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Wash. Water Power
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ORIGINAL FILED
SEP - 9 1991
SUPERIOR COURT
SPOKANE COUNTY

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

THE WASHINGTON WATER POWER
COMPANY, a Washington
Corporation,

Plaintiff,

vs.

ADAMS County, a municipal
corporation;
ASOTIN COUNTY, a municipal
corporation;
BENTON County, a municipal
corporation;
DOUGLAS County, a municipal
corporation;
FERRY County, a municipal
corporation;
FRANKLIN County, a municipal
corporation;
GARFIELD County, a municipal
corporation;
GRANT County, a municipal
corporation;
KLICKITAT County, a municipal
corporation;
LEWIS County, a municipal
corporation;
LINCOLN County, a municipal
corporation;
PEND OREILLE County, a
municipal corporation;
SKAMANIA County, a municipal
corporation;
SPOKANE County, a municipal
corporation;
STEVENS County, a municipal

No.

SUMMONS

91204059-6

Registered
Indexed, Dir
Indirect
Filed 9/28/91
Mailed

SUMMONS - 1

PAINE, HAMBLIN, COFFIN, BROOKE & MILLER
SUITE 1200, WASHINGTON TRUST FINANCIAL CENTER
717 WEST SPRAGUE AVENUE
SPOKANE, WASHINGTON 99204-0464 PHONE (509) 455-6000

1 corporation;)
2 THURSTON County, a municipal)
3 corporation;)
4 WHITMAN County, a municipal)
5 corporation;)
6 and the STATE OF WASHINGTON,)
7 DEPARTMENT OF REVENUE,)
8 Defendant.)
9

10 TO: DEFENDANT(S) ABOVE NAMED

11
12 A lawsuit has been started against you in the above-entitled
13 court by The Washington Water Power Company, plaintiffs. Plaintiffs'
14 claim is stated in the written Complaint, a copy of which is served
upon you with this Summons.

15 In order to defend against this lawsuit, you must respond to the
16 Complaint by stating your defense in writing, and serve a copy upon
17 the undersigned attorney for the plaintiffs within 20 days after the
18 service of this Summons in state, and 60 days after the service of
19 this Summons out of state, each excluding the day of service, or a
20 default judgment may be entered against you without notice. A default
21 judgment is one where plaintiffs are entitled to what they ask for
22 because you have not responded. If you serve a notice of appearance
23 on the undersigned attorney, you are entitled to notice before a
24 default judgment may be entered.

25 You may demand that the plaintiffs file this lawsuit with the
26 Court. If you do so, the demand must be made in writing and must be
27 served upon the plaintiffs. Within 14 days after you serve the
28 demand, the plaintiffs must file this lawsuit with the Court, or the
29 service on you of this Summons and Complaint will be void.

30 If you wish to seek the advice of an attorney in this matter, you
31 should do so promptly so that your written response, if any, may be
32 served on time.
33
34
35
36

SUMMONS - 2

PAINE, HAMBLIN, COFFIN, BROOKE & MILLER
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717 WEST SPRAGUE AVENUE
SPOKANE, WASHINGTON 99204-0484 PHONE (509) 465-8000

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

3 PAINE, HAMBLIN, COFFIN, BROOKE & MILLER

4
5 By: *John R. Quinlan*

6 JOHN R. QUINLAN

7 W.S.B.A. No. 00669

8 Attorneys for Plaintiffs

9 Dated: *September 9, 1991*

10 JRQ\P\A527

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SUMMONS - 3

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GARFIELD County, a municipal
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GRANT County, a municipal
corporation;
Klickitat County, a municipal
corporation;
LEWIS County, a municipal
corporation;
LINCOLN County, a municipal
corporation;
PEND OREILLE County, a
municipal corporation;
SKAMANIA County, a municipal
corporation;
SPOKANE County, a municipal
corporation;
STEVENS County, a municipal
corporation;

No. 912040-6

COMPLAINT FOR REFUND OF
PROPERTY TAXES

COMPLAINT FOR REFUND OF PROPERTY TAXES - 1

PAINE, HAMBLIN, COFFIN, BROOKE & MILLER
SUITE 1200, WASHINGTON TRUST FINANCIAL CENTER
717 WEST SPRAGUE AVENUE
SPOKANE, WASHINGTON 99204-0464 PHONE (509) 455-6000

1 THURSTON County, a municipal)
2 corporation;)
3 WHITMAN County, a municipal)
4 corporation;)
5 and the STATE OF WASHINGTON,)
6 DEPARTMENT OF REVENUE,)
7 Defendant.)
8

9 Plaintiff alleges as follows:

10 I. TYPE OF ACTION

11 1.1 This is an action for refund of property taxes for both
12 electric and gas properties of the plaintiff. The property taxes were
13 assessed for the year 1990 under the provisions of Chapter 84 of the
14 Revised Code of Washington. More specifically the refund of property
15 taxes is sought under the provisions of RCW 84.68.020 and RCW 84.68.050.
16

17 II. PARTIES

18 2.1 Plaintiff: The Washington Water Power Company ("WWP") is a
19 Washington corporation qualified to do business and in good standing in
20 this state. The headquarters of the plaintiff is located at Spokane,
21 Washington. The plaintiff also operates in the states of Idaho and
22 Montana. WWP is an "electric light and power company" within the
23 meaning of RCW 84.12.200(4) and a "gas company" within the meaning of
24 RCW 84.12.200(7). Both electric and gas properties are located in a
25 majority of the defendant counties. However, the following counties
26 contain only electric plant:
27

28
29 Benton County
30 Douglas County
31 Ferry County
32 Pend Oreille County

33 Only gas properties are located in Klickitat and Skamania counties.
34

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1 2.2 Defendants State of Washington Department of Revenue: The
2 defendant State of Washington Department of Revenue ("Department") is an
3 agency of the State of Washington. The Department of Revenue makes the
4 assessment of the properties of Washington public utilities under the
5 provisions of RCW 84.12.270.
6

7
8 2.2.1 The Department apportions overall electric and gas
9 system values as between the states in which the plaintiff operates
10 under the provisions of RCW 84.12.230.
11

12 2.2.2 The Department is also responsible for the
13 apportionment of the true and correct actual cash value of the
14 Washington properties as between the counties of the State of
15 Washington in which the plaintiff operates under the provisions of
16 RCW 84.12.350.
17

18
19 2.3 Defendant Counties: The defendants Adams County, Asotin
20 County, Benton County, Douglas County, Ferry County, Franklin County,
21 Garfield County, Grant County, Klickitat County, Lewis County, Lincoln
22 County, Pend Oreille County, Skamania County, Spokane County, Stevens
23 County and Whitman County are all political subdivisions of the State of
24 Washington.
25

26
27 III. JURISDICTION AND VENUE

28 3.1 This action is brought in Spokane County pursuant to the
29 provisions of RCW 84.68.050.
30

31 IV. PAYMENT OF TAXES UNDER PROTEST

32 4.1 The Department assessed WWP's State of Washington operating
33 property for the 1990 assessment year at a value of:
34

1 Taxable System Value in Washington--

2 Gas Property-- \$62,600,000

3 Electric Property-- \$505,100,000

4
5 An allocated portion of such value was subsequently certified to each of
6 the defendant counties. The Department's State of Washington gas
7 property values were subsequently lowered by the Washington Board of Tax
8 Appeals in Docket No. 38521 to \$56,718,945. Each of the counties listed
9 its share of the value of WWP's operating property on its 1990 property
10 tax rolls for taxes payable in 1991.
11

12
13 4.2 On or before April 30, 1991, WWP timely paid under written
14 protest the first installment of its property taxes payable in 1991
15 to the County Treasurer of each of the counties as follows:
16

17 4.2.1 To Adams County-- the amount of \$127,034.94
18 4.2.2 To Asotin County-- the amount of \$ 66,819.78
19 4.2.3 To Benton County-- the amount of \$ 551.10
20 4.2.4 To Douglas County-- the amount of \$ 6,727.62
21 4.2.5 To Ferry County-- the amount of \$ 35,736.13
22 4.2.6 To Franklin County-- the amount of \$ 19,828.52
23 4.2.7 To Garfield County-- the amount of \$ 5,780.28
24 4.2.8 To Grant County-- the amount of \$ 33,164.37
25 4.2.9 To Klickitat County-- the amount of \$ 3,186.94
26 4.2.10 To Lewis County-- the amount of \$ 351,249.26
27 4.2.11 To Lincoln County-- the amount of \$219,578.58
28 4.2.12 To Pend Oreille County-- the amount of \$ 2,064.33
29 4.2.13 To Skamania County-- the amount of \$ 1,122.11
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1 4.2.14 To Spokane County-- the amount of \$1,851,154.21
2
3 4.2.15 To Stevens County-- the amount of \$797,517.94
4
5 4.2.16 To Thurston County-- the amount of \$ 14,319.24
6
7 4.2.17 To Whitman County-- The amount of \$320,689.53

8 4.3 The total taxes paid under protest are \$3,856,524.88.

9 4.4 WWP claims a refund of such taxes in an amount to be
10 determined at trial, plus interest thereon from the date of payment of
11 the taxes as allowed by law.

12 VI. REASONS PLAINTIFF IS ENTITLED TO REFUND

13 Plaintiff is entitled to refund of taxes and interest thereon as
14 allowed by law for the following reasons:

15 5.1 The Department in its assessment as stated in paragraph 4.1
16 above as authorized by RCW 84.12.270 has not arrived as "true cash
17 value" of the properties. The subject properties have been valued at a
18 value far in excess of their true cash value.

19 5.2 The valuation has been made on a fundamentally wrong basis and
20 has been inconsistent from methods followed in previous years in the
21 Department's determination of true cash value. Specifically the
22 Department in its 1990 valuation chose to place heavy emphasis on the
23 "income indicator" of value. The "income indicator" in 1990 was
24 considerably higher than in previous years, yet in previous years little
25 reliance was placed on the income indicator when reliance thereon would
26 have produced lower values. In previous years other indicators, less
27 volatile than the income indicator, were relied upon by the Department,
28 yet in 1990 when these indicators would have produced lower values,

1 little or no emphasis was placed upon them. Such a valuation procedure
2 has in 1990 produced in an arbitrary manner what is alleged to be a
3 "true cash value".
4

5 5.3 The procedure the Department used in arriving at true cash
6 value through the capitalization of income (i.e. the income indicator)
7 is in itself flawed and does not produce a true cash value. The
8 Department in deriving an income indicator of value, substantially
9 understated the market required rate of return on equity by use of a
10 earnings/price ratio for common stock. As a result the overall
11 capitalization rate was understated, thus causing the capitalized value
12 to be overstated.
13
14

15 5.4 The Department in arriving at its true cash values for these
16 properties of a regulated public utility which is limited to a rate of
17 return on a cost basis by governmental regulatory agencies, contrary to
18 past practices, has in 1990 placed little or no reliance on the "cost"
19 indicator of the plaintiff in valuing its properties.
20
21

22 5.5 The assessment by the Department is an overstatement of the
23 true cash value of the properties of the plaintiff, because the
24 Department has adopted an improper stock-and-debt indicator approach
25 which is inconsistent with the law.
26
27

28 5.6 The Department in making its valuations has been unwarrantedly
29 influenced by rapidly increasing values in real estate occurring in
30 western Washington but not occurring generally in the operating areas of
31 WWP during the assessment period.
32
33

5.6 The overvaluation of plaintiff's assessments is illegal, grossly inequitable and palpably excessive, arbitrary and capricious, and is determined on a fundamentally wrong basis. The overvaluation by the Department violates the Commerce (Article I, § 8(3)), Due Process and Equal Protection Clauses (Amendment XIV, § 1) of the United States Constitution and is a deprivation of WWP's rights secured by the United States Constitution.

5.7 The assessment violates the Uniformity Clause of the Washington State Constitution, Article 7, § 1.

VI. RELIEF SOUGHT

WWP prays that the taxes paid by it as stated in paragraph 4.2 above be refunded in an amount to be determined at trial, that it be awarded interest on the amount refunded from the date of payment of such taxes as allowed by law, and that it be awarded its costs herein and such other and further relief as may be proper.

DATED this 9th day of September, 1991.

**PAINE, HAMBLIN, COFFIN, BROOKE
& MILLER**

By

John R. Quinlan

W.S.B.A. No. 00669

**Attorneys for The Washington
Water Power Company**

jrq\p\A521

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717 WEST SPRAGUE AVENUE
MOKANE, WASHINGTON 88204 0484 PHONE (509) 455-8000

STEVENSON, WASHINGTON,

9/18/91

TO COUNTY AUDITOR DR.
Skamania County, Washington

FILING
RECORDING ✓

FILE NO.

112056

AMOUNT

NC

Conditional Sale

Chattel Mortgage

Contracts

Deed

Mortgage

Satisfactions

Lis Pendens

Affidavits

file - Summons

Skamania County et al
to

The Washington Water Power Co.

10:06

Please Remit Balance Due \$

Return Herein Enclosed

Note—Return this bill (with your remittance) to be receipted

Received Payment

Gary M. Olson
COUNTY AUDITOR

STAMPS NOT TAKEN
IN PAYMENT OF FEES

By

P. J. Lowery
DEPUTY

(ALL FEES ARE REQUIRED BY LAW TO BE PAID IN ADVANCE.
SEE SECTION 8794 REMINGTON & BALLINGER'S CODE OF WASHINGTON)

TRICK & MURRAY, SEATTLE.

97677