

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

KENNETH L. BINKLEY,	)	DOCKET UE-091531
	)	
Complainant,	)	
	)	ORDER 03
v.	)	
	)	
SALMON SHORES RV PARK AND	)	FINAL ORDER GRANTING IN PART
PUGET SOUND ENERGY, INC.,	)	AND DENYING IN PART
	)	COMMISSION STAFF PETITION
Respondents.	)	FOR REVIEW OF ORDER 02
	)	
.....	)	

**BACKGROUND**

- 1 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 Company). The complaint alleged that Salmon Shores was reselling electricity at rates higher than authorized by PSE Tariff Schedule 24 E-C. On October 19, 2009, PSE filed an answer to the complaint. Salmon Shores did not file an answer to the complaint.
  
- 2 The parties filed dispositive motions and responses in May 2010 and, on June 2, 2010, Administrative Law Judge (ALJ) Dennis J. Moss issued Order 02, the Initial Order in this matter (Order 02), which determined that Mr. Binkley’s complaint should be dismissed as to both Salmon Shores and PSE. Order 02 held that Mr. Binkley failed to show that Salmon Shores had engaged in business that would subject it to the Commission’s jurisdiction. The Order also ruled that Mr. Binkley failed to state a claim against PSE upon which relief could be granted. In sum, Order 02 concluded that the facts established in this case did not show any violation by Salmon Shores or PSE of any law, rule or regulation, including the requirements of PSE’s tariffs.

- 3 On June 10, 2010, Commission Staff filed a timely petition for administrative review of specified portions of Order 02. Staff does not challenge the ultimate decision in Order 02 but seeks review of the provisions in the order regarding the basis for determining the Commission’s jurisdiction over entities that sell electricity. Staff also takes issue with the discussion in paragraph 29 of Order 02 on whether a PSE customer may recover its electricity costs through the rent it charges its tenants (“rent inclusion”). By its petition, Commission Staff seeks modifications to four separate paragraphs of Order 02.
- 4 On June 21, 2010, PSE filed its answer to Staff’s petition. PSE explains that, like Staff, the Company agrees with the ultimate outcome of Order 02. PSE contends that Commission Staff’s proposed modifications to that Order are unnecessary and represent an inappropriate attempt to establish precedent on broad-reaching issues not fully addressed within the specific factual limitations of the present case.

### **DECISION**

- 5 The Initial Order contains an excellent recitation of this matter’s background and procedural history that we adopt as our own. Order 02, ¶¶ 7 to 18. We agree with the ALJ that the facts in this case do not demonstrate any violation by Salmon Shores or PSE of any law, rule or regulation, including the requirements of PSE’s tariffs. Even so, in light of Commission Staff’s petition for administrative review, we make two minor substantive changes and one *pro forma* modification to Order 02.
- 6 Mr. Binkley’s formal complaint specifically alleges that PSE failed to stop Salmon Shores RV Park from illegally re-selling electricity at rates higher than authorized by Schedule 24E-C of PSE’s tariff. No party seeks review of the determination in Order 02 that the complaint should be dismissed because Salmon Shores is not reselling electricity it purchases from PSE. Further, because both Commission Staff and PSE concur that Salmon Shores is not currently re-selling electricity, we need not reach the issue of Salmon Shores’ past practices in that regard. However, because a finding on Salmon Shores’ past practices is unnecessary, we grant Staff’s petition with regard to re-wording Finding of Fact No. 3 found at Order 02, ¶ 37.

- 7 Given the limitations of the factual record presented in this matter, we decline Commission Staff's request that we refine or alter Order 02's jurisdictional analysis by modifying paragraphs 20 and 30 of Order 02. However, we decline to formally adopt or endorse as Commission precedent the rationale used in Order 02 to determine agency jurisdiction. Nor do we establish in this Order the analysis to be used in future proceedings. We share Staff's concerns about the "for profit" focus of the analysis in Order 02, but we agree with PSE that "[t]his case is not the appropriate vehicle for addressing issues of first impression or establishing wide-ranging policy on issues relating to resale and Commission jurisdiction." PSE Answer ¶ 2.
- 8 Commission Staff's observations on Order 02's dictum regarding a landlord's potential "rent inclusion" policy for utilities is well taken. In many cases, rental charges are simply that: payment in exchange for a right to occupy a property. In some instances, some or all utilities are included in a rental charge, but in other cases the tenant is separately responsible for paying his or her utility bills. Individual circumstances and scenarios can and do vary widely. We can only conclude that flat rent that includes utilities does not amount to reselling electricity. Other situations can be more complicated. Mr. Binkley did not raise the "rent inclusion" issue in his complaint, and under the facts of the case it is not directly relevant. Therefore, we grant Commission Staff's petition on this point and will strike paragraph 29 from the Initial Order.
- 9 Finally, Commission Staff calls our attention to an oversight contained in Order 02, ¶ 5, reciting the party representatives appearing in this docket and stating that Stephen L. Young is appearing pro se on behalf of Salmon Shores. We agree with Staff that the Order should provide that Deric N. Young, attorney, represented Salmon Shores in this proceeding.

**ORDER**

THE COMMISSION ORDERS:

- 10 (1) Paragraph 5 of Order 02 is modified to state that Deric N. Young, attorney,  
represented Salmon Shores RV Park.
- 11 (2) Paragraph 29 of Order 02 is stricken.
- 12 (3) Paragraph 37, Finding of Fact (3) in Order 02, is modified to state that  
“Salmon Shores RV Park is not conducting 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.”
- 13 (4) All other provisions in Order 02 remain in effect for this matter but are  
deemed of no precedential value beyond the facts and circumstances of this  
case.

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- 14 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order and Order 02.

Dated at Olympia, Washington, and effective February 10, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**