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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ROATS WATER SYSTEM, INC., an active)
Oregon business corporation,)
Complainant,)
v.)
GOLFSIDE INVESTMENTS, LLC, an)
active Oregon limited liability company,)
Defendant.)

Case No. UM 1248

DEFENDANT’S MOTION TO DISMISS OR STRIKE

ORAL ARGUMENT BY TELEPHONE REQUESTED

I. MOTION

Pursuant to OAR 860-011-0000(3) (incorporating the Oregon Rules of Civil Procedure) and ORCP 21 A(1), A(2) and E, Defendant Golfside Investments, LLC, (hereinafter, “Golfside”), hereby moves for entry of an order as follows:

- A) Dismissing the above-entitled action for lack of jurisdiction; or
- B) Striking sham and irrelevant portions of the Complaint.

This motion is supported by the following points and authorities.

II. POINTS AND AUTHORITIES

The jurisdictional issue is dispositive, so there is no need to consider Defendant’s Motion to Strike if the Commission (*i.e.*, the Administrative Law Judge assigned to this case) agrees that jurisdiction is lacking. The Motion to Strike is presented as a back-up argument and in order to satisfy the consolidation requirements of ORCP 21 F.

A. The Public Utilities Commission lacks jurisdiction to consider Roats’ Complaint.

Roats Water System, Inc.’s (hereinafter, “Roats”) Complaint should be dismissed because subject matter jurisdiction and/or personal jurisdiction is lacking. Roats brought its Complaint pursuant to ORS 756.500, which provides:

1 Any person may file a complaint before the Public Utility
2 Commission, or the commission may, on the commission's own
3 initiative, file such complaint. **The complaint shall be against any**
4 **person whose business or activities are regulated** by some one or
more of the statutes, jurisdiction for the enforcement or regulation of
which is conferred upon the commission. The person filing the
complaint shall be known as the complainant and the person against
whom the complaint is filed shall be known as the defendant.

5 ORS 756.500(1) (emphasis added). Golfside is not regulated by the PUC¹, so the PUC lacks
6 personal jurisdiction over Golfside and/or lacks subject matter jurisdiction over Roats'
7 Complaint.

8 The Courts have interpreted ORS 756.500(1) according to its plain language.
9 According to the Supreme Court: "Under ORS 756.500(1), a 'defendant' is a person or entity
10 **who is regulated by the PUC** and against whom a 'complaint' has been filed." *Coalition for*
11 *Safe Power v. Oregon Public Utility Com'n*, 325 Or. 447, 939 P.2d 1167, 1170 (1997)
12 (emphasis added). In greater detail:

13 In interpreting a statute, this court's task is to discern the intent of the
14 legislature. The first level of analysis is to examine the text and
15 context of the statute. If the legislature's intent is clear from those
16 inquiries, further inquiry is unnecessary. **ORS 756.500(1), identifies**
17 **who may file a complaint with the PUC and against whom that**
18 **complaint may be filed.** From the text of the statute, we know that
'any person,' including the PUC itself, may file a complaint and
become a 'complainant.' **A complaint may be filed against 'any**
person whose business or activities are regulated by some one or
more of the statutes, jurisdiction for enforcement or regulation of
which is conferred upon the [PUC].'

19 *Pacific Northwest Bell Telephone Co. v. Eachus*, 320 Or. 557, 564, 888 P.2d 562 (1995).
20 (emphasis added)(internal citations omitted). There is no authority to file a PUC complaint
21 against an unregulated person or entity.

22 In *Oregon Trail Elec. Consumers Co-op, Inc. v. Co-Gen Co.*, 168 Or.App. 466, 473, 7
23 P.3d 594 (2000), the Court of Appeals noted that "the determination of parties' rights under a
24 contract is a common-law issue that falls within a circuit court's general jurisdiction."
25

26 ¹ The Complaint does not allege that Golfside is regulated by PUC, nor is there any basis for such an
allegation.

1 Moreover, the *Oregon Trail* Court noted that where “neither party is presently subject to PUC
2 regulation,” the PUC lacks jurisdiction. 168 Or.App. 474, n. 6. Pursuant to the plain language
3 of ORS 756.500(1) jurisdiction is also lacking, *even if* the complainant is subject to
4 regulation, so long as, like here, the defendant is not.

5 Because Golfside is not regulated, the requirements of ORS 756.500(1) have not been
6 satisfied and the PUC lacks jurisdiction to consider Roats’ Complaint.

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**B. Portions of Roats’ Complaint are sham and/or irrelevant and, therefore,
8 should be stricken.**

9 If Roats’ Complaint is not dismissed, the following portions of that Complaint should
10 be stricken:

- 11 • The last sentence of Paragraph 5;
- 12 • Exhibit “B”;
- 13 • The second and last sentences of Paragraph 6; and
- 14 • Exhibit “C”.

15 The law provides:

16 Upon motion made by a party before responding to a pleading ... the
17 court may order stricken: ... (2) any insufficient defense or any sham,
frivolous, irrelevant, or redundant matter inserted in a pleading.

18 ORCP 21 E. The last sentence of Paragraph 5 is sham and/or irrelevant because it references
19 the Administrative Review and Decision in Project Number 05-58 which, by reference to the
20 first page of Exhibit “B”, was issued March 17, 2005. However, Roats’ bases its claim on a
21 subdivision plat recorded “[o]n or about December 18, 2003.” (Complaint, ¶4). Paragraph 5
22 purports to relate to “[t]he replat alleged in paragraph 4,” but it is apparent that the attached
23 Administrative Decision did not approve the subject replat because it was issued over one
24 year later. In other words, Roats’ Complaint discusses, and attaches, the wrong Decision.
25 Accordingly, the last sentence of Paragraph 5 and the attached Administrative Review and
26 Decision, Exhibit “5”, are shams and/or irrelevant and should be stricken.

1 Similarly, paragraph 6 references Rule 9a, but that rule was not in effect when the
2 Water Service Agreement was signed or when the subject replat occurred. The law provides:

3 All tariff changes shall be made applicable with service rendered on
4 and after the effective date of the changes, unless the Commission by
order provides otherwise.

5 OAR 860-036-0640. Roats' Complaint acknowledges in paragraph 6 that Rule 9a was
6 approved June 24, 2005 and that, before that time, the applicable rule was Rule 6a. Roats
7 cannot recover under Rule 6a because that rule required the setting of a master meter as a
8 prerequisite to recovering residential development charges. No master meter was ever set in
9 Golfside's subdivision. To avoid this problem, Roats cites the current rule even though it was
10 not in effect at the material times. Because Exhibit "C" was not in effect at the relevant times,
11 that Exhibit and all references thereto are sham and/or irrelevant and should be stricken.

12 **III. CONCLUSION**

13 Because Golfside is not regulated by the PUC, it cannot be made a defendant in a PUC
14 Complaint. Accordingly, and pursuant to ORS 756.500(1), the PUC lacks jurisdiction to
15 consider Roats' Complaint. In the alternative, the above-described portions of the Complaint
16 should be stricken as sham and/or irrelevant.

17
18 **DATED** this ____ day of February, 2006.

19 PETERKIN & ASSOCIATES

20
21

Brian C. Hickman; OSB #03109
22 Of Attorneys for Defendant
23 Phone: (541) 389-2572
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CERTIFICATE OF SERVICE

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I hereby certify that I served on the date set forth below the foregoing **DEFENDANT’S MOTION TO DISMISS OR STRIKE** on the following counsel by the following indicated method(s):

Mark G. Reinecke
Bryant, Lovlien & Jarvis
P.O. Box 1151
Bend, OR 97709-1151
389-3386 (fax)

- by **MAILING** a full, true and correct copy in a sealed, postage paid envelope, addressed to the above and deposited with the U S Postal Service in Bend, OR 97701.
- by causing full, true and correct copies to be **hand delivered to** the above persons.
- by **FAXING** a full, true and correct copy to the above.

DATED: February ____, 2006.

PETERKIN & ASSOCIATES

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