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IDAHO PUBLIC  
UTILITIES COMMISSION

**JASON B. WILLIAMS**  
Corporate Counsel  
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May 31, 2012

**VIA HAND DELIVERY**

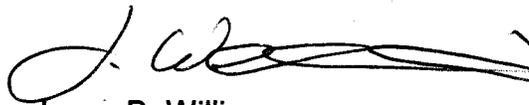
Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-10-22  
Yellowstone Power, Inc., Firm Energy Sales Agreement - Joint Motion for  
Approval of Settlement Stipulation and Settlement Stipulation

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of the Joint Motion for Approval of Settlement Stipulation and the Settlement Stipulation (Attachment No. 1 to Motion) in the above matter.

Very truly yours, 



Jason B. Williams

JBW:csb  
Enclosures

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IDAHO PUBLIC UTILITIES COMMISSION

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Attorneys for Yellowstone Power, Inc.

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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )	
OF IDAHO POWER COMPANY FOR )	CASE NO. IPC-E-10-22
APPROVAL OF A FIRM ENERGY SALES )	
AGREEMENT WITH YELLOWSTONE )	JOINT MOTION FOR APPROVAL OF
POWER, INC. FOR THE SALE AND )	SETTLEMENT STIPULATION
PURCHASE OF ELECTRIC ENERGY. )	
)	

COMES NOW, Yellowstone Power, Inc. ("Yellowstone") and Idaho Power Company ("Idaho Power" or "Company") (hereinafter referred to as the "Parties"), by and through their undersigned attorneys, and hereby move the Idaho Public Utilities Commission ("Commission") for an order accepting the settlement stipulation ("Settlement Stipulation") filed herewith as Attachment No. 1. This Motion is based on the following:

## **I. BACKGROUND**

1. On February 19, 2004, Idaho Power filed an Application with the Commission requesting approval of an Agreement for Sale and Purchase of Electric Energy between Idaho Power and Renewable Energy of Idaho, Inc. ("Renewable Energy Agreement") for a 17.5 megawatt ("MW") biomass generating facility to be located at the old Boise Cascade Plant site near Emmett, Idaho ("Renewable Power Project"). The Agreement was negotiated, and the power from the Renewable Power Project was to be supplied, pursuant to the Public Utility Regulatory Policies Act of 1978. The Commission approved the Application and the Agreement in Case No. IPC-E-04-05, Order No. 29437.

2. The Renewable Energy Agreement went into default and was ultimately terminated when Renewable Energy, for reasons it alleged were beyond its control, was unable to meet its Scheduled Operation Date. Thereafter, Idaho Power determined it had incurred damages for Renewable Energy's non-performance of the Renewable Energy Agreement in the amount of \$106,804. Renewable Energy did not have the funds or assets to make the payment.

3. On August 13, 2010, Idaho Power filed an Application with the Commission requesting approval of a 15-year Firm Energy Sales Agreement ("FESA") between Idaho Power and Yellowstone dated July 28, 2010, for an 11.7 MW biomass fueled combined heat and power generator located at the same site as the Renewable Energy Project ("Yellowstone Project."). Richard Vinson, one of the principals of Yellowstone, was also a principal member of Renewable Energy. Although the non-performance damages of the Renewable Energy Agreement was the liability of

Renewable Energy and not Yellowstone, Mr. Vinson agreed, as part of the FESA, to pay the non-performance damages of the Renewable Energy Agreement as an offset to the energy payments Yellowstone was to receive in the FESA. On September 3, 2010, the Commission issued a Notice of Application/Modified Procedure and set an October 1, 2010, comment deadline. Order No. 32065. Commission Staff was the only party to submit comments. In response to Staff comments, Yellowstone filed a motion on October 1, 2010, to permit reply comments, and a subsequent motion on October 7, 2010, requesting oral argument following reply comments. The Commission granted Yellowstone's motions and heard oral arguments from Yellowstone, Idaho Power, and Commission Staff on October 26, 2010. Order Nos. 32083 and 32094.

4. In approving the FESA, the Commission analyzed the "totality of the circumstances," including the fact that the FESA allowed for Idaho Power to recover the \$106,804 in non-performance damages from the Renewable Energy Agreement, "for the benefit of ratepayers, that [Idaho Power] could not otherwise collect." Order No. 32104 at 12. Notably, the Commission-approved FESA had a Scheduled Commercial Operation date of December 31, 2011, which was selected by Yellowstone. In addition, the FESA required Yellowstone to post a Delay Liquidated Damages deposit in the amount of \$450,000. Yellowstone timely posted this required deposit in the form of a Letter of Credit.

5. The Yellowstone Project failed to achieve its Scheduled Operation Date. On May 3, 2012, Idaho Power sent Yellowstone a Notice of Material Breach for failing to achieve its Scheduled Operation Date and stating that it would collect on the Letter of Credit by May 10, 2012, if Yellowstone failed to cure the Material Breach. In response,

Yellowstone submitted a letter to Idaho Power alleging a *force majeure* event had occurred, precluding Idaho Power from collecting the Delay Security. Settlement discussions between the Parties ensued. The Settlement Stipulation is the result of those settlement negotiations.

6. The Parties recommend that the Commission grant this Motion and approve the Settlement Stipulation in its entirety, without material change or condition, pursuant to RP 274.

## **II. REQUEST FOR MODIFIED PROCEDURE**

7. Pursuant to RP 201, the Parties believe the public interest does not require a hearing to consider the issues presented by this Motion and the Parties request it be processed by Modified Procedure.

NOW, THEREFORE, the Parties respectfully request that the Commission enter its Order (1) directing that consideration of the Settlement Stipulation be conducted by Modified Procedure and (2) approving the Settlement Stipulation without material condition or modification.

Respectfully submitted this 31<sup>st</sup> day of May 2012.

  
\_\_\_\_\_  
JASON B. WILLIAMS  
Attorney for Idaho Power Company

\_\_\_\_\_  
DEAN J. MILLER  
Attorney for Yellowstone Power, Inc.

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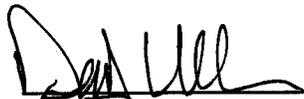
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Respectfully submitted this 31<sup>st</sup> day of May 2012.

---

JASON B. WILLIAMS  
Attorney for Idaho Power Company



---

DEAN J. MILLER  
Attorney for Yellowstone Power, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of May 2012 I served a true and correct copy of the within and foregoing JOINT MOTION FOR APPROVAL OF SETTLEMENT STIPULATION upon the following named parties by the method indicated below, and addressed to the following:

**Commission Staff**

Kristine Sasser, Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [Kris.Sasser@puc.idaho.gov](mailto:Kris.Sasser@puc.idaho.gov)

**Yellowstone Power, Inc.**

Dick Vinson  
Yellowstone Power, Inc.  
P.O. Box 1539  
Thompson Falls, Montana 59873

Hand Delivered  
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 Overnight Mail  
 FAX  
 Email [dick@blackfoot.net](mailto:dick@blackfoot.net)

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 [joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)

  
Christa Beary, Legal Assistant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-10-22**

**ATTACHMENT NO. 1  
SETTLEMENT STIPULATION**

DEAN J. MILLER (ISB No. 1968)  
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Attorneys for Yellowstone Power, Inc.

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[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-10-22  
APPROVAL OF A FIRM ENERGY SALES )  
AGREEMENT WITH YELLOWSTONE ) SETTLEMENT STIPULATION  
POWER, INC. FOR THE SALE AND )  
PURCHASE OF ELECTRIC ENERGY. )  
\_\_\_\_\_ )

This settlement stipulation ("Settlement Stipulation") is entered into between Yellowstone Power, Inc. ("Yellowstone") and Idaho Power Company ("Idaho Power" or "Company"), referred to herein individually as a Party and collectively as the "Parties."

The Parties agree as follows.

## **I. INTRODUCTION**

1. The terms and conditions of this Settlement Stipulation are set forth herein. The Parties agree that this Settlement Stipulation represents a fair, just, and reasonable compromise of the dispute between the Parties and that this Settlement Stipulation is in the public interest. The Parties maintain that the Settlement Stipulation and its acceptance by the Idaho Public Utilities Commission ("Commission") represent a reasonable resolution of all issues identified between the Parties. Therefore, the Parties recommend that the Commission, in accordance with RP 274-76, approve the Settlement Stipulation and all of its terms and conditions without material change or condition.

## **II. BACKGROUND**

2. On February 19, 2004, Idaho Power filed an Application with the Commission requesting approval of an Agreement for Sale and Purchase of Electric Energy between Idaho Power and Renewable Energy of Idaho, Inc. ("Renewable Energy Agreement") for a 17.5 megawatt ("MW") biomass generating facility to be located at the old Boise Cascade Plant site near Emmett, Idaho ("Renewable Power Project"). The Agreement was negotiated, and the power from the Renewable Power Project was to be supplied, pursuant to the Public Utility Regulatory Policies Act of 1978. The Commission approved the Application and the Agreement in Case No. IPC-E-04-05, Order No. 29437.

3. The Renewable Energy Agreement went into default and was ultimately terminated when Renewable Energy, for reasons it alleged were beyond its control, was unable to meet its Scheduled Operation Date. Thereafter, Idaho Power determined it had incurred damages for Renewable Energy's non-performance of the Renewable

Energy Agreement in the amount of \$106,804. Renewable Energy did not have the funds or assets to make the payment.

4. On August 13, 2010, Idaho Power filed an Application with the Commission requesting approval of a 15-year Firm Energy Sales Agreement ("FESA") between Idaho Power and Yellowstone dated July 28, 2010, for an 11.7 MW biomass fueled combined heat and power generator located at the same site as the Renewable Energy Project ("Yellowstone Project"). Richard Vinson, one of the principals of Yellowstone, was also a principal member of Renewable Energy. Although the non-performance damages of the Renewable Energy Agreement was the liability of Renewable Energy and not Yellowstone, Mr. Vinson agreed, as part of the FESA, to pay the non-performance damages of the Renewable Energy Agreement as an offset to the energy payments Yellowstone was to receive in the FESA. On September 3, 2010, the Commission issued a Notice of Application/Modified Procedure and set an October 1, 2010, comment deadline. Order No. 32065. Commission Staff was the only party to submit comments. In response to Staff comments, Yellowstone filed a motion on October 1, 2010, to permit reply comments, and a subsequent motion on October 7, 2010, requesting oral argument following reply comments. The Commission granted Yellowstone's motions and heard oral arguments from Yellowstone, Idaho Power, and Commission Staff on October 26, 2010. Order Nos. 32083 and 32094.

5. In approving the FESA, the Commission analyzed the "totality of the circumstances," including the fact that the FESA allowed for Idaho Power to recover the \$106,804 in non-performance damages from the Renewable Energy Agreement, "for the benefit of ratepayers, that [Idaho Power] could not otherwise collect." Order No. 32104 at 12. Notably, the Commission-approved FESA had a Scheduled Commercial

Operation date of December 31, 2011, which was selected by Yellowstone. In addition, the FESA required Yellowstone to post a Delay Liquidated Damages deposit in the amount of \$450,000. Yellowstone timely posted this required deposit in the form of a Letter of Credit.

6. The Yellowstone Project failed to achieve its Scheduled Operation Date. On May 3, 2012, Idaho Power sent Yellowstone a Notice of Material Breach for failing to achieve its Scheduled Operation Date and stating that it would collect on the Letter of Credit by May 10, 2012, if Yellowstone failed to cure the Material Breach. In response, Yellowstone submitted a letter to Idaho Power alleging a *force majeure* event had occurred, precluding Idaho Power from collecting the Delay Security. Settlement discussions between the Parties ensued. This Settlement Stipulation is the result of those settlement negotiations.

7. Based upon the settlement discussions, as a compromise of the positions in this case, and for other consideration as set forth below, the Parties agree to the following terms:

### **III. TERMS OF THE SETTLEMENT STIPULATION**

8. Termination of FESA. The Parties agree that the FESA shall be terminated, the Yellowstone Project's Generator Interconnection request shall be withdrawn, and the Yellowstone Project shall be removed from the Company's Generator Interconnection queue, all effective upon Commission approval of this Settlement Stipulation.

9. Mutual Release. Yellowstone and its current and former partners, joint venturers, representatives, successors, assigns, affiliates, subsidiaries, parents, divisions, departments, investors, shareholders, officers, directors, employees,

managers, agents, attorneys, insurers, and predecessors ("Releasing Parties") fully, finally, and forever release, discharge, and covenant not to sue Idaho Power and its current and former partners, joint venturers, representatives, successors, assigns, affiliates, subsidiaries, parents, divisions, departments, investors, shareholders, officers, directors, employees, managers, agents, attorneys, insurers, and predecessors ("Released Parties"), to the broadest extent allowed by law, from and for any and all claims, actions, causes of action, debts, damages, demands, offsets, payments, costs, rights, liabilities, charges, and expenses, direct or indirect, regardless of the legal or equitable theory on which they are based, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, asserted or unasserted, arising from or relating to the Yellowstone Project.

Idaho Power fully, finally, and forever releases, discharges, and covenants not to sue Yellowstone and its current and former partners, joint venturers, representatives, successors, assigns, affiliates, subsidiaries, parents, divisions, departments, investors, shareholders, officers, directors, employees, managers, agents, attorneys, insurers, and predecessors ("Released Parties"), to the broadest extent allowed by law, from and for any and all claims, actions, causes of action, debts, damages, demands, offsets, payments, costs, rights, liabilities, charges, and expenses, direct or indirect, regardless of the legal or equitable theory on which they are based, whether known or unknown, liquidated or unliquidated, asserted or unasserted, arising from the Yellowstone Project.

10. Damages. Yellowstone agrees to pay to Idaho Power the sum of \$200,000 for its material breach of the FESA, which includes the pre-existing debt of Renewable Energy in the amount of \$106,804, which shall be due and payable in full and in cash to Idaho Power within seven (7) calendar days of the date on which the

Parties sign this Settlement Stipulation. If Yellowstone fails to make such payment to Idaho Power, then Yellowstone agrees that Idaho Power shall be allowed to draw on the current \$450,000 Letter of Credit. Idaho Power agrees to withdraw its current demand for payment of \$450,000 on the Letter of Credit so long as Yellowstone agrees to maintain said Letter of Credit in full force and effect for the remainder of the term of such Letter of Credit (i.e., June 23, 2012). In addition, Yellowstone agrees to maintain the \$450,000 Letter of Credit (or a replacement Letter of Credit in an amount of no less than \$450,000) in full force and effect until the Commission issues a final, non-appealable order approving this Settlement Stipulation, provided, however, that Yellowstone's liability hereunder shall never exceed \$450,000.

11. The Parties agree that this Settlement Stipulation represents a compromise of the positions of the Parties in this case. Except to the extent necessary for a Party to explain before the Commission its own statements and positions with respect to the Settlement Stipulation, all statements made and positions taken in negotiations relating to this Settlement Stipulation are confidential and will not be admissible in evidence in this or any other proceeding.

12. The Parties recommend that the Commission issue a Notice of Proposed Settlement Stipulation via Modified Procedure.

13. The Parties submit this Settlement Stipulation to the Commission and recommend approval in its entirety pursuant to RP 274-76. The Parties shall support this Settlement Stipulation before the Commission, and shall not appeal a Commission order approving the Settlement Stipulation or an issue resolved by the Settlement Stipulation. If this Settlement Stipulation is challenged by anyone who is not a Party, the Parties reserve the right to file testimony, cross-examine witnesses, and put on such

case as they deem appropriate to respond fully to the issues presented, including the right to raise issues that are incorporated in the settlements embodied in this Settlement Stipulation. Notwithstanding this reservation of rights, the Parties agree that they will continue to support the Commission's adoption of the terms of this Settlement Stipulation.

14. If the Commission rejects any part or all of this Settlement Stipulation, or imposes any additional material conditions on approval of this Settlement Stipulation, each Party reserves the right, upon written notice to the Commission and the other Parties to this proceeding, within fourteen (14) days of the date of such action by the Commission, to withdraw from this Settlement Stipulation. In such case, no Party shall be bound or prejudiced by the terms of this Settlement Stipulation, and each Party shall be entitled to seek reconsideration of the Commission's order, file testimony as it chooses, cross-examine witnesses, and do all other things necessary to put on such case as it deems appropriate. In such case, the Parties immediately will request the prompt reconvening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case. The Parties agree to cooperate in development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in participating in hearings and preparing briefs.

15. The Parties agree that this Settlement Stipulation is in the public interest and that all of its terms and conditions are fair, just, and reasonable.

16. No Party shall be bound, benefited, or prejudiced by any position asserted in the negotiation of this Settlement Stipulation, except to the extent expressly stated herein, nor shall this Settlement Stipulation be construed as a waiver of rights unless

such rights are expressly waived herein. Except as otherwise expressly provided for herein, execution of this Settlement Stipulation shall not be deemed to constitute an acknowledgment by any Party of the validity or invalidity of any particular method, theory, or principle of regulation or cost recovery. No Party shall be deemed to have agreed that any method, theory, or principle of regulation or cost recovery employed in arriving at this Settlement Stipulation is appropriate for resolving any issues in any other proceeding in the future. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Settlement Stipulation.

17. The obligations of the Parties are subject to the Commission's approval of this Settlement Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal, if any, by a court of competent jurisdiction.

18. This Settlement Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 31<sup>st</sup> day of May 2012.

Yellowstone Power, Inc.

Idaho Power Company

By  \_\_\_\_\_  
Dean J. Miller  
Attorney for Yellowstone Power, Inc.

By \_\_\_\_\_  
Jason B. Williams  
Attorney for Idaho Power Company

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Dean J. Miller  
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By   
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