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April 10, 2006

The Honorable Samuel J. Petrillo Administrative Law Judge Public Utility Commission of Oregon P. O. Box 2148 Salem, OR 97308-2148 VIA FAX: 503-378-5505; FIRST CLASS MAIL; AND ELECTRONIC FILING

Re: Roats Water System, Inc. v. Golfside Investments, LLC

Case No. UM-1248

Dear Judge Petrillo:

Enclosed for your consideration and filing, please find Defendant's Motion for Reconsideration in the Alternative Request for Certification in regard to the above-entitled matter.

Please note that I have been associated as counsel of record and am assisting Brian Hickman in representing Defendant Golfside Investments, LLC.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

David A. Hilgemann

DAH/ldc

Enclosure

Mark G. Reinecke (w/enclosure) (via FAX and First Class Mail)

Jason W. Jones (w/enclosure) (via FAX and First Class Mail) Brian C. Hickman (w/enclosure) (via FAX and First Class Mail)

TOTAL PAGES FAXED: 6

1	BEFORE THE PUBLIC UTILITY COMMISSION
2	OF OREGON
3	UM 1248
4 5 6 7 8 9 10 11 12 13	ROATS WATER SYSTEM, INC., Complainant, MOTION FOR RECONSIDERATION VS. IN THE ALTERNATIVE REQUEST FOR CERTIFICATION GOLFSIDE INVESTMENTS, LLC, Defendant. Defendant.
14 15 16	Golfside Investments, LLC (Golfside) respectfully disagrees with the ruling that denied its motion to dismiss.
17	Golfside now moves for reconsideration because the ruling was apparently based
18	upon a misunderstanding of Golfside's position. ¹
19	In the alternative, Golfside requests certification of the ruling to the Public
20	Utility Commission (Commission). OAR 860-014-0091.
21	The reason for this motion, or in the alternative this request, becomes clear when
22	the anomalous effect of the ruling is considered. The ruling has granted Plaintiff more authority
23	than the Commission itself has to file a complaint under ORS 756.500. The Commission i
24	limited to filing a complaint "against any person whose business or activities are regulated" by

Page 1 - MOTION FOR RECONSIDERATION IN THE ALTERNATIVE REQUEST FOR CERTIFICATION

¹The ruling incorrectly described Golfside's position on the Commission's lack of jurisdiction when it stated that Golfside "further argues that the Commission lacks subject matter jurisdiction over the Complaint, presumably because the matter involves a contractual dispute." (Ruling 2) (footnote omitted). Golfside's position is that the Commission lacks subject matter jurisdiction because the Complaint herein is not authorized by ORS 756.500, regardless of whether or not the Complaint is designated a "Breach of Contract."

1	a statute that is within the jurisdiction of the Commission. ORS 756.500(1). But the ruling
2	allows Plaintiff to file the Complaint against Golfside, whose business is not regulated by the
3	Commission.
4	RECONSIDERATION
5	The 1939 legislature enacted the provisions now in ORS 756.500(1) through (4)
6	as part of the Uniform Practice Act of the Public Utilities Commissioner. 1939 Oregon Laws
7	Chap. 320, Sec. 4. The legislature added subsection (5), relied upon in the ruling, in 1971.
8	Subsection (1) of the statute defines who can file a complaint with the
9	Commission: "Any person may file a complaint," or the Commission on its "own initiative,
10	[may] file such complaint." Subsection (1) also defines the "defendant" in a complaint filed
11	by a "person" or by the Commission:
12	"The complaint shall be against any person whose business or activities are regulated by [the Commission] * * *."
14 15	There is a relationship between subsection (1) and subsection (5) of ORS
16	756.500. After all, the two subsections are part of the same statute. The provisions of all
17	subsections in ORS 756.500 must be considered in the determining the meanings of subsections
18	(1) and (5). PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993).
19	Subsection (5) should not be considered in isolation.
20	Subsections (2) through (4) contain additional procedural provisions regarding
21	a "complaint." These procedural provisions must apply to a "complaint" brought by a public
22	utility under subsection (5) because the procedural provisions are not only part of the same
23	statute but there are no other procedural provisions applicable to a complaint under
24	subsection (5).

 ${\tt Page}~2~{\tt -MOTION}~FOR~RECONSIDERATION~IN~THE~ALTERNATIVE~REQUEST~FOR~CERTIFICATION$

1	In providing the applicable procedure, subsections (3) and (4) refer to the party
2	against whom the complaint is filed as the "defendant," i.e. a "defendant" as defined in
3	subsection (1). In other words, a complaint brought under subsection (5) may be brought only
4	against a "person whose business or activities are regulated by" the Commission as provided
5	in subsection (1).
6	Subsection (5) does not identify any other possible person as a defendant in a
7	complaint brought by a public utility. In fact, subsection (5) deals with only who may bring a
8	complaint and the nature of the complaint.
9	Significantly, subsection (5) does not grant a public utility any authority beyond
10	the authority of a "person" who files a complaint under subsection (1). Subsection (5) states
11	that a public utility "may make complaint * * * with like effect as though made by any other
12	person." ²
13	The ruling is correct that subsection (5) "clearly authorizes a public utility to file
14	a complaint with the Commission regarding matters affecting utility rates and service." (Ruling
15	2). But respectfully, the ruling is in error in allowing such a complaint to be filed against an
16	entity not regulated by the Commission.
17	/////
18	CERTIFICATION
19	If reconsideration is denied, Golfside respectfully requests certification of the
20	ruling to the Commission.

Page 3 - MOTION FOR RECONSIDERATION IN THE ALTERNATIVE REQUEST FOR CERTIFICATION

²Subsection (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.

1	The Commission's reversal of the ruling before a hearing would avoid the undue
2	prejudice that would affect Golfside in proceeding to hearing.
3	Substantial time and expense would be spent by Golfside in preparation for a
4	hearing. Golfside's business would be disrupted because of the need for its personnel to devote
5	time, which would otherwise be spent at work, in preparing for and testifying at the hearing.
6	For a hearing held in Salem, the time, expense, and disruption to Golfside would be enhanced
7	In the interim, Golfside has already lost one sale, and stands to lose others due to the obligation
8	to disclose the ruling to prospective purchases pursuant to ORS 105.464.
9	In fairness to Golfside, the Commission's decision on its subject matter
LO	jurisdiction in this matter should be made as soon as reasonably possible.
L1	DATED this 10 th day of April, 2006.
L2	Respectfully submitted,
L3	LAW OFFICES OF DAVID HILGEMANN
L 4	
L5	By:
L 6	David A. Hilgemann, OSB #72121
L 7	Of Attorneys for Defendant
L 8	
L 9	

 ${\tt Page~4-MOTION~FOR~RECONSIDERATION~IN~THE~ALTERNATIVE~REQUEST~FOR~CERTIFICATION}$

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1	CERTIFICATE OF SERVICE
2	I HEDERY CERTIES that I sarved the foregoing MOTION EOR
3 4	I HEREBY CERTIFY that I served the foregoing MOTION FOR RECONSIDERATION IN THE ALTERNATIVE REQUEST FOR CERTIFICATION on:
5 6	Mark G. Reinecke
7	Bryant, Lovlien & Jarvis, PC
8	P. O. Box 1151
9	Bend, OR 97709-1151
10	FAX No. (541) 389-3386
11	Of Attorneys for Complainant
12	
13	Jason W. Jones
14	Assistant Attorney General
15	Regulated Utility & Business Section
16	1162 Court Street NE
17	Salem, OR 97301-4096
18	FAX No. (503) 378-5300
19	
20	by FAXing and mailing to said attorneys a full, true, and correct copy thereof at the FAX
21	numbers and addresses listed above on the 10 th day of April, 2006.
22	LAW OFFICES OF DAVID HILGEMANN
23	
24	By:
25	David A. Hilgemann, OSB #72121
26	Of Attorneys for Defendant
27	
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Page 1 - CERTIFICATE OF SERVICE