

March 15, 2004

Idaho Public Utilities Commission
472 W. Washington
Boise, Idaho 83720

Re: Case No. IPC-E-04-2 : Ownership of Environmental Attributes

Dear Commissioners,

I am writing in response to the Idaho Power request for summary judgment on the issue of the ownership of environmental attributes (“Green Tags”) for QFs under PURPA contracts in Idaho. US Geothermal strongly supports the recommendation made by Idaho Power that the QF developers own the Green Tags associated with their facilities. It is clear that the natural gas fired SAR used as the basis to calculate the avoided cost rate does not have green attributes, nor is the value of the Green Tags included in the avoided cost rate calculation.

During a recent conversation, the Bonneville Environmental Foundation (BEF) estimated the current wholesale value of Green Tags to be 0.4 to 0.6 mils per kw-hr, with BEF focusing on purchasing primarily at the 0.6 mil level. By contrast, Idaho Power offers Green Tags, through its retail Green Power program (sourced through BEF), priced at 1.25 mils per kw-hr (\$15 for 1200 kw-hr). In short, Green Tags have significant value to the developer, and although they are typically not sold until the QF is in operation, they can have an important economic impact on the viability of renewable projects.

US Geothermal does not agree with Idaho Power on their request for a “right of first refusal” (ROFR) on the commercial rights to the Green Tags however. Clearly, since Idaho Power wants a ROFR, they believe it has value, and as such, there should be a separate value returned to the developer for granting it. For the reasons below, Idaho Power’s petition to be granted the ROFR should be denied:

- There is no “ownership” relationship between the utility and the developer. Why then should the utility have a ROFR on any aspect of the developer’s property?
- The PURPA rate is carefully calculated as the cost of the utility operating a gas-fired plant. There is no component in the SAR cost calculation for the value of the Green Tags. In fact a Green Tag is calculated by comparing the emissions from the subject plant against the emissions from a gas-fired plant. By definition, the SAR can neither produce nor capture a Green Tag value.
- Similarly, there is no cost calculation in the SAR for the value of the “right of first refusal”.
- Green Tags were not created by PURPA nor by an Idaho state authority. They are traded nationally and internationally and should not be regulated by the state.

- The utility is free to negotiate the purchase of the Green Tags from the developer. US Geothermal is more than willing to offer all or part of our Green Tags to an Idaho utility if they are interested in buying them. We believe Green Tag sales from an Idaho based facility, rather than from an out-of-state facility would be welcomed and strongly supported by Idaho consumers.
- Granting a ROFR decreases the value of the Green Tags by discouraging other potential buyers from bidding on the Green Tags in a true open market. With the ROFR, the utility can come in as a spoiler after all other good-faith negotiations are completed. In fairness, if the utility wants the Green Tags, they should have to invest the same effort in negotiations as any other purchaser. Granting the utilities a ROFR would burden the QF and make it much more difficult to market the Green Tags to third parties. This marketing complication is real and was confirmed to us by third-party purchasers.
- Administratively the proposed ROFR would be ambiguous and cumbersome. How *exactly* is the ROFR defined and when can it be exercised? When the PURPA contract is first signed? Does it mean after the 1st sale of Green Tags has been negotiated in good-faith with another purchaser? If the Green Tags are sold on an annual basis (a common practice), does the “right of first refusal” give the utility that right each and every time that a new contract for the sale is readied? Is the developer required to offer the utility the same terms and conditions? Does the utility have the right to view a third party confidential contract to confirm that they have been offered the same terms and conditions?

In summary, we respectfully ask that the PUC grant Idaho Power’s request that Green Tag ownership be vested with the QF developer, and that the PUC deny the request to grant a right of first refusal. Thank you for the opportunity to comment on this critical issue.

Sincerely,

Doug Glaspey

Doug Glaspey
Chief Operating Officer