

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF HOKU MATERIALS, INC. FOR REPARATIONS AND REFORMATION OF ITS AMENDED SPECIAL CONTRACT WITH IDAHO POWER COMPANY)))))	CASE NO. IPC-E-12-02 ORDER NO. 32525
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In January 2012, the Commission ordered Idaho Power and Hoku Materials to “immediately enter into [settlement] negotiations regarding Hoku’s Petition to Reform its amended special contract” for electric service. Order No. 32437 at 11. Hoku, Idaho Power and Commission Staff (collectively “the Parties”) subsequently negotiated and entered into a “Settlement Stipulation” that resolved the disputes between Hoku and Idaho Power. The Settlement Stipulation provided that Idaho Power and Hoku will revise their amended special contract within 30 days to “reflect the terms and conditions of [the] Settlement Stipulation.” Stipulation at § 8.

On March 15, 2012, the Commission issued Order No. 32486 accepting a proposed settlement regarding revisions to the amended special contract between Idaho Power and Hoku for electric service. Consistent with Order No. 32486, Idaho Power submitted the “Second Amended and Restated Agreement” (hereinafter the “revised special contract”) for the Commission’s review and approval on April 11, 2012.

THE REVISED SPECIAL CONTRACT

The 2012 revised special contract takes the existing (amended) special contract and adds a new “Section 6A” to the existing special contract. In essence, Section 6A contains the terms and conditions for the “Deferral Period” agreed to by the parties in the Settlement Stipulation and approved by the Commission in Order No. 32486. The revised special contract provides that Hoku’s monthly minimum (take-or-pay) payment for the first rate block is reduced to \$800,000 per month 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 set out in Schedule 91. The revised special contract will run until December 1, 2014, and the cumulative difference between the monthly minimum payment under the 2012 revised special contract and the previous special contract is added to the end of the contract period.

1. Up-Front Payment. Section 6A.5 of the revised special contract provides that Hoku will pay Idaho Power \$3.8 million as an “up-front payment.” Idaho Power will collect the up-front payment by collecting \$2 million from the existing \$4 million cash deposit held by Idaho Power. The remaining balance will be collected by assessing Hoku an additional monthly payment of \$100,000 per month for 18 months.

2. Balancing Mechanism. Section 6A.4 of the revised special contract contains a “balancing mechanism” to be capped at \$16.5 million that shall accrue interest of 6%. As explained in Order No. 32486, the purpose of the balancing mechanism is to track the difference between the deferred first block minimum energy charges under the old amended special contract, and the revised minimum monthly billed energy charges (excluding demand) specified in the Settlement Stipulation and incorporated in the revised special contract. Beginning with the January 2014 invoice for service in December 2013, Idaho Power will charge and recover from Hoku 1/12 of the balance in the balancing mechanism in addition to the then applicable monthly energy and demand charges, over a 12-month period. All payments collected from the balancing mechanism shall be allocated to ratepayers in the Company’s PCA mechanism. § 6A.4.

3. Usage. Section 6A.2 of the revised special contract provides Hoku with the flexibility to ramp-up its commercial operation after it provides a six-month advance notice to Idaho Power. If its monthly consumption will exceed 20 MW per month, Hoku’s notice must include a “12-month forward-looking ramp-up schedule.” § 6A.2. Once Hoku uses more than 20 MW of energy in any given month, then Hoku shall be obligated to pay an additional deposit amount. In addition, Hoku will pay the larger of the minimum billed energy charge or the minimum billed energy charge set out in Sections 6.1.1 and 8 of the revised special contract and Schedule 32.

4. Franchise Fee. During the parties’ negotiations to revise the special contract, they became aware that the Hoku facility is located within the city limits of Pocatello. Consequently, Hoku is obligated to pay the applicable franchise fee assessed by Pocatello. The revised special contract provides that the franchise fee shall be assessed to the first block and second block demand charges and “against the actual amount of energy consumed by Hoku with such energy being billed at the applicable first block energy or second block energy rates.” § 6A.1.¹

¹ In addition to the revised special contract, Idaho Power also filed an amended Schedule 32 (Hoku Electric Rates). Schedule 32 has been updated to reference the new 2012 revised special contract dated April 11, 2012.

STAFF RECOMMENDATION

Staff determined the revised special contract and its terms are consistent with the terms and conditions set out in the parties' Settlement Stipulation and adopted by the Commission in Order No. 32486. Staff also concurs with the proposed changes to Schedule 32 to be effective April 11, 2012. Given the new revised special contract, Staff believes there is good cause to make the changes effective on less than 30 days' notice. *Idaho Code* § 61-307.

FINDINGS

After reviewing the revised special contract, we find that the 2012 revised special contract comports with the terms and conditions of the Settlement Stipulation approved in Order No. 32486. We further find that the revised special contract and the rates contained therein are fair, just and reasonable, and in the public interest. *Idaho Code* § 61-502. In addition, we approve the ministerial changes to Schedule 32 to reflect the date of the revised special contract as April 11, 2012. We find there is good cause to approve the ministerial changes to Schedule 32 on less than 30 days' notice pursuant to *Idaho Code* § 61-307.


ORDER

IT IS HEREBY ORDERED that the Second Amended and Restated Agreement for electric service (the 2012 revised special contract) between Hoku Materials and Idaho Power dated April 11, 2012, is approved.

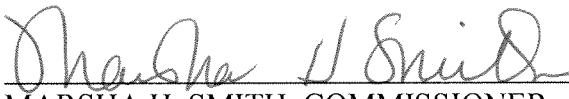
IT IS FURTHER ORDERED that the changes to tariff Schedule 32 are approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-12-02 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

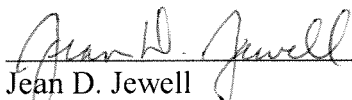
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th
day of April 2012.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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