

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KENNETH L. BINKLEY,  
Complainant,

v.

PUGET SOUND ENERGY, INC. and  
SALMON SHORES RV PARK,  
Respondents.

NO. UE-091531

PSE ANSWER TO COMMISSION  
STAFF'S PETITION FOR  
ADMINISTRATIVE REVIEW

**I. INTRODUCTION**

1. Puget Sound Energy ("PSE") submits this Answer to Commission Staff's Petition for Administrative Review ("Petition") pursuant to WAC 480-07-825(4). Commission Staff's Petition addresses two issues: "(1) the basis for Commission jurisdiction over entities that sell electricity, such as Salmon Shores RV Park ("Salmon Shores"); and (2) the 'rent inclusion' issue, i.e., whether a PSE customer/landlord may recover its electricity costs through the rent it charges its tenants, without violating PSE's resale prohibition."<sup>1</sup>
2. In general, PSE believes that Commission Staff's proposed modifications are unnecessary. Commission Staff and PSE agree with the ultimate outcome of the case—dismissal of the complaint against PSE and Salmon Shores. This case is not the appropriate vehicle for addressing issues of first impression or establishing wide-ranging policy on issues

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<sup>1</sup> Petition at paragraph 4.

relating to resale and Commission jurisdiction. Such determinations are better suited to rulemakings or adjudicative proceedings where the parties are fully engaged and a complete briefing of the issues occurs. In this case, the primary party seeking Commission jurisdiction over Salmon Shores did not file responses to the several motions to dismiss and for summary determination.<sup>2</sup> Accordingly, PSE requests that the Commission adopt the Initial Order and limit the precedential value to the facts presented.

## II. ANSWER

### A. Commission Jurisdiction

3. Commission Staff's request that the Commission amend the Initial Order's jurisdictional analysis in Paragraph 20, Paragraph 30 and Finding of Fact No. 3 is unnecessary and should be denied. As noted in Paragraph 20 of the Initial Order, the Commission is authorized and required 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 consumption.<sup>3</sup>

4. The Initial Order's determination that Salmon Shores is not reselling electricity and therefore is merely a PSE customer and not a public service company subject to the Commission's jurisdiction<sup>4</sup> is consistent with the grant of authority to the Commission set

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<sup>2</sup> The issues were never briefed by Complainant Kenneth Binkley. See Initial Order ¶ 18 (noting Complainant Mr. Binkley did not file response to PSE's motion for summary determination or Commission Staff and Salmon Shores motions to dismiss).

<sup>3</sup> RCW 80.01.040(3).

<sup>4</sup> Initial Order at ¶ 30.

forth in RCW 80.01.040(3), RCW 80.04.015<sup>5</sup> and the definitions of "electrical company" and "public service company" set forth in RCW 80.04.010.

5. Similarly, there is no error in the Commission's Finding of Fact No. 3 which states as follows:

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.<sup>6</sup>

6. Because Salmon Shores is not reselling electricity, it is not subject to the Commission's jurisdiction. Further, it is not an electrical company or a public service company under RCW 80.04.010. It is not necessary to delve into the "devotion to public use test" as Commission Staff proposes, given the fact that Salmon Shores is not reselling electricity and therefore not conducting business subject to regulation by the Commission.

7. Further, PSE has concerns regarding the burden placed on regulated electrical companies if the Commission adopts Commission Staff's position that the Commission has no jurisdiction over private companies that resell electricity because they are not public service companies. Commission Staff would have PSE charged with policing its customers' billing practices when faced with claims that customers are reselling, but argues that the Commission should have no jurisdiction over such entities, even though WAC 480-100-108(5) prohibits the reselling of electricity (unless the resale is specifically authorized in the

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<sup>5</sup> RCW 80.04.015 grants the Commission jurisdiction to determine whether a person or corporation is conducting business subject to regulation under Title 80. *See* Conclusion of Law No. 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.").

<sup>6</sup> Initial Order ¶ 37.

utility's tariff). The Initial Order properly focuses Commission jurisdiction on whether a company is operating as an electrical company by reselling electricity for a profit. The Commission should reject Commission Staff's request to revise Paragraph 20, Paragraph 30 and Finding of Fact No. 3.

**B. "Rent Inclusion"**

8. PSE does not interpret Paragraph 29 of the Initial Order, to prohibit rent inclusion of electricity costs or rule that rent inclusion is resale. The language in this paragraph of the Initial Order appears to be dictum, which, as Commission Staff recognizes, has no bearing on the findings of fact or conclusions of law,<sup>7</sup> particularly in light of the undisputed fact that Salmon Shores was not including any charges for electricity in rent charges.

9. However, if the Commission elects to rule on this issue as requested by Commission Staff, PSE agrees that the Commission should rule that rent inclusion does not constitute reselling in violation of PSE's tariff or WAC 480-100-108(5). Where utilities are included in rent, PSE should not be placed in the untenable position of trying to determine what portion of the monthly rent is for electricity service in response to a complaint that a landlord is charging more to its tenants for electricity, in the aggregate, than the landlord pays to PSE.

10. PSE agrees the Commission should convene a rule making at a later date to define "resell" in a manner that can be consistently applied by utilities and the Commission, after seeking input from stakeholders. As discussed above, "resell" should be defined in a manner that does not place unreasonable burdens on PSE and other regulated utilities to monitor the

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<sup>7</sup>See Petition at ¶ 19.

billing practices of its customers and does not place unreasonable burdens on customers of utilities to prove they are not reselling.

11. Additionally, a rulemaking to define "resell" should consider policy implications associated with the definition. Paragraph 33 of the Initial Order states that 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. While PSE agrees with this concern, PSE believes an additional policy concern is to encourage, or at a minimum not discourage, the installation of submeters by such landlord customers to fairly allocate usage between tenants.

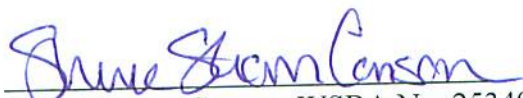
### III. CONCLUSION

12. For the above reasons, the Company respectfully requests this Commission adopt the Initial Order with the clarification that it has no precedential value beyond the facts presented in this case.

DATED: June 21, 2010.

**PERKINS COIE LLP**

By



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by email and U.S. Mail, postage prepaid to:

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Dated at Belleve, Washington, this 21st day of June, 2010.

  
Cynthia Main