

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

KENNETH L. BINKLEY,	)	DOCKET UE-091531
	)	
Complainant,	)	
	)	ORDER 02
v.	)	
	)	
SALMON SHORES RV PARK AND	)	INITIAL ORDER
PUGET SOUND ENERGY, INC.,	)	
	)	
Respondents.	)	
	)	
.....	)	

*Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission (Commission) or allowed to become effective pursuant to the notice at the end of this Order. This Order would dismiss the Complaint as to Salmon Shores RV Park based on a Commission determination that it has not conducted business subject to the Commission’s regulatory authority and, hence, is beyond the Commission’s jurisdiction except for the limited purpose of making that determination. This Order would dismiss the Complaint as to Puget Sound Energy, Inc., for failure to state a claim upon which relief can be granted. The Commission determines that neither Salmon Shores RV Park nor Puget Sound Energy, Inc. has violated any requirement of law, rule or regulation, including the requirements of Puget Sound Energy, Inc.’s tariffs.*

**SUMMARY**

1 **PROCEEDINGS.** On September 14, 2009, Kenneth L. Binkley filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint against Salmon Shores RV Park (Salmon Shores) and Puget Sound Energy, Inc. (PSE or the Company). On October 19, 2009, PSE filed an answer to the

complaint. The Commission did not receive an answer from Salmon Shores. The complaint alleges that Salmon Shores is reselling electricity at rates higher than authorized by PSE Tariff Schedule 24 E-C.

2 On November 9, 2009, the Commission’s regulatory staff (Commission Staff or Staff)<sup>1</sup> filed its Motion for an Order Removing Salmon Shores RV Park as a Respondent. PSE responded to Staff’s motion on November 24, 2009, stating it did not object to an order removing Salmon Shores as a respondent. PSE also stated in its response that it intended to file a motion for dismissal alleging that Mr. Binkley failed to state a claim against PSE. On November 25, 2009, Mr. Binkley filed his Response to Commission Staff Motion for an Order Removing Salmon Shores RV Park as a Respondent. Mr. Binkley’s response, among other things, raised the question whether Salmon Shores is a public service company subject to the Commission’s jurisdiction and asks the Commission to institute a special proceeding to determine that issue.<sup>2</sup>

3 The Commission conducted a duly noticed prehearing conference in this proceeding at its offices in Olympia, Washington, on December 3, 2009. The parties agreed at the prehearing conference to attempt resolution of this matter via mediation. On February 9, 2010, however, the mediator issued a notice cancelling the mediation because, during a second mediation session on that date, “the parties agreed that further mediation would not result in resolution of the issues in this proceeding and agreed to discontinue mediation.”<sup>3</sup>

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See, RCW 34.05.455.*

<sup>2</sup> Mr. Binkley incorrectly cited RCW 81.04.510, a statute concerning the Commission’s jurisdiction over certain transportation companies, as the basis for the Commission’s authority to institute such a proceeding. The Commission’s authority to determine whether a company is conducting business subject to the Commission’s jurisdiction over utility companies is found in RCW 80.04.015.

<sup>3</sup> *Kenneth L. Binkley v. Salmon Shores RV Park and Puget Sound Energy, Inc.*, Docket UE-091531, Notice Cancelling Mediation (February 9, 2010).

4 On April 12, 2010, the Commission issued a notice establishing a schedule for parties to file any potentially dispositive motions and responses. PSE, Salmon Shores and Staff filed various motions and responses by the deadline date of May 24, 2010.<sup>4</sup> Complainant, Mr. Binkley, elected not to take advantage of this opportunity to present argument. The Commission will consider Mr. Binkley to have rested on the bases of his Complaint, his argument during the prehearing conference on December 3, 2009, and his Response to Commission Staff Motion for an Order Removing Salmon Shores RV Park as a Respondent.

5 **PARTY REPRESENTATIVES:** Kenneth L. Binkley appeared *pro se* representing himself as Complainant. Stephen L. Young appeared *pro se*, representing Salmon Shores RV Park, which he owns. Sheree Strom Carson, Perkins Coie, Bellevue, Washington, represents PSE. Donald T. Trotter, Senior Assistant Attorney General, Olympia, Washington, represents Staff.

6 **COMMISSION DETERMINATION:** If this Initial Order becomes final following Commission review or by operation of law, the Commission will determine that Mr. Binkley's complaint should be, and is, dismissed as to both Salmon Shores and PSE. Complainant failed to show that Salmon Shores has engaged in business that would make it subject to the Commission's jurisdiction. Complainant failed to state a claim against PSE upon which relief could be granted. The facts do not show any violation by Salmon Shores or PSE of any law, rule or regulation, including the requirements of PSE's tariffs.

## MEMORANDUM

### **I. Background and Procedural History**

7 On September 14, 2009, Mr. Binkley filed with the Commission, in the form of correspondence, a "Consumer Complaint" against PSE and Salmon Shores. The

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<sup>4</sup> PSE filed its Motion to Reply and Reply to Commission's Staff's Response to PSE Motion for Summary Determination on June 1, 2010. The Commission considered the arguments in PSE's reply prior to receiving the Company's motion. There accordingly is no arguable prejudice to any party, and the Commission grants PSE's motion and accepts its reply into the record of this proceeding.

Commission, which liberally construes such filings, docketed the matter as a formal complaint under RCW 80.04.110. On October 30, 2009, the Commission issued a Notice of Prehearing Conference to be conducted on December 3, 2009.

8 The essence of Mr. Binkley’s complaint is his allegation that Salmon Shores has resold, or is reselling, power it purchases from PSE for more than it is charged, thus violating PSE’s tariffs. Mr. Binkley contends that the Commission has jurisdiction to determine whether Salmon Shores is acting in this manner, which he argues would mean it is unlawfully conducting business as a public service company subject to the Commission’s authority. Mr. Binkley also contends that PSE is culpable under the facts he alleges because the Company is knowingly not enforcing its tariffs, which forbid customers from reselling power provided under those tariffs.

9 On November 9, 2009, Commission Staff filed its “Motion for an Order Removing Salmon Shores RV Park as a Respondent.” Staff argues in this motion that Salmon Shores is a customer of PSE, not a public service company. Staff reasons that since the Commission’s complaint statute, RCW 80.04.110, applies to complaints against public service companies such as PSE, not customers of a public service company, the Commission should issue an order removing Salmon Shores RV Park as a respondent in this matter.<sup>5</sup> In other words, Staff argues that Salmon Shores is beyond the Commission’s jurisdictional reach insofar as the facts alleged are concerned.

10 On November 24, 2009, PSE responded to Staff’s motion, stating that it does not object to an order removing Salmon Shores as a respondent. PSE agrees with Staff that the Commission has no jurisdiction over Salmon Shores “because, to the best of PSE’s knowledge, Salmon Shores is not currently reselling electricity.”<sup>6</sup> PSE argues

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<sup>5</sup> Staff notes, with the caveat that it is not reaching any legal conclusions or providing any legal advice, that persons in Complainant Mr. Binkley’s position may have remedies under the Mobile Home Landlord-Tenant Act, RCW 59.20 (MHLTA), which states, in part, that a mobile home landlord “shall not: ... charge to any tenant a utility fee in excess of actual utility costs ...”. RCW 59.20.070(6). However, legal remedies available under the MHLTA are administered by the superior court, not the Commission. RCW 59.20.120 places venue in the district or superior court in which the mobile home is located. Mr. Binkley has pursued this matter with the Attorney General’s MHLTA office, but was dissatisfied with the results of his efforts, according to his Complaint in this proceeding.

<sup>6</sup> PSE Response ¶ 2.

that “[o]n the face of Mr. Binkley’s Complaint, the per-kWh utility charge Salmon Shores charges its tenants does *not* exceed PSE’s per kWh charge.”<sup>7</sup> PSE also states that the Electric Availability Charge (EAC) that Salmon Shores assesses its tenants on a per capita basis does no more than recover the RV park’s monthly costs of electricity. That is, the EAC covers the cost for electricity that Salmon Shores incurs for common usage (*e.g.*, park lighting and office operations).

- 11 PSE also states in its response that “Mr. Binkley has failed to state a claim against PSE and PSE will be moving for dismissal in the near future.”<sup>8</sup> PSE argues further that Mr. Binkley is not a PSE customer and has not shown “how PSE has violated any law, rule, regulation, Commission order or duty owed to him.”<sup>9</sup> PSE also relates that:

In response to Mr. Binkley’s informal complaints regarding Salmon Shores’ billing practices, PSE has diligently worked to educate Salmon Shores regarding its tenant billings. Salmon Shores has thus far cooperated with PSE to revise its method of billing tenants so that it is no longer reselling electricity – thereby avoiding a disconnection of service, which would have resulted in no electric service for any of its tenants, including Mr. Binkley.<sup>10</sup>

- 12 Mr. Binkley responded to Staff’s motion and PSE’s response on November 25, 2009. Mr. Binkley first provides his perspective concerning his efforts to pursue this matter via the Commission’s informal complaint process. He then relates his perspective concerning his efforts to pursue his concerns over Salmon Shores’ billing practices via the Manufactured Housing Dispute Resolution Program (MHDRP), pursuant to RCW 59.30.040, the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA). It appears from Mr. Binkley’s discussions of these efforts that he was dissatisfied with the processes at the Commission and the MHDRP, and the results he obtained.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ¶ 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

13 Mr. Binkley next discusses PSE's response to Staff's motion for an order removing Salmon Shores as a respondent. He states:

PSE argues that they have not violated any law, rule, regulation, Commission order or duty to the Complainant, yet the record clearly shows that they lied to the Commission about Salmon Shores going to a flat rate billing system in order to manipulate the Commission into closing the Complainant's informal complaint.<sup>11</sup>

14 Turning to PSE's statement that it would move shortly to dismiss his complaint, Mr. Binkley argues that Staff's motion concerns only the question "whether Salmon Shores should [be] removed as a respondent."<sup>12</sup> Mr. Binkley argues: "Future motions filed by PSE should be considered in the future on their own merit. Such arguments are irrelevant to the Motion now being heard."<sup>13</sup>

15 In the last three paragraphs of his response, Mr. Binkley addresses the merits of Staff's motion. Mr. Binkley acknowledges that he is not a PSE customer. He argues, however, that Salmon Shores "is our power company, not PSE." Mr. Binkley says it is for the Commission to determine "whether Salmon Shores is operating now or in the past without approval or authority."<sup>14</sup> In other words, Mr. Binkley wants the Commission to conduct what is commonly referred to as a "classification" proceeding under RCW 80.04.015.

16 The Commission heard argument concerning Staff's motion during the prehearing conference conducted on December 3, 2009. On the basis of this argument, the presiding Administrative Law Judge urged the parties to attempt to resolve their dispute via mediation, using a Commission mediator. On February 9, 2010, the Commission-appointed mediator gave notice that the mediation effort was not successful.<sup>15</sup>

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<sup>11</sup> The record does not support either Mr. Binkley's allegation of prevarication or his speculation regarding motivation.

<sup>12</sup> Binkley Response at 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *See supra* fn. 3.

17 On April 12, 2010, the Commission issued a notice establishing a schedule for parties to file any potentially dispositive motions and responses. On April 13, 2010, PSE filed its Motion for Summary Determination. On April 28, 2010, Staff filed its Motion to Dismiss Complaint as to Salmon Shores RV Park. On May 3, 2010, Salmon Shores filed its Motion for an Order Dismissing Salmon Shores RV Park as a Respondent. On May 19, 2010, the Commission accepted for filing the following:

- PSE's Response to Staff's Motion to Dismiss Complaint as to Salmon Shores RV Park.
- PSE's Response to Salmon Shores' Motion for an Order Dismissing Salmon Shores RV Park as a Respondent.
- Commission Staff's Response to Salmon Shores' Motion for an Order Dismissing Salmon Shores RV Park as a Respondent.

Finally, on May 24, 2010, Staff filed its Response to PSE's Motion for Summary Determination.

18 Complainant, Mr. Binkley, did not file a response to PSE's Motion for Summary Determination, Staff's Motion to Dismiss Complaint as to Salmon Shores RV Park, or Salmon Shores' Motion for and Order Dismissing Salmon Shores RV Park as a Respondent by the deadline date of May 24, 2010, established by the Commission's notice issued on April 12, 2010.

## II. Discussion and Determinations

19 Mr. Binkley's principal allegation is that his landlord, Salmon Shores, "has been stealing money from [its] tenants by overcharging for electrical usage."<sup>16</sup> Although the determination in this Order is that Salmon Shores has not overcharged its tenants, Mr. Binkley's perspective on the matter is easily understood because of PSE's practice in interpreting its own tariff in a manner that is at odds with underlying law and policy. PSE's electric Tariff G provides in section 5 of Schedule 80 that

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<sup>16</sup> Complaint at 2, final paragraph.

"[s]ervice shall not be resold unless specifically authorized in the applicable rate schedule." Salmon Shores is a customer of PSE receiving electricity under Schedules 7, 24 and 25. None of the applicable rate schedules authorize a customer to resell service.<sup>17</sup> PSE states in its Motion for Summary Determination that it:

Has historically defined reselling as occurring when a landlord who is PSE's customer charges its tenants on a per-kWh basis for electricity and the per-kWh rate used by the landlord is greater than PSE's rate to the landlord. Where a landlord recovers some or all of [its] costs relating to providing electric service to tenants on a basis other than on a per-kWh basis, service is not considered as being resold, even if the practice results in charges to tenants that amount to a total greater than PSE's bill to the landlord.<sup>18</sup>

PSE's interpretation of what it means to "resell" electricity in violation of its tariff, while perhaps useful in some contexts, fails to capture fully the underlying legal and policy rationales that explain why such reselling is not allowed. This may be explained by the fact that the term "resold" in Schedule 80 has not previously been subjected to close analysis from a legal or policy perspective.

20 The Commission's fundamental responsibility is to:

Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.<sup>19</sup>

The Commission's jurisdiction, as relevant here, is over "public service compan[ies]," including "electrical compan[ies]."<sup>20</sup> Electrical companies, again as relevant here, include businesses "owning, operating or managing any electric plant for hire within

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<sup>17</sup> See PSE Motion for Summary Determination ¶ 3 (citing Declaration of Lynn Logen ("Logen Declaration") at ¶¶ 2 – 4 and Exhibits A – D).

<sup>18</sup> PSE Motion for Summary Determination ¶ 4 (citing Logen Declaration ¶ 5).

<sup>19</sup> RCW 80.01.040(3) – General powers and duties of commission.

<sup>20</sup> RCW 80.04.010 – Definitions.



this state.”<sup>21</sup> Putting the formal statutory language in plain terms, the Commission’s relevant regulatory authority is over private businesses that sell, or resell, electricity for a profit.

- 21 Viewed in this context, PSE’s interpretation of what it means to resell electricity in violation of the Company’s tariff is correct only in limited circumstances that are not, in point of fact, the circumstances before us in this case. Moreover, PSE’s interpretation is misplaced insofar as it implies a landlord customer can charge more to its tenants for electricity, in the aggregate, than the landlord pays to PSE.
- 22 The central question for the Commission is whether Salmon Shores has resold, or is reselling, electricity to its tenants for more than PSE has charged Salmon Shores. The answer is no. Although Salmon Shores’ billing method arguably can be said to have been in technical violation of PSE’s tariff at the time Mr. Binkley first complained informally to the Commission of his landlord’s billing practices, the landlord has cooperated with PSE to conform its billing practices to what the Company finds acceptable. We discuss this in more detail below. Most important, though, is the fact that Salmon Shores has done no more than recover from its tenants its actual costs of electricity, purchased on their behalf through one or more master meters.
- 23 At the time of the Commission’s initial involvement in this matter, Salmon Shores presented bills to its tenants stated in terms of a rate per kilowatt hour (kWh) multiplied by the number of kWhs registered on individual meters maintained by the RV park at each tenant’s RV site. Salmon Shores determined the unit rate each month by first subtracting from its total charges from PSE costs it attributed to consumption at the park’s office, in common facilities or in connection with park maintenance. It then divided the balance by the total kWh reflected by the tenants’ meters. Because the numerator in this equation included the costs not just of metered power consumed by the tenants for their individual use, but also power consumed at the park for common uses such as park lighting and the park office, the per-kWh rate, in fact, exceeded the rates shown on the various tariffs under which Salmon Shores purchased power from PSE. This is what understandably caused Mr. Binkley to believe Salmon Shores was overcharging him, led him to complain informally to the

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<sup>21</sup> *Id.*

Commission, and prompted him to seek redress via the MHDRP. Salmon Shores, however, did not collect more from its tenants in the aggregate than it paid in total to PSE. In fact, in most months it was collecting somewhat less than the full amount.

24 PSE investigated the allegations in Mr. Binkley’s informal complaint and determined on the basis of the Company’s historic, but incorrect, interpretation of pertinent tariff language that Salmon Shores was indeed reselling electricity in violation of PSE’s tariff.<sup>22</sup> Again, as PSE states in its Motion for Summary Determination the Company “has historically defined reselling as occurring when a landlord who is PSE’s customer charges its tenants on a per-kWh basis for electricity and the per-kWh rate used by the landlord is greater than PSE’s rate to the landlord.”<sup>23</sup> Thus, under PSE’s interpretation of its tariffs, Salmon Shores was reselling electricity. PSE worked with Salmon Shores to cure this asserted violation of the Company’s tariff by revising the manner in which the landlord bills its tenants. According to PSE, “[t]o avoid disconnection, Salmon Shores cooperated with PSE to revise its method of billing tenants so that it was no longer reselling electricity as of April 2009.”<sup>24</sup>

25 Mr. Binkley does not agree with PSE that Salmon Shores is now in conformance with the Company’s tariffs even though the per-kWh rate Salmon Shores charges is less than or equal to the average rate per kWh that PSE charges the RV park. Mr. Binkley contends that the landlord’s imposition of an “electricity access charge” (EAC) based on the costs of electricity devoted to common use in the RV park results in overcharges to Mr. Binkley and other tenants. Mr. Binkley, however, presents no

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<sup>22</sup> See PSE Motion for Summary Determination ¶ 3 (citing Declaration of Lynn Logen (“Logen Declaration”) at ¶¶ 2 – 4 and Exhibits A – D).

<sup>23</sup> PSE Motion for Summary Determination ¶ 4 (citing Logen Declaration ¶ 5).

<sup>24</sup> *Id.* (citing Logen Declaration ¶¶ 6 – 11). In other words, PSE informed Salmon Shores when it learned of the arguably offending billing practices that it would disconnect service if Salmon Shores did not change its billing method to conform to the Company’s historical application of the tariff language prohibiting customers from reselling electricity. Considering this, and Salmon Shores cooperation with the Company, Mr. Binkley’s assertions that PSE has failed to enforce its tariffs are incorrect. We note, too, PSE’s argument that it “has no duty (or authority) to monitor or regulate Salmon Shores’ billing practices,” yet, “PSE has not idly sat by and allowed its tariff to be violated. Nor has PSE violated any law, regulation or rule.” Indeed, Mr. Binkley does not contend that PSE has violated any law, regulation or rule.

evidence to substantiate his claim. Indeed, the evidence he does present shows both that Salmon Shores' billing practices conform to PSE's interpretation of what its tariff requires and that Salmon Shores is not charging its tenants more than what the landlord is charged by PSE. As the Company states in its Motion for Summary Determination:

PSE has reviewed each of the bills that Mr. Binkley submitted as attachments 2 through 7 to his Complaint. Logen Declaration at ¶ 12. The rate per kWh on those bills and the average rate[s] charged to Salmon Shores by PSE [are] as follows:

4/1/09 bill - \$0.08717 per kWh --- [PSE rate = ] \$0.091568  
5/1/09 bill - \$0.08718 per kWh --- [PSE rate = ] \$0.088447  
6/1/09 bill - \$0.08717 per kWh --- [PSE rate = ] \$0.088322  
7/1/09 bill - \$0.08717 per kWh --- [PSE rate = ] \$0.089716  
8/1/09 bill - \$0.08717 per kWh --- [PSE rate = ] \$0.088515  
9/1/09 bill - \$0.06600 per kWh --- [PSE rate = ] \$0.088476

From the above, PSE concludes that Salmon Shores is not currently (as of September 1, 2009) illegally reselling electricity and is not in violation of PSE's tariff. *Logen Declaration at ¶ 13.* Salmon Shores' use of an EAC is likewise not in violation of PSE's tariff. Salmon Shores charges its tenants an EAC that is calculated by dividing the portion of their bill from PSE that remains after subtracting amounts charged to each tenant on a per-kWh basis, by the number of tenants. Allocation based on the number of tenants is not considered resale of electricity. *Logen Declaration at ¶ 5.*<sup>25</sup>

26 While not contending that Salmon Shores is overcharging its tenants relative to what the RV park pays PSE for electricity, Staff argues in this connection that:

The EAC is permissible if it charges on a per capita basis for common area usage of electricity. However, [the] EAC, as currently calculated by Salmon Shores, also charges for each tenant's individual metered usage on a per capita basis. Unless and until Salmon Shores eliminates the EAC or changes how it calculates the EAC, or recovers its

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<sup>25</sup> *Id.* ¶¶ 5 – 6.

electricity cost through rents, Salmon Shores is in technical violation of PSE's tariff.<sup>26</sup>

- 27 Staff discusses at length its concern that during at least some months, Salmon Shores has charged a per-kWh rate for its tenants' metered use that is less than the average rate PSE charges Salmon Shores. This results in what Staff calls "under billing" for metered use. According to Staff, any "under billed" amounts are added to the common usage charges that Salmon Shores uses to calculate the EAC. Staff expresses its concern that:

Salmon Shores collects more of that "under-billed" amount from a below average usage tenant than an above average usage tenant. For that below average usage tenant, that could calculate to a per-kWh rate higher than the "average" rate PSE calculated in this case, depending on the level of under-billing in a particular month, and the specific EAC calculation that month.<sup>27</sup>

Staff's concern is misplaced for two reasons. First, as discussed above, a per-kWh charge that is higher than what PSE's tariff reflects does not necessarily violate the underlying legal and policy rationales that prevent landlords from reselling electricity at a mark-up relative to PSE's tariff.

- 28 Second, Staff fails to explain why such a calculation should be made, or would be a matter of concern, considering that there is nothing in PSE's tariff requiring that Salmon Shores meter individual tenant's use and bill them according to that use. Nor is there any such requirement set forth by statute or rule. In fact, Salmon Shores could simply remove all individual meters from the RV park and recover its electricity costs by dividing its total monthly bill from PSE among its tenants on a per capita basis without regard to their individual levels of use.<sup>28</sup>

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<sup>26</sup> Commission Staff's Response to PSE's Motion for Summary Determination ¶ 4.

<sup>27</sup> *Id.* ¶ 26.

<sup>28</sup> We note again, however, the Commission's disagreement with PSE's interpretation of its tariff that would even allow the landlord to collect more than it is charged by PSE, so long as it does not state its bills in terms of a per-kWh charge. "Where a landlord recovers some or all of their costs relating to providing electric service to tenants on a basis other than on a per-kWh basis,

29 It is also difficult to square Staff's analysis and concern with its proposed alternative remedy of Salmon Shores electing to recover its electricity costs in the rents it charges its tenants.<sup>29</sup> Such an approach would lack any transparency at all. Tenants would have no idea how much their electric use cost them each month; low-use customers would effectively subsidize high-use customers; there would be no incentive to conserve. Even if Staff meant its proposal to be limited to recovery of the park's common costs, it is not possible to square this idea with the Commission's paramount interest in having tenants such as those at Salmon Shores not pay more for electric costs than what the landlord is charged by PSE.

30 In sum, the Commission determines that Salmon Shores has not, and is not, reselling electricity. It therefore is merely a PSE customer and not a public service company subject to the Commission's jurisdiction. Salmon Shores is currently in compliance with PSE's tariff, even under the Company's interpretation of the prohibition against customers reselling electricity. Salmon Shores, for these reasons, should be dismissed as a respondent.

31 The Commission also determines that Mr. Binkley's complaint should be dismissed as to PSE. The Company has not failed to enforce its tariff. Nor has it otherwise violated any law, rule or regulation.

32 There is a final point worth discussing in this Order. Staff argues that "[t]he issues in this case arise primarily because of the lack of clarity surrounding the term "resold" in PSE's tariff."<sup>30</sup> Staff urges the Commission to require PSE to file tariff revisions

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service is not considered as being resold, even if the practice results in charges to tenants that amount to a total greater than PSE's bill to the landlord." Logen Declaration ¶ 5.

<sup>29</sup> Consider, for example, that if Salmon Shores added to its rents an amount equal to its average monthly bill divided by the number of units it rents, there undoubtedly would be some months when the landlord's actual costs for electricity would be lower than the average amount. Using Staff's approach of translating the extra rent charge into a per-kWh rate for electricity would mean that Salmon Shores would be, in Staff's words, in technical violation of PSE's tariff. Commission Staff's Response to PSE's Motion for Summary Determination ¶ 4.

<sup>30</sup> Commission Staff's Response to PSE's Motion for Summary Determination ¶ 34.

defining the term “resold” in the Company’s tariff Schedule 80, Sheet 80b. Staff argues that “[t]his will provide the Commission a vehicle for consideration of the resale issue in a more comprehensive way.”<sup>31</sup>

33 As discussed above, there is nothing compelling about PSE’s interpretation of the term “resold.” The Commission interprets it differently considering, among other things, that there is no requirement for landlord tenants such as Salmon Shores to bill their tenants on the basis of metered use and per-kWh rates.<sup>32</sup> As stated at the outset, the Commission’s underlying policy concern is that landlord customers such as Salmon Shores not recover from their tenants any mark-up, or profit on, the amounts PSE charges the landlord under its tariffs.<sup>33</sup> PSE may wish to file revised tariff sheets that more clearly reflect this understanding of the underlying law and policy rationale discussed in this Order, but it is not appropriate to compel it to do so in the context of this proceeding. If Staff is concerned about this issue in a generic sense (*i.e.*, as a matter of industry practice), it would be more appropriate to initiate a form of proceeding such as an inquiry leading to an interpretive and policy statement, or even a rulemaking, so that broader perspectives can be brought to bear.

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<sup>31</sup> *Id.*

<sup>32</sup> Having said that, it is worthwhile to observe that the billing method Salmon Shores currently uses is superior to the method it previously used because it avoids any friction with PSE considering the Company’s interpretation of its tariff. In addition, Salmon Shores’ current billing method should eliminate confusion by tenants who might compare per-kWh rates under the Company’s tariffs to what they are charged by their landlord. Again, however, there is nothing requiring this specific billing method. It is worth emphasizing, though, that the more transparent the billing method, the less likely Salmon Shores will face again complaints such as this one.

<sup>33</sup> The challenges inherent in enforcing this policy are apparent. Indeed, this case illustrates the potential for perverse results under current regulation. Here, PSE considers Salmon Shores to have resold electricity in violation of PSE’s tariff because Salmon Shores stated per-kWh charges in its bills to tenants that were higher than those allowed under PSE’s tariff even though the landlord was not attempting to recover more than its actual costs. Yet, PSE apparently would be unconcerned if Salmon Shores had simply removed or ignored individual customer’s meters and billed a flat rate to its tenants that resulted in recovery of more than Salmon Shores’ actual costs. *See, supra*, ¶ 19.

**FINDINGS OF FACT**

34 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

35 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical and gas companies.

36 (2) Puget Sound Energy, Inc., (PSE) is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

37 (3) Salmon Shores RV Park is not conducting, and has not conducted business subject to the Commission’s jurisdiction. It is not a “public service company” or an “electrical company” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW.

38 (4) PSE has taken all appropriate measures to ensure that its customer, Salmon Shores RV Park, has not resold electricity obtained from PSE in violation of PSE’s tariffs that do not allow customers to resell electricity.

**CONCLUSIONS OF LAW**

39 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 40 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 41 (2) The Commission's jurisdiction over Salmon Shores RV Park is limited to the determination that it is not conducting, and has not conducted, business subject to the Commission's regulatory authority.
- 42 (3) PSE has neither failed to enforce its tariffs nor otherwise failed to act fully in accordance with all pertinent requirements of law, rule and regulation.

**ORDER**

THE COMMISSION ORDERS THAT:

- 43 (1) Salmon Shores RV Park is dismissed as a respondent to the complaint in this proceeding.
- 44 (2) The complaint in this proceeding is dismissed as to Puget Sound Energy, Inc. for failure to state a claim upon which relief can be granted.

Dated at Olympia, Washington, and effective June 2, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge



## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

In addition, WAC 480-07-450(2) provides that a party who is found in default may contest the order of default by filing a written motion with the Commission within ten days after service of the Final Order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

**DOCKET UE-091531**  
**ORDER 02**

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Attn: David Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
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1300 S Evergreen Park Drive, SW  
Olympia, WA 98504-7250