptability or unacceptability of the proposed date(s). The Parties' determination as to the acceptability of Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices and neither Party shall unreasonably withhold its acceptance of the proposed date for scheduled maintenance.

13.7 Maintenance Coordination - The Parties shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.

13.8 Contact Prior to Curtailment - Idaho Power will contact Seller prior to exercising its rights to curtail, interrupt or reduce deliveries from Seller. Seller understands that in the case of emergency circumstances, no notice will be given to Seller prior to interruption, curtailment, or reduction.

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, 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 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 coverages:

14.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to fifteen percent (15%) of the total cost of the Facility, or \$1,000,000, whichever is greater, each occurrence, combined single limit. The deductible for such insurance shall not exceed one-half of one percent (0.5%) of the total cost of the Facility.

14.2.2 Property Insurance for catastrophic perils with minimum limits not less than sixty percent (60%) of the total cost of the Facility. The Property Insurance coverage will be written on a replacement cost basis and will include:

- (a) Standard fire policy.
- (b) Extended coverage endorsement.
- (c) Vandalism and malicious mischief endorsement.
- (d) Earthquake and flood insurance.
- (e) The deductible for the above property insurance coverage shall not exceed one percent (1%) of the total cost of the Facility.

14.2.3 Boiler and machinery insurance with minimum limits not less than ninety percent (90%) of the total cost of the equipment covered in (a) below:

(a) All boiler and machinery coverage must be written on a "comprehensive form" basis to provide coverage against the sudden and accidental breakdown of all boilers, machinery and electrical equipment, turbines, generators, and switchgear.

(b) Coverage under this insurance must be written on a "Replacement Cost" basis.

(c) The deductible for this insurance shall not exceed two percent (2%) of the total cost of the equipment covered in (a) above.

14.2.4 Business Interruption (Loss of Income) Insurance with minimum daily limits not less than seventy-five percent (75%) of the Facility's estimated gross daily electrical revenue and total policy limits not less than twenty percent (20%) of the Facility's estimated gross annual revenue from the sale of electrical energy:

(a) Coverage will include Seller's loss of earnings when business operations are curtailed or suspended because of a loss due to an insured peril. Coverage may be written on an actual loss sustained basis.

(b) This insurance coverage must be endorsed to the Property Insurance Policy and the Boiler and Machinery Insurance Policy.

(c) The deductible for this insurance coverage shall not exceed ten (10) days gross daily revenues from the sale of electrical energy.

(d) Estimated gross daily revenue and estimated gross annual revenue shall be computed on the basis of the kWh production estimates contained in paragraph 6.2.

14.2.5 All of the above insurance coverages shall be covered with insurance companies with an A.M. Best rating of A- or better and shall include:

(a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable;

(b) A provision stating that such policies shall not be canceled or their limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

(c) In the case of the insurance coverages described in subparagraphs 14.2.1, 14.2.2 and 14.2.3 above, the total cost of the Facility will include any Seller-furnished Disconnection Equipment and/or Interconnection Facilities. The total cost of the Facility and total cost of equipment will be adjusted either upward or downward to reflect the current replacement cost of the Facility or equipment. This adjustment will be based on either (1) an appraisal made by, or for, the Seller's insurance company, or (2) the Handy-Whitman Index "Cost Trends of Electric Utility Construction -- Plateau Region" other production plant-gas turbo generators as published by Whitman, Requardt & Associates, 2315 Saint Paul St, Baltimore, MD

21218. Such adjustment shall be made, at a minimum, every fifth Contract Year during the term of this Agreement. A copy of these computations and/or appraisals will be submitted to Idaho Power for Idaho Power's review and approval.

14.3 Seller to Provide Certificates of Insurance - As required in paragraph 4.1.5 herein and annually thereafter, Seller shall furnish Idaho Power certificates of insurance, together with the endorsements required therein, evidencing the coverages as set forth above.

14.4 Seller to Provide Copies of Policies of Insurance - Within one hundred twenty (120) days after the Operation Date, and within ninety (90) days of the effective date of any modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have been no changes to the policy in lieu of providing the required certified copy of the policy.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages 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.

#### ARTICLE XV: LAND RIGHTS

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

15.2 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 15.4, 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 15.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 15.2.

15.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 15.4, 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 15.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 15.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 15.3.

15.4 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 XV. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 15.2 and 15.3 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 XV.

#### ARTICLE XVI: FORCE MAJEURE

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, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority, 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 event of 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.

(4) Seller's obligation to pay liquidated damages as provided in paragraph 21.3 will not be excused by an event of force majeure.

#### ARTICLE XVII: LIABILITY; DEDICATION

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, nor affect the status of Idaho Power

as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XVIII: SEVERAL OBLIGATIONS

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 XIX: WAIVER

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 XX: CHOICE OF LAWS

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho.

#### ARTICLE XXI: DISPUTES AND DEFAULT

21.1 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.

21.2 Default - 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, then, and only then, may the nondefaulting Party pursue its legal or equitable remedies.

**21.3 Seller Permanent Curtailment** - If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix C, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment. The lump sum repayment amount will bear interest from sixty (60) days after Idaho Power gives or receives notice of Seller's permanent reduction of the Annual Net Firm Energy amount, until paid, at a rate equal to interest rates specified in Idaho Code §28-22-104(2) or its successor Idaho Code provision in effect during each month of that period. For purposes of this paragraph, Idaho Power's voluntary termination in accordance with paragraph 5.2.2 shall not be considered a permanent curtailment. The Parties further agree that this paragraph does not constitute a waiver by Idaho Power of its right to pursue its remedies under paragraph 21.6 or by either Party of their right to an award of pre and post judgement interest, costs and attorneys fees as permitted by law in any litigation arising out of this Agreement.

**21.4 Security for Repayment Obligation** - During the full term of this Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power if Seller defaults under this Agreement. In accordance with Commission Order Nos 21690, 21800 and Declaratory Order No. 23949 and subject to the provisions of paragraph 21.2 above, this assurance will be provided as follows:

**21.4.1 Insurance** - Seller shall comply with the provisions of paragraph 14.2. If Seller fails to comply, such failure will be an event of default.

(a) In the case of the liability insurance coverage, (paragraph 14.2.1), a default will be a material breach and may only be cured by Seller supplying evidence that the liability insurance coverage has been replaced or reinstated.

(b) For all other insurance coverages described in paragraph 14.2, the default may be cured by replacement or reinstatement of the insurance, or by Seller posting liquid

security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100%) of the accumulated overpayment liability specified for that year in Appendix C.

21.4.2 Debt Service Reserve Account - (a) During the period of time in which the Facility acts as security for a first mortgage lien which is senior to Idaho Power's security interest in the Facility as described in paragraph 4.1.8 above, Seller shall maintain a debt service reserve account containing cash in an amount equal to twenty percent (20%) of the Facility's estimated gross revenue from Net Firm Energy sales for the first Contract Year rounded to the nearest \$1,000. With Idaho Power's consent, this debt service reserve account may be coordinated with any debt service reserve account required by Seller's first mortgage lender to avoid duplication of accounts.

(b) Upon full satisfaction of the above-referenced first mortgage lien and when Idaho Power's security interest becomes the senior security interest in the Facility, the escrow manager will pay to Seller the amount in the debt service reserve account which exceeds five percent (5%) of the Facility's estimated gross revenue for the next Contract Year rounded to the nearest \$1,000.

(c) The amount to be retained in the debt service reserve account will be recalculated every five (5) Contract Years to reflect any increases or decreases in the Adjustable Payment amount under paragraph 7.1.2 of the Agreement.

(d) During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, the escrow manager of the debt service reserve account will be instructed to only release funds from the debt service reserve account to the holder of the first mortgage lien. Funds from said account shall be released only when, and only to the extent that Seller certifies to the escrow manager that after payment of all operating costs, the Facility's revenues are insufficient to make full debt service and/or lease payments on the Facility.

(e) During the period when Idaho Power's security interest is the senior security interest in the Facility, the escrow manager will be instructed to only release funds from

the debt service reserve account to pay operating costs for the Facility.

(f) For purposes of the debt service reserve account, operating costs are limited to those costs necessary for the operation of the Facility such as taxes, insurance expenses, lease payments and other ordinary and necessary operating expenses. Operating costs shall not include any disbursements other than lease payments which would constitute a profit or return on investment.

(g) After any release of funds by the escrow manager, Seller shall be obligated to restore the debt service reserve account to the amounts provided for in paragraphs 21.4.2(a) and (b), whichever is applicable, prior to Seller disbursing funds which would constitute a profit or return on investment. Until the debt service reserve debt account is fully restored, Seller will, within sixty (60) days of the completion of each Contract Year, provide the escrow manager and Idaho Power with a report prepared by Seller's independent outside accountants showing that Seller has not breached its obligations under this paragraph 21.4.2(g).

(h) Any breach of paragraph 21.4.2(g) by Seller will be an event of default and will require posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100%) of the accumulated overpayment amount specified for that year in Appendix C.

21.4.3 In lieu of establishing and funding the above-described debt service reserve account, with Idaho Power's prior written consent Seller may substitute irrevocable standby letter(s) of credit, book entry certificate(s) of deposit or other security instrument(s) acceptable to Idaho Power. During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, Idaho Power and the first mortgage lender will be joint beneficiaries of the security instrument(s). When Idaho Power's security interest is the senior security interest in the Facility, Idaho Power will be the sole beneficiary of the security instrument(s).

21.4.4 Engineer's Certification - Every three (3) years for the first twelve (12)

years after the Operation Date, and every two (2) years thereafter during the full term of this Agreement, Seller will supply Idaho Power with an Engineer's Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the State of Idaho, which ongoing O & M Certificate shall be in the form specified in Appendix E. Seller's failure to supply the required certificate will be an event of default. Such a default may be cured by Seller providing the required certificate or by posting liquid security in accordance with paragraph 21.5 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix C.

21.4.5 Maintenance Escrow - During the full term of this Agreement, Seller shall maintain and fund the maintenance escrow account described in paragraph 4.1.7 and Commission Order No 21690. If at any time Seller fails to maintain or fully fund that maintenance escrow account, such a failure will be an event of default. Such default may be cured by reinstating the required escrow account or by Seller posting liquid security in accordance with paragraph 21.5 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix C.

21.4.6 Security Interests - During the full term of this Agreement, Seller shall maintain compliance with all of the requirements of Idaho Power's security interests described in paragraph 4.1.8 of this Agreement and Commission Order No 21690. Seller's failure to comply with those requirements, will be an event of default and in addition to any other remedies available under this Agreement, Commission Order No 21690, and the security interests, Seller will be required by Idaho Power to post liquid security in accordance with paragraph 21.5 in an amount equal to thirty-five percent (35%) of the accumulated overpayment liability specified for that year in Appendix C. Seller recognizes that in accordance with Commission Order No 21690, an event of default under either or both of paragraphs 21.4.3 or 21.4.4 constitutes an event of default under paragraph 21.4.5 and in that event the obligation to post liquid security under paragraphs 21.4.3 through 21.4.5 is cumulative.

21.4.7 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 the Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses Seller is required to obtain during the term of this Agreement. 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 a default.

(a) In the case of non-compliance with the required governmental permits, an event of default will be a material breach and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

21.4.8 "K" Factor and Estoppel Certificates - In reliance upon Seller's compliance with paragraphs 4.1.10 and 4.1.11, upon execution of this Agreement by Idaho Power, and approval of this Agreement by the Commission, application of the "K" factor as described in Commission Order No. 21690 is suspended. Every three (3) years during the term of this Agreement, commencing with the third anniversary of the Operation Date, Seller shall deliver to Idaho Power estoppel certificates from Seller and Seller's fuel supplier, fuel transporter and thermal energy purchaser certifying that the contracts described in paragraphs 4.1.10 and 4.1.11 are unmodified and in full force and effect and that there are no uncured defaults by either party.

If Seller fails to provide the required estoppel certificates and the Parties are unable to agree on alternative security, the Parties agree to submit to the jurisdiction of the Commission for a determination of whether the "K" factor and the obligation to post liquid security, as described in this Agreement and Commission Order No. 21690, should be applied to the Facility.

21.5 Liquid Security - If, pursuant to this Agreement or Commission Order No 21690, Seller becomes obligated to post liquid security, such obligation may be satisfied by Seller's (1)

depositing cash in an escrow to be held and managed by a bank or savings & loan association located and in good standing in the State of Idaho; or (2) providing an irrevocable standby letter of credit acceptable to Idaho Power. The escrow holder and the escrow instructions for the cash deposit will be acceptable to both Idaho Power and Seller. Payment of all taxes on the amounts deposited in the escrow will be the obligation of the Seller. The liquid security escrow account will be maintained separately from the maintenance reserve account described in paragraph 4.1.7. Failure to maintain and provide the liquid security required by this Agreement and Commission Order Nos 21690 and 21800 shall be an event of default.

**21.6 Equitable Remedies** - If as described in paragraph 21.3, Seller permanently curtails all or part of its deliveries of Net Firm Energy to Idaho Power and (1) within three (3) years after said curtailment Seller or its successors or assigns sells or delivers or attempts to sell or deliver said curtailed capacity or energy to any entity other than Idaho Power without Idaho Power's prior written consent, such sale or delivery or attempted sale or delivery shall be a breach of this Agreement; or (2) if, within three (3) years after such permanent curtailment Seller or its successors or assigns attempts to require Idaho Power to purchase said permanently curtailed Net Firm Energy at a rate that exceeds the rates contained in this Agreement, such attempt will be a breach of this Agreement. The remedy at law for the above described breaches shall be inadequate and Idaho Power shall be entitled to injunctive relief and specific performance of this Agreement. The provisions of this paragraph 21.6 shall survive any termination of this Agreement (other than an optional termination under paragraph 5.2) for the periods provided for in this paragraph.

**21.7 Refund of Lump Sum Repayment** - If Seller has made a lump sum repayment as required by paragraph 21.3 and;

- (1) Within three (3) years of said payment Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power at the rates, terms and conditions contained in this Agreement for the number of Contract Years that were remaining under this Agreement at the time of the permanent curtailment; then

(2) Idaho Power will resume its purchases from the Facility and will refund a portion of the lump sum repayment amount as follows:

- (a) If sales resume within one year of the payment of the lump sum repayment amount, Idaho Power will refund 90% of the lump sum repayment amount;
- (b) If sales resume within two years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount;
- (c) If sales resume within three years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount.

#### ARTICLE XXII: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXIII: COMMISSION ORDER

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 XXIV: SUCCESSORS AND ASSIGNS

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 transfer of Seller's rights or obligations under this Agreement by merger or otherwise nor any assignment hereof by Seller shall become effective without the written consent of Idaho Power being first obtained. Such consent shall not be unreasonably withheld. 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 XXV: MODIFICATION

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 XXVI: TAXES

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 Interconnection Facilities.

#### ARTICLE XXVII: NOTICES

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:           Glenns Ferry Cogeneration Partners, Ltd.  
                          Attn: Alan K Forbes  
                          12150 E Briarwood, Suite 145  
                          Englewood, Colorado 80112

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

**ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS**

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

- Appendix A - Standards for Interconnection and Metering**
- Appendix B - Special Facilities, Point of Delivery,  
Metering, and Operation Date**
- Appendix C - Lump Sum Refund Payment**
- Appendix D - Operating Instructions**
- Appendix E - Engineer's Certifications**
- Appendix F -**
- Appendix G -**
- Appendix H - Determination of Eligibility for Operation Date**

ARTICLE XXIX - ENTIRE AGREEMENT

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:

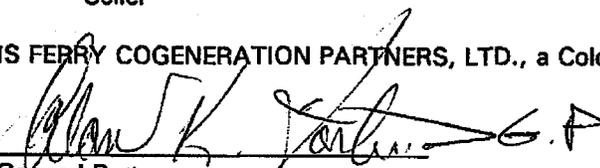
IDAHO POWER COMPANY, an Idaho corporation

By   
Vice President, Power Supply

Date: Dec 7, 1992

"Seller"

GLENN'S FERRY COGENERATION PARTNERS, LTD., a Colorado limited partnership

By  G.P.  
General Partner

Date: Dec 9, 1992

1. H F Wright
2. B L Kline
3. R W Stahman
4. W A Mott

FW  
B. Kline  
RWS  
WAM

5. J M Collingwood
6. L R Gunnoe
7. J W Marshall



STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 7<sup>th</sup> day of December, 1992, before me, the undersigned, a Notary Public, personally appeared Jan B Packwood, personally known, who being duly sworn, did say that he is the Vice President, Power Supply of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

B J Schauffelberger  
Notary Public for Idaho  
Residing at Boise, Idaho

My Commission Expires: July 27, 1993

STATE OF COLORADO )  
 ) ss  
County of Arapahoe )

On this 9<sup>th</sup> day of December, 1992, before me, the undersigned, a Notary Public, personally appeared Alan K Forbes, personally known, who being duly sworn, did say that he is the General Partner of Glens Ferry Cogeneration Partners, Ltd. that executed the within instrument, and acknowledged to me that he executed the same as the free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Amha Feist  
Notary Public for  
Residing at: Parker, Colorado

My Commission Expires: 5-20-96

## APPENDIX A

### STANDARDS FOR INTERCONNECTION AND METERING

#### A-1 GENERAL PROVISIONS

A-1.1 It is the policy of Idaho Power to permit Seller to operate its Facility in parallel with Idaho Power's electric system, whenever this can be done without adverse effect to Idaho Power's equipment, personnel or other customers.

A-1.2 These guidelines contain the minimum metering, interconnection, protection, operation, and communications requirements for the safe and effective parallel operation of Seller's Facility with Idaho Power's system. Although these guidelines are established to provide a uniform approach for evaluating Seller's generation projects, each interconnection must be examined by Idaho Power individually. Idaho Power and the Seller will be guided by this document, which is a part of the Firm Energy Sales Agreement, in planning an interconnection between Idaho Power's system and the Seller.

A-1.3 Idaho Power may provide limited technical assistance for Seller, but will not perform any engineering, construction or repair work on power production equipment.

#### A-2 GENERAL DESIGN CONSIDERATIONS

A-2.1 All Seller generators larger than twenty (20) kVA shall be three-phase generators connected to three-phase circuits. Generators twenty (20) kVA and smaller may be either three-phase or single-phase, as approved by Idaho Power.

Due to physical limitations within Idaho Power's transmission and distribution systems, induction machine sizes will be limited to confine voltage flicker within acceptable limits. Each generation site is unique and Idaho Power will determine the appropriateness of any proposed machine type for the site and interconnection.

A-2.2 Except in certain instances to be determined by Idaho Power, Seller's generator(s) shall be isolated from Idaho Power's system by a transformer. Transformer type and connection will be

specified by Idaho Power. The Seller may be required to limit the fault current contribution to Idaho Power's system by generator and/or transformer impedance, neutral grounding, transformer connections or other means.

A-2.3 Idaho Power will not assume any responsibility for protection of the Seller's generator or of any other portion of the Seller's electrical equipment. The Seller is fully responsible for protecting its equipment from faults or disturbances on Idaho Power's system. For example, most transmission and distribution line circuit breakers on Idaho Power's system will reclose automatically after they have attempted to clear a fault. The reclose time delays and system impedances are available from Idaho Power and should be considered very carefully by the Seller to determine if damage to the Seller's facility is possible. Dead line and synchronism check systems can be installed, at Seller's expense, that will minimize the possibility of a line reclosing into a generator while it is still connected to the system. In some cases, Idaho Power will require these dead line and synchronism check systems.

A-2.4 Seller is hereby notified that certain conditions on Idaho Power's system may cause negative sequence currents to flow in the Seller's generator. It is the sole responsibility of the Seller to protect its equipment from excessive negative sequence currents, reverse power flow, and single phasing.

### A-3 METERING AND TELEMETRY REQUIREMENTS

A-3.1 Unless otherwise agreed by the Parties, metering will be provided for recording net output of the Facility and will be separate from any metering of Seller's load. Metering required will be determined by Idaho Power on a case-by-case basis, but will generally follow the guidelines below:

A-3.1.1 Capacity Under 750 kW - Two kWh/demand meters; one measuring power flow into Seller's facilities and one measuring power flow into Idaho Power's system;

A-3.1.2 Capacity of 750 kW to 4999 kW - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed, and connected to the project voice communications circuit supplied by the developer with a first priority given to Idaho Power's use of said communication circuit. An electro-mechanical kWh backup meter will also be installed; Additionally, if a project is interconnected with Idaho Power's transmission system, all necessary telemetry and communication equipment and a dedicated voice quality

unconditioned data line may be installed to provide continuous instantaneous telemetering of net generation to Idaho Power's Designated Dispatch Facility;

**A-3.1.3 Capacity of 5000 kW and Above** - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed and connected to a voice communications circuit supplied by the developer with a first priority given to Idaho Power's use of said communication circuit. An electro-mechanical kWh backup meter will also be installed. In addition, all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line will be installed to provide continuous instantaneous telemetering of net generation to Idaho Power's Designated Dispatch Facility.

**A-4 FACILITY PROTECTION**

**A-4.1** The Seller has full responsibility for the maintenance of its generating equipment and the equipment protecting the Facility. If, in the opinion of Idaho Power, the Seller has failed to provide proper maintenance of the Facility or its protection equipment and this failure could adversely impact Idaho Power or other Idaho Power customers, Idaho Power can require the Seller to cease parallel operation.

**A-5 SYNCHRONOUS GENERATORS**

**A-5.1** All synchronous machines five (5) MVA or larger shall be equipped with a speed governor operated with a speed droop characteristic of five percent (5%).

**A-5.2** A check interlock for synchronizing of the Seller's generator(s) is required.

**A-5.3** Synchronous generators shall be capable of operating continuously at maximum power output within five percent (5%) of rated voltage and anywhere within a power factor range of from ninety percent (90%) lagging to ninety-five percent (95%) leading.

Synchronous generators shall be equipped with an excitation system and a voltage regulator which are capable of automatically controlling voltage at the generator terminals or a point farther into the system through the use of compensation.

The excitation system shall be equipped with over and under excitation limiters or equivalent systems which will permit the voltage regulator to utilize the full reactive capability of the machine.

In some cases, because of specific system requirements in the area of the interconnection, this general rule may be modified by Idaho Power to include:

- 1) power factor or reactive control of the voltage regulator;
- 2) use of a programmable controller to vary the reactive output of the machine based upon a preset time schedule or other control criteria; or
- 3) Idaho Power may provide a remote signal which will be used to adjust the voltage or power factor regulator setting.

Facilities used to control reactive output including both local and remote equipment will be at the Seller's expense as specified in B-11 of Appendix B.

Idaho Power may also require the use of a power system stabilizer (PSS) on machines with high speed excitation systems.

Idaho Power will provide the required operating criteria (voltage, power factor, schedules, etc.) and/or settings. Idaho Power may change these criteria from time to time as system requirements change. If after notification of operational deficiencies the Facility is not operated as specified, or if the Seller does not make necessary corrections within a reasonable time, a default will be declared pursuant to Article XXI.

A-5.4 Due to the ability of large synchronous generators to influence Idaho Power's system, protective and control relaying, in addition to the usual voltage frequency and fault relaying, may be required by Idaho Power. If required, this will consist of generator relaying for phase-to-phase and three-phase fault detection. Idaho Power will specify the relay type and determine settings. This relaying will be tested annually by Idaho Power and the actual cost of this testing will be paid by the Seller.

#### A-6 INDUCTION GENERATORS

A-6.1 Overvoltage can become a serious problem when an induction generator and a portion of the transmission or distribution facilities are isolated from the system. Overvoltage relaying shall be provided that will open the generator breaker in the event that the voltage reaches predetermined limits consistent with the overvoltage capability of the generator and the system. Undervoltage protection

may also be required. On larger units, underfrequency and overfrequency relaying may both be required.

A-6.2 Induction generators require reactive support to operate. The supplemental reactive required is that amount required to correct the Facility to unity power factor. The reactive may be supplied by either Idaho Power's system or from capacitive correction at the Facility or both. Idaho Power will charge the Seller (as specified in Appendix B) for reactive that is provided from Idaho Power's system.

At some Facilities, because of system considerations, it may not be practical to provide all of the reactive compensation at the Facility. In these instances, Idaho Power shall specify the power factor and compensation necessary at the Facility.

The Seller will have the option to furnish the reactive compensation that is required at the Facility. If the Seller furnishes the reactive compensation, the Facility must be operated within five percent (5%) of the specified power factor. The Seller must also design the Facility to avoid possible overvoltage that can occur under certain conditions when capacitors are applied to the generator terminals.

#### A-7 DC TO AC CONVERTERS

A-7.1 Direct current generators may be operated in parallel with Idaho Power's system through a synchronous inverter. The inverter installation will be designed such that an Idaho Power system interruption will result in the immediate removal of the inverter power flow to Idaho Power. Harmonics and/or spurious frequencies generated by the Seller's generator-inverter combinations must be limited to avoid causing any reduction in quality of electric service to Idaho Power's customers.

#### A-8 SWITCHING REQUIREMENTS

A-8.1 Idaho Power reserves the right to open and secure by lock any disconnecting device without prior notice to Seller for any of the following reasons:

A-8.1.1 System emergency;

A-8.1.2 Inspection of the Seller's Facility protective equipment reveals a condition which might adversely impact Idaho Power or Idaho Power's customers;

A-8.1.3 Seller's generating equipment interferes with Idaho Power's customers, or system.

A-8.2 Seller shall maintain a written record of all operating (opening and closing) by Seller of the Seller's interconnection with Idaho Power. Each operation will be recorded by the date, hour and minute and will include the generator kWh reading at the time of the operation. This record will be maintained on a monthly basis and the original will be mailed to Idaho Power on the first business day of the following month. Idaho Power will provide the forms necessary for filing this monthly switching report.

**A-9 GENERATION SCHEDULING AND REPORTING**

A-9.1 For installations under 750 kVA, the Seller shall read its generator kWh/demand meter within the 24-hour period following 12:00 noon on the last day of each month. That kWh meter reading is to be recorded on the Monthly Power Production Switching Report.

A-9.2 For installations 750 kVA and above, see Appendix D.

A-9.3 The written record of the end-of-month meter reading on the Monthly Power Production Switching Report, subject to subsequent review and correction by Idaho Power, will be the basis of payment for energy purchased by Idaho Power from the Seller. An adjustment in the kWhs delivered will be made to compensate for the losses in B-6.

A-9.4 At the end of each month, the Monthly Power Production Switching Report will be mailed to:

Operations and Joint Facilities Accounting  
Idaho Power Company  
P O Box 70  
Boise, Idaho 83707

A-9.5 Payment to the Seller will be made no later than thirty (30) days following receipt of the Monthly Power Production and Switching Report.

**APPENDIX B**  
**SPECIAL FACILITIES, POINT OF DELIVERY, METERING,**  
**AND OPERATION DATE**  
**PROJECT NO 21765151**  
**MAGIC WEST COGENERATION PROJECT**

**B-1 DESCRIPTION OF FACILITY**

The Seller's electrical Facility is described as natural gas fired turbine generator packages with total nameplate rating of less than 10 MW net at 4,160 volts, three phase, 60 Hz.

**B-2 LOCATION OF FACILITY**

The Facility is located in the SE Quarter of Section 29, Township 5 South, Range 10 East, Boise Meridian, Elmore County, at the Magic Valley potato processing facility in Glens Ferry, Idaho.

**B-3 SCHEDULED OPERATION DATE**

Seller has selected January 1, 1995, as the Scheduled Operation Date and December 1, 1994, as the First Energy Date. In making these selections, Seller recognizes that to allow for adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho Power, based on the information supplied by Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and Metering Equipment will be completed in time so as not to delay Seller's achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to Idaho Power, Idaho Power may be required to reschedule its construction of these facilities which could adversely impact Seller's ability to achieve its scheduled First Energy Date.

**B-4 FAILURE TO ACHIEVE OPERATION DATE**

If Seller has not achieved the Operation Date within eleven (11) months of the Scheduled Operation Date, such failure shall be deemed to be an event of default pursuant to Article XXI.

**B-5 POINT OF DELIVERY**

The Point of Delivery of energy from the Seller to Idaho Power will be the 138,000 volt bushings of the Seller's transformer. The 11,000 kVA transformer will be owned and maintained by the Seller. The transformer connection will be 138 kV grounded Wye/4.16 kV Delta.

**B-6 LOSSES**

Until modified by mutual agreement, losses shall be set at 2.00% of the metered energy delivered. When Seller has supplied Idaho Power with the data needed to properly analyze the Losses associated with the Facility, Idaho Power and Seller will review that data and re-set the loss factor for the Facility. If the Parties are unable to agree, they will submit the dispute to the Commission for resolution. Any adjustment will be retroactive to the First Energy Date.

**B-7 METERING AND TELEMETRY**

The Metering Equipment, will be on the 4,160 volt side of the Seller's step up transformer. Idaho Power provided metering equipment will consist of: current and potential transformers, a meter enclosure, an electronic bi-directional meter for measuring net generation, an isolation relay, transducer, communication equipment, and all meter wiring. Seller provided metering equipment will consist of all conduit and junction boxes from the metering transformers to the meter enclosure and all high side conductor and connectors. Seller will arrange for and make available at Seller's cost, a telephone circuit dedicated to Idaho Power's use terminating in an RJ-11 receptacle to be used for load profiling and another telephone circuit dedicated to Idaho Power's communication equipment for continuous telemetering of the project's kilowatt output to Idaho Power's Designated Dispatch Facility. The meter will register kilowatt-hours and kilowatts of demand. Idaho Power provided meter and communication equipment will be owned and maintained by Idaho Power with total cost of purchase, installation, operation and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller.

**B-8 SPECIAL FACILITIES**

The construction of approximately 3/4 mile of three phase 138,000 volt single pole transmission line with switching provisions and the reconstruction of approximately 1/4 mile of 12.5 kV

distribution circuit will be supplied and maintained by Idaho Power. The total cost of these facilities will be reimbursed to Idaho Power by the Seller.

**B-9 REACTIVE POWER**

The Seller shall operate the synchronous generators within plus or minus 5% of unity power factor, or as listed in Appendix A.

**B-10 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 and will be located at the Point of Delivery. Idaho Power will supply a three phase 138,000 volt gang operated disconnect switch, a 138,000 volt potential transformer, a 138,000 volt circuit switcher and a relay cabinet containing relays, associated wiring, logic, and batteries. Seller will install all Idaho Power supplied equipment, and all wiring and conduit necessary for the operation of the interconnection equipment. Idaho Power will supply details for the interconnection panel and will connect and test the equipment prior to operation of the facility. Seller will provide drawings of their interconnection wiring for engineering approval before installation. The total cost of the interconnection equipment, connection and testing will be reimbursed to Idaho Power by the Seller.

**B-11 COSTS**

The total cost of the 138,000 kV transmission line Special Facilities is \$160,000. The total cost of the distribution line Special Facilities is \$3,444. The total cost of the Metering Equipment is \$8,236. The total cost of the communication equipment is \$8,500. In addition, there will be a monthly charge for the communication circuit lease cost associated with the telemetry equipment. The communications circuit lease is \$280.00 per month as of the date of this Agreement. Seller recognizes that the monthly communications circuit charge may be adjusted by Idaho Power as the cost to Idaho Power is adjusted by the owner of the communications circuit. The total cost of the Disconnecting Equipment is \$93,468. The total cost to be paid

by the Seller is \$273,648. This represents the amount that will be charged by Idaho Power if the Seller makes the payment on or before January 18, 1993. If the Seller does not make this payment by the specified date, the costs will be subject to update. Idaho Power will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of the agreement Seller will pay Idaho Power the operation and maintenance charge specified in Schedule 72 INTERCONNECTIONS TO NON-UTILITY GENERATION or its successor schedules(s). This monthly operation and maintenance charge will be calculated based on \$160,000.00 of 138 kV rated Interconnection Facilities plus an additional \$110,204.00 of Interconnection Facilities rated below 138 kV. The total cost shown above is an estimate calculated on the basis of average costs. When the actual total cost is determined, Idaho Power will adjust the total cost amount to reflect the actual total cost incurred by Idaho Power. Beginning with the month of this adjustment, the operation and maintenance charges will also be adjusted. When the actual total cost is known, within sixty (60) days Idaho Power will refund any overpayment or Seller will remit any underpayment.

#### B-12 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. If Seller elects not to retain ownership of the Interconnection Facilities but instead wishes that Idaho Power purchase such facilities from Seller at the net salvage value, Idaho Power may then be invoiced by Seller for the net salvage value estimated by Idaho Power for the interconnection facilities and shall pay said amount to Seller within thirty (30) days after receipt of said invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho Power.

APPENDIX C

LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT  
OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT  
UNDER 20-YEAR CONTRACT

<b>Contract Year of Curtailment Commencement</b>	<b>Dollars Per Annual Megawatt Hour</b>
1	31
2	44
3	57
4	69
5	81
6	92
7	102
8	111
9	118
10	124
11	128
12	130
13	128
14	124
15	116
16	104
17	87
18	65
19	36
20	18

APPENDIX D

OPERATING INSTRUCTIONS FOR PLANTS OVER 750 KW

1. Prior to initial start-up at least one day in advance the Project shall:
  - A. Provide Idaho Power's System Scheduling at the Boise Bench System Dispatching Center with an estimate of the hourly generation that is expected to be produced during the first scheduled test day. The phone number for System Scheduling is listed below.
  - B. Notify the Division Substation Supervisor of project start up plans. The phone number is listed below.
  - C. The kWh meter should be read and entered on the Monthly Power Production and Switching Report (Form No: Cogen CAD-A-1).
2. Before 10:00 a.m. on each normal work day, after the initial start-up, the Project will report to the system scheduling office the previous day's actual generation based upon midnight to midnight meter readings and the estimate of generation planned for the following day or days. The phone number to report the actual generation and scheduling estimate is listed below. Note that the System Scheduling number is answered only between the hours of 8 a.m. to 5 p.m. Mountain Time, on weekdays and that generation estimates must be provided for weekend days and holidays.
3. Each time the generator breaker is closed or opened (including testing and normal operation), Idaho Power's system dispatchers must be notified by phone as soon as possible. Prompt reporting is very important. The Designated Dispatch Facility is manned 24 hours a day, 7 days a week, and the phone number is listed below.
4. In addition to promptly notifying the system dispatchers, the record of each breaker opening and closing must be entered on the Monthly Power Production and Switching Report mentioned in 1-C above.
5. For questions or problem concerning:

Power Scheduling: (208) 383-2931

System Dispatching: (208) 383-2826

Metering: Meter Engineer - Boise  
(208) 383-2751

or

Division Metering Supervisor

Payette	(208) 642-6284
Boise	(208) 322-2029
Twin Falls	(208) 736-3284
Pocatello	(208) 236-7771

**Substations:      Division Substation Supervisor**

Payette	(208) 642-6262
Boise	(208) 322-2064
Twin Falls	(208) 736-3237
Pocatello	(208) 236-7774

**Billing:      Operations and Joint Facilities Accounting - Boise  
(208) 383-2593**

**Contracts:    Customer Generation - Boise  
(208) 383-2427**

**6.    Toll free numbers for Operating Reporting:**

System Scheduling	1-800-356-4328
System Dispatching	1-800-348-4328

APPENDIX E

CERTIFICATION OF DESIGN ENGINEER

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

1. That Design Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.

2. That Design 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 Certification is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Cogeneration Project 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 Design Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.

6. That Design Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.

7. That Design Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, Seller furnished interconnection equipment and other Project facilities and equipment.

8. 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.

9. 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.

10. That Design Engineer has supplied the Seller with at least one copy of said Plans and Specifications bearing his Stamp and the words "CERTIFIED FOR IDAHO P.U.C SECURITY ACCEPTANCE" on each sheet thereof.

11. That Design Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(2) of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Certification.

12. That Design 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 \_\_\_\_\_

STATE OF IDAHO )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

APPENDIX E

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 Certification is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Cogeneration Project 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, Seller furnished interconnection equipment and other Project facilities and equipment.

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

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

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

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 \_\_\_\_\_

\_\_\_\_\_  
STATE OF IDAHO )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

APPENDIX E

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 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 Certification is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Cogeneration Project 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.

8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance (O&M Policy) 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 \_\_\_\_\_ (\_\_\_\_) year period.

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

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 \_\_\_\_\_

STATE OF IDAHO )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

APPENDIX E

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 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 Certification is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Cogeneration Project 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.

8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection, and the Project's Policy for Operation and Maintenance (O&M Policy) bearing the words "CERTIFIED FOR IDAHO P.U.C. SECURITY APPROVAL" and the Stamp of the Certifying Engineer. It is Engineer's professional opinion, based on

the Project's appearance, that its ongoing operation and maintenance 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 \_\_\_\_\_ ( ) years.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 21.4.3 of the Agreement, is relying on Engineer's representations and opinions contained in this Certification.

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 \_\_\_\_\_

STATE OF IDAHO )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

## APPENDIX F

Fuel Supplier - Fuel Transporter ("FS") recognizes that Glens Ferry Cogeneration Partners, Ltd. ("GFCP") has elected to sell the electrical output of the Magic West Cogeneration Facility to Idaho Power at levelized rates under a twenty (20) year Firm Energy Sales Agreement. FS understands and agrees that Idaho Power will be a "Lender" as that term is defined and used in the Fuel Supply and Fuel Transportation Agreements. FS understands that under the Firm Energy Sales Agreement if GFCP permanently curtails its sales of firm electrical energy to Idaho Power prior to the conclusion of the twenty (20) year term of the Firm Energy Sales Agreement, GFCP's election to be paid levelized rates will trigger a substantial overpayment liability payment to Idaho Power. FS further recognizes that Idaho Power's willingness to purchase firm energy from the Magic West Cogeneration Facility at levelized rates was based, in part, on FS's commitment to supply and deliver fuel in an amount sufficient to allow the Magic West Cogeneration Facility to generate the annual Net Energy amount in the Firm Energy Sales Agreement each year during the full twenty (20) year term of the Firm Energy Sales Agreement. FS recognizes that if it terminates or permanently curtails its sales/deliveries of fuel to GFCP, such termination - curtailment could cause a permanent curtailment, as described in paragraph 21.3 of the Firm Energy Sales Agreement. FS and GFCP agree that Idaho Power is an intended third-party beneficiary of the Fuel Supply and Fuel Transportation Agreements. GFCP and FS further agree that they will be jointly and severally liable to Idaho Power for any damages Idaho Power may incur as a result of an uncured breach by FS of the conditions and covenants of the Fuel Supply/Fuel Transportation Agreements, and such uncured breach results in any permanent curtailment by GFCP.

## APPENDIX G

Magic West, Inc. ("MW") recognizes that Glenns Ferry Cogeneration Partners, Ltd. ("GFCP") has elected to sell the electrical output of the Magic West Cogeneration Facility to Idaho Power at levelized rates under a twenty (20) year Firm Energy Sales Agreement. MW understands and agrees that Idaho Power will be a "Lender" as that term is defined and used in the Thermal Energy Service Agreement. MW understands that under the Firm Energy Sales Agreement if GFCP permanently curtails its sales of firm electric energy to Idaho Power prior to the conclusion of the twenty (20) year term of the Firm Energy Sales Agreement, GFCP's election to be paid levelized rates will trigger a substantial overpayment liability payment to Idaho Power. MW further recognizes that Idaho Power's willingness to purchase firm energy from the Magic West Cogeneration Facility at levelized rates was based, in part, on MW's commitment to purchase sufficient thermal energy under the Thermal Energy Service Agreement to assure the Magic West Cogeneration Facility will be a Qualifying Facility under PURPA for the full twenty (20) year term of the Firm Energy Sales Agreement. MW recognizes that if it terminates or permanently curtails its purchases of thermal energy from GFCP, the Magic West Cogeneration Facility may lose its qualifying facility status. Such loss of qualifying facility status will be a default under the Firm Energy Sales Agreement and would cause a permanent curtailment, as described in paragraph 21.3 of the Firm Energy Sales Agreement. MW and GFCP agree that Idaho Power is an intended third-party beneficiary of the Thermal Energy Service Agreement. GFCP and MW further agree that they will be jointly and severally liable to Idaho Power for any damages Idaho Power may incur as a result of the loss of the Magic West Cogeneration Facility qualifying facility status, if such loss of qualifying facility status is a result of an uncured breach by MW of the conditions and covenants in the Thermal Energy Service Agreement, and such breach results in the failure by MW to purchase the amounts of thermal energy required to maintain qualifying facility status.

## APPENDIX H

### DETERMINATION OF ELIGIBILITY FOR OPERATION DATE

1. Prior to initial startup and during the determination of eligibility for an Operation Date, the Facility will observe all the applicable requirements of APPENDIX C - OPERATING INSTRUCTIONS FOR PLANTS OVER 750 kW.
2. The test period ("Test Period") for determination of eligibility for an Operation Date shall be thirty (30) consecutive days.
3. Concurrently with the start of its Test Period, the Facility will notify Idaho Power, in writing, of the date and time the test is considered to have started.
4. For each 24 hour period during the Test Period, the Facility will record, at a minimum, the net generation, in kWh, delivered (not scheduled) to Idaho Power.
5. The Facility will record all outages occurring during the Test Period. For each outage, the record will include, at a minimum, the starting time, the ending time, the total time the unit was disconnected from Idaho Power's system, and the cause(s) of the outage whether internal or external to the Facility.
6. If the Test Period spans the end of any month, the Facility will report to Idaho Power the previous month's total net generation delivered per the requirements of Paragraph A-9 - GENERATION SCHEDULING AND REPORTING. The total kWh delivered during the month will be correctly designated as having occurred either prior to the date stipulated in 3. above or after the start of the Test Period.
7. Prior to the determination of an Operation Date, all kWhs delivered are Surplus Energy and will be paid for at the Surplus Energy Purchase Price.
8. At the end of the Test Period, the Facility will submit to Idaho Power, in writing, the following:
  - a. the complete daily record per 4.; and
  - b. the total net kilowatt hours delivered to Idaho Power (the sum of 4.); and
  - c. the complete outage record per 5., including total hours of outage; and

- d. a calculation showing the Service Factor (SF) which is defined as

$$SF = (SH/TPH) \times 100\%$$

where

TPH is defined as the Test Period Hours which equals  
24 hours x 30 consecutive days = 720 hours

and,

SH is defined as Service Hours which equals  
TPH - total outage hours (from 8c)

- e. a calculation showing the Net Capacity Factor (NCF) which equals

$$ANG/PRSNFEA \times 100\%$$

where

ANG is defined as actual net generation delivered  
during the Test Period (from 8b)

and,

PRSNFEA is defined as the Pro-Rated Seasonal Net Firm  
Energy Amount (from paragraph 6.2 of the Agreement)

- f. A letter certifying to the above and requesting Idaho Power's concurrence that the Facility has, indeed, demonstrated the necessary degree of completion and reliability and is thus eligible for an Operation Date.

9. The Facility shall be deemed eligible for an Operation Date if during the Test Period both the Service Factor and the Net Capacity Factor are equal to or greater than 90%. If both Factors are shown to exceed the minimum requirement, then the eligible Operation Date for the Facility, per paragraph 1.12, shall be deemed to have occurred at 0001 hours Mountain Time on the day following the day defined in 3. above as the day the test began.
10. If, at the end of the Test Period, either the Service Factor or the Net Capacity Factor (or both) are found to be below 90%, the Test Period will be extended on a day to day basis until such time as at the conclusion of a period of 30 consecutive days, both the Service Factor and the Net Capacity factor are simultaneously above 90%. The date when the Facility becomes eligible for an Operation date, in this case, shall be deemed to have occurred at 0001 hours Mountain Time on the day following the day 30 days previous to the conclusion of the extended Test Period.

11. Once the Facility has accomplished all the requirements of paragraph 5.2, including either 9. or 10. above, Idaho Power will, as part of the routine month-end payment process, and in addition to any payment due for the then current month, remit to the Seller the difference between the appropriate seasonal rate of paragraph 7.1 and the Surplus Energy Purchase Price previously paid for Test Period energy. If the project's Operation Date has been determined per 10., this adjustment will apply to only the 30 consecutive days prior to the conclusion of the Test Period. No interest will be paid on any adjustment amounts.

**EXHIBIT B**

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPROVAL OF )  
 A FIRM ENERGY SALES AGREEMENT )  
 BETWEEN IDAHO POWER COMPANY AND )  
 GLENNS FERRY COGENERATION )  
 PARTNERS, LTD. FOR THE MAGIC )  
 WEST COGENERATION PROJECT. )**

**CASE NO. IPC-E-92-32  
 ORDER NO. 24674**

On December 23, 1992, Idaho Power Company (Idaho Power; Company) and Glenns Ferry Cogeneration Partners, Ltd. (Glenns Ferry) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a Firm Energy Sales Agreement (Agreement) between Idaho Power and Glenns Ferry.

Glenns Ferry is the developer of the Magic West Cogeneration Project (Magic West), a proposed less than ten megawatt natural gas fired turbine generation facility located in the SE Quarter of Section 29, Township 5 South, Range 10 East, Boise Meridian, Elmore County, at the Magic West Potato Processing Facility in Glenns Ferry, Idaho. The estimated annual net firm energy production is 83,220,000 kWh. As represented, the project will be a PURPA "qualifying facility" (QF) prior to interconnection. The Agreement, dated December 9, 1992, provides for levelized rates over a 20-year contract term. Scheduled operation date is January 1, 1995.

Magic West is the first proposed natural gas fired qualified cogeneration facility to offer energy to Idaho Power. Of significance, the Commission,, in its review of the submitted Agreement, notes the following nonstandard and/or unique features:

**Suspension of the "K" Factor**

Application of the "K" factor, per prior Commission Orders, is intended to compensate for the increased risk of loss of motive force attributable to non-hydro generating resources and hydro generating resources with less than optimal water rights. Reference Order Nos. 21690 and 21800, Case No. U-1006-292. The Commission may consider reasonable evidence of

secure motive power as an acceptable means of eliminating the application of the "K" factor. Order No. 23949, Case No. IPC-E-91-13; Order No. 24007, Case No. IPC-E-91-22.

In this case the parties propose "suspending" application of the "K" factor conditioned upon the commitment of Glenns Ferry to provide the following specific and periodic assurances of the firmness of motive force for the term of the Agreement:

- a. Agreement ¶ 4.1.0 requires that as a condition to interconnection, Glenns Ferry must "demonstrate to Idaho Power's reasonable satisfaction that Glenns Ferry has entered into fuel supply and fuel transportation contracts which will provide a firm supply of fuel and fuel transportation in an amount sufficient to allow the facility to generate the annual net firm energy amount each contract year for the full term of the Agreement."
- b. Agreement ¶ 21.4.8 addresses the suspension of the "K" factor and provides a procedure for ongoing monitoring of the status of the contracts between Glenns Ferry, its fuel supplier and fuel transporter. If this monitoring process reveals that any of the various contracts, i.e., the "motive force" for the project, are in default, ¶ 21.4.8 provides that the suspension of the "K" factor can be revoked with Commission concurrence and Glenns Ferry would be obligated to post liquid security consistent with the Commission's Orders in Case No. U-1006-292.
- c. Agreement ¶¶ 4.1.11 and 21.4.8 provide that as a condition of interconnection, Glenns Ferry will also provide assurances similar to (a) and (b) above for the performance of the thermal host, Magic West, Inc. for the full term of the Agreement.
- d. Agreement ¶¶ 4.1.0 and 4.1.11 also provide that Glenns Ferry will include contract provisions in its contracts with a fuel supplier and fuel transporter and the thermal host, Magic West, Inc., that will put these entities on notice that Idaho Power is an intended third party beneficiary of the respective agreements and that Idaho Power can enforce those agreements if necessary. Glenns Ferry has also agreed to place Magic West, Inc., the fuel supplier and fuel transporter on notice that if such fuel supplier and fuel transporter and Magic West, Inc., have uncured breaches of their respective agreements with Glenns Ferry that in the case such uncured breach causes a permanent curtailment by

Glenns Ferry as defined in the Agreement or in the event such uncured breach by Magic West results in the loss of the facility's qualifying facility status, then Idaho Power can proceed directly against Magic West, Inc. and/or the fuel supplier and fuel transporter as appropriate to recover its damages.

**Subsequent determination that facility capacity exceeds ten megawatts**

Agreement ¶ 6.4 provides a procedure for revising the contract rates with the concurrence of the Commission if Idaho Power subsequently determines that the capacity of the Magic West facility actually exceeds ten megawatts.

**Surplus energy**

Agreement ¶ 6.1 provides that all energy produced and delivered by Glenns Ferry in excess of 10,000 kWh per hour will be purchased as surplus energy (Schedule 86).

**Metering and Records**

Thermal Energy Metering Equipment, Agreement ¶ 10.4 and Maintenance and Retention of Records, Agreement ¶ 11.1 provide that Glenns Ferry will install, operate and maintain thermal energy metering equipment and maintain necessary records regarding thermal energy deliveries and natural gas purchases. This metering and record keeping requirement will allow Idaho Power to verify that the efficiencies of the project comply with PURPA and preserve the project's QF status over the full term of the Agreement. Failure to maintain QF status for the full term of the Agreement is an event of default under the Agreement and if uncured could lead to a contract termination.

**Disputes**

Agreement ¶ 21.1 reads as follows: "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."

The Commission reminds the parties that jurisdiction may not be conferred on the Commission by contractual stipulation. The authority and jurisdiction of the Commission is restricted to that expressly and by necessary implication conferred upon it by enabling statutes. The nature and extent of the Commission jurisdiction to resolve actual disputes will be determined by the Commission on an individual case-by-case basis notwithstanding paragraph 21.1 of the Agreement.

The Commission finds that the Agreement signed and submitted by the parties contains avoided cost rates in conformity with applicable Commission Orders. Reference Order No. 24383, Case No. IPC-E-92-15. It is the further opinion of the Commission that the precautions taken by Idaho Power to justify suspension of the "K" factor for the Magic West project satisfy the intent and requirements of the Commission's prior Orders regarding reasonable evidence of a secure motive power. The terms of the Agreement, except as qualified above, are reasonable and we approve them. We also approve payments made under this Agreement as prudently incurred expenses for ratemaking purposes.

### **CONCLUSIONS OF LAW**

#### **I**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the *Idaho Code* and the Public Utility Regulatory Policies Act of 1978 (PURPA).

#### **II**

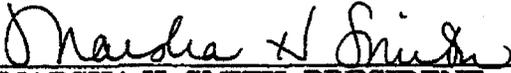
The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from qualified cogeneration facilities, and to implement FERC rules.

### **ORDER**

In consideration of the foregoing and as so qualified, IT IS HEREBY ORDERED that the Firm Energy Sales Agreement between Idaho Power Company and Glens Ferry Cogeneration Partners, Ltd. submitted in this proceeding be and the same is hereby approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this *22nd* day of January 1993.

  
MARSHA H. SMITH, PRESIDENT

  
DEAN J. MILLER, COMMISSIONER

  
RALPH NELSON, COMMISSIONER

ATTEST:

  
MYRNA J. WALTERS  
COMMISSION SECRETARY

SW:vld/O-1985

**EXHIBIT C**



***Black Hills Idaho Management, Inc.***

June 10, 2008

Mr. M. Mark Stokes  
Manager, Power Supply Planning  
Idaho Power Company  
P. O. Box 70  
Boise, Idaho 83707

Re: Firm Energy Sales Agreement (as amended, the "FESA") between Idaho Power Company ("Idaho Power") and Glens Ferry Cogeneration Partners, Ltd. (the "Partnership") – Magic West Project

Dear Mark:

We have received and reviewed your letter dated May 23, 2008 (the "May Letter"), in which Idaho Power identifies a purported material breach of the FESA, Idaho Power's intention to begin the process of terminating the FESA, and its assessment of liquidated damages payable under the FESA. Given that the May Letter does not identify itself as a formal notice of default or termination under and in accordance with the terms of the FESA, we do not consider it as such. Further, although we understand that Idaho Power believes that the Facility (as defined in the FESA) has lost its "qualifying facility" status (as that term is used and defined in 18 C.F.R. 292.207) due to the termination of the operations of Idaho Fresh-Pak, the Facility's steam host, Idaho Power should consider the following information in light of the conclusions outlined in the May Letter:

1. It is premature for Idaho Power to conclude that the Facility is no longer a qualifying facility. Compliance with the criteria of the Federal Energy Regulatory Commission (the "FERC") for status as a qualifying facility is measured over the course of the calendar year. Idaho Power's conclusion that the Facility has not satisfied FERC's criteria presently, therefore, is speculative. If the Partnership concludes that the Facility may be unable to satisfy FERC's criteria for qualifying facility status under the circumstances, the Partnership will undertake efforts to preserve such status, including petitioning the FERC for a temporary waiver of the applicable standards for qualifying facility status, and a reaffirmation of the Facility's status as a qualifying facility. We will apprise Idaho Power of any such petition.

350 Indiana Street, Suite 400, Golden, Colorado 80401  
General: 303-568-3260 Facsimile: 303-568-3261

2. Even if a breach had occurred under Section 3.2 of the FESA, wouldn't the Partnership get the benefit of a notice of the default and the cure period specified in Section 21.2 of the FESA? Section 21.2 requires that a notice in writing be given to the defaulting party, and is quite clear on the limitations of the pursuit of remedies by a non-defaulting party, stating, "If the defaulting Party shall fail to cure such default within the sixty (60) days after service of [the default] 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 if the defaulting Party does not commence such cure within the sixty (60) day period and continue to diligently pursue such cure, then, the nondefaulting Party may pursue its legal or equitable remedies."

3. Idaho Power asserts in the May Letter that liquidated damages of \$11,234,700 are payable, without (i) citing on what basis the damages are payable, (ii) providing a calculation of such amount or (iii) referencing the applicable provision of the FESA pursuant to which such amounts are payable. Given the lack of substantiation of the liquidated damages claim, we will not have a plan for payment of the specified damages, as requested in the May Letter, as we believe those amounts are not due. If you would like to discuss this issue further, we are open to a meeting where your points could be reviewed.

We understand that our reading of the provisions of the FESA may differ with Idaho Power's, and would be willing, under Section 21.1 of the FESA, to take any resulting difference of opinion to the Idaho Public Utilities Commission ("PUC") for resolution. If, as you state in the last paragraph of the May letter, it is Idaho Power's intention to unilaterally file a notice of material breach and termination of the FESA with the PUC, the Partnership will vigorously challenge any such action. We continue to believe that an amicable resolution is in the best interest of all parties, and we would like to pursue further discussions with Idaho Power to work through these issues, as well as to reach an arrangement whereby the Partnership can continue to provide power to Idaho Power under terms that are acceptable to both parties. The tolling proposal that you reference in the May Letter was intended to be a starting point for discussions between the parties, and we hope that Idaho Power will be open to working with the Partnership to formulate terms for a tolling or other arrangement that will be workable for Idaho Power and the Partnership.

If, at any point in the future, a default actually has occurred under the FESA on which Idaho Power intends to take action and notify the Partnership, we would remind you of your obligations to the lenders to the Facility to provide all written notices under the FESA directly to their Collateral Agent, both under Article XXVII of the FESA (as amended pursuant to the Second Amendment to the Firm Energy Sales Agreement, dated

Idaho Power Company  
June 10, 2008  
Page 3

December 30, 1995), and under Section 1.01(c) of the Consent and Agreement, dated as of December 15, 1995, between Idaho Power and Toronto Dominion (Texas), Inc., as Collateral Agent, predecessor in interest to Calyon, New York Branch, the current Collateral Agent.

We look forward to further discussions with you.

Respectfully,

Glenns Ferry Cogeneration Partners, Ltd.

By: Glenns Ferry Management, Inc.,  
its General Partner

By: 

Name: Steven J. Helmers  
Title: Vice President

cc: Fred Barber, Power Plant Management Services, LLC  
Scott Gross, Power Plant Management Services, LLC  
Barbara Nevins, Black Hills Generation, Inc.  
Mark Lux, Black Hills Energy, Inc.  
Tom Ohlmacher, Black Hills Corporation  
Ted Vandermel, Calyon – Crédit Agricole CIB  
Anne Shean, Calyon – Crédit Agricole CIB

**EXHIBIT D**

JAN 11 1988

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION )  
ON THE COMMISSION'S OWN MOTION OF )  
REASONABLE TERMS FOR SECURITY IN )  
AGREEMENTS BETWEEN IDAHO POWER )  
COMPANY AND COGENERATORS AND )  
SMALLPOWER PRODUCERS. )**

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**CASE NO. U-1006-292**

**ORDER NO. 21690**

TABLE OF CONTENTS

	<u>PAGE</u>
Appearances at the Hearing . . . . .	1
Suppliers of Written Comment . . . . .	2
Organization of this Order . . . . .	2
Summary . . . . .	2
I. Discussion of Questions & Options . . . . .	4
A. General Issue . . . . .	4
B. Quantification of Overpayment Amount . . . . .	5
C. Risks of Economic Walk-Away . . . . .	8
D. Security . . . . .	12
E. Risk Mitigation in Lieu of Security . . . . .	20
F. Weighting and the Base Requirement . . . . .	20
G. Basic Insurance . . . . .	22
H. Engineering Certification . . . . .	24
I. Maintenance Escrow . . . . .	26
J. Lien Rights . . . . .	29
K. The "K" Factor . . . . .	31
L. Water Rights . . . . .	32
II. Details of the Methodology . . . . .	33
A. The Decision Tree . . . . .	33
B. The Security Requirement Amounts . . . . .	34
C. The Overpayment Liability . . . . .	35
Findings of Fact . . . . .	36
Order . . . . .	38
Appendices (For Guidance Only)	
A. From Order No. 21446 Appendix A . . . . .	
B. Sample Engineering Certificates . . . . .	

Appearances at the Hearing:

On March 20, 1987, the Idaho Public Utilities Commission (Commission) initiated Case No. U-1006-292, an investigation into the security provisions of cogeneration and small power production (CSPP) contracts with Idaho Power Company (IPCo).

Public hearing was held in this matter beginning Tuesday, June 16, 1987 and continuing through June 19, 1987 in the Commission Hearing Room, Boise, Idaho. The following parties appeared by and through their respective counsel:

Commission Staff:	Scott D. Woodbury Deputy Attorney General
Idaho Power Company:	Barton L. Kline Evans, Keane, Koontz, Boyd & Ripley  Ronald L. Williams
The Washington Water Power Company:	R. Blair Strong Payne, Hamblin, Coffin, Brooke & Miller
Utah Power & Light Company:	N. Randy Smith Merrill & Merrill  Michael G. Jenkins
Bonneville Pacific Corporation & Interwest Financial, Inc.:	Gary L. Montgomery Marcus, Merrick & Montgomery  David P. Hirschi
Cook Electric, Inc. and Afton Energy, Inc.:	Owen H. Orndorff Charles F. Peterson Orndorff & Peterson
Sithe Energies U.S.A., Inc.:	Roy L. Eiguren Steven R. Ormiston Lindsay, Hart, Neil & Weigler
Potlatch Corporation:	Ralph M. Davisson

**Suppliers of Written Comments:**

On September 10, 1987, the Commission issued Order No. 21446 and its Appendix A proposal for securing the cumulative overpayment liability that occurs with levelized rates in CSPP power purchase contracts. The Commission solicited written comments and specific suggestions from the parties with respect to implementation of the proposed methodology and regarding the Appendix A referenced standards for adequacy and appropriateness. Parties providing written comments to Order No. 21446 were:

Idaho Power Company (IPCo)  
Washington Water Power Company (WWP)  
Pacific Power & Light Company (PP&L)  
Utah Power and Light Company (UP&L)  
Sithe Energies USA, Inc. (Sithe)  
Cook Electric, Inc. (Cook)  
Resource Development Associates (RDA)  
Bonneville Pacific Corporation (Bonneville)  
RTD Hydro Projects (RTD)  
Stein-McMurray Insurance

**Organization of this Order:**

This Order is structured as set out in the Table of Contents. Although framed as an Idaho Power Company case, the implications of this Order have generic consequence for all Idaho regulated electric utilities. We therefore discuss the various items in generic terms, although we use IPCo data in all of our examples.

To establish this Order as a "stand-alone" document, we repeat verbatim here (in single spacing) each item discussed in Order No. 21446. Following each repeated item we discuss the pertinent specific comments provided by the parties and our findings.

**Summary**

After reviewing the filings of record, testimony and submitted comments, the Commission concludes that significant overpayment by ratepayers to cogenerators

and small power producers (CSPPs) occurs in the early years of a level-pay power purchase contract. In the event of a default, we find that some CSPPs may be unable to refund this overpayment unless they maintain some form of liquid security to provide the funds. Liquid security is to be made available to the ratepayer in an amount equal to the computed overpayment liability, adjusted for risk reduction. The Commission finds that the amount of the required security is determined by the following factors: (a) the length of the power sales contract, (b) the amount of the level rate paid to the CSPP, (c) the type of Qualifying Facility (QF), (d) the amount and type of insurance carried on the QF, (e) the quality of design and construction of the QF, (f) the funds available for QF maintenance, and (g) the availability of a lien on the QF to the energy purchasing utility.

The details of determining the amount of liquid security required of each QF are explained in the body of this Order. The steps to be followed in computing the amount of required security are:

- (1) Using the contract length, the avoided cost rate, and the applicable discount rate, compute the annual total overpayment liability (Section I.B. and II.C.);
- (2) Using the decision tree, determine the base liability ratios (Sections I.G., H., I., & J., subsection 3; and Sections II.A. & B.); and
- (3) Using the "K" factor equation, determine the final liability ratio.

The effects of having adequate insurance, engineering certification, maintenance escrow, and lien rights all reduce the base liability ratio. Application of the "K" factor (required except for hydro projects with protected water rights) adds to the liability ratio.

## I. Discussion of Questions and Options

### A. General Issue

#### 1. Order No. 21446

As established in the Notice of Issue Identification (Order No. 21889) the principal issue addressed at hearing was one of security, assessing the need for and devising a means to protect ratepayers from the perceived exposure and risk of non-recovery of overpayment resulting from the front-end loading that occurs with levelized rates in power purchase contracts.

The avoided cost rates paid to cogenerators and small power producers (CSPPs) for energy and capacity are substantially a melded rate levelized over the term of the contract. The Commission in its implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the related rules and regulations of the Federal Energy Regulatory Commission (FERC) has utilized levelized rates as an incentive to the development of the cogeneration and small power production industry. Levelization provides the project developer with a price for supplied power at the front-end of the contract in excess of the power's actual energy value, thus enabling the project to better service its debt and meet start-up costs. In later years the cumulative overpayment is recouped because the payments at levelized rates are projected to be less than the value of the power. At the end of the contract, the cumulative sum of overpayments and underpayments theoretically will be zero.

The need for security for the amount of overpayment attendant to the front-end loading is commensurate with the perceived risk of economic walk away by the project owner and the consequential or ensuing loss to the utility's ratepayers. We believe that some form of security and/or risk mitigation is necessary to achieve an optimum level of ratepayer indifference.

For the record, the Commission notes that in prior Orders 16025 and 16048 we expressed a policy against enforcing overpayment liability clauses. Those Orders were entered in the early, high inflation years of PURPA implementation when the risk to ratepayers was not definable and at a time when PURPA implementation was the primary goal. The passage of time has more clearly limned the ratepayer risks associated with CSPP development and we can now engage in a more sophisticated balancing of policy goals.

#### 2. Parties' Comments

Most parties accepted the commission's defining of the issues without comment. Resource Development Associates however, spent considerable effort comparing the riskiness of utility plants and CSPP plants. In part, it states

"... the ratepayer is not protected nor is the utility at risk for its economic consequences with generation projects such as WPPS and Kettle Falls. In the long run the utilities have been able to pass on to the ratepayer the brunt of this overpayment for higher cost resources at little or no risk to the utility or economic consequence to the utility. It is this double standard that I believe is the single major underlying oversight in this case."

### 3. Commission's Position

We recognize that utility-owned resources are not without risk. We do not agree with Resource Development Associates' characterization of that risk nor with its characterization of this Commission's treatment of such risk. We emphasize that this case does not concern the record of the comparative risks of utility and CSPP resources. This case instead concerns itself with the establishing of a means for securing the overpayment liability inherent in the early years of a CSPP power purchase levelized rate contract.

The comparison between utility generation resource costs and CSPP rates is the proper subject of "avoided cost" determination, which is presently being revisited in the U-1500-170 case.

#### **B. Quantification of Overpayment Amount**

##### 1. Order No. 21446

"We find that appropriate quantification of the overpayment amount for purpose of risk assessment and present value calculation involves factoring in the impact of the time-value of money [contra methodology employed by The Washington Water Power Company (WWP)]. This is accomplished by assigning a discount rate to the balance of the cumulative overpayment. Idaho Power in its "Appendix D lump sum refund payment schedule" has assigned a discount rate of 12.74%, its weighted cost of capital. Following is a graphic representation for analysis comparing levelized and non-levelized rates, and the cumulative over/underpayments with and without a discount rate of 12.74% for a 35 year contract. An added assumption factored into the calculations is an annual inflation rate of 3%.

The disparity between Staff and IPCo calculations of accumulated overpayment amounts, as evidenced in their respective testimony and exhibits, has been subsequently and substantially reconciled. We are satisfied that the 47.05 mill value of avoided costs includes delevelization of the 7 mill adjustable (variable) portion. We find that IPCo's calculations are based on a reasonable interpretation of the modeling approved in the -248 case and are conceptually appropriate for determining the amount of cumulative overpayment liability.

As indicated above, the discount rate represents the time value of money. An analysis of inflation adjusted returns on various investment instruments shows that long-term expectations are highly variable and extremely risk related. The average expected return on long-term, safe investments over the last 30 years was 0.3% over inflation. The average expected return on very risky short-term investments was 13.5% above inflation. [Reference: Stocks, Bonds, Bills and Inflation: 1986 Year Book, Ibbotson Associates.]

On the basis of the foregoing, we believe that IPCo's use of 12.74% as a discount rate assumes a very high level of risk. The use of 12.74% also contributes significantly to the magnitude of overpayment liability. We find that a variance in the risk factors associated with any given project or class of projects may justify a proportionate reduction in the cumulative overpayment amounts and level of required security.

Utah Power & Light Company's (UP&L) computation of overpayment liability results in a sum nearly three times larger than that of IPCO. The reason for the discrepancy lies in the differing methodologies for computing avoided cost rates for periods less than 35 years.

In IPCO Order No. 20350 the minimum length of an agreement qualifying for maximum levelized avoided costs was determined to be 35 years. A series of arbitrary discounts from the 35-year payment — 85% for 30 years, 75% for 25 years and 65% for 20 years — was adopted to encourage long-term agreements. (Order No. 20350 at p. 20.) Idaho Power uses the arbitrary percentages in ratesetting for contracts less than 35 years. In determining overpayment liability in a 35 year contract the Company computes the amount of overpayment for each year less than 35 years by the discounted present value method, rather than employing the arbitrary discount percentages. We find that the underlying procedure used to construct IPCo's "Appendix D" accurately reflects our intent and we approve the use of such methodology for computation of overpayment liability.

UP&L Order No. 20637 contains similar language to that of IPCO regarding the utilization of an arbitrary discount in ratesetting for contracts less than 35 years. UP&L, however, also uses the arbitrary percentages in computing the amount of overpayment liability, as if the contract were written for the shorter contact period, with adjustments for the time value of money. We reject this methodology for computation of overpayment liability as being inappropriate."

## 2. Parties' Comments

Cook Electric Inc. and Resource Development Associates provided comments that indicate they do not fully understand IPCo's Appendix D methodology. WWP suggests that they may have some difficulty implementing the precise IPCo methodology because of inadequate data in prior Commission orders and suggests an alternate method which provides nearly identical results.

UP&L suggests using the CSPP's discount rate in lieu of the utility's, provided the former is higher.

## 3. Commission's Position

For clarification, under IPCo's Appendix D methodology the computed overpayment liability is the cumulative difference between the actual contract rate and what that rate would have been had it been computed by the same method for a shorter contract period. The cumulative difference includes applying the discount rate to increase the balance annually. All computations start with the actual avoided cost rate being paid to the Qualifying Facility (QF).

The discount rate to be used is the Commission-determined "Ratepayer" discount rate. For any project contracting under avoided cost rates determined before Order No. 21630 (U-1500-170) the ratepayer discount rate is identical to the utility's discount rate as used in determining the levelized avoided cost. For QFs contracting after Order No. 21630 (U-1500-170), the ratepayer discount rate will be specifically identified in the Commission order setting the avoided cost.

Using the QF's discount rate is unacceptable. Neither the Commission nor the utilities ought to be privy to CSPP's cost of capital. Furthermore, the damages that we herein attempt to avoid and recover relate to costs to the ratepayer, not costs to CSPPs.

We find that applying the computations to actual annual generation rather than contract energy, as proposed by WWP, is acceptable.

In fact, not doing so raises the potential inconsistency of applying a liquidated damages rate to a contract energy far different from any actual energy produced. We therefore find that utilities using a liquidated damages schedule such as IPCo's Appendix D, shall apply the rate to some reasonable estimate of the actual annual generation of the plant. The method of determining the applicable estimate shall be clearly stated in the power purchase contract.

### **C. Risks of Economic Walk-Away**

#### **1. Order No. 21446**

"Although the amount of cumulative overpayment can be readily ascertained, the perceived risk that a given CSPP will not perform for the full term of the contract and will 'walk-away' is not easily susceptible to quantification. Given an absence of actuarial experience by which to gauge the associated risk, we are unable to make an accurate assessment as to how many CSPPs will fail, what type of project is most likely to fail, and when that failure is likely to occur. It can be assumed to be a high probability, however, that a project owner receiving levelized payments will seriously consider 'walk-away' if his projected or realized revenue stream is insufficient to meet his variable operating costs.

The risks of project failure attendant to personal injury or property damage, or equipment failure due to improper maintenance or management are of a nature that can be readily insured against. So too can a project developer insure against catastrophic loss or failure of operating equipment due to natural or man-caused calamity. The prudent businessmen insures against these risks as a matter of course.

What we have described above and characterized as economic 'walk-away' is a form of business loss triggered by economic adversity. It has been suggested that the cost of obtaining security from financial or insurance industries against this risk is prohibitively expensive because the exposure to a CSPP walk-away is perceived to be high. Arguably the cost, if it is indeed expensive, is rather a factor of there being no track record for assessing the incidence of loss. We note however, that segments of the insurance industry are stepping forward with what appear at first blush to be reasonable proposals addressing the overpayment liability. (E.g. Stein-McMurray.)

Protecting the ratepayer from this risk, assessing the risk and determining the appropriate level of security involves a balancing of equities and benefits. This Commission has previously recognized that few if any QFs are absolutely risk free. (U-1006-199, Order

No. 17478.) We have long supported the development of cogeneration and small power production as a viable alternative generation resource. We recognize that a diverse generation base enables a utility to achieve greater reliability and provides a societal benefit of marked importance. We are not prepared to abandon our policy of facilitating the development of QF power through levelized rates by implementing requirements that have the effect of eliminating the benefits of levelization. This is not to say however that the perceived risk attendant to overpayment liability need not be addressed. We believe the risk can be mitigated.

Assessment of risk for cogeneration and small power production facilities operating under the umbrella of PURPA and FERC rules and regulations is complicated by the limited review permitted into a project's financial structure and organization. Thus constrained, this Commission cannot engage in project specific investment type business analysis.

One means of assessing or differentiating risk entails a classification of projects by size and generation technology (fuel source). Generically hydro projects are assumed to be the lowest risk technology. Thermal projects are perceived riskier because the fuels or renewable resources used have greater market demand and are by nature volatile in both price and supply. A graduated increase in risk is associated with thermal projects utilizing solid fossil fuel. The high end of the risk spectrum under analysis is occupied by thermal projects dependent on gas and oil for firing. Small power projects using wood waste or biomass as a fuel source are viewed as medium to high risk projects. Unproven technologies such as geothermal would generally be classified as high risk. We find the generic differences between hydro and thermal projects to be a reasonable basis for distinctions in treatment.

We do not choose to dictate how a qualifying facility (QF) must be operated. But acknowledging that levelized rates and front-end loading create a risk of overpayment, we find it reasonable to reduce the percentage of overpayment that need be actually secured if the QF will take identified steps to mitigate and reduce the risk of loss.

Risk reducing factors that are entitled to a concomitant reduction in the percentage of overpayment liability that must be secured are as follows:

1. adequate basic business insurance
2. appropriate engineering certification
3. appropriate maintenance escrow
4. acceptable lien rights
5. adequate water rights (hydro electric facility)

The factors are further defined in Appendix A, attached hereto together with illustrative graphs and the Commission's proposed procedure for implementation. You are noticed that the standards of adequacy and appropriateness referenced therein are as yet undefined and are solicited in party comments to this proposal. The percentage values cited in the Appendix A modeling are to a degree arbitrary as in fact are the risk reducing items themselves. Nevertheless, we believe that the proposal is conceptually a viable and equitable means of determining or projecting the total dollar amount of overpayment liability requiring security for a given project.

As set out in the Appendix A proposal, it is envisioned that the total percentage of liability that must be posted or secured may be reduced by the percent value assigned to each risk reducing item down to a proposed floor of 20% of total. There is also a belief within the Commission that qualifying hydro facilities satisfying the five factors cited above should be permitted to escape the base floor requirement of 20%. The lack of unanimity is based on differing perceptions. It is the perception of some that there will always remain a residual risk that cannot be eliminated, thus justifying a 20% floor. This position is further supported by the realization that qualifying facilities regardless of technology have no statutory obligation to provide service. There exists a belief cutting the other way that qualifying hydro facilities satisfying all mitigation factors may through diversity be expected to be less risky and achieve a better performance history than utility base load facilities for which there may always be some attendant risk of failure. An additional reason cited for elimination of the 20% floor for hydro is the degree of risk already assumed by adopting the utility's weighted marginal cost of capital as the discount factor for avoided cost calculations. The Commission invites comment as to whether a base floor of 20% or some other percentage should be required of all projects.

As evidenced from analysis of Appendix A, the Commission's proposal has been so structured as to provide an incentive for QFs to enter into power purchase contracts for periods shorter than 35 years. This departs from our prior policy. When PURPA was implemented, non-utility generation was expected to defer construction of coal-fired plants with life expectancies of up to 35 years. We now regulate no utility with such a base load plant on its planning horizon. We therefore must reassess the policy favoring 35 year power purchase contracts. The 35 year contract term is no longer a magic number. This adjustment favoring shorter contracts is also an attempt to compensate in part for the perceived and inherent risk of inaccuracy in long-term projections."

## 2. Parties' Comments

On the question of providing a base level of liquid security the parties were predictably divided. The utilities recommended a base level for liquid security of no less than 20% of the computed liability, with UP&L initially supporting 100% regardless of project type.

The CSPPs take the position that as a result of proper risk mitigation, the level of security should be substantially reduced to the point where no liquid security is required of a fully mitigated hydro QF. Sithe and Bonneville provided several citations from the record showing that nearly every party sponsored witnesses who believe that the probability of default by a well built, well managed hydro facility with protected water rights is nearly nil.

IPCo requested that the Commission not prejudice issues to be discussed in the U-1500-170 generic avoided cost case, especially as to contract length and levelized rates.

3. Commission Position

The preponderance of evidence in the record clearly supports the position for a zero security base for fully risk-mitigated projects. We remind the parties that the subject here is security, not liability. Every QF is liable for repayment of the full level of discounted overpayment in the event of default. The liquid security requirement provides a source of funding for all or part of that liability. We are satisfied that the risk mitigation measures identified in Order No. 21446, as herein modified, are adequate to assure ratepayer indifference.

Furthermore, every scenario suggested to demonstrate the possibility of a CSPP contract default includes inflation rates vastly exceeding those used to establish the avoided cost. Since energy costs would increase in proportion to that high inflation rate, we can expect ratepayers to have received substantial benefits from all QFs prior to (and after) default by any one of them. Furthermore, the Commission expects this Order to result in a quality of design, construction, and management of QFs yielding resource reliability equivalent to that provided by utilities.

We do not intend to prejudice here issues that are more properly considered in Case No. U-1500-170. However, the issues of contract length and avoided cost levelization are clearly related to overpayment risks and are properly subjects of U-1006-292. We remain firmly committed to the general principle of levelized avoided cost rates, although we are open to potential variations on the present method of full levelization. Also, we are convinced that the risks associated with setting firm prices increase exponentially with contract length. We therefore intend to discourage firm price contracts exceeding 20 years in length.

## D. Security

### 1. Order No. 21446

"As stated by Russell A. Pack, Manager of Resource Contracts for UP&L, 'the contractual obligation (to repay) is nothing but an empty promise if the CSPPs have no funds or assets with which to make the repayment'. Mr. Pack's concern is not without merit; however, we find that mitigation of risk is an alternative to full funding of the overpayment liability obligation.

The requirement of funding the overpayment liability to the tune of a liquidated damages schedule was challenged by Dr. Slaughter (Cook Electric). It is his position that damages (including consequential damages) upon breach of contract (including breach occasioned by economic walk away) are capable of ascertainment and should therefore not contractually be reduced to liquidated damages. The fallacy behind this reasoning is that part of the problem we are dealing with is the creation of a fund (a liquid security) out of which to pay or satisfy judgment damages. If a target amount is not identified at the front-end and an amount set aside or a form of security is not provided, the ratepayer is made to assume a greater risk or exposure that the awarded damages will not be satisfied. The potential magnitude of risk to ratepayers based on a reasonable forecast of increasing power costs, demand, inflation and discount rate justifies the parties stipulating to a liquidated damages provision.

As previously indicated, we believe that some form of security and/or risk mitigation is necessary to achieve an optimum level of ratepayer indifference.

### SECURITY OPTIONS

The total universe or menu of options for securing the overpayment liability, while conceptually large becomes more limited with analysis. The following security options were evaluated by the parties:

#### IPCo

- o Elimination of levelized rates
- o Risk Premium Discounted Rate
- o Deep Pocket Corp. Guarantee of Performance
- o Security Fund (ORF) Hydro Less than 5 MW
  - Trust Account
  - Captive Insurance

#### WWP

- o Elimination of Levelized Rates
- o Risk Assessment Based on Generation Technology and Location
  - Second Mortgage Lien
  - Financial Guarantees for 100% of Overpayment Liability Obligation (Actual \$ vs. time value of money)

#### UP&L

- o Elimination of Levelized Rates
- o Full Cash Security (100%) or guarantee
- o Risk Management/Risk Compensation (Discounting of levelized rate to arrive at risk premium)
  - Second mortgage lien requirement
  - Pooling hydro < 5 MW

#### Staff

- o Elimination of Levelized Rates
- o Insurance
- o Performance Bonds
- o Escrow
- o Guarantee Lines of Credit
- o Project Pooling
- o Risk Sharing
- o Lien Rights
- o Corp. Guarantee of performance

Bonneville Pacific Corporation

- o No requirement of additional security
- o Recommends raising avoided cost rates to reflect the new level of risk associated with levelized payments

Cook Electric

- o Risk sharing by ratepayers
- o Risk pool
- o Letters of Credit
- o Second Mortgage Liens
- o Escrow

Potlatch

- o Corp. Guarantee of performance

What follows is an analysis of the major security options commented on by the parties. We appreciate the variety of options presented. They all contributed to our understanding, assessment, reassessment and development of policy and procedure.

ELIMINATION OF LEVELIZED RATES

The favored solution of the utilities to the overpayment liability problem is to eliminate levelized rates. Eliminating front-end loading substantially reduces the magnitude of risk in the event of default. A disadvantage of delevelized rates however is that they do not provide a cushion of stability for ratepayers. Once beyond the surplus period they are inclined to spiral ever upward. Capacity and energy payments in a firm contract would vary over the contract term. A risk of overpayment would still be present owing to the vagaries of forecasting, but the dollar amount of potential loss would be significantly reduced.

We view the consequence of full or partial delevelizing of rates to CSPP qualifying facilities as reducing or eliminating the development of those QF projects heavily reliant on financing. Although the experience of other States would indicate that some development of cogeneration and small power production is possible without levelized rates, we are not prepared to eliminate this incentive. Front-end loading facilitates service of debt, encourages CSPP development, and meets the intent of Congress that wealth is not a pre-condition to participation.

Delevelization of rates is not the panacea it is touted to be. While the economics under either levelized or delevelized rates are similar, the perceived gap between projected contract rate and actual value of power may be more pronounced with delevelization. Delevelized rates could engender substantial rate shock at the end of the estimated surplus period.

RISK PREMIUM DISCOUNTED RATE

The underlying rationale of the risk premium discounted rate is that without security the front-end loading or overpayment amount in levelized rates is tantamount to an unsecured loan from ratepayers to CSPPs. Arguably, as the unsecured nature of the loan would justify charging a higher interest rate, so does it justify the use of a higher discount rate to compute the levelized rate. IPCO suggests that the existing -248 (-265) avoided cost rates are appropriate only for facilities with zero risk. It recommends reducing the amount of payment in proportion to the level of risk associated with a given project. Idaho Power imputes its weighted marginal cost of capital, 12.74%, to CSPP projects in

its present value calculations, a discount rate viewed by the Commission as already assuming a very high level of risk. Under this approach it is proposed that a statistical risk model be developed assessing the unique risks of each individual project or class of projects to determine the appropriate discount rate. The type of analysis envisioned is seemingly precluded. It was suggested that this alternative would have the advantage of simplicity and no administrative costs. We question the appropriateness of setting rates on any basis other than utility avoided cost. We conclude that the more reasoned approach is to use level of risk as reducing the percentage of overpayment amounts requiring security, rather than adjusting or varying the rates.

#### RISK MANAGEMENT/RISK COMPENSATION

A variation on IPCO's risk premium discounted rate methodology is the risk management/risk compensation alternative of UP&L. Whereas IPCO would reduce the rate paid to CSPPs, UP&L would pay the full rate and require a percentage refund or risk premium to ratepayers. As proposed the risk premium would be a discounting of the levelized rate below forecasted avoided costs to reflect the ratepayers bearing the risk of potential project failure or economic walk-away. The premium would be paid directly to ratepayers through a non-recourse adjustment in avoided cost rates. As with IPCO's proposal the risk premium floor would be the utilities' weighted marginal cost of capital (UP&L Order No. 20637 — 11.35%.)

As an integral part of its proposal UP&L suggests that CSPPs be required to take certain steps to minimize the risk of project failure. A comprehensive general liability policy of adequate coverage and limits for property, boiler & machinery and business interruption insurance would be mandatory to mitigate uninsured or underinsured loss. To ameliorate the discount or risk premium, CSPPs would be required to post a certain level of equity (typically a CSPP will provide only 30% equity) so that the developer has less exposure to debt service constraints, a material amount of his own money at risk, and consequently a greater incentive to perform.

#### OVERPAYMENT RESERVE FUND

The principal security measure discussed at hearing was IPCO's proposed Overpayment Reserve Fund (ORF). This method of security envisions a pooling of hydro projects limited in size to 5 megawatts or less. Participation would be limited to hydro because such projects constitute a homogenous grouping of similar risk. Project size would be limited to 5 megawatts because including larger projects would increase the required contribution of all pool participants (or of the larger facility) and would significantly increase the risk potential of bankrupting the fund.

As proposed, the initial contribution would be a reasonable estimate based on modeling assumptions, percentage of participation, assessment of actuarial risk, and forecasting of loss probability. The required contribution would be adjusted over time or "experience rated". It was estimated that the percentage of revenue stream necessary for funding the ORF against the risk of "economic walk-away" would be 2-4% (estimated initial contrib. of 4%). Periodic review would allow for appropriate contribution adjustments to reflect the cumulative experience.

IPCO foresees the ORF concept as structured along the lines of either (1) a trust account or (2) captive insurance. The functioning of a trust account is generally familiar. A captive insurance program is captive in the sense that it is independently structured and only covers losses for which the contributions are made. It is assumed that the insurance premium would be deductible by the CSPP. However, if there is no loss history, it was cautioned that the premiums received may be taxable revenue to the captive insurance company. Tax and legal opinions would be required.

Participation in the ORF or in any project pool or homogenous grouping necessarily involves satisfying eligibility criteria. What are permissible criteria? Who should establish the criteria? Who should determine whether eligibility standards are satisfied? What right of appeal exists, if any? It was suggested that a precise or reasonable calculation of contribution requires a substantial amount of knowledge about the cost structure, operating characteristics, financial strength, and functional size, type and ownership of the qualifying facility. It would also seem to be a function of level of participation and amount or percentage of cumulative overpayment liability that must be secured. It is questionable whether the type of inquiry envisioned as necessary is permissible. It is unquestioned that neither this Commission nor the utility may engage in inquiry into a CSPP's financial structure or organization. We must necessarily divorce ourselves from any role in administration or review of program eligibility criteria.

#### CORPORATE GUARANTEE OF PERFORMANCE

The corporate guarantee of performance is viable only to the extent that inquiry is permitted into its financial structure and organization. PURPA and FERC rules and regulations as previously indicated ostensibly preclude such an inquiry. Assuming, however, for purpose of argument that inquiry is permitted, IPCO suggests that qualifying corporations must exhibit a consistent record of profitability, maintain a book equity of at least \$100,000,000, a debt ratio of less than 60%, pre-tax interest coverage tests of at least 3.0x, a ratio of total book equity to total net investment in CSPP assets of at least 500%, and an investment grade commercial paper rating from the nationally recognized rating agencies. The qualifying factors suggested are to a degree arbitrary but are somewhat indicative of the "deep pockets" that are perceived to be necessary to adequately insure the ratepayer against the risk of overpayment liability. Developing precise quantifiable criteria is a difficult process. A corporation that is a stand-alone QF is perceived to be much riskier than a well-diversified corporation with significant financial strength, substantial liquid resources, and varied revenue streams and assets. If a CSPP plant represents a major portion of the QF owners' committed assets and cash flow, a corporate guarantee of performance or guaranteed line of credit is probably unacceptable or unattainable. To assess the risk involved in any corporate guarantee one need only read the newspapers. Today's healthy company can quickly become tomorrow's business failure. Acceptance of a corporate guarantee would require monitoring the financial soundness of the guarantor over the term of the contract.

An additional perceived impediment to the viability of a corporate guarantee is the Commission's inability to prevent transfer of project interest to a third party, a party that may have neither the deep-pockets, the commitment nor the inclination to ensure the continued viability and continuance of the project.

## CASH ESCROW

Short of delevelized rates a fully funded escrow provides the ratepayer with the most complete protection against overpayment. Unfortunately it nullifies the benefits of levelization. When used in combination with other security measures however, it may be quite useful in providing the full or requisite coverage. As in any escrow or trust arrangement the element of control becomes a factor when attempting to perfect one's security interest. It has been suggested that the degree of control necessary to assure perfection is actual possession. [Reference Article 9 security interest (§28-9-305 I.C.)]

## LIEN RIGHTS

The lien rights available to secure ratepayer interests in CSPP projects are usually subordinate to the first lien of the project financier. The value of a second lien position in all the QF property and facilities is the measure or degree of control over the project that it imparts with respect to its continued financing, operations and maintenance. Although it provides no liquid fund for satisfaction of overpayment obligation, we nevertheless recognize it as a valuable tool in safeguarding the interests of the ratepayer. To be acceptable a lien should be subordinate only to the first lien of the project financier and the FERC license, as evidenced by an appropriate policy of title insurance.

## RISK SHARING

As expressed at hearing, any entity should have the opportunity to bear the risk and receive compensation for doing so. In the context of the risk of overpayment liability it was suggested that either a non-regulated subsidiary of the utility or the ratepayers themselves might share the risk with the CSPPs.

Arguably the ratepayers have been sharing the risk, albeit somewhat unknowingly, since the inception and implementation of levelized rates. There has always been a perceived risk. There will always be a residual risk. We are committed to achieving a reasonable level of ratepayer indifference. We do not see any further sharing of risk by the ratepayer as being a viable option.

It was suggested that a non-regulated utility subsidiary could operate as a potential risk sharer, taking either an ownership position in selective CSPP plants or brokering for a percentage of the CSPP revenue stream. The taint of impropriety and potential for less than arms' length transactions between the utility and its subsidiary would seem to militate against the feasibility of this option. It also appears that development of such a marketing mechanism would require a paradigm shift of thought on the part of the utilities who are prone to view the CSPP industry as a competitive foe rather than an ally in electric power generation.

## INSURANCE

The feasibility of insurance as security against overpayment liability is dependent on the willingness of the industry to insure against economic abandonment for a 35-year period with limited rights of cancellation (nonpayment of premium). It was the expressed

concern of some that insurance companies rarely make an unconditional commitment to cover all amounts of risk; that a residual risk, the risk above policy limits, remains with the policyholder.

The proposal of Stein-McMurray Insurance Services of Boise, Idaho indicates that the risk of economic walk-away is insurable. Insuring 100% of projected overpayment liability, the projected premium as a percentage of revenue streamflow would start at 2% for the first ten years, escalate to 5% for the next six years and gradually decline again to 2% with premium pay-off occurring in year 25 of a 35-year contract. The premium as a percentage of 35-year revenue would equate to 2.2%; as a percentage of 25-year revenue, 2.99%.

2. Parties' Comments

a. Elimination of Levelized Rates

Resource Development Associates generally agrees with the Commission's position that this option be rejected. The other parties withheld comment on this subject.

b. Risk Premium Discounted Rate

Resource Development Associates generally agrees with the Commission's position that this option be rejected. The other parties withheld comment on this subject.

c. Risk Management/Risk Compensation

Resource Development Associates generally agrees with the Commission's position that this option be rejected. The other parties withheld comment on this subject.

d. Overpayment Reserve Fund

Resource Development Associates generally agrees with the Commission's position that this option be rejected. The other parties withheld comment on this subject.

e. Corporate Guarantee of Performance

Resource Development Associates generally agrees with the Commission's position that this option be rejected. IPCo and WWP both urged the Commission to reconsider permitting Corporate Guarantees as a security option. The remaining parties withheld comment on this issue.

f. Cash Escrow

Resource Development Associates concurs that a fully funded cash security escrow nullifies the benefits of levelization. The other parties withheld comment on this issue.

g. Lien Rights

All of the commenting parties addressed this issue as it relates to risk mitigation. A detailed discussion of the comments follows in Section I.J. of this Order.

h. Risk Sharing

Resource Development Associates perceives risk sharing as beneficial to the ratepayers. The other parties withheld comment on this issue.

i. Insurance

Resource Development Associates believes that QF insurance premiums should be added to the "Avoided Cost" rates. RDA suggests no mechanics for accomplishing this, nor does it explain how the premiums constitute costs of the utility that can be avoided through the purchase of CSPP energy.

Sithe, Bonneville, Cook and Stein-McMurray Insurance point out that the insurance contemplated in Order No. 21446 is unlikely to be available unless the insurance company has access to a customer base comprising a large number of small hydroelectric facilities requiring 100% security liability coverage. Such a base is unlikely to be available under the plan proposed by Order No. 21446.

3. Commission's Position

a. Elimination of Levelized Rates

The Commission rejects implementation of this option for general application. Individually negotiated non-level rates will be considered on a case by case basis.

b. Risk Premium Discounted Rate

The Commission rejects implementation of this option for the reasons stated in Order No. 21446.

c. Risk Management/Risk Compensation

The Commission rejects implementation of this option for the reasons stated in Order No. 21446.

d. Overpayment Reserve Fund

The Commission rejects implementation of this option for the reasons stated in Order No. 21446.

e. Corporate Guarantee of Performance

We carefully reconsidered this option in light of the parties' comments, but our conclusions were the same as described in Order No. 21446. We therefore continue to reject implementation of this option.

f. Cash Escrow

We continue to consider a cash escrow to be the best method of satisfying the liquid security requirement of a QF. A cash escrow or equivalent shall be maintained in the amount of the overpayment liquid security requirement. The escrow is to be managed by an institution licensed to execute financial transactions in the State of Idaho (e.g. an Idaho Bank or S&L).

g. Lien Rights

See Section I. J. below.

h. Risk Sharing

We believe that the risk mitigation proposal contained in Order No. 21446, as modified herein, reduces the level of risk shared by the ratepayers adequately to substantially represent ratepayer indifference between QF generation and utility generation.

i. Insurance

We are disappointed that the insurance industry appears unwilling to provide insurance for the portion of risk unmitigated under Order No. 21446. Nonetheless, we see no reason to burden all projects equally in order to permit the most risky to obtain insurance at the same rates as the least risky. We continue to offer risk mitigation as the most reasonable solution.

E. Risk Mitigation in Lieu of Security

1. Order No. 21446

The details of this proposal are set out in Appendix A, attached.

2. Parties' Comments

Because of the extensiveness of the comments, they are separated into six separate sections, with discussions of the parties' comments and the Commission's position included in each section. The six sections are:

- F. Weighting and the Base Requirement
- G. Basic Insurance
- H. Engineering Certification
- I. Maintenance Escrow
- J. Lien Rights
- K. The "K" Factor

F. Weighting and the Base Requirement

1. Order No. 21446

The weighting of the 5 risk mitigating factors suggested were:

- a. Insurance - 20%
- b. Engineering Certification - 15%
- c. Maintenance Escrow - 20%
- d. Lien Rights - 25%
- e. Non-Hydro or Inadequate Water Rights

+ Add back  $K = [(1+d)^n]\%$   
Where: d = discount rate  
n = contract length

The suggested weighting resulted in a base security requirement of 20% of the computed overpayment liability for a fully mitigated hydroelectric project.

2. Parties' Comments

The utilities recommend the following weightings and base requirement:

	<u>IPCo</u>	<u>WWP</u>	<u>PP&amp;L</u>	<u>UP&amp;L</u>
Insurance	-10%	+80	0	-10%
Engineering Certification	-15%	+25	0	-10%
Maintenance Escrow	-20%	+20	-25%	-10%
Lien Rights	-10%	+25	-25%	-10%
Thermal or Inadequate Water Rights	+ K	+35	0	+ K
Adequate Water Rights	---	---	-25%	---
Hydro Project	---	---	---	-20%
Utility O&M Rights	---	---	-25%	---
Base Requirement	35%	20%	0	40%

WWP recommends an additive method with an unlimited number of potential adders to a base of 20% of the computed liability.

IPCo discusses the riskiness of CSPP generation as reflected by a comparison of QFs' actual generation to their contractual commitments and concludes that QFs are more risky than utility generating plants. UP&L also discusses its perception that QFs are very risky. WWP discusses the varying levels of riskiness relative to the QF owner's stability and the type of project.

The other parties withheld recommendations of specific weightings, but all except Stein-McMurray Insurance recommended a base of zero for fully mitigated hydroelectric projects.

3. Commission's Position

The Commission recognizes that utilities consider good insurance coverage, excellent design/construction, and prudent operations/maintenance practices to be a necessary part of any generation resource. Nonetheless, QFs deficient in one or more of these areas have been and are "on line" in Idaho. Our goal is to promote measures that

will increase the likelihood that the ratepayer will receive the energy contracted for. Therefore, we give substantial weight to these risk mitigation measures for reducing security requirements.

We also recognize that there are other potential actions that may reduce risk and that the "additive" method proposed by WWP permits flexibility in its application. Flexibility however, is likely to breed dispute leading to a reopening of the security issue. Therefore, we continue to prefer the "subtractive" methodology proposed in Order No. 21446.

As stated previously, we find that a zero security requirement base for fully mitigated hydroelectric projects is reasonable. Accordingly, we have adjusted and selected the following "subtractive" weighting system for risk mitigation measures:

Insurance	-25%
Engineering Certification	-20%
Maintenance Escrow	-20%
Lien Rights	-35%
Non-Hydro or Inadequate Water Rights	$+ K = [(1.18)^n - 1]\%$
Base Requirement	0%

As before, we ascribe no weight to any mitigation factor unless the basic insurance package is in place, and we ascribe no weight to Lien Rights unless Insurance, Engineering Certification, and Maintenance Escrow requirements have been met.

**G. Basic Insurance**

1. Order No. 21446

"Adequate basic business insurance" refers to 5 types of insurance that ought to be carried by a prudent businessman. They are:

1. Liability insurance,
2. Catastrophic (flood, fire, etc.) insurance,
3. Boiler and Machinery insurance,
4. Temporary Loss of Income insurance, and
5. For hydro plants, Low Water insurance.

2. Parties' Comments

The parties generally concurred with the selection of insurance types. IPCo pointed out the varying levels of protection available for low water insurance. As part of its initial testimony in this case, Sithe submitted a copy of the insurance policy for its Elk Creek project.

3. Commission's Position

Based on the above identified comments and original testimony, and in light of the developments during Cook Electric Inc.'s negotiations with IPCo for the Magic Dam Project, we have established a reasonable schedule of insurance limits to provide minimum adequate protection for ratepayers. Of course, individual projects may have unusual features, and conditions change with time, so deviations from the established limits will be considered on a case-by-case basis.

The specific or minimal levels of coverage required to qualify a QF for the 25% reduction in liquid security requirement shall be at least:

<u>Type</u>	<u>Limit</u>	<u>Max. Deductible</u>
Liability	The greater of 15% of plant cost or \$1 million/incident	0.5% of plant cost
Catastrophic Perils	60% of plant cost	1.0% of plant cost
Boiler/Machinery	90% of equipment cost	2.0% of equipment cost
Loss of Income (Business Interruption)	75% of estimated daily income up to 20% of annual income	10 days of income
Low Water	25% of annual income	10% of annual income

No more than 10 years from the initial generation date, and thereafter at intervals no greater than 5 years, the coverages for Liability, Catastrophic, and Boiler/Machinery insurance shall be adjusted by increasing or decreasing the underlying

"plant cost" to reflect changes in the appropriate regional heavy construction deflator as published by the U.S. Department of Commerce.

The power sales agreement shall require the QF to submit evidence of adequate coverage at least annually. Should the coverage lapse, the QF shall immediately notify the utility, and the liquid security requirement level shall revert to 100% of the computed liability. Failure either to maintain adequate basic business insurance or to fully fund the required liquid security fund shall constitute a breach of contract.

#### H. Engineering Certification

##### 1. Order No. 21446

"Appropriate engineering certification" refers to certification by a Professional Engineer (registered in the State of Idaho) as to the adequacy of the QF's design, construction, and Operations and Maintenance (O&M) procedures policy."

##### 2. Parties' Comments

The parties generally agreed that engineering certification of design, construction, and O&M procedures provides a significant reduction in the risk associated with QFs. IPCo and WWP recommend that O&M certification be required periodically over the life of the power sales contract.

Sithe suggests that the project design engineer be permitted to certify the project's design. It also suggests that engineers registered in jurisdictions other than Idaho be permitted to certify QFs.

##### 3. Commission's Position

###### a. Idaho Registration

We find the requirement for Idaho registration to be reasonable. Idaho has a reciprocity agreement with nearly every other jurisdiction in the U.S.. We believe that no qualified professional will be unreasonably excluded from participation in Idaho's CSPP market by this requirement.

b. Design Certification

- i. QFs requiring a major FERC license must receive design approval by FERC. Evidence of FERC approval shall adequately fulfill the requirement for design certification.
- ii. To qualify for risk mitigation, a QF unable to show design approval by FERC must have its facility design certified by an independent Idaho Registered Professional Engineer bearing no association or nexus to the QF's designer. The "second opinion" principle is widely used in many areas of insurance and risk management and we find it appropriate here.

c. Construction Certification

To qualify for risk mitigation, an independent Registered Professional Engineer having no association or nexus to the primary construction inspection professional must certify the quality of facility construction. We again endorse the "second opinion" principle.

d. O&M Certification

We concur with IPCo and WWP that continuing O&M certifications are necessary to qualify for risk mitigation. Initially a Registered Professional Engineer must certify that the QF has written Policies and Procedures for O&M and that they are adequate to assure the plant's viability for the life of the power purchase agreement under normal operating conditions. Thereafter, at intervals not greater than 3 years, the QF shall be required to provide an Engineers Certification of the continued adequacy of O&M procedures.

e. Standards of Certification

Appendix B comprises suggested Certification Forms. The suggested forms include a statement of the engineer's qualifications, a statement of his review of the QF,

and a certification that the design, construction, or O&M are consistent with the life of the power purchase agreement. Engineer certifications shall be at least equivalent in all terms to those included in Appendix B of this Order. A copy of each required certificate shall be submitted to the interconnecting utility prior to commercial generation by the QF.

f. Applicability

In order to receive a 20% reduction in liquid security requirement for this risk mitigation item, all the terms and conditions set out in Sections G and H of this Order must be met. Failure to maintain said terms and conditions at any time during the life of the power purchase agreement shall result in the 20% reduction being revoked. Failure to establish and maintain the resulting new level of liquid overpayment security shall constitute breach of contract.

I. Maintenance Escrow

1. Order No. 21446

"Maintenance escrow refers to a contractual arrangement with the Utility or a competent Idaho financial institution to maintain an account of liquid funds available only for investment in repairs to the QF's physical plant."

2. Parties Comments

The parties generally agree that a maintenance escrow provides substantial reduction in the risk associated with QFs.

IPCo submits the following outline of suggested terms and conditions:

"1. Prior to the date of commercial operation of the project, an amount equal to an agreed upon percentage of annual project revenues is placed in a escrow account. (In this example, we will use 5 percent). The escrow account is managed by a third party escrow holder, usually a financial institution, which is set up to handle periodic receipts and disbursements of money. The funds in the escrow account are invested to earn interest for the benefit of the escrow account.

2. As a condition of the CSPP contract, the CSPP developer agrees to provide the utility and the escrow holder with a formal plan for periodic maintenance of the facility. From time to time, as maintenance or repair work is performed, the CSPP requests the escrow holder to disburse funds from the account to cover that maintenance or repair work. As a part of the request, the CSPP supplies the escrow holder and the

utility with documentation regarding the work and the amounts that will be needed to perform the work. Within five days of the request, the request is either approved or denied. *Denials are subject to arbitration.*

3. The 5 percent amount is maintained throughout the term of the project. Additional funding requirements are satisfied either by periodic lump-sum payments by the CSPP or by regular deductions from utility energy payments which are deposited directly into the escrow account. If the escrow account earns a higher than expected rate of interest or if there is no unscheduled maintenance and as a result the balance in the escrow account exceeds 5 percent, any overages are immediately paid to the CSPP. In addition, at the end of the contract, the balance in the account is paid to the CSPP."

UP&L states that a maintenance escrow" ... has little impact on reducing the risks of economic walkaway." They recommend

"... that the funds come from an initial deposit by the CSPP of at least 5 years of estimated maintenance expense and that the fund continue to grow by the utility withholding a percentage of each month's energy payment and depositing that into the maintenance escrow."

Sithe and Bonneville question whether the Maintenance Escrow required by the power purchase agreement is to be separate and in addition to maintenance escrows required by financial institutions.

3. Commission's Position

a. Terms and Conditions

- i. An acceptable Maintenance Escrow shall be managed by an institution licensed to execute financial transactions in the State of Idaho. (E.g. an Idaho Bank or S&L.)
- ii. Prior to March 1 of each year following the initial generation date the QF shall submit to the Escrow Manager and the utility the following:
  - (1) An audited statement of the prior calendar year's O&M expenses.
  - (2) An estimate of the present year's gross income.

- 
- (3) Evidence that the resultant of 5% of the estimated gross income minus the past year's O&M expense has been submitted to the Escrow Manager for investment in the escrow fund.
  - iii. If at any time it appears that the O&M expense for the calendar year will exceed 5% of the QF's projected gross income, the QF may request the Escrow Manager to release the overage to the QF from the escrow fund. The request must include documentation of the estimated overage. The QF shall also submit a copy of the request and associated documentation to the utility.
  - iv. Upon receipt of the request and documentation, the Escrow Manager shall, within 5 working days, release the required funds to the QF.
  - v. At the end of the life of the power purchase agreement, any balance remaining in the maintenance escrow shall be returned to QF.
  - vi. The Escrow Manager's fee, if any, shall be paid by the QF.
  - vii. The specific language of the power purchase agreement and the escrow agreements shall be negotiated to reflect the general intent of the above terms and conditions

b. Maintenance Escrow

The QF shall maintain only one maintenance escrow. Provided, however, that the terms, conditions, and cumulative level of funding of said escrow shall be at least as stringent as those specified above.

c. Applicability

In order to receive a 20% reduction in liquid security requirement for this risk mitigation item, all the terms and conditions set out in Sections G. and I. of this Order must be met. Failure to maintain said terms and conditions at any time during the life of the power purchase sales agreement shall result in the 20% reduction being revoked. Failure to establish and maintain the resulting new level of liquid overpayment security shall constitute breach of contract.

J. Lien Rights

1. Order No. 21446

Order No. 21446 requires only that the utility have "adequate lien rights" for the QF to have reduced security requirements.

2. Parties Comments

IPCo recommends that utilities' lien rights be made subordinate only to the first lien holder, that the utility be permitted to assess a fee for establishing the lien, and that additional liquid security be required. It points out that foreclosure under the lien may not provide full recovery for the ratepayers.

WWP cites considerable experience with liens on QFs and recommends that all liens include at least:

1. Title insurance policy.
2. Contractually stipulated first mortgage amount.
3. The filing of fixture financing statements.
4. Assignable contract rights, water rights, permits, licenses, leases, etc., relating to the operation of the QF.

WWP also includes a copy of its present contract language pertaining to liens on QFs. UP&L recommends that the QF "... bear the expense ..." of the "... tremendous administrative burden ..." placed on the utility by the lien.

Sithe and Bonneville recommend that the utility lien be subordinate to liens created by refinancing of the project as well as to the initial long term financing. Sithe recommends a "standard form" lien.

3. Commission's Position

a. Terms and Conditions

We find that the considerations recommended by WWP, quoted above, are terms that must be addressed by any lien, deed of trust, or mortgage in order to qualify a QF for the 35% reduction of liquid security requirement under this risk mitigation item. In addition, fuel consuming thermal projects should be required to provide an assignable fuel contract setting fuel prices for the life of the QF's power sales agreement with the utility.

Experimental technologies (wind, geothermal, solar, etc.) will be subject to the "lien rights" security reduction only at the utility's discretion.

b. Standard Forms

We decline the invitation to invoke "standard form" liens. We believe that these instruments should be drafted by the parties to reflect specific conditions.

c. Subordination

We concur with IPCo that utilities' lien rights should be subordinate only to the initial long term financier's lien.

d. Administrative Expenses

We find that the cost of administering reasonably written liens will not substantially burden the utilities and that QFs shall not be required to pay a fee to the utilities.

e. Applicability

The value to the utility and the ratepayer of a lien is directly related to the quality of the underlying QF. Hence, the 35% reduction in liquid security requirement for

this risk mitigation item shall remain in effect only so long as the QF fulfills all requirements of Sections G., H., I. and J. above.

Failure to maintain these terms and conditions at any time during the life of the power sales agreement shall result in the 35% reduction being revoked. Failure to establish and maintain the appropriate new level of liquid overpayment security shall constitute breach of contract.

**K. The "K" Factor**

1. Order No. 21446

"5.)[K]; Is the QF hydroelectric, and if so, are it's water rights secured by agricultural rights for at least twice the required flow?

$$K = (1+d)^n$$

Where:

d = discount rate  
n = contract length"

2. Parties' Comments

The parties generally agree that some recognition ought to be given to the differences in quality of motive force (i.e., energy source), but many appear confused by the "K" factor.

3. Commission's Position

The "K" factor was developed as an additive item to reflect our belief that the risk of a QF losing its economic supply of motive force increases exponentially with time. The utilities discount rate was selected as the annual rate of risk increase because it is a reasonable reflection of the market's perception of financial risk over time. After receipt and analysis of the parties comments, we find that energy costs are substantially less predictable than financial costs. To reflect this we have substituted 18% in lieu of the utility's discount rate. Also, to adhere more closely to the mathematics of economic theory, we subtract "one" from the raised value. The resulting equation for the additive "K" factor is:

$$K = [(1.18)^n - 1]\%$$

Thus to compute K, raise 1.18 to the "contract length in years" power, then subtract "one" from the result. This number is the percentage increase to be added to the otherwise required overpayment security if the QF is non-hydroelectric or if the hydroelectric QF's water rights are not protected by downstream consumptive users' water rights. The "K" factor is applicable regardless of other risk mitigation factors.

Examples:

For 7 year contracts:

$$K = (1.18)^7 - 1 = 3.19 - 1 = \underline{2.19\%}$$

For 20 year contracts:

$$K = (1.18)^{20} - 1 = 27.39 - 1 = \underline{26.39\%}$$

#### L. Water Rights

1. Order No. 21446

Adequate water rights are defined as rights owned by downstream consumptive users equal to twice the requirement of the QF.

2. Parties Comments

IPCo supports the requirement for non-condemnable senior water rights downstream of the QF, but believes that only rights to flows equal to the maximum project usage are necessary.

WWP points out the need for seniority to the downstream requirement, and cautions that the downstream rights must not be supplied by inflows below the QF.

PP&L recommends broadening the concept to include long-term fuel contracts for thermal projects.

Siteh suggests that the QF's water right provides adequate protection without additional downstream water rights. Siteh, Cook and Bonneville state that no value is given to water rights by Order No. 21446.

RTD Hydro Projects states: "There is no potential for future subordination of hydropower water rights to consumptive agriculture uses upstream from [its] diversions. The extremely steep and rocky mountainous terrain upstream from [its] project sites preclude agriculture development. The possibility of industrial development is very remote and the use of the water in this area for mining purposes is very restricted by clean water regulations."

### 3. Commission's Position

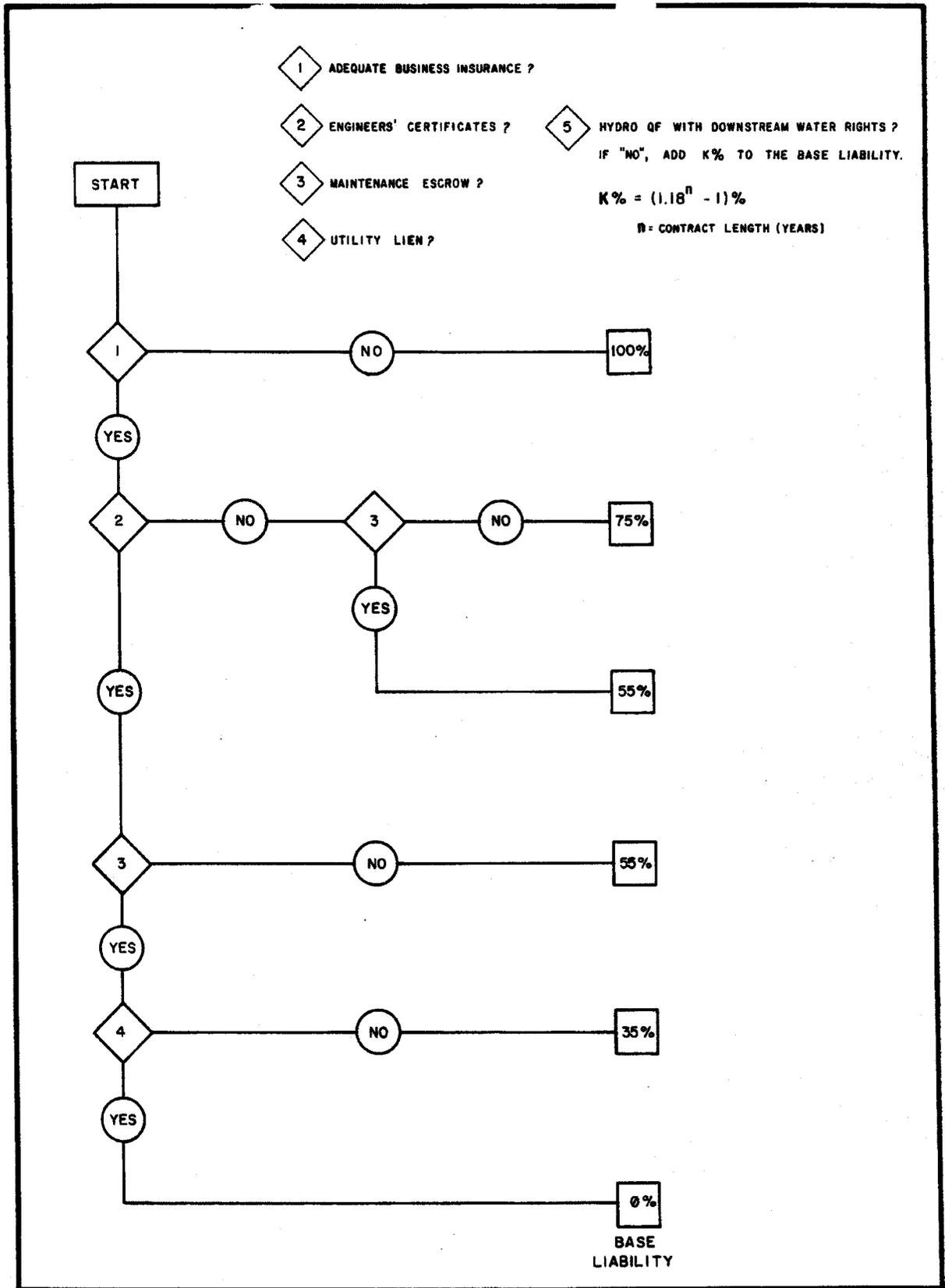
The requirement for non-condemnable senior water rights owned by downstream users is reasonable regardless of upstream terrain. To be acceptable the rights must not be supplied by inflows below the QF. Since some water rights may be abandoned, hydroelectric QFs must be able to show non-condemnable senior downstream rights equal to twice their maximum rated flow to avoid adding the "K" factor to the security requirement.

Long-term fuel contracts are a consideration in determining lien rights, so need not be considered here.

## II. Details of the Methodology

### A. The Decision Tree

The following decision tree (page 33A) leads the user to proper determination of the security requirement for any given QF depending on the answers to 5 questions, as listed on the diagram.



## **B. The Security Requirement Amounts**

### **1. The Table**

The following table (page 34A) provides a matrix of the Security Requirement Ratios available to QFs depending on the various levels of mitigation. Column (1) identifies the length of the QF's power sales agreement in years. The headings of the other columns identify the level of mitigation which QFs may take. To qualify for the ratios listed in Column (4), the QF may supply either engineering certification or a maintenance escrow in addition to adequate basic business insurance. The ratios in Column (5) require all three measures; basic business insurance, engineering certifications and a maintenance escrow. Column (6) ratios require the QF to grant acceptable lien rights to the utility in addition to the other three mitigation measures.

The row labeled zero under Column (1) represents the security ratios which must be maintained by hydroelectric QFs possessing adequate downstream water rights, regardless of contract length.

To use the table:

- \* Select the column representing the mitigation measures in effect for the QF.
- \* Select the row representing the length of the power sales contract for the QF.
- \* The percentage listed at the intersection of the selected column and row represents the ratio to the total computed security requirement that the CSPP must maintain in the form of liquid security in order to avoid breach of contract.

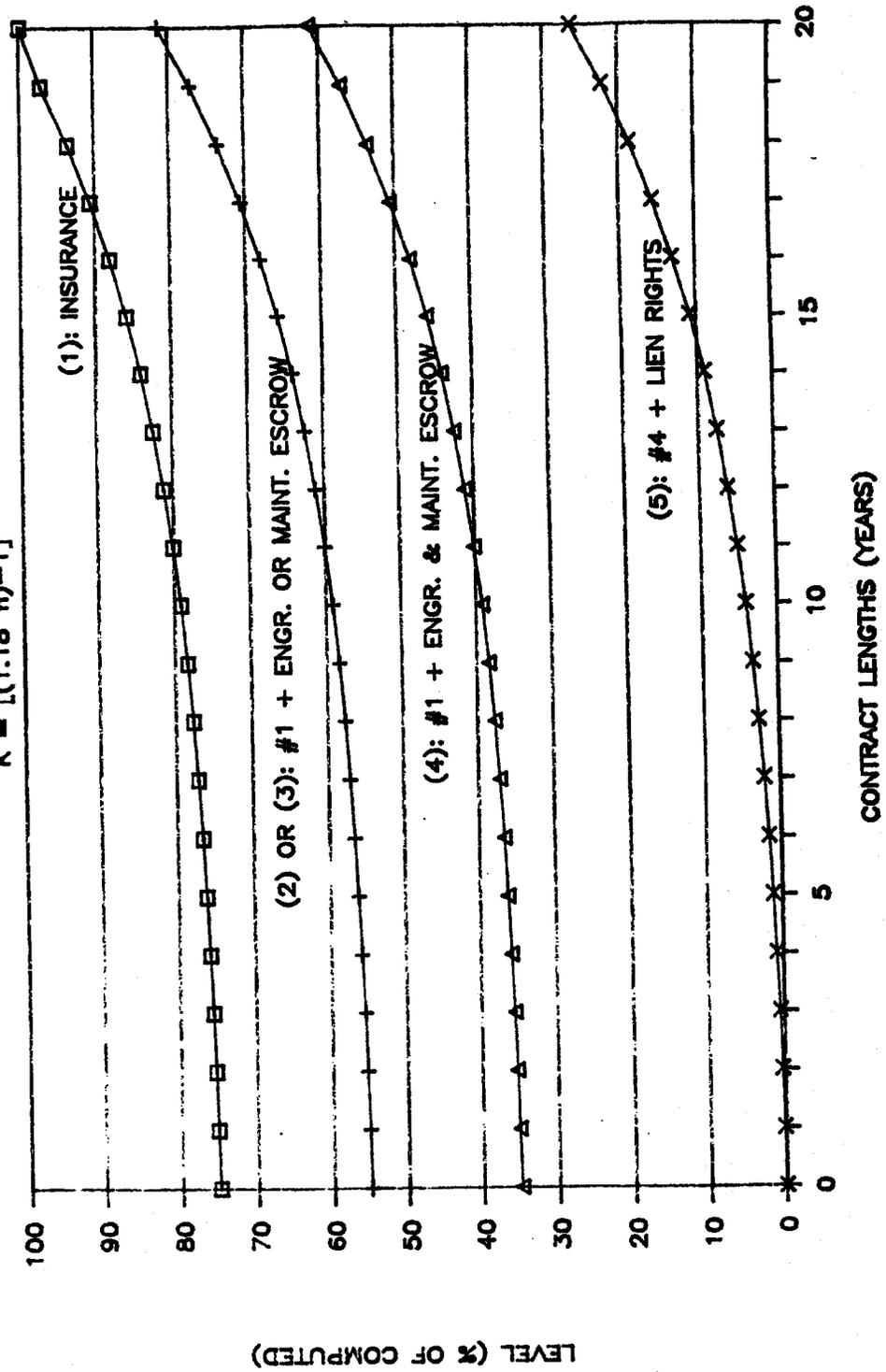
### **2. The Graph**

Page 34B is a graphical representation of the data presented in the chart on page 34A.



# REQUIRED SECURITY LEVELS

$$K = [(1.18^n) - 1]$$



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**C. The Overpayment Liability**

**1. The Chart**

The chart on page 35A is a matrix representing the overpayment liability rates in any given year for QFs having a power sales agreement length of 10, 15, 20, 25, 30 or 35 years. The data shown are for avoided cost rates determined using the assumptions of Case No. U-1006-247, but without arbitrary reduction for contracts less than 35 years. The method of determining the overpayment liability rates is as described in Section I.B.3., above.

The chart is included for illustrative purposes only. Actual data will depend on the rates in effect at the time of making the contract and should be clearly stated therein.

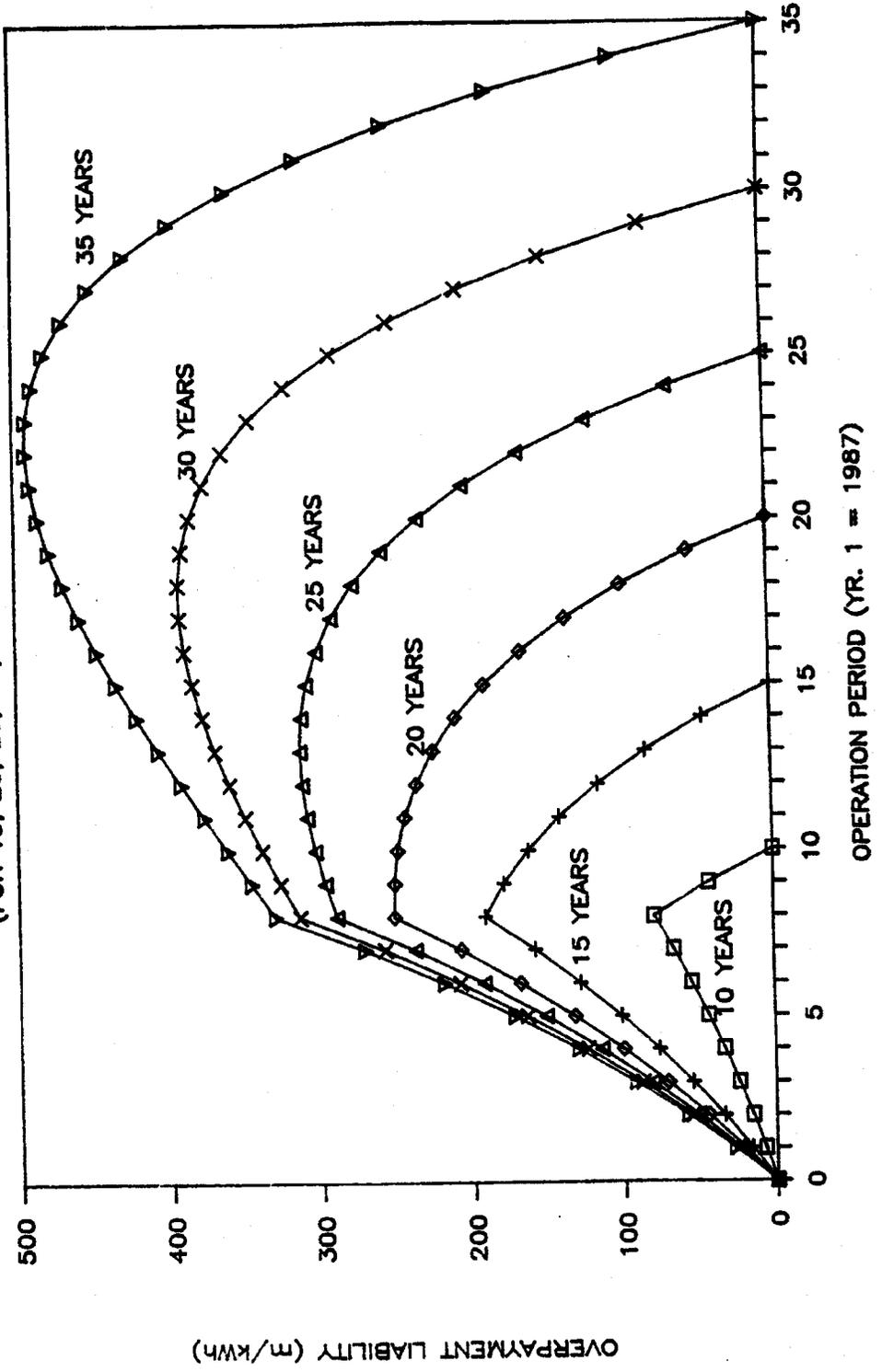
**2. The Graph**

Page 35B is a graphical representation of the data shown on page 35A.

IPCO OVERPAYMENT LIABILITY LEVEL (m/kWh) (100% of computed liability)							
CONTRACT LENGTH (YEARS):		10	15	20	25	30	35
LEVEL RATE (m/kWh):		25.69	34.04	38.56	41.35	43.17	44.37
END OF OPERATION YEAR NO.:	0	0.00	0.00	0.00	0.00	0.00	0.00
	1	7.60	16.46	21.26	24.22	26.15	27.43
	2	15.71	34.57	44.77	51.07	55.17	57.90
	3	24.39	54.52	70.82	80.88	87.43	91.79
	4	33.69	76.53	99.70	114.01	123.32	129.51
	5	43.69	100.85	131.77	150.86	163.29	171.54
	6	54.44	127.76	167.41	191.90	207.84	218.43
	7	66.05	157.57	207.07	237.64	257.54	270.76
	8	78.60	190.65	251.24	288.67	313.03	329.21
	9	42.66	177.85	250.96	296.11	325.51	345.04
	10	0.00	161.28	248.51	302.37	337.44	360.73
	11		140.40	243.53	307.22	348.68	376.23
	12		114.58	235.64	310.41	359.08	391.42
	13		83.12	224.40	311.65	368.45	406.19
	14		45.22	209.30	310.63	376.60	420.42
	15		0.00	189.78	306.97	383.27	433.96
	16			165.18	300.27	388.22	446.64
	17			134.78	290.05	391.13	458.27
	18			97.76	275.77	391.65	468.64
	19			53.19	256.83	389.41	477.48
	20			0.00	232.55	383.95	484.52
	21				202.15	374.76	489.43
	22				164.75	361.28	491.84
	23				119.37	342.87	491.34
	24				64.87	318.77	487.44
	25				0.00	288.17	479.61
	26					250.12	467.23
	27					203.57	449.61
	28					147.30	425.97
	29					79.96	395.41
	30					0.00	356.93
	31						309.37
	32						251.46
	33						181.73
	34						98.53
	35						0.00

# IPCO ACCUMULATED OVERPAYMENT LIABILITY

(FOR 15, 20, 25, 30, & 35 YR CONTRACTS)



## FINDINGS OF FACT

We find:

- 1) That levelized rates are an incentive to the development of the cogeneration and small power production industry.
- 2) That CSPPs receiving levelized avoided cost payments will be overpaid if they substantially reduce generation or if they discontinue generation (i.e. default) prior to the end of their contract term;
- 3) That the overpayment rate is different in each year of operation;
- 4) That the burden of said overpayment falls on the ratepayers unless they are reimbursed by the defaulting CSPP;
- 5) That any reimbursement from a CSPP to the ratepayers for said overpayment ought to include annual interest for the period between the time of overpayment and the time of the reimbursement;
- 6) That the method described herein for estimating the cumulative value of said overpayment is a just and reasonable method of determining liquidated damages;
- 7) That CSPPs may be unable to provide said reimbursement unless they are required to establish and maintain some form of liquid security;
- 8) That a cash escrow managed by an Idaho Bank or Savings and Loan Association (or equivalent guaranteed lines of credit or insurance) will satisfy the liquid security requirement;
- 9) That the risk of default by a CSPP for any QF is directly related to the quality of design, construction, maintenance and management of said QF;
- 10) That it is just and reasonable to require CSPPs to maintain a form of liquid security equal to 100% of the estimated cumulative overpayment (estimate) throughout the life of each QF's power purchase agreement;

11) That it is just and reasonable to reduce the amount of the required liquid security (required amount) by 25% of the estimate for each QF protected by adequate basic business insurance as described herein;

12) That it is just and reasonable to reduce the required amount by an additional 20% of the estimate for each QF meeting the requirements of subparagraph 11, above, and also providing full engineering certification as described herein;

13) That it is just and reasonable to reduce the required amount by an additional 20% of the estimate for each QF meeting the requirements of subparagraph 11, above, and also maintaining a maintenance escrow as described herein;

14) That it is just and reasonable to reduce the required amount by an additional 35% of the estimate for each QF meeting the requirements of subparagraphs 11, 12 and 13, above, and also providing the energy purchasing utility with adequate lien rights as described herein;

15) That it is just and reasonable to increase the required amount by an amount "K%" of the estimate, as described herein, for any QF that does not receive its motive force from falling water protected by adequate downstream water rights as described herein; provided that the required value shall not exceed 100% of the estimate; and

16) That it is just and reasonable for each party subject to the requirements of this Order to assume and bear its own administrative costs.

## CONCLUSIONS OF LAW

### I

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, The Washington Water Power Company, Utah Power & Light Company and Pacific Power & Light Company pursuant to the authority and power granted it under Title 61 of the *Idaho Code*, and the Rules of Practice and Procedure of the Idaho Public Utilities Commission, IDAPA 31.A.

### II

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 (PURPA) and implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations to purchase energy from qualifying cogeneration and small power production facilities, and to implement FERC rules. PURPA §§210, 210A, 210F, 16 U.S.C.A. §§824-a-3, 824-a-3(a), (f); *Afton Energy, Inc. v. Idaho Power Company*, 107 Idaho 781, 693 P.2d 427.

## O R D E R

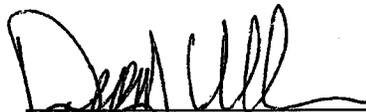
In consideration of the foregoing, IT IS HEREBY ORDERED that cogenerators and small power producers contracting for levelized rates with Commission-regulated utilities after the date of this Order must provide a Commission-approved form of liquid security and/or risk mitigation in the amount of computed overpayment liability to ensure an optimum level of ratepayer indifference to the front-end loading that occurs with levelized rates in power purchase contracts.

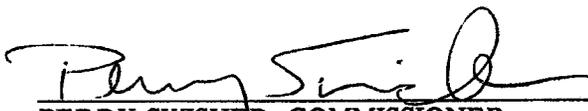
IT IS FURTHER ORDERED that the reasoning and methodology of the Commission as set forth above in Sections I and II for securing the cumulative

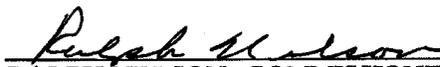
overpayment liability that occurs with levelized rates in CSPP power purchase contracts be adopted and implemented.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. U-1006-292 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. U-1006-292. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §61-626.

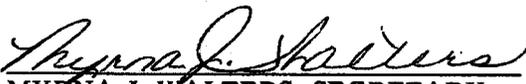
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this ~~11~~ 12 day of January, 1988.

  
DEAN J. MILLER, PRESIDENT

  
PERRY SWISHER, COMMISSIONER

  
RALPH NELSON, COMMISSIONER

ATTEST:

  
MYRNA J. WALTERS, SECRETARY

sw/692L

### SEPARATE CONCURRING OPINION

In Order No. 21446 the Commission acknowledged that unanimity did not exist among the Commission members on at least one issue presented by this case. And, my separate opinion in Case No. U-1006-294, Order No. 21522, further reflected, or at least hinted at, lack of unanimity. In deference to the majority vote of my colleagues, I have concurred in this Order. However, I write separately for the purpose clarifying the difference of opinion which existed among the Commissioners.

The Commission, in its deliberations leading to this Order, has struggled with a number of difficult issues. For the most part, this Order, which is the product of extensive discussion and debate, achieves a reasonable accommodation of conflicting interests.

The most difficult policy decision involved in this case was whether any combination of security or risk mitigation should be allowed to completely eliminate a requirement of liquid security. I argued that there should be some residual liquid security requirement for two reasons. First CSPP projects are fundamentally different from utility-owned projects in that they operate free of regulatory oversight. Ratepayers are protected, at least in theory, from risks arising from the construction of generating facilities by regulated utilities. As a Commission, we do not have corresponding authority with respect to CSPP projects. This distinction, in my opinion, should be reflected in the security mechanism. All CSPP projects, whether they be hydro or cogenerating, should have some residual liquid security requirement.

Second, by permitting hydro projects to escape from the residual security requirement we may encourage the development of hydro projects at the expense of thermal projects. Although this is not the intent of the Order, it may be a consequence.

DATED at Boise, Idaho, this                      day of January, 1988.

  
DEAN J. MILLER, PRESIDENT

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**APPENDIX A**

**(From Order No. 21446)**

**ORDER NO. 21690**

---

Reduction of CSPP risk can best be accomplished by basing the level of liquid security requirement on the answers to "yes-or-no" questions about 5 key areas of a project. The first 4 questions pertain to the developer's contractual arrangements. The fifth question pertains to outside influences over the QF. The 5 questions are:

- 1.) [20%]; Does the QF have adequate basic business insurance?
- 2.) [15%]; Has the QF received appropriate independent engineering certification?
- 3.) [20%]; Does the Owner assure an appropriate Maintenance escrow?
- 4.) [25%]; Does the Utility have acceptable lien rights over the QF?
- 5.) [ K ]; Is the QF hydroelectric, and if so, are it's water rights secured by agricultural rights for at least twice the required flow?

"Adequate basic business insurance" refers to 5 types of insurance that ought to be carried by a prudent businessman. They are:

1. Liability insurance,
2. Catastrophic (flood, fire, etc.) insurance,
3. Boiler and Machinery insurance,
4. Temporary Loss of Income insurance, and
5. For hydro plants, Low Water insurance.

"Appropriate engineering certification" refers to certification by a Professional Engineer (registered in the State of Idaho) as to the adequacy of the QF's design, construction, and Operations and Maintenance(O&M) procedures policy.

"Maintenance escrow" refers to a contractual arrangement with the Utility or a competent Idaho financial institution to maintain an account of liquid funds available only for investment in repairs to the QF's physical plant.

Standards of adequacy and appropriateness for the three items penultimately identified are defined elsewhere.

The level of security required of a QF can be determined by sequentially asking one or more questions [depending on the answer(s) to the previous question(s)] in the 5 key areas. Because the written description of the questioning process is somewhat complex, a pictorial decision tree is attached. The description, in conjunction with the tree, explains the process.

Answers to the key questions will lead to a percentage number. This number represents the level of liquid security required of the QF relative to the total "levelization overpayment liability" as computed by the method described elsewhere. The questions are asked as follows.

Question No. 1. is a crucial determinant of a QF's riskiness. If a QF is not protected against basic risks by adequate insurance, it must be viewed as very risky regardless of any other measures an Owner may take. Therefore, if the answer to question No. 1 is "No", the QF is required to maintain 100% of the computed overpayment security. If the answer is "Yes", the security level requirement is reduced by 20% and question No. 2 is appropriate.

If the answer to question No. 2 is "Yes", the security requirement is reduced by another 15%. Furthermore, regardless of the answer to question No. 2, question No. 3 is also appropriate and if the answer there is "Yes", the security requirement is reduced by an additional 20%. If both 2 & 3 are "Yes", question No. 4 is also appropriate. A "Yes" answer to question No. 4 reduces the requirement another 25%.

Regardless of the answers to questions No. 2, 3, and 4, Question No. 5 is appropriate so long as the answer to 1 was "Yes". If the answer to No. 5 is "Yes", then the level of security stays as per questions Nos. 1 thru 4. However, if the answer to 5 is "No", the level of security requirement is increased by:

$$K = \frac{n}{(1+d)^n} \quad \text{Where:}$$

d = discount rate  
n = contract length

The results of this series of decisions will result in one of the following if 5 is "Yes".

IF THESE ARE YES -----	THEN THIS LEVEL -----
NONE	100%
1 Only	80%
1 & 2	65%
1 & 3	60%
1, 2, & 3	45%
1, 2, 3, & 4	20%

If the answer to 5 is "No", the appropriate level tabulated above will increase according to the contract length, but not in excess of 100%.

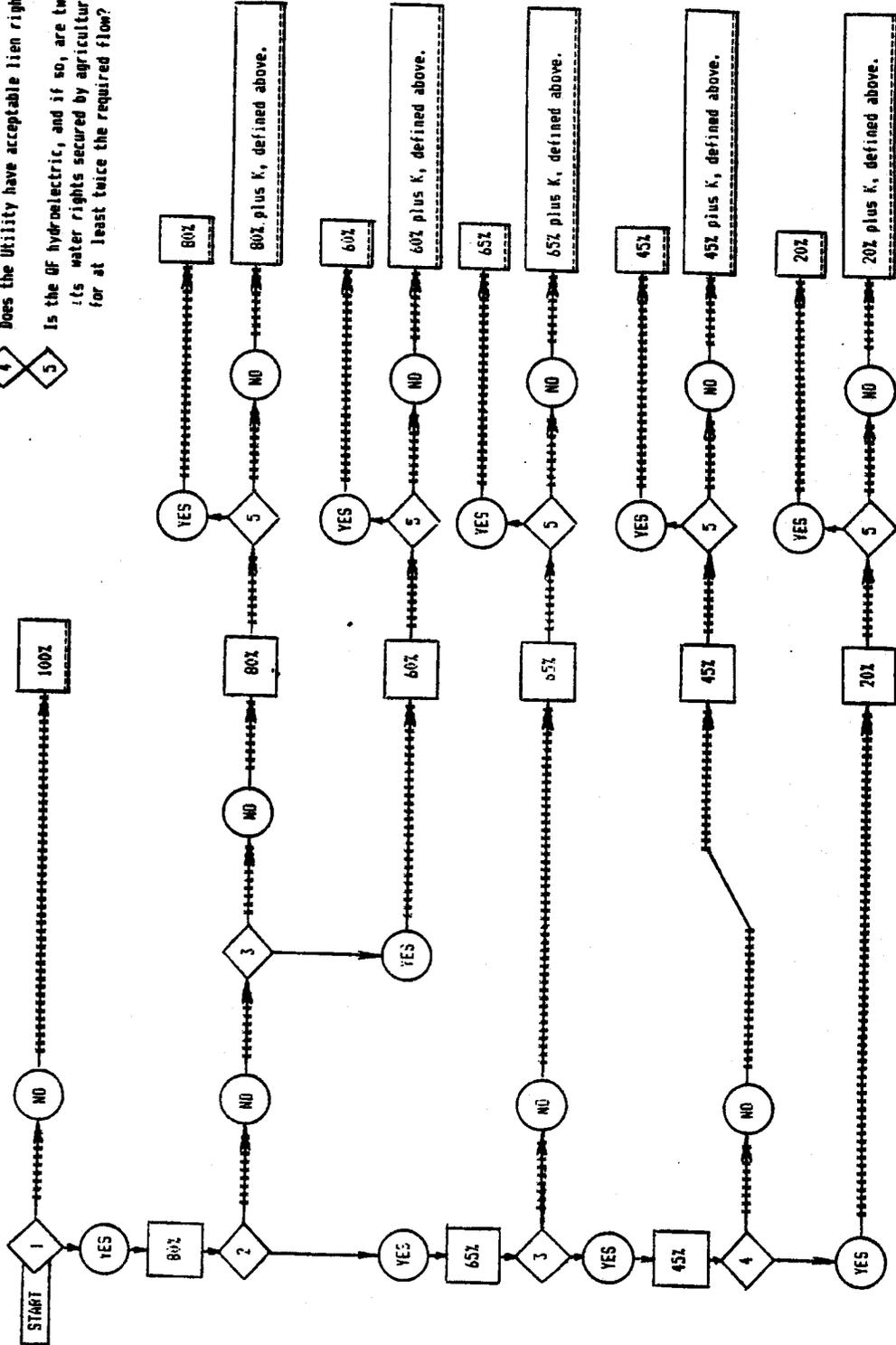
**CSPP SECURITY QUESTIONS AND LEVELS**

**QUESTIONS:**

- 1 Does the CSPP plant have adequate basic business insurance?
- 2 Has the plant received appropriate independent engineering certification?
- 3 Does the project assure an appropriate Maintenance Escrow?
- 4 Does the Utility have acceptable lien rights?
- 5 Is the OF hydroelectric, and if so, are twice its water rights secured by agricultural rights for at least twice the required flow?

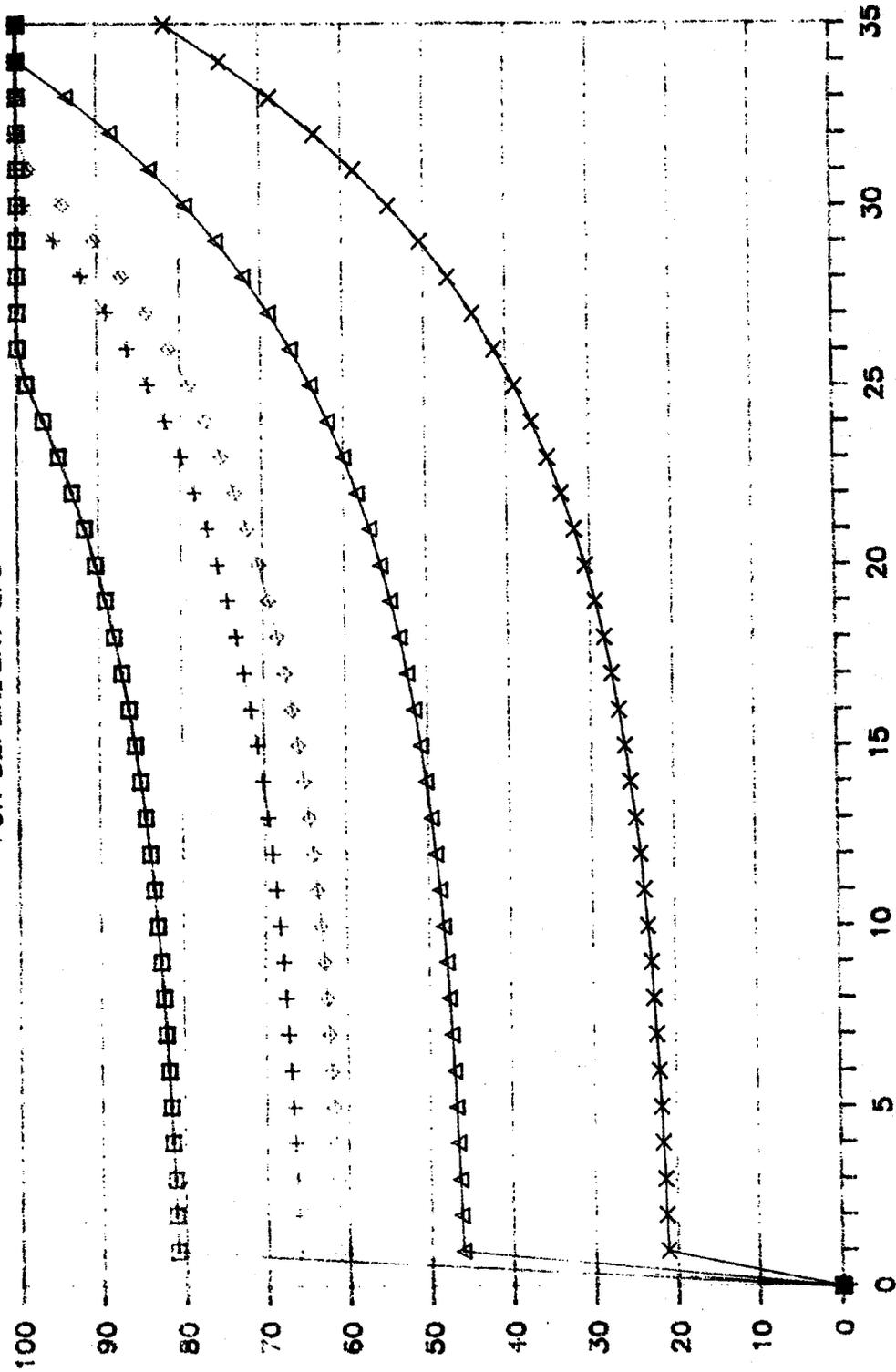
$K = (1+d)^n$  Where:  $d$  = discount rate;  $n$  = contract length (years).

**LEVELS:**



# REQUIRED SECURITY LEVELS

FOR DEPENDENT QFs



CONTRACT LENGTHS (YEARS): Yes to:  
 □ 1,2,3    △ 1,2,3&4  
 ◇ 1,2&3    X 1,2,3&4

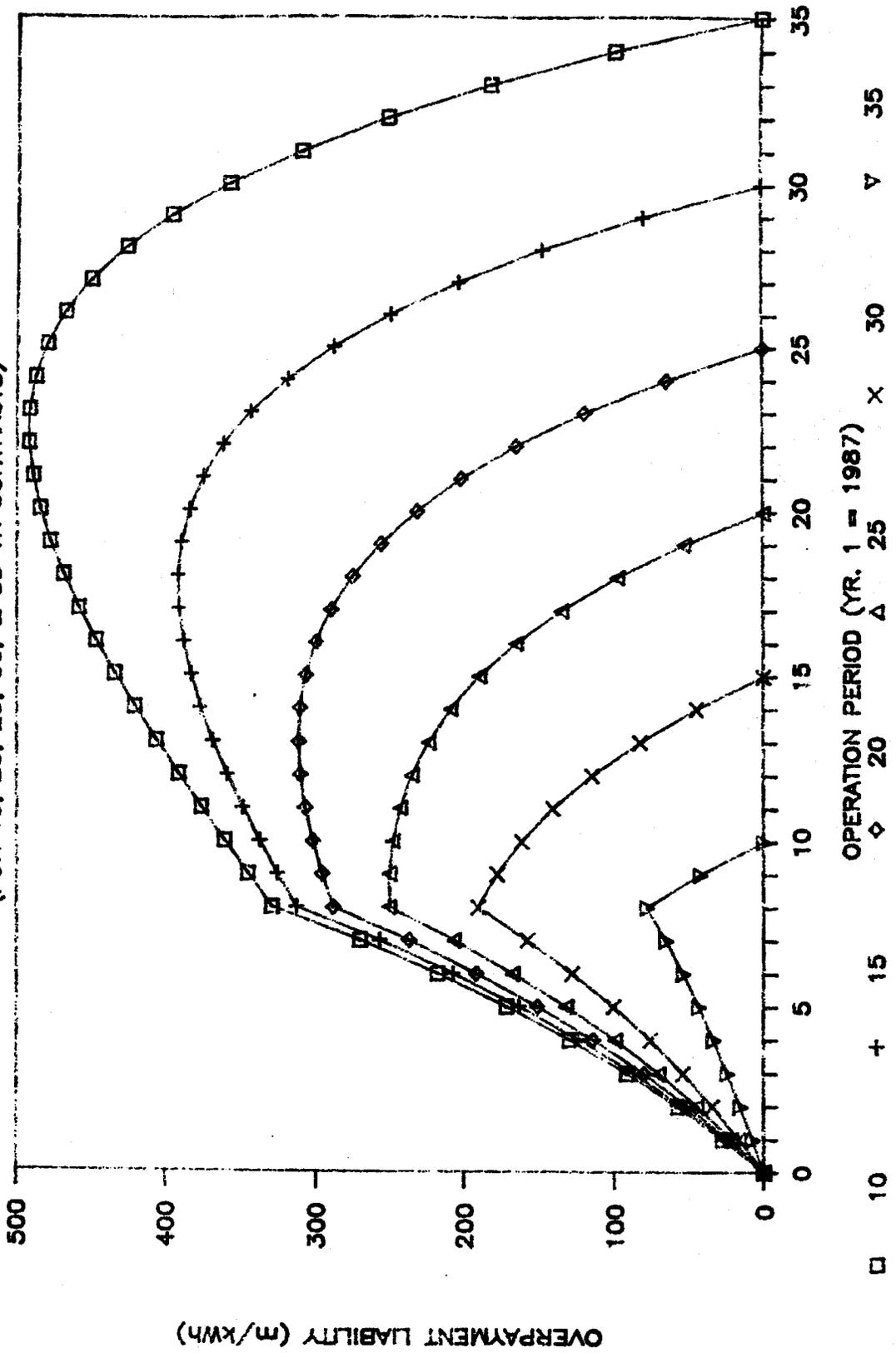
LEVEL (% OF COMPUTED)

IPCO OVERPAYMENT LIABILITY LEVEL (¢/kWh; 100%)

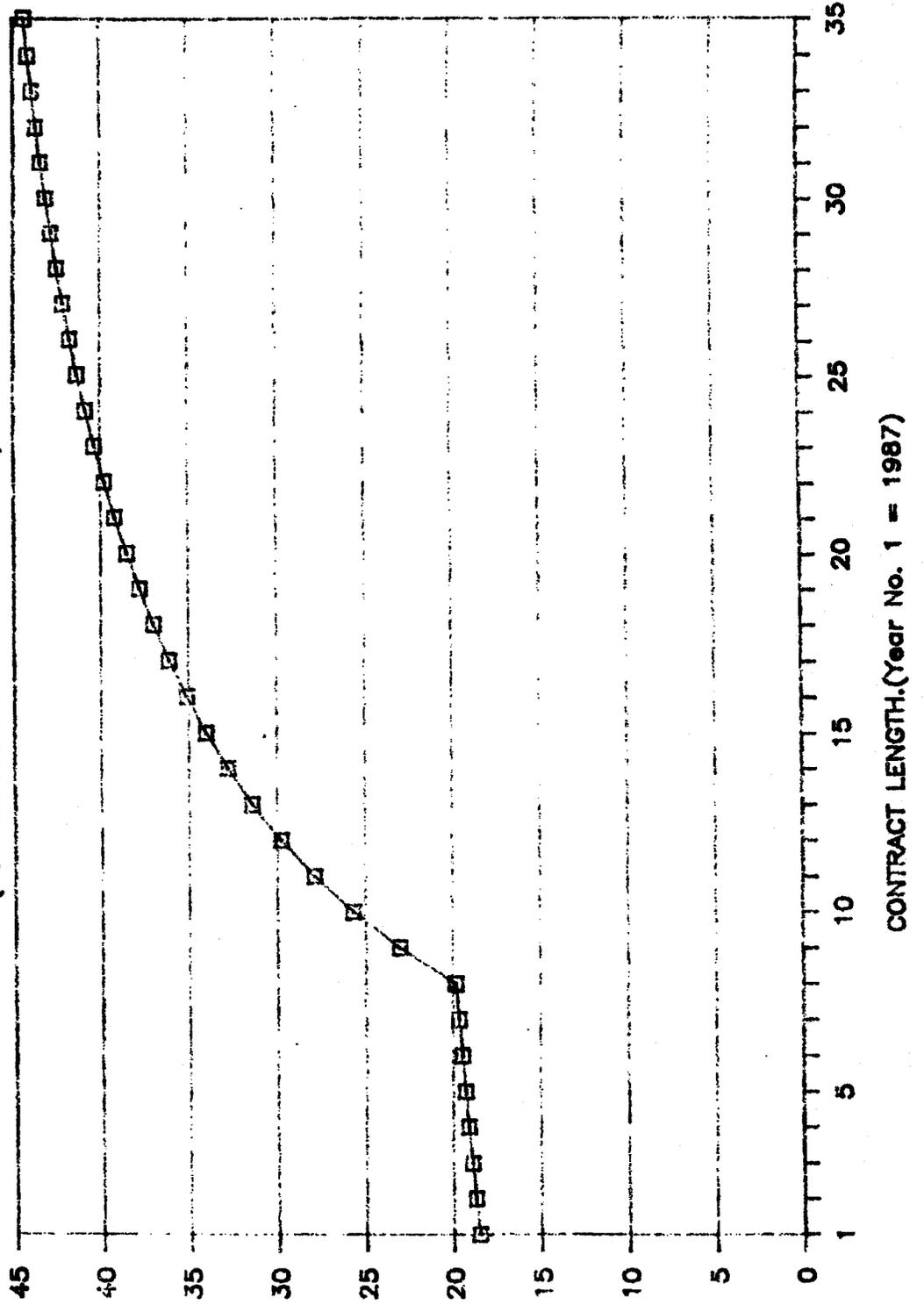
CONTRACT LENGTH (YEARS)*	10	15	20	25	30	35	
LEVEL RATE (¢/kWh)*	25.69	34.04	38.56	41.35	43.17	44.37	
OPERATION YEAR:	1987 *	7.60	16.46	21.26	24.22	26.15	27.43
	1988 *	15.71	34.57	44.77	51.07	55.17	57.90
	1989 *	24.39	54.52	70.82	80.88	87.43	91.79
	1990 *	33.69	76.53	99.70	114.01	123.32	129.51
	1991 *	43.69	100.85	131.77	150.86	163.29	171.54
	1992 *	54.44	127.76	167.41	191.90	207.84	218.43
	1993 *	66.05	157.57	207.07	237.64	257.54	270.76
	1994 *	78.60	190.65	251.24	288.67	313.03	329.21
	1995 *	42.66	177.85	250.96	296.11	325.51	345.04
	1996 *	0.00	161.28	248.51	302.37	337.44	360.73
	1997 *		140.40	243.53	307.22	348.68	376.23
	1998 *		114.58	235.64	310.41	359.08	391.42
	1999 *		83.12	224.40	311.65	368.45	406.19
	2000 *		45.22	209.30	310.63	376.60	420.42
	2001 *		0.00	189.78	306.97	383.27	433.96
	2002 *			165.18	300.27	388.22	446.64
	2003 *			134.78	290.05	391.13	458.27
	2004 *			97.76	275.77	391.65	468.64
	2005 *			53.19	256.83	389.41	477.48
	2006 *			0.00	232.55	383.95	484.52
	2007 *				202.15	374.76	489.43
	2008 *				164.75	361.28	491.84
	2009 *				119.37	342.87	491.34
	2010 *				64.87	318.77	487.44
	2011 *				0.00	288.17	479.61
	2012 *					250.12	467.23
	2013 *					203.57	449.61
	2014 *					147.30	425.97
	2015 *					79.96	395.41
	2016 *					0.00	356.93
	2017 *						309.37
	2018 *						251.46
	2019 *						181.73
	2020 *						98.53
	2021 *						0.00

# IPCO ACCUMULATED OVERPAYMENT LIABILITY

(FOR 15, 20, 25, 30, & 35 YR CONTRACTS)



# IPCO LEVELIZED RATES (FOR VARIOUS CONTRACT LENGTHS)



LEVEL RATES (m/kwh)

YEAR NO.:	1	2	3	4	5	6	7	8	9	10
YEAR:	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
LEVEL RATE:	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05
ACTUAL NON-LEVEL:	21.2	21.69	22.07	22.55	23.02	23.49	23.94	24.49	24.95	25.41
OVER/UNDER PAYMENT:	25.85	25.36	24.98	24.50	24.03	23.56	23.11	22.56	22.14	21.66
CUMULATIVE OVER/UNDER PAYMENT:	27.45	57.87	91.77	129.47	171.48	218.34	270.70	329.14	394.76	468.55
CUMULATIVE PAYMENT W/O INTEREST:	25.85	51.21	76.19	100.69	124.72	148.28	171.39	193.95	216.76	239.75

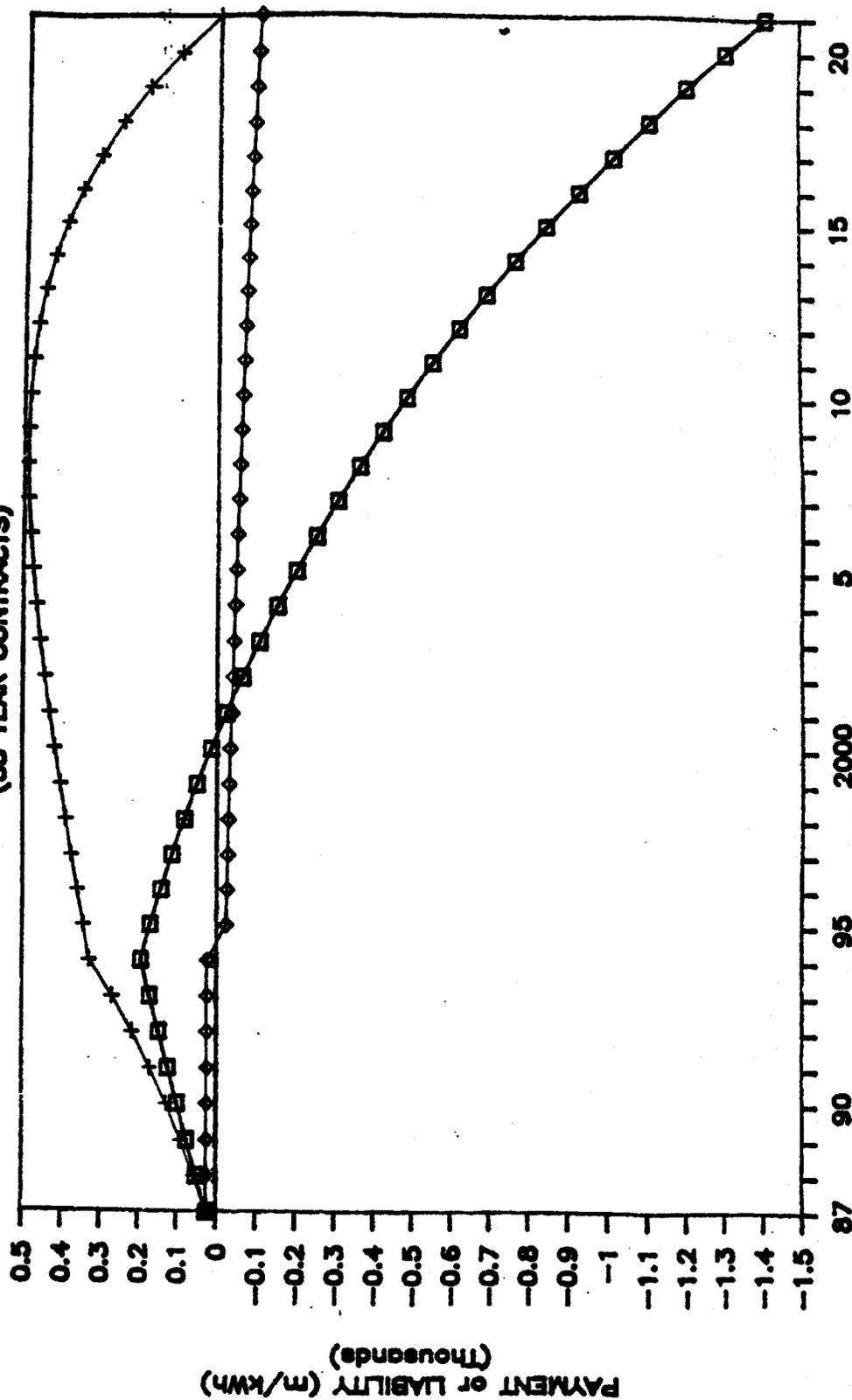
YEAR NO.:	11	12	13	14	15	16	17	18	19	20
YEAR:	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
LEVEL RATE:	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05
ACTUAL NON-LEVEL:	75.73	77.67	80.09	82.38	84.73	87.16	89.68	92.27	94.94	97.71
OVER/UNDER PAYMENT:	(28.68)	(30.82)	(33.04)	(35.33)	(37.68)	(40.11)	(42.63)	(45.22)	(47.89)	(50.66)
CUMULATIVE OVER/UNDER PAYMENT:	376.15	391.35	406.13	420.36	433.90	446.59	458.22	468.59	477.44	484.47
CUMULATIVE PAYMENT W/O INTEREST:	114.07	53.25	50.21	14.88	-22.8	-62.91	-105.54	-150.76	-198.65	-249.31

YEAR NO.:	21	22	23	24	25	26	27	28	29	30
YEAR:	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
LEVEL RATE:	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05	47.05
ACTUAL NON-LEVEL:	100.55	103.5	106.53	109.67	112.91	116.25	119.69	123.27	126.94	130.74
OVER/UNDER PAYMENT:	(53.50)	(56.45)	(59.48)	(62.62)	(65.86)	(69.20)	(72.64)	(76.22)	(79.89)	(83.69)
CUMULATIVE OVER/UNDER PAYMENT:	489.39	491.80	491.29	487.40	479.56	467.13	449.57	425.92	395.35	358.66
CUMULATIVE PAYMENT W/O INTEREST:	-302.81	-359.26	-418.74	-481.36	-547.22	-616.42	-689.06	-765.29	-845.17	-928.66

YEAR NO.:	31	32	33	34	35
YEAR:	2017	2018	2019	2020	2021
LEVEL RATE:	47.05	47.05	47.05	47.05	47.05
ACTUAL NON-LEVEL:	134.67	138.72	142.9	147.22	151.67
OVER/UNDER PAYMENT:	(57.52)	(91.67)	(95.85)	(100.17)	(104.62)
CUMULATIVE OVER/UNDER PAYMENT:	309.29	281.36	181.61	98.39	(0.16)
CUMULATIVE PAYMENT W/O INTEREST:	-1016.48	-1109.15	-1204	-1304.17	-1408.79

Order No. 21446

# IPCo CSPP LIABILITY COMPARISONS (35 YEAR CONTRACTS)



1 0% + 12.74%      ◊      YEAR NON-CUM.

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**APPENDIX B**

**Sample Engineering Certificates**

**ORDER NO. 21690**

ENGINEER'S CERTIFICATION  
OF  
DESIGN ADEQUACY  
FOR A  
PURPA QUALIFYING FACILITY (QF)

1. I, \_\_\_\_\_ am a Professional Engineer  
Name of Engineer

registered to practice in the State of Idaho. I have substantial experience in the design, construction, and operation of electric power plants of the same type as

\_\_\_\_\_ (plant),  
Title of QF

sited at \_\_\_\_\_  
Description of Project Site

in \_\_\_\_\_ County, State of \_\_\_\_\_.

2. I have reviewed and/or supervised the review of the Plans and Specifications for said power plant and its associated equipment and appurtenances, and it is my professional opinion that if the plant is built in accordance with said Plans and Specifications and operated/maintained to commercially typical standards for this type of plant, said plant will operate at or near design efficiency and plant factor for \_\_\_\_\_ years (length of the proposed Power Sales Contract), barring unforeseeable Force Majeure.
3. I have no economic relationship to the Designer of said plant and have made my analysis of the Plans and Specifications independently.
4. I have supplied the owner of the plant with at least one copy of said Plans and Specifications bearing my Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.
5. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

Date: \_\_\_\_\_

Signature \_\_\_\_\_

ENGINEER'S CERTIFICATION  
OF  
CONSTRUCTION ADEQUACY  
FOR A  
PURPA QUALIFYING FACILITY (QF)

1. I, \_\_\_\_\_ am a Professional Engineer  
Name of Engineer
- registered to practice in the State of Idaho. I have  
substantial experience in the design, construction, and  
operation of electric power plants of the same type as  
\_\_\_\_\_ (plant),  
Title of QF
- sited at \_\_\_\_\_  
Description of Project Site
- in \_\_\_\_\_ County, State of \_\_\_\_\_.
2. I have made and/or supervised periodic inspections of the  
construction in progress and of the completed plant, and it is  
my professional opinion that the plant was built substantially  
in accordance with Plans and Specifications bearing the words  
"CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" and the Stamp  
of the Certifying Engineer of the Design, and that the plant  
was built to commercially accepted standards for a plant of  
this type.
3. I have no economic relationship to the Designer of said plant  
and have made my analysis of the Plans and Specifications  
independently.
4. I hereby CERTIFY that the above statements are complete, true,  
and accurate to the best of my knowledge and I therefore set my  
hand and seal below.

Signed and Sealed

Date: \_\_\_\_\_

Signature \_\_\_\_\_

ENGINEER'S CERTIFICATION  
OF  
OPERATIONS AND MAINTENANCE POLICY  
FOR A  
PURPA QUALIFYING FACILITY (QF)

1. I, \_\_\_\_\_ am a Professional Engineer  
Name of Engineer
- registered to practice in the State of Idaho. I have  
substantial experience in the design, construction, and  
operation of electric power plants of the same type as  
\_\_\_\_\_ (plant),  
Title of QF
- sited at \_\_\_\_\_  
Description of Project Site
- in \_\_\_\_\_ County, State of \_\_\_\_\_.
2. I have reviewed and/or supervised the review of the Policy for  
Operation and Maintenance (O&M Policy) for the plant and it is  
my professional opinion that, provided said plant has been  
designed and built to appropriate standards, adherence to said  
O&M Policy will result in the plant's producing at or near the  
design electrical output, efficiency, and plant factor for  
\_\_\_\_\_ years (length of the proposed Power Sales Contract),  
barring unforeseeable Force Majeure.
3. I have no economic relationship to the Designer of said plant  
and have made my analysis of the Plans and Specifications  
independently.
4. I have supplied the owner of the plant with at least one copy  
of said O&M Policy bearing my Stamp and the words "CERTIFIED  
FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.
5. I hereby CERTIFY that the above statements are complete, true,  
and accurate to the best of my knowledge and I therefore set my  
hand and seal below.

Signed and Sealed

Date: \_\_\_\_\_

Signature \_\_\_\_\_

ENGINEER'S CERTIFICATION  
OF  
ONGOING OPERATIONS AND MAINTENANCE  
OF A  
PURPA QUALIFYING FACILITY (QF)

1. I, \_\_\_\_\_ am a Professional Engineer  
Name of Engineer

registered to practice in the State of Idaho. I have substantial experience in the design, construction, and operation of electric power plants of the same type as

\_\_\_\_\_ (plant),  
Title of QF

sited at \_\_\_\_\_  
Description of Project Site

in \_\_\_\_\_ County, State of \_\_\_\_\_.

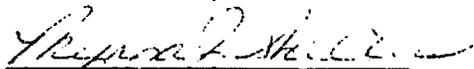
2. I have made a physical inspection of said plant, its operations and maintenance records since the last previous certified inspection, and the plant's O&M Policy bearing the words "CERTIFIED FOR IDAHO P.U.C. SECURITY APPROVAL" and the Stamp of the Certifying Engineer. It is my professional opinion, based on the plant'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 plant will continue producing at or near its design electrical output, efficiency, and plant factor for \_\_\_\_\_ years (time remaining to the end of the plants Power Sales Contract).
3. I have no economic relationship to the Designer of said plant and have made my analysis of the Plans and Specifications independently.
4. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

Date: \_\_\_\_\_

Signature \_\_\_\_\_

**EXHIBIT E**



MYRNA J. WALTERS  
COMMISSION SECRETARY

FIRST AMENDMENT TO THE  
FIRM ENERGY SALES AGREEMENT

THIS FIRST AMENDMENT entered into on the 12<sup>th</sup> day of April 1994, to the FIRM ENERGY SALES AGREEMENT (the "Agreement") dated as of December 9, 1992, between GLENN'S FERRY COGENERATION PARTNERS, LTD ("Seller"), and IDAHO POWER COMPANY, ("Idaho Power"), hereinafter sometimes referred to collectively as "Parties", or individually as "Party", for Seller's cogeneration project ("Facility").

WITNESSETH:

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission ("Commission") on January 22, 1993 per Order No. 24674; and

WHEREAS, the Seller desires to delay the Scheduled Operation Date of this Facility by one year; and

WHEREAS, the Parties desire to embody various other miscellaneous changes which have taken place since the Agreement was first signed.

NOW THEREFORE, the Parties have agreed to amend the Agreement as follows:

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

In Paragraph 7.1.1 Base Payment,

"35.63 Mills/kWh" is changed to "37.22" Mills/kWh"

"58.16 Mills/kWh" is changed to "60.77" Mills/kWh"

"48.47 Mills/kWh" is changed to "50.64" Mills/kWh"

2. B-3 SCHEDULED OPERATION DATE

"January 1, 1995" is changed to "January 1, 1996" (Scheduled Operation Date)

"December 1, 1994" is changed to December 1, 1995" (First Energy Date)

3. B-11 COSTS is amended to read as follows:

The cost of the 138 kV transmission line Special Facilities is \$155,500. The cost of

the distribution line Special Facilities is \$3,444. The cost of right-of-way acquisition is \$4,500. The cost of the Metering Equipment is \$8,236. The cost of the communication equipment is \$8,500. In addition, there will be a monthly charge for the communication circuit lease cost associated with the telemetry equipment. The communications circuit lease is \$280.00 per month as of the date of this Agreement. Seller recognizes that the monthly communications circuit charge may be adjusted by Idaho Power as the cost to Idaho Power is adjusted by the owner of the communications circuit. The cost of the Disconnecting Equipment is \$103,000. The total cost to be paid by the Seller is \$283,180. The \$283,180 represents the amount that will be charged by Idaho Power if the Seller makes the payment on or before February 1, 1995. If the Seller does not make this payment by the specified date, the costs will be subject to update. Idaho Power will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of the agreement Seller will pay Idaho Power the operation and maintenance charge specified in Schedule 72 INTERCONNECTIONS TO NON-UTILITY GENERATION or its successor schedules(s). This monthly operation and maintenance charge will be calculated based on \$160,000.00 of 138 kV rated Interconnection Facilities plus an additional \$119,736.00 of Interconnection Facilities rated below 138 kV. The total cost shown above is an estimate calculated on the basis of average costs. When the actual total cost is determined, Idaho Power will adjust the total cost amount to reflect the actual total cost incurred by Idaho Power. Beginning with the month of this adjustment, the operation and maintenance charges will also be adjusted. When the actual total cost is known, within sixty (60) days Idaho Power will refund any overpayment or Seller will remit any underpayment.

4. Except as modified by this First Amendment, all other parts of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year herein written.

IDAHO POWER COMPANY

By Jan B Packwood  
Jan B Packwood  
Vice President, Power Supply  
Date 4/12/94

GLENN FERRY COGENERATION PARTNERS, LTD  
By Alan K Forbes G.P.  
Alan K Forbes  
General Partner  
Date 4/17/94

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 12<sup>th</sup> day of April, 1994, before me, the undersigned, a Notary Public, personally appeared Jan B Packwood, personally known, who being duly sworn, did say that he is the Vice President, Power Supply of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Barbara Hill  
Notary Public for Idaho  
Residing at: Boise, Idaho

STATE OF Colorado )  
 ) ss  
County of Arapahoe )

On this 14<sup>th</sup> day of April, 1994, before me, the undersigned, a Notary Public, personally appeared Alan K Forbes, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

[Signature]  
Notary Public for Colorado  
Residing at: Parker, CO

**EXHIBIT F**

MAY 18 1994

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF A PROPOSED AMEND- )  
MENT TO THE FIRM ENERGY SALES )  
AGREEMENT BETWEEN IDAHO POWER )  
COMPANY AND GLENNS FERRY COGEN- )  
ERATION PARTNERS, LTD. FOR THE )  
MAGIC WEST COGENERATION PROJECT )

CASE NO. IPC-E-94-7

ORDER NO. 25505

21765151

APPLICATION

On April 15, 1994, Idaho Power Company (Idaho Power; Company) and Glenns Ferry Cogeneration Partners, Ltd. (Glenns Ferry) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of an Amendment to a Firm Energy Sales Agreement (Agreement) between Idaho Power and Glenns Ferry. The underlying Agreement dated December 9, 1992 was approved by the Commission in Order No. 24674 on January 22, 1993.

Glenns Ferry is the developer of the Magic West Cogeneration project (Magic West), a proposed less than 10 MW natural gas fired turbine generation facility located in the southeast quarter of Section 29, Township 5 South, Range 10 East, Boise Meridian, Elmore County, at the Magic West potato processing facility in Glenns Ferry, Idaho. The estimated annual net firm energy production is 83,220,000 kWh. As represented, the project will be a PURPA "qualifying facility" (QF) prior to interconnection. The underlying Agreement provides for levelized rates over a 20-year contract term and a scheduled operation date of January 1, 1995.

Idaho Power has also entered into a Firm Energy Sales Agreement with Rupert Cogeneration Partners, Ltd. (Rupert) to purchase energy to be generated by a less than 10 MW cogeneration project which will be located adjacent to the Magic Valley Foods potato processing facility in Rupert, Idaho (Magic Valley Project). The Magic Valley Agreement was approved by the Commission in Order No. 25050 on July 23, 1993. The scheduled operation date for the Magic Valley Project is January 1, 1996.

The Application relates that Mr. Allen Forbes is the general partner of both Rupert and Glenns Ferry and as the President of Independent Energy Partners, Inc., is

developing both the Magic West and Magic Valley Projects. In order to capture certain economies of scale and to coordinate the construction and financing of the Magic West and Magic Valley Projects, Mr. Forbes requested that Idaho Power consent to an amendment to the Glens Ferry Firm Energy Sales Agreement to change the scheduled operation date from January 1, 1995 to January 1, 1996. Pursuant to agreement of the parties, if the Amendment is approved by the Commission, Rupert has stipulated to a dismissal (with prejudice) of its Complaint against Idaho Power for "grandfathering" in Case No. IPC-E-93-18.

The Company contends that deferral of the scheduled operation date of the Magic West Project and settlement of the Rupert Complaint would be beneficial to Idaho Power Company and its Customers.

The proposed Amendment dated April 12, 1994 (attached) defers the scheduled operation date for the Magic West Project from January 1, 1995 to January 1, 1996. The Amendment also modifies paragraph 7.1.1 of the Magic West Agreement to adjust the rates to correspond with the current "published" rates for a 20-year Firm Energy Sales Agreement commencing in 1996. (Reference Commission Order No. 24911.)

#### **FINDINGS**

The Commission has reviewed the filings of record in Case No. IPC-E-94-7 and has reviewed its prior Order approving the Magic West Project, Order No. 24674, Case No. IPC-E-92-32. The Commission finds the terms of the Amendment to be reasonable and we approve them. We also approve payments made under the Agreement (as amended) as prudently incurred expenses for ratemaking purposes.

#### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the *Idaho Code* and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter

into fixed term obligations for the purchase of energy from qualifying cogeneration facilities, and to implement FERC rules.

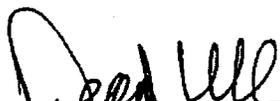
**O R D E R**

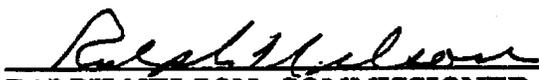
In consideration of the foregoing IT IS HEREBY ORDERED that the First Amendment to the Firm Energy Sales Agreement between Idaho Power Company and Glens Ferry Cogeneration Partners, Ltd. submitted in this proceeding be and the same is hereby approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *18~~th~~* day of May 1994.

  
MARSHA H. SMITH, PRESIDENT

  
DEAN J. MILLER, COMMISSIONER

  
RALPH NELSON, COMMISSIONER

ATTEST:

  
Myrna Walters  
Commission Secretary

JR\O-INC-E-94-7.SW

ORDER NO. 25505

FIRST AMENDMENT TO THE  
FIRM ENERGY SALES AGREEMENT

THIS FIRST AMENDMENT entered into on the 12<sup>th</sup> day of April 1994, to the FIRM ENERGY SALES AGREEMENT (the "Agreement") dated as of December 9, 1992, between GLENN'S FERRY COGENERATION PARTNERS, LTD ("Seller"), and IDAHO POWER COMPANY, ("Idaho Power"), hereinafter sometimes referred to collectively as "Parties", or individually as "Party", for Seller's cogeneration project ("Facility").

WITNESSETH:

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission ("Commission") on January 22, 1993 per Order No. 24874; and

WHEREAS, the Seller desires to delay the Scheduled Operation Date of this Facility by one year; and

WHEREAS, the Parties desire to embody various other miscellaneous changes which have taken place since the Agreement was first signed.

NOW THEREFORE, the Parties have agreed to amend the Agreement as follows:

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

In Paragraph 7.1.1 Base Payment

"35.63 Mills/kWh" is changed to "37.22" Mills/kWh"

"58.16 Mills/kWh" is changed to "60.77" Mills/kWh"

"48.47 Mills/kWh" is changed to "50.64" Mills/kWh"

2. B-3 SCHEDULED OPERATION DATE

"January 1, 1995" is changed to "January 1, 1996" (Scheduled Operation Date)

"December 1, 1994" is changed to December 1, 1995" (First Energy Date)

3. B-11 COSTS is amended to read as follows:

The cost of the 138 kV transmission line Special Facilities is \$155,500. The cost of

the distribution line Special Facilities is \$3,444. The cost of right-of-way acquisition is \$4,500. The cost of the Metering Equipment is \$8,236. The cost of the communication equipment is \$8,500. In addition, there will be a monthly charge for the communication circuit lease cost associated with the telemetry equipment. The communications circuit lease is \$280.00 per month as of the date of this Agreement. Seller recognizes that the monthly communications circuit charge may be adjusted by Idaho Power as the cost to Idaho Power is adjusted by the owner of the communications circuit. The cost of the Disconnecting Equipment is \$103,000. The total cost to be paid by the Seller is \$283,180. The \$283,180 represents the amount that will be charged by Idaho Power if the Seller makes the payment on or before February 1, 1995. If the Seller does not make this payment by the specified date, the costs will be subject to update. Idaho Power will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of the agreement Seller will pay Idaho Power the operation and maintenance charge specified in Schedule 72 INTERCONNECTIONS TO NON-UTILITY GENERATION or its successor schedules(s). This monthly operation and maintenance charge will be calculated based on \$160,000.00 of 138 kV rated Interconnection Facilities plus an additional \$119,736.00 of Interconnection Facilities rated below 138 kV. The total cost shown above is an estimate calculated on the basis of average costs. When the actual total cost is determined, Idaho Power will adjust the total cost amount to reflect the actual total cost incurred by Idaho Power. Beginning with the month of this adjustment, the operation and maintenance charges will also be adjusted. When the actual total cost is known, within sixty (60) days Idaho Power will refund any overpayment or Seller will remit any underpayment.

4. Except as modified by this First Amendment, all other parts of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the  
day and year herein written.

IDAHO POWER COMPANY

By Jan B Packwood  
Jan B Packwood  
Vice President, Power Supply  
Date 4/12/94

GLENN'S FERRY COGENERATION PARTNERS, LTD

By Alan K Forbes G.P.  
Alan K Forbes  
General Partner  
Date 4/7/94

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 12<sup>th</sup> day of April, 1994, before me, the undersigned, a Notary Public, personally appeared Jarvis Packwood, personally known, who being duly sworn, did say that he is the Vice President, Power Supply of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Barbara Hill  
Notary Public for Idaho  
Residing at: Boise, Idaho

STATE OF Colorado )  
 ) ss  
County of Arapahoe )

On this 7<sup>th</sup> day of April, 1904, before me, the undersigned, a Notary Public, personally appeared Alan K. Ferkes, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

[Signature]  
Notary Public for Colorado  
Residing at: Boise, Idaho

**EXHIBIT G**

APPROVED PER MINUTE ENTRY  
DATED JANUARY 8, 1996.

  
MYRNA J. WALTERS  
COMMISSION SECRETARY

Facility No. 21765151  
Project: Magic West

**SECOND AMENDMENT TO THE  
FIRM ENERGY SALES AGREEMENT**

THIS SECOND AMENDMENT entered into on the 30 day of December 1995, to the FIRM ENERGY SALES AGREEMENT (the "Agreement") dated as of December 9, 1992, between GLENNS FERRY COGENERATION PARTNERS, LTD ("Seller"), and IDAHO POWER COMPANY, ("Idaho Power"), hereinafter sometimes referred to collectively as "Parties", or individually as "Party", for Seller's cogeneration project ("Facility").

**WITNESSETH:**

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission ("Commission") on January 22, 1993 per Order No. 24674; and

WHEREAS, the First Amendment was approved by the Idaho Public Utilities Commission ("Commission") on May 18, 1994 per Order No. 25505; and

WHEREAS, the Parties desire to embody various other miscellaneous changes which have taken place since the Agreement was first signed.

NOW THEREFORE, the Parties have agreed to amend the Agreement as follows:

1. Paragraph 4.1.8.1 - "\$15,000,000.00" is changed to read "\$17,000,000.00"

2. Paragraph 4.1.8.2 - is changed to read:

"Other than the first mortgage liens permitted herein, Permitted Encumbrances as that term is defined in that certain Credit Agreement between Seller and Toronto Dominion (Texas) Inc., as Agent and as Collateral Agent, and The Toronto Dominion Bank, Houston Agency, as Letter of Credit Issuing Bank, as Lender, pursuant to which the Lender extends credit to Seller to construct, install and equip the Facility (the "Credit Agreement") or temporary mechanics, statutory or similar liens incurred in the ordinary course of business in an amount not to exceed in aggregate ten thousand dollars (\$10,000.00), Seller will not permit any liens or encumbrances of any nature whatsoever to be placed on the Facility without Idaho Power's prior written consent, which consent will not be unreasonably withheld. If any unpermitted lien or encumbrance is placed on the Facility, Seller will provide

Idaho Power with a bond, insurance or other security acceptable to Idaho Power in an amount sufficient to secure the full discharge of such unpermitted lien or encumbrance.”

3. Paragraph 13.3.2 - is changed to read:

“If Idaho Power determines that curtailment, interruption or reduction of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, 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 Firm Energy deliveries for a period that exceeds twenty (20) consecutive days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Firm Energy at a rate determined by dividing the seasonal Net Firm Energy amount specified in paragraph 6.2 for the season in which the interruption or curtailment occurs by the number of hours in that season. Idaho Power shall be obligated to make payments in accordance with this Agreement for Net Firm Energy so calculated for the remainder of any such curtailment period. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.”

4. Paragraph 14.2.4 is changed to read:

“Business Interruption (Loss of Income) Insurance with minimum daily limits not less than seventy-five percent (75%) of the Facility’s estimated gross daily electrical revenue or one hundred percent (100%) of annual business income (i.e., profit before income taxes, debt service and continuing operating expenses) whichever is greater and total policy limits not less than twenty percent (20%) of the Facility’s estimated gross annual revenue from the sale of electrical energy or one hundred percent (100%) of the annual business income (as described above) for a period of up to twelve (12) months, whichever is greater.”

5. Paragraph 14.2.4(c) is changed to read:

“The deductible for this insurance coverage shall not exceed thirty (30) days gross daily revenues from the sale of electrical energy.”

6. Article XVI (4) is changed to read:

“Seller’s obligation under paragraph 21.3 to pay liquidated damages as a result of a permanent curtailment will not be excused even if the permanent curtailment arises out of an event of force majeure.”

7. Paragraph 21.2 Default is changed to read:

Default - 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 if the defaulting Party does not commence such cure within the sixty (60) day period and continue to diligently pursue such cure, then, the nondefaulting Party may pursue its legal or equitable remedies.

8. Paragraph 21.4.2 Debt Service Reserve Account - (a) is changed to read:

Debt Service Reserve Account - (a) During the period of time in which the Facility acts as security for a first mortgage lien which is senior to Idaho Power's security interest in the Facility as described in paragraph 4.1.8 above, Seller shall maintain a debt service reserve account containing cash in an amount equal to fifty percent (50%) of the Facility's estimated Annual Debt Service rounded to the nearest \$1,000. With Idaho Power's consent, this debt service reserve account may be coordinated with any debt service reserve account required by Seller's first mortgage lender to avoid duplication of accounts.

9. Paragraph 21.4.3 is changed to read:

In lieu of establishing and funding the above-described debt service reserve account, with Idaho Power's prior written consent Seller may substitute irrevocable standby letter(s) of credit, book entry certificate(s) of deposit or other security instrument(s) acceptable to Idaho Power. During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, the Seller may, in lieu of establishing and funding the above-described debt service reserve account, substitute Debt Service Loan(s) as such term is defined in Section 2.1(c) of the Credit Agreement and Idaho Power and the first mortgage lender will be joint beneficiaries of the security instrument(s). When Idaho Power's security interest is the senior security interest in the Facility, Idaho Power will be the sole beneficiary of the security instrument(s) acceptable to Idaho Power.

10. **ARTICLE XXVII: NOTICES**

Notices are amended to read as follows:

**"To Seller:**                   **Toronto Dominion (Texas) Inc**  
**Attn: Manager, Agency**  
**909 Fannin, Suite 1700**  
**Houston, TX 77010**

**To Idaho Power:**           **Vice President, Bulk Power Markets**  
**Idaho Power Company**  
**P O Box 70**  
**Boise, ID 83707"**

11. **Appendix B to this Agreement is deleted in its entirety and the following is substituted in its place:**

**"APPENDIX B**  
**SPECIAL FACILITIES, POINT OF DELIVERY, METERING,**  
**AND OPERATION DATE**  
**PROJECT NO 21765151**  
**MAGIC WEST COGENERATION PROJECT**

**B-1 DESCRIPTION OF FACILITY**

The Seller's electrical Facility is described as a natural gas fired turbine synchronous generator package with total net rating of less than 10 MW net at 12,470 volts, three phase, 60 Hz.

**B-2 LOCATION OF FACILITY**

The Facility is located in the SE Quarter of Section 29, Township 5 South, Range 10 East, Boise Meridian, Elmore County, at the Magic West, Inc potato processing facility in Glens Ferry, Idaho.

**B-3 SCHEDULED OPERATION DATE**

Seller has selected March 7, 1996, as the Scheduled Operation Date and February 5, 1996, as the First Energy Date. In making these selections, Seller recognizes that to allow for adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho Power, based on the information supplied by Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and Metering Equipment will be completed in time so as not to delay Seller's achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to

Idaho Power, Idaho Power may be required to reschedule its construction of these facilities which could adversely impact Seller's ability to achieve its scheduled First Energy Date.

**B-4 FAILURE TO ACHIEVE OPERATION DATE**

If Seller has not achieved the Operation Date within eleven (11) months of the Scheduled Operation Date, such failure shall be deemed to be an event of default pursuant to Article XXI.

**B-5 POINT OF DELIVERY**

The Point of Delivery of energy from the Seller to Idaho Power will be the 12.47 kV bushings on the Idaho Power side of the Seller's transformer. The 10,000 kVA transformer will be owned and maintained by the Seller. The transformer connection will be 12.47 kV Grounded Wye / 12.47 kV Delta.

**B-6 LOSSES**

The metering point and the Point of Delivery of energy are at the same location, so no adjustment to energy for losses will be necessary.

**B-7 METERING AND TELEMETRY**

The Metering Equipment, will be on the Idaho Power side of the Seller's transformer. Idaho Power provided metering equipment will consist of: current and potential transformers, a meter enclosure, an electronic bi-directional meter for measuring net generation, an isolation relay, transducer, communication equipment, and all meter wiring. Seller will arrange for and make available at Seller's cost, a telephone circuit dedicated to Idaho Power's use terminating in an RJ-11 receptacle to be used for load profiling. At Seller's cost, Idaho Power will arrange for a second telephone circuit dedicated to Idaho Power's communication equipment for continuous telemetering of the project's kilowatt output to Idaho Power's Designated Dispatch Facility. The meter will register kilowatt-hours and kilowatts of demand. Idaho Power provided meter and communication equipment will be owned and maintained by Idaho Power with total cost of purchase, installation, operation and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller.

**B-8 SPECIAL FACILITIES**

The construction of a substation breaker, with associated buss, relaying, control equipment and 138 kV PT's for fault detection, and a 3 phase 12.47 kV dedicated distribution line including all appropriate poles, crossarms, conductor, and disconnects and other associated hardware will be supplied and maintained by Idaho Power. The total cost of these facilities will be reimbursed to Idaho Power by the Seller.

**B-9 REACTIVE POWER**

The Seller shall operate the synchronous generators within plus or minus 5% of unity power factor, or as listed in Appendix A.

**B-10 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 and will be located at the Point of Delivery. Idaho Power will provide and install a three phase pole mounted 15 kV oil switch to be used as a breaker, the disconnection panel which includes the relays and associated logic, a pole mounted transformer bank for ground fault detection, and a pole with three single phase safety switches which will also be for the connection of Seller's conductor at the Point of Delivery. Seller will supply and install conduit and cable connecting CT's on the Seller's transformer to the disconnecting panel. Idaho Power will supply details for the disconnection panel and will connect and test the equipment prior to operation of the facility. Seller will provide drawings of their interconnection wiring for engineering approval before installation. The total cost of the disconnection equipment, installation, connection and testing will be reimbursed to Idaho Power by the Seller.

**B-11 COSTS**

The total cost of the substation Special Facilities is \$157,000. The total cost of the distribution line Special Facilities is \$16,700. The total cost of the Metering Equipment is \$10,800. The total cost of the communication equipment is \$8,500. In addition, there will be a monthly charge for the communication circuit lease cost associated with the telemetry equipment. The communications circuit lease is \$320.00 per month as of the date of this Agreement. Seller recognizes that the monthly communications circuit charge may be adjusted by Idaho Power as the cost to Idaho Power is adjusted by the owner of the communications circuit. The total cost of the Disconnecting Equipment is \$41,600. The total cost to be paid by the Seller is \$234,600. This represents the amount that will be charged by Idaho Power if the Seller makes the payment on or before December 11, 1995. If the Seller does not make this payment by the specified date, the costs will be subject to update. Idaho Power will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of the agreement Seller will pay Idaho Power the operation and

maintenance charge specified in Schedule 72 INTERCONNECTIONS TO NON-UTILITY GENERATION or its successor schedules(s). The total cost shown above is an estimate calculated on the basis of average costs. When the actual total cost is determined, Idaho Power will adjust the total cost amount to reflect the actual total cost incurred by Idaho Power. Beginning with the month of this adjustment, the operation and maintenance charges will also be adjusted. When the actual total cost is known, within sixty (60) days Idaho Power will refund any overpayment or Seller will remit any underpayment.

**B-12 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. If Seller elects not to retain ownership of the Interconnection Facilities but instead wishes that Idaho Power purchase such facilities from Seller at the net salvage value, Idaho Power may then be invoiced by Seller for the net salvage value estimated by Idaho Power for the interconnection facilities and shall pay said amount to Seller within thirty (30) days after receipt of said invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho Power."

12. **Appendix C - Lump Sum Refund Payment for Permanent Curtailment is deleted in its entirety and following substituted in its place.**

**"APPENDIX C**

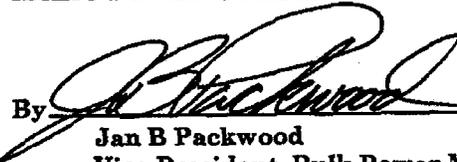
**LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT  
OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT  
UNDER 20-YEAR CONTRACT**

<b>Contract Year of Curtailment Commencement</b>	<b>Dollars Per Annual Megawatt Hour</b>
1	32
2	46
3	59
4	72
5	85
6	96
7	107
8	116
9	124
10	130
11	134
12	135
13	134
14	130
15	121
16	109
17	91
18	68
19	38
20	19

13. **Except as modified by this Second Amendment, all other parts of the Agreement shall remain in full force and effect.**

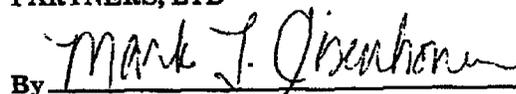
IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as  
of the day and year herein written.

IDAHO POWER COMPANY

By   
Jan B Packwood  
Vice President, Bulk Power Markets

Date 12/30/95

GLENN'S FERRY COGENERATION  
PARTNERS, LTD

By   
Its PRESIDENT

Date 12/26/95

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 30 day of December, 1995, before me, the undersigned, a Notary Public, personally appeared Jan B Packwood, personally known, who being duly sworn, did say that he is the Vice President, Bulk Power Markets of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Barbara L Hill  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission Expires July 21, 1999

STATE OF New York )  
 ) ss  
County of New York )

On this 26th day of December, 1995, before me, the undersigned, a Notary Public, personally appeared MARK L EISENHOWER, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Peter J. Felts  
Notary Public for New York  
Residing at: New York  
My Commission Expires \_\_\_\_\_

PETER J. FELTMAN  
Notary Public, State of New York  
No. 31-498281  
Qualified in New York County  
Commission Expires June 22, 1996

**EXHIBIT H**

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
RUPERT AND GLENNS FERRY COGENERA- ) CASE NO. IPC-E-95-19  
TION PARTNERS FOR AN ORDER )  
APPROVING AMENDMENTS TO POWER )  
SALES AGREEMENTS ) MINUTE ENTRY  
\_\_\_\_\_)**

On December 19, 1995, Rupert Cogeneration Partners Ltd. (Rupert) and Glens Ferry Cogeneration Partners Ltd. (Glens Ferry) filed an Application with the Idaho Public Utilities Commission (Commission) requesting Commission approval of proposed first and second amendments to the respective Firm Energy Sales Agreement(s) of Rupert and Glens Ferry with Idaho Power Company. The executed amendments were filed with the Commission on January 3, 1996 (attached).

Rupert Cogeneration Partners Ltd. is the developer of a natural gas cogeneration project (approximately 10 MW) adjacent to the Magic Valley Foods, Inc. potato processing facility in Rupert, Idaho. The estimated annual net firm energy production is 83,220,000 kWh. The Agreement dated June 25, 1993, provides for levelized rates over a 20 year contract term. Reference Case No. IPC-E-93-15, Order No. 25050. The scheduled operation date is January 1, 1996.

Glens Ferry Cogeneration Partners Ltd. is the developer of a natural gas cogeneration project (approximately 10 MW) at the Magic West Potato Processing Facility in Glens Ferry, Idaho. The estimated annual net firm energy production is 83,220,000 kWh. The Agreement dated December 9, 1992, provides for levelized rates over a 20-year contract term. Reference Case No. IPC-E-92-32, Order No. 24674. Scheduled operation date pursuant to First Amendment is January 1, 1996. Reference Case No. IPC-E-94-7, Order No. 25505.

The submitted amendments make the following changes:

Article 4.1.8 Security Interests (Rupert)

¶ 4.1.7.1 The first mortgage lien amount is increased from \$15 million to \$17 million.

¶ 4.1.7.2 The term "encumbrance" is further defined.

**Article 4.1.8 Security Interests (Glenns Ferry)**

¶ 4.1.8.1 The first mortgage lien amount is increased from \$15 million to \$17 million.

¶ 4.1.8.2 The term "encumbrance" is further defined.

**Article 13.3 Energy Acceptance**

¶ 13.3.2 Idaho Power's obligations in the event of curtailment are further defined.

**Article 14.2 Insurance**

¶ 14.2.4 Alternative language added regarding business interruption (loss of income) insurance.

¶ 14.2.4(c) Amount of authorized deductible increased from ten days to thirty days gross daily revenues from sale of electrical energy.

**Article 16 Force Majeure**

¶ 16.4 Language added to clarify that obligation to pay liquidated damages as a result of permanent curtailment will not be excused even if the permanent curtailment arises out of an event of force majeure.

**Article 21 Disputes and Default**

¶ 21.2 Amended to permit cure of default "within a commercially reasonable time."

¶ 21.4.2 Debt Service Reserve Account requirement amount changed from 20% of the facility's estimated gross revenue from net firm energy sales for the first contract year to 50% of the facility's estimated annual debt service.

¶ 21.4.3 Amended to permit seller, with Company approval, to substitute Debt Service Loan in lieu of Debt Service Reserve Account.

**Article 27 Notices**

Notice Requirement of Seller Amended.

**Agreement Appendix B, Special Facilities, Point of Delivery, Metering and Operation Date**

Deleted in its entirety and substitute language submitted.

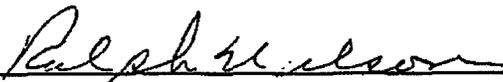
Scheduled operation date extended to March 7, 1996.

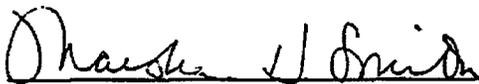
Agreement Appendix C, Lump Sum Refund Payment for Permanent Curtailment (Glenns Ferry only)

Deleted in its entirety and substitute language submitted.  
Refund Payment Amount adjusted for change in scheduled operation date.

The negotiated changes and amendments to the respective underlying Firm Energy Sales Agreements of Rupert and Glenns Ferry in Case No. IPC-E-95-19 have been reviewed and considered by the Commission as a regularly scheduled item on its January 8, 1996 decision agenda. It is the Commission's finding that the proposed changes do not materially affect the risk to the Company or its customers and that the amendment(s) are reasonable and should be approved. The Commission continues to find that all costs incurred by Idaho Power related to the Firm Energy Sales Agreements should be allowed as prudently incurred expenses for ratemaking purposes.

DATED at Boise, Idaho this 8th day of January 1996.

  
\_\_\_\_\_  
RALPH NELSON, PRESIDENT

  
\_\_\_\_\_  
MARSHA H. SMITH, COMMISSIONER

Commissioner Hansen was out of the office on this date.

\_\_\_\_\_  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Myrna J. Walters  
Commission Secretary

bls/O-ipce9519.me

MINUTE ENTRY

**EXHIBIT I**

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION )**  
**ON THE COMMISSION'S OWN MOTION OF ) CASE NO. U-1006-292**  
**REASONABLE TERMS FOR SECURITY IN )**  
**AGREEMENTS BETWEEN IDAHO POWER ) ORDER NO. 21800**  
**COMPANY AND COGENERATORS AND )**  
**SMALLPOWER PRODUCERS. )**  
**)**

On February 1, 1988, Utah Power & Light Company (UP&L) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting clarification and reconsideration of Order No. 21690 issued January 11, 1988 in Case No. U-1006-292. That Order required qualifying cogenerators and small power producers (CSPPs) to provide Commission approved forms of liquid security and/or risk mitigation in the amount of the computed overpayment liability that occurs with levelized rates in CSPP power purchase contracts.

Although characterized as a Petition for Reconsideration, the Petition fails to comply with the requirements of Petitions for Reconsideration as set forth in Rule 33.1(a) of the Commission's Rules of Practice and Procedure:

Petitions for Reconsideration must set forth specifically the ground or grounds why the petitioner contends that the Order or Rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.

from failing to comply with procedural requirements, a simple reading of the Petition reveals that petitioner is asking for nothing more than clarification. We therefore characterize UP&L's Petition as one for clarification only under Rule 32.4 and not one for reconsideration as defined in Rule 33.

UP&L suggests that the Commission leaves many questions unanswered regarding implementation. UP&L's concerns can be best addressed in the order of their presentation.

## I. GENERAL CONCERNS (UP&L)

UP&L states that although Order No. 21690 requires CSPPs to comply with certain risk reducing factors or, in the alternative, to post up to 100% liquid security ... the Order does not address the consequences of a CSPP's failure to comply with the risk reducing factors. Using that statement as a springboard, the Company then poses the following questions:

- o Is the utility's only remedy to force the CSPP to post the appropriate percentage of liquid security through a breach of contract or a similar action?
- o Will the utility be allowed to stop paying the CSPP for energy (or refuse to receive any more energy) until the CSPP posts adequate security?
- o Will the CSPP be considered to be in breach of contract thus allowing the utility to terminate the Power Purchase Agreement?
- o Who has the burden of "discovering" that the CSPP is or is not in compliance with the risk reducing factors?
- o What are the consequences to a utility (and its customers and shareholders) that does not "discover" noncompliance?

response:

Order No. 21690 unequivocally states that failure to establish and maintain adequate required liquid security is a breach of contract. Failure to maintain the terms and conditions of risk mitigation factors results in an immediate revocation of the related percentage reduction in liquid security requirement. Failure to establish and maintain the resulting new level of liquid overpayment security constitutes a breach of contract.

As a general rule, the rights of the parties in the event of default or breach of contract are set out with some specificity in the Power Purchase Contract. Those rights are appropriately determined by negotiation between the parties and, although subject to review and approval of the Commission, should not be dictated by the Commission.

A Power Purchase Contract establishes attendant rights and obligations between the contracting parties. The Commission is not a contract signator. Accordingly, contracting and contract enforcement, administration and monitoring are the responsibility of the utility, not the Commission. It is not the function of the Commission to assume that responsibility nor determine in advance what constitutes prudent management. The Company cannot divorce itself from the contractual responsibility attendant to implementation of a federally mandated requirement of purchase.

## **II. SPECIFIC CONCERNS (UP&L)**

### **A. Liquid Security Cash Escrow**

To the extent that the computed liquid amount of overpayment liability is not reduced by application of the identified risk reducing factors the Commission requires a CSPP to post and maintain the resulting level of liquid overpayment security. UP&L seeks clarification on the following issues related to the liquid security cash escrow account:

- o Who is to choose the escrow account holder?
- o When can cash be withdrawn from the escrow account and by whom?
- o Who will pay taxes on the interest earned by the funds?
- o Who will decide disputes regarding the escrow funds?
- o Is UP&L entitled to an Article IX security interest in the liquid security escrow funds?

Response:

The identified issues are an appropriate subject for negotiation between the contracting parties. It is clearly the intent of the Order that the security escrow must be maintained at the required level at all times.

Income taxes are normally the responsibility of the party receiving income. Except at project default, it is envisioned that the escrow will belong to the CSPP. It follows that the CSPP should be responsible for the payment of income taxes on interest accruing to the escrow fund. IRS Code Section 51 ¶1510.

Contract disputes and interpretation in the event of alleged default or breach are normally appropriate for judicial determination, not Commission determination.

### **B. Basic Insurance**

Order No. 21690 defines essential types of "adequate basic business insurance" and establishes minimum levels for coverage to qualify for a related reduction in liquid security requirement. UP&L seeks clarification on the following issues related to the five identified types of basic business insurance:

- o Are the utility and Commission entitled to a notice of cancellation or a notice of change of policy limits directly from the insurance company rather than rely on the CSPP for notice?
- o Will the utility be added to the insurance policies as an additional insured with regards to the utility's interests?

- o Is the utility entitled to pay for the basic insurance if the CSPP fails to do so, and deduct the costs from such insurance premium from payments made to the CSPP?
- o Are the Commission and the utility entitled or expected to review the insurance policies issued to the CSPP to verify compliance with the insurance requirements of the Order?
- o Who decides if the insurance companies issuing the policies are reputable companies capable of handling the risks assumed?

Response:

The identified issues are an appropriate subject for negotiation between the contracting parties. While it is the function of the Commission to identify essential elements that should be addressed and included in Power Purchase Contracts, it is not appropriate that the Commission draft or define contract terms with any greater specificity, nor is it the function of the Commission to monitor compliance or to devise further standards and a mechanism for doing so.

### **C. Engineering Certification**

UP&L seeks Commission clarification that certification as to the adequacy of the QF design, construction and O&M must be performed by an independent registered professional engineer to qualify for the related percentage reduction and liquid security required to be posted.

Commission response:

It is clearly the intent of the Commission that all certification be performed by independent registered professional engineers. The logistics related to the certification process are an appropriate subject for negotiation between the contracting parties.

### **D. Maintenance Escrow**

As an approved method of risk mitigation for related percentage reduction in liquid security requirement, the Commission has established minimum guidelines for a maintenance escrow to provide a fund for maintenance and repair to the physical plant. UP&L seeks clarification on the following issues related to the maintenance escrow:

- o If initial generation of a CSPP project occurs on or soon after March 2 of a given year, is the CSPP relieved of placing funds in the escrow account until March 1 of the following year?
  - o Who is to audit O&M expenses?
  - o Who is to give evidence to whom that the required amount was placed in the escrow account?
  - o Does the utility have input in the decision whether to release the funds from the escrow account?

- o Is the liquid security escrow account to be maintained separately from the maintenance account?
- o To whom will escrow funds be released?

The Commission response:

It is the Commission's intent that the maintenance escrow be funded only after the first full year of operation. This allows the escrow to be funded out of operating revenue or cash flow, rather than investment capital.

The remaining questions or identified issues are an appropriate subject for negotiation between the contracting parties. It is assumed that the contracting parties are acting in good faith. The utility should reconsider whether it wants to involve itself in QF decisions regarding the timing or need for maintenance and repair. The utility should also be mindful of the ramifications and preclusive effect of Section 210(e)(1) of the Public Utility Regulatory Policies Act of 1978 regarding exemption of qualifying CSPPs from traditional utility-type cost of service regulation or respecting the financial or organizational regulation of such facilities.

#### **E. Lien Rights**

Order No. 21690 establishes the granting of "adequate lien rights" as an approved method of risk mitigation for the qualifying facility (QF) to reduce the level or required amount of liquid overpayment security. The Commission found that "The cost of administering reasonably written liens will not substantially burden the utilities and that QFs shall not be required to pay a fee to the utilities." UP&L contends that "The cost of administering the lien rights and other aspects of the order will be tremendous . . . and that if done properly it will require constant attention from [UP&L's] planning department, risk management department, legal department and other departments." UP&L recommends that the cost be borne by the CSPPs.

Commission response:

UP&L's assertion that the costs attendant to administering its power purchase contracts will be "tremendous" is unsupported and speculative. It is expected that reasonable administrative costs will be incurred by the utility. Washington Water Power, in comments of record, relates that it has had extensive experience with CSPP liens and considers them simple to administer. We trust that UP&L will engage in economic and prudent administration of its power purchase contracts.

#### **F. "K" Factor**

UP&L states that it is confused by the Commission's explanation of the "K" factor in Order No. 21690 and does not understand why the Commission subtracted "1" from the raised value.

Commission response:

The "K" factor is a model that mathematically represents risk increasing with time. It should be obvious that there is no risk associated with a contract of zero-length. Hence, "K" ought to be zero for contract length zero, but:

if  $K = (1 + d)^n$ , (where contract length =  $n$  and discount rate =  $d$ )

then at  $n = 0$ ,  $K = (1 + d)^0 = 1.0$

therefore, to meet the logical restraint that  $K = 0$  at  $n = 0$ ,

$K$  is defined as  $[(1 + d)^n - 1]$

therefore,  $K = (1 + d)^0 - 1$

$= 1 - 1 = 0$  at  $n = 0$

## **CONCLUSIONS OF LAW**

I

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, The Washington Water Power Company, Utah Power & Light Company and Pacific Power & Light Company pursuant to the authority and power granted it under Title 61 of the Idaho Code, and the Rules of Practice and Procedure of the Idaho Public Utilities Commission, IDAPA 31.A.

II

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 (PURPA) and implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations to purchase energy from qualifying cogeneration and small power production facilities, and to implement FERC rules. PURPA §§210, 210A, 210F, 16 U.S.C.A. §§824-a-3, 824-a-3(a), (f); Afton Energy, Inc. v. Idaho Power Company, 107 Idaho 781, 693 P.2d 427.

## **ORDER**

In consideration of the foregoing IT IS HEREBY ORDERED that the Petition for Reconsideration filed by Utah Power & Light Company in Case No. U-1006-292 be dismissed for failure to comply with the requirements of IDAPA 31.A.33.1(a). IT IS FURTHER ORDERED that said Petition be characterized as a Petition for Clarification under IDAPA 31.A.32.4.

IT IS FURTHER ORDERED that the Petition for Clarification of UP&L be granted and answered as set forth above. We find ourselves unable to answer UP&L's concerns more fully in the absence of a particular case or more specific facts being presented to us.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code §61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this            day of  
March, 1988.

DEAN J. MILLER, PRESIDENT

PERRY SWISHER, COMMISSIONER

RALPH NELSON, COMMISSIONER

ATTEST:

MYRNA J. WALTERS, SECRETARY

SW:vs/817L

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