



FILED
12-22-16
10:19 PM

MP6/EW2/ek4 12/22/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charles Paul Varvayanis,

Complainant,

vs.

Odd Fellows Sierra Recreation Association,

Defendant.

Case 16-10-005
(Filed October 6, 2016)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE**

Summary

This Scoping Memo and Ruling sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope this proceeding pursuant to Public Utilities Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure¹.

1. Background

On October 6, 2016 Charles Paul Varvayanis, Complainant, filed a Complaint against Odd Fellows Sierra Recreation Association (Odd Fellows), Defendant, seeking a refund allegedly ordered by Commission Decision 16-01-047. A prehearing conference (PHC) was set by a ruling dated November 23, 2016 and the parties were directed to file PHC statements.

¹ California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

The parties filed PHC statements on December 9, 2016. On December 16, 2016, the PHC was held to determine parties, discuss the scope, the schedule, and other procedural matters.

2. Scope

Based on the complaint and defendant's answer, PHC statements, and the discussion at the PHC, the following issues are within the scope of this proceeding:

1. Is Odd Fellows subject to the jurisdiction of this Commission as a Public Utility?
2. Is Complaint 16-10-005 subject to the jurisdiction of this Commission?
3. What is the correct refund amount to be refunded by the Odd Fellows to Complainant for fiscal year 2012 pursuant to Decision 16-01-047 as modified by Decision 16-08-006?
4. How much did the complainant pay to the Odd Fellows for water service for fiscal year 2012?
5. How much did the complainant pay to the Odd Fellows for all services for fiscal year 2012?
6. Of the total amount paid by complainant to the Odd Fellows for all services for fiscal year 2012, how much is properly allocated to water services?
7. Is the imposition of service charges for a stop payment order on refund checks issued by Odd Fellows subject to the jurisdiction of this Commission?
8. Is the imposition of service charges for a stop payment order on refund checks issued by Odd Fellows permitted by tariff?
9. During what period of time do checks issued June 24, 2016 remain valid and payable?
10. Are there alternatives for reissuing checks which would not require imposition of fees for stop payment orders?

11. Whether a fine or penalty should be imposed for violation of Commission Rule 1:
 - a. By Complainant
 - b. By Defendant

3. Categorization

The Commission in the Instruction to Answer, issued on October 12, 2016, determined that the category of the proceeding is adjudicatory.

This scoping memo confirms the categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling. (*See* Rule 7.6.)

4. Need for Hearing

The Commission in the Instruction to Answer also preliminarily determined that hearings are required.

An evidentiary hearing is required of the following issues due to disputed issues of material fact:

- What is the correct amount to be refunded by the Odd Fellows to complainant for fiscal year 2012 pursuant to Decision 16-01-047 as modified by Decision 16-08-006?
- How much did the complainant pay to the Odd Fellows for water service for fiscal year 2012?
- How much did the complainant pay to the Odd Fellows for all services for fiscal year 2012?
- Of the total amount paid by complainant to the Odd Fellows for all services for fiscal year 2012, how much is properly allocated to water services?
- Whether a fine or penalty be imposed for violation of Commission Rule 1:
 - a. By Complainant
 - b. By Defendant

5. Ex Parte Communications

In an adjudicatory proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are prohibited as described at Public Utilities Code § 1701.2(c) and Article 8 of the Rules.

6. Assigned Commissioner, Presiding Officer

President Michael Picker is the assigned Commissioner. Eric Wildgrube and John Mikita are the assigned Administrative Law Judges (ALJ).

Pursuant to Public Utilities Code § 1701.3 and Rule 13.2 of the Commission's Rules, Eric Wildgrube is designated as the Presiding Officer.

7. Filing, Service and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f). Discovery.

8. Discovery

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the ALJ. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

9. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

10. Schedule

Following the PHC, the parties participated with the assigned ALJ in a telephone conference on December 20, 2016 to discuss additional scheduling issues. In an effort to expedite resolution of this proceeding the complainant will serve, via service on the service list for this proceeding (including service on the defendant and ALJ), as soon as possible and no later than December 27, 2016, copies of documentary evidence reflecting all amounts paid to the Odd Fellows for services for fiscal year 2012. Within one week of service of those documents, Odd Fellows shall serve, in the same manner, copies of documentary evidence reflecting the receipt of payments from complainant for fiscal year 2012 and the allocation of those payments.

Based on the foregoing and the PHC, the adopted schedule is:

EVENT	DATE
Complainant's Initial Production of Evidence reflecting payments for fiscal year 2012	On or before December 27, 2016
Defendant's Initial Production of Evidence regarding receipt and allocation of complainant's payments for fiscal year 2012	Within one week of complainant's production
Defendant's Motion to Dismiss	January 6, 2017
Complainant's Opposition to the Motion to Dismiss	January 20, 2017
Evidentiary Hearings	February 2, 2017, 10:00 a.m. Commission Courtroom 505 Van Ness Avenue San Francisco, California
Concurrent Post-hearing Briefs	February 16, 2017

The proceeding will be submitted upon the filing of briefs, unless the assigned Commissioner or the ALJ directs further evidence or argument.

The assigned Commissioner or assigned ALJ may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding.

It is the Commission's intent to complete this proceeding within 12 months of the date the action is initiated. This deadline may be extended by order of the Commission. (Public Utilities Code § 1701.2(e).)

11. Settlement and Alternative Dispute Resolution

While the schedule does not include specific dates for settlement conferences, it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpuc.ca.gov/adr>, for more information.

If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at adr_program@cpuc.ca.gov. The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements.

Alternatively, and at their own expense, the parties may agree to use outside ADR services.

IT IS RULED that:

1. The category of this proceeding is adjudicatory. Appeals as to category, if any, must be filed and served within ten days from the date of this scoping memo.
2. Administrative Law Judge Eric Wildgrube is designated as the Presiding Officer.
3. The scope of the issues for this proceeding is as stated in "Section 2. Scope" of this ruling.
4. Hearing is necessary.
5. The schedule for the proceeding is set in "Section 10. Schedule" of this ruling. The assigned Commissioner or Presiding Officer may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.
6. *Ex parte* communications are prohibited. (See Public Utilities Code § 1701.2(c); Article 8 of the Commission's Rules of Practice and Procedure.)

Dated December 22, 2016, at San Francisco, California.

/s/ MICHAEL PICKER
Michael Picker
Assigned Commissioner

/s/ ERIC WILDGRUBE
Eric Wildgrube
Administrative Law Judge