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IDAHO PUBLIC
UTILITIES COMMISSION

DONOVAN E. WALKER
Senior Counsel
dwalker@idahopower.com

November 16, 2010

VIA HAND DELIVERY

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-10-39

*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 DESERT MEADOW WINDFARM, LLC*

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Application in the above matter.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

DONOVAN E. WALKER (ISB No. 5921)
LISA D. NORDSTROM (ISB No. 5733)
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-5317
Facsimile: (208) 388-6936
dwalker@idahopower.com
lnordstrom@idahopower.com

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IDAHO PUBLIC
UTILITIES COMMISSION

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) CASE NO. IPC-E-10-39
APPROVAL OF A FIRM ENERGY SALES)
AGREEMENT FOR THE SALE AND) APPLICATION
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY)
AND DESERT MEADOW WINDFARM, LLC.)
_____)

Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), hereby respectfully applies to the Idaho Public Utilities Commission ("IPUC" or "Commission") for an Order approving the Firm Energy Sales Agreement ("FESA") between Idaho Power and Desert Meadow Windfarm, LLC ("Desert Meadow" or "Seller") under which Desert Meadow would sell and Idaho Power would purchase electric energy generated by the Desert Meadow Windfarm ("Facility") located near Mountain Home, Idaho.

In support of this Application Idaho Power represents as follows:

I. BACKGROUND

1. Sections 201 and 210 of PURPA, and pertinent regulations of the Federal Energy Regulatory Commission ("FERC"), require that regulated electric utilities purchase power produced by cogenerators or small power producers that obtain qualifying facility ("QF") status. The rate a QF receives for the sale of its power is generally referred to as the "avoided cost" rate and is to reflect the incremental cost to an electric utility of electric energy or capacity or both, which, but for the purchase from the QF, such utility would generate itself or purchase from another source. The Commission has authority under PURPA Sections 201 and 210 and the implementing regulations of the FERC, 18 C.F.R. § 292, to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules.

2. Desert Meadow proposes to design, construct, install, own, operate, and maintain a 23 megawatt ("MW") (Maximum Capacity Amount) wind generating facility to be located near Mountain Home, Idaho. The Facility will be a QF under the applicable provisions of PURPA.

II. THE FIRM ENERGY SALES AGREEMENT

3. On November 12, 2010, Idaho Power and Desert Meadow entered into a FESA pursuant to the terms and conditions of the various Commission Orders applicable to this PURPA agreement for a wind resource. See Order Nos. 30415, 30488, 30738, and 30744. A copy of the FESA is attached to this Application as Attachment No. 1. Under the terms of this FESA, Desert Meadow elected to contract with Idaho Power for a 20-year term using the non-levelized published avoided cost

rates as currently established by the Commission for energy deliveries of less than 10 average megawatts ("aMW"). Although Idaho Power filed a Joint Petition on November 5, 2010, seeking a reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kilowatts ("kW"), the Company does not believe that this FESA should be impacted by that filing. This FESA was final and executed by Desert Meadow on November 2, 2010, prior to the filing of the Joint Petition. The FESA was subsequently executed by Idaho Power on November 12, 2010, and now filed for approval with the Commission on November 16, 2010.

4. The nameplate rating of this Facility is 23.0 MW. As defined in paragraph 1.17 and paragraph 4.1.3 of the FESA, Desert Meadow 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 7.5 of the FESA, should the Facility exceed 10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the Maximum Capacity Amount, but will not purchase or pay for this Inadvertent Energy.

5. This PURPA wind agreement includes the Mechanical Availability Guarantee ("MAG"), Wind Integration Cost reduction, and Wind Forecasting cost sharing as required in Commission Order No. 30488. In addition, Desert Meadow and Idaho Power have agreed to Delay Liquidated Damages and associated Delay Security provisions of \$45 per kW of nameplate capacity within this FESA that have previously been approved as reasonable by the Commission in several PURPA FESAs. See Case

Nos. IPC-E-10-02, IPC-E-10-05, IPC-E-10-15, IPC-E-10-16, IPC-E-10-17, IPC-E-10-18, IPC-E-10-19, and IPC-E-10-22.

6. Desert Meadow has elected December 31, 2011, as the Scheduled First Energy Date and December 31, 2012, as the Scheduled Operation Date for this Facility. See Appendix B. Various requirements have been placed upon Desert Meadow in order for Idaho Power to accept energy deliveries from this Facility. Idaho Power will monitor compliance with these initial requirements. In addition, Idaho Power will monitor the ongoing requirements through the full term of this FESA. Should the Commission approve this FESA, Idaho Power intends to consider the Effective Date of the FESA to be November 12, 2010.

7. The FESA, as signed and submitted by the parties thereto, contains non-levelized published avoided cost rates in conformity with applicable IPUC Orders. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed to Desert Meadow.

8. The FESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. The Facility is currently in good standing with the generator interconnection process. Assuming that Seller continues to provide necessary technical information and make payments for interconnection materials and studies in a timely manner, Idaho Power's Delivery business unit anticipates providing a "Facility Study Report" to Seller no later than January 7, 2011. Following review of the Facility Study Report, the next step is for Seller and Idaho Power Delivery to enter into a Generator Interconnection Agreement, or "GIA." Idaho Power – Power Supply submitted Transmission Service

Requests ("TSR") on behalf of the Facility to Idaho Power Delivery. Delivery responded that a System Impact Study was required and one was subsequently performed. The Study analysis indicates that the existing transmission system can accommodate the requested 120 MW without transmission network upgrades. The TSRs will be accepted providing completion of the GIA and valid network resource designation.

9. Seller has selected December 31, 2011, for the Scheduled First Energy Date and December 31, 2012, as the Scheduled Operation Date. Desert Meadow has been advised that it is Desert Meadow's responsibility to work with Idaho Power's Delivery business unit to ensure that sufficient time and resources will be available for Delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow the Facility to achieve the December 31, 2012, Scheduled Operation date. Seller has been further advised that delays in the interconnection or transmission process do not constitute excusable delays in achieving the Scheduled Operation date and if Seller fails to achieve the Scheduled Operation date at the times specified in the FESA, delay damages will be assessed. The developer of the Facility has advised Idaho Power that it is aware of these requirements and is confident of its ability to meet the schedule.

10. Section 21 of the FESA provides that the FESA will not become effective until the Commission has approved all of the FESA's terms and conditions and declared that all payments Idaho Power makes to Desert Meadow for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

III. MODIFIED PROCEDURE

11. Idaho Power believes that a 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 present its testimony and support the Application in such hearing.

IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

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

Donovan E. Walker, Senior Counsel
Lisa Nordstrom, Lead Counsel
Idaho Power Company
1221 West Idaho Street
P.O. Box 70
Boise, Idaho 83707
dwalker@idahopower.com
lnordstrom@idahopower.com

Randy C. Alphin
Energy Contract Administrator
Idaho Power Company
1221 West Idaho Street
P.O. Box 70
Boise, Idaho 83707
rallphin@idahopower.com

V. REQUEST FOR RELIEF

13. Idaho Power Company respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure; (2) approving the Firm Energy Sales Agreement between Idaho Power Company and Desert Meadow Windfarm, LLC, without change or condition; and (3) declaring that all payments for purchases of energy under the firm Energy Sales Agreement between Idaho Power Company and Desert Meadow Windfarm, LLC, be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 16th day of November 2010.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

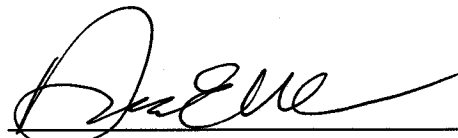
I HEREBY CERTIFY that on the 16th day of November 2010 I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

Desert Meadow Windfarm, LLC
Dean J. Miller
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. Box 2564
Boise, Idaho 83701

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email joe@mcdevitt-miller.com

Maurice Miller, Authorized Manager
3145 Geary Boulevard, #723
San Francisco, California 94118

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email mauri@envisionwind.com



Donovan E. Walker

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-39

IDAHO POWER COMPANY

ATTACHMENT NO. 1

FIRM ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
DESERT MEADOW WINDFARM, LLC
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FIRM ENERGY SALES AGREEMENT
(10 aMW or Less)

Project Name: Desert Meadow Windfarm

Project Number: 21615120

THIS AGREEMENT, entered into on this 12 day of November 2010 between DESERT MEADOW WINDFARM, LLC (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 "Availability Shortfall Price" - The current month's Mid-Columbia Market Energy Cost minus the current month's All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 15.00 Mills/kWh the result shall be 15.00 Mills/kWh.
- 1.2 "Business Days" - means any calendar day that is not a Saturday, a Sunday, or a NERC recognized holiday.

- 1.3 “Calculated Net Energy Amount” - A monthly estimate, prepared and documented after the fact by Seller, reviewed and accepted by the Buyer that is the calculated monthly maximum energy deliveries (measured in kWh) for each individual wind turbine, totaled for the Facility to determine the total energy that the Facility could have delivered to Idaho Power during that month based upon: (1) each wind turbine’s Nameplate Capacity, (2) Sufficient Prime Mover available for use by each wind turbine during the month, (3) incidents of Force Majeure, (4) scheduled maintenance, or (5) incidents of Forced Outages less Losses and Station Use. If the duration of an event characterized as item 3, 4 or 5 above (measured on each individual occurrence and individual wind turbine) lasts for less than 15 minutes, then the event will not be considered in this calculation. The Seller shall collect and maintain actual data to support this calculation and shall keep this data for a minimum of 3 years.
- 1.4 “Commission” - The Idaho Public Utilities Commission.
- 1.5 “Contract Year” - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.6 “Delay Liquidated Damages” – Damages payable to Idaho Power as calculated in paragraph 5.3, 5.4, 5.5 and 5.6.
- 1.7 “Delay Period” – All days past the Scheduled Operation Date until the Seller’s Facility achieves the Operation Date.
- 1.8 “Delay Price” - The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price specified in paragraph 7.3 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.
- 1.9 “Designated Dispatch Facility” - Idaho Power’s Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.10 “Effective Date” – The date stated in the opening paragraph of this Firm Energy Sales Agreement representing the date upon which this Firm Energy Sales Agreement was fully executed by both Parties.
- 1.11 “Facility” - That electric generation facility described in Appendix B of this Agreement.

- 1.12 "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 the Seller begins delivering energy to Idaho Power's system at the Point of Delivery.
- 1.13 "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. The Parties shall make commercially reasonable efforts to perform this unplanned preventative maintenance during periods of low wind availability.
- 1.14 "Heavy Load Hours" – The daily hours beginning at 7:00 am, ending at 11:00 pm Mountain Time, (16 hours) excluding all hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.15 "Inadvertent Energy" – Electric energy Seller does not intend to generate. Inadvertent energy is more particularly described in paragraph 7.5 of this Agreement.
- 1.16 "Interconnection Facilities" - All equipment specified in Idaho Power's Schedule 72.
- 1.17 "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.
- 1.18 "Light Load Hours" – The daily hours beginning at 11:00 pm, ending at 7:00 am Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

- 1.19 “Losses” – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the Metering Point 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.
- 1.20 “Market Energy Reference Price” – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.21 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.22 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.23 “Mechanical Availability” - The percentage amount calculated by Seller within 5 days after the end of each month of the Facility’s monthly actual Net Energy divided by the Facility’s Calculated Net Energy Amount for the applicable month. Any damages due as a result of the Seller falling short of the Mechanical Availability Guarantee for each month shall be determined in accordance with paragraph 6.4.4.
- 1.24 “Mechanical Availability Guarantee” shall be as defined in paragraph 6.4.
- 1.25 “Metering Equipment” - All equipment specified in Schedule 72, this Agreement and any additional equipment specified in Appendix B required to measure, record and telemeter bi-directional power flows from the Seller's Facility at the Metering Point.
- 1.26 “Metering Point” - The physical point at which the Metering Equipment is located that enables accurate measurement of the Test Energy and Net Energy deliveries to Idaho Power at the Point of Delivery for this Facility that provides all necessary data to administer this Agreement.
- 1.27 “Mid- Columbia Market Energy Cost” – 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-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.

- 1.28 “Nameplate Capacity” –The full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt-amperes, kilowatts, volts or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.
- 1.29 “Net Energy” – All of the electric energy produced by the Facility, less Station Use, less Losses, expressed in kilowatt hours (kWh) delivered 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.
- 1.30 “Operation Date” – The day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.31 “Point of Delivery” – The location specified 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.
- 1.32 “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.
- 1.33 “Scheduled Operation Date” – The date specified in Appendix B when Seller anticipates achieving the Operation Date. It is expected that 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.
- 1.34 “Schedule 72” – Idaho Power’s Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission. The Seller shall be responsible to pay all costs of interconnection and integration of this Facility into the Idaho Power electrical system as specified within Schedule 72 and this Agreement.
- 1.35 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.

- 1.36 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Schedule 72.
- 1.37 "Station Use" – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.38 "Sufficient Prime Mover" means wind speed that is (1) equal to or greater than the generation unit's manufacturer-specified minimum levels required for the generation unit to produce energy and (2) equal to or less than the generation unit's manufacturer-specified maximum levels at which the generation unit can safely produce energy.
- 1.39 "Surplus Energy" – 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.
- 1.40 "Total Cost of the Facility" - The total cost of structures, equipment and appurtenances.
- 1.41 "Wind Energy Production Forecast" – A forecast of energy deliveries from this Facility provided by an Idaho Power administered wind forecasting model. The Facility shall be responsible for an allocated portion of the total costs of the forecasting model as specified in Appendix E.

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 Facility'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 under this Agreement, 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. 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 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, 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.

4.1.3.1 If the Maximum Capacity specified in Appendix B of this Agreement and the cumulative manufacture Nameplate Capacity rating of the individual generation units at this Facility is less than 10 MW. The Seller shall submit detailed, manufacturer, verifiable data of the Nameplate Capacity ratings of the actual individual generation units to be installed at this Facility. Upon verification by Idaho Power that the data provided establishes the combined Nameplate Capacity rating of the generation units to be installed at this Facility is less than 10 MW, it will be deemed that the Seller has satisfied the Initial Capacity Determination for this Facility.

4.1.4 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. 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.

4.1.5 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.

- 4.1.6 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIII.
- 4.1.7 Interconnection – Provide written confirmation from Idaho Power’s delivery business unit that Seller has satisfied all interconnection requirements.
- 4.1.8 Network Resource Designation – The Seller’s Facility has been designated as a network resource capable of delivering firm energy up to the amount of the Maximum Capacity.
- 4.1.9 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 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 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 that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement.

5.3.1 If the Operation Date occurs after the Scheduled Operation Date but on or prior to 90 days following the Scheduled Operation Date, Seller shall pay Idaho Power Delay Liquidated Damages calculated at the end of each calendar month after the Scheduled Operation Date 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 number of days in the Delay Period in the current month) multiplied by the current month's Delay Price.

5.3.2 If the Operation Date does not occur within ninety (90) days following the Scheduled Operation Date, the Seller shall pay Idaho Power Delay Liquidated Damages, in addition to those provided in paragraph 5.3.1, calculated as follows:

Forty five dollars (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW.

5.4 If Seller fails to achieve the Operation Date within ninety (90) days following the Scheduled Operation Date, such failure will be a Material Breach and Idaho Power may terminate this Agreement at any time until the Seller cures the Material Breach. Additional Delay Liquidated Damages beyond those calculated in 5.3.1 and 5.3.2 will be calculated and payable using the Delay Liquidated Damage calculation described in 5.3.1 above for all days exceeding 90 days past the Scheduled Operation Date until such time as the Seller cures this Material Breach or Idaho Power terminates this Agreement.

5.5 Seller shall pay Idaho Power any calculated Delay Liquidated Damages within 7 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 and Idaho Power shall draw funds from the Delay Security provided by the Seller in an amount equal to the calculated Delay Liquidated Damages.

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.

5.7 Prior to the Seller executing this Agreement, the Seller shall have agreed to and executed a Letter of Understanding with Idaho Power that contains at minimum the following requirements:

- a) Seller has filed for interconnection and is in compliance with all payments and requirements of the interconnection process
- b) Seller has received and accepted an interconnection system impact study for this Facility.
- c) Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.
- d) Results of the initial transmission capacity request are known and acceptable to the Seller.
- e) Seller acknowledges 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 designated firm network resource.
- f) If the Facility is located outside of the Idaho Power service territory, in addition to the above requirements, the Seller must provide evidence that the Seller has acquired firm transmission capacity from all required transmitting entities to deliver the Facility's energy to an acceptable point of delivery on the Idaho Power electrical system.

5.8 Within thirty (30) days of the date of a final non-appealable Commission Order as specified in Article XXI approving this Agreement; Seller shall post liquid security ("Delay Security") in a form as described in Appendix D equal to or exceeding the amount calculated in paragraph 5.8.1.

Failure to post this Delay Security in the time specified above will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement.

5.8.1 Delay Security The greater of forty five (\$45) multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW or the sum of three month's estimated revenue. Where the estimated three months of revenue is the estimated revenue associated with the first three full months following the estimated Scheduled Operation Date, the estimated kWh of energy production as specified in paragraph 6.2.1 for those three months multiplied by the All Hours Energy Price specified in paragraph 7.3 for each of those three months.

5.8.1.1 In the event (a) Seller provides Idaho Power with certification that (1) a generation interconnection agreement specifying a schedule that will enable this Facility to achieve the Operation Date no later than the Scheduled Operation Date has been completed and the Seller has paid all required interconnection costs or (2) a generation interconnection agreement is substantially complete and all material costs of interconnection have been identified and agreed upon and the Seller is in compliance with all terms and conditions of the generation interconnection agreement, the Delay Security calculated in accordance with paragraph 5.8.1 will be reduced by ten percent (10%).

5.8.1.2 If the Seller has received a reduction in the calculated Delay Security as specified in paragraph 5.8.1.1 and subsequently (1) at Seller's request, the generation interconnection agreement specified in paragraph 5.8.1.1 is revised and as a result the Facility will not achieve its Operation Date by the Scheduled Operation Date, or (2) if the Seller does not maintain compliance with the generation interconnection agreement, the full amount of the Delay Security as calculated in paragraph 5.8.1 will be subject to reinstatement and will be due and owing within 5 business days from the date Idaho Power requests reinstatement. Failure to timely reinstate the Delay Security will be a Material Breach of this Agreement.

