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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF A PETITION FILED BY)
IDAHO POWER COMPANY FOR AN ORDER) CASE NO. IPC-E-04-2
DETERMINING OWNERSHIP OF THE)
ENVIRONMENTAL ATTRIBUTES) COMMENTS OF THE EXERGY
ASSOCIATED WITH A QUALIFYING FACILITY) CORPORATION
UPON PURCHASE BY A UTILITY OF THE
ENERGY PRODUCED BY A QUALIFYING
FACILITY

In response to the Notice of Modified Procedure issued in the above captioned matter the Energy Development Group, a Montana LLC, hereby submits the following comments:

The question before the Commission is simple in its structure, yet slightly more sophisticated in its fundamental nature. The Environmental Attribute [EA] commonly referred to as Tradable Renewable Certificates [TRC] or Green Tags can be qualified, oftentimes quantified, and possibly monetized. Attempts have been made to clarify where the EA lies, with the generator, the utility, or even the end customer of the energy/capacity product. One may opine on where the EA lies under a renewable resource generation scenario, but regardless of assorted published suggestions reflecting guidance on the issue, one ruling should be the contemporaneous authority on the subject: The October 1st, 2003, ruling by FERC (Docket No.

EL03-133-0-00) dominates in elucidation. This Order clearly indicates where and under what circumstances state authority for ascertaining ownership of Environmental Attributes embedded in renewable programs exists. Under the tenets incorporated into PURPA, whereby the utility is required to purchase energy and capacity only, the EA is not part of the protocol. Furthermore, from our review, no Idaho enabling statute exists for a decision on the question of ownership of an EA by the Idaho Public Utility Commission.

With all due respect to this regulatory body, without a specific legislative, regulatory, or legal provision in the Idaho Code or in the Idaho Administrative Rules, there appears to be no legal mechanism to authorize this body to create new law. Absent of those provisions, without an existing statute to interpret, a directive from the state legislature or superceded by Federal mandate, the IPUC cannot implement a decision deleterious to either the generator, the utility, or contrary to FERC and PURPA. Therefore, the FERC ruling is unambiguous and clear in its direction: Where no state initiated mandatory guidelines are evident, the EA remains with the generator.

But the question of whether law exists should be moot regardless. Such a law is inappropriate based on the single fact the generator bears the risk of compliance [which is born in capital cost and schedule when negotiating the energy sales agreement], therefore, the generator should also have the benefit of environmental attributes. The generator is solely responsible to mitigate pollution consequences, not the customer or utility, and all the liabilities or attributes of that generation lie with the generator.

Indeed, it may be argued if a renewable resource generator is required to relinquish the

Environmental Attributes to the customer of the product, foreseen as possibly offsetting the cost of energy for the consumer, then the opposite should also hold true. Emissions, other pollutants and societal impacts from fossil fuel, hydro, or nuclear generation, including, but not limited to QF co-generation, purchased by the customer should carry with it the inherent liabilities and extra costs associated with this energy and capacity. These liabilities are rapidly becoming monetized under emission SOx trading, the recently created Carbon trading floor in Chicago, and the Kyoto Protocol. Given these developments, should not the end customer subsidize the utility and generator for these liabilities under a quid pro quo resulting in a potential disincentive to the end product customer? Obviously, this has not, nor will occur in the real world of least-cost, rate-based structuring. Still, if the customer is willing to accept the monetized value of those consequences and is willing to pay additionally into the rate base, then we would submit the EA may possibly be ascribed to the consumer.

The inception of the Tradable Renewable Certificates or Green Tags derived from the Environmental Attributes was designed towards proliferation of renewable generation sources. The rationale was to provide to the generator an additional source of income from the potential offset of fossil-fuel emissions and other environmentally sensitive generators. Since renewable generation carries a disproportionately larger installed cost with no ability to pass through fuel risk, any additional inducement results in expanded opportunities to increase the amount of renewable resources.

The decision behind the avoided cost rate for a Qualifying Facility (QF) in Idaho is based on a natural gas-fired generator. There is no Environmental Attribute associated with this baseline generator, only Capacity and Energy. They alone are the basis for the avoided cost

rate mandated by the IPUC for QFs that generate 10,000 kW or less in any one hour. No EA is associated with this mandate. Equally as important, not all QFs are necessarily renewable energy based resources. Therefore, not all QFs in the ≤ 10 MW category can even demonstrate an EA.

But there is a more germane argument to be voiced under the concept of Integrated Resource Planning. Even if the EA is “stripped” from the renewable resource generation, there still is no rational nexus which purports the generating source to be anything other than nonpolluting. A renewable resource generator stripped of the EA, is still a nonpolluting generator resource and displacing fueled or hydro generation. No paper commodity will modify the evolution of the electrons produced. Given this transparency, the EA need not be part and parcel of any societal generation mix. The generator is nonpolluting and the potential to offset existing facilities, new emission or social-impact generation is tangible.

When PURPA was created in 1978, it was demonstrated as essential to create an environment of energy competition. Today, that philosophy is compounded by additional, relevant factors making this judicious pathway even more imperative. Smaller, distributed generation can be realized to add security and bolster transmission grids, while mitigating new infrastructure upgrades. Software and new technology make integration of small generating resources a seamless product for the utility. Demands for innovative, clean energy resources reverberate as societal values. This said, the primary drawbacks for new, smaller generator resources remain the disproportionably high initial capital cost and the inability to amortize those costs proportionally against the life cycle of the facility. Enabling the generator to maximize any potential return on investment, given the regimented structure employed under the auspices of

the IPUC for small QF, should be encouraged.

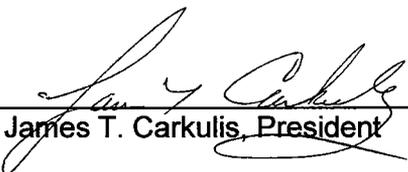
PURPA is still the rule, FERC is still the interpreter absent state jurisdiction, and PURPA is explicit in the mission for utilities and regulatory agencies: To assist and provide the necessary incentives for small, renewable generation to flourish. An EA, whether monetized or not, is separate from the energy and capacity of the generation source as tendered by both FERC and the IPUC.

Until such time the state of Idaho decides to enact legislation essentially forcing PURPA projects to [1] relinquish the EA to the ratepayer or utility, [2] creating a renewable portfolio standard or [3] implementing another such mandate for renewable resource generation requirements into the Integrated Resource Plan of the utilities serving the Idaho customer (and the energy sales price reflects this requirement), the irrefutable answer to the question posed is the EA remains with the generator, unless otherwise mutually agreed upon between generator and purchaser.

Thank you for allowing us to comment on the noted petition.

DATED this 18th day of March, 2004.

Exergy Development Group, LLC

By 
James T. Carkulis, President