

Kpud Seeking Supreme Court Review Of Appellate Court'S Opinion On Fire Cost Law



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KPUD No. 1 of Klickitat County (KPUD) and its insurer have asked the state Supreme Court to review an April 30 appellate court decision that ruled the utility district is subject to Washington's fire cost recovery statute.

The case is related to the Old Highway 8 Fire of August 2012, in which state Department of Natural Resources (DNR) investigators concluded KPUD was at fault because it did not foresee and mitigate the fire danger posed by a twin-stemmed ponderosa pine tree outside of the KPUD power line's right of way. A stem of that tree broke on a high wind day, fell across the power line, and created a ground-fault arc that sparked the fire.

KPUD initially tried to have the DNR's more than \$1.6 million claim for damages dismissed at the Superior Court level. When that failed, KPUD and its insurer took the matter to the Court of Appeals for eastern Washington.

That court ruled on April 30 that DNR can sue KPUD because the utility district falls under the definition of a person or corporation, per the fire cost recovery statute.

KPUD had 30 days from the date the Court of Appeals opinion was published to seek discretionary review at the state Supreme Court, according to Peter Lavallee, communications director for the Attorney General's office.

Had the Supreme Court declined to review the matter, the case would have gone back to the trial court for further proceedings, Lavallo noted.

Jim Smith, general manager of KPUD, said the Court of Appeals opinion is a turning point regarding the application of the fire cost recovery statute. He said a number of Public Utility Districts in Washington have joined the cause by filing friend of the court briefs in support of KPUD's petition.

"This is a landmark case," Smith said. "It's our case, but you are seeing other PUDs taking notice because it will affect them, too, if this [appellate court] ruling holds."

The position of KPUD and its insurer is that the PUD, as a public corporation, is not subject to the fire cost recovery statute because the law does not specifically name them as such.