

Okeson v. Seattle

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LITIGATION UPDATE

OKESON V. SEATTLE

by Matt Irwin*

INTRODUCTION

On January 18, 2007, the Washington State Supreme Court declared that the City of Seattle owned electric utility company, Seattle City Light, could not use electric utility rate payments to buy offsets of greenhouse gas (“GHG”) emissions from companies unassociated with Seattle City Light. The suit was filed by four individual rate payers, and on behalf of all other Seattle City Light ratepayers.¹ While the case has been legislatively overturned, it demonstrates the need for state legislatures to consider the traditional judicial limitations of public utilities in crafting legislation to meet environmental goals.

LEGAL BACKGROUND AND ARGUMENTS

On April 10, 2000, the City of Seattle passed Resolution 30144 to accompany the 30th Anniversary of Earth Day.² Resolution 30144 stated that “[Seattle] City Light will meet growing [electricity energy] demand with no net increase in greenhouse gas emissions by . . . [m]itigating or offsetting greenhouse gas emissions associated with any fossil fuels to meet load growth.”³ In the spring of 2001, the Seattle city council passed resolution 30359.⁴ Resolution 30359 stated that because it is more expensive to reduce GHG emissions locally in the Seattle area than in other areas, Seattle City Light was directed to pay other entities

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throughout the country to reduce their GHG emissions to offset Seattle City Light's GHG emissions.⁵ An example of Seattle City Light's agreements with outside entities was Seattle City Light's agreement with DuPont in which Seattle City Light paid DuPont \$650,000 to buy 300,000 tons of GHG emission offsets from a DuPont plant in Kentucky.⁶

Plaintiff ratepayers challenged the legality of Seattle City Light's GHG offset contracts, arguing that under Washington law, utility expenditures must have a sufficient nexus to the utility's purpose.⁷ Therefore, under the plaintiff's argument, Seattle City Light's arrangements to pay entities such as DuPont to reduce their GHG emissions did not have a sufficient connection to supplying electricity to Seattle ratepayers.⁸ Defendant City of Seattle argued that it may choose any means to reduce GHG emissions as long as it offsets the GHG emissions associated with supplying power to Seattle ratepayers, including paying other emitters to reduce their GHG emissions.⁹

HOLDINGS

The trial court granted summary judgment for the City of Seattle.¹⁰ The trial judge summarized the court's position:

I think that City Light has the authority to reduce its own emissions. It can do that by managing its own facilities, its own producing facilities, or it can spend money to have its emissions, its contribution reduced by someone else. This all makes sense only because of the unusual nature of the greenhouse gas canopy; the fact that it is an envelope around the entire globe; that it's not localized.¹¹

Thus, the trial court upheld Seattle City Light's agreements to pay unrelated emitters of GHGs because, considering the nature of GHG reduction, there is no difference between reducing GHGs in the Seattle area or thousands of miles away.

The plaintiffs appealed the summary judgment order to the Washington State Supreme Court ("Supreme Court"). The state's Supreme Court applied a longstanding Washington state rule that a municipal corporation is limited to the powers expressly granted to them, powers implied or incident to the express powers, or powers essential to the purpose of the municipal corporation.¹² The Supreme Court stated that as a municipal corporation, Seattle City Light lacks the authority to take actions that benefit the public as a whole.¹³ Instead, as a municipal corporation, Seattle City Light can only take actions that benefit ratepayers.¹⁴ The Supreme Court determined that by paying other organizations to reduce their GHG emissions, Seattle City Light is not actually reducing its own emissions and is therefore benefiting the public as a whole, not just the Seattle City Light ratepayers.¹⁵ Therefore, the Supreme Court held that Seattle City Light's GHG emissions offset contracts were not within the utility's proprietary powers because they were designed to

reduce the world's GHG emissions on an aggregate, not Seattle City Light's own GHG emissions in regards to the operation of supplying electricity.¹⁶

CONCLUSION

Individual plaintiff Okeson released a statement that the "lawsuit doesn't mean he opposes fighting global warming . . . But he wants utilities to deal with their own pollution and calculate the price into what they sell rather than paying someone else to deal with the problem."¹⁷ While under the previous statutory regime the plaintiffs were successful in preventing Seattle City Light from paying other companies to reduce their GHG emissions, Washington has passed legislation that specifically overrules *Okeson v. City of Seattle*.¹⁸ The Washington

State Legislature has passed H.B. 1929, which allows municipal utilities and public utility districts to mitigate their GHG emissions through activities such as, "purchase, trade, or banking of greenhouse gasses offsets or credits."¹⁹ Thus the state of Washington has overcome previous statutory and judicial limitations to allow Seattle City Light to mitigate its impact on global climate change. 

Plaintiff ratepayers challenged the legality of Seattle City Light's GHG offset contracts.

Endnotes: Litigation Update

¹ See *Okeson v. City of Seattle*, 150 P.3d 556, 558 (Wash. 2007).

² *Okeson, id.* at 558.

³ *Okeson, id.* at 558.

⁴ *Okeson, supra* note 1, at 558.

⁵ *Okeson, supra* note 1, at 559.

⁶ *Okeson, supra* note 1, at 559.

⁷ *Okeson, supra* note 1, at 559-60.

⁸ *Okeson, supra* note 1, at 560.

⁹ *Okeson, supra* note 1, at 560.

¹⁰ *Okeson, supra* note 1, at 560.

¹¹ *Okeson, supra* note 1, at 560.

¹² *Okeson, supra* note 1, at 560-61 (*citing* *Farwell v. City of Seattle*, 86 P. 217, 218 (1906)).

¹³ *Okeson, supra* note 1, at 561-62.

¹⁴ *Okeson, supra* note 1, at 563.

¹⁵ *Okeson, supra* note 1, at 564-65.

¹⁶ *Okeson, supra* note 1, at 565.

¹⁷ Warren Cornwall, *City Light Can't Buy Pollution "Offsets," Court Says*, SEATTLE TIMES, Jan. 19, 2007, available at http://seattletimes.nwsources.com/html/localnews/2003531679_greenhouse19m.html (last visited Jan. 14, 2008).

¹⁸ West's RCWA 54.16.390 (1).

¹⁹ West's RCWA 54.16.390 (2).