

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

KENNETH L. BINKLEY,

Complainant,

v.

SALMON SHORES RV PARK AND
PUGET SOUND ENERGY, INC.,

Respondents.

DOCKET UE-091531

COMMISSION STAFF MOTION FOR
AN ORDER REMOVING SALMON
SHORES RV PARK AS A
RESPONDENT

1 Staff of the Washington Utilities and Transportation Commission (Staff) moves the Commission for an order removing Salmon Shores RV Park as a Respondent because the Commission does not have jurisdiction over a customer of a public service company.

I. BACKGROUND

2 Prior to the filing of the Consumer Complaint,¹ the Consumer Protection Staff of the Washington Utilities and Transportation Commission (UTC) worked informally with Puget Sound Energy Company (PSE), Salmon Shores RV Park and Complainant Mr. Binkley on the general problem identified in the Consumer Complaint.² However, the Complainant has elected to file a formal complaint, and the UTC should now address the scope of its own jurisdiction.

3 Staff is filing this motion now to give Complainant Mr. Binkley and Respondent PSE time to consider the issue before the prehearing conference. As a procedural matter,

¹ Consumer Complaint (undated, but received September 14, 2009).

² Representatives from the Washington State Attorney General's Office's (AGO) Manufactured Housing Dispute Resolution Program were also involved in these discussions. Pursuant to RCW 59.30.030 and .040, the AGO administers a dispute resolution program involving mobile home park landlords and their tenants.

Staff requests that the UTC set this Motion for argument at the currently-scheduled December 3, 2009, prehearing conference, and set a prior date for parties to file responses.

III. FACTS³

4 The Consumer Complaint names both PSE and Salmon Shores RV Park as Respondents. As to Salmon Shores RV Park, in essence, the complaint alleges that Salmon Shores RV Park is “overcharging for electrical usage.”⁴

IV. DISCUSSION

A. The UTC should remove Salmon Shores RV Park as a respondent because the UTC has no jurisdiction over Salmon Shores RV Park

5 For purposes of this docket, Salmon Shores RV Park is a customer of PSE. Salmon Shores RV Park is not a public service company; it does not have electric service tariffs on file with the UTC,⁵ and nothing in the Consumer Complaint suggests the UTC regulates Salmon Shores RV Park as a public service company.⁶

6 By its terms, the UTC’s complaint statute⁷ applies to complaints against a public service company such as PSE, not a customer of a public service company.⁸ This is consistent with the UTC’s general jurisdiction, which is over public service companies, not the customers of public service companies.⁹

³ For purposes of this motion, Staff assumes the facts stated in the Consumer Complaint are true. If this matter is litigated, many of those facts, or the interpretation of those facts, may be contested.

⁴ Consumer Complaint at 2, last paragraph, second sentence.

⁵ Attachment A to this Motion, Declaration of Lisa Wyse, at 2, ¶5.

⁶ This is not to say that a person other than a public service company may violate a UTC statute or order with impunity, because by statute, such violators are “guilty of a gross misdemeanor.” RCW 80.04.390, last sentence. But, that is a matter for the superior court and the county prosecutor, because the UTC has no criminal jurisdiction. As article 4, section 6 of the state constitution states (in pertinent part): “The superior court shall have original jurisdiction in ... all cases of misdemeanor not otherwise provided by law ...”.

⁷ RCW 80.04.110.

⁸ If the customer is a public service company, RCW 80.04.110 would apply.

⁹ RCW 80.01.040.

7 Consequently, the UTC should issue an order removing Salmon Shores RV Park as a respondent in this matter.¹⁰

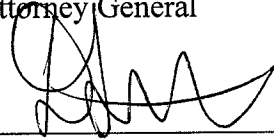
VI. CONCLUSIONS

8 The Washington Utilities and Transportation Commission (UTC) should set the foregoing motion for argument at the currently-scheduled December 3, 2009, prehearing conference, and set a prior date for responses. After receiving responses from the parties, and oral argument, if any, the UTC should issue an order removing Salmon Shores RV Park as a Respondent.

DATED this 9th day of November, 2009.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General



DONALD T. TROTTER
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

¹⁰ Without reaching any legal conclusions or providing any legal advice, Staff observes 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 UTC. (*I.e.*, RCW 59.20.120 places venue in the district or superior court in which the mobile home is located). Remedies available under the MHLTA are directly against the landlord and/or the tenant, as the case may be; entities such as the UTC and PSE do not figure in.

The foregoing observation that MHLTA remedies may be available assumes Salmon Shores RV Park is a "mobile home landlord" and that it is charging or has charged a "tenant" "a utility fee in excess of actual utility costs," as those terms or phrases are used in the MHLTA. Those factors, and perhaps others, would need to be established for there to be a remedy under the MHLTA. Again, those would be issues before the court in a HMLTA enforcement action, and not before the UTC.