



**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)

**DEFENDANT ODD FELLOWS SIERRA RECREATION ASSOCIATION'S
PREHEARING CONFERENCE STATEMENT**

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December 8, 2016

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PREHEARING CONFERENCE STATEMENT**

Pursuant to the Administrative Law Judge's Ruling Setting Prehearing Conference (PHC) and Directing Parties to Meet and Confer and File PHC Statements dated October 6, 2016 from ALJ John Mikita of the California Public Utilities Commission ("Commission"), Defendant Odd Fellows Sierra Recreation Association, a California corporation ("Odd Fellows"), files this PHC Statement in connection with the Complaint filed by Complainant Charles Paul Varvayanis ("Complainant") in the above-referenced matter:

I. STIPULATED FACTS

The parties have meet and conferred and have stipulated to the following facts (1-15):

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.
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, Odd Fellows billed \$571.60 for water for FY2012. After 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. 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. As set forth in Appendix B to its Petition to Modify Decision, Odd Fellows calculated a refund of \$2.88 for each lot owner who had paid \$571.60 for water.

11. On or about March 25, 2016, Odd Fellows' agent sent Complainant a refund of \$2.88 for each of the two lots owned by Complainant. Complainant received such refunds.

12. On or about June 24, 2016, Odd Fellows' agent sent Complainant a refund of \$2.88 for each of the two lots owned by Complainant.

13. On or about July 15, 2016, Complainant informed Mr. Del Wallis, President of Odd Fellows, that he had not received the June 24, 2016 refund checks from Odd Fellows in the amount of \$2.88 each and asked Odd Fellows to reissue such checks to Complainant.

14. On or about August 17, 2016, Odd Fellows' agent informed Complainant that they could put a stop payment on the June 24, 2016 refunds checks previously sent to Complainant, that the fee for such stop payment would be \$24.00 for each check and that Odd Fellows' agent could reissue such refund checks once the stop payment fees were paid by Complainant.

15. On or about September 28, 2016, Odd Fellows' agent sent Complainant a refund of \$2.88 for each of the two lots owned by Complainant. Complainant received such refunds.

II. FACTUAL ISSUES IN DISPUTE:

Odd Fellows submits the following facts in addition to the above-referenced stipulated facts:

1. The Water Company is currently operating as a public utility.
2. The Complaint does not recognize the Decision to Modify.
3. Odd Fellows has received no complaints from any other person other than Complainant regarding the failure to receive refunds during the three sets of refunds which have been sent to approximately 360 lot owners.
4. Odd Fellows banks at Oak Valley Community Bank. Oak Valley Community Bank charges \$24.00 to put a stop payment fee on any check.

III. NON-STIPULATED ISSUES

The parties meet and conferred regarding stipulating to issues and were unable to stipulate to the issues to be considered.

Odd Fellows submits the following issues to be considered (none of which have been stipulated to by Complainant):

1. Is Odd Fellows a public utility under Public Utilities Code §§ 2704 and 2706(b)?
2. Is Odd Fellows subject to the jurisdiction of the Commission?
3. If Odd Fellows is not a “public utility” and not subject to the jurisdiction of the Commission, does Complainant have the right to file this Complaint?

IV. SETTLEMENT TECHNIQUES

Odd Fellows is open to alternative dispute resolution methods in order to resolve this matter. However, Odd Fellows is not willing to reissue any refund checks to Complainant unless Complainant agrees to pay the stop payment fee which Odd Fellows must pay to its banking institution to put a stop payment on the two checks previously issued to Complainant as referenced in the stipulated facts as Odd Fellows is concerned regarding the precedent that would be set if it were to do so.

V. PROPOSED SCHEDULE

Odd Fellows intends to file a Motion to Dismiss the Complaint following the PHC unless Complainant will agree to dismiss his frivolous Complaint at or prior to the PHC.

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