

**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       )** **ORDER NO. 31005**  
**WITH HOKU MATERIALS, INC.                 )**

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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 an Amended and Restated Energy Sales Agreement implementing the changes described in the Company’s prior Motion to Delay the Start Date of its ESA with Hoku and Letter Agreement.

On July 9, 2009, Commission Staff issued supplemental comments regarding the Amended and Restated Energy Sales Agreement. On July 24, 2009, the Commission issued an Order approving the Amended Agreement. *See* Order No. 30869.

On November 24, 2009, Idaho Power advised the Commission of its Letter Agreement with Hoku to temporarily waive Hoku’s minimum billed energy charge. Commission Staff reviewed the Company’s filing and consulted with representatives of Idaho Power regarding the proposed billing change.

## ORIGINAL ENERGY SALES AGREEMENT

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 Commission 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 have agreed that Hoku's scheduled load demand for the summer of 2012 is 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 states 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 wishes 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 the 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 MW during July 2009; 10 MW during August 2009; and no more than 25 MW 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.

#### **PROPOSED BILLING CHANGE**

As mentioned above, in November 2009 Idaho Power submitted a Letter Agreement with cover letter to the Commission. The Agreement reached by Idaho Power and Hoku requires that Idaho Power temporarily waive the minimum billed energy charge in the Hoku Special Contract. The temporary waiver would begin December 1, 2009, and remain in effect until the month when the contract load factor first exceeds 70% of the total contract demand or March 31, 2011, whichever occurs earliest. The rationale for the requested waiver of the minimum billed energy charge is related to the current business environment and is discussed in more detail in the confidential Letter Agreement.

#### **STAFF ANALYSIS AND RECOMMENDATION**

Staff viewed Idaho Power's current filing as being equivalent to a Tariff Advice. Idaho Power is requesting the waiver of a rate in an approved contract. Staff reviewed the waiver from the perspective of Idaho Power's other customers. Hoku is contributing all of the fixed delivery costs associated with supplying power to its project. If Hoku does not take minimum service under the contract, Idaho Power may have to unwind positions that are long in two of 16 months in the waiver period. Unwinding the long positions could prove to be a net cost or benefit to other customers as the cost or benefit flows through the PCA. Because the long positions are relatively small, Staff believes the impact on other customers will be insignificant. Staff recommends that the Commission approve the Letter Agreement. The unwinding costs are

unknown but estimated to be small or non-existent. Staff believes that the waiver will benefit Hoku and should assist them as they work to bring the facility into production.

### **COMMISSION DECISION AND FINDINGS**

The Commission has reviewed Idaho Power's request to temporarily waive the minimum billed energy charge for its special contract customer Hoku Materials, Inc. as well as Staff's review and recommendation. The Commission finds that the proposed waiver is reasonable.

The Commission herein acknowledges Idaho Power's willingness to again accommodate Hoku's concerns by delaying the full implementation of the ESA as Hoku attempts to establish a firm footing amidst the current adverse business climate. As part of its deliberations on this matter, the Commission is aware of and has duly considered Hoku's potential to become a relatively large employer within the State of Idaho. However, such proposed actions do not eclipse the Commission's statutory duty to ensure that Idaho Power's rates and charges are fair, just and reasonable.

Specifically, the Commission must verify that the costs associated with the delayed implementation of the ESA are borne primarily by the contracting parties and not Idaho Power's remaining customer base. To that end, the Commission commends Staff for its vigilance and for adhering to its regulatory role by verifying that the proposed changes to the ESA between Idaho Power and Hoku will not unduly harm Idaho Power's remaining 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**

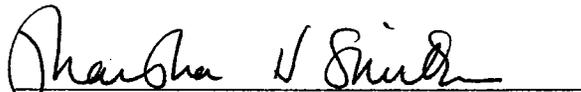
IT IS HEREBY ORDERED that Idaho Power Company's proposed billing change (Temporary Waiver of the Minimum Billed Energy Charge) for Hoku Materials, Inc. is approved.

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 12<sup>th</sup> day of February 2010.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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