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Idaho Public Utilities Commission

IN THE SUPREME COURT OF THE STATE OF IDAHO

SUP-E-11-02

**IN THE MATTER OF THE APPLICATION OF)
PACIFICORP DBA ROCKY MOUNTAIN)
POWER FOR A DETERMINATION)
REGARDING A FIRM ENERGY SALES)
AGREEMENT BETWEEN ROCKY)
MOUNTAIN POWER AND CEDAR CREEK)
WIND, LLC (RATTLESNAKE CANYON)
PROJECT (11-01), COYOTE HILL PROJECT)
(11-02), NORTH POINT PROJECT (11-03),)
STEEP RIDGE PROJECT (11-04), AND FIVE)
PINE PROJECT (11-05)).)**

CEDAR CREEK WIND, LLC,

Petitioner/Appellant,

v.

IDAHO PUBLIC UTILITIES COMMISSION,

Respondent, Respondent on Appeal,

and

**PACIFICORP DBA ROCKY MOUNTAIN)
POWER,)**

Respondent.)

**SUPREME COURT
DOCKET NO. 39134-2011**

**STIPULATED MOTION TO
SUSPEND APPEAL AND
REMAND TO THE
ADMINISTRATIVE AGENCY**

STIPULATED MOTION TO SUSPEND
APPEAL AND REMAND TO THE
ADMINISTRATIVE AGENCY

COMES NOW Cedar Creek Wind, LLC (“Cedar Creek”) and the Idaho Public Utilities Commission (“PUC”) (collectively referred to as the “Parties”) through their respective counsels of record to request that the Court suspend the appeal in the above-captioned matter and remand this matter to the PUC pursuant to Appellate Rules 13.2 and 13.3.¹ As outlined in greater detail below, the Parties maintain there is 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.

BRIEF IN SUPPORT OF SUSPENSION AND REMAND

A. Background

On July 27, 2011, the PUC issued its final Order on reconsideration No. 32302 affirming its prior decision not to approve five Power Purchase Agreements (“Agreement”) entered into between Cedar Creek and PacifiCorp dba Rocky Mountain Power² pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA).³ The PUC’s decision is the primary subject of the appeal in this case. On August 5, 2011, Cedar Creek filed a Petition with FERC requesting that the federal agency bring an enforcement action against the PUC pursuant to PURPA Section 210(h), 16 U.S.C. § 824a-3(h)(2), or, in the alternative, to make certain findings related to the PUC’s decision. Cedar Creek claimed that the PUC’s decision to not approve the five Agreements is inconsistent with FERC’s regulations implementing PURPA. While its

¹ On October 4, 2011, PacifiCorp dba Rocky Mountain Power (“Rocky Mountain”) filed a Petition to Intervene as a party in this appeal. As of the date of this Stipulated Motion, the Court has not ruled upon Rocky Mountain’s Petition. Nevertheless, Rocky Mountain supports the suspension of the appeal and remand to the Commission.

² See *supra* n.1.

³ 16 U.S.C. § 824a-3.

petition to FERC was pending, Cedar Creek on August 31, 2011, filed its Notice of Appeal in this case.

On October 4, 2011, FERC issued an Order in response to Cedar Creek's Petition. In its Order FERC concluded that the PUC's Order was inconsistent with PURPA and FERC's regulations implementing PURPA *Notice of Intent Not to Act and Declaratory Order*, 137 FERC ¶ 61,006 (Oct. 4, 2011). Given FERC's recent Order, the Parties believe that it is appropriate for the appeal to be suspended: (1) to allow the PUC to reconsider its Order in light of FERC's Order; and (2) to provide the Parties with an opportunity to discuss the possibility of settling the appeal.

B. Suspension and Remand to the PUC

Idaho Appellate Rule 13(e) provides that unless stayed, the Public Utilities Commission "shall have continued jurisdiction of the matter and the parties consistent with the provisions of applicable statutes. . . ." I.A.R. 13(e). In addition, *Idaho Code* § 61-624 provides that the PUC "may at any time, upon notice to the public utility affected, and after opportunity to be heard . . . rescind, alter or amend any order or decision made by it." In this Stipulated Motion, the Parties are requesting that the appeal be temporarily suspended and the case remanded to the PUC. I.A.R. 13.3.

Granting the Motion will allow the underlying parties in the PUC case to review the recent FERC Order and its effects on the PUC's Orders on appeal. The suspension and remand will also provide the Parties with an opportunity to settle the appeal, thereby conserving party and judicial resources.

In considering a suspension on appeal, the Parties must disclose the duration of the requested suspension. I.A.R. 13.2. The Parties request that the appeal be suspended for

approximately 45 days. The Parties assert that this amount of time will provide sufficient opportunity to address how the FERC Order affects the PUC's prior Orders that are the subject of this appeal.

PRAYER

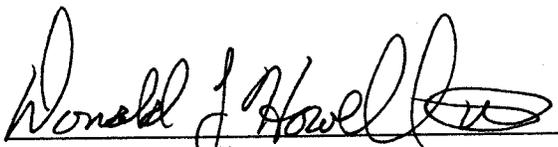
In summary, the Parties respectfully request that the Court grant a suspension of this appeal. Granting the Motion will allow: (1) the Commission to reconsider its Orders in light of FERC's Order; and (2) the Parties an opportunity to discuss the possibility of settling the entire appeal. Moreover, suspending the appeal will conserve judicial resources. Consequently, there is good cause for the Court to suspend the appeal and remand this matter to the PUC until the PUC has completed its review on remand or until December 5, 2011, pursuant to I.A.R. 13.2 and 13.3.

CERTIFICATE OF UNCONTESTED MOTION

The undersigned does hereby certify that he has contacted opposing counsels and is authorized to represent that opposing counsels have no objection to this Motion, and joins in the Stipulated Motion.

RESPECTFULLY submitted on behalf of the Parties this 24th day of October 2011.

IDAHO PUBLIC UTILITIES COMMISSION



Donald L. Howell, II
Deputy Attorney General

bis/O:PAC-E-11-01-05_Appeal_Stipulated Motion to Suspend Appeal_dh

STIPULATED MOTION TO SUSPEND
APPEAL AND REMAND TO THE
ADMINISTRATIVE AGENCY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24th DAY OF OCTOBER 2011, SERVED THE FOREGOING STIPULATED MOTION TO SUSPEND APPEAL AND REMAND TO THE ADMINISTRATIVE AGENCY, IN SUPREME COURT DOCKET NO. 39134-2011, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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SECRETARY