

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

RECEIVED

2013 FEB 26 PM 3: 57

IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for Respondent-Intervenor Idaho Power Company

IN THE SUPREME COURT OF THE STATE OF IDAHO

GROUSE CREEK WIND PARK, LLC, and)	
GROUSE CREEK WIND PARK II, LLC,)	
)	SUPREME COURT
Petitioners-Appellants,)	DOCKET NO. 39151-2011
)	
v.)	Idaho Public Utilities Commission
)	Case Nos. IPC-E-10-61 and
IDAHO PUBLIC UTILITIES COMMISSION,)	IPC-E-10-62
)	
Respondent-Respondent on Appeal,)	
)	
and)	IDAHO POWER COMPANY'S
)	RESPONSE TO APPELLANTS'
IDAHO POWER COMPANY,)	MOTION TO AUGMENT
)	
Respondent-Intervenor/Respondent on)	
Appeal.)	
)	

COMES NOW, Idaho Power Company ("Idaho Power") and respectfully objects to the Petitioners/Appellants', Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC ("Grouse Creek"), motion to augment the record on appeal. Grouse Creek's request to include these specific documents in the record on appeal has already been heard, and denied, by the Idaho Public Utilities Commission ("Idaho Commission" or "Commission"). See Order No. 32720, R. pp. 393-397.

I. 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).

II. OBJECTION TO DOCUMENTS

Idaho Power and Commission Staff objected 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. R. pp. 385-388 (Staff's objection to Proposed Agency Record); R. pp. 377-383 (Idaho Power's objection to Proposed Agency Record). After hearing, the Idaho Commission issued Order No. 32720 on January 18, 2013, settling the record for this

matter by specifically excluding the documents that Grouse Creek is now requesting that this Court augment the record with. R. pp. 393-397. The Idaho Commission has the continuing jurisdiction on appeal, and is the proper authority to determine what is contained in the record on appeal, and what it considered in reaching its determination in this matter. It has done so.

The settled record has been transmitted to the Supreme Court, and Grouse Creek's brief is currently due on March 4, 2013. Grouse Creek now contends that the excluded Complaints be made part of the record "for the reason that the 'filing of a meritorious complaint' against Idaho Power is an important legal and factual issue in this appeal." Grouse Creek Motion to Augment, p. 2. Grouse Creek also erroneously contends that Idaho Power "acquiesced" to the inclusion of the Complaints in the record on appeal. Grouse Creek Motion to Augment, p. 5. Neither allegation is correct.

It is not necessary to include the Complaints from other cases in the record on appeal for this case in order to reference the fact that complaints were filed. In fact, the Commission acknowledged the fact that complaints were filed, and that the parties subsequently settled the disputes asserted in the Complaints and entered into contracts, in its Final Reconsideration Order on Remand, R. pp. 352, which is the subject of the present appeal. Order No. 32635. However, it is inappropriate to now, on the appeal of Case Nos. IPC-E-10-61 and IPC-E10-62, for Grouse Creek to argue the merits of those Complaints, from Case Nos. IPC-E-10-29 and IPC-E-10-30, that were never responded to by Idaho Power, never heard by the Commission, and not relied upon—beyond their citation in its final orders for this matter—by the Commission. The Commission acknowledged the filing of the Complaints in its final order for this matter,

but Grouse Creek cannot now argue in this appeal the merits of whether it was a "meritorious" complaint or not.

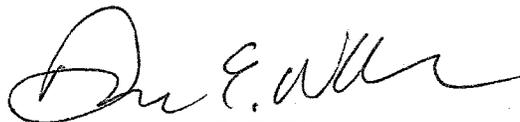
The Commission did not rely upon the documents that it excluded from the proposed Agency's Record on appeal, which include the specific documents Grouse Creek now asks the Court to augment the record with, in making its determinations in this case. The Commission stated:

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. . . . 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.

R. p. 396.

Consequently, Idaho Power hereby objects to Grouse Creek's request to augment the record with the same materials that the Idaho Commission determined, after hearing, that it did not rely upon in making its determination in this matter. Idaho Power respectfully requests that Grouse Creek's Motion to Augment the Record on Appeal be denied.

Respectfully submitted this 26th day of February 2013.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of February 2013 I served a true and correct copy of IDAHO POWER COMPANY'S RESPONSE TO APPELLANTS' MOTION TO AUGMENT 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
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
Ronald L. Williams
WILLIAMS BRADBURY, P.C.
1015 West Hays Street
Boise, Idaho 83702

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email ron@williamsbradbury.com

Attorneys for Petitioners-Appellants Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC


Christa Beary, Legal Assistant 