

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ROATS WATER SYSTEM, INC., an active)
Oregon business corporation,)

Complainant,)

vs.)

GOLFSIDE INVESTMENTS, LLC, an)
active Oregon limited liability company,)

Defendant.)

Case No.: UM-1248

**REPLY TO DEFENDANT'S MOTION
TO DISMISS OR STRIKE**

Complainant, Roats Water System, Inc., responds to Defendant Golfside Investments, LLC's Motion to Dismiss or Strike as follows:

1. Defendant relies on ORS 756.500(1) when it argues that the PUC lacks personal jurisdiction over Golfside and/or lacks subject matter jurisdiction over Complainant's Complaint "because Golfside is not regulated." Defendant's motion further relies on Coalition for Safe Power v. Oregon Public Utility Com'n, 325 Or. 447, 939 P.2d 1167, 1170 (1997) when it argues that "[T]here is no authority to file a PUC complaint against an unregulated person or entity. Defendant's reliance on the first section of the identified statute fails to take into consideration Section 5 of that statute. ORS 756.500(5) states as follows:

"Notwithstanding (1) of this Section, any public utility or telecommunications utility may make complaint as to any matter affecting its own rates or service with like effect as though made by any other person, by filing an application, petition or complaint with the Commission."

Clearly, the PUC has both personal jurisdiction over Golfside and subject matter jurisdiction over Roats' Complaint. Defendant has simply relied upon the wrong portion of the statute when making its argument. Defendant's Motion to Dismiss should be denied.

2. In response to Defendant's Motion to Strike, Complainant believes that Exhibit B issued March 17, 2005, by the City of Bend is relevant to this case. The document provides the approval for which defendant is currently developing its land. Certainly, additional

1 documents may also be relevant and may be submitted as evidence at trial. Defendant's
2 Motion to Strike should be denied.

3 3. Concerning Defendant's argument that Roats "cannot recover under Rule 6a
4 because that rule required the setting of a master meter as a prerequisite to recovering
5 residential development charges", Defendant's "legal conclusion" is wrong. Moreover, such
6 motion is not an appropriate motion at this time pursuant to OAR 860-011-0000(3) which
7 incorporates the Oregon Rules of Civil Procedure, and in particular, ORCP 21 A(1), A(2) and
8 E.

9 **CONCLUSION**

10 Defendant Golfside's Motion to Dismiss should be denied because the PUC has
11 jurisdiction to hear this case pursuant to ORS 756.500(5). Defendant's Motion is silent as to
12 that particular provision of the statute. Defendant's alternative Motion to Strike should be
13 denied as the Exhibits are relevant and the Motions are improper at this stage of the
14 proceedings. These motions are more appropriate at the summary judgment stage or at trial.
15 On its face, nothing in the Complaint is "sham and/or irrelevant".

16 DATED THIS 14th day of March, 2006.

17 BRYANT, LOVLIE & JARVIS,

18 

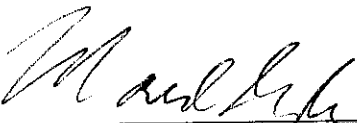
19 MARK G. REINECKE, OSB 91407
20 Of Attorneys for Complainant Roats
21 Water Systems
22 Email: reinecke@bljlawyers.com

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I served the foregoing COMPLAINANT'S REPLY TO
3 DEFENDANT'S MOTION TO DISMISS OR STRIKE by depositing a true, full and exact
4 copy thereof in the United States Post Office at Bend, Oregon, enclosed in a sealed envelope,
5 postage prepaid, addressed to:

6 BRIAN C. HICKMAN
7 PETERKIN & ASSOCIATES
8 222 NW IRVING AVENUE
9 BEND, OR 97701
10 Of Attorneys for Defendant

11 DATED this 14th day of March, 2006.

12 
13 _____
14 MARK G. REINECKE, OSB 91407
15 Of Attorneys for Complainant

16 **CERTIFICATE OF TRUE COPY**

17 I hereby certify the foregoing is a true, full and exact copy of the original thereof.

18 DATED this 14th day of March, 2006.

19 _____
20 MARK G. REINECKE, OSB 91407
21 Of Attorneys for Complainant