

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>HOKU MATERIALS, INC.,</b>	)	
	)	<b>CASE NO. IPC-E-11-28</b>
<b>COMPLAINANT,</b>	)	
	)	<b>NOTICE OF SCHEDULING</b>
<b>v.</b>	)	
	)	<b>NOTICE OF ORAL ARGUMENT</b>
<b>IDAHO POWER COMPANY,</b>	)	
	)	<b>ORDER NO. 32431</b>
<b>RESPONDENT.</b>	)	

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On December 29, 2011, Hoku Materials, Inc. filed a formal complaint against Idaho Power Company requesting that the Commission not allow the utility to terminate service to Hoku for failure to pay its monthly contractual minimum payments. Hoku is a special contract customer of Idaho Power and is constructing a new polysilicon manufacturing facility in Pocatello. Complaint at ¶ 5. In the complaint, Hoku concedes it did not pay its November electric bill, due and payable December 21, 2011. Hoku suggests that its November bill (approximately \$1.896 million) may be satisfied by withdrawing the same amount from the existing \$4.0 million deposit held by Idaho Power.<sup>1</sup>

On December 30, 2011, Idaho Power filed an “Answer, Motion to Dismiss, and Motion to Set Termination Date” in response to the complaint. In its Answer, Idaho Power requests that the Commission either dismiss the complaint “and/or set a date as soon as possible by which Idaho Power may terminate electric service to Hoku.” Answer at 1. Pursuant to Rule 256, the utility requests expeditious relief because of the “imminent financial harm to Idaho Power and its customers.” *Id.* Based upon the pleadings, we find there is good cause to expedite resolution of this case.

**BACKGROUND**

In its complaint Hoku maintains that its facility is not yet “operational and producing revenue.” Consequently, Hoku must draw on various reserves or loans to pay its monthly operating costs under its special contract. Hoku insists that terminating electric service to its facility means that Hoku cannot complete construction of its plant, store chemicals on-site, and

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<sup>1</sup> The complaint also states that “Hoku is contemplating the filing of an action at the Commission to contest the required contractual minimum [payments].” Complaint at ¶ 2.

threatens 160 jobs, and the protection of various facility “including piping systems, pumps, motors and sensitive electronic equipment that must be kept from freezing.” Complaint at ¶ 4.

Under the “Amended and Restated” special contract between Hoku and Idaho Power, Hoku takes service under two rate blocks. The first block is equivalent to Idaho Power’s avoided cost rates at the time the contract was approved in 2009. The second block of 25 MW or more is consistent with the Company’s approved Schedule 19-T rates. Order No. 31005 at 2. The special contract also has a “take-or-pay” provision. Under the take-or-pay provision, Hoku is required to either take or pay for a certain amount of energy starting April 1, 2011. *Id.* at 4.

In accordance with the Commission’s Utility Customer Relations Rule 605 (IDAPA 31.21.01.605), Idaho Power filed copies of its initial and final “Notice of [Service] Termination” issued to Hoku on December 22 and December 27, 2011, respectively. The date of service termination given in the final notice was January 3, 2012. Rule 605 provides that “[n]o industrial or large commercial customer shall have its service terminated unless the Commission is given written notice seven (7) days before the termination. The Commission may stay termination of service upon its finding that the public interest requires service to be maintained to the customer.”

## **IDAHO POWER ANSWER**

### ***A. Motion to Dismiss***

In its Answer, Idaho Power admits that representatives of Hoku advised the utility 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.” Answer at ¶ 5.

Idaho Power asserts that Hoku has failed to allege any dispute or controversy between the parties. Answer at ¶ 11. Idaho Power insists that it has “gone out of its way to accommodate Hoku” by modifying the original special contract, delaying its implementation, and bifurcating the time when Hoku must make deposits. *Id.* Idaho Power asserts that Hoku has missed the November payment and “has failed to provide Idaho Power with any assurance that such a payment will be forthcoming.” *Id.* at ¶ 12.

Idaho Power believes that Hoku has filed its complaint as a means of “forestalling disconnections 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.” *Id.* at ¶ 13. The

Company maintains that it cannot terminate service to a customer once a customer has filed a complaint “so long as the customer continues to pay all amounts not in dispute, including current utility bills.” *Id.* at ¶ 12 *citing* Rule 402.02, IDAPA 31.21.01.402.02 (emphasis added). Consequently, Idaho Power asserts that there is no real controversy between the parties because Hoku is bound under the take-or-pay provision of the special contract to pay the monthly minimum charge. *Id.* at ¶ 13. Consequently, Idaho Power requests that the Commission dismiss the complaint on fewer than 14 days’ notice. *Id.* at 10-11.

### ***B. The Rule L Deposit***

Idaho Power states that in June 2011, it advised Hoku that it must submit a deposit pursuant to the utility’s Rule L tariff and the terms of the special contract. Rule L generally provides that a deposit not to exceed two times the customer’s actual or estimated highest monthly bill may be required.<sup>2</sup> In a letter dated June 15, 2011, Idaho Power advised Hoku that 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.” Idaho Power Atch. 3. In its Answer, Idaho Power asserts that it subsequently agreed to defer the date by which the \$1.8 million deposit is due to March 2, 2012, “so long as Hoku remained current on payments to Idaho Power pursuant to the [special contract].” Answer at ¶ 9; Atch. 4.

Because Hoku is no longer current in its monthly payments, Idaho Power argues the deposit extension from December 31, 2011 to March 2, 2012 (for the additional \$1.8 million) is no longer effective. *Id.* ¶ 15. “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.” *Id.*

Even though Hoku consented to using deposit funds to pay the November billing, Idaho Power maintains that there is no provision in Rule L “whereby customers can request to use [their] deposit[s] to pay monthly charges. . . .” *Id.* at ¶ 14. Even if it were to use the existing deposit to pay Hoku’s November bill, the funds held in deposit “would quickly dwindle to nothing within the first few days of January 2012.” *Id.* at ¶ 16. If Hoku’s December bill

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<sup>2</sup> Customer Relations Rule 601 provides that an “industrial customer may be required to pay a deposit or make an advanced payment in accordance with the utility’s tariff filed with the Commission.” IDAPA 31.21.01.601.

remained unpaid, then all but about \$100,000 of the original \$4 million deposit would be depleted. *Id.* at ¶ 16.

Idaho Power calculates that Hoku's daily bill under the take-or-pay provision is approximately \$65,000 per day. The Company maintains that it will be adversely impacted if it is required to provide service to a very large customer without receiving any payment for such service.

One outcome of such a scenario would be that [Idaho Power] would be required to accelerate additional accumulated deferral investment tax credits (ADITC) 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 the 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 its service.

*Id.* at ¶ 17. Consequently, Idaho Power requests that the Commission set a specific date as soon as possible by which Idaho Power can terminate service to Hoku. The Company further requests that such an Order state that Hoku can avoid service termination if Hoku "brings current all outstanding amounts it owes to [Idaho Power] as well as immediately provides Idaho Power the additional required \$1.8 million deposit." *Id.* at ¶ 18.

#### **NOTICE OF SCHEDULING**

At our decision meeting on January 3, 2012, Staff counsel advised us that the parties had reached agreement on a proposed schedule to process this complaint. The parties also agreed that written pleadings supplemented by oral argument will develop a sufficient record for the Commission to decide this complaint. Based upon the parties' agreement and the request for expedited treatment, we find there is good cause to schedule oral argument on less than 14 days notice. Given the parties' recommendation, we set the following schedule:

<b>DATE</b>	<b>ACTION</b>
January 9, 2012	Hoku's Reply to Idaho Power's Answer
January 11, 2012	Oral argument

## NOTICE OF ORAL ARGUMENT

YOU ARE HEREBY NOTIFIED that the Commission shall hear oral argument in this matter on **JANUARY 11, 2012, AT 2:00 P.M. IN THE COMMISSION HEARING ROOM, 472 WEST WASHINGTON STREET, BOISE, IDAHO.**

YOU ARE FURTHER NOTIFIED that if the parties desire to submit exhibits, each party is assigned the following exhibit numbers:

Hoku:	Exhibit Nos. 1-99
Staff:	Exhibit Nos. 100-199
Idaho Power:	Exhibit Nos. 200-299

All exhibits must comply with the requirements of Rule 231 of the Commission's Rules of Procedure. IDAPA 31.01.01.231.

YOU ARE FURTHER NOTIFIED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0338 (Telephone)  
(208) 334-3762 (FAX)  
E-Mail: [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov)

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and specifically *Idaho Code* §§ 61-503, 61-507, 61-612 through 61-616, 61-621, and IDAPA 31.21.01.401, .602, and .605. The Commission may enter any final Order consistent with its authority under Title 61.


YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

## ORDER

IT IS HEREBY ORDERED that the parties adhere to the schedule set out above. Oral argument in this matter shall be heard on January 11, 2012 in the Commission's Hearing Room.

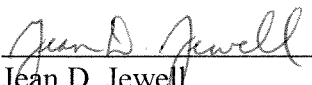
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 5<sup>th</sup> day of January 2012.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
\_\_\_\_\_  
MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

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