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IDAHO PUBLIC
UTILITIES COMMISSION

DONOVAN E. WALKER
Lead Counsel
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October 11, 2011

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-11-10
*IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY
FOR A DETERMINATION REGARDING THE FIRM ENERGY SALES
AGREEMENT WITH INTERCONNECT SOLAR DEVELOPMENT, LLC
FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY*

Dear Ms. Jewell:

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

Very truly yours,


Donovan E. Walker

DEW:csb
Enclosures

DONOVAN E. WALKER (ISB No. 5921)
JASON B. WILLIAMS (ISB No. 8718)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR A)	CASE NO. IPC-E-11-10
DETERMINATION REGARDING THE)	
FIRM ENERGY SALES AGREEMENT)	IDAHO POWER COMPANY'S
WITH INTERCONNECT SOLAR)	RESUBMITTAL OF THE FIRM
DEVELOPMENT, LLC FOR THE SALE)	ENERGY SALES AGREEMENT
AND PURCHASE OF ELECTRIC)	
ENERGY.)	
_____)	

Idaho Power Company ("Idaho Power" or "Company"), pursuant to the Idaho Public Utilities Commission's ("Commission") Order Nos. 32361 and 32364 in this matter, hereby resubmits the Firm Energy Sales Agreement ("FESA") for the Commission's consideration. Attached hereto as Attachment No. 1 is the re-executed FESA that: (1) corrects the previously identified mathematical error in the escalation identified in Order No. 32361, (2) contains recalculated pricing based upon correction for daylight savings time and use of a new energy shape based upon the utilization of different solar panels by Interconnect Solar Development, LLC ("Interconnect Solar"), and (3) revises the First Energy Date and the Scheduled Operation Date chosen by Interconnect Solar.

To assist in the review of the re-executed and revised FESA, attached as Attachment No. 2 is a redlined version of the FESA that shows the additions and deletions made to the previously submitted FESA. Those revisions are summarized below.

1. Escalation Error.

As indicated in Order No. 32361, the original FESA submitted for the Commission's review contains a mathematical error in the escalation rate that is applied to the 2009 Integrated Resource Plan ("IRP") combined-cycle combustion turbine capital cost used in the Public Utility Regulatory Policies Act of 1978 ("PURPA") IRP pricing model. The levelized price in the original FESA is \$105.15. After correction of the escalation error, the resulting levelized price is \$94.59. This escalation error has been corrected in the re-executed FESA.

2. New Energy Shape.

Upon presentation of the corrected FESA pricing (at a levelized price of \$94.59), Interconnect Solar stated that it had also made an error in the energy shape that it provided to Idaho Power that serves as the basis for the energy pricing in the PURPA IRP avoided cost pricing model. Interconnect Solar submitted a new energy shape and Idaho Power ran those numbers through the IRP pricing model to arrive at a new pricing stream for the project. The new energy shape contained different output levels during peak load hours based upon a correction for daylight savings time. The new energy shape also contained an increase in total energy delivered based upon the proposed use of different solar panels than those that were originally planned by Interconnect Solar. When combined with the modification for the price escalation error, the results

on the pricing from the new energy shape for the project's output results in a new levelized price of \$97.47.

3. Revised First Energy and Scheduled Operation Date.

Interconnect Solar elected to revise the First Energy Date and the Scheduled Operation Date that it chose for this project by adding two months to each. The original dates were: First Energy Date = June 1, 2012, and Scheduled Operation Date = July 1, 2012. The proposed new dates are: First Energy Date = August 1, 2012, and Scheduled Operation Date = September 1, 2012. Despite this two month change to the First Energy and Scheduled Operation Date, the same discrepancy exists in the Scheduled Operation Date chosen by Interconnect Solar and the time that Idaho Power estimates is required to complete the interconnection work for this project in its Generator Interconnection Agreement ("GIA"). As stated in the initial Application, Idaho Power estimates that it needs at least 18 months for permitting and construction. This 18 months starts at the time when Interconnect Solar pays the required construction deposits in the GIA, which have not yet been paid. See Application, p. 7-8.

4. Identification of Each Change in the New FESA.

Upon review of the redlined FESA submitted hereto as Attachment No. 2, each change is identified as follows:

Page 13, Section 6.2.1. The net energy amounts are updated.

Page 15 through 24, Sections 7.1 through 7.2. The original pricing streams (charts) are deleted and replaced with updated pricing.

Page 42 – Appendix B, Section B-1. The total acres, number of panels, panel wattage, and nameplate rating were updated.

Page 42 – Appendix B, Section B-3. The Scheduled First Energy Date and Scheduled Operation Date were both pushed out by two months.

No other changes were made to the re-executed contract.

CONCLUSION

WHEREFORE, Idaho Power respectfully submits the revised and re-executed FESA to the Commission for its review, and either acceptance or rejection.

Respectfully submitted at Boise, Idaho, this 11th day of October 2011.


DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October 2011 I served a true and correct copy of IDAHO POWER COMPANY'S RESUBMITTAL OF THE FIRM ENERGY SALES AGREEMENT upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff

Kristine Sasser
Deputy Attorney General
Idaho Public Utilities Commission
472 West Washington (83702)
P.O. Box 83720
Boise, Idaho 83720-0074

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email Kris.Sasser@puc.idaho.gov

Interconnect Solar Development LLC

Randy Hemmer, Manager
Interconnect Solar Development LLC
3777 Twilight Drive
Boise, Idaho 83703

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email randyhemmer@clearwire.net

Ronald L. Williams
WILLIAMS BRADBURY, P.C.
1015 West Hays Street
Boise, Idaho 83702

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email ron@williamsbradbury.com


Donovan E. Walker

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-11-10

IDAHO POWER COMPANY

ATTACHMENT NO. 1

NEW FESA

FIRM ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
INTERCONNECT SOLAR DEVELOPMENT LLC
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FIRM ENERGY SALES AGREEMENT
(Solar Project – Greater than 100 kW)

Project Name: Murphy Flats Solar Power Project

Project Number: 12616650

THIS AGREEMENT, entered into on this 4th day of October 2011 between INTERCONNECT SOLAR DEVELOPMENT LLC (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as “Parties” or individually as “Party.”

WITNESSETH:

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

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

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

ARTICLE I: DEFINITIONS

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

- 1.1 “Base Energy” – Monthly Net Energy less than 110% of the monthly Net Energy Amount as specified in paragraph 6.2 of this Agreement less any Net Energy that is determined to be Surplus Energy as specified within 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 7.2 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 “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its avoided emission of pollutants. Environmental Attributes include but are not limited to: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. REC Reporting Rights are the right of a REC Purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the REC Purchaser’s discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Environmental Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

associated with one (1) MWh of Energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) the cash grant in lieu of the investment tax credit pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

- 1.9 “Facility” - That electric generation facility described in Appendix B of this Agreement.
- 1.10 “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 the Idaho Power electrical system at the Point of Delivery.
- 1.11 “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.
- 1.12 “Heavy Load Peak Hours” – The daily Heavy Load Hours from hour beginning at 3:00 pm through hour ending 7 pm Mountain time, (4 hours).
- 1.13 “Heavy Load Standard Hours” – The daily Heavy Load Hours not included as Heavy Load Peak Hours.
- 1.14 “Interconnection Facilities” - All equipment specified in Schedule 72.
- 1.15 “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.
- 1.16 “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.

- 1.17 “Market Energy Reference Price” – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.18 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.19 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.20 “Metering Equipment” - All equipment specified in Schedule 72, this Agreement and any additional equipment specified in Appendix B required to measure, record and telemeter bi-directional power flows between the Seller's electric generation plant and Idaho Power's system.
- 1.21 “Metering Point” - The physical point at which the Metering Equipment is located that enables accurate measurement of the Test Energy and Net Energy deliveries to Idaho Power at the Point of Delivery for this Facility that provides all necessary data to administer this Agreement.
- 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-amperes, 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) delivered to Idaho Power at the Point of Delivery. Subject to the terms of this Agreement, Seller commits to deliver all Net Energy to Idaho Power at the Point of Delivery for the full term of the Agreement.

- 1.25 “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 “Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, indicating generation of renewable energy by the Facility, and includes all Environmental Attributes arising as a result of the generation of electricity associated with the REC. One REC represents the Environmental Attributes associated with the generation of one thousand (1,000) kWh of Net Energy.
- 1.29 “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.
- 1.30 “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 and this Agreement.
- 1.31 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.32 “Special Facilities” - Additions or alterations of transmission and/or distribution lines and transformers as described in Schedule 72.
- 1.33 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.

1.34 “Surplus Energy” – defined as follows:

1.34.1 For the first Contract Year: 1) Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system during the month which exceeds 130% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, or 2) All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system in any month where the Net Energy delivered for that month is less than 70% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, 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.

1.34.2 For all Contract Years other than the first Contract Year: 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) All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system in any month where the Net Energy delivered for that month is less than 90% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, 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.

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

ARTICLE V: TERM AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of twenty five (25) 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 ninety (90) days following the Scheduled Operation Date, Seller shall pay Idaho Power Delay Liquidated Damages calculated at the end of each calendar month after the Scheduled Operation Date as follows:
- Delay Liquidated Damages are equal to ((Current month's Initial Year Net Energy Amount as specified in paragraph 6.2.1 divided by the number of days in the current month) multiplied by the number of days in the Delay Period in the current month) multiplied by the current month's Delay Price.
- 5.3.2 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation

Date, the Seller shall pay Idaho Power Delay Liquidated Damages calculated as follows:

Forty five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW, less the actual Delay Liquidated Damages paid pursuant to paragraph 5.3.1 above.

- 5.4 If Seller fails to achieve the Operation Date within one-hundred and twenty (120) 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:
- a) Filed for interconnection and is in compliance with all payments and requirements of the interconnection process
 - b) Received and accepted an interconnection feasibility study for this Facility.
 - c) Provided all information required to enable Idaho Power to file an initial transmission capacity request.

- d) Accepted the results of the initial transmission capacity request.
- e) Acknowledged 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. If final interconnection or transmission studies are not complete at the time the Seller executes this Agreement, the Seller understands that the Seller's obligations to pay Damages and Liquidated Damages associated with the projects failure to achieve the Operation Date by the Scheduled Operation Date as specified in this Agreement is not relieved by final interconnection or transmission processes and schedules.

5.8 Within thirty (30) days of the date of a final non-appealable 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. Failure to post this Delay Security in the time specified above will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement.

5.8.1 Delay Security - The greater of forty five (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW or the sum of three month's estimated revenue. Where the estimated three months of revenue is the estimated revenue associated with the first three full months following the estimated Scheduled Operation Date, the estimated kWh of energy production as specified in paragraph 6.2.1 for those three months multiplied by the All Hours Energy Price specified in paragraph 7.2 for each of those three months.

5.8.1.1 In the event 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 five (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 at the earlier of, 1) thirty (30) days after the Operation Date has been achieved, or 2) sixty (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. Net Energy produced by the Facility and delivered by the Seller at any moment in time to the Point of Delivery that exceeds the Maximum Capacity Amount will be a Material Breach of this Agreement.

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	3,118,600
	April	3,822,900
	May	4,712,000
Season 2	July	5,310,300
	August	4,606,600
	November	1,866,600
	December	1,466,300
Season 3	June	4,980,000
	September	4,071,000
	October	2,954,300
	January	1,125,300
	February	1,633,212

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 or by electronic notice provided and verified via return electronic verification of receipt to the electronic notices addressed specified in 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 recently provided 3 matching 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 30 days prior to the first day of the second Contract Year, 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 first day of the second Contract Year and at the end of every third month thereafter: (1) the Seller may not revise the immediate next three months of previously provided Net Energy Amounts, (2) but by written notice given to Idaho Power in accordance with paragraph 25.1, no later than 5:00 PM of the 5th day following the end of the previous month, the Seller may revise all other previously provided Net Energy Amounts. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

6.2.4 Idaho Power Adjustment of Net Energy Amount – If Idaho Power is excused from accepting the Seller’s Net Energy as specified in paragraph 12.2.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 and the Seller’s declared Suspension of Energy Deliveries is not unreasonably rejected by Idaho Power, the Net Energy Amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 12.2.1 or 12.3.1 occurs will be reduced in accordance with the following:

Where:

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

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

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

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

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

TH = Actual total hours in the current month

Resulting formula being:

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

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

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

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Base Energy Purchase Price

- 7.1.1 During the months of March, April and May Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours for each year as specified below:

	<u>Heavy Load Energy Price</u>	<u>Light Load Energy Price</u>
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2012	71.88	66.53
2013	72.17	66.82
2014	72.46	67.11
2015	72.75	67.40
2016	73.04	67.69
2017	73.33	67.98
2018	73.62	68.27
2019	73.91	68.56
2020	74.21	68.86
2021	74.50	69.15
2022	74.80	69.45

2023	75.10	69.75
2024	75.40	70.05
2025	75.70	70.35
2026	76.00	70.65
2027	76.30	70.95
2028	76.61	71.26
2029	76.91	71.56
2030	77.22	71.87
2031	77.53	72.18
2032	78.28	72.93
2033	79.04	73.69
2034	79.80	74.45
2035	80.58	75.23
2036	81.36	76.01
2037	82.15	76.80

7.1.2 During the months of November and December, Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours for each year as specified below:

<u>Year</u>	<u>Heavy Load Energy Price</u> Mills/kWh	<u>Light Load Energy Price</u> Mills/kWh
2012	117.36	108.63
2013	117.83	109.09
2014	118.30	109.56
2015	118.77	110.03
2016	119.24	110.51
2017	119.72	110.98
2018	120.19	111.46
2019	120.67	111.94
2020	121.15	112.42
2021	121.64	112.90
2022	122.12	113.39
2023	122.61	113.87
2024	123.10	114.36
2025	123.59	114.85
2026	124.08	115.34
2027	124.57	115.84
2028	125.07	116.34
2029	125.57	116.83

2030	126.07	117.34
2031	126.57	117.84
2032	127.80	119.06
2033	129.04	120.30
2034	130.29	121.56
2035	131.56	122.82
2036	132.83	124.10
2037	134.12	125.39

7.1.3 During the months of July and August, Idaho Power shall pay the non-levelized Heavy Load Standard Energy Price for all Base Energy received during Heavy Load Standard Hours, the Heavy Load Peak Hour Prices for all Base Energy received during Heavy Load Peak Hours and the Light Load Energy Price for all Base Energy received during Light Load Hours for each year as specified below:

	<u>Heavy Load Standard Energy Price</u>	<u>Heavy Load Peak Energy Price</u>	<u>Light Load Energy Price</u>
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2012	115.01	123.23	108.63
2013	115.47	123.72	109.09
2014	115.93	124.22	109.56
2015	116.39	124.71	110.03
2016	116.86	125.20	110.51
2017	117.33	125.71	110.98
2018	117.79	126.20	111.46
2019	118.26	126.70	111.94
2020	118.73	127.21	112.42
2021	119.21	127.72	112.90
2022	119.68	128.23	113.39
2023	120.16	128.74	113.87
2024	120.64	129.26	114.36
2025	121.12	129.77	114.85
2026	121.60	130.28	115.34
2027	122.08	130.80	115.84
2028	122.57	131.32	116.34
2029	123.06	131.85	116.83
2030	123.55	132.37	117.34
2031	124.04	132.90	117.84

2032	125.24	134.19	119.06
2033	126.46	135.49	120.30
2034	127.68	136.80	121.56
2035	128.93	138.14	122.82
2036	130.17	139.47	124.10
2037	131.44	140.83	125.39

7.1.4 During the months of June, September, October, January and February, Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours as specified below:

<u>Year</u>	<u>Heavy Load Energy Price</u>	<u>Light Load Energy Price</u>
	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2012	97.80	90.52
2013	98.19	90.91
2014	98.58	91.30
2015	98.97	91.69
2016	99.37	92.09
2017	99.76	92.48
2018	100.16	92.88
2019	100.56	93.28
2020	100.96	93.68
2021	101.36	94.08
2022	101.77	94.49
2023	102.17	94.89
2024	102.58	95.30
2025	102.99	95.71
2026	103.40	96.12
2027	103.81	96.53
2028	104.23	96.95
2029	104.64	97.36
2030	105.06	97.78
2031	105.48	98.20
2032	106.50	99.22
2033	107.53	100.25
2034	108.58	101.30
2035	109.63	102.35
2036	110.69	103.41
2037	111.77	104.49

7.2 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 for each year as specified below:

	March, April and May	July, August, November and December	June, September, October, January and February
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2012	69.50	113.48	94.56
2013	69.79	113.94	94.95
2014	70.08	114.41	95.34
2015	70.37	114.88	95.74
2016	70.66	115.36	96.13
2017	70.95	115.83	96.52
2018	71.24	116.31	96.92
2019	71.53	116.79	97.32
2020	71.83	117.27	97.72
2021	72.12	117.75	98.12
2022	72.42	118.23	98.53
2023	72.72	118.72	98.93
2024	73.02	119.21	99.34
2025	73.32	119.70	99.75
2026	73.62	120.19	100.16
2027	73.92	120.69	100.57
2028	74.23	121.18	100.99
2029	74.53	121.68	101.40
2030	74.84	122.18	101.82
2031	75.15	122.69	102.24
2032	75.90	123.91	103.26
2033	76.66	125.15	104.29
2034	77.42	126.40	105.34
2035	78.20	127.67	106.39
2036	78.98	128.94	107.45
2037	79.77	130.23	108.53

7.3 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the lower of the current month’s Market Energy Reference Price, Light Load Energy Price or the All Hours Energy Price specified in paragraph 7.2.

7.4 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.

- 7.5 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 Environmental Attributes. Idaho Power will be granted ownership of 50% of all of the Environmental Attributes associated with the Facility and Seller will likewise retain 50% ownership of all of the Environmental Attributes associated with the Facility. Title of 50% Environmental Attributes shall pass to Idaho Power at the same time that transfer of title of the associated Test Energy or Net Energy to Idaho Power occurs. If after the Effective Date any additional Environmental Attributes or similar environmental value is created by legislation, regulation, or any other action, including but not limited to, carbon credits and carbon offsets, Idaho Power shall be granted ownership of 50% of these additional Environmental Attributes or environmental values that are associated with the Test Energy or the Net Energy delivered by the Seller to Idaho Power. Seller shall use prudent and commercially reasonable efforts to ensure that any operations of the Facility do not jeopardize the current or future Environmental Attribute status of this solar generation Facility.
- 8.2 The Parties shall cooperate to ensure that all Environmental Attribute certifications, rights and reporting requirements are completed by the responsible Parties.
- 8.2.1 At least sixty (60) days prior to the First Energy Date, the Parties shall mutually cooperate to enable Idaho Power's Environmental Attributes from this Facility to be placed into Idaho Power's WREGIS account or any other Environment Attribute accounting and tracking system

selected by the Idaho Power. The Seller at the Seller's sole expense will be responsible to establish and maintain the Seller's WREGIS or other Environmental Attribute account and/or system that enables the creation of the Environmental Attribute certificates associated with this Project and the transfer of 50% of the Environmental Attributes to Idaho Power for the Term of this Agreement. If the Environmental Attribute accounting and tracking system initially selected by Idaho Power is materially altered or discontinued during the Term of this Agreement, the Parties shall cooperate to identify an appropriate alternative Environmental Attribute accounting and tracking process and enable the Environmental Attributes be processed through this alternative method.

8.2.2 Each Party shall only report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program the 50% of the Environmental Attributes that such party owns and shall refrain from reporting the Environmental Attributes owned by the other Party.

8.2.3 If Idaho Power requests additional Environmental Attribute certifications beyond what is provided by the WREGIS process the Seller shall obtain any Environmental Attribute certifications required by Idaho Power for those Environmental Attributes delivered to Idaho Power from the Seller. If the Seller incurs cost, as a result of Idaho Power's request, Seller shall invoice Idaho Power for the reasonable costs, not to exceed 50% of the total cost of providing such certification. If Idaho Power elects to obtain its own certifications, then Seller shall fully cooperate with Idaho Power in obtaining such certification.

ARTICLE IX: FACILITY AND INTERCONNECTION

9.1 Design of Facility - Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy to the Idaho Power Point of Delivery for the full term of the Agreement.

9.2 Interconnection Facilities - Except as specifically provided for in this Agreement, the required

Interconnection Facilities will be in accordance with Schedule 72, the Generation Interconnection Process and Appendix B. The Seller is responsible for all costs associated with this equipment as specified in Schedule 72 and the Generation Interconnection Process, including but not limited to initial costs incurred by Idaho Power for equipment costs, installation costs and ongoing monthly Idaho Power operations and maintenance expenses.

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, 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 produced and delivered to the Idaho Power Point of Delivery to Idaho Power's Designated Dispatch Facility.

ARTICLE XI - RECORDS

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

ARTICLE XII: OPERATIONS

- 12.1 Communications - Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.
- 12.2 Energy Acceptance –
- 12.2.1 Idaho Power shall be excused from accepting and paying for Net Energy which would have otherwise been produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, or temporary disconnection of the Facility in accordance with Schedule 72. If, for reasons other than an event of Force Majeure, a temporary disconnection under Schedule 72 exceeds twenty (20) days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller 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 from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount at any moment in time. 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 contract 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 Article 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 do an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the

Seller's Facility.

- 12.4 Scheduled Maintenance – On or before January 31st 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 ten (10) days' prior written notice to Idaho Power.

13.3 Seller to Provide Certificate of Insurance - As required in paragraph 4.1.6 herein and annually thereafter, Seller shall furnish Idaho Power a certificate of insurance, together with the endorsements required therein, evidencing the coverage as set forth above.

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

ARTICLE XIV: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the Effective Date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the

exercise of due diligence, it shall be unable to overcome. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

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

ARTICLE XV: LIABILITY; DEDICATION

- 15.1 Limitation of Liability. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. Neither party shall be liable to the other for any indirect, special, consequential, nor punitive damages, except as expressly authorized by this Agreement.
- 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 non defaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the non defaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.

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

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

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

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

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:
Interconnect Solar Development LLC
3777 Twilight Drive
Boise, ID 83703

Telephone: 208-440-0358
Cell: 208-440-0358
FAX:

E-mail: randyhemmer@clearwire.net

Copy of document to:

Bill Piske
1303 E. Carter
Boise, ID 83706

Telephone: 208-941-7458
Email: billpiske@cableone.net

To Idaho Power:

Original document to:

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

Copy of document to:

Cogeneration and Small Power Production
Idaho Power Company
PO Box 70
Boise, Idaho 83707

E-mail: rallphin@idahopower.com

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

ARTICLE XXVI: ADDITIONAL TERMS AND CONDITIONS

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

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

ARTICLE XXVII: SEVERABILITY

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

ARTICLE XXVIII: COUNTERPARTS

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

ARTICLE XXIX: ENTIRE AGREEMENT

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

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

Idaho Power Company

Interconnect Solar Development LLC

By Lisa A. Grow
Lisa A Grow
Sr. Vice President, Power Supply

By Randy Hemmer
Randy Hemmer
Manager

Dated 10.4.11
"Idaho Power"

Dated 10-4-11
"Seller"

APPENDIX A

A-1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

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

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

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

Idaho Power Company

Cogeneration and Small Power Production

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month _____ Year _____

Project Name _____ Project Number: _____
 Address _____ Phone Number: _____
 City _____ State _____ Zip _____

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

Breaker Opening Record

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

Breaker Closing Record

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

* <u>Reason</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 generated power (kW) and any other required energy measurements to adequately administer this Agreement.

A-3 ROUTINE REPORTING

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

Idaho Power Contact Information

Daily Energy Production Reporting

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

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

Planned and Unplanned Project outages

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

- Project Identification - Project Name and Project Number
- Approximate time outage occurred
- Estimated day and time of project coming back online

Seller's Contact Information

24-Hour Project Operational Contact

Name: Thadeus Carson
Telephone Number: 208-338-7070
Cell Phone:

Project On-site Contact information

Name: Thadeus Carson
Telephone Number: 208-338-7070

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Murphy Flats Solar Power Project

Project Number: 12616650

B-1 DESCRIPTION OF FACILITY

A Solar facility making use of 132 acres, consisting of 73,800 individual 285 Watt individual photo voltaic panels for a total nameplate rating of the PV panels being 21.033 MW and 10- 2 MW Siemens Inverters.

Var Capability (Both leading and lagging: Leading is .95 Lagging is .95

B-2 LOCATION OF FACILITY

Near: Murphy, Idaho

Sections: 25, 26, 35 & 36 Township: 2S Range: 2E County: Owyhee

Description of Interconnection Location: Antelope Lane

Nearest Idaho Power Substation: Sinker Creek

B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected August 1, 2012 as the Scheduled First Energy Date.

Seller has selected September 1, 2012 as the Scheduled Operation Date.

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

B-4 MAXIMUM CAPACITY AMOUNT

This value will be **20 MW** which is consistent with the value provided by the Seller to Idaho Power in accordance with Schedule 72. This value is the maximum energy (MW) that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

B-5 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of where the Sellers Facility's energy is delivered to the Idaho Power electrical system. Schedule 72 will determine the specific Point of Delivery for this Facility. The Point of Delivery identified by Schedule 72 will become an integral part of this Agreement.

B-6 LOSSES

If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering 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 Losses 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 losses calculations.

B-7 METERING AND TELEMTRY

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

B-8 NETWORK RESOURCE DESIGNATION

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

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

APPENDIX C

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

The undersigned _____, on behalf of himself /herself 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 Idaho Power Company (IPCo) Facility No. _____ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and

built to appropriate standards, adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for a _____ 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/her knowledge and therefore sets his/her 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/herself 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 Idaho Power Company (IPCo) Facility No. _____ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.

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

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C

ENGINEER'S CERTIFICATION

OF

DESIGN & CONSTRUCTION ADEQUACY

The undersigned _____, on behalf of himself/herself 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 Idaho Power Company (IPCo) Facility No _____ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.

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

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

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

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

12. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her 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 and any other 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 or any other required security amount(s). The Seller shall be responsible for all costs, and receive any interest earned associated with establishing and maintaining the escrow account(s).
2. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Delay Security or any other required security amounts: a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or b) an irrevocable 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. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-11-10
IDAHO POWER COMPANY

ATTACHMENT NO. 2
REDLINED ORIGINAL FESA

FIRM ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
INTERCONNECT SOLAR DEVELOPMENT LLC
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- 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 7.2 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 “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its avoided emission of pollutants. Environmental Attributes include but are not limited to: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. REC Reporting Rights are the right of a REC Purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the REC Purchaser’s discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Environmental Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.17 “Market Energy Reference Price” – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.18 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.19 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.20 “Metering Equipment” - All equipment specified in Schedule 72, this Agreement and any additional equipment specified in Appendix B required to measure, record and telemeter bi-directional power flows between the Seller's electric generation plant and Idaho Power's system.
- 1.21 “Metering Point” - The physical point at which the Metering Equipment is located that enables accurate measurement of the Test Energy and Net Energy deliveries to Idaho Power at the Point of Delivery for this Facility that provides all necessary data to administer this Agreement.
- 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-amperes, 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) delivered to Idaho Power at the Point of Delivery. Subject to the terms of this Agreement, Seller commits to deliver all Net Energy to Idaho Power at the Point of Delivery for the full term of the Agreement.

1.34 “Surplus Energy” – defined as follows:

1.34.1 For the first Contract Year: 1) Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system during the month which exceeds 130% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, or 2) All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system in any month where the Net Energy delivered for that month is less than 70% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, 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.

1.34.2 For all Contract Years other than the first Contract Year: 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) All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system in any month where the Net Energy delivered for that month is less than 90% of the monthly Net Energy Amount for the corresponding month specified in paragraph 6.2, 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.

1.35 “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,

opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

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

Date, the Seller shall pay Idaho Power Delay Liquidated Damages calculated as follows:

Forty five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW, less the actual Delay Liquidated Damages paid pursuant to paragraph 5.3.1 above.

- 5.4 If Seller fails to achieve the Operation Date within one-hundred and twenty (120) 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:
- a) Filed for interconnection and is in compliance with all payments and requirements of the interconnection process
 - b) Received and accepted an interconnection feasibility study for this Facility.
 - c) Provided all information required to enable Idaho Power to file an initial transmission capacity request.

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 five (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 at the earlier of, 1) thirty (30) days after the Operation Date has been achieved, or 2) sixty (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. Net Energy produced by the Facility and delivered by the Seller at any moment in time to the Point of Delivery that exceeds the Maximum Capacity Amount will be a Material Breach of this Agreement.

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

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 first day of the second Contract Year and at the end of every third month thereafter: (1) the Seller may not revise the immediate next three months of previously provided Net Energy Amounts, (2) but by written notice given to Idaho Power in accordance with paragraph 25.1, no later than 5:00 PM of the 5th day following the end of the previous month, the Seller may revise all other previously provided Net Energy Amounts. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

6.2.4 Idaho Power Adjustment of Net Energy Amount – If Idaho Power is excused from accepting the Seller’s Net Energy as specified in paragraph 12.2.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 and the Seller’s declared Suspension of Energy Deliveries is not unreasonably rejected by Idaho Power, the Net Energy Amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 12.2.1 or 12.3.1 occurs will be reduced in accordance with the following:

Where:

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

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

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

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

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

<u>2023</u>	<u>75.10</u>	<u>69.75</u>
<u>2024</u>	<u>75.40</u>	<u>70.05</u>
<u>2025</u>	<u>75.70</u>	<u>70.35</u>
<u>2026</u>	<u>76.00</u>	<u>70.65</u>
<u>2027</u>	<u>76.30</u>	<u>70.95</u>
<u>2028</u>	<u>76.61</u>	<u>71.26</u>
<u>2029</u>	<u>76.91</u>	<u>71.56</u>
<u>2030</u>	<u>77.22</u>	<u>71.87</u>
<u>2031</u>	<u>77.53</u>	<u>72.18</u>
<u>2032</u>	<u>78.28</u>	<u>72.93</u>
<u>2033</u>	<u>79.04</u>	<u>73.69</u>
<u>2034</u>	<u>79.80</u>	<u>74.45</u>
<u>2035</u>	<u>80.58</u>	<u>75.23</u>
<u>2036</u>	<u>81.36</u>	<u>76.01</u>
<u>2037</u>	<u>82.15</u>	<u>76.80</u>

7.1.2 During the months of November and December, Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours for each year as specified below:

<u>Year</u>	<u>Heavy Load Energy Price</u> <u>Mills/kWh</u>	<u>Light Load Energy Price</u> <u>Mills/kWh</u>
<u>2012</u>	<u>117.36</u>	<u>108.63</u>
<u>2013</u>	<u>117.83</u>	<u>109.09</u>
<u>2014</u>	<u>118.30</u>	<u>109.56</u>
<u>2015</u>	<u>118.77</u>	<u>110.03</u>
<u>2016</u>	<u>119.24</u>	<u>110.51</u>
<u>2017</u>	<u>119.72</u>	<u>110.98</u>
<u>2018</u>	<u>120.19</u>	<u>111.46</u>
<u>2019</u>	<u>120.67</u>	<u>111.94</u>
<u>2020</u>	<u>121.15</u>	<u>112.42</u>
<u>2021</u>	<u>121.64</u>	<u>112.90</u>
<u>2022</u>	<u>122.12</u>	<u>113.39</u>
<u>2023</u>	<u>122.61</u>	<u>113.87</u>
<u>2024</u>	<u>123.10</u>	<u>114.36</u>
<u>2025</u>	<u>123.59</u>	<u>114.85</u>
<u>2026</u>	<u>124.08</u>	<u>115.34</u>
<u>2027</u>	<u>124.57</u>	<u>115.84</u>
<u>2028</u>	<u>125.07</u>	<u>116.34</u>
<u>2029</u>	<u>125.57</u>	<u>116.83</u>

<u>2032</u>	<u>125.24</u>	<u>134.19</u>	<u>119.06</u>
<u>2033</u>	<u>126.46</u>	<u>135.49</u>	<u>120.30</u>
<u>2034</u>	<u>127.68</u>	<u>136.80</u>	<u>121.56</u>
<u>2035</u>	<u>128.93</u>	<u>138.14</u>	<u>122.82</u>
<u>2036</u>	<u>130.17</u>	<u>139.47</u>	<u>124.10</u>
<u>2037</u>	<u>131.44</u>	<u>140.83</u>	<u>125.39</u>

7.1.4 During the months of June, September, October, January and February, Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours as specified below:

<u>Year</u>	<u>Heavy Load Energy Price</u> <u>Mills/kWh</u>	<u>Light Load Energy Price</u> <u>Mills/kWh</u>
<u>2012</u>	<u>97.80</u>	<u>90.52</u>
<u>2013</u>	<u>98.19</u>	<u>90.91</u>
<u>2014</u>	<u>98.58</u>	<u>91.30</u>
<u>2015</u>	<u>98.97</u>	<u>91.69</u>
<u>2016</u>	<u>99.37</u>	<u>92.09</u>
<u>2017</u>	<u>99.76</u>	<u>92.48</u>
<u>2018</u>	<u>100.16</u>	<u>92.88</u>
<u>2019</u>	<u>100.56</u>	<u>93.28</u>
<u>2020</u>	<u>100.96</u>	<u>93.68</u>
<u>2021</u>	<u>101.36</u>	<u>94.08</u>
<u>2022</u>	<u>101.77</u>	<u>94.49</u>
<u>2023</u>	<u>102.17</u>	<u>94.89</u>
<u>2024</u>	<u>102.58</u>	<u>95.30</u>
<u>2025</u>	<u>102.99</u>	<u>95.71</u>
<u>2026</u>	<u>103.40</u>	<u>96.12</u>
<u>2027</u>	<u>103.81</u>	<u>96.53</u>
<u>2028</u>	<u>104.23</u>	<u>96.95</u>
<u>2029</u>	<u>104.64</u>	<u>97.36</u>
<u>2030</u>	<u>105.06</u>	<u>97.78</u>
<u>2031</u>	<u>105.48</u>	<u>98.20</u>
<u>2032</u>	<u>106.50</u>	<u>99.22</u>
<u>2033</u>	<u>107.53</u>	<u>100.25</u>
<u>2034</u>	<u>108.58</u>	<u>101.30</u>
<u>2035</u>	<u>109.63</u>	<u>102.35</u>
<u>2036</u>	<u>110.69</u>	<u>103.41</u>
<u>2037</u>	<u>111.77</u>	<u>104.49</u>

below:

	<u>Heavy Load Energy Price</u>	<u>Light Load Energy Price</u>
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2012	70.78	65.43
2013	71.90	66.55
2014	73.02	67.67
2015	74.18	68.83
2016	75.34	69.99
2017	76.53	71.18
2018	77.73	72.38
2019	78.96	73.61
2020	80.21	74.86
2021	81.47	76.12
2022	82.76	77.41
2023	84.07	78.72
2024	85.40	80.05
2025	86.75	81.40
2026	88.13	82.78
2027	89.52	84.16
2028	90.93	85.58
2029	92.37	87.02
2030	93.84	88.49
2031	95.33	89.98
2032	96.26	90.91
2033	97.20	91.85
2034	98.15	92.79
2035	99.10	93.75
2036	100.07	94.72
2037	101.05	95.70

7.1.2 ~~During the months of November and December, Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours for each year as specified below:~~

	<u>Heavy Load Energy Price</u>	<u>Light Load Energy Price</u>
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2012	115.56	106.82
2013	117.38	108.65
2014	119.22	110.48

2017	122.44	131.19	116.21
2018	124.37	133.26	118.18
2019	126.34	135.37	120.18
2020	128.34	137.51	122.22
2021	130.36	139.67	124.28
2022	132.42	141.88	126.38
2023	134.51	144.12	128.52
2024	136.64	146.40	130.69
2025	138.81	148.72	132.90
2026	141.00	151.07	135.14
2027	143.23	153.46	137.41
2028	145.49	155.88	139.73
2029	147.80	158.36	142.08
2030	150.16	160.88	144.48
2031	152.53	163.42	146.90
2032	154.02	165.02	148.42
2033	155.52	166.62	149.95
2034	157.04	168.25	151.50
2035	158.56	169.89	153.07
2036	160.11	171.55	154.64
2037	161.68	173.23	156.24

7.1.4 ~~During the months of June, September, October, January and February, Idaho Power shall pay the non-levelized Heavy Load Energy Price for all Base Energy received during Heavy Load Hours and the Light Load Energy Price for all Base Energy received during Light Load hours as specified below:~~

<u>Year</u>	<u>Heavy Load Energy Price</u> Mills/kWh	<u>Light Load Energy Price</u> Mills/kWh
2012	96.30	89.02
2013	97.82	90.54
2014	99.35	92.07
2015	100.92	93.64
2016	102.51	95.23
2017	104.12	96.84
2018	105.76	98.48
2019	107.43	100.15
2020	109.13	101.85
2021	110.85	103.57
2022	112.60	105.32
2023	114.38	107.10

2033	94.82	154.80	129.00
2034	95.76	156.35	130.29
2035	96.72	157.91	131.59
2036	97.69	159.49	132.91
2037	98.67	161.09	134.24

- 7.3 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the lower of the current month's Market Energy Reference Price, Light Load Energy Price or the All Hours Energy Price specified in paragraph 7.2.
- 7.4 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.
- 7.5 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 Environmental Attributes. Idaho Power will be granted ownership of 50% of all of the Environmental Attributes associated with the Facility and Seller will likewise retain 50% ownership of all of the Environmental Attributes associated with the Facility. Title of 50% Environmental Attributes shall pass to Idaho Power at the same time that transfer of title of the associated Test Energy or Net Energy to Idaho Power occurs. If after the Effective Date any additional Environmental Attributes or similar environmental value is created by legislation, regulation, or any other action, including but not limited to, carbon credits and carbon offsets, Idaho Power shall be granted ownership of 50% of these additional

invoice Idaho Power for the reasonable costs, not to exceed 50% of the total cost of providing such certification. If Idaho Power elects to obtain its own certifications, then Seller shall fully cooperate with Idaho Power in obtaining such certification.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy to the Idaho Power Point of Delivery for the full term of the Agreement.
- 9.2 Interconnection Facilities - Except as specifically provided for in this Agreement, the required Interconnection Facilities will be in accordance with Schedule 72, the Generation Interconnection Process and Appendix B. The Seller is responsible for all costs associated with this equipment as specified in Schedule 72 and the Generation Interconnection Process, including but not limited to initial costs incurred by Idaho Power for equipment costs, installation costs and ongoing monthly Idaho Power operations and maintenance expenses.

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, 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 produced and delivered to the Idaho Power Point of Delivery to Idaho Power's Designated Dispatch Facility.

12.2.3 Under no circumstances will the Seller deliver Net Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount at any moment in time. 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 contract 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 Article

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 ten (10) days' prior written notice to Idaho Power.

13.3 Seller to Provide Certificate of Insurance - As required in paragraph 4.1.6 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.

- 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.

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.

To Idaho Power:

Original document to:

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

Copy of document to:

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

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

ARTICLE XXVI: ADDITIONAL TERMS AND CONDITIONS

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

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

ARTICLE XXVII: SEVERABILITY

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

ARTICLE XXVIII: COUNTERPARTS

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

APPENDIX A

A-1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

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

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

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

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect the meter reading information from the Idaho Power provided Metering Equipment that measures the Net Energy and energy delivered to supply Station Use for the Facility recorded at 12:00 AM (Midnight) of the last day of the month. The meter information collected will include but not be limited to energy production, Station Use, the maximum generated power (kW) and any other required energy measurements to adequately administer this Agreement.

A-3 ROUTINE REPORTING

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

Idaho Power Contact Information

Daily Energy Production Reporting

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

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

Planned and Unplanned Project outages

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

- Project Identification - Project Name and Project Number
- Approximate time outage occurred
- Estimated day and time of project coming back online

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Murphy Flats Solar Power Project

Project Number: 12616650

B-1 DESCRIPTION OF FACILITY

A Solar facility making use of ~~125-132~~ acres, consisting of ~~74,07573,800~~ individual ~~28570~~ Watt individual photo voltaic panels for a total nameplate rating of the PV panels being ~~21.0330.00025~~ MW and 10- 2 MW Siemens Inverters.

Var Capability (Both leading and lagging: Leading is .95 Lagging is .95

B-2 LOCATION OF FACILITY

Near: Murphy, Idaho

Sections: 25, 26, 35 & 36 Township: 2S Range: 2E County: Owyhee

Description of Interconnection Location: Antelope Lane

Nearest Idaho Power Substation: Sinker Creek

B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected June-August 1, 2012 as the Scheduled First Energy Date.

Seller has selected July-September 1, 2012 as the Scheduled Operation Date.

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

B-7 METERING AND TELEMETRY

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

B-8 NETWORK RESOURCE DESIGNATION

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

APPENDIX C

ENGINEER'S CERTIFICATION
OF
OPERATIONS & MAINTENANCE POLICY

The undersigned _____, on behalf of himself /herself 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 Idaho Power Company (IPCo) Facility No. _____ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the _____ Project, is located in Section ____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and

APPENDIX C
ENGINEER'S CERTIFICATION
OF
ONGOING OPERATIONS AND MAINTENANCE

The undersigned _____, on behalf of himself/herself 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 Idaho Power Company (IPCo) Facility No. _____ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ 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.

APPENDIX C

ENGINEER'S CERTIFICATION

OF

DESIGN & CONSTRUCTION ADEQUACY

The undersigned _____, on behalf of himself/herself 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 Idaho Power Company (IPCo) Facility No _____ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.

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 and any other 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 or any other required security amount(s). The Seller shall be responsible for all costs, and receive any interest earned associated with establishing and maintaining the escrow account(s).
2. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Delay Security or any other required security amounts: a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit