

KRISTINE A. SASSER
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, ID 83720-0074
(208) 334-0357
IDAHO BAR NO. 6618

Attorney for the Respondent on Appeal,
Idaho Public Utilities Commission

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A)
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
ROCKY MOUNTAIN POWER AND GROUSE)
CREEK WIND PARK, LLC (10-61) AND)
GROUSE CREEK WIND PARK II, LLC (10-)
62).)

GROUSE CREEK WIND PARK, LLC, and)
GROUSE CREEK WIND PARK II, LLC,)

Petitioners-Appellants,)

v.)

IDAHO PUBLIC UTILITIES COMMISSION,)

and)

IDAHO POWER COMPANY,)

Respondents-Respondents on Appeal.)

SUPREME COURT
DOCKET NO. 39151-2011

STIPULATED MOTION TO
SUSPEND APPEAL AND
REMAND TO THE
ADMINISTRATIVE AGENCY



STIPULATED MOTION TO SUSPEND
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COMES NOW Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC (collectively “Grouse Creek”), the Idaho Public Utilities Commission (“PUC”), and Idaho Power Company (“Idaho Power”) (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. 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. 32299 affirming its prior decision not to approve two Firm Energy Sales Agreements (“Agreements”) entered into between Grouse Creek and Idaho Power pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA)¹ and Idaho Code § 61-307. On September 7, 2011, Grouse Creek filed its Notice of Appeal in this case. The PUC’s decision is the primary subject of the appeal.

On October 4, 2011, FERC issued an Order concluding that a PUC order in a similarly situated case² 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 in this case to

¹ 16 U.S.C. § 824a-3.

² Order No. 32386 (Case Nos. PAC-E-11-01 through 11-05). On October 24, 2011, the Parties in Docket No. 39134-2011 also filed a Stipulated Motion to Suspend Appeal and Remand to the Administrative Agency. The Stipulated Motion in the 39134 appeal is pending and based upon the same FERC Order mentioned in this Motion in the 39151 appeal.

be suspended: (1) to allow the PUC to reconsider its Order in this case in light of the FERC 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 120 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 the Stipulated Motion to suspend the appeal and remand the case to the PUC. Moreover, suspending the appeal

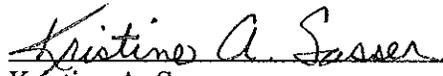
will conserve judicial resources. Consequently, there is good cause for the Court to suspend the appeal and remand this matter to the PUC until the PUC has completed its review on remand or until March 15, 2012, pursuant to I.A.R. 13.2 and 13.3.

CERTIFICATE OF UNCONTESTED MOTION

The undersigned does hereby certify that she has contacted counsel for all parties and is authorized to represent that all parties join in the Stipulated Motion.

RESPECTFULLY submitted on behalf of the Parties this 4TH day of November 2011.

IDAHO PUBLIC UTILITIES COMMISSION



Kristine A. Sasser
Deputy Attorney General

O:Supreme Court_IPC-E-10-61-62_Stipulated Motion to Suspend Appeal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 4th DAY OF NOVEMBER 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:

DONOVAN E. WALKER
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: dwalker@idahopower.com

PETER J RICHARDSON
GREG ADAMS
RICHARDSON & O'LEARY PLLC
515 N. 27TH STREET
BOISE ID 83702
E-MAIL: peter@richardsonandoleary.com
greg@richardsonandoleary.com



SECRETARY