

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**LC 41**

In the Matter of Idaho Power Company's  
Application to Include the Boardman to  
Hemingway Transmission Line in its  
Acknowledged Integrated Resource Plan  
("IRP")

**STOP IDAHO POWER'S MOTION TO  
POSTPONE AND MOTION TO  
CONSOLIDATE PROCEEDINGS**

1

**Motions**

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Pursuant to OAR 860-014-0010(1) & (2) and OAR 860-014-0025, Stop Idaho

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Power, a party in the above-captioned docket, hereby moves the Commission to

4

postpone further proceedings in this docket and, when Idaho Power Company ("Idaho

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Power" or "Company") files its 2009 Integrated Resource Plan ("IRP") in June, to

6

consolidate proceedings in this docket with proceedings in the 2009 IRP docket.

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The relief requested is brought under and supported by two Commission

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administrative rules. First, OAR 860-0014, captioned "Postponements and

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Continuances of Hearings," provides:

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(1) Any party may request a postponement of a hearing. The party must

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provide the reasons why the postponement is necessary. The

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Commission or Administrative Law Judge (ALJ) may require oral requests

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for postponement of a hearing to be confirmed in writing.

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(2) The Commission or ALJ may grant a postponement of a hearing and

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may, at any time, order a postponement on his/her own motion.

1 Second, OAR 860-014-0025, captioned “Consolidation of Proceedings,” provides,  
2 “Proceedings may be consolidated for hearing at the discretion of the Commission or  
3 Administrative Law Judge.”

4 Points and authorities in support of this motion are set forth below.

5 **Memorandum of Points and Authorities**

6 **Stale Data in Idaho Power Company’s 2006 Integrated Resource Plan**

7 In this proceeding Idaho Power Company must establish a need for the B2H  
8 transmission facility. The Addendum, however, has for its basis the outdated 2006 IRP.  
9 Consequently, the Addendum would only partially update a plan that will be recreated  
10 from the ground up in a few short months.

11 Idaho Power’s 2006 IRP, onto which Idaho Power seeks to tack its Addendum,  
12 has little relevance to the realities of today’s economic circumstances. As the  
13 Commission knows, since the acknowledgment of the 2006 plan the nation and the  
14 Northwest have been buffeted by the greatest economic downturn since the 1930s.  
15 During the community hearings in Ontario, Oregon, on March 26, Pat Phillips, a long-  
16 time resident and local real estate agent who is also member of Stop Idaho Power,  
17 addressed the “bleak picture that for the economic growth of the Treasure Valley.”  
18 Exhibit 1, Testimony of Pat Phillips, at 6. She cited a newspaper article from November  
19 2008 indicating a “deep recession” for Idaho, *id.* at 1, a December article that put  
20 unemployment in Nampa at 7.8 percent and in Caldwell at 8.8 percent, *id.* at 2, the  
21 impact from expected loss of 2000 jobs at the Micron later this year, *id.*, the planned job

1 losses at *The Idaho Statesman*, *id.* at 3, the loss of 122 teachers in the Boise school  
2 system, *id.*, the impact of the shutdown of the Tamarack Resort in Valley County, *id.* at  
3 4, plummeting sales of Boise Cascade products, *id.*, the impact of the failure of MPC  
4 Computers, *id.* at 5, the effect of the economic crisis on Boise Contemporary Theater,  
5 *id.*, the deep slide in housing sales in Ada and Canyon counties, *id.*, and cuts at State of  
6 Idaho, Boise State University, and various medical facilities. *Id.* at 6. She then rebutted  
7 Idaho Power's optimistic projections for housing in the Treasure Valley, noting that  
8 actual figures "were no where near [Idaho Power] projections." *Id.* at 6-7. Ms. Phillips  
9 concluded her remarks by stating,

10 Therefore, based on the summary of factual data, coupled with the  
11 economic downturn, I contend that Idaho Power has overstated its need  
12 for power running through the proposed Boardman to Hemingway line,  
13 and I ask that you insist on waiting for their updated projections which will  
14 be forthcoming in their 2009 Integrated Resource Plan due out this  
15 summer.

16  
17 *Id.* at 8.

18 Ms. Phillips' remarks were necessarily addressed to the immediate economic  
19 crisis facing residents of the Treasure Valley. The economic crisis is not only local,  
20 however, it is both regional and national. At this writing there are news reports that  
21 unemployment nationally has jumped to 8.5 percent, a 25-year high.<sup>1</sup> Regionally,  
22 Oregon's unemployment rate of 10.8 percent is among the highest in the nation,<sup>2</sup> and

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<sup>1</sup> Bob Willis & Rich Miller, "U.S. May Keep Losing Jobs After Unemployment Hit 25-Year High" (April 4, 2009), available at

<http://www.bloomberg.com/apps/news?pid=20601087&sid=ar8O8agGg9AY&refer=home/>.

<sup>2</sup> Bob Willis, "Jobless Rate Exceeds 10% in Three More U.S. States" (March 27, 2009), available at <http://www.bloomberg.com/apps/news?pid=20601087&sid=aBTa0e1ODD5k&refer=home>.

1 the peak apparently is still to be reached. These facts belie the rosy picture of  
2 economic health and robust growth that Idaho Power attempts to paint in its  
3 Addendum.<sup>3</sup>

4 Recently, Idaho Power apparently sensed that, because economic conditions are  
5 deteriorating so rapidly, it needed to update both the Addendum and the 2006 IRP.  
6 Instead of filing a written update to the Addendum, however, the Company  
7 supplemented the record during the March 26 field hearing, taking a significant amount  
8 of the time that had been reserved for local citizen input. This approach not only  
9 reduced the amount of time available to local citizens who lack the ability to make  
10 formal filings, it also precluded a meaningful review and response to the new data. A  
11 Company representative later acknowledged the need to put in the new data; when a  
12 local resident remonstrated to Idaho Power's David Angell that the Company had  
13 monopolized 45 minutes of the scheduled two-hour forum, Mr. Angell replied, "Yes, but  
14 we got it [the new material] into the record." Exhibit 2, Affidavit of Roger Findley at 2, ¶  
15 7.

16 The new information Idaho Power put into the record of the Ontario field hearing  
17 was anything but fair and balanced. Following the Ontario hearing Mr. Findley  
18 requested from a Commission representative a copy of Idaho Power's Ontario  
19 PowerPoint presentation and compared it to a presentation that Idaho Power made to

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<sup>3</sup> There is also concern in the utility industry that "a permanent shift in consumption" has occurred that would have led to significantly lower demand regardless of the current economic crisis. Rebecca Smith, "Surprise Drop in Power Use Delivers Jolt to Utilities," Wall Street Journal (November 21, 2008), available at <http://online.wsj.com/article/SB122722654497346099.html>.

1 the 2009 IRP Advisory Committee on March 19. Mr. Findley's review confirmed first  
2 that all of the slides presented to the Ontario hearing contained information that was  
3 neither in the acknowledged 2006 IRP nor in the Addendum. (This new material  
4 appears slated to be included in the upcoming 2009 IRP.) Moreover, during the March  
5 26 field hearing Idaho Power failed to cite, refer to, or even comment upon material it  
6 earlier presented to the March 19 2009 IRP Advisory Committee meeting, which omitted  
7 material addressed demand side reductions in two areas, viz., (i) the "Irrigation Peak  
8 Rewards" program, which is anticipated to reduce peak loads this summer by an  
9 additional 128 MW, and (ii) the EnerNOC contract, which is expected to reduce  
10 commercial and industrial loads by 75 MW by 2011.<sup>4</sup> Of course, presentation of this  
11 material would have undercut Idaho Power's alleged need for the B2H line. *Id.* at 2, ¶  
12 11.

13 Notwithstanding the new data, there is significant confusion surrounding Idaho  
14 Power's projected firm loads, and granting the motions will doubtless reduce that  
15 confusion. For example, there is confusion in the record surrounding Micron  
16 Technology's firm load, which Ms. Phillips alluded to in her testimony. When Stop Idaho  
17 Power inquired whether the reduction of that load was reflected in the Addendum, Idaho  
18 Power first admitted that it was not. Then the Company stated:

19 *In addition, the load forecast used in the IRP Addendum did not*  
20 *include a new large load that comes on-line this year. As Hoku Materials,*  
21 *Inc., begins coming on-line later this year, the increase in load due to*  
22 *Hoku is expected to be far greater than any reduction expected from*

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<sup>4</sup> A copy of the EnerNOC press release dated March 4, 2009, is attached as Exhibit 3.

1 Micron. By the first quarter of 2010, Hoku demand is forecast to be 82  
2 MW (without losses).

3  
4 Exhibit 4, Idaho Power Company's Response to Stop Idaho Power's Data Request No.  
5 7 (emphasis added). The Addendum, however, says otherwise: The anticipated Hoku  
6 load is indeed reflected in the Addendum. Attention is directed specifically to page 8 of  
7 the Addendum, which states,

- 8 • The sales and load forecast reflects the increased expected demand  
9 for energy and peak capacity of Idaho Power's newest special contract  
10 customer, Hoku Scientific, Inc., located in Pocatello, Idaho. Hoku  
11 Scientific plans to begin operation in April 2009 and reach full capacity  
12 by October 2009. . . .  
13

14 Further evidence that the new Hoku load is already in the Addendum is present in the  
15 table, "Expected Case Sales and Load Forecast" at page A-4 of the Addendum;  
16 *compare* Additional Firm load of 136 MW in January 2009 *with* the December 2009  
17 figure of 210 MW.

18 Idaho Power's apparent confusion regarding its own firm loads is most likely a  
19 consequence of the rapidly changing economic situation in the region. The best way to  
20 resolve this confusion is to take a more deliberate, comprehensive approach regarding  
21 Idaho Power's anticipated loads, which approach can best be implemented by holding  
22 the present proceedings in abeyance and pursuing the 2009 IRP filing.

23 *Misplaced Reliance on Hoku Scientific Projected Loads*

24 Idaho Power places great reliance on the new Hoku load to establish its need for  
25 the B2H line. That reliance is reflected graphically in its response to Stop Idaho  
26 Power's inquiry regarding the Company's special contract customers. Exhibit 5, which

1 is Idaho Power's response to Stop Idaho Power's data request 15, shows a dramatic  
2 leap in 2009 that can only be attributable to the planned Hoku sales. Without Hoku, it  
3 appears that Idaho Power's projected additional firm load will decline through 2030.  
4 Consequently the viability of the projected Hoku load deserves close examination.

5 Hoku Material, which has contracted with Idaho Power, is a wholly owned  
6 subsidiary of Hoku Scientific, Inc., which is listed on NASDAQ (symbol, "HOKU"). A  
7 review of stock data reports discloses that Hoku Scientific has been in business for a  
8 little over three years and that it has yet to show any net income; consequently, its  
9 earnings per share are negative. Hoku's stock is now trading at \$2.50 per share, near  
10 an all-time low.<sup>5</sup> And further investigation casts severe doubt on whether Idaho Power  
11 is wise to base its resource plan on the likes of Hoku.

12 Because Hoku is a listed company it must file periodic reports with the Securities  
13 Exchange Commission. Hoku's most recent quarterly report (called a "10Q") was  
14 issued on February 4, 2009; that report highlights how precarious and risky the  
15 company's future is.

16 One of the major requirements in SEC disclosure documents is a candid  
17 discussion of the risks the company faces. Hoku had no choice but to comply with this  
18 requirement; its disclosures of material risks run 14 small-type printed pages in the filed  
19 document.<sup>6</sup> Those 14 pages disclose 29 separate, objective, material risks that Hoku

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<sup>5</sup> Exhibit 6, Opinionetics Three-Year Stock Quote for HOKU (April 3, 2009).

<sup>6</sup> That portion of the electronic document has been converted to Word format, scanned, and is presented as Exhibit 7.

1 today is facing. The list of significant risks starts with an admission that the company  
2 failed in its attempt to be a viable fuel cell provider and that it has a complete lack of  
3 experience in the business of photovoltaic installations and polysilicon markets, Exhibit  
4 5 at 1, and runs the gamut of numerous severe financial, regulatory, environmental,  
5 legal, political, and financial hazards. Captions for those 29 risks are set forth below;  
6 these captions are quoted verbatim from the company's own report (the full text  
7 explaining the concerns underlying each caption is in Exhibit 7. The 29 captions state:

- 8 • We have a limited operating history, and have recently determined to  
9 enter the photovoltaic installations and polysilicon markets and scale  
10 back our efforts in the fuel cell market. If we are unable to generate  
11 significant revenue, our business will be harmed. . . .  
12
- 13 • We need at least \$390 million to construct and equip our planned  
14 polysilicon production plant, and we may be unable to raise this capital  
15 on favorable terms or at all. . . .  
16
- 17 • We may have difficulty managing change in our operations, which  
18 could harm our business. If we are unable to collect \$43 million in past  
19 due amounts from our supply agreement with Wealthy Rise  
20 International, Ltd. (Solargiga), or resell their capacity to another  
21 customer, our business will be materially harmed. . . .  
22
- 23 • If our supply agreement with Wuxi Suntech Power Co., Ltd. is  
24 terminated for any reason, our business will be materially harmed. . . .  
25
- 26 • If our supply agreement with Solarfun Power Hong Kong Limited is  
27 terminated for any reason, our business will be materially harmed. . . .  
28
- 29 • If our supply agreement with Jiangxi Jinko Solar Co., Ltd. is terminated  
30 for any reason, our business will be materially harmed. . . .  
31
- 32 • If either of our supply agreements with Tianwei New Energy (Chengdu)  
33 Wafer Co., Ltd. is terminated for any reason, our business will be  
34 materially harmed. . . .



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- We will face intense competition in the polysilicon market from large competitors with significant operating histories and financial and technological resources. While polysilicon shortages persist, we expect competition to further intensify. . . .
- We may be unsuccessful in expanding the production capacity of our polysilicon production facility. . . .
- Technological development in the solar power industry could reduce market demand for polysilicon, which could cause our sales and profit to decline. . . .
- Fluctuations in industrial production capacity for polysilicon could harm our business. . . .
- We rely on limited suppliers and, if these suppliers fail to deliver materials that meet our quality requirements in a timely, cost-effective manner or at all, our production of polysilicon and our installation of PV systems would be limited. . . .
- Even if we achieve our polysilicon and PV system installation objectives on a timely basis and complete the construction of our polysilicon production plant as currently planned, we may still be unsuccessful in developing, producing and/or selling these products and services, which would harm our business. . . .
- If our PV system installation competitors are able to develop and market products that customers prefer to our products, we may not be able to generate sufficient revenue to continue operations. . . .
- Technological development in the solar power industry could reduce market demand for polysilicon or allow for lower cost production of polysilicon by our competitors, which could cause our sales and profit to decline. . . .
- Our operating results have fluctuated in the past, and we expect a number of factors to cause our operating results to continue to fluctuate in the future, making it difficult for us to accurately forecast our quarterly and annual operating results. . . .

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- If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and investors' views of us. . . .
- We may not be able to protect our intellectual property, and we could incur substantial costs defending ourselves against claims that our products infringe on the proprietary rights of others. . . .
- The loss of any of our executive officers or the failure to attract or retain specialized technical and management personnel could impair our ability to grow our business. . . .
- We will use materials that are considered hazardous in our planned manufacturing and production processes and, therefore, we could be liable for environmental damages resulting from our research, development, or manufacturing and production operations. . . .
- Any significant and prolonged disruption of our operations in Hawaii could result in PV system installation delays that would reduce our revenue. . . .
- We have significant international activities and customers that subject us to additional business risks, including increased logistical complexity and regulatory requirements, which could result in a decline in our revenue. . . .
- If we do not obtain on a timely basis the necessary government permits and approvals to construct and operate our planned polysilicon production plant our construction costs could increase and our business could be harmed. . . .
- Our business and industry are subject to government regulation, which may harm our ability to market our products. . . .
- If government incentives to locate our planned polysilicon facility in the City of Pocatello, Idaho are not realized then the costs of establishing our facility may be higher than we currently estimate. . . .

- 1 • The reduction or elimination of government and economic incentives  
2 for PV systems and related products could reduce the market  
3 opportunity for our PV installation services. . . .  
4
- 5 • Our stock price is volatile and purchasers of our common stock could  
6 incur substantial losses. . . .  
7
- 8 • Anti-takeover defenses that we have in place could prevent or frustrate  
9 attempts by stockholders to change our directors or management. . . .  
10
- 11 • Because we do not intend to pay dividends, [investors] will benefit from  
12 an investment in our common stock only if it appreciates in value. . . .  
13

14 Like Idaho Power, Stop Idaho Power hopes that Hoku can overcome its  
15 acknowledged difficulties and become a responsible and solid economic force in Idaho  
16 and the region.<sup>7</sup> But Idaho Power's reliance on Hoku as a viable new firm load is  
17 obviously misplaced; by Hoku's own admission it is a high-risk startup that may not  
18 survive to the end of 2009 – if, in fact, it ever begins commercial operation.

### 19 Conclusion

20 These are volatile economic times. The nation has witnessed the destruction of  
21 trillions of dollars in investments and millions of jobs in the last six months alone.  
22 Electric loads are plummeting, and the economic effects of the crisis are more severe  
23 regionally than nationally. Major loads upon which Idaho Power relies to justify the B2H  
24 line are either already vanishing (in the case of Micron) or highly speculative (in the  
25 case of Hoku). It is a poor time to commit to massive new transmission line to serve

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<sup>7</sup> Stop Idaho Power has received information that Hoku is delinquent in its payments to Idaho Power, although at the present time definitive proof of such has not been obtained. Consequently, Stop Idaho Power will request information on this topic in an upcoming data request.

1 demand that may not materialize for decades; indeed, it is a poor time even to attempt  
2 to engage in long-term planning of capital-intensive facilities


3           There is an easy solution to dealing with these uncertainties: Wait a while. Wait  
4 to see how much further the economy will deteriorate so that more reasonable  
5 projections might be made. Wait to see whether the economy will recover and, if so,  
6 how rapidly. At a minimum, wait to see whether Hoku can in fact get the financing it  
7 needs to open its new facility in Pocatello and actually commence reliable commercial  
8 operation. In several months the Commission should be in a much better position to  
9 respond intelligently to these issues and thus make much more reliable determinations  
10 regarding the need for the B2H line.

11           Stop Idaho Power thinks that some of the serious uncertainties – such as the  
12 viability of Hoku Scientific – may be clarified in the near future. Granting Stop Idaho  
13 Power's motion to postpone and then its motion to consolidate this proceeding with the  
14 soon-to-be-opened docket on Idaho Power's 2009 IRP is an ideal manner for dealing  
15 with these serious uncertainties. Instead of taking the dual track of simultaneously  
16 updating both the 2006 IRP and the Addendum on the one hand and preparing and  
17 filing the 2009 IRP on the other, Idaho Power should be required to put forth a single,  
18 comprehensive, and consistent plan that more adequately addresses its projected loads  
19 and the need for the B2H line. In the 2009 IRP Idaho Power can update  
20 comprehensively its projections involving Micron, Hoku, and other factors that are  
21 necessary to determine need. In sum, the need for the B2H line can best be

1 determined when the present economic volatility diminishes and when the long-term  
2 viability of Hoku as a significant load becomes more certain.

3 For the foregoing reasons, Stop Idaho Power respectfully requests that the  
4 Commission, through Administrative Law Judge Arlow, enter an order postponing  
5 further proceedings in this docket until Idaho Power Company files its 2009 IRP. Once  
6 that plan is filed, Stop Idaho Power respectfully requests that the Commission  
7 consolidate the present proceedings in this docket with that proceeding.

8 Respectfully submitted this 9<sup>th</sup> day of April, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that, on April 9, 2009, I served a true and correct copy of the foregoing document in Docket LC 41 on the following named persons who have not waived paper service. I have served those who have waived paper service by email.

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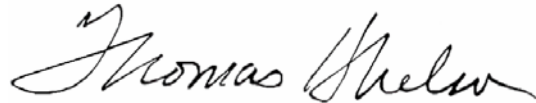
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# **EXHIBIT 1**

## **TESTIMONY OF PAT PHILLIPS**

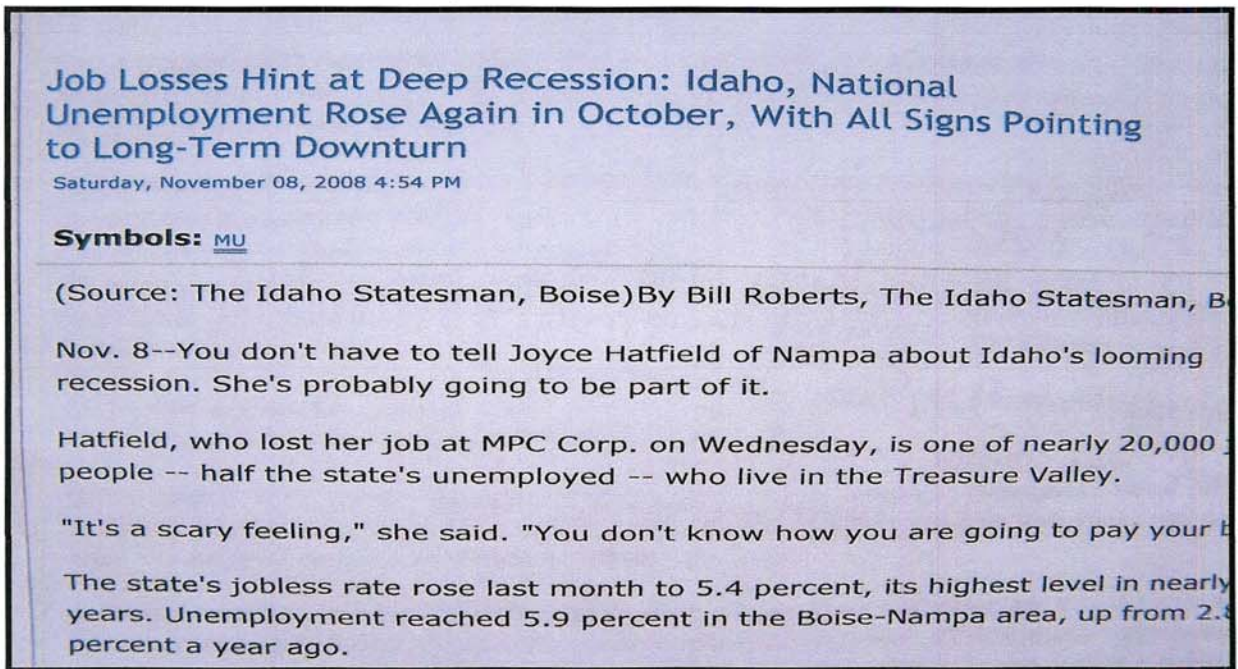
Good Evening.

Thank you for coming to Ontario.

We have been asked to get up, tell you who we are, and state our point.

My name is Patricia Ann Phillips. My mailing address is 190 SW 4th Ave., Ontario. My father's family has been farming in Malheur County since the 1890's, so I am not new to the County. My husband, Tom and I have a small real estate Sales business in Ontario, which is what we have been doing for the last 30 years, And many times during those last 30 years we have butted heads with various Components of Oregon's land use laws. Now, in total disregard for those land Use laws, Idaho Power wishes to place a 500 kV line through our farm land. But I understand that the Oregon Public Utilities Commission is here to evaluate Only need. And with that, I will come to my point.

You are certainly aware of the economic condition of our Nation. Let me localize That economic condition for you a bit.



**Job Losses Hint at Deep Recession: Idaho, National Unemployment Rose Again in October, With All Signs Pointing to Long-Term Downturn**  
Saturday, November 08, 2008 4:54 PM

**Symbols:** [MU](#)

(Source: The Idaho Statesman, Boise) By Bill Roberts, The Idaho Statesman, B

Nov. 8--You don't have to tell Joyce Hatfield of Nampa about Idaho's looming recession. She's probably going to be part of it.

Hatfield, who lost her job at MPC Corp. on Wednesday, is one of nearly 20,000 people -- half the state's unemployed -- who live in the Treasure Valley.

"It's a scary feeling," she said. "You don't know how you are going to pay your t

The state's jobless rate rose last month to 5.4 percent, its highest level in nearly years. Unemployment reached 5.9 percent in the Boise-Nampa area, up from 2.8 percent a year ago.

In November, of 2008, Bill Roberts of The Idaho Statesman, daily newspaper for the City of Boise, put out an article telling of the "Deep Recession" headed for Idaho. He cited that "of the nearly 40,000 jobless people living in Idaho, half lived in the Treasure Valley". He goes on to say that unemployment is up to 5.9% in the Boise-Nampa area, up from 2.8% a year ago.



In December, 2008, The Idaho Press-Tribune staff tells that layoffs and hiring freezes erased thousands of Idaho jobs in November, sending the state's unemployment rate to a 15 year high. The Press-Tribune reports Nampa's unemployment at 7.8% and Caldwell at 8.8%

**Idaho job losses mount**

Idaho Press-Tribune Staff  
newsroom@idahopress.com  
Saturday, December 6th, 2008

TREASURE VALLEY — Layoffs and hiring freezes erased thousands of Idaho jobs in November, sending the state's unemployment rate to a 15-year high.

Statewide, the jobless rate jumped half a percentage point to 5.8 percent, to make the October-November increase ever recorded in the Gem State.

Locally, the Labor Department reported even higher unemployment — 7.8 percent in Nampa and 8.8 percent in Caldwell. Those are about five percentage points greater than a year ago. Caldwell jobless rate was 3.8 percent and Nampa was 3.4 percent.

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In February, 2009, Brad Talbutt of the Idaho Statesman reports that Micron would be ending most of its Boise manufacturing, and by the end of August (2009) as many as 2,000 workers will lose their jobs.

News > Business

## Job cuts to take Micron to early '90s staff level

Boise chip maker says it will eliminate 2,000 positions by August

BY BRAD TALBUTT - btalbutt@idahostatesman.com  
Published: 02/24/09

Comments (43) | [Recommend \(0\)](#)

Although Micron Technology said two months ago that it had no intention of stopping production in Boise anytime soon, others have been predicting the end for some time.

As late as December, at the annual shareholders' meeting, Micron Chairman and CEO Steve Appleton said, "We will continue to run DRAM on 200 millimeter into the foreseeable future. Those products - we call them specialized - are probably our most profitable."

That has changed.

Micron Technology said Monday that it would cut 500 more workers from its Boise payroll in "the near term" and close its remaining 200 mm wafer production plants, ending most

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**File photo**  
A Micron employee inspects a wafer at a Micron manufacturing plant.

Then, on March 16, 2009, The Idaho Statesman, the state's largest newspaper, announced it has to cut 25 positions, and salary reductions will be forced on those lucky enough to keep their jobs.

IDAHO STATESMAN • IDAHOSTATESMAN.COM

BUSINESS

## Statesman to lay off 25 workers

The newspaper will reduce the wages of most of its remaining employees by 3% to 10%.

**BY BILL ROBERTS**  
broberts@idahostatesman.com

The reductions come as the newspaper weathers a deepening recession that has gripped much of the Treasure Valley.

President and Publisher Mi-Ai Parrish said the cuts are essential "to reduce expenses aggressively." But the paper remains profitable, she said.

This is the third round of Statesman layoffs since June. It will bring the number of workers who have been laid off to 66. The company will still employ more than 300 workers.

Employees who are laid off will work through April 3.

"There isn't a person on the list we want to leave," Parrish said.

Wage reductions will start in April.

Employees earning \$25,000-\$49,999 a year will take 3 percent pay cuts. Those earning \$50,000 to \$99,999 will have their pay cut 6 percent, and those earning \$100,000 or more will be cut 10 percent.

Staff furloughs are also a possibility later this year if revenues don't improve, Parrish told employees in an e-mail Monday.

Statesman job and wage reductions are part of a plan announced in February by McClatchy Co., which owns the Statesman, to reduce its job force by 15 percent amid falling advertising revenues. The company has a heavy debt burden from its 2006 purchase of the Knight Ridder newspaper chain.

The Statesman determined how its reductions would be made, Parrish said. Job cuts were eased by other cost-saving measures. This month, the newspaper moved its printing to the Idaho Pressbune in Nampa, which will save the company hundreds of thousands of dollars a year, Parrish said.

Layoffs will come from throughout the newspaper, but "we worked really hard to touch the newsgathering operation as possible," she said. "We will still have the largest newsgathering force in the state."

Bill Roberts

Following are other examples of the Treasure Valley economy

**WITH KIDS?** Cindy Hall at Spalding Elementary in the Meridian School District works Thursday afternoon. She worries that she won't be able to teach as effectively if she gets 5.

DARIN OSWALD / doswald@idahostatesman.com

## Boise schools will cut 122 teachers next year

The district blames declining enrollment and disappointing state revenue projections.

**BY SANDRA FORESTER**  
sforester@idahostatesman.com

The cuts include 75 part-time and full-time elementary and secondary teachers with one-year contracts, and 47 secondary teachers whose contracts won't be renewed, said district spokesman Dan Hollar. He could not say which schools would lose positions.

"Next week is when we're notifying these individuals," he said. "It's always a difficult situation. This is not easy for us to do."

Hollar said the district won't know how cuts will affect class size until the school year starts because classes are based on enrollment.

See **TEACHERS, A6**

 **READ THE MEMO SENT TO TEACHERS**  
IdahoStatesman.com/Education

did nothing to help the financially troubled resort, which is closing Wednesday.

# Tamarack's lofty plans come crashing down

## Losses prove too big to let the troubled resort stay open

BY JOHN MILLER  
THE ASSOCIATED PRESS

Tamarack Resort in Valley County billed itself as the first new destination ski resort in a quarter century when its first customers climbed aboard lifts in December 2004.

Four years later, the resort operation, including lodging, is shutting down Wednesday, leaving homeowners still holding resort real estate once worth millions.

Factors dooming Tamarack, at least for now, include a spending spree by French owner Jean-Pierre Boespflug that drained a \$250 million construction loan, tight credit markets, collapsing

### WHAT'S NEXT?

► **After the ski hill closes:** Tamarack officially says the resort is no longer operating but is not offering details about what might be ahead for amenities such as the restaurant or rentals. Ditto what, if any, plans are contemplated for golf or mountain-biking season later this year.

► **It's up to the judge:** Bankruptcy Judge Patrick Owen will consider at 9 a.m. Thursday whether the receiver gets the money he's requesting to close the resort.

► **Not a good sign:** The resort's Web site (tamarackidaho.com) shut down Tuesday.



KATHERINE JONES / kjones@idahostatesman.com

Sharon Olson, owner of the Whistle Stop in Cascade, has kept her costs down by pinching pennies and working seven days a week. She owns her building and doesn't expect to lay off any of her employees, despite the economy. "I'm lucky," she says.

# Long Valley economy has big hole shaped like Tamarack

# Boise Cascade's sales plummet

## The company blames a drop in home construction for the losses.

BY BRAD TALBUTT

btalbutt@idahostatesman.com  
Boise Cascade lost \$40.5 million on sales of \$516.6 million in the final quarter of 2008, compared with net income of \$39 million on \$1.24 billion in sales in the same quarter a year earlier.

For the year, the privately held manufacturer lost \$288 million, compared with a \$128 million profit in 2007.

Boise Cascade operates lumber mills in the Pacific Northwest and Louisiana, in-

cluding a laminated beam plant in Emmett. It sells lumber and manufactured wood products like plywood and particleboard to the construction industry.

The company attributes most of the annual loss to a previously reported \$219 million writedown of the value of its 49 percent stake in Boise Inc., the company created when Boise Cascade sold its paper and packaging division to investors who took Boise Inc. public in February 2008.

Boise Cascade used most of the proceeds from the sale to pay down long-term debt, which fell to \$315 million in 2008 from \$1.1 billion at the end of 2007.

The 43 percent drop in U.S.

housing starts in the fourth quarter, along with the now familiar litany of economic woes — crippled financial markets, elevated inventories of unsold homes, rising unemployment and falling consumer confidence — caused sales to dry up.

The company's outlook on 2009 isn't any rosier. It expects to operate production facilities at less than capacity through the year.

"It will be a difficult challenge to return to profitability if new residential construction in the U.S. remains at the levels experienced over the last six months," said Duane McDougall, chairman and

See BOISE CASCADE, B9

### IN THE WORKPLACE

## Workers, employers seek layoff advice

BY CINDY KRISCHER GOODMAN  
MCLATCHY NEWSPAPERS

As pink slips become as common as Post-it notes, our workplaces are becoming a breeding ground for employment lawsuits. Smart employers are asking the right questions about their legal obligations during a layoff. And, wise employees are brushing up on their rights.

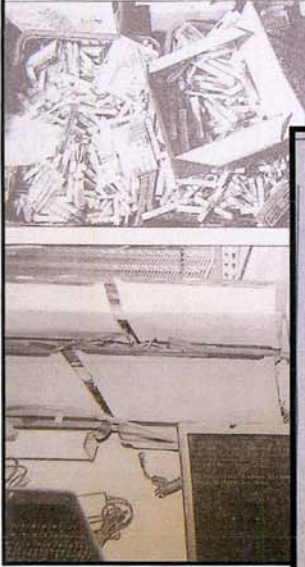
Below, Michael Casey, a corporate labor lawyer with Epstein Becker & Green, a national business-law firm, responds to concerns of readers. Casey represents employers. Robert Weisberg, a Miami attorney who represents workers, also offers answers.

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With sales of manufactured goods p this recession, d chips is evaporati ary, chip sales plu almost a third fro vious year to \$15

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# MPC leftovers going on the block



You can bid on the remains of the failed Valley company starting Wednesday.

## Recession takes toll on performing arts

Layoffs and performance cuts in Idaho could be just the beginning, as ticket sales, donations and grants decline.

BY DANA OLAND

doland@idahostatesman.com

Boise Contemporary Theater canceled its closing production of Sarah Rule's "Eurydice."

Hailey's Company of Fools is ending its season with the two-character "Souvenir" instead of the nine-character "House of Blue Leaves."

Both decisions were made because of the economic crisis, and both groups say their actions preempted a larger loss this season and greater debt for next. BCT also laid off some staff.

The economy deeply affects

### HOW YOU CAN HELP

**Make a donation:** no matter how small — to an arts group that means something to you. If every audience member in a 400-seat theater gave \$5, that company would receive a \$2,000 donation.

**Buy a ticket:** Opera Idaho performs "Cosi fan tutte" at the Egyptian Theatre this weekend. Company of Fool's performs "Souvenir" at the Liberty in Hailey. Ballet Idaho, Idaho Dance Theatre and Trey McIntyre Project both have performances in the next few months. Boise Little Theater's season runs through May. The Boise Philharmonic performs March 13-14. Boise

Contemporary Theater continues its "5-by-5" play reading series.

**Volunteer services and in-kind donations:** If you can't give money, ask if there is some way you can help: design a Web page, set up a database, donate a computer. There are many ways you can make a difference.

Arts groups exist in a delicate balance in the best of times, said Mark Hofflund, managing director of Idaho Shakespeare Festival and chairman of the Idaho Commission on the Arts.

"If they can stay through the difficult times, they'll continue to grow and eventually flourish," Hofflund said.

# Housing market slides again

Tax incentives for new home buyers haven't had much effect in the Treasure Valley yet.

BY BRAD TALBUTT

btalbutt@idahostatesman.com

Fewer homes were sold in Ada and Canyon counties in February than in any February in the last 10 years, according to the latest report from the Intermountain Multiple Listing Service.

The median price of homes sold continued to decline — down 18 percent in Canyon

County and 11 percent in Ada County from February 2008, the MLS reported.

The local inventory of unsold homes remains high, depressing prices, which are near 2005 levels.

Sales continue to drag despite still-falling prices, low interest rates and an \$8,000 tax credit for first-time homebuyers in the federal stimulus law Congress passed in February.

"I'm still not seeing people jumping in because of that, but the people who are already buying are excited to get the free money," said Shaun Tracy, associate broker with ReMax Capi-

tal City in Boise. "The public is still trying to figure out what the credit really means, and I don't think it has caused momentum to shift. I think over time, as builders advertise it along with other incentives, it might."

Tracy said fear is still stifling the market — especially the fear people have of losing their jobs.

"People are essentially putting their lives on hold, even though prices haven't been this good in years," he said.

Tracy Conklin, an agent with Coldwell Banker Tomlinson Group, said her office is hearing from more motivated shoppers who are aware of the credit, but

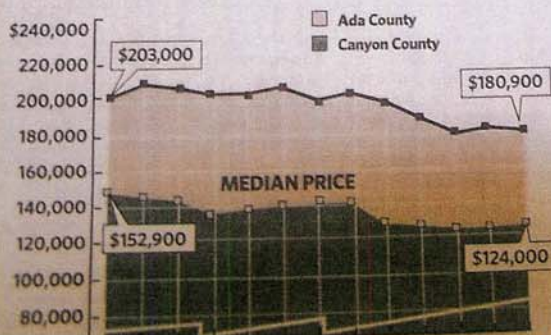
said it has not yet translated into sales.

"I remember winters being slow traditionally, so I don't know if we're not just back to a normal sales year," she said. "Of course sales and prices are down, but it's not like nothing is happening. People are buying homes."

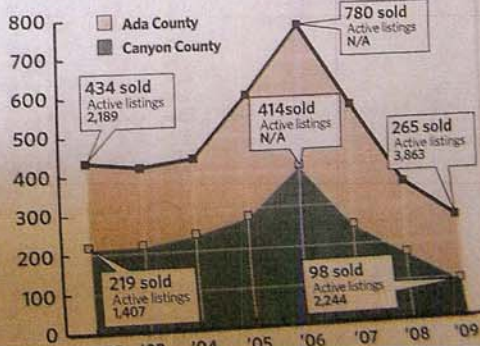
Builders are doing everything they can to control inventory, and Lars Hansen, director of sales at the Brighton Corp., said he now has very few homes available after closing several sales in January.

See HOUSING, B9

HOME PRICES EDGED DOWN IN ADA, UP IN CANYON...



...BUT FEBRUARY SALES DECLINED IN BOTH



These cuts, along with those at MPC Computers of Nampa, closing of Tamarack Ski Resort, cuts in medical facilities, Boise State University and even the State government of Idaho, all create a bleak picture for the economic growth of the Treasure Valley.

Idaho Power has based part of its need on the growing economy of the Treasure Valley. In their Integrated Resource Plan of 2006, Idaho Power projected single family residential housing increases to be 13,140 for 2005, 11,784 for 2006, 10,701 for 2007, and 10,423 for 2008. In 2008, they issued another IRP stating starts for 2009 to be 10,060, and 6,496 for 2010. Now, in February, 2009, Idaho Power has issued an addendum IRP to their 2006 plan, stating the expected case sales and load forecast for 2009 for residential housing to be 7,121, and 7,269 for 2010.

Single Family Residential Housing Starts & Sales						
<i>IP Integrated Resource Plans-Projected Residential Starts</i>						
<b>IP 06 project</b>	13140	11784	10701	10423	9675	8845
<b>IP 08 project</b>					10060	6496
<b>IP 2/09 project</b>					7121	7269

I contend that even though Idaho Power says it has cut its projection by 10,000, it has still not cut enough. You can see by the following chart, collected from Census Bureau data, from the local realtor's multiple listing service, from Idaho Power's IRP's, and actually calling each municipality, that single family residential sales in 2007 and 2008, are no where near IP projections. This is not news I take lightly, as my business is selling homes, but these numbers plainly indicate even now, Idaho Power's projections are not based on historical data. My chart only represents single family residential housing starts, but is indicative of what is going on in commercial and industrial markets as well. Idaho Power is basing much of its need on one company, which is like putting all of one's eggs in one basket.

Idaho Power has said all along that only 17% of the electricity brought to the Treasure Valley will be used in the Treasure Valley, and now, that figure may be optimistic. Please note the decline and sudden dropping away, of single family residential building permits in the Treasure Valley between 2005 at 15,505 and 2008 at 2,374 again comparing 2,374 with Idaho Power's projection of 10,423

Single Family Residential Housing Starts & Sales

	2005	2006	2007	2008	2009	2010
<b>IP Integrated Resource Plans-Projected Residential Starts</b>						
IP 06 project	13140	11784	10701	10423	9675	8845
IP 08 project					10060	6496
IP 2/09 project					7121	7269

**Building Permits for Single Family Residential**

Location	Year	2005	2006	2007	2008	28-Feb-09 2009 ytd	2010
Boise		955	1166	620	184	39	
Ada Co		7386	4104	2331	353		
Canyon Co		3114	2963	1192	855		
Nampa		1426	1135	289	241		
Caldwell		955	1166	620	362	10	
Eagle		527	234	87	90		
Star		546	274	119	21		
Middleton		135	185	42	85		
Homedale		15	10	7	0		
Cascade		2	6	2	3	0	
Emmett		108	72	32	12	0	
Notus		3	21	5	7		
Parma		13	8	12	7	1	
New Plymouth		8	18	5	1	0	
Payette Co		97	99	89	27	0	
Payette		16	34	23	9	1	
Fruitland		41	65	52	11	1	
Washington C		47	40	36	34	2	
Weiser		13	20	10	7	0	
Ontario		15	22	12	4	0	
Malheur Co		72	87	86	61		includes Vale, Nyssa, Jordan Valley
<b>Total</b>		<b>15494</b>	<b>11729</b>	<b>5671</b>	<b>2374</b>	<b>54</b>	

**Housing Sales per Intermountain MLS**

	2005	2006	2007	2008	Feb 28, 09
Ada Co					709
Canyon Co	13,209	11,101	7,824	5,871	262
Payette Co	6,310	5,698	3,519	2,377	27
Malheur Co	475	439	323	211	12
	269	293	234	154	
<b>Total</b>	<b>20,263</b>	<b>17,531</b>	<b>11,900</b>	<b>8,613</b>	<b>1,010</b>

**Building Lot Sales per Intermountain MLS**

	2005	2006	2007	2008	2009
sold lots	3064	1677	940	487	34

Therefore, based on the summary of factual data, coupled with the economic downturn, I contend that Idaho Power has overstated its need for power running through the proposed Boardman to Hemingway line, and I ask that you insist on waiting for their updated projections which will be forthcoming in their 2009 Integrated Resource Plan due out this summer.

Thank you for your attention.

Respectfully,

Pat Phillips

# **EXHIBIT 2**

## **AFFIDAVIT OF ROGER FINDLEY**



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

LC 41

In the Matter of Idaho Power Company's  
Application to Include the Boardman to  
Hemingway Transmission Line in its  
Acknowledged Integrated Resource Plan  
("IRP")

**DECLARATION OF ROGER FINDLEY IN  
SUPPORT OF STOP IDAHO POWER'S  
MOTION TO POSTPONE AND  
CONSOLIDATE HEARING**

State of Oregon                    )  
  ) ss.  
County of Malheur                )

1           ROGER FINDLEY, upon being duly sworn, deposes and says:

2           1.     I am a resident of Ontario, Oregon, and a member of Stop Idaho Power.

3           2.     I attended the Public Utility Commission field hearing in Ontario, Oregon,  
4 on March 26, 2009.

5           3     The field hearing was scheduled to run from 7 p.m. to 9 p.m.

6           4.     At the opening of the field hearing Idaho Power Company representatives  
7 made a presentation that lasted for approximately 45 minutes, during which  
8 presentation new material was entered into the record.

9           5.     The new material included a PowerPoint presentation.

10          6.     Following the field hearing my wife and I spoke with Idaho Power  
11 Company's Director of Planning Delivery, David Angell. My wife, Jean Findley, stated to  
12 Mr. Angell, "You used 45 minutes of Malheur County citizens' PUC two-hour time slot to

1 introduce new evidence.”

2 7. In response to my wife’s statement Mr. Angell responded, ““Yes, but we  
3 got it [the new material] into the record.”

4 8. Following the field hearing I requested a copy of Idaho Power Company’s  
5 Ontario PowerPoint presentation from a member of the Commission Staff.

6 9. I compared the Ontario field hearing PowerPoint presentation with a  
7 PowerPoint presentation that Idaho Power Company made on March 19 to the 2009  
8 IRP Advisory Committee, whose meetings I often attend.

9 10. All of the slides Idaho Power presented to the Ontario meeting appear to  
10 be new material; none of them were covered in the 2006 Integrated Resource Plan or in  
11 the Addendum. Seven of those slide had been presented previously to the 2009 IRP  
12 Advisory Committee. The new material appears to be slated for inclusion in the 2009  
13 Integrated Resource Plan filing.

14 11. During the Ontario field hearing Idaho Power failed to cite, refer to, or  
15 even comment upon material it presented to the 2009 IRP Advisory Committee meeting  
16 on March 19, which material addressed demand side reductions in two areas, viz., (i)  
17 the “Irrigation Peak Rewards” program, which is anticipated to reduce peak loads this  
18 summer by an additional 128 MW, and (ii) The EnerNOC contract, which is expected to  
19 reduce commercial and industrial loads by 75 MW by 2011. Of course, presentation of  
20 this material would undercut Idaho Power’s alleged “need” for the B2H line.

21 ///

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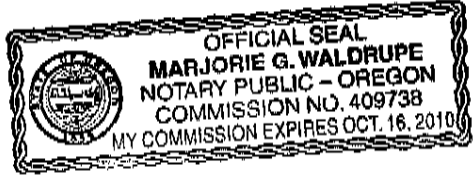
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AND FURTHER DECLARANT SAYETH NOT.

*Roger Findley*  
\_\_\_\_\_  
Roger Findley

State of Oregon     )  
                                  ) ss.  
County of Malheur    )

Before me, a notary public, appeared Roger Findley on the 9<sup>th</sup> day of April, 2009, and acknowledged the foregoing as his voluntary act and deed.



*Marjorie G. Waldrup*  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

# **EXHIBIT 3**

**EnerNOC PRESS RELEASE**

**MARCH 4, 2009**



FOR IMMEDIATE RELEASE

Contact: Media Relations: Sarah McAuley, (617) 532.8195, [news@enernoc.com](mailto:news@enernoc.com)  
Investor Relations: Will Lyons, (617) 532.8104, [ir@enernoc.com](mailto:ir@enernoc.com)

### **EnerNOC Signs 65 Megawatt Demand Response Contract with Idaho Power**

BOSTON, MA, March 4, 2009 – EnerNOC, Inc. (NASDAQ: ENOC), a leading developer and provider of clean and intelligent energy solutions, today announced that it has entered into a five-year contract with Idaho Power, a subsidiary of IDACORP, Inc., to provide up to 65 megawatts of demand response capacity in southern Idaho. Pending regulatory approval, EnerNOC will begin to deliver capacity under this contract this summer.

“Investing in this demand response initiative helps us meet our commitment to our customers to continue to provide responsible, reliable, fair-priced energy and continue to diversify our power portfolio. By choosing EnerNOC’s demand response application, which has been successfully deployed by many of our respected industry peers, we get the firm capacity we need to respond to peak load demands during our summer peak season,” said Warren Kline, Customer Service and Regional Operations Vice President of Idaho Power.

“This is Idaho Power’s first comprehensive demand response offering targeting commercial and industrial customers, and demonstrates that more and more utilities are embracing demand response as a necessary component of their resource portfolio,” said Tim Healy, Chairman and CEO of EnerNOC.

EnerNOC will enable and manage a network of commercial and industrial facilities throughout Idaho Power’s service area to reduce electricity demand during system peaks. Idaho Power experienced a new summer peak of 3,214 MW in June 2008. EnerNOC will install its technology, free of charge to the customer, at each participating facility and provide payments to participants for being “on call” during the summer months. In addition, each facility will get free basic access to EnerNOC’s PowerTrak® energy management software, which will enable them to identify additional cost-saving opportunities through better energy management. When a demand response event is called, EnerNOC will dispatch its network to reduce non-essential electricity usage and collect real-time data to verify that each facility is achieving its pre-determined energy reduction goals.

This contract is subject to the approval of the Idaho Public Utilities Commission.

EnerNOC provides demand response and energy efficiency solutions throughout North America in open markets such as New England, New York, PJM Interconnection, Texas, and California, as well as under bilateral agreements with utilities such as the Tennessee Valley Authority, Tampa Electric Company, Salt River Project, Public Service Company of New Mexico, and Xcel Energy.

#### **About Idaho Power**

Formed in 1998, IDACORP, Inc. is the holding company for Idaho Power, a regulated electric utility that began operations in 1916. Today, Idaho Power employs nearly 2,000 people to serve a 24,000 square-mile service area in southern Idaho and eastern Oregon. With 17 low-cost hydroelectric projects as the core of its generation portfolio, Idaho Power’s 487,000 residential, business and agricultural customers pay some of the nation’s lowest prices for electricity. Idaho Power offers energy efficiency programs and incentives for residential, commercial, industrial and

irrigation customers. To learn more about Idaho Power's energy efficiency programs, visit the Energy Center at [www.idahopower.com/energycenter](http://www.idahopower.com/energycenter). To learn more about Idaho Power or IDACORP, visit [www.idahopower.com](http://www.idahopower.com) or [www.idacorpinc.com](http://www.idacorpinc.com).

### **About EnerNOC**

EnerNOC, Inc. is a leading developer and provider of clean and intelligent energy solutions to commercial, institutional, and industrial customers, as well as electric power grid operators and utilities. EnerNOC's technology-enabled demand response and energy management solutions help optimize the balance of electric supply and demand. The Company uses its Network Operations Center, or NOC, to remotely manage and reduce electricity consumption across a network of commercial, institutional, and industrial customer sites and make demand response capacity and energy available to grid operators and utilities on demand. For more information visit [www.enernoc.com](http://www.enernoc.com).

### **Safe Harbor Statement**

Statements in this press release regarding management's future expectations, beliefs, intentions, goals, strategies, plans or prospects, including, without limitation, statements relating to the future success of EnerNOC's demand response and energy management solutions and the ability of EnerNOC's utility customers to derive cost-effective benefits from such solutions, may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. In addition, certain of the EnerNOC's contracts and expansion of existing contracts may be subject to approval of state or local regulatory agencies. There can be no assurance that such approvals will be obtained. Forward-looking statements can be identified by terminology such as "anticipate," "believe," "could," "could increase the likelihood," "estimate," "expect," "intend," "is planned," "may," "should," "will," "will enable," "would be expected," "look forward," "may provide," "would" or similar terms, variations of such terms or the negative of those terms. Such forward-looking statements involve known and unknown risks, uncertainties and other factors including those risks, uncertainties and factors referred to under the section "Risk Factors" in EnerNOC's most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, as well as other documents that may be filed by EnerNOC from time to time with the Securities and Exchange Commission, as well as other documents that may be filed by EnerNOC from time to time with the Securities and Exchange Commission. As a result of such risks, uncertainties and factors, EnerNOC's actual results may differ materially from any future results, performance or achievements discussed in or implied by the forward-looking statements contained herein. EnerNOC is providing the information in this press release as of this date and assumes no obligations to update the information included in this press release or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Tel: (617) 224.9900 | email: [info@enernoc.com](mailto:info@enernoc.com) | [www.enernoc.com](http://www.enernoc.com) | © 2001-2007 EnerNOC, Inc.

# **EXHIBIT 4**

## **SIP DATA REQUEST NO. 7 AND IDAHO POWER'S RESPONSE**

**SIP'S DATA REQUEST NO. 7:**

**Please quantify the effect of the closure of Micron's last production line in June 2009 in terms of Idaho Power Company's need for power. Was this loss factored into the Company's load projections?**

**IDAHO POWER COMPANY'S RESPONSE TO SIP'S DATA REQUEST NO. 7:**

Micron Technology's announcement came after Idaho Power had prepared the load forecast used for both the IRP Addendum and the 2009 IRP. Idaho Power has had discussions with Micron on the potential impact to future loads. Micron has advised the Company that it does expect some sustained load reduction, but it does not expect the load reduction to be substantial. As stated in the 2006 IRP on page 29, Micron's load is approximately 80 aMW.

In addition, the load forecast used in the IRP Addendum did not include a new large load that comes on-line this year. As Hoku Materials, Inc., begins coming on-line later this year, the increase in load due to Hoku is expected to be far greater than any reduction expected from Micron. By the first quarter of 2010, Hoku demand is forecast to be 82 MW (without losses).



# **EXHIBIT 5**

## **SIP DATA REQUEST NO. 15 AND IDAHO POWER'S RESPONSE**

**SIP'S DATA REQUEST NO. 15:**

**Please identify all Idaho Power Company's special contract customers and their current and projected energy demands.**

**IDAHO POWER COMPANY'S RESPONSE TO SIP'S DATA REQUEST NO. 15:**

**ADDITIONAL FIRM LOAD**

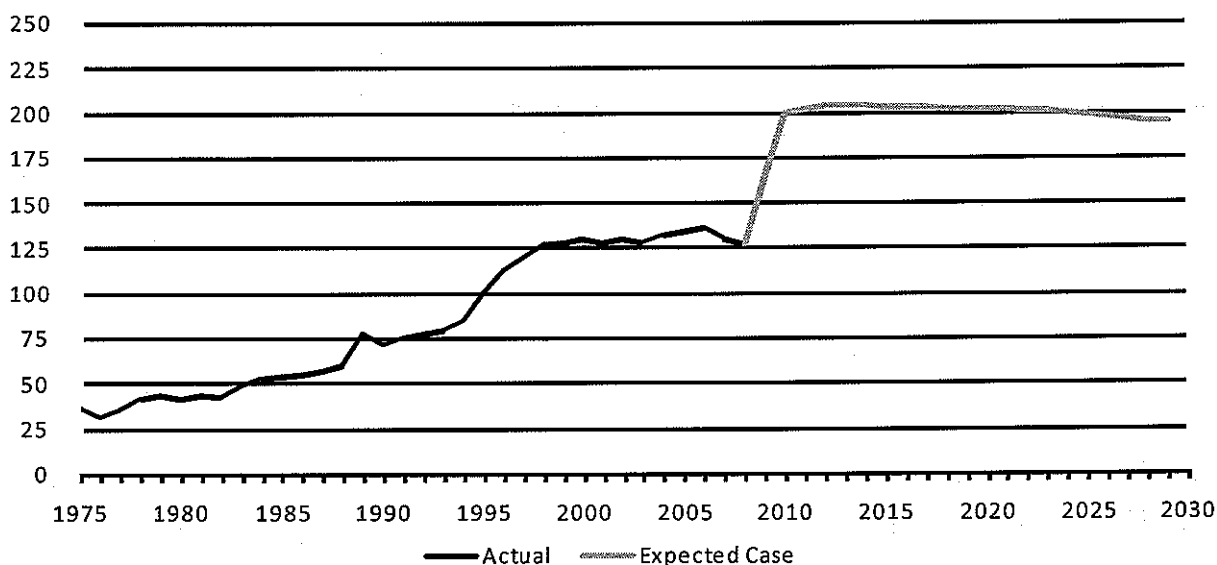
Special contracts currently exist for five large customers that are recognized as firm load customers. These customers are Micron Technology, Simplot Fertilizer, INL, Hoku Materials, Inc., and Raft River Rural Electric Cooperative, Inc. ("Raft River"). Together, these customers make up the "Additional Firm Load" category. Idaho Power does not voluntarily provide historical or forecast information concerning individual customers without obtaining the customer's consent.

In the expected case forecast, additional firm load is expected to increase from 127 aMW in 2008 to 195 aMW in the year 2028, an average growth rate of 2.2 percent per year over the planning period (see Table 1). The additional firm load energy and demand forecast in the 70<sup>th</sup> percentile scenario is identical to the expected load growth scenario. The scenario of projected additional firm load is illustrated in Figure 11.

**Table 1. Additional Firm Load Growth (aMW)**

	2008	2013	2018	2028	Growth Rate (per year) 2008–2028
Expected Case .....	127	204	202	195	2.2%

**Figure 11. Forecasted Additional Firm Load (aMW)**



**Additional Firm Sales and Load\*****Historical Additional Firm Sales and Load, 1970–2008**

Year	Billed Sales (thousands of MWh)	Percent Change	Average Load (megawatts)
1970	319		36
1971	295	-7.5%	34
1972	284	-3.7%	32
1973	290	2.2%	33
1974	282	-2.7%	32
1975	314	11.1%	36
1976	277	-11.9%	31
1977	311	12.4%	35
1978	357	14.8%	41
1979	373	4.6%	43
1980	360	-3.6%	41
1981	376	4.5%	43
1982	368	-2.2%	42
1983	425	15.5%	48
1984	466	9.8%	53
1985	473	1.3%	54
1986	482	2.0%	55
1987	503	4.3%	57
1988	531	5.6%	60
1989	671	26.5%	77
1990	626	-6.8%	71
1991	661	5.7%	75
1992	681	3.0%	77
1993	689	1.3%	79
1994	741	7.5%	85
1995	877	18.4%	100
1996	988	12.6%	112
1997	1,048	6.0%	120
1998	1,112	6.2%	127
1999	1,121	0.8%	128
2000	1,143	1.9%	130
2001	1,118	-2.1%	128
2002	1,139	1.9%	130
2003	1,120	-1.7%	128
2004	1,157	3.3%	132
2005	1,175	1.6%	134
2006	1,189	1.2%	136
2007	1,142	-4.0%	130
2008	1,114	-2.4%	127

\* Includes Micron Technology, Simplot Fertilizer, INL, City of Weiser, and Raft River Rural Electric Cooperative, Inc.

# **EXHIBIT 6**

**OPIONETICS THREE-YEAR HOKU  
STOCK QUOTE, APRIL 3, 2009**



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### HOKU Hoku Scientific Inc (NASDAQ GM)

Last: **\$2.50**    Change: ▲ **+\$0.01**    % Change: **+0.4%**    As of 12:00 AM ET

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Enter Symbol <input type="text" value="hoku"/>	Time Frame <input type="text" value="3 years"/>	Frequency <input type="text" value="Daily"/>
Price Display <input type="text" value="Close"/>	Compare to Index <input type="text" value="&lt;None&gt;"/>	Compare to Symbol <input type="text"/>
Upper Indicator <input type="text" value="Show All Events"/>	Lower Indicator 1 <input type="text" value="Volume"/>	Lower Indicator 2 <input type="text" value="&lt;None&gt;"/>
Lower Indicator 3 <input type="text" value="&lt;None&gt;"/>	<input type="button" value="Draw Chart"/>	

Date: **04/03/2009 12:00 AM ET**    Open: **2.56**    Close: **2.5**    High: **2.57**

HOKU Daily  Earnings Up  Down  Dividends  Splits  4/03/09



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# **EXHIBIT 7**

**HOKU SCIENTIFIC, INC.**

**10Q QUARTERLY REPORT TO SEC**

**“Risk Factors”**

**HOKU SCIENTIFIC 10Q REPORT  
TO SECURITIES EXCHANGE COMMISSION  
FEBRUARY 3, 2009  
“RISK FACTORS,” ITEM 1A OF REPORT**

Source: <http://google.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=6377827-154877-233265&type=sect&TabIndex=2&companyid=374587&ppu=%252fddefault.aspx%253fsym%253dHOKU>

**ITEM 1A. RISK FACTORS**

In addition to the risks discussed in Part I, Item 2, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” our business is subject to the risks set forth below.

*Risks Associated With Our Business*

**We have a limited operating history, and have recently determined to enter the photovoltaic installations and polysilicon markets and scale back our efforts in the fuel cell market. If we are unable to generate significant revenue, our business will be harmed.**

We were incorporated in March 2001 and have a limited operating history. We have cumulative net losses since our inception through December 31, 2008.

We have recently announced a change in our main business and our intention to form a polysilicon business through our subsidiary Hoku Materials and a photovoltaic, or PV, system installation business through our subsidiary Hoku Solar. The polysilicon business includes developing production capabilities for and the eventual production of polysilicon. The PV systems installation business includes the design, engineering, procurement and installation of turnkey PV systems for residential and commercial customers. Prior to our announcement, our business was solely focused on the stationary and automotive fuel cell markets. We do not expect to generate any revenue from Hoku Fuel Cells in the foreseeable future, and Hoku Materials does not currently generate any revenue.

We have no prior experience in the polysilicon business. In order to be successful, we are devoting substantial management time, resources and funds to this new business. We intend to produce polysilicon at our planned polysilicon production facility in Pocatello, Idaho. We commenced construction in May 2007 and anticipate we will begin producing polysilicon beginning in the first half of calendar year 2009; however, this could be delayed to the second half of calendar year 2009. Any delays beyond the second half of 2009 could result in the termination of our customer supply contracts. We have encountered and expect that we will continue to encounter significant risks relating to our entering into the polysilicon industry and changes in that industry. If we are unable to address these risks and other risks successfully, our business, financial condition and results of operations likely would be adversely affected.

**We need at least \$390 million to construct and equip our planned polysilicon production plant, and we may be unable to raise this capital on favorable terms or at all.**

Our planned entry into the polysilicon market will require us to spend significant sums to support the construction of a facility to produce polysilicon, to purchase capital equipment, to fund new sales and marketing efforts, to pay for additional operating costs and to significantly increase our headcount. As a result, we expect our costs to increase significantly, which will result in further losses before we can begin to generate significant revenue from our Hoku Materials division.

Based on our polysilicon supply agreements with customers, we plan to equip and construct a polysilicon production plant with a production capacity of 4,000 metric tons of polysilicon per year. Our original estimated construction cost for a facility capable of producing 3,500 metric tons of polysilicon per year was \$390 million; however, we have not yet determined the additional cost associated with the increase in our planned production output from 3,500 to 4,000 metric tons per year. We believe that the increase will not require the purchase of any additional

polysilicon reactors, trichlorosilane production equipment, or vent gas recovery equipment. As of December 31, 2008, we had contributed approximately \$140.1 million to the construction cost of our polysilicon plant. We plan on funding the remaining construction costs through customer prepayments and through debt or equity financing. As of December 31, 2008, we had received \$98.5 million in customer prepayments under our supply contracts and expect to receive an additional \$185.5 million in customer prepayments.

We have experienced delays in the receipt of customer prepayments under our agreements with Wuxi Suntech Power Co., Ltd., Solarfun Power Hong Kong Limited, Tianwei New Energy (Chengdu) Wafer Co., Ltd., Jiangxi Jinko Solar Co., Ltd. and Wealthy Rise International, Ltd.(Solargiga). As of December 31, 2008, Solargiga had failed to pay us any of the \$43 million of their aggregate \$68 million in prepayments due prior to such date. If receipt of these payments are delayed, or not received at all, we could experience delays in our ability to continue the engineering, construction, and procurement of our planned polysilicon plant in order to deliver polysilicon in the first half of calendar year 2009, or within the time periods specified in our customer contracts, which could materially harm our business. Even if we receive these prepayments on time, the actual costs to engineer, construct, and procure our planned polysilicon production plant could exceed our estimates, and we may be unable to raise any additional funding required to pay for any such added costs.

Prior to obtaining additional debt or equity financing we believe we will have to, among other things, satisfy potential lenders and investors that we have adequately addressed the principal risks that: (1) the construction of the polysilicon plant is not completed on time, on budget, or at all; (2) the polysilicon plant does not operate at its full capacity; (3) the polysilicon plant fails to generate sufficient revenue to service any debt; or (4) that the financing will not be sufficient to complete the construction, procurement and start-up of our planned polysilicon plant. If we seek debt financing, we believe that we will need to accomplish and address the following:

- obtain agreements from Wuxi Suntech Power Co., Ltd., Solarfun Power Hong Kong Limited, Jiangxi Jinko Solar Co., Ltd., Tianwei New Energy (Chengdu) Wafer Co., Ltd. and Wealthy Rise International, Ltd (Solargiga) to assign any purchase payments for polysilicon made to Hoku Materials to the lenders that may provide us with debt financing and to subordinate each of their pari-passu security interests in Hoku Materials to the senior security interest of such lenders;
- obtain agreements from Stone & Webster, Inc., JH Kelly LLC, GEC Graeber Engineering Consultants GmbH and MSA Apparatus Construction for Chemical Equipment, Ltd., Idaho Power Company, Dynamic Engineering Inc., Saft Power Systems USA, Inc., PVA Tepla Danmark, Polymet Alloys, Inc., BHS Acquisitions, LLC and other potential vendors to assign their respective construction and/or service contracts to the lenders that may provide us with debt financing; and
- obtain the report of an independent engineering firm which supports our construction plans, our operating plans and our pro forma financial models which support the feasibility of our operating plans and business model.

If we fail to successfully address the risks of concern to potential lenders and investors, we may be unable to finance the construction of our planned production plant, our business will be materially and adversely affected, and we may be forced to delay, alter or abandon our planned polysilicon business operations. In addition, any delay in achieving these objectives may result in additional expense which would harm our business.

**If any of our polysilicon plant engineering, construction, or key equipment vendors are late in providing their contract deliverables, we may be unable to complete the construction of our planned polysilicon plant to begin commercial shipments in 2009, or at all, which could harm our business.**



We have contracts with Stone & Webster, Inc. JH Kelly, LLC, GEC Graeber Engineering Consultants GmbH and MSA Apparatus Construction for Chemical Equipment, Ltd., Idaho Power Company, Dynamic Engineering Inc., Saft Power Systems USA, Inc., PVA Tepla Danmark, Polymet Alloys, Inc., BHS Acquisitions, LLC and our other vendors, contractors and consultants who are providing key services, equipment, and supplies for the engineering, construction and procurement of our planned polysilicon plant in Pocatello, Idaho. If we experience delays in the performance or delivery of the services, equipment, and goods under these respective agreements, we may be unable to commence production of polysilicon in calendar year 2009, to ramp-up production and commence commercial shipments in calendar year 2009, or deliver the volume of polysilicon that is required under our polysilicon supply agreements. In addition, if we are required to seek alternative suppliers of the reactors, the TCS process, or electric substation for which we have already contracted, our costs could increase significantly and we would experience further delays.

Furthermore, delays may result in a breach of delivery obligations under our supply agreements with Suntech, Solarfun, Jinko, Tainwei and Solargiga which may allow them to terminate the supply agreements, which may require us to return deposits and prepayments (in some cases with premiums). This would harm our business and may make it difficult or impossible to complete the construction of our production facility on schedule or at all. While our agreements with our consultants, engineers, contractors, production equipment vendors and service providers do provide for certain penalties payable in the event that deadlines are not met, such penalties are not sufficient individually or in the aggregate to compensate us for the termination of any of our supply agreements or to replace the loss of any prepayments or deposits made in connection with our supply agreements.

**We may have difficulty managing change in our operations, which could harm our business.**

To date we have expended significant financial and management resources in connection with our planned entry into the polysilicon market and the development of our PV system installation business. For example, in May 2007 we commenced construction of our planned polysilicon facility in Pocatello, Idaho. Construction of the planned polysilicon facility and the operation of the polysilicon manufacturing and PV system installation businesses will involve substantial changes to our operations and place a significant strain on our senior management team and financial and other resources, and will, among other things, require us to significantly increase our international activities; hire and train additional financial, accounting sales and marketing personnel; and make substantial investment in our engineering, logistics, financial and information systems, including implementing new enterprise-level transaction processing, operational and financial management information systems, procedures and controls.

Any failure by us to manage the expansion of our operations or succeed in these markets or other markets that we may enter in the future, may harm our business, prospects, financial condition and results of operations.

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**If we are unable to collect \$43 million in past due amounts from our supply agreement with Wealthy Rise International, Ltd. (Solargiga), or resell their capacity to another customer, our business will be materially harmed.**

In September 2008, we entered into a supply agreement with Wealthy Rise International, Ltd., a wholly-owned subsidiary of Solargiga Energy Holdings, Ltd., or Solargiga, for the sale and delivery of polysilicon to Solargiga over a ten-year period beginning in March 2010, or the Solargiga Supply Agreement. Under the Solargiga Supply Agreement, up to approximately \$455 million may be payable to us during the ten-year period, subject to the acceptance of product deliveries and other conditions. Pursuant to the Solargiga Supply Agreement, Solargiga agreed to pay us an initial cash deposit of \$22 million. In connection therewith, we agreed to grant to Solargiga a security interest in all of our tangible and intangible assets related to our polysilicon business, and all equity interests in Hoku Materials owned by Hoku Scientific, to serve as collateral for our obligations under the Solargiga Supply Agreement. This security interest would be pari-passu with the security interests granted to Wuxi Suntech Power Co., Ltd., Solarfun Power Hong Kong Limited, Jianxi Jinko Solar Co., Ltd., and Tianwei New Energy (Chengdu)

Wafer Co. The customer security interests provide that they would be junior to the collateral interest of any lender providing debt financing for plant construction. As of December 31, 2008, Solargiga had failed to make its initial deposit of \$22 million, provide a \$46 million stand-by letter of credit, or make its second payment of \$21 million, which, according to the terms of the Solargiga Supply Agreement were due to us in September 2008, October 2008 and December 2008, respectively. We are in discussions with Solargiga to receive the late payments and letter of credit, and if we do not receive the payment and letter of credit, we may amend our contract with Solargiga, or terminate the Solargiga Supply Agreement altogether. In the event we terminate the Solargiga Supply Agreement, we would endeavor to replace the unmet prepayment commitments by reselling the polysilicon capacity currently allocated to Solargiga to other current or future customers. If we are unable to resell the polysilicon capacity represented by the Solargiga Supply Agreement we will need to secure new funds in order to finance the construction of our polysilicon production plant. Securing new funds may delay the anticipated timing of completion of the production plant, which delay may result in us failing to meet our delivery requirements under our other supply agreements. We may not be able to secure new funds on terms as favorable to us as those under the Solargiga Supply Agreement or at all. If we are unable to secure new funds, we will not be able to complete construction of the production plant, our business will be materially and adversely affected and we may be forced to delay, alter or abandon our planned business operations.

**If our supply agreement with Wuxi Suntech Power Co., Ltd. is terminated for any reason, our business will be materially harmed.**

In May 2008, we amended our polysilicon supply agreement with Wuxi Suntech Power Co., Ltd., or Suntech, for the sale and delivery of polysilicon to Suntech over a ten-year period beginning in July 2009, or the Suntech Supply Agreement. Under the Suntech Supply Agreement, up to approximately \$678 million may be payable to us during the ten-year period, subject to the achievement of milestones, the acceptance of product deliveries and other conditions. Pursuant to the Suntech Supply Agreement, we granted to Suntech a security interest in all of our tangible and intangible assets related to our polysilicon business, and all equity interests in Hoku Materials owned by Hoku Scientific, to serve as collateral for our obligations under the Suntech Supply Agreement. These security interests are pari-passu with the security interests granted to Solarfun Power Hong Kong Limited, Jiangxi Jinko Solar Co., Ltd. and Tianwei New Energy (Chengdu) Wafer Co. The customer security interests provide that they would be junior to the collateral interest of any lender providing debt financing for plant construction.

Each party may elect to terminate the Suntech Supply Agreement under certain circumstances, including, but not limited to:

- the bankruptcy, assignment for the benefit of creditors or liquidation of the other party; or
- a material breach of the other party.

Suntech may also terminate the agreement for the following material breaches:

- if we enter into customer commitments to deliver more than the rated capacity of our plant, subject to exceptions for planned expansion and increases in productivity; or
- if we fail to deliver a predetermined quantity of our polysilicon product by December 2009; or
- if we fail to complete successfully any of the polysilicon quality and production volume tests or the process implementation test set forth in the agreement within specified periods of time.

In addition, in the instance of extraordinary events, including acts of god and other events outside of our control, which result in our inability to perform under the terms of the Suntech Supply Agreement, we are afforded only a limited amount of time to cure such conditions. In the event we fail to cure the condition so that we can supply our product to Suntech or otherwise satisfy our delivery requirements by delivering to Suntech third-party polysilicon purchased in the open market, Suntech may terminate the Suntech Supply Agreement.

If the Suntech Supply Agreement is terminated for any reason, our business will be materially harmed. In addition, if the Suntech Supply Agreement is terminated by Suntech, we will be required to return any deposits and advance payments received up to the date of the termination, which is \$2 million as of December 31, 2008 and we will need to secure new funds in order to finance the construction of our polysilicon production plant. Securing new funds may delay the anticipated timing of completion of the production plant, which delay may result in us failing to meet our delivery requirements under our other supply agreements. We may not be able to secure new funds on terms as favorable to us as those under the Suntech Supply Agreement or at all. If we are unable to secure new funds, we will not be able to complete construction of the production plant, our business will be materially and adversely affected and we may be forced to delay, alter or abandon our planned business operations.

**If our supply agreement with Solarfun Power Hong Kong Limited is terminated for any reason, our business will be materially harmed.**

In May 2008, we entered into a supply agreement with Solarfun Power Hong Kong Limited, a subsidiary of Solarfun Power Holdings Co., Ltd., or Solarfun, for the sale and delivery of polysilicon to Solarfun over a ten-year period beginning in July 2009, or the Solarfun Supply Agreement. Under the Solarfun Supply Agreement, up to approximately \$384 million may be payable to us during the ten-year period, subject to the acceptance of product deliveries and other conditions. Pursuant to the Solarfun Supply Agreement, we granted to Solarfun a security interest in all of our tangible and intangible assets related to our polysilicon business, and all equity interests in Hoku Materials owned by Hoku Scientific, to serve as collateral for our obligations under the Solarfun Supply Agreement. This security interest is pari-passu with the security interests granted to Suntech, Jiangxi Jinko Solar Co., Ltd. and Tianwei New Energy (Chengdu) Wafer Co., Ltd. The customer security interests provide that they would be junior to the collateral interest of any lender providing debt financing for plant construction.

In October 2008, we entered into an amended supply agreement with Solarfun, or the Solarfun Amendment No. 1. Under the Solarfun Amendment No.1, we cancelled Solarfun's \$44 million letter of credit. In return, Solarfun paid us \$21 million, consisting of the \$19 million payment currently due, plus an accelerated \$2 million payment from the \$20 million prepayment which is not due until March 31, 2009. In addition, Solarfun Holdings Co., Ltd., Solarfun's corporate parent has signed the Solarfun Amendment No. 1 as guarantor for all of Solarfun's \$44 million in prepayment obligations that were previously guaranteed by the letter of credit. The Solarfun Amendment No. 1 also provides that if Solarfun fails to timely make any of these prepayments, then we may cancel the Solarfun Supply Agreement and retain all deposits previously paid. Finally, the Solarfun Amendment No. 1 amends the Solarfun Supply Agreement to allow us to suspend shipment of polysilicon to Solarfun if Solarfun fails to timely make its \$5 million prepayment due on March 31, 2010.

Each party may elect to terminate the Solarfun Supply Agreement under certain circumstances, including, but not limited to:

- the bankruptcy, assignment for the benefit of creditors or liquidation of the other party; or
- a material breach of the other party.

In addition, in the instance of extraordinary events, including acts of god and other events outside of our control, which result in our inability to perform under the terms of the Solarfun Supply Agreement, we are afforded only a limited amount of time to cure such conditions. In the event we fail to cure the condition so that we can supply our product to Solarfun or otherwise satisfy our delivery requirements by delivering to Solarfun third-party polysilicon purchased in the open market, Solarfun may terminate the Solarfun Supply Agreement.

Solarfun may also terminate the agreement if we fail to deliver a predetermined quantity of our polysilicon product by December 2009.

If the Solarfun Supply Agreement is terminated for any reason, our business will be materially harmed. In addition, if the Solarfun Supply Agreement is terminated by Solarfun, we will be required to return any deposits and advance payments received up to the date of the termination, which is \$32 million as of December 31, 2008 and we will need to secure new funds in order to finance the construction of our polysilicon production plant. Securing new funds may delay the anticipated timing of completion of the production plant, which delay may result in us failing to meet our delivery requirements under our other supply agreements. We may not be able to secure new funds on terms as favorable to us as those under the Solarfun Supply Agreement or at all. If we are unable to secure new funds, we will not be able to complete construction of the production plant, our business will be materially and adversely affected and we may be forced to delay, alter or abandon our planned business operations.

**If our supply agreement with Jiangxi Jinko Solar Co., Ltd. is terminated for any reason, our business will be materially harmed.**

In July 2008, we entered into a supply agreement with Jiangxi Jinko Solar Co., Ltd., or Jinko, formerly known as Jiangxi Kinko Energy Co., Ltd., for the sale and delivery of polysilicon to Jinko over a ten-year period beginning in November 2009, or the Jinko Supply Agreement. Under the Jinko Supply Agreement, up to approximately \$298 million may be payable to us during the ten-year period, subject to the acceptance of product deliveries and other conditions. Pursuant to the Jinko Supply Agreement, we have granted to Jinko a security interest in all of our tangible and intangible assets related to our polysilicon business, and all equity interests in Hoku Materials owned by Hoku Scientific, to serve as collateral for our obligations under the Jinko Supply Agreement. This security interest is pari-passu with the security interests granted to Suntech, Solarfun and Tianwei New Energy (Chengdu) Wafer Co., Ltd. The customer security interests provide that they would be junior to the collateral interest of any lender providing debt financing for plant construction.

In January 2009, we entered into Amendment No. 1 to Supply Agreement with Jinko, or the Jinko Amendment. Under the Jinko Amendment, the total volume of polysilicon to be sold by us to Jinko has been reduced such that up to approximately \$178 million may be payable to us during the ten-year period, subject to product deliveries and other conditions. This represents a 40% reduction in volume from the approximately \$298 million that would have been payable under the Jinko Supply Agreement over the same ten year period.

Under the Jinko Supply Agreement, Jinko previously paid us a cash deposit of \$10 million in September 2008, plus an additional \$2.5 million in December 2008 and \$7.5 million in January 2009 prior to the execution of the Jinko Amendment, as prepayments for future product deliveries. Jinko is obligated to pay an additional cash deposit of \$13 million as a prepayment for future product deliveries on or before March 31, 2009. Under the Jinko Amendment, we have waived the requirement that Jinko provide a letter of credit to secure its \$13 million deposit obligation; and the Jinko Amendment provides that if Jinko does not provide the \$13 million cash deposit on or before March 31, 2009, then we may immediately terminate the Jinko Supply Agreement and retain the \$20 million cash deposits as liquidated damages.

Pursuant to the Jinko Amendment, Jinko has agreed to provide us with most favored pricing terms for the processing of specified volumes of our polysilicon into wafers during the ten year term of the Jinko Supply Agreement.

Each party may elect to terminate the Jinko Supply Agreement under certain circumstances, including, but not limited to:

- the bankruptcy, assignment for the benefit of creditors or liquidation of the other party; or

- a material breach of the other party.

In addition, in the instance of extraordinary events, including acts of god and other events outside of our control, which result in our inability to perform under the terms of the Jinko Supply Agreement, we are afforded only a limited amount of time to cure such conditions. In the event we fail to cure the condition so that we can supply our product to Jinko or otherwise satisfy our delivery requirements by delivering to Jinko third-party polysilicon purchased in the open market, Jinko may terminate the Jinko Supply Agreement.

Jinko may also terminate the agreement if we fail to deliver a predetermined quantity of our polysilicon product by December 2009. Upon a termination of the Jinko Supply Agreement by Jinko due to our failure to deliver polysilicon in the amounts and by the dates required in the Jinko Supply Agreement, we are required to refund to Jinko 150% of the \$33 million prepayment, less any part of the \$33 million that has been applied to the purchase price of products delivered under the Jinko Supply Agreement. In most other cases, if Jinko terminates the Jinko Supply Agreement, then we are required to refund to Jinko only the \$33 million prepayment, less any part of the \$33 million that has been applied to the purchase price of products delivered under the Jinko Supply Agreement.

If the Jinko Supply Agreement is terminated for any reason, our business will be materially harmed. In addition, if the Jinko Supply Agreement is terminated by Jinko, we will be required to return any deposits and advance payments received up to the date of the termination, which is \$12.5 million as of December 31, 2008 and we will need to secure new funds in order to finance the construction of our polysilicon production plant. Securing new funds may delay the anticipated timing of completion of the production plant, which delay may result in us failing to meet our delivery requirements under our other supply agreements. We may not be able to secure new funds on terms as favorable to us as those under the Jinko Supply Agreement or at all. If we are unable to secure new funds, we will not be able to complete construction of the production plant, our business will be materially and adversely affected and we may be forced to delay, alter or abandon our planned business operations.

**If either of our supply agreements with Tianwei New Energy (Chengdu) Wafer Co., Ltd. is terminated for any reason, our business will be materially harmed.**

In August 2008, we entered into a supply agreement with Tianwei New Energy (Chengdu) Wafer Co., Ltd., or Tianwei, for the sale and delivery of polysilicon to Tianwei over a ten-year period beginning in March 2010, or the Tianwei Supply Agreement No. 1. Under the Tianwei Supply Agreement, No. 1, up to approximately \$284 million may be payable to us during the ten-year period, subject to the acceptance of product deliveries and other conditions.

In September 2008, we entered into a second supply agreement with Tianwei for the sale and delivery of polysilicon to Tianwei over a ten-year period beginning in April 2010, or the Tianwei Supply Agreement No. 2. Under the Tianwei Supply Agreement No. 2, up to approximately \$227 million may be payable to us during the ten-year period, subject to the acceptance of product deliveries and other conditions.

Pursuant to the Tianwei Supply Agreement No. 1 and the Tianwei Supply Agreement No. 2, or the Tianwei Supply Agreements, we have granted to Tianwei a security interest in all of our tangible and intangible assets related to our polysilicon business, and all equity interests in Hoku Materials owned by Hoku Scientific, to serve as collateral for our obligations under the Tianwei Supply Agreements. This security interest is pari-passu with the security interests granted to Suntech, Solarfun, and Jinko. The customer security interests provide that they would be junior to the collateral interest of any lender providing debt financing for plant construction.

Each party may elect to terminate either of the Tianwei Supply Agreements under certain circumstances, including, but not limited to:

- the bankruptcy, assignment for the benefit of creditors or liquidation of the other party; or

- 
- a material breach of the other party.

In addition, in the instance of extraordinary events, including acts of god and other events outside of our control, which result in our inability to perform under the terms of the Tianwei Supply Agreements, we are afforded only a limited amount of time to cure such conditions. In the event we fail to cure the condition so that we can supply our product to Tianwei or otherwise satisfy our delivery requirements by delivering to Tianwei third-party polysilicon purchased in the open market, Tianwei may terminate the Tianwei Supply Agreements.

Tianwei may also terminate the Tianwei Supply Agreement No. 1 and Tianwei Supply Agreement No. 2 if we fail to deliver a predetermined quantity of our polysilicon product by March 2010 and June 2010, respectively. Upon a termination of the Tianwei Supply Agreement No. 1 by Tianwei due to our failure to deliver polysilicon in the amounts and by the dates required in the contract, we are required to refund to Tianwei 150% of the \$45 million prepayment, less any part of the \$45 million that has been applied to the purchase price of products previously delivered to Tianwei. In most other cases, if Tianwei terminates the Tianwei Supply Agreement, No. 1, then we are required to refund to Tianwei the \$45 million prepayment, less any part of the \$45 million that has been applied to the purchase price of products previously delivered under the contract. Upon a termination of the Tianwei Supply Agreement No. 2 by Tianwei due to our failure to deliver polysilicon in the amounts and by the dates required in the contract, we are required to refund to Tianwei 150% of the \$36 million prepayment, less any part of the \$36 million that has been applied to the purchase price of products previously delivered to Tianwei. In most other cases, if Tianwei terminates the Tianwei Supply Agreement, No.2, then we are required to refund to Tianwei the \$36 million prepayment, less any part of the \$36 million that has been applied to the purchase price of products previously delivered under the contract.

If either or both of the Tianwei Supply Agreements is terminated for any reason, our business will be materially harmed. In addition, if the Tianwei Supply Agreement No. 1 or the Tianwei Supply Agreement No. 2 is terminated, we will be required to return any deposits and advance payments received up to the date of the termination, which are \$30 million and \$22 million, respectively, as of December 31, 2008 and we will need to secure new funds in order to finance the construction of our polysilicon production plant. Securing new funds may delay the anticipated timing of completion of our production plant, which delay may result in us failing to meet our delivery requirements under our other supply agreements. We may not be able to secure new funds on terms as favorable to us as those under the Tianwei Supply Agreements, or at all. If we are unable to secure new funds, we will not be able to complete construction of the production plant, our business will be materially and adversely affected and we may be forced to delay, alter or abandon our planned business operations.

**We will face intense competition in the polysilicon market from large competitors with significant operating histories and financial and technological resources. While polysilicon shortages persist, we expect competition to further intensify.**

In the polysilicon market, we will compete with companies such as Hemlock Semiconductor Corporation, Renewable Energy Corporation ASA, Mitsubishi Polycrystalline Silicon America Corporation, Mitsubishi Materials Corporation, Tokuyama Corporation, MEMC Electronic Materials, Inc., and Wacker Chemie AG. In addition, we believe new companies may be emerging in China, Korea, India, Europe, Brazil, Australia, North America, and the Middle East, and new technologies, such as fluidized bed reactors and direct solidification, are emerging, which may have significant cost and other advantages over the Siemens process we are planning to use to produce polysilicon at our production facility. These competitors may have longer operating histories, greater name recognition and greater financial, sales and marketing, technical and other resources than us. As a result of these disparities, we may be unable to successfully obtain and retain the customer and supplier relationships necessary to be successful in the polysilicon market and PV system installation market, and our operating results and our businesses may suffer.

Certain polysilicon producers have announced plans to invest heavily in the expansion of their production capacities in view of the current scarcity of solar-grade silicon, strong demand and the expected strong market growth. These

initiatives may increase the visibility of already-operational competitors in the industry and their promised delivery capacities, making it more difficult for us to establish market share as a new entrant especially given the fact that our production facility is not yet operational. Further, as these initiatives develop, we expect significant additional production capacity to come on-line in 2010, near in time to when our proposed polysilicon facility would become fully operational. This additional capacity may suppress prices, which could make it more difficult to retain our existing customer relationships and to make new such relationships and otherwise adversely affect our business.

**We may be unsuccessful in expanding the production capacity of our polysilicon production facility.**

While we believe we have physical space available to expand our polysilicon production facility to a capacity of up to 8,000 metric tons per year, we may not be able to secure access to the necessary electrical power, water supply and other necessary infrastructure and services, making an expansion difficult or impossible. In addition, we may not be able to secure additional polysilicon customers, or if we secure new customers, we may not be able to secure prepayments from them to fund the expansion.

**Technological development in the solar power industry could reduce market demand for polysilicon, which could cause our sales and profit to decline.**

The solar power industry is characterized by evolving technologies and standards. Technological evolutions and developments, including thin-film technologies, higher photovoltaic efficiency and thinner wafers may decrease the demand for polysilicon by PV module manufacturers, and some manufacturers are developing alternative solar technologies that require significantly less silicon than crystalline silicon PV cells and silicon-based modules, or no polysilicon at all. If these developing technologies prove more advantageous in application and are widely adopted, we may experience a decrease in demand for our polysilicon and a decrease in our sales or operating margins.

**Fluctuations in industrial production capacity for polysilicon could harm our business.**

Certain polysilicon producers have announced plans to invest heavily in the expansion of their production capacities in view of the current scarcity of solar-grade silicon, strong demand and the expected strong market growth. We currently expect significant additional capacity to come on-line in 2010, near in time to when our proposed polysilicon facility would become fully operational. In addition, if an excess supply of electronic-grade silicon were to develop, producers of electronic-grade silicon could switch production to solar-grade silicon, eliminating the current scarcity of solar-grade silicon or causing it to decline more rapidly than we currently anticipate. The electronic-grade silicon market historically has experienced significant cyclicity; for example, that market experienced significant excess supply from 1998 through 2003. Moreover, the current scarcity of silicon could also be overcome in the medium term if the need for silicon is significantly reduced as a result of the introduction of new technologies that significantly reduce or eliminate the need for silicon in producing effective PV systems.

If any of these events occurred, they could result in an excess supply of solar-grade silicon and could suppress market prices for solar-grade silicon. Any such suppression of market prices for silicon would affect the price which we could expect to receive in selling our polysilicon in the spot market and could provide our customers with incentives to reconsider or renegotiate their long-term supply contracts with us to the extent the polysilicon deliverable under those contracts is priced above prevailing market prices. Accordingly, any such events could adversely affect our operating margins and, consequently, our businesses.

Conversely, industry-wide shortages of polysilicon have in the past created shortages of PV modules and increased prices. Our inability to obtain PV modules at commercially reasonable prices or at all would adversely affect our PV system installation business by reducing our ability to meet potential customer demand for our products or to provide products at competitive prices. An industry shortage in available polysilicon, therefore, may delay the

potential growth of PV system installations business, thereby harming our business, financial condition and results of operations.

**We rely on limited suppliers and, if these suppliers fail to deliver materials that meet our quality requirements in a timely, cost-effective manner or at all, our production of polysilicon and our installation of PV systems would be limited.**

It is highly likely that we will procure materials for our PV system installation business from vertically integrated solar module manufacturing and installation companies that are also our competitors. These companies may choose in the future not to sell these materials to us at all, or may raise their prices to a level that would prevent us from selling our products on a profitable basis.

In our polysilicon business we rely heavily on our contracted suppliers of key process technologies and infrastructure including such components as the reactors, the TCS process, and the electric substation. If any of these suppliers fail to perform consistent with their contractual obligations, we will be required to seek alternative suppliers and likely will not be able to commence production of polysilicon at our planned polysilicon production facility on our current schedule. Any such production delays may result in a breach of one or more of our supply agreements with Suntech, Solarfun, Jinko Tianwei and Solargiga and such breaches may allow these customers to terminate the supply agreements and seek a return of prepayments, which would harm our business and may make impossible the completion of our polysilicon production facility.

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**Even if we achieve our polysilicon and PV system installation objectives on a timely basis and complete the construction of our polysilicon production plant as currently planned, we may still be unsuccessful in developing, producing and/or selling these products and services, which would harm our business.**

If we are successful in our efforts to construct our polysilicon production facility, our ability to successfully compete in the polysilicon and PV system installation markets will depend on a number of factors, including:

- our ability to produce or procure TCS and polysilicon, and install PV systems at costs that allow us to achieve or maintain profitability in these businesses;
- our ability to successfully manage a much larger and growing enterprise, with a broader national and international presence;
- our ability to attract new customers and expand existing customer relationships;
- our ability to develop new technologies to become competitive through cost reductions;
- our ability to scale our business to be competitive;
- our ability to predict and adapt to changing market conditions, including the price of inputs and the spot price for polysilicon sold in the market by us or purchased by us from third-parties to settle customer commitments; and
- future product liability or warranty claims.

**If our PV system installation competitors are able to develop and market products that customers prefer to our products, we may not be able to generate sufficient revenue to continue operations.**



The market for PV systems installations is competitive and continually evolving. As a new entrant to this market, we expect to face substantial competition from companies such as PowerLight, a subsidiary of SunPower Corporation, SunEdison, and other new and emerging companies in Asia, North America and Europe. Many of our known competitors are established players in the solar industry, and have a stronger market position than ours and have larger resources and recognition than we have. Furthermore, the PV market in general competes with other sources of renewable energy and conventional power generation.

**Technological development in the solar power industry could reduce market demand for polysilicon or allow for lower cost production of polysilicon by our competitors, which could cause our sales and profit to decline.**

The solar power industry is characterized by evolving technologies and standards. Technological evolutions and developments in PV products, including thin-film technologies, higher photovoltaic efficiency and thinner wafers may decrease the demand for polysilicon by PV module manufacturers, and some manufacturers are developing alternative solar technologies that require significantly less silicon than crystalline silicon-based solar cells and modules, or no polysilicon at all. If these developing technologies prove more advantageous in application and are widely adopted, we may experience a decrease in demand for our polysilicon and a decrease in our sales or operating margins.

Additionally, other technologies for the production of polysilicon are increasing in prevalence in the industry. Technologies which compete with the Seimens reactor process, including fluidized bed reactor process, may enable the manufacture of polysilicon more quickly or at lower cost than does the Seimens reactor process. To the extent that our competitors adopt other technologies that enable them to compete more effectively, our operating margins and price-competitiveness may be impacted. In the event that we are unable to re-design our production facility around these more efficient processes on manageable timetables and at reasonable cost, our business could be adversely affected.

**Our operating results have fluctuated in the past, and we expect a number of factors to cause our operating results to continue to fluctuate in the future, making it difficult for us to accurately forecast our quarterly and annual operating results.**

Hoku Materials does not currently generate any revenue and we do not expect to generate any revenue from Hoku Fuel Cells in the foreseeable future. All of our revenue presently is generated by Hoku Solar and our PV system installation activities.

Our future operating results and cash flows will depend on many factors that will impact our polysilicon business run by Hoku Materials, our PV system installation business run by Hoku Solar and our fuel cell business run by Hoku Fuel Cells, including the following:

- the size and timing of customer orders, milestone achievement, product delivery and customer acceptance, if required;

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- the length of contract negotiation cycles,
  - the timing of equipment delivery and procurement, integration and testing,
  - our success in obtaining prepayments from customers for future shipments of polysilicon;

- our success in maintaining and enhancing existing strategic relationships and developing new strategic relationships with potential customers;
- our ability to finance power purchase agreements for potential PV system installation customers;
- the results of our currency hedging activities;
- actions taken by our competitors, including new product introductions and pricing changes;
- the costs of maintaining and expanding our operations;
- customer budget cycles and changes in these budget cycles; and
- external economic and industry conditions.

As a result of these factors, we believe that period-to-period comparisons of our results of operations are not necessarily meaningful and should not be relied upon as indications of future performance.

**If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and investors' views of us.**

Ensuring that we have adequate internal financial and accounting controls and procedures in place to help ensure that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be re-evaluated frequently. In May 2007 we commenced construction of our planned polysilicon facility in Pocatello, Idaho. Construction of the planned polysilicon facility and the operation of our polysilicon manufacturing business and PV system installation businesses will involve substantial changes to our operations will require us to increase our international activities, hire and train additional financial and accounting personnel, make substantial investments in our engineering, logistics, financial and information systems, including implementing new enterprise-level transaction processing, operational, financial and accounting management information systems, procedures and controls. In connection with the planned increased scale of our polysilicon manufacturing business and PV system installation businesses and our implementation of new operational and financial management information systems to accommodate these businesses, we expect to engage in a process of documenting, reviewing and improving our internal control and procedures in connection with Section 404 of the Sarbanes-Oxley Act, which requires an annual assessment by management on the effectiveness of our internal control over financial reporting. We conduct annual testing of our internal controls in connection with the Section 404 requirements and, as part of that documentation and testing, we may identify areas for further attention and improvement. Implementing any appropriate changes to our internal controls may entail substantial costs in order to modify our existing accounting systems and take a significant period of time to complete, and may distract our officers, directors and employees from the operation of our business. Further, we may encounter difficulties assimilating or integrating the internal controls, disclosure controls and IT infrastructure of the businesses that we may acquire in the future. These changes may not, however, be effective in maintaining the adequacy of our internal controls, and any failure to maintain that adequacy, or consequent inability to produce accurate financial statements on a timely basis, could increase our operating costs and could materially impair our ability to operate our business. In addition, investors' perceptions that our internal controls are inadequate or that we are unable to produce accurate financial statements may seriously affect our stock price.

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**We may not be able to protect our intellectual property, and we could incur substantial costs defending ourselves against claims that our products infringe on the proprietary rights of others.**

Our ability to compete effectively in the fuel cell market will depend on our ability to protect our intellectual property rights with respect to our membranes, Hoku membrane electrode assemblies, or MEAs and manufacturing processes and any intellectual property we develop with respect to our polysilicon business. We rely in part on patents, trade secrets and policies and procedures related to confidentiality to protect our intellectual property. However, much of our intellectual property is not covered by any patent or patent application. Confidentiality agreements to which we are party may be breached, and we may not have adequate remedies for any breach. Our trade secrets may also become known without breach of these agreements or may be independently developed by our competitors. Our inability to maintain the proprietary nature of our technology and processes could allow our competitors to limit or eliminate any of our potential competitive advantages. Moreover, our patent applications may not result in the grant of patents either in the United States or elsewhere. Further, in the case of our issued patents or our patents that may issue, we do not know whether the claims allowed will be sufficiently broad to protect our technology or processes. Even if some or all of our patent applications that issue are sufficiently broad, our patents may be challenged or invalidated and we may not be able to enforce them. We could incur substantial costs in prosecuting or defending patent infringement suits or otherwise protecting our intellectual property rights. We do not know whether we have been or will be completely successful in safeguarding and maintaining our proprietary rights. Moreover, patent applications filed in foreign countries may be subject to laws, rules and procedures that are substantially different from those of the United States, and any resulting foreign patents may be difficult and expensive to enforce. Further, our competitors may independently develop or patent technologies or processes that are substantially equivalent or superior to ours. If we are found to be infringing third-party patents, we could be required to pay substantial royalties and/or damages, and we do not know whether we will be able to obtain licenses to use these patents on acceptable terms, if at all. Failure to obtain needed licenses could delay or prevent the development, production or sale of our products, and could necessitate the expenditure of significant resources to develop or acquire non-infringing intellectual property.

Asserting, defending and maintaining our intellectual property rights could be difficult and costly, and failure to do so might diminish our ability to compete effectively and harm our operating results. We may need to pursue lawsuits or legal actions in the future to enforce our intellectual property rights, to protect our trade secrets and domain names, and to determine the validity and scope of the proprietary rights of others. If third parties prepare and file applications for trademarks used or registered by us, we may oppose those applications and be required to participate in proceedings to determine priority of rights to the trademark.

We cannot be certain that others have not filed patent applications for technology covered by our issued patent or our pending patent applications or that we were the first to invent technology because:

- some patent applications in the United States may be maintained in secrecy until the patents are issued;
- patent applications in the United States and many foreign jurisdictions are typically not published until 18 months after filing; and
- publications in the scientific literature often lag behind actual discoveries and the filing of patents relating to those discoveries.

Competitors may have filed applications for patents, may have received patents and may obtain additional patents and proprietary rights relating to products or technology that block or compete with our products and technology. Due to the various technologies involved in the development of fuel cell systems, including membrane and MEA technologies, and PV products, it is impracticable for us to affirmatively identify and review all issued patents that may affect our products. Although we have no knowledge that our products and technology infringe any third party's intellectual property rights, we cannot be sure that we do not infringe any third party's intellectual property rights. We may have to participate in interference proceedings to determine the priority of invention and the right to a patent for the technology. Litigation and interference proceedings, even if they are successful, are expensive to pursue and time-consuming, and we could use a substantial amount of our financial resources in either case.

**The loss of any of our executive officers or the failure to attract or retain specialized technical and management personnel could impair our ability to grow our business.**

We are highly dependent on our executive officers, including Dustin M. Shindo, our Chairman of the Board of Directors, President and Chief Executive Officer, and Karl M. Taft III, our Chief Technology Officer. Due to the specialized knowledge that each of our executive officers possesses with respect to our technology or operations, the loss of service of any of our executive officers would harm our business. We do not have employment agreements with any of our executive officers, and each may terminate his employment without notice and without cause or good reason. In addition, we do not carry key man life insurance on our executive officers.

There is a limited pool of qualified applicants for our operations located in Hawaii capable of meeting our specialized needs. Our future success will depend, in part, on our ability to attract and retain qualified management and technical personnel, many of whom must be relocated from the continental United States or other countries. In addition, we will need to hire and train specialized engineers to manage and operate our planned polysilicon facility in Pocatello, Idaho. We may not be successful in hiring or retaining qualified personnel. Our inability to hire qualified personnel on a timely basis, or the departure of key employees, could harm our business.

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**We will use materials that are considered hazardous in our planned manufacturing and production processes and, therefore, we could be liable for environmental damages resulting from our research, development, or manufacturing and production operations.**

The production of polysilicon will involve the use of materials that are hazardous to human health and the environment, the storage, handling and disposal of which will be subject to government regulation. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may increase our research and development or manufacturing costs and may require us to halt or suspend our operations until we regain compliance. If we have an accident at our facility involving a spill or release of these substances, we may be subject to civil and/or criminal penalties, including financial penalties and damages, and possibly injunctions preventing us from continuing our operations. Any liability for penalties or damages, and any injunction resulting from damages to the environment or public health and safety, could harm our business. In addition under various Federal, state and local laws, ordinances and regulations, an owner or operator of real estate is liable for costs of removal or remediation of certain hazardous or toxic substances on or in such property. These laws often impose such liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such substances. We do not have any insurance for liabilities arising from the use and handling of hazardous materials.

**Any significant and prolonged disruption of our operations in Hawaii could result in PV system installation delays that would reduce our revenue.**

Hoku Solar is currently located in Hawaii, which is subject to the potential risk of earthquakes, hurricanes, tsunamis, floods and other natural disasters. The occurrence of an earthquake, hurricane, tsunami, flood or other natural disaster at or near our facility in Hawaii could result in damage, power outages and other disruptions that would interfere with our ability to conduct our business. In October 2006, Hawaii suffered a major earthquake causing significant damage throughout the state. Our facilities and operations; however, did not suffer any damage.

Most of the materials we use in our PV system installation business must be delivered via air or sea. Hawaii has a large union presence and has historically experienced labor disputes, including dockworker strikes that have prevented or delayed cargo shipments. Any future dispute that delays shipments via air or sea could prevent us from procuring or installing our turnkey PV systems in time to meet our customers' requirements, or might require us to seek alternative and more expensive freight forwarders or contract manufacturers, which could increase our expenses.

**We have significant international activities and customers that subject us to additional business risks, including increased logistical complexity and regulatory requirements, which could result in a decline in our revenue.**

Our current polysilicon supply agreements are with Suntech, Jinko, Solarfun, Tianwei and Solargiga all of which are located in The People's Republic of China or Hong Kong. As a result, we will be engaging in significant international sales of our polysilicon, which can be subject to many inherent risks that are difficult or impossible for us to predict or control, including:

- political and economic instability;
- unexpected changes in regulatory requirements and tariffs;
- difficulties and costs associated with staffing and managing foreign operations, including foreign distributor relationships;
- longer accounts receivable collection cycles in certain foreign countries;
- adverse economic or political changes;
- unexpected changes in regulatory requirements;
- more limited protection for intellectual property in some countries;
- potential trade restrictions, exchange controls and import and export licensing requirements;
- U.S. and foreign government policy changes affecting the markets for our products;
- problems in collecting accounts receivable; and
- potentially adverse tax consequences of overlapping tax structures.

All of our contracts are denominated in U.S. dollars except for our contract with GEC Graeber Engineering Consultants GmbH and MSA Apparatus Construction for Chemical Equipment Ltd., which is denominated in Euros. Therefore, increases in the exchange rate of the U.S. dollar to foreign currencies will cause our products to become relatively more expensive to customers in those countries, which could lead to a reduction in sales or profitability in some cases.

### ***Risks Associated With Government Regulation and Incentives***

**If we do not obtain on a timely basis the necessary government permits and approvals to construct and operate our planned polysilicon production plant our construction costs could increase and our business could be harmed.**

We have received the air permit and storm water prevention permit that are necessary to begin construction of our polysilicon plant; however, we need to apply for additional permits with federal, state and local authorities,

including building permits to continue the construction our polysilicon plant, and permits to operate the plant when construction is complete. The government regulatory process is lengthy and unpredictable and delays could cause additional expense and increase our construction costs. In addition, we could be required to change our construction plans in order receive the required permits and such changes could also result in additional expense and delay. Any delay in completion of construction could result in us failing to meet our delivery deadlines under our supply agreements and give the other parties to these agreements the right to terminate the agreements.

**Our business and industry are subject to government regulation, which may harm our ability to market our products.**

The market for electricity generation products is heavily influenced by foreign, federal, state and local government regulations and policies concerning the electric utility industry, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. In the United States and in a number of other countries, these regulations and policies are being modified and may continue to be modified. Customer purchases of, or further investment in the research and development of, alternative energy sources, including solar power technology, could be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our PV system installations. For example, without a regulatory mandated exception for solar power systems, utility customers are often charged interconnection or standby fees for putting distributed power generation on the electric utility grid. These fees could increase the cost to our customers of installing PV systems and make them less desirable, thereby harming our business, prospects, results of operations and financial condition. Furthermore, our discussions with The James Campbell Company to plan a Kapolei Sustainable Energy Park is subject to various conditions and government approvals related to the capped solid waste storage area on the site.

The installation of PV systems is subject to oversight and regulation in accordance with national and local ordinances relating to building codes, safety, environmental protection, utility interconnection and metering and related matters. It is difficult to track the requirements of individual states and design equipment to comply with the varying standards. Any new government regulations or utility policies pertaining to PV system installations may result in significant additional expenses to us and, as a result, could cause a significant reduction in demand for our PV system installation services.

**If government incentives to locate our planned polysilicon facility in the City of Pocatello, Idaho are not realized then the costs of establishing our facility may be higher than we currently estimate.**

The State of Idaho and the local municipal government have approved a variety of incentives to attract Hoku Materials, including tax incentives, financial support for infrastructure improvements around our facility, and grants to fund the training of new employees. In December 2006, we received a letter from the City of Pocatello, Idaho outlining a variety of financial and other incentives that could be available to us if we ultimately complete the construction of our planned polysilicon production facility in the City of Pocatello, Idaho. This letter is not a legally binding agreement on the part of the City of Pocatello, Idaho or on us, and the various incentives described in the letter are subject to a number of risks, contingencies and uncertainties, including the actual availability of financial and other incentives, including favorable tax incentives and utility availability, at the time of completion of planned construction and thereafter.

In March 2007, we entered into a 99-year ground lease with the City of Pocatello, for approximately 67 acres of land in Pocatello, Idaho and in May 2007 we commenced construction of our polysilicon facility. In May 2007, the City of Pocatello approved an ordinance that would provide us with tax incentives related to the infrastructure necessary for the completion of our planned polysilicon plant. We would receive up to \$25.9 million in real property tax reimbursements for infrastructure improvements and up to \$17.4 million in real property tax reimbursements based on employment numbers. The tax incentives expire on December 31, 2030. Except for the ground lease, we have not entered into any other definitive agreements with the State of Idaho or any county or municipal government and we may not realize the benefits of these other offered incentives including workforce training funds and utility capacities. If there are changes to the ordinance, which affects the amount of the incentives, and/or we are unable to realize these incentives the operating costs of our planned polysilicon facility in Idaho may be higher than we currently estimate.

**The reduction or elimination of government and economic incentives for PV systems and related products could reduce the market opportunity for our PV installation services.**

We believe that the near-term growth of the market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network, depends in large part on the availability and size of government incentives. Because we plan to sell to the on-grid market, the reduction or elimination of government incentives may adversely affect the growth of this market or result in increased price competition, both of which adversely affect our ability to compete in this market. Currently, the U.S. federal solar tax credit is scheduled to expire at the end of calendar year 2016. If similar tax or other federal government incentives are not available beyond calendar year 2016, it could harm our solar business.

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Today, the cost of solar power exceeds the cost of power furnished by the electric utility grid in many locations. As a result, federal, state and local government bodies in many countries, most notably Germany, Japan and the United States, have provided incentives in the form of rebates, tax credits and other incentives to end users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. These government economic incentives could be reduced or eliminated altogether. For example, Germany has been a strong supporter of solar power products and systems and political changes in Germany could result in significant reductions or eliminations of incentives, including the reduction of tariffs over time. Some solar program incentives expire, decline over time, are limited in total funding or require renewal of authority. Net metering policies in Japan could limit the amount of solar power installed there. Reductions in, or elimination or expiration of, governmental incentives could result in decreased demand for PV products, and reduce the size of the market for our planned PV system installation services.

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***Risks Associated With Our Common Stock and Charter Documents***

**Our stock price is volatile and purchasers of our common stock could incur substantial losses.**

Our stock price is volatile and since April 1, 2008 to December 31, 2008, our stock has had low and high sales prices in the range of \$2.06 to \$10.25 per share. The stock market in general and the market for technology companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price of our common stock may fluctuate significantly in response to a number of factors, including:

- variations in our financial results or those of our competitors and our customers;
- announcements by us, our competitors and our customers of acquisitions, new products, significant contracts, commercial relationships or capital commitments;
- failure to meet the expectations of securities analysts or investors with respect to our financial results;
- our ability to develop and market new and enhanced products on a timely basis;
- litigation;

- changes in our management;
- changes in governmental regulations or in the status of our regulatory approvals;
- future sales of our common stock by us and future sales of our common stock by our officers, directors and affiliates;
- investors' perceptions of us; and
- general economic, industry and market conditions.

In addition, in the past, following periods of volatility and a decrease in the market price of a company's securities, securities class action litigation has often been instituted against that company. Class action litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

**Anti-takeover defenses that we have in place could prevent or frustrate attempts by stockholders to change our directors or management.**

Provisions in our amended and restated certificate of incorporation and bylaws may make it more difficult for or prevent a third party from acquiring control of us without the approval of our Board of Directors. These provisions:

- establish a classified Board of Directors, so that not all members of our Board of Directors may be elected at one time;
- set limitations on the removal of directors;
- limit who may call a special meeting of stockholders;
- establish advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted upon at stockholder meetings;
- prohibit stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders; and
- provide our Board of Directors the ability to designate the terms of and issue new series of preferred stock without stockholder approval.

These provisions may have the effect of entrenching our management team and may deprive investors of the opportunity to sell their shares to potential acquirers at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock.

As a Delaware corporation, we are also subject to Delaware anti-takeover provisions. Our Board of Directors could rely on Delaware law to prevent or delay an acquisition.

**Because we do not intend to pay dividends, you will benefit from an investment in our common stock only if it appreciates in value.**



We have not paid cash dividends on any of our classes of capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future. The success of your investment in our common stock will depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value or even maintain the price at which you purchased your shares.