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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

FRANKLIN ENERGY STORAGE ONE, LLC,
FRANKLIN ENERGY STORAGE TWO, LLC,
FRANKLIN ENERGY STORAGE THREE, LLC,
FRANKLIN ENERGY STORAGE FOUR, LLC,

Plaintiffs,

vs.

PAUL KJELLANDER, KRISTINE RAPER, AND
ERIC ANDERSON, in their official capacity as
Commissioners of the IDAHO PUBLIC UTILITIES
COMMISSION.

Defendants.

Case No. 1:18-cv-00236-REB

**DEFENDANTS' MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, CROSS-
MOTION FOR SUMMARY
JUDGMENT**

DEFENDANTS' MOTION TO DISMISS AND, IN THE ALTERNATIVE, CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants Paul Kjellander, Kristine Raper, and Eric Anderson, in their official capacities as Commissioners of the Idaho Public Utilities Commission (collectively "Defendants"), respectfully move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the First Amended Complaint ("Complaint") of Franklin Energy Storage One through Four (collectively, "Plaintiffs") with prejudice. Alternatively, Defendants respectfully move the Court, pursuant to Rule 56(a) for summary judgment.

As grounds for their motion, Defendants state that (1) this Court lacks subject matter jurisdiction; (2) Plaintiffs' Complaint lacks facial plausibility; (3) Plaintiffs' claims are time-barred; and (4) the First Amended Complaint is barred by the Eleventh Amendment.

WHEREFORE, and for the reasons set forth in the accompanying Memorandum in Support, Defendants request that the Court dismiss Plaintiffs' First Amended Complaint with prejudice.

DATED this 26th day of October, 2018.

OFFICE OF THE ATTORNEY GENERAL

/s/ Brandon Karpen
Brandon Karpen
Deputy Attorney General
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Peter Richardson, Attorney for Plaintiffs
(email: peter@richardsonadams.com)

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RESPECTFULLY SUBMITTED this 26th day of October, 2018.

/s/ Brandon Karpen

Brandon Karpen