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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|                       |   |                            |
|-----------------------|---|----------------------------|
| HOKU MATERIALS, INC., | ) |                            |
|                       | ) | CASE NO. IPC-E-11-28       |
| Complainant,          | ) |                            |
| v.                    | ) | ANSWER, MOTION TO DISMISS, |
|                       | ) | AND MOTION TO SET          |
| IDAHO POWER COMPANY,  | ) | TERMINATION DATE           |
|                       | ) |                            |
| Respondent.           | ) |                            |
|                       | ) |                            |

COMES NOW, Idaho Power Company ("Idaho Power" or "Company") and hereby answers the Complaint Contesting Termination of Service ("Complaint") filed by Hoku Materials, Inc. ("Hoku") and respectfully moves the Idaho Public Utilities Commission ("Commission") to dismiss the Complaint and/or set a date as soon as possible by which Idaho Power may terminate electrical service to Hoku. In light of the potential, imminent financial harm to Idaho Power and its customers, Idaho Power hereby files these Motions and requests expeditious substantive relief pursuant to RP 256.

## I. ANSWER

1. Idaho Power admits that Hoku is a special contract customer of Idaho Power, but denies that the parties' relationship is pursuant to that certain Amended and Restated Electric Service Agreement ("AESAs"). Idaho Power admits that "Exhibit A" to the Complaint is a true and correct copy of the AESA between Hoku and Idaho Power dated June 19, 2009. Idaho Power affirmatively asserts that the relationship between Idaho Power and Hoku is governed by the AESA, Commission Order Nos. 30748, 30869, and 31005, Idaho Power's Tariff Schedule 32 approved by the Commission, as well as other Commission rules and regulations.

2. Idaho Power admits that "Exhibit B" to the Complaint is Idaho Power's invoice to Hoku for electric service in the month of November 2011. Idaho Power admits that Hoku's actual energy consumption during November 2011 was 46,167 kilowatt-hours of energy and 215 kilowatts of demand, with a power factor adjusted demand of 220 kilowatts. Idaho Power denies the allegation that Hoku's actual energy consumption in the month of December 2011 will be approximately the same as in November 2011. Idaho Power admits that the remainder of charges on the November 2011 invoice are contractual minimum payments required by the AESA because Hoku does not currently consume the contractual amount energy. Idaho Power has insufficient information to know whether Hoku is contemplating the filing of an action at the Commission to contest the required contract minimum adjustments and therefore denies such allegation.

3. Idaho Power admits that Hoku has made a deposit with Idaho Power in the amount of Four Million Dollars (\$4,000,000) at the Company's request, but

affirmatively asserts it is not the full deposit amount required to be paid by Hoku. Idaho Power denies that Hoku has any claims or defenses for refusing to pay the November invoice or any other invoices. Idaho Power denies all other allegations made in paragraph 3 of the Complaint.

4. Idaho Power has insufficient knowledge of all of the allegations made in paragraph 4 of the Complaint and therefore denies each and every allegation made therein.

5. Idaho Power has insufficient knowledge related to the allegations made in the first two sentences of paragraph 5 of the Complaint and therefore denies the first two sentences of paragraph 5 of the Complaint. Idaho Power admits that prior to the issuance of the Company's Notice of Termination, representatives of Hoku advised representatives of Idaho Power that current cash flow shortage was such that payment of the November invoice may not occur until January 2012. At no time did Idaho Power consent to Hoku making late payments or postponing the termination of service to Hoku. Idaho Power admits that it issued Hoku an Initial Notice of Termination on December 22, 2011 (attached hereto as "Attachment 1" and incorporated by reference), and a Final Notice of Termination of Service on December 27, 2011 (attached hereto as "Attachment 2" and incorporated by reference), pursuant to Commission Rules 602 and 603.

6. For each allegation made in the Complaint not specifically addressed above, Idaho Power hereby denies each and every allegation not specifically addressed above.

## **II. MOTION TO DISMISS AND MOTION TO SET TERMINATION DATE**

### **A. Statement of Facts**

7. Hoku and Idaho Power entered into an Electric Service Agreement (“ESA”) on September 17, 2008. The Commission approved the ESA by Order dated March 16, 2009 (Order No. 30748). The effective date of the original ESA was for Idaho Power to begin providing service to Hoku on June 1, 2009, and conclude on May 31, 2013. On May 28, 2009, and at the request of Hoku, Idaho Power submitted a Motion for a Commission Order authorizing a delay in the commencement of the ESA with Hoku until December 1, 2009. Idaho Power and Hoku subsequently submitted the AESA for Commission approval. By Order dated July 24, 2009, the Commission approved the request to delay the ESA’s effective date as well as the AESA, noting that the AESA and the delay of the effective date on which Hoku would begin receiving energy from Idaho Power would “not unduly prejudice Idaho Power’s other customers.” Order No. 30869 at 4 (emphasis in original).

8. On November 24, 2009, Idaho Power advised the Commission of a confidential Letter Agreement that the Company entered into with Hoku which temporarily waived Hoku’s minimum billed energy charge beginning December 1, 2009, until such time when the “contract load factor first exceeds 70% of the total contract demand or March 31, 2011, whichever occurs earliest.” Order No. 31005 at 4. The Commission granted the request to temporarily waive the minimum billed energy charge for Hoku, noting “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.” Order No. 31005 at 5. The Commission

cautioned, however, that the temporary waiver did not “eclipse the Commission’s statutory duty to ensure that Idaho Power’s rates and charges are fair, just and reasonable.” *Id.* Specifically, the Commission stated that it “must verify that the costs associated with the delayed implementation of the ESA are borne primarily by the contract parties and not Idaho Power’s remaining customer base.” *Id.*

9. On June 15, 2011, Idaho Power submitted a letter to Hoku (attached hereto as “Attachment 3” and incorporated by reference) explaining the Company’s policy with regard to Customer deposits and requested that \$4 million of Hoku’s total \$5.8 million deposit be paid immediately with the additional \$1.8 million deposit to be paid by Hoku by no later than December 31, 2011. At Hoku’s request, Idaho Power agreed to delay the date to March 2, 2012, by which Hoku had to pay such additional \$1.8 million deposit so long as Hoku remained current on payments to Idaho Power pursuant to the AESA. See letter dated December 20, 2011 from Idaho Power’s Warren Kline to Joe Miller attached hereto as “Attachment 4” and incorporated by reference.

10. Idaho Power issued Hoku an invoice in early December in the amount of approximately \$1.9 million for services provided to it for November 2011. Payment was due on December 21<sup>st</sup>, which Idaho Power did not receive. On December 22, Idaho Power sent Hoku an Initial Notice of Termination per the Commission’s Utility Customer Relations Rules 602 and 603 (“Initial Notice”), indicating that service to the Hoku facility would be terminated on the morning of Thursday, December 29<sup>th</sup>. On December 27<sup>th</sup>, Idaho Power sent Hoku a Final Notice of Termination (“Final Notice”) indicating that consistent with the Company’s disconnection practices during the holidays, Hoku’s

energy service would not be terminated until Tuesday, January 3, 2012, unless past-due payment was received. On December 29, 2011, Hoku filed the Complaint against Idaho Power at the Commission.

### **B. Motion to Dismiss**

11. The Complaint fails to allege any dispute or controversy between the parties. The only allegation of wrong-doing is an unsupported allegation in the Complaint that “Hoku is contemplating the filing of an action at the Commission to contest the required contractual minimum adjustments.” Complaint at 2. Hoku has not, however, filed such an action, and its mere contemplation of challenging the provisions of the AESA that if freely negotiated with Idaho Power is not grounds for a complaint against Idaho Power. As evidenced in the recitation of the Statement of Facts above, Idaho Power has gone out of its way to accommodate Hoku, including modifying the original ESA, delaying the implementation of the AESA, and bifurcating the time when Hoku would have to make deposits. More importantly, Idaho Power has fulfilled all of its obligations under the AESA, and the Complaint fails to allege any fact demonstrating Idaho Power has failed to fulfill its contractual obligations under the AESA.

12. The fact of the matter is Hoku has missed a payment it owes to Idaho Power and has failed to provide Idaho Power with any assurance that such a payment will be forthcoming. Idaho Power, pursuant to the Commission’s Utility Customer Relations Rules, has sent Hoku the required notices that it seeks to terminate electrical service to Hoku because of its failure to pay its invoice. See Attachments 1 and 2. Under the Commission’s rules, the Company cannot terminate service to a customer so long as a pending complaint exists against the Company and “so long as the customer

continues to pay all amounts not in dispute, including current utility bills.” Utility Customer Relations Rule 402.2.

13. It is Idaho Power’s firm belief that Hoku has filed the Complaint as a means of forestalling disconnection so that it can continue to receive service from Idaho Power without paying for such service even though no real controversy exists between the parties. More specifically, Hoku has failed to allege in the Complaint that it is disputing amounts that it owes to Idaho Power. Thus, Idaho Power has a strong argument that because Hoku has failed to properly dispute an amount it owes the Company, Idaho Power has the authority under the Commission’s Utility Customer Relations Rules to terminate service as Hoku has failed to make payments on amounts not in dispute. Moreover, since the Complaint fails to allege any material facts in dispute or controversy between the parties, the Commission should dismiss the Complaint and allow the Company to proceed immediately with terminating service to Hoku.

### **C. Motion to Set Termination Date**

14. The Complaint implies that Idaho Power can be held harmless by Hoku’s failure to pay its November 2011 invoice because the Company can apply Hoku’s \$4 million deposit to cover the approximately \$1.9 million amount due in the November 2011 invoice. As an initial matter, customer deposits, including Hoku’s deposit, are governed by the Company’s Rule L tariff. Specifically, Rule L states that the Company will retain customer deposits for a minimum of twelve calendar months until such time as the customer establishes good credit. There is no provision in Rule L whereby customers can request to use its deposit to pay monthly charges, as suggested by Hoku

in its Complaint. Notably, Idaho Power clearly explained the Company's policy and Rule L provisions relating to deposits both in conversations with representatives of Hoku as well as the June 15, 2011, letter. See Attachment 3.

15. Idaho Power was very accommodating to Hoku in requesting a deposit pursuant to Rule L. Specifically, the Company agreed to allow Hoku to pay its required \$5.8 million deposit in two tranches—a \$4 million initial deposit and a \$1.8 million supplemental deposit, with the supplemental deposit being due no later than December 31, 2011. In yet another effort to accommodate Hoku, Idaho Power agreed to delay the requirement that Hoku make the required \$1.8 million additional deposit payment until March 2, 2012, so long as Hoku remained current on all of its monthly invoices. See Attachment 4. As explained in the letter, that offer to extend the payment deadline was conditioned upon Hoku remaining current on its invoices, and because Hoku is no longer current on paying its invoices, the offer to extend the date by which the supplemental deposit payment to March 2, 2012, is no longer valid. Accordingly, the remaining \$1.8 million deposit amount is due to Idaho Power by December 31, 2011. Pursuant to Utility Customer Relations Rule 602.02, Idaho Power has the authority to terminate service in the event it does not receive the required \$1.8 million deposit payment by December 31, 2011.

16. That said, even if the Company were to agree to Hoku's suggestion that the Company can apply a portion of the \$4 million deposit to cover its November 2011 invoice, the total \$4 million deposit would quickly dwindle to nothing within the first few days of January 2012. The Company has continued to provide service to Hoku throughout the month of December, but has not had any assurances from Hoku that it

will pay its December 2011 invoice. Based upon the best information available to it as of the date of this pleading, Idaho Power anticipates that Hoku's December 2011 invoice will be more than \$2 million. When the November and December invoices are added together (i.e. \$1.9 million for November and \$2 million for December), that leaves only about \$100,000 of the original \$4 million deposit remaining. In addition, the Company has received no assurances from Hoku that it will make its required \$1.8 million deposit payment by December 31, 2011. Indeed, Hoku's refusal to pay its November 2011 invoice is strong evidence that Hoku will fail to pay the required additional \$1.8 million deposit by the end of 2011.

17. Put differently, Hoku's current power bill with the Company runs approximately \$65,000 per day. As described above, all but \$100,000 of Hoku's original \$4 million deposit would be used if applied to Hoku's November and December invoices. The remaining \$100,000 of Hoku's original \$4 million deposit would disappear within the first few days of January 2012. The Company will be adversely impacted because it will experience a revenue shortfall by being forced to provide service to a very large customer without receiving any payment for such services, negatively impacting the Company's financial position, which could translate into lower earnings. One outcome of such a scenario would be that the Company would be required to accelerate additional accumulated deferred investment tax credits ("ITCs") which the Commission authorized in Order No. 32424. Conversely, the Company's revenue shortfalls as a result of Hoku's failure to pay could potentially jeopardize customers' ability to share in the Company's earnings pursuant to that same Commission Order. Thus, Idaho Power and its customers will experience imminent and immediate harm (by

a detriment of approximately \$65,000 per day) by Hoku's failure to pay its invoices and if the Company is required to continue to provide it service.

18. In addition, and as explained above, Hoku has failed to allege any material fact, controversy, or dispute related to the services it receives from Idaho Power. The Commission's typical formal complaint process may take months to complete. Idaho Power has concerns that if the Commission allows the Hoku Complaint to run the usual course at the Commission, Hoku could potentially become millions of dollars delinquent in amounts it owes to Idaho Power.<sup>1</sup> To protect both the Company's interests as well as the interests of its customers, Idaho Power respectfully requests that the Commission set a specific date (and that such date be as soon as possible) by which Idaho Power can terminate service to Hoku. Idaho Power further requests that such an order provide that Hoku can avoid having its service terminated if, prior to such termination date, Hoku brings current all outstanding amounts it owes to the Company as well as immediately provides Idaho Power the additional required \$1.8 million deposit.

19. As required by RP 256.02, Idaho Power contacted counsel for Hoku by telephone and sent a copy of this pleading via electronic mail.

NOW, THEREFORE, Idaho Power respectfully requests as follows:

- 1) That the Commission dismiss the Complaint for failing to allege a dispute or controversy;
- 2) That the Commission issue an Order setting a date as soon as possible by which Idaho Power may terminate electrical service to Hoku;

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<sup>1</sup> As explained above, Hoku's daily bill is currently approximately \$65,000 per day which, over a period of months, will add up to potentially millions of dollars.

- 3) That the Commission require Hoku to immediately pay Idaho Power for all amounts past due plus all amounts necessary to fulfill Hoku's required \$5.8 million deposit amount; and
- 4) That the Commission grant the relief requested in this pleading on fewer than fourteen (14) days notice pursuant to RP 256.

Respectfully submitted this 30th day of December 2011.



JASON B. WILLIAMS  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of December 2011 I served a true and correct copy of the within and foregoing ANSWER, MOTION TO DISMISS, AND MOTION TO SET TERMINATION DATE upon the following named parties by the method indicated below, and addressed to the following:

**Commission Staff**

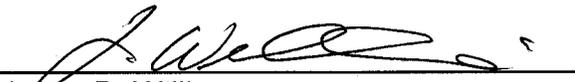
Donald L. Howell, II  
Deputy Attorneys General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [Don.Howell@puc.idaho.gov](mailto:Don.Howell@puc.idaho.gov)

**Hoku Materials, Inc.**

Dean J. Miller  
McDEVITT & MILLER LLP  
420 East Bannock (83702)  
P.O. Box 2564  
Boise, Idaho 83701

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)  
[heather@mcdevitt-miller.com](mailto:heather@mcdevitt-miller.com)

  
\_\_\_\_\_  
Jason B. Williams

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**



December 22, 2011

Hoku Materials, Inc.  
Attn: Austin Webb  
One Hoku Way  
Pocatello, ID 83204

Subject: Initial Notice of Termination

Dear Mr. Webb:

Your November Energy Services Agreement invoice D1111002 in the amount of \$1,895,656.26 was due Wednesday, December 21<sup>st</sup>. As of the morning of December 22<sup>nd</sup>, payment has not been received. Per IPUC's Utility Customer Relations Rule 602, failure to pay an undisputed bill is grounds for termination of service. As a result of your past due payment, Hoku's energy service will be terminated on the morning of Thursday, December 29<sup>th</sup> unless payment is received prior to 5 p.m. Mountain Time on Wednesday, December 28<sup>th</sup>.

An informal or formal complaint concerning this termination may be filed with the Commission. Service will not be terminated prior to the resolution of a filed complaint.

Regards,

Aubrae Sloan  
Finance Team Leader

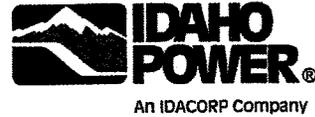
cc: Dan Minor  
Warren Kline  
Mike Youngblood  
Sam Golay  
Idaho Public Utilities Commission

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 2**



December 27, 2011

Hoku Materials, Inc.  
Attn: Austin Webb  
One Hoku Way  
Pocatello, ID 83204

Subject: Final Notice of Termination

Dear Mr. Webb:

Your November Energy Services Agreement invoice D1111002 in the amount of \$1,895,656.26 was due Wednesday, December 21, 2011. As of the morning of December 27, 2011, Idaho Power Company has not received payment of this past-due amount. Per IPUC's Utility Customer Relations Rule 602, failure to pay an undisputed bill is grounds for termination of service. Consistent with Idaho Power's disconnection practices during the holidays, Hoku's energy service will be terminated on Tuesday, January 3, 2012, unless prior payment is received.

An informal or formal complaint concerning this termination may be filed with the Commission. Service will not be terminated prior to the resolution of a filed complaint. Please note that if service is terminated and you wish to reconnect, a reconnection fee will be assessed, for each service connection, and all past-due amounts must be paid in full plus interest.

Regards,

A handwritten signature in cursive script, appearing to read "Aubrae Sloan".

Aubrae Sloan  
Finance Team Leader

cc: Dan Minor  
Warren Kline  
Mike Youngblood  
Sam Golay  
Idaho Public Utilities Commission

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 3**



IDAHO POWER COMPANY  
P.O. BOX 70  
BOISE, IDAHO 83707

June 15, 2011

Hoku Materials, Inc.  
Attn. Mr. Scott Paul  
One Hoku Way  
Pocatello, ID 83204

Dear Mr. Paul,

During the past two weeks we have discussed Hoku Materials, Inc.'s (Hoku) deposit requirements pursuant to Rule L of Idaho Power Company's (IPC) tariff and the Amended and Restated Electric Service Agreement between Idaho Power Company and Hoku Materials, Inc. (Electric Service Agreement). Without relinquishing any rights that IPC may have accrued under the applicable tariff, the Electric Service Agreement, or applicable law, this letter supplements my earlier letter to Hoku of October 27, 2009.

As previously stated, as part of any new large special contract customer's application for service, IPC performs a credit evaluation to determine eligibility for unsecured credit. Based on that evaluation, Hoku will be required to provide a cash deposit or other security acceptable to Idaho Power Company (IPC). Examples of other security are a letter of credit (form, substance and provider must be acceptable to IPC) or a guaranty, acceptable to IPC, by another person or entity which meets IPC's creditworthiness standards.

According to Rule L of IPC's tariff, the amount of the deposit shall not exceed two times the applicant's actual or estimated highest monthly bill. In review of Hoku's anticipated bills for its first year of operations and acknowledging that there will be a ramp up in its operations, a cash deposit or other acceptable security in the amount of \$4,000,000 is required at this time with a supplemental deposit in the amount of \$1,800,000 required on December 31, 2011. The deposit may be applied or utilized by Idaho Power in any manner permitted by Rule L. Each deposit will be held for a minimum of twelve months, at which time IPC will perform a credit evaluation. If the credit evaluation determines Hoku is eligible for unsecured credit, the applicable deposit plus interest will be refunded. Otherwise, each deposit will be retained and a credit evaluation will be performed every twelve months until Hoku is eligible for unsecured credit. Interest will accrue on each deposit at the rate established annually by the Idaho Public Utilities Commission. Currently, the interest rate for customer deposits is 1%.

Sincerely,

Warren Kline  
Vice President, Customer Operations

C: Dan Minor, Executive Vice President, Operations, Dave Joerger, Eastern Regional Manager, Maggie Brilz, Customer Service Manager, Sam Golay, Major Customer Representative, Idaho Power

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-28**

**IDAHO POWER COMPANY**

**ATTACHMENT 4**



**WARREN KLINE**  
Vice President, Customer Operations  
[WKline@idahopower.com](mailto:WKline@idahopower.com)

December 20, 2011

**VIA U.S. MAIL AND E-MAIL**  
[joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)

Dean J. Miller  
McDEVITT & MILLER LLP  
420 East Bannock  
P.O. Box 2564  
Boise, Idaho 83701

Re: Hoku Materials Deposit Required for Electric Service

Dear Joe:

Idaho Power Company ("Idaho Power") has received your letter dated December 16, 2011, requesting that the due date of Hoku Materials' ("Hoku") second deposit installment be extended by approximately sixty (60) days until March 2, 2012. Based upon the representations made in your letter, Idaho Power agrees to this extension conditioned as follows:

1. Hoku remains current on payments owed under Hoku's Amended and Restated Energy Service Agreement ("ESA") (including the \$1,895,656.26 due December 21, 2011, for service rendered in November 2011); and
2. If it appears Hoku will energize the reactors before March 2, 2012, Hoku will so notify Idaho Power and pay the \$1,800,000 second deposit installment in advance of energization.

The forgoing extension of the second deposit installment represents the full extent to which Idaho Power can accommodate Hoku. If Hoku does not satisfy both conditions as set forth above, Idaho Power will take action to terminate service.

Sincerely,

Warren Kline

WK:csb

cc: Lisa Nordstrom, Lead Counsel, Idaho Power Company (via e-mail)  
Scott Paul, CEO, Hoku Corporation (via U.S. Mail and e-mail)