

IN THE MATTER OF THE PETITION OF)
HOKU MATERIALS, INC. FOR) CASE NO. IPC-E-12-02
REPARATIONS AND REFORMATION OF)
ITS AMENDED SPECIAL CONTRACT) NOTICE OF PETITION
WITH IDAHO POWER COMPANY)
) NOTICE OF
) PROPOSED SETTLEMENT
)
) ORDER NO. 32465

date of its [special contract] with Idaho Power.” Order No. 32437 at 2 *citing* Order No. 30869 at 4.

In November 2009, the parties subsequently agreed to waive payment of the minimum energy charge (i.e., the minimum take-or-pay provision) until April 1, 2011. In Order No. 31005 issued in February 2010, the Commission approved the temporary waiver of the take-or-pay provision. The Commission acknowledged that the postponement of the minimum take-or-pay provision will “assist Hoku in establishing a ‘firm footing amidst the current adverse business climate.’” Order No. 32437 at 3 *quoting* Order No. 31005 at 5. Since April 1, 2011, Hoku has paid the minimum charge under the take-or-pay provision of the amended special contract.²

In December 2011, Hoku filed a formal complaint against Idaho Power requesting that the Commission prohibit the utility from terminating service to Hoku for failure to pay its monthly take-or-pay charges. Case No. IPC-E-11-28. In conjunction with the 11-28 case, Hoku also filed the present Petition requesting that its minimum monthly bills starting in December 2011 be suspended until the Commission issues a final Order regarding Hoku’s request to reform its amended special contract. Response at 3. In Order No. 32437 issued January 13, 2012, the Commission declined to suspend Hoku’s December 2011 minimum monthly payment due January 19, 2012. Order No. 32437 at 9. Instead, the Commission directed Idaho Power and Hoku

to immediately enter into negotiations regarding Hoku’s Petition to reform the amended special contract. . . . Without deciding the issue, we advise the parties that waiver of the first block energy charge beginning with the January 2012 bill should be part of their negotiations. If settlement negotiations are not fruitful, the Commission will issue further instructions regarding the processing of the Petition.

Order No. 32437 at 11.³

THE REFORMATION PETITION

In its Petition, Hoku seeks relief from the minimum take-or-pay provision. More specifically, Hoku requests reformation of Section 5.7 of the amended special contract. As set

² Although the minimum payments are seasonally adjusted, the November 2011 minimum charge was approximately \$1.896 million.

³ No person sought reconsideration of Order No. 32437.

out below, this provision provides that Idaho Power may release Hoku from its first block energy commitment. Hoku alleges that Idaho Power has “unreasonably refused” to release Hoku from its first block purchase or payment commitment. Petition at ¶¶ 10.13. Consequently, Hoku requests that the Commission reform Section 5.7 of the contract by adding the underlined text

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.

Petition at ¶ 14. In addition to reformation of the special contract, Hoku also asserts that it is entitled to reparation for its First Block Energy and Demand (i.e., take-or-pay) payments in an amount to be determined by the Commission. *Id.* at ¶ 15. Finally, while the Commission is processing the Petition, Hoku also seeks suspension of the minimum payments under its take-or-pay provision “until such time as Hoku is prepared to commence the production ramp-up of its polysilicon deposition reactors.” *Id.* at ¶ 16.

Following issuance of the Commission’s final Order No. 32437 in the 11-28 case, Hoku, Idaho Power, and Commission Staff (hereinafter “the Parties”) met on five occasions in settlement negotiations. The Parties subsequently entered into a “Settlement Stipulation” that would resolve all the disputed issues in Hoku’s Petition. On February 17, 2012, the Parties filed a Joint Motion to Approve the Settlement Stipulation and filed testimony in support of the proposed settlement.

NOTICE OF PROPOSED SETTLEMENT

The Parties agreed to resolve all the disputed issues in Hoku’s Petition. As set out in the Stipulation, the Parties agreed to reduce the monthly minimum payments for the first block to \$800,000 for a period not to exceed 18 months from January 1, 2012, through June 30, 2013. Hoku will continue to pay the applicable energy efficiency surcharge (Schedule 91). The amended special contract will be extended for another year (until December 1, 2014), and the

cumulative total of the reduced minimum payments will be added to the end of the contract.⁴ Stipulation § 6.4.

Other elements of the proposed Settlement Stipulation include:

1. Up-front Payment. In consideration for amending the contract, Hoku shall pay to Idaho Power \$3.8 million as an “up-front payment.” Idaho Power will immediately collect \$2 million for the up-front payment from the existing \$4 million deposit held by Idaho Power. The remaining balance will be collected by assessing Hoku an additional monthly payment of \$100,000 for 18 months. Stipulation § 6.3.

2. Balancing Mechanism. Effective January 1, 2012, Idaho Power will establish a “balancing mechanism” capped at \$16.5 million and the balancing mechanism will accrue interest at 6%. The purpose of the mechanism is to track the difference between: (1) the deferred first block minimum energy charges under the amended special contract; and (2) the “modified” minimum monthly billed energy charges (excluding demand) under the proposed Settlement Stipulation. Beginning with the invoice for service in December 2013, Idaho Power will then charge and recover from Hoku 1/12 of the balance in the balancing mechanism. In other words, Idaho Power will charge and recover minimum payment amounts that were deferred during the 18-month deferral period over 12 months, in addition to all other energy and demand charges. All payments collected from the balancing mechanism will be allocated to ratepayers in the Company’s PCA mechanism. Stipulation § 6.2.

3. Usage. If Hoku plans to begin commercial operation during the 18-month deferral period, it must provide a 6-month advance notice before its monthly consumption may exceed 20 MW. *Id.* § 6.5. Once Hoku uses more than 20 MW of energy in any given month, then Hoku shall be obligated to pay the minimum billed energy charge according to the current amended special contract for the remainder of the deferral period. Stipulation § 6.6.

The Parties recommend that the Commission issue a Notice of Proposed Settlement and request comments within 14 days of the Commission’s Notice. Stipulation at 10. Each party also filed testimony supporting the approval of the proposed Settlement Stipulation. The Parties assert that the Settlement Stipulation is in the public interest and that all of its terms and

⁴ The Stipulation also required that Hoku make the first payment under the Settlement Stipulation for services rendered in January 2012 in the amount of \$932,000. Stipulation § 6.1. Idaho Power received the first payment on February 17, 2012.

conditions are fair, just and reasonable. If the Commission approves of the proposed settlement, then the Stipulation provides that the Parties shall submit a “revised” amended special contract within 30 days that “reflect[s] the terms and conditions of this Settlement Stipulation.” *Id.* at 8.

NOTICE OF COMMENT PERIOD

YOU ARE HEREBY NOTIFIED that the Commission has decided to seek public comment regarding the proposed Settlement Stipulation and modification of the amended special contract between Hoku and Idaho Power. Given the request of the Parties and the press of time, the Commission finds there is good cause to seek comments within 14 days from the date of this Order.

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, IDAPA 31.01.01.201 through .204.

YOU ARE FURTHER NOTIFIED that the Settlement Stipulation together with the Parties’ supporting testimony can be viewed at the Commission offices during regular business hours. The Petition, Settlement Stipulation, Joint Motion, and supporting testimony are also available for review on the Commission’s web site at www.idaho.puc.gov by clicking on “File Room” and then “Electric Cases.”

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on the proposed Settlement Stipulation may file a written comment in support or opposition with the Commission no later than 14 days from the date of this Order. The comment must contain a statement of reasons supporting the comment period. Written comments concerning this Petition shall be mailed to the Commission and the Parties at the addresses reflected below:

Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5918

Idaho Power Company:

Jason B. Williams
Lisa D. Nordstrom
Idaho Power Company

PO Box 70

Boise, ID 83707-0070

E-Mail: jwilliams@idahopower.com

lnordstrom@idahopower.com

Hoku Materials, Inc.

Dean J. Miller
McDevitt & Miller LLP
420 W. Bannock Street
PO Box 2564 (83701)
Boise, ID 83702
E-mail: joe@mcdevitt-miller.com

All comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at www.puc.idaho.gov. Click the "Comments and Questions" icon and complete the comment form using the case number as it appears on the front of this document. These comments must also be sent to the Parties at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

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. 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.

YOU ARE FURTHER NOTIFIED that the Commission is not bound by any settlement reached by the Parties. The Commission will independently review any proposed settlement to determine whether the settlement is just, fair and reasonable, and in the public interest, or otherwise in accordance with law and regulatory policy. The Commission may accept the settlement, reject the settlement, or state additional conditions under the which the settlement will be accepted. IDAPA 31.01.01.274-.276.

ORDER

IT IS HEREBY ORDERED that persons wishing to file comments in this matter do so no later than 14 days from the date of this Order.

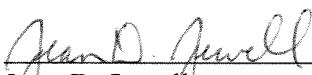
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 22nd day of February 2012.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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