

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

GROUSE CREEK WIND PARK, LLC and)	
GROUSE CREEK WIND PARK II, LLC,)	SUPREME COURT
)	DOCKET NO. 39151-2011
Petitioner-Appellant,)	
)	
vs.)	IPUC CASE NOS. IPC-E-10-61
)	IPC-E-10-62
IDAHO PUBLIC UTILITIES COMMISSION,)	
)	
Respondent-Respondent on Appeal,)	
)	
and)	
)	
IDAHO POWER COMPANY,)	ORDER NO. 32720
)	
Respondent-Intervenor/Respondent)	
on Appeal.)	

On September 7, 2011, Grouse Creek Wind Park and Grouse Creek Wind Park II (collectively “the Grouse Creek projects” or “Grouse Creek”) filed a timely Notice of Appeal from the Commission’s Final Order on Reconsideration in Case Nos. IPC-E-10-61 and IPC-E-10-62. On November 4, 2011, a Stipulated Motion to Suspend Appeal and Remand to the Administrative Agency was filed pursuant to Appellate Rules 13.2 and 13.3. Grouse Creek, the Idaho Public Utilities Commission (“PUC”), and Idaho Power Company (collectively referred to as “the Parties”) stated that there was “good cause for the Court to grant this Motion in order for the Parties to consider a recent decision issued by the Federal Energy Regulatory Commission (“FERC”) regarding the subject matter of the appeal.” Stipulated Motion at ¶ 1. The Court granted the Parties Motion to Suspend on November 23, 2011.

On remand, settlement discussions between the Parties were unfruitful. The Parties filed legal briefs and the PUC held oral argument on March 7, 2012. On September 7, 2012, the PUC issued its Final Reconsideration Order on Remand denying approval of Grouse Creek’s two power purchase agreements. Appellant’s filed an Amended Notice of Appeal with the Court on October 19, 2012. The proposed record was served on all parties on November 20, 2012. On December 18, 2012, Commission Staff and Idaho Power filed timely objections to the proposed record and requested a hearing pursuant to Appellate Rule 29(a) and 13(e).

On December 21, 2012, the Commission issued a Notice setting the matter for hearing on January 9, 2013. Order No. 32702. All Parties appeared at hearing and presented oral arguments for their respective positions. By this Order, we grant Idaho Power's and Commission Staff's objections to the record. The agency's record on appeal shall be amended as more fully set out in the body of this Order.

OBJECTIONS TO THE PROPOSED RECORD

A. Commission Staff's Objections to the Proposed Record

Staff objected to the inclusion of voluminous petitions, answers, notices and orders from cases which are irrelevant to the issues on appeal. Staff maintained that parts of Volume III and Volume IV (approximately 175 pages in Volume III and 140 pages in Volume IV) are voluminous, duplicative and otherwise irrelevant to the issues on appeal. Rather than burden the Court with this material, Staff argued that it should be removed from the record.

Specifically, in Volume III, Staff asserted that the requested additions to the agency record related to PUC Case No. GNR-E-10-04 (pages 575 through 803) are immaterial and/or duplicative of the standard record that is already a part of the agency's record on appeal. In Volume IV, Staff asserted that the requested additions to the record related to PUC Case No. GNR-E-11-01 (pages 804 through 891) are also immaterial and/or duplicative of documents that are already a part of the agency's record on appeal. Staff maintained that the requested documents are not part of the agency's standard record, nor were the documents considered by the Commission in resolving the issues in this case. To the extent that any of the material might have been relevant or considered, it is already a part of the agency's record in the underlying Grouse Creek matters.

Staff argued that affidavits, motions, answers, and other documents filed by other parties in other cases were clearly not contemplated for inclusion as additional documents under Appellate Rule 28(c). Tr. at 48. Staff also noted that Appellate Rule 28(a) encourages the Parties to designate an agency record more limited than the standard record. Removal of the irrelevant and duplicative records would not only be consistent with the Idaho Appellate Rules but would also substantially reduce the size of the already substantial record in this case by more than 300 pages.

B. Idaho Power's Objections to the Proposed Record

Idaho Power objected to the inclusion of all documents that are not part of the standard record in the underlying cases on the Grouse Creek Agreements. IPC-E-10-61 and 10-62. Specifically, Idaho Power asked that pages 553 through 891 be stricken from the proposed record. Tr. at 51. These pages include material from two Grouse Creek complaints and two cases involving disputes over numerous aspects of Idaho's application of the Public Utility Regulatory Policies Act (PURPA). Case Nos. IPC-E-10-29, IPC-E-10-30, GNR-E-10-04 and GNR-E-11-01. Idaho Power also noted that the Grouse Creek complaints included as part of the Company's objection were submitted in this underlying matter on remand as an attachment to an affidavit of Grouse Creek's counsel. Idaho Power Objection at 5, n.1; Tr. at 53. Therefore, Idaho Power requests that pages 1179 through 1203 also be stricken.

Idaho Power maintained it is a fundamental premise of appellate procedure that review of a case be conducted based on the record of that case. Tr. at 50. Appellate procedure and standards of review do not contemplate that arguments, documents and the record from other, unrelated matters be considered on appeal. Moreover, inclusion of such documents could cause confusion and unnecessarily enlarges the record on appeal. *Id.* Finally, Idaho Power argues that the additional documents requested were not considered by the Commission in its resolution of the underlying case in this matter, and concern separate issues that were resolved in separate proceedings.

C. Grouse Creek's Position Regarding Objections to the Record

Grouse Creek stated at hearing that it was willing to stipulate to removal of portions of the record that were objected to by Commission Staff and Idaho Power "in exchange for concessions not to add materials from these other cases themselves." Tr. at 52. However, the Parties were unable to agree to a stipulation. *Id.* at 55.

DISCUSSION AND FINDINGS

When an objection is made to the proposed record on appeal, the Commission determines, 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).

The Commission finds that the numerous and random filings from the Grouse Creek complaints and the two PURPA cases are irrelevant and inclusion of them is unnecessary to a determination of the underlying matter in this case. To the extent that final decisions of the Commission from those cases were considered in the resolution of this matter, they are already included by reference and citation in the final Orders from this case. However, the final Orders from the other cases were not appealed and have become final and conclusive Orders of the Commission not subject to collateral attack. *Idaho Code* 61-625. Moreover, we find that motions, answers, affidavits and similar filings made by other parties in other proceedings unrelated to the case presently on appeal are outside the scope of the "additional documents" contemplated by Rule 28(c) for supplementing a record on appeal.

The Commission finds that removal of pages 553 through 891 and 1179 through 1203 will provide a more concise and relevant agency record on appeal. Removal of the superfluous material is also consistent with the directive provided by Rule 28(a) that encourages parties to limit the record on appeal.

ORDER

IT IS HEREBY ORDERED that the Record on Appeal be revised to reflect the deletions of pages 553 through 891 and pages 1179 through 1203.

IT IS FURTHER ORDERED that, pursuant to Idaho Appellate Rule 29(a), the Record is hereby settled. The Commission Secretary shall file a copy of this Order amending the agency's proposed Record on Appeal with the Supreme Court.

IT IS FURTHER ORDERED that the Commission Secretary shall file copies of the settled Record in accordance with the Idaho Appellate Rules (I.A.R. 29(b)).

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th
day of January 2013.



PAUL KJELLANDER, PRESIDENT

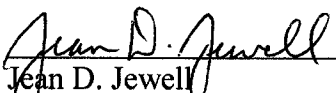


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:\Supreme Court Cases\IPC-E-10-61_62_Objection to Record_ks