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IN THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD KEAVY,)	
)	SUPREME COURT
Petitioner-Appellant,)	DOCKET NO. 49844-2022
)	
v.)	IPUC CASE NOS.
)	QWE-T-21-14
IDAHO PUBLIC UTILITIES COMMISSION)	SUP-T-22-01
and QWEST CORPORATION, dba)	
CENTURYLINK COMMUNICATIONS, LLC,)	IDAHO PUBLIC UTILITIES
)	COMMISSION’S
Respondents.)	OPPOSITION TO MOTION
)	FOR TIME TO RESPOND,
)	AND MOTION FOR
)	INVOLUNTARY DISMISSAL
)	

COMES NOW the Respondent on Appeal, Idaho Public Utilities Commission (“Commission”), and submits this opposition to Petitioner-Appellant Richard Keavy’s Motion for Time to Respond. The Commission respectfully request that this Court deny the Motion for Time to Respond, and dismiss this appeal, with prejudice, pursuant to Idaho Appellate Rules 21, 32(a), 34(c)-(d), and 46.

PROCEDURAL HISTORY

On September 12, 2022, Mr. Keavy filed a “Motion[] to have inadequacy and corruption of ‘Agency Record’ exposed; names of all collaborating players identified...” The Agency Record

IDAHO PUBLIC UTILITIES COMMISSION’S
OPPOSITION TO MOTION FOR TIME TO RESPOND
MOTION FOR INVOLUNTARY DISMISSAL

was filed with this Court on September 14, 2022, and the appeal was suspended pending an order on Mr. Keavy's motion. On October 3, 2022, this Court entered an order denying the motion.

On November 7, 2022, Mr. Keavy filed a "Motion/Request for more time to respond, accumulate evidence held by the PUC, ascertain Bar standing on pending request, ascertain AttyGen place on recent relevant material collaboration with several other states." ("Motion for Time to Respond").

ARGUMENT

A. Opposition to Motion for Time to Respond

The Commission requests that this Court deny Mr. Keavy's Motion for Time to Respond because it is both procedurally and substantively deficient.

The time prescribed by the rules for filing an appellant brief "may be enlarged by the Court or any Justice thereof for *good cause* shown upon the motion of a party. Applications for extensions of time for filing briefs shall also be subject to the requirements of Rule 34(d)." I.A.R. 46 (emphasis added). Pursuant to Idaho Appellate Rule 34(d):

A motion for extension of time for filing a brief may be made no later than the due date for the appellate brief and shall be supported by an affidavit setting forth:

- (1) The date when the brief is due;
- (2) The number of extensions of time previously granted, and if extensions were granted the original date when the brief was due;
- (3) Whether any previous requests for extensions of time have been denied or denied in part;
- (4) The reasons or grounds why an extension is necessary;
- (5) The number of days of extension deemed necessary and the date on which the brief would become due;
- (6) Whether there has been any stipulation of the parties for this application for extension, which stipulation shall not be binding upon the Court;
- (7) The position of the opposing parties concerning the application, and whether or not the opposing parties have verbally expressed their agreement or disagreement;

(8) What assurance there is that the brief will be filed within the extended time requested.

Extensions of time for filing briefs *shall not be favored* and will be granted by the Supreme Court only upon a *clear showing of good cause* and as provided in Rule 46.

I.A.R. 34(d) (emphasis added).

1. Procedural Deficiency

Procedurally, Mr. Keavy's motion is not supported by an affidavit as required by Idaho Appellate Rule 34(d). Further, Mr. Keavy's motion does not contain the information required under Idaho Appellate Rule 34(d)(1)-(3), and (5)-(8). While Mr. Keavy did provide his "reasons or grounds why an extension is necessary," as required by Idaho Appellate Rule 34(d)(4), those reasons and grounds are without merit as discussed below. To the extent that Mr. Keavy is acting pro se in this matter, he is still subject to the same standards and rules as appellants represented by an attorney.

Pro se litigants are held to the same standards and rules as those represented by an attorney. Moreover, Pro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules.

Michalk v. Michalk, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009) (internal citations and quotations omitted). Thus, Mr. Keavy's Motion for Time to Respond is procedurally deficient.

2. Substantive Deficiency

Substantively, Mr. Keavy's motion fails to provide a "clear showing of good cause" as required by Idaho Appellate Rules 34(d) and 46. Mr. Keavy argues that the Commission provided additional time to parties during the lower proceedings; however, that does not create good cause for an extension of time on appeal.

Mr. Keavy argues that there are "500+/-" pages of documents as identified in a Freedom of Information Act ("FOIA") request that are "assumed relevant" in this matter; however, that assertion is without merit. Mr. Keavy appealed the Commission's Final Order No. 35351 and subsequent Order on Reconsideration No. 35396, in which the Commission determined that it lacked jurisdiction to adjudicate the dispute between Mr. Keavy and respondent Qwest

Corporation, dba CenturyLink Communications, LLC (“Qwest”). R. pp. 77-78; R. pp. 83-84. The Commission’s orders are based solely on the legal question of jurisdiction, and Mr. Keavy’s motion provides no argument or authority to support a claim that any of the alleged “500+/-” pages of documents are relevant to a determination of the statutory jurisdiction of the Commission.

Mr. Keavy argues that he needs more time to potentially retain legal counsel through the Idaho State Bar Pro Bono legal assistance program; however, Mr. Keavy does not provide any realistic timeline for when, or even if, any such retention of legal assistance may be forthcoming.

Finally, Mr. Keavy argues that more time should be given based upon an alleged newspaper story concerning the Idaho Attorney General and an investigation into Federal Do Not Call concerns. Mr. Keavy does not provide any actual evidence of an investigation, nor any argument or authority to show that any such investigation holds any relevancy to the issue on appeal. Thus, Mr. Keavy’s arguments are without merit, Mr. Keavy has failed to show good cause for an extension of time to file appellant’s brief, and the Motion for Time to Respond is substantively deficient.

The Commission respectfully requests that this Court deny the Motion for Time to Respond.

B. Motion for Involuntary Dismissal

If this Court denies Mr. Keavy’s Motion for Time to Respond, the Commission requests that this Court dismiss this appeal, with prejudice, pursuant to Idaho Appellate Rules 21, 32(a), 34(c).

“Appellant’s brief shall be filed with the clerk of the Supreme Court within 35 days of the date that the reporter’s transcript and the clerk’s or agency’s record have been filed with the Supreme Court.” I.A.R 34(c). Failure of an appellant to timely file their brief “may be grounds only for such action or sanction as the Supreme Court deems appropriate, which may include dismissal of the appeal.” I.A.R 21.

Based upon the Commission’s calculation of the due date for Mr. Keavy’s appellate brief pursuant to Idaho Appellate Rule 22; considering the date the Agency Record was filed, September 14, 2022; this Court’s September 15, 2022, order suspending the appeal; and this Court’s October

3, 2022, order denying Mr. Keavy's motion on the Agency Record, it appears that Mr. Keavy filed his motion requesting an extension of time for filing his appellate brief on either the day the appellate brief was due, or one day before.

In either case, involuntary dismissal of the appeal is appropriate. Mr. Keavy has filed two motions in this Court that do not comport with the Idaho Appellate Rules, which constitutes grounds for dismissal. Further, a review of the record shows that this appeal is based upon a purely legal question of statutory jurisdiction, an issue that Mr. Keavy failed to address on reconsideration before the Commission and fails again to address in the Motion for Time to Respond. For those reasons, the Commission respectfully request that this Court grant the Commission's Motion for Involuntary Dismissal and dismiss this appeal with prejudice.

CONCLUSION

The Commission respectfully requests that this Court deny Mr. Keavy's Motion for Time to Respond and grant the Commission's Motion for Involuntary Dismissal of this appeal with prejudice.

Respectfully submitted this 17th day of November 2022.



Chris J. Burdin
Deputy Attorney General
Attorney for Respondent on Appeal,
Idaho Public Utilities Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2022, served the foregoing *Opposition to Motion for Time to Respond* and *Motion for Voluntary Dismissal*, in Supreme Court Docket No. 49844-2022, by forwarding a copy thereof, to the following, via the manner indicated:

Appellant, *pro se*

Richard Keavy
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- U.S. Mail, postage prepaid
- Personal Delivery
- Facsimile
- E-Mail

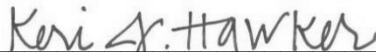
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