

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

SALMON SHORES MOTION FOR
AN ORDER DISMISSING SALMON
SHORES RV PARK AS A
RESPONDENT

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I. RELIEF REQUESTED

1. Salmon Shores RV Park, by and through undersigned counsel, requests that the Commission dismiss the Complaint brought by Kenneth L. Binkley dated September 14, 2009 for an order removing Salmon Shores RV Park (“Salmon Shores”) as a Respondent because the Commission does not have jurisdiction over a customer of a public service company.

II. FACTS

2. Salmon Shores is a private recreational vehicle park that rents individual sites for tent camping, and seasonal and month to month recreational vehicle (“RV”) sites with utility hookups. The Petitioner, Mr. Binkley, is a month to month recreational vehicle tenant. Steve Young Declaration at ¶ 3.

3. Salmon Shores is an electric customer of Puget Sound Energy (“PSE”). PSE serves Salmon Shores with six electric meters. Salmon Shores provides electric service from the PSE meters to various facilities in the park including to each RV site. Each RV site is

separately metered. Salmon Shores also provides the electrical meters for its office and store on the premises. Steve Young Declaration at ¶ 4.

4. Salmon Shores does not provide electrical service outside the boundaries of its property or to any persons other than those renting sites in the park or using the park facilities. Salmon Shores uses the electricity provided by PSE for itself and its tenants. Salmon Shores bills its tenants for electricity provided to Salmon Shores by PSE. Salmon Shores also charges an Electrical Access Charge (“EAC”) to recover its reasonable costs for billing and collecting for electricity usage by its tenants. Steve Young Declaration at ¶ 5.

5. Petitioner claims that Salmon Shores is acting as a public service company, and overcharging for electrical usage in violation of PSE tariffs.” Petitioner’s Complaint at 2, last paragraph, second sentence. PSE investigated the allegations made by Mr. Binkley. 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. PSE has concluded that Salmon Shores is not currently illegally reselling electricity and is not in violation of PSE’s tariff. Logen Declaration at ¶ 13.

6. Salmon Shores use of an Electrical Access Charge (“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.

III. STATEMENT OF ISSUES

7. Whether this Commission should dismiss Mr. Binkley's Complaint for lack of jurisdiction and failure to state a claim against Salmon Shores upon which relief can be granted.

IV. EVIDENCE RELIED UPON

8. Salmon Shores relies upon the record in this action, as well as the attached declaration of Steve Young, and the declaration of Lynn Logen filed by PSE herein.

V. ARGUMENT¹

9. Petitioner claims that Salmon Shores is a public service company. The Commission does not agree. Petitioner has the burden of demonstrating that Salmon Shores is a public services company. He has not stated any facts to support his claim because Salmon Shores only provides electrical service to its tenants. It does not provide electrical services to the public.

10. Pursuant to RCW 80.04.010, a “(p)ublic service company’ includes every gas company, electrical company, telecommunications company, and water company.” RCW 80.04.010 also defines an “electical company” as follows:

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes **or for the use of its tenants and not for sale to others**), and every city or town owning, operating or managing any electric plant for hire within this state. ...

Emphasis added.

¹ Salmon Shores also adopts without repeating the arguments presented in the Commission’s Motion For An Order Removing Salmon Shores RV Park As A Respondent dated November 9, 2009 and the Motion On Behalf Of Commission Staff To Dismiss Complaint As To Salmon Shores RV Park dated April 28, 2010.

Salmon Shores provides electricity only “for the use of its tenants and not for sale to others.” It does not provide electrical services to the public. It supplies electrical service to serve only particular individuals

11. Our courts have applied the test in *Inland Empire Rural Electrification* in determining the classification of a company as a public service company. *Inland Empire Rural Electrification, Inc. v. Dep’t of Pub. Serv.*, 199 Wash 527 (1939). The court stated:

The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or by that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular individuals of its own selection.

Inland Empire at 537, *See also United and Informed Citizen Advocates Network v. WUTC*, 106 Wn.App. 605, 615 (2001).

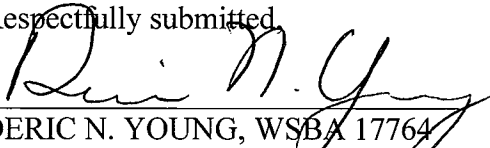
12. Salmon Shores merely offers to serve only particular individuals of its own selection, that is, its tenants on its property. Salmon Shores does not provide electrical services to the general public. To interpret this otherwise would require every RV or Manufactured Home Park that separately meters electricity be characterized as a public service company. Consequently, the Commission should issue an order removing Salmon Shores RV Park as a respondent in this matter.

VI. CONCLUSION

13. For the above reasons, Salmon Shores respectfully requests this Commission dismiss Salmon Shores as a Respondent in the matter.

DATED this 3 of May, 2010.

Respectfully submitted,


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Attorney for Respondent Salmon Shores