

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

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

And Related Matter.

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

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

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November 19, 2015

Pursuant to Rule 14.3(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Sierra Park Water Company (“Water Company”) files its Comments on Revised Proposed Decision Resolving a Complaint and Authorizing a Certificate of Public Convenience and Necessity as Modified (“Comments”).

Summary

The Water Company stated in its September 8, 2015 Comments on ALJ Smith’s Proposed Decision (“PD”) that the terms of the PD were in large measure acceptable, seeking clarification on a few points. In particular, the Water Company stated its appreciation of the PD’s “broad intent” for “the Water Company to have a reasonable opportunity to operate successfully and independently.” (Water Company Comments on PD filed on September 8, 2015, pg.1.) These Comments had in mind the PD’s correct and record-supported determination that

“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 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 therefore limit the refund by Water Company to approximately 25% of the backcast resulting refund - i.e., 25% of \$321,422, or \$80,000.”

(PD pg. 17.) However, the Revised Proposed Decision (“RPD”) completely reverses field with respect to refund amount and timing. This radically different position on refunds, which is factually erroneous, will eliminate the prospect of Water Company’s future solvency.

As will be explained below, with the refund schedule as defined in ALJ Smith’s PD, Water Company was willing to accept that PD and not argue over

many issues it could have. It is in that context that Water Company “accepted” the initial PD. Water Company cannot so accept the RPD. To do so would violate Water Company’s fiduciary duties to its shareholders as well as its obligations to provide reliable service to its customers.

Comments

The RPD notes that with its issuance, “Parties here get one further opportunity where they are allowed to comment on a proposed decision before this decision becomes final, and again on the revised proposed decision which was issued in response to comments on the initial proposed decision.” (RPD pg. 16.) Due to the factual errors in the RPD as described below, Water Company must take advantage of this opportunity, but limits its comments as much as it can under the circumstances. Water Company limits its comments here to issues concerning its ability to remain in business. Water Company has previously responded to other concerns but they will be immaterial if the company is forced into insolvency.

First, Water Company maintains that the Revenue Requirements (“RR”) calculated by Staff are unrealistic and insufficient for ongoing healthy operation of the Company. Evidence for this has been documented in Exhibit E 2 of 2 of Water Company’s November 26, 2014 response to Staff Report of September 30, 2014, and is still relevant.¹ In Exhibit E 2 of 2, Water Company compared Staff’s recommended RR and Rate Design (“RD”) to Water Company’s RR and RD line-by-line. Notes accompanied the comparison showing the

¹ It should be noted that to minimize costs, the fledgling Water Company has been operated since its inception by volunteer board members, who have served **at no cost** to Water Company and thus its customers, including Complainants, in performing the duties of General Manager, Regulatory Compliance Coordinator, Human Resources Manager, Financial Officer, Communications Staff and Administrative Assistant. (Water Company’s sole paid employee spends his allotted 24 hours per week on operating and maintaining the water system.) Board members have also contributed hundreds of hours of volunteer effort in support of analyzing and preparing responses to case regulatory filing requirements, thus minimizing legal expenses. Because board members worked many hours for free and have absorbed out-of-pocket costs, all customers, again including the very Complainants that continue to bite the hand that feeds them, have benefitted from lower charges.

differences between the two explaining why Water Company's numbers were appropriate. Several of those examples are cited here.

Legal Fees - for FY 14 Staff's Report (September 30, 2014 pg. 14) allows \$6,000 while Water Company budgeted \$28,000, to cover legal expenses associated with ongoing application processes. Staff's number erases \$22,000 in FY 14 and by "backcasting," an amount of approximately \$30,000 in FY13 that should have been allowed based on actual expenses incurred.² Staff stated that redacted copies of legal bills could not be use to determine reasonableness of the charges and disallowed them (Staff Report of September 30, 2014 and April 15, 2015, pgs. 18 and 33 respectively). Water Company argued (Response to Staff Report of November 25, 2014, pg. 8) that for a yet-to-be regulated company, setting aside attorney-client privilege in a written document was not realistic. However, Water Company offered then and is still quite willing to review those expenditures with Staff.

Reserves - "Water Company proposed a reserves account of \$20,000 for unanticipated water systems costs. This should be rejected as no justification was provided for this reserve account." (Staff Report, September 30, 2014, pg. 22). Water Company's system is over 50 years old and prone to breaks and equipment failures which cannot be predicted and thus create "unanticipated water system costs." Reserve funds provide an "insurance policy" to address such failures, thus allowing Water Company to provide reliable service, which it will be obligated to do as a CPUC-regulated public utility. Staff suggests waiting for "The Engineering consultant study to (sic) make recommendations for replacement reserves which will be considered during the Water Company's next GRC. . . " (Staff Report dated April 15, 2015, pgs. 35,36), but does not address how to deal with breaks and failures in the interim; the proposed reserve fund would do that.

² The PD candidly admitted that the backcast "is not conclusive as a determinate of what rates should have been, it is only one indicator" and further found "Even a forensic audit of costs (at great expense) would not be conclusive." (PD pg. 17.)

Computation of Overcharges - In both Staff's Reports (dated September 30, 2014 and April 15, 2015, pg. 12 Table 2 and pg.25 Table 3 respectively), FY14 "Utility Assessment Amount" (columns c and d) use "Improved" and "Unimproved Lot" costs of \$997. In actuality, FY14 "Improved" and "Unimproved" lot costs were billed at \$969 and \$902 respectively (Water Company November 26, 2015 Response, pg. 16 to Staff Report dated September 30, 2014). This difference leads to an additional and unwarranted refund amount of approximately \$14,000.

Consulting - Staff's Report (dated September 30, 2014, pg. 20, Footnote 32), "recommends \$16,100 and \$16,200 for FY13 and FY14 respectively" for Water Administration Consulting and supplies, but then omits \$15,000 of those allowed amounts in their RR and DR calculations for FY13 and FY14 (November 26, 2015 Water Company Response to Staff Report dated September 30, 2014). This apparent error is also in Staff Report dated April 15, 2015, pg. 20, Table 2, Line 21c, columns h and i). This leads to a \$30,000 unwarranted refund, which means customers would not be charged for these allowable services.

Importantly, Water Company was not provided and thus was unaware that Staff had delivered to ALJ Long a revised report, replacing the original report of September 30, 2014. Water Company first learned of this April 15, 2015 revised Staff Report when it came as an attachment to the PD filed August 18, 2015. Both the PD and RPD admit as much, stating "... the Water Division was allowed to revise it report based on [parties' 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." (PD pg. 4 & RPD pg. 4,³ bold font added.) It was then apparent that Staff had discounted Water Company's justification of its costs and had made only very minor modifications to its revenue requirements analysis - essentially leaving the computed "over-charges" unchanged. Had this information been made available to Water Company in April, Water Company

³ The RPD adds ", and incorporated herein" at the end of the second sentence.

could have pursued Staff's request: "*Applicant should provide justification of amounts disallowed by Staff if it wants to include the disallowed amounts in rate,*" and provided whatever further justification was required (Staff Revised Report dated April 15, 2015 pg. 29).

But with the refund schedule as defined in ALJ Smith's PD, Water Company felt it could remain solvent by running an even leaner operation for two years until it was able to seek relief in its next rate case. Though the PD would have created severe financial constraints, Water Company determined it could and would accept the refund schedule as provided in the PD rather than opt to revisit Staff's RR and RD, which would extend the approval process and concomitant expense to all parties. Water Company continues to maintain that the supposed "over-charges" were grossly inflated as computed, due to problematic RR and RD developed by Staff. However, this result in the PD was appropriately balanced by the PD's determination that the Commission must "write off" a significant portion of the overcharges found by Staff. Therefore, Water Company did not spend time and money once again refuting Staff in Water Company's comments on the PD.

Second, the RPD asserts that "...Water Company [was] well aware of this obligation," and "...rates were paid subject to refund." This is per a Scoping Memo dated February 14, 2013, and a prehearing conference ("PHC") held on July 1, 2013. (RPD pgs. 18-19). The assertion is factually erroneous. (See Rule 14.3(c).) These dates precede Water Company's existence in the first case, and its submittal of an Application for a Certificate of Public Convenience and Necessity ("CPCN") in the second. The CPCN Application was filed on September 20, 2013, over two months after the referenced PHC. It was not until February 18, 2014 that Water Company's Application (A13-09-023) and C12-03-017 were consolidated. As noted, Water Company filed its CPCN Application five months earlier; it was not a party in C12-03-017 and therefore did not invest time or money in following that proceeding.

Therefore, Water Company was “aware of this obligation” only as it applied to the Recreation Association (“RA”). The statements pointed to on page 19 of the RPD are not applicable to or binding on Water Company, and it is both factually and legally erroneous for the RPD to rely upon that thin reed to justify reversing the factually-supported refund determination in the PD.

Third, Staff’s calculation of overcharges is based on the assumption that all customers paid their annual bills from Water Company in full. However, in FY13 and FY14 revenue shortfalls from customers who paid either nothing or pennies on the dollar amounted to approximately \$30,000 and \$31,000 respectively (Staff Report dated September 30, 2014, Table 2, pg. 12). Water Company will not be repaying dollars that were never paid in the first place, and Staff’s computed refunds should be reduced commensurately.

Fourth, as recommended in the RPD, Water Company has approached the Services Company to discuss refunds of easement lease payments. However, those funds are not available for refund. They have been spent by Services Company to provide other necessary services of benefit to the property owners in Sierra Park, including centralized garbage collection, pine needle disposal, and common grounds maintenance.

Thus, Water Company has only minimal cash reserves and has no ability to reclaim easement money for payment of refunds.

Conclusions

The Water Company’s revenue requirements as recommended by Staff are \$193,349 for FY15 and \$198,403 for FY16, with profit for each of those years at \$34,463 and \$35,363 respectively; this is prior to paying Federal Income tax (Staff Reports dated September 30, 2014 and April 15, 2015, pgs. 11 and 20, line 32 respectively). Under the PD, after taxes Water Company would have paid out in refunds \$80,000 (for overcharges from FY 13/FY 14), or roughly 50% of its annual profit, over 8 years (PD dated August 8, 2015, pg. 17). The remaining profit would have had to serve as a reserve fund for

emergencies, as this expense was rejected for lack of justification in Staff Report, dated September 30, 2014, pg. 22.

In contrast, the RPD requires a refund of \$321,422 (for supposed overcharges from FY 13/FY 14), over a two-year period, **four times as much refund in one-quarter of the time, a sixteen-fold increase.** Any excess funds collected from Water Company's June 2015 (FY15) billing will be refunded to customers who paid their bills. As specified by Staff RR for FY16 is \$198,403 and will be required to cover operating expenses. At the end of FY14, Water Company had in its bank account the amount of \$47,858, residual funds from two years of operation. This amount does not include payments yet to be collected from the approximately 40 customers who have for years chosen not to pay their bills. Unless and until tardy payment is forthcoming, the \$47,858 is the only amount available to tap for refunds without eating into operating capital.

Under the RPD, refunds for overcharges from FY13/FY14 shall commence in March 2016 with a payment of \$40,125. There is adequate cash on hand, absent recovery of all tardy payments, to cover this first refund payment, leaving only about \$7,000. But in fiscal year 2016, \$160,000 of approved revenues of \$198,403 will be spent on refunds. This leaves remaining funds of \$45,403 ($\$198,403 + \$7,000 - \$160,000$) to operate the Water Company in that entire fiscal year. Water Company would have minimal or no ability to cover employee salary, other basic expenses such as pumping costs, and expenses necessary for the public health such as water testing. Additionally, profits are eliminated, which violates the Water Company's constitutional right to have an opportunity to earn a return on investment, and there is no possibility of building a reserve fund. In order to continue operation, Water Company would be forced to seek bankruptcy protection before the end of the 2015 fiscal year.

Recommendations

1. Water Company recommends the RPD's revised refund and timing requirements be replaced with the refund provisions of the PD. Thus, the RPD

should be revised to require Water Company to 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.

2. Water Company requests the Commission to order that if the approximately 40 customers including Complainants (Water Company Comments to PD, September 8, 2015, pg.4), who have paid Water Company either nothing or only minimal amounts since its May 24, 2013 inception, have not paid to Water Company the full amount they would owe under the rates approved in the final decision, including their prorated share of the cost of the engineering study, by 30 days after the effective date of the decision, Water Company may terminate their service.

3. Staff's computed refunds should be reduced to reflect the fact that though Water Company revenue shortfall for non-payment in FY13 and FY 14 on paper amounted to approximately \$30,000 and \$31,000, respectively, these amounts will be less based on rebilling based on Staff's RR and RD.

4. Water Company strongly recommends it is in the best interest of the property owners in Sierra Park that the Company remains viable, providing assurances of uninterrupted water service while it moves forward as a now-regulated utility or transitions to an alternative water provider agreeable to community members.

Dated: November 19, 2015

Kirk M. Knudsen

/s/ Kirk Knudsen

President
Sierra Park Water Company

APPENDIX OF PROPOSED CHANGES

(Rule 14.3(b))

Revisions to Text Related to Refunds and Delinquent Payments

p. 2, second paragraph, third sentence, delete text and replace with the following: “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, and \$28,000 is to be refunded by Odd Fellows via Water Company over two years.”

pp. 17-19, beginning fifth line from the bottom of p. 17 through p. 19, end of second full paragraph, delete text and replace with the following:

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 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.

FOOTNOTE:

⁷ Staff Report at 26.

p. 20, add the following at the end of the first full paragraph: "Customers who have either paid Water Company nothing or minimal amounts since May 2013 when Water Company was formed must pay Water Company the amounts they owe calculated under the rates adopted in this decision as well as their prorated share of the cost of the approved engineering study. If they do not do so within thirty (30) days of the effective date of this decision, Water Company may terminate their water service."

Findings of Fact

p. 27, add new Finding of Fact 8: "Refunds of the full backcast would likely imperil the financial survivability of Water Company."

p. 27, add new Finding of Fact 9: "A number of customers of Water Company have either paid Water Company nothing or minimal amounts since May 2013 when Water Company was formed."

Conclusions of Law

p. 28, delete text of Conclusion of Law 11 and replace with the following: "Refunds are appropriate but cannot be so onerous that the Water Company would be unable to function."

p. 28, add new Conclusion of Law 12 and renumber succeeding Conclusions of Law accordingly: “Refunds cannot be so rapid or large that they imperil the survivability of Water Company.”

p. 29, revise current Conclusion of Law 16 as follows: “~~Odd Fellows and the Water Company~~ collected rates subject to refund and should be required to make a full refund.”

p. 29, add new Conclusion of Law after current Conclusion of Law 16 and renumber succeeding Conclusions of Law accordingly: “Water Company should be permitted to terminate service for those customers of Water Company who have either paid Water Company nothing or minimal amounts since May 2013 when Water Company was formed, if such customers have not paid amounts owing under the rates adopted in this decision as well as their prorated share of the cost of the approved engineering study within thirty (30) days of the effective date of this decision.”

Ordering Paragraphs

pp. 30-31, delete Ordering Paragraph 3.a and replace with the following: “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 Division of Water and Audits Staff Report (Attachment A to this decision). Water Company may offset the costs of the engineering study set forth in Ordering Paragraph 4 below from this refund.”

p. 33, add new Ordering Paragraph 12 and renumber current Ordering Paragraph 12 to be Ordering Paragraph 13: “Sierra Park Water Company, Inc., may terminate service to any customer who has either paid Water Company nothing or minimal amounts since May 2013 for any such customer who has not paid amounts owing under the rates adopted in this decision as well as such customer’s prorated share of the cost of the approved engineering study within thirty (30) days of the effective date of this decision.”