



RECEIVED

2012 DEC 18 PM 2:46

IDAHO PUBLIC  
UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Lead Counsel  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

December 18, 2012

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case Nos. IPC-E-10-61 and IPC-E-10-62  
Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC, Firm  
Energy Sales Agreements – Idaho Power Company's Objection to Proposed  
Agency's Record

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and fourteen (14) copies  
(seven (7) for each case) of Idaho Power Company's Objection to Proposed Agency's  
Record on Appeal and Request for Hearing.

Very truly yours,

Donovan E. Walker

DEW:csb  
Enclosures

DONOVAN E. WALKER (ISB No. 5921)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5317  
Facsimile: (208) 388-6936  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

RECEIVED  
2012 DEC 18 PM 2:46  
IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for Respondent-Intervenor Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

GROUSE CREEK WIND PARK, LLC, and	)	
GROUSE CREEK WIND PARK II, LLC,	)	
	)	SUPREME COURT
Petitioners-Appellants,	)	DOCKET NO. 39151-2011
	)	
v.	)	IPUC CASE NOS. IPC-E-10-61
	)	IPC-E-10-62
IDAHO PUBLIC UTILITIES COMMISSION,	)	
	)	
Respondent-Respondent on Appeal,	)	
	)	
and	)	IDAHO POWER COMPANY'S
	)	OBJECTION TO PROPOSED
IDAHO POWER COMPANY,	)	AGENCY'S RECORD ON APPEAL
	)	AND REQUEST FOR HEARING
Respondent-Intervenor/Respondent on	)	
Appeal.	)	
	)	

COMES NOW Idaho Power Company ("Idaho Power"), by and through its attorney of record, Donovan E. Walker, and respectfully objects to certain portions of the Proposed Agency's Record on Appeal requested by the Petitioners/Appellants, Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC ("Grouse Creek"), in the above-entitled action. In particular, Idaho Power objects to Grouse Creek's

request to include in the Record on Appeal for Case Nos. IPC-E-10-61 and IPC-E-10-62 voluminous materials from different Idaho Public Utilities Commission ("Commission") cases that are not subject to appeal, nor the subject of this appeal. This Objection is made pursuant to Idaho Appellate Rules 29(a) and 13(e).

### **I. THE REQUESTED RECORD**

On October 19, 2012, Grouse Creek filed an Amended Notice of Appeal from the Commission's Final Order No. 32257, Final Reconsideration Order No. 32299, and Final Reconsideration Order on Remand No. 32635 from Commission Case Nos. IPC-E-10-61 and IPC-E-10-62. In its Amended Notice of Appeal, Grouse Creek requested numerous documents from several other Commission cases in addition to the standard agency record on appeal pursuant to Idaho Appellate Rule 28. Those additional documents include: the complaints and other documents from Case Nos. IPC-E-10-29 and IPC-E-10-30; the petition, orders, and notices from Case No. GNR-E-10-04; selected pleadings, comments, motions, and petitions from other parties (Northwest and Intermountain Power Producers Coalition "NIPPC") in Case No. GNR-E-10-04; the order and notices from Case No. GNR-E-11-01; selected motions, testimony, and an answer from other parties (NIPPC and Rocky Mountain Power) in Case No. GNR-E-11-01; as well as several documents from Case Nos. IPC-E-10-61 and IPC-E-10-61, which are the present cases on appeal.

### **II. THE COMMISSION PROCEEDINGS**

On December 29, 2010, Idaho Power filed Applications requesting acceptance or rejection of two Firm Energy Sales Agreements between Idaho Power and Grouse Creek. The contracts were entered into pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"). On February 24, 2011, the Commission issued Notice

of the Applications and Notice of Modified Procedure for the processing of both matters consolidated. Comments were filed by Grouse Creek, Commission Staff, and Idaho Power. On June 8, 2011, the Commission issued Final Order No. 32257, denying approval of Grouse Creek's two December 28, 2010, Firm Energy Sales Agreements. On June 29, 2011, Grouse Creek petitioned for reconsideration of Order No. 32257. On July 27, 2011, the Commission issued its Final Order on Reconsideration No. 32299 denying Grouse Creek's Petition for Reconsideration. On September 7, 2011, Grouse Creek Filed a Notice of Appeal from Order Nos. 32257 and 32299.

Prior to settlement of the Agency's record and transfer to the Idaho Supreme Court, Idaho Power, the Commission, and Grouse Creek filed a stipulated motion with the Idaho Supreme Court to suspend the appeal and remand to the Commission for the Commission to consider its decision in light of a recently issued decision from the Federal Energy Regulatory Commission. The Commission issued Order No. 32430 granting further rehearing to reconsider its Final Order on Reconsideration No. 32299. Idaho Power, Commission Staff, and Grouse Creek each filed legal briefing and the Commission held oral argument on reconsideration. On September 7, 2012, the Commission issued its Final Reconsideration Order on Remand No. 32635, affirming its previous disapproval of Grouse Creek's Firm Energy Sales Agreements. On October 19, 2012, Grouse Creek filed an Amended Notice of Appeal from the Commission's Final Order No. 32257, Final Reconsideration Order No. 32299, and Final Reconsideration Order on Remand No. 32635.

### **III. LEGAL STANDARDS**

The standards for review of Commission orders are clear. "No new or additional evidence may be introduced in the Supreme Court, but the appeal shall be heard on the

record of the commission as certified by it.” *Idaho Code* § 61-629; *Idaho Power Co. v. Idaho Public Utilities Commission*, 140 Idaho 439, 441-42, 90 P.3d 889, 891-92 (2004). It is a basic tenet of administrative law that a reviewing court is bound by the evidence placed into the record and presented to the agency. *B. Schwartz, Administrative Law*, 2d Ed. § 10.2 (1984). Judicial review is clearly confined to the record presented to the Commission, as finder of fact. *Greenfield Village Apartments v. Ada County*, 130 Idaho 207, 938 P.2d 1245 (1997).

When objection is made to the requested record on appeal, the Commission must determine, after hearing, what is to be included in the Agency’s Record that is sent to the Supreme Court. I.A.R. 29(a)-(b). “In administrative appeals from the Public Utilities Commission, . . . the administrative agency shall have continued jurisdiction of the matter and the parties . . . including the power to settle the transcript and record on appeal.” I.A.R. 13(e). Once settled by the Commission, the Agency’s Record is then filed with the Supreme Court. I.A.R. 29(b).

#### **IV. OBJECTION TO DOCUMENTS**

Idaho Power objects to Grouse Creek’s request to include in the Record on Appeal for Case Nos. IPC-E-10-61 and IPC-E-10-62 materials from different Commission cases that are no longer subject to appeal, nor the subject of this appeal, nor contained in the record for these matters. Moreover, some of the additional requested documents are not only from different Commission cases and matters but they also are from different parties, other than Grouse Creek. The additional requested documents are not part of the record in this case, were not considered by the Commission in its resolution of this case, and concern separate matters that were resolved by their own final orders, or are still pending final orders at the Commission.

Even if relevant and appropriate for inclusion in the Agency's record for this case, which they are not, Grouse Creek has cherry-picked selected pleadings, arguments, and testimony, submitted by a non-party to this case, NIPPC, and left out the opposing pleadings, arguments, and testimonies of the other parties to those proceedings.

The additional documents requested by Grouse Creek to be part of the Agency's Record on Appeal that are from other separate cases should be stricken from the Record on Appeal:

**1. Documents from Case Nos. IPC-E-10-29 and IPC-E-10-30 should be stricken.** Grouse Creek has requested documents from Case Nos. IPC-E-10-29 and IPC-E-10-30, which are separate complaint cases which were filed by Grouse Creek, and then stayed. Idaho Power did not answer the Complaints and the commission has never issued a Summons nor ruled upon the Complaints. Idaho Power objects to the inclusion of these separate cases and matters in the Record on Appeal for Case Nos. IPC-E-10-61 and IPC-E-10-62. Specifically, Idaho Power objects to the inclusion of the November 8, 2010, Complaints in Case Nos. IPC-E-10-29 and IPC-E-10-30 found in the Proposed Agency Record on Appeal, Vol. III, pp. 553–570; the November 29, 2010, e-mail, Vol. III, p. 571; and the April 25, 2011, Decision Meeting Minutes, Vol. III, pp. 572-574, and asks that they be should be stricken.<sup>1</sup>

**2. Documents from Case No. GNR-E-10-04 and GNR-E-11-01 should be stricken.** Grouse Creek has requested several documents from Case No. GNR-

---

<sup>1</sup> Idaho Power notes that these Complaints were attempted to be submitted into the record in Case No. IPC-E-10-61 and IPC-E-10-62 attached to an affidavit of counsel. To the extent that the Commission relied upon or considered the above materials from Case No. IPC-E-10-29 and IPC-E-10-30, they should be part of the record as submitted in this case, and not included from their separate case records in IPC-E-10-29 and IPC-E-10-30.

E-10-04 and GNR-E-11-01, which are separate cases that were resolved by their own final orders, and were not appealed to the Supreme Court. Grouse Creek cannot now argue issues from these different cases in the appeal of its contract cases, Case Nos. IPC-E-10-61 and IPC-E-10-62. Moreover, the requested documents consist of an answer, comments, reply comments, a petition, and rebuttal testimony submitted by NIPPC, a non-party to the present action. Additionally, none of the opposing pleadings or documents from other parties were requested, only a cherry-picked selection that Grouse Creek somehow feels are appropriate or supportive of its position or arguments it intends to make in this case. It is entirely improper to include argument and documents from other separate cases that were resolved by their own Commission orders that were not appealed, and were not even submitted by the same party as the present case. Specifically, Idaho Power objects to the inclusion all requested additional documents from the record of Case No. GNR-E-10-04 found in the Proposed Agency Record on Appeal Vol. III, p. 575 through Vol. IV p. 803—as well as all additional requested documents from the record of Case No. GNR-E-11-01 found at Vol. IV, p. 804 through Vol. IV, p. 891.

3. ***Documents from Case No. IPC-E-10-61 and IPC-E-10-62.*** Idaho Power does not object to the inclusion in the Agency's Record on Appeal of the additional documents requested that are actually part of record in these cases, as they are appropriately included.

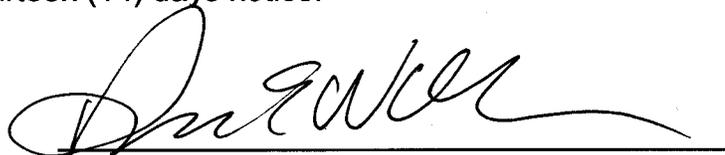
#### **V. REQUEST FOR HEARING**

"Any objection made to . . . the agency's record must be accompanied by a notice setting the objection for hearing and shall be heard and determined by the . . .

administrative agency from which the appeal is taken.” I.A.R. 29(a). Idaho Power respectfully requests that the Commission schedule a hearing for this matter following one of the Commission’s scheduled Decision meetings during the month of January 2013 and issue a Notice of Hearing pursuant to IDAPA 31.01.01.241 with at least fourteen (14) days notice.

## **VI. CONCLUSION**

Based upon the reasons set forth above, Idaho Power respectfully requests that the Commission exclude all requested documents from separate Commission case files that were not part of the record for Case Nos. IPC-E-10-61 and IPC-E-10-62, and not considered by the Commission in resolution of those matters. Specifically, Idaho Power objects to, and asks, that the following pages of the Proposed Agency Record on Appeal be stricken: Vol. III, p. 553 through Vol. IV, p. 891. Idaho Power respectfully requests that the Commission schedule a hearing to consider Idaho Power’s objections to the Proposed Agency Record on Appeal and issue a Notice of Hearing pursuant to IDAPA 31.01.01.241 with at least fourteen (14) days notice.



Donovan E. Walker  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of December 2012 I served a true and correct copy of IDAHO POWER COMPANY'S OBJECTION TO PROPOSED AGENCY'S RECORD ON APPEAL AND REQUEST FOR HEARING upon the following named parties by the method indicated below, and addressed to the following:

**Commission Staff**

Kristine Sasser, Deputy Attorney General  
Donald L. Howell, II, Lead Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [Kris.Sasser@puc.idaho.gov](mailto:Kris.Sasser@puc.idaho.gov)  
[Don.howell@puc.idaho.gov](mailto:Don.howell@puc.idaho.gov)

*Attorneys for Respondent-Respondent Idaho Public Utilities Commission*

**Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC**

Peter J. Richardson  
Gregory M. Adams  
RICHARDSON & O'LEARY, PLLC  
515 North 27<sup>th</sup> Street (83702)  
P.O. Box 7218  
Boise, Idaho 83707

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
[greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

*Attorneys for Petitioner-Appellant Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC*

  
Christa Beary, Legal Assistant