



WAC 480-90/100-056 Refusal of Service. Information from the Office of the AG

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Category: 480-90/100-056 Refusal of Service

Industry: Electric Only Both
 Gas Only Issues

----- Forwarded by Bob Cedarbaum/WUTC on 11/10/98 11:29 AM -----



Bob Cedarbaum <bcedarba@wutc.wa.gov> on 11/10/98 11:28:19 AM

Please respond to bcedarba@wutc.wa.gov

To: Bob Cedarbaum/WUTC
cc:
Subject: [Fwd: Landlord Resales of Energy Services]

ATTN Bert Estlow

I am an Assistant Attorney General assigned to the division which represents the Washington Utilities and Transportation Commission. I have been asked to respond to your inquiry of Anne Levinson concerning the Commission's regulation of shopping center landlords who resell utility service at retail to their tenants. I assume for purposes of your inquiry that the landlord owns or operates gas and/or electric plant located in the shopping center, but probably "downstream" from the meter.

With that assumption in mind, it appears that the Commission would have jurisdiction over the resale of gas or electricity by a landlord to a tenant. This conclusion is based primarily on the statutory definitions contained in chapters 80.01 and 80.04 Revised Code of Washington (RCW). Under RCW 80.01.040(3), the Commission regulates the rates, services and practices of anyone engaged in this state in the business of supplying for compensation any utility service or commodity including electric and natural gas companies. An "electric company" or "gas company" includes any person or corporation owning, controlling, operating or managing any "electric plant" or "gas plant" in this state. "Gas plant" or "electric plant", in turn, is defined as any real or personal property used or to be used to transmit, distribute or sell electricity or natural gas. A landlord reselling electric or natural gas service to a tenant would, therefore, be a utility subject to Commission jurisdiction since the landlord operates utility plant for compensation in this state. This situation would be analogous to the owner of a mobile home park who resells energy services to tenants through a master meter. The Commission has asserted jurisdiction over such entities under a similar analysis.

One word of caution, however: There are a series of court cases in this state that analyze whether a company is regulated by the Commission because the company may not provide service to the general public or a segment of the general public. In other

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words, the company could fall within the definitions discussed earlier, but not be jurisdictional because it is not a "public service company". These cases have looked primarily at cooperatives which, in addition to having a limited customer base, are also not-for-profit and are governed by their members, rather than a Board of Directors and shareholders. Therefore, while the landlord in your question is operating for a profit, an argument could be made that they are not serving the general public, but only a limited number of tenants in a limited area. Please contact me if you wish citations to these cases.

Finally, you ask whether the landlord, if subject to Commission rate regulation, would be limited as to the level of profit it can earn from its tenants. The general answer is "yes". All regulated companies must charge the tariffed rates that they have on file with the Commission. RCW 80.28.080. The Commission establishes these rates on a cost of service basis, meaning that a utility is allowed to recover their reasonable and prudent expenses and earn a fair rate of return on their investment. An analysis would have to be made to determine what rates this standard produces, but excessive profits would be prevented. The Commission has utilized a number of different methodologies for ratemaking, and an assessment would be necessary to determine what method best fits this situation.

Please contact me if you have any further questions. I should note that this message contains my personal opinion which may not coincide with that of the Commission itself or the Attorney General's Office.

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