

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,

Applicant/Appellant,

v.

IDAHO PUBLIC UTILITIES COMMISSION,

Respondent on Appeal.

)
) **SUPREME COURT**
) **DOCKET NO. 29016**
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) **IPUC CASE NO. IPC-E-01-34**
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) **IPUC ORDER NO. 29164**
)

On October 8, 2002, Idaho Power Company filed a Notice of Appeal in this case. Pursuant to the Idaho Appellate Rules, the Commission Secretary prepared the Agency Record on Appeal and provided a copy to Idaho Power. I.A.R. 27-28. On November 8, 2002, Idaho Power filed a letter with the Commission Secretary requesting that the “public [written] comments” commencing in Volume II, at page 266 through Volume III of the Agency Record on Appeal be deleted. The Commission Staff filed an Answer to this Letter on November 13, 2002. Idaho Power filed a reply to Staff’s Answer on November 20, 2002. Based on the agreement of the parties the Commission settles the record as discussed in greater detail below.

BACKGROUND

When Idaho Power filed its Application in this case, it specifically requested that the matter “be processed under RP 201, et al., allowing for consideration of issues to be processed under Modified Procedure, i.e., written submission rather than by an evidentiary hearing.” Application at 5; R. at 8. In Order No. 28892 the Commission found that the Company’s Application should be processed pursuant to Modified Procedure under the Commission’s Rules of Procedure, IDAPA 31.01.01.201-.204. Order No. 28892 at 2; R at 118. When the Commission “preliminarily find[s] that the public interest may not require a hearing to consider the issues presented in a proceeding, . . . [then] the proceeding may be processed under modified procedure, i.e., by written submissions rather than by hearing.” IDAPA 31.01.01.201 (emphasis added). Thus, the Commission would analyze this case based on the written submissions of interested persons and parties. In regard to filing written comments the Commission stated:

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission within twenty-one (21) days from the date of this Notice. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this application shall be mailed to the Commission and the Applicant[.] . . .

Persons desiring to submit comments via e-mail may do so by accessing the Commission's homepage located at www.puc.state.id.us under the heading of "Contact Us." . . . These comments should also be sent to the Applicant[.] . . . IDAPA 31.01.01.012 and .203.

YOU ARE FURTHER NOTIFIED that if no written comments 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.

Order No. 28992 at 2-3; R. at 118-19.

In response to Order No. 28992, the Commission received written comments from the Idaho Irrigation Pumpers Association, the Commission Staff and over 200 members of the public. On December 28, 2001, Idaho Power filed reply comments that responded to issues raised by Staff, the Irrigation Pumpers and those filed by the public. R. at 167-179. Idaho Power's reply comments addressed in some detail the issues raised by the public written comments. R. at 168-172.

In Order No. 28992 the Commission authorized Idaho Power to recover nearly \$74 million in payments made to irrigators but denied the Company's request for approximately \$12 million attributable to "lost revenue." In that Order, the Commission specifically referenced public comments. Order No. 28992 at 3; R. at 192. In Order No. 29103 issued August 2002, the Commission denied the Company's petition to reconsider the lost revenue issue and affirmed its previous decision. On October 2, 2002, Idaho Power filed its Notice of Appeal from Commission Order Nos. 28992 and 29103 with the Idaho Supreme Court.

A. Idaho Power's Initial Request and November 8, 2002 Letter

In its Notice of Appeal, the Company requested that the Commission Secretary prepare the "standard record" and include additional documents in the Agency Record pursuant to Idaho Appellate Rule 28. Notice of Appeal at 3; R. at 261. On November 8, 2002, Idaho

Power filed its letter requesting that “public comments” filed by Idaho citizens in this case be deleted from the Agency’s Record on Appeal. The Company stated that it does not “desire that those comments be contained in the transcript nor does the Company believe that those comments should be considered as part of the Commission’s formal deliberation process.”

B. Staff’s Answer

Staff did not agree with the Company’s position that the public written comments did not belong in the Agency Record. Based upon the history of this case, the Commission’s Rules and Idaho Appellate Rules, Staff insisted that the written comments by the public are automatically part of the Agency Record on Appeal.

Staff agreed with the Company’s general desire that the size of the record could be reduced. Instead of eliminating all of the public comments, Staff proposed that only a few of them be included in the record on the basis that they are representative of the overall concerns raised by members of the public. Staff proposed that the Commission only include in the Agency’s Record on Appeal the public written comments contained in the prepared Record found on pages: 266, 268, 288, 293, 303, 327, 338, 391, 399 and 477. Staff asserted that this would substantially reduce the size of the Record on Appeal.

C. Idaho Power’s Reply

Idaho Power filed its Reply to Staff’s Answer on November 20, 2002. The Company stated that it had no objection to the inclusion of the public written comments designated by Staff in its November 13, 2002 Answer.

COMMISSION DECISION

The Commission is vested with the authority to settle the record on appeal. As set out in Idaho Appellate Rule 29, any objection or suggested change to the agency’s record “shall be heard and determined by the . . . administrative agency from which the appeal is taken.” I.A.R. 29(a). It is self-evident that the Commission is in the best position to recognize and discern the actual record in its underlying proceeding. When objections to the Agency’s Record have been filed, the Commission is to utilize its discretion in settling the record on appeal. *See Aker v. Aker*, 52 Idaho 50, 11 P.2d 372 (1932); *Sun Valley Shopping Ctr. v. Idaho Power Company*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

Given the agreement between Idaho Power and the Commission Staff, the Commission finds that it is reasonable to reduce the Agency Record. Reducing the size of the

record by including a portion of the public written comments comports with Idaho Appellate Rule 28. Rule 28 encourages the parties designate an Agency's Record "more limited than the standard record." I.A.R. 28(a). We find that the record on appeal may be appropriately reduced and that those comments identified by the Staff are representative of the body of the written public comments. Therefore, those comments contained on the following pages of the current record shall be included in the settled Agency Record on Appeal: 266, 268, 288, 293, 303, 327, 338, 391, 399 and 477.

ORDER

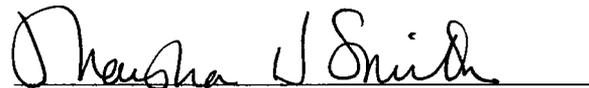
IT IS HEREBY ORDERED that by agreement of the parties the size of the Agency Record on Appeal is reduced as discussed above.

IT IS FURTHER ORDERED that pursuant to Idaho Appellate Rule 28(a), only the following public written comments contained on the following pages of the current record, 266, 268, 288, 293, 303, 327, 338, 391, 399 and 477, shall be contained in the Agency Record on Appeal.

IT IS FURTHER ORDERED that having ruled upon this request, the Record on Appeal is deemed settled in accordance with Idaho Appellate Rule 29(a).

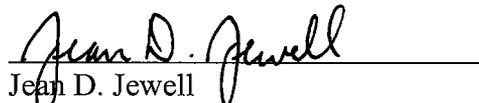
DONE by final Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th
day of November 2002.


PAUL KJELLEANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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