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IDAHO PUBLIC
UTILITIES COMMISSION

Barton L. Kline
Senior Attorney

December 26, 2006

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P. O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-06-36
In the Matter of the Application of Idaho Power Company for Approval
of a Firm Energy Sales Agreement for the Sale and Purchase of
Electric Energy Between Idaho Power Company and Idaho Winds
LLC for the Alkali Wind Generation Facility

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Application for the above-referenced matter.

I would appreciate it if you would return a stamped copy of this transmittal letter in the enclosed self-addressed, stamped envelope.

Very truly yours,

Barton L. Kline

BLK:sh
Enclosures

BARTON L. KLINE, ISB # 1526
MONICA B. MOEN, ISB # 5734
Idaho Power Company
1221 West Idaho Street
P. O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-2682
FAX Telephone: (208) 388-6936
bkline@idahopower.com
mmoen@idahopower.com

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

Express Mail Address

1221 West Idaho Street
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR APPROVAL)
OF A FIRM ENERGY SALES AGREEMENT)
FOR THE SALE AND PURCHASE OF)
ELECTRIC ENERGY BETWEEN IDAHO)
POWER COMPANY AND IDAHO WINDS LLC)
FOR THE ALKALI WIND GENERATION)
FACILITY)
_____)

CASE NO. IPC-E-06-36
APPLICATION

COMES NOW, Idaho Power Company ("Idaho Power" or "the Company") and, pursuant to RP 52, hereby requests that the Commission issue its Order approving a Firm Energy Sales Agreement (the "Agreement") between Idaho Power and Idaho Winds LLC ("Idaho Winds") under which Idaho Winds would sell and Idaho Power would purchase electric energy generated by Idaho Wind's Alkali Wind Farm Facility located approximately 6 miles northwest of Glens Ferry, in Elmore County, Idaho ("Facility"). A copy of the Agreement is enclosed herewith as Attachment 1.

This Application is based on the following:

I.

In interlocutory Order No. 29839 issued in Case No. IPC-E-05-22, the Commission reduced the size cap for QF wind generation facilities entitled to receive the published avoided cost rates from 10 average megawatts to 100 kW. In Order No. 29839, the Commission also identified several criteria that it would consider to determine whether a particular QF wind generation facility, that had been in the negotiation queue when Order No. 29839 was issued, was sufficiently mature so as to justify “grandfathering” the wind generation facility to entitlement to the published rates.

These criteria are as follows:

- (1) Submittal of a signed power purchase agreement to the utility, or
- (2) Submittal to the utility of a completed Application for Interconnection Study and payment of fee.

In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g.,

- (1) A wind study demonstrating a viable site for the project,
- (2) A signed contract for wind turbines,
- (3) Arranged financing for the project, and/or
- (4) Related progress on the facility permitting and licensing path.

(Order No. 29839, p. 10, August 4, 2005; final Order No. 29851).

The Commission noted in Order No. 29872 in Case No. IPC-E-05-22, that the degree of substantial progress and project maturity that it would look for is a demonstration that the QF project can be brought on-line in a timely manner and within a reasonable period following contract execution and approval. The Commission stated it would look at the totality of the facts presented.

II.

Following the issuance of reconsideration Order No. 29872, the Commission has reviewed several requests from wind QFs for grandfathering status. Of particular import is Commission Order No. 29954, issued January 17, 2006 in Case No. IPC-E-05-35 in which Cassia Wind sought grandfather status for its tow wind farm projects, (“Cassia Wind Order”). In the Cassia Wind Order the Commission determined that even though, as of the August 4, 2005 cut-off date, Cassia Wind had not completed several important secondary criteria, it would be reasonable for Cassia Wind to receive an exemption from the published rate eligibility cap established in Order No. 29839 *provided* that Cassia Wind was able to demonstrate that it had secured financing and obtained a turbine commitment from John Deere Credit by January 4, 2006.

III.

In this case, the Alkali Facility developer, Pacific Wind LLC, initially advised Idaho Power that it did not desire to pursue a “grandfathering” determination. However, since the issuance of the Cassia Wind order, the developer has decided to pursue a “grandfathered” contract. Based on Idaho Power Company’s review of the information provided by the developer and in light of the Commission’s analysis in the Cassia Wind order, Idaho Power has determined that it would be reasonable to grandfather the Facility based on the following:

Primary Criteria:

1. Prior to Idaho Power filing its petition on June 17, 2005 in Case No. IPC-E-05-22, (“Suspension Petition”), Idaho Power and the Facility developer had completed contract negotiations and were prepared to sign a Firm Energy Sales Agreement for this

Facility. At the time Idaho Power filed the Suspension Petition, Idaho Power advised the developer that Idaho Power would not sign the Firm Energy Sales Agreement until the Commission had considered the Suspension Petition. As noted above, the developer initially decided not to pursue "grandfathering" but now desires to move forward with the Facility. Idaho Power believes that in light of the fact that the parties had fully negotiated and were ready to sign the FESA prior to August 5, 2005, the first primary criteria should be deemed to have been met.

2. The second primary criteria described by the Commission in Order No. 29039 is submittal of a completed application for interconnection. The developer submitted a generation interconnection study application for the Facility on January 31, 2005 for a 10 MW project along with a \$2,000 initial feasibility analysis fee. The developer withdrew the application on May 26, 2005 at the recommendation of Idaho Power Company's transmission group because the developer desired to increase the Facility size to 18 MW. At that time Idaho Power Company's transmission group correctly advised the developer that the interconnection application could not be amended but instead, a new application had to be filed. The developer decided to defer submitting a revised generation interconnection application until the Power Purchase Agreement was signed; an event which both Idaho Power and the developer believed was imminent.

Secondary Criteria:

On August 15, 2005 the developer wrote to Idaho Power describing the development status of the Facility. A copy of the August 15, 2005 letter is attached as Attachment 2. As noted in the August 15, 2005 letter, the developer did not, as of

August 5 2005, have a signed contract for turbines. However, Idaho Power has reviewed the information provided by the developer and confirmed that this developer had determined that obtaining financing was the highest priority on the critical path. Prior to August 4, 2005, the developer had obtained firm commitments to finance the Facility. The Company had also confirmed that as of August 4, 2005, the Facility had made substantial progress on the other secondary criteria, except for acquisition of turbines. As in the case of Cassia Wind, the developer has now obtained a firm commitment for turbines for the Facility. A copy of Idaho Power's November 7, 2006 letter to the developer confirming satisfaction of the required secondary commitments is attached as Attachment 3.

IV.

Based on the foregoing, on December 12, 2006, Idaho Power and Idaho Winds LLC entered into a Firm Energy Sales Agreement ("Agreement") for the Facility pursuant to the terms and conditions of Commission Order No. 29632. Under the terms of that Agreement, Idaho Winds elected to contract with Idaho Power for a 20-year term. Idaho Winds further elected to contract with the Company using the Non-Levelized Published Avoided Cost Rates as currently established by the Commission for projects that, under normal operating conditions, will not generate more than 10 aMW on a monthly basis.

V.

For the most part the Agreement contains terms and conditions identical to the terms and conditions previously approved by the Commission in other Firm Energy Sales Agreements between Idaho Power and various QFs. However, there are two

provisions that the Commission should be aware of in its consideration of this Agreement.

1. In the negotiations of this project, Idaho Power and Idaho Winds agreed that a Facility on-line date of December 2007 is crucial for various reasons. The Agreement contains Delay Damage provisions that require Idaho Winds to pay Idaho Power damages for on-line delays past December 31, 2007 for a period of up to 90 days.

2. The Agreement reflects the changes to Idaho Power's Schedule 72 approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18. Consistent with Order No. 30179, the Agreement no longer contains certain provisions covering interconnection issues that had previously been included in firm energy sales agreements. Those provisions are now covered by Schedule 72 and the Uniform Interconnection Agreement that is a part of Schedule 72.

VI.

Idaho Winds has indicated that the Facility will be an 18 MW wind generating facility. The Facility will be a qualified small power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA"). The Facility will consist of 12 GE wind turbines with individual generator ratings of 1.5 MW for each unit for a total facility generator rating of 18 MW. As provided by the Agreement, Idaho Winds will be required to provide data on the Facility that Idaho Power will use to confirm that, under normal and/or average conditions, generation from the Facility will not exceed 10 aMW on a monthly basis.

VII.

Idaho Winds has selected December 30, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date for the Facility. As the Agreement specifies, once a project requests and is assigned an Operation Date, various terms of the Agreement are activated, primarily the 90%/110% performance criteria. The Agreement requires that only the monthly variable non-firm price for energy be paid for any energy the Facility delivers to Idaho Power prior to the assignment of an Operation Date for this project.

VIII.

Section 24 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Idaho Winds for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

IX.

Within this Agreement, various requirements have been placed upon Idaho Winds in order for Idaho Power to accept energy deliveries from this project. Idaho Power will confirm that the initial requirements have been completed prior to accepting energy from this Facility. The Company will also monitor the ongoing requirements through the full term of this Agreement. Should the Commission approve this Agreement, Idaho Power intends to consider the Effective Date of the Agreement to be December 12, 2007.

X.

The Agreement, as signed and submitted by the Parties thereto, contains Non-Levelized Published Avoided Cost Rates in conformity with applicable IPUC Orders.

XI.

Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following:


Barton L. Kline, Senior Attorney
Monica B. Moen, Attorney II
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707
bkline@idahopower.com
mmoen@idahopower.com

Ric Gale
VP-Pricing and Regulatory
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707
rallphin@idahopower.com

NOW, THEREFORE, based on the foregoing, Idaho Power Company hereby requests that the Commission issue its Order:

- (1) Approving the Firm Energy Sales Agreement between Idaho Power Company and Idaho Winds without change or condition; and
- (2) Declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power Company and Idaho Winds be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 26th day of December 2006.



BARTON L. KLINE
Attorney for Idaho Power Company

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-06-36

IDAHO POWER COMPANY

ATTACHMENT NO. 1

APPLICATION

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

IDAHO WINDS LLC

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FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

ALKALI WIND FARM

Project Number: 21615200

THIS AGREEMENT, entered into on this 12TH day of DECEMBER 2006 between IDAHO WINDS LLC an Idaho limited liability company (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Seller will design, construct, own, maintain and operate an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is willing to purchase, firm electric energy produced by the Seller's Facility.

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

ARTICLE I: DEFINITIONS

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

- 1.1 "Commission" - The Idaho Public Utilities Commission.
- 1.2 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.3 "Delay Liquidated Damages" - Damages payable to Idaho Power as calculated in paragraph 5.3, 5.4, 5.5 and 5.6.
- 1.4 "Delay Period" - All days past the Scheduled Operation Date until the Seller's Facility achieves the Operation Date. This Delay Period shall not exceed 90 days.

- 1.5 “Delay Price” - The current month’s Market Energy Cost minus the current month’s Net Energy Purchase Price specified in paragraph 7.1 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.
- 1.6 “Designated Dispatch Facility” - Idaho Power’s Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.7 “Facility” - That electric generation facility described in Appendix B of this Agreement.
- 1.8 “First Energy Date” - The day commencing at 0001 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and the Seller begins delivering energy to Idaho Power’s system at the Point of Delivery.
- 1.9 “Inadvertent Energy” – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.3 of this Agreement.
- 1.10 “Interconnection Facilities” - All equipment specified in Schedule 72.
- 1.11 “Initial Capacity Determination” – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than 10 average MW per month and is therefore eligible to be paid the published rates in accordance with Commission Order No. 29632.
- 1.12 “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 point the Facility’s energy is delivered to the Idaho Power electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.13 “Market Energy Cost” – Eighty-five percent (85%) of the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index, which is similar to the Dow Jones Mid-Columbia Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.
- 1.14 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.

- 1.15 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.16 “Metering Equipment” - All equipment specified in Schedule 72, this Agreement and any additional equipment specified in Appendix B required to measure, record and telemeter power flows between the Seller's electric generation plant and Idaho Power's system.
- 1.17 “Net Energy” – All of the electric energy produced by the Facility, less Station Use, less Losses, expressed in kilowatt hours (kWh). 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.
- 1.18 “Operation Date” – The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.19 “Point of Delivery” – The location specified in Appendix B, where Idaho Power's and the Seller's electrical facilities are interconnected.
- 1.20 “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.
- 1.21 “Scheduled Operation Date” – The date specified in Appendix B when Seller anticipates achieving the Operation Date.
- 1.22 “Schedule 72” – Idaho Power's Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.
- 1.23 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.24 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.25 “Surplus Energy” – (1) Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month which exceeds 110% of the monthly 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 90% of the monthly 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.

1.26 "Total Cost of the Facility" - The total cost of structures, equipment and appurtenances.

ARTICLE II: NO RELIANCE ON IDAHO POWER

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

2.2 Seller Independent Experts - All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

ARTICLE III: WARRANTIES

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

3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR 292.201 et seq. After initial qualification, Seller will take such steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Seller's Qualifying

Facility status and associated support and compliance documents at anytime during the term of this Agreement.

ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.201 et seq. and a Qualifying Facility certificate.
- 4.1.2 Opinion of Counsel - Submit to Idaho Power an Opinion Letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the Opinion Letter. The Opinion Letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The Opinion Letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).
- 4.1.3 Initial Capacity Determination - Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data will include but not be limited to, 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 Engineer's Certifications - Submit an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy as described in Commission Order No. 21690. These certificates will be in the form specified in Appendix C but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.
- 4.1.5 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.
- 4.1.6 Interconnection – Provide written confirmation from Idaho Power's Delivery Business Unit that Seller has satisfied all interconnection requirements.
- 4.1.7 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date.
- 5.2 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:
 - a) Achieved the First Energy Date.
 - b) Commission approval of this Agreement in a form acceptable to Idaho Power has been received.
 - c) Seller has demonstrated to Idaho Power's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable and safe manner.
 - d) Seller has requested an Operation Date from Idaho Power in a written format.
 - e) Seller has received written confirmation from Idaho Power of the Operation Date.

This confirmation will not be unreasonably withheld by Idaho Power.

5.3 Seller shall cause the Facility to achieve the Operation Date on or before the Scheduled Operation Date. If the Operation Date occurs after the Scheduled Operation Date, Seller shall pay Idaho Power Delay Liquidated Damages. Delay Liquidated Damages will be calculated monthly as follows:

Delay Liquidated Damages are equal to ((Current month's Initial Year Net Energy Amount as specified in paragraph 6.2.1 divided by the number of days in the current month) multiplied by the current month's Delay Period) multiplied by the current month's Delay Price.

5.4 Delay Liquidated Damages will be calculated for a maximum of ninety (90) days past the Scheduled Operation Date. If Seller fails to achieve the Operation Date within ninety (90) days of the Scheduled Operation Date, Idaho Power may terminate this Agreement.

5.5 Seller shall pay Idaho Power any calculated Delay Liquidated Damages within five (5) business days of when Idaho Power calculates and presents any Delay Liquidated Damages billings to the Seller. Seller's failure to pay these damages within the specified time will be a Material Breach of this Agreement.

5.6 The Parties agree that the damages Idaho Power would incur due to delay in the Facility achieving the Operation Date on or before the Scheduled Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

6.1 Delivery and Acceptance of Net Energy - Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy to Idaho Power at the Point of Delivery. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time will the total amount of Net Energy and/or Inadvertent Energy produced by the Facility and delivered by the Seller to

the Point of Delivery exceed the Maximum Capacity Amount.

6.2 Net Energy Amounts - Seller intends to produce and deliver Net Energy in the following monthly amounts:

6.2.1 Initial Year Monthly Net Energy Amounts:

	<u>Month</u>	<u>kWh</u>
Season 1	March	4,560,300
	April	4,589,900
	May	4,278,500
Season 2	July	3,193,800
	August	3,048,400
	November	4,100,900
	December	4,402,300
Season 3	June	3,771,600
	September	3,368,800
	October	3,927,900
	January	4,176,000
	February	3,868,700

6.2.2 Ongoing Monthly Net Energy Amounts - Seller shall initially provide Idaho Power with one year of monthly generation estimates (Initial Year Monthly Net Energy Amounts) and beginning at the end of month nine and every three months thereafter provide Idaho Power with an additional three months of forward generation estimates. This information will be provided to Idaho Power by written notice in accordance with paragraph 25.1, no later than 5:00 PM of the 5th day following the end of the previous month. If the Seller does not provide the Ongoing Monthly Net Energy Amounts in a timely manner, Idaho Power will use the most recent 3 months of the Initial Year Monthly Net Energy Amounts specified in paragraph 6.2.1 for the next 3 months of monthly Net Energy amounts.

6.2.3 Seller's Adjustment of Net Energy Amount -

6.2.3.1 No later than the Operation Date, by written notice given to Idaho Power in accordance with paragraph 25.1, the Seller may revise all of the previously

provided Initial Year Monthly Net Energy Amounts.

6.2.3.2 Beginning with the end of the 3rd month after the Operation Date and at the end of every third month thereafter: (1) the Seller may not revise the immediate next three months of previously provided Net Energy Amounts, (2) but by written notice given to Idaho Power in accordance with paragraph 25.1, no later than 5:00 PM of the 5th day following the end of the previous month, the Seller may revise all other previously provided Net Energy Amounts. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

6.2.4 Idaho Power Adjustment of Net Energy Amount – 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 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 reduced in accordance with the following:

Where:

NEA = Current Month’s 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:

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

This Adjusted 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.

- 6.3 Unless excused by an event of Force Majeure, Seller's failure to deliver Net Energy in any Contract Year in an amount equal to at least ten percent (10%) of the sum of the Initial Year Net Energy Amounts as specified in paragraph 6.2 shall constitute an event of default.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

- 7.1 Net Energy Purchase Price – For all Net Energy, Idaho Power will pay the non-levelized energy price in accordance with Commission Order 29646 with seasonalization factors applied:

<u>Year</u>	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	<u>Mills/kWh</u>	<u>Mills/kWh</u>	<u>Mills/kWh</u>
2007	38.73	63.23	52.69
2008	39.62	64.68	53.90
2009	40.53	66.17	55.14
2010	41.46	67.69	56.41
2011	42.42	69.25	57.71
2012	43.39	70.85	59.04
2013	44.39	72.48	60.40
2014	45.42	74.16	61.80
2015	46.47	75.86	63.22
2016	47.54	77.62	64.68
2017	48.63	79.40	66.17
2018	49.76	81.24	67.70
2019	50.91	83.11	69.26
2020	52.07	85.02	70.85
2021	53.28	86.99	72.49
2022	54.51	88.99	74.16

2023	55.76	91.04	75.87
2024	57.05	93.14	77.62
2025	58.37	95.29	79.41
2026	59.72	97.50	81.25
2027	61.09	99.74	83.12

7.2 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Cost or the Net Energy Purchase Price specified in paragraph 7.1, whichever is lower.

7.3 Inadvertent Energy –

7.3.1 Inadvertent Energy is electric energy produced by the Facility, expressed in kWh, which the Seller delivers to Idaho Power at the Point of Delivery that exceeds 10,000 kW multiplied by the hours in the specific month in which the energy was delivered. (For example January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440, 000 kWh in this example would be Inadvertent Energy.)

7.3.2 Although Seller intends to design and operate the Facility to generate no more than 10 average MW and therefore does not intend to generate Inadvertent Energy, Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount but will not purchase or pay for Inadvertent Energy

7.4 Payment Due Date – Energy payments to the Seller will be disbursed within 30 days of the date which Idaho Power receives and accepts the documentation of the monthly Net Energy and Inadvertent Energy actually produced by the Seller's Facility and delivered to Idaho Power as specified in Appendix A.

7.5 Continuing Jurisdiction of the Commission – This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984); Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985); Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925,

729 P.2d 400 (1986); Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

- 8.1 Idaho Power waives any claim to ownership of Environmental Attributes. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) directly associated with the production of energy from the Seller's Facility.

ARTICLE IX: FACILITY AND INTERCONNECTION

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

ARTICLE X: METERING AND TELEMETRY

- 10.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain Metering Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with Schedule 72. The Metering Equipment will be at the location and the type required to measure, record and report the Facility's Net Energy, Station Use, Inadvertent Energy and maximum energy deliveries (kW) in a manner to provide Idaho Power adequate energy measurement data to administer this Agreement and to integrate this Facility's energy production into the Idaho Power electrical system.

ARTICLE XI - RECORDS

- 11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate total generation, Net Energy, Station Use, Inadvertent Energy

and maximum generation (kW) records in a form and content recommended by Idaho Power.

- 11.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all generation, Net Energy, Station Use, Inadvertent Energy and maximum generation (kW) records pertaining to the Seller's Facility.

ARTICLE XII: OPERATIONS

- 12.1 Communications - Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.

- 12.2 Energy Acceptance -

12.2.1 Idaho Power shall be excused from accepting and paying for Net Energy or accepting Inadvertent Energy produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, or temporary disconnection of the Facility in accordance with Schedule 72. If, for reasons other than an event of Force Majeure, a temporary disconnection under Schedule 72 exceeds twenty (20) days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

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

12.2.3 Under no circumstances will the Seller deliver Net Energy and/or Inadvertent Energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

12.3 Seller Declared Suspension of Energy Deliveries

12.3.1 If the Seller's Facility experiences a forced outage due to equipment failure which is not caused by an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility, Seller may, after giving notice as provided in paragraph 12.3.2 below, temporarily suspend all deliveries of Net Energy to Idaho Power from the Facility or from individual generation unit(s) within the Facility impacted by the forced outage for a period of not less than 48 hours to correct the forced outage condition ("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 (not less than 48 hours) in the written notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Net Energy Amount will be adjusted as specified in paragraph 6.2.4.

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 24 hours after the telephone contact, provide Idaho Power a written notice in accordance with Article XXV that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Seller to initiate a Declared Suspension of Energy Deliveries. 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

