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August 3, 2020

**VIA ELECTRONIC FILING**

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Boulevard  
Building 8, Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-20-28  
Wood Hydro, LLC v. Idaho Power Company

Dear Ms. Noriyuki:

Attached for electronic filing in the above matter is Idaho Power Company's Answer and Cross-Complaint. If you have any questions about the enclosed documents, please do not hesitate to contact me.

Very truly yours,



Donovan Walker

DEW/ cld  
Enclosures

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

WOOD HYDRO, LLC,	)	
	)	CASE NO. IPC-E-20-28
Complainant,	)	
v.	)	IDAHO POWER COMPANY'S
	)	ANSWER AND CROSS-
IDAHO POWER COMPANY,	)	COMPLAINT
	)	
Respondent/Cross-	)	
Complainant,	)	
	)	
v.	)	
	)	
WOOD HYDRO, LLC,	)	
	)	
Cross-Respondent,	)	
	)	
ENEL GREEN POWER NORTH	)	
AMERICA, INC.	)	
	)	
Cross-Respondent,	)	
	)	
v.	)	
	)	
CENTRAL RIVERS POWER US, LLC	)	
	)	
Cross-Respondent.	)	
	)	

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COMES NOW, Idaho Power Company (“Idaho Power” or “Company”) and pursuant to Rule 54 and 57 hereby answers the Complaint of Wood Hydro, LLC (“Wood Hydro” or “Mile 28”). Additionally, Idaho Power hereby brings a cross-complaint against Wood Hydro and two other similarly situated PURPA<sup>1</sup> QFs<sup>2</sup> owned by Enel Green Power North America, Inc. (“Enel” or “Rock Creek #2) and Central Rivers Power US, LLC (“Central Rivers” or “Lowline #2”).<sup>3</sup>

### **I. INTRODUCTION, FACTS, AND CROSS COMPLAINT**

1. Mile 28, Rock Creek #2, and Lowline #2, each have an old version of a 35-year, levelized rate, mandatory purchase, PURPA QF contract with Idaho Power.<sup>4</sup> Each of the three projects are in the later portions of their respective contract terms: Mile 28 expires in June of 2029; Rock Creek #2 expires in April of 2024; and Lowline #2 expires in April of 2023. Each of the projects have had extended periods of non-generation constituting a permanent curtailment, or failure to deliver, their contractual Annual Net Energy amounts. Their contracts contain specific provisions, designed to ensure that the projects continue to generate through the later years of their levelized rate contracts when they are paying back customers for the early years’ overpayments. When each project permanently curtailed its Annual Net Energy amounts, Idaho Power calculated the appropriate Lump Sum Repayment amount from the contracts and assessed the same in a letter to the projects. Each project responded in writing alleging that there had been no permanent curtailment and contesting the Lump Sum

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<sup>1</sup> Public Utility Regulatory Policies Act of 1978.

<sup>2</sup> PURPA Qualifying Facility.

<sup>3</sup> Wood Hydro, LLC owns/controls the Mile 28 hydroelectric QF, Enel Green Power NA, Inc., owns/controls the Rock Creek #2 hydroelectric QF, and Central Rivers Power US, LLC owns/controls the Lowline #2 hydroelectric QF.

<sup>4</sup> Attached hereto as Attachment No. 1 is the Mile 28 PURPA contract. Attached hereto as Attachment No. 2. Is the Rock Creek #2 PURPA contract. Attached here as Attachment No. 3 is the Lowline #2 PURPA contract.

Repayment amounts claimed by Idaho Power on behalf of its customers. Mile 28 filed a formal complaint alleging it has not permanently curtailed delivery of its Annual Net Energy amounts and that the “liquidated damages clause in the Agreement is unenforceable under Idaho law.” Wood Hydro Complaint, p 2.

2. All three contracts contain a nearly identical provision in Section 21 of the Agreements stating,

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment.

All three contracts also contain a table, Appendix D, that provides a Lump Sum Repayment amount to be applied by contract year for which there is permanent curtailment of the Annual Net Energy amounts. This is designed as a mechanism to protect customers in the levelized agreement and to make sure projects continue to generate in the later years to “pay back” customers for the levelized overpayment amount from the early years of the contract.

3. Idaho Power respectfully requests that the Idaho Public Utilities Commission (“Commission”) address the relevant contract provisions relating to the Annual Net Energy amounts, permanent curtailment, Lump Sum Rayment amounts, and any other necessary contractual provisions for all three cross-respondents, and provide direction to Idaho Power and the QF cross-respondents as to the proper

interpretation of the contractual provisions as they relate to the Commission's implementation of PURPA's mandatory purchase, legally enforceable obligation for these projects in the state of Idaho.

Mile 28

4. On August 1, 2019, Idaho Power notified Wood Hydro that it had failed to deliver any generation to Idaho Power under its active PURPA contract for a period from November 2018 through July 2019 and remained off-line at the time of the letter. See August 1, 2019, letter attached hereto as Attachment No. 4 and incorporated herein by this reference. This letter states that because the contract is a levelized rate PURPA agreement ("Agreement"), that Idaho Power was required to implement paragraph 21.3 of the agreement for Lump Sum Repayment Amounts should the project fail to deliver the Annual Net Energy Amount agreed to by the project and defined in paragraph 6.3. Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for Mile 28 shall be 5,798,590 kWh. Paragraph 21.3 of the Agreement specifies that if Mile 28 fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power. The last completed Contract Year (6/1/2018 to 5/31/2019) was Contract Year 25. In accordance with paragraph 21.3 of the Agreement, the calculation of the Repayment Amount at the end of Contract Year 25 is: The Annual Net Energy Amount of 5,798,590 kWh minus actual Net Energy delivered during Contract Year 25 of 3,355,049 kWh, the difference divided by 1,000 to convert to MWH and multiplied by the Appendix D Lump Sum Repayment Amount for the 25<sup>th</sup> Contract Year of \$476 per annual MWH, which equals a total Lump Sum Repayment Amount of \$1,163,125.

5. The August 1, 2019, letter also references paragraph 21.7 of the Agreement which allows for a refund of up to 90% of the Lump Sum Repayment amount should the project return to generating within a year's time. The letter also recognized the project's ongoing activities to repair and replace equipment at the project, and stated that the project could post a letter of credit to cover the \$1,163,125 Lump Sum Repayment amount, to be held for the next three years. Should the project come online and resume generation in 2019, pursuant to paragraph 21.7 of the Agreement they could be eligible to receive a refund of 90% of the Lump Sum Repayment amount, leaving a balance of \$116,312 that could either be netted against future monthly Net Energy payments under the Agreement or paid in full by the project.

6. The project responded by letter dated August 7, 2019. Attached hereto as Attachment No. 5 and incorporated herein by this reference. In this letter the project acknowledges that it has not delivered generation under the Agreement, but states that there has been no "permanent curtailment." The letter describes some of the repairs it was undertaking to be able to start generating again.

7. Idaho Power responded by letter dated August 14, 2019. Attached hereto as Attachment 6 and incorporated herein by this reference.

8. Wood Hydro posted a letter of credit to cover the Lump Sum Repayment amount on August 19, 2019. Attached hereto as Attachment No. 7 and incorporated herein by this reference. The project came back online in late August 2019. Attached hereto as Attachment No 8 and incorporated herein by this reference.

9. On March 17, 2020, Idaho Power received a letter from legal counsel on behalf of Mile 28. Attached hereto as Attachment No. 9 and incorporated herein by this

reference. This letter states “that there has never been a permanent curtailment of the Annual Net Energy Amount ...” This letter discusses a position in a legal brief by Idaho Power many years ago regarding implementation of the 90%/110% firmness requirement, and challenges the Lump Sum Repayment liquidated damages as not complying with Idaho law because “Idaho Power has claimed that it has available to it market electricity less expensive than PURPA power prices as found in the Agreement. Also, energy sales upon transparent markets making any damage claim easily [sic] to calculate.” The letter requests that Mile 28 “not be assessed as proposed in the accompanying claim letters and promptly reimbursed for funds withheld from its power generation payments.”

10. Idaho Power responded by letter dated April 15, 2020. Attached hereto as Attachment No. 10 and incorporated herein by this reference. The letter explains the related contract provisions and why the Commission included them in that vintage of contract. The type of Firm Energy Sales Agreement executed by Mile 28, in general terms, works as follows: Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy produced by the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Firm Energy amount is sum of the project’s monthly estimates, in this instance 5,798,590 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Firm Energy; the project must deliver up to its Annual Net Firm Energy amount from Section

6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.3; Appendix D).

11. Mile 28's PURPA contract is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate contract, there is an "overpayment" to the project in the early years that is offset by an "underpayment" in the outer years. To make sure that a project does not just generate and take payments during the more lucrative "overpayment" early years, and then fail to generate or under-generate in the later years when customers are being repaid for the "overpayment" in the "underpayment" years, the Commission set up certain mechanisms to make sure customers were not left holding the bag in the outer years of the contract. These mechanisms include such things as additional security today, and in this case the provisions found in Section 21.3 "Seller Permanent Curtailment", Appendix D "Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Energy Amount Under 35-Year Contract", and 21.7 "Refund of Lump Sum Repayment". These sections of the contract, Section 21.3, Section 21.7, Section 6.3, and Appendix D, when read and considered together in the context of the four corners of this contract are clear and tell us exactly what happens when the project fails to deliver its Annual Net Firm Energy amount specified in Section 6.3.

12. As pointed out by both Idaho Power and by Mile 28 in their letters, the relevant portion of Section 21.3, Seller Permanent Curtailment, states as follows:

If, at any time prior to the end of the term of the Agreement,  
Seller permanently curtails in whole or in part its long-term

average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment.

13. Section 6.3, Annual Net Firm Energy Amount, states, “The Annual Net Firm Energy amount shall be 5,798,590 kWh and shall be the sum of the three (3) Seasonal Net Firm Energy amounts Seller specified above.” Sections 6.2 and 6.4 reference how the Net Firm Energy Amounts the Seller has estimated are based upon anticipated and historical long-term average water flows, long-term average energy production estimates, Seller’s water right filings and the water records supporting those projected water flows. Section 6.4 states, “The parties have reviewed these anticipated water flows ... and have agreed that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Firm Energy amount in paragraph 6.3 are reasonable and shall constitute the water flows available to the Facility under “average” water conditions.”

14. Here, the project had zero deliveries to Idaho Power during the months of November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, and July 2019. Contract Year 25 ran from June 1, 2018 through May 31, 2019. The project had a total Net Firm Energy delivered during Contract Year 25 of only 3,355,049 kWh, which is short of the required delivery of the Annual Net Firm Energy Amount from Section 6.3 of 5,798,590 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once

Contract Year 25 came and went with a substantial shortfall of delivered Net Firm Energy, there was no way to “make-up” the shortfall by over-generating in a different time period. There was a permanent curtailment of the project’s Annual Net Firm Energy deliveries for Contract Year 25. The project also had curtailment of Net Firm Energy deliveries during Contract Year 26, in that as of August 14, 2019, there had been Zero deliveries to Idaho Power. However, this curtailment in Contract Year 26 did not become a permanent curtailment invoking the provisions of Section 21.3 and Appendix D because subsequent to August 14, 2019, and prior to the expiration of Contract Year 26, the project met its requirement to deliver the 5,798,590 kWh Annual Net Firm Energy amount from Section 6.3.

15. Because the project failed to deliver its Annual Net Firm Energy amount from Section 6.3 during Contract Year 25, and thus permanently curtailed its annual delivery for that year, the Lump Sum Repayment amount specified for Contract Year 25 from Appendix D is applied to the difference in Net Firm Energy delivered and the Annual Net Firm Energy amount - which in this case is \$1,163,125. However, the contract anticipates that a permanent curtailment of Annual Net Firm Energy deliveries may not continue for the entire remaining duration of the 35-year contract term, and thus contains the provisions in Section 21.7, Refund of Lump Sum Repayment, which states,

If Seller has made a lump sum repayment as required by paragraph 21.3 and;

(1) Within three (3) years of said payment Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power at the rates, terms and conditions contained in this Agreement for

the number of Contract Years that were remaining under this Agreement at the time of the permanent curtailment; then

(2) Idaho Power will resume its purchases from the Facility and will refund a portion of the lump sum repayment as follows:

(a) if sales resume within one (1) year of the payment of the lump sum repayment amount, Idaho Power will refund 90% of the lump sum repayment amount;

(b) if sales resume within two (2) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount;

(c) if sales resume within three (3) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount.

Consequently, because the project resumed generation in Contract Year 26 to meet the Annual Net Firm Energy amount, Idaho Power forfeited its entitlement to the actual collection of the \$1,046,812 lump sum repayment amount for the permanent curtailment of Contract Year 25 Annual Net Firm Energy amount, and applied the 90% refund upfront - thus merely applying the 10% balance of \$116,312 - which Wood Hydro is now contesting in its Complaint.

#### Rock Creek #2

16. On June 2, 2020, Idaho Power sent Enel a letter notifying it that Rock Creek #2 had not generated at all during Contract Year 31, and informed Rock Creek #2 of the Lump Sum Repayment amount due under its PURPA contract of \$4,059,472. Attached hereto as Attachment No. 11 and incorporated herein by this reference. Rock Creek #2's PURPA Agreement is an older levelized agreement where Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy produced by

the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Firm Energy amount is sum of the project's monthly estimates for a Contract Year, in this instance 14,073,550 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Energy; the project must deliver up to its Annual Net Firm Energy amount from Section 6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.3.1; Appendix D).

17. This is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate contract, there is an "overpayment" to the project in the early years that is offset by an "underpayment" in the outer years. To make sure that a project does not just generate and take payments during the more lucrative "overpayment" early years, and then fail to generate or under-generate in the later years when customers are being repaid for the "overpayment" in the "underpayment" years, the Agreement contains certain mechanisms to make sure customers were not harmed in the outer years of the contract. These mechanisms include such things as additional security in current contracts, and in this case the provisions found in Section 21.3.1, Appendix D "Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Firm Energy Amount Under 35-Year Contract".

18. Section 21.3.1 of Rock Creek #2's contract states:

If, at any time prior to the end of the term of the Agreement,  
Seller permanently curtails in whole or in part its long-term

average deliveries of the Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as damages arising out of this permanent curtailment of Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount.

Section 6.3, Annual Net Firm Energy Amount, states, “The Annual Net Energy shall be 14,073,550 kWh and shall be the sum of the three (3) Seasonal Net Energy amounts Seller specified above.”

19. Rock Creek #2 had zero deliveries to Idaho Power during the months of June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020, May 2020. Contract Year 31 ran from April 2, 2019, through April 1, 2020. The Project had a total Net Energy delivered during Contract Year 3 of only 978,479 kWh, which is short of the required delivery of the Annual Net Firm Energy Amount from Section 6.3 of 14,073,550 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once Contract Year 31 came and went with a substantial shortfall of delivered Net Energy, there is no way to “make-up” the shortfall by over-generating in a different time period. There was a permanent curtailment of the project’s Annual Net Firm Energy deliveries for Contract Year 31.

20. Because Rock Creek #2 failed to deliver its Annual Net Firm Energy amount from Section 6.3 during Contract Year 31, and permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 31 from Appendix D is applied to the difference in Net Energy delivered and the Annual Net

Energy amount - which in this case is \$4,059,472 (\$310/MWH multiplied by the difference of 14,073.550 MWH and 978.479 MWH).

21. Rock Creek #2 responded to Idaho Power by letter on June 26, 2020, stating its disagreement that there had been a permanent curtailment under the contract, and protesting Idaho Power's assessment of the Lump Sum Repayment amount pursuant to the contract. Attached hereto as Attachment No. 12 and incorporated herein by this reference.

Lowline #2

22. On May 22, 2020, Idaho Power sent Central Rivers Power a letter notifying it that Lowline #2 had not delivered any generation since May of 2019, had failed to deliver the Annual Net Energy amount required of its Agreement for Contract Year 32, and informed Lowline #2 of the Lump Sum Repayment amount due under its PURPA contract of \$3,616,983. Attached hereto as Attachment No. 13 and incorporated herein by this reference. Lowline #2's Agreement is an older levelized agreement whereby Idaho Power will purchase and Seller will sell all of the Net Energy and Surplus Energy produced by the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Energy amount is sum of the project's monthly estimates for a Contract Year, in this instance 15,755,610 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Energy; the project must deliver up to its Annual Net Energy amount from Section 6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.2.1; Appendix D).

23. This is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate contract, there is an “overpayment” to the project in the early years that is offset by an “underpayment” in the outer years. To make sure that a project does not just generate and take payments during the more lucrative “overpayment” early years, and then fail to generate or under-generate in the later years when customers are being repaid for the “overpayment” in the “underpayment” years, the Agreement contains certain mechanisms to make sure customers were not harmed in the outer years of the contract. These mechanisms include such things as additional security, and in this case the provisions found in Section 21.2.1, Appendix D “Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Energy Amount Under 35-Year Contract”.

24. Section 21.2.1 of Lowline #2’s Agreement states:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Energy amount Seller shall pay to Idaho Power, as Idaho Power’s sole and exclusive remedy for damages arising out of this permanent curtailment of Net Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Energy amount specified in paragraph 6.3 and the reduced Annual Net Energy amount.

Section 6.3, Annual Net Energy Amount, states, “The Annual Net Energy shall be 15,755,610 kWh and shall be the sum of the three (3) Seasonal Net Energy amounts Seller specified above.”

25. Lowline #2 had zero deliveries to Idaho Power during the months of June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020 and continues to remain curtailed as of the date of this letter. Contract Year 32 ran from April 29, 2019, through April 28, 2020. The Project had a total Net Energy delivered during Contract Year 32 of only 1,287,678 kWh (which was delivered during the month of May 2019 only), which is short of the required delivery of the Annual Net Energy Amount from Section 6.3 of 15,755,610 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once Contract Year 32 came and went with a substantial shortfall of delivered Net Energy, there is no way to “make-up” the shortfall by over-generating in a different time period. There was a permanent curtailment of the project’s Annual Net Energy deliveries for Contract Year 32.

26. Because Lowline #2 failed to deliver its Annual Net Energy amount from Section 6.3 during Contract Year 32, and permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 32 from Appendix D is applied to the difference in Net Energy delivered and the Annual Net Energy amount - which in this case is \$3,616,983 (\$250/MWH multiplied by the difference of 15,755.610 MWH and 1,287.678 MWH).

27. Lowline #2 responded to Idaho Power by letter on June 15, 2020, stating its disagreement that there had been a permanent curtailment under the contract, and protesting Idaho Power’s assessment of the Lump Sum Repayment amount pursuant to the contract. Attached hereto as Attachment No. 14 and incorporated herein by this reference.

## **II. ANSWER**

28. Idaho Power hereby answers Wood Hydro's Complaint as follows: Idaho Power denies any allegation not specifically admitted and reserves the right to supplement and/or amend this Answer if Wood Hydro amends its Complaint, or if additional defenses are ascertained during the course of discovery or otherwise.

29. Wood Hydro did not make specifically numbered allegations in its formal complaint, but made general allegations written in the narrative. Consequently, Idaho Power generally denies the allegations of Wood Hydro, and answers in the narrative which includes the numbered paragraphs and statements contained herein as part of Idaho Power's cross-complaint above. To the extent that certain allegations of Wood Hydro contain legal conclusions, no response is required by Idaho Power.

30. Idaho Power disagrees with Wood Hydro's interpretation of the contractual provisions, denies that Idaho Power improperly assessed and withheld funds from Wood Hydro, and denies the allegation that the Lump Sum Repayment amounts are unlawful liquidated damages. Wood Hydro improperly equates the liquidated damages in Mile 28's Agreement to a straight forward, replacement power comparison of market prices to those contained in the PURPA Agreement and alleges they do not meet the requirements for liquidated damages under Idaho law. However, the liquidated damages refer to, as does the entire mechanism at issue in this case, the application of a Lump Sum Repayment intended to protect customers when a project fails to continue to provide generation pursuant to the contract sufficient to repay customers for the

overpayment inherent in the levelized rate contract. The application of the specific amounts designated as Lump Sum Repayment amounts by contract year from the table in Appendix D to the shortfall in Net Energy delivered compared to the Annual Net Energy amount is both a reasonable forecast of just compensation for customers in the inherent inequities when a project stops delivering generation after reaping the overpayment part of the levelized rate - and this is something that is very difficult of accurate estimation. The contract provisions meet the general requirements of Idaho law for liquidated damages as cited by Wood Hydro.

### **III. AFFIRMATIVE DEFENSES**

31. Wood Hydro's Complaint, and all allegations and requests for relief therein, fails to state a claim upon which relief can be granted.

32. Idaho Power acted at all times and in all respects, with regard to Wood Hydro and its PURPA contract, in conformance and compliance with state and federal law and the required and applicable rules, regulations, tariffs, and schedules for the state of Idaho's implementation of PURPA.

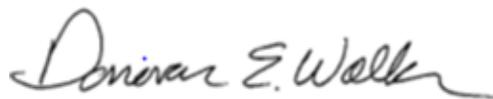
33. Idaho Power hereby reserves the right to assert any and all additional defenses, ascertained during the course of discovery or otherwise, by amendment to this answer as the Commission's rules, procedures, and/or Orders may allow and/or withdraw or amend the above affirmative defenses.

#### **IV. REQUESTED RELIEF**

WHEREFORE, having fully answered, Idaho Power respectfully requests:

1. That the Commission issue its Order denying the relief sought by Wood Hydro in its Prayer for Relief; and
2. That the Commission issue a Summons to Wood Hydro, Enel, and Central Rivers Power directing them to answer the allegations in Idaho Power's cross-complaint; and
3. That the Commission subsequently establish a proper procedure as it deems necessary to assist in its interpretation of the contractual provisions implementing PURPA; and
4. That the Commission direct Wood Hydro, Enel, and Central River Power to pay the amounts assessed by Idaho Power as Lump Sum Repayment amounts due and owing to customers as compensation for the overpayment inherent in these levelized rate contracts; or
5. Alternatively, that the Commission relieve Idaho Power of any obligation to pursue Lump Sum Repayment amounts against Wood Hydro, Enel, and Central Rivers Power under the facts present and pursuant their PURPA contracts; and
6. For such other relief as the Commission deems just and reasonable.

Respectfully submitted this 3<sup>rd</sup> day of August 2020.



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DONOVAN E. WALKER  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of August 2020, I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER AND CROSS-COMPLAINT upon the following named parties by the method indicated below, and addressed to the following:

**Wood Hydro, LLC**

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**Idaho Public Utilities Commission Staff**

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**Enel Green Power North America, Inc.**

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**Central Rivers Power US, LLC**

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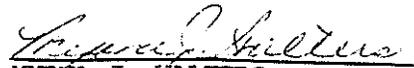
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Christy Davenport, Legal Secretary

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**

  
MYRNA J. WALTERS  
COMMISSION SECRETARY

FIRM ENERGY SALES AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
CONTRACTOR'S POWER GROUP, INC

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FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 13th day of August, 1993, is between CONTRACTOR'S POWER GROUP, INC., an Idaho Corporation hereinafter referred to as "Seller", and IDAHO POWER COMPANY, an Idaho corporation hereinafter referred to as "Idaho Power" hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

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

WHEREAS, Seller wishes to sell, and Idaho Power is legally obligated to purchase firm electric energy generated by Seller's electric generation Facility.

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

ARTICLE I: DEFINITIONS

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

1.1 'Annual Net Firm Energy' - The amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Contract Year.

1.2 "Commission" - The Idaho Public Utilities Commission.

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

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

1.5 "Disconnection Equipment" - Any device or combination of devices by which Idaho Power can manually and/or automatically interrupt the flow of energy from the Seller to Idaho Power's system, including enclosures or other equipment as may be required to ensure that only Idaho Power will have access to the devices.

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

1.7 "First Energy Date" - The date when the Seller begins delivering energy to Idaho Power's system.

1.8 "Interconnection Facilities" - All facilities which are reasonably required by Prudent Electrical Practices and the National Electric Safety Code to interconnect and to allow the delivery of energy from the Seller's electric generation plant to Idaho Power's system including, but not limited to, Special Facilities, Disconnection Equipment and Metering Equipment.

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

1.10 "Metering Equipment" - Equipment as described in Appendix B and Schedule 72 required to measure, record or telemeter power flows between the Seller's electric generation plant and Idaho Power's system.

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

1.12 "Operation Date" - The day commencing at 0001 hours Mountain Time, following the day on which the Facility demonstrates that it has been completed and reached a degree of reliability such that it is capable of delivering Net Firm Energy continuously into Idaho Power's system.

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

1.14 "Prudent Electrical Practices" - Those practices, methods and equipment that

are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

1.15 "Replacement Cost" - The replacement value of damaged property without deduction for depreciation.

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

1.17 "Schedule 72" - Idaho Power's Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.

1.18 "Season" - The three time periods identified in Article VI.

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

1.20 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Appendix B and Schedule 72 required to safely interconnect the Seller's electric generation plant to the Idaho Power's system.

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

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

1.23 "Total Cost of the Facility" - The total Replacement Cost of structures, equipment and appurtenances.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

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

2.2 Seller Independent Experts - Except for the Disconnection Equipment and any

other facilities within the exclusive control of Idaho Power, all professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement, have been solely those of Seller.

#### ARTICLE III: WARRANTIES

3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power, and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including but not limited to safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

3.2 Qualifying Facility Status - Seller warrants that prior to interconnection with Idaho Power the Facility will be a qualifying facility ("QF"). as that term is used and defined in 18 CFR, § 292.207. After initial qualification, Seller will take such steps as may be required to maintain the Facility's QF status during the term of this Agreement and Seller's failure to maintain QF status will be a material breach of this Agreement.

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

#### ARTICLE IV: CONDITIONS TO INTERCONNECTION

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho Power, Seller shall provide the following:

4.1.1 Licenses and Permits - Submit proof to Idaho Power that all licenses,

permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including but not limited to those licenses, permits or approvals specified in Appendix C.

4.1.2 Hydrological Data - Submit proof to Idaho Power that the hydrological data associated with the water flows applicable to the Facility and other factors relevant to the future security of such water flows, assuming normal weather conditions, demonstrate that the Application for Permit to appropriate water referred to in Appendix C provides Seller with sufficient water rights to generate the Net Firm Energy as specified in this Agreement.

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

(1) That Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller, provide the rights set forth therein, and are enforceable in accordance with their terms; and

(2) That the attorney has reviewed the approved Application for Permit to appropriate water referred to in Appendix C, that the Application for Permit to appropriate water is legally and validly issued to Seller, is held in the name of Seller and grants to Seller the rights therein specified, and is enforceable in accordance with its terms; and

(3) That downstream of the Facility, there are existing, agricultural senior water rights sufficient to ensure the availability of the water rights applied for in the Permit to Appropriate Water referred to in Appendix C; and

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

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

4.1.3.1 The opinion of counsel required in 4.1.3 above will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld.

4.1.4 Schedule 72 Payments - Make payment to Idaho Power for all costs of Disconnection Equipment, Metering Equipment and Special Facilities as provided for in Schedule 72 and Appendix B of this Agreement;

4.1.5 Written Acceptance - Obtain written acceptance from Idaho Power as provided in paragraph 8.3;

4.1.6 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIV;

4.1.7 Demonstration of Safe Operation - Demonstrate to Idaho Power's reasonable satisfaction that Seller's Facility has been completed, and is capable of operating safely to commence deliveries of electric energy into Idaho Power's system;

4.1.8 Maintenance Escrow Account - Demonstrate to Idaho Power's satisfaction that the Seller has established and funded (1) a debt service reserve account in a form and with a fund holder which complies with paragraph 21.4.2 and (2) a maintenance escrow account in a form and with an escrow manager which complies with Commission Order Nos 21690 and 21800. Said maintenance escrow account shall be structured and funded as follows:

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

4.1.8.2 Within sixty (60) days after the completion of each Contract Year, the Seller will deposit cash in the maintenance escrow account in an amount equal to five percent (5%) of the Facility's estimated gross income for the ensuing Contract Year, less an amount equal to the Facility's actual maintenance, repair and replacement expense (maintenance expenses) incurred during the prior Contract Year.

4.1.8.3 The maximum amount of deposit retained in the maintenance reserve account shall be two hundred thousand dollars (\$200,000.00). This maximum amount will be adjusted either upward or downward to reflect current replacement cost of the turbine/generator. This adjustment will be made at a minimum every fifth Contract Year during the term of this Agreement and will be based on the Handy-Whitman Index "Cost Trends of Electricity Utility Construction -- Plateau Region" -- "Hydro Production Plant" as published by Whitman Requardt & Associates, 2315 Saint Paul St, Baltimore, MD 21218.

4.1.8.4 At the time Seller makes the deposit described in paragraph 4.1.8.2, Seller will provide both the escrow manager and Idaho Power with a report prepared by an independent accounting firm showing the prior Contract Year's actual maintenance expenses, identified by appropriate FERC maintenance account number, and the estimate of the Facility's gross income for the ensuing Contract Year used to compute the deposit amount, together with documentation supporting that estimate of gross income.

4.1.8.5 If Seller determines that the maintenance expense for a Contract Year will exceed five percent (5%) of the Facility's estimated gross income for that Contract Year, the Seller may request that the escrow manager release funds from the maintenance escrow account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC

maintenance account number, and such documentation shall be submitted to both the escrow manager and Idaho Power. Following receipt of the request and documentation, the escrow manager, shall, within five (5) working days, release the required funds to Seller.

4.1.8.6 At the end of each Contract Year, Seller will provide Idaho Power with evidence of compliance with the maintenance escrow account requirements set out in this Agreement and Commission Order Nos 21690 and 21800. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The maintenance escrow fund will be subject to the lien rights described in 4.1.9 below.

4.1.9 Security Interests - Provide Idaho Power with acceptable security against Seller's default under this Agreement. Acceptable security will conform to Commission Order Nos 21690 and 21800 and may include, but will not be limited to, title insurance, security interests in the real property associated with the Facility, equipment, fixtures, contracts, permits, the FERC license or exemption from licensing, water rights, including evidence of third party downstream water rights, easements, rights-of-way, funds held in escrow in which Seller has an interest and that relate to the operation of the Facility, and other reasonable security arrangements consistent with the Facility's financing and ownership arrangements.

4.1.9.1 Idaho Power's security interests will be superior and senior to all liens other than the first mortgage lien and other security interests permitted in accordance with paragraphs 4.1.9.2.

4.1.9.2 If Seller desires to incur a first mortgage lien or other security interests that will be superior to Idaho Power's security interests in the Facility, at least twenty-one (21) days prior to their execution Seller shall provide Idaho Power with draft copies of the deeds of trust, mortgages and other security agreements that will be used to secure such first lien. Upon their execution Seller shall

documents shall not be assigned, amended, modified, or extended, and no replacement or refinancing of any nature shall be undertaken, without Idaho Power's prior written consent which consent shall not be unreasonably withheld. In no event will the amount of any first mortgage lien exceed \$950,000. The total amount of all refinanced or replaced first liens shall not exceed the unpaid principal balance of the first mortgage liens they replace.

4.1.9.3 Other than the first mortgage liens permitted herein, or temporary mechanic's, statutory or similar liens incurred in the ordinary course of business in an amount not to exceed in aggregate five thousand dollars (\$5,000) Seller will not permit any liens or encumbrances of any nature whatsoever to be placed on the Facility without Idaho Power's prior written consent, which consent will not be unreasonably withheld. If any unpermitted lien or encumbrance is placed on the Facility, Seller will provide Idaho Power with a bond, insurance or other security acceptable to Idaho Power in an amount sufficient to secure the full discharge of such unpermitted lien or encumbrance.

4.1.9.4 If, after the initial first lien has been established, Seller desires to assign this Agreement or assign, replace or refinance said first lien, Seller will reimburse Idaho Power for the reasonable out-of-pocket costs Idaho Power incurs for document review and revision including any consents to assignment or subordination agreements that Seller requests from Idaho Power. Idaho Power's out-of-pocket costs will include but not be limited to filing fees, title insurance premiums, and fees of legal counsel.

4.1.10 Confirmation - Obtain written confirmation from Idaho Power that all conditions to interconnection have been fulfilled. Such written confirmation shall not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM, EARLY TERMINATION, AND OPERATION DATE

5.1 Term - Except as otherwise provided, this Agreement shall become effective on the date first above written, and shall continue in full force and effect for a period of thirty-five (35) Contract Years.

5.2 Early Termination - Either Party may terminate this Agreement at the end of the twentieth, twenty-fifth, or thirtieth Contract Years by giving the other Party written notice of termination a minimum of one (1) year prior to the beginning of the twentieth, twenty-fifth, and thirtieth Contract Years provided, however, that neither Party shall be allowed to terminate until at least five (5) years after the date of expiration of the initial permanent first lien financing for the project.

5.2.1 Liquidated Administrative Costs - If either Party exercises its option to terminate, in addition to any payments due under paragraph 21.3, the Party initiating termination will pay the other Party liquidated administrative costs which will be determined according to the following formula:

$$(\text{kWh}) \times (\text{Rate/kWh}) \times (\text{Percent}) = \text{liquidated administrative costs}$$

Where:

"kWh" is the Annual Net Firm Energy amount shown in paragraph 6.3; and

"Rate/kWh" is the sum of the base payment shown in paragraph 7.1.1 plus the adjustable payment in accordance with paragraph 7.1.2 as set on the July 1st immediately prior to the notification of intention to terminate; and

"Percent" is a multiplier based on the following schedule:

4 Year's prior notice of termination: 1.5%

3 Year's prior notice of termination: 2.0%

2 Year's prior notice of termination: 2.5%

1 Year's prior notice of termination: 3.0%

5.2.2 Idaho Power - Early termination under this paragraph by Idaho Power is not a default by the Seller and will not constitute a permanent curtailment under paragraph 21.3.

5.2.3 Seller - Early termination under this paragraph by the Seller will constitute a permanent curtailment under paragraph 21.3.

5.3 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and reliability has been demonstrated to Idaho Power's satisfaction, and Idaho Power has confirmed that satisfaction in writing. Seller shall have the duty to obtain that confirmation and it will not be unreasonably withheld by Idaho Power. Prior to the Operation Date, Seller must provide the following:

- (1) As-built drawings of the Seller-furnished Interconnection Facilities, and
- (2) An executed Engineer's Certification of Design & Construction Adequacy, and an Engineer's Certification of Operations and Maintenance ("O&M") Policy as described in Commission Order No 21690. These certificates will be in the form specified in Appendix F, but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

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

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

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

Season 1	March	0	kWh
	April	446,515	kWh
	May	892,746	kWh
Season 2	June	927,547	kWh
	July	1,012,953	kWh
	August	985,026	kWh
	September	887,890	kWh
Season 3	October	512,497	kWh
	November	133,416	kWh
	December	0	kWh
	January	0	kWh
	February	0	kWh

6.3 Annual Net Firm Energy Amount - The Annual Net Firm Energy amount shall be 5,798,590 kWh and shall be the sum of the three (3) Seasonal Net Firm Energy amounts Seller specified above. At Idaho Power's option the Annual Net Firm Energy amount and the resulting Appendix D lump sum repayment amount may be adjusted based on the actual performance of the Facility.

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

6.5 Net Firm Energy Changes -

6.5.1 Increased Generation Capability - If, at any time during the term of this Agreement, as a result of some action by Seller, i.e. procurement of additional long-term water supplies or improvements to the efficiency of the installed generating equipment, Seller intends to permanently increase the amount of Annual Net Firm Energy from the Facility above the amount specified in paragraph 6.3 above, Seller will promptly notify Idaho Power of that intent. If Idaho Power concurs that Seller is capable of actually providing such increased Net Firm Energy, Idaho Power will have the option to purchase this increased amount of Net Firm Energy in accordance with either of the following alternatives: (1) the purchase will be under the same terms and conditions of this Agreement except that the rate for the incremental increase of Net Firm Energy shall not be the rate in paragraph 7.1 of this Agreement, but instead will be priced at the appropriate firm energy rate in effect at the time of such increase; or (2) the purchase will be made under a separately negotiated agreement. The choice of purchase alternative will be Idaho Power's.

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

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

7.1.1 Base Payment -

Season 1	36.03 Mills/kWh
Season 2	58.82 Mills/kWh
Season 3	49.02 Mills/kWh

7.1.2 Adjustable Payment - In addition to the base payment specified in paragraph 7.1.1, Idaho Power shall pay to Seller an adjustable payment which shall be established by the Commission and subject to change pursuant to Commission Order effective on July 1 of each year during the term of this Agreement. While the Parties do not know what the adjustable payment amount will be as of the Operation Date under this Agreement, the

Parties acknowledge that the adjustable payments as of the date of the signing of this Agreement are as follows:

Season 1	7.34 Mills/kWh
Season 2	11.99 Mills/kWh
Season 3	9.99 Mills/kWh

7.2 Surplus Energy Purchase Price - Surplus Energy will be purchased at the non-firm avoided energy rate computed in accordance with Option B in Idaho Power's Tariff 101, Schedule 86 or with its successor schedules as approved by the Commission.

7.3 Continuing Jurisdiction of the Commission - This Agreement is a special contract and as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Comm'n and Afton Energy, Inc., 107 Idaho 781, 693 P2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Comm'n, 107 Idaho 1122, 695 P2d 1261 (Idaho 1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

#### ARTICLE VIII: FACILITY AND INTERCONNECTION

8.1 Design of Facility - Seller shall design, construct, install, own, operate and maintain the Facility and any Seller owned Interconnection Facilities so as to allow safe, reliable delivery of electric energy to Idaho Power's system for the full term of this Agreement.

8.2 Interconnection Facilities - Except as specifically provided for in this Agreement, interconnection of the Facility will be in accordance with Schedule 72. Seller will pay all costs of interconnecting the Facility with Idaho Power.

8.3 Idaho Power Review - To assure the Facility and Seller-furnished Interconnection Facilities are of suitable size and are compatible with Idaho Power's system, Seller shall submit the designs, plans, specifications and performance data for the Facility and Seller-furnished Interconnection Facilities to Idaho Power for review. Idaho Power shall, in writing and in conformance with paragraph

4.1.5, notify Seller of its acceptance and confirmation of system compatibility or conversely, notify Seller, in writing, of any changes which, consistent with Prudent Electrical Practices, Idaho Power determines are necessary to assure the safe delivery of electric energy from the Facility to Idaho Power's system.

#### ARTICLE IX: DISCONNECTION EQUIPMENT

9.1 Disconnect Equipment - Idaho Power will, at Seller's expense, provide, own, operate, and maintain all Disconnection Equipment. At Seller's request, Idaho Power will provide Seller with the general specifications and an itemization by category of the costs of such Disconnection Equipment. Idaho Power will establish the settings of Disconnection Equipment to disconnect automatically from the Facility for the protection of Idaho Power's system and personnel consistent with Prudent Electrical Practices. Upon Seller's request, Idaho Power will notify Seller as to the original setting and any adjustments thereof. Except as otherwise required by Prudent Electrical Practices, Disconnection Equipment will be designed so that the closure of any breaker or other disconnecting device which connects the Facility to Idaho Power's system shall be controlled by equipment which will perform the following:

- (1) Automatically monitor the status of the electrical system on Idaho Power's side of the disconnecting device; as to voltage and frequency; and
- (2) Prohibit closure or reconnection until voltage and frequency have been within approved limits for a continuous period of not less than five (5) minutes; and
- (3) Operate so that if Idaho Power's system is de-energized within sixty (60) seconds after closure of the disconnecting device, the disconnecting device will immediately open and not close again until it has been manually reset and/or Idaho Power can safely reclose the Disconnecting Equipment.

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

9.3 Remote Disconnection - Other Disconnection Equipment, including equipment which will provide Idaho Power's operating personnel with the ability to remotely control and monitor the status of the breaker or other disconnecting device by radio or hard-wire circuit between the Facility and the Designated Dispatch Facility may be specified by Idaho Power when, in Idaho Power's reasonable judgment, such equipment is required by Prudent Electrical Practices. Seller recognizes that such remote control equipment may not initially be required by Idaho Power, but at such time as operating conditions on Idaho Power's system dictate, Idaho Power will install this remote control equipment at Seller's expense. If Seller disputes Idaho Power's determination that the installation of such remote Disconnection Equipment is required, such dispute shall be submitted to the Commission for resolution.

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

#### ARTICLE X: METERING

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

10.2 Meter Inspection - Idaho Power shall inspect and test all meters upon their installation and at least once every four (4) years thereafter. If requested by Seller, Idaho Power shall

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

10.3 Telemetry - Consistent with Appendix A of this Agreement, Idaho Power will install, operate and maintain at Seller's expense metering, communications and telemetry equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of Seller's net generation to Idaho Power's Designated Dispatch Facility.

#### ARTICLE XI: RECORDS

11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties, adequate metering and related power production records, in a form and content recommended by Idaho Power.

11.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all such metering and related power production records pertaining to Seller's account.

## ARTICLE XII: PROTECTION

12.1 Seller shall construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Appendix A, Prudent Electrical Practices, the National Electrical Code, the National Electrical Safety Code and any other applicable local, state, and federal codes. If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel, or service to its customers, Idaho Power may physically interrupt the flow of energy from the Facility or take such other reasonable steps as Idaho Power deems appropriate. Except in the case of an emergency, Idaho Power will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 13.8. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities. In some cases, some of Seller's protective relays will provide back-up protection for Idaho Power's facilities. In that event, Idaho Power will test such relays annually and Seller will pay the actual cost of such annual testing.

## ARTICLE XIII: OPERATIONS

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

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

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

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

13.3.2 If Idaho Power determines that curtailment, interruption or reduction

of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, operating conditions on its system, or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of force majeure, Idaho Power requires such a curtailment, interruption or reduction of Net Firm Energy deliveries for a period that exceeds twenty (20) consecutive days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Firm Energy at a rate determined by dividing the monthly Net Firm Energy amount specified in paragraph 6.2 for the month in which the interruption or curtailment occurs by the number of hours in that month. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

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

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

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

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

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

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity.

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

14.2.1 Commercial General Liability Insurance for both bodily injury and property damage with limits equal to fifteen percent (15%) of the Total Cost of the Facility, or \$1,000,000, whichever is greater, each occurrence, combined single limit. The deductible for such insurance shall not exceed one-half of one percent (0.5%) of the Total Cost of the Facility.

14.2.2 All Risk Property Insurance with minimum limits not less than ninety percent (90%) of the Total Cost of the Facility. The Property Insurance coverage must be written on a Replacement Cost basis and will include:

- (a) Standard fire policy.
- (b) Extended coverage endorsement.
- (c) Vandalism and malicious mischief endorsement.
- (d) The deductible for the above property insurance coverage shall not exceed five percent (5%) of the Total Cost of the Facility or \$25,000 whichever is greater.

14.2.3 Boiler and Machinery Insurance with minimum limits not less than ninety

percent (90%) of the total Replacement Cost of the equipment covered in (a) below:

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

(b) Coverage under this insurance must be written on a Replacement Cost basis; and

(c) The deductible for this insurance shall not exceed five percent (5%) of the total Replacement Cost of the equipment covered in (a) above or \$25,000 whichever is greater.

14.2.4 Earthquake & Flood (catastrophic perils) Insurance with limits not less than sixty percent (60%) of the Total Cost of the Facility. The deductible for this insurance shall not exceed five percent (5%) of the Total Cost of the Facility.

14.2.5 Business Interruption (Loss of Income) Insurance with minimum daily limits not less than seventy-five percent (75%) of the Facility's estimated gross daily electrical revenue and total policy limits not less than twenty percent (20%) of the Facility's estimated gross annual revenue from the sale of electrical energy;

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

(b) This insurance coverage must be endorsed to both the All Risk Property Insurance Policy and the Boiler and Machinery Insurance Policy;

(c) The deductible for this insurance coverage shall not exceed thirty (30) days gross daily revenues from the sale of electrical energy; and

(d) The estimated gross daily revenue and estimated gross annual revenue shall be computed on the basis of the kWh production estimates contained in paragraph 6.2.

14.2.6 All of the above insurance coverages shall be placed with insurance companies with an A.M. Best rating of A- or better and shall include:

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

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

(c) In the case of the insurance coverages described in subparagraphs 14.2.1, 14.2.2 and 14.2.3 above, the Total Cost of the Facility will include any Seller-furnished Disconnection Equipment and/or Interconnection Facilities. The Total Cost of the Facility and total Replacement Cost of equipment will be adjusted either upward or downward to reflect the current replacement cost of the Facility or equipment. This adjustment will be based on either (1) an appraisal made by, or for, the Seller's insurance company, or (2) the Handy-Whitman Index "Cost Trends of Electric Utility Construction -- Plateau Region" -- "Hydro Production Plant" as published by Whitman, Requardt & Associates, 2315 Saint Paul St, Baltimore, MD 21218. Such adjustment shall be made, at a minimum, every fifth Contract Year during the term of this Agreement. A copy of these computations and/or appraisals will be submitted to Idaho Power for Idaho Power's review and approval.

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

14.4 Seller to Provide Copies of Policies of Insurance - Within one hundred twenty (120) days after the Operation Date, and within ninety (90) days of the effective date of any modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have been no changes to the policy in lieu of providing the required certified copy of the policy.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages required by paragraph 14.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps

Seller is taking to reinstate the coverage.

#### ARTICLE XV: LAND RIGHTS

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

15.2 Use of Public Rights-of-Way - The Parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho Power's compliance with paragraph 15.4, Seller agrees that should Seller seek and receive from any local, state or federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho Power of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho Power may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 15.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 5.2.

15.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 15.4, Idaho Power may use and attach its distribution and/or transmission facilities to Seller's Interconnection Facilities, may reconstruct Seller's Interconnection Facilities to accommodate Idaho Power's usage or Idaho Power may construct its own distribution or transmission facilities along, over and above any public right-of-way acquired from Seller pursuant to paragraph 15.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 15.4,

Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 15.3.

15.4 Conditions of Use - It is the intention of the Parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho Power's exercising its rights under this Article XV. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 15.2 and 15.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the Parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the Parties, and (3) shall provide Seller with an interconnection to Idaho Power's system of equal capacity and durability as existed prior to Idaho Power exercising its rights under this Article XV.

#### ARTICLE XVI: FORCE MAJEURE

As used in this Agreement, "force majeure" or "an event of force majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome, including but not limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, court orders, laws or regulations, insurrection or riot, an act of the elements or lack of precipitation resulting in reduced water flows for power production purposes. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of force majeure, both Parties shall be excused from whatever performance is affected by the event of force majeure, provided that:

(1) The non-performing Party shall, as soon as is reasonably possible after the occurrence of the event of force majeure, give the other Party written notice describing the particulars of the occurrence.

(2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of force majeure.

(3) No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

#### ARTICLE XVII: LIABILITY; DEDICATION

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Idaho Power as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XVIII: SEVERAL OBLIGATIONS

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

#### ARTICLE XIX: WAIVER

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

#### ARTICLE XX: CHOICE OF LAWS

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

## ARTICLE XXI: DISPUTES AND DEFAULT

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

21.2 Default - If either Party fails to perform any of the terms or conditions of this Agreement, (an "event of default") the nondefaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, then, and only then, may the nondefaulting Party pursue its legal or equitable remedies

21.3 Seller Permanent Curtailment - If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment. The Annual Net Firm Energy amount in Article VI and the resulting Appendix D lump sum repayment amount may be adjusted from time to time based on the actual performance of the Facility. The lump sum repayment amount will bear interest from sixty (60) days after Idaho Power gives or receives notice of Seller's permanent reduction of the Annual Net Firm Energy amount, until paid, at a rate equal to interest rates specified in Idaho Code §28-22-104(2) or its successor Idaho Code provision in effect during each month of that period. For purposes of this paragraph, neither reduced deliveries of Net Firm Energy due to short-term below-normal, water conditions (paragraph 6.4) nor Idaho Power's voluntary termination in accordance with paragraph 5.2.2 shall be considered a permanent curtailment. The Parties further agree that this paragraph does not constitute a waiver by Idaho Power of its right to pursue its remedies under paragraph 21.6 or by either Party of their right to an award of pre and post judgement interest, costs and attorneys fees as permitted by law in any litigation arising out of this Agreement.

21.4 Security for Repayment Obligation - During the full term of this Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power if Seller defaults under this Agreement. In accordance with Commission Order Nos 21690 and 21800, and Declaratory Order 23949 and subject to the provisions of paragraph 21.2 above, this assurance will be provided as follows:

21.4.1 Insurance - Seller shall comply with the provisions of paragraph 14.2. If Seller fails to comply, such failure will be an event of default.

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

(b) For all other insurance coverages described in paragraph 14.2, the default may be cured by replacement or reinstatement of the insurance, or by Seller posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100%) of the accumulated overpayment liability specified for that year in Appendix D.

21.4.2 Debt Service Reserve Account - (a) Because the Facility is located on the canal system of the Milner-Gooding Canal Project and therefore receives the benefits of the American Falls Reservoir District No. 2's senior water rights, Idaho Power is willing to permit Seller to establish a debt service reserve account until conforming low water insurance becomes available. Said debt service reserve account will be separate from the maintenance escrow account and shall be structured as follows:

(b) During the period of time in which the Facility acts as security for a first mortgage lien which is senior to Idaho Power's security interest in the Facility as described in paragraph 4.1.9 above, Seller shall maintain a debt service reserve account in cash or an irrevocable standby letter of credit in an amount equal to twenty percent (20%) of the Facility's estimated gross revenue for the first Contract Year rounded to the nearest \$1,000.

(c) Upon full satisfaction of the above-referenced first mortgage lien and when Idaho Power's security interest becomes the senior security interest in the Facility, the

escrow manager will pay to Seller the amount in the debt service reserve account which exceeds five percent (5%) of the Facility's estimated gross revenue for the next Contract Year rounded to the nearest \$1,000.

(d) The amount to be retained in the debt service reserve account will be recalculated every five (5) years to reflect any increases or decreases in the adjustable payment amount under paragraph 7.1.2 of this Agreement.

(e) During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, the escrow manager of the debt service reserve account will be instructed to only release funds from the debt service reserve account to the holder of the first mortgage lien. Funds from said account shall be released only when, and only to the extent that Seller certifies to the escrow manager that after payment of all operating costs, the Facility's revenues are insufficient to make full debt service and/or lease payments on the Facility.

(f) During the period when Idaho Power's security interest is the senior security interest in the Facility, the escrow manager will be instructed to only release funds from the debt service reserve account to pay operating costs for the Facility.

(g) For purposes of the debt service reserve account, operating costs are limited to those costs necessary for the operation of the Facility such as taxes, insurance expenses, lease payments and other ordinary and necessary operating expenses. Operating costs shall not include any disbursements other than lease payments which would constitute a profit or return on investment.

(h) After any release of funds by the escrow manager, Seller shall be obligated to restore the debt service reserve account to the amounts provided for in paragraphs 21.4.2(b) and (c), which ever is applicable, prior to Seller disbursing funds which would constitute a profit or return on investment. Until the debt service reserve account is fully restored, Seller will, within sixty (60) days of the completion of each Contract Year, provide the escrow manager and Idaho Power with a report prepared by Seller's outside accountants

showing that Seller has not breached its obligations under this paragraph 21.4.2(h).

(i) Any breach of paragraph 21.4.2(h) by Seller will be an event of default and will require posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100%) of the accumulated overpayment amount specified for that year in Appendix D.

21.4.3 Engineer's Certification - Every three (3) years for the first twelve (12) years after the Operation Date, and every two (2) years thereafter during the full term of this Agreement, Seller will supply Idaho Power with a Certification of Ongoing O&M from a Registered Professional Engineer licensed in the State of Idaho, which Certification of Ongoing O&M shall be in the form specified in Appendix F. Seller's failure to supply the required certificate will be an event of default. Such a default may be cured by Seller providing the required certificate or by posting liquid security in accordance with paragraph 21.5 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix D.

21.4.4 Maintenance Escrow - During the full term of this Agreement, Seller shall maintain and fund the maintenance escrow account described in paragraph 4.1.8 and Commission Order No 21690. If at any time Seller fails to maintain or fully fund that maintenance escrow account, such a failure will be an event of default. Such default may be cured by reinstating the required reserve fund or by Seller posting liquid security in accordance with paragraph 21.5 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix D.

21.4.5 Security Interests - During the full term of this Agreement, Seller shall maintain compliance with all of the requirements of Idaho Power's security interests described in paragraph 4.1.9 of this Agreement and Commission Order No 21690. Seller's failure to comply with those requirements, will be an event of default and in addition to any other remedies available under this Agreement, Commission Order No 21690, and the security interests, Seller will be required by Idaho Power to post liquid security in accordance with

paragraph 21.5 in an amount equal to thirty-five percent (35%) of the accumulated overpayment liability specified for that year in Appendix D. Seller recognizes that in accordance with Commission Order No 21690, an event of default under either or both of paragraphs 21.4.3 or 21.4.4 constitutes an event of default under paragraph 21.4.5 and in that event the obligation to post liquid security under paragraphs 21.4.3 through 21.4.5 is cumulative.

21.4.6 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of the Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses Seller is required to obtain during the term of this Agreement including, but not limited to, the Application for Permit to appropriate water within a reasonable time after their issuance. At least every fifth Contract Year, Seller will update the documentation described in paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to maintain its water rights, or to provide the documentation required by this paragraph, such failure will be a default.

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

(b) In the case of non-compliance with Seller's obligation to secure and maintain adequate water rights, an event of default may be cured by Seller reacquiring the required water rights or by posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100.0%) of the accumulated overpayment liability specified for that year in Appendix D.

21.5 Liquid Security - If, pursuant to this Agreement or Commission Order No 21690, Seller becomes obligated to post liquid security, such obligation may be satisfied by (1) Seller's depositing cash in an escrow to be held and managed by a bank or savings & loan association located and in good standing in the State of Idaho. The escrow holder and the escrow instructions will be

acceptable to both Idaho Power and Seller. Payment of all taxes on the amounts deposited in the escrow will be the obligation of the Seller. The liquid security escrow account will be maintained separately from the maintenance reserve account described in paragraph 4.1.8; or (2) Providing liquid security in the form of irrevocable standby letter(s) of credit, book entry certificate(s) of deposit or other cash equivalents acceptable to Idaho Power. The banks, issuing the letters of credit and other cash equivalents will be located and in good standing in the State of Idaho. Failure to maintain and provide the liquid security required by this Agreement and Commission Order Nos 21690 and 21800 shall be an event of default.

21.6 Equitable Remedies - If as described in paragraph 21.3, Seller permanently curtails all or part of its deliveries of Net Firm Energy to Idaho Power and (1) within three (3) years after said curtailment Seller or its successors or assigns sells or delivers or attempts to sell or deliver said curtailed capacity or energy to any entity other than Idaho Power without Idaho Power's prior written consent, such sale or delivery or attempt sale or delivery shall be a breach of this Agreement; or (2) if, within three (3) years after such permanent curtailment Seller or its successors or assigns attempts to require Idaho Power to purchase said permanently curtailed Net Firm Energy at a rate that exceeds the rates contained in this Agreement, such attempt will be a breach of this Agreement. The remedy at law for the above described breaches shall be inadequate and Idaho Power shall be entitled to injunctive relief and specific performance of this Agreement. The provisions of this paragraph 21.6 shall survive any termination of this Agreement (other than an optional termination under paragraph 5.2) for the periods provided for in this paragraph.

21.7 Refund of Lump Sum Repayment - If Seller has made a lump sum repayment as required by paragraph 21.3 and;

(1) Within three (3) years of said payment Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power at the rates, terms and conditions contained in this Agreement for the number of Contract Years that were remaining under this Agreement at the time of the permanent curtailment; then

(2) Idaho Power will resume its purchases from the Facility and will refund

a portion of the lump sum repayment amount as follows:

(a) If sales resume within one (1) year of the payment of the lump sum repayment amount, Idaho Power will refund 90% of the lump sum repayment amount;

(b) If sales resume within two (2) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount;

(c) If sales resume within three (3) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount.

#### ARTICLE XXII: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXIII: COMMISSION ORDER

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

#### ARTICLE XXIV: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no transfer by merger or otherwise nor any assignment hereof by Seller shall become effective without the written consent of Idaho Power being first obtained. Such consent shall not be unreasonably withheld. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

## ARTICLE XXV: MODIFICATION

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

## ARTICLE XXVI: TAXES

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

## ARTICLE XXVII: NOTICES

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

To Seller:                      President  
   Contractor's Power Group, Inc.  
   Box 820  
   Twin Falls, ID 83303-0820

To Idaho Power:              Vice President, Power Supply  
   Idaho Power Company  
   P O Box 70  
   Boise, Idaho 83707

## ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

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

- Appendix A - Standards for Interconnection and Metering
- Appendix B - Special Facilities, Point of Delivery, Metering, and Operation Date
- Appendix C - Schedule of Required Licenses and Permits
- Appendix D - Lump Sum Refund Payment
- Appendix E - Operating Instructions for Plants over 750 kW
- Appendix F - Engineer's Certifications

ARTICLE XXIX - ENTIRE AGREEMENT

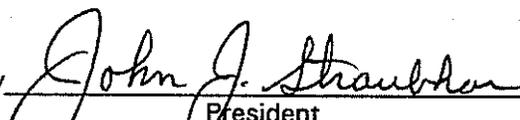
This Agreement constitutes the entire agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

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

IDAHO POWER COMPANY

CONTRACTOR'S POWER GROUP, INC.

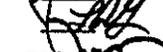
By   
Vice President, Power Supply  
Dated 8/13/93  
"Idaho Power"

By   
President  
Dated July 24, 1993  
"Seller"

- 1. H F Wright
- 2. B L Kline
- 3. R W Stahman
- 4. W A Mott

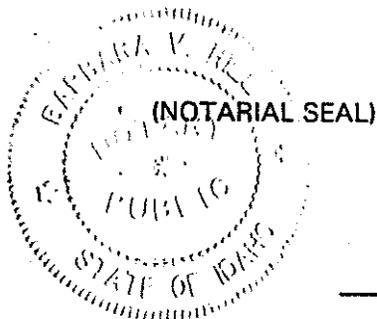

- 5. J M Collingwood
- 6. L R Gunnoe
- 7. J W Marshall


STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 16<sup>th</sup> day of August, 1993, before me, the undersigned, a Notary Public, personally appeared Jan B Packwood, personally known, who being duly sworn, did say that he is the Vice President, Power Supply of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

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



Barbara V Hill  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF Idaho )  
 ) ss  
County of Jerome )

On this 24<sup>th</sup> day of July, 1993, before me, the undersigned, a Notary Public, personally appeared John J Straubhar, personally known, who being duly sworn, did say that he is the President of the corporation that executed the within instrument, and acknowledged to me that he executed the same as the free act and deed.

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

(NOTARIAL SEAL)

John J Straubhar  
Notary Public for Idaho  
Residing at: Jerome

## APPENDIX A

### STANDARDS FOR INTERCONNECTION AND METERING

#### A-1 GENERAL PROVISIONS

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

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

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

#### A-2 GENERAL DESIGN CONSIDERATIONS

A-2.1 All Seller generators larger than twenty (20) kVA shall be three-phase generators connected to three-phase circuits. Generators twenty (20) kVA and smaller may be either three-phase or single-phase, as approved by Idaho Power.

Due to physical limitations within Idaho Power's transmission and distribution systems, induction machine sizes will be limited to confine voltage flicker within acceptable limits. Each generation site is unique and Idaho Power will determine the appropriateness of any proposed machine type for the site and interconnection.

A-2.2 Except in certain instances to be determined by Idaho Power, Seller's generator(s) shall be isolated from Idaho Power's system by a transformer. Transformer type and connection will be

specified by Idaho Power. The Seller may be required to limit the fault current contribution to Idaho Power's system by generator impedance, neutral grounding, transformer connections or other means.

A-2.3 Idaho Power will not assume any responsibility for protection of the Seller's generator or of any other portion of the Seller's electrical equipment. The Seller is fully responsible for protecting its equipment from faults or disturbances on Idaho Power's system. For example, most transmission and distribution line circuit breakers on Idaho Power's system will reclose automatically after they have attempted to clear a fault. The reclose time delays and system impedances are available from Idaho Power and should be considered very carefully by the Seller to determine if damage to the Seller's facility is possible. Dead line and synchronism check systems can be installed, at Seller's expense, that will minimize the possibility of a line reclosing into a generator while it is still connected to the system.

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

### A-3 METERING AND TELEMETRY REQUIREMENTS

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

A-3.1.1 Capacity Under 750 kW - Two kWh/demand meters; one measuring power flow into Seller's facilities and one measuring power flow into Idaho Power's system;

A-3.1.2 Capacity of 750 kW to 4999 kW - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed, and connected to the project voice communications circuit supplied by the developer with a first priority given to Idaho Power's use of said communication circuit. An electro-mechanical kWh backup meter will also be installed. Additionally, if a project is interconnected with Idaho Power's transmission system, all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line may be installed to provide continuous instantaneous

telemetering of net generation to Idaho Power's Designated Dispatch Facility;

A-3.1.3 Capacity of 5000 kW and Above - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed, and connected to a voice communications circuit supplied by the developer with a first priority given to Idaho Power's use of said communication circuit. An electro-mechanical kWh backup meter will also be installed. In addition, all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line will be installed to provide continuous instantaneous telemetering of net generation to Idaho Power's Designated Dispatch Facility.

#### A-4 FACILITY PROTECTION

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

#### A-5 SYNCHRONOUS GENERATORS

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

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

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

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

## Appendix B:

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

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

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

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

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

### A-6 INDUCTION GENERATORS

A-6.1 Overvoltage can become a serious problem when an induction generator and a portion of the

transmission or distribution facilities are isolated from the system. Overvoltage relaying shall be provided that will open the generator breaker in the event that the voltage reaches predetermined limits consistent with the overvoltage capability of the generator and the system. Undervoltage protection may also be required. On larger units, underfrequency and overfrequency relaying may both be required.

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

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

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

#### A-7 DC TO AC CONVERTERS

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

#### A-8 SWITCHING REQUIREMENTS

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

A-8.1.1 System emergency;

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

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

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

#### A-9 GENERATION SCHEDULING AND REPORTING

#### A-9 GENERATION SCHEDULING AND REPORTING

##### A-9.1 For Projects under 750 kW

A-9.1.1 Each time the Seller either opens or closes the Facility's interconnection with Idaho Power, the date, time, and kWh reading of the generator(s) will be recorded on the Monthly Power Production and Switching Report (Form CAD-A-1) provided by Idaho Power. This record will be maintained on a monthly basis.

A-9.1.2 Within the 24-hour period following 12:00 noon on the last day of each month, the Seller will read the meter(s) which record Facility generation (Facility Output), Station Use (Local Service), and Auxiliary Service (if any) and enter those readings on the same Monthly Power Production and Switching Report designated in paragraph A-9.1.1 above.

A-9.1.3 The written record of the end-of-month meter readings on the Monthly Power Production and Switching Report, subject to subsequent review and correction by Idaho Power, will be the basis of payment for energy purchased by Idaho Power from the Seller. An adjustment in the kWhs delivered will be made to compensate for the Losses in B-6.

A-9.1.4 At the end of each month, the Monthly Power Production and Switching Report will be mailed to:

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

A-9.1.5 Payment to the Seller will be made no later than thirty (30) days following receipt of the Monthly Power Production and Switching Report by Idaho Power.

A-9.2 For Projects 750 kW and Larger

A-9.2.1 In addition to the requirements of paragraph A-9.1.1 through A-9.1.5, Projects larger than 750 kW must meet the requirements of Appendix E.

APPENDIX B

SPECIAL FACILITIES, POINT OF DELIVERY, METERING,  
AND OPERATION DATE  
PROJECT NO 31615154  
MILE 28 HYDRO PROJECT

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as two induction generators with nameplate ratings of 750 kW each, 480 Volt, three phase, 60 hertz, driven by Kaplan turbines.

B-2 LOCATION OF FACILITY

The Facility is located in the SW Quarter of Section 7, Township 8 South, Range 20 East, Boise Meridian, Jerome County, Idaho.

B-3 SCHEDULED OPERATION DATE

Seller has selected May 15, 1994, as the Scheduled Operation Date and April 15, 1994, as the First Energy Date. In making these selections, Seller recognizes that to allow for an adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho Power, based on the information supplied by the Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and Metering Equipment will be completed in time so as not to delay Seller achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to Idaho Power, Idaho Power may be required to reschedule its construction of these facilities which could adversely impact Seller's ability to achieve its scheduled specified First Energy Date.

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

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

**B-5 POINT OF DELIVERY**

The Point of Delivery of energy from the Seller to Idaho Power will be where the Seller's 35 kV, three phase distribution line interconnects with Idaho Power's fused disconnects located approximately 3 miles south west of the project site in the SW 1/4 of Section 29, Township 8 South, Range 20 East, Boise Meridian, Jerome County, Idaho.

**B-6 LOSSES**

Until modified by mutual agreement, Losses shall be set at 2.00% of the metered energy delivered. When Seller has supplied Idaho Power with data needed to properly analyze the Losses associated with the Facility, Idaho Power and Seller will review that data and re-set the loss factor for the Facility. If the Parties are unable to agree, they will submit the dispute to the Commission for resolution. Any adjustment will be retroactive to the First Energy Date.

**B-7 METERING AND TELEMETRY**

The Metering Equipment will be on the 480 Volt side of the Seller's step-up transformer. Idaho Power provided Metering Equipment will consist of: current and potential transformers, a meter enclosure, meter test blocks, an electronic bidirectional meter for measuring net generation, and all meter wiring. Seller provided metering equipment will consist of all conduit and junction boxes from the metering transformers to the meter enclosure. Seller will install all Seller provided material as well as the metering transformers and the enclosure. Seller will arrange for and make available at Seller's cost a telephone circuit dedicated to Idaho Power's use terminating in an RJ-11 receptacle at the meter enclosure. The meter will register kilowatt-hours and kilowatts of demand. Idaho Power provided meter equipment will be owned and maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller.

**B-8 SPECIAL FACILITIES**

Idaho Power will provide a fused disconnect with pole and other necessary materials at the point of delivery and the upgrade of two 34.5 kV capacitor bank control circuits. The total cost of these facilities will be reimbursed to Idaho Power by the Seller.

**B-9 REACTIVE POWER**

Total reactive power required to be supplied by Idaho Power to the Seller is 808 KVAR, based on information provided by the Seller. Idaho Power will install and maintain facilities on its system so as to meet this requirement with total cost of installation to be reimbursed to Idaho Power by the Seller.

**B-10 DISCONNECTION EQUIPMENT**

Disconnection Equipment is required to insure that the Seller's Facility will be disconnected from Idaho Power's system in the event of a disturbance on either Idaho Power's system or the Seller's Facility. This equipment is for the protection of Idaho Power's equipment only and will be located at the Seller's Facility. Idaho Power will supply the disconnection equipment which consists of three 15 kVA transformers with fused disconnects, a 34.5 kV recloser with control enclosure containing relays and associated logic, 34.5 kV main disconnects, poles, conductor, arresters, batteries and other miscellaneous hardware. The Seller will provide approximately 50 feet of three phase 35 kV primary underground cable and a 34.5/19.9 kV grounded wye to 480/277 V grounded wye padmounted transformer. Seller will install all Seller supplied equipment, control wire and conduit necessary for the operation of the disconnection equipment. Idaho Power will supply details for the disconnection panel and will test the equipment prior to operation of the Facility. Seller will provide drawings of their interconnection wiring for engineering approval before installation. The total cost of the disconnection equipment, connection and testing will be reimbursed to Idaho Power by the Seller.

**B-11 COSTS**

The cost of Special Facilities is \$5,000. The cost of the metering equipment is \$6,129. The cost of reactive power supplied is \$6,787. The cost of the disconnecting equipment is \$47,680. The total cost to be paid by the Seller is \$65,596. This represents the amount that

will be charged by Idaho Power if the Seller makes the payment on or before September 6, 1993. If the Seller does not make this payment by the specified date, the costs will be subject to update. Idaho Power will not schedule construction or order materials which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of this Agreement, Seller will pay Idaho Power the operation and maintenance charge specified in Schedule 72 INTERCONNECTIONS TO NON-UTILITY GENERATION or its successor schedules(s). The total cost shown above is an estimate calculated on the basis of average costs. When the actual total cost is determined, Idaho Power will adjust the total cost amount to reflect the actual total cost incurred by Idaho Power. Beginning with the month of this adjustment, the operation and maintenance charges will also be adjusted. When the actual total cost is known, within sixty (60) days Idaho Power will refund any overpayment or Seller will remit any underpayment.

#### B-12 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho Power will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities described in this Appendix, less the cost of removal and transfer to Idaho Power's nearest warehouse, if the Interconnection Facilities will be removed. If Seller elects not to obtain ownership of the Interconnection Facilities but instead wishes that Idaho Power reimburse the Seller for said Facilities the Seller may invoice Idaho Power for the net salvage value as estimated by Idaho Power and Idaho Power shall pay such amount to Seller within thirty (30) days after receipt of the invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho Power.

## APPENDIX C

### SCHEDULE OF REQUIRED LICENSES AND PERMITS

1. Evidence of compliance with Part 1 of the Federal Power Act. Acceptable evidence of compliance will be an Order from FERC: (1) issuing a valid License for the Facility, or (2) validly exempting the Facility from Licensing.
2. Approved Application for Permit to appropriate water for power production purposes issued by the Idaho Department of Water Resources.
3. Evidence of compliance with Subpart B of 18 CFR §292.207.(a).

APPENDIX D

LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT  
OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT  
UNDER 35-YEAR CONTRACT

DOLLARS PER ANNUAL MEGAWATT HOUR

<u>Contract Year of Curtailment Commencement</u>	<u>Facility Operation Date 1994</u>
1	32
2	67
3	105
4	125
5	146
6	167
7	189
8	211
9	233
10	255
11	277
12	299
13	320
14	341
15	362
16	382
17	401
18	419
19	435
20	449
21	461
22	470
23	476
24	478
25	476
26	469
27	456
28	435
29	408
30	371
31	323
32	265
33	192
34	105
35	52

APPENDIX E

OPERATING INSTRUCTIONS FOR PLANTS OVER 750 KW

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

Power Scheduling: (208) 383-2931

System Dispatching: (208) 383-2826

Metering: Meter Engineer - Boise (208) 383-2751

or

Division Metering Supervisor

Payette (208) 642-6284

Boise (208) 322-2029

Twin Falls (208) 736-3284

Pocatello (208) 236-7771

**Substations:** Division Substation Supervisor

Payette	(208) 642-6262
Boise	(208) 322-2064
Twin Falls	(208) 736-3237
Pocatello	(208) 236-7774

**Billing:** Operations and Joint  
Facilities Accounting - Boise (208) 383-2593

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

6. Toll free numbers for Operating Reporting:

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

APPENDIX F

ENGINEER'S CERTIFICATION OF DESIGN &  
CONSTRUCTION ADEQUACY

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

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

2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

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

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

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

11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.3(2) of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

\_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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

APPENDIX F

ENGINEER'S CERTIFICATION OF  
OPERATIONS & MAINTENANCE POLICY

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

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

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

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.3(2) of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

\_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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

APPENDIX F

ENGINEER'S CERTIFICATION OF ONGOING  
OPERATIONS AND MAINTENANCE

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

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

2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

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

appearance, that its ongoing operation and maintenance has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency, and plant factor for \_\_\_\_\_ ( ) years.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 21.4.3 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

\_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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



(Intra-Company Correspondence)

Re: Contractor's Power Group, Inc - Mile 28  
(IPCo Project 31615154)

Date: November 19, 1993

To: Legal Department - Original  
R K Christensen/R C Allphin  
R P Meyer  
J D Roholt  
J H Willmorth/C A Jones  
I M Staab/J D Collins

From: John Ferree *J.F.*

Attached for your file are four pages which have been changed in the Firm Power Sales Agreement for the above referenced project. These changes were necessitated by a Commission Order regarding the insurance requirements.

As the changes were made with the approval of the Contractor's Power Group and prior to Idaho Power's submitting the Agreement to the IPUC for approval, no amendment will be required. Please insert each of the attached sheets into your copy of the Agreement and destroy the sheets originally received.

If you have any questions, please do not hesitate to give me a call.

JF/ekg  
Enclosures (4)

are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

1.15 "Replacement Cost" - The replacement value of damaged property without deduction for depreciation.

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

1.17 "Schedule 72" - Idaho Power's Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.

1.18 "Season" - The three time periods identified in Article VI.

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

1.20 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Appendix B and Schedule 72 required to safely interconnect the Seller's electric generation plant to the Idaho Power's system.

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

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

1.23 "Total Cost of the Facility" - The total Replacement Cost of structures, equipment and appurtenances.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

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

2.2 Seller Independent Experts - Except for the Disconnection Equipment and any

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

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity.

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

14.2.1 Commercial General Liability Insurance for both bodily injury and property damage with limits equal to fifteen percent (15%) of the Total Cost of the Facility, or \$1,000,000, whichever is greater, each occurrence, combined single limit. The deductible for such insurance shall not exceed one-half of one percent (0.5%) of the Total Cost of the Facility.

14.2.2 All Risk Property Insurance with minimum limits not less than ninety percent (90%) of the Total Cost of the Facility. The Property Insurance coverage must be written on a Replacement Cost basis and will include:

- (a) Standard fire policy.
- (b) Extended coverage endorsement.
- (c) Vandalism and malicious mischief endorsement.
- (d) The deductible for the above property insurance coverage shall not exceed five percent (5%) of the Total Cost of the Facility or \$25,000 whichever is greater.

14.2.3 Boiler and Machinery Insurance with minimum limits not less than ninety

percent (90%) of the total Replacement Cost of the equipment covered in (a) below:

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

(b) Coverage under this insurance must be written on a Replacement Cost basis; and

(c) The deductible for this insurance shall not exceed five percent (5%) of the total Replacement Cost of the equipment covered in (a) above or \$25,000 whichever is greater.

14.2.4 Earthquake & Flood (catastrophic perils) Insurance with limits not less than sixty percent (60%) of the Total Cost of the Facility. The deductible for this insurance shall not exceed five percent (5%) of the Total Cost of the Facility.

14.2.5 Business Interruption (Loss of Income) Insurance with minimum daily limits not less than seventy-five percent (75%) of the Facility's estimated gross daily electrical revenue and total policy limits not less than twenty percent (20%) of the Facility's estimated gross annual revenue from the sale of electrical energy;

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

(b) This insurance coverage must be endorsed to both the All Risk Property Insurance Policy and the Boiler and Machinery Insurance Policy;

(c) The deductible for this insurance coverage shall not exceed thirty (30) days gross daily revenues from the sale of electrical energy; and

(d) The estimated gross daily revenue and estimated gross annual revenue shall be computed on the basis of the kWh production estimates contained in paragraph 6.2.

14.2.6 All of the above insurance coverages shall be placed with insurance companies with an A.M. Best rating of A- or better and shall include:

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

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

(c) In the case of the insurance coverages described in subparagraphs 14.2.1, 14.2.2 and 14.2.3 above, the Total Cost of the Facility will include any Seller-furnished Disconnection Equipment and/or Interconnection Facilities. The Total Cost of the Facility and total Replacement Cost of equipment will be adjusted either upward or downward to reflect the current replacement cost of the Facility or equipment. This adjustment will be based on either (1) an appraisal made by, or for, the Seller's insurance company, or (2) the Handy-Whitman Index "Cost Trends of Electric Utility Construction -- Plateau Region" -- "Hydro Production Plant" as published by Whitman, Requardt & Associates, 2315 Saint Paul St, Baltimore, MD 21218. Such adjustment shall be made, at a minimum, every fifth Contract Year during the term of this Agreement. A copy of these computations and/or appraisals will be submitted to Idaho Power for Idaho Power's review and approval.

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

14.4 Seller to Provide Copies of Policies of Insurance - Within one hundred twenty (120) days after the Operation Date, and within ninety (90) days of the effective date of any modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have been no changes to the policy in lieu of providing the required certified copy of the policy.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages required by paragraph 14.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps

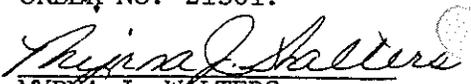
**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 2**

FIRM ENERGY SALES AGREEMENT  
 BETWEEN  
 IDAHO POWER COMPANY  
 AND  
 BONNEVILLE PACIFIC CORPORATION  
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MYRNA J. WALTERS  
COMMISSION SECRETARY

Facility No: 31615104  
Project: Rock Creek II

### FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 13<sup>th</sup> day of July, 1987, is between BONNEVILLE PACIFIC CORPORATION, a corporation (Seller), and IDAHO POWER COMPANY, a Maine corporation (Idaho) hereinafter sometimes referred to collectively as "parties" or individually as "party."

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

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

WHEREAS, Seller wishes to sell, and Idaho has been ordered by the Commission to agree to purchase, electric energy from that facility,

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

#### ARTICLE I: DEFINITIONS

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

1.1 "Annual Net Firm Energy" - The amount of Net Firm Energy Seller estimates it will deliver to Idaho at the Point of Delivery during each Contract Year.

1.2 "Commission" - The Idaho Public Utilities Commission.

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

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

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

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

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

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

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

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

1.11 "Operation Date" - The day commencing at 0001 hours, following the day during which all features and equipment of the Facility have reached a

degree of completion and reliability, such that they are capable of operating simultaneously to deliver Net Energy continuously into Idaho's system.

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

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

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

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

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

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

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

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

## ARTICLE II: NO RELIANCE ON IDAHO

2.1 Seller Independent Investigation - Except for the Disconnection Equipment and any other facilities exclusively within the control of Idaho, Seller warrants and represents to Idaho that in entering into this Agreement and the undertaking by Seller of the obligation set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho in connection with the transactions contemplated by this Agreement.

2.2 Seller Independent Experts - Except for the Disconnection Equipment and any other facilities within the exclusive control of Idaho, all professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement, have been solely those of Seller.

## ARTICLE III: WARRANTIES

3.1 No Warranty by Idaho - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho, and Idaho makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including but not limited to safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

3.2 Qualifying Facility Status - Seller warrants that the Facility is a "qualifying facility," as that term is used and defined in 18 CFR, Part 292. Seller will take such steps as may be required to maintain the Facility's "qualifying facility" status during the term of this Agreement.

3.3 FERC License - Seller warrants that Seller possesses a valid license or exemption from licensing from the Federal Energy Regulatory Commission (FERC) for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license or exemption is a material part of the consideration for Idaho's execution of this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or exemption for the Facility during the term of this Agreement, and Seller's failure to maintain a valid FERC license or exemption will be an event of default and grounds for termination of this Agreement. In making this warranty, Seller acknowledges its understanding that under Paragraph 19.2, Idaho may challenge Seller's FERC license, and if Idaho is successful in its challenge, Seller will be in default and this Agreement may be modified or terminated.

#### ARTICLE IV: CONDITIONS TO INTERCONNECTION

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho, Seller shall:

4.1.1 Submit proof to Idaho that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including but not limited to those licenses, permit or approvals specified in Appendix C;

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

4.1.3 Obtain written acceptance from Idaho as provided in paragraph 8.3;

4.1.4 Submit proof to Idaho of all insurance required in Article XIV;

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

4.1.6 Submit to Idaho a statement from a licensed professional engineer certifying that the design of and equipment in Seller's Facilities comply with the standards of this Agreement and with Prudent Electrical Practices.

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

#### ARTICLE V: TERM AND OPERATION DATE

5.1 Term - Except as provided in Article XXIII, this Agreement shall become effective on the date first above written, and shall continue in full force and effect for a period of thirty-five (35) Contract Years.

5.2 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and reliability has been demonstrated to Idaho's satisfaction, and Idaho has confirmed that satisfaction in writing. Seller shall have the duty to obtain that confirmation and it will not be unreasonably withheld by Idaho. Prior to the Operation Date, Seller must provide as-built drawings of the Facility and the Facility's operating requirements.

ARTICLE VI: SALE OF NET FIRM ENERGY

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

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

Season 1	March	1,214,750 KWH
	April	1,345,340 KWH
	May	1,390,190 KWH
Season 2	June	1,345,340 KWH
	July	1,218,230 KWH
	August	1,356,220 KWH
	September	1,324,510 KWH
Season 3	October	1,405,530 KWH
	November	1,345,340 KWH
	December	1,390,190 KWH
	January	467,300 KWH
	February	270,610 KWH

6.3 Annual Net Firm Energy Amount - The Annual Net Firm Energy shall be 14,073,550 KWH and shall be the sum of the three Seasonal Net Firm Energy amounts Seller specified above.

6.4 Normal Water Conditions - The Net Firm Energy amounts Seller has estimated it can supply are based upon the anticipated long-term average water flows at the Facility. The parties have reviewed these anticipated water flows and the water records supporting those projected water flows and have agreed

that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Firm Energy amount in paragraph 6.3 are reasonable and shall constitute the water flows available to the Facility under "normal" water conditions. No later than 120 days after the Operation Date, Seller will install such water flow measuring equipment as is reasonably required to permit the parties to monitor the water flows at the Facility site. Seller will operate and maintain this water flow measuring equipment and will perform such other water flow analyses as may be required to carry out the provisions of 21.3.1.

6.5 Net Firm Energy Changes -

6.5.1 Increased Generation Capability - At any time during the term of this Agreement, as a result of some action by Seller, i e, procurement of additional long-term water supplies or improvements to the efficiency of the installed generating equipment, if Seller intends to offer to sell Idaho an amount of annual Net Firm Energy from the Facility which exceeds the amount specified in paragraph 6.3 above, Seller will promptly notify Idaho of that intent. If Idaho concurs that Seller is capable of actually providing such increased Net Firm Energy, Idaho will have the option to purchase this increased amount of Net Firm Energy in accordance with either of the following alternatives: (1) the purchase will be under the same terms and conditions of this Agreement except that the rate for the incremental increase of Net Firm Energy shall not be the rate in paragraph 7.1 of this Agreement, but instead will be priced at the appropriate firm energy rate in effect at the time of such increase; or (2) the purchase will be made under a separately negotiated agreement. The choice of purchase alternative will be Idaho's.

6.5.2 Subsequent Determination that Facility Capacity Exceeds Ten Megawatts - The Commission has determined that cogeneration and small power production facilities with a capacity larger than 10 MW are not entitled to the rates contained in this Agreement. The rates, terms and conditions of this Agreement are premised on Seller's representation that the capacity of the Facility is not larger than 10 MW. If, at any time, Idaho determines that the Facility's capacity actually exceeds 10 MW, Idaho will notify Seller and provide Seller with the information which supports Idaho's determination. If Seller disputes Idaho's determination, the dispute will be submitted to the Commission for resolution. If the Commission determines that the Facility's capacity actually exceeds 10 MW, this Agreement will be terminated or modified in accordance with the Commission's determination.

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

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

7.1.1 Base Payment -

Season 1	30.1 Mills/KWH
Season 2	48.1 Mills/KWH
Season 3	40.0 Mills/KWH

7.1.2 Adjustable Payment - In addition to the Base Payment specified in paragraph 7.1.1, Idaho shall pay to Seller an Adjustable Payment of 3.26 mills per kilowatt hour for Net Firm Energy delivered and accepted in Season 1 and 5.21 mills per KWH for Net Firm Energy delivered and accepted in Season 2

and 4.34 mills per KWH for Net Firm Energy delivered and accepted in Season 3. The Adjustable Payment shall be subject to change pursuant to Commission Order at such time as Idaho's retail rates are revised by Commission Order.

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

7.3 Continuing Jurisdiction of the Commission - This agreement is a special contract and as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with *Idaho Power Company v. Idaho Public Utilities Comm'n and Afton Energy, Inc*, 107 Idaho 781, 693 P2d 427 (1984), *Idaho Power Company v. Idaho Public Utilities Comm'n*, \_\_\_ Idaho \_\_\_, 695 P2d 1261 (Idaho 1985), *Idaho Power Company v. Idaho Public Utilities Comm'n and Afton Energy, Inc*, \_\_\_ Idaho \_\_\_, \_\_\_ P2d \_\_\_ (Slip Op No 155, 1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

#### ARTICLE VIII: FACILITY AND INTERCONNECTION

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

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

8.3 Idaho Review - To assure the Facility and Seller-furnished Interconnection Facilities are of suitable size and are compatible with Idaho's system, Seller shall submit the designs, plans, specifications and performance data for the Facility and Seller-furnished Interconnection Facilities to Idaho for review. Idaho shall, in writing and in conformance with paragraph 4.1.3, notify Seller of its acceptance and confirmation of system compatibility or conversely, notify Seller, in writing, of any changes which, consistent with Prudent Electrical Practices, Idaho determines are necessary to assure the safe delivery of electric energy from the Facility to Idaho's system.

#### ARTICLE IX: DISCONNECTION EQUIPMENT

9.1 Disconnect Equipment - Idaho will, at Seller's expense, provide, install, own, operate, and maintain all Disconnection Equipment. At Seller's request, Idaho will provide Seller with the general specifications and an itemization by category of the costs of such Disconnection Equipment. Idaho will establish the settings of Disconnection Equipment to disconnect automatically from the Facility for the protection of Idaho's system and personnel consistent with Prudent Electrical Practices. Upon Seller's request, Idaho will notify Seller as to the original setting and any adjustments thereof. Except as otherwise required by Prudent Electrical Practices, Disconnection Equipment will be designed so that the closure of any breaker or other disconnecting device which connects the Facility to Idaho's system shall be controlled by equipment which will perform the following:

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

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

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

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

9.3 Remote Disconnection - Other Disconnection Equipment, including equipment which will provide Idaho's operating personnel with the ability to remotely control and monitor the status of the breaker or other disconnecting device by radio or hard-wire circuit between the Facility and the Designated Dispatch Facility may be specified by Idaho when, in Idaho's reasonable judgment, such equipment is required by Prudent Electrical Practices. Seller recognizes that such remote control equipment may not initially be required by Idaho, but at such time as operating conditions on Idaho's system dictate, Idaho will install this remote control equipment at Seller's expense. If Seller disputes Idaho's determination that the installation of such remote Disconnection Equipment is required, such dispute shall be submitted to the Commission for resolution.

9.4 Interference with Disconnection Equipment - If Seller attempts to modify, adjust or otherwise interfere with the Disconnection Equipment or

its enclosure, such action shall constitute an event of default pursuant to Article XXI.

#### ARTICLE X: METERING

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

10.2 Meter Inspection - Idaho shall inspect and test all meters upon their installation and at least once every four years thereafter. If requested by Seller, Idaho shall make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both parties shall be notified of the time when any inspection or test shall take place, and each party may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired, or replaced, at Idaho's expense, in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test

varies by more than two percent from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the payments will be based on the shorter of (1) a period equal to one-half the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (2) six (6) months.

10.3 Telemetry - Metering, communications and telemetry equipment which will be capable of providing Idaho with continuous instantaneous telemetry of net generation to Idaho's Designated Dispatch Facility may be specified by Idaho when, in Idaho's reasonable judgment, such equipment is required by Prudent Electrical Practices. Seller recognizes that such telemetry equipment may not initially be required by Idaho, but at such time as operating conditions on Idaho's system dictate, Idaho will install, operate and maintain this telemetry equipment at Seller's expense. If Seller disputes Idaho's determination that the installation of such telemetry equipment is required, such dispute shall be submitted to the Commission for resolution.

#### ARTICLE XI: RECORDS

11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the parties, adequate metering and related power production records, in a form and content recommended by Idaho.

11.2 Inspection - Either party, after reasonable notice to the other party, shall have the right, during normal business hours, to inspect and audit

any or all such metering and related power production records pertaining to Seller's account.

#### ARTICLE XII: PROTECTION

12.1 Seller shall construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Appendix A, Prudent Electrical Practices, the National Electric Safety Code and any other applicable local, state, and federal codes. If, in the reasonable opinion of Idaho, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho's equipment, personnel, or service to its customers, Idaho may physically interrupt the flow of energy from the Facility or take such other reasonable steps as Idaho deems appropriate. Except in the case of an emergency, Idaho will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 13.8. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities.

#### ARTICLE XIII: OPERATIONS

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

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

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

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

13.3.2 If Idaho determines that curtailment, interruption or reduction of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, operating conditions on its system, or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of force majeure, Idaho requires such a curtailment, interruption or reduction of Net Firm Energy deliveries for a period that exceed twenty days beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Firm Energy at a rate determined by dividing the Annual Firm Net Energy amount by 8760 hours. Idaho will notify Seller when the interruption, curtailment or reduction is terminated.

13.4 Voltage Levels - Seller shall use its best efforts to minimize voltage swings and to maintain voltage levels acceptable to Idaho. Idaho may, upon one hundred eighty (180) days' notice to Seller, change its nominal operating voltage level by more than ten percent (10%) at the Point of

Delivery, in which case Seller shall modify, at Idaho's expense, Seller's equipment as necessary to accommodate the modified nominal operating voltage level.

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

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

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

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

ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each party shall agree to hold harmless and to indemnify the other party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying party's construction, ownership, operation or maintenance of, or by failure of, any of such party's works or facilities used in connection with this Agreement. The indemnifying party shall, on the other party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying party shall pay all costs that may be incurred by the other party in enforcing this indemnity.

14.2 Insurance - During the term of this agreement, Seller shall secure and continuously carry Comprehensive General Liability Insurance for both bodily injury and property damage equivalent to the amount of \$1,000,000 combined single limit. Such insurance shall:

- (a) include an endorsement naming Idaho as an additional insured insofar as liability arising out of or relevant to this agreement is concerned; and
- (b) include a provision stating that such liability policies shall not be canceled or their limits of liability reduced without thirty (30) days' written notice to Idaho.

14.2.1 Seller to Provide Certificates of Insurance - As required in paragraph 4.1.4 herein and annually thereafter, Seller shall furnish Idaho certificates of Insurance, together with the endorsements required therein, evidencing the coverages as set forth above.

14.2.2 Seller to Provide Copies of Policies of Insurance - It is a requirement of this contract that a certified copy of the original

policies and all endorsements be furnished Idaho as soon as reasonably possible.

#### ARTICLE XV: LAND RIGHTS

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

15.2 Use of Public Rights-of-Way - The parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho's compliance with paragraph 15.4, Seller agrees that should Seller seek and receive from any local, state or federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 15.4, Idaho shall not be

required to compensate Seller for exercising its rights under this paragraph 15.2.

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

15.4 Conditions of Use - It is the intention of the parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho's exercising its rights under this Article XV. Therefore, the parties agree that the exercise by Idaho of any of the rights enumerated in paragraphs 15.2 and 15.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) Equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the parties, and (3) shall provide Seller with an interconnection to Idaho's system of equal capacity and durability as existed prior to Idaho exercising its rights under this Article XV.

#### ARTICLE XVI: FORCE MAJEURE

As used in this Agreement, "force majeure" or "an event of force majeure" means any cause beyond the control of the Seller or of Idaho which, despite the exercise of due diligence, such party is unable to foresee, prevent or overcome, including but not limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, court orders, laws or regulations, insurrection or riot, an act of the elements or lack of precipitation resulting in reduced water flows for power production purposes. If either party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of force majeure, both parties shall be excused from whatever performance is affected by the event of force majeure, provided that:

(1) The non-performing party shall, as soon as is reasonably possible after the occurrence of the event of force majeure, give the other party written notice describing the particulars of the occurrence.

(2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of force majeure.

(3) No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

#### ARTICLE XVII: LIABILITY; DEDICATION

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one party to the other under any

provision of this Agreement shall constitute the dedication of that party's system or any portion thereof to the other party or to the public, nor affect the status of Idaho as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XVIII: SEVERAL OBLIGATIONS

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

#### ARTICLE XIX: WAIVER

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

19.2 Idaho is presently challenging, before the Federal Energy Regulatory Commission ("FERC"), FERC's failure to properly examine the need for the power to be produced by small power production facilities when FERC issues licenses under the Federal Power Act. If Seller has received a license from FERC for this Facility, execution of this Agreement by Idaho shall not be construed by Seller as a waiver by Idaho of Idaho's right to challenge FERC's issuance of Seller's license before the FERC, or in the courts, and Idaho

expressly reserves any and all legal or administrative rights it may have with respect to such challenge.

#### ARTICLE XX: CHOICE OF LAWS

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

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

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

21.2 Notice - In the event either party defaults in the performance of any of the terms or conditions of this Agreement, the nondefaulting party shall cause notice in writing to be given to the defaulting party, specifying the manner in which such default occurred. If the defaulting party shall fail to cure such default within the 30 days after service of such notice, then, and only then, may the nondefaulting party pursue any remedy which it may have in law or equity, including an action to terminate this Agreement, to enforce the terms of this Agreement, or to recover damages for breach thereof. This article shall not be construed as restricting in any way Idaho's rights under Article XII, or paragraph A-4.1 of Appendix A to immediately interrupt flows of energy from the facility to Idaho's system.

21.3 Liquidated Damages. The parties agree that the amount of the payment which Idaho is to make to Seller is based on the agreed value to Idaho of Seller's performance of its obligation to provide Net Firm Energy as set out

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

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

21.3.2 Security for Repayment Obligation - During the full term of this Agreement, Seller will provide Idaho with adequate assurance that Seller

will be able to repay the amounts owing Idaho under Article XXI if Seller were to default under paragraph 21.3.1. This assurance will be provided as follows:

(1) Prior to interconnection and pending issuance of a final unappealable Order in Commission Case No U-1006-292, Seller will provide and continuously maintain in full force and effect, valued loss of income insurance covering, at a minimum, the perils of fire, extended coverage, vandalism and malicious mischief, earthquake and flood and loss arising out of accidents to boilers and/or pressure vessels and mechanical and electrical breakdown coverage for turbines and generators. Such policies shall:

(a) be in amounts equal to the repayment amounts shown in Appendix D that would be owed to Idaho pursuant to paragraph 21.3.1 if Seller were to totally curtail deliveries to Idaho.

(b) include a provision stating that the policy or policies shall not be cancelled or the limits reduced without thirty (30) days' written notice to Idaho.

(c) include an endorsement naming Idaho as an additional insured and loss payee.

As required in paragraph 4.1.4 herein and annually thereafter, Seller shall furnish Idaho certificates of Insurance, together with endorsements required therein, evidencing the coverages as set forth above. It is also a requirement of this contract that a certified copy of the original policies and all endorsements be furnished Idaho as soon as reasonably possible.

(2) Upon issuance of a final unappealable Order in Commission Case No U-1006-292, Seller shall provide adequate overpayment liability assurance to Idaho in such amounts and by such means as are specified by

the Commission in said Order. The amounts and the form of the overpayment liability assurance for this Facility shall be specifically approved by the Commission.

Nothing herein shall be construed as a waiver by either party of its right to appeal the Commission's final decision in the above-referenced case.

Seller recognizes that in Case No U-1006-292, the Commission could determine that CSPP rates should be de-levelized or could otherwise establish security provisions which would cause Seller not to continue with the project. If that were to occur, Seller recognizes and agrees that Idaho would have incurred substantial engineering and other expenses which must be recovered from the Seller. In recognition of that fact, Seller agrees that upon approval of this Agreement by the Commission, Seller will deposit with Idaho a cash deposit in an amount equal to \$2 per kilowatt of project nameplate capacity. If the project is completed and interconnected, the deposit will be applied to the cost of interconnection. If the project is not completed and interconnected, the deposit will be retained by Idaho. While the deposit is held by Idaho, it will accrue interest at the rate computed in accordance with paragraph 21.3.1 above.

(3) If the Commission does not issue an Order which clearly establishes the form and minimum amount of security which Seller is required to provide and which Idaho is required to accept for small hydroelectric projects, then the parties agree that they will promptly meet and attempt to negotiate contract provisions that will provide adequate assurance that Seller will be able to repay the amounts owing

Idaho under Article XXI if Seller were to default under paragraph 21.3.1. If the parties are unable to agree on these contract provisions, they will promptly submit the dispute to the Commission for resolution pursuant to paragraph 21.1. During the pendency of the dispute resolution process before the Commission, the Agreement will remain in full force and effect.

It is expressly understood and agreed that the security provisions set forth above have been entered into for the sole purpose of consummating this specific Agreement, and do not constitute a precedent for any future Agreement between the parties, and do not reflect the types or amount of security which the parties would agree to include in any future CSPP Energy Sales Agreement.

#### ARTICLE XXII: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXIII: COMMISSION ORDER

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

#### ARTICLE XXIV: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, except that no assignment hereof by Seller shall become

effective without the written consent of Idaho being first obtained. Such consent shall not be unreasonably withheld. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

#### ARTICLE XXV: MODIFICATION

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

#### ARTICLE XXVI: TAXES

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

26.2 Each party shall pay before delinquency all ad valorem taxes and other governmental charges which if failed to be paid when due could result in a lien upon the Facility or the Interconnection Facilities.

26.3 The Tax Reform Act of 1986 (Act) specified that Contributions in Aid of Construction (CIAC) received from customers are taxable income to the utility. The Act did not, however, specify the definition of a customer. Accordingly, it is uncertain whether the amounts to be paid by Seller under Appendix B would be considered CIAC and therefore taxable to Idaho. Idaho will treat the Appendix B amounts received from Seller as a nontaxable contribution received from a supplier, not a customer, and will pursue this position with the Internal Revenue Service (IRS). However, should any amount received from

Seller ultimately be deemed by the IRS to be taxable income to Idaho, Seller shall pay Idaho the amount which will fully satisfy Idaho's income tax liability for those amounts, including any interest, penalties and/or additional taxes resulting from such determination by the IRS.

#### ARTICLE XXVII: NOTICES

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

To Seller: Carl Peterson  
Sr Vice President  
Bonneville Pacific Corporation  
257 East 200 South  
Salt Lake City, Utah 84111

To Idaho: Vice President, Power Plant Construction  
and Power Operations  
Idaho Power Company  
P O Box 70  
1220 Idaho Street  
Boise, Idaho 83707

#### ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

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

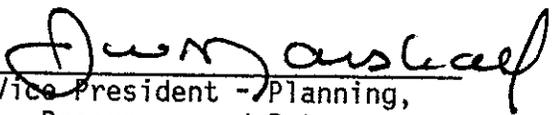
- Appendix A - Standards for Interconnection and Metering
- Appendix B - Special Facilities, Point(s) of Delivery and Metering, and Operation Date
- Appendix C - Schedule of Required Licenses and Permits
- Appendix D - Lump Sum Payment
- Appendix E - Operating Instructions

ARTICLE XXIX - ENTIRE AGREEMENT

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

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

IDAHO POWER COMPANY

By   
Vice President - Planning,  
Resources and Rates

Dated 7-13-87

"Idaho"

BONNEVILLE PACIFIC CORPORATION

By   
Carl Peterson  
Sr Vice President

Dated: 7/8/87

"Seller"

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 13<sup>th</sup> day of July, 1987, before me, the undersigned, a Notary Public, personally appeared J W MARSHALL, personally known, who being duly sworn, did say that he is the Vice President - Planning Resources and Rates of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

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

(NOTARIAL SEAL)

Julie A Ryan  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 8<sup>th</sup> day of July, 1987, before me, the undersigned, a Notary Public, personally appeared CARL PETERSON, personally known, who being duly sworn, did say that he is the Sr Vice President of the corporation who executed the within instrument, and acknowledged to me that he executed the same as the free act and deed.

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

(NOTARIAL SEAL)

Julie A Ryan  
Notary Public for Idaho  
Residing at: Boise, Idaho

APPENDIX A  
STANDARDS FOR INTERCONNECTION AND METERING

A-1 GENERAL PROVISIONS

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

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

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

A-2 GENERAL DESIGN CONSIDERATIONS

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

Due to physical limitations within Idaho's transmission and distribution systems, induction machine sizes will be limited to confine voltage flicker within acceptable limits. Each generation site is unique and Idaho will

determine the appropriateness of any proposed machine type for the site and interconnection.

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

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

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

### A-3 METERING AND TELEMETRY REQUIREMENTS

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

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

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

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

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

#### A-4 FACILITY PROTECTION

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

#### A-5 SYNCHRONOUS GENERATORS

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

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

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

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

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

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

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

If the Facility is not operated to control reactive output in the manner specified and after notification, the Seller does not make necessary

corrections within a reasonable time, a default will be declared pursuant to Article XXI.

A-5.4 Due to the ability of large synchronous generators to influence Idaho's system, protective and control relaying in addition to the usual voltage frequency, and fault relaying may be specified by Idaho.

#### A-6 INDUCTION GENERATORS

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

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

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

The Seller will have the option to furnish the reactive compensation that is required at the Facility. If the Seller furnishes the reactive compensation, the Facility must be operated at a power factor that is within 5 percent of the specified power factor. The Seller must also design the

Facility to avoid possible over-voltage that can occur under certain conditions when capacitors are applied to the generator terminals.

#### A-7 DC TO AC CONVERTERS

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

#### A-8 SWITCHING REQUIREMENTS

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

A-8.1.1 System emergency.

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

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

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

A-9 GENERATION SCHEDULING AND REPORTING

A-9.1 For installations under 750 KVA, the Seller shall read his generator kilowatt hour/demand meter within the 24-hour period following 12:00 noon on the last day of each month. That kilowatt hour meter reading is to be recorded on the monthly switching report that is mailed to Idaho.

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

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

APPENDIX B  
SPECIAL FACILITIES, POINTS OF DELIVERY AND METERING,  
AND OPERATION DATE  
ROCK CREEK II

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as four Westinghouse induction generators having nameplate ratings of 200 KW, 350 KW, 600 KW, and 600 KW, three phase, 4160 volts, 60 hertz. The generators will be driven by Worthington turbines.

B-2 LOCATION OF FACILITY

The Facility is located in the NW Quarter of Section 25, Township 9 South, Range 16 East, Boise Meridian, Twin Falls County, Idaho.

B-3 SCHEDULED OPERATION DATE

Seller has selected May 1, 1988, as the Scheduled Operation Date and March 1, 1988, as the First Energy Date. In making these selections, Seller recognizes that to allow for adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho, based on the information supplied by Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and metering equipment will be completed in time so as not to delay Seller's achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to Idaho, Idaho may

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

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

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

**B-5 POINT OF DELIVERY**

The Point of Delivery of Energy from the Seller to Idaho will be the 46,000 volt bus at the existing Rock Creek Substation located approximately 4500 feet Northwest of the Rock Creek II site. The Seller will be responsible for the 46,000 volt transmission line from the Rock Creek II site to the existing Rock Creek Substation, and will also own and maintain the 2000 KVA three phase, 46,000 volts to 4160 volt transformer bank connected delta high voltage sidegrounded wye low voltage side, located approximately 50 feet from the Rock Creek II generator. This interconnection will allow the Rock Creek II Project to share the existing Rock Creek disconnection facilities.

**B-6 LOSSES**

Losses shall be 1.03% of the metered energy.

**B-7 METERING AND TELEMETRY**

The metering equipment will be on the 4160 volt side of the transformer bank, and will consist of potential and current transformers, an electronic bi-directional demand meter, and an electromechanical backup meter. The meter installation will have load profiling and communication port capability and will be connected to the project voice communications

circuit. The meters will register kilowatt-hours and kilowatts of demand. Metering equipment will be owned and maintained by Idaho, with total cost of purchase, installation, operation and maintenance, including administrative cost to be reimbursed to Idaho by the Seller. Normal operation and maintenance expenses regarding metering equipment are included in the operation and maintenance charge provided for in paragraph B-11 of this Appendix.

#### B-8 SPECIAL FACILITIES

No Special Facilities will be required. This Project will share the Disconnection and Special Facilities installed as part of the original Rock Creek small hydro project. The Seller will be responsible for the construction and operation of the 46,000 volt line from the Rock Creek #2 site to the existing Rock Creek Substation.

#### B-9 REACTIVE POWER

The Seller will be responsible for providing capacitors necessary to bring the generator power factor to 95%.

#### B-10 DISCONNECTION EQUIPMENT

Disconnection Equipment is required to insure that the Seller's Facility will be disconnected from Idaho's system in the event of a disturbance on either Idaho's system or the Seller's Facility. This equipment is for the protection of Idaho's equipment only. Rock Creek II will utilize the Disconnection Equipment installed as part of the interconnection of the original Rock Creek small hydro project. This will be accomplished by connecting Rock Creek II to the existing common 46,000 volt bus in the Rock Creek Substation.

#### B-11 COSTS

The total cost of Metering Equipment is \$8,359. Total amount to be paid to Idaho by the Seller is \$8,359, less the \$1,000 Application Fee and less the deposit described in paragraph 21.3.2(2). This represents the amount that will be charged by Idaho if the Seller makes the payment on or before September 6, 1987. If the Seller does not make this payment by the specified date, the amount will be subject to adjustment by Idaho. Idaho will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho's inventory until payment has been made. In addition, to the installation and construction charges above, during the term of the Agreement, Seller will pay Idaho an operation and maintenance charge of 0.7% per month times the total amount specified above. The monthly operations and maintenance charge may be adjusted during the term of the Agreement to reflect changes in the costs upon which the charge is based. Idaho will maintain on file with the Commission a schedule showing the cost components and calculation of the monthly operation and maintenance charge.

#### B-12 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities described in this Appendix, less the cost of removal and transfer to Idaho's nearest warehouse, if the Interconnection Facilities will be removed. If Seller elects not to retain ownership of the Interconnection Facilities but instead wishes that Idaho purchase such facilities from Seller at the net salvage value, Idaho may then be invoiced by Seller for

the net salvage value estimated by Idaho for the Interconnection Facilities and shall pay such amount to Seller within thirty (30) days after receipt of said invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho.

APPENDIX C  
SCHEDULE OF REQUIRED LICENSES AND PERMITS

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

APPENDIX D

LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT  
 OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT  
 UNDER 35-YEAR CONTRACT  
 DOLLARS PER ANNUAL MEGAWATT HOUR

<u>Contract Year of Curtailment Commencement</u>	<u>Facility Operation Date</u>
1	25
2	60
3	90
4	130
5	170
6	215
7	265
8	320
9	345
10	360
11	375
12	390
13	405
14	420
15	435
16	445
17	460
18	470
19	475
20	485
21	490
22	490
23	490
24	485
25	480
26	465
27	450
28	425
29	395
30	355
31	310
32	250
33	180
34	100
35	0

APPENDIX E

OPERATING INSTRUCTIONS FOR PLANTS OVER 750 KW

1. Prior to initial start-up at least one day in advance the Project shall:
  - A. Provide Idaho Power's system dispatching facility with an estimate of the hourly generation that is expected to be produced during the first scheduled test day. The phone number for System Scheduling to report the estimate is listed below.
  - B. Notify the Division Substation Supervisor of project start up plans. The phone number is listed below.
  - C. The kWh meter should be read and entered on the Monthly Power Production and Switching Report (Form No: Cogen CAD-A-1).
2. Before 10:00 Am on each normal work day, after the initial start-up, the Project will report to the System Scheduling Office the previous day's actual generation based upon midnight to midnight meter readings and the estimate of generation planned for the following day or days. The phone number to report the actual generation and scheduling estimate is listed below. Note that the System Scheduling number is answered only between the hours of 8 AM to 5 PM Mountain Time, on weekdays and that generation estimates must be provided for weekend days and holidays.
3. Each time the generator breaker is closed or opened (including testing and normal operation), Idaho Power's System Dispatchers must be notified by phone as soon as possible. Prompt reporting is very important. The System Dispatch Center is manned 24 hours a day, 7 days a week, and the phone number is listed below.
4. In addition to promptly notifying the System Dispatchers, the record of each breaker opening and closing must be entered on the Monthly Power Production and Switching Report mentioned in 1-C above.
5. At the end of each month, the Monthly Power Production and Switching Report will be mailed to the Vice President, Power Plant Construction and Power Operations, Idaho Power Company, P O Box 70, Boise, Idaho 83707.
6. For questions or problem concerning:  

<u>Power Scheduling:</u>	(208) 383-2863
<u>System Dispatching:</u>	(208) 383-2826

Metering: Meter Engineer - Boise  
(208) 383-2751

or

Division Metering Supervisor

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

Substations: Division Substation Supervisor

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

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

Contracts: John Ferree - Boise  
(208) 383-2427

7. Toll free numbers for Operating Reporting:

<u>In-State:</u>	System Scheduling	1-800-635-1093
	System Dispatching	1-800-635-7348

<u>Out-of-State:</u>	System Scheduling	1-800-356-4328
	System Dispatching	1-800-348-4328

U-1006-297

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FILED

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IDAHO PUBLIC  
UTILITIES COMMISSION

FIRST AMENDMENT TO  
FIRM ENERGY SALES AGREEMENT

Facility No 31615104  
Project: Rock Creek II

APPROVED PER MINUTE ENTRY  
CASE NO. U-1006-297.

*Marjorie Maxwell*  
Marjorie Maxwell  
Assistant Commission Secretary

This First Amendment is to that certain Firm Energy Sales Agreement ("Agreement") dated as of July 13, 1987, between Bonneville Pacific Corporation ("Seller"), and Idaho Power Company ("Idaho Power"), for Seller's Rock Creek II small hydroelectric project ("Facility").

W I T N E S S E T H:

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on July 27, 1987, in Order No 21361; and

WHEREAS, paragraph 21.3.2 of the Agreement states that Seller shall provide security for Seller's levelized rate repayment obligation in an amount and by such means as specified by the Commission in its final Order in Case No U-1006-292; and

WHEREAS, in Commission Order Nos 21690 and 21800 in Case No U-1006-292, the Commission established the security provisions which Idaho Power is obligated to accept as security for Seller's levelized rate repayment obligation.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Article IV, Conditions to Interconnection, is hereby amended to read as follows:

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho Power, Seller shall:

4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal,

state or local authorities, including but not limited to, those licenses, permits or approvals specified in Appendix C.

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

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

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

(3) That downstream of the Facility, there are existing, non-condemnable senior water rights sufficient to ensure the availability of the water rights applied for in the Application for Permit to Appropriate Water referred to in Appendix C;

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

(5) That the attorney has read Commission Order No 21690 and it is his legal opinion that Seller

possesses water rights that do not require the application by Idaho Power of the "K" factor described in said Order.

4.1.2.1 The opinion of counsel required in 4.1.2 above will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form of opinion will not be unreasonably withheld.

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

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

4.1.5 Submit to Idaho Power all insurance certificates required in Article XIV;

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

4.1.7 Demonstrate to Idaho Power's satisfaction that the Seller has established a maintenance escrow account in a form and with an Escrow Manager which complies with Commission Order Nos 21690

and 21800. Said maintenance escrow account shall be structured and funded as follows:

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

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

4.1.7.3 At the time Seller makes the deposit described in paragraph 4.1.7.2, Seller will provide both the Escrow Manager and Idaho Power with a report prepared by Seller's outside accountants showing the prior Contract Years actual

maintenance expenses, identified by appropriate FERC maintenance account number, and the estimate of the Facility's gross income for the ensuing Contract Year used to compute the deposit amount, together with documentation supporting that estimate of gross income.

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

4.1.7.5 At the end of each Contract Year, Seller will provide Idaho Power with evidence of compliance with the maintenance escrow account requirements set out in this Agreement and

Commission Order Nos 21690 and 21800. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The maintenance reserve fund will be subject to the lien rights described in 4.1.8 below.

4.1.8 Provide Idaho Power with acceptable lien rights. It is recognized and agreed that for Idaho Power's lien rights to be acceptable, Idaho Power will have, subject to all encumbrances of Seller's permanent financing lender, such rights as may be necessary to allow Idaho Power to expeditiously take over ownership and operation of the Facility, including any Seller-owned Interconnection Equipment or other appurtenances if Seller fails to cure any default in accordance with paragraph 21.2 of the Agreement. Acceptable lien rights will conform to Commission Order Nos 21690 and 21800 and may include title insurance, mortgage(s), deed(s) of trust, lease, assignment(s), assignment(s) of any contract(s), and lease(s), the FERC license, or exemption from licensing, water rights, other governmental permits, rights-of-way, any funds in escrow accounts, U.C.C. financing statement(s), personal and/or corporate guarantee(s), subordination agreements as required by Idaho Power, and all other security agreement(s) Idaho Power may deem necessary. All lien rights will be in a

form acceptable to Idaho Power. Acceptance of lien rights will not be unreasonably withheld.

4.1.8.1 At least 90 days prior to the First Energy Date, Seller will provide Idaho Power, for Idaho Power's review and approval, copies of all mortgages and/or other security agreements that Seller's financiers intend to use or are using to secure the construction loan financing for the Facility. As soon as practicable thereafter, but not later than 30 days prior to the First Energy Date, Seller shall provide Idaho Power with a commitment for the long-term or permanent financing (which could include leveraged leasing) for the Facility (or for conversion of the existing construction financing to permanent financing), which commitment shall state the maximum amount of the permanent loan financing and the amount and nature of all debt reserves and maintenance reserves required by the permanent loan financier. In the case of a leveraged lease, Seller will provide a similar commitment showing the maximum amount of the lessor's permanent debt to be secured by the Facility, the rental reserves to be required by the lessor and a certificate from the lessor that lessor recognizes that its interest in the Facility that is not otherwise encumbered by the original

permanent debt will be subject to Idaho Power's lien for the full term of the agreement. Idaho Power shall have the right to review and approve these mortgages and/or other security agreement and the commitment to the extent reasonably necessary to insure Idaho Power's ability to perfect its lien rights in the Facility in accordance with paragraph 4.1.8.2. Any material modifications to the permanent loan or lease commitment or to the mortgages and/or other security agreements previously delivered to Idaho Power pursuant to this section which will or may, in Idaho Power's judgment, adversely affect Idaho Power's lien rights shall require the prior written approval of Idaho Power, which approval shall not be unreasonably withheld. Idaho Power has been advised by Seller that Seller intends to convert its existing construction financing to short-term (not to exceed two years) permanent financing or to obtain other permanent financing at any time during said two-year period. Idaho Power agrees to allow Seller to exercise such rights of refinancing and to subordinate Idaho Power's lien rights thereto provided (i) the conversion to permanent financing is completed within two years after the Operation Date, (ii) the extent and nature of the permanent liens and

encumbrances placed upon the Facility are substantially similar to those previously affecting the Facility (taking into account the nature of leverages lease financing if such option is selected by Seller), (iii) the amount of the permanent debt financing does not exceed \$6,000,000 (iv) Seller is not then in material default under this Agreement or under any mortgages and/or other security agreements then encumbering the Facility, and (v) said permanent financing complies with paragraph 4.1.8.2. At such time as the construction and/or permanent financing documents have been delivered to Idaho Power in their final, executed form, the same shall not be amended, modified, extended or assigned, and no refinancing of any nature beyond that allowed hereunder shall be undertaken, without Idaho Power's prior written consent, which consent shall not be unreasonably withheld unless Idaho Power, in its judgment, determines that such amendment, modification, extension, assignment or refinancing will or may adversely affect its lien position with respect to the Facility.

4.1.8.2 Idaho Power's lien rights will be superior and senior to all encumbrances other than those mortgages and/or other security

agreements securing the original construction and/or permanent loan financing for the Facility.

4.1.8.3 Other than the encumbrances permitted herein, Seller will not otherwise encumber the Facility. Seller will not allow any liens or encumbrances of any nature whatsoever to be placed on the Facility; provided, however, that if any liens or encumbrances are placed on the Facility without Seller's consent, Seller will provide Idaho Power with a bond or insurance sufficient to secure the discharge of such liens or encumbrances.

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

2. Paragraph 5.2, Operation Date, is hereby amended to read as follows:

5.2 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and reliability has been demonstrated to Idaho Power's satisfaction, and Idaho Power has confirmed that satisfaction in writing. Seller shall have the duty to obtain that confirmation and it will not be

unreasonably withheld by Idaho Power. Prior to the Operation Date, Seller must provide the following:

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

(2) Executed Design, Construction Adequacy, and O&M Policy engineers certificates as described in Commission Order No 21690. These certificates will be in the form specified in Appendix F, but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

3. Paragraph 6.4, Normal Water Conditions, is hereby amended to read as follows:

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

flow measuring equipment and will perform such other water flow analyses as may be required to carry out the provisions of Article XXI.

4. Paragraph 7.3, Continuing Jurisdiction of the Commission, is hereby amended to read as follows:

7.3 Continuing Jurisdiction of the Commission -

This agreement is a special contract and as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with *Idaho Power Company v. Idaho Public Utilities Comm'n and Afton Energy, Inc*, 107 Idaho 781, 693 P2d 427 (1984), *Idaho Power Company v. Idaho Public Utilities Comm'n*, 107 Idaho 1122, 695 P2d 1261 (Idaho 1985), *Afton Energy, Inc, v. Idaho Power Company*, 111 Idaho 925, 729 P2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

5. Paragraph 13.6, Scheduled Maintenance, is hereby amended to read as follows:

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

unreasonably withhold its acceptance of the proposed date for scheduled maintenance.

6. Paragraph 14.2, Insurance, is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 14.2.5 Low Water Insurance:

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

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

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

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

14.2.6 All of the above insurance coverages shall include:

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

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

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

7. Existing Paragraph 14.2.1, Seller to Provide Certificates of Insurance, is hereby deleted and a new paragraph 14.3 is added:

14.3 Seller to Provide Certificates of Insurance -

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

8. Existing Paragraph 14.2.2, Seller to Provide Copies of Policies of Insurance, is hereby deleted and a new paragraph 14.4 is added:

14.4 Seller to Provide Copies of Policies of Insurance - Within 120 days after the Operation Date, and within 90 days after the effective date of any renewals or modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have been no changes to the policy in lieu of providing the required certified copy of the policy.

9. A new Paragraph 14.5, Seller to Notify Idaho Power of Lapse of Coverage, is added to Article XIV.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages required by paragraph 14.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage.

10. Paragraph 21.2, Notice, is hereby amended to read as follows:

21.2 Notice - In the event either party defaults in the performance of any of the terms or conditions of this Agreement, the nondefaulting party shall cause notice in writing to be given to the defaulting party, specifying the manner in which such default occurred. If the defaulting party shall fail to cure such default within the 60 (sixty) days after service of such notice, then, and only then, may the nondefaulting party pursue an action to terminate this Agreement, to enforce the terms of this Agreement, or to recover damages for breach thereof. This article shall not be construed as restricting in any way Idaho Power's rights under Article XII, or paragraph A-4.1 of Appendix A to immediately interrupt flows of energy from the Facility to Idaho Power's sytem.

11. Paragraph 21.3.2, Security for Repayment Obligations, is hereby amended to read as follows:

21.3.2 Security for Repayment Obligation -

During the full term of this Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power under Article XXI if Seller were to default pursuant to paragraph 21.3.1. In accordance with Commission Order

Nos 21690 and 21800, and subject to the provisions of paragraph 21.2 above, this assurance will be provided as follows:

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

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

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

(c) In lieu security:

In lieu of providing conforming low water insurance Seller will establish a low water insurance reserve account with the same Escrow Manager which administers the maintenance escrow account described in paragraph 4.1.7. Said low water insurance reserve account shall be separate from the maintenance escrow reserve account and will be structured and funded as follows:

(1) The escrow instructions between the Seller and the Escrow Manager will provide that the funds in the low water insurance reserve account will be prudently invested and that all costs of setting up and operating the low water insurance reserve account, shall be paid by the Seller. All interest earned on the funds on deposit will be retained in the low water insurance reserve account. At the end of the term of this Agreement, any balance remaining in the low water reserve account shall be the property of the Seller.

(2) Within 60 days after the commencement of a Contract Year in which Seller is entitled to provide security in-lieu of conforming low water insurance coverage, Seller will deposit cash in the low water insurance reserve account in an amount

equal to 2½% of the Facility's estimated gross income for that Contract Year.

(3) At the time that conforming low water insurance becomes available in accordance with paragraph 21.3.2.1(b), Seller will request that the Escrow Manager release funds from the low water insurance reserve account in an amount sufficient to pay the annual premium on such low water insurance. Upon such request, the Escrow Manager, shall, within five working days, release the required funds to Seller. Seller may continue to make annual draws against the low-water insurance account to pay the premiums on low water insurance until the fund is exhausted.

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

(e) For all other insurance coverages described in paragraph 14.2, the default may be cured by replacement or reinstatement of the insurance, or by Seller posting liquid security in

accordance with paragraph 21.4 in an amount equal to 100% of the accumulated overpayment liability specified for that year in Appendix D.

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

21.3.2.3 During the full term of this Agreement, Seller shall maintain and fund the maintenance reserve account described in paragraph 4.1.7 and Commission Order No 21690. If at any time Seller fails to maintain or fully fund that maintenance reserve account, such a failure will be a default under Article XXI. Such default may be cured by reinstating the required reserve

fund, or by Seller posting liquid security in accordance with paragraph 21.4 in an amount equal to 20% of the accumulated overpayment liability specified for that year in Appendix D.

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

21.3.2.5 During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in

paragraph 4.1.1 of the Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses Seller is required to obtain during the term of this Agreement including, but not limited to, the Permit to Appropriate Water, within a reasonable time after their issuance. At least every fifth Contract Year, Seller will update the documentation described in Paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to maintain its water rights, or to provide the documentation required by this paragraph, such failure will be a default under Article XXI.

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

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

12. A new Paragraph 21.4, Liquid Security, is hereby added to Article XXI:

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

13. Article XXVIII, Additional Terms and Conditions, is amended to include a new Appendix F, Engineers Certificates.

14. A new Paragraph A-9.4, is hereby added to Appendix A, Section A-9, GENERATION SCHEDULING AND REPORTING :

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

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

15. Paragraph B-1, of Appendix B, DESCRIPTION OF FACILITY is hereby amended to read as follows:

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as one Ideal synchronous generator having nameplate rating of 2100 KW, three phase, 4160 volts, 60 hertz. The generator will be driven by a Voith turbine.

16. Paragraph B-5, POINT OF DELIVERY. In line 6, 2000 KVA, three phase, is hereby changed to 3000 KVA, three phase.

17. Paragraph B-9, REACTIVE POWER, is hereby deleted in its entirety and replaced by:

The Seller will operate the synchronous generators within plus or minus 5 percent of unity power factor, or as listed in Appendix A.

18. Paragraph B-10, DISCONNECTION EQUIPMENT. The following sentence is hereby added to the end of the existing paragraph:

The Seller will provide and install a communication circuit between the Rock Creek II powerhouse and the Idaho disconnection equipment in the Rock-Creek Substation. Idaho will modify the Rock Creek disconnection equipment to accept the Rock Creek II communication signal.

19. Paragraph B-11, COSTS. The first two sentences are hereby deleted in their entirety and replaced by:

The total cost of metering equipment is \$9,623, and the total cost of disconnection equipment modifications is \$2,376. The total amount to be paid to Idaho by the Seller

is \$11,999 less the 1,000 application fee and the \$3,500 deposit described in Paragraph 21.3.2(2).

20. Paragraph 5 of Appendix E, OPERATING INSTRUCTIONS FOR PLANTS OVER 750 KW, is hereby deleted in its entirety.

21. A new Appendix F, in the form attached, is included by reference in the Agreement.

22. Except as amended herein, the Agreement shall remain in full force and effect.

23. This Amendment shall not become effective until the Commission approves all terms and conditions hereof without change or condition, and declares that this Amendment is prudent for ratemaking purposes.

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

IDAHO POWER COMPANY

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

Dated: 9.20.88

BONNEVILLE PACIFIC CORPORATION  
"Seller"

By J. Ank J.  
Its VICE PRESIDENT

Dated: 9/9/88

APPENDIX F  
CERTIFICATION OF DESIGN ENGINEER

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

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

2. That Design Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

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

9. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices during the full term of the Agreement.

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

11. That Design Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(2) of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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

APPENDIX F

ENGINEER'S CERTIFICATION OF DESIGN &  
CONSTRUCTION ADEQUACY

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

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

2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

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

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

10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices during the full term of the Agreement.

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

12. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(2) of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

\_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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

APPENDIX F

ENGINEER'S CERTIFICATION OF  
OPERATIONS & MAINTENANCE POLICY

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

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

2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

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

9. That Engineer has supplied the Seller with at least one copy of said O&M Policy bearing his Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

10. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2(2) of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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

APPENDIX F

ENGINEER'S CERTIFICATION OF ONGOING  
OPERATIONS AND MAINTENANCE

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

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

2. That Engineer has reviewed the Firm Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

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

9. That Engineer has supplied the Seller and Idaho Power with at least one copy of said Certification bearing his Stamp and signature.

10. That Engineer recognizes that Idaho Power, in accordance with paragraph 21.2.2.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

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

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

Date \_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

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

MINUTE ENTRY

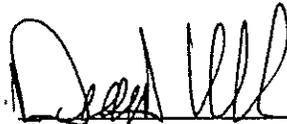
Case No. U-1006-297

On September 20, 1988, Idaho Power Company and Bonneville Pacific Corporation through their respective attorneys of record, filed an Application for an Order approving the First Amendment to the Firm Energy Sales Agreement dated July 13, 1987, between Idaho Power and Bonneville for the proposed Rock Creek II hydroelectric facility.

The amendment was considered at a decision meeting on Friday, September 23, 1988.

The Commission now finds that the First Amendment to the Firm Energy Sales Agreement (Agreement) dated July 13, 1987, approved by Commission Order No. 21361, Case No. U-1006-297 satisfies the security obligation of the parties as established in Commission Order Nos. 21690 and 21800 in Case No. U-1006-292. The terms of the amendment are reasonable and we approve them. We also approve reasonable costs incurred under this amendment by Idaho Power as prudently incurred expenses for ratemaking purposes.

DATED at Boise, Idaho, this 23<sup>rd</sup> day of September, 1988.



DEAN J. MILLER, PRESIDENT

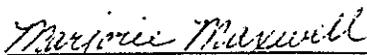


PERRY SWISHER, COMMISSIONER



RALPH NELSON, COMMISSIONER

ATTEST:



MARJORIE MAXWELL, ASSISTANT SECRETARY

SW:vs/M-335

Facility No. 31615104  
Project: Rock Creek II

**SECOND AMENDMENT TO  
FIRM ENERGY SALES AGREEMENT**

This Second Amendment made on Nov 24, 1999, is to that certain Firm Energy Sales Agreement (as heretofore amended, the "Agreement") dated as of July 13, 1987, between Bonneville Pacific Corporation and Idaho Power Company ("Idaho Power") for the Rock Creek II small hydroelectric generating project ("Facility").

WITNESSETH:

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on July 27, 1987, in Order No. 21361; and

WHEREAS, the Agreement was amended by Bonneville Pacific Corporation and Idaho Power on September 20, 1988, which amendment was approved by the Commission on September 23, 1988, by minute entry in Case No. U-1006-297; and

WHEREAS, Bonneville Pacific Corporation assigned its interest in the Agreement to BP Hydro Associates ("Seller"), on April 20, 1989, and

NOW THEREFORE, Idaho Power and Seller agree to further amend the Agreement as follows:

1. The existing Paragraph 4.1.7 of the Agreement is deleted in its entirety and the following inserted in its place:

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

4.1.7.1 All costs of implementing and operating the maintenance reserve account shall be paid by the Seller. All interest earned on the funds on deposit will be retained in the maintenance reserve account. At the end of the term of this Agreement, any balance remaining in the maintenance reserve account shall be the property of the Seller.

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

required hereunder to be maintained in such reserve may be replaced by an irrevocable standby letter of credit in the same amount.

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

4.1.7.4 If at any time it appears that the maintenance expense for that Contract Year will exceed 2% of the Facility's estimated gross income for that Contract Year, the Seller may request that Idaho Power consent to the release of funds from the maintenance reserve account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC maintenance account number, and such documentation shall be submitted to Idaho Power. Upon approval by Idaho Power, the required funds will be released to Seller in accordance with Paragraph 4.1.7.5.

4.1.7.5 Control of the maintenance reserve account will be maintained by Idaho Power through the requirement of dual signatures on the account. The only authorized signers will be the Chief Operating Officer and the Chief Financial Officer of Idaho Power (or their respective designees) and the Treasurer of Seller (or his/her respective designee). Accordingly, funds will only be released from the maintenance reserve account upon the signatures of the both of Idaho Power's authorized signers or one Idaho Power authorized signer and Seller's authorized signer.

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

2. Paragraph 21.3.2, Security for Repayment Obligations, is hereby

amended to read as follows:

21.3.2 Security for Repayment Obligation - During the full term of this Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power under Article XXI if Seller were to default pursuant to paragraph 21.3.1. This assurance will be provided as follows:

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

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

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

(c) In lieu Security:

In lieu of providing conforming low water insurance, Seller will establish a low water insurance reserve account with the same bank which administers the maintenance reserve account described in paragraph 4.1.7. Funds in said insurance reserve account may be commingled with the funds in the maintenance reserve account, but Seller will maintain separate accounting for determining the amounts attributable to each account. Seller's annual accounting reports under Paragraph 4.1.7.3 will show the current reconciled amounts in both the maintenance reserve account and the low water insurance reserve account. The low water insurance reserve account will be structured and funded as follows:

(1) All costs of setting up and operating the low water insurance reserve account, shall be paid by the Seller. Interest earned on the funds on deposit will be credited to the low water insurance reserve account. At the end of the term of this Agreement, any balance remaining in the low water insurance

reserve account shall be the property of the Seller.

(2) Within 60 days after the commencement of a Contract Year in which Seller is entitled to provide security in-lieu of conforming low water insurance coverage, Seller will deposit cash in the low water insurance reserve account in an amount equal to 2.5% of the Facility's estimated gross income for that Contract Year, until the balance reaches the amount stated in the next sentence. The balance in the fund attributable to the low water insurance reserve account will not exceed \$105,000. If the balance in the fund exceeds this maximum amount, the Seller may withdraw the excess annually. At Seller's option, the cash required hereunder to be maintained in such reserve may be replaced by an irrevocable standby letter of credit in the same amount.

(3) At the time that conforming low water insurance becomes available in accordance with paragraph 21.3.2.1(b), Seller will request that Idaho Power release funds from the low water insurance reserve account in an amount sufficient to pay the annual premium on such low water insurance. Upon such request, Idaho Power, shall release the required funds to Seller in accordance with Paragraph 4.1.7.5. Seller may continue to make annual draws against the low-water insurance account to pay the premiums on low water insurance until the fund is exhausted.

(4) With Idaho Power's consent, this low water reserve account may be coordinated with any debt service reserve account required by Seller's first mortgage lender to avoid duplication of accounts. During any period of such coordination, Idaho Power and the first mortgage lender will be joint beneficiaries of any letter of credit substituted pursuant to Section 21.3.2.1(c)(2).

(d) Failure to provide conforming low water insurance or to maintain the *in lieu* security described above, will be a default which can be cured by reinstatement of the insurance or *in lieu* security or by posting with Idaho Power, or a third party acceptable to Idaho Power, liquid security in a form acceptable to Idaho Power and in an amount equal to 100% of the accumulated overpayment amount specified for that year in Appendix D.

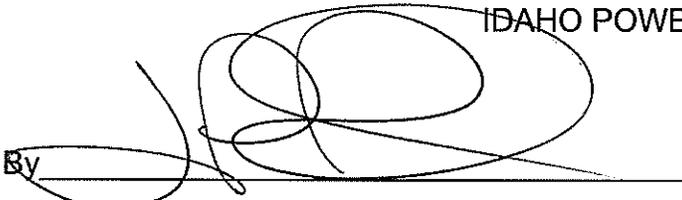
(e) For all other insurance coverages described in paragraph

14.2, the default may be cured by replacement or reinstatement of the insurance, or by Seller posting with Idaho Power, or a third party acceptable to Idaho Power, liquid security in a form acceptable to Idaho Power and in an amount equal to 100% of the accumulated overpayment liability specified for that year in Appendix D.

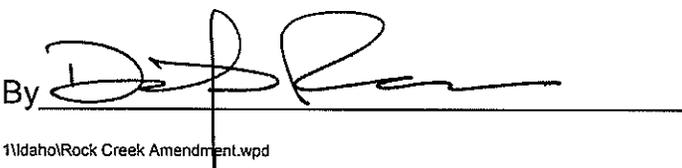
3. Except as amended herein, the Agreement shall remain in force and effect.

4. This second amendment shall not become effective until the Commission approves all terms and conditions hereof without change or condition and declares that this second amendment is prudent for rate making purposes.

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

By  IDAHO POWER COMPANY

BP HYDRO ASSOCIATES  
By CHI-Idaho, Inc., its General Partner

By 

O:\MBP\16511\Idaho\Rock Creek Amendment.wpd



**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 3**

Revision Date: 5/7/86  
 Draft Date: 6/5/86

FIRM ENERGY SALES AGREEMENT  
 BETWEEN  
 IDAHO POWER COMPANY  
 AND  
 BONNEVILLE PACIFIC CORPORATION  
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Myrna J. Walters, Commission  
Secretary FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 12<sup>th</sup> day of September, 1986, is between BONNEVILLE PACIFIC CORPORATION a corporation (Seller), and IDAHO POWER COMPANY, a Maine corporation (Idaho) hereinafter sometimes referred to collectively as "parties" or individually as "party."

W I T N E S S E T H:

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

WHEREAS, Seller wishes to sell, and Idaho is legally obligated to purchase, electric energy from that facility,

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

ARTICLE I: DEFINITIONS .

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

- 1.1 "Annual Net Energy" - The amount of Net Energy Seller estimates it will deliver to Idaho at the Point of Delivery during each Contract Year.
- 1.2 "Commission" - The Idaho Public Utilities Commission.
- 1.3 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.4 "Designated Dispatch Facility" - Idaho's Boise Bench System Dispatch Center.
- 1.5 "Disconnection Equipment" - Any device or combination of devices located on the interconnection between the Facility and Idaho's system by which

Idaho can manually and/or automatically interrupt the flow of power from the Facility to Idaho's system. Disconnection Equipment includes such enclosures or other facilities as may be required to ensure that only Idaho will have access to the devices.

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

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

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

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

1.10 "Net Energy" - The electric energy produced by the Facility, less Station Use and less Losses, expressed in kilowatt hours ("kwh"), delivered to Idaho at the Point of Delivery.

1.11 "Operation Date" - The day commencing at 0001 hours, following the day during which all features and equipment of the Facility have reached a degree of completion and reliability, such that they are capable of operating simultaneously to deliver Net Energy continuously into Idaho's system.

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

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

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

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

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

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

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

1.18 "Surplus Energy" - Net Energy which is delivered and accepted prior to the Operation Date.

## ARTICLE II: NO RELIANCE ON IDAHO

2.1 Seller Independent Investigation - Except for the Disconnection Equipment and any other facilities exclusively within the control of Idaho, Seller warrants and represents to Idaho that in entering into this Agreement and the undertaking by Seller of the obligation set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has

not relied upon the advice, experience or expertise of Idaho in connection with the transactions contemplated by this Agreement.

2.2 Seller Independent Experts - Except for the Disconnection Equipment and any other facilities within the exclusive control of Idaho, all professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement, have been solely those of Seller.

#### ARTICLE III: WARRANTIES

3.1 No Warranty by Idaho - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho, and Idaho makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including but not limited to safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

3.2 Qualifying Facility Status - Seller warrants that the Facility is a "qualifying facility," as that term is used and defined in 18 CFR, Part 292. Seller will take such steps as may be required to maintain the Facility's "qualifying facility" status during the term of this Agreement.

#### ARTICLE IV: CONDITIONS TO INTERCONNECTION

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho, Seller shall:

4.1.1 Submit proof to Idaho that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable

federal, state or local authorities, including but not limited to those licenses, permit or approvals specified in Appendix C;

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

4.1.3 Obtain written acceptance from Idaho as provided in paragraph 8.3;

4.1.4 Submit proof to Idaho of all insurance required in Article XIV;

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

4.1.6 Submit to Idaho a statement from a licensed professional engineer certifying that the design of and equipment in Seller's Facilities comply with the standards of this Agreement and with Prudent Electrical Practices.

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

#### ARTICLE V: TERM AND OPERATION DATE

5.1 Term - Except as provided in Article XXIII, this Agreement shall become effective on the date first above written, and shall continue in full force and effect for a period of thirty-five (35) Contract Years.

5.2 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and

reliability has been demonstrated to Idaho's satisfaction, including, but not limited to, the Project's as-built drawings and operating requirements, and Idaho has confirmed that satisfaction in writing. Seller shall have the duty to obtain that confirmation and it will not be unreasonably withheld by Idaho.

ARTICLE VI: SALE OF NET ENERGY

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

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

Season 1	March	1,398,890 KWH
	April	1,785,890 KWH
	May	2,003,140 KWH
Season 2	June	1,938,510 KWH
	July	2,003,190 KWH
	August	2,003,190 KWH
	September	1,785,890 KWH
Season 3	October	1,337,510 KWH
	November	1,041,940 KWH
	December	- KWH
	January	- KWH
	February	457,460 KWH

6.3 Annual Net Energy Amount - The Annual Net Energy shall be 15,755,610 KWH and shall be the sum of the three Seasonal Net Energy amounts Seller specified above.

6.4 Normal Water Conditions - For hydroelectric generating facilities, the Net Energy amounts Seller has estimated it can supply are based upon

the anticipated water flows at the Facility. The parties have reviewed these anticipated water flows and the water records supporting those projected water flows and have agreed that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Energy amount are reasonable and shall constitute the water flows available to the Facility under "normal" water conditions. No later than 120 days after the Operation Date, Seller will install such water flow measuring equipment as is reasonably required to permit the parties to monitor the water flows at the Facility site. Seller will operate and maintain this water flow measuring equipment and will perform such other water flow analyses as may be required to carry out the provisions of 21.2.1.

6.5 Net Energy Changes - If, during the first three Contract Years, as a result of some action by Seller (for example, procurement of additional long-term water or other fuel supplies, or installation of larger or more efficient generating equipment), Seller is able to permanently increase the amount of annual Net Energy delivered to Idaho by more than 25% above the amount specified in paragraph 6.3 above, Idaho shall purchase this increased amount of Net Energy under the terms and conditions of this Contract except that the price paid to Seller for the increased increment of Net Energy shall not be determined in accordance with paragraph 7.1 of this Agreement, but instead will be priced at the firm energy rate in effect at the time of such increase for a Contract term equal in length to the period commencing in the year of the Net Energy increase and ending in the year in which this Agreement expires. After the first three Contract Years, the 25% amount referred to above shall be reduced to 10% or, at the option of Seller, shall be sold

separately to Idaho as Annual Net Energy under a separately negotiated agreement.

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

7.1 Net Energy Purchase Price - The price to be paid to Seller for Net Energy which is not Surplus Energy will be the sum of the following payments:

7.1.1 Base Payment -

Season 1	30.1 Mills/KWH
Season 2	48.1 Mills/KWH
Season 3	40.0 Mills/KWH

\* Changed  
12/86

7.1.2 Adjustable Payment - In addition to the Base Payment specified in paragraph 7.1.1, Idaho shall pay to Seller an Adjustable Payment of <sup>3.26\*</sup> 5.2 mills per kilowatt hour for Net Energy delivered and accepted in Season 1 and <sup>5.21\*</sup> 8.4 mills per KWH for Net Energy delivered and accepted in Season 2 and <sup>4.34\*</sup> 7.0 mills per KWH for Net Energy delivered and accepted in Season 3. The Adjustable Payment shall be subject to change pursuant to Commission Order at such time as Idaho's retail rates are revised by Commission Order.

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

7.3 Continuing Jurisdiction of the Commission - This agreement is a special contract and as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with *Idaho Power Company v. Idaho Public Utilities Comm'n and Afton Energy, Inc*, 106 Idaho \_\_\_\_, 693 P2d 427

(1984), *Idaho Power Company v. Idaho Public Utilities Comm'n*, \_\_\_ Idaho \_\_\_, 695 P2d 1261 (Idaho 1985), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

#### ARTICLE VIII: FACILITY AND INTERCONNECTION

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

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

8.3 Idaho Review - To assure the Facility and Seller-furnished Interconnection Facilities are of suitable size and are compatible with Idaho's system, Seller shall submit the designs, plans, specifications and performance data for the Facility and Seller-furnished Interconnection Facilities to Idaho for review. Idaho shall, in writing and in conformance with paragraph 4.1.3, notify Seller of its acceptance and confirmation of system compatibility or conversely, notify Seller, in writing, of any changes which, consistent with Prudent Electrical Practices, Idaho determines are necessary to assure the safe delivery of electric energy from the Facility to Idaho's system.

#### ARTICLE IX: DISCONNECTION EQUIPMENT

9.1 Disconnect Equipment - Idaho will, at Seller's expense, provide, install, own, operate, and maintain all Disconnection Equipment. At Seller's

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

- (1) Automatically monitor the status of the electrical system on Idaho's side of the disconnecting device; as to voltage and frequency; and
- (2) Prohibit closure or reconnection until voltage and frequency have been within approved limits for a continuous period of not less than five minutes; and

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

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

9.3 Remote Disconnection - Other Disconnection Equipment, including equipment which will provide Idaho's operating personnel with the ability to remotely control and monitor the status of the breaker or other disconnecting

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

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

#### ARTICLE X: METERING

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

billing hereunder shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested or adjusted.

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

#### ARTICLE XI: RECORDS

11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the parties, adequate metering and related power production records, in a form and content recommended by Idaho.

11.2 Inspection - Either party, after reasonable notice to the other party, shall have the right, during normal business hours, to inspect and audit any or all such metering and related power production records pertaining to Seller's account.

#### ARTICLE XII: PROTECTION

12.1 Seller shall construct, operate and maintain the Facility and Seller-furnished Interconnection Facilities in accordance with Appendix A, Prudent Electrical Practices, the National Electric Safety Code and any other applicable local, state, and federal codes. If, in the reasonable opinion of Idaho, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho's equipment, personnel, or service to its customers, Idaho may physically interrupt the flow of energy from the Facility or take such other reasonable steps as Idaho deems appropriate. Except in the case of an emergency, Idaho will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 13.8. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities.

#### ARTICLE XIII: OPERATIONS

13.1 Emergency Conditions - Seller agrees that in the event of and during a period of a shortage of power on Idaho's system as declared by Idaho in its reasonable discretion, Seller shall, at Idaho's request and within the limits of reasonable safety requirements as determined by Seller, use its best

efforts to provide requested Net Energy, and shall, if necessary, delay any scheduled shutdown of the Facility.

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

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

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

13.3.2 If Idaho determines that curtailment, interruption or reduction of Net Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, operating conditions on its system, or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of force majeure, Idaho requires such a curtailment, interruption or reduction of Net Energy deliveries for a period that exceed twenty days beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate determined by dividing the Annual Net Energy amount by 8760 hours. Idaho will notify Seller when the interruption, curtailment or reduction is terminated.

13.4 Voltage Levels - Seller shall use its best efforts to minimize voltage swings and to maintain voltage levels acceptable to Idaho. Idaho may, upon one hundred eighty (180) days' notice to Seller, change its nominal operating voltage level by more than ten percent (10%) at the Point of

Delivery, in which case Seller shall modify, at Idaho's expense, Seller's equipment as necessary to accommodate the modified nominal operating voltage level.

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

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

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

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

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each party shall agree to hold harmless and to indemnify the other party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying party's construction, ownership, operation or maintenance of, or by failure of, any of such party's works or facilities used in connection with this Agreement. The indemnifying party shall, on the other party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying party shall pay all costs that may be incurred by the other party in enforcing this indemnity.

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

14.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage equivalent to the amount of \$1,000,000 combined single limit. Such insurance shall:

- (a) include an endorsement naming Idaho as an additional insured insofar as work performed under this agreement is concerned; and
- (b) include a provision stating that such liability policies shall not be canceled or their limits of liability reduced without thirty (30) days' written notice to Idaho.

14.2.2 Valued Loss of Income Insurance covering, at a minimum, the perils of fire, extended coverage, vandalism and malicious mischief, earthquake and flood and loss arising out of accidents to boilers and/or pressure vessels and mechanical and electrical breakdown coverage for turbines and generators. Such policies shall:

(a) be in amounts equal to the repayment amounts shown in Appendix D that would be owed to Idaho pursuant to paragraph 21.2.

(b) include a provision stating that this policy shall not be canceled or the limits reduced without thirty (30) days' written notice to Idaho.

(c) include Idaho as an additional insured and loss payee.

14.2.3 Seller to Provide Copies of Policies of Insurance - It is a requirement of this contract that a certified copy of the original policies and all endorsements be furnished Idaho as soon as reasonably possible.

#### ARTICLE XV: LAND RIGHTS

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

15.2 Use of Public Rights-of-Way - The parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho's compliance with paragraph 15.4, Seller agrees that should Seller seek and receive from any local, state or

federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 15.4, Idaho shall not be required to compensate Seller for exercising its rights under this paragraph 15.2.

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

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

apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the parties, and (3) shall provide Seller with an interconnection to Idaho's system of equal capacity and durability as existed prior to Idaho exercising its rights under this Article XV.

#### ARTICLE XVI: FORCE MAJEURE

As used in this Agreement, "force majeure" or "an event of force majeure" means any cause beyond the control of the Seller or of Idaho which, despite the exercise of due diligence, such party is unable to foresee, prevent or overcome, including but not limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, court orders, laws or regulations, insurrection or riot, an act of the elements or lack of precipitation resulting in reduced water flows for power production purposes. If either party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of force majeure, both parties shall be excused from whatever performance is affected by the event of force majeure, provided that:

(1) The non-performing party shall, as soon as is reasonably possible after the occurrence of the event of force majeure, give the other party written notice describing the particulars of the occurrence.

(2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of force majeure.

(3) No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been

fully performed before such occurrence shall be excused as a result of such occurrence.

#### ARTICLE XVII: LIABILITY; DEDICATION

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one party to the other under any provision of this Agreement shall constitute the dedication of that party's system or any portion thereof to the other party or to the public, nor affect the status of Idaho as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XVIII: SEVERAL OBLIGATIONS

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

#### ARTICLE XIX: WAIVER

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

19.2 Idaho is presently challenging, before the Federal Energy Regulatory Commission ("FERC") and in the Courts, FERC's failure to examine the need for the power to be produced by cogeneration and small power production facilities in FERC's issuance of licenses and exemptions to licensing under the Federal Power Act. If Seller has applied to FERC for an exemption, license or preliminary permit for this Facility, or if an exemption, license or preliminary permit has been granted, execution of this Agreement by Idaho shall in no way be construed by Seller or any other party as a waiver by Idaho of its rights to challenge FERC's issuance of Seller's exemption, license or preliminary permit before the FERC, or in any other forum, and Idaho expressly reserves any and all legal or administrative rights it may have with respect to such challenge.

#### ARTICLE XX: CHOICE OF LAWS

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

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

21.1 Notice - In the event either party defaults in the performance of any of the terms or conditions of this Agreement, the nondefaulting party shall cause notice in writing to be given to the defaulting party, specifying the manner in which such default occurred. If the defaulting party shall fail to cure such default within the 30 days after service of such notice, then, and only then, may the nondefaulting party pursue any remedy which it may have in law or equity, including an action to terminate this Agreement, to enforce the terms of this Agreement, or to recover damages for breach thereof. This

article shall not be construed as restricting in any way Idaho's rights under Article XII, or paragraph A-4.1 of Appendix A to immediately interrupt flows of energy from the facility to Idaho's system.

21.2 Liquidated Damages. The parties agree that the amount of the payment which Idaho is to make to Seller is based on the agreed value to Idaho of Seller's performance of its obligation to provide Net Energy as set out in Article VI for the full term of the Agreement. The parties further agree that if Idaho does not receive such full performance (1) Idaho shall be deemed damaged by reason thereof, (2) it would be impractical or extremely difficult to fix the actual damages to Idaho resulting therefrom, (3) the payments as provided below are in the nature of adjustments in Net Energy prices and liquidated damages and not a penalty, and are a reasonable attempt by the parties to estimate a fair compensation to Idaho for the reasonable losses that would result from such total or partial default.

21.2.1 Failure to Deliver for Term of Agreement - If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its deliveries of the Annual Net Energy amount Seller shall pay to Idaho, as Idaho's sole and exclusive remedy for damages arising out of this permanent curtailment of Net Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the annual Net Energy amount specified in paragraph 6.3 and the reduced Annual Net Energy amount. This payment amount will bear interest from sixty (60) days after Idaho receives notice of Seller's permanent reduction of the annual Net Energy amount, until paid, at a rate equal to the average of the prime interest rates of the Idaho First National Bank in effect during

each month of that period. For purposes of this paragraph, reduced deliveries of Net Energy due to below-normal water conditions (paragraph 6.4) shall not be considered a permanent curtailment.

#### ARTICLE XXII: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXIII: COMMISSION ORDER

This Agreement shall not become effective until the Commission approves all terms and provisions hereof without change or condition and declares that all payments to be made hereunder shall be allowed as prudently incurred expenses for ratemaking purposes. If the Commission has not approved this Agreement within 60 days of its submission, then either party may terminate this Agreement by giving written notice to the other within 30 days after said 60-day approval period has expired.

#### ARTICLE XXIV: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, save that no assignment hereof by Seller shall become effective without the written consent of Idaho being first obtained. Such consent shall not be unreasonably withheld. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho shall have the right to

be notified by the financing entity that it is exercising such rights or remedies.

#### ARTICLE XXV: MODIFICATION

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

#### ARTICLE XXVI: TAXES

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

26.2 Each party shall pay before delinquency all ad valorem taxes and other governmental charges which if failed to be paid when due could result in a lien upon the Facility or the Interconnection Facilities.

#### ARTICLE XXVII: NOTICES

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

To Seller: Bonneville Pacific Corporation  
Suite 300  
200 East South Temple  
Salt Lake City, UT 84111  
  
Attn: Raymond Hixson, President

To Idaho: Vice President, Power Operations  
Idaho Power Company  
P O Box 70  
1220 Idaho Street  
Boise, Idaho 83707

ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

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

- Appendix A - Standards for Interconnection and Metering
- Appendix B - Special Facilities, Point(s) of Delivery and Metering, and Operation Date
- Appendix C - Schedule of Required Licenses and Permits
- Appendix D - Lump Sum Payment

ARTICLE XXIX - ENTIRE AGREEMENT

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

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

IDAHO POWER COMPANY

Approval:

R J O'Connor RJO  
T A Spofford TAS  
L G Teply LGT  
J W Marshall JWM  
W A Mott WAM  
B L Kline BLK

By J W Marshall  
J W Marshall  
Vice President - Planning, Resources  
and Rates

Dated 9-12-86

"Idaho"

BONNEVILLE PACIFIC CORPORATION

By Raymond Hixson  
Raymond Hixson  
President

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

"Seller"

STATE OF IDAHO            )  
County of Ada            ) ss

On this 12<sup>th</sup> day of September, 1986, before me, the undersigned, a Notary Public, personally appeared J W MARSHALL, personally known, who being duly sworn, did say that he is the Vice President of Planning Resources and Rates, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

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

(NOTARIAL SEAL)

Janie A Ryan  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF IDAHO UTAH        )  
County of SALT LAKE        ) ss

On this 13<sup>TH</sup> day of AUGUST, 1986, before me, the undersigned, a Notary Public, personally appeared RAYMOND HIXSON, personally known, who being duly sworn, did say that he is the INDIVIDUAL who executed the within instrument, and acknowledged to me that he executed the same as the free act and deed.

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

(NOTARIAL SEAL)

Deborah Buckley  
Notary Public for Idaho-UTAH  
Residing at: Salt Lake City

## APPENDIX A

### STANDARDS FOR INTERCONNECTION AND METERING

#### A-1 GENERAL PROVISIONS

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

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

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

#### A-2 GENERAL DESIGN CONSIDERATIONS

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

Due to physical limitations within Idaho's transmission and distribution systems, induction machine sizes will be limited to confine voltage flicker within acceptable limits. Each generation site is unique and Idaho will

determine the appropriateness of any proposed machine type for the site and interconnection.

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

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

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

### A-3 METERING REQUIREMENTS

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

A-3.1.1 Capacity Under 750 KVA - A kilowatt-hour/demand meter will be installed.

A-3.1.2 Capacity of 750 KVA and Above - A Jem II bi-directional, load profiling electronic meter with communication port capability will be installed. An electromechanical kWh backup meter will also be installed.

#### A-4 FACILITY PROTECTION

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

#### A-5 SYNCHRONOUS GENERATORS

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

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

#### A-5.3 Synchronous Generators

Synchronous generators shall be capable of operating continuously at maximum power output within 5 percent of rated voltage and anywhere within a power factor range of 90 percent, or lower, lagging and 95 percent, or lower, leading.

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

- 1) a power factor regulator may be required as well as a voltage regulator.

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

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

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

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

#### A-6 INDUCTION GENERATORS

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

required. On larger units, underfrequency and overfrequency relaying may be required.

#### A-6.2 Induction Generators

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

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

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

#### A-7 DC TO AC CONVERTERS

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

## A-8 SWITCHING REQUIREMENTS

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

A-8.1.1 System emergency.

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

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

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

## A-9 GENERATION SCHEDULING AND REPORTING

A-9.1 For installations under 750 KVA, the Seller shall read his generator kilowatt hour/demand meter within the 24-hour period following 12:00 noon on the last day of each month. That kilowatt hour meter reading is to be recorded on the monthly switching report that is mailed to Idaho.

A-9.2 For installations 750 KVA and above, before 10:00 A M each day, the Seller shall provide the Designated Dispatch Facility with an estimate of what the Seller will generate on the following day or days as may be required. In order to maintain a continuous record of energy actually generated and delivered, the Seller shall, by means acceptable to Idaho, obtain the kilowatt hour reading at midnight of each day and shall notify the Designated Dispatch

Facility, the following day, of that meter reading. Additionally, the kilowatt hour meter reading, corresponding to midnight at the end of the last day of each month, shall also be recorded on the monthly switching report that is mailed to Idaho.

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

APPENDIX B  
SPECIAL FACILITIES, POINTS OF DELIVERY AND METERING,  
AND OPERATION DATE  
LOWLINE II PROJECT

B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as one ideal synchronous generator with a nameplate rating of 2790 KW at 4160 volts, 3 phase, 60 hertz, driven by a Kaplan Turbine.

B-2 LOCATION OF FACILITY

The Facility is located in the SW Quarter of Section 8, Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho.

B-3 SCHEDULED OPERATION DATE

Seller has selected March 1, 1987, as the Scheduled Operation Date and December 1, 1986, as the First Energy Date. In making these selections, Seller recognizes that to allow for adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho, based on the information supplied by Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and metering equipment will be completed in time so as not to delay Seller's achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to Idaho, Idaho may be required to reschedule its construction of these facilities which

could adversely impact Seller's ability to achieve its scheduled First Energy Date.

B-4 FAILURE TO ACHIEVE OPERATION DATE

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

B-5 POINT OF DELIVERY

The Point of Delivery of Energy from the Seller to Idaho will be the deadend bells on the Seller-owned three phase 34,500 volt deadend structure located in the 34.5 KV/4160 volt Seller-owned substation near the powerhouse. The Seller will own the station type 3,500 KVA three phase, 1900/34,500 volt to 4160 volt grounded wye--ungrounded wye step-up transformer.

B-6 LOSSES

Losses shall be 1.10% of the metered energy.

B-7 METERING

The metering equipment will be on the 4160 volt side of the transformer bank, and will consist of current and potential transformers, a Jem 2 electronic meter. The meter will register kilowatt-hours and kilowatts of demand. Metering equipment will be owned and maintained by Idaho, with total cost of purchase, installation operation, and maintenance, including administrative cost to be reimbursed to Idaho by the Seller. Normal operation and maintenance expenses regarding metering equipment are included in the operation and maintenance charge provided for in paragraph B-11 of this Appendix.

#### B-8 SPECIAL FACILITIES

The reconstruction of approximately 6 miles of existing 34.5 KV three phase and single phase overhead distribution line using 336 aluminum conductor, the installation of reverse power flow detection in the substation voltage regulation equipment and existing line recloser, relocation of a capacitor bank, and the construction of approximately one-half mile of new three phase 34.5 KV 336 aluminum overhead distribution line, will be provided by Idaho as Special Facilities. The total cost of these Special Facilities will be reimbursed to Idaho by the Seller.

#### B-9 REACTIVE POWER

The Seller shall operate the synchronous generator within plus or minus 5% of unity power factor, or as listed in Appendix A.

#### B-10 DISCONNECTION EQUIPMENT

Disconnection Equipment is required to insure that the Seller's Facility will be disconnected from Idaho's system in the event of a disturbance on either Idaho's system or the Seller's Facility. This equipment is for the protection of Idaho's equipment only. Idaho will supply and install the Disconnection Equipment which consists of a pole mounted 34.5 KV rated oil switch to be used as the breaker, a disconnection panel which includes the relays and associated logic, a pole mounted transformer bank for ground fault protection, and a safety switch. Seller will provide signals from the generator phase-to-phase and three phase fault protection to the Idaho Disconnection Equipment. Seller will supply and install all cable, conduit, and generator connections necessary for the operation of the Disconnection Equipment. Idaho will supply details for the

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

#### B-11 COSTS

The total cost of Special Facilities and Metering Equipment is \$174,991. The total cost of the Disconnecting Equipment is \$15,147. Total amount to be paid to Idaho by the Seller is \$190,138, less the \$1,000 Application Fee. This represents the amount that will be charged by Idaho if the Seller makes the payment on or before July 20, 1986. If the Seller does not make this payment by the specified date, the amount will be subject to adjustment by Idaho. Idaho will not schedule construction or order Special Facilities which are not ordinarily maintained in Idaho's inventory until payment has been made. In addition, to the installation and construction charges above, during the term of the Agreement, Seller will pay Idaho an operation and maintenance charge of 0.7% per month times the total amount specified above. The monthly operations and maintenance charge may be adjusted during the term of the Agreement to reflect changes in the costs upon which the charge is based. Idaho will maintain on file with the Commission a schedule showing the cost components and calculation of the monthly operation and maintenance charge.

*Seller Paid*  
\$1,000 3/4/86  
189,138 6/1/87  
<189,138> Returned  
199,577 7/2/87  
200,577

#### B-12 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities

described in this Appendix, less the cost of removal and transfer to Idaho's nearest warehouse, if the Interconnection Facilities will be removed. If Seller elects not to retain ownership of the Interconnection Facilities but instead wishes that Idaho purchase such facilities from Seller at the net salvage value, Idaho may then be invoiced by Seller for the net salvage value estimated by Idaho for the Interconnection Facilities and shall pay such amount to Seller within thirty (30) days after receipt of said invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho.

APPENDIX C

SCHEDULE OF REQUIRED LICENSES AND PERMITS

1. Evidence of compliance with Part 1 of the Federal Power Act. Acceptable evidence of compliance will be an Order from FERC: (1) issuing a License for the Facility, or (2) exempting the Facility from Licensing.
2. Permit for the appropriation of water for power production purposes issued by the Idaho Department of Water Resources.
3. Evidence of compliance with Subpart B of CFR §292.707.

APPENDIX D

LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT  
 OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT  
 UNDER 35-YEAR CONTRACT  
 DOLLARS PER ANNUAL MEGAWATT HOUR

<u>Contract Year of Curtailment Commencement</u>	<u>Facility Operation Date</u>	
	<u>1986</u>	<u>1987*</u>
1	25	25
2	50	60
3	80	90
4	115	130
5	150	170
6	190	215
7	240	265
8	290	320
9	350	345
10	370	360
11	390	375
12	400	390
13	415	405
14	430	420
15	445	435
16	455	445
17	465	460
18	475	470
19	485	475
20	490	485
21	495	490
22	500	490
23	495	490
24	495	485
25	485	480
26	470	465
27	450	450
28	430	425
29	400	395
30	360	355
31	310	310
32	250	250
33	180	180
34	100	100
35	0	0

\* Lump Sum Refund Payment Schedules for Facility Operation Dates beginning in 1988 are identical to 1987.

  
MYRNA J. WALTERS  
COMMISSION SECRETARY

FIRST AMENDMENT TO THE  
FIRM ENERGY SALES AGREEMENT

THIS FIRST AMENDMENT made as of this 3<sup>RD</sup> day of May 1996,  
is to that certain Firm Energy Sales Agreement ("Agreement") dated as of September 12, 1986,  
between Bonneville Pacific Corp ("Bonneville"), and Idaho Power Company ("Idaho Power"), for  
the above referenced hydroelectric project ("Facility").

W I T N E S S E T H:

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission  
("Commission") on November 14, 1986 in Order No. 20823; and

WHEREAS, in 1989, Bonneville assigned the Agreement to BP Hydro Associates,  
an Idaho General Partnership; and

WHEREAS, the ownership of all of the partnership interest of BP Hydro  
Associates has now been transferred to CHI-Idaho, Inc ("Seller"); and

WHEREAS, the Seller desires to eliminate its obligation under the Agreement to  
procure certain insurance coverage related to Seller's levelized rate repayment obligation; and

WHEREAS, the Commission in Orders No. 21690 and 21800 established new  
security provisions some of which, Idaho Power and Seller ("Parties") now desire to include in  
the Agreement to provide security for Seller's levelized rate repayment obligation and to  
eliminate the above referenced insurance coverage; and

WHEREAS, the Parties desire to embody the changes which have occurred to  
paragraph 7.1.2 since the Agreement was first signed.

THEREFORE, the Parties hereby amend the Agreement as follows:

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

Paragraph 7.1.2 Adjustable Payment

Per Commission Order No. 25880

"5.2 mills" per kWh was amended to read "3.28" mills per kWh

"8.4 mills" per kWh was amended to read "5.24" mills per kWh

"7.0 mills" per kWh was amended to read "4.37" mills per kWh

2. ARTICLE XIV: INDEMNIFICATION AND INSURANCE is hereby amended to read as follows:

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

14.2.1 Commercial General Liability Insurance for both bodily injury and property damage with limits not less than \$5,000,000 each occurrence, combined single limit. The deductible for such insurance shall not exceed two hundred thousand dollars (\$200,000) except for pollution liability and Jones Act coverage in which case the deductible shall not exceed five hundred thousand dollars (\$500,000).

14.2.2 All Risk Property Insurance with minimum limits not less than ninety percent (90%) of the total cost of the Facility. The Property Insurance coverage will be written on a replacement cost basis and will include: (a) Standard fire policy;

(b) Extended coverage endorsement;

(c) Vandalism and malicious mischief endorsement;

(d) The deductible for the above property insurance coverage shall not exceed one hundred thousand dollars (\$100,000); and.

(e) Earthquake & Flood (catastrophic perils) Insurance with limits not less than sixty percent (60%) of the total cost of the Facility. The deductible for this insurance shall not exceed five percent (5%) of the Facility cost or two hundred fifty thousand dollars (\$250,000), whichever is greater.

14.2.3 Boiler and machinery insurance with minimum limits not less than ninety percent (90%) of the total cost of the equipment covered in (a) below:

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

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

(c) The deductible for this insurance shall not exceed two hundred and fifty thousand dollars (\$250,000).

14.2.4 Business Interruption (Loss of Income) Insurance with minimum daily limits not less than seventy-five percent (75%) of the Facility's estimated gross daily electrical revenue less non-continuing expenses and total policy limits not less than twenty percent (20%) of the Facility's estimated gross annual revenue from the sale of electrical energy less non-continuing expenses:

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

(b) This insurance coverage must be endorsed to both the All Risk Property Insurance Policy and the Boiler and Machinery Insurance Policy;

(c) The deductible for this insurance coverage shall not exceed thirty (30) days gross daily revenues from the sale of electrical energy; and

(d) The annual estimate of gross daily revenue and estimated gross annual revenue shall be based on the energy actually delivered to Idaho Power by the Facility during the most recent 24 month period.

14.2.5 All of the above insurance coverages shall be placed with insurance companies with an A.M. Best rating of A- or better and shall include:

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

(b) A provision stating that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to Idaho Power except for nonpayment of premium in which case ten (10) days written notice; and

(c) In the case of the insurance coverages described in subparagraphs 14.2.1, 14.2.2 and 14.2.3 above, the total cost of the Facility will include any Seller-furnished Disconnection Equipment and/or Interconnection Facilities. The total cost of the Facility and total cost of equipment will be adjusted either upward or downward to reflect the current replacement cost of the Facility or equipment. This adjustment will be based on either (1) an appraisal made by, or for, the Seller's insurance company, or (2) the Handy-Whitman Index of Public Utility Construction Costs, "Cost Trends of Electric Utility Construction Plateau Region Hydro Production Plant" as published by Whitman, Requardt and Associates, 2315 Saint Paul Street, Baltimore, Maryland, 21218, or (3) use of an approved "industrial cost trend index" published by a

national insurer (i.e. Factory Mutual Engineering and Research Building Cost Index; Kemper Replacement Value Cost Trends - Industrial Machinery & Equipment; IRI (Industrial Risk Insurers) U.S. Replacement Cost Factors). Such adjustment shall be made, at a minimum, every Fifth Contract Year during the term of this Agreement. A copy of these computations and/or appraisals will be submitted to Idaho Power for Idaho Power's review and approval.

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

14.4 Seller to Provide Copies of Policies of Insurance - At Idaho Power's request, Seller will furnish to Idaho Power a copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages required by paragraph 14.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage."

3. ARTICLE XXVII: NOTICES is amended to read as follows:

"To Seller: Patrick J Danna, Treasurer  
Consolidated Hydro Mountain States, Inc.  
Stamford Towers  
680 Washington Boulevard, Suite 500  
Stamford, Ct 06901

To Idaho: Vice President, Bulk Power Markets  
Idaho Power Company  
P O Box 70  
Boise, ID 83707"

4. ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

The following is added: "Appendix E - Engineer's Certifications"

5. The following Article is added to the Agreement:

"ARTICLE XXX: SECURITY

30.1 Security for Repayment Obligation - During the full term of this

Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power if Seller defaults under this Agreement. In accordance with Commission Order Nos 21690, 21800 and Declaratory Order No. 23949 and subject to the provisions of ARTICLE XXI DEFAULT, NOTICE AND LIQUIDATED DAMAGES, this assurance will be provided as follows:

30.1.1 Insurance - Seller shall comply with the provisions of paragraph 14.2. If Seller fails to comply, such failure will be an event of default.

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

30.1.1.2 For all other insurance coverages described in paragraph 14.2, the default may be cured by replacement or reinstatement of the insurance, or by Seller posting liquid security in accordance with paragraph 30.3 in an amount equal to one hundred percent (100%) of the accumulated overpayment liability specified for that year in Appendix D.

30.1.2 Engineering Certifications - Seller shall:

30.1.2.1 Within sixty (60) days of the approval of this Amendment by the Commission, furnish to Idaho Power an executed Engineer's Certification of Operations and Maintenance Policy which shall be in the form specified in Appendix E; and

30.1.2.2 Every three (3) years for the first twelve (12) years from the date the Commission approves this Amendment, and every two (2) years thereafter during the remaining term of this Agreement, Seller will furnish Idaho Power with an Engineer's Certification of Ongoing Operations and Maintenance from a registered professional engineer licensed in the State of Idaho which will be in the form specified in Appendix E.

30.1.2.3 Seller's failure to supply the required certificates will be an event of default under Article XXI of the Agreement. Such a default may be cured by Seller providing the required certificate(s) or by posting liquid security in accordance with paragraph 30.3 in an amount equal to twenty percent (20%) of the accumulated overpayment liability

specified for that year in Appendix D.

### 30.1.3 Lien Rights

30.1.3.1 Lien Rights - Seller will provide Idaho Power with acceptable security against Seller's default under this Agreement. Acceptable security will conform to Commission Orders No 21690 and 21800, and may include, but will not be limited to, security interests in real property, equipment, fixtures, contracts, permits, easements, and rights-of-way. Seller will provide title insurance and other reasonable security arrangements consistent with the Facility's financing and ownership arrangements. Idaho Power's security interests will be superior and senior to all security interests other than the first priority mortgage or deed of trust, leasehold, financing statement, security agreement and other first priority security interests permitted in accordance with paragraph 30.1.3.2.

30.1.3.2 Seller has previously incurred a first mortgage or deed of trust and other first priority security interests that will be superior to Idaho Power's security interests in the Facility. The unpaid principal balance secured by these first priority security interests is 15 million dollars (\$15,000,000). Upon execution of this amendment, Seller will provide Idaho Power with copies of all deeds of trust, mortgages, contract assignments and other security agreements that are presently in force. The first priority security interests shall not be assigned, amended, modified, or extended, and no replacement or refinancing of any nature shall be undertaken, without Idaho Power's prior written consent which consent shall not be unreasonably withheld or delayed. The amount of any refinanced or replaced first priority security interests shall not exceed the unpaid principal balance secured by the security interest they replace.

30.1.3.3 Other than the first priority security interests permitted herein or temporary mechanic's, statutory or similar liens incurred in the ordinary course of business in an amount not to exceed in aggregate fifty thousand dollars (\$50,000.00), Seller will not permit any liens or encumbrances of any nature whatsoever to be placed on the Facility without Idaho Power's prior written consent, which consent will

not be unreasonably withheld. If any unpermitted lien or encumbrance is placed on the Facility, Seller will provide Idaho Power with a bond, insurance or other security acceptable to Idaho Power in an amount sufficient to secure the full discharge of such unpermitted lien or encumbrance.

30.1.3.4 If, after the initial first priority security interests have been established, Seller desires to assign this Agreement or assign, replace or refinance said first priority security interests, Seller will reimburse Idaho Power for the reasonable out-of-pocket costs Idaho Power incurs for document review and revision including any consents to assignment or subordination agreements that Seller requests from Idaho Power. Idaho Power's out-of-pocket costs will include but not be limited to filing fees, title insurance premiums, and fees of legal counsel.

30.1.3.5 During the remaining term of this Agreement, Seller shall maintain compliance with all of the requirements of Idaho Power's security interests described above in paragraph 30.1.3.1 of this Agreement and Commission Order No 21690. Seller's failure to comply with those requirements, will be an event of default and in addition to any other remedies available under this Agreement, Commission Order No 21690, and the security interests, Seller will be required by Idaho Power to post liquid security in accordance with paragraph 30.3 in an amount equal to thirty-five percent (35%) of the accumulated overpayment liability specified for that year in Appendix E.

30.1.4 Maintenance Escrow Account - Seller shall demonstrate to Idaho Power's satisfaction that the Seller has established a maintenance escrow account in a form and with an escrow manager which complies with Commission Orders No 21690 and 21800. Said maintenance escrow account shall be structured and funded as follows:

30.1.4.1 The escrow instructions establishing the maintenance escrow account will provide that the funds in the maintenance escrow account will be prudently invested and that all costs of implementing and operating the maintenance escrow account shall be paid by the Seller. All interest earned on the funds on deposit will be retained in the maintenance escrow account. At the end of the term of

this Agreement, any balance remaining in the maintenance escrow account shall be the property of and released to the Seller.

30.1.4.2 Within sixty (60) days after the completion of each Contract Year, the Seller will:

30.1.4.2.1 Maintenance Expenses - Provide both the escrow manager and Idaho Power with a report prepared by an independent accounting firm showing the prior Contract Year's actual maintenance expenses, identified by appropriate Federal Energy Regulatory Commission maintenance account number; and

30.1.4.2.2 Gross Income Estimate - Provide an estimate of the Facility's gross income from sales of Net Energy for the ensuing Contract Year, together with documentation supporting that estimate; and

30.1.4.2.3 Deposit - Deposit cash in the maintenance escrow account in an amount equal to three and one-half percent (3.5%) of the Facility's estimated gross income from Net Energy sales for the ensuing Contract Year, less an amount equal to the Facility's actual maintenance, repair and replacement expense (maintenance expenses) incurred during the prior Contract Year; and

30.1.4.2.4 Evidence of Compliance - Provide Idaho Power with evidence of compliance with the maintenance escrow account deposit requirements. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The maintenance escrow fund will be subject to the lien rights described in paragraph 30.1.3.1 above.

30.1.4.3 If Seller determines that the maintenance expense for a Contract Year will exceed three and one-half percent (3.5%) of the Facility's estimated gross income for that Contract Year, the Seller may request that the escrow manager release funds from the maintenance escrow account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC maintenance account number, and such documentation shall be submitted to both the escrow manager and Idaho

Power. Following receipt of the request and documentation, the escrow manager, shall, within five working days, release the requested funds to Seller.

30.1.4.4 During the full term of this Agreement, Seller shall maintain and fund the maintenance escrow account described in paragraph 30.1.4 and Commission Order No 21690. If at any time Seller fails to maintain or fully fund that maintenance escrow account, such a failure will be an event of default. Such default may be cured by reinstating the required escrow account or by Seller posting liquid security in accordance with paragraph 30.3 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix D.

30.1.5 Debt Service Reserve Account

(a) Because the Facility is located ~~on~~ the canal system of the Twin Falls Canal Co. Project and therefore receives the benefits of its senior water rights, Idaho Power is willing to permit Seller to establish a debt service reserve account until conforming low water insurance becomes available. Said debt service reserve account will be separate from the maintenance escrow account and shall be structured as follows:

(b) During the period of time in which the Facility acts as security for a first mortgage lien which is senior to Idaho Power's security interest in the Facility as described in paragraph 30.1.3 above, Seller shall maintain a debt service reserve account in cash or an irrevocable standby letter of credit in an amount equal to twenty percent (20%) of the Facility's estimated gross revenue from Net Firm Energy sales for the first Contract Year rounded to the nearest \$1,000. With Idaho Power's consent, this debt service reserve account may be coordinated with any debt service reserve account required by Seller's first mortgage lender to avoid duplication of accounts.

(c) Upon full satisfaction of the above-referenced first mortgage lien and when Idaho Power's security interest becomes the senior security interest in the Facility, the escrow manager will pay to Seller the amount in the debt service reserve account which exceeds five percent (5%) of the Facility's estimated gross revenue for the next Contract Year

rounded to the nearest \$1,000.

(d) The amount to be retained in the debt service reserve account will be recalculated every five (5) years to reflect any increases or decreases in the adjustable payment amount under paragraph 7.1.2 of the Agreement.

(e) During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, the escrow manager of the debt service reserve account will be instructed to only release funds from the debt service reserve account to the holder of the first mortgage lien. Funds from said account shall be released only when, and only to the extent that Seller certifies to the escrow manager that after payment of all operating costs, the Facility's revenues are insufficient to make full debt service and/or lease payments on the Facility.

(f) During the period when Idaho Power's security interest is the senior security interest in the Facility, the escrow manager will be instructed to only release funds from the debt service reserve account to pay operating costs for the Facility.

(g) For purposes of the debt service reserve account, operating costs are limited to those costs necessary for the operation of the Facility such as taxes, insurance expenses, lease payments and other ordinary and necessary operating expenses. Operating costs shall not include any disbursements other than lease payments which would constitute a profit or return on investment.

(h) After any release of funds by the escrow manager, Seller shall be obligated to restore the debt service reserve account to the amounts provided for in paragraphs 30.1.5 (b) and (c), whichever is applicable, prior to Seller disbursing funds which would constitute a profit or return on investment. Until the debt service reserve debt account is fully restored, Seller will, within sixty (60) days of the completion of each Contract Year, provide the escrow manager and Idaho Power with a report prepared by Seller's outside accountants showing that Seller has not breached its obligations under this paragraph 30.1.5(h).

(i) Any breach of paragraph 30.1.5(h) by Seller will be an event of default and will require posting liquid security in accordance with paragraph 30.3 in an amount equal to one hundred percent (100%) of the

accumulated overpayment amount specified for that year in Appendix D.

30.1.5.1 In lieu of establishing and funding the above-described debt service reserve account, with Idaho Power's prior written consent Seller may substitute irrevocable standby letter(s) of credit, book entry certificate(s) of deposit or other security instrument(s) acceptable to Idaho Power. During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, Idaho Power and the first mortgage lender will be joint beneficiaries of the security instrument(s). When Idaho Power's security interest is the senior security interest in the Facility, Idaho Power will be the sole beneficiary of the security instrument(s).

30.2 Cumulative Obligation - Seller recognizes that in accordance with Commission Order No 21690, an event of default under any or all of paragraphs 30.1.2, 30.1.4 or 30.1.5 constitutes a default under paragraph 30.1.3 and in that event the obligation to post liquid security under paragraphs 30.1.2 through 30.1.5 is cumulative.

30.3 Liquid Security - If, pursuant to this Agreement or Commission Order No 21690, Seller becomes obligated to post liquid security, such obligation may be satisfied by Seller's (1) depositing cash in an escrow to be held and managed by a bank or savings & loan association located and in good standing in the State of Idaho; or (2) providing an irrevocable standby letter of credit acceptable to Idaho Power. The escrow holder and the escrow instructions for the cash deposit will be acceptable to both Idaho Power and Seller. Payment of all taxes on the amounts deposited in the escrow will be the obligation of the Seller. The liquid security escrow account will be maintained separately from the maintenance reserve account described in paragraph 30.1.4. Failure to maintain and provide the liquid security required by this Agreement and Commission Order Nos 21690 and 21800 shall be an event of default."

6. A new appendix, Appendix E is added to the Agreement.
7. Except as modified by this First Amendment, all other parts of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year herein written.

IDAHO POWER COMPANY

By *Jan B Packwood*  
Jan B Packwood  
Vice President, Bulk Power Markets

Date *May 3, 1996*

CONSOLIDATED HYDRO  
MOUNTAIN STATES, INC.

By *P. Paul King*  
Its *Vice President*

Date *4-30-96*

STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 3<sup>rd</sup> day of May, 1996, before me, the undersigned, a Notary Public, personally appeared Jan B Packwood, personally known, who being duly sworn, did say that he is the Vice President, Bulk Power Markets of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as a free act and deed.

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

(NOTARIAL SEAL)

Barbara Hill  
Notary Public for Idaho  
Residing at: Boise, Id  
Commission Expires on July 27, 1999

STATE OF Idaho )  
 ) ss  
County of Ada )

On this 30 day of April, 1996, before me, the undersigned, a Notary Public, personally appeared Norman E. Kamp, personally known, who being duly sworn, did say that he is the individual who executed the within instrument, and acknowledged to me that he executed the same as a free act and deed.

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

(NOTARIAL SEAL)

Jonny D. Chipple  
Notary Public for Idaho  
Residing at: Boise, Idaho  
Commission Expires on 03-29-2002

APPENDIX E

ENGINEER'S CERTIFICATION OF  
OPERATIONS & MAINTENANCE POLICY

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

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

2. That Engineer has reviewed the \_\_\_\_\_ Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Certification is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

8. That Engineer has reviewed and/or supervised the review of the Policy for Operation

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

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 30.1.2.1 of the Agreement, is relying on Engineer's representations and opinions contained in this Certification.

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

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

Date \_\_\_\_\_

\_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
Commission Expires on \_\_\_\_\_

APPENDIX E

ENGINEER'S CERTIFICATION OF ONGOING  
OPERATIONS AND MAINTENANCE

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

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

2. That Engineer has reviewed the \_\_\_\_\_ Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Certification is identified as IPCo Facility No \_\_\_\_\_ and is further designated as Federal Energy Regulatory Commission Hydro Project No \_\_\_\_\_ and is hereinafter referred to as the "Project".

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

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

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

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

8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection, and the Project's Policy for Operation and Maintenance (O&M Policy) bearing the words "CERTIFIED FOR IDAHO P.U.C. SECURITY APPROVAL" and

the Stamp of the Certifying Engineer. It is Engineer's professional opinion, based on the Project's appearance, that its ongoing operation and maintenance has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency, and plant factor for \_\_\_\_\_ (\_\_\_) years.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 30.1.2.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Certification.

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

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

Date \_\_\_\_\_

\_\_\_\_\_

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

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

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

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
Commission Expires on \_\_\_\_\_

Facility No. 31615125  
Project: Lowline II

**SECOND AMENDMENT TO  
FIRM ENERGY SALES AGREEMENT**

This Second Amendment made on Nov 24, 1999, is to that certain Firm Energy Sales Agreement (as heretofore amended, the "Agreement") dated as of September 12, 1986, between Bonneville Pacific Corporation and Idaho Power Company ("Idaho Power") for the Lowline II small hydroelectric generating project ("Facility").

**WITNESSETH:**

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on November 14, 1986, in Order No. 20823; and

WHEREAS, Bonneville Pacific Corporation assigned its interest in the Agreement to BP Hydro Associates ("Seller"), on April 20, 1989, and

WHEREAS, the Agreement was amended by Seller and Idaho Power on May 3, 1996, which amendment was approved by the Commission on June 7, 1996, by minute entry in Case No. IPC-E-96-8; and

NOW THEREFORE, Idaho Power and Seller agree to further amend the Agreement as follows:

1. The existing Paragraph 30.1.4 of the Agreement is deleted in its entirety and the following inserted in its place:

30.1.4 Seller shall demonstrate to Idaho Power's satisfaction that the Seller has established a maintenance reserve account in a form and with a fund holder acceptable to Idaho Power. Said maintenance reserve account shall be structured and funded as follows:

30.1.4.1 All costs of implementing and operating the maintenance reserve account shall be paid by the Seller. All interest earned on the funds on deposit will be retained in the maintenance reserve account. At the end of the term of this Agreement, any balance remaining in the maintenance reserve account shall be the property of the Seller.

30.1.4.2 Within 60 days after the completion of each Contract Year, the Seller will deposit cash in the maintenance reserve account in an amount equal to 3.5% of the Facility's estimated gross income for the

2

ensuing Contract Year, less an amount equal to the Facility's actual maintenance, repair and replacement expense (maintenance expenses) incurred during the prior Contract Year. At Seller's option, the cash required hereunder to be maintained in such reserve may be replaced by an irrevocable standby letter of credit in the same amount.

30.1.4.3 At the time Seller makes the deposit described in paragraph 30.1.4.2, Seller will provide Idaho Power with a report showing the prior Contract Year's actual maintenance expenses, identified by appropriate FERC maintenance account number, and the estimate of the Facility's gross income for the ensuing Contract Year used to compute the deposit amount, together with documentation supporting that estimate of gross income.

30.1.4.4 If at any time it appears that the maintenance expense for that Contract Year will exceed 3.5% of the Facility's estimated gross income for that Contract Year, the Seller may request that Idaho Power consent to the release of funds from the maintenance reserve account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC maintenance account number, and such documentation shall be submitted to Idaho Power. Upon approval by Idaho Power, the required funds will be released to Seller in accordance with Paragraph 30.1.4.5.

30.1.4.5 Control of the maintenance reserve account will be maintained by Idaho Power through the requirement of dual signatures on the account. The only authorized signers will be the Chief Operating Officer and the Chief Financial Officer of Idaho Power (or their respective designees) and the Treasurer of Seller (or his/her respective designee). Accordingly, funds will only be released from the maintenance reserve account upon the signatures of the both of Idaho Power's authorized signers or one Idaho Power authorized signer and Seller's authorized signer.

30.1.4.6 At the end of each Contract Year, Seller will provide Idaho Power with evidence of compliance with the maintenance reserve account requirements set out in this Agreement. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The

maintenance reserve fund will be subject to the lien rights described in paragraph 4.1.8 below.

2. Paragraph 30.1.5, Debt Service Reserve Account, is hereby amended to read as follows:

30.1.5 Low Water Insurance; Reserve Account

30.1.5.1

(a) Except as permitted under Section 30.1.5.1(b) below, Seller shall obtain low water insurance coverage which is reasonably acceptable to Idaho Power.

(b) If Seller, after the exercise of due diligence, is unable to secure low water insurance complying with Section 30.1.5.1(a) above, or if the cost of such insurance coverage exceeds 2.5% of the Facility's estimated gross income for the ensuing Contract Year, then the failure to provide low water insurance shall not be deemed a default if Seller provides the following security in lieu of low water insurance until conforming low water insurance is available at a price that does not exceed the percentage amount specified above.

(c) In lieu Security:

In lieu of providing conforming low water insurance, Seller will establish a low water insurance reserve account with the same bank which administers the maintenance reserve account described in paragraph 30.1.4. Funds in said insurance reserve account may be commingled with the funds in the maintenance reserve account, but Seller will maintain separate accounting for determining the amounts attributable to each account. Seller's annual accounting reports under Paragraph 30.1.4.3 will show the current reconciled amounts in both the maintenance reserve account and the low water insurance reserve account. The low water insurance reserve account will be structured and funded as follows:

(1) All costs of setting up and operating the low water insurance reserve account, shall be paid by the Seller. Interest earned on the funds on deposit will be credited to the low water insurance reserve account. At the end of the term of this Agreement, any balance remaining in the low water insurance reserve account shall be the property of the Seller.

(2) Within 60 days after the commencement of a Contract



Year in which Seller is entitled to provide security in-lieu of conforming low water insurance coverage, Seller will deposit cash in the low water insurance reserve account in an amount equal to 2.5% of the Facility's estimated gross income for that Contract Year, until the balance reaches the amount stated in the next sentence. The balance in the fund attributable to the low water insurance reserve account will not exceed \$128,000. If the balance in the fund exceeds this maximum amount, the Seller may withdraw the excess annually. At Seller's option, the cash required hereunder to be maintained in such reserve may be replaced by an irrevocable standby letter of credit in the same amount.

(3) At the time that conforming low water insurance becomes available in accordance with paragraph 30.1.5.1(b), Seller will request that Idaho Power release funds from the low water insurance reserve account in an amount sufficient to pay the annual premium on such low water insurance. Upon such request, Idaho Power, shall release the required funds to Seller in accordance with Paragraph 30.1.4.5. Seller may continue to make annual draws against the low-water insurance account to pay the premiums on low water insurance until the fund is exhausted.

(4) With Idaho Power's consent, this low water reserve account may be coordinated with any debt service reserve account required by Seller's first mortgage lender to avoid duplication of accounts. During any period of such coordination, Idaho Power and the first mortgage lender will be joint beneficiaries of any letter of credit substituted pursuant to Section 30.1.5.1(c)(2).

(d) Failure to provide conforming low water insurance or to maintain the *in lieu* security described above, will be a default which can be cured by reinstatement of the insurance or *in lieu* security or by posting with Idaho Power, or a third party acceptable to Idaho Power, liquid security in a form acceptable to Idaho Power and in an amount equal to 100% of the accumulated overpayment amount specified for that year in Appendix D.

3. Except as amended herein, the Agreement shall remain in force and effect.

4. This second amendment shall not become effective until the Commission approves all terms and conditions hereof without change or condition and declares that this second amendment is prudent for rate making purposes.

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

IDAHO POWER COMPANY  
By 

BP HYDRO ASSOCIATES  
By CHI-Idaho, Inc., its General Partner

By 

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**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 4**

August 1, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Notification of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

**Mile 28 Hydro Firm Energy Sales Agreement**

Idaho Power and the Contractor's Power Group, Inc. ("Seller") executed a Firm Energy Sales Agreement ("Agreement") on August 13, 1993. This Agreement has changed ownership several times and most recently was sold to the Big Wood Canal Company which leases the Mile 28 Hydro Generation Facility ("Facility") to Wood Hydro LLC. The Facility is an Idaho Power designated network resource and the levelized energy rate was based on expected energy deliveries to Idaho Power from the Facility. The Facility is required to deliver all of its Net Energy to Idaho Power in accordance with this Agreement for 35 Contract Years beginning with the Operation Date of June 1, 1994 through May 31, 2029.

**Annual Review and Notifications**

Idaho Power performs annual reviews of all energy sales contracts to make sure they are in compliance and the facilities are performing according to their contracts. It came to Idaho Power's attention during a recent review that the Facility has not generated any power for the last 9 months (November 2018 through July 2019) and continues to remain offline. Idaho Power was not notified by the Facility at any time in the past 9 months that this designated network resource was going to be taken offline for an extended period of time and during the summer peak months.

**Recent Discussions**

On July 31, 2019, Michael Darrington (Idaho Power) and Jerry Jardine (Idaho Power) called Ted Sorenson (Wood Hydro LLC) and discussed the status of the Facility. Mr. Sorenson reported that beginning with the winter of 2018, several repairs and replacements were started and some of the repairs and replacements were continuing with an expected completion date in mid-August 2019. Idaho Power explained that because the Agreement is a levelized rate contract, Idaho Power is required to implement paragraph 21.3 of the Agreement for Lump Sum Repayment Amounts should the Facility fail to deliver the Annual Net Energy Amount agreed to by the Seller and defined in paragraph 6.3.

## **Lump Sum Refund Repayment Amount Calculation**

### **Annual Net Energy Amount**

Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for this Facility shall be 5,798,590 kWh.

### **Failure to Deliver the Annual Net Energy Amount**

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power.

### **Calculation**

The last completed Contract Year (6/1/2018 to 5/31/2019) is Contract Year 25. In accordance with Paragraph 21.3, the calculation of the Repayment Amount as of the end of Contract Year 25 is as follows:

The Annual Net Energy Amount of 5,798,590 kWh minus actual Net Energy delivered during Contract Year 25 of 3,355,049 kWh, the difference divided by 1,000 to convert to MWh and multiplied by the Appendix D Lump Sum Repayment amount for the 25<sup>th</sup> Contract Year of \$476 per annual MWh = \$1,163,125.

### **Provision for a Partial Refund of the Repayment Amount**

Paragraph 21.7 of the Agreement allows for Idaho Power to refund between 85% and 90% of the Repayment Amount to the Seller provided that the Facility returns to full production within three years of the Repayment Amount paid to Idaho Power by the Seller. The Facility must demonstrate that they will be able to achieve the Annual Net Energy Amount of 5,798,590 kWh for a Contract Year and must accomplish this before the end of the three-year period to qualify for the partial refund. Assuming that the Facility will resume sales in 2019, the partial refund to the Seller would be 90% of \$1,163,125 = \$1,046,812 and the remaining balance of \$116,312 would be paid by the Seller to Idaho Power and is not refundable.

### **Repayment Amount Security and Payments**

The Repayment Amount of \$1,163,125 is now due to Idaho Power. However, Mr. Sorenson provided documentation about the Facility repairs and replacements after the July 31, 2019 phone call and has demonstrated that the Facility is being prepared to return to service and is expected to continue to deliver the required Annual Net Energy Amount to Idaho Power for the remaining term of the Agreement. Because of these assurances, Idaho Power is willing to accept a letter of credit, subject to Idaho Power's review and credit requirements, as security for \$1,046,812. This letter of credit is due within 30 days of the date on this letter. This security shall be held in place for the next three Contract Years but may be released earlier by Idaho Power when the Facility returns to full generation, can demonstrate that it will achieve the Annual Net Energy Amount for the next Contract Year and provided that the Facility is generating before the end of the three-year period defined in paragraph 21.7. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. The Seller also has the option of making a non-refundable payment of \$116,312 in cash to Idaho Power instead of netting the monthly energy payments with the balance of the Repayment Amount due.

Sincerely,

  
Jerry Jardine  
Energy Contracts

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 5**



1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

August 7, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

We are in receipt of your letter dated August 1 regarding the Mile 28 Project and the repairs we have been performing there that have taken longer than anticipated. While we acknowledge that Idaho Power has not received the deliveries it expected from the project this summer, we have read through the Firm Energy Sales Agreement and do not read the provisions you set out in your letter as requiring a Lump Sum Repayment.

You highlight Section 21.3 as providing for a Lump Sum Repayment in an amount that is then calculated in the letter. However, Section 21.3 provides for such repayment where the Seller “permanently curtails” its long-term average deliveries. There is no permanent curtailment in this circumstance. We are working very hard to make repairs at the facility to improve its functionality. We are rebuilding the switchgear to prevent the types of trips that have happened in the past, improving the trash rake system to deal with the extremely high volume of weeds and debris at the facility, and are winterizing the facility to take advantage of available recharge water. We anticipated that these repairs would be complete during the winter months when the project does not typically produce. As unfortunately sometimes happens, these repairs have taken much longer than planned, despite our diligent efforts. We appreciate Idaho Power’s concerns and we want to do our best to find a solution that is agreeable. As mentioned above, we anticipate the project being able to make up this lost production once we finish our repairs and can take advantage of recharge water. We believe that these repairs will be complete within the next two to three weeks.

We appreciate your time and consideration and look forward to finding an agreeable solution. We would also like to extend an invitation to your team to come visit the facility once it is complete so that you can see the results of our efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Sorenson".

Ted S Sorenson, Manager  
Wood Hydro LLC

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 6**

August 14, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Second Notice of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

Idaho Power received your letter dated August 7, 2019 (“WH Letter”) regarding the Mile 28 Hydro failure to achieve the Annual Net Firm Energy amount for Contract Year 25. Attached is the Idaho Power Letter dated August 1, 2019 (“IPC Letter”) for reference.

In your WH Letter, you requested that we find an agreeable solution. However, Idaho Power is required to enforce the terms of the Agreement and we cannot agree to different terms which will harm the Idaho Power customers while benefiting the Facility. Your WH Letter also referenced only two words (“permanently curtails”) from a sentence in Paragraph 21.3 of the Agreement and you stated that the Facility’s ongoing curtailment, which has lasted for 9 months, has caused the Facility to miss the Annual Net Energy Amount for Contract Year 25 by 42% and the Facility has yet to deliver any energy to Idaho Power for Contract Year 26, is “not a permanent curtailment”. The complete sentence in paragraph 21.3 that you referenced reads, “If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by.....curtailment. Paragraph 21.7, Refund of Lump Sum Refund, goes on to explain that if, within 3 years, the Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power, then Idaho Power will refund up to 90% of the Repayment Amount provided the curtailment is resolved during that 3-year period. It is clear from paragraph 21.7, that the Agreement recognizes the Facility may resolve the cause of the curtailment to their Net Firm Energy deliveries, which would apply to your circumstance if the Facility starts delivering the Annual Net Energy Amount again, and permits Idaho Power to refund up to 90% of the lump sum repayment that the Seller paid to Idaho Power provided the curtailment is resolved during that 3-year period. Paragraph 21.7 also allows Idaho Power to keep either 10% or 15% of the Repayment Amount provided the curtailment is resolved during that 3-year period. If the curtailment is not resolved within 3 years, then Idaho Power shall keep 100% of the Repayment Amount.

Summarizing from the IPC Letter:

1. The Project has not delivered any energy to Idaho Power during the last 9 months (November 2018 to July 2019). As of August 14, 2019, the Project is still not delivering energy to Idaho Power.
2. Paragraph 6.3 of the Agreement states that the Annual Net Firm Energy amount shall be 5,798,590 kWh.
3. The Facility delivered 3,355,049 kWh in Contract Year 25.
4. The Facility failed to achieve the Annual Net Firm Energy amount for Contract Year 25. The Facility has yet to deliver any energy for Contract Year 26.
5. Paragraph 21.3 of the Agreement requires the Seller to pay the appropriate lump sum repayment amount specified in Appendix D multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount and the Contract Year 25 Annual Net Energy amount.
6. Paragraph 21.7 of the Agreement recognizes that the Facility may resolve the cause of the Net Energy Amount curtailment within a 3-year period and permits Idaho Power to refund a portion of the lump sum repayment that the Seller paid to Idaho Power (up to 90%) provided the curtailment is resolved during that 3-year period.
7. The Idaho Power customers were harmed because the Facility failed to deliver the required Annual Net Firm Energy amount for a levelized rate contract which is why the Agreement requires Idaho Power to keep a portion of the lump sum repayment, even if the Facility returns to service and starts delivering energy to Idaho Power within a 3-year period of the curtailment.

Idaho Power is required by contract to seek the Repayment Amount security and payments as described in the last paragraph of the IPC Letter. As stated in the IPC Letter, please provide the security for 90% of the Repayment Amount (\$1,046,812) no later than September 3, 2019. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. If the curtailment is not resolved within 1 year of the start of the curtailment, then Idaho Power is entitled to another 5% of the Repayment Amount. If the curtailment is not resolved within 3 years, then Idaho Power is entitled to 100% of the Repayment Amount.

Sincerely,

  
Jerry Jardine  
Energy Contracts



1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

August 7, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

We are in receipt of your letter dated August 1 regarding the Mile 28 Project and the repairs we have been performing there that have taken longer than anticipated. While we acknowledge that Idaho Power has not received the deliveries it expected from the project this summer, we have read through the Firm Energy Sales Agreement and do not read the provisions you set out in your letter as requiring a Lump Sum Repayment.

You highlight Section 21.3 as providing for a Lump Sum Repayment in an amount that is then calculated in the letter. However, Section 21.3 provides for such repayment where the Seller "permanently curtails" its long-term average deliveries. There is no permanent curtailment in this circumstance. We are working very hard to make repairs at the facility to improve its functionality. We are rebuilding the switchgear to prevent the types of trips that have happened in the past, improving the trash rake system to deal with the extremely high volume of weeds and debris at the facility, and are winterizing the facility to take advantage of available recharge water. We anticipated that these repairs would be complete during the winter months when the project does not typically produce. As unfortunately sometimes happens, these repairs have taken much longer than planned, despite our diligent efforts. We appreciate Idaho Power's concerns and we want to do our best to find a solution that is agreeable. As mentioned above, we anticipate the project being able to make up this lost production once we finish our repairs and can take advantage of recharge water. We believe that these repairs will be complete within the next two to three weeks.

We appreciate your time and consideration and look forward to finding an agreeable solution. We would also like to extend an invitation to your team to come visit the facility once it is complete so that you can see the results of our efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Sorenson".

Ted S Sorenson, Manager  
Wood Hydro LLC

August 1, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Notification of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

**Mile 28 Hydro Firm Energy Sales Agreement**

Idaho Power and the Contractor's Power Group, Inc. ("Seller") executed a Firm Energy Sales Agreement ("Agreement") on August 13, 1993. This Agreement has changed ownership several times and most recently was sold to the Big Wood Canal Company which leases the Mile 28 Hydro Generation Facility ("Facility") to Wood Hydro LLC. The Facility is an Idaho Power designated network resource and the levelized energy rate was based on expected energy deliveries to Idaho Power from the Facility. The Facility is required to deliver all of its Net Energy to Idaho Power in accordance with this Agreement for 35 Contract Years beginning with the Operation Date of June 1, 1994 through May 31, 2029.

**Annual Review and Notifications**

Idaho Power performs annual reviews of all energy sales contracts to make sure they are in compliance and the facilities are performing according to their contracts. It came to Idaho Power's attention during a recent review that the Facility has not generated any power for the last 9 months (November 2018 through July 2019) and continues to remain offline. Idaho Power was not notified by the Facility at any time in the past 9 months that this designated network resource was going to be taken offline for an extended period of time and during the summer peak months.

**Recent Discussions**

On July 31, 2019, Michael Darrington (Idaho Power) and Jerry Jardine (Idaho Power) called Ted Sorenson (Wood Hydro LLC) and discussed the status of the Facility. Mr. Sorenson reported that beginning with the winter of 2018, several repairs and replacements were started and some of the repairs and replacements were continuing with an expected completion date in mid-August 2019. Idaho Power explained that because the Agreement is a levelized rate contract, Idaho Power is required to implement paragraph 21.3 of the Agreement for Lump Sum Repayment Amounts should the Facility fail to deliver the Annual Net Energy Amount agreed to by the Seller and defined in paragraph 6.3.

## **Lump Sum Refund Repayment Amount Calculation**

### **Annual Net Energy Amount**

Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for this Facility shall be 5,798,590 kWh.

### **Failure to Deliver the Annual Net Energy Amount**

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power.

### **Calculation**

The last completed Contract Year (6/1/2018 to 5/31/2019) is Contract Year 25. In accordance with Paragraph 21.3, the calculation of the Repayment Amount as of the end of Contract Year 25 is as follows:

The Annual Net Energy Amount of 5,798,590 kWh minus actual Net Energy delivered during Contract Year 25 of 3,355,049 kWh, the difference divided by 1,000 to convert to MWh and multiplied by the Appendix D Lump Sum Repayment amount for the 25<sup>th</sup> Contract Year of \$476 per annual MWh = \$1,163,125.

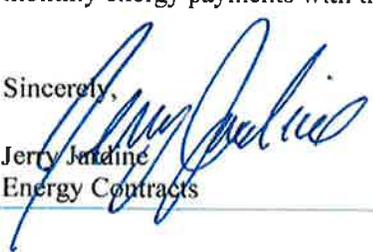
### **Provision for a Partial Refund of the Repayment Amount**

Paragraph 21.7 of the Agreement allows for Idaho Power to refund between 85% and 90% of the Repayment Amount to the Seller provided that the Facility returns to full production within three years of the Repayment Amount paid to Idaho Power by the Seller. The Facility must demonstrate that they will be able to achieve the Annual Net Energy Amount of 5,798,590 kWh for a Contract Year and must accomplish this before the end of the three-year period to qualify for the partial refund. Assuming that the Facility will resume sales in 2019, the partial refund to the Seller would be 90% of \$1,163,125 = \$1,046,812 and the remaining balance of \$116,312 would be paid by the Seller to Idaho Power and is not refundable.

### **Repayment Amount Security and Payments**

The Repayment Amount of \$1,163,125 is now due to Idaho Power. However, Mr. Sorenson provided documentation about the Facility repairs and replacements after the July 31, 2019 phone call and has demonstrated that the Facility is being prepared to return to service and is expected to continue to deliver the required Annual Net Energy Amount to Idaho Power for the remaining term of the Agreement. Because of these assurances, Idaho Power is willing to accept a letter of credit, subject to Idaho Power's review and credit requirements, as security for \$1,046,812. This letter of credit is due within 30 days of the date on this letter. This security shall be held in place for the next three Contract Years but may be released earlier by Idaho Power when the Facility returns to full generation, can demonstrate that it will achieve the Annual Net Energy Amount for the next Contract Year and provided that the Facility is generating before the end of the three-year period defined in paragraph 21.7. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. The Seller also has the option of making a non-refundable payment of \$116,312 in cash to Idaho Power instead of netting the monthly energy payments with the balance of the Repayment Amount due.

Sincerely,

  
Jerry Jardine  
Energy Contracts

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 7**



**Northwest**  
FARM CREDIT SERVICES

1215 Pier View Dr  
Idaho Falls, ID 83402-4966  
Voice: 208.552.2300 Fax: 208.552.2305

**IRREVOCABLE STANDBY LETTER OF CREDIT No. 6035477-101**

Date: August 19, 2019

**BENEFICIARY:**

Idaho Power Company  
1221 W. Idaho Street  
Boise, Idaho 83702  
Attention: Risk and Credit Department

**APPLICANT:**

Wood Hydro LLC  
1032 Grandview Drive  
Ivins, Utah 84738  
Attention: Ted Sorenson

Ladies and Gentlemen:

Northwest Farm Credit Services, PCA, 1215 Pier View Dr., Idaho Falls, Idaho (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit (this "Letter of Credit") in favor of Idaho Power Company, an Idaho corporation (the "Beneficiary"), for the account of Wood Hydro LLC, an Idaho Limited Liability Company (the "Applicant"), in the amount of US\$ 1,046,812.00 (One million forty-six thousand eight hundred and twelve United States Dollars and 00/100 only) (the "Available Amount"), effective immediately and expiring at 5:00 p.m. New York time on October 3, 2022, or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day (the "Expiration Date"); provided however, that such Expiration Date shall automatically be extended for successive one-year terms, unless and until the Beneficiary provides to the Applicant a written notice of termination of the Letter of Credit at least 60 days' prior to such Expiration Date, as extended. This Letter of Credit is provided by the Applicant to meet the terms outlined in Paragraphs 21.3 and 21.7 of the Energy Sales Agreement between Idaho Power Company and Contractor's Power Group, Inc dated August 13, 1993.

For the purposes hereof, the term "Business Day" shall mean any day, other than a Saturday or Sunday, on which commercial banks are not authorized or required to be closed in the City of New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation of the following documents at Northwest Farm Credit Services, PCA, 1215 Pier View Dr., Idaho Falls, Idaho 83402-4966, ATTENTION: Eric Gray, on or prior to 5:00 p.m. New York time on any Business Day on or prior to the Expiration Date: October 3, 2022

1. The original of this Letter of Credit and all amendments thereto for endorsement thereto (or photocopies of the originals for partial drawings or for facsimile transmittals); and
2. The Drawing Certificate duly dated and issued in substantially the form of Attachment A attached hereto, duly completed and purportedly bearing the signature of an officer of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at (208) 552-2305 to the attention of Eric Gray, Relationship Manager/VP. Any claims made by facsimile must be confirmed by such person as shall be specified from time-to-time by the Bank. The facsimile transmittal shall be deemed received when confirmed to Bank by telephone at (208) 552-2327. Drawings made by facsimile transmittal are deemed to be the actual presentation without the need of original signed documents.

In the event of any non-conforming presentation, we shall immediately notify Beneficiary by facsimile to (208) 388-2521 that the presentation has been rejected, which notice shall indicate the reason for dishonoring such presentation and shall place at the disposal of beneficiary the documents presented by Beneficiary in support of its demand for payment. Beneficiary may thereafter present documents and receive payment hereunder in the event a conforming presentation is made in accordance with the terms herein.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, that the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be null and void and of no force or effect.

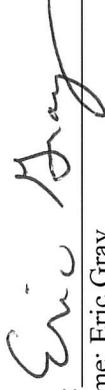
Banking charges and all other costs and fees associated with this Letter of Credit shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified, or limited by reference to any documents, instruments, or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument, or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated herein, this Letter of Credit is subject to the International Standby Practices ISP 98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"), and as to matters not covered by the ISP, the laws of the State of Idaho (without regard to the principles of conflicts of laws thereunder).

Northwest Farm Credit Services, PCA

By:   
Name: Eric Gray  
Title: Relationship Manager/VP

ATTACHMENT A

**FORM OF DRAWING CERTIFICATE**

To:

Northwest Farm Credit Services, PCA  
1215 Pier View Dr.  
Idaho Falls, ID 83402-4966  
Attn: Eric Gray

Subject: Irrevocable Standby Letter of Credit No. 6035477-101

The undersigned \_\_\_\_\_, an authorized representative of Idaho Power Company, an Idaho corporation (the "Beneficiary"), hereby certifies to Northwest Farm Credit Services (the "Bank"), with reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ \_\_\_\_\_, pursuant to the terms of that certain [NAME OF AGREEMENT] between \_\_\_\_\_ and Beneficiary, dated as of \_\_\_\_\_, 20\_\_.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of XXX AND XX/100 Dollars (\$ \_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_ day of \_\_\_\_\_, 20\_\_.

IDAHO POWER COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 8**

**Archived:** Monday, August 3, 2020 10:36:03 AM

**From:** [Miriah Elliott](#)

**Sent:** Tue, 17 Sep 2019 14:56:17

**To:** [Jardine, Jerry](#)

**Cc:** Ted S. Sorenson; Darrington, Michael

**Subject:** [EXTERNAL]Re: Mile 28 Annual Net Energy Notice

**Sensitivity:** Normal

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**KEEP IDAHO POWER SECURE!** External emails may request information or contain malicious links or attachments. Verify the sender before proceeding, and check for additional warning messages below.

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Jerry and Michael,

Ted wanted me to let you know that the Mile 28 Project is up and running and has been running since late August. Please let me know if you need additional information at this point.

Warm Regards,  
Miriah

---

**From:** [Jardine, Jerry](#) <[JJardine@idahopower.com](mailto:JJardine@idahopower.com)>

**Sent:** Wednesday, August 14, 2019 3:46 PM

**To:** [Miriah Elliott](#) <[miriah@tsorenson.net](mailto:miriah@tsorenson.net)>

**Cc:** Ted S. Sorenson <[ted@tsorenson.net](mailto:ted@tsorenson.net)>; Darrington, Michael <[MDarrington@idahopower.com](mailto:MDarrington@idahopower.com)>; Walker, Donovan <[DWalker@idahopower.com](mailto:DWalker@idahopower.com)>

**Subject:** RE: Mile 28 Annual Net Energy Notice

---

**From:** [Miriah Elliott](#) <[miriah@tsorenson.net](mailto:miriah@tsorenson.net)>

**Sent:** Wednesday, August 07, 2019 4:49 PM

**To:** [Jardine, Jerry](#) <[JJardine@idahopower.com](mailto:JJardine@idahopower.com)>

**Cc:** Ted S. Sorenson <[ted@tsorenson.net](mailto:ted@tsorenson.net)>

**Subject:** [EXTERNAL]RE: Mile 28 Annual Net Energy Notice

---

**KEEP IDAHO POWER SECURE!** External emails may request information or contain malicious links or attachments. Verify the sender before proceeding, and check for additional warning messages below.

---

Jerry,

Attached please find a letter from Ted responding to your August 1 letter regarding the Mile 28 project.

Best,

Miriah

**Miriah R. Elliott**

**Director of Business Operations**

office: (435) 429-1878

cell: (801) 891-4147

email: [miriah@tsorenson.net](mailto:miriah@tsorenson.net)

1032 Grandview Drive

Mins, UT 84738

sig pic



Begin forwarded message:

**From:** "Jardine, Jerry" <[JJardine@idahopower.com](mailto:JJardine@idahopower.com)>

**Date:** August 1, 2019 at 2:10:06 PM MDT

**To:** "'Ted S. Sorenson'" <[ted@tsorenson.net](mailto:ted@tsorenson.net)>

**Subject:** Mile 28 Annual Net Energy Notice

Ted,

Attached is the Mile 28 Annual Net Energy Notice that we discussed yesterday by phone.

Regards,

Jerry Jardine

Energy Contracts

Idaho Power Company

**IDAHO POWER LEGAL DISCLAIMER**

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format. Thank you.



**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 9**



**C. Tom Arkoosh**  
tom.arkoosh@arkoosh.com

March 17, 2020

Donavan Walker  
Idaho Power Company  
PO Box 70  
Boise, ID 83707  
[DWalker@Idahopower.com](mailto:DWalker@Idahopower.com)

*Re: Mile 28 Original Energy Sales Agreement*

Dear Donovan:

There is ongoing dispute of contract interpretation between Idaho Power Company (“Idaho Power”) and Wood Hydro, LLC, (“Wood”), the successor in interest to the Mile 28 Hydro Generation Facility (“Project”) Firm Energy Sales Agreement of August 23, 1993 (“Agreement”). Enclosed you will find correspondence between the parties that adequately describes the background of this dispute.

In summary, because the project was “off line” from April to mid-August, 2019, Idaho Power staff seeks to assess Wood \$116,312.00 based upon a calculation explained by Idaho Power staff as the difference between the Annual Net Energy Amount estimation and the actual Net Energy Delivered times the Lump Sum Repayment amount from Appendix D of the Agreement for permanent curtailment in the 25<sup>th</sup> year.

The difficulty with the assessment is that there has never been a permanent curtailment of the Annual Net Energy Amount by reason of not producing energy from April to mid-August.

Before reviewing the actual wording of the contract, please recall the context in which Idaho Power advocated before the Idaho Public Utilities Commission for the adoption of the 90/110 performance band to create reliability in deliveries. As to the Agreement, and agreements like it, entered before the age of the 90/110 performance band, Idaho Power wrote:

**The Commission Should Consider the Distinction Between Firm and Non-Firm QF Energy In Light Of Current Conditions**

In seeking leave to file a post-hearing brief, counsel for U.S. Geothermal indicated that it was his intention to use the post-hearing brief to address the Commission’s prior orders that define the terms ‘non-firm’ and ‘firm’ in the

context of energy purchased from QFs. Idaho Power does not believe there is any dispute as to how the Commission has traditionally used those terms. In Order No. 15746 in Case No. P-300-12, The Commission noted that, ‘under Section 292.304(d) of the FERC rules, a small power producer has the option of selling power to a utility either on an ‘as-available’ basis or ‘pursuant’ to a legally enforceable obligation.’ In Order No. 15746 and subsequently in Order No. 18190 issued in 1983 in Case No. U-1006-200, the Commission defined the ‘as-available sale’ to correspond to non-firm energy and the ‘pursuant to a legally enforceable obligation’ to correspond to firm energy. As the Commission noted in Order No. 18618 issued in Case No. U-1006-216, ‘The Company is correct, therefore, when it asserts that Order Nos. 18190 and 18358 distinguish between firm and non-firm energy prices and that it is the ‘quality of the energy produced’ by the co-generator or small power producer that determines its price.’ (Order No. 18618, p.3.)

In Order No. 18618, the Commission also stated:

“...energy is considered firm if it is provided by the seller pursuant to a legally enforceable obligation to deliver and if it is of sufficient reliability that it can serve to defer or avoid construction of the company’s own plants. Hydro projects --- both those of the company and those of small power producers --- have always been assumed to meet this definition.” (Order No. 18618, p.9).

As Idaho Power noted in its direct testimony in this case, using the definition of firm energy established in the early 1980’s, a QF is only obligated to sign a contract and provide an estimate of what it thinks it will generate each month over the twenty (20) to thirty-five (35) year term of its agreement to be entitled to receive firm energy prices. As Mr. Gale noted, in today’s world, the actual firmness of the energy deliveries under these 1980’s vintage contracts more closely resemble non-firm energy deliveries than firm energy deliveries. In the Firm Energy Sales Agreements (‘FESA’s’) without the 90%/110% band provision, QF developers provide an estimate of what they expect to generate each month, but there is no requirement, nor is there any economic incentive, for QF developers to provide accurate estimates or to actually deliver energy in the monthly amounts they estimate they will provide in the Firm Energy Sales Agreement. The actual amount of energy delivered by QF’s under these agreements can fluctuate between 0 MW and 10 MW, hour-to-hour, day-to-day, month-to-month, either because the project has lost its motive force or the developer has chosen to reduce generation for some other reason. With the exception of the five new QF contracts which include the 90%/110% band, Idaho Powers QF contracts do not require QF’s to provide the higher value firm energy Idaho Power’s customers are paying for. *Post-Hearing Brief*, Page 4, Cases Nos. IPC-E-04-08 and 10.

The language of Idaho Power's *Post Hearing Brief* relevant here to the operation of the Agreement deserves emphasis: **there is no requirement ... for QF developers to provide accurate estimates, or to actually deliver energy in the monthly amounts they estimate they will provide in the Firm Energy Sales Agreement.**

\*\*\*

**With the exception of the five new QF contracts which include the 90%110% band, Idaho Powers QF contracts do not require QF's to provide the higher value firm energy Idaho Power's customers are paying for.**

The *Post Hearing Brief* does not support Idaho Power's argument about liquidated damages. The language of the Agreement does not support the conclusion that the failure of the Project to deliver power between April and mid-August authorizes Idaho Power to withhold monies from Wood.

Idaho Power relies upon this language from section 21.3 of the Agreement:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of the Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment.

Please note that "Annual Net Firm Energy," is defined in section 1.1 of the Agreement as "[t]he amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Contract Year." [Emphasis added.] Nowhere in the claim letters of Idaho Power does Idaho Power assert that Wood seeks to change the Annual Net Firm Energy estimates found at section 6.2 of the Agreement.

Further, not only has Wood not changed the estimates of the Annual Net Firm Energy deliveries but has done absolutely nothing permanent or long-term concerning deliveries from the Project.

The language of Idaho Power's *Post Hearing Brief* and the representations Idaho Power made to the Idaho Public Commission make clear that section 21.3 does not allow the attempted assessment unless and until Wood permanently changes the estimates in the Agreement. Other provisions indicate section 21.3 is the section addressing the estimates and changes in those estimates, but not the actual deliveries. Section 21.3 itself provides that interest begins only 60 days after a Seller receives "notice of Seller's permanent reduction of the Annual Net Firm Energy Amount." Read in context, this sentence makes clear that the permanent reduction must be a permanent reduction of the estimate.

It is also important to note that in addressing available adjustments to the Agreement, Idaho Power may adjust the estimates in the contract, the Annual Net Firm Energy Amount, based on actual performance, again confirming that section 23.1 addresses the estimate, and not the actual delivered energy, because it is inconceivable that Idaho Power can adjust the amount of actual energy delivered.

Further, the liquidated damages clause found in section 23.1 appears unenforceable.

“In determining the validity of liquidated damage clauses, we have adhered to the rule set forth in the Restatement of Contracts section 339 (1932);

‘An agreement, made in advance of breach, fixing the damages therefor, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless

(a) The amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and

(b) The harm that is caused by the breach is one that is incapable or very difficult of accurate estimation.”

*Young Electric Co. v. Capps*, supra [94 Idaho] at 521, 492 P.2d at 60; *Graves v. Cupic*, 75 Idaho 451, 457, 272 P.2d 1020, 1023-24 (1954).

Repeatedly and historically, Idaho Power has claimed that it has available to it market electricity less expensive than PURPA power prices as found in the Agreement. Also, energy sales upon transparent markets making any damage claim easily to calculate.

Finally, Idaho Power will over time receive the energy claimed to be deficient addressed in the claim letters, contradicting the assertion that Idaho Power customers will be harmed. In fact, as more particularly described in the attached correspondence, the repairs and upgrades at the facility will make the facility more reliable, providing additional benefit to Idaho Power customers. The facility has been online and operating reliably since August.

For the forgoing reasons, we request confirmation that Wood will not be assessed as proposed in the accompanying claim letters and promptly be reimbursed for funds withheld from its power generation payments.

Sincerely,

ARKOOSH LAW OFFICES



C. Tom Arkoosh

August 14, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Second Notice of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

Idaho Power received your letter dated August 7, 2019 (“WH Letter”) regarding the Mile 28 Hydro failure to achieve the Annual Net Firm Energy amount for Contract Year 25. Attached is the Idaho Power Letter dated August 1, 2019 (“IPC Letter”) for reference.

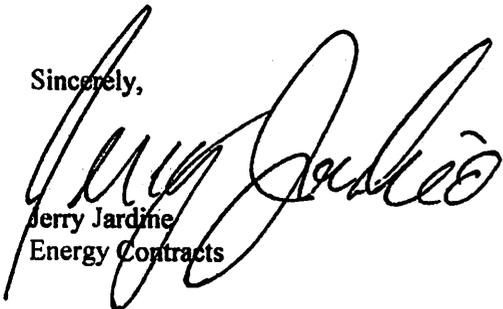
In your WH Letter, you requested that we find an agreeable solution. However, Idaho Power is required to enforce the terms of the Agreement and we cannot agree to different terms which will harm the Idaho Power customers while benefiting the Facility. Your WH Letter also referenced only two words (“permanently curtails”) from a sentence in Paragraph 21.3 of the Agreement and you stated that the Facility’s ongoing curtailment, which has lasted for 9 months, has caused the Facility to miss the Annual Net Energy Amount for Contract Year 25 by 42% and the Facility has yet to deliver any energy to Idaho Power for Contract Year 26, is “not a permanent curtailment”. The complete sentence in paragraph 21.3 that you referenced reads, “If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by.....curtailment. Paragraph 21.7, Refund of Lump Sum Refund, goes on to explain that if, within 3 years, the Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power, then Idaho Power will refund up to 90% of the Repayment Amount provided the curtailment is resolved during that 3-year period. It is clear from paragraph 21.7, that the Agreement recognizes the Facility may resolve the cause of the curtailment to their Net Firm Energy deliveries, which would apply to your circumstance if the Facility starts delivering the Annual Net Energy Amount again, and permits Idaho Power to refund up to 90% of the lump sum repayment that the Seller paid to Idaho Power provided the curtailment is resolved during that 3-year period. Paragraph 21.7 also allows Idaho Power to to keep either 10% or 15% of the Repayment Amount provided the curtailment is resolved during that 3-year period. If the curtailment is not resolved within 3 years, then Idaho Power shall keep 100% of the Repayment Amount.

Summarizing from the IPC Letter:

1. The Project has not delivered any energy to Idaho Power during the last 9 months (November 2018 to July 2019). As of August 14, 2019, the Project is still not delivering energy to Idaho Power.
2. Paragraph 6.3 of the Agreement states that the Annual Net Firm Energy amount shall be 5,798,590 kWh.
3. The Facility delivered 3,355,049 kWh in Contract Year 25.
4. The Facility failed to achieve the Annual Net Firm Energy amount for Contract Year 25. The Facility has yet to deliver any energy for Contract Year 26.
5. Paragraph 21.3 of the Agreement requires the Seller to pay the appropriate lump sum repayment amount specified in Appendix D multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount and the Contract Year 25 Annual Net Energy amount.
6. Paragraph 21.7 of the Agreement recognizes that the Facility may resolve the cause of the Net Energy Amount curtailment within a 3-year period and permits Idaho Power to refund a portion of the lump sum repayment that the Seller paid to Idaho Power (up to 90%) provided the curtailment is resolved during that 3-year period.
7. The Idaho Power customers were harmed because the Facility failed to deliver the required Annual Net Firm Energy amount for a levelized rate contract which is why the Agreement requires Idaho Power to keep a portion of the lump sum repayment, even if the Facility returns to service and starts delivering energy to Idaho Power within a 3-year period of the curtailment.

Idaho Power is required by contract to seek the Repayment Amount security and payments as described in the last paragraph of the IPC Letter. As stated in the IPC Letter, please provide the security for 90% of the Repayment Amount (\$1,046,812) no later than September 3, 2019. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. If the curtailment is not resolved within 1 year of the start of the curtailment, then Idaho Power is entitled to another 5% of the Repayment Amount. If the curtailment is not resolved within 3 years, then Idaho Power is entitled to 100% of the Repayment Amount.

Sincerely,



Jerry Jardine  
Energy Contracts



WOODHYDRO

1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

August 7, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

We are in receipt of your letter dated August 1 regarding the Mile 28 Project and the repairs we have been performing there that have taken longer than anticipated. While we acknowledge that Idaho Power has not received the deliveries it expected from the project this summer, we have read through the Firm Energy Sales Agreement and do not read the provisions you set out in your letter as requiring a Lump Sum Repayment.

You highlight Section 21.3 as providing for a Lump Sum Repayment in an amount that is then calculated in the letter. However, Section 21.3 provides for such repayment where the Seller "permanently curtails" its long-term average deliveries. There is no permanent curtailment in this circumstance. We are working very hard to make repairs at the facility to improve its functionality. We are rebuilding the switchgear to prevent the types of trips that have happened in the past, improving the trash rake system to deal with the extremely high volume of weeds and debris at the facility, and are winterizing the facility to take advantage of available recharge water. We anticipated that these repairs would be complete during the winter months when the project does not typically produce. As unfortunately sometimes happens, these repairs have taken much longer than planned, despite our diligent efforts. We appreciate Idaho Power's concerns and we want to do our best to find a solution that is agreeable. As mentioned above, we anticipate the project being able to make up this lost production once we finish our repairs and can take advantage of recharge water. We believe that these repairs will be complete within the next two to three weeks.

We appreciate your time and consideration and look forward to finding an agreeable solution. We would also like to extend an invitation to your team to come visit the facility once it is complete so that you can see the results of our efforts.

Sincerely,

Ted S Sorenson, Manager  
Wood Hydro LLC



August 1, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Notification of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

**Mile 28 Hydro Firm Energy Sales Agreement**

Idaho Power and the Contractor's Power Group, Inc. ("Seller") executed a Firm Energy Sales Agreement ("Agreement") on August 13, 1993. This Agreement has changed ownership several times and most recently was sold to the Big Wood Canal Company which leases the Mile 28 Hydro Generation Facility ("Facility") to Wood Hydro LLC. The Facility is an Idaho Power designated network resource and the levelized energy rate was based on expected energy deliveries to Idaho Power from the Facility. The Facility is required to deliver all of its Net Energy to Idaho Power in accordance with this Agreement for 35 Contract Years beginning with the Operation Date of June 1, 1994 through May 31, 2029.

**Annual Review and Notifications**

Idaho Power performs annual reviews of all energy sales contracts to make sure they are in compliance and the facilities are performing according to their contracts. It came to Idaho Power's attention during a recent review that the Facility has not generated any power for the last 9 months (November 2018 through July 2019) and continues to remain offline. Idaho Power was not notified by the Facility at any time in the past 9 months that this designated network resource was going to be taken offline for an extended period of time and during the summer peak months.

**Recent Discussions**

On July 31, 2019, Michael Darrington (Idaho Power) and Jerry Jardine (Idaho Power) called Ted Sorenson (Wood Hydro LLC) and discussed the status of the Facility. Mr. Sorenson reported that beginning with the winter of 2018, several repairs and replacements were started and some of the repairs and replacements were continuing with an expected completion date in mid-August 2019. Idaho Power explained that because the Agreement is a levelized rate contract, Idaho Power is required to implement paragraph 21.3 of the Agreement for Lump Sum Repayment Amounts should the Facility fail to deliver the Annual Net Energy Amount agreed to by the Seller and defined in paragraph 6.3.

### **Lump Sum Refund Repayment Amount Calculation**

#### **Annual Net Energy Amount**

Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for this Facility shall be 5,798,590 kWh.

#### **Failure to Deliver the Annual Net Energy Amount**

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power.

#### **Calculation**

The last completed Contract Year (6/1/2018 to 5/31/2019) is Contract Year 25. In accordance with Paragraph 21.3, the calculation of the Repayment Amount as of the end of Contract Year 25 is as follows:

The Annual Net Energy Amount of 5,798,590 kWh minus actual Net Energy delivered during Contract Year 25 of 3,355,049 kWh, the difference divided by 1,000 to convert to MWH and multiplied by the Appendix D Lump Sum Repayment amount for the 25<sup>th</sup> Contract Year of \$476 per annual MWH = \$1,163,125.

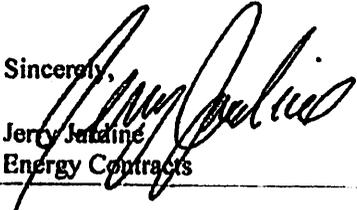
#### **Provision for a Partial Refund of the Repayment Amount**

Paragraph 21.7 of the Agreement allows for Idaho Power to refund between 85% and 90% of the Repayment Amount to the Seller provided that the Facility returns to full production within three years of the Repayment Amount paid to Idaho Power by the Seller. The Facility must demonstrate that they will be able to achieve the Annual Net Energy Amount of 5,798,590 kWh for a Contract Year and must accomplish this before the end of the three-year period to qualify for the partial refund. Assuming that the Facility will resume sales in 2019, the partial refund to the Seller would be 90% of \$1,163,125 = \$1,046,812 and the remaining balance of \$116,312 would be paid by the Seller to Idaho Power and is not refundable.

#### **Repayment Amount Security and Payments**

The Repayment Amount of \$1,163,125 is now due to Idaho Power. However, Mr. Sorenson provided documentation about the Facility repairs and replacements after the July 31, 2019 phone call and has demonstrated that the Facility is being prepared to return to service and is expected to continue to deliver the required Annual Net Energy Amount to Idaho Power for the remaining term of the Agreement. Because of these assurances, Idaho Power is willing to accept a letter of credit, subject to Idaho Power's review and credit requirements, as security for \$1,046,812. This letter of credit is due within 30 days of the date on this letter. This security shall be held in place for the next three Contract Years but may be released earlier by Idaho Power when the Facility returns to full generation, can demonstrate that it will achieve the Annual Net Energy Amount for the next Contract Year and provided that the Facility is generating before the end of the three-year period defined in paragraph 21.7. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. The Seller also has the option of making a non-refundable payment of \$116,312 in cash to Idaho Power instead of netting the monthly energy payments with the balance of the Repayment Amount due.

Sincerely,

  
Jerry Jantaine  
Energy Contracts



WOODHYDRO

1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

October 8, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

As you know, the Mile 28 Hydro facility (the "Facility") generated over 571,000 kwh in August of this year after it was offline for a few months to enable important repairs such as rebuilding the switchgear, improving the trash racks, and winterizing the system. Per your letter dated August 1, 2019, Idaho Power alleges that the deliveries for the Facility were "permanently curtailed," and thus a Lump Sum Repayment was required for the facility. We responded by letter dated August 7, 2019, and disputed that there was any such permanent curtailment for the Facility. By email dated August 15, 2019, Ted S. Sorenson agreed to provide the security requested in the August 1, 2019 letter, but did so under protest in order to focus on putting the Facility back online in as timely a manner as possible.

We have now become aware that in addition to receiving the Letter of Credit, Idaho Power intends to offset power generation revenue by \$116,312, which is the amount it claims in the August 1, 2019 letter is the non-refundable portion of the Lump Sum Repayment. We reiterate that there was no permanent curtailment here. Historically, the Facility has not generated in the winter months, yet Idaho Power has included these months in its assessment both of its argument that a permanent curtailment exists and in calculating the Lump Sum Repayment. We have been unable to find specific language in the Energy Sales Agreement specifying how one is to determine that a permanent curtailment has occurred. We think it is unreasonable to conclude that lack of generation for such a short period of time is sufficient to both conclude that a permanent curtailment exists and that such repayment is necessary. Further, in addition to the security provided in the Letter of Credit, the winterization of the Facility will ensure that the Facility will make up for any lost generation from the summer months during its operations this winter.

We appreciate your attention in this matter and are happy to answer any questions that you may have.

Sincerely,

Ted S Sorenson, P.E.  
Manager, Wood Hydro LLC

August 1, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Notification of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

**Mile 28 Hydro Firm Energy Sales Agreement**

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**Recent Discussions**

On July 31, 2019, Michael Darrington (Idaho Power) and Jerry Jardine (Idaho Power) called Ted Sorenson (Wood Hydro LLC) and discussed the status of the Facility. Mr. Sorenson reported that beginning with the winter of 2018, several repairs and replacements were started and some of the repairs and replacements were continuing with an expected completion date in mid-August 2019. Idaho Power explained that because the Agreement is a levelized rate contract, Idaho Power is required to implement paragraph 21.3 of the Agreement for Lump Sum Repayment Amounts should the Facility fail to deliver the Annual Net Energy Amount agreed to by the Seller and defined in paragraph 6.3.

## **Lump Sum Refund Repayment Amount Calculation**

### **Annual Net Energy Amount**

Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for this Facility shall be 5,798,590 kWh.

### **Failure to Deliver the Annual Net Energy Amount**

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power.

### **Calculation**

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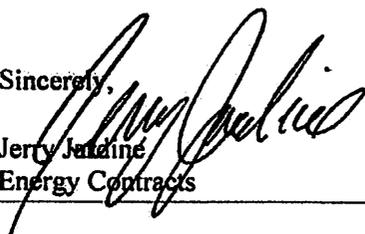
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### **Repayment Amount Security and Payments**

The Repayment Amount of \$1,163,125 is now due to Idaho Power. However, Mr. Sorenson provided documentation about the Facility repairs and replacements after the July 31, 2019 phone call and has demonstrated that the Facility is being prepared to return to service and is expected to continue to deliver the required Annual Net Energy Amount to Idaho Power for the remaining term of the Agreement. Because of these assurances, Idaho Power is willing to accept a letter of credit, subject to Idaho Power's review and credit requirements, as security for \$1,046,812. This letter of credit is due within 30 days of the date on this letter. This security shall be held in place for the next three Contract Years but may be released earlier by Idaho Power when the Facility returns to full generation, can demonstrate that it will achieve the Annual Net Energy Amount for the next Contract Year and provided that the Facility is generating before the end of the three-year period defined in paragraph 21.7. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. The Seller also has the option of making a non-refundable payment of \$116,312 in cash to Idaho Power instead of netting the monthly energy payments with the balance of the Repayment Amount due.

Sincerely,

  
Jerry Jardine  
Energy Contracts



1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

August 7, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

We are in receipt of your letter dated August 1 regarding the Mile 28 Project and the repairs we have been performing there that have taken longer than anticipated. While we acknowledge that Idaho Power has not received the deliveries it expected from the project this summer, we have read through the Firm Energy Sales Agreement and do not read the provisions you set out in your letter as requiring a Lump Sum Repayment.

You highlight Section 21.3 as providing for a Lump Sum Repayment in an amount that is then calculated in the letter. However, Section 21.3 provides for such repayment where the Seller "permanently curtails" its long-term average deliveries. There is no permanent curtailment in this circumstance. We are working very hard to make repairs at the facility to improve its functionality. We are rebuilding the switchgear to prevent the types of trips that have happened in the past, improving the trash rake system to deal with the extremely high volume of weeds and debris at the facility, and are winterizing the facility to take advantage of available recharge water. We anticipated that these repairs would be complete during the winter months when the project does not typically produce. As unfortunately sometimes happens, these repairs have taken much longer than planned, despite our diligent efforts. We appreciate Idaho Power's concerns and we want to do our best to find a solution that is agreeable. As mentioned above, we anticipate the project being able to make up this lost production once we finish our repairs and can take advantage of recharge water. We believe that these repairs will be complete within the next two to three weeks.

We appreciate your time and consideration and look forward to finding an agreeable solution. We would also like to extend an invitation to your team to come visit the facility once it is complete so that you can see the results of our efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted S Sorenson", written over a horizontal line.

Ted S Sorenson, Manager  
Wood Hydro LLC

**From:** [Ted S. Sorenson](#)  
**To:** [Jardine, Jerry](#); [Miriah Elliott](#)  
**Cc:** [Darrington, Michael](#); [Walker, Donovan](#)  
**Subject:** RE: Mile 28 Annual Net Energy Notice  
**Date:** Thursday, August 15, 2019 7:28:46 AM

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Jerry

We will provide the security requested but do so under protest . I simply do not have time to dispute. I want to stay focused on getting the plant back online as well as getting knight, sage brush and MC under way .

We request provision of security in the form of a letter of credit from our Bank , Farm Credit . Is this acceptable to Idaho Power ?

I ask your consideration on one two items

1. Please come to Mile 28 and see for yourself what we are doing
2. The generation shortage last year , was in my opinion , a partial function of Line issues with Idaho Power tripping us offline multiple times. See email below

**Ted S. Sorenson, PE**  
cell: (208) 589-6908  
email: [ted@tsorenson.net](mailto:ted@tsorenson.net)



**From:** Ted S. Sorenson  
**Sent:** Tuesday, September 11, 2018 6:23 AM  
**To:** 'JCreason@idahopower.com' <JCreason@idahopower.com>  
**Cc:** 'Dale Hellwinkel' <windyhcattle@gmail.com>; 'davidstephenson@cableone.net' <davidstephenson@cableone.net>; 'Jardine, Jerry' <JJardine@idahopower.com>  
**Subject:** Mile 28 Hydro Plant

Jerimiah

We have a problem . Beginning July 15 the plant has experienced 7 or 8 trips; all utility outages from Idaho Power. We are experiencing damage to equipment . The common thread is damage to equipment that only operates when the generators are off line; lube oil pumps, multiple speed sensors , the interconnect monitoring package , power supply to PLC , lighting arrestors etc , and over this last weekend damage to our transformer. Our operators report being jobsite after a trip and observing when Idaho power reenergizes the line , lightening arrestors going up in flames and voltage on one leg 20% higher than normal . We believe we the issue is voltage spikes when Idaho power reenergizes .

Please feel free to contact operator Dale Hellwinkel at 208-358-1711 for more detailed information.

We are getting the transformer repaired but are reluctant to restart until we have assurances that the problem is fixed. We have been offline 27 days since July 15 and have experienced thousands of dollars in repair expense. We will cooperate in any way we can but need your immediate attention. Please advise .

**Ted S, Sorenson, PE**  
office: (435) 429-1878  
cell: (208) 589-6908  
email: [ted@tsorenson.net](mailto:ted@tsorenson.net)



---

**From:** Jardine, Jerry <[JJardine@idahopower.com](mailto:JJardine@idahopower.com)>  
**Sent:** Wednesday, August 14, 2019 3:47 PM  
**To:** Miriah Elliott <[miriah@tsorenson.net](mailto:miriah@tsorenson.net)>  
**Cc:** Ted S. Sorenson <[ted@tsorenson.net](mailto:ted@tsorenson.net)>; Darrington, Michael <[MDarrington@idahopower.com](mailto:MDarrington@idahopower.com)>; Walker, Donovan <[DWalker@idahopower.com](mailto:DWalker@idahopower.com)>  
**Subject:** RE: Mile 28 Annual Net Energy Notice

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**From:** Miriah Elliott <[miriah@tsorenson.net](mailto:miriah@tsorenson.net)>  
**Sent:** Wednesday, August 07, 2019 4:49 PM  
**To:** Jardine, Jerry <[JJardine@idahopower.com](mailto:JJardine@idahopower.com)>  
**Cc:** Ted S. Sorenson <[ted@tsorenson.net](mailto:ted@tsorenson.net)>  
**Subject:** [EXTERNAL]RE: Mile 28 Annual Net Energy Notice

**KEEP IDAHO POWER SECURE!** External emails may request information or contain malicious links or attachments. Verify the sender before proceeding, and check for additional warning messages below.

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Jerry,

Attached please find a letter from Ted responding to your August 1 letter regarding the Mile 28 project.

Best,

Miriah

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 10**

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

April 15, 2020

C. Tom Arkoosh  
Arkoosh Law Offices  
802 W. Bannock Street, Suite LP 103  
P.O. Box 2900  
Boise, ID 83701

**VIA ELECTRONIC MAIL:** [tom.arkoosh@arkoosh.com](mailto:tom.arkoosh@arkoosh.com)

Re: Mile 28 Hydro

Dear Tom:

I write in response to your letter dated March 17, 2020, which references an “ongoing dispute of cont[r]act [sic] interpretation between Idaho Power Company (“Idaho Power”) and Wood Hydro, LLC, (“Wood”)” regarding a PURPA QF Firm Energy Sales Agreement dated August 23, 1993 (“Agreement”) for the Mile 28 hydro project.

The bulk of your letter quotes and discusses IPUC orders and Idaho Power testimony mainly from the 1980’s which frankly I have a hard time seeing as relevant or understanding the point you are trying to make. The particular Agreement, and the terms and conditions thereof between Mile 28 and Idaho Power are straight-forward and clear. Granted the terminology is a bit difficult to work through, but such is the case with every PURPA QF contract I have ever encountered. This particular vintage of PURPA QF contract has many provisions that are no longer employed in such contracts by the IPUC. However, this does not in and of itself make such contract provisions invalid even though the concepts and provisions are no longer required or utilized in mandatory QF purchases by Idaho Power.

This type of Firm Energy Sales Agreement, in general terms, works as follows: Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy produced by the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Firm Energy amount is sum of the project’s monthly estimates, in this instance 5,798,590 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Firm Energy; the project must deliver up to its Annual Net Firm Energy amount from Section 6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.3; Appendix D).

This is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate contract, there is an “overpayment” to the project in the early years that is offset by an “underpayment” in the outer years. To make sure that a project does not just generate and take payments during the more lucrative “overpayment” early years, and then fail to generate or under-generate in the later years when customers are being repaid for the “overpayment” in the “underpayment” years, the IPUC set up certain mechanisms to make sure customers were not left holding the bag in the outer years of the contract. These mechanisms include such things as additional security, and in this case the provisions found in Section 21.3 “Seller Permanent Curtailment”, Appendix D “Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Energy Amount Under 35-Year Contract”, and 21.7 “Refund of Lump Sum Repayment”. These sections of the contract, Section 21.3, Section 21.7, Section 6.3, and Appendix D, when read and considered together in the context of the four corners of this contract are clear and tell us exactly what happens when the project fails to deliver its Annual Net Firm Energy amount specified in Section 6.3.

As pointed out by both Idaho Power and by you in your letter, the relevant portion of Section 21.3, Seller Permanent Curtailment, states as follows:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment.

Section 6.3, Annual Net Firm Energy Amount, states, “The Annual Net Firm Energy amount shall be 5,798,590 kWh and shall be the sum of the three (3) Seasonal Net Firm Energy amounts Seller specified above.” Sections 6.2 and 6.4 reference how the Net Firm Energy Amounts the Seller has estimated are based upon anticipated and historical long-term average water flows, long-term average energy production estimates, Seller’s water right filings and the water records supporting those projected water flows. Section 6.4 states, “The parties have reviewed these anticipated water flows ... and have agreed that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Firm Energy amount in paragraph 6.3 are reasonable and shall constitute the water flows available to the Facility under “average” water conditions.”

Here, the project had Zero deliveries to Idaho Power during the months of November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, and July 2019. Contract Year 25 ran from June 1, 2018 through May 31, 2019. The project had a total Net Firm Energy delivered during Contract Year 25 of only 3,355,049 kWh, which is short of the required delivery of the Annual Net Firm Energy Amount from Section 6.3 of 5,798,590 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once Contract Year 25 came and went with a substantial shortfall of delivered Net Firm Energy, there was no way to “make-up” the shortfall by over-generating in a different time period. There was a permanent curtailment of the project’s Annual Net Firm Energy deliveries for Contract Year 25. The project also had curtailment of Net Firm Energy deliveries during Contract Year 26, in that as of August 14, 2019, there had been Zero deliveries to Idaho Power. However, this curtailment in Contract Year 26 did not become a permanent curtailment invoking the provisions of Section 21.3 and Appendix D because subsequent to August 14, 2019, and prior to the expiration of Contract Year 26, the project met its requirement to deliver the 5,798,590 kWh Annual Net Firm Energy amount from Section 6.3.

Because the project failed to deliver its Annual Net Firm Energy amount from Section 6.3 during Contract Year 25, and thus permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 25 from Appendix D is applied to the difference in Net Firm Energy delivered and the Annual Net Firm Energy amount - which in this case is \$1,046,812. However, the contract anticipates that a permanent curtailment of Annual Net Firm Energy deliveries may not continue for the entire remaining duration of the 35-year contract term, and thus contains the provisions in Section 21.7, Refund of Lump Sum Repayment, which states,

If Seller has made a lump sum repayment as required by paragraph 21.3 and;

(1) Within three (3) years of said payment Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power at the rates, terms and conditions contained in this Agreement for the number of Contract Years that were remaining under this Agreement at the time of the permanent curtailment; then

(2) Idaho Power will resume its purchases from the Facility and will refund a portion of the lump sum repayment as follows:

(a) if sales resume within one (1) year of the payment of the lump sum repayment amount, Idaho Power will refund 90% of the lump sum repayment amount;

(b) if sales resume within two (2) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount;

(c) if sales resume within three (3) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount.

Consequently, because the project resumed generation in Contract Year 26 to meet the Annual Net Firm Energy amount, Idaho Power forfeited its entitlement to the actual collection of the \$1,046,812 lump sum repayment amount for the permanent curtailment of Contract Year 25 Annual Net Firm Energy amount, and applied the 90% refund upfront - thus merely applying the 10% balance of \$116,312 - which you are now contesting.

Mr. Jardine's letters are quite clear and run through the relevant portions of the Agreement as well as the failure of the project to generate its Annual Net Firm Energy amount in Contract Year 25. Idaho Power stands by its previously sent letters and claims with regard to the project's failure to generate and meet its Annual Net Firm Energy amount requirement. As previously referenced above this is a contract mechanism that accompanies the levelized nature of the payments in this vintage of PURPA QF contract as a protection for customers in the nature of the "overpayment" of a levelized rate in the early years and the "underpayment" in the later years - and part of the assurance that projects do not simply take the more lucrative early year "overpayments" and then under-generate and/or abandon projects in the "underpayment" later years.

Idaho Power understands that the lack of project generation may have predated Wood Hydro's involvement and recognizes that Mr. Sorenson was able to make necessary improvements to the project once he took it over to enable it to hopefully continue to generate and meet the requirements of its Agreement. However, the provisions of the contract are clear in that the project permanently curtailed its Annual Net Firm Energy amount for Contract year 25 - and is also quite clear in the application of the Lump Sum Refund Payment for the shortfall in Contract year 25. The project can pay the remaining balance of \$116,312, 10% Lump Sum Refund Payment, or have Idaho Power continue to net this amount against the Facility's monthly Net Energy payments until the balance is zero. Please let us know how you would like to proceed.

Sincerely,



Donovan E. Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 11**

Jerry Jardine  
Energy Contracts  
[jjardine@idahopower.com](mailto:jjardine@idahopower.com)

June 2, 2020

Chuck Salo  
Regional Manager  
Geothermal & Solar O&M  
Enel Green Power North America  
200 South Virginia Street, Suite 400  
Reno, Nevada 89501

**VIA ELECTRONIC MAIL:** Chuck Salo, [Chuck.Salo@Enel.com](mailto:Chuck.Salo@Enel.com);  
Conrad St. Pierre, [Conrad.StPierre@Enel.com](mailto:Conrad.StPierre@Enel.com)  
Randald Bartlett, [Randald.Bartlett@Enel.com](mailto:Randald.Bartlett@Enel.com)  
Lisa Szot, [Lisa.Szot@Enel.com](mailto:Lisa.Szot@Enel.com);  
Greg Rizzo, [Greg.Rizzo@Enel.com](mailto:Greg.Rizzo@Enel.com);

Re: Rock Creek #2 Curtailment and Lump Sum Refund Repayment

Dear Mr. Salo:

Enel Green Power North America, Inc (“Enel”) has a Firm Energy Sales Agreement dated July 13, 1987 (“Agreement”) with Idaho Power for the sale and purchase of energy from the Rock Creek #2 Hydro Project (“Project”). Idaho Power received an email from Kyle Brown on June 26, 2019, while he was still employed with Enel, with notification that the Project had a failed thrust bearing, babbitt and thrust discs. As of the date of this letter, the project has not delivered any energy to Idaho Power since the end of May 2019. Contract Year 31 ended last month and the Project failed to deliver the Annual Net Energy amount required by the Agreement.

This Agreement is an older levelized agreement and a brief explanation of the terms of the Agreement would be beneficial. Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy produced by the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Firm Energy amount is sum of the project’s monthly estimates for a Contract Year, in this instance 14,073,550 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Energy; the project must deliver up to its Annual Net Firm Energy amount from Section 6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.3.1; Appendix D). The Agreement is a levelized payment/price

contract with liquidated damages provisions should the Project fail to deliver the Annual Net Firm Energy amount specified in paragraph 6.3.

This is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate contract, there is an “overpayment” to the project in the early years that is offset by an “underpayment” in the outer years. To make sure that a project does not just generate and take payments during the more lucrative “overpayment” early years, and then fail to generate or under-generate in the later years when customers are being repaid for the “overpayment” in the “underpayment” years, the Agreement contains certain mechanisms to make sure customers were not harmed in the outer years of the contract. These mechanisms include such things as additional security, and in this case the provisions found in Section 21.3.1, Appendix D “Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Firm Energy Amount Under 35-Year Contract”.

Section 21.3.1, states as follows:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as damages arising out of this permanent curtailment of Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount.

Section 6.3, Annual Net Firm Energy Amount, states, “The Annual Net Energy shall be 14,073,550 kWh and shall be the sum of the three (3) Seasonal Net Energy amounts Seller specified above.”

For this curtailment, the Project had zero deliveries to Idaho Power during the months of June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020, May 2020 and continues to remain curtailed as of the date of this letter. Contract Year 31 ran from April 2, 2019, through April 1, 2020. The Project had a total Net Energy delivered during Contract Year 3 of only 978,479 kWh, which is short of the required delivery of the Annual Net Firm Energy Amount from Section 6.3 of 14,073,550 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once Contract Year 31 came and went with a substantial shortfall of delivered Net Energy, there is no way to “make-up” the shortfall by over-generating in a different time period. There was a permanent curtailment of the project’s Annual Net Firm Energy deliveries for Contract Year 31.

Because the project failed to deliver its Annual Net Firm Energy amount from Section 6.3 during Contract Year 31, and permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 31 from Appendix D is applied to the difference in Net Energy delivered and the Annual Net Energy amount - which in this case is \$4,059,472 (\$310/MWH multiplied by the difference of 14,073.550 MWH and 978.479 MWH).

Your email dated May 19, 2020, indicates that the Project may start repairs in the coming weeks but did not provide an estimate of when the Project would complete the repairs. Please confirm when you expect the project to return to service and start delivering energy to Idaho Power per the Agreement.

The lump sum refund payment of \$4,059,472 is now due. Idaho Power would consider making arrangements for a monthly payment plan if you are unable to pay the entire balance in a single payment. Please let me know how you would like to proceed.

Sincerely,

*Jerry Jardine*

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 12**



VIA EMAIL and US MAIL

June 26, 2020

Jerry Jardine  
Energy Contracts  
Idaho Power Company  
1221 W. Idaho St.  
P.O. Box 70  
Boise, Idaho 83707  
jjardine@idahopower.com

Dear Mr. Jardine,

This letter is in response to your letter dated June 2, 2020 (the “June 2 Notice”) regarding the Firm Energy Sales Agreement dated July 13, 1987, as amended from time to time (the “Agreement”) between BP Hydro Associates (*successor in interest to* Bonneville Pacific Corporation) (“Seller”) and Idaho Power Company (“Idaho Power”) for the purchase and sale of energy from the Rock Creek #2 Hydro Project (the “Facility”). Capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Agreement.

Seller completely disagrees with the assertion in the June 2 Notice that temporary failure of the Facility to deliver energy entitles Idaho Power to a lump sum refund payment of \$4,059,472. On its face, this sum is overreaching and the analysis used to arrive at number is not supported by the terms of the Agreement. Section 6.1 of the Agreement obligates Idaho Power to purchase “all of the Net Firm Energy that and Surplus Energy produced by the Facility and delivered by Seller to the Point of Delivery.” “Net Firm Energy” is defined as the “electric energy produced by the Facility, less Station Use and Losses...” The Agreement does not guarantee the amount of Net Firm Energy that will be produced by the Facility and delivered to the Point of Delivery, but simply estimates the aggregate amounts based on historical data in 1987 and refers to that estimated amount as the “Annual Net Firm Energy”.

In addition, Section 21.3.1 refers to a “permanent” curtailment of the long-term average deliveries of the Net Firm Energy as determined by the Seller. Seller never intended for, nor conveyed to Idaho Power that the shut-down of the Facility was going be permanent, but rather has made diligent efforts to both repair the Facility and keep Idaho Power apprised of the status of the repairs on the Facility. The Facility is now back in service as of June 18, 2020 and the Seller expects to deliver Net Firm Energy to the Point of Delivery going forward.

Finally, Section 21.2 of the Agreement requires a non-defaulting party to give notice to the other party in the event of failure to perform an obligation under the Agreement and the Seller has 60 days to cure. The June 2 Notice was the first notice that Seller received from Idaho Power claiming Seller’s failure to comply with the terms of the Agreement, yet it stated that there were zero deliveries in June 2019 and that zero deliveries continued to the date of the June 2 Notice - a full year later. Based on extreme amounts Idaho Power is now claiming to be owed as stated in the June 2 Notice, it appears that Idaho Power stayed silent for a whole year and did nothing to mitigate any damages in order to make this extremely high claim based on a false assertion of a permanent curtailment. Such actions run contrary to basic contract and equity principles and the failure to provide timely notice of a default under the

Agreement effectively waived any claims to which Idaho Power may be entitled to from the Seller for the time that the Facility was down.

Seller is pleased to report that the Facility is back on line, but disputes that any lump sum payment is due to Idaho Power and will take all actions necessary if Idaho Power persists in this claim.

Sincerely,

A handwritten signature in black ink that reads "Randal Bartlett". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

Randal Bartlett, P.E.  
Sr. Director, Hydro O&M  
Enel Green Power North America, Inc.

cc: [generalcounsel@enel.com](mailto:generalcounsel@enel.com)

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 13**

**Jerry Jardine**  
Energy Contracts  
[jjardine@idahopower.com](mailto:jjardine@idahopower.com)

May 22, 2020

Ryan McQueeney Chief Financial Officer  
Central Rivers Power US, LLC  
Lowline #2 PURPA Hydro Project  
4920 Elm Street, Suite 205  
Bethesda, MD 20814

**VIA ELECTRONIC MAIL:** [rmcqueeney@hullstreetenergy.com](mailto:rmcqueeney@hullstreetenergy.com)

Re: Lowline #2 Curtailment and Lump Sum Refund Repayment

Dear Ryan:

Central Rivers Power US, LLC (“CRP”) has a Firm Energy Sales Agreement dated September 12, 1986 (“Agreement”) with Idaho Power for the sale and purchase of energy from the Lowline #2 Hydro Project (“Project”). Idaho Power received an email from Kyle Brown on May 28, 2019, with notification that the Project had a catastrophic failure of the turbine over Memorial Day weekend 2019. As of the date of this letter, the project has not delivered any energy to Idaho Power since the end of May 2019. Contract Year 32 ended last month and the Project failed to deliver the Annual Net Energy amount required by the Agreement.

This Agreement is an older levelized agreement and a brief explanation of the terms of the Agreement would be beneficial. Idaho Power will purchase and Seller will sell all of the Net Energy and Surplus Energy produced by the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Energy amount is sum of the project’s monthly estimates for a Contract Year, in this instance 15,755,610 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Energy; the project must deliver up to its Annual Net Energy amount from Section 6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.2.1; Appendix D). The Agreement is a levelized payment/price contract with liquidated damages provisions should the Project fail to deliver the Annual Net Energy amount specified in paragraph 6.3.

This is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate

contract, there is an “overpayment” to the project in the early years that is offset by an “underpayment” in the outer years. To make sure that a project does not just generate and take payments during the more lucrative “overpayment” early years, and then fail to generate or under-generate in the later years when customers are being repaid for the “overpayment” in the “underpayment” years, the Agreement contains certain mechanisms to make sure customers were not harmed in the outer years of the contract. These mechanisms include such things as additional security, and in this case the provisions found in Section 21.2.1, Appendix D “Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Energy Amount Under 35-Year Contract”.

Section 21.2.1, states as follows:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Energy amount Seller shall pay to Idaho Power, as Idaho Power’s sole and exclusive remedy for damages arising out of this permanent curtailment of Net Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Energy amount specified in paragraph 6.3 and the reduced Annual Net Energy amount.

Section 6.3, Annual Net Energy Amount, states, “The Annual Net Energy shall be 15,755,610 kWh and shall be the sum of the three (3) Seasonal Net Energy amounts Seller specified above.”

For this curtailment, the Project had zero deliveries to Idaho Power during the months of June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020 and continues to remain curtailed as of the date of this letter. Contract Year 32 ran from April 29, 2019, through April 28, 2020. The Project had a total Net Energy delivered during Contract Year 32 of only 1,287,678 kWh (which was delivered during the month of May 2019 only), which is short of the required delivery of the Annual Net Energy Amount from Section 6.3 of 15,755,610 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once Contract Year 32 came and went with a substantial shortfall of delivered Net Energy, there is no way to “make-up” the shortfall by over-generating in a different time period. There was a permanent curtailment of the project’s Annual Net Energy deliveries for Contract Year 32.

Because the project failed to deliver its Annual Net Energy amount from Section 6.3 during Contract Year 32, and permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 32 from Appendix D is applied to the difference in Net Energy delivered and the Annual Net Energy amount - which in this case is \$3,616,983 (\$250/MWH multiplied by the difference of 15,755.610 MWH and 1,287.678 MWH).

Kyle Brown's email dated May 18, 2020, indicates that the Project may start delivering energy to Idaho Power at the end of August 2020. Please confirm when you expect the project to return to service and start delivering energy to Idaho Power per the Agreement.

The lump sum refund payment of \$3,616,983 is now due. Idaho Power would consider making arrangements for a monthly payment plan if you are unable to pay the entire balance in a single payment. Please let me know how you would like to proceed.

Sincerely,

*Jerry Jardine*

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-20-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 14**



June 15, 2020

VIA U.S. MAIL AND ELECTRONIC MAIL: [jjardine@idahopower.com](mailto:jjardine@idahopower.com)

Idaho Power Company  
1221 W. Idaho Street (83702)  
Boise, ID 83707  
Attention: Mr. Jerry Jardine, Energy Contracts

Idaho Power Company  
P.O. Box 70  
Boise, ID 83707  
Attention: Vice President, Bulk Power Markets

Re: Idaho Power Company's May 22, 2020 Letter Regarding Lowline #2 Curtailment and Lump Sum Refund Repayment (the "May 22<sup>nd</sup> Letter")

Dear Jerry:

Reference is made to: (i) the Firm Energy Sales Agreement, dated September 12, 1986 (as amended May 3, 1996 and November 24, 1999, the "Agreement"), between Idaho Power Company ("Idaho Power") and Lowline Rapids, LLC, as successor in interest to Bonneville Pacific Corporation ("Seller"); and (ii) the May 22<sup>nd</sup> Letter. Capitalized terms used but not defined in this letter have the meanings assigned to them in the Agreement.

As you know, Central Rivers Power US, LLC ("Central Rivers") recently acquired, indirectly, Seller and the Facility from Enel and GE. As the new owners of the Facility, we are committed to completing repairs on the turbine and returning the Facility to normal operations as soon as possible. At this time, Central Rivers anticipates the Facility will return to normal operations on or about September 2, 2020.

In the May 22<sup>nd</sup> Letter, Idaho Power asserts that "[t]here was a permanent curtailment of the project's Annual Net Energy deliveries for Contract Year 32." Idaho Power further asserts that "[b]ecause the project failed to deliver its Annual Net Energy amount from Section 6.3 during Contract Year, and permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 32 from Appendix D [of the Agreement] is applied to the difference in Net Energy delivered and the Annual Net Energy amount – which in this case is \$3,616,983 (\$250/MWH multiplied by the difference of 15,755.610 MWH and 1,287.678 MWH)." Finally, the May 22<sup>nd</sup> Letter concludes that "[t]he lump sum refund payment of \$3,616,983 is now due."

Seller does not agree with Idaho Power's interpretation of the Agreement or its conclusion that Seller is responsible for a lump sum repayment amount pursuant to Section 21.2 and Appendix D of the Agreement. First, Idaho Power implies that the Agreement requires Seller to deliver the Annual Net Energy amount each Contract Year pursuant to Section 6.3 or be liable for liquidated damages in the form of a lump sum repayment amount pursuant to Section 21.2. The Agreement does not support this position. The Annual Net Energy amount in Section 6.3 is an estimate of Net Energy to be produced by the Facility based on long-term historical water flow records and average long-term energy estimates based thereon. Pursuant to Section 6.1, Idaho Power purchases all of the Net Energy delivered by Seller



to the Point of Delivery. Neither Section 6.1, Section 6.3, nor any other provision in the Agreement establish a firm requirement of Seller to deliver the Annual Net Energy amount in any Contract Year.

Second, Seller does not believe that the provisions of Section 21.2 and Appendix D are applicable to the current circumstances. Idaho Power entirely glosses over the requirement in Section 21.2 that there be a permanent curtailment of Net Energy deliveries. That the reduction must be permanent is underscored by the express language in Section 21.2. Although not specifically defined in the Agreement, the *Oxford Dictionary* defines “permanent” as “lasting or intended to last or remain unchanged indefinitely.” Seller’s current inability to supply Idaho Power Net Energy is not permanent.

As noted in the May 22<sup>nd</sup> Letter, delivery of Net Energy from the Facility was significantly impacted because of a catastrophic failure of the Facility’s turbine. After the failure, Seller began the process to undertake major repairs to the turbine and Central Rivers has accelerated these repairs and expects to have them completed by August 25, 2020. These circumstances do not constitute a permanent reduction of Net Energy deliveries. Once the repairs are completed, Seller expects the Facility to return to normal operations and to resume delivery of Net Energy to Idaho Power.

Moreover, the very nature of the lump sum repayment amount in Section 21.2 and Appendix D demonstrates that these provisions are intended to address permanent reductions in Net Energy, and not penalize Seller for temporary reductions of Net Output. This is especially the case where, as here, the temporary reduction is caused by a limited term mechanical breakdown, and Seller is diligently engaged in repairing the Facility and returning it to normal operations.

Seller reserves all of its rights and remedies under the Agreement.

Should you like to discuss the matters in this letter further, I can be reached at the number below.

Sincerely,

Matthew Stanley  
Vice President & General Manager  
Central Rivers Power US, LLC  
670 N. Commercial Street, Suite 204  
Manchester, New Hampshire 03101  
Phone: 603-554-2656