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February 7, 2014

Via Hand Delivery

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

Re: Case No. IPC-E-13-22
Idaho Winds LLC

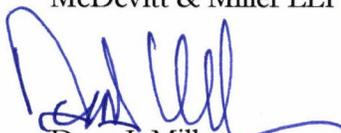
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven (7) copies of Idaho Winds LLC's Motion to Dismiss.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP


Dean J. Miller

DJM/hh
Enclosures

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RECEIVED
2014 FEB -7 PM 1:25
IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for Idaho Winds LLC.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION
OF IDAHO POWER COMPANY TO
UPDATE ITS WIND INTEGRATION
RATES AND CHARGES.

Case No. IPC-E-13-22

**IDAHO WINDS LLC MOTION TO
DISMISS**

COMES NOW the Intervenor Idaho Winds LLC (“Idaho Winds”), and pursuant to RP 256.04, Moves to Dismiss in part Idaho Power Company’s (“Company”) Application, dated November 29, 2013 (“Application”), that was submitted for approval by the Idaho Public Utilities Commission (“Commission”).

On January 31, 2014, several Movants¹ filed a Motion to Dismiss, generally asserting that the Commission should dismiss the Company’s Application.

¹ Cassia Wind Farm LLC, Hot Springs Windfarm, LLC, Bennett Creek Windfarm, LLC, Cassia Gulch Wind Park LLC, Tuana Springs Energy, LLC, and High Mesa Energy, LLC, are each a wholly owned subsidiary of Continental Wind, LLC which is an indirect wholly owned subsidiary of Exelon Wind, LLC. Cold Springs Windfarm, LLC, Desert Meadow Windfarm, LLC, Hammett Hill Windfarm, LLC, Mainline Windfarm, LLC, Ryegrass Windfarm, LLC, and Two Ponds Windfarm, LLC (collectively the “Mountain Air Projects QFs”) are each a wholly owned subsidiary of Mountain Air Projects, LLC.

Idaho Winds concurs with Movants that, to the extent the Company's Application seeks to modify terms, rates, and prices contained in an existing Firm Energy Sales Agreement ("FESA"), like the FESA between Idaho Winds and the Company, the Company's Application is unsupported as a matter of law and should be dismissed.

The Commission's Rule of Procedure 256.04 requires parties seeking similar relief to join in the motion or file their own motion within seven (7) days after receiving the original motion. Idaho Winds desires to call to the Commission's attention the facts and circumstances surrounding its existing FESA and the reasons Idaho Winds believes that the Company cannot modify the wind integration charge ("WIC") as it applies to existing PURPA wind projects.

Therefore, to the extent the Company's Application seeks to modify terms, rates, and prices contained in the FESA between Idaho Winds and Company, Idaho Winds respectfully files this Motion to Dismiss the Company's Application.

A. BACKGROUND

1. The Sawtooth Wind Project

Idaho Winds owns and operates a wind generation facility in Elmore County, Idaho, known as the Sawtooth Wind Project. The Sawtooth Wind Project is a qualified small power production project under the applicable provisions of the Public Utility Regulatory Practices Act of 1978. *The Sawtooth Wind Project is a stand-alone facility and is not a disaggregated part of a larger project.* The nameplate rating of the Sawtooth Wind Project is 22 MW, although under normal operating conditions it is operated so as not to exceed 10 aMW on a monthly basis.

On September 1, 2009, Idaho Winds and the Company executed a FESA with respect to the Sawtooth Wind Project. A true copy of the FESA is attached hereto as Exhibit A. On December 16, 2009, the Commission approved the FESA. Order No. 30964, Case No. E-09-25.

The Sawtooth Wind Project achieved its commercial operation date on November 1, 2011, and has been in continuous operation since that date. *See* Exhibit B, attached hereto.

2. Order No. 30488

Order No. 30488 was issued in Case No. IPC-E-07-03.² That Order approved a comprehensive settlement of outstanding PURPA implementation issues. Among other things it:

- Increased the published rate eligibility cap from 10 kW to 10 aMW;
- Established a wind integration adjustment of published avoided-cost rates for PURPA wind projects that had not yet come online;
- Eliminated the then existing 90%/110% band;
- Approved a Mechanical Availability Guarantee, and:
- Provided for sharing of wind forecasting costs.

Most importantly for purposes of this case, Order No. 30488 stated:

“Idaho Power’s published avoided-cost rates for Wind QFs will be adjusted to recognize an assumed cost of integrating the energy generated by Wind QFs as a part of the Company’s generating resource portfolio. The rate adjustment will be applied in three tiers, increasing as the total amount of wind integrated onto Idaho Power’s system grows. *The integration charge for each Wind QF project will be calculated at the time a Wind QF project achieves its Operation Date* as that term is defined in the Firm Energy Sales Agreement (FESA) between the Company and the wind QF. The integration charge will be calculated as a percentage (7%, 8% or 9%) of the current 20 year, levelized, avoided cost rate, subject to a cap of \$6.50/MWh. *The integration charge as calculated on the Operation Date will remain fixed throughout the term of the contract* and will be applied as a decrement to the applicable published rate according to the table below”.... Pgs. 7-8, Case No. IPC-E-07-03 (emphasis added).

² In The Matter Of Idaho Power Company’s Petition To Increase The Published Rate Eligibility Cap For Wind-Powered Small Power Production Facilities; And To Eliminate The 90%/110% Performance Band For Wind-Powered Small Power Production Facilities.

3. The Company's Current PURPA Wind Project Penetration And WIC Allocation

As set forth in the Direct Testimony of Company Witness Youngblood, the Company currently purchases power from twenty-seven (27) existing PURPA wind projects with a collective nameplate capacity of 576.92 MW. *See*, Direct Testimony of Witness Youngblood, Ex. 2. These existing FESAs fall into one of four categories.

Fourteen of the existing FESAs were executed prior to Order No. 30488 and are not assessed a WIC. Thirteen of the existing FESAs were executed after Order No. 30488, and as a result, are assessed a WIC. Three of these thirteen existing FESAs contain individually negotiated rates and are assessed a flat \$6.50/MWh WIC that was included in pricing models used for negotiations. Three of these thirteen existing FESAs contain a levelized rate based on the then current published avoided cost schedule and are assessed a WIC that reflects an 8% discount of the specified rate, capped at \$6.50/MWh. Seven of these thirteen existing FESAs contain a non-levelized rate also based on the then current published avoided cost schedule and are assessed a WIC that reflects an 8% discount of the specified rate, capped at \$6.50/MWh. The Sawtooth Wind Project's FESA is in the fourth category. As a result, the WIC contained in the Sawtooth Wind Project's FESA reflects an 8% discount of its non-levelized published rate, and is capped at \$6.50/MWh.

4. The Sawtooth Wind Project's FESA

The Sawtooth Wind Project's FESA expressly incorporated the terms of Order No. 30488, and the WIC specified therein. *See*, Exhibit A, Article VII. Thus, the Sawtooth Wind Project has always been assessed the WIC established by Order No. 30488 that was calculated as of its operation date and was to "remain fixed throughout the term of the contract."

The Sawtooth Wind Project's FESA expressly states that "no modification to [the FESA] shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission." See, Exhibit A, Section XXIII.

Idaho Winds has not, and does not, consent to the Company's proposed modification to the WIC that was established by Order No. 30488 and incorporated into its FESA, as stated in the Company's Application.

5. The Company's Application

The Company's Application requests authorization from the Commission to update the Company's wind integration charges in accordance with the findings of its 2013 Wind Integration Study ("2013 Study"). To accomplish this end, the Company has proposed two overall changes to the WIC: (a) to abandon the use of percentage of avoided cost and *allocate a fixed amount based on IPC's total wind penetration level*, and (b) to decouple the WIC from the avoided cost rate contained in the power sales agreement so as to have a new *WIC assessed as a stand-alone tariff charge*.

The Company has requested to implement these two changes through one of three proposed methods:

- Method 1 – Maintain Current Allocation, with Raised Fixed Costs;
- Method 2 – Maintain Current Allocation with an Integration Tariff; and
- Method 3 – Establish an Equitable Allocation of Costs.

The Company has not specifically stated whether Method 1 or Method 2 could affect PURPA wind projects with existing FESAs. The Company ambiguously left this possibility open in its Application when referring to the tariffs in its Application as "examples" and "drafts." See, Direct Testimony of Witness Youngblood, Pg. 16.

Method 3, however, would expressly increase the integration costs of existing PURPA wind projects. Under Method 3, the Company has proposed to raise the WIC for existing PURPA wind projects that came online prior to December 1, 2013; in so doing, the Company has proposed to decrease the amounts said projects agreed to receive from the Company for the energy currently delivered under existing FESAs.

B. ARGUMENT

1. Legal Standard For The Commission's Review.

The Commission's procedural rules recognize a motion to dismiss as a proper motion. *See*, RP 56. The Commission has considered and granted motions to dismiss in appropriate circumstances. *See e.g. Petition of J.R. Simplot Company*, Case No. IPC-E-13-17, Order No. 32940 (granting Idaho Power's Motion to Dismiss).

2. The Company's Application Should Be Dismissed Because The Terms, Rates, And Prices In The Sawtooth Wind Project's FESA Are Not Subject To Modification.

Order No. 30488, Commission precedent, and the provisions of the Sawtooth Wind Project's FESA all preclude modification of those terms, rates, and prices contained in the Sawtooth Wind Project's FESA.

- a. Order No. 30488, and the WIC specified therein, is not subject to change with respect to existing PURPA wind projects.

The provision in Order No. 30488 fixing the WIC for the term of the FESA was not a regulatory mandate imposed on the Company against its will. Rather, as noted above, it was the result of a settlement agreement that the Company signed and supported with the understanding that it would "*provide long-term stability for QF development.*" Order No. 30488, Pg. 11, Case No. IPC-E-07-03 (emphasis added). In its Joint Motion to Approve Settlement Stipulation, the Company stated:

“For the reasons cited herein, Idaho Power and Renewable Coalition respectfully submit that the Stipulation is in the public interest and hereby jointly request that, after appropriate review, the Commission enter its Order (1) approving the Stipulation; and (2) authorizing Idaho Power to enter into new contracts with existing and future wind QFs utilizing the charges, terms and conditions contained in the Stipulation.”³

Because the Company willfully entered into the terms of the settlement agreement that the Commission approved in Order No. 30488, which unequivocally stated that the “[WIC] as calculated on the Operation Date will remain fixed throughout the term of the contract,” the Commission should not approve the Company’s Application to modify the WIC established by Order No. 30488.

Although Idaho Winds recognizes that in Order No. 30488, the Commission expressly stated that “parties can petition the Commission at any time to open a docket to review and update wind integration costs if those costs are believed to be outdated or inaccurate,” it is clear from Order No. 30488 that any review or update should only apply to those new PURPA wind projects that have not yet achieved their commercial operation date. Only through this interpretation could the goal of long-term contract stability recognized in Order No. 30488 be read coherently with the Commission’s invitation to the ongoing review and updates of the WIC.

To the contrary, if the Commission were to approve the Company’s Application, thereby interpreting Order No. 30488 as giving the Company the right to increase the WIC for existing PURPA wind projects, the Commission would effectively thwart the underlying goal of long-term QF stability that drove the settlement agreement at issue in Order No. 30488. Had the parties intended for the terms of the settlement in Order No. 30488 to give the Company this right to increase the WIC for existing PURPA wind projects, then no existing PURPA wind project would have agreed to the settlement under the pretense of long-term contract stability.

³ Joint Motion to Approve Settlement Stipulation, October 2, 2007, Pg. 12, Case No. IPC-E-07-03.

Furthermore, the recognition for the importance of stability can be discerned from the Commission's decision not to assess the WIC established by Order No. 30488 to those PURPA wind projects that achieved their commercial operation date prior to the issuance of that Order. *See*, Direct Testimony of Witness Youngblood, Ex. No. 2. Just as the Commission ordered that those PURPA wind projects that had come online prior to the entry of Order No. 30488 should not be subject to a WIC that they could not have contemplated, so should the Commission not approve the WIC increases requested in the Application that Order No. 30488 was designed to cap for currently existing PURPA wind projects, like the Sawtooth Wind Project.

b. This Commission has recognized that FESA terms, rates, and prices are fixed.

The Commission has consistently recognized that once rates are fixed by an approved FESA, they are not subject to modification, absent agreement of the parties. "Once a PPA [or FESA] has been executed and approved by the Commission—once the contract terms are set—they are generally not subject to future change absence express language of the PPA [or FESA], or the agreement of the parties." Order No. 32850, Pg. 14, Case No. IPC-E-11-15.

As noted above, the FESA under which Idaho Winds sells electricity to the Company expressly incorporated Order No. 30488. *See*, Exhibit A, Article VII. At the time it was expressly incorporated into the Sawtooth Wind Project's FESA, Order No. 30488 stated that the "[WIC] as calculated on the Operation Date will remain fixed throughout the term of the contract."

If the Commission were to approve the Company's Application, the Commission would be allowing the Company to increase the fixed WIC as established by Order No. 30488. Because the fixed WIC established by Order No. 30488 has been expressly incorporated into the FESA for those PURPA wind projects that came online after the entry of Order 30488, any such future

change to the WIC assessed to those existing PURPA wind projects would amount to a change to the FESA. Because any change to the FESA would be inconsistent with the Commission's precedent, the Commission should dismiss the Company's proposed changes to the WIC assessed to existing PURPA wind projects, as was requested in Company's Application.

c. The Sawtooth Wind Project's FESA expressly precludes modification.

As noted above, the specific terms of the FESA between Idaho Winds and the Company preclude modification except by written agreement of the parties. The FESA states that, "No modification of this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission." *See*, Attachment A, Article XXIII.

As noted above, Idaho Winds has not, and does not, consent to the Company's proposed modification to the WIC that was established by Order No. 30488 and expressly incorporated into its FESA. Therefore, the Commission should dismiss the Company's proposed changes to the WIC assessed to existing PURPA wind projects, as requested in Company's Application.

Idaho Winds acknowledges that the Sawtooth Wind Project's FESA expressly states that:

"[the FESA] is a special contract and, as such, the rates, terms and conditions contained [the FESA] will be *construed* in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308." *See*, Exhibit A, Section 7.7 (emphasis added).

However, Idaho Winds believes that because its FESA expressly incorporated Order No. 30488, and Order No. 30488 unequivocally states that the "[WIC] as calculated on the Operation Date will remain fixed throughout the term of the contract," there are no facts or balancing tests to "construe". Therefore, the Commission should dismiss the Company's proposed changes to the WIC assessed to existing PURPA wind projects, as requested in the Company's Application.

d. Federal law precludes modification.

As demonstrated above, Order No. 30488, Commission precedent, and the provisions of the Sawtooth Wind Project's FESA preclude modification of those terms, rates, and prices contained in the Sawtooth Wind Project's FESA. That should end the inquiry. However, the Motion to Dismiss filed by Movants further demonstrates that federal law also precludes modification. To the extent resort to federal law is necessary, Idaho Winds concurs in the analysis contained in the Movants' Motion to Dismiss, and the Commission should dismiss the Company's proposed changes to the WIC assessed to existing PURPA wind projects, as requested in the Company's Application.

C. CONCLUSION

Based on the reasons and authorities cited herein, Idaho Winds respectfully requests that the Commission enter its order dismissing the Application of the Company in part to the extent the Company seeks to modify the terms, rates, and prices contained in the FESA between Idaho Winds and the Company.

DATED this 7 day of February, 2014.

IDAHO WINDS LLC

By: 

Dean J. Miller

Attorney for Idaho Winds LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of February, 2014, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary	Hand Delivered	<input checked="" type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
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jjewell@puc.state.id.us		

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BY: Heather Houli
McDevitt & Miller LLP

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

IDAHO WINDS LLC

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FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

Project Name: Sawtooth Wind Project

Project Number: 21615110

THIS AGREEMENT, entered into on this 15th day of September 2009 between IDAHO WINDS 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 turbines 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 and 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 Idaho Power's 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 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 07:00 am, ending at 11:00 pm Mountain Time, (16 hours) excluding all hours on all Sundays, New Years Day, Memorial Day, Fourth of July, 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 07:00 am Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Fourth of July, 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 Idaho Power.
- 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. In establishing this date it is expected that the Seller reasonably determines this date based upon the best known information in regards to equipment availability and construction schedules.
- 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, 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 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-specific, 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 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 and Transmission Service Request–
- 4.1.8.1 Provide all data required by the Idaho Power delivery business unit to enable the Seller’s Facility to be designated as a network resource.
- 4.1.8.2 Receive confirmation from the Idaho Power delivery business unit that the Seller’s Facility has been designated as a network resource.
- 4.1.8.3 Provide all data required for Idaho Power to submit a Transmission Service Request (TSR) for the Seller’s Facility.
- 4.1.8.4 Receive confirmation from Idaho Power that the TSR has been granted in sufficient capacity to meet or exceed the Maximum Capacity and the Seller has paid all costs associated with any requirements of the TSR.
- 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.

5.3.1 If the Operation Date occurs after the Scheduled Operation Date but on or prior to 90 days past 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 Monthly 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:

Twenty dollars (\$20) multiplied by the Maximum Capacity Amount with the Maximum Capacity Amount being measured in kW.

5.4 If Seller fails to achieve the Operation Date within ninety (90) days after the Scheduled Operation Date and Seller has made no commercially reasonable efforts to develop this Facility, Idaho Power will terminate this Agreement. If the Seller is making commercially reasonable efforts to develop this Facility, Idaho Power shall not terminate this Agreement and additional Delay Damages beyond those calculated in 5.3.1 and 5.3.2 will be calculated and payable monthly using the delay damage calculation described in 5.3.1 above for all days exceeding 90 days past the Scheduled Operation Date until such time as the Seller achieves the Operation Date or until

termination of this Agreement. If Idaho Power determines that the Seller is no longer making commercially reasonable efforts to develop this Facility Idaho Power shall terminate this Agreement.

5.5 Seller shall pay Idaho Power any calculated Delay Liquidated Damages within 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 may 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 Within thirty (30) days of the date of a 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 5.7.1. 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.

5.7.1 Twenty dollars (\$20) multiplied by the Maximum Capacity Amount with the Maximum Capacity Amount being measured in kW.

5.7.1.1 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 (b) the Seller is in compliance with all terms and conditions of the generation

interconnection agreement, the Delay Security calculated in accordance with paragraph 5.7.1 will be reduced by ten percent (10%).

5.7.1.2 If the Seller has received a reduction in the calculated Delay Security as specified in paragraph 5.7.1.1 and subsequently (1) at Seller's request, the generation interconnection agreement specified in paragraph 5.7.1.1 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 5.7.1 will be subject to reinstatement and will be due and owing within 15 Business Days from the date Idaho Power requests reinstatement. Failure to timely reinstate the Delay Security will be a Material Breach of this Agreement.

5.7.2 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) 30 days after the Operation Date has been achieved or (2) 30 days after the termination of this Agreement.

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	5,812,000
	April	5,762,000
	May	5,432,000
Season 2	July	4,205,000
	August	3,878,000
	November	5,169,000
	December	5,293,000
Season 3	June	5,070,000
	September	4,408,000
	October	5,247,000
	January	5,394,000
	February	4,815,000
	Total	60,485,000

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 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 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.

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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 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 30744, 30738 and adjusted in accordance with Commission Order 30415 for Heavy Load Hour Energy deliveries, and 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>
2009	53.96	89.26	73.42
2010	53.34	88.17	72.58
2011	54.78	90.71	74.53
2012	56.32	93.45	76.79
2013	57.61	95.73	78.69
2014	58.93	98.07	80.64
2015	60.28	100.47	82.64
2016	61.73	103.05	84.79
2017	63.14	105.55	86.88

2018	64.67	108.27	89.14
2019	66.16	110.90	93.58
2020	67.68	113.60	98.25
2021	69.24	116.37	103.16
2022	70.83	119.20	105.71
2023	72.48	122.11	108.81
2024	74.15	125.09	112.01
2025	75.97	128.15	115.31
2026	78.25	131.87	118.71
2027	80.60	135.71	122.21
2028	83.03	139.67	125.05
2029	85.53	143.75	128.49
2030	88.10	147.95	132.03
2031	90.19	151.35	
2032	92.72	155.49	
2033	95.32	159.73	

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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 30744, 30738 and adjusted in accordance with Commission Order 30415 for Light Load Hour Energy deliveries, and adjusted in accordance with Commission Order 30488 for the wind integration charge and with seasonalization factors applied:

Year	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2009	49.04	80.52	66.72
2010	48.42	79.43	65.88
2011	49.85	81.97	67.83
2012	51.40	84.71	69.93
2013	52.69	86.99	71.68
2014	54.00	89.33	73.47
2015	55.36	91.73	75.36
2016	56.81	94.31	77.51
2017	58.22	96.82	79.60
2018	59.74	99.53	81.86
2019	61.24	102.16	84.05
2020	62.75	104.86	86.30
2021	64.31	107.63	88.61
2022	65.91	110.47	90.97
2023	67.55	113.38	93.40
2024	69.23	116.36	95.88
2025	70.95	119.41	98.43
2026	73.05	123.14	101.53
2027	75.25	126.98	104.73

2028	77.68	130.93
2029	80.18	135.01
2030	82.75	139.21
2031	84.83	142.62
2032	87.37	146.75
2033	89.97	151.00

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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 30744, 30738 and adjusted in accordance with Commission Order 30488 for the wind integration charge and with seasonalization factors applied:

Year	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2009	51.77	85.37	70.44
2010	51.15	84.28	69.60
2011	52.59	86.82	71.55
2012	54.13	89.56	73.65
2013	55.42	91.84	75.45
2014	56.74	94.18	77.40
2015	58.09	96.58	79.40
2016	59.54	99.16	81.55
2017	60.95	101.67	83.64
2018	62.48	104.38	85.90
2019	63.97	107.01	88.09
2020	65.49	109.71	90.34
2021	67.04	112.48	92.65
2022	68.64	115.32	95.01
2023	70.28	118.22	97.44
2024	71.96	121.21	99.92
2025	73.68	124.26	102.47
2026	75.87	127.99	105.57
2027	78.22	131.82	108.77
2028	80.65	135.78	112.07
2029	83.14	139.86	115.47
2030	85.72	144.06	118.97
2031	87.80	147.47	121.81
2032	90.34	151.60	125.25
2033	92.94	155.85	128.79

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 – 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 Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

8.1 Idaho Power waives any claim to ownership of Environmental Attributes. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy

Credits (RECs) and Tradable Renewable Certificates (TRCs) directly associated with the production of energy from the Seller's Facility.

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 recommended by 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.
- 12.3 Scheduled Maintenance -- On or before January 31 of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of the Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.
- 12.4 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 the 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 construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. 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 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. 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 other Party or to the public or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XVI: SEVERAL OBLIGATIONS

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

ARTICLE XVII: WAIVER

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

ARTICLE XVIII: CHOICE OF LAWS AND VENUE

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

ARTICLE XIX: DISPUTES AND DEFAULT

- 19.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.

19.2 Notice of Default -

19.2.1 Defaults. If either Party fails to perform any of the terms or conditions of this Agreement (an "event of default"), the nondefaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the nondefaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.

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

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

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

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

19.3.3 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of this

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

ARTICLE XX: GOVERNMENTAL AUTHORIZATION

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

ARTICLE XXI: COMMISSION ORDER

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

ARTICLE XXII: SUCCESSORS AND ASSIGNS

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

or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXIII: MODIFICATION

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

ARTICLE XXIV: TAXES

- 24.1 Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

ARTICLE XXV: NOTICES

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

To Seller: Idaho Winds LLC
Attention: Tom Fetzer, Vice President
4255 S. Nickel Creek Place
Meridian, Idaho 83642
phone 208.888.7960
e-mail: tf@powerworks.com

To Idaho Power:

Original document to:

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

Copy of document to:

- 26-

8/27/2009

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

Idaho Winds LLC

By



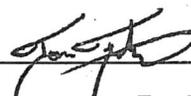
Dan B. Minor
Sr. Vice President, Delivery

Dated

September 1, 2009

"Idaho Power"

By



Tom Fetzer
Vice President

Dated

Aug. 27, 2009

"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
P O Box 70
Boise, Idaho 83707

The meter readings required on this report will be the readings on the Idaho Power Meter Equipment measuring the Facility's total energy production 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:	_____	_____	_____	
End of Month kWh Meter Reading:	_____	_____	_____	kW
Beginning of Month kWh Meter:	_____	_____	_____	
Difference:	_____	_____	_____	
Times Meter Constant:	_____	_____	_____	
kWh for the Month:	_____	-	-	<u>Net Generation</u>
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 generated power (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: _____
Telephone Number: _____
Cell Phone: _____

Project On-site Contact information

Telephone Number: _____

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. 21615110

Idaho Winds LLC – Sawtooth Wind Farm

B-1 DESCRIPTION OF FACILITY

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

The Facility will consist of 14 GE wind turbines with individual generator nameplate ratings of 1.5 MW for each unit, for a total Facility generator nameplate rating of 21 MW, with a maximum Facility output of 22 MW. Each generating unit has a reactive power capability (VAR capability) of 493 kVAR delivered (lagging) to 493 kVAR consumed (leading). Seller and Idaho Power may mutually agree to substitution, any time prior to the Operation Date, a different manufacturer and/or model wind turbine provided that the aggregate nameplate rating of the Facility does not exceed 22 MW.

If the Seller wishes to substitute different wind turbines, the Seller shall provide detailed specifications of the proposed substitute wind turbines to Idaho Power. Idaho Power will then review this detailed information and either accept or reject the Seller's proposed substitute wind turbines. Idaho Power acceptance of the substitute wind turbines will be required by both confirmations that the interconnection is able to accommodate the substitute wind turbines and that the substitute wind turbines are acceptable under this Agreement. Only after Idaho Power's acceptance of the substitute wind turbines shall the Seller be allowed to install the substitute wind turbines, which acceptance shall not be unreasonably withheld.

B-2 LOCATION OF FACILITY

Near: Glens Ferry, ID

Section: 16 Township: T5S Range: R9E County: Elmore, ID.

Description of Interconnection Location: On-site in Section 16, T5S, R9E, Elmore County, Idaho. Interconnect with an existing Idaho Power 34.5 kV distribution line. Exact point of interconnection to be determined as part of the Idaho Power delivery business unit's interconnection study process.

Nearest Idaho Power Substation: Sailor Creek substation.

B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected October 31, 2012 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 22 MW which is consistent with the value provided by the Seller to Idaho Power in accordance with Schedule 72. This value is the maximum energy (MW) that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

B-5 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of where the Seller's 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 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 month's kWh loss calculations.

B-7 METERING AND TELEMTRY

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

APPENDIX C
ENGINEER'S CERTIFICATION
OF
OPERATIONS & MAINTENANCE POLICY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. _____ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for a twenty (20) year period.

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

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

By _____

(P.E. Stamp)

Date _____

APPENDIX C
ENGINEER'S CERTIFICATION
OF
ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. _____ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ 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 knowledge and therefore sets his hand and seal below.

By _____

(P.E. Stamp)

Date _____

APPENDIX C
ENGINEER'S CERTIFICATION
OF
DESIGN & CONSTRUCTION ADEQUACY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as IPCo Facility No _____ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a twenty (20) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.
9. That the Project has been constructed in accordance with said plans and specifications, all

applicable codes and consistent with Prudent Electrical Practices as that term is described in the Agreement.

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

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

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

By _____
(P.E. Stamp)

Date _____

APPENDIX D

FORMS OF LIQUID SECURITY

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the Delay Security and any other security requirements 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 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: (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 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.
 - 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 and 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 Idaho Power will be adjusted accordingly and the unpaid balance will be deducted from the ensuing Contract Year's energy payments.

- b. During the first Contract Year, 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,

Idaho Power will deduct the Facility's calculated share of the Wind Energy Production Forecasting costs specified in item d each month during the first Contract Year and subsequently refund any overpayment (payments that exceed the cap) in equal monthly amounts over the ensuing Contract Year.

- 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 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.

$$\text{Annual Cost Allocation (ACA)} = \text{AFCost} \times (\text{FMW} / \text{TMW})$$

And

$$\text{Monthly Cost Allocation (MCA)} = \text{ACA} / 12$$

- 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 15 days of the date of the payment invoice.

October 31, 2011

Randy C. Allphin
Senior Energy Contracts Coordinator

Idaho Winds LLC
Attn: Mr. William Damon, Vice President
15850P Jess Ranch Road
Tracy, CA 93577
Original: U.S. Mail

E-mail Copy: wd@powerworks.com

RE: Sawtooth Wind Project
Project Number – 21615110
Operations Date

This notice is provided as specified in paragraph 5.2 of the Firm Energy Sales Agreement between Idaho Winds LLC and Idaho Power Company for the Sawtooth Wind Project ("Agreement").

On October 28, 2011, Idaho Power received an e-mail from the project requesting an Operation Date of November 1, 2011.

As specified in paragraph 1.30 of the Agreement;

"Operation Date – The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed."

Idaho Power has reviewed the requirements of paragraph 5.2 and the information provided by the project and agrees that, as of the date of this letter, the project has completed all of the requirements to be granted an Operation Date as requested.

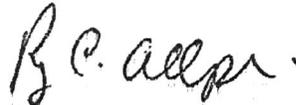
Therefore the Operation Date for this project shall be considered to be 00:01 hour of November 1, 2011.

Please review the complete Agreement, specifically any requirements that go into effect as of the Operation Date.

To establish payment information (payee, payee address, electronic payment, etc.), please contact Carlene Snyder, (208-388-2265, csnyder@idahopower.com), and she can assist you in determining the necessary information required for establishing either electronic or manual payments. If you have any questions specifically in regards to the ongoing payment calculation, please contact Kent Christensen (208-388-2593, kchristensen@idahopower.com).

If there are any other questions that you have, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Randy C Allphin".

Randy C Allphin
Idaho Power Company

RCA/cs
Cc: Kent Christensen