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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Respondent
Idaho Public Utilities Commission

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.)	OBJECTION TO PROPOSED
)	AGENCY'S RECORD ON
IDAHO PUBLIC UTILITIES COMMISSION,)	APPEAL
)	
Respondent-Respondent on Appeal,)	NOTICE AND
)	REQUEST FOR HEARING
and)	
)	
IDAHO POWER COMPANY,)	
)	
)	
Respondent-Intervenor/Respondent)	
on Appeal.)	

The Commission Staff, by and through its attorney of record, Kristine Sasser, Deputy Attorney General, pursuant to Idaho Appellate Rules 29(a) and 13(e), respectfully objects to the proposed agency's record on appeal served on the parties on November 20, 2012.

BACKGROUND

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

OBJECTION TO PROPOSED
AGENCY'S RECORD ON APPEAL
NOTICE AND REQUEST FOR HEARING

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. In its Amended Notice of Appeal, Grouse Creek identified the following issues:

- (1) 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 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;
- (2) 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;
- (3) 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
- (4) 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.

Pursuant to Appellate Rule 29, parties to the appeal have 28 days from the date of service of the proposed record (or until December 18, 2012) to file objections including corrections, additions or deletions.

OBJECTION TO THE PROPOSED RECORD

Staff objects to portions of the proposed record on appeal served by the Commission Secretary on November 20, 2012. More specifically, Staff objects to the inclusion of voluminous petitions, answers, notices and orders from cases which are irrelevant to the issues on appeal. Staff maintains that parts of Volume III and Volume IV (approximately 175 pages in Volume III and 140 pages in Volume IV) are not relevant. These documents are voluminous, duplicative and otherwise irrelevant to the issues on appeal. Rather than burden the Court with this material, it should be removed from the record.

Specifically, in Volume III, Staff asserts 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 record already a part of the agency's record on appeal. Likewise, in Volume IV, Staff asserts that the requested additions to the record related to PUC Case No. GNR-E-11-01 (pages 804 through 891) are immaterial and/or duplicative of documents that are already a part of the agency's record on appeal. The requested documents are not part of the agency's record regarding the underlying matters in this appeal, 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. Removal of the irrelevant and duplicative records would substantially reduce the size of the already substantial record in this case.

NOTICE AND REQUEST FOR HEARING

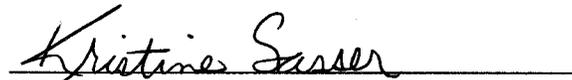
When an objection is made to the proposed record on appeal, the Commission determines, after hearing, what is to be included in the agency's record that is sent to the Supreme Court. I.A.R. 29(a-b). "In administrative appeals from the Public Utilities Commission, . . . the administrative agency shall 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).

“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). Staff respectfully requests that the PUC schedule a hearing for this matter following a regularly scheduled PUC decision meeting 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.

CONCLUSION

Based upon the reasons set forth above, Staff requests that the Commission delete the irrelevant and duplicative portions of the record on appeal. Staff respectfully requests that the Commission schedule a hearing to consider Staff’s objections and issue a Notice of Hearing pursuant to IDAPA 31.01.01.241 with at least fourteen (14) days notice.

Respectfully submitted this 18th day of December 2012.



Kristine Sasser
Deputy Attorney General

Attorney for Respondent
Idaho Public Utilities Commission

O:Supreme Court:Objection to Record_ks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 18th DAY OF DECEMBER 2012, SERVED THE FOREGOING **OBJECTION TO PROPOSED AGENCY'S RECORD ON APPEAL; NOTICE AND REQUEST FOR HEARING**, IN SUPREME COURT DOCKET NO. 39134-2011, IPUC CASE NOS. IPC-E-10-61 AND IPC-E-10-62 BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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SECRETARY