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ROY L. EIGUREN

January 30, 1989

IDAHO PUBLIC  
UTILITIES COMMISSION

VIA HAND DELIVERY

Myrna J. Walters,  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Application for Approval of Power Sales  
Agreement - Hazelton "A"

Dear Ms. Walters:

Enclosed you will find an original and seven copies of Bypass Limited, a California Limited Partnership's Application for Approval of a Firm Energy Sales Agreement with Idaho Power Company. Also enclosed, for your reference is a copy of the Certificate of Registration on file with the Idaho Secretary of State's Office indicating the legal status of Bypass Limited, a California Limited Partnership.

Also filed herewith is a Notice of Withdrawal filed by both Idaho Power Company and Sithe Energies, USA. The Notice of Withdrawal is made contingent upon the granting by the Commission of the Application for Approval of the Firm Energy Sales Agreement.

Would you please be so kind as to file the above referenced pleadings?

Sincerely yours,  
*Roy L. Eiguren*  
Roy L. Eiguren

/rs

Enclosures

# State of Idaho

## Department of State

### CERTIFICATE OF REGISTRATION OF BYPASS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of an Application of BYPASS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP for Registration in this State, duly signed and verified pursuant to the provisions of the Idaho Limited Partnership Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Registration to BYPASS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP to transact business in this State under the name BYPASS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP and attach hereto a duplicate original of the Application for Registration.

Dated January 27, 1986



*Pete T. Cenarrusa*

SECRETARY OF STATE

by: \_\_\_\_\_







Office of

**March Fong Eu**

Secretary of State  
SACRAMENTO

**CERTIFICATE OF STATUS  
CALIFORNIA LIMITED PARTNERSHIP**

I, MARCH FONG EU, *Secretary of State of the State of California*, hereby certify:

That on the 22nd day of November, 1985,

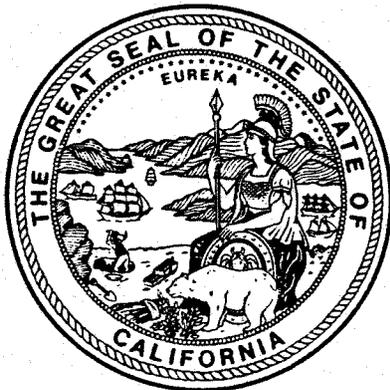
BYPASS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP

*became recognized under the laws of the State of California by filing its Certificate of Limited Partnership in this office; and*

*That no record exists in this office of a certificate of cancellation of said limited partnership nor of a court order declaring cancellation thereof; and*

*That according to the records of this office, the said limited partnership is authorized to exercise all its powers, rights and privileges and is in good legal standing in the State of California; and*

*That no information is available in this office on the financial condition, business activity or practices of this limited partnership.*



IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this  
26th day of December, 1985

*March Fong Eu*

Secretary of State

No. L01064

Certificate of Registration

BYPASS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP

STATE OF IDAHO  
Department of State  
Boise, Idaho  
Approved, filed and admitted to the  
corporation records of the State of  
Idaho  
Date January 27, 1986  
Time 9:39 am

Foreign - California

FEES PAID \$ 60.00

Pete T. Cenarrusa

SECRETARY OF STATE

By: *Deane Walker*

Invoice # 57046

CCR # 37433

Registered Agent:  
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205 N. 10th Street  
Boise, Idaho 83702

Filing Party  
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IDAHO PUBLIC  
UTILITIES COMMISSION  
*A. Statten*

Attorneys for Sithe Energies U.S.A.  
and Bypass Limited Partnership

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF BYPASS LIMITED PARTNERSHIP )  
FOR AN ORDER APPROVING A FIRM )  
ENERGY SALES AGREEMENT WITH IDAHO )  
POWER COMPANY )

CASE NO. IPC-E-89-2  
APPLICATION FOR APPROVAL

COMES NOW Bypass Limited, a California Limited Partnership that is qualified to do business in the State of Idaho (Applicant) and requests the Idaho Public Utilities Commission (Commission) for an Order approving a Firm Energy Sales Agreement (Agreement) with Idaho Power Company (Idaho Power) for the proposed Hazelton "A" Hydroelectric Facility (Facility). A copy of the Agreement is attached hereto. This Application is based on the following:

I.

Idaho Power is a regulated public utility subject to the jurisdiction of the Commission.

II.

The Facility will be a qualifying small power production facility under the Public Utility Regulatory Policy Act of 1978 ("PURPA").

III.

On January 18, 1989, the Applicant and Idaho Power entered into a Firm Energy Sales Agreement, a copy of which is attached hereto and by this reference made a part hereof, Exhibit A.

IV.

The Agreement has a term of twenty (20) years. The Facility is located in the NE Quarter of Section 2, Township 10 South, Range 20 East, Boise Meridian, Jerome County, Idaho and will have a total capacity of approximately 9,900 kw.

V.

Applicant represents to the Commission that it is a qualifying small power production facility, that the avoided cost rates contained in the Agreement are in compliance with Commission Orders, and that the acquisition of energy by Idaho Power from Applicant, pursuant to the Agreement, will be in the public interest.

VI.

In order to provide Idaho Power with assurance that the costs it has contracted to pay under the Agreement will be allowed as prudently incurred expenses for ratemaking purposes, Applicant

respectfully requests the Commission to include in its Order approving this Agreement, language essentially as follows:

All payments to be made under the Agreement between Applicant and Idaho Power shall be allowed as prudently incurred expenses for ratemaking purposes by Idaho Power Company.

VI.

Recognizing the Agreement is one of the first fully negotiated firm energy sales agreements entered into by Idaho Power Company since the Commission issued its 'security' orders (Order Nos. 21690 and 21800) the Applicant specifically notes for Commission review, the following clause from the Agreement:

(c) In lieu security:

Because the Facility is located on the canal system of the Northside Canal Company and therefore receives the benefits of the Northside Canal Company's senior water rights and upstream storage, Idaho Power is willing to permit Seller to establish a Debt Service Reserve Account until conforming low water insurance becomes available. Said Debt Service Reserve Account will be separate from the maintenance escrow account and shall be structured as follows:

(1) The escrow instructions between the Seller and the Escrow Manager will provide that the funds in the Debt Service Reserve Account will be prudently invested and that all costs of setting up and operating the Debt Service Reserve Account, shall be paid by the Seller. At the end of the term of this Agreement, or at the end of Seller's obligation to maintain an escrow account in lien [sic] of purchasing low water insurance, any balance remaining in the Debt Service Reserve Account shall be released to Seller.

(2) Within 60 days after commencement of a Contract Year in which Seller is entitled to provide security in-lieu of conforming low water insurance coverage, Seller will deposit cash in the Debt Service Reserve Account in an amount equal to 2½% of the Facility's estimated gross income for

that Contract Year. Said requirement to deposit 2½% of estimated gross income for each Contract Year shall cease when the Debt Service Reserve Account is funded in an amount equal to three months' debt service on the project, or \$250,000, whichever is higher. All interest earned on the funds on deposit shall be retained in the Debt Service Reserve Account. The requirement that interest earned on funds on deposit in the Debt Service Reserve Account be retained in that account shall cease once the Debt Service Reserve Account is fully funded as provided above.

(3) The Escrow Manager will be instructed to only release funds from the Debt Service Reserve Account to the holder of the debt on the Facility. Funds from said account shall be released only when, and only to the extent that Seller certifies to the Escrow Manager that the Facility's revenues are insufficient to satisfy Seller's costs of operating the Facility and as a result, remaining funds are not sufficient to make debt service payments on the Facility. For purposes of the Debt Service Reserve Account, costs for operating the Facility shall be limited to those costs necessary for the operation of the Facility such as taxes, insurance expenses, and other ordinary and necessary operating expenses. Costs for operating the Facility shall not include any disbursements which would constitute a profit or return on investment.

(4) When conforming low water insurance has been purchased, Seller will no longer be required to fund or maintain said Debt Service Reserve Account.

(d) Failure to provide conforming low water insurance or to maintain the Debt Service Reserve Account described above, will be a default which can be cured by reinstatement of the insurance or the Debt Service Reserve Account, or by posting liquid security in accordance with Paragraph 21.4 in an amount equal to 100% of the accumulated overpayment amount specified for that year in Appendix D.

It is understood and agreed by the parties that the above clause of the Agreement will be in effect only as long as conforming low water insurance is not available. Low water insurance is defined as not being available when its costs exceed 2.5% of the Facility's projected annual average income. See Paragraph 21.3.2.1.

VII.

As per the Settlement Agreement and Stipulation filed with this Commission in Case No. U-1500-170 and in Case Nos. U-1006-300, -301, -302, the Firm Energy Sales Agreement is explicitly made contingent not only upon its approval by the Commission but also upon the withdrawal of the Petition for Rehearing filed by Sithe Energies, USA, and the Cross-Petition for Rehearing filed by Idaho Power Company in Case No. U-1500-170. Sithe's Petition for Rehearing and Idaho Power's Cross-Petition for rehearing were granted by the Commission on January 27, 1988, in Order No. 21734. As a result of entering into the Settlement Agreement and Stipulation the parties waived their right to have their respective petitions for reconsideration heard within the statutory deadline of thirteen (13) weeks pursuant to Idaho Code Section 61-626(2). A copy of that Settlement Agreement and Stipulation is attached hereto and by this reference made a part hereof (Exhibit B). A copy of the Joint Notice of Withdrawal is attached hereto and by this reference made a part hereof (Exhibit C).

WHEREFORE, Applicant requests that the Commission issue its Order:

1. Approving the Agreement;
2. Finding that Applicant is a qualifying small power production facility; that the avoided cost rates contained in the

Agreement are just and reasonable; and that the acquisition of the power and energy by Idaho from Applicant is in the public interest; and

3. Ordering that those costs for purchase of power under this Agreement shall be allowed to Idaho as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 30th day of January, 1989.

LINDSAY, HART, NEIL & WEIGLER

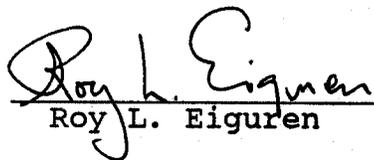
By   
Roy L. Eiguren

EXHIBIT A

FIRM ENERGY SALES AGREEMENT

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

BYPASS LIMITED

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Facility No: 31715128  
Project: Hazelton A

APPROVED PER COMMISSION  
ORDER NO. 22326.

FIRM ENERGY SALES AGREEMENT

  
Myrna J. Walters  
Commission Secretary

THIS AGREEMENT, entered into on this 18<sup>th</sup> day of January, 1988, is between BYPASS LIMITED, a California limited partnership (Seller), and IDAHO POWER COMPANY, a Maine corporation (Idaho Power) hereinafter sometimes referred to collectively as "parties" or individually as "party."

W I T N E S S E T H:

WHEREAS, Seller plans to construct, own and operate an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho Power has been ordered by the Commission to agree to purchase electric energy from that 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 "Annual Net Firm Energy" - The amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Contract Year.

1.2 "Commission" - The Idaho Public Utilities Commission.

1.3 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.

1.4 "Designated Dispatch Facility" - Idaho Power's Boise Bench System Dispatch Center.

1.5 "Disconnection Equipment" - Any device or combination of devices located on the interconnection between the Facility and Idaho Power's system by which Idaho Power can manually and/or automatically interrupt the flow of power from the Facility to Idaho Power's system. Disconnection Equipment includes such enclosures or other facilities as may be required to ensure that only Idaho Power will have access to the devices.

1.6 "First Energy Date" - The date when Seller has been interconnected with Idaho Power's system and begins delivering electric energy to Idaho Power for purposes of demonstrating to Idaho Power the Facility's degree of completion and reliability.

1.7 "Facility" - That electric generation facility described in Appendix B of this Agreement.

1.8 "Interconnection Facilities" - All facilities required to be installed solely to interconnect and deliver energy from the Facility to Idaho Power's system including, but not limited to, connection, switching, metering, relaying, communications and safety equipment.

1.9 "Losses" - The loss of energy occurring as a result of the transformation and transmission of energy between the Facility and the Point of Delivery.

1.10 "Net Firm Energy" - The electric energy produced by the Facility, less Station Use and less Losses, expressed in kilowatt hours ("KWH"), which Seller commits to deliver to Idaho Power at the Point of Delivery on a long-term average basis for the full term of the Agreement.

1.11 "Operation Date" - The day commencing at 0001 hours, following the day on which the Facility demonstrates that it has been completed and

reached a degree of reliability such that it is capable of delivering Net Energy continuously into Idaho Power's system.

1.12 "Point of Delivery" - The location specified in Appendix B, where Idaho Power's and Seller's electrical facilities are interconnected.

1.13 "Prudent Electrical Practices" - Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

1.14 "Scheduled Operation Date" - The date specified in Appendix B when Seller anticipates achieving the Operation Date.

1.15 "Season" - The three periods identified in Article VI.

1.16 "Seasonal Net Firm Energy" - The amounts of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Season.

1.17 "Special Facilities" - Those additions and alterations to Idaho Power's system which are reasonably required by Prudent Electrical Practices and the national Electric Safety Code to interconnect the Facility safely to Idaho Power's system.

1.18 "Station Use" - Electric energy which is used solely to operate the Facility's equipment which is auxiliary or directly related to the production of electricity and which, but for the generation of electricity, would not be consumed by Seller.

1.19 "Surplus Energy" - Electric energy which is delivered and accepted prior to the Operation Date or which Seller does not commit to provide on a long-term average basis for the full term of the Agreement.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

2.1 Seller Independent Investigation - Except for the Disconnection Equipment and any other facilities exclusively within the control of Idaho Power, Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligation 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 - Except for the Disconnection Equipment and any other facilities within the exclusive control of Idaho Power, 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, Part 292. Seller will take such steps as may be required to maintain the Facility's "qualifying facility" status during the term of this Agreement.

3.3 FERC License - Seller warrants that Seller possesses a valid license or exemption from licensing from the Federal Energy Regulatory Commission (FERC) for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license or exemption is a material part of the consideration for Idaho Power's execution of this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or exemption for the Facility during the term of this Agreement, and Seller's failure to maintain a valid FERC license or exemption will be an event of default.

#### ARTICLE IV: CONDITIONS TO INTERCONNECTION

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho Power, 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, those licenses, permits or approvals specified in Appendix C.

4.1.2 Submit to Idaho Power an opinion of counsel signed by an attorney admitted to practice and in good standing in the State of Idaho certifying as follows:

(1) That Seller has obtained the necessary licenses, permits and approvals required by paragraph 4.1.1;

(2) That the attorney has reviewed the approved Application for Permit to Appropriate Water referred to in Appendix C;

(3) That downstream of the Facility, there are existing, non-condemnable senior water rights sufficient to ensure the availability

of the water rights applied for in the Application for Permit to appropriate water referred to in Appendix C;

(4) That the non-condemnable water rights described in (3) above are senior to the Facility's requested water rights and are not dependent on inflows below Seller's Point of Diversion specified in the Application for Permit to Appropriate Water referred to in Appendix C.

(5) That the attorney has read Commission Order No 21690 and it is his legal opinion that Seller possesses water rights that do not require the application by Idaho Power of the "K" factor described in said Order.

4.1.2.1 The opinion of counsel required in 4.1.2 above 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.

4.1.3 Make payment to Idaho Power for all costs of Disconnection Equipment, metering and telemetry equipment and Special Facilities as provided for in Appendix B of this Agreement;

4.1.4 Obtain written acceptance from Idaho Power as provided in paragraph 8.3;

4.1.5 Submit written proof to Idaho Power of all insurance required in Article XIV;

4.1.6 Demonstrate to Idaho Power's satisfaction that Seller's Facility has been completed, and is capable of operating safely to commence deliveries of electric energy into Idaho Power's system;

4.1.7 Demonstrate to Idaho Power's satisfaction that the Seller has established a maintenance reserve account in a form and with a fund holder which complies with Commission Order Nos 21690 and 21800. Said maintenance reserve account shall be structured and funded as follows:

4.1.7.1 The escrow instructions establishing the maintenance escrow account will provide that the funds in the maintenance escrow account will be prudently invested and that all costs of implementing and operating the maintenance escrow account shall be paid by the Seller. All interest earned on the funds on deposit will be retained in the maintenance reserve account. At the end of the term of this Agreement, any balance remaining in the maintenance reserve account shall be the property of the Seller.

4.1.7.2 Within 60 days after the completion of each Contract Year, the Seller will deposit cash in the maintenance escrow account in an amount equal to 2% of the Facility's estimated gross income for the ensuing Contract Year, less an amount equal to the Facility's actual maintenance, repair and replacement expense (maintenance expenses) incurred during the prior Contract Year.

4.1.7.3 At the time Seller makes the deposit described in paragraph 4.1.7.2, Seller will provide both the Escrow Manager and Idaho Power with a report prepared by Seller's outside accountants showing the prior Contract Years actual maintenance expenses, identified by appropriate FERC maintenance account number, and the estimate of the Facility's gross income for the ensuing Contract Year used to compute the deposit amount, together with documentation supporting that estimate of gross income.

4.1.7.4 If at any time it appears that the maintenance expense for that Contract Year will exceed 2% of the Facility's estimated gross income for that Contract Year, the Seller may request that the Escrow Manager release funds from the maintenance escrow account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC maintenance account number, and such documentation shall be submitted to both the Escrow Manager and Idaho Power. Following receipt of the request and documentation, the Escrow Manager, shall, within five working days, release the required funds to Seller.

4.1.7.5 At the end of each Contract Year, Seller will provide Idaho Power with evidence of compliance with the maintenance escrow account requirements set out in this Agreement and Commission Order Nos 21690 and 21800. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The maintenance reserve fund will be subject to the lien rights described in 4.1.8 below.

4.1.8 Provide Idaho Power with acceptable lien rights. It is recognized and agreed that for Idaho Power's lien rights to be acceptable, Idaho Power will have, subject to the lien rights of Seller's construction and permanent financing lender, such rights as may be necessary to allow Idaho Power to expeditiously assume ownership and operation of the Facility, including any Seller-owned Interconnection Equipment or other appurtenances if Seller fails to cure any default in accordance with

paragraph 21.2 of the Agreement. Acceptable lien rights will conform to Commission Order Nos 21690 and 21800 and may include, but will not be limited to, title insurance, mortgage(s), deed(s) of trust, lease assignment(s), assignment(s) of contract rights, and lease(s), the FERC license, or exemption from licensing, water rights, other governmental permits, rights-of-way, subordination agreements, funds held in escrow in which Seller has an interest and that relate to the operation of the Facility, and other reasonable security arrangements consistent with the Seller's construction and final permanent financing. All lien rights will be in a form acceptable to Idaho Power. Acceptance of lien rights will not be unreasonably withheld.

4.1.8.1 Idaho Power's lien rights will be superior and senior to all liens other than those mortgages and/or other security agreements securing the construction and permanent loan financing for the Facility.

4.1.8.2 Other than the liens described herein, Seller will not allow any liens or encumbrances of any nature whatsoever to be placed on the Facility. If any such unpermitted lien or encumbrance is placed on the Facility, Seller will provide Idaho Power a bond or insurance sufficient to secure its discharge.

4.1.8.3 As soon as practicable, Seller will provide Idaho Power, for Idaho Power's review and approval, drafts of all mortgages and/or other security agreements that Seller intends to use to secure the permanent loan financing for the Facility. Idaho Power must notify Seller of its acceptance or rejection of the draft

financing submittal in writing no later than thirty days from Idaho Power's receipt thereof. If Idaho Power does not object within such thirty-day period, it will be deemed to have approved the draft financing submittal. Seller will not materially alter any provision of the final financing documents directly affecting Idaho Power's lien rights from that approved in draft form. As soon as practicable thereafter, but not later than six (6) months after the Operation Date, Seller shall provide Idaho Power with copies of the permanent financing documents in their final executed form. Idaho Power shall have 14 days after such final documents are delivered to review them for the purpose of determining whether any provision directly affecting its second lien rights have been materially changed from the draft documents previously provided. If Idaho Power does not object within such 14 day period, it will be deemed to have approved the documents. When the permanent financing documents have been delivered to Idaho Power in their final, executed form, the same shall not be amended, modified, or extended, and no refinancing of any nature beyond that allowed pursuant to Paragraph 4.1.8.5 shall be undertaken. In no event will the amount of the first mortgage lien or any replacement first mortgage lien exceed \$18,000,000.

4.1.8.4 During the time period between the First Energy Date and Idaho Power's approval of the permanent loan financing documents pursuant to the previous subparagraph, Idaho Power shall pay Seller for all energy delivered at the Surplus Energy Purchase Price as provided for in Paragraph 7.2 herein. Once the final financing documents are approved by Idaho Power pursuant to the

previous subparagraph, Idaho Power will retroactively pay Seller for all energy delivered by Seller from the First Energy Date at the rate specified in Paragraphs 7.1 and 7.1.2 herein, less the amounts actually paid Seller at the rate specified in Paragraph 7.2.

4.1.8.5 Seller may incur replacement first mortgage liens against the Facility in accordance with this subparagraph. Replacement first mortgage liens shall not be in an amount exceeding the unpaid balance of the replaced mortgage. The Seller shall not, incur replacement liens except to obtain lower rates of interest, to provide for the long-term refinancing of the construction loans for the Facility, to finance the replacement or repair of equipment associated with the Facility, or to cure default by the Seller. Replacement mortgages will be subject to Idaho Power's prior consent, which consent will not be unreasonably withheld.

4.1.9 Obtain written confirmation from Idaho Power that all conditions to interconnection have been fulfilled. It is understood that such written confirmation shall not be unreasonably withheld by Idaho Power.

#### ARTICLE V: TERM AND OPERATION DATE

5.1 Term - Except as provided in Article XXIII, this Agreement shall become effective on the date first above written, and shall continue in full force and effect for a period of twenty (20) Contract Years.

5.2 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and reliability has been demonstrated to Idaho Power's satisfaction, and Idaho

Power has confirmed that satisfaction in writing. Seller shall have the duty to obtain that confirmation and it will not be unreasonably withheld by Idaho Power. Prior to the Operation Date, Seller must provide the following:

(1) As-built drawings of the Seller-furnished Interconnection Equipment, and

(2) Executed Certification of Design Engineer, Engineer's Certification of Design & Construction Adequacy, and Engineer's Certification of Operations and Maintenance Policy as described in Commission Order No 21690. These certificates will be in the form specified in Appendix F, but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

#### ARTICLE VI: SALE OF NET FIRM ENERGY

6.1 Delivery and Acceptance of Net Firm Energy - Except when either party's performance is prevented by events of force majeure (Article XVI) or otherwise excused as provided herein, Idaho Power shall purchase all of the Net Firm Energy and Surplus Energy produced by the Facility and delivered by Seller to the Point of Delivery.

6.2 Seasonal Net Firm Energy Amounts - Based on long-term historical water flow records and average long-term average energy production estimates based thereon, Seller estimates that it can deliver Net Firm Energy in the following monthly amounts:

Season 1	March	55,894 KWH
	April	1,844,320 KWH
	May	4,470,136 KWH
Season 2	June	4,848,324 KWH
	July	5,541,807 KWH
	August	5,236,000 KWH
	September	3,910,854 KWH

	October	1,853,226	KWH
	November	653,870	KWH
Season 3	December	0	KWH
	January	0	KWH
	February	0	KWH

6.3 Annual Net Firm Energy Amount - The Annual Net Firm Energy shall be 28,414,431 KWH and shall be the sum of the three Seasonal Net Firm Energy amounts Seller specified above.

6.4 Normal Water Conditions - The Net Firm Energy amounts Seller has estimated it can supply are based upon the anticipated long-term average water flows at the Facility. The parties have reviewed these anticipated water flows, Seller's water right filings and the water records supporting those projected water flows and have agreed that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Firm Energy amount in paragraph 6.3 are reasonable and shall constitute the water flows available to the Facility under "normal" water conditions. No later than 120 days after the Operation Date, Seller will install such water flow measuring equipment as is reasonably required to permit the parties to monitor the water flows at the Facility site. Seller will operate and maintain this water flow measuring equipment and will perform such other water flow analyses as may be required to carry out the provisions of Article XXI.

6.5 Net Firm Energy Changes -

6.5.1 Increased Generation Capability - If, at any time during the term of this Agreement, as a result of some action by Seller, i e, procurement of additional long-term water supplies or improvements to the efficiency of the installed generating equipment, Seller intends to permanently increase the amount of Annual Net Firm Energy from the Facility above the amount specified

in paragraph 6.3 above, Seller will promptly notify Idaho Power of that intent. If Idaho Power concurs that Seller is capable of actually providing such increased Net Firm Energy, Idaho Power will have the option to purchase this increased amount of Net Firm Energy in accordance with either of the following alternatives: (1) the purchase will be under the same terms and conditions of this Agreement except that the rate for the incremental increase of Net Firm Energy shall not be the rate in paragraph 7.1 of this Agreement, but instead will be priced at the appropriate firm energy rate in effect at the time of such increase; or (2) the purchase will be made under a separately negotiated agreement. The choice of purchase alternative will be Idaho Power's.

6.5.2 Subsequent Determination that Facility Capacity Exceeds Ten Megawatts - Cogeneration and small power production facilities with a capacity larger than 10 MW are not entitled to the rates contained in this Agreement. The rates, terms and conditions of this Agreement are premised on Seller's representation that the capacity of the Facility is not larger than 10 MW. If, at any time, the Facility's capacity actually exceeds 10 MW, Idaho Power will notify Seller and the Commission and provide them with the information which supports that determination.

If the Commission determines that the Facility's capacity actually exceeds 10 MW, then this Agreement will be modified by the Commission.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT;  
ADJUSTMENT OF PURCHASE PRICE

7.1 Net Firm Energy Purchase Price - The price to be paid to Seller for Net Firm Energy will be the sum of the following payments:

7.1.1 Base Payment -

Season 1	28.55 Mills/KWH
Season 2	45.67 Mills/KWH
Season 3	38.06 Mills/KWH

7.1.2 Adjustable Payment - In addition to the Base Payment specified in paragraph 7.1.1, Idaho Power shall pay to Seller an Adjustable Payment of 3.26 mills per kilowatt hour for Net Firm Energy delivered and accepted in Season 1 and 5.21 mills per KWH for Net Firm Energy delivered and accepted in Season 2 and 4.34 mills per KWH for Net Firm Energy delivered and accepted in Season 3. The Adjustable Payment shall be subject to change pursuant to Commission Order at such time as Idaho Power's retail rates are revised by Commission Order.

7.2 Surplus Energy Purchase Price - Surplus Energy will be purchased at the non-firm avoided energy rate in effect at the time of delivery. This rate is calculated monthly and is filed with the Commission.

7.3 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 Comm'n and Afton Energy, Inc*, 107 Idaho 781, 693 P2d 427 (1984), *Idaho Power Company v. Idaho Public Utilities Comm'n*, 107 Idaho 1122, 695 P2d 1261 (Idaho 1985), *Afton Energy, Inc, v. Idaho Power Company*, 111 Idaho 925, 729 P2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

## ARTICLE VIII: FACILITY AND INTERCONNECTION

8.1 Design of Facility - Seller shall design, construct, install, own, operate and maintain the Facility. The Facility shall be designed and constructed so as to allow safe, reliable delivery of electric energy to Idaho Power's system.

8.2 Interconnection Facilities - Except for the Special Facilities, metering and telemetry equipment and Disconnection Equipment specified in Appendix B, Seller shall construct, install, own, and maintain all Interconnection Facilities. Seller will pay all costs of interconnecting the Facility with Idaho Power.

8.3 Idaho Power Review - To assure the Facility and Seller-furnished Interconnection Facilities are of suitable size and are compatible with Idaho Power's system, Seller shall submit the designs, plans, specifications and performance data for the Facility and Seller-furnished Interconnection Facilities to Idaho Power for review. Idaho Power shall, in writing and in conformance with paragraph 4.1.4, notify Seller of its acceptance and confirmation of system compatibility or conversely, notify Seller, in writing, of any changes which, consistent with Prudent Electrical Practices, Idaho Power determines are necessary to assure the safe delivery of electric energy from the Facility to Idaho Power's system.

## ARTICLE IX: DISCONNECTION EQUIPMENT

9.1 Disconnect Equipment - Idaho Power will, at Seller's expense, provide, own, operate, and maintain all Disconnection Equipment. At Seller's request, Idaho Power will provide Seller with the general specifications and an itemization by category of the costs of such Disconnection Equipment. Idaho

Power will establish the settings of Disconnection Equipment to disconnect automatically from the Facility for the protection of Idaho Power's system and personnel consistent with Prudent Electrical Practices. Upon Seller's request, Idaho Power will notify Seller as to the original setting and any adjustments thereof. Except as otherwise required by Prudent Electrical Practices, Disconnection Equipment will be designed so that the closure of any breaker or other disconnecting device which connects the Facility to Idaho Power's system shall be controlled by equipment which will perform the following:

(1) Automatically monitor the status of the electrical system on Idaho Power's side of the disconnecting device; as to voltage and frequency; and

(2) Prohibit closure or reconnection until voltage and frequency have been within approved limits for a continuous period of not less than five minutes; and

(3) Operate so that if Idaho Power's system is de-energized within 60 seconds after closure of the disconnecting device, the disconnecting device will immediately open and not close again until it has been manually reset and/or Idaho Power can safely reclose the Disconnecting Equipment.

9.2 Security of Disconnect Equipment - The Disconnection Equipment will be located in an enclosure secured by a lock or otherwise secured in a manner designed to ensure that only Idaho Power's authorized personnel will have access to the disconnecting devices.

9.3 Remote Disconnection - Other Disconnection Equipment, including equipment which will provide Idaho Power's operating personnel with the ability to remotely control and monitor the status of the breaker or other disconnecting device by radio or hard-wire circuit between the Facility and the

Designated Dispatch Facility may be specified by Idaho Power when, in Idaho Power's reasonable judgment, such equipment is required by Prudent Electrical Practices. Seller recognizes that such remote control equipment may not initially be required by Idaho Power, but at such time as operating conditions on Idaho Power's system dictate, Idaho Power will install this remote control equipment at Seller's expense. If Seller disputes Idaho Power's determination that the installation of such remote Disconnection Equipment is required, such dispute shall be submitted to the Commission for resolution.

9.4 Interference with Disconnection Equipment - If Seller attempts to modify, adjust or otherwise interfere with the Disconnection Equipment or its enclosure, such action shall constitute an event of default pursuant to Article XXI.

#### ARTICLE X: METERING

10.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain required metering equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with the standards set forth in Appendix A. If required by Idaho Power, metering will also include measurement of kilovar-hours in a manner agreed to by both parties. All meter equipment and installation costs shall be borne by Seller, including costs incurred by Idaho Power for inspecting and testing such equipment at reasonable intervals at Idaho Power's actual cost of providing this equipment and services. The point of metering shall be at the location described in Appendix B. All meters used to determine the billing hereunder shall be sealed and the seals shall be

broken only upon occasions when the meters are to be inspected, tested or adjusted.

10.2 Meter Inspection - Idaho Power shall inspect and test all meters upon their installation and at least once every four years thereafter. If requested by Seller, Idaho Power shall make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both parties shall be notified of the time when any inspection or test shall take place, and each party may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired, or replaced, at Idaho Power's expense, in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test varies by more than two percent from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the payments will be based on the shorter of (1) a period equal to one-half the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (2) six (6) months.

10.3 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 generation 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 metering and related power production 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 such metering and related power production records pertaining to Seller's account.

## ARTICLE XII: PROTECTION

12.1 Seller shall construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Appendix A, Prudent Electrical Practices, the National Electric Safety Code and any other applicable local, state, and federal codes. 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 physically interrupt the flow of energy from the Facility or take such other reasonable steps as Idaho Power deems appropriate. Except in the case of an emergency, Idaho Power will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 13.8. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities. In some cases, some of Seller's protective relays will provide back-up protection for Idaho Power's facilities.

In that event, Idaho Power will test such relays annually and Seller will pay the actual cost of such annual testing.

#### ARTICLE XIII: OPERATIONS

13.1 Emergency Conditions - Seller agrees that in the event of and during a period of a shortage of power on Idaho Power's system as declared by Idaho Power in its reasonable discretion, Seller shall, at Idaho Power's request and within the limits of reasonable safety requirements as determined by Seller, use its best efforts to provide the requested energy, and shall, if necessary, delay any scheduled shutdown of the Facility.

13.2 Communications - Idaho Power and Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility, and Seller shall report to Idaho Power at the times and in the manner set forth in Appendix A.

13.3 Energy Acceptance - Idaho Power shall be excused from accepting and paying for Net Firm Energy delivered by Seller to the Point of Delivery under the following circumstances:

13.3.1 If it is prevented from doing so by an event of force majeure.

13.3.2 If Idaho Power determines that curtailment, interruption or reduction of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, operating conditions on its system, or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of force majeure, Idaho Power requires such a curtailment, interruption or reduction of Net Firm Energy deliveries for a period that exceeds twenty days beginning with the

twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Firm Energy at a rate determined by dividing the Annual Firm Net Energy amount by 8760 hours. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

13.4 Voltage Levels - Seller shall use its best efforts to minimize voltage swings and to maintain voltage levels acceptable to Idaho Power. Idaho Power may, upon one hundred eighty (180) days' notice to Seller, change its nominal operating voltage level by more than ten percent (10%) at the Point of Delivery, in which case Seller shall modify, at Idaho Power's expense, Seller's equipment as necessary to accommodate the modified nominal operating voltage level.

13.5 Generator Ramping - Idaho Power shall have the right to specify the rate that generation is changed at startup, during normal operation or following reconnection to Idaho Power's system. Generation ramping may be required to permit Idaho Power's voltage regulation equipment time to respond to changes in power flow.

13.6 Scheduled Maintenance - On or before January 1 of each year, Seller shall submit a proposed maintenance schedule for that year and Idaho Power and Seller shall mutually agree as to the acceptability or unacceptability of the proposed date(s). The parties' determination as to the acceptability of Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices and neither party shall unreasonably withhold its acceptance of the proposed date for scheduled maintenance.

13.7 Maintenance Coordination - The parties shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.

13.8 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact Seller prior to exercising its rights to curtail, interrupt or reduce deliveries from Seller. Seller understands that in the case of emergency circumstances, no notice will be given to Seller prior to interruption, curtailment, or reduction.

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each party shall agree to hold harmless and to indemnify the other party, its officers, agents, 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 costs that may be incurred by the other party in enforcing this indemnity.

14.2 Insurance - During the term of this agreement, Seller shall secure and continuously carry the following insurance coverages:

14.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to 15% of the total cost of the Facility, or \$1,000,000, whichever is greater, each occurrence, combined single limit. The deductible for such insurance shall not exceed 0.5% of the total cost of the Facility.

14.2.2 Property Insurance for catastrophic perils with minimum limits not less than 60% of the total cost of the Facility. The Property Insurance coverage will include:

- (a) Standard fire policy.
- (b) Extended coverage endorsement.
- (c) Vandalism and malicious mischief endorsement.
- (d) Earthquake and flood insurance.
- (e) This insurance must be written on a "Replacement Cost" basis.

(f) The deductible for the above Property Insurance coverage shall not exceed 1.0% of the total cost of the Facility.

14.2.3 Boiler and Machinery Insurance with minimum limits not less than 90% of the total cost of the equipment covered in (a) below:

(a) All Boiler and Machinery coverage must be written on a "comprehensive form" basis to provide coverage against the sudden and accidental breakdown of all boilers, machinery and electrical equipment, turbines, generators, and switchgear.

(b) Coverage under this insurance must be written on a "Replacement Cost" basis.

(c) The deductible for this insurance shall not exceed 2.0% of the total cost of the equipment covered in (a) above.

14.2.4 Business Interruption (Loss of Income) Insurance with minimum daily limits not less than 75% of the Facility's estimated gross daily revenue and total policy limits not less than 20% of the Facility's estimated gross annual revenue:

(a) Coverage will include Seller's loss of earnings when business operations are curtailed or suspended because of a loss due to an insured peril. Coverage may be written on an actual loss sustained basis.

(b) This insurance coverage must be endorsed to the Property Insurance Policy and the Boiler and Machinery Insurance Policy.

(c) The deductible for this insurance coverage shall not exceed 10 days.

(d) Estimated gross daily revenue and estimated gross annual revenue shall be computed on the basis of the kilowatt-hour production estimates contained in paragraph 6.2.

14.2.5 Low Water Insurance:

(a) Low water insurance means insurance which provides coverage for reduced project revenues resulting from reduced generation due to water flows at the project being less than the long-term average water flows established by the parties under Paragraph 6.4.

(b) The annual policy limits shall be not less than 25% of the estimated gross annual revenue for the Facility.

(c) The deductible for this insurance coverage shall not exceed 10% of the Facility's estimated gross annual revenue.

(d) The estimated gross annual revenue shall be computed on the basis of the kilowatt-hour production estimates contained in paragraph 6.2.

14.2.6 All of the above insurance coverages shall include:

(a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable;

(b) A provision stating that such policies shall not be cancelled or their limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

(c) In the case of the insurance coverages described in subparagraphs 14.2.1, 14.2.2 and 14.2.3 above, the total cost of the Facility will include any Seller-furnished Disconnection Equipment and/or Interconnection Facilities. The total cost of the Facility and total cost of equipment will be adjusted either upward or downward to reflect the current replacement cost of the Facility or equipment. This adjustment will be based on the Handy-Whitman Index "Cost Trends of Electric Utility Construction -- Plateau Region" -- "Hydro Production Plant" as published by Whitman, Requardt & Associates, 2315 Saint Paul St, Baltimore, MD 21218. Such adjustment shall be made every fifth Contract Year during the term of this Agreement. Seller will make these computations and will expeditiously submit them to Idaho Power for Idaho Power's review and approval.

14.3 Seller to Provide Certificates of Insurance - As required in paragraph 4.1.5 herein and annually thereafter, Seller shall furnish Idaho Power certificates of insurance, together with the endorsements required therein, evidencing the coverages as set forth above.

14.4 Seller to Provide Copies of Policies of Insurance - Within 120 days after the Operation Date, and within 90 days of the effective date of any modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have

been no changes to the policy in lieu of providing the required certified copy of the policy.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages required by paragraph 14.2 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.

#### ARTICLE XV: LAND RIGHTS

15.1 Seller to Provide Access - Seller hereby grants to Idaho Power for the term of this Agreement all necessary rights of way and easements to install, operate, maintain, replace, and remove Idaho Power's metering equipment, Disconnection Equipment and other Special Facilities necessary or useful to this agreement, including adequate and continuing access rights on property of Seller. Seller warrants that it has procured sufficient easements and rights of way from third parties so as to provide Idaho Power with the access described above. All documents granting such easements or rights of way shall be subject to Idaho Power's approval and in recordable form.

15.2 Use of Public Rights-of-Way - The parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho Power's compliance with paragraph 15.4, Seller agrees that should Seller seek and receive from any local, state or federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way

shall be subordinate to any future use by Idaho Power of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho Power may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 15.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 15.2.

15.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 15.4, Idaho Power may use and attach its distribution and/or transmission facilities to Seller's Interconnection Facilities, may reconstruct Seller's Interconnection Facilities to accommodate Idaho Power's usage or Idaho Power may construct its own distribution or transmission facilities along, over and above any public right-of-way acquired from Seller pursuant to paragraph 15.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 15.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 15.3.

15.4 Conditions of Use - It is the intention of the parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho Power's exercising its rights under this Article XV. Therefore, the parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 15.2 and 15.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the

parties, and (3) shall provide Seller with an interconnection to Idaho Power's system of equal capacity and durability as existed prior to Idaho Power exercising its rights under this Article XV.

#### ARTICLE XVI: FORCE MAJEURE

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, including but not limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, court orders, laws or regulations, insurrection or riot, an act of the elements or lack of precipitation resulting in reduced water flows for power production purposes. 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 event of 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 XVII: LIABILITY; DEDICATION

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, nor affect the status of Idaho Power as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XVIII: SEVERAL OBLIGATIONS

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 XIX: WAIVER

19.1 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 XX: CHOICE OF LAWS

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho.

## ARTICLE XXI: DISPUTES, DEFAULT, NOTICE AND LIQUIDATED DAMAGES

21.1 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.

21.2 Notice - In the event either party defaults in the performance of any of the terms or conditions of this Agreement, 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 60 days after service of such notice, then, and only then, may the nondefaulting party pursue an action to terminate this Agreement, to enforce the terms of this Agreement, or to recover damages for breach thereof. This article shall not be construed as restricting in any way Idaho Power's rights under Article XII, or paragraph A-4.1 of Appendix A to immediately interrupt flows of energy from the facility to Idaho Power's system.

21.3 Liquidated Damages - The parties agree that the amount of the payment which Idaho Power is to make to Seller is based on the agreed value to Idaho Power of Seller's performance of its obligation to provide Net Firm Energy as set out in Article VI for the full term of the Agreement. The Net Firm Energy amount in Article VI and the resulting Appendix D lump sum repayment amount may be adjusted from time to time based on the actual

performance of the Facility. The parties further agree that if Idaho Power does not receive such full performance (1) Idaho Power shall be deemed damaged by reason thereof, (2) it would be impractical or extremely difficult to fix the actual damages to Idaho Power resulting therefrom, (3) the payments as provided below are in the nature of adjustments in Net Firm Energy prices and liquidated damages and not a penalty, and are a reasonable attempt by the parties to estimate a fair compensation to Idaho Power for the reasonable losses that would result from such total or partial default.

21.3.1 Failure to Deliver for Term of Agreement - If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as damages arising out of this permanent curtailment of Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the annual Net Firm Energy amount specified in paragraph 6.3 and the reduced annual Net Firm Energy amount after the permanent curtailment. This payment amount will bear interest from sixty (60) days after Idaho Power gives or receives notice of Seller's permanent reduction of the annual Net Firm Energy amount, until paid, at a rate equal to interest rates specified in Idaho Code §28-22-104 (or its successor Idaho Code provision) in effect during each month of that period. For purposes of this paragraph, reduced deliveries of Net Firm Energy due to short-term below-normal water conditions (paragraph 6.4) shall not be considered a permanent curtailment.

21.3.2 Security for Repayment Obligation - During the full term of this Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power under Article XXI if Seller were to default pursuant to paragraph 21.3.1. In accordance with Commission Order Nos 21690 and 21800, and subject to the provisions of paragraph 21.2 above, this assurance will be provided as follows:

21.3.2.1 Seller shall comply with the provisions of paragraph 14.2. If Seller fails to comply, such failure will be an event of default under Article XXI.

(a) In the case of the liability insurance coverage, (paragraph 14.2.1), a default may only be cured by Seller supplying evidence that the liability insurance coverage has been replaced or reinstated.

(b) In the case of Low Water insurance coverage, (paragraph 14.2.5) if Seller, after the exercise of due diligence, is unable to secure low water insurance coverage which complies with Paragraph 14.2.5, or if the cost of insurance coverage which complies with Paragraph 14.2.5 exceeds 2.5% of the Facility's projected annual average revenue, then the failure to provide low water insurance shall not be deemed an event of default if Seller provides the following security *in lieu* of low water insurance until conforming low water insurance is available at a price that does not exceed the percentage amount specified above.

(c) In lieu security:

Because the Facility is located on the canal system of the Northside Canal Company and therefore receives the benefits of the Northside Canal Company's senior water rights and upstream storage, Idaho Power is willing to permit Seller to establish a Debt Service Reserve Account until conforming low water insurance becomes available. Said Debt Service Reserve Account will be separate from the maintenance escrow account and shall be structured as follows:

(1) The escrow instructions between the Seller and the Escrow Manager will provide that the funds in the Debt Service Reserve Account will be prudently invested and that all costs of setting up and operating the Debt Service Reserve Account, shall be paid by the Seller. At the end of the term of this Agreement, or at the end of Seller's obligation to maintain an escrow account in lieu of purchasing low water insurance, any balance remaining in the Debt Service Reserve Account shall be released to Seller.

(2) Within 60 days after commencement of a Contract Year in which Seller is entitled to provide security in-lieu of conforming low water insurance coverage, Seller will deposit cash in the Debt Service Reserve Account in an amount equal to 2 1/2% of the Facility's estimated gross income for that Contract Year. Said requirement to deposit 2 1/2% of estimated gross income for each Contract Year shall cease when the Debt Service Reserve Account is funded in an amount equal to three months' debt service on the project, or \$250,000, whichever is

higher. All interest earned on the funds on deposit shall be retained in the Debt Service Reserve Account. The requirement that interest earned on funds on deposit in the Debt Service Reserve Account be retained in that account shall cease once the Debt Service Reserve Account is fully funded as provided above.

(3) The Escrow Manager will be instructed to only release funds from the Debt Service Reserve Account to the holder of the debt on the Facility. Funds from said account shall be released only when, and only to the extent that Seller certifies to the Escrow Manager that the Facility's revenues are insufficient to satisfy Seller's costs of operating the Facility and as a result, remaining funds are not sufficient to make debt service payments on the Facility. For purposes of the Debt Service Reserve Account, costs for operating the Facility shall be limited to those costs necessary for the operation of the Facility such as taxes, insurance expenses, and other ordinary and necessary operating expenses. Costs for operating the Facility shall not include any disbursements which would constitute a profit or return on investment.

(4) When conforming low water insurance has been purchased, Seller will no longer be required to fund or maintain said Debt Service Reserve Account.

(d) Failure to provide conforming low water insurance or to maintain the Debt Service Reserve Account described above, will be a default which can be cured by reinstatement of the insurance or the

Debt Service Reserve Account, or by posting liquid security in accordance with Paragraph 21.4 in an amount equal to 100% of the accumulated overpayment amount specified for that year in Appendix D.

21.3.2.2 Every three (3) years for the first twelve (12) years after the Operation Date, and two (2) years thereafter during the full term of this Agreement, Seller will supply Idaho Power with an Ongoing O&M certificate from a Registered Professional Engineer licensed in the State of Idaho, which Ongoing O&M certificate shall be in the form specified in Appendix F. Seller's failure to supply the required certificate will be an event of default under Article XXI of the Agreement. Such a default may be cured by Seller providing the required certificate or by posting liquid security in accordance with paragraph 21.4 in an amount equal to 20% of the accumulated overpayment liability specified for that year in Appendix D.

21.3.2.3 During the full term of this Agreement, Seller shall maintain and fund the maintenance reserve account described in paragraph 4.1.7 and Commission Order No 21690. If at any time Seller fails to maintain or fully fund that maintenance reserve account, such a failure will be default under Article XXI. Such default may be cured by reinstating the required reserve fund, or by Seller posting liquid security in accordance with paragraph 21.4 in an amount equal to 20% of the accumulated overpayment liability specified for that year in Appendix D.

21.3.2.4 During the full term of this Agreement, Seller shall maintain compliance with all of the requirements of Idaho

Power's lien rights described in paragraph 4.1.8 of the Agreement and Commission Order No 21690. If at any time, Seller fails to comply with those requirements, in addition to any other remedies available under this Agreement, Commission Order No 21690, and the lien rights, Seller will be required by Idaho Power to post liquid security in accordance with paragraph 21.4 in an amount equal to 35% of the accumulated overpayment liability specified for that year in Appendix D. Seller recognizes that in accordance with Commission Order No 21690, a default under either or both of paragraphs 21.3.2.2 or 21.3.2.3 constitutes a default under paragraph 21.3.2.4 and in that event the obligation to post liquid security under paragraphs 21.3.2.2 through 21.3.2.4 is cumulative.

21.3.2.5 During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of the Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses Seller is required to obtain during the term of this Agreement including, but not limited to, the Permit to Appropriate Water within a reasonable time after their issuance. 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 maintain its water rights, or to provide the documentation required by this paragraph, such failure will be a default under Article XXI.

(a) In the case of non-compliance with the required governmental permits, the default may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

(b) In the case of non-compliance with Seller's obligation to secure and maintain adequate water rights, default may be cured by Seller reacquiring the required water rights or by posting liquid security in accordance with paragraph 21.4 in an amount equal to 26.39% of the accumulated overpayment liability specified for that year in Appendix D.

21.4 Liquid Security - If, pursuant to this Agreement or Commission Order No 21690, Seller becomes obligated to post liquid security, such obligation may be satisfied by Seller's depositing cash or a cash equivalent acceptable to Idaho Power, in an escrow to be held and managed by a bank or savings & loan association located and in good standing in the State of Idaho. The escrow holder and the escrow instructions will be acceptable to both Idaho Power and Seller. Payment of all taxes on the amounts deposited in the escrow will be the obligation of the Seller. The liquid security escrow account will be maintained separately from the maintenance reserve account described in paragraph 4.1.7. Failure to maintain and provide the liquid security required by this Agreement and Commission Order Nos 21690 and 21800 shall be a default under Article XXI.

#### ARTICLE XXII: GOVERNMENTAL AUTHORIZATION

This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or this Agreement.

#### ARTICLE XXIII: COMMISSION ORDER

This Agreement shall not become effective until the Commission approves all terms and provisions hereof without change or condition and declares that all payments to be made hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

#### ARTICLE XXIV: SUCCESSORS AND ASSIGNS

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 Seller shall become effective without the written consent of Idaho Power being first obtained. Such consent shall not be unreasonably withheld. 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 XXV: MODIFICATION

No modification to this Agreement shall be valid unless it is in writing and signed by both parties.

#### ARTICLE XXVI: TAXES

26.1 Each party agrees to pay its own federal and state taxes on its share of income attributable to the parties' performance of this Agreement, and any other tax, including any tax in the nature of an excise tax.

26.2 Each party shall pay before delinquency all ad valorem 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.

26.3 The Tax Reform Act of 1986 (Act) specified that Contributions in Aid of Construction (CIAC) received from customers are taxable income to the utility. The Act did not, however, specify the definition of a customer. Accordingly, it is uncertain whether the amounts to be paid by Seller under Appendix B would be considered CIAC and therefore taxable to Idaho Power. Idaho Power will treat the Appendix B amounts received from Seller as a non-taxable contribution received from a supplier, not a customer, and will defend this position with the Internal Revenue Service (IRS) should this item be contested. However, should any amount received from Seller ultimately be deemed by the IRS to be taxable income to Idaho Power, Seller shall pay Idaho Power the amount which will fully satisfy Idaho Power's income tax liability for those amounts calculated using the "net present value method" specified in IPUC Order No 21933, plus any interest, penalties and/or additional taxes resulting from such determination by the IRS.

#### ARTICLE XXVII: NOTICES

All written notices under this Agreement shall be directed as follows, and shall be considered delivered when deposited in the U S Mail, first-class postage prepaid, as follows:

To Seller:                   Bypass Limited  
                                  c/o Sithe Energies, USA  
                                  885 Third Avenue, Suite 3040  
                                  New York, NY 10002

To Idaho Power

Sr Vice President, Power Supply  
Idaho Power Company  
P O Box 70  
1220 Idaho Street  
Boise, Idaho 83707-0070

ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

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

- Appendix A - Standards for Interconnection and Metering
- Appendix B - Special Facilities, Point of Delivery and Metering, and Operation Date
- Appendix C - Schedule of Required Licenses and Permits
- Appendix D - Lump Sum Refund Payment
- Appendix E - Operating Instructions
- Appendix F - Statements of Professional Engineer

ARTICLE XXIX - ENTIRE AGREEMENT

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:

BYPASS LIMITED, a California  
limited partnership

IDAHO POWER COMPANY

By William Kriegel  
General Partner

By C. E. Bissell  
C E Bissell, Sr Vice President  
Power Supply

Dated: \_\_\_\_\_

Dated 1/18/89

"Seller"

"Idaho Power"

[ PAGE 42 IS A BLANK PAGE ]

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 18<sup>th</sup> day of January, 1988, before me, the undersigned, a Notary Public, personally appeared C E BISSELL, personally known, who being duly sworn, did say that he is the Sr Vice President - Power Supply of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

B. V. Schaeffer  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF New York )  
 ) ss  
County of New York )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1988, before me, the undersigned, a Notary Public, personally appeared William Kriegel, personally known, who being duly sworn, did say that he is the General Partner of the limited partnership that executed the within instrument, and acknowledged to me that he executed the same as the free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Marianne Feldt  
Notary Public for New York  
Residing at: Greenwood Lake, NY

MARIANNE FELDT  
Notary Public, State of New York  
No. 60-4634130  
Qualified in Orange County  
Certificate Filed in New York County  
Commission Expires November 30, 1990

APPENDIX A  
STANDARDS FOR INTERCONNECTION AND METERING

A-1 GENERAL PROVISIONS

A-1.1 It is the policy of Idaho Power to permit Seller to operate its Facility in parallel with Idaho Power's electric system, whenever this can be done without adverse effect to Idaho Power's equipment, personnel or other customers.

A-1.2 These guidelines contain the minimum metering, interconnection, protection, operation, and communications requirements for the safe and effective parallel operation of Seller's Facility with Idaho Power's system. Although these guidelines are established to provide a uniform approach for evaluating Seller's generation projects, each interconnection must be examined by Idaho Power individually. Idaho Power and the Seller will be guided by this document, which is a part of the Firm Energy Sales Agreement, in planning an interconnection between Idaho Power's system and the Seller.

A-1.3 Idaho Power may provide limited technical assistance for Seller, but will not perform any engineering, construction or repair work on power production equipment.

A-2 GENERAL DESIGN CONSIDERATIONS

A-2.1 All Seller generators larger than 20 KVA shall be three-phase generators connected to three-phase circuits unless otherwise approved by Idaho Power. Generators 20 KVA and smaller may be either three-phase or single-phase, depending on system considerations.

Due to physical limitations within Idaho Power's transmission and distribution systems, induction machine sizes will be limited to confine

voltage flicker within acceptable limits. Each generation site is unique and Idaho Power will determine the appropriateness of any proposed machine type for the site and interconnection.

A-2.2 Except in certain instances to be determined by Idaho Power, Seller's generator(s) shall be isolated from Idaho Power's system by a transformer. Transformer type and connection will be specified by Idaho Power. The Seller may be required to limit the fault current contribution to Idaho Power's system by generator impedance, neutral grounding or other means.

A-2.3 Idaho Power will not assume any responsibility for protection of the Seller's generator or of any other portion of the Seller's electrical equipment. The Seller is fully responsible for protecting his equipment from faults or disturbances on Idaho Power's system.

A-2.4 Seller is hereby notified that certain conditions on Idaho Power's system may cause negative sequence currents to flow in the Seller's generator. It is the sole responsibility of the Seller to protect his equipment from excessive negative sequence currents, reverse power flow, and single phasing.

### A-3 METERING AND TELEMETRY REQUIREMENTS

A-3.1 Unless otherwise agreed by the Parties, metering will be provided for recording net output of the Facility and will be separate from any metering of Seller's load. Metering required will be determined by Idaho Power on a case-by-case basis, but will generally follow the guidelines below:

A-3.1.1 Capacity Under 750 KW - Two kilowatt-hour/demand meters; one measuring power flow into customer's facilities and one measuring power flow into Idaho Power's system.

A-3.1.2 Capacity of 750 KW to 4999 KW - A bi-directional, electronic meter installation with load profiling and communication port capability will be

installed, and connected to the project voice communications circuit. An electro-mechanical KWH backup meter will also be installed.

A-3.1.3 Capacity of 5000 KW and Above - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed, and connected to the voice communications circuit. An electro-mechanical KWH backup meter will also be installed. In addition, all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line will be installed to provide continuous instantaneous telemetering of net generation to Idaho Power's designated dispatch facility.

#### A-4 FACILITY PROTECTION

A-4.1 The Seller has full responsibility for the maintenance of his generating equipment and the equipment protecting the Facility. If, in the opinion of Idaho Power, the Seller has failed to provide proper maintenance of the facility or its protection equipment, and this failure could adversely impact Idaho Power or other Idaho Power customers, Idaho Power can require the Seller to cease parallel operation.

#### A-5 SYNCHRONOUS GENERATORS

A-5.1 Idaho Power or the Seller may specify a governor. If a governor is used, the governor characteristics shall be capable of adjustment to at least 5 percent speed droop. The initial droop setting will be 5 percent. Idaho Power may specify changes in the setting within the 5 percent capability.

A-5.2 A check interlock for synchronizing of the Seller's generator(s) is required.

A-5.3 Synchronous generators shall be capable of operating continuously at maximum power output within 5 percent of rated voltage and anywhere within a power factor range of from 90 percent lagging to 95 percent leading.

Unless otherwise approved by Idaho Power, synchronous generators shall be equipped with an excitation system and voltage regulator that are capable of automatically controlling generator voltage over the full range of generator power and reactive capability. In some cases, depending upon system requirements, one or more of the following control methods may be required, as specified in Appendix B:

- 1) a power factor regulator may be required as well as a voltage regulator.
- 2) a programmable controller capable of varying the reactive output based upon a preset time schedule.
- 3) a remote signal provided by Idaho Power to adjust the voltage or power factor regulator settings. Idaho Power will provide this remote signal from within Idaho Power's system and transmit the signal to the Facility at the Seller's expense, as specified in B-11 of Appendix B.

The generator excitation system shall have over and under excitation limiter equipment which will permit voltage regulator action to control the reactive output within the range of the generator's capability.

The reactive capability of the Facility shall be operated as specified by Idaho Power, within the generator reactive capability, to regulate either the interconnection voltage or Facility output power factor or both. Idaho Power will provide the desired voltage, power factors, and schedules required by the Seller to set voltage regulators, power factor regulators and programmed or remote signal controllers. Idaho Power may change these desired values from time to time as system requirements change.

If the Facility is not operated to control reactive output in the manner specified and after notification, the Seller does not make necessary corrections within a reasonable time, a default will be declared pursuant to Article XXI.

A-5.4 Due to the ability of large synchronous generators to influence Idaho Power's system, protective and control relaying in addition to the usual voltage frequency, and fault relaying will be specified by Idaho Power. This will consist of generator relaying for phase to phase and three phase fault detection. Idaho Power will specify the relay type and determine settings. This relay will be tested annually by Idaho Power and the actual cost of this testing will be paid by the Seller.

#### A-6 INDUCTION GENERATORS

A-6.1 Overvoltage can become a serious problem when an induction generator is isolated to a portion of a transmission or distribution system. Overvoltage relaying shall be provided that will open the generator breaker in the event that the voltage reaches predetermined limits consistent with the overvoltage capability of the generator and the system. Undervoltage protection may also be required. On larger units, underfrequency and overfrequency relaying may be required.

A-6.2 Induction generators require supplemental reactive support. The total reactive required is that amount required to correct the Facility to unity power factor. The reactive may come from either Idaho Power's system or from capacitive correction at the Facility or both. Idaho Power will charge the Seller (as specified in Appendix B) for reactive that is provided from the system.

At some Facilities, because of system considerations, it may not be practical to provide all of the reactive compensation at the Facility. In these instances, Idaho Power shall specify the power factor and compensation necessary at the Facility.

The Seller will have the option to furnish the reactive compensation that is required at the Facility. If the Seller furnishes the reactive compensation, the Facility must be operated at a power factor that is within 5 percent of the specified power factor. The Seller must also design the Facility to avoid possible over-voltage that can occur under certain conditions when capacitors are applied to the generator terminals.

#### A-7 DC TO AC CONVERTERS

A-7.1 Direct current generators may be operated in parallel with Idaho Power's system through a synchronous inverter. The inverter installation will be designed such that an Idaho Power system interruption will result in the immediate removal of the inverter power flow to Idaho Power. Harmonics and/or spurious frequencies generated by the Seller's generator-inverter combinations must be limited to avoid causing any reduction in quality of electric service to Idaho Power's other customers.

#### A-8 SWITCHING REQUIREMENTS

A-8.1 Idaho Power reserves the right to open and secure by lock any disconnecting device without prior notice to Seller for any of the following reasons:

A-8.1.1 System emergency.

A-8.1.2 Inspection of the Seller's Facility protective equipment reveals a condition which might adversely impact Idaho Power or Idaho Power's other customers.

A-8.1.3 Seller's generating equipment interferes with other customers, or with Idaho Power's system.

A-8.2 Seller shall maintain a written record of all operating (opening and closing) by Seller of the Seller's interconnection with Idaho Power. Each operation will be recorded by the date, hour and minute and will include the generator kilowatt hour reading at the time of the operation. This record will be maintained on a monthly basis and the original will be mailed to Idaho Power on the first business day of the following month. Idaho Power will provide the forms necessary for filing this monthly switching report.

A-9 GENERATION SCHEDULING AND REPORTING

A-9.1 For installations under 750 KVA, the Seller shall read his generator kilowatt hour/demand meter within the 24-hour period following 12:00 noon on the last day of each month. That kilowatt hour meter reading is to be recorded on the Monthly Power Production Switching Report.

A-9.2 For installations 750 KVA and above, see Appendix E.

A-9.3 The written record of the end-of-month meter reading on the Monthly Power Production Switching Report, subject to subsequent review and correction by Idaho Power, will be the basis of payment for energy purchased by Idaho Power from the Seller. An adjustment in the kilowatt hours delivered will be made to compensate for the losses in B-6.

A-9.4 At the end of each month, the Monthly Power Production Switching Report will be mailed to:

Operations and Joint Facilities Accounting  
Idaho Power Company  
P O Box 70  
Boise, Idaho 83707-0070

APPENDIX B  
SPECIAL FACILITIES, POINT OF DELIVERY AND METERING,  
AND OPERATION DATE  
PROJECT NO 31715128  
HAZELTON A

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as three generators with nameplate ratings of 3300 KW each at 4160 Volts, three phase, 60 hertz, driven by Kaplan S-Type Turbines.

B-2 LOCATION OF FACILITY

The Facility is located in the NE Quarter of Section 2, Township 10 South, Range 20 East, Boise Meridian, Jerome County, Idaho.

B-3 SCHEDULED OPERATION DATE

Seller has selected June 1, 1990, as the Scheduled Operation Date and May 1, 1990, as the First Energy Date. In making these selections, Seller recognizes that to allow for adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho Power, based on the information supplied by Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and metering equipment will be completed in time so as not to delay Seller's achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to Idaho Power, Idaho Power may be required

to reschedule its construction of these facilities which could adversely impact Seller's ability to achieve its scheduled First Energy Date.

**B-4 FAILURE TO ACHIEVE OPERATION DATE**

If Seller has not achieved the Operation Date within eleven (11) months of the Scheduled Operation Date, such failure shall be deemed to be an event of default pursuant to Article XXI.

**B-5 POINT OF DELIVERY**

The Point of Delivery of Energy from the Seller to Idaho Power will be the 138,000 volt bushings of the transformer bank. The 11,000 KVA transformer bank will be a three phase bank, 4160 volts to 138,000 volts, and will be owned and maintained by the Seller. The transformer connection will be specified by Idaho Power at a later date.

**B-6 LOSSES**

Losses shall be 2.00% of the metered energy.

**B-7 METERING AND TELEMTRY**

The metering equipment will be on the 4160 volt side of the transformer bank, and will consist of potential and current transformers, an electronic bi-directional demand meter, and an electro-mechanical backup meter. The meter installation will have load profiling and communication port capability and will be connected to the project voice communications circuit. The telemetry equipment will include all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line which will be installed to provide continuous instantaneous telemetering of net generation to Idaho Power's Designated Dispatch Facility. Metering and telemetry equipment will be owned and maintained by Idaho Power, with total cost of purchase, installation, operation and

maintenance, including communications line lease cost to be reimbursed to Idaho Power by the Seller.

#### B-8 SPECIAL FACILITIES

The construction of 11,800 feet of 138,000 volt H-frame transmission line using a 750 foot ruling span, including two deadend structures and following a straight line, and the installation of two 138,000 volt sectionalizing switches will be provided by Idaho Power as Special Facilities. The total cost for these Special Facilities will be reimbursed to Idaho Power by the Seller. The Seller will provide all needed right of way.

#### B-9 REACTIVE POWER

The Seller shall operate the synchronous generators within plus or minus 5% of unity power factor unless Idaho Power specifies other operating guidelines.

#### B-10 DISCONNECTION EQUIPMENT

Disconnection Equipment is required to insure that the Seller's Facility will be disconnected from Idaho Power's system in the event of a disturbance on either Idaho Power's system or the Seller's Facility. This equipment is for the protection of Idaho Power's equipment only and will be located at the Point of Delivery. Idaho Power will supply a three phase gang operated 138,000 volt disconnect switch for mounting on the deadend structure, a 138,000 volt potential transformer, a 138,000 volt circuit switcher, a current transformer to be installed in the transformer neutral, a relay cabinet containing relays and associated wiring and logic, and a battery cabinet. Seller will install all Idaho Power supplied equipment, and all wiring and conduit necessary for the operation

of the interconnection equipment. Idaho Power will supply details for the interconnection panel and will connect and test the equipment prior to operation of the facility. Seller will provide drawings of the interconnection wiring for engineering approval before installation. The total cost of the interconnection equipment, connection and testing will be reimbursed to Idaho Power by the Seller.

#### B-11 COSTS

The total cost of transmission Special Facilities is \$224,182. The total cost of the Metering Equipment is \$7,050. The total cost of the telemetry equipment is \$5,555. In addition, there will be a monthly charge for the communication circuit lease cost associated with the telemetry equipment. The communications circuit lease is \$140 per month as of the date of this Agreement. Seller recognizes that the monthly communications circuit charge may be adjusted by Idaho Power as the cost to Idaho Power is adjusted by the owner of the communications circuit. The total cost of the Disconnecting Equipment is \$81,644. The total cost to be paid by the Seller is \$318,431. This represents the amount that will be charged by Idaho Power if the Seller makes the payment on or before January 27, 1989. Idaho Power will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of the Agreement, Seller will pay Idaho Power an operation and maintenance charge of 0.36% per month on the transmission Special Facilities, and 0.7% per month for the remainder of the Facilities specified above. The monthly operations and maintenance charges may be adjusted during the term of the Agreement to reflect

changes in the costs upon which the charges is based. Idaho Power will maintain on file with the Commission a schedule showing the cost components and calculation of the monthly operation and maintenance charges.

#### B-12 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho Power will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities described in this Appendix, less the cost of removal and transfer to Idaho Power's nearest warehouse, if the Interconnection Facilities will be removed. Idaho Power may then be invoiced by Seller for the net salvage value estimated by Idaho Power for the interconnection facilities and shall pay such amount to Seller within thirty (30) days after receipt of said invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho Power.

## APPENDIX C

### SCHEDULE OF REQUIRED LICENSES AND PERMITS

1. Evidence of compliance with Part 1 of the Federal Power Act. Acceptable evidence of compliance will be an Order from FERC: (1) issuing a valid License for the Facility, or (2) validly exempting the Facility from Licensing.
2. Approved Application for Permit to appropriate water for power production purposes issued by the Idaho Power Department of Water Resources.
3. Evidence of compliance with Subpart B of CFR §292.207.

APPENDIX D

LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT  
OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT  
UNDER 20-YEAR CONTRACT

<u>Contract Year of Curtailment Commencement</u>	<u>Dollars Per Annual Megawatt Hour 1990 Operation Date</u>
1	22
2	47
3	73
4	101
5	131
6	164
7	199
8	200
9	199
10	197
11	192
12	185
13	175
14	162
15	146
16	126
17	102
18	74
19	40
20	0

APPENDIX E

OPERATING INSTRUCTIONS FOR PLANTS OVER 750 KW

1. Prior to initial start-up at least one day in advance the Project shall:
  - A. Provide Idaho Power's system dispatching facility with an estimate of the hourly generation that is expected to be produced during the first scheduled test day. The phone number for System Scheduling to report the estimate is listed below.
  - B. Notify the Division Substation Supervisor of project start up plans. The phone number is listed below.
  - C. The kWh meter should be read and entered on the Monthly Power Production and Switching Report (Form No: Cogen CAD-A-1).
2. Before 10:00 Am on each normal work day, after the initial start-up, the Project will report to the System Scheduling Office the previous day's actual generation based upon midnight to midnight meter readings and the estimate of generation planned for the following day or days. The phone number to report the actual generation and scheduling estimate is listed below. Note that the System Scheduling number is answered only between the hours of 8 AM to 5 PM Mountain Time, on weekdays and that generation estimates must be provided for weekend days and holidays.
3. Each time the generator breaker is closed or opened (including testing and normal operation), Idaho Power's System Dispatchers must be notified by phone as soon as possible. Prompt reporting is very important. The System Dispatch Center is manned 24 hours a day, 7 days a week, and the phone number is listed below.
4. In addition to promptly notifying the System Dispatchers, the record of each breaker opening and closing must be entered on the Monthly Power Production and Switching Report mentioned in 1-C above.
5. For questions or problem concerning:  

<u>Power Scheduling:</u>	(208) 383-2863
<u>System Dispatching:</u>	(208) 383-2826
<u>Metering:</u>	Meter Engineer - Boise (208) 383-2751

or

Division Metering Supervisor

Payette	(208) 642-3371, ext 284
Boise	(208) 322-2029
Twin Falls	(208) 733-6880, ext 284
Pocatello	(208) 236-7700, ext 7771

Substations: Division Substation Supervisor

Payette	(208) 642-3371, ext 262
Boise	(208) 322-2064
Twin Falls	(208) 733-6880, ext 237
Pocatello	(208) 236-7700, ext 7774

Billing: Power Accounting - Boise  
(208) 383-2592

Contracts: Customer Generation - Boise  
(208) 383-2427

6. Toll free numbers for Operating Reporting:

In-State:

System Scheduling	1-800-635-1093
System Dispatching	1-800-635-7348

Out-of-State:

System Scheduling	1-800-356-4328
System Dispatching	1-800-348-4328

APPENDIX F

CERTIFICATION OF DESIGN ENGINEER

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

1. That Design Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.

2. That Design 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 further designated as Federal Energy Regulatory Commission Hydro Project 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 Design Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.

6. That Design Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this project.

7. That Design Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, water conveying equipment, Seller furnished interconnection equipment and other project facilities and equipment.

8. 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.

9. 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 during the full term of the Agreement.

10. That Design Engineer has supplied the Seller with at least one copy of said Plans and Specifications bearing his Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

11. That Design Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(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 Design 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 \_\_\_\_\_

STATE OF IDAHO        )  
                          ) ss  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

APPENDIX F

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 further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.

6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this project.

7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the Plans and Specifications independently.

8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, water conveying equipment, Seller furnished interconnection equipment 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 during the full term of the Agreement.

11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(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 \_\_\_\_\_

\_\_\_\_\_

STATE OF IDAHO        )  
                          ) ss  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

APPENDIX F

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 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 further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.

6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this project.

7. That Engineer has no economic relationship to the Design Engineer of this Project.

8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance (O&M Policy) for this plant and it is his professional opinion that, provided said plant has been designed and built to appropriate standards, adherence to said O&M Policy will result in the plant's producing at or near the design electrical output, efficiency, and plant factor for the \_\_\_\_\_ (\_\_\_\_) year period of the Agreement.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(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 \_\_\_\_\_

STATE OF IDAHO            )  
                                  ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

APPENDIX F

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 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 further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_\_) year period.

6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this project.

7. That Engineer has no economic relationship to the Design Engineer of this Project.

8. That Engineer has made a physical inspection of said plant, its operations and maintenance records since the last previous certified inspection, and the plant's O&M Policy bearing the words "CERTIFIED FOR IDAHO P.U.C. SECURITY APPROVAL" and the Stamp of the Certifying Engineer. It is Engineer's professional opinion, based on the plant'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 plant 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 21.2.2.2 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 \_\_\_\_\_

STATE OF IDAHO        )  
                              ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

**EXHIBIT B**

**SETTLEMENT AGREEMENT AND STIPULATION**

**SETTLEMENT AGREEMENT AND STIPULATION**

THIS AGREEMENT and Stipulation is by and between Bypass Limited, Sithe Energies USA, and the Northside Canal Company (hereinafter collectively referred to as "Complainants") and Idaho Power Company ("Idaho Power").

**W I T N E S S E T H:**

WHEREAS, Complainants presently have pending before the Idaho Public Utilities Commission (the "Commission") three complaints against Idaho Power. Those complaints are identified as Case Nos. U-1006-300 (Hazelton A), U-1006-310 (Hazelton B) and U-1006-302 (Wilson Lake); and

WHEREAS, the Commission has granted both Complainants' Petition for Reconsideration and Idaho Power's Cross-Petition for Reconsideration as to Order Nos. 21249, 21332, and 21630 issued in Case No. U-1500-170; and

WHEREAS, the parties desire to settle and resolve both the Complaints and the Petitions for Reconsideration;

NOW, THEREFORE, in consideration of the foregoing, the parties hereby stipulate and agree as follows:

1. All parties agree to waive their statutory rights to have the Petitions for Reconsideration heard by the Commission within thirteen (13) weeks after the date for filing Petitions for Reconsideration (I.C. § 61-626(2)). The parties further agree and stipulate that the Commission may

vacate the briefing schedule and the hearing on reconsideration presently set for March 22, 1988, pending final resolution of the settlement efforts between the parties.

2. Complainants hereby stipulate and agree to the dismissal of Commission Case Nos. U-1006-300 (Hazelton A), U-1006-301 (Hazelton B) and U-1006-302 (Wilson Lake) without prejudice. Except as otherwise provided in paragraph 5, Complainants agree that in a subsequent complaint proceeding (if any) relating to any of these three projects, neither they, nor any of their representatives, successors or assigns, will allege that any of the three Projects have any right or entitlement to the cogeneration/small power production purchase rates set by the Commission in Case No. U-1006-248.

3. The parties agree to expeditiously negotiate and submit to the Commission for approval, contracts for the Hazelton A and B small hydro projects. These contracts will include the interim purchase rates set by the Commission in Order No. 21630 in Case No. U-1500-170.

4. The parties will also negotiate a contract for the Wilson Lake project but it will not be executed, nor will it contain any purchase rates. When Complainants have provided Idaho Power with all of the permits and other information necessary for the execution of the Wilson Lake contract including, but not limited to, a license or exemption from licensing from the Federal Energy Regulatory Commission for the Wilson Lake Project, the contract will be finalized and

submitted to the Commission for approval. Unless another rate is ordered by the Commission, the purchase rates to be included in the Wilson Lake Contract will be the Commission approved small power production purchase rates in effect at the time the Wilson Lake Contract is executed.

5. Concurrent with the application to the Commission for approval of the Hazelton A and Hazelton B contracts, both parties will file motions withdrawing their respective Petitions for Reconsideration in Case No. U-1500-170. The Commission's approval of the Hazelton A and Hazelton B contracts as submitted and its granting of the Motions withdrawing the Petitions for Reconsideration will be a condition precedent to the effectiveness of the Hazelton A and B contracts and will constitute a full accord and satisfaction of all outstanding issues between the parties relating to the Hazelton A and Hazelton B Projects. If the Commission does not approve the inclusion of the interim rates set in Order No. 21630 in the Hazelton A and B contracts then, (1) the Hazelton A and B contracts will be null and void; (2) either party will be free to move the Commission for an Order setting dates for filing briefs and a hearing on the Petitions for Reconsideration; and (3) Complainants may refile their complaints before the Commission for the Hazelton A and Hazelton B projects and request that they be paid at the rates set in Case No. U-1006-248.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement and Stipulation effective the 3rd day of March, 1988.

for /s/ *Don L. Eignen*  
Steven R. Ormiston  
Counsel for Bypass Limited  
and Sithe Energies USA

for /s/ *Don L. Eignen*  
John A. Rosholt  
Counsel for Northside Canal  
Company

/s/ *Barton L. Kline*  
Barton L. Kline  
Counsel for Idaho Power  
Company

EXHIBIT C

JOINT NOTICE OF INTENT TO WITHDRAW  
PETITION FOR RECONSIDERATION AND  
CROSS-PETITION FOR RECONSIDERATION

Barton L. Kline  
EVANS, KEANE, KOONTZ, BOYD, SIMKO & RIPLEY  
101 South Capitol Boulevard, Suite 1700  
Post Office Box 959  
Boise, Idaho 83701  
(208) 384-1800

Attorneys for Idaho Power Company

Roy L. Eiguren  
Peter J. Richardson  
LINDSAY, HART, NEIL & WEIGLER  
350 North Ninth Street  
Jefferson Place, Suite 400  
Boise, Idaho 83702  
(208) 336-8844

Attorneys for Sithe Energies, U.S.A.  
and for Bypass Limited

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE REVIEW OF THE	)	
IDAHO PUBLIC UTILITIES COMMISSION'S	)	CASE NO. U-1500-170
POLICIES ESTABLISHING AVOIDED COSTS	)	
UNDER THE PUBLIC UTILITY REGULATORY	)	JOINT NOTICE OF INTENT TO
POLICIES ACT OF 1978 AND IMPLEMENTING	)	WITHDRAW PETITION FOR
SECTION 210 OF THAT ACT REQUIRING	)	RECONSIDERATION AND
THE PURCHASE OF ELECTRICITY FROM	)	CROSS-PETITION FOR
COGENERATORS AND SMALL POWER	)	RECONSIDERATION
<u>PRODUCERS</u>	)	

COME NOW, Sithe Energies USA (Sithe) and Idaho Power Company (Idaho Power), and hereby notify the Idaho Public Utilities Commission (Commission) pursuant to Rule 7.7 of the Commission's Rules of Practice and Procedure (IDAPA 31.A, 7.7), of their joint intent to withdraw Sithe's Petition for Reconsideration and Idaho Power's Cross-Petition for Reconsideration of Order Nos. 21249 (Issued May 26, 1987), 21332 (Issued July 13, 1987) and 21630 (issued December 1, 1987).

Pursuant to the Settlement Agreement and Stipulation filed with the Commission and dated March 3, 1988, the parties have successfully negotiated and executed a Firm Energy Sales Agreement for the Hazelton "A" project and have agreed upon the form of a contract for Hazelton "B." The parties therefore consider the terms and conditions of the Settlement Agreement and Stipulation (but for the Commission's granting the Application for Approval of the Power Sales Agreement for Hazelton "A") to be fulfilled. That Settlement Agreement and Stipulation states, in part:

Concurrent with the application to the Commission for approval of the Hazelton A and Hazelton B contracts, both parties will file motions withdrawing their respective Petitions for Reconsideration in Case No. U-1500-170. The Commission's approval of the Hazelton A and Hazelton B contracts as submitted and its granting of the Motions withdrawing the Petitions for Reconsideration will be a condition precedent to the effectiveness of the Hazelton A and B contracts and will constitute a full accord and satisfaction of all outstanding issues between the parties relating to the Hazelton A and Hazelton B Projects.

A true and complete copy of the Settlement Agreement and Stipulation is attached hereto and by this reference made a part hereof. Exhibit A.

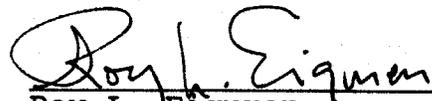
Upon the Commission's approval of the Power Sales Agreement for the Hazelton "A" project Sithe will withdraw its Petition for Reconsideration and Idaho Power will withdraw its Cross-Petition for Reconsideration. Upon Commission approval of the Firm Energy Sales Agreement for Hazelton "A," Sithe and Idaho Power will consider the terms and conditions of the

Settlement Agreement and Stipulation to have been satisfied in full.

This Notice of Withdrawal is hereby made expressly contingent upon the Commission's granting the Application for Approval of the Power Sales Agreement for the Hazelton "A" project in Case No. IPC-E-89-2.

Dated in Boise, Idaho, this 30th day of January, 1989.

LINDSAY, HART, NEIL & WEIGLER

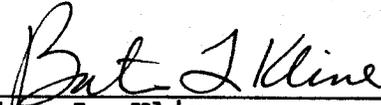


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Roy L. Eiguren  
Peter J. Richardson  
- Of the Firm -  
Attorney's for Petitioner,  
Sithe Energies, U.S.A.

Dated in Boise, Idaho, this 30th day of January, 1989.

EVANS, KEANE, KOONTZ, BOYD,  
SIMKO & RIPLEY

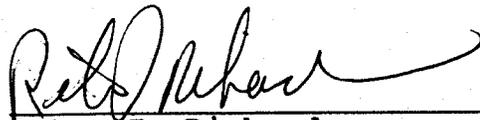


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Barton L. Kline  
- Of the Firm -  
Attorneys for Respondent,  
Idaho Power Company

PROOF OF SERVICE

I HEREBY CERTIFY that I have this 30th day of January 1989, served the foregoing NOTICE OF INTENT TO WITHDRAW PETITION FOR RECONSIDERATION AND CROSS-PETITION FOR RECONSIDERATION upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to the addressees as noted on the attached list.

  
Peter J. Richardson