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IDAHO PUBLIC  
UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Lead Counsel  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

November 22, 2011

**VIA HAND DELIVERY**

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

Re: Case No. IPC-E-11-25  
*IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY  
FOR A DETERMINATION REGARDING THE FIRM ENERGY SALES  
AGREEMENT FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY  
BETWEEN IDAHO POWER COMPANY AND DYNAMIS ENERGY, LLC*

Dear Ms. Jewell:

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

Very truly yours,



Donovan E. Walker

DEW:csb  
Enclosures

RECEIVED

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IDAHO PUBLIC UTILITIES COMMISSION

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  
Telephone: (208) 388-5317  
Facsimile: (208) 388-6936  
dwalker@idahopower.com  
jwilliams@idahopower.com

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF IDAHO POWER COMPANY FOR	)	CASE NO. IPC-E-11-25
A DETERMINATION REGARDING THE	)	
FIRM ENERGY SALES AGREEMENT FOR	)	APPLICATION
THE SALE AND PURCHASE OF ELECTRIC	)	
ENERGY BETWEEN IDAHO POWER	)	
COMPANY AND DYNAMIS ENERGY, LLC.	)	
	)	

Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), hereby respectfully applies to the Idaho Public Utilities Commission ("Commission") for an Order accepting or rejecting the Firm Energy Sales Agreement ("FESA") between Idaho Power and Dynamis Energy, LLC ("Dynamis" or "Seller") under which Dynamis would sell and Idaho Power would purchase electric energy generated by the Dynamis Ada County Landfill project ("Facility") located near Boise, Idaho.

In support of this Application, Idaho Power represents as follows:

## **I. BACKGROUND**

1. Sections 201 and 210 of PURPA, and pertinent regulations of the Federal Energy Regulatory Commission ("FERC"), require that regulated electric utilities purchase power produced by cogenerators or small power producers that obtain Qualifying Facility ("QF") status. The rate a QF receives for the sale of its power is generally referred to as the "avoided cost" rate and is to reflect the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the QF, such utility would generate itself or purchase from another source. The Commission has authority under PURPA Sections 201 and 210 and the implementing regulations of the FERC, 18 C.F.R. § 292, to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules.

## **II. THE FIRM ENERGY SALES AGREEMENT**

2. Dynamis proposes to own, operate, and maintain a 22 megawatt (Maximum Capacity Amount) landfill waste to energy generating facility to be located in Idaho Power's service territory near Boise, Idaho. The Facility will be a QF under the applicable provisions of PURPA. Idaho Power and Dynamis entered into a FESA for the sale and purchase of the energy generated by the Facility on November 16, 2011. The FESA for this Facility was executed by C. Lloyd Mahaffey, Chairman and Chief Executive Officer for Dynamis Energy, LLC, on November 14, 2011. It was subsequently executed by Idaho Power on November 16, 2011, and now filed for the Commission's review on November 22, 2011. A copy of the FESA is attached to this Application as Attachment No. 1. This FESA is the result of negotiations between Idaho

Power and Dynamis and contains the avoided cost rates established pursuant to the Commission's approved Integrated Resource Plan ("IRP") avoided cost methodology as currently established by the Commission.

3. Dynamis has elected October 15, 2013, as the Scheduled First Energy Date and February 14, 2014, as the Scheduled Operation Date for this Facility. See Appendix B. The FESA requires Dynamis to meet various requirements in order for Idaho Power to accept energy deliveries from this Facility. Idaho Power will monitor compliance with these initial requirements. In addition, Idaho Power will monitor the ongoing requirements through the full term of the FESA.

4. The contract term specified in the FESA is 20 years and includes shared ownership of the Renewable Energy Certificates ("RECs") generated over the entire term of the FESA.

5. Dynamis and Idaho Power have agreed to Delay Liquidated Damages as well as the requirement to post Delay Security. Delay Liquidated Damages shall apply should Dynamis fail to bring the Facility on-line by the Scheduled Operation Date as specified in the FESA. Delay Liquidated Damages are agreed to be calculated as described hereafter. If the Operation Date occurs after the Scheduled Operation Date, but within 90 days of that Scheduled Operation Date, then damages are equal to the sum of all Hourly Energy Production amounts for the entire Delay Period multiplied by the applicable Delay Price; if the Operation Date occurs more than 90 days past the Scheduled Operation Date, then damages are specified as \$45 per kilowatt ("kW") of nameplate capacity for the Facility. If the Facility fails to achieve its Operation Date within 90 days of the Scheduled Operation Date, the failure will be a Material Breach of

the FESA and Idaho Power may terminate the FESA if not cured by Dynamis. Dynamis and Idaho Power have also agreed to Delay Security provisions requiring Dynamis to post Delay Security in an amount equal to \$45 per kW of nameplate capacity within 30 days of Commission approval of the FESA. These Delay Damage and Security provisions have previously been approved as reasonable by the Commission in several PURPA FESAs. See Case Nos. IPC-E-10-02; IPC-E-10-05; IPC-E-10-15 through IPC-E-10-19; IPC-E-10-22; IPC-E-10-24; IPC-E-10-26; IPC-E-10-37 through IPC-E-10-45; and IPC-E-10-47 through IPC-E-10-50.

6. Dynamis and Idaho Power have agreed to terms providing for each party's 50 percent ownership of any Environmental Attributes, including RECs, generated by the Facility for the full 20-year term of the FESA. This has mutual benefits for both Idaho Power's customers and the Facility. These provisions clarify the ownership of the Environmental Attributes generated by the Facility such that each party can potentially maximize what benefit it can from such ownership. It clarifies the QF developer's ownership and subsequent ability to retain RECs and obtain what value it can for them to help offset the costs of development and operation. It also clarifies Idaho Power's ownership and ability to obtain what value it can for its customers, to retire them and claim the Environmental Attributes of the renewable generation as part of its system, or to utilize them to meet the requirements of potential future Renewable Portfolio Standards that may require the Company to obtain and have RECs.

7. The energy prices in FESA are derived from Idaho Power's AURORA economic dispatch model for this Facility's estimated energy shape as specified by Commission requirements for the IRP-based avoided cost methodology. The energy

price identified by the IRP methodology for this Facility is equivalent to a 20-year levelized price of \$92.35 per megawatt-hour. However, the actual energy pricing stream varies throughout the term of the contract based upon the month and time of day during which the energy is delivered to Idaho Power. The energy prices in the FESA contain the previously approved differentiation between both Heavy Load and Holiday Standard Energy purchase pricing. Seller only plans to deliver energy during Heavy Load and Holiday Standard Energy hours and does not intend to produce and deliver any Light Load energy to Idaho Power. See Sections 7.1, 7.2, and 7.3.

8. The FESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. The Facility is currently in the generator interconnection process. Assuming that Seller continues to provide necessary technical information and make payments for interconnection materials and studies in a timely manner, Idaho Power's Delivery business unit will be able to proceed with its interconnection and transmission study processes, which ultimately results in a Schedule 72 Generator Interconnection Agreement, or "GIA" between Dynamis and Idaho Power. PURPA QF generation must be designated as a network resource ("DNR") on Idaho Power's system. Upon resolution of any and all upgrades required to acquire transmission capacity for this Facility's generation, and upon execution of the FESA and the GIA, this Facility may then be designated as a network resource.

9. As previously stated in paragraph 3 of this Application, and set forth in Appendix B to the FESA, Dynamis has selected October 15, 2013, for the Scheduled First Energy Date and February 14, 2014, as the Scheduled Operation Date. Dynamis

has been advised that it is Dynamis's responsibility to work with Idaho Power's Delivery business unit to ensure that sufficient time and resources will be available for Delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow the Facility to achieve the February 14, 2014, Scheduled Operation date. Seller has been further advised that delays in the interconnection or transmission process do not constitute excusable delays in achieving the Scheduled Operation date and if Seller fails to achieve the Scheduled Operation date at the times specified in the FESA, delay damages will be assessed

10. Dynamis has also been made aware of and accepted the provisions of the FESA and the Company's approved Tariff Schedule 72 regarding non-compensated curtailment or disconnection of its Facility should certain operating conditions develop on the Company's system. According to the standard provisions in Section 12 of the FESA, curtailment without compensation may occur if there is an event of Force Majeure, a Forced Outage, or a temporary disconnection of the Facility in accordance with Tariff Schedule 72. If the generation from the Facility will have an adverse effect upon Idaho Power's 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. The parties' intent and understanding is that non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of the Company's system such that it may have a detrimental effect upon the Company's ability to manage its

thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system.

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

### **III. MODIFIED PROCEDURE**

12. Idaho Power believes that a hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing. RP 201 *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present its testimony in such hearing.

### **IV. COMMUNICATIONS AND SERVICE OF PLEADINGS**

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

Donovan E. Walker, Lead Counsel  
Jason B. Williams, Corporate Counsel  
Idaho Power Company  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

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

### **V. REQUEST FOR RELIEF**

14. Idaho Power Company respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure; (2) accepting or rejecting the Firm Energy Sales Agreement between Idaho Power

Company and Dynamis Energy, LLC, without change or condition; and, if accepted, (3) declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power Company and Dynamis Energy, LLC, be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 22<sup>nd</sup> day of November 2011.

A handwritten signature in black ink, appearing to read "Donovan E. Walker", written over a horizontal line.

DONOVAN E. WALKER  
Attorney for Idaho Power Company

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of November 2011 I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

**Dynamis Energy, LLC**  
C. Lloyd Mahaffey, CEO  
Wade D. Thomas, General Counsel  
776 East Riverside Drive, Suite 150  
Eagle, Idaho 83616

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email Lloyd@dynamisenergy.com  
wthomas@dynamisenergy.com



Donovan E. Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-25**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 1**

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

DYNAMIS ENERGY, LLC

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FIRM ENERGY SALES AGREEMENT  
(Greater than 10 aMW)

Project Name: Dynamis Ada County Landfill Project

Project Number: 21615400

THIS AGREEMENT, entered into on this 16<sup>th</sup> day of November, 2011 between Dynamis Energy, LLC, an Idaho limited liability company (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

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

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

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

ARTICLE I: DEFINITIONS

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

- 1.1 "Business Hours" – Daily hours of 8:00 AM to 5:00 PM Mountain Time, Monday through Friday excluding New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas and any other Idaho Power observed holiday.
- 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, and 5.6 .
- 1.5 “Delay Period” – All hours 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. If this value is less than \$15.00 per MWh, then this value will be \$15.00 per MWh
- 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;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. REC Reporting Rights are the right of a REC owner to report the ownership and use 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 owner’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 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

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<sup>1</sup> 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.

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 Idaho Power’s system at the Point of Delivery.
- 1.11 “Forced Outage” –
- 1.11.1 A reduction in the Facility’s delivery of Net Energy which is the result of an Idaho Power imposed curtailment, interruption or reduction of Net Energy as a result of line construction, electrical system maintenance requirements, emergencies, electrical system operating conditions, unplanned maintenance or electrical system reliability emergencies on its system or as otherwise required by Prudent Electrical Practices or;
- 1.11.2 A reduction in the Facility’s production of Net Energy which is the result of equipment failure at the Seller’s generation facility that is not a Force Majeure event or caused by neglect, disrepair or lack of adequate preventative maintenance.
- 1.12 “Heavy Load Energy” – All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system during all Heavy Load Hours less any Surplus Energy.
- 1.13 “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.
- 1.14 “Holiday Evening Hours” - The daily hours beginning at 11:00 pm, ending at 7:00 am Mountain Time (8 hours) on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

- 1.15 "Holiday Standard Energy" – All Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during all Holiday Standard Hours less any Surplus Energy
- 1.16 "Holiday Standard Hours" - The daily hours beginning at 7:00 am, ending at 11:00 pm Mountain Time, (16 hours) on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.17 "Interconnection Facilities" - All equipment specified in Schedule 72.
- 1.18 "Light Load Energy" – All Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during all Light Load Hours and Holiday Evening Hours less any Surplus Energy.
- 1.19 "Light Load Hours" – The daily hours beginning at 11:00 pm, ending at 7:00 am Mountain Time (8 hours), excluding all hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.20 "Losses" – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the Metering Point and the Point of Delivery. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.21 "Market Energy Reference Price" – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.22 "Material Breach" – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.23 "Maximum Capacity Amount" – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement and shall not exceed the maximum capacity as specified within the Generation Interconnection Agreement.
- 1.24 "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.
- 1.25 "Metering Point" - The physical point at which the Metering Equipment is located that enables accurate measurement of the Net Energy deliveries to Idaho Power at the Point of Delivery for this Facility that provides all necessary data to administer this Agreement.

- 1.26 “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.
- 1.27 “Nameplate Capacity” – The full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt-amperers, kilowatts, volts or other appropriate units, which are usually indicated on a nameplate attached to the individual machine or device.
- 1.28 “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.
- 1.29 “Operation Date” – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.30 “Performance Hours” – All Heavy Load Hours and Holiday Standard Hours excluding the daily hour beginning at 7:00 AM ending at 8:00 AM and hour beginning at 10:00 PM ending at 11:00 PM, all measured in Mountain Standard Time.
- 1.31 “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.
- 1.32 “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.
- 1.33 “Renewable Energy Certificate (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.

- 1.34 “Scheduled Operation Date” – The date specified in Appendix B when Seller anticipates having achieved 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 will have achieved the Operation Date.
- 1.35 “Schedule 72” – Idaho Power’s Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission. The Seller shall be responsible to pay all costs of interconnection and integration of this Facility into the Idaho Power electrical system as specified within Schedule 72.
- 1.36 “Special Facilities” - Additions or alterations of transmission and/or distribution lines and transformers as described in Schedule 72.
- 1.37 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.38 “Surplus Energy” – defined as:
- 1.38.1 All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system prior to the Operation Date, or
- 1.38.2 All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system after the Operation Date and during Heavy Load Hours or Holiday Standard Hours that is greater than 110% of the Hourly Energy Production amount for the corresponding hour specified in Appendix E. In addition, delivering Net Energy to Idaho Power that exceeds the Maximum Capacity shall be a Material Breach of this Agreement, or
- 1.38.3 All Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system for a given hour during the first Contract Year if the Net Energy produced by the Seller’s Facility and delivered to the Idaho Power electrical system during any Performance Hour is less than 75% of the Hourly Energy Production amount for the corresponding hour specified in Appendix E, or

1.38.4 All Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system for a given hour after the first Contract Year if the Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during any Performance Hour is less than 90% of the Hourly Energy Production amount for the corresponding hour specified in Appendix E, or

1.39 "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 a cumulative total Nameplate Capacity for the entire Facility. Upon receipt of this data, Idaho Power shall review the provided data and determine if the Nameplate Capacity specified is reasonable based upon the manufacturer's specified generation ratings for the specific generation units and that the Nameplate Capacity of the Facility does not exceed the Maximum Capacity.

- 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 (20) Contract Years from the Operation Date.
- 5.2 Operation Date - The Operation Date shall be the date selected by Seller upon three (3) business days notice to Idaho Power, provided that 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.

5.3.1 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; provided however that delays in the interconnection and transmission network upgrade study, design and construction process that are solely caused by or solely the result of Idaho Power's failure to interconnect the Facility in accordance with the Facility's interconnection agreement estimated date shall be considered a Force Majeure event accepted by both Parties.

5.3.2 It is the Parties reasonable expectation that this Agreement will be approved by the Idaho Public Utilities Commission ("Commission") within ninety (90) days of its submittal by Idaho Power to the Commission and that the Agreement will be submitted for approval within fifteen (15) days of execution by the Parties. If Commission approval of this Agreement occurs more than ninety (90) days after submittal occurs, the Scheduled Operation Date shall be deemed extended, on a day-for-day basis, equal to the number of days the Commission approval exceeds ninety (90) days after the submittal date.

5.3.3 If the Operation Date occurs after the Scheduled Operation Date but on or prior to 90 days following the Scheduled Operation Date, Seller shall pay Idaho Power Delay Liquidated Damages calculated at the end of each calendar month after the Scheduled Operation Date as follows:

Delay Liquidated Damages are equal to the sum of all Hourly Energy Production amounts specified in Appendix E for the entire Delay Period multiplied by the applicable Delay Price.

5.3.4 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation Date the Seller shall pay Idaho Power Delay Liquidated Damages, in addition to those provided in paragraph 5.3.3, 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 5.3.3.

5.4 If Seller fails to achieve the Operation Date within ninety (90) days following the Scheduled Operation Date, such failure will be a Material Breach and Idaho Power may terminate this Agreement at any time until the Seller cures the Material Breach. Additional Delay Liquidated Damages beyond those calculated in 5.3.1 and 5.3.2 will be calculated and payable using the Delay Liquidated Damage calculation described in 5.3.1 above for all days exceeding ninety (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, and
- b) Received and accepted an interconnection feasibility study for this Facility, and

c) Seller acknowledges responsibility for all interconnection costs and any costs associated with acquiring adequate firm transmission capacity to enable the project to be classified as an Idaho Power firm network resource. If final interconnection or transmission studies are not complete at the time the Seller executes this Agreement, the Seller understands and accepts that Damages and Liquidated Damages associated with the project's 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 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 – Forty-five (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW.

5.8.1.1 In the event (a) Seller provides Idaho Power with certification that 1) a generation interconnection agreement specifying a schedule that will enable this Facility to achieve the Operation Date no later than the Scheduled Operation Date has been completed and the Seller has paid all required interconnection costs, or 2) a generation interconnection agreement is substantially complete and all material costs of interconnection have been identified and agreed upon and the Seller is in compliance with all terms and conditions of the generation interconnection agreement, the Delay Security calculated in accordance with paragraph 5.8.1 will be reduced by ten percent (10%).

5.8.1.2 If the Seller has received a reduction in the calculated Delay Security as specified in paragraph 5.8.1.1 and subsequently 1) at Seller's request, the generation interconnection agreement specified in paragraph 5.8.1.1 is revised and as a result the Facility will not achieve its Operation Date by the Scheduled Operation Date, or 2) if the Seller does not

maintain compliance with the generation interconnection agreement, the full amount of the Delay Security as calculated in paragraph 5.8.1 will be subject to reinstatement and will be due and owing within 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 and 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. At no time will the total amount of Net Energy produced by the Facility and delivered by the Seller to the Point of Delivery exceed the Maximum Capacity Amount.
- 6.2 Net Energy Amounts - Seller intends to produce and deliver hourly Net Energy amounts equal to the Hourly Energy Production amounts specified in Appendix E.
- 6.2.1 Adjustment of Hourly Energy Production amounts - If 1) Idaho Power is excused from accepting the Seller's Net Energy as specified in paragraph 12.2.1, or 2) a Declared Suspension of Energy Deliveries is initiated by the Seller and accepted by Idaho Power, the Hourly Energy Production amount as specified in Appendix E for the specific hour in which the reduced Net Energy deliveries occurs will be reduced by the level of Net Energy reduction.

Example 1 - The Hourly Energy Production amount specified in Appendix E for January, hour 8 is 20 MW, if Idaho Power requests a reduction in the Facility's output of 50% for that hour, the 20 MW Hourly Energy Production amount for just that specific hour will be reduced to 10 MW.

Example 2 - The Hourly Energy Production amount specified in Appendix E for January, hour 8 is 20 MW. If Declared Suspension of Energy Deliveries is initiated by the Seller and accepted by Idaho Power that results in total shutdown of the Facility, the Hourly Energy Production will be reduced to 0 MW for this hour and any other hours in which the Declared Suspension of Energy Deliveries is in effect.

This adjusted Hourly Energy Production amount will be used in applicable Surplus Energy calculations and performance calculations for only the specific hour in which Idaho Power was excused from accepting the Seller's Net Energy or the Declared Suspension of Energy Deliveries is in effect.

6.3 Beginning with the first day of the seventh (7<sup>th</sup>) month after the Operation Date, unless excused by an event of Force Majeure, a Forced Outage, or as Scheduled Maintenance, Seller delivers hourly Net Energy to Idaho Power that exceeds plus or minus 10% of the Hourly Energy Production amounts specified in Appendix E for more than 1) Ten (10) consecutive hours, or 2) Seventy two (72) hours in any one calendar month the applicable energy price per MWh shall be reduced by fifteen percent (15%) for all Net Energy and Surplus Energy delivered to Idaho Power for all hours beginning with the first hour after either of these criteria has been met and the reduced energy payments rate shall stay in effect a period of seven (7) days.

6.3.1 If during this seven (7) day period, either of these criteria are again met, a new seven (7) day period of reduced energy payments will begin with the first hour after the criteria has been met.

6.4 Unless excused by an event of Force Majeure, Forced Outage, or Scheduled Maintenance Seller's failure to deliver 30,000 MWh in any Contract Year shall constitute an event of default.

#### ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Heavy Load Purchase Price – For all Heavy Load Energy accepted by Idaho Power, Idaho Power will pay the non-levelized Heavy Load Purchase Price as specified in Appendix F.

- 7.2 Holiday Standard Purchase Price – For all Holiday Standard Energy accepted by Idaho Power, Idaho Power will pay the non-levelized Holiday Standard Purchase Price as specified in Appendix F.
- 7.3 Light Load Energy Price – The Seller does not intend to produce and deliver any Light Load Energy to Idaho Power. Any Light Load Energy produced by the Seller and delivered to Idaho Power may 1) be accepted by Idaho Power at no cost to Idaho Power, or 2) Idaho Power may curtail all Light Load Energy deliveries with no notice provided to the Seller, or 3) the Seller and Idaho Power may mutually agree to terms and conditions of Light Load Energy deliveries prior to the delivery of Light Load Energy. The mutual agreement will specify at minimum the pricing, hours and quantity of Light Load Energy to be delivered to Idaho Power.
- 7.3.1 The Party requesting Light Load Energy deliveries shall provide written notification to the other Party during Business Hours. This notification shall include desired hours of energy deliveries and proposed energy price, the other party shall then respond within a reasonable period of time during Business Hours.
- 7.3.2 Upon mutual agreement, the requesting Party shall provide a written document authorized and executed by an appropriate representative. This document must include the mutually agreed upon pricing, hours of delivery and other required terms and conditions. The other Party shall then within a reasonable time, review and execute the provided documentation if the conditions are acceptable.
- 7.3.3 Only after the written document has been executed by both Parties shall an exception to Light Load Energy deliveries as specified in paragraph 7.3 exist.
- 7.4 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 or eighty-five percent (85%) of the Holiday Standard Purchase Price.
- 7.5 Payment Due Date – Undisputed Energy payments, less any payments due to Idaho Power will be disbursed to the Seller within thirty (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.

7.6 Continuing Jurisdiction of the Commission - This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

#### ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

8.1 Environmental Attributes. Idaho Power will be granted ownership of fifty percent (50%) of all of the Environmental Attributes associated with the Facility and Seller will likewise retain fifty percent (50%) ownership of all of the Environmental Attributes associated with the Facility. Title of fifty percent (50%) of the 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 fifty percent (50%) of these additional Environmental Attributes or environmental values that are associated with the Surplus 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 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 Western Renewable Energy Generation Information System ("WREGIS") account or any other Environment Attribute accounting and tracking system selected by 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 Facility and the transfer of fifty percent (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 fifty percent (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 fifty percent (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 on an hourly bases and 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 hourly 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, Forced Outage, scheduled outage 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 amounts equal to the applicable Hourly Energy Production amounts specified in Appendix E contingent to the Seller providing evidence that Seller's facility and fuel supply was ready and able to deliver the specified Hourly Energy Production amounts except for Idaho Power's inability to receive the Seller's energy. 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. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.
- 12.2.4 If Idaho Power is unable to accept the energy from this Facility and is not excused from accepting the Facility's energy, Idaho Power's damages shall be limited to only the value of the estimated energy that Idaho Power was unable to accept. Idaho Power will have no

responsibility to pay for any other costs, lost revenue or consequential damages the Facility may incur.

### 12.3 Seller Declared Suspension of Energy Deliveries

12.3.1 If the Seller's Facility experiences a Seller caused Forced Outage, 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 forty eight (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 twenty four (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 to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance

of the Seller's Facility.

- 12.4 Scheduled Maintenance – On or before January 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 4.1.5 herein and annually thereafter, Seller shall furnish Idaho Power a certificate of insurance, together with the endorsements required therein, evidencing the coverage as set forth above.

13.4 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 13.3 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage. Failure to provide this notice and to expeditiously reinstate or replace the coverage will constitute a Material Breach of this Agreement.

#### ARTICLE XIV: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the effective date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome. Force Majeure does not include disruptions or curtailment of the Facility's fuel supply that are the result of actions or inactions by the fuel supplier or

changes in law or regulation occurring after the effective date. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

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

#### ARTICLE XV: LIABILITY; DEDICATION

- 15.1 Limitation of Liability - Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. Neither party shall be liable to the other for any indirect, special, consequential, nor punitive damages, except as expressly authorized by this Agreement. Consequential damages will include, but not be limited to, the value of Environmental Attributes and any adverse impact to the fuel supply or the fuel supply due to the inability of Idaho Power to accept energy from the Facility.
- 15.2 Dedication - No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the Party or the public or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XVI: SEVERAL OBLIGATIONS

- 16.1 Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

ARTICLE XVII: WAIVER

- 17.1 Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

ARTICLE XVIII: CHOICE OF LAWS AND VENUE

- 18.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions.
- 18.2 Venue for any litigation arising out of or related to this Agreement will lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

ARTICLE XIX: DISPUTES AND DEFAULT

- 19.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.
- 19.2 Notice of Default -
- 19.2.1 Defaults - If either Party fails to perform any of the terms or conditions of this Agreement (an "event of default"), the 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 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; and

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

19.3.3 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses. At least every fifth Contract Year, Seller will update the documentation described in Paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be an event of default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

ARTICLE XX: GOVERNMENTAL AUTHORIZATION

- 20.1 This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party of this Agreement.

ARTICLE XXI: COMMISSION ORDER

- 21.1 This Agreement shall become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

ARTICLE XXII: SUCCESSORS AND ASSIGNS

- 22.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any party which Idaho Power may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of Idaho Power's rights, obligations and interests under this Agreement. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXIII: MODIFICATION

- 23.1 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

ARTICLE XXIV: TAXES

- 24.1 Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be

paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

ARTICLE XXV: NOTICES

25.1 All written notices under this Agreement shall be directed as follows and shall be considered delivered when faxed, e-mailed and confirmed with deposit in the U.S. Mail, first-class, postage prepaid, as follows:

To Seller:

Original document to:

Dynamis Energy, LLC  
C. Lloyd Mahaffey, CEO  
776 E. Riverside Drive, Suite 150  
Eagle, ID 83616

Telephone: 208-938-2680  
FAX: 208-938-2684  
E-mail: Lloyd@dynamisenergy.com

Copy of document to:

Dynamis Energy, LLC  
Wade D. Thomas, General Counsel  
776 E. Riverside Drive, Suite 150  
Eagle, ID 83616

Telephone: 208-938-2680  
FAX: 208-938-2684  
E-mail: wthomas@dynamisenergy.com

To Idaho Power:

Original document to:

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
Appendix E	-	Hourly Energy Production
Appendix F	-	Monthly Energy Prices

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

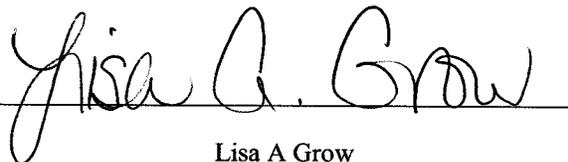
29.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

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

Dynamis Energy, LLC

By



Lisa A Grow  
Sr. Vice President, Power Supply

By



C. Lloyd Mahaffey  
Chairman and CEO

Dated

11.16.11

"Idaho Power"

Dated

11/14/11

"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** \_\_\_\_\_

**Facility  
Output**

**Station  
Usage**

**Station  
Usage**

**Metered  
Maximum Generation**

**Meter Number:** \_\_\_\_\_

**End of Month kWh Meter Reading:** \_\_\_\_\_

**Beginning of Month kWh Meter:** \_\_\_\_\_

**Difference:** \_\_\_\_\_

**Times Meter Constant:** \_\_\_\_\_

**kWh for the Month:** \_\_\_\_\_

**Metered Demand:** \_\_\_\_\_

kW

**Net Generation**

**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 hourly 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: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

Project On-site Contact information

Name: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

## APPENDIX B

### FACILITY AND POINT OF DELIVERY

Project Name: Dynamis Ada County Landfill Project

Project Number: 21615400

#### B-1 DESCRIPTION OF FACILITY

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

The Facility is a waste-to-energy system that thermally converts waste into heat, which heats a steam boiler (approximate capacity is 220,000 pph) that in turn drives a 23 MW nameplate capacity steam turbine. The facility will employ a power limiter to limit Net Energy output to 22 MW.

*Var Capability (Both leading and lagging) Leading is 1.0 pf, Lagging is 0.95 at the Point of Interconnection (POI) with the generator rated 0.97 pf leading, 0.85 pf lagging while connected to the utility. When the generator is not on-line with the utility the auxiliary load power factor may range from 0.80 pf leading to 1.0 pf lagging. Leading power factor for the generation plant is defined as VAR flow into the plant (import VARs) and lagging power factor is VAR flow out of the plant (export VARs) as measured at the POI.*

#### B-2 LOCATION OF FACILITY

Near: Ada County Landfill

Section: 12, Township: 4N, Range 1E and 2E, Ada County.

GPS Coordinates: 43° 42' 20" N; 116° 16' 26" W

Description of Interconnection Location: Idaho Power's Boise Bench – Emmett – Ustick 138 kV line serves the interconnection area. The 138 kV in-and-out extension will be approximately 0.5 miles in length and will tap the existing transmission system between Dry Creek Junction and Gary substation.

Interconnection will require a new 138 kV class substation at the Facility site.

Nearest Idaho Power Substation: Gary substation

**B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE**

Seller has selected October 15, 2013 as the Scheduled First Energy Date.

Seller has selected February 15, 2014 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 22 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 where the 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 Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation Metering Equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a

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

#### B-7 METERING AND TELEMETRY

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

#### B-8 NETWORK RESOURCE DESIGNATION

Idaho Power cannot accept or pay for generation from this Facility until a Network Resource Designation ("NRD") application has been accepted by Idaho Power's delivery business unit. Federal Energy Regulatory Commission ("FERC") rules require Idaho Power to prepare and submit the NRD. Because much of the information Idaho Power needs to prepare the NRD is specific to the Seller's Facility, Idaho Power's ability to file the NRD in a timely manner is contingent upon timely receipt of

the required information from the Seller. Prior to Idaho Power beginning the process to enable Idaho Power to submit a request for NRD status for this Facility, the Seller shall have completed all requirements as specified in Paragraph 5.7 of this Agreement. **Seller's failure to provide complete and accurate information in a timely manner can significantly impact Idaho Power's ability and cost to attain the NRD designation for the Seller's Facility and the Seller shall bear the costs of any of these delays that are a result of any action or inaction by the Seller.**

APPENDIX C

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for a fifteen (15) year period.
9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C

ENGINEER'S CERTIFICATION

OF

ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a fifteen (15) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.

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

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

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C

ENGINEER'S CERTIFICATION  
OF  
DESIGN & CONSTRUCTION ADEQUACY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as IPCo Facility No \_\_\_\_\_ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a fifteen (15) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

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

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

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

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

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

Date \_\_\_\_\_

## APPENDIX D

### FORMS OF LIQUID SECURITY

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

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

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

APPENDIX E

HOURLY ENERGY PRODUCTION

This table is a list of hourly energy amounts (measured in MWs) for each hour of a twenty-four (24) hour period in each month that will be applied to all days of the month.

<b>Hour</b>	<b>Jan (MW)</b>	<b>Feb (MW)</b>	<b>Mar (MW)</b>	<b>Apr (MW)</b>	<b>May (MW)</b>	<b>Jun (MW)</b>	<b>Jul (MW)</b>	<b>Aug (MW)</b>	<b>Sep (MW)</b>	<b>Oct (MW)</b>	<b>Nov (MW)</b>	<b>Dec (MW)</b>
<b>1</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>2</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>3</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>4</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>5</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>6</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>7</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>8</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>9</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>10</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>11</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>12</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>13</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>14</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>15</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>16</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>17</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>18</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>19</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>20</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>21</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>22</b>	20	20	20	20	20	20	20	20	20	20	20	20
<b>23</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>24</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>Daily</b>	320	320	320	320	320	320	320	320	320	320	320	320

APPENDIX F

MONTHLY PURCHASE PRICES

Mills per Kwh

---

<u>Month/Year</u>	<u>Heavy Load Purchase Price</u>	<u>Holiday Standard Purchase Price</u>
Jan-12	\$84.27	\$81.05
Feb-12	\$85.76	\$81.03
Mar-12	\$81.15	\$76.88
Apr-12	\$76.70	\$73.32
May-12	\$69.70	\$63.39
Jun-12	\$71.77	\$64.29
Jul-12	\$83.55	\$77.70
Aug-12	\$87.83	\$81.28
Sep-12	\$90.25	\$82.51
Oct-12	\$84.52	\$81.19
Nov-12	\$87.90	\$84.82
Dec-12	\$86.69	\$82.30
Jan-13	\$86.11	\$82.01
Feb-13	\$87.75	\$83.51
Mar-13	\$83.19	\$79.45
Apr-13	\$78.68	\$74.02
May-13	\$71.21	\$64.51
Jun-13	\$73.83	\$67.88
Jul-13	\$85.47	\$79.40
Aug-13	\$89.91	\$83.36
Sep-13	\$91.58	\$82.47
Oct-13	\$83.94	\$80.29
Nov-13	\$88.88	\$84.40
Dec-13	\$88.88	\$86.14
Jan-14	\$87.76	\$82.96
Feb-14	\$89.40	\$84.87
Mar-14	\$85.60	\$81.15
Apr-14	\$80.92	\$75.56
May-14	\$72.80	\$66.01
Jun-14	\$76.15	\$69.27
Jul-14	\$87.08	\$81.11
Aug-14	\$91.69	\$84.96
Sep-14	\$94.41	\$86.47

Oct-14	\$85.99	\$82.10
Nov-14	\$89.81	\$84.92
Dec-14	\$90.21	\$86.23
Jan-15	\$88.57	\$85.04
Feb-15	\$91.06	\$85.94
Mar-15	\$87.03	\$80.82
Apr-15	\$80.13	\$77.64
May-15	\$72.89	\$66.21
Jun-15	\$76.86	\$69.27
Jul-15	\$87.78	\$81.41
Aug-15	\$92.43	\$85.55
Sep-15	\$98.86	\$87.90
Oct-15	\$89.54	\$82.20
Nov-15	\$92.80	\$88.08
Dec-15	\$90.74	\$87.31
Jan-16	\$88.32	\$84.47
Feb-16	\$90.76	\$85.18
Mar-16	\$86.80	\$81.29
Apr-16	\$80.79	\$77.26
May-16	\$73.73	\$67.06
Jun-16	\$77.05	\$69.25
Jul-16	\$87.64	\$82.32
Aug-16	\$93.84	\$86.71
Sep-16	\$99.25	\$87.29
Oct-16	\$87.85	\$82.35
Nov-16	\$92.94	\$88.45
Dec-16	\$91.13	\$87.56
Jan-17	\$90.91	\$86.04
Feb-17	\$93.08	\$88.84
Mar-17	\$88.74	\$84.13
Apr-17	\$83.46	\$77.18
May-17	\$76.57	\$68.02
Jun-17	\$79.11	\$71.67
Jul-17	\$90.60	\$82.94
Aug-17	\$95.91	\$87.95
Sep-17	\$98.70	\$87.74
Oct-17	\$89.78	\$84.34
Nov-17	\$95.34	\$91.13
Dec-17	\$92.68	\$89.41
Jan-18	\$91.93	\$87.84
Feb-18	\$94.07	\$88.83
Mar-18	\$89.49	\$85.99
Apr-18	\$83.54	\$78.11

May-18	\$76.11	\$70.26
Jun-18	\$79.39	\$71.99
Jul-18	\$91.17	\$84.38
Aug-18	\$98.23	\$90.33
Sep-18	\$100.60	\$90.89
Oct-18	\$93.85	\$87.16
Nov-18	\$96.44	\$91.24
Dec-18	\$93.60	\$91.03
Jan-19	\$93.80	\$89.99
Feb-19	\$96.27	\$89.89
Mar-19	\$90.44	\$84.85
Apr-19	\$84.99	\$80.00
May-19	\$77.50	\$71.01
Jun-19	\$80.42	\$73.70
Jul-19	\$92.47	\$86.18
Aug-19	\$98.85	\$91.90
Sep-19	\$102.82	\$91.48
Oct-19	\$92.49	\$85.38
Nov-19	\$96.50	\$92.43
Dec-19	\$95.86	\$92.44
Jan-20	\$95.88	\$90.91
Feb-20	\$97.68	\$92.99
Mar-20	\$91.93	\$87.46
Apr-20	\$86.60	\$83.39
May-20	\$79.04	\$74.37
Jun-20	\$83.23	\$76.02
Jul-20	\$94.24	\$89.03
Aug-20	\$99.84	\$93.96
Sep-20	\$104.15	\$93.04
Oct-20	\$92.93	\$87.06
Nov-20	\$98.42	\$93.51
Dec-20	\$97.19	\$94.41
Jan-21	\$95.99	\$92.40
Feb-21	\$97.44	\$93.69
Mar-21	\$92.51	\$88.32
Apr-21	\$86.60	\$83.05
May-21	\$79.03	\$73.93
Jun-21	\$83.55	\$77.86
Jul-21	\$94.26	\$89.12
Aug-21	\$100.60	\$94.26
Sep-21	\$104.59	\$94.78
Oct-21	\$97.45	\$91.52
Nov-21	\$100.69	\$95.40

Dec-21	\$97.11	\$94.10
Jan-22	\$96.68	\$94.74
Feb-22	\$98.93	\$95.11
Mar-22	\$93.40	\$90.33
Apr-22	\$86.54	\$82.96
May-22	\$80.90	\$75.87
Jun-22	\$84.13	\$78.08
Jul-22	\$95.19	\$88.32
Aug-22	\$101.85	\$96.03
Sep-22	\$105.70	\$95.02
Oct-22	\$95.44	\$87.01
Nov-22	\$101.54	\$97.38
Dec-22	\$97.63	\$95.98
Jan-23	\$100.73	\$99.00
Feb-23	\$102.77	\$98.49
Mar-23	\$97.25	\$92.52
Apr-23	\$90.94	\$88.51
May-23	\$84.99	\$77.49
Jun-23	\$87.83	\$82.99
Jul-23	\$99.70	\$95.09
Aug-23	\$106.54	\$99.46
Sep-23	\$113.09	\$99.75
Oct-23	\$100.39	\$91.86
Nov-23	\$106.81	\$101.81
Dec-23	\$101.66	\$98.66
Jan-24	\$102.29	\$99.61
Feb-24	\$104.92	\$100.43
Mar-24	\$98.80	\$95.16
Apr-24	\$91.22	\$86.96
May-24	\$85.12	\$79.41
Jun-24	\$88.07	\$82.00
Jul-24	\$100.61	\$95.21
Aug-24	\$108.45	\$99.79
Sep-24	\$115.33	\$100.84
Oct-24	\$104.31	\$97.40
Nov-24	\$107.34	\$101.78
Dec-24	\$103.93	\$100.20
Jan-25	\$104.23	\$102.18
Feb-25	\$107.14	\$102.26
Mar-25	\$100.19	\$95.50
Apr-25	\$94.30	\$89.13
May-25	\$86.67	\$82.45
Jun-25	\$90.82	\$84.52

Jul-25	\$103.41	\$97.10
Aug-25	\$110.38	\$103.83
Sep-25	\$118.31	\$103.33
Oct-25	\$103.45	\$96.55
Nov-25	\$109.55	\$103.13
Dec-25	\$106.58	\$102.87
Jan-26	\$105.29	\$103.81
Feb-26	\$108.34	\$102.91
Mar-26	\$101.66	\$96.42
Apr-26	\$95.16	\$91.31
May-26	\$88.51	\$83.12
Jun-26	\$92.95	\$85.79
Jul-26	\$103.99	\$97.46
Aug-26	\$110.99	\$103.38
Sep-26	\$118.59	\$104.40
Oct-26	\$103.57	\$98.25
Nov-26	\$110.70	\$103.57
Dec-26	\$107.23	\$104.86
Jan-27	\$107.04	\$104.13
Feb-27	\$108.84	\$106.16
Mar-27	\$102.59	\$98.42
Apr-27	\$95.88	\$91.00
May-27	\$88.75	\$83.89
Jun-27	\$93.73	\$86.59
Jul-27	\$104.02	\$98.83
Aug-27	\$112.65	\$104.92
Sep-27	\$120.17	\$104.44
Oct-27	\$108.53	\$102.47
Nov-27	\$115.07	\$106.88
Dec-27	\$108.05	\$105.52
Jan-28	\$108.72	\$106.78
Feb-28	\$110.62	\$107.11
Mar-28	\$103.93	\$100.06
Apr-28	\$96.84	\$91.57
May-28	\$91.20	\$85.09
Jun-28	\$94.32	\$90.04
Jul-28	\$107.38	\$101.22
Aug-28	\$117.64	\$107.54
Sep-28	\$119.38	\$105.96
Oct-28	\$107.42	\$100.50
Nov-28	\$115.65	\$109.11
Dec-28	\$109.38	\$106.42
Jan-29	\$110.53	\$109.27

Feb-29	\$112.52	\$107.38
Mar-29	\$106.27	\$101.09
Apr-29	\$98.95	\$92.44
May-29	\$91.67	\$87.86
Jun-29	\$96.52	\$90.47
Jul-29	\$108.94	\$101.62
Aug-29	\$118.42	\$109.67
Sep-29	\$121.14	\$106.68
Oct-29	\$106.91	\$101.53
Nov-29	\$114.55	\$106.74
Dec-29	\$112.20	\$109.32
Jan-30	\$113.04	\$111.74
Feb-30	\$115.09	\$109.79
Mar-30	\$108.65	\$103.31
Apr-30	\$101.12	\$94.41
May-30	\$93.61	\$89.69
Jun-30	\$98.61	\$92.38
Jul-30	\$111.40	\$103.86
Aug-30	\$121.17	\$112.15
Sep-30	\$123.97	\$109.07
Oct-30	\$109.31	\$103.77
Nov-30	\$117.18	\$109.13
Dec-30	\$114.76	\$111.79
Jan-31	\$115.62	\$114.28
Feb-31	\$117.73	\$112.27
Mar-31	\$111.10	\$105.60
Apr-31	\$103.34	\$96.43
May-31	\$95.61	\$91.57
Jun-31	\$100.76	\$94.34
Jul-31	\$113.93	\$106.17
Aug-31	\$124.00	\$114.71
Sep-31	\$126.88	\$111.54
Oct-31	\$111.78	\$106.07
Nov-31	\$119.88	\$111.60
Dec-31	\$117.40	\$114.34
Jan-32	\$118.20	\$116.82
Feb-32	\$120.37	\$114.75
Mar-32	\$113.55	\$107.88
Apr-32	\$105.55	\$98.43
May-32	\$97.59	\$93.43
Jun-32	\$102.89	\$96.28
Jul-32	\$116.46	\$108.46
Aug-32	\$126.83	\$117.26

Sep-32	\$129.79	\$113.99
Oct-32	\$114.25	\$108.36
Nov-32	\$122.59	\$114.05
Dec-32	\$120.03	\$116.88
Jan-33	\$121.02	\$119.60
Feb-33	\$123.26	\$117.47
Mar-33	\$116.23	\$110.39
Apr-33	\$107.99	\$100.66
May-33	\$99.79	\$95.51
Jun-33	\$105.25	\$98.44
Jul-33	\$119.23	\$110.99
Aug-33	\$129.90	\$120.05
Sep-33	\$132.96	\$116.69
Oct-33	\$116.95	\$110.89
Nov-33	\$125.54	\$116.75
Dec-33	\$122.90	\$119.66
Jan-34	\$123.84	\$122.38
Feb-34	\$126.15	\$120.18
Mar-34	\$118.90	\$112.89
Apr-34	\$110.42	\$102.87
May-34	\$101.98	\$97.56
Jun-34	\$107.60	\$100.58
Jul-34	\$122.00	\$113.51
Aug-34	\$132.99	\$122.84
Sep-34	\$136.14	\$119.38
Oct-34	\$119.65	\$113.41
Nov-34	\$128.50	\$119.44
Dec-34	\$125.78	\$122.44
Jan-35	\$126.74	\$125.24
Feb-35	\$129.12	\$122.98
Mar-35	\$121.66	\$115.47
Apr-35	\$112.92	\$105.15
May-35	\$104.22	\$99.68
Jun-35	\$110.02	\$102.79
Jul-35	\$124.85	\$116.11
Aug-35	\$136.17	\$125.72
Sep-35	\$139.41	\$122.15
Oct-35	\$122.43	\$116.00
Nov-35	\$131.54	\$122.22
Dec-35	\$128.74	\$125.30
Jan-36	\$129.65	\$128.11
Feb-36	\$132.10	\$125.78
Mar-36	\$124.42	\$118.04

Apr-36	\$115.42	\$107.41
May-36	\$106.46	\$101.78
Jun-36	\$112.43	\$104.98
Jul-36	\$127.70	\$118.70
Aug-36	\$139.36	\$128.60
Sep-36	\$142.70	\$124.92
Oct-36	\$125.21	\$118.58
Nov-36	\$134.60	\$124.99
Dec-36	\$131.71	\$128.17

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  
Telephone: (208) 388-5317  
Facsimile: (208) 388-6936  
dwalker@idahopower.com  
jwilliams@idahopower.com

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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 ) CASE NO. IPC-E-11-25  
A DETERMINATION REGARDING THE )  
FIRM ENERGY SALES AGREEMENT FOR ) APPLICATION  
THE SALE AND PURCHASE OF ELECTRIC )  
ENERGY BETWEEN IDAHO POWER )  
COMPANY AND DYNAMIS ENERGY, LLC. )  
\_\_\_\_\_ )

Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), hereby respectfully applies to the Idaho Public Utilities Commission ("Commission") for an Order accepting or rejecting the Firm Energy Sales Agreement ("FESA") between Idaho Power and Dynamis Energy, LLC ("Dynamis" or "Seller") under which Dynamis would sell and Idaho Power would purchase electric energy generated by the Dynamis Ada County Landfill project ("Facility") located near Boise, Idaho.

In support of this Application, Idaho Power represents as follows:

## **I. BACKGROUND**

1. Sections 201 and 210 of PURPA, and pertinent regulations of the Federal Energy Regulatory Commission ("FERC"), require that regulated electric utilities purchase power produced by cogenerators or small power producers that obtain Qualifying Facility ("QF") status. The rate a QF receives for the sale of its power is generally referred to as the "avoided cost" rate and is to reflect the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the QF, such utility would generate itself or purchase from another source. The Commission has authority under PURPA Sections 201 and 210 and the implementing regulations of the FERC, 18 C.F.R. § 292, to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules.

## **II. THE FIRM ENERGY SALES AGREEMENT**

2. Dynamis proposes to own, operate, and maintain a 22 megawatt (Maximum Capacity Amount) landfill waste to energy generating facility to be located in Idaho Power's service territory near Boise, Idaho. The Facility will be a QF under the applicable provisions of PURPA. Idaho Power and Dynamis entered into a FESA for the sale and purchase of the energy generated by the Facility on November 16, 2011. The FESA for this Facility was executed by C. Lloyd Mahaffey, Chairman and Chief Executive Officer for Dynamis Energy, LLC, on November 14, 2011. It was subsequently executed by Idaho Power on November 16, 2011, and now filed for the Commission's review on November 22, 2011. A copy of the FESA is attached to this Application as Attachment No. 1. This FESA is the result of negotiations between Idaho

Power and Dynamis and contains the avoided cost rates established pursuant to the Commission's approved Integrated Resource Plan ("IRP") avoided cost methodology as currently established by the Commission.

3. Dynamis has elected October 15, 2013, as the Scheduled First Energy Date and February 14, 2014, as the Scheduled Operation Date for this Facility. See Appendix B. The FESA requires Dynamis to meet various requirements in order for Idaho Power to accept energy deliveries from this Facility. Idaho Power will monitor compliance with these initial requirements. In addition, Idaho Power will monitor the ongoing requirements through the full term of the FESA.

4. The contract term specified in the FESA is 20 years and includes shared ownership of the Renewable Energy Certificates ("RECs") generated over the entire term of the FESA.

5. Dynamis and Idaho Power have agreed to Delay Liquidated Damages as well as the requirement to post Delay Security. Delay Liquidated Damages shall apply should Dynamis fail to bring the Facility on-line by the Scheduled Operation Date as specified in the FESA. Delay Liquidated Damages are agreed to be calculated as described hereafter. If the Operation Date occurs after the Scheduled Operation Date, but within 90 days of that Scheduled Operation Date, then damages are equal to the sum of all Hourly Energy Production amounts for the entire Delay Period multiplied by the applicable Delay Price; if the Operation Date occurs more than 90 days past the Scheduled Operation Date, then damages are specified as \$45 per kilowatt ("kW") of nameplate capacity for the Facility. If the Facility fails to achieve its Operation Date within 90 days of the Scheduled Operation Date, the failure will be a Material Breach of

the FESA and Idaho Power may terminate the FESA if not cured by Dynamis. Dynamis and Idaho Power have also agreed to Delay Security provisions requiring Dynamis to post Delay Security in an amount equal to \$45 per kW of nameplate capacity within 30 days of Commission approval of the FESA. These Delay Damage and Security provisions have previously been approved as reasonable by the Commission in several PURPA FESAs. See Case Nos. IPC-E-10-02; IPC-E-10-05; IPC-E-10-15 through IPC-E-10-19; IPC-E-10-22; IPC-E-10-24; IPC-E-10-26; IPC-E-10-37 through IPC-E-10-45; and IPC-E-10-47 through IPC-E-10-50.

6. Dynamis and Idaho Power have agreed to terms providing for each party's 50 percent ownership of any Environmental Attributes, including RECs, generated by the Facility for the full 20-year term of the FESA. This has mutual benefits for both Idaho Power's customers and the Facility. These provisions clarify the ownership of the Environmental Attributes generated by the Facility such that each party can potentially maximize what benefit it can from such ownership. It clarifies the QF developer's ownership and subsequent ability to retain RECs and obtain what value it can for them to help offset the costs of development and operation. It also clarifies Idaho Power's ownership and ability to obtain what value it can for its customers, to retire them and claim the Environmental Attributes of the renewable generation as part of its system, or to utilize them to meet the requirements of potential future Renewable Portfolio Standards that may require the Company to obtain and have RECs.

7. The energy prices in FESA are derived from Idaho Power's AURORA economic dispatch model for this Facility's estimated energy shape as specified by Commission requirements for the IRP-based avoided cost methodology. The energy

price identified by the IRP methodology for this Facility is equivalent to a 20-year levelized price of \$92.35 per megawatt-hour. However, the actual energy pricing stream varies throughout the term of the contract based upon the month and time of day during which the energy is delivered to Idaho Power. The energy prices in the FESA contain the previously approved differentiation between both Heavy Load and Holiday Standard Energy purchase pricing. Seller only plans to deliver energy during Heavy Load and Holiday Standard Energy hours and does not intend to produce and deliver any Light Load energy to Idaho Power. See Sections 7.1, 7.2, and 7.3.

8. The FESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. The Facility is currently in the generator interconnection process. Assuming that Seller continues to provide necessary technical information and make payments for interconnection materials and studies in a timely manner, Idaho Power's Delivery business unit will be able to proceed with its interconnection and transmission study processes, which ultimately results in a Schedule 72 Generator Interconnection Agreement, or "GIA" between Dynamis and Idaho Power. PURPA QF generation must be designated as a network resource ("DNR") on Idaho Power's system. Upon resolution of any and all upgrades required to acquire transmission capacity for this Facility's generation, and upon execution of the FESA and the GIA, this Facility may then be designated as a network resource.

9. As previously stated in paragraph 3 of this Application, and set forth in Appendix B to the FESA, Dynamis has selected October 15, 2013, for the Scheduled First Energy Date and February 14, 2014, as the Scheduled Operation Date. Dynamis

has been advised that it is Dynamis's responsibility to work with Idaho Power's Delivery business unit to ensure that sufficient time and resources will be available for Delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow the Facility to achieve the February 14, 2014, Scheduled Operation date. Seller has been further advised that delays in the interconnection or transmission process do not constitute excusable delays in achieving the Scheduled Operation date and if Seller fails to achieve the Scheduled Operation date at the times specified in the FESA, delay damages will be assessed

10. Dynamis has also been made aware of and accepted the provisions of the FESA and the Company's approved Tariff Schedule 72 regarding non-compensated curtailment or disconnection of its Facility should certain operating conditions develop on the Company's system. According to the standard provisions in Section 12 of the FESA, curtailment without compensation may occur if there is an event of Force Majeure, a Forced Outage, or a temporary disconnection of the Facility in accordance with Tariff Schedule 72. If the generation from the Facility will have an adverse effect upon Idaho Power's 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. The parties' intent and understanding is that non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of the Company's system such that it may have a detrimental effect upon the Company's ability to manage its

thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system.

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

### **III. MODIFIED PROCEDURE**

12. Idaho Power believes that a hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing. RP 201 *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present its testimony in such hearing.

### **IV. COMMUNICATIONS AND SERVICE OF PLEADINGS**

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

Donovan E. Walker, Lead Counsel  
Jason B. Williams, Corporate Counsel  
Idaho Power Company  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

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

### **V. REQUEST FOR RELIEF**

14. Idaho Power Company respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure; (2) accepting or rejecting the Firm Energy Sales Agreement between Idaho Power

Company and Dynamis Energy, LLC, without change or condition; and, if accepted, (3) declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power Company and Dynamis Energy, LLC, be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 22<sup>nd</sup> day of November 2011.

A handwritten signature in black ink, appearing to read "Donovan E. Walker", written over a horizontal line.

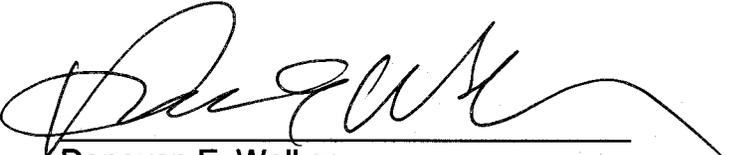
DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of November 2011 I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

**Dynamis Energy, LLC**  
C. Lloyd Mahaffey, CEO  
Wade D. Thomas, General Counsel  
776 East Riverside Drive, Suite 150  
Eagle, Idaho 83616

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [Lloyd@dynamisenergy.com](mailto:Lloyd@dynamisenergy.com)  
[wthomas@dynamisenergy.com](mailto:wthomas@dynamisenergy.com)



Donovan E. Walker