ORDER NO. 07-048

ENTERED 02/10/07

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1248

ROATS WATER SYSTEM, INC.,	)	
	)	
Complainant,	)	
	)	ORDER
vs.	)	
	)	
GOLFSIDE INVESTMENTS, LLC,	)	
	)	
Defendant.	)	

DISPOSITION: COMPLAINT GRANTED IN PART

Summary

In this order, the Commission concludes that Golfside Investments, LLC, is obligated to pay certain residential development charges in accordance with the water service tariffs approved for Roats Water Company.

Procedural History

On November 16, 2005, Roats Water System, Inc. (Roats), filed a petition for declaratory ruling (petition) with the Public Utility Commission of Oregon (Commission) pursuant to ORS 756.450. The petition requested a ruling that Golfside Investments, LLC (Golfside), is responsible for paying residential development charges (RDCs) in conformance with Roats' Residential/Multi-Residential Development Charge, Schedule 5 and Rule 9(a).

The Commission considered Roats' petition at its January 26, 2006, regular public meeting. After review, the Commission declined to grant the petition for declaratory ruling. Because of an apparent dispute regarding factual issues, the Commission instead concluded that it was more appropriate for Roats to file a complaint against Golfside.

On February 9, 2006, Roats filed a Complaint with the Commission pursuant to ORS 756.500, alleging that Golfside has refused to pay RDCs specified in Roat's tariffs and rules. In addition to the requirements set forth in tariffs, Roats alleges that Golfside is obligated to pay the RDCs pursuant to a Water Service Agreement entered into with Golfside's predecessor, 523, LLC.

On February 27, 2006, Golfside challenged the Complaint and, among other things, alleged that the Commission lacked jurisdiction to consider Roats' complaint. On March 30, 2006, and April 19, 2006, respectively, the Administrative Law Judge (ALJ) denied Golfside's motion to dismiss and subsequent request for certification of the ruling.[1]

After a failed attempt to informally resolve the dispute, the parties filed, on June 21, 2006, a "Stipulated Statement of Facts and Issues." On June 22, 2006, Golfside filed a formal answer to the Complaint, denying responsibility to pay the Residential Development Charges (RDCs) requested by Roats. In its answer, Golfside also asserted a number of affirmative defenses.

In subsequent pleadings, Roats sought permission to file a reply to Golfside's answer and raised a counterclaim seeking attorney fees. The ALJ granted Roats' motion to file a reply but indicated that he would rule on the attorney fee issue at a later date.

Golfside sought permission to present evidence in addition to that included in the Stipulated Statement of Facts. In response, the ALJ served a number of clarifying questions for the parties to answer to determine whether a hearing was necessary to consider the additional evidence proffered by Golfside. The parties filed a joint response on December 8, 2006. A supplemental response was filed on December 15, 2006**.**

FINDINGS OF FACT

The following findings of fact were either stipulated by the parties or submitted by the parties in response to the clarifying questions propounded by the ALJ:

April, 1999: Mr. Walt Musa submits a site plan to the City of Bend to develop a 173-space manufactured home park on a 23.2 acre parcel within the city. Mr. Musa proposes to develop the park in four phases.

May 3, 1999: Roats sends an introductory letter and information packet to Mr. Musa concerning the provision of water service to the planned manufactured home park development.

July 7, 1999: The City of Bend Planning Division approves Mr. Musa's request to develop a manufactured home park. The approval indicates that Roats will

[1] Golfside denominated the request as a Motion for Reconsideration. However, because an application for reconsideration is appropriate only after the Commission issues a final order, the ALJ treated Golfside's motion as a request for certification of the March 30, 2006, Ruling pursuant to Oregon Administrative Rule 860-012-0035.

provide water service to the development. The City of Bend subsequently approves a 169-space manufactured home park on September 1, 1999.[2]

January 31, 2000: Mr. Musa, on behalf of 523, LLC, and Mr. William Roats, on behalf of Roats, sign a Water Service Agreement (WSA). The WSA provides, among other things, that Roats will supply water service to the manufactured home park. Section 5.6 of the WSA provides as follows:

> 5.6 Connection charge for new service under OPUC approved tariff service charges:
>
> | | |
> |---|---|
> | Standard 5/8 x ¾ service | $300 |
> | Larger than 5/8 x ¾ service | $300 plus add'l cost |
> | Fireflow Charge | 50 cents per sq. ft. measured by building outside dimensions. |
> | Residential/Multi-Residential Development Charge | As per OPUC tariff rules & regulations Schedule No. 5 and Rule 6(a). |

Shortly after the WSA was signed, certain water utility infrastructure was installed to serve the development.[3] No master meter was installed at the manufactured home park. Instead, individual meters were installed to serve tenants connected to water service.

September 14, 2000: 523, LLC, transfers its interest in the subject property to Flightfoot Incorporated.

March 7, 2002: Flightfoot Incorporated transfers its interest in the subject property to Golfside Park, LLC. Subsequently, Golfside Park files an application with the City of Bend to convert the partially improved manufactured home park to a 169-lot manufactured home subdivision as allowed by House Bill 3686 (HB 3686), now ORS 92.830-92.845.[4]

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[2] Exhibit No. 4 at 3.

[3] The stipulated facts indicate that Golfside contributed to the construction of off-site improvements necessary to extend Roats' 12-inch mainline to the subdivision and also purchased individual water meters for spaces within the manufactured home park. Presumably, the parties intended to refer to 523, LLC, since Golfside did not acquire an interest in the development until later.

[4] HB 3686, 2001 Oregon Legislative Session (Chapter 711, Or Law 2001). Note that ORS 92.830 to 92.845 were enacted into law by the Legislative Assembly but were not added to or made part of ORS Chapter 92 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation. http://www.leg.state.or.us/ors/orspref.htm.

May 23, 2002: Golfside Park, LLC, transfers its interest in the subject property to Golfside Investments, LLC.

June 21, 2002: The City of Bend grants Golfside Park's application to convert Phase I of the manufactured home park into a manufactured home subdivision, but denies the application as to Phases II-IV.

September 18, 2002: A City of Bend Hearings Officer approves Golfside Park's application to convert all four phases of the manufactured home park into a residential subdivision (hereafter "manufactured home subdivision") in accordance with HB 3686. The Hearings Officer's decision resulted from an appeal of the city's June 21, 2002, decision.

September 16, 2003: The City of Bend modifies the Hearings Officer's September 18, 2002, decision by allowing Golfside Investments (Golfside)[5] to plat the remaining phases of the manufactured home subdivision in separate phases.

December 18, 2003: Golfside records the plat for Phases I and II of the manufactured home park subdivision, thereby creating 97 separate tax lots. The previous manufactured home park comprised only one tax lot.[6]

January 1, 2004: Legislative amendments to ORS 92.830 – 92.845 become effective.

March 17, 2005: The City of Bend conditionally approves Golfside's application to convert the existing manufactured home subdivision into a residential subdivision/Planned Unit Development (hereafter, "PUD subdivision"), consisting of 96 lots, two of which are to be used as common areas.

April 13, 2005: Roats advises Golfside that it has recently become aware that Golfside converted from a manufactured home subdivision to a planned unit development. For the first time, Roats demands that Golfside pay the RDCs at issue in this proceeding.

July 1, 2005: Amendments to Roats' tariff become effective. Former Rule 6(a) "Residential/Multi-Residential Development Charge" is replaced by Rule 9(a). Rule 9(a) is untitled, but also governs the assessment of residential/multi-residential development charges.

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[5] Sometime after the September, 2002, decision, the city acknowledged that Golfside Park, LLC, had transferred its interest in the subject property to Golfside Investments, LLC.

[6] Exhibit No. 7 shows that the manufactured home subdivision was officially recorded as "Golfside manufactured home park." This order refers to the subdivision development as the "manufactured home subdivision" to avoid confusion with the former manufactured home park.

September 22, 2005: Golfside records the plat for its PUD subdivision, known as "Golfside Park, PUD." The plat specifies 94 residential lots and two common areas. Of the residential lots, 13 are smaller than 4,000 square feet, 71 are between 4,000 square feet and 6,000 square feet, and 10 are larger than 6,000 square feet

CONCLUSIONS OF LAW AND OPINION

The principal issue in this case is whether Roats is entitled to collect residential development charges (RDCs) from Golfside. Roats contends that Golfside is required to pay RDCs under Roats' tariff and pursuant to the Water Service Agreement executed between Roats and Golfside's predecessor, 523, LLC. Golfside denies that it owes RDCs to Roats and advances a number of arguments and affirmative defenses in support of its position.

Before we turn to the principal issue, we must address two preliminary matters. First, for the reasons set forth below, the Commission concludes that the issues in this case can be resolved based on the stipulated facts and answers to the clarifying questions. Accordingly, there is no need to conduct an evidentiary hearing in this matter. Golfside's motion to supplement the record is denied.

Second, in response to Golfside's renewed argument, we agree with the ALJ's prior determination that this Commission has jurisdiction over this dispute. As noted, this issue was addressed at length in the ALJ rulings issued on March 30, 2006, and April 19, 2006. Golfside offers no new arguments in support of its claim. As emphasized in the two ALJ rulings and discussed in more detail below, the essence of Roat's complaint in this case is a request to require payment of charges set forth in its tariffs governing water utility service.[7] These matters are clearly within the jurisdiction of the Commission.

Residential Development Charges

Residential Development Charges are one-time charges paid by new developments to offset the capital costs associated with the construction of water facilities needed to serve the development. The Commission has approved RDCs for a number of water utilities besides Roats. For example, in the Bend area, both examples, Avion Water Company and Long Butte Water System, have Commission-approved development charges.

RDC payments are recorded by the utility as a Contribution in Aid of Construction (CIAC), and represent a liability of the company. Pursuant to Oregon Administrative Rule 860-036-0756, CIAC and its resulting depreciation are excluded from the ratemaking process. When the water utility receives an RDC payment, it

[7] Roats' tariff includes schedules, rules, and regulations.

records a reduction in its rate base. This has the effect of reducing the utility's revenue requirement because its rate base is lower than it would have been without the CIAC.[8]

In addition to alleging that its tariff requires Golfside to pay RDCs, Roat's complaint also alleges that Golfside, as successor in interest to 523, LLC, is obligated to pay RDCs under the WSA. However, as discussed in the prior ALJ Rulings, the analysis in this case should focus on Roats' tariff rather than the WSA. There are two principal reasons for this finding:

First, Roats Water System, Inc., is a public utility subject to the jurisdiction of the Commission. Oregon law requires that public utilities must act in accordance with their Commission-authorized tariffs. ORS 757.225 provides:

> No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220.
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> ORS 757.310 similarly provides:
>
> (1) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount prescribed in the schedules or tariffs for the public utility.
>
> (2) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.

These statutes make clear that a public utility must levy charges and provide service in strict compliance with its Commission-approved tariffs.[9] Any deviation from those tariffs is unlawful.[10]

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[8] In addition, the cash received in the form of RDC payments increases the utility's cash flow, thereby enabling the utility to invest in future plant improvements.

[9] See also, ORS 757.325 (No utility shall give undue or unreasonable preference to a particular person); ORS 757.330 (No person shall receive any concession whereby service is rendered at a lesser rate than provided in the utility's published tariffs).

Second, the WSA is consistent with the aforementioned statutes because it incorporates the terms of Roats' RDC tariff. Specifically, Section 5.6 requires that RDCs shall be assessed "as per OPUC tariff rules and regulations schedule No. 5 and rule 6(a)." In addition, Section 3.2 of the WSA states that "[c]harges shall be as prescribed by the appropriate schedule, and charges may be changed from time to time approved by the Oregon Public Utility Commission." Thus, the parties to the agreement clearly contemplated that Roats would assess RDCs in accordance with its tariff. They further understood that the Commission might revise the RDC tariff from time to time, and that any changes approved by the Commission would apply to the parties.

Since Roats is obligated by law to adhere to its Commission-authorized tariffs, and since the WSA cannot contravene those tariffs, it is unnecessary to consider the WSA in this proceeding. Instead, the appropriate inquiry is whether Roats' tariff requires Golfside to pay RDCs under the facts presented in this case. As a result, it is unnecessary to address Golfside's affirmative defenses to the WSA,[11] or disputes relating to the proper interpretation of that agreement.[12] Since Golfside maintains that it is not bound by the WSA in any event, it is not prejudiced by this conclusion.

<u>Roats' RDC Tariff</u>

A residential development charge must be paid under Roats' tariff whenever the utility supplies a lot with permanent new water service[13] to serve a residential dwelling. It applies to both individually metered water service and master-metered water service. Roats' RDC tariff was in effect during all times relevant to this case.

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[10] The only way a water utility such as Roats may charge rates different from those set forth in its general tariffs is pursuant to the special contract provisions in Oregon Administrative Rule 860-036-0740. That rule provides that the Commission may approve a special contract which then becomes the legal tariff governing the charges assessed by the utility to the contracting customer. The facts disclose that the Commission never approved a special contract between Roats and 523, LLC, or any of its successors, including Golfside.

[11] These include Golfside's claim that it is not liable for contractual obligations entered into by 523, LLC, as well as its claims that enforcement of the WSA is barred by the statute of limitations, laches, and estoppel.

[12] For the same reason, it is unnecessary to entertain Golfside's proffered evidence relating to the circumstances surrounding the execution of the agreement, including testimony from Mr. Musa concerning his understanding of the agreement.

[13] The rule does not define what constitutes the "establishment of permanent new water service." For purposes of this order, it is reasonable to construe that requirement as the non-temporary connection of water service to a residential dwelling where no water service has previously been supplied.

Roats' RDC was set forth in Rule 6(a) in January, 2000, when Roats and 523, LLC, first agreed that Roats would provide water service to the manufactured home park. That rule required, in relevant part:[14]

> The residential development charge is assessed (based on the lot size) on any lot or lots for which a permanent new water service is established to serve one or more residential dwellings. The residential development charge is assessed in addition to the meter set charge.
>
> A residential development located on a single tax lot for which a master metered water service is established to serve multiple residences, shall (in lieu of the charge based on lot size) be assessed a residential development charge based on the size of the master water meter required to serve the development (including all areas to be served in future phases of the development).
>
> Subsequent to setting the master meter and payment of its fee, if lots within the master metered development become separately identified tax lots, the developer(s) of these separately identified tax lots will then be assessed an additional charge equal to the greater of (a) or (b), and reduced by (c); where (a) is a residential development charge (based on each individual new lot size), (b) is the meter set charge, and (c) is the fee previously paid to set the master meter for this development. In the event that this calculation produces a number less than zero, no refund will be given, and the amount of the fee shall be zero.

Rule 6(a) remained in effect until July 1, 2005, when it was superseded by Rule 9(a).[15] Except for the revisions to paragraph 3 shown below, Rule 9(a) is identical to Rule 6(a).[16]

> Subsequent to setting the *meter(s) or* master meter and payment of [its] fee*s*, if lots within the [master metered] development become separately identified tax lots, the developer(s) of the[se] separately identified tax lots will then be assessed an additional charge equal to the greater of

[14] Paragraph 4 of Rule 6(a) deals with commercial development and is irrelevant to the issues in this case. Paragraph 4 of Rule 9(a) – which is identical to paragraph 4 of Rule 6(a) – is omitted for the same reason.

[15] Golfside recorded the plat for its PUD subdivision in September, 2005.

[16] Additions are italicized and deletions are shown in brackets.

> (a) or (b), and reduced by (c); where (a) is a residential development charge (based on each individual new lot size), (b) is the master meter set charge, and (c) is the fee previously paid to set the master meter for this development. In the event that this calculation produces a number less than zero, no refund will be given, and the amount of the fee shall be zero.

As discussed more fully below, the revisions to paragraph 3 -- now included in Rule 9(a) -- are not relevant to any of the issues in this proceeding. Thus, it is unnecessary to address any arguments relating to those revisions.[17]

<u>Application of the RDC tariff to the Developments at Issue in the Case</u>

At the outset, Golfside raises two initial challenges to the application of Roats' RDC tariff. First, Golfside argues that Roats' RDC is "unjust and unreasonable" and is therefore prohibited by ORS 757.020.[18] We disagree. As noted above, RDCs are a standard practice in the water industry and represent a reasonable method of offsetting the capital costs associated with the construction of utility facilities necessary to serve new developments. Indeed, RDCs serve essentially the same function as system development charges imposed by local governments to reduce the financial burden on public infrastructure and facilities. Furthermore, RDCs do not result in a windfall for the utility because they are not included in rate base for ratemaking purposes.

Golfside's argument is also flawed from a legal standpoint. ORS 756.565 provides that:

> All rates, tariffs, classifications, regulations, practices and service fixed, approved or prescribed by the Public Utility Commission and any order made or entered upon any matter within the jurisdiction of the commission *shall be in force and shall be prima facie lawful and reasonable,* until found otherwise in a proceeding brought for that purpose under ORS 756.610. (Emphasis added.)

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[17] For example, Golfside argues that Rule 9(a) does not apply because it was modified after the WSA was executed and after the City of Bend approved Golfside's PUD subdivision. These arguments do not apply to the PUD subdivision for the reasons discussed below. They would not be persuasive in any event, because: (a) Roats' tariff, not the WSA, controls the disposition of the issues in this case, and (b) RDCs are payable under the tariff when water service is provided and do not depend upon actions taken by the city with respect to Golfside's development."

[18] ORS 757.020 provides that "[e]very public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited."

Residential development charges have not been determined to be unreasonable or unlawful in a judicial proceeding brought pursuant to ORS 756.610.

Second, Golfside argues that it is exempt from Roats' RDC because of ORS 92.830 *et seq.*, which exempts manufactured housing subdivisions from "system development charges (SDCs). ORS 223.299(4)(a) defines a system development charge as:

> . . . a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement. 'System Development Charge' includes that portion of a sewer or water system connection charge that is greater than the amount necessary *to reimburse the local government* for its average cost of inspecting and installing connections with water and sewer facilities. (Emphasis added.)

The Oregon Court of Appeals has addressed system development charges in a number of recent decisions. As explained by the Court:

> A system development charge is a one-time fee *imposed by a governmental unit* in response to the increased *burden on public facilities* created by new development. (Emphasis added). *Homebuilders Ass'n v. City of West Linn*, 204 Or. App. 655, 657 (2006); See also, *Homebuilders Ass'n of Metropolitan Portland v. Tualatin Hills Park and Recreation Dist.*, 185 Or. App. 729, 731 (2003).

Similarly, in another recent decision, the Court recognized:

> ORS chapter 223 authorizes *local governments to undertake capital improvements and provides for the use of SDCs as a mechanism to fund such improvements.* (Emphasis added.) *Homebuilders Ass'n of Lane County v. City of Springfield*, 204 Or. App. 270, 276 (2006).

Both the statutory definition and relevant case law make clear that SDCs are assessed only by local governmental units for the purpose of offsetting costs placed on public facilities. That is not the case here. Roats is an investor-owned utility, not a local governmental unit, and the residential development charges included in its tariff are designed to offset the company's capital cost of constructing water facilities. Contrary to

Golfside's claim, Roats' RDCs do not constitute system development charges and are not subject to the statutory exemption in ORS 92.830 *et seq.*[19]

Accordingly, we conclude that Roats' RDC applies to lots within Golfside's development where permanent new water service is supplied to a residential dwelling. Since the circumstances surrounding the housing developments described in this order differ, they should be analyzed separately to determine whether and to what extent the RDC applies.

<u>The Manufactured Home Park</u>.

Rule 6(a) of Roats' tariff was in effect from the time the manufactured home park was approved by the City of Bend on September 1, 1999, until it was converted to a 97-lot manufactured home subdivision in September, 2003. Until the subdivision was created, the manufactured home park was comprised of a single tax lot. The rental spaces in the park were served by individual meters rather than a master meter.

In the case of a single tax lot for which master meter water service has not been established, paragraph 1 of Rule 6(a) provides that the RDC shall be assessed based on the size of the lot.[20] The RDC is payable when permanent new water service is established to serve one or more residential dwellings on the lot. Thus, under its tariff, Roats was entitled to collect an RDC if any dwellings within the manufactured home park were connected with permanent new water service during the period of time the manufactured home park existed. However, because the manufactured home park was situated on a single tax lot, the tariff provides for payment of only one RDC based upon the size of the lot upon which the park was situated. This is true regardless of the number of manufactured home spaces connected with permanent new water service during that time frame.[21]

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[19] It is also unclear whether Golfside's PUD subdivision -- which includes "stick-built" homes -- even qualifies for the manufactured home subdivision exemption. The 2005 legislative amendments to ORS 92.830 include the addition of Subsection (1)(c), restricting the use of the lots in a qualifying manufactured home subdivision to "the installation of manufactured dwellings." The record indicates that this issue was the subject of an unresolved legal dispute between Golfside and the City of Bend. Rather than litigate the matter, the parties agreed to replat the manufactured home subdivision as a PUD subdivision. Whether or not Golfside's PUD qualifies as a manufactured home subdivision is of no consequence in this case, however, because Roats' RDCs are not SDCs encompassed by the statutory scheme.

[20] Schedule No. 5 of Roats' tariff specifies different charges for different lot sizes. For example, the RDC for a lot greater than 20,000 square feet is $3,175. The charges set forth in Schedule No. 5 did not change when Rule 6(a) was revised and renumbered in 2005.

[21] The responses to the clarifying questions propounded by the ALJ appear to indicate that Roats began providing new water service to tenants occupying spaces in the manufactured home park after the park was approved by the city on September 1, 1999, and before it was converted into the manufactured home subdivision.

The Manufactured Home Subdivision.

As in the case of the manufactured home park, Rule 6(a) of Roats' RDC tariff was in effect during the entire time the manufactured home subdivision was in existence. The conversion of the manufactured home park to the manufactured home subdivision resulted in the creation of 97 new tax lots where only one lot had existed previously. Under paragraph 1 of the rule, an RDC was owed for every new lot that began receiving permanent new service during the time the manufactured home subdivision was in existence. The amount of each RDC depends upon the size of the lot receiving new water service as set forth in Schedule No. 5 of Roats' tariff.

The record does not indicate whether the spaces in the manufactured home park were converted into tax lots on a one-for-one basis (*i.e.*, whether spaces in the manufactured home park and new tax lots in the manufactured home subdivision occupied the same geographical territory).[22] Assuming a one-to-one conversion took place, any spaces already receiving permanent water service from Roats prior to the conversion into a manufactured home subdivision would not be required to pay an RDC. Only the newly created lots in the subdivision that were supplied with permanent new water service were subject to an RDC under the tariff.

Focusing on paragraphs 2 and 3 of Rule 6(a), Golfside asserts that it does not have to pay RDCs because no master meter was ever set.[23] While Golfside is correct that no master meter was ever installed in any of the three developments, its interpretation of the rule is incorrect. Paragraphs 2 and 3 apply only where a development is, or has been, served by a master meter.[24] Since that was not the case for any of the developments under consideration, paragraphs 2 and 3 are inapplicable, and the appropriate RDC is determined based upon paragraph 1.[25]

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[22] Exhibit No. 4 shows that the City of Bend approved a 169-space manufactured home park to be developed in four phases. At the time application was made to convert the park to a manufactured home subdivision, only the northern portion of Phase I had been developed, consisting of 53 rental spaces, approximately 30 of which were occupied. See Exhibit No. 4 at 3.

[23] Golfside does not specify, but presumably this argument applies to all three developments; that is, the manufactured home park, the manufactured home subdivision, and the PUD subdivision.

[24] Paragraph 2 deals with a single tax lot in which master-metered service is established. Paragraph 3 deals with the situation where a master-metered development is subsequently changed into separately identifiable tax lots.

[25] As noted above, all of the water service provided by Roats has been individually metered. This includes the water service provided to spaces in the manufactured home park, as well as lots in both the manufactured home subdivision and the PUD subdivision.

The PUD subdivision.

As noted, Rule 6(a) of Roats' tariff was superseded by Rule 9(a) shortly before Golfside recorded the plat for the PUD subdivision. The changes in the rule, however, have no effect upon the RDCs applicable to lots receiving permanent new water service in the PUD subdivision.

Although the 2005 revisions to paragraph 3 made it applicable to both master-metered developments and individually metered developments, the paragraph relates only to circumstances where lots within a development subsequently "become separately identified tax lots." That is not the case here, because all of the 94 lots in Golfside's PUD subdivision previously became separately identified tax lots in 2003 when the manufactured home subdivision was created. The conversion of the manufactured home subdivision to a PUD subdivision in 2005 did not cause any change in the existing tax lots. Thus, the revisions to paragraph 3 of the RDC rule – now incorporated in Rule 9(a) – do not apply to the PUD subdivision.

As in the case of the manufactured home park and the manufactured home subdivision, paragraph 1 of the RDC tariff[26] governs the RDCs applicable to Golfside's PUD subdivision. Thus, any lots that began receiving permanent new water service after the creation of the PUD subdivision, or that receive permanent water service from Roats in the future, are subject to an RDC.[27] The amount of the RDC will depend upon the size of the lot receiving new water service as set forth in Schedule No. 5.

Other Issues

Occupied and Connected Lots.

Golfside claims that it should not have to pay the RDC for lots that were "already occupied" and "fully connected" at the time the complaint was filed. That argument is not persuasive. Roats is entitled to collect RDCs in accordance with its filed tariff. Indeed, as emphasized above, the utility is obligated by law to do so. If RDCs are owed under the tariff, they must be paid, regardless of whether the lot in question is already occupied and receiving water service.

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[26] As noted, there is no difference between paragraph 1 of Rule 6(a) and paragraph 1 of Rule 9(a).

[27] In response to the clarifying questions submitted by the ALJ, the parties indicate that 18 lots began receiving permanent water service from Roats after the conversion to a PUD subdivision on March 17, 2005. The parties also state that there are approximately 24 vacant lots not yet receiving permanent water service.

Attorney Fees.

Both parties to this case request that the Commission award attorneys fees pursuant to ORS 756.185. It is well settled that the Commission does not have authority to award attorney fees. In *Belozer Poultry Farms, Inc., vs. Portland General Electric Company*, the Commission held:[28]

> ORS 756.185(1) permits a court, not an agency, to award attorney fees if the court awards damages against the utility. The powers of administrative agencies are limited to those conferred by statute. No statute permits the Commission to award attorney fees. The Oregon Court of Appeals has specifically held that administrative agencies lack authority to award attorney fees. *Johnson v. Employment Division,* 64 Or App 276, 280 (1983).

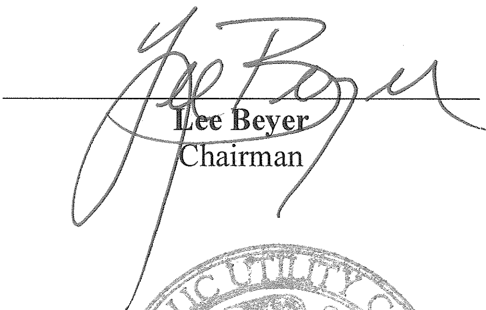
[28]*Belozer Poultry Farms, Inc., vs. Portland General Electric Company*, docket UC 201, Order No. 92-825, entered June 8, 1992.

ORDER

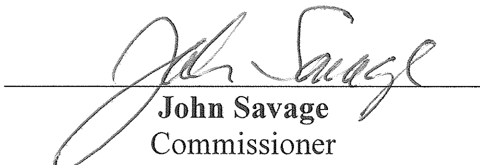
1. Roats Water System, Inc., is authorized under its Commission-approved water service tariff and applicable law to assess residential development charges as described herein.

2. Golfside Investments, LLC, is required to pay residential development charges as set forth herein.

Made, entered, and effective FEB 10 2007.



Lee Beyer
Chairman



John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.