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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

PACIFIC POWER & LIGHT COMPANY,
a Maine corporation, qualified to
do business in the State of
Washington,

Plaintiff,

vs.

DEPARTMENT OF REVENUE OF THE STATE
OF WASHINGTON; CLARK COUNTY,
WASHINGTON; COWLITZ COUNTY,
WASHINGTON; GRAYS HARBOR COUNTY,
WASHINGTON; KLIKITAT COUNTY,
WASHINGTON; LEWIS COUNTY,
WASHINGTON; SKAMANIA COUNTY,
WASHINGTON; THURSTON COUNTY,
WASHINGTON; and YAKIMA COUNTY,
WASHINGTON,

Defendants.

NO. 84-2-00882-0

S U M M O N S



TO: DEPARTMENT OF REVENUE OF THE STATE OF WASHINGTON; CLARK
COUNTY, WASHINGTON; COWLITZ COUNTY, WASHINGTON; GRAYS
HARBOR COUNTY, WASHINGTON; KLIKITAT COUNTY, WASHINGTON;
LEWIS COUNTY, WASHINGTON; SKAMANIA COUNTY, WASHINGTON;
THURSTON COUNTY, WASHINGTON; and YAKIMA COUNTY, WASHINGTON

A lawsuit has been started against you in the above-
entitled Court by the above named plaintiff. Plaintiff's claim
is stated in the written complaint, a copy of which is served
upon you with this summons.

In order to defend against this lawsuit, you must
respond to the complaint by stating your defense in writing,
and serve a copy upon the undersigned attorney for the plaintiff
within twenty (20) days after the service of this summons, ex-
cluding the day of service [or if served upon you out of the
State of Washington, then within sixty (60) days after service],
or a default judgment may be entered against you without notice.
A default judgment is one where plaintiff is entitled to what he
asks for because you have not responded. If you serve a notice
of appearance on the undersigned attorney, you are entitled to
notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with
the Court. If you do so, the demand must be in writing and must
be served upon the plaintiff. Within fourteen (14) days after
service of the demand, the plaintiff must file this lawsuit with
the Court, or the service on you of this summons and complaint will
be void.

If you wish to seek the advice of an attorney in this
matter, you should do so promptly so that your written response, if
any, may be served on time.

This summons is issued pursuant to Rule 4 of the Superior
Court Civil Rules of the State of Washington.

DATED: June 22, 1984

SWANSON, LINDSKOG, LUNDGAARD
AITKEN & SWANSON

By

Robert E. Lundgaard
Attorney for Plaintiff
207 Security Building
Olympia, Washington 98501
Telephone: (206) 943-8440

COUNSEL:

STOEL, RIVES, BOLEY, FRASER
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900 S.W. Fifth Avenue
Portland, Oregon 97204



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PACIFIC POWER & LIGHT COMPANY,
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WASHINGTON; COWLITZ COUNTY,
WASHINGTON; GRAYS HARBOR COUNTY,
WASHINGTON; KLIKITAT COUNTY,
WASHINGTON; LEWIS COUNTY,
WASHINGTON; SKAMANIA COUNTY,
WASHINGTON; THURSTON COUNTY,
WASHINGTON; and YAKIMA COUNTY,
WASHINGTON,

Defendants.

NO.

COMPLAINT FOR REFUND OF
PROPERTY TAXES PAID
UNDER PROTEST

COMES NOW the plaintiff, and alleges as follows:

I.

Plaintiff PACIFIC POWER & LIGHT COMPANY is a Maine corporation qualified and authorized to do business in the State of Washington. Plaintiff is a public service company which operates an electric utility system in Washington and other Western states. Defendant counties are counties in the State of Washington in which plaintiff owns real and personal property used in the conduct of its electric utility business. The Department of Revenue of the State of Washington ("Department of Revenue") is a department of the government of the State of Washington which is required annually to make an assessment of plaintiff's operating property and certify the apportioned, equalized assessed value of such

property to defendant counties.

II.

This is an action for refund of taxes brought pursuant to the provisions of Section 84.68.020 of the Revised Code of Washington. Venue for this action is established pursuant to Section 84.68.050 of the Revised Code of Washington. Plaintiff is a public service company whose operating property is located in more than one county and is assessed as a unit by the Department of Revenue. A portion of the taxes at issue in this action for refund was payable to and paid to Thurston County in 1983.

III.

Pursuant to Chapter 84.12 of the Revised Code of Washington, the Department of Revenue is annually required to determine the actual cash value of plaintiff's operating property. The Department of Revenue so determined actual cash value with respect to plaintiff's property, the taxes of which are at issue in this action. Plaintiff does not contest such determination of value.

After determining the actual cash value of plaintiff's operating property, the Department of Revenue is required to apportion such value to the respective counties entitled thereto. The Department of Revenue so apportioned the value of plaintiff's property, the taxes on which are at issue in this action. Plaintiff does not contest the action of the Department of Revenue in apportioning the value of plaintiff's property.

The Department of Revenue is required to determine the equalized assessed valuation of plaintiff's operating property in each county to which value is apportioned by applying to the actual apportioned value of such property the same ratio as the ratio of assessed to actual value of

the general property in the county.

In accordance with the decision of the Washington Supreme Court in Burlington Northern, Inc. vs. Johnston, 89 Wn.2d 321, P.2d 1085 (1977), the Department of Revenue, as to defendant counties, and as to plaintiff's property taxes which are at issue in this action, determined an equalization ratio for real property and an equalization ratio for personal property. Thereafter, the Department of Revenue applied the real property ratio to items of property which it considered to be real property and applied the personal property ratio to items of property which it considered to be personal property. The Department of Revenue certified the apportioned equalized assessed value of plaintiff's property to the county assessor of each defendant county. On the basis of such apportioned equalized assessed value, property taxes were levied against plaintiff's property in each defendant county and plaintiff paid property taxes to defendant counties as follows:

<u>County</u>	<u>Dollar Amount</u>
Clark	\$ 304,171.00
Cowlitz	243,297.00
Grays Harbor	895,467.00
Klickitat	35,244.00
Lewis	1,273,887.00
Skamania	462,987.00
Thurston	449,241.00
Yakima	678,602.00

These total amounts of tax were paid in two installments, the first of which was paid on or about April 30, 1983 and the second of which was paid on or about October 31, 1983. In accordance with the provisions of Section 84.63.020 of the Revised Code of Washington each

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installment of property tax so paid was paid under written protest.

IV.

In the process of determining and certifying the apportioned equalized assessed value of plaintiff's real and personal property to each defendant county, the Department of Revenue considered, treated and equalized as personal property items of plaintiff's property which were and are real property within the meaning of Section 84.12.280 of the Revised Code of Washington. In particular, the Department of Revenue and defendant counties have considered and treated as personal property certain items of property including but not limited to property at generating plant facilities and substations, both existing and under construction, which are land or buildings of an electric light and power company, and therefore are real property under the definitions contained in Section 84.12.280 of the Revised Code of Washington. More specifically, items of property which are land or buildings and were improperly considered and equalized as personal property include, but are not limited to:

With respect to thermal generating facilities:

- (a) Boiler buildings and appurtenant fixtures, including boilers;
- (b) Turbine buildings and appurtenant fixtures, including turbines and generators;
- (c) Precipitators and appurtenant fixtures;
- (d) Cooling towers and appurtenant fixtures;
- (e) Related substations and appurtenant fixtures;
- (f) Coal preparation facilities and appurtenant fixtures;
- (g) Coal handling facilities and appurtenant fixtures; and

(h) Cooling ponds.

With respect to hydroelectric generating facilities:

- (a) Dams and appurtenant fixtures, including generators and turbines;
- (b) Powerhouses and appurtenant fixtures, including generators and turbines;
- (c) Reservoirs;
- (d) Related substations; and
- (e) Flumes.

With respect to substations:

- (a) Transformers and transformer footings;
- (b) Fences;
- (c) Circuit breakers;
- (d) Poles; and
- (e) Underground grounding systems.

With respect to construction work in progress:

- (a) Reactor-containment buildings and appurtenant fixtures; and
- (b) Generator-boiler buildings and appurtenant fixtures.

The actions of the Department of Revenue and defendant counties in considering and equalizing such items of real property as personal property were inconsistent with Section 84.12.280 of the Revised Code of Washington, were arbitrary and capricious, were unconstitutional and were illegal.

V.

In all defendant counties the equalization ratio for personal property was higher than the equalization ratio for real property. Accordingly, the improper and illegal treatment of certain of plaintiff's property in such defendant counties as personal property rather than real property

resulted in higher amounts of property tax being assessed and levied against plaintiff's property.

VI.

If all real property owned by plaintiff in defendant counties comprising generating plant facilities and substations, existing and under construction (such property being more particularly described in Paragraph IV), has been properly considered, treated and equalized as real property, the approximate amount of tax properly payable to each defendant county in 1933, compared with the amount actually paid, would have been as follows:

<u>County</u>	<u>Dollar Amount Paid</u>	<u>Approximate Dollar Amount Properly Payable</u>
Clark	\$ 304,171.00	\$ 296,532.00
Cowlitz	243,297.00	240,313.00
Grays Harbor	895,467.00	822,959.00
Klickitat	35,244.00	33,729.00
Lewis	1,273,887.00	1,153,103.00
Skamania	462,987.00	425,181.00
Thurston	49,241.00	47,828.00
Yakima	678,602.00	633,224.00

The actual amount of tax properly payable if such property had been properly considered as real property cannot be determined prior to the completion of this refund action.

WHEREFORE, plaintiff prays as follows:

1. The Court determine that the items of property referred to in paragraph IV are real property.
2. The Court determine the value of such property for purposes of ad valorem property taxation, or remand this matter to the Department of Revenue for such determination.
3. The Court determine, or remand to the Department of Revenue for such determination, the amount of tax which

would have been payable by plaintiff to each defendant county if the property referred to in paragraph IV had been considered and equalized as real property.

4. The Court then enter judgment in favor of plaintiff against defendant counties in the amount of the difference between the tax paid to such counties as shown in paragraph II and then the proper amount of tax payable, as determined in this action, together with lawful interest thereon from the dates of payment, costs of suit and such other relief as the Court deems appropriate.

DATED this 25 day of June, 1984.

SWANSON, LINDSKOG, LUNDGAARD,
AITKEN & SWANSON

By 151
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OF COUNSEL:

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