Decision **PROPOSED DECISION OF ALJ SMITH (Mailed 8/18/2015)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)
Fred Coleman, Steven Wallace, Larry L. Vaughn and Ruth Dargitz, Complainants, vs. Odd Fellows Sierra Recreation Association, Defendant.	Case 12-03-017 (Filed March 14, 2012) (CONSOLIDATED)

DECISION RESOLVING A COMPLAINT AND AUTHORIZING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AS MODIFIED

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DECISION RESOLVING A COMPLAINT AND AUTHORIZING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AS MODIFIED

Summary

This decision finds that Complainants are correct and Odd Fellows Sierra Recreation Association (Odd Fellows) has been acting as a public utility and should be subject to this Commission's jurisdictional and regulation. This decision conditionally grants a Certificate of Public Convenience and Necessity (CPCN) to Sierra Park Water Company, Inc. (Water Company), a subsequent creation by Odd Fellows, subject to the transfer of critical assets and rights from Odd Fellows necessary for Water Company to have a reasonable opportunity to operate successfully and independently. The decision mandates that Water Company implement the Commission's required affiliate transaction rules. The decision adopts rates for Water Company and orders refunds for past overcharges. Water Company must file tariffs by advice letter. Except where specific relief is adopted, the Complaint is denied.

This decision adopts reasonable rates for the first time for Water Company and the customers it serves in Long Barn, California. The adopted revenue requirement for fiscal year 2015-2016 is $193,349, and for fiscal year 2016-2017 it is $198,403. Refunds are ordered for prior overcharges from 2013 through 2015 of $80,000 by Water Company to be recovered by customers as bill credits over an extended period of 10 years; $28,000 is to be refunded by Odd Fellows via Water Company over two years; and any payments made by Water Company to the Service Company, also created by Odd Fellows, for improperly holding and then possibly charging Water Company for water service-related assets. These assets were previously owned by Odd Fellows and must be transferred to Water Company as a condition of granting the CPCN. Water Company must also

adopt and implement affiliate transaction rules to be applicable to any transactions in the future with Service Company and the Odd Fellows regardless of their apparent separation.

Water Company is subject to the regulation of the Division of Drinking Water at the State Water Resources Control Board which has primary jurisdiction for water quality and water safety.

These consolidated proceedings are closed.

1. Procedural History

These consolidated proceedings relate to the Odd Fellows Sierra Recreation Association (Odd Fellows) and the provision of water to residents around Long Barn, California. Originally, Case (C.) 12-03-017 was filed alleging that Odd Fellows was improperly providing public utility service at unreasonable rates and was operating without Commission authority.[1] Subsequently, Odd Fellows filed Application (A.) 13-09-023 along with the newly created Sierra Park Water Company, Inc. (Water Company) for a Certificate of Public Convenience and Necessity (CPCN) to offer retail water service in place of Odd Fellows. The February 18, 2014 scoping memo did the following: (i) consolidated the Complaint and the CPCN application, (ii) categorized the CPCN application as ratesetting and changed the categorization of the Complaint from adjudicatory to ratesetting, (iii) determined that evidentiary hearings are not necessary, (iv) set a procedural schedule, (v) determined that the CPCN application is not a project pursuant to the California Environmental

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[1] A similar complaint, C.12-03-016 was dismissed in Decision (D.) 12-08-027, dated August 23, 2012, filed by the Odd Fellows Sierra Homeowners' Association against the Odd Fellows Sierra Recreation Association the defendant in C.12-03-017 and applicant in A.13-09-023.

Quality Act, (vi) defines the scope of the CPCN application and of the Complaint, (vii) imposed an *ex parte* ban, and (viii) designated the assigned Administrative Law Judge (ALJ) as Presiding Officer.

By a ruling dated June 2, 2014, Applicants and the Commission's Division of Water and Audits (Water Division) were directed to respond: the Applicants to provide data, and the Water Division to prepare a detailed analysis. By a Ruling dated October 7, 2014, the Applicants and Complainants (who are also interested parties in the application) were directed to serve comments on the Water Division's draft report and the Water Division was allowed to revise its report based on those comments. The final report, following revisions to incorporate or respond to comments, was served on the assigned ALJ on April 15, 2015, and is Attachment A to this decision. Parties were allowed to comment on the proposed decision and its utilization of the final report.

2. Standard of Review and Record

Proposed water utility ownership changes are reviewed under Public Utilities (Pub. Util.) Code §§ 851-854 which prohibit the sale or transfer of control of a public utility without the advance approval of this Commission.

The primary standard, by which the Commission reviews whether a transaction should be approved under § 854(a), is whether or not the transaction will be "adverse to the public interest."[2]

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[2] *See* D.03-12-033 at 6; D.01-06-007 at 15.

Applicants have the burden of proof to demonstrate that the requested relief is just and reasonable.

The record consists of the documents served and filed in this proceeding. No evidentiary hearings were held.

3. The California Environmental Quality Act Does Not Apply

We have reviewed the application to determine whether the California Environmental Quality Act (CEQA) applies to this proposed transaction.

While the sale of utility assets may be a project under CEQA, we find that based on the record before us it can be seen with certainty that this transfer of control will not have a significant effect on the environment.

> *15061. REVIEW FOR EXEMPTION*
>
> *(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.*
>
> *(b) A project is exempt from CEQA if:*
> *(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*

(CEQA Guideline 15061(b)(3).)

4. Background

4.1. Water Service Provider

It is accepted by all parties and the Water Division, that Odd Fellows was providing water to residents of the Long Barn area. During the initial phase of C.12-03-017 Odd Fellows agreed to file an application for a CPCN. When it was filed, the proposal included the creation of two new entities: Water Company and another unrelated Service Company. The effect, if approved, would severe the Odd Fellows from retail water provision and transfer other assets to the second new entity, Service Company. As proposed in the application, Service Company would own land and certain rights which would be leased to Water Company. Water Company would be subject to regulation by this Commission and the State Water Resources Control Board. Service Company would be an unregulated entity. The parties to the complaint protested the application.

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. Absent granting a CPCN to Water Company we would otherwise find Odd Fellows has been and continues to be a water utility subject to this Commission's jurisdiction and we would order the transactions between the Odd Fellows with Water Company and Service Company to be voided. The transfer of all water service related assets to Water Company is necessary to make it whole and functionally viable to succeed Odd Fellows as the service provider. Placing valuable land and other related rights in the hands of Service Company makes Water Company a weaker entity and not a reasonable successor service provider.

4.2. Rates

One of the key issues in the Complaint was that Odd Fellows (besides illegally operating as a water company) was charging unfair rates. The Water Division was directed to examine the rates proposed by Water Company as a part of the CPCN application to adopt fair and reasonable rates going forward. That same analysis was used to "deflate" or "backcast" rates for the prior years. These recast rates could then be compared to the rates charged by Odd Fellows to determine if customers were over or under-charged. There are no previously authorized rates or prior proceedings in any forum that legally established the prior rates given Odd Fellows' status as an illegal public utility. This decision adopts the going forward forecasts prepared by Water Division in its final report. It also adopts the deflated rate calculations to determine whether Complainants' had a right to any refunds. The refunds are significant and pose a problem for the viability of Water Company going forward: too rapid a refund will likely result in insolvency. Therefore refunds are of necessity spread over a longer period of time.

Section 2 of the Water Division report (Attachment A) provides a detailed description of the process and methodology used to correctly forecast the revenue requirements and to perform the deflated comparison for assessing the reasonableness of the prior rates. We find that the Water Division's report is persuasive and we accord it more weight than the proposals of Water Company and the arguments of the Complainants.[3]

4.3. Alternative Provider

Complainants have argued that rather than either Odd Fellows or the new Water Company, they should instead be served by a nearby public water district, the Tuolumne Utility District (District). The record shows that although there were discussions, Odd Fellows and the District did not reach an agreement regarding service. The Commission has no jurisdiction over the District and cannot compel it or the utility to consider a transfer. We can only urge the newly independent Water Company to seriously consider combining with the District, or, as proposed by the Water Division, pursue an operating agreement with the

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[3] Complainants transitioned into intervenors for the application; we use this term for convenience.

District. We note that the District probably has condemnation rights to annex Water Company through eminent domain proceeding. Again, we have no standing in a hypothetical condemnation proceeding. We therefore pursue this option no further.

5. Water Division Report

Odd Fellows, and as conditionally approved herein, Water Company, serves 364 connections, thus the utility falls into the Class-D as a small water utility. Normally a Class-D company is regulated through the less formal advice letter process even for general rate cases. This application was necessary to grant the CPCN and set initial rates. The Water Division usually processes advice letter proceedings and it is the expert entity in the Commission to review rate proposals for a Class-D company.

By ruling the Water Division was given broad direction to review the rate request filed by Water Company; perform discovery, and draft a report. A September 30, 2014 draft report was served on the Applicants and other parties who were afforded the opportunity to comment. On April 15, 2015, the Final Report was served on the assigned ALJ, who is also the presiding officer. The balance of this decision reviews and considers the Final Report and either adopts or modifies its recommendations as discussed below.

5.1. Summary of Final Report Recommendations

1) **Refunds Owed to Customers**[4]

   The Odd Fellows Sierra Recreation Association (Recreation Association) which provided water to the Odd Fellows Sierra Homeowners Association (OFSHA), and later to certain lot owners within the OFSHA Subdivision overcharged these lot owners for water service. In March 2013 when the Recreation Association formed the Sierra Park Water Company (Water Company), it too over-charged these lot owners. Staff recommends that the over-charged amounts for these lot owners should be refunded to each lot owner based on the over-charged amounts between June 1, 2012 and the present;

2) **Fiscal Years 2015 and 2016 Revenue Requirements**

   Going forward, the monthly water service charge amount for each lot should be reduced to conform to revenue requirements shown in Tables 2 and 4. Some expenses reported by the Recreation Association and the Water Company (Applicants) were not appropriately justified and should be disallowed;

3) **Need for Engineering Consultant**

   The Water Company should engage an engineering consultant to conduct an engineering study to:

   a) Make an assessment of the state of the existing water system;

   b) Make recommendations on adequacy of the water system including the distribution system, the water supply, fire flow, compliance with Water Board Requirements, new proposed water projects, perform preliminary design of new

[4] These eight summaries are verbatim from the Final Report Executive Summary, although the captions are newly created here.

capital projects, and prepare capital budgets and revenue requirements.

c) Make recommendations regarding alternative water supply resources if needed;

d) Develop a schedule for converting the existing unmetered water connections to metered connections in the development;

4) **Funding for Engineering Study**

The engineering study, to be initiated and completed in Fiscal Year (FY) 2015, should be funded by a separate surcharge of $45,000 (or $124 per connection) on all lot owners during FY 2015, subject to refund. All expenses and revenues collected through the surcharge should be tracked in a memorandum account subject to a reasonableness review either as part of the next general rate case or through a separate Tier 3 Advice Letter filing with the Division of Water and Audits.

5) **Water Company Access**

The Recreation Association should provide the Water Company unfettered access, and water rights at no charge, to existing water supply sources located in the Subdivision. If it is unwilling to do so, then it should continue to provide water services under its own license with the Water Board. In that event, the Water Company may operate as a wholly owned subsidiary of the Recreation Association.

6) **Affiliate Transaction Rules**

Applicants should develop formal Affiliate Transaction rules for all transactions between the Water Company, the Recreation Association and the Service Company and report compliance with those rules to the Commission during the next general rate case;

7) **Potential for Operating Contract**

The purveyor of water services should investigate the possibility of having Tuolumne Utility District (District) operate the water system under an "operations contract" for greater cost savings and operational efficiencies. Depending on their experiences under such an arrangement, the applicants may consider consolidation of the water system with the District's system. This is also consistent with PU Code Section 2719 and the Commission's desire to merge small water systems into larger ones for greater efficiency.

8) **Future Access for Wells**

After receiving a Certificate, if there is a need to drill a new well in the future, the purveyor of water services (either the Odd Fellows or the Water Company), may purchase access to the property subject to negotiation between the utility with eminent domain power and the property owner(s) at a fair market price pursuant to PU Code Section 2730 and approval from the Commission.

6. Discussion of the Water Division's Final Reports

6.1. Summary

We will discuss the Final Report in a different sequence for ease of presenting our conclusions and orders. First, we discuss the operational concerns of whether Water Company can be an effective and viable entity. Thus Topics (3) Need for an Engineering Consultant, (5) Water Company Access, and (6) Affiliate Transactions are discussed first. Second we look at the reasonable rates to be charged going forward and the deflation of those rates as a proxy for potential refunds as discussed in the Final Report's Topics (2) Fiscal Years 2015 and 2016 Revenue Requirements, (1) Refunds Owed to Customers and (4) Funding for Engineering Study. Finally we look at Topics (7) Potential for Operating Contract and (8) Future Access for Wells.

6.2. Viable Water Utility

The Water Division proposes and we agree that Water Company needs to hire an engineering consultant to do far more on-site visits and operational guidance in order to increase the chances that the utility can survive. Additionally, if there are any future transactions with Service Company or Odd fellows (except for those two being customers of Water Company) the Water Company must adopt and comply with the Commission's affiliate transaction rules (see below). In essence, any dealings with Odd Fellows or Service Company must be at arms-length and be at market terms. After transferring all water service assets to Water Company these transactions should be minimal. The Water Division is concerned that the proposed structure would be inefficient and the utility operations might fail from a lack of proper planning. We agree. Regardless of any real or apparent separation Water Company must adopt and implement affiliate transaction rules applicable to any transactions with either Odd Fellows or Service Company.

The Odd Fellows was operating a utility – without a permit, but viable. It had a water supply, a distribution system and related equipment, and it had paying customers and even complaining customers. Unfortunately, the proposed creation of Water Company and Service Company severs the connection between the service provider and some of the relevant resources. Service Company would, most critically, hold title to land where tanks and wells are located. Thus the Water Division is rightly concerned about the application of the Commission's affiliate transaction rules which are intended to protect ratepayers from unreasonable transactions between related parties.

Here, the formation of the two companies and the inter-related management make them, at least at the start, affiliates in the broad sense and the

method of initial shareholder funding means nearly identical ownership. We can see no benefit and many pitfalls in the proposed structure. The Water Company would always be dependent on Service Company for access to wells sites and tanks unless it were to purchase or condemn land as needed later. There was no interference like this when Odd Fellows was operating illegally; the assets necessary for water service were available and dedicated to water service. 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. These assets were used by Odd Fellows to provide service and unless Odd Fellows wish to remain in the business, and now be regulated, all assets for water service need to be directly held by Water Company separately from both Odd Fellows and Service Company.
Odd Fellows is currently the illegal utility and until it complies with this directive, all transactions to Water Company and Service Company are null and void pursuant to Pub. Util. Code Section 854(a).

The Commission has adopted affiliate transaction rules which at their essence ensure that no utility has self-dealings with affiliates (related companies) or family members of owners and officers that would result in excessive costs or poorer service than would otherwise be provided if goods or services were acquired from independent sources. By ensuring Water Company has all of the related water service assets under its control, we reduce the risk of unfair or unreasonable costs from Service Company or the residual Odd Fellows entity. But we further direct Water Company to adopt and implement the Commission's affiliate transaction rules with oversight by the Water Division.

6.3. Reasonable Rates

The Commission's obligation is to examine the proposed cost of service by Water Company and determine the just and reasonable rates necessary to provide safe and reliable service to the customers and allow the Water Company an opportunity to recover its costs and earn a fair return.[5] The intervenors are lay-persons and not experienced and trained regulators. Therefore we accord little weight to the conclusions but we did consider very carefully their concerns about the reasonableness of the rate proposals. The Water Division assigned an experienced regulatory expert to review the requests by Water Company, perform an independent evaluation, and, following the directives in the scoping memo and related rulings, prepare a report with a forecast for rates and a

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[5] **Pub. Util. Code § 701.10:** The policy of the State of California is that rates and charges established by the commission for water service provided by water corporations shall do all of the following:

> (a) Provide revenues and earnings sufficient to afford the utility an opportunity to earn a reasonable return on its used and useful investment, to attract capital for investment on reasonable terms and to ensure the financial integrity of the utility.
>
> (b) Minimize the long-term cost of reliable water service to water customers.
>
> (c) Provide appropriate incentives to water utilities and customers for conservation of water resources.
>
> (d) Provide for equity between present and future users of water service.
>
> (e) Promote the long-term stabilization of rates in order to avoid steep increases in rates.
>
> (f) Be based on the cost of providing the water service including, to the extent consistent with the above policies, appropriate coverage of fixed costs with fixed revenues.
>
> *(Added by Stats. 1992, Ch. 549, Sec. 1. Effective January 1, 1993.)*

recalculation of rates to determine whether customers were previously over charged.

The Water Division report was published in draft form and parties were allowed to comment. In response, Water Division reviewed, modified and made any necessary corrections to the report. After reviewing the Final Report we find it to be persuasive in all but one matter: we find the Water Division does not allow sufficient time for Water Company to refund prior overcharges and to follow the Final Report's suggested schedule would unnecessarily risk insolvency; there would likely be insufficient cash flow to operate successfully.

6.4. Test Years 2015 and 2016

The Water Division calculated according to Commission standard practice a test year revenue requirement for two years: fiscal year 2015 (which straddles 2015-2016) and fiscal year 2016 ending June 30, 2017.

One important issue is that the Water Division identified as inappropriate charges proposed by Service Company to Water Company for annual right-of-way fees. We agree these proposed charges are inappropriate. Water Company can obtain a right of way or easement by eminent domain and would not have to pay annual charges for access. Further, these assets were originally held by Odd Fellows and used as a part of the illegal water service. Therefore, transferring them to Service Company is not a reasonable option if Odd Fellows wishes to not be a utility and expects the Commission to approve a CPCN for Water Company.

Additionally, the Water Division made various assumptions and adjustments to derive the test year revenue requirements and we find that this work was competently performed in a fair and impartial manner by the Division's expert. Complainants were allowed to comment on the Staff report and Water Division was required to address and consider those comments in its Final Report. This process is comparable to the advice letter ratesetting process where the applicant is allowed to file for an increase (as Water Company did here); parties are allowed to protest (again allowed here); the Water Division publishes a draft resolution which is subject to comment (like the Staff Report here) and the final resolution considers those comments (like here) before the Commission adopts a final resolution. Parties here get one further opportunity here where they are allowed to comment on a proposed decision before this decision becomes final.

7. Refunds

By earlier ruling[6] rates charged by Odd Fellows, and now Water Company were made subject to refund to resolve the Complaint. These rates were never approved by the Commission and it would be impossible to cost effectively audit the actual operations to try and determine whether those charges were reasonable. Therefore, the assigned ALJ directed Water Division staff to "backcast" using the test year forecast data as a proxy for rates. The results of that analysis are included in the Final Report and summarized in Table 3 of Attachment A. The Water Division followed standard practice and precedent and recommended a refund over two years. The "backcast" methodology was used as a device to determine whether water rates were reasonably close to what might have been found reasonable had Odd Fellows been properly permitted as a water utility and its rates been legally set by the Commission.

[6] February 14, 2013 Scoping Memorandum at 4.

The Water Division calculates that Water Company and Odd Fellows must refund a combined $430,854 as showing in Table 3 of Attachment A. The Odd Fellows should refund $109,432: $94,957 for improved lots and $14,475 for unimproved lots for the period of time water utility operations and rates were under its control.[7] If the Water Company were required to refund the balance of $321,422 in the same manner, over 10 years at a rate of $32,142 per year, there is insufficient money in rates going forward to sustain these refunds. The forecast 2015-2016 after-tax return for Water Company is only $34,463. Thus the refund for 10 years would offset nearly the entire projected return for the next 10 years.

We must necessarily pick a long refund period because Water Company is very small – only 364 connections – and obviously lacks the resources to refund the full amount and we must "write-off" a significant portion of the refund as unobtainable. The Water Division's forecast 2015 revenues is only $193,349, with a profit of only $34,463 and we cannot imperil continued service to facilitate refunds. The "backcast" clearly suggests that rates were too high, but it is not conclusive as a determinate of what rates should have been, it is only one indicator. Even a forensic audit of costs (at great expense) would not be conclusive. Therefore, we must find some refund that gives ratepayers some relief without totally disrupting the ability of Water Company to survive as a functioning utility. We will therefore limit the refund by Water Company to approximately 25% of the backcast resulting refund – i.e., 25% of $321,422, or $80,000. We will require Water Company to refund this amount as a bill credit of a combined total of $10,000 per year for the next eight years, allocated

[7] Staff Report at 26.

proportionately to the improved and unimproved lots as otherwise shown in the Staff Report.

Odd Fellows was allowed to collect rates subject to refund while the Complaint was pending and before it formed Water Company (without first seeking Commission approval). We therefore find that Odd Fellows must make a refund of $28,000, or approximately 25% of $109,432: $24,360 for improved lots and $3,640 for unimproved lots, its adjusted share prior to spinning-off Water Company. We will allow Odd Fellows to make this refund over two years by paying Water Company $14,000 each year, which, in turn, will make an additional bill credit to customers as proposed in the Staff Report. Thus, customers' bills will reflect a line item adjustment for a refund from Water Company for eight years and another line item for a refund from the Odd Fellows for two 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 it the next billing. It is Water Company's responsibility to recover any unauthorized payments that may have been made before this decision approved the CPCN and approved the transfer as described in this decision from Odd Fellows to Water Company.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _______, and reply comments were filed on ______ by ________.

Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Richard Smith is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicants are subject to the jurisdiction of this Commission.
2. Odd Fellows has been providing water service to over 300 customers without a CPCN.
3. Odd Fellows does not have Commission-authorized rates in effect.
4. Odd Fellows did not transfer all assets it previously used to provide water service to Water Company.
5. Odd Fellows transferred land and other assets previously used to provide water service to Service Company.
6. Odd Fellows and Water Company charged rates significantly higher than a "backcast" of the test year estimate would suggest was possibly appropriate.
7. An engineering consultant should be retained at a cost capped at $45,000 to access the water system and make service recommendations.
8. Refunds of the full backcast would likely imperil the financial survivability of Water Company.
9. No payments by Water Company have been authorized to Service Company for the use of water service assets that should belong to Water Company.

Conclusions of Law

1. It is reasonable to grant a Certificate of Public Convenience and Necessity to Water Company, as modified herein, as a successor to the uncertificated operator, Odd Fellows.

2. It is reasonable to void Odd Fellows' transfer of water service related assets to Service Company.

3. It is reasonable to ensure that Water Company has all necessary assets of Odd Fellows previously used to provide water service to Water Company to operate as a viable water utility.

4. It is reasonable that any payments made to Service Company for the use of assets that should be a part of Water Company are void and should be refunded to customers.

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.

6. As modified herein, the transfer of control is reasonable pursuant to Public Utilities (Pub. Util.) Code §§ 851-854.

7. The Commission has no jurisdictional standing to require the acquisition of Water Company by a municipal water district.

8. Applicant bears the burden of proof to show that its forecasts are reasonable.

9. It is reasonable to require Odd Fellows to transfer all necessary assets for water service solely to Water Company.

10. Rates previously being charged by Odd Fellows are unreasonable.

11. Refunds are appropriate but cannot be so onerous that the Water Company would be unable to function.

12. Water Company should establish a memorandum account in its Preliminary Statement to track the costs and surcharge revenues collected associated with retention of an engineering consultant.

13. In the absence of prior rate proceedings a deflation of a reasonable forecast is a fair proxy for a prior period's reasonable rates.

14. The Water Division's rate forecast is more persuasive than the Applicant's proposal.

15. Refunds cannot be so rapid or large that they imperil the survivability of Water Company.

16. Odd fellows collected rates subject to refund and should be required to make a full refund.

17. This decision should be effective today.

18. These proceedings should be closed.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is conditionally granted to Sierra Park Water Company, Inc. (Water Company) provided that Odd Fellows Sierra Recreation Association (Odd Fellows) transfers to Water Company all of the assets it used when it illegally provided water service in and near Long Barn California. Odd Fellows and Water Company must file a Tier 2 Advice Letter to demonstrate the completion of the asset transfer. The assets to be transferred are as described in the Water and Audit Division's April 15, 2015 Staff Report (Attachment A) to this decision.

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 , 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.

3. Sierra Park Water Company, Inc. (Water Company) and Odd Fellows Sierra Recreation Association (Odd Fellows) must make refunds.

    a. Water Company must refund $80,000 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 otherwise shown in the Staff Report (Attachment A to this decision).

    b. Odd Fellows must make a full refund of $28,000, allocated proportionately to the improved and unimproved lots as otherwise shown in the Staff Report, its adjusted share prior to spinning-off Water Company. Odd Fellows must make the refund over two years by paying Water Company who, in turn, will make a bill credit to customers as proposed in the Staff Report dated April 15, 2015 (Attachment A).

    c. Water Company must make a refund to customers of all payments made without authority to Service Company and allocated proportionately to the improved and unimproved lots as otherwise shown in the Staff Report for refunds.

4. Sierra Park Water Company, Inc., shall implement a surcharge of $124 for each connection to fund the costs of retaining an engineering consultant.

5. If Odd Fellows Sierra Recreation Association (Odd Fellows) declines to transfer assets given to Service Company without authority from this Commission then Odd Fellows must:

    a. Refund $80,000 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).

b. Refund of $28,000, allocated proportionately to the improved and unimproved lots as otherwise shown in the Staff Report, its adjusted share prior to spinning-off Water Company. Odd Fellows must make the refund over two years bill credit to customers as proposed in the Staff Report dated April 15, 2015 (Attachment A).

c. Refund to customers of all payments made without authority to Service Company and allocated proportionately to the improved and unimproved lots as otherwise shown in the Staff Report for refunds.

6. Sierra Park Water Company, Inc. (Water Company) must implement tariffs to adopt the test year revenue requirement and rates as calculated in the Water and Audits Division's Staff Report (Attachment A to this decision). Water Company must file a Tier 1 advice letter within 15 days of the effective date of this decision that add tariff sheets to:

a. implement adopted rates;

b. refund bill credits as ordered in Ordering Paragraph 3 and collect surcharges as ordered in Ordering Paragraph 4;

c. include a service-area map;

d. incorporate the standard tariff rules; and

e. incorporate into preliminary statements a description of the memorandum account authorized to track costs and surcharge revenues associated with retaining an engineering consultant.

7. If Odd Fellows Sierra Recreation Association (Odd Fellows) declines to transfer assets given to Sierra Park Services, Inc. without authority from this , Odd Fellows must implement tariffs to adopt the test year revenue requirement and rates as calculated in the Water and Audits Division's Staff Report

(Attachment A to this decision). Odd Fellows must file a Tier 1 advice letter within 15 days of the effective date of this decision that add tariff sheets to:

a. implement adopted rates;
b. refund bill credits as ordered in Ordering Paragraph 3 and collect surcharges as ordered in Ordering Paragraph 4;
c. include a service-area map;
d. incorporate the standard tariff rules; and
e. incorporate into preliminary statements a description of the memorandum account authorized to track costs and surcharge revenues associated with retaining an engineering consultant.

8. 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.

9. These proceedings are closed.

10. This decision is effective today.

This order is effective today.

Dated _____________________________, at San Francisco, California.

ATTACHMENT A

STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

April 15, 2015
To: Administrative Law Judge Douglas Long
Subject: Staff report on A. 13-09-023 and C. 1203017

Pursuant to e-mail Rulings of June 2, 2014 and October 7, 2014, by Administrative Law Judge Douglas Long in the subject proceedings, the Division of Water and Audits hereby transmits its Staff Report. This report replaces the staff report of September 30, 2014. Any comments on the report should be directed to Mr. Ravi Kumra, P. E., at (415) 703-2571 or ravi.kumra@cpuc.ca.gov.

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California Public Utilities Commission
Division of Water and Audits

STAFF REPORT
ON
APPLICATION OF
Odd Fellows Sierra Recreation Association and Sierra Park Water Company, Inc.
For a 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
April 15, 2015

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Executive Summary

Based on a review of Application (A.) 13-09-023, Complaint (C.) 12-03-017 and the e-mail rulings of Administrative Law Judge (ALJ) Douglas Long dated June 2, 2014 and October 7, 2014, the Division of Water and Audits Staff (Staff) finds that:

1) The Odd Fellows Sierra Recreation Association (Recreation Association) which provided water to the Odd Fellows Sierra Homeowners Association (OFSHA), and later to certain lot owners within the OFSHA Subdivision overcharged these lot owners for water service. In March 2013 when the Recreation Association formed the Sierra Park Water Company (Water Company), it too over-charged these lot owners. Staff recommends that the over-charged amounts for these lot owners should be refunded to each lot owner based on the over-charged amounts between June 1, 2012 and the present;

2) Going forward, the monthly water service charge amount for each lot should be reduced to conform to revenue requirements shown in Tables 2 and 4. Some expenses reported by the Recreation Association and the Water Company (Applicants) were not appropriately justified and should be disallowed;

3) The Water Company should engage an engineering consultant to conduct an engineering study to:

   a. make an assessment of the state of the existing water system;
   b. make recommendations on adequacy of the water system including the distribution system, the water supply, fire flow, compliance with Water Board requirements, new proposed water projects, perform preliminary design of new capital projects, and prepare capital budgets and revenue requirements.
   c. make recommendations regarding alternative water supply sources if needed;
   d. develop a schedule for converting the existing unmetered water connections to metered connections in the development;

4) The engineering study, to be initiated and completed in Fiscal Year (FY)2015 [8], should be funded by a separate surcharge of $45,000 (or $124 per connection) on all lot owners during FY 2015, subject to refund. All expenses and revenues collected through the surcharge should be tracked in a memorandum account subject to a reasonableness review either as part of the next GRC or through a separate Tier 3 Advice Letter filing with the Division of Water and Audits (DWA).

5) The Recreation Association should provide the Water Company unfettered access, and water rights at no charge, to existing water supply sources located in the Subdivision. If it is unwilling to do so, then it should continue to provide water services under its own license with the Water Board. In that event, the Water Company may operate as a wholly owned subsidiary of the Recreation Association.

6) Applicants should develop formal Affiliate Transaction rules for all transactions between the Water Company , the Recreation Association and the Service Company and report compliance with those rules to the Commission during the next General Rate Case (GRC);

7) The purveyor of water services should investigate the possibility of having Tuolumne Utility District (TUD) operate the water system under an "operations contract" for greater cost savings and operational efficiencies. Depending on their experiences under such an arrangement, the applicants may consider consolidation of the water system with TUD's system . This is also consistent with PU Code Section 2719 and the Commission's desire to merge small water systems into larger ones for greater efficiency.

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[8] The Fiscal Year (FY) for the Recreation Association and the Water Company is from June 1 through May 31 of the following year. Thus, FY 2015 is from June 1, 2015 through May 31, 2016. Similarly for other FY's.

8) After receiving a CPCN, if there is a need to drill a new well in the future, the purveyor of water services (either the Recreation Association or the Water Company), may purchase access to the property subject to negotiation between the utility with eminent domain power and the property owner(s) at a fair market price pursuant to PU Code Section 2730 and approval from the Commission.

After receiving its CPCN, the Applicants should comply with all annual filing requirements with the DWA pursuant to Chapter 3, Article 5 of the PU Code.

Section 1 ***<u>Introduction</u>***

By E-Mail Ruling of June 2, 2014, Administrative Law Judge (ALJ) Douglas Long directed the DWA to review the rate base, cost of capital, and operating expenses which support the 2014 base year rates, i.e., Sierra Park Water Company's (Water Company or SPWC) proposed revenue requirement and rate design. The Ruling enumerated the following requests and questions of DWA:

1. Based on the review of the filing, provide a nominal dollar base-line revenue requirement which can be deflated to 2012 and 2013 dollars in order to compare to the rates charged by the Odd Fellows which are the subject of the outstanding complaint, C. 12-03-017.

2. Based on the filing, provide a 2014 and 2015 revenue requirement and rate design as if the Water Company had filed a conventional Class D Water Company advice letter rate case pursuant to the usual Commission practices.

3. Provide an explanation for any changes to the revenue requirement and rate design proposed by the applicants. For example, changes in rate base, capital expenditures, expense, cost of capital, etc.

4. In light of the proposed spin-off of the Odd Fellows Sierra Recreation Association (Recreation Association)'s water operations and other changes which led to the creation of the Water Company, what, if any, recommendations would the DWA propose with respect to applying the Commission's affiliate transaction rules to the Water Company, the Service Company, and Odd Fellows? This question is posed in light of the use of shared employees, the similar ownership structure, and any possible remaining links to Odd Fellows after the creation of the separate Water Company.

5. With respect to question 4, the Commission's Affiliate Transaction Rules for water utilities include reporting requirements and are generally perpetual requirements. Are there any reasonable modifications DWA would suggest

> to the rules or to limit the application of the rules to some transition period, for example, for three or five years?

This report provides the requested responses to Administrative Law Judge (ALJ) Long's Ruling, incorporates comments received on Staff's report of September 30, 2014, communications received from the State Water Resources Control Board, and further review of the record. This report replaces the Staff report of September 30, 2014.

This report is divided into the following sections:

Section 1: Background. This section describes the water system, the relevant issues associated with the system, a consultant's report evaluating the system and recommending a capital budget, divestiture of the Sierra Park Water Company (Water Company or SPWC) and Sierra Park Service Company Inc. (Service Company) by the Odd Fellows Recreation Association (Recreation Association); Complaint (C.) 12-03-017, Application (A.) 13-09-023),; and review and recommendations received from the State Water Resources Control Board Water Division (Division), and an engineering study proposed by Staff;

Section 2: Revenue Requirements. In this section, the filings of the Recreation Association and the Water Company (Applicants) were reviewed and Summaries of Earnings (SOE) were developed for FY 2014 and 2015. Using the SOE for 2014, the expenses were deflated to FY's 2011, 2012 and 2013. Based on this, the under/over-collections from lot owners for water services provided by Recreation Association and the Water Company were computed from the date of filing of C. 12-03-017;

Section 3: Comments received on the Staff report. In this section, Staff discusses the comments received from the complainants and the applicants on the Staff report of September 30, 2014;

Section 4: Responses to ALJ requests. In this section, responses to the ALJ's requests were developed based on an analysis of the filings; and

Section 5: Recommendations. In this section, Staff recommendations are presented for questions raised by the ALJ, and issues related to rate design, affiliate transactions and disposition of C. 12-03-017.

1.1 Description of Water System

The Recreation Association operated and maintained facilities serving a small development of mostly vacation homes near the community of Long Barn, California in the Sierra Nevada Mountains. The community is located off of State Highway 108 at an approximate elevation of 4600 ft. The water supply to the development is from two wells that pump groundwater into the distribution system and 6 storage tanks. The total pumping capacity of the wells is approximately 170 gallons per minute (gpm). The total storage is approximately 300,000 gallons. The well sizes and storage volumes have served the community adequately over the years.

From 1986 to January 2012, the Recreation Association provided water to the Odd Fellows Sierra Homeowners Association (OFSHA). The OFSHA in turn, provided water to the owners of the lots within the subdivision. The Recreation Association states that as a direct result of the failure of the OFSHA to pay it for the provision of water and certain other services from June 1, 2011 to May 31, 2012 (FY 2011), the Recreation Association ceased providing services to the OFSHA in January 2012.[9] From January 2012 to May 31, 2013, the Recreation Association provided water directly to owners of the lots within the subdivision. Since June 1, 2013, the water services are provided by the Water Company. [10]

1.2 Consultant Report

In 2012, the Recreation Association retained Domenichelli and Associates, Inc., a Civil Engineering firm (Consultant), to evaluate its water supply and distribution system to provide guidance to assure property owners within this development that there would be a reliable supply of water well into the future. The purpose of the study was to gather information regarding the existing water system and make recommendations regarding establishment of water use rates. The revenues would be used for continued operations and maintenance of the water system, including the repair and replacement of existing facilities. The Consultant also developed a long term capital expenditure budget over a 20 year horizon and issued a report on December 8, 2013.[11]

In its report, the Consultant noted that the water system is not metered and the Recreation Association has not indicated a desire to meter services at this time. Between the wells and tanks, maximum domestic demands are met as long as there are no major system failures. Firefighting capacity is sufficient to provide several hours of flow within an acceptable range.[12] Improvements to the wells and storage tanks will require repairs of the lining for the tanks and upgrades such as pump and motor replacements for the wells. Due to age of the wells (18 and 28 years respectively), the wells will require major rehabilitation within the next 20 years. The distribution system is through a pipe network with mostly 4-inch diameter pipes with some 2-inch lines. The pipes are 40 to 60 years old. Based on information provided to the Consultant by the Recreation Association, the Consultant recommended that 100% of the system should be replaced by 8 inch and 6 inch diameter pipes over the next 40 years. The Consultant noted that the

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[9] Per A. 13-09-023, Exhibit N, the Recreation Association was issued Water Supply Permit (03-11-11P-002) by the California Department of Public Health on February 28, 2011 to supply water for domestic purposes to the Recreation Association.

[10] The Sierra Park Water Company was formed by the Recreation Association on March 25, 2013.

[11] A. 13-09-023, Exhibit Q: Capital Expenditures Report, Odd Fellows Sierra Recreation Association, Inc., Long Barn, California. Report issued by Domenichelli and Associates, Inc., December 8, 2013.

[12] Id, pg. 3

estimates of required facilities were based on a limited knowledge of the type and condition of the existing pipe materials and current condition of the well equipment.[13] The estimated cost for replacement of pipes was about $1.8 million. The estimated cost of repairing the tanks and rehabilitating the wells was about $270,000. [14]

The Consultant recommended the establishment of a 5% contingency reserve fund for unforeseen or emergency needs and for minor improvements unrelated to the major repair or replacement of water supply facilities. The reserves would also be used for compliance with future water quality related regulations, provisioning and installation of metered services, improvements to the maintenance shop or equipment, and as a contingency for a major failure of a portion of the system requiring costly repairs or replacement.

Based on the above, the Consultant developed a capital budget and recommended a 5 year fixed monthly user fee of $71.52 which included a 3% inflation factor or, a fee of $75 which included a 5% reserve. The fee should be revisited over time to review the reserve account balances and make any necessary adjustments.

1.3 Divestiture by the Recreation Association

In March 2012, the Recreation Association formed two "For Profit" Corporations called the Sierra Park Water Company and the Sierra Park Services, Inc. The Recreation Association states that: [15]

> 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…
>
> The Recreation Association will lease to the Water Company, the area of the Timber Land on which the water lines and water storage tanks that currently serve the Park are located. The Service Company will lease the right to extract water from the Real Property to be transferred (after transfer by the Recreation Association) to the Water Company. In addition, the Service Company will grant an easement to the Water Company over, under and through the area of the Real Property to the Water Company to be transferred which the water pipes, wells and related improvements that currently serve the park are located.

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[13] Id, pg. 5

[14] Id, pg. 6

[15] "Corrected Status Report of the Odd Fellows Sierra Recreation Association", Case No. C.12-03-017, filed on April 15, 2013

The Water Company will own, operate, maintain, repair and improve the water system, including the distribution system, upon conveyance of the same by the Recreation Association. At the same time, the Recreation Association will convey all real property to the Service Company within the subdivision except rights to water from Sugar Pine Creek and a lot that is owned by the Recreation Association. The Applicants also state that:[16]

> … the Recreation Association will lease to the Water Company certain real estate property owned by it outside of the boundary lines of the Park on which the water tanks connected to the water distribution system for the lot owners of the Park are located for $5,000 per year. The real property to be conveyed to the Service Company includes real property on which the water system is located. The Service Company plans to lease the real property within the perimeter of the subdivision on which the wells that provide water to lot owners of the Park are located for $3,250 per year per well. The Service Company will also lease to the Water Company certain real property to be conveyed by the Recreation Association to the Service Company within the boundary lines of the Park on which the pipes used to distribute water to the lot owners of the Park are located for $39,140 per year.

The lease amounts are effective June 1, 2013 and will be reviewed annually. The Applicants also state that in the event the CPUC is concerned that the lease payments are too high, the Service Company and the Water Company would be willing to negotiate a lower lease payment in return for a much greater amount for use of water from the wells.

1.4 Complaint 12-03-017

On March 14, 2012, four lot owners (Complainants) filed Complaint (C.) 12-03-017 against the Recreation Association. The Complainants allege that: the Recreation Association should be regulated by the CPUC since it was providing water to lot owners; the rates charged for water service are excessive and need to be modified with excessive amounts refunded to ratepayers.

1.5 Application 13-09-023

The Recreation Association and the Water Company (Applicants) filed Application (A.) 13-09-023 on September 20, 2013 for a Certificate of Public Convenience and Necessity (CPCN) to operate a Public Water Company and Water System near Long Barn, to establish rates for service, and for the Water Company to issue stock. Applicants state that since June 1, 2013, the Water Company has been providing water to the lot owners within the subdivision under a conditional approval from

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[16] "Joint response of Applicants Odd Fellows Sierra Recreation Association and Sierra Park Water Company, Inc, to June 2, 2014 e-mail ruling of ALJ Douglas Long for additional data and analysis", A. 13-09-023, dated June 23, 2014

the California Water Resources Control Board (Water Board) dated June 14, 2013[17] and pursuant to a temporary Operating Lease with OFSHA. In response to a Staff Data Request, Applicants state that they have not prepared or executed any written leases or easements for payments by the Water Company to the Recreation Association or to the Service Company. Such documents will be prepared and executed following the approval of the Application by the Commission.[18]

1.6 State Water Resources Control Board Review and Recommendations

1.6.1 Inspection Report

The State Water Resources Control Board (Water Board), Division of Drinking Water staff (Division) conducted an inspection of the Water Company's water system and its operations. The Division found that: the water system is in good overall condition; has adequate source and storage capacity to serve the customers of the system during peak demand periods; complies with all of its permit provisions; and the system is capable of supplying safe and potable water that meets all of the primary drinking water standards. The Division made the following recommendations: [19]

1. Cracks in the sanitary seals at wells 5 and 6 must be repaired by March 31, 2015.

2. The Company must perform a cross connection survey to identify cross connection hazards.

3. The Company must monitor Wells Nos. 5 and 6 for asbestos by March 31, 2015.

4. The Company must submit a plan and time line to the Division detailing how the Company will bring down the manganese levels produced by the active sources. The manganese levels are in excess of three times the Maximum Contamination Level (MCL).

5. The Company should develop and submit to the Division a tank maintenance plan. The next round of tank cleanings and inspections should be completed in 2015.

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[17] Formerly, California Department of Public Health

[18] Data Request RK001, Question 8.

[19] Letter from Kassy D. Chauhan, P. E., Senior Sanitary Engineer, State Water Resources Control Board, Division of Drinking Water to Kirk Knudsen, President, Sierra Park Water Company Inc., dated February 12, 2015.

1.6.2 Capital Improvement Plan and Five Year Budget Projections

As part of their review, the Division evaluated a Capital Improvement Plan (CIP) and five year budget projections for the years 2013 through 2017 submitted by the Water Company. [20]

The CIP indicates total installed costs for existing and new projects of $3,199,600. This is comprised of $2,492,100 for existing projects and $707,500 for new projects. [21] The annual reserve required for the CIP items is projected to be $75,111 or $6,259 per month. Based on 364 connections, the per lot reserve requirements is $17.20 per lot per month. [22]

The five year budget projections indicate total expenses of $383,064 (for FY 2013), $392,777 (for FY 2014), $652,781 (for FY 2015), $440,891 (for FY 2016) and $451,564 (for FY 2017). These include an existing contribution from CIP of $59,305 in FY 2013, new project costs of $250,000 in FY 2015, and additional new project contribution to CIP of $15,806 in FY 2016.

Staff notes that the amounts included in the documents submitted by the Water Company to the Division are significantly higher than those that were submitted in application A. 13-09-023.

The Division determined that the CIP and five year budget projections that were submitted by the Water Company were acceptable.

1.6.3 Recommendations by the State Water Resources Control Board

The Division determined that the Water Company has complied with all of the requirements contained in the water supply permit with the exception of providing the necessary ownership information. [23] Although the Division typically issues water supply permits to the legal owners of a water system, an exception was made in this case to leave the existing water supply permit (No. 03-11-13P-015) in place because the Water Company has been operating the system efficiently. The Division determined that the Water Company has adequate technical, managerial and

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[20] Simplified Capital Improvement Plan and Five Year Budget Projections, dated February 6, 2015.

[21] New projects include $700,000 for two Iron and Manganese removal plants and $7,500 for a new Well house, concrete and controls.

[22] The Simplified Capital Improvement Plan (CIP) erroneously indicates a monthly reserve per customer of $20.86 based on 300 customers.

[23] The Water Company was unable to provide ownership information because of opposition to the grant of the CPCN by the CPUC.

financial capacity to effectively operate the water system and recommends that the Commission should grant a CPCN to the Water Company. [24]

1.7 Engineering Study Proposed by DWA Staff

DWA Staff recommends that the Water Company should retain an engineering consultant to evaluate the existing water system, ensure compliance with water quality related issues, prepare capital budgets and propose revenue requirements. The study, initiated and completed in FY 2015, would be carried out in three phases: Phase I would be devoted to staffing for the project and compilation of existing information on the water system. In Phase II, the consultant would evaluate the water system and make recommendations for the existing distribution system, the water supply, water storage facilities, adequacy of fire flow, alternative sustainable water supply, and compliance with recommendations by the Water Board.[25] Such a study will require physical inspection of the facilities. The consultant will also make recommendations regarding the new Capital Projects identified in the water company filings with the Water Board and installation of new water meters for provisioning water service. In Phase III, the consultant would perform preliminary engineering designs, develop implementation schedules and suggest a Capital Budget for the Water Company. The DWA staff estimate includes an appropriate contingency factor and estimated hours for project supervision. See Table 1 for details.

The engineering study should be funded by a special assessment of $45,000 ($124/per lot) on all lot owners. That amount should be billed as a separate line item from base rates established for each lot in the development. The revenue collected and the costs for this study should be tracked in a special memorandum account subject to refund. The Water Company may claim reimbursement of these expenses through a Tier 3 Advice Letter after completion of the study. The Water Company can then request Commission review of the engineering study's recommendations during its next GRC.

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[24] Letter from Kassy D. Chauhan, P. E., Senior Sanitary Engineer, State Water Resources Control Board, Division of Drinking Water to Ravi Kumra, P. E., Senior Utilities Engineer, Division of Water and Audits, January 20, 2015.

[25] See section 1.6.1 for a summary of findings from the 2015 Inspection report of the Sierra Park Water Company, Inc., dated February 12, 2015.

Table 1: Sierra Park Water Company
Estimates for special engineering study

			Activity		Estimated Hours			Estimated Cost @ $80/Hr
			Phase I: Staffing and compilation of existing information				50	$ 4,000
1			Project setup and review existing information			50		
	1			Staffing	10			
	2			Compile and evaluate available information	40			
			Phase II: Evaluate water system and propose new capital projects				270	$ 21,600
2			Evaluate water system			190		
	1			Distribution system	50			
		1		Evaluate state of existing distribution system				
		2		Recommend next steps				
	2		Water supply		40			
		1		Evaluate existing water supply sources				
		2		Recommend alternative water supply sources				
	3		Water storage		30			
		1		Evaluate adequacy of existing storage tank facilites				
		2		Recommend maintenance program				
		3		Recommend next steps				
	4		Fire flow		30			
		1		Evaluate adequacy of existing system to meet fire flow requirements				
		2		Recommend next steps				
	5		Compliance with Water Board requiremets		40			
	1			Water quality				
	2			Distribution system				
	3			Fire flow				
	4			System maintenance				
3			New proposed Capital Project			80		
	1			Iron and Manganese removal plants	40			
	2			New well head installations	20			
	3			Meter installation program	20			
			Phase III: Preliminary Design, implementation and Rate making				140	$ 11,200
4			Preliminary designs and implementation schedules			100		
5			Rate making			40		
	1			Capital budgets				
	2			Revenue requiremens				
6			Totals					
		1	Sub-Total				410	$ 36,800
		2	Project supervision				40	$ 3,400
		3	Contingencies				60	$ 4,800
		4	Total				510	$ 45,000

Section 2 ***Revenue Requirements***

To determine the revenue requirements for water service, Staff reviewed the historical and projected financial information filed by the Recreation Association and the Water Company and supplemental information received through data requests. In response to Staff's request for updated information to what was filed with A. 13-09-023, the Recreation Association stated:

> . . . the Odd Fellows Recreation Association was the sole provider of all community services, including water, during the FY 2012 and 2013 for which we are submitting this information. It was the last of more than 50 some odd all services were provided to all property owners as a package of services. In that style of operations, there was less accounting effort in sorting out what was needed for providing water separate from all other services such as garbage disposal, Pine needle disposal, and other services, including the shared efforts of a paid

> caretaker, part time help and contracted services. During this phase, each year all property owners had the opportunity to review, discuss and approve a budget at each annual meeting, either in person or by proxy. . . . From June 1, 2013 forward the water services have been under the jurisdiction of the Sierra Park Water Company, , while other services are under the jurisdiction of the Sierra Park Services Company, SPSC . . .[26]

The Recreation Association provided its financial report updated to May 31, 2013.[27] In the financial report, the auditors state that

> . . . the financial statements do not express an opinion or provide any assurances about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America . . . The policy is to prepare the financial statements on the modified basis of each cash receipts and cash disbursements. Accordingly, the accompanying financial statements are not intended to present the financial position or results of operations in conformity with accounting principles generally accepted in the United States of America. . . . We are not independent with respect to Odd Fellows Sierra Recreation Association, Inc [28] [29]

The CPA's clarified that they performed a compilation based on data provided by OFSRA without conducting any testing of the underlying data. They did not audit the financial records. The financial report did not segregate all water related income and expenses. Rather, it presented all information for the Recreation Association for all activities that were handled by the Recreation Association. The Recreation Association also stated that it did not segregate records for the water service offered. Due to this, Staff could not rely on the accuracy of the historical

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[26] E-mail from Ronald Hawke to Ravi Kumra, dated July 18, 2014.

[27] Odd Fellows Sierra Recreation Association Inc., Compiled Financial Statements, May 31, 2013.

[28] Id, at page 1

[29] In a clarification, OFSRA's CPA firm noted that they perform accounting services on a regular monthly basis for OFSRA and its professional standards do not require it to be independent with respect to clients when performing a compilation of financial statements. Letter from Eric A. Carlson, CPA to Ravi Kumra, dated 10/23/2014.

financial information presented by the Recreation Association. In addition to the financial statements, Staff reviewed the invoices that justified the expenses reported by the Recreation Association in A. 13-09-023. However, Staff was unable to find sufficient explanations to justify many of the claimed expenditures.

Staff requested updated financial information but the Water Company did not comply with the request.[30] Therefore, Staff used the Budget Reports that came from the Water Company's Board of Director Minutes for financial information related with Water Company operations.[31] For FY 2013, since financial information was reported for 11 months ended April 30, 2014, it was extrapolated to May 31, 2014. The extrapolated expenses are referred to as "actual expenses" in Staff's report issued on September 30, 2014. The FY 2013 financials were then escalated to FY 2014 (base year), 2015 and 2016 by using inflation factors approved by DWA. To determine the revenue requirements to 2011 and 2012, Staff deflated the FY 2013 amounts to 2012 and 2011 using inflation factors approved by DWA.

In response to ALJ Long's ruling of October 7, 2014, the Water Company filed comments to DWA's Staff report of September 30, 2014 and included revised actual expenses incurred for FY 2013/2014 along with its projections for future years. [32] The expenses reported were significantly different from earlier filings. DWA's Staff report has been revised taking into consideration the filed comments. See Appendix A for a discussion of the Water Company's filing.

2.1 Revenue Requirements Proposed by Applicants

For FY 2013, the Water Company reported a revenue requirement of $343,220. Included in that amount was a $20,000 reserve for unanticipated expenses, a capital replacement program[33] and lease charges of $51,600 for access to water related assets to the Service Company and to the Recreation Association,[34] legal charges of

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[30] Data Request RKK001

[31] Sierra Park Water Company Board of Directors Meeting Minutes for June 7, 2014.

[32] Filed November 25, 2014

[33] Capital expenditures are for Waterline Replacement, Well Rehabilitation and Tank Repairs.

[34] Easement leases are comprised of: (1) 6 Miles pipe access: $39,600; (2) Ground and access to 2 wells: $6,500; and (3) Access to water towers: $5,000

$30,900 and communications related expenses of $3,499. See Table 2, Col. "d". In contrast, Actual Expenses were $299,075.[35] This was a 23.7% increase over Staff's extrapolated amount. Those expenses included lower charges for purchased power, employee labor, [36] water testing, accounting, consulting, communications and general expenses. Replacement reserves were not included. However, lease payments were included. Staff was unable to verify the expenditures reported by the Water Company because no backup documentation was provided. See Table 2, Columns "e1" for Water Company's recommendations.

By contrast the Consultant reported Water Company revenue requirements of $294,191, $303,016, $312,107, $321,470 and $331,114 respectively for FY's 2012, 2013, 2014, 2015 and 2016.[37] Projected amounts included estimates for waterline replacement, well rehabilitation and tank repairs.[38] An inflation factor of 3% was applied to the FY 2013 amounts to compute estimates for future years.

2.2 Staff Recommendations for Revenue Requirements

For Class C and D water utilities, net income is calculated using both the rate of return (ROR) on rate base and a rate of margin (ROM) method. The method that produces the higher net income is used. The ROR may be set at a level above or below the recommended range, if warranted. Where little or no rate base exists, the ROM is used. The ROM is applied to operating expenses to determine the estimated dollar return, which is then compared with the average dollar ROR on rate base.[39]

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[35] Actual expenses, computed by extrapolating 11 month expenses as of 4/30/2013 to 05/31/2013 from Board of Director Minutes of June 7, 2014 were $241,788.

[36] Employee costs were lower because of reimbursements received from the Service Company for use of Water Company Staff.

[37] Application Exhibit O

[38] Estimates for Repair and Replacements for 2013, 2014, 2015 and 2016 are: $100,805; $103,829; $106,944; and $110,152.

[39] "Rates of Return and Rates of Margin for Class C and Class D Water Utilities", Memo to the Commission, from Rami Kahlon, Director, Division of Water and Audits and Kayode Kajopaiye, Chief, Water Company Audit, Finance & Compliance Branch, Dated March 21, 2014. For details, see http://www.cpuc.ca.gov/NR/rdonlyres/B0B16EBF-3955-4C03-BDE7-C74A83462991/0/2015DWAMemoROR.pdf

The Water Company has less than 500 connections. As such, it qualifies as a Class D Water Company. Staff determined that since the Water Company's rate base is minimal, the ROM will produce a higher return for the Water Company. The ROM for Class D water utilities is 21.69% for 2014 and is used in the Summary of Earnings computations.

2.2.1 Revenue Requirements for Fiscal Year 2013 Through 2016

For FY 2013, Staff recommends a revenue requirement of $198,536 ($545 per lot). For that computation, Staff removed lease payments, reduced legal-related and maintenance charges, and included a ROM of $35,387. For computing revenue requirement for 2014 (Base-line), the FY 2013 revenue requirement was escalated by Commission's recommended inflation factors for Compensation Per Year Per Hour and Estimates of Non-Labor and Wage Escalation Rates.[40] [41] Similarly, the Base-line revenue requirement was escalated to derive the revenue requirement for FY 2015 which was then escalated for FY 2016 revenue requirement. Based on this analysis, Staff recommends baseline revenue requirement of $190,712 ($524 per lot), $193,349 ($531 per lot) and $198,407 ($545 per lot) respectively for FY 2014, 2015 and 2016. Including funding for a special engineering study to evaluate the water system, the revenue requirements (per lot) for FY 2015 will be $238,419 ($655 per lot) respectively. See Table 2, cols. "h through k".

It should be noted that the baseline revenue requirements for FY 2014 are lower than for FY 2013 primarily because of lower legal expenses and one time maintenance expenses that were incurred during 2013. For FY 2014 through 2016, the Staff escalated FY 2013 labor costs by labor escalation factors approved by DWA.

2.2.2 Revenue Requirements for Fiscal Year 2011 Through 2012

For computing a revenue requirement for 2012, the revenue requirement for 2013 was deflated using DWA approved escalation factors for 2012. Similarly, the 2011 revenue requirement was derived by deflating the 2012 revenue requirement.

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[40] ORA December 2014 Summary of Compensation Per Hour, Memo from Energy Division dated January 23, 2015.

[41] Estimates of Non-labor and Wage Escalation rates for 2014 through 2018 from the June HIS Global Insight U.S Economic Outlook, Memo from Office of Ratepayer Advocates Water Branch, dated January 23, 2015.

Based on this, Staff has determined that the revenue requirements for FYs 2011 and 2012 are $186,974 ($514 per lot) and $180,280 ($495 per lot), respectively. See Table 2, cols "f" and "g".

Table 2: Sierra Park Water Company

Summary of Earnings

			From CPCN filings [1]			SPWC filing of 11/25/2014		Staff recommendation					
						Actual	Projected						
		Fiscal Year	2011	2012	2013	2013	2014	2011	2012	2013	2014 (Baseline)	2015	2016
		a	b	c	d	e1	e2	f	g	h	i	j	k
I		Operating Revenues											
1		Flat Rates	$ 145,471	$ 177,580	$ 312,683	$ 364,496	$ 316,505	$ 180,280	$ 186,974	$ 198,536	$ 190,712	$ 193,349	$ 198,403
2		Metered Rates			$ -					$ -			
3		Fire Protection											
4		Other			$ 3,167								
5		*Total Operating Revenues*	$ 145,471	$ 177,580	$ 315,850	$ 364,496	$ 316,505	$ 180,280	$ 186,974	$ 198,536	$ 190,712	$ 193,349	$ 198,403
II		Operating Expenses											
6		Purchased Water			$ -					$ -			
7		Purchased Power	$ 14,708	$ 13,498	$ 16,000	$ 7,900	$ 8,039	$ 7,436	$ 7,845	$ 7,900	$ 7,971	$ 7,995	$ 8,139
8		Other Volume Related Expenses											
9		Employee Labor	$ 37,472	$ 42,203	$ 53,869	$ 29,569	$ 20,182	$ 28,172	$ 28,792	$ 29,569	$ 30,249	$ 30,945	$ 32,059
10		Materials	$ 1,504	$ 888	$ 11,301	$ 9,000		$ 836	$ 862	$ 888	$ 896	$ 899	$ 915
11		Contract Work (Excluding Water Testing)					$ 2,000				$ -		
12		Water testing			$ 8,240	$ 3,080	$ 3,170	$ 2,929	$ 3,002	$ 3,080	$ 3,151	$ 3,201	$ 3,208
13		Transportation Expense											
14		Other Plant Maintenace Expense	$ 21,737	$ 41,339	$ 39,140	$ 44,094	$ 48,500	$ 36,842	$ 36,868	$ 39,140	$ 39,492	$ 39,611	$ 40,324
15		Office Salaries									$ -	$ -	
16		Management Salaries											
17		Employee Pension and Benefits			$ 7,643	$ 11,306	$ 3,660	$ 10,772	$ 11,009	$ 11,306	$ 11,566	$ 11,632	$ 12,258
18		Uncollectibles [3]				$ 945	$ 950	$ 945	$ 945	$ 945	$ 950	$ 965	$ 970
19		Office Service & Rentals				$ 56	$ 100			$ 55	$ 55	$ 56	
20		Office Supplies & Expenses				$ 1,085	$ 1,200			$ 1,085	$ 1,085	$ 1,088	$ 1,108
21		Professional Services											
	a	Accounting			$ 16,173	$ 13,298	$ 14,021	$ 12,670	$ 12,948	$ 13,298	$ 13,724	$ 14,135	$ 14,644
	b	Legal			$ 30,900	$ 40,930	$ 28,000	$ 9,527	$ 9,737	$ 10,000	$ 6,000	$ 6,138	$ 6,359
	c	Consulting	$ 44,013	$ 44,013	$ 48,875	$ 23,223	$ 23,920	$ 7,649	$ 7,817	$ 8,028	$ 8,213	$ 8,402	$ 8,704
22		Insurance	$ 23,967	$ 12,003	$ 21,270	$ 23,430	$ 23,805	$ 22,054	$ 23,267	$ 23,430	$ 23,641	$ 23,712	$ 24,139
23		Regulatory Commission Exp.					$ 10,000				$ -	$ -	$ -
24		General Expenses	$ 2,069	$ 4,248	$ 9,999	$ 6,334	$ 6,230	$ 1,130	$ 1,192	$ 1,200	$ 1,211	$ 1,214	$ 1,236
25		minus expenses capitalized		$ (3,585)		$ 4,882				$ 4,882			
26		*Total Operating Expenses*	$ 145,471	$ 154,607	$ 263,410	$ 219,132	$ 201,777	$ 140,960	$ 146,303	$ 154,806	$ 148,203	$ 150,193	$ 154,062
III		Deductions											
27		Depreciation Expense											
28		Ad Valorem Taxes											
29		Payroll Tax			$ 4,496	$ 5,269	$ 3,355	$ 5,039	$ 5,150	$ 5,269	$ 5,411	$ 5,535	$ 5,734
30		Taxes other than Income			$ 3,708	$ 2,254	$ 2,500	$ 2,147	$ 2,195	$ 2,254	$ 2,306	$ 2,359	$ 2,444
31		States Income Taxes				$ 800	$ 859			$ 800	$ 800	$ 800	$ 800
32		Federal Income Tax											
33		Lease payments for easements			$ 51,100	$ 51,600	$ 51,600	$ -	$ -	$ -		$ -	$ -
34		Reserves			$ 20,000	$ 20,000							
35		*Total Deductions*	$ -	$ -	$ 79,304	$ 79,943	$ 58,314	$ 7,187	$ 7,345	$ 8,343	$ 8,516	$ 8,694	$ 8,978
36		*Total Deductions and Expenses*	$ 145,471	$ 154,607	$ 342,714	$ 299,075	$ 260,091	$ 148,147	$ 153,648	$ 163,149	$ 156,720	$ 158,887	$ 163,040
37		**Net income before taxes**											
IV		*Rate Base*											
38		Depreciation [4]		$ 22,973	$ 506	$ 552							
39		Rate of Margin [5]			$ -	$ 64,859	$ 56,414	$ 32,133	$ 33,326	$ 35,387	$ 33,992	$ 34,463	$ 35,363
V		*Revenue requirement and assessments*											
40		*Base revenue requirement excluding special study*											
	a	Base Revenue requirement	145471	177580	343220	363934	316505	180280	186974	198536	190712	193349	198403
	b	Revenue requirement/ Connection	400	488	943	1000	870	495	514	545	524	531	545
	c	Revenue requirement/ Connection/Mo	33	41	79	83	72	41	43	45	44	44	45
41		*Revenue requirement for special study*											
	a	Engineering consulant Fee					$ 44,000			$ -	$ -	$ 45,000	$ -
	b	Revenue requirement/ Connection					$ 121			$ -	$ -	$ 124	
	c	Revenue requirement/ Connection/Mo					$ 10			$ -	$ -	$ 10	
42		*Revenue Requirement including special study*											
	a	Requirement including special study	$ 145,471	$ 177,580	$ 343,220	$ 363,934	$ 360,505	$ 180,280	$ 186,974	$ 198,536	$ 190,712	$ 238,349	$ 198,403
	b	Revenue requirement/ Connection	$ 400	$ 488	$ 943	$ 1,000	$ 990	$ 495	$ 514	$ 545	$ 524	$ 655	$ 545
	c	Revenue requirement/ Connection/Mo	$ 33	$ 41	$ 79	$ 83	$ 83	$ 41	$ 43	$ 45	$ 44	$ 55	$ 45

Notes

1. A. 13-09-023, Ex. P
2. Sierra Park Water Company, Board of Directors Meeting Minutes, June 7, 2014. Amounts are extra-polated to 5/31/2014
3. Assume approximately 0.5% of Operating Expenses as uncollectible expense
4. No Depreciation expenses for water related assets were reported
5. Rate of Margin of 21.69% applied to Operating expenses

Section 3: Comments on Staff Report and Discussion

Comments on the Staff report of September 30, 2014 were filed by the complainants,[42] the Recreation Association,[43] and the Water Company. [44]

The Complainants state that: The Commission should deny the instant application because the applicants did not fully cooperate with Staff, mislead the Commission by filing false testimony and lack the expertise to properly operate and manage the water system. They recommend that the water system should be taken over and run by TUD, which is a Public Utility District that operates in close proximity with the subject water system and has lower rates. The Water Company charged excessive amounts for labor by an employee who should technically be an employee of the Service Company and perform work for the Water Company on an "as needed" basis. The employees time should be tracked going forward; over-collected assessments from lot owners should be refunded using the same pattern as was used for collecting those funds and not quarterly as recommended by staff; the water company should collect dues for water services every two months following use of water rather than annually in advance as is the current practice; water rates should be same as those charged by TUD for raw water because the water that is currently provided to the residents of the development is untreated; the special assessment for the special engineering study recommended by staff should be canceled because the recreation Association did not transfer $132,645 that it collected from lot owners for a water reserve fund during the time they were responsible for supplying water to the sub-Division;

The Recreation Association states that: it is not responsible for any overcharge collections for FY 2011 because the OFSHA collected dues and refunded a majority of dues to lot owners after paying it a specified amount for water and other services; There were no overcharges by the Recreation Association for FY 2012 and backup information furnished to Staff was discounted and expenses were inappropriately disallowed; The Recreation Association is opposed to giving the Water Company unfettered access to water properties at no charge and believes that its lease charges for the property on which the tanks are located is reasonable; The water from Sugar Pine Creek is not potable and would have to be treated before it can be used for drinking purposes. However, assuming the Recreation Association had the legal rights to that water, it would

[42] Comments and reply comments were filed by the complainants on October 11, 2014and December 8, 2014.

[43] Comments filed by Recreation Associati9on on November 26, 2014

[44] Comments and Reply comments were filed by the Water Company on November 26, 2014 and December 9, 2014.

be willing to discuss transferring such rights to the Water Company. Additionally, the Recreation Association finds the Staff recommendations on Affiliate Transactions Reasonable;

The Water Company recommends that the ALJ should reject the Staff recommended revenue requirements and rates because they are based on insufficient information, have calculation errors, and hypothetical estimates of expenses. The Water Company recommends that its filed revised "actual" expenses, revised Summary of Earnings (SOE) and Revised Revenue Requirements (RR) and proposed rates that were significantly higher than those recommended by Staff should be used. The Water Company is opposed to Staff's proposal for access to all water properties without payment of any easement leases to the Recreation Association or the Service Company and finds the process of initiating condemnation and eminent domain proceedings as recommended by Staff to be too costly and time consuming. It proposes to consider such proceedings after the CPCN has been granted. The Water Company believes that if hearings are held, they should be confined to employee time related issues only. Water Company will recover from the Service Company, charges for water consumption for FY 13/14 and 14/15.

Discussion

Some significant issues raised in the Comments are discussed below:

Unfettered access to water properties and water at no cost

The divestiture of the Water Company by the Recreation Association is an optional event. Staff finds no reason for the water company to continue paying the Recreation Association for access to water properties or to the "for profit" Service Company, that was created by the Recreation Association, for drawing water from the wells. Unfettered access to all sources of water supply is essential for the successful and sustainable operation of the Water Company. 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. If it is unwilling to do so, then the Recreation Association should continue to be the purveyor of water services under license from the Water Board or, have the Water Company provide those services as a wholly owned subsidiary.

Employee labor

Staff agrees with the Water Company that: the system operator is required to have a special D1 license so he should continue to be an employee of the Water Company; the allocation of approximately 61% of the employees' time to the water company and payment of fully loaded costs for work done for the Service Company are reasonable; and accurate tracking of time spent by the employees is necessary going forward.

Refund of over-collected amounts

Staff believes that the lot owners in the development were overcharged. Those amounts should be refunded to lot owners except for the over-collections from March through May 31, 2012 which were already refunded to lot owners. See table 3 for details. The refunds should be paid to lot owners in four quarterly installments over a period of 2 years.

Frequency of dues for water service
Staff agrees with the Water Company that it is more cost effective to collect dues annually rather than every two months, as suggested by complainants. The latter will add significantly to administrative costs and impact available working cash. This could expose the company to potential cash shortfalls at the onset of each fiscal year.

Water rates
Staff agrees with the Water Company that charging "Raw Water" rates charged by TUD is inappropriate because TUD's raw water is not potable while the Water Company supplied water is potable. In any case, TUD's potable water is treated while the Water Company water does not need any treatment to comply with California Drinking Water standards. See Table 2 for recommended rates.

Operation of the water system by TUD
Complainants believe that TUD, rather than the Water Company, has the experience and expertise to operate the Water Company's operations more efficiently. The applicants state that an option to turn over its operations to TUD was considered and rejected by a majority of lot owners who preferred to keep the water operations independent. The Water Board staff has determined that the Water Company has the technical, managerial and financial ability to operate the water system. Public Utilities (PU) Code Section 2718 through 2720 provide guidance regarding consolidation of water utilities.
Section 2719 of the PU Code states:

2719 The Legislature finds and declares all of the following:

(a) Public water systems are faced with the need to replace or upgrade the public water system infrastructure to meet increasingly stringent state and federal safe water drinking laws and regulations governing fire flow standards for public fire protection.

(b) Increasing amount of capital are required to finance the necessary investment in public water system infrastructure.

(c) Scale economies are achievable in the operation of public water systems.

(d) Providing water companies with an incentive to achieve these scale economies will provide benefits to ratepayers.

Section 2720 of the PU Code provides guidance on acquisition of property at fair market value by a water utility.
DWA staff is concerned that because of its small size, the Water Company would not have access to special expertise at the most cost efficient prices. Nor would the

company enjoy economies of scale that are available to larger utilities. This would translate into higher rates being paid by customers.
A utility like TUD has access to specialized expertise and enjoys economies of scale in operating water systems like those of the Water Company. DWA Staff recommends that the Water Company should re-consider the option of turning over the water system operation to TUD for greater cost and operational efficiencies. This is also consistent with Section 2719 of the PU Code that encourages the small companies to merge their operations with larger companies.

Disposition of the application for a CPCN

The Division recommends that the applicant's application for a CPCN should be approved by the Commission. DWA staff agrees with this assessment subject to the Recommendations in Section 5 of this report.

Section 4: ***DWA Staff's Responses to Administrative Law Judge's Ruling***

This section contains Staff's responses to ALJ Long's requests. Staff recommendations are presented in Section 5.

Request # 1: Based on the review of the filing, provide a nominal dollar base-line revenue requirement which can be deflated to 2012 and 2013 dollars in order to compare to the rates charged by the Odd Fellows which are the subject of an outstanding complaint.

Revenue requirements

The base-line revenue requirement for 2014 is deflated to 2013 using inflation factors authorized by DWA. The inflation factors for 2012 are then applied to the deflated FY 2013 revenue requirement to calculate the 2012 revenue requirement. Similarly, for FY 2011, the inflation factors for 2011 are applied to the deflated FY 2012 revenue requirement. The revenue requirements for FY 2011 through 2014 are: $180,280 ($495 per lot) for FY 2011; $186,974 ($514 per lot) for FY 2012; $198,536 ($545 per lot) for 2013; and $190,712 ($524 per lot) for 2014. See Table 2 for details.

Computations for overcharges from complainants

To determine over/under charges from C. 12-03-017, Staff recommends the rates associated with the deflated revenue requirements for each lot should be compared with amounts charged from complainants. The difference of the two will be the over/under charge associated with C. 12-03-017.

Using Staff recommended revenue requirements for FY's 2011, 2012, 2013 and 2014 divided by 364 connections, Staff determined the revenue requirement for each lot (or connection) in the development. This was compared with the amounts collected from the complainants from the date of filing of C. 12-03-017. Based on this comparison, Staff has determined that lot owners were over-charged for water service. See Table 3 for details

Table 3: Computation of extra amounts collected

Assessment Period	Domecheli Report w/o CIP	Domecheli Report w/CIP	Utility Asessment Amount Improved Lot	Utility Asessment Amount Unimproved Lot	Assessment / Lot per staff Recommendation w/o special study	Over/(Under) Collection Per Improved Lot	Over/(Under) Collection Per Unimproved Lot	Total Over/Under Collection Improved Lot (305 lots)	Total Over/Under Collection Unimproved Lot (59 lots)	Total Over/Under Collection Total	Refund by
	a	b	c	d	e	f=c-e	g=e-d	h=f*305 [1]	i=g*59 [1]	j=h+i [1]	
3/1/2012-5/31/2012			$ 793	$ 793	$ 495	$ 298	$ 298	$ 22,702	$ 4,391	$ 27,093	-
6/1/2012-5/31/2013	$ 522	$ 802	$ 825	$ 759	$ 514	$ 311	$ 245	$ 94,957	$ 14,475	$ 109,432	Recreation Assoc.
6/1/2013-5/31/2014	$ 537	$ 826	$ 968	$ 890	$ 545	$ 423	$ 345	$ 128,884	$ 20,330	$ 149,214	Water Company
6/1/2014-5/31/2015	$ 553	$ 851	$ 997	$ 997	$ 524	$ 473	$ 473	$ 144,297	$ 27,911	$ 172,208	Water Company
							Total Refund	$ 368,138	$ 62,715	$ 430,854	
							Total Overcollecti	$ 390,840	$ 67,107	$ 457,947	

Notes

1. Over/Under Collections for FY 2011 is for 3 months (March through May, 2012).

According to a filing by the Recreation Association, between June 11, 2011 and May 31, 2012, the OFSHA collected all assessments directly from the lot owners of the Park for all services (including Water) that the Recreation Association provided to the lot owners of the Park. The OFSHA turned over only part of the assessments collected to the Recreation Association and refunded a majority of the assessment that it had collected from lot owners to the lot owners for the period of June 1, 2011 to May 31, 2012. So if any refund is due to the lot owners for that period, it should be paid by the OFSHA, not the Recreation Association. The OFSHA is currently defunct.

The overcharged amounts collected from lot owners from March through May 2012 was $27,093 [45] Since that amount was already returned to the lot owners, the request for refunding the over-collected amount for March through May 31, 2012 should be rejected. The remainder of the over-collections should be refunded to lot owners as indicated in Table 3.

Request # 2: Based on the filing, provide a 2014 and 2015 revenue requirement and rate design as if Water Company had filed a conventional Class D Water Company advice letter rate case pursuant to the usual Commission practices.

Revenue requirements for 2014 and 2015

Revenue requirements were computed for FY's 2014 and 2015 as if the Water Company had filed a conventional Class D water company advice letter. As discussed above, for each year, revenue requirement based on ROM method was higher than those computed based on Rate of Return method. Therefore, the ROM was used to compute the revenue requirement. The Revenue Requirements are summarized in Table 4 below.

Table 4: Staff Recommended Revenue Requirements

Period	Asessment per lot			Revenue Requirement	
	w/o special study	special study	Total	w/o special study	with special study
a	b	c	d=b+c	e=b*364	f=d*364
6/1/2011-5/31/2012	$ 495		$ 495	$ 180,280	$ 180,280
6/1/2012-5/31/2013	$ 514		$ 514	$ 186,974	$ 186,974
6/1/2013-5/31/2014	$ 545		$ 545	$ 198,536	$ 198,536
6/1/2014-5/31/2015	$ 524		$ 524	$ 190,712	$ 190,712
6/1/2015-5/31/2016	$ 531	$ 124	$ 655	$ 193,349	$ 238,349

Request # 3: Provide an explanation for any changes to the revenue requirement and rate design proposed by the applicants. For example, changes in rate base, capital expenditures, expense, cost of capital, etc.

Applicants based their rate design on estimates that exceeded actual costs by a significant amount. Some items included: higher than historical estimates for purchased power; charging full-time employee wages, benefits and taxes for an

[45] Overcharges were $22,702 and $4,391 for improved and un-improved lots.[46] The revenue requirements for FY 2015 without the special study will be $531 per lot.

employee who devoted only 61% of his time for Water Company related matters; charging inflated amounts for materials and water testing, charging unjustified legal and consulting expenses; charging higher than reasonable general expenses; charging for lease payments for easements to water related assets; and setting up a replacement reserve schedule without proper justification.

In the revenue requirement and rate design proposed by Staff, Staff removes some of the excess charges, adds recovery for net revenue based on a ROM method, and recommends inclusion of $45,000 for a special study to: make an assessment of the water system, make recommendations for system improvements, develop a capital budget, and perform preliminary engineering designs for necessary system modifications. See Section 1.7 for Staff recommended engineering study.

The annual per lot revenue requirements for FY 2014, 2015 and 2016 including funds for a special engineering study will be $524, $655 [46] and $545 respectively. It should be noted that the revenue requirement will go down in FY 2016 because funding for the special study will no longer be required. The funds collected for this study will be tracked in a special memorandum account and will be approved following reasonableness review by the Commission either as part of the next general rate case or a separate Tier 3 Advice Letter filing. See Tables 2 and 4 for details of revenue requirements.

Request # 4: In light of the proposed spin-off of Odd Fellows' water operations and other changes which led to the creation of the Water Company, what, if any, recommendations would DWA propose with respect to applying the Commission's Affiliate Transaction Rules to the Water Company, the Service Company, and Odd Fellows (Recreation Association)? This question is posed in light of the use of shared employees, the similar ownership structure, and any possible remaining links to Odd Fellows after the creation of the separate Water Company.

The Commission's Affiliate Transaction Rules (Rules) are contained in D.10-10-019. These rules are specifically meant for Class A and B water companies. Application of these Rules requires detailed reporting requirements which may be too onerous for the Water Company as it is a very small company. Staff recognizes that sometimes it

[46] The revenue requirements for FY 2015 without the special study will be $531 per lot.

is difficult to hire outside experts by a small company. However, when it is necessary to use Water Company employees, Water Company must ensure that all affiliate related work is done after its own work has been completed, a proper tracking of time spent is maintained and approved at all times, the Water Company is fully compensated for all employee expenses (including but not limited to wages, benefits, applicable taxes and any ancillary costs like transportation) that are incurred by the Water Company. The Recreation Association finds Staff's recommendations on affiliate transactions as reasonable.

Request # 5: With respect to Request #4, the Commission's Affiliate Transaction Rules for water utilities include reporting requirements and are generally perpetual requirements. Are there any reasonable modifications DWA would suggest to the Rules or to limit the application of the Rules to some transition period, for example, for three or five years?

Staff believes that Affiliate Transaction Rules should be adhered to at all times and compliance with the Rules should be reported by the Water Company in each General Rate Case (GRC).

Section 5: ***<u>DWA Staff Recommendations</u>***

In this section, Staff makes recommendations based on its evaluation of A. 13-09-023 and C. 12-03-017.

5.1 Recommendations for ALJ questions

1. Request 1: Refund of excess amounts collected

(i) No refunds are due to lot owners for over-collections for the period March 1 through May 31, 2012. Those amounts have already been returned to lot owners by the now defunct OFSHA.

(ii) The Recreation Association should refund $109,432 [47], with interest at a rate established by the ALJ, which is the excess amount collected during FY 2012. The refund amount with interest should be paid to all lot owners in 4 semi-annual installments over a period of 2 years.

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[47] Refund is comprised of $94,957 for improved lots and $14,475 for unimproved lots. See Table 3.

(iii) The Water Company should refund $321,422 [48]which is the excess amount collected for FY 2013 and 2014, plus interest at a rate established by the ALJ. The refund amount should be made to all lot owners in 4 semi-annual installments over a period of 2 years.

2. *Request 2: Per Lot assessments for FY 2015 and 2016*

(i) The Water Company should modify the lot assessments to $531 for FY 2015 and $545 for FY 2016 as shown in Table 2

.

(ii) A special assessment of $124 per lot should be collected from each lot owner in FY 2015 to pay for the special engineering study recommended by staff.

3. *Request 3: Changes in revenue requirements proposed by Applicants and Staff*

(i) Applicant should provide justification of amounts disallowed by Staff if it wants to include the disallowed amounts in rates.

4. *Requests 4 and 5: Affiliate transactions*

(i) All affiliated companies must adopt formal affiliate transaction rules.

(ii) Any Board members who are also members of the affiliates should recuse themselves from making any decisions regarding use of Water Company resources. [49]

(iii) Water Company should make available its staff for work with affiliated companies only after its staff has completed their obligation to the Water Company.

(iv) Water Company should maintain detailed auditable records when its staff provides services to any affiliate.

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[48] The refund before interest is comprised of $149,214 for June 1, 2013 through May 31, 2014 and $172,208 for May 31, 2014 through May 31, 2015.

[49] The Recreation Association states that none of the Water Company Board members serve on any of the affiliated company Boards.

(v) The Water Company should be promptly reimbursed fair market value for services performed by its staff or equipment used for affiliates. As an example, for labor expenses, Water Company must charge a fully loaded rate that includes the employee salary, benefits, taxes, transportation and ancillary expenses.

(vi) All Affiliate Transaction Rules should be adhered to at all times and compliance with the Rules should be reported by the Water Company in each GRC.

5.2 Additional Recommendations

1. Evaluate capital expenditure needs of Water Company

The Water Company should work with Staff to hire an engineering consultant to perform the tasks listed in Table 1. These include:

a. Compile existing information available on the system.
b. Make an assessment of the existing water system, survey and determine the exact location of distribution system in its area of service.
c. Evaluate the condition of the existing distribution system, the wells, water tanks and adequacy of the system for fire flow.
d. Make recommendations regarding capital requirements and implementation schedules for new projects to comply with water quality requirements required by the State Water Board. The projects include the Iron and Manganese removal plants and the well heads as identified in the Water Company's CIP and Budget projections submitted to the Division.
e. Evaluate the feasibility of alternative water supply sources and water rights related issues in case one or both producing wells fail or are out of commission.
f. Develop a schedule for converting the existing unmetered water connections to metered connections.
g. Establish a time line and replacement reserves schedule for capital expenditures needed for Water Company operations going forward.

2. Establish a memorandum account to track engineering study costs

The Water Company should collect $45,000 ($124 per lot) in FY2015, subject to refund for the special engineering study discussed in Section 1.7 above. The Water Company should establish a memorandum account to track revenues collected and costs associated with the special study and may seek Commission approval of these costs and offsetting revenues collected in its next General Rate Case (GRC) or through a separate Tier 3 Advice Letter filing.

3. Transfer rights and access to water properties to the Water Company at no cost
The Recreation Association should transfer all water system assets and related water rights to the Water Company at no cost. If the Recreation Association is unwilling to give unfettered access to water properties and for drawing water from the existing wells at no charge, then it should continue as the purveyor of water services in the development under license from the Water Board. In that case, the Water Company may operate as a wholly owned subsidiary of the Recreation Association.

4. Development of replacement water sources
After receiving a CPCN, if there is a need to drill a new well in the future, the purveyor of water services (either the Recreation Association or the Water Company), may purchase access to the property subject to negotiation between the utility with eminent domain power and the property owner(s) at a fair market price pursuant to PU Code Section 2730 and approval from the Commission.

5. Consider an "operations contract" with Tuolumne Utilities District (TUD)
The purveyor of water services should investigate the possibility of having TUD operate the water system under an "operations contract" for greater cost savings and operational efficiencies. Depending on their experiences under such an arrangement, the applicants may eventually consider consolidation of the water system with TUD's system. This is also consistent with PU Code Section 2719 and the Commission's desire to merge small water systems into larger ones for greater efficiency.

6. Compliance with filing requirements
The Water Company or the purveyor of water services, after it receives its CPCN, should comply with all annual filing requirements including but not limited to Annual reports with DWA pursuant to Chapter 3, Article 5 of the PU Code.

Appendix A: Review of expenses for Water Company

Expenses requested in A.13-09-023 and recommended by DWA are shown in Table 2. The following are Staff comments on some key expenses for the Water Company.

1. Operating Expenses

1.1 Total Operating Expenses

The Water Company budgeted and reported operating expenses were $263,410 and $219,122 for FY 2013. This compares with $183,064 based on projections for 12 months from the Board of Director (BOD) minutes of June 7, 2014. [50] Staff recommends an amount of $164,806 for FY 2013, 148,806 for FY 2014, $150,193 for FY 2015 and 154,062 for FY 2016. Some significant items are discussed below.

Insurance

Water Company's budgeted and actual insurance premiums are $21,270 and $23,430, respectively, for FY 2013. Staff notes that the annual insurance premium for year ended May 31, 2013 (FY 2012) for the Recreation Association was $15,213 for water services as well as other services required by the Recreation Association. FY 2013 insurance expenses represent an increase of 54% over what the Recreation Association paid in FY 2012 for all activities including those related with provisioning of water services.

Staff recommends adoption of the current insurance premiums but encourages the Water Company to review its insurance needs and investigate competitive bids to reduce the insurance costs.

Employee Expenses

The Water Company has one full-time employee while the Service Company and the Recreation Association have none. The Water Company employee performs tasks for the Service Company on an "as needed" basis. For this, the Water Company is reimbursed actual employee expenses by the Service Company. The Water Company's budgeted employee expenses for FY 2013 were $57,019.[51] During FY 2013, the Water Company was reimbursed $24,106 by the Service Company (SPS) for this employee. This is 39% of projected 12 month employee expense. Based on

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[50] Based on extrapolation of information reported I the Board of Director Meeting minutes of June 7, 2014.

[51] Comprised of $44,960 payroll, $7,563 benefits, and $4,496 payroll taxes. See Table 2, col "d".

this, the Water Company employee devoted 61% of his time on Water Company related business.

The Water Company, using the 61% allocation factor, reported actual employee expenses of $46,164 [52] inclusive of wages, benefits and payroll taxes for 2013. For future years, the 2013 amount is increased based on escalated escalation factors recommended by the DWA.

Accounting
DWA Staff finds that the Water Company's FY 2013 accounting expenses of $13,298 to be reasonable. For future years, this amount was escalated based on escalation factors recommended by the DWA.

Legal Consulting
The Water Company's budgeted and actual legal costs are $30,900 and $40,930, [53] respectively, for FY 2013. The Water Company provided redacted copies of legal invoices that cannot be used to determine appropriateness of the claimed expenses.

In response to Staff data request, the Water Company indicates that it expects ongoing legal expenses of $2,992 for FY 2013 and similar costs in FY 2014. The Water Company also expects to pay legal fees for collection and possibly compliance matters. The total budgeted amount for legal fees is $28,500. This does not include legal fees for the Complaint Case C. 12-03-017 or A.13-09-023 as such fees should be non-recurring.

DWA Staff believes that a reasonable fees for legal expenses for FY 2013 is $10,000. This includes $7,000 for legal consulting and preparation of filings related with the instant CPCN application and $3,000 for preparation and filing of regulatory and other compliance documents. Going forward, DWA staff recommends that the utility should use the services of consultants to take care of ongoing regulatory and compliance requirements. Based on this, For FY 2014, DWA staff finds that $6,000 is adequate for ongoing regulatory and compliance matters for FY 2014. For FY 2015 and 2016, the FY 2014 amount is escalated per escalation factors for labor as approved by DWA.

Uncollectible Expenses

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[52] Comprised of $29,569 payroll, $11,306 benefits, and $5,289 payroll taxes. See Table 2, col. "e".

[53] Staff projection based on Board of Director Minutes was $37,600.

The Water Company requests an allowance of $945 and $950 for uncollectible expenses in 2013 and 2014. Staff finds this to be reasonable. See Table 2, Row 18 for projections for other years.

Professional Consulting
The Water Company's budgeted and actual Professional consulting costs are $48,875 and $23,223 respectively for FY 2013. The amount extrapolated by DWA Staff from the Board of Director Minutes of June 7, 1014 is $8,028. DWA Staff recommends $8,028 for FY 2013 for Professional Consulting. That amount is escalated by using DWA approved escalation factors for other years. See Table 2, Row 21c.

Taxes Other Than Income
The Water Company's budgeted and actual expenses for taxes and licenses are $3,708 and $2,204, respectively, for FY 2013. Staff finds $2,204 as reasonable.

General Expenses
The Water Company's reported general expenses of $6,334 for FY 2013. This includes expenses for credit cards ($1,979), increased bank fees ($27), Communications ($2,173), Miscellaneous ($2,150) and Tank Repairs ($38). Staff recommends $1,200 for these items. See details below.

DWA Staff recommends disallowance of credit card related expenses as the Commission requires prior authorization before a Water Company may use credit cards for bill payments. The Water Company may obtain that permission through a Tier 3 Advice Letter filing after it obtains its CPCN. Staff believes that the increased bank fees ($27) are appropriate, but the miscellaneous expense of $2,150 should be disallowed because of lack of details regarding what the amounts were used for. The Tank Repair expenses should be included as part of "Other Plant maintenance Expense." Communication expenses were incurred by the Water Company for printing and mailing newsletters to park residents. Staff believes that $1,100 is sufficient to keep members informed of developments in the water system. The Water Company is encouraged to make extensive use of the internet, bill inserts and its regular Board meetings to communicate developments in the Water Company to its customers and shareholders.

Other Plant Maintenance

The Water Company's budgeted and actual costs are $44,022 and $44,550 including a one time expenditure of $4,882 for FY 2013 [54] Since the expenditure of $4,882 is a one-time expense, it is not included in future projections. DWA Staff recommends $44,022, $39,727 and $40,363 should be used for FY 2013, 2014 and 2015 for Plant maintenance.

Water Testing
The Water Company reported actual expenses for water testing are $3,080. Staff finds this reasonable and recommends expenses for water testing of $3,080, $3,170 and $3,265 respectively for FY 2013, 2014 and 2015.

Purchased Power
The Water Company's actual expenses for purchase power was $7,900 for FY 2013. Staff finds this as reasonable. For other years, staff escalated this amount using escalation factors approved by DWA.

Water Tank Check Valve
Water Company budgeted $9,000 for a Water Tank Check Valve. The Water Company did not perform this repair. Staff recommends this amount should be removed for FY 2013, 2014 and FY 2015 budgets pending a recommendation resulting from the engineering study described above.

1.2 Other Expenses

Easement leases
The Water Company paid $500 for easement to 6 miles of pipes. Budgeted amount was $39,600. In addition, the Water Company paid $50,683 for easement leases for two wells, six water tanks and access to the same. The budgeted amount for this was $39, 140. The pipes, grounds, wells and tanks all belong to the OFRA, there is no reason for the Water Company to pay easement lease payments to access its distribution system. DWA Staff is recommending disallowance of all lease and easement related expenses.

Reserves
Water Company proposes a reserve of $20,000 for unanticipated water system costs. This should be rejected as no justification was provided for this reserve account. The Engineering consultant study will make recommendations for

[54] In its fling of 11/25/2014, the Water Company reported that the $4,882 was not a capital expense. Rather, it was a one time repair expense.

replacement reserves which will be considered during the Water Company's next GRC or in the Company's Tier 3 filing by the Water Company.

(END OF ATTACHMENT A)