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IDAHO PUBLIC
UTILITIES COMMISSION

DONOVAN E. WALKER
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May 25, 2010

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-10-18
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT WITH NEW ENERGY THREE LLC FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY FROM THE DOUBLE B DAIRY ANAEROBIC DIGESTOR PROJECT

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

P.O. Box 70 (83707)
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Boise, ID 83702

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT WITH NEW ENERGY THREE, LLC, FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY FROM THE DOUBLE B DAIRY ANAEROBIC DIGESTOR PROJECT.	CASE NO. IPC-E-10-18 APPLICATION

Idaho Power Company ("Idaho Power" or the "Company"), in accordance with Idaho Code § 61-503 and RP 52 and the applicable provisions of the Public Utility 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 New Energy Three, LLC ("New Energy") under which New Energy would sell and Idaho Power would purchase electric energy generated by the Double B Dairy Anaerobic Digester Power Project ("Facility") located in Cassia County, Idaho.

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 purchase price a QF receives for the sale of its power is generally referred to as the avoided cost rate and is computed to be equal to 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's PURPA rules.

II. THE FIRM ENERGY SALES AGREEMENT

2. On May 24, 2010, Idaho Power and New Energy entered into a Firm Energy Sales Agreement ("Agreement") for the Facility pursuant to the terms and conditions of the various Commission Orders applicable to this PURPA agreement. *See*, Order Nos. 30415, 30488, 30738, and 30744. A copy of the Agreement is enclosed with this Application as Attachment No. 1. The Agreement is for a term of 15 years and contains the non-levelized published avoided cost rates established by the Commission in Order No. 30744 for energy deliveries of less than 10 average megawatts ("MW").

3. The nameplate rating of this Facility will be 2 MW. As defined in paragraph 1.21 of the Agreement and as described in paragraph 4.1.3 of the Agreement, New Energy will be required to provide data on the Facility that Idaho Power will use to confirm that under normal and/or average conditions the Facility will not exceed 10 average MW on a monthly basis.

4. New Energy has elected a Scheduled Operation Date of December 1, 2012, for the Facility. If the Facility has not achieved its Operation Date by that date, Delay Liquidated Damages and associated Delay Security provisions within this Agreement are applicable.

5. Section 21.1 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 New Energy for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

6. All applicable interconnection study charges under Schedule 72 have been assessed and collected from New Energy. The final interconnection Feasibility Study is complete and the final Facility Study for the Facility is underway. Idaho Power Power Supply has made application for applicable transmission capacity and has been notified that transmission capacity is available.

III. APPLICABLE RATES

7. On March 16, 2010, in Order No. 30125 issued in Case No. GNR-E-10-01, the Commission adopted new published avoided cost rates for the purchase by Idaho Power of capacity energy from PURPA QFs. The rates adopted in Order No. 31025 are

approximately 10 percent lower than the rates previously adopted in Case No. GNR-E-09-01, Order No. 30744. By its terms, Order No. 31025 applies to new PURPA contracts executed on and after March 16, 2010. Because the Agreement is dated May 24, 2010, Order No. 31025 would require that the rates to be paid New Energy under the Agreement would be the rates set out in Order No. 31025 rather than the higher rates approved by the Commission in Order No. 30744. However, this Commission has recognized in prior Orders that there are situations when QF rates are changed that it is appropriate to include a prior vintage of rates in a current PURPA contract.[1] In several cases litigated in the early to mid-1990s, the Commission determined, and the Idaho Supreme Court affirmed, certain criteria that a QF developer must satisfy in order to establish an entitlement to sell energy at a particular published avoided cost rate.[2] One of the criteria that would qualify a particular generating facility to receive the superseded rate requires that the developer have executed a power sales agreement with the utility at the rate in question before a successor rate becomes effective. If the QF cannot meet the first criteria, the second criteria requires that prior to the new rates effective date, the QF developer must have filed a meritorious complaint alleging that the project was sufficiently mature and far enough along in the contracting process that but for the conduct of the utility company, the developer would have been able to sign a contract with the utility containing the superseded rates.

8. In this case, New Energy had not signed a contract with Idaho Power to purchase the Facility generation on or before March 16, 2010. On April 15, 2010, New

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[1] The Idaho Supreme Court has confirmed that it is within the Commission's jurisdiction to determine which vintage of QF rates should apply to a PURPA contract. See *Empire Lumber v. Washington Water Power,* 114 Idaho 191, 755 P.2d 1229 (1988) and *A.W. Brown Co., Inc., v. Idaho Power Company*, 121 Idaho 812, 828 P.2d 841 (1992).

[2] *A.W. Brown, Rosebud*, 131 Idaho.

Energy filed a Complaint at the Commission alleging that it was entitled to 3 contracts containing the higher Order No. 30744 rates. Upon further review of the facts, and by signing this agreement and voluntarily submitting it to the Commission, Idaho Power has concluded that New Energy meets the second test described above and should be entitled to the rates established by Order No. 30744 in Case No. GNR-E-09-01. The Company has received a number of requests for "grandfathering" of QF contracts. In making a determination to file and support an application urging that a particular QF project is entitled to the Order No. 30744 rates, the Company concluded that a project must have met ALL of the following criteria prior to March 16, 2010.

a. Interconnection and Transmission

i. Filed an interconnection application; and

ii. Received and accepted an interconnection feasibility study report for the project and paid any requested study deposits (or established credit) for the next phase of the interconnection process in accordance with Schedule 72; and

iii. Received confirmation from Idaho Power that transmission capacity is available for the project and/or received and accepted transmission capacity study results and cost estimates.

b. Purchase Power Agreement

i. An agreement was materially complete prior to March 16, 2010, and except for routine Idaho Power final processing, an agreement would have been executed by both parties prior to March 16, 2010.

9. It is Idaho Power's opinion that the New Energy Facility meets all of the above-referenced criteria. With respect to the power purchase agreement criteria, New

Energy and Idaho Power had resolved all material outstanding contract issues prior to March 16, 2010. Both parties expected that final review of the contract would be a relatively straightforward process. However, in early February, the Company became aware of some new procedural requirements from FERC that affected the way that the Facility would qualify for a Network Resource designation and thereby obtain the transmission needed to bring the power to be generated by the Facility from the interconnection to the Company load centers. The new procedure required some changes to the internal process at Idaho Power. Idaho Power embarked upon interpreting the regulations and implementing a process to be in compliance. In Idaho Power's opinion, the Agreement would have been signed by both parties prior to March 16, 2010, except for the time required by Idaho Power to implement the new internal transmission and network resource process and, as a result, the Facility should qualify for a contract including the Order No. 30744 rates. New Energy is current in all of its interconnection study payments and so as long as New Energy continues to provide requested information in a timely manner and pay invoices on time, it appears that the interconnection can be completed in time for New Energy to achieve its Scheduled Operation Date for the Facility.

10. The Agreement contains the most recent terms and conditions, including the liquidated damages and security provisions previously approved by the Commission in the Arena Drop and the Dry Creek dairy cases, Order Nos. 31060 and 31034, respectively.

11. Based on the foregoing, Idaho Power believes that the Agreement meets the criteria established by the Commission in its prior Orders and the Commission should approve the Agreement as presented.

IV. MODIFIED PROCEDURE

12. Idaho Power believes that a hearing is not necessary to consider the issues presented herein and 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.

V. COMMUNICATIONS AND SERVICE OF PLEADINGS

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

Donovan E. Walker, Senior Counsel
Lisa Nordstrom, Lead Counsel
Idaho Power Company
1221 West Idaho Street
P.O. Box 70
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dwalker@idahopower.com
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Randy C. Allphin
Energy Contract Administrator
Idaho Power Company
1221 West Idaho Street
P.O. Box 70
Boise, Idaho 83707
rallphin@idahopower.com

VI. REQUEST FOR RELIEF

14. 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 New Energy Three, 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 New Energy Three, LLC, be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 25th day of May 2010.

DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25th day of May 2010 I served a true and correct copy of the foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

New Energy One, LLC Attn: Laura Knothe, PE. New Energy One, LLC 8720 Vic Lane Middleton, Idaho 83644	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX ____ Email
Dean J. Miler McDEVITT & MILLER LLP 420 West Bannock Street P.O. Box 2564 Boise, Idaho 83701	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX ____ Email joe@mcdevitt-miller.com

Donovan E. Walker

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-10-18

IDAHO POWER COMPANY

ATTACHMENT NO. 1

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

NEW ENERGY THREE, LLC

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FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

Project Name: Double B Dairy

Project Number: 31616120

THIS AGREEMENT, entered into on this 24th day of May 2010 between NEW ENERGY THREE, LLC, an Idaho limited liability company (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Seller will design, construct, own, maintain and operate an electric generation facility; and

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

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

ARTICLE I: DEFINITIONS

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

1.1 "Base Energy" – Monthly Net Energy less than 110% of the monthly Net Energy Amount as specified in paragraph 6.2 of this Agreement.

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 "Delay Liquidated Damages" – Damages payable to Idaho Power as calculated in paragraph 5.3, 5.4, 5.5, 5.6 and 5.8.

1.5 "Delay Period" – All days past the Scheduled Operation Date until the Seller's Facility achieves the Operation Date.

1.6 "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.

1.7 "Designated Dispatch Facility" - Idaho Power's Systems Operations Group, or any subsequent group designated by Idaho Power.

1.8 "Facility" - That electric generation facility described in Appendix B of this Agreement.

1.9 "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.

1.10 "Heavy Load Hours" – The daily hours beginning at 7:00 am, ending at 11:00 pm Mountain Time, (16 hours) excluding all hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

1.11 "Inadvertent Energy" – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.5 of this Agreement.

1.12 "Interconnection Facilities" - All equipment specified in Schedule 72.

1.13 "Initial Capacity Determination" – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than 10 average MW per month and is therefore eligible to be paid the published rates in accordance with Commission Order No. 29632.

1.14 "Light Load Hours" – The daily hours beginning at 11:00 pm, ending at 7:00 am Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

1.15 "Losses" – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the point where the Facility's energy is metered and the point the Facility's energy is delivered to the Idaho Power electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.

1.16 "Market Energy Reference Price" – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.

1.17 "Material Breach" – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.

1.18 "Maximum Capacity Amount" – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.

1.19 "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 between the Seller's electric generation plant and Idaho Power's system.

1.20 "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.

1.21 "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-amperers, kilowatts, volts or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.22 "Net Energy" – All of the electric energy produced by the Facility, less Station Use, less Losses, expressed in kilowatt hours (kWh). 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. Net Energy does not include Inadvertent Energy.

1.23 "Operation Date" – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.

1.24 "Point of Delivery" – The location specified in Appendix B, where Idaho Power's and the Seller's electrical facilities are interconnected and the energy from this Facility is delivered to the Idaho Power electrical system.

1.25 "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.

1.26 "Scheduled Operation Date" – The date specified in Appendix B when Seller anticipates achieving the Operation Date. It is expected that the Scheduled Operation Date provided by the Seller shall be a reasonable estimate of the date that the Seller anticipates that the Seller's Facility shall achieve the Operation Date.

1.27 "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 within Schedule 72.

1.28 "Season" – The three periods identified in paragraph 6.2.1 of this Agreement.

1.29 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Schedule 72.

1.30 "Station Use" – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.

1.31 "Surplus Energy" – Is (1) Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month which exceeds 110% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2. or (2) If the Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month is less than 90% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, then all Net Energy delivered by the Facility to the Idaho Power electrical system for that given month or (3) All Net Energy produced by the Seller's Facility and delivered by the Facility to the Idaho Power electrical system prior to the Operation Date.

1.32 "Total Cost of the Facility" - The total cost of structures, equipment and appurtenances.

ARTICLE II: NO RELIANCE ON IDAHO POWER

2.1 Seller Independent Investigation - Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.

2.2 Seller Independent Experts - All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

ARTICLE III: WARRANTIES

3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR 292.201 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 Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Seller shall:

4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.201 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 Initial Capacity Determination - Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data will include but not be limited to, Nameplate Capacity, equipment specifications, prime mover data, resource characteristics, normal and/or average operating design conditions and Station Use data. Upon receipt of this information, Idaho Power will review the provided data and if necessary, request additional data to complete the Initial Capacity Determination within a reasonable time.

4.1.3.1 If the Maximum Capacity specified in Appendix B of this Agreement and the cumulative manufacture Nameplate Capacity rating of the individual generation units at this Facility is less than 10 MW. The Seller shall submit detailed, manufacturer, verifiable data of the Nameplate Capacity ratings of the actual individual generation units to be installed at this Facility. Upon verification by Idaho Power that the data provided establishes the combined Nameplate Capacity rating of the generation units to

be installed at this Facility is less than 10 MW, it will be deemed that the Seller has satisfied the Initial Capacity Determination for this Facility.

4.1.4 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.

4.1.5 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.

4.1.6 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.

4.1.7 Interconnection – Provide written confirmation from Idaho Power's delivery business unit that Seller has satisfied all interconnection requirements.

4.1.8 Network Resource Designation – The Seller's Facility has been designated as a network resource capable of delivering firm energy up to the amount of the Maximum Capacity.

4.1.9 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 15 *(not to exceed 20 years)* Contract Years from the Operation Date.

5.2 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:

a) Achieved the First Energy Date.

b) Commission approval of this Agreement in a form acceptable to Idaho Power has been received.

c) Seller has demonstrated to Idaho Power's satisfaction that the 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 Facility to achieve the Operation Date on or before the Scheduled Operation Date. Delays in the interconnection and transmission network upgrade study, design and construction process that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement.

5.3.1 If the Operation Date occurs after the Scheduled Operation Date but on or prior to 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:

Forty five dollars ($45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW.

5.4 If Seller fails to achieve the Operation Date within ninety (90) days following the Scheduled Operation

Date, such failure will be a Material Breach and Idaho Power may terminate this Agreement at any time until the Seller cures the Material Breach. Additional Delay Liquidated Damages beyond those calculated in 5.3.1 and 5.3.2 will be calculated and payable using the Delay Liquidated Damage calculation described in 5.3.1 above for all days exceeding 90 days past the Scheduled Operation Date until such time as the Seller cures this Material Breach or Idaho Power terminates this Agreement.

5.5 Seller shall pay Idaho Power any calculated Delay Damages or Delay Liquidated Damages within 7 days of when Idaho Power calculates and presents any Delay Damages or 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 Idaho Power shall draw funds from the Delay Security provided by the Seller in an amount equal to the calculated Delay Damages or Delay Liquidated Damages.

5.6 The Parties agree that the damages Idaho Power would incur due to delay in the Facility 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 Prior to the Seller executing this Agreement, the Seller shall have agreed to and executed a Letter of Understanding with Idaho Power that contains at minimum the following requirements:

a) Seller has filed for interconnection and is in compliance with all payments and requirements of the interconnection process

b) Seller has received and accepted an interconnection feasibility study for this Facility.

c) Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.

d) Results of the initial transmission capacity request are known and acceptable to the Seller.

e) Seller acknowledges responsibility for all interconnection costs and any costs associated with acquiring adequate firm transmission capacity to enable the project to be classified as an Idaho Power firm network resource.

f) If the Facility is located outside of the Idaho Power service territory, in addition to the above requirements, the Seller must provide evidence that the Seller has acquired firm transmission capacity from all required transmitting entities to deliver the Facility's energy to an acceptable point of delivery on the Idaho Power electrical system.

5.8 Within thirty (30) days of the date of a final non-appealable order as specified in Article XXI approving this Agreement the 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.

5.8.1 Delay Security The greater of forty five ($45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW or the sum of three month's estimated revenue. Where the estimated three months of revenue is the estimated revenue associated with the first three full months following the estimated Scheduled Operation Date, the estimated kWh of energy production as specified in paragraph 6.2.1 for those three months multiplied by the All Hours Energy Price specified in paragraph 7.3 for each of those three months.

5.8.1.1 In the event (a) Seller provides Idaho Power with certification that (1) a generation interconnection agreement specifying a schedule that will enable this Facility 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 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%).

5.8.1.2 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 5.8.1.1 is revised and as a result the Facility 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 5.8.1 will be subject to reinstatement and will be due and owing within 5 business days from the date Idaho Power requests reinstatement. Failure to timely reinstate the Delay Security will be a Material Breach of this Agreement.

5.8.2 Idaho Power shall release any remaining security posted hereunder after all calculated Delay Damages and/or Delay Liquidated Damages are paid in full to Idaho Power and the earlier of (1) 30 days after the Operation Date has been achieved or (2) 60 days after the Agreement has been terminated.

ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

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

6.2 Net Energy Amounts - Seller intends to produce and deliver Net Energy in the following monthly amounts:

6.2.1 Initial Year Monthly Net Energy Amounts:

	Month	kWh
Season 1	March	648,000
	April	648,000
	May	648,000
Season 2	July	648,000
	August	648,000
	November	648,000
	December	648,000
Season 3	June	648,000
	September	648,000
	October	648,000
	January	648,000
	February	648,000

6.2.2 Ongoing Monthly Net Energy Amounts - Seller shall initially provide Idaho Power with one year of monthly generation estimates (Initial Year Monthly Net Energy Amounts) and beginning at the end of month nine and every three months thereafter provide Idaho Power with an additional three months of forward generation estimates beyond those generation estimates previously provided. This information will be provided to Idaho Power by written notice in accordance with paragraph 25.1, no later than 5:00 PM of the 5th day following the end of the previous month. If the Seller does not provide the Ongoing Monthly Net Energy Amounts in a timely manner, Idaho Power will use the most recent 3 months of the Initial Year Monthly Net Energy Amounts specified in paragraph 6.2.1 for the next 3 months of monthly Net Energy amounts.

6.2.3 Seller's Adjustment of Net Energy Amount

6.2.3.1 No later than the Operation Date, by written notice given to Idaho Power in accordance with paragraph 25.1, the Seller may revise all of the previously provided Initial Year Monthly Net Energy Amounts.

6.2.3.2 Beginning with the end of the 9th month after the Operation Date and at the end of every third month thereafter: (1) the Seller may not revise the immediate next three

months of previously provided Net Energy Amounts, (2) but by written notice given to Idaho Power in accordance with paragraph 25.1, no later than 5:00 PM of the 5th day following the end of the previous month, the Seller may revise all other previously provided Net Energy Amounts. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

6.2.4 Idaho Power Adjustment of Net Energy Amount – If Idaho Power is excused from accepting the Seller's Net Energy as specified in paragraph 12.2.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 and the Seller's declared Suspension of Energy Deliveries is accepted by Idaho Power, the Net Energy Amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 12.2.1 or 12.3.1 occurs will be reduced in accordance with the following:

Where:

NEA = Current Month's Net Energy Amount (Paragraph 6.2)

SGU = a.) If Idaho Power is excused from accepting the Seller's Net Energy as specified in paragraph 12.2.1 this value will be equal to the percentage of curtailment as specified by Idaho Power multiplied by the TGU as defined below.

b.) If the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 this value will be the sum of the individual generation units size ratings as specified in Appendix B that are impacted by the circumstances causing the Seller to declare a Suspension of Energy Deliveries.

TGU = Sum of all of the individual generator ratings of the generation units at this Facility as specified in Appendix B of this agreement.

RSH = Actual hours the Facility's Net Energy deliveries were either reduced or suspended under paragraph 12.2.1 or 12.3.1

TH = Actual total hours in the current month

Resulting formula being:

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

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

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

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Base Energy Heavy Load Purchase Price – For all Base Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 30744, 30738 and adjusted in accordance with Commission Order 30415 for Heavy Load Hour Energy deliveries with seasonalization factors applied:

	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
Year	**Mills/kWh**	**Mills/kWh**	**Mills/kWh**
2010	57.98	94.67	78.89
2011	59.54	97.21	81.01
2012	61.22	99.95	83.29
2013	62.62	102.23	85.19
2014	64.05	104.57	87.14
2015	65.52	106.97	89.14
2016	67.10	109.55	91.29
2017	68.63	112.05	93.38
2018	70.29	114.77	95.64
2019	71.91	117.40	97.83
2020	73.56	120.10	100.08
2021	75.26	122.87	102.39
2022	76.99	125.70	104.75
2023	78.78	128.61	107.18
2024	80.60	131.59	109.66
2025	82.47	134.65	112.21
2026	84.75	138.37	115.31
2027	87.10	142.21	118.51

2028	89.53	146.17	121.81
2029	92.03	150.25	125.21
2030	94.60	154.45	128.71
2031	96.69	157.85	131.55

7.2 Base Energy Light Load Purchase Price – For all Base Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 30744, 30738 and adjusted in accordance with Commission Order 30415 for Light Load Hour Energy deliveries with seasonalization factors applied :

	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
Year	**Mills/kWh**	**Mills/kWh**	**Mills/kWh**
2010	52.63	85.93	71.61
2011	54.19	88.47	73.73
2012	55.87	91.21	76.01
2013	57.27	93.49	77.91
2014	58.70	95.83	79.86
2015	60.17	98.23	81.86
2016	61.75	100.81	84.01
2017	63.28	103.32	86.10
2018	64.94	106.03	88.36
2019	66.56	108.66	90.55
2020	68.21	111.36	92.80
2021	69.90	114.13	95.11
2022	71.64	116.97	97.47
2023	73.42	119.88	99.90
2024	75.25	122.86	102.38
2025	77.12	125.91	104.93
2026	79.40	129.64	108.03
2027	81.75	133.48	111.23
2028	84.18	137.43	114.53
2029	86.68	141.51	117.93
2030	89.25	145.71	121.43
2031	91.33	149.12	124.27

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 in accordance with Commission Order 30744 and 30738 with seasonalization factors applied:

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2010	55.60	90.78	75.65
2011	57.16	93.32	77.77
2012	58.84	96.06	80.05
2013	60.24	98.34	81.95
2014	61.67	100.68	83.90
2015	63.14	103.08	85.90
2016	64.72	105.66	88.05
2017	66.25	108.17	90.14
2018	67.91	110.88	92.40
2019	69.53	113.51	94.59
2020	71.18	116.21	96.84
2021	72.87	118.98	99.15
2022	74.61	121.82	101.51
2023	76.39	124.72	103.94
2024	78.22	127.71	106.42
2025	80.09	130.76	108.97
2026	82.37	134.49	112.07
2027	84.72	138.32	115.27
2028	87.15	142.28	118.57
2029	89.64	146.36	121.97
2030	92.22	150.56	125.47
2031	94.30	153.97	128.31

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 Inadvertent Energy –

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

7.5.2 Although Seller intends to design and operate the Facility to generate no more than 10 average MW and therefore does not intend to generate Inadvertent Energy, Idaho Power

will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount but will not purchase or pay for Inadvertent Energy.

7.6 Payment Due Date – Undisputed Energy payments, less any payments due to Idaho Power 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.

7.7 Continuing Jurisdiction of the Commission . This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc, v. Idaho Power Company, 111 Idaho 925, 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 Seller retains ownership under this Agreement of Green Tags and Renewable Energy Certificate (RECs), or the equivalent environmental attributes, directly associated with the production of energy from the Seller's Facility sold to Idaho Power.

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 and Inadvertent Energy to the Idaho Power Point of Delivery for the full term of the Agreement.

ARTICLE X: METERING AND TELEMETRY

10.1 Metering - 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 this Agreement and Schedule 72. The Metering Equipment will be at the

location and the type required to measure, record and report the Facility's Net Energy, Station Use, Inadvertent Energy and maximum energy deliveries (kW) at the Point of Delivery 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.

10.2 Telemetry – Idaho Power will install, operate and maintain at Seller's expense communications and telemetry equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of Seller's Net Energy and Inadvertent Energy produced and delivered to the Idaho Power Point of Delivery to Idaho Power's Designated Dispatch Facility.

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, Inadvertent Energy and maximum generation (kW) records in a form and content acceptable to 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, Inadvertent Energy 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 or accepting Inadvertent 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 will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

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 and/or Inadvertent Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

12.2.4 If Idaho Power is unable to accept the energy from this Facility and is not excused from accepting the Facility's energy, Idaho Power's damages shall be limited to only the value of the estimated energy that Idaho Power was unable to accept. Idaho Power will have no responsibility to pay for any other costs, lost revenue or consequential damages the Facility may incur.

12.3 Seller Declared Suspension of Energy Deliveries

12.3.1 If the Seller's Facility experiences a forced outage due to equipment failure which is not caused by an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility, Seller may, after giving notice as provided in paragraph 12.3.2 below, temporarily suspend all deliveries of Net Energy to Idaho Power from the Facility or from individual generation unit(s) within the Facility impacted by the forced outage for a period of not less than 48 hours to correct the forced outage condition ("Declared Suspension of Energy Deliveries"). The Seller's Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller's telephone notification as specified in paragraph 12.3.2 and will continue for the time as specified (not less than 48 hours) in the written

notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Net Energy Amount will be adjusted as specified in paragraph 6.2.4.

12.3.2 If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in paragraph 12.3.1, the Seller will notify the Designated Dispatch Facility by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Idaho Power. The Seller will, within 24 hours after the telephone contact, provide Idaho Power a written notice in accordance with XXIV that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Seller to initiate a Declared Suspension of Energy Deliveries. Idaho Power will review the documentation provided by the Seller to determine Idaho Power's acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries as specified in paragraph 12.3.1. Idaho Power's acceptance of the Seller's forced outage as an acceptable forced outage will be based upon the clear documentation provided by the Seller that the forced outage is not due do an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility.

12.4 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.

12.5 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.

12.6 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 shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's (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) An endorsement naming Idaho Power as an additional insured and loss payee as applicable; and

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

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 is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the 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 Limitation of Liability. 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. Neither party shall be liable to the other for any indirect, special, consequential, nor punitive damages, except as expressly authorized by this Agreement. Consequential damages will include, but not be limited to, the value of renewable energy certificate and, if the Facility is fueled by gas produced by an anaerobic digester system, any diminution or loss of anaerobic activity due to the inability of Idaho Power to accept energy from the Facility.

15.2 Dedication. 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 Party or 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 submitted to the Commission for resolution.

19.2 Notice of Default

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

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 Seller:

Original document to:

Laura Knothe, PE
New Energy Three, LLC
8720 Vic Lane
Middleton ID 83644

Telephone:
Cell: (208) 890-8783
FAX: (208) 585-9016

E-mail: laura@thenewenergycompany.com

To Idaho Power:

Original document to:

Vice President, Power Supply
Idaho Power Company
PO Box 70
Boise, Idaho 83707
Email: LGgrow@idahopower.com

Copy of document to:

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

Either Party may change the contact person and/or address information listed above, by providing written notice from an authorized person representing the Party.

ARTICLE XXVI: ADDITIONAL TERMS AND CONDITIONS

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

Appendix A	-	Generation Scheduling and Reporting
Appendix B	-	Facility and Point of Delivery
Appendix C	-	Engineer's Certifications
Appendix D	-	Forms of Liquid Security

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	New Energy Three, LLC
By Lisa A. Grow	By
Lisa A Grow Sr. Vice President, Power Supply	Laura Knothe, PE
Dated 5.24.10	Dated 5/21/10
"Idaho Power"	"Seller"

APPENDIX A

A –1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

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

Idaho Power Company
Attn: Cogeneration and Small Power Production
PO 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. 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 SWITCHING REPORT

Month _____ **Year** _____

Project Name _____ **Project Number:** _____

Address _____ **Phone Number:** _____

City _____ **State** _____ **Zip** _____

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

Breaker Opening Record

Date	Time	Meter	*	Reason

Breaker Closing Record

Date	Time	Meter

* **Breaker Opening Reason Codes**

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

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

_____ Signature _____ Date

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect 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 Facility 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 Facility 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.

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:	Jay Kesting
Telephone Number:	(208) 947-4519
Cell Phone:	(208) 559-4244

Project On-site Contact information

Name:	Kurt Standley
Telephone Number:	(208) 280-1166

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Double B Dairy

Project Number: 31616120

B-1 DESCRIPTION OF FACILITY

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

The facility consists of an anaerobic digester, gen sets and waste handling equipment. The total nameplate capacity of the three generators is 2000 kW.

Var Capability (Both leading and lagging) Leading is .98 Lagging is .8.

B-2 LOCATION OF FACILITY

Near: Murtaugh, ID

Sections: 33 Township: 10S Range: 21E Milner ID Quadrangle County: Cassia ID.

Description of Interconnection Location: Near 1250 West 1100 South Murtaugh, ID

Nearest Idaho Power Substation: Buckhorn Substation

B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected October 1, 2011 as the Scheduled First Energy Date.

Seller has selected December 1, 2012 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 __2__MW which is consistent with the value provided by the Seller to Idaho Power in accordance with Schedule 72. This value is the maximum energy (MW) that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

B-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.

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 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 the 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 Facilities energy production. 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.

B-8 NETWORK RESOURCE DESIGNATION

Idaho Power cannot accept or pay for generation from this Facility until a Network Resource Designation ("NRD") application has been accepted by Idaho Power's delivery business unit. Federal Energy Regulatory Commission ("FERC") Rules require Idaho Power to prepare and submit the NRD. Because much of the information Idaho Power needs to prepare the NRD is specific to the Seller's Facility, Idaho Power's ability to file the NRD in a timely manner is contingent upon timely receipt of the required information from the Seller. Prior to Idaho Power beginning the process to enable Idaho Power to submit a request for NRD status for this Facility, the Seller shall have completed all requirements as specified in Paragraph 5.7 of this Agreement. **Seller's failure to provide complete and accurate information in a timely manner can significantly impact Idaho Power's ability and**

cost to attain the NRD designation for the Seller's Facility and the Seller shall bear the costs of any of these delays that are a result of any action or inaction by the Seller.

APPENDIX C

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

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

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

2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____as Seller, dated _____.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. _____ and is hereinafter referred to as the "Project."

4. That the Project, which is commonly known as the _____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") 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 fifteen (15) year period.

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C

ENGINEER'S CERTIFICATION

OF

ONGOING OPERATIONS AND MAINTENANCE

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

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

2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. _____ and hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the _____Project, is located 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 fifteen (15) year period.

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

7. That Engineer has no economic relationship to the Design Engineer of this Project.

8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. It is Engineer's professional opinion, based on the Project's appearance, that its ongoing O&M has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining _____ years of the Agreement.

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C

ENGINEER'S CERTIFICATION

OF

DESIGN & CONSTRUCTION ADEQUACY

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

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

2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and _____as Seller, dated _____, _____.

3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as IPCo Facility No _____ and is hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the _____Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a fifteen (15) year period.

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

7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.

8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

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

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

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

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

By _____
(P.E. Stamp)

Date _____

APPENDIX D

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.