

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1248

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

COMPLAINANT ROATS WATER
SYSTEM, INC.'S RESPONSE TO
DEFENDANT'S OPENING BRIEF

ROATS WATER SYSTEM, INC. ("Roats"), responds to GOLFSIDE INVESTMENTS, LLC, ("Golfside"), Opening Brief in the order in which the arguments were presented therein.

A. Basis for Roats Charges

I. Water Service Agreement

Golfside attempts to avoid the PUC tariffs by claiming that it is not a party to the contract. The tariffs are applicable to the owner of the property, regardless of who owns or owned the development. Any other interpretation results in an absurdity. Under Golfside's reasoning, any developer could simply avoid utility provider tariffs by simply transferring the property to another of its owner's entities. In any event, although the name has changed and some ownership changes may have occurred, the two entities are closely related. In its Response to Golfside's Brief concerning evidence, Roats requests an opportunity for further discovery of the connection between 523 and Golfside.

Golfside further claims that it is not responsible for the charges because "Roats will not physically connect to anything." In support of its argument, Golfside relies on *In the matter of the Revised Rate Schedules filed by First on the Hill Water, Inc.*, PUC Order No. 97-432

1 (November 7, 1997), stating that “[T]his is the very same reason certain “hook-up” fees were
2 rejected by the PUC in *First Hill*, . . .”.

3 Golfside’s argument fails for three reasons. First, the charges in *First Hill* were
4 considered improper “licensing fees”. Here, Golfside admits that “[T]he utility infrastructure is
5 already “in place” and water has already been brought to all of the lots.” Roats is not asking for
6 a second or additional charge under its contract or the tariffs. It is simply enforcing the contract
7 and tariffs which indicate a particular charge for an individually owned lot subdivision.

8 Second, payment of the residential charge is recorded as contributions in aid of
9 construction (CIAC). CIAC is a liability to Roats that reduces rate base. Pursuant to Oregon
10 Administrative Rule (OAR) 860-036-0756, CIAC and its resulting depreciation is excluded
11 from water utility ratemaking. As such, when the Company receives payment for the
12 residential development charge, Roats records a reduction to rate base. This will have the
13 effect of reduced revenue requirement because Roat’s rate base is lower than it would have
14 been without the CIAC. Additionally, cash received for the payments increases Roat’s cash
15 flow, which in turn, allows Roats an increased opportunity to invest in future plant
16 improvements. The charges Roats collects from Golfside must be used for such improvements.
17 The payments do not go into Roat’s pocket.

18 Third, pursuant to ORS 757.225, Roats is obligated to collect the residential
19 development charge since it is recorded in a Commission approved rate schedule. ORS
20 757.225 states:

21 “No public utility shall charge, demand, collect or receive a greater or less
22 compensation for any service performed by it within the state, or for any service
23 in connection therewith, than is specified in printed rate schedules as may at the
24 time be in force, or demand, collect or receive any rate not specified in such
25 schedule. The rates named therein are the lawful rates.”

26 Golfside argues that the Water Service Agreement does not provide for additional
connection charges and that since the infrastructure is already in place, there is no new

1 consideration. Again, Golfside’s argument does not consider that the original contract included
2 the tariff charges in the event that the developer chose to develop individual lots which its
3 successor is now doing. It was the developer’s decision to change directions with its plans for
4 the property. As previously indicated, any other interpretation would result in an absurdity.
5 There would be no PUC regulated entities like Roats Water System if developers could
6 circumvent the PUC tariffs as Golfside is attempting to do in this case.

7 2. Tariff

8 Golfside argues that Rule 9a is not applicable because it did not become effective until
9 after Golfside changed from a single tax lot manufactured and mobile home park to a planned
10 unit subdivision with multiple tax lots and the ability to build and sell stick-built homes. Roat’s
11 requested payment pursuant to the tariffs as soon as it became aware of what the developer was
12 trying to do under the tariff rules applicable at the time. Even if Rule 9a does not apply, Rule
13 6a does apply and the analysis is the same.

14 Golfside argues that Roats “cannot recover under Rule 6a because that rule requires the
15 setting of a master meter as a prerequisite to recovering residential development charges”.
16 Golfside’s interpretation of the language of the statute is taken out of context. The language is
17 not intended to require the setting of a master meter as a prerequisite, especially in this case
18 where Golfside itself chose not to use a master meter. It is merely a timing issue made moot by
19 Golfside choosing not use a master meter in this particular subdivision.

20 It should also be noted that most of Golfside’s other arguments are negated by the tariff
21 language that if the individual tax lot property “becomes separate tax lots, the developer(s) of
22 these separately identified tax lots will then be assessed an additional
23 charge. . .”. Rule 9a does not change the rule. It simply makes clear what has always been the
24 case for situations where no master meter was installed by choice of the developer rather than
25 by any refusal of the regulated entity. There is no evidence that Roats refused to install a
26 master meter or failed to do so when asked by the developer.

1 B. Response to Golfside’s Affirmative Defenses

2 1. System Development Charges (ORS 92.845)

3 Roats has responded to this argument in its Opening Brief asserting that the statute is
4 intended to protect mobile home parks and its mobile home occupants, not developer profits for
5 converting to stick-built homes. Golfside did not and could not rely on the statute when
6 making application to the City of Bend unless it agreed to limit its development to
7 manufactured homes only. ORS 92.835 states:

8 “restricts the use of lots in the subdivision to the installation of manufactured
9 dwellings and restricts any other property in the subdivision to use as common
10 property as defined in ORS 94.550 or for public purposes; . . .”.

11 Since the development was not submitted or approved in conformance with this statute, it
12 cannot receive benefit from it.

13 2. Reasonableness of Charges (ORS 757.020)

14 The tariffs are approved by the PUC. The tariffs are set by rule to offset infrastructure
15 costs which ultimately allow for more fairness to developers and customers. The tariff amounts
16 do not have to be used for the particular project for which the tariff applies. Moreover,
17 Golfside’s predecessor did not contest the tariffs. On the contrary, it signed a contract agreeing
18 to be bound by them. Golfsides' purported “compromises” with the City of Bend are not
19 relevant to whether Roats charges are reasonable.

20 3. Timeliness of Claim

21 Roats has fully responded to this claim in its Opening Brief.

22 4. When Charges Are Due

23 Roats, even if it wanted to, is not empowered to not charge the tariff amounts for lots
24 which have not received City of Bend building permits. The tariff amounts become effective
25 and payable as soon as the developers PUD application was approved. The owner of the
26 property is responsible for paying residential development charges in conformance with the
Oregon Public Utility Commission Tariff Rules and Regulations:

1 “ . . . if lots within the development become separately identified tax lots, the
2 developer(s) of the separately identified tax lots will then be assessed an
3 additional charge equal to the greater of (a) or (b), and reduced by (c); where (a)
4 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.”

5 There is no authority which suggests that these rules can be ignored.

6 5. Jurisdiction

7 Roats has fully responded to this claim in its Opening Brief.

8 C. Attorney Fees (ORS 756.185)

9 Golfside has alleged that Roat’s charges are unjust and unreasonable in violation of
10 ORS 757.020. Golfside claims entitlement to attorney fees pursuant to ORS 756.185. If
11 Golfside’s ORS 757 claim is denied, Roats is entitled to reimbursement of its attorney fees as
12 ORS 756.185 is reciprocal.

13 DATED THIS _____ day of October 2006.

14 BRYANT, LOVLIE & JARVIS,

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16 MARK G. REINECKE, OSB 91407
17 Of Attorneys for Roats Water Systems
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