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IDAHO PUBLIC  
UTILITIES COMMISSION

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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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:

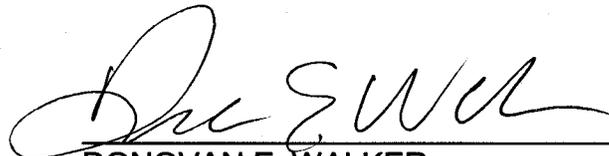
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Randy C. Allphin  
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Idaho Power Company  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
[rallphin@idahopower.com](mailto:rallphin@idahopower.com)

#### **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 10<sup>th</sup> day of December 2010.



---

DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10<sup>th</sup> 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](mailto: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 8<sup>th</sup>, 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 8<sup>th</sup> 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 11<sup>th</sup>, 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 5<sup>th</sup> 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 5<sup>th</sup> 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 unit 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:

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

The 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 31025 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 %)
<b><u>Year</u></b>	<b><u>Mills/kWh</u></b>	<b><u>Mills/kWh</u></b>	<b><u>Mills/kWh</u></b>
2010	44.04	71.90	59.91
2011	46.52	75.95	63.30
2012	49.26	80.43	67.02
2013	51.86	84.68	70.56
2014	54.66	89.24	74.37
2015	57.66	94.14	78.45
2016	59.39	96.96	80.80
2017	61.09	99.73	83.11
2018	62.93	102.75	85.62
2019	64.75	105.71	88.09
2020	66.62	108.77	90.64
2021	68.84	112.40	93.66
2022	71.15	116.17	96.81
2023	73.55	120.09	100.07
2024	76.05	124.16	103.47
2025	78.64	128.40	107.00
2026	80.85	131.99	109.99
2027	83.12	135.70	113.08
2028	85.46	139.53	116.27
2029	87.88	143.47	119.56
2030	90.37	147.54	122.95
2031	93.72	153.01	127.51

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 31025 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 %)
<b><u>Year</u></b>	<b><u>Mills/kWh</u></b>	<b><u>Mills/kWh</u></b>	<b><u>Mills/kWh</u></b>
2010	38.69	63.16	52.63
2011	41.17	67.22	56.02
2012	43.91	71.69	59.74
2013	46.51	75.94	63.28
2014	49.31	80.50	67.09
2015	52.31	85.41	71.17
2016	54.04	88.23	73.52
2017	55.74	91.00	75.83
2018	57.58	94.01	78.34
2019	59.40	96.97	80.81
2020	61.27	100.03	83.36
2021	63.49	103.66	86.38
2022	65.80	107.43	89.53
2023	68.20	111.35	92.79
2024	70.70	115.42	96.19
2025	73.29	119.66	99.72
2026	75.49	123.26	102.71
2027	77.77	126.97	105.80
2028	80.11	130.79	108.99
2029	82.53	134.74	112.28
2030	85.02	138.81	115.67
2031	88.37	144.27	120.23

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 31025 with seasonalization factors applied:

	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
<b><u>Year</u></b>	<b><u>Mills/kWh</u></b>	<b><u>Mills/kWh</u></b>	<b><u>Mills/kWh</u></b>
2010	41.66	68.01	56.67
2011	44.14	72.07	60.06
2012	46.88	76.54	63.78
2013	49.48	80.79	67.32
2014	52.28	85.35	71.13
2015	55.28	90.25	75.21
2016	57.01	93.08	77.56
2017	58.71	95.85	79.87
2018	60.55	98.86	82.38
2019	62.36	101.82	84.85
2020	64.24	104.88	87.40

2021	66.46	108.51	90.42
2022	68.77	112.28	93.57
2023	71.17	116.20	96.83
2024	73.67	120.27	100.23
2025	76.26	124.51	103.76
2026	78.46	128.10	106.75
2027	80.74	131.81	109.85
2028	83.08	135.64	113.03
2029	85.50	139.59	116.32
2030	87.99	143.66	119.71
2031	91.34	149.12	124.27

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 Utility 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 certificates (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 AND THIRD PARTY AGREEMENT

- 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 and Audit - 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, maximum generation (kW), landfill gas flow and landfill gas quality records pertaining to the Seller's Facility.
- 11.3 Third Party Agreement - Seller shall provide Idaho Power with a true and complete copy of the Third Party Agreement which shall remain in full force and effect for the term of this Agreement. Seller shall not change or eliminate the Fuel Supply Commitment nor amend or terminate either the Third Party Agreement or Fuel Supply Agreement without the prior written consent of Idaho Power which shall not be unreasonably withheld.

#### 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 XXV 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 to 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. Force Majeure does not include short-term disruptions or curtailment of the Facility's fuel supply. 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 certificates and, if the Facility is fueled (i.e. gases, waste, etc), any diminution or loss of gas production or collection 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:

Controller  
Fortistar Methane Group  
One North Lexington Ave.  
White Plains, New York 10601  
Telephone: 914-421-4900  
FAX: 914-421-0052  
E-mail: [jmaurer@fortistar.com](mailto:jmaurer@fortistar.com)

Copy of Document to:

Fortistar Methane Group  
5087 Junction Road  
Lockport, New York 14094  
E-mail: [tgesicki@fortistar.com](mailto:tgesicki@fortistar.com)

To Idaho Power:

Original document to:

Senior Vice President, Power Supply  
Idaho Power Company  
P O Box 70  
Boise, Idaho 83707  
Email: [Lgrow@idahopower.com](mailto:Lgrow@idahopower.com)

Copy of document to:

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

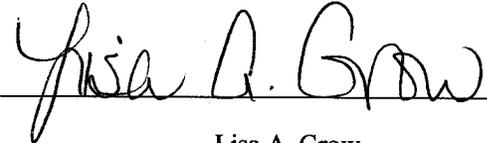
29.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

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

Hidden Hollow Energy 2 LLC

By

  
\_\_\_\_\_

Lisa A. Grow  
Sr. Vice President, Power Supply

By

  
\_\_\_\_\_

Thomas J. Gesicki  
President

Dated

12-8-10  
\_\_\_\_\_

"Idaho Power"

Dated

December 6, 2010  
\_\_\_\_\_

"Hidden Hollow 2 Energy LLC"

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  
P O Box 70  
Boise, Idaho 83707

The meter readings required on this report will be the readings on the Idaho Power Meter Equipment measuring the Facility's total energy production and Station Usage delivered to Idaho Power and the maximum generation (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**

	<u>Month</u>			<u>Year</u>	
<b>Project Name</b>	Hidden Hollow Energy 2 LLC			<b>Project Number:</b>	291
<b>Address</b>	10300 Seaman Gulch Road			<b>Phone Number:</b>	
<b>City</b>	Boise	<b>State</b>	Idaho	<b>Zip</b>	83714

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

**Breaker Opening Record**

<u>Date</u>	<u>Time</u>	<u>Meter</u>

* <u>Reason</u>

**Breaker Closing Record**

<u>Date</u>	<u>Time</u>	<u>Meter</u>

- \* **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 generation (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: Thomas Mortensen  
Telephone Number: (208) 484-2062

Project On-site Contact information

Name: Thomas Mortensen  
Telephone Number: (208) 484-2062

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Hidden Hollow Energy 2 LLC Landfill Gas Project

Project Number: 21615101

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 that existed under the current Firm Energy Sales Agreement dated October 11, 2005 consists of:

“... 2 Caterpillar; model G-3520C, generator sets with individual generator ratings of 1.6 MW for each unit, for a total Facility generator rating of 3.2 MW. These units are being fueled with first 1100 scfm of landfill gas from the Hidden Hollow landfill.”

The generation units being added under this Agreement are described as:

2 Caterpillar, Model G-3520 C Engine – Generator sets with generator ratings of 1.6 MW for each unit, for a total Facility Gross Rating of 3.2 MW. These units will be fueled with landfill gas from the Hidden Hollow Landfill.

*Var Capability (Both leading and lagging)* Leading is . \_\_\_\_ Lagging is . \_\_\_\_

B-2 LOCATION OF FACILITY

Near: Boise, ID

Sections: 11 Township: 4N Range: 1E County: Ada ID.

Description of Interconnection Location: Hidden Hollow Landfill, 10300 Seaman Gulch Road

Nearest Idaho Power Substation: Gary

B-3

#### SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected February 28, 2012 as the Scheduled First Energy Date.

Seller has selected February 28, 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 GROSS CAPACITY AMOUNT:

This value will be 3.2 MW which is consistent with the value provided by the Seller to Idaho Power in accordance with Schedule 72. This value is the maximum gross 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 Equipment is unable to measure the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (kWh) between the Seller's Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc) of all of the

electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the kWh Losses for the remaining term of the Agreement. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual kWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous months kWh loss calculations.

#### B-7 METERING AND TELEMETRY

Schedule 72 will determine the specific metering and telemetry requirements for this Facility. At 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 Facility's 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 \_\_Hidden Hollow Energy 2 LLC\_\_ Project, is located in Section \_\_11\_\_ Township \_\_4N\_\_ Range \_\_1E\_\_, Boise Meridian, \_\_\_\_\_ Ada\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for a twenty (20) year period.

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

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C

ENGINEER'S CERTIFICATION

OF

ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production 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 Hidden Hollow Energy 2 LLC Project, is located in Section 11 Township \_\_4N\_\_ Range \_\_1E\_\_, Boise Meridian, \_Ada\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) 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 twenty (20) 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 \_Hidden Hollow Energy 2 LLC\_Project, is located in Section \_11\_ Township \_4N\_ Range \_1E\_, Boise Meridian, \_Ada\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

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

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

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

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

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

Date \_\_\_\_\_

## APPENDIX D

### FORMS OF LIQUID SECURITY

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

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

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