



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Odd
Fellows Sierra Recreation Association, a
California corporation, and Sierra Park
Water Company, Inc., a California
corporation, for a 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 No. 13-09-023
(Filed September 20, 2013)

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

**COMMENTS OF APPLICANT ODD FELLOWS SIERRA RECREATION ASSOCIATION ON
PROPOSED DECISION RESOLVING A COMPLAINT AND AUTHORIZING A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY AS MODIFIED**

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OF PUBLIC CONVENIENCE AND NECESSITY AS MODIFIED**

22 Pursuant to Rule 14.2(a) of the Rules of Practice and Procedure of the California Public
23 Utilities Commission (“Commission”), Applicant ODD FELLOWS SIERRA RECREATION
24 ASSOCIATION (“Odd Fellows”) files its comments (“Comments”) on Proposed Decision
25 Resolving a Complaint and Authorizing a Certificate of Public Convenience and Necessity as
26 Modified Sierra Park Water Company, Inc. (“PD”).

27 Like Applicant SIERRA PARK WATER COMPANY, INC. (“Water Company”), Odd
28 Fellows is eager to resolve the proceedings expeditiously and therefore generally accepts most of
the orders proposed in the PD.

Water Company is filing separate comments on the PD, which Odd Fellows has
previously reviewed. Odd Fellows understands from such comments that Water Company will

1 be accepting the conditional Certificate of Public Convenience and Necessity (“CPCN”) ordered
2 in PD Ordering Paragraph 1 and the refund ordered in Ordering Paragraph 3(a).

3 Pursuant to Rule 14.3(b), as its subject index listing recommended changes, Odd Fellows
4 urges the Commission to:

- 5 • Correct numerous errors in the PD regarding transfer of property that has not actually
6 occurred.
- 7 • Increase staff’s unreasonably small revenue requirement for professional services. Odd
8 Fellows otherwise accepts the proposed revenue requirements for FY2015 and FY2016.
9 If the Commission does not agree to increase that revenue requirement, the Commission
10 should approve a memorandum account to track expenses for such services.
- 11 • Approve Water Company’s proposal to rebill delinquent customers.
- 12 • Confirm that the refund of lease payments made by Water Company in FY2013 and
13 FY2014 is included in the required refund of \$80,000.
- 14 • To prevent unfair cost-shifting, order that the Water Company refund of \$80,000 need
15 not be made to customers who have not paid their bills as required and continue not to
16 pay them after rebilling.
- 17 • Approve Water Company using funds that might be refunded for FY2015 for manganese
18 reduction and grant authority to establish a balancing account for that purpose.
- 19 • Increase the time for filing tariffs from 15 days to 90 days.
- 20 • Provide for oversight of Water Company’s and Odd Fellows’ drafting of affiliate
21 transaction rules by the Division of Water and Audits.
- 22 • Remove the word “illegal” used in the PD with regarding to Odd Fellows and replace it
23 with the word “uncertificated” (or “unregulated”).
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- Clarify that the \$80,000 refund and refund of all payments made by Water Company to Sierra Park Services, Inc. (“Service Company”) is only due by Water Company.
- Approve Odd Fellows’ proposal to rebill delinquent customers.
- Order that Odd Fellows’ refund of \$28,000 need not be made to customers who have not paid their bills and continue not to pay them after rebilling.

A. Odd Fellows Accepts the Following Determinations of the PD.

Odd Fellows incorporates by reference Water Company’s comments on the PD as set forth in Section A thereof to the extent applicable to Odd Fellows (or later applicable to Odd Fellows if Water Company were not to accept the CPCN).

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

1. Refund of Lease Payments

Odd Fellows incorporates by reference Water Company’s comments on the PD as set forth in Section B(1) thereof to the extent applicable to Odd Fellows (or later applicable to Odd Fellows if Water Company were not to accept the CPCN).

2. Collection and Refund Impact of Unpaid Bills

Odd Fellows incorporates by reference Water Company’s comments on the PD as set forth in Section B(2) thereof to the extent applicable to Odd Fellows¹ (or later applicable to Odd Fellows if Water Company were not to accept the CPCN).

¹ As set forth in Section G below, ODD FELLOWS rejects the portion of the PD that requires ODD FELLOWS to refund \$80,000.

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3 **C. Other Requests for Revision**

4 1. Revision to Revenue Requirement for Professionals

5 Odd Fellows incorporates by reference Water Company's comments on the PD as
6 set forth in Section C(1) thereof to the extent applicable to Odd Fellows (or later applicable to
7 Odd Fellows if Water Company were not to accept the CPCN).

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

10 Odd Fellows incorporates by reference Water Company's comments on the PD as
11 set forth in Section C(2) thereof to the extent applicable to Odd Fellows (or later applicable to
12 Odd Fellows if Water Company were not to accept the CPCN).

13 3. Increase of Time to File Tariffs

14 Odd Fellows incorporates by reference Water Company's comments on the PD as
15 set forth in Section C(3) thereof to the extent applicable to Odd Fellows (or later applicable to
16 Odd Fellows if Water Company were not to accept the CPCN).

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20 **D. Request for Clarification regarding Affiliate Transaction Rules**

21 Odd Fellows incorporates by reference Water Company's comments on the PD as set
22 forth in Section D thereof to the extent applicable to Odd Fellows (or later applicable to Odd
23 Fellows if Water Company were not to accept the CPCN).

1 **E. Errors concerning Transfer of Assets Require Correction**

2 Odd Fellows incorporates by reference Water Company's comments on the PD as set
3 forth in Section E thereof to the extent applicable to Odd Fellows (or later applicable to Odd
4 Fellows if Water Company were not to accept the CPCN).

5
6 Odd Fellows confirms that no property has actually been transferred by Odd Fellows to
7 either Water Company or Service Company.

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9 **F. Odd Fellows is an Uncertificated or Unregulated Public Utility Not an "Illegal"**
10 **Utility**

11 Under Public Utilities Code section 216(a): "Public utility" includes every . . . water
12 corporation, . . . where the service is performed for, or the commodity is delivered to, the public
13 or any portion thereof." A "water corporation" under Public Utilities Code section 241 is "every
14 corporation or person owning, controlling, operating, or managing any water system for
15 compensation within this State."

16
17 Under Public Utilities Code section 240, "'water system' includes all reservoirs, tunnels,
18 shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real
19 estate, fixtures, and personal property, owned, controlled, operated, or managed in connection
20 with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing,
21 carriage, apportionment, or measurement of water for power, irrigation, reclamation, or
22 manufacturing, or for municipal, domestic, or other beneficial use."

23
24 Under Public Utilities Code section 216(b), "Whenever any . . . water corporation, . . .
25 performs a service for, or delivers a commodity to, the public or any portion thereof for which
26 any compensation or payment whatsoever is received, that . . . water corporation, . . . is a public
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1 utility subject to the jurisdiction, control, and regulation of the commission and the provisions of
2 this part.”

3 Under Public Utilities Code section 1001, “No . . . water corporation, . . . shall begin the
4 construction of . . . a line, plant, or system, or of any extension thereof, without having first
5 obtained from the commission a certificate that the present or future public convenience and
6 necessity require or will require such construction.”

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8 As set forth in the PD, the Commission has apparently determined that the Odd Fellows
9 was, by statute, a “public utility” and that therefore it was subject to regulation by the
10 Commission. This makes the Odd Fellows a public utility subject to Commission regulation that
11 did not request a CPCN prior to this Application, or put another way, an uncertificated public
12 utility or unregulated public utility but **not** an “illegal” utility. Odd Fellows requests that the
13 Commission replace the word “illegal” as used in PD with either the word “uncertificated” or the
14 word “unregulated”.
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16 The accompanying Appendix of Proposed Changes sets forth all portions of the PD
17 where correction should occur.
18

19 **G. Odd Fellows Rejects the Order Requiring an \$80,000 refund by Odd Fellows and**
20 **Order Requiring Refund of Payments Made by Water Company to Service Company as**
21 **Such Refunds Should be Made by Water Company, Accepts the Order Requiring a \$28,000**
22 **refund by Odd Fellows and Requests Clarification as to Unpaid Customer Bills**
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24 1. Odd Fellows Should Not be Required to Refund \$80,000 Received by Water
25 Company or Payments Made by Water Company to Service Company
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1 If Odd Fellows declines to transfer assets given to Service Company², PD orders
2 \$80,000 is to be refunded by Odd Fellows “as a bill credit of a combined total of \$10,000 per
3 year for the next eight years, allocated proportionately to improved and unimproved lots as
4 otherwise shown in the Staff Report.” (see Ord. ¶ 5(a)). If Odd Fellows declines to transfer assets
5 given to Service Company, the PD also orders Odd Fellows to refund all payments made by
6 Water Company to Service Company (see Ord. ¶ 5(c)). As set forth in the Application and other
7 filings made by Odd Fellows and Water Company in this proceeding, Odd Fellows has not
8 collected any amounts for water from the owners of improved or unimproved lots for FY 2013-
9 14, FY 2014-15 or FY 2015-16. Instead, Water Company has collected for water for FY 2013-
10 14, FY 2014-15 and FY 2015-16. The PD does not order Water Company to turn over all fees
11 collected by it to Odd Fellows if Water Company declines the CPCN. Therefore, Water
12 Company, not Odd Fellows, should be ordered to make the \$80,000 refund referenced in PD and
13 refund to customers all payments made to Service Company as referenced in the PD.
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16 The accompanying Appendix of Proposed Changes sets forth all portions of the
17 PD where correction should occur.

18 2. Refund of \$28,000 by Odd Fellows

19 Odd Fellows accepts PD order requiring Odd Fellows to refund \$28,000.00 (see
20 Ord. ¶ 3(b) and 5(b)) based on the Revenue Requirement (“RR”) and Rate Design (“RD”) as
21 calculated by Staff for FY2012-2013. However, PD contains a technical error regarding
22 customers who will receive the required \$28,000.00 refund. There are three (3) distinct classes of
23 customers to which the proposed refund applies:
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- 25 • Class 1 is made up of lot owners who have made **no payments**.

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28 ² As set forth above, no property has been transferred to Service Company by ODD FELLOWS.

- Class 2 is made up of lot owners who have made partial payments which are **less than** the amount calculated by Staff for FY2012-2013.
- Class 3 is made up of lot owners, both shareholders of Odd Fellows and non-shareholders of Odd Fellows, who have paid **more than** the amount calculated by Staff for FY2012-2013.

PD did not distinguish between the above three classes.

As of May 31, 2015, approximately 30 customers have unpaid bills for FY2012-2013. It is not fair to other customers for these 30 customers not to pay their bills. It would also not be fair for them to receive a refund for bills they have not paid, or in some cases, significantly underpaid. Odd Fellows proposes to rebill the delinquent customers (either the full amount calculated by Staff for FY2012-2013 (Class 1) or the difference between what was paid by the delinquent customer and the amount calculated by Staff for FY2012-2013 (Class 2)). If these customers pay these adjusted bills, then they will never have paid a bill in an amount that would entitle them to a “refund”. Odd Fellows proposes that customers who persist in not paying their revised bills for FY 2012-13 after having been rebilled (as stated above) or do not pay more than the amount calculated by Staff for FY2012-2013 be excluded from receipt of a refund. Again, it would be unfair to the customers who paid their bills if those who did not do so received a refund.

Odd Fellows requests that the final Decision approve Odd Fellows rebilling delinquent customers and state that none of the \$28,000 to be refunded be paid/applied to customers who did not pay bills in FY2012-2013 and continue not to do so after being rebilled or do not pay more than the amount calculated by Staff for FY2012-2013 after being rebilled. Odd Fellows’ revised refund proposal is therefore summarized as set forth below:

- Class 1: No proportional refund if not paid after rebill.

- Class 2: No proportional refund if not paid in full after rebill.
- Class 3: Full proportional refund.

H. Conclusion

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

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

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- Remove the word “illegal” used in the PD with regarding to Odd Fellows and replace it with the word “uncertificated” (or “unregulated”).
- Clarify that the \$80,000 refund and refund of all payments made by Water Company to Service Company is only due by Water Company.
- Approve Odd Fellows’ proposal to rebill delinquent customers.
- Order that Odd Fellows’ refund of \$28,000 need not be made to customers who have not paid their bills and continue not to pay them after rebilling.

Respectfully submitted,

Dambacher, Trujillo & Associates,
a professional law corporation

September 7, 2015

By: /s/ Timothy T. Trujillo
Timothy T. Trujillo, Esq,
Attorney for Odd Fellows Sierra Recreation
Association

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Add new Conclusions of Law:

“Customers who did not pay bills in full in fiscal years 2012-2013 and who do not pay bills after being rebilled by Odd Fellows (with bills that take account of prior overcharges) should not receive any portion of the \$28,000 refund.”

Amend Ordering Paragraph 3:

P. 22, add a new sentence to Ordering Paragraph 3(b): **“Odd Fellows shall rebill all delinquent customers who did not pay bills in full for fiscal year 2012-2013 (with bills that take account of prior overcharges). Any customers who do not pay bills in full after such rebilling will not receive a refund.”**

Add New Ordering Subparagraph:

P. 23, add a new Ordering subparagraph 7.g: **“provide for rebilling of delinquent customers who did not pay bills in full for fiscal year 2012-2013 and provide that customers who do not pay bills in full after such rebilling (with bills that take account of prior overcharges) will not receive the refunds set forth in Ordering Paragraphs 3.b and 5.b.”**

Delete Ordering Paragraph 5(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).”**~~

1 Delete Ordering Paragraph 5(c):

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