

Peter J. Richardson (ISB No. 3195)
Gregory M. Adams (ISB No: 7454)
Richardson & O'Leary, PLLC
515 N. 27th Street
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com
greg@richardsonandoleary.com

RECEIVED
2012 OCT 19 PM 1:59
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Grouse Creek Wind Park, LLC
and Grouse Creek Wind Park II, LLC

BEFORE THE IDAHO

PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE) SUPREME COURT DOCKET NO.
APPLICATION OF IDAHO POWER) 39151-2011
COMPANY FOR A DETERMINATION)
REGARDING THE FIRM ENERGY)
SALES AGREEMENT FOR THE SALE) CASE NO. IPC-E-10-61
AND PURCHASE OF ELECTRIC)
ENERGY BETWEEN IDAHO POWER) AMENDED NOTICE OF APPEAL
COMPANY AND GROUSE CREEK)
WIND PARK, LLC)

IN THE MATTER OF THE) CASE NO. IPC-E-10-62
APPLICATION OF IDAHO POWER)
COMPANY FOR A DETERMINATION) AMENDED NOTICE OF APPEAL
REGARDING THE FIRM ENERGY)
SALES AGREEMENT FOR THE SALE)
AND PURCHASE OF ELECTRIC)
ENERGY BETWEEN IDAHO POWER)
COMPANY AND GROUSE CREEK)
WIND PARK II, LLC)

**TO: THE IDAHO PUBLIC UTILITIES COMMISSION, THE PARTIES IN THIS
MATTER AND THE RESPECTIVE COUNSEL OF RECORD**

NOTICE IS HEREBY GIVEN THAT:

1. The Appellants, Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC, appeal to the Idaho Supreme Court from the Idaho Public Utilities Commission's ("Commission's") Final Order No. 32257, Final Reconsideration Order No. 32299, and Final Reconsideration Order on Remand Order No. 32635 (collectively the "Orders").

2. Appellants have a right to appeal to the Idaho Supreme Court pursuant to I.C. § 61-627, and the Orders described in paragraph 1 above are appealable orders pursuant to I.C. § 61-627 and I.A.R. 11(e). The Commission entered Order No. 32635 on stipulated remand after Appellants initially appealed Order Nos. 32257 and 32299. This Amended Notice of Appeal filed pursuant to I.A.R. 17(m) serves to include in this appeal the Commission's Order No. 32635 and the Commission's record on remand.

3. Appellants presently intend to assert the following issues on appeal, although Appellants reserve the right to modify and develop these issues as appropriate and/or assert other issues on appeal as appropriate:

- a) Whether the Commission's Orders are arbitrary and capricious and in violation of controlling federal law, the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the Federal Energy Regulatory Commission's regulations, because the Commission's Orders required that a qualifying facility ("QF") must obtain a bilaterally executed contract with a purchasing utility, in determining when Appellants created a legally enforceable obligation for purposes of calculating avoided cost rates;
- b) Whether the Commission's "bright line rule," established in Order Nos. 32257 and 32299, that a firm energy sales agreement ("FESA") is not enforceable until it is executed by both parties is in violation of Idaho case law regarding contract formation;
- c) Whether the Commission's Orders are arbitrary and capricious, or otherwise not in accordance with law, because the Commission failed to apply and distinguish its own prior precedent implementing PURPA and FERC's regulations, including but not limited to 18 C.F.R. § 292.304(d)(2), which establishes criteria regarding grandfathered entitlement to pre-existing avoided cost rates and the date for formation of a legally enforceable obligation without a fully executed contract; and

- d) Whether the Commission's Orders are arbitrary and capricious and in violation of controlling federal law, PURPA and FERC's regulations, including but not limited to 18 C.F.R. § 292.301(b), because the Commission's Orders disapproved and held invalid Appellants' FESAs containing agreed-to rates, terms and conditions.

4. No order has been entered sealing any portion of the record.

5. A reporter was present at the oral argument on remand held at the Commission on March 7, 2012. Pursuant to I.A.R. 17(h), Appellants have requested preparation of the standard transcript, which will include the transcript of the proceedings at oral argument. Other than the oral argument held on March 7, 2012, Appellants are aware of no proceedings in these two cases (IPC-E-10-61 and IPC-E-10-62) where a reporter was present because the two cases were processed by modified procedure pursuant to Commission Rule of Procedure 201 *et seq.* Appellants elect to receive a hard copy of the transcript.

6. Appellants request preparation of a standard agency record on appeal pursuant to I.A.R. 28. Appellants also request that the following documents be included in the agency's record pursuant to I.A.R. 28(c), to the extent that such documents will not otherwise be included with the standard agency record. For clarity, Appellants have included in the list below all documents generated on remand for inclusion in the appellate record:

Date	Description
4/25/11	The Commission's Approved Decision Meeting Minutes of the April 25, 2011 Decision Meeting
11/8/10	Complaint of Grouse Creek Wind Park LLC, Case No. IPC-E-10-29
11/8/10	Complaint of Grouse Creek Wind Park II LLC, Case No. IPC-E-10-30
11/8/10 to present date	All documents in the Commission's files relating to stay of proceedings in Case No. IPC-E-10-29
11/8/10 to present date	All documents in the Commission's files relating to stay of proceedings in Case No. IPC-E-10-30
Various	All Orders and Notices in Commission Case No. GNR-E-10-04

11/8/10	Joint Petition of Utilities in Commission Case No. GNR-E-10-04
11/8/10	Answer of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
12/22/10	Comments of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
1/20/11	Reply Comments of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
1/21/11	Motion to Strike of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
2/28/11	Petition for Reconsideration of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
Various	All Orders and Notices in Commission Case No. GNR-E-11-01
3/17/11	Rocky Mountain Power Motions for Clarification and Protective Order in Commission Case No. GNR-E-11-01
3/18/11	Answer of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-11-01
4/14/11	Motion to Strike of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-11-01
4/22/11	Reading Rebuttal Testimony of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-11-01
12/30/11	Staff Decision Memorandum in Case Nos. IPC-E-10-61 and IPC-E-10-62
1/5/12	Notice of Oral Argument Order No. 32430 in Case Nos. IPC-E-10-61 and IPC-E-10-62
2/6/12	Idaho Power Company's Memorandum on Remand in Case Nos. IPC-E-10-61 and IPC-E-10-62
2/6/12	Idaho Power Company's Affidavit on Remand in Case Nos. IPC-E-10-61 and IPC-E-10-62
2/6/12	Staff's Legal Brief in Case Nos. IPC-E-10-61 and IPC-E-10-62
2/27/12	Reply Legal Brief of Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC in Case Nos. IPC-E-10-61 and IPC-E-10-62
2/27/12	Affidavit of Gregory M. Adams in Case Nos. IPC-E-10-61 and IPC-E-10-62
9/7/12	Reconsideration Order on Remand Order No. 32635 in Case Nos. IPC-E-10-61 and IPC-E-10-62

7. I certify:

- a) That this Amended Notice has been served on the reporter of the proceeding. .
- b) That the estimated fee for preparation of the transcript has been paid.
- c) That the estimated fee for preparation of the clerk's record has been paid.

- d) That the appellate filing fee of \$86.00 was paid to the Secretary of the Commission at the time of filing the initial Notice of Appeal.
- e) That service has been made upon all parties required to be served pursuant to I.A.R. 20, and the Attorney General of Idaho pursuant to I.C. § 67-1401(1).

DATED THIS 19th day of October 2012.

RICHARDSON AND O'LEARY, PLLC

By  _____

Peter J. Richardson (ISB No: 3195)
Gregory M. Adams (ISB No: 7454)
Attorneys for Grouse Creek Wind Park,
LLC and Grouse Creek Wind Park II, LLC

Peter J. Richardson (ISB No. 3195)
Gregory M. Adams (ISB No: 7454)
Richardson & O'Leary, PLLC
515 N. 27th Street
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com
greg@richardsonandoleary.com

RECEIVED
2012 OCT 19 PM 2:00
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Grouse Creek Wind Park, LLC
and Grouse Creek Wind Park II, LLC

BEFORE THE IDAHO

PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE) SUPREME COURT DOCKET NO.
APPLICATION OF IDAHO POWER) 39151-2011
COMPANY FOR A DETERMINATION)
REGARDING THE FIRM ENERGY)
SALES AGREEMENT FOR THE SALE) CASE NO. IPC-E-10-61
AND PURCHASE OF ELECTRIC)
ENERGY BETWEEN IDAHO POWER) AMENDED NOTICE OF APPEAL
COMPANY AND GROUSE CREEK)
WIND PARK, LLC)

IN THE MATTER OF THE) CASE NO. IPC-E-10-62
APPLICATION OF IDAHO POWER)
COMPANY FOR A DETERMINATION) AMENDED NOTICE OF APPEAL
REGARDING THE FIRM ENERGY)
SALES AGREEMENT FOR THE SALE)
AND PURCHASE OF ELECTRIC)
ENERGY BETWEEN IDAHO POWER)
COMPANY AND GROUSE CREEK)
WIND PARK II, LLC)

**TO: THE IDAHO PUBLIC UTILITIES COMMISSION, THE PARTIES IN THIS
MATTER AND THE RESPECTIVE COUNSEL OF RECORD**

NOTICE IS HEREBY GIVEN THAT:

AMENDED NOTICE OF APPEAL - 1

1. The Appellants, Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC, appeal to the Idaho Supreme Court from the Idaho Public Utilities Commission's ("Commission's") Final Order No. 32257, ~~and~~ Final Reconsideration Order No. 32299, and Final Reconsideration Order on Remand Order No. 32635 (collectively the "Orders").

2. Appellants have a right to appeal to the Idaho Supreme Court pursuant to I.C. § 61-627, and the Orders described in paragraph 1 above are appealable orders pursuant to I.C. § 61-627 and I.A.R. 11(e). The Commission entered Order No. 32635 on stipulated remand after Appellants initially appealed Order Nos. 32257 and 32299. This Amended Notice of Appeal filed pursuant to I.A.R. 17(m) serves to include in this appeal the Commission's Order No. 32635 and the Commission's record on remand.

3. Appellants presently intend to assert the following issues on appeal, although Appellants reserve the right to modify and develop these issues as appropriate and/or assert other issues on appeal as appropriate:

- a) Whether the Commission's Orders are arbitrary and capricious and in violation of controlling federal law, the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the Federal Energy Regulatory Commission's regulations, because the Commission's Orders ~~held~~ required that a qualifying facility ("QF") must obtain a bilaterally executed contract with a purchasing utility, in determining when Appellants created a legally enforceable obligation for purposes of calculating avoided cost rates;
- b) Whether the Commission's "bright line rule," established in ~~the Order Nos.~~ Order Nos. 32257 and 32299, that a firm energy sales agreement ("FESA") is not enforceable until it is executed by both parties is in violation of Idaho case law regarding contract formation;
- c) Whether the Commission's Orders are arbitrary and capricious, or otherwise not in accordance with law, because the Commission failed to apply ~~or~~ and distinguish its own prior precedent implementing PURPA and FERC's regulations, including but not limited to 18 C.F.R. § 292.304(d)(2), which establishes criteria regarding grandfathered entitlement to pre-existing avoided cost rates and the date for formation of a legally enforceable obligation without a fully executed contract to the Appellants' FESAs; and

d) Whether the Commission's Orders are arbitrary and capricious and in violation of controlling federal law, PURPA and FERC's regulations, including but not limited to 18 C.F.R. § 292.301(b), because the Commission's Orders disapproved and held invalid Appellants' FESAs containing agreed-to rates, terms and conditions.

d) Whether the Commission's "bright line rule," established in the Orders, is in violation of the rulemaking requirements of the Idaho Administrative Procedures Act and is therefore void.

4. No order has been entered sealing any portion of the record.

5. A reporter was present at the oral argument on remand held at the Commission on March 7, 2012. Pursuant to I.A.R. 17(h), Appellants have requested preparation of the standard transcript, which will include the transcript of the proceedings at oral argument. Other than the oral argument held on March 7, 2012, Appellants are aware of no proceedings in these two cases (IPC-E-10-61 and IPC-E-10-62) where a reporter was present because the two cases were processed by modified procedure pursuant to Commission Rule of Procedure 201 et seq. Appellants elect to receive a hard copy of the transcript.

6. Appellants request preparation of a standard agency record on appeal pursuant to I.A.R. 28. Appellants also request that the following documents be included in the agency's record pursuant to I.A.R. 28(c), to the extent that such documents will not otherwise be included with the standard agency record. For clarity, Appellants have included in the list below all documents generated on remand for inclusion in the appellate record:

Date	Description
4/25/11	The Commission's Approved Decision Meeting Minutes of the April 25, 2011 Decision Meeting
11/8/10	Complaint of Grouse Creek Wind Park LLC, Case No. IPC-E-10-29
11/8/10	Complaint of Grouse Creek Wind Park II LLC, Case No. IPC-E-10-30
11/8/10 to present date	All documents in the Commission's files relating to stay of proceedings in Case No. IPC-E-10-29
11/8/10 to	All documents in the Commission's files relating to stay of proceedings in Case

present date	No. IPC-E-10-30
Various	All Orders and Notices in Commission Case No. GNR-E-10-04
11/8/10	Joint Petition of Utilities in Commission Case No. GNR-E-10-04
11/8/10	Answer of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
12/22/10	Comments of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
1/20/11	Reply Comments of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
1/21/11	Motion to Strike of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
2/28/11	Petition for Reconsideration of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-10-04
Various	All Orders and Notices in Commission Case No. GNR-E-11-01
3/17/11	Rocky Mountain Power Motions for Clarification and Protective Order in Commission Case No. GNR-E-11-01
3/18/11	Answer of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-11-01
4/14/11	Motion to Strike of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-11-01
4/22/11	Reading Rebuttal Testimony of Northwest and Intermountain Power Producers Coalition in Commission Case No. GNR-E-11-01
<u>12/30/11</u>	<u>Staff Decision Memorandum in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>1/5/12</u>	<u>Notice of Oral Argument Order No. 32430 in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>2/6/12</u>	<u>Idaho Power Company's Memorandum on Remand in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>2/6/12</u>	<u>Idaho Power Company's Affidavit on Remand in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>2/6/12</u>	<u>Staff's Legal Brief in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>2/27/12</u>	<u>Reply Legal Brief of Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>2/27/12</u>	<u>Affidavit of Gregory M. Adams in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>
<u>9/7/12</u>	<u>Reconsideration Order on Remand Order No. 32635 in Case Nos. IPC-E-10-61 and IPC-E-10-62</u>

7. I certify:

- a) That this Amended Notice has been served on the reporter of the proceeding. there is no transcript fee and no reporter on whom to serve this notice because Appellant is aware of no transcript available from these matters.

- b) That the estimated fee for preparation of the transcript has been paid.
- b)c) That the estimated fee for preparation of the clerk's record has been paid.
- ed) That the appellate filing fee of \$86.00 ~~has~~ was been paid to the Secretary of the Commission at the time of filing the initial Notice of Appeal.
- de) That service has been made upon all parties required to be served pursuant to I.A.R. 20, and the Attorney General of Idaho pursuant to I.C. § 67-1401(1).

DATED THIS 19TH day of October 2012 ~~September 2011~~.

RICHARDSON AND O'LEARY, PLLC

By  _____

Peter J. Richardson (ISB No: 3195)
Gregory M. Adams (ISB No: 7454)
Attorneys for Grouse Creek Wind Park,
LLC and Grouse Creek Wind Park II, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of October 2012, a true and correct copy of the within and foregoing **AMENDED NOTICE OF APPEAL** was served in the manner shown to:

Jean Jewell
Commission Secretary
IDAHO PUBLIC UTILITIES COMMISSION
472 W Washington
Boise ID 83702

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Kristine Sasser
Deputy Attorney General
IDAHO PUBLIC UTILITIES COMMISSION
472 W Washington
Boise ID 83702

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Honorable Lawrence Wasden
Attorney General of the State of Idaho
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, Idaho 83720-0010

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Donovan E. Walker
Lisa Nordstrom
Randy Allphin
IDAHO POWER COMPANY
PO Box 70
Boise ID 83707-0070

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail



Gregory M. Adams