



RECEIVED

2012 FEB 17 PM 3:59

IDAHO PUBLIC  
UTILITIES COMMISSION

**JASON B. WILLIAMS**  
Corporate Counsel  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

February 17, 2012

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-12-02  
*IN THE MATTER OF THE PETITION OF HOKU MATERIALS, INC. FOR  
REPARATIONS AND REFORMATION OF ITS AMENDED SPECIAL  
CONTRACT WITH IDAHO POWER COMPANY*

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of the Joint Motion for Approval of Settlement Stipulation in the above matter.

Also enclosed for filing are nine (9) copies of the testimony of Michael J. Youngblood in support of the settlement stipulation. One copy of Mr. Youngblood's testimony has been designated as the "Reporter's Copy." In addition, a disk containing a Word version of Mr. Youngblood's testimony is enclosed for the Reporter.

Very truly yours,



Jason B. Williams

JBW:csb  
Enclosures

DEAN J. MILLER (ISB No. 1968)  
CHAS. F. McDEVITT (ISB No. 835)  
McDEVITT & MILLER, LLP  
420 West Bannock Street (83702)  
P.O. Box 2564  
Boise, Idaho 83701  
Telephone: (208) 343-7500  
Facsimile: (208) 336-6912  
[joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)

RECEIVED  
2012 FEB 17 PM 3:59  
IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Hoku Materials, Inc.

JASON B. WILLIAMS (ISB No. 8718)  
LISA D. NORDSTROM (ISB No. 5733)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5104  
Facsimile: (208) 388-6936  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF )	
HOKU MATERIALS, INC. FOR )	CASE NO. IPC-E-12-02
REPARATIONS AND REFORMATION )	
OF ITS AMENDED SPECIAL )	JOINT MOTION FOR APPROVAL
CONTRACT WITH IDAHO POWER )	OF SETTLEMENT STIPULATION
COMPANY )	
)	

---

COMES NOW, Hoku Materials, Inc. ("Hoku"), Idaho Power Company ("Idaho Power" or "Company"), and the Staff ("Staff") of the Idaho Public Utilities Commission ("Commission") (referred to herein collectively as the "Parties"), by and through their undersigned attorneys, and hereby move the Commission for an order accepting the settlement stipulation ("Settlement Stipulation") filed herewith. This Motion is based on the following:

## I. BACKGROUND

1. 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, at the request of Hoku, Idaho Power submitted a motion for a Commission order authorizing a delay in the commencement of the ESA until December 1, 2009. Idaho Power and Hoku subsequently submitted an Amended and Restated Electric Service Agreement (“AESA”) for Commission approval. By Order dated July 24, 2009, the Commission approved the request to delay the original 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)).

2. 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.*

3. Idaho Power issued an invoice to Hoku in early December 2011, in the amount of approximately \$1.9 million for services provided to Hoku for November 2011. Idaho Power did not receive payment from Hoku by the December 21, 2011, invoice due date. On December 22, 2011, Idaho Power sent Hoku an Initial Notice of Termination, per the Commission’s Utility Customer Relations Rules 602 and 603, indicating that service to the Hoku facility would be terminated on the morning of Thursday, December 29, 2011. On December 27, 2011, Idaho Power sent Hoku a Final Notice of Termination indicating that, consistent with the Company’s disconnection practices during the holidays, Hoku’s energy service would not be terminated for non-payment until Tuesday, January 3, 2012.

4. On December 29, 2011, Hoku filed a Complaint against Idaho Power at the Commission, Case No. IPC-E-11-28. Idaho Power submitted an Answer, Motion to Dismiss, and Motion to Set Termination Date on December 30, 2011. On January 5, 2012, the Commission issued a Notice of Scheduling and Notice of Oral Argument, setting an oral argument on Hoku’s Complaint and the Company’s Motion to Dismiss for January 11, 2012. On January 9, 2012, Hoku submitted a Response to the Company’s Motion to Dismiss as well as a Complaint for Contract Reformation and Reparations, which the Commission subsequently renamed as In the Matter of the Petition of Hoku Materials, Inc. for Reparations and Reformation of Its Amended Special Contract With Idaho Power Company and for which a new case was established, Case No. IPC-E-12-02. Oral argument was heard on January 11, 2012. On January 13, 2012, Hoku and Idaho Power each submitted Supplemental Statements of Facts. On January 13, 2012,

the Commission issued Final Order No. 32437, resolving Hoku's Complaint. That Order granted in part and denied in part Hoku's Complaint and directed Idaho Power and Hoku to enter into immediate negotiations to see if settlement of the Petition for Reformation was possible. Order No. 32437 further directed Commission Staff to mediate those settlement discussions. Hoku, Idaho Power, and Staff engaged in a series of settlement discussions after the issuance of Order No. 32437.

5. Based on the settlement negotiations, the Parties have agreed to resolve and settle all of the issues in the case. A copy of the signed Settlement Stipulation evidencing that settlement is included as Attachment No. 1. The Settlement Stipulation provides Hoku relief in the form of reduced minimum payments under the AESA for up to the next eighteen (18) months while at the same time protecting Idaho Power and its customers by requiring a one-time, up front payment in addition to repayment of deferred amounts during the final year of the contract. In addition, the Settlement Stipulation proposes to extend the term of the contract to December 1, 2014.

6. Filed contemporaneously herewith are the direct testimonies of Scott Paul on behalf of Hoku, Michael J. Youngblood on behalf of Idaho Power, and Randy Lobb on behalf of the Commission Staff in support of the Settlement Stipulation. For the reasons set forth therein, the Parties believe the Settlement Stipulation is reasonable and in the public interest.

7. The Parties recommend that the Commission grant this Motion and approve the Settlement Stipulation in its entirety, without material change or condition, pursuant to RP 274.

8. Within thirty (30) days of the entry of a final order approving the Settlement Stipulation without modification or condition, Idaho Power and Hoku will prepare and execute a Second Amended and Restated Electric Service Agreement

incorporating the terms of the Settlement Stipulation and file the same with the Commission.

## **II. REQUEST FOR MODIFIED PROCEDURE**

9. Pursuant to RP 201, the Parties believe the public interest does not require a hearing to consider the issues presented by this Motion and the Parties request it be processed by Modified Procedure.

10. In order to promptly settle the rights and expectations of the Parties, the Parties request expeditious consideration of the Settlement Stipulation and recommend that the Commission establish a fourteen (14) day comment period.

NOW, THEREFORE, the Parties respectfully request that the Commission enter its Order (1) directing that consideration of the Settlement Stipulation be by Modified Procedure with a fourteen (14) day comment period thereafter; (2) approving the Settlement Stipulation without condition or modification; and (3) directing that Hoku and Idaho Power file with the Commission within thirty (30) days of a final order approving the Settlement Stipulation a Second Amended and Restated Electric Service Agreement and thereupon dismissing with prejudice Hoku's Petition.

Respectfully submitted this 17<sup>th</sup> day of February 2012.

  
\_\_\_\_\_  
JASON B. WILLIAMS  
Attorney for Idaho Power Company

\_\_\_\_\_  
DEAN J. MILLER  
Attorney for Hoku Materials, Inc.

\_\_\_\_\_  
DONALD L. HOWELL, II  
Deputy Attorney General  
Attorney for Commission Staff

incorporating the terms of the Settlement Stipulation and file the same with the Commission.

**II. REQUEST FOR MODIFIED PROCEDURE**

9. Pursuant to RP 201, the Parties believe the public interest does not require a hearing to consider the issues presented by this Motion and the Parties request it be processed by Modified Procedure.

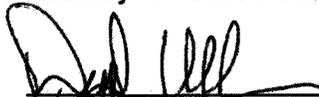
10. In order to promptly settle the rights and expectations of the Parties, the Parties request expeditious consideration of the Settlement Stipulation and recommend that the Commission establish a fourteen (14) day comment period.

NOW, THEREFORE, the Parties respectfully request that the Commission enter its Order (1) directing that consideration of the Settlement Stipulation be by Modified Procedure with a fourteen (14) day comment period thereafter; (2) approving the Settlement Stipulation without condition or modification; and (3) directing that Hoku and Idaho Power file with the Commission within thirty (30) days of a final order approving the Settlement Stipulation a Second Amended and Restated Electric Service Agreement and thereupon dismissing with prejudice Hoku's Petition.

Respectfully submitted this 17<sup>th</sup> day of February 2012.

---

JASON B. WILLIAMS  
Attorney for Idaho Power Company



---

DEAN J. MILLER  
Attorney for Hoku Materials, Inc.

---

DONALD L. HOWELL, II  
Deputy Attorney General  
Attorney for Commission Staff

incorporating the terms of the Settlement Stipulation and file the same with the Commission.

**II. REQUEST FOR MODIFIED PROCEDURE**

9. Pursuant to RP 201, the Parties believe the public interest does not require a hearing to consider the issues presented by this Motion and the Parties request it be processed by Modified Procedure.

10. In order to promptly settle the rights and expectations of the Parties, the Parties request expeditious consideration of the Settlement Stipulation and recommend that the Commission establish a fourteen (14) day comment period.

NOW, THEREFORE, the Parties respectfully request that the Commission enter its Order (1) directing that consideration of the Settlement Stipulation be by Modified Procedure with a fourteen (14) day comment period thereafter; (2) approving the Settlement Stipulation without condition or modification; and (3) directing that Hoku and Idaho Power file with the Commission within thirty (30) days of a final order approving the Settlement Stipulation a Second Amended and Restated Electric Service Agreement and thereupon dismissing with prejudice Hoku's Petition.

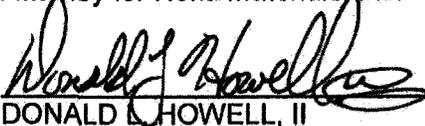
Respectfully submitted this 17<sup>th</sup> day of February 2012.

---

JASON B. WILLIAMS  
Attorney for Idaho Power Company

---

DEAN J. MILLER  
Attorney for Hoku Materials, Inc.

  
DONALD L. HOWELL, II  
Deputy Attorney General  
Attorney for Commission Staff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of February 2012 I served a true and correct copy of the within and foregoing JOINT MOTION FOR APPROVAL OF SETTLEMENT STIPULATION upon the following named parties by the method indicated below, and addressed to the following:

**Commission Staff**

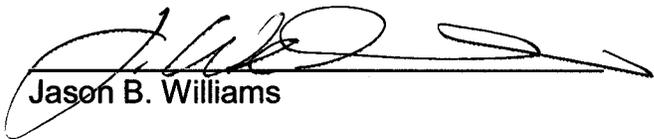
Donald L. Howell, II  
Deputy Attorneys General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email Don.Howell@puc.idaho.gov

**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  
heather@mcdevitt-miller.com

  
Jason B. Williams

**BEFORE THE**  
**IDAHO PUBLIC UTILITIES COMMISSION**  
**CASE NO. IPC-E-12-02**

**ATTACHMENT NO. 1**  
**SETTLEMENT STIPULATION**

DEAN J. MILLER (ISB No. 1968)  
CHAS. F. MCDEVITT (ISB No. 835)  
McDEVITT & MILLER, LLP  
420 W. Bannock Street  
PO Box 2564-83701  
Boise, ID 83702  
Telephone: (208) 343-7500  
Facsimile: (208) 336-6912  
[joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)

Attorneys for Hoku Materials, Inc.

JASON B. WILLIAMS (ISB No. 8718)  
LISA D. NORDSTROM (ISB No. 5733)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5104  
Facsimile: (208) 388-6936  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

Attorneys for Idaho Power Company

DONALD L. HOWELL, II (ISB NO. 3366)  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
472 WEST WASHIGTON STREET  
POBOX 83720  
BOISE, ID 83720-0074  
Tele: (208) 334-0312  
Fax: (208) 334-3762  
[don.howell@puc.idaho.gov](mailto:don.howell@puc.idaho.gov)

Attorney for Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<b>IN THE MATTER OF THE PETITION OF</b>	)	
<b>HOKU MATERIALS, INC. FOR</b>	)	CASE NO. IPC-E-12-02
<b>REPARATIONS AND REFORMATION</b>	)	
<b>OF ITS AMENDED SPECIAL</b>	)	SETTLEMENT STIPULATION
<b>CONTRACT WITH IDAHO POWER</b>	)	
<b>COMPANY</b>	)	

---

This Settlement Stipulation ("Settlement Stipulation") is entered into by and among Hoku Materials, Inc. ("Hoku"), Idaho Power Company ("Idaho Power" or "Company"), and the Staff of the Idaho Public Utilities Commission ("Staff"), referred to herein collectively as the "Parties." The Parties agree as follows.

### **I. INTRODUCTION**

1. The terms and conditions of this Settlement Stipulation are set forth herein. The Parties agree that this Settlement Stipulation represents a fair, just, and reasonable compromise of the issues in this proceeding and that this Settlement Stipulation is in the public interest. The Parties maintain that the Settlement Stipulation and its acceptance by the Idaho Public Utilities Commission ("IPUC" or "Commission") represent a reasonable resolution of all issues identified in this matter. Therefore, the Parties recommend that the Commission, in accordance with RP 274-76, approve the Settlement Stipulation and all of its terms and conditions without material change or condition.

### **II. BACKGROUND**

2. 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, at the request of Hoku, Idaho Power submitted a Motion for a Commission Order authorizing a delay in the commencement of the ESA until December 1, 2009, and an extension of the agreement end date until December 1, 2013. Idaho Power and Hoku

subsequently submitted an amended and restated ESA ("AESA") for Commission approval. By Order dated July 24, 2009, the Commission approved the request to delay the original 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).

3. 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.* Hoku paid, pursuant to the AESA, to Idaho Power monthly demand charges from December 1, 2010 through March 31, 2011 and the monthly demand and billed minimum energy

charges from April 1, 2011 through December 2011. Hoku also paid to Idaho Power approximately \$18 million for construction of a substation and transmission facilities.

4. Idaho Power issued Hoku an invoice in early December 2011 in the amount of approximately \$1.9 million for services provided to Hoku for November 2011. Prior to the due date, Hoku informed Idaho Power that Hoku's current cash flow shortage was such that payment for the November 2011 invoice may not occur until January 2012. Idaho Power did not receive payment by the December 21 due date of this invoice. 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. On December 27, 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 for non-payment until Tuesday, January 3, 2012.

5. On December 29, 2011, Hoku filed a Complaint against Idaho Power at the Commission. Case No. IPC-E-11-28. Idaho Power submitted an Answer, Motion to Dismiss, and Motion to Set Termination Date on December 30, 2011. The Commission issued on January 5, 2012, a Notice of Scheduling and a Notice of Oral Argument, setting an oral argument on Hoku's Complaint and the Company's Motion to Dismiss for January 11, 2012. On January 9, 2012, Hoku submitted a Response to the Company's Motion to Dismiss as well as a "Complaint" for Contract Reformation and Reparations, which the Commission subsequently renamed a "Petition" for Contract Reformation and for which a new case was established. Case No. IPC-E-12-02. Oral argument in Case

No. IPC-E- 11-28 was heard on January 11. On January 13, 2012, Hoku and Idaho Power each submitted a Supplemental Statement of Facts. On January 13, 2012, the Commission issued a Final Order No. 32437 resolving Hoku's termination Complaint. That Order granted in part and denied in part Hoku's complaint and directed Idaho Power and Hoku to enter into immediate negotiations to see if settlement of the Petition for Reformation was possible. Order No. 32437 further directed Commission Staff to mediate those settlement discussions. This Settlement Stipulation is the fruit of those settlement negotiations.

Based upon the settlement discussions, as a compromise of the positions in this case, and for other consideration as set forth below, the Parties agree to the following terms:

### **III. TERMS OF THE SETTLEMENT STIPULATION**

6. **Contract Reformation.** The Parties agree that the AESA shall be reformed as follows:

6.1 **Deferral Period.** Beginning effective January 1, 2012 and continuing through June 30, 2013 (the "Deferral Period") Hoku's monthly Minimum Billed Energy charge shall be Eight-Hundred Thousand Dollars (\$800,000) ("Modified Minimum Billed Energy Charge") to be applied by Idaho Power to First Block Demand, Second Block Demand, and First Block Energy charges. In addition, Idaho Power shall apply, and Hoku shall pay, the applicable demand side management rider ("DSM Rider") charge as applied to the demand and energy charges, consistent with the AESA. Thus, the amount of the DSM Rider charge shall be in addition to the Modified Minimum Billed Energy Charge. Idaho Power's accounting for each of these components will be treated

the same as the current treatment for each component under the current AESA. Except as otherwise provided for herein, the Deferral Period shall expire on July 1, 2013, and the Minimum Billed Energy charge shall revert back to what is contained in the current AESA. The first payment of \$932,000 shall be wire transferred to Idaho Power by no later than February 17, 2012. Such payment shall be deemed to satisfy the invoice submitted to Hoku by Idaho Power on February 2, 2012, consistent with the terms of this Settlement Stipulation. .

6.2 Balancing Mechanism. Effective January 1, 2012, Idaho Power shall use a "Balancing Mechanism" that starts at zero, shall not exceed a cap of \$16.5 million, and shall accrue interest at six percent (6%). The Balancing Mechanism will track and accrue on a monthly basis the difference between: 1) the first block minimum energy charges allocable to the Company's Idaho jurisdictional customers excluding all first and second block demand charges under the AESA; and 2) the modified minimum billed energy charge (excluding demand) under this Settlement Stipulation. No monthly adjustment to the Balancing Mechanism will occur if Hoku's monthly payment of the modified minimum billed energy charge (excluding demand) made under this Settlement Stipulation equals or exceeds the first block minimum energy charges (excluding all first and second block demand charges) under the AESA. Beginning with its January 2014 invoice for services rendered for December 2013, Idaho Power shall charge Hoku, in addition to the then-applicable monthly demand charges and energy charges, an amount equal to the amortization of the total Balancing Mechanism balance over twelve (12) months at six percent (6%) interest. One-hundred percent (100%) of the payments made by Hoku to pay down the Balancing Mechanism shall be allocated to Idaho Power's customers via

the Company's Power Cost Adjustment ("PCA"). The Parties expressly understand and agree that the amounts tracked by the Balancing Mechanism do not represent a liability or obligation of Idaho Power to its customers until such final, non-refundable amounts are received by Idaho Power from Hoku and applied as described herein.

6.3 Up-Front Payment. In consideration for Idaho Power granting Hoku the Deferral Period, Hoku shall pay to Idaho Power, in addition to any other amounts payable under the AESA, as modified by this Settlement Stipulation, an amount equal to Three-Million Eight-Hundred Thousand Dollars (\$3.8 million) ("Up-Front Payment") as follows: a) upon Commission approval of this Settlement Stipulation, Idaho Power shall immediately apply \$2 million of the existing \$4 million deposit previously paid by Hoku to the Up-Front Payment; and b) Hoku shall pay to Idaho Power as part of and in addition to its monthly invoice for services provided for under the AESA, as modified by this Settlement Stipulation, an amount equal to One-Hundred Thousand Dollars (\$100,000) per month for a period of eighteen (18) months beginning with the invoice issued in February 2012 for services provided in January 2012. Idaho Power shall record the \$3.8 million Up-Front Payment to the same account as the Second Block Energy charge.

6.4 Term & Rates. The Term of the AESA shall be extended to terminate as of December 1, 2014. Effective December 1, 2013, Hoku's First Block Energy charge under the AESA shall be reduced to an amount equal to the Second Block Energy charge, meaning Hoku will pay embedded-cost based rates beginning with services provided on and after December 1, 2013, including the then-applicable Minimum Billed Energy charge.

6.5 Usage. Except as provided for herein, Hoku agrees to cap its monthly power demand during the Deferral Period at 20 megawatts ("MW"). In the event Hoku increases, as provided for herein, the 20 MW cap up to a maximum of 82 MW as allowed for in the AESA, Hoku must provide Idaho Power a firm, 12-month forward-looking ramp-up schedule at least six-months in advance of any increase in energy consumption above 20 MW. In addition, Idaho Power will agree to provide such additional energy thirty (30) days after receipt of any required additional deposit amounts. Hoku agrees that failure to comply with the ramp-up schedule and/or any additional deposit requirements relieves Idaho Power of the obligation to provide Hoku with the additional requested energy. In addition, Hoku shall be required to give Idaho Power at least thirty (30) days prior written notice of when Hoku's monthly energy consumption is expected to exceed 10 MW for twelve (12) consecutive months.

6.6 Reversion to AESA. In the event Hoku uses more than 20 MW of energy in any given month during the Deferral Period, Hoku shall be obligated to pay the Minimum Billed Energy charge according to the current AESA for the remainder of the Deferral Period.

7. Hoku agrees to remain current on all invoices it receives from Idaho Power for the remainder of the Term of the AESA as modified by this Settlement Stipulation.

8. Upon Commission approval of this Settlement Stipulation, Hoku's Petition for Reformation in this proceeding shall be dismissed with prejudice. Within thirty (30) days of Commission approval of this Settlement Stipulation, the parties shall submit an

amended and revised AESA to reflect the terms and conditions of this Settlement Stipulation.

9. The Parties agree that this Settlement Stipulation represents a compromise of the positions of the Parties in this case. As provided in RP 272, other than any testimony filed in support of the approval of this Settlement Stipulation, and except to the extent necessary for a Party to explain before the Commission its own statements and positions with respect to the Settlement Stipulation, all statements made and positions taken in negotiations relating to this Settlement Stipulation are confidential and will not be admissible in evidence in this or any other proceeding.

10. The Parties recommend that the Commission issue a Notice of Proposed Settlement Stipulation via Modified Procedure and shorten the comment period to fourteen (14) days from the date the Notice is issued.

11. The Parties submit this Settlement Stipulation to the Commission and recommend approval in its entirety pursuant to RP 274-76. The Parties shall support this Settlement Stipulation before the Commission, and shall not appeal a Commission Order approving the Settlement Stipulation or an issue resolved by the Settlement Stipulation. If this Settlement Stipulation is challenged by anyone who is not a Party, the Parties reserve the right to file testimony, cross-examine witnesses, and put on such case as they deem appropriate to respond fully to the issues presented, including the right to raise issues that are incorporated in the settlements embodied in this Settlement Stipulation. Notwithstanding this reservation of rights, the Parties agree that they will continue to support the Commission's adoption of the terms of this Settlement Stipulation.

12. If the Commission rejects any part or all of this Settlement Stipulation, or imposes any additional material conditions on approval of this Settlement Stipulation, each Party reserves the right, upon written notice to the Commission and the other Parties to this proceeding, within fourteen (14) days of the date of such action by the Commission, to withdraw from this Settlement Stipulation. In such case, no Party shall be bound or prejudiced by the terms of this Settlement Stipulation, and each Party shall be entitled to seek reconsideration of the Commission's Order, file testimony as it chooses, cross-examine witnesses, and do all other things necessary to put on such case as it deems appropriate. In such case, the Parties immediately will request the prompt reconvening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case. The Parties agree to cooperate in development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in participating in hearings and preparing briefs.

13. The Parties agree that this Settlement Stipulation is in the public interest and that all of its terms and conditions are fair, just, and reasonable.

14. No Party shall be bound, benefited, or prejudiced by any position asserted in the negotiation of this Settlement Stipulation, except to the extent expressly stated herein, nor shall this Settlement Stipulation be construed as a waiver of rights unless such rights are expressly waived herein. Except as otherwise expressly provided for herein, execution of this Settlement Stipulation shall not be deemed to constitute an acknowledgment by any Party of the validity or invalidity of any particular method, theory, or principle of regulation or cost recovery. No Party shall be deemed to have

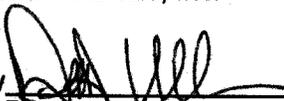
agreed that any method, theory, or principle of regulation or cost recovery employed in arriving at this Settlement Stipulation is appropriate for resolving any issues in any other proceeding in the future. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Settlement Stipulation.

15. The obligations of the Parties are subject to the Commission's approval of this Settlement Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal, if any, by a court of competent jurisdiction.

16. This Settlement Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 17 day of February 2012.

Hoku Materials, Inc.

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

Idaho Power Company

By \_\_\_\_\_  
Jason B. Williams  
Attorney for Idaho Power Company

Idaho Public Utilities Commission Staff

By \_\_\_\_\_  
Donald H. Howell, II  
Deputy Attorney General  
Attorney for Commission Staff

agreed that any method, theory, or principle of regulation or cost recovery employed in arriving at this Settlement Stipulation is appropriate for resolving any issues in any other proceeding in the future. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Settlement Stipulation.

15. The obligations of the Parties are subject to the Commission's approval of this Settlement Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal, if any, by a court of competent jurisdiction.

16. This Settlement Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 17<sup>th</sup> day of February 2012.

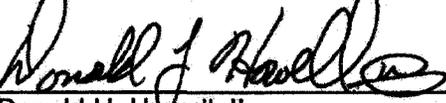
Hoku Materials, Inc.

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

Idaho Power Company

By \_\_\_\_\_  
Jason B. Williams  
Attorney for Idaho Power Company

Idaho Public Utilities Commission Staff

By   
Donald H. Howell, II  
Deputy Attorney General  
Attorney for Commission Staff

agreed that any method, theory, or principle of regulation or cost recovery employed in arriving at this Settlement Stipulation is appropriate for resolving any issues in any other proceeding in the future. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Settlement Stipulation.

15. The obligations of the Parties are subject to the Commission's approval of this Settlement Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal, if any, by a court of competent jurisdiction.

16. This Settlement Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 17<sup>th</sup> day of February 2012.

Hoku Materials, Inc.

Idaho Public Utilities Commission Staff

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

By \_\_\_\_\_  
Donald H. Howell, II  
Deputy Attorney General  
Attorney for Commission Staff

Idaho Power Company

By   
Jason B. Williams  
Attorney for Idaho Power Company