

Decision **PROPOSED DECISION OF ALJ MINKIN** (Mailing 7/13/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Odd Fellows Sierra Homeowners'
Association, a California non-profit Mutual
Association,

Complainant,

vs.

Odd Fellows Sierra Recreation Association,

Defendant.

Case 12-03-016
(Filed March 14, 2012)

DECISION DISMISSING COMPLAINT

Summary

By this decision, we dismiss Case 12-03-016. Complainant has failed to respond to the assigned Administrative Law Judge's Rulings. Therefore, we dismiss the complaint for lack of prosecution, and the proceeding is closed.

Procedural History

Odd Fellows Sierra Homeowners Association (Complainant or Homeowners Association) filed Case (C.) 12-03-016 against Odd Fellows Sierra Recreation Association (Defendant or Recreation Association) on March 4, 2012. Complainant states that the water system operated by Recreation Association should be regulated as a public utility, pursuant to Pub. Util. Code §§ 2701 and 2702.

With the permission of the assigned Administrative Law Judge (ALJ), Defendant was given leave to file its Answer on June 15, 2012, because parties had entered into settlement discussions regarding this complaint as well as a complaint filed by Defendant in Superior Court (Superior Court) of Tuolumne County. The ALJ also instructed parties to file a Joint Status Report on June 15, 2012

Defendant states that there is an agreement regarding provision of water service, which states explicitly that Defendant is not organized as a public utility and explains that the agreement lapsed as of January 10, 2012. Defendant is currently negotiating with the Tuolumne County Local Agency Formation Commission (LAFCO) to form a Community Services District to manage the Odd Fellows water system. Defendant has moved to stay the proceeding until the County LAFCO proceedings are concluded.

In the Status Report served on June 15, 2012, Defendant states that the Board of Directors of the Homeowners Association has disbanded and there is no longer an entity with whom to negotiate. Defendant represents that on February 23, 2012, Recreation Association filed a complaint in the Superior Court for non-payment of service provided by Recreation Association and states that Homeowners Association did not respond to the complaint. According to Defendant, a default hearing in Superior Court is scheduled for July 2012 in this matter.

On June 21, 2012, the assigned ALJ issued a ruling that provided procedural guidance to the parties and confirmed the information provided by electronic mail on June 18, 2012. ALJ Minkin required Complainant to verify that it intended to go forward with C.12-03-016 and to do so by June 28, 2012. No such verification has been filed and served. Therefore, we dismiss this complaint

for lack of prosecution. Evidentiary hearings were preliminarily determined to be required and we now find that no hearings are required. We therefore modify this preliminary determination.

C.12-03-016 is closed. We note that C.12-03-017, filed by Complainants Fred Coleman, Steven Wallace, Larry L. Vaughn and Ruth Dargitz, raises similar issues. The dismissal order in C.12-03-016 does not implicate C.12-03-017.

Comments on Proposed Decision

The proposed decision of ALJ Minkin was mailed to the parties in accordance with Pub. Util. Code 311 and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Catherine J. K. Sandoval is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

Finding of Fact

1. Complainant has not filed and served the required verification that it intends to pursue this complaint.

Conclusions of Law

1. This complaint should be dismissed for lack of prosecution.
2. All pending motions should be dismissed as moot.
3. Evidentiary hearings are not required and the preliminary determination that hearing shall be held should be modified.

4. The order in this matter should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Case 12-03-016 is dismissed.
2. All pending motions are dismissed as moot.
3. Evidentiary hearings are not required.
4. The order in this matter shall also be served on the service list to Case 12-03-017.
5. Case 12-03-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.