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Date of Issuance 1/29/2016

Decision 16-01-047 January 28, 2016

**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 that Odd Fellows Sierra Recreation Association (Odd Fellows) has been acting as a public utility and is subject to this Commission's jurisdiction 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 2016 by Water Company and Odd Fellows in four quarterly installments over five years (twenty total installments), pursuant to the recommendations set forth in the Division of Water and Audits Report (Final Report) attached hereto as Attachment A, as modified herein to assure the ongoing viability of the Water Company. In short, Odd Fellows must make the full refund set forth in the Water Division's Final Report under the five year schedule set forth above. Odd Fellows must also refund to Water Company by June 30, 2016, the easement

payments it received for Fiscal Years 2013 and 2014 (\$600 per year), and the easement payment for 2015, if that payment has been made. The Water Company must refund to its customers the full amount of the easement payments and 25 percent of the balance of the amount set forth in the Final Report, under the five year schedule set forth above.

The Water Company may offset the costs of the engineering study from this refund. The refund also includes payments, if any, made by Water Company to Sierra Park Services, Inc. (Service Company), also created by Odd Fellows, for improperly holding and then possibly charging Water Company for water service-related assets. These assets previously owned by Odd Fellows must be transferred to Water Company at no expense to Water Company's customers 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.<sup>1</sup>

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 Quality Act (CEQA), (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 (DWA or 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 (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

<sup>1</sup> 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.

decision, and incorporated herein. Parties were also allowed to comment on the initial proposed decision, the revised proposed decision, and both of these proposed decisions' utilization of the Final Report.

## **2. Standard of Review and Record**

Proposed water utility ownership changes are reviewed under Pub. Util. Code §§ 851-854<sup>2</sup> 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."<sup>3</sup>

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 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*

<sup>2</sup> All statutory references are to the California Public Utilities Code unless otherwise indicated.

<sup>3</sup> See D.03-12-033 at 6; D.01-06-007 at 15.

- (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 sever Odd Fellows from retail water provision and transfer other assets to the second new entity, Sierra Park Services, Inc. (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, at no expense to Water Company's customers, all of the relevant water service-related assets including land and legal rights, which were instead

contemplated to be transferred to Service Company.<sup>4</sup> 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 decreases the reliability of water service by Water Company, makes Water Company a weaker entity and an unreasonable successor service provider.

#### **4.2. Rates**

One of the key issues in the Complaint was that Odd Fellows (besides operating as a water company without Commission authorization)<sup>5</sup> 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 uncertificated public utility.

<sup>4</sup> In comments to the initial proposed decision, the Water Company states that none of these assets yet have been transferred to the Service Company. It is therefore unclear why the Water Company made easement payments to the Service Company for rights that had not yet been transferred.

<sup>5</sup> Hereafter we refer to Odd Fellows as an uncertificated 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, and the Water Division's proposal for implementing the refunds, subject to the modifications stated in Section 7. Section 2 of the Water Division's Final 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 Final Report is persuasive and we accord it more weight than the proposals of Water Company and the arguments of the Complainants.<sup>6</sup>

#### **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 District. Furthermore, in its next general rate case filing, the Water Company must document in a declaration under penalty of perjury all efforts it has made with the District to transfer or discuss a transfer of water services to the District.

<sup>6</sup> Complainants transitioned into intervenors for the application; we use the term "Complainants" for convenience.

This includes the dates of any meetings with the District, the participants of the meetings, and a detailed summary of the content of the meetings.

## **5. Water Division Final 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<sup>7</sup>**

Odd Fellows, 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 Odd Fellows formed the Sierra Park Water Company (Water Company), it too over-charged

<sup>7</sup> These eight summaries are verbatim from the Final Report Executive Summary, although the captions are newly created here.

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 Odd Fellows 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 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 2015, should be funded by a separate surcharge of \$45,000 (or \$124 per connection) on all lot owners during Fiscal Year 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**

Odd Fellows 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 Odd Fellows.

6) **Affiliate Transaction Rules**

Applicants should develop formal Affiliate Transaction rules for all transactions between the Water Company, Odd Fellows 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 § 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 § 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, with oversight from the Commission's Water Division.

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. Under the proposal, 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 as an uncertificated utility; the assets necessary for water service were available and dedicated to water service. Therefore, as a condition of the CPCN, Odd Fellows or the Service Company if it owns any of these assets, must transfer to the Water Company at no expense to Water Company customers all water utility-related assets including land, water rights, and any equipment used for providing water service that Odd Fellows owns or which it assigned for transfer to Service Company 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 an uncertificated utility subject to Commission jurisdiction and until it complies with this directive, all transactions to Water Company and Service Company are null and void pursuant to § 851.

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.

By these actions, as well as the establishment of just and reasonable rates discussed below, we believe we have provided the best opportunity for the Water Company to remain a viable provider of safe and reliable water service to its customers now and into the future.

### **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.<sup>8</sup> The Complainants are lay-persons and not experienced and trained regulators. Therefore we accord little weight to their 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 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

<sup>8</sup> Section 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.)*



any necessary corrections to the report. After reviewing the Final Report we find it to be persuasive and give it great weight in this decision.

#### **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 and the Water Division correctly included them in its proposed refund amounts.

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 had another opportunity to comment on the report when they were allowed to comment on the proposed decision, and again on the revised proposed decision. The Final Report was attached to both of these proposed decisions.

## 7. Refunds

By earlier ruling<sup>9</sup> 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.

The Water Division calculates that Water Company and Odd Fellows must refund a combined \$430,854 as shown on Table 3 of Attachment A of the Water Division Final Report for the period from June 1, 2012 to May 31, 2015. According to the Water Division, 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.<sup>10</sup> The Water Company is to refund the balance (\$321,422) which is \$ 273,181 for improved lots and \$48,241 for unimproved lots. The Water Division believes that the refunds should be paid to lot owners in four quarterly installments over a period of two years.<sup>11</sup> In

<sup>9</sup> February 14, 2013 Scoping Memorandum at 4.

<sup>10</sup> Staff Report at 26.

<sup>11</sup> Staff Report at 23.

addition, the Water Division Final Report at 18, states that the appropriate revenue requirement for Fiscal Year 2015-2016 is \$193,349.

In response to comments made to the initial proposed decision, which reduced the refund recommended by Water Division to 25 percent of the total amount, we revised the initial proposed decision to agree with the Water Division that the above refunds should be made in full over a two year period, subject to offset for the engineering study discussed below. Parties had an opportunity to comment on that revised proposed decision. (See Section 8 below.) We further modify the revised proposed decision in response to the comments on the revised proposed decision, and particularly those of the Water Company, which stated it had insufficient funds to make the full ordered refund after the initial few payments, and may risk insolvency.

With respect to Odd Fellows, the refund amount shall be that recommended in the Water Division's Final Report, but it shall be paid over five years as is the Water Company's refund (see below). With respect to the Water Company, we direct a refund amount that we believe strikes the appropriate balance; that is, for ratepayers to achieve some rate relief without totally disrupting the ability of the Water Company to survive as a functioning utility. It is beneficial for the present and future ratepayers to have a viable water utility; a disruption in water service for the ratepayers imperils their well-being and the value of their property.

In addressing refunds, we keep the following history in mind. From the commencement of the complaint proceeding, Complainants challenged the reasonableness of the water rates. Thus, at the commencement of the

proceedings, the parties agreed that the assessed rates would be made subject to refund.<sup>12</sup> Further, even though Complainants viewed the rates as unreasonable, they were always subject to refund: the February 14, 2013 Scoping Memo affirmed various parties' agreements, including that "[c]omplainants agreed to pay the full water assessment, subject to refund," and that "[p]arties agreed to pay the full water assessment, subject to refund."<sup>13</sup> Thus, from the time the February 14, 2013 Scoping Memo issued, rates were paid subject to refund.

Odd Fellows and the Water Company were, or should have been, well aware of this agreed to obligation. In addition to memorializing the agreement in the Scoping Memo, at a subsequent July 1, 2013 prehearing conference, the then-assigned ALJ reiterated that Odd Fellows should be prepared to make refunds if the Commission so ordered. "Until we release Odd Fellows from its obligation, I'd say that company had better hold on to cash. It may well have to

<sup>12</sup> The Water Company argues in its comments to the revised proposed decision that it somehow did not have notice of the rates being subject to refund, since it was formed and filed its application for a CPCN after the existing parties agreed and the ALJs issued their rulings of the rates being subject to refund. We find that argument unconvincing at best. Odd Fellows, in conjunction with the Water Company, cannot seek to form a new entity to provide water service and then somehow claim that through the formation of this new entity, the refund obligation no longer exists. In short, Odd Fellows and the Water Company cannot unilaterally make corporate changes to evade their refund obligations.

<sup>13</sup> The February 14, 2013 Joint Scoping Memo Ruling of the Assigned Commissioner and Administrative Law Judge at 4. This agreement mirrored an earlier agreement for Complainants to pay the full water assessment, subject to refund, which was set forth in the December 5, 2012 Administrative Law Judge's Ruling Memorializing Procedures Agreed To By Parties at 4.

do some refunds if we find either the older rate or even this new rate is unreasonable, because your complaint continues to run until we resolve it.”<sup>14</sup>

However, as stated above, it is in the ratepayers’ best interest to have a viable water company providing water services because their well-being and property value are imperiled without water. We therefore order the following refunds. Odd Fellows must refund to customers the amounts set forth in Table 3 of the Water Division Final Report (Attachment A to this decision). Specifically, Odd Fellows must 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. Odd Fellows must also refund to the Water Company \$1,200 to reflect the \$600 per year it received from the Water Company for the use of easements on six miles of pipe for Fiscal Years 2013 and 2014, as well as any monies received from Water Company for the six miles of pipe easements for Fiscal Year 2015.

Odd Fellows must reimburse the Water Company for these easement payments no later than June 30, 2016. Odd Fellows must refund to customers this amount over a five year period, in quarterly payments, similar to the refund period we order for the Water Company below. This refund period is greater than that recommended by the Water Division but we do so for the reasons set forth below.

Odd Fellows and the new Water Company and Service Company conceived of their proposed new structure while both Odd Fellows and the Water Company, at various points in time, were uncertificated utilities, and they

<sup>14</sup> July 1, 2013 Prehearing conference transcript, at 116, lines 6-12.

did not have permission from the Commission to retain or spin-off water utility-related assets or require the Water Company to lease water utility-related assets from other entities. As stated in Section 6.2 above, we see no benefit to a structure whereby the Water Company leases the assets necessary for water service from a different company, whether it is Odd Fellows or the Service Company. The Water Company would always be dependent on the Service Company or Odd Fellows for access to the water, unless it condemned the property.

In its comments to the revised proposed decision, the Water Company states that it may risk insolvency after the initial refund payments if it is ordered to make the refunds set forth in the Final Report. As stated elsewhere in this decision, it is in the best interest for the ratepayers to have a viable water company, and also to receive the payments instead of incurring protracted litigation through the bankruptcy process to attempt to receive a refund. Therefore, as to Water Company refunds, the Water Company must refund to ratepayers all of the monies paid to the Service Company in easements as well as 25 percent of the balance of the refund amount in the Final Report. The Water Company's argument in its comments to the revised proposed decision that it should not be required to refund easement payments to ratepayers because the Service Company no longer has the easement payments to return to Water Company is unpersuasive. As stated above, both Odd Fellows and the Water Company were and are uncertificated public utilities until they receive a CPCN to operate from this Commission. Payments made to the Service Company were at Water Company's risk, and it is Water Company's obligation to seek their return. Water Company cannot reduce the refund amounts because of its own ill- advised actions.

In terms of a refund amount, this means that for Fiscal Years 2013 and 2014, the refund amount shall be \$157,756 (or a little less than 50 percent of the total refund amount of \$321,422 recommended by the Water Division). This refund amount is computed as follows: For Fiscal Years 2013 and 2014, each ratepayer shall be reimbursed for 100 percent of the total easement payments of \$102,000 made by the Water Company to the Service Company, and 100 percent of the total easement payment of \$1,200 the Water Company made to Odd Fellows<sup>15</sup> (\$86,474 for the improved lots and \$16,728 for the unimproved lots).<sup>16</sup> The ratepayers shall then be reimbursed 25 percent of the remaining refund amount set forth in the Final Report, or \$46,677 for the improved lots and \$7,878 for the unimproved lots for the two year period.<sup>17</sup>

In its comments on the initial proposed decision, the Water Company states that its bills for Fiscal Year 2015-2016 were issued in June 2015. Therefore, the refund due customers who have paid more than their pro rata share of the Fiscal Year 2015-2016 revenue requirement of \$193,349 must also be made

<sup>15</sup> See Table 2 of the Water Division Final Report at 20, lines 33, columns e1 and e2.

<sup>16</sup> For the improved lots the \$86,474 consists of the easement payment for both FY 2013 and 2014 to the Service Company and the \$1007 easement payment to Odd Fellows for the same two year time period.

<sup>17</sup> For both FY 2013 and 2014, the Water Division computed the refund to the improved lots (305 lots) should be \$273,181. After deducting the easement payments to the improved lots from \$273,181, \$186,707 remains. 25 percent of \$186,707 is \$46,677. Thus, the refund amount to the improved lots is \$133,150 (the full easement amount of \$86,474, plus 25 percent of the remaining balance, or \$46,677). With respect to the unimproved lots (59), the Water Division computed the refund amount should be \$48,241. After deducting the easement payments to the unimproved lots from \$48,241, \$31,513 remains. 25% of \$31,513 is \$7,878. Thus, the refund amount to the unimproved lots is \$24,606 (the full easement amount of \$16,728, plus 25 percent of the remaining balance, or \$7,878).

according to the formula listed above (100 percent of the easement payments made to the Water Company and Odd Fellows plus 25 percent of the remaining balance.)

No interest shall accrue on this refund amount, which must be made in four quarterly installments over a five year period. This is a longer period than the two years recommended by the Water Division. However, the forecast 2015-2016 after-tax return for the Water Company is \$34,463. The refund amount spread over five years will be \$31,551. Thus, this refund will not cut into operating expenses and will still allow for a very small profit. Although not ideal for any party to the proceeding, we believe that the revised refund amounts balance the parties' agreement to charge rates subject to refund with the preservation of a viable future water utility.

As discussed above in Section 5.1, the Water Division Final Report recommends that the Water Company initiate and complete in Fiscal Year 2015 an engineering study funded by a separate surcharge of \$45,000 (or \$124 per connection) on all lot owners during Fiscal Year 2015-2016, subject to refund. We modify the Water Division Final Report recommendation so that the cost of the engineering study can be offset from the Water Company's share of the refund that would otherwise be due to each customer. This will eliminate the need for the customer to pay a separate assessment for the cost of the engineering study. However, we reiterate that the Water Company must separately track all expenses and revenues collected through the surcharge (even if it is assessed as an offset to the refund instead of paid separately) 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.



Finally, we modify refund payments as set forth below in response to comments to the initial proposed decision in this matter. We agree with the Water Company that refunds should go to customers who have overpaid their bills in the first instance, and not to all customers, including some customers that may not have paid their bills or may have paid less than the amount Water Division found to be a reasonable rate. However, we do not adopt the Water Company's proposed changes to the decision. Rather, customers who have overpaid the rates found by the Water Division to be reasonable must receive a refund of the amount they overpaid. This may mean that the actual refund amount is less than what we order, because if ratepayers did not pay the actual rates charged by Odd Fellows and/or the Water Company, they would not be entitled to a refund. Because we do not calculate interest on the refund, if a customer is in arrears on payments and the Water Company rebills that customer, the Water Company similarly shall not assess interest against the customer for this one-time billing.

Because we want to be sure refunds are correctly calculated, we direct that the Water Company on behalf of itself and Odd Fellows, make a Tier 1 advice letter filing as part of the filing set forth in Ordering Paragraph 5 below setting forth the refunds for each lot in the complex, including any offsets made from the Water Company's share of the refund for the engineering study. The Water Company must redact the public version and file a confidential version of the advice letter under seal to the extent it believes necessary so that it does not disclose customer specific information such as names, etc. This advice letter filing must be made no later than 60 days after the effective date of this decision.

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 after Fiscal Year 2014, these must be refunded to customers pursuant to the formula set forth above. 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.

### **8. 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.

The following parties filed comments: Complainants (on August 31, 2015),<sup>18</sup> the Water Company (on September 8, 2015), and Odd Fellows (on September 8, 2015). In response to the comments, we reissued the proposed decision as set forth below for further comment. The following parties filed comments: Complainants (on November 3, 2015), the Water Company and Odd Fellows (both on November 19, 2015). Complainants filed a reply on November 24, 2015. The Water Company's November 24, 2015 motion to strike Complainants' reply is denied.

In their August 31, 2015 Comments, Complainants state that they raise concerns "which have been discussed in previous filings with the CPUC." Under the Commission's Rule of Practice and Procedure, Rule 14.3, comments "shall focus on factual, legal or technical errors in the proposed....decision and in citing

<sup>18</sup> D.15-12-020, which extended the statutory deadline in this proceeding, stated that the comments to the proposed decision were filed on September 7, 2015. However, Complainants filed their comments on August 31, 2015, and Odd Fellows and the Water Company filed their comments on September 8, 2015.

such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Comments proposing specific changes to the proposed ...decision shall include supporting findings of fact and conclusions of law.”<sup>19</sup>

Because Complainants largely reargue their prior arguments made before the proposed decision issued, we do not make another detailed response to each argument as the ALJ considered these arguments before issuing the proposed decision. However, there are several points which Complainants raise to which an additional discussion is warranted.

First, Complainants believe that a full refund to customers is warranted under the facts and law. Upon further examination of the record, we agree with them with respect to Odd Fellows and revise Section 7 accordingly. We also revise Section 7 so that Water Company’s refund strikes the appropriate balance of the parties’ agreement to charge rates subject to refund with the preservation of a viable future water utility.

Complainants also argue that a full refund should be made for Fiscal Year 2015-2016 to the extent that any customers have already paid this assessment. We agree refunds for Fiscal Year 2015-2016 are appropriate to the same extent and under the same formula we order refunds for the prior fiscal years, and revise the proposed decision accordingly.

Complainants also argue extensively that the Water Company should be taken over by an alternative provider, the Tuolumne Utility District (District).

<sup>19</sup> In addition, all documents tendered to the Commission (including comments on the proposed decision) must, among other things, be written in type no smaller than 12 points in the text and 11 points in the footnotes. (*See* Rule 1.5.)

Section 4.3 of the initial and revised proposed decisions states that the Commission has no jurisdiction over the District and cannot compel it or the utility to consider a transfer. However, we believe it prudent for the Water Company to reconsider this issue in the future. Therefore, we revise Section 4.3 and direct that in its next general rate case filing, the Water Company must document in a declaration under penalty of perjury all efforts it has made with the District to transfer or discuss a transfer of water services to the District. This includes the dates of any meetings with the District, the participants of the meetings, and a detailed summary of the content of the meetings.

Complainants also argue that the Water Division should have performed a more extensive audit than that set forth in the Water Division Final Report. However, in an email ruling dated June 2, 2014, the ALJ directed the Water Division to perform a review of the rate base, cost of capital, and operating expenses that supported the 2014 base year rates and based on this review, respond to specifically delineated questions. The Water Division did so. In view of this follow-up work, we conclude that a more detailed audit was not required.<sup>20</sup>

In their comments to the revised proposed decision, Complainants request that a water reserve account, which they say was created from special assessment on the lot owners by the Recreation Association, should be transferred to the Water Company, and that the engineering study should be paid from this fund. Complainants state that this reserve account was created in the 1980s.

<sup>20</sup> The February 14, 2013 Scoping Memo also referenced a Water Division review of the books and records of the water system, including an assessment of the water system, etc., and recommendations. This is similar to the more detailed request the ALJ made in his June 2, 2014 email ruling.

The Final Report did not approve any reserve account. (*See* Final Report at 35-36.) The creation of the reserve account Complainants refer to predates the filing of this complaint. Therefore, any disagreement as to the account is more appropriately raised in Superior Court and not with this Commission.

Finally, the record and comments are unclear on this issue, but the parties generally argue about title issues to easements and land necessary to provide water service. We note that Odd Fellows had been providing water service and thus presumably had access to the requisite property. This decision directs that the all water service related assets must be transferred from Odd Fellows to the Water Company at no cost to the customers. To the extent title issues predate the transfer (e.g. persons have title or property issues with Odd Fellows), such issues are title issues that are appropriate for adjudication in Superior Court, and not by this Commission. (*See* e.g. Case 12-01-010, D.12-07-005, 2012 Cal. PUC LEXIS 295 at \* 17.)

Odd Fellows and the Water Company<sup>21</sup> filed similar comments to the initial proposed decision. They accept many requirements of the initial proposed decision but question or request modification of others. We address the latter group here. The Water Company requests correction of a potential technical error regarding lease refunds, to prevent double counting of the required \$80,000 refund for Fiscal Year 2013 and 2014. We make this correction. The Water Company also states that it would be unfair for customers who have not paid their bills to receive a refund, and proposes to rebill such customers the new staff

<sup>21</sup> For purposes of discussing comments to the proposed decision, we refer to the arguments as made by the Water Company, while recognizing that both parties made similar arguments.

approved water rates. The Water Company requests that the final decision approve the rebilling, and that it state that none of the refund be paid to customers who did not pay bills in Fiscal Year 2013 and 2014 and continue not to pay after being rebilled. Although we do not adopt the Water Company's specific proposal,<sup>22</sup> we modify the refund provisions as set forth in Section 7 above. This modification ensures that customers do not receive refunds for amounts that they did not pay.

The Water Company also argues for an increase of the amounts allocated in the Water Division Final Report for regulatory and legal expenses. Alternatively, the Water Company asks that it be permitted to establish in the tariffs to be filed a Legal and Regulatory Expense Memorandum Account in which it will record over the next three years all such expenses, to undergo reasonableness review for recovery in the Water Company's next general rate case. It is the Water Company's choice to stay an independent entity and not merge or be managed by another water company or district. We therefore do not increase the allocation for these expenses at this time. However, we grant the request to establish a memorandum account but note that recovery of the amounts recorded in the memorandum account are subject to a reasonableness review.

The Water Company also requests that instead of refunding any Fiscal Year 2015 overcharged amounts to customers (for which customers were billed on June 2, 2015), the Water Company dedicate the amount of any such over-

<sup>22</sup> Under the Water Company's proposal, it is possible that a customer who is entitled to a refund would not receive it because the customer has not paid one year's fees, even if, after deducting the fees owed, the customer had, on a cumulative basis, overpaid.

collections to continue work on the manganese removal project to comply with the State Water Resources Control Board's order to greatly reduce the manganese content in the water. We do not adopt this request. It is unclear at this time the scope or cost of any manganese removal and the engineering study should identify the scope of work and expenses before we address them further. We further require that the Water Company work with the Water Division to determine if there are state resource funds to assist with the manganese removal (e.g. through funding through the State Drinking Water Revolving Fund).

The Water Company requests that the proposed decision be clarified so that Water Company's compliance with the Affiliate Transaction Rules can be undertaken with assistance from the Commission's Water Division. We make this modification to the proposed decision.

Because it is a new entity, the Water Company also requests an increase in time from 15 days to 90 days to file the advice letter and tariffs required by the proposed decision. We grant the Water Company 60 days to file such advice letter and tariffs. Finally, the Water Company urges the Commission to modify any statements which state that any assets have already been transferred from Odd Fellows to the Water Company, because such is not the case. We make this technical correction.

As stated above, both the Odd Fellows and the Water Company filed comments to the revised proposed decision. Odd Fellows believes its required refund should be less because it did not collect all the monies billed for water services. Similarly, the Water Company argues it should not have to make refunds to those who did not pay their bills in the first instance. We reiterate that the refunds we direct go only to customers who overpaid the specified amounts

and therefore are entitled to refunds, not to customers who did not pay their water bill.

In its comments to the revised proposed decision Odd Fellows also now questions the Water Division's computation of water rates, although it did not question them in its comments to the initial proposed decision.<sup>23</sup> The Water Division requested cost information from Odd Fellows and the Water Company prior to writing its report, but had issues with the accuracy and usefulness of the unsegregated information it received. (*See* Final Report at 14-16.) The Water Division therefore used the best available information such as Budget Reports that came from the Water Company's Board of Director Minutes. Once it determined Fiscal Year 2013 financials, the Water Division then backcast or deflated this amount using approved inflation factors to determine the Fiscal Year 2011 and 2012 revenue requirement. We therefore make no changes to the Final Report in response to Odd Fellow's comments.

The Water Company also reargues the amount of the Final Report's revenue requirement, arguing that expenses such as legal fees, consulting, computation of overcharges and reserves should be higher. We disagree and do not change the Final Report in these areas. The Water Company states that it was unaware that staff had delivered to the ALJ a revised report and was not afforded an opportunity to comment on it. However, all parties were provided ample opportunity to comment on this report. (*See* Section 6.4 above.)

<sup>23</sup> Odd Fellows states that it did not question staff's computations because it was in general agreement with the refunded amount ordered by the initial proposed decision, even though it did not agree on the numbers used to achieve that amount.



The Water Company also states that the refund provisions of the revised PD may risk its insolvency before the end of the 2015 fiscal year. We therefore modify the refunds ordered by the revised proposed decision herein. Finally, the Water Company argues that it was somehow not on notice that the rates were subject to refund. As stated above, Odd Fellows and the Water Company cannot through a change in the corporate structure evade the refund obligation Odd Fellows agreed to at the commencement of the proceeding. In addition to the above modifications, we make other non-substantive changes to the proposed decision to improve the flow and correct typographical or other minor errors.

### **9. 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 has not yet transferred all assets it previously used to provide water service to Water Company.
5. Odd Fellows and Water Company charged rates significantly higher than a “backcast” of the test year estimate would suggest was possibly appropriate.
6. An engineering consultant should be retained at a cost capped at \$45,000 to assess the water system and make service recommendations.
7. No payments by Water Company have been authorized to Service Company for the use of water service assets that should belong to Water Company.

8. It is beneficial for the present and future ratepayers to have a viable water utility; a disruption in water service for the ratepayers imperils their well-being and the value of their property.

**Conclusions of Law**

1. It is reasonable to grant a CPCN 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, should any have occurred.

3. It is reasonable to ensure that Water Company has, at no expense to Water Company's customers, 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 water service related assets from Odd Fellows and/or Service Company to Water Company, that all transactions forming both Water Company and Service Company will be void.

6. As modified herein, the transfer of control is reasonable pursuant to §§ 851-854.

7. The Commission has no jurisdictional standing to require the acquisition of Water Company by a municipal water district. However, the Water Company must report on any discussions it has with the Tuolumne Utility District in its next general rate case as set forth in the Ordering Paragraphs below.

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, at no expense to Water Company customers.

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

11. Refunds set forth in Ordering Paragraph 3 below are reasonable and appropriate. In setting the refund amount for the Water Company, we keep in mind that it is beneficial for the present and future ratepayers to have a viable water utility; a disruption in water service for the ratepayers imperils their well-being and the value of their property.

12. Refunds should go to customers who have overpaid their bills in the first instance, and not to customers who have paid less than what the Water Division found to be a reasonable rate.

13. Water Company, on behalf of itself and Odd Fellows, should make a Tier 1 advice letter filing as set forth in Ordering Paragraph 3 below which sets forth the refunds for each lot in the complex, including any offsets made for the costs of the engineering study. The Water Company should redact the public version and file a confidential version of the advice letter under seal to the extent it believes necessary so that it does not disclose customer specific information such as names, etc. This advice letter filing should be made no later than 60 days after the effective date of this decision.

14. 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.

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

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

17. Odd Fellows and the Water Company collected rates subject to refund and should be required to make a full refund.

18. In its next general rate case filing, the Water Company should document in a declaration under penalty of perjury all efforts it has made with the District to transfer or discuss a transfer of water services to the District. This includes the dates of any meetings with the District, the participants of the meetings, and a detailed summary of the content of the meetings.

19. Water Company should work with the Division of Water and Audits to determine if there are state resource funds to assist with the manganese removal project required by the State Water Resources Control Board.

20. The Water Company may establish a memorandum account to track legal expenses for review in its next general rate case, subject to reasonableness review.

21. Water Company's November 24, 2015 motion to strike Complainant's reply to the revised proposed decision should be denied.

22. This decision should be effective today.

23. This proceeding 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, at no expense to Water Company customers, all of the assets it used

when it provided water service as an uncertificated utility 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 Division of Water and Audit's April 15, 2015 Staff Report (Attachment A to this decision) and incorporated herein.

2. If Odd Fellows Sierra Recreation Association (Odd Fellows) declines to transfer to Sierra Park Water Company, Inc., the assets used to provide water service, if any, given to Sierra Park Services, Inc. (Service Company) without Commission approval, Odd Fellows is a public utility subject to the jurisdiction of this Commission and any 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 the following refunds.

- a. Water Company must refund \$ 157,756, allocated as follows: \$133,150 to the improved lots and \$24,606 to the unimproved lots as the lots are shown in the Division of Water and Audits Staff Report (Attachment A to this decision). The Water Company must also refund to customers their proportionate share of the overpayments, if any, made for Fiscal Years 2015-2016 according to the formula set forth in the decision and used to compute the Fiscal Year 2013 and 2014 refunds. Water Company must make the refund in quarterly payments over five years (for a total of twenty payments) to customers. These payments are due for 2016, 2017, 2018, 2019 and 2020 by the following dates: March 31, June 30, September 30 and December 31. Water Company may offset the costs of the engineering study set forth in Ordering Paragraph 4 below from this refund.

- b. Odd Fellows must make a full refund of \$109,432, allocated proportionately to the improved and unimproved lots as otherwise shown in the Division of Water and Audits Staff Report, its adjusted share prior to spinning-off Water Company. Odd Fellows must make the refund over five years (for a total of twenty payments by the dates set forth in Ordering Paragraph 3.a above by paying Water Company who, in turn, must refund customers as proposed in the Division of Water and Audits Staff Report. Additionally, Odd Fellows must refund to the Water Company no later than June 30, 2016, \$1,200 to reflect the \$600 per year it received from the Water Company for the use of easements on six miles of pipe for Fiscal Years 2013 and 2014, and any monies received from Water Company for the six miles of pipe easements for Fiscal Year 2015.
  - c. Water Company must make a refund to customers of all payments made, if any, without authority to Sierra Park Services, Inc., and allocated proportionately to the improved and unimproved lots as otherwise shown in the Division of Water and Audits Staff Report for refunds. This refund shall be made as set forth in Ordering Paragraph 3.a above.
4. Sierra Park Water Company, Inc., must implement a surcharge of \$124 for each connection to fund the costs of retaining an engineering consultant and may offset this surcharge against the refunds it owes customers.
  5. If Odd Fellows Sierra Recreation Association (Odd Fellows) declines to transfer assets, if any, given to Service Company without authority from this Commission, then Odd Fellows must make the refunds to customers set forth in Ordering Paragraph 3 above.
  6. Sierra Park Water Company, Inc. (Water Company) must implement tariffs to adopt the test year revenue requirement and rates as calculated in the Division

of Water and Audits Staff Report (Attachment A to this decision). Water Company must file a Tier 1 advice letter within 60 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. In documenting the refunds, the Water Company must redact the public version and file a confidential version of the advice letter under seal to the extent it believes necessary so that it does not disclose customer specific information;
- 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 Commission, Odd Fellows must implement tariffs to adopt the test year revenue requirement and rates as calculated in the Division of Water and Audits Staff Report (Attachment A to this decision). Odd Fellows must file a Tier 1 advice letter within 60 days of the effective date of this decision that add tariff sheets to address items a through e of Ordering Paragraph 5 above.

8. Sierra Park Water Company, Inc. (Water Company), must adopt affiliate transaction rules with oversight from the Commission's Division of Water and Audits 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. In its next general rate case filing, Sierra Park Water Company, Inc., must document in a declaration under penalty of perjury all efforts it has made with the Tuolumne Utility District (District) to transfer or discuss a transfer of water services to the District. This includes the dates of any meetings with the District, the participants of the meetings, and a detailed summary of the content of the meetings.

10. Sierra Park Water Company, Inc. must work with the Division of Water and Audits to determine if there are state resource funds to assist with the manganese removal project required by the State Water Resources

11. Sierra Park Water Company may establish a memorandum account to track legal expenses for review in its next general rate case, subject to reasonableness review.

12. Sierra Park Water Company's November 24, 2015 motion to strike Complainant's reply to the revised proposed decision is denied.

13. Application 13-09-023 and Case 12-03-017 are closed.

This decision is effective today.

Dated January 28, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners



# **ATTACHMENT A**

STATE OF CALIFORNIA

EDMUND G. BROWN JR., *Governor*

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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.

Ravi Kumra, P. E.

Senior Utilities Engineer

Division of Water and Audits

*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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Appendix A Review of Expenses for Water Company Revenue Requirements

**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 <sup>24</sup>, 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.

<sup>24</sup> 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 Introduction***

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.<sup>25</sup> 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.<sup>26</sup>

### **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.<sup>27</sup>

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.<sup>28</sup> 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

<sup>25</sup> 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.

<sup>26</sup> The Sierra Park Water Company was formed by the Recreation Association on March 25, 2013.

<sup>27</sup> 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.

<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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:<sup>31</sup>

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.

<sup>29</sup> Id, pg. 5

<sup>30</sup> Id, pg. 6

<sup>31</sup> "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:<sup>32</sup>

... 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

<sup>32</sup> "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<sup>33</sup> 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.<sup>34</sup>

## **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:<sup>35</sup>

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.

<sup>33</sup> Formerly, California Department of Public Health

<sup>34</sup> Data Request RK001, Question 8.

<sup>35</sup> 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.<sup>36</sup>

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.

<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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

<sup>36</sup> Simplified Capital Improvement Plan and Five Year Budget Projections, dated February 6, 2015.

<sup>37</sup> New projects include \$700,000 for two Iron and Manganese removal plants and \$7,500 for a new Well house, concrete and controls.

<sup>38</sup> The Simplified Capital Improvement Plan (CIP) erroneously indicates a monthly reserve per customer of \$20.86 based on 300 customers.

<sup>39</sup> 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. <sup>40</sup>

### **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.<sup>41</sup> 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.

<sup>40</sup> 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.

<sup>41</sup> 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

		<i>Activity</i>	<i>Estimated Hours</i>	<i>Estimated Cost @ \$80/Hr</i>		
		<b>Phase I: Staffing and compilation of existing information</b>			50	\$ 4,000
1		Project setup and review existing information	50			
	1	Staffing	10			
	2	Compile and evaluate available information	40			
		<b>Phase II: Evaluate water system and propose new capital projects</b>			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 facilities				
	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 requirements	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			
		<b>Phase III: Preliminary Design, implementation and Rate making</b>			140	\$ 11,200
4		Preliminary designs and implementation schedules	100			
5		Rate making	40			
	1	Capital budgets				
	2	Revenue requirements				
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 . . .<sup>42</sup>

The Recreation Association provided its financial report updated to May 31, 2013.<sup>43</sup> 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<sup>44 45</sup>

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

<sup>42</sup> E-mail from Ronald Hawke to Ravi Kumra, dated July 18, 2014.

<sup>43</sup> Odd Fellows Sierra Recreation Association Inc., Compiled Financial Statements, May 31, 2013.

<sup>44</sup> Id, at page 1

<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> 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<sup>49</sup> and lease charges of \$51,600 for access to water related assets to the Service Company and to the Recreation Association,<sup>50</sup> legal charges of

<sup>46</sup> Data Request RKK001

<sup>47</sup> Sierra Park Water Company Board of Directors Meeting Minutes for June 7, 2014.

<sup>48</sup> Filed November 25, 2014

<sup>49</sup> Capital expenditures are for Waterline Replacement, Well Rehabilitation and Tank Repairs.

<sup>50</sup> 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.<sup>51</sup> This was a 23.7% increase over Staff’s extrapolated amount. Those expenses included lower charges for purchased power, employee labor,<sup>52</sup> 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.<sup>53</sup> Projected amounts included estimates for waterline replacement, well rehabilitation and tank repairs.<sup>54</sup> 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.<sup>55</sup>

<sup>51</sup> 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.

<sup>52</sup> Employee costs were lower because of reimbursements received from the Service Company for use of Water Company Staff.

<sup>53</sup> Application Exhibit O

<sup>54</sup> Estimates for Repair and Replacements for 2013, 2014, 2015 and 2016 are: \$100,805; \$103,829; \$106,944; and \$110,152.

<sup>55</sup> “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.<sup>56 57</sup> 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.

<sup>56</sup> ORA December 2014 Summary of Compensation Per Hour, Memo from Energy Division dated January 23, 2015.

<sup>57</sup> 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

Fiscal Year	From CPCN filings <sup>1</sup>			SPWC filing of 11/25/2014		Staff recommendation						
				Actual	Projected							
	2011	2012	2013	2013	2014	2011	2012	2013	2014	2015	2016	
a	b	c	d	e1	e2	f	g	h	i	j	k	
	(Baseline)											
I	<b>Operating Revenues</b>											
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	<b>Total Operating Revenues</b>	<b>\$ 145,471</b>	<b>\$ 177,580</b>	<b>\$ 315,850</b>	<b>\$ 364,496</b>	<b>\$ 316,505</b>	<b>\$ 180,280</b>	<b>\$ 186,974</b>	<b>\$ 198,536</b>	<b>\$ 190,712</b>	<b>\$ 193,349</b>	<b>\$ 198,403</b>
II	<b>Operating Expenses</b>											
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	\$ 28,182	\$ 28,172	\$ 28,792	\$ 29,569	\$ 30,249	\$ 30,945	\$ 32,059
10	Materials	\$ 1,504	\$ 888	\$ 11,301	\$ 9,000		\$ 836	\$ 882	\$ 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 Maintenance Expense	\$ 21,737	\$ 41,339	\$ 39,140	\$ 44,094	\$ 48,500	\$ 36,842	\$ 38,868	\$ 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	\$ 11,832	\$ 12,258
18	Uncollectibles <sup>3</sup>				\$ 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	<b>Total Operating Expenses</b>	<b>\$ 145,471</b>	<b>\$ 154,607</b>	<b>\$ 263,410</b>	<b>\$ 219,132</b>	<b>\$ 201,777</b>	<b>\$ 140,960</b>	<b>\$ 146,303</b>	<b>\$ 154,806</b>	<b>\$ 148,203</b>	<b>\$ 150,193</b>	<b>\$ 154,062</b>
III	<b>Deductions</b>											
27	Depreciation Expense											
28	Ad Valorem Taxes											
29	Payroll Tax			\$ 4,496	\$ 5,289	\$ 3,355	\$ 5,039	\$ 5,150	\$ 5,289	\$ 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	<b>Total Deductions</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 79,304</b>	<b>\$ 79,943</b>	<b>\$ 58,314</b>	<b>\$ 7,187</b>	<b>\$ 7,345</b>	<b>\$ 8,343</b>	<b>\$ 8,516</b>	<b>\$ 8,694</b>	<b>\$ 8,978</b>
36	<b>Total Deductions and Expenses</b>	<b>\$ 145,471</b>	<b>\$ 154,607</b>	<b>\$ 342,714</b>	<b>\$ 299,075</b>	<b>\$ 260,091</b>	<b>\$ 148,147</b>	<b>\$ 153,648</b>	<b>\$ 163,149</b>	<b>\$ 156,720</b>	<b>\$ 158,887</b>	<b>\$ 163,040</b>
37	<b>Net income before taxes</b>											
IV	<b>Rate Base</b>											
38	Depreciation <sup>4</sup>		\$ 22,973	\$ 506	\$ 552							
39	Rate of Margin <sup>5</sup>			\$ -	\$ 64,859	\$ 56,414	\$ 32,133	\$ 33,326	\$ 35,387	\$ 33,992	\$ 34,463	\$ 35,363
V	<b>Revenue requirement and assessments</b>											
40	<b>Base revenue requirement excluding special study</b>											
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	<b>Revenue requirement for special study</b>											
a	Engineering consultant Fee					\$ 44,000			\$ -	\$ -	\$ 45,000	\$ -
b	Revenue requirement/ Connection					\$ 121			\$ -	\$ -	\$ 124	
c	Revenue requirement/ Connection/Mo					\$ 10			\$ -	\$ -	\$ 10	
42	<b>Revenue Requirement including special study</b>											
a	Requirement including special study	\$ 145,471	\$ 177,580	\$ 343,220	\$ 363,934	\$ 360,505	\$ 180,280	\$ 186,974	\$ 198,536	\$ 190,712	\$ 193,349	\$ 198,403
b	Revenue requirement/ Connection	\$ 400	\$ 488	\$ 943	\$ 1,000	\$ 990	\$ 495	\$ 514	\$ 545	\$ 524	\$ 531	\$ 545
c	Revenue requirement/ Connection/Mo	\$ 33	\$ 41	\$ 79	\$ 83	\$ 83	\$ 41	\$ 43	\$ 45	\$ 44	\$ 45	\$ 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,<sup>58</sup> the Recreation Association,<sup>59</sup> and the Water Company.<sup>60</sup>

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

<sup>58</sup> Comments and reply comments were filed by the complainants on October 11, 2014 and December 8, 2014.

<sup>59</sup> Comments filed by Recreation Association on November 26, 2014

<sup>60</sup> 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		Utility Assessment Amount		Assessment / Lot	Over/(Under) Collection		Total Over/Under Collection			Refund by
	w/o CIP	w/CIP	Improved	Unimproved	per staff	Per	Per	Improved	Unimproved	Total	
			Lot	Lot	Recommendation	Improved	Unimproved	Lot	Lot		
	a	b	c	d	w/o special study	Lot	Lot	(305 lots)	(59 lots)	j=h+l <sup>1</sup>	
				e	f=c-e	g=e-d	h=f*305 <sup>1</sup>	i=g*59 <sup>1</sup>	j=h+l <sup>1</sup>		
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<sup>61</sup> Since that amount was already returned to the lot owners, the

<sup>61</sup> Overcharges were \$22,702 and \$4,391 for improved and un-improved lots.

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	Assessment 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 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 <sup>62</sup> 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 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.

<sup>62</sup> The revenue requirements for FY 2015 without the special study will be \$531 per lot.

*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: DWA Staff Recommendations***

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 <sup>63</sup>, 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.
- (iii) The Water Company should refund \$321,422 <sup>64</sup> 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.

<sup>63</sup> Refund is comprised of \$94,957 for improved lots and \$14,475 for unimproved lots. See Table 3.

<sup>64</sup> 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.

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.<sup>65</sup>
  - (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.
  - (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.

<sup>65</sup> The Recreation Association states that none of the Water Company Board members serve on any of the affiliated company Boards.

## 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.<sup>66</sup> 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.<sup>67</sup> 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

<sup>66</sup> Based on extrapolation of information reported in the Board of Director Meeting minutes of June 7, 2014.

<sup>67</sup> 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<sup>68</sup> 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,<sup>69</sup> 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*

<sup>68</sup> Comprised of \$29,569 payroll, \$11,306 benefits, and \$5,289 payroll taxes. See Table 2, col. "e".

<sup>69</sup> 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 <sup>70</sup> 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

<sup>70</sup> In its filing 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)**