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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)

(NOT CONSOLIDATED)

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)

(NOT CONSOLIDATED)

ASSIGNED COMMISSIONER'S SCOPING MEMO

1. Summary

This scoping memo determines the scope and adopts a procedural schedule for two proceedings, consolidated herein, both of which relate to the Odd Fellows Sierra Recreation Association (Odd Fellows) and the provision of water to residents around Long Barn, California. Originally,

Complaint (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.

This scoping memo does the following: (i) consolidates the Complaint and the CPCN application, (ii) categorizes the CPCN as ratesetting and changes the categorization of the Complaint from adjudicatory to ratesetting, (iii) determines that evidentiary hearings are not necessary, (iv) sets a procedural schedule, (v) determines that the CPCN is not a project pursuant to the California Environmental Quality Act, (vi) defines the scope of the CPCN and of the Complaint, (vii) imposes an *ex parte* ban, and (viii) designates the assigned Administrative Law Judge (ALJ) as Presiding Officer.

2. Consolidation

The existing Complaint was subject to limited review and a hearing was held on July 9, 2013, when the Defendant, Odd Fellows, agreed to file an application for a CPCN which would eliminate the question going forward of whether Odd Fellows was improperly acting as a public utility. A remaining issue is whether the rates then currently charged by Odd fellows were reasonable. That issue remains outstanding and can best be examined in a

¹ A similar complaint, C. 12-03-016 was dismissed in Decision 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.

consolidated review of the CPCN. Therefore, for administrative ease and for a complete single record it is reasonable for C.12-03-017 to be consolidated with A.13-09-023.

3. Categorization and Need for Hearings

C.12-03-017 was originally categorized as adjudicatory. However, the remaining issue² of reasonable rates is more appropriately ratesetting and therefore the categorization is hereby changed.

The CPCN application was preliminarily determined to be ratesetting and this ruling affirms that determination. The original complainants are also protestants to the application and have made several filings. A prehearing conference was held on January 7, 2014 for the CPCN and applicants were ordered to make a filing in response to the protests. Any remaining issues or questions of fact are most likely to be identified by the ALJ and can be addressed by ruling for the production of records or sworn responses, etc. It is therefore unclear that evidentiary hearings are necessary at this time and the schedule adopted herein does not include further hearings.

4. Procedural Schedule

At this time no issues of law appear to require briefing and no evidentiary issues of fact require a hearing. However, the ALJ may require further information from Applicants and in that event Protestants will be allowed an opportunity to comment and the Applicants an opportunity to reply. Therefore, we will set a submission date June 1, 2014 and a scheduled date of August 1,

² By forming Water Company and filing for a CPCN Odd Fellows has essentially conceded water service in Long Barn, California is a public utility activity subject to this Commission's jurisdiction.

2014, for mailing a Proposed Decision for Comment. The Presiding Officer has delegated authority to modify by subsequent rulings this schedule, require the production of data or briefs, and subsequently set hearings, as necessary or otherwise may modify this schedule if necessary.

5. Assignment and Presiding Officer

Catherine Sandoval is the assigned Commissioner for both matters and Douglas Long is the assigned ALJ and is designated as Presiding Officer for the CPCN. ALJ Long is already the Presiding Officer for C.12-03-017 and this assignment remains in effect.

6. California Environmental Quality Act (CEQA)

Odd Fellows has been providing water at retail to residents in the area around Long Barn, California, for an extended period of time. Water Company would assume Odd Fellows' position and continue to serve existing customers using the existing system and sources of water. Therefore there is no Project as defined by CEQA.

7. Scope

The scope of the consolidated proceedings include:

1. Whether or not to grant Water Company a CPCN and therefore to relieve Odd Fellows of its water service obligation. This includes determining whether Odd Fellows has transferred all necessary assets and rights associated with providing water service to Water Company so that Water Company can be economically and operationally viable.
2. Determine whether or not Water Company will be able to furnish and maintain adequate, efficient, just, and reasonable service, including equipment and facilities necessary to promote the safety, health, comfort, and

convenience of its patrons, employees, and the public.
(See Pub. Util. Code Section 451.)

3. Adopt initial rates and tariffs for Water Company if a CPCN is granted.
4. Resolve whether the rates in effect at the time the Complaint was filed can be determined to be reasonable or not; and, if not, whether a remedy is available to Complainants.

8. Ex Parte Rules

C.12-03-017 was categorized as adjudicatory by the April 2, 2012 Instruction to Answer and therefore was subject to an *ex parte* ban. (Rule 8.3(b).) The consolidated proceedings are categorized here as ratesetting. In a ratesetting proceeding involving hearings, *ex parte* communications are usually permitted but only if consistent with certain restrictions, and they are subject to reporting requirements. (See Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3, and 8.5.) Although the Complaint and CPCN are now categorized as ratesetting we deem it beneficial to impose an *ex parte* ban on the consolidated proceedings. This means that parties may only communicate with decisionmakers in writing in required filings or motions, etc., and must file and serve the communication on the entire service list. See Rule 8.3(c)(1). Parties may communicate with the Presiding Officer on procedural matters.

9. Record

The record will be composed of all documents filed and served by the parties.

10. Final Oral Argument

Pursuant to Rule 13.13(b), a party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is

requested within the time and manner specified in the scoping memo or later ruling. This request must be made by written motion filed and served no later than 30 days after submission of this proceeding.

IT IS RULED that:

1. These proceedings are categorized as ratesetting. This ruling is appealable within 10 days under Rule 7.6.
2. Evidentiary hearings are not necessary.
3. The issues to be considered are those described in Section 7.
4. The schedule is as described in Section 4. The proceeding will be submitted on June 1, 2014.
5. *Ex parte* contacts are prohibited.
6. Final oral argument is permissible as described in Section 10.
7. Administrative Law Judge Douglas M. Long is designated as the Presiding Officer for the consolidated proceedings.

Dated February 18, 2014, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner