

P.O. Box 2213
Olympia, WA
25 November 2009

VIA HAND DELIVERY & EMAIL

David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 Evergreen Park Drive, SW
Olympia, WA 98504

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STATE OF WASH.
UTILITY TRADES
COMMISSION

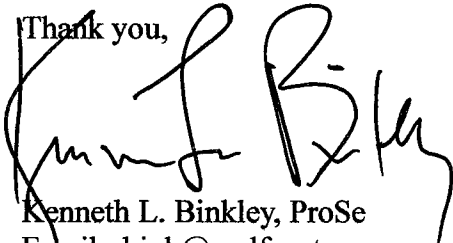
Re: Docket No. UE-091531

Dear Mr. Danner:

Enclosed please find the original copy of the Response to Commission Staff Motion for an Order Removing Salmon Shores RV Park as a Respondent by Kenneth L. Binkley, ProSe. A certificate of service is included with the Response. An electronic copy will be emailed to all parties of record and records@wutc.wa.gov.

If you have any questions, please contact Kenneth L. Binkley at 253-777-5209.

Thank you,



Kenneth L. Binkley, ProSe
Email: bink@wolfenet.com

CERTIFICATE OF SERVICE

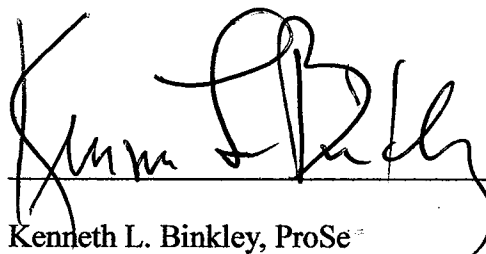
I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by emailing, personal service and mailing with postage prepaid to:

Donald T. Trotter
Assistant Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128
Phone: 360-664-1183
Email: Dtrotter@utc.wa.gov

Salmon Shores RV Park
Attention: Manager
5446 Black Lake Blvd SW
Olympia, WA 98512
Phone: 360-357-8618
Email: manager@salmonshores.us

Gina S. Warren
Sheree Strom Carson
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Telephone: 425-635-1400
Email: Gwarren@perkinscoie.com
scarson@perkinscoie.com

Dated at Olympia, Washington, this 25th day of November, 2009.



Kenneth L. Binkley, ProSe[®]

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

KENNETH L. BINKLEY)	DOCKET UE-091531
)	
Complainant,)	RESPONSE TO COMMISSION STAFF
)	MOTION FOR AN ORDER REMOVING
)	SALMON SHORES RV PARK AS A
)	RESPONDENT
v)	
)	
SALMON SHORES RV PARK)	
AND PUGET SOUND ENERGY,)	
INC.,)	
)	
<u>Respondents.</u>)	

Complainant, Kenneth L. Binkley, responding to the Commission Staff Motion For An Order Removing Salmon Shores RV Park as a Respondent in this complaint.

I. BACKGROUND

On April 2, 2008, the Complainant filed an informal complaint with Mr. John Cupp concerning Salmon Shores RV Park selling electricity to its tenants at the rate of 16 cents per kwh since about January 2007. On April 4, 2008, Puget Sound Energy sent a letter to Salmon Shores RV Park informing them that they had to stop reselling electricity to their tenants at 16 cents per kwh or that they would be subject to regulation by the UTC. On the same date, PSE informed Mr. Cupp that if Salmon Shores continued to over-charge their tenants PSE would petition the Commission to disconnect their power.

On May 9, 2008, the Complainant notified Salmon Shores that he would no longer pay for electricity at 16 cents per kwh, but would pay the rate the PSE charged them for electricity. Also, on May 9, 2008, PSE informed Mr. Cupp that Salmon Shores was incorrectly billing their tenants. On June 20, 2008, PSE informed Mr. Cupp that Salmon Shores was going to a flat-rate billing system not based on kwh for their tenants and that they “no longer have a problem”. Shortly after that date, the UTC closed the informal complaint without informing the Complainant.

On February 14, 2009, Salmon Shores served the Complainant with a Ten Day Electricity Cut Off Notice demanding payment for the electricity billed at a rate higher than what PSE charged them. On February 17, 2009, the Complainant discovered that the UTC had closed the informal complaint based upon PSE's false claim that Salmon Shores was now charging a flat rate not based upon kwh. On February 24, 2009, the UTC's Mr. Cupp notified the Complainant that Salmon Shores would not cut off his electricity; that he would ask Salmon Shores to have Salmon Shores give the Complainant credit for any charges over what PSE charges them; that he would address Salmon Shores' billing practices and that he then “consider the matter resolved and closed.”

II. DISCUSSION

On May 11 2008, the Complainant filed a complaint concerning, among other issues, the illegal re-selling of electricity against Salmon Shores with the Manufactured Housing Dispute Resolution Program (MHDRP), pursuant to provisions of RCW 59.30.040, the Manufactured/Mobile Home Landlord- Tenant Act (MHTLA). On June 23, 2008, the MHDRP notified the Complainant that they would attempt mediation with Salmon Shores RV Park. On September 19, 2008, the MHDRP notified the Complainant that their mediation efforts with Salmon Shores had failed and they had officially opened an investigation regarding the Complainant's complaint. During November and early December 2008, the MHDRP's investigator, Rich LaMonica, conducted his investigation. In late December 2008, Mr. LaMonica completed the investigation and issued his findings. The actual date is unknown to the Complainant since the MHDRP failed to notify the Complainant of the investigation's findings.

In early January, 2009, the MHDRP's Assistant Attorney General, without the Complainant's knowledge or consent, entered into ex parte negotiations with Salmon Shores' attorney on a "Settlement Agreement in Lieu of Notice of Violation." Apparently, the terms of that "Settlement Agreement" between the parties were so favorable to Salmon Shores that it resulted in Salmon Shores' February 14, 2009 "Ten Day Electricity Cut Off Notice" issued against the Complainant. The Complainant requested a copy of that "agreement", but the MHDRP refused provided a copy to the Complainant.

In April 2009, when Salmon Shores, per PSE's diligent education efforts, began billing its tenants a Public Use Fee called the "Electricity Access Charge" (EAC), the Complainant complained to the MHDRP about the EAC. The MHDRP refused to address the issue.

On June 6, 2009, the Complainant contacted the MHDRP's program director, Cathy Caldwell, requesting a status report on his complaint. Ms. Caldwell, notified the Complainant that a second ex parte "Settlement Agreement in Lieu of Notice of Violation" had been negotiated between her office and Salmon Shores' attorney. (Attachment A.) Only after repeated requests, did Ms. Caldwell provide the Complainant with a copy of said "agreement". Over the next few weeks, Ms. Caldwell, via email and telephone calls, made repeated demands that the Complainant sign said "agreement". By late August, Ms. Caldwell was encouraging Salmon Shores to threaten to disconnect the Complainant's electricity. (Attachment B.)

The Complainant believes that the MHDRP's AAG does not represent the Complainant and therefore cannot "negotiate" any "Settlement Agreement in Lieu of Notice of Violation" with Salmon Shores without the Complainant's involvement. Apparently, since the Complainant refuses to sign that "Settlement Agreement", the MHDRP is refusing to issue their Notice of Violation against Salmon Shores.

III. ARGUMENT

PSE's Response to this motion is that they have no objection to an order removing Salmon Shores as a respondent in this complaint. 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

PSE's Response to this Motion also refers to their intent in the "near future" to move to dismiss this Complaint and argues that the grounds for such dismissal is that the Complainant is not a customer of PSE. This motion concerns whether Salmon Shores should be removed as a respondent. 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.

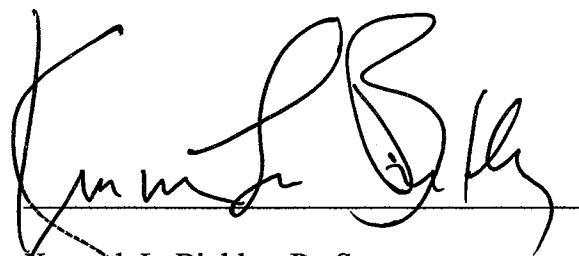
However, it is true that the Complainant is not a customer of PSE. The Complainant and his fellow tenants are consumers of electricity provided to us by Salmon Shores RV Park. Our electricity is metered by Salmon Shores through meters owned by Salmon Shores and each are read by Salmon Shores' "meter readers". Each month, Salmon Shores bills us for the metered electrical usage used in our homes. Each month, the customers of Salmon Shores also pay for the electricity used to provide us with water and sewer as a part of our monthly rent billing. Each month, the customers of Salmon Shores pay, in addition to our rent, a public use fee of \$16.00 to pay for electricity used in the common areas of the Park. The Complainant believes that while Salmon Shores has been stopped from double billing its tenants' metered electrical usage, the EAC is, in fact, a double billing of electricity paid by the tenants for their water, sewer and public use fee. It is a fact: Salmon Shores RV Park is our power company, not PSE.

It is a question of fact that needs to be determined by the Commission, whether Salmon Shores is operating now or in the past without approval or authority. It is established fact that Salmon Shores, for at least 18 months charged its customers at twice the tariff rate. They have collected tens of thousands of dollars from their tenants for electricity without approval or authority of the Commission. The EAC scheme is just another way for Salmon Shores to over charge its customers for electricity. The fact that Salmon Shores is not listed as public service company with the Commission is not grounds for their removal from this action. It only establishes further fact that they have been operating as a private Utility without approval of the Commission.

IV. CONCLUSION

The Staff Motion for An Order Removing Salmon Shores RV Park as a Respondent should not be granted without the Commission instituting a special proceeding requiring Salmon Shores to appear before the Commission, to produce evidence, documentation, and to give testimony under oath proving that their operations and acts are not subject to the jurisdiction of the Commission as provided by RCW 81.04.510, entitled "Engaging in business or operating without approval or authority- Procedure."

Dated: November 25, 2009.



Kenneth L. Binkley, ProSe



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle, WA 98104-3188

Manufactured Housing Dispute Resolution Program
•Consumer Protection Division•
1-866-924-6458

SETTLEMENT AGREEMENT IN LIEU OF NOTICE OF VIOLATION

Date: July 6, 2009

Complainant: Kenneth Binkley
5446 Black Lake Blvd. SW #33B
Olympia, WA 98512

Respondent: Salmon Shores RV Park
Attn: Steve Young
c/o John Woodring
2120 State Avenue NE, Suite 201
Olympia, WA 98506

RE: Complaint # 316894 – Kenneth Binkley

Pursuant to RCW 59.30.040, the Manufactured Housing Dispute Resolution Program has found there to be one or more VIOLATIONS of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) with regard to the above referenced complaint. **HOWEVER, in lieu of a Notice of Violation, the Complainant and Respondent hereby enter into the following Settlement Agreement.**

I. Introduction

- 1.1 The Complainant, Kenneth Binkley, filed a complaint with the Manufactured Housing Dispute Resolution Program (MHDRP) on May 11, 2008.
- 1.2 After an investigation, the MHDRP determined that sufficient evidence exists to issue a Notice of Violation as outlined below.

- 1.3 Salmon Shores RV Park (Respondent) denies that the Manufactured/Mobile Home Landlord Tenant Act applies to it as an RV park and further alleges that it is exempt from the Attorney General's authority under chapter 59.30, RCW.
- 1.4 However, both Complainant and Respondent desire to RESOLVE this matter by means of this Settlement Agreement. In so doing, the parties do not intend this Settlement Agreement to have any effect, evidentiary or otherwise, in any other separate proceeding in which the Complainant and Respondent are a party except as otherwise directed below.

II. Settlement Terms

- 2.1 This settlement agreement is entered into between Kenneth Binkley and Salmon Shores RV Park.
- 2.2 The parties agree that Kenneth Binkley complained and alleged that the following violations of the Manufactured/Mobile Home Landlord-Tenant Act occurred:
 - (a) 59.20.130(6)—Overcharging of Utilities. Mr. Binkley complained that Salmon Shores charged him \$0.16 per KWH of electricity when Puget Sound Energy charged the park approximately \$0.09 per KWH. Under RCW 59.20.130(6), this is a violation of the law.
- 2.3 By entering into this Settlement Agreement, Respondent admits no violations or liability under the Manufactured/Mobile Home Landlord-Tenant Act, (RCW 59.20). Respondent further admits no violations or liability under the Manufactured/Mobile Home Landlord-Tenant Act to any other tenant in Salmon Shores RV Park as a result of entering into this Settlement Agreement.

III. Actions Agreed Upon

- 3.1 The parties hereby settle this dispute and sign this Settlement Agreement to indicate their agreement that the following actions shall be taken by Salmon Shores RV Park and Kenneth Binkley:
 - (a) Salmon Shores RV Park shall reimburse to Kenneth Binkley the amount of \$121.11 representing a billing rate of an authorized \$0.08 per KWH rather than the previously charged \$0.16 per KWH. This shall be done within 15 days of the Program Manager's signing of this Settlement Agreement.
 - (b) Respondent agrees that all future utility billings will be handled by a third party but reserves the right to convert billing to in house and further agrees that it will not charge on per KWH basis instead using a per Unit Basis that cover all charges incurred by Salmon Shores tenants regarding utility billing. These charges include and are limited to the charges currently imposed by Puget Sound Energy and include yearly surcharges and administrative fees

that are allowed by law. Salmon Shores will at no time charge more than what is being billed to them for utility charges.

(c) Kenneth Binkley agrees to remain current on all bills payable to the park beginning on the date this agreement is signed by the Program Manager of the Manufactured Housing Dispute Resolution Program. Mr. Binkley is not required to pay any disputed utility bill amount incurred prior to May 2009.

3.2 This Settlement Agreement shall serve to resolve the matter in the Manufactured Housing Dispute Resolution Program unless the agreed upon actions are not taken within the indicated time.

IV. Compliance With This Agreement

4.1 If the parties fail to perform the agreed upon actions listed above within the allotted time, the MHDRP will issue an appropriate Notice of Violation. This Notice may be appealed pursuant to RCW 59.30.040.

Steve Young
Owner, Salmon Shores RV Park

Date

Kenneth Binkley, Complainant

Date

Approved and Entered into MHDRP Files,

Cathie Caldwell, Program Manager

Date

Subject: Re: Salmon Shores' Latest Threat to Cutoff Power
From: Ken Binkley <bink@wolfenet.com>
Date: Mon, 24 Aug 2009 14:50:20 -0700
To: "Caldwell, Cathie (ATG)" <CathieC@ATG.WA.GOV>, "Bernstein, Jake (ATG)" <JasonB1@ATG.WA.GOV>
CC: "Cupp, John (UTC)" <JCupp@utc.wa.gov>, "Logen, Lynn" <lynn.logen@pse.com>, "Philips, Amanda (ATG)" <AmandaP3@ATG.WA.GOV>
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00800000
Message-ID: <4A930B1C.3000709@wolfenet.com>
User-Agent: Thunderbird 2.0.0.22 (Windows/20090605)
MIME-Version: 1.0
References: <4A9007EB.5060307@wolfenet.com>
<B26DEAE577D79B4DB0C0DC6B1973274FEA9B4B@atgmxsea2.atg.wa.lcl>
In-Reply-To: <B26DEAE577D79B4DB0C0DC6B1973274FEA9B4B@atgmxsea2.atg.wa.lcl>
Content-Type: text/plain; charset=ISO-8859-1; format=flowed
Content-Transfer-Encoding: 7bit

Caldwell, Cathie (ATG) wrote:

We will make contact with the management. Forgive my assumption but I would assume that your refusal to pay the EAC charge is why they are threatening to turn off your electricity?

Ms. Caldwell:

Personally, I do not believe that it is your job to make assumptions, so I have no forgiveness to offer you.

As I mentioned in my email to you on Wednesday, August 19, "I spoke with Mr. Bernstein, our Assistant Attorney General, about your difficulties regarding the EAC charge. He informed me that after careful review of the complaints brought by other Salmon Shores tenants in April and June of this year, this office has declined to open a formal investigation regarding the EAC charge because the Puget Sound Energy Tariff Specialist reported that no law had been broken. I understand that you disagree with this but unless you provide written documentation to the contrary we will not move this matter forward."

I am working on it and hope to have something for you by the end of the week, unless, of course, Salmon Shores cuts off my power. Mr. Cupp is again out of the office until August 25th.

But perhaps you could help, considering that I raised the EAC issue over four months ago and heard no response from your office until your email last week. Please have your Assistant Attorney General Jake Bernstein write to me and explain your legal reasoning.

You do need to remain current on your bill and pay the EAC charge. Is this the reason for the threat of turning off your electricity?

No. The reason is the same has last February's Threat to Cut Off my electricity. I am current on my bills, both rent and electricity, other than the disputed over charging of electricity that Salmon Shores continues to engage in.

Your office needs to remind Salmon Shores that such a power off is a clear violation of the MHLTA RCW 59.20.130 (6)- Protection and maintenance of utilities.

Your office needs to remind Salmon Shores that this MHLTA complaint is not resolved until it is resolved.

Thank you.

Ken Binkley, WISHA Whistle Blower, Pro Se

Attachment B