

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-08-21**  
**APPROVAL OF ITS AMENDED AND )**  
**RESTATED ENERGY SALES AGREEMENT )**  
**WITH HOKU MATERIALS, INC. ) ORDER NO. 30869**  
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On October 24, 2008, Idaho Power Company (“Idaho Power” or “Company”) filed an Application with the Commission seeking approval of a special contract to supply electrical power to Hoku Materials, Inc. (“Hoku”). On November 6, 2008, Staff submitted production requests to the Company and Idaho Power submitted written responses to those requests on November 28, 2008.

On December 3, 2008, the Commission issued a Notice of Application and Notice of Modified Procedure and established a 60-day open comment period. Order No. 30697. Commission Staff, Idaho Irrigation Pumpers Association, Inc. (“IIPA”) and an individual Idaho Power customer all filed written comments within the established comment period.

On March 16, 2009, the Commission issued an Order approving Idaho Power’s special Energy Sales Agreement (“ESA”) with Hoku. *See* Order No. 30748. On May 28, 2009, Idaho Power submitted a Motion for a Commission Order authorizing a delay in the commencement of its ESA with Hoku. On June 23, 2009, Idaho Power submitted a supplemental filing seeking approval of the Amended and Restated Energy Sales Agreement implementing the changes described in the Company’s Motion to Delay Start Date and Letter Agreement.

On July 9, 2009, Commission Staff issued supplemental comments regarding the Amended and Restated Energy Sales Agreement.

**THE COMPANY’S ORIGINAL APPLICATION**

The original ESA entered into between Idaho Power and Hoku dictated that Idaho Power will sell and Hoku will purchase in excess of 25,000 kW. Application at 2. The parties entered into a special contractual arrangement that comports with the requirements outlined in Idaho Power Tariff No. 101. *Id.* Idaho Power agreed to construct, at Hoku’s expense, certain

interconnection facilities necessary to enable delivery of electrical service to Hoku's facilities. *Id.*

The original effective date of the ESA was June 1, 2009, and would conclude on May 31, 2013. *Id.* at 3. Under the terms of the special contract, either party can terminate the ESA by issuing prior written notice to the other party within one year of the effective termination date. *Id.* The ESA stipulated that if the effective termination date occurred prior to the implementation of a subsequent ESA between the parties, then Hoku's energy and demand rates will be equivalent to the Company's Schedule 19-T rates until a replacement contract is approved by the Commission. *Id.*

Under the terms of the original ESA, Hoku's demand would vary during the summer and non-summer seasons. *Id.* Hoku's peak demand during the term of the ESA would not exceed 82 MW. *Id.* The parties agreed that Hoku's scheduled load demand for the summer of 2012 would be contingent upon Idaho Power's ability to integrate "major transmission and generation projects" into its system. *Id.*

The parties agreed to divide Hoku's demand and energy requirements into "two blocks for pricing purposes." *Id.* at 4. The first block is equivalent to the Company's "current Commission-approved avoided cost rates." *Id.* Any change to the avoided cost rate during the term of the Agreement will not affect the first block energy rate contained in the Agreement. *Id.* The second block rates, 25 MW or more, are consistent with the Company's approved Schedule 19-T rates. *Id.*

Hoku is required to "take-or-pay" a certain amount of energy from Idaho Power every month but it is also allowed to "request a release of all or part of its first block energy purchase commitment." *Id.* Idaho Power stated that it will "make a commercially reasonable effort to absorb or resell the released energy and provide a credit to Hoku." *Id.* The amount credited will depend upon the rate period during which the Company receives timely notice of Hoku's request to release its energy demands as well as the Company's ability to "manage and supply commitments to serve Hoku's load." *Id.*

In addition, if Hoku wished to procure additional power during the summer rate period, then Idaho Power is obligated to make the same "commercially reasonable efforts to obtain proposals to supply Hoku's additional energy request." *Id.* at 5. Hoku will be responsible for the costs of these "purchases and any associated transmission and ancillary service expense to

transport such purchase to the Hoku Facility.” *Id.* Hoku’s ability to expand its first block up to 175,000 kW hinges upon the Company’s ability to supply and deliver additional power. *Id.*

Idaho Power’s Application stated that it was seeking an effective date of June 1, 2009, to coincide with the effective date of the parties’ ESA. *Id.* The Application asked that the first block revenues and expenses be treated similarly to wholesale purchases and sales and thus not be included under the Company’s yearly PCA. *Id.* Finally, the Application stated that the ESA will become effective only if all of its “terms and provisions” are approved by the Commission “without change or condition.” *Id.*

In support of its Application, the Company submitted testimony from Ric Gale, Vice President of Regulatory Affairs. Mr. Gale’s testimony explains, in greater detail, the Company’s rationale for the specific elements of its ESA with Hoku.

#### **AMENDED AND RESTATED ENERGY SALES AGREEMENT**

In its initial Motion to Delay Start Date of its ESA with Hoku, Idaho Power submitted a “Letter Agreement” describing various modifications to the terms and conditions of the parties’ ESA and informed the Commission that it was involved in an ongoing process with Hoku to draft a more formal document incorporating the provisions outlined in the Letter Agreement. The Letter Agreement revealed that the parties mutually agreed to the following changes to their original Agreement:

1. Delay the start date of the ESA until December 1, 2009;
2. Hoku will receive service between June 1, 2009, and November 30, 2009, as a Schedule 19T customer;
3. Hoku will limit its demand to no more than 5 MWs during July 2009; 10 MWs during August 2009; and no more than 25 MWs for each month thereafter until November 30, 2009;
4. During the June through August 2009 time period, Hoku will coordinate with Idaho Power to schedule appropriate times to impose any large loads associated with the testing of its production equipment;
5. The termination date of the ESA will be extended through November 20, 2013;
6. Hoku will reduce its contract demand levels during the summer of 2012 to 43 MWs from June 16 to August 15 and 67 MWs from August 16 through September 15; and

7. Hoku will incur additional Energy Efficiency Rider charges to its first block energy usage beginning on December 1, 2011.

In its supplemental filing, Idaho Power advised the Commission that the parties have formally amended the ESA to incorporate the changes outlined in the Letter Agreement. A copy of the new Agreement was included as an Attachment to the Company's supplemental filing.

#### **STAFF SUPPLEMENTAL COMMENTS**

Staff reviewed Idaho Power's filing and supports the Company's request for a Commission Order approving the Amended and Restated ESA. Staff stated that "given the state of the national economy, the Staff understands why a delay in the contract start date may benefit Hoku." Supplemental Staff Comments at 2. However, Staff's primary concern "centers on the impact to Idaho Power's other customers." *Id.* Accordingly, Staff met with representatives of Idaho Power to discuss the practical effect that the delay in the start date of the ESA, as well as other contract modifications, would have on the Company's power supply costs and/or Power Cost Adjustment (PCA) mechanism. *Id.* At the meeting, the Company advised Staff that it had made advance purchases as early as September 2008 in anticipation of including the Hoku load to its Operating Plan. *Id.* Nonetheless, "the Company demonstrated that the profits and losses" caused by the delay "approximately netted to zero." *Id.*

Thus, Staff "found no disadvantage to other customers caused by the delayed start date or other contract changes." *Id.* Staff recommended that the Commission approve the parties' Amended and Restated ESA, including a delay in the ESA start date. *Id.* at 3.

#### **COMMISSION DECISION AND FINDINGS**

The Commission has reviewed and considered the filings in Case No. IPC-E-08-21, including the Revised and Restated Energy Sales Agreement submitted for approval and filed comments by Commission Staff. The Commission finds the terms and conditions of the Amended and Restated Energy Sales Agreement to be reasonable.

The Commission is mindful of the current economic downturn which precipitated Hoku's decision to seek a delay in the start date of its Energy Sales Agreement with Idaho Power. Moreover, the Commission is appreciative of both the cooperative manner in which the parties endeavored to reach a mutually beneficial result and Staff's efforts to verify that the changes included in the Amended and Restated Agreement will not unduly prejudice Idaho Power's other customers.

**CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter pursuant to its authority under Title 61 of the Idaho Code, and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

**ORDER**

IT IS HEREBY ORDERED that the Commission approves Idaho Power Company's Amended and Restated Energy Sales Agreement with Hoku Materials, Inc. with a revised effective date of December 1, 2009.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24<sup>th</sup> day of July 2009.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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