

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

RECEIVED
2013 FEB 26 PM 4:27
IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Respondent on Appeal,
Idaho Public Utilities Commission

IN THE SUPREME COURT OF THE STATE OF IDAHO

GROUSE CREEK WIND PARK, LLC and)	
GROUSE CREEK WIND PARK II, LLC,)	SUPREME COURT
)	DOCKET NO. 39151-2011
Petitioners/Appellants,)	
)	
v.)	
)	
IDAHO PUBLIC UTILITIES COMMISSION,)	
)	IDAHO PUC'S BRIEF IN
Respondent-Respondent on Appeal,)	OPPOSITION TO
)	APPELLANT'S MOTION TO
and)	AUGMENT THE RECORD OR,
)	IN THE ALTERNATIVE,
IDAHO POWER COMPANY,)	MOTION TO AUGMENT
)	RECORD
Respondent-Intervenor/Respondent)	
on Appeal.)	
)	

Pursuant to Idaho Appellate Rule 30, the Idaho Public Utilities Commission (Commission) respectfully moves this Court to deny the Motion to Augment the Appellate Record filed with this Court by Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC (Grouse Creek) on February 12, 2013. The Commission's previous decision to exclude the requested material from the appellate record (R. at 396) should be affirmed because the

IDAHO PUC'S BRIEF IN OPPOSITION TO
APPELLANT'S MOTION TO AUGMENT
THE RECORD OR, IN THE ALTERNATIVE,
MOTION TO AUGMENT RECORD

requested material was not “considered by the [Commission] in the trial of the action or proceeding.” I.A.R. 28(c).

BACKGROUND

A. The Requested Material

Grouse Creek seeks, pursuant to Idaho Appellate Rule 30, to augment the appellate record with an Affidavit of Counsel Gregory M. Adams¹ and two unserved “Complaints” originally filed with the Commission in different proceedings on November 8, 2010. Grouse Creek has acknowledged that “on November 19, 2010, Idaho Power and the [Grouse Creek] Projects agreed to stay the complaint proceeding[s]. . . .” Exhibits to R. at 16 (emphasis added). On November 29, 2010, Grouse Creek’s previous counsel requested that the Commission “not serve a summons on Idaho Power [regarding the two complaints] at this time . . . [because] we have tentatively reached a settlement with Idaho Power. . . .” Atch. A (emphasis added). Consequently, the Commission never served the two complaints (identified as IPC-E-10-29 and IPC-E-10-30) on Idaho Power, never reached the merits of the unserved complaints, and never issued any findings in the two proceedings.

B. Objections to the Record

The affidavit and its two unserved complaints initially comprised pages 1179 through 1203 of the Proposed Agency Record. On December 18, 2012, Idaho Power and the Commission Staff each filed objections to the proposed record on appeal. R. at 377, 385. Pursuant to I.A.R. 29(a) the Commission scheduled a hearing on the objections for January 9, 2013. R. at 390. On January 18, 2013, the Commission issued Order No. 32720 (R. at 393),

¹ On January 22, 2013, Grouse Creek substituted new counsel (Williams Bradbury) for its previous counsel (Richardson & O’Leary).

finding that counsel's affidavit and the two complaints should be removed from the record on appeal. In particular, the Commission found that motions, answers, affidavits and similar filings made by other parties in other proceedings unrelated to the consolidated cases presently on appeal (IPC-E-10-61 and IPC-E-10-62) are outside the scope of the "additional documents" contemplated by I.A.R. 28(c) for supplementing a record on appeal. R. at 396. The Commission found that removal of pages 553 through 891 and 1179 through 1203 would provide a more concise and relevant agency record. *Id.* Removal of the superfluous material is also consistent with the directive provided by I.A.R. 28(a) that encourages parties to limit the record on appeal. *Id.*

Grouse Creek now argues that "the 'filing of a meritorious complaint' against Idaho Power is an important legal and factual issue in this case." Motion at 2. Grouse Creek further maintains that "[n]either Idaho Power nor Commission Staff objected to or moved to strike the Affidavit and Complaints from the record in this case." *Id.* at 4. Finally, Grouse Creek posits that the Commission clearly considered – in the context of I.A.R. 28(c) – the Affidavit and complaints because "[i]t said so, when it determined that the dates of the Complaints were insufficient to establish that 'a legally enforceable obligation arose on or before November 8, 2010.'" *Id.*

ARGUMENT IN OPPOSITION TO THE MOTION

The applicable text of I.A.R. 28(c) states, "Any party may request any written document filed or lodged with the district court or agency to be included in the clerk's or agency's record including, but not limited to . . . , statements or affidavits considered by the court or administrative agency in the trial of the action or proceeding, or considered on any motion made therein. . . ." (Emphasis added.) Grouse Creek's request to augment the record misstates

the underlying facts, misrepresents the Commission's findings and presumes conclusions that are not a part of the underlying record in this case or any related cases involving Grouse Creek. Moreover, the Motion to Augment does not meet the threshold required by the appellate rules.

The Motion should be denied for several reasons. First, the Commission has previously found that the requested material was not considered by the Commission in its decision-making in the consolidated cases on appeal. Grouse Creek argues that its complaints were considered when the Commission "determined that the dates of the Complaints were insufficient to establish that 'a legally enforceable obligation arose on or before November 8, 2010.'" Motion at 4. To the contrary, the Commission specifically found that "A determination regarding whether and when a legally enforceable obligation arose – outside the specific contract terms – was wholly unnecessary." R. at 358. The Commission acknowledged that the complaints were filed by Grouse Creek on November 8, 2010, but dismissed any consideration of the complaints because of Grouse Creek's decision not to pursue them. *Id.* at 360. The substance of the complaints has not been considered, evaluated, weighed or ruled upon based on Grouse Creek's request that the complaints not be served. To include the complaints in the Record on Appeal after the Commission determined that the complaints were not considered would be advantageous to Grouse Creek and prejudicial to Idaho Power and the Commission. Grouse Creek should not be permitted to introduce documents from another case that were not considered by the Commission in this proceeding. I.A.R. 28(c); *Idaho Code* § 61-629 ("No new or additional evidence may be introduced in the Supreme Court, but the appeal shall be heard on the record certified by it."); *McNeal v. Idaho PUC*, 142 Idaho 685, 688, 132 P.3d 442, 445 (2006).

Second, the premise of Grouse Creek's argument for inclusion of its complaints is invalid. The complaints have not been deemed meritorious. Grouse Creek filed the complaints with the Commission but immediately requested that the Commission not serve the complaints, thereby suspending any action on the complaints. *See* Attachment A. Unprocessed complaints amount to nothing more than an argument of the party – an argument that can be made during briefing and oral argument in the present case. Additionally, because Grouse Creek instructed the Commission to suspend any action on the complaints, Idaho Power was not provided with any opportunity to defend itself against the allegations made against it by Grouse Creek in the complaints. Therefore, inclusion of the unprocessed complaints operates as an unfair advantage to Grouse Creek because it is representing unchallenged allegations in complaints as *meritorious* facts in evidence. *McNeal*, 142 Idaho at 688, 132 P.3d at 445; *Idaho Code* § 61-629.

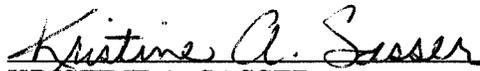
Third, Grouse Creek's argument that “[n]either Idaho Power nor Commission Staff objected” to the inclusion of the affidavit and complaints is contrary to the underlying record. Idaho Power objected to the inclusion of all documents not part of the record in this case. R. at 381; Settlement Tr. at 51, ll.10-11 (included as Atch. B). Idaho Power stated in its objection to the proposed record that “Idaho Power objects to the inclusion of these separate [complaints] in the Record on Appeal. . . .” R. 381. In addition, at the Commission's hearing to settle the record on appeal – Idaho Power specifically “objected to inclusion of the materials from separate Complaint dockets, which appear in [proposed record] Volume III, page 553 through page 574. They also appear again in an Affidavit that was filed on remand in these contract approval cases in Volume V, pages 1179 and 12[03].” Settlement Tr. at 53 (emphasis added). It is clear that Idaho Power's objection did include the complaints.

For the foregoing reasons, Grouse Creek's Motion to Augment should not be granted by the Court. The Commission, after hearing oral argument regarding the requested material, determined that the two different complaints were irrelevant and inclusion of them was unnecessary. The Commission found that removal of the complaints (and additional superfluous material) from the Record provided a more concise and relevant record on appeal and is consistent with the directives provided by the Court in Rule 28(a). R. at 396. Moreover, the complaints were never served, they were never considered, and the merits of the complaints (if any) have never been found. Indeed, the complaints have never been determined to be meritorious. *Idaho Code* § 61-629.

MOTION TO AUGMENT IN THE ALTERNATIVE

If the Court grants the Motion to Augment then, in the alternative, the Commission respectfully moves pursuant to Rule 30 that the Court also augment the record with two documents. First, the Commission requests that the attached e-mail dated November 29, 2010, from Grouse Creek's counsel (Peter Richardson) to the Commission's counsel (Kristine Sasser) requesting that the complaints not be served upon Idaho Power be added to the record. *See* Atch. A. Second, we request that the transcript from the Commission's hearing on settlement of the record (pages 49-55, 58-59) be added to the record on appeal. *See* Atch. B.

Submitted on behalf of the Idaho Public Utilities Commission this 26th day of February 2013.


KRISTINE A. SASSER
Deputy Attorney General

Attorney for Respondent on Appeal,
Idaho Public Utilities Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 26th DAY OF FEBRUARY 2013, SERVED THE FOREGOING IDAHO PUC'S BRIEF IN OPPOSITION TO APPELLANT'S MOTION TO AUGMENT THE RECORD OR, IN THE ALTERNATIVE, MOTION TO AUGMENT RECORD, 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:

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

RONALD L. WILLIAMS
WILLIAMS BRADBURY, P.C.
1015 W. HAYS STREET
BOISE, ID 83702
E-MAIL: ron@williamsbradbury.com


SECRETARY

Xan Allen

From: Kris Sasser
Sent: Monday, November 29, 2010 10:51 AM
To: Xan Allen
Subject: FW: Grouse Creek Complaint Dockets

RECEIVED

2010 NOV 29 AM 11: 52

IDAHO PUBLIC
UTILITIES COMMISSION

Xan -

Could you please include this email in the record for the IPC-E-10-29 and 10-30 case? Thank you.

Kris

From: Peter Richardson [<mailto:peter@richardsonandoleary.com>]
Sent: Monday, November 29, 2010 10:46 AM
To: Kris Sasser
Cc: Walker, Donovan; Greg Adams; Allphin, Randy
Subject: Grouse Creek Complaint Dockets

Kris, as we discussed this morning on the telephone, we have tentatively reached a settlement with Idaho Power and respectfully request that the Commission not serve a summons on Idaho Power at this time. We believe we will have a final settlement within approximately two to three weeks and we will at that time formally request a dismissal that would be contingent upon Commission approval of the final settlement agreement and power purchase agreement. Please reference Docket Nos. IPC-E-10-29 and IPC-E-10-30.

Peter Richardson

Richardson & O'Leary

515 N. 27th Street

Boise, Idaho 83702

(208) 938-7901

ATTACHMENT A
DOCKET NO. 39151-2011



ORIGINAL

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

Petitioner-Appellant,

v.

IDAHO PUBLIC UTILITIES COMMISSION,

Respondent-Respondent on Appeal,

and

IDAHO POWER COMPANY,

Respondent-Intervenor/Respondent
on Appeal.

) SUPREME COURT
) DOCKET NO.
) 39151-2011

) ORAL ARGUMENT

IDAHO PUBLIC
UTILITIES COMMISSION

2013 JAN 14 PM 4:36

RECEIVED

HEARING BEFORE

COMMISSIONER MACK A. REDFORD (PRESIDING)
COMMISSIONER PAUL KJELLANDER
COMMISSIONER MARSHA H. SMITH

PLACE: Commission Hearing Room
472 West Washington Street
Boise, Idaho

DATE: January 9, 2013

VOLUME II - Pages 45 - 61



HEDRICK

COURT REPORTING

POST OFFICE BOX 578
BOISE, IDAHO 83701
208-336-9208

Serving the legal community since 1978

ATTACHMENT B
DOCKET NO. 39151-2011

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Staff: KRISTINE A. SASSER, Esq.
Deputy Attorney General
472 West Washington
Boise, Idaho 83702

For Idaho Power Company: DONOVAN E. WALKER, Esq.
and JULIA A. HILTON, Esq.
Idaho Power Company
1221 West Idaho Street
Boise, Idaho 83702

For Grouse Creek Wind Park: Richardson & O'Leary, PLLC
by GREGORY M. ADAMS, Esq.
and PETER J. RICHARDSON, Esq.
515 North 27th Street
Boise, Idaho 83702

1 BOISE, IDAHO, WEDNESDAY, JANUARY 9, 2013, 9:31 A.M.

2
3
4 COMMISSIONER REDFORD: Let's go on the record.
5 Good morning, ladies and gentlemen. This is a hearing
6 scheduled for this date, January 9, 2013, at 9:30 o'clock a.m.
7 at the Public Utilities Commission headquarters in Boise. This
8 hearing is in the matter of Grouse Creek Wind Park, LLC, and
9 Grouse Creek Wind Park II, LLC, versus the Idaho Public
10 Utilities Commission and Idaho Power. These cases are on
11 appeal to the Idaho Supreme Court in Supreme Court Docket No.
12 39151-2011. These two cases were consolidated in this Supreme
13 Court case. The Idaho Public Utilities Commission Case Nos.
14 are IPC-E-10-61 and IPC-E-10-62.

15 There being -- there is a quorum present. All
16 Commissioners are in attendance.

17 The purpose for this hearing is to settle the
18 record on appeal. In its appeal, Petitioner-Appellant
19 requested certain documents originating before the Commission
20 to be included in the record on appeal. The Idaho Public
21 Utilities Staff and Idaho Power have objected to certain
22 documents that are requested to be included in the record.

23 Idaho Appellate Rules 29(a) and (b) govern these
24 proceedings and give the Idaho Public Utilities Commission
25 authority to settle the record to be sent to the Idaho Supreme

1 Court.

2 On the 21st day of December, 2012, the Idaho
3 Public Utilities Commission, in Order No. 32702, issued its
4 Notice of Hearing in this matter.

5 If you will please identify yourself for the
6 record, starting with you, Mr. Adams.

7 MR. ADAMS: This is Greg Adams, on behalf of
8 Grouse Creek Wind Parks, and I have with me at the table here
9 Peter Richardson. And I believe Christine Mikell and
10 Andrew Fales from the wind projects may be calling in; I'm not
11 sure if they've gotten through.

12 COMMISSIONER REDFORD: Okay. Mr. Walker.

13 MR. WALKER: Thank you, Mr. Chairman. Donovan
14 Walker and Julia Hilton, on behalf of Idaho Power.

15 MS. SASSER: Kristine Sasser, representing
16 Commission Staff.

17 COMMISSIONER REDFORD: Okay. Are there any
18 preliminary matters that need to be taken up before we start
19 into the oral argument on this case?

20 Hearing none, we'll start with you, Ms. Sasser,
21 as you and -- for the Commission Staff and then to Mr. Walker
22 for Idaho Power, as you are the moving parties.

23 MS. SASSER: Thank you, Chairman Redford,
24 Commissioners.

25 Staff objects to the inclusion of any and all

1 documents produced, submitted, or issued as part of the
2 GNR-E-10-04 case and GNR-E-11-01 case. The cases have been
3 fully and finally decided by this Commission, no parties
4 appealed, and the time for appeal on those cases has long since
5 expired. And inclusion of these cases in the record confuses
6 the issues and it subjects the final Decisions of this
7 Commission to collateral attack on the cases as they are
8 presented and the material assets presented to the Supreme
9 Court.

10 To the extent that any of the material in these
11 cases might be relevant to the Decision in the Grouse Creek
12 matter, it's already a part of the agency's record in this case
13 on appeal. It's part of the final Orders in the Grouse Creek
14 matter on the original final Order, the final Order on
15 Reconsideration, and the Order on Reconsideration on Remand in
16 the 10-61 and 10-62 case to the extent that any of the material
17 from the generic dockets is relevant to the Decisions in this
18 particular matter currently in front of the Commission.

19 Also, while Idaho Appellate Rule 28(c) allows for
20 the inclusion of additional documents beyond the standard
21 record, the Rule specifically states -- and it's page 620 in
22 the Court Rules book. Idaho Appellate Rule 28(c), about
23 two-thirds of the way down, in talking about additional
24 documents that can be added to the record on appeal, states:

25 Not limited to written requested jury

1 instructions, written jury instructions given by the court,
2 depositions, briefs, statements or affidavits considered by the
3 court or administrative agency in the trial of the action or
4 proceeding, or considered on any motion made therein, and
5 memorandum opinions or decisions of a court or administrative
6 agency.

7 Now, as Mr. Richardson has requested, Affidavits,
8 Motions, Answers, additional documents, I believe that that
9 request is clearly outside the Rule for additional documents on
10 appeal to the Supreme Court. I think that the Rule includes
11 the Decisions made from the administrative agency which would
12 be the final Orders in the case, but clearly any of the
13 additional documents filed by NIPPC and any other parties is
14 not included in that language from the Rule.

15 I also believe that if Mr. Richardson would have
16 wanted the arguments from other parties in other cases to be
17 included and a part of the record and necessary on appeal for
18 the Grouse Creek matter, then those are arguments that he
19 should have included in the underlying case in this matter.

20 Removal of the irrelevant, unnecessary, and
21 duplicative material would substantially reduce the size of an
22 already substantial record. It would reduce the size of the
23 record by 315 pages, as proposed by Commission Staff. What's
24 more, it would allow the Supreme Court to focus on the real
25 issues in the Grouse Creek matter, which are narrowly tailored

1 to the final Orders in this case and the issues that are
2 discussed in the underlying matter in this case.

3 And as a final note, I would also point out that
4 to be consistent with what the Court Rules are that the Supreme
5 Court puts in front of us and requests of us as parties and
6 agencies, Rule 28(a) of the Idaho Appellate Rules, when it
7 speaks about designation of record, the last sentence in Rule
8 28(a) of the Idaho Appellate Rules says: Parties are
9 encouraged to designate a clerk's or agency's record more
10 limited than the standard record.

11 Clearly in this case we not only have the
12 standard record, but we have more than 300 additional pages
13 that are really unnecessary to appeal the legitimate and
14 necessary issues in this case.

15 And that's all I have. I open it up for
16 questions.

17 COMMISSIONER REDFORD: Any questions from the
18 Commissioners?

19 Hearing none, we'll move on to Mr. Walker.

20 MR. WALKER: Thank you, Mr. Chairman. And thank
21 you, Ms. Sasser.

22 Idaho Power agrees and objected to the same
23 documents referenced by Commission Staff, those being the
24 documents from the two GNR cases: GNR-E-10-04 and GNR-E- -- is
25 it 11 -- 11-01. And Idaho Power had a somewhat more expansive

1 objection than Staff in that Idaho Power objects up front to
2 the inclusion of documents from any case that is not the case
3 that is on appeal presently in front of the Court.

4 It's a fundamental premise of appellate procedure
5 and the standards of review of this Commission's Decisions that
6 the review of any particular case is done on the record of that
7 case. It's not done on the record of other cases, it's not
8 done considering the arguments or documents or issues from
9 other matters. It's done on the record for this case, and
10 that's it.

11 I think Idaho Power -- it's Idaho Power's
12 position that not only as argued by Commission Staff as a
13 duplicative or not necessary or cause confusion in the record
14 or undue amount of documents, but it's entirely improper to
15 have an opportunity to argue about and discuss and possibly
16 back-door challenge issues or items from other cases that have
17 their own final Orders, their own determinations that are not
18 subject to appeal in this matter, that are the law of the case,
19 the law of this Commission, and not subject to argument and
20 challenge in the course of this case, they are to be accepted.

21 And to that matter, citation to Commission Orders
22 or other authority can be done in legal briefings and arguments
23 without the necessity of including those case dockets and those
24 records at this body in the record on appeal for an entirely
25 separate matter.

1 And as referenced by Commission Staff, once we
2 look a little closer at the specific documents requested, not
3 only is it improper because they're from different cases, but
4 several of them concern entirely different parties; i.e., not
5 Grouse Creek or these projects that are the subject matter of
6 this case.

7 At the end of the day, we have a system with
8 appellate review that vests the authority back to the trier of
9 fact, be that this Commission or a court of law, as the final
10 determination on what is contained in the record that was
11 before you that you utilized to make your Decision in the case.
12 And that's why we're here today. Regardless of what any three
13 of us may argue, it's up to you to determine what was relevant,
14 what's part of this case record, and what you relied upon in
15 reaching the Decisions for this case; not the Decisions in a
16 GNR case or in any other matter, but for this matter.

17 And to be specific, Idaho Power objects to
18 everything designated in the record that originates from other
19 cases besides IPC-E-10-61 and IPC-E-10-62, which are the two
20 Grouse Creek matters. Those are found in the proposed agency
21 record on appeal, Volume III, page 553, through Volume IV,
22 page 891, we ask be stricken from the record on appeal.

23 COMMISSIONER REDFORD: Mr. Adams.

24 MR. ADAMS: Thank you for the opportunity to
25 respond.

1 I think I'm first going to provide a little bit
2 of context for why we requested to have this material in the
3 record, bearing in mind that it was a while ago that we did it
4 and having -- the original Notice of Appeal was filed back in
5 September of 2011. So it's -- we -- in looking at the record
6 again, the amended Notice of Appeal, I think we're going to be
7 able to stipulate to have some of this material removed if
8 Idaho Power and the Commission would be willing to stipulate in
9 exchange for concessions not to add materials from these other
10 cases themselves.

11 So there's basically two different categories of
12 material that are in issue: There's the material from the
13 generic docket -- the two generic dockets, and then there's
14 also the material from the Complaint case. I'll start with the
15 generic docket materials from GNR-E-10-04 and GNR-E-11-01.

16 You know, first, in defense of our initial
17 request to include this material in the record, much of this
18 material is, in fact, referenced in Pleadings in this case.
19 Idaho Power's Application to approve the PPAs and their
20 comments asking to have the PPAs rejected directly stated that
21 Idaho Power incorporated by reference materials from the
22 GNR-E-10-04 proceeding, and also the NIPPC comments were
23 referenced in the Grouse Creek comments and discussed. And
24 that was our thinking when we included those in the record.

25 However, in reviewing the amended Notice of

1 Appeal and the objections, we would be willing to stipulate to
2 remove the materials in Volume III, page 575, to Volume IV,
3 page 891. That's the entirety of what they requested to have
4 removed from those generic dockets. We would stipulate to do
5 that in exchange for agreement that Idaho Power and the
6 Commission are not going to move to augment the record with any
7 materials from those dockets at a later point in time during
8 the appeal. That was our concern and why we included material
9 from those dockets.

10 With regard to the Complaint dockets, the
11 Complaints actually appear twice in the record. Idaho Power
12 has objected to inclusion of the materials from the separate
13 Complaint dockets, which appear in Volume III, page 553 through
14 page 574. They also appear again in an Affidavit that was
15 filed on remand in these contract approval cases in Volume V,
16 pages 1179 and 12 dash oh three.

17 As we understand it, there's no objection to
18 inclusion of the second reference in Volume V. The Complaints
19 are obviously relevant to the issues on appeal; I don't think
20 that's disputed. So, you know, we would stipulate to removal
21 of the documents from the separate Complaint dockets in
22 Volume III, page 553 through page 574, so long as we get
23 confirmation that the other place where the Complaints exist in
24 the record in Volume V, 1179 to 1203, will not be removed from
25 the Appellate record. And those -- that's an Affidavit of

1 Counsel that was filed during the remand proceedings.

2 So, with that --

3 COMMISSIONER REDFORD: What was that last,
4 Volume V, what were those numbers?

5 MR. ADAMS: It was numbers 1179 to 1203.

6 So hopefully with that, that makes resolution of
7 this hearing pretty simple, and we can answer any questions the
8 Commissioners may have.

9 COMMISSIONER REDFORD: Any questions?

10 COMMISSIONER SMITH: No.

11 COMMISSIONER REDFORD: Just so I can be clear,
12 you would -- you agree that documents 575 through 891 can be
13 removed.

14 MR. ADAMS: It's -- well, the complete,
15 everything is Volume III, 553, through Volume IV, 891. And we
16 would agree to that if there is agreement that no other
17 documents from GNR-E-10-04 and GNR-E-11-01 will later be
18 submitted into the appellate record through a Motion to Augment
19 under Idaho Appellate Rule 30 or otherwise; because once this
20 record is settled, the timeline is set for us to file our
21 brief, and we don't -- we anticipated that material being
22 submitted into the record, so we're fine with having it all
23 removed and we agree it's not relevant.

24 COMMISSIONER REDFORD: Have you spoken with the
25 other parties about the Stipulation?

1 MR. ADAMS: No, we didn't. The hearing was set
2 so quickly, we decided to just address it at the hearing here.

3 COMMISSIONER SMITH: Should we give them a few
4 minutes to talk about it.

5 COMMISSIONER REDFORD: Yes. Why don't we go off
6 the record for a few minutes, and maybe you can get together
7 and see if you can come up with a Stipulation.

8 Okay, we'll be in recess.

9 (Recess.)

10 COMMISSIONER REDFORD: Okay, let's go back on the
11 record.

12 MS. SASSER: Get Grouse Creek.

13 COMMISSIONER SMITH: Hang on.

14 COMMISSIONER REDFORD: Okay, we're on the record.

15 Mr. Adams, have you resolved your differences
16 with Staff and Idaho Power?

17 MR. ADAMS: I think -- I don't think we were able
18 to. I think that Idaho Power didn't want to stipulate to not
19 adding materials from these other dockets at a future time.
20 So, you know, we're not in a position to waive -- to stipulate
21 to have it removed and thereby waive our right to request
22 having any of this other material included at a later date.

23 COMMISSIONER SMITH: So -- I have a question.

24 COMMISSIONER REDFORD: Ms. Smith.

25 COMMISSIONER SMITH: So I was kind of curious

1 about what you would see the difference between, you know, your
2 Stipulation kind of format and just the regular format where
3 people file their briefs and cite to stuff, be it legal
4 precedent or Commission Orders, which I think happens all the
5 time, even to stuff that's not in the official record.

6 MR. ADAMS: Well, I think -- I think we're in
7 agreement that the Orders don't need to be in the record to be
8 cited to the Court, Commissioner Smith.

9 COMMISSIONER SMITH: Okay.

10 MR. ADAMS: So, you know, the concern is more the
11 other materials that were filed by other parties in the docket.

12 COMMISSIONER SMITH: So you think that if -- that
13 there's a possibility that if the Commission chooses not to
14 have this material in the record and you don't have any
15 agreement, they are going to come along later and say, Please
16 add this to the record.

17 MR. ADAMS: That's our only concern.

18 COMMISSIONER SMITH: Okay. Thank you.

19 COMMISSIONER REDFORD: Any questions?

20 COMMISSIONER KJELLANDER: No.

21 COMMISSIONER REDFORD: Any further questions?

22 COMMISSIONER SMITH: Yeah. Yeah.

23 So if they did do that, would they be coming to
24 us or would they be coming to the Supreme Court?

25 MR. ADAMS: They would be going to the Supreme

1 Court under a Motion to augment the record.

2 COMMISSIONER SMITH: Aha. I see.

3 MR. ADAMS: And our concern is also with the
4 timing --

5 (Telephone sounds.)

6 MR. ADAMS: -- how that would play out.

7 COMMISSIONER SMITH: Tell them they're late.

8 COMMISSIONER KJELLANDER: Just don't talk. Just
9 hang up.

10 COMMISSIONER SMITH: So if that happens again,
11 you have to push this button right there.

12 Thank you, Mr. Chairman. Those are all my
13 questions.

14 (Telephone sounds.)

15 COMMISSIONER REDFORD: This button?

16 COMMISSIONER SMITH: No, the bottom, that one.

17 COMMISSIONER REDFORD: Hello.

18 MS. MIKELL: Hello. Hello?

19 COMMISSIONER REDFORD: Who am I speaking to?

20 MS. MIKELL: This is Christine Mikell from
21 Wasatch Wind, trying to call in to the hearing.

22 COMMISSIONER REDFORD: Okay, you're on the
23 hearing. Would you please mute your phone so that we don't get
24 anything from your end.

25 MS. MIKELL: Sure, I'd be happy to. Going on

1 mute. Thank you.

2 COMMISSIONER REDFORD: Thank you.

3 Is there anything further that the parties want
4 to discuss?

5 MR. ADAMS: Commissioner Redford, yes, just one
6 more thing.

7 I would like to clarify on the record that
8 there's been no objection to inclusion of the Complaints that
9 were filed with -- in the remand proceedings, in Volume V,
10 pages 1179 to page 1203, so that regardless of what the
11 Commission decides with regard to the material from the other
12 dockets, that that material will remain in the appellate
13 record.

14 COMMISSIONER REDFORD: What's that? What are
15 they again?

16 MR. ADAMS: It's Volume V, pages 1179 to 1203.

17 COMMISSIONER REDFORD: Okay. Well, if there's
18 nothing further to come before the Commission --

19 MR. WALKER: Mr. Chairman.

20 COMMISSIONER REDFORD: Yes.

21 MR. WALKER: I have a quick point relevant to
22 what Mr. Adams just referenced.

23 Idaho Power did reference on page 5 of its Motion
24 what Mr. Adams refers to is his own Affidavit in the 10-61 and
25 10-62 cases that he submitted that attached copies of the

1 Complaints from the other matters, and what Idaho Power said in
2 its written materials was exactly what I said in argument:
3 That to the extent that the Commission determines it relied on
4 any of those materials, then it should determine that they're
5 part of the record.

6 COMMISSIONER REDFORD: Which were those again?
7 What's the page numbers of those Affidavits? Do you have them?

8 MR. WALKER: They're from Volume V. I don't have
9 the exact page number reference. I can look it up if you --

10 COMMISSIONER REDFORD: But it's an Affidavit of
11 Mr. Adams.

12 MR. WALKER. Yes. I believe it starts on 1179.

13 COMMISSIONER SMITH: And goes to 1203.

14 MR. ADAMS: That's correct. And when Mr. Walker
15 is done, I can direct the Commission to where that was actually
16 cited in the Orders.

17 MR. WALKER: And that's not necessary, because
18 I will agree that upon my review of the Order on Remand this
19 morning, I did see the Commission's own reference to the
20 Complaint and the fact that a summons was not issued in its
21 Orders in the 10-61 and 10-62 cases.

22 COMMISSIONER REDFORD: Anything else anyone has
23 to offer?

24 Well, hearing no other explanations or argument,
25 the Commission will take this under consideration and in due

1 course will issue its ruling on how the record should be
2 settled.

3 And so we'll go off the record at this time.

4 (The hearing adjourned at 10:02 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AUTHENTICATION

This is to certify that the foregoing is a true and correct transcript to the best of my ability of the proceedings held in the matter of Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC, Petitioners/Appellants, vs Idaho Public Utilities Commission, Respondent-Respondent on Appeal, and Idaho Power Company, Respondent-Intervenor/ Respondent on Appeal, Supreme Court Docket No. 39151-2011, commencing on Wednesday, January 9, 2013, at the Commission Hearing Room, 472 West Washington, Boise, Idaho, and the original thereof for the file of the Commission.

Wendy J. Murray

WENDY J. MURRAY, Notary Public
in and for the State of Idaho,
residing at Meridian, Idaho.
My Commission expires 2-8-2014.
Idaho CSR No. 475

