

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF A PETITION FILED BY</b>	)	<b>CASE NO. IPC-E-04-2</b>
<b>IDAHO POWER COMPANY FOR AN ORDER</b>	)	
<b>DETERMINING OWNERSHIP OF THE</b>	)	<b>NOTICE OF PETITION FOR</b>
<b>ENVIRONMENTAL ATTRIBUTES</b>	)	<b>DECLARATORY RULING</b>
<b>ASSOCIATED WITH A QUALIFYING</b>	)	
<b>FACILITY UPON PURCHASE BY A UTILITY</b>	)	<b>NOTICE OF MODIFIED</b>
<b>OF THE ENERGY PRODUCED BY A</b>	)	<b>PROCEDURE</b>
<b>QUALIFYING FACILITY.</b>	)	
	)	<b>NOTICE OF COMMENT/</b>
	)	<b>PROTEST DEADLINE</b>

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YOU ARE HEREBY NOTIFIED that on February 5, 2004, Idaho Power Company (Idaho Power; Company) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting an Order determining ownership of the marketable “environmental attributes”<sup>1</sup> associated with a PURPA qualifying facility (QF) when Idaho Power enters into a long-term, fixed rate contract to purchase the energy produced by that QF. Reference IDAPA 31.01.01.101.

**Background**

In June 2003, the Federal Energy Regulatory Commission (FERC) received a Petition for Declaratory Order from PURPA QFs seeking FERC interpretation of its avoided cost rules under PURPA. Specifically, Petitioners sought an Order declaring that avoided cost contracts entered into pursuant to PURPA, absent express provisions to the contrary, do not inherently convey to the purchasing utility any renewable energy credits (RECs) or similar tradable certificates. It was the contention of Petitioners that the power purchase price that the utility pays under such a contract compensates a QF only for the energy and capacity produced by that facility and not for any environmental attributes associated with the facility. Reference FERC Docket EL03-133-000.

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<sup>1</sup> Idaho Power does not define “environmental attributes.” A good definition is included in a white paper prepared by the Energy Trust of Oregon Inc. \_\_ Green Tag Ownership and Disposition (September 17, 2003). See attached “Appendix A.”

In an Order issued on October 1, 2003 (105 FERC ¶ 61,004), FERC granted the Petitioners request for a declaratory order, to the extent that the petition asked the Commission to declare that Commission's avoided cost regulations did not contemplate the existence of RECs and that the avoided cost rates for capacity and energy sold under contracts entered into pursuant to PURPA do not convey the RECs, in the absence of an expressed contractual provision. FERC's Order made the following specific findings:

19. Section 210(a) of PURPA requires the Commission to prescribe rules imposing on electric utilities the obligation to offer to purchase electric energy from QFs. Under Section 210(b) of PURPA, such purchases must be at rates that are: (1) just and reasonable to electric consumers and in the public interest; (2) not discriminatory against QFs; and (3) not in excess of the incremental cost to the electric utility of alternative electric energy. Section 210(d) of PURPA, in turn, defines "incremental costs of alternative electric energy" as "the cost to the electric utility of the electric energy of which, but for the purchases from [the QF], such utility would generate or purchase from another source."
20. The Commission implemented the purchase obligations set forth in PURPA in Section 292.303 of its regulations, 18 CFR § 292.303(a) (2003), which provides:

Each electric utility shall purchase in accordance with Section 292.304, any energy and capacity which is made available from a qualifying facility. . . .

Section 292.304, in turn, requires that rates for purchases shall: (1) be just and reasonable to the electric customer of the electric utility and in the public interest; and (2) not discriminate against qualifying cogeneration and small power production facilities. 18 CFR § 292.304(a)(1) (2003). The regulation further provides that nothing in the regulation requires any electric utility to pay more than the avoided costs for purchases. 18 CFR § 292.304(a)(2) (2003). "Avoided costs" is defined as the "incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 CFR § 292.101(b)(6) (2003).

21. Section 292.304 sets forth what factors are to be considered in determining avoided costs. See 18 CFR § 292.304(e) (2003). The factors to be considered include:

- (1) The utility's system cost data;

- (2) The availability of capacity or energy from a QF during the system daily and season peak periods;
  - (3) The relationship between the availability of energy or capacity from the QF to the ability of the electric utility to avoid costs; and
  - (4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the QF.
22. Significantly, what factor is not mentioned in the Commission's regulations is the environmental attributes of the QF selling to the utility. This is because avoided costs were intended to put the utility into the same position when purchasing QF capacity and energy as if the utility generated the energy itself or purchased the energy from another source. In this regard, the avoided costs that a utility pays a QF does not depend on the type of QF, i.e., whether it is a fossil-fuel-cogeneration facility or a renewable-energy small power production facility. The avoided costs rates, in short, are not intended to compensate the QF for more than capacity and energy.
23. As noted above, RECs are relative recent creations of the states. Seven states have adopted renewable portfolio standards that use unbundled RECs. What is relevant here is that the RECs are created by the states. They exist outside the confines of PURPA. PURPA thus does not address the ownership of RECs. The contracts for sales of QF capacity and energy, entered into pursuant to PURPA, likewise do not control the ownership of the RECs (absent an express provision in the contract). States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold and traded; it is not an issue controlled by PURPA.
24. We thus grant Petitioners' Petition for Declaratory Order, to the extent that they ask the Commission to declare that contracts for the sale of QF capacity and energy entered into pursuant to PURPA do not convey RECs to the purchasing utility (absent an express provision in a contract to the contrary). While a state may decide that a sale of power at wholesale automatically transfers ownership of the state-created RECs, that requirement must find its authority in state law, not PURPA.

## **Petition for Declaratory Ruling**

Regional organizations, Idaho Power contends, exist to facilitate green energy transactions from resources that have been certified as green energy compliant by those organizations e.g., Bonneville Environmental Foundation (BEF). These entities issue tradable “green tags” to certified renewable energy producers. Green tags are also known as green certificates, renewable energy credits (RECs) and tradable renewable certificates (TRCs). A green tag represents the environmental and other non-power attributes associated with 1 megawatt hour (MWh) of electricity generated from a renewable resource. Some of the QFs from whom Idaho Power anticipates making purchases in the future, the Company contends, have indicated an intention to obtain marketable green tags as a result of entering into contracts with Idaho Power. Green tags avoid the need to package the electricity with its environmental attributes. The tags provide a way in which to “unbundle” the environmental attributes from the electricity and permit the sale of the environmental attributes of renewable generation separately from the electricity generated. In effect, the Company states that green tags are a currency that can be traded to individuals and entities wishing to support “green” energy. Example: Idaho Power Schedule 62\_\_Green Energy Purchase Program (Case No. IPC-E-00-18, Order No. 28655).

Referencing the foregoing FERC Order, Idaho Power states that FERC suggested that individual states may decide ownership of the green tags. As a result, the Company seeks guidance from the Commission as to ownership of potentially marketable certificates in Idaho.

Idaho Power contends that in Idaho, a utility and its customers confer additional value on QFs by virtue of the long-term, levelized, fixed rate contracts that the utility enters into with the QFs. That value, it asserts, is in addition to the avoided costs paid to the QFs for the energy produced. Vesting the utility with some ownership interest in the green tags, it states, would remunerate the utility for the additional value conferred to the QFs. The QF position, the Company represents, is that QF ownership of the green tags provides the incentive they need to invest in the production of energy from a renewable resource. They assert that the sale of the green tags associated with the generation of green power compensates the QF with the facility’s environmental attributes and rewards the additional risks associated with the investment in and the design and operation of a renewable energy resource plant.

In this Petition, Idaho Power Company requests a declaratory order from the Commission clarifying ownership of these green tags. The “respective arguments” of the Company and QFs are presented in the Company’s Petition.

Despite Idaho Power’s interest in owning the green tags, the Company acknowledges that retention of those tags by the QF developers may encourage the development of additional green energy resources in Idaho without the need to increase energy purchase prices. Given the heightened public interest in the development of new renewable resources, Idaho Power respectfully recommends that the Commission determine that the developers of such generation facilities receive full ownership rights in any green tags issued to them conditioned upon the requirement that the QF developers who qualify for green tags and from whom Idaho Power purchases energy grant the Company a “right of first refusal” to purchase those tags.

YOU ARE FURTHER NOTIFIED that the Commission has reviewed the filings of record in Case No. IPC-E-04-2. The Commission has preliminarily found that the public interest in this matter may not require a hearing to consider the issues presented, and that the issues raised by the Company’s filing may be processed under **Modified Procedure**, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204.

YOU ARE FURTHER NOTIFIED that **the deadline for filing written comments or protests** with respect to Idaho Power’s Petition and the use of Modified Procedure in Case No. IPC-E-04-2 is **Friday, March 19, 2004**.

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the deadline, the Commission may consider the matter on its merits and enter its Order without a formal hearing. If comments or protests are filed within the deadline, the Commission will consider them and in its discretion may set the matter for hearing or may decide the matter and issue its Order based on the written positions before it. Reference IDAPA 31.01.01.204.

YOU ARE FURTHER NOTIFIED that written comments concerning Case No. IPC-E-04-2 should be mailed to the Commission and the Company at the addresses reflected below.

COMMISSION SECRETARY  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074

Street Address for Express Mail:

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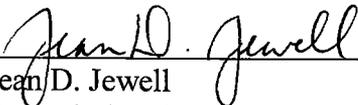
All comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at [www.puc.state.id.us](http://www.puc.state.id.us). Click the "Comments and Questions" icon, and complete the comment form, using the case number as it appears on the front of this document. These comments must also be sent to the Applicant at the e-mail addresses listed above.

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

YOU ARE FURTHER NOTIFIED that the Application in Case No. IPC-E-04-2 may be viewed at [www.puc.state.id.us](http://www.puc.state.id.us) by clicking on "File Room" and "Electric Cases," or can be viewed during regular business hours at the Idaho Public Utilities Commission, 472 W Washington Street, Boise, Idaho and at the general business office of Idaho Power Company, 1221 W Idaho Street, Boise, Idaho.

NOTICE OF PETITION FOR DECLARATORY RULING  
NOTICE OF MODIFIED PROCEDURE  
NOTICE OF COMMENT/ PROTEST DEADLINE 6

DATED at Boise, Idaho this 20<sup>th</sup> day of February 2004.

  
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Jean D. Jewell  
Commission Secretary

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NOTICE OF PETITION FOR DECLARATORY RULING  
NOTICE OF MODIFIED PROCEDURE  
NOTICE OF COMMENT/ PROTEST DEADLINE 7