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2012 JAN -9 PM 3:11  
IDAHO PUBLIC  
UTILITIES COMMISSION

Chas. F. McDevitt  
Dean J. (Joe) Miller

January 9, 2012

*Via Hand Delivery*

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington St.  
Boise, Idaho 83720

NEW CASE

Re: **Hoku Materials, Inc. v. Idaho Power**  
Case No. ~~IPC-11-13~~

Dear Ms. Jewell:

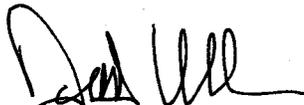
IPC-E-12-02

Enclosed for filing in the above matter, please find an original and seven (7) copies of Hoku Materials, Inc.'s Complaint for Contract Reformation and Reparations.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh  
Encl.

ORIGINAL

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IDAHO PUBLIC  
UTILITIES COMMISSION

NEW CASE

*Attorneys for Hoku Materials, Inc.*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

HOKU MATERIALS INC,

Complainant,

v.

IDAHO POWER COMPANY,

Respondent.

Case No.

**COMPLAINT FOR CONTRACT  
REFORMATION AND  
REPARATIONS**

IPC-E-12-02

COMES NOW Hoku Materials Inc., (“Hoku”), pursuant to RP 54, and for claims against Idaho Power Company (“Idaho Power”, “the Company”, “IPCo”) complains and alleges as follows, to wit:

**STATEMENT OF FACTS**

1. Hoku is a corporation organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of Idaho.
2. Hoku is constructing a manufacturing facility in Pocatello, Idaho, for the purpose of manufacturing, marketing and selling polysilicon to the solar industry (“Facility”).
3. Idaho Power Company is an electric utility company subject to the jurisdiction of the Idaho Public Utilities Commission (“Commission”).

4. On September 17, 2008, Hoku and Idaho Power entered into an Agreement for Electric Service for the supply of electric power and energy to the Facility. On June 19, 2009, Hoku and Idaho Power entered into an Amended and Restated Agreement for Electric Service (“AESAs”) which superseded and replaced the September 17, 2008, Agreement for Electric Service. On July 24, 2009, the Commission entered Order No. 30869, Case No. IPC-E-08-21 approving the AESA. A true and correct copy of the AESA is attached hereto as Exhibit 1.

5. Pursuant to the AESA, Hoku’s demand and energy requirements are divided into two blocks for pricing purposes. The AESA defines First Block Contract Demand and the number of kilowatts Idaho Power has agreed to make available as listed in Section 6 of the AESA. First Block Energy is the number of kilowatt hours determined by multiplying the First Block Contract Demand by the number of hours in the billing period, multiplied by the Contract Load Factor. Under the AESA, commencing in April of 2011, Hoku is obligated to pay the First Block Demand and Energy Charges regardless of whether it actually consumes or demands energy.

6. The AESA establishes a rate for First Block Energy charges of \$.061660. The AESA rate for First Block Energy charges was established by reference to Idaho Power’s then existing published avoided costs. Since 2009 the Commission has entered orders lowering Idaho Power’s avoided costs and current avoided costs are approximately 12% lower than the First Block Energy rate contained in the AESA.

7. Hoku re-alleges as if fully set forth herein, and incorporates by reference, paragraphs 9—12 of Hoku’s Response to Idaho Power Pleadings, filed contemporaneously herewith.

8. At the time the AESA was executed it was the mutual assumption of the parties that the polysilicon deposition reactors would be energized and operational, and Hoku would begin its production ramp-up by December 1, 2009.

9. Through a series of events and circumstances beyond the control of Hoku, although some of the polysilicon deposition reactors have been energized and become operational, Hoku has not yet begun its production ramp-up.

10. Paragraph 5.7 of the AESA provides:

“Release of First Block Energy: With adequate notice and the written consent of Idaho Power, Hoku may request a release of all or part of its First Block Energy purchase commitment in return for credit on its First Block Energy Charge. The value of the credit will be determined by mutual agreement and will take into consideration the timing of the notice and Idaho Power's ability to manage any supply commitments made on Hoku's behalf.”

11. In March, 2011, Hoku's officials met with Idaho Power's officials at Idaho Power's offices and requested of Idaho Power a release of First Block Energy pursuant to paragraph 5.7 of the AESA. Idaho Power unreasonably refused a release. On or about August 16, 2011, Hoku requested in writing of Idaho Power a release of First Block Energy pursuant to Paragraph 5.7. Idaho Power again unreasonably refused a release.

12. As written, Paragraph 5.7 is contrary to the public interest because it vests sole discretion in Idaho Power Company.

#### **STATEMENT OF LEGAL AUTHORITY**

13. While Hoku acknowledges that the Commission does not have authority to alter a contract merely to relieve one or the other of the parties from an unprofitable or injudicious undertaking, the Commission does have the authority and the responsibility to reform or alter terms of contracts that are contrary to the public interest. The Idaho Supreme Court has confirmed the Commission's authority to modify contracts when required by the public interest.

*See Agricultural Products v. Utah Power & Light*, 98 Idaho 23, 557 P.2d 617 (1976). And, Idaho Power Company has recently acknowledged this authority in pleadings filed with the Commission:

“The Commission, in its role as the regulatory authority for all investor owned, public utilities in the state of Idaho, has an independent obligation and duty to assure that all contracts entered into by the public utilities it regulates are ultimately in the public interest. In the state of Idaho, contracts are afforded constitutional protection against interference from the State. Idaho Const. Art. I, § 16. However, despite this constitutional protection, the Commission may annul, supersede, or reform the contracts of the public utilities it regulates in the public interest. *Agricultural Products Corp. V. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617, 623 (1976) (“Interference with private contracts by the state regulation of rates is a valid exercise of the police power, and such regulation is not a violation of the constitutional prohibition against impairment of contractual obligations.”); see also *Federal Power Comm's v. Sierra Pac. Power Co.*, 350, US. 348, 76 S.Ct. 368, 100 L.Ed. 388 (1 956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373 (1956) (U.S. Supreme Court finding that rates fixed by contract could be modified only “when necessary in the public interest”). The Commission may interfere in such a way with the contracts of a public utility only to prevent an adverse affect to the public interest. *Agricultural Products*, 98 Idaho at 29. “Private contracts with utilities are regarded as entered into subject to reserved authority of the state to modify the contract in the public interest.” *Id.*” See Reply Comments of Idaho Power Company, Case No. IPC-E-10-59. (2011).

The Commission has recently exercised its public interest authority not merely to modify contracts, but to reject them entirely. See e.g. Order No. 32256, Case No. IPC-E-11-58, Order No. 32298, Case No. IPC-E-51—55; Order No. 32255, Case No. IPC-E-11-57.

The AESA by its own terms implies that the Commission may modify contract terms.

Section 14.1 provides:

“The terms, conditions, and rates set forth in this Agreement and Schedule 32 are subject to the continuing jurisdiction of the Commission.”

The Commission also has authority to require reparations for excessive or discriminatory charges pursuant to Idaho Code §61-641:

**“61-641. Overcharge—Reparation.—**When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product, or commodity, furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection: provided, no discrimination will result from such reparation. [1913, ch. 61, § 67a, p. 247; reen. C.L. 106:147; C.S., § 2515; I.C.A., § 59-641.]”

**FIRST CLAIM FOR RELIEF—CONTRACT REFORMATION**

14. Paragraph 5.7 should be reformed to provide:

“Release of First Block Energy: With adequate notice and the written consent of Idaho Power or by order of the Commission, Hoku may request a release of all or part of its First Block Energy purchase commitment in return for credit on its First Block Energy Charge. The value of the credit will be determined by mutual agreement or by order of the Commission and will take into consideration the timing of the notice and Idaho Power's ability to manage any supply commitments made on Hoku's behalf.”

**SECOND CLAIM FOR RELIEF—REPARATIONS**

15. Hoku is entitled to reparations for First Block Energy and Demand payments in an amount to be determined by the Commission.

**THIRD CLAIM FOR RELIEF—SUSPENSION OF FIRST BLOCK ENERGY**

16. The Commission should enter its order releasing First Block Energy charges until such time as Hoku is prepared to commence the production ramp-up of its polysilicon deposition reactors.

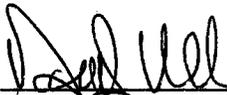
WHEREFORE, Hoku respectfully requests of the Commission that:

1. Reform the ARESA as herein requested.
2. Release First Block Energy as herein requested.
3. Award to Hoku reparations in an amount to be determined.

4. Grant such other relief as is appropriate in the circumstance.

DATED this 4 day of January, 2012.

HOKU MATERIALS, INC

By:  \_\_\_\_\_  
Dean J. Miller  
*Attorney for Hoku Materials, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of January, 2012, I caused to be served a true and correct copy of the foregoing document, upon:

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, ID 83720-0074  
[jjewell@puc.state.id.us](mailto:jjewell@puc.state.id.us)

Hand Delivered   
U.S. Mail   
Fax   
Fed. Express   
Email

Lisa D. Nordstrom  
Idaho Power Company  
1221 W. Idaho St. (83702)  
PO Box 70  
Boise, ID 83707-0070  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

Hand Delivered   
U.S. Mail   
Fax   
Email

MCDEVITT & MILLER LLP

BY Heather Houle

AMENDED AND RESTATED ELECTRIC SERVICE AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
HOKU MATERIALS, INC

THIS AMENDED AND RESTATED AGREEMENT FOR ELECTRIC SERVICE ("Agreement") is executed on June 19, 2009, by HOKU MATERIALS, INC, a Delaware Corporation ("Hoku") and IDAHO POWER COMPANY, an Idaho Corporation ("Idaho Power"). In consideration of the mutual covenants hereinafter set forth, the parties hereby agree as follows:

SECTION 1 - SPECIAL CONTRACT

1.1 This Agreement is a Special Contract as described in Idaho Power's Schedule 19. This Agreement supercedes and replaces the Agreement for Electric Service between the parties dated September 17, 2008.

SECTION 2 - DEFINITIONS

When used in this Agreement:

2.1. "Commission" shall mean the Idaho Public Utilities Commission or its successor agency.

2.2. "Construction Agreement" shall mean that certain Agreement for Construction of Hoku Electric Substation and Associated Facilities dated as of December 28, 2007, by and between Hoku and Idaho Power, as such may be amended from time to time.

2.3. "Contract Load Factor" shall mean 90 percent for purposes of establishing the energy blocks for monthly billing.

2.4. "Embedded Date" shall mean December 1, 2013.

2.5. "Embedded Rate" shall mean the demand and energy rates detailed in the Company's then-effective Schedule 19T.

2.6. "Excess Demand" shall mean the average kilowatts supplied during the coincident 15-consecutive-minute period of maximum use each day, adjusted for Power Factor, which exceeds the Total Contract Demand.

2.7. "Excess Energy" shall mean any kilowatt-hours of energy supplied to the Hoku Facility during the monthly billing period as measured by the metering equipment located at the Points of Delivery that exceeds the sum of the First Block Energy and the Second Block Energy.

2.8. "First Block Contract Demand" shall mean the monthly number of kilowatts Idaho Power has agreed to make available to the Hoku Facility in accordance with the Scheduled Contract Demand in Section 6.

2.9. "First Block Energy" shall mean the kilowatt-hours determined by multiplying the First Block Contract Demand by the number of hours in the billing period multiplied by the Contract Load Factor.

2.10. "Hoku Facility" shall mean the Hoku Polysilicon Production complex located on One Hoku Way, Pocatello, Idaho.

2.11. "Interconnection Facilities" shall mean all facilities which are reasonably required by Prudent Electrical Practices and the National Electric Safety Code to interconnect and deliver electrical power and energy to the Hoku Facility, including, but not limited to, transmission facilities, substation facilities and metering equipment.

2.12. "Minimum Billed Energy" shall mean the number of kilowatt-hours determined by multiplying 50% of the Total Contract Demand for the billing month by the number of hours in the billing month at the Contract Load Factor.

2.13. "Points of Delivery" shall mean the locations specified in paragraph 5.2 where the electrical facilities owned by Hoku are interconnected to the electrical facilities owned by Idaho Power and where power and energy are delivered by Idaho Power for the purpose of providing electrical service for the operations of the Hoku Facility.

2.14. "Power Factor" shall mean the percentage obtained by dividing the maximum demand recorded in kW by the corresponding kilovolt-ampere (kVa) demand established by Hoku.

2.15. "Prudent Electrical Practices" shall mean those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and utility operation to operate electrical equipment and deliver electric power and energy with safety, dependability, efficiency and economy.

2.16. "Schedule 19" shall mean the Company's then effective Idaho Retail Tariff Schedule 19T.

2.17. "Schedule 32" shall mean the Hoku tariff schedule of rates and charges or its successor schedules.

2.18. "Scheduled Contract Demand" is defined in Section 6.1.1 below.

2.19. "Second Block Contract Demand" shall mean 25,000 kilowatts.

2.20. "Second Block Energy" shall mean the total kilowatt-hours supplied to the Hoku Facility during the monthly billing period as measured by the metering equipment located at the Points of Delivery less the First Block Energy, but no greater than 25,000 kilowatts multiplied by the number of hours in the billing period multiplied by the Contract Load Factor.

2.21. "Total Contract Demand" shall mean the sum of the First Block Contract Demand and the Second Block Contract Demand as specified in Section 6, and as such may be modified pursuant to Section 6.2 below.

2.22. "Transformer Losses" shall mean energy losses resulting when a transformer changes the voltage level of alternating current electricity. Transformer losses will be accounted for in the initial metering installation.

### SECTION 3 - TERM OF AGREEMENT

3.1 This Agreement shall become effective as provided in paragraph 15.1 and remain in effect through the Embedded Date and will be automatically renewed thereafter until either Hoku or Idaho Power terminates this Agreement as provided in paragraph 4.1.

3.2 It is the intention of the parties that following the Embedded Date, the parties shall enter into a new Special Contract whereby Hoku shall pay energy and demand rates that are equal to the lesser of the then-applicable Schedule 19 rate or the average of the contract rates in Idaho Power's then-effective other "Special Contracts". These Special Contract rates will remain in effect on an interim basis until the next final Commission order in a general rate case proceeding.

3.3 Service under this Agreement will commence December 1, 2009.

### SECTION 4 - TERMINATION

4.1 Notice of Termination: After the Embedded Date, either party to this Agreement shall have the right to terminate this Agreement by delivering written notice of termination to the other party. The effective date of termination will be specified in the termination notice, but such effective date cannot be earlier than 12 months after the date of the delivery of the notice of termination. If both parties give notice of termination, the earliest effective date will prevail. If the effective date of a termination occurs before the new Special Contract is effective between the Parties as described in Section 3.1 above, then the applicable energy and demand rates shall be the Embedded Rate.

### SECTION 5 - SERVICES TO BE PROVIDED

5.1 Supply Obligation: In accordance with Prudent Electrical Practices and the provisions of this Agreement, Idaho Power will furnish Hoku's total requirements for electric power and energy at the Hoku Facility. Hoku will not resell any portion of the power and energy furnished under this Agreement.

5.2 Points of Delivery: Electric power and energy shall be delivered by Idaho Power at each point generally described as the load side terminals of the substation transformer 13.8 kilovolt disconnect switches at the Hoku Facility.

5.3 Adjustment for Transformer Losses: Metering on the load side of the substation transformers will be adjusted for Transformer Losses.

5.4 Description of Electric Service: Idaho Power shall supply three-phase, 60 hz alternating current at nominal 13,800 volts, with a maximum steady state variation of plus or minus five percent (5%) under normal system conditions. Consistent with Prudent Electrical Practices, Idaho Power will operate within the capability of its existing system to minimize voltage level fluctuations, the normal frequency variation to be within plus or minus 0.05 hz on a 60 hz base.

5.5 Available Capacity: Idaho Power will make power available to Hoku in an amount equal to the kilowatts of Total Contract Demand shown in Section 6.1.1.

5.6 Request for Proposals: During the initial term of the agreement, at Hoku's request, Idaho Power will use commercially reasonable efforts to obtain proposals to supply power to meet Hoku's summer loads not served by Idaho Power. Idaho Power will customize such supply request to match Hoku's requirements. These additional purchases are subject to Idaho Power's ability to deliver the power to Hoku and Hoku's acceptance of the price and terms of the proposals. Hoku is responsible for the full costs of these purchases and any associated transmission and ancillary service expense to transport such purchases to the Hoku Facility.

5.7 Release of First Block Energy: With adequate notice and the written consent of Idaho Power, Hoku may request a release of all or part of its First Block Energy purchase commitment in return for credit on its First Block Energy Charge. The value of the credit will be determined by mutual agreement and will take into consideration the timing of the notice and Idaho Power's ability to manage any supply commitments made on Hoku's behalf.

**SECTION 6 - CONTRACT DEMAND**

6.1 Contract Demand Provisions prior to the Embedded Date: The following provisions apply during the period of time from December 1, 2009 to the Embedded Date, while Hoku is changing its load at the Hoku Facility.

6.1.1 Scheduled Contract Demand: Hoku agrees to contract for, and Idaho Power agrees to provide power made available to the Hoku Facility in the following amounts expressed in kilowatts (the "Scheduled Contract Demand"):

Time <u>Period</u>	First Block Contract <u>Demand</u>	Second Block Contract <u>Demand</u>	Total Contract <u>Demand</u>
12/1/2009 – 12/31/2009 .....	1,000	25,000	26,000
1/1/2010 – 1/31/2010 .....	8,000	25,000	33,000
2/1/2010 – 2/28/2010 .....	17,000	25,000	42,000
3/1/2010 – 4/30/2010 .....	19,000	25,000	44,000
5/1/2010 – 6/15/2010 .....	32,000	25,000	57,000
6/16/2010 – 8/15/2010 .....	18,000	25,000	43,000
8/16/2010 – 9/15/2010 .....	42,000	25,000	67,000
9/16/2010 – 12/31/2010 .....	57,000	25,000	82,000
1/1/2011 – 6/15/2011 .....	57,000	25,000	82,000
6/16/2011 – 8/15/2011 .....	18,000	25,000	43,000
8/16/2011 – 9/15/2011 .....	42,000	25,000	67,000
9/16/2011 – 12/31/2011 .....	57,000	25,000	82,000
1/1/2012 – 6/15/2012 .....	57,000	25,000	82,000
6/16/2012 – 8/15/2012 .....	18,000	25,000	43,000

8/16/2012 – 9/15/2012 .....	42,000	25,000	67,000
9/16/2012 – 12/31/2012 .....	57,000	25,000	82,000
1/1/2013 – 12/1/2013 .....	57,000	25,000	82,000

6.2 Contract Demand Provisions after Initial Expansion: After the Embedded Date, Hoku has the option to increase or decrease its Total Contract Demand level as follows:

6.2.1 Increases to Total Contract Demand: Under the terms of this Agreement, Hoku may increase the Total Contract Demand above 82,000 kilowatts by increasing the First Block Contract Demand in increments of 1,000 to 10,000 kilowatts per year up to a Total Contract Demand of 175,000 kilowatts. Hoku will notify Idaho Power in writing of the additional capacity requirements at least one year in advance. The new Total Contract Demand will be in effect for a minimum of one year. Increases to Total Contract Demand are subject to the availability of adequate capacity in Idaho Power's facilities to provide the requested service.

6.2.2 Decreases to Total Contract Demand: After the Embedded Date, Hoku may decrease the Total Contract Demand by reducing the First Block Contract Demand in decrements of 1,000 kilowatts. Total Contract Demand may not be decreased below 25,000 kilowatts. Hoku will notify Idaho Power in writing of the decrease in capacity requirements at least one year in advance. The new Total Contract Demand will be in effect for a minimum of one year.

6.3 Excess Demand: Prior to the Embedded Date, and subject to Section 6.2.1 above, the availability of power in excess of the Total Contract Demand is not guaranteed, and if the average kilowatts supplied at the Hoku Facility during the 15-consecutive-minute period of maximum use each day, adjusted for power factor, exceeds the Total Contract Demand, Idaho Power may curtail service to the Hoku Facility. Idaho Power reserves the right to install, at any time, at Hoku's expense, any device necessary to protect Idaho Power's system from damage which may be caused by the taking of Excess Demand. Hoku will be responsible for any damages to Idaho Power's system or damages to third parties resulting from the taking of Excess Demand. Hoku agrees to use its best reasonable efforts to monitor its electric loads and to advise Idaho Power as soon as possible of the potential for Excess Demand at the Hoku Facility. Excess Demand will be subject to the Daily Excess Demand Charge and the Monthly Excess Demand Charge specified in Schedule 32.

6.4 Proration: Billings during months that contain a change in the Scheduled Contract Demand will be prorated.

## SECTION 7 - FACILITIES FOR DELIVERY TO HOKU FACILITY

7.1 Additional Facilities: The parties acknowledge that they have separately entered into the Construction Agreement, pursuant to which Hoku is paying Idaho Power to construct the Interconnection Facilities necessary to provide the Total Contract Demand under this Agreement. Idaho Power represents and warrants to Hoku that none of the charges set forth in Schedule 32 include any cost reimbursement or adjustment that is already being paid by Hoku pursuant to the Construction Agreement, and that such Interconnection Facilities are sufficient to supply the Scheduled Contract Demand. To the extent that additional transmission and/or substation Interconnection

Facilities are required to provide additional service pursuant to Section 6.2.1 above, special arrangements will be made in a separate Agreement between Hoku and Idaho Power.

7.2 **Operation and Maintenance:** Idaho Power will operate and maintain Interconnection Facilities necessary to provide service to the Hoku Facility. Such Interconnection Facilities include Interconnection Facilities paid for by Hoku, including those paid for by Hoku pursuant to the Construction Agreement. Idaho Power shall operate and maintain such Interconnection Facilities in accordance with Prudent Electrical Practices.

#### SECTION 8 - CHARGES TO BE PAID BY HOKU TO IDAHO POWER

8.1 **Rates and Charges:** The rates and charges for electrical power, energy and other services provided by Idaho Power to the Hoku Facility are identified by component in Schedule 32. The total amount to be paid by Hoku for electric service to the Hoku Facility will be the sum of the components identified on Schedule 32.

8.2 **Power Factor:** When the Hoku Facility's Power Factor is less than 95 percent during the 15-consecutive-minute period of maximum use for the monthly billing period, Idaho Power will determine the Total Billing Demand by multiplying the metered demand in kilowatts by 0.95 and dividing that product by the Power Factor.

8.3 **Billing and Metering Provisions:** Idaho Power will install and maintain suitable metering equipment for each Point of Delivery so that coincident demand and energy consumption can be determined for the billing period.

8.4 **First Block Contract Demand Charge:** The First Block Contract Demand Charge is fixed and is not subject to change through the Embedded Date. After the Embedded Date, the Contract Demand Charge is subject to change and revision by order of the Commission. After the Embedded Date, Idaho Power will advocate for Commission acceptance of the ratemaking treatment for the Special Contract described in Section 3.2 above.

8.5 **First Block Energy Charge:** The First Block Energy Charge and Excess Energy Charge are fixed and are not subject to change through the Embedded Date. After the Embedded Date, the Energy Charge and Excess Energy Charge are subject to change and revision by order of the Commission. After the Embedded Date, Idaho Power will advocate for Commission acceptance of the ratemaking treatment for the Special Contract described in Section 3.2 above.

8.6 **Second Block Charges:** The Second Block Contract Demand Charge and the Second Block Energy Charge will increase or decrease uniformly with any base rate change authorized by the Commission that is applicable to Idaho Power's Tariff Schedule 19T through the Embedded Date. After the Embedded Date, the Second Block Contract Demand Charge and the Second Block Energy Charge are subject to change and revision by order of the Commission.

8.7 **Power Cost Adjustment:** The Power Cost Adjustment (PCA) rate as defined under Idaho Power's Tariff Schedule 55 will be applied to the Second Block Energy only. The PCA rate will not apply to the First Block Energy or to Excess Energy.

8.8 **Conservation Program Funding Charge:** The Conservation Program Funding Charge as specified in Idaho Power's Tariff Schedule 91 for Schedule 19 will be applied to the sum of the Second Block Charges, Excess Demand Charges,

and Excess Energy Charges. Beginning December 1, 2011, the Conservation Program Funding Charge will also apply to First Block Charges.

8.9 Minimum Energy Charges: Each month Hoku will be billed for the actual metered kilowatt-hours of energy, but no less than the Minimum Billed Energy amount defined in Section 2.12.

#### SECTION 9 - PAYMENT OF BILLS/SETTLEMENTS

9.1 Billing Data: Hoku shall pay Idaho Power for all services provided under this Agreement. Invoices for payment for electric services shall be prepared and submitted to Hoku monthly. All invoices or bills shall contain such data as may be reasonably required to substantiate the billing.

9.2 Payment Procedure: All bills or accounts for electric service owed by Hoku to Idaho Power hereunder shall be due and payable within fifteen (15) days following Hoku's receipt of a bill. Payment will be made by electronic transfer of funds. Idaho Power will provide Hoku with current ABA routing numbers and other necessary instructions to facilitate the electronic transfer of funds.

#### SECTION 10 - ACCESS TO PREMISES

10.1 During the term of this Agreement, and for a reasonable period following termination, Idaho Power shall have access to the Hoku Facility premises at all times for the purposes of reading meters; making installations, repairing and removing Interconnection Facilities and Idaho Power equipment and for other proper purposes hereunder.

#### SECTION 11 - ASSIGNMENT

11.1 This Agreement shall be binding upon the heirs, legal and personal representatives, successors and assigns of the parties hereto.

#### SECTION 12 - LIABILITY

12.1 Each party agrees to protect, defend, indemnify and hold harmless the other party, its officers, directors, and employees against and from any and all liability, suits, loss, damage, claims, actions, costs, and expenses of any nature, including court costs and attorney's fees, even if such suits or claims are completely groundless, as a result of injury to or death of any person or destruction, loss or damage to property arising in any way in connection with, or related to, this Agreement, but only to the extent such injury to or death of any person or destruction, loss or damage to property is not due to the negligence or other breach of legal duty of such other party; provided; however, that each party shall be solely responsible for claims of and payment to its employees for injuries occurring in connection with their employment or arising out of any workman's compensation law.

12.2 Limitation of Liability: Neither party shall, in any event, be liable to the other for any special, incidental, exemplary, punitive or consequential damages such as, but not limited to, lost profits, revenue or good will, or interest, whether such loss is based on contract, warranty, negligence, strict liability or otherwise.

### SECTION 13 - MODIFICATIONS OF CONTRACT

13.1 This Agreement may not be modified except by writing, duly signed by both parties hereto.

### SECTION 14 - COMMISSION JURISDICTION

14.1 This Agreement and the respective rights and obligations of the parties hereunder, shall be subject to (1) Idaho Power's General Rules and Regulations as now or hereafter in effect and on file with the Commission and (2) to the jurisdiction and regulatory authority of the Commission and the laws of the State of Idaho.

14.2 [The terms, conditions, and rates set forth in this Agreement and Schedule 32 are subject to the continuing jurisdiction of the Commission.] The rates under this Agreement are subject to change and revision by order of the Commission upon a finding, supported by substantial competent evidence, that such rate change or revision is just, fair, reasonable, sufficient, nonpreferential, and nondiscriminatory. It is the parties' intention by such provision that the rate making standards to be used in making any revisions or changes in rates, and the judicial review of any revisions or changes in rates, will be the same standards that are applicable to Idaho intrastate tariff rates.

### SECTION 15 - COMMISSION APPROVAL

15.1 This Agreement shall become effective upon the approval by the Commission of all terms and provisions hereof without change or condition.

IDAHO POWER COMPANY

BY

ITS

AR Gale  
Vice President - Regulatory Affairs

HOKU MATERIALS, INC.

BY

ITS

**IDAHO POWER COMPANY**

BY \_\_\_\_\_

ITS \_\_\_\_\_

**HOKU MATERIALS, INC.**

BY  \_\_\_\_\_

ITS Chief Operating Officer \_\_\_\_\_