

FILED

NOV 18 2015

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX OFFICIO CLERK OF COURT

The Honorable Judge Millie M. Judge
Hearing Date: 11/18/2015
Hearing Time: 9:00 AM

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

PUBLIC UTILITY DISTRICT NO. 1 of
SNOHOMISH COUNTY, a
Washington public utility district,

Plaintiff,

v.

WASHINGTON STATE AUDITOR'S
OFFICE, an agency of the State of
Washington, and TROY KELLEY,
Washington State Auditor, in his
official capacity, WASHINGTON
DEPARTMENT OF COMMERCE, an
agency of the State of Washington, and
WASHINGTON UTILITIES AND
TRANSPORATION COMMISSION, a
commission of the State of Washington,

Defendants,

and

NORTHWEST ENERGY
COALITION and RENEWABLE
NORTHWEST,

Defendant-Intervenors.

NO. 15-2-03116-1

ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
AND DEFENDANT-INTERVENORS
AND DISMISSING THE
COMPLAINT

ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
AND DEFENDANT-INTERVENORS
AND DISMISSING THE
COMPLAINTS

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I. HEARING

1.1 Hearing. A hearing was held on November 18, 2015.

1.2 Appearances. The parties and defendant-intervenors appeared by and through the following counsel: Assistant Attorney General Kathryn McLeod for Washington State Department of Commerce (Commerce); Assistant Attorney General Christopher Casey for Washington State Utilities and Transportation Commission (UTC); Assistant Attorney General Matthew Kernutt for Washington State Auditor (Auditor); Anna Sewell, Earthjustice, for Northwest Energy Coalition and Renewable Northwest; and Kristine R. Wilson, Perkins Coie, for Public Utility District No. 1 of Snohomish County (SnoPUD).

1.3 Background. Northwest Energy Coalition and Renewable Northwest, the Auditor and SnoPUD each moved for summary judgment; Commerce and UTC filed a joint motion for summary judgment (Summary Judgment Motions).

1.4 Evidence and argument. The Court reviewed the pleadings and evidence presented, including the case record; the Plaintiff's, Defendants' and Defendant-Intervenors' briefs in support of the Summary Judgment Motions; Responses and Replies to Summary Judgment Motions; and declarations and attached exhibits filed in support of the summary judgment briefs. The Court also considered the oral argument of the parties and the defendant-intervenors.

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II. FINDINGS OF FACT

The Court having considered the evidence and argument of the parties makes the following Findings, which are not in dispute:

- 1 2.1 In November 2006, Washington voters approved Initiative 937, creating the
2 Energy Independence Act (EIA) (codified at chapter 19.285 RCW).
3 2.2 ^{Among other provisions,}
4 [^] The EIA requires Washington qualifying utilities to obtain increasing amounts
5 of electricity from renewable resources and undertake cost-effective energy
6 conservation to serve their customers' energy consumption.
7 2.3 SnoPUD is a Washington qualifying utility subject to the requirements of the
8 EIA.
9 2.4 Prior to the deadline for the 2013 compliance year, SnoPUD notified the
10 Auditor that it intended to rely on the 4 percent cost cap provision in
11 RCW 19.285.050. SnoPUD previously entered into long-term power purchase
12 agreements for electricity generated by several wind power facilities and the
13 utility wanted to use the investment to comply with the EIA renewable energy
14 requirement.
15 2.5 Following a disagreement with the Auditor on how to interpret
16 RCW 19.285.050, SnoPUD chose to rely, under protest, on the renewable
17 energy target in RCW 19.285.040(2) to avoid a likely finding of
18 noncompliance.
19 2.6 SnoPUD subsequently filed a complaint with this Court seeking a declaratory
20 judgment and writ of mandamus.
21 2.7 The Auditor issued an audit report on April 27, 2015, (the report was reissued
22 on September 21, 2015, to correct a date) finding that SnoPUD complied with
23 the renewable energy target for 2013.

III. CONCLUSIONS OF LAW

- 24 3.1 The issue before the Court is whether the EIA allows a utility utilizing the
25 4 percent cost cap compliance method in RCW 19.285.050 to count investments
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1 in eligible renewable resources where some or all of the corresponding RECs
2 from the eligible renewable resources are sold.

3 3.2 The statutory construction and interpretation of the EIA affects SnoPUD's legal
4 rights.

5 3.3 There is no genuine issue as to material facts and summary judgment may be
6 issued as a matter of law. Civil Rule (CR) 56.

7 3.4 An important goal of the EIA is to increase the amount of eligible renewable
8 energy used to meet utility customers' electricity consumption.

9 3.5 Qualifying utilities may comply with the EIA using eligible renewable
10 resources, renewable energy credits, or a combination of both.

11 3.6 To comply with the EIA, a utility must own the nonpower attributes of the
12 eligible renewable resources it uses for compliance.

13 3.7 By definition, a renewable energy credit contains all of the nonpower attributes
14 associated with one megawatt-hour of electricity from a generation facility
15 powered by a renewable resource, including qualification as an eligible
16 renewable resource. *See* RCW 19.285.030(12), (15) and (20).

17 3.8 By definition, an eligible renewable resource contains both power attributes and
18 nonpower attributes. Once the REC is separated from the eligible renewable
19 resource, what remains is electricity (e.g., power attributes) devoid of all
20 nonpower attributes, which does not qualify as an eligible renewable resource.
21 *See* RCW 19.285.030(12), (15) and (20).

22 3.9 If a utility uses the 4 percent cost cap method under RCW 19.285.050, the
23 utility must retain the nonpower attributes associated with any eligible
24 renewable resources invested in and relied upon for compliance. If a REC is
25 created in association with an eligible renewable resource and the eligible
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MDJ

*retained and cannot
be sold
and/or
sold*

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renewable resource is relied on for compliance, the REC must be ~~retired~~. See ^{retained} WAC 194-37-120 and WAC 480-109-200(3). If the RECs are not ~~retired~~, no portion of the cost of the associated electricity may be included for purposes of compliance under RCW 19.285.050.

3.10 The Auditor performed its audit duties in compliance with the law and audited SnoPUD's compliance with the renewable energy target for 2013 under the EIA.

IV. ORDER

4.1 Summary Judgment is awarded in favor of Defendants and Defendant-Intervenors.

4.2 There are no remaining unresolved issues in Plaintiff's Complaint; accordingly, this case is dismissed with prejudice.

DATED this 18th day of November, 2015.

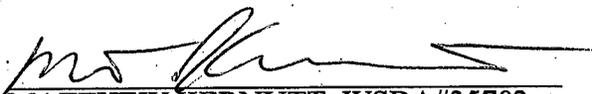
Millie M. Judge
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