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IDAHO PUBLIC
UTILITIES COMMISSION

November 9, 2005

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

RE: Case No. AVU-E-05-07

Dear Ms. Jewell:

Enclosed please find ten (10) copies of THE DIRECT TESTIMONIES OF MARK D. THOMPSON, LAWRENCE MICHAEL UNDERWOOD AND CHARLES FREDERICK BUSCH ON BEHALF OF THOMPSON RIVER CO-GEN, LLC. This includes a copy for the reporter(s).

I have also enclosed an extra copy to be service-dated and returned to us for our files. Thank you.

Sincerely,

Nina Curtis
Administrative Assistant

encl.

CERTIFICATE OF SERVICE

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I hereby certify that on this 9th day of November, 2005, the DIRECT
TESTIMONY OF MARK D. THOMPSON, LAWRENCE MICHAEL UNDERWOOD AND
CHARLES FREDERICK BUSCH ON BEHALF OF THOMPSON RIVER CO-GEN LLC was
sent to the following parties as shown:

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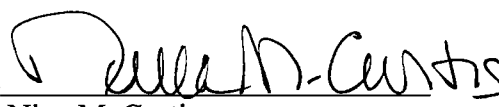
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Signed 
Nina M. Curtis

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BEFORE THE IDAHO PUBLIC UTILITIES
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UTILITIES COMMISSION

THOMPSON RIVER CO-GEN, LLC
a Colorado Company

Complainant

vs.

AVIST CORPORATION, dba Avista Utilities
a Washington Corporation

Respondent

Case No. AVU-E-05-07

Direct Testimony of

MARK D. THOMPSON

Strategic Energy Concepts, LLC

on behalf of

THOMPSON RIVER CO-GEN, LLC

November 8, 2005

1
2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**
3
4 **RECORD?**
5

6 **A.** My name is Mark D. Thompson. My business address is 83 Burning Tree, Butte MT
7 59701.

8 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
9
10 **EXPERIENCE?**
11

12 **A.** In May 2004, I left my position at NorthWestern and started Strategic Energy Concepts,
13 LLC, which provides independent consulting services, specializing in energy commodity and
14 finance structured products. I have numerous clients, but my primary client is NorthWestern
15 Energy, for which I provide independent contractor services focused on enterprise risk
16 management and energy services for their unregulated and regulated activities. I joined
17 NorthWestern in October 2001, during the majority of which time I held the position of
18 Executive Director of Energy Supply for NorthWestern, performing energy supply procurement
19 and optimization for NorthWestern's energy supply requirements, including responsibility for
20 the electric and natural gas default supply procurement activities in Montana.

21 I have actively participated in the Western natural gas and electricity commodity markets
22 for the last nine years, and maintain a disciplined approach to portfolio management as well as
23 expertise in the western physical generation and transmission commodity markets.

24 Throughout my career, I have concentrated on embracing the volatility and arbitrage
25 opportunities in the energy commodity markets as well as managing an asset-based portfolio at a

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1 major Independent Power Producer (IPP). As the Western Asset Portfolio Director at NRG, I
2 was responsible for overseeing the management of 2400 MW of capacity, as part of a joint
3 venture investment. I also assisted in the development, commissioning and market strategy for
4 two 50 MW reciprocating engine facilities in Northern California, similar to the Montana Basin
5 Creek and Avista Boulder Park projects.

6 Prior to joining NRG, I assisted the California Power Exchange in developing forward
7 hedging instruments and bidding structures, and performing market analysis, surveillance and
8 compliance of participants' bidding behaviors. I was also instrumental in assisting the Province
9 of Alberta to design market rules and auction activities for the divestiture of generation assets.

10 I pursued my interest in market fundamentals and asset-backed portfolios at Avista
11 Corporation (Washington Water Power), where I studied the Northwest hydro system and
12 provided insight-based risk absorption strategies for the asset-based utility.

13 I began my trading career in agricultural commodities at the world-leading agriculture
14 and food company, ConAgra, in 1993. I hold BSBA degrees in Economics and Finance from
15 Creighton University in Omaha Nebraska.

16 The knowledge that I acquired and refined from asset and commodity optimization
17 activities assists NorthWestern with insight in quantifying risk and enlisting the appropriate risk
18 management instruments for the market-based default supply activities. As a strong business
19 development strategist, I have focused on industry relationships and the creation of structured
20 products to complement procurement and optimization efforts.

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1 **Q. WHAT IS YOUR CONNECTION, IF ANY, TO THE TRC PROJECT?**

2
3 **A.** I provide independent consulting services to TRC related to transmission, wholesale
4 marketing and project financing.

5
6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

7
8 **A.** My testimony is related to transmission issues, qualifying facility integration issues,
9 economic and price forecasting issues, and standard industry practices in the acquisition and
10 management of generation resources. I also provided the introduction for TRC to Avista and
11 was directly involved in the negotiation process with Avista. To that extent, I am a lay witness.

12 **Q. PLEASE DESCRIBE NORTHWESTERNS' PAST AND CURRENT**
13 **RELATIONSHIP WITH TRC?**

14 **A.** The relationship between NorthWestern and TRC began as early as 2001 and
15 contractually ended through the automatic termination clause in the Co-Generation Power Sale
16 Agreement (See Section 2.2(b) of Exhibit No. 1). NorthWestern continues to be the control area
17 in which TRC is located and TRC maintains a valid Generation Interconnection Agreement and
18 firm transmission services on the NorthWestern system. TRC has notified NorthWestern that it
19 will likely leave the NorthWestern control area and be consolidated into the Avista control area,
20 through remote telemetry, similar to Avista's ownership of Colstrip, which is also in
21 NorthWestern's control area. Specifically related to the energy supply transactions between
22 NorthWestern and TRC, the parties have entered into three different transactions, two of which
23 have terminated prior to any energy being delivered.

1 First, NorthWestern and TRC entered into a PPA on September 28, 2001, which was
2 presented to the Montana Public Service Commission (MPSC) as part of a portfolio of resources
3 (base-load hydro / coal from new and existing resources and a series of wind projects). In June
4 2002, the MPSC issued an order, in which it declined to provide pre-approval of the portfolio.
5 This MPSC order caused NorthWestern to exercise a "regulatory-out" clause and terminate the
6 Power Purchase Agreement between Montana Power Company and Thompson River Co-Gen,
7 LLC.

8 The two parties continued to communicate and entered into negotiation of a second
9 agreement, which was executed between NorthWestern and TRC on September 12, 2002 as the
10 "Co-Generation Power Sale Agreement between Thompson River Co-Gen, LLC and
11 NorthWestern Energy, LLC" (Exhibit No. 1). This contract was for a minimum of 8 MW and a
12 maximum of the full base-load project output. At the time of the transaction, NorthWestern
13 contractually agreed to a price, which a premium to the wholesale market in order to promote
14 new, small, environmentally sound resources. The 2002 Power Sale Agreement was not filed
15 with the MPSC for advanced approval and therefore was not in the default supply "rate-base" for
16 NorthWestern.

17 A third transaction between NorthWestern and TRC has been mutually agreed but not
18 fully executed. This transaction, referred to as an "Interim Power Sales Agreement" became
19 necessary to facilitate short-term test energy deliveries from TRC to the NorthWestern system.
20 The term of the Interim Power Sales Agreement is the lesser of i) one-year; or ii) notice by TRC
21 that it has commenced a power sales agreement with another party. Despite the interim

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1 agreement not being executed, NorthWestern and TRC have conducted transactions under its
2 general terms and conditions.

3 As stated throughout this testimony, TRC also maintains two other agreements with
4 NorthWestern. First, TRC maintains a Generation Interconnection Agreement, which is required
5 for any generation project to interconnect to the electric grid. Secondly, TRC maintains a firm
6 transmission agreement sufficient to transmit up to 10 MW of energy from the TRC project to
7 Avista's Idaho service territory at Burke.

8 **Q. WHAT TRANSMISSION AGREEMENTS WILL BE NECESSARY TO**
9 **INTERCONNECT TRC WITH THE AVISTA SYSTEM?**

10
11 **A.** TRC has attained the necessary transmission agreement that will be necessary to
12 interconnect with the Avista system. Specifically, TRC has secured 10 MW of firm transmission
13 from the NorthWestern system to Avista at Burke (Avista's Idaho service territory) for a term
14 sufficient to match the power sale agreement with Avista. Furthermore, TRC has notified
15 NorthWestern that it plans to be integrated into the Avista control area. Placing the TRC facility
16 in the Avista control area ensures that Avista receives all of the net output from the facility.
17 Avista integrates off-system resources into its control area as part of normal operations, such as
18 its interest in Colstrip and Noxon, both of which are located in Montana.

19 Despite concerns from Avista, TRC wants to make it clear that Avista will receive the
20 entire net output of the Project and that TRC maintains firm transmission rights to the point of
21 delivery specified by Avista. Avista's comments related to alternative delivery points can be
22 accommodated through standard industry transmission scheduling. Such schedules will be

1 secondary, as the primary point of delivery is Burke. It should also be noted that Avista
2 performs the very same activities for scheduling its own resources. In fact, as will be discussed
3 later, Avista utilizes non-firm, short-term transmission to delivery energy from some of its
4 resources. Avista appears to be attempting to hold TRC to a different standard.

5 To further refute Avista's non-commercial and non-standard claim that TRC will
6 maintain only one firm transmission path, Avista's single largest thermal resource, a
7 proportionate share of Colstrip Units 3 & 4 (222 MW) maintains a single transmission path with
8 a stated rating that is actually less the full output of Avista's generation capacity share. If
9 adequate transmission cannot be acquired or if existing transmission is de-rated, Avista i)
10 attempts to market such energy at the Colstrip busbar; or ii) Avista backs down the resource.
11 Since the resource is in Montana, Avista often has the opportunity to sell the output to other
12 load-serving entities. If Avista can operate numerous of its substantial resources (Colstrip,
13 Coyote Springs 2 and PPM wind) with non-firm and short-term transmission provisions, their
14 complaint regarding TRC's firm transmission is not conceivably credible and serves only as an
15 attempt to confuse the matter.

16
17 **Q. DID YOU PARTICIPATE IN THE DISCUSSIONS WITH AVISTA REGARDING**
18 **TRC'S DESIRE TO SELL QF POWER TO AVISTA?**

19
20 **A.** I participated during most, but not all discussions. Specifically, I provided the
21 introduction between TRC and Avista and remained as one of the primary contracts since I
22 maintained a prior relationship with most of the Avista personnel and was familiar with the

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1 Avista system, the TRC facility and the wholesale transmission grid. As stated in my experience
2 area, prior to working for NorthWestern Energy, I worked for Avista Corp (1998-1999), thus
3 many of the contacts were persons with whom I use to work. My engagement with TRC
4 included assisting in attaining a PURPA contract and project financing opportunities. Being
5 familiar with the Avista resources and service territory, I was aware that Avista has contracted
6 with only one (Potlatch) (or very few) qualifying facilities (QF). In fact, subject to further
7 discovery, I recall that Avista's Kettle Falls (which Avista has communicated is a good
8 resource), was first proposed as a QF and then subsequently purchased by the utility and is
9 operated as an integrated resource within rate-base.

10
11 **Q. WHAT WAS AVISTA'S RESPONSE TO THE PROPOSAL?**
12

13 A. Avista's response, while courteous was not overly anxious or receptive. After Avista's
14 initial response to TRC on February 5, 2004, it became evident that Avista, even though still
15 energy resource deficit was not all that interested in accepting energy from TRC, as a QF.
16 (Energy resource deficit means that Avista is capacity sufficient but energy deficit during
17 most periods of the year due to their reliance upon hydro and natural gas fired generation
18 resources.) Despite the delays and lack of communication, I was not overly surprised, since
19 it was well known in the region that Avista's only QF contract (with Potlach) has been a
20 contested and contentious relationship.

21 TRC and Avista will still at preliminary levels of communication regarding output,
22 desired structure and rate schedules in early July. Despite Avista's requirement under
23 PURPA, TRC remained unclear as to the product that Avista most desired. TRC desired to

1 look at numerous issues that may compel Avista to be more engaged, including Project
2 modifications and the acquisition of firming services, all of which would have increased the
3 cost to TRC. Subsequent review of engineering design discovered that the TRC Project
4 could not be expanded efficiently due to boiler limitations.

5 Unfortunately, Avista is now utilizing TRC's attempts to negotiate in good faith in a
6 manner to confuse the Commission. The TRC Project is simple. The Project does not, under
7 normal operating conditions, generate more than a net of 10 a MW monthly. The full net
8 output would be delivered to Avista (since it will be in Avista's control area). Furthermore,
9 TRC has demonstrated to Avista (through hourly meter output) that the Project has never
10 exceeded 10 aMW. Firm transmission has been acquired to the requested point of delivery
11 (Burke) in a manner that exceeds Avista's own resource acquisition practices. The only real
12 issue that appears to be confusing is Avista's delay in contracting with TRC.

13 **Q. WHAT HAPPENED AFTER TRC'S INITIAL APPROACH REGARDING**
14 **ITS DESIRE FOR A QF CONTRACT WITH AVISTA?**

15 **A.** As stated, Avista did not really communicate their direct concerns in the beginning and
16 are now expressing issues that either confuse the issues or were never communicated
17 amongst the Parties. Therefore, TRC can systematically go through each of Avista's issues
18 and either refute or clarify each issue. TRC utilized the form of contract, previously
19 approved by the Commission for other QF projects, in an attempt to reduce contractual
20 confusion. TRC attempted to negotiate in good faith to no avail with Avista and now seeks
21 Commission assistance in clarifying any outstanding issues.

1 Prior to filing the complaint with the Commission, TRC attempted to explain to Avista
2 what TRC believed to be the Project benefits and limitations and even attempted to propose
3 numerous value added products, in order to engage Avista and understand their real needs.
4 TRC provided project information and an introduction to the principals in order to
5 appropriately explain the project and the qualifications of the principals. In these
6 discussions, TRC explicitly attempted to explain the boiler limitations of the Project. Many
7 of Avista's questions or concerns were very limited in scope and had no real bearing on the
8 facts or actual operations of the TRC Project. Due to the lack of communication from Avista
9 regarding its thoughts on the Project, TRC attempted to "guess" at their concerns by
10 proposing a series of proposals (including a conceptual firming proposal) that were aimed at
11 being innovative and providing Avista with a firm energy resource. This structure would
12 have cost TRC additional expenses, which could have been recognized and recovered
13 through negotiations.

14 TRC eventually concluded that it would alleviate significant concerns and
15 misconceptions by requesting to be directly integrated into the Avista control area, similar to
16 the integration of Colstrip, Coyote Springs #2, Noxon and other resources that are outside of
17 Avista's system control area. Avista has acknowledged that the TRC Project can be
18 successfully integrated into the Avista control area. This will ensure that the entire net output
19 from the TRC Project is delivered directly to Avista. TRC will not sell any energy to any
20 other wholesale entity.

1 **Q. WHAT IS MEANT BY THE STATEMENT “THE PROJECT IS BOILER**
2 **LIMITED”? WHY IS THE BOILER LIMITATION SIGNIFICANT?**

3
4 **A.** Boiler limitations refer to the amount of thermal energy output that can be created from
5 the boiler portion of a Project. This thermal energy output is the real input for the generator
6 to function. Thermal projects, especially co-generation facilities (with direct thermal energy
7 off-take) often suffer from boiler limitations. Thermal limitations are also exacerbated by
8 fuel input (such as low Btu wood-waste) and elevation (due to air density). Boiler limitations
9 do not affect the reliability of the resource, but rather limit the continuous output to a level
10 less than the design of the generator. Specifically, it is the actual performance of the Project
11 that becomes fully known only after commercial operation. Therefore, it is standard industry
12 practice to quantify the project at the most optimistic output levels in order to ensure that the
13 permits, FERC filings and interconnection requests will embrace the final project output.
14 Otherwise, the generator would be at risk of exceeded interconnection or permit levels. The
15 actual generation output is influenced by elevation, the btu content of the fuel, the steam
16 output requirements to the steam host (in a co-generation application, like TRC), and the
17 steam output of the boiler. Obviously, an increased output level will directly impact the
18 contribution to fixed costs. Thus, TRC has designed the Project to maximize output while
19 remaining in compliance with all permits, prudent operation parameters and equipment
20 specifications.

1 **Q. CAN YOU PROVIDE AN EXAMPLE OF THERMAL LIMITATIONS FROM**
2 **ANOTHER RESOURCE?**

3
4 **A.** Yes. The Colstrip Units 3 & 4, in which Avista has an ownership interest, are at times
5 thermally limited. More specifically, the net output of the resource is less than the design for
6 numerous reasons including weather, operational constraints from the boiler, cooling towers,
7 steam system or normal degradation of the resource. For example the 740 MW resources
8 often operate at lower levels. This is considered normal for a thermal project and not
9 contrary to "average design".
10

11 **Q. IN THE RESPONSE TO THE IPUC, AVISTA STATES THAT TRC LIMITED**
12 **THEIR TRANSMISSION LOSSES OBLIGATION TO 4%. IS THIS AN**
13 **ACCURATE DESCRIPTION? IF NOT, WHY?**

14 **A.** No, it is absolutely incorrect and serves only to confuse the matter. The transmission
15 losses under the NorthWestern FERC Open Access Transmission Tariff (OATT) are
16 allocated as 4%. Thus, TRC was simply quoting the FERC tariff obligation for the
17 transmission wheel from the TRC Project to the Avista interconnection point at Burke. TRC
18 agrees that it will be responsible for the applicable losses on the NorthWestern system. That
19 obligation will be between TRC and NorthWestern, as the Transmission Provider. Avista's
20 obligations do not occur until energy is delivered at Burke. Avista will maintain the
21 obligation, just like any contract or resource to provide firm transmission from Burke into its
22 system, including taking remedial action if such transmission is not available. Avista will not

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11

1 be a party to the NorthWestern transmission contract and therefore cannot be liable in any
2 manner. The NWE FERC tariff states that such losses are 4%, thus, 4% is the current
3 obligation. TRC could accurately quote the loss rate, since it is a tariff rate paid by all
4 customers to wheel on the NWE system. No other losses are applicable, as Avista will
5 accept the energy at Burke under its Network transmission agreement.

6
7 **Q. ONE OF AVISTA'S APPARENT CONCERNS REGARDING TRC'S**
8 **REJECTION OF ITS PROPOSED CONTRACT (AS EXPRESSED IN AVISTA'S**
9 **ANSWER) IS THAT TRC WOULD NOT AGREE TO ALTERNATIVE DELIVERY**
10 **POINTS. IS THIS TRUE? AND IS IT STANDARD INDUSTRY PRACTICE TO**
11 **REQUIRE RESOURCES TO HAVE FIRM TRANSMISSION TO NUMEROUS POINTS**
12 **OF DELIVERY, IN CASE THE PRIMARY POINT OF DELIVERY IS NOT**
13 **AVAILABLE?**

14
15 **A.** First it is not accurate to state that TRC "refused" to provide delivery to a secondly point
16 of delivery. TRC has acquired firm transmission for delivery of up to 10 MW per hour to Avista
17 at Burke. TRC would allow Avista to re-direct its firm transmission to a secondly point of
18 delivery. However, this is not without limitations to Avista's obligation to maintain firm
19 transmission take-away at Burke. Therefore agreeing to a re-direct, without any commitment
20 from Avista would place non-standard and un-fair risk on TRC. Avista completely understands
21 that it is standard industry practice to i) maintain firm transmission (take-away) for resources; ii)

1 firm transmission can be redirected, if possible; and iii) remedial action protocols are established
2 if transmission constraints do occur, including remarking the energy at the busbar. As a point of
3 clarification, most FERC transmission tariffs (including NorthWestern's) allow re-direction of
4 transmission, but such re-direct would be on an as-available basis.

5 Furthermore, it is not standard industry practice or legally required that TRC provide
6 multiple firm transmission paths. For example, Avista does not maintain a secondary firm
7 physical path to deliver Colstrip energy (Avista's only significant base-load thermal resource) to
8 its control area. Furthermore, Avista's acquisition of a wind resource is delivered through short-
9 term non-firm transmission reservations. Lastly, to my knowledge Avista does not maintain
10 long-term firm transmission to delivery all of the net output from the recently acquired Coyote
11 Springs #2 resource to its control area.

12 Lastly, since the TRC project is physically in Montana and directly connected to
13 NorthWestern's system, Avista will likely be able to deliver any energy that it can not accept
14 into its control area to a buyer in Montana at market-based rates. Therefore, the firm
15 transmission path, which TRC has agreed to maintain and the ability for Avista to "lay-off"
16 energy that it can not accept into its own service territory provides equal or greater reliability
17 than many of Avista's existing resources.

18
19 **Q. AT SOME POINT IN YOUR DISCUSSIONS DID AVISTA REFUSE TO**
20 **NEGOTIATE FURTHER?**
21

1 A. Yes. TRC and Avista agreed that the parties would seek to integrate the TRC Project into
2 the Avista control area and alleviate any concern regarding the delivery of the entire net
3 output of the Project to Avista. TRC has demonstrated that under normal design and
4 operating conditions that the Project does not exceed 10 aMW per month. TRC successfully
5 acquired firm transmission to Avista's Idaho service territory at Burke. However, the parties
6 could not agree on the contract rate.

7 TRC believes that it is clearly eligible for the statutory standard offer rate. Avista refuses
8 to agree and apparently misinterprets the previous Commission orders. Avista recommended
9 that TRC seek clarification from the Commission regarding Avista's requirement to perform
10 under the standard offer rates.

11 Despite initial indications from Avista to the contrary, Avista did not really negotiate
12 with TRC. Thus, TRC, acting in good faith, proposed a few concepts with Avista in order to
13 determine the most optimal product that Avista desired. Each of these conceptual designs
14 was proposed simply for discussion purposes and was not fully developed. TRC was
15 attempting to engage Avista in an otherwise drawn out process. As indicated throughout my
16 testimony, TRC will integrate the Project into Avista's control area and deliver the entire net
17 output to Avista.

18 **Q. DID TRC MAKE A COUNTERPROPOSAL TO AVISTA? IF IT HAS, TO YOUR**
19 **KNOWLEDGE, HAS AVISTA OBJECTED TO ANY SPECIFIC PROVISIONS IN THAT**
20 **COUNTER-PROPOSAL?**

1 A. Yes, TRC offered a counter-proposal utilizing the exact form of contract that has been
2 approved by the IPUC for other QF resources (through Idaho Power). TRC is not fully aware of
3 the contractual concerns that Avista maintains, but believed that following the specific contract
4 language of other approved QFs in Idaho was appropriate. As communicated, it is not likely that
5 Avista maintains superior expertise in the drafting of a PURPA contract (than another utility like
6 Idaho Power), since Avista maintains only one substantial QF. It may be possible that Avista's
7 "concerns" are not valid, standard industry or reliability concerns, but rather a way to delay the
8 process. Many of Avista's stated "concerns" are unfounded and have been addressed within my
9 testimony. Furthermore, TRC has explicitly communicated that it is willing to negotiate
10 legitimate issues in good faith with Avista. The contract draft provided to Avista was carefully
11 documented to comply with previous Commission orders and standard language within those
12 contracts.

13 Many of the issues expressed in Avista's response to the complaint are either completely
14 misconstruing the facts or are issues that were never directly discussed amongst the Parties and
15 therefore only represent Avista's inaccurate opinions. The review of Avista's response and other
16 data request truly demonstrate the need for clarification from the Commission.

17 **Q. WHAT IS YOUR UNDERSTANDING OF AVISTA'S PRESENT DISPOSITION**
18 **WITH RESPECT TO ITS OWN QUALIFYING FACILITY PORTFOLIO?**

19 A. Certainly it is no secret that Avista and Potlatch maintain a strained relationship.
20 Furthermore, Potlatch is the only substantive QF resource with which Avista maintains a
21 contract. Maintaining only one QF resource in a diverse portfolio is far less than other utilities in
22

1 the region. Although Avista will argue to the contrary, the geographic location of actual QFs is
2 not the sole reason that Avista does not maintain QF resources. Avista seems to be able to
3 acquire non-PURPA resource in remote geographic locations from its service territory with no
4 problem. In fact, every substantial resource, Colstrip, Coyote Springs #2 and Noxon are
5 geographically located in other states well outside of Avista's service territory. The most recent
6 acquisitions by Avista, such as Coyote Springs #2 and Boulder Park have been rate base
7 acquisitions, rather than contractual energy supply agreements. I understand that Avista
8 maintained substantial cost and delays in the recent development of Coyote Springs and Boulder
9 Park.

10 Furthermore, it does not appear that Avista is acting in good faith. The TRC Project
11 would represent less than 1 percent of Avista's resource requirements. Secondly, Avista
12 continues to attempt to confuse the issue by introducing un-related matters into the issue. For
13 example, Avista claims that TRC is unwilling to cease withdrawal of water under its water rights
14 from the Clark Fork nearly 95% of the year. First, this issue is unrelated to the negotiation of a
15 PURPA contract and may be legally challenged as an unfair negotiation practice. Secondly, the
16 state of jurisdiction regarding water rights is Montana, not Idaho and TRC will follow the
17 Montana permit. If TRC were selling to any other entity, Avista would have no right to invoke
18 this condition in the Power Sales Agreement. Thus, it appears that Avista is attempting to
19 unduly leverage TRC.

20

1 **Q. IN THE REPLY TO THE IPUC, AVISTA COMMUNICATES SOME CONCERN**
2 **WITH THE DELAY IN MEETING PERMITTING SPECIFICATIONS. IS THIS**
3 **COMMON IN THE INDUSTRY? TO YOUR KNOWLEDGE HAS AVISTA**
4 **EXPERIENCED DELAYS OR ADDITIONAL COST IN INTEGRATING NEW**
5 **RESOURCES?**

6
7 **A. Yes, delays, especially for coal resources are common in the industry. The stringent**
8 **permit requirements, the complicated design of a coal co-generation facility and the initial capital**
9 **costs is precisely the reason why new coal plants have not been developed in the Pacific**
10 **Northwest over the last 20 years. Delays during the initial start-up phase due to equipment**
11 **problems or compliance with permits is common. For example, Avista experienced a delay**
12 **during the start-up of Boulder Park due to a malfunction of the Selective Catalytic Reduction**
13 **(SCR). Avista could not operate the project, within the confines of the air quality permit without**
14 **the SCRs working properly.**

15 Secondly, during the start-up of Coyote Springs #2, the step-up transformer
16 malfunctioned causing a significant delay (approximately 15months) in the commercial
17 operation of the project.

18 Avista has also successfully completed re-licensing of the Spokane River hydro projects.
19 Hydro re-licensing, similar to any permitting process, embraces numerous issues that must be
20 resolved or mitigated through specific protocol. Minor delays or engineering re-design are often
21 required in order to successfully complete the process.

1 Therefore, a delay in operations by TRC in order to responsibly meet or exceed all
2 stringent air quality permits is neither un-common or an indication of the Project value. Rather,
3 as identified in Avista's own activities, it is really part of the risk and cost associated with new
4 projects.

5
6 **Q. TO YOUR MIND, IS AVISTA CORRECTLY STATING THAT ITS AVOIDED**
7 **RESOURCE IS NO LONGER A GAS-FIRED COMBUSTION TURBINE?**

8 **A.** Absolutely not. As recently as last year, Avista completed its acquisition of the entire
9 Coyote Springs 2 resource and received rate base approval for such resource in Idaho. The
10 Coyote Springs resource represents an important resource for Avista, as documented in their
11 recent Integrated Resource Plan (IRP). Tables 2.5 and 2.6 of the Avista IRP plan identifies that
12 combustion turbines will provide 25% and 31% of its total capacity and energy requirements,
13 respectively. Avista's total annual load requirements of 9,142,000 MWHs means that TRC (at
14 10 aMW or less) will comprise of less than 1% of their total energy requirements. Thus,
15 Avista's market purchases are greater than 1% and the market is consistently clearly at levels
16 higher than cost from a combustion turbine. The net heat rate curve (adjusted for parasitic load
17 and variable O&M costs) is greater than 7,100. Furthermore, the heat rate of Coyote Springs is
18 fairly flat down to approximately 190 MW. This means that Avista could actually benefit
19 (access spinning reserves) by slightly backing down Coyote Springs and accepting energy from
20 TRC. Furthermore, a study of the relationship between natural gas prices and electric prices,
21 demonstrates that electric prices in the Pacific Northwest are highly correlated to natural gas

1 prices. According to the IRP documents, Avista purchases more than 1% (the equivalent net
2 output of TRC) of its total resource through short-term wholesale transaction. Therefore, natural
3 gas fired generation is clearly the avoided cost for Avista since Avista is effectively purchasing
4 electricity at or above natural gas generation variable cost through spot market electricity
5 purchases. Avista's apparent assertion that generation from "company-owned" generation does
6 not count as avoided cost is ignoring the intent of PURPA.

7 Avista's own reports "2005 IRP TAC6 Kalich2.pdf in their IRP documents) state that the
8 current "wholesale marketplace likely understates avoided cost" and that the "IRP schedule will
9 be used in WA for PURPA less than 1 MW". Furthermore, the Idaho Commission has
10 established two standard offer avoided cost rates for resource less than 10 aMW. If Avista did
11 not agree with those standard offer rates, Avista should have filed comments directly related to
12 that, rather than attempt circumvent a QF's request for service.

13 I have discussed that Avista's avoided cost is natural gas fired generation, thus the
14 standard offer rate for fueled projects appears to be appropriate. Avista's IRP documents also
15 concur that electric market prices are correlated to natural gas prices (Slide 37 of "2005 IRP
16 TAC6 Gall2"). Each of the portfolios illustrated by Avista, demonstrate that gas fired generation
17 will be utilized in context of a portfolio asset mix. (See "2005 IRP TAC6 Kalich1" IRP
18 documents). In addition to Avista's acquisition of natural gas resources (Coyote Springs and
19 Boulder Park), Avista documents that approximately 65% of new generation is combine-cycle,
20 natural gas-fired generation. Furthermore another 6% of new additions is gas generation from
21 simple cycle (less efficient) resources.

1 Avista has also recently constructed a 25 MW reciprocating engine project, Boulder Park,
2 located in the Spokane valley. The efficiency on the reciprocating engines is approximately
3 8,900.
4

5 **Q. AS FAR AS YOU KNOW, HAS NORTHWESTERN ENERGY EVER RECEIVED**
6 **DATA FROM TRC INDICATING THAT TRC GENERATES IN EXCESS OF 10 AMW**
7 **IN A MONTH?**

8 **A.** No. NorthWestern has never received more than 10 aMW in any month from the TRC
9 project since the Project began operation and testing in December 2004. Hourly meter data has
10 been provided to Avista, which quantify the deliveries from TRC. Therefore, under normal
11 operating conditions, TRC does not exceed a net output of 10 aMW.

12 Furthermore, Section 3.8 of the Co-Generation Power Sales Agreement explicitly
13 contemplated that the actual project ... "capability will not be precisely known until it is
14 constructed". This is not uncommon for dual-fuel thermals resources (especially co-generation
15 resources), which are boiler limited.

16 Lastly, TRC has attempted to alleviate any confusion or concern regarding the total net
17 output by requesting to be integrated into Avista's control area. This means that Avista will
18 visually monitor the entire net output of the Project and receive 100% of the energy.

19
20
21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**
22

1 A. Yes. As a new generation resource in the Pacific Northwest and a resource that would
2 provide less than 1 percent of Avista's total annual energy requirements under a standard offer
3 rate schedule, we believe that any confusion related to the Project output and contract provisions
4 could be easily resolved through a settlement conference.

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IDAHO PUBLIC
UTILITIES COMMISSION

THOMPSON RIVER CO-GEN, LLC
a Colorado Company

Complainant

vs.

AVIST CORPORATION, dba Avista Utilities
a Washington Corporation

Respondent

Case No. AVU-E-05-07

EXHIBIT No. 1

to

Direct Testimony of
M. Thompson, Thompson River Co-Gen, LLC

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INDEX TO EXHIBITS

A. Project Description

CO-GENERATION POWER SALE AGREEMENT

This Co-generation Electric Power Sale Agreement, dated this 12th day of September, is between Thompson River Co-gen, LLC, a Montana Limited Liability Company ("SELLER") and NorthWestern Energy, LLC, a Delaware Limited Liability Company ("BUYER"). SELLER and BUYER are sometimes referred to herein collectively as the "Parties" and individually as "Party."

Section 1: Definitions

As used herein, the following terms have the following meanings when used with initial capitalization, whether singular or plural:

1.2 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 "Ancillary Services" means all ancillary products associated with the generation of Power including, without limitation, spinning reserves, non-spinning reserves, reactive power and voltage control.

1.4 "Base Power" means, in respect to the Initial Term, the first 13 megawatt hours of Power delivered to BUYER in any hour and in respect to any Extended Term, the first five megawatt hours of Power delivered to BUYER in any hour.

1.5 "Base Rate" means a per annum rate equal to 125 percent of the rate announced publicly from time to time by Morgan Guaranty Trust Company of New York in New York,

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Attorney
Issuing Date: Sept. 12, 2002

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New York as its "Prime Rate". Each change in said prime rate shall be effective on the date such change is publicly announced by Morgan Guaranty Trust Company of New York.

1.6 "Bonus Scheduled Maintenance Hours means the amount, if any, that Lost Generation Hours associated with Schedule Maintenance in any Year are less than the Scheduled Maintenance Target Amount.

1.7 "Capacity Entitlement Amount" means the amount of Power that is to be made available to BUYER from the Project in any hour as provided for in Subsection 3.5.

1.8 "Capacity Test Amounts" means the total generating capability of the Project (stated in total megawatt hours), as established in the Successful Project Test or a Periodic Project Test.

1.9 "Contract Operation Date" means the date, certified by SELLER, subsequent to a Successful Project Test.

1.10 "Credit Support" means collateral delivered either to the SELLER or to an independent trustee acceptable to the SELLER for the benefit of the SELLER in the form of either (a) cash, (b) one or more irrevocable, transferable standby letters of credit issued by a U.S. Commercial bank, or a foreign bank with a U.S. branch, with such bank having a credit rating of at least "A-" from a Standard & Poors' Rating Group or its successor ("S&P") or "A3" from Moody's Investors Services, Inc., or its successor ("Moody's"), in a form acceptable to the SELLER, (c) a guarantee, limited to the amount of Credit Support required, of a person or entity (1) having a long-term senior debt rating of "BBB-" or better from S&P and "Baa3" or better from Moody's, in each case confirmed by the rating agency in connection with the giving of the guarantee, and (2) having consolidated net tangible assets of at least \$300 million, or (d) other security acceptable to the SELLER.

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1.11 "Environmental Attributes" means any and all credits, "green tags", benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to Power made available hereunder, including without limitation, any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator. The term "Environmental Attributes" includes any other environmental credits or benefits recognized in the future and attributable to Power made available hereunder. SELLER shall, upon a timely request from BUYER take all reasonable actions necessary to establish Environmental Attributes in connection with the Project. "Environmental Attributes" shall not include any tax credits attributable to the Project in any way, irrespective of the basis for the tax credit and such tax credits shall remain the exclusive property of the SELLER.

1.12 "Excess Scheduled Maintenance Hours" means the amount, if any, that Lost Generation Hours associated with Scheduled Outages exceed the Scheduled Maintenance Target Amount.

1.13 "FERC" means the Federal Energy Regulatory Commission or any successor agency.

1.14 "Forced Outage" means any Project outage or reduced generating capability that is not a Scheduled Maintenance Outage.

1.15 "Forced Outage Target Amount" means 700 hours per Year.

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1.16 "Insolvency Event" means any one of the following events:

(i) SELLER shall: (a) become insolvent, (b) become generally unable to pay its debts as they become due, or (c) call a meeting of creditors for the composition of debts;

(ii) SELLER shall permit, or acquiesce in, an order for relief entered with respect to it under, or shall commence a voluntary case or proceeding under, any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary proceeding or to the conversion of an involuntary proceeding to a voluntary proceeding under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for the Project or for all or a substantial part of its property, or SELLER shall make any assignment for the benefit of creditors or shall be unable or fail, or admit in writing its inability, to pay its debts as such debts become due, or the Board of Control of SELLER (or any committee thereof) adopts any resolution or otherwise authorizes action to approve any of the foregoing;

(iii) an involuntary proceeding shall be commenced against SELLER under any applicable bankruptcy, insolvency, reorganization, receivership, arrangement or readjustment of debt or other similar law now or hereafter in effect, which proceeding is not dismissed, stayed or vacated within 90 days thereafter, or a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, sequestrator, trustee, custodian, or other officer having similar powers over SELLER or over the Project or all or a substantial part of the Assets shall have been entered, or an interim receiver, trustee or other custodian of SELLER or of all or a substantial part of the Assets shall have been appointed or a warrant of attachment, execution or similar process against any substantial part of the Assets shall have been issued, and

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in any such event not been stayed, dismissed, bonded or discharged within 60 days of entry, appointment or issuance; or

(iv) there shall occur any seizure, vesting or intervention by or under the authority of a government by which SELLER's management is displaced or its authority in the conduct of its business is materially curtailed

(v) SELLER shall experience a Material Adverse Change.

1.17 "Lender" means any entity providing construction financing, permanent financing or refinancing for the Assets, or a trustee for a holder of debt, the proceeds of which are used to provide such financing or refinancing.

1.18 "Letter of Credit Agreement" means the Letter of Credit Agreement between the Parties of even date herewith, which obligates SELLER to issue a letter of credit to BUYER within 365 days of the date first set forth above.

1.19 "Lien" means any mortgage, pledge, lien, claim, charge, encumbrance, security interest, conditional sale agreement or title retention agreement against or with respect to any of property or interest in property which is part of the Assets.

1.20 "Lost Generation Hours" means the number of hours during each Year that the Project is not available, for any reason, to generate the Capacity Entitlement Amount.

1.21 "Material Adverse Change" means (1) in respect to a Party or its assignee, that the Party's (or the Party's assignee's) long-term senior secured or unsecured debt rating has fallen below both "BBB-" from S&P and "Baa3" from Moody's.

1.22 "Mid-C Off-Peak Index" means the Dow JonesTM Mid-Columbia firm off-peak index, as calculated by Dow Jones, for each Monday through Saturday, excluding NERC-defined holidays; provided, in the event the Mid-Columbia Daily Off-Peak Index is not available from

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Dow Jones for any given day then the value posted from the previous like day of the week shall be utilized.

1.23 "Mid-C On-Peak Index" means the Dow JonesTM Mid-Columbia firm on-peak index, as calculated by Dow Jones, for each Monday through Saturday, excluding NERC-defined holidays; provided, in the event the Mid-Columbia Daily On-Peak Index is not available from Dow Jones for any given day then the value posted from the previous like day of the week shall be utilized.

1.24 "Mid- Sunday and Holiday Index" means the Mid-Columbia firm 24-hour index as calculated by Dow Jones for each Sunday and NERC-defined holiday; provided, in the event the Mid-Columbia Daily Sunday and Holiday Index is not available from Dow Jones for any given day then the value posted from the previous Like Day of the week shall be utilized.

1.25 "Mill Service Requirements" means the actual electrical requirements of the Thompson River Lumber Mill as presently configured, not to exceed two megawatt hours during any hour nor 15,768 megawatt hours during any Year.

1.26 "Monthly Power Charge" means the monthly charge computed pursuant to Subsection 5.2 or 5.3.

1.27 "Operative Documents" mean all agreements, commitments or contracts executed by or on behalf of SELLER in connection with the construction, installation or operation of, the Project, or the supply of water to, or the removal of waste from the Project or Property, whether now existing or hereafter entered into by SELLER, including but not limited to: (a) engineering, procurement or construction contracts, (b) contracts for water supply, (c) contracts for transmission or interconnection services or facilities, (d) contracts for sale of steam, (e) contracts for goods or services, and (f) assignable authorizations, consents, approvals, registrations, permits and licenses from governmental authorities; provided, that "Operative Document" shall
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not include any agreement, contract or other commitment for the sale of power; any agreement, contract, debt instrument or other document associated with or related to financing of the Assets; or any agreement, contract or other document associated with or related to the direct or indirect ownership interests in the Assets, including equity ownership and related equity matters with respect to any entity owning the Assets.

1.28 "Penalty Hours" means each hour of a Year that the Project is not available to generate BUYER's Capacity Entitlement Amount except: (i) Lost Generation Hours associated with Scheduled Maintenance Outages that are not Excess Scheduled Maintenance Hours, or (ii) Lost Generation Megawatt Hours associated with Forced Outages caused by Uncontrollable Forces not exceeding 110 percent of the Forced Outage Target Amount.

1.29 "Periodic Project Test" means a test of the generating capability of the Project conducted pursuant to Subsection 3.9.

1.30 "Point of Delivery" means the primary, high voltage side of the Project transformer, or during the Extended Term any other point as mutually agreed.

1.31 "Power" means electrical energy generated by the Project and delivered to BUYER hereunder.

1.32 "Project" means the thermal electric generation facility and related transmission and interconnection equipment owned and operated by SELLER in proximity to Thompson Falls, Montana with a bus bar rating of approximately 16 megawatts and as described with greater particularity in Exhibit A to this Agreement together with all additions, improvements and modifications thereto and all personal property used or useful in connection therewith.

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Attorney
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1.33 "Property" means the real property on which the Project is located or used or useful with respect to the Project and owned by SELLER, and all tenements, easements, rights-of-way, rights and privileges and appurtenances relating thereto.

1.34 "Prudent Electric Practice" means those practices, methods and acts which:

(a) when engaged in are commonly used by independent power producers in prudent engineering and operations to operate electric equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition; or

(b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.

Prudent Electric Practice is not limited to the optimum practiced method or act, but rather is a spectrum of possible practices, methods or acts.

1.35 "Relevant Mid-C Index" means, as among the Mid-C Off-Peak Index, the Mid-C On-Peak and Index and the Mid-C Sunday and Holiday Index, the index that corresponds to the hour when Test Energy is delivered to BUYER.

1.36 "Scheduled Maintenance Outage" means any Project outage or reduced generating capability associated with maintenance or repair of the Project made known to BUYER at least 24 hours in advance of its occurrence.

1.37 "Scheduled Maintenance Target Amount" means 625 hours per Year.

1.38 "Stone & Webster Report" means a report from Stone & Webster Consultants, or other independent expert chosen by BUYER, and reasonably acceptable to SELLER, that concludes, following an analysis of the Project and Operative Documents that:

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- a) The Project has been or will be designed and constructed consistent with Prudent IPP Electric Practice,
- b) Plans for Project maintenance have been established and such plans are reasonably consistent with Prudent IPP Electric Practice,
- c) The operation of the Project after the Contract Operation Date will comply with all applicable laws and regulations,
- d) the Project is financially feasible and can reasonably be expected to afford the SELLER an adequate rate of return,
- e) the Project can reasonably be expected to be available so as to comply with SELLER's obligations hereunder and
- f) the Contract Operation Date can reasonably be expected to occur on or before 475 days following the execution of this Agreement.

1.39 "Successful Project Test" means a consecutive five-day test of the Project, during a period nominated by SELLER, supervised and certified by a Registered Professional Engineer reasonably acceptable to BUYER, during which time the Project generates a total of at least 1,300 megawatt hours.

1.40 "Supplemental Power" means Power delivered to BUYER in any hour that is not Base Power.

1.41 "Test Energy" shall have the meaning attributed to such term in Section 3.2.

1.42 "Test Period" shall have the meaning attributed to such term in Subsection 3.11.

1.43 "Uncontrollable Forces" means causes described in Section 10 of this Agreement.

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1.44 "Year" means a calendar year during the term of this Agreement; provided, however, numerical annual requirements provided for hereunder shall be prorated in regard to partial Years that occur after the Contract Operation Date and at the conclusion of the Term or any Extended Term.

Section 2: Term and Termination

2.1 SELLER Authority. SELLER represents and warrants that this Agreement has been duly and validly executed and delivered by SELLER and constitutes a valid and legally-binding agreement of SELLER enforceable against SELLER in accordance with its terms (except as the foregoing may be limited by: (a) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (b) equitable principles of general applicability).

2.2 Termination Prior to Expiration Date. This Agreement shall terminate without any liability or penalty of any kind by either Party to the other, except as provided in the Letter of Credit Agreement, and have no further force or effect prior to the expiration date established in paragraph (e) under the following circumstances:

(a) If the Stone & Webster Report has not been delivered to BUYER within 30 days of the execution of this Agreement, notwithstanding the Parties' best efforts to obtain such report, this Agreement shall automatically terminate as of such date; provided however, if Stone & Webster Report is not delivered within such 30-day period, SELLER may provide written notice to BUYER that it wishes to attempt to cure any deficiency in the Project that prevented the Stone & Webster Report from issuing, in which event, the termination of this Agreement shall be delayed for an additional 120 days pending remedy by the Seller and the final review and issuance of a favorable Project report from Stone and Webster. To the extent the Stone & Webster Report is not delivered to BUYER within 30 days of the execution of this

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Agreement and such delay in delivery is not in any way caused by SELLER's failure to cooperate, then the delivery date shall be extended for a period of time sufficient to permit Stone & Webster to render its report on the Project.

(b) If the Contract Operation Date has not occurred within 515 days of the execution of this Agreement, notwithstanding SELLER's best efforts to cause it to occur, this Agreement shall automatically terminate as of such date.

(c) If SELLER does not deliver the Letter of Credit to BUYER in conformity with Subsection 2.2 of the Letter of Credit Agreement, notwithstanding 10-days' written notice from BUYER of SELLER's failure to do so, this Agreement may be terminated by BUYER upon its providing SELLER with written notice of BUYER's election to terminate.

(d) Extension Option. By providing written notice to SELLER at least one year prior to the date that this Agreement would otherwise terminate pursuant to paragraph (e), BUYER may elect to extend the term of this Agreement for an additional five years (subject to the pricing provisions of Subsection 5.3) so that it terminates 15 years following the Contract Operation Date. This additional five-year period shall be referred to as the "Extended Term".

(e) Termination. Except as otherwise provided in this Subsections 2.2, this Agreement shall terminate at 2400 hours Pacific Time, 10 years following the Contract Operation Date.

Section 3: Purchase and Sale of Power

3.1 Purchase and Sale. BUYER agrees to purchase and SELLER agrees to sell all of available electric output of the Project, net of station service requirements and Mill Service

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Requirements, and related Ancillary Services and Environmental Attributes, on the terms and conditions set forth in this Agreement.

3.2 Test Energy. Prior to the Contract Operation Date, it is expected that the Project will generate electric energy during testing phases ("Test Energy"). SELLER shall provide BUYER with at least 72 hours advance notice of the availability of such Test Energy and shall deliver such Test Energy to BUYER at the Point of Delivery as it is generated. BUYER shall accept the Test Energy and pay SELLER as provided for in Subsection 5.1.

3.3 Contract Operation Date. The Contract Operation Date shall occur after a Successful Project Test, but no earlier than October 1, 2003. SELLER shall use best efforts to cause the Contract Operation Date to occur within 455 days of the execution of this Agreement. BUYER's sole remedy for a delay in the Contract Operation Date during the period prior to the termination of this Agreement pursuant to Paragraph 2.2(b) shall be that provided for in the Letter of Credit Agreement. Subsequent to the Contract Operation Date, and subject to the terms and conditions of this Agreement, SELLER shall make the Capacity Entitlement Amount, together with all associated Ancillary Services and Environmental Attributes, to BUYER for the balance of the term of this Agreement.

3.4 Notice of Commencement of Deliveries. During the first week of October 2003, SELLER shall communicate in writing to BUYER SELLER's then-best estimate of the initial availability of Test Energy and of the Contract Operation Date. SELLER shall provide BUYER with written notice of the actual Contract Operation Date no less than three business days in advance of such date. Such date shall not be changed after notice of it has been given to BUYER.

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3.5 Capacity Entitlement Amount. Except during Scheduled Maintenance Outages and Forced Outages, SELLER shall operate the Project during each hour at its maximum generating capability, consistent with Prudent Electric Practice, and deliver all available electric output, net of station service requirements and Mill Service Requirements to BUYER at the Point of Delivery. Notwithstanding the foregoing, SELLER shall not be obligated to deliver more than 13 megawatt hours of Power to the BUYER during any hour and BUYER shall not be obligated to purchase more than 16 megawatts of Power during any hour. The Project shall be deemed unavailable to generate the Capacity Entitlement Amount during any hour when actual Project generation is less than 8.5 megawatts.

3.6 Scheduled Maintenance Outages. Subsequent to the Contract Operation Date, SELLER shall comply with all operating, repair and maintenance standards as are required to permit the enforcement of all material warranty claims with respect to the Project or any part thereof. In consultation with BUYER, SELLER shall schedule Scheduled Maintenance Outages, including major overhauls, consistent with, Prudent Electric Practice, Project warranties and manufacturers' maintenance recommendations. Except under unusual circumstances, Scheduled Maintenance Outages shall be scheduled when requested by BUYER. To the extent that Lost Generation Hours associated with Scheduled Maintenance are less than the Scheduled Maintenance Target Amount, they shall constitute Bonus Lost Generation Hours. Lost Generation Hours in excess of 110 percent of the Scheduled Maintenance Target Amount shall constitute Excess Scheduled Maintenance Hours; provided, however, SELLER shall be allowed to carry forward up to 120 Bonus Scheduled Maintenance Hours each Year, not to exceed a total accumulation at the end of any Year of 300 Bonus Scheduled Maintenance Hours, for use in connection with future Scheduled Maintenance Outages that exceed the Scheduled Maintenance

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Target Amount. In addition, from time to time, with the consent of BUYER, required Scheduled Maintenance Outages may be shifted among Years with corresponding adjustments made to the Scheduled Maintenance Outage Target Amount. Excess Scheduled Maintenance Hours that are not offset by Bonus Scheduled Maintenance Megawatt Hours, shall constitute Penalty Hours.

3.7 Forced Outages. At such times as Forced Outages occur, SELLER shall promptly determine, in its reasonable judgment, and so inform BUYER, whether such Forced Outages were reasonably attributable to Uncontrollable Forces.

3.8 Successful Project Test. While it is estimated that the Project will be capable of reliably generating 12.5 megawatt hours per hour, its capability will not be precisely known until it is constructed. Actual Project generating capability shall be tested during a consecutive five-day period designated by SELLER prior to the Contract Operation Date ("Test Period"). SELLER may schedule as many Test Periods as it chooses prior to the Contract Operation Date. During any Test Period, the Project shall be operated at its full capability during each hour in compliance with all laws, rules, regulations, approvals, authorizations, orders or other requirements of governmental or regulatory agencies or authorities. SELLER may terminate any such test prior to its completion and schedule a future Test Period. SELLER shall promptly notify BUYER as to whether it nominates any completed test as the Successful Project Test. If SELLER does not nominate a Test Period as a successful Project Test, it shall promptly schedule a future Test Period. Any Project test conducted for purposes of this Subsection shall be supervised by an independent Registered Professional Engineer reasonably acceptable to BUYER and the results of any test, nominated by SELLER to be the Successful Project Test shall be certified by such Registered Professional Engineer.

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3.9 Periodic Project Tests. During September of any Year, BUYER may request that SELLER test the generating capability of the Project consistent with the procedures set forth in Subsection 3.8 and SELLER shall perform such test within 20 days of BUYER's request.

3.10 Source of Power. Absent BUYER's written consent to a substitute source of generation, SELLER shall only deliver Power hereunder that has been generated at the Project.

Section 4: Project Operation

4.1 Operating Standards. SELLER shall construct, operate and maintain the Project in a safe manner in accordance with Prudent IPP Electric Practices, the requirements of all applicable Federal, state and local laws and the National Electric Safety Code as such code may be amended from time to time and consistent with any interconnection agreement related to the delivery of Project output at the Point of Delivery. SELLER shall obtain and comply with all permits, licenses, authorizations and other rights required to construct, own, operate, use and maintain the Project. SELLER shall furnish to BUYER, on request, copies of all documents granting, evidencing or otherwise related to such permits, licenses, authorizations or rights.

4.2 Information. Upon reasonable notice, SELLER shall permit representatives of BUYER to visit the Project site during construction and during maintenance outages to ascertain the status of such construction or maintenance. SELLER shall promptly furnish BUYER with copies of such plans, specifications, records and other information relating to the Project as may be reasonably requested by BUYER from time to time. If and to the extent any information or documents furnished to BUYER are confidential or proprietary to SELLER, BUYER shall treat the same as such and shall take reasonable steps to protect against the unauthorized use or disclosure of the same; provided, however, that such information and documents are conspicuously marked or otherwise clearly identified as confidential or proprietary when

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NORTHWESTERN ENERGY, LLC

furnished. By requesting, reviewing or commenting upon any documents, BUYER shall not be deemed to be assuming or waiving any of SELLER's obligations under this Agreement.

4.3 Release and Indemnity of BUYER. SELLER hereby releases and shall defend, indemnify and hold harmless BUYER from all claims, losses, harm, liabilities, damages, penalties, fines, costs and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with the construction or operation of the Project. To the fullest extent permitted by applicable law, the foregoing shall apply regardless of any fault, negligence, strict liability or product liability of BUYER and to any claim, action, suit or proceeding brought by any employee of SELLER. However, SELLER shall not be required to so defend, indemnify or hold harmless BUYER from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the negligence or contributory negligence of BUYER or its directors, officers, employees, agents or representatives.

4.4 Release and Indemnity of SELLER. BUYER hereby releases and shall defend, indemnify and hold harmless SELLER from all claims, losses, harm, liabilities, penalties, fines damages, costs and expenses (including but not limited to, reasonable attorneys' fees) arising out of or in connection with its use of Power received at the Point of Delivery. To the fullest extent permitted by applicable law, the foregoing shall apply regardless of any fault, negligence, strict liability or product liability of SELLER and to any claim, action, suit or proceeding brought by any employee of BUYER. However, BUYER shall not be required to so defend, indemnify or hold harmless SELLER from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the negligence or contributory negligence of SELLER or its directors, officers, employees, agents or representatives.

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NORTHWESTERN ENERGY, LLC

Portland3-1408464.1 0019436-00003
Issuing Officer: Michael J. Uda
Attorney
Issuing Date: Sept. 12, 2002

DRAFT: 12/10/2002 3:01 PM
Effective Date: No later than 60 days after filing

4.5 Insurance. Commencing on the Contract Operation Date and continuing throughout the term of this Agreement, SELLER shall maintain or cause to be maintained property insurance covering the Project to the full replacement value of the Project, blanket comprehensive general liability insurance (including all risk endorsements and contractual liability coverage) with a combined single limit of not less than \$10,000,000 for each occurrence and workers compensation coverage all in accordance with standard insurance industry practices. Evidence of required insurance shall be provided annually to BUYER. BUYER, its officers, directors and employees shall be named as additional insureds. Subject to required Lender approval, proceeds of property insurance shall be payable so as to insure that such proceeds are used to repair, replace or otherwise restore the Project to at least as good condition or state of repair as it was in prior to the occurrence with respect to which such proceeds are payable. If, subsequent to the Contract Operation Date, the Project is destroyed and not able to be rebuilt at its existing site, subject to any required consent of Lenders and the agreement between SELLER and BUYER, SELLER shall use such insurance proceeds to use best efforts to rebuild the Project at another site with reasonable transmission access to the Point of Delivery.

Section 5: Pricing

5.1 Test Energy. BUYER shall pay SELLER the Relevant Mid -C Index less \$3 per megawatt hour for each megawatt hour of Test Energy delivered to it at the Point of Delivery.

5.2 Monthly Power Charge During Initial Term. Subject to the provisions of Subsection 11.2, in respect to each month that Power is delivered during the Initial Term, BUYER shall pay seller a Monthly Power Charge equal to the result of the following equation:

$$B \times 40 + S \times P = \text{Monthly Power Charge (stated in dollars)}$$

Where:

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B = Amount of Base Power delivered to BUYER during the month

S = Amount of Supplemental Power, which shall be equal to all Power in excess of 13 megawatts in any hour delivered to BUYER during the month

P = Lower of: a) \$34.00 or b) the average of the Relevant Mid-C Index applicable to each hour of the month (weighted by quantity of Supplemental Power delivered) less \$3.00

5.3 Monthly Power Charge During Extended Term. Subject to the provisions of Subsection 11.2, in respect to each month that Power is delivered from the Project or another mutually agreed Point of Delivery during any Extended Term, BUYER shall pay SELLER a Monthly Power Charge equal to the result of the following equation:

$B \times 34 + S \times P = \text{Monthly Power Charge (stated in dollars)}$

Where:

B = Amount of Base Power delivered to BUYER during the month

S = Capacity and associated energy in excess of 5 megawatts, but in no event shall Supplemental Power exceed 8 megawatts delivered to BUYER during the month

P = Higher of: a) the average Relevant Mid-C Index applicable to each hour of the month less \$3.00 (weighted by quantity of Supplemental Power delivered), but not to exceed \$53.00 or b) be less than \$32.00.

5.3 The Monthly Power Charge shall constitute full compensation to Seller for all Power, Ancillary Services and Environmental Attributes made available to BUYER hereunder.

5.4 FERC Filing. Within 60 days of the execution of this Agreement, SELLER shall file this Agreement with the FERC pursuant to Section 205 of the Federal Power Act and request waiver of any FERC rules that would otherwise require a later filing. The Parties shall afford

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each other a reasonable opportunity to review and comment in advance upon any written materials proposed to be submitted by them to the FERC in connection with this Agreement.

5.5 Additional FERC Review. The methodologies utilized for pricing purposes in this Agreement and the prices and pricing formulae specified herein shall remain in effect through the term of this Agreement and neither Party shall petition the FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend such methodologies, prices or formulae or support such a petition filed by any third party.

Section 6: Project Log

6.1 Project Availability Log. SELLER shall maintain a log showing actual Project generation and the nature of the fuel used in the Project during each hour of the term of this Agreement subsequent to the Contract Operation Date. Such log may be reviewed (including for purposes of verifying outages characterized as Uncontrollable Forces, pursuant to Section 10.1) and copied, by BUYER upon giving reasonable advance notice of its election to do so.

Section 7: Metering, Telemetry and Transmission

7.1 Metering. SELLER shall install, own, maintain and test the meters and associated equipment that, in BUYER's judgment, are reasonably required to determine the amounts and time of delivery of Power under this Agreement. BUYER shall have access to such meters during normal business hours. BUYER shall have the right to require, at SELLER's expense, a test of such meters semi-annually. In the event any metering is found to be inaccurate by more than two percent, meter readings and billings for the period of inaccuracy (which shall not exceed the period since the last meter test or 12 months, whichever is shorter) shall be retroactively adjusted for one-half of the amount of the variance and SELLER shall promptly cause the inaccurate meter(s) to be repaired and corrected.

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7.2 Telemetry. SELLER shall install and pay for such modifications to the Project of a standard type and manufacturer as are reasonably required to permit BUYER to monitor the level of Project generation on a real-time basis. BUYER shall pay for the installation of such modifications to BUYER's system control center, instrument transformers and auxiliary equipment of a standard type and manufacturer as are reasonably required to permit BUYER to monitor the level of Project generation on a real-time basis. Equipment installed at the Project site shall be owned and maintained by SELLER. Equipment installed on BUYER's premises shall be owned and maintained by BUYER.

7.3 Transmission. SELLER shall be solely responsible for all permits, licenses fees and agreements necessary for SELLER to deliver Power to the Point of Delivery including a generation interconnection agreement. It is understood that the integration of the Project may require the SELLER to operate the Project in accordance with the transmission provider's remedial action schemes.

Section 8: Billing and Payment

8.1 Billing. Billings to BUYER under this Agreement shall be addressed as follows:

NorthWestern Energy, LLC
40 East Broadway Street
Butte, MT 59701
Attention: Vice President – Energy Supply

or to such other address as BUYER may designate in writing in the future.

SELLER shall bill BUYER by the 15th day of each month, and transmit such bill by telecopy, for Power made available to BUYER during the preceding month. If the statement is an estimated bill, any adjustment required shall be made in the ensuing month's statement. If the estimated bill exceeds 102 percent of the amount finally billed, the amount of the adjustment

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shall include interest at the Base Rate for the period between billings. BUYER shall pay such amounts, by wire transfer of good federal funds within 20 days of receipt of such bill in accordance with instructions given by SELLER to BUYER from time to time, provided such instructions are given at least two days in advance of the date of expected payment. Interest shall accrue on any unpaid amounts during the period of delinquency, if any, at the Base Rate. If BUYER pays any bill under protest and its position is subsequently upheld, or if an error in any billing is discovered within two years of when it was submitted, interest shall accrue at the Base Rate on the amount of any overcharge.

8.2 Fuel Use Certification. SELLER shall include in each bill a certification of the percentage of Power delivered during the month to which the bill applies that was generated with wood waste.

8.3 Delinquent Payments. If BUYER fails to pay any bill within 60 days of receipt, and continues to fail to pay such bill for ten days following written notice of such non-payment from SELLER, SELLER may terminate this Agreement.

Section 9: Notices

Any notice or notification required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been validly served, given or delivered (i) the next business day after such notice was delivered to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (ii) upon receipt of notice given by telecopy, mailgram, telegram, telex, or personal delivery:

To SELLER: Thompson River Co-gen, LLC
c/o Professional Recovery Systems, MT
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285 2nd Avenue W. N.
Kalispell, MT 59901
Attn: Mr. Barry A. Bates
Phone No. 406/257-2263
Telecopy No. 406/257-7578

with a copy to:

Thomas Tenenbaum, Esq.
Gorsuch Kirgis LLP
1515 Arapahoe, Tower 1, Suite 1000
Denver, CO 80202
Phone No. 303/376-5081
Telecopy No. 303/376-5001

To BUYER: NorthWestern Energy, LLC
40 East Broadway Street
Butte, MT 59701
Attn: Vice President – Energy Supply
Phone No. 406/497-3607
Telecopy No. 406/497-2150

Section 10: Uncontrollable Forces

10.1 **When Performance Excused.** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement (other than obligations of said Party to pay amounts due hereunder) when a failure of performance shall be due to an Uncontrollable Force. The term "Uncontrollable Force" shall be any cause beyond the control of the Party affected, including but not restricted to failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party

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to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

Section 11: Remedies

11.1 Rights and Remedies Cumulative. Except with respect to Subsections 2.2 and 3.3, upon the breach by either Party of its obligations hereunder, the other Party shall have all of the rights and remedies available hereunder, under any other agreement between the Parties and under all applicable laws, all of which rights and remedies shall be cumulative and nonexclusive to the extent permitted by law; provided, however, that:

- (i) neither Party shall be entitled to recover consequential or special damages;
and
- (ii) neither Party shall be entitled to seek to terminate this Agreement, except as expressly provided in this Agreement.

11.2 Loss of Project Availability.

11.2.1 To the extent Penalty Hours occur in any month, the Monthly Power Charge otherwise applicable to such month shall be reduced by an amount equal to the result of the following equation:

$$\underline{1.15 \times N \times P/H = \text{Reduction in Monthly Power Charge}}$$

Where:

N = Monthly Power Charge that would otherwise be owing

P = Number of Penalty Hours during the month

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H = Total number of hours in the month

11.2.2 To the extent that the Capacity Test Amount established in a Periodic Project Test is less than 1,200 megawatt hours, for the following 12 months, the Monthly Power Charge that would otherwise be owing shall be multiplied by a fraction, the numerator of which is the Capacity Test Amount and the denominator of which is 1,200 megawatt hours. If a Periodic Project Test is requested by BUYER, but not performed by SELLER within 20 days of the request, the Monthly Power Charge that would otherwise be owing shall be reduced by 75 percent until such time as the Periodic Project Test is performed.

11.2.3 If, during any consecutive 36-month period, the total Penalty Hours exceeds 1,600, BUYER, upon learning of such occurrence, shall notify each Lender of such occurrence and deliver a copy of each notice to SELLER.

11.2.4 If, more than 2,000 Penalty Hours occur in any consecutive 36-month period, BUYER, in addition to its rights under Section 11.2.1, may elect to exercise the rights described in Section 11.3.

11.3 Step-In Rights.

11.3.1 In addition to all of BUYER's other rights hereunder, upon the occurrence of an Insolvency Event or the event described in Subsection 11.2.4, if operation of the Project is not assumed by any Lender, BUYER shall have the right, but under no circumstances the obligation, to assume operational responsibility for the Project in the place and stead of, and as agent for, SELLER in order to complete construction, continue operation or complete any necessary repairs so as to preserve BUYER's right to purchase Power under this Agreement; provided, however, that BUYER's rights under this Subsection 11.3 shall be

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subordinate to the rights of any Lender. BUYER shall give written notice to SELLER and Lenders at least 30 days in advance of the contemplated exercise of its rights under this Subsection 11.3. In no event shall BUYER's election to operate the Project be deemed to be a transfer of title or a transfer of SELLER's obligations as owner thereof. In the exercise of such operating rights, BUYER shall be SELLER's agent, and all liabilities incurred in the operation of the Project shall be incurred for SELLER's account without liability to BUYER. For the purpose of implementing the foregoing, upon the exercise of BUYER's rights hereunder, SELLER shall appoint BUYER as SELLER's attorney, with power to operate the Project if BUYER elects to exercise such operating rights. This power being coupled with an interest is irrevocable until this Agreement is terminated.

11.3.2 BUYER shall undertake to comply with Prudent Electric Practice in the exercise of the operating rights granted in Subsection 11.3.1, provided, however, that in addition to the limitations set forth in Subsection 11.1, BUYER shall have no liability to SELLER, or to any person having an interest in SELLER, in connection with the exercise of such rights except for direct damages arising out of BUYER's gross negligence or willful misconduct in the exercise of such rights. During any period that BUYER is exercising the operating rights granted pursuant to Subsection 11.3.1, (i) SELLER shall deliver all revenue from the Project received by it to BUYER and (ii) BUYER shall hold all revenue from the Project received by it (including, without limitation, all payments due from BUYER hereunder). BUYER shall distribute such revenue in the following priority: (a) first, to Lenders all then-due regularly-scheduled, non-accelerated payments; (b) second, in payment of insurance premiums to maintain insurance as required by Subsection 4.6; (c) third, in payment of real estate taxes assessed against the Project; (d) fourth, in payment of all reasonable operating costs of the

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Project; (e) fifth, to BUYER in reimbursement for all reasonable expenses in exercising its operating rights; and (f) sixth, after the accumulation of \$1,000,000 in the trust fund, the balance to SELLER; provided, however, in the event of an acceleration of payment obligations by Lenders such revenue will be distributed as directed by such Lenders.

11.3.3 During the period BUYER exercises such operating rights, (i) SELLER shall have no right nor obligation to operate the Project, no right to exercise any rights inconsistent with the exercise by BUYER of such rights, nor any right to receive any payment otherwise due in connection with the Project except in trust for the sole purpose of delivering such payment to BUYER pursuant to Subsection 11.3.3, (ii) all payments received by SELLER in connection with the Project shall be held by it in trust for Lenders and immediately delivered to BUYER pursuant to Subsection 11.3.3 in their original form together with all endorsements required to permit BUYER to negotiate such payments, (iii) SELLER shall perform all steps reasonably requested by BUYER to facilitate the exercise by BUYER of such rights and (iv) Mill Service Requirements shall be suspended.

11.3.4 On each occasion on which BUYER elects to exercise such rights, BUYER may exercise such rights until the later of (i) 30 days after the date the Insolvency Event which gave rise to BUYER's right to exercise such rights, if any, is cured, or (ii) the first anniversary of the date on which BUYER began such exercise of such rights; provided, however, BUYER may elect at any time to terminate its then exercise of such rights upon the date specified by BUYER in a notice to SELLER (with a copy to Lenders) as the date on which it will cease exercising such rights, which notice shall be given at least 60 days before such date, unless such shorter period is approved by Lenders; provided, however, that such notice may be given no less than 10 days before such date in the event Lenders accelerate the payment obligations.

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Section 12: Waiver

Failure by a Party to exercise any right, remedy or option hereunder or under any related agreement or delay in exercising such right, remedy or option will not operate as a waiver by such Party of its right to exercise any such right, remedy or option. No waiver by a Party will be effective unless it is in writing and signed by such Party, and then only to the extent specifically stated.

Section 13: Arbitration

13.1 The Parties shall make best efforts to settle all disputes arising under this Agreement as a matter of normal business and without recourse to either arbitration or litigation. If any dispute arises under this Agreement, the Parties shall arbitrate the matter before an arbitrator who is an attorney or engineer familiar with contracts governing the operation of electrical systems. Any arbitration shall be commenced within a year of when a dispute arises and shall be commenced by either Party submitting to the other a Notice of Arbitration. The Parties shall have 30 days following the submittal of a Notice of Arbitration by either Party to attempt to mutually agree upon an arbitrator. If the Parties are unable to agree on an arbitrator within that time, either Party may request that a judge of the United States Circuit Court for the Tenth Circuit designate an arbitrator.

13.2 The arbitrator shall have discretion to establish a schedule and procedure for the arbitration and may conduct the arbitration based upon written submittals. The arbitrator may afford the Parties any or all of the discovery rights provided for in the Federal Rules of Civil Procedure.

13.3 At the commencement of the arbitration hearing, each Party shall submit a proposed Arbitration Award and the arbitrator shall be required to adopt in full the proposed

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Arbitration Award of one of the Parties and the Arbitration Award selected shall be final and binding on the Parties.

13.4 The Party whose proposed Arbitration Award is not selected shall pay all the costs of the arbitration, including the costs and the attorneys' fees of the prevailing Party.

Section 14: Assignment

Neither Party shall assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, no consent shall be required for an assignment:

- (a) to any corporation or other entity into which or with which a Party is merged or consolidated or to which the Party transfers substantially all of its assets provided that all obligations hereunder are assumed by such successor entity; or
- (b) by BUYER to an Affiliate of BUYER

Nothing contained in this Section shall be construed to prevent the Parties from making a collateral assignment of the revenues due under the terms of this Agreement. No assignment, merger or consolidation shall relieve any Party of any obligation under this Agreement. Subject to the foregoing restrictions in this Section, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

Section 15: Covenants

15.1 Title to Assets. SELLER has, and shall at all times maintain, good, indefeasible, and merchantable title to and ownership of the Assets

15.2 BUYER Credit Support. If, during the term of this Agreement, there is any Material Adverse Change affecting BUYER, the BUYER shall notify the SELLER in writing of this development within two business days, and the SELLER, in its discretion, may require the

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BUYER to provide Credit Support sufficient to assure that the BUYER will continue to meet its current contractual obligations under this Agreement. Following a demand for Credit Support, and until such time as the BUYER is no longer experiencing a Material Adverse Change, the BUYER shall maintain satisfactory Credit Support on an ongoing basis sufficient to assure its contractual obligations. BUYER's Credit Support shall be in an amount equal to 24 months projected accounts receivable. If the BUYER fails to provide such Credit Support within 10 days of a request for Credit Support, or fails to maintain Credit Support as set forth above, the SELLER may suspend its performance under this Agreement until such Credit Support is posted. At such time as BUYER is no longer experiencing the Material Adverse Change, all Credit Support provided by or on behalf of BUYER shall be relinquished and returned to the BUYER.

15.3 Request For Information. At a Party's written request, the other Party shall furnish the requesting Party financial information as may be reasonably required to confirm that the BUYER or the SELLER has not been affected by a Material Adverse Change.

Section 16: Miscellaneous

16.1 THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LOCAL LAW OF THE STATE OF MONTANA, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT OTHERWISE REFER CONSTRUCTION OR INTERPRETATION OF THIS AGREEMENT TO THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION, AND ALL OTHER LAWS OF MANDATORY APPLICATION INCLUDING THE FEDERAL POWER ACT.

16.2 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon the Parties.

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16.3 In order to facilitate the obtaining of financing or refinancing for the Project, BUYER shall execute such consents, agreements or similar documents as Lenders may reasonably request in connection with the documentation of the financing or refinancing for the Project.

16.4 This Agreement cannot be changed orally or by the conduct of the Parties. Any amendment, modification or change may be made only by a writing signed by the party against whom enforcement is sought.

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COGENERATION POWER SALE AGREEMENT BETWEEN THOMPSON RIVER CO-GEN, LLC AND
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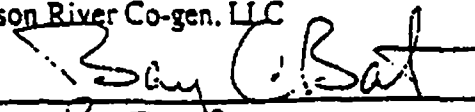
Portlad3-1408464.1 0019436-00003
Issuing Officer: Michael J. Uda
Attorney
Date Sent 12/10/2002

DRAFT: 12/10/2002 3:01 PM
Effective Date: No later than 60 days after filing

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as of the date
first above written.

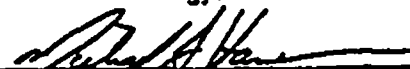
Thompson River Co-gen. LLC

By


Title: PARTNER

NorthWestern Energy, LLC

By


Title: President & CEO

COGENERATION POWER SALE AGREEMENT BETWEEN THOMPSON RIVER CO-GEN, LLC AND
NORTHWESTERN ENERGY, LLC

Portfile3-1408464.1 0019436-00003
Issuing Officer: Michael J. Uda
Attorney
Issuing Date: Sept. 12, 2002

DRAFT: 12/16/2002 3:01 PM
Effective Date: No later than 60 days after filing