UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 21 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FRANKLIN ENERGY STORAGE ONE, LLC; et al.,

Plaintiffs-Appellees,

v.

IDAHO PUBLIC UTILITIES COMMISSION; et al.,

Defendants,

and

IDAHO POWER COMPANY,

Intervenor-Defendant-Appellant.

No. 20-35144

D.C. No. 1:18-cv-00236-REB
District of Idaho, Boise

ORDER

FRANKLIN ENERGY STORAGE ONE, LLC; et al.,

Plaintiffs-Appellees,

v.

PAUL KJELLANDER, in his official capacity as Commissioners of the Idaho Public Utilities Commission; et al.,

Defendants-Appellants,

and

No. 20-35146

D.C. No. 1:18-cv-00236-REB

LCC/MOATT

IDAHO POWER COMPANY,

Intervenor-Defendant.

Before: THOMAS, Chief Judge, SCHROEDER and CALLAHAN, Circuit Judges.

The parties jointly move to dismiss these appeals as moot, asserting the matter no longer presents a live case or controversy, and to vacate the judgment of the district court from which these appeals were taken (Docket Entry No. 15 in No. 20-35144; Docket Entry No. 11 in No. 20-35146). We agree that these appeals are moot and accordingly dismiss them for lack of jurisdiction. *See United States v. Tanoue*, 94 F.3d 1342, 1344 (9th Cir. 1996) ("[A]n appeal must be dismissed as moot if an event occurs while the appeal is pending that makes it impossible for the appellate court to grant 'any effectual relief whatever' to the prevailing party." (citing *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992))).

However, we deny the parties' requests to vacate the judgment of the district court because it is not clear from the record on appeal that the circumstances of this case warrant vacatur. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 71-72 (1997) ("Vacatur is in order when mootness occurs through happenstance—circumstances not attributable to the parties—or . . . the 'unilateral action of the party who prevailed in the lower court.'").

The district court is not precluded by this denial from vacating its own judgment upon independent review. *See Cammermeyer v. Perry*, 97 F.3d 1235, 1239 (9th Cir. 1996).

DISMISSED.