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IDAHO PUBLIC
UTILITIES COMMISSION

DONOVAN E. WALKER
Senior Counsel
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December 10, 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-10-44

***IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY
FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT FOR THE
SALE AND PURCHASE OF ELECTRIC ENERGY BETWEEN IDAHO
POWER COMPANY AND HIDDEN HOLLOW ENERGY 2 LLC***

Dear Ms. Jewell:

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

Very truly yours,



Donovan E. Walker

DEW:csb
Enclosures

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LISA D. NORDSTROM (ISB No. 5733)
Idaho Power Company
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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

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

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-10-44
APPROVAL OF A FIRM ENERGY SALES)
AGREEMENT FOR THE SALE AND) APPLICATION
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY)
AND HIDDEN HOLLOW ENERGY 2 LLC.)
_____)

Idaho Power Company ("Idaho Power" or "Company"), in accordance with 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 "Commission") for an Order approving the Firm Energy Sales Agreement ("FESA") between Idaho Power and Hidden Hollow Energy 2 LLC ("Hidden Hollow" or "Seller") under which Hidden Hollow would sell and Idaho Power would purchase electric energy generated by the Hidden Hollow Landfill Gas Project ("Facility") located near Boise, 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 rate a QF receives for the sale of its power is generally referred to as the "avoided cost" rate and is to reflect the incremental cost to an electric utility of electric energy or capacity or both, which, but for the purchase from the QF, such utility would generate itself or purchase from another source. The Commission has authority under PURPA Sections 201 and 210 and the implementing regulations of the FERC, 18 C.F.R. § 292, to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules.

2. Hidden Hollow proposes to design, construct, install, own, operate, and maintain a 3.2 megawatt ("MW") (Maximum Capacity Amount) landfill gas generating facility to be located at Ada County's Hidden Hollow Landfill near Boise, Idaho. The Facility will be a QF under the applicable provisions of PURPA.

3. This Facility is proposed as a second generation unit to be installed at the Ada County Hidden Hollow Landfill using landfill gas as its fuel source. G2 Energy Hidden Hollow, LLC ("G2") has a Commission approved FESA for an existing 3.2 MW landfill gas powered generating unit located at the Hidden Hollow Landfill. See Order No. 29928, Case No. IPC-E-05-28. This Facility is proposed by a separate affiliate company; however, it utilizes the same landfill gas reserves as a fuel source. Idaho

Power has been engaged with Hidden Hollow over the course of the last year and a half, and because this Facility utilizes the same landfill gas fuel source as the previously approved PURPA QF project located at the landfill, the Company has negotiated provisions of this FESA intended to preserve the value of the previously approved contract while enabling additional generation to be developed at this location. The FESA contains provisions that provide that the first 1100 scfm of fuel is dedicated to the generation units under the previously approved agreement. The 1100 scfm is an engineering calculated value of the quantity of the average fuel quality required to operate the first generation units at their nameplate capacity. The FESA provides Idaho Power the right to audit the fuel distribution to the various generation units. In this manner, the parties propose to preserve the value represented by the lower rates applicable to the power provided pursuant to the G2 FESA in order to prevent the Facility in this case from providing power at a higher cost to the Company and its customers in its stead.

II. THE FIRM ENERGY SALES AGREEMENT

4. On December 8, 2010, Idaho Power and Hidden Hollow entered into a FESA pursuant to the terms and conditions of the various Commission Orders applicable to this PURPA agreement. See Order Nos. 30415 and 31025. A copy of the FESA is attached to this Application as Attachment No. 1. Under the terms of this FESA, Hidden Hollow elected to contract with Idaho Power for a 20-year term using the non-levelized published avoided cost rates as currently established by the Commission for energy deliveries of less than 10 average megawatts ("aMW").

5. The nameplate rating of this Facility is 3.2 MW. As defined in paragraph 1.17 and paragraph 4.1.3 of the FESA, Hidden Hollow 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 aMW on a monthly basis. Furthermore, as described in paragraph 7.5 of the FESA, should the Facility exceed 10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the Maximum Capacity Amount, but will not purchase or pay for this Inadvertent Energy.

6. Hidden Hollow has elected February 28, 2012, as the Scheduled First Energy Date and February 28, 2012, as the Scheduled Operation Date for this Facility. See Appendix B. Various requirements have been placed upon Hidden Hollow in order for Idaho Power to accept energy deliveries from this Facility. Idaho Power will monitor compliance with these initial requirements. In addition, Idaho Power will monitor the ongoing requirements through the full term of this FESA. Should the Commission approve this FESA, Idaho Power intends to consider the Effective Date of the FESA to be December 8, 2010.

7. Hidden Hollow and Idaho Power have agreed to Delay Liquidated Damages and associated Delay Security provisions of \$45 per kW of nameplate capacity within this FESA that have previously been approved as reasonable by the Commission in several PURPA FESAs. See Case Nos. IPC-E-10-02, IPC-E-10-05, IPC-E-10-15, IPC-E-10-16, IPC-E-10-17, IPC-E-10-18, IPC-E-10-19, and IPC-E-10-22.

8. The FESA, as signed and submitted by the parties thereto, contains non-levelized published avoided cost rates in conformity with applicable IPUC Orders. All

applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed to Hidden Hollow.

9. The FESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. The Facility is currently in good standing with the generator interconnection process. Idaho Power – Power Supply submitted Transmission Service Requests on behalf of the Facility to Idaho Power Delivery. Delivery responded that Transmission capacity is available for this Facility and network resource designation will be granted upon the completion of the GIA and this FESA.

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

III. MODIFIED PROCEDURE

11. 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.

IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

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

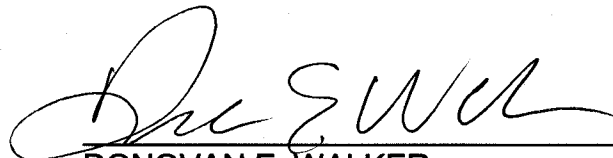
Donovan E. Walker, Senior Counsel
Lisa Nordstrom, Lead Counsel
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dwalker@idahopower.com
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Randy C. Allphin
Energy Contract Administrator
Idaho Power Company
1221 West Idaho Street
P.O. Box 70
Boise,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

V. REQUEST FOR RELIEF

13. 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 Hidden Hollow Energy 2 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 Hidden Hollow Energy 2 LLC be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 10th day of December 2010.



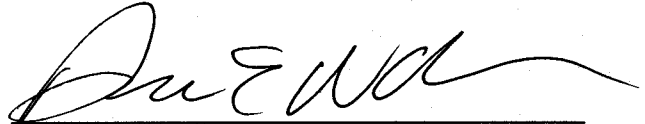
DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10th day of December 2010 I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

Hidden Hollow Energy 2 LLC
Thomas J. Gesicki, President
Fortistar Methane Group
5087 Junction Road
Lockport, New York 14094

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email tgesicki@fortistar.com



Donovan E. Walker

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-10-44

IDAHO POWER COMPANY

ATTACHMENT NO. 1

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

HIDDEN HOLLOW ENERGY 2 LLC

DATED: DECEMBER 8th, 2010

FIRM ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
HIDDEN HOLLOW ENERGY 2 LLC
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FIRM ENERGY SALES AGREEMENT
(10 MW or Less)

Project Name: Hidden Hollow Energy 2 LLC Landfill Gas Project

Project Number: 21615101

THIS AGREEMENT, entered into on this 8th day of December 2010 between Hidden Hollow Energy 2 LLC, a Delaware 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's affiliate currently owns and operates the existing 3.2 MW Hidden Hollow Landfill Gas Project, located at the Ada County Hidden Hollow Landfill which is selling energy to Idaho Power under a Firm Energy Sales Agreement, dated October 11th, 2005; and

WHEREAS, Seller intends to design, construct, own, operate and maintain a 3.2 MW electric generation Facility; and

WHEREAS, Seller wishes to sell and Idaho Power is willing to purchase, firm electric energy produced by the Seller's 3.2 MW Facility as specified solely within this Agreement.

WHEREAS, Seller's affiliate Hidden Hollow Energy LLC has entered into a Landfill Gas Franchise Agreement with Ada County (the "Third Party Agreement") committing the first 1100 scfm of landfill gas from the Ada County Landfill, the amount which is the required heat input for the Nameplate Capacity of the Hidden Hollow Energy LLC generating equipment.

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 **“Fuel Supply Agreement”** – The agreement executed between the Seller and the fuel provider for the Seller’s Facility.
- 1.10 **“Fuel Supply Commitment”** – The minimum amount of fuel from Ada County Landfill equal to 1100 scfm which is the required heat input to run the Hidden Hollow Energy LLC Facility at Nameplate Capacity.
- 1.11 **“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.

- 1.12 "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.
- 1.13 "Inadvertent Energy" – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.5 of this Agreement.
- 1.14 "Interconnection Facilities" - All equipment specified in Schedule 72.
- 1.15 "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.
- 1.16 "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.
- 1.17 "Losses" – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the 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.
- 1.18 "Market Energy Reference Price" – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.19 "Material Breach" – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.20 "Maximum Capacity Amount" – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.21 "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 the Idaho Power electrical system.
- 1.22 "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.

- 1.23 “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.
- 1.24 “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.
- 1.25 “Operation Date” – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.26 “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.
- 1.27 “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.
- 1.28 “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.

- 1.29 "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.
- 1.30 "Season" – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.31 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Schedule 72.
- 1.32 "Station Use" – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.33 "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.
- 1.34 "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 manufacturer's 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 Fuel Supply Agreement – Provide Idaho Power with a copy of the Fuel Supply Agreement executed by the Seller and the fuel supplier in a form acceptable to Idaho Power. The terms and

conditions within the Fuel Supply Agreement must be consistent with the terms and conditions contained within this Agreement. Idaho Power's acceptance will not be unreasonably withheld.

- 4.1.6 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.
- 4.1.7 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.
- 4.1.8 Interconnection – Provide written confirmation from Idaho Power's delivery business unit that Seller has satisfied all interconnection requirements.
- 4.1.9 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.
- 4.1.10 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM AND OPERATION DATE

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

	<u>Month</u>	<u>kWh</u>
Season 1	March	1,600,000
	April	1,700,000
	May	1,800,000
Season 2	July	1,500,000
	August	1,800,000
	November	1,900,000
	December	1,970,000

Season 3	June	1,700,000
	September	1,700,000
	October	1,970,000
	January	1,600,000
	February	1,450,000

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

