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IDAHO PUBLIC UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Senior Counsel  
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December 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-10-58  
*IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY  
FOR A DETERMINATION REGARDING THE FIRM ENERGY SALES  
AGREEMENT FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY  
BETWEEN IDAHO POWER COMPANY AND MURPHY FLAT WIND, 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)  
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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-10-58  
A DETERMINATION REGARDING THE )  
FIRM ENERGY SALES AGREEMENT FOR ) APPLICATION  
THE SALE AND PURCHASE OF ELECTRIC )  
ENERGY BETWEEN IDAHO POWER )  
COMPANY AND MURPHY FLAT WIND, )  
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 accepting or rejecting the Firm Energy Sales Agreement ("FESA") between Idaho Power and Murphy Flat Wind, LLC ("Murphy Flat Wind" or "Seller") under which Murphy Flat Wind would sell and Idaho Power would purchase electric energy generated by the Murphy Flat Wind ("Facility") located near Murphy, 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. Murphy Flat Wind proposes to design, construct, install, own, operate, and maintain a 25 megawatt (“MW”) (Maximum Capacity Amount) wind generating facility to be located near Murphy, Idaho. The Facility will be a QF under the applicable provisions of PURPA. The FESA for this Facility, as well as the FESAs for Murphy Flat Mesa, LLC; Murphy Flat Energy, LLC; Rainbow Ranch Wind LLC; and Rainbow West Wind, LLC, are all signed by Brian Jackson, Manager of American Wind Group LLC, being the authorized manager of each LLC for the aforementioned projects.

3. On November 5, 2010, Idaho Power filed a Joint Petition and Motion seeking a reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kilowatts (“kW”). Case No. GNR-E-10-04. On December 3, 2010, the Commission

issued Order No. 32131 setting a Modified Procedure comment schedule with which to develop a record for its decision regarding the Joint Petition and Motion's request to lower the published avoided cost rate eligibility cap. Comments are due on December 22, 2010, Reply Comments are due January 19, 2011, and Oral Argument is scheduled for January 27, 2011. The Commission also ordered that its decision regarding whether to reduce the published avoided cost eligibility cap become effective on December 14, 2010.

4. Idaho Power has an obligation under federal law, FERC regulations, and this Commission's Orders, that it has not been relieved of, to enter into power purchase agreements with PURPA QFs. As stated in the Joint Petition filing, Idaho Power has received a large amount, in terms of both volume and MWs, of requests from PURPA QF developers demanding to enter into published avoided cost rate FESAs. The Company continues to process these requests, in the ordinary course of business, and file the same for review with this Commission, as is its legal obligation. However, the request in this Application, as well as several other Applications that have been and will be filed over the course of the next couple of months, is made with the specific reservation of rights and incorporation of the averments set forth in the Joint Petition regarding the possible negative effects to the both the utility and its customers of additional and unfettered PURPA QF generation on system reliability, utility operations, and costs of incorporating and integrating such a large penetration level of PURPA QF generation into the utility's system.

5. As recently as November 2, 2010, in the Yellowstone Power case, the Commission reiterated to Idaho Power that, "we intend for the Company to assist the

Commission in its gatekeeper role of assuring that utility customers are not being asked to pay more than the Company's avoided cost for the QF contracts. We expect Idaho Power to rigorously review such contracts." Order No. 32104. Even though Idaho Power is legally obligated to continue to negotiate, execute, and submit PURPA QF contracts for Commission review, it also feels obligated to reiterate that the continuing and unchecked requirement for the Company to acquire additional intermittent and other QF generation regardless of its need for additional energy or capacity on its system not only circumvents the Integrated Resource Planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs.

## **II. THE FIRM ENERGY SALES AGREEMENT**

6. On December 15, 2010, Idaho Power and Murphy Flat Wind 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 31025. A copy of the FESA is attached to this Application as Attachment No. 1. Under the terms of this FESA, Murphy Flat Wind 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"). This FESA was executed by Murphy Flat Wind on December 13, 2010. It was subsequently executed by Idaho Power on December 15, 2010, and now filed for the Commission's review on December 16, 2010.

7. The nameplate rating of this Facility is 25 MW. As defined in paragraph 1.17 and paragraph 4.1.3 of the FESA, Murphy Flat Wind 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.

8. 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, Murphy Flat Wind 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.

9. Murphy Flat Wind 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 Murphy Flat Wind 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.

10. 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 Murphy Flat Wind.

11. 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 the beginning stages of 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 will be able to proceed with its interconnection and transmission study processes, which ultimately results in a Schedule 72 Generator Interconnection Agreement, or "GIA" between Murphy Flat Wind and Idaho Power. PURPA QF generation must be designated as a network resource ("DNR") on Idaho Power's system, which requires Idaho Power – Power Supply to submit a Transmission Service Request ("TSR") on behalf of the Facility to Idaho Power Delivery. Upon resolution of any and all upgrades required to acquire transmission capacity for this Facility's generation, and upon execution of the FESA and the GIA, this Facility may then be designated as a network resource.

12. Seller has selected December 31, 2011, for the Scheduled First Energy Date and December 31, 2012, as the Scheduled Operation Date. Murphy Flat Wind has been advised that it is Murphy Flat Wind'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 the accompanying risk inherent in demanding to proceed with obligating itself to a Scheduled First Energy Date and Scheduled Operation Date in the FESA without knowing what upgrades will be required, and what time frame the interconnection and potential system network upgrades can be constructed within. Murphy Flat Wind has advised Idaho Power that it has been advised of and is willing to take the responsibility and risk associated with electing to proceed with this contract without knowledge of the requirements of interconnection and possible transmission upgrades.

13. Murphy Flat Wind has also been made aware of and accepted the provisions of the FESA and the Company's approved Tariff Schedule 72 regarding non-compensated curtailment or disconnection of its Facility should certain operating conditions develop on the Company's system. According to the standard provisions in Article XII of the FESA, curtailment without compensation may occur if there is an event of Force Majeure, a Forced Outage, or a temporary disconnection of the Facility in accordance with Tariff Schedule 72. If the generation from the Facility will have an adverse effect upon Idaho Power's 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. The parties' intent and understanding is that non-compensated curtailment would be exercised when the generation being provided by the Facility in



certain operating conditions exceeds or approaches the minimum load levels of the Company's system such that it may have a detrimental effect upon the Company's ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system.

14. 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 Murphy Flat Wind for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

### **III. MODIFIED PROCEDURE**

15. 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 prepare and present its testimony in such hearing.

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

16. 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](mailto:dwalker@idahopower.com)  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

Randy C. Allphin  
Energy Contract Administrator  
Idaho Power Company  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
[rallphin@idahopower.com](mailto:rallphin@idahopower.com)

## **V. REQUEST FOR RELIEF**

17. Idaho Power Company respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure; (2) accepting or rejecting the Firm Energy Sales Agreement between Idaho Power Company and Murphy Flat Wind, LLC, without change or condition; and, if accepted, (3) declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power Company and Murphy Flat Wind, LLC, be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 16<sup>th</sup> day of December 2010.

A handwritten signature in black ink, appearing to read "Donovan E. Walker", written over a horizontal line.

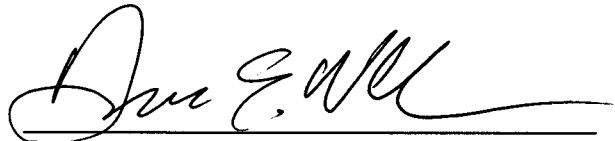
**DONOVAN E. WALKER**  
Attorney for Idaho Power Company

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 16<sup>th</sup> day of December 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:

**Murphy Flat Wind, LLC**  
Attn: Brian D. Jackson  
Murphy Flat Wind, LLC  
American Wind Group LLC- Manager  
2792 Desert Wind Road  
Oasis, Idaho 83647-5020

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [brian@americanwind.net](mailto:brian@americanwind.net)



Donovan E. Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-10-58**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 1**

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

MURPHY FLAT WIND, LLC

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FIRM ENERGY SALES AGREEMENT  
(10 aMW or Less)

Project Name: Murphy Flat Wind Project

Project Number: 12616600

THIS AGREEMENT, entered into on this 15 day of December 2010 between Murphy Flat Wind, 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 the Idaho Power electrical 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.
- 4.1.8.1 Seller has provided all information required to enable Idaho Power to file an initial transmission capacity request.
- a) Results of the initial transmission capacity request are known and acceptable to the Seller.
  - b) 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.
  - c.) 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.

- 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 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 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 ninety (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 ninety (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 seven (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.