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Thursday, February 29, 2024 1:00PM  
IDAHO PUBLIC  
UTILITIES COMMISSION

**MEGAN GOICOECHEA ALLEN**  
Corporate Counsel  
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February 29, 2024

**VIA ELECTRONIC MAIL**

Commission Secretary  
Idaho Public Utilities Commission  
11331 West Chinden Blvd., Building 8  
Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-24-09  
Rock Creek II Hydro Project  
Idaho Power Company's Application for Approval or Rejection of an Energy  
Sales Agreement with BP Hydro Associates for the Sale and Purchase of  
Electric Energy from the Rock Creek II Hydro Project

Dear Commission Secretary:

Attached for electronic filing is Idaho Power Company's Application in the above-entitled matter. If you have any questions about the attached documents, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Megan Goicoechea Allen". The signature is written in a cursive, flowing style.

Megan Goicoechea Allen

MAG:cd  
Enclosures

MEGAN GOICOECHEA ALLEN (ISB No. 7623)  
DONOVAN E. WALKER (ISB No. 5921)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF IDAHO POWER COMPANY FOR	)	CASE NO. IPC-E-24-09
APPROVAL OR REJECTION OF AN	)	
ENERGY SALES AGREEMENT WITH BP	)	APPLICATION
HYDRO ASSOCIATES FOR THE SALE	)	
AND PURCHASE OF ELECTRIC ENERGY	)	
FROM THE ROCK CREEK II HYDRO	)	
PROJECT.	)	
_____	)	

Idaho Power Company (“Idaho Power” or “Company”), in accordance with Idaho Public Utilities Commissions (“Commission”) Rule of Procedure<sup>1</sup> 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), hereby respectfully applies to the Idaho Public Utilities Commission (“Commission”) for an order accepting or rejecting the Energy Sales Agreement (“ESA” or “Agreement”) between Idaho Power and BP Hydro Associates (“Seller”) (jointly, “Parties”) under which Seller

<sup>1</sup> Hereinafter cited as RP.

would sell and Idaho Power would purchase electric generation from the Rock Creek II Hydro Project (“Project” or “Facility”) located in Twin Falls County, Idaho, which is a PURPA Qualifying Facility (“QF”).

In support of this Application, Idaho Power represents as follows:

## **I. BACKGROUND**

1. The Rock Creek II Hydro Project is a 1.9 megawatt (“MW”) nameplate capacity hydroelectric facility currently delivering energy to Idaho Power under an Energy Sales Agreement entered into on July 13, 1987 (“1987 Agreement”), which expires on April 2, 2024. In anticipation of the current ESA expiring, Idaho Power and Seller have been in communication since July 2023, regarding the process and timing for entering into a replacement contract, and Idaho Power has made multiple attempts over the intervening seven months to move the process forward in order to provide sufficient time for the regulatory review and approval process prior to the expiration of the existing contract. The Company’s attempts to communicate with Seller in this regard are outlined in correspondence from Idaho Power to Seller dated January 22, 2024, a copy of which is attached to this Application as Attachment 1.

2. Unfortunately, despite the Company’s efforts to support the Project in timely pursuing a replacement ESA, Seller did not submit the signed Schedule 73, Qualifying Facility Energy Sales Agreement Application with necessary documentation to Idaho Power until February 20, 2024. On that same day, Idaho Power sent Seller indicative pricing, which Seller accepted, followed by a draft ESA for Seller’s review. On February 27, 2024, Idaho Power and the Seller entered into the ESA submitted herewith as Attachment 2, which is a new contract with the same QF for a new term with updated

terms and conditions. The Parties intend the proposed ESA to replace the 1987 Agreement, as amended, in light of its upcoming expiration.

3. The replacement ESA provides that the Seller will sell and the Company will purchase electric energy generated by the Facility at non-levelized, published avoided cost rates for non-seasonal hydro resources as approved in Case No. GNR-E-23-02, Order No. 35800, for a 20-year term, with full capacity payments for the entire term. The Company recognizes that Staff initiated a case on January 18, 2024, to update the inputs to the surrogate avoided resource (“SAR”) method model used by the Commission to calculate the Company’s published avoided cost rates, which remains pending. See Case No. IPC-E-24-04. In that case, Staff requested the Commission approve the updated SAR Methodology avoided cost rates retroactively, with an effective date of January 1, 2024, though a final Commission order has not yet been issued. In the meantime, the approved rates continue to be those most recently authorized by the Commission in Case No. GNR-23-02.

4. Accordingly, the indicative pricing provided by Idaho Power to Seller on February 20, 2024, was based on the currently-effective published avoided cost rates and that is the pricing that was incorporated into the ESA executed by the Parties on February 27, 2024. The Company notes that even if the Commission ultimately approves the updated published avoided cost rates in Case No. IPC-E-24-04, effective January 1, 2024, the Company remains bound by the pricing set forth in the replacement ESA insofar as it reflects the rates actually in effect at the time the legally enforceable obligation was established, which in this case were obtained from the previously-approved model from Case No. GNR-E-23-02, Order No. 35800.

5. In the process of preparing the replacement ESA, the parties became aware that the Description of the Facility set forth in the First Amendment to the 1987 Agreement contains a discrepancy insofar as it states the nameplate capacity of the Facility is 2100 kW though the actual nameplate rating is 1900 kW as reflected in the manufacturer's "nameplate" attached to the generating unit. Appendix B, Paragraph B-1 of the replacement ESA reflects the actual nameplate rating of the Facility, 1900 kW. The Company notes that the modified nameplate capacity is within the original capacity amount contemplated in the 1987 Agreement, as amended, and does not impact the Facility's eligibility for published rates or otherwise affect the conditions, rates, or other terms of the existing 1987 Agreement.

6. As more fully set forth herein, the proposed ESA complies with the Commission's orders directing the implementation of PURPA for the State of Idaho, including but not limited to Commission Order Nos. 32697, 32737, and 32802 from Case No. GNR-E-11-03.

## **II. RELEVANT LAW**

7. Pursuant to PURPA and regulations of the Federal Energy Regulatory Commission ("FERC") implementing it, electric utilities are required to purchase power produced by designated Qualifying Facilities. Under this must purchase provision, the rate a utility must buy the power produced by the QF is generally referred to as the avoided cost rate, which is intended to reflect the incremental cost to the purchasing utility of power, which it would either generate itself or purchase from another source *but for the purchase of power from the QF*. See 18 CFR §292.101(b)(6).

8. While FERC is tasked with developing broad federal regulations to guide

PURPA's implementation, individual state commissions are tasked with implementing PURPA at the state level. "PURPA requires that utilities buy the power output from QF's under a federal rate mechanism (i.e., avoided costs) that is determined and implemented by state utility commissions." Order No. 32697 at 7.

9. Pursuant to its authority under PURPA, this Commission has established and adopted numerous contract terms and conditions for energy sales agreements entered into between regulated utilities and QFs under PURPA and developed parameters for published and negotiated avoided cost rate calculations.

10. The Commission's seminal decisions on PURPA implementation, starting with Order No. 32697, established, in pertinent part, a 10 average megawatts ("aMW") project eligibility cap for access to published avoided cost rates for resources other than wind and solar and confirmed use of the surrogate avoided resource ("SAR") methodology to calculate published rates (updated annually).

11. The Commission also held that both energy and capacity should be considered in determining avoided costs, though payments for capacity should only begin at such time that the utility becomes capacity deficient. See Order No. 32697. If an existing QF seeks a new contract with the utility to replace an expiring contract, the capacity deficit date is still determined as of the date the original contract was executed, and the QF will be entitled to immediate payment for capacity under the replacement contract if it was being paid for capacity at the end of the prior agreement. See *also* Order No. 32871.

12. Relative to QF replacement contracts, the Commission subsequently recognized that conditions existing at the time a legally enforceable obligation was

established in the prior contract could prevent a QF from ever receiving capacity payments, which would be inconsistent with the Commission's prior orders addressing QF eligibility for capacity payments. See, e.g., Order No. 34200 at 4-5. As a result, the Commission has focused on whether the utility has been relying on the QF's power production to meet its capacity needs in determining whether a QF qualifies for immediate capacity payments in a replacement contract.

### **III. THE PROPOSED ENERGY SALES AGREEMENT**

13. The Project is currently delivering energy to Idaho Power in accordance with the 1987 Agreement, as amended, that expires on April 2, 2024. Idaho Power and the Seller entered into a replacement ESA on February 27, 2024, in compliance with Commission Order No. 32697 and its progeny, which is intended to replace the 1987 Agreement, as amended, and pursuant to which the Seller would continue to sell, and the Company would continue to purchase electric energy generated by the Project. A copy of the ESA is attached to this Application as Attachment 2.

14. Under the terms of the proposed ESA, the Seller elected to contract with Idaho Power for a 20-year term using the non-levelized, published avoided cost rates for non-seasonal hydro resources as currently established by the Commission in GNR-E-23-02 for replacement contracts and for energy deliveries of less than 10 aMW. See Order No. 35800 dated May 31, 2023. Additionally, because it is a replacement ESA, the proposed ESA contains capacity payments for the entire term of the Agreement consistent with prior Commission Orders.<sup>2</sup> See, e.g., Order No. 32697 at 21-22; Order No. 32737 at 5; Order No. 32871; and Order No. 34200 at 4-5.

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<sup>2</sup> It is the Company's understanding based on prior Commission orders that QF projects that have been included in Idaho Power's load and resource balance during their initial contract term meet the

15. The proposed ESA contains contract provisions consistent with PURPA, FERC regulations, and the Commission's prior orders. With regard to the latter, the following discussion demonstrates the proposed ESA's compliance with certain Idaho-specific provisions that have been the focus of Commission Staff in reviewing similar approval requests: (1) adherence to the capacity size threshold for published rates; (2) eligibility for capacity payments; (3) 90/110 rule with a five-day advance notice for adjusting Estimated Net Energy Amounts; and (4) conformance of Article XXIII, Modification, with recent Commission orders.

### ***Capacity Size Threshold***

16. The Seller warrants that the Facility is a PURPA Qualifying Facility and has provided documentation that the project nameplate capacity is 1.9 MW.

17. As defined in paragraphs 1.24 and 4.1.4 of the ESA, the Seller will be required to provide data on the Facility that Idaho Power will use to confirm that under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Furthermore, as described in paragraph 7.7 of the ESA, should the Facility exceed 10 aMW on a monthly basis or 1,900 kilowatts ("kW") on an hourly basis, Idaho Power will accept the energy, defined as Inadvertent Energy, but will not purchase or pay for it.

18. Because the Facility produces less than 10 aMW on a monthly basis under normal or average conditions, it is eligible for published avoided cost rates.

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requirements to include value for their replacement contracts as more fully discussed in Order No. 34200 at 4-5. To that end the Rock Creek II Hydro Facility is, like other PURPA contracts, included in the Company's generation forecast for existing resources that is considered in the load and resource balance analysis as part of the Integrated Resource Plan ("IRP") process.



### ***Eligibility for Capacity Payments***

19. In Case No. GNR-E-11-03, the Commission held if a QF project is being paid for capacity at the end of a contract term and enters into a replacement contract, it will be entitled to immediate payment of capacity. See Order No. 32697 at 21-22; Order No. 32737 at 5; and Order No. 32871. Subsequently, the Commission recognized that there may be circumstances under which a QF should still qualify for immediate capacity payments with a replacement ESA despite not receiving a separate capacity payment under the existing/expiring contract. Under broad PUPRA and Commission guidelines, the primary question for determining capacity payment eligibility is whether or not the operation of the QF permits the Company to avoid or deter adding future additional capacity. See, e.g., Order No. 34200 at 4-5 and Order No. 34295 at 4-5.

20. The 1987 Agreement does not separate energy and capacity components but, considering that Idaho Power has included the QF's production in its IRP load and resource balance in the same manner as other QFs, it is Idaho Power's understanding that a consistent application of the rationale in Order Nos. 32697, 34200, and 34295 calls for including capacity payments for the entire term of the replacement contract. More specifically, because the utility has been relying on the QFs power production for IRP planning purposes and no significant changes are contemplated in the replacement contract, the replacement ESA contains payment for capacity for the entire term of the replacement contract in line with prior Commission orders.

### ***90/110 Rule and 5-Day Ahead Provision***

21. In Idaho, the Commission has determined that the contractual obligation of a QF under PURPA translates into a commitment to deliver its monthly estimated

production. Order 29632 at 20. To maintain eligibility for the firm avoided cost rates, as opposed to Schedule 86 non-firm avoided cost rates, Qualifying Facilities are to provide a monthly estimate of the amount of energy they expect to produce, and the delivery of committed energy must fall within a 90/110 band for the QF to be entitled to the firm published avoided cost rate.

22. Consistent with these provisions, the proposed ESA requires that the Seller provide estimates of net energy and adopted a five-day advanced notice for adjusting Estimated Net Energy Amounts for purposes of complying with 90/110 firmness requirements as set forth in paragraphs 6.2 and 7.1. The notification of Net Energy Amount monthly adjustments described in paragraph 6.2.3 must be provided no later than 5 p.m. Mountain Standard Time on the 25<sup>th</sup> day of the month that is prior to the month to be revised. If the 25<sup>th</sup> day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25<sup>th</sup>.

23. The Commission has previously approved the same five-day advanced notice revisions to monthly generation estimates in numerous instances, recognizing that Estimated Net Energy Amounts that are closer to the time of delivery can improve the accuracy of input used by the Company for short-term operational planning. See, e.g., Case Nos. IPC-E-19-01, IPC-E-19-03, IPC-E-19-04, IPC-E-19-07, IPC-E-19-12, IPC-E-21-05, IPC-E-21-23, IPC-E-21-27, IPC-E-21-28, IPC-E-21-29, IPC-E-21-31, IPC-E-22-03, and IPC-E-22-04. Moreover, the Facility has a long generation history under the 1987 Agreement, which further reduces the need for a revision to delivery estimates beyond a five-day advanced notice.

### **Article XXIII (Modifications)**

24. In reviewing other PURPA energy sales agreements recently, the Commission has identified a heretofore standard ESA provision, Article XXIII Modification, that it determined required revisions to address scenarios involving Facility modifications to ensure, *inter alia*: the modified Facility operates under a correct and accurate contract that describes the characteristics and parameters of the modified Facility and the rate paid to the Facility and recovered from ratepayers, starting from the first operation date after the Facility is modified, reflect the proper and authorized rate of the modified Facility. See, e.g., Order Nos. 35705 and 35767.

25. The proposed ESA between Idaho Power and Seller incorporates the provisions and language recently approved by the Commission and in conformity with Order No. 35705.

### **Other Pertinent Provisions**

26. The Project is already interconnected and selling energy to Idaho Power and the ESA specifies a Scheduled First Energy Date and Scheduled Operation Date for this Project of April 3, 2024. See Appendix B. Articles IV and V of this ESA recognize that information provided under the previous agreement may still be applicable to this replacement ESA. As specified in the ESA, Idaho Power shall review the previously provided information and will accept the information as previously submitted, request updates to that information, and/or require new information to satisfy compliance with the various requirements for the Seller to be granted a First Energy Date and Operation Date for this replacement ESA. In addition, Idaho Power will monitor the ongoing requirements through the full term of this ESA.

27. The ESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. Seller is in the process of renewing its Schedule 72 Generator Interconnection Agreement, or “GIA,” with Idaho Power. PURPA QF generation must be a designated network resource (“DNR”) to serve Idaho Power’s retail load on its system. In order for the Facility to maintain its DNR status, there must be a power purchase agreement associated with its transmission service request in order to maintain compliance with Idaho Power’s non-discriminatory administration of its Open Access Transmission Tariff (“OATT”) and maintain compliance with FERC requirements.

28. Article XXI of the ESA provides that it will only become finally effective upon the Commission’s approval of all of the ESA’s terms and conditions and finding that all payments Idaho Power makes to the Seller for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

#### **IV. PROCEDURE**

29. Idaho Power believes that a technical hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure, i.e., by written submissions rather than by hearing. RP 201, *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present its testimony in such hearing.

30. The Company is aware that the Seller’s delay in completing the Schedule 73 contracting process has resulted in a compressed timeline for the Commission to review the replacement ESA, and it recognizes that the timing of this filing likely does not provide adequate time for the regulatory approval process to be completed prior to the expiration of the existing agreement on April 2, 2024. Because the replacement ESA will

not be finally effective until it is approved by the Commission pursuant to Article XXI of the ESA, the Company is concerned that there could be a lapse between the expiration of the 1987 Agreement and the approval of the replacement ESA. In this regard the Company notes that, under similar circumstances, the Commission has approved both energy and capacity payments during a lapsed contract period using the Surplus Energy Price set forth in the new contract.

31. The Company understands that a procedural schedule that would result in a final Commission determination by April 2, 2024, is likely not practicable, and is therefore contemplating the need for an interim arrangement; absent alternative direction from the Commission, the Company proposes to pay the Seller for any generation delivered from the Facility during the potential lapsed contract period (April 3, 2024, until the service date of the final order issued by the Commission) at the Surplus Energy Price as defined in Section 7.2 of the Replacement ESA.

#### **V. COMMUNICATIONS AND SERVICE OF PLEADINGS**

32. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

Donovan E. Walker  
Megan Goicoechea Allen  
IPC Dockets  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[mgoicoecheaallen@idahopower.com](mailto:mgoicoecheaallen@idahopower.com)  
[dockets@idahopower.com](mailto:dockets@idahopower.com)

Energy Contracts  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
[energycontracts@idahopower.com](mailto:energycontracts@idahopower.com)

**VI. REQUEST FOR RELIEF**

33. Idaho Power respectfully requests that the Commission issue an order: (1) authorizing that this matter may be processed by Modified Procedure; (2) accepting or rejecting the ESA between Idaho Power and the Seller; and, if accepted, (3) declaring that all payments Idaho Power makes to the Seller for purchases of electric energy generated by the Facility will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 29<sup>th</sup> day of February 2024.



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MEGAN GOICOECHEA ALLEN  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of February 2024, I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

<b>Commission Secretary</b> Idaho Public Utilities Commission 11331 W. Chinden Blvd., Bldg No. 8 Suite 201-A (83714) PO Box 83720 Boise, ID 83720-0074	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> FAX <input type="checkbox"/> FTP Site <input checked="" type="checkbox"/> Email
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**Courtesy Copy Sent via e-mail to:**

Cory Lagerstrom  
BP Hydro Associates  
Rock Creek II Hydro  
4603 Homestead Drive  
Prairie Village, KS 66208  
cory@hydrolandcorp.com



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Christy Davenport, Legal Assistant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-24-09**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**



January 22, 2024

***Sent Via U.S. Mail and electronic mail: [cory@hydrolandcorp.com](mailto:cory@hydrolandcorp.com)***

Cory Lagerstrom  
Hydroland Omega LLC  
Rock Creek II Hydro  
4603 Homestead Drive  
Prairie Village, KS 66208

RE: Rock Creek II Hydro Project (1.9 MW), Project Number: 31615104  
Replacement Energy Sales Agreement Schedule 73 Application

Dear Cory,

As you know, Idaho Power Company (“Idaho Power”) is a party to an Energy Sales Agreement (“ESA”) dated July 13, 1987 (“1987 Agreement”), as amended, for the purchase and sale of energy produced by the Rock Creek II Hydro Project (“Project” or “Facility”), a Qualifying Facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 currently owned by Rock Creek Hydro LLC and operated by Hydroland Omega LLC (collectively referred to as “Seller”). The 1987 Agreement expires on April 02, 2024.

In anticipation of the expiration of the 1987 Agreement, Seller contacted Idaho Power via email on July 19, 2023, inquiring about the process for entering a new contract with updated terms and conditions for the same QF for a new term starting April 03, 2024. Idaho Power responded the next day by providing a Schedule 73 Application for a replacement contract and outlining the documentation needed from the Project in support of the application. Having received no response, Idaho Power contacted the Seller by email on September 14, 2023, asking about the status of the Schedule 73 Application submission and reminding the Seller that time is of the essence in this process due to the regulatory approval proceeding that must be initiated with the Idaho Public Utilities Commission (“IPUC”) once a replacement contract is executed. Seller responded the same day indicating it did intend to proceed.

Thereafter, on September 22, 2023, having still not received a completed application, Idaho Power again contacted the Project asking that it submit a completed application as soon as possible and cautioning that there was a constrained timeline to get the replacement contract filed and processed with the IPUC in advance of the expiration of the 1987 Agreement. On September 25<sup>th</sup>, the Seller requested a meeting for further discussion, which Idaho Power scheduled and facilitated on September 28<sup>th</sup>. At that meeting, Idaho Power again explained the Schedule 73 Application submittal requirements as well as the contracting process, IPUC filing process, and the associated timelines.

On October 05, 2023, Seller sent an email to Idaho Power again requesting the Schedule 73 Application, which Idaho Power sent the same day along with a copy of previous email communications between Idaho Power and the Seller and repeated instructions for submitting the application and supporting documentation. Notwithstanding, on October 11<sup>th</sup> Seller provided Idaho Power with an incomplete and unsigned Schedule 73 Application and did not include any of the necessary supporting documentation. Idaho Power responded the same day advising Seller that the process cannot move forward until Seller provides a completed and signed Schedule 73 Application with all supporting documentation; Idaho Power once again outlined the process and necessary documentation. Seller did not respond.

January 22, 2024

Subsequently, Idaho Power followed up via email on November 6, 2023, requesting the status of the Schedule 73 Application and supporting documentation. Having again received no response, Idaho Power called Seller on December 12, 2023, to discuss the status of the Schedule 73 Application. Seller indicated at that time that Idaho Power could anticipate receiving the completed Schedule 73 Application by the end of the week. No further communications from the Seller have been received to date.

Unfortunately, as of the date of this letter, Seller has yet to provide a completed, signed Schedule 73 Application with supporting documentation despite Idaho Power's diligent efforts to support the Project in pursuing a replacement contract and to actively communicate the potential timing constraints. Seller's failure to timely provide complete and accurate information has several potential implications. First, it is highly unlikely that the parties will be able to execute a replacement ESA and have it filed and approved by the IPUC prior to the expiration of the existing ESA. This, in turn, can impact the Facility's designated network resource ("DNR") status, continuance of which requires, in part, an executed ESA that is approved by the IPUC. Idaho Power cannot accept or pay for generation from the Facility if it does not have an executed ESA and maintain its DNR status. Finally, a lapse between the existing and replacement ESA may impact the rates to be paid for the Facility's generation and other terms and conditions to the extent it becomes no longer practicable or appropriate to characterize the ESA as a "replacement".

If Seller still desires a replacement ESA, it is imperative that it provide the signed Schedule 73 Application and necessary documentation, after which the parties can work diligently to agree on and execute a replacement ESA as soon as possible. Regardless, in the spirit of transparency, Idaho Power does not believe it will be possible for the regulatory approval process to be completed prior to the expiration of the existing agreement. If, upon expiration of the existing agreement, a replacement ESA has been executed and filed with the Commission, but not yet approved, the parties will need to consider whether a temporary arrangement with interim rates may be possible and appropriate. If, on the other hand, the Seller no longer desires a replacement ESA, no further action is necessary.

Regards,



Bill Hatch  
Senior Energy Contracts Coordinator  
Idaho Power

cc: Pat Donahue  
Chad Thompson

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-24-09**

**IDAHO POWER COMPANY**

**ATTACHMENT 2**

ENERGY SALES AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
BP HYDRO ASSOCIATES  
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ENERGY SALES AGREEMENT (Non-Levelized)  
(Non-Seasonal Hydro Facility 10 average Monthly MW or Less)

Project Name: Rock Creek II

Project Number: 20240403

THIS ENERGY SALES AGREEMENT (“AGREEMENT”), entered into on as of the Effective Date defined in Paragraph 1.11, between BP HYDRO ASSOCIATES, (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as “Parties” or individually as “Party.”

WITNESSETH:

WHEREAS, Seller owns, maintains and operates a PURPA Qualifying Facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is required to purchase, electric generation produced by a PURPA Qualifying 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 “Adjusted Estimated Net Energy Amount” – The Estimated Net Energy Amount specified in paragraph 6.2 including any adjustments that have been made in accordance with paragraphs 6.2.2, 6.2.3 or 6.2.4.
- 1.2 “Authorized Agent” – A person or persons specified within paragraph 25.2 of this Agreement as being authorized and empowered, for and on behalf of the Seller, to execute instruments, agreements, certificates, and other documents (collectively “Documents”) and to take actions on behalf of the Seller, and that Idaho Power Company and its directors, officers, employees, and agents are entitled to consider and deal with such persons as agents of the Seller for all purposes,

until such time as an authorized officer of the Seller shall have delivered to Idaho Power Company a notice in writing stating that such person is and shall no longer be an agent on behalf of the Seller. Any Documents executed by such persons shall be deemed duly authorized by the Seller for all purposes.

- 1.3 “Commission” – The Idaho Public Utilities Commission.
- 1.4 “Contract Year” – The period commencing each calendar year on the same calendar date as the Operation Date and ending three hundred sixty-four (364) days thereafter.
- 1.5 “Delay Cure Period” – One hundred twenty (120) days immediately following the Scheduled Operation Date.
- 1.6 “Delay Damages” – Current month’s Initial Year Monthly Estimated Net Energy Amount as specified in paragraph 6.2.1 as of the Effective Date divided by the number of days in the current month multiplied by the number of days in the Delay Period in the current month multiplied by the current month’s Delay Price.
- 1.7 “Delay Period” – All days past the Scheduled Operation Date until the Seller’s Facility achieves the Operation Date or the Agreement is terminated by Idaho Power.
- 1.8 “Delay Price” – The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price as specified in Section 7.6 and Appendix E-3 of this Agreement. If this calculation results in a value less than zero (0), the result of this calculation will be zero (0).
- 1.9 “Designated Network Resource (DNR)” – A resource that is designated for Idaho Power network load and does not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet Idaho Power’s network load.
- 1.10 “Designated Dispatch Facility” – Idaho Power’s Load Serving Operations, or any subsequent group designated by Idaho Power.
- 1.11 “Effective Date” – The date upon which this Energy Sales Agreement was fully executed by both Parties.

1.12 “Environmental Attributes” – Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its avoided emission of pollutants. Environmental Attributes include but are not limited to: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. REC Reporting Rights are the right of a REC purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the REC purchaser’s discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) the cash grant in lieu of the investment tax credit pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Environmental Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.13 “Estimated Net Energy Amount” – The monthly Estimated Net Energy Amount (kWh) provided by the Seller in accordance with paragraph 6.2 and which may be adjusted periodically throughout the Term of this Agreement in accordance with paragraph 6.2.
- 1.14 “Facility” – That electric generation facility described in Appendix B of this Agreement.
- 1.15 “Facility Nameplate Capacity” – The sum of the individual Generation Unit Nameplate Capacities that are installed at this Facility.
- 1.16 “First Energy Date” – The day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and after the Seller requested First Energy Date.
- 1.17 “Forced Outage” – A partial or total reduction of a) the Facility’s capacity to produce and/or deliver Net Energy to the Point of Delivery, or b) Idaho Power's ability to accept Net Energy at the Point of Delivery for non-economic reasons, as a result of Idaho Power or Facility: 1) equipment failure which was **not** the result of negligence or lack of preventative maintenance, or 2) responding to a transmission provider curtailment order, or 3) unplanned preventative maintenance to repair equipment that left unrepaired, would result in failure of equipment prior to the planned maintenance period, or 4) planned maintenance or construction of the Facility or electrical lines required to serve this Facility, or 5) icing events within the immediate water source used as the Facility’s primary motive force that causes the Facility to reduce energy production.
- 1.18 “Fueled Rates” – Fueled Rates shall apply to Qualifying Facility projects fueled with fossil fuels as described in Schedule 73, Rate Options.
- 1.19 “Generator Interconnection Agreement (GIA)” – The interconnection agreement that specifies terms, conditions and requirements of interconnecting to the Idaho Power electrical system, which will include but not be limited to all requirements as specified by Schedule 72.
- 1.20 “Generation Unit” – A complete electrical generation system within the Facility that is able to generate and deliver electricity to the Point of Delivery independent of other Generation Units within the same Facility.



- 1.21 “Heavy Load Hours (HL)” – The daily hours, applicable to energy deliveries, from hour ending 0700 - 2200 Mountain Time, (16 hours) excluding all hours on all Sundays, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.22 “Inadvertent Energy” – Electric energy Seller did not intend to generate. Inadvertent energy is described in paragraph 7.7 of this Agreement.
- 1.23 “Interconnection Facilities” – All equipment specified in the GIA.
- 1.24 “Initial Capacity Determination” – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than ten (10) average megawatts (MW) per month.
- 1.25 “Light Load Hours (LL)” – The daily hours from hour ending 2300 – 0600 Mountain Time (8 hours), plus all other hours on all Sundays, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.26 “Losses” – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the point where the Facility’s energy is metered and the Facility’s Point of Delivery. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.27 “Market Energy Reference Price” – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.28 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.29 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.30 “Mid-Columbia Market Energy Cost” – Eighty-two and four tenths percent (82.4%) of the monthly arithmetic average of each day’s Intercontinental Exchange (“ICE”) daily firm Mid-C Peak Avg and Mid-C Off-Peak Avg index prices. Each day’s index prices will reflect the relative proportions of peak hours and off peak hours in the month as follows:

The Mid-Columbia Market Energy Cost actual calculation being:

$$.824 * \left( \sum_{X=1}^n \{(\text{ICE Mid-C Peak Avg}_x * \text{HL hours for day}) + (\text{ICE Mid-C Off-Peak Avg}_x * \text{LL hours for day})\} / (n*24) \right)$$

where n = number of days in the month

If the ICE Mid-C Index prices are not reported for a particular day or days, prices derived from the respective averages of HL and LL prices for the immediately preceding and following reporting periods or days shall be substituted into the formula stated in this definition and shall therefore be multiplied by the appropriate respective numbers of HL and LL Hours for such particular day or days with the result that each hour in such month shall have a related price in such formula. If the day for which prices are not reported has in it only LL Hours (for example a Sunday), the respective averages shall use only prices reported for LL hours in the immediately preceding and following reporting periods or days. If the day for which prices are not reported is a Saturday or Monday or is adjacent on the calendar to a holiday, the prices used for HL Hours shall be those for HL hours in the nearest (forward or backward) reporting periods or days for which HL prices are reported. If the ICE Mid-C Index reporting is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index, which is similar to the ICE Mid-C Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.

- 1.31 “Monthly Nameplate Energy” – Facility Nameplate Capacity (kW) multiplied by the hours in the applicable month.
- 1.32 “Nameplate Capacity” – The full-load electrical quantities assigned by the designer to a Generation Unit and its prime mover or other piece of electrical equipment, expressed in kilovolt-amperes, kilowatts, horsepower or other appropriate units. The nameplate is usually attached to the individual machine or device. This value is established for the term of this Agreement in Appendix B, item B-1 of this Agreement and validated in paragraph 4.1.4 of this Agreement.

- 1.33 “Net Energy” – All of the electric energy produced by the Facility, less Station Use and Losses, expressed in kilowatt hours (kWh) delivered by the Facility to Idaho Power at the Point of Delivery. Subject to the terms of this Agreement, Seller commits to deliver all Net Energy to Idaho Power at the Point of Delivery for the full term of the Agreement. Net Energy does not include Inadvertent Energy.
- 1.34 “Non-Fueled Rates” – Non-Fueled Rates shall apply to Qualifying Facility Projects that do not use fossil fuels as their primary fuel as described in Schedule 73, Rate Options.
- 1.35 “Non-seasonal Hydro Facility” – As described in Commission Order 32802, a hydro generating Facility that does not qualify as a Seasonal Hydro Facility.
- 1.36 “Operation Date” – For new projects, the day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed and after the Seller requested Operation Date. For existing projects already delivering energy to Idaho Power under an existing energy sales agreement, the Operation Date will be at hour beginning 00:01 on the Scheduled Operation Date selected in Appendix B-3, provided the Commission approves the replacement Agreement and the Seller completes all of the Article IV and Article V requirements prior to the Scheduled Operation Date specified in Appendix B-3.
- 1.37 “Point of Delivery” – The location specified in the GIA and referenced in Appendix B, where Idaho Power’s and the Seller’s electrical facilities are interconnected and the energy from this Facility is delivered to the Idaho Power electrical system.
- 1.38 “Prudent Electrical Practices” – Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully, safely, dependably, efficiently and economically.
- 1.39 “Renewable Energy Certificate” or “REC” - A certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, indicating generation of renewable energy by the Facility, and includes all Environmental Attributes arising as a result of the generation of electricity associated with the REC. One REC represents the Environmental Attributes associated with the generation of one thousand (1,000) kWh of Net Energy.

- 1.40 “Scheduled Operation Date” – The date specified in Appendix B-3 when Seller anticipates achieving the Operation Date. The Scheduled Operation Date provided by the Seller shall be a reasonable estimate of the date that the Seller anticipates that the Seller’s Facility shall achieve the Operation Date and complete Article V compliance items.
- 1.41 “Schedule 72” – Idaho Power’s Tariff No. 101, Schedule 72 or its successor schedules as approved by the Commission.
- 1.42 “Schedule 73” – Idaho Power’s Tariff No. 101, Schedule 73 or its successor schedules as approved by the Commission.
- 1.43 “Security Deposit” – \$45 per kW Nameplate Capacity of the entire Facility.
- 1.44 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.45 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.46 “Termination Damages” – Financial damages the non-defaulting party has incurred as a result of termination of this Agreement.

ARTICLE II: NO RELIANCE ON IDAHO POWER

- 2.1 Seller Independent Investigation – Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.
- 2.2 Seller Independent Experts – All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power – Any review or acceptance Seller’s design, specifications,

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

- 3.2 Qualifying Facility Status – Seller warrants that the Facility is a “Qualifying Facility,” as that term is used and defined in 18 C.F.R. §292.201 et seq. and Seller will take such steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Facility's Qualifying Facility status and associated support and compliance documents at any time during the term of this Agreement.
- 3.3 FERC License / Exemption / Determination – Seller warrants that Seller possesses a valid license, exemption from licensing, or a determination of a qualifying conduit hydropower facility (pursuant to section 30 of the Federal Power Act) from the Federal Energy Regulatory Commission ("FERC") for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license, exemption, or a determination of a qualifying conduit hydropower facility is a material part of the consideration for Idaho Power's execution of this Agreement. If applicable, Seller will take such steps as may be required to maintain a valid FERC license, exemption, or a determination of a qualifying conduit hydropower facility 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 ACCEPTANCE OF ENERGY

- 4.1 First Energy Date – Prior to the Effective Date of this Agreement, this Facility has been delivering energy to Idaho Power in accordance with a Firm Energy Sales Agreement dated July 13, 1987, and some of the requirements of this Article are similar to the requirements of the 1987 agreement. Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Idaho Power shall review the

previously provided information and at Idaho Power's sole discretion may 1) accept the previously provided information as meeting the requirements of this Article or, 2) require updates to the previously provided information or 3) require the Seller to provide new information to complete the following requirements.

- 4.1.1 Licenses, Leases, Permits, Determinations, Approvals – Submit proof to Idaho Power that all licenses, leases, permits, determinations and approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. §292.201 et seq. as a certified Qualifying Facility.
- 4.1.2 Opinion of Counsel – Submit to Idaho Power an opinion letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits, determinations and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the opinion letter. The opinion letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The opinion letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).
- 4.1.3 Commission Approval – Confirm with Idaho Power that Commission approval of this Agreement in a form acceptable to Idaho Power has been received.
- 4.1.4 Initial Capacity Determination – Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data will include but not be limited to, Generation Unit Nameplate Capacity, equipment specifications, prime mover data, resource characteristics, normal and/or average operating design conditions and Station Use data. Upon receipt of this information, Idaho Power will

review the provided data and if necessary, request additional data to complete the Initial Capacity Determination within a reasonable time.

4.1.4.1 If the Maximum Capacity Amount specified in Appendix B of this Agreement and the cumulative manufacturer's Nameplate Capacity rating of the individual Generation Units at this Facility does not exceed ten (10) MW, the Seller shall submit detailed, manufacturer, verifiable data of the Nameplate Capacity ratings of the individual Generation Units to be installed at this Facility. Idaho Power will verify that the data provided establishes the combined Nameplate Capacity rating of the Generation Units to be installed at this Facility does not exceed ten (10) MW and will determine if the Seller has satisfied the Initial Capacity Determination.

4.1.4.2 If the Maximum Capacity or the cumulative manufacture's Nameplate Capacity Rating of the individual Generation Units at this Facility exceeds ten (10) MW, Idaho Power will review all data submitted by Seller to determine if it is a reasonable estimate that the Facility will not exceed ten (10) average MW in any month.

4.1.5 Nameplate Capacity – Submit to Idaho Power manufacturer's and engineering documentation that establishes the Nameplate Capacity of each individual Generation Unit that is included within this entire Facility. The sum of the individual Generation Unit capacity ratings shall be equal to Facility Nameplate Capacity. Upon receipt of this data, Idaho Power shall review the provided data and determine if the Nameplate Capacity specified is reasonable based upon the manufacturer's specified generation ratings for the specific Generation Units.

4.1.6 Completion Certificate – Submit a certificate executed by an authorized agent of the Seller attesting that all mechanical and electrical equipment of the designated Generation Unit has been completed to enable the Generation Unit to begin testing and deliver Test Energy in a safe manner.

- 4.1.7 Insurance – Submit written proof to Idaho Power of all insurance required in Article XIII.
- 4.1.8 Interconnection – Provide written confirmation from Idaho Power’s business unit that administers the GIA that Seller has satisfied all interconnection, hourly metering and testing requirements that will enable the Facility to be safely connected to the Idaho Power electrical system.
- 4.1.9 Designated Network Resource (DNR) – Confirm that the Seller’s Facility has completed all of the requirements to be an Idaho Power DNR capable of delivering energy up to the amount of the Maximum Capacity at the Point of Delivery.
- 4.1.9.1 As specified in Appendix B item 7 of this Agreement, the Seller’s Facility must achieve DNR status prior to Idaho Power accepting any energy from this Facility. Appendix B item 7 provides information on the initial application process required to enable Idaho Power to determine if network transmission capacity is available for this Facility’s Maximum Capacity Amount and/or if Idaho Power transmission network upgrades will be required. The results of this study process and any associated costs will be included in the GIA for this Facility.
- 4.1.9.2 At least thirty (30) days prior to the Scheduled First Energy Date and after the Facility has completed all requirements of the GIA that enable the Facility to come online, Idaho Power will complete the process for getting the Seller’s Facility approved as an Idaho Power DNR. If the Seller estimates that the actual First Energy is expected to be different than the Scheduled First Energy Date specified in Appendix B of this Agreement, the Seller must notify Idaho Power of this revised date no later than 30 days prior to Scheduled First Energy Date. The Facility cannot deliver any energy to Idaho Power until it is approved as a DNR and after completing all the requirements of the GIA and complying with the requirements of this Agreement.
- 4.1.10 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be



provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM AND OPERATION DATE

5.1 Term – Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the Effective Date and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date, except that if the Operation Date is granted for a date that is after the Scheduled Operation Date identified in Appendix B, in which case the Term shall start on the Scheduled Operation Date.

5.2 Operation Date – Prior to the Effective Date of this Agreement, this Facility has been delivering energy to Idaho Power in accordance with a Firm Energy Sales Agreement dated July 13, 1987, and some of the requirements of this Article are similar to the requirements of the 1987 agreement. Prior to the Operation Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Idaho Power shall review the previously provided information and at Idaho Power's sole discretion may 1) accept the previously provided information as meeting the requirements of this Article or, 2) require updates to the previously provided information or 3) require the Seller to provide new information to complete the following requirements. A single Operation Date will be granted for the entire Facility and may occur only after the Facility has achieved all of the following:

- a) The Facility is online and delivering electricity to Idaho Power at the Point of Delivery.
- b) Seller has demonstrated to Idaho Power's satisfaction that all mechanical and electrical testing has been completed satisfactorily and the Facility is able to provide energy in a consistent, reliable and safe manner.
- c) Engineer's Certifications – Submit an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy as described in Commission Order No. 21690. These certificates will be in the form specified in Appendix C but may be modified to the extent necessary to

recognize the different engineering disciplines providing the certificates.

d) Seller has requested an Operation Date from Idaho Power in a written format.

e) Seller has received written confirmation from Idaho Power of the Operation Date.

5.3 Operation Date Delay – Seller shall cause the Facility to achieve the Operation Date on or before the Scheduled Operation Date. Delays in the interconnection and transmission network upgrade study, design and construction process (This includes any delay in making the required deposit payments set forth in the Facility’s GIA) that **are not** caused by Idaho Power or Force Majeure events accepted by both Parties, **shall not** prevent Delay Damages or Termination Damages from being due and owing as calculated in accordance with this Agreement.

5.4 Termination – If Seller fails to achieve the Operation Date prior to the Scheduled Operation Date, such failure will be a Material Breach and shall subject the Seller to Delay Damages during the Delay Cure Period. If Seller fails to achieve an Operation Date during the Delay Cure Period, Idaho Power may immediately terminate this Agreement with no further notice required.

5.5 Delay Damages Billing and Payment – Idaho Power shall calculate and submit to the Seller any Delay Damages due Idaho Power within fifteen (15) days after the end of each month or within 30 days of the date this Agreement is terminated by Idaho Power.

5.6 Termination Damages Billing and Payment – Idaho Power shall calculate and submit to the Seller any Termination Damages due Idaho Power within thirty (30) days after this Agreement has been terminated. Seller shall respond within 15 days. In the event of a dispute regarding the calculation of Termination Damages, either party may resort to a court of competent jurisdiction.

5.7 Seller Payment – Seller shall pay Idaho Power any calculated Delay or Termination Damages within 15 days from when Idaho Power presents these final adjusted billings to the Seller. Final adjusted billing being the original billing adjusted to reflect any mutually agreed to changes from the original billing. Seller’s failure to pay these damages within the specified time will be a Material Breach of this Agreement and Idaho Power shall draw funds from the Security Deposit provided by the Seller in an amount equal to the calculated damages.

5.8 Security Deposit – Within thirty (30) days of the date of a final non-appealable Commission Order

approving this Agreement as specified in Article XXI, the Seller shall post and maintain liquid security in a form as described in Appendix D equal to or exceeding the amount specified within this Agreement as the Security Deposit until such time as the Security Deposit is released by Idaho Power as specified in paragraph 5.8.1. Failure to post this Security Deposit in the time specified above will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement. In accordance with Commission Order No. 32697 E(1)(8), this Article 5.8 shall not be required in situations where the parties are entering into a new Energy Sales Agreement (“ESA”) for an existing Qualifying Facility (“QF”) project already in commercial operation so long as the new ESA is between the same parties and there are no material modifications to the existing QF project.

5.8.1 Security Deposit Release – Idaho Power shall release any remaining Security Deposit provided by Seller promptly after either the Facility has achieved its Operation Date or this Agreement has been terminated and only after all final adjusted Delay and Termination Damages have been paid in full to Idaho Power.

#### ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

6.1 Net Energy Purchase and Delivery – Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy to Idaho Power at the Point of Delivery. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time within any hour will the Seller's Facility generation deliveries to Idaho Power exceed the Maximum Capacity Amount specified in Appendix B.

6.2 Estimated Net Energy Amounts – Neither the monthly Estimated Net Energy Amounts provided as of the Effective Date of this Agreement nor monthly Adjusted Estimated Net Energy Amounts provided during the term of this Agreement shall exceed ten (10) average monthly MW nor be greater than the Maximum Capacity Amount (measured in kW) multiplied by the hours in the applicable month. Seller agrees to provide initial and revised Estimated Net Energy Amounts using an automated electronic input portal provided by Idaho Power. If the electronic portal is not

available, Seller will provide Estimated Net Energy Amounts to Idaho Power via email or alternate methods as specified by Idaho Power.

6.2.1 Monthly Estimated Net Energy Amounts provided as of the Effective Date of this Agreement:

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

6.2.2 Seller's Adjustment of Estimated Net Energy Amounts – Prior to the Operation Date, the Seller may revise all of the previously provided monthly Estimated Net Energy Amounts. This revision must be submitted using the electronic portal provided by Idaho Power if available. If the portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed to by both parties.

6.2.3 Seller's Adjustment of Estimated Net Energy Amounts After the Operation Date – After the Operation Date, the Seller may revise any future monthly Estimated Net Energy Amounts by providing written notice no later than 5 PM Mountain Standard time on the 25<sup>th</sup> day of the month that is prior to the month to be revised. If the 25<sup>th</sup> day of the month falls on a weekend or holiday, then Idaho Power must receive the revision no later than the last business day prior to the 25<sup>th</sup> day of the month. For example, if the Seller would like to revise the Estimated Net Energy Amount

for October, they would need to submit a revised schedule no later than September 25<sup>th</sup> or the last business day prior to September 25<sup>th</sup>.

- a.) This revision must be submitted using the electronic portal provided by Idaho Power if available. If portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed to by both parties.
- b.) If the Seller does not update the electronic portal or provide written notice of changes to the Estimated Net Energy Amounts, then it will be deemed to be an election of no change from the most recently provided monthly Estimated Net Energy Amounts. Idaho Power is unable to accept any requested changes to the Estimated Net Energy Amounts if the date and time that Idaho Power receives the requested change is after the deadline.

6.2.4 Idaho Power Adjustment of Monthly Estimated Net Energy Amounts – If Idaho Power is excused from accepting the Seller’s Net Energy as specified in paragraph 12.2.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 and the Seller’s declared Suspension of Energy Deliveries is accepted by Idaho Power, the monthly estimated Net Energy amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 12.2.1 or 12.3.1 occurs will be temporarily reduced in accordance with the following and only for the actual month in which the event occurred:

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NEA = Current Month’s Estimated Net Energy Amount (Paragraph 6.2)

- SGU =
- a.) If Idaho Power is excused from accepting the Seller’s Net Energy as specified in paragraph 12.2.1 this value will be equal to the percentage of curtailment as specified by Idaho Power multiplied by the TGU as defined below.
  - b.) If the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 this value will be the sum of the individual Generation Units size ratings as specified in Appendix B that are impacted by the circumstances causing the Seller to declare a Suspension of Energy Deliveries.

TGU = Sum of all of the individual generator ratings of the Generation Units at this Facility as specified in Appendix B of this agreement.

RSH = Actual hours the Facility's Net Energy deliveries were either reduced or suspended under paragraph 12.2.1 or 12.3.1

TH = Actual total hours in the current month

Resulting formula being:

$$\begin{array}{l} \text{Adjusted} \\ \text{Estimated} \\ \text{Net Energy} \\ \text{Amount} \end{array} = \text{NEA} - \left( \left( \frac{\text{SGU}}{\text{TGU}} \times \text{NEA} \right) \times \left( \frac{\text{RSH}}{\text{TH}} \right) \right)$$

This Adjusted Estimated Net Energy Amount will be used in applicable Surplus Energy calculations for only the specific month in which Idaho Power was excused from accepting the Seller's Net Energy or the Seller declared a Suspension of Energy Deliveries.

- 6.3 Failure to Deliver Minimum Amounts of Net Energy – Unless excused by an event of Force Majeure or Idaho Power's inability to accept Net Energy, Seller's failure to deliver Net Energy in any Contract Year in an amount equal to at least ten percent (10%) of the sum of the monthly estimated Net Energy amounts in effect as of the Operation Date shall constitute an event of default.

#### ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

- 7.1 Surplus Energy – (1) Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month which exceeds one hundred ten percent (110%) of the monthly Adjusted Estimated Net Energy Amount for the corresponding month specified in paragraph 6.2, or (2) if the Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month is less than ninety percent (90%) of the monthly Adjusted Estimated Net Energy Amount for the corresponding month specified in paragraph 6.2,

then all Net Energy delivered by the Facility to the Idaho Power electrical system for that given month, or (3) all Net Energy produced by the Seller's Facility and delivered by the Facility to the Idaho Power electrical system prior to the Operation Date, or (4) all monthly Net Energy that exceeds the Monthly Nameplate Energy.

- 7.2 Surplus Energy Price – For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Reference Price or the applicable All Hours Energy Price, whichever is lower.
- 7.3 Base Energy – The Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system after the Facility has achieved an Operation Date which is greater than or equal to ninety percent (90%) and less than or equal to one hundred ten percent (110%) of the monthly Adjusted Estimated Net Energy Amount for the corresponding month specified in paragraph 6.2.
- 7.4 Base Energy Heavy Load Purchase Price – For all hourly Base Energy received during Heavy Load Hours, Idaho Power will pay the monthly non-levelized Base Energy Heavy Load Purchase Price as specified in Appendix E.
- 7.5 Base Energy Light Load Purchase Price – For all hourly Base Energy received during Light Load Hours, Idaho Power will pay the monthly non-levelized Base Energy Light Load Purchase Price as specified in Appendix E.
- 7.6 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the monthly non-levelized All Hours Energy in Appendix E.
- 7.7 Inadvertent Energy –
- 7.7.1 Inadvertent Energy is electric energy produced by the Facility which the Seller delivers to Idaho Power at the Point of Delivery that:
- a.) exceeds ten thousand (10,000) kW multiplied by the hours in the specific month in which the energy was delivered. (For example, January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440,000 kWh in this example would be Inadvertent

Energy.) or

b.) exceeds the Maximum Capacity Amount (in kW) in any hour.

7.7.2 Although Seller intends to design and operate the Facility to generate no more than the Maximum Capacity Amount in any hour and no more than ten (10) average MW monthly and therefore does not intend to generate and deliver Inadvertent Energy, Idaho Power will accept Inadvertent Energy but will not purchase or pay for Inadvertent Energy.

7.7.3 Delivering Inadvertent Energy to Idaho Power for two (2) consecutive months and/or in any three (3) months during a Contract Year will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement within sixty (60) days after the Material Breach has occurred.

7.8 Payments – Undisputed Base Energy and Surplus Energy payments, less any payments due to Idaho Power will be disbursed to the Seller within thirty (30) days of the date which Idaho Power receives and accepts the documentation of the monthly Base Energy and Surplus Energy actually delivered to Idaho Power as specified in Appendix A. Seller agrees to use payment method as specified by Idaho Power which could be ACH (Automated Clearing House), electronic, wire, paper checks or any other method for making payments to Seller.

7.9 Continuing Jurisdiction of the Commission – This Agreement is a special contract and the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utility Regulatory Policies Act of 1978 and 18 C.F.R. §292.303-308

#### ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

8.1 Pursuant to Commission Order No. 32697 and Order No. 32802 the Environmental Attributes and



Renewable Energy Certificates as defined within this Agreement and directly associated with the production of energy from the Seller's Facility are owned by the Seller.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility – Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy and Inadvertent Energy to the Idaho Power Point of Delivery for the full term of the Agreement in accordance with the GIA.

ARTICLE X:

METERING, METERING COMMUNICATIONS AND SCADA TELEMETRY

- 10.1 Metering – Idaho Power shall, provide, install, and maintain metering equipment needed for metering the electrical energy production from the Facility. The metering equipment will be capable of measuring, recording, retrieving, and reporting the Facility's hourly gross electrical energy production, Station Use, maximum energy deliveries (kW) and any other electricity measurements at the Point of Delivery that Idaho Power needs to administer this Agreement and integrate this Facility's electricity delivered to the Idaho Power electrical system. Specific equipment, installation details and requirements for this metering equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 and the GIA.
- 10.2 Metering Communications – Seller shall, at the Seller's sole initial and ongoing expense, arrange for, provide, install, and maintain dedicated metering communications equipment capable of transmitting the metering data specified in paragraph 10.1 to Idaho Power in a frequency, manner and form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated metering communications equipment. Specific details and requirements for this metering communications equipment will be established in the GIA process and documented in the GIA.
- 10.3 Supervisory Control and Data Acquisition (SCADA) Telemetry – In addition to the requirements

of paragraph 10.1 and 10.2, Idaho Power may require telemetry equipment and telecommunications which will be capable of providing Idaho Power with continuous instantaneous SCADA telemetry of the Seller's Net Energy and Inadvertent Energy production in a form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated SCADA and telecommunications equipment. Specific details and requirements for this SCADA Telemetry and telecommunications equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 and the GIA.

#### ARTICLE XI – RECORDS

- 11.1 Maintenance of Records – Seller shall maintain monthly records at the Facility or such other location mutually acceptable to the Parties. These records shall include total generation, Net Energy, Station Use, Surplus Energy, Inadvertent Energy and maximum hourly generation (kW) and be recorded in a form and content acceptable to Idaho Power. Monthly records shall be retained for a period of not less than five (5) years.
- 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 records pertaining to the Seller's Facility generation, Net Energy, Station Use, Surplus Energy, Inadvertent Energy and maximum generation (kW) records pertaining to the Seller's Facility.

#### ARTICLE XII: OPERATIONS

- 12.1 Communications – Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with the GIA.
- 12.2 Acceptance of Energy –
- 12.2.1 Idaho Power shall be excused from accepting and paying for Net Energy or accepting Inadvertent Energy which would have otherwise been produced by the Facility and

delivered by the Seller to the Point of Delivery:

- a.) If generation deliveries are interrupted due an event of Force Majeure or Forced Outage.
- b.) If interruption of generation deliveries is allowed by Section 210 of the Public Utility Regulatory Policies Act of 1978 and 18 C.F.R. §292.304
- c.) If temporary disconnection and/or interruption of energy deliveries is in accordance with Schedule 72 or other provisions as specified within the GIA.
- d.) If Idaho Power determines that curtailment, interruption or reduction of Net Energy or Inadvertent Energy deliveries is necessary because of line construction, electrical system maintenance requirements, emergencies, electrical system operating conditions, electrical system reliability emergencies on its system, or as otherwise required by Prudent Electrical Practices.

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

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

12.2.4 If Idaho Power is unable to accept the generation from this Facility and is not excused from accepting the Facility's generation, Idaho Power's damages shall be limited to only the value of the estimated electricity that Idaho Power was unable to accept valued at the applicable energy prices specified in this Agreement. Idaho Power will have no

responsibility to pay for any other costs, lost revenue or consequential damages the Facility may incur.

12.3 Seller Declared Suspension of Energy Deliveries –

12.3.1 If the Seller's Facility experiences a Forced Outage, and the Seller initiates a Declared Suspension of Energy Deliveries, Seller shall, after giving notice as provided in paragraph 12.3.2 below, temporarily reduce deliveries of Net Energy (kW) to Idaho Power from the Facility to not exceed the reduced energy deliveries (kW) stated by the Seller in the initial declaration for a period of not less than forty-eight (48) hours ("Declared Suspension of Energy Deliveries"). The Seller's Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller's telephone notification as specified in paragraph 12.3.2 and will continue for the time as specified in the written notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Estimated Net Energy Amount will be adjusted as specified in paragraph 6.2.3.

12.3.2 If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in paragraph 12.3.1, the Seller will notify the Designated Dispatch Facility by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Idaho Power. The Seller will, within twenty four (24) hours after the telephone contact, provide Idaho Power a written notice in accordance with Article XXV that will contain the beginning hour and expected duration of the Declared Suspension of Energy Deliveries, a description of the conditions that caused the Seller to initiate a Declared Suspension of Energy Deliveries and the reduced level (kW) of energy deliveries the Facility is requesting that will be set as the maximum energy deliveries to Idaho Power for the duration of the Declared Suspension of Energy Delivery event (not less than 48 hours). Idaho Power will review the documentation provided by the Seller to determine Idaho Power's acceptance of the described Forced Outage as qualifying for a Declared Suspension of Energy Deliveries as specified in

paragraph 12.3.1. Idaho Power's acceptance of the Seller's Forced Outage as an acceptable Forced Outage will be based upon the clear documentation provided by the Seller that the Forced Outage is not due to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility.

- 12.4 Scheduled Maintenance – On or before January 31<sup>st</sup> of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. If the Seller intends to perform planned maintenance at approximately the same time every year, the Seller may submit a maintenance schedule for the first calendar year and include a statement that this maintenance schedule shall be consistent for all future years, until such time as the Seller notifies Idaho Power of a change to this schedule. The Parties determination as to the acceptability of the Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.
- 12.5 Idaho Power Maintenance Information – Upon receiving a written request from the Seller, Idaho Power shall provide publicly available information with regard to Idaho Power planned maintenance information that may impact the Facility.
- 12.6 Contact Prior to Curtailment – Idaho Power will make a reasonable attempt to contact the Seller prior to interrupting the interconnection or curtailing deliveries from the Seller's Facility. Seller understands that in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events, Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

### ARTICLE XIII: INDEMNIFICATION AND INSURANCE

- 13.1 Indemnification – Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property,

proximately caused by the indemnifying Party's, (a) construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement, or (b) negligent or intentional acts, errors or omissions. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all documented costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

- 13.2 Insurance – During the term of this Agreement, Seller shall secure and continuously carry insurance as specified in Appendix F.

#### ARTICLE XIV: FORCE MAJEURE

- 14.1 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. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the effective date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome. Fluctuations and/or changes of the motive force and/or the fuel supply **are not** events of Force Majeure. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

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

Majeure event and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

ARTICLE XV: LIABILITY; DEDICATION

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

ARTICLE XVI: SEVERAL OBLIGATIONS

- 16.1 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 XVII: WAIVER

- 17.1 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 XVIII: CHOICE OF LAWS AND VENUE

- 18.1 State of Idaho Laws – This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions.

18.2 Venue – For any litigation arising out of or related to this Agreement will lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

ARTICLE XIX: DISPUTES AND DEFAULT

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

19.2 Notice of Default

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

19.2.2 Material Breaches – The notice and cure provisions in paragraph 19.2.1 do not apply to defaults identified in this Agreement as Material Breaches. Material Breaches must be cured as expeditiously as possible following occurrence of the breach. Idaho Power can terminate the Agreement at any time following the Material Breach unless there is a specific cure, or cure period, identified by this Agreement for that specific Material Breach then that cure, or cure period, shall apply.

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

19.3.1 Insurance – Evidence of compliance with the provisions of Appendix F. If Seller fails to comply, such failure will be a Material Breach.



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

19.3.3 Licenses / Leases / Permits / Determinations – During the full term of this Agreement, Seller shall maintain compliance with all leases, permits, licenses and determinations described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits, licenses or determinations. 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 leases, permits, licenses and determinations described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be an event of default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

#### ARTICLE XX: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXI: COMMISSION ORDER

21.1 Commission Order – Idaho Power shall file this Agreement for its acceptance or rejection by the Commission. This Agreement shall only become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

ARTICLE XXII: SUCCESSORS AND ASSIGNS

22.1 This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. Neither this Agreement nor any rights or obligations of either Party hereunder may be assigned, in whole or in part, by operation of law or otherwise, without the prior written consent of both Parties, which consent shall not be unreasonably withheld. Any party with which Idaho Power may consolidate, merge, convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of Idaho Power's rights, obligations and interests under this Agreement. Any purported assignment in derogation of the foregoing shall be void. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXIII: MODIFICATION

- 23.1 No later than the First Energy Date, the Seller will provide Idaho Power with an "as-built" description of the Facility in the form set forth in Appendix B.
- 23.2 The Seller will not modify the Facility from the description set forth in Appendix B without prior notification to Idaho Power. A proposed modification to the Facility that would change the Facility as described in Appendix B is referred to herein as a "Proposed Facility Modification." Proposed Facility Modification does not include additions or expansions to the Facility that result in an increase to the Maximum Capacity Amount, which are addressed in paragraph 23.6. The Seller may not begin construction of any Proposed Facility Modification(s) unless and until the following requirements have been met:
- (i) Seller has promptly notified Idaho Power of the Proposed Facility Modification(s) prior to initiating the modification design, specification, purchasing and construction process;
  - (ii) Seller has provided Idaho Power with detailed plans regarding the Proposed Facility Modification(s), including proposed revisions to the as-built description of the Facility set

forth in Appendix B; and

- (iii) The Proposed Facility Modification has been reviewed by Idaho Power and a determination made to either pursue an amendment as a Proposed Facility Modification pursuant to paragraphs 23.3 and 23.4 or as an expansion or additional project pursuant to paragraph 23.6.

23.3 Idaho Power will review any Proposed Facility Modification(s) and “as-built” descriptions to determine whether an amendment of the Agreement is appropriate as set forth in paragraph 23.4. In reviewing any Proposed Facility Modification(s) or actual modifications reflected in the as-built description, Idaho Power shall consider the following information: (i) The nature, scope, and extent of the proposed or actual modification(s); (ii) The impact, if any, on the applicable avoided cost rates or other relevant terms and conditions; and (iii) Such other information as may reasonably be necessary including the effect on any other provisions hereof which may be impacted by the proposed or actual modification. Proposed modifications could result in several possible actions including but not limited to: no change to Appendix B, and thus no further action; an amendment to conform Appendix B to the modified Facility; an amendment to adjust the pricing and other relevant terms and conditions; or a termination and new Agreement.

23.4 Based on its review, Idaho Power, at its sole determination in accordance with the provisions of the Public Utility Regulatory Policies Act of 1978 and any amendments thereto (“PURPA”) and subject to Commission approval, may choose to enter into an amendment of the Agreement to adjust the pricing or other relevant terms and conditions as necessary, including Appendix B;

23.4.1 If Idaho Power determines that it is appropriate to revise the Agreement, the Parties will enter into a written amendment to the Agreement revising the relevant terms, conditions, description in Appendix B, and, if necessary, pricing, referred to herein as the “Facility Modification Amendment”. The Facility Modification Amendment will be submitted to the Commission for approval. If the pricing is adjusted, the Parties will agree on and include in the amendment a pricing true-up mechanism to ensure that the correct rates apply to the modified Facility from the completion date of the modification.

- 23.4.2 If the Commission determines that the Proposed Facility Modification would require termination of the Agreement, the Seller may abandon the Proposed Facility Modification or accept the termination. If the Seller accepts the termination, Seller will be responsible for Termination Damages, if any, and the Parties may negotiate a new agreement based on the Facility as modified.
- 23.5 In addition to prior notification of any modifications to the Facility from the description set forth in Appendix B, no later than thirty (30) days following the date of substantial completion of such modification, and prior to the first Operation Date of such modification, Seller must provide Idaho Power with an “as-built” description of the modified Facility in the form set forth in Appendix B of this Agreement; provided that the Facility, as reflected in the “as-built” description to be provided under this paragraph, may not deviate from the Facility Modification Amendment, except, in each case, to the extent such further modification(s) are authorized under a subsequent written amendment to this Agreement that is executed by the Parties and approved by the Commission. If the “as-built” description deviates from the then-approved Appendix B, Idaho Power will review it and follow the process described in paragraphs 23.3 and 23.4.
- 23.6 Idaho Power is not required to purchase any Net Energy above the Maximum Capacity Amount. If Seller builds an expansion or additional project such that the expansion, or additional project would be deemed a single Qualified Facility or the same site under FERC regulations, Seller may not require Idaho Power (and Idaho Power will have no obligation to purchase pursuant to this Agreement) the output of any such expansion, or additional facility under the terms, conditions and prices in this Agreement. Instead, Seller may exercise any rights to enter into a new agreement for the sale of such incremental energy from such additional facility that is a Qualified Facility under then-applicable laws and regulations.
- 23.7 Idaho Power is not obligated to and shall not make any incremental payment to Seller as a result of any modification, addition, or expansion of the Facility if such modification was not authorized and approved by the Commission pursuant to the provisions of this Article 23. Should the Seller modify, construct additions, and/or expand the Facility without notification to Idaho Power nor the

authorization and approval of the Commission pursuant to the provisions of this Article 23, any incremental payments to Seller resulting from and subsequent to the modification, addition, and/or expansion of the Facility that deviate from the description in Appendix B shall be unauthorized and immediately due and owing back to Idaho Power. Failure to repay, or reasonably offset future payments made to Seller designed to repay and recoup any unauthorized payment amounts will be deemed a material breach of this Agreement.

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

#### ARTICLE XXIV: TAXES

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

#### ARTICLE XXV: NOTICES AND AUTHORIZED AGENTS

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

To Seller:

Original document to:  
BP Hydro Associates  
Rock Creek II Hydro Project  
Cory Lagerstrom  
4603 Homestead Drive  
Praire Village, KS 66208  
913-908-2211  
cory@hydrolandcorp.com

To Idaho Power:

Original document to:  
Vice President, Power Supply  
Idaho Power Company  
PO Box 70  
Boise, Idaho 83707  
energycontracts@idahopower.com

Copy of document to:  
Cogeneration and Small Power Production  
Idaho Power Company  
PO Box 70  
Boise, Idaho 83707  
energycontracts@idahopower.com

Either Party may change the contact person and/or address information listed above, by providing written notice from an authorized person representing the Party.

25.2 BP Hydro Associates Authorized Agents

Cory Lagerstrom

Pat Donahue

Chad Thompson

The Seller may modify the Authorized Agents by requesting and completing an Authorized Agent form provided by Idaho Power. This document will include the requested changes and require signature(s) from an authorized party of the Seller.

ARTICLE XXVI: ADDITIONAL TERMS AND CONDITIONS

26.1 Equal Employment Seller agrees to comply with all applicable equal employment opportunity, small business, and affirmative action laws and regulations. All Equal Employment Opportunity and affirmative action laws and regulations are hereby incorporated by this reference, including provisions of 38 U.S.C. §4212, Executive Order 11246, as amended, and any subsequent executive orders or other laws or regulations relating to equal opportunity for employment on government contracts. To the extent this Agreement is covered by Executive Order 11246, the Equal Opportunity Clauses contained in 41 C.F.R. §60-1.4, 41 C.F.R. §60-250.5, and 41 C.F.R. §60-741.5 are incorporated herein by reference.

26.2 Prior to the Seller executing this Agreement, the Seller shall have:

- a) Submitted an interconnection application for this Facility and is in compliance with all payments and requirements of the interconnection process.
- b) Acknowledged responsibility for all interconnection costs and any costs associated with acquiring adequate firm transmission capacity to enable the project to be classified as an Idaho Power DNR. If final interconnection or transmission studies are not complete at the time the Seller executes this Agreement, the Seller understands that the Seller's obligations to pay Delay and Termination Damages associated with the project's failure to achieve the Operation Date by the Scheduled Operation Date as specified in this Agreement is not relieved by final interconnection or transmission costs, processes or schedules.
- c) Provide acceptable and verifiable evidence to Idaho Power that demonstrates the Facility is eligible for the published avoided costs requested by the Seller and contained within this Agreement. Commission Order No. 35800 effective June 1, 2023, provides the current published avoided costs for Non-Seasonal Hydro Facilities, Seasonal Hydro Facilities, Other Facilities, Solar Facilities, and Wind Facilities. Commission Order No. 32697 provides for full capacity payments for existing projects that have requested replacement contracts after their existing contract expires.

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

- Appendix A – Generation Scheduling and Reporting
- Appendix B – Facility and Point of Delivery
- Appendix C – Engineer's Certifications
- Appendix D – Forms of Liquid Security
- Appendix E – Non-Seasonal Hydro Facility Energy Prices
- Appendix F – Insurance Requirements

#### ARTICLE XXVII: SEVERABILITY

27.1 The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

ARTICLE XXVIII: COUNTERPARTS

28.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

ARTICLE XXIX: ENTIRE AGREEMENT

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

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

Idaho Power Company

BP Hydro Associates

By

Ryan N. Adelman

By

Cory Lagerstrom

Ryan Adelman  
Vice President, Power Supply

Cory Lagerstrom

Dated

2/27/2024

Dated

2/27/2024

“Idaho Power”

“Seller”



APPENDIX A

A –1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

At the end of each month, the power production and switching report will be emailed to:  
cspaccounting@idahopower.com

If email is not available, then the report can be mailed to:  
Idaho Power Company  
Cogeneration and Small Power Production Reports  
C/O Financial Accounting  
1221 W. Idaho  
Boise, Idaho 83702

The meter readings required on this report will be the readings on the Idaho Power meter equipment measuring the Facility's total energy production and Station Usage delivered to Idaho Power and the maximum generated energy (kW) as recorded on the metering equipment and/or any other required energy measurements to adequately administer this Agreement. This document shall be the document to enable Idaho Power to begin the energy payment calculation and payment process. The meter readings on this report may not be used to calculate the actual payment, but instead will be a check of the automated meter reading information that will be gathered as described in item A-2 below:

Idaho Power Company

Cogeneration and Small Power Production

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month \_\_\_\_\_ Year \_\_\_\_\_

Project Name \_\_\_\_\_ Project Number: \_\_\_\_\_  
 Address \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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

Breaker Opening Record

<u>Date</u>	<u>Time</u>	<u>Meter</u>

*	<u>Reason</u>

Breaker Closing Record

<u>Date</u>	<u>Time</u>	<u>Meter</u>

\* Breaker Opening Reason Codes

- 1 Lack of Adequate Prime Mover
- 2 Forced Outage of Facility
- 3 Disturbance of IPCo System
- 4 Scheduled Maintenance
- 5 Testing of Protection Systems
- 6 Cause Unknown
- 7 Other (Explain)

I hereby certify that the above meter readings are true and correct as of Midnight on the last day of the above month and that the switching record is accurate and complete as required by the Energy Sales Agreement to which I am a Party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## A-2 AUTOMATED METER READING COLLECTION PROCESS

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

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

## A-3 SELLER CONTACT INFORMATION

### Seller's Contact Information

Name: Cory Lagerstrom

Telephone Number: (913) 908-2211

### 24-Hour Project Operational Contacts

Name: Chad Thompson

Telephone Number: (208) 240-1567

## APPENDIX B

### FACILITY AND POINT OF DELIVERY

Project Name: Rock Creek II

Project Number: 20240403

#### B-1 DESCRIPTION OF FACILITY

The Rock Creek II Hydro Project (“Project”) executed a 35-year Firm Energy Sales Agreement on July 13, 1987. The project started delivering energy to Idaho Power in April of 1989. The 1987 agreement expires on April 02, 2024.

The Project has one Ideal Electric synchronous three phase, 4160 volts, 60 hertz generator having a nameplate rating of 1,900 kW. The generator will be driven by a Voith Francis Turbine. Total generator nameplate capacity is 1,900 kW (1.9 MW).

Facility Nameplate Capacity for Rock Creek II Hydro: 1,900 kW (1.9 MW)

Qualifying Facility Category (Small Power Production or Cogeneration): Small Power Production

Primary Energy Source (Hydro, Wind, Solar, Biomass, Waste, Geothermal): Hydro

Fueled or Non-Fueled Rate (Generator primarily fueled with fossil or non-fossil fuel): Non-Fueled

#### 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.

Nearest City: Twin Falls

County and State: Twin Falls County, Idaho

Location Coordinates: Latitude 42°37'14.54"N

Longitude 114°31'53.38"W

Interconnection / Point of Delivery: Vicinity of Rock Creek II Hydro Power Plant

#### B-3 SCHEDULED FIRST ENERGY DATE AND SCHEDULED OPERATION DATE

This Facility is interconnected and already delivering energy to Idaho Power pursuant to a Firm Energy Sales Agreement that the parties agree to have expire on April 02, 2024. The Scheduled First Energy Date and the Scheduled Operation Date for this Agreement is the hour beginning 00:01

on April 03, 2024. The Actual Operation Date will also be April 03, 2024 provided that the Commission approves the replacement Agreement, and the Seller completes all of the Article IV and Article V requirements prior to April 03, 2024.

**B-4 MAXIMUM CAPACITY AMOUNT:**

The Maximum Capacity Amount is 1,900 kW (1.9 MW) which is consistent with the value provided by the Seller to Idaho Power in accordance with the GIA. This value is the maximum generation that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

**B-5 POINT OF DELIVERY**

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of where the Seller's Facility energy is delivered to the Idaho Power electrical system. The GIA will determine the specific Point of Delivery for this Facility. The Point of Delivery identified by the GIA will become an integral part of this Agreement.

**B-6 LOSSES**

If the Idaho Power metering equipment is capable of measuring the energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power metering equipment is unable to measure the energy deliveries directly at the Point of Delivery, the Losses will be calculated. This loss calculation is currently set at ("1.03%") of the kWh electricity production recorded on the Facility generation metering equipment. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation needs to be revised due to a change in the electrical equipment or some other factor, then Idaho Power may adjust the calculation and retroactively adjust the previous month's kWh loss calculations.

**B-7 DESIGNATED NETWORK RESOURCE (DNR)**

This Facility is an Idaho Power DNR pursuant to an existing energy sales agreement. The DNR status will continue if this Agreement is 1) executed and approved by the Commission, and 2) a

GIA has been executed by both parties and 3) the Seller is in compliance with all requirements of that GIA. Idaho Power cannot accept or pay for generation from this Facility if the Facility has not achieved the status of being an Idaho Power DNR. Federal Energy Regulatory Commission (“FERC”) rules require Idaho Power to prepare and submit the application to achieve DNR status for this Facility. Because much of the information Idaho Power needs to prepare the DNR application is specific to the Seller’s Facility, Idaho Power’s ability to file the DNR application in a timely manner is contingent upon timely receipt of the required information from the Seller. Prior to Idaho Power beginning the process to enable Idaho Power to submit a request for DNR status for this Facility, the Seller shall have 1) filed a Generation Interconnection application, 2) submitted all information required by Idaho Power to complete the application, and 3) either executed this Agreement or, at a minimum, provided Idaho Power with confirmation of the Seller’s intent to complete this Agreement in a timely manner. Seller’s failure to provide complete and accurate information in a timely manner can significantly impact Idaho Power’s ability and cost to attain the DNR designation for the Seller’s Facility and the Seller shall bear the costs of any of these delays that are a result of any action or inaction by the Seller.

APPENDIX C

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereafter referred to as the "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 Idaho Power Company Facility No. \_\_\_\_\_ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ 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, said Project has been designed and built to appropriate standards, and 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 the full Contact Term of \_\_\_\_\_ years.
9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is

relying on Engineer's representations and opinions contained in this Statement.

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_



APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
ONGOING OPERATIONS AND MAINTENANCE

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

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereafter referred to as the "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 Idaho Power Company Facility No. \_\_\_\_\_ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_, Boise Meridian, \_\_\_\_\_ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ 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. The Engineer certifies, based on the Project's appearance and the information provided by the Project, that the Project's ongoing O&M has been completed in accordance with said O&M Policy; that it is in reasonably good operating condition; and it is in the Engineer's professional opinion that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining \_\_\_\_\_ years of the Agreement.

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

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C

ENGINEER'S CERTIFICATION  
OF  
DESIGN & CONSTRUCTION ADEQUACY

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

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

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

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

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

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

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX D

FORMS OF LIQUID SECURITY

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

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

1. Cash – Seller shall deposit cash in the amount of the required Security Deposit with Idaho Power. Idaho Power will not be responsible to calculate or pay any interest on these funds deposited with Idaho Power.
2. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the required security amount(s). A single escrow account may be established for all security requirements, however detailed accounting of the individual security requirements must be maintained by the Seller and Seller shall be obligated to maintain the appropriate amounts to satisfy each security requirement within the individually identified accounts. The Seller shall be responsible for all costs.

3. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Security Deposit: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties. A single aggregate Guarantee or Letter of Credit may be provided for all security requirements, however detailed accounting of the individual security requirements must be maintained by the Seller and Seller shall be obligated to maintain the appropriate amounts to satisfy each security requirement within the individually identified accounts. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

APPENDIX E

## NON-SEASONAL HYDRO FACILITY ENERGY PRICES

(Prices based on the Nameplate Capacity Amount of 1,900 kW, Non-Fueled Rates)

E-1 Base Energy Heavy Load Purchase Price – For all Base Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order No. 35800 effective June 1, 2023, with full capacity payments per Commission Order No. 32697 and seasonalization factors applied:

Year	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	\$/MWh	\$/MWh	\$/MWh
2024	51.04	83.33	69.44
2025	48.89	79.83	66.52
2026	47.30	77.22	64.35
2027	46.29	75.57	62.98
2028	46.52	75.94	63.29
2029	47.10	76.90	64.08
2030	48.16	78.63	65.52
2031	49.77	81.25	67.71
2032	51.74	84.47	70.39
2033	53.89	87.98	73.32
2034	56.12	91.62	76.35
2035	58.35	95.27	79.39
2036	59.77	97.58	81.31
2037	61.12	99.78	83.15
2038	63.66	103.94	86.62
2039	64.21	104.84	87.36
2040	67.08	109.52	91.27
2041	68.96	112.59	93.83
2042	70.28	114.75	95.62
2043	71.19	116.23	96.86
2044	72.33	118.09	98.41

E-2 Base Energy Light Load Purchase Price – For all Base Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order No. 35800 effective June 1, 2023, with full capacity payments per Commission Order No. 32697 and seasonalization factors applied:

Year	Season 1 - (73.50 %) \$/MWh	Season 2 - (120.00 %) \$/MWh	Season 3 - (100.00 %) \$/MWh
2024	45.69	74.59	62.16
2025	43.54	71.09	59.24
2026	41.94	68.48	57.07
2027	40.94	66.84	55.70
2028	41.16	67.21	56.01
2029	41.75	68.17	56.80
2030	42.81	69.89	58.24
2031	44.42	72.52	60.43
2032	46.39	75.74	63.11
2033	48.54	79.24	66.04
2034	50.77	82.88	69.07
2035	53.00	86.53	72.11
2036	54.42	88.84	74.03
2037	55.77	91.05	75.87
2038	58.31	95.21	79.34
2039	58.86	96.10	80.08
2040	61.73	100.78	83.99
2041	63.61	103.86	86.55
2042	64.93	106.01	88.34
2043	65.84	107.50	89.58
2044	66.98	109.35	91.13



E-3 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the non-levelized energy price in accordance with Commission Order 35800 effective June 1, 2023, with full capacity payments per Commission Order No. 32697 and seasonalization factors applied:

Year	Season 1 - (73.50 %) \$/MWh	Season 2 - (120.00 %) \$/MWh	Season 3 - (100.00 %) \$/MWh
2024	48.66	79.44	66.20
2025	46.51	75.94	63.28
2026	44.91	73.33	61.11
2027	43.91	71.68	59.74
2028	44.13	72.06	60.05
2029	44.72	73.01	60.85
2030	45.78	74.74	62.28
2031	47.39	77.37	64.47
2032	49.36	80.58	67.15
2033	51.51	84.09	70.08
2034	53.74	87.73	73.11
2035	55.97	91.38	76.15
2036	57.38	93.69	78.07
2037	58.74	95.90	79.91
2038	61.28	100.05	83.38
2039	61.83	100.95	84.12
2040	64.70	105.63	88.03
2041	66.58	108.71	90.59
2042	67.90	110.86	92.38
2043	68.81	112.34	93.62
2044	69.95	114.20	95.17

APPENDIX F

INSURANCE REQUIREMENTS

The Seller shall secure and continuously carry insurance as specified within this Appendix for the term of the Agreement.

1. All insurance required by this Agreement shall be placed with an insurance company with an A.M. Best Company rating of A- or better.
2. If the insurance coverage required in this Appendix is cancelled, materially changed or lapses for any reason, the Seller will immediately notify Idaho Power in writing. This notice will advise Idaho Power of the specific reason for cancellation, material change or lapse and the steps being taken to comply with these Insurance Requirements. Failure to provide this notice and to comply with these Insurance Requirements within five (5) days of the cancellation, material change or lapse will constitute a Material Breach and Idaho Power may terminate this Agreement.
3. Prior to the First Energy date and subsequently within ten (10) days of the annual anniversary of the Operation Date, the Seller shall provide a Certificate of Insurance in the name of Idaho Power Company and list Idaho Power Company as an Additional Insured Endorsement and Waiver of Subrogation Endorsement.
4. The Certificate of Insurance shall evidence the appropriate insurance coverage of Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to one million dollars (\$1,000,000), each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.