

ORDER NO. 22-121

ENTERED Apr 22 2022

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 466

In the Matter of

ROATS WATER SYSTEM, INC.,

Affiliated Interest Application with Michelle  
Roats Berg Pursuant to ORS 757.495 and  
OAR 860-036-2210.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on April 19, 2022, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Nolan Moser".

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**Nolan Moser**  
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON  
REDACTED STAFF REPORT  
PUBLIC MEETING DATE: April 19, 2022**

REGULAR  CONSENT  EFFECTIVE DATE April 20, 2022

DATE: March 29, 2022

TO: Public Utility Commission

FROM: Russ Beitzel

THROUGH: Bryan Conway, Marc Hellman, and Bruce Hellebuyck **SIGNED**

SUBJECT: ROATS WATER SYSTEM, INC.:  
(Docket No. UI 466)  
Requests approval of an Affiliated Interest Agreement with Michelle Roats Berg.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve Roats Water System, Inc.'s (Roats or Company) application (Application) for approval of an Affiliated Interest (AI) Employment Agreement (Agreement) with Michelle Roats Berg (MRB), subject to conditions.

**DISCUSSION:**

Issue

Whether the Commission should grant the Company's request to enter into an AI Agreement with MRB for the provision of AI services to Roats.

Applicable Law

Pursuant to ORS 757.015(1) and (2), a corporation or person has an affiliated interest relationship with a public utility when it owns or holds, directly or indirectly, in any chain of successive ownership, at least five percent of the voting securities of that public utility. Pursuant to ORS 757.015(3), a corporation that is owned by any corporation or person owning at least five percent of the voting securities of a public utility also has an affiliated interest relationship with the public utility. Pursuant to ORS 757.015(5), every

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corporation that has two or more officers or two or more directors in common with a public utility has an affiliated interest with the public utility.

ORS 757.495(1) and OAR 860-036-2210(2) require that when a public utility enters into a contract with an affiliated interest, it must seek Commission approval of the contract within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. ORS 757.495(6) requires the Commission to enter an order on the matter within 90 days after the matter has been submitted to the Commission for consideration.

Pursuant to ORS 757.495(3), the Commission will approve affiliated interest agreements if the terms are fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all financial aspects of the agreement for ratemaking purposes, and may reserve that issue for subsequent proceedings.<sup>1</sup>

Pursuant to OAR 860-036-2230(2)(e), when services or supplies are sold to a water utility by an affiliate, sales must be recorded in the water utility's accounts at the lower of the affiliate's cost or the market rate. The affiliate's cost must be calculated using the water utility's most recently authorized rate of return.

## Analysis

### *Background*

Roats is a water utility that provides service to approximately 3,213 residential and commercial customers and 784 irrigation customers in Bend, Oregon. The Company also offers public and private fire protection. MRB is both an employee and partial owner of the company. With the present Application, Roats seeks Commission approval of an agreement for the provision of AI services to Roats by MRB.

Roats filed its Application for approval of the Agreement on December 10, 2021. ORS 757.495(2) and OAR 860-036-2210(2) require contracts with affiliated interests to be filed with the Commission no later than 90 calendar days after the date of execution of the contract. Pursuant to that requirement, the Agreement should have been submitted for Commission approval, based on both the receipt of ownership shares and hiring, no later than December 30, 2017.<sup>2</sup> In response to a Staff information request, the

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<sup>1</sup> See Order No. 11-071 in Docket No. UI 306.

<sup>2</sup> See response to IRs 01-02.

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Company stated that the delay in submitting the present filing was that they, “did not realize the hiring and ownership transfer triggered an affiliated interest filing.”<sup>3</sup>

Staff investigated the affiliate status, the services provided by the affiliate, and the appropriate salary comparisons.

*Affiliate Status*

MRB is a minority share owner and is considered to have affiliated interest relationships with Roats pursuant to ORS 757.015. There is no formal contract between Roats and MRB. MRB maintains a position of Office Manager within the company, providing direct services through that employment.

Per the Application, MRB provides the following services as an Office Manager:

- Manage and supervise administrative duties of company office functions.
- Directly manage all team members, including training, assigning and directing work, evaluating performance, disciplining as necessary, and addressing employee concerns and grievances.
- Responsible for company human relations management.
- Provide team members with regular feedback on performance, including frequent informal feedback, annual performance reviews, assisting with professional development, and making recommendations for employee separations, promotions or special assignments.
- Manage recruitment of new employees, including interviewing and making hiring recommendations/decisions and compensation recommendations.
- Disseminate, implement, and enforce organization and team standards, policies and procedures, including providing proper guidance to those carrying out related duties.
- Develop office policies and procedures and ensure implementation as appropriate.
- Supervises daily office-and-field staff planning, coordination and operations.
- Customer Service and utility billing supervisor – plan, organize, supervise and direct the work of Customer Services and Utility Billing.
- Manage IT infrastructure and contracted vendor.
- Identify opportunities for process and office management improvements and design and implements new systems.
- Analysis and manages operations including bookkeeping, payroll, billing, and other related company functions.
- Communications and public relations manager.

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<sup>3</sup> See response to IR 04.

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- Primary liaison for government, public agency program, and compliance management.
- Evaluates complex technical and/or financial information and alternatives related to policy development and strategic planning.
- Cross Connection Control program manager and OHA certified Cross Connection Specialist.
- Supervises Company's cross connection control program in compliance with Federal and State rules and regulations.
- Provides administrative support as necessary to President/Company Owner
- Supports budget development and monitoring, and other fiscal and purchasing/procurement-related tracking and recording.
- Assumes accountability for all expenses within office management umbrella.
- Addresses complex, sensitive or escalated customer issues.
- Ensures adherence to policies, procedures and accurate work.
- Implements special projects as required.
- Complies with safety requirements of the position and actively promotes safe work practices.
- In an emergency event or an officially declared State of Emergency, responds as directed to ensure the restoration of essential public services, facilities and infrastructure.

Additionally, MRB has the following skills and experience for the Office Manager position:<sup>4</sup>

- Skilled in all functions of the main office management process, employee team management, compliance, programs, and operation management.
- Nearly 20 years in the fields of event management, marketing, and public relations.
- Skilled in managing company operations and procedures, fiscal management, project management, employee management and is an experienced public relations manager.
- Manages special projects including the Company's master planning, water management and conservation plan, mitigation credit management, cross connection testing and maintenance program, City of Bend permit processing, serves as the Oregon Health Authority contact to manage routine sample testing, health surveys, etc., and other various projects.
- Able to fulfill the role of any main office employee who is out-of-office due to sickness or vacation.
- Certified Cross Connection Specialist (2019 – present).

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<sup>4</sup> See response to IR 03.

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- Bachelors of Science degree majoring in Communications earned from Oregon State University.

*Terms and Conditions*

As stated above, there is no formal contract between Roats and MRB as MRB is considered an 'employee at-will' in terms of employment status.

The company is requesting to "...escalate both the salary and compensation amounts on an annual basis at a percentage not to exceed the annual Consumers Price Index – All Urban Consumers (CPI-U) published by the U.S. Bureau of Labor Statistics (BLS)." This is the same index Staff uses in salary escalation related to rate cases. All future amounts of the affiliated costs would be analyzed for reasonableness in subsequent rate cases. Staff has no objection to this condition in the application.

*Transfer Pricing*

As an employee of Roats, MRB's total compensation would be considered the affiliate's cost. Because OAR 860-036-2230(2)(e) requires affiliated interest transactions to be recorded in the water utility's accounts at the lower of the affiliate's cost or the market rate, if the Company intends to record these transactions using the affiliates' cost, the affiliates' cost must be lower than the equivalent market rate for the goods and services to be transacted.

In its Confidential attachment to the Application, the Company states that it expects approximately **[Begin Confidential]** **[End Confidential]** annually in fiscal year 2021. The total compensation is comprised of **[Begin Confidential]** **[End Confidential]**.

Staff reviewed the affiliate costs related to MRB's position and market value direct salary comparators provided by the American Water Works Association (AWWA) related to Office Manager (S140).<sup>5</sup> The estimated cost of obtaining the services from Affiliates appears to be lower than the market value of equivalent goods and services, as required by OAR 860-036-2230. Additionally, Staff reviewed, and found appropriate, the salary and benefit compensation of all affiliate employees for ratemaking treatment in a recent rate case.<sup>6</sup>

<sup>5</sup> 2021 AWWA Compensation Survey: Small Water and Waste Water Utilities, December 2021.

<sup>6</sup> See Order No. 21-466 in Docket No. UW 185.

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*Public Interest Compliance*

The Company states that, “Michelle has a vested interest in the company and its’ future” and “... is the daughter of Company Owner/President...”<sup>7</sup> Staff generally agrees that an employee being part of the ownership family of a water utility can benefit a water utility by increasing the interest in its successful operation.

*Timing of Application and Commission Action*

As noted above, the Company did not submit this request for approval of the AI agreement between MRB and the Company within 90 days as required by ORS 757.495(1). However, ORS 757.495 does not require that the Commission reject an AI agreement if it is filed untimely. In this case, Staff concludes the delay in filing should not negatively impact Roats’ recovery of the expense at issue and is not a reason to deny the request for approval.

ORS 757.495(6) specifies the commission must enter an order regarding any matter under ORS 757.495 “within 90 days after the matter has been submitted to the commission for consideration[.]” If the Commission does not meet this deadline, the Commission may not, when setting rates, disallow expenses incurred under the AI agreement solely on the ground the agreement was not approved by the Commission.<sup>8</sup>

In this case, the request for approval of the AI agreement was filed on December 10, 2021, and the 90-day interval starting on that date ended on March 14, 2022. This fact should have no consequence if the Commission approves the AI application. As already noted, the Commission’s failure to enter an order within 90 days of the time a matter was submitted for consideration means only that the Commission may not disallow expense incurred under the AI agreement solely on the ground the AI agreement was not approved. Because the AI agreement/employment has been ongoing for more than two years and has continued uninterrupted since Roats filed the application in this case, the Company is not prejudiced by Staff’s delay in presenting this matter to the Commission for approval.

Conclusion

Based on the review of this application, Staff concludes the following:

1. The proposed affiliated interest agreement is fair, reasonable, and not contrary to the public interest; and,
2. Necessary records are available.

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<sup>7</sup> See response to IR 03.

<sup>8</sup> ORS 757.495(4).

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The Company has reviewed a draft of this memo and voiced no concerns.

**PROPOSED COMMISSION MOTION:**

Approve Roats Water System, Inc.'s application for approval of an AI Employment Agreement with Michelle Roats Berg, subject to the following conditions:

1. The Company will provide the Commission access to all books of account as well as all documents, data, and records that pertain to any payments made from the Company to Affiliates.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceedings or alternative form of regulation.
3. The Company will notify the Commission in advance of any substantive changes to the Agreement, including any material changes in price. Any such changes shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
4. The Company will report to the Commission, as part of its annual affiliated interest report, a summary of Affiliate costs charged to the Company, and
5. With its next general rate proceeding filing, the Company will provide a demonstration of the cost and market value of all goods/services provided to Roats.