



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Charles Paul Varvayanis,

Complainant,

vs.

Odd Fellows Sierra Recreation
Association,

Defendant.

CASE (C.) 16-10-005
(Filed October 6, 2016)

**VERIFIED ANSWER
OF DEFENDANT ODD FELLOWS SIERRA RECREATION ASSOCIATION**

Timothy T. Trujillo
DAMBACHER, TRUJILLO & ASSOCIATES,
APLC
32 N. Washington St.
Sonora, CA 95370
Telephone: 209-533-1883
FAX: 209-533-3884
Email: tim@dtalawyers.com

Attorneys for
Odd Fellows Sierra Recreation Association
P.O. Box 116
Long Barn, California 95335
Telephone: (209)586-4065
Email: rosieanddel@gmail.com

November 14, 2016

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Charles Paul Varvayanis,

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Odd Fellows Sierra Recreation
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VERIFIED ANSWER

Pursuant to Rule 13.1 and Rule 1.15 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, and the Instructions to Answer dated October 12, 2016 from the Commission directed to Defendant Odd Fellows Sierra Recreation Association, a California corporation (“Odd Fellows”), Odd Fellows, in answer to Complainant Charles Paul Varvayanis’ (“Complainant”) Verified Complaint, admits, denies, and alleges as follows:

I. INTRODUCTORY ALLEGATIONS AND BACKGROUND

By way of background, and in support of its affirmative defenses, Odd Fellows alleges the following facts:

1. The Commission issued its Decision No. 16-01-047 (the “Original Decision”) on January 29, 2016.
2. The Original Decision conditionally granted Sierra Park Water Company, Inc. (“Water Company”) a certificate of public convenience and necessity conditioned on certain transfers by Odd Fellows described in Ordering Paragraph 1. Odd Fellows subsequently made such required transfers to Water Company and Water Company is operating as a public utility.

3. As pertinent to the Complaint, the Original Decision also ordered certain refunds to be made by Odd Fellows. Ordering Paragraph 3.b on page 37 of the Original Decision originally specifically provided as follows:

3.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.

4. On June 29, 2016, Odd Fellows filed a Petition for Modification of the Original Decision with the Commission specifically seeking a modification of Ordering Paragraph 3.b of the Original Decision (the “Petition for Modification of the Original Decision”). Water Company also filed a separate Petition for Modification of the Original Decision with the Commission on June 10, 2016.

5. Odd Fellows’ Petition for Modification of the Original Decision specifically provided as follows on pages 3 and 4:

As set forth above, Ordering Paragraph 3.b specified a specific dollar amount to be refunded by Odd Fellows: \$109,432, allocated \$94,957 for improved lots and \$14,475 for unimproved lots for FY 2012. (Decision, p. 20 and p. 37.) These specific dollar amounts were “backcast” by the Water Division for FY 2012 (See Decision, p. 17; Attachment A to Decision, p. 25, Table 3, dollar amounts stated in 3rd and 4th Rows in Column labeled “Total.”)

*Odd Fellows recognizes that the Water Division was attempting to determine a reasonable rate for water for FY 2012 by “backcasting”. However, Odd Fellows did not bill \$825 for water for improved lots or \$759 for water for unimproved lots in FY 2012 as set forth in Attachment A to Decision, p. 25, Table 3. **Instead, Odd Fellows actually***

billed \$571.60 for water for all (improved and unimproved) lots for FY 2012.¹ *As Odd Fellows did not collect (or bill) \$825 for water for improved lots or \$759 for water for unimproved lots, if Odd Fellows were to refund \$109,432, this would result in a windfall of \$253.40 for improved lots and \$187.40 for unimproved lots for FY2012!*

Furthermore, Odd Fellows did not collect all amounts it billed for FY2012 (at a rate of \$571.60). The Decision recognizes that fact in stating customers who did not pay the actual rates charged “would not be entitled to a refund.” (Decision, p. 24.)

Finally, the Decision also recognizes 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. (Decision, p. 24.)

Unfortunately, the foregoing are not reflected in Ordering Paragraph 3.b. As a result, under current Ordering Paragraph 3.b, despite the clear intent of the Decision, customers will receive windfalls unless Ordering Paragraph 3.b is revised. This would lead to an unfair result.

Odd Fellows therefore requests that Ordering Paragraph 3.b be revised to make it clear refunds need be made subject to the amount actually collected for each customer for water for FY 2012. Odd Fellows kept very detailed records of all payments made by customers for FY 2012 and therefore is able to determine the customers who fully paid the amount billed (\$571.60), made partial payments or made no payments at all.

6. Odd Fellows also attached its proposed calculation of refunds to customers if its Petition for Modification of the Original Decision was granted (See Appendix B to Petition for Modification of Original Decision). Such calculations were for refunds only to customers who paid in full (\$571.60) as set forth in Odd Fellows’ Petition for Modification of the Original Decision.

7. On July 19, 2016, the Commission issued a Proposed Decision Granting Petitions to Modify Decision 16-01-047 and Clarifying Ordering Paragraphs 3.a and 3.b.

8. No comments were filed by Complainant or any other person in response to the Proposed Decision Granting Petitions to Modify Decision 16-01-047 and Clarifying Ordering

¹ See February 14, 2013, Joint Scoping Memo Ruling of Assigned Commissioner and Administrative Law Judge filed in C-1203017, p. 4., subparagraph 3. See also, “Report of the Odd Fellows Sierra Recreation Association” filed on December 7, 2012, in C-1203017, p. 2-3. Footnote in quoted text.

Paragraphs 3.a and 3.b and thus on August 19, 2016 the Commission issued its Decision Granting Petitions to Modify Decision 16-01-047 and Clarifying Ordering Paragraphs 3.a and 3.b (the “Decision to Modify”).

9. The Decision to Modify specifically modified paragraph 3.b of the Original Decision as follows:

*3.b. Odd Fellows must make a refund to all customers whom 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.*

10. As set forth above, Water Company and not Odd Fellows is operating as a public utility pursuant to the Original Decision.

11. As set forth above, Odd Fellows billed \$571.60 for water for FY2012. After the the Decision to Modify was issued, Odd Fellows continued to calculate refunds as shown on the spreadsheet attached as Appendix B to its Petition to Modify Decision. As referenced above, such calculations were for refunds only to customers who paid in full for water for FY2012 (\$571.60). Those who did not pay at all or only partially paid were rebilled as if the rate adopted by the Commission for FY 2012 (\$514) was already in place.

II. ANSWERS TO SPECIFIC ALLEGATIONS

As to the specific allegations contained in Complainant's Verified Complaint, Odd Fellows admits, denies, and alleges as follows:

I. Details of the Complaint

First Cause of Action

(Fraudulent Representation of CPUC Ordered Refunds Due Ratepayers)

1. As to the allegations contained in Exhibit A, Part I, first paragraph, first sentence of the Complaint, Odd Fellows denies these allegations as the Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

2. As to the allegation contained in Exhibit A, Part I, first paragraph, second sentence of the Complaint, Odd Fellows has insufficient information to verify if "Complainant's bills are paid in full", and therefore denies this allegation on information and belief.

3. As to the allegations contained in Exhibit A, Part I, first paragraph, third sentence of the Complaint, Odd Fellows admits that the Decision to Modify provides as follows: "*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 denies any other allegations in Exhibit A, Part I, first paragraph, third sentence of the Complaint.

4. As to the allegations contained in Exhibit A, Part I, first paragraph, fourth sentence of the Complaint, Odd Fellows denies these allegations as Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

5. As to the allegations contained in Exhibit A, Part I, first paragraph, fifth sentence of the Complaint, Odd Fellows denies these allegations as Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

6. As to the allegations contained in Exhibit A, Part I, second paragraph, first sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

7. As to the allegation contained in Exhibit A, Part I, second paragraph, second sentence of the Complaint, Odd Fellows has insufficient information to verify the allegation contained therein and therefore denies this allegation on information and belief.

8. As to the allegations contained in Exhibit A, Part I, second paragraph, third sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

9. As to the allegations contained in Exhibit A, Part I, third paragraph (Note 1) of the Complaint, Odd Fellows denies these allegations as Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

10. As to the allegations contained in Exhibit A, Part I, fourth paragraph (Note 2), first sentence of the Complaint, Odd Fellows denies these allegations as Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

11. As to the allegations contained in Exhibit A, Part I, fourth paragraph (Note 2), second sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

12. As to the allegations contained in Exhibit A, Part I, fourth paragraph (Note 2), third sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

13. As to the allegations contained in Exhibit A, Part I, fifth paragraph, first sentence of the Complaint, Odd Fellows denies these allegations as Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

14. As to the allegations contained in Exhibit A, Part I, fifth paragraph, second sentence of the Complaint, Odd Fellows denies these allegations as Odd Fellows filed a Petition for Modification of the Original Decision with the Commission on June 29, 2016 as set forth above.

15. As to the allegations contained in Exhibit A, Part I, sixth paragraph, first sentence of the Complaint, Odd Fellows denies these allegations as Ordering Paragraph 3.b was modified by the Decision to Modify as set forth above.

Second Cause of Action

(Fraudulent Withholding of CPUC Ordered Refund Payment)

16. As to the allegations contained in Exhibit A, Part I, seventh paragraph, first sentence of the Complaint, Odd Fellows admits that its President is Del Wallis and that on or around July 15, 2016 Complainant informed Mr. Wallis that he had not received two refund

checks from Odd Fellows in the amount of \$2.88 each. Odd Fellows denies the remaining allegations in Exhibit A, Part I, seventh paragraph, first sentence of the Complaint.

17. As to the allegations contained in Exhibit A, Part I, seventh paragraph, second sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

18. As to the allegations contained in Exhibit A, Part I, seventh paragraph, third sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

19. As to the allegations contained in Exhibit A, Part I, seventh paragraph, fourth sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

20. As to the allegations contained in Exhibit A, Part I, seventh paragraph, fifth sentence of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief.

21. As to the allegations contained in Exhibit A, Part I, eighth paragraph of the Complaint, Odd Fellows has insufficient information to verify the allegations contained in such paragraph and therefore denies these allegations on information and belief.

Third Cause of Action

(Fraudulent Demand for Fees Not Authorized by the Tariff Book)

22. As to the allegations contained in Exhibit A, Part I, ninth paragraph of the Complaint, Odd Fellows denies such allegations.

23. As to the allegations contained in Exhibit A, Part I, tenth paragraph, ninth paragraph of the Complaint, Odd Fellows has insufficient information to verify the allegations contained therein and therefore denies these allegations on information and belief. Odd Fellows further alleges that it not subject to the jurisdiction of the Commission because Odd Fellows is not a public utility under Public Utilities Code §§ 2704 and 2706(b).

24. As to the allegations contained in Exhibit A, Part I, eleventh paragraph of the Complaint, Odd Fellows has insufficient information to verify the allegations contained in such paragraph and therefore denies these allegations on information and belief.

II. The Issues to be Considered

25. Answering the allegations in Part II, paragraphs twelve through fourteen of the Complaint, Odd Fellows alleges that these allegations are legal conclusions requiring no answer. Insofar as any factual response is deemed necessary, Odd Fellows denies each and every allegation contained in each and every such paragraph.

III. Relief Desired

26. Answering the allegations in Part III, paragraphs fifteen through seventeen of the Complaint, Odd Fellows alleges that these allegations are prayers for relief requiring no answer. Insofar as any factual response is deemed necessary, Odd Fellows denies each and every allegation contained in each and every such paragraph.

III. AFFIRMATIVE DEFENSES

Odd Fellows alleges the following affirmative defenses in response to the allegations contained in Complainant's Verified Complaint:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

The California Public Utilities Commission lacks jurisdiction to award the relief requested by Complainant.

Odd Fellows is not subject to the jurisdiction of the Commission because Odd Fellows is not a public utility under Public Utilities Code §§ 2704 and 2706(b). Furthermore, pursuant to Rule 4.1(a)(1) of the Commission's Rules of Practice and Procedure, Complainant does not have the right to file this Complaint against Odd Fellows as Odd Fellows is not a "public utility".

THIRD AFFIRMATIVE DEFENSE

Through its conduct with respect to the matters complained of in the Complaint, Complainant has waived any right to the relief he requested in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Complainant is barred from receiving any relief requested in the Complaint by the doctrine of laches due to his unreasonable delay in bringing the claims contained in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

Odd Fellows lacks sufficient information or belief to determine whether it may have additional, as yet unstated, affirmative defenses to the Complaint, and based thereon, reserves the right to seek leave to add further affirmative defenses.

IV. HEARINGS/ISSUES/PROPOSED SCHEDULE

Pursuant to Rule 4.4, Odd Fellows objects to any need for a hearing and to the issues to be considered and proposed schedule as set forth in the Complaint.

Defendant requests that the prehearing conference and any hearing (if required) be set at the convenience of the Commission and in conformity with the Commission's Rules of Practice and Procedure. Odd Fellows does note that it intends to file one or more motions with the Commission prior to the prehearing conference.

V. CONCLUSION

For the above-stated reasons, Defendant requests that the Commission deny the relief sought by Complainant and dismiss the Complaint.

Respectfully submitted,

DAMBACHER, TRUJILLO & ASSOCIATES, a professional
law corporation

By: /s/ Timothy T. Trujillo
TIMOTHY T. TRUJILLO, ESQ.

Attorneys for Defendant Odd Fellows Sierra Recreation
Association

VERIFICATION

I am the President of Defendant Odd Fellows Sierra Recreation Association and am authorized to make this verification on its behalf. The statements in the foregoing Verified Answer are true of my own knowledge, except as to the matters which are therein stated on information and believe, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2016, at Sonora, California.

/s/ Del Wallis

By: Del Wallis