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May 19, 2010

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Kenneth L. Binkley v. Salmon Shores RV Park and Puget Sound Energy, Inc.*
Docket UE-091531

Dear Mr. Danner:

Enclosed for filing in the above-referenced docket are the original and seven (7) copies of Commission Staff's Response to Salmon Shores' Motion for an Order Dismissing Salmon Shores as a Respondent, and Certificate of Service.

Sincerely,

DONALD T. TROTTER
Assistant Attorney General

DTT:klg
Enclosures
cc: Parties

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

COMMISSION STAFF'S RESPONSE
TO SALMON SHORES' MOTION
FOR AN ORDER DISMISSING
SALMON SHORES AS A
RESPONDENT

1 In "Salmon Shores Motion for an Order Dismissing Salmon Shores as a Respondent"
(May 3, 2010) (Motion), Salmon Shores RV Park (Salmon Shores) asks the Commission to
remove Salmon Shores as a respondent in this case, for "lack of jurisdiction and failure to
state a claim upon which relief can be granted." Motion at 2, paragraph 7.

2 Salmon Shores' argues: 1) it is exempt from the definition of "electrical company" in
RCW 80.04.010; and 2) it does not devote its property to public use, thus it fails the test
enunciated by the court in *Inland Empire Electrification, Inc. v. Department of Public
Service*, 199 Wash. 527, 92 P.2d 258 (1939). Motion at 3-4, paragraphs 10-12.

3 For the reasons that follow, the Commission should grant Salmon Shores' Motion,
but it should reject Salmon Shores' first argument regarding the statutory exemption.

Statute at Issue

4 RCW 80.04.010 defines "electrical 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. ...

Discussion

5 Salmon Shores meets the literal definition of “electrical company” because it owns and operates the electric meters and other electrical facilities behind PSE’s meters that serve Salmon Shores’ tenants. Motion at 2-3, paragraphs 3-4. Salmon Shores charges tenants for the electricity, *id.*, so Salmon Shores manages that plant “for hire within this state.”¹

6 Salmon Shores argues it is exempt from the definition of electrical company (and thus exempt from Commission regulation) based on the phrase “or for the use of its tenants and not for sale to others” found in the parentheses in RCW 80.04.010. However, the full exemption language is: “other than a railroad or street railroad generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others.”

7 Thus, the exemption applies only to a railroad or a street railroad, and only if they generate electricity for their tenant’s use. Salmon Shores is neither a railroad nor a street railroad, and Salmon Shores does not generate electricity. Consequently, the exemption in RCW 80.04.010 regarding “tenants” of a railroad or street railroad does not apply to Salmon Shores. Of course, though Salmon Shores meets the literal definition of “electrical company” in RCW 80.04.010, that does not end the matter. In both the *Inland Empire* and *Nob Hill*,² the court concluded that Inland Empire Electrification, Inc. and Nob Hill Water Co. met the literal statutory definitions of an “electrical company” and a “water company,”

¹ It is possible the “for hire” language includes a service to the public element. That element is presented in RCW 80.01.040(3), which we discussed in our April 28, 2010, Motion on Behalf of Commission Staff to Dismiss Complaint as to Salmon Shores RV Park.

² *West Valley Land Co., Inc. v. Nob Hill Water Co.*, 107 Wn.2d 359, 729 P.2d 42 (1986).

respectively,³ but held neither was subject to commission regulation because they did not devote their property to public use.

8 Thus, Salmon Shores' applies the *Inland Empire* and *Nob Hill* analysis to conclude that Salmon Shores is not subject to regulation because it does not devote its property to public use. Staff reached the same conclusion in its April 28, 2010, motion in this docket. Consequently, we reply by referring the Commission to that motion.⁴

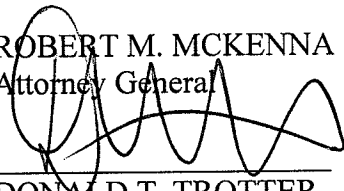
Conclusions

9 The Commission should grant Salmon Shores' Motion on the basis Salmon Shores does not devote its property to public use, and thus is not subject to commission jurisdiction. The Commission should not decide that issue based on Salmon Shores' characterization of the EAC. The Commission should reject Salmon Shores' argument that it qualifies for the exemption in the definition of "electrical company" in RCW 80.04.010.

DATED this 19th day of May 2010.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General


DONALD T. TROTTER
Assistant Attorney General
Counsel for Staff of the Washington Utilities
and Transportation Commission

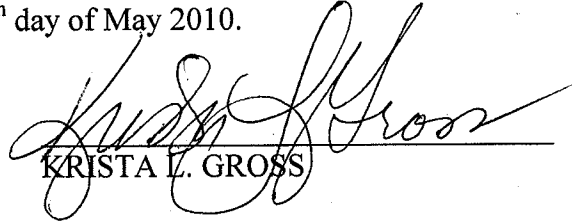
³ *Inland Empire*, 199 Wash. At 534-35: "It is apparent that, upon a literal interpretation of the definitions [of electrical company], respondent would come within the scope of the regulatory provisions of the [statute]. ... However, the question ... is whether, despite these literal definitions, respondent *is*, in fact and law, a *public service corporation* within the purview of the public service commission law." (Emphasis in original). *Nob Hill*, 107 Wn.2d at 364: "Under a literal application of the definitions set forth in RCW 80.04., Nob Hill would come within the scope of the regulatory provisions of RCW 80.04." The court went on to apply the test enunciated in *Inland Empire*, and found Nob Hill was not subject to Commission regulation.

⁴ Salmon Shores characterizes the Energy Availability Charge (EAC) as a charge that recovers Salmon Shores' electricity-related billing and collecting costs. Motion at 2, paragraph 6. The EAC is not relevant to Salmon Shores' Motion, so the Commission need not resolve that issue in the context of Salmon Shores' Motion. Staff addresses Salmon Shores' characterization of the EAC in Staff's response to PSE's "Motion for Summary Determination" (April 14, 2010).

Docket UE-091531
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 19th day of May 2010.


KRISTA L. GROSS

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