



10 damages because the Project did not produce electricity from November, 2018, through March,  
11 2019, its usual nonproducing winter months, and April, 2019 through July, 2019, when it was  
12 “off line” for repairs. Although Idaho Power claims the Project permanently curtailed its  
13 “Annual Net Firm Energy,” Annual Net Firm Energy is the Agreement’s estimate of Net Firm  
14 Energy Wood was to deliver, and that estimate has never changed. Because the Project did not  
15 permanently reduce this estimate, and the estimate is the same as it has always been, Idaho  
16 Power is not entitled to withhold liquidated damages. Further, the liquidated damages clause in  
17 the Agreement is unenforceable under Idaho law.

18 **II.**

19 **CONTACT INFORMATION**

20 Tom Arkoosh

21 **III.**

22 **IDENTITY OF THE PARTIES**

23 Wood is an Idaho limited liabilities company that is qualified to do and doing business in  
24 the state of Idaho. Wood is the successor in interest to the Agreement and operates the Project.

25 Idaho Power is an Idaho corporation and investor owned electric utility qualified to do  
26 and doing business in the state of Idaho with it principal place of business at 1221 West Idaho  
27 Street, Boise, Idaho 83702. Idaho Power is subject to the jurisdiction of the Commission.

28 **IV.**

29 **JURISDICTION AND APPLICABLE LAW**

30 This case involves enforcement of the Agreement, which was entered on August 13,  
31 1993, pursuant to the Public Utilities Regulatory Policy Act of 1978 (“PURPA”) between Idaho



Power as buyer of the electricity produced by the Project and Contractor's Power Group, Inc., as seller. Wood is the successor to this Agreement and operator of the Project.

In Idaho, the Commission possesses jurisdiction to implement PURPA and adjudicate complaints against public utilities under PURPA. *Afton Energy Inc. v. Idaho Power Co.*, 111 Idaho 925 (1986). Further, the parties acknowledged this jurisdiction of paragraph 21.1 of the Agreement, reciting language approved by the Commission:

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

Further, liquidated damages clauses are not enforceable in Idaho unless:

1. The amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and
2. The harm that is caused by the breach is one that is incapable or very difficult of accurate estimation.

Restatement of Contracts section 339 as adopted by the Idaho Supreme Court.

## V.

### THE AGREEMENT

The 1993 Agreement provides that seller will make a one-time estimate of expected power deliveries labeled "Annual Net Firm Energy" amount. Agreement paragraph 1.1. The electricity actually produced is called "Net Firm Energy." Agreement paragraph 1.11. Thus, while Annual Net Firm Energy is the estimate established at the commencement of the Agreement, Net Firm Energy is what actually is produced under the Agreement.

The Agreement provides in paragraph 21.3 for liquidated damages if the Project "permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm

Energy amount specified in paragraph 6.3.” Paragraph 6.3 states the Annual Net Firm Energy Amount (the estimate) is 5,798,590 kWh.

Although Wood did not produce the expected energy from April 2019, through July 2019, because of repairs, the Annual Net Firm Energy Amount has never changed.

## VI.

### FACTS

As recited above, the Project did not produce electricity during the winter months of November 2018 through March 2019, which it usually does not. December through March are estimated in paragraph 6.2 of the Agreement as 0 kWh deliveries. Because of repairs, the Project did not deliver energy from April 2019 through July 2019, but did deliver starting in August 2019 after repairs were complete.

On August 1, 2019, Jerry Jardine wrote Ted Sorenson of Wood, Exhibit B, alleging liquidated damages were owed from Wood to Idaho Power for the “Failure to Deliver the Annual Net Energy Amount,” stating:

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount (“Repayment Amount”) shall be calculated and payable to Idaho Power.

Paragraph 21.3 does not provide for payment for the failure to deliver the Annual Net Energy Amount (the estimate), but instead provides for liquidated damages for permanently curtailing its long-term Annual Net Energy Amount estimate, which the Wood has not done for the Project. For that matter, the only time actual Net Firm Energy amounts (the actual deliveries) are mentioned in the paragraph is:

For purposes of this paragraph, neither reduced deliveries of Net Firm Energy due to short-term below -normal, water conditions (paragraph 6.4) nor Idaho Power’s voluntary



83 termination in accordance with paragraph 5.2.2 shall be considered a permanent  
84 curtailment.

85  
86 This strongly suggests that short term curtailments of the actual deliveries are not permanent  
87 curtailment of the estimates.

88 On August 7, 2019, Ted Sorenson responded to Jerry Jardine, Exhibit C, explaining that  
89 no “permanent curtailment” occurred.

90 On August 14, 2019, Jerry Jardine replied, Exhibit D, again propounding the confusing  
91 between permanent curtailment of the estimated annual amount and actual deliveries; insisting  
92 the Agreement gave Idaho Power no choice but to withhold money; and, finally, assessing  
93 \$116,312 of damages that would be withheld from the Projects monthly Net Energy payments.

94 On October 8, 2019, Exhibit E, Ted Sorenson wrote Jerry Jardine protesting the  
95 misreading of the Agreement and reiterating there was no permanent curtailment.

96 On March 17, 2020, Exhibit F, this office took up the matter for Wood and wrote to  
97 Idaho Power’s counsel that not only was there no permanent curtailment of the estimated  
98 deliveries, but the liquidated damage clause was unenforceable. As part of this argument, this  
99 office explained that it was because a Project was not required to deliver the Annual Net Energy  
100 Amount estimate that Idaho Power insisted after the Agreement that in its new agreements there  
101 must be a firm energy estimate which would in fact cause the imposition of liquidated damages if  
102 the project did not deliver within a 90/110 performance band of the estimate. To justify this  
103 material change, Idaho Power had complained to the Commission that projects were not required  
104 to deliver the Annual Net Energy Amount estimate.

105 On April 15, 2020, Idaho Power’s counsel responded to this office, Exhibit G, reiterating  
106 Idaho Power’s position that, “[b]ecause the project failed to deliver its Annual Net Firm Energy  
107 amount from Section 6.3 during Contract Year 25, and thus permanently curtailed its annual

delivery for that year,” the liquidated damage imposition was justified. Note the confusion between failure to deliver an estimated amount (which the contract allows) and permanent curtailment of the estimated amount (which the contract does not allow, and which did not happen here.)

**VII.**

**PRAYER**

WHEREFORE, Wood respectfully request that the Commission issue an Order providing for:

1. A declaration by the Commission that Wood has not “permanently curtailed the Annual Net Energy Amount” estimate under the Agreement.
2. A declaration by the Commission that the liquidated damages clause in the Agreement is not enforceable.
3. A directive to Idaho Power to refund any withheld Net Firm Energy amount payments withheld and reimburse Wood for the cost of the letter of credit wrongfully required by Idaho Power to continue to accept deliveries of energy from the Project.

DATED this 24th day of June 2020,

Arkoosh Law Offices



---

C. Tom Arkoosh



~~Office of the Secretary~~  
~~Public Utilities Board~~

JAN 12 1994

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPROVAL  
OF A FIRM ENERGY SALES AGREE-  
MENT BETWEEN IDAHO POWER  
COMPANY AND CONTRACTOR'S POWER  
GROUP, INC.**

) **CASE NO. IPC-E-93-25**) **ORDER NO. 25354**

On November 19, 1993, Idaho Power Company (IPCo) filed an Application with the Idaho Public Utilities Commission requesting approval of a Firm Energy Sales Agreement between Idaho Power and Contractor's Power Group, Inc. (CPG).

CPG is the developer of the Mile 28 Hydro Project, a proposed 1500 kilowatt facility located on the Milner-Geodong Canal in the southwest 1/4 of Section 7, Township 8 South, Range 20 East, Boise Meridian, Jerome County, Idaho. Contractor's plans to utilize an existing canal system and the senior water rights for irrigation owned by the American Falls Reservoir District No. 2 to obtain adequate water for the facility. As represented, the project currently has a valid FERC license or exemption and will be a qualifying facility (QF) prior to interconnection. The anticipated annual firm energy production is 5,798,590 kWh. The Agreement provides for IPCo's purchase of any surplus energy in excess of the anticipated annual firm energy at the non-firm avoided energy rate in accordance with IPCo's Tariff 101, Schedule 86. The scheduled operation date of the facility is May 15, 1994. The Agreement, dated August 13, 1993, provides for a 35-year contract term and contains avoided cost rates computed for 35 years based on the levelized avoided costs approved by the Commission in Case No. IPC-E-93-4.

Paragraph 21.1 of the Agreement provides that any disputes arising under the Agreement will be submitted to the Commission for resolution. The Commission reminds the parties that jurisdiction may not be conferred on the Commission by contractual stipulation. The authority and jurisdiction of the Commission is

ORDER NO. 25354

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EXHIBIT A

restricted to that expressly and by necessary implication conferred upon it by enabling statutes. The nature and extent of Commission jurisdiction to resolve actual disputes will be determined by the Commission on a case-by-case basis.

The Commission finds that the Agreement, as signed and submitted by the parties, contains avoided cost rates that, as structured, are acceptable for this project and are in substantial conformity with applicable Commission orders. The terms of the contract are reasonable and we approve them. We also approve payments made under this Agreement as prudently incurred expenses for ratemaking purposes.

### CONCLUSIONS OF LAW

#### I

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the *Idaho Code* and the Public Utility Regulatory Policies Act of 1978.

#### II

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 (PURPA) and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations to purchase energy from qualifying facilities, and to implement FERC rules. PURPA §§ 210, 210A, 210F; 16 U.S.C.A. §§ 834-A-3, 824-A-3(a)(1); *Afton Energy, Inc. v. Idaho Power Company*, 107 Idaho 781, 693 P.2d 427 (1984).

### ORDER

IT IS HEREBY ORDERED that the Firm Energy Sales Agreement between Idaho Power Company and Contractor's Power Group, Inc. submitted in this proceeding is hereby approved.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after



any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho  
this 17<sup>th</sup> day of January 1994.

Commissioner Smith was out of the  
office on this date.

MARSHA H. SMITH, PRESIDENT



DEAN J. MILLER, COMMISSIONER



RALPH NELSON, COMMISSIONER

ATTEST:



Myrna J. Walters  
Commission Secretary

JR\O-IPC-E-93-25.WS

ORDER NO. 25354

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*See Newbury  
L. B. 12*

FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

CONTRACTOR'S POWER GROUP, INC

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FIRM ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

CONTRACTOR'S POWER GROUP, INC

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FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 13th day of August, 1993, is between CONTRACTOR'S POWER GROUP, INC., an Idaho Corporation hereinafter referred to as "Seller", and IDAHO POWER COMPANY, an Idaho corporation hereinafter referred to as "Idaho Power" hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Seller plans to construct, own and operate an electric generation Facility;  
and

WHEREAS, Seller wishes to sell, and Idaho Power is legally obligated to purchase firm electric energy generated by Seller's electric generation 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 "Annual Net Firm Energy" - The amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Contract Year.
- 1.2 "Commission" - The Idaho Public Utilities Commission.
- 1.3 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.4 "Designated Dispatch Facility" - Idaho Power's Boise Bench System Dispatch Center.



1.5 "Disconnection Equipment" - Any device or combination of devices by which Idaho Power can manually and/or automatically interrupt the flow of energy from the Seller to Idaho Power's system, including enclosures or other equipment as may be required to ensure that only Idaho Power will have access to the devices.

1.6 "Facility" - That electric generation facility described in Appendix B of this Agreement.

1.7 "First Energy Date" - The date when the Seller begins delivering energy to Idaho Power's system.

1.8 "Interconnection Facilities" - All facilities which are reasonably required by Prudent Electrical Practices and the National Electric Safety Code to interconnect and to allow the delivery of energy from the Seller's electric generation plant to Idaho Power's system including, but not limited to, Special Facilities, Disconnection Equipment and Metering Equipment.

1.9 "Losses" - The loss of energy occurring as a result of the transformation and transmission of energy between the Facility and the Point of Delivery.

1.10 "Metering Equipment" - Equipment as described in Appendix B and Schedule 72 required to measure, record or telemeter power flows between the Seller's electric generation plant and Idaho Power's system.

1.11 "Net Firm Energy" - Electric energy produced by the Facility, less Station Use and less Losses, expressed in kilowatt hours ("kWh"), which Seller commits to deliver to Idaho Power at the Point of Delivery on a long-term average basis for the full term of the Agreement.

1.12 "Operation Date" - The day commencing at 0001 hours Mountain Time, following the day on which the Facility demonstrates that it has been completed and reached a degree of reliability such that it is capable of delivering Net Firm Energy continuously into Idaho Power's system.

1.13 "Point of Delivery" - The location specified in Appendix B, where Idaho Power's and Seller's electrical facilities are interconnected.

1.14 "Prudent Electrical Practices" - Those practices, methods and equipment that

are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

1.15 "Scheduled Operation Date" - The date specified in Appendix B when Seller anticipates achieving the Operation Date.

1.16 "Schedule 72" - Idaho Power's Tariff No 101, Schedule 72 or its successor schedules as approved by the Commission.

1.17 "Season" - The three time periods identified in Article VI.

1.18 "Seasonal Net Firm Energy" - The amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Season.

1.19 "Special Facilities" - Additions or alterations of transmission and/or distribution lines and transformers as described in Appendix B and Schedule 72 required to safely interconnect the Seller's electric generation plant to the Idaho Power's system.

1.20 "Station Use" - Electric energy which is used solely to operate the Facility's equipment which is auxiliary or directly related to the production of electricity and which, but for the generation of electricity, would not be consumed by Seller.

1.21 "Surplus Energy" - Electric energy which is delivered and accepted prior to the Operation Date or which Seller does not commit to provide on a long-term average basis for the full term of the Agreement.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

2.1 Seller Independent Investigation - Except for the Disconnection Equipment and any other facilities exclusively within the control of Idaho Power, 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 - Except for the Disconnection Equipment and any

other facilities within the exclusive control of Idaho Power, 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 prior to interconnection with Idaho Power the Facility will be a qualifying facility ("QF"). as that term is used and defined in 18 CFR, § 292.207. After initial qualification, Seller will take such steps as may be required to maintain the Facility's QF status during the term of this Agreement and Seller's failure to maintain QF status will be a material breach of this Agreement.

3.3 FERC License - Seller warrants that Seller possesses a valid license or exemption from licensing from the Federal Energy Regulatory Commission ("FERC") for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license or exemption is a material part of the consideration for Idaho Power's execution of this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or exemption for the Facility during the term of this Agreement, and Seller's failure to maintain a valid FERC license or exemption will be a material breach of this Agreement.

#### ARTICLE IV: CONDITIONS TO INTERCONNECTION

4.1 Prior to the First Energy Date and as a condition of interconnection with Idaho Power, Seller shall provide the following:

4.1.1 Licenses and Permits - 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 those licenses, permits or approvals specified in Appendix C.

4.1.2 Hydrological Data - Submit proof to Idaho Power that the hydrological data associated with the water flows applicable to the Facility and other factors relevant to the future security of such water flows, assuming normal weather conditions, demonstrate that the Application for Permit to appropriate water referred to in Appendix C provides Seller with sufficient water rights to generate the Net Firm Energy as specified in this Agreement.

4.1.3 Opinion of Counsel - Submit to Idaho Power an opinion of counsel signed by an attorney admitted to practice and in good standing in the State of Idaho certifying as follows:

(1) 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, provide the rights set forth therein, and are enforceable in accordance with their terms; and

(2) That the attorney has reviewed the approved Application for Permit to appropriate water referred to in Appendix C, that the Application for Permit to appropriate water is legally and validly issued to Seller, is held in the name of Seller and grants to Seller the rights therein specified, and is enforceable in accordance with its terms; and

(3) That downstream of the Facility, there are existing, agricultural senior water rights sufficient to ensure the availability of the water rights applied for in the Permit to Appropriate Water referred to in Appendix C; and

(4) That the agricultural water rights described in (3) above are senior to the Facility's requested water rights and are not dependent on inflows below Seller's Point of Diversion specified in the Permit to Appropriate Water referred to in Appendix C; and

(5) That the attorney has read Commission Order No. 21690 and it is his legal opinion that Seller possesses water rights that do not require the application by Idaho Power of the "K" factor described in said Order.

4.1.3.1 The opinion of counsel required in 4.1.3 above 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.

4.1.4 Schedule 72 Payments - Make payment to Idaho Power for all costs of Disconnection Equipment, Metering Equipment and Special Facilities as provided for in Schedule 72 and Appendix B of this Agreement;

4.1.5 Written Acceptance - Obtain written acceptance from Idaho Power as provided in paragraph 8.3;

4.1.6 Insurance - Submit written proof to Idaho Power of all insurance required in Article XIV;

4.1.7 Demonstration of Safe Operation - Demonstrate to Idaho Power's reasonable satisfaction that Seller's Facility has been completed, and is capable of operating safely to commence deliveries of electric energy into Idaho Power's system;

4.1.8 Maintenance Escrow Account - Demonstrate to Idaho Power's satisfaction that the Seller has established and funded (1) a debt service reserve account in a form and with a fund holder which complies with paragraph 21.4.2 and (2) a maintenance escrow account in a form and with an escrow manager which complies with Commission Order Nos 21690 and 21800. Said maintenance escrow account shall be structured and funded as follows:

4.1.8.1 The escrow instructions establishing the maintenance escrow account will provide that the funds in the maintenance escrow account will be prudently invested and that all costs of implementing and operating the maintenance escrow account shall be paid by the Seller. All interest earned on the funds on deposit will be retained in the maintenance escrow account. At the end of the term of this Agreement, any balance remaining in the maintenance escrow account shall be the property of the Seller.



4.1.8.2 Within sixty (60) days after the completion of each Contract Year, the Seller will deposit cash in the maintenance escrow account in an amount equal to five percent (5%) of the Facility's estimated gross income for the ensuing Contract Year, less an amount equal to the Facility's actual maintenance, repair and replacement expense (maintenance expenses) incurred during the prior Contract Year.

4.1.8.3 The maximum amount of deposit retained in the maintenance reserve account shall be two hundred thousand dollars (\$200,000.00). This maximum amount will be adjusted either upward or downward to reflect current replacement cost of the turbine/generator. This adjustment will be made at a minimum every fifth Contract Year during the term of this Agreement and will be based on the Handy-Whitman Index "Cost Trends of Electricity Utility Construction -- Plateau Region" -- "Hydro Production Plant" as published by Whitman Requardt & Associates, 2315 Saint Paul St, Baltimore, MD 21218.

4.1.8.4 At the time Seller makes the deposit described in paragraph 4.1.8.2, Seller will provide both the escrow manager and Idaho Power with a report prepared by an independent accounting firm showing the prior Contract Year's actual maintenance expenses, identified by appropriate FERC maintenance account number, and the estimate of the Facility's gross income for the ensuing Contract Year used to compute the deposit amount, together with documentation supporting that estimate of gross income.

4.1.8.5 If Seller determines that the maintenance expense for a Contract Year will exceed five percent (5%) of the Facility's estimated gross income for that Contract Year, the Seller may request that the escrow manager release funds from the maintenance escrow account in an amount sufficient to pay the anticipated additional maintenance expenses. The request must include documentation supporting the Seller's projection of excess maintenance expense, identified by appropriate FERC



maintenance account number, and such documentation shall be submitted to both the escrow manager and Idaho Power. Following receipt of the request and documentation, the escrow manager, shall, within five (5) working days, release the required funds to Seller.

4.1.8.6 At the end of each Contract Year, Seller will provide Idaho Power with evidence of compliance with the maintenance escrow account requirements set out in this Agreement and Commission Order Nos 21690 and 21800. This evidence of compliance will be provided in a manner and form acceptable to Idaho Power. The maintenance escrow fund will be subject to the lien rights described in 4.1.9 below.

4.1.9 Security Interests - Provide Idaho Power with acceptable security against Seller's default under this Agreement. Acceptable security will conform to Commission Order Nos 21690 and 21800 and may include, but will not be limited to, title insurance, security interests in the real property associated with the Facility, equipment, fixtures, contracts, permits, the FERC license or exemption from licensing, water rights, including evidence of third party downstream water rights, easements, rights-of-way, funds held in escrow in which Seller has an interest and that relate to the operation of the Facility, and other reasonable security arrangements consistent with the Facility's financing and ownership arrangements.

4.1.9.1 Idaho Power's security interests will be superior and senior to all liens other than the first mortgage lien and other security interests permitted in accordance with paragraphs 4.1.9.2.

4.1.9.2 If Seller desires to incur a first mortgage lien or other security interests that will be superior to Idaho Power's security interests in the Facility, at least twenty-one (21) days prior to their execution Seller shall provide Idaho Power with draft copies of the deeds of trust, mortgages and other security agreements that will be used to secure such first lien. Upon their execution Seller shall

provide Idaho Power with copies of the executed first lien documents. The executed first lien documents shall not be assigned, amended, modified, or extended, and no replacement or refinancing of any nature shall be undertaken, without Idaho Power's prior written consent which consent shall not be unreasonably withheld. In no event will the amount of any first mortgage lien exceed \$700,000. The total amount of all refinanced or replaced first liens shall not exceed the unpaid principal balance of the first mortgage liens they replace.

4.1.9.3 Other than the first mortgage liens permitted herein, or temporary mechanic's, statutory or similar liens incurred in the ordinary course of business in an amount not to exceed in aggregate five thousand dollars (\$5,000) Seller will not permit any liens or encumbrances of any nature whatsoever to be placed on the Facility without Idaho Power's prior written consent, which consent will not be unreasonably withheld. If any unpermitted lien or encumbrance is placed on the Facility, Seller will provide Idaho Power with a bond, insurance or other security acceptable to Idaho Power in an amount sufficient to secure the full discharge of such unpermitted lien or encumbrance.

4.1.9.4 If, after the initial first lien has been established, Seller desires to assign this Agreement or assign, replace or refinance said first lien, Seller will reimburse Idaho Power for the reasonable out-of-pocket costs Idaho Power incurs for document review and revision including any consents to assignment or subordination agreements that Seller requests from Idaho Power. Idaho Power's out-of-pocket costs will include but not be limited to filing fees, title insurance premiums, and fees of legal counsel.

4.1.10 Confirmation - Obtain written confirmation from Idaho Power that all conditions to interconnection have been fulfilled. Such written confirmation shall not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM, EARLY TERMINATION, AND OPERATION DATE

5.1 Term - Except as otherwise provided, this Agreement shall become effective on the date first above written, and shall continue in full force and effect for a period of thirty-five (35) Contract Years.

5.2 Early Termination - Either Party may terminate this Agreement at the end of the twentieth, twenty-fifth, or thirtieth Contract Years by giving the other Party written notice of termination a minimum of one (1) year prior to the beginning of the twentieth, twenty-fifth, and thirtieth Contract Years provided, however, that neither Party shall be allowed to terminate until at least five (5) years after the date of expiration of the initial permanent first lien financing for the project.

5.2.1 Liquidated Administrative Costs - If either Party exercises its option to terminate, in addition to any payments due under paragraph 21.3, the Party initiating termination will pay the other Party liquidated administrative costs which will be determined according to the following formula:

$$(\text{kWh}) \times (\text{Rate/kWh}) \times (\text{Percent}) = \text{liquidated administrative costs}$$

Where:

"kWh" is the Annual Net Firm Energy amount shown in paragraph 6.3; and

"Rate/kWh" is the sum of the base payment shown in paragraph 7.1.1 plus the adjustable payment in accordance with paragraph 7.1.2 as set on the July 1st immediately prior to the notification of intention to terminate; and

"Percent" is a multiplier based on the following schedule:

4 Year's prior notice of termination: 1.5%

3 Year's prior notice of termination: 2.0%

2 Year's prior notice of termination: 2.5%

1 Year's prior notice of termination: 3.0%



5.2.2 Idaho Power - Early termination under this paragraph by Idaho Power is not a default by the Seller and will not constitute a permanent curtailment under paragraph 21.3.

5.2.3 Seller - Early termination under this paragraph by the Seller will constitute a permanent curtailment under paragraph 21.3.

5.3 Operation Date - The Operation Date may occur only after Seller has achieved the First Energy Date, and the necessary degree of completion and reliability has been demonstrated to Idaho Power's satisfaction, and Idaho Power has confirmed that satisfaction in writing. Seller shall have the duty to obtain that confirmation and it will not be unreasonably withheld by Idaho Power. Prior to the Operation Date, Seller must provide the following:

- (1) As-built drawings of the Seller-furnished Interconnection Facilities, and
- (2) 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 F, but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

#### ARTICLE VI: SALE OF NET FIRM ENERGY

6.1 Delivery and Acceptance of Net Firm Energy - Except when either Party's performance is prevented by events of force majeure (Article XVI) or otherwise excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy produced by the Facility and delivered by Seller to the Point of Delivery.

6.2 Seasonal Net Firm Energy Amounts - Based on long-term historical water flow records and long-term average energy production estimates based thereon, Seller estimates that it can deliver Net Firm Energy in the following monthly amounts:

Season 1	March	0	kWh
	April	446,515	kWh
	May	892,746	kWh
Season 2	June	927,547	kWh
	July	1,012,953	kWh
	August	985,026	kWh
	September	887,890	kWh
Season 3	October	512,497	kWh
	November	133,416	kWh
	December	0	kWh
	January	0	kWh
	February	0	kWh

6.3 Annual Net Firm Energy Amount - The Annual Net Firm Energy amount shall be 5,798,590 kWh and shall be the sum of the three (3) Seasonal Net Firm Energy amounts Seller specified above. At Idaho Power's option the Annual Net Firm Energy amount and the resulting Appendix D lump sum repayment amount may be adjusted based on the actual performance of the Facility.

6.4 Average Water Conditions - The Net Firm Energy amounts Seller has estimated it can supply are based upon the anticipated long-term average water flows at the Facility. The Parties have reviewed these anticipated water flows, Seller's water right filings and the water records supporting those projected water flows and have agreed that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Firm Energy amount in paragraph 6.3 are reasonable and shall constitute the water flows available to the Facility under "average" water conditions. No later than one hundred twenty (120) days after the Operation Date, Seller will install such water flow measuring equipment as is reasonably required to permit the Parties to monitor the water flows at the Facility site. Seller will operate and maintain this water flow measuring equipment and will perform such other water flow analyses as may be required to carry out the provisions of Article XXI.

6.5 Net Firm Energy Changes -

6.5.1 Increased Generation Capability - If, at any time during the term of this Agreement, as a result of some action by Seller, i.e. procurement of additional long-term water supplies or improvements to the efficiency of the installed generating equipment, Seller intends to permanently increase the amount of Annual Net Firm Energy from the Facility above the amount specified in paragraph 6.3 above, Seller will promptly notify Idaho Power of that intent. If Idaho Power concurs that Seller is capable of actually providing such increased Net Firm Energy, Idaho Power will have the option to purchase this increased amount of Net Firm Energy in accordance with either of the following alternatives: (1) the purchase will be under the same terms and conditions of this Agreement except that the rate for the incremental increase of Net Firm Energy shall not be the rate in paragraph 7.1 of this Agreement, but instead will be priced at the appropriate firm energy rate in effect at the time of such increase; or (2) the purchase will be made under a separately negotiated agreement. The choice of purchase alternative will be Idaho Power's.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT;  
ADJUSTMENT OF PURCHASE PRICE

7.1 Net Firm Energy Purchase Price - The price to be paid to Seller for Net Firm Energy will be the sum of the following payments:

7.1.1 Base Payment -

Season 1	36.03 Mills/kWh
Season 2	58.82 Mills/kWh
Season 3	49.02 Mills/kWh

7.1.2 Adjustable Payment - In addition to the base payment specified in paragraph 7.1.1, Idaho Power shall pay to Seller an adjustable payment which shall be established by the Commission and subject to change pursuant to Commission Order effective on July 1 of each year during the term of this Agreement. While the Parties do not know what the adjustable payment amount will be as of the Operation Date under this Agreement, the



Parties acknowledge that the adjustable payments as of the date of the signing of this Agreement are as follows:

Season 1	7.34 Mills/kWh
Season 2	11.99 Mills/kWh
Season 3	9.99 Mills/kWh

7.2 Surplus Energy Purchase Price - Surplus Energy will be purchased at the non-firm avoided energy rate computed in accordance with Option B in Idaho Power's Tariff 101, Schedule 86 or with its successor schedules as approved by the Commission.

7.3 Continuing Jurisdiction of the Commission - This Agreement is a special contract and as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Comm'n and Afton Energy, Inc., 107 Idaho 781, 693 P2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Comm'n, 107 Idaho 1122, 695 P2d 1261 (Idaho 1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P2d 400 (1986), Section 210 of the Public Utilities Regulatory Policies Act of 1978 and 18 CFR §292.303-308.

#### ARTICLE VIII: FACILITY AND INTERCONNECTION

8.1 Design of Facility - Seller shall design, construct, install, own, operate and maintain the Facility and any Seller owned Interconnection Facilities so as to allow safe, reliable delivery of electric energy to Idaho Power's system for the full term of this Agreement.

8.2 Interconnection Facilities - Except as specifically provided for in this Agreement, interconnection of the Facility will be in accordance with Schedule 72. Seller will pay all costs of interconnecting the Facility with Idaho Power.

8.3 Idaho Power Review - To assure the Facility and Seller-furnished Interconnection Facilities are of suitable size and are compatible with Idaho Power's system, Seller shall submit the designs, plans, specifications and performance data for the Facility and Seller-furnished Interconnection Facilities to Idaho Power for review. Idaho Power shall, in writing and in conformance with paragraph

4.1.5, notify Seller of its acceptance and confirmation of system compatibility or conversely, notify Seller, in writing, of any changes which, consistent with Prudent Electrical Practices, Idaho Power determines are necessary to assure the safe delivery of electric energy from the Facility to Idaho Power's system.

#### ARTICLE IX: DISCONNECTION EQUIPMENT

9.1 Disconnect Equipment - Idaho Power will, at Seller's expense, provide, own, operate, and maintain all Disconnection Equipment. At Seller's request, Idaho Power will provide Seller with the general specifications and an itemization by category of the costs of such Disconnection Equipment. Idaho Power will establish the settings of Disconnection Equipment to disconnect automatically from the Facility for the protection of Idaho Power's system and personnel consistent with Prudent Electrical Practices. Upon Seller's request, Idaho Power will notify Seller as to the original setting and any adjustments thereof. Except as otherwise required by Prudent Electrical Practices, Disconnection Equipment will be designed so that the closure of any breaker or other disconnecting device which connects the Facility to Idaho Power's system shall be controlled by equipment which will perform the following:

- (1) Automatically monitor the status of the electrical system on Idaho Power's side of the disconnecting device; as to voltage and frequency; and
- (2) Prohibit closure or reconnection until voltage and frequency have been within approved limits for a continuous period of not less than five (5) minutes; and
- (3) Operate so that if Idaho Power's system is de-energized within sixty (60) seconds after closure of the disconnecting device, the disconnecting device will immediately open and not close again until it has been manually reset and/or Idaho Power can safely reclose the Disconnecting Equipment.

9.2 Security of Disconnect Equipment - The Disconnection Equipment will be located in an enclosure secured by a lock or otherwise secured in a manner designed to ensure that only Idaho Power's authorized personnel will have access to the disconnecting devices.

9.3 Remote Disconnection - Other Disconnection Equipment, including equipment which will provide Idaho Power's operating personnel with the ability to remotely control and monitor the status of the breaker or other disconnecting device by radio or hard-wire circuit between the Facility and the Designated Dispatch Facility may be specified by Idaho Power when, in Idaho Power's reasonable judgment, such equipment is required by Prudent Electrical Practices. Seller recognizes that such remote control equipment may not initially be required by Idaho Power, but at such time as operating conditions on Idaho Power's system dictate, Idaho Power will install this remote control equipment at Seller's expense. If Seller disputes Idaho Power's determination that the installation of such remote Disconnection Equipment is required, such dispute shall be submitted to the Commission for resolution.

9.4 Interference with Disconnection Equipment - If Seller attempts to modify, adjust or otherwise interfere with the Disconnection Equipment or its enclosure, such action shall constitute an event of default pursuant to Article XXI and a material breach of this Agreement.

#### ARTICLE X: METERING

10.1 Metering and Telemetry - Idaho Power shall, for the account of Seller, provide, install, and maintain required Metering Equipment to be located at a mutually agreed upon location to record and measure power flows to Idaho Power in accordance with the standards set forth in Appendix A of this Agreement. If required by Idaho Power, metering will also include measurement of kilovar-hours in a manner agreed to by both Parties. All Metering Equipment and installation costs shall be borne by Seller, including costs incurred by Idaho Power for inspecting and testing such equipment at reasonable intervals at Idaho Power's actual cost of providing this Metering Equipment and services. The point of metering shall be at the location described in Appendix B of this Agreement. All meters used to determine the billing hereunder shall be sealed and the seals shall be broken only by Idaho Power when the meters are to be inspected, tested or adjusted.

10.2 Meter Inspection - Idaho Power shall inspect and test all meters upon their installation and at least once every four (4) years thereafter. If requested by Seller, Idaho Power shall



make a special inspection or test of a meter and Seller shall pay the reasonable costs of such special inspection. Both Parties shall be notified of the time when any inspection or test shall take place, and each Party may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, it shall be adjusted, repaired, or replaced, at Idaho Power's expense, in order to provide accurate metering. If a meter fails to register, or if the measurement made by a meter during a test varies by more than two percent (2%) from the measurement made by the standard meter used in the test, adjustment (either upward or downward) to the payments Seller has received shall be made to correct those payments affected by the inaccurate meter for the actual period during which inaccurate measurements were made. If the actual period cannot be determined, corrections to the payments will be based on the shorter of (1) a period equal to one-half the time from the date of the last previous test of the meter to the date of the test which established the inaccuracy of the meter; or (2) six (6) months.

10.3 Telemetry - Consistent with Appendix A of this Agreement, Idaho Power will install, operate and maintain at Seller's expense metering, communications and telemetry equipment which will be capable of providing Idaho Power with continuous instantaneous telemetry of Seller's net generation to Idaho Power's Designated Dispatch Facility.

#### ARTICLE XI: RECORDS

11.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties, adequate metering and related power production records, in a form and content recommended by Idaho Power.

11.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all such metering and related power production records pertaining to Seller's account.

## ARTICLE XII: PROTECTION

12.1 ~~Seller shall construct, operate and maintain the Facility and Seller-furnished~~ Interconnection Facilities in accordance with Appendix A, Prudent Electrical Practices, the National Electrical Code, the National Electrical Safety Code and any other applicable local, state, and federal codes. If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel, or service to its customers, Idaho Power may physically interrupt the flow of energy from the Facility or take such other reasonable steps as Idaho Power deems appropriate. Except in the case of an emergency, Idaho Power will attempt to notify Seller of such interruption prior to its occurrence as provided in paragraph 13.8. Seller shall provide and maintain adequate protective equipment sufficient to prevent damage to the Facility and Seller-furnished Interconnection Facilities. In some cases, some of Seller's protective relays will provide back-up protection for Idaho Power's facilities. In that event, Idaho Power will test such relays annually and Seller will pay the actual cost of such annual testing.

## ARTICLE XIII: OPERATIONS

13.1 Emergency Conditions - Seller agrees that in the event of and during a period of a shortage of power on Idaho Power's system as declared by Idaho Power in its reasonable discretion, Seller shall, at Idaho Power's request and within the limits of reasonable safety requirements as determined by Seller, use its best efforts to provide the requested energy, and shall, if necessary, delay any scheduled shutdown of the Facility.

13.2 Communications - Idaho Power and Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility, and Seller shall report to Idaho Power at the times and in the manner set forth in Appendix A of this Agreement.

13.3 Energy Acceptance - Idaho Power shall be excused from accepting and paying for Net Firm Energy delivered by Seller to the Point of Delivery under the following circumstances:

13.3.1 If it is prevented from doing so by an event of force majeure.

13.3.2 If Idaho Power determines that curtailment, interruption or reduction



of Net Firm Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, operating conditions on its system, or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of force majeure, Idaho Power requires such a curtailment, interruption or reduction of Net Firm Energy deliveries for a period that exceeds twenty (20) consecutive days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Firm Energy at a rate determined by dividing the monthly Net Firm Energy amount specified in paragraph 6.2 for the month in which the interruption or curtailment occurs by the number of hours in that month. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

13.4 Voltage Levels - Seller shall use its best efforts to minimize voltage fluctuations and to maintain voltage levels acceptable to Idaho Power. Idaho Power may, upon one hundred eighty (180) days' notice to Seller, change its nominal operating voltage level by more than ten percent (10%) at the Point of Delivery, in which case Seller shall modify, at Idaho Power's expense, Seller's equipment as necessary to accommodate the modified nominal operating voltage level.

13.5 Generator Ramping - Idaho Power shall have the right to limit the rate that generation is changed at startup, during normal operation or following reconnection to Idaho Power's system. Generation ramping may be required to permit Idaho Power's voltage regulation equipment time to respond to changes in power flow.

13.6 Scheduled Maintenance - On or before January 1 of each year, Seller shall submit a written proposed maintenance schedule for that year and Idaho Power and Seller shall mutually agree as to the acceptability or unacceptability of the proposed date(s). The Parties' determination as to the acceptability of Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices and neither Party shall unreasonably withhold its acceptance of the proposed date for scheduled maintenance.

13.7 Maintenance Coordination - The Parties shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.



13.8 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact Seller prior to exercising its rights to curtail, interrupt or reduce deliveries from Seller. Seller understands that in the case of emergency circumstances, no notice will be given to Seller prior to interruption, curtailment, or reduction.

#### ARTICLE XIV: INDEMNIFICATION AND INSURANCE

14.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity.

14.2 Insurance - During the term of this Agreement, Seller shall secure and continuously carry the following insurance coverages:

14.2.1 Commercial General Liability Insurance for both bodily injury and property damage with limits equal to fifteen percent (15%) of the total cost of the Facility, or \$1,000,000, whichever is greater, each occurrence, combined single limit. The deductible for such insurance shall not exceed one-half of one percent (0.5%) of the total cost of the Facility.

14.2.2 All Risk Property Insurance with minimum limits not less than ninety percent (90%) of the total cost of the Facility. The Property Insurance coverage will be written on a replacement cost basis and will include:

- (a) Standard fire policy.
- (b) Extended coverage endorsement.
- (c) Vandalism and malicious mischief endorsement.
- (d) The deductible for the above property insurance coverage shall not exceed five percent (5%) of the total cost of the Facility or \$25,000 whichever is greater.

14.2.3 Boiler and machinery insurance with minimum limits not less than ninety

~~percent (90%) of the total cost of the equipment covered in (a) below:~~

(a) All boiler and machinery coverage must be written on a "comprehensive form" basis to provide coverage against the sudden and accidental breakdown of all boilers, machinery and electrical equipment, turbines, generators, and switchgear;

(b) Coverage under this insurance must be written on a "Replacement Cost" basis; and

(c) The deductible for this insurance shall not exceed five percent (5%) of the total cost of the equipment covered in (a) above or \$25,000 whichever is greater.

(d) Earthquake & Flood (catastrophic perils) Insurance with limits not less than sixty percent (60%) of the total cost of the Facility. The deductible for this insurance shall not exceed five percent (5%) of the Facility cost.

14.2.4 Business Interruption (Loss of Income) Insurance with minimum daily limits not less than seventy-five percent (75%) of the Facility's estimated gross daily electrical revenue and total policy limits not less than twenty percent (20%) of the Facility's estimated gross annual revenue from the sale of electrical energy;

(a) Coverage will include Seller's loss of earnings when business operations are curtailed or suspended because of a loss due to an insured peril. Coverage may be written on an actual loss sustained basis.

(b) This insurance coverage must be endorsed to both the All Risk Property Insurance Policy and the Boiler and Machinery Insurance Policy;

(c) The deductible for this insurance coverage shall not exceed thirty (30) days gross daily revenues from the sale of electrical energy; and

(d) The estimated gross daily revenue and estimated gross annual revenue shall be computed on the basis of the kWh production estimates contained in paragraph 6.2.

14.2.5 All of the above insurance coverages shall be placed with insurance companies with an A.M. Best rating of A- or better and shall include:



(a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable;

(b) A provision stating that such policies shall not be canceled or their limits of liability reduced without sixty (60) days' prior written notice to Idaho Power; and

(c) In the case of the insurance coverages described in subparagraphs 14.2.1, 14.2.2 and 14.2.3 above, the total cost of the Facility will include any Seller-furnished Disconnection Equipment and/or Interconnection Facilities. The total cost of the Facility and total cost of equipment will be adjusted either upward or downward to reflect the current replacement cost of the Facility or equipment. This adjustment will be based on either (1) an appraisal made by, or for, the Seller's insurance company, or (2) the Handy-Whitman Index "Cost Trends of Electric Utility Construction -- Plateau Region" -- "Hydro Production Plant" as published by Whitman, Requardt & Associates, 2315 Saint Paul St, Baltimore, MD 21218. Such adjustment shall be made, at a minimum, every fifth Contract Year during the term of this Agreement. A copy of these computations and/or appraisals will be submitted to Idaho Power for Idaho Power's review and approval.

14.3 Seller to Provide Certificates of Insurance - Seller shall annually furnish Idaho Power certificates of insurance, together with the endorsements required therein, evidencing the coverages as set forth above.

14.4 Seller to Provide Copies of Policies of Insurance - Within one hundred twenty (120) days after the Operation Date, and within ninety (90) days of the effective date of any modifications to the policy, Seller will furnish to Idaho Power a certified copy of the original of each insurance policy and all endorsements for each of the insurance coverages described above. In the case of policy renewals, Seller may provide a certificate from the insurance carrier that there have been no changes to the policy in lieu of providing the required certified copy of the policy.

14.5 Seller to Notify Idaho Power of Lapse of Coverage - If any of the insurance coverages required by paragraph 14.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps



Seller is taking to reinstate the coverage.

#### ARTICLE XV: LAND RIGHTS

15.1 Seller to Provide Access - Seller hereby grants to Idaho Power for the term of this Agreement all necessary rights-of-way and easements to install, operate, maintain, replace, and remove Idaho Power's Metering Equipment, Disconnection Equipment and other Special Facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of Seller. Seller warrants that it has procured sufficient easements and rights-of-way from third parties so as to provide Idaho Power with the access described above. All documents granting such easements or rights-of-way shall be subject to Idaho Power's approval and in recordable form.

15.2 Use of Public Rights-of-Way - The Parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho Power's compliance with paragraph 15.4, Seller agrees that should Seller seek and receive from any local, state or federal governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho Power of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho Power may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 15.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 5.2.

15.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 15.4, Idaho Power may use and attach its distribution and/or transmission facilities to Seller's Interconnection Facilities, may reconstruct Seller's Interconnection Facilities to accommodate Idaho Power's usage or Idaho Power may construct its own distribution or transmission facilities along, over and above any public right-of-way acquired from Seller pursuant to paragraph 15.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 15.4,

Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 15.3.

15.4 Conditions of Use - It is the intention of the Parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho Power's exercising its rights under this Article XV. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 15.2 and 15.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the Parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the Parties, and (3) shall provide Seller with an interconnection to Idaho Power's system of equal capacity and durability as existed prior to Idaho Power exercising its rights under this Article XV.

#### ARTICLE XVI: FORCE MAJEURE

As used in this Agreement, "force majeure" or "an event of force majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome, including but not limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, court orders, laws or regulations, insurrection or riot, an act of the elements or lack of precipitation resulting in reduced water flows for power production purposes. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of force majeure, both Parties shall be excused from whatever performance is affected by the event of force majeure, provided that:

(1) The non-performing Party shall, as soon as is reasonably possible after the occurrence of the event of force majeure, give the other Party written notice describing the particulars of the occurrence.

(2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of force majeure.

(3) No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

#### ARTICLE XVII: LIABILITY; DEDICATION

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Idaho Power as an independent public utility corporation, or Seller as an independent individual or entity.

#### ARTICLE XVIII: SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

#### ARTICLE XIX: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

#### ARTICLE XX: CHOICE OF LAWS

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho.



## ARTICLE XXI: DISPUTES AND DEFAULT

~~21.1~~ Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.

21.2 Default - If either Party fails to perform any of the terms or conditions of this Agreement, (an "event of default") the nondefaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, then, and only then, may the nondefaulting Party pursue its legal or equitable remedies

21.3 Seller Permanent Curtailment - If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment. The Annual Net Firm Energy amount in Article VI and the resulting Appendix D lump sum repayment amount may be adjusted from time to time based on the actual performance of the Facility. The lump sum repayment amount will bear interest from sixty (60) days after Idaho Power gives or receives notice of Seller's permanent reduction of the Annual Net Firm Energy amount, until paid, at a rate equal to interest rates specified in Idaho Code §28-22-104(2) or its successor Idaho Code provision in effect during each month of that period. For purposes of this paragraph, neither reduced deliveries of Net Firm Energy due to short-term below-normal, water conditions (paragraph 6.4) nor Idaho Power's voluntary termination in accordance with paragraph 5.2.2 shall be considered a permanent curtailment. The Parties further agree that this paragraph does not constitute a waiver by Idaho Power of its right to pursue its remedies under paragraph 21.6 or by either Party of their right to an award of pre and post judgement interest, costs and attorneys fees as permitted by law in any litigation arising out of this Agreement.

21.4 Security for Repayment Obligation - During the full term of this Agreement, Seller will provide Idaho Power with adequate assurance that Seller will be able to repay the amounts owing Idaho Power if Seller defaults under this Agreement. In accordance with Commission Order Nos 21690 and 21800, and Declaratory Order 23949 and subject to the provisions of paragraph 21.2 above, this assurance will be provided as follows:

21.4.1 Insurance - Seller shall comply with the provisions of paragraph 14.2. If Seller fails to comply, such failure will be an event of default.

(a) In the case of the liability insurance coverage, (paragraph 14.2.1), a default will be a material breach and may only be cured by Seller supplying evidence that the liability insurance coverage has been replaced or reinstated.

(b) For all other insurance coverages described in paragraph 14.2, the default may be cured by replacement or reinstatement of the insurance, or by Seller posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100%) of the accumulated overpayment liability specified for that year in Appendix D.

21.4.2 Debt Service Reserve Account - (a) Because the Facility is located on the canal system of the Milner-Gooding Canal Project and therefore receives the benefits of the American Falls Reservoir District No. 2's senior water rights, Idaho Power is willing to permit Seller to establish a debt service reserve account until conforming low water insurance becomes available. Said debt service reserve account will be separate from the maintenance escrow account and shall be structured as follows:

(b) During the period of time in which the Facility acts as security for a first mortgage lien which is senior to Idaho Power's security interest in the Facility as described in paragraph 4.1.9 above, Seller shall maintain a debt service reserve account in cash or an irrevocable standby letter of credit in an amount equal to twenty percent (20%) of the Facility's estimated gross revenue for the first Contract Year rounded to the nearest \$1,000.

(c) Upon full satisfaction of the above-referenced first mortgage lien and when Idaho Power's security interest becomes the senior security interest in the Facility, the



escrow manager will pay to Seller the amount in the debt service reserve account which exceeds five percent (5%) of the Facility's estimated gross revenue for the next Contract Year rounded to the nearest \$1,000.

(d) The amount to be retained in the debt service reserve account will be recalculated every five (5) years to reflect any increases or decreases in the adjustable payment amount under paragraph 7.1.2 of this Agreement.

(e) During the period when the Facility is security for a first mortgage lien that is senior to Idaho Power's lien, the escrow manager of the debt service reserve account will be instructed to only release funds from the debt service reserve account to the holder of the first mortgage lien. Funds from said account shall be released only when, and only to the extent that Seller certifies to the escrow manager that after payment of all operating costs, the Facility's revenues are insufficient to make full debt service and/or lease payments on the Facility.

(f) During the period when Idaho Power's security interest is the senior security interest in the Facility, the escrow manager will be instructed to only release funds from the debt service reserve account to pay operating costs for the Facility.

(g) For purposes of the debt service reserve account, operating costs are limited to those costs necessary for the operation of the Facility such as taxes, insurance expenses, lease payments and other ordinary and necessary operating expenses. Operating costs shall not include any disbursements other than lease payments which would constitute a profit or return on investment.

(h) After any release of funds by the escrow manager, Seller shall be obligated to restore the debt service reserve account to the amounts provided for in paragraphs 21.4.2(b) and (c), which ever is applicable, prior to Seller disbursing funds which would constitute a profit or return on investment. Until the debt service reserve account is fully restored, Seller will, within sixty (60) days of the completion of each Contract Year, provide the escrow manager and Idaho Power with a report prepared by Seller's outside accountants



showing that Seller has not breached its obligations under this paragraph 21.4.2(h).

(i) Any breach of paragraph 21.4.2(h) by Seller will be an event of default and will require posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100%) of the accumulated overpayment amount specified for that year in Appendix D.

21.4.3 Engineer's Certification - Every three (3) years for the first twelve (12) years after the Operation Date, and every two (2) years thereafter during the full term of this Agreement, Seller will supply Idaho Power with a Certification of Ongoing O&M from a Registered Professional Engineer licensed in the State of Idaho, which Certification of Ongoing O&M shall be in the form specified in Appendix F. Seller's failure to supply the required certificate will be an event of default. Such a default may be cured by Seller providing the required certificate or by posting liquid security in accordance with paragraph 21.5 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix D.

21.4.4 Maintenance Escrow - During the full term of this Agreement, Seller shall maintain and fund the maintenance escrow account described in paragraph 4.1.8 and Commission Order No 21690. If at any time Seller fails to maintain or fully fund that maintenance escrow account, such a failure will be an event of default. Such default may be cured by reinstating the required reserve fund or by Seller posting liquid security in accordance with paragraph 21.5 in an amount equal to twenty percent (20%) of the accumulated overpayment liability specified for that year in Appendix D.

21.4.5 Security Interests - During the full term of this Agreement, Seller shall maintain compliance with all of the requirements of Idaho Power's security interests described in paragraph 4.1.9 of this Agreement and Commission Order No 21690. Seller's failure to comply with those requirements, will be an event of default and in addition to any other remedies available under this Agreement, Commission Order No 21690, and the security interests, Seller will be required by Idaho Power to post liquid security in accordance with



paragraph 21.5 in an amount equal to thirty-five percent (35%) of the accumulated overpayment liability specified for that year in Appendix D. Seller recognizes that in accordance with Commission Order No 21690, an event of default under either or both of paragraphs 21.4.3 or 21.4.4 constitutes an event of default under paragraph 21.4.5 and in that event the obligation to post liquid security under paragraphs 21.4.3 through 21.4.5 is cumulative.

21.4.6 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of the Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses Seller is required to obtain during the term of this Agreement including, but not limited to, the Application for Permit to appropriate water within a reasonable time after their issuance. At least every fifth Contract Year, Seller will update the documentation described in paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to maintain its water rights, or to provide the documentation required by this paragraph, such failure will be a default.

(a) In the case of non-compliance with the required governmental permits, an event of default will be a material breach and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

(b) In the case of non-compliance with Seller's obligation to secure and maintain adequate water rights, an event of default may be cured by Seller reacquiring the required water rights or by posting liquid security in accordance with paragraph 21.5 in an amount equal to one hundred percent (100.0%) of the accumulated overpayment liability specified for that year in Appendix D.

21.5 Liquid Security - If, pursuant to this Agreement or Commission Order No 21690, Seller becomes obligated to post liquid security, such obligation may be satisfied by (1) Seller's depositing cash in an escrow to be held and managed by a bank or savings & loan association located and in good standing in the State of Idaho. The escrow holder and the escrow instructions will be

acceptable to both Idaho Power and Seller. Payment of all taxes on the amounts deposited in the escrow will be the obligation of the Seller. The liquid security escrow account will be maintained separately from the maintenance reserve account described in paragraph 4.1.8; or (2) Providing liquid security in the form of irrevocable standby letter(s) of credit, book entry certificate(s) of deposit or other cash equivalents acceptable to Idaho Power. The banks, issuing the letters of credit and other cash equivalents will be located and in good standing in the State of Idaho. Failure to maintain and provide the liquid security required by this Agreement and Commission Order Nos 21690 and 21800 shall be an event of default.

21.6 Equitable Remedies - If as described in paragraph 21.3, Seller permanently curtails all or part of its deliveries of Net Firm Energy to Idaho Power and (1) within three (3) years after said curtailment Seller or its successors or assigns sells or delivers or attempts to sell or deliver said curtailed capacity or energy to any entity other than Idaho Power without Idaho Power's prior written consent, such sale or delivery or attempt sale or delivery shall be a breach of this Agreement; or (2) if, within three (3) years after such permanent curtailment Seller or its successors or assigns attempts to require Idaho Power to purchase said permanently curtailed Net Firm Energy at a rate that exceeds the rates contained in this Agreement, such attempt will be a breach of this Agreement. The remedy at law for the above described breaches shall be inadequate and Idaho Power shall be entitled to injunctive relief and specific performance of this Agreement. The provisions of this paragraph 21.6 shall survive any termination of this Agreement (other than an optional termination under paragraph 5.2) for the periods provided for in this paragraph.

21.7 Refund of Lump Sum Repayment - If Seller has made a lump sum repayment as required by paragraph 21.3 and;

(1) Within three (3) years of said payment Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power at the rates, terms and conditions contained in this Agreement for the number of Contract Years that were remaining under this Agreement at the time of the permanent curtailment; then

(2) Idaho Power will resume its purchases from the Facility and will refund



a portion of the lump sum repayment amount as follows:

- ~~-----~~(a)~~-----~~ If sales resume within one (1) year of the payment of the lump sum  
repayment amount, Idaho Power will refund 90% of the lump sum repayment amount;
- (b) If sales resume within two (2) years of the payment of the lump sum  
repayment amount, Idaho Power will refund 85% of the lump sum repayment amount;
- (c) If sales resume within three (3) years of the payment of the lump sum  
repayment amount, Idaho Power will refund 85% of the lump sum repayment amount.

#### ARTICLE XXII: GOVERNMENTAL AUTHORIZATION

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

#### ARTICLE XXIII: COMMISSION ORDER

This Agreement shall become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

#### ARTICLE XXIV: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no transfer by merger or otherwise nor any assignment hereof by Seller shall become effective without the written consent of Idaho Power being first obtained. Such consent shall not be unreasonably withheld. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

#### ARTICLE XXV: MODIFICATION

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

#### ARTICLE XXVI: TAXES

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

#### ARTICLE XXVII: NOTICES

All written notices under this Agreement shall be directed as follows, and shall be considered delivered when deposited in the U S Mail, first-class postage prepaid, as follows:

To Seller:                      President  
                                        Contractor's Power Group, Inc.  
                                        Box 820  
                                        Twin Falls, ID 83303-0820

To Idaho Power:              Vice President, Power Supply  
                                        Idaho Power Company  
                                        P O Box 70  
                                        Boise, Idaho 83707

#### ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

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

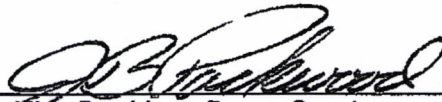
- Appendix A - Standards for Interconnection and Metering
- Appendix B - Special Facilities, Point of Delivery,  
                                        Metering, and Operation Date
- Appendix C - Schedule of Required Licenses and Permits
- Appendix D - Lump Sum Refund Payment
- Appendix E - Operating Instructions for Plants over 750 kW
- Appendix F - Engineer's Certifications

ARTICLE XXIX - ENTIRE AGREEMENT

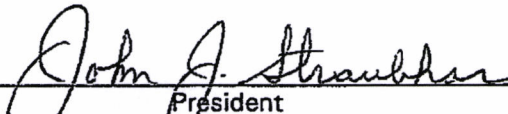
-----This Agreement constitutes the entire agreement of the Parties concerning the subject  
matter hereof and supersedes all prior or contemporaneous oral or written agreements between the  
Parties concerning the subject matter hereof.

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

IDAHO POWER COMPANY

By   
Vice President, Power Supply  
Dated 8/13/93  
"Idaho Power"

CONTRACTOR'S POWER GROUP, INC.

By   
President  
Dated July 24, 1993  
"Seller"



STATE OF IDAHO )  
 ) ss  
County of Ada )

On this 16<sup>th</sup> day of August, 1993, before me, the undersigned, a Notary Public, personally appeared Jan B Packwood, personally known, who being duly sworn, did say that he is the Vice President, Power Supply of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Barbara V Hill  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF Idaho )  
 ) ss  
County of Jerome )

On this 24<sup>th</sup> day of July, 1993, before me, the undersigned, a Notary Public, personally appeared John J Straubhar, personally known, who being duly sworn, did say that he is the President of the corporation that executed the within instrument, and acknowledged to me that he executed the same as the free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Efah Cristobal  
Notary Public for Idaho  
Residing at: Jerome

## APPENDIX A

### STANDARDS FOR INTERCONNECTION AND METERING

#### A-1 GENERAL PROVISIONS

A-1.1 It is the policy of Idaho Power to permit Seller to operate its Facility in parallel with Idaho Power's electric system, whenever this can be done without adverse effect to Idaho Power's equipment, personnel or other customers.

A-1.2 These guidelines contain the minimum metering, interconnection, protection, operation, and communications requirements for the safe and effective parallel operation of Seller's Facility with Idaho Power's system. Although these guidelines are established to provide a uniform approach for evaluating Seller's generation projects, each interconnection must be examined by Idaho Power individually. Idaho Power and the Seller will be guided by this document, which is a part of the Firm Energy Sales Agreement, in planning an interconnection between Idaho Power's system and the Seller.

A-1.3 Idaho Power may provide limited technical assistance for Seller, but will not perform any engineering, construction or repair work on power production equipment.

#### A-2 GENERAL DESIGN CONSIDERATIONS

A-2.1 All Seller generators larger than twenty (20) kVA shall be three-phase generators connected to three-phase circuits. Generators twenty (20) kVA and smaller may be either three-phase or single-phase, as approved by Idaho Power.

Due to physical limitations within Idaho Power's transmission and distribution systems, induction machine sizes will be limited to confine voltage flicker within acceptable limits. Each generation site is unique and Idaho Power will determine the appropriateness of any proposed machine type for the site and interconnection.

A-2.2 Except in certain instances to be determined by Idaho Power, Seller's generator(s) shall be isolated from Idaho Power's system by a transformer. Transformer type and connection will be

specified by Idaho Power. The Seller may be required to limit the fault current contribution to Idaho Power's system by generator impedance, neutral grounding, transformer connections or other means.

A-2.3 Idaho Power will not assume any responsibility for protection of the Seller's generator or of any other portion of the Seller's electrical equipment. The Seller is fully responsible for protecting its equipment from faults or disturbances on Idaho Power's system. For example, most transmission and distribution line circuit breakers on Idaho Power's system will reclose automatically after they have attempted to clear a fault. The reclose time delays and system impedances are available from Idaho Power and should be considered very carefully by the Seller to determine if damage to the Seller's facility is possible. Dead line and synchronism check systems can be installed, at Seller's expense, that will minimize the possibility of a line reclosing into a generator while it is still connected to the system.

A-2.4 Seller is hereby notified that certain conditions on Idaho Power's system may cause negative sequence currents to flow in the Seller's generator. It is the sole responsibility of the Seller to protect its equipment from excessive negative sequence currents, reverse power flow, and single phasing.

### A-3 METERING AND TELEMETRY REQUIREMENTS

A-3.1 Unless otherwise agreed by the Parties, metering will be provided for recording net output of the Facility and will be separate from any metering of Seller's load. Metering required will be determined by Idaho Power on a case-by-case basis, but will generally follow the guidelines below:

A-3.1.1 Capacity Under 750 kW - Two kWh/demand meters; one measuring power flow into Seller's facilities and one measuring power flow into Idaho Power's system;

A-3.1.2 Capacity of 750 kW to 4999 kW - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed, and connected to the project voice communications circuit supplied by the developer with a first priority given to Idaho Power's use of said communication circuit. An electro-mechanical kWh backup meter will also be installed. Additionally, if a project is interconnected with Idaho Power's transmission system, all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line may be installed to provide continuous instantaneous



telemetering of net generation to Idaho Power's Designated Dispatch Facility;

~~A-3.1.3~~ Capacity of 5000 kW and Above - A bi-directional, electronic meter installation with load profiling and communication port capability will be installed, and connected to a voice communications circuit supplied by the developer with a first priority given to Idaho Power's use of said communication circuit. An electro-mechanical kWh backup meter will also be installed. In addition, all necessary telemetry and communication equipment and a dedicated voice quality unconditioned data line will be installed to provide continuous instantaneous telemetering of net generation to Idaho Power's Designated Dispatch Facility.

#### A-4 FACILITY PROTECTION

A-4.1 The Seller has full responsibility for the maintenance of its generating equipment and the equipment protecting the Facility. If, in the opinion of Idaho Power, the Seller has failed to provide proper maintenance of the Facility or its protection equipment, and this failure could adversely impact Idaho Power or other Idaho Power customers, Idaho Power can require the Seller to cease parallel operation.

#### A-5 SYNCHRONOUS GENERATORS

A-5.1 Idaho Power or the Seller may specify a governor. If a governor is used, the governor characteristics shall be capable of adjustment to at least five percent (5%) speed droop. The initial droop setting will be five percent (5%). Idaho Power may specify changes in the setting within the five percent (5%) capability.

A-5.2 A check interlock for synchronizing of the Seller's generator(s) is required.

A-5.3 Synchronous generators shall be capable of operating continuously at maximum power output within five percent (5%) of rated voltage and anywhere within a power factor range of from ninety percent (90%) lagging to ninety-five percent (95%) leading.

Unless otherwise approved by Idaho Power, synchronous generators shall be equipped with an excitation system and voltage regulator that are capable of automatically controlling generator voltage over the full range of generator power and reactive capability. In some cases, depending upon system requirements, one or more of the following control methods may be required, as specified in

Appendix B:

- 1) a power factor regulator may be required as well as a voltage regulator;
- 2) a programmable controller capable of varying the reactive output based upon a preset time schedule;
- 3) a remote signal provided by Idaho Power to adjust the voltage or power factor regulator settings. Idaho Power will provide this remote signal from within Idaho Power's system and transmit the signal to the Facility at the Seller's expense, as specified in B-11 of Appendix B.

The generator excitation system shall have over and under excitation limiter equipment which will permit voltage regulator action to control the reactive output within the range of the generator's capability.

The reactive capability of the Facility shall be operated as specified by Idaho Power, within the generator reactive capability, to regulate either the interconnection voltage or Facility output power factor or both. Idaho Power will provide the desired voltage, power factors, and schedules required by the Seller to set voltage regulators, power factor regulators and programmed or remote signal controllers. Idaho Power may change these desired values from time to time as system requirements change.

If the Facility is not operated to control reactive output in the manner specified and after notification, or the Seller does not make necessary corrections within a reasonable time, a default will be declared pursuant to Article XXI.

A-5.4 Due to the ability of large synchronous generators to influence Idaho Power's system, protective and control relaying in addition to the usual voltage frequency, and fault relaying will be specified by Idaho Power. This will consist of generator relaying for phase-to-phase and three-phase fault detection. Idaho Power will specify the relay type and determine settings. This relay will be tested annually by Idaho Power and the actual cost of this testing will be paid by the Seller.

A-6 INDUCTION GENERATORS

A-6.1 Overvoltage can become a serious problem when an induction generator and a portion of the

transmission or distribution facilities are isolated from the system. Overvoltage relaying shall be provided that will open the generator breaker in the event that the voltage reaches predetermined limits consistent with the overvoltage capability of the generator and the system. Undervoltage protection may also be required. On larger units, underfrequency and overfrequency relaying may both be required.

A-6.2 Induction generators require reactive support to operate. The supplemental reactive required is that amount required to correct the Facility to unity power factor. The reactive may be supplied by either Idaho Power's system or from capacitive correction at the Facility or both. Idaho Power will charge the Seller (as specified in Appendix B) for reactive that is provided from Idaho Power's system.

At some Facilities, because of system considerations, it may not be practical to provide all of the reactive compensation at the Facility. In these instances, Idaho Power shall specify the power factor and compensation necessary at the Facility.

The Seller will have the option to furnish the reactive compensation that is required at the Facility. If the Seller furnishes the reactive compensation, the Facility must be operated at a power factor that is within five percent (5%) of the specified power factor. The Seller must also design the Facility to avoid possible overvoltage that can occur under certain conditions when capacitors are applied to the generator terminals.

#### A-7 DC TO AC CONVERTERS

A-7.1 Direct current generators may be operated in parallel with Idaho Power's system through a synchronous inverter. The inverter installation will be designed such that an Idaho Power system interruption will result in the immediate removal of the inverter power flow to Idaho Power. Harmonics and/or spurious frequencies generated by the Seller's generator-inverter combinations must be limited to avoid causing any reduction in quality of electric service to Idaho Power's customers.

#### A-8 SWITCHING REQUIREMENTS

A-8.1 Idaho Power reserves the right to open and secure by lock any disconnecting device without prior notice to Seller for any of the following reasons:

A-8.1.1 System emergency;



A-8.1.2 Inspection of the Seller's Facility protective equipment reveals a condition which might adversely impact Idaho Power or Idaho Power's customers;

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A-8.1.3 Seller's generating equipment interferes with Idaho Power's customers, or with Idaho Power's system.

A-8.2 Seller shall maintain a written record of all operating (opening and closing) by Seller of the Seller's interconnection with Idaho Power. Each operation will be recorded by the date, hour and minute and will include the generator kWh reading at the time of the operation. This record will be maintained on a monthly basis and the original will be mailed to Idaho Power on the first business day of the following month. Idaho Power will provide the forms necessary for filing this monthly switching report.

A-9 GENERATION SCHEDULING AND REPORTING

A-9 GENERATION SCHEDULING AND REPORTING

A-9.1 For Projects under 750 kW

A-9.1.1 Each time the Seller either opens or closes the Facility's interconnection with Idaho Power, the date, time, and kWh reading of the generator(s) will be recorded on the Monthly Power Production and Switching Report (Form CAD-A-1) provided by Idaho Power. This record will be maintained on a monthly basis.

A-9.1.2 Within the 24-hour period following 12:00 noon on the last day of each month, the Seller will read the meter(s) which record Facility generation (Facility Output), Station Use (Local Service), and Auxiliary Service (if any) and enter those readings on the same Monthly Power Production and Switching Report designated in paragraph A-9.1.1 above.

A-9.1.3 The written record of the end-of-month meter readings on the Monthly Power Production and Switching Report, subject to subsequent review and correction by Idaho Power, will be the basis of payment for energy purchased by Idaho Power from the Seller. An adjustment in the kWhs delivered will be made to compensate for the Losses in B-6.

A-9.1.4 At the end of each month, the Monthly Power Production and Switching Report will be mailed to:

Idaho Power Company  
Operations and Joint Facilities Accounting  
P O Box 70  
Boise, Idaho 83707

A-9.1.5 Payment to the Seller will be made no later than thirty (30) days following receipt of the Monthly Power Production and Switching Report by Idaho Power.

A-9.2 For Projects 750 kW and Larger

A-9.2.1 In addition to the requirements of paragraph A-9.1.1 through A-9.1.5, Projects larger than 750 kW must meet the requirements of Appendix E.

## APPENDIX B

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SPECIAL FACILITIES, POINT OF DELIVERY, METERING,  
AND OPERATION DATE  
PROJECT NO 31615154  
MILE 28 HYDRO PROJECT

### B-1 DESCRIPTION OF FACILITY

The Seller's Facility is described as two induction generators with nameplate ratings of 750 kW each, 480 Volt, three phase, 60 hertz, driven by Kaplan turbines.

### B-2 LOCATION OF FACILITY

The Facility is located in the SW Quarter of Section 7, Township 8 South, Range 20 East, Boise Meridian, Jerome County, Idaho.

### B-3 SCHEDULED OPERATION DATE

Seller has selected May 15, 1994, as the Scheduled Operation Date and April 15, 1994, as the First Energy Date. In making these selections, Seller recognizes that to allow for an adequate testing of the Facility's degree of completion and reliability, it must achieve its First Energy Date at least thirty (30) days prior to the Operation Date. Idaho Power, based on the information supplied by the Seller, will schedule its construction so that all Special Facilities, Disconnection Equipment and Metering Equipment will be completed in time so as not to delay Seller achieving the First Energy Date. However, if Seller fails to pay the costs specified in B-11 below at the time specified therein, or materially changes the specifications or design of the Facility or Seller-furnished Interconnection Facilities from what was previously provided to Idaho Power, Idaho Power may be required to reschedule its construction of these facilities which could adversely impact Seller's ability to achieve its scheduled specified First Energy Date.



**B-4 FAILURE TO ACHIEVE OPERATION DATE**

~~If Seller has not achieved the Operation Date within eleven (11) months of the Scheduled~~  
Operation Date, such failure shall be deemed to be an event of default pursuant to Article XXI.

**B-5 POINT OF DELIVERY**

The Point of Delivery of energy from the Seller to Idaho Power will be where the Seller's 35 kV, three phase distribution line interconnects with Idaho Power's fused disconnects located approximately 3 miles south west of the project site in the SW 1/4 of Section 29, Township 8 South, Range 20 East, Boise Meridian, Jerome County, Idaho.

**B-6 LOSSES**

Until modified by mutual agreement, Losses shall be set at 2.00% of the metered energy delivered. When Seller has supplied Idaho Power with data needed to properly analyze the Losses associated with the Facility, Idaho Power and Seller will review that data and re-set the loss factor for the Facility. If the Parties are unable to agree, they will submit the dispute to the Commission for resolution. Any adjustment will be retroactive to the First Energy Date.

**B-7 METERING AND TELEMETRY**

The Metering Equipment will be on the 480 Volt side of the Seller's step-up transformer. Idaho Power provided Metering Equipment will consist of: current and potential transformers, a meter enclosure, meter test blocks, an electronic bidirectional meter for measuring net generation, and all meter wiring. Seller provided metering equipment will consist of all conduit and junction boxes from the metering transformers to the meter enclosure. Seller will install all Seller provided material as well as the metering transformers and the enclosure. Seller will arrange for and make available at Seller's cost a telephone circuit dedicated to Idaho Power's use terminating in an RJ-11 receptacle at the meter enclosure. The meter will register kilowatt-hours and kilowatts of demand. Idaho Power provided meter equipment will be owned and maintained by Idaho Power, with total cost of purchase, installation, operation, and maintenance, including administrative cost to be reimbursed to Idaho Power by the Seller.

**B-8 SPECIAL FACILITIES**

Idaho Power will provide a fused disconnect with pole and other necessary materials at the point of delivery and the upgrade of two 34.5 kV capacitor bank control circuits. The total cost of these facilities will be reimbursed to Idaho Power by the Seller.

#### B-9 REACTIVE POWER

Total reactive power required to be supplied by Idaho Power to the Seller is 808 KVAR, based on information provided by the Seller. Idaho Power will install and maintain facilities on its system so as to meet this requirement with total cost of installation to be reimbursed to Idaho Power by the Seller.

#### B-10 DISCONNECTION EQUIPMENT

Disconnection Equipment is required to insure that the Seller's Facility will be disconnected from Idaho Power's system in the event of a disturbance on either Idaho Power's system or the Seller's Facility. This equipment is for the protection of Idaho Power's equipment only and will be located at the Seller's Facility. Idaho Power will supply the disconnection equipment which consists of three 15 kVA transformers with fused disconnects, a 34.5 kV recloser with control enclosure containing relays and associated logic, 34.5 kV main disconnects, poles, conductor, arresters, batteries and other miscellaneous hardware. The Seller will provide approximately 50 feet of three phase 35 kV primary underground cable and a 34.5/19.9 kV grounded wye to 480/277 V grounded wye padmounted transformer. Seller will install all Seller supplied equipment, control wire and conduit necessary for the operation of the disconnection equipment. Idaho Power will supply details for the disconnection panel and will test the equipment prior to operation of the Facility. Seller will provide drawings of their interconnection wiring for engineering approval before installation. The total cost of the disconnection equipment, connection and testing will be reimbursed to Idaho Power by the Seller.

#### B-11 COSTS

The cost of Special Facilities is \$5,000. The cost of the metering equipment is \$6,129. The cost of reactive power supplied is \$6,787. The cost of the disconnecting equipment is \$47,680. The total cost to be paid by the Seller is \$65,596. This represents the amount that



will be charged by Idaho Power if the Seller makes the payment on or before September 6, 1993. ~~If the Seller does not make this payment by the specified date, the costs will be subject~~ to update. Idaho Power will not schedule construction or order materials which are not ordinarily maintained in Idaho Power's inventory until payment has been made. In addition to the installation and construction charges above, during the term of this Agreement, Seller will pay Idaho Power the operation and maintenance charge specified in Schedule 72 INTERCONNECTIONS TO NON-UTILITY GENERATION or its successor schedules(s). The total cost shown above is an estimate calculated on the basis of average costs. When the actual total cost is determined, Idaho Power will adjust the total cost amount to reflect the actual total cost incurred by Idaho Power. Beginning with the month of this adjustment, the operation and maintenance charges will also be adjusted. When the actual total cost is known, within sixty (60) days Idaho Power will refund any overpayment or Seller will remit any underpayment.

#### B-12 SALVAGE

No later than sixty (60) days after the termination or expiration of this Agreement, Idaho Power will prepare and forward to Seller an estimate of the remaining value of those Idaho Power furnished Interconnection Facilities described in this Appendix, less the cost of removal and transfer to Idaho Power's nearest warehouse, if the Interconnection Facilities will be removed. If Seller elects not to obtain ownership of the Interconnection Facilities but instead wishes that Idaho Power reimburse the Seller for said Facilities the Seller may invoice Idaho Power for the net salvage value as estimated by Idaho Power and Idaho Power shall pay such amount to Seller within thirty (30) days after receipt of the invoice. Seller shall have the right to offset the invoice amount against any present or future payments due Idaho Power.



## APPENDIX C

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### SCHEDULE OF REQUIRED LICENSES AND PERMITS

1. Evidence of compliance with Part 1 of the Federal Power Act. Acceptable evidence of compliance will be an Order from FERC: (1) issuing a valid License for the Facility, or (2) validly exempting the Facility from Licensing.
2. Approved Application for Permit to appropriate water for power production purposes issued by the Idaho Department of Water Resources.
3. Evidence of compliance with Subpart B of 18 CFR §292.207.(a).

# APPENDIX D

## LUMP SUM REFUND PAYMENT FOR PERMANENT CURTAILMENT OF PORTION OR ALL OF ANNUAL NET ENERGY AMOUNT UNDER 35-YEAR CONTRACT

DOLLARS PER ANNUAL MEGAWATT HOUR

<u>Contract Year of Curtailment Commencement</u>	<u>Facility Operation Date 1994</u>
1 .....	32
2 .....	67
3 .....	105
4 .....	125
5 .....	146
6 .....	167
7 .....	189
8 .....	211
9 .....	233
10 .....	255
11 .....	277
12 .....	299
13 .....	320
14 .....	341
15 .....	362
16 .....	382
17 .....	401
18 .....	419
19 .....	435
20 .....	449
21 .....	461
22 .....	470
23 .....	476
24 .....	478
25 .....	476
26 .....	469
27 .....	456
28 .....	435
29 .....	408
30 .....	371
31 .....	323
32 .....	265
33 .....	192
34 .....	105
35 .....	52

## APPENDIX E

### OPERATING INSTRUCTIONS FOR PLANTS OVER 750 KW

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1. Prior to initial start-up at least one day in advance the Project shall:
  - A. Provide Idaho Power's System Scheduling at the Boise Bench System Dispatching Center with an estimate of the hourly generation that is expected to be produced during the first scheduled test day. The phone number for System Scheduling is listed below.
  - B. Notify the Division Substation Supervisor of project start up plans. The phone number is listed below.
  - C. The kWh meter should be read and entered on the Monthly Power Production and Switching Report (Form No: Cogen CAD-A-1).
2. Before 10:00 a.m. on each normal work day, after the initial start-up, the project will report to the system scheduling office the previous day's actual generation based upon midnight to midnight meter readings and the estimate of generation planned for the following day or days. The phone number to report the actual generation and scheduling estimate is listed below. Note that the System Scheduling number is answered only between the hours of 8 a.m. to 5 p.m. Mountain Time, on weekdays and that generation estimates must be provided for weekend days and holidays.
3. Each time the generator breaker is closed or opened (including testing and normal operation), Idaho Power's system dispatchers must be notified by phone as soon as possible. Prompt reporting is very important. The Designated Dispatch Facility is manned 24 hours a day, 7 days a week, and the phone number is listed below.
4. In addition to promptly notifying the system dispatchers, the record of each breaker opening and closing must be entered on the Monthly Power Production and Switching Report mentioned in 1-C above.

5. For questions or problem concerning:

Power Scheduling: (208) 383-2931

System Dispatching: (208) 383-2826

Metering: Meter Engineer - Boise (208) 383-2751

or

Division Metering Supervisor

Payette (208) 642-6284

Boise (208) 322-2029

Twin Falls (208) 736-3284

Pocatello (208) 236-7771



**Substations:** Division Substation Supervisor

Payette	(208) 642-6262
Boise	(208) 322-2064
Twin Falls	(208) 736-3237
Pocatello	(208) 236-7774

**Billing:** Operations and Joint  
Facilities Accounting - Boise (208) 383-2593

**Contracts:** Customer Generation - Boise (208) 383-2427

6. Toll free numbers for Operating Reporting:

System Scheduling	1-800-356-4328
System Dispatching	1-800-348-4328

August 1, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Notification of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

**Mile 28 Hydro Firm Energy Sales Agreement**

Idaho Power and the Contractor's Power Group, Inc. ("Seller") executed a Firm Energy Sales Agreement ("Agreement") on August 13, 1993. This Agreement has changed ownership several times and most recently was sold to the Big Wood Canal Company which leases the Mile 28 Hydro Generation Facility ("Facility") to Wood Hydro LLC. The Facility is an Idaho Power designated network resource and the levelized energy rate was based on expected energy deliveries to Idaho Power from the Facility. The Facility is required to deliver all of its Net Energy to Idaho Power in accordance with this Agreement for 35 Contract Years beginning with the Operation Date of June 1, 1994 through May 31, 2029.

**Annual Review and Notifications**

Idaho Power performs annual reviews of all energy sales contracts to make sure they are in compliance and the facilities are performing according to their contracts. It came to Idaho Power's attention during a recent review that the Facility has not generated any power for the last 9 months (November 2018 through July 2019) and continues to remain offline. Idaho Power was not notified by the Facility at any time in the past 9 months that this designated network resource was going to be taken offline for an extended period of time and during the summer peak months.

**Recent Discussions**

On July 31, 2019, Michael Darrington (Idaho Power) and Jerry Jardine (Idaho Power) called Ted Sorenson (Wood Hydro LLC) and discussed the status of the Facility. Mr. Sorenson reported that beginning with the winter of 2018, several repairs and replacements were started and some of the repairs and replacements were continuing with an expected completion date in mid-August 2019. Idaho Power explained that because the Agreement is a levelized rate contract, Idaho Power is required to implement paragraph 21.3 of the Agreement for Lump Sum Repayment Amounts should the Facility fail to deliver the Annual Net Energy Amount agreed to by the Seller and defined in paragraph 6.3.

**EXHIBIT B**



### **Lump Sum Refund Repayment Amount Calculation**

#### **Annual Net Energy Amount**

Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for this Facility shall be 5,798,590 kWh.

#### **Failure to Deliver the Annual Net Energy Amount**

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power.

#### **Calculation**

The last completed Contract Year (6/1/2018 to 5/31/2019) is Contract Year 25. In accordance with Paragraph 21.3, the calculation of the Repayment Amount as of the end of Contract Year 25 is as follows:

The Annual Net Energy Amount of 5,798,590 kWh minus actual Net Energy delivered during Contract Year 25 of 3,355,049 kWh, the difference divided by 1,000 to convert to MWH and multiplied by the Appendix D Lump Sum Repayment amount for the 25<sup>th</sup> Contract Year of \$476 per annual MWH = \$1,163,125.

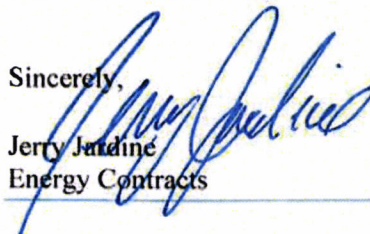
#### **Provision for a Partial Refund of the Repayment Amount**

Paragraph 21.7 of the Agreement allows for Idaho Power to refund between 85% and 90% of the Repayment Amount to the Seller provided that the Facility returns to full production within three years of the Repayment Amount paid to Idaho Power by the Seller. The Facility must demonstrate that they will be able to achieve the Annual Net Energy Amount of 5,798,590 kWh for a Contract Year and must accomplish this before the end of the three-year period to qualify for the partial refund. Assuming that the Facility will resume sales in 2019, the partial refund to the Seller would be 90% of \$1,163,125 = \$1,046,812 and the remaining balance of \$116,312 would be paid by the Seller to Idaho Power and is not refundable.

#### **Repayment Amount Security and Payments**

The Repayment Amount of \$1,163,125 is now due to Idaho Power. However, Mr. Sorenson provided documentation about the Facility repairs and replacements after the July 31, 2019 phone call and has demonstrated that the Facility is being prepared to return to service and is expected to continue to deliver the required Annual Net Energy Amount to Idaho Power for the remaining term of the Agreement. Because of these assurances, Idaho Power is willing to accept a letter of credit, subject to Idaho Power's review and credit requirements, as security for \$1,046,812. This letter of credit is due within 30 days of the date on this letter. This security shall be held in place for the next three Contract Years but may be released earlier by Idaho Power when the Facility returns to full generation, can demonstrate that it will achieve the Annual Net Energy Amount for the next Contract Year and provided that the Facility is generating before the end of the three-year period defined in paragraph 21.7. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. The Seller also has the option of making a non-refundable payment of \$116,312 in cash to Idaho Power instead of netting the monthly energy payments with the balance of the Repayment Amount due.

Sincerely,

  
Jerry Jardine  
Energy Contracts





1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

August 7, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

We are in receipt of your letter dated August 1 regarding the Mile 28 Project and the repairs we have been performing there that have taken longer than anticipated. While we acknowledge that Idaho Power has not received the deliveries it expected from the project this summer, we have read through the Firm Energy Sales Agreement and do not read the provisions you set out in your letter as requiring a Lump Sum Repayment.

You highlight Section 21.3 as providing for a Lump Sum Repayment in an amount that is then calculated in the letter. However, Section 21.3 provides for such repayment where the Seller "permanently curtails" its long-term average deliveries. There is no permanent curtailment in this circumstance. We are working very hard to make repairs at the facility to improve its functionality. We are rebuilding the switchgear to prevent the types of trips that have happened in the past, improving the trash rake system to deal with the extremely high volume of weeds and debris at the facility, and are winterizing the facility to take advantage of available recharge water. We anticipated that these repairs would be complete during the winter months when the project does not typically produce. As unfortunately sometimes happens, these repairs have taken much longer than planned, despite our diligent efforts. We appreciate Idaho Power's concerns and we want to do our best to find a solution that is agreeable. As mentioned above, we anticipate the project being able to make up this lost production once we finish our repairs and can take advantage of recharge water. We believe that these repairs will be complete within the next two to three weeks.

We appreciate your time and consideration and look forward to finding an agreeable solution. We would also like to extend an invitation to your team to come visit the facility once it is complete so that you can see the results of our efforts.

Sincerely,

Ted S Sorenson, Manager  
Wood Hydro LLC

**EXHIBIT C**



August 14, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Second Notice of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

Idaho Power received your letter dated August 7, 2019 ("WH Letter") regarding the Mile 28 Hydro failure to achieve the Annual Net Firm Energy amount for Contract Year 25. Attached is the Idaho Power Letter dated August 1, 2019 ("IPC Letter") for reference.

In your WH Letter, you requested that we find an agreeable solution. However, Idaho Power is required to enforce the terms of the Agreement and we cannot agree to different terms which will harm the Idaho Power customers while benefiting the Facility. Your WH Letter also referenced only two words ("permanently curtails") from a sentence in Paragraph 21.3 of the Agreement and you stated that the Facility's ongoing curtailment, which has lasted for 9 months, has caused the Facility to miss the Annual Net Energy Amount for Contract Year 25 by 42% and the Facility has yet to deliver any energy to Idaho Power for Contract Year 26, is "not a permanent curtailment". The complete sentence in paragraph 21.3 that you referenced reads, "If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by.....curtailment. Paragraph 21.7, Refund of Lump Sum Refund, goes on to explain that if, within 3 years, the Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power, then Idaho Power will refund up to 90% of the Repayment Amount provided the curtailment is resolved during that 3-year period. It is clear from paragraph 21.7, that the Agreement recognizes the Facility may resolve the cause of the curtailment to their Net Firm Energy deliveries, which would apply to your circumstance if the Facility starts delivering the Annual Net Energy Amount again, and permits Idaho Power to refund up to 90% of the lump sum repayment that the Seller paid to Idaho Power provided the curtailment is resolved during that 3-year period. Paragraph 21.7 also allows Idaho Power to keep either 10% or 15% of the Repayment Amount provided the curtailment is resolved during that 3-year period. If the curtailment is not resolved within 3 years, then Idaho Power shall keep 100% of the Repayment Amount.

Summarizing from the IPC Letter:

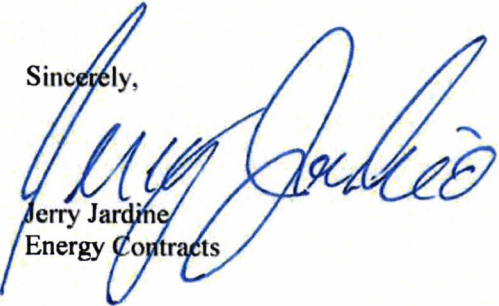
## EXHIBIT D



1. The Project has not delivered any energy to Idaho Power during the last 9 months (November 2018 to July 2019). As of August 14, 2019, the Project is still not delivering energy to Idaho Power.
2. Paragraph 6.3 of the Agreement states that the Annual Net Firm Energy amount shall be 5,798,590 kWh.
3. The Facility delivered 3,355,049 kWh in Contract Year 25.
4. The Facility failed to achieve the Annual Net Firm Energy amount for Contract Year 25. The Facility has yet to deliver any energy for Contract Year 26.
5. Paragraph 21.3 of the Agreement requires the Seller to pay the appropriate lump sum repayment amount specified in Appendix D multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount and the Contract Year 25 Annual Net Energy amount.
6. Paragraph 21.7 of the Agreement recognizes that the Facility may resolve the cause of the Net Energy Amount curtailment within a 3-year period and permits Idaho Power to refund a portion of the lump sum repayment that the Seller paid to Idaho Power (up to 90%) provided the curtailment is resolved during that 3-year period.
7. The Idaho Power customers were harmed because the Facility failed to deliver the required Annual Net Firm Energy amount for a levelized rate contract which is why the Agreement requires Idaho Power to keep a portion of the lump sum repayment, even if the Facility returns to service and starts delivering energy to Idaho Power within a 3-year period of the curtailment.

Idaho Power is required by contract to seek the Repayment Amount security and payments as described in the last paragraph of the IPC Letter. As stated in the IPC Letter, please provide the security for 90% of the Repayment Amount (\$1,046,812) no later than September 3, 2019. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. If the curtailment is not resolved within 1 year of the start of the curtailment, then Idaho Power is entitled to another 5% of the Repayment Amount. If the curtailment is not resolved within 3 years, then Idaho Power is entitled to 100% of the Repayment Amount.

Sincerely,



Jerry Jardine  
Energy Contracts





1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

August 7, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

We are in receipt of your letter dated August 1 regarding the Mile 28 Project and the repairs we have been performing there that have taken longer than anticipated. While we acknowledge that Idaho Power has not received the deliveries it expected from the project this summer, we have read through the Firm Energy Sales Agreement and do not read the provisions you set out in your letter as requiring a Lump Sum Repayment.

You highlight Section 21.3 as providing for a Lump Sum Repayment in an amount that is then calculated in the letter. However, Section 21.3 provides for such repayment where the Seller "permanently curtails" its long-term average deliveries. There is no permanent curtailment in this circumstance. We are working very hard to make repairs at the facility to improve its functionality. We are rebuilding the switchgear to prevent the types of trips that have happened in the past, improving the trash rake system to deal with the extremely high volume of weeds and debris at the facility, and are winterizing the facility to take advantage of available recharge water. We anticipated that these repairs would be complete during the winter months when the project does not typically produce. As unfortunately sometimes happens, these repairs have taken much longer than planned, despite our diligent efforts. We appreciate Idaho Power's concerns and we want to do our best to find a solution that is agreeable. As mentioned above, we anticipate the project being able to make up this lost production once we finish our repairs and can take advantage of recharge water. We believe that these repairs will be complete within the next two to three weeks.

We appreciate your time and consideration and look forward to finding an agreeable solution. We would also like to extend an invitation to your team to come visit the facility once it is complete so that you can see the results of our efforts.

Sincerely,

Ted S Sorenson, Manager  
Wood Hydro LLC

August 1, 2019

Ted Sorenson  
Mile 28 Hydro Project  
C/O Wood Hydro LLC  
1032 Grand View Drive  
Ivins, UT 84738  
208-589-6908  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

E-mail and U.S. Certified Mail to Ted Sorenson

Re: Mile 28 Hydro Generation Facility  
Notification of Lump Sum Repayment Amount for Contract Year 25 (June 2018 to May 2019)

Dear Mr. Sorenson,

**Mile 28 Hydro Firm Energy Sales Agreement**

Idaho Power and the Contractor's Power Group, Inc. ("Seller") executed a Firm Energy Sales Agreement ("Agreement") on August 13, 1993. This Agreement has changed ownership several times and most recently was sold to the Big Wood Canal Company which leases the Mile 28 Hydro Generation Facility ("Facility") to Wood Hydro LLC. The Facility is an Idaho Power designated network resource and the levelized energy rate was based on expected energy deliveries to Idaho Power from the Facility. The Facility is required to deliver all of its Net Energy to Idaho Power in accordance with this Agreement for 35 Contract Years beginning with the Operation Date of June 1, 1994 through May 31, 2029.

**Annual Review and Notifications**

Idaho Power performs annual reviews of all energy sales contracts to make sure they are in compliance and the facilities are performing according to their contracts. It came to Idaho Power's attention during a recent review that the Facility has not generated any power for the last 9 months (November 2018 through July 2019) and continues to remain offline. Idaho Power was not notified by the Facility at any time in the past 9 months that this designated network resource was going to be taken offline for an extended period of time and during the summer peak months.

**Recent Discussions**

On July 31, 2019, Michael Darrington (Idaho Power) and Jerry Jardine (Idaho Power) called Ted Sorenson (Wood Hydro LLC) and discussed the status of the Facility. Mr. Sorenson reported that beginning with the winter of 2018, several repairs and replacements were started and some of the repairs and replacements were continuing with an expected completion date in mid-August 2019. Idaho Power explained that because the Agreement is a levelized rate contract, Idaho Power is required to implement paragraph 21.3 of the Agreement for Lump Sum Repayment Amounts should the Facility fail to deliver the Annual Net Energy Amount agreed to by the Seller and defined in paragraph 6.3.



### **Lump Sum Refund Repayment Amount Calculation**

#### **Annual Net Energy Amount**

Paragraph 6.3 of the Agreement specifies the Annual Net Energy Amount for this Facility shall be 5,798,590 kWh.

#### **Failure to Deliver the Annual Net Energy Amount**

Paragraph 21.3 of the Agreement specifies if the Facility fails to deliver Net Energy as stated in Article 6.3 (Annual Net Energy Amount of 5,798,590 kWh), a Lump Sum Repayment Amount ("Repayment Amount") shall be calculated and payable to Idaho Power.

#### **Calculation**

The last completed Contract Year (6/1/2018 to 5/31/2019) is Contract Year 25. In accordance with Paragraph 21.3, the calculation of the Repayment Amount as of the end of Contract Year 25 is as follows:

The Annual Net Energy Amount of 5,798,590 kWh minus actual Net Energy delivered during Contract Year 25 of 3,355,049 kWh, the difference divided by 1,000 to convert to MWH and multiplied by the Appendix D Lump Sum Repayment amount for the 25<sup>th</sup> Contract Year of \$476 per annual MWH = \$1,163,125.

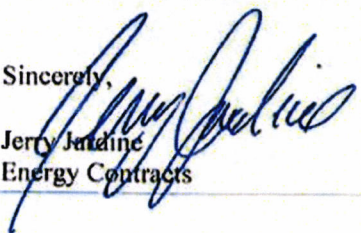
#### **Provision for a Partial Refund of the Repayment Amount**

Paragraph 21.7 of the Agreement allows for Idaho Power to refund between 85% and 90% of the Repayment Amount to the Seller provided that the Facility returns to full production within three years of the Repayment Amount paid to Idaho Power by the Seller. The Facility must demonstrate that they will be able to achieve the Annual Net Energy Amount of 5,798,590 kWh for a Contract Year and must accomplish this before the end of the three-year period to qualify for the partial refund. Assuming that the Facility will resume sales in 2019, the partial refund to the Seller would be 90% of \$1,163,125 = \$1,046,812 and the remaining balance of \$116,312 would be paid by the Seller to Idaho Power and is not refundable.

#### **Repayment Amount Security and Payments**

The Repayment Amount of \$1,163,125 is now due to Idaho Power. However, Mr. Sorenson provided documentation about the Facility repairs and replacements after the July 31, 2019 phone call and has demonstrated that the Facility is being prepared to return to service and is expected to continue to deliver the required Annual Net Energy Amount to Idaho Power for the remaining term of the Agreement. Because of these assurances, Idaho Power is willing to accept a letter of credit, subject to Idaho Power's review and credit requirements, as security for \$1,046,812. This letter of credit is due within 30 days of the date on this letter. This security shall be held in place for the next three Contract Years but may be released earlier by Idaho Power when the Facility returns to full generation, can demonstrate that it will achieve the Annual Net Energy Amount for the next Contract Year and provided that the Facility is generating before the end of the three-year period defined in paragraph 21.7. Beginning with the August 2019 Net Energy Payment for the Facility, the 10% balance of \$116,312 will be netted against the Facility's monthly Net Energy payments until the balance is zero. The Seller also has the option of making a non-refundable payment of \$116,312 in cash to Idaho Power instead of netting the monthly energy payments with the balance of the Repayment Amount due.

Sincerely,

  
Jerry Jardine  
Energy Contracts





WOODHYDRO

1032 Grandview Drive  
Ivins, UT 84738  
Office (435) 429-1878  
Fax (208) 522-8223  
[ted@tsorenson.net](mailto:ted@tsorenson.net)

October 8, 2019

Jerry Jardine  
Idaho Power Company  
1221 W Idaho Street  
Boise, ID 83702

*Re: Mile 28 Hydro Generation Facility*

Dear Jerry,

As you know, the Mile 28 Hydro facility (the "Facility") generated over 571,000 kwh in August of this year after it was offline for a few months to enable important repairs such as rebuilding the switchgear, improving the trash racks, and winterizing the system. Per your letter dated August 1, 2019, Idaho Power alleges that the deliveries for the Facility were "permanently curtailed," and thus a Lump Sum Repayment was required for the facility. We responded by letter dated August 7, 2019, and disputed that there was any such permanent curtailment for the Facility. By email dated August 15, 2019, Ted S. Sorenson agreed to provide the security requested in the August 1, 2019 letter, but did so under protest in order to focus on putting the Facility back online in as timely a manner as possible.

We have now become aware that in addition to receiving the Letter of Credit, Idaho Power intends to offset power generation revenue by \$116,312, which is the amount it claims in the August 1, 2019 letter is the non-refundable portion of the Lump Sum Repayment. We reiterate that there was no permanent curtailment here. Historically, the Facility has not generated in the winter months, yet Idaho Power has included these months in its assessment both of its argument that a permanent curtailment exists and in calculating the Lump Sum Repayment. We have been unable to find specific language in the Energy Sales Agreement specifying how one is to determine that a permanent curtailment has occurred. We think it is unreasonable to conclude that lack of generation for such a short period of time is sufficient to both conclude that a permanent curtailment exists and that such repayment is necessary. Further, in addition to the security provided in the Letter of Credit, the winterization of the Facility will ensure that the Facility will make up for any lost generation from the summer months during its operations this winter.

We appreciate your attention in this matter and are happy to answer any questions that you may have.

Sincerely,

Ted S Sorenson, P.E.  
Manager, Wood Hydro LLC

**EXHIBIT E**





**C. Tom Arkoosh**  
tom.arkoosh@arkoosh.com

March 17, 2020

Donavan Walker  
Idaho Power Company  
PO Box 70  
Boise, ID 83707  
[DWalker@Idahopower.com](mailto:DWalker@Idahopower.com)

*Re: Mile 28 Original Energy Sales Agreement*

Dear Donovan:

There is ongoing dispute of contract interpretation between Idaho Power Company ("Idaho Power") and Wood Hydro, LLC, ("Wood"), the successor in interest to the Mile 28 Hydro Generation Facility ("Project") Firm Energy Sales Agreement of August 23, 1993 ("Agreement"). Enclosed you will find correspondence between the parties that adequately describes the background of this dispute.

In summary, because the project was "off line" from April to mid-August, 2019, Idaho Power staff seeks to assess Wood \$116,312.00 based upon a calculation explained by Idaho Power staff as the difference between the Annual Net Energy Amount estimation and the actual Net Energy Delivered times the Lump Sum Repayment amount from Appendix D of the Agreement for permanent curtailment in the 25<sup>th</sup> year.

The difficulty with the assessment is that there has never been a permanent curtailment of the Annual Net Energy Amount by reason of not producing energy from April to mid-August.

Before reviewing the actual wording of the contract, please recall the context in which Idaho Power advocated before the Idaho Public Utilities Commission for the adoption of the 90/110 performance band to create reliability in deliveries. As to the Agreement, and agreements like it, entered before the age of the 90/110 performance band, Idaho Power wrote:

**The Commission Should Consider the Distinction Between Firm and Non-Firm QF Energy In Light Of Current Conditions**

In seeking leave to file a post-hearing brief, counsel for U.S. Geothermal indicated that it was his intention to use the post-hearing brief to address the Commission's prior orders that define the terms 'non-firm' and 'firm' in the

context of energy purchased from QFs. Idaho Power does not believe there is any dispute as to how the Commission has traditionally used those terms. In Order No. 15746 in Case No. P-300-12, The Commission noted that, 'under Section 292.304(d) of the FERC rules, a small power producer has the option of selling power to a utility either on an 'as-available' basis or 'pursuant' to a legally enforceable obligation.' In Order No. 15746 and subsequently in Order No. 18190 issued in 1983 in Case No. U-1006-200, the Commission defined the 'as-available sale' to correspond to non-firm energy and the 'pursuant to a legally enforceable obligation' to correspond to firm energy. As the Commission noted in Order No. 18618 issued in Case No. U-1006-216, 'The Company is correct, therefore, when it asserts that Order Nos. 18190 and 18358 distinguish between firm and non-firm energy prices and that it is the 'quality of the energy produced' by the co-generator or small power producer that determines its price.' (Order No. 18618, p.3.)

In Order No. 18618, the Commission also stated:

"...energy is considered firm if it is provided by the seller pursuant to a legally enforceable obligation to deliver and if it is of sufficient reliability that it can serve to defer or avoid construction of the company's own plants. Hydro projects --- both those of the company and those of small power producers --- have always been assumed to meet this definition." (Order No. 18618, p.9).

As Idaho Power noted in its direct testimony in this case, using the definition of firm energy established in the early 1980's, a QF is only obligated to sign a contract and provide an estimate of what it thinks it will generate each month over the twenty (20) to thirty-five (35) year term of its agreement to be entitled to receive firm energy prices. As Mr. Gale noted, in today's world, the actual firmness of the energy deliveries under these 1980's vintage contracts more closely resemble non-firm energy deliveries than firm energy deliveries. In the Firm Energy Sales Agreements ('FESA's') without the 90%/110% band provision, QF developers provide an estimate of what they expect to generate each month, but there is no requirement, nor is there any economic incentive, for QF developers to provide accurate estimates or to actually deliver energy in the monthly amounts they estimate they will provide in the Firm Energy Sales Agreement. The actual amount of energy delivered by QF's under these agreements can fluctuate between 0 MW and 10 MW, hour-to-hour, day-to-day, month-to-month, either because the project has lost its motive force or the developer has chosen to reduce generation for some other reason. With the exception of the five new QF contracts which include the 90%/110% band, Idaho Power's QF contracts do not require QF's to provide the higher value firm energy Idaho Power's customers are paying for. *Post-Hearing Brief*, Page 4, Cases Nos. IPC-E-04-08 and 10.



The language of Idaho Power's *Post Hearing Brief* relevant here to the operation of the Agreement deserves emphasis: **there is no requirement ... for QF developers to provide accurate estimates, or to actually deliver energy in the monthly amounts they estimate they will provide in the Firm Energy Sales Agreement.**

\*\*\*

**With the exception of the five new QF contracts which include the 90%110% band, Idaho Powers QF contracts do not require QF's to provide the higher value firm energy Idaho Power's customers are paying for.**

The *Post Hearing Brief* does not support Idaho Power's argument about liquidated damages. The language of the Agreement does not support the conclusion that the failure of the Project to deliver power between April and mid-August authorizes Idaho Power to withhold monies from Wood.

Idaho Power relies upon this language from section 21.3 of the Agreement:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of the Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Ned Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment.

Please note that "Annual Net Firm Energy," is defined in section 1.1 of the Agreement as "[t]he amount of Net Firm Energy Seller estimates it will deliver to Idaho Power at the Point of Delivery during each Contract Year." [Emphasis added.] Nowhere in the claim letters of Idaho Power does Idaho Power assert that Wood seeks to change the Annual Net Firm Energy estimates found at section 6.2 of the Agreement.

Further, not only has Wood not changed the estimates of the Annual Net Firm Energy deliveries but has done absolutely nothing permanent or long-term concerning deliveries from the Project.

The language of Idaho Power's *Post Hearing Brief* and the representations Idaho Power made to the Idaho Public Commission make clear that section 21.3 does not allow the attempted assessment unless and until Wood permanently changes the estimates in the Agreement. Other provisions indicate section 21.3 is the section addressing the estimates and changes in those estimates, but not the actual deliveries. Section 21.3 itself provides that interest begins only 60 days after a Seller receives "notice of Seller's permanent reduction of the Annual Net Firm Energy Amount." Read in context, this sentence makes clear that the permanent reduction must be a permanent reduction of the estimate.



It is also important to note that in addressing available adjustments to the Agreement, Idaho Power may adjust the estimates in the contract, the Annual Net Firm Energy Amount, based on actual performance, again confirming that section 23.1 addresses the estimate, and not the actual delivered energy, because it is inconceivable that Idaho Power can adjust the amount of actual energy delivered.

Further, the liquidated damages clause found in section 23.1 appears unenforceable.

“In determining the validity of liquidated damage clauses, we have adhered to the rule set forth in the Restatement of Contracts section 339 (1932);

‘An agreement, made in advance of breach, fixing the damages therefor, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless

(a) The amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and

(b) The harm that is caused by the breach is one that is incapable or very difficult of accurate estimation.”

*Young Electric Co. v. Capps*, supra [94 Idaho] at 521, 492 P.2d at 60; *Graves v. Cupic*, 75 Idaho 451, 457, 272 P.2d 1020, 1023-24 (1954).

Repeatedly and historically, Idaho Power has claimed that it has available to it market electricity less expensive than PURPA power prices as found in the Agreement. Also, energy sales upon transparent markets making any damage claim easily to calculate.

Finally, Idaho Power will over time receive the energy claimed to be deficient addressed in the claim letters, contradicting the assertion that Idaho Power customers will be harmed. In fact, as more particularly described in the attached correspondence, the repairs and upgrades at the facility will make the facility more reliable, providing additional benefit to Idaho Power customers. The facility has been online and operating reliably since August.

For the forgoing reasons, we request confirmation that Wood will not be assessed as proposed in the accompanying claim letters and promptly be reimbursed for funds withheld from its power generation payments.

Sincerely,

ARKOOSH LAW OFFICES



C. Tom Arkoosh





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April 15, 2020

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**VIA ELECTRONIC MAIL:** [tom.arkoosh@arkoosh.com](mailto:tom.arkoosh@arkoosh.com)

Re: Mile 28 Hydro

Dear Tom:

I write in response to your letter dated March 17, 2020, which references an "ongoing dispute of cont[r]act [sic] interpretation between Idaho Power Company ("Idaho Power") and Wood Hydro, LLC, ("Wood")" regarding a PURPA QF Firm Energy Sales Agreement dated August 23, 1993 ("Agreement") for the Mile 28 hydro project.

The bulk of your letter quotes and discusses IPUC orders and Idaho Power testimony mainly from the 1980's which frankly I have a hard time seeing as relevant or understanding the point you are trying to make. The particular Agreement, and the terms and conditions thereof between Mile 28 and Idaho Power are straight-forward and clear. Granted the terminology is a bit difficult to work through, but such is the case with every PURPA QF contract I have ever encountered. This particular vintage of PURPA QF contract has many provisions that are no longer employed in such contracts by the IPUC. However, this does not in and of itself make such contract provisions invalid even though the concepts and provisions are no longer required or utilized in mandatory QF purchases by Idaho Power.

This type of Firm Energy Sales Agreement, in general terms, works as follows: Idaho Power will purchase and Seller will sell all of the Net Firm Energy and Surplus Energy produced by the Seller (Section 6.1); the project provides, as part of the contract, its monthly generation amounts, estimated based on long-term historical water flow records and long-term average energy production estimates (Section 6.2); the Annual Net Firm Energy amount is sum of the project's monthly estimates, in this instance 5,798,590 kWh, (Section 6.3); the project is paid a base payment (Section 7.1.1) and an adjustable payment (Section 7.1.2) for its Net Firm Energy; the project must deliver up to its Annual Net Firm Energy amount from Section 6.3 or be subject to a schedule of Lump Sum Refund Payment (Section 21.3; Appendix D).

**EXHIBIT G**

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P.O. Box 70  
Boise, ID 83707



This is a type of levelized payment/price contract whereby the base payment is a levelized/fixed price spread over the entire 35-year contract term. Consequently, as with any levelized price contract compared to a non-levelized and escalated rate contract, there is an "overpayment" to the project in the early years that is offset by an "underpayment" in the outer years. To make sure that a project does not just generate and take payments during the more lucrative "overpayment" early years, and then fail to generate or under-generate in the later years when customers are being repaid for the "overpayment" in the "underpayment" years, the IPUC set up certain mechanisms to make sure customers were not left holding the bag in the outer years of the contract. These mechanisms include such things as additional security, and in this case the provisions found in Section 21.3 "Seller Permanent Curtailment", Appendix D "Lump Sum Repayment for Permanent Curtailment of Portion or All of Annual Net Energy Amount Under 35-Year Contract", and 21.7 "Refund of Lump Sum Repayment". These sections of the contract, Section 21.3, Section 21.7, Section 6.3, and Appendix D, when read and considered together in the context of the four corners of this contract are clear and tell us exactly what happens when the project fails to deliver its Annual Net Firm Energy amount specified in Section 6.3.

As pointed out by both Idaho Power and by you in your letter, the relevant portion of Section 21.3, Seller Permanent Curtailment, states as follows:

If, at any time prior to the end of the term of the Agreement, Seller permanently curtails in whole or in part its long-term average deliveries of the Annual Net Firm Energy amount specified in paragraph 6.3, Seller shall pay to Idaho Power, as reasonable liquidated damages arising out of this permanent curtailment of Annual Net Firm Energy deliveries, the appropriate lump sum repayment amount specified in Appendix D, multiplied by the difference in megawatt-hours between the Annual Net Firm Energy amount specified in paragraph 6.3 and the reduced Annual Net Firm Energy amount after the permanent curtailment.

Section 6.3, Annual Net Firm Energy Amount, states, "The Annual Net Firm Energy amount shall be 5,798,590 kWh and shall be the sum of the three (3) Seasonal Net Firm Energy amounts Seller specified above." Sections 6.2 and 6.4 reference how the Net Firm Energy Amounts the Seller has estimated are based upon anticipated and historical long-term average water flows, long-term average energy production estimates, Seller's water right filings and the water records supporting those projected water flows. Section 6.4 states, "The parties have reviewed these anticipated water flows ... and have agreed that, for purposes of this Agreement, the projected water flows used to calculate the Annual Net Firm Energy amount in paragraph 6.3 are reasonable and shall constitute the water flows available to the Facility under "average" water conditions."

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Here, the project had Zero deliveries to Idaho Power during the months of November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, and July 2019. Contract Year 25 ran from June 1, 2018 through May 31, 2019. The project had a total Net Firm Energy delivered during Contract Year 25 of only 3,355,049 kWh, which is short of the required delivery of the Annual Net Firm Energy Amount from Section 6.3 of 5,798,590 kWh. It is important to note that these contract mechanisms and metrics function on an annual basis, and once Contract Year 25 came and went with a substantial shortfall of delivered Net Firm Energy, there was no way to "make-up" the shortfall by over-generating in a different time period. There was a permanent curtailment of the project's Annual Net Firm Energy deliveries for Contract Year 25. The project also had curtailment of Net Firm Energy deliveries during Contract Year 26, in that as of August 14, 2019, there had been Zero deliveries to Idaho Power. However, this curtailment in Contract Year 26 did not become a permanent curtailment invoking the provisions of Section 21.3 and Appendix D because subsequent to August 14, 2019, and prior to the expiration of Contract Year 26, the project met its requirement to deliver the 5,798,590 kWh Annual Net Firm Energy amount from Section 6.3.

Because the project failed to deliver its Annual Net Firm Energy amount from Section 6.3 during Contract Year 25, and thus permanently curtailed its annual delivery for that year, the lump sum repayment amount specified for Contract Year 25 from Appendix D is applied to the difference in Net Firm Energy delivered and the Annual Net Firm Energy amount - which in this case is \$1,046,812. However, the contract anticipates that a permanent curtailment of Annual Net Firm Energy deliveries may not continue for the entire remaining duration of the 35-year contract term, and thus contains the provisions in Section 21.7, Refund of Lump Sum Repayment, which states,

If Seller has made a lump sum repayment as required by paragraph 21.3 and;

(1) Within three (3) years of said payment Seller becomes capable of resuming production of the curtailed Net Firm Energy and offers to resume sales to Idaho Power at the rates, terms and conditions contained in this Agreement for the number of Contract Years that were remaining under this Agreement at the time of the permanent curtailment; then

(2) Idaho Power will resume its purchases from the Facility and will refund a portion of the lump sum repayment as follows:

(a) if sales resume within one (1) year of the payment of the lump sum repayment amount, Idaho Power will refund 90% of the lump sum repayment amount;

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(b) if sales resume within two (2) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount;

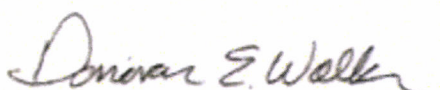
(c) if sales resume within three (3) years of the payment of the lump sum repayment amount, Idaho Power will refund 85% of the lump sum repayment amount.

Consequently, because the project resumed generation in Contract Year 26 to meet the Annual Net Firm Energy amount, Idaho Power forfeited its entitlement to the actual collection of the \$1,046,812 lump sum repayment amount for the permanent curtailment of Contract Year 25 Annual Net Firm Energy amount, and applied the 90% refund upfront - thus merely applying the 10% balance of \$116,312 - which you are now contesting.

Mr. Jardine's letters are quite clear and run through the relevant portions of the Agreement as well as the failure of the project to generate its Annual Net Firm Energy amount in Contract Year 25. Idaho Power stands by its previously sent letters and claims with regard to the project's failure to generate and meet its Annual Net Firm Energy amount requirement. As previously referenced above this is a contract mechanism that accompanies the levelized nature of the payments in this vintage of PURPA QF contract as a protection for customers in the nature of the "overpayment" of a levelized rate in the early years and the "underpayment" in the later years - and part of the assurance that projects do not simply take the more lucrative early year "overpayments" and then under-generate and/or abandon projects in the "underpayment" later years.

Idaho Power understands that the lack of project generation may have predated Wood Hydro's involvement and recognizes that Mr. Sorenson was able to make necessary improvements to the project once he took it over to enable it to hopefully continue to generate and meet the requirements of its Agreement. However, the provisions of the contract are clear in that the project permanently curtailed its Annual Net Firm Energy amount for Contract year 25 - and is also quite clear in the application of the Lump Sum Refund Payment for the shortfall in Contract year 25. The project can pay the remaining balance of \$116,312, 10% Lump Sum Refund Payment, or have Idaho Power continue to net this amount against the Facility's monthly Net Energy payments until the balance is zero. Please let us know how you would like to proceed.

Sincerely,



Donovan E. Walker