

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JOSEPH B. MCNEAL dba PAGEDATA,)	
)	SUPREME COURT
Petitioner/Appellant,)	DOCKET NO. 31844
)	
v.)	IPUC CASE NO. QWE-T-03-25
)	
IDAHO PUBLIC UTILITIES COMMISSION,)	
)	
Respondent on Appeal,)	ORDER SETTLING AGENCY'S
)	RECORD ON APPEAL
and)	
)	ORDER NO. 29800
QWEST CORPORATION,)	
)	
<u>Respondent/Respondent on Appeal.</u>)	

On April 19, 2005, PageData filed a Notice of Appeal from Commission Order Nos. 29687 and 29726 in the above referenced case. In its Notice of Appeal PageData requested that, in addition to those documents automatically included in the Appellate Record pursuant to Appellate Rule 28(b)(3), the entire Commission file for a different case, Case No.QWE-T-03-6, be included in the Record on Appeal. Notice of Appeal at 3. Pursuant to PageData's request, the Commission Secretary included the requested documents from Case No. QWE-T-03-6 ("the 03-6 Case"), in the proposed Appellate Record for this case, No. QWE-T-03-25. On May 10, 2005, the Commission Secretary served the proposed Record on Appeal on the parties.

On May 19, 2005, the Commission Staff filed an Objection to the Agency's Record on Appeal objecting to the inclusion of most of the 03-6 Case documents in the Record on Appeal in this case. The Staff's Objection was made pursuant to Appellate Rules 29(a) and 13(e). On May 20, 2005, Qwest filed a "Joinder to Objection" supporting the Staff's objections. On May 23, 2005, the Commission issued a Notice of Hearing to consider Staff and Qwest's objections to the proposed Record as required by I.A.R. 29(a).

THE STAFF'S OBJECTIONS

With the exception of the four documents noted in the footnote below, the Staff objected to including documents from an entirely different case file in this Record on Appeal.¹ The Staff argued that the remaining documents contained in the Commission's 03-6 Case "are not relevant to the current appeal, were not considered by the Commission in the resolution of Case No. QWE-T-03-25, and concern an entirely separate matter with separate issues that were resolved by its own final Order No. 29604 and Order No. 29655 (denying reconsideration)." Staff Objection at 4. Staff asserted that PageData did not file a Notice of Appeal in the 03-6 Case and "it is now well past the deadline to do so." *Id.* The Order denying reconsideration in the 03-6 Case was Order No. 29655 issued December 9, 2004. Thus, it is well after the 42-day deadline for filing a Notice of Appeal. The Staff asserted that judicial review is clearly confined to the record presented to the Commission as the finder of fact. *Greenfield Village Apartments v. Ada County*, 130 Idaho 207, 938 P.2d 1245 (1997), and that "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.

In summary, the Staff argued, to which Qwest agreed, that PageData cannot, in the appeal of this case, No. QWE-T-03-25, argue issues decided in a separate and completely different administrative case, No. QWE-T-03-6. Consequently, the objected documents (proposed R. at 90-92 and 100-217) should be stricken from the proposed record. Staff Objection at 4.

THE SETTLEMENT HEARING

In accordance with Appellate Rule 29(a) and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*, the Commission issued a Notice of Hearing on May 23, 2005. The Commission convened a hearing on June 8, 2005 to hear Staff's objections, and any response thereto. Appearing for the Commission Staff was Donovan E. Walker, Deputy Attorney General, and appearing for Qwest Corporation was William J. Batt, Batt & Fisher, LLP. Neither Mr. McNeal dba PageData nor any representative thereof, appeared at the hearing. Argument

¹ Staff and Qwest did not object to: (1) the Qwest-Arch Paging Interconnection Agreement adopted by PageData (proposed R. at 69-74); (2) the Amendment to the adopted Interconnection Agreement (proposed R. at 81-89); and (3) the Commission Order Nos. 29198 and 29293 (proposed R. 75-80 and 93-99) approving the adoption of the Qwest-Arch Interconnection Agreement and the Amendment to the Interconnection Agreement respectively. See Staff Objection at n.1.

was heard from Commission Staff and Qwest Corporation. The Commission, after recessing for deliberations, issued an oral ruling from the bench, and now issues this Order.

FINDINGS

Having considered the oral argument and upon review of the documents in question as well as the applicable laws and rules, we find that Staff's Objection is well taken and that it should be sustained. We find that the Commission has proper authority and jurisdiction over this matter pursuant to I.A.R. 13(e) and 29(a). We find that the documents in the proposed Record on Appeal, Volume I, pages 90-92 and 100-217 should not be included in the Record on Appeal. These documents were not considered by the Commission in the resolution of the case currently on appeal, QWE-T-03-25, and are therefore not relevant. It is undisputed that the objected documents originated in a different case. These documents concern a separate matter from that which is currently on appeal. This separate matter was resolved by its own final Orders that were not appealed by PageData within the time limitations allowed by law.

Allowing this material to now be included in the Record on Appeal would be contrary to *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 of the commission as certified by it."); and contrary to *Castaneda v. Brighton Corporation*, 130 Idaho 923 n.1, 950 P.2d 1262 n.1 (1998) (judicial review is limited to the record developed below). Additionally, after review of PageData's preliminary statement of issues from its Notice of Appeal, the Commission is mindful of a recent statement from our Supreme Court in *Regan v. Kootenai County*, that "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." 148 Idaho 721, 725, 100 P.3d 615, 619 (2004) quoting *Camp v. Pitts*, 411 U.S. 138, 142, 93 S.Ct. 1241, 1244 (1973).

ORDER

IT IS HEREBY ORDERED that Staff's Objection to portions of the proposed Record on Appeal is sustained and granted. The Commission Secretary shall remove pages 90-92 and 100-217 from Volume I of the proposed Record.

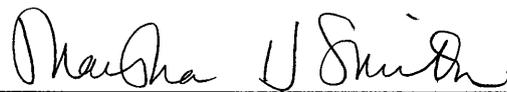
IT IS FURTHER ORDERED that, with the changes noted above, the Record on Appeal shall hereby be deemed SETTLED pursuant to this Order and as authorized by I.A.R. 29.

IT IS FURTHER ORDERED that the Commission Secretary is instructed to forward the settled Record on Appeal, including a copy of this Order, to the Idaho Supreme Court and to the parties consistent with the Idaho Appellate Rules.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th day of June 2005.



PAUL KJELLANDER, PRESIDENT

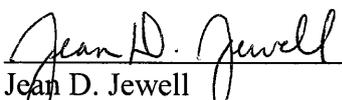


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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