## OE OKEGON BEFORE THE PUBLIC UTILITY COMMISSION

## UM 1248

TO FILE A REPLY

TO COMPLAINANT'S MOTION

COMPLAINANT'S RESPONSE

TO DEFENDANT'S OBJECTIONS

Oregon business corporation, Oregon business corporation,

Complainant,

Oregon limited liability company, Oregon limited liability company,

Defendant.

Complainant Roats Water System, Inc, ("Roats") filed a request to allow it to respond to Defendant Golfside Investments, LLC ("Golfside's") Answer to raise certain issues including good faith and fair dealing, waiver and reciprocal attorney fee rights. Golfside filed an

complaint seeking a determination of whether the tariffs apply to Golfside. ςζ Commission that there were factual issues in dispute. On that suggestion, Roats filed this 74 lots. Roats was advised by the Commission to file a complaint after Golfside argued to the 53 multiple tax lot subdivision in which the developer can build any type of home on any of the 77 lot with manufactured homes and subsequently changes its plan to an individually owned 17 apply in a case where the developer initially indicates that it will develop its property as one tax 07 matter, Roats originally asked the PUC for a simple declaratory ruling as to whether its tariffs 61 the fact that Defendant has not alleged any counterclaims". It should be noted that in this 81 Colfside "questions whether Complainant can assert any affirmative defenses in light of LI

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I – KESPONSE TO DEF'S. OBJECTIONS TO MOT TO FILE REPLY BRYANT, LOVLIEN & JARVIS, PC

ATTORVEYS AT LAW, ESTABLISHED 1915 591 SW Mill View Way PO Box 1151 Bend, Opegon 97709-1151 (541) 382-4331 fax (541) 389-3386 WWW.BLULAWYERS.COM

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Colfside not only denies that it is responsible for the charges, but also alleges a right to

Π fees in some other way, it will be happy to do so. Roats chose to address the reciprocal 01 to Roats. It the court believes that Roats' should title its claim to reimbursement of its attorney 6 award of attorney fees, the reciprocal nature of that attorney fee provision is just as applicable 8 alleged that Roats is in violation of the statute requiring judgment in Golfside's favor and an L because it was not entitled to them under the claims it filed. However, now that Golfside has 9 based on the statute it relies upon. Roats did not seek attorney fees in the original Complaint ς clear that Golfside is making a claim that it is entitled to reimbursement of its attorney fees  $\mathbf{t}$ unreasonable. Although Colfside may not have titled this a "claim", the result is the same. It is £ reimbursement for its attorney fees based on its allegation that Roats' tariff charges are 7

Colfside has filed a claim under the statute. LI was determined that the otherwise unavailable claim for attorney fees is available now that 91 the court and hopefully reduce the litigation expenses. In preparing Roats' Opening Brief, it ۶I Golfside is attempting to use the stipulated facts as a sword rather than to narrow the issues for 14 Interestingly, Colfside filed its Answer one day after the parties submitted their stipulated facts. 13 Golfside further objects to Roats' attorney fee claim as untimely and prejudicial. 15

provision in what appeared to be the most simple and logical way.

53 day of November 2006. DATED this available to Golfside. Roats respectfully requests that its Reply be included in the pleadings. 77 not been prejudiced. Any and all strategies, arguments and settlement potential are still 17 would make the same claim. Despite Golfside's unsupported statement to the contrary, it has 07 Colfside had to expect that by raising a new claim with a reciprocal attorney fee right, Roats 6I Golfside has provided nothing in the form of evidence as to how it has been prejudiced. 81

BKAANT LOVLIEN & JARVIS,

Of Attorneys for Roats Water Systems WYRK G. REINECKE, OSB #91407

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291 SW Mill View Way PO Box 1151 Bend, Oregon 97709-1151 (541) 362-4331 fax (541) 369-3386 WWW.BLJENDRER.COM

3 – RESPONSE TO DEF'S. OBJECTIONS TO MOT TO FILE REPLY BRYANT, LOVLIEN & JARVIS, PC ATTORNEYS ATLAW, ESTRILISHED 1915 ATTORNEYS ATLAW, ATTORNEYS ATLAW, ESTRILISHED 1915 ATTORNEYS ATLAW, ATTORNEYS ATTORNEYS ATLAW, ATTORNEYS ATLAW, ATTORNEYS ATLA	
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Mark G. Reineck, OSB #91407	55
Mad & Bring	51
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BRYANT, LOVLIEN & JARVIS	
DATED this $\overline{2}$ day of November, 2006.	61 81
[X] by E-MAILING a full, true and correct copy to the above.	21 J
shove persons	91
by causing full, true and correct copies to be hand delivered to the	    SI
Envelope, addressed to the above and deposited with the US Postal Service in Bend, OR 97701	] + [
[X] by MAILING a full, true and correct copy in a sealed, postage paid	EI
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Salem, OR 97301-4096 iason.w.jones@doj.state.or.us	
Assistant Attorney General 1162 Court Street NE	01
Jason W. Jones	6
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222 NW Irving Ave. Bend, OR 97701	L
Prian C. Hickman Peterkin & Associates	9
MOTION TO FILE A REPLY on the following persons by the following indicated method(s):	Ş
COMPLAINANT'S RESPONSE TO DEFENDANT'S OBJECTIONS TO COMPLAINANT'S	<b>†</b>
I hereby certify that I served on the date set forth below the foregoing	E
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CERTIFICATE OF SERVICE	I

1			
2			
3			
4	BEFORE THE PUBLIC UTILITY COMMISSION		
5	OF OREGON UM 1248		
6			
0	ROATS WATER SYSTEM, INC., an active	)	
7	Oregon business corporation,	)	
8	Complainant,	) ) ) COMPLAINANT'S RESPONSE	
9	vs.	) TO DEFENDANT'S OBJECTIONS	
10	GOLFSIDE INVESTMENTS, LLC, an active Oregon limited liability company,	) TO COMPLAINANT'S MOTION ) TO FILE A REPLY )	
11	Defendant.	) ) )	
12		·/	

Complainant Roats Water System, Inc, ("Roats") filed a request to allow it to respond to Defendant Golfside Investments, LLC ("Golfside's") Answer to raise certain issues including good faith and fair dealing, waiver and reciprocal attorney fee rights. Golfside filed an Objection.

Golfside "questions whether Complainant can assert any affirmative defenses in light of the fact that Defendant has not alleged any counterclaims". It should be noted that in this matter, Roats originally asked the PUC for a simple declaratory ruling as to whether its tariffs apply in a case where the developer initially indicates that it will develop its property as one tax lot with manufactured homes and subsequently changes its plan to an individually owned multiple tax lot subdivision in which the developer can build any type of home on any of the lots. Roats was advised by the Commission to file a complaint after Golfside argued to the Commission that there were factual issues in dispute. On that suggestion, Roats filed this complaint seeking a determination of whether the tariffs apply to Golfside.

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1 - RESPONSE TO DEF'S. OBJECTIONS TO MOT TO FILE REPLY

1Golfside not only denies that it is responsible for the charges, but also alleges a right to2reimbursement for its attorney fees based on its allegation that Roats' tariff charges are3unreasonable. Although Golfside may not have titled this a "claim", the result is the same. It is4clear that Golfside is making a claim that it is entitled to reimbursement of its attorney fees5based on the statute it relies upon. Roats did not seek attorney fees in the original Complaint6because it was not entitled to them under the claims it filed. However, now that Golfside has7alleged that Roats is in violation of the statute requiring judgment in Golfside's favor and an8award of attorney fees, the reciprocal nature of that attorney fee provision is just as applicable9to Roats. If the court believes that Roats' should title its claim to reimbursement of its attorney0fees in some other way, it will be happy to do so. Roats chose to address the reciprocal1provision in what appeared to be the most simple and logical way.2Golfside further objects to Roats' attorney fee claim as untimely and prejudicial.

Interestingly, Golfside filed its Answer one day after the parties submitted their stipulated facts. Golfside is attempting to use the stipulated facts as a sword rather than to narrow the issues for the court and hopefully reduce the litigation expenses. In preparing Roats' Opening Brief, it was determined that the otherwise unavailable claim for attorney fees is available now that Golfside has filed a claim under the statute.

Golfside has provided nothing in the form of evidence as to how it has been prejudiced. Golfside had to expect that by raising a new claim with a reciprocal attorney fee right, Roats would make the same claim. Despite Golfside's unsupported statement to the contrary, it has not been prejudiced. Any and all strategies, arguments and settlement potential are still available to Golfside. Roats respectfully requests that its Reply be included in the pleadings.

DATED this \_\_\_\_\_ day of November 2006.

BRYANT LOVLIEN & JARVIS,

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

\$ASQ430-025.513

1	CERTIFICATE OF SERVICE			
2				
3	I hereby certify that I served on the date set forth below the foregoing			
4	COMPLAINANT'S RESPONSE TO DEFENDANT'S OBJECTIONS TO COMPLAINANT'S			
5	MOTION TO FILE A REPLY on the following persons by the following indicated method(s):			
6	Brian C. Hickman Peterkin & Associates			
7	222 NW Irving Ave. Bend, OR 97701 <u>bhickman@peterkinpc.com</u>			
8				
9	Jason W. Jones			
10	Assistant Attorney General 1162 Court Street NE			
11	Salem, OR 97301-4096 jason.w.jones@doj.state.or.us			
12				
13	[X] by MAILING a full, true and correct copy in a sealed, postage paid Envelope, addressed to the above and deposited with the US Postal			
14	Envelope, addressed to the above and deposited with the US Postal Service in Bend, OR 97701			
15 16	[ ] by causing full, true and correct copies to be <b>hand delivered</b> to the above persons			
17	[X] by <b>E-MAILING</b> a full, true and correct copy to the above.			
18	DATED this day of November, 2006.			
19	BRYANT, LOVLIEN & JARVIS			
20				
21				
22	Mark G. Reineck, OSB #91407			
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	3 – RESPONSE TO DEF'S. OBJECTIONS TO MOT TO FILE REPLY \$ASQ430-025.513			