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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE)
APPLICATION OF IDHAO POWER)
FOR AUTHORITY TO RETURE ITS) CASE NO. IPC-E-08-24
GREEN TAGS.)

**COMMENTS OF IDAHO CONSERVATION LEAGUE
AND RENEWABLE NORTHWEST PROJECT**

COMES NOW, Idaho Conservation League (ICL) and Renewable Northwest Project (RNP) with these comments in the above captioned matter. As Idaho's largest state-based conservation organization, ICL represents over 9,500 members many of whom are customers of Idaho Power. As customers of Idaho Power, ICL and its members have a deep interest in promoting the efficient use of our energy resources in order to protect clean air, water, and open space. RNP is a non-profit advocacy organization promoting solar, wind and geothermal resources in the four Northwest states. RNP's members are a unique combination of environmental and consumer organizations as well as a variety of businesses engaged in the development of renewable energy projects.

On April 23, 2010 in Order No. 31062, the Commission notified the public that Idaho Power had filed their REC Management Plan and established a public comment period on this plan. ICL and RNP submit the following comments regarding this Plan.

BACKGROUND

Renewable Energy Credits Generally

A Renewable Energy Credit (REC), also known as a Green Tag, is a regulatory and accounting mechanism that separates the environmental attributes from the energy produced by a generation source and represents the value of those environmental attributes. Using wind as an example, when the turbine begins generating, the output is one megawatt-hour of energy and one REC. The energy generated by the project is sold to utilities in the same manner as traditional generation. The project developer can sell the RECs from the project to utilities, or to a wider body of customers through the voluntary REC market place.

A utility may purchase RECs to satisfy a regulatory obligation such as a Renewable Portfolio Standard. Utilities and individuals can also acquire RECs through the voluntary marketplace like Idaho Power's Green Power Purchase Program. The REC system attempts to capture the value - created by regulation or consumer demand - of a renewable energy project's the environmental attributes (including displaced fossil fuel-powered generation and associated reductions in air pollution) and provides a reliable and auditable marketplace in which to trade this value.

Once acquired, the REC owner has two options, either sell the REC or retire it. They can sell the REC to another buyer just as in any other normal commercial transaction. Alternatively, the owner can retire the REC (a permanent, legal obligation not to sell the REC to another entity). Once the owner retires the REC, the owner is able to make a public claim about the

environmental attributes the REC embodies. For example, a clothing store could purchase and retire a REC and then tell its customers the store is powered by renewable energy. The clothing store cannot tell its customers that the store is powered by renewable energy without retiring the REC.

RECs are essentially a marketing and accounting tool that makes up for the physical impossibility of tracking individual electrons. Instead of tracking electrons, utilities and REC marketers in the Western Electricity Coordinating Council (WECC) region use the Western Renewable Energy Generation Information System (WREGIS) to account for renewable megawatt-hours and their associated environmental attributes that move through the system. The WREGIS system keeps track of the RECs separated from the megawatt-hours of associated energy that are fed into the grid and allocates these RECs into individual accounts as either sold, banked, or retired. By moving RECs between these accounts, sellers, buyers, and regulators can track their use of RECs.¹

The Commodity Futures Trading Commission and truth in advertising laws at the state level regulate the REC marketplace. In order to prevent misleading information or consumer confusion, truth in advertising laws require that companies making environmental claims are able, among other things, to substantiate their claims based on “competent and reliable evidence.” According to the National Association of Attorneys General, because it is physically impossible to track the source of electrons delivered to customers, utilities and REC marketers

¹ WREGIS, *Final Operating Rules*, § 6, pp. 14-20 (June 4, 2007)(explaining the various accounts for RECs and the effect of moving a REC between various accounts). *Available at:* <http://www.wregis.org/Documents.php>

should instead use “an auditable contract path” that tracks the financial transactions back to specific generation sources.²

The WREGIS system provides this auditable contract path and supplies the competent and reliable evidence in order for Idaho Power to make truthful claims concerning the environmental attributes about its generation portfolio. Some examples of untruthful claims are: (a) describing a utility portfolio mix as supplying of 100 megawatt-hours of renewable energy without consuming, i.e. retiring, the RECs to substantiate this claim, or (b) double counting environmental attributes by both claiming a portfolio supplies 100 megawatt-hours and then selling the RECs substantiating this claim to another buyer. If Idaho Power does either of these things, they may be exposed to legal liability for making false advertising claims.

Idaho Power’s RECs

Since 2008, Idaho Power has acquired RECs from two Power Purchase Agreements. From Telocast Wind Power Partners, Idaho Power acquires 100% of the RECs generated by the 101 MW Elkhorn Valley Wind Project, roughly 300,000 RECs annually. *See* Order No. 30259, IPC-E-06-31. From U.S. Geothermal, Idaho Power acquires a portion of the RECs generated by the Raft River Geothermal Project. *See* Order No. 30485, IPC-E-07-17. The Commission, in both of these orders, approved Idaho Power’s request to include the price of the RECs when incorporating these projects into the Power Cost Adjustment. *Id; Id.*

Going forward, Idaho Power plans to acquire some RECs and not acquire others. As part of the Neal Hot Springs Unit 1 Geothermal PPA application, filed on December 28, 2009, Idaho Power includes the RECs as part of the energy price and intends to recover this through the PCA.

² National Association of Attorneys General, *Environmental Marketing Guidelines for Electricity*, § 2 (b), pp. 4-8 (December 1999). Available at: http://www.naag.org/publications_environment.php (titled *Green Marketing Guidelines*)

See Application at 5, IPC-E-09-34. In their 2009 IRP, Idaho Power explains the planned upgrade to Shoshone Falls Hydroelectric Project “becomes even more economically attractive” when they include the sale of RECs. *Idaho Power 2009 IRP* at 36 – 37. However, both the Idaho Winds PPA approved last year and the currently pending PPA with Cargill Inc. do not include RECs in the energy price. See Application, at exhibit 1 p. 17, IPC-E-09-25; Application, at exhibit 1, p. 17, IPC-E-10-15.

Regulatory History of Idaho Power’s RECs

This matter originally arose when Idaho Power requested permission to retire the RECs it acquired in 2007 and 2008. Initially the Commission approved this request, over the objections of the Staff, so that Idaho Power could meet a future federal renewable energy standard and communicate the level of renewables in their portfolio to customers. See Order No. 30720, at 3. After granting the Industrial Customers Petition for Rehearing, the Commission changed course and ordered Idaho Power to sell the RECs it currently held and file a business plan for RECs acquired in 2009 and beyond. See Order No. 30818, at 4-5. In this Order, the Commission noted that Idaho Power also changed course and explained their desire to bank RECs instead of retire them. *Id.*, at 3-4. The Commission found “no compelling evidence” that banking the RECs would “lessen the burden in meeting a future federal standard.” *Id.*, at 4. Instead, the Commission concluded, “that the best use of [RECs] at issue in this case is to sell them and use the proceeds to benefit Idaho ratepayers.” *Id.* When the Industrial Customers petitioned for clarification regarding the treatment of RECs generated in 2009 and beyond, the Commission denied this petition and instead explained “we . . . await Idaho Power’s submission of a business plan that will maximize the value of its future [REC]s.” Order No. 30868, at 3. The submission of this business plan brings us to the present round of comments.

Idaho Power's REC Management Plan

Idaho Power's plan is to continue to acquire RECs, but sell them and return the money to ratepayers until obligated to retire them. They base their REC Management Plan on "a reasonable likelihood that a federal renewable energy standard ("RES") will be passed by Congress that will require the Company to obtain and retire RECs for compliance." *Idaho Power REC Management Plan*, at 2. Interestingly this Plan does not mention the other justifications for retiring RECs Idaho Power previously put forth – to communicate the portion of renewables in their portfolio to customers, and "align with state interests in promoting renewable energy." *Idaho Power's Reply Brief on Reconsideration*, at 2, (April 20, 2009).

Turning to specific sources of RECs, the Plan defines four categories. For their existing long term PPAs for the Elkhorn and Raft River sources, Idaho Power proposes to simply sell the RECs and return the income to ratepayers. *Id.*, at 3. For existing PURPA and other "REC Generating Contracts," they propose to acquire RECs "if a mutually agreeable price can be reached with the project owner." *Id.* For New Long-term PPAs, Idaho Power intends to include the RECs in the contracts (e.g. the proposed PPA with the Neal Hot Springs Geothermal Unit filed as case No. IPC-E-09-34). *Id.* Finally, for "Qualified Renewable Projects," which apparently include only Idaho Power's small hydroelectric projects that "can be certified as renewable under other states renewable portfolio standards," they "will consider selling the near-term RECs." *Id.*, at 4.

COMMENTS

ICL and RNP acknowledge the REC system can be conceptually challenging but maintain that this system is very important for utility customers. The Idaho Energy Plan instructs Idaho Power to pursue the following resource priority: efficiency followed by

renewables. *See 2007 Idaho Energy Plan*, at 2. The REC system allows project developers, utilities, and consumers to fulfill the policy priority by providing a transparent, auditable marketplace for the environmental attributes of renewable generation.

Two factors drive the value of this marketplace - regulatory obligations and consumer demand. The Commission ordered Idaho Power to submit a REC Management Plan “that will maximize the value” of RECs going forward. Order No. 30868, at 3. To truly maximize the value, this Plan should consider both of these value drivers. However, the Plan only considers the value of RECs to meet future regulatory obligations in the form of a renewable energy standard. It fails to consider the value of REC retirement to meet existing regulatory obligations imposed by truth in advertising laws. Idaho Power originally requested the authority to retire RECs in order to “comply with standards regarding characterization of its resource portfolio to customers.” *Idaho Power Reply Brief on Reconsideration*, at 2. As described above, if Idaho Power consumes RECs by making public statements concerning the environmental attributes of the Elkhorn, Raft River, or other renewable resources, they must retire sufficient RECs to account comply with regulatory obligations imposed by truth in advertising laws. Compliance with these obligations has value to ratepayers by both avoiding legal liability and facilitating Idaho Power’s ability to communicate with their customers.

By only selling RECs, Idaho Power’s plan fails to maximize the value of RECs that retirement could provide. The Commission expressly did not foreclose the possible value of future retirement. *See Order No. 30818*, at 4. Instead, the Commission ordered Idaho Power to sell prior year’s RECs “unless and until the federal government establishes renewable energy standards and corresponding guidelines.” *Id.* ICL and RNP submits that, while no Federal RES currently exists, there are guidelines and procedures for capturing the value of REC retirement in

the form of truth in Commodity Futures Trading Commission regulations, truth in advertising laws, and the WREGIS tracking system. Idaho Power's plan should explain how the company intends to maximize the value of RECs by complying with these guidelines and procedures.

Turning to the four categories of RECs identified in the Plan, ICL and RNP submit these further comments. First, existing RECs from long term PPA provide a source of revenue for ratepayers if sold, but alternatively allow for compliance with existing regulatory obligations and consumer demands if retired. Idaho Power may not be maximizing the full value of the RECs if the company chooses to sell them.

Second, for existing PURPA and REC Generating Contracts, which Idaho Power may acquire, the Plan does not attempt to explain how this secondary revenue stream could be used to pursue additional renewable energy projects. The Plan does not explain how the current practice of not acquiring RECs maximizes the value of this potential revenue stream for ratepayers.

Third, for New Long-term PPAs, Idaho Power "intends to continue to acquire long-term rights to the RECs under these agreements." *REC Management Plan*, at 3. However, the Plan does not explain why acquiring RECs for these projects should be treated differently than acquiring RECs from PURPA projects. There maybe a simple reason for this, such the fact that PURPA contracts are at avoided costs while other PPAs are at negotiated costs. But the Plan does not explain why this distinction maximizes the value of RECs for ratepayers.

Fourth, for Qualified Renewable Projects, the Plan considers acquiring RECs only from projects that "can be certified as renewable under other states renewable portfolio standards." The Plan does not explain whether these projects may generate RECs based on other qualifications such as those established for the region by WREGIS or nationally by Green-e. Green-e certifies RECs, including some forms of hydropower, and provides a system for the

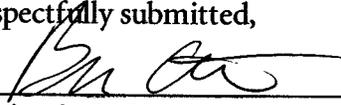
capturing this value through the voluntary marketplace. *See Green-e Energy National Standard Version 1.6* (December 2008).³ By ignoring the ability to generate, acquire, and then sell or retire RECS under these systems, the Plan may not maximize the value of RECs to ratepayers.

CONCLUSION

The REC system, while it can be conceptually challenging, provides a transparent, auditable marketplace for capturing the added value of renewable energy projects. This value is driven by both regulatory obligations, in the form of renewable portfolio standard compliance and truth in advertising laws, and consumer demand, in the form of the voluntary marketplace and consumer expectations. While complicated, this marketplace is real and growing. Even if Idaho does not have a state-based regulatory requirement for renewable energy, Idaho Power must still comply with other regulatory and consumer obligations. These obligations create some value to retiring RECs, including from avoiding liability and communicating with consumers. Without addressing the issues raised by ICL and RNP, Idaho Power's plan may not maximize this value. We respectfully request the Commission to order Idaho Power to develop a more detailed plan regarding whether or not to acquire RECs from all potential sources and how to best derive value from these potential assets.

DATED this 14th day of May, 2010.

Respectfully submitted,



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Isl Ben too on behalf of G.L.L.

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³ Available at: http://www.green-e.org/getcert_re_stan.shtml#standard