

Missoulian

U.S. Supreme Court wants to hear from federal government on PPL appeal

By MIKE DENNISON Missoulian State Bureau | Posted: Monday, November 1, 2010 8:30 pm

HELENA - The U.S. Supreme Court Monday said it wants the federal government to weigh in before deciding whether to accept PPL Montana's appeal of a decision allowing the state to charge the company rent using state riverbeds to generate power.

The nation's high court, in a brief order without explanation, invited the U.S. solicitor general to file legal briefs "expressing the views of the United States" on the issues involved in the appeal of the \$41 million judgment against PPL.

A spokesman for PPL Montana said while Monday's order doesn't decide whether the U.S. Supreme Court will take the case, the company sees it as potentially positive sign.

"I think (the U.S. Supreme Court) recognizes there are some significant federal issues here and wants to see what the U.S. government has to say about it," said David Hoffman. "We feel very pleased by it."

Hoffman said he's not sure when the U.S. Supreme Court would make a final decision on accepting the case. It could be a month; it could be several months, he said.

State Attorney General Steve Bullock, however, said he sees Monday's order as "routine," and not indicative of which way the court is leaning.

"This case involves facilities managed by federal authorities, so it doesn't strike us as unusual that the court would seek the federal government's position," he said. "We continue to believe that the Missouri, Clark Fork and Madison rivers are navigable and belong to the people of Montana."

The high court accepts about 1 percent of the 8,000 appeals it is asked each year to consider.

PPL is asking the high court to accept its appeal of a 5-2 decision in January by the Montana Supreme Court, which said the state owns the riverbeds where PPL has hydroelectric dams and therefore can charge rent for the use of the riverbed.

The \$41 million in damages are for PPL's use of the riverbeds from 2000-2007. If the state wins the case, PPL also would be liable for rent since 2007 and 10 percent annual interest on the damages award.

Bullock argued last month that the high court should not accept the appeal and should let the Montana Supreme Court ruling stand.

He said the case has "no important federal question" and that PPL has never had title to the riverbeds in questions.

PPL Montana, the largest private generator of electric power in the state, has 10 hydroelectric projects on the Madison, Missouri and Clark Fork rivers.

The Montana ruling said those rivers are "navigable" and therefore the riverbeds are owned by the state.

PPL and its allies say the U.S. Supreme Court has ruled that the navigability of a river must be determined "section by section," and that Montana courts didn't follow that standard.

Two groups representing Montana water-users, the Cato Institute, a Libertarian think tank, and power-industry groups also have asked the Supreme Court to take the case.

The case stems from a 2003 lawsuit filed by several parents of Montana schoolchildren and later taken over by the state. It said the riverbeds used for generating power are school-trust land and that hydroelectric dams should pay rent for using that land.

Two other power companies with dams on Montana rivers - PacifiCorp. and Avista Corp. - settled the case and agreed to pay rent, but PPL Montana has fought the issue in court.