

11-6-2009

# City of Idaho Falls v. Fuhriman Clerk's Record v. 2 Dckt. 36721

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**LAW CLERK**  
IN THE  
**SUPREME COURT**  
OF THE  
STATE OF IDAHO

IN RE THE VALIDITY OF THE POWER  
SALES AGREEMENT AND THE  
CREDITWORTHINESS AGREEMENT  
BETWEEN VERIFIED PEITION FOR  
THE CITY OF IDAHO FALL JUDICIAL  
CONFIRMATION AND THE BONNEVILLE  
POWER ADMINISTRATION

VOLUME  
II

THE CITY OF IDAHO FALLS

Petitioner \_\_\_\_\_ and

Respondent \_\_\_\_\_  
VS.

MAYOR JARED FUHRIMAN

Intervenor \_\_\_\_\_ and

Appellant \_\_\_\_\_

Appealed from the District Court of the Seventh \_\_\_\_\_ Judicial

District of the State of Idaho, in and for Bonneville \_\_\_\_\_ County

Hon. Darren B. Simpson \_\_\_\_\_, District Judge

Molly O'Leary, 515 N. 27<sup>th</sup> Street, Boise, ID 83402 \_\_\_\_\_  
Attorney for Appellant

Dale W. Storer, PO Box 50130, Idaho falls, ID 83405 \_\_\_\_\_  
Attorney for Respondent

**FILED - COPY**  
Filed this NOV - 6 2009  
Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS By \_\_\_\_\_

**36721**  
**COPY**  
Deputy

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

IN RE THE VALIDITY OF THE )  
POWER SLAES AGREEMENT AND )  
THE CREDITWORTHINESS )  
AGREEMENT BETWEEN VERFIED )  
PETITION FOR THE CITY OF IDAHO )  
FALLS JUDICIAL CONFIRMATION )  
AND THE BONNEVILLE POWER )  
ADMINISTRATION. )

Case No. CV-2009-1736  
Docket No. 36721  
Volume II

\_\_\_\_\_  
THE CITY OF IDAHO FALLS, )  
 )  
Petitioner/Respondent, )  
 )  
v. )  
 )  
MAYOR JARED FUHRIMAN, )  
 )  
Intervenor/Appellant. )  
\_\_\_\_\_ )

\*\*\*\*\*

**CLERK'S RECORD ON APPEAL**

\*\*\*\*\*

Appeal from the District Court of the  
Seventh Judicial District of the State of Idaho,  
in and for the County of Bonneville

HONORABLE Darren B. Simpson, District Judge.

\*\*\*\*\*

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**EXHIBIT E**

[January 8, 2008 Minutes and Resolution of City Council]

City of Idaho Falls

January 8, 2009

The City Council (the "*Council*") of the City of Idaho Falls, Bonneville County, Idaho (the "*City*"), pursuant to due notice met in regular public session at 7:30 p.m. on January 8, 2009, at its regular meeting place at the City Annex Building at 680 Park Avenue in the City of Idaho Falls, Idaho. The meeting was duly called to order by the Mayor with the following members of the Council being present, constituting a quorum of the Council:

| NAME              | TITLE         |
|-------------------|---------------|
| Jared D. Fuhriman | Mayor         |
| Karen Cornwell    | Councilmember |
| Ida Hardcastle    | Councilmember |
| Thomas Hally      | Councilmember |
| Michael Lehto     | Councilmember |
| Sharon D. Parry   | Councilmember |
| Ken Taylor        | Councilmember |

Absent: None.

Also Present:

| NAME               | TITLE  |
|--------------------|--|
| Rosemarie Anderson | City Clerk                                   |
| Dale W. Storer     | City Attorney                                |
| Jackie Flowers     | General Manager, Idaho Falls Power           |
| Jo Elg             | Assistant General Manager, Idaho Falls Power |

After the minutes of the preceding meeting had been read and approved, the City Clerk presented to the Council an affidavit evidencing the giving of public notice of the agenda, date, time and place of the January 8, 2009 regular public meeting of the Council in compliance with the requirements of applicable Idaho law. The affidavit was ordered recorded in the minutes of the meeting and is as follows:



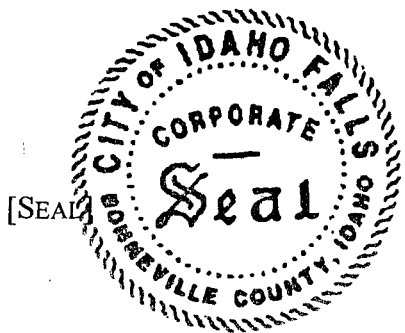
STATE OF IDAHO )  
 )  
COUNTY OF BONNEVILLE )

I, the undersigned, the duly qualified and acting City Clerk of City of Idaho Falls, Bonneville County, Idaho (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 67-2343, Idaho Code, as amended, I gave public notice of the agenda, date, time and place of the January 8, 2009, regular public meeting held by the Council of the City, by:

(a) causing a notice of the regular meeting schedule of the Council for calendar year 2009 to be posted in a prominent place at the principal office of the City on or before December 31, 2008, said notice having continuously remained so posted and available for public inspection during the regular office hours of the Council until the convening of the meeting; and

(b) causing a copy of the agenda for the January 8, 2009, regular public meeting of the Council, in the form attached hereto as *Exhibit A*, to be posted in a prominent place at the principal office of the City at least 48 hours before the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the City, this 8th day of January, 2009.



*Ramaree Anderson*  
\_\_\_\_\_  
City Clerk  
City of Idaho Falls,  
Bonneville County, Idaho

**EXHIBIT A**

[Attach Agenda for January 8, 2009 Public Meeting]

**CITY OF IDAHO FALLS, IDAHO**  
**COUNCIL MEETING AGENDA**  
**REGULAR MEETING**  
**COUNCIL CHAMBERS, 680 PARK AVENUE**  
**JANUARY 8, 2009**  
**7:30 P.M.**

**MAYOR**

Call to order.

Roll call.

State of the City Address.

Awards and Presentations, including Years of Service Award Pins.

Election of President of the Council.

Council Committee Assignments.

**CONSENT AGENDA**

Items from the City Clerk:

Minutes from the December 9, 2008 Council Work Session and the December 16, 2008 Council Work Session;

Monthly Reports from various Division and Department Heads;

Approval of Monthly Expenditure Summary dated December 1, 2008 through December 31, 2008;

Approval of License Applications, all carrying the required approvals.

**REGULAR AGENDA**

**MAYOR**

Recognition of citizens from the floor.

**DIVISION DIRECTORS**

Memos from the Airport Director:

Consent to Assignment of Hangar Lease Agreement between Yost Development LLC and Symbiotic Innovations LLC; and,

Consent to Assignment of Hangar Lease Agreement between Yost Enterprises and Marshall Egan.

**COUNCIL MEETING AGENDA  
REGULAR MEETING  
JANUARY 8, 2009  
Page 2**

Memos from the Idaho Falls Power Director:

Adoption of a resolution authorizing the City of Idaho Falls to file a petition for judicial confirmation of the validity of the renewal Power Sales Agreement and the Creditworthiness Agreement each between the City and Bonneville Power Administration; and,

Indemnification Agreement.

Memos from the Municipal Services Director:

Tabulation and award of bid for One (1) 2008 or Newer Linebed, Hydraulic Digger Derrick and Related Accessories Mounted on a New 2009 Cab and Chassis; and,

Tabulation and award of bid for Two (2) New 2009 Rear Hand Load Refuse Bodies – 20 Cubic Yard Mounted on Two (2) New 2009 Cab and Chassis.

Memo from the Police Chief:

ATV Ordinance.

Introduction of City Attorney:

Presentation of legal matters and/or documents requiring Council consideration.

Adjournment.

*If you need communication aids or services or other physical accommodations to participate or access this meeting or program of the City of Idaho Falls, you may contact City Clerk Rosemarie Anderson at Telephone Number 612-8414 or the ADA Coordinator Mr. J. P. Blickenstaff at Telephone Number 612-8323 as soon as possible and they will make every effort to adequately meet your needs.*

In accordance with the requirements of Section 67-2344, Idaho Code, as amended, written minutes of this meeting are being kept.

After the conduct of other business not pertinent to the following, the following resolution was introduced in written form. Pursuant to motion duly made and seconded, the resolution was adopted and approved by the following vote:

|      |                 |
|------|-----------------|
| AYE: | Karen Cornwell  |
|      | Sharon D. Parry |
|      | Ken Taylor      |
|      | Ida Hardcastle  |
|      | Michael Lehto   |
|      | Thomas Hally    |

|      |       |
|------|-------|
| NAY: | None. |
|------|-------|

Upon completion of the meeting, the resolution was filed and recorded in the official minutes of the Council. The resolution is as follows:

RESOLUTION No. 2008-24

A RESOLUTION AUTHORIZING THE CITY OF IDAHO FALLS TO FILE A PETITION FOR A JUDICIAL CONFIRMATION OF THE VALIDITY OF THE RENEWAL POWER SALES AGREEMENT AND THE CREDITWORTHINESS AGREEMENT EACH BETWEEN THE CITY AND BONNEVILLE POWER ADMINISTRATION.

WHEREAS, the City of Idaho Falls, Bonneville County, Idaho (the "City") has previously executed a Block and Slice Power Sales Agreement (the "Existing PSA") with the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville"), which will expire on September 30, 2011;

WHEREAS, the City Council of the City has previously determined that it is necessary, desirable and in the best interests of the City and the electric consumers served by the City to obtain a continued long-term supply of electric power and energy by entering into a renewal Power Sales Agreement (the "Renewal PSA") with Bonneville, and to that end has authorized the execution and delivery of the Renewal PSA;

WHEREAS, Bonneville also requires the City to execute a Creditworthiness Agreement (a "Creditworthiness Agreement"), and accordingly the City Council of the City has authorized the execution and delivery of a Creditworthiness Agreement with Bonneville;

WHEREAS, the City has determined it is necessary and desirable to initiate a judicial confirmation proceeding to confirm that (1) the Renewal PSA and the Creditworthiness Agreement (together, the "Agreements") are authorized by the laws and Constitution of Idaho, (2) the obligations of the City under the Agreements constitute "ordinary and necessary expenses" within the meaning of Article VIII, Section 3 of the Idaho Constitution and (3) each of the Agreements constitute the legal, valid and binding agreement of the City; and

WHEREAS, the City has previously taken all actions on its part required under the provisions of Title 7, Chapter 13, Idaho Code, as amended, as conditions precedent to the adoption of this resolution including:

(1) causing a Notice of Public Hearing to be published on December 2, 2008, in *The Post-Register*, a newspaper of general circulation in the City, far forward in the main section of *The Post-Register*, and in a format, size, and type distinguishing the Notice of Public Hearing from legal notices, of a public hearing to be held on December 18, 2008 (the "Public Hearing"), with respect to the adoption of a resolution authorizing the filing of a judicial petition for the confirmation of the validity of the Agreements;

(2) causing a copy of the Notice of Public Hearing to be posted on December 2, 2008, in a prominent place at the principal office of the City in the City of Idaho Falls, Idaho, such Notice of Public Hearing having continuously remained so

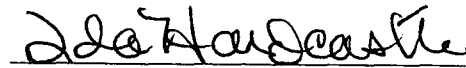
posted and available for public inspection during the regular office hours of the City until the convening of the Public Hearing;

(3) causing a copy of the Notice of Public Hearing to be given by certified mail, not less than 14 days before the Public Hearing, to all persons who have requested notice of all meetings convened for the purpose of considering a resolution or ordinance authorizing the filing of a judicial confirmation petition; and

(4) the holding of the Public Hearing, pursuant to Section 7-1304 Idaho Code, as amended, on December 18, 2008, on whether to adopt a resolution authorizing the filing of a petition for judicial confirmation of the Agreements;


NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, that the City is authorized to file a petition, pursuant to the provisions of Title 7, Chapter 13, Idaho Code, as amended, for a judicial confirmation of the City's authority to enter into and to perform its obligations under the Agreements and of the validity and enforceability thereof.

ADOPTED AND APPROVED this 8th day of January, 2009.

  
\_\_\_\_\_  
Mayor, City of Idaho Falls  
Bonnevill<sup>er</sup> County, Idaho

[SEAL]

ATTEST:

  
\_\_\_\_\_  
City Clerk,  
City of Idaho Falls,  
Bonnevill<sup>er</sup> County, Idaho



After the conduct of other business not pertinent to the foregoing, it was moved and carried that the Council adjourn.

CITY OF IDAHO FALLS, BONNEVILLE COUNTY,  
IDAHO

By *Don Hardcastle*  
Mayor Pro Tem

[SEAL]

ATTEST:

By *Rosamaria Anderson*  
City Clerk


[SEAL]





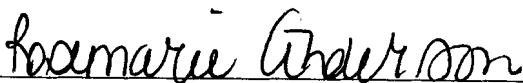
After the conduct of other business not pertinent to the foregoing, it was moved and carried that the Council adjourn.

CITY OF IDAHO FALLS, BONNEVILLE COUNTY,  
IDAHO

By   
Mayor

[SEAL]

ATTEST:

By   
City Clerk

[SEAL]



State of Idaho )

COUNTY OF BONNEVILLE )

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of City of Idaho Falls, Bonneville County, Idaho (the "City"). I further certify that the above and foregoing constitutes a true and correct extract of the minutes of a regular public meeting of the City Council (the "Council") of the City, held on January 8, 2009, including a resolution approved and adopted at such meeting, as said minutes and resolution are recorded in the regular official book of minutes of the proceedings of the Council kept in the office of the City Clerk, that said proceedings were duly had and taken as therein shown, that the meeting therein shown was in all respects called, held and conducted in accordance with law, and that the persons therein named were present at said meeting, as therein shown.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed or imprinted hereon the official seal of the City, this 8th day of January, 2009.

Roxanne Anderson  
City Clerk  
City of Idaho Falls,  
Bonneville County, Idaho

[SEAL]



**EXHIBIT F**

[Renewal Power Sales Agreement]

Contract No. 09PB-13056

**POWER SALES AGREEMENT**  
executed by the  
**BONNEVILLE POWER ADMINISTRATION**  
and  
**CITY OF IDAHO FALLS DBA IDAHO FALLS POWER**

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and CITY OF IDAHO FALLS DBA IDAHO FALLS POWER (Idaho Falls), hereinafter individually referred to as "Party" and collectively referred to as the "Parties". Idaho Falls is a municipal corporation, organized and authorized under the laws of the State of Idaho to purchase and distribute electric power to serve retail consumers from its distribution system within its service area.

#### RECITALS

Idaho Falls' current power sales agreement (Contract No. 00PB-12173) continues through September 30, 2011, and will be replaced by this Agreement on October 1, 2011.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

BPA is authorized to market federal power to qualified entities that are eligible to purchase such power. Under section 5(b)(1) of the Northwest Power Act, BPA is obligated to offer a power sales agreement to eligible customers for the sale and purchase of federal

power to serve their retail consumer load in the Region that is not met by the customer's use of its non-federal resources.

BPA has proposed the adoption of a tiered rate pricing methodology for federal power sold to meet BPA's obligations under section 5(b) of the Northwest Power Act to eligible customers, in order to provide more efficient pricing signals and encourage the timely development of regional power resource infrastructure to meet regional consumer loads under this Agreement.

To effect that purpose, in this Agreement BPA establishes a Contract High Water Mark for Idaho Falls that will define the amounts of power Idaho Falls may purchase from BPA at the Tier 1 Rate, as defined in BPA's Tiered Rate Methodology.

The Parties agree:

**1. TERM**

This Agreement takes effect on the date signed by the Parties for performance of the actions required in advance of deliveries of federal power under this Agreement, as follows:

- (1) section 3, Power Purchase Obligation, excluding the purchase and payment obligations of Idaho Falls under Sections 3.1 and 3.2;
- (2) section 9, Elections to Purchase Power Priced at Tier 2 PF Rates;
- (3) section 17, Information Exchange and Confidentiality;
- (4) section 18, Conservation and Renewables;
- (5) section 19, Resource Adequacy;
- (6) section 22, Governing Law and Dispute Resolution;
- (7) section 25, Termination;
- (8) Exhibit A, Net Requirements and Resources;
- (9) Exhibit B, High Water Marks and Contract Demand Quantities; and,
- (10) Exhibit C, Purchase Obligations.

Section 22, Governing Law and Dispute Resolution will only apply to the extent there is a dispute regarding actions required after the Effective Date in the above referenced sections and exhibits.

This Agreement will be effective for performance of all other actions on the date Idaho Falls delivers a favorable opinion of independent counsel to Idaho Falls with respect to Idaho Falls authorization of this Agreement under the Constitution and laws of the State of Idaho. This Agreement expires on September 30, 2028.

## 2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used, or if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions (GRSPs). Definitions in **bold** indicate terms that are defined in the TRM and that the Parties agree should conform to the TRM as it may be revised. The Parties agree that if such definitions are revised pursuant to the TRM, they shall promptly amend this Agreement to incorporate such revised definitions from the TRM, to the extent they are applicable.

- 2.1 "5(b)/9(c) Policy" means BPA's Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under sections 5(b)(1) and 9(c) of the Northwest Power Act issued May 23, 2000, and its revisions or successors.
- 2.2 "**7(i) Process**" means a public process conducted by BPA to establish rates for the sale of power and other products pursuant to section 7(i) of the Northwest Power Act or its successor.
- 2.3 "**Above-RHWM Load**" means the forecast annual Total Retail Load, less Existing Resources, NLSLs, and the customer's RHWM, as determined in the RHWM Process.
- 2.4 "Absolute Operating Constraint" means an Operating Constraint that cannot be exceeded under any condition.
- 2.5 "Actual BOS Generation" means the actual generation produced by the BOS Complex, as adjusted for actual Tier 1 System Obligations and RHWM Augmentation.
- 2.6 "Actual Slice Output Energy" or "ASOE" means the actual amount of Idaho Falls' Slice Output Energy BPA makes available to Idaho Falls at the Scheduling Points of Receipt.
- 2.7 "Actual Tier 1 System Generation" or "ATSG" means the actual generation produced by the Tier 1 System plus the RHWM Augmentation.
- 2.8 "**Additional CHWM**" means the CHWMs established for DOE-Richland, New Publics formed in whole or in part out of loads previously served by an entity other than an Existing Public, and load growth for New Tribal Utilities. Additional CHWM will not include CHWMs for New Publics formed out of Existing Publics or other Initial CHWMs.
- 2.9 "Additional Energy" shall have the meaning as defined in section 5.8.1.
- 2.10 "Additional Slice Amount" shall have the meaning as defined in section 1 of Exhibit Q.

- 2.11 “Adjusted Annual RHWM Tier 1 System Capability” or “AART1SC” means the annual RHWM Tier 1 System Capability amount, as such amount may be adjusted by BPA pursuant to Exhibit I.
- 2.12 “Algorithm Tuning Parameters” shall have the meaning as defined in section 2 of Exhibit M.
- 2.13 “Annexed Load” means existing load, distribution system, or service territory Idaho Falls acquires after the Effective Date from another utility, by means of annexation, merger, purchase, trade, or other acquisition of rights, the acquisition of which has been authorized by a final state, regulatory or court action. The Annexed Load must be served from distribution facilities that are owned or acquired by Idaho Falls.
- 2.14 “Annual Net Requirement” means BPA’s forecast of Idaho Falls’ Net Requirement for each Fiscal Year that results from the process established in section 1 of Exhibit A and is shown in the table in section 1.2 of Exhibit A.
- 2.15 “**Augmentation for Additional CHWM**” means the amount of annual average firm energy BPA forecasts, calculated in accordance with sections 3.2.1.1 and 3.2.1.2 of the TRM during the RHWM Process, that is equal to the amount of Additional CHWMs used in the calculation of RHWM Augmentation.
- 2.16 “**Augmentation for Initial CHWM**” means the amount of annual average firm energy BPA forecasts, during the RWHM Process, that will be needed (in addition to the Tier 1 System Firm Critical Output) to meet the Initial CHWM. The amount of energy is restricted by the Augmentation Limit.
- 2.17 “**Augmentation Limit**” means the amount of augmentation calculated by BPA in accordance with section 3.2.1 of the TRM, which establishes the maximum level of Augmentation for Initial CHWM.
- 2.18 “Average Megawatts” or “aMW” means the amount of electric energy in megawatt-hours (MWh) during a specified period of time divided by the number of hours in such period.
- 2.19 “**Balancing Authority**” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.
- 2.20 “**Balancing Authority Area**” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.
- 2.21 “Base Critical Slice Amount” shall have the meaning as defined in section 1 of Exhibit Q.



- 2.22 “Base Slice Percentage” shall have the meaning as defined in section 1 of Exhibit Q.
- 2.23 “Base Tier 1 System Capability” shall have the meaning as defined in section 1 of Exhibit Q.
- 2.24 “Block Product” means a planned amount of Firm Requirements Power sold to Idaho Falls to meet a portion of its regional consumer load pursuant to the terms set forth in section 4 of this Agreement.
- 2.25 “BOS Base” means the forecast generation amounts available from the BOS Complex, as adjusted by BPA for forecast Tier 1 System Obligations and RHWM Augmentation.
- 2.26 “BOS Complex” or “Balance of System Complex” means the Tier 1 System Resources, except those resources that comprise the Coulee-Chief Complex and Lower Columbia Complex.
- 2.27 “BOS Deviation Account” means the account BPA maintains that quantifies the cumulative amount, expressed in MWd, by which Idaho Falls’ hourly BOS Base schedules deviate from the amount determined by multiplying Idaho Falls’ Slice Percentage by the hourly Actual BOS Generation.
- 2.28 “BOS Deviation Return” means the energy amounts associated with the reduction of Idaho Falls’ BOS Deviation Account balance.
- 2.29 “BOS Flex” means the amount by which the BOS Base can reasonably be reshaped within a given calendar day by utilizing the flexibility available from the Lower Snake Complex.
- 2.30 “BOS Module” means the Slice Computer Application module that is used to determine Idaho Falls’ Slice Output Energy and Delivery Limits available from the BOS Complex.
- 2.31 “**Business Days**” means every Monday through Friday except Federal holidays.
- 2.32 “Bypass Spill” shall have the meaning as defined in section 2 of Exhibit M.
- 2.33 “Calibrated Simulator Discharge” means, for each Simulator Project, Idaho Falls’ simulated discharge as adjusted to reflect such project’s actual H/K, actual Bypass Spill, and actual required Fish Spill, pursuant to section 3.6 of Exhibit M.
- 2.34 “Carbon Credit” shall have the meaning as defined in section 1 of Exhibit H.
- 2.35 “Columbia Generating Station” or “CGS” shall have the meaning as defined in section 5.8.1.
- 2.36 “CGS Displacement” shall have the meaning as defined in section 5.8.1.

- 2.37 “**CHWM Contract**” means the power sales contract between a customer and BPA that contains a Contract High Water Mark (CHWM), and under which the customer purchases power from BPA at rates established by BPA in accordance with the TRM.
- 2.38 “**CHWM Process**” means the FY 2011 process, as set forth in section 4.1 of the TRM, through which BPA establishes CHWMs for Existing Customers.
- 2.39 “**Combined Maximum Additional Slice Amount**” shall have the meaning as defined in section 1 of Exhibit Q.
- 2.40 “**Consumer-Owned Resource**” means a Generating Resource connected to Idaho Falls’ distribution system that is owned by a retail consumer, has a nameplate capability greater than 200 kilowatts, is operated or applied to load, and is not operated occasionally or intermittently as a back-up energy source at times of maintenance or forced outage. Consumer-Owned Resource does not include a resource where the owner of the resource is a retail consumer that exists solely for the purpose of selling wholesale power and for which Idaho Falls only provides incidental service to provide energy for local use at the retail consumer’s generating plant for lighting, heat and the operation of auxiliary equipment.
- 2.41 “**Contract Demand Quantity**” or “**CDQ**” shall have the meaning as defined in the TRM, the definition of which is recited in section 6.6.1.
- 2.42 “**Contract High Water Mark**” or “**CHWM**” shall have the meaning as defined in the TRM, the definition of which is recited in section 6.6.1.
- 2.43 “**Contract Resource**” means any source or amount of electric power that Idaho Falls acquires from an identified or unidentified electricity-producing unit or units by contract purchase, and for which the amount received by Idaho Falls does not depend on the actual production from an identified Generating Resource.
- 2.44 “**Coulee-Chief Complex**” means the two hydroelectric projects located in the middle reach of the Columbia River, consisting of Grand Coulee and Chief Joseph.
- 2.45 “**Creditworthiness Agreement**” means Contract No. 09PB-13257 between BPA and Idaho Falls.
- 2.46 “**Critical Slice Amount**” means the forecasted amount of Slice Output Energy that Idaho Falls is expected to receive in a Fiscal Year, and is equal to the product of Idaho Falls’ Slice Percentage and the Adjusted Annual RHWM Tier 1 System Capability. The annual Critical Slice Amount and associated monthly Critical Slice Amounts for each FY are as set forth in Exhibit I.

- 2.47 “Customer Inputs” means the Simulator Project discharge, elevation, or generation requests Idaho Falls develops as inputs to the Simulator pursuant section 3.3 of Exhibit M.
- 2.48 “Dedicated Resource” means a Specified Resource or an Unspecified Resource Amount listed in Exhibit A that Idaho Falls is required by statute to provide or obligates itself to provide under this Agreement for use to serve its Total Retail Load.
- 2.49 “Default User Interface” or “DUI” shall have the meaning as defined in section 5.10.1.
- 2.50 “Delivery Limits” means the limits that govern the availability of Slice Output and the scheduling of Slice Output Energy by Idaho Falls as determined by BPA, and implemented through the Slice Computer Application.
- 2.51 “Delivery Request” means the amount of Slice Output Energy Idaho Falls requests that BPA make available for delivery for any given hour as established per section 7 of Exhibit M.
- 2.52 “**Designated BPA System Obligations**” means the set of obligations specified in Table 3.4 of the TRM, imposed on BPA by statutes, regulations, court order, treaties, executive orders, memoranda of agreement, and contracts that require the generation or delivery of power, forbearance from generating power, or receipt of power, in order to support the operation of the FCRPS, including any obligations to the BPA Balancing Authority (Transmission Services).
- 2.53 “Diurnal” means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).
- 2.54 “**Diurnal Flattening Service**” or “DFS” means a service that makes a resource that is variable or intermittent, or that portion of such resource that is variable or intermittent, equivalent to a resource that is flat within each of the 24 HLH and LLH periods of a year.
- 2.55 “Due Date” shall have the meaning as described in section 16.2.
- 2.56 “Effective Date” means the date on which this Agreement has been signed by Idaho Falls and BPA.
- 2.57 “Election Year” shall have the meaning as defined in section 5.8.1.
- 2.58 “Elective Spill” means Spill other than Bypass Spill or Fish Spill that occurs at a hydroelectric project and is within such project’s available turbine capacity such that the Spill may otherwise be utilized to produce energy.
- 2.59 “Eligible Slice Customers” shall have the meaning as defined in section 1 of Exhibit Q.

- 2.60 “Environmental Attributes” shall have the meaning as defined in section 1 of Exhibit H.
- 2.61 “Environmentally Preferred Power RECS” or “EPP RECs” shall have the meaning as defined in section 1 of Exhibit H.
- 2.62 “Existing Customer” means a municipal, tribal, public or cooperative utility that is entitled to preference and priority under the Bonneville Project Act, P.L. 75-329 and that was eligible on December 1, 2008, to purchase requirements power at a PF rate or that would be eligible on December 1, 2008, to purchase requirements power at a PF rate.
- 2.63 “Existing Resource” means a Specified Resource listed in section 2 of Exhibit A that Idaho Falls was obligated by contract or statute to use to serve Idaho Falls’ Total Retail Load prior to October 1, 2006.
- 2.64 “**Federal Columbia River Power System**” or “FCRPS” means the integrated power system that includes, but is not limited to, the transmission system constructed and operated by BPA and the hydroelectric dams constructed and operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation in the Pacific Northwest.
- 2.65 “Federal Operating Decision” means a decision made by the Corps, Reclamation, BPA, or the United States Entity of the Columbia River Treaty, in accordance with the authority of each such entity, and as needed to meet Tier 1 System Obligations not already reflected in the Simulator or BOS Module, that establishes the permissible range of operations for any project or projects that comprise the FCRPS.
- 2.66 “FERC” means the Federal Energy Regulatory Commission, or its successor.
- 2.67 “**Firm Critical Output**” means the forecast output from Tier 1 System Resources that is determined in accordance with sections 3.1.3.1, 3.1.3.3, and 3.1.3.4 of the TRM.
- 2.68 “Firm Requirements Power” means federal power that BPA sells under this Agreement and makes continuously available to Idaho Falls to meet BPA’s obligations to Idaho Falls under section 5(b) of the Northwest Power Act.
- 2.69 “**Fiscal Year**” or “FY” means the period beginning each October 1 and ending the following September 30.
- 2.70 “Fish Spill” means Spill that occurs at a hydroelectric project in order to maintain compliance with established fish passage criteria, such as those criteria set forth in biological opinions.
- 2.71 “Flat Annual Shape” means a distribution of energy having the same value of energy in all hours of the year.

- 2.72 "Flat Within-Month Shape" means a distribution of energy having the same average megawatt value of energy in each hour of the month.
- 2.73 "**Forced Outage Reserve Service**" or "FORS" means a service that provides an agreed-to amount of capacity and energy to load during the forced outages of a qualifying resource.
- 2.74 "**Forecast Net Requirement**" means a forecast of Idaho Falls' Annual Net Requirement that BPA performs in each RHWM Process.
- 2.75 "**Forecast Year**" means the Fiscal Year ending one full year prior to the commencement of a Rate Period.
- 2.76 "Forced Spill" shall have the meaning as defined in section 2 of Exhibit M.
- 2.77 "Generating Resource" means any source or amount of electric power from an identified electricity-producing unit, and for which the amount of power received by Idaho Falls or Idaho Falls' retail consumer is determined by the power produced from such identified electricity-producing unit. Such unit may be owned by Idaho Falls or Idaho Falls' retail consumer in whole or in part, or all or any part of the output from such unit may be owned for a defined period by contract.
- 2.78 "Generation Benchmark" shall have the meaning as defined in section 5.8.1.
- 2.79 "H/K" means, prospectively, a hydroelectric project's water-to-energy conversion factor used to forecast such project's potential energy production per unit of turbine discharge, expressed as MW per kcfs, or retrospectively, for any given period of time, the value equal to a hydroelectric project's average Net Generation divided by such project's average turbine discharge, expressed as MW per kcfs.
- 2.80 "Hard Operating Constraint" means an Operating Constraint that may not be exceeded without express consent from project operators, owners, or other federal agencies responsible for establishing such Operating Constraints.
- 2.81 "Heavy Load Hours (HLH)" means hours ending 0700 through 2200 hours Pacific Prevailing Time (PPT), Monday through Saturday, excluding holidays as designated by the North American Electric Reliability Corporation (NERC). BPA may update this definition as necessary to conform to standards of the Western Electricity Coordinating Council (WECC), North American Energy Standards Board (NAESB), or NERC.
- 2.82 "Hydraulic Link Adjustment" means the adjustment to Idaho Falls' simulated McNary inflow that is equal to the difference between Idaho Falls' Calibrated Simulator Discharge for Chief Joseph and the measured Chief Joseph discharge, pursuant to section 3.7 of Exhibit M.
- 2.83 "Incremental Cost" shall have the meaning as defined in section 5.8.1.

- 2.84 “Incremental Side Flows” shall have the meaning as defined in section 2 of Exhibit M
- 2.85 “Initial Slice Customers” shall have the meaning as defined in section 1 of Exhibit Q.
- 2.86 “Initial Slice Percentage” or “ISP” means the percentage that is determined pursuant to section 5.3.2 after January 1, 2009, and prior to May 1, 2011, and is the basis for determining Idaho Falls’ Slice Percentage for each Fiscal Year pursuant to section 5.3.3.
- 2.87 “**Initial CHWM**” means the sum of all Existing Customers’ CHWMs determined in the CHWM Process pursuant to section 4.1 of the TRM.
- 2.88 “Integrated Network Segment” shall have the meaning as defined in section 14.1.
- 2.89 “Interchange Points” means the points where Balancing Authority Areas interconnect and at which the interchange of energy between Balancing Authority Areas is monitored and measured.
- 2.90 “Interim Slice Implementation Procedures” shall have the meaning as defined in section 5.10.1.
- 2.91 “Issue Date” shall have the meaning as described in section 16.1.
- 2.92 “Light Load Hours (LLH)” means: (1) hours ending 0100 through 0600 and 2300 through 2400 hours PPT, Monday through Saturday, and (2) all hours on Sundays and holidays as designated by NERC. BPA may update this definition as necessary to conform to standards of the WECC, NAESB, or NERC.
- 2.93 “Logic Control Parameters” shall have the meaning as defined in section 2 of Exhibit M.
- 2.94 “Lower Columbia Complex” or “LCOL Complex” means the four hydroelectric projects located on the lower reach of the Columbia River, consisting of McNary, John Day, The Dalles, and Bonneville.
- 2.95 “Lower Snake Complex” or “LSN Complex” means the four hydroelectric projects located on the lower reach of the Snake River, consisting of Lower Granite, Little Goose, Lower Monumental, and Ice Harbor.
- 2.96 “Majority” shall have the meaning as defined in section 5.12.1.
- 2.97 “Maximum Additional Slice Amount” shall have the meaning as defined in section 1 of Exhibit Q.
- 2.98 “Maximum Slice Amount” shall have the meaning as defined in section 1 of Exhibit Q.

- 2.99 "Megawatt-day" or "MWd" means a unit of electrical energy equal to 24 megawatt-hours.
- 2.100 "Monthly Reimbursement Value" means the value determined by dividing the amount Idaho Falls is billed for a month under the applicable Customer Charges, as described pursuant to section 5.1 of the TRM, by the sum of: (1) Idaho Falls' ASOE for such month and (2) the amount of Idaho Falls' Surplus Slice Output energy that is curtailed during such month.
- 2.101 "Monthly Shaping Factors" means the monthly factors, as specified in section 1.2 of Exhibit C, that are multiplied by Idaho Falls' annual Tier 1 Block Amount in order to determine Idaho Falls' monthly Tier 1 Block Amounts for each month of a Fiscal Year.
- 2.102 "Multiyear Hydroregulation Study" shall have the meaning as defined in section 2 of Exhibit N.
- 2.103 "Net Generation" means the total electric energy produced at a hydroelectric project as reduced by the electric energy consumed by such project for station service purposes.
- 2.104 "Net Requirement" means the amount of federal power that Idaho Falls is entitled to purchase from BPA to serve its Total Retail Load minus amounts of Idaho Falls' Dedicated Resources shown in Exhibit A, as determined consistent with section 5(b)(1) of the Northwest Power Act.
- 2.105 "New Large Single Load" or "NLSL" has the meaning specified in section 3(13) of the Northwest Power Act and in BPA's NLSL policy.
- 2.106 "New Resource" means: (1) a Specified Resource listed in section 2 of Exhibit A that Idaho Falls was or is first obligated by contract, or was or is obligated by statute, to use to serve Idaho Falls' Total Retail Load after September 30, 2006, and (2) any Unspecified Resource Amounts listed in Exhibit A.
- 2.107 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839, Public Law No. 96-501, as amended.
- 2.108 "Notice Deadlines" means the dates established in section 9.1.1.
- 2.109 "Onsite Consumer Load" means the electric load of an identified retail consumer of Idaho Falls that is directly interconnected or electrically interconnected on the same portion of Idaho Falls' distribution system with a Consumer-Owned Resource of that same identified retail consumer such that no transmission schedule is needed to deliver the generation from the Consumer-Owned Resource to the consumer load.

- 2.110 "Operating Constraints" means the operating limits, project operating requirements, and non-power constraints that are the result of implementing Federal Operating Decisions or Prudent Operating Decisions.
- 2.111 "Operating Plan" shall have the meaning as defined in section 5.8.1.
- 2.112 "Operating Rule Curves" or "ORC" means the forebay operating limits established for a reservoir pursuant to operating agreements in effect, and as modified to reflect Operating Constraints, that are used to determine such reservoir's upper forebay operating limit (upper ORC) or lower forebay operating limit (lower ORC).
- 2.113 "Operating Year" means the period, beginning each August 1 and ending the following July 31, that is designated under the Pacific Northwest Coordination Agreement (PNCA) for resource planning and operational purposes.
- 2.114 "Pacific Northwest Coordination Agreement" or "PNCA" means Contract No. 97PB-10130, as such agreement may be amended or replaced, among BPA, the U.S. Army Corps of Engineers, the Bureau of Reclamation, and certain generating utilities in the Region that sets forth the terms and conditions for the coordinated operation of generating resources in the Region.
- 2.115 "Point of Delivery" or "POD" means the point where power is transferred from a transmission provider to Idaho Falls.
- 2.116 "Point of Metering" or "POM" means the point at which power is measured.
- 2.117 "Power Services" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.
- 2.118 "Preliminary Net Requirement" shall have the meaning as defined in section 10.1.
- 2.119 "Preliminary Slice Amount" shall have the meaning as defined in section 1 of Exhibit Q.
- 2.120 "Preliminary Slice Percentage" means a preliminary Slice Percentage that is established and set forth in Exhibit J as of the Effective Date.
- 2.121 "Primary Points of Receipt" shall have the meaning as defined in section 14.1.
- 2.122 "Project Storage Bounds" or "PSB" means the Storage Content amounts associated with the upper ORC and lower ORC in effect at a project.
- 2.123 "Prudent Operating Decision" means a decision made by Power Services operations staff, in their exercise of reasonable judgment, that modifies the operating range applied to any project or projects that comprise the FCRPS



for the purpose of meeting any BPA obligation, including but not limited to Federal Operating Decisions, except actions taken by Power Services solely to sell surplus power to loads BPA is not contractually obligated to serve under section 5 of the Northwest Power Act. Prudent Operating Decisions are applied for a finite period of time and in a manner that proportionally affects the amount of power from such project or projects that is available to BPA, to Idaho Falls under this Agreement, and to other Slice Customers under their respective Slice/Block Power Sales Agreements.

- 2.124 "Purchase Periods" means the time periods established in section 9.1.1.
- 2.125 "Quorum" shall have the meaning as defined in section 5.12.1.
- 2.126 "Rate Case Year" means the Fiscal Year ending prior to the commencement of a Rate Period. The Rate Case Year immediately follows the Forecast Year and is the year in which the 7(i) Process for the next Rate Period is conducted.
- 2.127 "**Rate Period**" means the period of time during which a specific set of rates established by BPA pursuant to the TRM is intended to remain in effect.
- 2.128 "Rate Period High Water Mark" or "RHWM" shall have the meaning as defined in the TRM, the definition of which is recited in section 6.6.1.
- 2.129 "Region" means the Pacific Northwest as defined in section 3(14) of the Northwest Power Act.
- 2.130 "Renewable Energy Certificates" or "RECs" shall have the meaning as defined in section 1 of Exhibit H.
- 2.131 "Requirements Slice Output" or "RSO" means, for each month, the portion of Idaho Falls' Slice Output Energy that is equal to the lesser of: (1) Idaho Falls' Critical Slice Amount for such month; (2) Idaho Falls' Annual Net Requirement for such month, less monthly amounts purchased under the Block Product, as specified in Exhibit C; or (3) Idaho Falls' actual Net Requirement for such month, less monthly amounts purchased under the Block Product, as specified in Exhibit C.
- 2.132 "Resource Support Services" or "RSS" means the Diurnal Flattening Service and Forced Outage Reserve Service BPA provides to support resources that are renewable resources and are Specified Resources used to serve Total Retail Load after September 30, 2006, and may in the future include other related services that are priced in the applicable 7(i) Process consistent with the TRM.
- 2.133 "**RHWM Augmentation**" means the amount of augmentation to the Tier 1 System Firm Critical Output BPA calculates in each RHWM Process that is needed to meet the total of all RHWMs. This calculation assumes every customer is able to purchase at Tier 1 Rates up to its full RHWM and is

determined by adding Augmentation for Initial CHWM and Augmentation for Additional CHWM.

- 2.134 **“RHWM Process”** means a public process BPA conducts, during the Forecast Year prior to each 7(i) Process (beginning with the WP-14 7(i) Process), in which BPA will calculate, as described in section 4.2 of the TRM, the following values for the upcoming Rate Period:
- (1) RHWM Tier 1 System Capability, including RHWM Augmentation;
  - (2) each customer’s RHWM;
  - (3) each customer’s Forecast Net Requirement; and
  - (4) each customer’s Above-RHWM Load.
- 2.135 **“RHWM Tier 1 System Capability”** means the Tier 1 System Firm Critical Output plus RHWM Augmentation.
- 2.136 **“RP Augmentation”** means the 7(i) Process forecast of the amount of power BPA needs on an annual basis to purchase for each Rate Period to meet all customers’ Forecast Tier 1 Load.
- 2.137 **“SCA”** or **“Slice Computer Application”** means BPA’s proprietary computer hardware, software and related processes, developed, updated, and maintained by BPA and consisting of: (1) the Simulator; (2) the BOS Module; (3) the Default User Interface; and (4) other related processes, including but not limited to communications, scheduling, electronic tagging and accounting for Slice Output Energy, all as described in Exhibit M.
- 2.138 **“SCA Functionality Test”** shall have the meaning as defined in section 5.10.1.
- 2.139 **“SCA Implementation Date”** shall have the meaning as defined in section 5.10.1.
- 2.140 **“SCA Pass Date”** shall have the meaning as defined in section 5.10.1.
- 2.141 **“Scheduling Hour XX”** means the 60-minute period ending at XX:00. For example, Scheduling Hour 04 means the 60-minute period ending at 4:00 a.m.
- 2.142 **“Scheduling Points of Receipt”** shall have the meaning as defined in section 14.1.
- 2.143 **“Simulated Operating Scenario”** means the simulated operation of the Simulator Projects, including the discharge amounts, generation amounts, and forebay elevations, as determined by the Simulator.

- 2.144 "Simulated Output Energy Schedule(s)" means the amount of energy that is calculated by the Simulator as Idaho Falls' simulated generation amount associated with each Simulator Project.
- 2.145 "Simulator" or "Slice Water Routing Simulator" means the Slice Computer Application (SCA) module used to determine Idaho Falls' Slice Output and Delivery Limits available from the Simulator Projects.
- 2.146 "Simulator Initialization Time" shall have the meaning as defined in section 2 of Exhibit M.
- 2.147 "Simulator Modeling Period" shall have the meaning as defined in section 2 of Exhibit M.
- 2.148 "Simulator Parameters" means the operating parameters applicable to the Simulator Projects and which BPA develops as inputs to the Simulator to reflect Operating Constraints, pursuant to section 3.2 of Exhibit M.
- 2.149 "Simulator Pass Date" shall have the meaning as defined in section 5.10.1.
- 2.150 "Simulator Performance Test" shall have the meaning as defined in section 5.10.1.
- 2.151 "Simulator Project(s)" means any of the hydroelectric projects represented in the Simulator, including those projects that comprise the Coulee-Chief Complex and the Lower Columbia Complex.
- 2.152 "Slice/Block Power Sales Agreement" means this Agreement and all other agreements with Slice Customers that provide for the sale of the Slice/Block Product.
- 2.153 "Slice/Block Product" means Idaho Falls' purchase obligation under the Slice Product and the Block Product to meet its regional consumer load obligation as described in section 3.1.
- 2.154 "Slice Customers" means all BPA customers that have executed a Slice/Block Power Sales Agreement.
- 2.155 "Slice Implementation Group" or "SIG" means the group that includes representatives from BPA, Idaho Falls, and all other Slice Customers established pursuant to section 5.12.
- 2.156 "Slice Output" means the quantities of energy, peaking energy, storage, and ramping capabilities available from the Tier 1 System Resources, as adjusted for Tier 1 System Obligations and established pursuant to the SCA or an alternate procedure under section 5.10 or Exhibit O, that Idaho Falls is entitled to purchase under the Slice Product, as determined by applying Idaho Falls' Slice Percentage to such quantities.

- 2.157 "Slice Output Energy" means the energy made available to Idaho Falls under the Slice Product.
- 2.158 "Slice Percentage" means the percentage set forth in section 2 of Exhibit K applicable during each Fiscal Year that is used to determine the Slice Output that is made available to Idaho Falls.
- 2.159 "Slice Percentage Adjustment Ratio" or "SPAR" shall have the meaning as defined in section 1.1 of Exhibit K.
- 2.160 "Slice Percentage Determination Requirements Load" shall have the meaning as defined in section 1 of Exhibit Q
- 2.161 "Slice Product" means BPA's power product under which Slice Output as defined herein is sold to Idaho Falls pursuant to the terms and conditions set forth in section 5 of this Agreement.
- 2.162 "Slice Storage Account" or "SSA" shall have the meaning as defined in section 2 of Exhibit N.
- 2.163 "**Slice True-Up Adjustment Charge**" means the amount charged to each Slice Product customer determined in the Slice True-Up Adjustment in accordance with section 2.7 of the TRM.
- 2.164 "Soft Operating Constraint" means an Operating Constraint, other than a Hard or Absolute Operating Constraint, that is to be achieved on a day-ahead planning basis, but may be exceeded in real-time after coordinating with project operators, owners, or other federal agencies responsible for establishing such Operating Constraints.
- 2.165 "Specified Resource" means a Generating Resource or Contract Resource that has a nameplate capability or maximum hourly purchase amount greater than 200 kilowatts, that Idaho Falls is required by statute or has agreed to use to serve its Total Retail Load. Each such resource is identified as a specific Generating Resource or as a specific Contract Resource with identified parties and is listed in sections 2 and 4 of Exhibit A.
- 2.166 "Spill" means water that passes a hydroelectric project without producing energy, including Bypass Spill, Elective Spill, Fish Spill, and Forced Spill.
- 2.167 "Statement of Intent" shall have the meaning as defined in section 2.3 of Exhibit C.
- 2.168 "Storage" means the ability of the Tier 1 System Resources to alter energy production among hours, days, and months by impounding water or releasing impounded water.
- 2.169 "Storage Content" means the amount of water stored in a project's reservoir, expressed in thousands of second-foot-days (ksfd). The Storage Content is typically calculated based on a conversion of such reservoir's measured

forebay elevation, expressed in feet, to ksfd through the use of an established elevation-to-content conversion table.

- 2.170 "Storage Energy" means the amount of energy that would be produced if a project released a specified amount of Storage Content, and is determined by multiplying such Storage Content by a specified H/K, such as the project's at-site H/K or the combined H/K of the project and specified downstream projects.
- 2.171 "Storage Offset Account" or "SOA" means the account BPA maintains that records the cumulative amount by which Idaho Falls' simulated Storage Content associated with each Simulator Project deviates from the actual Storage Content for each such Simulator Project.
- 2.172 "Super Majority" shall have the meaning as defined in section 5.12.1.
- 2.173 "Surplus Firm Power" means firm power that is in excess of BPA's obligations, including those incurred under sections 5(b), 5(c), and 5(d) of the Northwest Power Act, as available.
- 2.174 "Surplus Slice Output" means, for any month, the amount of Slice Output Energy (and associated capacity) that is available to Idaho Falls under section 5 of this Agreement that exceeds Idaho Falls' Requirements Slice Output for any such month.
- 2.175 "Third Party Transmission Provider" means a transmission provider other than BPA that delivers power to Idaho Falls.
- 2.176 "Tier 1 Block Amount" means the amount of Firm Requirements Power made available to Idaho Falls under the Block Product that is sold at Tier 1 Rates.
- 2.177 "Tier 1 Rate" means the Tier 1 Rate as defined in the TRM.
- 2.178 "Tier 1 RECs" shall have the meaning as defined in section 1 of Exhibit H.
- 2.179 "**Tier 1 System**" means the collection of resources and contract purchases that comprise the Tier 1 System Resources and the collection of contract loads and obligations that comprise the Designated BPA System Obligations.
- 2.180 "**Tier 1 System Capability**" means the Tier 1 System Firm Critical Output plus RP Augmentation.
- 2.181 "**Tier 1 System Firm Critical Output**" means the Firm Critical Output of Tier 1 System Resources less Tier 1 System Obligations.
- 2.182 "**Tier 1 System Obligations**" the amount of energy and capacity that BPA forecasts for the Designated BPA System Obligations over a specific time period.

- 2.183 “**Tier 1 System Resources**” means the Federal System Hydro Generation Resources listed in Table 3.1 of the TRM; the Designated Non-Federally Owned Resources listed in Table 3.2 of the TRM; and the Designated BPA Contract Purchases listed in Table 3.3 of the TRM.
- 2.184 “**Tier 2 Block Amount**” means the amount of Firm Requirements Power made available to Idaho Falls under the Block Product that is sold at Tier 2 Rates.
- 2.185 “**Tier 2 Cost Pools**” means all of the Cost Pools to which Tier 2 Costs will be allocated by BPA.
- 2.186 “**Tier 2 Load Growth Rate**” means a Tier 2 Rate at which Load Following customers may elect to purchase Firm Requirements Power in accordance with section 2.2 of Exhibit C.
- 2.187 “**Tier 2 Rate**” means the Tier 2 Rate as defined in the TRM.
- 2.188 “**Tier 2 RECs**” shall have the meaning as defined in section 1 of Exhibit H.
- 2.189 “**Tier 2 Short-Term Rate**” means a Tier 2 Rate at which customers may elect to purchase Firm Requirements Power in accordance with section 2.4 of Exhibit C.
- 2.190 “**Tier 2 Vintage Rate**” means a Tier 2 Rate at which customers may elect to purchase Firm Requirements Power in accordance with section 2.3 of Exhibit C.
- 2.191 “**Tiered Rate Methodology**” or “**TRM**” means the long-term methodology established by BPA in a Northwest Power Act section 7(i) hearing as the Tiered Rate Methodology to implement the Policy (as defined in the TRM) construct of tiering BPA’s Priority Firm Power rates for serving load under CHWM Contracts.
- 2.192 “**Total Retail Load**” means all retail electric power consumption, including electric system losses, within Idaho Falls’ electrical system excluding:
- (1) those loads BPA and Idaho Falls have agreed are nonfirm or interruptible loads
  - (2) transfer loads of other utilities served by Idaho Falls
  - (3) any loads not on Idaho Falls’ electrical system or not within Idaho Falls’ service territory, unless specifically agreed to by BPA
- 2.193 “**Transfer Service**” means the transmission, distribution and other services provided by a Third Party Transmission Provider to deliver electric energy and capacity over its transmission system.

- 2.194 "Transmission Services" means the organization, or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System.
- 2.195 "Uncontrollable Force" shall have the meaning as defined in section 21.
- 2.196 "Unsold Slice Amount" shall have the meaning as defined in section 1 of Exhibit Q.
- 2.197 "Unsold Slice Percentage" shall have the meaning as defined in section 1 of Exhibit Q.
- 2.198 "Unspecified Resource Amount" means an amount of firm energy, listed in sections 3 and 4 of Exhibit A, that Idaho Falls has agreed to supply and use to serve its Total Retail Load. Such amount is not attributed to a Specified Resource.

### **3. SLICE/BLOCK POWER PURCHASE OBLIGATION**

#### **3.1 Slice/Block Product Purchase Obligation**

Commencing on October 1, 2011, and continuing for the duration of this Agreement, BPA shall sell to Idaho Falls, and Idaho Falls shall purchase from BPA, the Slice/Block Product, which includes: (1) a planned amount of Firm Requirements Power under the Block Product as set forth in sections 1 and 2 of Exhibit C; and (2) Slice Output under the Slice Product pursuant to section 5 and Exhibit K.

#### **3.2 Take or Pay**

Idaho Falls shall pay rates established by BPA in a 7(i) Process, for: (1) the amounts of Firm Requirements Power that BPA makes available under the Block Product that Idaho Falls is obligated to purchase pursuant to section 3.1(1), and (2) the Slice Output, including the amounts of Slice Output Energy that BPA makes available under the Slice Product that Idaho Falls is obligated to purchase pursuant to section 3.1(2). Idaho Falls shall pay such rates regardless of whether or not Idaho Falls takes delivery of such amounts of Firm Requirements Power and Slice Output Energy.

#### **3.3 Application of Dedicated Resources**

Idaho Falls agrees to serve a portion of its Total Retail Load with the Dedicated Resources listed in Exhibit A as follows:

- (1) Specified Resources that are Generating Resources shall be listed in section 2.1 of Exhibit A,
- (2) Specified Resources that are Contract Resources shall be listed in section 2.2 of Exhibit A, and
- (3) Unspecified Resource Amounts shall be listed in section 3.1 of Exhibit A.

Idaho Falls shall use its Dedicated Resources to serve its Total Retail Load, and specify amounts of its Dedicated Resources in the tables shown in Exhibit A, as stated below for each specific resource and type.

### **3.3.1 Specified Resources**

#### **3.3.1.1 Application of Specified Resources**

Idaho Falls shall use the output of all Specified Resources, listed in section 2 of Exhibit A, to serve Idaho Falls' Total Retail Load. BPA shall determine Idaho Falls' Net Requirement using the amounts listed in the then current Exhibit A for each Fiscal Year. The amounts listed are not intended to interfere with Idaho Falls' operation of its Specified Resources.

#### **3.3.1.2 Determining Specified Resource Amounts**

Idaho Falls shall state, for each Specified Resource listed in section 2 of Exhibit A, firm energy amounts for each Diurnal period and peak amounts for each month beginning with the later of the date the resource was dedicated to load or October 1, 2011, through the earlier of the date the resource will be permanently removed or September 30, 2028. BPA in consultation with Idaho Falls shall determine the firm energy amounts for each Diurnal period and peak amounts for each month for each Specified Resource consistent with the 5(b)/9(c) Policy. BPA shall update the peak amounts listed in section 2 of Exhibit A pursuant to section 3.4.

### **3.3.2 Unspecified Resource Amounts**

#### **3.3.2.1 Application of Unspecified Resource Amounts**

To serve Above-RHWM Load that Idaho Falls commits to meet with Dedicated Resources in Exhibit C, Idaho Falls shall provide and use Unspecified Resource Amounts to meet any amounts not met with its Specified Resources listed in section 2 of Exhibit A.

#### **3.3.2.2 Determining Unspecified Resource Amounts**

By September 15, 2011, and by each September 15 thereafter, the Parties shall calculate, and BPA shall fill in the tables in section 3.1 of Exhibit A with, Idaho Falls' Unspecified Resource Amounts for the upcoming Fiscal Year. Upon termination or expiration of this Agreement any Unspecified Resource Amounts listed in Exhibit A shall expire, and Idaho Falls shall have no further obligation to apply Unspecified Resource Amounts.

## **3.4 Peak Amount Methodologies**



**3.4.1 Standard for Calculating Resource Peak Amounts**

The peak amounts for Idaho Falls' Specified Resources will be stated at a future time in Exhibit A. Such resource peak amounts will be developed contemporaneously and consistent with the determination of peak energy amounts pursuant to Section 3.4.2. If BPA determines it is necessary to update such resource peak amounts in order to incorporate different resource peaking capability determination standards, then BPA may, consistent with BPA's 5(b)/9(c) Policy and in accordance with section 3.4.3, develop and apply such revised resource peaking capability determination standards.

**3.4.2 Method for Determining Peak Energy Amounts**

The amounts of peaking energy Idaho Falls has purchased to meet its firm power load will be stated at a future time in Exhibit A. Until such time that peak energy amounts are stated in Exhibit A, the amounts of peaking energy available to Idaho Falls are as provided under the Block Product and as calculated by the Slice Computer Application. BPA may adopt a methodology for calculating the amounts of peaking energy available to Idaho Falls under this Agreement. Before peak energy amounts may be applied in Exhibit A, BPA shall: (1) complete a process to adopt a methodology, pursuant to section 3.4.3, which shall include a calculation of Idaho Falls' total peak load, Idaho Falls' peaking energy capability from its resources, and BPA's peaking energy capability for the Federal system, and (2) upon completion of such process, in consultation with Idaho Falls calculate the peak energy amounts in accordance with the methodology adopted and enter such amounts into Exhibit A. The application of any such methodology shall not by itself reduce BPA's obligation to provide peaking energy otherwise available under this Agreement to less than Idaho Falls' net requirement peak stated in Exhibit A. BPA and Idaho Falls shall take such actions and make such modifications, including to the Slice Computer Application, needed to timely implement any such methodology.

**3.4.3 Process for Modifying Peak Amounts**

Any methodology for determining the peak energy capability of Specified Resources as described in section 3.4.1, or Idaho Falls' peak energy amounts available from BPA under this Agreement, as described in section 3.4.2, will be developed by BPA in a public process, including consultation with Idaho Falls and other interested parties, a formal public comment process, and a record of decision. Except as otherwise agreed by Idaho Falls and BPA, any such methodology shall not require modification of the peak amount of any Specified Resource, or the peak energy amounts listed in Exhibit A, until the first Fiscal Year of the Rate Period following BPA's written notice to implement the revised peaking capability standard, which shall be given to Idaho Falls at least 180 days before the start of such Fiscal Year.

### 3.5 Changes to Dedicated Resources

#### 3.5.1 Specified Resource Additions to Meet Above-RHWM Load

By written notice to BPA, Idaho Falls may elect to add Specified Resources to section 2 of Exhibit A to meet any obligations Idaho Falls may have in Exhibit C to serve its Above-RHWM Load with Dedicated Resources. Idaho Falls shall determine amounts for such Specified Resources in accordance with section 3.3.1.2 by June 30, 2011, and by June 30 of each Fiscal Year thereafter. BPA shall revise Exhibit A consistent with Idaho Falls' elections.

#### 3.5.2 Resource Additions for a BPA Insufficiency Notice

If BPA provides Idaho Falls a notice of insufficiency and reduces its purchase obligation, in accordance with section 23.2, then Idaho Falls may add Dedicated Resources to replace amounts of Firm Requirements Power BPA will not be providing due to insufficiency. The Parties shall revise Exhibit A to reflect such additions.

#### 3.5.3 Decrements for 9(c) Export

If BPA determines, in accordance with section 23.6, that an export of a Specified Resource listed in section 2 of Exhibit A requires a reduction in the amount of Firm Requirements Power BPA sells Idaho Falls then BPA shall notify Idaho Falls of the amount and duration of the reduction in Idaho Falls' Firm Requirements Power purchases from BPA. Within 20 days of such notification Idaho Falls may add a Specified Resource to section 2 of Exhibit A in the amount of such decrement. If Idaho Falls does not add a Specified Resource to meet such decrement, then within 30 days of such notification BPA shall add Unspecified Resource Amounts to section 3.2 of Exhibit A in the amount and for the duration of such decrement.

#### 3.5.4 Temporary Resource Removal

By September 15, 2011, and by September 15 of each Fiscal Year thereafter, BPA shall revise Idaho Falls' Dedicated Resource amounts listed in the tables of Exhibit A consistent with Idaho Falls' resource removal elections made in accordance with section 10.

#### 3.5.5 Permanent Discontinuance of Resources

Idaho Falls may permanently remove a Specified Resource listed in section 2 of Exhibit A, consistent with the 5(b)/9(c) Policy on statutory discontinuance for permanent removal. If BPA makes a determination that Idaho Falls' Specified Resource has met BPA's standards for a permanent removal, then BPA shall revise Exhibit A accordingly. If Idaho Falls does not replace such resource with another Dedicated Resource, then Idaho Falls' additional Firm Requirements Power purchases under this Agreement, as a result of such a resource removal, may be subject to additional rates or charges as established in the Wholesale Power Rate Schedules and GRSPs.

### 3.5.6 **Resource Additions for Annexed Loads**

If Idaho Falls acquires an Annexed Load after the Effective Date, Idaho Falls shall add Dedicated Resources to Exhibit A to serve amounts of such load for which Idaho Falls did not receive a CHWM addition pursuant to section 1.2.2 of Exhibit B. Idaho Falls shall serve such load with Dedicated Resources for the remainder of the Purchase Period during which Idaho Falls acquires such load. Idaho Falls may only purchase Firm Requirements Power at Tier 2 Rates to serve such Annexed Load amounts, if Idaho Falls has provided BPA with its election by a Notice Deadline for such power purchase at Tier 2 during the corresponding Purchase Period.

### 3.5.7 **Resource Additions/Removals for NLSLs**

3.5.7.1 To serve an NLSL listed in Exhibit D that is added after the Effective Date, Idaho Falls may add Dedicated Resources to section 4 of Exhibit A. Idaho Falls may discontinue serving its NLSL with the Dedicated Resources listed in section 4 of Exhibit A if BPA determines that Idaho Falls' NLSL is no longer an NLSL in Idaho Falls' service territory.

3.5.7.2 If Idaho Falls elects to serve an NLSL with Dedicated Resources, then Idaho Falls shall specify in section 4 of Exhibit A the maximum monthly and Diurnal Dedicated Resource amounts that Idaho Falls plans to use to serve the NLSL. Idaho Falls shall establish such firm energy amounts for each month beginning with the date the resource was dedicated to load through the earlier of the date the resource will be removed or September 30, 2028. Idaho Falls shall serve the actual load of the NLSL up to such maximum amounts with such Dedicated Resource amounts. To the extent that the NLSL load is less than the maximum amount in any monthly or Diurnal period, Idaho Falls shall have no right or obligation to use such amounts to serve the non-NLSL portion of its Total Retail Load. Specific arrangements to match such resources to the NLSL on an hourly basis shall be established in Exhibit D.

### 3.5.8 **PURPA Resources**

If Idaho Falls is required by the Public Utility Regulatory Policies Act (PURPA) to acquire output from a Generating Resource, then such output shall be added as a Specified Resource pursuant to Exhibit A.

## 3.6 **Consumer-Owned Resources**

Except for any Consumer-Owned Resources serving an NLSL, which Idaho Falls has applied to load consistent with section 23.3.7, Idaho Falls shall apply the output of its Consumer-Owned Resources as follows:

**3.6.1 Existing Consumer-Owned Resources**

Idaho Falls has designated, in sections 7.1, 7.2, or 7.3 of Exhibit A, the extent that each existing Consumer-Owned Resource as of the Effective Date will or will not serve Onsite Consumer Load. Such designation shall apply for the term of this Agreement.

**3.6.2 New Consumer-Owned Resources**

Idaho Falls shall designate the extent that each Consumer-Owned Resource commencing commercial operation after the Effective Date will or will not serve Onsite Consumer Load. Idaho Falls shall make such designation to BPA in writing within 120 days of the first production of energy by such resource. Such designation shall apply for the term of this Agreement.

Consistent with Idaho Falls' designations, BPA shall list Consumer-Owned Resources serving Onsite Consumer Load in section 7.1 of Exhibit A, Consumer-Owned Resources not serving Onsite Consumer Load in section 7.2 of Exhibit A, and Consumer-Owned Resources serving both Onsite Consumer Load and load other than Onsite Consumer Load in section 7.3 of Exhibit A.

**3.6.3 Application of Consumer-Owned Resources Serving Onsite Consumer Load**

Power generated from Consumer-Owned Resources listed in section 7.1 of Exhibit A shall serve Idaho Falls' Onsite Consumer Load. Idaho Falls shall receive no compensation from BPA for excess power generated on any hour from such resources.

**3.6.4 Application of Consumer-Owned Resources Serving Load Other than Onsite Consumer Load**

Idaho Falls shall ensure that power generated from Consumer-Owned Resources listed in section 7.2 of Exhibit A is scheduled for delivery and either: (1) sold to another utility in the Region to serve its Total Retail Load, (2) purchased by Idaho Falls to serve its Total Retail Load (consistent with section 3.3), (3) marketed as an export, or (4) any combination of (1), (2), and (3) above.

**3.6.5 Application of Consumer-Owned Resources Serving Both Onsite Consumer Load and Load Other than Onsite Consumer Load**

If Idaho Falls designates a Consumer-Owned Resource to serve both Onsite Consumer Load and load other than Onsite Consumer Load then Idaho Falls shall select either Option A or Option B below.

**3.6.5.1 Option A: Maximum Amounts Serving Onsite Consumer Load**

If Idaho Falls selects this Option A, then Idaho Falls shall specify, in section 7.3 of Exhibit A, the maximum hourly amounts of an identified Onsite Consumer Load that are to be served with power generated by an identified Consumer-

Owned Resource. Such amounts shall be specified as Diurnal megawatt amounts, by month, and shall apply in all years for the term of this Agreement. Such amounts are not subject to change in accordance with section 3.6.6.

On any hour that the Onsite Consumer Load is less than the specified maximum hourly amounts, all such Onsite Consumer Load shall be served by Idaho Falls with the identified Consumer-Owned Resource or with power other than Firm Requirements Power. Any hourly amounts of the identified Onsite Consumer Load in excess of the specified maximum hourly amounts shall be served with Firm Requirements Power. Any power generated from the identified Consumer-Owned Resource in excess of the specified maximum hourly amounts shall be applied to load other than Onsite Consumer Load in accordance with section 3.6.4.

**3.6.5.2 Option B: Maximum BPA-Served Onsite Consumer Load**

If Idaho Falls selects this Option B, then Idaho Falls shall specify, in section 7.3 of Exhibit A, the maximum hourly amounts of an identified Onsite Consumer Load that are to be served with Firm Requirements Power. Such amounts shall be specified as Diurnal megawatt amounts, by month, and shall apply in all years for the term of this Agreement. Such amounts are not subject to change in accordance with section 3.6.6.

On any hour that Onsite Consumer Load is less than the specified maximum hourly amounts, all such Onsite Consumer Load shall be served with Firm Requirements Power. Idaho Falls shall serve any hourly amounts of the identified Onsite Consumer Load in excess of the specified maximum hourly amounts with power generated by the identified Consumer-Owned Resource or with power other than Firm Requirements Power. Any power generated from the identified Consumer-Owned Resource in excess of the amounts required to be used to serve the Onsite Consumer Load shall be applied to load other than Onsite Consumer Load in accordance with section 3.6.4.

**3.6.6 Changes to Consumer-Owned Resources**

Prior to each Fiscal Year Idaho Falls shall notify BPA in writing of any changes in ownership, expected resource output, or other characteristic of Consumer-Owned Resources identified in section 7 of Exhibit A. If a Consumer-Owned Resource has permanently ceased operation and Idaho Falls notifies BPA of such cessation, then BPA shall revise section 7 of Exhibit A to reflect such change as long as BPA agrees the determination is reasonable.

#### 4. **BLOCK PRODUCT**

##### 4.1 **Block Product General Description**

The Block Product is sold to provide a planned amount of Firm Requirements Power to serve a portion of Idaho Falls' Annual Net Requirement.

##### 4.2 **Block Amount Shapes**

###### 4.2.1 **Tier 1 Block Amount Shapes**

Upon the execution of this Agreement, Idaho Falls shall select one of the following shapes for Tier 1 Block Amounts: (1) a Flat Annual Shape, or (2) a Flat Within-Month Shape. The shape selected by Idaho Falls shall be specified in section 1.2 of Exhibit C and shall remain fixed during the term of this Agreement.

###### 4.2.2 **Tier 2 Block Amount Shape**

Tier 2 Block Amounts, sold to and purchased by Idaho Falls for its load, shall only be made available by BPA to Idaho Falls in a Flat Annual Shape.

###### 4.2.3 **Shaping Restrictions**

No shaping options for Tier 1 Block Amounts and Tier 2 Block Amounts are permitted other than those described in sections 4.2.1 and 4.2.2.

##### 4.3 **Annual and Monthly Tier 1 Block Amounts**

The annual and monthly Tier 1 Block Amounts shall be determined as follows:

###### 4.3.1 **Determination of Annual Tier 1 Block Amount**

By September 15, 2011, and by each September 15 thereafter, BPA shall determine Idaho Falls' annual Tier 1 Block Amount for the next Fiscal Year by subtracting the Critical Slice Amount for such Fiscal Year from the lesser of Idaho Falls' Annual Net Requirement or its RHWM.

###### 4.3.2 **Determination of Monthly Tier 1 Block Amounts**

Idaho Falls' Tier 1 Block Amounts for each month of the Fiscal Year shall be determined by multiplying the annual Tier 1 Block Amount, as determined pursuant to section 4.3.1, by the Monthly Shaping Factors specified in section 1.2 of Exhibit C.

###### 4.3.3 **Annual and Monthly Tier 1 Block Amounts Specified in Exhibit C**

Idaho Falls' annual and monthly Tier 1 Block Amounts, as determined pursuant to this section 4.3 for each Fiscal Year, shall be specified in section 1 of Exhibit C.

**4.4 Annual Tier 2 Block Amounts**

The annual Tier 2 Block Amounts, if any, sold to and purchased by Idaho Falls, shall be specified in section 2 of Exhibit C.

**5. SLICE PRODUCT**

**5.1 Slice Product General Description**

The Slice Product is a system sale of power that includes requirements power, surplus power, and hourly scheduling rights, all of which are indexed to the variable output capability of the FCRPS resources that comprise the Tier 1 System, and to the extent such capability is available to Power Services after Tier 1 System Obligations and Operating Constraints are met. These capabilities are accessed by Idaho Falls through the Slice Computer Application, which shall reasonably represent and calculate the capabilities available to Power Services from such resources after Tier 1 System Obligations and Operating Constraints are met, including energy production, peaking, storage and ramping capability. The Slice Computer Application applies Idaho Falls' Slice Percentage to such capabilities.

The Slice Product sold by BPA and purchased by Idaho Falls is a power sale, and is not under any circumstances to be construed as a sale of the Tier 1 System Resources, Tier 1 System Resource capability, or a transfer of control of such Tier 1 System Resources.

BPA does not guarantee that the amount of Slice Output Energy made available under the Slice Product, combined with Firm Requirements Power made available under the Block Product, will be sufficient to meet Idaho Falls' regional consumer load, on an hourly, daily, weekly, monthly, or annual basis. Idaho Falls agrees that it has the obligation to supply nonfederal power to meet its Total Retail Load not met by its purchase of Slice Output and power from the Block Product.

Changes in the output of the Tier 1 System shall affect the amount of Slice Output made available to Idaho Falls under this Agreement. Accordingly, Idaho Falls understands and agrees it is exposed to Tier 1 System performance risk and water supply risk.

The Slice Product does not provide Idaho Falls any rights to utilize Tier 1 System Resources for within-hour energy or capacity services, including but not limited to dynamic scheduling, self-supply of operating reserves, and self-supply of energy imbalance. Slice Output Energy is scheduled firm for the hour of delivery.

Notwithstanding any provision of this Agreement to the contrary, or Idaho Falls' rights under this Agreement, BPA and Federal operating agencies at all times shall retain operational control of all resources comprising the FCRPS, including without limitation all such resources that comprise the Tier 1 System.

**5.2 Determination of Amounts of Slice Output Made Available to Idaho Falls**

Slice Output made available to Idaho Falls shall be adjusted by Operating Constraints in effect on the Tier 1 System. Such Operating Constraints shall be applied proportionately to the Tier 1 System output available to Power Services, Idaho Falls, and all other Slice Customers.

The amount of Slice Output Energy made available to Idaho Falls is based on a simulation of stream flows routed through the Simulator Projects, plus the BOS Base, using the Slice Computer Application, and as adjusted for Operating Constraints. Accordingly, Idaho Falls understands and agrees that the amount of Slice Output Energy made available to Idaho Falls may not precisely equal the result of its Slice Percentage multiplied by the Actual Tier 1 System Generation.

**5.3 Preliminary Slice Percentage, Initial Slice Percentage, Slice Percentage, and Adjustments to Slice Percentage**

**5.3.1 Preliminary Slice Percentage**

Idaho Falls' Preliminary Slice Percentage shall be the percentage as specified in section 1 of Exhibit J as of the Effective Date.

**5.3.2 Initial Slice Percentage**

Idaho Falls' Initial Slice Percentage shall be determined pursuant to section 4 of Exhibit Q. No later than May 1, 2011, BPA shall revise section 2 of Exhibit J to state Idaho Falls' Initial Slice Percentage.

**5.3.3 Slice Percentage**

No later than 15 days prior to the beginning of each Fiscal Year, beginning with Fiscal Year 2012, BPA shall revise the table in section 2 of Exhibit K to include Idaho Falls' Slice Percentage for each such Fiscal Year, as may be adjusted pursuant to section 1 of Exhibit K.

**5.3.4 Slice Percentage Not to Exceed Initial Slice Percentage**

Idaho Falls understands and agrees that in no event shall its Slice Percentage exceed its Initial Slice Percentage during the term of this Agreement.

**5.3.5 Adjustments to Slice Percentage**

As set forth in section 1.3 of Exhibit K for each Fiscal Year, Idaho Falls' Slice Percentage shall be adjusted: (1) when the amount of Additional CHWM for such Fiscal Year is greater than zero, or (2) such that Idaho Falls' purchase obligation under this Agreement does not exceed Idaho Falls' Annual Net Requirement for such Fiscal Year.

**5.4 Critical Slice Amount**

BPA shall determine Idaho Falls' Critical Slice Amount for Fiscal Year 2012 no later than 15 days prior to the first day of Fiscal Year 2012, and for each



subsequent Fiscal Year no later than 15 days prior to the first day of each such Fiscal Year, using the procedure described in section 2 of Exhibit I.

## 5.5 Disposition of Surplus Slice Output

5.5.1 All sales, exchanges, or other dispositions of federal power are subject to and governed by federal law including, but not limited to, the Bonneville Project Act, P.L. 75-329 as amended, the Pacific Northwest Consumer Power Preference Act, P.L. 88-552, the Federal Columbia River Transmission System Act, P.L. 93-454, and the Northwest Power Act, P.L. No. 96-501, as amended.

5.5.2 All sales of Surplus Slice Output by Idaho Falls for use outside the Region, or to parties not serving firm retail load in the Region, are subject to the provisions of the Pacific Northwest Consumer Power Preference Act and section 9(c) of the Northwest Power Act, and BPA and Idaho Falls acknowledge their respective responsibilities thereunder.

5.5.3 The following uses of Surplus Slice Output shall not constitute a sale of Surplus Slice Output outside the Region:

5.5.3.1 Leaving the Surplus Slice Output in Storage or placing it in Idaho Falls' Storage;

5.5.3.2 Exchanging Surplus Slice Output with another utility customer in the Region, or a statutorily enumerated type of exchange with a utility outside the Region;

5.5.3.3 Using Surplus Slice Output to displace Idaho Falls' nonfederal resources identified in Exhibit A, or Idaho Falls' market purchases that would have been made for serving its Total Retail Load; and

5.5.3.4 A sale of Surplus Slice Output to a BPA utility customer for service to that utility's Total Retail Load in the Region, consistent with sections 3(14) and 9(c) of the Northwest Power Act.

Idaho Falls may demonstrate such uses of Surplus Slice Output by means of a storage account, executed contracts for binding sales or exchanges, or another form of offer and acceptance.

5.5.4 Pursuant to the Pacific Northwest Consumer Power Preference Act and section 9(c) of the Northwest Power Act, BPA shall have the right to curtail all or a portion of Idaho Falls': (1) Surplus Slice Output capacity upon 60 months written notice to Idaho Falls, and (2) Surplus Slice Output energy upon 60 days written notice to Idaho Falls. Any such notice shall specify the amounts and duration of the curtailment, and whether such capacity or energy is needed to meet BPA's capacity

and energy requirements in the Region. Prior to issuing any such curtailment notice, BPA and Idaho Falls shall consult in order to determine the quantity, if any, of Surplus Slice Output energy and capacity that may be subject to such curtailment. Such curtailments shall be limited to Idaho Falls' proportional share of the amount needed, and for the duration necessary, to cover BPA's projection of its needs within the Region. Such curtailments are subject to sections 5.5.5 and 5.5.6.

5.5.5 If BPA issues a notice of curtailment pursuant to section 5.5.4, then it shall concurrently issue notices of curtailment, recall, or termination to all other extra regional and non-preference purchasers to whom BPA has sold Surplus Firm Power, or surplus capacity, for durations longer than specified in the notice, provided that such sales agreements contain provisions that allow for recall, curtailment or termination.

5.5.6 Following each month that Surplus Slice Output is curtailed pursuant to section 5.5.5 above, Power Services shall include a line item credit on Idaho Falls' monthly customer bill issued equal to the amount of Surplus Slice Output energy curtailed during the preceding month, multiplied by the Monthly Reimbursement Value for the month during which the curtailment was in effect.

**5.6 Disposition of Requirements Slice Output and Requirements Slice Output Test**

**5.6.1 Disposition of Requirements Slice Output**

Requirements Slice Output (RSO) purchased by Idaho Falls under this Agreement and made available by BPA shall be used solely for the purpose of serving Idaho Falls' Total Retail Load. Idaho Falls shall maintain monthly documentation establishing the delivery of RSO to serve its Total Retail Load, such as by schedule or by electronic tag, for each such month. Idaho Falls shall make such documentation available to BPA upon request.

**5.6.2 Requirements Slice Output Test**

**5.6.2.1 Submission of Monthly Actual Total Retail Load Data**

On or before the 10<sup>th</sup> Business Day of each calendar month, Idaho Falls shall submit to BPA its actual Total Retail Load for the preceding calendar month, expressed in MWh.

**5.6.2.2 RSO Test**

BPA shall compare: (1) Idaho Falls' Slice Output Energy delivered to its actual Total Retail Load plus loss return schedules to Transmission Services (Slice-to-Load Delivery) during each month with (2) Idaho Falls' RSO for each such month. Such comparison is the monthly RSO Test.

**5.6.2.3 Notification of Results of RSO Test**

On or before the 20<sup>th</sup> Business Day of each calendar month, BPA shall notify Idaho Falls in writing of the results of the RSO Test conducted pursuant to section 5.6.2.2.

**5.6.2.4 Conditions that Result in Passage of RSO Test**

- (1) If Idaho Falls' Slice-to-Load Delivery in a month is greater than or equal to its RSO for such month, then Idaho Falls shall have satisfied the requirements of the RSO Test for such month; or,
- (2) If Idaho Falls' Slice-to-Load Delivery in a month is less than its RSO for such month, but Idaho Falls' Actual Slice Output Energy (ASOE) for the month is less than 107.5 percent of its RSO, and Idaho Falls' monthly Slice-to-Load Delivery is greater than 92.5 percent of its ASOE for such month, then Idaho Falls shall have satisfied the RSO Test for such month.

**5.6.2.5 Conditions Under Which BPA May Deem Idaho Falls to Have Satisfied the RSO Test**

- (1) If Idaho Falls has not satisfied the requirements of the RSO Test pursuant to section 5.6.2.4, then Idaho Falls may, within 14 calendar days after BPA provides Idaho Falls with written notice of the RSO Test results pursuant to section 5.6.2.3, provide BPA with data that demonstrates Idaho Falls took reasonable and prudent actions to otherwise satisfy the RSO Test for such month. Such data may include analysis indicating Idaho Falls satisfied the RSO Test in each of two distinct periods of ten or more consecutive days within the month. If Power Services determines such data and/or analysis demonstrates such compliance, then BPA shall deem Idaho Falls to have satisfied the RSO Test for such month. BPA shall have the sole discretion to determine whether Idaho Falls shall be deemed to have satisfied the RSO Test pursuant to this section 5.6.2.5(1). BPA shall, no later than 14 calendar days following the day Idaho Falls provides such supporting data and/or analysis, notify Idaho Falls, in writing, of its decision as to whether or not Idaho Falls shall be deemed to have satisfied the RSO Test, and the basis for such decision.
- (2) If recurring conditions exist that result in BPA repeatedly deeming Idaho Falls to have satisfied the RSO Test, BPA and Idaho Falls shall collaboratively

develop documentation, through a separate letter agreement, that establishes for a specified prospective time period the conditions under which BPA shall deem Idaho Falls to have satisfied the RSO Test.

**5.6.2.6 Conditions that Result in Failure of RSO Test and Associated Penalty**

If Idaho Falls fails to satisfy the RSO Test per section 5.6.2.4, and is not deemed by BPA to have satisfied the RSO Test pursuant to section 5.6.2.5 for any month, then a penalty charge shall be assessed as follows for that month:

- (1) The penalty charge shall be equal to Idaho Falls' under-delivered amount for such month multiplied by the UAI Charge for energy for each such month.
- (2) The under-delivered amount for such month is equal to the lesser of the amount Idaho Falls' monthly Slice-to-Load Delivery is less than: (1) Idaho Falls' RSO for the month, or (2) if section 5.6.2.4(2) is applicable, then 95 percent of Idaho Falls' ASOE for the month.

**5.7 Northwest Power Act Section 6(m) Resource Acquisitions**

Idaho Falls retains all rights to participate in any BPA major resource acquisitions pursuant to section 6(m) of the Northwest Power Act.

**5.8 Displacement of Columbia Generating Station (CGS)**

**5.8.1 Definitions**

- 5.8.1.1 "Additional Energy" means the amount of energy Idaho Falls is entitled to receive if it elects not to participate in CGS Displacements during an Election Year, and is equal to Idaho Falls' Slice Percentage multiplied by the difference between the Generation Benchmark and the expected level of CGS generation while displacement is in effect.
- 5.8.1.2 "Columbia Generating Station" or "CGS" means the nuclear powered generating facility located near Richland, Washington, and operated by Energy Northwest, or its successor.
- 5.8.1.3 "CGS Displacement" means a decision by Power Services to shut-down all or a portion of the power production at CGS due to market conditions.
- 5.8.1.4 "Election Year" means the 12-month period beginning each February 1 and ending the following January 31.

- 5.8.1.5 "Generation Benchmark" means the generation level at which Power Services reasonably expects CGS to operate, absent any CGS Displacement, which is typically about 1,130 MWh per hour.
- 5.8.1.6 "Incremental Cost" means the additional costs that Power Services would have incurred if CGS had been operated at full capability, and CGS Displacements had not been instituted, including the costs of nuclear fuel and variable operations and maintenance costs, expressed in dollars per MWh.
- 5.8.1.7 "Operating Plan" means the forecasted CGS monthly generation adopted in BPA's firm planning for a Fiscal Year.

**5.8.2 CGS Displacement Election**

No later than January 31, 2012, and no later than January 31 of each calendar year thereafter during the term of this Agreement, Idaho Falls shall provide Power Services written notice stating whether or not it elects to participate in CGS Displacements for the Election Year that begins on the following day. Such election shall be irrevocable for each such Election Year, and shall apply to all CGS Displacements implemented by Power Services during such Election Year.

**5.8.3 Election to Participate in CGS Displacement**

If Idaho Falls elects to participate in CGS Displacements, then Idaho Falls shall not be entitled to Additional Energy.

**5.8.4 Election Not to Participate in CGS Displacements**

If Idaho Falls elects to not participate in CGS Displacements, then Idaho Falls shall be entitled to amounts of Additional Energy as described in this section 5.8.4.

- 5.8.4.1 Idaho Falls shall take delivery of Additional Energy associated with each CGS Displacement as described in section 5.8.6. Power Services shall make such Additional Energy available to Idaho Falls at the Scheduling Points of Receipt.
- 5.8.4.2 PS shall maintain for Idaho Falls an account that will indicate the accumulated amount of Additional Energy that was made available to Idaho Falls during each CGS Displacement and for each Fiscal Year.
- 5.8.4.3 Following the end of each Fiscal Year, Idaho Falls shall pay an amount equal to Idaho Falls' balance in the accumulated Additional Energy account multiplied by the Incremental Cost associated with each such Fiscal Year, and such account balance shall be set to zero. Such amount shall be included on Idaho Falls' next power bill immediately after

determination of the Incremental Cost pursuant to section 5.8.5.

**5.8.5 Operating Plan and Incremental Cost**

Within 30 days following the date that the Operating Plan for the upcoming Fiscal Year is adopted, Power Services shall provide Idaho Falls such Operating Plan and the actual Incremental Cost associated with the immediately preceding Fiscal Year.

**5.8.6 Implementation of CGS Displacement**

5.8.6.1 BPA shall notify Idaho Falls of any potential CGS Displacement as soon as BPA determines such CGS Displacement is likely to occur.

5.8.6.2 If a CGS Displacement occurs during a period when Idaho Falls has elected not to participate in such CGS Displacement, BPA shall develop and submit to Idaho Falls hourly schedules of Additional Energy as described in section 5.8.1.1.

5.8.6.3 Such Additional Energy amounts shall be computed by the BOS Module as a component of Idaho Falls' BOS schedule, as described in section 4 of Exhibit M.

**5.9 Treatment of RHWL Augmentation**

Idaho Falls shall purchase and receive a share of RHWL Augmentation in an amount equal to Idaho Falls' Slice Percentage multiplied by the RHWL Augmentation for each Fiscal Year, as set forth in Exhibit L.

**5.10 SCA Functionality Test, Simulator Performance Test, and Implementation of the SCA**

This section sets out the SCA Functionality and Simulator Performance Tests. BPA shall promptly notify Idaho Falls of the results of the SCA Functionality and Simulator Performance Tests.

**5.10.1 Definitions**

5.10.1.1 "Default User Interface," or "DUI," means the basic user interface that is developed by BPA and made available to Idaho Falls for access to the SCA.

5.10.1.2 "Interim Slice Implementation Procedures" means the procedures set forth in Exhibit O that will be used on an interim basis to determine Idaho Falls' available Slice Output and Delivery Limits in the event the SCA Implementation Date occurs after October 1, 2011, pursuant to section 5.10.3.

5.10.1.3 "SCA Functionality Test" means the test set forth in section 5.10.2 that is conducted to determine whether the

SCA is complete, functional, and ready for daily implementation and use.

- 5.10.1.4 "SCA Implementation Date" means the latest of:  
(1) October 1, 2011, (2) 90 days after the SCA Pass Date, or  
(3) 90 days after the Simulator Pass Date.
- 5.10.1.5 "SCA Pass Date" means the date on which the SCA passes the SCA Functionality Test.
- 5.10.1.6 "Simulator Pass Date" means the date on which the Simulator passes the Simulator Performance Test.
- 5.10.1.7 "Simulator Performance Test" means the test conducted by BPA and consisting of four separate tests: a Storage Content test, an energy test, a peaking test, and a ramp down test, each as separately described in section 3.5.3 of Exhibit M.

**5.10.2 SCA Functionality Test**

**5.10.2.1 SCA Functionality Test Conducted No Later Than July 1, 2011**

The initial SCA Functionality Test shall be conducted by BPA no later than July 1, 2011.

**5.10.2.2 Determination of SCA Functionality Test Procedures**

BPA, in consultation with Idaho Falls and other members of the SIG, shall, by April 15, 2011, establish a detailed written description of the validation procedures that will comprise the SCA Functionality Test. Such validation procedures shall include a comprehensive series of objective tests that establish if the SCA, including the Simulator, DUI and BOS module, are wholly functional and ready for daily implementation and use.

**5.10.3 SCA Implementation Date**

**5.10.3.1 SCA Implementation Date Established as October 1, 2011**

If the SCA Implementation Date is established as October 1, 2011, then BPA and Idaho Falls shall commence implementation of the SCA beginning on October 1, 2011.

**5.10.3.2 SCA Implementation Date Occurs After October 1, 2011**

If the SCA Implementation Date is established later than October 1, 2011, then, beginning on October 1, 2011, and continuing until the SCA Implementation Date, BPA and Idaho Falls shall implement the Interim Slice Implementation Procedures, pursuant to Exhibit O.

#### **5.10.4 Simulator Performance Test**

##### **5.10.4.1 Simulator Performance Test Date**

No later than August 1, 2010, BPA shall provide Idaho Falls access to the Simulator that will be used by BPA to conduct the Simulator Performance Test. The Simulator Performance Test shall be conducted by BPA no later than October 31, 2010.

##### **5.10.4.2 Simulator Fails Simulator Performance Test**

If, as of October 31, 2010, the Simulator has failed one or more of the four tests that comprise the Simulator Performance Test, then Idaho Falls may elect to change its purchase obligation pursuant to section 11.2.

#### **5.10.5 Idaho Falls Unable to Utilize DUI**

If, as of the SCA Implementation Date, Idaho Falls is not functionally ready to access and utilize the DUI, then beginning October 1, 2011 and continuing until 30 days after Idaho Falls provides BPA with written notice that it is functionally ready to utilize the DUI, BPA shall use the SCA to determine Idaho Falls' hourly Delivery Requests in accordance with the following procedures:

##### **5.10.5.1 Establishment of Preschedules**

- (1) BPA shall set Idaho Falls' Customer Inputs (generation requests) for Grand Coulee and Chief Joseph equal to Power Services planned Grand Coulee and Chief Joseph's respective generation;
- (2) BPA shall set Idaho Falls' Customer Inputs (elevation requests) for the LCOL Complex projects such that those projects pass inflow on an hourly basis; and
- (3) BPA shall set Idaho Falls' hourly BOS amount equal to Idaho Falls' Slice Percentage multiplied by the BOS Base amount (no BOS Flex allowed).
- (4) BPA shall communicate the above values to Idaho Falls via facsimile.

##### **5.10.5.2 Updates to Preschedule Values**

Using the same criteria as set forth in section 5.10.5.1, BPA shall revise Idaho Falls' Customer Inputs, and submit to Idaho Falls its revised Delivery Requests, as needed to reflect BPA's latest estimated generation, inflow and BOS Base values: (1) by 1800 hours on the day prior to delivery, and (2) by 60 minutes prior to the beginning of each hour of delivery.



#### 5.10.5.3 **Submission of Electronic Tags**

Idaho Falls shall submit electronic tags to Power Services on preschedule and real time, pursuant to Exhibit F, which shall indicate energy amounts equal to Idaho Falls' hourly Delivery Requests established under this section 5.10.5.

- (1) If energy amounts indicated on Idaho Falls' electronic tags are greater than its hourly Delivery Requests, then Idaho Falls shall receive the electronic tag amounts and shall be charged at the UAI Charge for the energy that is in excess of the Slice Output Energy amount.
- (2) If energy amounts indicated on Idaho Falls' electronic tags are less than its hourly Delivery Requests, then Idaho Falls shall receive the electronic tag amounts and shall forfeit the remaining Slice Output Energy amount.

#### 5.10.5.4 **Delivery Limit Penalties**

Except as described in section 5.10.5.3, Delivery Limit penalties established in Exhibit N shall not be assessed for the first 90 days that the provisions described in this section 5.10.5 are in effect.

#### 5.11 **Slice Computer Application Development Schedule**

The schedule attached hereto as Exhibit P represents timelines under which specific tasks associated with the development of the SCA shall be completed. Idaho Falls and BPA understand and agree that: (1) the timelines specified in Exhibit P are not binding and are for information purposes only, and (2) the timelines set forth in this section 5 are binding. BPA, Idaho Falls, and other members of the SIG shall discuss the status of the various tasks identified in Exhibit P and their associated timelines.

#### 5.12 **Slice Implementation Group**

##### 5.12.1 **Definitions**

5.12.1.1 "Majority" means at least 51 percent of the Slice Implementation Group (SIG) members (or their alternates) present at a meeting of the SIG at which a Quorum has been established (counting only one representative for each Slice Customer and for BPA, even if both the SIG member and the alternate SIG member are present).

5.12.1.2 "Quorum" means the BPA SIG member and at least 60 percent of all Slice Customer SIG members (provided that if an alternate SIG member is present at a SIG meeting and the corresponding SIG member is not, the alternate SIG member shall be counted for purposes of determining a Quorum).

5.12.1.3 "Super Majority" means at least 66 percent of the Slice Customer SIG members (or their alternates) present at a meeting of the SIG at which a Quorum has been established (counting only one representative for each Slice Customer, even if both the SIG member and the alternate SIG member are present).

#### 5.12.2 Slice Implementation Group

5.12.2.1 The Parties anticipate that implementation issues will arise regarding the Slice Product or the Slice Computer Application, and that a forum is needed for discussing alternatives and taking actions that may affect BPA and the Slice Customers. The SIG is hereby established for the purposes of: (1) considering, establishing and documenting modifications to the Slice Computer Application necessary to maintain its reasonable representation of Tier 1 System energy, peaking, storage, and ramping capability; (2) considering, establishing and documenting modifications to the Slice Computer Application necessary for Idaho Falls and other Slice Customers to schedule Slice Output Energy under this Agreement; (3) establishing a clearinghouse for information regarding the Slice Product and the Slice Computer Application; and (4) establishing a forum for discussing any other issues regarding the Slice Product, the Slice Computer Application and associated procedures.

5.12.2.2 BPA and Idaho Falls shall each appoint a SIG member and an alternate SIG member to attend SIG meetings. Appointment of a SIG member and an alternate SIG member shall initially be made in writing submitted to BPA and all other Slice Customers, and thereafter to the SIG chairperson. The Slice Customer SIG members shall elect a SIG chairperson each year who shall conduct SIG meetings. Any SIG meeting may be conducted by telephone conference call. Any action of the SIG, except as otherwise provided herein, shall be made by Majority vote of the SIG members (or any alternates acting in the absence of SIG members) attending the SIG meeting in person or by telephone. The SIG may adopt rules and procedures, including dates, times, and locations of meetings, as it deems necessary or desirable. A meeting may be called by any SIG member or alternate by providing all other SIG members and alternates with written notice at least seven calendar days in advance of such meeting, setting forth the date, location, and subject matter of such meeting. The SIG shall meet at least once during each Fiscal Year.

5.12.2.3 BPA shall have the right in its sole discretion to implement the upgrades, replacements and changes described in sections 5.12.2.3(1) through 5.12.2.3(3) only to the extent it determines such implementation is consistent with the Slice product as described in section 5.1, and only after: (1) such implementation and related testing is reviewed and discussed by the SIG; and (2) such upgrades, replacements and changes have been subjected to testing as determined by BPA to be relevant and sufficient to demonstrate that each upgrade, replacement, or change functions as intended and does not cause any other portion of the SCA to malfunction. Such implementation by BPA shall not be subject to approval by the SIG. Notwithstanding BPA's sole discretion to implement such upgrades, replacements and changes, Idaho Falls may dispute BPA's determination of consistency with section 5.1 regarding any such upgrades, replacements, and changes, in accordance with section 22. If as a result of a dispute resolution process such upgrade, replacement, or change is determined to be inconsistent with section 5.1, then BPA, Idaho Falls, and other members of the SIG shall consult to identify modifications that make such upgrade, replacement, or change consistent with section 5.1, and BPA shall promptly implement such modifications.

- (1) BPA may change, upgrade or replace the Slice Computer Application as necessary to produce results that reasonably represent the energy production, peaking, storage, or ramping capability of the Tier 1 System.
- (2) BPA may change, upgrade or replace the Slice Computer Application as necessary to maintain functionality with BPA's internal business processes and systems.
- (3) BPA may determine how Operating Constraints are translated into Simulator Parameters for application within the Slice Computer Application, and in a manner that reflects in the Slice Computer Application the impacts of such Operating Constraints on the Tier 1 System.

5.12.2.4 Subject to the procedures set forth below and except as otherwise provided in section 5.12.2.3, BPA or any Slice Customer may propose changes to the Slice Computer Application. Any such proposal shall be made in writing and be provided to all members of SIG. The proposal shall state the change or changes proposed, the reasons for such proposed change or changes, the expected impacts or benefits, and the time frame of implementation.

5.12.2.5 Following receipt of written notice proposing a change to the SCA pursuant to section 5.12.2.4, the SIG chairperson shall convene the SIG to discuss such proposed change(s). The SIG shall decide, using its normal rules of procedure, the type of analysis (if any) that should be performed on the proposed change(s), and, as applicable, whether the proposed change(s) shall be further considered.

5.12.2.6 After an analysis (if any) is completed and distributed to the SIG members, the SIG chairperson shall convene a meeting of the SIG to discuss the proposed change(s), and any modifications thereto. If BPA elects to submit the proposed change(s) for public comment, the SIG chairperson will postpone any vote on the proposed change(s) for up to 45 calendar days to permit BPA to conduct a public comment process.

5.12.2.7 At a meeting of the SIG, the SIG chairperson shall put to a vote the question of whether the proposed change(s) should be recommended for implementation. If a Majority of the SIG members vote in favor of implementing the proposed change(s), then the proposed change(s) will be implemented by BPA unless:

- (1) the BPA SIG member opposes the proposed change(s), in which case the proposed change(s) shall not be adopted, and the Slice Computer Application shall not be revised; or
- (2) the BPA SIG member approves the proposed change(s), and one or more Slice Customer SIG members who voted against the implementation of the proposed change(s) request in writing to all SIG members, within 10 calendar days of the Majority vote approving such implementation, a second vote by all Slice Customer SIG members on the question of whether the proposed change(s) should be implemented. In this event, implementation shall be deferred until such second vote is taken. Such second vote shall be taken within 20 calendar days of the date of such Majority vote. If a Super Majority of the Slice Customer SIG members affirm the proposal under such second vote to implement the proposed change(s), then the proposed change(s) will be implemented. If a Super Majority of the Slice Customer SIG members does not affirm under such second vote to implement the proposed change(s), then the proposed change(s) will not be implemented.

**5.13 Creditworthiness**

Idaho Falls shall execute a Creditworthiness Agreement with BPA prior to or coincident with execution of this Agreement.

**5.14 True-Up Adjustment Charge**

**5.14.1 Interest Rate Applied to Slice True-Up Adjustment Charge and Time Periods During Which Interest is Applied**

BPA shall calculate a Slice True-Up Adjustment Charge annually pursuant to section 2.7.4 of the TRM.

**5.14.1.1 Determination of Interest Rate**

Interest shall be computed and added to the Slice True-Up Adjustment Charge using the daily simple interest rate. The daily simple interest rate shall be the Prime Rate for Large Banks as reported in the Wall Street Journal or successor publication in the first issue of the Fiscal Year in which the Slice True-Up Adjustment Charge is calculated, divided by 365. The daily simple interest rate will be fixed on the first day of the Fiscal Year in which the Slice True-Up Adjustment Charge is calculated for the time periods specified under section 5.14.1.2.

**5.14.1.2 Time Periods During Which Interest is Applied**

Interest determined pursuant to section 5.14.1.1 shall be computed and added to the Slice True-Up Adjustment Charge for Idaho Falls for the time periods defined as follows:

- (1) If the Slice True-Up Adjustment Charge is a credit to Idaho Falls, then the period for interest computation will begin with the first day of the Fiscal Year in which the Slice True-Up Adjustment Charge is calculated, and will end on the due date of the bill that contains such credit.
- (2) If the Slice True-Up Adjustment Charge is a charge payable to BPA, then the period for interest computation will begin with the first day of the Fiscal Year in which the Slice True-Up Adjustment Charge is calculated, and will end, with regard to the portion to be paid, on the due date for each of the three monthly bills in which the Slice True-Up Adjustment Charge appears. If Idaho Falls elects to pay the charge in one month, then Idaho Falls shall notify BPA in writing and the period for interest computation will begin with the first day of the Fiscal Year in which the Slice True-Up Adjustment Charge is calculated and will end on the due date for the next monthly bill issued following the day such Slice True-Up Adjustment Charge is calculated.

- (3) If a credit or charge contained in a Slice True-Up Adjustment Charge is subject to dispute resolution pursuant to Attachment A of the TRM or has been reserved for final disposition in the next 7(i) Process, all pursuant to the TRM, and if there is an adjustment to such credit or charge as a result thereof, then the period for the interest calculation shall begin on the first day of the Fiscal Year in which the disputed Slice True-Up Adjustment Charge was calculated and will end as specified in section 5.14.1.2(1) or (2) depending upon whether the adjustment is a credit or a charge.

## 6. TIERED RATE METHODOLOGY

- 6.1 BPA has proposed the TRM to FERC for either confirmation and approval for a period of 20 years (through September 30, 2028) or a declaratory order that the TRM meets cost recovery standards. The then-effective TRM shall apply in accordance with its terms and shall govern BPA's establishment, review and revision pursuant to section 7(i) of the Northwest Power Act, of all rates for power sold under this Agreement.
- 6.2 In the event that FERC approves the TRM for a period less than through September 30, 2028, or issues a declaratory order that the TRM meets cost recovery standards for a period less than through September 30, 2028, BPA shall, before the approved period of the TRM expires: (1) propose continuation of the TRM in a hearing conducted pursuant to section 7(i) of the Northwest Power Act or its successor; and then (2) resubmit the TRM to FERC for approval or declaratory affirmation of cost recovery standards through September 30, 2028.
- 6.3 The recitation of language from the TRM in this Agreement is not intended to incorporate such language into this Agreement. The TRM's language may be revised, but only in accordance with the requirements of TRM sections 12 and 13. If language of the TRM is revised, then any such language recited in this Agreement shall be modified accordingly, and the Amendment process of section 24.1 shall not apply to any such modifications.
- 6.4 Any disputes over the meaning of the TRM or rates or whether the Administrator is correctly implementing the TRM or rates, including but not limited to matters of whether the Administrator is correctly interpreting, applying, and otherwise adhering or conforming to the TRM or rate, shall (1) be resolved pursuant to any applicable procedures set forth in the TRM; (2) if resolved by the Administrator as part of a proceeding under section 7(i) of the Northwest Power Act, be reviewable as part of the United States Court of Appeals for the Ninth Circuit's review under section 9(e)(5) of the Northwest Power Act of the rates or rate matters determined in such section 7(i) proceeding (subject to any further review by the United States Supreme Court); and (3) if resolved by the Administrator outside such a section 7(i) proceeding, be reviewable as a final action by the United States

Court of Appeals for the Ninth Circuit under section 9(e)(5) of the Northwest Power Act (subject to any further review by the United States Supreme Court). The remedies available to Idaho Falls through such judicial review shall be Idaho Falls' sole and exclusive remedy for such disputes, except as provided in the next paragraph.

Any knowing failure of BPA to abide by the TRM, or any BPA repudiation of its obligation here and under the TRM to revise the TRM only in accordance with the TRM sections 12 and 13 procedures for revision, would be a matter of contract to be resolved as would any other claim of breach of contract under this Agreement. For purposes of this paragraph, when there is a dispute between BPA and Idaho Falls concerning what the TRM means or requires, a "knowing failure" shall occur only in the event the United States Court of Appeals for the Ninth Circuit or, upon further review, the United States Supreme Court rules against BPA on its position as to what the TRM means or requires and BPA thereafter persists in its prior position.

6.5 BPA shall not publish a Federal Register Notice regarding BPA rates or the TRM that prohibits, limits, or restricts Idaho Falls' right to submit testimony or brief issues on rate matters regarding the meaning or implementation of the TRM or establishment of BPA rates pursuant to it, provided however for purposes of BPA's conformance to this paragraph a "rate matter" shall not include budgetary and program level issues.

6.6 The TRM established by BPA as of the Effective Date includes, among other things, the following:

6.6.1 Definitions (from Definitions section of the TRM):

**"Contract High Water Mark" or "CHWM"** means the amount (expressed in Average Megawatts), computed for each customer in accordance with section 4 of the TRM. For each customer with a CHWM Contract, the CHWM is used to calculate each customer's RHWM in the RHWM Process for each applicable Rate Period. The CHWM Contract specifies the CHWM for each customer.

**"Rate Period High Water Mark" or "RHWM"** means the amount, calculated by BPA in each RHWM Process (as defined in the TRM) pursuant to the formula in section 4.2.1 of the TRM and expressed in Average Megawatts, that BPA establishes for each customer based on the customer's CHWM and the RHWM Tier 1 System Capability (as defined in the TRM). The maximum planned amount of power a customer may purchase under Tier 1 Rates each Fiscal Year of the Rate Period is equal to the RHWM for Load Following customers and the lesser of RHWM or Annual Net Requirement for Block and Slice/Block customers.

**"Contract Demand Quantity" or "CDQ"** means the monthly quantity of demand (expressed in kilowatts) included in each customer's CHWM Contract that is subtracted from the Customer

System Peak (as defined in the TRM) as part of the process of determining the customer's Demand Charge Billing Determinant (as defined in the TRM), as calculated in accordance with section 5.3.5 of the TRM.

6.6.2 Rate Period High Water Mark Calculation (from section 4.2.1 of the TRM):

Expressed as a formula, the RHWM will be calculated by BPA for each customer as follows:

$$RHWM = \frac{CHWM}{\Sigma CHWM} \times TISC$$

where:

*RHWM* = Rate Period High Water Mark, expressed in Average Megawatts

*CHWM* = Contract High Water Mark

$\Sigma CHWM$  = sum of all customers' Contract High Water Marks, including those for customers without a CHWM Contract

*TISC* = forecast RHWM Tier 1 System Capability (as defined in the TRM), averaged for the Rate Period

## 7. HIGH WATER MARKS AND CONTRACT DEMAND QUANTITIES

### 7.1 Contract High Water Mark (CHWM)

BPA shall establish Idaho Falls' CHWM in the manner defined in section 4.1 of the TRM that was current as of the Effective Date. Idaho Falls' CHWM and the circumstances under which it can change are stated in Exhibit B.

### 7.2 Rate Period High Water Mark (RHWM)

Idaho Falls' CHWM shall also be Idaho Falls' RHWM for FY 2012 and FY 2013. BPA shall establish Idaho Falls' RHWM for the next Rate Period by September 30, 2012, and for subsequent Rate Periods by September 30 of each Forecast Year thereafter. BPA shall establish Idaho Falls' RHWM in the manner defined in section 4.2 of the TRM that was current as of the Effective Date.

### 7.3 Contract Demand Quantities (CDQs)

BPA shall establish Idaho Falls' CDQs pursuant to the TRM. Idaho Falls' CDQs are listed in Exhibit B.

## 8. APPLICABLE RATES

Purchases under this Agreement are subject to the following rate schedules, or their successors: Priority Firm Power (PF), New Resource Firm Power (NR), and Firm



Power Products and Services (FPS), as applicable. Billing determinants for any purchases will be included in each rate schedule. Power purchases under this Agreement are subject to BPA's Wholesale Power Rate Schedules, established in accordance with the TRM, as applicable, and its GRSPs (or their successors).

**8.1 Priority Firm Power (PF) Rates**

BPA shall establish its PF power rates that apply to purchases under this Agreement pursuant to section 7 of the Northwest Power Act, and in accordance with the TRM. BPA shall establish PF power rates that include rate schedules for purchase amounts at Tier 1 Rates and purchase amounts at Tier 2 Rates. Idaho Falls' purchases of: (1) Tier 1 Block Amounts, as specified in section 1 of Exhibit C, and (2) Critical Slice Amounts, as specified in section 2 of Exhibit I, shall be at Tier 1 Rates. Idaho Falls' purchases of Tier 2 Block Amounts, if any, shall be at the applicable Tier 2 Rates and in accordance with the terms of section 2 of Exhibit C.

**8.2 New Resource Firm Power (NR) Rate**

Pursuant to sections 23.3.6 and 23.3.7, Idaho Falls agrees to serve NLSLs with Dedicated Resources or Consumer-Owned Resources listed in section 4 or 7.4, respectively, of Exhibit A.

**8.3 Firm Power Products and Services (FPS) Rate**

Services sold under this Agreement to Idaho Falls at the FPS rate, if any, are listed in Exhibit D.

**8.4 Additional Charges**

Idaho Falls may incur additional charges or penalty charges as established in the Wholesale Power Rate Schedules and GRSPs, including the Unauthorized Increase Charge and the Resource Shaping Charge, or their successors.

**9. ELECTIONS TO PURCHASE POWER PRICED AT TIER 2 RATES**

**9.1 Determination and Notice to Serve Above-RHWM Load**

Idaho Falls shall determine and provide notice, as described below, to BPA whether Idaho Falls shall serve its Above-RHWM Load that is greater than or equal to 8,760 megawatt-hours with either: (1) Firm Requirements Power purchased from BPA at a Tier 2 Rate or rates, (2) Dedicated Resources, or (3) a specific combination of both (1) and (2). Idaho Falls shall make such determination and provide such notice as follows:

**9.1.1 Notice Deadlines and Purchase Periods**

Notice Deadlines and corresponding Purchase Periods are as follows:

| Notice Deadline    |     | Purchase Period   |
|--------------------|-----|-------------------|
| November 1, 2009   | For | FY 2012 – FY 2014 |
| September 30, 2011 | For | FY 2015 – FY 2019 |
| September 30, 2016 | For | FY 2020 – FY 2024 |
| September 30, 2021 | For | FY 2025 – FY 2028 |

**9.1.2 Elections to Purchase at Tier 2 Rates**

By each Notice Deadline, Idaho Falls shall elect in writing to purchase, or not to purchase, Firm Requirements Power at Tier 2 Rates for at least the upcoming Purchase Period. If Idaho Falls elects to purchase Firm Requirements Power at Tier 2 Rates, then Idaho Falls shall make such election pursuant to sections 2.2 through 2.4 of Exhibit C. BPA shall update Exhibit C to state Idaho Falls' Tier 2 Rate purchase elections.

**9.1.3 Elections Not to Purchase at Tier 2 Rates**

If Idaho Falls elects under section 9.1.2 not to purchase Firm Requirements Power at Tier 2 Rates to serve Above-RHWM Load for a Purchase Period, BPA shall update section 2.1 of Exhibit C to indicate such election. Such election shall not eliminate any existing obligation that extends into the Purchase Period or beyond to purchase Firm Requirements Power at Tier 2 Rates.

**9.1.4 Failure to Make an Election**

If Idaho Falls makes no election by a Notice Deadline in section 9.1.1 for the corresponding Purchase Period, Idaho Falls shall be deemed to have elected not to purchase Firm Requirements Power at Tier 2 Rates to serve Above-RHWM Load, except for any existing obligation to purchase such power that extends into the Purchase Period or beyond.

**9.2 Tier 2 Rate Alternatives**

Subject to the requirements of this section 9 and those stated in Exhibit C, Idaho Falls shall have the right to purchase Firm Requirements Power at Tier 2 Vintage Rates and Tier 2 Short-Term Rates.

**9.3 Flat Block**

Amounts of Firm Requirements Power priced at Tier 2 Rates and purchased by Idaho Falls shall be equal in all hours of the year.

**10. TIER 2 REMARKETING AND RESOURCE REMOVAL**

For the purpose of this section 10, any Dedicated Resources added to Exhibit A pursuant to section 3.5.3 or 3.5.7 do not have temporary resource removal or remarketing rights under this section. In addition, any Dedicated Resource amounts or amounts purchased at a Tier 2 Rate that would otherwise be made eligible for removal or remarketing due to the addition of resources under section 3.5.3 do not have temporary resource removal or remarketing rights under this section.

**10.1 Definition of Preliminary Net Requirement**

"Preliminary Net Requirement" means BPA's forecast of Idaho Falls' Net Requirement for each Fiscal Year prior to the removal of any resources in accordance with this section 10.

**10.2 Resource Removal and Remarketing of Tier 2 Purchase Amounts – First Fiscal Year of Each Rate Period**

If Idaho Falls' Preliminary Net Requirement for the first Fiscal Year of an upcoming Rate Period is less than the sum of: (1) Idaho Falls' RHWM, and (2) Idaho Falls' Tier 2 Rate purchase amounts, as stated in Exhibit C, then Tier 2 remarketing and removal of New Resources shall apply for such year to the extent necessary to comply with section 10.4. If such remarketing and removal of New Resources applies, then by August 31 of the applicable Rate Case Year, Idaho Falls may notify BPA of the order and associated amounts of Idaho Falls' Tier 2 Rate purchase amounts that BPA shall remarket and the New Resources Idaho Falls shall remove for the upcoming Fiscal Year. If compliance with the requirements of section 10.4 would cause Idaho Falls to remove part or all of any New Resource that Idaho Falls uses to fulfill a state or federal renewable resource standard or other comparable legal obligation, then Idaho Falls shall have the right to substitute its right to remove New Resources for the same amount of Existing Resources to the extent necessary to comply with section 10.4, provided that the hourly, monthly, and Diurnal amounts so removed shall be equal to the hourly, monthly, and Diurnal amounts provided by the New Resources that Idaho Falls would have otherwise been obligated to remove.

If Idaho Falls does not provide BPA with such timely notice in accordance with the preceding paragraph, then BPA shall determine the order and associated amounts of Tier 2 remarketing and removal of New Resources to the extent necessary to comply with section 10.4.

**10.3 Resource Removal and Remarketing of Tier 2 Purchase Amounts – Subsequent Fiscal Years of Each Rate Period**

For each subsequent Fiscal Year of each Rate Period, the process established in section 10.2 shall also apply, and after BPA remarkets all Tier 2 Rate purchase amounts and Idaho Falls removes all amounts of its New Resources, then Existing Resources are eligible for resource removal to the extent necessary to comply with section 10.5. By August 31 prior to the applicable Fiscal Year, Idaho Falls may notify BPA of the order and associated amounts of Existing Resource removal for the upcoming Fiscal Year.

If Idaho Falls does not provide BPA with such timely notice, then BPA shall determine the order of and associated amounts of Existing Resource removal for the upcoming Fiscal Year.

**10.4 Extent of Removal for the First Fiscal Year of Each Rate Period**

Tier 2 remarketing and resource removal pursuant to section 10.2 shall apply until:

- (1) the remarketed Tier 2 Rate purchase amounts plus the removed New Resource amounts equal the amount by which Idaho Falls' Tier 2 Rate purchase amounts plus its RHWM exceed its Preliminary Net Requirement, or

- (2) all of Idaho Falls' Tier 2 Rate purchase amounts are remarketed and all of its New Resources are removed.

**10.5 Extent of Removal for Subsequent Fiscal Years of Each Rate Period**

For each subsequent Fiscal Year of a Rate Period, Tier 2 remarketing and resource removal pursuant to section 10.3 shall apply as stated in section 10.4. In addition, if Idaho Falls' Preliminary Net Requirement for the applicable subsequent Fiscal Year of a Rate Period is lower than Idaho Falls' Preliminary Net Requirement for the first Fiscal Year of the same Rate Period, then resource removal shall apply to Idaho Falls' Existing Resources. As long as Idaho Falls has Existing Resources to remove, the amount of such removal shall equal the lesser of: (1) the remaining amount that Idaho Falls' RHW exceeds its Preliminary Net Requirement, or (2) the difference between Idaho Falls' Preliminary Net Requirement for the first Fiscal Year and Idaho Falls' Preliminary Net Requirement for the applicable subsequent Fiscal Year of the Rate Period. If Idaho Falls' Preliminary Net Requirement for the applicable subsequent Fiscal Year of a Rate Period is greater than or equal to Idaho Falls' Preliminary Net Requirement for the first Fiscal Year of the same Rate Period, then resource removal shall not apply to Idaho Falls' Existing Resources.

**10.6 Partial Resource Removal**

When only a portion of a Specified Resource or Unspecified Resource Amounts is being removed pursuant to section 10.2 or 10.3, such resources shall be removed proportionally to maintain the same annual shape for the resource that Idaho Falls has established in Exhibit A.

**10.7 Rounding of Tier 2 Rate Purchase Amounts**

To the extent remarketing of Tier 2 Rate purchase amounts results in an amount less than a whole Average Megawatt, BPA shall round such amount to a whole Average Megawatt.

**10.8 Remarketing of Power Priced at Tier 2 Rates**

Consistent with rates established under the TRM, Idaho Falls shall be subject to applicable charges or credits associated with BPA's remarketing of purchase amounts of Firm Requirements Power at Tier 2 Rates. Except as specified in section 10.9, Idaho Falls shall be responsible for remarketing of any amounts of its Dedicated Resources, Specified or Unspecified, that are removed pursuant to sections 10.2 or 10.3.

**10.9 Removal of Resources Taking DFS**

The following shall apply for any Dedicated Resources: (1) for which Idaho Falls is purchasing DFS under this Agreement, and (2) that are partially or entirely removed in accordance with sections 10.2 or 10.3.

10.9.1 Idaho Falls shall continue to supply the entire amount of any such resources to BPA consistent with applicable provisions stated in Exhibit D.

10.9.2 BPA shall remarket the amounts of any such resources that are removed pursuant to sections 10.2 or 10.3 in the same manner BPA remarkets Tier 2 Rate purchase amounts in section 10.8. BPA shall continue to provide DFS in accordance with applicable provisions in Exhibit D to any amounts of such resources that remain after resource removal.

## 11. RIGHT TO CHANGE PURCHASE OBLIGATION

### 11.1 One-Time Right to Change Purchase Obligation

Subject to this section 11.1, Idaho Falls shall have a one-time right to change its purchase obligation, identified in section 3, to another purchase obligation available from BPA, including Load Following or Block. If Idaho Falls chooses to change its purchase obligation under this section 11.1, then Idaho Falls shall first provide notice to BPA of its intent and then confirm its decision as established below. Any elections of Tier 2 Rate alternatives, Dedicated Resource additions, or other notices given to BPA under this Agreement shall continue to be applicable under the new purchase obligation, provided that BPA may update such terms and conditions consistent with the then current terms of the new purchase obligation, and additional costs may apply for service under the new purchase obligation as described in section 11.1.3.

#### 11.1.1 Notice to Change

By May 31, 2016, Idaho Falls may provide written notice to BPA that it is requesting to change its purchase obligation effective October 1, 2019, subject to confirmation described in section 11.1.4. Idaho Falls' notice shall state the type of service requested.

#### 11.1.2 Limitations Due to Peak Load Increase

By July 31, 2016, BPA shall assess the aggregate effect of all requests to change purchase obligations on BPA's forecast of its total monthly firm coincident peak loads in the first year the changes become effective. If the increase in this peak load in any one month exceeds 300 megawatts, then BPA may, after consulting with Idaho Falls and other customers with a CHWM Contract, do one of the following to reduce the increase in such peak load to 300 megawatts: (1) deny Idaho Falls' request to change its purchase obligation, or (2) approve Idaho Falls' request but defer the date on which Idaho Falls' new purchase obligation change becomes effective.

#### 11.1.3 Charge to Change Purchase Obligation

In addition to the limitations established in section 11.1.2, Idaho Falls may be subject to charges, in addition to the rates for the new service, as a result of changing its purchase obligation pursuant to this section 11.1. Such additional charges shall recover all additional costs that: (1) will be incurred by BPA to serve Idaho Falls under its new purchase obligation compared to its existing purchase obligation, and (2) would otherwise result in a rate impact on all other customers receiving service under a CHWM Contract. If Idaho Falls makes a

request to change its purchase obligation pursuant to this section 11.1, then by August 31, 2016, BPA shall determine and present Idaho Falls with any such additional charges. BPA shall not be required to make a payment to Idaho Falls as a result of Idaho Falls changing its purchase obligation.

**11.1.4 Change Confirmation**

Within 30 days of BPA's presentation to Idaho Falls of the additional charges determined in section 11.1.3, Idaho Falls shall provide BPA with written notice whether it wishes to proceed with its request to change its purchase obligation. If Idaho Falls does not provide BPA with such confirmation, then Idaho Falls' existing purchase obligation identified in section 3 shall continue to apply.

**11.1.5 Amendment to Reflect New Purchase Obligation**

Following Idaho Falls' confirmation of its decision to change its purchase obligation, the Parties shall amend this Agreement to replace the terms of Idaho Falls' current purchase obligation with the terms of the new purchase obligation. The amended Agreement shall be effective no later than October 1, 2019.

**11.2 Additional Rights to Change Purchase Obligation**

In addition to the opportunity to change its purchase obligation provided in section 11.1, Idaho Falls may elect to change its purchase obligation to that stated in section 11.2.4 after the occurrence of any of the events listed in sections 11.2.1 through 11.2.3.

**11.2.1 Simulator Fails Simulator Performance Test**

If, as of October 31, 2010, BPA has failed to perform the Simulator Performance Test, or the Simulator has failed one or more of the four tests that comprise the Simulator Performance Test, then Idaho Falls may change its purchase obligation to that stated in 11.2.4 by providing written notice to BPA in accordance with section 20. Such written notice must be received by BPA no later than January 15, 2011. Unless the Parties agree otherwise, the effective date of the change in purchase obligation to the contingent contract amendment shall be July 1, 2011.

**11.2.2 No Slice Output Energy Available on a Forecasted Basis**

Idaho Falls may change its purchase obligation to that stated in 11.2.4 by providing written notice in accordance with section 20 not later than 60 days after BPA forecasts, prior to the first day of any Fiscal Year, that there will be no Slice Output Energy available for delivery to Idaho Falls during such Fiscal Year and the immediately following Fiscal Year, or in the event there is no Slice Output Energy available to Idaho Falls during any two consecutive Fiscal Years. Unless the Parties agree otherwise, the effective date of the contingent contract amendment shall be October 1 of the Fiscal Year in which BPA has forecasted that there will be no Slice Output Energy available for delivery to Idaho Falls.

### **11.2.3 Changes to Transmission Scheduling Practices**

Idaho Falls may change its purchase obligation to that stated in section 11.2.4 by providing written notice to BPA in accordance with section 20 not later than 60 calendar days after BPA, or its successor, adopts standards, rules, practices or procedures, that require Idaho Falls to schedule hourly energy based on Scheduling Points of Receipt for each of the Tier 1 System Resources from which Idaho Falls may receive Slice Output Energy under this Agreement. Unless the Parties agree otherwise, the effective date of the contingent contract amendment shall be October 1 of the Fiscal Year following the date BPA adopts such policy.

### **11.2.4 Alternative Requirements Power Purchase Obligation**

Idaho Falls selects the Load Following Power Purchase Obligation as the purchase obligation that it will purchase in the event Idaho Falls changes its purchase obligation under the events specified in sections 11.2.1 through 11.2.3. Not later than the deadlines shown in sections 11.2.1 through 11.2.3, the Parties shall execute a contract amendment for the selected purchase obligation. Such contract amendment shall contain the same terms and conditions as this Agreement, including any elections or choices made under this Agreement that are applicable to the new purchase obligation selected by Idaho Falls.

### **11.2.5 Waiver of Certain Claims for Damages**

In the event that Idaho Falls changes its purchase obligation in accordance with this section 11, Idaho Falls agrees not to seek and hereby waives the right, if any such right exists, to pursue any claim for damages from BPA due to any such change. This waiver is limited to any claims Idaho Falls may have arising from changes to Idaho Falls' purchase obligation under this section 11. This waiver has no application to, and Idaho Falls hereby expressly preserves, any claims for damages arising under any other section of this Agreement.

## **12. BILLING CREDITS AND RESIDENTIAL EXCHANGE**

### **12.1 Billing Credits**

If Idaho Falls develops a Generating Resource to serve its loads, then Idaho Falls agrees that it shall forego any request for, and BPA is not obligated to include, billing credits, as defined in section 6(h) of the Northwest Power Act, on Idaho Falls' bills under this Agreement. This section does not apply to any billing credit contracts in effect as of the Effective Date.

### **12.2 Agreement to Limit Exchange Costs of Existing Resources**

Idaho Falls agrees it will not seek and shall not receive residential exchange benefits pursuant to section 5(c) of the Northwest Power Act other than pursuant to Section IV(G) of BPA's 2008 Average System Cost Methodology or its successor. Idaho Falls recognizes that the quantity of residential load will be determined in a subsequent policy or rate determination. Idaho Falls'

agreement in this section 12.2 is a material precondition to BPA offering and executing this Agreement.

**13. SCHEDULING**

Idaho Falls shall schedule power in accordance with Exhibit F.

**14. DELIVERY**

**14.1 Definitions**

14.1.1 "Integrated Network Segment" means those facilities of the Federal Columbia River Transmission System that are required for the delivery of bulk power supplies, the costs for which are recovered through generally applicable transmission rates, and that are identified as facilities in the Integrated Network Segment, or its successor, in the BPA segmentation study for the applicable transmission rate period as determined in a hearing establishing or revising BPA's transmission rates pursuant to section 7(i) of the Northwest Power Act.

14.1.2 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Requirements Power is forecasted to be made available by Power Services to Idaho Falls for purposes of obtaining a long-term firm transmission contract.

14.1.3 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Slice Output Energy is made available by Power Services to Idaho Falls for purposes of transmission scheduling.

**14.2 Transmission Service**

14.2.1 Idaho Falls is responsible for delivery of power from the Scheduling Points of Receipt, except as provided under section 14.6.

14.2.2 Idaho Falls shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas.

14.2.3 At Idaho Falls' request, Power Services shall provide Idaho Falls with Primary Points of Receipt and other information needed to enable Idaho Falls to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Idaho Falls with Scheduling Points of Receipt. Power Services has the right to provide power to Idaho Falls at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Idaho Falls at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Idaho Falls for any incremental, direct, non-administrative costs incurred by Idaho Falls to comply with delivering Firm



Requirements Power from such a Scheduling Point of Receipt to Idaho Falls' load if the following conditions, as outlined in (1) or (2) below, have been met:

- (1) If Idaho Falls has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Requirements Power to its load:
  - (A) Idaho Falls has requested long-term firm transmission service to deliver its Firm Requirements Power using the Primary Points of Receipt and other information provided by Power Services; and
  - (B) Idaho Falls has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Requirements Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and
  - (C) Idaho Falls' transmission schedule was curtailed due to non-firm status under PTP transmission service or Idaho Falls can provide proof of the reimbursable costs incurred to replace the curtailed schedule.
  
- (2) If Idaho Falls has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Requirements Power to its load:
  - (A) Idaho Falls has requested long-term firm transmission service to deliver its Firm Requirements Power using the Primary Points of Receipt and other information provided by Power Services; and
  - (B) Idaho Falls' transmission schedule was curtailed due to non-firm status under its secondary service status and Idaho Falls can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

#### 14.3 Liability for Delivery

Idaho Falls waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 14.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply regardless of whether or not this Agreement provides for Transfer Service.

#### 14.4 Real Power Losses

BPA is responsible for the real power losses necessary to deliver Tier 1 Block Amounts and Tier 2 Block Amounts to Idaho Falls' PODs listed in Exhibit E.

Idaho Falls shall be responsible for all real power losses associated with the delivery of its Slice Output Energy except BPA shall be responsible for real power losses associated with the delivery of Slice Output Energy across the Third Party Transmission Provider's system to Idaho Falls' PODs listed in Exhibit E.

#### 14.5 Metering Losses

BPA shall adjust measured amounts of power to account for losses, if any, that occur between Idaho Falls' PODs and the respective POMs, as specified in Exhibit E.

#### 14.6 Delivery by Transfer

Subject to the limitations in this section, BPA agrees to acquire and pay for Transfer Service to deliver Firm Requirements Power and Surplus Firm Power to Idaho Falls' PODs, as listed in Exhibit E, in an amount not to exceed Idaho Falls' Total Retail Load on an hourly basis. In the event that a conflict exists between the provisions of this Agreement and the Agreement Regarding Transfer Service (ARTS) Contract No. 05EO-40043, this Agreement shall govern.

##### 14.6.1 Ancillary Services

BPA shall acquire and pay for Ancillary Services, as defined in BPA's Open Access Transmission Tariff, needed for Idaho Falls' Transfer Service subject to the following limitations:

- (1) Idaho Falls shall reimburse BPA for load regulation service or its replacement at the applicable Transmission Services rate, or its successor.
- (2) BPA shall pay for the Ancillary Service(s) charged by a Third-Party Transmission Provider to deliver Firm Requirements Power to the PODs listed in Exhibit E, only if Idaho Falls is also purchasing such Ancillary Service(s) from Transmission Services to deliver Firm Requirements Power to the PODs in Exhibit E. If at any time Idaho Falls is not purchasing Ancillary Service(s) from Transmission Services to deliver Firm Requirements Power to one or more of the PODs listed in Exhibit E, then Idaho Falls shall reimburse BPA for the Ancillary Service(s) charges BPA has incurred from the Third Party Transmission Provider to deliver power to such POD(s), at the applicable or equivalent Transmission Services Ancillary Services rate.

##### 14.6.2 Low Voltage Delivery

Low Voltage Delivery is service over the Low Voltage Segment by any Third Party Transmission Provider's system. "Low Voltage Segment"

means the facilities of a Third-Party Transmission Provider that are equivalent to the voltage level of the facilities excluded by Transmission Services from the Integrated Network Segment. For Low Voltage Delivery, Idaho Falls shall pay Power Services the applicable General Transfer Agreement (GTA) Delivery Charge, or its successor rate, consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs. The Parties shall list Idaho Falls' PODs that require Low Voltage Delivery in Exhibit E.

**14.6.3 Direct Assignment Costs**

Idaho Falls shall pay BPA for all directly assigned costs, including but not limited to: facility or system studies costs, construction costs, upgrade costs, and expansion costs, or other capital costs for facilities directly associated with service to any Idaho Falls PODs assessed by the Third Party Transmission Provider to BPA. Such costs shall be consistent with Transmission Service's "Guidelines for Direct Assignment Facilities," and the "Final Supplemental Guidelines for Direct Assignment of Facilities Costs Incurred Under Transfer Agreements" included in BPA's Long Term Regional Dialogue Final Policy, July 2007, or any other revision of that policy, or as established in a BPA 7(i) Process.

**14.6.4 Penalties Assessed By the Third Party Transmission Provider**

BPA has the right to directly pass through to Idaho Falls any penalty charges assessed by the Third Party Transmission Provider that are associated with BPA's acquisition of Transfer Service to the PODs identified in Exhibit E. Such charges may include, but are not limited to, power factor penalties or excessive energy imbalance penalties.

**14.6.5 Removal of PODs**

BPA may terminate deliveries at a POD if Idaho Falls consents to the termination or if the Parties determine that Idaho Falls' requirements for power at such point may be adequately supplied under reasonable conditions and circumstances at different POD(s): (1) directly from the Federal Columbia River Transmission System, (2) indirectly from the facilities of another transmission owner/operator, or (3) both.

**14.6.6 Annexed Loads**

BPA shall arrange and pay for Transfer Service for federal power deliveries to serve Idaho Falls' Annexed Load. Idaho Falls shall provide BPA written notice of any Annexed Load acquired greater than one Average Megawatt no later than 90 days prior to the commencement of service to the Annexed Load. However, BPA's obligation to provide Transfer Service to Idaho Falls' Annexed Load shall be limited by the megawatt caps and process for Annexed Load and new public customers set forth in BPA's Long Term Regional Dialogue Final Policy, July 2007, or any revision of that policy.

#### 14.6.7 Non-Federal Deliveries

If Idaho Falls has a non-federal resource or is acquiring a non-federal resource necessary to serve its Above-RHWM Load, and Idaho Falls has requested that BPA assist in the acquisition of transmission services for such resource, then BPA shall offer Idaho Falls a separate agreement for specific terms and conditions under which BPA will obtain Transfer Service on a Third Party Transmission Provider's system for delivery of that resource to Idaho Falls' system. The terms of the agreement BPA offers to Idaho Falls shall not be subject to section 22, Governing Law and Dispute Resolution. BPA shall develop the agreement consistent with the principles of service specified in Exhibit G.

### 15. METERING

#### 15.1 Requirements for Meters

BPA shall access Idaho Falls' load meter data for purposes of forecasting and planning. The following requirements shall apply to all meters listed in Exhibit E.

##### 15.1.1 BPA Owned Meters

At BPA's expense, BPA shall operate, maintain, and replace, as necessary all metering equipment owned by BPA that is needed to forecast and plan for Idaho Falls' power needs under this Agreement. Idaho Falls authorizes BPA to maintain and replace any BPA owned meter on Idaho Falls facilities. With reasonable notice from BPA and for the purpose of implementing this provision, Idaho Falls shall grant BPA reasonable physical access to BPA owned meters at BPA's request.

If, at any time, BPA or Idaho Falls determines that a BPA owned meter is defective or inaccurate, then BPA shall adjust, repair, or replace the meter to provide accurate metering as soon as practical.

BPA shall give Idaho Falls access to meter data from the BPA owned meters listed in Exhibit E.

##### 15.1.2 Non-BPA Owned Meters

###### 15.1.2.1 Customer Owned Meters

For all Idaho Falls owned metering equipment that is needed by BPA to forecast and plan for Idaho Falls' power needs under this Agreement, Idaho Falls shall give BPA direct, electronic access to meter data from all Idaho Falls owned meters that are capable of being accessed electronically. For the purpose of inspection, Idaho Falls shall grant BPA reasonable physical access to Idaho Falls' meters at BPA's request.

Idaho Falls shall operate, maintain, and replace, as necessary at Idaho Falls expense, all Idaho Falls owned metering equipment.

If, at any time, BPA or Idaho Falls determines that a Idaho Falls owned meter listed in Exhibit E is defective or inaccurate, then Idaho Falls shall adjust, repair, or replace the meter, or shall make commercially reasonable efforts to arrange for the completion of such actions, to provide accurate metering as soon as practical. BPA shall have the right to witness any meter tests conducted by Idaho Falls on Idaho Falls owned meters listed in Exhibit E and, with reasonable advance notice, BPA may conduct tests on such meters. Idaho Falls shall have the right to witness any meter tests conducted by BPA.

**15.1.2.2 Non-BPA Owned Meters Not Owned by Idaho Falls**

For non-BPA owned meters not owned by Idaho Falls needed by BPA to forecast and plan, Idaho Falls shall make commercially reasonable efforts to arrange for such meters to be operated, maintained and replaced, as necessary.

If, at any time, it is determined that a non-BPA owned meter not owned by Idaho Falls listed in Exhibit E is defective or inaccurate, then Idaho Falls shall make commercially reasonable efforts to arrange to adjust, repair, or replace the meter, to provide accurate metering as soon as practical. To the extent possible, BPA may witness any meter tests on non-BPA owned meters not owned by Idaho Falls listed in Exhibit E and, with reasonable advance notice, BPA may conduct tests on such meters. Idaho Falls shall have the right to witness any meter tests conducted by BPA.

**15.1.2.3 Non-BPA Owned Meters Owned by a Third-Party Transmission Provider**

This section 15.1.2 shall not apply to non-BPA owned meters that are owned by a Third-Party Transmission Provider with which BPA holds a transmission contract for service to Idaho Falls load. In these cases the metering arrangements shall be between BPA and the Third-Party Transmission Provider.

**15.1.3 New Meters**

A separate agreement addressing the location, cost responsibility, access, maintenance, testing, and liability of the Parties with respect to new meters shall be between Idaho Falls and Transmission Services.

All new and replaced meters installed by BPA or Idaho Falls shall meet the American National Standard Institute standards, including, but not limited to, C12.20, Electricity Meters--0.2 and 0.5 Accuracy

Classes and the Institute of Electrical and Electronics Engineers, Inc. standard C57.13, Requirements for Instrument Transformers, or their successors. Any new and replaced meters shall be able to record meter data hourly, store data for a minimum of 45 days, and be accessed electronically.

**15.2 Metering an NLSL**

Any loads that are monitored by BPA for an NLSL determination and any NLSLs shall be metered pursuant to section 23.3.4.

**15.3 Metering Exhibit**

Idaho Falls shall provide meter data specified in section 17.3 and shall notify BPA of any changes to PODs, POMs, Interchange Points and related information for which it is responsible. BPA shall list Idaho Falls' PODs and meters in Exhibit E.

**16. BILLING AND PAYMENT**

**16.1 Billing**

BPA shall bill Idaho Falls monthly for all products and services provided during the preceding month(s). BPA may send Idaho Falls an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Idaho Falls. If electronic transmittal of the entire bill is not practical, then BPA shall transmit a summary electronically, and send the entire bill by United States mail.

**16.2 Payment**

Idaho Falls shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20<sup>th</sup> day after the Issue Date of the bill (Due Date). If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Idaho Falls has made payment on an estimated bill then:

- (1) if the amount of the final bill exceeds the amount of the estimated bill, then Idaho Falls shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or
- (2) if the amount of the final bill is less than the amount of the estimated bill, then BPA shall pay Idaho Falls the difference between the estimated bill and final bill by the 20<sup>th</sup> day after the final bill's Issue Date. If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

**16.3 Late Payments**

After the Due Date, a late payment charge equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

#### 16.4 Termination

If Idaho Falls has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Idaho Falls does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Idaho Falls is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section 16.4 must comply with section 20.

#### 16.5 Disputed Bills

16.5.1 If Idaho Falls disputes any portion of a charge or credit on Idaho Falls' estimated or final bills, Idaho Falls shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Idaho Falls shall pay the entire bill by the Due Date. This section 16.5.1 does not allow Idaho Falls to challenge the validity of any BPA rate.

16.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

16.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 22, Idaho Falls is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

#### 16.6 Limit of Payment Obligations

16.6.1 The payment obligations of Idaho Falls under this Agreement shall constitute a cost of purchased electric power and energy and an ordinary and necessary expense of the operation of the municipal electric system owned by Idaho Falls. The obligation of Idaho Falls to make the payments provided for in this Agreement shall be limited to the revenues and income of Idaho Falls' electric utility enterprise funds.

16.6.2 BPA and Idaho Falls agree that (1) in no event shall the payment obligations of Idaho Falls under this Agreement be deemed to constitute a prohibited indebtedness or liability of Idaho Falls within the meaning of any constitutional or statutory limitation or restriction, and (2) Idaho Falls shall not be obligated to levy any taxes, general or special, for the purpose of paying to BPA, or to any assignee of BPA, any amount due under this Agreement.

## **17. INFORMATION EXCHANGE AND CONFIDENTIALITY**

### **17.1 General Requirements**

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement and to forecast Idaho Falls' Total Retail Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, administer Transfer Service, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). In addition, Idaho Falls shall provide information BPA requests about Dedicated Resources for purposes of meeting BPA's statutory obligations under section 7(b) of the Northwest Power Act. Information requested under this section 17.1 shall be provided in a timely manner. If Idaho Falls fails to provide BPA with information Idaho Falls is required to provide pursuant to this Agreement and the absence of such information makes it impossible for BPA to perform a calculation, make a determination, or take an action required under this Agreement, then BPA may suspend its obligation to perform such calculation, make such determination, or take such action until Idaho Falls has provided such information to BPA.

### **17.2 Reports**

17.2.1 Within 30 days after final approval of Idaho Falls' annual financial report and statements by Idaho Falls' authorized officer, Idaho Falls shall either e-mail them to BPA at [kslf@bpa.gov](mailto:kslf@bpa.gov) or, if any of the information is publicly available, then Idaho Falls shall notify BPA of its availability.

17.2.2 Within 30 days after its submittal to the Energy Information Administration (EIA), or its successor, Idaho Falls shall e-mail a copy of its Annual Form EIA-861 Reports to BPA at [kslf@bpa.gov](mailto:kslf@bpa.gov). If Idaho Falls is not required to submit such reports to the EIA, then this requirement does not apply.

### **17.3 Meter Data**

17.3.1 In accordance with section 15 and Exhibit E, the Parties shall notify each other of any changes to PODs, POMs, Interchange Points and related information for which it is responsible. Idaho Falls shall ensure BPA has access to all data from load and resource meters that



BPA determines is necessary to forecast, plan, schedule, and bill under this Agreement. Access to this data shall be on a schedule determined by BPA. Meter data shall be in hourly increments for all meters that record hourly data. Meter data includes, but is not limited to: Idaho Falls' actual amounts of energy used or expended for loads and resources, and the physical attributes of Idaho Falls' meters.

17.3.2 Idaho Falls consents to allow Power Services to receive the following information from Transmission Services or BPA's metering function: (1) Idaho Falls' meter data, as specified in section 17.3.1, section 15, and Exhibit E, and (2) notification of outages or load shifts.

17.3.3 At least 15 calendar days in advance, Idaho Falls shall e-mail BPA at: (1) [mdm@bpa.gov](mailto:mdm@bpa.gov) and (2) the contact shown in section 20 when the following events are planned to occur on Idaho Falls' system that will affect the load measured by the meters listed in Exhibit E: (1) installation of a new meter, (2) changes or updates to an existing meter not owned by BPA, (3) any planned line or planned meter outages, and (4) any planned load shifts from one POD to another. This section 17.3.3 is not intended to apply to retail meters not listed in Exhibit E.

17.3.4 If an unplanned load shift or outage occurs, materially affecting the load measured by the meters listed in Exhibit E, then Idaho Falls shall e-mail BPA at: (1) [mdm@bpa.gov](mailto:mdm@bpa.gov), and (2) the contact shown in section 20 within 72 hours after the event.

**17.4 Data for Determining CHWM and CDQs**

Upon request, Idaho Falls shall provide to BPA any load and resource information that BPA determines is reasonably necessary to calculate Idaho Falls' CHWM and CDQs. This may include historical load data not otherwise available to BPA and other data necessary to allow BPA to adjust for weather normalization.

**17.5 Hourly Total Retail Load Data**

BPA shall notify Idaho Falls by June 30, 2009, if BPA determines that it does not have adequate hourly meter data to calculate Idaho Falls' Total Retail Load. If BPA sends such notification, Idaho Falls shall e-mail the following hourly data to BPA at [kself@bpa.gov](mailto:kself@bpa.gov) according to the schedule below. Idaho Falls shall submit such data in a comma-separated-value (csv) format with the time/date stamp in one column and load amounts, with units of measurement specified, in another column.

17.5.1 By December 31, 2009, Idaho Falls shall send to BPA Idaho Falls' actual hourly Total Retail Load data for Fiscal Year 2002 through Fiscal Year 2009.

17.5.2 By December 31, 2010, Idaho Falls shall send to BPA, Idaho Falls' actual hourly Total Retail Load data for each Point of Delivery for Fiscal Year 2010.

17.5.3 By December 31, 2011, and by December 31 of each year thereafter, Idaho Falls shall send BPA Idaho Falls' actual hourly Total Retail Load data for the immediately preceding Fiscal Year.

**17.6 Total Retail Load Forecast**

By June 30, 2011, and by June 30 of each year thereafter, Idaho Falls shall provide BPA a forecast of Idaho Falls' monthly energy and Idaho Falls' system coincidental peak of Idaho Falls' Total Retail Load for the upcoming ten Fiscal Years. Idaho Falls shall e-mail the forecast to BPA at [kself@bpa.gov](mailto:kself@bpa.gov), in a comma-separated-value (csv) format. Idaho Falls shall send the csv file with the following data elements in separate columns:

- (1) four-digit calendar year,
- (2) three-character month identifier,
- (3) monthly energy forecast,
- (4) unit measurement of monthly energy forecast,
- (5) monthly Idaho Falls-system coincidental peak forecast, and
- (6) unit measurement of monthly Idaho Falls-system coincidental peak forecast.

**17.7 Transparency of Net Requirements Process**

**17.7.1 Data Made Publicly Available**

By July 31, 2011, and by July 31 every year thereafter, BPA shall make the following information publicly available to Idaho Falls and all other BPA regional utility customers with a CHWM:

- (1) Idaho Falls' measured Total Retail Load data for the previous Fiscal Year in monthly energy amounts and monthly customer-system peak amounts,
- (2) BPA's forecast of Idaho Falls' Total Retail Load, for the upcoming Fiscal Year, in monthly energy amounts and monthly customer-system peak amounts, and
- (3) Idaho Falls' Dedicated Resource energy and peak amounts for the upcoming Fiscal Year and the previous Fiscal Year.

**17.7.2 Waiver of Confidentiality and Comment Process**

Idaho Falls waives all claims of confidentiality regarding the data described above. Idaho Falls may provide comments regarding the published data to BPA within ten Business Days after notification. After reviewing any comments and no later than 60 days from the date BPA originally releases such data, BPA shall make available a

final set of data and an explanation of any changes to Idaho Falls and all other customers with a CHWM.

**17.8 Confidentiality**

Before Idaho Falls provides information to BPA that is confidential, or is otherwise subject to privilege, or nondisclosure, Idaho Falls shall clearly designate such information as confidential. BPA shall notify Idaho Falls as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other federal law or court or administrative order, for any confidential information. BPA shall only release such confidential information to comply with FOIA or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of confidential information within BPA to employees who need it for purposes of administering this Agreement.

**17.9 Resources Not Used to Serve Total Retail Load**

Idaho Falls shall list in section 6 of Exhibit A all Generating Resources and Contract Resources Idaho Falls owns that are: (1) not Specified Resources listed in section 2 of Exhibit A, and (2) greater than 200 kilowatts of nameplate capability. At BPA's request Idaho Falls shall provide BPA with additional data if needed to verify the information listed in section 6 of Exhibit A.

**18. CONSERVATION AND RENEWABLES**

**18.1 Conservation**

**18.1.1 Evaluations**

At BPA's expense, BPA may conduct, and Idaho Falls shall cooperate in, conservation impact and project implementation process evaluations to assess the amount, cost-effectiveness, and reliability of conservation in BPA's or Idaho Falls' service area.

BPA shall select the timing, frequency, and type of such evaluations. BPA shall do so with reasonable consideration of Idaho Falls' and Idaho Falls' consumers' needs.

**18.1.2 Reporting Requirements**

18.1.2.1 This section 18.1.2.1 does not apply if Idaho Falls' Total Retail Load from the most recent prior Fiscal Year is 25 annual Average Megawatts or less, or if Idaho Falls purchases all of its power from BPA to serve its Total Retail Load. Beginning June 1, 2010, and no later than June 1 every 2 years thereafter, Idaho Falls shall submit a 10-year conservation plan stating Idaho Falls' projection of planned conservation, including biennial conservation targets. This requirement may be satisfied by submitting any plans Idaho Falls prepares in the normal course of business if the plans include, or are supplemented by, the information required

above. This includes plans required under state law (such as the Washington State Energy Independence Act (RCW 19.285)).

18.1.2.2 Idaho Falls shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Idaho Falls through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

## 18.2 Renewable Resources

### 18.2.1 Renewable Energy Certificates

BPA shall transfer Renewable Energy Certificates (RECs), or their successors, to Idaho Falls in accordance with Exhibit H.

### 18.2.2 Reporting Requirements

This section 18.2.2 does not apply if Idaho Falls' Total Retail Load is 25 annual Average Megawatts or less or if Idaho Falls purchases all of its power from BPA to serve its Total Retail Load. If Idaho Falls' Total Retail Load is above 25 annual Average Megawatts, the following requirements may be satisfied by submitting plans and reports Idaho Falls prepares in the normal course of business as long as such plans and reports include the information required below.

Beginning September 1, 2012, and by September 1 every year thereafter, Idaho Falls shall provide BPA with the following:

- (1) updated information on power forecasted to be generated over the forthcoming calendar year by renewable resources with nameplate capabilities greater than 200 kilowatts, including net metered renewable resources operating behind the BPA meter, used by Idaho Falls to serve its Total Retail Load, under Exhibit A. Such information shall include: project name, fuel type(s), location, date power purchase contract signed, project energization date, capacity, capacity factor, remaining term of purchase (or if direct ownership remaining life of the project), and the percentage of output that will be used to serve Idaho Falls' Total Retail Load that calendar year. Where resources are jointly owned by Idaho Falls and other customers that have a CHWM Contract, Idaho Falls may either submit a report on behalf of all owners or identify the customer that will submit the report;

- (2) the amount of all purchases of RECs used to meet requirements under state or federal law for the forthcoming calendar year; and
- (3) if Idaho Falls is required under state law or by Transmission Services to prepare long-term integrated resource plans or resource forecasts, then Idaho Falls shall provide Power Services with updated copies of such or authorize Transmission Services to provide them directly to Power Services.

**19. RESOURCE ADEQUACY**

By November 30, 2010, and by November 30 each year thereafter, Idaho Falls shall provide to the Pacific Northwest Utilities Conference Committee (PNUCC), or its successor, forecasted loads and resources data to facilitate a region-wide assessment of loads and resources in a format, length of time, and level of detail specified in PNUCC's Northwest Regional Forecast Data Request.

After consultation with the Regional Resource Adequacy Forum, or a successor, BPA may require Idaho Falls to submit additional data to the Northwest Power and Conservation Council (Council) that BPA determines is necessary for the Council to perform a regional resource adequacy assessment.

The requirements of this section 19 are waived if Idaho Falls purchases from BPA all of its power to serve its Total Retail Load.

**20. NOTICES AND CONTACT INFORMATION**

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to Idaho Falls:

Idaho Falls Power  
140 South Capital  
P.O. Box 50220  
Idaho Falls, ID 83405-0220  
Attn: Jo Elg  
Assistant Manager  
Phone: 208-612-8430  
FAX: 208-612-8435  
E-Mail: jelg@ifpower.org

If to BPA:

Bonneville Power Administration  
2700 Overland Avenue  
Burley, ID 83318-3273  
Attn: Larry D King - PSE  
Account Executive  
Phone: 208-678-9492  
FAX: 208-678-4538  
E-Mail: ldking@bpa.gov

## 21. UNCONTROLLABLE FORCES

21.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

- (1) any curtailment or interruption of firm transmission service on BPA's or a Third Party Transmission Provider's System that prevents delivery of Firm Requirements Power sold under this Agreement to Idaho Falls;
- (2) any failure of Idaho Falls' distribution or transmission facilities that prevents Idaho Falls from delivering power to end-users;
- (3) strikes or work stoppage;
- (4) floods, earthquakes, other natural disasters, or terrorist acts; and
- (5) final orders or injunctions issued by a court or regulatory body having subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court having subject matter jurisdiction.

21.2 Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

21.3 If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:

- (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;
- (2) use commercially reasonable efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;
- (3) keep the other Party apprised of such efforts on an ongoing basis; and
- (4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with section 20.

## **22. GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be interpreted consistent with and governed by federal law. Idaho Falls and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 22, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

### **22.1 Judicial Resolution**

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Idaho Falls or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 22, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 22, then Idaho Falls may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 22.

### **22.2 Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 22.1 above, shall be subject to arbitration, as set forth below.

Idaho Falls may request that BPA engage in binding arbitration to resolve any dispute. If Idaho Falls requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 22.2 and sections 22.3 and 22.4 are met. BPA may request that Idaho Falls engage in binding arbitration to resolve any dispute. In response to BPA's request, Idaho Falls may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 22.2 and sections 22.3 and 22.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 22.1 above and is not resolved via binding arbitration, unless Idaho Falls notifies BPA that it does not wish to proceed with nonbinding arbitration.

**22.3 Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within 1 year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

**22.4 Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 22. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

**22.5 Finality**

22.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

22.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is



brought no later than 395 calendar days after the date the arbitration award was issued.

**22.6 Arbitration Costs**

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

**23. STATUTORY PROVISIONS**

**23.1 Retail Rate Schedules**

Idaho Falls shall make its retail rate schedules available to BPA, as required by section 5(a) of the Bonneville Project Act, P.L. 75-329, within 30 days of each of Idaho Falls' retail rate schedule effective dates. This requirement may be satisfied by Idaho Falls informing BPA of its public website where such information is posted and kept current.

**23.2 Insufficiency and Allocations**

If BPA determines, consistent with section 5(b) of the Northwest Power Act and other applicable statutes, that it will not have sufficient resources on a planning basis to serve its loads after taking all actions required by applicable laws then BPA shall give Idaho Falls a written notice that BPA may restrict service to Idaho Falls. Such notice shall be consistent with BPA's insufficiency and allocations methodology, published in the Federal Register on March 20, 1996, and shall state the effective date of the restriction, the amount of Idaho Falls' load to be restricted and the expected duration of the restriction. BPA shall not change that methodology without the written agreement of all public body, cooperative, federal agency and investor-owned utility customers in the Region purchasing federal power from BPA under section 5(b) of the Northwest Power Act. Such restriction shall take effect no sooner than 5 years after BPA provides notice to Idaho Falls. If BPA imposes a restriction under this provision then the amount of Firm Requirements Power that BPA is obligated to provide and that Idaho Falls is obligated to purchase pursuant to section 3 and Exhibit C shall be reduced to the amounts available under such allocation methodology for restricted service.

**23.3 New Large Single Loads and CF/CTs**

**23.3.1 Determination of an NLSL**

In accordance with BPA's NLSL Policy, BPA may determine that a load is an NLSL as follows:

23.3.1.1 BPA shall determine an increase in production load to be an NLSL if any load associated with a new facility, an existing facility, or an expansion of an existing facility, which is not contracted for, or committed to (CF/CT), as determined by the

Administrator, by a public body, cooperative, investor-owned utility, or federal agency customer prior to September 1, 1979, and which will result in an increase in power requirements of such customer of ten Average Megawatts (87,600,000 kilowatt-hours) or more in any consecutive 12-month period.

23.3.1.2 For the sole purpose of computing the increase in energy consumption between any two consecutive 12-month periods of comparison under this section 23.3.1, reductions in the end-use consumer's load associated with a facility during the first 12-month period of comparison due to unusual events reasonably beyond the control of the end-use consumer shall be determined by BPA, and the energy consumption shall be computed as if such reductions had not occurred.

23.3.1.3 The Parties may agree that the installed production equipment at a facility will exceed 10 Average Megawatts consumption over any 12 consecutive months and such agreement shall constitute a binding NLSL determination.

### 23.3.2 Determination of a Facility

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL, based on the following criteria:

- (1) whether the load is operated by a single end-use consumer;
- (2) whether the load is in a single location;
- (3) whether the load serves a manufacturing process which produces a single product or type of product;
- (4) whether separable portions of the load are interdependent;
- (5) whether the load is contracted for, served or billed as a single load under Idaho Falls' customary billing and service policy;
- (6) consideration of the facts from previous similar situations; and
- (7) any other factors the Parties determine to be relevant.

### 23.3.3 Administrative Obligations and Rights

23.3.3.1 Idaho Falls' CF/CT loads and NLSLs are listed in Exhibit D.

23.3.3.2 Idaho Falls shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as an NLSL. The Parties shall list any such potential NLSLs in Exhibit D. If BPA determines that any load associated with a

single facility is capable of growing 10 Average Megawatts or more in a consecutive 12-month period, then such load shall be subject to monitoring as determined necessary by BPA.

23.3.3.3 When BPA makes a request, Idaho Falls shall provide physical access to its substations and other service locations where BPA needs to perform inspections or gather information for purposes of implementing section 3(13) of the Northwest Power Act, including but not limited to making a final NLSL, facility, or CF/CT determination. Idaho Falls shall make a request to the end-use consumer to provide BPA, at reasonable times, physical access to inspect a facility for these purposes.

23.3.3.4 Unless the Parties agree pursuant to section 23.3.1.3 above, BPA shall determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load is an NLSL, BPA shall notify Idaho Falls and the Parties shall add the NLSL to Exhibit D to reflect BPA's determination.

#### 23.3.4 Metering an NLSL

For any loads that are monitored by BPA for an NLSL determination, and for any loads at any facility that is determined by BPA to be an NLSL, BPA may, in its sole discretion, install BPA owned meters. If the Parties agree otherwise, Idaho Falls may install meters meeting the exact specification BPA provides to Idaho Falls. Idaho Falls and BPA shall enter into a separate agreement for the location, ownership, cost responsibility, access, maintenance, testing, replacement and liability of the Parties with respect to such meters. Idaho Falls shall arrange for metering locations that allow accurate measurement of the facility's load. Idaho Falls shall arrange for BPA to have physical access to such meters and Idaho Falls shall ensure BPA has access to all NLSL meter data that BPA determines is necessary to forecast, plan, schedule, and bill for power.

#### 23.3.5 Undetermined NLSLs

If BPA does not determine at the outset that an increase in load is an NLSL, then the Parties shall install metering equipment as required by section 23.3.4 above, and BPA shall bill Idaho Falls for the increase in load at the applicable PF rate during any consecutive 12-month monitoring period. If BPA later determines that the increase in load is an NLSL, then BPA shall revise Idaho Falls' bill to reflect the difference between the applicable PF rate and the applicable NR rate in effect for the monitoring period in which the increase takes place. Idaho Falls shall pay that bill with simple interest computed from the start of the monitoring period to the date the payment is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published

during the month in which the monitoring period began) divided by 365.

If BPA concludes in its sole judgment that Idaho Falls has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer under sections 23.3.3 and 23.3.4, BPA may determine any load subject to NLSL monitoring to be an NLSL, in which case Idaho Falls shall be billed and pay in accordance with the last two sentences of the preceding paragraph. Such NLSL determination shall be final unless Idaho Falls proves to BPA's satisfaction that the applicable load did not exceed 10 Average Megawatts in any 12-month monitoring period.

#### **23.3.6 Service Elections for an NLSL**

Idaho Falls shall serve all NLSLs with Dedicated Resource amounts in Exhibit A that are not already being used to serve Idaho Falls' Total Retail Load in the region. Idaho Falls agrees to provide such Dedicated Resources on a continuous basis as identified in Exhibit A. Under no circumstances shall BPA be required to acquire firm power for service to such NLSLs.

#### **23.3.7 Consumer-Owned Resources Serving an NLSL**

##### **23.3.7.1 Renewable Resource/Cogeneration Exception**

An end-use consumer served by Idaho Falls, with a facility whose load is, in whole or in part, an NLSL, may reduce its NLSL to less than 10 Average Megawatts in a consecutive 12-month period by applying an onsite renewable resource or onsite cogeneration behind Idaho Falls' meter to its facility load. Idaho Falls shall ensure that such resource is continuously applied to serve the NLSL, consistent with BPA's "Renewables and On-Site Cogeneration Option under the NLSL Policy" portion of its Policy for Power Supply Role for Fiscal Years 2007-2011, adopted February 4, 2005, and the NLSL policy included in BPA's Long Term Regional Dialogue Final Policy, July 2007, as amended or replaced. If the NLSL end-use consumer meets the qualification for the exception, then the Parties shall: (1) list the Consumer-Owned Resource serving the NLSL in section 7.4 of Exhibit A and (2) amend Exhibit D to add the onsite renewable resource or cogeneration facility and the requirements for such service.

##### **23.3.7.2 Consumer-Owned Resources that are not Renewable Resources/Cogeneration**

If Idaho Falls serves an NLSL with a Consumer-Owned Resource that does not qualify for the renewable resource or cogeneration exception, the Parties shall list such Consumer-Owned Resource serving the NLSL in section 7.4 of Exhibit A.

**23.4 Priority of Pacific Northwest Customers**

The provisions of sections 9(c) and 9(d) of the Northwest Power Act and the provisions of P.L. 88-552 as amended by the Northwest Power Act are incorporated into this Agreement by reference. Idaho Falls, together with other customers in the Region, shall have priority to BPA power consistent with such provisions.

**23.5 Prohibition on Resale**

Idaho Falls shall not resell Firm Requirements Power except to serve Idaho Falls' Total Retail Load or as otherwise permitted by federal law.

**23.6 Use of Regional Resources**

23.6.1 Within 60 days prior to the start of each Fiscal Year, Idaho Falls shall provide notice to BPA of any Firm Power from a Generating Resource, or a Contract Resource during its term, that has been used to serve firm consumer load in the Region and that Idaho Falls plans to export for sale outside the Region in the next Fiscal Year. For purposes of this section 23.6, "Firm Power" means electric power which is continuously made available from Idaho Falls' operation of generation or from its purchased power, which is able to meet its Total Retail Load, except when such generation or power is curtailed or restricted due to an Uncontrollable Force. Firm Power includes firm energy and firm peaking energy or both.

BPA may request and Idaho Falls shall provide within 30 days of such request, additional information on Idaho Falls' sales and dispositions of non-federal resources if BPA has information that Idaho Falls may have made such an export and not notified BPA. BPA may request and Idaho Falls shall provide within 30 days of such request, information on the planned use of any or all of Idaho Falls Generating and Contract Resources.

During any Purchase Period that Idaho Falls has no purchase obligation for Firm Requirements Power under section 3, Idaho Falls shall have no obligation to notify BPA of its exports under this section; *provided, however*, Idaho Falls shall provide notification of all applicable exports in Purchase Periods when it has a purchase obligation.

23.6.2 Idaho Falls shall be responsible for monitoring any Firm Power from Generating Resources and Contract Resources it sells in the Region to ensure such Firm Power is planned to be used to serve firm consumer load in the Region.

23.6.3 If Idaho Falls fails to report to BPA in accordance with section 23.6.1, above, any of its planned exports for sale outside the Region of Firm Power from a Generating Resource or a Contract Resource that has been used to serve firm consumer load in the Region, and BPA makes a finding that an export which was not reported was made, BPA shall

decrement the amount of its Firm Requirements Power sold under this Agreement by the amount of the export that was not reported and by any continuing export amount. Decrements under the preceding sentence shall be first to power that would otherwise be provided at Tier 1 Rates. When applicable, such decrements shall be identified in section 3.2 of Exhibit A.

23.6.4 For purposes of this section 23.6, an export for sale outside the Region means a contract for the sale or disposition of Firm Power from a Generating Resource or a Contract Resource during its term that has been used to serve firm consumer load in the Region, which contract will be performed in a manner that such output is no longer used or not planned to be used solely to serve firm consumer load in the Region. Delivery of Firm Power outside the Region under a seasonal exchange agreement that is made consistent with BPA's 5(b)/9(c) Policy will not be considered an export. Firm Power from a Generating Resource or a Contract Resource used to serve firm consumer load in the Region means the firm generating or load carrying capability of a Generating Resource or a Contract Resource as established under PNCA resource planning criteria, or other resource planning criteria generally used for such purposes within the Region.

**23.7 BPA Appropriations Refinancing**

The Parties agree that the provisions of section 3201(i) of the Bonneville Power Administration Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, as stated in the United States Code on the Effective Date, are incorporated by reference and are a material term of this Agreement.

**24. STANDARD PROVISIONS**

**24.1 Amendments**

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement shall be of any force or effect unless set forth in writing and signed by authorized representatives of each Party.

**24.2 Entire Agreement and Order of Precedence**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

**24.3 Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. Without limiting the foregoing, BPA's refusal to consent to assignment shall not be considered unreasonable if, in BPA's sole discretion: (1) the sale of power by BPA to the assignee would violate any applicable statute, or (2) such sale might adversely affect the tax-exempt status of bonds issued as part of an issue that finances or refinances the Columbia Generating Station or that such sale might limit the ability to issue future tax-exempt bonds to finance or refinance the Columbia Generating Station. Idaho Falls may not transfer or assign this Agreement to any of its retail consumers.

**24.4 No Third-Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

**24.5 Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or of any other breach of this Agreement.

**24.6 BPA Policies**

Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of Idaho Falls to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of Idaho Falls to seek judicial review of any such policy.

**24.7 Rate Covenant and Payment Assurance**

Idaho Falls agrees that it shall establish, maintain and collect rates or charges sufficient to assure recovery of its costs for power and energy and other services, facilities and commodities sold, furnished or supplied by it through any of its electric utility properties. BPA may require additional forms of payment assurance if: (1) BPA determines that such rates and charges may not be adequate to provide revenues sufficient to enable Idaho Falls to make the payments required under this Agreement, or (2) BPA identifies in a letter to Idaho Falls that BPA has other reasonable grounds to conclude that Idaho Falls may not be able to make the payments required under this Agreement. If Idaho Falls does not provide payment assurance satisfactory to BPA, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 20.

**25. TERMINATION**

**25.1 BPA's Right to Terminate**

BPA may terminate this Agreement if:

- (1) Idaho Falls fails to make payment as required by section 16.4, or
- (2) Idaho Falls fails to provide payment assurance satisfactory to BPA as required by section 24.7.

Such termination is without prejudice to any other remedies available to BPA under law.

**25.2 Customer's Right to Terminate**

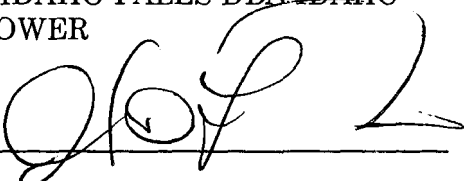
Idaho Falls may provide written notice to terminate this Agreement not later than 60 days after: (1) a Final FERC Order is issued declining to approve the Tiered Rate Methodology (if BPA seeks FERC's confirmation and approval of it), (2) FERC issues a final declaratory order finding that the TRM does not meet cost recovery standards, or (3) FERC issues a Final FERC Order that determines rates established consistent with the TRM cannot be approved because the TRM precludes the establishment of rates consistent with cost recovery. The notice shall include a date of termination not later than 90 days after the date of such notice. For purposes of this section 25.2, "Final FERC Order" means a dispositive order by FERC on the merits, and does not include any interim order. A dispositive order on the merits is, for purposes of this section, final when issued and there is no need to await a FERC order on rehearing before the decision is considered final.

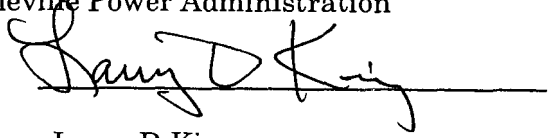
**26. SIGNATURES**

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

CITY OF IDAHO FALLS DBA IDAHO FALLS POWER

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By 

By 

Name Jared Fuhriman  
(Print/Type)

Name Larry D King  
(Print/Type)

Title Mayor

Title Account Executive

Date November 25, 2008

Date 3 December 08

(PSE-W:\POWER CONTRACT CUSTOMER\IDAHO FALLS\13056\13056.DOC) 11/04/08





**Exhibit A**  
**NET REQUIREMENTS AND RESOURCES**

**1. NET REQUIREMENTS**

Idaho Falls' Net Requirement equals its Total Retail Load minus Idaho Falls' Dedicated Resources determined pursuant to section 3.3 of the body of this Agreement and listed in sections 2, 3, and 4 of this exhibit. The Parties shall not add or remove resource amounts to change Idaho Falls' purchase obligations from BPA under section 3.1 of the body of this Agreement except in accordance with sections 3.5 and 10 of the body of this Agreement.

BPA shall annually calculate a forecast of Idaho Falls' Net Requirement for the upcoming Fiscal Year as follows:

**1.1 Forecast of Total Retail Load**

By September 15, 2011, and by each September 15 thereafter, BPA shall fill in the table below with Idaho Falls' Total Retail Load forecast (submitted pursuant to section 17.6 of the body of this Agreement) for the upcoming Fiscal Year. BPA shall notify Idaho Falls by July 31 immediately preceding the start of the Fiscal Year if BPA determines Idaho Falls' submitted forecast is reasonable or not reasonable. If BPA determines Idaho Falls' submitted forecast is not reasonable, then BPA shall fill in the table below with a forecast BPA determines to be reasonable by September 15 immediately preceding the start of the Fiscal Year.

Idaho Falls may submit to arbitration, which may be binding arbitration under a separate agreement or nonbinding arbitration as agreed to by the Parties, pursuant to section 22 of the body of the Agreement, the issue of the reasonableness of BPA's forecast of Idaho Falls' Total Retail Load used by BPA to fill in the table below. Such arbitration shall not include issues of the interpretation or application of BPA's policies with respect to such forecast, including without limitation BPA's 5(b)/9(c) Policy.

| <b>Annual Forecast of Monthly Total Retail Load</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
|   | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
| <b>Fiscal Year 2012</b>                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2013</b>                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2014</b>                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2015</b>                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)   |     |     |     |     |     |     |     |     |     |     |     |     |               |

| Annual Forecast of Monthly Total Retail Load |     |     |     |     |     |     |     |     |     |     |     |     |               |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
|  | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
| Fiscal Year 2016                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2017                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2018                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2019                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2020                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2021                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2022                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2023                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2024                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2025                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2026                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2027                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2028                             |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                 |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                    |     |     |     |     |     |     |     |     |     |     |     |     |               |

Notes: Fill in the table above with megawatt-hours rounded to whole megawatt-hours, with megawatts rounded to one decimal place, and annual Average Megawatts rounded to three decimal places.

**1.2 Forecast of Net Requirements**

By September 15, 2011, and by each September 15 thereafter, BPA shall calculate, and fill in the table below with, Idaho Falls' Net Requirement forecast for the upcoming Fiscal Year by month. Idaho Falls' Net Requirement forecast equals Idaho Falls' Total Retail Load forecast, shown in section 1.1 above, minus Idaho Falls' Dedicated Resource amounts, shown in section 5 below.

On a planning basis Idaho Falls shall serve that portion of its Total Retail Load that is not served with Firm Requirements Power with Idaho Falls' Dedicated Resources.

| Annual Forecast of Monthly Net Requirements |     |     |     |     |     |     |     |     |     |     |     |     |               |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
|   | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
| Fiscal Year 2012                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2013                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2014                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2015                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2016                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2017                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2018                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2019                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2020                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2021                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2022                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2023                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2024                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2025                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2026                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |

| Annual Forecast of Monthly Net Requirements |     |     |     |     |     |     |     |     |     |     |     |     |               |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
|   | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
| Fiscal Year 2027                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Fiscal Year 2028                            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)                                |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)                                   |     |     |     |     |     |     |     |     |     |     |     |     |               |

Note: Fill in the table above with megawatt-hours rounded to whole megawatt-hours, with megawatts rounded to one decimal place, and annual Average Megawatts rounded to three decimal places.

**2. LIST OF SPECIFIED RESOURCES**

**2.1 Generating Resources**

All of Idaho Falls' Generating Resources that are Specified Resources are listed below.

(1) **Gem State**

(A) **Special Provisions**

None.

(B) **Resource Profile**

| Fuel Type | Date Resource Dedicated to Load | Date of Resource Removal | Percent of Resource Used to Serve Load | Nameplate Capability (MW) |
|-----------|---------------------------------|--------------------------|--|---------------------------|
| Hydro     | 10/1988                         | N/A                      | 61%                                    | 23.4                      |

| Statutory Status |      | Resource Status |     | DFS or SCS? |    | Dispatchable? |    | PNCA? |    | If PNCA, PNCA Updates? |    |
|------------------|------|-----------------|-----|-------------|----|---------------|----|-------|----|------------------------|----|
| 5b1A             | 5b1B | Existing        | New | Yes         | No | Yes           | No | Yes   | No | Yes                    | No |
|                  | X    | X               |     |             |    |               | X  |       | X  |                        |    |

Note: Fill in the table above with "X"s.

(C) **Specified Resource Amounts**

| Specified Resource Amounts |      |      |      |      |      |      |      |     |     |     |     |      |               |
|----------------------------|------|------|------|------|------|------|------|-----|-----|-----|-----|------|---------------|
|                            | Oct  | Nov  | Dec  | Jan  | Feb  | Mar  | Apr  | May | Jun | Jul | Aug | Sep  | annual<br>aMW |
| Fiscal Year 2012           |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806         |
| HLH (MWh)                  | 3188 | 3814 | 3561 | 3817 | 4084 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2190 | 5.796         |
| LLH (MWh)                  | 2514 | 3061 | 2807 | 3282 | 3022 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1916 | 5.820         |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |               |

**Specified Resource Amounts**

|                         | Oct  | Nov  | Dec  | Jan  | Feb  | Mar  | Apr  | May | Jun | Jul | Aug | Sep  | annual<br>aMW |
|-------------------------|------|------|------|------|------|------|------|-----|-----|-----|-----|------|---------------|
| <b>Fiscal Year 2013</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3814 | 3424 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2190 | 5.792         |
| LLH (MWh)               | 2391 | 3061 | 2944 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1916 | 5.798         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2014</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3814 | 3424 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.810         |
| LLH (MWh)               | 2391 | 3061 | 2944 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.774         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2015</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3662 | 3561 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.807         |
| LLH (MWh)               | 2391 | 3214 | 2807 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.778         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2016</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806         |
| HLH (MWh)               | 3311 | 3662 | 3561 | 3817 | 4084 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.820         |
| LLH (MWh)               | 2391 | 3214 | 2807 | 3282 | 3022 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.788         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2017</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3188 | 3814 | 3561 | 3817 | 3921 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2281 | 5.781         |
| LLH (MWh)               | 2514 | 3061 | 2807 | 3282 | 2940 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1825 | 5.811         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2018</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3188 | 3814 | 3424 | 3969 | 3921 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2190 | 5.785         |
| LLH (MWh)               | 2514 | 3061 | 2944 | 3130 | 2940 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1916 | 5.807         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2019</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3814 | 3424 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2190 | 5.792         |
| LLH (MWh)               | 2391 | 3061 | 2944 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1916 | 5.798         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2020</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806         |
| HLH (MWh)               | 3311 | 3814 | 3424 | 3969 | 4084 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.824         |
| LLH (MWh)               | 2391 | 3061 | 2944 | 3130 | 3022 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.783         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2021</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3662 | 3561 | 3817 | 3921 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.806         |
| LLH (MWh)               | 2391 | 3214 | 2807 | 3282 | 2940 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.779         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2022</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3188 | 3814 | 3561 | 3817 | 3921 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.812         |
| LLH (MWh)               | 2514 | 3061 | 2807 | 3282 | 2940 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.771         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |

| Specified Resource Amounts |      |      |      |      |      |      |      |     |     |     |     |      |            |
|----------------------------|------|------|------|------|------|------|------|-----|-----|-----|-----|------|------------|
|                            | Oct  | Nov  | Dec  | Jan  | Feb  | Mar  | Apr  | May | Jun | Jul | Aug | Sep  | annual aMW |
| <b>Fiscal Year 2023</b>    |      |      |      |      |      |      |      |     |     |     |     |      |            |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794      |
| HLH (MWh)                  | 3188 | 3814 | 3561 | 3817 | 3921 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2281 | 5.781      |
| LLH (MWh)                  | 2514 | 3061 | 2807 | 3282 | 2940 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1825 | 5.811      |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |            |
| <b>Fiscal Year 2024</b>    |      |      |      |      |      |      |      |     |     |     |     |      |            |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806      |
| HLH (MWh)                  | 3188 | 3814 | 3424 | 3969 | 4084 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2190 | 5.800      |
| LLH (MWh)                  | 2514 | 3061 | 2944 | 3130 | 3022 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1916 | 5.815      |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |            |
| <b>Fiscal Year 2025</b>    |      |      |      |      |      |      |      |     |     |     |     |      |            |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794      |
| HLH (MWh)                  | 3311 | 3814 | 3424 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.810      |
| LLH (MWh)                  | 2391 | 3061 | 2944 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.774      |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |            |
| <b>Fiscal Year 2026</b>    |      |      |      |      |      |      |      |     |     |     |     |      |            |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794      |
| HLH (MWh)                  | 3311 | 3662 | 3561 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.807      |
| LLH (MWh)                  | 2391 | 3214 | 2807 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.778      |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |            |
| <b>Fiscal Year 2027</b>    |      |      |      |      |      |      |      |     |     |     |     |      |            |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794      |
| HLH (MWh)                  | 3311 | 3662 | 3561 | 3817 | 3921 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.806      |
| LLH (MWh)                  | 2391 | 3214 | 2807 | 3282 | 2940 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.779      |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |            |
| <b>Fiscal Year 2028</b>    |      |      |      |      |      |      |      |     |     |     |     |      |            |
| Total (MWh)                | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806      |
| HLH (MWh)                  | 3188 | 3814 | 3561 | 3817 | 4084 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2281 | 5.795      |
| LLH (MWh)                  | 2514 | 3061 | 2807 | 3282 | 3022 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1825 | 5.820      |
| Peak (MW)                  |      |      |      |      |      |      |      |     |     |     |     |      |            |

Notes: Fill in the table above with megawatt-hours rounded to whole megawatt-hours, with megawatts rounded to one decimal place, and annual Average Megawatts rounded to three decimal places.

**2.2 Contract Resources**

Idaho Falls does not have any Contract Resources that are Specified Resources at this time.

**3. UNSPECIFIED RESOURCE AMOUNTS**

**3.1 Unspecified Resource Amounts Used to Serve Total Retail Load**

Idaho Falls does not have any Unspecified Resource Amounts at this time.

**3.2 Unspecified Resource Amounts for 9(c) Export Decrements**

BPA shall insert a table below pursuant to section 3.5.3 of the body of this Agreement.

4. **DEDICATED RESOURCE AMOUNTS FOR AN NLSL**

Idaho Falls does not have any Dedicated Resource amounts serving an NLSL at this time, in accordance with section 3.5.7 of the body of this Agreement.

5. **TOTAL DEDICATED RESOURCE AMOUNTS**

The amounts in the table below equal the sum of all resource amounts used to serve Idaho Falls' Total Retail Load listed above in sections 2, 3, and 4.

| <b>Dedicated Resource Amounts</b> |            |            |            |            |            |            |            |            |            |            |            |            |                   |
|-----------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------------|
|                                   | <b>Oct</b> | <b>Nov</b> | <b>Dec</b> | <b>Jan</b> | <b>Feb</b> | <b>Mar</b> | <b>Apr</b> | <b>May</b> | <b>Jun</b> | <b>Jul</b> | <b>Aug</b> | <b>Sep</b> | <b>annual aMW</b> |
| <b>Fiscal Year 2012</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 7106       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.806             |
| <b>HLH (MWh)</b>                  | 3188       | 3814       | 3561       | 3817       | 4084       | 3995       | 3820       | 0          | 0          | 0          | 0          | 2190       | 5.796             |
| <b>LLH (MWh)</b>                  | 2514       | 3061       | 2807       | 3282       | 3022       | 2876       | 3056       | 0          | 0          | 0          | 0          | 1916       | 5.820             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2013</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 6861       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.794             |
| <b>HLH (MWh)</b>                  | 3311       | 3814       | 3424       | 3969       | 3921       | 3847       | 3972       | 0          | 0          | 0          | 0          | 2190       | 5.792             |
| <b>LLH (MWh)</b>                  | 2391       | 3061       | 2944       | 3130       | 2940       | 3024       | 2903       | 0          | 0          | 0          | 0          | 1916       | 5.798             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2014</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 6861       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.794             |
| <b>HLH (MWh)</b>                  | 3311       | 3814       | 3424       | 3969       | 3921       | 3847       | 3972       | 0          | 0          | 0          | 0          | 2281       | 5.810             |
| <b>LLH (MWh)</b>                  | 2391       | 3061       | 2944       | 3130       | 2940       | 3024       | 2903       | 0          | 0          | 0          | 0          | 1825       | 5.774             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2015</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 6861       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.794             |
| <b>HLH (MWh)</b>                  | 3311       | 3662       | 3561       | 3969       | 3921       | 3847       | 3972       | 0          | 0          | 0          | 0          | 2281       | 5.807             |
| <b>LLH (MWh)</b>                  | 2391       | 3214       | 2807       | 3130       | 2940       | 3024       | 2903       | 0          | 0          | 0          | 0          | 1825       | 5.778             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2016</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 7106       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.806             |
| <b>HLH (MWh)</b>                  | 3311       | 3662       | 3561       | 3817       | 4084       | 3995       | 3972       | 0          | 0          | 0          | 0          | 2281       | 5.820             |
| <b>LLH (MWh)</b>                  | 2391       | 3214       | 2807       | 3282       | 3022       | 2876       | 2903       | 0          | 0          | 0          | 0          | 1825       | 5.788             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2017</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 6861       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.794             |
| <b>HLH (MWh)</b>                  | 3188       | 3814       | 3561       | 3817       | 3921       | 3995       | 3820       | 0          | 0          | 0          | 0          | 2281       | 5.781             |
| <b>LLH (MWh)</b>                  | 2514       | 3061       | 2807       | 3282       | 2940       | 2876       | 3056       | 0          | 0          | 0          | 0          | 1825       | 5.811             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2018</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 6861       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.794             |
| <b>HLH (MWh)</b>                  | 3188       | 3814       | 3424       | 3969       | 3921       | 3995       | 3820       | 0          | 0          | 0          | 0          | 2190       | 5.785             |
| <b>LLH (MWh)</b>                  | 2514       | 3061       | 2944       | 3130       | 2940       | 2876       | 3056       | 0          | 0          | 0          | 0          | 1916       | 5.807             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Fiscal Year 2019</b>           |            |            |            |            |            |            |            |            |            |            |            |            |                   |
| <b>Total (MWh)</b>                | 5702       | 6875       | 6368       | 7099       | 6861       | 6871       | 6875       | 0          | 0          | 0          | 0          | 4106       | 5.794             |
| <b>HLH (MWh)</b>                  | 3311       | 3814       | 3424       | 3969       | 3921       | 3847       | 3972       | 0          | 0          | 0          | 0          | 2190       | 5.792             |
| <b>LLH (MWh)</b>                  | 2391       | 3061       | 2944       | 3130       | 2940       | 3024       | 2903       | 0          | 0          | 0          | 0          | 1916       | 5.798             |
| <b>Peak (MW)</b>                  |            |            |            |            |            |            |            |            |            |            |            |            |                   |

**Dedicated Resource Amounts**

|                         | Oct  | Nov  | Dec  | Jan  | Feb  | Mar  | Apr  | May | Jun | Jul | Aug | Sep  | annual<br>aMW |
|-------------------------|------|------|------|------|------|------|------|-----|-----|-----|-----|------|---------------|
| <b>Fiscal Year 2020</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806         |
| HLH (MWh)               | 3311 | 3814 | 3424 | 3969 | 4084 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.824         |
| LLH (MWh)               | 2391 | 3061 | 2944 | 3130 | 3022 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.783         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2021</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3662 | 3561 | 3817 | 3921 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.806         |
| LLH (MWh)               | 2391 | 3214 | 2807 | 3282 | 2940 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.779         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2022</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3188 | 3814 | 3561 | 3817 | 3921 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.812         |
| LLH (MWh)               | 2514 | 3061 | 2807 | 3282 | 2940 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.771         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2023</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3188 | 3814 | 3561 | 3817 | 3921 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2281 | 5.781         |
| LLH (MWh)               | 2514 | 3061 | 2807 | 3282 | 2940 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1825 | 5.811         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2024</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806         |
| HLH (MWh)               | 3188 | 3814 | 3424 | 3969 | 4084 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2190 | 5.800         |
| LLH (MWh)               | 2514 | 3061 | 2944 | 3130 | 3022 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1916 | 5.815         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2025</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3814 | 3424 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.810         |
| LLH (MWh)               | 2391 | 3061 | 2944 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.774         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2026</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3662 | 3561 | 3969 | 3921 | 3847 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.807         |
| LLH (MWh)               | 2391 | 3214 | 2807 | 3130 | 2940 | 3024 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.778         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2027</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 6861 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.794         |
| HLH (MWh)               | 3311 | 3662 | 3561 | 3817 | 3921 | 3995 | 3972 | 0   | 0   | 0   | 0   | 2281 | 5.806         |
| LLH (MWh)               | 2391 | 3214 | 2807 | 3282 | 2940 | 2876 | 2903 | 0   | 0   | 0   | 0   | 1825 | 5.779         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |
| <b>Fiscal Year 2028</b> |      |      |      |      |      |      |      |     |     |     |     |      |               |
| Total (MWh)             | 5702 | 6875 | 6368 | 7099 | 7106 | 6871 | 6875 | 0   | 0   | 0   | 0   | 4106 | 5.806         |
| HLH (MWh)               | 3188 | 3814 | 3561 | 3817 | 4084 | 3995 | 3820 | 0   | 0   | 0   | 0   | 2281 | 5.795         |
| LLH (MWh)               | 2514 | 3061 | 2807 | 3282 | 3022 | 2876 | 3056 | 0   | 0   | 0   | 0   | 1825 | 5.820         |
| Peak (MW)               |      |      |      |      |      |      |      |     |     |     |     |      |               |

Notes: Fill in the table above with megawatt-hours rounded to whole megawatt-hours, with megawatts rounded to one decimal place, and annual Average Megawatts rounded to three decimal places.



6. **LIST OF RESOURCES NOT USED TO SERVE TOTAL RETAIL LOAD**  
 Pursuant to section 17 of the body of this Agreement, all Generating Resources and Contract Resources Idaho Falls owns that are: (1) not Specified Resources listed in section 2 of Exhibit A, and (2) greater than 200 kilowatts of nameplate capability, are listed below.

(1) **Bulb Turbines**

(A) **Resource Profile**

| Fuel Type | Type of Resource    |                   | Percent of Resource Not Used to Serve Load | Nameplate Capability (MW) |
|-----------|---------------------|-------------------|--|---------------------------|
|           | Generating Resource | Contract Resource |  |                           |
| Hydro     | X                   |                   | 100%                                       | 24.0                      |

(B) **Expected Resource Output**

| Expected Output - Energy (aMW) |        |        |        |        |        |        |        |        |        |
|--------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Fiscal Year                    | 2012   | 2013   | 2014   | 2015   | 2016   | 2017   | 2018   | 2019   | 2020   |
| Annual aMW                     | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 |
| Fiscal Year                    | 2021   | 2022   | 2023   | 2024   | 2025   | 2026   | 2027   | 2028   |        |
| Annual aMW                     | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 | 18.100 |        |

Note: Fill in the table above with annual Average Megawatts rounded to three decimal places.

(2) **Gem State**

(A) **Resource Profile**

| Fuel Type | Type of Resource    |                   | Percent of Resource Not Used to Serve Load | Nameplate Capability (MW) |
|-----------|---------------------|-------------------|--|---------------------------|
|           | Generating Resource | Contract Resource |  |                           |
| Hydro     | X                   |                   | 39%  | 23.4                      |

(B) **Expected Resource Output**

| Expected Output - Energy (aMW) |       |       |       |       |       |       |       |       |       |
|--------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Fiscal Year                    | 2012  | 2013  | 2014  | 2015  | 2016  | 2017  | 2018  | 2019  | 2020  |
| Annual aMW                     | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 |
| Fiscal Year                    | 2021  | 2022  | 2023  | 2024  | 2025  | 2026  | 2027  | 2028  |       |
| Annual aMW                     | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 | 3.712 |       |

Note: Fill in the table above with annual Average Megawatts rounded to three decimal places.

7. **LIST OF CONSUMER-OWNED RESOURCES**

7.1 **Consumer-Owned Resources Serving Onsite Consumer Load**

Pursuant to section 3.6 of the body of this Agreement, Idaho Falls does not have any Consumer-Owned Resources serving Onsite Consumer Load at this time.

7.2 **Consumer-Owned Resources Serving Load Other than Onsite Consumer Load**

Pursuant to section 3.6 of the body of this Agreement Idaho Falls does not have any Consumer-Owned Resources serving load other than Onsite Consumer Load at this time.

7.3 **Consumer-Owned Resources Serving Both Onsite Consumer Load and Load Other than Onsite Consumer Load**

Pursuant to section 3.6 of the body of this Agreement, Idaho Falls does not have any Consumer-Owned Resources serving both Onsite Consumer Load and load other than Onsite Consumer Load at this time.

7.4 **Consumer-Owned Resources Serving an NLSL**

Pursuant to section 23.3.7 of the body of this Agreement, Idaho Falls does not have any Consumer-Owned Resources serving an NLSL at this time.

8. **REVISIONS**

BPA shall revise this exhibit to reflect: (1) Idaho Falls' elections regarding the application and use of all resources owned by Idaho Falls and Idaho Falls' retail consumers and (2) BPA's determinations relevant to this exhibit and made in accordance with this Agreement.

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**Exhibit B**  
**HIGH WATER MARKS AND CONTRACT DEMAND QUANTITIES**

**1. CONTRACT HIGH WATER MARK (CHWM)**

**1.1 CHWM Amount**

By September 15, 2011, BPA shall fill in the table below with Idaho Falls' CHWM. Once established, Idaho Falls' CHWM shall not change for the term of this Agreement except as allowed in section 1.2 of this exhibit.

|  |  |
|--|--|
| <b>CHWM (annual aMW):</b>  |  |
| Note: BPA shall round the number in the table above to three decimal places. |  |

**1.2 Changes to CHWM**

If a change is made to Idaho Falls' CHWM pursuant to this section 1.2, then BPA shall determine and notify Idaho Falls of the date such change will be effective as follows:

1.2.1 If a load included in Idaho Falls' Measured 2010 Load, as defined in the TRM, is later found to have been an NLSL in FY 2010, then BPA shall reduce Idaho Falls' CHWM by the amount of the NLSL. BPA shall notify Idaho Falls 30 days prior to when the updated CHWM will become effective. Idaho Falls shall be liable for payment of any charges to adjust for the ineligible Tier 1 PF rate purchases dating back to October 1, 2011.

1.2.2 If Idaho Falls acquires an Annexed Load from a utility that has a CHWM, then BPA shall increase Idaho Falls' CHWM by adding part of the other utility's CHWM to Idaho Falls' CHWM. The CHWM increase shall be effective on the date that Idaho Falls begins service to the Annexed Load. BPA shall establish the amount of the CHWM addition as follows:

- (1) If Idaho Falls and the other utility involved in the annexation agree on the amount of the CHWM addition, then BPA shall adopt that amount if BPA determines such amount is reasonable.
- (2) If Idaho Falls and the other utility cannot agree on the amount of the CHWM addition, or if BPA determines the amount agreed to in section 1.2.2(1) of this exhibit is unreasonable, then the amount of the CHWM addition shall equal the calculated amount below; provided however, BPA may adjust the calculated amount below to reflect the division of Dedicated Resources between the utilities and other pertinent information advanced by Idaho Falls and the other utility:

$$\left[ \frac{\text{Annexed Load minus annexed NLSLs, if any}}{\text{Other utility's pre-annexation Total Retail Load minus total NLSLs, if any}} \right] \times \left[ \text{Other utility's pre-annexation CHWM} \right]$$

1.2.3 If another utility with a CHWM annexes load of Idaho Falls, then BPA shall reduce Idaho Falls' CHWM by adding part of Idaho Falls' CHWM to the other utility's CHWM. The CHWM reduction shall be effective on the date that the other utility begins service to the Annexed Load. BPA shall establish the amount of the CHWM reduction as follows:

- (1) If Idaho Falls and the other utility involved in the annexation agree on the amount of the CHWM reduction, then BPA shall adopt that amount if BPA determines such amount is reasonable.
- (2) If Idaho Falls and the other utility cannot agree on the amount of the CHWM reduction, or if BPA determines the amount agreed to in section 1.2.3(1) of this exhibit is unreasonable, then the amount of the CHWM reduction shall equal the calculated amount below; *provided however*, BPA may adjust the calculated amount below to reflect the division of Dedicated Resources between the utilities and other pertinent information advanced by Idaho Falls and the other utility:

$$\left[ \frac{\text{Annexed Load minus annexed NLSLs, if any}}{\text{Idaho Falls' pre-annexation Total Retail Load minus total NLSLs, if any}} \right] \times \left[ \text{Idaho Falls' pre-annexation CHWM} \right]$$

1.2.4 BPA may change Idaho Falls' CHWM if BPA's Administrator determines that BPA is required by court order about an Annexed Load to make such changes. BPA shall determine the effective date of such a change and shall update this exhibit with the changed CHWM.

## 2. CONTRACT DEMAND QUANTITIES (CDQs)

### 2.1 CDQ Amounts

By September 15, 2011, BPA shall fill in the table below with Idaho Falls' monthly CDQs. Calculation of such CDQs is established in the TRM. Idaho Falls' monthly CDQs shall not change for the term of this Agreement except as allowed below.

| Monthly Contract Demand Quantities  |     |     |     |     |     |     |     |     |     |     |     |     |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|   | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep |
| kW  |     |     |     |     |     |     |     |     |     |     |     |     |
| Note: BPA shall round the amounts in the table above to the nearest whole kilowatt. |     |     |     |     |     |     |     |     |     |     |     |     |

## 2.2 Changes Due to Annexation

The Parties shall determine when changes to Idaho Falls' CDQs, as allowed below, will become effective.

2.2.1 If Idaho Falls acquires an Annexed Load from a utility that has monthly CDQs, then BPA shall increase Idaho Falls' CDQ for each month by adding the portion of the other utility's monthly CDQ that is attributable to such Annexed Load. For each month, the sum of Idaho Falls' and the other utility's post-annexation CDQs shall not exceed the sum of the pre-annexation CDQs for such utilities. BPA shall establish the amount of the CDQ additions as follows:

- (1) If Idaho Falls and the other utility involved in the annexation agree on the amounts of the CDQ additions, then BPA shall adopt those amounts.
- (2) If Idaho Falls and the other utility cannot agree on the amounts of the CDQ additions, then BPA shall determine the amounts based on the monthly load factors of the Annexed Load.

2.2.2 If another utility with monthly CDQs annexes load of Idaho Falls, then BPA shall reduce Idaho Falls' CDQ for each month by removing the portion of Idaho Falls' monthly CDQ that is attributable to the load that was annexed. For each month, the sum of Idaho Falls' and the other utility's post-annexation CDQs shall not exceed the sum of the pre-annexation CDQs for such utilities. BPA shall establish the amount of the CDQ reductions as follows:

- (1) If Idaho Falls and the other utility involved in the annexation agree on the amounts of the CDQ reductions, then BPA shall adopt those amounts.
- (2) If Idaho Falls and the other utility cannot agree on the amounts of the CDQ reductions, then BPA shall determine the amounts based on the monthly load factors of the Annexed Load.

## 3. REVISIONS

BPA may revise this exhibit to the extent allowed in sections 1 and 2 of this exhibit. All other changes shall be made by mutual agreement.

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**Exhibit C  
PURCHASE OBLIGATIONS**

**1. DETERMINATION OF TIER 1 BLOCK AMOUNTS**

**1.1 Determination of Annual Tier 1 Block Amounts**

By September 15, 2011, and by each September 15 thereafter, BPA shall enter in the table below Idaho Falls' annual Tier 1 Block Amount as determined pursuant to section 4.3.1 of the body of this Agreement.

| <b>Annual Tier 1 Block Amounts</b> |   |   |
|------------------------------------|---|---|
| <b>Fiscal Year</b>                 | <b>Annual Tier 1 Block Amount (aMW)</b> | <b>Annual Tier 1 Block Amount (MWh)</b> |
| 2012                               |   |   |
| 2013                               |   |   |
| 2014                               |   |   |
| 2015                               |   |   |
| 2016                               |   |   |
| 2017                               |   |   |
| 2018                               |   |   |
| 2019                               |   |   |
| 2020                               |   |   |
| 2021                               |   |   |
| 2022                               |   |   |
| 2023                               |   |   |
| 2024                               |   |   |
| 2025                               |   |   |
| 2026                               |   |   |
| 2027                               |   |   |
| 2028                               |   |   |

**1.2 Flat Within-Month Shape**

Idaho Falls' monthly Tier 1 Block Amounts, expressed in MWh, shall be determined based on the Monthly Shaping Factors. Idaho Falls' Monthly Shaping Factors that are used to determine monthly Tier 1 Block Amounts shall be determined as follows:

**1.2.1 Monthly Shaping Factors for a Flat Within-Month Shape**

Idaho Falls' Monthly Shaping Factors for a Flat Within-Month Shape shall be determined in accordance with section 1.2.1.2 of this exhibit, using Idaho Falls' "monthly 2010 load values" and "annual 2010 load value" as determined in accordance with section 1.2.1.1 of this exhibit.

**1.2.1.1 Calculation of Monthly and Annual 2010 Load Values**

Each "monthly 2010 load value" for Idaho Falls shall be equal to Idaho Falls' monthly Total Retail Load for FY 2010, as adjusted in accordance with sections 4.1.1.1 and 4.1.1.2 of the

TRM. Idaho Falls' "annual 2010 load value" shall be equal to the sum Idaho Falls' "monthly 2010 load values" for all months of FY 2010.

**1.2.1.2 Calculation of Monthly Shaping Factors for a Flat Within-Month Shape**

Idaho Falls' Monthly Shaping Factors for a Flat Within-Month Shape shall be determined as follows:

- (1) The "monthly shape numerator" shall be equal to (a) the "monthly 2010 load value" for the corresponding month in FY 2010 minus (b) Idaho Falls' Existing Resource amounts for the each month of FY 2012, as listed in section 2 of Exhibit A, expressed in MWh;
- (2) The "monthly shape denominator" shall be equal to (a) the "annual 2010 load value," minus (b) the sum of Idaho Falls' Existing Resource amounts for the all months of FY 2012, as listed in section 2 of Exhibit A, expressed in MWh; and
- (3) The Monthly Shaping Factors for a Flat Within-Month Shape shall be equal to (a) the "monthly shape numerator" for each month, divided by (b) the "monthly shape denominator" for each such month, rounded to three decimal places and set forth in the table below.

| Monthly Shaping Factors |     |     |     |     |     |     |     |     |     |     |     |     |       |
|-------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|
| Month                   | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Total |
| Monthly Shaping Factor  |     |     |     |     |     |     |     |     |     |     |     |     | 1.000 |

**1.3 Monthly Tier 1 Block Amounts**

The monthly Tier 1 Block Amounts for each month of each Fiscal Year, beginning with FY 2012, shall be equal to: (1) the annual Tier 1 Block Amount as specified in section 1.1 of this exhibit multiplied by (2) the Monthly Shaping Factor for the corresponding month as specified in section 1.2 of this exhibit, rounded to a whole number. BPA shall enter such amounts into the table below. Due to rounding, total megawatt-hour deliveries during any Fiscal Year may be slightly different than the megawatt-hours stated in section 1.1 of this exhibit. Idaho Falls shall schedule the monthly Tier 1 Block Amounts as flat as possible on all hours of each month.

| Monthly Tier 1 Block Amounts (MWh) |     |     |     |     |     |     |     |     |     |     |     |     |  |
|------------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--|
| FY                                 | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep |  |
| 2012                               |     |     |     |     |     |     |     |     |     |     |     |     |  |
| 2013                               |     |     |     |     |     |     |     |     |     |     |     |     |  |
| 2014                               |     |     |     |     |     |     |     |     |     |     |     |     |  |
| 2015                               |     |     |     |     |     |     |     |     |     |     |     |     |  |

| Monthly Tier 1 Block Amounts (MWh) |     |     |     |     |     |     |     |     |     |     |     |     |
|------------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| FY                                 | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep |
| 2016                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2017                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2018                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2019                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2020                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2021                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2022                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2023                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2024                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2025                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2026                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2027                               |     |     |     |     |     |     |     |     |     |     |     |     |
| 2028                               |     |     |     |     |     |     |     |     |     |     |     |     |

**2. FIRM REQUIREMENTS POWER AT TIER 2 RATES**

**2.1 Notice to Purchase Zero Amounts at Tier 2 Rates**

If Idaho Falls elects not to purchase Firm Requirements Power at Tier 2 Rates for a Purchase Period, then by March 31 immediately following the corresponding Notice Deadline, BPA shall update this exhibit to indicate such election by adding an "X" to the applicable cell in the following table. Such election means that for the Purchase Period specified below, Idaho Falls shall: (1) purchase zero amounts of Firm Requirements Power at Tier 2 Rates, and (2) serve all of its Above-RHWM Load with power other than Firm Requirements Power.

| Zero Tier 2 | Purchase Period   |
|-------------|-------------------|
|             | FY 2012 - FY 2014 |
|             | FY 2015 - FY 2019 |
|             | FY 2020 - FY 2024 |
|             | FY 2025 - FY 2028 |

**2.2 Tier 2 Load Growth Rate**

Idaho Falls shall not have the right to purchase Firm Requirements Power at Tier 2 Load Growth Rates for the term of this Agreement.

**2.3 Tier 2 Vintage Rates**

**2.3.1 Election Process**

**2.3.1.1 Right to Convert**

Subject to the amounts of power BPA makes available at one or more Tier 2 Vintage Rates, Idaho Falls shall have the right to convert some or all of the amounts of Firm Requirements Power it has elected to purchase at Tier 2 Short-Term Rates, as stated in section 2.4 of this exhibit, to an equal purchase amount at Tier 2 Vintage Rates.



**2.3.1.2 Statement of Intent**

If Idaho Falls elects to purchase Firm Requirements Power from BPA at Tier 2 Vintage Rates, then Idaho Falls shall sign a Statement of Intent offered by BPA. "Statement of Intent" means a statement prepared by BPA and signed by Idaho Falls that describes the approach and cost structure that will be used for a specific Tier 2 Cost Pool. If BPA establishes a Tier 2 Cost Pool for a Tier 2 Vintage Rate consistent with the Statement of Intent, then Idaho Falls agrees to have the portion of its Tier 2 Rate power purchase specified in the Statement of Intent priced at that rate. If BPA is unable to establish the Tier 2 Cost Pool for the specific Tier 2 Vintage Rate, then Idaho Falls agrees to purchase such amount of Firm Requirements Power at Tier 2 Short-Term Rates, except as stated in section 2.3.1.5 of this exhibit.

**2.3.1.3 Insufficient Availability**

The Statement of Intent shall include procedures to allocate between competing applications for a specific Tier 2 Cost Pool if requests exceed amounts available.

**2.3.1.4 Conversion Costs**

Upon establishment of a Tier 2 Vintage Rate for which Idaho Falls signed a Statement of Intent, Idaho Falls shall be liable for payment of any outstanding costs under Tier 2 Short-Term Rates that apply to Idaho Falls. Such costs shall be those that BPA: (1) is obligated to pay and will not recover from Idaho Falls under Tier 2 Short-Term Rates as a result of the conversion, and (2) is unable to recover through other transactions. BPA shall determine such costs, if any, in the first 7(i) Process that establishes the applicable Tier 2 Vintage Rate. In no event shall BPA make payment to Idaho Falls as a result of Idaho Falls' conversion of purchase amounts at Tier 2 Short-Term Rates to purchase amounts at Tier 2 Vintage Rates.

**2.3.1.5 Additional Offerings**

In addition to the right to convert to Tier 2 Vintage Rates established in section 2.3.1.1 of this exhibit, Idaho Falls may have the opportunity to purchase Firm Requirements Power at Tier 2 Vintage Rates regardless of whether Idaho Falls is purchasing at Tier 2 Short-Term Rates if:

- (1) BPA determines, in its sole discretion, that all requests for service at Tier 2 Vintage Rates by purchasers of Firm Requirements Power at Tier 2 Short-Term Rates are able to be satisfied, and

- (2) BPA determines, in its sole discretion, to offer Idaho Falls a Statement of Intent that would provide Idaho Falls the opportunity to purchase Firm Requirements at Tier 2 Vintage Rates.

If Idaho Falls signs a Statement of Intent offered by BPA pursuant to this section 2.3.1.5, and if BPA is unable to establish the Tier 2 Cost Pool for the applicable Tier 2 Vintage Rate, then Idaho Falls' current elections for service to its Above-RHWM Load shall continue to apply.

Except as provided in this section 2.3.1, any election by Idaho Falls to purchase Firm Requirements Power at Tier 2 Vintage Rates shall not relieve Idaho Falls of any obligation to purchase Firm Requirements Power at another Tier 2 Rate.

**2.3.1.6 Exhibit Updates**

By September 15 immediately following the establishment of a Tier 2 Vintage Rate for which Idaho Falls signed a Statement of Intent, BPA shall amend this exhibit to show Idaho Falls' Tier 2 Vintage Rate purchases and remove Idaho Falls' Tier 2 Short-Term Rate purchases by the amounts purchased at the Tier 2 Vintage Rate, if Idaho Falls is converting to the Tier 2 Vintage Rate from the Tier 2 Short-Term Rate. BPA shall insert applicable tables, terms, and conditions for each Tier 2 Vintage Rate in section 2.3.2 of this exhibit.

**2.3.2 Vintage Rate Elections**

Idaho Falls has no Tier 2 Vintage Rate elections at this time.

**2.4 Tier 2 Short-Term Rate**

If Idaho Falls elects by the applicable Notice Deadline to purchase Firm Requirements Power at Tier 2 Short-Term Rates for a Purchase Period, then in its election Idaho Falls shall state its purchase amounts of such power for each year of the corresponding Purchase Period. By March 31 immediately following each Notice Deadline, BPA shall update the table below with:

(1) Idaho Falls' purchase amounts, if any, at Tier 2 Short-Term Rates for the corresponding Purchase Period, or (2) a zero purchase amount if Idaho Falls does not elect to purchase Firm Requirements Power at Tier 2 Short-Term Rates for the corresponding Purchase Period.

| Tier 2 Short-Term Rate Table |      |      |      |      |      |
|------------------------------|------|------|------|------|------|
| Fiscal Year                  | 2012 | 2013 | 2014 | 2015 | 2016 |
| aMW                          |      |      |      |      |      |
| Fiscal Year                  | 2017 | 2018 | 2019 | 2020 | 2021 |
| aMW                          |      |      |      |      |      |

| Tier 2 Short-Term Rate Table   |      |      |      |      |      |
|--|------|------|------|------|------|
| Fiscal Year  | 2022 | 2023 | 2024 | 2025 | 2026 |
| aMW  |      |      |      |      |      |
| Fiscal Year  | 2027 | 2028 |      |      |      |
| aMW  |      |      |      |      |      |
| Note: Insert whole megawatt amounts for each year of the applicable Purchase Period. |      |      |      |      |      |

**2.5 Amounts of Power to be Billed at Tier 2 Rates**

Prior to each Fiscal Year and consistent with Idaho Falls' elections, BPA shall determine the amounts, if any, of Firm Requirements Power at Tier 2 Rates that need to be remarketed subject to section 10 of the body of this Agreement. By September 15 of each Fiscal year beginning September 15, 2011, BPA shall update the table below for the upcoming Fiscal Year with: (1) the annual average amounts of Firm Requirements Power which Idaho Falls shall purchase at each applicable Tier 2 Rate, (2) any remarketed Tier 2 Rate purchase amounts, and (3) the total amount of Firm Requirements Power priced at Tier 2 Rates, net of any remarketed amounts.

| Annual Amounts Priced at Tier 2 Rates (aMW)  |      |      |      |      |      |      |      |      |      |
|--|------|------|------|------|------|------|------|------|------|
| Fiscal Year  | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| No Tier 2 at this time   |      |      |      |      |      |      |      |      |      |
| Minus Remarketed Amounts   |      |      |      |      |      |      |      |      |      |
| Total Amount at Tier 2   |      |      |      |      |      |      |      |      |      |
| Fiscal Year  | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 |      |
| No Tier 2 at this time   |      |      |      |      |      |      |      |      |      |
| Minus Remarketed Amounts   |      |      |      |      |      |      |      |      |      |
| Total Amount at Tier 2   |      |      |      |      |      |      |      |      |      |
| Notes:   |      |      |      |      |      |      |      |      |      |
| 1. List each applicable Tier 2 rate in the table above. For the first applicable Tier 2 rate replace <b>No Tier 2 at this time</b> with the name of the applicable Tier 2 rate. For each additional Tier 2 rate, add a new row above the <b>Remarketed Amounts</b> row. If Idaho Falls elects not to purchase at Tier 2 rates, then leave <b>No Tier 2 at this time</b> in the table and leave the remainder of the table blank. |      |      |      |      |      |      |      |      |      |
| 2. Fill in the table above with whole annual Average Megawatts.  |      |      |      |      |      |      |      |      |      |

**3. MONTHLY PF RATES**

Applicable monthly Tier 1 and Tier 2 Rates are specified in BPA Wholesale Power Rate Schedules and GRSPs.

4. **REVISIONS**

BPA shall revise this exhibit to reflect Idaho Falls' elections regarding service to its Above-RHWM Load and BPA's determinations relevant to this exhibit and made in accordance with this Agreement.

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**Exhibit D**  
**ADDITIONAL PRODUCTS AND SPECIAL PROVISIONS**

**1. CF/CT AND NEW LARGE SINGLE LOADS**

**1.1 CF/CT Loads**

Idaho Falls has no loads identified that were contracted for, or committed to (CF/CT), as of September 1, 1979, as defined in section 3(13)(A) of the Northwest Power Act.

**1.2 Potential NLSLs**

Idaho Falls has no identified potential NLSLs.

**1.3 Existing NLSLs**

Idaho Falls has no existing NLSLs.

**2. RESOURCE SUPPORT SERVICES**

RSS is only available to Idaho Falls to support resources that are Specified Resources used to serve Total Retail Load that are added after September 30, 2006. Idaho Falls' purchase of RSS shall include all support services necessary to convert the actual scheduled output from the resource being supported into a flat annual block.

2.1 BPA shall develop the RSS products to support applicable Specified Resources listed in section 2 of Exhibit A for the FY 2012-2014 Purchase Period and offer such as a revision to this exhibit by August 1, 2009. Prior to that date, BPA shall provide Idaho Falls a reasonable opportunity to provide input into the development of the products and the related contract provisions. If Idaho Falls requests that BPA provide such service, then the Parties shall execute a revision to this exhibit by the November 1, 2009, Notice Deadline. By each Notice Deadline thereafter, Idaho Falls may purchase RSS from BPA to support applicable Specified Resources listed in section 2 of Exhibit A for the corresponding Purchase Period.

2.2 If Idaho Falls adds a new Specified Resource within a Purchase Period to meet its obligations to serve Above-RHWM Load with Dedicated Resources, consistent with section 3.5.1 of the body of this Agreement, Idaho Falls may purchase RSS from BPA to support such resource. Such purchase shall be for the remainder of the Purchase Period and for the following Purchase Period. Idaho Falls shall notify BPA of its decision to purchase RSS for a new Specified Resource by October 31 of a Rate Case Year and the elected RSS will be effective at the start of the upcoming Rate Period.

**3. SCHEDULING ERROR COMPENSATION**

This provision replaces the letter agreement dated March 17, 2003, signed by both Idaho Falls and BPA, regarding the Slice scheduling protocol.

On March 1, 2003, BPA instituted a new Slice scheduling protocol under which BPA notifies PacifiCorp (PAC) when a real time schedule change for Idaho Falls is

submitted to BPA by Idaho Falls' scheduling agent. This protocol is intended to eliminate scheduling discrepancies created in the event BPA fails to notify PAC of a real time schedule change received from Idaho Falls' scheduling agent.

For the term of this Agreement, if Idaho Falls incurs a charge which Idaho Falls believes was due to BPA failing to notify PAC of a schedule change by Idaho Falls' scheduling agent, Idaho Falls shall send the bill, along with the date, time, copy of the Slice computer application acceptance document or the SysGenID of the acceptance document, and the energy amount being disputed to BPA. BPA will verify whether the scheduling discrepancy was a result of BPA not notifying PAC. If BPA verifies the discrepancy was a BPA error, BPA shall then credit Idaho Falls on the succeeding final power bill for the portion attributable to the verified discrepancy of the costs billed Idaho Falls. Scheduling discrepancies that occur due to an Uncontrollable Force as defined in this Agreement will not be credited.

**4. REVISIONS**

This exhibit shall be revised by mutual agreement of the Parties to reflect additional products Idaho Falls purchases during the term of this Agreement.

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**Exhibit E  
METERING**

**1. METERING**

**1.1 Directly Connected Points of Delivery and Load Metering**  
None.

**1.2 Transfer Points of Delivery and Load Metering**

- (1) **BPA POD Name:** Sugar Mill 46 kV;  
**BPA POD Number:** 668;  
**WECC Balancing Authority:** PACE;

**Location:** the point in PacifiCorp's dba Rocky Mountain Power Sugar Mill Substation where the 46 kV facilities of Rocky Mountain Power and Idaho Falls are connected;

**Voltage:** 46 kV;

**Metering:**

(A) in Idaho Falls' Sugar Mill Substation in the 46 kV circuit over which such electric power flows;

- (i) **BPA Meter Point Name:** Sugar Mill #1 Out;  
**BPA Meter Point Number:** 529;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Transfer, Rocky Mountain Power to Idaho Falls;

- (ii) **BPA Meter Point Name:** Sugar Mill #2 Out;  
**BPA Meter Point Number:** 564;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Transfer, Rocky Mountain Power to Idaho Falls;

(B) in Idaho Falls' Upper Plant Generation Station in the 4.16 kV circuit over which such electric power flows;

**BPA Meter Point Name:** Upper Plant Out;  
**BPA Meter Point Number:** 196;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Directly connected to Idaho Falls' distribution system;

(C) in Idaho Falls' Lower Plant Generation Station in the 4.16 kV circuit over which such electric power flows;

**BPA Meter Point Name:** Lower Plant Out;  
**BPA Meter Point Number:** 197;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Directly connected to Idaho Falls' distribution system;

- (D) in Idaho Falls' City Plant Generation Station in the 4.16 kV circuit over which such electric power flows;

**BPA Meter Point Name:** City Plant Out;  
**BPA Meter Point Number:** 207;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Directly connected to Idaho Falls' distribution system;

- (E) in Idaho Falls' Old Lower Plant Generation Station in the 2.4. kV circuit over which such electric power flows;

**BPA Meter Point Name:** Old Lower Plant Out;  
**BPA Meter Point Number:** 296;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Directly connected to Idaho Falls' distribution system;

**Metering Loss Adjustment:** BPA shall adjust for losses between the POD and the Upper Plant Out, Lower Plant Out, City Plant Out, and Old Lower Plant Out POMs. Such adjustments shall be specified in writing between BPA and Idaho Falls. Losses are not applicable at Sugar Mill;

**Exception:** BPA and Idaho Falls are not physically connected, other than BPA's Westside Substation. BPA exchanges power with Rocky Mountain Power, and Rocky Mountain Power serves Idaho Falls' load. The amounts of electric power, energy, and varhours delivered to Idaho Falls shall be the coincidental sum of electric power, energy, and varhours measured at the Sugar Mill POD, Idaho Falls' Upper, Lower, Old Lower, and City Hydro POMs, Gem State POM, and Westside. The entire output of the Upper, Lower, Old Lower, and City Hydro facilities are currently sold to BPA.

- (2) **BPA POD Name:** Westside 46 kV;  
**BPA POD Number:** 843;  
**WECC Balancing Authority:** PACE;

**Location:** the point in BPA's Westside Substation where the 46 kV facilities of BPA and Idaho Falls are connected;



**Voltage:** 46 kV;

**Metering:**

- (A) in Rocky Mountain Power's Sugar Mill Substation in the 161 kV circuit over which such electric power flows;
  - (i) **BPA Meter Point Name:** Sugar Mill-Westside Out;  
**BPA Meter Point Number:** 1277;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Transfer, Rocky Mountain Power to BPA to Idaho Falls;
  - (ii) **BPA Meter Point Name:** Sugar Mill-Westside In;  
**BPA Meter Point Number:** 1278;  
**Direction for PF Billing Purposes:** Negative;  
**Manner of Service:** Transfer, Idaho Falls to BPA to Rocky Mountain Power;
  
- (B) in BPA's Westside Substation in the 161 kV circuit over which such electric power flows;
  - (i) **BPA Meter Point Name:** Westside Out;  
**BPA Meter Point Number:** 1407;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Transfer, Rocky Mountain Power to BPA to Idaho Falls;
  - (ii) **BPA Meter Point Name:** Westside In;  
**BPA Meter Point Number:** 1408;  
**Direction for PF Billing Purposes:** Negative;  
**Manner of Service:** Transfer, Idaho Falls to BPA to Rocky Mountain Power;

**Metering Loss Adjustment:** BPA shall adjust for losses between the POD and the Westside Out and Westside In POMs. Such adjustments shall be specified in writing between BPA and Idaho Falls. BPA is responsible for the 161 kV to 46 kV transformer losses as Westside. Idaho Falls is responsible for the Westside-Sugar Mill 161 kV line losses and Westside Station Service.

**Exception:** BPA and Idaho Falls are not physically connected, other than BPA's Westside Substation. BPA exchanges power with Rocky Mountain Power and Rocky Mountain Power serves Idaho Falls' load. The amounts of electric power, energy, and varhours delivered to Idaho Falls shall be the coincidental sum of electric power, energy, and varhours measured at the Sugar Mill POD, Idaho Falls' Upper, Lower, Old Lower, City Hydro POMs, Gem State POM, and the Westside.

### 1.3 Resource Locations and Metering

(1) **Resource Name:** Gem State Hydro

**Metering:** in Idaho Falls' Gem State Generating Plant in the 13.8 kV circuit over which such electric power flows;

(A) **BPA Meter Point Name:** Gem State Hydro Genr Out;  
**BPA Meter Point Number:** 1636;  
**Direction for PF Billing Purposes:** Positive;  
**Manner of Service:** Directly connected to Idaho Falls;

(B) **BPA Meter Point Name:** Gem State Hydro Genr In;  
**BPA Meter Point Number:** 1637;  
**Direction for PF Billing Purposes:** Negative;  
**Manner of Service:** Directly connected to Idaho Falls;

**Metering Loss Adjustment:** BPA shall adjust for losses between the BPA POD and the BPA POMs. Such adjustments shall be specified in written correspondence between BPA and Idaho Falls;

**Exceptions:** The amounts of power, energy, and varhours delivered to Idaho Falls shall be the coincidental sum of electric power, energy, and varhours measured at the Sugar Mill POD, Idaho Falls' Upper, Lower, Old Lower, and City Hydro POMs, Gem State POM, and Westside.

## 2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

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**Exhibit F**  
**SCHEDULING**

**1. SCHEDULING FEDERAL POWER**

Idaho Falls is responsible for scheduling all amounts of Slice Output Energy, Tier 1 Block Amounts and Tier 2 Block Amounts purchased under this Agreement from the Scheduling Points of Receipt to their ultimate destination, and for creating associated electronic tags. Idaho Falls agrees to provide copies of such electronic tags to Power Services consistent with the requirements of this Exhibit F.

**2. COORDINATION REQUIREMENTS**

**2.1 Prescheduling**

Idaho Falls shall submit delivery schedules of Slice Output Energy, Tier 1 Block Amounts and Tier 2 Block Amounts to Power Services by 1100 Pacific Prevailing Time the day(s) on which prescheduling occurs, as specified by WECC. Preschedule electronic tags are due to Power Services in accordance with the parameters specified in section 4 of this exhibit.

**2.2 Real-Time Scheduling**

Idaho Falls shall have the right to submit new or modified schedules and electronic tags associated with deliveries of Slice Output Energy in real-time in accordance with the parameters specified in section 4 of this exhibit.

**2.3 After the Fact**

Power Services and Idaho Falls agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). Power Services and Idaho Falls shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

**3. SLICE OUTPUT ENERGY SCHEDULING REQUIREMENTS**

3.1 Schedule submissions to Power Services will primarily be via Power Services approved electronic methods, which may include specific interfaces. However, other Power Services' agreed-upon submission methods (verbal, fax, etc.) are acceptable if electronic systems are temporarily not available. Transmission scheduling arrangements are handled under separate agreements/provisions with the designated transmission provider, and may not necessarily be the same requirements as Power Services' scheduling arrangements.

3.2 Schedules of Slice Output Energy submitted to Power Services by Idaho Falls shall comply with Delivery Limits established in the Slice Computer Application.

3.3 The timeline within which Power Services shall approve or deny Idaho Falls' Delivery Requests, as represented by Idaho Falls' electronic tags, shall

conform to Power Services' then current preschedule and real-time scheduling guidelines as specified in section 4 of this exhibit.

- 3.3.1 For the purpose of approving requests for deliveries of Slice Output Energy, Power Services shall approve electronic tags, as described in section 3.3.2 below, that Idaho Falls submits to Power Services consistent with section 3.2 above prior to the applicable Power Services scheduling deadline, as specified in section 4 of this exhibit.
  - 3.3.2 Electronic tags submitted to Power Service shall: (1) identify BPA as the generation providing entity, (2) identify Idaho Falls as first downstream purchasing-selling entity, (3) identify hourly energy amounts in MWh, and (4) maintain all data consistent with applicable industry standards.
  - 3.3.3 Power Services shall have the sole discretion to accept or deny electronic tags that Idaho Falls submits to Power Services after the applicable Power Services' scheduling deadline set forth in section 4 of this exhibit, regardless of the reason for the late submission, and regardless of submission method (electronic, verbal, fax, etc.)
  - 3.3.4 Changes to tagged energy amounts required by the Balancing Authority for maintaining system reliability, as determined by the responsible Balancing Authority, shall be implemented by Power Services and Idaho Falls at the time of such notification by the Balancing Authority.
- 3.4 Idaho Falls shall be responsible for verifying the sum of its hourly tagged and non-tagged (e.g., transmission loss schedules, etc., that are not tagged) energy amounts is equal to its Delivery Request, as described in section 7 of Exhibit M, for each Scheduling Hour.
- 3.4.1 Idaho Falls shall have the right to submit adjusted Customer Inputs to Power Services, pursuant to section 4.1 of this exhibit, in order to alter the associated Simulated Output Energy Schedules within established Delivery Limits, such that Idaho Falls' Delivery Request is made equal to the sum of its tagged and non-tagged energy amounts for each Scheduling Hour.
  - 3.4.2 For each Scheduling Hour, the amount Idaho Falls' hourly tagged and non-tagged energy amount is in excess of its Delivery Request shall be subject to the UAI Charge for energy, and the amount Idaho Falls' hourly tagged and non-tagged energy amount is less than its Delivery Request shall be forfeited.
  - 3.4.3 Electronic tag and Delivery Request mismatches that result from Balancing Authority reliability required actions shall not be subject to penalty if such required reliability action is implemented by the

Balancing Authority less than 30 minutes prior to the start of the Scheduling Hour in which the mismatch occurs.

#### 4. SCHEDULING DEADLINES

##### 4.1 Customer Input Submission Deadline

Idaho Falls shall have until 15 minutes prior to the start of each Scheduling Hour to submit revised Customer Inputs to Power Services in order to affect the associated Simulated Output Energy Schedules for each such Scheduling Hour. Power Services shall have the sole discretion to reject for any reason Idaho Falls' Customer Inputs associated with the upcoming Scheduling Hour that are submitted to Power Services after 15 minutes prior to the start of each such Scheduling Hour.

##### 4.2 Real-Time Electronic Tag Submission Deadline

Power Services shall approve electronic tags, as described in section 3.3.2 of this exhibit, that are consistent with section 3.2 of this exhibit and submitted to Power Services by Idaho Falls prior to the Power Services' scheduling deadline, which is 30 minutes prior to the start of each Scheduling Hour.

##### 4.3 Preschedule Electronic Tag Submissions

Unless otherwise mutually agreed, all Idaho Falls preschedule electronic tags will be submitted to Power Services according to NERC instructions and deadlines for electronic tagging, as specified or modified by the Balancing Authority and WECC.

#### 5. SCHEDULING OF DEDICATED RESOURCES

No later than 10 days following the end of each month, Idaho Falls agrees that it will electronically copy Power Services on all electronic tags that were created or modified during the previous month in association with the delivery of Idaho Falls' Dedicated Resources, if any, listed in sections 2, 3, and 4 of Exhibit A.

#### 6. SPECIAL SCHEDULING PROVISIONS FOR TRANSFER CUSTOMERS

BPA shall add special scheduling provisions to this Exhibit F prior to commencement of service to account for transfer arrangements.

#### 7. REVISIONS

BPA may unilaterally revise this exhibit:

- (1) to implement changes that BPA determines are necessary to allow it to meet its power scheduling obligations under this Agreement, or
- (2) to comply with the prevailing industry practice and requirements, currently set by WECC, NAESB, or NERC, or their successors or assigns.

BPA shall provide a draft of any material revisions of this exhibit to Idaho Falls, with a reasonable time for comment, prior to BPA providing written notice of the revision. Revisions are effective 45 days after BPA provides written notice of the revisions to Idaho Falls unless, in BPA's sole judgment, less notice is necessary to

comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

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**Exhibit G**  
**PRINCIPLES OF NON-FEDERAL TRANSFER SERVICE**

As provided by section 14.6.7 of the body of this Agreement and BPA's Long-Term Regional Dialogue Final Policy, July 2007, or any other later revision of that policy, if Idaho Falls acquires non-federal resources to serve its retail load above its established RHWM, then BPA's support and assistance to Idaho Falls regarding transfer service for its non-federal resources shall be consistent with the following principles:

**1. ESTABLISHED CAPS AND LIMITATIONS**

BPA shall provide financial support for the transmission capacity associated with non-federal resource purchases to all Transfer Service customers up to a maximum of 41 megawatts per fiscal year, cumulative over the duration of this Agreement. This cumulative megawatt limit is shown in the table below.

| <b>Fiscal Year</b> | <b>Per Year MW Limit</b> | <b>Cumulative MW Limit</b> |
|--------------------|--------------------------|----------------------------|
| FY 2012            | 41                       | 41                         |
| FY 2013            | 41                       | 82                         |
| FY 2014            | 41                       | 123                        |
| FY 2015            | 41                       | 164                        |
| FY 2016            | 41                       | 205                        |
| FY 2017            | 41                       | 246                        |
| FY 2018            | 41                       | 287                        |
| FY 2019            | 41                       | 328                        |
| FY 2020            | 41                       | 369                        |
| FY 2021            | 41                       | 410                        |
| FY 2022            | 41                       | 451                        |
| FY 2023            | 41                       | 492                        |
| FY 2024            | 41                       | 533                        |
| FY 2025            | 41                       | 574                        |
| FY 2026            | 41                       | 615                        |
| FY 2027            | 41                       | 656                        |
| FY 2028            | 41                       | 697                        |

**2.** Application of section 14.6.7 of the body of this Agreement shall be on a first come, first served basis in each year based on the date each request is received by BPA. Requests not met, in whole or in part, in any Fiscal Year will have priority over subsequent requests the following year. Once granted, BPA shall honor such request for the duration of the resource acquisition period, not to exceed the term of this Agreement.

**3. PROCESS AND PARAMETERS FOR INITIALLY CHOOSING A NON-FEDERAL RESOURCE**

3.1 BPA obtains Transfer Service from Third Party Transmission Providers pursuant to OATT Network Integration Transmission Service. Additionally, BPA acquires firm transmission for all load service obligations incurred.

Therefore, BPA shall, on behalf of Idaho Falls, pursue Network Resource designation, as defined in the FERC OATT for Idaho Falls' non-federal resource. BPA shall provide all information the Third Party Transmission Provider requires to evaluate the Network Resource designation request. Idaho Falls shall provide all relevant information BPA determines is required to submit an application for designation of the resource as a Network Resource per section 29 of the OATT, or its successor.

- 3.2 Idaho Falls shall notify BPA of its intent and/or actions to acquire or purchase a non-federal resource at least one year prior to delivery. Such acquisition or purchase shall be for a period of no less than one year in duration.
- 3.3 If BPA's existing Transfer Service to Idaho Falls is pursuant to a non-OATT contractual arrangement, then BPA shall pursue all reasonable arrangements, including but not limited to OATT service, sufficient to enable Idaho Falls to utilize the non-federal resource to serve its load.
- 3.4 BPA shall not be liable to Idaho Falls in the event that Network Resource designation cannot be obtained.
- 3.5 BPA shall only obtain or pay for Transfer Service for Idaho Falls' non-federal resource if it is designated as a Network Resource under the Third Party Transmission Provider's OATT with a commitment of at least one year. The limitations in this principle 3 do not pertain to market purchases and the use of secondary network transmission, which are addressed below in principle 15.
4. Idaho Falls shall provide BPA all information BPA determines is reasonably necessary to administer firm network transmission service over the Third Party Transmission Provider's system.
5. BPA shall pay only the capacity costs associated with transmission service to Idaho Falls over transmission facilities of the Third Party Transmission Provider that either: (1) interconnect directly to Idaho Falls' facilities or (2) interconnect to BPA transmission facilities which subsequently interconnect with Idaho Falls' facilities. Idaho Falls shall arrange for, and pay any costs associated with, the delivery of non-federal power to an interconnection point with the Third Party Transmission Provider, including obtaining and paying for firm transmission across all intervening transmission systems.
6. Idaho Falls shall pay a portion of the costs of all Ancillary Services necessary to deliver any non-federal resource to serve its load. The Ancillary Service costs imposed by the Third Party Transmission Provider shall be apportioned between BPA and Idaho Falls based on either:
  - (1) metered/scheduled quantities of the non-federal resource, expressed as a percentage of total load, multiplied by the total costs assessed BPA by the Third Party Transmission Provider; or



(2) actual charges assessed by the Third Party Transmission Provider.

However, BPA shall treat the cost of load regulation service consistent with the load regulation service cost as described in section 14.6.1(1) of the body of this Agreement. BPA shall be responsible for the cost of generation supplied reactive power, and Idaho Falls shall be responsible for any generation imbalance costs, if any, related to Idaho Falls' non-federal resource.

7. Idaho Falls shall be responsible for the costs of all other transmission services for non-federal deliveries not included in principles 5 and 6 above, including, but not limited to: redispatch, congestion management costs, system and facility study costs associated with adding the non-federal generation as a Network Resource, direct assigned system upgrades, distribution and low-voltage charges, if applicable and real power losses.
8. Idaho Falls shall be responsible for all costs of interconnecting generation to a transmission system.
9. Idaho Falls shall be responsible for acquiring transmission services from BPA, including wheeling for non-federal resources. If Idaho Falls does not require transmission services from BPA for wheeling non-federal resources, then Idaho Falls shall be responsible for a pro rata share of the Third Party Transmission Provider transmission costs that BPA incurs to serve Idaho Falls.
10. Idaho Falls shall be responsible for all integration services to support its non-federal resources:
  - (1) in accordance with all requirements of the host Balancing Authority and/or Third Party Transmission Provider, and
  - (2) which are necessary for designation of the non-federal resource as a Network Resource.
11. As necessary, Idaho Falls shall meet all resource metering requirements including compliance with BPA standards and any requirements of the generation host Balancing Authority and/or Third Party Transmission Provider.
12. The Parties shall cooperate to establish the protocols, procedures, data exchanges or other arrangements the Parties deem reasonably necessary to support the transmission of Idaho Falls' non-federal resource.
13. Unless otherwise agreed, Idaho Falls shall be responsible for managing any non-federal resource consistent with Exhibit F.
14. BPA shall have no obligation to pay for Transfer Service for non-federal power to serve any portion of Idaho Falls' retail load that Idaho Falls is obligated to serve with federal power pursuant to this Agreement.

15. Once Idaho Falls' non-federal resource has been designated as a Network Resource, BPA will not undesignate Idaho Falls' Network Resource for marketing purposes. Also, once such Network Resource designation has been made, Idaho Falls may make market purchases to displace the Network Resource, which BPA shall schedule on secondary network service, provided that:
- (1) such market purchases are at least one day in duration;
  - (2) the megawatt amount of the market purchase does not exceed the amount of the designated Network Resource that Idaho Falls would have scheduled to its load;
  - (3) such market purchases are only scheduled in preschedule consistent with section 4.1 of Exhibit F;
  - (4) Idaho Falls does not, under any circumstances, remarket its designated Network Resource or perform any other operation that would cause BPA to be in violation of its obligations under the Third Party Transmission Provider's OATT;
  - (5) Idaho Falls is responsible for any additional energy imbalance, redispatch, and/or UAI charges that result from a transmission curtailment that impacts the resulting secondary network schedule; and
  - (6) any RSS products that Idaho Falls has purchased from BPA are not applied to the market purchase(s).
16. These principles will be the basis for a separate agreement BPA shall offer to Idaho Falls to support the Transfer Service of Idaho Falls' non-federal resource. BPA shall include terms specific to a particular non-federal resource in exhibits to the separate agreement, with a separate exhibit for each non-federal resource. Idaho Falls is under no obligation to accept this separate agreement or the exhibit for the particular non-federal resource and BPA is not bound to acquire or pay for Transfer Service for non-federal resources if Idaho Falls does not accept the separate agreement or the exhibit for the particular non-federal resource.
17. BPA shall recover the costs associated with any agreements with Idaho Falls reached under these principles pursuant to BPA's Wholesale Power Rate Schedules and GRSPs.

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**Exhibit H**  
**RENEWABLE ENERGY CERTIFICATES AND CARBON ATTRIBUTES**

**1. DEFINITIONS**

- 1.1 “Carbon Credit” means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.
- 1.2 “Environmental Attributes” means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.
- 1.3 “Environmentally Preferred Power RECS” or “EPP RECs” means the portion of BPA’s Tier 1 RECs that is equal to an amount of up to 130 percent of the annual average of equivalent environmentally preferred power (EPP) contracted for as of October 1, 2009, for FYs 2010 and 2011 under Subscription power sales contracts containing rights to Environmental Attributes through FY 2016, as determined by BPA to be necessary to administer such rights.
- 1.4 “Renewable Energy Certificates” or “RECs” means the certificates, documentation, or other evidence that demonstrates, in the tracking system selected under section 5 of this exhibit, the ownership of Environmental Attributes.
- 1.5 “Tier 1 RECs” means the RECs composed of a blend, by fuel source, based on annual generation of the resources listed in or pursuant to section 2 of this exhibit.
- 1.6 “Tier 2 RECs” means the RECs associated with generation of the resources whose costs are allocated to a given Tier 2 Cost Pool in accordance with the TRM.

**2. BPA’S TIER 1 REC INVENTORY**

BPA’s Tier 1 REC inventory shall include all RECs that BPA has determined are associated with resources whose output is used to establish Tier 1 System Capability, as Tier 1 System Capability is defined in the TRM. The disposition of any Carbon Credits that BPA determines are associated with resources listed in, or in accordance with, this section 2 shall be as described in section 3 of this exhibit. The disposition of any Carbon Credits that BPA determines are associated with resources not listed in, or in accordance with, this section 2 shall be consistent with section 7 of this exhibit. As of the Effective Date, BPA has determined that the following resources have RECs associated with them that will be included in the Tier 1 REC inventory: Foote Creek I, Foote Creek II, Stateline, Condon, Klondike I, Klondike III, and Ashland Solar. BPA shall maintain this list on a publicly accessible BPA website and shall periodically update this list to include any then-

current resources that BPA has determined have Tier 1 RECs associated with them. BPA shall calculate its inventory of Tier 1 RECs annually and after the fact based on energy generated by listed resources during the previous calendar year.

**3. IDAHO FALLS' SHARE OF TIER 1 RECS**

Beginning April 15, 2012, and by April 15 every year thereafter over the term of this Agreement, BPA shall:

- (1) transfer to Idaho Falls, or manage in accordance with section 5 of this exhibit, at no additional charge or premium beyond Idaho Falls' payment of the otherwise applicable Tier 1 Rate, a pro rata share of Tier 1 RECs based on Idaho Falls' RHWM divided by the total RHWMs of all holders of CHWM Contracts; and
- (2) for transferred RECs, provide Idaho Falls with a letter assigning title of such Tier 1 RECs to Idaho Falls.

The amount of Tier 1 RECs available to BPA to transfer or manage shall be subject to available Tier 1 REC inventory, excluding amounts of Tier 1 REC inventory used to provide EPP RECs.

**4. TIER 2 RECS**

If Idaho Falls chooses to purchase Firm Requirements Power at a Tier 2 Rate, and there are RECs which BPA has determined are associated with the resources whose costs are allocated to the Tier 2 Cost Pool for such rate, then beginning April 15 of the year immediately following the first Fiscal Year in which Idaho Falls' Tier 2 purchase obligation commences, and by April 15 every year thereafter for the duration of Idaho Falls' Tier 2 purchase obligation, BPA shall, based on Idaho Falls' election pursuant to section 5 of this exhibit, transfer to or manage for Idaho Falls a pro rata share of applicable Tier 2 RECs generated during the previous calendar year. The pro rata share of Tier 2 RECs BPA transfers to Idaho Falls shall be the ratio of Idaho Falls' amount of power purchased at the applicable Tier 2 Rate to the total amount of purchases under that Tier 2 Rate.

**5. TRANSFER, TRACKING, AND MANAGEMENT OF RECS**

Subject to BPA's determination that the commercial renewable energy tracking system WREGIS is adequate as a tracking system, BPA shall transfer Idaho Falls' share of Tier 1 RECs, and Tier 2 RECs if applicable, to Idaho Falls via WREGIS or its successor. If, during the term of this Agreement, BPA determines in consultation with customers that WREGIS is not adequate as a tracking system, then BPA may change commercial tracking systems with one year advance notice to Idaho Falls. In such case, the Parties shall establish a comparable process for BPA to provide Idaho Falls its RECs.

Starting on July 15, 2011, and by July 15 prior to each Rate Period through the term of this Agreement, Idaho Falls shall notify BPA which one of the following three options it chooses for the transfer and management of Idaho Falls' share of Tier 1 RECs, and Tier 2 RECs if applicable, for each upcoming Rate Period:

- (1) BPA shall transfer Idaho Falls' RECs into Idaho Falls' own WREGIS account, which shall be established by Idaho Falls; or
- (2) BPA shall transfer Idaho Falls' RECs into a BPA-managed WREGIS subaccount. Such subaccount shall be established by BPA on Idaho Falls' behalf and the terms and conditions of which shall be determined by the Parties in a separate agreement; or
- (3) Idaho Falls shall give BPA the authority to market Idaho Falls' RECs on Idaho Falls' behalf. BPA shall annually credit Idaho Falls for Idaho Falls' pro rata share of all revenues generated by sales of RECs from the same rate pool on its April bill, issued in May.

If Idaho Falls fails to notify BPA of its election by July 15 before the start of each Rate Period, then Idaho Falls shall be deemed to have elected the option in section 5(3) of this exhibit.

Any RECs BPA transfers to Idaho Falls on April 15 of each year shall be limited to those generated January 1 through December 31 of the prior year, except that any RECs BPA transfers to Idaho Falls by April 15, 2012, shall be limited to those generated October 1, 2011, through December 31, 2011.

**6. FEES**

BPA shall pay any reasonable fees associated with: (1) the provision of Idaho Falls' RECs and (2) the establishment of any subaccounts in Idaho Falls' name pursuant to sections 5(1) and 5(2) of this exhibit. Idaho Falls shall pay all other fees associated with any WREGIS or successor commercial tracking system, including WREGIS retirement, reserve, and export fees.

**7. CARBON CREDITS**

In the absence of carbon regulations or legislation directly affecting BPA, BPA intends to convey the value of any future Carbon Credits associated with resources whose costs are recovered in Tier 1 or Tier 2 Rates to Idaho Falls on a pro rata basis in the same manner as described for Tier 1 RECs and Tier 2 RECs in sections 3 and 4 of this exhibit. This value may be conveyed as: (1) the Carbon Credits themselves; (2) a revenue credit after BPA markets such Carbon Credits; or (3) the ability to claim that power purchases at the applicable PF rate are derived from certain federal resources.

**8. BPA'S RIGHT TO TERMINATE IDAHO FALLS' RECS AND/OR CARBON CREDITS**

To the extent necessary to comply with any federal regulation or legislation which addresses Carbon Credits or any other form of Environmental Attribute(s) and includes compliance costs applicable to BPA, BPA may, upon reasonable notice to Idaho Falls, terminate Idaho Falls' contract rights to Tier 1 RECs under section 3 of this exhibit and/or Idaho Falls' pro rata share of Carbon Credits under section 7 of this exhibit.

**9. RATEMAKING TREATMENT**

Notwithstanding the transfer, sharing, management, conveyance, marketing or crediting of RECs and Carbon Credits, or the value of any or all of them, pursuant to this Exhibit H, BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of: (1) determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act; and (2) establishing the rate(s) applicable to BPA sales pursuant to section 5(c) of the Northwest Power Act in a manner that BPA determines provides an appropriate sharing of the benefits and/or costs of the federal system and comparably reflects treatment of RECs and Carbon Credits in the calculation of a utility's average system cost of resources. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Idaho Falls. This paragraph does not constitute Idaho Falls' agreement to statutory ratemaking authority BPA does not otherwise have.

**10. REVISIONS**

BPA shall revise this Exhibit H to reflect BPA's determinations relevant to this exhibit and made in accordance with this Agreement. Any other revisions to this Exhibit H shall be by mutual agreement.

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**Exhibit I  
CRITICAL SLICE AMOUNTS**

**1. ESTABLISHING ADJUSTED ANNUAL RHWMTier 1 SYSTEM CAPABILITY**

No later than 90 days prior to the start of each Fiscal Year, beginning with FY 2012, BPA shall determine the annual and monthly Average Megawatt and MWh amounts of Adjusted Annual RHWMTier 1 System Capability for the upcoming Fiscal Year.

Such Adjusted Annual RHWMTier 1 System Capability amounts shall be determined by adjusting the Fiscal Year amounts used to calculate the RHWMTier 1 System Capability for known and determinable events that have occurred since the most recently concluded RHWMTier 1 System Process, such as changes in the availability or performance of Tier 1 System Resources, changes in Tier 1 System Obligations or the requirements of an applicable biological opinion, and which events: (1) would have caused BPA to use different assumptions in determining the RHWMTier 1 System Capability had such events been known before the RHWMTier 1 System Process; (2) will result in the Adjusted Annual RHWMTier 1 System Capability differing materially from the applicable annual RHWMTier 1 System Capability; and (3) will be reflected in BPA's operation of the FCRPS during the applicable Fiscal Year. The monthly Average Megawatt amounts of Adjusted Annual RHWMTier 1 System Capability so determined shall be specified in the applicable rows of the table below for each Fiscal Year. The monthly Adjusted Annual RHWMTier 1 System Capability expressed in megawatt-hours will be the product of the monthly Adjusted Annual RHWMTier 1 System Capability in Average Megawatts multiplied by the number of hours in the month, and will be specified in the applicable rows of the table below for each Fiscal Year.

| <b>Adjusted Annual RHWMTier 1 System Capability</b> |            |            |            |            |            |            |            |            |            |            |            |            |                       |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-----------------------|
|   | <b>Oct</b> | <b>Nov</b> | <b>Dec</b> | <b>Jan</b> | <b>Feb</b> | <b>Mar</b> | <b>Apr</b> | <b>May</b> | <b>Jun</b> | <b>Jul</b> | <b>Aug</b> | <b>Sep</b> | <b>annual<br/>aMW</b> |
| <b>Fiscal Year 2012</b>                             |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (aMW)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (MWh)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Fiscal Year 2013</b>                             |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (aMW)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (MWh)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Fiscal Year 2014</b>                             |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (aMW)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (MWh)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Fiscal Year 2015</b>                             |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (aMW)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (MWh)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Fiscal Year 2016</b>                             |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (MWh)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Peak (MW)</b>                                    |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Fiscal Year 2017</b>                             |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Energy (MWh)</b>                                 |            |            |            |            |            |            |            |            |            |            |            |            |                       |
| <b>Peak (MW)</b>                                    |            |            |            |            |            |            |            |            |            |            |            |            |                       |

**Adjusted Annual RHWM Tier 1 System Capability**

|                         | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
|-------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
| <b>Fiscal Year 2018</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2019</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2020</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2021</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2022</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2023</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2024</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2025</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2026</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2027</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2028</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |

Note: Fill in the table above with megawatt-hour values rounded to a whole number, and average megawatt values rounded to three decimal places.

**2. ESTABLISHING CRITICAL SLICE AMOUNTS**

By September 15, 2011, and by each September 15 thereafter, BPA shall determine Idaho Falls' Critical Slice Amounts by multiplying the monthly average megawatt amounts of Adjusted Annual RHWM Tier 1 System Capability set forth in the table in section 1 for each Fiscal Year by Idaho Falls' Slice Percentage applicable to each such Fiscal Year stated in section 2 of Exhibit K. The Critical Slice Amounts so determined will be specified in the applicable row of the table below for each Fiscal Year. The monthly Critical Slice Amounts, expressed as megawatt-hours, shall be the product of the monthly Critical Slice Amounts in Average Megawatts multiplied by the number of hours in the applicable month, and will be specified in the applicable row of the table below for each Fiscal Year.



**Annual Critical Slice Amount**

|                         | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
|-------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
| <b>Fiscal Year 2012</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2013</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2014</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2015</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2016</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)               |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2017</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Peak (MW)               |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2018</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2019</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2020</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2021</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2022</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2023</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2024</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2025</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2026</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| <b>Fiscal Year 2027</b> |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)            |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)            |     |     |     |     |     |     |     |     |     |     |     |     |               |

| Annual Critical Slice Amount  |     |     |     |     |     |     |     |     |     |     |     |     |               |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------|
|   | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | annual<br>aMW |
| Fiscal Year 2028  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (aMW)  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Energy (MWh)  |     |     |     |     |     |     |     |     |     |     |     |     |               |
| Note: Fill in the table above with megawatt-hour values rounded to a whole number, and average megawatt values rounded to three decimal places. |     |     |     |     |     |     |     |     |     |     |     |     |               |

**3. REVISIONS**

By September 15, 2011, and by each September 15 thereafter, BPA shall provide Idaho Falls a revised Exhibit I reflecting the annual and monthly Adjusted Annual RHWM Tier 1 System Capability and Critical Slice Amounts for the upcoming Fiscal Year determined in accordance with this Exhibit I, and a written summary stating any changes to the assumptions used by BPA to determine the RHWM Tier 1 System Capability for such Fiscal Year, the reasons for such change and the resulting impacts to the RHWM Tier 1 System Capability. Other changes shall be by mutual agreement of the Parties.

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## Exhibit J

### PRELIMINARY SLICE PERCENTAGE AND INITIAL SLICE PERCENTAGE

1. **PRELIMINARY SLICE PERCENTAGE**

Idaho Falls' Preliminary Slice Percentage is as specified below:

Preliminary Slice Percentage = 0.52018% or 0.0052018 as a decimal value.

2. **INITIAL SLICE PERCENTAGE**

Idaho Falls' Initial Slice Percentage shall be determined in accordance with section 4 of Exhibit Q. Promptly following such determination, BPA shall enter Idaho Falls' Initial Slice Percentage below:

Initial Slice Percentage = xx.xxxxx%, or 0.xxxxxxx as a decimal value.

3. **REVISIONS**

No later than May 1, 2011, BPA shall revise section 2 of this Exhibit J to enter Idaho Falls' Initial Slice Percentage.

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**Exhibit K**  
**ANNUAL SLICE PERCENTAGE DETERMINATION PROCESS**

**1. Annual Slice Percentage Determination Process**

**1.1 Definitions**

The following definitions apply only to this exhibit.

1.1.1 "Slice Percentage Adjustment Ratio" or "SPAR" means, for a given Fiscal Year, the ratio that is determined by dividing: (1) the Initial CHWM by (2) the sum of the Initial CHWM and the Additional CHWM for such Fiscal Year. The SPAR shall be expressed as a five-digit decimal number and entered into the table in section 1.2 below.

1.1.2 "Tier 1 Purchase Amount" means the lesser of Idaho Falls' Annual Net Requirement or Idaho Falls' RHWM.

**1.2 Establishing SPAR Amounts**

No later than 15 days prior to the first day of each Fiscal Year, beginning with FY 2012, BPA shall compute the SPAR for such Fiscal Year and enter it into the table below.

| <b>Fiscal Year</b> | <b>Slice Percentage Adjustment Ratio</b> |
|--------------------|--|
| FY 2012            | x.xxxxx                                  |
| FY 2013            | x.xxxxx                                  |
| FY 2014            | x.xxxxx                                  |
| FY 2015            | x.xxxxx                                  |
| FY 2016            | x.xxxxx                                  |
| FY 2017            | x.xxxxx                                  |
| FY 2018            | x.xxxxx                                  |
| FY 2019            | x.xxxxx                                  |
| FY 2020            | x.xxxxx                                  |
| FY 2021            | x.xxxxx                                  |
| FY 2022            | x.xxxxx                                  |
| FY 2023            | x.xxxxx                                  |
| FY 2024            | x.xxxxx                                  |
| FY 2025            | x.xxxxx                                  |
| FY 2026            | x.xxxxx                                  |
| FY 2027            | x.xxxxx                                  |
| FY 2028            | x.xxxxx                                  |

**1.3 Determination of Slice Percentage**

By September 15, 2011, and by each September 15 thereafter, BPA shall determine Idaho Falls' Slice Percentage by adjusting Idaho Falls' Initial Slice Percentage, as set forth in section 2 of Exhibit J, using the procedure set forth below.

**1.3.1 Annual Net Requirement Greater Than or Equal to the Product of AART1SC\*ISP\*SPAR**

If Idaho Falls' Annual Net Requirement is greater than or equal to the product of: (1) the Adjusted Annual RHWMTier 1 System Capability, (2) Idaho Falls' Initial Slice Percentage, and (3) the SPAR, then Idaho Falls' Slice Percentage shall be set equal to its Initial Slice Percentage multiplied by the SPAR.

**1.3.2 Annual Net Requirement Less Than the Product of AART1SC\*ISP\*SPAR**

If Idaho Falls' Annual Net Requirement is less than the product of: (1) the Adjusted Annual RHWMTier 1 System Capability, (2) Idaho Falls' Initial Slice Percentage, and (3) the SPAR, then Idaho Falls' Slice Percentage shall be set equal to the ratio determined by dividing (A) the product of Idaho Falls' Tier 1 Purchase Amount and the SPAR, by (B) the Adjusted Annual RHWMTier 1 System Capability.

**2. SLICE PERCENTAGE**

BPA shall enter Idaho Falls' Slice Percentage calculated pursuant to section 1.3 of this exhibit into the table below as a percentage rounded to the fifth digit, and as a decimal value rounded to the seventh digit.

| <b>Fiscal Year</b> | <b>Slice Percentage (decimal value)</b> |
|--------------------|---|
| FY 2012            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2013            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2014            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2015            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2016            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2017            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2018            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2019            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2020            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2021            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2022            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2023            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2024            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2025            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2026            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2027            | xx.xxxxx % (0.xxxxxxx)                  |
| FY 2028            | xx.xxxxx % (0.xxxxxxx)                  |

**3. REVISIONS**

BPA shall revise the table in section 1.2 and the table in section 2 of this Exhibit K for each Fiscal Year in accordance with the terms of this Exhibit K. Other changes to this Exhibit K shall be by mutual agreement of the Parties.

**Exhibit L**  
**RHWM AUGMENTATION**

**1. RHWM AUGMENTATION AMOUNTS**

The amounts of RHWM Augmentation applicable to each Fiscal Year of each Rate Period shall be entered into the table below no later than 60 days after the conclusion of the RHWM Process for each such Rate Period.

| <b>Fiscal Year</b> | <b>RHWM Augmentation</b> |
|--------------------|--------------------------|
| FY 2012            | xxx aMW                  |
| FY 2013            | xxx aMW                  |
| FY 2014            | xxx aMW                  |
| FY 2015            | xxx aMW                  |
| FY 2016            | xxx aMW                  |
| FY 2017            | xxx aMW                  |
| FY 2018            | xxx aMW                  |
| FY 2019            | xxx aMW                  |
| FY 2020            | xxx aMW                  |
| FY 2021            | xxx aMW                  |
| FY 2022            | xxx aMW                  |
| FY 2023            | xxx aMW                  |
| FY 2024            | xxx aMW                  |
| FY 2025            | xxx aMW                  |
| FY 2026            | xxx aMW                  |
| FY 2027            | xxx aMW                  |
| FY 2028            | xxx aMW                  |

**2. MODELING OF RHWM AUGMENTATION IN THE SLICE COMPUTER APPLICATION**

The amounts of RHWM Augmentation listed in section 1 of this exhibit will be a component of the BOS Base amount as determined by the BOS Module pursuant to section 4.4.1 of Exhibit M, and shall be made available to Idaho Falls in a Flat Annual Shape for the applicable Fiscal Year.

**3. REVISIONS**

This Exhibit L shall be revised by BPA in accordance with its terms and such revision provided to Idaho Falls not later than 60 days after to the conclusion of each RHWM Process.

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**Exhibit M**  
**SLICE COMPUTER APPLICATION**

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**1. SLICE COMPUTER APPLICATION – GENERAL DESCRIPTION**

The Slice Computer Application is a proprietary BPA computer application developed and maintained by BPA in consultation with Idaho Falls and other SIG members. The Slice Computer Application consists of the Slice Water Routing Simulator, the Balance of System Module, the Default User Interface, and other related processes used for scheduling, tagging, and accounting of Slice Output and communication of information, all as described below.

The Slice Computer Application is used to determine Idaho Falls’ hourly Slice Output Energy amounts that will be made available by Power Services for delivery to Idaho Falls. The total amount of Slice Output Energy to be scheduled each hour is comprised of the results of the Simulator and the BOS Module, as set forth in section 7 of this exhibit.

In the event Exhibit O is implemented pursuant to section 5.10.3.2 of the body of this Agreement, only sections 3.5, 5, 8, and 9 of this Exhibit M shall be in effect as long as Exhibit O remains in effect.

## 2. DEFINITIONS

The following definitions apply only to this Exhibit M.

- 2.1 "Algorithm Tuning Parameters" means factors, coefficients, or variables that are embedded within Simulator algorithms or formulas and are adjusted by Power Services as needed to appropriately implement provisions of this Agreement.
- 2.2 "Bypass Spill" means Spill that occurs at a hydroelectric project associated with lock operations, leakage and fish bypass systems.
- 2.3 "Forced Spill" means Spill other than Bypass Spill, Elective Spill, or Fish Spill that occurs at a hydroelectric project and is unavoidable in order to operate the project within applicable Operating Constraints.
- 2.4 "Incremental Side Flows" means the portion of a hydroelectric project's natural inflow that enters the river on which the project is located between that project and the next-upstream project.
- 2.5 "Logic Control Parameters" means flags or toggles that are embedded within the Slice Computer Application logic and are set by Power Services as needed to appropriately implement provisions of this Agreement.
- 2.6 "Simulator Initialization Time" means the date and time that represents the beginning of the first one-hour period of the Simulator Modeling Period.
- 2.7 "Simulator Modeling Period" means the variable time period represented by the Simulator output, including between 41 and 48 one-hour time periods and an additional 22 to 24 eight-hour time periods, as described in section 3.1.2 of this exhibit.

## 3. SLICE WATER ROUTING SIMULATOR

### 3.1 General Description

The Simulator is designed to determine Idaho Falls' potential range of available Simulated Output Energy Schedules and Delivery Limits associated with the Simulator Projects. Idaho Falls shall utilize the Simulator to simulate the routing of available stream flow through the Simulator Projects in compliance with established Simulator Parameters. Power Services is responsible for establishing and managing Simulator Parameters within the Simulator, pursuant to section 3.2 of this exhibit, and Idaho Falls is responsible for establishing and managing Customer Inputs within the Simulator, pursuant to section 3.3 of this exhibit. Idaho Falls shall use the Slice Computer Application to determine and make its requests for Slice Output Energy scheduled from Power Services.

- 3.1.1 The Simulator will be managed, updated and maintained by BPA. Idaho Falls shall have access to the Simulator for the purpose of running various Simulated Operating Scenarios.



- 3.1.2 The Simulator shall be designed to produce Simulated Operating Scenarios in one-hour time periods for no less than 41 hours and no more than 48 hours, and additional eight-hour time periods for no less than 22 periods and no more than 24 periods, depending upon the Simulator Initialization Time.
- 3.1.2.1 The one-hour time periods shall begin with the hour that directly follows the Simulator Initialization Time and will continue for between 41 and 48 hours, ending with either Scheduling Hour 06, 14, or 22.
- 3.1.2.2 The eight-hour time periods shall include the three periods each day ending with Scheduling Hours 06, 14, and 22. The eight-hour time periods shall begin with the first eight-hour period following the one-hour time periods and shall continue for between 22 and 24 periods, ending with the eight-hour period that ends with Scheduling Hour 22.
- 3.1.3 The Simulator shall incorporate approximate hydraulic time lags between Simulator Projects.
- 3.1.4 The Simulator shall reflect the application of all Operating Constraints in effect for each Simulator Project, including compliance with Operating Constraints in effect at downstream projects.
- 3.1.5 The Simulator shall calculate simulated inflows to Grand Coulee based upon forecast (or measured when available) discharges from upstream projects plus forecast Incremental Side Flows between those projects and Grand Coulee, as adjusted for forecast Banks Lake irrigation pumping flows.
- 3.1.6 The Simulator shall compute the simulated Grand Coulee discharge, generation, and forebay elevation based on Idaho Falls' Customer Inputs and shall use such computed discharge to establish Idaho Falls' simulated Chief Joseph inflow, given appropriate time lags, and as adjusted for forecast Chief Joseph Incremental Side Flows.
- 3.1.7 The Simulator shall calculate simulated inflows to McNary based upon forecast (or measured when available) discharges from Priest Rapids and Ice Harbor after considering approximate hydraulic time lags between those projects and McNary, as adjusted for forecast McNary Incremental Side Flows. The Simulator shall also incorporate Idaho Falls' Hydraulic Link Adjustment, pursuant to section 3.7 of this exhibit, into Idaho Falls' simulated McNary inflow.
- 3.1.8 The Simulator shall compute the simulated McNary discharge, generation, and forebay elevation based on Idaho Falls' Customer Inputs and shall use such computed discharge to establish Idaho Falls'

simulated John Day inflow, given appropriate time lags, and as adjusted for forecast John Day Incremental Side Flows.

3.1.9 The Simulator will compute the simulated discharge, generation and forebay elevations for John Day, The Dalles and Bonneville, as well as simulated inflows into The Dalles and Bonneville for Idaho Falls, in a like manner.

3.1.10 The Simulator will not be designed to accept aggregated Customer Inputs for the LCOL Complex or the Coulee-Chief Complex. Idaho Falls may develop aggregated Customer Inputs for use in its in-house processes but must translate such aggregated Customer Inputs into individual Customer Inputs for each Simulator Project to enable the Slice Computer Application to validate Idaho Falls' simulated operation of individual Simulator Projects against Operating Constraints.

### 3.2 Simulator Parameters

Power Services shall establish, monitor and update the Simulator Parameters, as specified in this section 3.2, applicable to each Simulator Project to reflect: (1) Operating Constraints in effect or to take effect at the actual Tier 1 System Resource, and (2) forecast system conditions used by BPA in the operation of the Tier 1 System Resources, for the entire Simulator Modeling Period. Power Services shall designate each Operating Constraint established as a Simulator Parameter as either an Absolute Operating Constraint, a Hard Operating Constraint, or a Soft Operating Constraint. The simulated operating capability available from the Simulator Projects as affected by the Simulator Parameters shall reasonably represent the actual operating capability available from the Tier 1 System Resources that comprise the Simulator Projects as affected by the associated Operating Constraints. To the maximum extent practicable, Power Services shall monitor the operating conditions that affect the Simulator Projects and shall revise the Simulator Parameters as necessary to reflect changes.

3.2.1 Power Services shall have the right to revise Simulator Parameters affecting each Scheduling Hour up to one hour prior to the beginning of each such Scheduling hour. For example, Power Services shall have the right to revise Simulator Parameters affecting Scheduling Hour 13 up until 11:00 a.m.

3.2.2 The Simulator Parameters shall include:

- (1) Hourly regulated inflows (Grand Coulee and McNary only);
- (2) Hourly Incremental Side Flows;
- (3) Initial forebay elevations;
- (4) Water to energy conversion factors (H/Ks);

- (5) Content to elevation conversion tables;
- (6) Project turbine capacities;
- (7) Spill limitations and requirements, including Bypass Spill quantities;
- (8) Generation limitations and requirements;
- (9) Discharge limitations and requirements as needed to meet both discharge and tailwater elevation requirements;
- (10) Forebay limitations and requirements;
- (11) System wide requirements that affect the Simulator Projects (e.g. Vernita Bar, chum spawning, or Operating Reserves);
- (12) Algorithm Tuning Parameters;
- (13) Logic Control Parameters that affect the Simulator Projects (e.g. CGS Displacement election, PSB enforcement flag, etc.); and,
- (14) Simulator Parameters as implemented pursuant to section 5.12 of the body of this Agreement and included in the specification manual described in section 3.5.1 of this exhibit.

### 3.3 Idaho Falls' Customer Inputs and Use of the Simulator

Idaho Falls shall be responsible for accessing the Simulator and submitting at least one Customer Input for each of the Simulator Projects for each one-hour and eight-hour time period for the entire Simulator Modeling Period. Idaho Falls is required to submit Customer Inputs to the Simulator separately from all other Slice Customers' Customer Inputs.

#### 3.3.1 Customer Inputs shall include:

- (1) Generation requests;
- (2) Elevation requests;
- (3) Discharge requests; and,
- (4) Customer Inputs as implemented pursuant to section 5.12 of the body of this Agreement and included in the specification manual described in section 3.5.1 of this exhibit.

3.3.2 Customer Inputs shall be stated in terms of whole project capability rather than Idaho Falls' Slice Percentage of project capability.

- 3.3.3 The Simulator shall include criteria for prioritizing Customer Inputs among generation, elevation, and discharge requests. Using these criteria, Idaho Falls may specify, in its Customer Inputs, the relative priority of its generation, elevation, or discharge requests, which shall be used by the Simulator to produce a Simulated Operating Scenario in accordance with applicable Simulator Parameters.
- 3.3.4 Upon submission to Power Services, the Simulator shall process Idaho Falls' Customer Inputs to determine a Simulated Operating Scenario. The simulated generation values resulting from each Simulated Operating Scenario shall represent Idaho Falls' potential Simulated Output Energy Schedules. Simulated Output Energy Schedules are not considered schedules for power delivery.
- 3.3.5 For each Simulated Operating Scenario the Slice Computer Application will provide Idaho Falls with a report stating for each Simulator Project: (1) the resulting simulated generation, discharge and elevation values, (2) which, if any, Absolute or Hard Operating Constraints limited the Simulated Operating Scenario, and (3) which, if any, Absolute or Hard Operating Constraints were violated.
- 3.3.6 If Idaho Falls submits Customer Inputs for a Simulated Operating Scenario that would otherwise result in violations of one or more Absolute or Hard Operating Constraints, the Simulator shall, to the extent possible, establish a Simulated Operating Scenario that conforms to the Absolute or Hard Operating Constraints. In such event, Idaho Falls shall make the election to either cancel the submission of its Customer Inputs or accept the results of the Simulated Operating Scenario.
- 3.3.7 Idaho Falls shall have the right to modify and submit to Power Services its Customer Inputs for each Scheduling Hour within the scheduling deadline established in section 4.1 of Exhibit F. As of the scheduling deadline prior to each Scheduling Hour, the Simulator shall process the Customer Inputs last submitted by Idaho Falls to determine Idaho Falls' final Simulated Operating Scenario and associated final Slice Output Energy Schedules, which shall be the basis of Idaho Falls' Delivery Request, as described in section 7 of this exhibit, for each such Scheduling Hour.
- 3.3.8 At least once per day, Idaho Falls shall be required to produce a Simulated Operating Scenario that demonstrates all Simulator Projects are in compliance with all applicable Operating Constraints for the duration of the Simulator Modeling Period.
- 3.3.9 Power Services shall provide Idaho Falls with access, via the Slice Computer Application, to a test version of the Simulator that can be

used for scenario testing. In this test version Idaho Falls shall have the ability to modify Simulator Parameters.

### 3.4 **Simulator Output**

Based on the Simulator Parameters and Customer Inputs in effect, the Simulator shall produce the following results for each one-hour and eight-hour time period for the entire Simulator Modeling Period:

- 3.4.1 Idaho Falls' potential Simulated Output Energy Schedules (simulated generation), simulated discharge, and simulated forebay elevation associated with each Simulator Project.
- 3.4.2 A list of Customer Inputs that resulted in violation of Operating Constraints within the Simulated Operating Scenario, pursuant to section 3.3.6 of this exhibit, or that were not achieved by the Simulator, for each Simulator Project.
- 3.4.3 A list of Operating Constraints that were violated within Idaho Falls' simulated operation for each Simulator Project.
- 3.4.4 An explanation for each occurrence listed pursuant to sections 3.4.2 and 3.4.3 of this exhibit.
- 3.4.5 Idaho Falls' Hydraulic Link Adjustment amounts as established pursuant to section 3.7 of this exhibit.

### 3.5 **Simulator Documentation, Performance Test, and Accuracy**

#### 3.5.1 **Simulator Documentation**

Power Services, with Idaho Falls' input, shall develop a manual with specifications describing the Simulator computations, processes and algorithms in sufficient detail to permit Idaho Falls to understand and verify the Simulator computations and accuracy of the Simulator outputs. The Simulator specification manual shall include, but shall not be limited to, the following:

- (1) A documented list of data points, including the source systems of record, such as BPA's internal modeling tools or stream flow forecasting databases, that are accessed and used to determine Simulator Parameters;
- (2) Full documentation, excluding computer code, of the processes by which the Simulator computes and produces output values;
- (3) Full documentation, excluding computer code, of the Simulator functions available to Idaho Falls, including access and controls of the Simulator; and

(4) Full documentation of the data output/display processes and communication protocols associated with Idaho Falls' computer systems.

3.5.2 If requested, Power Services may provide Idaho Falls assistance in developing an operational manual to explain how the Simulator is to be operated by Idaho Falls. After a reasonable period of time (as determined by Power Services) following the SCA Implementation Date, Power Services may charge Idaho Falls for any such assistance Power Services provides.

**3.5.3 Simulator Performance Test**

Power Services shall conduct the Simulator Performance Test specified in this section 3.5.3 of this exhibit, and as required pursuant to section 5.10.4 of the body of this Agreement and section 3.5.4.2 of this exhibit.

**3.5.3.1 Storage Content Test**

Using actual stream flows (including calculated Incremental Side Flows), operating constraints, initial monthly Simulator Project forebay elevations, and Simulator Project discharges for the months of January through September 2010, as input parameters, Power Services shall produce Simulated Operating Scenarios for each month of that period. Power Services shall compute the hourly Storage Content difference for each Simulator Project as the difference between the simulated Storage Content and the actual Storage Content for each such Simulator Project for each hour of the test period. For each month of the test period, a Simulator Project will have passed the Storage Content test if: (1) the hourly Storage Content difference is greater than the Storage Content value contained in column A of the table below on no more than 4 percent of the hours in the month; and, (2) no hourly Storage Content difference during the month is greater than the lesser of (i) the Storage Content value contained in column B of the table below or (ii) one-half of the applicable monthly available Storage Content. If a Simulator Project fails either of these tests for a month, then such Simulator Project will have failed the Storage Content test for such month.

| <b>Simulator Project</b> | <b>Column A</b> | <b>Column B</b> |
|--------------------------|-----------------|-----------------|
| Grand Coulee             | 5 ksfd          | 15 ksfd         |
| Chief Joseph             | 5 ksfd          | 11.5 ksfd       |
| McNary                   | 5 ksfd          | 15 ksfd         |
| John Day                 | 5 ksfd          | 15 ksfd         |
| The Dalles               | 5 ksfd          | 12.5 ksfd       |
| Bonneville               | 5 ksfd          | 15 ksfd         |

The overall Storage Content test will be deemed to have failed if one or more of the following occurs:

- (1) Grand Coulee fails the test in one or more of the nine months;
- (2) More than 25 percent of the 54 monthly tests fail;
- (3) Four or more Simulator Projects fail the test in any single month; or
- (4) Any of the Simulator Projects fail the test in all 9 months.

#### 3.5.3.2 Energy Test

Using actual stream flows (including calculated Incremental Side Flows), operating constraints, initial monthly Simulator Project forebay elevations, Simulator Project discharge values, and Simulator Project H/Ks for the months of January through September 2010, as input parameters, Power Services shall produce Simulated Operating Scenarios for each month of that period. Power Services shall compute the daily and monthly differences between the simulated generation and actual generation for each Simulator Project. For each month of the test period, a Simulator Project will have passed the energy test if: (1) for each day of the month the daily generation difference is no greater than 5 percent of the associated Simulator Project's actual daily generation; and, (2) the monthly generation difference is no greater than 3 percent of the associated Simulator Project's actual monthly generation. The overall energy test will be deemed to have failed if one or more of the following occurs:

- (1) Grand Coulee fails the test in one or more of the 9 months;
- (2) More than 25 percent of the 54 monthly tests fail;
- (3) Four or more Simulator Projects fail the monthly test in any single month; or
- (4) Any of the Simulator Projects fail the test in all 9 months.

#### 3.5.3.3 Peaking Test

Power Services shall produce a separate Simulated Operating Scenario as specified below, for the hottest consecutive 3-day

period and the coldest consecutive 3-day period that occurred during the period January through September 2010.

The 3-day test periods shall be determined by Power Services based on the weighted-average temperatures for three major load centers: Portland, Seattle, and Spokane. The weighted-average temperatures for these load centers will be determined as follows:

- (1) Each city's daily maximum and daily minimum temperature will be averaged;
- (2) The resulting day-average temperature from each city will be weighted by applying load center percentage weightings, which will be determined by Power Services and will sum to 100 percent for the three cities; and
- (3) The resulting weighted day-average temperatures for each city will then be combined to determine each day's weighted-average load center temperature.

The daily weighted-average load center temperatures will be averaged for each consecutive 3-day period for the January through September 2010 period. The lowest such average will establish the coldest 3-day period and the highest such average will establish the hottest 3-day period.

The Simulated Operating Scenarios will be developed using actual stream flows (including calculated Incremental Side Flows), operating constraints, and initial Simulator Project forebay elevations from the 3-day test periods as input parameters. Each Simulator Project's hourly generation request will be set equal to such Simulator Project's actual generation value from the representative test periods. Power Services will compare each of the Simulator Project's simulated hourly generation values to such Simulator Project's actual hourly generation values for each of the 6 peak hours on any of the test days. The 6 peak hours shall be established as the 6 hours with the largest combined actual Simulator Project generation each day. The peaking test will be deemed to have failed if either of the following occurs:

- (1) The Simulator Projects' combined simulated generation value deviates from the Simulator Projects' combined actual generation value by more than 200 aMW over the 6 peak hours on any of the test days; or



- (2) The Simulator Projects' combined simulated generation value deviates from the Simulator Projects' combined actual generation value by more than 400 MW on any of the 6 peak hours on any of the test days.

#### 3.5.3.4 Ramp Down Test

Using actual stream flows (including calculated Incremental Side Flows), operating constraints, initial Simulator Project forebay elevations, and Simulator Project generation values from the dates specified below as input parameters, Power Services shall develop a separate Simulated Operating Scenario for each specified date. Power Services shall compute the difference between the simulated Grand Coulee generation change and the actual Grand Coulee generation change for each two consecutive hours between Scheduling Hour 20 and Scheduling Hour 02 for each study day. The ramp down test will be deemed to have failed if one or more of the following occurs:

- (1) The difference between the simulated and actual Grand Coulee generation change is greater than 300 MW on any two consecutive hours between Scheduling Hour 20 and Scheduling Hour 02, on any ramp down test date;
- (2) The average difference between the simulated and actual Grand Coulee generation change is greater than 100 MW for each two consecutive hours between Scheduling Hour 20 and Scheduling Hour 02 on any ramp down test date.
- (3) The ramp down test dates will be:  
January 7-8 (Th-F) and 16-17 (Sa-Su), 2010,  
February 4-5 (Th-F) and 24-25 (W-Th), 2010,  
March 10-11 (W-Th) and 22-23 (M-Tu), 2010,  
April 2-3 (F-Sa) and 19-20 (M-Tu), 2010,  
May 6-7 (Th-F) and 27-28 (Th-F), 2010,  
June 9-10 (W-Th) and 21-22 (M-Tu), 2010,  
July 1-2 (Th-F) and 30-31 (F-Sa), 2010,  
August 12-13 (Th-F) and 20-21 (F-Sa), 2010,  
September 6-7 (M-Tu) and 16-17 (Th-F), 2010.

#### 3.5.3.5 Changes to Simulator Performance Test Criteria

If the Simulator Performance Test fails, and after Power Services discusses the results of the test with Idaho Falls, the Parties agree the test criteria is unreasonable, inappropriate, or unattainable, then the Parties may mutually agree to either deem the Simulator Performance Test as having passed, or alter the test criteria prior to conducting subsequent Simulator Performance Tests.

#### 3.5.4 Simulator Accuracy

Idaho Falls and Power Services acknowledge that model errors are inevitable. No cumulative accounting of model error impacts shall be required or established.

3.5.4.1 To minimize such errors Power Services shall ensure Simulator Parameters established for the Simulator reasonably reflect the expected values for forecasted inflows and Operating Constraints and that the Simulator reasonably represents the operational attributes of the Simulator Projects. Power Services shall develop a process to account and correct for differences between forecasted and measured inflows and H/K values reflected in the Simulator in an effort to minimize cumulative deviations. Idaho Falls shall accept such inputs and corrections, and shall ensure that Customer Inputs established for the Simulator reasonably reflect Idaho Falls' intended use of hourly scheduling flexibility within the established Delivery Limits.

3.5.4.2 As an ongoing check of the Simulator's accuracy, Power Services shall run a retrospective Simulator Performance Test as described in section 3.5.3 of this exhibit by October 31 of each calendar year during the term of this Agreement, beginning with calendar year 2012. The Simulator accuracy criteria for each Simulator Performance Test shall be set equal to actual Simulator accuracy associated with the preceding Simulator Performance Test results, unless the Parties agree otherwise through the SIG process. The specific study dates for each Simulator Performance Test shall be as agreed by the Parties. The test criteria for each Simulator Performance Test may be modified as agreed by the Parties. The results of each such test shall be made available to Idaho Falls by November 15 of each calendar year. The frequency of such tests may be modified by agreement of the Parties through the SIG process.

3.5.4.3 If any annual Simulator Performance Test results are not within the accuracy criteria established pursuant to section 3.5.4.2 of this exhibit, Power Services, in consultation with Idaho Falls and other members of the SIG, shall promptly implement modifications needed to bring the Simulator output in compliance with such accuracy criteria.

#### 3.5.5 Documentation of Simulator Updates, Upgrades, or Replacements and Idaho Falls' Required Actions

At least 30 days prior to Power Services implementing any updates, upgrades, or replacements to the Simulator, the Simulator specifications manual described in section 3.5.1 of this exhibit shall be

revised by Power Services and distributed to Idaho Falls' SIG representative. Within such 30 day period Idaho Falls shall test its systems and provide sufficient training to its staff to allow it to prudently manage the changes resulting from the updates, upgrades, or replacements.

### **3.6 Calculation and Application of the Calibrated Simulator Discharge**

3.6.1 Power Services shall calculate Idaho Falls' Calibrated Simulator Discharge for each Simulator Project by summing the following components for each hour.

- (1) The value produced by dividing Idaho Falls' Simulated Output Energy Schedule by the actual H/K associated with each such Simulator Project. For Grand Coulee and Chief Joseph the actual H/K shall reflect the previous day average, whereas for all other Simulator Projects, the actual H/K shall reflect the previous hour. For Grand Coulee only, the actual H/K shall reflect an adjustment based on Idaho Falls' SOA for Grand Coulee;
- (2) The actual Bypass Spill associated with each such Simulator Project;
- (3) The actual required Fish Spill associated with each such Simulator Project;
- (4) Idaho Falls' simulated Elective Spill associated with each such Simulator Project; and,
- (5) Idaho Falls' simulated Forced Spill associated with each such Simulator Project.

3.6.2 Idaho Falls' Calibrated Simulator Discharge for each Simulator Project shall be used to establish Idaho Falls' Storage Offset Account balances, as described in section 4 of Exhibit N.

### **3.7 Calculation and Application of the Hydraulic Link Adjustment**

3.7.1 Idaho Falls' Hydraulic Link Adjustment values shall be determined for the following periods of each day of this Agreement, beginning October 1, 2011.

- (1) The period including hours ending 2300 through 0600;
- (2) The period including hours ending 0700 through 1400; and
- (3) The period including hours ending 1500 through 2200.

3.7.2 Idaho Falls' Hydraulic Link Adjustment values shall be equal to Idaho Falls' average Chief Joseph Calibrated Simulator Discharge for each period above, minus the average Chief Joseph measured discharge for the same period.

3.7.3 Idaho Falls' Hydraulic Link Adjustment values shall be applied as an adjustment to Idaho Falls' simulated inflow to McNary in an equivalent amount for each hour of the same period for the following day.

#### 4. **BALANCE OF SYSTEM MODULE**

The BOS Module will include processes that compute: (1) the BOS Base amounts, (2) the BOS Flex amounts, (3) Idaho Falls' BOS Deviation Return amounts, and (4) Idaho Falls' Additional Energy amounts, all as specified below.

##### 4.1 **BOS Base Amount**

Consistent with the following provisions, the BOS Base amount shall be determined by Power Services and provided to Idaho Falls.

4.1.1 The BOS Base amount, for each hour, shall be equal to the sum of: (1) Power Services' latest planned or scheduled generation amounts associated with the BOS Complex projects, (2) the amount of Elective Spill Power Services implements on the BOS Complex projects, (3) the amount of RHWL Augmentation, as described in Exhibit L, and (4) the forecast amount of energy associated with Tier 1 System Obligations. Tier 1 System Obligations will be netted against or added to the BOS Complex generation as appropriate. Energy associated with RHWL Augmentation included in the BOS Base amount shall be applied in equal amounts each hour of each FY.

4.1.2 Idaho Falls' hourly BOS Base schedules shall be equal to the hourly BOS Base amounts multiplied by Idaho Falls' Slice Percentage.

##### 4.2 **BOS Flex Amount**

Consistent with the following provisions, the BOS Flex amount shall be determined by Power Services and made available to Idaho Falls on an as available basis.

4.2.1 The BOS Module will: (1) determine if there is sufficient flexibility to reshape the hourly generation associated with the Lower Snake Complex that is included in the BOS Base amount, and if so, (2) provide as output the resulting amount by which the BOS Base amount can be increased or decreased on any given hour. The BOS Module will specify the BOS Flex amounts that are available for preschedule as well as adjusted BOS Flex amounts that are available for real-time.

4.2.2 Such BOS Flex amounts shall reflect, in the judgment of Power Services, the amount by which the BOS Base amount can reasonably

be reshaped using the within-day flexibility available in the Lower Snake Complex, taking into account the Operating Constraints and stream flow conditions.

- 4.2.3 Idaho Falls shall determine its planned hourly use of the BOS Flex and submit to Power Services as part of the preschedule process, positive and negative hourly BOS Flex schedules that sum to zero for each day. A positive hourly BOS Flex schedule shall reflect an increase relative to the BOS Base amount and a negative hourly schedule shall reflect a decrease relative to the BOS Base amount.
- 4.2.4 In real-time, Idaho Falls shall update its hourly BOS Flex schedules to comply with revised BOS Flex amounts. If a mid-day change to the BOS Flex amounts prohibits Idaho Falls from scheduling its net day-total BOS Flex energy to equal zero, then Idaho Falls shall adjust its BOS Flex schedules to bring its net day total BOS Flex schedule as close to zero as possible within the revised BOS Flex amounts. Idaho Falls' BOS Deviation Account balance shall be adjusted to compensate for any non-zero day-total BOS Flex amount scheduled for any calendar day.
- 4.2.5 The BOS Flex available to Idaho Falls shall be equal to the BOS Flex determined pursuant to this section 4.2 multiplied by Idaho Falls' Slice Percentage.
- 4.2.6 If Idaho Falls determines it has a significant risk of not meeting its firm load service at any time, Idaho Falls may request that Power Services, as time permits and based on its professional judgment, assess the ability to modify the established BOS Flex amounts within applicable Operating Constraints. If Power Services alters such BOS Flex amounts, such updated values shall apply to all Slice Customers. Idaho Falls acknowledges such assessment by Power Services may result in an increase, decrease or no change to any of the remaining hourly BOS Flex amounts.

**4.3 BOS Deviation Return Amounts**

The BOS Module will compute and establish Idaho Falls' BOS Deviation Return amounts as established in section 4.4.1 of Exhibit N.

**4.4 Additional Energy Amounts**

The BOS Module will compute and establish Idaho Falls' Additional Energy schedules pursuant to section 5.8 of the body of this Agreement.

**4.5 Total BOS Amounts**

Idaho Falls' total BOS amount shall be equal to the sum the following components, rounded to a whole number:

- (1) the BOS Base schedule as established pursuant to section 4.1 of this exhibit;

- (2) the BOS Flex schedule as established pursuant to section 4.2 of this exhibit;
- (3) the BOS Deviation Return amount described in section 4.3 of this exhibit; and,
- (4) the Additional Energy amount described in section 4.4 of this exhibit.

**5. DEFAULT USER INTERFACE**

Power Services shall develop and maintain a Default User Interface (DUI) for Idaho Falls' use in interacting with the Slice Computer Application. Idaho Falls may utilize the DUI as its primary interface or may use an interface it develops in-house. If Idaho Falls' primary interface is not the DUI, then Idaho Falls shall maintain back-up functionality through, and staff capability to operate, the DUI in the event Idaho Falls' in-house interface is unavailable. The DUI shall include the functional capabilities listed below.

- (1) Provide Idaho Falls access to the Simulator for submittal of Customer Inputs and to run Simulated Operating Scenarios.
- (2) Provide Idaho Falls feedback and reports from the Simulator and BOS Module as set forth in sections 3.4 and 4.2.1 of this exhibit.
- (3) Provide Idaho Falls input/output displays related to the Simulator and BOS Module.

**6. SCA REPORTS**

- 6.1 No later than 5 minutes following the end of each Scheduling Hour, the SCA shall provide Idaho Falls a detailed report that specifies: (1) Idaho Falls' Calibrated Simulator Discharges as specified in section 3.6 of this exhibit, (2) Idaho Falls' SOA balances as specified in section 4 of Exhibit N, (3) Idaho Falls' adjusted forebay elevations for the Simulator Projects as specified in section 4.3 of Exhibit N, and (4) the after-the-fact project data Idaho Falls shall use to verify its hourly SOA balances.
- 6.2 Power Services shall make available to Idaho Falls, via the Slice Computer Application, a report which shall present all changes to Simulator Parameters that have been made by Power Services between a user specified start date/time and end date/time. Power Services shall include brief, concise explanatory statements coincidental with significant Simulator Parameter changes.
- 6.3 Power Services shall make available to Idaho Falls, via the Slice Computer Application, a report which shall present all Prudent Operating Decisions implemented by Power Services in the Simulator, between a user specified start date/time and end date/time. The report shall include the reason for imposing the Prudent Operating Decision and the manner in which Power

Services incorporated the Prudent Operating Decision into the Simulator Parameters.

**7. HOURLY DELIVERY REQUEST**

Idaho Falls' hourly Delivery Request for Slice Output Energy associated with any given Scheduling Hour shall be equal to the sum of the following components:

- (1) the sum of Idaho Falls' final Simulated Output Energy Schedules established per section 3.3.7 of this exhibit for each of the Simulator Projects multiplied by Idaho Falls' Slice Percentage, rounded to a whole number; and,
- (2) Idaho Falls' total BOS amount, established pursuant to section 4.5 of this exhibit.

Idaho Falls shall revise its hourly Delivery Requests for Slice Output Energy consistent with the requirements of section 3.4 of Exhibit F.

**8. SCA TRIAL PERIODS**

BPA shall facilitate four separate week-long SCA trial periods. During these trial periods, BPA shall maintain a test version of the SCA in a form as near to production status as possible, including the functionality for Idaho Falls to submit Customer Inputs and run the Simulator to produce Simulated Operating Scenarios and final Simulated Operating Scenarios through the DUI and through the secure network protocols, and to receive results from the submittal processes. The selection of specific weeks for such trial periods will be coordinated through the SIG, but shall begin no later than April 1, 2011 and shall end no later than August 1, 2011. Results and feedback of the trial periods will be reported to the SIG at which time any suggestions for improving the SCA, the Simulator, or the processes necessary to support and maintain the SCA will be discussed and considered by the Parties.

**9. REVISIONS**

Revisions to this Exhibit M shall be by mutual agreement of the Parties.

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**Exhibit N  
SLICE IMPLEMENTATION PROCEDURES**

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**1. SLICE IMPLEMENTATION PROCEDURES – GENERAL DESCRIPTION**

The procedures established in this Exhibit N shall be used by BPA and Idaho Falls in conjunction with Exhibit M to implement deliveries of energy sold to Idaho Falls under the Slice Product.

In the event Exhibit O is implemented pursuant to section 5.10.3.2 of the body of this Agreement and provisions of this Exhibit N are in conflict with provisions of Exhibit O, provisions of Exhibit O shall prevail.

**2. DEFINITIONS**

The following definitions apply only to this Exhibit N.

2.1 “Multiyear Hydroregulation Study” means a hydroregulation study that simulates the prospective monthly operation of the Tier 1 System, typically for a 12-month period, given a range of stream flow sequences.

2.2 “Slice Storage Account” or “SSA” means the account maintained by Power Services that records the sum of: (1) Idaho Falls’ Grand Coulee Storage Offset Account balance, and (2) the product of Idaho Falls’ Slice Percentage and the Grand Coulee actual Storage Content.

**3. DATA PROVIDED BY POWER SERVICES**

In addition to information exchanged and provided through provisions of Exhibit M and in order to assist Idaho Falls in managing and planning the use of its Slice Output, Power Services shall provide Idaho Falls the following information.

3.1 Tier 1 System operational information as described in sections 7, 8 and 9 of this exhibit.



- 3.2 Idaho Falls' SOA and BOS deviation account balances as described in section 4 of this exhibit.

**4. STORAGE AND DEVIATION ACCOUNTING**

As described below, Power Services shall determine and make available to Idaho Falls separate storage deviation account balances (Storage Offset Accounts or SOA) for each Simulator Project. The Storage Offset Accounts shall use measured project discharges, H/K values, and forebay elevations as benchmarks. Power Services shall also determine and make available to Idaho Falls an energy deviation account balance for the BOS Complex. The BOS Deviation Accounting benchmark shall be the Actual BOS Generation.

- 4.1 Idaho Falls' Storage Offset Account balances shall be established for each Simulator Project each hour in terms of the cumulative difference, expressed in thousands of second-foot-days (ksfd), between Idaho Falls' simulated project Storage Contents and actual project Storage Contents, based on the sum of the following components:

4.1.1 For each Simulator Project except Grand Coulee and McNary, Idaho Falls' Calibrated Simulator Discharge, as described in section 3.6 of Exhibit M, from the next-upstream Simulator Project minus such next-upstream Simulator Project's measured discharge, after considering approximate time lags;

4.1.2 The measured discharge from each Simulator Project minus Idaho Falls' Calibrated Simulator Discharge from such Simulator Project;

4.1.3 For McNary only, Idaho Falls' Hydraulic Link Adjustment, as described in section 3.7 of Exhibit M, and;

4.1.4 Idaho Falls' prior-hour SOA balance for each Simulator Project.

- 4.2 Power Services shall initialize Idaho Falls' September 30, 2011, SOA balance for each Simulator Project at zero.

4.3 For purposes of initializing Idaho Falls' official hourly simulated forebay elevations in the Simulator, Idaho Falls' SOA balance for each Simulator Project shall be added to the associated project's actual Storage Content and the result shall be converted to an equivalent forebay elevation using content-to-elevation tables established for such project.

4.4 Idaho Falls' BOS Deviation Account shall be equal to the cumulative difference, expressed in MWd, between Idaho Falls' BOS Base amount for each Scheduling Hour and the product of the Actual BOS Generation and Idaho Falls' Slice Percentage for each such hour. Idaho Falls' BOS Deviation Account balance shall be adjusted based on the following procedures:

4.4.1 Any time the absolute value of Idaho Falls' BOS Deviation Account balance, as of midnight the day prior to a day on which prescheduling

occurs, is greater than 2 MWd per Idaho Falls' Slice Percentage (Slice Percentage \* 2 \* 100), Idaho Falls shall schedule BOS Deviation Return energy each hour the following preschedule day in an amount equal to 1 MW per Idaho Falls' Slice Percentage, rounded to a whole number. Such BOS Deviation Return energy shall be scheduled as positive or negative values, as appropriate to reduce Idaho Falls' BOS Deviation Account balance toward zero.

4.4.2 On or before the 15<sup>th</sup> day of each month Power Services shall determine and provide to Idaho Falls the results of an Actual BOS Generation calculation for the previous month that incorporates updated actual project generation and Tier 1 System Obligation values for each hour of such month. Based on the monthly Actual BOS Generation calculation, Power Services shall determine a monthly BOS deviation, expressed in MWd, relative to the hourly BOS Base amounts. On the 20<sup>th</sup> day of each month Power Services shall adjust Idaho Falls' BOS Deviation Account balance by an amount equal to Idaho Falls' Slice Percentage multiplied by the monthly BOS deviation associated with such previous month.

4.5 Idaho Falls shall make all reasonable efforts to adjust its requests for deliveries of Slice Output Energy to reduce its SOA balances to zero by 2400 hours PPT on September 30, 2028, or the date of termination of this Agreement, whichever occurs earlier. Any balances in Idaho Falls' SOAs as of the earlier of 2400 hours on September 30, 2028, or the date of termination of this Agreement shall be converted to energy amounts by multiplying such SOA balances by the associated federal downstream H/Ks. The resulting energy amounts shall be summed with Idaho Falls' BOS Deviation Account balance as of the earlier of 2400 hours on September 30, 2028, or the date of termination of this Agreement. The resulting amount of energy, expressed in MWh, if positive, shall be delivered by Power Services to Idaho Falls, or if negative, delivered by Idaho Falls to Power Services, within the next 30 days after the termination of this Agreement.

## 5. OPERATING CONSTRAINT AND BOS FLEX VIOLATIONS

### 5.1 Operating Constraint Violations

The Simulator is designed such that Idaho Falls' Simulated Operating Scenario maintains compliance with all Hard and Absolute Operating Constraints. However, Power Services and Idaho Falls recognize there may be occasions where one or more Hard or Absolute Operating Constraints are violated within a Simulated Operating Scenario. In the event the Customer Inputs submitted by Idaho Falls result in the violation of one or more Hard or Absolute Operating Constraints in a final Simulated Operating Scenario, as established per section 3.3.7 of Exhibit M, Power Services shall establish operating guidelines based upon its determination of how Power Services would operate the system under similar conditions, such as operating to a minimum flow constraint, that Idaho Falls shall follow until such time as Idaho Falls' final Simulated Operating Scenario is in compliance with all

Operating Constraints. Power Services may also, upon its determination that Idaho Falls could have reasonably avoided such Operating Constraint violation, apply a penalty pursuant to section 5.1.4 of this exhibit for as long as such Hard or Absolute Operating Constraint is violated based upon Idaho Falls' final Simulated Operating Scenarios.

- 5.1.1 Idaho Falls shall be responsible for monitoring and anticipating potential Operating Constraint violations on a prospective basis and adjusting Customer Inputs as needed to maintain compliance.
- 5.1.2 Hourly Operating Constraint validations and violations associated with the Simulator Projects shall be based on Customer Inputs established by Idaho Falls and submitted to Power Services within the Power Services real-time scheduling deadline pursuant to section 4.1 of Exhibit F.
- 5.1.3 Grand Coulee's Project Storage Bound validations, violations and resulting penalties shall be determined pursuant to section 6 of this exhibit.
- 5.1.4 Pursuant to the terms set forth in section 5 above, Power Services shall have the right to reduce Idaho Falls' Delivery Request by up to 100% of Idaho Falls' total Simulated Output Energy Schedule for the Lower Columbia Complex for lower Columbia Simulator Project violations, or the Coulee-Chief Complex for Grand Coulee or Chief Joesph Simulator Project violations, on any given hour, taking into account the extent to which BPA determines it would face consequences under similar conditions, subject to the following provisions:
  - 5.1.4.1 Only for hours in which Idaho Falls' final Simulated Operating Scenarios are in violation of a Hard or Absolute Operating Constraint at one or more Simulator Projects;
  - 5.1.4.2 Only to the extent Power Services notifies Idaho Falls of the reduction at least 60 minutes prior to the Scheduling Hour on which the reduction shall be applied;
  - 5.1.4.3 Only to the extent Idaho Falls fails to remedy the Operating Constraint violation prior to the deadline established in section 4.1 of Exhibit F, and;
  - 5.1.4.4 Only for violations of Hard or Absolute Operating Constraints other than Grand Coulee's PSB.

**5.2 BOS Flex Violations**

Hourly Delivery Limit validations and violations associated with BOS Flex amounts shall be based on Idaho Falls' BOS Flex schedules submitted to Power Services as of the deadline set forth in section 4.2 of Exhibit F. Idaho

Falls' BOS Flex schedules that exceed Idaho Falls' Slice Percentage multiplied by positive BOS Flex amounts shall be subject to the UAI Charge for energy and Idaho Falls' BOS Flex schedules that are less than Idaho Falls' Slice Percentage multiplied by negative BOS Flex amounts shall be forfeited.

**6. GRAND COULEE PROJECT STORAGE BOUND (PSB) EXCEEDENCES**

When Grand Coulee's upper or lower PSB is established as either a Soft or Hard Operating Constraint, Idaho Falls' simulated Grand Coulee forebay elevation shall be validated against such Grand Coulee's PSB once each day. Such validations shall occur as of Scheduling Hour 05 for the upper PSB and Scheduling Hour 22 for the lower PSB. When Grand Coulee's upper or lower PSB is established as an Absolute Operating Constraint, no PSB validation will be necessary and the Simulator will not allow violations of Absolute Operating Constraints.

**6.1 Determination of Grand Coulee PSB**

Power Services shall estimate the upper and lower Grand Coulee PSB associated with each day of the following 3 months as part of each 3-month forecast submitted pursuant to section 8 of this exhibit, and shall update such Grand Coulee PSB as conditions change and as needed to reflect updated Operating Constraints. To determine Grand Coulee's PSBs, Power Services shall calculate the Storage Content associated with the Grand Coulee upper and lower ORCs as established by Operating Constraints in effect. Power Services shall apply a Storage Content difference between the upper and lower Grand Coulee PSB equivalent to at least ½-foot at all times except when Grand Coulee is required to fill to 1290.0 feet for verification of refill. Power Services may specify other conditions under which this ½-foot difference does not apply.

**6.2 Application of the Grand Coulee PSB**

Power Services shall designate each Grand Coulee PSB that does not represent an Absolute Operating Constraint as either a Hard Operating Constraint or a Soft Operating Constraint. Unless designated otherwise by Power Services, Grand Coulee PSB associated with date-specific required forebay elevations shall be designated as Hard Operating Constraints and Grand Coulee PSB associated with interpolated points in effect on days between such date-specific required forebay elevations shall be designated as Soft Operating Constraints. Idaho Falls shall maintain its Slice Storage Account balance within the upper and lower Grand Coulee PSB that are designated as Hard Operating Constraints, or be subject to penalties as established in section 6.4 of this exhibit. Idaho Falls' Slice Storage Account balance may exceed the upper or lower Grand Coulee PSB designated as Soft Operating Constraints without penalty. However, Idaho Falls recognizes that maintaining an SSA that is not within the upper and lower Grand Coulee PSB increases Idaho Falls' risk of violating the Grand Coulee PSB designated as Hard Operating Constraints and incurring the associated penalties.

- 6.3 Determination of Idaho Falls' Grand Coulee PSB Exceedence**  
Idaho Falls' Grand Coulee PSB exceedence shall be equal to the Storage Content by which Idaho Falls' Slice Storage Account balance is: (1) in excess of the value determined by multiplying Idaho Falls' Slice Percentage by the upper Grand Coulee Project Storage Bound, or (2) less than the value determined by multiplying Idaho Falls' Slice Percentage by the lower Grand Coulee Project Storage Bound. An upper Grand Coulee PSB exceedence is denoted as a positive value, while a lower Grand Coulee PSB exceedence is denoted as negative value.
- 6.4 Grand Coulee PSB Exceedences, Idaho Falls' Actions, and Penalties**
- 6.4.1 Idaho Falls shall be responsible for monitoring its SSA balance and any Grand Coulee PSB exceedence. If Idaho Falls' Grand Coulee PSB exceedence is positive, denoting an exceedence of the upper Grand Coulee PSB, on a day in which the upper Grand Coulee PSB is designated as a Hard Operating Constraint, the following shall apply.
- 6.4.1.1 Idaho Falls shall immediately modify and submit to Power Services its Customer Inputs associated with Grand Coulee such that the most restrictive maximum discharge constraint in effect at the Simulator Projects is achieved in its Simulated Operating Scenario. Idaho Falls shall maintain such simulated operation until such time as Idaho Falls' SSA balance is within Grand Coulee's upper and lower PSB.
- 6.4.1.2 If Idaho Falls fails to take the action specified in section 6.4.1.1 of this exhibit, then Idaho Falls' Grand Coulee SOA balance shall be reduced by an amount equal to the PSB exceedence determined pursuant to section 6.3 of this exhibit.
- 6.4.2 If Idaho Falls' Grand Coulee PSB exceedence is negative, denoting an exceedence of the lower Grand Coulee PSB, on a day in which the lower Grand Coulee PSB is designated as a Hard Operating Constraint, the following shall apply.
- 6.4.2.1 Idaho Falls shall immediately modify and submit to Power Services its Customer Inputs associated with Grand Coulee such that the most restrictive minimum discharge constraint in effect at the Simulator Projects is achieved in its Simulated Operating Scenario. Idaho Falls shall maintain such simulated operation until such time as Idaho Falls' SSA balance is within Grand Coulee's upper and lower PSB.
- 6.4.2.2 If Idaho Falls fails to take the action specified in section 6.4.2.1 of this exhibit, then a penalty shall be applied to Idaho Falls equal to Grand Coulee's at-site Storage Energy amount, expressed in MWh, associated with the absolute value of the Grand Coulee PSB exceedence determined

pursuant to section 6.3 of this exhibit multiplied by the UAI Charge for energy.

## 7. COMMUNICATIONS

- 7.1 Idaho Falls shall be solely responsible for its internal dissemination of information provided by Power Services pursuant to Exhibit M and this Exhibit N.
- 7.2 Idaho Falls shall be able to utilize the Default User Interface, as described in section 5 of Exhibit M, to review the Simulator Parameters established by Power Services.
- 7.3 Power Services shall make reasonable efforts to promptly notify Idaho Falls of potential and significant system condition or operational changes via e-mail, XML messaging, and/or the daily conference call described in section 7.5 of this exhibit.
- 7.4 Power Services shall communicate Federal Operating Decisions and Prudent Operating Decisions to Idaho Falls in the following manner:
  - 7.4.1 An initial listing and description of Federal Operating Decisions and Prudent Operating Decisions that affect the Simulator Projects and are in effect as of September 30, 2011;
  - 7.4.2 A publication via the Slice Computer Application as soon as practicable after BPA is informed of a Federal Operating Decision, or BPA makes either a Federal Operating Decision or Prudent Operating Decision affecting the Simulator Projects; and
  - 7.4.3 A verbal report to the attendees during the next scheduled daily conference call as described in section 7.5 of this exhibit regarding Federal Operating Decisions or Prudent Operating decisions that have a material impact on the operation of the Simulator Projects, BOS Complex, or Tier 1 System Obligations.
- 7.5 Beginning September 28, 2011, and on each Business Day thereafter, Power Services shall initiate an informational conference call with Idaho Falls and the other Slice Customers promptly at 12:40 PPT to discuss current and upcoming operating parameters and other related matters. The time and frequency of the call may be changed upon the mutual agreement of Power Services, Idaho Falls, and the other SIG members. Idaho Falls shall receive notice from Power Services via e-mail at least three Business Days prior to any such change.
- 7.6 Subject to the provisions set forth in section 5.12 of the body of this Agreement, Power Services, Idaho Falls, and other Slice Customers shall establish a forum to review and discuss Operating Constraints and their application.

## 8. 3-MONTH FORECAST OF SLICE OUTPUT

- 8.1 Prior to September 24, 2011 and prior to the 24<sup>th</sup> day of each month thereafter, Power Services shall provide Idaho Falls with the results of a 3-month forecast, pursuant to section 8.2 of this exhibit. Power Services shall revise such forecast during the month in the event conditions change significantly and shall make such revised forecast available to Idaho Falls in a timely manner.
- 8.2 Power Services, consistent with its internal study processes, shall perform two single-trace hydroregulation studies that incorporate the expected stream flow condition for the upcoming 3-month period in weekly time periods. One study shall operate Grand Coulee as needed to satisfy the minimum Simulator Project flow constraint in order to attain the highest reservoir elevations possible at Grand Coulee, limited by its upper ORC, and one study shall operate to Grand Coulee as needed satisfy the Simulator Project maximum flow constraint in order to attain the lowest reservoir elevations possible at Grand Coulee, limited to its lower ORC. Both studies shall reflect a pass-inflow operation at all other Simulator Projects and the expected operation at all other Tier 1 System Resources and non-federal projects that are represented in the study, such as Brownlee, Kerr, and the mid-Columbia projects. Power Services shall initialize the starting reservoir Storage Contents for each study equal to the Storage Contents projected to occur at midnight on the study initialization date. Based on the results of these studies, Power Services shall provide to Idaho Falls the weekly natural inflow, turbine discharge, generation, Spill discharge, and ending elevation for each of the Simulator Projects, the Snake Complex projects, Libby, Hungry Horse, Dworshak, and Keenleyside (Arrow); the weekly generation forecasts for the sum of the remaining BOS projects, excluding CGS; the weekly CGS generation forecast; and the weekly forecast of the individual Tier 1 System Obligations. Power Services shall also provide a summary of weekly aggregated planned generator maintenance outages for all Tier 1 System Resources, expressed in total MW, as well as the estimated daily Grand Coulee upper and lower PSB for the study period.

## 9. 12-MONTH FORECAST OF SLICE OUTPUT

- 9.1 Prior to July 15, 2011, and prior to each July 15 thereafter during the term of this Agreement, Power Services, Idaho Falls, and other Slice purchasers shall meet to discuss and review inputs, assumptions, and content of the Multiyear Hydroregulation Study used to develop the 12-month forecast described in section 9.4 of this exhibit.
- 9.2 Prior to August 1, 2011, and prior to each August 1 thereafter during the term of this Agreement, Power Services shall provide Idaho Falls with results from the 12-month forecast, pursuant to section 9.4 of this exhibit.

- 9.3 Prior to August 15, 2011, and prior to each August 15 thereafter during the term of this Agreement, Power Services, Idaho Falls, and other Slice purchasers shall meet to discuss the results of the 12-month forecast described in section 9.4 of this exhibit.
- 9.4 Power Services, consistent with its internal study processes, shall perform a single Multiyear Hydroregulation Study for the upcoming October through September period representing a range of potential stream flow traces (typically 43 traces). The study shall reflect Grand Coulee operating to its ORC at times when its upper and lower ORC are equal. At times when Grand Coulee's upper and lower ORC are not equal, the study shall reflect Coulee operating in a manner that achieves all Simulator Project flow constraints when possible. The study shall represent a pass-inflow operation at all other Simulator Projects and the expected operation at all other Tier 1 System Resources and non-federal projects that are represented in the study, such as Brownlee, Kerr, and the mid-Columbia projects. Power Services shall initialize the starting reservoir Storage Contents for this study at the Storage Contents projected to occur at midnight on the study initialization date. Based on the results of this study, Power Services shall provide to Idaho Falls the monthly natural inflow, turbine discharge, generation, Spill discharge, and ending elevation for each of the Simulator Projects, the Snake Complex projects, Libby, Hungry Horse, Dworshak, and Keenleyside (Arrow); the monthly generation forecasts for the sum of the remaining BOS projects, excluding CGS; the monthly CGS generation forecast; and the monthly forecast of the individual Tier 1 System Obligations. Power Services shall also provide a summary of monthly aggregated planned generator maintenance outages, expressed in total MW, for all Tier 1 System Resources.

## **10. CONGESTION MANAGEMENT**

If there are congestion management requirements placed on Power Services by the Balancing Authority, Power Services shall adhere to the operational requirements of such congestion management requirements and shall apply such operational requirements to Idaho Falls consistent with the terms of this Agreement.

## **11. CONFIDENTIALITY**

BPA considers all prospective operational information associated with the Tier 1 System or any Tier 1 System Resource to be proprietary and business sensitive. Such information that is provided by BPA to Idaho Falls or its scheduling agent pursuant to Exhibit M or this Exhibit N shall be treated as confidential by Idaho Falls and its scheduling agent. Idaho Falls shall limit its use of such information to its employees or agent solely for the implementation of the terms of this Agreement, and to no others. BPA reserves the right to withhold such operational information from scheduling agents that BPA determines are significant, active participants in WECC wholesale power or transmission markets and that are not purchasers of the Slice Product. If Idaho Falls enlists the services of a scheduling agent that is not a purchaser of the Slice Product Idaho Falls shall require its scheduling agent to develop systems or procedures that create functional separation between Slice related operational information and such scheduling agent's marketing functions.



**12. REVISIONS**

Revisions to this Exhibit N shall be by mutual agreement of the Parties.

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**Exhibit O**  
**INTERIM SLICE IMPLEMENTATION PROCEDURES**

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This Exhibit O shall be implemented only if the SCA Implementation Date, as established pursuant to section 5.10.3.2 of the body of this Agreement, is later than October 1, 2011. If implemented, this Exhibit O shall be in effect beginning October 1, 2011 and shall remain in effect until the SCA Implementation Date.

If this Exhibit O is implemented, any provisions of this Exhibit O that are in conflict with provisions of Exhibit N shall prevail over such provisions of Exhibit N.

To implement the provisions of this Exhibit O, BPA and Idaho Falls shall not utilize the Slice Computer Application as described in Exhibit M, but shall instead utilize the computer application developed and utilized to implement the Block and Slice Power Sales Agreements (Subscription Slice Agreements) that were in effect between October 1, 2001 and September 30, 2011. If Idaho Falls was not a party to such Subscription Slice Agreements Idaho Falls shall enlist the services of a BPA customer that was a party to such Subscription Slice Agreements, or its scheduling agent, in order to implement the provisions of this exhibit. The cost for such services that may be required for Idaho Falls to implement this Exhibit O shall be borne solely by Idaho Falls.

**1. DEFINITIONS**

Terms with initial capitalization that are not defined in this exhibit shall be as defined in the body of this Agreement. Generally, calculations associated with defined terms within this exhibit are for the whole of the Slice System. Wherever a similar value is needed for Idaho Falls' share of the Slice System values, the term "individual" is inserted before the defined term. Defined terms that contain the

word "Generation" are for the Slice System as a whole. Defined terms that contain the word "Output" or are preceded by "individual" are customer-specific.

For purposes of implementing this Exhibit O, all references to "Slice System", "Slice System Resources", "System Obligations", "Slice System Obligations" and any internal reference to "Slice System" will be deemed to mean Tier 1 System, such as Tier 1 System Resources, Tier 1 System Obligations and Tier 1 System Capability.

- 1(a) "Absolute Minimum Estimated Slice System Generation" means the least amount of energy the Slice System, as adjusted by System Obligations, can produce in a given time period.
- 1(b) "Actual Net Slice System Generation (ANSSG)" means the sum of the ATSG in megawatt-hours (MWh) and the gross Elective Spill in MWh used in the calculation of net Elective Spill in section 7(g)(2).
- 1(c) "Dispatchable Projects" means those Slice System generation resources that are available for redispatching with less advance notice than a calendar day, and include, but are not limited to, Grand Coulee, Chief Joseph, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, and Bonneville.
- 1(d) "Estimated Slice System Generation (ESSG)" means the sum of the estimated generation produced at all the projects in the Slice System after adjustment for Operating Constraints and System Obligations over a given period of time.
- 1(e) "Fixed Flow" shall refer to an operational state when the maximum and minimum daily Estimated Slice System Generation, as provided by BPA pursuant to section 9(a)(5), are the same, and which is the result of Operating Constraints that restrict the ability to utilize the capability of the Slice System to store or draft water on different days.
- 1(f) "Grace Margin" means the amount by which Idaho Falls may exceed its SSSB without incurring penalties.
- 1(g) "Grace Margin Spill Account (GMSA)" means the account which Power Services maintains that reflects the total amount of energy subtracted from the Slice purchasers' Slice Storage Deviation Accounts each day as a result of the Slice purchasers accruing Slice Storage Account balances that exceed their individual upper Slice System Storage Bound limit and their individual Grace Margin.
- 1(h) "Immediate Spill Deliveries" means energy BPA delivers to other parties for purposes of shifting spill from the FCRPS to the other parties' systems.
- 1(i) "Lower Snake Projects (LSN)" means the four hydroelectric Projects located on the lower reach of the Snake River, consisting of Lower Granite, Little Goose, Lower Monumental, and Ice Harbor

- 1(j) "Non-Dispatchable Projects" means the Slice System generating resources that are not Dispatchable Projects.
- 1(k) "Pondage" means the ability of the hydro facilities of the Slice System to use lower river ponds (e.g., the LCOL and LSN) in combination with Grand Coulee and Chief Joseph to shift energy within the day and between days. Pondage includes Pondage Up and Pondage Down as described and calculated in section 3(c). Pondage Up may be used to exceed the daily maximum ESSG and/or the TOP HLH maximum ESSG. Pondage Down may be used to generate below the daily minimum ESSG.
- 1(l) "Ramp Rate" means the maximum rate of change in the level of generation for a specified period within all applicable Operating Constraints.
- 1(m) "Slice Output Limits" means all storage, energy, capacity, and rate of change limits defined in this exhibit that limit the availability and use of Slice Output by Idaho Falls.
- 1(n) "Slice Storage Account" means the quantity equal to the sum of Idaho Falls' SSDA and the product of Idaho Falls' Slice Percentage and the Slice System Storage Energy, expressed in megawatt-days (MW-days).
- 1(o) "Slice System Deviation Account (SSDA)" means the amount of energy, in MW-days, that Idaho Falls' ASOE deviates from the product of the ANSSG and Idaho Falls' Slice Percentage, as described in section 7(d).
- 1(p) "Slice System Storage Bounds (SSSB)" means the maximum and minimum limits of the storage that is available to the Slice System, as calculated in section 3(b) below.
- 1(q) "Slice System Storage Energy (SSSE)" means the Storage Energy of the Slice System calculated by summing the Storage Energy in MW-days of certain Slice System projects, which shall include, but not be limited to Grand Coulee.
- 1(r) "Storage Energy" means the energy that would be produced if a reservoir released its entire Storage Content. Storage Energy amounts are determined by multiplying a reservoir's Storage Content, expressed in thousands of second-foot-days (KSFd), by such reservoir's at-site and downstream federal water-to-energy conversion factor (H/K).
- 1(s) "Technical Management Team" means that group comprised of representatives from federal and state (Oregon, Washington, Idaho, and Montana) agencies that is responsible for determining river operations in accordance with the FCRPS biological opinion and other applicable operational requirements.

- 1(t) "TOP Heavy Load Hours" or "TOP HLH" means the hours ending 0700 through 2200 Pacific prevailing time (PPT) for each day of the week (including Sundays and holidays).
- 1(u) "TOP Light Load Hours" or "TOP LLH" means the hours ending 0100 through 0600 PPT and hours ending 2300 through 2400 PPT for each day of the week (including Sundays and holidays).
- 1(v) "Weekly Constraint" means an operation of the FCRPS that requires a specific flow requirement for the week, typically specified as a discharge from McNary Dam. During this operation, the weekend average flow requirement must be at least 80% of the previous 5-weekday average discharge.

**2. CALCULATION OF INDIVIDUAL LIMITS, ROUNDING, AND PENALTY CHARGES**

- 2(a) This section intentionally left blank
- 2(b) This section intentionally left blank
- 2(c) This section intentionally left blank
- 2(d) **Calculation of Idaho Falls' Individual Limits**  
Unless otherwise specified, the calculation of such individual values, in MW, MWh, or MW-days, shall be the product of such value for the Slice System and Idaho Falls' Slice Percentage.
- 2(e) **Rounding of Calculations**  
All values in this exhibit that are expressed in terms of megawatts shall be expressed in whole megawatts. To the extent that a calculation results in a value that is not an integer, the number shall be converted to an integer using the following method:
  - 2(e)(1) If the decimal is less than 0.50, round down to the nearest whole number.
  - 2(e)(2) If the decimal is equal to or greater than 0.50, round up to the nearest whole number.
- 2(f) This section intentionally left blank
- 2(g) This section intentionally left blank
- 2(h) **Penalty Charges**  
If, after the day, it is determined that Idaho Falls has scheduled ASOE in excess of Idaho Falls' Slice Percentage of: (1) the one-hour maximum ESSG, (2) the one-hour maximum ESSG for Lower Snake Projects (LSN), (3) the one-hour maximum ESSG for the rest of the system, (4) the TOP HLH maximum ESSG for LSN, (5) the TOP HLH maximum ESSG for the rest of

the system (except as permitted in section 7(f) of this exhibit), (6) the daily maximum ESSG (except as permitted in section 7(f) of this exhibit) as adjusted by Idaho Falls' right to Pondage, and/or (7) the Ramp Rate Up, all as calculated under the provisions of this Exhibit O, then Idaho Falls may be charged at the Unauthorized Increase Charge for energy for the amount of such exceedence.

If, after the day, it is determined that Idaho Falls has scheduled ASOE in an amount less than Idaho Falls' Slice Percentage of: (1) the Absolute Minimum ESSG, (2) daily minimum ESSG as adjusted by Idaho Falls' right to Pondage, and/or (3) the one-hour or two-hour Ramp Rate Down, all as calculated under the provisions of this Exhibit O (such amount to be designated as "generation shortfall"), Idaho Falls' SSDA may be reduced by the generation shortfall. Such generation shortfall will be added to Idaho Falls' ASOE when computing Idaho Falls' Pondage and SSDA balances for that day.

Penalties assessed by Power Services pursuant to this Exhibit O may be waived by Power Services in accordance with section 25.5 of the body of this Agreement. Any waiver granted with respect to a specific circumstance shall not constitute a waiver of future exceedence, nor create a waiver for a recurrence of such circumstance or for any other circumstance.

### **3. CALCULATING THE SLICE SYSTEM STORAGE AND PONDAGE**

The following procedures shall be used in determining all quantities related to SSSE, SSSB and Pondage values. The calculation of SSSE and SSSB set out below is a generic methodology, which is to be used in specific applications in this Exhibit.

#### **3(a) Calculating the SSSE**

Power Services shall calculate the SSSE, as defined in section 1(q), by summing the Storage Energy of the project(s) listed in section 1(q).

#### **3(b) Calculating the SSSB**

Prior to midnight on the 23rd day of each month, Power Services shall provide Idaho Falls with a forecast of the upper and lower SSSB for the subsequent three months. To determine the SSSB, Power Services shall calculate the SSSE associated with the upper and the lower ORC, except that whenever Grand Coulee's upper ORC is 1,290.0 feet (full pool), the upper SSSB shall reflect the Storage Energy associated with 1,289.7 feet. The upper and the lower SSSB shall be increased or decreased as appropriate to reflect available Pondage.

#### **3(c) Calculating Pondage**

To calculate the Pondage limits Power Services will reflect the estimated effective H/K values, as adjusted for required Fish Spill, and shall assume the forebay elevations for the Simulator Projects are initialized for the day at two-thirds full within their current operational storage ranges. Using these input values for the current day or next day(s), as appropriate, Power Services shall calculate the maximum amount that the LCOL Complex and LSN Complex projects can be utilized, relative to their expected operation, to

increase the maximum daily ESSG and decrease the minimum daily ESSG by utilizing storage capabilities to store or draft water as appropriate. The resulting ability of the Federal System to increase maximum daily ESSG represents Pondage Up and the resulting ability of the Federal System to decrease minimum daily ESSG represents Pondage Down. Storing water at a particular project may increase or decrease overall Slice System generation, depending on the Operating Constraints in effect, and Power Services shall include such adjustment in the calculation of Pondage on an ongoing basis. Pondage Up limits shall be reported in positive values and Pondage Down limits shall be reported in negative values.

- 3(c)(1) During times when the Hanford Reach protection level flow is in effect, as established pursuant to the Hanford Reach Fall Chinook Protection Program Agreement as it then exists, the Pondage Down limit will be increased (made more negative) on Saturdays, Sundays, and holidays as appropriate to reflect the right to reduce discharge from Grand Coulee and Chief Joseph to levels below such protection level flow.
- 3(c)(2) During Fixed Flow operations associated with Weekly Constraints at McNary Dam, as defined in section 1(u), Pondage Up will be modified to reflect the shaping and flexibility allowed between the weekdays and the weekends as follows:

For Monday-Friday: Increase Pondage Up by the product of  $.303 * 24 * H/K_{GCL} * \text{weekly flow target}$   
 For Saturday: Increase Pondage Up by the product of  $.75 * .303 * 24 * H/K_{GCL} * \text{weekly flow target}$   
 For Sunday: Increase Pondage Up by 0

Where:

$H/K_{GCL}$  is the sum of the actual expected water-to-energy conversion factor for all Slice System projects from Grand Coulee to Bonneville Dam, taking into account the spill requirements at each of the projects, and the weekly McNary flow target, which is the flow requirement as determined by the Technical Management Team or through a Federal Operating Decision, in thousand second foot days (ksfd).

- 3(c)(3) During Fixed Flow operations, Idaho Falls' Pondage Up balance shall be increased and Pondage Down balance shall be decreased (made more negative) from time to time based on the change in Idaho Falls' SSDA balance since the start of the Fixed Flow operation. Such adjustment shall be calculated each day as described below and shall be applicable on the 2<sup>nd</sup> day following such calculation, as follows:

**Formula 1**

$$\text{UpAdj}_I = \text{Greater of 0 or } [(SSDA_{I-2} - SSDA_0) * 24 - (SSP * K)]$$

**Formula 2**

$$\text{DownAdj}_I = \text{Lesser of 0 or } [(SSDA_{I-2} - SSDA_0) * 24 + (SSP * K)]$$

Where:

**UpAdj<sub>i</sub>** is the amount of additional Pondage Up which Idaho Falls shall have a right to utilize on day I.

**DownAdj<sub>i</sub>** is the amount of additional Pondage Down which Idaho Falls shall have a right to utilize on day I.

**SSDA<sub>I-2</sub>** is Idaho Falls' SSDA on the day 2 calendar days prior to day I.

**SSDA<sub>0</sub>** is Idaho Falls' SSDA on the last day prior to the start of Fixed Flow operation.

**SSP** is Idaho Falls' Slice Percentage.

**K** is a constant equal to 50,000 MWh. 50,000 MWh was selected as a reasonable deadband for accumulated changes in SSDA and is subject to change upon the mutual agreement of BPA and Idaho Falls.

4. **FORECASTED SLICE OUTPUT CALCULATION, POWER SERVICES REAL-TIME ADJUSTMENTS, ELECTIVE SPILL DECLARATION, AND RAMP RATE CALCULATIONS**

The following procedures shall be used in determining Idaho Falls' minimum and maximum available Slice Output on a daily and hourly basis.

4(a) **Calculating the ESSG**

To determine the ESSG, Power Services shall calculate for each project in the Slice System such project's generation in terms of MW. When calculating the generation of such a project, Power Services shall estimate the energy that could be produced with those generating units that are planned to be available for such period while observing all applicable Operating Constraints. Power Services shall calculate the ESSG by adding the generation of all projects included in the Slice System and adjusting for any forecasted System Obligations.

4(b) **Projects With a Fixed Operation**

There are several Slice System projects whose operation is typically governed by non-power requirements and, as such, their operation will not typically be altered for power purposes. These projects are listed in Table 3.1 of the TRM under the headings "Independent Hydro Projects" and in Table 3.2 of the TRM under the heading "Designated Non-Federally Owned Resources".

4(c) **12-Month Forecast of Slice Output Energy**

BPA shall provide Idaho Falls the results of a 12-month forecast as set forth in section 8.4 of Exhibit N, except BPA shall provide data associated with the



appropriate corresponding terms defined in this Exhibit O rather than data associate with the terms Simulator Project, Snake Complex, BOS, and PSB as defined in Exhibit M.

4(d) **90-Day Forecast of Slice Output Energy**

BPA shall provide Idaho Falls the results of a 90-day forecast as set forth in section 7.2 of Exhibit N, except BPA shall provide data associated with the appropriate corresponding terms defined in this Exhibit O rather than data associate with the terms Simulator Project, Snake Complex, BOS, and PSB as defined in Exhibit M.

4(e) **Calculating the Maximum and Minimum Daily ESSG**

Beginning on September 30, 2011, and on each Business Day thereafter for as long as this exhibit is in effect, Power Services shall provide Idaho Falls with a forecast of the maximum and minimum ESSG for the total of all hours, the maximum ESSG for the total of the TOP HLHs, and the minimum ESSG for the total of the TOP LLHs of each day, for the upcoming preschedule day and the following six consecutive days.

In determining such maximum and minimum daily ESSG, Power Services shall perform two hydroregulation studies, one operating Grand Coulee as needed to achieve the maximum flow constraint in effect, and one operating Grand Coulee as needed to achieve the minimum flow constraint in effect. For such studies, Power Services shall initialize the starting reservoir Storage Contents to the previous day's actual elevations. Power Services shall incorporate forecasted probable regulated inflows for each project, forecasted unit outages, and all applicable Operating Constraints. For such studies, Power Services shall reflect the expected project operation of the LSN Complex, Hungry Horse, Libby, Dworshak and all non-federal projects. Power Services shall reflect a pass inflow operation of LCOL Complex to the extent allowed by such projects' Operating Constraints.

During periods of Fixed Flow operations, Power Services will compute the accumulated energy difference, in MWh, between each day's last official maximum and minimum daily ESSG, and that day's ANSSG with no adjustment for actual use of Pondage. On the first Business Day of each week, if the absolute value of the previous day's accumulated difference exceeds 15,000 MWh, Power Services will make an adjustment to the maximum and minimum daily ESSG values for the following day and each subsequent day through the following Sunday. Such daily adjustment shall be no greater than the accumulated deviation divided by the number of days over which the adjustment will be effective.

4(f) **Calculating the Daily ESSG Assuming a Pass-Inflow Operation**

Beginning on September 30, 2011, and on each Business Day thereafter as long as this exhibit is in effect, Power Services shall provide Idaho Falls with a forecast of the daily ESSG assuming a pass inflow operation for the upcoming preschedule day and the following six consecutive days. To calculate this value, Power Services shall determine the daily ESSG based on

the expected operation of the Slice System as adjusted by the Storage Energy associated with the daily change in Storage Content expected to occur at the Dispatchable Projects. Parties agree that the foregoing study does not reflect then-current Federal Operating Decisions and Operating Constraints, and will not accurately reflect Slice Output Energy actually available.

**4(g) Calculating the Hourly Maximum ESSG**

Power Services shall calculate the hourly maximum ESSG separately for the LSN Complex and for the rest of the Slice System. For such maximums, Power Services shall sum the maximum hourly generation of the Slice System projects in each of the two groups above. The maximum hourly generation for each project shall be the lesser of the capability of the generating units that are available for service on that hour or the maximum generation allowed consistent with Operating Constraints.

Power Services shall also separately calculate for the LSN and for the rest of the Slice System, the maximum ESSG that can be produced over the TOP HLH in MWh, consistent with Operating Constraints. The LSN maximum generation for TOP HLH is that generation in excess of the minimum generation for the LSN on TOP HLH.

**4(h) Calculating the Hourly Absolute Minimum ESSG**

The hourly Absolute Minimum ESSG reflects the least amount of generation that the Slice System can produce in any hour, without causing Elective Spill. To determine the hourly Absolute Minimum ESSG, Power Services shall calculate the ESSG that would result from a minimum flow operation, while observing all Operating Constraints.

**4(i) Adjustments By Power Services**

On an hourly basis, Power Services shall monitor the Slice System and communicate to Idaho Falls changes in the hourly and daily Slice Output Limits for the current day. Changes to the Slice Output Limits for the next day(s) may be communicated to Idaho Falls at a later time, but shall be communicated as soon as practicable. Idaho Falls shall make adjustments to its schedules to stay within such limits. No modifications to schedules that begin within 60 minutes from the notification by Power Services of such adjustment will be necessary. Power Services shall have the authority to make any such changes based on the conditions listed below.

**4(i)(1) Corrections of Errors, Omissions, or Assumptions**

Estimates of daily maximum ESSG, the hourly maximum ESSG, and Absolute Minimum ESSG may be adjusted in real-time by Power Services to reflect corrections of errors, omissions, or changes in the assumptions used to calculate the Slice System capability.

**4(i)(2) Changes in Federal Operating Decisions**

Power Services may adjust information and Slice Output Limits previously provided by Power Services to reflect new Federal Operating Decisions, the termination or suspension of a Federal

Operating Decision already reflected in the estimates, or if Power Services determines that the Slice Output Limits do not accurately reflect the actual Slice System operation on the current day.

**4(i)(3) Notification of Elective Spill**

Power Services shall notify Idaho Falls of Elective Spill for TOP HLH and/or TOP LLH as soon as practicable after Power Services determines that it is at risk of having Elective Spill. Such notice shall include a revised TOP LLH Minimum ESSG, which will be updated to reflect operating conditions of the Slice System. If the System is declared to be in an Elective Spill condition for TOP HLH during periods of Fixed Flow operations, Power Services may not declare the system to be out of Elective Spill condition unless such declaration is made prior to the start of the actual day for which the declaration was made; *provided, however*, during a period of Elective Spill in TOP HLH the hourly maximum generation pursuant to section 4(g) may be reduced if necessary to cause a reduction in system generation as directed by another federal agency. Failure by BPA to notify Idaho Falls of Elective Spill conditions shall not protect Idaho Falls from Elective Spill allocation per section 7(g) below.

**4(i)(4) Changes in the Hourly or Daily Slice System Capability**

Power Services shall revise the estimates of daily maximum ESSG, the hourly maximum ESSG, or Absolute Minimum ESSG when there is a change on the Slice System that exceeds either 500 MW on any remaining hour or 200 aMW for the remaining hours of the day.

**4(j) Calculation of Maximum Ramp Rates**

**4(j)(1) Ramp Rate Up**

The Ramp Rate Up equals:

$$\text{MRR} + \text{NDG}_N - \text{NDG}_{N-1}$$

Where:

MRR = the maximum rate of increase in generation for the Dispatchable Projects between 2 hours.

$\text{NDG}_N/\text{NDG}_{N-1}$  = The generation from the Non-Dispatchable Projects and the sum of the System Obligations for the schedule hour N and schedule hour N-1.

Idaho Falls' increase in schedules between two hours shall be computed as:

$$[\text{RG}_N - \text{RG}_{N-1}]$$

Where:

$RG_N/RG_{N-1}$  = The lesser of the hourly maximum generation times the SSP, or Idaho Falls' requested generation for schedule hour N and schedule hour N-1.

If Idaho Falls submits schedules such that the increase calculated in accordance with the immediately preceding formula exceeds the product of Idaho Falls' Slice Percentage and the Ramp Rate Up, such exceedence will be subject to the UAI Charge for energy, and such exceedence amount will be subtracted from Idaho Falls' daily ASOE for purposes of computing the daily Pondage and SSDA balances.

**4(j)(2) Ramp Rate Down**

Ramp Rate Down is the maximum rate of decrease in generation for the Dispatchable Projects over any three consecutive schedule hours. The Ramp Rate Down limit is calculated as both a limit to the amount of decrease in generation over any two consecutive hours and the decrease in generation over any three consecutive schedule hours.

***One-Hour Test***

The Ramp Rate Down limit between two consecutive hours, N-1 and N is the greater of:

4(j)(2)(i)  $C * SSP$ , or

4(j)(2)(ii)  $B * (RG_{N-1} - HM_N)$

***Two-Hour Test***

The Ramp Rate Down limit between two hours, N-2 and N is the sum of:

4(j)(2)(i) The greater of  $[(SSP * C)$  or  $(A * (RG_{N-2} - HM_{N-1}))]$ , and

4(j)(2)(ii) The greater of  $\{(SSP * C)$  or  $A * (RG_{N-2} - \text{the greater of } [(SSP * C)$  or  $(A * (RG_{N-2} - HM_{N-1}) - HM_N)]\}$

In no event shall the results of the two-hour test cause a limit that would be less than  $C * SSP$  for any two consecutive hours.

Where:

$A = 0.4$

$B = 0.5$

$C$  = The minimum hourly down ramp limit for the Slice System, set for 1,000 megawatts on all hours

SSP = Idaho Falls' Slice Percentage

$RG_N/RG_{N-2}$  = The greater of the Absolute Minimum ESSG times the SSP for hour N, or Idaho Falls' requested generation for schedule hour N and schedule hour N-2

$HM_N/HM_{N-2}$  = Absolute Minimum ESSG for schedule hour N and schedule hour N-2, multiplied by Idaho Falls' Slice Percentage.

The following formula shall be used to determine Idaho Falls' actual ramp down across any two hours:

$$[(RG_N - SSP * (NDG_N + SO_N)) - (RG_{N-X} - SSP * (NDG_{N-X} + SO_{N-X}))]$$

Where:

$RG_{N-X}$  = The greater of the Absolute Minimum ESSG times the SSP, or the scheduled generation for the schedule hour X hours prior to hour N

SSP = Idaho Falls' Slice Percentage

$NDG_{N-X}$  = The Slice System generation from the Non-Dispatchable Projects for the schedule hour X hours prior to hour N

$SO_{N-X}$  = The System Obligations for the schedule hour X hours prior to hour N

X shall be set to the value one for calculating Idaho Falls' schedule decrease for the 1-hour Ramp Rate Down test and shall be set to the value two for the 2-hour Ramp Rate Down test.

If Idaho Falls submits a schedule which results in the delivery of energy such that the decrease calculated in accordance with the preceding paragraph exceeds the Ramp Rate Down limit as determined for either the 1-hour test or 2-hour test as specified above, such exceedence will be subject to transfer from Idaho Falls' SSDA, consistent with the provisions of section 2(h) of this Exhibit O. In the event that an exceedence of both the 1-hour test and 2-hour test occurs across the same delivery hour, the greater of the two amounts shall be so transferred, and such exceedence amount will be added to Idaho Falls' daily ASOE for purposes of computing the daily Pondage and SSDA balances.

4(k) This section intentionally left blank.

**5. CALCULATING ACTUAL SLICE OUTPUT**

The following procedures shall be used in determining the actual quantities of Slice Output.

**5(a) Calculation of Actual SSSE and Slice Storage Account Balance**  
Beginning October 2, 2011, and on each day thereafter as long as this Exhibit O is in effect, Power Services shall calculate and provide Idaho Falls with the SSSE and Idaho Falls' Slice Storage Account balance for the previous day, as measured in MW-days. Power Services shall calculate such SSSE based on the actual reservoir Storage Contents, as measured at midnight for the previous day. To determine Idaho Falls' Slice Storage Account balance, Power Services shall sum the product of the SSSE and Idaho Falls' Slice Percentage with Idaho Falls' Slice Storage Deviation Account (SSDA) balance as of midnight the same day, as determined in section 7(d).

**5(b) Calculation of ANSSG and ASOE**  
Beginning October 2, 2011, and on each day thereafter as long as this Exhibit O is in effect, Power Services shall calculate and provide Idaho Falls with a daily accounting of the ANSSG produced on the previous day, as measured in MWh. Power Services shall calculate such ANSSG in the same manner as the ESSG but using: (1) actual project generation instead of forecasted generation, and (2) actual System Obligations instead of forecasted System Obligations, as adjusted by (3) the gross Elective Spill pursuant to section 7(g).

To determine Idaho Falls' daily individual ASOE, Power Services shall sum for each hour of the day, the greater of Idaho Falls' scheduled Slice Output Energy and Idaho Falls' individual Absolute Minimum ESSG. In the event that Idaho Falls' daily individual ASOE is less than the minimum individual Slice Output Limit for such day, as adjusted by Idaho Falls' available Pond Down, Idaho Falls' daily individual ASOE shall be deemed to be equal to the minimum individual Slice Output Limit for such day, as adjusted by Idaho Falls' available Pond Down. The difference between Idaho Falls' daily individual ASOE and the sum of Idaho Falls' scheduled Slice Output Energy for all hours of such day shall be forfeited and transferred from Idaho Falls' SSDA.

**6. GRACE MARGIN**

**6(a) General**

It is anticipated that Idaho Falls' Slice Storage Account balance may not always be within its individual SSSB. Such deviation could be due to potential forecast or accounting errors on Power Services's part or errors on Idaho Falls' part. A Grace Margin will be provided to mitigate any penalty. The Grace Margin is both added to the maximum storage bounds and subtracted from the minimum storage bounds. The Grace Margin is applied on an after-the-fact basis only. If the Slice System is in Fixed Flow, the UAI Charge will not be applied for being below the minimum storage bounds, nor

will the forfeiture of energy for being above the maximum storage bounds be applied, as set forth in section 6(e). It is recognized that unusual events may require Idaho Falls and Power Services to institute by mutual oral or written agreement special actions with regard to the Grace Margin.

If, as of the last day of Fixed Flow, when the Slice System is transitioning to a period of operating within maximum and minimum storage bounds, Idaho Falls' SSA balance exceeds its individual SSSB, Idaho Falls shall have up to 7 days (or longer if allowed in section 6(e)) beginning on the day that such transition was commenced to bring its SSA balance within its individual SSSB by utilizing the procedure described in section 6(e) without penalty or charge. If, within such 7-day period, Idaho Falls brings its SSA balance within its individual SSSB, the provisions described in section 6(e) shall become effective beginning on the day such compliance was achieved. If, within or by the end of such 7-day period, Idaho Falls fails to bring its SSA balance within its individual SSSB, Idaho Falls shall be subject to the penalties described in this section 6 for any amount its SSA balance remains outside the SSSB at the end of such 7-day period (or longer period if allowed in section 6(e)).

**6(b) Calculation of Grace Margin**

To determine Idaho Falls' Grace Margin, Power Services shall calculate the greater of:

6(b)(1) The product of 17,300 MWh and Idaho Falls' Slice Percentage, or

6(b)(2) The value equal to the difference between the forecast and actual daily ESSG assuming a pass-inflow operation on that day, multiplied by Idaho Falls' Slice Percentage.

**6(c) Calculation of SSSB Exceedence**

Power Services shall determine the exceedence of Idaho Falls' Slice Storage Account relative to Idaho Falls' individual SSSB, by using Formula 3. Power Services shall also determine the quantity of Idaho Falls' SSDA that is subject to forfeiture and transfer out of its SSA, if any, using Formula 4, and the quantity of energy subject to the Unauthorized Increase Charge for energy, if any, by using Formula 5.

**Formula 3**

$$E = (\text{Greater of } 0 \text{ or } (SSSE_I - uSSSB)) + (\text{Lesser of } 0 \text{ or } (SSSE_I - ISSSB))$$

Where:

E is the amount by which Idaho Falls' SSSE exceeds the Slice System Storage Bounds in MW-days.

SSSE<sub>I</sub> is Idaho Falls' Slice Storage Account balance as measured in MW-days.

**uSSSB** is Idaho Falls' individual upper Slice System Storage Bound as measured in MW-days.

**ISSSB** is Idaho Falls' individual lower Slice System Storage Bound as measured in MW-days.

**Formula 4**

**gmSPILL = Greater of {0, or the Lesser of [(0.99\*DmaxGen - ASOE/24), or (E - GM<sub>I</sub>)]}**

Where:

**E** is Idaho Falls' exceedence calculated in Formula 3 above in MW-days.

**gmSPILL** is the amount of Idaho Falls' exceedence that is considered to be spilled as measured in MW-days.

**GM<sub>I</sub>** is Idaho Falls' individual Grace Margin as measured in MW-days.

**DmaxGen** is the maximum daily ESSG multiplied by Idaho Falls' Slice Percentage as measured in MW-days.

**Formula 5**

**gmUAI = Absolute value of {Lesser of {0, or the Greater of [(ASOE/24 - 1.01\*DminGen), or (E + GM<sub>I</sub>)]}**

Where:

**E** is Idaho Falls' exceedence calculated in Formula 3 above in MW-days.

**gmUAI** is the amount of Idaho Falls' exceedence, measured in MW-days, that is considered to be subject to the UAI Charge for energy.

**GM<sub>I</sub>** is Idaho Falls' individual Grace Margin as measured in MW-days.

**DminGen** is the minimum daily ESSG multiplied by Idaho Falls' Slice Percentage as measured in MW-days.

**Formula 6**

**[This formula has been intentionally left blank]**



6(d) **Grace Margin Spill Account (GMSA)**

Power Services shall establish a GMSA that shall be initialized each day to zero and maintained in MW-days. Power Services shall calculate the GMSA pursuant to section 6(e)(3) and shall utilize the GMSA to calculate net Elective Spill pursuant to section 7(g)(2).

6(e) **Application of the Grace Margin**

Any time that gmSpill and gmUAI as calculated in Formulae 4 and 5 are greater than zero, the gmSpill or gmUAI must be eliminated by Idaho Falls. Idaho Falls shall take the action(s) described below to return its Slice Storage Account balance to a condition that is within its Grace Margin to avoid the penalties below. If Idaho Falls' exceedence as calculated in Formula 3 is greater than zero at a time when Grand Coulee's ORC is 1,290.0 feet, then Idaho Falls shall take the actions specified in section 6(e)(2) by the day following the day on which Idaho Falls is notified of such exceedence. In all other instances where Idaho Falls' exceedence as calculated in Formula 3 above is not zero, Idaho Falls shall take such actions by the third day following the day of notification. The day of notification shall be the day Idaho Falls receives the ANSSG that applies to the day on which the exceedence occurs.

6(e)(1) This section intentionally left blank.

6(e)(2) Idaho Falls shall adjust its ASOE in compliance with one of the following two requirements:

6(e)(2)(A) Idaho Falls' exceedence as calculated in Formula 4 and 5 shall be reduced to zero; or

6(e)(2)(B) If Slice Output Limits prevent Idaho Falls from making such adjustment, then Idaho Falls shall continue to schedule its Slice Output Energy within 1 percent below the daily maximum or 1 percent above the daily minimum Slice Output Limit, without being required to utilize Pondage, for as many days as necessary to eliminate such exceedence.

If Idaho Falls fails to schedule its ASOE or make a SSDA transfer as specified in section 6(e)(2), such exceedence, if positive, will be treated as gmSPILL pursuant to section 6(e)(3); if negative, such amount shall be treated as gmUAI pursuant to section 6(e)(4).

Idaho Falls may elect to schedule its ASOE in a manner to reduce the exceedence amount to zero prior to the day following the day of notification, or the third day following the day of notification, as described in section 6(e). If Idaho Falls does so, Idaho Falls shall not be required to adjust its ASOE as specified in this section 6(e)(2).

**6(e)(3) Applied gmSpill and the Grace Margin Spill Account**

Power Services shall decrease Idaho Falls' SSDA by the amount of gmSPILL calculated in Formula 4 above that is applied pursuant to sections 6(e) and 6(e)(2). In addition, Power Services shall add such amounts to the GMSA, which shall represent the sum of all Slice purchasers' applied gmSPILL for each day.

**6(e)(4) Unauthorized Increase Charge for Applied gmUAI**

Power Services shall charge Idaho Falls for the amount of gmUAI calculated in Formula 5 above that is applied pursuant to sections 6(e), and 6(e)(2) at the UAI Charge for energy. In addition, Power Services shall increase Idaho Falls' SSDA by the amount of gmUAI for which such a charge is assessed.

**7. SLICE PARTICIPANT'S DAILY SLICE STORAGE DEVIATION ACCOUNT (SSDA) BALANCE, ALLOCATION OF ELECTIVE SPILL, AND PONDAGE ACCOUNT BALANCE**

Power Services shall establish and maintain an accounting of the daily SSSE based upon the Slice System reservoirs' actual Storage Contents (actual SSSE). Power Services shall establish and maintain an accounting of the daily deviation of Slice Storage (SSDA) for Idaho Falls as specified below. Power Services shall measure or calculate such account balances in MW-days as of midnight each day. For purposes of section 6 and this section 7, the SSDA shall only be computed as a daily storage balance and shall not be computed as an hourly estimate of Idaho Falls' SSDA balances. Idaho Falls shall utilize its SSDA as an indicator of its proximity to its individual SSSB and shall adjust its request of Slice Output Energy as needed to stay within such storage bounds. If Idaho Falls' Slice Storage Account balance is outside of its individual SSSB, the Grace Margin rules in section 6 shall apply.

7(a) This section intentionally left blank.

**7(b) Initial Balances**

Power Services shall initialize the September 30, 2011, actual SSSE to the SSSE associated with the actual elevations of the projects in the Slice System as of 2400 hours PPT on September 30, 2011. Power Services shall initialize Idaho Falls' September 30, 2011, SSDA balance to zero.

7(c) This section intentionally left blank.

**7(d) Daily Calculation of the SSDA Balance**

Beginning October 2, 2011, and on each day thereafter as long as this Exhibit O is in effect, Power Services shall calculate and provide Idaho Falls with daily account balances of Idaho Falls' dSSDA and SSDA for the previous day using Formulae 7 and 8.

**Formula 7**

$$SSDA_{-1} = SSDA_{-2} + dSSDA_{-1} - eSPILL_I$$

Where:

SSDA<sub>-1</sub> is the SSDA for day -1 as measured in MW-days.

SSDA<sub>-2</sub> is the SSDA for day -2 as measured in MW-days.

dSSDA<sub>-1</sub> is the change in the SSDA for day -1 calculated in Formula 8 below, in MW-days.

eSPILL<sub>L</sub> is Idaho Falls' allocated share of the net Elective Spill for the Slice System calculated in Formula 13 below, expressed in MW-days.

**Formula 8**

$$dSSDA_{-1} = [(SSP * ANSSG_{-1}) - ASOE_{-1}] / 24$$

Where:

dSSDA<sub>-1</sub> is the change in the SSDA for day -1 as measured in MW-days.

SSP is the Slice Percentage.

ANSSG<sub>-1</sub> is the ASSG for day -1 as measured in MWh.

ASOE<sub>-1</sub> is Idaho Falls' individual ASOE for day -1 as measured in MWh.

**7(e) Termination of the Interim Slice Implementation Procedures and Slice Participant's SSDA Balance**

BPA shall provide Idaho Falls notice that these Interim Slice Implementation Procedures shall terminate no less than five (5) days prior to the date of such termination. Any balance remaining in Idaho Falls' SSDA as of 2400 hours on the date these Interim Slice Implementation Procedures are terminated shall be transferred to Idaho Falls' BOS Deviation Account as the initial balance in that account.

**7(f) Procedures During Fixed Flow and Declared Elective Spill Condition for TOP HLH**

The procedures outlined in this subsection 7(f) shall be used when the Slice System is in a Fixed Flow state and Elective Spill is declared for TOP HLH.

**7(f)(1) Pondage Balance Calculation**

The daily change in Idaho Falls' Pondage Account balance, calculated pursuant to section 7(h), shall be zero regardless of the difference between Idaho Falls' generation schedule compared to its Slice Percentage of the daily maximum ESSG and daily minimum ESSG.

**7(f)(2) dSSDA Calculation**

The dSSDA as defined in section 7(d) of this exhibit shall be set to zero for each such calendar day.

**7(f)(3) Allocation of Expenses Associated with Elective Spill**

Expenses incurred by Power Services due to the delivery of Elective Spill energy will be allocated to Idaho Falls by multiplying the amount of such expenses incurred by Power Services on such day by Idaho Falls' Slice Percentage.

**7(f)(4) Daily Maximum ESSG**

Idaho Falls will have the right to exceed its share of daily maximum ESSG, as adjusted by Idaho Falls' available Pond Up.

**7(f)(5) TOP HLH Maximum ESSG for the Rest of the System**

Idaho Falls' will have the right to exceed its share of the TOP HLH maximum ESSG for the rest of the system, as adjusted by Idaho Falls' available Pondage Up.

**7(f)(6) One-Hour Maximum ESSG**

Idaho Falls' will not have the right to exceed its share of the one-hour maximum ESSG.

**7(g) Procedures Due to Elective Spill in Other Conditions**

The procedures outlined in this section 7(g) shall be used to calculate and allocate actual amounts of Elective Spill that occur when the Slice System is not in a Fixed Flow state or when the Slice System is in a Fixed Flow state and Elective Spill is declared only for TOP LLH.

**7(g)(1) General**

Power Services may need to reduce the actual Elective Spill by delivering energy as Immediate Spill Deliveries or by paying other parties to take energy that would otherwise be implemented as Elective Spill. Power Services shall increase the Elective Spill quantity by the amount of energy delivered under either of such arrangements, which total shall be known as the gross Elective Spill.

**7(g)(2) Calculation of Net Elective Spill**

The quantity of Elective Spill that occurs on the Slice System on any given day shall be reduced by the quantity in the GMSA to determine net Elective Spill for that day. Power Services shall use Formula 9 to calculate the net Elective Spill for the Slice System.

**Formula 9**

**$eSPILL_{NET} = \text{Greater of } 0 \text{ or } (eSPILL_{GROSS} - \text{GMSA} - \text{HourlySpill})$**

Where:

**eSPILL<sub>NET</sub>** is the net Elective Spill for the Slice System to be allocated to the Slice Purchasers in MW-days.

**eSPILL<sub>GROSS</sub>** is the gross Elective Spill for the Slice System in MW-days.

**GMSA** is the sum of all Slice purchaser's applied gmSpill as calculated in section 6(e)(3) in MW-days.

**HourlySpill** is the total amount of energy transferred from all Slice customers SSDAs pursuant to the second paragraph of section 2(h).

**7(g)(3) Allocation of Net Elective Spill**

As needed, Power Services shall calculate for Idaho Falls, all other Slice Customers, and Power Services, the net Elective Spill to be allocated to each Party, using Formulae 10, 11, and 12. When requested, Power Services shall make available to Idaho Falls the calculations and all data necessary to verify the calculation of the allocated net Elective Spill.

**Formula 10**

$$\text{llhMINGEN} = (\text{llhASSG}_{\text{ADO}} + \text{eSPILL}_{\text{NET}} * 24) / \text{TOP LLH}$$

Where:

**llhMINGEN** is the minimum TOP LLH Slice System generation needed to avoid Elective Spill for the day, expressed in average MW.

**llhASSG<sub>ADO</sub>** is the portion of the daily ASSG that was generated on TOP LLH, less the quantity of energy delivered as Immediate Spill Deliveries, and the energy for which Power Services paid other parties to take during such TOP LLH, expressed in MWh.

**eSPILL<sub>NET</sub>** is the net Elective Spill for the Slice System, to be allocated to the Slice Customers, as calculated in Formula 9 and expressed in MW-days.

**TOP LLH** is the number of TOP LLH in the day.

**Formula 11**

$$\text{llhADDGEN}_i = \text{the greater of} \\ ((\text{llhMINGEN} * \text{SSP}) - \text{llhASOE}_i / \text{TOP LLH}) \text{ or } 0$$

Where:

**llhADDGEN<sub>I</sub>** is Idaho Falls' additional individual ASOE that was needed on TOP LLH to avoid Elective Spill for the day, as expressed in average MW.

**llhMINGEN** is the minimum TOP LLH Slice System generation needed to avoid Elective Spill for the day, calculated in Formula 10, expressed in average MW.

**SSP** is Idaho Falls' Slice Percentage.

**llhASOE<sub>I</sub>** is the portion of Idaho Falls' daily individual ASOE that was scheduled on TOP LLH, plus the energy associated with hourly spill penalties that occur on TOP LLH, as expressed in MWh.

**TOP LLH** is the number of TOP LLH in the day.

**Formula 12**

$$eSPILL_I = eSPILL_{NET} * llhADDGEN_I / llhADDGEN_{TOT}$$

Where:

**eSPILL<sub>I</sub>** is Idaho Falls' allocated share of the net Elective Spill for the Slice System, expressed in MW-days.

**eSPILL<sub>NET</sub>** is the net Elective Spill for the Slice System to be allocated to the Slice Customers, as determined in Formula 9, expressed in MW-days.

**llhADDGEN<sub>I</sub>** is Idaho Falls' minimum TOP LLH Slice System Generation needed to avoid Elective Spill for the day, as determined in Formula 11, expressed in average MW.

**llhADDGEN<sub>TOT</sub>** is the minimum TOP LLH Slice System generation needed to avoid Elective Spill for the day, as determined in Formula 11, summed for all Slice Customers, and expressed in average MW.

**7(h) Pondage Account and Daily/Weekly Use of Pondage**

Power Services shall establish and maintain daily accounting of the Pondage limits on the Slice System, calculated pursuant to section 3(c) of this Exhibit.

Power Services shall also establish and maintain an accounting of the daily use of Pondage for Idaho Falls as specified below. Power Services shall measure or calculate such account balances in whole megawatt-hours (MWh) as of midnight PPT each day.

7(h)(1) Idaho Falls' Pondage account will be calculated in daily energy quantities and shall be cumulative, with a negative balance indicating use of Pondage Up and a positive balance indicating use of Pondage Down. The account balance will be changed each day by the sum of the following items:

7(h)(1)(A) The energy amount by which Idaho Falls' ASOE exceeds the daily maximum ESSG shall be subtracted from Idaho Falls' Pondage account balance and the amount by which the ASOE is lower than the daily minimum ESSG shall be added to Idaho Falls' Pondage account balance.

7(h)(1)(B) If Idaho Falls' Pondage account balance for the prior day is positive, the account balance shall be decreased by the lesser of: (1) the amount of the Pondage account balance for the prior day, or (2) the amount that Idaho Falls' ASOE is greater than the daily minimum ESSG, limited by the daily maximum ESSG.

7(h)(1)(C) If Idaho Falls' Pondage account balance for the prior day is negative, the account balance shall be increased by the lesser of: (1) the amount of the Pondage account balance for the prior day, or (2) the amount that Idaho Falls' ASOE is lower than the daily maximum ESSG, limited by the daily minimum ESSG.

7(h)(1)(D) If Idaho Falls has specified amounts in addition to those calculated automatically by Power Services for the Pondage account balance to be used for Pondage operations, including taking and returning of energy from the Pondage account, then Power Services shall include such amounts in the calculation.

7(h)(2) If Idaho Falls schedules ASOE such that its Pondage account balance does not exceed, in a positive amount, its Slice Percentage times the Pondage Down limit (note: a negative number), and does not exceed in a negative amount, its Slice Percentage times the Pondage Up limit (note: a positive number), no penalty for Pondage shall be applied. If Idaho Falls' Pondage account balance exceeds either limit, the energy amount in excess of the limit will be assessed as gmSpill or gmUAI as appropriate, *provided however*, that if the Pondage limits become smaller, Idaho Falls shall not be obligated to reduce the balance in order to comply with the limit and shall not be assessed gmSpill or gmUAI for that amount. However, any subsequent increases in Idaho Falls' Pondage account balance while its balance exceeds the reduced limit will be subject to gmSpill or gmUAI as appropriate.

7(h)(3) During periods when protection level flows are in effect at Priest Rapids Dam pursuant to the Hanford Reach Fall Chinook Protection Program Agreement as it then exists, Idaho Falls shall schedule ASOE such that Idaho Falls' Pondage account balance is within its share of the Pondage Down limit by midnight of each Wednesday.

7(i) This section intentionally left blank

8. **THIS SECTION INTENTIONALLY LEFT BLANK**

9. **DATA AND INFORMATION PROVIDED BY POWER SERVICES**

9(a) **Slice System Estimates Provided Each Business Day By Power Services**

Power Services shall provide to Idaho Falls no later than 1630 hours PPT on each Business Day the estimates specified in sections 9(a)(1) through 9(a)(13) for the day or days for which preschedules shall be established on the next Business Day in accordance with the WECC Preschedule Calendar, pursuant to section 2 of Exhibit F. All estimates will be provided net of expected Operating Constraints and in MWh except where noted. Power Services does not guarantee or assume any particular or specific result from use by Idaho Falls of these estimates and any of the information provided.

9(a)(1) **One-Hour Maximum ESSG**

This estimate represents the maximum Slice System generation that can be produced for 1 hour. The ESSG shall be separated into the following two categories:

9(a)(1)(A) the LSN maximum generation for an hour that is in excess of the hourly minimum generation for the LSN for such hour; and

9(a)(1)(B) the rest of the Slice System.

9(a)(2) **TOP HLH Maximum ESSG**

This estimate represents the portion of the maximum ESSG that can be produced over the TOP HLH for:

9(a)(1)(A) the LSN, and

9(a)(1)(B) the rest of the Slice System.

9(a)(3) **Absolute Minimum ESSG**

This estimate reflects the Absolute Minimum ESSG that can be produced during any hour without causing Elective Spill.

9(a)(4) **TOP LLH Minimum ESSG**

This estimate is the amount of Slice System generation that needs to be produced over the TOP LLH to minimize the potential of Elective



Spill given expected system conditions. This estimate is not a limit, and there is also no guarantee or assurance by Power Services that in providing this estimate, a Slice Output Energy request at that level will not incur some amount of Elective Spill.

**9(a)(5) Daily Maximum and Minimum ESSG**

This estimate represents the maximum and minimum amount of Slice System generation that can be produced for the day, without utilizing available Pondage.

**9(a)(6) Fixed Project Generation Schedules**

This estimate represents the hourly expected generation from the projects described in section 4(b).

**9(a)(7) Maximum Hourly Ramp Rates**

The estimate for the maximum hourly Ramp Rates, in MW, for increasing and decreasing Slice System generation will be calculated using the methodology in section 4(j).

**9(a)(8) Maximum and Minimum Storage Bounds**

This estimate will provide the SSSB in MW-days for the preschedule day and the following 6 days.

**9(a)(9) ESSG Pass-Inflow Forecast**

This is the theoretical ESSG, assuming a modified inflow operation, as discussed in section 4(f). This will provide Idaho Falls with an estimated amount of Slice Output Energy to schedule in order to maintain its SSA balance from day to day.

**9(a)(10) Planned Unit Outages**

Under normal operating conditions, this will include planned unit outages of at least 500 MW for all Slice System projects for the next preschedule day and the following 6 days and will be provided during the daily conference call described in section 7.5 of Exhibit N. Power Services will provide more detailed planned unit outage information during times of severe weather events or anticipated regional power shortages. The outage information provided will be in terms of megawatts of capacity out of service for the Slice System.

**9(a)(11) Six-Day TOP HLH and TOP LLH Maximum and Minimum Generation**

This estimate will include a forecast of the maximum and minimum Estimated Slice System Generation expected to occur on TOP LLH and on TOP HLH, given unit availability and Operating Constraints for the 6 days after the day to be prescheduled.

**9(a)(12) Pondage Up and Pondage Down Available on the Slice System**

This estimate shall represent the cumulative amount of Pondage Up and Pondage Down available on the Slice System for the next preschedule day.

**9(a)(13) State of the Slice System**

Power Services shall provide to Idaho Falls an indication of the expected state of the Slice System for the preschedule day(s). Such indication shall be that the Slice System is in a storage energy state unless there is a specific weekly or daily flow requirement on one of the LCOL projects, or the difference between the uSSSB and the ISSSB would be approximately the same as the potential size of the inflow forecast error. Power Services and Idaho Falls shall review and evaluate the selection of the system state with the operations subcommittee throughout the Operating Year on a case-by-case basis in order to coordinate and plan the timing and transition between Slice System states.

If Power Services declares that the Slice System is operating in a Fixed Flow state, and emergency provisions are enacted through the Northwest Power Pool Emergency Response Team ("NWPP ERT"), the Slice System will transition from a Fixed Flow state to an interim storage energy state. During the period that the NWPP ERT declares an emergency, there will be no assessment by Power Services for gmSpill or gmUAI. The maximum daily ESSG will be determined using the increased right to generation on the system, while the minimum daily ESSG will continue to reflect the system minimum discharge requirements.

Upon suspension of emergency provisions enacted by the NWPP ERT and as appropriate, the Slice System will return to the Fixed Flow state, with the maximum daily ESSG and the minimum daily ESSG set at the same value each day. For purposes of section 3(c)(3) of Exhibit O, the SSDA balance as the last day of the interim storage energy state will be the SSDA<sub>0</sub> that Idaho Falls may use to adjust its Pondage rights for the duration of the subsequent Fixed Flow period.

Power Services shall also declare whether there is an expectation of Elective Spill during TOP LLH and/or Elective Spill during TOP HLH.

**9(b) Operating Constraints**

Power Services shall provide to Idaho Falls changes to current Operating Constraints and the imposition of new Operating Constraints, as they become known to Power Services, which could impact the current and future generating capability of the Slice System. The Operating Constraints may be listed in terms of discharge, energy, or any other unit that is appropriate to convey the constraint.

9(c) **Slice System Actual Information Provided By Power Services**  
Power Services shall provide Idaho Falls with the following information at the times specified. In the event that actual information is not available, Power Services shall substitute its best available estimate of such information for such missing data and indicate to Idaho Falls that the data is based on best available information. Idaho Falls shall accept such estimates and the risk of reliance upon such estimates:

9(c)(1) SSSE, SSDA, and the Grand Coulee elevation as of midnight the previous day, as well as the ANSSG for the previous day, assuming no Elective Spill for such calculations, by 0800 hours PPT each day, and

9(c)(2) Idaho Falls' allocation of Elective Spill, by 1200 hours PPT each Business Day.

9(d) This section intentionally left blank

9(e) This section intentionally left blank

## 10. WEEKLY CONSTRAINTS

### 10(a) General

Some Operating Constraints are expressed in terms of Weekly Constraints. If a Weekly Constraint is in effect, Power Services shall provide Idaho Falls with information pursuant to this subsection. To the extent that Power Services is provided with an error margin for the Weekly Constraint with regard to any Operating Constraints, either before or after the fact, Idaho Falls will be entitled to its Slice Percentage share of such error margin in any computation or accounting in this Exhibit O.

### 10(b) Real-Time Changes

If the nature and/or duration of the flow requirements associated with the Weekly Constraints described above change, Power Services shall provide Idaho Falls with the necessary data for operating, consistent with such revised Weekly Constraints. Power Services shall provide to Idaho Falls such data necessary to calculate the operational limits applicable to Idaho Falls. Idaho Falls shall adjust its operation for the remainder of the week to conform to the revised Weekly Constraint.

11. THIS SECTION INTENTIONALLY LEFT BLANK

12. THIS SECTION INTENTIONALLY LEFT BLANK

## 13. SCHEDULING REQUIREMENTS

Idaho Falls shall schedule its Slice Output Energy in accordance with this section 13 and all sections of Exhibit F, except sections 3.2, 3.4.1, and 4.1.

13(a) **Prescheduling**

Schedules submitted after the Power Services prescheduling timeframe set forth in section 2.1 of Exhibit F will be accepted on a best efforts basis up to the time that the preschedule checkout process has been completed for that preschedule day by Power Services.

13(b) This section intentionally left blank.

13(c) **Scheduling Energy by Resource Groups**

Idaho Falls shall separately distribute its request for energy between the LSN and the rest of the Slice System. Idaho Falls' request for hourly energy from each resource group shall observe the limits for hourly maximum generation, maximum generation over the TOP HLH, and the hourly rate of change for such resource groups. Such hourly values will then be combined to be Idaho Falls' request for hourly energy.

13(d) **Preschedule Limits**

Preschedules submitted by Idaho Falls shall comply with all applicable requirements as set forth in this Exhibit O.

14. **REVISIONS**

Not less than 30 days prior to implementing this Exhibit O, BPA and Idaho Falls shall review and revise, if necessary, the provisions herein using the procedures set forth in section 5.12 of the body of this Agreement.

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**Exhibit P**  
**SLICE COMPUTER APPLICATION DEVELOPMENT SCHEDULE**

1. **SLICE COMPUTER APPLICATION DEVELOPMENT SCHEDULE**  
 The Following table represents milestones and the associated dates by which BPA intends to meet those milestones during development of the Slice Computer Application.

| <b>Milestone Description</b>  | <b>Date</b> |
|---|-------------|
| Publish SCA Requirements Document   | 1/30/2009   |
| Project kick-off with Slice Customers   | 2/3/2009    |
| Review of SCA Requirements Document Complete                                    | 3/2/2009    |
| Publish Simulator Requirements Document   | 6/1/2009    |
| Publish BOS and Reporting module Requirements Document                          | 8/1/2009    |
| Publish Customer Facing Web Service Design Specification                        | 10/1/2009   |
| Begin Prototype Simulator Testing   | 4/1/2010    |
| Publish Draft Simulator Specification   | 6/1/2010    |
| "Performance Test Ready" version of Simulator Complete                          | 8/1/2010    |
| Performance Test Complete   | 10/31/2010  |
| Publish Simulator Specification   | 1/15/2011   |
| Begin Customer application integration testing with Customer facing Web Service | 1/15/2011   |
| Publish Functionality Test Procedures   | 4/15/2011   |
| Functionality Test Complete   | 7/1/2011    |
| Begin Customer Training and Testing of SCA                                      | 7/1/2011    |
| SCA "Go-Live"   | 10/1/2011   |

2. **REVISIONS**  
 The timelines represented in the table above are non-binding, pursuant to section 5.11 of the body of this Agreement, and are subject to change. BPA shall revise this Exhibit P as needed to reflect significant changes.

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**Exhibit Q**  
**DETERMINATION OF INITIAL SLICE PERCENTAGE**

**1. DEFINITIONS**

The following definitions apply only to this Exhibit Q.

- 1.1 "Additional Slice Amount" means the additional portion of the Base Critical Slice Amount that Idaho Falls elects to purchase from BPA as determined in section 3 of this exhibit, rounded to a 5 digit decimal annual aMW value.
- 1.2 "Base Tier 1 System Capability" means Tier 1 System Capability that is deemed equal to 7,400 aMW.
- 1.3 "Base Critical Slice Amount" means 2,000 annual aMW, which represents the Base Slice Percentage multiplied by the Base Tier 1 System Capability.
- 1.4 "Base Slice Percentage" means 27.027 percent.
- 1.5 "Combined Maximum Additional Slice Amount" means the sum of all of the Maximum Additional Slice Amounts of those Eligible Slice Customers that have notified BPA, in accordance with section 3.2 of this exhibit, of their elections to participate in the allocation of Unsold Slice Amount under section 3.3 of this exhibit.
- 1.6 "Eligible Slice Customers" means those Initial Slice Customers whose Maximum Additional Slice Amount is equal to or greater than one aMW.
- 1.7 "Initial Slice Customers" means those Slice Customers that hold an executed Slice/Block Power Sales Agreement as of January 1, 2011.
- 1.8 "Maximum Additional Slice Amount" means the maximum additional portion of the Base Critical Slice Amount that Idaho Falls may elect to purchase from BPA, as determined in section 3.1 of this exhibit, rounded to an integer annual aMW value.
- 1.9 "Maximum Slice Amount" means the maximum portion of the Base Critical Slice Amount that Idaho Falls may request from BPA as part of the Initial Slice Percentage computation, and is equal to Idaho Falls' Slice Percentage Determination Requirements Load multiplied by 0.7, expressed as an integer annual aMW value. Idaho Falls' Maximum Slice Amount is: 56.6 aMW
- 1.10 "Preliminary Slice Amount" means the integer annual aMW value that is equal to Idaho Falls' Preliminary Slice Percentage, as set forth in Exhibit J section 1, multiplied by the Base Tier 1 System Capability.
- 1.11 "Slice Percentage Determination Requirements Load" means a forecast amount of Idaho Falls' requirements load that is used only in the determination of Idaho Falls' Preliminary Slice Percentage and Initial Slice

Percentage. Idaho Falls' Slice Percentage Determination Requirements Load is: 80.9 aMW.

- 1.12 "Unsold Slice Amount" means that portion of the Base Critical Slice Amount that remains unsold, as computed in section 2.2 of this exhibit, rounded to an integer annual aMW value.
- 1.13 "Unsold Slice Percentage" means the percentage, if any, determined pursuant section 2.1 of this exhibit, expressed as a three decimal digit percentage.

## **2. DETERMINATION OF UNSOLD SLICE AMOUNT**

No later than January 30, 2011, BPA shall determine the Unsold Slice Amount, using the procedure below.

### **2.1 Compute Unsold Slice Percentage**

The Unsold Slice Percentage shall be equal to: (1) the Base Slice Percentage minus (2) the sum of the Preliminary Slice Percentages for all Initial Slice Customers.

### **2.2 Compute Unsold Slice Amount**

The Unsold Slice Amount shall be equal to the Base Tier 1 System Capability multiplied by the Unsold Slice Percentage, expressed as an integer aMW value.

### **2.3 Unsold Slice Amount Less Than One aMW**

If the Unsold Slice Amount is less than one aMW, then BPA shall notify Idaho Falls no later than January 30, 2011, that there shall be no allocation of the Unsold Slice Amount and that Idaho Falls' Initial Slice Percentage shall be as determined pursuant to section 4.1 of this exhibit.

### **2.4 Unsold Slice Amount Equal To or Greater Than One aMW**

If the Unsold Slice Amount is equal to or greater than one aMW, then BPA shall provide written notice to Idaho Falls no later than January 30, 2011 of the Unsold Slice Amount available for allocation. The Unsold Slice Amount shall be allocated pursuant to section 3 of this exhibit.

## **3. ALLOCATION PROCEDURES FOR UNSOLD AMOUNTS OF SLICE**

No later than February 15, 2011, BPA shall make available to Initial Slice Customers the Unsold Slice Amount using the procedure below.

### **3.1 Compute Maximum Additional Slice Amount**

Idaho Falls' Maximum Additional Slice Amount shall be equal to its Maximum Slice Amount minus its Preliminary Slice Amount, rounded to an integer annual aMW value.

#### **3.1.1 Maximum Additional Slice Amount Less Than One aMW**

If Idaho Falls' Maximum Additional Slice Amount is less than one aMW, then Idaho Falls shall receive no allocation of the Unsold Slice

Amount, and Idaho Falls' Initial Slice Percentage shall be determined pursuant to section 4.2 of this exhibit.

**3.1.2 Maximum Additional Slice Amount Equal To or Greater Than One aMW**

If Idaho Falls' Maximum Additional Slice Amount is equal to or greater than one aMW, Idaho Falls shall be eligible to participate in the allocation of any Unsold Slice Amount as set forth in sections 3.2 and 3.3 of this exhibit.

**3.2 Slice Customers Determine Allocation of Unsold Slice Amounts Among Themselves**

Idaho Falls, if it is an Eligible Slice Customer, shall make a good faith effort, working with the other Eligible Slice Customers, to determine, no later than March 1, 2011, an allocation of the Unsold Slice Amount, such that the sum of all Eligible Slice Customers' Additional Slice Amounts is less than or equal to the Unsold Slice Amount.

If the Eligible Slice Customers agree upon an allocation of the Unsold Slice Amount that conforms with the above limitation, then they shall submit the Additional Slice Amounts in a letter to BPA no later than March 1, 2011, signed by all Eligible Slice Customers, that sets out the name and Additional Slice Amount for each Eligible Slice Customer. Idaho Falls' Initial Slice Percentage shall then be determined pursuant to section 4.5 of this exhibit.

If the Eligible Slice Customers are unable to agree by March 1, 2011 on an allocation of the Unsold Slice Amount, then Idaho Falls shall provide written notification to BPA no later than March 8, 2011 that it elects to, or elects not to, participate in BPA's determination of Additional Slice Amounts, pursuant to section 3.3 of this exhibit. If Idaho Falls elects not to participate in BPA's allocation of the Unsold Slice Amount, or fails to provide written notification to BPA of its election no later than March 8, 2011, then Idaho Falls' Initial Slice Percentage shall be determined pursuant to section 4.4 of this exhibit.

**3.3 BPA's Allocation of Unsold Slice Amount**

BPA shall allocate the Unsold Slice Amount, as set forth in the procedure below, for each Eligible Slice Customer that has provided written notice on or before March 8, 2011 of its election to participate in such allocation.

**3.3.1 Compute Additional Slice Amount**

Idaho Falls' Additional Slice Amount shall be equal to its Maximum Additional Slice Amount multiplied by the ratio determined by dividing: (1) the Unsold Slice Amount by (2) the Combined Maximum Additional Slice Amount.

**3.3.2 Additional Slice Amount is Less Than or Equal to Zero**

If Idaho Falls' Additional Slice Amount is less than or equal to zero, then Idaho Falls shall receive no allocation of Unsold Slice Amount



under this section 3.3, and Idaho Falls' Initial Slice Percentage shall be determined pursuant to section 4.3 of this exhibit.

**3.3.3 Additional Slice Amount is Greater Than Zero**

If Idaho Falls' Additional Slice Amount is greater than zero then Idaho Falls' Initial Slice Percentage shall be determined pursuant to section 4.5 of this exhibit.

**4. DETERMINATION OF INITIAL SLICE PERCENTAGE**

No later than April 15, 2011, BPA shall determine Idaho Falls' Initial Slice Percentage pursuant to the applicable procedure below. Idaho Falls' Initial Slice Percentage so determined, shall be entered into section 2 of Exhibit J.

**4.1 Determination of Initial Slice Percentage when Unsold Slice Amount Less Than One**

If the Unsold Slice Amount is less than one aMW, then BPA shall set Idaho Falls' Initial Slice Percentage equal to Idaho Falls' Preliminary Slice Percentage.

**4.2 Determination of Initial Slice Percentage when Maximum Additional Slice Amount Less Than One**

If Idaho Falls' Maximum Additional Slice Amount is less than one aMW, then BPA shall set Idaho Falls' Initial Slice Percentage equal to Idaho Falls' Preliminary Slice Percentage.

**4.3 Determination of Initial Slice Percentage when Additional Slice Amount Less Than or Equal To Zero**

If Idaho Falls' Additional Slice Amount is less than or equal to zero, then BPA shall set Idaho Falls' Initial Slice Percentage equal to Idaho Falls' Preliminary Slice Percentage.

**4.4 Determination of Initial Slice Percentage when Idaho Falls Elects Not to Participate in Allocation of Unsold Slice Amount**

If Idaho Falls elects, or is deemed under section 3.2 of this exhibit to have elected, not to participate in an allocation of Unsold Slice Amounts, then BPA shall set Idaho Falls' Initial Slice Percentage equal to Idaho Falls' Preliminary Slice Percentage.

**4.5 Determination of Initial Slice Percentage when Eligible Slice Customers Agree on Allocation of Unsold Slice Amount**

If the Eligible Slice Customers deliver a letter to BPA on or before March 1, 2011, in accordance with section 3.2 of this exhibit, then Idaho Falls' Initial Slice Percentage shall be equal to: (1) the sum of Idaho Falls' Preliminary Slice Amount plus Idaho Falls' Additional Slice Amount as specified in the letter, divided by (2) the Base Tier 1 System Capability, expressed as a five decimal percentage.

4.6 **Determination of Initial Slice Percentage when BPA Allocates Additional Slice Amounts Greater Than Zero**

If Idaho Falls' Additional Slice Amount, as determined by BPA pursuant to section 3.3 of this exhibit, is greater than zero, then Idaho Falls' Initial Slice Percentage shall be equal to: (1) the sum of Idaho Falls' Preliminary Slice Amount plus Idaho Falls' Additional Slice Amount, divided by (2) the Base Tier 1 System Capability, expressed as a five decimal percentage.

5. **REVISIONS**

Revisions to this Exhibit Q shall be by mutual agreement of the Parties.

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**EXHIBIT G**

[Creditworthiness Agreement]

ORIGINAL

ROSE- ORIGINAL  
PSE - 2012 CONTRACT



**Department of Energy**

Bonneville Power Administration  
2700 Overland Avenue  
Burley, ID 83318-3273

POWER SERVICES

November 12, 2008

In reply refer to: PSE-Burley

Contract No. 09PB-13257  
CREDITWORTHINESS AGREEMENT

Mayor Jared Fuhriman  
City of Idaho Falls  
P.O. Box 50220  
Idaho Falls, ID 83405-0220

Dear Mayor Fuhriman:

The Bonneville Power Administration (BPA) and the City of Idaho Falls dba Idaho Falls Power (Idaho Falls) intend to enter into Contract No. 09PB-13056, Slice/Block Power Sales Agreement (Slice Agreement). This Creditworthiness Agreement (Agreement) is only applicable to the Slice Agreement. BPA and Idaho Falls are sometimes referred to individually as "Party" and jointly as "Parties."

In recognition of the unique features of the Slice Agreement and as an accommodation to BPA, Idaho Falls hereby agrees to enter into this Agreement.

Accordingly, BPA and Idaho Falls agree as follows:

1. **TERM.** This Agreement takes effect on the date the Slice Agreement is signed by BPA and Idaho Falls, and shall continue in effect until the date, after termination or expiration of the Slice Agreement, on which all payment obligations of Idaho Falls to BPA in connection with the purchase of electric power by Idaho Falls under section 5 of the Slice Agreement have been satisfied.
2. **DEFINITIONS**
  - (a) "Acceptable Credit Support" means the following, as reasonably determined by BPA, provided that BPA may in its discretion agree that other arrangements qualify as Acceptable Credit Support:
    - (1) The deposit of cash by Idaho Falls in an escrow or trust account managed by a bank; provided, that, such deposit shall qualify as Acceptable Credit Support only if the amounts required

under this Agreement have been deposited in such account for a minimum of six continuous months (or such other continuous period as shall defeat a voidable preference under Federal bankruptcy law then in effect);

- (2) (A) An irrevocable standby letter of credit (LOC) issued by:
- (i) a federally insured bank having at least \$1 billion in deposits and whose senior unsecured debt is rated "A" or better by at least two Major Credit Rating Companies;
  - (ii) the National Rural Utilities Cooperative Finance Corporation, so long as its senior unsecured debt is rated "A" or better by at least two Major Credit Rating Companies; or (iii) an institution of equivalent creditworthiness, as reasonably determined by BPA.
- (B) The terms and conditions of the LOC shall provide that:
- (i) It must be payable in full solely to BPA not later than three Business Days after written demand by BPA and without further conditions;
  - (ii) It must guarantee payment and not performance;
  - (iii) It must waive diligence, presentment, demand, protest, notice of acceptance or any other notice;
  - (iv) It must not be terminable by Idaho Falls without BPA's approval;
  - (v) It must be subject to amendment only with BPA's approval;
  - (vi) It must be non-transferable and the issuer of the LOC must be obligated to notify BPA of any assumption or assignment thereof;
  - (vii) Except as otherwise stated in section 2(a)(2)(B)(i-vi), this LOC is subject to International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (ISP98), and as to matters not addressed by the ISP98 this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws, except that to the extent the parties' rights and obligations are required to be governed by

United States Federal law, then such rights and obligations shall be governed by United States Federal law.

From time-to-time, the Parties may agree to attach hereto a form of LOC to be used by Idaho Falls if Acceptable Credit Support must be posted pursuant to this Agreement.

- (b) “Business Day” means any day that is normally observed by Idaho Falls as a workday. If the last day of a period during which an action is to be taken under this Agreement falls on a day that is not a Business Day, the last day of such period shall be the next Business Day.
- (c) “Major Credit Rating Companies” means Standard & Poor’s, Moody’s Investors Services, Inc., Fitch Ratings, or their respective affiliates and successors.
- (d) “Maximum Annual Power Billing” means: (1) at a given time other than in the first year in which power is to be sold to Idaho Falls under the Slice Agreement, an amount equal to twelve times the greatest monthly amount theretofore billed to Idaho Falls by BPA under section 5 of the Slice Agreement in the preceding twelve months, and (2) at a given time in the first year in which power is to be sold to Idaho Falls under the Slice Agreement, an amount equal to twelve times the greatest monthly amount forecast to be billed to Idaho Falls by BPA in such year calculated consistent with BPA’s then-applicable Wholesale Power Rate Schedules (regardless of whether or not such schedules are final proposed schedules or have been confirmed by the Federal Energy Regulatory Commission on a provisional or final basis). In the case of both (1) and (2) hereof, the Maximum Annual Power Billing shall not include any amount with respect to the Slice True-Up Adjustment Charge, as defined in the TRM.
- (e) “Tiered Rate Methodology” or “TRM” shall have the meaning as defined in the Slice Agreement.
- (f) “Unenhanced” means, with respect to debt of Idaho Falls, that such debt is secured by the revenues of Idaho Falls only and is not supported by another entity whether through bond insurance, guarantee, or another financial product. In addition, the term is meant to exclude project financed debt and debt that is outstanding but defeased or escrowed to maturity.

### 3. CREDIT REVIEW AND ACCEPTABLE CREDIT SUPPORT

- (a) **Credit Review.** BPA shall conduct a credit review of Idaho Falls to determine the amount of Acceptable Credit Support, if any, that Idaho Falls must post on or before the date power deliveries by BPA commence under the Slice Agreement.
- (b) **When Acceptable Credit Support Will Not Be Initially Required.** At the time power deliveries by BPA commence, Idaho Falls shall have no obligation to post Acceptable Credit Support under either of the following conditions:
- (1) as of August 1, 2011, Idaho Falls' senior, unenhanced debt, if any, is rated by one or more of the Major Credit Rating Companies; and: (A) none have rated such debt below investment grade (BBB- or its equivalent); and (B) in the case of any such debt having a rating at the lowest investment grade (BBB- or its equivalent), Idaho Falls is not on negative credit watch, or
  - (2) as of August 1, 2011, BPA internally rates Idaho Falls BBB- or greater after completion of the credit review pursuant to section 3(a).
- (c) **When Acceptable Credit Support is Required.** If BPA determines that Idaho Falls does not meet the criteria outlined in section 3(b), then Idaho Falls shall post Acceptable Credit Support at the time power deliveries by BPA commence under the Slice Agreement, assuming timely provision of information by Idaho Falls under section 3(d). BPA shall notify Idaho Falls of the result of such a determination no later than August 1, 2011. If BPA timely notifies Idaho Falls that Acceptable Credit Support is required at the time power deliveries by BPA commence under the Slice Agreement, Idaho Falls must post Acceptable Credit Support on or before the time power deliveries by BPA commence under the Slice Agreement in the amount, if any, determined by BPA; provided, however, that the amount of Acceptable Credit Support may not at any time exceed the product of 0.120 and the Maximum Annual Power Billing.
- (d) **Idaho Falls' Failure to Submit Credit Application and Related Information.** If BPA has not received a completed credit application and other information to BPA's satisfaction by April 1, 2011, BPA, without any credit review, may require that Idaho Falls post Acceptable Credit Support in an amount equal to the product of the Maximum Annual Power Billing and 0.120 at the time power deliveries by BPA commence under the Slice Agreement. In such

event, Idaho Falls, must maintain that amount of Acceptable Credit Support until such time as BPA determines otherwise; provided, however, that BPA shall complete the comprehensive credit review of Idaho Falls as soon as practicable after the receipt of a credit application.

4. **CONTINUING CREDIT REVIEW.** From the time power deliveries by BPA commence under the Slice Agreement until the termination or expiration of this Agreement, Idaho Falls shall be subject to continuing credit review by BPA. BPA may periodically review Idaho Falls' creditworthiness and determine, consistent with the terms of this Agreement, the amount, if any, of Acceptable Credit Support that Idaho Falls must post and maintain; provided, however, that Idaho Falls shall not be required to post or maintain Acceptable Credit Support in excess of the product of 0.120 and the Maximum Annual Power Billing. Within three Business Days of receipt by Idaho Falls of notice by BPA to post or increase the amount of Acceptable Credit Support, Idaho Falls shall post or increase the amount of Acceptable Credit Support to the amount determined and provided in the notice by BPA. BPA shall promptly review any Acceptable Credit Support proposed by Idaho Falls to determine whether it satisfies the requirements of this Agreement. From time-to-time during the term of this Agreement, BPA may request and Idaho Falls shall provide updated information of the type described in section 3(d); provided, however, that such information must be reasonably necessary to BPA's evaluation of Idaho Falls' creditworthiness, and, provided further, that Idaho Falls shall have no obligation to provide BPA with any confidential or business sensitive information.

The following events or conditions are grounds for BPA to determine that Idaho Falls post or increase the amount of Acceptable Credit Support under this section 4:

- (a) BPA has knowledge that Idaho Falls has defaulted on or is not performing its payment obligations under power marketing contracts, or loans, notes, bonds, or other evidences of indebtedness;
- (b) Idaho Falls has senior, unenhanced debt that is rated by at least one Major Credit Rating Company below investment grade (BBB- or its equivalent), or is rated by at least one Major Credit Rating Company below investment grade at the lowest investment grade (BBB- or its equivalent) and Idaho Falls is on negative credit watch by that Major Credit Rating Company;
- (c) The enactment, by any legislative body with competent jurisdiction over Idaho Falls of legislation that would render unlawful: (1) the performance by Idaho Falls of any absolute or contingent obligation to make a payment or to receive delivery in respect of the Slice



Agreement, or of any other material provision of the Slice Agreement; or (2) the performance by Idaho Falls of any material contingent or other obligation that Idaho Falls has under this Agreement, the Slice Agreement or any Acceptable Credit Support relating to this Agreement;

- (d) Idaho Falls takes an official position in any legal proceeding to which it is a party that its performance under the Slice Agreement is unlawful or unauthorized;
- (e) Any litigation is filed against Idaho Falls, or by Idaho Falls, contesting the validity or enforceability of Idaho Falls' obligations under the Slice Agreement or this Agreement, or any material provision of the Slice Agreement or this Agreement;
- (f) Substantial changes in market prices occur that materially and adversely impact Idaho Falls' ability to make payments under the Slice Agreement;
- (g) Other material changes in Idaho Falls' financial condition have occurred that may adversely impact Idaho Falls' ability to make payments under the Slice Agreement; or
- (h) Failure of Idaho Falls to provide BPA with information requested by BPA, and to the extent that Idaho Falls does not provide the requested information, BPA is free to draw any conclusion about the creditworthiness of Idaho Falls with respect to the subject matter of the request.

5. **OBLIGATION TO PROVIDE EVIDENCE OF ACCEPTABLE CREDIT SUPPORT.** Idaho Falls must provide BPA with copies of any Acceptable Credit Support provided hereunder immediately upon execution of such Acceptable Credit Support and must provide to BPA within two Business Days of notice by BPA reasonably reliable evidence that Acceptable Credit Support is in effect in the amount provided hereunder.

6. **DISPUTES**

- (a) Idaho Falls may dispute BPA's determinations for the posting of or an increase in the amount of Acceptable Credit Support under this Agreement only if Idaho Falls timely posts the amount so determined by BPA, not to exceed the product of 0.120 and the Maximum Annual Power Billing. Idaho Falls shall maintain such Acceptable Credit Support until the dispute is finally resolved or BPA agrees otherwise.

- (b) Idaho Falls may dispute whether BPA's requests for information are consistent with the terms of this Agreement only if Idaho Falls posts Acceptable Credit Support in an amount determined by BPA, not to exceed the product of 0.120 and the Maximum Annual Power Billing. Idaho Falls must maintain such Acceptable Credit Support until the dispute is finally resolved or BPA agrees otherwise.
- (c) Idaho Falls may dispute a determination by BPA whether a LOC or other form of security meets the requirements of an Acceptable Credit Support only if Idaho Falls posts or maintains security acceptable to BPA and in an amount determined by BPA, not to exceed the product 0.120 and the Maximum Annual Power Billing.
- (d) In the event of a dispute arising under this section 6, the dispute resolution procedures of the Slice Agreement shall apply.

7. **REQUESTS TO REEVALUATE CREDITWORTHINESS.** Idaho Falls may request, at any time during the term of this Agreement, that BPA reevaluate Idaho Falls' creditworthiness. Upon such request, BPA shall determine, consistent with the provisions of this Agreement, whether to reduce the amount of Acceptable Credit Support then required to be posted or maintained by Idaho Falls.

8. **FAILURE TO POST OR MAINTAIN SECURITY.** In the event Idaho Falls does not: (a) post or maintain Acceptable Credit Support in the amount required hereunder; or (b) provide reasonably reliable evidence thereof, in each case as provided in this Agreement, Idaho Falls is in default of this Agreement. Idaho Falls has three Business Days from the date of receipt by Idaho Falls of notification by BPA of such default to cure such default by posting Acceptable Credit Support in the amount required hereunder, or, as the case may be, by providing BPA with reasonably reliable evidence thereof. If the default is not so cured within such period, Idaho Falls is in material breach of this Agreement and the Slice Agreement, and BPA may terminate its obligation to deliver electric power under the Slice Agreement as provided in section 24.7 thereof.

9. **ACCESS TO AND USE OF FUNDS**

- (a) **Access to Funds Available Under Acceptable Credit Support.** BPA is entitled under this Agreement to draw on or receive the funds available under an Acceptable Credit Support only if Idaho Falls has been billed under section 16.1 of the Slice Agreement, and the amount so billed remains unpaid, in whole or in part, after the 45 day cure period outlined in section 16.4 of the Slice Agreement. This section shall not be interpreted to require that BPA meet any condition of demand, satisfaction, presentment or other notice prior to drawing on

or receiving the funds provided under any credit support provided under this Agreement.

- (b) **Use of Funds Available Under Acceptable Credit Support.** If BPA draws on or receives the funds available under an Acceptable Credit Support, such funds shall be used by BPA first to satisfy all liabilities due and owing from Idaho Falls to BPA pursuant to the terms of the Slice Agreement arising from or related to the delivery of power to Idaho Falls under section 5 of the Slice Agreement, and second to any other amounts that are due and owing BPA, but that are unpaid under the Slice Agreement including without limitation amounts billed to Idaho Falls thereunder, any interest thereon, and any Slice True-Up Adjustment Charge (as defined in the TRM). If the amount of the funds provided to BPA exceeds the sum of all such liabilities, the amount remaining after all such liabilities are satisfied shall be promptly returned by BPA to Idaho Falls, with interest on the excess funds from the date BPA took possession of those funds to the date the excess funds are returned to Idaho Falls. Such interest shall be calculated by dividing the Prime Rate for Large Banks as reported in the Wall Street Journal on the date BPA took possession of those funds by 365, and applying the resulting interest rate to the excess funds returned to Idaho Falls for each day of the period for which interest is due under this section.
- (c) **No Affect On Other Credit Support Obligations.** BPA's rights to credit support under this Creditworthiness Agreement shall be in addition to and not in derogation of any other credit support or performance assurance provided under the Slice Agreement or any other agreement.

10. **FORM OF NOTICE.** Unless otherwise specified, notice under this Agreement shall be in writing and shall be effective when received. Notice may be transmitted by hand delivery or by mail. Notice may also be transmitted by facsimile or electronic mail, provided that such transmission shall have been followed by hand or mail delivery of the original notice.

If the foregoing is acceptable to Idaho Falls, please sign and date both originals of this Agreement and return one of the originals to me. The remaining original is for your files.

ACCEPTED:

Sincerely,

CITY OF IDAHO FALLS DBA IDAHO FALLS POWER

By [Signature]  
Mayor

[Signature]

Account Executive

Name Jared Fuhriman

Name Larry D King


Date November 25, 2008

(PSE-W:\POWER\CONTRACT\CUSTOMER\IDAHO FALLS\13257\13257.DOC) 11/03/08



After the conduct of other business not pertinent to the foregoing, it was moved and carried that the Council adjourn.

CITY OF IDAHO FALLS, BONNEVILLE COUNTY,  
IDAHO

By   
Mayor

ATTEST:

By Roxanne Anderson  
City Clerk

[SEAL]



STATE OF IDAHO )  
 )  
COUNTY OF BONNEVILLE )

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of City of Idaho Falls, Bonneville County, Idaho (the "City"). I further certify that the above and foregoing constitutes a true and correct copy of the minutes of a special public meeting of the City Council (the "Council") of the City, held on November 25, 2008, including a resolution adopted at such meeting, together with the exhibit attached thereto, as said minutes, resolution and exhibit are recorded in the regular official book of minutes of the proceedings of the Council kept in the office of the City Clerk, that said proceedings were duly had and taken as therein shown, that the meeting therein shown was in all respects called, held and conducted in accordance with law, and that the persons therein named were present at said meeting, as therein shown.

I further certify that I caused a true and correct copy of the above-referenced resolution (including the exhibit attached thereto) to be filed in the office of the City Clerk for examination by any interested person during the regular business hours of the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed or imprinted hereon the official seal of the City, this 25th day of November, 2008.



Roxmarie Anderson  
City Clerk  
City of Idaho Falls,  
Bonneville County, Idaho

DALE W. STORER  
ISB #2166  
HOLDEN, KIDWELL, HAHN  
& CRAPO, P.L.L.C.  
1000 Riverwalk, Suite 200  
Idaho Falls, Idaho 83402

09-12-11 1:37

Attorneys for Petitioner,  
The City of Idaho Falls

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE )  
POWER SALES AGREEMENT )  
AND THE CREDITWORTHINESS )  
AGREEMENT BETWEEN )  
THE CITY OF IDAHO FALLS )  
AND THE BONNEVILLE )  
POWER ADMINISTRATION )

No. CV-09-1736

AFFIDAVIT OF JACQUELINE FLOWERS,  
IN SUPPORT OF PETITION FOR  
JUDICIAL CONFIRMATION

STATE OF IDAHO )  
 ) SS  
COUNTY OF BONNEVILLE )

Jacqueline Flowers, being first duly sworn, deposes and states as follows:

1. I am the General Manager of the Electric Division of the City of Idaho Falls (which does business as, and is referred to herein as, "*Idaho Falls Power*"). I have reviewed and am familiar with the terms and provisions of the Power Sales Agreement, Contract No. 09PB-13056 (the "*Renewal Power Sales Agreement*") and the Creditworthiness Agreement, Contract No. 09PB-13257 (the "*Creditworthiness Agreement*"), each between the City of Idaho Falls, Bonneville County, Idaho (the "*City*") and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("*Bonneville*").

2. As General Manager of Idaho Falls Power, I am responsible for the operations of Idaho Falls Power and I am familiar with its business and affairs. Day-to-day management of Idaho Falls Power is my responsibility and I supervise a staff of 64 employees. I report to the Mayor and City Council of the City. The City Council sets policy and rates and exercises general supervision over Idaho Falls Power.

3. I participated in Bonneville's Regional Dialogue Process that led to the development of the Renewal Power Sales Agreement, reviewed and commented on Bonneville's policy proposals, and participated in numerous meetings and conferences with Bonneville, its preference customers and others regarding Bonneville's power supply product offerings. I have also reviewed and am familiar with the engineer's report prepared by the City's independent consulting engineer, E. Robert Mooney, P.E., of Mooney Consulting (the "*Engineer's Report*") and the factual information contained therein is true and correct and I agree with the engineering conclusions and recommendations set forth therein.

4. The City has owned and operated its municipal electric utility system (the "*System*") since 1900. The System generates, transmits and distributes reliable and low-cost electric power and energy to over 25,000 residential, commercial, industrial and other customers located within the System's established service area.

5. The System operates on an entirely self-supporting basis. Revenues from rates and other System revenues pay all costs of the System. Such costs include operation and maintenance costs, debt service expense and capital improvement costs. System costs also include purchased power expenses, including power purchased under the Block and Slice Power Sales Agreement between Idaho Falls Power and Bonneville that became effective on October 1,



2001 and expires on September 30, 2011 (the "2001 PSA"). Power supply costs are paid from System revenues as a regular, ordinary and necessary cost of the operation of the System.

6. Idaho Falls Power currently maintains and collects, and will continue to maintain and collect, rates and charges for electric services sufficient to pay all obligations with respect to the System, including payments to be made to Bonneville under the Renewal Power Sales Agreement. No other funds of the City are or will be used for these purposes. Payments to be made to Bonneville under the Renewal Power Sales Agreement will be included in the City's annual operating budget. Any increased power supply costs will be met through amounts on deposit in the Rate Stabilization Fund (discussed below) and rate adjustments as determined by the City Council.

7. System rates are reviewed annually by Idaho Falls Power's management and the City Council. Management of Idaho Falls Power conducts regular cost of service studies for each customer class.

8. The electric rates presently charged by Idaho Falls Power are among the lowest of any utility in the United States. Idaho Falls Power has established itself as a provider of reliable electric service at low and stable rates. The Mission Statement of Idaho Falls Power (discussed below) provides that it will maintain and, if possible, improve its position as a leader in providing low-cost and reliable electric service by maintaining control over costs and promoting rate stability. Power purchases from Bonneville are essential to meeting these goals.

9. Idaho Falls Power has implemented various measures to assist in meeting its primary objectives of maintaining control over costs and promoting rate stability. Idaho Falls Power adopted a Mission Statement in March 1997, and amended and updated the Mission

Statement in 2007. The Mission Statement provides that Idaho Falls Power shall provide superior service to its customers by providing reliable high-quality power, providing competitive rates and offering programs and services to meet customers' needs and expectations. Operating principles adopted to accomplish the mission include aggressively pursuing the least cost, reliable power supply mix consistent with good business practices, recognizing that Idaho Falls Power's customers have supported a long-term approach to power supply acquisitions. Idaho Falls Power's Mission Statement is discussed in further detail in the Engineer's Report.

10. In December 1997 the City Council created a Rate Stabilization Fund within the City's electric enterprise fund. The Rate Stabilization Fund was created in recognition of the challenges Idaho Falls Power would face as a result of deregulation of the electric industry. The Rate Stabilization Fund is used, at the direction of the City Council, to (a) provide reserves for future capital improvements to and renewals and replacements of System components, (b) provide contingency funds for rate stabilization, and (c) provide funds for future power supply purposes and risk management transactions. The Rate Stabilization Fund is funded with available System revenues after provision has been made for the payment of all other System costs. Management of Idaho Falls Power and the City Council evaluate the adequacy of the Rate Stabilization Fund annually. The balance on deposit in the Rate Stabilization Fund currently exceeds \$28 million. Idaho Falls Power presently maintains the Rate Stabilization Fund with a minimum balance of \$20 million. The Rate Stabilization Fund has better enabled Idaho Falls Power to provide safe, reliable and low-cost electric service to its customers.

11. The City Council adopted a Risk Management Policy for Idaho Falls Power in 1999 and has amended the Policy from time to time. The Risk Management Policy recognizes the risks inherent in competitive wholesale power markets. It sets policies, standards and

procedures to be followed by Idaho Falls Power to manage and reduce the risks associated with wholesale power transactions in a deregulated market. Such policies and standards include a prohibition on speculative transactions, matching of power supply resources and requirements, examination of alternatives and strict counterparty creditworthiness standards.

12. The City is a member of Utah Associated Municipal Power Systems (“UAMPS”), a political subdivision of the State of Utah that provides wholesale electric services to over 50 public utility systems in eight Western states. The City joined UAMPS in order to achieve economies of scale in purchasing power supplies, transmission access to power markets outside of the Pacific Northwest and the use of UAMPS’ power scheduling and dispatching office which operates 24 hours a day on a real-time basis. The power scheduling and dispatching services provided by UAMPS facilitate the City’s purchase of the Slice product from Bonneville and enable the City to maximize the benefits of the product.

13. As discussed in further detail in the Engineer’s Report, Idaho Falls Power has sponsored efficiency programs for its customers, resulting in significant annual energy savings. Idaho Falls Power has also pursued various renewal energy resources, including investigation of a wind project proposed to be located near the City. Idaho Falls Power may purchase a small amount of power from this project, which would be used to supplement Idaho Falls Power’s other power supply resources.

14. Idaho Falls Power maintains a five-year forward plan for capital additions, replacements and upgrades to the System. Capital improvement costs are presently funded out of System revenues and reserves. The City last issued bonds to finance System improvements (the Gem State Project) in 1985. The capital improvement costs shown in the five-year plan are taken

into account in Idaho Falls Power's annual evaluations of System rates and funding targets for the Rate Stabilization Fund.

15. The System's own generation facilities consist of hydroelectric generating facilities located on the Snake River known as the Bulb Turbine Project and the Gem State Project. Other major System components are described in detail in the Engineer's Report.

16. The Bulb Turbine Project was completed in 1982. It consists of three low-head bulb turbine hydroelectric generating facilities (the Upper, City and Lower Plants) with a total nameplate generating capacity of 27 MegaWatts ("MW"). Since it was placed in operation, all of the output of the Bulb Turbine Project has been sold to Bonneville under net billing and other arrangements on terms favorable to the City. During the term of the current power sales contract, the average price Bonneville pays Idaho Falls Power for Bulb Turbine Project output has exceeded the average price Idaho Falls Power currently pays Bonneville for power supply under the 2001 PSA.

17. The Gem State Project is a 23.4 MW hydroelectric generating facility on the Snake River about 5 miles southwest of the City. A portion of the annual output of the Gem State Project (up to 29% and not less than 25%) is sold at cost to Rocky Mountain Power (successor to Utah Power & Light Company) under a long-term power sales contract which extends to 2023. Idaho Falls Power typically receives output from the Gem State Project from September through April and sells all of the output of the Project from May through August to Rocky Mountain Power.

18. The generating output of both the Bulb Turbine Project and the Gem State Project varies with streamflows down the Snake River. Both the Bulb Turbine Project and the

Gem State Project are “run-of-the-river” hydroelectric projects, meaning neither Project utilizes a water storage reservoir. In an average water year, the Bulb Turbine Project and the Gem State Project are capable of producing a combined generation of approximately 32 aMW of energy. In a low water year, or a “critical water” year, the generating output of the Bulb Turbine and Gem State Projects is about 21.5 aMW. Taking into account the City’s power sales obligations to Bonneville and Rocky Mountain Power, the output of these Projects available to the City is less than 6 aMW in a critical water year. Consequently, the City purchases at wholesale a substantial portion of the System’s annual electricity requirements (the System’s annual energy requirement for the last year of operations (the twelve months ended September 30, 2008) was approximately 86.6 aMW).

19. Idaho Falls Power is a “preference” customer of Bonneville under the provisions of the federal law, including the Bonneville Project Act and the Pacific Northwest Electric Power Planning and Conservation Act. Since 1963, the City has purchased most of the System’s energy requirements from Bonneville at rates that have been less than the cost of alternative power supplies, and Bonneville has been a highly reliable power supplier to the City. Bonneville currently sells power to Idaho Falls Power under the 2001 PSA, and to its other preference customers under similar power sales agreements that became effective on October 1, 2001 and expire on September 30, 2011 (together with the 2001 PSA, the “2001 PSAs”).

20. Under the 2001 PSAs, Bonneville offers three types of power supply service to its preference customers: (a) Load-Following (power is provided in an amount and at the times necessary to meet all or a portion of the customer’s actual load), (b) Block (power is provided in a pre-determined amount each month), or (c) Slice of the System (“*Slice*”) (the

customer purchases a specified percentage of the power generated by Bonneville's power system (the "*Federal Power System*") on an "if, as and when generated" basis).

21. The amounts paid to Bonneville by its preference customers including Idaho Falls Power are required by federal law (specifically, the Pacific Northwest Electric Power Planning and Conservation Act) to cover all of Bonneville's actual costs of acquiring, generating, producing and transmitting electric power and energy and to return the federal investment in the Federal Columbia River Power System to the U.S. Treasury. Bonneville's costs are determined under periodic rate filings made by Bonneville with the Federal Energy Regulatory Commission ("*FERC*"), which is required to issue a finding that the rates are based on Bonneville's total system costs.

22. Rates for service under the 2001 PSAs are determined under the provisions of the 2001 PSAs and Bonneville's rate cases before FERC. The 2001 PSAs contain provisions allowing Bonneville to adjust rates to recover its costs. Under the current rate structure (covering the period from October 1, 2006 to September 30, 2009), rates for each year are subject to an annual adjustment on the basis of forecasted financial results for the prior fiscal year. As such, the rates paid by preference customers, including Idaho Falls Power, under the 2001 PSAs have varied during the term of those agreements.

23. Under its 2001 PSA, Idaho Falls Power purchases the Slice product and the Block product (referred to herein as the "*Slice/Block product*"). For its most recent year of operations (the twelve months ending September 30, 2008) Idaho Falls Power purchased approximately 90% of the total power supply requirements of the System from Bonneville as a Slice/Block customer under its 2001 PSA.

24. As required by the 2001 PSA, Idaho Falls Power purchases the Block product in amounts that are equal for each day within a month and that vary by month to correspond to the seasonal variations in the System's loads. The monthly quantities presently range from a low of 24 MW/hour in September to a high of 39 MW/hour in December. The average rate payable by Idaho Falls Power for the Block product for the year ended September 30, 2007 was \$23.95/MWh, which is substantially below current market-based rates.

25. The Slice power supply product is purchased as a percentage of the generation output of the Federal Power System. Consequently, the amount of power received by Idaho Falls Power from the Slice product varies with the actual generating output of the Federal Power System. Under the 2001 PSA, Idaho Falls Power presently purchases 0.6931% of the output of the Federal Power System and pays approximately \$1,300,000 per month for its percentage share of the output. Because the amount of power received by Idaho Falls Power under the Slice product varies with the actual generation of the Federal Power System, the effective price paid by Idaho Falls Power varies from year to year. For the year ended September 30, 2007, Idaho Falls Power paid an effective rate of \$27.45/MWh for all energy received under the Slice product, which is substantially below current market-based rates.

26. The rates paid by the City under the 2001 PSA in each year have been less than wholesale market prices for electricity and have been far more stable and less volatile than market prices.

27. Power deliveries received by Idaho Falls Power under its 2001 PSA do not precisely match Idaho Falls Power's System loads. Idaho Falls Power enters into power purchase and sale transactions to match its power supplies with its System loads.

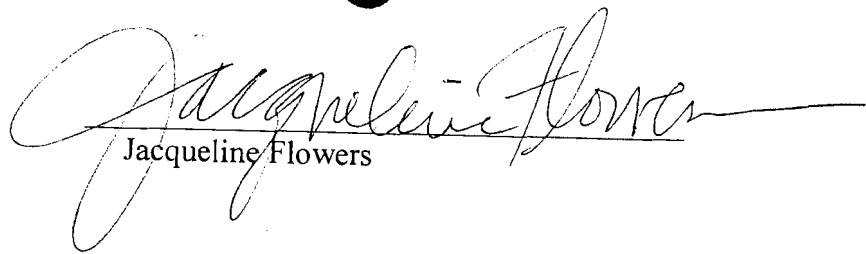
28. In determining whether to enter into the Renewal Power Sales Agreement at the expiration of the City's 2001 PSA, Ms. Elg and Mr. Mooney and I evaluated alternative power supply resources now available, including construction of new generating units and wholesale market power purchase agreements. In my opinion, none of these alternatives offers the City the benefits it realizes from Bonneville, including below-market rates, stability in rates as compared to market-based alternatives, a high degree of reliability, and avoidance of construction risks, with minimal counterparty and other risks.

29. Ms. Elg and Mr. Mooney and I also evaluated each of Bonneville's product supply offerings. It is my opinion that the City should purchase the Slice/Block product, as the power purchase arrangement that best matches Idaho Falls Power's System loads, existing resources and objectives of maintaining control over costs and keeping rates stable.

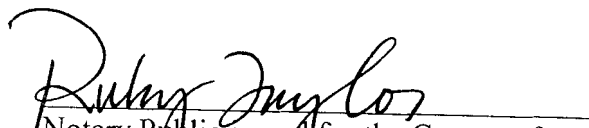
30. The Renewal Power Sales Agreement renews and continues the City's Slice/Block power purchases from Bonneville for a seventeen-year term beginning October 1, 2011. The terms of the Renewal Power Sales Agreement are highly favorable to the City, providing for reliable, cost-based power to be sold to the City under a long-term arrangement. I have recommended to the City Council that it execute the Renewal Power Sales Agreement for the continued purchase of the Slice/Block product because in my opinion the Slice/Block product is the most advantageous and economic power supply option available from Bonneville and is most likely to produce the lowest power supply costs for the customers served by the System.

31. If called to testify at a hearing on this matter I would testify to the foregoing.



  
Jacqueline Flowers

Subscribed and sworn to before  
me this 12 day of March, 2009

  
Notary Public in and for the County of  
Bonneville, State of Idaho

[SEAL]

My commission expires 12/10/2012

DALE W. STORER  
ISB #2166  
HOLDEN, KIDWELL, HAHN  
& CRAPO, P.L.L.C.  
1000 Riverwalk Drive, Suite 200,  
Idaho Falls, Idaho 83405

10 137

Attorney for Petitioner,  
The City of Idaho Falls

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE )  
BLOCK AND SLICE POWER )  
SALES AGREEMENT BETWEEN )  
THE CITY OF IDAHO FALLS AND )  
THE UNITED STATES OF )  
AMERICA )  
)

No. CW-09-1736

AFFIDAVIT OF JO A. ELG,  
IN SUPPORT OF PETITION FOR  
JUDICIAL CONFIRMATION

STATE OF IDAHO )  
) SS  
COUNTY OF BONNEVILLE )

Jo A. Elg, being first duly sworn, deposes and states as follows:

1. I am the Assistant General Manager of the Electric Division of the City of Idaho Falls (which does business as, and is referred to herein as, "Idaho Falls Power"). In such capacity, I am responsible for assisting the General Manager with the operations of Idaho Falls Power and I am familiar with its business and affairs. My primary responsibility within Idaho Falls Power is power supply, and I have participated in the development of, have reviewed and am familiar with the terms and provisions of the Power Sales Agreement, Contract No. 09PB-13056 (the "Renewal Power Sales Agreement") and the Creditworthiness Agreement, Contract

No. 09PB-13257, each between the City of Idaho Falls, Bonneville County, Idaho (the "City") and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("*Bonneville*").

2. As a part of my responsibility for power supply matters, I participated in Bonneville's Regional Dialogue Process (discussed below) that led to the development of the Renewal Power Sales Agreement, reviewed and commented on Bonneville's policy proposals, and participated in numerous meetings and conferences with Bonneville, its preference customers and others regarding Bonneville's power supply product offerings. I also initiate and supervise the wholesale market transactions utilized by Idaho Falls Power to match its power supplies with its power requirements. As a result I am familiar with wholesale market conditions and prices in the Pacific Northwest and Intermountain Regions.

3. Idaho Falls Power operates the City's municipal electric utility system (the "*System*"). The System presently provides reliable and low-cost electric service to over 25,000 customers. For its last year of operations (the twelve months ended September 30, 2008), the total electricity requirements of the customers served by Idaho Falls Power were approximately 748,000 MegaWatt-hours ("*Mwh*"), representing an annual energy requirement of 86.6 average MegaWatts ("*aMW*"). Over the past 10 years the electric energy requirements of the customers served by the System have grown at a rate of almost 2% per year.

4. The System's loads are temperature-sensitive and vary by season. Peak demands on the System occur during the winter months, due to a large number of residential customers that use electricity for home heating, other customers whose electricity requirements are temperature-sensitive and other seasonal loads. The lowest demands on the System are

during the spring and fall seasons. Demands in the summer season have increased in recent years due to air conditioning loads.

5. Consistent and steady growth has occurred in Idaho Falls Power's residential and commercial customer base and in customer energy usage over the last ten years. The engineer's report prepared by the City's independent consulting engineer, E. Robert Mooney, P.E., of Mooney Consulting (the "*Engineer's Report*") contains a table which sets forth the total energy requirements of the customers served by the System for the last ten fiscal years of operation. I have reviewed and am familiar with the Engineer's Report and the factual information contained therein is true and correct and I agree with the engineering conclusions and recommendations set forth therein.

6. Idaho Falls Power's own generation facilities consist of hydroelectric generating facilities—the Bulb Turbine Project and the Gem State Project—located on the Snake River. These facilities operate as "run-of-the-river" generating units, meaning there are no water storage reservoirs. Consequently, the output of these Projects is entirely dependent upon seasonal streamflows on the Snake River. These Projects cannot be used to generate output to meet real-time changes in System load.

7. The combined generation of the Bulb Turbine Project and the Gem State Project is approximately 32 aMW of energy in an average water year and about 21.5 aMW in a low, or a "critical water", year. All of the output of the Bulb Turbine Project is currently sold to Bonneville under net billing and other arrangements on terms favorable to the City, and a portion of the annual output of the Gem State Project is sold at cost to Rocky Mountain Power under a

long-term power sales contract. The output of these Projects available to the City after such sales is less than 6 aMW in a critical water year.

8. Although Idaho Falls Power has sought to develop additional thermal generating resources to complement its hydroelectric supplies, currently it does not have in place any thermal generating resources. The City depends materially on wholesale power supplies to meet System requirements.

9. Idaho Falls Power and other preference customers of Bonneville currently purchase power from Bonneville pursuant to power sales agreements that became effective on October 1, 2001, and expire on September 30, 2011 (the "2001 PSAs"). Idaho Falls Power acquires approximately 90% of System requirements from Bonneville under its 2001 PSA.

10. Idaho Falls Power presently purchases the "Block" and "Slice" power supply products (referred to herein as the "*Slice/Block product*") under the 2001 PSA. The Slice power supply product is purchased as a percentage of the generation output of the federal Columbia River Power System (the "*Federal Power System*"). While seasonal variations in the output of the Federal Power System generally correspond to the seasonal variations in the loads on Idaho Falls Power's System, there are months in each year when Idaho Falls Power does not receive sufficient power from Bonneville to meet all of its System loads. Correspondingly, there are certain months in the year when Idaho Falls Power receives power from Bonneville that is surplus to its System loads. Idaho Falls Power enters into power purchase and sale transactions to match its power supplies with its System loads.

11. Idaho Falls Power currently has supplemental power purchase contracts in place, primarily with wholesale market suppliers and other municipal utilities. These power

purchase arrangements are mostly seasonal, although one supplemental contract obligates Idaho Falls Power to purchase power for multiple years. Most of these contracts are executed to serve winter loads, although Idaho Falls Power has a contract in place to serve summer load. Supplemental power sales contracts such as these are entered into on an as-needed basis, sometimes with short notice. Costs for power purchased under such supplemental power sales contracts are paid from System revenues as regular, ordinary and necessary costs of the operation of the System.

12. In anticipation of the expiration of the 2001 PSAs on September 30, 2011, in 2005 Bonneville began a process called the "Long-Term Regional Dialogue Process" (the "*Regional Dialogue Process*"). Throughout the Regional Dialogue Process, Bonneville solicited public comments on the policy proposal and held a number of public hearings throughout the Pacific Northwest. Idaho Falls Power's General Manager, Ms. Jackie Flowers, and consulting engineer, Mr. Mooney, and I were directly involved in the Regional Dialogue Process, which consisted of an extensive review and analysis of the power and energy available from the Federal Power System and how this power and energy could best be sold by Bonneville to its preference customers.

13. In 2006 Bonneville issued a policy proposal that set forth principles for the development of new long-term power sales agreements between Bonneville and its preference customers that would become effective upon the expiration of the 2001 PSAs on October 1, 2011 (together with the Renewal Power Sales Agreement, the "*2011 PSAs*").

14. In 2007, Bonneville issued its Record of Decision on the Regional Dialogue Process, which determined that, among other things, Bonneville would proceed to offer the 2011

PSAs to its preference customers with provisions generally consistent with the governing principles set out in the policy proposal, and that preference customers would have the option of purchasing the “Load-Following”, “Block”, or “Slice/Block” product to meet their net power requirements, with various modifications to the terms of the 2001 PSAs.

15. The Record of Decision also determined that, beginning with the 2011 PSAs, Bonneville would allocate all of the firm generating output of the Federal Power System to its preference customers. Bonneville also determined that the firm output of the Federal Power System would not be sufficient to meet the net power requirements of its preference customers in 2011. As a result, and in an effort to minimize the impact of market prices and volatility on its cost-based rates, Bonneville determined that it would apply a “Tiered-Rate Methodology” under the 2011 PSAs.

16. Under the Tiered-Rate Methodology, Bonneville will allocate all of the net firm output of the Federal Power System among its preference customers. The allocation will be based upon each preference customer’s net power requirements for the year ended September 30, 2010. A preference customer’s allocation is referred to as its “High Water Mark”. Bonneville’s lowest rate—the “Tier 1” rate—will apply to all purchases of power by a preference customer up to its High Water Mark. A preference customer may purchase supplemental power above its High Water Mark allocation from Bonneville at “Tier 2” rates, which cover all of Bonneville’s incremental costs of acquiring additional power supply resources at wholesale market-based prices. Bonneville has submitted a Rate Case Initial Proposal to the Federal Energy Regulatory Commission (“FERC”) for approval of the Tiered-Rate Methodology for the entire term of the 2011 PSAs. Under the Tiered-Rate Methodology, Bonneville will implement revised rate schedules every two years.

17. In addition to evaluating the alternative power supply products offered by Bonneville under the 2011 PSAs, management of Idaho Falls Power also analyzed the availability, costs and benefits of power supplies in the wholesale power market and from the development of new generation resources. Idaho Falls Power engaged Mr. Mooney to assist it in evaluating Bonneville's power supply offerings and alternative power supply resources available in the wholesale market and from new resources, and to determine which power supply option would best meet Idaho Falls Power's unique circumstances—*i.e.*, its seasonal variations in load and the limitations of the System's generating units—and meet Idaho Falls Power's primary objectives of maintaining a high degree of reliability, promoting rate stability and controlling power supply costs.

18. The alternatives to purchasing power and energy from Bonneville are (a) entering into a contract with another wholesale power supplier, and (b) acquiring an existing or constructing a new generating resource either itself or by participating with other similarly-situated utilities.

19. We first evaluated the possibility of entering into contracts with other wholesale suppliers. We found that first, as discussed in the Engineer's Report, in order to meet its delivery obligations any wholesale supplier would likely rely on both wholesale market supplies and the output of generating units it owns or has contractual rights to, which generating units are likely fueled by natural gas. Market prices for electricity in recent years reflect a significant amount of volatility and uncertainty, and price volatility in gas markets can also be extreme. Consequently, to ensure it would be able to cover its costs, a wholesale supplier under a long-term contract would likely require the purchaser pay a premium over current market prices. Second, in polling various power suppliers we found that none were willing to enter into



a contract with a term longer than five years. Thus, in five or six years Idaho Falls Power would be required to either obtain other power supply resources or renew the contract, with no assurance as to the renewal terms and prices. Third, there are no market products currently available to follow load—the only type of contract available is for all hours flat or for heavy or light load hours. Lastly, any market-based supply of electricity exposes Idaho Falls Power to the risks of the supplier's bankruptcy or insolvency or the supplier's failure to perform its power supply obligations. While various contractual provisions and the development of a portfolio of power supplies can be used to mitigate these risks, no wholesale market alternative can be as reliable and secure as Bonneville.

20. Purchases from Bonneville are clearly superior to purchases under wholesale power supply contracts. As opposed to prices for power under wholesale power supply contracts, Bonneville's rates are cost-based and its rate methodology is subject to review by FERC. Bonneville's current rates are approximately one-half of market rates, and Bonneville's rates are expected to remain well below market rates for the foreseeable future. The duration of the Renewal Power Sales Agreement is seventeen years, rather than five years. Power supply under the Renewal Power Sales Agreement is more flexible than market-based supplies, and the scheduling rights associated with the Slice power supply product will allow Idaho Falls Power to achieve a reasonable degree of load-following. The contract terms of the Renewal Power Sales Agreement are also much more favorable to preference customers, and there is no bankruptcy risk associated with Bonneville, a federal agency.

21. We also evaluated the possibility of Idaho Falls Power acquiring an existing or constructing a new generating resource, either by itself or by participating with other similarly-situated utilities. We found that because several proposed coal-fired generation projects are on

hold due to litigation and uncertainty about carbon dioxide and mercury regulations, any new coal-fired generation project likely cannot be completed before 2014. Additionally, a gas-fired generating unit not already under development with permitting completed and equipment ordered cannot be completed earlier than 2012. Fuel costs amount to about fifty percent of the total cost of electricity (including debt service costs) from a gas-fired generator, and the volatility of natural gas prices would significantly reduce the ability of Idaho Falls Power to maintain stable rates. Lastly, ownership or participation in the construction and operation of a new generating facility involves substantial construction, financial, and operating risks that, while they can be mitigated, cannot be completely avoided. As a result, even if a new generating resource were available in the near term and at a reasonable cost, it would still not compare favorably to any of Bonneville's power supply products.

22. Purchases from Bonneville do not present the risks associated with acquiring an existing or constructing a new generating resource. Bonneville is an established power supplier with a long history of operations and control over the 225 generating facilities that comprise the Federal Power System. These are the same generating resources that have been used by Bonneville to meet its power supply obligations to the City for over 45 years under the 2001 PSA and the City's prior power purchase arrangements with Bonneville. These resources have operated with a high degree of reliability and have provided Idaho Falls Power and its customers with power supplies at rates well below and more stable than any alternative. Pursuant to the terms of the Renewal Power Sales Agreement, these existing generating resources are the generating resources Bonneville will use to meet its power sales obligation to the City under the Renewal Power Sales Agreement. Bonneville will not acquire or construct

any new generating resources to meet its power sales obligation to the City under the Renewal Power Sales Agreement.

23. It is my opinion that the City has no meaningful alternative to power purchases from Bonneville. If the City were unable to enter into the Renewal Power Sales Agreement, its power supply costs would increase substantially and it would be subject to significant volatility, the reliability of Idaho Falls Power's power supply resources would diminish significantly, and the customers served by Idaho Falls Power would be required to pay substantially higher rates and would be subject to significant price volatility and other wholesale market risks.

24. Having concluded that continuing to purchase power and energy from Bonneville was better than any alternative resource, we evaluated each of Bonneville's power supply product offerings to determine which product offering would best suit Idaho Falls Power.

25. The Load-Following product, although viable for Idaho Falls Power, is not ideal because shaping services would have to be purchased separately. (Shaping services are supplemental power supplies and ancillary services necessary to match the variable output of the Federal Power System with the variable loads of the customers purchasing the Load-Following product.) BPA has not yet identified the power supply resources that will be used to provide shaping services or the costs of such services. Additionally, purchasers of the Load-Following product have no control over BPA's disposition of surplus power or the revenues from surplus power sales.

26. The Block product alone is not suitable for Idaho Falls Power because it does not provide any flexibility to meet real-time changes in System loads. If Idaho Falls Power

were to purchase the Block product alone it would not be able to meet real-time changes in load because it does not have any thermal generating resources that can be operated to match its system loads and the System's hydroelectric units all operate as "run-of-the-river" units. Shaping capacity could be purchased from Bonneville, but it will be a complex product and, as discussed above, the costs and resources associated with shaping capacity have not yet been identified.

27. The Slice product offers significant flexibility in shaping because the customer has certain scheduling rights that enable it vary the amount of power it receives within certain operating parameters. The customer determines the rate of delivery in any hour, based upon the maximum and minimum capability of the Federal Power System, after considering non-power constraints placed on the System. The customer is also allowed to utilize the Federal Power System's storage capability in the same percentage as its Slice percentage. These options provide the customer with control and autonomy in the operation of its own generation and contract resources. For Idaho Falls Power, these options accommodate the variability of its temperature-sensitive loads and output of its run-of-the-river units. In addition, Slice customers are allocated a percentage of the surplus output of the Federal Power System, so the customer has the option to use surplus generation to meet its own loads or, if not needed, to sell surplus power and use the resulting revenues to reduce its net power supply costs. In my opinion, the Slice product is the most favorable power supply option for Idaho Falls Power.

28. In purchasing the Slice power supply product, Idaho Falls Power will purchase a specified percentage of the output of the designated Federal Power System resources, and will pay a flat monthly fee for all of the power it receives. The amount of power that will be received each month will vary with the output of the Federal Power System and more power will be received in high water periods and years and less power will be received in low water periods

and years. The amount of power received by Idaho Falls Power could also be reduced as a result of generator outages and deratings, additional operating constraints on the federal dams for environmental reasons and other factors. While the variability and risk of reductions in the power available from the Slice product are not insignificant, these risks are inherent in any hydroelectric-based generating system, and Idaho Falls Power has developed and implemented systems that enable it to effectively mitigate and manage these risks.

29. All of Bonneville's customers are exposed to the risk that Bonneville's power supply rates may increase over the term of the 2011 PSAs. While customers purchasing the Slice product are exposed to a greater risk of near-term price adjustments, all of Bonneville's customers are exposed to the risk of rate adjustments. For example, a succession of low water years or an extremely low water year could require Bonneville to acquire supplemental power supplies in the wholesale market to meet its obligations under the Block and Load-Following products. In that event, all of Bonneville's customers would be exposed to increased rates.

30. The amount now on deposit in the Rate Stabilization Fund and the target minimum balance for that Fund exceed a full year of Idaho Falls Power's payments to Bonneville for power supply. In my opinion, the amount in the Rate Stabilization Fund is sufficient to mitigate reasonably expected variations in Bonneville's rates over the term the Renewal Power Sales Agreement.

31. Bonneville does not permit customers to purchase all of their High Water Mark allocations of federal power under the Slice product, and requires them to purchase a portion of their High Water Mark allocations under the "flat" Block power supply product (*i.e.*, without shaping capacity).

32. Under the Block product, the City will purchase specified amounts of power (in MWh) each month, and will pay rates (in \$/MWh) that are fixed for two-year periods. The amounts of power will vary by month to reflect seasonal variations in System loads. The specific amount of Block power to be purchased by the City will be formally established prior to the beginning of power deliveries and will remain fixed for the term of the Renewal Power Sales Agreement.

33. The City presently expects that it will purchase approximately 50% of its High Water Mark power allocation under the Slice product and approximately 50% under the Block product. The Slice and Block products to be purchased under the Renewal Power Sales Agreement are similar to the Slice and Block power supply products currently purchased under the City's 2001 PSA, and Idaho Falls Power has developed the systems and expertise necessary to effectively utilize these power supply products. It is my opinion that the purchase of the Slice and Block products by the City under the Renewal Power Sales Agreement is the most advantageous and economic power supply option available to the City from Bonneville and it is most likely to produce the lowest power supply costs for the customers served by the System.

34. The Renewal Power Sales Agreement creates an obligation of the City to purchase power and energy from Bonneville and an obligation of Bonneville to sell power and energy to the City for a seventeen-year term commencing October 1, 2011. The power sales and purchase obligations of the City and Bonneville are "firm" and performance by either party is excused only in the event of an "Uncontrollable Force", defined in the Renewal Power Sales Agreement to include interruption of power transmission to the City, disruption of the facilities of the System, Acts of God, and other events beyond the control of the parties.

35. Under Section 3.2 of the Renewal Power Sales Agreement, the City is obligated to pay for the power that Bonneville “makes available” to the City under the Slice and Block power supply products. Bonneville’s power supply operation “makes available” power to the City by delivering it to the points of receipt under the City’s firm transmission contract with Bonneville’s transmission operation under which power is transmitted to the System. The City is obligated to pay for the power that Bonneville “makes available” to the City regardless of whether it takes delivery of the power.

36. The cost-based rates the City will pay under the Renewal Power Sales Agreement are expected to be substantially below current and projected wholesale market rates. The rates to be paid by the City for power and energy under the Renewal Power Sales Agreement are cost-based rates that will be determined in accordance with the provisions of governing federal law and the Renewal Power Sales Agreement. As discussed above, the Renewal Power Sales Agreement provides that Bonneville’s actual power supply rates will be determined under the Tiered-Rate Methodology, which methodology is subject to the approval of FERC. The rates are subject to adjustment from time to time during the term of the Renewal Power Sales Agreement to recover Bonneville’s costs.

37. As discussed above, Bonneville will allocate the entire net firm output of the Federal Power System among its preference customers. Each preference customer’s High Water Mark allocation does not, however, account for load growth for the year beginning October 1, 2011. Most preference customers anticipate having system loads greater than their High Water Mark allocations and will need additional power supplies to meet these loads.

38. Idaho Falls Power anticipates it will need approximately 3 aMW above its High Water Mark allocation to meet its load for the year beginning October 1, 2011, and management of Idaho Falls Power currently projects a 1.5% annual growth rate in the System's energy requirements in future years. Tables in the Engineer's Report set forth Idaho Falls Power's projected annual and monthly requirements and resources. These tables show projected shortages for several months during the year ending September 30, 2012, and increasing shortages projected for every year for the years 2012 through 2022, reflecting the fact that Bonneville will limit sales to all of its preference customers at Tier 1 rates to their High Water Mark allocations, which do not account for load growth.

39. Preference customers are independently responsible to procure additional power supplies above their High Water Mark allocations. They may do this through supplemental power purchases from Bonneville at Tier 2 rates, other power supply resources purchased or acquired on their own, or a combination of these options.

40. The 2011 PSAs require that preference customers wishing to purchase supplemental power from Bonneville at Tier 2 rates must provide Bonneville with at least three to four years' advance notification of its election to purchase Tier 2 power. Bonneville then negotiates power supply contracts with wholesale market suppliers. Once an election to purchase Tier 2 power has been made, the preference customer must enter into a separate power purchase commitment with Bonneville that extends for three to five years.

41. If Idaho Falls Power wishes to purchase Tier 2 power from Bonneville, it will be required to enter into separate contractual arrangements with Bonneville every three to five years, throughout the term of the Renewal Power Sales Agreement.



42. If Idaho Falls Power does not purchase Tier 2 power from Bonneville, it will need to execute other term power purchase agreements with other suppliers to meet its energy requirements above its High Water Mark allocation, or acquire positions in new generating plants.

43. It will become necessary for Idaho Falls Power to execute Tier 2 or other supplemental power purchase commitments throughout the term of the Renewal Power Sales Agreement to meet its System requirements above its High Water Mark allocation. Such supplemental purchase commitments will be entered into on an as-needed basis from time to time. Such supplemental purchase commitments will likely be entered into on relatively short notice, ideally when wholesale market conditions are most favorable. They may be executed on a seasonal basis, and may be relatively short-term but require multi-year commitments (as is the case with Tier 2 supplemental purchase commitments). Attempting to obtain voter approval of each supplemental power purchase commitment would be highly inefficient and costly for Idaho Falls Power, and would significantly hinder Idaho Falls Power's primary objectives of attaining maximum rate stability and maintaining low rates.

44. The execution of supplemental power purchase commitments is not unusual or uncommon for Idaho Falls Power. As discussed above, Idaho Falls Power currently has supplemental power purchase commitments in place. As is the case with current supplemental power purchase commitments, costs for purchased power under supplemental power purchase commitments executed throughout the term of the Renewal Power Sales Agreement will be paid from System revenues as regular, ordinary and necessary costs of the operation of the System.

45. In determining whether to enter into such transactions, management of Idaho Falls Power and the City Council will, as is their practice with respect to all other power purchase commitments entered into, make informed decisions consistent with sound business principles, taking into account then-current and projected System loads, evaluating available resources and other power supply options, and considering other facts and circumstances at future points in time, and Idaho Falls' Power's primary objectives of rate stability and control over costs.

46. Bonneville is requiring all preference customers purchasing the Slice product under the 2011 PSAs execute a Creditworthiness Agreement. The Creditworthiness Agreement creates no new payment obligation on the part of the City. Rather, the Creditworthiness Agreement requires the City, in the event the City's credit rating falls below "investment grade" or is at the lowest investment grade rating with a negative outlook, to post collateral (in the form of cash or a letter of credit) for the benefit of Bonneville to secure the City's payment obligations under the Renewal Power Sales Agreement. The required amount of collateral is 12% of the maximum annual power payments made by Idaho Falls Power to Bonneville (which, at present, would be approximately \$2.5 million). If collateral is posted, Bonneville has the right to draw on the cash or letter of credit in the event Idaho Falls Power fails to timely pay a power bill. Idaho Falls Power would then be obligated to replenish the withdrawn cash or reimburse the issuing bank for amounts drawn under the letter of credit.

47. There is no reasonable expectation that the City will be required to post collateral as it presently holds a credit rating of "A2" from Moody's Investor's Service, which is four levels above the lowest investment grade rating assigned by Moody's ("Baa3"). The City's credit rating is thus well above the threshold established in the Creditworthiness Agreement.

48. In the event the City were required to post collateral under the Creditworthiness Agreement, any required collateral would be satisfied with amounts on deposit in the Rate Stabilization Fund.

49. Bonneville would not have agreed to enter into the Renewal Power Sales Agreement with the City in the absence of the Creditworthiness Agreement. Execution of the Creditworthiness Agreement is one of the terms and conditions of the Renewal Power Sales Agreement. The Creditworthiness Agreement is absolutely necessary to give effect to the Renewal Power Sales Agreement.

50. Collateral agreements such as the Creditworthiness Agreement are very common in modern wholesale market transactions. Such collateral agreements generally protect both parties to a transaction from the risk that the other party will default on the performance of its obligations.

51. Idaho Falls Power's own Risk Management Policy requires that management of Idaho Falls Power consider use of collateral agreements to protect Idaho Falls Power's interests in wholesale market transactions. Without collateral agreements, Idaho Falls Power would be exposed to risks of nonperformance, insolvency and bankruptcy by counterparties in wholesale market transactions. Such collateral agreements protect the interests of Idaho Falls Power and the consumers it serves.

52. If called to testify at a hearing on this matter I would testify to the foregoing.

*Jo A. Elg*

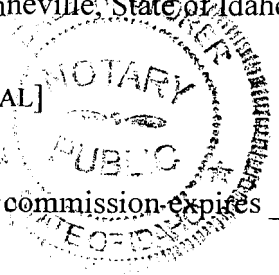
Jo A. Elg

Subscribed and sworn to before  
me this 3<sup>rd</sup> day of March, 2009

*Dawn Stover*

Notary Public in and for the County of  
Bonneville, State of Idaho

[SEAL]



My commission expires 2-23-11

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE )  
POWER SALES AGREEMENT )  
AND THE CREDITWORTHINESS )  
AGREEMENT BETWEEN )  
THE CITY OF IDAHO FALLS )  
AND )  
THE BONNEVILLE )  
POWER ADMINISTRATION )

No. CV 09-1736

BRIEF IN SUPPORT OF  
VERIFIED PETITION FOR  
JUDICIAL CONFIRMATION

This Brief is filed by the City of Idaho Falls, Idaho (the "City") in support of the Petition filed by the City under the Judicial Confirmation Law, Title 7, Chapter 13, Idaho Code, as amended (the "Judicial Confirmation Law"), to confirm the validity of the Renewal Block and Slice Power Sales Agreement, Contract No. 09PB-13056 (the "Renewal Power Sales Agreement") and the related Creditworthiness Agreement, Contract No. 09PB-13257, (the "Creditworthiness Agreement"), each between the City and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville").

Capitalized terms used and not defined in this Brief have the meanings assigned to them in the Petition.

## ISSUES PRESENTED

1. Is the Renewal Power Sales Agreement an “obligation” of the City within the meaning of the Judicial Confirmation Law, and is the Creditworthiness Agreement a “security instrument” or agreement “related” to the City’s Renewal Power Sales Agreement “obligation” within the meaning of the Judicial Confirmation Law?

2. Are the Renewal Power Sales Agreement and the Creditworthiness Agreement legal, valid and binding obligations of the City because:

(a) the City is authorized by the general laws of the State of Idaho, particularly Sections 50-325 and 50-342, Idaho Code, as amended, to enter into power purchase agreements,

(b) the payment obligations of the City under the Renewal Power Sales Agreement are “ordinary and necessary expenses” of the City within the meaning of Art. VIII, § 3 of the Idaho Constitution,

(c) the City is authorized to enter into the Creditworthiness Agreement under its express power to enter into the Renewal Power Sales Agreement because the Creditworthiness Agreement is a collateral and security agreement required by Bonneville as a condition to the Renewal Power Sales Agreement and is, accordingly, one of the terms and conditions of the Renewal Power Sales Agreement, and

(d) as a collateral and security agreement, the Creditworthiness Agreement does not create any new payment obligation of the City and serves only to secure the City’s payment obligations under the Renewal Power Sales Agreement?

### ADDITIONAL FACTUAL BACKGROUND

The Petition sets forth the facts upon which the City is seeking a judicial confirmation of the validity of the Renewal Power Sales Agreement. Such facts establish, among other things, that the City has taken all actions on its part required under the Judicial Confirmation Law as prerequisites to the filing of the Petition.

For a detailed description of the factual matters relating to the Renewal Power Sales Agreement and the Creditworthiness Agreement, the City respectfully refers the Court's attention to:

- (a) the Affidavit of Jacqueline Flowers, the General Manager of Idaho Falls Power, which is filed with this Brief (the "*Flowers Affidavit*"),
- (b) the Affidavit of Jo A. Elg, Assistant General Manager of Idaho Falls Power, which is filed with this Brief (the "*Elg Affidavit*"), and
- (c) the Report of Mooney Consulting, dated November 25, 2008 (the "*Engineer's Report*"), a part of the record of the November 25, 2008 proceedings of the Mayor and City Council of the City and which is filed separately as *Exhibit A* to this Brief.

The Flowers Affidavit, the Elg Affidavit and the Engineer's Report establish, among other things, that:

- (1) The City has purchased a substantial majority of its electric power requirements from Bonneville since 1963. For over 45 years, Bonneville has been a highly reliable power supplier to the City, the rates paid by the City for power from Bonneville have been less than the cost of alternative power supplies, and the consumers served by the System enjoy some of the lowest electric rates in the United States. The

City has paid all of its power supply costs from System revenues as a regular, ordinary and necessary cost of the operation of the System.

(2) Bonneville markets power from 31 existing federal hydroelectric projects operated by the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers. This power is supplemented by several existing non-federal hydroelectric and thermal projects in the Pacific Northwest, as well as firm power from various contractual resources. By federal law, Bonneville is required to offer to sell this power on a preferential and priority basis to municipal, public and cooperative utilities (known as “*preference customers*”) to meet their system loads (*see* 16 U.S.C. §§ 832c and 839c).

(3) The City is a preference customer of Bonneville and currently purchases about 90% of the power necessary for the operation of its municipal electric utility system (the “*System*”) from Bonneville under a Block and Slice Power Sales Agreement that took effect in 2001 (the “*2001 PSA*”). The balance of the System’s power requirements are met through (a) power generated by the City’s hydroelectric generating facilities located on the Snake River (known as the Bulb Turbine Project and the Gem State Project), and (b) a relatively small amount of wholesale market purchases.

(4) By federal law, the rates charged by Bonneville are required to recover all of Bonneville’s costs of supplying power to its preference customers and to return the federal investment in the Federal Columbia River Power System to the U.S. Treasury (*see* 16 U.S.C. § 832e). As a result, the rates paid to Bonneville under the 2001 PSA have varied during the term of that Agreement to enable Bonneville to recover its actual power supply costs. The rates to be paid by the City are expected to vary over the term of the Renewal Power Sales Agreement for the same reason.



(5) Most of Bonneville's power sales agreements, including the 2001 PSA, expire in 2011. Bonneville commenced a public process in 2005 known as the "Regional Dialogue" to determine its power supply offerings to its preference customers upon expiration of the current power sales agreement. Management of Idaho Falls Power participated directly in the Regional Dialogue process, which resulted in Bonneville's offer to enter into long-term renewal power purchase agreements for a seventeen-year period beginning October 1, 2011. Under the renewal power purchase agreements, Bonneville offered various power supply products including load-following, block and slice/block.

(6) The City engaged an independent consulting engineer (E. Robert Mooney, P.E., of Mooney Consulting) with substantial experience with Bonneville and a close familiarity with the operations of Idaho Falls Power to assist it in evaluating and analyzing the power supply products offered by Bonneville as well as any alternative power supply products available through the wholesale power market. The Engineer's Report summarizes the evaluation and analysis conducted by Mooney Consulting and management of Idaho Falls Power, and recommends that the City continue to purchase the "Slice/Block" product offered by Bonneville. The "Slice/Block" product is similar to the power supply products currently purchased by the City under the 2001 PSA, and is the power supply product that provides the greatest benefits to Idaho Falls Power. Management of Idaho Falls Power and the consulting engineer also determined that all alternative power supplies available through the wholesale market would impose substantially increased costs and substantially greater risks on Idaho Falls Power and the customers it serves.

(7) Based upon its review of the Engineer's Report and the recommendations of the management of Idaho Falls Power, the City Council of the City determined that it is in the best interests of the City to enter into the Renewal Power Sales Agreement.

(8) The Renewal Power Sales Agreement is the best power supply arrangement available to Idaho Falls Power and the Slice/Block power supply product is the most advantageous power purchase arrangement for Idaho Falls Power.

(9) The Renewal Power Sales Agreement provides Idaho Falls Power with a long-term, cost-based, power supply resource from all of the generating facilities comprising the Federal Power System. The power supply available to Idaho Falls Power under the Renewal Power Sales Agreement will meet most of the System's net requirements (although supplemental power purchase arrangements will be required by 2011). The cost-based prices to be paid by the City under the Renewal Power Sales Agreement will be far less expensive and far more stable than any other power supply arrangement available to the City.

(10) In the absence of the Renewal Power Sales Agreement, the City would be required to obtain power supplies in the wholesale market for most of the System's requirements. The prices, terms and risks of wholesale market supplies are substantially less advantageous to the City than the Renewal Power Sales Agreement and would expose Idaho Falls Power and the consumers it serves to increased power supply costs, as well as unacceptable price volatility and reliability risks.

(11) The ability of Idaho Falls Power to continue to provide highly reliable, low-cost electric utility service to its customers depends materially on its ability to continue its power supply purchases from Bonneville under the Renewal Power Sales Agreement.

(12) Idaho Falls Power will maintain and collect rates and charges for the electric services it provides that will be sufficient to pay all operation, maintenance and power supply costs of the System, including all payments to Bonneville under the Renewal Power Sales Agreement, as well as all other obligations with respect to the System, and no other funds of the City will be used for these purposes.

The City respectfully submits that its payment obligations for the power supplies it has received from Bonneville since 1963 fall within the “ordinary and necessary expenses” proviso of Art. VIII, § 3 of the Idaho Constitution. Because of the essentiality of the Renewal Power Sales Agreement to the continued operations of Idaho Falls Power, the City cannot be exposed to any doubt regarding its legal authority to enter into and perform the Renewal Power Sales Agreement. Accordingly, the City has commenced this proceeding to confirm that its future payment obligations to Bonneville under the Renewal Power Sales Agreement are “ordinary and necessary expenses” in light of the recent decision of the Idaho Supreme Court in *City of Boise v. Frazier*.

#### POINTS AND AUTHORITIES

##### I.

The Renewal Power Sales Agreement is an “obligation” within the meaning of the Judicial Confirmation Law as “an agreement that evidences an indebtedness of a political subdivision...” The Creditworthiness Agreement is an “agreement or security instrument” related to the Renewal Power Sales Agreement within the meaning of the Judicial Confirmation Law.

Section 7-1302(1), Idaho Code, as amended.

Section 7-1303, Idaho Code, as amended.

## II.

The City has the power and authority to enter into the Renewal Power Sales Agreement (a) under the authority of Section 50-325, Idaho Code, as amended, which authorizes Idaho cities to “acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city...” and (b) under the authority of Section 50-342(b), Idaho Code, as amended, which authorizes Idaho cities which own and operate an electric distribution system to “enter into power sales or power purchase contracts with entities engaged in generating, transmitting, or distributing electric power and energy to provide for the purchase, sale or exchange of electric power or energy upon the terms and conditions as shall be specified in the power sales or purchase contract.”

Section 50-325, Idaho Code, as amended.

Section 50-342(b), Idaho Code, as amended.

*Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983).

## III.

The payment obligations of the City under the Renewal Power Sales Agreement are “ordinary and necessary expenses” of the City within the meaning of Art. VIII, § 3 of the Idaho Constitution.

Art. VIII, § 3, Idaho Constitution.

*Feil v. City of Coeur d’Alene*, 23 Idaho 32, 129 P. 643 (1912).

*City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006).

*Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 495 (1931).

*Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

*Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912).

*In re University Place/Idaho Water Center Project*, \_\_ Idaho \_\_, 199 P.3d 102 (2008).

*Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

*Jones v. Power Co.*, 27 Idaho 656, 150 P. 35 (1915).

*Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894).

*City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

*Board of County Com'rs of Twin Falls County v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1974).

*Corum v. Common School Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

*Ray v. Nampa School District #131*, 120 Idaho 117, 814 P.2d 17 (1990).

*Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

*Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983).

*Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

*Poison Creek Pub. Inc. v. Cent. Idaho Pub., Inc.*, 134 Idaho 426, 3 P.3d 1254 (Ct.App. 2000).

*Dunbar v. Board of Com'rs of Canyon County*, 5 Idaho 407, 49 P. 409 (1897).

#### IV.

The City is expressly authorized to enter into the Renewal Power Sales Agreement “upon such terms and conditions as shall be specified” therein, and the Creditworthiness Agreement is a required term and condition of the Renewal Power Sales Agreement. The Creditworthiness Agreement is a collateral and security agreement that does not create any new payment obligation of the City. Accordingly, any amounts paid by the City under the Creditworthiness Agreement are “ordinary and necessary expenses” of the City to the same extent as amounts paid by the City under the Renewal Power Sales Agreement.

Art. VIII, § 3, Idaho Constitution.

Section 50-325, Idaho Code, as amended.

Section 50-342(b), Idaho Code, as amended.

*Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

*Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912).

## ARGUMENT

### I. THE RENEWAL POWER SALES AGREEMENT AND THE CREDITWORTHINESS AGREEMENT ARE PROPER SUBJECTS OF A PROCEEDING UNDER THE JUDICIAL CONFIRMATION LAW.

#### A. PURPOSE OF THE JUDICIAL CONFIRMATION LAW.

In enacting the Judicial Confirmation Law, the Idaho Legislature determined, found and declared that “early judicial examination into and determination of the validity of the power of any political subdivision to issue bonds or other obligations and execute any agreements or security instruments therefore promotes the health, safety and welfare of the people of the state.”<sup>1</sup> The Judicial Confirmation Law provides a mechanism by which political subdivisions of the State of Idaho can obtain a judicial confirmation of the validity of their bonds and other obligations. A judicial confirmation of the validity of a bond or obligation enables the political subdivision issuing bonds or entering into a contractual obligation, as well as the investors purchasing the bonds or the entity contracting with the political subdivision, to proceed with the assurance that they have entered into a legal, valid and binding transaction.

The present proceeding involves a long-term power purchase contract between the City and Bonneville. The City has brought the present proceeding to confirm the validity of the Renewal Power Sales Agreement, which is essential to the continued ability of Idaho Falls Power to provide reliable, low-cost power to its customers, and to assure the City and Bonneville that the Renewal Power Sales Agreement is a legal, valid and binding obligation of the City. Accordingly, this proceeding is consistent with the statutory purpose of the Judicial

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<sup>1</sup> Section 7-1302(1), Idaho Code, as amended.

Confirmation Law and the Renewal Power Sales Agreement is precisely the sort of obligation that is a proper subject of a judicial confirmation proceeding.

B. THE RENEWAL POWER SALES AGREEMENT IS AN "OBLIGATION" OF THE CITY WITHIN THE MEANING OF THE JUDICIAL CONFIRMATION LAW.

The Judicial Confirmation Law provides for the confirmation of the validity of "any bond or obligation or of any agreement or security instrument related thereto" of a political subdivision of the State of Idaho.<sup>2</sup> "Obligation" is defined as "an agreement that evidences an indebtedness of any political subdivision, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes."<sup>3</sup>

The Renewal Power Sales Agreement is a seventeen-year commitment by the City to purchase and pay for electric power from Bonneville and, among other things, to charge and collect rates sufficient to meet its payment obligations to Bonneville under the Renewal Power Sales Agreement.<sup>4</sup> Under the Renewal Power Sales Agreement, the City is obligated to make payments for the power that Bonneville makes available to the City. It is undisputed that the total amount payable by the City over the seventeen-year term of the Renewal Power Sales Agreement exceeds the amount now on deposit in the municipal treasury and the amount now appropriated for purchased power expense for the current fiscal year.

Because it creates a long-term payment obligation of the City, the Renewal Power Sales Agreement is an "obligation" within the meaning of the Judicial Confirmation Law. The Creditworthiness Agreement, under which Bonneville may require the City to post collateral to secure its payment obligations under the Renewal Power Sales Agreement, is a "security

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<sup>2</sup> Section 7-1304(1), Idaho Code, as amended.

<sup>3</sup> Section 7-1303(5), Idaho Code, as amended.

<sup>4</sup> Renewal Power Sales Agreement, §24.7.



instrument” (as defined in Section 7-1303 of the Judicial Confirmation Law), or an agreement “related” to the City’s obligation under the Renewal Power Sales Agreement (as described in Section 7-1304(1) of the Judicial Confirmation Law) and, as such, is also a proper subject of this proceeding.

## II. THE RENEWAL POWER SALES AGREEMENT IS AUTHORIZED BY THE LAWS OF THE STATE OF IDAHO

The City is authorized by Sections 50-325 and 50-342, Idaho Code, as amended, to enter into the Renewal Power Sales Agreement:

Cities shall have authority: to acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city ... [Section 50-325]

A city owning and operating an electric distribution system shall have the authority to: ... (b) Enter into power sales or power purchase contracts with entities engaged in generating, transmitting, or distributing electric power and energy to provide for the purchase, sale or exchange of electric power or energy upon such terms and conditions as shall be specified in the power sales or power purchase contract ... [Section 50-342]

The only significant decision construing Section 50-325 is *Asson v. City of Burley*.<sup>5</sup> In that case, five Idaho cities entered into a Participants’ Agreement with the Washington Public Power Supply System (“WPPSS”) for the purchase of the “project capability” of two planned nuclear power plants (“*Projects No. 4 and 5*”). Under the “dry-hole liability” provision of the Participants’ Agreement (also known as the “Hell or High Water” clause) the cities were unconditionally obligated to pay their percentage shares of the bond obligations incurred by WPPSS to finance Projects No. 4 and 5, regardless of whether WPPSS was successful in financing all of the costs of Projects No. 4 and 5 or completing the construction of the Projects

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<sup>5</sup> 105 Idaho 432, 670 P.2d 839 (1983).

and placing them into operation.<sup>6</sup> After issuing \$2.25 billion of bonds and beginning construction of Projects No. 4 and 5, WPPSS was unable to issue the additional bonds necessary to complete construction and Projects No. 4 and 5 were terminated.

The Idaho Supreme Court determined that the Participants' Agreement was an elaborate financing arrangement providing only for the purchase of "project capability", not the purchase of electric power as authorized by Sections 50-325 and 50-342. The Court stated:

We can find no statutory authorization for the purchase of "project capability" where such purchase comprehends the payment of long-term indebtedness for which no power may be supplied, and for which no ownership interest is acquired. The municipality is neither acquiring, owning, maintaining, or operating a plant, nor purchasing electrical power [as authorized by Section 50-325]. It is underwriting another entity's indebtedness in return for merely the possibility of electricity.<sup>7</sup>

Accordingly, the Court determined that the Idaho cities did not have authority to enter into the Participants' Agreements under Sections 50-325 or 50-342, Idaho Code, as amended.<sup>8</sup>

In contrast to the WPPSS Participants' Agreement, no "dry hole" financing or construction risk is borne by the City under the Renewal Power Sales Agreement. The generating facilities that Bonneville has committed to meet its power supply obligations to the City are not proposed or planned facilities, but are the same generating resources that it has used

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<sup>6</sup> *Id.* at 436, 670 P.2d at 843. The "dry hole" clause [Section 6(d)] of the Participants' Agreement read in pertinent part as follows:

*This Participant shall make the payments to be made to Supply System under this Agreement whether or not any of the Projects are completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of either Project for any reason whatsoever in whole or in part.*

*Id.* (emphasis added).

<sup>7</sup> *Id.* at 443, 670 P.2d at 850.

<sup>8</sup> *Id.*

to meet its supply obligations to the City for over 45 years under the 2001 PSA and the City's prior power purchase arrangements with Bonneville. The Federal Power System includes 37 hydroelectric generating facilities on the Columbia River and its tributaries that have been in operation for many years, in some cases since the 1930s, as well as a large nuclear generating station.<sup>9</sup> Bonneville has no statutory authority to construct any generating facilities, and is required to use only the existing and operating facilities that comprise the Federal Power System, to meet its power supply obligations under the Renewal Power Sales Agreement. No new generating facilities will be constructed or financed by Bonneville in order to enable it to provide electric service to the City. Unlike the WPPSS Participants' Agreement which provided for "merely the possibility of electricity," the City has every assurance that will at all times receive a continuous flow of electricity from Bonneville under the Renewal Power Sales Agreement.

The specific contractual terms for the sale of power by Bonneville make it clear that the Renewal Power Sales Agreement is a true power purchase agreement providing for the delivery of power at all times. Under the Renewal Power Sales Agreement, Bonneville commits to sell and the City commits to purchase specified monthly blocks of power (the "Block" power supply product) as well as a percentage of the actual output of the Federal Power System (the "Slice" power supply product).<sup>10</sup> With regard to the Block power supply product, the Renewal Power Sales Agreement provides that the power sold by Bonneville to the City is "Firm Requirements Power" which is defined to mean power that Bonneville "makes *continuously available* to Idaho Falls".<sup>11</sup> With regard to the Slice power supply product, the Renewal Power Sales Agreement

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<sup>9</sup> These generating resources are referred to generally herein as the "Federal Power System." In the Renewal Power Sales Agreement, these generating resources are defined as the "Tier 1 System Resources" and consist of the specific generating facilities listed in Bonneville's Tiered Rate Methodology. The complete Tiered Rate Methodology is available on BPA's website: [http://www.bpa.gov/corporate/ratecase/2008/2008\\_TRM/Docs/TRM\\_11-10-08.pdf](http://www.bpa.gov/corporate/ratecase/2008/2008_TRM/Docs/TRM_11-10-08.pdf) (last visited March 12, 2009).

<sup>10</sup> Renewal Power Sales Agreement, §3.2.

<sup>11</sup> Renewal Power Sales Agreement, §§4.1 and 2.68 (emphasis added).

provides that it is “a system sale of power that includes requirements power, surplus power, and hourly scheduling rights” that “is *not under any circumstances* to be construed as a sale of the Tier 1 System Resources, *Tier 1 System Resource capability*, or a transfer of control of such Tier 1 System Resources.”<sup>12</sup>

The Renewal Power Sales Agreement contains no “dry-hole” or “Hell or High Water” provision that unconditionally obligates the City to make payments regardless of whether it is receiving power supply service from Bonneville. Under Section 3.2 of the Renewal Power Sales Agreement, the City agrees to pay for the power that Bonneville makes available to the City. While Section 3.2 obligates the City to pay for power that Bonneville “makes available” regardless of whether the City elects to take delivery of the power, this provision is tempered by the “Uncontrollable Force” provisions of the Renewal Power Sales Agreement which excuses failures to perform by the City due to events beyond its control, including specifically any failure of the facilities of the System that prevent Idaho Falls Power from delivering power to its customers. As is the case with other true service contracts, Idaho Falls pays Bonneville monthly in arrears for the power supply services and products provided by Bonneville in the preceding month.<sup>13</sup>

The City acknowledges that it (and all of Bonneville’s other preference customers) are exposed to the risk that Bonneville’s rates may increase in certain years and over time due to water conditions on the Columbia River and its tributaries, forced outages of individual generating units of the Federal Power System, the costs of environmental and endangered species programs and other factors. However, this risk is of a different nature and order of magnitude than the risks under the WPPSS Participants’ Agreement. There, the participants were obligated

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<sup>12</sup> Renewal Power Sales Agreement, §5.1 (emphasis added).

<sup>13</sup> Renewal Power Sales Agreement, §16.1.

unconditionally to pay their shares of debt service on over \$2 billion of bonds issued by WPPSS regardless of the fact that they would never receive a single unit of electricity. In contrast, there is no financing, construction, "dry-hole" or "Hell or High Water" risk allocated to the City under the Renewal Power Sales Agreement. Bonneville has used the Federal Power System to provide the City with reliable, low-cost power since 1963 (and other preference customers dating back to the 1930s). Bonneville is now committing to use those same existing and operating power supply resources to serve the City with cost-based power for another seventeen years. Under the terms of the Renewal Power Sales Agreement, only the firm generation from the existing resources of the Federal Power System is used to serve the City and Bonneville's other preference customers and no new facilities can be financed or constructed by Bonneville to provide this service.

The night-and-day differences between WPPSS, its ill-fated Projects No. 4 and 5 and the terms of its Participants' Agreement (on the one hand) and Bonneville, the established and operating Federal Power System and the specific terms of the Renewal Power Sales Agreement (on the other hand) are sufficient to establish that the Renewal Power Sales Agreement is a *bona fide* power purchase arrangement that the City is authorized to enter into under Idaho law. Based on the foregoing, the Renewal Power Sales Agreement is a true power purchase agreement that the City is authorized to enter into under Sections 50-325 and 50-342, and the City's payment obligations thereunder are "authorized by the general laws of the state" within the meaning of Art. VIII, § 3 of the Idaho Constitution.

**III. THE PAYMENT OBLIGATIONS OF THE CITY UNDER THE RENEWAL POWER SALES AGREEMENT ARE "ORDINARY AND NECESSARY EXPENSES" UNDER ART. VIII, § 3 OF THE IDAHO CONSTITUTION.**

Article VIII, § 3 of the Idaho Constitution provides in pertinent part, as follows:

No city shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue

provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof... Any indebtedness or liability incurred contrary to this provision shall be void: *Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state....*(emphasis added).

Under a long line of cases, the Idaho Supreme Court has construed this provision as applying to virtually any long-term obligation of a municipality. In *Feil v. City of Coeur d'Alene*, the Idaho Supreme Court interpreted the term “liability” to be broader than the term “indebtedness” and defined “liability” to mean “[t]he state of being bound or obliged, in law or justice,” whether or not an “indebtedness” is also created.<sup>14</sup> Under *Feil*, the fact that an indebtedness or liability is payable solely from a special fund and with no recourse to the taxing power, does not obviate the need for compliance with the requirements of Article VIII, Section 3.

The City believes that its payment obligations under the Renewal Power Sales Agreement constitute “ordinary and necessary expenses” within the meaning of the proviso to Art. VIII, § 3, and submits that the present case can be resolved under the record of the constitutional debates and extensive case law regarding “ordinary and necessary expenses” set forth below.<sup>15</sup>

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<sup>14</sup> 23 Idaho 32, 50, 129 P. 643, 649 (1912) (citations omitted).

<sup>15</sup> The Renewal Power Sales Agreement is a service contract under which the City will pay for power supply services provided by Bonneville, and the City’s payments will be made solely from the available revenues of the System with no recourse to the taxing power or general funds of the City. The payments to be made to Bonneville will be included in the annual operating budget of Idaho Falls Power and any increased power supply costs would be met through the available amounts on deposit in the Rate Stabilization Fund and any adjustments to electric rates deemed necessary by the City Council. Under these circumstances, an argument could be made that Renewal Power Sales Agreement as a true service contract does not give rise to any “indebtedness or liability” within the meaning of Art. VIII, § 3. Nevertheless, the City also believes that its obligations under the Renewal Power Sales Agreement clearly constitute an “ordinary and necessary” expense within the intent of the Framers of the Idaho Constitution and existing Idaho case law. Accordingly, for purposes of the current proceedings, the City agrees that the “ordinary and necessary expense” analysis is the most workable framework for its obligations under the Renewal Power Sales Agreement.

A. "ORDINARY AND NECESSARY EXPENSES"

1. History of Art. VIII § 3's Proviso Clause

The Proceedings and Debates of the Idaho Constitutional Convention of 1889 contain an extensive discussion of local government finance and the purpose of Art. VIII, § 3. While it is true that "[m]any convention delegates wanted to severely limit the ability of local governments to incur indebtedness," ultimately the delegates realized that the original draft of Art. VIII, § 3 "went too far in limiting local government."<sup>16</sup> As initially drafted, § 3 would have "prohibited local governments from incurring debt beyond the revenue expected for the year without approval of two-thirds of the voters at a special election."<sup>17</sup> The delegates were concerned that strictly requiring counties and municipalities to operate on a cash basis would, in many instances, undermine their ability to provide services which were essential to the orderly administration of governmental affairs. Delegate Weldon Heyburn expressed the sentiment of the Framers when he said "we don't want to leave any part of the ordinary legitimate expenses of running county government in doubt."<sup>18</sup>

The Framers recognized that the text of Art. VIII, § 3, as originally drafted, would create an untenable situation for local governments. Judge William Claggett, one of the most respected members of the convention, recognized that the proposed debt limitation would severely impede the "ordinary administration of [local government] affairs," such as the court system.<sup>19</sup> He noted that:

[I]f you pass that section in the way it is you will absolutely require that when a witness wants to get his fees, after he has attended upon the court, before he can do it the county

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<sup>16</sup> Dennis C. Colson, *Idaho's Constitution: The Tie that Binds* 198-99 (1991).

<sup>17</sup> *Id.*

<sup>18</sup> I.W. Hart, *Proceedings and Debates of the Constitutional Convention of Idaho* 591 (1912).

<sup>19</sup> *Id.* at 588.

commissioner have got to stop and submit at a special election to the whole vote of the people as to whether they will pay them or not.<sup>20</sup>

To avoid this unduly harsh and unrealistic application, he proposed the following language: “*Provided*, That this section shall not be construed to apply to any ordinary indebtedness created under the general laws of the state.”<sup>21</sup> The delegates’ comments make clear that the language of the proviso clause,<sup>22</sup> which was later modified to read “ordinary and necessary expenses authorized under the general laws of the state,” was a compromise intended to give governmental authorities the freedom to incur indebtedness when necessary to the efficient administration of local government, while still preserving the integrity of the Idaho Constitution’s “spirit of economy.”<sup>23</sup> The delegates recognized that the orderly and efficient administration of local government required that certain debts not be subject to the voting requirements of Art. VIII, § 3.

Judge Claggett’s comments at the constitutional convention provide a clear statement of the intent of the Framers regarding municipal debt:

I simply call the attention of the convention to the fact that the way it [Art. VIII, § 3] reads now it would prohibit the issuance of county scrip to pay the ordinary indebtedness absolutely imposed upon the county as provided by law, in case there should be any heavy expenses, as suggested by Mr. Hampton, exceeding the current revenues of that year; and that it is intended to apply to special indebtedness, I should judge.<sup>24</sup>

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I offered this proviso to call the attention of the convention to this matter. We don’t want to go over this too fast. For instance, the

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20 *Id.*

21 *Id.* at 586.

22 *City of Boise v. Frazier*, 143 Idaho 1, 3, 137 P.3d 388, 390 (2006) (“This exception is referred to as the ‘proviso clause.’”).

23 *Id.* at 5, 137 P.3d at 392 (quoting *Williams v. City of Emmett*, 51 Idaho 500, 505, 6 P.2d 475, 476 (1931)).

24 Hart, *supra*, at 587.



general laws of the state will provide that the witness fees are so much, the mileage fees are so much, all the expenses of the county government are fixed by law. Those expenses are paid annually by the issuance of county scrip, or paid as they arise by the issuance of county scrip. We all know that in the practical administration of county government, *that there sometimes will be extraordinary expenses, I mean extraordinary expenses in the ordinary administration of affairs.* I am not speaking now of special indebtedness at all, but the ordinary general indebtedness which is incurred in the way of administration of county affairs . . . [The purpose of the proviso] *is to limit the section [Art. VIII, § 3] to such indebtedness as does not arise under the ordinary administration of the county.*<sup>25</sup>

These statements reflect the practical realities of day-to-day administration of local government, both then as well as in modern times. The delegates knew that in the “ordinary” course of affairs, local governments would sometimes encounter “extraordinary” expenses, that cumulatively exceeded the budget for the current year. Moreover, the “extraordinary expenses,” which the Framers believed were exempt from the voting requirements, were separate from the types of “special indebtedness,” which all of the delegates appeared to agree required prior voter approval. The Framers obviously did not think it wise to require a vote before a city or county could incur indebtedness arising under the ordinary administration of local government. Specifically, they recognized that local governments would not be able to meet the needs of their citizens if they adopted the indebtedness limitation without some type of escape valve for customary, recurring expenses that arose in the usual course of administering governmental affairs and providing governmental services.

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<sup>25</sup> *Id.* at 588-589 (emphasis added). At first glance, Judge Claggett’s statement about “extraordinary expenses in the ordinary administration of county affairs . . .” appears to be an oxymoron. However, when read in context it is apparent that his reference to “extraordinary expenses” was merely his way of referring to expenses occurring within the ordinary administration of county affairs – such as expenses to repair flood damages or expenses of a capital trial – and which exceeded available revenues within a county’s budget year. In contrast, his reference to “special indebtedness” meant expenditures which are unusual, infrequent, and not recurring in the customary administration of the county – or in other words large capital expenditures that were not usually encountered in the ordinary course of county affairs. In short, “special indebtedness” means long-term debt incurred to finance large, capital projects not normally encountered in the day-to-day administration of a county.

Several of the delegates gave practical examples of the type of ordinary expenses that should not require a public vote. Delegate Weldon Heyburn noted that “[t]he expenses of the criminal court instead of being upon the litigants as in civil cases are upon the county,” and in the event of “an unusual number of capital cases,” the expenses could easily exceed the revenue allocated for criminal trials in a given year.<sup>26</sup> Explaining why such ordinary expenses should not require a vote, Delegate Heyburn said “[w]e don’t want to have any part of our court expenses in doubt . . . and we don’t want to call a county election for the purpose of making up a deficit of four or five hundred dollars at the end of the year.”<sup>27</sup> Delegate Peter Pefley, the mayor of Boise, gave another example of the type of “ordinary and necessary” expenditures that municipalities would periodically encounter.

We have streams running adjacent through the city that in time of high water, and ditches all the time, that are liable as I said to break away and run down through the city, and if we had to wait to hold an election and get two-thirds of the voters to ratify another levy, the whole city might be ruined before it could be abated, and I would not like to see anything of that kind occur.<sup>28</sup>

Early decisions of the Idaho Supreme Court interpreting Art. VIII, § 3 also recognize that the Framers did not intend to prohibit all non-voted municipal indebtedness and that the Framers specifically intended to allow non-voted local government debt for “ordinary and necessary expenses.” In *Butler v. City of Lewiston*,<sup>29</sup> the City of Lewiston proposed to issue bonds for the purpose of funding outstanding warrants which had been issued to pay the salaries of city officers and employees and “other necessary municipal expenses authorized by the general laws

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<sup>26</sup> *Id.* at 590-91.

<sup>27</sup> *Id.* at 591.

<sup>28</sup> *Id.* at 592.

<sup>29</sup> 11 Idaho 393, 83 P. 234 (1905).

of the state ... and a judgment in favor of [a plaintiff] against the city of Lewiston”.<sup>30</sup> In the early days of statehood, local governments were funded almost exclusively with a single annual property tax levy. The expenses incurred in the ordinary administration of local government and the provision of basic governmental services were paid in county “warrants,” also called “scrip,” that were redeemable when sufficient funds became available from property receipts to provide for their payment.<sup>31</sup> The Court determined that “[t]he bonds proposed to be issued are to be issued for the purpose of funding the outstanding warrant indebtedness of the city. Such bonds will not increase the legal indebtedness of the city, but simply change the form of existing indebtedness from warrant to bond.”<sup>32</sup> The Court went on to say, “[t]he question arises, then, whether the warrant indebtedness which is sought to be changed to bonded indebtedness arose from the ordinary and necessary expenses authorized by the general laws of the state.”<sup>33</sup> After a careful examination of the routine expenses funded with the warrants, the Court held that these were “ordinary and necessary expenses” within the meaning of Art. VIII, § 3, and that the funding bonds were validly issued without the need for an authorizing election.<sup>34</sup>

In *Hickey v. City of Nampa*,<sup>35</sup> the City of Nampa’s water system was destroyed as a result of a fire in the city. Work was done to repair and replace the water system and fire-fighting equipment. Warrants were issued to pay for these items and for other expenses, including the salaries of officers and other “*necessary expenditures in the maintenance of the*

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30 *Id.* at 404, 83 P. at 238.

31 *See Colson, supra*, at 199.

32 11 Idaho at 403, 83 P. at 238.

33 *Id.* at 404, 83 P. at 238.

34 *Id.*

35 22 Idaho 41, 124 P. 280 (1912).

*municipal government.*”<sup>36</sup> The City then proposed to issue funding bonds to redeem the outstanding warrants. It was contended that the indebtedness represented by the warrants exceeded the annual income and revenue of the City, contrary to Art. VIII, § 3, and that the funding bonds could not be issued without an authorizing vote. The Supreme Court determined that the expenditures for which the warrants were issued were considered “ordinary and necessary expenses” within the meaning of Art. VIII, § 3, and that as such, the indebtedness was not in contravention of Art. VIII, § 3.<sup>37</sup>

## 2. Principles Derived From the Framers’ Intent and Early Case Law

An examination of the constitutional convention yields several clear principles regarding the Framers’ intent. First, the Framers did not intend to absolutely prohibit all local government debt or require that local governments operate strictly on a cash basis. Although the initial draft of Art. VIII, § 3 would have made it more difficult for local governments to incur debt, nowhere did the Framers evidence an intent that those governments operate solely on a “cash basis.” Specifically, they recognized that some types of “special indebtedness” were necessary and desirable, provided the citizens were given an opportunity to approve or disapprove its issuance.<sup>38</sup> The delegates expressly recognized that some debt was essential for cities to develop and flourish:

As you all know, these western towns cannot grow except by contracting a large indebtedness. There has not been a western town within the last ten years that has increased to any extent unless they incur a large indebtedness. I think, as well shown by writers on political economy, that municipal indebtedness is absolutely necessary for municipal prosperity and making the municipal improvements that call for indebtedness, and I make the

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<sup>36</sup> *Id.* at 43, 124 P. at 280 (italics added).

<sup>37</sup> *Id.* at 45-46, 124 P. at 281.

<sup>38</sup> Colson, *supra*, at 199.

assertion that with indebtedness the debtors are those who make vastly more wealth – the borrowers are the towns that acquire it.<sup>39</sup>

Acknowledging that the Framers were not opposed to municipal debt *per se*, Professor Dennis C. Colson noted that “[t]he floor debates on these three debt limitations [found in Art. VIII] made it clear the convention as a whole was not as conservative and restrictive as the committees that wrote the public indebtedness and municipal corporations articles.”<sup>40</sup>

The second principle discernable from the constitutional convention is that the Framers recognized that a certain class of “ordinary” debt could properly be incurred without first submitting the matter to the voters. This, of course, was the whole thrust behind the proviso clause. The Framers understood that the voting requirement only applied to “such indebtedness as *does not arise* under the ordinary administration of the [local government].”<sup>41</sup> Thus, the applicability of the proviso clause depends on a finding that the *character* of the proposed indebtedness is or is not “ordinary” and “necessary.” The proviso analysis *does not* depend on a finding that it is impractical to hold an election. It is true that perceptive observers then and now have recognized that presenting every issue of long-term municipal debt to the voters is so impractical and inefficient as to be completely unworkable.<sup>42</sup> Delegate Weldon Heyburn noted that, “Elections are held in our county at an expense of eight or nine hundred dollars – for the purpose of determining whether or not you shall issue \$500 worth of warrants – that is the practical application of the principle, and it is hardly worth while to go to this expense.”<sup>43</sup>

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<sup>39</sup> Hart, *supra*, at 595-96 (comments of Edgar Wilson).

<sup>40</sup> Colson, *supra*, at 201.

<sup>41</sup> Hart, *supra*, 588-89 (emphasis added) (comments of William Claggett).

<sup>42</sup> In a recent decision, Justice Jim Jones of the Idaho Supreme Court observed, with regard to the voter approval requirement of Art. VIII § 3, that “[I]t is a virtual impossibility to present every multi-year governmental contract or lease to the public for a vote.” *In re University Place/Idaho Water Center Project*, \_\_ Idaho \_\_, 199 P.3d 102, 122 (2008) (J. Jones, J., specially concurring).

<sup>43</sup> *Id.* at 591 (comments of Weldon Heyburn).

However, this discussion of practicality is merely a by-product of the underlying ordinary and necessary analysis. Merely because it is possible to delay an expenditure long enough to conduct a public vote does not necessarily mean a city or county must do so. The Framers did not intend to tie local officials' hands to the point where unsound or absurd results would follow. Rather the proviso was grounded in the need for practicality in administering the ordinary affairs of local government. The *Peterson* case is the best illustration of that principle.<sup>44</sup> Deferring the required repairs to the Pocatello airport another few months in order to allow an election was obviously within the realm of possibility. But the fact that the court did not require an election is indicative of its recognition that the analysis should be driven by the nature of the proposed indebtedness (i.e. in that case, the ordinary nature of recurring repairs), rather than the practicality of holding an election. Similarly, in *Bannock County* the court relied upon the Legislature's recognition of the extraordinary nature of funding construction of "courthouses, jails and other public buildings," as its basis for finding that the proposition of funding the purchase of a courthouse building site must be first submitted to the electorate.<sup>45</sup> Because of the extraordinary nature of such indebtedness, the court concluded that the county was required to use temporary facilities until the question could be submitted to the people. Again, it was the nature of the debt that drove the analysis, not the practicality of conducting a bond election. In sum, the Framers clearly intended that the application of the proviso be dependant on a finding that an expense is "ordinary and necessary," not a finding that holding an election is "impractical."

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<sup>44</sup> *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

<sup>45</sup> *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894).

Third, determining what constitutes an “ordinary and necessary” expense is necessarily a case-by-case, fact-intensive analysis.<sup>46</sup> As noted above, the Framers agreed that the proviso would apply to indebtedness incurred in the “ordinary administration” or “practical administration” of local government, but did not articulate any analytical framework or litmus test with which to determine whether a particular expenditure was “ordinary” and thus exempt from Art. VIII, § 3. Although several of the delegates gave examples of the types of projects which would constitute “ordinary and necessary expenses,”<sup>47</sup> the Framers established no bright line rule by which to measure such indebtedness. Consequently, early Supreme Court case law quickly recognized that a determination of whether a given expense is “ordinary and necessary,” necessarily requires a case-by-case analysis that takes into account all of the facts and circumstances associated with the proposed indebtedness and the particular purpose for which the debt will be used.

The following are examples of expenditures which, after a careful analysis of the facts associated with the indebtedness, have been held by the Idaho Supreme Court to be “ordinary and necessary expenses”:

- Snow and ice removal on public streets, and police and fire protection<sup>48</sup>
- Construction of a jail in a newly created county<sup>49</sup>
- Acquisition of a temporary jail<sup>50</sup>

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<sup>46</sup> This principle is supported by that statement in *Frazier* that “[w]hether a proposed expenditure is ordinary and necessary depends on the surrounding circumstances of each case.” 143 Idaho at 7, 137 P.3d at 394.

<sup>47</sup> See Hart, *supra*, 584-94 (the delegates suggested that “heavy county expenses,” “court expenses,” “any emergency,” “extraordinary expenses,” “witness fees,” “mileage fees,” “any part of the ordinary legitimate expenses of running county government,” and repairing ditches and water courses would qualify as “ordinary and necessary”).

<sup>48</sup> *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

<sup>49</sup> *Jones v. Power Co.*, 27 Idaho 656, 150 P. 35 (1915).

<sup>50</sup> *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894).

- Repair, replacement and expansion of existing municipal airport facilities determined to be unsound, inadequate and unsafe<sup>51</sup>
- Improvements to hospital facilities to comply with state safety standards<sup>52</sup>
- Contract to procure a school teacher and payment of the teacher's salary<sup>53</sup>
- Employment contract with maintenance electrician for a school district<sup>54</sup>
- Salaries of public employees<sup>55</sup>
- Replacement of water system<sup>56</sup>
- Repair and replacement of system components of public works projects<sup>57</sup>

B. *ASSON* ANALYSIS OF POWER PURCHASE AGREEMENTS AS “ORDINARY AND NECESSARY”

In *Asson v. City of Burley* the Idaho Supreme Court addressed the validity of the payment obligations of five Idaho cities under the WPPSS Participants' Agreement under Art. VIII, § 3.<sup>58</sup> The *Asson* case is the only reported decision of the Supreme Court that considers whether payments by an Idaho city under a power purchase agreement are “ordinary and necessary

<sup>51</sup> *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

<sup>52</sup> *Board of County Com'rs of Twin Falls County v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1974).

<sup>53</sup> *Corum v. Common School Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

<sup>54</sup> *Ray v. Nampa School District #131*, 120 Idaho 117, 814 P.2d 17 (1990).

<sup>55</sup> *Butler v. City of Lewiston*, 11 Idaho 393, 83 P. 234 (1905); *Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912); *Hanson v. City of Idaho Falls*, 92 Idaho 512, 514, 446 P.2d 634, 636 (1968) (“One of the most fundamental and necessary expenses of municipal government is that which is incurred in the provision of adequate police protection for persons and property. Certainly it could not be argued in good faith that the weekly or monthly compensation of municipal employees is not an ordinary and necessary expense within the proviso of art. VIII, s 3.”).

<sup>56</sup> *Hickey*, 22 Idaho 41, 124 P. 280.

<sup>57</sup> *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

<sup>58</sup> 105 Idaho 432, 437, 670 P.2d 839, 844 (1983).



expenses” under the proviso clause. As noted in Section II, *supra*, the *Asson* court held that the unconditional obligations of the cities to pay their percentage shares of the costs incurred by WPPSS in developing, financing and constructing Projects No. 4 and 5, including debt service costs, regardless of whether Projects No. 4 and 5 were constructed and whether or not the cities received any power, were not “ordinary and necessary expenses.” Regarding Projects No. 4 and 5, the Court stated:

It was a colossal undertaking, fraught with financial risk. It was open-ended: the cities could not have known what their ultimate debt or liability would be. One cannot stretch the meaning of “ordinary” to include an expense for which there could not be, until years later, certainty of limits. The funding agreement left the Idaho cities with extensive indebtedness – yet no ownership, and minimal control, and only the possibility of electricity. Further, the agreement was for the construction of nuclear power plants, at an expense unencountered in the history of these cities’ power ventures. One could conceive of a number of words to describe this undertaking, but “ordinary” would not be one of them.<sup>59</sup>

The Supreme Court contrasted its holding regarding Projects No. 4 and 5, with the net billing agreements associated with the Washington Public Power Supply System Projects No. 1, 2, and 3, which were not at issue in the case. The court stated that because the obligations under the latter agreements were so different from the onerous and open-ended agreement associated with Projects No. 4 and 5, its holding would be inapplicable to Projects No. 1, 2, and 3, had those agreements been before the court:

The cities’ authorization to enter into Project 1, 2 and 3 agreements is not at issue, and as we have pointed out, the two sets of agreements are sufficiently different to make much of our holding *not applicable even by analogy* to the earlier agreements, which we

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<sup>59</sup> *Id.* at 443, 670 P.2d at 850.

perceive to be in the nature of *power purchase contracts more than long-term debt obligations*.<sup>60</sup>

In essence, the court suggested, though it did not hold, that *bona fide* power purchase arrangements that provide for the delivery of electrical power and payment for services rendered would constitute an “ordinary and necessary” municipal expense. For the reasons discussed in Part II above, the Renewal Power Sales Agreement at issue here falls into the latter category of a *bona fide* power purchase agreement.

A discussion of the differences between the two sets of agreements is instructive to understanding the court’s view that the agreements related to Projects No. 1, 2, and 3 would qualify under the proviso. The Court observed that prior to entering into the Participants’ Agreements for Projects No. 4 and 5, the cities had entered into net billing agreements with WPPSS and Bonneville with respect to Projects No. 1, 2 and 3.<sup>61</sup> Under the net billing agreements, the cities purchased from WPPSS shares of project capability in Projects No. 1, 2 and 3 and, like the Participants’ Agreement from Projects No. 4 and 5, agreed to make payments to WPPSS on an absolute and unconditional basis (*i.e.*, “come Hell or High Water”). However, unlike Participants’ Agreement from Projects No. 4 and 5, the net billing agreements contained provisions that mitigated the cities’ risk that Projects No. 1, 2 and 3 would not be completed. Under the net billing agreements, the cities assigned their project capability shares to Bonneville, which agreed to incorporate the output available to it from the assigned project capability shares into its existing power supply resources (the Federal Power System discussed above) that it used to provide power supply to the cities under the power sales agreements then in effect. Bonneville agreed to credit its regular power bills to the cities in an amount equal to their

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<sup>60</sup> *Id.* (emphasis added).

<sup>61</sup> *Id.* at 435, 670 P.2d at 842. The court also noted that the cities had statutory authorization under Section 50-342, Idaho Code, as amended to enter into net billing arrangements.

payments to WPPSS regardless of whether the plants ever became operable.<sup>62</sup> In effect, Bonneville, not the cities, funded Projects No. 1, 2 and 3 and effectively protected the participants from the direct construction and financing risks associated with these projects.<sup>63</sup> Because the net billing agreements integrated Projects No. 1, 2 and 3 into Bonneville's existing power supplies and power sales agreements with the cities, the cities were insulated from the direct construction risks associated with the projects, and were thus guaranteed that they would always receive power in exchange for the payments they made to Bonneville and WPPSS, regardless of whether Projects No. 1, 2 and 3 were completed or operable. The Participants would never be in the situation of making payments in exchange for "merely the possibility of electricity."<sup>64</sup>

However, it should be noted that the net billing agreements did not completely insulate the cities from all of the risks associated with Projects No. 1, 2 and 3. The cities still bore the risk that if these Projects were not completed, their power supply costs from Bonneville would increase and did increase in fact.<sup>65</sup> In contrast to the net billing agreements, no construction risk is present in the Renewal Power Sales Agreement. It is merely a contract for the purchase of power; it does not fund the construction of new power generation projects. Moreover, even though the City is obligated to purchase power for the term of the contract, the City is only obligated to pay for power supplies "made available" for Bonneville. While the City will pay

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<sup>62</sup> "Each participating utility pays WPPSS its share of the costs of developing the projects, and BPA gives the participant a credit in the amount of such payment on the BPA bill for the power purchased by the participant." *Id.*

<sup>63</sup> *Id.* at 434-35, 670 P.2d at 838-39.

<sup>64</sup> *Id.*

<sup>65</sup> Under the net billing agreements, Bonneville was obligated to provide billing credits to the cities regardless of whether Projects No. 1, 2 and 3 were completed, operable or operating. As a result, Bonneville provided (and continues to provide) billing credits in exchange for only the power from completed Project No. 2. This resulted in an increase in Bonneville's net power supply costs and increased billings to all of the cities.

flat monthly rates for the Slice power supply product regardless of the amount of power it receives under that product, there is no realistic possibility that the City will receive no power under the Slice Product from the existing and operating generating resources comprising the Federal Power System. Further, if the City is unable to take power from Bonneville due to “Uncontrollable Force” (as defined in the Renewal Power Sales Agreement), the City’s obligation to pay is suspended. There is no “dry hole” risk associated with the Renewal Power Sales Agreement. Thus, the Renewal Power Sales Agreement is even more “ordinary” than the net billing agreements for Projects No. 1, 2, and 3.

C. *CITY OF BOISE V. FRAZIER* AND THE DEFINITION OF “ORDINARY AND NECESSARY”

In order to fall within the proviso clause of Article VIII, Section 3, an expense must be both “ordinary” and “necessary”.<sup>66</sup> The Idaho Supreme Court has held that expense is “ordinary” if, “in the ordinary course of the transaction of municipal business, or maintenance of municipal property, it may be and is likely to become necessary.”<sup>67</sup> The court has also defined an “ordinary” expense as “regular; usual; normal; common; often recurring...not characterized by peculiar or unusual circumstances.”<sup>68</sup> The decisions listed above and the Framers’ discussions at the constitutional convention indicate that an expense is “necessary” if it is essential to the ability of a local government to fulfill its core governmental functions.<sup>69</sup> Simply

<sup>66</sup> *Frazier*, 143 Idaho at 4, 137 P.3d at 391 (“The phrase ‘ordinary and necessary’ ... is read in the conjunctive.”).

<sup>67</sup> *Id.* (citing *Hanson*, 92 Idaho at 514, 446 P.2d at 636).

<sup>68</sup> *Peterson*, 93 Idaho at 778, 473 P.2d at 648 (defining “ordinary”).

<sup>69</sup> See *Hart*, *supra*, at 591. Idaho cases have not always employed a consistent definition of “necessary.” In *Peterson*, the Idaho Supreme Court held that “necessary means indispensable.” 93 Idaho at 778, 473 P.2d at 648 (internal quotation marks omitted). In *Frazier* the court appeared to disfavor that interpretation as “circular and provid[ing] little guidance.” 143 Idaho at 4, 137 P.3d at 391. Nevertheless, Idaho courts have held that the interpretation of a statute, or constitutional provision, “begins with an examination of the literal words.” *Poison Creek Pub. Inc. v. Cent. Idaho Pub., Inc.*, 134 Idaho 426, 429, 3 P.3d 1254, 1257 (Ct.App. 2000). “We must give the words their plain, usual and ordinary meaning.” *Id.* In this case, the plain, usual and ordinary meaning of “necessary” is: “Indispensable, requisite, essential, needful; that cannot be done without.” *Oxford English Dictionary* Vol. X, 277 (2d ed. 1989).

put, “ordinary and necessary expenses” are those which constitute the “ordinary and legitimate expenses of running [local] government.”<sup>70</sup>

The recent case of *City of Boise v. Frazier*<sup>71</sup> discussed Art. VIII, § 3’s proviso clause in the context of a lease financing agreement for the construction of a new five-story parking facility at the Boise airport. The Idaho Supreme Court appropriately found, based on the facts before it, that the proposed parking garage was *not* an ordinary and necessary expense and that “the City must obtain the consent of the voting public before entering into the proposed financing agreement.”<sup>72</sup> The *Frazier* court determined that because expansion of the airport’s facilities was necessary to keep pace with increased airline passenger demand, the new parking facility was an “ordinary” expense.<sup>73</sup> However, the court found that the parking facility did not satisfy the “necessary” prong of the proviso clause.

Using language that, at first blush, appears to apply to every kind of local government indebtedness, *Frazier* cited an earlier case, *Dunbar v. Board of County Commissioners of Canyon County*,<sup>74</sup> for the proposition that “[i]n order for an expenditure to qualify as ‘necessary’ as the word is used in the proviso clause to Article VIII, § 3 of the Idaho Constitution, there must exist a necessity for making the expenditure at or during such year.”<sup>75</sup> The *Frazier* court suggested that “expenditures qualify as ‘necessary’ only if they are truly urgent.”<sup>76</sup> However, a

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<sup>70</sup> See Hart, *supra*, at 591 (comments of Weldon Heyburn).

<sup>71</sup> 143 Idaho 1, 137 P.3d 388 (2006).

<sup>72</sup> *Id.* at 6, 137 P.3d at 393.

<sup>73</sup> *Id.* at 4, 137 P.3d at 391.

<sup>74</sup> 5 Idaho 407, 49 P. 409 (1897).

<sup>75</sup> 143 Idaho at 6, 137 P.3d at 393.

<sup>76</sup> *Id.* at 4, 137 P.3d at 391.

closer examination of *Frazier*, the cases it relies upon, and the constitutional convention suggests that while the *Frazier* “urgency” test is applicable to large, capital intensive projects of the type at issue in that case (*i.e.*, “special indebtedness”), it *does not* universally apply to all local governmental indebtedness.

1. *Frazier’s Plain Language*

The *Frazier* court specifically stated “[w]hether a proposed expenditure is ordinary and necessary depends on the surrounding circumstances of each case.”<sup>77</sup> This suggests the court’s statement regarding the “urgency” factor was not a bright-line rule applicable to all government expenses, but rather was one factor, among others, that could satisfy the “necessary” prong and that the ultimate determination will depend upon the particular facts of the case. Importantly, *Frazier* did not overrule any of the court’s prior decisions, nor did the court suggest that the *Frazier* rule superseded any of the court’s prior Art. VIII, § 3 precedent. Thus, each of the Idaho Supreme Court’s earlier Art. VIII, § 3 decisions can be instructive in discerning what constitutes an ordinary and necessary expense.

The *Frazier* court specifically acknowledged that earlier Art. VIII, § 3 cases were correctly decided even where “urgency” was not a factor. For example, the *Frazier* court acknowledged that “expenses incurred in the repair and improvement of existing facilities can qualify as ordinary and necessary expenses.”<sup>78</sup> Both of the cases on which the *Frazier* court relied for that proposition, *City of Pocatello v. Peterson* and *Bd. of County Comm’rs of Twin Falls County v. Idaho Heath Facilities Authority*, discuss the role public safety plays in the analysis. However, neither case discussed any sort of “urgency” or “emergency” requiring that

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<sup>77</sup> *Id.* at 7, 137 P.3d at 394.

<sup>78</sup> *Id.* at 6, 137 P.3d at 393 (citing *Bd. of County Comm’rs of Twin Falls County*, 96 Idaho 498, 531 P.2d 588 and *Peterson*, 93 Idaho 774, 473 P.2d 644).

the expense be made in the designated year.<sup>79</sup> This led to the *Frazier* court's acknowledgement that the "urgency" which it had associated with the necessary prong was a malleable concept and that various factors – some of which have nothing to do with "immediacy" or "emergency" – may satisfy the "necessary" prong of the proviso's test. "The required urgency can result from a *number of possible causes, such as* threats to public safety, the need for repairs, maintenance, or preservation of existing property, or a legal obligation to make the expenditure without delay."<sup>80</sup> It is important to note that the list of factors which the *Frazier* court stated could stand in the place of "urgency" was illustrative, *not* exclusive. Thus, after a case-by-case analysis, courts may find that other different factors can satisfy the necessary prong, "urgency" being but one of them.

## 2. Revisiting the Holding of *Dunbar* and *Bannock County*

In *Dunbar*, the case from which the *Frazier* court purportedly drew its "urgency" component,<sup>81</sup> the court defined "ordinary and necessary" in this manner:

[T]o come within the constitutional proviso or exception, expenditures made in excess of the revenues of any current year must not only be for ordinary expenses, such as are usual to the maintenance of the county government, the conduct of its necessary business, and the protection of its property, but there must exist a necessity for making the expenditure at or during such year.<sup>82</sup>

In that case the court analyzed whether the construction of a bridge and the issuance of warrants for bounties on rabbit scalps constituted an "ordinary and necessary" expense of

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<sup>79</sup> See 93 Idaho 774, 473 P.2d 644 and 96 Idaho 498, 531 P.2d 588.

<sup>80</sup> *Frazier*, 143 Idaho at 6-7, 137 P.3d at 393-94 (emphasis added) (citations omitted).

<sup>81</sup> *Id.* at 4, 137 P.3d at 391 ("The meaning of 'necessary' in the proviso clause takes on added clarity under the *Dunbar* test because expenditures qualify as 'necessary' only if they are truly urgent.").

<sup>82</sup> 5 Idaho at 412, 49 P. at 411.

Canyon County.<sup>83</sup> Nowhere in *Dunbar* did the court suggest that expenditures must be “urgent” or constitute an “emergency.” Indeed, a fair reading of the *Dunbar* rule would not necessarily incorporate an “urgency” component at all. Rather, the language in *Dunbar* stating that “there must exist a necessity for making the expenditure at or during such year” – the very language which the *Frazier* court used to justify the “urgency” gloss – was really nothing more than a statement of the obvious; that is, before a proposed expenditure may come within the proviso, it must be demonstrated that the expenditure is, indeed, “necessary.” The *Dunbar* court’s language was nothing more than a pronouncement that in order to qualify under the proviso, an expenditure must be ordinary, usual, and customary course of business of local government and that the expenditure must be “necessary” or essential to support the core governmental functions or statutory duties incumbent upon the local government at the time the expenditure is made.<sup>84</sup> To say that an expense is essential to a core governmental function or fulfillment of a statutory duty and that such necessity must be demonstrated before the expenditure can be made, does not require a showing of “urgency,” “emergency” or other impending calamity. Finally, it is instructive to note that the court’s holding in *Dunbar* was in fact based on the “ordinary” prong, not the “necessary” prong.<sup>85</sup> The *Dunbar* court did not expound on its definition of necessary or analyze whether the expenses before it were necessary. Thus, whatever the *Dunbar* court said regarding the “necessary” prong was mere dicta and did nothing more than state the obvious – that is, the expenditure must be “necessary” at the time it is to be made.

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<sup>83</sup> 5 Idaho at 410, 49 P. at 410.

<sup>84</sup> Such a reading would emphasize the clause “*there must exist a necessity for making the expenditure*” whereas the *Frazier* court apparently chose to emphasize the clause “*at or during such year.*” The reading of the *Dunbar* rule proposed above recognizes the reality that a particular local government expense can be necessary during a given year without there existing an “urgency” that the expense be made within *that* calendar year.

<sup>85</sup> 5 Idaho at 413, 49 P. at 411 (“We conclude that the building of a bridge and the payment of scalp bounties are not ordinary, but extraordinary, expenses.”).



When establishing the rule quoted above, the Dunbar court cited to and relied upon *Bannock County v. C. Bunting & Co.*<sup>86</sup> As noted in footnote 90, *infra*, the *Bannock County* case held that issuing warrants for the purchase of land for a courthouse was not an “ordinary and necessary” expense.<sup>87</sup> Nowhere did the *Bannock County* court specifically analyze the “necessary” prong; indeed the court’s holding appeared to rest on a finding that “the legislature did not consider [the purchase of land for a courthouse] an ordinary expense of the county.”<sup>88</sup> The *Bannock County* case, like *Dunbar*, did not suggest, much less hold, that the resolution of the “ordinary and necessary” analysis is dependent on a finding of “urgency.”

### 3. The Framers and “Urgency”

Nowhere at the constitutional convention did the Framers indicate that expenses must be “urgent” in order to fall under the proviso. As illustrated in footnote 47, *supra*, the delegates gave examples of the types of expenses they believed would fall under the proviso. While some expenses, such as “any emergency” or repairing damaged ditches and watercourses do suggest that an element of “urgency,” might be indicative of an ordinary and necessary expense, other examples the Framers provided are absolutely devoid of any “urgency” whatsoever. Clearly the payment of “witness fees,” “mileage fees,” and “the ordinary legitimate expenses of running county government” do not convey a sense of urgency. Many of the Idaho Supreme Court’s early decisions implicitly acknowledge that the Framers did not intend to require that local government expenses be “urgent” in order to fall under the proviso.<sup>89</sup> Moreover, analyzing whether an expense is ordinary and necessary, most of the cases analyzing the proviso clause do

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<sup>86</sup> *Dunbar*, 5 Idaho at 412, 49 P. at 411 (citing *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894)).

<sup>87</sup> 4 Idaho at 167-68, 37 P. at 280.

<sup>88</sup> *Id.* at 168, 37 P. at 280 (emphasis added).

<sup>89</sup> See Part III (A) (2), *supra*.

analyze the two terms separately, although as noted above they each have a slightly different meaning – “usual or “recurring” versus “essential” or “core” to the administration of local government affairs.<sup>90</sup>

More than seventy years ago in *Corum v. Common School Dist. No. 21*, the court held that “[t]he employment of teachers by trustees of common school districts is a duty imposed upon them by law, and the cost thereof is an ‘ordinary and necessary expense authorized by the general laws of the state,’ and therefore exempt from the provisions” of Art. VIII, § 3.<sup>91</sup> As is apparent from this language, the court was satisfied that the employment contract at issue in that case was essential to a core governmental function (i.e. instruction of students by district employees) and did not require an additional showing that expenditure was “urgent.” Similarly, the court’s holding in *Butler v. City of Lewiston* that “[c]ertainly the salaries of city officials and employees and other necessary expenses clearly come within the proviso”<sup>92</sup> shows an understanding that local government expenditures which are essential to a core government function can be “ordinary and necessary” absent a showing of urgency.

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<sup>90</sup> See, e.g., *Asson v. City of Burley*, 105 Idaho 432, 441, 670 P.2d 839, 848 (1983) (“We note at the outset that this proviso consists of two requirements: (1) that the expense be ordinary and necessary, and (2) that it be authorized by the general laws of the state. We will address the ‘ordinary and necessary’ requirement first.”) (citation omitted). Earlier cases, such as *Bannock County* also analyze “ordinary” and “necessary” conjunctively. In that case, the Idaho Supreme Court held that construction of a temporary jail was “an ordinary and necessary expense,” but the purchase of land as a site for a courthouse “is clearly not among the ordinary and necessary expenses of the county.” 4 Idaho at 167-68, 37 P. at 280. Interestingly, John T. Morgan, a justice of the Idaho Supreme Court at the time it decided *Bannock County* was also a delegate to the constitutional convention who supported the proviso proposed by William Claggett. Hart, *supra*, at 592. Nowhere in its discussion does the *Bannock County* court suggest that “urgency” is relevant to the ordinary and necessary analysis. On the contrary, language such as “[i]t is the duty of the commissioners to provide a place for the safe-keeping of prisoners,” 4 Idaho at 167, 37 P. at 280, when finding the proviso applicable the expense for a temporary jail suggests an understanding the Framers intended the proviso to apply to those expenses which are essential to the ability of a local government to fulfill a statutory duty or fulfill its core governmental functions.

<sup>91</sup> *Corum*, 55 Idaho at 730, 47 P.2d at 891.

<sup>92</sup> 11 Idaho at 404, 83 P. at 238.

In the context of large capital projects, urgency compelled by the need to protect public safety, can, however, come to the forefront as a factor or means by which a proposed expenditure can be considered to be “necessary.” Specifically, such capital projects were exactly what the Framers had in mind when they referred to “special indebtedness,” which required a citizen vote. The Supreme Court has held that under somewhat unusual circumstances, even large, “special” projects can be justified as “ordinary and necessary” – thus removing the voting requirement – where they were truly “urgent.”<sup>93</sup> Conversely, in the context of the usual, common, smaller expenditures for things such as salaries, repairs, maintenance, utility services or other routine governmental services, the “necessity” is met merely by showing that the desired expenditure is essential to support basic governmental functions that are necessary to meet the health, safety and welfare needs of the citizens.

The foregoing shows that the *Frazier* court was quite correct to require that proponents of large, capital projects – like the airport parking garage at issue in that case – demonstrate “urgency” before such expenditures can be considered necessary and thus exempt from the voting requirement. Because the City of Boise did not provide a showing of urgency in *Frazier*,<sup>94</sup> the court correctly found that the proviso did not apply, under the circumstances of that case. However, the foregoing discussion also shows that the many other factors can stand in lieu of “urgency” in the analysis of “ordinary and necessary” expenses. In cases that involve “ordinary” expenses common to practical administration of local government – circumstances that are factually distinguishable from *Frazier* – a court can find that an expense is necessary

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<sup>93</sup> *Frazier*, 143 Idaho at 7, 137 P.3d at 394. See e.g. *Peterson*, 93 Idaho 774, 473 P.2d 644. Although the *Peterson* court did not expressly hold that the expansion of the airport was “urgent,” it did hold that repairing airport facilities, which “have become obsolete and have ceased to provide the necessary safety demanded by air travelers,” was an ordinary and necessary expense, thus obviating the need for a bond election. *Id.* at 778-79, 473 P.2d at 648-49.

<sup>94</sup> 143 Idaho at 5, 137 P.3d at 392 (“[R]egardless of the importance of public airport parking, circumstances do not require the erection of a permanent parking structure on an immediate or emergency basis.”).

without also finding an “urgency” for making that expenditure in a given year, provided the expense is essential to a fulfill a core governmental function or statutory duty.

The City submits that the specific holding of *Frazier* is limited to large, capital projects that are out of the norm for local government, not “usual or customary,” and that *Frazier*’s holding is inapplicable to the delivery of vital utility services or the execution of a true power purchase agreement such as the Renewal Power Sales Agreement, where the City is providing a service that is critically necessary for the health, safety and welfare of its citizens and commerce. As noted above, Idaho statutes authorize the City to provide, own, and operate a power distribution system.<sup>95</sup> Providing electrical power to the City’s citizens, like providing water, sewer and sanitation services, is a core governmental function. Moreover, as stated in the Flowers and Elg Affidavits and in the Engineer’s Report, execution of the Renewal Power Sales Agreement is essential to the City’s ability to fulfill that core governmental function, without which the City would be unable to provide a stable, reliable and economical source of power for its customers. Thus, in light of the foregoing discussion, this Court can, *Frazier* notwithstanding, find that the Renewal Power Sales Agreement is an “ordinary and necessary” expense without a finding of “emergency” or “urgency.”

D. THE RENEWAL POWER SALES AGREEMENT IS “ORDINARY AND NECESSARY”

As discussed above, the Renewal Power Sales Agreement is a true service contract for the purchase of cost-based electric power and energy. Such payments are “ordinary” because the purchase of electricity from an established power supplier like Bonneville, which has existing and operating power facilities available to meet its supply obligations, is no different than any other contract entered into by a municipality for utility services, fire protection services or public safety services, routine supplies or materials purchases or services necessary to provide essential

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<sup>95</sup> Sections 50-325, 50-342, Idaho Code, as amended.

governmental services to the public. Payments for electrical power are usual, recurring, common expenses of any municipal electric utility, are made in the ordinary course of business, and are not characterized by peculiar or unusual “special” circumstances. Payments for power purchases under the Renewal Power Sales Agreement are made on a “pay-as-you-go” basis, *i.e.*, payments are made in arrears and after services are received. The City makes payments for power that Bonneville makes available to the City, and no payment is required to be made if the City is unable to take power due to an Uncontrollable Force affecting the City. There is no long-term commitment other than to pay for power as it is delivered.

As noted in the Flowers and Elg Affidavits and in the Engineer’s Report, the City has owned and operated a municipal electric system for over 100 years. The City has been purchasing electric power and energy at cost-based rates from Bonneville for over forty-five years, and has been purchasing the Slice and Block power supply products for the past seven years. Unlike the Participants’ Agreement from WPPSS Projects No. 4 and 5, and unlike the net billing agreements for WPPSS Projects No. 1, 2 and 3, no new generating facilities will be constructed by Bonneville or by any other entity to enable Bonneville to meet its power supply obligations under the Renewal Power Sales Agreement. Only the existing and operating generating resources of the Federal Power System will be used to supply power under the Renewal Power Sales Agreement. Thus, the City’s purchase of power under the Renewal Power Sales Agreement should be viewed even more favorably than the agreements for Projects No. 1, 2, and 3, which the *Asson* court seemed to approve. Based on the foregoing, the City’s purchase of power under the Renewal Power Sales Agreement is “ordinary” in every sense of the term as employed by the Framers.

The City’s purchases of electric power and energy under the Renewal Power Sales Agreement are also “necessary.” While the City has developed local hydroelectric generating

resources and has sought to develop additional thermal generating sources to complement its hydroelectric supplies, the City depends materially on wholesale power supplies to meet the requirements of the customers served by the System. There can be no doubt that the provision of reliable, low cost supplies of electricity to residential, commercial and industrial customers is necessary to promote and protect the public welfare and the local economy and core to the very mission of the City. The Idaho Legislature recognized the vital role of reliable, cost effective and stable electrical energy in our society when it enacted Section 50-342A(1), Idaho Code, as amended, to provide specific authority for municipal utilities to enter into joint ownership arrangements for power projects. In enacting that section, the Legislature found and determined that:

Securing long-term electric generation and transmission resources at cost-based rates is essential to the ability of municipal utilities to provide reliable and economic electric services at stable prices to the consumers and communities they serve and is essential to the economy and the economic development of their communities and to the public health, safety and welfare.<sup>96</sup>

The purchase of wholesale power supplies is no different than providing water, sewer or sanitation services, or any other routine “pay-as-you-go” expense associated with the regular operation of municipal government and the provision of essential governmental services. It is every bit as essential to fulfilling the “ordinary legitimate expenses of running [local] government” as the payment of the salaries of municipal employees, the purchase of water for distribution to consumers, the removal of snow and ice on public streets, and ensuring adequate police and fire protection.<sup>97</sup>

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<sup>96</sup> Section 50-342A(1), Idaho Code, as amended; *see also* Sections 50-325 and 50-342(b), Idaho Code, as amended, discussed *supra*.

<sup>97</sup> *Thomas*, 33 Idaho 394, 195 P. 92; *Loomis*, 119 Idaho 434, 807 P.2d 1272; *Butler*, 11 Idaho 393, 83 P. 234; *Hickey*, 22 Idaho 41, 124 P. 280; *Hanson*, 92 Idaho 512, 446 P.2d 634.

It is often in the best interest of a city to enter into multi-year contracts for regular and recurring services that enable the city to perform essential governmental services or fulfill statutory duties. A multi-year contract often provides cost savings and reduced administrative costs. A multi-year contract can provide stability and avoid payment of unnecessary administrative costs associated with frequent supplier changes. Quite frequently, a multi-year contract is necessary to induce a proprietor to undertake significant capital expenditures in order to supply a much needed commodity or service such as sanitation services or fire protection services. Cities in Idaho routinely enter into multi-year contracts for essential services as health insurance for municipal employees, maintenance and repair of public safety dispatch equipment and computers, purchase of critical fuel supplies for public safety vehicles, provision of sanitation collection services, and fire protection or police and public safety services. Even janitorial service contracts sometimes require multi-year commitments in order to secure economical or favorable terms. Idaho Falls has a three year contract in place with the unions for its electrical workers and firefighters, a two year contract for health insurance for its employees and a thirty-year contract in place with Bonneville for the transmission of power from the Federal Power System to Idaho Falls Power. None of these multi-year contracts are considered “urgent,” yet they are most certainly ordinary and necessary in every sense of those terms. The payment obligations of the City under these arrangements, as well as under the Renewal Power Sales Agreement, are ordinary and necessary to the performance by the City of its core governmental functions and any “indebtedness or liability” they may create is also an “ordinary and necessary expense” of the City within the meaning of Art. VIII, § 3.

E. RATE STABILIZATION AND SUPPLEMENTAL POWER SUPPLIES.

1. Rate Stabilization

As stated above, the Renewal Power Sales Agreement does not contain the “dry-hole” construction risk or the unconditional payment guaranty contained in the WPPSS Participants’ Agreement. The Renewal Power Sales Agreement does, however, give rise to certain operational risks that the City has proactively sought to manage and mitigate through the Rate Stabilization Fund and Risk Management Policy of Idaho Falls Power.

The primary risk to Idaho Falls Power (and all of Bonneville’s customers) under the Renewal Power Sales Agreement is the variability of generation from any hydroelectric-based system, such as Bonneville’s, and Bonneville’s need to revise its rates over the term of the Agreement to offset the impact of low water years. As discussed in the Engineer’s Report, a low water year will have an immediate impact on the per-unit cost of power under the Slice power supply product (under which the City pays a flat monthly fee in exchange for a percentage of the output of the Federal Power System). A succession of low water years or an extremely low water year could require Bonneville to acquire supplemental power supplies in the wholesale market to meet its obligations under the Block power supply product and the Load-Following power supply product, and all of Bonneville’s customers will be exposed to increased rates in this event. The risk that operational costs may increase is inherent in any cost-based rate structure or methodology.

The Rate Stabilization Fund provides Idaho Falls Power with a “rainy day” fund or reserve to absorb any precipitous wholesale rate increases or calamitous emergency circumstances. While the Rate Stabilization Fund is available for a variety of purposes in the discretion of the City Council, the amount on deposit presently exceeds an entire year of power bills from Bonneville, providing Idaho Falls Power with an extraordinary ability to protect consumers from the nominal wholesale price variability inherent in this Contract. That the City has taken all actions necessary on its part to effectively manage and mitigate the risks associated



with the Renewal Power Sales Contract, is simply yet another recognition that operational risks are inherent in most governmental endeavors and that the risks associated with the Renewal Power Sales Contract have been routinely dealt with as part of the ordinary course of supplying electrical power to residential and commercial customers.

## 2. Supplemental Power

As discussed in the Elg Affidavit and the Engineer's Report, Idaho Falls Power projects that its allocation of power under the Renewal Power Sales Agreement will be approximately 3 aMW less than the System's net power supply requirements. No additional firm power will be available from Bonneville over the term of the Renewal Power Sales Agreement to meet growth in System loads (which grow at an annual average about 2 percent). Thus, during the term of the Renewal Power Sales Agreement, the City will need to execute agreements for supplemental power in order to meet the System's power requirements, beyond the power supplied by Bonneville under the Renewal Power Sales Agreement.

To meet its power deficit, the City may enter into multi-year supplemental power arrangements from Bonneville at market-based rates ("Tier 2" power), it may make wholesale market purchases, acquire supplemental power supply resources, or undertake a combination of these options. The staff at Idaho Falls Power will be responsible for evaluating supplemental power supply options and making recommendations to the City Council on which option(s) best meet the System's needs. Those supplemental power contracts will undoubtedly require multi-year commitments.

The present case is important not only for the City's ability to enter into and perform the Renewal Power Sales Agreement, but also for its ability to purchase supplemental power supplies under "true" power purchase agreements that extend beyond a single year. Any supplemental power purchase agreement, including a purchase of "Tier 2" power from

Bonneville, would constitute a separate contractual obligation of the City that could be considered an “indebtedness or liability” subject to the requirements of Art. VIII, § 3. While the City is not requesting this Court’s confirmation of the validity of any future supplemental power supply contract, it is important that the present case confirm the City’s understanding that payment obligations under a *bona fide* power purchase agreement (*i.e.*, not involving any dry-hole risk or unconditional payment obligation) constitute “ordinary and necessary expenses” under the proviso clause of Art. VIII, § 3.

The payment obligations of the City under a *bona fide* supplemental power purchase agreement would constitute “ordinary and necessary expenses” for the same reasons as its payment obligations under the Renewal Power Sales Agreement. Like the Renewal Power Sales Agreement, supplemental power purchase agreements involve the usual, recurring, common expenses of any municipal electric utility, all of which are necessary to fulfill the core function of delivering electrical energy to customers of the utility. The supplemental power purchase agreements are made in the ordinary course of operating the City’s power utility, and are not characterized by peculiar or unusual “special” circumstances. Unlike the Renewal Power Sales Agreement, supplemental power purchase transactions will be entered into on relatively short notice, ideally when wholesale market conditions are most favorable, or when seasonal demands necessitate and may involve short-term commitments that extend beyond the City’s current budget year. There will be no realistic opportunity to submit to the voters the question of entering into supplemental power purchase agreements.

Repetitive elections for the purpose of submitting to the voters the question of entering into supplemental power purchase agreements would be highly inefficient and costly, and would significantly hinder Idaho Falls Power’s primary objectives of facilitating maximum rate stability

and maintaining low rates.<sup>98</sup> Thus, the recognition that *bona fide* power purchase agreements are not subject to the requirements of Art. VIII, § 3 provides the City with the assurance that it will not have to attempt the “virtual impossibility” of presenting each of its many supplemental power contracts to the citizens for a vote.<sup>99</sup> It is no more practical to submit such supplemental power contracts to a citizen vote than it would be to submit union contracts, sanitation franchises, public safety contracts or photocopier leases to a citizen referendum. In the same sense that the Framers recognized that expenses in a murder trial, dike repair, or water system repair were ordinary and necessary, and thus not worthy of an election,<sup>100</sup> so also are routine recurring expenses associated with securing short term supplemental power contracts necessary to meet seasonal or load matching requirements.

Regardless of whether a commitment to purchase power lasts two years or seventeen, so long as the commitment is a true power purchase contract, such a commitment is “ordinary and necessary” for the reasons discussed above and no election should be required.

**IV. THE CITY HAS EXPRESS AUTHORITY TO ENTER INTO THE CREDITWORTHINESS AGREEMENT AND ITS PAYMENT OBLIGATIONS THEREUNDER ARE ALSO “ORDINARY AND NECESSARY EXPENSES”.**

**A. THE CITY HAS EXPRESS AUTHORITY TO ENTER INTO THE CREDITWORTHINESS AGREEMENT.**

The Creditworthiness Agreement is required by Bonneville as a condition to the Renewal Power Sales Agreement<sup>101</sup> and is a collateral and security agreement that is commonly required

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<sup>98</sup> Idaho Falls does not here suggest that the practicality or impracticality of calling an election drives the analysis of whether an expense is ordinary and necessary. Rather it is the character of the debt and its stated purpose which determines whether an expenditure is ordinary and necessary.

<sup>99</sup> See *In re University Place/Idaho Water Center Project*, --- Idaho ---, 199 P.3d 102, 122 (2008) (J. Jones, J., specially concurring).

<sup>100</sup> Hart, *supra*, 585-94.

<sup>101</sup> Renewal Power Sales Agreement, §5.13.

in wholesale power purchase and sales transactions. As discussed above, Sections 50-325 and 50-342(b), Idaho Code, as amended, provide express authority for the City to enter into the Renewal Power Sales Agreement. In particular, Section 50-342(b) authorizes cities to enter into power purchase contracts “upon such terms and conditions as shall be specified in the ... contract.” The Creditworthiness Agreement is one of the “terms and conditions” of the Renewal Power Sales Agreement. The Creditworthiness Agreement is specifically required by Bonneville as a condition to the Renewal Power Sales Agreement and serves solely to provide security for the City’s payment obligations thereunder. It creates no new indebtedness, rather it serves only to secure and guarantee the City’s obligation to pay for power purchased under the Renewal Power Sales Agreement. But for the requirements of the Renewal Power Sales Agreement, there is no reason for the Creditworthiness Agreement. Accordingly, the City has express authority to enter into the Creditworthiness Agreement as one of the “terms and conditions” of the Renewal Power Sales Agreement.

The City acknowledges that Bonneville requires the Creditworthiness Agreement from only those preference customers that elect to purchase the Slice/Block power supply product, and that the City could purchase either the Load-Following power supply product or the (stand-alone) Block power supply product without the requirement of entering into the Creditworthiness Agreement. However, the City Council determined that the execution of the Renewal Power Sales Agreement for the purchase of the Slice/Block power supply product was in the best interests of the City, based upon the recommendations of management of Idaho Falls Power’s that the Slice/Block power supply product was the most advantageous and economic power supply option available from Bonneville and was most likely to produce the lowest power supply costs for the customers served by the System. Consequently, the Creditworthiness Agreement is

in fact necessary and essential to give effect to the City's purchase of the most advantageous power supply available from Bonneville, and is not merely "convenient."

In addition, it should be noted that collateral and security agreements comparable to the Creditworthiness Agreement are now commonplace in the wholesale power market, and are typically bi-lateral contracts that provide reasonable assurances that both the seller and the buyer will perform their power sales and purchase obligations. Indeed, the Risk Management Policy of Idaho Falls Power requires management to consider the use of collateral agreements to protect the interests of Idaho Falls Power in wholesale market transactions. In the absence of collateral agreements, Idaho Falls Power is exposed to the risks of non-performance, insolvency and bankruptcy by counterparties in wholesale market transactions. The Creditworthiness Agreement is necessary to give effect to the City's Renewal Power Sales Agreement with Bonneville and similar collateral agreements are frequently necessary to protect the interests of Idaho Falls Power and the consumers it serves in wholesale market transactions.

Given the City's express authority to enter into the Renewal Power Sales Agreement under Sections 50-325 and 50-342(b), Idaho Code, as amended, the City also has express authority to enter into the Creditworthiness Agreement as one of the "terms and conditions" of the Renewal Power Sales Agreement. The Creditworthiness Agreement is necessary and essential to the City's realization of the benefits of the Renewal Power Sales Agreement and the City's authority to enter into the Creditworthiness Agreement is necessary to give effect to its authority to enter into the Renewal Power Sales Agreement.

B. ANY AMOUNTS PAID BY THE CITY UNDER THE CREDITWORTHINESS AGREEMENT ARE "ORDINARY AND NECESSARY EXPENSES".

Under the Creditworthiness Agreement, Bonneville may require the City to post collateral to secure its payment obligations under the Renewal Power Sales Agreement in the event that the credit rating of Idaho Falls Power falls below "investment grade" or is at the

lowest investment grade rating with a negative outlook.<sup>102</sup> In the event that the credit rating of Idaho Falls Power falls below the minimum rating designated in the Creditworthiness Agreement and Bonneville determines to require the posting of collateral, Idaho Falls would be required to post either cash or a letter of credit issued by a bank to secure its payment obligations under the Renewal Power Sales Agreement. The amount of collateral is required to be equal to 12% of the maximum annual power payments made by Idaho Falls Power under the Renewal Power Sales Agreement. After the collateral has been posted, if Idaho Falls Power fails to pay timely a future power bill under the Renewal Power Sales Agreement, Bonneville would have the right to draw on the cash or the letter of credit issued by a commercial bank to satisfy the unpaid amount. Idaho Falls Power would then be obligated to replenish the withdrawn cash or to reimburse the bank for the amount drawn under the letter of credit. The question raised by the terms of the Creditworthiness Agreement is whether the obligations of Idaho Falls Power to post collateral and to replenish any drawings on the collateral constitute an “indebtedness or liability” and/or “ordinary and necessary expenses” within the meaning of Art. VIII, § 3 of the Constitution.

In the discussion above regarding the status of the City’s payment obligations under the Renewal Power Sales Agreement as “ordinary and necessary expenses” under Art. VIII, § 3, the decisions of the Supreme Court in *Butler v. City of Lewiston* and *Hickey v. City of Nampa* were cited for the proposition that the issuance of bonds to fund warrant indebtedness incurred to pay “ordinary and necessary expenses” of a city does not create a new “indebtedness or liability,” but is treated as a continuation of the original “ordinary and necessary expense” represented by the warrants.<sup>103</sup> In *Hickey*, the Court held that:

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<sup>102</sup> Idaho Falls Power presently holds an “A2” credit rating from Moody’s Investor’s Service. The lowest investment grade rating assigned by Moody’s is “Baa3” which is four levels below the current rating of Idaho Falls Power.

<sup>103</sup> See Section III (A) (1), *supra*.

Having determined that the indebtedness for which the warrants were issued is lawful, and that the warrants are binding and valid obligations of the city, it follows ... that the council might authorize and issue funding bonds without submitting the question to a vote of the people. This was not the creation of any new indebtedness, but was rather the changing of the form of the indebtedness, or paying an ordinary debt already incurred.<sup>104</sup>

Applying the decisions of the Supreme Court in *Butler* and *Hickey*, if the amounts payable by the City under the Renewal Power Sales Agreement constitute “ordinary and necessary expenses” then the amounts posted or paid by the City under the Creditworthiness Agreement, whether as a posting of cash or a replenishment or reimbursement of amounts drawn, must also constitute “ordinary and necessary expenses” for the reason that no new obligation of the City is created, there is merely a change in form of the original obligation which itself was an “ordinary and necessary expense”. A posting of cash or a replenishment or reimbursement of amounts drawn is, in substance, identical to the issuance of bonds to fund warrant indebtedness, where the warrants are redeemed and the city’s original obligation takes the form of repayment to the bond holders.

The Creditworthiness Agreement does not create any new payment obligation of the City and serves only to secure the City’s payment obligations under the Renewal Power Sales Agreement. If the payment obligations of the City under the Renewal Power Sales Agreement constitute “ordinary and necessary expenses,” then the posting, replenishment and reimbursement of any collateral posted pursuant to the Creditworthiness Agreement to meet such payment obligations would necessarily be an “ordinary and necessary expense” of the City.

#### CONCLUSION

The Renewal Power Sales Agreement is an “ordinary and necessary expense authorized by the general laws of the state” and therefore exempt from the voting requirements of Art. VIII,

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<sup>104</sup> 22 Idaho at 46, 124 P at 281.

§ 3. That section's proviso clause expresses the Framers' belief that certain types of public indebtedness were normal and essential to the operation of local government, and that it was impractical to submit the question of such indebtedness to a public vote. The Framers also recognized that the analysis of what constitutes an "ordinary and necessary" expense is necessarily a case-by-case, fact intensive inquiry. The Renewal Power Sales Agreement at issue in this case is authorized by sections 50-325 and 50-342(b), Idaho Code, as amended. In addition the Renewal Power Sales Agreement is the type of recurring, routine, usual expense that is essential to a core function of local government---it is nothing more than buying electrical power and paying for it on a "pay-as-you-go" basis. Finding that the Renewal Power Sales Agreement is "ordinary and necessary" is completely consistent with the Framers' intent that no part of the "ordinary legitimate expenses" of local government be placed in doubt. Such a finding is also consistent with the Supreme Court's case law interpreting Art. VIII, § 3. Specifically, the Supreme Court's holding in *Frazier* recognizes that certain expenses, may be considered "ordinary and necessary" even absent the "urgency" that would be required for large scale capital projects to escape a public vote. Since the Renewal Power Sales Agreement is an "ordinary and necessary" expense, it is exempt from the requirements of Art. VIII, § 3 and no vote is required for it to be a valid and binding obligation of the City. Any supplemental power purchase agreements which the City enters to supply power deficits not met by the Renewal Power Sales Agreement are also "ordinary and necessary" expenses of the City and are valid and binding without a vote.

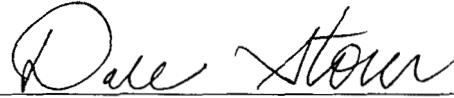
Pursuant to Section 50-342(b), Idaho Code, the City is expressly authorized to enter into the Creditworthiness Agreement as one of the terms and conditions of the Renewal Power Sales Agreement. Because the City's obligations under the Renewal Power Sales Agreement are considered "ordinary and necessary expenses", the posting, replenishment and reimbursement of



any collateral posted pursuant to the Creditworthiness Agreement to meet the City's payment obligations under the Renewal Power Sales Agreement is also necessarily considered an "ordinary and necessary expense" of the City, as a continuation of the original "ordinary and necessary expense" represented by the City's obligations under the Renewal Power Sales Agreement.

Respectfully submitted this 18<sup>th</sup> day of March, 2009.

HOLDEN, KIDWELL, HAHN &  
CRAPO, P.L.L.C.



Dale W. Storer  
Dale W. Storer  
Attorney for Petitioner



Daniel C. Dansie  
Daniel C. Dansie  
Attorney for Petitioner

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE  
POWER SALES AGREEMENT AND  
THE CREDITWORTHINESS  
AGREEMENT BETWEEN VERIFIED  
PETITION FOR THE CITY OF IDAHO  
FALLS JUDICIAL CONFIRMATION  
AND THE BONNEVILLE POWER  
ADMINISTRATION.

Case No. CV-09-1736

**NOTICE OF FILING OF JUDICIAL  
CONFIRMATION PETITION**

RECEIVED

MAR 27 2009

Public Notice is hereby given by the Seventh Judicial District Court of Bonneville County, State of Idaho, that the Court will hold a hearing on the petition filed with the Court by the City of Idaho Falls (the "*City*") to establish the validity of a renewal Block and Slice Power Sales Agreement and a Creditworthiness Agreement (together, the "*Agreements*") each between the City and the United States of America, Department of Energy, Bonneville Power Administration.

The hearing on the petition will be held in the Courtroom of the Honorable Gregory Anderson, District Judge, on May 7, 2009, at 9:00 a.m. at the courthouse of the Seventh Judicial District Court of Bonneville County, 605 N. Capital Ave., in the City of Idaho Falls.

The petition has been filed with the Court pursuant to the Judicial Confirmation Law, Title 7, Chapter 13, Idaho Code, as amended. The petition requests a determination by the Court that (1) the Agreements are authorized by the laws and Constitution of Idaho, (2) the payment and other obligations incurred by the City under the Agreements are "ordinary and necessary expenses" of the City within the meaning of Article VIII, Section 3 of the Idaho

**ORIGINAL**

Constitution, and (3) each of the Agreements is the legal, valid, and binding obligation of the City enforceable in accordance with its terms.

Any taxpayer, property owner, elector, or electric ratepayer of Idaho Falls, any person having or claiming any right, title, or interest in any property or funds to be affected by the Agreements or any other person who has the right to object to this hearing or the Agreements may appear and either move to dismiss or answer the petition at any time before the hearing. The petition shall be taken as confessed by all persons who fail to so appear.

The petition may be examined in its entirety at the courthouse of the Seventh Judicial District Court of Bonneville County, 605 N. Capital Ave., in the City of Idaho Falls.

Dated this 27th day of March, 2009.

SEVENTH JUDICIAL DISTRICT COURT OF  
BONNEVILLE COUNTY, STATE OF IDAHO



*Ronald Long*

By: *Karen Rootzels*  
Clerk of the Court

MOLLY O'LEARY  
ISB #4996  
RICHARDSON & O'LEARY, PLLC  
515 North 27<sup>th</sup>  
Boise, Idaho 83702

09-APR-17 AM 10:50  
JUDICIAL DISTRICT  
CLERK'S OFFICE  
BOISE, IDAHO

Attorney for Intervenor,  
The Honorable Jared D. Fuhriman  
The Mayor of the City of Idaho Falls

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE  
POWER SALES AGREEMENT  
AND THE CREDITWORTHINESS  
AGREEMENT BETWEEN  
THE CITY OF IDAHO FALLS AND  
THE BONNEVILLE POWER  
ADMINISTRATION

) Case No. CV-09-1736  
)  
) ANSWER OF THE HONORABLE  
) JARED D. FUHRIMAN TO CITY OF  
) IDAHO FALLS' PETITION FOR  
) JUDICIAL CONFIRMATION  
)

The Mayor of the City of Idaho Falls, Idaho, a municipal corporation organized and existing under the laws of the State of Idaho (the "City"), brings this Answer (this "Answer") to the Verified Petition for Judicial Confirmation brought by the City pursuant to the Judicial Confirmation Law of the State of Idaho, Title 7, Chapter 13, Idaho Code, as amended (the "Judicial Confirmation Law"), to confirm the validity of the Power Sales Agreement, Contract No. 09PB-13056 (the "Renewal Power Sales Agreement") and the Creditworthiness Agreement, Contract No. 09PB-13257 (the "Creditworthiness Agreement"), each between the City and the

United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("*Bonneville*").

The statements contained herein are supplemented by a Brief in Support of Answer to Petition for Judicial Confirmation which is filed herewith and incorporated by reference in this Answer.

**I. STANDING**

1. The Mayor is an owner of property, taxpayer, elector and electric rate payer of the City as described in Section 7-1307 of the Judicial Confirmation Law.

2. The Mayor is responsible to execute the Renewal Power Sales Agreement and Creditworthiness Agreement. Accordingly, the Mayor is also a "person interested" in the validity of the Renewal Power Sales Agreement and Creditworthiness Agreement as described in Section 7-1307 of the Judicial Confirmation Law.

**II. STIPULATION OF FACTS**

3. The Mayor stipulates to all facts set forth in the City's Petition.

**III. VALIDITY OF THE OBLIGATION**

4. The Renewal Power Sales Agreement creates an "indebtedness" or "liability" of the City within the meaning of Art. VIII, § 3 because it commits the City, for a term of seventeen years, to purchase and pay for electric power Bonneville makes available to the City and to charge and collect rates sufficient to meet its payment obligations to Bonneville under the Renewal Power Sales Agreement, and because the total amount payable by the City over the term of the Renewal Power Sales Agreement exceeds the amount now on deposit in the

municipal treasury and the amount now appropriated for purchased power expense for the current fiscal year.

5. In *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006), the Idaho Supreme Court held that for an expenditure exceeding a city's income and revenue for the year to be considered "necessary" within the meaning of the "ordinary and necessary expenses" proviso of Art. VIII, § 3, of the Idaho Constitution, there must exist a necessity for making the expenditure during the current year. The intent and purpose of the *Frazier* "necessary" test is to require an election to authorize any expenditure that exceeds a city's yearly income and revenue, where there is in fact time to hold an authorizing election.

6. The *Frazier* "necessary" test applies to all municipal expenditures exceeding the income and revenue for the year, regardless of whether they are incurred in connection with "special indebtedness" or other type of municipal expenditure. The holdings of Idaho cases previous to *Frazier* are consistent with this approach.

7. The execution by the City of the Renewal Power Sales Agreement is not "necessary" within the meaning of *Frazier*. It is true that Bonneville required all of its preference customers to authorize and execute renewal power sales agreements before December 1, 2008. However, because the Renewal Power Sales Agreement will not become effective until October 1, 2011, the City still has ample time to hold an election authorizing the City's obligations under the Renewal Power Sales Agreement.

8. Regardless of the benefits of the Renewal Power Sales Agreement or the low-cost power supply it will provide to the City, the Idaho Constitution requires submitting the Renewal

Power Sales Agreement to the voters, who then will have the opportunity to to determine whether they believe the City should enter into the Renewal Power Sales Agreement.

9. The Mayor agrees with the City that the Creditworthiness Agreement is an agreement “related” to the Renewal Power Sales Agreement within the meaning of the Judicial Confirmation Law and that the City is authorized to enter into the Creditworthiness Agreement. The Mayor also agrees that the Creditworthiness Agreement creates no new payment obligation for the City and no additional “indebtedness or liability” of the City.

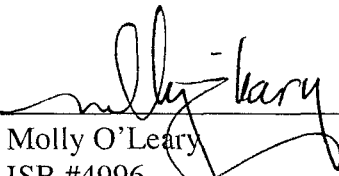
WHEREFORE, for the reasons set forth herein and in the Brief in Support of this Answer filed herewith, the Mayor prays that this Court enter an order or orders declaring and adjudging as follows:

1. Under the Idaho Supreme Court’s decision in *Frazier*, the payment obligations of the City under the Renewal Power Sales Agreement do not constitute “necessary” expenses within the “ordinary and necessary” expenses proviso of Art. VIII, § 3, and are therefore not legal, valid and binding obligations of the City; and

2. Such other relief as the Court deems just and appropriate.

Respectfully submitted this 14<sup>th</sup> day of April, 2009.

RICHARDSON & O’LEARY, PLLC

By:   
Molly O’Leary  
ISB #4996  
Attorney for Intervenor,  
The Hon. Jared D. Fuhriman,  
Mayor of the City of Idaho Falls, Idaho



MOLLY O'LEARY  
ISB #4996  
RICHARDSON & O'LEARY, PLLC  
515 N 27th  
Boise, Idaho 83702

2009 FEB 17 11:12:10  
CLERK OF COURT  
SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

Attorney for Intervenor,  
The Hon. Jared Fuhriman,  
Mayor of the City of Idaho Falls

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE  
POWER SALES AGREEMENT  
AND THE CREDITWORTHINESS  
AGREEMENT BETWEEN  
THE CITY OF IDAHO FALLS AND  
THE BONNEVILLE POWER  
ADMINISTRATION

) Case No. CV-09-1736

)  
)  
) BRIEF IN SUPPORT OF MAYOR  
) JARED D. FUHRIMAN'S ANSWER  
) TO CITY OF IDAHO FALLS'  
) PETITION FOR JUDICIAL  
) CONFIRMATION

This Brief is filed by the Mayor of Idaho Falls, Idaho (the "Mayor") in support of the Answer filed by the Mayor to the Verified Petition for Judicial Confirmation filed by the City of Idaho Falls, Idaho (the "City") under the Judicial Confirmation Law, Title 7, Chapter 13, Idaho Code, as amended (the "Judicial Confirmation Law"), to determine the validity of the Renewal Block and Slice Power Sales Agreement, Contract No. 09PB-13056 (the "Renewal Power Sales Agreement") and the related Creditworthiness Agreement, Contract No. 09PB-13257 (the "Creditworthiness Agreement"), each between the City and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville").

MAYOR'S BRIEF

## POINTS AND AUTHORITIES

### I.

The payment obligations of the City under the Renewal Power Sales Agreement are not “necessary” expenses of the City within the meaning of “ordinary and necessary expenses” proviso of Art. VIII, § 3 of the Idaho Constitution.

*City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006).

*Dunbar v. Board of Commissioners of Canyon County*, 5 Idaho 407, 49 P. 409 (1897).

*Corum v. Common School District No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

*Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

*Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894).

*Board of County Commissioners v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1975).

*City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

*Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

*Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

*Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

*Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 238 (1912).

*Butler v. City of Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

## ARGUMENT

### I. THE PAYMENT OBLIGATIONS OF THE CITY UNDER THE RENEWAL POWER SALES AGREEMENT ARE NOT “NECESSARY” EXPENSES UNDER THE IDAHO SUPREME COURT’S DECISION IN *FRAZIER*.

The Mayor assumes, for purposes of this judicial confirmation proceeding, that the obligations of the City under the Renewal Power Sales Agreement constitute an “indebtedness” or “liability” of the City within the meaning of Art. VIII, § 3. The City argues that the Renewal Power Sales Agreement is not subject to the requirements of Art. VIII, § 3, however, because its City’s obligations thereunder are “ordinary and necessary” within the meaning of the proviso clause to that Section. As will be shown below, under the reasoning of the Idaho Supreme Court’s 2006 decision in *City of Boise v. Frazier*,<sup>1</sup> the City’s obligations under the Renewal Power Sales Agreement are not “necessary” within the meaning of Art. VIII, § 3, and are thus subject to the requirements of Art. VIII, § 3.

#### A. The “Necessary” Test.

In *City of Boise v. Frazier*, the City of Boise filed a judicial confirmation proceeding to determine the validity of an agreement pursuant to which the City would incur long-term indebtedness to finance the construction of a parking garage at the Boise airport. The Idaho Supreme Court determined that the City of Boise’s proposal to expand the Boise airport parking facilities was “ordinary” because such expansion was “consistent with the ordinary course of municipal business” in operating the City of Boise’s property.<sup>2</sup>

With respect to the “necessary” element, however, the Idaho Supreme Court adopted the test for “necessary” in *Dunbar v. Board of Commissioners of Canyon County*,<sup>3</sup> which held that

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<sup>1</sup> 143 Idaho 1, 137 P.3d 388 (2006).

<sup>2</sup> *Id.* at 4, 137 P.3d at 391.

<sup>3</sup> 5 Idaho 407, 49 P. 409 (1897).

for an expenditure to be “necessary” within the meaning of the proviso clause, “there must exist a necessity for making the expenditure at or during [the current] year.”<sup>4</sup> The Idaho Supreme Court held that although the City of Boise’s parking expansion was an important part of a well-functioning airport, “the circumstances do not require the erection of a permanent parking structure on an immediate or emergency basis.”<sup>5</sup> As such, the Court held that the parking expansion was not “necessary” within the meaning of Art. VIII, § 3.

Thus, as of the *Frazier* holding in 2006, the test for determining whether an expenditure that exceeds the income and revenue for the year is “necessary” for purposes of the “ordinary and necessary expenses” proviso of Art. VIII, § 3, is simply whether the expenditure must be incurred during the current year. The intent of the *Frazier* “necessary” test is to require an election to authorize the expenditure at issue where there is in fact time to hold one. Where there is no realistic opportunity to hold an authorizing election, the expenditure will be considered “necessary” within the meaning of Art. VIII, § 3.

B. The Scope of *Frazier*.

The City argues that the “necessary” test adopted by *Frazier* applies only to expenditures incurred in connection with “special indebtedness” (*i.e.*, “large capital projects”) and not to expenditures incurred pursuant to “core governmental functions”. The holding of *Frazier*, however, contains no such qualifications and applies the *Dunbar* “necessary” test to *any* municipal expenditure that obligates a municipality beyond one year.

In *Frazier* the court recognized that in the many cases over previous years concerning the issue of whether a certain expenditure was considered “ordinary and necessary” for purposes of Art. VIII, § 3, Idaho courts did not expressly employ the *Dunbar* “necessary” test, but that such

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<sup>4</sup> *Frazier*, 143 Idaho at 5, 137 P.3d at 392; *Dunbar*, 5 Idaho at 412, 49 P. at 411.

<sup>5</sup> *Frazier*, 143 Idaho at 5, 137 P.3d at 392.

decisions over the years “have been broadly consistent with the *Dunbar* test.”<sup>6</sup> The court went on to cite various of its decisions over the years the holdings of which were consistent with the *Dunbar* test, including *Corum v. Common School District No. 21*<sup>7</sup> (payment of a teacher’s salary under a teacher contract) and *Hanson v. City of Idaho Falls*<sup>8</sup> (creation of police retirement fund, considered compensation). The City cites *Corum* and *Hanson* in its brief for the proposition that the expenses incurred in those cases were held to be “ordinary and necessary” despite the fact that there was no need to incur the expenditures at issue on an urgent or immediate basis.

The better view, however, is that in such cases the expenditures at issue *were* in fact necessary to be incurred during the current year. For example, in *Corum* and *Hanson* it was no doubt necessary to pay teacher salaries and public employee compensation within the current fiscal year. Requiring that a city wait to pay such salaries and compensation until an authorizing election is held would be entirely unrealistic, and would ultimately leave a city without qualified employees to conduct the city’s basic operations and business for the benefit of the public. These types of expenditures are undoubtedly “necessary” within the *Frazier* test.<sup>9</sup>

Thus, the common thread in the cases in which the Idaho Supreme Court held that the expenditures at issue were “ordinary and necessary” was the presence of an immediate or urgent

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<sup>6</sup> *Id.* at 4, 137 P.3d at 391.

<sup>7</sup> 55 Idaho 725, 47 P.2d 889 (1935).

<sup>8</sup> 92 Idaho 512, 446 P.2d 634 (1968).

<sup>9</sup> The other cases cited in *Frazier* were: *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894) (expenditure for temporary jail); *Board of County Commissioners v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1975) (indebtedness by a county to construct and remodel health facilities so facilities would comply with state safety standards); *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970) (replacing unsafe airport terminal); *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933) (providing relief for unemployed); *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921) (providing for police and fire protection services); *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915) (paying organizational expenses for a new county); *Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 238 (1912) (rebuilding the city’s destroyed water system for fire protection and domestic water supply); *Butler v. City of Lewiston*, 11 Idaho 393, 83 P. 234 (1905) (satisfying tort judgment and paying salaries of city officers and employees).

necessity for incurring the expense. Recognizing this common thread, the Court in *Frazier* set forth the clear and concise rule that to be considered “necessary”, there must exist a necessity for incurring the expenditure at issue within the current fiscal year.

This is a proper result, for two reasons. First, voters are the ones who bear the burden of expenditures incurred by a city, regardless of whether those expenditures are incurred in connection with the incurrence of “special indebtedness”, in the exercise of a “core governmental function”, or otherwise. Consequently, voters should have the right to determine whether they are willing to pay for such an expenditure.

Second, the holding of *Frazier* is consistent with the intent of the framers of Art. VIII, § 3. Such intent was, as recognized by the court in *Frazier*, to except from the requirements of Art. VIII, § 3 “unavoidable expenses, such as carrying on criminal trials and abating flood damage, that could not be delayed.”<sup>10</sup> The court in *Frazier* went on to observe that “the expenditures contemplated by the delegates involved immediate or emergency expenses, such as those involving public safety, or expenses the government entity in question was legally obligated to perform promptly.”<sup>11</sup> Thus, as recognized by the court in *Frazier*, it seems that the framers intended to except from the requirements of Art. VIII, § 3 only those expenditures necessary to be incurred on an immediate basis.

C. The Renewal Power Sales Contract is not “Necessary” Within the Meaning of *Frazier*.

The Mayor does not contest that the City’s power purchases under the Renewal Power Sales Contract are “ordinary” within the meaning of Art. VIII, § 3. Rather, the Mayor

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<sup>10</sup> *Frazier*, 143 Idaho at 4, 137 P.3d at 391.

<sup>11</sup> *Id.*

respectfully submits that the City's power purchases under the Renewal Power Sales Agreement are not "necessary" within the meaning of *Frazier*.

The City executed the Renewal Power Sales Agreement prior to December 1, 2008, pursuant to Bonneville's requirement that those preference customers desiring to execute renewal power sales agreements do so by that date. However, the Renewal Power Sales Agreement will not become effective until October 1, 2011, which is over two years away. Consequently, unlike the circumstances present in *Corum* and *Hanson* discussed above, the City still has ample opportunity to hold an authorizing election. No expenditure will be incurred under the Renewal Power Sales Agreement before October 1, 2011. Quite simply, then, the City's obligations under the Renewal Power Sales Agreement are not "necessary" within the meaning of *Frazier*.

This is not to say that certain power purchase and other agreements cannot be considered "necessary" within the meaning of *Frazier*. Under circumstances where it is truly necessary for the City to execute an agreement and incur expenditures thereunder on an immediate basis, then the execution of the agreement and incurrence of expenditures in connection therewith could be considered "necessary" within the meaning of *Frazier*.

The Mayor acknowledges that requiring an election on the Renewal Power Sales Agreement and related agreements (e.g., "Tier 2 purchase commitments") may be costly or inefficient. However, the intent and purpose of Art. VIII, § 3 is to protect the public's interests by submitting the question to the voters, even if at the expense of efficiency.

The Mayor also acknowledges that if the City had not executed the Renewal Power Sales Agreement in 2008 it would not be able to enter into the Renewal Power Sales Contract at all, and would thus be subject to purchasing power from other alternative resources, some of which may be less advantageous for the City and its inhabitants. However, this does not defeat the need for an election. The City has secured its ability to purchase power from Bonneville by executing

the Renewal Power Sales Agreement prior to December 1, 2008, and because the Renewal Power Sales Agreement will not become effective until October 1, 2011, the City can now conduct an authorizing election.

It is true that the Renewal Power Sales Agreement will enable the City to purchase power at cost from Bonneville, which is a federal agency and an established power supplier with a reliable power supply system, and that this will enable the City to provide low-cost power to its inhabitants. It is also true that such power purchases are critical to the operation of the City's municipal electric utility system and provision of reliable, low-cost power to consumers. However, neither the merits of the Renewal Power Sales Agreement nor the benefits of low-cost power supply it provides override the Constitutional requirement for an election. As recognized by the court in *Frazier* with respect to the airport parking facilities considered in that case, "that parking facilities are important, or even critical to the operation of the airport is insufficient to satisfy the constitutional requirements of Art. VIII, § 3."<sup>12</sup> The benefits and costs of the Renewal Power Sales Agreement should be communicated to the voters, who then should have the opportunity to vote on the matter to determine whether they believe it is desirable and worth the expense for the City execute the Renewal Power Sales Agreement to acquire power on their behalf. After all, it is the voters who will ultimately pay for the costs of the Renewal Power Sales Agreement.

D. Creditworthiness Agreement

The Mayor does not dispute that the Creditworthiness Agreement is an agreement "related" to the Renewal Power Sales Agreement within the meaning of the Judicial Confirmation Law and that the City is authorized to enter into the Creditworthiness Agreement as one of the terms and conditions of the Renewal Power Sales Agreement. The Mayor also

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<sup>12</sup> *Id.* at 6, 137 P.3d at 393.



agrees that the Creditworthiness Agreement creates no payment obligation of the City that is separate from its primary payment obligation under the Renewal Power Sales Agreement. However, in order for the Creditworthiness Agreement to be a valid obligation of the City, the City's primary payment obligations under the Renewal Power Sales Agreement must first be approved by the voters.

### CONCLUSION

In *Frazier* the Idaho Supreme Court set forth a clear test for determining whether an "indebtedness or liability" of a city is a "necessary" expense for purposes of the "ordinary and necessary expenses" proviso of Art. VIII, § 3. The *Frazier* test applies to all municipal expenditures exceeding income and revenue for the current year. Under the *Frazier* test, the City's payment obligations under the Renewal Power Sales Agreement are not "necessary" because they need not be incurred on an immediate or emergency basis—the City has ample opportunity to conduct an election to authorize such obligations prior to the effectiveness of the Renewal Power Sales Agreement. Consequently, the City's payment obligations under the Renewal Power Sales Agreement are not "ordinary and necessary expenses" under Art. VIII, § 3. The Renewal Power Sales Agreement must be submitted to the voters. The Creditworthiness Agreement should be submitted to the voters along with the Renewal Power Sales Agreement for simultaneous approval or rejection.

Respectfully submitted this 14<sup>th</sup> day of April, 2009.

RICHARDSON & O'LEARY, PLLC

By: 

Molly O'Leary

ISB #4996

Attorney for Intervenor,

The Honorable Jared D. Fuhriman

Mayor of the City of Idaho Falls



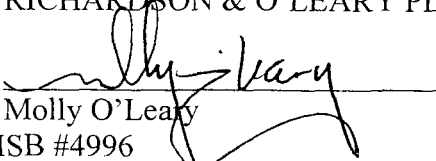
I certify I served a copy to:

Dale W. Storer  
Attorney at Law  
Holden Kidwell Hahn & Crapo, PLLC  
1000 Riverwalk Dr., Suite 200  
Idaho Falls, Idaho 83405

via fax number: 208.523.9518 and email: [dstorer@holdenlegal.com](mailto:dstorer@holdenlegal.com)

DATED this 14th day of April 09.

RICHARDSON & O'LEARY PLLC



Molly O'Leary  
ISB #4996  
Attorney for Intervenor,  
The Hon. Jared D. Fuhriman,  
Mayor of the City of Idaho Falls, Idaho

LePac

Dale W. Storer (ISB No. 2166)  
Daniel C. Dansie (ISB No. 7985)  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.  
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Idaho Falls, Idaho 83405-0130  
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Facsimile: (208) 523-9518

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JUDICIAL DISTRICT COURT  
BONNEVILLE COUNTY  
IDAHO

Attorneys for Petitioner, The City of Idaho Falls

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE  
POWER SALES AGREEMENT AND  
THE CREDITWORTHINESS  
AGREEMENT BETWEEN VERIFIED  
PETITION FOR THE CITY OF IDAHO  
FALLS JUDICIAL CONFIRMATION  
AND THE BONNEVILLE POWER  
ADMINISTRATION.

Case No. CV-09-1736

**AFFIDAVIT OF PUBLICATION AND  
POSTING**

STATE OF IDAHO            )  
  )ss.  
County of Bonneville        )

I, ROSEMARIE ANDERSON, do hereby depose and state as follows:

1. I am the City Clerk for the City of Idaho Falls.
2. Pursuant to the provisions of the Judicial Confirmation Law found at Idaho Code § 7-1306, I caused a Notice of Filing of Petition for Judicial Confirmation to be published in a newspaper of general circulation within the jurisdiction for three consecutive weeks in the manner required by such statute. A Publisher's Affidavit, confirming that the

602

**ORIGINAL**

notice was published in the required manner and for the required time, is attached hereto as Exhibit "A."

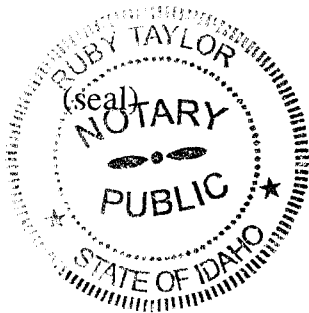
3. I also caused the Notice of Filing of Petition for Judicial Confirmation to be posted in a prominent place near the main door of the administrative offices of the City of Idaho Falls for a period of at least thirty (30) days as required by § 7-1306.

5. I am over the age of 18, have personal knowledge of the foregoing, and would testify to the truth of the same if called upon in a court of law.

DATED this 6th day of May, 2009.

Rosemarie Anderson  
Rosemarie Anderson

SUBSCRIBED and sworn to before me this 6<sup>th</sup> day of May, 2009.



Ruby Taylor  
Notary Public for Idaho  
Residing at: Bonneville  
My Commission Expires: 12/12/2012

**CERTIFICATE OF SERVICE**

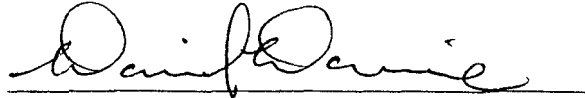
I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing, emailing or by facsimile, with the correct postage thereon, on this 6 day of May, 2009.

**DOCUMENT SERVED:** AFFIDAVIT OF PUBLICATION AND POSTING

**ATTORNEYS SERVED:**

Molly O'Leary  
515 N. 27th Street  
Boise, ID 83702

- Mail
- Hand Delivery
- Facsimile
- Email



Daniel C. Dansie  
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

# Proof of Publication The Post Register

State of Idaho  
County of Bonneville

I, ~~Dan Moore~~, or Joanna Hibbert, first being duly sworn, depose and say: That I am the Operations Manager, or Production Supervisor of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post Register, a newspaper of general circulation, published daily at Idaho Falls, Idaho; said Post Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the First day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than twelve consecutive months and said Post Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post Register for 3 consecutive (days) weeks, first publication having been made on the 5TH day of APRIL 2009, last publication having been made on the 19TH day of APRIL at the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

*Joanna Hibbert*

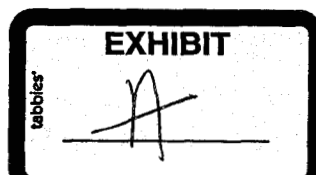
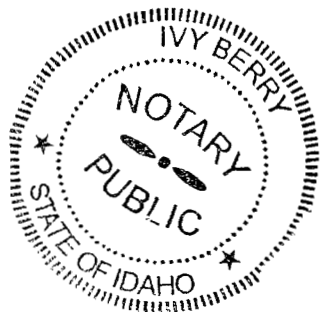
Subscribed and sworn to before me, this 22ND day of APRIL 2009

*[Signature]*

Notary Public

My commission expires January 10, 2015

Credit



**IN THE SEVENTH JUDICIAL DISTRICT COURT  
OF BONNEVILLE COUNTY, STATE OF IDAHO**

IN RE THE VALIDITY OF THE  
POWER SALES AGREEMENT  
AND THE CREDITWORTHINESS  
AGREEMENT BETWEEN  
VERIFIED PETITION FOR THE  
CITY OF IDAHO FALLS  
JUDICIAL CONFIRMATION  
AND THE BONNEVILLE POWER  
ADMINISTRATION.

Case No. CV-09-1736

**NOTICE OF FILING OF  
JUDICIAL  
CONFIRMATION  
PETITION**

Public Notice is hereby given by the Seventh Judicial District Court of Bonneville County, State of Idaho, that the Court will hold a hearing on the petition filed with the Court by the City of Idaho Falls (the "City") to establish the validity of a renewal Block and Slice Power Sales Agreement and a Creditworthiness Agreement (together, the "Agreements") each between the City and the United States of America, Department of Energy, Bonneville Power Administration.

The hearing on the petition will be held in the Courtroom of the Honorable Gregory Anderson, District Judge, on May 7, 2009, at 9:00 a.m. at the courthouse of the Seventh Judicial District Court of Bonneville County, 605 N. Capital Ave., in the City of Idaho Falls.

The petition has been filed with the Court pursuant to the Judicial Confirmation Law, Title 7, Chapter 13, Idaho Code as amended. The petition requests a determination by the Court that (1) the Agreements are authorized by the laws and Constitution of Idaho, (2) the payment and other obligations incurred by the City under Agreements are "ordinary and necessary expenses" of the City within the meaning of Article VIII, Section 3 of the Idaho Constitution, and (3) each of the Agreements is the legal, valid, and binding obligation of the City enforceable in accordance with its terms.

Any taxpayer, property owner, elector, or electric ratepayer of Idaho Falls, any person having or claiming any right, title, or interest in any property or funds to be affected by the Agreements or any other person who has the right to object to this hearing or the Agreements may appear and either move to dismiss or answer the petition at any time before the hearing. The petition shall be taken as confessed by all persons who fail to so appear.

The petition may be examined in its entirety at the courthouse of the Seventh Judicial District Court of Bonneville County, 605 N. Capital Ave., in the City of Idaho Falls.

Dated this 27th day of March, 2009.

SEVENTH JUDICIAL DISTRICT COURT OF  
BONNEVILLE COUNTY, STATE OF IDAHO

Ronald Longmore

By: \_\_\_\_\_ K.D. \_\_\_\_\_

Clerk of the Court

Published: April 5, 12, 19, 2009

ESP010419



FILED IN CHAMBERS AT BLACKFOOT,  
BINGHAM COUNTY, IDAHO

May 08, 2009  
AT Open  
Darren B. Simpson  
DARREN B. SIMPSON  
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IN RE THE VALIDITY OF THE )  
POWER SALES AGREEMENT )  
AND THE CREDIT WORTHINESS )  
AGREEMENT BETWEEN THE )  
CITY OF IDAHO FALLS AND )  
THE BONNEVILLE POWER )  
ADMINISTRATION, )  
\_\_\_\_\_ )

Case No. CV-2009-1736

MINUTE ENTRY

May 7, 2009, at 10:00 A.M., a Petition for Judicial Confirmation came on for hearing before the Honorable Darren B. Simpson, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Sandra Beebe, Court Reporter, and Ms. Lettie Messick, Deputy Court Clerk, were present.

Mr. Dale Storer and Mr. Daniel Dansie appeared on behalf of the City of Idaho Falls. Ms. Molly O'Leary appeared on behalf of intervener Mayor Jared Fuhriman.

Ms. O'Leary addressed the Court regarding standing and judicial estoppel.

Mr. Storer responded and acknowledged that Mayor Fuhriman has standing and judicial estoppel did not apply.


Mr. Storer presented argument supporting the Petition for Judicial Confirmation.

Ms. O'Leary argued in opposition to the Petition.

Mr. Storer presented additional argument supporting the Petition.

The Court took the matter under advisement.

Court was thus adjourned.



DARREN B. SIMPSON  
District Judge

c: Dale Storer  
Molly O'Leary  
050709AMSimpson

FILED IN CHAMBERS AT BLACKFOOT,  
BINGHAM COUNTY, IDAHO

AT June 15, 2009  
10:47 a.m. Darren B. Simpson

DARREN B. SIMPSON  
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF BONNEVILLE

IN RE: THE VALIDITY OF THE POWER  
SALES AGREEMENT AND THE  
CREDITWORTHINESS AGREEMENT  
BETWEEN THE CITY OF IDAHO  
FALLS AND THE BONNEVILLE  
POWER ADMINISTRATION

Case No. CV 2009-1736

**ORDER GRANTING PETITION FOR  
JUDICIAL CONFIRMATION**

**I. INTRODUCTION**

BEFORE THIS COURT came to be heard the Petition of the City of Idaho Falls (hereinafter the "City") for Judicial Confirmation of the validity of the Power Sales Agreement, Contract No. 09PB-13056 (hereinafter the "Renewal Power Sales Agreement") and the Creditworthiness Agreement, Contract No. 09PB-13257 (the "Creditworthiness Agreement"), each between the City and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (hereinafter "Bonneville Power").<sup>1</sup> Jared Fuhriman, in his official capacity as Mayor of the City (hereinafter the "Mayor"), filed an answer in opposition to the City's Petition.<sup>2</sup>

This Court held a hearing on the City's Petition on May 7, 2009.<sup>3</sup> Having reviewed the

<sup>1</sup> Verified Petition for Judicial Confirmation, *In re the Validity of the Power Sales Agreement and the Creditworthiness Agreement Between the City of Idaho Falls and the Bonneville Power Administration*, Bonneville County case no. CV 2009-1736 (filed March 19, 2009) (hereinafter referred to as the "City's Petition").

<sup>2</sup> Answer of the Honorable Jared D. Fuhriman to the City of Idaho Falls' Petition for Judicial Confirmation, *In re the Validity of the Power Sales Agreement and the Creditworthiness Agreement Between the City of Idaho Falls and the Bonneville Power Administration*, Bonneville County case no. CV 2009-1736 (filed April 17, 2009) (hereinafter the "Mayor's Answer").

<sup>3</sup> Minute Entry, *In re the Validity of the Power Sales Agreement and the Creditworthiness Agreement Between the City of Idaho Falls and the Bonneville Power Administration*, Bonneville County case no. CV 2009-1736 (filed

record, the arguments of the parties, and the relevant authorities, this Court shall grant the City's Petition and confirm the validity of the Renewal Power Sales Agreement and the Creditworthiness Agreement.

## II. BACKGROUND

On November 25, 2008, the City Council of the City adopted a resolution approving and authorizing the Renewal Power Sales Agreement and the Creditworthiness Agreement.<sup>4</sup> The same resolution authorized and directed the Mayor, the City Attorney and other officers of the City to commence proceedings pursuant to the Judicial Confirmation Law, Idaho Code ("I.C.") §§ 7-1301 et seq., to confirm the validity of the Renewal Power Sales Agreement and the Creditworthiness Agreement.<sup>5</sup> The Renewal Power Sales Agreement renews and continues the City's power purchases from Bonneville Power for a seventeen (17) year term.<sup>6</sup>

## III. DISCUSSION

### A. Preliminary Issues.

At the beginning of hearing on the City's Petition, this Court raised the question of the Mayor's standing to contest the judicial confirmation. This Court also raised the issue of judicial estoppel (assuming standing) based upon the Mayor's verification of the facts set forth in the City's Petition and the filing of the Mayor's Answer in his official capacity as the Mayor of the City.<sup>7</sup>

The City conceded that the Mayor has standing to raise questions as to whether the Renewal Power Sales Agreement and the Creditworthiness Agreement under I.C. § 7-1307, which reads:

(1) Any owner of property, taxpayer, elector or rate payer, in the political subdivision or any other person interested in the bond, obligation or agreements or

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<sup>4</sup> City's Petition, at p. 3, ¶ 4; the Mayor's Answer, at p. 2, § II, ¶ 3.

<sup>5</sup> *Id.*

<sup>6</sup> City's Petition, at p. 7, ¶ 12.

<sup>7</sup> See: City's Petition, at p. 21; Mayor's Answer, at p. 1.

security instrument related thereto, or otherwise interested in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court.

(2) The petition shall be taken as confessed by all persons who fail to so appear.

In his Answer, the Mayor stated that he is an owner of property, taxpayer, elector and electric rate payer of the City.<sup>8</sup> However, the Mayor filed his Answer in his official capacity as Mayor of the City, thereby availing himself of counsel paid for by the City. Having not filed his Answer in his individual capacity, the Mayor does not have standing to pursue his objection in his individual capacity.

The Mayor also argued that he “is responsible to execute the Renewal Power Sales Agreement and Creditworthiness Agreement. Accordingly, the Mayor is also a ‘person interested’ in the validity of the Renewal Power Sales Agreement and Creditworthiness Agreement....”<sup>9</sup> Based upon I.C. § 7-1307, and the unopposed assertions within the Mayor’s Answer, this Court finds that the Mayor, in his official capacity, fits within the definition of “any other person interested in the bond, obligation or agreements” and therefore has standing to file his answer to the City’s Petition.

With regard to judicial estoppel, this Court notes that the Mayor, in his Answer, stipulated to all facts set forth in the City’s Petition.<sup>10</sup> In his Answer, the Mayor argues only the legal ramifications of the facts peculiar to this case, that is, the validity of the Renewal Power Sales Agreement.<sup>11</sup> Thus, the Mayor’s verification of the facts set forth in the City’s Petition is not a contrary position to the legal arguments set forth in the Mayor’s Answer, and thus, he is not judicially estopped from pursuing the arguments set forth in his Answer.

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<sup>8</sup> Mayor’s Answer, at p. 2, § I, ¶ 1.

<sup>9</sup> Mayor’s Answer, at p. 2, § I, ¶ 2.

<sup>10</sup> Mayor’s Answer, at p. 2, § II, ¶ 3.

<sup>11</sup> Mayor’s Answer, at pp. 2-4, § III, ¶¶ 4-8.

**B. Standard of Review – Petition for Judicial Confirmation.**

With regard to a petition for judicial confirmation, this Court’s factual findings will be set aside only if they are clearly erroneous.<sup>12</sup> Thus, this Court’s findings must be based upon substantial and competent evidence.<sup>13</sup> “Substantial and competent evidence” is “relevant evidence which a reasonable mind might accept to support a conclusion.”<sup>14</sup>

**C. The Renewal Power Sales Agreement and Consequent Creditworthiness Agreement Fall within the Purview of Article VIII, § 3 of the Idaho Constitution.**

Article VIII, § 3 of the Idaho Constitution bars a municipality from incurring debt that cannot be paid from the income and revenue “in that year.” The text of Article VIII, § 3 reads, in relevant part:

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void; Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city may own, purchase, construct, extend or equip, within and without the corporate limits of such city, off street parking facilities, public recreation facilities, and air navigation facilities, and for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds (2/3) of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefore, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law, and provided further, that any city or other political subdivision of the state may own, purchase, construct, extend, or equip, within and without the corporate limits of such city or political subdivision, water systems, sewage collection systems, water treatment plants, sewage treatment plants, and may rehabilitate existing electrical generating facilities, and for the purpose of paying the cost thereof, may, without regard to any limitation herein

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<sup>12</sup> *City of Boise v. Frazier*, 143 Idaho 1, 2, 137 P.3d 388, 389 (2006).

<sup>13</sup> *Bouten Construction Company v. H.F. Magnuson Company*, 133 Idaho 756, 760, 992 P.2d 751, 755 (1999).

<sup>14</sup> *Bouten Construction Company v. H.F. Magnuson Company*, 133 Idaho at 761, 992 P.2d at 756 [citing: *Mancilla v. Greg*, 131 Idaho 685, 687, 963 P.2d 368, 370 (1998)].

imposed, with the assent of a majority of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefore, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities, as may be prescribed by law....

This Court has struggled with the positioning of an electrical power purchasing contract in the scheme of incurring an “indebtedness or liability” as contemplated by the Idaho Constitution. Whereas a contract to construct a multi-tiered parking garage as an expansion to an existing parking garage is certainly to “incur” an indebtedness or liability,<sup>15</sup> a contract to buy power in the future is simply a promise to continue to pay for a municipal budgetary item in the future. In other words, the City already pays for electrical power for its residents. It shall continue to pay for electrical power for its citizens in one form or another out of its annual budget.<sup>16</sup> That the particular form or electric power purchase before the Court involves a substantial savings over a seventeen (17) year period does not erase the fact that the City is not creating or incurring a new debt, but paying for power from its annual budget.<sup>17</sup> In so doing, the City is capturing a significant savings by promising to buy in the future, from Bonneville Power, an already budgeted item.<sup>18</sup>

On the other hand, however, by entering into a multi-year power purchase agreement, it is within the realm of reason that the City incurred a new liability.<sup>19</sup> In *Hanson v. City of Idaho Falls*,<sup>20</sup> the Idaho Supreme Court held that the creation of a fund to provide retirement compensation and benefits to municipal policeman created a duty on the part of the City of Idaho Falls, which is a “liability,” as that term may be broadly defined.<sup>21</sup>

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<sup>15</sup> Black’s Law Dictionary defines “incur” as “to suffer or bring on oneself (a liability or expense).” Black’s Law Dictionary, 8<sup>th</sup> ed., at p. 782.

<sup>16</sup> Flowers Affidavit, at p. 3, ¶ 6.

<sup>17</sup> *Id.*

<sup>18</sup> Flowers Affidavit, at p. 10, ¶ 28.

<sup>19</sup> *See: Hanson v. City of Idaho Falls*, 92 Idaho 512, 514, 446 P.2d 634, 636 (1968).

<sup>20</sup> *See: Id.*

<sup>21</sup> *Hanson v. City of Idaho Falls*, 92 Idaho at 514, 446 P.2d at 636.

Therefore, this Court shall consider the Renewal Power Sales Agreement as a “debt or liability” as those terms are used under Article VIII, § 3 of the Idaho Constitution.

**D. The Renewal Power Sales Agreement Represents a Liability that is both Ordinary and Necessary.**

The Mayor argues that the Renewal Power Sales Agreement is not valid under Idaho Constitution Article VIII, § 3 because the City’s payment obligations thereunder are not “necessary” expenses as defined by the Idaho Supreme Court’s decision in *City of Boise v. Frazier*.<sup>22</sup> In *City of Boise v. Frazier*, the Idaho Supreme Court analyzed the provision under Article VIII, § 3 of the Idaho Constitution which authorizes municipalities to incur debt for ordinary and necessary expenses.<sup>23</sup> The Court wrote:

Article VIII, § 3 of the Idaho Constitution generally bars cities from incurring debts or liabilities without first conducting an election to secure voter approval for the proposed expenditure. [Footnote omitted.] The section, however, contains a notable exception. No public vote is required if the expenditure is for an “ordinary and necessary” expense “authorized by the general laws of the state ....” This exception is referred to as the “proviso clause.”

\* \* \*

Article VIII, § 3 has been part of Idaho’s Constitution since the beginning of statehood.

\* \* \*

The intention was to prevent local government entities from incurring debts without approval from the voters and a clear plan to retire those debts.

\* \* \*

Broadly speaking, Article VIII, § 3 imposes two requirements to be met by local governments before incurring indebtedness. The first requirement is a public election securing two-thirds of the vote, and the second is the collection of an annual tax sufficient to pay the debt within thirty years.

\* \* \*

When the draft version of Article VIII, § 3 was presented to the constitutional convention, it was amended by the delegates to add the words “provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state.” [Cites omitted.] Delegate William Claggett offered the original proviso clause. [Cite omitted.] Claggett explained his intent to the other delegates, stating: “[w]e all know that in the practical administration of county government, that there sometimes will be extraordinary expenses, I mean extraordinary expenses in the ordinary administration of affairs. [Cite omitted.] By way of example, Claggett mentioned the payment of witness

<sup>22</sup> 143 Idaho 1, 137 P.3d 388 (2006). See: The Mayor’s Answer, at § III, pp. 2-4.

<sup>23</sup> See: *City of Boise v. Frazier*, 143 Idaho at 2-4, 137 P.3d at 389-91.



fees. [Cite omitted.] Other delegates mentioned juror fees and criminal court expenses, [cite omitted], the expense of controlling streams and ditches, [cite omitted], and “any emergency” [cite omitted].<sup>24</sup>

In reviewing a particular expenditure, the Idaho Supreme Court looks at the proviso clause terms “ordinary and necessary” independently of each other, and then in conjunction.<sup>25</sup> In other words, a proposed expenditure must be both “ordinary” and “necessary.” This Court shall view the Renewal Power Sales Agreement under the lens of each of these terms.

**1. The Renewal Power Sales Agreement Involves a Debt that is an “Ordinary” Expense of Municipal Government.**

The Mayor concedes that the Renewal Power Sales Agreement involves an “ordinary” expenses of municipal government.<sup>26</sup> Since the City requested judicial confirmation of the Renewal Power Sales Agreement and the Creditworthiness Agreement, however, this Court finds that a thorough analysis of the validity of the Renewal Power Sales Agreement and the Creditworthiness Agreement is warranted.

The Mayor concedes that the Creditworthiness Agreement does not create a payment obligation on the part of the City.<sup>27</sup> Instead, it is “related” to the Renewal Power Sales Agreement and the City is authorized to enter into the Creditworthiness Agreement as one of the terms and conditions of the Renewal Power Sales Agreement.<sup>28</sup> Accordingly, this Court shall focus upon the validity of the Renewal Power Sales Agreement.

In deciding whether the Renewal Power Sales Agreement involves ordinary expenses, this Court refers to the definition of “ordinary” purveyed by the Idaho Supreme Court. An expense is ordinary “if in the ordinary course of municipal business, or the maintenance of

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<sup>24</sup> *Id.*

<sup>25</sup> *See: City of Boise v. Frazier*, 143 Idaho at 4, 137 P.3d at 391.

<sup>26</sup> *See: Mayor’s Brief*, at p. 6, ¶ C.

<sup>27</sup> *Mayor’s Brief*, at pp. 8-9, ¶ D.

<sup>28</sup> *Id.*

municipal property, it may be and is likely to become necessary.”<sup>29</sup>

Under the Idaho Code, cities have the authority to “acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city, and to sell excess power subject to the provision of section 50-327, Idaho Code.”<sup>30</sup> In addition, a city owning and operating an electric distribution system has the authority to:

- (a) Purchase, or generate, or both, electric power and energy for the purpose of disposing of such power and energy to the United States of America, department of energy, acting by and through the Bonneville power administration, or its successor, through exchange, net billing or any arrangement which is used for supplying the needs of the city for electric power or energy;
- (b) Enter into power sales or power purchase contracts with entities engaged in generating, transmitting, or distributing electric power and energy to provide for the purchase, sale or exchange of electric power or energy upon such terms and conditions as shall be specified in the power sales or purchase contract; and
- (c) Establish, operate and fund energy conservation or other public purpose programs for the purpose of promoting efficient use of energy and energy conservation by city consumers including, but no limited to, programs to install energy efficient and energy conservation devices or measures in consumer buildings and structures served by the city and to grant low-interest loans to city consumers for the installation of such measures, provided such measures are provided on a nondiscriminatory basis to all classes of customers similarly situated....<sup>31</sup>

The Idaho Legislature has determined and declared that

... securing long-term electric generation and transmission resources at cost-based rates is essential to the ability of municipal utilities to provide reliable and economic electric services at stable prices to the consumers and communities they serve and is essential to the economy and the economic development of their communities and to the public health, safety and welfare. It is further determined and declared that in order to facilitate the development of such cost-based resources, it is necessary and desirable that municipal electrical utilities have sufficient flexibility and statutory authority to pay the ordinary and necessary expenses associated with the operation and maintenance of such cost-based resources.<sup>32</sup>

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<sup>29</sup> *City of Boise v. Frazier*, 143 Idaho at 4, 137 P.3d at 391 [citing: *Hanson v. City of Idaho Falls*, 92 Idaho 512, 514, 446 P.2d 634, 636 (1968)].

<sup>30</sup> I.C. § 50-325.

<sup>31</sup> I.C. § 50-342.

<sup>32</sup> I.C. § 50-342A(1).

The fact that the Renewal Power Sales Agreement is authorized by the general laws of the state of Idaho does not, *ipso facto*, bring the proposed expenditure within the proviso as an ordinary and necessary expense.<sup>33</sup> Given the fact that the City owns and operates a municipal electric utility system, however, which generates, transmits and distributes reliable and low-cost electric power and energy to residential, commercial, industrial and other customers located within the established service area,<sup>34</sup> the City's proposal to purchase electrical power is consistent with the meaning of the Idaho Constitution's phrase "the ordinary course of municipal business" and is a type of expense that "may be and is likely to become necessary."<sup>35</sup>

**2. The Renewal Power Sales Agreement Involves Debts that are "Necessary" Expenses of Municipal Government.**

A "necessary" expense, as that term is used in Article VIII, § 3 of the Idaho Constitution, and interpreted by the Idaho Supreme Court, is one wherein "there ... exist[s] a necessity for making the expenditure at or during such year."<sup>36</sup> In other words, expenditures qualify as "necessary" only if they are truly urgent.<sup>37</sup> The Idaho Supreme Court further opined that "necessary" expenses, as contemplated by the framers of the Idaho Constitution, include "immediate or emergency expenses, such as those involving public safety, or expenses the government entity in question was legally obligated to perform promptly."<sup>38</sup>

The City does not contend that the debt characterized by the Renewal Power Sales Agreement is urgent. However, the Idaho Supreme Court defined "necessary," as contemplated by the framers, in the disjunctive. According to the Idaho Supreme Court, necessary expenses include "immediate or emergency expenses, such as those involving public safety" or "expenses

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<sup>33</sup> *City of Pocatello v. Peterson*, 93 Idaho 774, 777, 473 P.2d 644, 647 (1970).

<sup>34</sup> See: Affidavit of Jacqueline Flowers, in Support of Petition for Judicial Confirmation, *In re the Validity of the Power Sales Agreement and the Creditworthiness Agreement Between the City of Idaho Falls and the Bonneville Power Administration*, Bonneville County case no. CV 2009-1736 (filed March 19, 2009) (hereinafter the "Flowers Affidavit").

<sup>35</sup> See: *City of Boise v. Frazier*, 143 Idaho at 4, 137 P.3d at 391.

<sup>36</sup> *City of Boise v. Frazier*, 143 Idaho at 5, 137 P.3d at 392.

the government entity in question was legally obligated to perform promptly.”<sup>39</sup> Thus, this Court focuses upon whether or not multi-year utility contracts are “expenses the [City] ... was legally obligated to perform promptly.”<sup>40</sup>

The City has owned and operated a municipal electric utility system since 1900.<sup>41</sup> This electric utility system generates, transmits and distributes electric power and energy to residential, commercial, industrial and other customers within its established service area.<sup>42</sup> In its role as a public utility, the City has a duty to “furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public....”<sup>43</sup> Thus, the expense of providing electrical power to its citizens is a duty the City is legally obligated to perform.

But is the City legally obligated to provide for electrical expenses *promptly*? This Court finds that the answer to this question is yes. The City currently depends upon wholesale power supplies to meet electrical system requirements, since the City cannot supply all of the necessary electrical power on its own.<sup>44</sup> Although it is within the City’s authority to purchase electrical power on the open market on an annual basis, such unstructured planning involves significant risk of market and price volatility (potentially exceeding the City’s budgeted fund for electrical power purchases) as well as the risk of lack of supply.<sup>45</sup> Bonneville Power’s electric power rates are approximately one-half of current market rates and its supply of electric power is both stable and more flexible with regard to a supply of electrical power that approximates consumer

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<sup>37</sup> *City of Boise v. Frazier*, 143 Idaho at 4, 137 P.3d at 391.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Flowers Affidavit, at p. 2, ¶ 4.

<sup>42</sup> *Id.*

<sup>43</sup> I.C. § 61-302.

<sup>44</sup> See: Affidavit of Jo A. Elg, in Support of Petition for Judicial Confirmation, *In re the Validity of the Power Sales Agreement and the Creditworthiness Agreement Between the City of Idaho Falls and the Bonneville Power Administration*, Bonneville County case no. CV 2009-1736 (filed March 19, 2009) (hereinafter the “Elg Affidavit”), at p. 4, ¶ 9.

demand.<sup>46</sup>

Since the City has a duty to provide such electrical service as shall promote the safety, health, comfort and convenience of its patrons, this Court finds that the proposed multi-year electrical power purchase contract is more analogous to multi-year employment contracts than contracts for the building or improvement of physical structures owned by the City.

With regard to employment contracts of municipal employees, the Idaho Supreme Court has stated:

The employment of teachers by trustees of common school districts is a duty imposed upon them by law, and the cost thereof is an "ordinary and necessary expense authorized by the general laws of the state," and therefore exempt from the provisions of said article [Idaho Constitution Article VIII, § 3]. We do not think it would be consistent to hold that the salaries of city officials and employees come within the proviso referred to [cites omitted], and that the employment of teachers does not fall within the proviso.<sup>47</sup>

The City's duty to provide electrical service creates the urgency which causes the Renewal Power Sales Agreement, together with the Creditworthiness Agreement, to fall within the "necessary" element of the proviso clause. If the City refuses to strategically plan for long-term provision of electric power for its electric utility system, particularly in the volatile market to which the parties stipulated, it risks a breach of its duty should high, open-market electric supply prices exceed its budget limitations in a given year, or should one or several of its open-market electric suppliers fail to deliver electric power due to bankruptcy or inability to meet market demand. Accordingly, under the facts of this case, a long-term power supply contract is a necessary expense.

#### IV. CONCLUSION AND ORDER

The City's Renewal Power Sales Agreement is an ordinary and necessary expense authorized by the general laws of the state of Idaho. As such, Article VIII, § 3 of the Idaho

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<sup>45</sup> Elg Affidavit, at pp. 7-8, ¶ 19.

<sup>46</sup> Elg Affidavit, at pp. 7-8, ¶¶ 19-20.

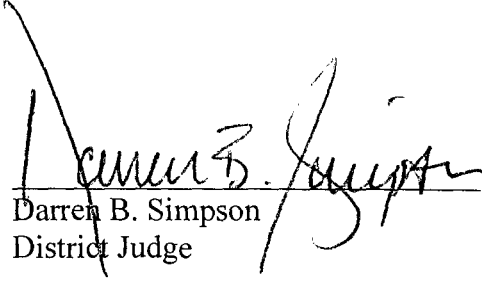
Constitution does not apply thereto. This Court confirms as valid the Renewal Power Sales Agreement.

The Mayor concedes that the Creditworthiness Agreement creates no payment obligation on the part of the City which is separate from the Renewal Power Sales Agreement. As a contract "related" to the Renewal Power Sales Agreement and with no substantive objection thereto, this Court finds that the Creditworthiness Agreement is also valid.

The City's Petition is, therefore, **granted**.

**IT IS SO ORDERED.**

**DATED** this 15<sup>th</sup> day of June 2009.

  
Darren B. Simpson  
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Granting Petition for Judicial Confirmation was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this \_\_\_\_ day of June 2009, to:

Dale W. Storer, Esq.  
HOLDEN, KIDWELL, HAHN &  
CRAPO, P.L.L.C.  
1000 Riverwalk, Suite 200  
Idaho Falls, ID 83402

U.S. Mail    Courthouse Box    Facsimile

Molly O'Leary, Esq.  
RICHARDSON & O'LEARY,  
PLLC  
515 N 27th  
Boise, ID 83702

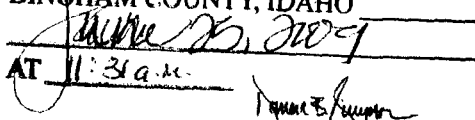
U.S. Mail    Courthouse Box    Facsimile

RONALD LONGMORE, Clerk of the Court

By:  Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,  
BINGHAM COUNTY, IDAHO

AT 11:31 a.m.

  
DARREN B. SIMPSON  
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF BONNEVILLE

IN RE: THE VALIDITY OF THE POWER  
SALES AGREEMENT AND THE  
CREDITWORTHINESS AGREEMENT  
BETWEEN THE CITY OF IDAHO  
FALLS AND THE BONNEVILLE  
POWER ADMINISTRATION

Case No. CV 2009-1736

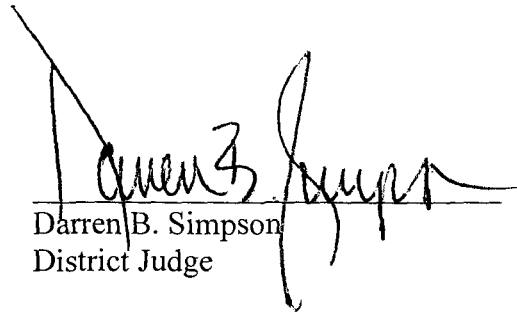
**JUDGMENT**

THIS COURT, having entered its Order Granting Petition for Judicial Confirmation in this matter, finds that Judgment should enter. Accordingly,

Petitioner's Petition for Judicial Confirmation is, in all things, **granted**.

**IT IS SO ORDERED.**

DATED this 25<sup>TH</sup> day of June 2009.

  
Darren B. Simpson  
District Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 20<sup>th</sup> day of June 2009, to:

Dale W. Storer, Esq.  
HOLDEN, KIDWELL, HAHN &  
CRAPO, P.L.L.C.  
1000 Riverwalk, Suite 200  
Idaho Falls, ID 83402

U.S. Mail    Courthouse Box    Facsimile

Molly O'Leary, Esq.  
RICHARDSON & O'LEARY,  
PLLC  
515 N 27th  
Boise, ID 83702

U.S. Mail    Courthouse Box    Facsimile

RONALD LONGMORE, Clerk of the Court

By:  Deputy Clerk

Molly O'Leary (ISB No. 4996)  
RICHARDSON & O'LEARY, P.L.L.C.  
515 N. 27th Street  
Boise, Idaho 83702  
Telephone: (208) 938-7900  
Facsimile: (208) 938-7904

BONNEVILLE COUNTY  
IDAHO  
2009 JUL 14 PM 4:27

Attorneys for Appellant, Mayor Jared Fuhriman

IN THE SEVENTH JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY,  
STATE OF IDAHO

IN RE THE VALIDITY OF THE  
POWER SALES AGREEMENT AND  
THE CREDITWORTHINESS  
AGREEMENT BETWEEN VERIFIED  
PETITION FOR THE CITY OF IDAHO  
FALLS JUDICIAL CONFIRMATION  
AND THE BONNEVILLE POWER  
ADMINISTRATION.

Case No. CV-09-1736

**NOTICE OF APPEAL**

THE CITY OF IDAHO FALLS,

Petitioner/Respondent

v.

MAYOR JARED FUHRIMAN,

Intervenor/Appellant.

TO: THE ABOVE-NAMED RESPONDENT AND THE PARTY'S ATTORNEY  
DALE W. STORER AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Mayor Jared Fuhriman, appeals against the  
above-named Respondent to the Idaho Supreme Court from the final Judgment entered

in the above entitled action on the 25th day of June, 2009, by Honorable Judge Darren B. Simpson.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2).

3. Appellant intends to assert the following issue on appeal: whether or not the Court erred in finding that the obligations contained within the Renewal Power Sales Contract and Creditworthiness Agreement constitute ordinary and necessary expenses, pursuant to Article VIII, § 3 of the Idaho Constitution.

4. No Order has been entered sealing any portion of the record.

5. A reporter's transcript is not requested.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

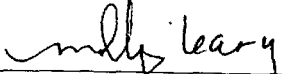
- a. Stipulation of Facts.
- b. Affidavit of Jo Elg.
- c. Affidavit of Robert Mooney.
- d. Affidavit of Jackie Flowers.
- e. All exhibits attached to the foregoing Affidavits.

7. I certify that a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

- a. N/A.

- b. No reporter's transcript is requested.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the appellate filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 10th day of July, 2009.

  
\_\_\_\_\_  
Molly O'Leary  
Richardson & O'Leary, PLLC  
Attorneys for Intervenor/Appellant

**CERTIFICATE OF SERVICE**

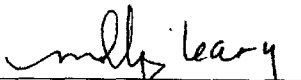
I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 10<sup>th</sup> day of July, 2009.

**DOCUMENT SERVED:** NOTICE OF APPEAL

**ATTORNEYS SERVED:**

Dale W. Storer  
P.O. Box 50130  
Idaho Falls, ID 83405

Mail  
 Hand Delivery  
 Facsimile

  
\_\_\_\_\_  
Molly O'Leary  
Richardson & O'Leary, PLLC

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IN RE THE VALIDITY OF THE )  
 POWER SLAES AGREEMENT AND )  
 THE CREDITWORTHINESS )  
 AGREEMENT BETWEEN VERFIED )  
 PETITION FOR THE CITY OF IDAHO )  
 FALLS JUDICIAL CONFIRMATION )  
 AND THE BONNEVILLE POWER )  
 ADMINISTRATION. )

Case No. CV-2009-1736

Docket No. 36721

**CLERK'S CERTIFICATE**

\_\_\_\_\_  
 THE CITY OF IDAHO FALLS, )

Petitioner/Respondent, )

v. )

MAYOR JARED FUHRIMAN, )

Intervenor/Appellant. )

STATE OF IDAHO )

County of Bonneville )

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District, of the State of Idaho, in and for the County of Bonneville, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that no exhibits were either offered or admitted in the above-entitled cause, that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court, as required by Rule 31 of the Idaho Appellate Rules.



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IN RE THE VALIDITY OF THE )  
 POWER SLAES AGREEMENT AND )  
 THE CREDITWORTHINESS )  
 AGREEMENT BETWEEN VERFIED )  
 PETITION FOR THE CITY OF IDAHO )  
 FALLS JUDICIAL CONFIRMATION )  
 AND THE BONNEVILLE POWER )  
 ADMINISTRATION. )

Case No. CV-2009-1736  
 Docket No. 36721

**CERTIFICATE OF SERVICE**

\_\_\_\_\_  
 THE CITY OF IDAHO FALLS, )  
 )  
 Petitioner/Respondent, )  
 )  
 v. )  
 )  
 MAYOR JARED FUHRIMAN, )  
 )  
 Intervenor/Appellant. )

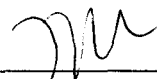
I HEREBY CERTIFY that on the 22nd day of October, 2009, I served a copy of the Reporter's Transcript (if requested) and the Clerk's Record in the Appal to the Supreme Court in the above entitled cause upon the following attorneys:

Molly O'Leary  
 RICHARDSON & O'LEARY  
 515 N. 27<sup>th</sup> Street  
 Boise, ID 83702

Dale W. Storer  
 HOLDEN KIDWELL HAHN & CRAPO  
 PO Box 50130  
 Idaho Falls, ID 83405

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE  
 Clerk of the District Court

By:   
 Deputy Clerk