

ORDER NO. 22-123

ENTERED Apr 22 2022

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 468

In the Matter of

ROATS WATER SYSTEM, INC.,

Affiliated Interest Application with William
C. Roats 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:



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 468)
Requests approval of an Affiliated Interest Agreement with William C.
(Casey) Roats.

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 William C. (Casey) Roats (WCR), subject to conditions.

DISCUSSION:

Issue

Whether the Commission should grant the Company's request to enter into an AI Agreement with WCR 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.¹

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. WCR 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 WCR.

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 during 2001.² In response to a Staff information request, the Company stated that

¹ See Order No. 11-071 in Docket No. UI 306.

² See response to IRs 01-02.

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

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

Affiliate Status

WCR 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 WCR. WCR maintains a position of Vice-President within the company, providing direct services through that employment.

Per the Application, WCR provides the following services as a Vice-President:

- Acts as the Direct Responsible Charge (DRC) for the system’s water distribution operation. As such, this position requires a Distribution II certification with greater/more complex specialized knowledge and certifications than field service members.
- High level responsibility and decision-making authority.
- Develops and implements procedures to improve efficiency of field operations and maintenance activities; assesses, monitors and evaluates service delivery methods and procedures; directs and implements quality assurance and other various programs to ensure compliance with Federal, State and Local laws, permits and regulations.
- Evaluates complex technical and/or financial information and alternatives related to policy development, strategic planning, and designs of new or upgraded treatment facilities.
- Performs a variety of skilled management and working level functions in the maintenance and repair of the district’s water distribution system to ensure the safety and quality of the domestic and irrigation water supplies.
- Supervise all tasks and personnel of the water transmission and distribution functions.
- Directs, trains, and supervises field and mechanic service team.
- Operates, monitors, and controls the operational activities of the water systems and associated equipment such as pumps, disinfection equipment, electric motors, at wells, reservoir, and booster sites in accordance with department operating plans and procedures.
- Conducts inspections of the water system and related equipment including pumps and water tank; monitors water tank levels, water quality, and

³ See response to IR 04.

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- functioning of equipment; Locates and repairs leaks in water main and/or service lines.
- Obtains water and/or chlorine samples in accordance with regulatory requirements.
 - Maintains and operates water system and water production equipment.
 - Responsible for repair and maintenance on all types of valves, pumps and equipment including chlorinators, evaporators, and hydraulic valves, and fans; repairs raw water booster pumps and chlorine injection pumps used in the disinfection of water.
 - Manages repairing and maintaining fire hydrants, valves, and chlorine analyzers.
 - Provides assistance to contractors, developers, and landowners in locating water, power and sewer lines; assists customers and/or the public regarding water related issues and complaints.
 - Conducts installations/inspections of new service lines, water main extensions, and/or meter installations.
 - Reads water meters and reports usage for billing purposes; re-reads meters as requested.
 - Performs service order work including turning on new service, disconnecting service for repairs, and changing out meters.
 - Prepares and maintains a variety of departmental reports, records, and documentation.
 - Promotes and observes safe work methods and uses safety equipment; secures work sites as necessary; attends safety committee meetings, actively participates in and may conduct tailgate trainings.
 - Oversees and manages telemetry system and coordinates with outside programming contractor.
 - Manages the utility field operations, including strategic direction and goals, operational execution and program development for maintaining and repairing in-ground and above ground infrastructure.
 - Directs and monitors employee activity and equipment operations to ensure safe practices; ensures that facilities maintain operational reliability. Provides regular feedback on performance, including frequent informal feedback, performance reviews, assists with professional development, and makes recommendations for employee separations, promotions or special assignments.
 - Manages the efficiency and effectiveness of the department's service to its customers.
 - Complies with safety requirements of the position and actively promotes safe work practices.

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- In an emergency event or an officially declared State of Emergency, responds to ensure the restoration of essential public services, facilities and infrastructure.
- Coordinates and responds to emergency utility situations, after-hours calls, or special requests as needed.
- Other related duties as assigned.

Additionally, WCR has the following skills and experience for the Vice-President position:⁴

- Helped lead the growth and development of the Company for over 21 years.
- Experienced Water Distribution 2 certified operator, Cross Connection Inspector and Backflow Assembly Tester.
- Institutional knowledge of the Company that was developed through years of serving in all Company capacities including field service crew and front office management, system management, excavation and physical system development, work with outside vendors/agencies and customer relations.
- Backflow Assembly Tester.
- Water Distribution II.
- Certified Cross Connection Specialist.
- Bend City Councilor 2014 – 2018.
- City of Bend Mayor 2016 – 2018.

Terms and Conditions

As stated above, there is no formal contract between Roats and WCR as WCR 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, WCR'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

⁴ See response to IR 03

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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]** [REDACTED] **[End Confidential]** annually in fiscal year 2021. The total compensation is comprised of **[Begin Confidential]** [REDACTED] **[End Confidential]**.

Staff reviewed the affiliate costs related to WCR's position and market value direct salary comparators provided by the American Water Works Association (AWWA) related to Assistant General Manager (S110).⁵ 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.⁶

Public Interest Compliance

The Company states that, "Casey has a vested interest in the company and its' future" and "... is a full-time, reliable employee of the company and exceeds the requirements of his position."⁷ 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 WCR 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.⁸

⁵ 2021 AWWA Compensation Survey: Small Water and Waste Water Utilities, December 2021

⁶ See Order No. 21-466 in Docket No. UW 185.

⁷ See response to IR 03.

⁸ ORS 757.495(4).

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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.

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 William C. (Casey) Roats, 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.

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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.

UI 468 PMM - Confidential