

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1248

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

**DISPOSITION: REQUEST FOR CERTIFICATION DENIED**

On March 30, 2006, the Administrative Law Judge (ALJ) issued a Ruling denying a motion to dismiss/motion to strike filed by Golfside Investment, Inc. (Golfside), the defendant in this matter. In support of its motion to dismiss, Golfside relies upon ORS 756.500(1), which provides, in part, that “complaints shall be against any 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.” Golfside argues that the Commission has no jurisdiction to consider this Complaint because Golfside is an unregulated entity.<sup>1</sup>

The Ruling rejected both the motion to dismiss and motion to strike. With respect to the former, the ALJ emphasized that ORS 756.500(5) authorizes a public utility to “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.” Subsection (5) specifically provides that public utilities may make such filings “[n]otwithstanding the provisions of subsection (1).”

On April 10, 2006, Golfside filed a “Motion for Reconsideration In the Alternative Request for Certification,” challenging that portion of the Ruling denying its motion to dismiss. As discussed below, Golfside maintains that the Ruling is based upon a misunderstanding of its position, as well as a misinterpretation of ORS 756.500.

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<sup>1</sup> A copy of ORS 756.500 is attached to this Ruling.

Because an application for reconsideration is appropriate only after the Commission issues a final order, Golfside's filing is treated as a request for certification of the ALJ's March 30, 2006, Ruling. See, ORS 756.561; OARs 860-012-0035 and 860-014-0091.

In its request for certification, Golfside reasserts that "the Commission is limited to filing a complaint 'against any person whose business or activities are regulated' by a statute that is within the jurisdiction of the Commission." It maintains that the ruling unlawfully extends the Commission's authority by allowing the complainant, Roats Water System (Roats), "to file the complaint against Golfside, whose business is not regulated by the Commission." In support of its argument, Golfside states:

There is a relationship between subsection (1) and subsection (5) of ORS 756.500. After all, the two subsections are part of the same statute. The provisions of all subsections in ORS 756.500 must be considered in the determining the meanings of subsections (1) and (5). *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993). Subsection (5) should not be considered in isolation.

Subsections (2) through (4) contain additional procedural provisions regarding a 'complaint.' These procedural provisions must apply to a 'complaint' brought by a public utility under subsection (5) because the procedural provisions are not only part of the same statute but there are no other procedural provisions applicable to a complaint under subsection (5).

In providing the applicable procedure, subsections (3) and (4) refer to the party against whom the complaint is filed as the 'defendant,' *i.e.* a 'defendant' as defined in subsection (1). In other words, a complaint brought under subsection (5) may be brought only against a 'person whose business or activities are regulated by' the Commission as provided in subsection (1).

Subsection (5) does not identify any other possible person as a defendant in a complaint brought by a public utility. In fact, subsection (5) deals with only who may bring a complaint and the nature of the complaint.

Significantly, subsection (5) does not grant a public utility any authority beyond the authority of a 'person' who files a complaint under subsection (1). Subsection (5) states that a

public utility ‘may make complaint \* \* \* with like effect as though made by any other person.’<sup>2</sup> [Golfside’s Footnote 2 states: Subsection (5) was enacted ‘[n]otwithstanding subsection (1)’ only in the sense that it allows a public utility, in addition to a ‘person’ under subsection (1), to file a complaint and it provides that a public utility’s complaint may be about matters that affect its particular interests.]

The ruling is correct that subsection (5) ‘clearly authorizes a public utility to file a complaint with the Commission regarding matters affecting utility rates and service.’ (Ruling 2). But respectfully, the ruling is in error in allowing such a complaint to be filed against an entity not regulated by the Commission.

Golfside appears to argue that since the term “defendant” is defined only in subsection (1), the only possible “defendants” encompassed by ORS 756.500 are those persons<sup>2</sup> whose business or activities are regulated by the Commission. In other words, Golfside seems to be saying that the definition of “defendant” in the last sentence of subsection (1) must be read in conjunction with the previous sentence of that section, which requires that complaints must be filed against regulated entities.

Golfside’s proposed statutory construction fails to distinguish that the first two sentences of Subsection (1) deal with complaints *filed against* utilities, whereas Subsection (5) deals with complaints *filed by* utilities. The fact that Subsection (5) does not mention the term “defendant” does not compel the conclusion that utilities may only file complaints against other regulated entities. If that were the case, all disputes between a utility and its customers relating to utility rates or service would have to be pursued in a judicial forum. Such an interpretation would negate a major portion of the Commission’s regulatory authority and would impose immense burdens upon the judicial system. Clearly, the Legislature did not intend that result when it enacted ORS 756.500.

The essence of Golfside’s claim is that Subsection (5) merely reiterates a right already granted in Subsection (1), which provides that “any person” (including a utility) may file a complaint against a regulated entity. That interpretation, however, renders Subsection (5) superfluous, a result contrary to maxims of statutory construction. Contrary to Golfside’s assertion, Subsection (5) permits a public utility or telecommunications utility to file a complaint against any person, so long as the matter involves the utility’s own rates or service.

Golfside also asserts that the Ruling “incorrectly describes” its position regarding jurisdiction. It emphasizes that its “position is that the Commission lacks subject matter jurisdiction because the Complaint herein is not authorized by

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<sup>2</sup> Under ORS 756.010(5), “Person” includes individuals, joint ventures, partnerships, corporations and associations or their officers, employees, agents, lessees, assignees, trustees or receivers.”

ORS 756.500, regardless of whether or not the Complaint is designated a “Breach of Contract.”<sup>3</sup>

The challenged statement does not misconstrue Golfside’s jurisdictional argument. Rather, it addresses case law cited by Golfside in its motion to dismiss, and rejects the apparent assertion that the Commission lacks jurisdiction because the instant dispute arises out of a contractual agreement. As emphasized, ORS 756.500(5) specifically authorizes a utility to file a 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.*” The Ruling makes clear that the Commission has jurisdiction in this case because Roats’ complaint relates to “a matter affecting its own rates” as set forth in its tariffs and rules governing utility water service.

As a final matter, Golfside asserts that it will suffer undue prejudice unless the Ruling is reversed. Golfside cites the time and expense necessary to prepare for hearing as the disruption of its personnel and business operations. It also cites the loss of business opportunities because of the need to disclose the existence of the pending Complaint to potential customers. All of the concerns cited by Golfside are matters typically associated with litigation. As such, they do not rise to the level of “substantial detriment” or “undue prejudice” sufficient to justify certification under OAR 860-014-0091.<sup>4</sup>

Golfside has not demonstrated that the Ruling is incorrect or that it will result in substantial detriment or undue prejudice as required by OAR 860-014-0091. Accordingly, the request for certification of the March 30, 2006, ALJ Ruling is denied.

Dated at Salem, Oregon, this 19<sup>th</sup> day of April, 2006.

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Samuel J. Petrillo  
Administrative Law Judge

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<sup>3</sup> The statement in the Ruling challenged by Golfside provides: “Golfside further argues that the Commission lacks subject matter jurisdiction, presumably because the matter involves a contractual dispute.” The attached footnote provides: “Golfside cites *Oregon Trail Elec. Consumers Co-op v. Co-Gen Co.*, 168 Or. App. 466, 7 p3d 594 (2000), for the proposition that ‘the determination of parties’ rights under a contract is a common-law issue that falls within a circuit court’s jurisdiction.’” Although the caption of Roats’ Complaint indicates “Breach of Contract – Development Charges,” the essence of the Complaint is a request to require payment of charges set forth in its tariffs and rules governing utility water service. As noted below, these matters are within the jurisdiction of the Commission to decide.

<sup>4</sup> OAR 860-014-0091(1) provides that a ruling of an Administrative Law Judge may not be appealed during the proceeding except where the ALJ certifies the question to the Commission pursuant to OAR 860-012-0035(1)(i), upon a finding that the ruling: (a) May result in substantial detriment to the public interest or undue prejudice to any party; or (b) Denies or terminates any person’s participation. Subsection (b) is inapplicable here.

## APPENDIX A

**756.500 Complaint; persons entitled to file; contents; amendments.** (1) Any person may file a complaint before the Public Utility Commission, or the commission may, on the commission's own initiative, file such complaint. The complaint shall be against any 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.

(2) It is not necessary that a complainant have a pecuniary interest in the matter in controversy or in the matter complained of, but the commission shall not grant any order of reparation to any person not a party to the proceedings in which such reparation order is made.

(3) The complaint shall state all grounds of complaint on which the complainant seeks relief or the violation of any law claimed to have been committed by the defendant, and the prayer of the complaint shall pray for the relief to which the complainant claims the complainant is entitled.

(4) The complaint may, at any time before the completion of taking of evidence, be amended by order of the commission. However, if a charge not contained in the original complaint or a prior amended complaint is sought to be made by any such amendment, the defendant shall be given a reasonable time to investigate the new charge and answer the amended complaint. The final hearing shall, if necessary, be continued until some date after the defendant has had a reasonable time to investigate and be prepared to meet the amended complaint.

(5) Notwithstanding subsection (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. [Formerly 756.520; 1987 c.447 §91; 1995 c.733 §68]