

PROPOSED DECISION

Agenda ID #15237 (Rev. 1)
Ratesetting
11/10/2016 Item #14

Decision PROPOSED DECISION OF ALJ WILDGRUBE (Mailed 10/7/2016)

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 DENYING PETITION OF COMPLAINANTS
TO MODIFY DECISION 16-01-047**

Summary

This decision denies the Petition to Modify Decision 16-01-047 filed by Fred Coleman, Steven Wallace, Larry L. Vaughn and Ruth Dargitz, (Complainants) on August 1, 2016. Decision 16-01-047 was issued on January 29, 2016 in these consolidated proceedings, and was modified previously by Decision 16-08-006, issued on August 19, 2016.

This proceeding is closed.

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 granted Water Company a CPCN conditioned on certain transfers by Odd Fellows and ordered refunds described in Ordering Paragraphs 1 and 3, respectively, of the decision. Ordering Paragraphs 3.a and 3.b of that decision were subsequently modified by D.16-08-006, which granted petitions to modify filed by the Water Company and Odd Fellows, and clarified that refunds were to be made by the Water Company and Odd Fellows only to customers who previously made payments in excess of reasonable rates.

Relevant to this Petition, Ordering Paragraph 3.b of D.16-01-047 also ordered Odd Fellows refund 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, and any monies received from Water Company for the six miles of pipe easements for Fiscal Year 2015.

On August 23, 2016, the Water Company filed a response opposing the petition on the grounds that the petition fails to comply with the requirements of Rule 16.4 of the Commission Rules of Practice and Procedure.¹

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) provides,

A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

3. Relief Requested in Petition

The Complainants, by their Petition for Modification, request revisions to Ordering Paragraph 3.b to “reflect that Odd Fellows collected \$5,000 a year in Fiscal Year 2013 and 2014 for water tank rental as well as a refund of the actual amount collected for the tank rental for Fiscal Year 2015.”

The petition alleges that “Documents from the Odd Fellows indicates that \$5,000 per year was collected in 2013 and 2014 from the Water Company for the water tank leases. The amount collected for 2015 needs verification.”

The Complainants propose rewording Ordering Paragraph 3.b as follows (additions are underlined; deletions are stricken through):

Odd Fellows must make a refund to all customers whom made payments in excess of reasonable rates only, of up to \$109,432, as

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.

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. 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~~ \$10,000 to reflect the ~~\$600~~ \$5,000 per year it received from the Water Company for the use of ~~easements on six miles of pipe~~ the water tanks for Fiscal Years 2013 and 2014, and any monies received from Water Company ~~for the six miles of pipe easements~~ the rental of the water tanks for Fiscal Year 2015.

4. Discussion

The Complainants' petition contains a concise statement of the justification for the proposed modification in compliance with Rule 16.4(b). The petition contends Odd Fellows collected from the Water Company \$5,000 per year in 2013 and 2014 and may have collected additional money in 2015 for water tank leases and that money should be repaid. The petition also proposes specific wording to carry out the requested modification.

However, Rule 16.4(b) also requires a petition provide support for any factual allegations. The factual allegations concerning the alleged lease payments however, may not be "officially noticed" and are supported neither by "specific citations to the record in the proceeding" nor an "appropriate declaration or affidavit" and therefore do not comply with Rule 16.4(b).

4.1. We Decline Official Notice of the Alleged Facts

Rule 13.9 provides official notice may be taken of matters that may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 *et seq.* Evidence Code section 451, in relevant part, requires taking judicial notice of:

(f) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.

Evidence Code section 452, in relevant part, permits taking judicial notice of:

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

and,

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

The facts alleged by the Complainants are neither “so universally known” nor “of such common knowledge” that they “cannot reasonably be the subject of dispute” nor are they “capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Therefore, we do not take official notice of the alleged facts.

4.2. The Record Does not Support the Alleged Facts

The Complainants’ specific citation to the record in the proceeding is to the Division of Water and Audits Staff Report (Staff Report), Attachment “A” to D.16-01-047 at page 10. That citation merely refers to an intention by the Odd Fellows to lease the water tank property to the Water Company. Page 11 of the Staff Report states, “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.”

Although the Water Company reported lease payments in support of its claimed revenue requirement (Staff Report, at 16, footnote 50), the Staff Report

states, "Staff was unable to verify the expenditures reported by the Water Company because no backup documentation was provided" (Staff Report at 17) and recommended disallowing the lease payments. (Staff Report at 18 and 35.) The record of this proceeding does not support a finding that the Water Company paid \$5,000, or any amount, for the use of water tanks for Fiscal Years 2013, 2014, or 2015.

The Complainants, in addition to failing to provide support in the record for their factual allegations, have also failed to provide an "appropriate declaration or affidavit" supporting allegations of "new or changed facts." The Petition for Modification does not comply with Rule 16.4(b) and must be denied.

We note that D.16-01-047 at page 25, provides,

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.

Therefore, although the Complainants' Petition for Modification is denied, an order of the Commission is not required for the Water Company to seek recovery of any unauthorized payments which it may have made.

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 were received.

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. Decision 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. Decision 16-01-047 was modified by Decision 16-08-006, issued on August 19, 2016.
3. The facts alleged by the Complainants' petition are neither so universally known nor of such common knowledge that they cannot reasonably be the subject of dispute.
4. The facts alleged by the Complainants' petition are not capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.
5. The facts alleged by the Complainants' petition are not supported by specific citations to the record in the proceeding.
6. The facts alleged by the Complainants' petition are not supported by an appropriate declaration or affidavit.
7. The record of this proceeding does not support a finding the Water Company paid \$5,000, or any amount, for the use of water tanks for Fiscal Years 2013, 2014, or 2015.

Conclusions of Law

1. Rule 16.4(b) of the Commission's Rules of Practice and Procedure requires a petition for modification to provide support for any factual allegations by official notice, citations to the record in the proceeding, or an appropriate declaration or affidavit.
2. The Petition's factual allegations concerning the alleged lease payments may not be officially noticed.

3. The factual allegations within the Complainants' petition are not supported by an appropriate declaration or affidavit.

4. The Complainants' Petition for Modification should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of Complainants Fred Coleman, Steven Wallace, Larry L. Vaughn and Ruth Dargitz, filed August 1, 2016, for Modification of Decision 16-01-047, is denied.

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

This order is effective today.

Dated _____, 2016, at San Francisco, California.