

Decision PROPOSED DECISION OF ALJ WILDGRUBE (Mailed July 19, 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)

And Related Matter.

Case 12-03-017

DECISION GRANTING PETITIONS TO MODIFY DECISION 16-01-047 AND CLARIFYING ORDERING PARAGRAPHS 3.a AND 3.b

Summary

This decision grants the Petitions to Modify Decision (D.) 16-01-047 filed by Sierra Park Water Company, Inc. (Water Company) on June 10, 2016, and filed by Odd Fellows Sierra Recreation Association on June 29, 2016. D.16-01-047 was issued on January 29, 2016 in these consolidated proceedings.

Specifically, we modify D.16-01-047 to amend Ordering Paragraphs (OP) 3.a and 3.b to be consistent with the body of D.16-01-047. Decision 16-01-047 requires the Water Company (OP 3.a) and the Odd Fellows Sierra Recreation Association (Odd Fellows) (OP 3.b) to issue refunds to customers for overpayments in excess of authorized tariffs. Although the body of D.16-01-047 states that customers who did not pay the rates charged would not be entitled to

a refund and that the actual amount refunded would be less than the total amount ordered and despite the use of the word “refund” in the OPs, it appears from the Petitions that amendments of OPs 3.a and 3.b are necessary to ensure the implementation of these Ordering Paragraphs.

1. Background

The 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. 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.

Decision (D.) 16-01-047 conditionally granted Water Company a CPCN conditioned on certain transfers by Odd Fellows described in Ordering Paragraph (OP) 1 of the decision. As pertinent to this Petition, the Decision also ordered Water Company and Odd Fellows refund amounts received in excess of reasonable rates (OP 3.a and 3.b, respectively).

The Decision recognizes, at page 24, that Water Company did not collect all of the amounts billed and states customers who did not pay the actual rates charged “would not be entitled to a refund.” The Decision also recognizes, at page 24, that “the actual refund amount” may be “less than what we order” because customers who did not pay in full would not be entitled to a refund.

Similarly, Odd Fellows did not collect all amounts it billed and did not collect all of the amounts identified by the decision as the “full refund.”

Notably, the Decision at page 34, Conclusions of Law 34,

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.

The recognition that customers who did not pay either Odd Fellows or the Water Company amounts in excess of reasonable rates should not be entitled to receive a refund was not unambiguously reflected by the OPs.

OP 3.a on page 36 of the Decision provides:

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.

OP 3.b on page 37 of the Decision provides:

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 OP 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.

As a result, under current OPs 3.a and 3.b, despite the clear intent of the Decision, customers who paid less than amounts billed, or even paid nothing at all, may receive windfalls unless OPs 3.a and 3.b are revised.

The parties, by their Petitions for Modification, propose revisions to these OPs to conform to the intent of the decision that customers who did not overpay their bills should not receive refunds of money they did not pay.

Water Company requested, on June 21, 2016, pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure,¹ an extension of time to comply with Ordering Paragraph 3.a. On June 23, 2016, the Executive Director of the Commission granted Water Company an extension of 60 days from June 30, 2016 to August 29, 2016 to comply with OP 3.a of D.16-01-047.

On June 29, 2016 pursuant to Rule 16.16, Odd Fellows requested an extension of time to comply with OP 3.b. On June 29, 2016, the Commission's Executive Director granted Odd Fellows an extension of 60 days from June 30, 2016 to August 29, 2016 to comply with OP 3.b of D.16-01-047.

2. Procedural Requirements Under Rule 16.4

Rule 16.4 governs the process for the filing and consideration of petitions for modification. Rule 16.4(b) requires that a petition for modification concisely state the justification for the proposed relief and to propose specific wording for all requested modifications.

¹ Hereinafter all references to "Rule" or "Rules" are to the Commission Rules of Practice and Procedure, Title 20, California Code of Regulations, Division 1, Chapter 1.

The parties' petitions each contain a concise but thorough statement of justification for the proposed modifications and comply with the other requirements of Rule 16.4.

3. Relief Requested in Petition

The parties by their Petitions for Modification propose revisions to these OPs to conform to the intent of the decision that customers who did not overpay their bills should not receive refunds of money they did not pay.

Water Company suggests rewording OP 3.a as follows (additions are in bold type):

Water Company must refund up to \$ 157,756, allocated as follows: **up to \$133,150** to the improved lots and **up to \$24,606** to the unimproved lots, **subject to amount collected**, 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 OP 4 below from this refund.

Odd Fellows suggests rewording OP 3.b as follows (additions are in bold type):

Odd Fellows must make a refund of **up to \$109,432, subject to amount collected**, ~~allocated proportionately to the improved and unimproved lots as otherwise shown in the Division of Water and Audits Staff Report,~~ as 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 OP 3.a above ~~by paying Water Company who, in turn,~~

~~must refund customers as proposed in the Division of Water and Audits Staff Report).~~ **Odd Fellows may prepay all or any portion of the refund payments then due in full at any time.** 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.

4. Discussion

The Commission agrees OPs 3.a and 3.b should reflect the intent stated by the Decision and that it is reasonable that refunds paid by Water Company and Odd Fellows 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.

The Commission considers, however, that the proposed modifications to the OPs continue to present the potential that the Ordering Paragraphs may be misunderstood.

Therefore, the Commission will grant the Petitions for Modification and will modify the OPs as follows (additions are in bold type):

3.a. Water Company must refund **to all customers who made payments in excess of reasonable rates only, up to \$ 157,756 for Fiscal Years 2013 and 2014**, allocated as follows: **up to \$133,150** to the improved lots and **up to \$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 Year 2015 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, **by the following dates: March 31, August 29, September 30, and December 31** and ~~these payments are due for 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.

3.b. Odd Fellows must make a refund **to all customers who made payments in excess of reasonable rates only, of up to \$109,432, allocated proportionately to the improved and unimproved lots as otherwise shown in the Division of Water and Audits Staff Report,** as 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~~. **Odd Fellows may prepay all or any portion of the refund payments then due in full at any time.** 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.

The Executive Director of the Commission granted to Water Company and Odd Fellows an extension of 60 days from June 30, 2016 to August 29, 2016 to comply with OP 3.a and OP 3.b, respectively, of D.16-01-047.

In conjunction with granting the Petitions for Modification, the Commission will require the parties comply with the modified OPs and all acts required by June 30, 2016 to be performed on or before August 29, 2016 and all acts required to be performed by subsequent dates shall be performed by the dates set forth by the OPs.

5. Comments on Proposed Decision

The proposed decision of ALJ Wildgrube 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. No comments have been filed.

6. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Eric Wildgrube is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.16-01-047 was issued on January 29, 2016 in the consolidated proceeding A.13-09-023, filed September 20, 2013, and C.12-03-017, filed March 14, 2012.

2. The Decision recognizes, at page 24, that Sierra Park Water Company, Inc. did not collect all of the amounts billed and states customers who did not pay the actual rates charged “would not be entitled to a refund.” The Decision also recognizes, at page 24, that “the actual refund amount” may be “less than what we order” because customers who did not pay in full would not be entitled to a refund.

3. The Decision at page 34, Conclusion of Law 12, states, “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.”

4. The recognition that customers who did not pay either Odd Fellows Sierra Recreation Association or Sierra Park Water Company, Inc. amounts in excess of reasonable rates should not be entitled to receive a refund was not unambiguously reflected by the OPs.

5. As a result, under current OPs 3.a and 3.b, despite the intent of the Decision, customers who paid less than amounts billed or even paid nothing at all may receive windfalls unless OPs 3.a and 3.b are revised.

6. On June 23, 2016, the Commission’s Executive Director granted Sierra Park Water Company, Inc. an extension of 60 days from June 30, 2016 to August 29, 2016 to comply with OP 3.a of D.16-01-047.

7. On June 29, 2016, the Commission's Executive Director granted Odd Fellows Sierra Recreation Association an extension of 60 days from June 30, 2016 to August 29, 2016 to comply with OP 3.b of D.16-01-047.

8. The Petitions for Modification are uncontested.

Conclusions of Law

1. The parties' Petitions for Modification of Odd Fellows and Water Company each contain a concise but thorough statement of justification for the proposed modifications and comply with the other requirements of Rule 16.4, Title 20, California Code of Regulations, Division 1, Chapter 1.

2. It is reasonable to approve amendments to OPs 3.a and 3.b and to grant the Petitions for Modification of Odd Fellows and Water Company.

O R D E R

IT IS ORDERED that:

1. The Petition of Odd Fellows Sierra Recreation Association for Modification of Decision 16-01-047 is granted.

2. The Petition of Sierra Park Water Company, Inc. for Modification of Decision 16-01-047 is granted.

3. Decision 16-01-047 is modified as follows:

a. Ordering Paragraph 3.a of Decision 16-01-047 is modified as follows:

Water Company must refund to all customers who made payments in excess of reasonable rates only, up to \$ 157,756 for Fiscal Years 2013 and 2014, allocated as follows: up to \$133,150 to the improved lots and up to \$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 Year 2015 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, by the following dates: March 31, August 29, September 30, and December 31 and these payments are due for 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. Ordering Paragraph 3.b of Decision 16-01-047 is modified as follows:

Odd Fellows must make a refund to all customers who made payments in excess of reasonable rates only, of up to \$109,432, as 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. Odd Fellows may prepay all or any portion of the refund payments then due in full at any time. 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.

4. Consolidated proceeding Application 13-09-023 and Case 12-03-017 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.