

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of Application of Odd Fellows Sierra Recreation Association, a California corporation, and Sierra Park Water Company, Inc., a California corporation, for Certificate of Public Convenience and Necessity to Operate a Public Utility Water System near Long Barn, Tuolumne County, California and to Establish Rates for Service and For Sierra Park Water Company, Inc. to Issue Stock.

Application 13-09-023
(Filed September 20, 2013)

And Related Matter.

Case 12-03-017
(Filed March 14, 2012)
(CONSOLIDATED)

**COMMENTS OF SIERRA PARK WATER COMPANY ON
PROPOSED DECISION RESOLVING A COMPLAINT AND AUTHORIZING A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY AS MODIFIED**

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Pursuant to Rule 14.2(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Sierra Park Water Company (“Water Company”) files its Comments on Proposed Decision Resolving a Complaint and Authorizing a Certificate of Public Convenience and Necessity as Modified (“Comments”).

Water Company appreciates the broad intent of the referenced Proposed Decision (“PD”) for “the Water Company to have a reasonable opportunity to operate successfully and independently.” (PD, p. 2.) Water Company is eager to resolve the proceedings expeditiously and therefore generally accepts most of the orders proposed in the PD. Perhaps most important are Water Company’s acceptance of the conditional Certificate of Public Convenience and Necessity (“CPCN”) ordered in PD Ordering Paragraph 1 and of the refund ordered in Ordering Paragraph 3(a).

Pursuant to Rule 14.3(b), as its subject index listing recommended changes, Water Company urges the Commission to:

- Correct numerous errors in the PD regarding transfer of property that has not actually occurred.
- Increase staff’s unreasonably small revenue requirement for professional services. Water Company otherwise accepts the proposed revenue requirements for FY2015 and FY2016. If the Commission does not agree to increase that revenue requirement, the Commission should approve a memorandum account to track expenses for such services.
- Approve Water Company’s proposal to rebill delinquent customers.
- Confirm that the refund of lease payments made by Water Company in FY2013 and FY2014 is included in the required refund of \$80,000.
- To prevent unfair cost-shifting, order that the refund of \$80,000 need not be made to customers who have not paid their bills as required and continue not to pay them after rebilling.

- Approve Water Company using funds that might be refunded for FY2015 for manganese reduction and grant authority to establish a balancing account for that purpose.
- Increase the time for filing tariffs from 15 days to 90 days.
- Provide for oversight of Water Company’s drafting of affiliate transaction rules by the Division of Water and Audits.

A. Water Company Accepts the Following Determinations of the PD.

At pages 8-11, the PD reviews the recommendations of the Staff Report and “either adopts or modifies [the staff report’s] recommendations as discussed below.” (PD, p. 8.) Water Company accepts without any request for clarification or revision the following recommendations as included in the PD:

Sections 5.1(3) and (4) regarding “Need for Engineering Consultant” and “Funding for Engineering Study”. Water Company accepts the engagement of an engineering consultant and will prosecute the study’s scope of work as delineated in Table 1 of the Staff Report as soon as practicable. Water Company will fund the study as set forth in section 5.1(4) and Ordering Paragraph 4. Water Company will establish a memorandum account to track all expenses and revenue collected through the \$124 surcharge and consult with Staff to determine whether to review the reasonableness of such expenses in Water Company’s next general rate case or via a Tier 3 advice letter.

Section 5.1(5) regarding “Water Company Access”. Per the PD, Water Company and the Recreation Association will work in concert to consummate the transfer of all water property related assets from Recreation Association ownership to Water Company ownership as soon as is practicable. Water Company proposes to notify Staff as soon as a timeline for transfer completion is known, as well as when the transaction is completed. Water Company anticipates that after such notice, the Commission will lift the “conditional” provision of Water Company’s CPCN.

Section 5.1(7) regarding “Potential for Operating Contract”. Water Company accepts this recommendation.

Section 5.1(8) regarding “Future Access to Wells”. Water Company concurs with this recommendation.

B. Water Company Accepts the Order Requiring an \$80,000 refund but requests clarification as to refund of lease payments and unpaid customer bills.

The PD orders \$80,000 is to be refunded by Water Company “as a bill credit of a combined total of \$10,000 per year for the next eight years, allocated proportionately to improved and unimproved lots as otherwise shown in the Staff Report.” (PD, p. 17; see also Ord. ¶ 3(a).) Water Company understands these refunds will occur beginning with the next billing cycle (FY2016), with bills on which the first refund is reflected being mailed in June 2016.

1. Refund of Lease Payments

The PD rightfully recognizes, “The refunds [of the magnitude computed by Staff] are significant and pose a problem for the viability of the Water Company going forward: too rapid a refund will likely result in insolvency.” (PD, p. 7.) Water Company appreciates this recognition that an insolvent water utility is of no benefit to its customers.

The PD further states regarding refunds:

. . . customers’ bills will reflect a line item adjustment for a refund from Water Company for eight years . . .

Additionally, all *forecasts* for “easements” or right-of-way access to Service Company are disallowed in the Final Report. To the extent that Water Company has made any payments to Service Company these must be refunded to customers in a one-time refund [in] the next billing.

(PD, p. 18, italics added.)

However, the PD contains a potential technical error regarding lease refunds that must be corrected to prevent double-counting of the required \$80,000 refund for FY2013 and FY2014. Water Company believes staff appropriately accounted for lease payments for FY2013 and FY2014 in calculating overpayments for those two years. That overcharge amount is \$321,422, which includes the FY2013 and FY2014 lease payments. (Response of Sierra Park Water Company to Division of Water and Audits Staff Report Dated September 30, 2014, on Application of Odd Fellows Sierra Recreation Association and Sierra Park Water

Company, Inc. for Certificate of Public Convenience and Necessity (A. 13-09-023) and Complaint by Fred Coleman, Steven Wallace, Larry L. Vaughn and Ruth Dargitz vs Odd Fellows Sierra Recreation Association (C. 13-03-017), dated November 25, 2014, ex. B1 of 2, line 48 & ex. E2 of 2, line 45; Staff Report, p. 18, § 2.2.1.) Thus, those necessary lease refunds have been accounted for correctly by Staff. Further, Water Company has not paid any lease payments for FY2015, and thus there would be no refund for any period of time after FY2014.

Nevertheless, Water Company is concerned about this sentence from page 18 of the PD: “To the extent that Water Company has made any payments to Service Company these must be refunded to customers in a one-time refund [in] the next billing.” Specifically, Water Company is concerned that sentence leads to ambiguity with respect to the required lease refunds. Therefore, Water Company requests the Commission to make it quite clear in the final Decision that the sentence of concern to the Water Company refers only to any lease payments made *after* FY2014 (of which, again, there have been none). Water Company makes that request because it is concerned that if that sentence is taken to apply to FY2013 and FY2014 in addition to the \$80,000 refund, it would lead to a duplication of refund amounts already required as part of Section 7 of the PD (PD, p. 17). This would result in a harsh financial impact on the Water Company from which it would be unable to recover, and would be completely opposite to the PD’s stated desire to avoid insolvency of Water Company.

Water Company therefore requests the PD be revised to make clear that (1) the reference to refund in the second sentence of the second paragraph on page 18 is only to any lease payments made after FY2014, and (2) the easement lease re-payment is to be limited to its proportional part of the \$80,000 refund, and is not to be duplicated as an additional refund.

2. Collection and Refund Impact of Unpaid Bills

The PD contains a technical error regarding customers who will receive the required refund. As of May 31, 2015, approximately 40 customers have unpaid bills spanning FY2013 and FY2014. It is not fair to other customers for these 40 customers not to pay their bills. It would also not be fair for them to receive a refund for bills they have not paid, or in some

cases, they significantly underpaid. Water Company proposes to rebill the delinquent customers, with bills adjusted for the Revenue Requirement (“RR”) and Rate Design (“RD”) as calculated by Staff for FY2013 and FY2014. If these customers pay these adjusted bills, then they will never have paid a bill in an amount that would entitle them to a “refund.” Water Company proposes that customers who persist in not paying their bills for FY2013 and/or FY2014 after having been rebilled as stated above be excluded from receipt of a refund. Again, it would be unfair to the customers who paid their bills if those who did not do so received a refund. In fact, it would shift to customers who timely paid bills the cost of refunding money to those who did not pay their bills.

Water Company requests that the final Decision approve Water Company rebilling delinquent customers as proposed above and, to prevent unfair cost-shifting, state that none of the \$80,000 refund be paid to customers who did not pay bills in FY 2013 and FY2014 and continue not to do so after being rebilled.

C. Other Requests for Revision

1. Revision to Revenue Requirement for Professionals

In general, Water Company is willing to accept the proposed Revenue Requirement. However, the amount allowed for regulatory and legal expenses is factually unsupported. Water Company is very concerned with the extremely low amount of money allocated, in aggregate, to regulatory and legal expenses, and requests that revenue requirement to be increased.

In Staff Table 2 (Staff Report, p. 20), for FY2015 and FY2016, Staff allotted no money for Regulatory Commission expense and barely over \$6000 each year for legal expense. This was apparently based on its conclusion that Water Company should use consultants, not lawyers, going forward (staff does not do Water Company the service of identifying such consultants) to address ongoing regulatory and compliance requirements. Thus, staff decided \$6000 was sufficient for regulatory and compliance matters in FY2014, and then escalated that number a small amount for the next two fiscal years. (Staff Report, p. 33.) Despite recommending the use of unidentified consultants, staff listed the roughly \$6000 as legal expense. (Table 2, Staff Report p. 20, row 21(b).)

Water Company pointed out that it anticipated legal fees costing \$28,500. (Staff Report, p. 33.) It is also notable that we are now in FY2015 and these proceedings are still ongoing, requiring continuing legal expenses. It will also require legal assistance to document the transactions ordered by the PD. There will be additional unanticipated-by-staff legal expenses for these Comments, as well as for filing the Tier 1 Advice Letter and other matters of regulatory compliance, such as the annual compliance filings discussed in the Staff Report at item 6 on p. 31. The fact that all these things need to be done is simply not subject to factual dispute.

It is also not disputable that Water Company is brand new to the experience of being a regulated utility. It knows very little about dealing with Commission regulation. Water Company wishes to do so correctly, but it is going to need legal expertise to do so. The Commission is well aware that attorneys with Commission expertise do not work for free. The Commission posts on its website a table for Intervenor Hourly Rates.¹ Very few Commission water attorneys are listed. One, Anita Taff-Rice, had a 2013 approved rate of \$310. Her hourly rate went up \$5 per year from 2011 to 2013; thus, it would be fair to conclude the Commission would approve an hourly rate for her of \$315 for 2014, \$320 for 2015, and \$325 for 2016. To pick one more example of a highly-respected attorney with an approved intervenor hourly rate, TURN energy attorney Robert Finkelstein's 2014 approved hourly rate was \$505.

As noted, staff apparently recorded both regulatory consulting and legal costs together in its Table 2, without providing any information about available consultants or their costs. But as for the exemplary attorney rates listed above, in FY2014, with the \$6000 allotted by staff for both regulatory and legal expense, Water Company could have purchased a total of 19.5 hours of the time of an attorney with a rate of \$315 and 12.2 hours of the time of an attorney with a rate of \$505. Considering the numerous tasks Water Company will be under Commission order to undertake after the CPCN is awarded, that could hardly be enough time to draft the required tariffs, let alone deal with other

¹ See <http://www.cpuc.ca.gov/NR/rdonlyres/67D5008A-C75C-445F-AFCE-6AFF4BBA6A00/0/UpdatedRatechart072215.xls&sa=U&ved=0CCAQFjAJahUKEwiVjqiCwtbHAhXCsoAKHcWEDI4&client=internal-uds-cse&usg=AFQjCNGrqi32yBoeJUjP2Su31opx1hi6xg>. Water Company requests official notice of this table from the Commission's official website under Commission Rule 13.9.

regulatory compliance issues. In addition, the rates discussed above are only for Commission practitioners. They do not consider at all the cost of transactional attorneys to accomplish the conveyances the PD requires.

Water Company respectfully requests the Commission to recognize the factual error in the sum recommended by staff for legal and regulatory expense, and therefore reject the wholly inadequate sums for such expenses of \$6138 proposed by staff for 2015, and \$6359 proposed for 2016. (Table 2, Staff Report, p. 20, row 21(b).) Instead, the Commission should adopt the Company's forecasted sum of \$28,500 for each year, increasing the 2015 revenue requirement by \$22,362, and the 2016 revenue requirement by \$22,141.

If the Commission is unwilling to do that, Water Company respectfully requests that the Commission at least include an order that Water Company may establish in the tariffs to be filed a Legal and Regulatory Expense Memorandum Account in which it will record over the next three years all such expenses, to undergo reasonableness review for recovery in Water Company's next General Rate Case.

2. Impact of Expenses for Compliance with State Water Resources Control Board Requirements

The Water Company based its FY2015 billing on a proposed and shareholder approved budget of \$326,166 - \$955 for an improved lot and \$909 for an unimproved lot. Staff's RR and RD determined the appropriate RR and RD should be \$193,349. To that it added the \$45,000 for the engineering study, leading staff to calculate an overcharge for FY2015 of \$87,817. (See Staff Report, Table 4, p. 26, for all these numbers.)

As staff is aware (Staff Report, p. 12, note 21), the Water Company is under order of the State Water Resources Control Board ("Water Board") to comply with the State's requirement to greatly reduce the manganese content in its water. Water Company has been working closely with the Water Board over the last 6 months to move this effort ahead post haste. There can be no rationale for postponing the work already underway on this project until the ordered engineering study acknowledges the need for it, since the need for this project has already been established through water testing and mandate from a sister state agency.

Rather than go to the expense of refunding any FY2015 overcharged amounts to customers (for which customers were billed on June 1, 2015), the Water Company proposes to dedicate the amount of any such “overcollection” to continue work on the manganese removal project. In order to do that, Water Company suggests the Commission order Water Company to create a balancing account that would record credits for any overcollections and debits for payments for the manganese project. Water Company respectfully requests that the final Decision adopt this proposal.

3. Increase of time to file tariffs

Ordering Paragraph 6 requires Water Company to file a Tier 1 advice letter within 15 days of the effective date of the decision establishing its tariffs, including a number of listed items. The undisputable facts show that to allow such a short period of time to draft tariffs would constitute factual error. As already noted, Water Company is a brand new regulated utility. Bluntly, it cannot possibly draft the requisite tariffs in that period of time. That will especially be so if there is no increase in the legal and regulatory budget, since Water Company has no in-house experience base in tariff drafting. There is also no need for such an accelerated deadline, because the PD approves the recommendation of Staff the annual billing continue, and the next bills will be sent in June 2016. (PD, p. 8; Staff Report, p. 23.)

Water Company respectfully requests that the final Decision revise Ordering Paragraph 6 to require the filing of the advice letter and tariffs within 90 days of the effective date of the final decision in accordance with Ordering Paragraph 6 on page 23.

D. Request for Clarification regarding Affiliate Transaction Rules

Section 5.1(6) on page 10 and Ordering Paragraph 8 on page 24 of the PD call for Water Company to develop formal Affiliate Transaction rules for all transactions between the Water and Services Companies as well as the Recreation Association. Water Company accepts this requirement, but notes that the PD directs these rules be adopted and implemented “with oversight by the Water Division.” (PD, p. 13.) However, relevant Ordering Paragraph 8 is technically deficient because it does not include a reference to such oversight. In order to assist Water Company in minimizing legal and regulatory expense, as well as to ensure both proper compliance and that the compliance filing is well understood

and performed efficiently, Water Company respectfully requests the final Decision be revised so that it is clear the development of the affiliate transaction rules by Water Company will be undertaken with the assistance of the Division of Water and Audits.

E. Errors concerning Transfer of Assets Require Correction.

In numerous places, the PD erroneously states in various ways that assets have been transferred from the Recreation Association to the Service Company. As one example, Finding of Fact 5 on page 19 states “Odd Fellows transferred land and other assets previously used to provide water service to Service Company.” As another example, Conclusion of Law 2 on page states “It is reasonable to void Odd Fellows’ transfer of water service related assets to Service Company.”

Statement that such transfer has already occurred is a factual error requiring correction. No transfer of any property from Odd Fellows to Water Company or Service Company has occurred yet. It will occur after the CPCN takes effect, and it will occur as called for in the PD. The record supports that no transfer has yet occurred. See, for example, Staff Report, p. 9 (“The Recreation Association *intends to transfer* all water lines, wells, pumps, water storage tanks and related improvements located within the Park or on the Timber Land (the Water Related Personal Property to be transferred) to the Water Company...”)(quoting a filing by the Recreation Association in C.12-03-017) (italics added); Staff Report, p. 22 (“Staff believes that for the Water Company to survive, the Recreation Association *must transfer* all water properties, water rights and access to the same at no cost to the Water Company”) (italics added); Staff Report, p. 31 (italics added) (“The Recreation Association *should transfer* all water system assets and related water rights to the Water Company at no cost”).

The accompanying Appendix of Proposed Changes sets forth all portions of the PD where correction of this error should occur.

F. Conclusion

For the reasons set forth in these Comments, Water Company respectfully requests the Commission to revise the Proposed Decision to:

- Correct numerous errors in the PD regarding transfer of property that has not actually occurred.
- Increase staff's unreasonably small revenue requirement for professional services. Water Company otherwise accepts the proposed revenue requirements for FY2015 and FY2016. If the Commission does not agree to increase that revenue requirement, the Commission should approve a memorandum account to track expenses for such services.
- Approve Water Company's proposal to rebill delinquent customers.
- Confirm that the refund of lease payments made by Water Company in FY2013 and FY2014 is included in the required refund of \$80,000.
- To prevent unfair cost-shifting, order that the refund of \$80,000 need not be made to customers who have not paid their bills as required and continue not to pay them after rebilling.
- Approve Water Company using funds that might be refunded for FY2015 for manganese reduction and grant authority to establish a balancing account for that purpose.
- Increase the time for filing tariffs from 15 days to 90 days.
- Provide for oversight of Water Company's drafting of affiliate transaction rules by the Division of Water and Audits.

Dated: September 8, 2015

Kirk M. Knudsen

/s/ Kirk M. Knudsen

President
Sierra Park Water Company

APPENDIX OF PROPOSED CHANGES
(Rule 14.3(b))

Proposed Changes to Correct Factual Error regarding Asset Transfer

P. 2, near bottom of page: “These assets ~~were previously~~ owned by Odd Fellows ~~and~~ must be transferred to Water Company as a condition of granting the CPCN.”

P. 6, first sentence in first full paragraph: “As determined in this decision, we can only grant a CPCN to Water Company if Odd Fellows ~~modifies its transactions and~~ transfers to Water Company all of the relevant water service-related assets including land and legal rights, ~~which were instead transferred to Service Company.~~”

P. 13, delete third sentence on page (which reads “Therefore, Service Company must transfer at no cost all water utility-related assets including land, water rights, and any equipment used for providing water service that were allocated to it by Odd Fellows at the time of forming the Service Company and Water Company.”)

P. 19: Delete Finding of Fact 5.

P. 20: Delete Conclusion of Law 2.

P. 20, Conclusion of Law 5: “It is reasonable ~~that~~, if Odd Fellows refuses to transfer assets ~~from Service Company~~ to Water Company, to void all transactions forming both Water Company and Service Company.”

PP. 21-22, Ordering Paragraph 2: “If Odd Fellows Sierra Recreation Association (Odd Fellows) declines to transfer assets ~~given to Sierra Park Services, Inc. (Service Company) without authority for this~~ Water Company, Odd Fellows is a public utility subject to the jurisdiction of this Commission ~~and all asset transfers to Sierra Park Water Company, Inc., and Service Company are void~~. We therefore conditionally grant a certificate of Public Convenience and Necessity to Odd Fellows.”

P. 22, introductory paragraph to Ordering Paragraph 5: “If Odd Fellows Sierra Recreation Association (Odd Fellows) declines to transfer assets ~~given to Service~~ Water Company ~~without authority from this Commission~~ then Odd Fellows must:”

Proposed Changes Related to Professional Services Revenue Requirement

If revenue requirement is increased:

P. 7, first full sentence: “This decision adopts the going forward forecasts prepared by Water Division in its final report, **except that the forecasted revenue requirement for professional and regulatory services is increased by \$22,362 for fiscal year 2015-2016 and \$22,141 for fiscal year 2016-2017.**”

P. 23, first sentence in Ordering Paragraph 6: “Sierra Park Water Company, Inc. (Water Company) must implement tariffs to adopt a revenue requirement of \$215,711 for fiscal year 2015-2016 and \$220,544 for fiscal year 2016-2017~~the test year revenue requirement and rates as calculated in the Water and Audits Division’s Staff Report (Attachment A to this decision).~~”

Revise Conclusion of Law 12 as follows: “Water Company should establish ~~a memorandum account~~ in its Preliminary Statement: **(a) a memorandum account to track the costs and surcharge revenues collected associated with retention of an engineering consultant; and (b) a balancing account in lieu of a refund for FY2015 overpayments to be used solely for its project with the State Water Resources Control Board to reduce manganese content in its water.**”

Revise Ordering Paragraph 6.e as follows: “incorporate into preliminary statements a description of ~~the~~ **(a) a memorandum account authorized to track the costs and surcharge revenues collected associated with retaining an engineering consultant; and (b) a balancing account in lieu of a refund for FY 2015 overpayments to be used solely for its project with the State Water Resources Control Board to reduce manganese content in its water.**”

Alternatively, if revenue requirement is not increased:

Revise Conclusion of Law 12 as follows: “Water Company should establish ~~a memorandum account~~ in its Preliminary Statement: **(a) a memorandum account to track the costs and surcharge revenues collected associated with retention of an engineering consultant; (b) a memorandum account to track the costs of legal and regulatory professional services for**

reasonableness review in Water Company's next General Rate Case; and (c) a balancing account in lieu of a refund for FY2015 overpayments to be used solely for its project with the State Water Resources Control Board to reduce manganese content in its water."

Revise Ordering Paragraph 6.e as follows: "incorporate into preliminary statements a description of ~~the~~ (a) a memorandum account authorized to track ~~the~~ costs and surcharge revenues ~~collected~~ associated with ~~retention of~~ retaining an engineering consultant; (b) a memorandum account to track the costs of legal and regulatory professional services for reasonableness review in Water Company's next General Rate Case; and (c) a balancing account in lieu of a refund for FY 2015 overpayments to be used solely for its project with the State Water Resources Control Board to reduce manganese content in its water."

Other Proposed Changes

P. 18, second sentence of second paragraph: "To the extent that Water Company has made any lease payments to Service Company after FY2014, these must be refunded to customers in a one-time refund ~~it~~ in the next billing."

PP. 22-23, Ordering Paragraph 5.a.: "Refund \$80,000, which includes proportionally refund of disallowed lease payments made in fiscal years 2013-2014 and 2014-2015, as a bill credit of a combined total of \$10,000 per year for the next eight years allocated proportionately to the improved and unimproved lots as shown in the Staff Report (Attachment A to this decision)."

P. 23, Ordering Paragraph 6, second sentence: "Water Company must file a Tier 1 advice letter within ~~1590~~ days of the effective date of this decision that add tariff sheets to:"

P. 24, Ordering Paragraph 8: "With the oversight of the Division of Water and Audits, Sierra Park Water Company, Inc. (Water Company), must adopt affiliate transaction rules and apply these rules to any transactions with Odd Fellows Sierra Recreation Association or Sierra Park Services, Inc., regardless of any real or apparent separation of the these three entities."

Add new Conclusions of Law:

“It is reasonable for Water Company to rebill customers who did not pay bills in fiscal years 2013-2014 and 2014-2015 to reduce such bills to take account of prior overcharges.”

“Customers who did not pay bills in fiscal years 2013-2014 and 2014-2015 and who do not pay bills after being rebilled by Water Company with bills that take account of prior overcharges should not receive any portion of the \$80,000 refund.”

“It is reasonable for the Division of Water and Audits of provide assistance to Water Company in adopting affiliate transaction rules.”

Add new Ordering Paragraph:

P. 23, new Ordering Paragraph 6.f: “provide for rebilling of delinquent customers who did not pay bills in fiscal years 2013-2014 and 2014-2015 and provide that customers who do not pay bills after such rebilling will not receive the refunds set forth in Ordering Paragraphs 3.a and 6.b.”