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UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Corporate Counsel

August 11, 2009

**VIA HAND DELIVERY**

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

Re: Case No. IPC-E-09-24

*IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY  
FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT FOR THE  
SALE AND PURCHASE OF ELECTRIC ENERGY BETWEEN IDAHO POWER  
COMPANY, CASSIA GULCH WIND PARK, LLC, AND TUANA SPRINGS  
ENERGY, LLC*

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Application in the above matter.

Very truly yours,

Donovan E. Walker

DEW:csb  
Enclosures

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Attorneys for Idaho Power Company

Street Address for Express Mail:  
1221 West Idaho Street  
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-09-24  
APPROVAL OF A FIRM ENERGY SALES )  
AGREEMENT FOR THE SALE AND ) APPLICATION  
PURCHASE OF ELECTRIC ENERGY )  
BETWEEN IDAHO POWER COMPANY, )  
CASSIA GULCH WIND PARK, LLC, AND )  
TUANA SPRINGS ENERGY, LLC )

Idaho Power Company ("Idaho Power" or the "Company"), in accordance with RP 52 and the applicable provisions of the Public Utilities Regulatory Policies Act of 1978 ("PURPA"), hereby respectfully applies to the Idaho Public Utilities Commission ("IPUC" or the "Commission") for an Order approving the Firm Energy Sales Agreement between Idaho Power and Cassia Gulch Wind Park, LLC, and Tuana Springs Energy, LLC (Cassia Gulch and Tuana Springs are referred to collectively as the "Seller") under which Seller would sell and Idaho Power would purchase electric energy generated by

the Seller's facility. Seller's facility consists of the Cassia Gulch Wind Park, which currently possesses a Firm Energy Sales Agreement ("FESA") approved by the Commission in Order No. 30087, Case No. IPC-E-06-11, and the Tuana Springs Expansion to that project.

This FESA is meant to supersede Cassia Gulch Wind Park's previously approved FESA with this new FESA incorporating the output of the expanded project. It is the parties' intent that the FESA for the Cassia Gulch Wind Park facility between Cassia Gulch and Idaho Power dated April 7, 2006, remain in full force and effect until such time as the expansion facilities have achieved their Operation Date of June 30, 2010. At such time, the Cassia Gulch Agreement shall automatically terminate and shall be replaced by this Agreement.

In support of this Application, Idaho Power represents as follows:

#### **I. BACKGROUND**

1. Sections 201 and 210 of PURPA, and pertinent regulations of the Federal Energy Regulatory Commission ("FERC"), require that regulated electric utilities purchase power produced by cogenerators or small power producers that obtain qualifying facility ("QF") status. The rate a QF receives for the sale of its power is generally referred to as the "avoided cost" rate and is to reflect the incremental cost to an electric utility of electric energy or capacity or both, which, but for the purchase from the QF, such utility would generate itself or purchase from another source. The Commission has authority under PURPA Sections 201 and 210 and the implementing regulations of the FERC, 18 C.F.R. § 292, to set avoided costs, to order electric utilities

to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules.

2. Seller proposes to design, construct, install, own, operate, and maintain a new 16,800 kilowatt ("kW") electric wind generating facility adjacent to and as an expansion of the 18,900 kW Cassia Gulch Wind Park facility. The Facility will be a QF under the applicable provisions of PURPA.

## **II. THE FIRM ENERGY SALES AGREEMENT**

3. On August 5, 2009, Idaho Power and Seller entered into a Firm Energy Sales Agreement ("Agreement") pursuant to the terms and conditions of the various Commission Orders applicable to this PURPA agreement for a wind resource. See, Order Nos. 30415, 30488, 30738, and 30744. Under the terms of this Agreement, Seller elected to contract with Idaho Power for a 20-year term. The purchase price contained in the Agreement was established by running the AURORA economic dispatch model consistent with the Commission requirements for projects larger than 10 megawatts ("MW"). The purchase price established by running the AURORA economic dispatch model was then blended with the prices contained within the existing Cassia Gulch Wind Farm agreement in order to preserve the value of the existing Cassia Gulch Wind Farm agreement for the Idaho Power ratepayers. The Agreement is filed with this Application as Attachment No. 1.

4. Section 21 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Seller for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

5. Seller has selected November 1, 2009, as the Scheduled First Energy Date for the expansion phase of the facility. (The Cassia Gulch Wind Park, original facility, has already attained its First Energy Date and Operation Date). Seller has elected June 30, 2010, as the Scheduled Operation Date for the expansion phase of the facility. (See, Appendix B). Various requirements have been placed upon Seller in order for Idaho Power to accept energy deliveries from this Facility. Idaho Power will monitor compliance with these initial requirements. In addition, Idaho Power will monitor the ongoing requirements through the full term of this Agreement. Should the Commission approve this Agreement, Idaho Power intends to consider the Effective Date of the Agreement to be August 5, 2009.

6. The Agreement provides that all applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed to Seller. Seller has completed the facility study portion of the generator interconnection process for the expansion phase of the facility, and the execution of the generation interconnection agreement is the next step of that process. Idaho Power's Delivery business unit is continuing its design work under the facility study agreement and, in that process, has undertaken discussions with the Seller. Based on the studies to date and the discussions with the Seller, Idaho Power has concluded that, assuming the developer continues to provide necessary technical information and pay for long lead time materials in a timely manner, the Company will have sufficient time and available resources to construct the interconnection facilities in time to allow the expansion facilities to meet the scheduled operation date.

### III. MODIFIED PROCEDURE

7. Idaho Power believes that a hearing is not necessary to consider the issues presented herein and therefore respectfully requests that this Application be processed under Modified Procedure, i.e., by written submissions rather than by hearing. RP 201, *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to present its testimony and support the Application in such hearing.

### IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

8. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

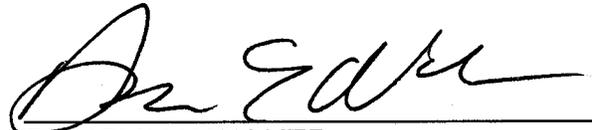
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Randy C. Allphin  
Contract Administrator  
Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707  
[rallphin@idahopower.com](mailto:rallphin@idahopower.com)

### V. REQUEST FOR RELIEF

9. Idaho Power Company respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure, (2) approving the Firm Energy Sales Agreement between Idaho Power Company and Cassia Gulch Wind Park, LLC, and Tuana Springs Energy, LLC, without change or condition, and (3) declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power Company and Cassia Gulch Wind Park, LLC, and Tuana Springs Energy, LLC, be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 11<sup>th</sup> day of August 2009.

A handwritten signature in black ink, appearing to read "Don Walker", written over a horizontal line.

DONOVAN WALKER  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of August 2009 I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

**Cassia Gulch Wind Park, LLC, and  
Tuana Springs Energy, LLC**  
Dean J. Miller  
McDEVITT & MILLER LLP  
420 West Bannock Street  
P.O. Box 2564  
Boise, Idaho 83701

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email



Donovan E. Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-09-24**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 1**

IDAHO POWER COMPANY  
FIRM ENERGY SALES AGREEMENT  
(Qualifying Facility larger than 10 average MW)

Between

IDAHO POWER COMPANY  
AND  
CASSIA GULCH WIND PARK, LLC  
AND  
TUANA SPRINGS ENERGY, LLC

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IDAHO POWER COMPANY  
FIRM ENERGY SALES AGREEMENT  
(Qualifying Facility larger than 10 average MW)

Project Name: Tuana Springs Expansion and the Cassia Gulch Wind Park

Project Number: 31315150

THIS AGREEMENT, entered into on this 5<sup>th</sup> day of Aug. 2009 between Cassia Gulch Wind Park, LLC an Idaho limited liability company ("Cassia Gulch"), Tuana Springs Energy, LLC an Idaho limited liability company ("Tuana")(Cassia Gulch and Tuana are referred to collectively as the "Seller"), and IDAHO POWER COMPANY, an Idaho corporation ("Idaho Power"). Cassia Gulch, Tuana and Idaho Power are hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Cassia Gulch currently owns, maintains and operates an existing 18,900 Kw electric generation facility approximately 4.3 miles west of Idaho Power's Lower Malad Substation along its Lower Malad to Mountain Home Junction 138 KV line ("Cassia Facility"); and

WHEREAS, Tuana intends to design, construct, own, operate and maintain a new 16,800 Kw electric generation facility adjacent to and as an expansion of the Cassia Facility ("Tuana Springs Expansion"); and

WHEREAS, Seller expects to sell all of the Net Energy from the Cassia Facility and the Tuana Springs Expansion to Idaho Power under this Agreement as a single Qualifying Facility with a nameplate rating of 35,700 Kw; and

WHEREAS, the existing Firm Energy Sales agreement for the Cassia Gulch Wind Park facility between Cassia Gulch and Idaho Power dated April 7, 2006, shall remain in full force and effect until such time as the Tuana Springs Expansion has achieved its Operation Date as specified within this Agreement. At such time, the Cassia Gulch agreement shall automatically terminate and shall be replaced by this Agreement; and

WHEREAS, Seller and Idaho Power have agreed all of the Net Energy from the Tuana Springs Expansion prior to the Tuana Springs Expansion achieving the Operation Date, shall be sold to Idaho Power as Surplus Energy and priced in accordance with this Agreement; and

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

#### ARTICLE I: DEFINITIONS

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

- 1.1 “Availability Shortfall Price” - The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 15.00 Mills/Kwh the result shall be 15.00 Mills/Kwh.
- 1.2 “Business Days” - means any calendar day that is not a Saturday, a Sunday, or a NERC recognized holiday.
- 1.3 “Calculated Net Energy Amount” - A monthly estimate, prepared and documented after the fact by Seller, reviewed and accepted by the Buyer that is the calculated monthly maximum energy deliveries (measured in Kwh) for each individual wind turbine, totaled for the Facility to determine the total energy that the Facility could have delivered to Idaho Power during that month based upon: (1) each wind turbines Nameplate Capacity, (2) Sufficient Prime Mover available for use by each wind turbine during the month, (3) incidents of Force Majeure, (4) scheduled maintenance, or (5) incidents of Forced Outages and less Losses and Station Use. If the duration of an event characterized as item 3, 4 or 5 above (measured on each individual occurrence and individual wind turbine) lasts for less than 15 minutes, then the event will not be considered in this calculation. The Seller shall collect and maintain actual data to support this calculation and shall keep this data for a minimum of 2 years.
- 1.4 “Commission” - The Idaho Public Utilities Commission.

- 1.5 “Contract Year” - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.6 “Delay Liquidated Damages” – Damages payable to Idaho Power as calculated in paragraph 5.3, 5.4, 5.5 and 5.6.
- 1.7 “Delay Period” – All days past the Scheduled Operation Date until the earlier of the date (a) Seller’s entire Facility achieves the Operation Date or (b) this Agreement is terminated in accordance with Section 5.4.
- 1.8 “Delay Price” - The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.
- 1.9 “Designated Dispatch Facility” - Idaho Power’s Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.10 “Effective Date” – The date this Agreement becomes effective as specified in paragraphs 5.1 and 21.1.
- 1.11 “Facility” - That electric generation facility resulting from the combination of the Cassia Facility and the Tuana Springs Expansion as further described in Appendix B of this Agreement.
- 1.12 “First Energy Date” - The day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and the Seller begins delivering energy to Idaho Power’s system at the Point of Delivery.
- 1.13 “Forced Outage” – a partial or total reduction of a) the Facility’s capacity to produce and/or deliver Net Energy to the Point of Delivery, or b) Idaho Power's ability to accept Net Energy at the Point of Delivery for non-economic reasons, as a result of Idaho Power or Facility: 1) equipment failure which was not the result of negligence or lack of preventative maintenance or 2) responding to a transmission provider curtailment order or 3) unplanned preventative maintenance to repair equipment that left unrepaired, would result in failure of equipment prior

- to the planned maintenance period. The Parties shall make commercially reasonable efforts to perform such unplanned preventative maintenance during periods of low wind availability.
- 1.14 “Heavy Load Hours” – The daily hours beginning at 07:00 am, ending at 11:00 pm Mountain Time, (16 hours) excluding all hours on all Sundays, New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.
- 1.15 “Interconnection Facilities” - All equipment specified in Idaho Power's Schedule 72 on file at the Commission.
- 1.16 “Light Load Hours” – The daily hours beginning at 11:00 pm, ending at 07:00 am Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.
- 1.17 “Losses” – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the Facility’s Metering Point and the Point of Delivery. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.18 “Market Energy Reference Price” – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.19 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.20 “Maximum Capacity Amount” – The maximum capacity (Kw) of the Facility will be as specified in Appendix B of this Agreement and shall not exceed the sum of individual generation unit Nameplate Capacity ratings.
- 1.21 “Mechanical Availability” - The percentage amount calculated by Seller within 5 Business Days after the end of each month of the Facility’s monthly actual Net Energy divided by the Facility’s Calculated Net Energy Amount for the applicable month. Any damages due as a result of Seller falling short of the Mechanical Availability Guarantee for each month shall be determined in accordance with paragraph 6.4.4.
- 1.22 “Mechanical Availability Guarantee” shall be as defined in paragraph 6.4.

- 1.23 “Metering Equipment” - All equipment specified in Schedule 72, this Agreement and any additional equipment specified in Appendix B required to measure, record and telemeter bi-directional power flows at the Metering Point.
- 1.24 “Metering Point” – The physical point at which the Metering Equipment is located that enables accurate measurement of the Net Energy deliveries to Idaho Power at the Point of Delivery for each of the Seller’s facilities..
- 1.25 “Mid- Columbia Market Energy Cost” – The monthly weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index, which is similar to the Dow Jones Mid-Columbia Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.
- 1.26 “Nameplate Capacity” –The full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt-amperes, kilowatts, volts or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.
- 1.27 “Net Energy” – All of the electric energy produced by the Facility, less Station Use, less Losses, expressed in kilowatt hours (kWh) delivered to Idaho Power at the Point of Delivery based upon the measured values at the Metering Point (s) less any required calculations to reconcile the energy measured at the Metering Point (s) to the actual Net Energy delivered to Idaho Power at the Point of Delivery. Subject to the terms of this Agreement, Seller commits to deliver all Net Energy to Idaho Power at the Point of Delivery for the full term of the Agreement.
- 1.28 “Operation Date” – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.

- 1.29 “Point of Delivery” – The location specified in Appendix B, where the Seller delivers the Facility’s Net Energy to the Idaho Power electrical system.
- 1.30 “Prudent Electrical Practices” – Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully, safely, dependably, efficiently and economically.
- 1.31 “Scheduled Operation Date” – The later of the date specified in Appendix B when Seller anticipates achieving the Operation Date, or ninety days (90) after the Idaho Power provided interconnection is completed and energized as specified within the generation interconnection agreement for the Tuana Springs Expansion. In establishing this date it is expected that the Seller reasonably determines this date based upon the best known information in regards to equipment availability and construction schedules.
- 1.32 “Schedule 72” – Idaho Power’s Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission. The Seller shall be responsible to pay all costs of interconnection and integration of this Facility into the Idaho Power electrical system as specified in the interconnection agreements for both the Cassia Facility and the Tuana Springs Expansion.
- 1.33 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.34 “Special Facilities” - Additions or alterations of transmission and/or distribution lines and transformers as described in Schedule 72.
- 1.35 “Station Use” – Electric energy which is consumed by Facility losses and equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.36 “Sufficient Prime Mover” means wind speed that is (1) equal to or greater than the generation unit’s manufacturer-specified minimum levels required for the generation unit to produce energy and (2) equal to or less than the generation unit’s manufacturer-specified maximum levels at which the generation unit can safely produce energy.

- 1.37 “Surplus Energy” – All Net Energy produced by the Seller’s Tuana Springs Expansion and delivered by the Seller to the Idaho Power Point of Delivery prior to the Operation Date of this Agreement.
- 1.38 “Wind Energy Production Forecast” – A forecast of energy deliveries from this Facility provided by an Idaho Power administered wind forecasting model. The Facility shall be responsible for an allocated portion of the total costs of the forecasting model as specified in Appendix E.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

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

## ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller’s design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller’s design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.
- 3.2 Qualifying Facility Status - Seller warrants that the Facility is a “Qualifying Facility,” as that term is used and defined in 18 CFR 292.201 et seq. After initial qualification, Seller will take such

steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Facility's Qualifying Facility status and associated support and compliance documents at anytime during the term of this Agreement.

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

- 4.1 The Cassia Facility phase of this entire Facility has already been granted a First Energy Date as that phase of this Facility completed the First Energy Date requirements under the Firm Energy Sales Agreement for just that phase dated April 7, 2006. Prior to the First Energy Date for the Tuana Springs Expansion and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller's Tuana Springs Expansion, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations of the Cassia Facility continue to be in good standing and that those for the Tuana Springs Expansion have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.201 et seq. as a certified Qualifying Facility.
- 4.1.2 Opinion of Counsel - Submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter

will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

- 4.1.3 Nameplate Capacity – Submit to Idaho Power manufacturer’s and engineering documentation that establishes the Nameplate Capacity of each individual generation unit that is included within this entire Facility. Upon receipt of this data, Idaho Power shall review the provided data and determine if the Nameplate Capacity specified is reasonable based upon the manufacturer’s specified generation ratings for the specific generation units.
- 4.1.4 Engineer’s Certifications - Submit an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy as described in Commission Order No. 21690. These certificates will be in the form specified in Appendix C but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.
- 4.1.5 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.
- 4.1.6 Interconnection – Provide written confirmation from Idaho Power’s delivery business unit that Seller has satisfied all interconnection requirements.
- 4.1.7 Network Resource Designation –
- 4.1.7.1 Provide all data required by the Idaho Power delivery business unit to enable the Seller’s entire Facility to be designated as a network resource.
- 4.1.7.2 Receive confirmation from the Idaho Power delivery business unit that the Seller’s entire Facility has been designated as a network resource.
- 4.1.8 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller’s request and will not be unreasonably withheld by Idaho Power.

## ARTICLE V: TERM AND OPERATION DATE

5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date.

5.2 Operation Date - The Cassia Facility of this Facility has already been granted an Operation Date prior to the execution of this Agreement as that phase of this Facility completed the Operation Date requirements under the Firm Energy Sales Agreement for just that phase dated April 7, 2006. Upon completion of the Operation Date requirements for the Tuana Springs Expansion, the Operation Date for the entire Facility shall be the Operation Date granted to the Tuana Springs Expansion. Notwithstanding the above, nothing in this Agreement shall effect the terms and conditions of the Cassia Gulch Facility Firm Energy Sales Agreement until it terminates at the time the Tuana Springs Expansion achieves the Operation Date in accordance with this Agreement. The Operation Date for the Tuana Springs Expansion may occur only after all of the following have occurred and been documented in writing:

- a) Achieved the First Energy Date.
- b) Commission approval of this Agreement with a non-appealable order in a form acceptable to Idaho Power has been received.
- c) Seller has demonstrated to Idaho Power's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable and safe manner.
- d) Seller has requested an Operation Date from Idaho Power in a written format.
- e) Seller has received written confirmation from Idaho Power of the Operation Date.

This confirmation will not be unreasonably withheld by Idaho Power.

5.3 Operation Date Delay - Seller shall cause the Tuana Springs Expansion to achieve the Operation Date on or before the Scheduled Operation Date.

5.3.1 If the Operation Date occurs after the Scheduled Operation Date but on or prior to the date ninety (90) days following the Scheduled Operation Date, Seller shall pay Idaho

Power Delay Liquidated Damages calculated at the end of each calendar month after the Scheduled Operation Date as follows:

Delay Liquidated Damages are equal to ((Current month's Initial Year Net Energy Amount as specified in paragraph 6.2.1 divided by the number of days in the current month) multiplied by the number of days in the Delay Period in the current month) multiplied by the current month's Delay Price.

5.3.2 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation Date the Seller shall pay Idaho Power Delay Liquidated Damages, in addition to those provided in paragraph 5.3.1, calculated as follows:

Twenty dollars (\$20) multiplied by the portion of the Maximum Capacity Amount attributed to the Tuana Springs Expansion with the Maximum Capacity Amount being measured in KW.

5.3.3 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation Date, in addition to the Delay Liquidated damages specified above, Seller shall provide Idaho Power with a written report documenting the then current status of the Tuana Springs Expansion. The Seller shall then provide Idaho Power with monthly reports on or before the end of each subsequent month of the Delay Period validating that the Seller continues to make commercially reasonable efforts to achieve the Operation Date.

5.4 Notice of Operation Date Delay without progress - In the event Idaho Power reasonably determines that the Seller is not making commercially reasonable efforts to achieve the Operation Date, as evidenced by Seller's (1) initial report of the status of the Tuana Springs Expansion and/or (2) failure to submit timely progress reports as required by Section 5.3.3. and/or (3) any such progress report indicates that Seller is not making commercially reasonable efforts to achieve the Operation Date, Idaho Power shall provide written notice to the Seller of this determination and the Seller shall have 30 days to provide additional information that

demonstrates to Idaho Power's reasonable satisfaction that the Seller is making commercially reasonable efforts to achieve an Operation Date within a reasonable period of time.

5.4.1 Idaho Power may terminate this Agreement due to delay in the Operation Date with written notice to Seller provided: (1) Idaho Power has provided the prior written notice as provided in 5.4 above to Seller of its intent and right under this Agreement to terminate this Agreement 30 days from the date of such notice; and (2) Seller has not rectified, within 30 days of such notice, the conditions necessary to defer Idaho Power's right to terminate this Agreement; and (3) Tuana Springs Expansion has not achieved a First Energy Date.

5.4.2 In the event that Idaho Power does not exercise the termination rights provided for in Section 5.5 above, then for all days in the Delay Period beyond ninety (90) days following the Scheduled Operation Date, in addition to all previously calculated and paid Delay Liquidated Damages specified in paragraph 5.3.1 and 5.3.2, the Seller shall pay Idaho Power additional Delay Liquidated Damages calculated at the end of each calendar month as follows:

Delay Liquidated Damages are equal to ((Current month's Initial Year Net Energy Amount as specified in paragraph 6.2.1 divided by the number of days in the current month) multiplied by the number of days of the Delay Period in the current month) multiplied by the current month's Delay Price; **provided , however**, no additional Delay Liquidated Damages shall be due and payable pursuant to this Section 5.4.1 unless and until such delay damages exceed the Delay Liquidated Damages provided for in Section 5.3.2.

5.5 Seller shall pay Idaho Power any calculated Delay Liquidated Damages within seven (7) days of when Idaho Power calculates and presents any Delay Liquidated Damages billings to the Seller. Seller's failure to pay these damages within the specified time will be a Material Breach of this

Agreement, and provided Seller has not disputed in writing the applicability or calculation of such Delay Liquidated Damages, and such dispute is found to be reasonable, Idaho Power may draw funds from the Delay Security provided by the Seller in an amount equal to the calculated Delay Liquidated Damages.

5.6 The Parties agree that the damages Idaho Power would incur due to delay in the Tuana Springs Expansion achieving the Operation Date on or before the Scheduled Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

5.7 Within thirty (30) days of the date of a Commission Order as specified in Article XXI approving this Agreement; Seller shall post liquid security ("Delay Security") in a form as described in Appendix D equal to or exceeding the amount calculated in paragraph 5.8.1.

5.7.1 Twenty dollars (\$20) multiplied by the portion of the Maximum Capacity Amount attributed to the Tuana Springs Expansion with the Maximum Capacity Amount being measured in KW.

5.7.1.1 In the event (a) Seller provides Idaho Power with certification that (1) a generation interconnection agreement specifying a schedule that will enable the Tuana Springs Expansion to achieve the Operation Date no later than the Scheduled Operation Date has been completed and the Seller has paid all required interconnection costs or (2) a generation interconnection agreement is substantially complete and all material costs of interconnection have been identified and agreed upon and (b) the Seller is in compliance with all terms and conditions of the generation interconnection agreement, the Delay Security calculated in accordance with paragraph 5.8.1 will be reduced by ten percent (10%).

5.7.1.2 If the Seller has received a reduction in the calculated Delay Security as specified in paragraph 5.8.1.1 and subsequently (1) at Seller's request, the generation

interconnection agreement specified in paragraph 5.7.1.1 is revised and as a result the Tuana Springs Expansion will not achieve its Operation Date by the Scheduled Operation Date or (2) if the Seller does not maintain compliance with the generation interconnection agreement, the full amount of the Delay Security as calculated in paragraph 5.7.1 will be subject to reinstatement and will be due and owing within ten (10) business days from the date Idaho Power requests reinstatement. Failure to timely reinstate the Delay Security will be a Material Breach of this Agreement.

5.7.2 Idaho Power shall release any remaining security posted hereunder after all calculated Delay Liquidated Damages are paid in full to Idaho Power and the earlier of (1) 30 days after the Operation Date achieved or (2) 30 days after the termination of this Agreement.

5.7.3 The Parties agree that at 12:00 midnight MST on the Operation Date established for the Tuana Springs Expansion project, the Firm Energy Sales Agreement dated April 7, 2006 between Cassia Gulch and Idaho Power shall automatically terminate and any amounts accrued and payable by one of the parties to the other up through such Tuana Springs Expansion Operation Date shall be paid in accordance with such Firm Energy Sales Agreement. All energy and capacity generated by the Cassia Facility subsequent to the Operation Date for the Tuana Springs Expansion shall be sold to Idaho Power in accordance with this Agreement.

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

6.1 Delivery and Acceptance of Net Energy - Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy to Idaho Power at the Point of Delivery. At no time will the total amount of Net Energy produced by the Facility and delivered by the Seller to the Point of Delivery exceed the Maximum Capacity Amount.

6.2 Net Energy Amounts - Seller intends to produce and deliver Net Energy in the following monthly amounts. These amounts shall be consistent with the Mechanical Availability Guarantee.

6.2.1 Initial Year Monthly Net Energy Amounts:

	<u>Month</u>	<u>kWh</u>
Season 1	March	6,876,543
	April	6,526,442
	May	5,553,874
Season 2	July	3,967,053
	August	4,363,759
	November	7,663,617
	December	8,384,014
Season 3	June	4,798,885
	September	4,990,809
	October	6,148,932
	January	9,512,832
	February	8,076,701

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

6.4 Mechanical Availability Guarantee – After the Operational Date has been established, the Facility shall achieve a minimum monthly Mechanical Availability of 85% for the Facility for each month during the full term of this Agreement (the Mechanical Availability Guarantee). Failure to achieve the Mechanical Availability Guarantee shall result in Idaho Power calculating damages as specified in paragraph 6.4.4.

6.4.1 At the same time the Seller provides the Monthly Power Production and Switching Report (Appendix A), the Seller shall provide and certify the calculation of the Facility's current month's Mechanical Availability. The Seller shall include a summary of: (a) Forced Outages, (b) Force Majeure events, (c) scheduled maintenance and Station Use information that was used to calculate the current month's Mechanical Availability.

- 6.4.2 Seller shall maintain and retain for three years detailed documentation supporting the monthly calculation of the Facility's Mechanical Availability.
- 6.4.3 Idaho Power shall have the right to review and audit the documentation supporting the calculation of the Facility's Mechanical Availability at reasonable times at the Seller's offices.
- 6.4.4 If the current month's Mechanical Availability is less than the Mechanical Availability Guarantee, damages shall be equal to:
- The month's Calculated Net Energy Amount minus the month's actual Net Energy deliveries multiplied by the Availability Shortfall Price.
- 6.4.5 Any damages calculated in paragraph 6.4.4 will be offset against the current month's energy payment. If an unpaid balance remains after the damages are offset against the energy payment, the Seller shall pay in full the remaining balance within 15 days of the date of the invoice.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

- 7.1 Heavy Load Purchase Price – For all Net Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price adjusted in accordance with Commission Order 30415 for Heavy Load Hour Energy deliveries, and adjusted in accordance with Commission Order 30488 for the wind integration charge and with seasonalization factors applied:

<u>Year</u>	Seasonal Factors		
	<u>Mills/kWh</u> Season 1 - (73.50 %)	<u>Mills/kWh</u> Season 2 - (120.00 %)	<u>Mills/kWh</u> Season 3 - (100.00 %)
2009	40.28	65.75	54.80
2010	44.35	72.42	60.35
2011	50.85	83.74	69.18
2012	46.94	76.79	63.86
2013	43.28	70.66	58.88
2014	43.07	70.32	58.59
2015	51.59	85.07	70.20
2016	51.32	84.56	69.82

2017	50.13	82.46	68.20
2018	56.06	92.99	76.41
2019	62.23	103.93	85.52
2020	62.31	104.09	85.66
2021	70.04	117.79	97.07
2022	53.59	88.60	72.91
2023	63.39	105.98	87.24
2024	65.00	108.84	89.62
2025	75.04	126.63	104.44
2026	61.12	101.96	83.89
2027	72.22	121.66	100.30
2028	75.00	126.56	104.38

7.2 Light Load Purchase Price – For all Net Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price adjusted in accordance with Commission Order 30415 for Light Load Hour Energy deliveries, and adjusted in accordance with Commission Order 30488 for the wind integration charge and with seasonalization factors applied:

Year	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2009	35.36	57.72	48.10
2010	39.43	64.38	53.65
2011	45.93	75.01	62.49
2012	42.01	68.59	57.16
2013	38.35	62.62	52.18
2014	38.14	62.27	51.90
2015	46.67	76.33	63.50
2016	46.40	75.83	63.12
2017	45.20	73.80	61.50
2018	51.14	84.26	69.58
2019	57.31	95.19	78.24
2020	57.39	95.35	78.38
2021	65.12	109.05	89.79
2022	48.67	79.86	66.21
2023	58.46	97.25	79.96
2024	60.08	100.11	82.34
2025	70.09	117.89	97.16
2026	56.19	93.23	76.61
2027	67.30	112.92	93.02
2028	70.06	117.82	97.10

7.3 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the non-levelized energy price adjusted in accordance with Commission Order 30488 for the wind integration charge and with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2009	38.09	62.18	51.81
2010	42.16	68.84	57.37
2011	48.66	79.86	66.20
2012	44.74	73.05	60.88
2013	41.09	67.08	55.90
2014	40.88	66.74	55.61
2015	49.40	81.18	67.22
2016	49.13	80.68	66.84
2017	47.93	78.57	65.22
2018	53.88	89.11	73.30
2019	60.04	100.04	82.28
2020	60.12	100.20	82.42
2021	67.85	113.90	93.83
2022	51.40	84.71	69.93
2023	61.19	102.10	84.00
2024	62.81	104.96	86.38
2025	72.83	122.74	101.20
2026	58.93	98.08	80.65
2027	70.02	117.77	97.06
2028	72.79	122.67	101.14

7.4 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Reference Price or the All Hours Energy Price specified in paragraph 7.3, whichever is lower.

7.5 Payment Due Date – Energy payments, less the Wind Energy Production Forecasting Monthly Cost Allocation (MCA) described in Appendix E, will be disbursed to the Seller within 30 days of the date which Idaho Power receives and accepts the documentation of the monthly Net Energy actually delivered to Idaho Power as specified in Appendix A.

7.6 Continuing Jurisdiction of the Commission - This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with

Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308

#### ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

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

#### ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy to the Idaho Power Point of Delivery for the full term of the Agreement.
- 9.2 Interconnection Facilities – Seller shall be responsible for all interconnection costs for both the Cassia Facility and the Tuana Springs Expansion as specified in Schedule 72 and the generation interconnection agreements applicable to the Cassia Facility, the Tuana Springs Expansion and the combined Facility.
- 9.3 Idaho Power shall make commercially reasonable efforts to establish the Facility as a designated network resource with a capacity of the Maximum Capacity Amount on or before the Operation Date.

## ARTICLE X: METERING AND TELEMTRY

- 10.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain Metering Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with Schedule 72 from the entire Facility at the Point of Delivery. The Metering Equipment will be at the location and the type required to measure, record and report the entire Facility's Net Energy, Station Use and maximum energy deliveries (kW) in a manner to provide Idaho Power adequate energy measurement data to administer this Agreement and to integrate this Facility's energy production into the Idaho Power electrical system. In addition, it will be required that the Seller provide at the Seller's expense, Metering and Telemetry acceptable to Idaho Power installed by the Seller to record the energy production from the Cassia Facility and the Tuana Springs Expansion separately. This metering and telemetry equipment will include a communication circuit and all equipment required to integrate the Seller's meter data into the Idaho Power electronic meter reading process. Idaho Power will produce only a single energy payment for the Seller's entire Facility that will include the energy and associated energy pricing for all phases of this Facility. The Seller provided metering and telemetry equipment will meet Idaho Power standards for revenue class metering and the Seller will provide Idaho Power electronic access to this meter information.

## ARTICLE XI - RECORDS

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

## ARTICLE XII: OPERATIONS

- 12.1 Communications - Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.
- 12.2 Energy Acceptance -
- 12.2.1 Idaho Power shall be excused from accepting and paying for Net Energy which would have otherwise been produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, or temporary disconnection of the Facility in accordance with Schedule 72. If, for reasons other than an event of Force Majeure, a temporary disconnection under Schedule 72 exceeds twenty (20) days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller shall be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2 and Seller shall be entitled to be compensated in accordance with Article VII. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.
- 12.2.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may temporarily disconnect the Facility from Idaho Power's transmission/distribution system as specified within Schedule 72 or take such other reasonable steps as Idaho Power deems appropriate.
- 12.2.3 Under no circumstances will the Seller deliver Net Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

- 12.3 Scheduled Maintenance – On or before January 31 of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of the Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.
- 12.4 Maintenance Coordination - The Seller and Idaho Power shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.
- 12.5 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact the Seller prior to exercising its rights to interrupt interconnection or curtail deliveries from the Seller's Facility. Seller understands that in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

#### ARTICLE XIII: INDEMNIFICATION AND INSURANCE

- 13.1 Indemnification - Each Party agrees to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's (a) construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement or (b) negligent or intentional acts, errors or omissions. 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 documented costs, including reasonable attorney fees that

may be incurred by the other Party in enforcing this indemnity.

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

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

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

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

13.3 Seller to Provide Certificate of Insurance - As required in paragraph 4.1.5 herein and annually thereafter, Seller shall furnish Idaho Power a certificate of insurance, together with the endorsements required therein, evidencing the coverage as set forth above.

13.4 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 13.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage. Failure to provide this notice and to expeditiously reinstate or replace the coverage will constitute a Material Breach of this Agreement.

#### ARTICLE XIV: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party was unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances,

earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the Effective Date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid, and by the exercise of due diligence, it shall be unable to overcome. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

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

#### ARTICLE XV: LIABILITY; DEDICATION

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

#### ARTICLE XVI: SEVERAL OBLIGATIONS

16.1 Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained

in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

#### ARTICLE XVII: WAIVER

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

#### ARTICLE XVIII: CHOICE OF LAWS AND VENUE

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

#### ARTICLE XIX: DISPUTES AND DEFAULT

- 19.1 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 first addressed by written notice to the managements of both Parties which will negotiate, or appoint representatives to negotiate, in good faith to seek a resolution of the dispute. In the event a Party refuses to negotiate, or no resolution is reached, or no mutual agreement between the Parties to continue discussions is reached within 60 days of being submitted to the management of each Party, either Party may present the dispute in a complaint proceeding before the Commission for resolution.
- 19.2 Notice of Default -
- 19.2.1 Defaults. Except as provided in Article 5 for delay in achieving the Operation Date, in the event either Party fails to perform any of the terms or conditions of this

Agreement (an “event of default”), the non defaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the non-defaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.

19.2.2 Material Breaches – The notice and cure provisions in paragraph 19.2.1 do not apply to defaults identified in this Agreement as Material Breaches. Material Breaches must be cured as expeditiously as possible following occurrence of the breach.

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

19.3.1 Insurance - Evidence of compliance with the provisions of paragraph 13.2. If Seller fails to comply, such failure will be a Material Breach and may only be cured by Seller supplying evidence that the required insurance coverage has been replaced or reinstated;

19.3.2 Engineer’s Certifications - Every three (3) years after the Operation Date, Seller will supply Idaho Power with a Certification of Ongoing Operations and Maintenance (O&M) from a Registered Professional Engineer licensed in the State of Idaho, which Certification of Ongoing O & M shall be in the form specified in Appendix C. Seller’s failure to supply the required certificate will be an event of default. Such a default may only be cured by Seller providing the required certificate; and

19.3.3 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or

additional permits or licenses. At least every fifth Contract Year, Seller will update the documentation described in Paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be an event of default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

#### ARTICLE XX: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXI: COMMISSION ORDER

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

#### ARTICLE XXII: SUCCESSORS AND ASSIGNS

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

or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXIII: MODIFICATION

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

ARTICLE XXIV: TAXES

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

ARTICLE XXV: NOTICES

- 25.1 All written notices under this Agreement shall be directed as follows and shall be considered delivered when faxed, e-mailed and confirmed with deposit in the U.S. Mail, first-class, postage prepaid, as follows:

To Cassia Gulch:

Original document to:  
Richard A Cummings  
412 E Parkcenter Blvd, Suite 325  
PO Box 1545  
Boise, Idaho 83701  
email: rcummings@cummingslawidaho.com

Copy of document to:

John Deere Renewables, LLC  
Assistant Chief Counsel.  
6400 NW 86<sup>th</sup> Street  
Johnston, IA 50131  
email: JDRLEGAL@johndeere.com

To Idaho Power:

Original document to:

Vice President, Power Supply  
Idaho Power Company  
P O Box 70  
Boise, Idaho 83707  
Email:jimmiller@idahopower.com

Copy of document to:

Cogeneration and Small Power Production  
Idaho Power Company  
P O Box 70  
Boise, Idaho 83707  
E-mail: rallphin@idahopower.com

ARTICLE XXVI: ADDITIONAL TERMS AND CONDITIONS

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

- |            |   |  |
|------------|---|--|
| Appendix A | - | Power Production and Availability Report |
| Appendix B | - | Facility and Point of Delivery           |
| Appendix C | - | Engineer's Certifications                |
| Appendix D | - | Forms of Liquid Security                 |
| Appendix E | - | Wind Energy Production Forecasting       |

ARTICLE XXVII: SEVERABILITY

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

ARTICLE XXVIII: COUNTERPARTS

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

ARTICLE XXIX: ENTIRE AGREEMENT

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

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

Idaho Power Company

By



Dan B. Minor  
Sr. Vice President, Delivery

Dated

8/5/09

"Idaho Power"

Cassia Gulch Wind Park, LLC

By



Terry Kramer  
Manager

Dated

3 Aug. 2009

"Seller"

Tuana Springs Energy, LLC

By



Manager

Dated

7-28-09

"Seller"

APPENDIX A

A -1 MONTHLY POWER PRODUCTION AND AVAILABILITY REPORT

At the end of each month the following required documentation for the Cassia Facility and the Tuana Springs Expansion will be submitted to:

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

The meter readings required on this report will be the readings on the Idaho Power Meter Equipment measuring the Facility's total energy production and Station Usage delivered to Idaho Power and the maximum generated energy (kW) as recorded on the Metering Equipment and/or any other required energy measurements to adequately administer this Agreement. And the meter readings from the Seller provided Metering Equipment that measures the energy from the Cassia Facility and the Tuana Springs Expansion separately. This document shall be the document to enable Idaho Power to begin the energy payment calculation and payment process. The meter readings on this report shall not be used to calculate the actual payment, but instead will be a check of the automated meter reading information that will be gathered as described in item A-2 below:

**Idaho Power Company**

**Cogeneration and Small Power Production**

**MONTHLY POWER PRODUCTION AND AVAILABILITY REPORT**

Month \_\_\_\_\_

Year \_\_\_\_\_

Project Name \_\_\_\_\_

Project Number: \_\_\_\_\_

Address \_\_\_\_\_

Phone Number: \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

**Mechanical Availability Guarantee**

Seller Calculated Mechanical Availability \_\_\_\_\_

As specified in this Agreement, the Seller shall include with this monthly report a summary statement of the Mechanical Availability of this Facility for the calendar month. This summary shall include details as to how the Seller calculated this value and summary of the Facility data used in the calculation. Idaho Power and the Seller shall work together to mutually develop a summary report that provides the required data. Idaho Power reserves the right to review the detailed data used in this calculation as allowed within the Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect 1) the meter reading information from the Idaho Power provided Metering Equipment that measures the Net Energy and energy delivered to supply Station Use for the entire Facility recorded at 12:00 AM (Midnight) of the last day of the month and 2) the meter reading information from the Seller provided Metering Equipment that measures the energy production and Station Use for the Cassia Facility and the Tuana Springs Expansion separately recorded at 12:00 AM (Midnight) of the last day of the month.

The meter information collected will include but not be limited to energy production, Station Use, the maximum generated power (kW) and any other required energy measurements to adequately administer this Agreement.

## A-3 ROUTINE REPORTING

Once the Tuana Springs Expansion has achieved its Operation Date and has operated in a reliable and consistent manner for a reasonable period of time, the Parties may mutually agree to modify this Routine Reporting requirement for this entire Facility.

### Idaho Power Contact Information

#### Daily Energy Production Reporting

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

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

#### Planned and Unplanned Project outages

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

- Project Identification - Project Name and Project Number

- Approximate time outage occurred
- Estimated day and time of project coming back online

Seller's Contact Information

24-Hour Project Operational Contact

Name: JDR Operations  
Telephone Number: 877-539-4631  
Cell Phone: 515-267-3488  
email: JDROPS@johndeere.com

Project On-site Contact information

Telephone Number: 515-306-4480

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Number: 31315150  
Tuana Springs Expansion and Cassia Gulch Wind Park

B-1 DESCRIPTION OF FACILITY

*(Must include the nameplate rating and VAR capability (both leading and lagging) of all generation units to be included in the Facility.)*

The Cassia Gulch Wind Park consists of a single 34.5 kV collector circuit connecting nine (9) 2.1 MW Suzlon S-88 wind turbine generators and their pad mount step-up transformers to a 34.5/138 kV substation owned by the project to interconnect to an Idaho Power owned 138 kV circuit breaker and tap of their 138 kV transmission line from Lower Malad substation to Mountain Home Junction 4.3 miles west of Lower Malad. The project is designed and constructed to operate with a power factor at the Point of Delivery in the range of .95 leading to .95 lagging when producing rated power using switched capacitors in each turbine which attempt to keep the power factor at unity at the terminals of each wind turbine generator.

The Tuana Springs Expansion will add a single 34.5 kV collector circuit connecting eight more (8) 2.1 MW Suzlon S-88 wind turbine generators and their pad mount step-up transformers to an expansion of existing 34.5/138 kV Cassia substation to add a second 34.5/138 kV transformer. The expansion will interconnect the high voltage side of the new transformer to the 138 kV bus on the project side of Idaho Power's existing 138 kV circuit breaker. The Tuana Springs Expansion is also designed and constructed to operate with a power factor at the Point of Delivery in the range of .95 leading to .95 lagging when producing rated power using switched capacitors in each turbine which attempt to keep the power factor at unity at the terminals of each wind turbine generator.

B-2 LOCATION OF FACILITY

Near: 4.3 miles west of Lower Malad substation

Sections: 15 & 22 Township: 6South Range: 12East County: Twin Falls, ID.

Description of Interconnection Location: 4.3 miles east of Lower Malad Substation on IPCo 138 kV Lower Malad to Mountain Home 138 kV line

Nearest Idaho Power Substation: \_\_\_\_\_

**B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE**

Cassia Gulch Wind Park

The Cassia Gulch Wind Park has already attained its First Energy Date and Operation Date under a previous Firm Energy Sales Agreement between Cassia Gulch Wind Park LLC and Idaho Power dated April 7, 2006. At the time the Tuana Springs Expansion achieves its Operation Date, the Operation Date for this entire Facility (including the Cassia Gulch Wind Park) will be the Operation Date of the Tuana Springs Expansion.

Tuana Springs Expansion

For the Tuana Springs Expansion phase of this Facility:

Seller has selected November 1, 2009 as the Scheduled First Energy Date.

Seller has selected June 30, 2010 as the Scheduled Operation Date.

In making these selections, Seller recognizes that adequate testing of the Facility and completion of all requirements in paragraph 5.2 of this Agreement must be completed prior to the project being granted an Operation Date.

**B-4 MAXIMUM CAPACITY AMOUNT:** This value will be 35,700 kW which is consistent with the value provided by the Seller to Idaho Power in accordance with Schedule 72 and less than or equal to the sum of the Nameplate Capacity rating of all the individual generation units at this Facility. This value is the maximum energy (kW) that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

B-5 POINT OF DELIVERY

“Point of Delivery” means, unless otherwise agreed by both Parties, the point of where the Sellers Facility’s energy is delivered to the Idaho Power electrical system. Schedule 72 will determine the specific Point of Delivery for this Facility. The Point of Delivery identified by Schedule 72 will become an integral part of this Agreement and is defined as the same location for both the Tuana Springs Expansion and the Cassia Gulch Wind Park.

B-6 LOSSES

If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering Equipment is unable to measure the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (kWh) between the Seller’s Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation Metering Equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the kWh Losses for the remaining term of the Agreement. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual kWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous months kWh loss calculations.

B-7 METERING AND TELEMETRY

Schedule 72 will determine the specific metering and telemetry requirements for this Facility. At a minimum, the Metering Equipment and Telemetry equipment must be able to provide and record hourly energy deliveries to the Point of Delivery and any other energy measurements required to administer this Agreement. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment, design and installation of the Idaho Power provided equipment. Seller will arrange for and make available at Seller's cost communication circuit(s) compatible with Idaho Power's communications equipment and dedicated to Idaho Power's use terminating at the Idaho Power facilities capable of providing Idaho Power with continuous instantaneous information on the entire Facility's energy production and the separate Tuana Springs Expansion and the Cassia Gulch Wind Park energy production and Station Use as required to administer this Agreement. Idaho Power provided 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. Payment of these costs will be in accordance with Schedule 72 and the total metering cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
OPERATIONS & MAINTENANCE POLICY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the Tuana Springs Expansion portion of this Facility which is the subject of the Agreement and this Statement is identified as a portion of IPCo Facility No. \_\_\_\_\_ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the Cassia Gulch Wind Park and the Tuana Springs Expansion, 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 five (5) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the

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

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

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C

ENGINEER'S CERTIFICATION

OF

ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production Facility which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the Cassia Gulch Wind Park and the Tuana Springs Expansion 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 five (5) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. It is Engineer's professional opinion, based on the Project's appearance, that its ongoing O&M has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the

Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining \_\_\_\_\_ years of the Agreement.

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

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C

ENGINEER'S CERTIFICATION

OF

DESIGN & CONSTRUCTION ADEQUACY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the Tuana Springs Expansion portion of this Facility which is the subject of the Agreement and this Statement is identified as a portion of IPCo Facility No. \_\_\_\_\_ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the Cassia Gulch Wind Park and the Tuana Springs Expansion, 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 five (5) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

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

10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices for a twenty (20) year period.

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

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

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

Date \_\_\_\_\_

## APPENDIX D

### FORMS OF LIQUID SECURITY

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the Delay Security requirement within this Agreement.

For the purpose of this Appendix D, the term "Credit Requirements" shall mean acceptable financial creditworthiness of the entity providing the security instrument in relation to the term of the obligation in the reasonable judgment of Idaho Power, provided that any guarantee and/or letter of credit issued by any other entity with a short-term or long-term investment grade credit rating by Standard & Poor's Corporation or Moody's Investor Services, Inc. shall be deemed to have acceptable financial creditworthiness.

1. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the Delay Security.
2. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Delay Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) a Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties.

## APPENDIX E

### WIND ENERGY PRODUCTION FORECASTING

As specified in Commission Order 30488, Idaho Power shall make use of a Wind Energy Production Forecasting model to forecast the energy production from this Facility and other Qualifying Facility wind generation resources. Seller and Idaho Power will share the cost of Wind Energy Production Forecasting. The Facility's share of Wind Energy Production Forecasting is determined as specified below. Sellers share will not be greater than 0.1% of the total energy payments made to Seller by Idaho Power during the previous Contract Year.

- a. For every month of this Agreement beginning with the first full month after Commission approval of this Agreement as specified in Article XXI, the Wind Energy Production Forecasting Monthly Cost Allocation (MCA) will be due and payable by the Seller. Any Wind Energy Production Forecasting Monthly Cost Allocations (MCA) that are not reimbursed to Idaho Power shall be deducted from energy payments to the Seller.
  - As the value of the 0.1% cap of the Facilities total energy payments will not be known until the first Contract Year is complete, at the end of the first Contract Year any prior allocations that exceeded the 0.1% cap shall be adjusted to reflect the 0.1% cap and if the Facility has paid the monthly allocations a refund will be included in equal monthly amounts over the ensuing Contract Year. If the Facility has not paid the monthly allocations the amount due Idaho Power will be adjusted accordingly and the unpaid balance will be deducted from the ensuing Contract Year's energy payments.
- b. During the first Contract Year, as the value of the 0.1% cap of the Facilities total

energy payments will not be known until the first Contract Year is complete, Idaho Power will deduct the Facility's calculated share of the Wind Energy Production Forecasting costs specified in item d of this section each month during the first Contract Year and subsequently refund any overpayment (payments that exceed the cap) in equal monthly amounts over the ensuing Contract Year.

- c. The cost allocation formula described below will be reviewed and revised if necessary on the last day of any month in which the cumulative MW nameplate of wind projects having Commission approved agreements to deliver energy to Idaho Power has been revised by an action of the Commission.
- d. The monthly cost allocation will be based upon the following formula :

Where: **Total MW (TMW)** is equal to the total nameplate rating of all wind projects that are under contract to provide energy to Idaho Power Company.

**Facility MW (FMW)** is equal to the nameplate rating of this Facility as specified in Appendix B.

**Annual Wind Energy Production Forecasting Cost (AFCost)** is equal to the total annual cost Idaho Power incurs to provide Wind Energy Production Forecasting Idaho Power will estimate the AFCost for the current year based upon the previous year's cost and expected costs for the current year. At year-end, Idaho Power will compare the actual costs to the estimated costs and any differences between the estimated AFCost and the actual AFCost will be included in the next year's AFCost.

**Annual Cost Allocation (ACA) = AFCost X (FMW / TMW)**

And

**Monthly Cost Allocation (MCA) = ACA / 12**

- e. The Wind Energy Production Forecasting Monthly Cost Allocation (MCA) is due and payable to Idaho Power. The MCA will first be netted against any monthly energy payments owed to the Seller. If the netting of the MCA against the monthly energy payments results in a balance being due Idaho Power, the Facility shall pay this amount within 15 days of the date of the payment invoice.