

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

PUGET SOUND ENERGY, INC.'S
MOTION FOR SUMMARY
DETERMINATION

1. Puget Sound Energy, Inc. ("PSE" or "the Company"), located at 10885 NE 4th Street, Bellevue, Washington, by and through undersigned counsel, hereby submits its Motion For Summary Determination pursuant to WAC 480-07-380(1)(2).

I. RELIEF REQUESTED

2. PSE requests that the Commission dismiss the Formal Complaint brought by Kenneth L. Binkley dated September 14, 2009 and mailed by the Commission on September 30, 2009 (the "Complaint") for failure to state a claim against PSE. Mr. Binkley does not allege that PSE violated any standard, rule, law or tariff. Furthermore, Mr. Binkley is not a customer of PSE and PSE has no duty to regulate or monitor Mr. Binkley's relationship with Salmon Shores RV Park ("Salmon Shores").

II. STATEMENT OF FACTS

3. Mr. Binkley is a tenant of Salmon Shores. Salmon Shores is a customer of PSE receiving electricity under Schedules 7, 24 and 25. See Declaration of Lynn Logen ("Logen Declaration") at ¶ 2. In April 2008, Mr. Binkley submitted an informal complaint filed with

the Commission and as well as with the Attorney General's Consumer Protection Division claiming that Salmon Shores was charging utility fees to tenants that were in excess of the actual rates charged to Salmon Shores by PSE. Logen Declaration at ¶ 3 and Exhibits A & B. PSE's electric Tariff G provides in section 5 of Schedule 80 that "[s]ervice shall not be resold unless specifically authorized in the applicable rate schedule." Logen Declaration at ¶ 4 and Exhibit C. None of the applicable rate schedules authorize a customer to resell service. Logen Declaration at ¶ 4 and Exhibit D.

4. PSE investigated the allegations made by Mr. Binkley in his informal complaint and found that Salmon Shores was indeed reselling electricity in violation of PSE's tariff. Logen Declaration at ¶¶ 3, 4, 6. PSE has historically defined reselling as occurring only when a landlord (PSE's customer) charges tenants on a per-kilowatt hour ("kWh") basis for electricity and the per-kWh rate used by the landlord is greater than PSE's rate to the landlord. Logen Declaration at ¶ 5. To avoid disconnection of service, Salmon Shores cooperated with PSE to revise its method of billing tenants so that it was no longer reselling electricity as of April 2009. Logen Declaration at ¶¶ 6 - 11.

5. Nevertheless, Mr. Binkley subsequently filed a formal complaint with the Commission alleging that Salmon Shores is still reselling electricity, in part due to an "electricity access charge" ("EAC") that Salmon Shores is now charging its tenants. PSE has reviewed each of the bills that Mr. Binkley submitted as attachments 2 through 7 to his Complaint. Logen Declaration at ¶ 12. The rate per kWh on those bills and the average rate charged to Salmon Shores by PSE is as follows:

4/1/09 bill - \$0.08717 per kWh ---Rate charged by PSE for this time period \$0.091568
5/1/09 bill - \$0.08718 per kWh ---Rate charged by PSE for this time period \$0.088447
6/1/09 bill - \$0.08717 per kWh ---Rate charged by PSE for this time period \$0.088322
7/1/09 bill - \$0.08717 per kWh ---Rate charged by PSE for this time period \$0.089716
8/1/09 bill - \$0.08717 per kWh ---Rate charged by PSE for this time period \$0.088515
9/1/09 bill - \$0.066 per kWh ---Rate charged by PSE for this time period \$0.088476

6. From the above, PSE concludes that Salmon Shores is not currently (as of September 1, 2009) illegally reselling electricity and is not in violation of PSE's tariff. Logen Declaration at ¶ 13. Salmon Shores use of an EAC is likewise not in violation of PSE's tariff. Salmon Shores charges its tenants an EAC that is calculated by dividing the portion of their bill from PSE that remains after subtracting amounts charged to each tenant on a per-kWh basis, by the number of tenants. Allocation based on the number of tenants is not considered resale of electricity. Logen Declaration at ¶ 5.

7. Mr. Binkley does not make any allegations against PSE in his Complaint. His claims are against Salmon Shores for the illegal resale of electricity. The closest he gets to an allegation is in his Conclusion section: "The UTC, PSE and the AGO's MHLTA have been aware for over a year and a half that Salmon Shores has been stealing money from their tenants by overcharging for electrical usage."

III. STATEMENT OF ISSUES

8. Whether this Commission should dismiss Mr. Binkley's Complaint for failure to state a claim against PSE upon which relief can be granted.

IV. EVIDENCE RELIED UPON

9. PSE relies upon the record in this action, as well as the attached declaration of Lynn Logen, Tariff Consultant for PSE.

V. ARGUMENT

10. WAC 480-09-380(2) provides that a party may move for summary determination if the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor. In considering a motion made under WAC 480-09-380(2), the Commission will consider the standards applicable to a motion made under Civil Rule 56 of the Civil Rules for Superior Court. CR 56 is the summary judgment rule. CR 56(b) provides that a party against whom a claim is asserted may move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof. Summary judgment is appropriate where, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *see also Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990).
11. The Commission must view the evidence in a light most favorable to a non-moving party; however, the non-moving party may not rely upon speculation or on argumentative assertions that unresolved factual issues remain. *White v. State*, 131 Wn.2d 1, 7, 929 P.2d

396 (1997). A mere scintilla of evidence is not enough to establish the existence of a material fact; rather, a party must set forth specific facts which disclose the existence of a material fact. *Id.* at 22-23. When there are no factual issues and the dispute can be resolved by answering questions of law, as in the present case, summary judgment is favored as an important part of the process of resolving the dispute. *Id.* at 6.

12. Mr. Binkley does not make any direct allegations against PSE in his Complaint. Mr. Binkley's Complaint, as framed, is against Salmon Shores for the illegal resale of electricity. His only "allegation" against PSE stems from his Conclusion section wherein he states: "The UTC, PSE and the AGO's MHLTA have been aware for over a year and a half that Salmon Shores has been stealing money from their tenants by overcharging for electrical usage." Even if true that PSE was aware that Salmon Shores was "stealing" money from tenants by overcharging for electrical usage, PSE owes no duty to Mr. Binkley and PSE has not violated any laws, regulations or rules. Nevertheless, a review of the facts shows that this conclusory statement by Mr. Binkley is not accurate.
13. PSE was alerted of concerns with Salmon Shore's billing practices. PSE diligently worked with Salmon Shores, WUTC staff and the Attorney General's Office to help Salmon Shores rectify its billing practices. While PSE has no duty (or authority) to monitor or regulate Salmon Shores' billing practices, PSE has not idly sat by and allowed its tariff to be violated. Nor has PSE violated any law, regulation or rule.

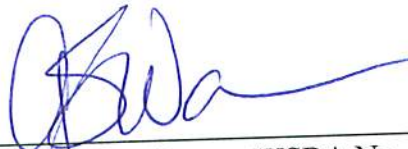
VI. CONCLUSION

14. For the above reasons, the Company respectfully requests this Commission dismiss Mr. Binkley's Complaint as it does not state a claim against the Company for which this Commission can remedy.

DATED: April 12th, 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 Bellevue, Washington, this 13th day of April, 2010.


Cynthia Mann