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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

KENNETH L. BINKLEY,)	
)	
Complainant,)	
)	
vs.)	DOCKET NO. UE-091531
)	Volume I
SALMON SHORES RV PARK AND)	Pages 1 - 42
PUGET SOUND ENERGY,)	
)	
Respondent.)	

A prehearing conference in the above matter was held on December 3, 2009, at 9:30 a.m., at 1300 South Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge DENNIS MOSS.

The parties were present as follows:

KENNETH L. BINKLEY, by KENNETH L. BINKLEY, 5446 Black Lake Boulevard Southwest, Space 33B, Olympia, Washington 98512; mailing address, Post Office Box 2213, Olympia, Washington 98507; telephone, (253) 777-5209.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by DONALD T. TROTTER, Assistant Attorney General, 1400 South Evergreen Park Drive Southwest, Post Office Box 40128, Olympia, Washington 98504; telephone, (360) 664-1189.

SALMON SHORES RV PARK, by STEVEN LEE YOUNG, Owner, 6918 Jericho Lane Southwest, Olympia, Washington 98512; telephone, (360) 239-1591.

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1 Court Reporter

2 PUGET SOUND ENERGY, INC., by SHEREE STROM

3 CARSON and GINA S. WARREN, Attorneys at Law, Perkins

4 Coie, 10885 Northeast Fourth Street, Suite 700,

5 Bellevue, Washington 98004; telephone, (425) 635-1422.

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1 P R O C E E D I N G S

2 JUDGE MOSS: Good morning, everyone. My name
3 is Dennis Moss. I'm an administrative law judge with
4 the Washington Utilities and Transportation Commission.
5 We are convened this morning in the matter styled
6 Kenneth L. Binkley versus Salmon Shores RV Park and
7 Puget Sound Energy, Inc., Docket UE-091531. This is a
8 formal complaint brought by Mr. Binkley against the
9 Respondents.

10 I have indicated the purpose of our gathering
11 this morning is to have our first prehearing conference
12 in this matter so we can discuss the case. We have a
13 pending motion that previously has been noticed for
14 oral argument this morning, and we will hear that, and
15 we will determine whatever process may be necessary to
16 bring this case to satisfactory conclusion.

17 So with that, the first order of business,
18 and Mr. Binkley, I recognize you are proceeding without
19 counsel; is that correct?

20 MR. BINKLEY: I'm pro se.

21 JUDGE MOSS: The first order of business in a
22 formal hearing, we take appearances from the parties,
23 so what I'm going to ask you to do is state for the
24 record your full name, and please spell your last name;
25 state your address, where you wish to receive any

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1 written communications in the case; give us your phone
2 number, if you have one; fax number, if you have one,
3 and an e-mail address, if you have one, where you can
4 be contacted during the course of the proceeding. So
5 I'll ask you to go first if you would, please.

6 MR. BINKLEY: Your Honor, my name is Kenneth
7 Lee Binkley, B-i-n-k-l-e-y. I reside at 5446 Black
8 Lake Boulevard, Space No. 33-B. I do not get my mail
9 there because it is intercepted by the landlord. My
10 mailing address is PO Box 2213, Olympia, 98507. My
11 phone number is (253) 777-5209. My e-mail address is
12 bink@wolfenet.com.

13 JUDGE MOSS: Thank you very much. Is Salmon
14 Shores represented this morning?

15 MR. YOUNG: Yes, Your Honor.

16 JUDGE MOSS: Please come forward. You can
17 sit by Mr. Trotter.

18 MR. YOUNG: My name is Steven Lee Young. I
19 reside at 6918 Jericho Lane Southwest, Olympia, 98512.
20 My phone number is (360) 239-1591 and my e-mail is
21 steveyoung@autocomcorp.com.

22 JUDGE MOSS: Mr. Young, in what capacity are
23 you appearing today.

24 MR. YOUNG: As the owner of the RV park.

25 JUDGE MOSS: Thank you very much, and our

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1 other respondent is PSE. Are you representing the
2 Company today, Ms. Carson?

3 MS. STROM CARSON: I am. Sheree Strom Carson
4 representing Puget Sound Energy. My address is 10885
5 Northeast Fourth Street, Suite 700, Bellevue,
6 Washington, 98004; phone, (425) 635-1400; fax, (425)
7 635-2400; e-mail, scarson@perkinscoie.com. Also
8 representing the Company is Gina Warren, and she has
9 the same phone number, address, and she will give you
10 her e-mail address.

11 MS. WARREN: Gina S. Warren, and my e-mail
12 address is gwarren@perkinscoie.com.

13 JUDGE MOSS: Thank you, Ms. Warren and
14 Ms. Carson. Mr. Trotter for the Staff?

15 MR. TROTTER: My name is Donald T. Trotter,
16 assistant attorney general representing the UTC staff.
17 My address is 1400 South Evergreen Park Drive
18 Southwest, PO Box 40128, Olympia, Washington,
19 98504-0128. My telephone number is (360) 664-1189. My
20 e-mail is dtrotter@utc.wa.gov, and the fax is (360)
21 586-5522.

22 JUDGE MOSS: Thank you very much. Is there
23 anyone else who wishes to enter an appearance today?
24 Hearing none, let's move on.

25 I have pending a motion from Staff to dismiss

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1 Salmon Shores RV Park as a respondent, and the
2 Commission previously gave notice providing an
3 opportunity for parties to respond in writing to that
4 motion, and both PSE and Mr. Binkley did respond in
5 writing to that motion, and I have that material and I
6 have read it.

7 The Commission also gave notice that we would
8 hear oral argument today concerning Staff's motion, and
9 with that, Mr. Trotter, do you wish to present any
10 argument on your motion this morning?

11 MR. TROTTER: Just briefly, Your Honor. The
12 Staff filed this motion because on the face of
13 Mr. Binkley's Complaint, Salmon Shores was simply a
14 customer of PSE. So under the complaint statute that
15 the Commission operates under, it contemplates
16 complaints against public service companies, not
17 customers. Obviously, Staff's motion has nothing to do
18 with PSE's conduct that Mr. Binkley is alleging, so I
19 think the Commission definitely has jurisdiction over
20 PSE.

21 We read Mr. Binkley's response, and on the
22 third page of that response in his conclusion, he
23 states that the motion should not be granted without
24 the Commission instituting a special proceeding to
25 classify Salmon Shores as subject to UTC jurisdiction,

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1 he cites RCW 80.04.510, which is a correct cite to the
2 Commission classification statute. I think Mr. Binkley
3 correctly recognizes that that statute is not
4 implemented by private parties but by the Commission
5 itself, but at this time, his complaint is not a
6 classification proceeding, and the Commission has not
7 instituted a classification proceeding as of today.

8 So if Mr. Binkley wishes to raise that issue,
9 the Commission could allow him to amend his complaint
10 to add a request that the Commission institute a
11 classification proceeding that would require notice to
12 Salmon Shores, who is here, so that might not be a
13 difficult problem, and then if Mr. Binkley during the
14 course of the hearing can provide a sufficient basis
15 for the Commission to initiate a classification
16 proceeding, the Commission could do so.

17 So in the end, based on the Complaint that
18 was filed, Staff believed its motion was appropriate,
19 and since that complaint still stands, we still believe
20 it is appropriate. However, if Mr. Binkley wishes to
21 add to his complaint to add a request that the
22 Commission institute a classification proceeding and if
23 he's interested in producing evidence on that score,
24 then Staff would not have an objection to that, but as
25 I said, on the face of the Complaint, that issue was

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1 not squarely before the Commission.

2 So we believe our motion is valid. If you
3 wish to hold it in abeyance pending further
4 developments on that classification issue, that might
5 be a wise course of action. I want none of my remarks
6 to suggest that Staff either favors or disfavors
7 classification of Salmon Shores. That is an issue that
8 would have to be developed.

9 JUDGE MOSS: Let me ask you a couple of
10 questions on that point. First of all, I want to be
11 clear on the record. The statute that you cited,
12 Mr. Binkley, is RCW 81.04.510, is not applicable here
13 because that statute applies to transportation
14 companies and we are talking about a utility matter.

15 There is, however, a corresponding statutory
16 provision in Chapter 80 which does cover utilities, and
17 that is 80.04.015. The language is quite similar if
18 not identical to the statute you cited, but I just want
19 to be clear on that point.

20 MR. TROTTER: I'll stand corrected on that,
21 Your Honor. I'm sorry.

22 JUDGE MOSS: That's all right. I know you
23 are familiar with both provisions, Mr. Trotter, so my
24 questions will not go astray. Pursuant to a special
25 proceeding for classification, I gather from reading

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1 your motion that the fundamental concern is the
2 Commission's jurisdiction that Salmon Shores RV Park is
3 a customer of PSE and not a public service company, and
4 as I reread the statutes this morning, I noticed that
5 electrical companies are public service companies, and
6 so I presume that the facts and the law would have to
7 be applied in such ways to find that Salmon Shores is
8 an electrical company in order for us to have
9 jurisdiction?

10 MR. TROTTER: That would seem to be the
11 theory, Your Honor. Of course, the statute on its face
12 has been interpreted by the courts in certain context,
13 so you can't just rely on the literal words of the
14 statute, but I believe that Mr. Binkley's theory would
15 be that Salmon Shores is an electrical company subject
16 to UTC regulation.

17 JUDGE MOSS: Would that be your theory,
18 Mr. Binkley?

19 MR. BINKLEY: Yes, it would be. Obviously,
20 PSE is -- I'm not a customer, and none of my neighbors
21 are customers of PSE, and that's why I came to the UTC
22 in the first place. PSE makes a good point that the
23 residents of Salmon Shores RV Park are not customers of
24 PSE, and our point is, and that's why I came to them
25 informally was that when they charge 16 cents a

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1 kilowatt hour, Salmon Shores owns the electrical
2 infrastructure that provides each of the tenants with
3 power. They have the meters. They read the meters.
4 They invoice. They threatened to cut off power. All
5 these proceedings are covered -- PSE is covered by that
6 under their charter as a public service company, and as
7 they point out, Salmon Shores is not a public service
8 company, and I do feel it is appropriate to have a
9 classification proceeding, and I do feel that that
10 should have been something that would have happened
11 over a year ago when the UTC was first notified of
12 this, and PSE notified Salmon Shores by writing that if
13 they wanted to charge more than the tariff rate to
14 their customers, they were acting as a reseller and
15 they had to be licensed as a public service company.
16 This is something that should have happened a long time
17 ago, and yes, I have no problem if that is what's going
18 to happen. If Mr. Young has the opportunity to come to
19 such a special proceeding and present his evidence, why
20 charging 16 cents an hour, and from what I've been able
21 to ascertain from talking to my neighbors, that went on
22 for almost a year and a half, and I would like to also
23 note that it would still be going on if I hadn't stood
24 up and said no, I'm not going to pay more than what the
25 UTC has authorized the electrical charge, and I believe

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1 that yeah, that is the best way to do that, but as the
2 Staff attorney pointed out, I have no means of doing
3 that. It is something that only the UTC can implement,
4 and if they do implement it and it actually does happen
5 and Mr. Young is required to present his documentation
6 as to why he's not a public service company, why he
7 shouldn't be a public service company, why he has a
8 right to charge 16 cents a kilowatt hour, or as the
9 subject that I brought up in this complaint primarily,
10 this electric access charge, which is a public use fee.
11 We already pay a public use fee, and that issue is
12 something that needs to be addressed also, because they
13 stopped charging 16 cents as soon as I said, No, I'm
14 not paying; although, they have been continuing to bill
15 me at a higher rate than that and I have continued to
16 refuse to pay anything above that, and I believe that
17 they have ruined my credit because of that.

18 So yeah, PSE, this proceeding, if PSE is the
19 main party, yes, there is still issues because PSE has
20 said they instructed Mr. Young and Salmon Shores on how
21 to implement this EAC charge, which is, like I said, a
22 second charge, and the way its structured is if that no
23 one is watching, the additional surcharge on a \$90
24 electric bill has been as high as \$39, and that's not
25 an administrative fee. That is illegal reselling of

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1 power, and the structure that PSE has taught Salmon
2 Shores on how to do that is such that we have to take
3 their word that they only use so much power, and they
4 get to take all the kilowatt hours that they say they
5 don't use and add them on top of the power that we do
6 use through their meters, without accounting the fact
7 that we pay for electricity besides through the meters,
8 we pay for electricity for the water as part of rent,
9 for the sewer, which is included as part of the rent.
10 There is other electrical charges.

11 I have tried from PSE to find out whether
12 Mr. Young's Black Lake Water Department, which is an
13 unregulated water company by virtue of the fact that
14 they are a manufactured home park, they don't have to
15 be licensed and regulated as the water company, but the
16 only expense of that water company is the electricity
17 used to run the pumps and supply the water pressure to
18 the tenants, and there has been nothing in the
19 information that we have gotten, and it's only been
20 myself and my fellow neighbor here, Mr. Cross, who has
21 been able to get that information, and we believe we
22 are paying more than once for the water also, and it's
23 a hidden charge. It's a scam.

24 JUDGE MOSS: Let's don't stray to far from
25 the electricity issue.

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1 MR. BINKLEY: It is the electricity issue.
2 If we pay for our electricity for water and sewage and
3 the power, there has to be some sort of billing for it,
4 some meter on that, and everything I've seen from the
5 EAC charge, they don't talk about the electrical energy
6 that they have to way pay for water and for sewage, and
7 it's like I say, according to our leases, we pay a
8 public use fee, which apparently is intended to cover
9 the cost of streetlights and such in the park, and even
10 that is a bit of an overkill considering they only have
11 one streetlight. They have two for their store and
12 their office that provides security for their store,
13 but in the park proper, there is only one streetlight,
14 and it's left up to the tenants such as me to pay for
15 any additional lighting for the public through my
16 meter.

17 I have security lights that light up my
18 little corner of the park that I pay for that through
19 the meter, and if the public use fee is to cover those
20 kind of charges, then we are paying twice for something
21 that we are really not getting value for, and --

22 JUDGE MOSS: I think there is a fair amount
23 of what you are saying, Mr. Binkley, that the
24 Commission is going to lack any jurisdiction to cure.
25 I understand you have some conflict with your landlord

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1 with respect to various charges or rents or whatever.
2 The only thing we even arguably have jurisdiction over
3 here is these electrical charges, and so what we are
4 going to be focusing on in this proceeding will be the
5 question of whether Salmon Shores is doing something
6 other than passing through to its tenants the cost of
7 electricity that is consumed on the premises of Salmon
8 Shores RV Park, and we will also hear from PSE with
9 respect to what its obligations are in this connection.

10 I've looked at the tariff a bit. The tariff
11 charges, of course, are not simple per kilowatt charges
12 that can just be looked at on the face of things. We
13 have to know how much electricity. We've got block
14 rates. We've got various sorts of base charges in
15 additional to the per-kilowatt-hour charges. As I
16 understand the situation, there is the electricity
17 consumed by the individual tenants, but there is also
18 electricity for common usage. I gather, Mr. Young,
19 there is some sort of an office on the premises or
20 something like that?

21 MR. YOUNG: Yes, Your Honor. There is an
22 office on the premise and lights around the park,
23 pumps, accessory usage.

24 JUDGE MOSS: I gather Mr. Trotter or
25 Ms. Carson could speak to this, but this commission

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1 would only have a concern here if there were facts to
2 show that Salmon Shores was, in fact, charging its
3 tenants more for electricity than it is being charged
4 by PSE. Is that essentially it?

5 MS. STROM CARSON: Yes, Your Honor, that's
6 essentially it. PSE has taken the position over the
7 past several decades that what is at issue here is
8 their improper reselling of electricity, and PSE has
9 taken the position that as long as a mobile home park
10 charges no more per kilowatt hour usage than PSE is
11 charging for kilowatt hour usage, then that's not
12 improper reselling of electricity.

13 So in this case, it's undisputed that in 2007
14 and 2008, that's what was happening was Salmon Shores
15 was charging more per kilowatt hour usage than PSE was
16 charging Salmon Shores. That was a problem. That
17 would be engaging in regulated activity that they are
18 not approved to do, and when PSE was notified of that,
19 PSE worked with Salmon Shores, educated Salmon Shores.
20 It took some time, but by 2009, Salmon Shores was
21 properly charging its customers per kilowatt hour
22 usage.

23 I think the issue here is does this
24 electricity availability charge that Salmon Shores now
25 charges, is that somehow continuing its practice of

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1 reselling electricity, and PSE believes it's not.
2 There are common areas that Salmon Shores tenants take
3 advantage of; for example, laundry and other areas,
4 where electricity is provided, and it is reasonable and
5 it has occurred in the past that RV parks, marinas,
6 apartment complexes, whatever, charge an additional
7 flat rate charge or some type of charge for this
8 additional electricity that is provided to its
9 customers for maintenance of meters, for billing,
10 dividing up among its tenants for the usage of
11 electricity, so it's not unreasonable for Salmon Shores
12 to do that, and that's not considered reselling
13 electricity.

14 I think it's also important to recognize that
15 there are issues here, it sounds like, between
16 Mr. Binkley and Salmon Shores, and there is a forum to
17 address these. There is the Mobile Home Manufactured
18 Home Park Act where many of these issues, perhaps all
19 of these issues can be raised, so it's not that
20 Mr. Binkley is without a proper forum to have these
21 issues addressed, but when we look at what Salmon
22 Shores is doing now, it's not improperly reselling
23 electricity, and because it is not engaging in activity
24 that is regulated by the Commission, there is really no
25 point for the Commission to undertake a classification

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1 hearing, and as I read the statute, 80.04.015, the
2 remedy would be to order Salmon Shores to cease and
3 desist, and it's PSE's position that Salmon Shores has
4 already done that, so there wouldn't be a lot of point
5 to going forward with such a proceeding.

6 JUDGE MOSS: Mr. Trotter?

7 MR. TROTTER: I think we've all been
8 discussing some of the facts that haven't been
9 established yet, and Mr. Binkley has some rights there,
10 but I see two related but really distinct issues, and
11 one is a tariff issue. Was the tariff violated,
12 because there was, as Ms. Carson incorrectly used the
13 term "improper reselling." It's all reselling, what's
14 proper and improper. Was there an improper reselling
15 under the tariff, and if so, what are the consequences
16 of that.

17 The second issue is was Salmon Shores acting
18 as a public service company or as a regulated utility,
19 and that's a much more complicated question because
20 under the court decisions, you have what are to be a
21 regulated utility you devote your property to the
22 public use and so on. So if a customer does charge a
23 submeter entity a rate higher than they are charged by
24 PSE, does that make that customer a public service
25 company, and I don't think it always does -- was there

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1 a tariff violation, and did the conduct, whatever it
2 was, result in Salmon Shores becoming a regulated
3 utility.

4 I think those are the distinct questions, but
5 they certainly have some facts in common.

6 MS. STROM CARSON: Your Honor, if I might
7 make just one more point that I meant to make earlier.
8 It seems like it makes sense to have some sort of a
9 bright-line rule in terms of when the Commission is
10 going to get involved in these cases because this
11 really can open the door to the Commission looking at
12 all charges for RV parks and marinas and apartment
13 complexes and determining if the charges are
14 reasonable, and I'm not sure that that's what the
15 legislature intended when talking about electric
16 companies and public service companies, so it seems
17 like it makes sense to have a bright-line rule that if
18 there is not a per-kilowatt-hour basis, a markup on the
19 electricity charges, then there is not improper
20 reselling of electricity.

21 JUDGE MOSS: Mr. Young, would you like to be
22 heard on the question of whether Salmon Shores should
23 be dismissed as a respondent in this proceeding?

24 MR. YOUNG: Your Honor, I'm not a utility
25 company. I'm not an electric company. I know

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1 Mr. Binkley has some issues about -- this is the first
2 time I've met him -- some issues, but I've never
3 charged more than what my electric bill is. I might
4 have figured how to do it wrong, but with PSE's help,
5 we've corrected that. Never charged more than what my
6 electric bill is to the customers.

7 JUDGE MOSS: It does appear to me that there
8 are a myriad of questions here, not just two. This is
9 a fairly complicated matter in some regards, and that
10 is one reason I'm allowing our conversation to be that,
11 a conversation, to be a little free-wheeling and a
12 little less formal than we might be in other
13 proceedings. Frankly, I'm trying to gain an
14 understanding of this matter myself. To the extent we
15 are departing from the norms of legal argument and so
16 forth, that's why I'm doing that.

17 There are a couple of matters here, trying to
18 boil this down and try to bring some clarity to the
19 situation. It seems to me that there are a couple of
20 questions here. One is billing and how things are
21 billed, and the other is how much, and I understand
22 what you've just said, and based on what I've seen in
23 terms of the papers that have been filed and looking at
24 the materials you submitted, Mr. Binkley, your bills
25 and so forth that were appended to your complaint, one

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1 of the questions is this per-kilowatt-hour charge, and
2 as I was saying a moment ago, when you look at these
3 tariffs -- this is the Company's tariff, part of it.
4 Actually, this is Schedule 7 I have here on the top,
5 and I also have copies of 7(a), which apparently does
6 not apply because parks are not four-story buildings.
7 We've got Schedule 24 here and Schedule 25, and those
8 in turn relate to Schedule 8. It's not all that
9 straightforward.

10 You can look at these tariff sheets or you
11 can go on the Commission's Web site and find summaries
12 of the charges that are applicable under these tariff
13 sheets, and you do find there statements of
14 per-kilowatt-hour charges, but what you also discover
15 there is it's not a simple, straightforward matter of
16 8.7 cents per kilowatt hour or something like that.
17 There are charges that change depending on the month of
18 the year. The charges depend in part on how much
19 electricity is consumed in total. There is one charge
20 for the first 600 kilowatts. I'm looking at Schedule 7
21 right now, which is residential services by way of
22 example. There is a charge here of 8.4 cents, but it
23 adds up to an energy charge of 8.5 cents for the first
24 600 kilowatts, and then it's a dollar three for over
25 600 kilowatts.

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1 To the extent you've got an electrical bill
2 under Schedule 7 as a residential customer of PSE, they
3 would break those out on individual lines, but if you
4 added it up and did the average cost, it would be
5 somewhere between 8.5 and 1.3 cents. So it's not a
6 simple, straightforward matter of looking at this and
7 saying, Oh, they are charging me 8.7 cents and this
8 only allows for 8.4.

9 There is also a basic charge under these
10 schedules, and you seem to be familiar with this, for
11 single-phase power, seven dollars a month under this
12 Schedule 7, for example. So one question is, Well, all
13 things considered, PSE says, Well, the way we look at
14 our tariffs and the way we look at this issue, and we
15 have a mobile park or something similar to that, we
16 say, well, the owner of the park or the owner of the
17 marina can charge its customers on a per-kilowatt-hour
18 basis, but it's not allowed to state that in the form
19 of a bill at a rate that is any higher than what is
20 stated for our per-kilowatt charge under the tariff.
21 Is that essentially correct, Ms. Carson?

22 MS. STROM CARSON: Yes.

23 JUDGE MOSS: That does not recognize the fact
24 that the actual cost, if you will, of the electricity
25 that PSE has provided to the individual customer

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1 through the owner of park is higher, can be higher. In
2 fact, it is by definition going to be higher than that
3 per kilowatt charge, isn't it?

4 MS. STROM CARSON: That's correct.

5 JUDGE MOSS: What I'm trying to get at here
6 Mr. Binkley and Mr. Young, for your benefits is that it
7 may be that if everybody could sit down, perhaps with
8 the assistance of a neutral, third party, what we call
9 a mediator, and add the facts and the figures in terms
10 of looking at the charges that were levied that we
11 could come to a better understanding of what's actually
12 going on here.

13 Mr. Young is saying, in the days of the 16
14 cents or something like that, he may have been doing it
15 wrong, but he since has been educated by his contacts
16 with PSE and is trying to do it right. In fact, in
17 looking at what you submitted with your complaint,
18 Mr. Binkley, it does look like the charges per kilowatt
19 hour are what the tariff provides, but Mr. Young has
20 indicated this morning that his goal and what he's
21 tried to do is simply pass through to the residents of
22 the park his cost of electricity, and the question is,
23 if he's being billed ten thousand dollars a month, is
24 he collecting ten thousand dollars a month from his
25 residents or is he collecting eleven thousand dollars?

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1 If he's collecting ten, putting aside the question of
2 how he bills it, then he's not reselling PSE
3 electricity at a profit, and therefore, as far as I can
4 tell based on the statutes as I understand them, he's
5 not breaking the law, so there would be nothing we
6 could do.

7 Then there is the question of the billing,
8 and as long as he's now billing properly, as long as
9 he's not overcharging you and is now properly billing
10 you, I'm not sure what we could do for you here.
11 That's the question on my mind is how we could provide
12 you any meaningful relief.

13 MR. BINKLEY: Part of what's going on here is
14 the fact that it appears that the tenants of the park
15 have no rights. PSE has taken a position since
16 Mr. Young is their customers, they owe the customers of
17 them. We don't have the protections that guarantee
18 that the meters that we get our power from are accurate
19 like a residential customer is there. There is no
20 transparency in the charges, the EAC charges. There is
21 no explanation. There is nothing posted in the park
22 about this is what the tariff is and we are not
23 charging this, and if there is any additional fees
24 that -- PSE mentioned that there is laundry facilities.
25 It costs money to use those facilities. If you wish to

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1 use them, you pay money for that. If you wish to use
2 Salmon Shores rest rooms and showers, it's \$25 a month
3 to use those showers, and like I say, they do have but
4 one light in the park and that sort of thing, and the
5 way they've done this is they disguise their rates. We
6 have to trust what this EAC charge is whatever Salmon
7 Shores says they use is true, and there is no
8 guarantee, and we don't have a right, according to PSE,
9 to come to you guys because we are not customers. We
10 are nobodies.

11 JUDGE MOSS: It's not that you are nobodies,
12 but it is a simple fact that you are not a direct
13 customer of PSE, so PSE is not in a position to help
14 you in the way you wish to be helped.

15 MR. BINKLEY: I haven't asked them to help me
16 in that way. Yes, we are not their customers, but it
17 seems to me that if the utility Commission has tariffs
18 that provide protections, consumer protections for
19 customers of public service companies that what they
20 are saying is those protections end at Mr. Young. As
21 Mr. Young's customers, we do not have as their
22 argument, we do not have any rights to the same
23 protections that our rights of a customer, and that's
24 what we are saying. We do not have those rights, and
25 the EAC charge was implemented last spring with no

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1 explanation of what it was, and it wasn't until
2 Mr. Cross -- I tried myself with the Landlord Tenant
3 Act people. They refused to even respond to me about
4 my concerns about the EAC.

5 Mr. Cross did file a complaint with them, and
6 that was the first time that Salmon Shores provided
7 anybody with that, and yeah, that EAC charge last
8 spring was \$39. Now it's gone down to five dollars,
9 and a couple of months ago, the billing was 69, or they
10 lowered the kilowatt rate down to six cents a kilowatt
11 hour because they used the billing meter readings from
12 the previous month and have essentially double charged
13 us all and gave us a credit. Of course, if they had
14 charged the 8717 that they were normally charging, that
15 would have been \$16 because they were collecting, and I
16 provided the information there. You can see that month
17 with even the EAC charge. They collected more from the
18 metered electricity of the tenants than they paid to
19 PSE.

20 Now, of course, it was a computer glitch, but
21 they did not notify the residents of the park that it
22 was a computer glitch until after the bills were due.
23 There is nothing mentioned by people who paid that
24 double electricity bill two months ago, whether they
25 were going to get credit. There is no transparency.

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1 There is no guarantee. If my meter reads 30 kilowatt
2 hours a day, no matter how much I'm using electricity,
3 I have no recourse, and that's where there is this
4 disconnect where it is saying there should be a
5 transparency that Salmon Shores as a customer who is
6 passing on the electricity that they get billed by PSE.
7 There should be a transparency so we can see that we
8 are being charged for an appropriate fee that the
9 billing from PSE for the electricity that is used for
10 water and sewage which we pay separate from our metered
11 stuff that we are not paying that again, and it's a
12 backdoor way of double billing.

13 JUDGE MOSS: Mr. Binkley, those are issues
14 that we can't resolve for you here. Those are landlord
15 tenant issues, and I know you have pursued this under
16 the Manufactured Housing Dispute Resolution Program.
17 It's mentioned here in some of the paper that you
18 filed, and I understand from what you've written here
19 and so forth that you are not satisfied with what has
20 occurred there, but this commission can't do anything
21 about that.

22 We have no jurisdiction under RCW Title 59,
23 and there is nothing we can do about that. Our concern
24 is very narrow here as a utilities commission. Our
25 concern is with the companies we regulate, such as PSE,

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1 and being sure that they are conducting themselves in
2 accordance with the statutes, rules, and their tariffs,
3 which are also considered to be legally binding. We
4 are concerned with that, and so what you would have to
5 show with respect to PSE in this proceeding is that
6 they are not conducting themselves in accordance with
7 the statutes, rules, or tariffs.

8 As to Salmon Shores, well, it remains a
9 question in my mind if we have any jurisdiction with
10 Salmon Shores at all. We have a motion pending on that
11 question. Salmon Shores is a customer of PSE, and
12 there is nothing in the record at this juncture that
13 would show them to be a public service company. Now,
14 I'm prepared to let you bring forth something, some
15 argument on that. Looking at the statutes, that could
16 be a difficult proposition to make out. Mr. Trotter
17 indicates there is some case law out there. I don't
18 know. Perhaps you can do some research and make some
19 argument out that would establish Salmon Shores as an
20 entity somehow within our jurisdiction. It's not
21 entirely clear to me sitting here today that that's the
22 case.

23 Getting back to the path I was starting down
24 a few moments ago was to say that Mr. Young indicated
25 this is the first time the two of you have met, so

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1 that's an advantage of having a prehearing conference
2 such as this is the parties who are having some
3 misunderstandings or disputes between them can see each
4 other for the first time and perhaps open an
5 opportunity for some discussions outside of the context
6 of the proceeding that will bring about some
7 satisfactory resolution to what's frankly a fairly
8 complicated set of issues, some of which we may have
9 jurisdiction over, many of which you have raised which
10 we do not have jurisdiction over.

11 I'm trying to suggest there may be a
12 possibility of a better way for you to achieve some
13 sort of result that will satisfy you here than trying
14 to pursue this formal process through the WUTC. It's
15 just a suggestion. You've brought your complaint and
16 we will certainly hear it, but what I'm trying to do is
17 offer what I hope is a useful suggestion that perhaps
18 the two of you could sit down, again, with the
19 assistance of a third party who could act as a
20 mediator, and there is a dispute resolution center here
21 in Thurston county at nominal or no charges.

22 It's a myriad of issues that you could all
23 talk about and work through, and Mr. Young could
24 probably produce some papers in terms of bills from PSE
25 and that sort of thing, and maybe even PSE could

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1 involve somebody to help understand. It's complicated
2 stuff. I showed you those tariffs. You've seen them.
3 I imagine that you all could sit down and talk through
4 this and work out what would bring satisfaction to
5 everyone.

6 MR. BINKLEY: In addressing the issue of the
7 Landlord Tenant Act people, that is their job to
8 mediate such things. They tried informal mediation
9 with Mr. Young, and Mr. Young's position is the law
10 does not apply to him. That failed, and they did a
11 formal investigation and found grounds for formal
12 violation.

13 However, and I realize you have no
14 jurisdiction, and I'm not asking you guys to do
15 anything about the Landlord Tenant Act, but in terms of
16 negotiating the settlement, they went to Mr. Young's
17 attorney and did this settlement agreement without my
18 participation, without my knowledge, acting not
19 necessarily on my behalf, and the first agreement led
20 to a ten-day cutoff notice from Mr. Young, and I still
21 have yet to see that agreement, which requires my
22 signature. The one that I provided to you is an
23 agreement that came about with discussion between
24 Mr. Young and the AG's office without my participation,
25 and the AG has tried to force me into signing that.

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1 They have even contacted the Olympia police and had
2 them here alleging that I am some sort of threat
3 because I tried to get relief from them, and it's like
4 yeah, it is really scary. There is a provision there,
5 and I came to you guys because if you read the proposed
6 settlement there, it states clearly that they have
7 found an order of violation, but at the same time, the
8 agreement states that Mr. Young and Salmon Shores is
9 not a manufactured home park, and what good is an
10 agreement brought under the authority of a statute for
11 a landlord tenant act where the agreement states that
12 the law does not apply to one party.

13 It's like I don't know what to do about that.
14 It scares the heck out of me when I come to a
15 proceeding and I'm asking for a redress to find an
16 officer waiting for me at the door asking me if I have
17 a weapon. That's never come up except when Mr. Young
18 tried to encourage my neighbors to file criminal
19 charges against me because I had refused to pay this --

20 JUDGE MOSS: Mr. Binkley, we are straying
21 beyond our purpose here --

22 MR. BINKLEY: My point is part of what is in
23 here, you don't have jurisdiction over the Landlord
24 Tenant Act, and their job was to mediate, and what
25 really came out is they have a police officer here in

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1 this proceeding.

2 JUDGE MOSS: I think those are separate
3 issues, Mr. Binkley --

4 MR. BINKLEY: It's issues that obviously are
5 meant to intimidate me in trying to -- it does affect,
6 it disturbs me greatly that there is a police officer
7 here with the insinuation. They didn't ask Mr. Young
8 whether he has a weapons permit, whether he's carrying
9 a weapon, and that's not an issue. It should not be.

10 JUDGE MOSS: I don't think you should be
11 overly concerned about the Commission's decision with
12 respect to its security at this hearing process. We
13 frequently have police officers present in our hearing
14 room as courtrooms do every time they open their
15 doors --

16 MR. BINKLEY: The police officer said he was
17 here because of me because the AG's office said I was
18 some sort of threat. The officer told me that on the
19 way up here --

20 JUDGE MOSS: You have nothing to be concerned
21 about, Mr. Binkley, in that regard. I'm sorry that it
22 upsets you, but that is just the way it is. In terms
23 of this settlement agreement that you are talking
24 about, I did see that and you did attach that, in fact,
25 to your response to Commission staff's motion for

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1 removing Salmon Shores as a respondent, and of course
2 this would appear to me without knowing too much about
3 it to be the outcome of a process that occurred through
4 the Manufactured Housing Dispute Resolution Program,
5 and it is in the form that I see it here a proposal.
6 It has no signatures on it; although, it has a place
7 for your signature as well as Mr. Young's and for a
8 signature by the program manager at the Manufactured
9 Housing Dispute Resolution Program.

10 Now, this is the sort of thing that comes out
11 of a mediation. The purpose of a document such as this
12 is to say, Well, we are not going to resort to solving
13 this through the legal process. We are not going to
14 resort to a proceeding like this one, for example, and
15 have some judge decide who is right and who is wrong
16 and what's going to happen. Instead, we are going to
17 agree among ourselves that as provided in here, the
18 settlement terms as Part 2 here, and there is some
19 actions agreed upon in Part 3 that's providing for some
20 relief to you in terms of reimbursement, future
21 handling of utility bills. It says here that
22 respondent agrees that future utility bills will be
23 handled by a third party, so Mr. Young is apparently
24 willing to have this removed from immediate control and
25 so on and so forth.

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1 This would be the kind of thing that I would
2 hope you could accept to resolve these issues, if you
3 can. This is not the sort of thing we can order here.

4 MR. BINKLEY: I understand that. I included
5 that because you guys keep on bringing it up, and my
6 point is I was excluded from all negotiations on that.
7 I was told to sign that. There was no negotiations. I
8 have a letter from the AG's office saying it's not
9 their job to act as my attorney.

10 JUDGE MOSS: They did.

11 MR. BINKLEY: They did. They came up with
12 this without even my knowledge of it, without my
13 participation; although if you look at the original
14 Complaint, there is a letter from the AG's office where
15 he is talking to Mr. Young's attorney about his
16 attorney editing that document. I was excluded, and
17 that's my point is that yeah, I definitely need to do
18 something about that in a different form, and I'm not
19 quite sure what to do about it because the AG's office
20 apparently excludes me, and although they say I'm not
21 their attorney, they come up with this agreement and
22 then repeatedly through e-mail and phone conversations
23 demand that I sign it. That is not a settlement
24 agreement.

25 If there is an agreement between the parties,

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1 all the parties have to be there. The AG's office
2 should have been mediating the thing and I should have
3 been included on it, and the statute does not lock in a
4 settlement agreement in lieu of an order of violation.
5 Only if the parties can come to a settlement agreement
6 is there an agreement in lieu of the order of
7 violation. That is my point. We are treated like
8 nobodies and that I have this means of redress which I
9 don't have.

10 MR. TROTTER: I'm sorry to interrupt. I am
11 an employee of the attorney general's office, but I
12 will say for the record I was not involved in any of
13 that and I don't know any of the details, but I believe
14 you were suggesting, Your Honor, a mediation here
15 regarding the issues raised by the Complaint in which
16 Mr. Binkley would be a full participant. Did I
17 understand that correctly?

18 JUDGE MOSS: Yes, Mr. Trotter. That is what
19 I'm trying to suggest to you, Mr. Binkley. Perhaps we
20 now have an opportunity for you to become involved
21 directly in some discussions that would resolve this
22 matter informally. This commission does encourage what
23 we call alternative dispute resolution, or the
24 settlement process, and that's what I'm talking about.
25 I'm suggesting that maybe we should instead of setting

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1 a procedural schedule today and setting a date for PSE
2 to file its motion to dismiss its complaint, which they
3 have indicated they have every intention of doing,
4 instead of having to await additional paper on this
5 pending motion to dismiss Salmon Shores, perhaps you
6 all could enter into some discussions that would
7 involve you and that could lead to some sort of
8 satisfactory result.

9 Now, I don't know if the Commission will be
10 in a position to provide you with a mediator directly.
11 Sometimes we are able to do that; Sometimes we are not.
12 That's not my decision to make; although, I can
13 certainly put that question before the appropriate
14 people. The other option I mentioned was I mentioned
15 the Thurston County Dispute Resolution Center because
16 they do have a large number of trained mediators
17 available at any given time and could probably give you
18 a forum quickly. A third party with no interest in
19 this thing whatsoever could help the two of you or your
20 representatives, as you might choose, to work through
21 all this, and I think the sorts of issues, problems,
22 and questions I see addressed in this document that the
23 Manufactured Housing Dispute Resolution Program
24 developed through whatever means they develop such
25 things, these are the sorts of things that can be the

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1 subject of an agreement.

2 Again, we can't give you relief with respect
3 to these things, not directly. It's not within our
4 ability to do it, so for you to get the most
5 satisfactory result, and I understand you want to be a
6 participant, and so while there may be some things in
7 here that are satisfactory to you in terms of getting a
8 reimbursement for something -- you think you were
9 overcharged or whatever -- that's one thing, but the
10 other thing is to be involved, and so that's what I'm
11 suggesting is a process whereby you be involved in a
12 meaningful way.

13 MR. BINKLEY: I appreciate that. It's really
14 a shame that it had to come to this, and that's my
15 point. It's like I don't have any objection. I have
16 better things to do with my life than fight over this
17 thing, and this issue has been festering for a year and
18 a half now.

19 JUDGE MOSS: Yes, sir, I understand.

20 MR. BINKLEY: And it's like I'm excluded. I
21 am considered a threat, and --

22 JUDGE MOSS: Would you be open to this sort
23 of process?

24 MR. BINKLEY: I would be open to it as long
25 as I am not forced into accepting anything like these

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1 people, in fact, the AG's office has tried to do. If
2 the AG's office when they determined that there was an
3 order of violation, if they had come to me and said the
4 same thing, I would have sat down and we would have had
5 a discussion like adults, responsible adults who do
6 their business responsibly. I would have loved to have
7 done that, and I know that if there was an agreement
8 reached, it wouldn't be that one, because that one was
9 reached with me being excluded, and I appreciate the
10 idea that I might be included. After all, I am the one
11 that started this, like I say.

12 JUDGE MOSS: I'm glad to hear that.

13 Mr. Young, are you willing to participate in such a
14 process?

15 MR. YOUNG: Yes, Your Honor. I have no
16 problem with it.

17 JUDGE MOSS: Would the Company be willing to
18 have someone participate in that to the extent it might
19 be useful in terms of providing some technical guidance
20 with respect to these billing issues?

21 MS. STROM CARSON: Yes, we would, Your Honor.

22 JUDGE MOSS: I think there are two options.
23 One is I can find out whether we might be able to
24 provide a mediator for you here and this is something
25 you could do in the context of our four walls, I guess.

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1 Again, I'm not certain of that. We have a very limited
2 number of people available who are qualified to do
3 that, and I can't do it because I'm sitting as the
4 judge in the case.

5 If that is not a possibility, and I can find
6 out here in a few minutes, then my recommendation to
7 you is to use the Thurston County Dispute Resolution
8 Center, and I know them by reputation and also by
9 experience to be a well-qualified group of people.

10 MR. BINKLEY: I don't know if that costs
11 money or whatever. That's part of the problem is
12 myself, I'm on a pension. I'm on a veteran's
13 disability pension. Mr. Cross is likewise, and many of
14 the tenants are. That's one of the reasons why this is
15 so outrageous that this has come about.

16 JUDGE MOSS: The dispute resolution center,
17 to the extent it has charges at all, I know they are
18 reasonable, so I think it's a nominal sort of thing.
19 The mediators are all volunteers. They are unpaid, so
20 you aren't having to pay a mediator, so whether there
21 is some small facilities fee, I'm not really sure, but
22 that's something that could be investigated as well.

23 MR. BINKLEY: I appreciate the opportunity.
24 It's something that should have happened a year and a
25 half ago. I would certainly hope that such opportunity

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1 would not put me in a position where there is a police
2 officer looking over my shoulder and doing an
3 intimidation thing.

4 JUDGE MOSS: It's a completely informal
5 process. Now, let me go find out, if I can, if the
6 appropriate people are available, I will find out right
7 now if we can furnish you with a mediator, so while I'm
8 doing that, we will be in recess.

9 (Recess.)

10 JUDGE MOSS: Let's come back to order,
11 please. I have during the break been able to determine
12 that the Commission will be able to provide mediator
13 services in connection with this matter, and given the
14 Commission's current workload, it appears that it
15 probably will not be possible to schedule a conference
16 until after the first of the year, but we will go ahead
17 and assign a mediator and let you all know who that
18 will be, and then the mediator will be in direct touch
19 with you and get that process rolling and provide a
20 forum for you all to have some discussions about this.

21 In the meantime, I will not do more in terms
22 of setting a procedural schedule in this matter, and I
23 will hold Staff's motion in abeyance, and if PSE wants
24 to file something in the meantime, that's up to you,
25 but I also will not rule on that pending further

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1 developments in terms of the mediation, which I hope
2 will bring all these matters to a satisfactory
3 resolution.

4 Usually -- I should back up here. I'm being
5 informal today. I myself am a trained mediator and
6 have done a few mediations over the course of my
7 career, and I can tell you from experience that the
8 results the parties achieve in that context are almost
9 uniformly more satisfactory to them in what they will
10 get in a process such as this. I've been in the
11 judging business for a few years, and we sometimes say
12 that the mark of a good outcome in a judicial
13 proceeding is that everybody goes away unhappy. Well,
14 of course, there is a bit of levity involved in that,
15 but there is also an element of truth in it in that
16 it's much harder for me to achieve a satisfactory
17 result sitting where I sit because I'm constrained by
18 law and I'm constrained by the facts of the record and
19 so forth. Whereas the parties in a mediation in a
20 settlement type context are free to structure their own
21 agreement to their mutual satisfaction. Nobody goes
22 away 100 percent satisfied, but you are likely to go
23 away a lot more satisfied than from something I would
24 write.

25 MR. BINKLEY: So I understand that it's not

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1 mandatory. I won't be forced to sign some sort of
2 agreement.

3 JUDGE MOSS: You will not.

4 MR. BINKLEY: And that everything that we are
5 doing here is on hold until we see if we can work this
6 out.

7 JUDGE MOSS: That is correct. Any agreement
8 you can reach will be the product of your own
9 decisions.

10 MR. BINKLEY: I appreciate that. I think
11 that's something that should have happened a long time
12 ago, and I will do my best effort to do this and
13 contingent on the fact that I will not be forced into
14 an agreement.

15 JUDGE MOSS: You will not be forced into an
16 agreement, Mr. Binkley, and I appreciate your
17 willingness to participate in the process in good
18 faith, and Mr. Young has also shown a willingness to do
19 that, and PSE has offered to participate to the extent
20 their participation can be useful, and I think that's
21 all very helpful. So with that, I don't think there is
22 any more business we can accomplish here today that
23 would be useful so I'm going to adjourn these
24 proceedings, and we will reconvene if it becomes
25 necessary after this other process so it works its way

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1 through, all right?

2 MR. TROTTER: Was it your intention to issue
3 a notice to the parties identifying the mediator?

4 JUDGE MOSS: I'll issue a prehearing order,
5 and to the extent I can, I will identify the mediator.
6 I'm not sure how quickly we can do that because we have
7 a rather small shop, as you know, Mr. Trotter, but as
8 soon as we can identify the person who can be the
9 mediator, and we are all trained in that process, we
10 will do so, okay?

11 MR. BINKLEY: It will be in writing and I'll
12 get it at my PO Box?

13 JUDGE MOSS: Yes, sir, you will. We are in
14 recess. Thank you very much.

15 (Prehearing conference adjourned at 10:40 a.m.)

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