

McDevitt & Miller LLP

Lawyers

RECEIVED

(208) 343-7500
(208) 336-6912 (Fax)

420 W. Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702

2012 MAR -1 PM 3: 16

IDAHO PUBLIC
UTILITIES COMMISSION

Chas. F. McDevitt
Dean J. (Joe) Miller

March 1, 2012

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

IPC-E-12-11

**Re: In the Matter of the Application of Rainbow Ranch Wind LLC
of Rainbow West Wind LLC**

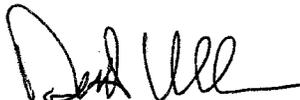
Dear Ms. Jewell:

Enclosed for filing, please find an original and seven (7) copies of Rainbow Ranch Wind, LLC and Rainbow West Wind, LLC's Petition and Application.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP


Dean J. Miller

DJM/hh
Encl.

Dean J. Miller (ISB No. 1968)
Chas. F. McDevitt (ISB No. 835)
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. Box 2564-83701
Boise, ID 83702
Tel: 208.343.7500
Fax: 208.336.6912
joe@mcdevitt-miller.com
chas@mcdevitt-miller.com

RECEIVED
2012 MAR -1 PM 3: 16
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Rainbow Ranch Wind LLC
Attorneys for Rainbow West Wind LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION
AND OF RAINBOW RANCH WIND LLC
AND RAINBOW WEST WIND LLC TO
MODIFY PRIOR ORDER No. 32300 OR
IN THE ALTERNATIVE APPLICATION
APPROVAL OF FIRM ENERGY
SALES AGREEMENTS

Case No. IPC-E-12-11
PETITION AND APPLICATION

COME NOW Rainbow Ranch Wind LLC, and Rainbow West Wind LLC. (collectively referred to as "Rainbow" or "Petitioners") and, pursuant to Idaho Code §61-624, and IPUCRP 53, respectfully petition the Commission to modify Order No. 32300, Case Nos. IPC-E-10-59 and IPC-E-10-60, such that Firm Energy Sales Agreements between Petitioners and Idaho Power Company executed by Rainbow on December 13, 2010, be approved. Alternatively, pursuant to IPUCRP 52, Rainbow applies for approval of the Firm Energy Sales Agreement. In support of the requested relief, Rainbow respectfully shows as follows, to wit:

INTRODUCTION

1. This Petition asks the Commission to modify an existing Order, as permitted by IPUCRP 53.01. The name of the person petitioned against is Idaho Power Company. *See* IPUCRP 53.05(d).

2. As discussed in more detail below, on July 27, 2011, the Commission issued Order No. 32300 disapproving two Firm Energy Sales Agreements between Rainbow and Idaho Power Company. Subsequently, on October 4, 2011, the Federal Energy Regulatory Commission ("FERC") issued an order declaring that the basis on which the Commission disapproved the Firm Energy Sales Agreements in Order No. 32300 was inconsistent with PURPA. *Cedar Creek Wind, LLC, "Notice of Intent Not to Act and Declaratory Order,"* 137 FERC ¶ 61,006 at P 35 (2011) (the "*Cedar Creek Order*").

3. Although Order No. 32300 has become final, the Commission has authority to modify existing orders based on new facts or information not available at the time of the initial order. However, FERC's *Cedar Creek Order* constitutes new facts or information justifying modification of Order No. 32300, and such modification would not constitute a collateral attack upon that Order.

4. Alternatively, this pleading is designated as an Application, as permitted by IPUCRP 51: "Two or more separately stated grounds, claims or answers concerning the same subject matter may be included in one pleading". IPUCRP 52 defines Applications as defined as, "All pleadings requesting a right, certificate, permit or authority from the Commission, while Petitions are pleadings "requesting modification, amendment or stay of existing orders." IPUCRP 53. For the reasons set forth below, the Firm Energy Sales Agreements should be approved. In Rainbow's view, the procedural vehicle by which such approval is accomplished

could either be modification of prior Order No. 32300, or approval of a new Application for approval of the Agreements. Accordingly, Rainbow has designated this pleading as a Petition to modify or, alternatively, an Application for approval. As explained below, whether designated a Petition or an Application, neither constitutes an impermissible collateral attack upon a prior order.

FACTUAL BACKGROUND

5. Rainbow Ranch Wind LLC., and Rainbow West Wind LLC., are limited liability companies authorized to conduct business in the State of Idaho and are engaged in the business of developing and constructing two wind energy conversion facilities (“Facilities”) located near Delco, Idaho in Cassia County, Idaho.

6. On December 13, 2010, Rainbow executed and delivered to Idaho Power Company (“Idaho Power” or “the Company”) two Firm Energy Sales Agreements (“FESAs”) with respect to the Facilities. On December 14, 2010, Idaho Power executed the FESA’s. On December 16, 2010, Idaho Power submitted to the Commission two Applications for Determination regarding the FESAs, Commission Case Nos. IPC-E-10-56 and IPC-E-10-60. True copies of the FESA’s are attached hereto as Exhibit 1.

7. As recited in the Applications, paragraphs 7—14, the FESAs were consistent with all then applicable Commission orders and policies.

8. On June 8, 2011, the Commission issued Order No. 32256, disapproving the FESAs. On June 29, 2011, Rainbow filed Petitions for Reconsideration in Case Nos. IPC-E-10-59 and IPC-E-10-60. On July 27, 2011, the Commission issued Order No. 32300, denying Rainbow’s Petition for Reconsideration. The Commission affirmed its prior decision not to approve the FESAs, finding that the FESAs were not effective prior to December 14, 2010.

Because each of the FESAs requested published avoided cost rates but the projects were in excess of 100kW, the Commission found that the published rates were no longer available to the projects. A true copy of Order No. 32300 is attached hereto as Exhibit 2.

9. In the *Cedar Creek Order*, on the basis of facts similar to those presented by Rainbow, FERC declared that that "the Idaho PUC decision denying Cedar Creek a legally enforceable obligation, specifically the requirement in the June 8 Order that a Firm Energy Sales Agreement/Power Purchase Agreement must be executed by both parties to the agreement before a legally enforceable obligation arises, is inconsistent with PURPA and our regulations implementing PURPA, particularly section 292.304(d)(2)." A true copy of the *Cedar Creek Order* is attached hereto as Exhibit 3.

10. Concurrent with this Petition, Rainbow is filing with FERC a "Petition for Enforcement Under the Public Utility Regulatory Policies Act of 1978." In its Petition for Enforcement, Rainbow has asked FERC to initiate an action to enforce Section 292.304(d) of its PURPA regulations against the Commission and reverse the Commission's determination that Petitioners were not eligible to receive the published avoided costs rates as of December 9, 2010, when Rainbow incurred a legally enforceable obligation to sell electricity to Idaho Power Company. In the alternative, Rainbow has asked FERC to find, consistent with the *Cedar Creek Order*, that Commission's orders denying Rainbow a legally enforceable obligation, specifically the requirement in the June 8 Order that a Firm Energy Sales Agreement/Power Purchase Agreement must be executed by both parties to the agreement before a legally enforceable obligation arises, is inconsistent with PURPA and the FERC's regulations implementing PURPA, particularly section 292.304(d)(2), and making such other findings as would allow Rainbow to pursue a successful enforcement action in a U.S. Federal District Court.

STATEMENT OF LEGAL AUTHORITY

11. Rainbow acknowledges that the Commission's Reconsideration Order No. 32300 became fully final twenty-one days following its issuance and that pursuant to Idaho Code § 61-625 orders that have become final and conclusive orders are not subject to collateral attack.

12. Notwithstanding Idaho Code § 61-625, the legislature has also adopted Idaho Code § 61-624 which provides:

“Rescission or change of orders.—The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected have the same effect as is herein provided for original orders or decisions.

13. The Idaho Supreme Court has considered the interplay between Idaho Code § 61-625 and § 61-624. In *Associated Housemovers, Inc., v. Rowley*, 97 Idaho 663, 551 P.2d (1976), the Commission entered an order denying a motor carrier permit, and the applicant neither filed a petition for reconsideration nor filed a notice of appeal. Later the applicant filed a second application seeking the same authority, which the Commission granted. The second application was supported by testimony of witnesses who were unavailable to the applicant in the earlier proceeding. 97 Idaho at 665.

14. On appeal, the Protestants to the application argued that the award of the permit in the second application amounted to a collateral attack on the first order and thereby violated Idaho Code § 61-625. The court rejected this argument, noting “Any modification of an existing order under Idaho Code § 61-624 arguably could be a collateral attack on that order, but such an interpretation would bring those two consecutive statutory sections into direct conflict, a result we cannot support”. 97 Idaho at 664-665. Relying on an Arizona Supreme Court case considering a similar statutory scheme, the court clarified that “collateral attack” means an attack

such as an application to a court for injunctive relief against an order of the Commission, but it does not include an application to the Commission to modify an existing order based on new facts or information. Thus, whether considered a Petition to modify an existing order or as a new Application—like in *Rowley*—this pleading does not violate Idaho Code 61-625.

15. Here, in Order No. 32300, based on the terms of the Agreements, the Commission determined that the projects were not entitled to published avoided cost rates because, at the time the agreements became effective, published rates were available only to wind and solar projects with a design capacity of 100kW or less. (Order No 32300 at 14).

16. The *Cedar Creek Order*, however, reaffirms FERC's regulations providing that entitlement of published rates may arise from an executed contract or from a “non-contractual, but still legally enforceable obligation”:

“[w]hile this may be done through a contract, if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA. Accordingly, a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.” 137 FERC 61,006 at pg. 13.

17. As demonstrated below, Rainbow incurred a legally enforceable obligation on December 9, 2010, when Rainbow indicated to Idaho Power that it was prepared to execute the final FESAs provided by Idaho Power on December 8, 2010. In any event, Petitioners did not incur legally enforceable obligations to sell electricity to IPC later than December 13, 2010, when Rainbow executed the FESAs. On the basis of the *Cedar Creek Order*, Rainbow is entitled to Commission approval of the FESAs.

**RAINBOW INCURRED A LEGALLY ENFORCEABLE OBLIGATION
TO SELL PRIOR TO DECEMBER 14, 2010**

18. In August of 2010, Rainbow submitted Generator Interconnection Applications to Idaho Power. Thereafter, negotiations with respect to FESAs began on Wednesday, November 3, 2010, when Brian Jackson, Rainbow's representative, sent an email to Idaho Power confirming Rainbow's intention to "sign 20-year non-levelized contracts with Idaho Power having a starting on-line date on or before 12-31-2012."

19. Representatives of Rainbow met with representatives of Idaho Power on Thursday, November 4, 2010, and discussed, among other things, the terms and conditions of the draft FESAs for the Rainbow Projects. At that meeting, Idaho Power indicated that it would provide Rainbow with blank FESA documents and instructed Rainbow to fill in the documents and return them to Idaho Power to proceed to the next step.

20. On Friday, November 5, 2010, Idaho Power provided Rainbow with a draft standard FESA and an initial information request. On that same day, Idaho Power and two other utilities filed a Joint Petition with the Commission requesting, among other things, that the Commission immediately reduce the size cap of those QF projects eligible to enter into contracts at published avoided cost rates from 10 aMW to 100 kW. Larger projects above the eligibility cap would be allowed to enter into contracts only at the utility's avoided costs as determined pursuant to the prospective utility purchaser's IRP methodology, which methodology, historically, had produced rates that were dramatically lower than the published rates. Idaho Power did not, however, inform Rainbow that it had filed the Joint Petition with the Commission.

21. On Thursday, November 9, 2010, Rainbow provided Idaho Power with the information Idaho Power had requested and, on Friday, November 10, 2010, Rainbow submitted finalized FESAs for the Rainbow Project to Idaho Power.

22. On Monday, November 15, 2010, after several phone calls and messages from Brian Jackson of Rainbow to Randy Allphin of Idaho Power requesting a meeting to discuss the FESAs, Rainbow sent Idaho Power an MS Word version of the FESA documents with the project information filled in. In response to Mr. Jackson's requests for a meeting, Mr. Allphin responded that he would be out of town until after Thanksgiving, but could meet with Rainbow when he returned to town. Mr. Allphin further informed Mr. Jackson of Idaho Power 's November 5, 2010, Joint Petition with the Commission and that "[t]he adjustment requested in this filing could affect your project's eligibility for the published avoided cost rate," but would not preclude Rainbow from negotiating a purchase power agreement with Idaho Power for the Rainbow Projects.

23. On November 17, 2010, Brian Jackson, Manager of Rainbow, sent an email to Donovan Walker of Idaho Power expressing concern over the delay in completing the FESAs for the Rainbow Projects and the potential effect on the Rainbow Projects of Idaho Power's filing of the Joint Petition with the Commission. That same day, in response to Mr. Jackson's email, Donovan Walker of Idaho Power called Brian Jackson and indicated that, notwithstanding the Joint Petition, Idaho Power was proceeding with a few purchase power agreement negotiations and would work with Rainbow to complete FESAs for the Rainbow Projects. Mr. Walker assured Mr. Jackson that the standard processes and procedures for securing FESAs at the published avoided cost rate were still in place until the Commission made official changes in response to the Joint Petition.

24. On November 19, 2010, Randy Allphin, Michael Darrington and Donovan Walker from Idaho Power met with Peter Richardson, Brian Jackson, Pike Teinert, and David Warrick from Rainbow and, among other things, discussed the next steps and procedures needed to finalize the FESAs for the Rainbow Projects.

25. On November 23, 2010, Idaho Power provided Rainbow with entirely new blank FESAs for the Rainbow Projects, essentially requiring Rainbow to start over again to fill in information on the blank documents.

26. On December 3, 2010, Rainbow provided Idaho Power with FESA documents with the agreement contacts and specific project items filled-in.

27. On December 3, 2010, the Commission issued Order No. 32131, finding probable cause to investigate the Idaho Utilities' assertions in the Joint Petition, but did not immediately reduce the eligibility cap to 100 kW. This order, however, gave notice that the Commission would make a decision on the eligibility cap after its investigation and that its decision would be effective, retroactively, on December 14, 2010.

28. On Tuesday, December 7, 2010, the completed FESAs for each of the Rainbow Projects were approved by Rainbow's legal review team and subsequently were discussed with Idaho Power. Late on Wednesday, December 8, 2010, Idaho Power provided Rainbow with completed FESAs for final review and approval by Rainbow.

29. At 8:36 AM on December 9, 2010, Brian Jackson of Rainbow sent an email to Idaho Power indicating that the FESAs "looked great," and asked: "please let us know how fast we can sign these?" Mr. Jackson further indicated that, although the Rainbow FESA team was in Portland that week, if Idaho Power indicated that it was prepared to sign the agreements on

Thursday, December 9, or Friday, December 10, the Rainbow team would fly back to Boise and would execute the FESAs that same day.

30. Rainbow did not hear from Idaho Power until almost noon on Monday, December 13, 2010, when Idaho Power informed Rainbow that the final contracts would be available at 2:00 PM that afternoon, and asked whether Rainbow wanted the final FESAs to be mailed or to pick them up in person. Rainbow was puzzled by Idaho Power's offer to mail the FESAs, and responded that Rainbow would come to Idaho Power's office at 2:00 PM to sign the FESAs.

31. At approximately 2:00 PM on Monday, December 13, 2010, representatives of Rainbow, consisting of Brian Jackson, Pike Teinert, and David Warrick received the final FESAs for the Rainbow Projects from Michael Darrington at the front desk of Idaho Power's corporate headquarters in Boise, Idaho. The Rainbow team went to a nearby restaurant, where Brian Jackson, on behalf of Petitioners, signed the original FESA for each of the Rainbow Projects. The Rainbow team then returned to Idaho Power's office.

32. Upon returning to Idaho Power's office with the executed FESAs the Rainbow team was told by Michael Darrington that Idaho Power would not sign the FESAs that afternoon. Although Idaho Power had provided Rainbow with final versions of the FESAs at 2:00 PM on December 13, 2010, and Rainbow had returned the signed FESAs to Idaho Power on December 13, 2010, Michael Darrington informed the Rainbow team that Idaho Power would execute the FESAs over the next couple of days.

33. The Rainbow team returned to Idaho Power's office on December 14, 2010. The FESAs had not been signed by late morning, and the Rainbow team asked Michael Darrington if there was any way to get the FESAs signed that day. Mr. Darrington told the Rainbow team that no one was sure how long it would take for the FESAs to be signed by Idaho Power or how

long it would take to submit the FESAs to the Commission. At that time, the Rainbow team told Mr. Darrington that, in Rainbow's view, the FESAs had been finalized the previous week; that is, on December 9, 2010.

34. The extensive FESA negotiations between Rainbow and Idaho Power, described above, lead to the reasonable conclusion that Rainbow did commit itself to sell electricity to Idaho Power. Specifically, Rainbow incurred legally enforceable obligations to sell electricity to Idaho Power on December 9, 2010, when Rainbow indicated to Idaho Power in an email that it was prepared to execute the final FESAs that Idaho Power had submitted to Rainbow on December 8, 2010.

35. Rainbow incurred legally enforceable obligations to sell electricity to Idaho Power on December 13, 2010, when Rainbow executed the FESAs and delivered them to Michael Darrington at Idaho Power's office.

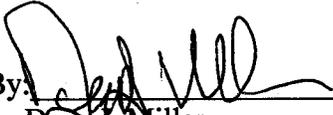
36. Idaho Power signed the FESAs on December 14, 2010, and submitted them to the Commission on December 16, 2010.

CONCLUSION AND PRAYER FOR RELIEF

Based on the reasons and authorities cited herein, Rainbow respectfully requests that in compliance with PURPA and consistent with the FERC's *Cedar Creek Order*, the Commission enter its Order Modifying Order No. 32300, such that the Firm Energy Sales Agreements be approved. Alternatively, Rainbow respectfully requests, to the extent this pleading is deemed an Application, that it be approved.

DATED this 1 day of March, 2012.

MCDEVITT & MILLER, LLP

By: 

Dean J. Miller

Attorney for Rainbow Ranch Wind LLC
and Rainbow West Wind LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of March, 2012, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Donovan E. Walker
Idaho Power Company
1221 W. Idaho Street
P.O. Box 70
Boise, ID 83707
dwalker@idahopower.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

BY: Heather Howe
MCDEVITT & MILLER LLP

FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

Project Name: Rainbow Ranch Wind Project

Project Number: 31615500

THIS AGREEMENT, entered into on this 14th day of December 2010 between Rainbow Ranch Wind, LLC (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

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

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

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

ARTICLE I: DEFINITIONS

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

- 1.1 "Availability Shortfall Price" - The current month's Mid-Columbia Market Energy Cost minus the current month's All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 15.00 Mills/kWh the result shall be 15.00 Mills/kWh.
- 1.2 "Business Days" - means any calendar day that is not a Saturday, a Sunday, or a NERC recognized holiday.

- 1.3 “Calculated Net Energy Amount” - A monthly estimate, prepared and documented after the fact by Seller, reviewed and accepted by the Buyer that is the calculated monthly maximum energy deliveries (measured in kWh) for each individual wind turbine, totaled for the Facility to determine the total energy that the Facility could have delivered to Idaho Power during that month based upon: (1) each wind turbine’s Nameplate Capacity, (2) Sufficient Prime Mover available for use by each wind turbine during the month, (3) incidents of Force Majeure, (4) scheduled maintenance, or (5) incidents of Forced Outages less Losses and Station Use. If the duration of an event characterized as item 3, 4 or 5 above (measured on each individual occurrence and individual wind turbine) lasts for less than 15 minutes, then the event will not be considered in this calculation. The Seller shall collect and maintain actual data to support this calculation and shall keep this data for a minimum of 3 years.
- 1.4 “Commission” - The Idaho Public Utilities Commission.
- 1.5 “Contract Year” - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.6 “Delay Liquidated Damages” – Damages payable to Idaho Power as calculated in paragraph 5.3, 5.4, 5.5 and 5.6.
- 1.7 “Delay Period” – All days past the Scheduled Operation Date until the Seller’s Facility achieves the Operation Date.
- 1.8 “Delay Price” - The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.
- 1.9 “Designated Dispatch Facility” - Idaho Power’s Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.10 “Effective Date” – The date stated in the opening paragraph of this Firm Energy Sales Agreement representing the date upon which this Firm Energy Sales Agreement was fully executed by both Parties.

- 1.11 **"Facility"** - That electric generation facility described in Appendix B of this Agreement.
- 1.12 **"First Energy Date"** - The day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and the Seller begins delivering energy to the Idaho Power electrical system at the Point of Delivery.
- 1.13 **"Forced Outage"** – a partial or total reduction of a) the Facility's capacity to produce and/or deliver Net Energy to the Point of Delivery, or b) Idaho Power's ability to accept Net Energy at the Point of Delivery for non-economic reasons, as a result of Idaho Power or Facility: 1) equipment failure which was **not** the result of negligence or lack of preventative maintenance, or 2) responding to a transmission provider curtailment order, or 3) unplanned preventative maintenance to repair equipment that left unrepaired, would result in failure of equipment prior to the planned maintenance period, or 4) planned maintenance or construction of the Facility or electrical lines required to serve this Facility. The Parties shall make commercially reasonable efforts to perform this unplanned preventative maintenance during periods of low wind availability.
- 1.14 **"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.
- 1.15 **"Inadvertent Energy"** – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.5 of this Agreement.
- 1.16 **"Interconnection Facilities"** - All equipment specified in Idaho Power's Schedule 72.
- 1.17 **"Initial Capacity Determination"** – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than 10 average MW per month and is therefore eligible to be paid the published rates in accordance with Commission Order No. 29632.

- 1.18 **"Light Load Hours"** – The daily hours beginning at 11:00 pm, ending at 7:00 am Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.19 **"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 the Facility's energy is delivered to the Idaho Power electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.20 **"Market Energy Reference Price"** – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.21 **"Material Breach"** – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.22 **"Maximum Capacity Amount"** – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.23 **"Mechanical Availability"** - The percentage amount calculated by Seller within 5 days after the end of each month of the Facility's monthly actual Net Energy divided by the Facility's Calculated Net Energy Amount for the applicable month. Any damages due as a result of the Seller falling short of the Mechanical Availability Guarantee for each month shall be determined in accordance with paragraph 6.4.4.
- 1.24 **"Mechanical Availability Guarantee"** shall be as defined in paragraph 6.4.
- 1.25 **"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 from the Seller's Facility at the Metering Point.
- 1.26 **"Metering Point"** - The physical point at which the Metering Equipment is located that enables accurate measurement of the Test Energy and Net Energy deliveries to Idaho Power at the Point of Delivery for this Facility that provides all necessary data to administer this Agreement.
- 1.27 **"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.

- 1.28 **"Nameplate Capacity"** – The full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt-amperes, kilowatts, volts or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.
- 1.29 **"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. Net Energy does not include Inadvertent Energy.
- 1.30 **"Operation Date"** – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.31 **"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 **"Scheduled Operation Date"** – The date specified in Appendix B when Seller anticipates achieving the Operation Date. It is expected that the Scheduled Operation Date provided by the Seller shall be a reasonable estimate of the date that the Seller anticipates that the Seller's Facility shall achieve the Operation Date.

- 1.34 "Schedule 72" – Idaho Power’s Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission. The Seller shall be responsible to pay all costs of interconnection and integration of this Facility into the Idaho Power electrical system as specified within Schedule 72 and this Agreement.
- 1.35 "Season" – The three periods identified in paragraph 6.2.1 of this Agreement.
- 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 "Sufficient Prime Mover" means wind speed that is (1) equal to or greater than the generation unit’s manufacturer-specified minimum levels required for the generation unit to produce energy and (2) equal to or less than the generation unit’s manufacturer-specified maximum levels at which the generation unit can safely produce energy.
- 1.39 "Surplus Energy" – All Net Energy produced by the Seller’s Facility and delivered by the Facility to the Idaho Power electrical system prior to the Operation Date.
- 1.40 "Total Cost of the Facility" - The total cost of structures, equipment and appurtenances.
- 1.41 "Wind Energy Production Forecast" – A forecast of energy deliveries from this Facility provided by an Idaho Power administered wind forecasting model. The Facility shall be responsible for an allocated portion of the total costs of the forecasting model as specified in Appendix E.

ARTICLE II: NO RELIANCE ON IDAHO POWER

- 2.1 Seller Independent Investigation - Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.

- 2.2 Seller Independent Experts - All professionals or experts including, but not limited to, engineers, attorneys, or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.
- 3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR 292.201 et seq. After initial qualification, Seller will take such steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Facility's Qualifying Facility status and associated support and compliance documents at anytime during the term of this Agreement.

ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.201 et seq. as a certified Qualifying Facility.
- 4.1.2 Opinion of Counsel - Submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that

Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

4.1.3 Initial Capacity Determination - Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data will include but not be limited to, Nameplate Capacity, equipment specifications, prime mover data, resource characteristics, normal and/or average operating design conditions and Station Use data. Upon receipt of this information, Idaho Power will review the provided data and if necessary, request additional data to complete the Initial Capacity Determination within a reasonable time.

4.1.3.1 If the Maximum Capacity specified in Appendix B of this Agreement and the cumulative manufacture Nameplate Capacity rating of the individual generation units at this Facility is less than 10 MW, the Seller shall submit detailed, manufacturer, verifiable data of the Nameplate Capacity ratings of the actual individual generation units to be installed at this Facility. Upon verification by Idaho Power that the data provided establishes the combined Nameplate Capacity rating of the generation units to be installed at this Facility is less than 10 MW, it will be deemed that the Seller has satisfied the Initial Capacity Determination for this Facility.

4.1.4 Nameplate Capacity – Submit to Idaho Power manufacturer’s and engineering documentation that establishes the Nameplate Capacity of each individual generation unit that is included within this entire Facility. Upon receipt of this data, Idaho Power shall review the provided data and determine if the Nameplate Capacity specified is reasonable based upon the manufacturer’s specified generation ratings for the specific generation units.

4.1.5 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.

4.1.6 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.

4.1.7 Interconnection – Provide written confirmation from Idaho Power’s delivery business unit that Seller has satisfied all interconnection requirements.

4.1.8 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.

4.1.8.1 Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.

- a) Results of the initial transmission capacity request are known and acceptable to the Seller.
- b) 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 designated firm network resource.
- c.) If the Facility is located outside of the Idaho Power service territory, in addition to the above requirements, the Seller must provide evidence that the Seller has acquired firm transmission capacity from all required transmitting

entities to deliver the Facility's energy to an acceptable point of delivery on the Idaho Power electrical system.

- 4.1.9 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date.
- 5.2 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:
- a) Achieved the First Energy Date.
 - b) Commission approval of this Agreement in a form acceptable to Idaho Power has been received.
 - c) Seller has demonstrated to Idaho Power's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable and safe manner.
 - d) Seller has requested an Operation Date from Idaho Power in a written format.
 - e) Seller has received written confirmation from Idaho Power of the Operation Date.

This confirmation will not be unreasonably withheld by Idaho Power.

- 5.3 Operation Date Delay - Seller shall cause the Facility to achieve the Operation Date on or before the Scheduled Operation Date. Delays in the interconnection and transmission network upgrade study, design and construction process that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement.

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

Delay Liquidated Damages are equal to ((Current month's Initial Year Net Energy Amount as specified in paragraph 6.2.1 divided by the number of days in the current month) multiplied by the number of days in the Delay Period in the current month) multiplied by the current month's Delay Price.

5.3.2 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation Date, the Seller shall pay Idaho Power Delay Liquidated Damages, in addition to those provided in paragraph 5.3.1, calculated as follows:

Forty-five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW.

5.4 If Seller fails to achieve the Operation Date within ninety (90) days following the Scheduled Operation Date, such failure will be a Material Breach and Idaho Power may terminate this Agreement at any time until the Seller cures the Material Breach. Additional Delay Liquidated Damages beyond those calculated in 5.3.1 and 5.3.2 will be calculated and payable using the Delay Liquidated Damage calculation described in 5.3.1 above for all days exceeding 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 Liquidated Damages within seven (7) days of when Idaho Power calculates and presents any 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 Liquidated Damages.

5.6 The Parties agree that the damages Idaho Power would incur due to delay in the Facility achieving the Operation Date on or before the Scheduled Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

5.7 Prior to the Seller executing this Agreement, the Seller shall have agreed to and executed a Letter of Understanding with Idaho Power that contains at a minimum the following requirements:

- a) Seller has filed for interconnection and is in compliance with all payments and requirements of the interconnection process.
- b) Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.

5.8 Within thirty (30) days of the date of a final non-appealable Commission Order as specified in Article XXI approving this Agreement; Seller shall post liquid security ("Delay Security") in a form as described in Appendix D equal to or exceeding the amount calculated in paragraph 5.8.1. Failure to post this Delay Security in the time specified above will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement.

5.8.1 Delay Security The greater of forty-five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW or the sum of three month's estimated revenue. Where the estimated three months of revenue is the estimated revenue associated with the first three full months following the estimated Scheduled Operation Date, the estimated kWh of energy production as specified in paragraph 6.2.1 for those three months multiplied by the All Hours Energy Price specified in paragraph 7.3 for each of those three months.

5.8.1.1 In the event (a) Seller provides Idaho Power with certification that (1) a generation interconnection agreement specifying a schedule that will enable this Facility to achieve the Operation Date no later than the Scheduled Operation Date has been completed and the Seller has paid all required interconnection

costs or (2) a generation interconnection agreement is substantially complete and all material costs of interconnection have been identified and agreed upon and the Seller is in compliance with all terms and conditions of the generation interconnection agreement, the Delay Security calculated in accordance with paragraph 5.8.1 will be reduced by ten percent (10%).

5.8.1.2 If the Seller has received a reduction in the calculated Delay Security as specified in paragraph 5.8.1.1 and subsequently (1) at Seller's request, the generation interconnection agreement specified in paragraph 5.8.1.1 is revised and as a result the Facility will not achieve its Operation Date by the Scheduled Operation Date, or (2) if the Seller does not maintain compliance with the generation interconnection agreement, the full amount of the Delay Security as calculated in paragraph 5.8.1 will be subject to reinstatement and will be due and owing within 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 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. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time will the total amount

of Net Energy and/or Inadvertent Energy produced by the Facility and delivered by the Seller to the Point of Delivery exceed the Maximum Capacity Amount.

6.2 Net Energy Amounts - Seller intends to produce and deliver Net Energy in the following monthly amounts. These amounts shall be consistent with the Mechanical Availability Guarantee.

6.2.1 Initial Year Monthly Net Energy Amounts:

	<u>Month</u>	<u>kWh</u>
Season 1	March	5,463,612
	April	5,707,523
	May	5,317,265
Season 2	July	4,731,878
	August	4,634,314
	November	4,536,749
	December	4,634,314
Season 3	June	4,780,661
	September	4,585,532
	October	4,683,096
	January	4,829,443
	February	4,634,314

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

6.4 Mechanical Availability Guarantee – After the Operational Date has been established, the Facility shall achieve a minimum monthly Mechanical Availability of eighty-five percent (85%) for the Facility for each month during the full term of this Agreement (the "Mechanical Availability Guarantee"). Failure to achieve the Mechanical Availability Guarantee shall result in Idaho Power calculating damages as specified in paragraph 6.4.4.

6.4.1 At the same time the Seller provides the Monthly Power Production and Availability Report (Appendix A), the Seller shall provide and certify the calculation of the Facility's current month's Mechanical Availability. The Seller shall include a summary of all information used to calculate the Calculated Net Energy Amount including but not

limited to: (a) Forced Outages, (b) Force Majeure events, (c) wind speeds and the impact on generation output, and (c) scheduled maintenance and Station Use information.

6.4.2 The Seller shall maintain and retain for (3) three years detailed documentation supporting the monthly calculation of the Facility's Mechanical Availability.

6.4.3 Idaho Power shall have the right to review and audit the documentation supporting the calculation of the Facility's Mechanical Availability at reasonable times at the Seller's offices.

6.4.4 If the current month's Mechanical Availability is less than the Mechanical Availability Guarantee, damages shall be equal to:

((85 percent of the month's Calculated Net Energy Amount) minus the month's actual Net Energy deliveries) multiplied by the Availability Shortfall Price.

6.4.5 Any damages calculated in paragraph 6.4.4 will be offset against the current month's energy payment. If an unpaid balance remains after the damages are offset against the energy payment, the Seller shall pay in full the remaining balance within thirty (30) days of the date of the invoice.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Heavy Load Purchase Price – For all Net Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 31025 adjusted in accordance with Commission Order 30415 for Heavy Load Hour Energy deliveries, adjusted in accordance with Commission Order 30488 for the wind integration charge, and with seasonalization factors applied:

	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2010	40.52	66.15	55.12
2011	42.80	69.87	58.24
2012	45.32	74.00	61.66

2013	47.71	78.18	64.92
2014	50.29	82.74	68.42
2015	53.05	87.64	72.17
2016	54.64	90.46	74.34
2017	56.20	93.23	76.61
2018	57.90	96.25	79.12
2019	59.57	99.21	81.59
2020	61.29	102.27	84.14
2021	63.33	105.90	87.16
2022	65.46	109.67	90.31
2023	67.67	113.59	93.57
2024	69.97	117.66	96.97
2025	72.35	121.90	100.50
2026	74.38	125.49	103.49
2027	76.62	129.20	106.58
2028	78.96	133.03	109.77
2029	81.38	136.97	113.06
2030	83.87	141.04	116.45
2031	87.22	146.51	121.01
2032	90.15	151.30	125.00
2033	93.19	156.26	129.13

7.2 Light Load Purchase Price – For all Net Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 31025 adjusted in accordance with Commission Order 30415 for Light Load Hour Energy deliveries, adjusted in accordance with Commission Order 30488 for the wind integration charge, and with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2010	35.59	58.11	48.42
2011	37.88	61.84	51.54
2012	40.40	65.95	54.96
2013	42.79	69.86	58.22
2014	45.37	74.06	61.72
2015	48.13	78.91	65.48
2016	49.72	81.73	67.64
2017	51.28	84.50	69.76
2018	52.97	87.51	72.07
2019	54.65	90.47	74.35
2020	56.37	93.53	76.86

2021	58.41	97.16	79.88
2022	60.54	100.93	83.03
2023	62.74	104.85	86.29
2024	65.04	108.92	89.69
2025	67.43	113.16	93.22
2026	69.45	116.76	96.21
2027	71.55	120.47	99.30
2028	73.70	124.29	102.49
2029	76.03	128.24	105.78
2030	78.52	132.31	109.17
2031	81.87	137.77	113.73
2032	84.80	142.56	117.72
2033	87.84	147.52	121.85

7.3 All Hours Energy Price -- The price to be used in the calculation of the Surplus Energy Price and Delay Price shall be the non-levelized energy price in accordance with Commission Order 31025 adjusted in accordance with Commission Order 30488 for the wind integration charge, and with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2010	38.33	62.57	52.14
2011	40.61	66.30	55.26
2012	43.13	70.42	58.68
2013	45.52	74.33	61.93
2014	48.10	78.85	65.44
2015	50.86	83.75	69.19
2016	52.45	86.58	71.36
2017	54.01	89.35	73.48
2018	55.71	92.36	75.88
2019	57.37	95.32	78.35
2020	59.10	98.38	80.90
2021	61.14	102.01	83.92
2022	63.27	105.78	87.07
2023	65.48	109.70	90.33
2024	67.78	113.77	93.73
2025	70.16	118.01	97.26
2026	72.18	121.60	100.25
2027	74.28	125.31	103.35
2028	76.58	129.14	106.53
2029	79.00	133.09	109.82
2030	81.49	137.16	113.21

2031	84.84	142.62	117.77
2032	87.77	147.41	121.76
2033	90.81	152.37	125.89

7.4 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Reference Price or the All Hours Energy Price specified in paragraph 7.3, whichever is lower.

7.5 Inadvertent Energy –

7.5.1 Inadvertent Energy is electric energy produced by the Facility, expressed in kWh, which the Seller delivers to Idaho Power at the Point of Delivery that exceeds 10,000 kW multiplied by the hours in the specific month in which the energy was delivered. (For example January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440, 000 kWh in this example would be Inadvertent Energy.)

7.5.2 Although Seller intends to design and operate the Facility to generate no more than 10 average MW and therefore does not intend to generate Inadvertent Energy, Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount but will not purchase or pay for Inadvertent Energy.

7.6 Payment Due Date – Undisputed Energy payments, less the Wind Energy Production Forecasting Monthly Cost Allocation (MCA) described in Appendix E and any other payments due 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 Mechanical Available Guarantee and the Net Energy actually delivered to Idaho Power as specified in Appendix A.

7.7 Continuing Jurisdiction of the Commission .This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107

Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utility Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

- 8.1 Seller retains ownership under this Agreement of green tags and renewable energy certificates (RECs), or the equivalent environmental attributes, directly associated with the production of energy from the Seller's Facility sold to Idaho Power.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy and Inadvertent Energy to the Idaho Power Point of Delivery for the full term of the Agreement.
- 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 and Telemetry Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with this Agreement and Schedule 72. The Metering Equipment will be at the location and the type required to measure, record and report the Facility's Net Energy, Station Use, Inadvertent Energy and maximum energy deliveries (kW) at

the Point of Delivery in a manner to provide Idaho Power adequate energy measurement data to administer this Agreement and to integrate this Facility's energy production into the Idaho Power electrical system.

- 10.2 Telemetry – Idaho Power will install, operate and maintain at Seller's expense metering, communications and telemetry equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of Seller's Net Energy and Inadvertent Energy produced and delivered to the Idaho Power Point of Delivery to Idaho Power's Designated Dispatch Facility.

ARTICLE XI - RECORDS

- 11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate total generation, Net Energy, Station Use, Inadvertent Energy and maximum generation (kW) records in a form and content acceptable to Idaho Power.
- 11.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all generation, Net Energy, Station Use, Inadvertent Energy 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 or accepting Inadvertent Energy which would have otherwise been produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, Forced Outage or temporary disconnection of the Facility in accordance with Schedule 72. If, for reasons other than an event of Force Majeure or a Forced Outage, a temporary disconnection under Schedule 72 exceeds twenty (20) days,

beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

12.2.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may temporarily disconnect the Facility from Idaho Power's transmission/distribution system as specified within Schedule 72 or take such other reasonable steps as Idaho Power deems appropriate.

12.2.3 Under no circumstances will the Seller deliver Net Energy and/or Inadvertent Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount at any moment in time. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

12.2.4 If Idaho Power is unable to accept the energy from this Facility and is not excused from accepting the Facility's energy, Idaho Power's damages shall be limited to only the 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 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.

- 12.4 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.
- 12.5 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact the Seller prior to exercising its rights to interrupt interconnection or curtail deliveries from the Seller's Facility. Seller understands that in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

ARTICLE XIII: INDEMNIFICATION AND INSURANCE

- 13.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's (a) construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement, or (b) negligent or intentional acts, errors or omissions. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all documented costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.
- 13.2 Insurance - During the term of this Agreement, Seller shall secure and continuously carry the following insurance coverage:
- 13.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to \$1,000,000, each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.

13.2.2 The above insurance coverage shall be placed with an insurance company with an A.M.

Best Company rating of A- or better and shall include:

- (a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable; and
- (b) A provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

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

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

ARTICLE XIV: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the Effective Date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

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

ARTICLE XV: LIABILITY; DEDICATION

15.1 Limitation of Liability. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement.

Neither party shall be liable to the other for any indirect, special, consequential, nor punitive damages, except as expressly authorized by this Agreement.

15.2 Dedication. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the Party or the public or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XVI: SEVERAL OBLIGATIONS

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

ARTICLE XVII: WAIVER

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

ARTICLE XVIII: CHOICE OF LAWS AND VENUE

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

ARTICLE XIX: DISPUTES AND DEFAULT

- 19.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.
- 19.2 Notice of Default
- 19.2.1 Defaults. If either Party fails to perform any of the terms or conditions of this Agreement (an "event of default"), the non-defaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the non-defaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.

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

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

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

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

Rainbow Ranch Wind LLC
American Wind Group, LLC-Manager
Attn: Brian D. Jackson
2792 Desert Wind Road
Oasis, Idaho 83647-5020
E-mail: Brian@AmericanWind.net

Copy of document to:

Innovative Energy Inc.
P.O. Box 11112
Jackson, WY 83002
Attn: Ben Bartlett
Bbbartlett4@gmail.com
307-690-5288

To Idaho Power:

Original document to:

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

Copy of document to:

Cogeneration and Small Power Production
Idaho Power Company

P.O. 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	-	Monthly Power Production and Availability Report
Appendix B	-	Facility and Point of Delivery
Appendix C	-	Engineer's Certifications
Appendix D	-	Forms of Liquid Security
Appendix E	-	Wind Energy Production Forecasting

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.

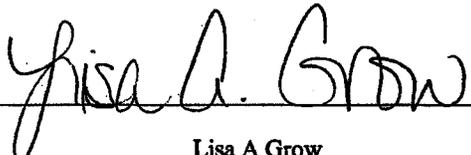
ARTICLE XXIX: ENTIRE AGREEMENT

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.

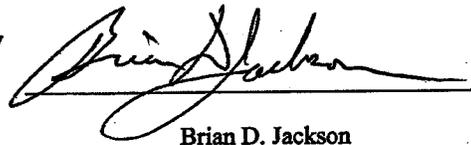
IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed
in their respective names on the dates set forth below:

Idaho Power Company

Rainbow Ranch Wind LLC

By 

Lisa A Grow
Sr. Vice President, Power Supply

By 

Brian D. Jackson
Manager of American Wind Group LLC
American Wind Group LLC
being the authorized manager of
Rainbow Ranch Wind LLC

Dated 12.14.10

"Idaho Power"

Dated 12-13-2010

"Seller"

APPENDIX A

A-1 MONTHLY POWER PRODUCTION AND AVAILABILITY 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 delivered to Idaho Power and Station Usage 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:

This report shall also include the Seller's calculation of the Mechanical Availability.

Idaho Power Company
Cogeneration and Small Power Production
MONTHLY POWER PRODUCTION AND AVAILABILITY REPORT

Month _____ Year _____

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

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

Mechanical Availability Guarantee

Seller Calculated Mechanical Availability _____

As specified in this Agreement, the Seller shall include with this monthly report a summary statement of the Mechanical Availability of this Facility for the calendar month. This summary shall include details as to how the Seller calculated this value and summary of the Facility data used in the calculation. Idaho Power and the Seller shall work together to mutually develop a summary report that provides the required data. Idaho Power reserves the right to review the detailed data used in this calculation as allowed within the Agreement.

Signature Date

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect the meter reading information from the Idaho Power provided Metering Equipment that measures the Net Energy and energy delivered to supply Station Use for the Facility recorded at 12:00 AM (Midnight) of the last day of the month.

The meter information collected will include but not be limited to energy production, Station Use, the maximum generation (kW) and any other required energy measurements to adequately administer this Agreement.

A-3 ROUTINE REPORTING

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: Brian D. Jackson
Telephone Number: 208-796-2222
Cell Phone: 208-859-1882

Project On-site Contact information

Telephone Number: _____

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Rainbow Ranch Wind Project

Project Number: 31615500

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 will be comprised of approximately ten (10) wind turbines with a cumulative nameplate rating that will not exceed the Maximum Capacity Amount as specified in Item B-4 and not less than 18 MW. At the time this agreement was executed, selection of the turbine manufacturer had not been finalized by the Seller. At the time the Seller provides the detailed description of the wind turbines selected and quantity to be included in the Idaho Power Interconnection process, the Seller will provide this same information to be included in this Agreement. The Facility is currently considering use of up to nine (9) Nordex N100 wind turbines (Nameplate Capacity rating up to 2.5MW/turbine, 0.95 lead/0.95 lag power factor) or up to 11 DeWind D9.2 wind turbines (Nameplate Capacity rating up to 2MW/turbine, 0.90 lead-inductive/0.90 lag-capacitive power factor), or other wind turbine models.

B-2 LOCATION OF FACILITY

Near: Declo, Idaho

T10S, R26E, SEC: 10, 3, and 2, County: Cassia

Description of Interconnection Location: 138 kV Idaho Power Transmission Line Tap

Nearest Idaho Power Substation: Jackson

B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected December 31, 2011 as the Scheduled First Energy Date.

Seller has selected December 31, 2012 as the Scheduled Operation Date.

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

B-4 MAXIMUM CAPACITY AMOUNT:

This value will be 23 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.

At the time this Agreement was executed the Seller had requested only 20 MW of capacity in the interconnection and transmission capacity process. Prior to the project delivering energy that exceeds 20MW, the Seller must request and be granted additional capacity up to but not exceeding 3 MW in both interconnection and transmission capacity by Idaho Power. The Seller must make this additional capacity request using the routine Idaho Power interconnection and transmission capacity process and shall be responsible for all costs associated with this additional capacity request. Under no circumstances will the Nameplate Capacity of this Facility exceed 23MW. If the installed capacity is less than the Maximum Capacity Amount at the end of the first Contract Year, the Maximum Capacity Amount will be adjusted downward to reflect the actual nameplate rating of the wind turbines installed. This revised Maximum Capacity Amount will then remain in effect for the remaining term of this Agreement.

B-5 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of where the Sellers Facility's energy is delivered to the Idaho Power electrical system. Schedule 72 will determine

the specific Point of Delivery for this Facility. The Point of Delivery identified by Schedule 72 will become an integral part of this Agreement.

B-6 LOSSES

If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering equipment is unable to measure the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (kWh) between the Seller's Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc.) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the kWh Losses for the remaining term of the Agreement. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual kWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous months kWh loss calculations.

B-7 METERING AND TELEMETRY

Schedule 72 will determine the specific metering and telemetry requirements for this Facility. At the minimum, the Metering Equipment and Telemetry equipment must be able to provide and record hourly energy deliveries to the Point of Delivery and any other energy measurements required to administer this Agreement. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment, design and installation of the Idaho

Power provided equipment. Seller will arrange for and make available at Seller's cost communication circuit(s) compatible with Idaho Power's communications equipment and dedicated to Idaho Power's use terminating at the Idaho Power facilities capable of providing Idaho Power with continuous instantaneous information on the Facilities energy production. Idaho Power provided equipment will be owned and maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller. Payment of these costs will be in accordance with Schedule 72 and the total metering cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

B-8 NETWORK RESOURCE DESIGNATION

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

APPENDIX C

ENGINEER'S CERTIFICATION
OF
OPERATIONS & MAINTENANCE POLICY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as 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 twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has

been designed and built to appropriate standards, adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for a 20 year period.

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C
ENGINEER'S CERTIFICATION
OF
ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as 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 twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.

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

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C

ENGINEER'S CERTIFICATION
OF
DESIGN & CONSTRUCTION ADEQUACY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as 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 twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.

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

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

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

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

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

By _____
(P.E. Stamp)

Date _____

APPENDIX D

FORMS OF LIQUID SECURITY

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

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

1. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the Delay Security or any other required security amount(s). The Seller shall be responsible for all costs, and receive any interest earned associated with establishing and maintaining the escrow account(s).

Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Delay Security or other required security amount(s): (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

APPENDIX E

WIND ENERGY PRODUCTION FORECASTING

As specified in Commission Order 30488, Idaho Power shall make use of a Wind Energy Production Forecasting model to forecast the energy production from this Facility and other Qualifying Facility wind generation resources. Seller and Idaho Power will share the cost of Wind Energy Production Forecasting. The Facility's share of Wind Energy Production Forecasting is determined as specified below. Sellers share will not be greater than 0.1% of the total energy payments made to Seller by Idaho Power during the previous Contract Year.

- a. For every month of this Agreement beginning with the first full month after the First Energy Date as specified in Appendix B of this Agreement, the Wind Energy Production Forecasting Monthly Cost Allocation (MCA) will be due and payable by the Seller. Any Wind Energy Production Forecasting Monthly Cost Allocations (MCA) that are not reimbursed to Idaho Power shall be deducted from energy payments to the Seller.
- b. As the value of the 0.1% cap of the Facilities total energy payments will not be known until the first Contract Year is complete, at the end of the first Contract Year any prior allocations that exceeded the 0.1% cap shall be adjusted to reflect the 0.1% cap. If the Facility has paid the monthly allocations, a refund will be included in equal monthly amounts over the ensuing Contract Year. If the Facility has not paid the monthly allocations, the amount due to Idaho Power will be adjusted accordingly and the unpaid balance will be deducted from the ensuing Contract Year's energy payments.

- c. The cost allocation formula described below will be reviewed and revised if necessary on the last day of any month in which the cumulative MW nameplate rating of wind projects having Commission approved agreements to deliver energy to Idaho Power has been revised by an action of the Commission.
- d. The monthly cost allocation will be based upon the following formula:

Where: **Total MW (TMW)** is equal to the total nameplate rating of all QF wind projects that are under contract to provide energy to Idaho Power Company.

Facility MW (FMW) is equal to the nameplate rating of this Facility as specified in Appendix B.

Annual Wind Energy Production Forecasting Cost (AFCost) is equal to the total annual cost Idaho Power incurs to provide Wind Energy Production Forecasting. Idaho Power will estimate the AFCost for the current year based upon the previous year's cost and expected costs for the current year. At year-end, Idaho Power will compare the actual costs to the estimated costs and any differences between the estimated AFCost and the actual AFCost will be included in the next year's AFCost.

Annual Cost Allocation (ACA) = AFCost X (FMW / TMW)

And

Monthly Cost Allocation (MCA) = ACA / 12

- e. The Wind Energy Production Forecasting Monthly Cost Allocation (MCA) is due and payable to Idaho Power. The MCA will first be netted against any monthly energy payments owed to the Seller. If the netting of the MCA against the monthly energy payments results in a balance being due Idaho Power, the Facility shall pay this amount within fifteen (15) days of the date of the payment invoice.

FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

Project Name: Rainbow West Wind Project

Project Number: 31615550

THIS AGREEMENT, entered into on this 14th day of December 2010 between Rainbow West Wind LLC (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

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

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

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

ARTICLE I: DEFINITIONS

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

- 1.1 "Availability Shortfall Price" - The current month's Mid-Columbia Market Energy Cost minus the current month's All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 15.00 Mills/kWh the result shall be 15.00 Mills/kWh.
- 1.2 "Business Days" - means any calendar day that is not a Saturday, a Sunday, or a NERC recognized holiday.

- 1.3 **“Calculated Net Energy Amount”** - A monthly estimate, prepared and documented after the fact by Seller, reviewed and accepted by the Buyer that is the calculated monthly maximum energy deliveries (measured in kWh) for each individual wind turbine, totaled for the Facility to determine the total energy that the Facility could have delivered to Idaho Power during that month based upon: (1) each wind turbine’s Nameplate Capacity, (2) Sufficient Prime Mover available for use by each wind turbine during the month, (3) incidents of Force Majeure, (4) scheduled maintenance, or (5) incidents of Forced Outages less Losses and Station Use. If the duration of an event characterized as item 3, 4 or 5 above (measured on each individual occurrence and individual wind turbine) lasts for less than 15 minutes, then the event will not be considered in this calculation. The Seller shall collect and maintain actual data to support this calculation and shall keep this data for a minimum of 3 years.
- 1.4 **“Commission”** - The Idaho Public Utilities Commission.
- 1.5 **“Contract Year”** - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.6 **“Delay Liquidated Damages”** – Damages payable to Idaho Power as calculated in paragraph 5.3, 5.4, 5.5 and 5.6.
- 1.7 **“Delay Period”** – All days past the Scheduled Operation Date until the Seller’s Facility achieves the Operation Date.
- 1.8 **“Delay Price”** - The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.
- 1.9 **“Designated Dispatch Facility”** - Idaho Power’s Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.10 **“Effective Date”** – The date stated in the opening paragraph of this Firm Energy Sales Agreement representing the date upon which this Firm Energy Sales Agreement was fully executed by both Parties.

- 1.11 **"Facility"** - That electric generation facility described in Appendix B of this Agreement.
- 1.12 **"First Energy Date"** - The day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and the Seller begins delivering energy to the Idaho Power electrical system at the Point of Delivery.
- 1.13 **"Forced Outage"** – a partial or total reduction of a) the Facility's capacity to produce and/or deliver Net Energy to the Point of Delivery, or b) Idaho Power's ability to accept Net Energy at the Point of Delivery for non-economic reasons, as a result of Idaho Power or Facility: 1) equipment failure which was **not** the result of negligence or lack of preventative maintenance, or 2) responding to a transmission provider curtailment order, or 3) unplanned preventative maintenance to repair equipment that left unrepaired, would result in failure of equipment prior to the planned maintenance period, or 4) planned maintenance or construction of the Facility or electrical lines required to serve this Facility. The Parties shall make commercially reasonable efforts to perform this unplanned preventative maintenance during periods of low wind availability.
- 1.14 **"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.
- 1.15 **"Inadvertent Energy"** – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.5 of this Agreement.
- 1.16 **"Interconnection Facilities"** - All equipment specified in Idaho Power's Schedule 72.
- 1.17 **"Initial Capacity Determination"** – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than 10 average MW per month and is therefore eligible to be paid the published rates in accordance with Commission Order No. 29632.

- 1.18 **“Light Load Hours”** – The daily hours beginning at 11:00 pm, ending at 7:00 am Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.19 **“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 the Facility’s energy is delivered to the Idaho Power electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.20 **“Market Energy Reference Price”** – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.21 **“Material Breach”** – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.22 **“Maximum Capacity Amount”** – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.23 **“Mechanical Availability”** - The percentage amount calculated by Seller within 5 days after the end of each month of the Facility’s monthly actual Net Energy divided by the Facility’s Calculated Net Energy Amount for the applicable month. Any damages due as a result of the Seller falling short of the Mechanical Availability Guarantee for each month shall be determined in accordance with paragraph 6.4.4.
- 1.24 **“Mechanical Availability Guarantee”** shall be as defined in paragraph 6.4.
- 1.25 **“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 from the Seller’s Facility at the Metering Point.
- 1.26 **“Metering Point”** - The physical point at which the Metering Equipment is located that enables accurate measurement of the Test Energy and Net Energy deliveries to Idaho Power at the Point of Delivery for this Facility that provides all necessary data to administer this Agreement.
- 1.27 **“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.

- 1.28 **"Nameplate Capacity"** – The full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt-amperes, kilowatts, volts or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.
- 1.29 **"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. Net Energy does not include Inadvertent Energy.
- 1.30 **"Operation Date"** – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.31 **"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 **"Scheduled Operation Date"** – The date specified in Appendix B when Seller anticipates achieving the Operation Date. It is expected that the Scheduled Operation Date provided by the Seller shall be a reasonable estimate of the date that the Seller anticipates that the Seller's Facility shall achieve the Operation Date.

- 1.34 "Schedule 72" – Idaho Power's Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission. The Seller shall be responsible to pay all costs of interconnection and integration of this Facility into the Idaho Power electrical system as specified within Schedule 72 and this Agreement.
- 1.35 "Season" – The three periods identified in paragraph 6.2.1 of this Agreement.
- 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 "Sufficient Prime Mover" means wind speed that is (1) equal to or greater than the generation unit's manufacturer-specified minimum levels required for the generation unit to produce energy, and (2) equal to or less than the generation unit's manufacturer-specified maximum levels at which the generation unit can safely produce energy.
- 1.39 "Surplus Energy" – All Net Energy produced by the Seller's Facility and delivered by the Facility to the Idaho Power electrical system prior to the Operation Date.
- 1.40 "Total Cost of the Facility" - The total cost of structures, equipment and appurtenances.
- 1.41 "Wind Energy Production Forecast" – A forecast of energy deliveries from this Facility provided by an Idaho Power administered wind forecasting model. The Facility shall be responsible for an allocated portion of the total costs of the forecasting model as specified in Appendix E.

ARTICLE II: NO RELIANCE ON IDAHO POWER

- 2.1 Seller Independent Investigation - Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.

- 2.2 Seller Independent Experts - All professionals or experts including, but not limited to, engineers, attorneys, or accountants that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.
- 3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR 292.201 et seq. After initial qualification, Seller will take such steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Facility's Qualifying Facility status and associated support and compliance documents at anytime during the term of this Agreement.

ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.201 et seq. as a certified Qualifying Facility.
- 4.1.2 Opinion of Counsel - Submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that

Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).

4.1.3 Initial Capacity Determination - Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data will include but not be limited to, Nameplate Capacity, equipment specifications, prime mover data, resource characteristics, normal and/or average operating design conditions and Station Use data. Upon receipt of this information, Idaho Power will review the provided data and if necessary, request additional data to complete the Initial Capacity Determination within a reasonable time.

4.1.3.1 If the Maximum Capacity specified in Appendix B of this Agreement and the cumulative manufacture Nameplate Capacity rating of the individual generation units at this Facility is less than 10 MW, the Seller shall submit detailed, manufacturer, verifiable data of the Nameplate Capacity ratings of the actual individual generation units to be installed at this Facility. Upon verification by Idaho Power that the data provided establishes the combined Nameplate Capacity rating of the generation units to be installed at this Facility is less than 10 MW, it will be deemed that the Seller has satisfied the Initial Capacity Determination for this Facility.

4.1.4 Nameplate Capacity – Submit to Idaho Power manufacturer’s and engineering documentation that establishes the Nameplate Capacity of each individual generation unit that is included within this entire Facility. Upon receipt of this data, Idaho Power shall review the provided data and determine if the Nameplate Capacity specified is reasonable based upon the manufacturer’s specified generation ratings for the specific generation units.

4.1.5 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.

4.1.6 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.

4.1.7 Interconnection – Provide written confirmation from Idaho Power’s delivery business unit that Seller has satisfied all interconnection requirements.

4.1.8 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.

4.1.8.1 Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.

a) Results of the initial transmission capacity request are known and acceptable to the Seller.

b) 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 designated firm network resource.

c.) If the Facility is located outside of the Idaho Power service territory, in addition to the above requirements, the Seller must provide evidence that the Seller has acquired firm transmission capacity from all required transmitting

entities to deliver the Facility's energy to an acceptable point of delivery on the Idaho Power electrical system.

- 4.1.9 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date.
- 5.2 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:
- a) Achieved the First Energy Date.
 - b) Commission approval of this Agreement in a form acceptable to Idaho Power has been received.
 - c) Seller has demonstrated to Idaho Power's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable and safe manner.
 - d) Seller has requested an Operation Date from Idaho Power in a written format.
 - e) Seller has received written confirmation from Idaho Power of the Operation Date.

This confirmation will not be unreasonably withheld by Idaho Power.

- 5.3 Operation Date Delay - Seller shall cause the Facility to achieve the Operation Date on or before the Scheduled Operation Date. Delays in the interconnection and transmission network upgrade study, design and construction process that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement.

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

Delay Liquidated Damages are equal to ((Current month's Initial Year Net Energy Amount as specified in paragraph 6.2.1 divided by the number of days in the current month) multiplied by the number of days in the Delay Period in the current month) multiplied by the current month's Delay Price.

5.3.2 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation Date, the Seller shall pay Idaho Power Delay Liquidated Damages, in addition to those provided in paragraph 5.3.1, calculated as follows:

Forty-five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW.

5.4 If Seller fails to achieve the Operation Date within ninety (90) days following the Scheduled Operation Date, such failure will be a Material Breach and Idaho Power may terminate this Agreement at any time until the Seller cures the Material Breach. Additional Delay Liquidated Damages beyond those calculated in 5.3.1 and 5.3.2 will be calculated and payable using the Delay Liquidated Damage calculation described in 5.3.1 above for all days exceeding 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 Liquidated Damages within seven (7) days of when Idaho Power calculates and presents any 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 Liquidated Damages.

5.6 The Parties agree that the damages Idaho Power would incur due to delay in the Facility achieving the Operation Date on or before the Scheduled Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

5.7 Prior to the Seller executing this Agreement, the Seller shall have agreed to and executed a Letter of Understanding with Idaho Power that contains at a minimum the following requirements:

- a) Seller has filed for interconnection and is in compliance with all payments and requirements of the interconnection process.
- b) Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.

5.8 Within thirty (30) days of the date of a final non-appealable Commission Order as specified in Article XXI approving this Agreement; Seller shall post liquid security ("Delay Security") in a form as described in Appendix D equal to or exceeding the amount calculated in paragraph 5.8.1. Failure to post this Delay Security in the time specified above will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement.

5.8.1 Delay Security The greater of forty-five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW or the sum of three month's estimated revenue. Where the estimated three months of revenue is the estimated revenue associated with the first three full months following the estimated Scheduled Operation Date, the estimated kWh of energy production as specified in paragraph 6.2.1 for those three months multiplied by the All Hours Energy Price specified in paragraph 7.3 for each of those three months.

5.8.1.1 In the event (a) Seller provides Idaho Power with certification that (1) a generation interconnection agreement specifying a schedule that will enable this Facility to achieve the Operation Date no later than the Scheduled Operation Date has been completed and the Seller has paid all required interconnection

costs or (2) a generation interconnection agreement is substantially complete and all material costs of interconnection have been identified and agreed upon and the Seller is in compliance with all terms and conditions of the generation interconnection agreement, the Delay Security calculated in accordance with paragraph 5.8.1 will be reduced by ten percent (10%).

5.8.1.2 If the Seller has received a reduction in the calculated Delay Security as specified in paragraph 5.8.1.1 and subsequently (1) at Seller's request, the generation interconnection agreement specified in paragraph 5.8.1.1 is revised and as a result the Facility will not achieve its Operation Date by the Scheduled Operation Date, or (2) if the Seller does not maintain compliance with the generation interconnection agreement, the full amount of the Delay Security as calculated in paragraph 5.8.1 will be subject to reinstatement and will be due and owing within 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 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. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time will the total amount

of Net Energy and/or Inadvertent Energy produced by the Facility and delivered by the Seller to the Point of Delivery exceed the Maximum Capacity Amount.

6.2 Net Energy Amounts - Seller intends to produce and deliver Net Energy in the following monthly amounts. These amounts shall be consistent with the Mechanical Availability Guarantee.

6.2.1 Initial Year Monthly Net Energy Amounts:

	<u>Month</u>	<u>kWh</u>
Season 1	March	5,463,612
	April	5,707,523
	May	5,317,265
Season 2	July	4,731,878
	August	4,634,314
	November	4,536,749
	December	4,634,314
Season 3	June	4,780,661
	September	4,585,532
	October	4,683,096
	January	4,829,443
	February	4,634,314

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

6.4 Mechanical Availability Guarantee – After the Operational Date has been established, the Facility shall achieve a minimum monthly Mechanical Availability of eighty-five percent (85%) for the Facility for each month during the full term of this Agreement (the "Mechanical Availability Guarantee"). Failure to achieve the Mechanical Availability Guarantee shall result in Idaho Power calculating damages as specified in paragraph 6.4.4.

6.4.1 At the same time the Seller provides the Monthly Power Production and Availability Report (Appendix A), the Seller shall provide and certify the calculation of the Facility's current month's Mechanical Availability. The Seller shall include a summary of all information used to calculate the Calculated Net Energy Amount including but not

limited to: (a) Forced Outages, (b) Force Majeure events, (c) wind speeds and the impact on generation output, and (c) scheduled maintenance and Station Use information.

6.4.2 The Seller shall maintain and retain for three (3) years detailed documentation supporting the monthly calculation of the Facility's Mechanical Availability.

6.4.3 Idaho Power shall have the right to review and audit the documentation supporting the calculation of the Facility's Mechanical Availability at reasonable times at the Seller's offices.

6.4.4 If the current month's Mechanical Availability is less than the Mechanical Availability Guarantee, damages shall be equal to:

((85 percent of the month's Calculated Net Energy Amount) minus the month's actual Net Energy deliveries) multiplied by the Availability Shortfall Price.

6.4.5 Any damages calculated in paragraph 6.4.4 will be offset against the current month's energy payment. If an unpaid balance remains after the damages are offset against the energy payment, the Seller shall pay in full the remaining balance within thirty (30) days of the date of the invoice.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Heavy Load Purchase Price – For all Net Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 31025 adjusted in accordance with Commission Order 30415 for Heavy Load Hour Energy deliveries, adjusted in accordance with Commission Order 30488 for the wind integration charge, and with seasonalization factors applied:

	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
<u>Year</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2010	40.52	66.15	55.12
2011	42.80	69.87	58.24
2012	45.32	74.00	61.66

2013	47.71	78.18	64.92
2014	50.29	82.74	68.42
2015	53.05	87.64	72.17
2016	54.64	90.46	74.34
2017	56.20	93.23	76.61
2018	57.90	96.25	79.12
2019	59.57	99.21	81.59
2020	61.29	102.27	84.14
2021	63.33	105.90	87.16
2022	65.46	109.67	90.31
2023	67.67	113.59	93.57
2024	69.97	117.66	96.97
2025	72.35	121.90	100.50
2026	74.38	125.49	103.49
2027	76.62	129.20	106.58
2028	78.96	133.03	109.77
2029	81.38	136.97	113.06
2030	83.87	141.04	116.45
2031	87.22	146.51	121.01
2032	90.15	151.30	125.00
2033	93.19	156.26	129.13

7.2 Light Load Purchase Price – For all Net Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 31025 adjusted in accordance with Commission Order 30415 for Light Load Hour Energy deliveries, adjusted in accordance with Commission Order 30488 for the wind integration charge, and with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2010	35.59	58.11	48.42
2011	37.88	61.84	51.54
2012	40.40	65.95	54.96
2013	42.79	69.86	58.22
2014	45.37	74.06	61.72
2015	48.13	78.91	65.48
2016	49.72	81.73	67.64
2017	51.28	84.50	69.76
2018	52.97	87.51	72.07
2019	54.65	90.47	74.35
2020	56.37	93.53	76.86

2021	58.41	97.16	79.88
2022	60.54	100.93	83.03
2023	62.74	104.85	86.29
2024	65.04	108.92	89.69
2025	67.43	113.16	93.22
2026	69.45	116.76	96.21
2027	71.55	120.47	99.30
2028	73.70	124.29	102.49
2029	76.03	128.24	105.78
2030	78.52	132.31	109.17
2031	81.87	137.77	113.73
2032	84.80	142.56	117.72
2033	87.84	147.52	121.85

7.3 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Price shall be the non-levelized energy price in accordance with Commission Order 31025 adjusted in accordance with Commission Order 30488 for the wind integration charge, and with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2010	38.33	62.57	52.14
2011	40.61	66.30	55.26
2012	43.13	70.42	58.68
2013	45.52	74.33	61.93
2014	48.10	78.85	65.44
2015	50.86	83.75	69.19
2016	52.45	86.58	71.36
2017	54.01	89.35	73.48
2018	55.71	92.36	75.88
2019	57.37	95.32	78.35
2020	59.10	98.38	80.90
2021	61.14	102.01	83.92
2022	63.27	105.78	87.07
2023	65.48	109.70	90.33
2024	67.78	113.77	93.73
2025	70.16	118.01	97.26
2026	72.18	121.60	100.25
2027	74.28	125.31	103.35
2028	76.58	129.14	106.53
2029	79.00	133.09	109.82
2030	81.49	137.16	113.21

2031	84.84	142.62	117.77
2032	87.77	147.41	121.76
2033	90.81	152.37	125.89

7.4 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Reference Price or the All Hours Energy Price specified in paragraph 7.3, whichever is lower.

7.5 Inadvertent Energy -

7.5.1 Inadvertent Energy is electric energy produced by the Facility, expressed in kWh, which the Seller delivers to Idaho Power at the Point of Delivery that exceeds 10,000 kW multiplied by the hours in the specific month in which the energy was delivered. (For example January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440,000 kWh in this example would be Inadvertent Energy.)

7.5.2 Although Seller intends to design and operate the Facility to generate no more than 10 average MW and therefore does not intend to generate Inadvertent Energy, Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount but will not purchase or pay for Inadvertent Energy.

7.6 Payment Due Date - Undisputed Energy payments, less the Wind Energy Production Forecasting Monthly Cost Allocation (MCA) described in Appendix E and any other payments due Idaho Power, will be disbursed to the Seller within 30 days of the date which Idaho Power receives and accepts the documentation of the monthly Mechanical Available Guarantee and the Net Energy actually delivered to Idaho Power as specified in Appendix A.

7.7 Continuing Jurisdiction of the Commission . This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107

Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utility Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

- 8.1 Seller retains ownership under this Agreement of green tags and renewable energy certificates (RECs), or the equivalent environmental attributes, directly associated with the production of energy from the Seller's Facility sold to Idaho Power.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility - Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy and Inadvertent Energy to the Idaho Power Point of Delivery for the full term of the Agreement.
- 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 and Telemetry Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with this Agreement and Schedule 72. The Metering Equipment will be at the location and the type required to measure, record and report the Facility's Net Energy, Station Use, Inadvertent Energy and maximum energy deliveries (kW) at

the Point of Delivery in a manner to provide Idaho Power adequate energy measurement data to administer this Agreement and to integrate this Facility's energy production into the Idaho Power electrical system.

- 10.2 Telemetry – Idaho Power will install, operate and maintain at Seller's expense metering, communications and telemetry equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of Seller's Net Energy and Inadvertent Energy produced and delivered to the Idaho Power Point of Delivery to Idaho Power's Designated Dispatch Facility.

ARTICLE XI - RECORDS

- 11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate total generation, Net Energy, Station Use, Inadvertent Energy and maximum generation (kW) records in a form and content acceptable to Idaho Power.
- 11.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all generation, Net Energy, Station Use, Inadvertent Energy 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 or accepting Inadvertent Energy which would have otherwise been produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, Forced Outage or temporary disconnection of the Facility in accordance with Schedule 72. If, for reasons other than an event of Force Majeure or a Forced Outage, a temporary disconnection under Schedule 72 exceeds twenty (20) days,

beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

12.2.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may temporarily disconnect the Facility from Idaho Power's transmission/distribution system as specified within Schedule 72 or take such other reasonable steps as Idaho Power deems appropriate.

12.2.3 Under no circumstances will the Seller deliver Net Energy and/or Inadvertent Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount at any moment in time. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

12.2.4 If Idaho Power is unable to accept the energy from this Facility and is not excused from accepting the Facility's energy, Idaho Power's damages shall be limited to only the 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 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.

- 12.4 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.
- 12.5 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact the Seller prior to exercising its rights to interrupt interconnection or curtail deliveries from the Seller's Facility. Seller understands that in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

ARTICLE XIII: INDEMNIFICATION AND INSURANCE

- 13.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's (a) construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement, or (b) negligent or intentional acts, errors or omissions. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all documented costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.
- 13.2 Insurance - During the term of this Agreement, Seller shall secure and continuously carry the following insurance coverage:
- 13.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to \$1,000,000, each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.

13.2.2 The above insurance coverage shall be placed with an insurance company with an A.M.

Best Company rating of A- or better and shall include:

- (a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable; and
- (b) A provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

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

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

ARTICLE XIV: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the Effective Date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

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

ARTICLE XV: LIABILITY; DEDICATION

- 15.1 Limitation of Liability. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. Neither party shall be liable to the other for any indirect, special, consequential, nor punitive damages, except as expressly authorized by this Agreement.
- 15.2 Dedication. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the Party or the public or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XVI: SEVERAL OBLIGATIONS

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

ARTICLE XVII: WAIVER

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

ARTICLE XVIII: CHOICE OF LAWS AND VENUE

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

ARTICLE XIX: DISPUTES AND DEFAULT

- 19.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.
- 19.2 Notice of Default
- 19.2.1 Defaults. If either Party fails to perform any of the terms or conditions of this Agreement (an "event of default"), the non-defaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the non-defaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.

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

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

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

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

Rainbow West Wind LLC
American Wind Group, LLC – Authorized Manager
Attn: Brian D. Jackson
2792 Desert Wind Road
Oasis, Idaho 83647-5020
E-mail: Brian@AmericanWind.net
Telephone: 208-796-2222

Copy of document to:

Innovative Energy Inc.
Attn: Ben Bartlett
P.O. Box 11112
Jackson, WY 83002
E-mail: Bbbartlett4@gmail.com
Telephone: 307-690-5288

To Idaho Power:

Original document to:

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

Copy of document to:

Cogeneration and Small Power Production
Idaho Power Company
P.O. 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	-	Monthly Power Production and Availability Report
Appendix B	-	Facility and Point of Delivery
Appendix C	-	Engineer's Certifications
Appendix D	-	Forms of Liquid Security
Appendix E	-	Wind Energy Production Forecasting

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.

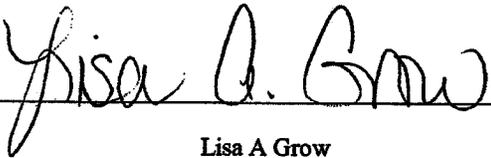
ARTICLE XXIX: ENTIRE AGREEMENT

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.

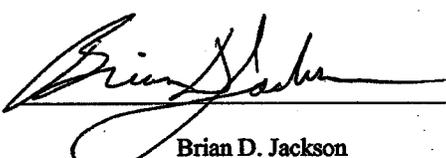
IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed
in their respective names on the dates set forth below:

Idaho Power Company

Rainbow West Wind LLC

By 

Lisa A Grow
Sr. Vice President, Power Supply

By 

Brian D. Jackson
Manager of American Wind Group LLC
American Wind Group LLC
being the authorized manager of
Rainbow West Wind LLC

Dated 12-14-10

"Idaho Power"

Dated 12-13-2010

"Seller"

APPENDIX A

A-1 MONTHLY POWER PRODUCTION AND AVAILABILITY 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 delivered to Idaho Power and Station Usage 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:

This report shall also include the Seller's calculation of the Mechanical Availability.

Idaho Power Company
Cogeneration and Small Power Production
MONTHLY POWER PRODUCTION AND AVAILABILITY REPORT

Month _____ Year _____

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

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

Mechanical Availability Guarantee

Seller Calculated Mechanical Availability _____

As specified in this Agreement, the Seller shall include with this monthly report a summary statement of the Mechanical Availability of this Facility for the calendar month. This summary shall include details as to how the Seller calculated this value and summary of the Facility data used in the calculation. Idaho Power and the Seller shall work together to mutually develop a summary report that provides the required data. Idaho Power reserves the right to review the detailed data used in this calculation as allowed within the Agreement.

 Signature Date

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect the meter reading information from the Idaho Power provided Metering Equipment that measures the Net Energy and energy delivered to supply Station Use for the Facility recorded at 12:00 AM (Midnight) of the last day of the month.

The meter information collected will include but not be limited to energy production, Station Use, the maximum generation (kW) and any other required energy measurements to adequately administer this Agreement.

A-3 ROUTINE REPORTING

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: Brian D. Jackson
Telephone Number: 208-796-2222
Cell Phone: 208-859-1882

Project On-site Contact information

Telephone Number: _____

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Rainbow West Wind Project

Project Number: 31615550

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 will be comprised of approximately ten (10) wind turbines with a cumulative nameplate rating that will not exceed the Maximum Capacity Amount as specified in Item B-4 and not less than 18 MW. At the time this agreement was executed, selection of the turbine manufacturer had not been finalized by the Seller. At the time the Seller provides the detailed description of the wind turbines selected and quantity to be included in the Idaho Power Interconnection process, the Seller will provide this same information to be included in this Agreement. The Facility is currently considering use of up to nine (9) Nordex N100 wind turbines (Nameplate Capacity rating up to 2.5MW/turbine, 0.95 lead/0.95 lag power factor) or up to 11 DeWind D9.2 wind turbines (Nameplate Capacity rating up to 2MW/turbine, 0.90 lead-inductive/0.90 lag-capacitive power factor), or other wind turbine models.

B-2 LOCATION OF FACILITY

Near: Declo, Idaho

T10S, R26E, SEC: 11, 12, 2, and 1, County: Cassia

Description of Interconnection Location: 138 kV Idaho Power Transmission Line Tap

Nearest Idaho Power Substation: Jackson

B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected December 31, 2011 as the Scheduled First Energy Date.

Seller has selected December 31, 2012 as the Scheduled Operation Date.

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

B-4 MAXIMUM CAPACITY AMOUNT:

This value will be 23 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.

At the time this Agreement was executed the Seller had requested only 20 MW of capacity in the interconnection and transmission capacity process. Prior to the project delivering energy that exceeds 20MW, the Seller must request and be granted additional capacity up to but not exceeding 3 MW in both interconnection and transmission capacity by Idaho Power. The Seller must make this additional capacity request using the routine Idaho Power interconnection and transmission capacity process and shall be responsible for all costs associated with this additional capacity request. Under no circumstances will the Nameplate Capacity of this Facility exceed 23MW. If the installed capacity is less than the Maximum Capacity Amount at the end of the first Contract Year, the Maximum Capacity Amount will be adjusted downward to reflect the actual nameplate rating of the wind turbines installed. This revised Maximum Capacity Amount will then remain in effect for the remaining term of this Agreement.

B-5 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of where the Sellers Facility's energy is delivered to the Idaho Power electrical system. Schedule 72 will determine

the specific Point of Delivery for this Facility. The Point of Delivery identified by Schedule 72 will become an integral part of this Agreement.

B-6 LOSSES

If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering equipment is unable to measure the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (kWh) between the Seller's Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc.) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the kWh Losses for the remaining term of the Agreement. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual kWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous months kWh loss calculations.

B-7 METERING AND TELEMETRY

Schedule 72 will determine the specific metering and telemetry requirements for this Facility. At the minimum, the Metering Equipment and Telemetry equipment must be able to provide and record hourly energy deliveries to the Point of Delivery and any other energy measurements required to administer this Agreement. These specifications will include but not be limited to equipment specifications, equipment location, Idaho Power provided equipment, Seller provided equipment, and all costs associated with the equipment, design and installation of the

Idaho Power provided equipment. Seller will arrange for and make available at Seller's cost communication circuit(s) compatible with Idaho Power's communications equipment and dedicated to Idaho Power's use terminating at the Idaho Power facilities capable of providing Idaho Power with continuous instantaneous information on the Facilities energy production. Idaho Power provided equipment will be owned and maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller. Payment of these costs will be in accordance with Schedule 72 and the total metering cost will be included in the calculation of the Monthly Operation and Maintenance Charges specified in Schedule 72.

B-8 NETWORK RESOURCE DESIGNATION

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

APPENDIX C

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as 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 twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the

Project's producing at or near the design electrical output, efficiency and plant factor for a twenty (20) year period.

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C
ENGINEER'S CERTIFICATION
OF
ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as 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 twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.

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

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C

ENGINEER'S CERTIFICATION
OF
DESIGN & CONSTRUCTION ADEQUACY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as 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 twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.

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

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

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

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

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

By _____
(P.E. Stamp)

Date _____

APPENDIX D

FORMS OF LIQUID SECURITY

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

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

1. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the Delay Security or any other required security amount(s). The Seller shall be responsible for all costs, and receive any interest earned associated with establishing and maintaining the escrow account(s).

Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Delay Security or other required security amount(s): (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

APPENDIX E

WIND ENERGY PRODUCTION FORECASTING

As specified in Commission Order 30488, Idaho Power shall make use of a Wind Energy Production Forecasting model to forecast the energy production from this Facility and other Qualifying Facility wind generation resources. Seller and Idaho Power will share the cost of Wind Energy Production Forecasting. The Facility's share of Wind Energy Production Forecasting is determined as specified below. Seller's share will not be greater than 0.1% of the total energy payments made to Seller by Idaho Power during the previous Contract Year.

- a. For every month of this Agreement beginning with the first full month after the First Energy Date as specified in Appendix B of this Agreement, the Wind Energy Production Forecasting Monthly Cost Allocation (MCA) will be due and payable by the Seller. Any Wind Energy Production Forecasting Monthly Cost Allocations (MCA) that are not reimbursed to Idaho Power shall be deducted from energy payments to the Seller.
- b. As the value of the 0.1% cap of the Facilities total energy payments will not be known until the first Contract Year is complete, at the end of the first Contract Year any prior allocations that exceeded the 0.1% cap shall be adjusted to reflect the 0.1% cap. If the Facility has paid the monthly allocations, a refund will be included in equal monthly amounts over the ensuing Contract Year. If the Facility has not paid the monthly allocations, the amount due to Idaho Power will be adjusted accordingly and the unpaid balance will be deducted from the ensuing Contract Year's energy payments.

- c. The cost allocation formula described below will be reviewed and revised if necessary on the last day of any month in which the cumulative MW nameplate rating of wind projects having Commission approved agreements to deliver energy to Idaho Power has been revised by an action of the Commission.
- d. The monthly cost allocation will be based upon the following formula:

Where: **Total MW (TMW)** is equal to the total nameplate rating of all QF wind projects that are under contract to provide energy to Idaho Power Company.

Facility MW (FMW) is equal to the nameplate rating of this Facility as specified in Appendix B.

Annual Wind Energy Production Forecasting Cost (AFCost) is equal to the total annual cost Idaho Power incurs to provide Wind Energy Production Forecasting. Idaho Power will estimate the AFCost for the current year based upon the previous year's cost and expected costs for the current year. At year-end, Idaho Power will compare the actual costs to the estimated costs and any differences between the estimated AFCost and the actual AFCost will be included in the next year's AFCost.

Annual Cost Allocation (ACA) = AFCost X (FMW / TMW)

And

Monthly Cost Allocation (MCA) = ACA / 12

- e. The Wind Energy Production Forecasting Monthly Cost Allocation (MCA) is due and payable to Idaho Power. The MCA will first be netted against any monthly energy payments owed to the Seller. If the netting of the MCA against the monthly energy payments results in a balance being due Idaho Power, the Facility shall pay this amount within fifteen (15) days of the date of the payment invoice.

137 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Cedar Creek Wind, LLC

Docket No. EL11-59-000

NOTICE OF INTENT NOT TO ACT AND DECLARATORY ORDER

(Issued October 4, 2011)

1. In this order, we give notice that we decline to initiate an enforcement action pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ However, as discussed below, we conclude that the June 8, 2011 decision of the Idaho Public Utilities Commission (Idaho PUC),² which rejected five Firm Energy Sales Agreements (Agreements) between Cedar Creek Wind, LLC (Cedar Creek) and PacifiCorp³ d/b/a Rocky Mountain Power (Rocky Mountain Power), is inconsistent with the requirements of PURPA and our regulations implementing PURPA,⁴ as discussed further below.

Background

2. The Idaho PUC findings at issue in this proceeding developed from a November 5, 2010 filing with the Idaho PUC by a number of Idaho utilities, including Rocky

¹ 16 U.S.C. § 824a-3(h) (2006).

² *In the Matter of the Application of PacifiCorp dba Rocky Mountain Power for a Determination Regarding a Firm Energy Sales Agreement Between Rocky Mountain Power and Cedar Creek Wind, LLC*, Order No. 32260, Case No. PAC-E-11-01 et al., (Idaho PUC June 8, 2011) (June 8 Order).

³ June 8 Order at 10.

⁴ 16 U.S.C. § 824a-3 (2006); 18 C.F.R. Part 292 (2011).

Mountain Power,⁵ requesting the Idaho PUC to initiate an investigation into various avoided cost issues.⁶ The Idaho utilities also urged the Idaho PUC to lower the published avoided cost rate eligibility cap for a qualified facility (QF) from 10 aMW⁷ to 100 kW effective immediately.⁸

3. On December 3, 2010, the Idaho PUC issued Order No. 32131, finding probable cause to investigate the Idaho utilities' assertions, but did not immediately reduce the eligibility cap to 100 kW.⁹ This order, however, gave notice that the Idaho PUC would make a decision on the eligibility cap after its investigation and that its decision would be effective, retroactively, on December 14, 2010.¹⁰

4. On February 7, 2011, the Idaho PUC issued Order No. 32176, holding that the eligibility cap for wind and solar QFs to receive published avoided cost rates should be temporarily reduced from 10 aMW to 100 kW while the Idaho PUC further investigates the issue.¹¹ The Idaho PUC noted that while published avoided cost rates are not available to projects exceeding the eligibility cap, such projects may establish an avoided cost rate by using the Integrated Resource Plan (IRP) methodology.¹²

⁵ The filing parties included Idaho Power Company (Idaho Power), Avista Corporation, and Rocky Mountain Power. June 8 Order at 2.

⁶ Cedar Creek Petition at 4; June 8 Order at 2.

⁷ "Average megawatts" is a concept used by the Idaho PUC to distinguish between a project's nameplate capacity and its actual monthly output. To satisfy the 10 aMW limitation, a QF must "demonstrate that under normal or average design conditions the project will generate at no more than 10 aMW in any given month," and the maximum monthly generation eligible for the published rates is capped "at the total number of hours in the month multiplied by 10 MW." Order No. 29632, Case No. IPC-E-04-8 et al., at 14 (Idaho PUC Nov. 22, 2004).

⁸ Cedar Creek Petition at 4; June 8 Order at 2.

⁹ Cedar Creek Petition at 5; June 8 Order at 3.

¹⁰ Cedar Creek Petition at 5; June 8 Order at 3.

¹¹ Order No. 32176 was affirmed on reconsideration by the Idaho PUC in Order No. 32212, issued March 28, 2011.

¹² June 8 Order at 3.

5. Finally, on June 8, 2011, the Idaho PUC issued Order No. 32260, assessing whether it should accept the Agreements submitted to it by Rocky Mountain Power on January 10, 2011. Idaho PUC rejected the Agreements because they did not conform with the eligibility cap changes implemented in Order No. 32176, reducing the cap from 10 aMW to 100 kW.¹³ In making this finding, the Idaho PUC adopted a “bright line rule: a Firm Energy Sales Agreement/Power Purchase Agreement must be executed, i.e., signed by both parties to the agreement, prior to the effective date of the change in eligibility criteria.”¹⁴ The Idaho PUC explained that the Agreements were for projects in excess of the 100 kW eligibility cap and in order to be eligible for published avoided cost rates, the Agreements must be in effect before the date of the eligibility cap change, or, December 14, 2010. The Idaho PUC, noting its new rule, found that the Agreements were not signed by both Cedar Creek and Rocky Mountain Power until December 22, 2010, well after December 14, 2010. Thus, based on these findings, the Idaho PUC rejected the Agreements.¹⁵

Cedar Creek Petition

6. On August 5, 2011, Cedar Creek¹⁶ filed a Petition for Enforcement (Petition) asking the Commission to initiate an enforcement action against the Idaho PUC to address changes to Idaho PUC’s published avoided cost rates and their implementation of PURPA as a result of orders issued by the Idaho PUC “insofar as the Idaho PUC Orders impermissibly held that a QF’s right under PURPA to charge at the then-existing avoided cost rates exists only upon the execution of a contract by both parties.”¹⁷

7. In the alternative, if the Commission refuses to initiate an enforcement action, Cedar Creek requests the Commission to make the following findings:

- The Commission’s PURPA regulations expressly permit a QF to sell energy and capacity pursuant to a legally enforceable

¹³ Cedar Creek Petition at 6; June 8 Order at 10.

¹⁴ June 8 Order at 10.

¹⁵ Order No. 32260 was affirmed on reconsideration by the Idaho PUC in Order No. 32302, issued July 27, 2011.

¹⁶ Cedar Creek is a developer of five wind farms in Bingham County, Idaho.

¹⁷ Cedar Creek Petition at 2.

obligation, and to sell at rates established as of the date that the obligation is incurred;

- A state commission tasked with implementing the Commission's PURPA regulations may not require that a QF have a fully executed contract to establish a legally enforceable obligation under the Commission's PURPA regulations; and
- A state commission to which the task of implementing the Commission's regulations has been delegated may not hold the date upon which a legally enforceable obligation arose, for the purpose of establishing a QF's entitlement to an avoided-cost rate, to be the date on which the utility signed the contract with the QF. Rather, the state commission must determine the date upon which the legally enforceable obligation first arose.¹⁸

8. Cedar Creek states that the Idaho PUC mistakenly rejected the Agreements on the basis that there was no legally enforceable obligation under PURPA until the time the contract was fully executed on December 22, 2010, notwithstanding the fact that Cedar Creek had executed the Agreements on December 13, 2010. Cedar Creek asserts that the Idaho PUC rule, issued in the June 8 Order, stating that a legally enforceable obligation was created only at the time the contract was fully executed, i.e., signed by the QF and electric utility, is inconsistent with the Commission's PURPA regulations. Thus, Cedar Creek states that the Idaho PUC incorrectly concluded that a legally enforceable obligation under PURPA was not incurred until December 22, 2010, rendering Cedar Creek ineligible for published avoided cost rates.

9. Cedar Creek argues that, with respect to the Commission's PURPA regulations, the Idaho PUC is attempting to substitute a fully-executed contract requirement for that of a legally enforceable obligation.¹⁹ Cedar Creek also argues that this substitution is prohibited by the Commission's regulations and its interpretation of those regulations.

10. Cedar Creek states that the Commission has previously made clear that a legally enforceable obligation and an executed contract are neither synonymous nor interchangeable, and while all contracts constitute legally enforceable obligations, not all

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 10.

legally enforceable obligations arise in the form of fully executed contracts.²⁰ Furthermore, Cedar Creek argues that the Commission has long held that: a legally enforceable obligation can, and does, exist in the absence of a contract; a QF may negotiate a contract at an electric utility's avoided cost rate and obligate itself to offer power to that electric utility before the parties sign a contract; and a legally enforceable obligation is available in the Commission's PURPA regulations to prevent an electric utility from circumventing such regulations merely by refusing to sign a contract.²¹ Thus, Cedar Creek acknowledges that while a state regulatory authority has the authority to determine the date on which a legally enforceable obligation is incurred, a state regulatory authority may not condition a legally enforceable obligation on the execution of a contract document. To do so, Cedar Creek argues, would nullify the authority delegated to them.

11. Lastly, Cedar Creek argues that the Idaho PUC's "bright line rule" not only is contrary to the meaning and intent of the Commission's regulations in 18 C.F.R. § 292.304(d), but also means that no matter how extreme the bad faith tactics of the utility, the QF cannot create a legally enforceable obligation and that an electric utility may prevent the creation of a legally enforceable obligation simply by refusing to sign a contract.²²

12. Cedar Creek presents several facts to support its argument that a legally enforceable obligation was incurred prior to December 14, 2010. Cedar Creek states that the Agreements' terms and conditions, including the stated rates, had been fully negotiated and agreed upon in the six months prior to the December 13, 2010 eligibility cap deadline. Cedar Creek also provides a detailed timeline of events leading up to and including December 2010 by way of the Zentz affidavit.²³ Furthermore, Cedar Creek states that the financing for its projects, substantial deposits for contracts associated with

²⁰ *Id.* at 10 (citing *Midwest Renewable Energy Projects, LLC*, 116 FERC ¶ 61,017, at P 15 (2006); *JD Wind 1, LLC*, 129 FERC ¶ 61,148, at P 25 (2009), *order denying "requests for rehearing, reconsideration or clarification,"* 130 FERC ¶ 61,127 (2010)) (*JD Wind 1*).

²¹ Cedar Creek Petition at 10-11.

²² Cedar Creek Petition at 11 ("To conclude otherwise and allow the [electric] utility's inaction to define whether a legally enforceable obligation existed would allow a QF's rights to be held hostage to a signature . . .").

²³ Cedar Creek Petition, Exhibit 4, Affidavit of Dana Zentz.

the projects, as well as forty year leases for the five project sites, are at risk due to the uncertainty of the situation.²⁴

13. Cedar Creek makes two ancillary arguments in addition to those directly addressing the Commission's PURPA regulations. First, Cedar Creek asserts that the Idaho PUC failed to provide notice to those entities affected by the lowering of the eligibility cap because the new eligibility cap was not announced until six months after the effective date of the lowered eligibility cap was established.²⁵ Second, Cedar Creek asserts that the Idaho PUC failed to follow its own precedent in that it did not grandfather any agreements made before the eligibility cap reduction.²⁶ Cedar Creek states that the Idaho PUC applied its grandfathering criteria as recently as November 2010, just over a month before the new eligibility cap went into effect.

Notice of Filing and Responsive Pleadings

14. Notice of Cedar Creek's filing was published in the *Federal Register*, 76 Fed. Reg. 50,212 (2011), with interventions and protests due on or before August 26, 2011.

15. On August 26, 2011, the Idaho PUC filed a notice of intervention and protest. The Idaho PUC argues that Cedar Creek's Petition fails to make out a case for enforcement under PURPA Section 210(h), and that even if the Commission were to accept Cedar Creek's mischaracterization of the proceedings, this case properly should be decided by the Idaho Supreme Court on review of the Idaho PUC's orders, rather than the Commission in the context of a Section 210(h) petition. Idaho PUC argues that by failing to preserve its right to seek review of the Idaho PUC's adjustment of the eligibility cap for published avoided cost rates in the Idaho Supreme Court, Cedar Creek cannot now resurrect its claim through a Commission action.

16. The Idaho PUC argues that its finding in the June 8 Order was properly within its authority. The Idaho PUC cites to the Commission's finding in *West Penn*²⁷ to support its argument that the states have the authority to determine the parameters of power purchase agreements, including the date when a legally enforceable obligation is

²⁴ Cedar Creek Petition at 13.

²⁵ *Id.* at 7.

²⁶ *Id.* at 7.

²⁷ *West Penn Power Co.*, 71 FERC ¶ 61,153 (1995) (*West Penn*).

incurred.²⁸ The Idaho PUC also argues that for it to now approve the Agreements, and allow Cedar Creek to ignore the deadline associated with the eligibility cap, would not be in the public interest because, in effect, Cedar Creek would enjoy rates in excess of the electric utility's avoided cost.

17. The Idaho PUC further argues that Cedar Creek cannot rely on the Commission's findings in *JD Wind I*.²⁹ Idaho PUC asserts that this is not a question of whether a legally enforceable obligation was created. Idaho PUC states that given the existence of the Agreements, there is no need for a determination of when or whether a legally enforceable obligation arises. Idaho PUC points out that there are indeed two methods under Idaho law that a QF may use to preserve an avoided cost rate: "(1) entering into a signed contract with the utility; or (2) filing a meritorious complaint with the Idaho PUC alleging that a 'legally enforceable obligation' has arisen and but for the conduct of the utility, there would be a contract."³⁰ According to the Idaho PUC, the Agreements themselves are evidence of the legally enforceable obligation. The Idaho PUC states that the terms of the Agreements specify that the effective date of the Agreements would be after execution by both parties and approval by the Idaho PUC. Idaho PUC notes that it did not approve the Agreements. Moreover, Idaho PUC states that Cedar Creek cannot now argue against the terms of the Agreements simply because those terms do not provide it with a favorable outcome.

18. On August 26, 2011, Idaho Power filed a timely motion to intervene and protest. Idaho Power supports Idaho PUC's implementation of PURPA and the Commission's PURPA regulations, including the June 8 Order. Most significantly, Idaho Power argues

²⁸ The Idaho PUC quotes the following excerpt from *West Penn*:

It is up to the States, not this Commission, to determine the specific parameters of individual QF power purchase agreements, including the date at which a legally enforceable obligation is incurred under State law. Similarly, whether the particular facts applicable to an individual QF necessitate modifications of other terms and conditions of the QF's contract with the purchasing utility is a matter for the States to determine. This Commission does not intend to adjudicate the specific provisions of individual QF contracts.

Idaho PUC Answer at 20 (citing *West Penn*, 71 FERC ¶ 61,153 at 61,495).

²⁹ *JD Wind I*, 129 FERC ¶ 61,148.

³⁰ Idaho PUC Answer at 7.

that the Agreements are exactly the types of projects that the Idaho PUC was concerned with as they were not reflective of the utility's avoided costs, and thus causing the Idaho PUC to lower the eligibility cap to 100 kW. Therefore, in exercising the authority delegated to it by PURPA and the Commission, Idaho Power maintains that the Idaho PUC properly rejected the Agreements.

19. Idaho Power further states that Cedar Creek's reliance on a legally enforceable obligation argument is misplaced as the Idaho PUC's decision in rejecting the Agreements was related to setting policy pertaining to the availability of the published avoided cost rate. Idaho Power argues that the Idaho PUC did nothing to obfuscate or eliminate an electric utility's obligation to purchase energy from a QF. Instead, Idaho Power states that the Idaho PUC simply set avoided cost pricing policy which comports with PURPA and this Commission's regulations.

20. On August 26, 2011, PacifiCorp³¹ filed a timely motion to intervene and comment. PacifiCorp supports the Idaho PUC's June 8 Order and opposes any effort by Cedar Creek to enforce the Agreements. PacifiCorp first argues that the Idaho PUC's actions are not subject to Commission review because the act of lowering the eligibility cap was an application of PURPA, not a matter of implementation. Second, PacifiCorp asserts that even if the Commission does have jurisdiction, that the states have the authority to determine the specific parameters associated with power purchase agreements. Last, PacifiCorp argues that Cedar Creek has mischaracterized Idaho contract law by asserting that a fully executed contract is the only method by which a legally enforceable obligation may incur. PacifiCorp argues that there are in fact two paths by which a QF may establish a legally enforceable obligation under PURPA in Idaho: (1) when the Idaho PUC approves a power purchase agreement that has been executed by the electric utility and the QF; or (2) when the QF files a complaint alleging that but for the utility's inappropriate refusal to execute an agreement the QF would have obtained a power purchase agreement.

21. On August 26, 2011, Northwest and Intermountain Power Producers Coalition (NIPPC) filed a timely motion to intervene and comment in support of Cedar Creek's Petition. NIPPC argues that the Idaho PUC's "bright line rule" vests all power to decide when a legally enforceable obligation is created in the hands of the electric utility, thereby abdicating the Idaho PUC's responsibility to implement the Commission's PURPA regulations. In essence, NIPPC argues the Idaho PUC has repealed the must-buy provision of PURPA and states that should an electric utility choose not to sign a

³¹ PacifiCorp is referred to as Rocky Mountain Power throughout this order and in the relevant Idaho proceedings.

contract, under the Idaho bright-line rule, there will be no legally enforceable obligation and hence no must-buy requirement.

22. On September 7, 2011, Cedar Creek filed a motion for leave to answer and answer to the comments of Idaho PUC, Idaho Power, and PacifiCorp. Cedar Creek disagrees with PacifiCorp's argument that the Commission does not have jurisdiction because Idaho PUC's actions constituted an application of PURPA, rather than the implementation of PURPA. Cedar Creek maintains that the actions by the Idaho PUC constitute an implementation of PURPA. Cedar Creek also asserts that the Idaho PUC misstates the law because, in Cedar Creek's view, a contract is not a necessary precondition to a legally enforceable obligation.

23. On September 9, 2011, Idaho PUC filed a motion for leave to answer and answer to NIPPC's comments. Idaho PUC asserts that NIPPC failed to disclose certain facts in its comment, including the fact that NIPPC was not a party to the underlying Idaho PUC orders and as a result does not have standing to challenge the Idaho PUC orders. Idaho PUC further asserts that NIPPC failed to recognize the two methods, listed in the Idaho PUC answer, available to a QF to preserve an avoided cost rate, and states that a legally enforceable obligation may be incurred in the absence of a contract.

24. On September 14, 2011, Exelon filed a motion for leave to answer and answer to Idaho PUC's September 9, 2011 Answer. Exelon supports Cedar Creek's Petition. Exelon argues that the Idaho PUC incorrectly found that the trigger for creating a legally enforceable obligation is the date that the electric utility finally executes a contract accepting the QF's written commitment, rather than the date that the QF committed to sell its power to the electric utility under PURPA. Exelon argues that the Commission addressed this issue in Order No. 69, where, according to Exelon, the Commission recognized that if a signed contract were a condition precedent to a legally enforceable obligation under PURPA, an electric utility could thwart the statute's purpose simply by refusing to sign. Thus, Exelon asserts, under Order No. 69 the action of an electric utility in agreeing or not agreeing to execute a contract cannot be the trigger creating a legally enforceable obligation.

Discussion

Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Cedar Creek's, Idaho PUC's, and Exelon's answer because they have provided information that assisted us in our decision-making process.

Commission Determination

26. Cedar Creek asks the Commission to institute an enforcement action against the Idaho PUC to enforce the Commission's PURPA regulations. Specifically, Cedar Creek petitions the Commission to enforce section 292.304(d)(2) of our regulations against the Idaho PUC as it relates to the Idaho PUC finding limiting the creation of a legally enforceable obligation only to QFs that have a "Firm Energy Sales Agreement/Power Purchase Agreement [that is] executed, i.e., signed by both parties to the agreement, prior to the effective date of the change in eligibility criteria,"³² as promulgated in its June 8 Order.³³ Alternatively, if the Commission does not institute an enforcement action, Cedar Creek asks the Commission to make the following declarations: (1) the Commission's PURPA regulations permit QFs to sell energy pursuant to a legally enforceable obligation; (2) a state commission may not limit legally enforceable obligations to fully executed contracts; and (3) a state commission cannot determine the date that a legally enforceable obligation arises based solely on the date that the electric utility signs a contract with the QF.³⁴

27. PURPA directs the Commission to prescribe "such rules as it determines necessary to encourage cogeneration and small power production."³⁵ PURPA, in turn, directs the states to "implement" the rules adopted by the Commission.³⁶ A "state commission may comply with the statutory requirements by issuing regulations, by resolving disputes on a case-by-case basis, or by taking other actions reasonably designed

³² June 8 Order at 10.

³³ Cedar Creek Petition at 14.

³⁴ *Id.* at 15.

³⁵ 16 U.S.C. §§ 824a-3(a)-(b) (2006).

³⁶ 16 U.S.C. § 824a-3(f) (2006); *accord FERC v. Mississippi*, 456 U.S. 742, 751 (1982); *Independent Energy Producers Association v. California Public Utilities Commission*, 36 F.3d 848, 856 (9th Cir. 1994); *Cogeneration Coalition of America, Inc.*, 61 FERC ¶ 61,252, at 61,925-26 (1992); *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128, at 30,864 (1980), *order on reh'g*, Order No. 69-A, FERC Stats. & Regs. ¶ 30,160 (1980), *aff'd in part and vacated in part*, *American Electric Power Service Corporation v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part*, *American Paper Institute, Inc. v. American Electric Power Service Corporation*, 461 U.S. 402 (1983).

to give effect to [the Commission's] rules."³⁷ As a result, a state may take action under PURPA only to the extent that that action is in accordance with the Commission's rules.

28. The Commission has enforcement authority under section 210(h)(2) of PURPA when a state commission's (or a non-regulated electric utility's) implementation of PURPA is "inconsistent or contrary to the Commission's regulations."³⁸ Section 210(h)(2)(B) of PURPA³⁹ permits any qualifying small power producer, among others, to petition the Commission to act under section 210(h)(2)(A) of PURPA⁴⁰ to enforce the requirement that a state commission implement the Commission's regulations. The Commission's enforcement authority under section 210(h)(2)(A) of PURPA is discretionary. As the Commission pointed out in its 1983 Policy Statement, "the Commission is not required to undertake enforcement action."⁴¹ If the Commission does not undertake an enforcement action within 60 days of the filing of a petition, under section 210(h)(2)(A) of PURPA, the petitioner then may bring its own enforcement action directly against the state regulatory authority or non-regulated electric utility in the appropriate United States district court.⁴²

29. Here, we give notice that we do not intend to go to court to enforce PURPA on behalf of Cedar Creek; Cedar Creek thus may bring its own enforcement action against the Idaho PUC in the appropriate court.

30. Notwithstanding our decision not to go to court to enforce PURPA on behalf of Cedar Creek, we find that the Idaho PUC decision denying Cedar Creek a legally enforceable obligation, specifically the requirement in the June 8 Order that a Firm Energy Sales Agreement/Power Purchase Agreement must be executed by both parties to

³⁷ *FERC v. Mississippi*, 456 U.S. 742, 751 (1982); see also *Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utilities Act of 1978*, 23 FERC ¶ 61,304, at 61,643 (1983) (1983 Policy Statement).

³⁸ 1983 Policy Statement, 23 FERC ¶ 61,304 at 61,644.

³⁹ 16 U.S.C. § 824a-3(h)(2)(B) (2006).

⁴⁰ 16 U.S.C. § 824a-3(h)(2)(A).

⁴¹ 1983 Policy Statement, 23 FERC ¶ 61,304 at 61,645.

⁴² 16 U.S.C. § 824a-3(h)(2)(B) (2006). The Commission may intervene in such a district court proceeding as a matter of right. *Id.*

the agreement before a legally enforceable obligation arises, is inconsistent with PURPA and our regulations implementing PURPA, particularly section 292.304(d)(2).⁴³

31. When Congress enacted PURPA in 1978, there was very little non-utility generation; virtually all new generating capacity was provided by traditional electric utilities. In fact, one of the principal reasons Congress adopted section 210 of PURPA was because electric utilities had refused to purchase power from non-utility producers.⁴⁴ Congress thus required the Commission to prescribe rules that the Commission “determines necessary to encourage cogeneration and small power production.”⁴⁵ In section 210(a) of PURPA,⁴⁶ Congress also required electric utilities to purchase electric energy from QFs, which the Commission, in section 292.303 of its regulations interpreted as imposing on electric utilities an obligation to purchase all electric energy and capacity made available from QFs.⁴⁷

32. The Commission’s regulations under PURPA also include a requirement that QFs have the option to sell not only as available but pursuant to legally enforceable obligations over specified terms.⁴⁸ Section 292.304(d)⁴⁹ provides:

(d) *Purchases “as available” or pursuant to a legally enforceable obligation.* Each qualifying facility shall have the option either:

(1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility’s avoided costs calculated at the time of delivery; or

(2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in

⁴³ 18 C.F.R. § 292.304(d)(2) (2011).

⁴⁴ *FERC v. Mississippi*, 456 U.S. at 750.

⁴⁵ 16 U.S.C. § 824a-3(a) (2006).

⁴⁶ *Id.*

⁴⁷ 18 C.F.R. § 292.303 (2011).

⁴⁸ *Id.* § 292.304(d)(2).

⁴⁹ *Id.* § 292.304(d).

which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

- (i) The avoided costs calculated at the time of delivery; or
- (ii) The avoided costs calculated at the time the obligation is incurred.

Section 292.304(d) and the requirement that a QF can sell and a utility must purchase pursuant to a legally enforceable obligation were specifically adopted to prevent utilities from circumventing the requirement of PURPA that utilities purchase energy and capacity from QFs. The Commission explained:

Paragraph (d)(2) permits a qualifying facility to enter into a contract or other legally enforceable obligation to provide energy or capacity over a specified term. Use of the term “legally enforceable obligation” is intended to prevent a utility from circumventing the requirement that provides capacity credit for an eligible facility merely by refusing to enter into a contract with a qualifying facility.⁵⁰

Thus, under our regulations, a QF has the option to commit itself to sell all or part of its electric output to an electric utility. While this may be done through a contract, if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state’s implementation of PURPA.⁵¹ Accordingly, a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from

⁵⁰ Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,880; *accord id.* (noting “the need for qualifying facilities to be able to enter into contractual commitments” and agreeing to “the need for certainty with regard to return on investment in new technologies”).

⁵¹ *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 212 (2006), *order on reh’g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250, at P 136-137 (2007), *aff’d sub nom. American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008); *see also Midwest Renewable Energy Projects, LLC*, 116 FERC ¶ 61,017 (2006).

the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.⁵²

33. Idaho PUC, joined by other protesters, supports the findings in the June 8 Order, arguing that the Agreements between Rocky Mountain Power and Cedar Creek are not eligible for published avoided cost rates because the contracts were not executed, or signed, on or before December 13, 2010, the cutoff date for the use of published avoided cost rates with the corresponding 10 aMW limit. In the June 8 Order, Idaho PUC relied on an Idaho Supreme Court opinion,⁵³ which, in turn, cited to a Commission order, *West Penn*,⁵⁴ as supporting its decision. The June 8 Order provides that “[Idaho PUC] does not consider a utility and its ratepayers obligated until both parties have completed their final reviews and signed the agreement.”⁵⁵

34. As an initial matter, we disagree with respondent’s use of the Commission’s determination in *West Penn*. In *West Penn*, petitioner West Penn, an electric utility serving retail customers, entered into a power purchase agreement with the owner of a QF for the sale of power at a specified rate. West Penn sought a declaratory order from the Commission that would abrogate the power purchase agreement. The Commission denied the petition, refusing to disturb the power purchase agreement because, prior to the petition before the Commission, the agreement was subject to a course of litigation that culminated with a denial of certiorari from the United States Supreme Court.

35. Idaho PUC and other protesters⁵⁶ interpret *West Penn*’s discussion to give broad discretion to the states as to what constitutes a legally enforceable obligation and when such obligation is incurred. We disagree. While *West Penn* stands for the notion that the Commission gives deference to the states to determine the date on which a legally enforceable obligation is incurred,⁵⁷ such deference is subject to the terms of the Commission’s regulations. *West Penn* does not, as Idaho PUC argues, give states the

⁵² *JD Wind 1*, 129 FERC ¶ 61,148 at P 25.

⁵³ *Rosebud Enterprises, Inc. v. Idaho Pub. Util. Comm.*, 917 P.2d 766, 780-81 (Idaho 1996) (citing *West Penn Power Co.*, 71 FERC ¶ 61,153 (1995) (*West Penn*)).

⁵⁴ *West Penn*, 71 FERC ¶ 61,153.

⁵⁵ June 8 Order at 9.

⁵⁶ June 8 Order at 9; Idaho PUC Answer at 20; Idaho Power Protest at 13-14; PacifiCorp Comment at 15.

⁵⁷ See *West Penn*, 71 FERC ¶ 61,153 at 61,495.

unlimited discretion to limit the ways a legally enforceable obligation is incurred.⁵⁸ Indeed, Commission regulations and Order No. 69 expressly use the terms “contract” and “legally enforceable obligation” in the disjunctive to demonstrate that a legally enforceable obligation includes, but is not limited to, a contract. Additionally, Order No. 69 specifically addressed the problem of an electric utility avoiding PURPA requirements simply by refusing to enter into a contract with a QF.⁵⁹ The June 8 Order, if left effective, would exacerbate this problem because the June 8 Order makes a fully-executed contract a condition precedent to the creation of a legally enforceable obligation. Therefore, when a state limits the methods through which a legally enforceable obligation may be created to only a fully-executed contract, the state’s limitation is inconsistent with PURPA, and our regulations implementing PURPA.⁶⁰

36. Next, Idaho PUC argues that *JD Wind 1* does not support Cedar Creek’s position that the Agreements resulted in a legally enforceable obligation as of December 13, 2010, or before. Idaho PUC argues that *JD Wind 1* does not apply because a contract between Cedar Creek and Rocky Mountain Power was formed on December 22, 2010, the date that Rocky Mountain Power signed the Agreements.⁶¹ We disagree with Idaho PUC and find our discussion of PURPA in *JD Wind 1* particularly applicable, that the phrase legally enforceable obligation is broader than simply a contract between an electric utility and a QF and that the phrase is used to prevent an electric utility from avoiding its PURPA obligations by refusing to sign a contract, or as here, from delaying the signing of a contract, so that a later and lower avoided cost is applicable. We further find that Idaho PUC’s June 8 Order ignores the fact that a legally enforceable obligation may be incurred before the formal memorialization of a contract to writing.⁶²

⁵⁸ See also Exelon Answer at 11-13.

⁵⁹ Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,880; see also NIPPC Comment at 10 (“If left intact, the Idaho PUC’s new [rule] means that no matter how extreme the bad faith tactics of the utility, the QF cannot create a legally enforceable obligation . . .”).

⁶⁰ Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,880.

⁶¹ Idaho PUC Answer at 17-18.

⁶² Courts have recognized that negotiations regarding terms that parties to the negotiations intend to become a finalized or written contract, may in some circumstances result in legally enforceable obligations on those parties notwithstanding the absence of a writing. See generally *Burbach Broadcasting Company of Delaware v. Elkins Radio Corp.*, 278 F.3d 401, 407-09 (4th Cir. 2002); *Adjustrite Systems, Inc. v. GAB Business*

(continued...)

37. Like the Public Utility Commission of Texas (Texas PUC) in *JD Wind 1*, the Idaho PUC has imposed requirements on QFs seeking to enter into agreements to sell electricity that are in addition to those contained in the Commission's regulations. In *JD Wind 1*, the Texas PUC refused to find that a legally enforceable obligation existed because, in its view, the QF was unable to provide "firm" power. The Commission disagreed with the Texas PUC and explained that the Commission's PURPA regulations do not contain any reference to "firm" power, and that Texas PUC's reliance on certain language in the regulatory text was incorrect. Similarly, Idaho PUC requires that a legally enforceable obligation can result from only a fully-executed contract. Like the requirement that a QF must provide "firm" power, the requirement of a fully-executed contract is absent from the Commission's regulations. We accordingly find that the Idaho PUC's requirement that an executed contract was necessary to create a legally enforceable obligation in these circumstances is inconsistent with PURPA and the Commission's regulations implementing PURPA.

38. Whether the conduct of Cedar Creek and Rocky Mountain Power constituted a legally enforceable obligation subject to the Commission's PURPA regulations is not before us. We note, however, that over the course of 2010, Cedar Creek and Rocky Mountain Power negotiated and drafted the Agreements through which Cedar Creek sought to sell electricity generated by its QFs to Rocky Mountain Power. Cedar Creek first entered into negotiations with Rocky Mountain Power regarding two agreements for wind projects in January 2010.⁶³ After a three-month period, in April 2010, Rocky Mountain Power provided Cedar Creek with avoided-cost pricing calculated using an IRP method. Cedar Creek found the avoided-cost pricing calculated via that method to be below market prices for other wind generated electricity purchased by Rocky Mountain Power.⁶⁴ Cedar Creek did not pursue these two contracts, and instead, in May 2010, it informed Rocky Mountain Power that it wished to negotiate five separate agreements that met Idaho PUC's 10 aMW threshold limit.⁶⁵ Over the next six months, negotiations and drafting continued with Cedar Creek providing information as requested by Rocky Mountain Power.⁶⁶ On November 29, 2010, Rocky Mountain Power provided Cedar

Services, Inc., 145 F.3d 543, 547-50 (2d Cir. 1998); *Miller Construction Co. v. Stresstek*, 697 P.2d 1201, 1202-04 (Idaho 1985).

⁶³ Zentz Affidavit at P 5.

⁶⁴ *Id.* at P 10-11.

⁶⁵ *Id.* P 12.

⁶⁶ *Id.* P 13-15.

Creek with a draft agreement containing a final round of revisions.⁶⁷ Cedar Creek returned the draft, with annotations, the next day.⁶⁸ Between November 30 and December 9, 2011, communications between the parties continued; however, Rocky Mountain Power did not deliver final versions of the Agreements to Cedar Creek until December 9, citing credit approvals and management reviews.⁶⁹ Although Rocky Mountain Power had provided final versions of the five agreements to Cedar Creek, Rocky Mountain Power's management continued their review.⁷⁰ Cedar Creek executed and delivered the Agreements to Rocky Mountain Power on December 13, 2011; notwithstanding having documents signed by Cedar Creek, Rocky Mountain Power management refused to sign.⁷¹ Rocky Mountain Power held the Agreements for over a week, making no changes, before they signed them on December 22, 2010.⁷²

39. While we are not ruling on the issue of whether a legally enforceable obligation was incurred, we note that these extensive negotiations between the parties are persuasive and point to the reasonable conclusion that Cedar Creek did commit itself to sell electricity to Rocky Mountain Power.⁷³ Such commitment to sell to an electric utility, the

⁶⁷ *Id.* P 15.

⁶⁸ Zentz Affidavit at P 15.

⁶⁹ *Id.* P 16-18.

⁷⁰ *Id.* P 18.

⁷¹ *Id.* P 19.

⁷² *Id.* P 20.

⁷³ The record in this proceeding also suggests that provisions of section 292.301(b) of the Commission's regulations, 18 C.F.R. § 292.301(b), may be applicable to Idaho PUC's decision in the June 8 Order. Section 292.301(b)(1) permits a QF and an electric utility to enter into a contract containing agreed-to rates, terms, or conditions that may differ from those that would otherwise be required by the Commission's regulations concerning the determination of avoided-cost rates. The Commission reasoned that a contracted-for-rate would never exceed true avoided costs and would thus be consistent with PURPA. Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,868. Moreover, section 292.301(b)(2) provides that the Commission's avoided cost regulations (and a state's implementation of those regulations) do not affect the validity of any contract entered into between a QF and an electric utility. Accordingly, the Idaho PUC's rejection of the contract entered into by Rocky Mountain Power and Cedar Creek, on the ground that the

(continued...)

Commission has found, “also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.”⁷⁴

40. Lastly, we find that the arguments concerning notice and the grandfathering of agreements are beyond the scope of this order, and accordingly, we take no position as to their validity. Cedar Creek may pursue such arguments, if it so chooses, in the appropriate court.

41. In conclusion, we find that the Idaho PUC’s June 8 Order, limiting the methods by which a legally enforceable obligation may be incurred to only a fully-executed contract, is inconsistent with our regulations implementing PURPA.

The Commission orders:

(A) Notice is hereby given that the Commission declines to initiate an enforcement action under section 210(h)(2)(A) of PURPA.

avoided-cost rate contained in the contract is excessive, appears inconsistent with PURPA and the Commission’s regulations implementing PURPA.

Based on the record, it is highly probable that Cedar Creek and Rocky Mountain Power are bound by a contract that specifies the use of published avoided cost rates. On December 9, 2010, Rocky Mountain Power sent Cedar Creek the final version of the Agreements. The Agreements specified the use of published avoided cost rates, not the IRP methodology. *See* June 8 Order at 3. On December 13, 2010, Cedar Creek executed the Agreements and returned them to Rocky Mountain Power. On December 22, 2010, Rocky Mountain Power executed the Agreements. In its answer, Idaho PUC states that “[t]he Idaho PUC previously found that the Agreements between Cedar Creek and Rocky Mountain [Power] were executed, and therefore a legally enforceable obligation was incurred, on December 22, 2010.” Idaho PUC Answer at 21. Thus, it is likely that these entities are bound by a contract requiring the use of published avoided cost rates.

⁷⁴ *JD Wind 1*, 129 FERC ¶ 61,148 at P 25; *see also* Exelon Answer at 9; NIPPC Comment at 8.

Docket No. EL11-59-000

- 19 -

(B) Cedar Creek's petition for a declaratory order is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) **CASE NO. IPC-E-10-59**
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND RAINBOW RANCH)
WIND, LLC)

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) **CASE NO. IPC-E-10-60**
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND RAINBOW WEST WIND,) **ORDER NO. 32300**
LLC)

On December 16, 2010, Idaho Power Company filed two Applications each requesting acceptance or rejection of a 20-year Firm Energy Sales Agreement (“Agreements”) between Idaho Power and Rainbow Ranch Wind, LLC and Rainbow West Wind, LLC (collectively “the Projects”). Both projects are located near Declo, Idaho, and are managed by American Wind Group, LLC (American Wind). On February 24, 2011, the Commission issued a consolidated Notice of Application and Notice of Modified Procedure for the two Applications. Timely comments in response to the Notice of Modified Procedure were filed by the Commission Staff, the Projects, and the public. On March 24, 2011, Idaho Power filed reply comments.

On June 8, 2011, the Commission issued a consolidated final Order disapproving the two Agreements. Order No. 32256 at 9. The Commission found that the Agreements “were not fully executed (signed by both parties) prior to December 14, 2010” – the date that the Commission lowered the eligibility cap for the published avoided cost rate from 10 MW to 100 kW. Thus, the Agreement contained an essential term that was no longer available to the Projects. *Id.*

On June 29, 2011, the Projects timely filed a joint Petition for Reconsideration of the Commission’s final Order. The Projects allege that the Commission’s final Order is unlawful, erroneous, and not in conformity with the law. Additionally, they allege that the Order is a violation of the rulemaking requirements of the Idaho Administrative Procedures Act.

Idaho Power filed an answer to the Projects' Petition on July 6, 2011. Idaho Power maintains that the Commission's final Order is based on substantial and competent evidence. Idaho Power argues that the Commission was acting within its discretion and in the public interest and, therefore, reconsideration should be denied.

BACKGROUND

A. The Agreements

On December 14, 2010, Idaho Power and the two wind projects entered into their respective Agreements. Under the terms of the Agreements, each wind project agrees to sell electric energy to Idaho Power for a 20-year term using the 10 aMW non-levelized published avoided cost rates. Applications at 4. The nameplate rating of each project is 23 MW. Under normal and/or average conditions, each QF will not exceed 10 aMW on a monthly basis. Idaho Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for a wind resource. *Id.* at ¶ 6 citing Order Nos. 30415, 30488, 30738 and 31025.

Each project has selected December 31, 2011, as the Scheduled First Energy Date and December 31, 2012, as the Scheduled Operation Date. Applications at 5. Idaho Power asserts that various requirements have been placed upon the projects in order for Idaho Power to accept the project's energy deliveries. Idaho Power states that it will monitor each project's compliance with initial and ongoing requirements through the term of the Agreement. The parties have agreed to liquidated damage and security provisions of \$45 per kW of nameplate capacity. Agreements ¶¶ 5.3.2, 5.8.1.

Idaho Power asserts that it has advised each project of the project's responsibility to work with Idaho Power's delivery business unit to ensure that sufficient time and resources will be available for the delivery unit to construct the interconnection facilities, and transmission upgrades if required, in time to allow the projects to achieve their December 31, 2012, Scheduled Operation Date. The Applications state that the projects have been advised that delays in the interconnection or transmission process do not constitute excusable delays and if a project fails to achieve its Scheduled Operation Date, delay damages will be assessed. Applications at 7. The Applications further maintain that each project has acknowledged and accepted the risk inherent in proceeding with its Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.*

Idaho Power also states that each project has been made aware of and accepted the provisions in the Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of the project should certain operating conditions develop on Idaho Power's system. The Applications note that 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 [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." *Id.*

By their own terms, the Agreements will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Idaho Power to each project for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreements ¶ 21.1.

B. The Utilities' Joint Petition

On November 5, 2010, prior to the date that Idaho Power and the Projects entered into their Agreements, Idaho Power, Avista Corporation, and PacifiCorp dba Rocky Mountain Power filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to the Commission's implementation of PURPA. Case No. GNR-E-10-04. On December 3, 2010, the Commission issued Order No. 32131 declining a motion made by the utilities to immediately reduce the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Order No. 32131 at 5. However, the Order did notify parties that the Commission's decision regarding whether to reduce the published avoided cost eligibility cap would become effective on December 14, 2010. *Id.* at 5-6, 9.

Section 210 of PURPA generally requires electric utilities to purchase power produced by QFs at "avoided cost" rates set by the Commission. "Avoided costs" are those costs which a public utility would otherwise incur for electric power, whether that power was purchased from another source or generated by the utility itself." 18 C.F.R. § 292.101(b)(6). Order No. 32176 at 1. Under PURPA regulations issued by the Federal Energy Regulatory Commission (FERC), the Commission must "publish" avoided cost rates for small QFs with a design capacity of 100 kW or less. Order No. 32176 at 1. However, the Commission has the discretion to set eligibility for the published avoided cost rate at a higher capacity amount –

commonly referred to as the “eligibility cap.” 18 C.F.R. § 292.304(c)(1-2). When a QF project is larger than the Commission-established eligibility cap the avoided cost rate for the project must be individually negotiated by the QF and the utility using the Integrated Resource Plan (IRP) Methodology. Order No. 32176.

The purpose of utilizing the IRP Methodology for large QF projects is to more precisely value the energy being delivered. *Id.* at 10. The IRP Methodology recognizes the individual generation characteristics of each project by assessing when the QF is capable of delivering its resources against when the utility is most in need of such resources. The resultant pricing is reflective of the value of QF energy to the utility. Utilization of the IRP Methodology does not negate the requirement under PURPA that the utility purchase the QF energy.

Based upon the record in the GNR-E-10-04 case, the Commission subsequently found that a “convincing case has been made to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar only while the Commission further investigates” other avoided cost issues. Order No. 32176 at 9 (emphasis original). On reconsideration, the Commission affirmed its decision to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW. Order No. 32212. Thus, the eligibility cap for the published avoided cost rate for wind and solar QF projects was set at 100 kW effective December 14, 2010. No party appealed from the Orders in Case No. GNR-E-10-04.

C. The Prior Final Order in this Case

On June 8, 2011, the Commission issued Order No. 32256 disapproving the Agreements between Idaho Power and each of the wind projects – Rainbow Ranch Wind and Rainbow West Wind.¹ The Commission determined that the Agreements were not fully executed (signed by both parties) prior to December 14, 2010, the date upon which the eligibility for published avoided cost rates changed from 10 aMW to 100 kW for wind and solar projects. Consequently, the Commission found that the rates contained in the Agreements did not comply with Order No. 32176 because each of the projects requesting published avoided cost rates are in

¹ The two projects had previously filed consolidated comments because the relevant facts for each of these projects are substantially similar. Consequently, the Commission found it reasonable and appropriate to consolidate the cases and issue a consolidated final Order. Order No. 32256 n.1.

excess of 100 kW. Order No. 32256 at 9. The “old” 10 aMW published rate is available only to non-wind and non-solar QFs.

The Projects signed the Agreements on December 13, 2010, and Idaho Power signed on December 14, 2010. The Commission noted that the Agreements contain language regarding the effective date. The terms of the Agreements unequivocally state that the “Effective Date” of the Agreements is “The date stated in the opening paragraph of this . . . Agreement representing the date upon which this [Agreement] was fully executed by both Parties.” Agreements ¶ 1.10 (emphasis added). The opening paragraph is dated “this 14th day of December, 2010.” We stated that “[t]he Commission does not consider a utility and its ratepayers obligated until both parties have completed their final reviews and signed the agreement.” Order No. 32256 at 8. We found that “a thorough review is appropriate and necessary prior to signing Agreements that obligate ratepayers to payments in excess of \$200 million” over the 20-year term of the Agreements. *Id.* at 7. The Commission established a bright line rule that for a wind or solar QF larger than 100 kW to be eligible for published avoided cost rates, a Firm Energy Sales Agreement/Power Purchase Agreement must have been executed, i.e., signed by both parties, prior to the December 14, 2010, effective date of the change in eligibility criteria. *Id.* at 8. The Commission additionally found that it was “not in the public interest to allow parties with contracts executed on or after December 14, 2010, to avail themselves of an eligibility cap that is no longer applicable.” *Id.*

PETITION FOR RECONSIDERATION

On June 29, 2011, the Projects filed a timely joint Petition for Reconsideration. *Idaho Code* § 61-626. The Projects allege that the Commission’s Order is unreasonable, erroneous, and not in conformance with the law. Specifically, the Projects argue that the Agreements became legally binding between the parties on December 14, 2010; that these projects would have been eligible for “grandfathering” under traditional criteria; that application of a bright line rule may constitute an improper governmental interference with contractual rights; and that a bright line rule generally results in manifest injustice. Alternatively, the Projects purport to adopt the “more general objections” asserted by “other parties in companion

cases.”² Reconsideration at 7. The Projects request reconsideration in the form of written briefs or comments.

Idaho Power filed an answer to the Projects’ Petition for Reconsideration. Idaho Power states that the Commission’s Order is based on substantial and competent evidence. Idaho Power argues that the Commission, “in its role as the regulatory authority for all investor-owned, public utilities in the state of Idaho, has an independent obligation and duty to assure that all contracts entered into by the public utilities it regulates are ultimately in the public interest.” Answer at 4. Idaho Power further maintains that the Commission regularly pursued its authority and was acting within its discretion in choosing to disapprove the Agreements. *Id.* at 2. Consequently, Idaho Power asks that the Projects’ Petition for Reconsideration be denied.

ISSUES ON RECONSIDERATION

A. Legal Standards

Reconsideration provides an opportunity for a party to bring to the Commission’s attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing. IDAPA 31.01.01.311.03. If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2).

Consistent with the purpose of reconsideration, the Commission’s Procedural Rules require that petitions for reconsideration “set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law.” Rule 331.01, IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a “statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.” *Id.*

² The Projects do not elaborate on these objections. However, they included in their Petition a bulleted list: (1) the bright line rule is inconsistent with federal law; (2) the Commission’s bright line rule is in violation of the rulemaking requirements of the Idaho Administrative Procedures Act; (3) “the retroactivity feature of the Order is suspect”; and (4) adoption of a bright line rule is an unexplained departure from past precedent.

B. Legally Binding Agreement on December 14, 2010

The Projects argue that, “by their express terms, the Agreements define the date upon which they become a binding contract on the parties.” Reconsideration at 3. The Projects assert that their Agreements became effective on December 14, 2010. The Projects contend that Idaho Power acknowledges that the Agreements were binding legal obligations as of December 14, 2010. The Projects maintain that the Commission’s intent behind a December 14 effective date is “vaguely written” and “a reasonable person could believe that FESAs effective December 14, 2010, qualified for published avoided cost rates.” *Id.* at 4. Specifically, the Projects argue that a reasonable person could understand the Commission’s Order to mean that agreements executed on or before December 14, 2010, are eligible for the 10 aMW eligibility cap.

Commission Findings: The Idaho Supreme Court has held that “[t]he implementation of PURPA as it relates to cogeneration and small power producers, and the regulations promulgated by FERC, have been largely left to the regulatory authorities of the individual states.” *A.W. Brown Company, Inc. v. Idaho Power Company*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992). “FERC regulations grant the states latitude in implementing the regulation of sales and purchases between QFs and electric utilities.” Order No. 32262 *citing Federal Energy Regulatory Commission v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982). As we stated in our final Order, “[a]ccording to the FERC, ‘it is up to the States, not [FERC] to determine the specific parameters of individual QF power purchase agreements, including the date at which a legally enforceable obligation is incurred under State law.’” Order No. 32254 at 9 *citing Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 623-624, 917 P.2d 766, 780-781 (1996) *citing West Penn Power Co.*, 71 FERC ¶ 61,153 (1995).

The Commission’s change in eligibility cap became effective on December 14, 2010. The new 100 kW threshold for wind and solar projects’ access to published avoided cost rates began on December 14, 2010. There is no other reasonable interpretation but that the new rates were in effect on the day that the Commission declared they become effective – December 14, 2010. *Idaho Code* § 61-618. There is nothing ambiguous or vague about when the new eligibility cap took effect. The Projects’ argument to the contrary is without merit. If the Projects’ argument regarding an effective date were applied to its own contract, December 14 could not be relied upon as the execution date of the Agreements – the self-proclaimed “effective date” upon which the Agreement was fully executed by both parties. It is inconsistent and

insincere for the Projects to declare that the Commission's assertion of an effective date is ambiguous only to subsequently rely on an effective date declaration in their Agreements to support approval of the contracts.

Moreover, the final Order disapproving the Projects' Agreements was abundantly clear: "in order for the 10 aMW eligibility cap to be available to wind and solar QFs, the agreement must have been effective *prior to* December 14, 2010." Order No. 32256 at 8 (emphasis added). We find that, for each of these two projects, a legally enforceable obligation was incurred on December 14, 2010. By the Projects' own admission and the very terms of the contracts, the Agreements were not effective until December 14, 2010. Agreements ¶ 1.10. We further find that, on that date, wind projects larger than 100 kW were no longer entitled to published avoided cost rates. However, as QFs, the Projects remain entitled to PURPA contracts with avoided cost rate terms calculated using the IRP Methodology. This finding is based on substantial and competent evidence and supported by the record in this case.

Although no party has argued this position on the matter, we recognize that the contracts also provide that the Agreement will not become effective *until the Commission has approved* all of the terms and conditions and declares that all payments made by Idaho Power to each project for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreements ¶ 21.1 (emphasis added). An effective date based on Commission approval of the Agreement has been supported on Idaho Supreme Court review.³ However, based upon this record, we find that the legally enforceable obligation is the date that the parties executed the Agreements and agreed to be bound by the terms contained therein. On that date, wind projects with a capacity of greater than 100 kW were not eligible to receive published rate contracts. The considerations made by this Commission are authorized by PURPA and FERC regulations. The Projects have failed to demonstrate that we were not regularly pursuing our authority.

The Commission's finding is also in the public interest and strikes a balance between "the local public interest of a utility's electric consumers and the national public interest in development of alternative energy sources." *Rosebud Enterprises*, 128 Idaho at 613, 917 P.2d at

³ "Rosebud is not entitled to a lock-in of an avoided cost rate until it has entered into a legally enforceable *and IPUC approved* obligation for the delivery of energy and capacity." *Rosebud Enterprises*, 128 Idaho at 620, 917 P.2d at 777 (emphasis added).

770. Allowing a project to avail itself of an eligibility cap (and therefore published rates) that is no longer applicable could cause ratepayers to pay more than the utility's avoided cost which "would be in direct violation of PURPA policies." *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 818, 828 P.2d 841, 847 (1992). Based on the foregoing, the Projects' request for reconsideration on this issue is denied.

C. Grandfathering Treatment

The Projects next argue that the Commission's "long history of grappling with claims eligibility for higher rates following a reduction in rates or change in methodology is well known and will not be repeated here." Reconsideration at 5. The Projects maintain that they would be eligible for grandfathering treatment under "traditional criteria" because contract negotiations between Idaho Power and the Projects were materially complete prior to December 14, 2010. *Id. citing* Order Nos. 29389, 29954, and 30109.

Commission Findings: The Projects' reliance on prior Commission Orders that permit projects to be grandfathered is misplaced. First, the Commission explicitly stated that "we look at the totality of the facts" in assessing entitlement to grandfathering status. Order No. 29954 at 2. In these Agreements, the "effective date" of each Agreement is the same day that the Commission's 100 kW eligibility cap for wind and solar projects' access to published rates became effective. Thus, the Projects' Agreements do not support that use of grandfathering. Second, the Idaho Supreme Court has stated that "[c]onferment of grandfathered status on [a] qualifying facility is essentially an IPUC finding that a legally enforceable obligation to sell power existed by a given date. *Such a finding is within the discretion of the state regulatory agency.*" *Rosebud Enterprises*, 128 Idaho 624, 917 P.2d at 781 (emphasis added). In this consolidated case, we found that each of the two projects incurred a legally enforceable obligation on December 14, 2010. Thus, there is no occasion to resort to the use of grandfathering criteria. The Commission's decision to not utilize grandfathering criteria and, instead, adhere to the stated effective date of the reduced eligibility cap is within the Commission's discretion. This finding is consistent with our authority under federal and state law.

Third, our Supreme Court has noted, "Because regulatory bodies perform legislative as well as judicial functions in their proceedings, they are not so rigorously bound by the doctrine of *stare decisis* that they must decide all future cases in the same way as they have

decided similar cases in the past.” *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 618, 917 P.2d 766, 775 (1996) citing *Intermountain Gas Co. v. Idaho PUC*, 97 Idaho 113, 119, 540 P.2d 775, 781 (1975). “So long as the Commission enters sufficient findings to show that its action is not arbitrary and capricious, the Commission can alter its decisions.” *Washington Water Power v. Idaho PUC*, 101 Idaho 567, 579, 617 P.2d 1242, 1254 (1980). Therefore, simply because grandfathering criteria have been used in consideration of QF eligibility to published rates in the past does not mean that this Commission must decide all future QF eligibility cases in the same manner.

Regardless of whether it is a change in the eligibility cap for access to published rates or a change in the rates themselves, the Commission is not bound by prior grandfathering treatment decisions so long as our decision is based on substantial and competent evidence in the record and we enter sufficient findings to demonstrate that is the case. In contrast to the change in eligibility for published rates in 2005,⁴ no criteria were enunciated or established by this Commission to determine project eligibility through the use of grandfathering for QF agreements executed on or after December 14, 2010. Because the Commission’s decision to not utilize grandfathering criteria was not arbitrary and/or capricious, we deny reconsideration on this issue.

As stated in our final Order, it is adverse to the public interest to allow parties who have not executed timely contracts to avail themselves of an eligibility cap that is no longer in place. Order No. 32256 at 8. Grandfathering contracts that were executed on or after December 14, 2010, and allowing them to utilize an eligibility cap that is no longer applicable, would be contrary to our determination regarding what the public interest requires. This finding is supported by substantial and competent evidence in the record and as explained in our Orders.

Moreover, no appeal was taken from the Commission’s Order to lower the eligibility cap. *Idaho Code* § 61-625 prohibits collateral attacks of Commission Orders that are final and conclusive. “A different rule would lead to endless consideration of matters previously presented to the Commission and confusion about the effectiveness of Commission orders.” *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 373, 597 P.2d 1028, 1063 (1979). The Projects are, in essence, collaterally attacking the Commission’s prior Order

⁴ The Commission outlined criteria that it would consider in determining whether a project was eligible for the previous, no longer applicable, eligibility cap for published avoided cost rates, i.e., whether a project would be “grandfathered” and permitted to utilize the old eligibility cap. Order No. 29839.

reducing the eligibility cap by arguing that grandfathering criteria should apply. However, no party timely appealed the Commission's decision in that case. Case No. GNR-E-10-04; Order Nos. 32176 and 32212. Therefore, the Commission's decision to lower the eligibility cap from 10 aMW to 100 kW for wind and solar projects effective December 14, 2010, is a final and conclusive Order of the Commission that is not subject to collateral attack. Based upon the foregoing, we deny reconsideration of this issue.

D. Improper Governmental Interference with Contractual Rights

The Projects claim that application of a bright line rule “renders the contracts a nullity” and may constitute an improper governmental interference with contractual rights. Reconsideration at 6. The Projects argue that the constitutional protection against governmental interference requires a “quantity of proof” in order to justify altering a rate fixed by contract. *Id. citing Agricultural Products v. Utah Power*, 98 Idaho 23, 557 P.2d 617 (1976).

Commission Findings: First, we note that a firm energy sales agreement/power purchase agreement differs from a standard offer and acceptance contract. Unlike standard offer and acceptance contracts, PURPA agreements are subject to review and approval by this Commission pursuant to Idaho statutes. *Idaho Code* §§ 61-502 and 61-503. “The Commission, as part of its statutory duties, determines reasonable rates and investigates and reviews contracts.” *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992). Thus, QF power purchase agreements are different from typical or standard contracts. “Interference with private contracts by the state regulation of rates is a valid exercise of the police power, and such regulation is not a violation of the constitutional prohibition against impairment of contractual obligations.” *Agricultural Products Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617, 623 (1976). Moreover, “[p]rivate contracts with utilities are regarded as entered into subject to reserved authority of the state to modify the contract *in the public interest.*” *Id.* (emphasis added). This Commission specifically stated that it was not in the public interest to approve the Projects' Agreements because they were executed after a new, lower eligibility to published rates became effective. Order No. 32256 at 8. The Projects have failed to prove that this finding is unreasonable, erroneous or not in conformance with the law.

Second, this Commission is not modifying the Agreements between Idaho Power and the Projects. We did not change the terms of the Agreements – we disapproved the contracts

because the terms did not comply with Order No. 32176 requiring wind projects with a capacity greater than 100 kW to utilize the IRP Methodology to determine avoided cost rates. Order No. 32256 at 9. It would be contrary to the public interest and a violation of Order No. 32176 to approve agreements executed on or after December 14, 2010, that contain published avoided cost rates for wind projects with a design capacity of more than 100 kW. The Projects have failed to demonstrate that we were not regularly pursuing our authority in disapproving their Agreements. Consequently, reconsideration of this issue is denied.

E. Remaining Assertions of Error

The Projects summarize their position by arguing that application of the Commission's bright line rule "offends fundamental conceptions of justice." Reconsideration at 6. The Projects also reference "other parties in companion cases [who] intend to assert more general objections to the Bright Line Rule." *Id.* at 7. The Projects do not elaborate on these objections beyond a bulleted list: (1) the bright line rule is inconsistent with federal law; (2) the Commission's bright line rule is in violation of the rulemaking requirements of the Idaho Administrative Procedures Act; (3) "the retroactivity feature of the Order is suspect"; and (4) adoption of a bright line rule is an unexplained departure from past precedent. *Id.* The Projects state that, if "the Commission is unable to reach the result herein requested, Rainbow will, of necessity, join in the assertion of those other, more general objections." *Id.*

Commission Findings: Commission Rule 331 requires that petitions for reconsideration describe "specifically the ground or grounds why the petitioner contends that the Order or any issue decided in the Order is unreasonable, unlawful, erroneous or not in conformance with the law, and [set forth] a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01. We find that a notation regarding manifest injustice and a bulleted list of additional issues argued by other parties in other cases fails to meet the requirements of Rule 331 for these issues. In particular, the Projects have failed to identify the specific grounds upon which they contend the Order is unlawful or erroneous in these regards. We further find that they have failed to provide "the nature and quantity of evidence or argument."⁵ *Id.* Accordingly, we deny reconsideration of these issues.

⁵ In response to the Projects' bullet point regarding rulemaking under the APA, we note our finding in Order Nos. 32298 at 13 and 32299 at 12-13.

Nothing cited by the Projects demonstrates that the Commission's Order is arbitrary or capricious or inconsistent with federal or state law. On the contrary, FERC specifically delegated authority to the States to determine when and how a legally enforceable obligation is created. We find that a legally enforceable obligation is incurred and a contract is fully executed upon obtaining the signature of both parties. We further find that a legally enforceable obligation was incurred by Idaho Power and these two projects on December 14, 2010. On that date, wind projects larger than 100 kW were no longer entitled to the 10 aMW published avoided cost rate. In determining when the parties incurred a legally enforceable obligation, we properly exercised the authority granted us by FERC. "For purposes of [FERC] regulations, the critical date is the date on which a legally enforceable obligation is incurred, and choosing that date for a specific QF is the responsibility of the States, not of [FERC]." *West Penn Power Co.*, 71 FERC ¶ 61153, 61495 (1995). This finding is based on substantial and competent evidence. The Commission's finding is also in the public interest and strikes a balance between "the local public interest of a utility's electric consumers and the national public interest in development of alternative energy sources." *Rosebud Enterprises*, 128 Idaho at 613, 917 P.2d at 770.

As we stated in our final Order, a comprehensive review of a power purchase agreement is consistent with this Commission's directive to utilities that they assist the Commission in its gatekeeper role when reviewing QF contracts.⁶ Order No. 32256 at 7. We find that it is reasonable and consistent with the authority granted us under PURPA, and that the public interest requires that each party have a full and final review of the contract before signing and obligating the utility and its ratepayers to hundreds of millions of dollars in energy payments over the 20-year life of the agreement. The Projects were given unrestricted time to adequately review the contracts before signing. Idaho Power is obligated to be as diligent in its review prior to requesting Commission approval that will commit ratepayer dollars.

CONCLUSION

The Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has

⁶ "The Commission, as part of its statutory duties, determines reasonable rates and investigates *and reviews contracts.*" *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992) (emphasis added).

authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided cost rates, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules. *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 128 Idaho 609, 612, 917 P.2d 766, 769 (1996).

Although FERC promulgated the general scheme and rules, it left the actual implementation of PURPA to the state regulatory authorities. *Id.*, 128 Idaho at 614, 917 P.2d 771. FERC rules insist that rates for purchases from QFs be just and reasonable to ratepayers, in the public interest, and not discriminatory against QFs. 18 C.F.R. § 292.304(a)(1). Notably, PURPA and the implementing regulations require only that published/standard avoided cost rates be established and made available to QFs with a design capacity of 100 kW or less. 18 C.F.R. § 292.304(c). When this Commission reduced wind and solar projects' eligibility to published avoided cost rates we unequivocally stated that continuing to allow large wind and solar projects access to published avoided cost rates for projects greater than 100 kW was "clearly not in the public interest." Order No. 32262. We reaffirmed that determination in the present case by finding that "it is not in the public interest to allow parties with contracts executed on or after December 14, 2010, to avail themselves of an eligibility cap that is no longer applicable." Order No. 32256 at 8. The Projects have failed to demonstrate that the Commission's findings are unreasonable, unlawful, erroneous, or not in conformity with the law. Rule of Procedure 331, IDAPA 31.01.01.331.01.

The Firm Energy Sales Agreements between Idaho Power and the two projects were executed on December 14, 2010. The Agreements recite that each project will have a maximum capacity amount of 23 MW. Under normal and/or average conditions, each project will not exceed 10 aMW on a monthly basis. Because the size of each of these wind projects exceeds 100 kW, they are not eligible to receive the published avoided cost rate. Nevertheless, the Projects are entitled to PURPA contracts with avoided cost rates calculated using the IRP Methodology.

ORDER

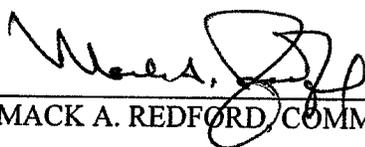
IT IS HEREBY ORDERED that the joint Petition for Reconsideration filed by Rainbow Ranch Wind and Rainbow West Wind is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case Nos. IPC-E-10-59 or IPC-E-10-60 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th day of July 2011.



PAUL KJELLANDER, PRESIDENT



MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:IPC-E-10-59_IPC-E-10-60_ks3