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IDAHO PUBLIC  
UTILITIES COMMISSION

Lisa D. Nordstrom  
Attorney II

October 5, 2007

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-07- 17  
In the Matter of the Application of Idaho Power for an Accounting  
Authorizing the Inclusion of power Supply Expenses Associated With  
the Purchase of energy from Raft River Energy I LLC in the  
Company's Power Cost Adjustment

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,



Lisa D. Nordstrom

LDN:sh  
Enclosures

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IDAHO PUBLIC UTILITIES COMMISSION

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Attorneys for Idaho Power Company

Street Address for Express Mail:

1221 West Idaho Street  
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR AN )  
ACCOUNTING ORDER AUTHORIZING THE )  
INCLUSION OF POWER SUPPLY )  
EXPENSES ASSOCIATED WITH THE )  
PURCHASE OF ENERGY )  
FROM RAFT RIVER ENERGY I LLC )  
IN THE COMPANY'S POWER COST )  
ADJUSTMENT. )  
\_\_\_\_\_ )

CASE NO. IPC-E -07- 17

APPLICATION FOR AN  
ACCOUNTING ORDER

COMES NOW, IDAHO POWER COMPANY ("Idaho Power" or the "Company") and, pursuant to Rule of Procedure 52, hereby applies to the Idaho Public Utilities Commission ("IPUC" or the "Commission") for an accounting order authorizing Idaho Power to include the expenses associated with the purchase of energy from Raft River Energy I LLC ("Raft River" or the "Project") in the Company's Power Cost Adjustment.

This Application is based on the following:

## **BACKGROUND**

1. Idaho Power identified a need for geothermal resources in the Company's 2004 Integrated Resource Plan ("IRP"). Specifically, the 2004 IRP indicated that Idaho Power would issue a Request for Proposals ("RFP") for 100 MW of a geothermal resource in 2005. The Company's 2006 IRP anticipated that the 100 MW geothermal RFP would be concluded in 2007 and that 50 MW of geothermal resource would be online by 2009. The Company issued the geothermal RFP on June 2, 2006 ("2006 Geothermal RFP").

2. On August 11, 2006, in response to the Company's 2006 Geothermal RFP, the Company received nine bids from five entities. The bids ranged in size from 5.5 to 100 MW. The bids also differed in types of power conversion proposed. Six of the proposals were for binary geothermal technology in which heat from the geothermal fluids is transferred to a secondary working fluid which drives a turbine. The remaining three proposals were for flash units in which hot geothermal fluids are converted to steam that drives a turbine. Six of the nine bids offered long-term power purchase options to the Company. One entity offered to develop three projects that would be sold to Idaho Power.

3. During the fall of 2006, the Evaluation Team met with each of the five RFP respondents and reviewed the nine proposals offered by those entities.

4. In November 2006, Idaho Power determined that it would not pursue ownership of a geothermal resource. The bidder who submitted ownership proposals was invited to change its bid to power purchase options. That bidder elected to withdraw its proposals from further consideration by the Company. In February 2007,

the Company chose to negotiate power purchase contracts with U.S. Geothermal, Inc., a Boise-based company.

5. In its bid, U.S. Geothermal, Inc. proposes to offer a total of 45.5 MW of geothermal energy to Idaho Power and to have those facilities online between October 2007 and January 2011. The parties have negotiated and executed a Power Purchase Agreement ("PPA") for approximately 13 MW of the 45.5 MW of geothermal power from Raft River Energy I LLC, an affiliate of U.S. Geothermal, Inc., for its facility known as Raft River Geothermal Power Plant Unit No. 1, located approximately 15 miles southeast of Malta, Idaho. Agreements for the remaining 32.5 MW of power will be submitted to the Commission separately from this filing. The PPA is enclosed as Attachment 1 to this Application.

6. Currently, a Commission-approved PURPA Agreement is in place between Raft River Energy I LLC and Idaho Power for a 10 MW facility at this identical location. (Case No. IPC-E-05-1, Order No. 29692) If the Commission approves the PPA and authorizes inclusion of the power supply expenses associated with the energy from the Raft River Geothermal Power Plant Unit No. 1 in the Company's Power Cost Adjustment, Idaho Power proposes that the Company's December 29, 2004 Agreement with Raft River Energy I LLC entered into pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") be rescinded upon Commission approval of the new PPA and upon satisfaction by Raft River I LLC of all requirements to attain a First Energy Date as specified within the PPA.

## **GENERAL DESCRIPTION OF THE RAFT RIVER ENERGY I LLC PPA**

7. Raft River Energy I LLC initially guarantees an annual output of 108,186,000 kWh and a 90% capacity factor beginning with the third Contract Year. This annual guarantee may be adjusted periodically based upon an independent engineer's assessment of the status of the geothermal reservoir. Failure to achieve the annual guarantees may result in financial payments to Idaho Power. In addition, the PPA contains Delay Damage provisions that will assess a financial penalty if the Project fails to achieve its scheduled Operation Date of February 2008. Failure to achieve the annual guarantees may result in financial payments to Idaho Power.

8. The term of the PPA is 25 Contract Years (25 years from the Operation Date). Idaho Power has an option to extend the term of the agreement for an additional period mutually agreeable to both parties. Should Raft River Energy I LLC choose to sell its facility, the PPA provides that Raft River first offer to sell its facility to Idaho Power.

9. Under the existing PURPA Agreement for this site, the Project is restricted to providing only 10 MW of energy to Idaho Power. Energy over 10 MW ("Inadvertent Energy") may be delivered to Idaho Power under the existing PURPA Agreement but no payment is required from Idaho Power for this Inadvertent Energy. The actual geothermal equipment and generation unit under this PPA are identical to the equipment being constructed under the current PURPA Agreement. As part of the negotiations for this PPA, upon approval of this PPA by the Commission, Idaho Power has agreed to retroactively pay for Inadvertent Energy delivered under the PURPA Agreement. The price for the Inadvertent Energy will be the lesser of either 85% of the

weighted average of Mid C, non-firm on and off peak prices or the monthly PPA price for the applicable months when the Inadvertent Energy was delivered to Idaho Power. If this PPA is not approved by the Commission, the existing PURPA Agreement terms and conditions will remain in effect which include no payments for Inadvertent Energy.

10. The Project, located southeast of Malta, Idaho, is physically connected to the Raft River Rural Electric Cooperative ("RRREC") electrical system and will wheel its energy across the RRREC and Bonneville Power Administration ("BPA") transmission systems to deliver its energy to Idaho Power at the Minidoka substation. As specified in the RFP, Idaho Power requested that all bidders provide and/or secure firm transmission costs within their bids. Because this Project is physically located off of the Idaho Power electrical system, it was necessary for this Project to acquire firm transmission across RRREC and BPA's system for the term of the PPA. Idaho Power provides transmission for numerous other BPA loads in the same area. As a result, the PPA allows and Idaho Power contemplates in the future to work with BPA to reduce the BPA transmission costs for this Project.

11. Prices under the PPA will be seasonally adjusted consistent with the seasonality factors currently being used in the Idaho Power PURPA agreements, with the highest rates being paid during the Company's peak energy usage months. The price for energy will start at an annual base rate of \$52.50/MWh, escalating annually at a rate of 2.1% through 2020. For the remaining term, the price for energy will escalate annually at a rate of 0.6% with the resulting energy price in 2032 being \$73.92/MWh. In addition to the energy price, a transmission cost of approximately \$1.75/MWh will be added to determine the total delivered price per MWh. As stated in item 10 above, it is

both parties' intent to work with BPA to reduce or potentially eliminate the BPA-related transmission costs.

12. The energy prices within this PPA compare favorably against the prices contained within the PURPA agreement for this same location. Because this PPA has a 25-year term while PURPA agreements have only 20-year terms, a direct comparison of prices under this PPA to PURPA Published Avoided Costs is not available. However, the current non-levelized PURPA Published Avoided Cost for calendar year 2007 is \$52.69 and if the 20<sup>th</sup> contract year non-levelized PURPA Published Avoided Cost is escalated at the same rate as previous years, an approximate PURPA price for calendar year of 2032 would be \$93.14. In addition to this cost savings, the PPA includes other provisions that are superior to a PURPA agreement including, but not limited to, the receipt of renewable energy credits, forecasting and security provisions, and performance assurances.

13. No payment is required by Idaho Power for energy deliveries over maximum contract amounts. The price paid for all energy delivered includes the value of renewable attributes ("Green Tags" or "RECs") associated with 3 MW of geothermal generation for the first 10 years of the agreement. For the remaining 15 years of the PPA, Idaho Power will receive 51% of the Green Tags associated with 13 MW of geothermal generation.

14. The PPA requires that Raft River Energy I LLC deliver detailed hourly, daily and weekly forecasting of Net Energy deliveries to Idaho Power Company. If the Project fails to provide timely, reliable and useful forecasts to Idaho Power as detailed and required by this PPA, the PPA contains provisions similar to the 90%-110% delivery

provisions contained in the Company's current PURPA agreements that will become effective and replace the annual performance requirements within this PPA.

15. The PPA requires the Project to post a \$750,000 security deposit by the end of the third Contract Year which will be available for Idaho Power Company to draw upon in the event damages are assessed against the Project. The \$750,000 security deposit is required to be maintained for the full term of the agreement which includes replenishment if any withdrawals occur during the term of the PPA.

### **REQUEST FOR FULL COST RECOVERY**

16. At the inception of Idaho Power's Power Cost Adjustment (PCA) mechanism, the Commission was concerned that the Company would not have the same degree of incentive to minimize power supply costs than if some degree of cost sharing with customers were retained. As a result, Idaho Power has recovered only 90% of changes from base level net power supply costs through the PCA with the remaining 10% acting as an incentive for efficiency. Although Idaho Power did not have any non-PURPA capacity contracts at the time the PCA was approved in 1993, the Commission found at that time that "it is appropriate to exclude any future non-CSPP [cogeneration, small power production] firm purchases from the PCA unless the Company has first obtained Commission approval to include them." (Order No. 24806 at 23.)

17. Unlike typical wholesale power supply transactions done in day-ahead or real-time markets, Idaho Power has gone through an extensive RFP process to identify the geothermal PPA that will provide the best value to customers. In this docket, the Commission and interested parties will have the opportunity to review reasonableness



of the RFP's winning bid and the prudence of this proposed PPA's power supply expenses prior to Idaho Power taking delivery of the power. Given the heightened review of this PPA, Idaho Power requests that the Commission authorize 100% recovery of its prudently incurred power expenses associated with this Power Purchase Agreement in the Company's Power Cost Adjustment. Currently no expenses associated with this Power Purchase Agreement are included in base rates.

18. Since the PCA was established in 1993, the Commission has allowed the Company "100% recovery of a resource that it is forced to acquire under federal law." (Order No. 24806 at 17.) Full recovery of the power expenses associated with 10MW of the 13MW encompassed in this PPA are already subject to a Commission-approved PURPA Agreement currently in place between Raft River Energy I LLC and Idaho Power at the same facility. Commission Order No. 29692 issued in Case No. IPC-E-05-1 found the PURPA agreement to be reasonable and allowed Idaho Power to recover 100% of the associated expenses in its PCA. Under the new PPA, Idaho Power will continue to purchase the same electrons but at a lower cost to customers. Thus, it is reasonable to allow 100% recovery through the PCA of the proposed PPA in its entirety.

19. In response to customer and Commission feedback, the Company has endeavored to incorporate greater amounts of renewable energy into its Integrated Resource Plans. The Commission has previously indicated its pleasure with Idaho Power's strategy to further diversify and increase the amount of renewable energy sources in its portfolio. (Order No. 29762 at 10 and Order No. 30281 at 12.) Idaho Power believes this geothermal power purchase agreement is precisely the type cost-

effective renewable power the Commission has encouraged the Company to procure. If, following its review the Commission agrees that it is, Idaho Power believes this renewable resource PPA is appropriate for full cost recovery in the Power Cost Adjustment rather than 90%.

### **SERVICE OF PLEADINGS**

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

Lisa D. Nordstrom  
Barton L. Kline  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

Ric Gale  
VP – Pricing and Regulatory  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

### **MODIFIED PROCEDURE**

21. The Company requests that this Application be processed under RP 201, et al, allowing for consideration of issues to be processed under Modified Procedure, i.e., by written submissions rather than by an evidentiary hearing, and process this application on an expedited basis.

### **REQUEST FOR ORDER**

22. Idaho Power respectfully requests that the Commission issue its order finding that:

(1) the Power Purchase Agreement with Raft River Energy I LLC is prudent and approving inclusion of the prudently incurred power purchase expenses associated with the Raft River Energy I LLC Power Purchase Agreement in the Company's Power Cost Adjustment; and

(2) the Company be authorized to recover 100% of its prudently incurred power expenses associated with this PPA in the Company's Power Cost Adjustment because the PPA was subject to Commission review and approval, and/or its energy is primarily comprised of currently federally mandated power receiving full cost recovery, and/or is a renewable resource whose development is to be encouraged; and

(3) the PURPA Firm Energy Sales Agreement between Idaho Power Company and Raft River Energy I LLC, dated December 29, 2004, be rescinded in its entirety upon the satisfactory achievement of the First Energy Date of the Project as established in the proposed Power Purchase Agreement between Raft River Energy I LLC and Idaho Power.

DATED at Boise, Idaho, this 5<sup>th</sup> day of October 2007.

  
LISA D. NORDSTROM  
Attorney for Idaho Power Company

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-07-17**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**

**POWER PURCHASE AGREEMENT  
BETWEEN  
RAFT RIVER ENERGY I LLC  
AND  
IDAHO POWER COMPANY**

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**POWER PURCHASE AGREEMENT  
BETWEEN  
RAFT RIVER ENERGY I LLC  
AND  
IDAHO POWER COMPANY**

This Power Purchase Agreement ("Agreement"), is entered into this 24<sup>th</sup> day of ~~SEPTEMBER~~, 2007, by and between RAFT RIVER ENERGY I LLC a Delaware limited liability company with a principal place of business at 1509 Tyrell Lane, Suite B, Boise, ID 83706 ("Seller"), and IDAHO POWER COMPANY, an Idaho corporation with a principal place of business at 1221 W. Idaho Street, Boise, ID 83702 ("Buyer"). Seller and Buyer may be referred to individually as "Party," or jointly as "Parties."

**Recitals**

A. Seller desires to develop, construct, own and operate a geothermal electric generating facility with an estimated average annual net output of 13 MW.

B. Seller has responded to Buyer's solicitation of bids for the provision of renewable energy, and Buyer has accepted Seller's offer in accordance with the terms and conditions set forth in this Agreement.

C. Seller and Buyer wish to enter into this Agreement in order to set forth the terms and conditions under which Seller will sell and Buyer will purchase energy from the Seller's Facility.

D. Seller and Buyer, upon Commission approval and satisfaction by the Seller of all requirements to attain a First Energy Date as specified within this Agreement, wish to terminate the PURPA Firm Energy Sales Agreement between the Buyer and the Seller dated December 29, 2004.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the sufficiency and adequacy of which are hereby acknowledged by each Party, the Parties agree to the following:

## **ARTICLE 1 DEFINITIONS**

1.1 “Affiliate” means any other person or entity that controls, is under the control of, or is under common control with, the named person or entity. For purposes of this definition, the term “control” (including the terms “controls,” “under the control of,” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of a person or entity, whether through ownership interest, by contract or otherwise.

1.2 “Annual Capacity Factor” means 90%.

1.3 “Annual Guaranteed Output” means the Annual Output Forecast as defined in Section 7.5 multiplied by the Annual Capacity Factor.

1.4 “Bankrupt” means with respect to any entity, such entity (1) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (2) makes an assignment or any general arrangement for the benefit of creditors, (3) otherwise becomes bankrupt or insolvent (however evidenced), (4) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (5) is generally unable to pay its debts as they fall due. The term “Bankruptcy” shall have a corollary meaning when used herein.

1.5 “BPA” means Bonneville Power Administration or its successor.

1.6 “Business Day” means any calendar day that is not a Saturday, a Sunday, or a NERC-recognized holiday.

1.7 “Buyer’s Delivery Business Unit” means that portion of Idaho Power Company, or its successor, that is responsible for the interconnections and operations of the Idaho Power Company distribution and transmission system as specified in the Idaho Power Company OATT.

1.8 “Commission” means the Idaho Public Utilities Commission or its successor.

1.9 “Commission Approval” means an order issued by the Commission approving this Agreement and finding the Contract Price to be reasonable and that all payments to be made to Seller under this Agreement shall be allowed as prudently incurred expenses of Buyer for ratemaking purposes, without condition(s) or modification(s) other than condition(s) or modification(s) accepted in writing by the Party or Parties adversely affected by such condition(s) or modification(s).

1.10 “Contract Price” means the price for all Net Energy that has been agreed to by the Parties in this Agreement and referenced in Appendix A.



1.11 “Contract Year” means the period commencing each calendar year on the same calendar date as the Operation Date and ending one (1) year later.

1.12 “Credit Rating” means (1) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P’s or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third-party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P’s or Moody’s, or (2) if such entity is a financial institution, the ratings issued or maintained by S&P’s or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

1.13 “Delay Energy Quantity” means 9,000 kW less any portion of capacity rating (kW) of the Facility that has met the Operation Date requirements specified in Section 4.4 multiplied by the hours beginning with the 744<sup>th</sup> hour past midnight of the Scheduled Operation Date to midnight of the day preceding the Operation Date, not to exceed, 2,160 total hours.

1.14 “Delay Liquidated Damages” means the Delay Energy Quantity multiplied by the Delay Price.

1.15 “Delay Price” means the applicable month’s Market Energy Price less the applicable month’s Contract Price. If this calculation results in a value less than zero (0) then the result will be zero (0).

1.16 “Designated Dispatch Facility” means Buyer’s generation dispatch group or any subsequent group designated by Buyer.

1.17 “Effective Date” means the date first written above.

1.18 “Emergency” means an emergency condition as defined under the Interconnection Agreement or the applicable OATT.

1.19 “Environmental Attributes” means the aggregate amount of environmental air quality credits, off-sets, or other benefits related to the Net Energy produced by the Facility that reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any federal, state or local legislation or regulation, and the aggregate amount of credits, offsets or other benefits related to Buyer’s current marketing program, any successor green pricing program, or other environmental or renewable energy credit trading program derived from the use, purchase or distribution of Net Energy from the Facility or any similar program pursuant to any federal, state or local legislation or regulation. The Environmental Attributes include, but are not limited to, green tags, green certificates, renewable energy credits (REC’s) and tradable renewable certificates directly associated with the Net Energy produced at this Facility. One REC is associated with the generation and delivery of one (1) MWh of Net Energy. Notwithstanding any other provision of this Agreement, Environmental Attributes *do not include*: (1) the PTC’s, (2) any investment tax credits, and any other tax credits, deductions, exemptions, or other tax benefits associated with the Facility, and (3) any state, federal, local or private cash payments, exemptions, refunds or grants relating in any way to the Facility, construction of

the Facility or output of the Facility, including the production of Inadvertent Energy, Test Energy, Station Use, or Net Energy.

1.20 “Facility” means the electric generation facility commonly known as Seller’s Raft River geothermal power plant unit #1, as described in more detail in Appendix B, which includes all of the equipment required to enable this power plant to produce and deliver the energy as specified within this Agreement to the Buyer. This equipment shall include but not be limited to the electrical interconnection equipment, generator, turbine, heat exchanger, and cooling tower(s). The geothermal fluid extraction wells, geothermal fluid injection wells, geothermal fluid transportation systems from the various wells to the generation unit are included in the Facility to the extent that they are used in the production of energy from the Facility.

1.21 “Facility Assets” shall have the meaning given to that term in Section 30.7.1.

1.22 “Facility Lender” means, collectively, any lender(s) providing any Project Financing and any successor(s) or assigns thereto.

1.23 “Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, and other documents relating to any Project Financing for the Facility, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with any Project Financing of the Facility, or of the Facility in combination with other assets of the Seller.

1.24 “First Energy Date” means the day commencing at 0001 hours, Mountain Time, following the day that the conditions in Section 3.1 have been satisfied.

1.25 “Forced Outage” means a Facility condition that requires a sudden or mandatory unplanned curtailment of the Net Energy deliveries from the Facility that (1) is due to equipment failure or unplanned shutdown which was not caused by an event of *force majeure* or by neglect, disrepair or lack of adequate preventative maintenance of the Seller’s Facility or (2) is required to allow unplanned repair or maintenance to prevent equipment failure.

1.26 “Good Utility Practice(s)” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice(s) is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to.

1.27 “Guaranty” means an instrument or agreement pursuant to which a guarantor guarantees the performance of the obligations of an obligor, which instrument or agreement is substantially in the form set forth as Appendix C.

1.28 “Guaranty Default” means with respect to a Guaranty or the guarantor thereunder, the occurrence of any of the following events: (1) any representation or warranty made or deemed to be made or repeated by such guarantor in connection with such Guaranty shall be false or misleading in any material respect when made or when deemed made or repeated; (2) such guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (3) the failure of such guarantor to comply with or timely perform any other material covenant or obligation set forth in such Guaranty if such failure is not capable of remedy or shall not be remedied in accordance with the terms and conditions of such Guaranty; (4) such Guaranty shall expire or terminate, or shall fail or cease to be in full force and effect and enforceable in accordance with its terms against such guarantor, prior to the satisfaction of all obligations of the obligor under this Agreement, in any such case without replacement; (5) such guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, its Guaranty, or (6) such guarantor becomes Bankrupt; provided, however, that no Guaranty Default shall occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

1.29 “Inadvertent Energy” (expressed in kWh), means all of the electric energy produced by the Facility, less Station Use, and delivered to and measured at the Metering Point, less Losses that are incurred between the Metering Point and the Buyer’s Point of Delivery and that is (1) after an Operation Date has been established in the PURPA Agreement and (2) energy in excess of 10,000 kW multiplied by the hours in a given month and, (3) produced prior to the First Energy Date of this Agreement and (4) delivered by the Seller to the Transmitting Entity and (5) delivered by the Transmitting Entity to the Point of Delivery and (6) accepted by the Buyer at the Point of Delivery and (7) not exceeding the Maximum Capacity.

1.30 “Initial Term” has the meaning given to that term in Section 4.1.1.

1.31 “Interconnection Agreement” means the agreement between the Interconnection Provider and the Seller that enables the Seller’s energy to be delivered and integrated into the Interconnection Provider’s electrical system.

1.32 “Interconnection Facilities” means all equipment required to be installed to interconnect and deliver energy from the Facility to the Transmitting Entity’s system including, but not limited to, connection, switching, metering, relaying, communications and safety equipment.

1.33 “Interconnection Provider” means the electric utility which the Facility is directly electrically interconnected to.

1.34 “Interest Rate” means (1) for purposes of identifying the Interest Rate to be paid on cash collateral, an annual interest rate equal to the overnight federal funds rates, or (2) for purposes of identifying the Interest Rate to be paid in an event of default, an annual interest rate equal to one hundred percent (100%) of the LIBOR three (3) month rate plus two hundred (200) basis points. The designated Interest Rate shall be the rate published on the date of the invoice, or other notice, in *The Wall Street Journal* (or, if

*The Wall Street Journal* is not published on that day, the next succeeding date of publication); *provided, however*, that the annual interest rate used as the Interest Rate shall not exceed the maximum rate permitted by law.

1.35 “Investor” means any investor(s) (including any transferees of such investors) that acquire a direct or indirect interest in Seller.

1.36 “Losses” means 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 delivered to the Transmitting Entity (measured by the Buyer’s Metering Equipment) and the Point of Delivery on the Buyer’s electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.

1.37 “Market Energy Cost” means the monthly 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-C Index price is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index similar to the Dow Jones Mid-C Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.

1.38 “Market Energy Price” means eighty-five percent (85%) of the Market Energy Cost.

1.39 “Material Adverse Change” means, with respect to Seller’s Guarantor, the Guarantor’s non-credit enhanced unsecured debt has (a) a Credit Rating below BBB- by S&P or below Baa3 by Moody’s, or (b) a Credit Rating of BBB- by S&P accompanied by a negative watch or Baa3 by Moody’s accompanied by a negative watch, or (c) both ratings are withdrawn or terminated on a voluntary basis by the rating agencies. If S&P changes its rating system during the Term, “BBB-“ shall be replaced by S&P’s lowest investment grade rating under the new rating system; likewise, if Moody’s changes its rating system during the Term, “Baa3” shall be replaced by Moody’s lowest investment grade rating under the new rating system.

1.40 “Material Breach” means a default or Event of Default (Article 26) subject to Section 26.3.

1.41 “Maximum Capacity” shall be 15.8 MW.

1.42 “Metering and Telemetry Equipment” means all equipment specified in the Interconnection Agreement, this Agreement, and any additional equipment specified in Appendix B required to measure, record and telemeter power flows between the Facility and Buyer’s electrical system.

1.43 “Metering Point” means the point on the Transmitting Entity’s or Interconnection Provider’s electrical system where the Seller’s energy is delivered to the Transmitting Entity and measured by the Buyer provided Metering Equipment.

1.44 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.45 "NERC" means the North American Electric Reliability Council or its successor.

1.46 "Net Energy", expressed in (kWh), means all of the electric energy produced by the Facility, less Station Use, and delivered to and measured at the Metering Point, less Losses that are incurred between the Metering Point and the Buyer's Point of Delivery and that is (1) after an Operation Date has been established and (2) delivered by the Seller to the Transmitting Entity and (3) delivered by the Transmitting Entity to the Point of Delivery and (4) accepted by the Buyer at the Point of Delivery and (5) not exceeding the Maximum Capacity. Net Energy does not include Test Energy. At any time during the term of this Agreement during which Appendix D is in force, Net Energy shall not include any Surplus/Shortfall Energy as defined in Appendix D.

1.47 "Net Energy Shortfall" means as calculated in Section 7.5.5 and subject to Net Energy Shortfall Damages.

1.48 "Net Energy Shortfall Price" means the price used to calculate the Net Energy Shortfall Damages as specified in Appendix E.

1.49 "Net Energy Shortfall Damages" means any remaining Net Energy Shortfall after the provisions of Section 7.5.5.2 have been applied, multiplied by the Net Energy Shortfall Price applicable to the actual period when the Net Energy Shortfall occurred.

1.50 "OATT" means the Open Access Transmission Tariff applicable to the Interconnection Provider's system, the Transmitting Entity's system, or the Buyer's transmission system.

1.51 "Operation Date" means the day commencing at 0001 hours, Mountain Time, following the day that all conditions of Section 4.4 have been satisfied.

1.52 "Performance Assurance" means collateral in the form of either a Guaranty, cash, letter(s) of credit, or other security acceptable to Buyer, as described in Article 16.

1.53 "Point of Delivery" means the point where the Transmitting Entity delivers the energy generated by the Facility to the Buyer's electrical system as specifically described in Appendix B.

1.54 "Project Financing" means debt with respect to which the Facility Lender(s) are granted security interests in the Facility, as well in such other of Seller's assets, and in such revenues generated therefrom, as are specified in the Financing Documents.

1.55 "PTC's" means Production Tax Credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, or replacement or substitute tax benefits based on energy production from the Facility.

