ISSUED: March 30, 2006

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1248

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

DISPOSITION: MOTION TO DISMISS DENIED; MOTION TO STRIKE DENIED

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 in conformance with Roats' Residential/Multi-Residential Development Charge, Schedule 5 and Rule 9a.

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 Feburary 9, 2006, Roats filed a Complaint with the Commission pursuant to ORS 756.500, alleging that Golfside has refused to pay development charges specified in Roat's tariffs and rules. Roats alleges that Golfside's obligation to pay is set forth in a Water Service Agreement (Agreement) entered into with Golfside's predecessor, 523 LLC. According to Roats, the Agreement requires payment of a residential/multi-residential development charge "as per OPUC tariff rules and regulations schedule No. 5 and rule 6a."

On March 1, 2006, Golfside filed a motion to dismiss the Complaint. In the alternative, Golfside requests that portions of the Complaint be stricken. Roats responded to the motion(s) on March 14, 2006.

After reviewing the pleadings, I find that Golfside's motion to dismiss and motion to strike should be denied for the following reasons[1]:

I. Golfside relies on ORS 756.500(1) to argue that the Commission lacks jurisdiction in this matter. Subsection (1) of ORS 756.500 provides:

> 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.

Golfside contends that the Commission lacks personal jurisdiction under Subsection (1) of the statute because Golfside is not a regulated entity. It further argues that the Commission lacks subject matter jurisdiction over the Complaint, presumably because the matter involves a contractual dispute.[2]

Golfside's jurisdictional arguments are not persuasive. As Roats points out in its response, ORS 756.500(5) provides:

> 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.

The Complaint filed in this matter seeks to recover development charges claimed to be owing pursuant to the fee schedule set forth in Roats' tariffs and rules governing its water utility service. ORS 756.500(5) clearly authorizes a public utility to file a complaint with the Commission regarding matters affecting utility rates and service.

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[1] Golfside's request for oral argument is also denied.

[2] 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.

II. Golfside seeks to strike the last sentence of paragraph 5 of the Complaint. That sentence refers to an Administrative Decision by the City of Bend, allegedly replatting the property subject to the Agreement. Golfside also seeks to strike the copy of the Administrative Decision, attached as Exhibit B to the Complaint. Golfside asserts that these items "are sham and/or irrelevant" because Roats "discusses, and attaches, the wrong Decision."

Golfside's motion to strike the last sentence of paragraph 5 of the Complaint and Exhibit B is denied. Whether the Administrative Decision cited in the Complaint is applicable to the subject property, and relates to Roats' right to collect development charges pursuant to its tariff and rules, is a question of fact to be considered at hearing.

III. Golfside seeks to strike the second and last sentences of paragraph 6 of the Complaint. Those sentences refer to Rule 9a of the Commission's tariff rules and regulations applicable to Roats' water utility service. Golfside asserts that Rule 9a was not in effect when the Agreement was signed or at the time the subject property was replatted. According to Golfside, Roats acknowledges that "the applicable rule was Rule 6a," but maintains that Roats "cannot recover under Rule 6a because that rule required the setting of a master meter as a prerequisite to recovering residential development charges." Golfside also seeks to strike Exhibit C of the Complaint – a copy of Roats's tariffs effective July 1, 2005 – because those tariffs were not in effect at the times relevant to the Complaint.

Golfside's motion to strike the two sentences in paragraph 6 and Exhibit C of the Complaint is denied. The Staff Report presented at the January 26, 2006, public meeting indicates that, except for minor wording changes, Rule 6a in effect at the time the Roats/523 LLC Agreement was executed is the same as Rule 9a of Roats' current rules. Pursuant to Oregon Administrative Rule 860-014-0050(1), official notice is taken of the tariff sheets on file with the Commission specifying the rules and regulations governing Roats' water service. A review of those tariff sheets confirms that Rule 9a of Roats' current rules and regulations does not differ in any significant respect from Rule 6a.[3] Consequently, there is no merit to Golfside's claim that the reference to Rule 9a must be stricken from the Complaint.

As noted above, Golfside also maintains that Roats cannot recover under Rule 6a because that rule required the setting of a master meter, and no such meter was ever set in Golfside's subdivision. The relevant portions of Rule 6a are set forth in the second and third paragraphs:

> 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

[3] Copies of Rule 6a and Rule 9a are attached as Appendix A to this ruling. The agreement between Roats and 523 LLC was executed in January, 2000.

> 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.

Although paragraph 3 of the rule could have been more artfully drafted, it is clear that it is intended to establish the method for calculating the development fee where a residential master-metered development with an already-installed master meter is subsequently changed into a residential development with separately identified tax lots. Golfside's apparent claim that the rule does not permit development fees to be assessed where a master-metered development is changed to separately identified tax lots before a master meter is installed does not make sense from a regulatory standpoint. Whether or not a master meter is in place at the time a master-metered development is changed to a development with separate tax lots has no bearing on the calculation of the development fee required to offset the additional cost of providing water service to the separate tax lots.

Based on the foregoing, Golfside's Motion to Dismiss and alternative Motion to Strike are denied.

Dated at Salem, Oregon, this 30th day of March, 2006.

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Samuel J. Petrillo
Administrative Law Judge

APPENDIX A

Rule 6a:

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.

Any commercial development within the master metered residential development area shall be assessed a fireflow charge instead of the residential development charge. The fireflow charge will be assessed on the entire structure containing the commercial enterprise, even though a portion of the structure may be for residential use. The lot occupied by the commercial development shall be excluded from any residential development charge.

Rule 9a:

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 signle tax lot for which a 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 area to be served in future phases of the development).

Subsequent to setting the meter(s) or master meter and payment of its fees, if lots within the development become separately identified tax lots, the developer(s) of the 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 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.

Any commercial development within the mastered residential development area shall be assessed a fireflow charge instead of a residential development charge. The fireflow charge shall be assessed on the entire structure containing the commercial enterprise, even though a portion of the structure may be for residential use. The lot occupied by the commercial development shall be excluded from any residential development charge.