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PUBLIC UTILITIES - IDAHO

Idaho Power Company v. Tidwell

Supreme Court of Idaho, Boise, September 2018 Term - December 28, 2018 - P.3d - 2018 WL 6817324

Landowner, who intervened in proceeding concerning utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line, appealed Public Utility Commission's decision denying landowner's request for intervenor funding for reimbursement of landowner's attorney fees.

The Supreme Court of Idaho held that:

- Deadline to file intervenor funding request was 14 days after Commission held last evidentiary hearing, not due date for petitions for reconsideration of final order;
- Landowner was provided adequate information about right to seek intervenor funding and deadlines governing such requests; and
- Landowner was not entitled to award of appellate attorney fees pursuant to private-attorney-general doctrine.

Landowner waived for judicial review her claims that Public Utility Commission failed to provide adequate notice to all parties that intervenor funding requests arising from utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line were due on certain date, that Commission's denial of intervenor funding request based solely on timing was arbitrary, capricious, and abuse of discretion because Commission had previously awarded intervenor funding to late applicants, that Commission violated the legislative intent behind statute governing award of costs of intervention because it denied her request solely based on timing, and that rule governing deadline for intervenor funding requests was unconstitutional for reason of vagueness, where claims were not raised in request for intervenor funding or petition for reconsideration.

In reviewing Public Utility Commission's denial of landowner's intervenor funding request for reimbursement of attorney fees incurred in proceeding concerning utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line, Supreme Court would decline to consider landowner's unpreserved claim that rule governing deadline for intervenor funding requests was unconstitutional for reason of vagueness, where consideration was not necessary for subsequent proceedings in case.

Under rule governing deadline for intervenor funding requests, deadline for landowner to file intervenor funding request for reimbursement of attorney fees incurred regarding utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line was 14 days after Public Utility Commission held last evidentiary hearing on application, not due date for petitions for reconsideration of final order.

Landowner was provided adequate information about right to seek intervenor funding and deadlines governing such requests, and thus failure to file request before deadline precluded recovery of

funding to reimburse landowner for attorney fees that were incurred regarding utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line; although Public Utility Commission was not required by statute or administrative rule to notify landowner of right to seek funding or deadline for request, Commission announced deadline for intervenor funding requests at last evidentiary hearing, and landowner's attorney received copy of another intervenor's request, which expressly set forth deadline for filing requests.

Landowner was not entitled to award of appellate attorney fees pursuant to private-attorney-general doctrine in her appeal of Public Utility Commission's decision denying her intervenor funding request for reimbursement of attorney fees incurred in proceeding concerning utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line; landowner did not prevail on appeal.