

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **ADV 434**

4 In the Matter of

5 ROATS WATER SYSTEM, INC.,

6 Roats Advice No. 16-03

STAFF'S MOTION TO DISMISS

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8 Pursuant to OAR 860-001-0420(3), Staff of the Public Utility Commission of Oregon  
9 (Staff) moves the Administrative Law Judge (ALJ) to dismiss Roats Water System, Inc.'s (Roats  
10 or Company) Advice 16-03, docketed as ADV 434.

11 **I. Background**

12 On March 15, 2016, Roats filed a request for a general rate revision seeking to increase  
13 rates for the first time in more than ten years, driven by an increase in operating expenses and the  
14 acquisition of the Juniper Utility water system from the City of Bend.<sup>1</sup> The Company's filing  
15 included tariff sheets to be effective July 1, 2016.<sup>2</sup> Pursuant to ORS 757.215, the Commission  
16 suspended Roats' tariff sheets for a period not to exceed nine months.<sup>3</sup> A pre-hearing conference  
17 was held in that case on May 5, 2016, during which the parties agreed to a procedural schedule  
18 that would allow Staff and Intervenors to investigate Roats' proposed rates during the suspension  
19 period.<sup>4</sup>

20 Since the Company's filing, Staff, Intervenors and the Company have met and discussed  
21 settlement on several occasions. On October 13, 2016, Staff filed a Motion to Suspend the  
22 Procedural Schedule in docket UW 166, as the parties had reached agreement on all but one

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<sup>1</sup> UW 166 – Roats' Initial Testimony at 4-5.

24 <sup>2</sup> See Roats' Advice 16-02.

25 <sup>3</sup> *In re Roats Water System, Inc.*, OPUC Docket No. UW 166, Order No. 16-114 (Mar. 18, 2016);  
26 subsequently corrected by *In re Roats Water System, Inc.*, OPUC Docket NO. UW 166, Order  
No. 16-149 (Apr. 19, 2016).

<sup>4</sup> UW 166 – Prehearing Conference Memorandum, issued May 9, 2016.

1 issue.<sup>5</sup> At that time, the parties anticipated filing a request to amend the schedule in order to  
2 address the one remaining issue.<sup>6</sup> On November 16, 2016, Staff filed a Status Report in UW 166  
3 alerting ALJ Patrick Power that the parties had reached a settlement in principle on the  
4 outstanding issue noted in Staff's October 13, 2016 Motion to Suspend the Procedural Schedule,  
5 and that the parties were continuing to work on finalizing the terms of the stipulation and  
6 drafting testimony in support of the stipulation.<sup>7</sup> Since that time, an additional issue has arisen  
7 upon which the parties are not in agreement, which has resulted in the current delay for a  
8 stipulation being filed. Staff has encouraged the Company to work through this issue in the  
9 context of UW 166.

10 On November 18, 2016, Roats filed with the Commission its Advice No. 16-03 which  
11 has been docketed as ADV 434. The filing requests a rate increase for its current Schedule 1  
12 customers, as well as proposing new schedules for domestic and irrigation service at The Pines  
13 and Crown Villa (recreational vehicle parks) and for standard irrigation service.<sup>8</sup> The Company  
14 has requested that rates be implemented subject to refund for the period between January 1,  
15 2017, and the date that new tariffs go into effect based on the Commission's final order in docket  
16 UW 166.<sup>9</sup> The Company's proposed interim rates are equal to "the rates agreed to by Staff and  
17 Roats in a stipulation to be proposed to the Commission in UW 166."<sup>10</sup>

18 On November 21, 2016, Staff conferred with the Company via a phone call regarding its  
19 Advice 16-03 and requested that the Company withdraw the filing and address issues related to  
20 its request for a general rate revision in the context of UW 166. Based on subsequent discussions  
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23 <sup>5</sup> UW 166 – Staff's Motion to Suspend the Procedural Schedule, filed October 13, 2016.

24 <sup>6</sup> *Id.*

25 <sup>7</sup> UW 166 – Staff's Status Report, filed November 16, 2016.

26 <sup>8</sup> Advice Filing 16-03 at 2.

<sup>9</sup> *Id.*

<sup>10</sup> Advice Filing 16-03 at 1.

1 with the Company, Staff now understands that the Company does not intend to withdraw this  
2 filing from Commission consideration.

3 Therefore, as discussed more fully below, Staff respectfully requests that the Company's  
4 Advice Filing 16-03 be dismissed, as it is unsupported, impermissibly discloses confidential  
5 settlement discussions, and is procedurally inappropriate.

## 6 II. Argument

### 7 A. Roats' Advice Filing constitutes an unsupported and inappropriate request for a 8 general rate revision.

9 Roats' Advice 16-03 constitutes a request for a general rate revision under the  
10 Commission's rules. OAR 860-036-0620(2) defines "general rate revision" as "a filing by a  
11 water utility that affects all or most of the water utility's rate schedules." Roats' Advice 16-03  
12 requests a rate increase for *all* of the Company's current customer classes, as well as proposing  
13 new rates for customer classes to be established upon the acquisition of the Juniper Utility water  
14 system. Roats has made this filing despite its currently pending request for a general rate  
15 revision in docket UW 166 and based on inadmissible evidence.<sup>11</sup>

16 Roats' basis for its proposed interim rates in Advice Filing 16-03 is "stipulated rates"  
17 discussed in settlement conferences in UW 166. OAR 860-001-0350(3) provides that absent the  
18 written consent of all parties, "any statement, admission, or offer of settlement made during  
19 settlement discussions is not admissible in any Commission proceedings, unless independently  
20 discoverable or offered for other purposes allowed under ORS 40.190."<sup>12</sup> Although Roats, Staff  
21 and Intervenors have engaged in settlement discussions and believe they have reached an  
22 agreement in principle on almost every issue in UW 166, no stipulation or supporting testimony  
23 has been filed with the Commission that memorializes the agreement. Furthermore, Staff has not  
24 provided the Company with written permission to disclose positions articulated during settlement

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26 <sup>11</sup> Staff also notes that the Company's Advice 16-03 contains no discussion regarding the  
customer notice requirements in OAR 860-036-0620.

<sup>12</sup> OAR 860-001-0350(3).



1 discussions in this filing, including agreed-upon rates for each schedule, and is not aware of any  
2 other party to UW 166 having granted such permission in writing. As such, Roats' request in  
3 Advice Filing 16-03 impermissibly relies on inadmissible, confidential settlement discussions  
4 from UW 166 as the basis for arguing its proposed rates are fair, just and reasonable.

5 **B. The Company's request is effectively moot in light of UW 166.**

6 Even absent the issues discussed above, Roats' filing is duplicative, inefficient, and does  
7 not serve the principle of judicial economy in light of the Company's currently pending request  
8 for a general rate revision in docket UW 166.

9 The Commission is statutorily bound to approve only those rates that it finds to be fair,  
10 just and reasonable,<sup>13</sup> and must base its determination of just and reasonable rates on the record  
11 before it in ratemaking proceedings.<sup>14</sup> In order to determine whether Roats' proposed rates in  
12 Advice Filing 16-03 are fair, just and reasonable, the Commission would need to suspend the  
13 filing, for a period not to exceed nine months in accordance with ORS 757.215, so that it may  
14 investigate the Company's proposed rates. If suspended for a period of nine months, as is typical  
15 in general rate proceedings in order to build an evidentiary record, the suspension period would  
16 go into August 2017, well after the Company's proposed January 1, 2017 effective date. Given  
17 the Company's desire for rates effective as soon as possible, its Advice Filing 16-03 does not  
18 serve its objective. Because the Commission is already bound to consider the reasonableness of  
19 Roats' proposed rate increase in docket UW 166, which is on track to be resolved well before  
20 August 2017, Staff finds considerations of judicial economy weigh in favor of addressing these  
21 issues within UW 166.

22 Staff does agree with Roats that rate schedules are necessary for the Company's newly  
23 acquired "standard" irrigation customers and domestic and irrigation customers in The Pines and  
24 Crown Villa; as the Company has no tariff pursuant to which these customers may be charged  
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26 <sup>13</sup> ORS 757.210(1)(a).

<sup>14</sup> ORS 756.558(2).

1 upon taking service from the Company. However, as discussed more fully above, the  
2 Company's Advice Filing 16-03 does not provide sufficient evidence upon which the  
3 Commission could conclude that the Company's proposed rates for those customers are fair, just  
4 and reasonable.

5 **C. The Company's application for a tariff change on less than statutory notice is not**  
6 **necessary in this case.**

7 Finally, Staff notes that the Company's Advice Filing 16-03 contains an application for  
8 approval of rates on less than statutory notice. ORS 757.220 provides the Commission with  
9 discretion to allow rate changes to take effect, for good cause shown, upon less than 30 days'  
10 notice to the Commission. In this case, Roats' Advice Filing 16-03 was filed on November 12,  
11 2016, which is more than 30 days prior to the Company's requested January 1, 2017 rate-  
12 effective date. As such, Roats' application for rates effective on less than statutory notice is not  
13 needed.

14 **III. Conclusion**

15 For the reasons stated above, Staff respectfully requests that the Commission dismiss  
16 Roats Advice Filing 16-03, and direct the Company to address issues related to the Company's  
17 current request for a general rate revision within docket UW 166.

18 DATED this 28<sup>th</sup> day of November, 2016.

19 Respectfully submitted,

20 ELLEN F. ROSENBLUM  
21 Attorney General

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24 Assistant Attorney General  
25 Of Attorneys for Staff of the Public Utility  
26 Commission of Oregon