

2017 MAY -1 PM 12: 22

FILED

BY *KP* DEPUTY

John Meyer, MT Bar # 11206
Cottonwood Environmental Law Center
P.O. Box 412
Bozeman, MT 59771
(406) 546-0149 | Phone
John@cottonwoodlaw.org

Keatan Williams, MT Bar # 46316657
312 North Ave. W.
Missoula, MT 59801
(970) 708-4963 | Phone
KeatanWilliamsLaw@gmail.com

Counsel for Plaintiff

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

COTTONWOOD ENVIRONMENTAL)
LAW CENTER,)

Plaintiffs,)
vs.)

MONTANA PUBLIC SERVICE)
COMMISSION)

Defendant.)
)
)
)
)
)
)
)

Case No. *DV-17-349C*

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Summons Issued

INTRODUCTION

1. The Montana Constitution provides Montanans with the right to a clean and healthful environment.
2. This case asks whether a regulatory limit on the amount of renewable energy that can be produced in Montana violates Montanans' right to a clean and healthful environment.
3. In 1999, the Montana legislature passed the Electric Utility Industry Generation Reintegration Act.
4. The Act limits the generating capacity of those engaged in net metering to 50 kilowatts (kw). Mont. Code Ann. § 69-8-103(19)(b).
5. Net metering is the production of energy through solar, wind, or hydropower that is intended to offset part or all of an energy customer's energy requirements. Mont. Code Ann. § 69-8-103(19).
6. The 50 kw limit violates Montanans' constitutional right to a clean and healthful environment.
7. The 50kw limit means Plaintiff's members and Montana residents must consume energy produced by utilities that use fossil fuels as an energy source.
8. The burning of fossil fuels to generate energy contributes to the destruction of our environment.
9. The Electric Utility Industry Generation Reintegration Act prevents community solar projects. Community solar projects allow people who rent or live in a home not suitable for a solar array to invest in a local renewable energy project and receive credits that reduce their energy bill.

10. The Act's prevention of community solar projects leads to continued consumption of fossil fuels and violates Montanans' constitutional right to a clean and healthful environment.

11. The Act's limit on the amount of renewable energy that can be net metered and the Act's ban on aggregate net metering discourages private investment in renewable energy resources, harms Montana's economic growth and encourages the continued development and consumption of fossil fuels in Montana.

12. The development and consumption of fossil fuels leads to climate change, which is responsible for decreasing snow pack, decreasing water volumes in rivers and streams across Montana, increasing water temperatures in rivers and streams across Montana, unhealthy forests, an increase in the frequency and intensity of wildfires, loss of wildlife habitat, and drying of prairie potholes. These effects of climate change will likely increase over the next century due to increased greenhouse gases caused by the use of fossil fuels.

13. The Montana Electric Utility Industry Generation Reintegration Act violates the Montana Constitution by arbitrarily limiting the amount of renewable energy that can be generated in Montana, thereby prolonging continued development and consumption of climate-changing fossil fuels that deprive Montanans of a clean and healthful environment.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over claims brought under Mont. Code Ann. § 27-8-202 (uniform declaratory relief); Mont. Code Ann. § 27-19-101 (injunctive relief). This Court has jurisdiction over the Public Service Commission.

15. Venue lies in Gallatin County pursuant to Mont. Code Ann. § 25-2-126 and Mont. Code Ann. § 2-4-506(4) because Plaintiffs are located and have their principal place of business in this judicial district.

PARTIES

16. Plaintiff COTTONWOOD ENVIRONMENTAL LAW CENTER is a Bozeman based conservation organization that is dedicated to protecting the people, forests, water, and wildlife of the West. Cottonwood members are involved in the renewable energy revolution and their financial, recreational, aesthetic, scientific, inspirational, educational, health, conservation and other interests are adversely affected by Mont. Code Ann. § 69-8-103 and 69-8-603. Cottonwood members also ski and fish on Montana's public lands and waterways, all of which are adversely impacted by Mont. Code Ann. § 69-8-103 and 69-8-603.

17. The above-described financial, aesthetic, recreational, scientific, inspirational, educational, health, conservation and other interests of the Plaintiffs have been, are being, and, unless the relief prayed for is granted, will continue to be adversely and irreparably injured by Defendant's enforcement of the 50kw production limit and ban on aggregate net metering. These are actual, concrete injuries to Plaintiff that would be redressed by the relief requested in this complaint. Plaintiffs have no other adequate remedy at law.

18. Defendant MONTANA PUBLIC SERVICE COMMISSION is the state regulatory board charged with implementing and enforcing the state's net-metering policy under Mont. Code Ann. § 69-8-103 and 69-8-603.

LEGAL AND FACTUAL BACKGROUND

19. Plaintiff contends that the Electric Utility Industry Generation Reintegration Act

violates their rights guaranteed by Article II, Section 3 and Article IX, Section 1 of the Montana Constitution.

20. Mont. Code Ann. § 69-8-103(19) provides in relevant part that: "Net metering system" means a facility for the production of electrical energy that...(b) has a generating capacity of not more than 50 kilowatts.

21. Mont. Code Ann. § 69-8-603(3) provides in relevant part that "[i]f electricity generated by the customer generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be billed...for the appropriate charges...and credited for the excess kilowatt hours."

22. Mont. Code Ann. § 69-8-603(4) provides in relevant part that: Any remaining unused credits for excess kilowatt hours will be granted to the electricity supplier without compensation.

23. Article II, Section 3 provides in relevant part that: All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment...Mont. Const. art. II, § 3.

24. The right to a clean and healthful environment is a fundamental right. Any statute or regulation implicating the right to a clean and healthful environment must be strictly scrutinized. A statute or regulation "can only survive strict scrutiny if the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective." *Montana Environmental Information Center v. Dept. of Environmental Quality*, 1999 MT 248 ¶ 63.

25. Article IX, Section 1 provides in relevant part as follows: (1) The State and each person shall *maintain and improve* a clean and healthful environment in Montana for present and future generations... (3) The legislature shall provide adequate remedies for the protection of the environmental life support system *from degradation* and provide adequate remedies to *prevent unreasonable depletion and degradation* of natural resources. Mont. Const. Art. IX, § 1 (emphasis added).

26. The rights provided for under Article IX, Section 1 are interrelated and interdependent with the fundamental right to a clean and healthful environment. Any state action which implicates either must be scrutinized consistently. Therefore, any state action which implicates Article IX, Section 1 must be reviewed under strict scrutiny. *Montana Environmental Information Center v. Dept. of Environmental Quality*, 1999 MT 248 ¶ 64.

27. Climate change is an issue of statewide importance. The release of greenhouse gases, including CO₂ released by burning fossil fuels, into the atmosphere affects the composition of the atmosphere. Climate change is, and will continue to, negatively affect the environment and health of Montanans. Climate change directly implicates Montanans' constitutional right to a clean and healthful environment.

28. The 50kw limit under Mont. Code Ann. 69-8-103(19)(b) and the ban on aggregated net metering under Mont. Code Ann. 69-8-603(3) implicate the rights enumerated under Article II, Section 3 and Article IX, Section 1 of the Montana Constitution.

29. A low kilowatt limit and the inability to net meter in aggregate discourages the use of renewable energy in Montana. By discouraging the use of renewable energy, the

statute promotes the use of fossil fuels and increases greenhouse gas emissions in Montana. The increase of greenhouse gas emissions in Montana caused by this statute implicates the right to a clean and healthful environment.

30. The Electric Utility Industry Generation Reintegration Act prevents community solar projects by limiting net metering to 50kw units.

31. Community solar projects allow people who rent or live in a home not suitable for a solar array to have a choice to invest in a local renewable energy project and receive credits that reduce their energy bill. These projects are generally larger than 50kw to power multiple homes. Prevention of these projects leads to continued consumption of fossil fuels, which harms the environment and implicates the constitutional right to a clean and healthful environment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Adjudge and declare that Defendants are in violation of the Montana Constitution.
- B. Adjudge and declare that Mont. Code Ann. § 69-8-103(19)(b) is invalid or inapplicable because it violates the rights outlined in Mont. Const. Article II, Section 3 and Mont. Const. Article IX, Section 1.
- C. Adjudge and declare that Mont. Code Ann. § 69-8-603(3) is invalid or inapplicable because it violates the rights outlined in Mont. Const. Article II, Section 3 and Mont. Const. Article IX, Section 1.
- D. Issue any other temporary, preliminary, and/or permanent injunctive relief as may be specifically requested hereafter by Plaintiff.

- E. Award Plaintiff their reasonable attorney fees, costs, and litigation expenses, under the Private Attorney General Theory, and/or any other applicable provision of law.
- F. Grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of the Plaintiffs and the public.

Respectfully submitted this 1st day of May, 2017.


/s/ John Meyer

JOHN MEYER

Cottonwood Environmental Law Center

P.O. Box 412

Bozeman, MT 59771

(406) 546-0149 | Phone

John@cottonwoodlaw.org

Counsel for Plaintiff