



FILED

1-20-17
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

4 Charles P. Varvayanis,)	Case 16-10-005
5 Complainant,)	(Filed October 6, 2016)
6 vs.)	
7 Odd Fellows Sierra Recreation Association,)	
8 Defendant.)	

VERIFIED COMPLAINANT'S OPPOSITION TO THE MOTION TO DISMISS

12 Charles P. Varvayanis
 13 P. O. Box 395
 14 Long Barn, CA 95335
 Telephone: (209) 586-3782
 E-mail: charles@varvayanis.com

January 20, 2017

1 Charles P. Varvayanis
2 P. O. Box 395
3 Long Barn, CA 95335
4 Telephone: (209) 586-3782
5 E-mail: charles@varvayanis.com

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

7 Charles P. Varvayanis,) Case 16-10-005
8 Complainant,) (Filed October 6, 2016)
9 vs.) Related Modification Decision 16-08-006
10 Odd Fellows Sierra Recreation Association,) (Issued August 19, 2016)
11 Defendant.) Related Original Decision 16-01-047
12) (Issued January 29, 2016)
13) Related Case 12-03-017
14) (Filed March 14, 2012)

15 **VERIFIED COMPLAINANT'S**
16 **OPPOSITION TO THE MOTION TO**
17 **DISMISS**

18 **OPPOSITION TO THE MOTION TO DISMISS**

19 Pursuant to the Scoping Memo and Ruling of Assigned Commissioner Michael Picker
20 and Administrative Law Judge Eric Wildgrube dated December 22, 2016 Complaint (the
21 “Complaint”) of Complainant Charles Paul Varvayanis (hereafter “Complainant”), files his
22 Opposition to the Motion to Dismiss Defendant’s Odd Fellows Sierra Recreation Association
23 (hereafter “Odd Fellows”), Motion to Dismiss the Verified Complaint as follows:

24 **I. BACKGROUND**

25 The Complainant has intimate knowledge of the water system, Odd Fellows’ operations
and costs having held a seat on the Odd Fellows Board of Directors for six years and having
served as Odd Fellows’ President and Director of the Water System.

1 A complaint was filed with the California Public Utilities Commission (hereafter
2 “CPUC” or “Commission”) on March 14, 2012 (Exhibit CV-19), alleging “The water system is
3 required to be regulated by the CPUC under California Public Utility Code 2701 and 2702...”
4 resulting in CPUC Case 12-03-017 and CPUC Decision 16-01-047 dated January 28, 2016
5 (hereafter “Original Decision”) (Exhibit CV-20) against Odd Fellows.

6 The Complainant legally merged three lots into one in 2007 and purchased another lot in
7 2009. Odd Fellows refused to recognize the mergers and invoiced the Complainant for four lots
8 until the Complainant sued Odd Fellows in 2012.

9 On June 6, 2012 Odd Fellows billed the Complainant \$1,024.00 per lot (Record items
10 CV-1, CV-2, CV-3 and CV-4).

11 On November 30, 2012 during the initial prehearing conference call with ALJ Minkin in
12 C12.03.017, Odd Fellows agreed to “*No later than December 7, 2012, Defendant will file and*
13 *serve an accounting of its actual cost of water for the 2010/2011, 2011/2012, and 2012/2013*
14 *budget years.*” The foregoing was memorialized by ALJ Minkin in her "Administrative Law
15 Judge's Ruling Memorializing Procedures Agreed to By Parties" filed on December 5, 2012 in
16 C12.03.017

17 On December 7, 2012 Odd Fellows filed its report of accounting of its purported actual
18 cost of water for the 2010/2011, 2011/2012, and 2012/2013 budget years (Record item ALJ-1).

19 The Odd Fellows Motion to Dismiss the Verified Complaint claims, “*On December 11,*
20 *2012, Odd Fellows credited Complainant \$571.60 on each of his original June 6, 2012 invoices*
21 *(thereby reducing the balance due for such original invoices to \$452.40 (\$1,024-\$571.60)). The*
22 *next day, December 12, 2012, Odd Fellows invoiced Complainant \$571.60 for water for each of*
23 *his four lots.*” (Record items OF-1 through OF-8) The Complainant was unaware of
24 aforementioned credits and invoices for \$571.60 until the January 5, 2017 e-mail to Ravi Kumra
25 titled “RE: case 16-10-005: Payments made by complainants”.

1 On January 22, 2013 the Complainant heard from several persons the amount owed per
2 lot had been reduce from \$1,024.00. The Complainant telephoned Odd Fellows' Agent/Account
3 Carlson, Hass and Associates (hereafter "Agent") and asked, "How much do I owe?" The agent
4 responded \$571.60.

5 On March 14, 2013 and March 19, 2013 the Complainant made the \$571.60 payments for
6 his two lots.

7 Two weeks after making the \$571.60 payments, the Complainant was sued by Odd
8 Fellows for not paying his bill in full and again telephoned the agent and asked, "How much do I
9 owe?" The agent responded there was an outstanding amount due of \$452.40.

10 On April 4, 2013 and April 5, 2013, the Complainant made the \$452.40 payments for his
11 two lots.

12 A third additional payment was made to cover a prorated legal fee verbally requested by
13 Odd Fellows but never invoiced or previously documented by Odd Fellows, however it was paid
14 by the Complainant in good faith. Only the payment receipt documents the amount of the
15 transaction.

16 On November 19, 2015 Odd Fellows filed "COMMENTS OF APPLICANT ODD
17 FELLOWS SIERRA RECREATION ASSOCIATION ON REVISED PROPOSED DECISION
18 RESOLVING A COMPLAINT AND AUTHORIZING A CERTIFICATE OF PUBLIC
19 CONVENIENCE AND NECESSITY AS MODIFIED".

20 The Original Decision against Odd Fellows was issued on January 29, 2016.

21 It is worthwhile noting that the Original Decision was the result of a full commission
22 decision of all five commissioners.

23 The Commission rejected the arguments presented in Odd Fellows November 19, 2015
24 filing "COMMENTS OF APPLICANT ODD FELLOWS SIERRA RECREATION
25 ASSOCIATION ON REVISED PROPOSED DECISION RESOLVING A COMPLAINT AND
- -

1 AUTHORIZING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AS
2 MODIFIED” including the \$571.60 figure based on guidance from the CPUC Division of Water
3 and Audits (hereafter “DWA” or “Water Division”) as documented in the Original Decision
4 (Exhibit CV-20), 8. Comments on Proposed Decision starting at the first paragraph on Page 31:

5 *“In its comments to the revised proposed decision Odd Fellows also now*
6 *questions the Water Division’s computation of water rates, although it did not*
7 *question them in its comments to the initial proposed decision.²³ The Water*
8 *Division requested cost information from Odd Fellows and the Water Company*
9 *prior to writing its report, but had issues with the accuracy and usefulness of the*
10 *unsegregated information it received. (See Final Report at 14-16.) The Water*
11 *Division therefore used the best available information such as Budget Reports*
12 *that came from the Water Company’s Board of Director Minutes. Once it*
13 *determined Fiscal Year 2013 financials, the Water Division then backcast or*
14 *deflated this amount using approved inflation factors to determine the Fiscal*
15 *Year 2011 and 2012 revenue requirement. We therefore make no changes to the*
16 *Final Report in response to Odd Fellow’s comments.”*

17 The DWA’s report attached to the Original Decision as ATTACHMENT A, starting at
18 page 15, first paragraph states:

19 *“The Recreation Association provided its financial report updated to May 31,*
20 *2013.⁴³ In the financial report, the auditors state that*

21 *... the financial statements do not express an opinion or provide any*
22 *assurances about whether the financial statements are in accordance*
23 *with accounting principles generally accepted in the United States of*
24 *America . . . The policy is to prepare the financial statements on the*
25 *modified basis of each cash receipts and cash disbursements.*
26 *Accordingly, the accompanying financial statements are not intended to*
27 *present the financial position or results of operations in conformity with*
28 *accounting principles generally accepted in the United States of America.*
29 *. . . We are not independent with respect to Odd Fellows Sierra*
30 *Recreation Association, Inc^{44 45}*

31 _____
32 ⁴³ Odd Fellows Sierra Recreation Association Inc., Compiled Financial Statements, May 31,
33 2013.

34 ⁴⁴ Id, at page 1

35 ⁴⁵ In a clarification, OFSRA’s CPA firm noted that they perform accounting services on a regular
36 monthly basis for OFSRA and its professional standards do not require it to be independent with
37 respect to clients when performing a compilation of financial statements. Letter from Eric A.
38 Carlson, CPA to Ravi Kumra, dated 10/23/2014.

1 *The CPA's clarified that they performed a compilation based on data provided by*
2 *OFSRA without conducting any testing of the underlying data. They did not audit*
3 *the financial records. The financial report did not segregate all water related*
4 *income and expenses. Rather, it presented all information for the Recreation*
5 *Association for all activities that were handled by the Recreation Association. The*
6 *Recreation Association also stated that it did not segregate records for the water*
7 *service offered. Due to this, Staff could not rely on the accuracy of the historical"*

8 The DWA's report attached to the Original Decision as ATTACHMENT A, starting at
9 page 26, third paragraph states:

10 *"Applicants based their rate design on estimates that exceeded actual costs by a*
11 *significant amount. Some items included: higher than historical estimates for*
12 *purchased power; charging full-time employee wages, benefits and taxes for an*
13 *employee who devoted only 61% of his time for Water Company related matters;*
14 *charging inflated amounts for materials and water testing, charging unjustified*
15 *legal and consulting expenses; charging higher than reasonable general*
16 *expenses; charging for lease payments for easements to water related assets; and*
17 *setting up a replacement reserve schedule without proper justification."*

18 On June 29, 2016, Odd Fellows filed a CPUC Petition for Modification of the Original
19 Decision (hereafter "Petition for Modification") specifically seeking a modification of Ordering
20 Paragraph 3.b on page 37.

21 The resulting CPUC Decision 16-08-006 dated August 19, 2016 (hereafter "Modified
22 Decision") granted the Petition for Modification along with a few changes made by the CPUC.

23 The Modified Decision does not incorporate reference, endorse, recognize, etc. the
24 \$571.60 figure presented by Odd Fellows or Appendix B of the Petition for Modification,
25 making it irrelevant and moot. Instead the Modified Decision paragraph 3.b. on Page 10, clearly
26 states:

27 *"Odd Fellows must make a refund to all customers who made payments in excess*
28 *of reasonable rates only..."*

1 The CPUC defined amount Odd Fellows is to refund is incorporated in two paragraphs in
2 its Modified Decision:

3 1) Modified Decision, 1. Background, starting at the last paragraph on page 2:

4 *“Notably, the Decision at page 34, Conclusions of Law 34, Refunds should go to*
5 *customers who have overpaid their bills in the first instance, and not to customers*
6 *who have paid less than what the Water Division found to be a reasonable rate.*
7 *The recognition that customers who did not pay either Odd Fellows or the Water*
8 *Company amounts in excess of reasonable rates should not be entitled to receive*
9 *a refund was not unambiguously reflected by the OPs.” Underlined for emphasis.*

10 Note to the reader: “Decision at page 34, Conclusions of Law 34” should likely
11 read “Decision at page 34, Conclusions of Law 12”.

12 2) Modified Decision, first paragraph under 4. Discussion on page 6:

13 *“The Commission agrees OPs 3.a and 3.b should reflect the intent stated by the*
14 *Decision and that it is reasonable that refunds paid by Water Company and Odd*
15 *Fellows should go to customers who have overpaid their bills in the first instance,*
16 *and not to customers who have paid less than what the Water Division found to be*
17 *a reasonable rate.” Underlined for emphasis.*

18 The Original Decision at page 34, Conclusions of Law 12 states:

19 *“Refunds should go to customers who have overpaid their bills in the first*
20 *instance, and not to customers who have paid less than what the Water Division*
21 *found to be a reasonable rate.” Underlined for emphasis.*

22 Since the Complainant has paid his bill in full, the Modified Decision changes nothing in
23 respect to the Complainant and as a result has no effect on the Complainant.

24 The Original Decision and the Modified Decision both rely on findings by the Water
25 Division that rate payers paid \$825 for water for improved lots and \$759 for water for
unimproved lots as published and attached to the Original Decision as ATTACHMENT A at
page 25, Table 3:

Table 3: Computation of extra amounts collected

Assessment Period	Domecheli Report		Utility Assessment Amount		Assessment / Lot	Over/(Under) Collection		Total Over/Under Collection			Refund by
	w/o CIP	w/CIP	Improved	Unimproved	per staff	Per	Per	Improved	Unimproved	Total	
			Lot	Lot	Recommendation w/o special study	Improved Lot	Unimproved Lot	Lot (305 lots)	Lot (59 lots)		
	a	b	c	d	e	f=c-e	g=e-d	h=f*305 ¹	i=g*59 ¹	j=h+i ¹	
3/1/2012-5/31/2012			\$ 793	\$ 793	\$ 495	\$ 298	\$ 298	\$ 22,702	\$ 4,391	\$ 27,093	-
6/1/2012-5/31/2013	\$ 522	\$ 802	\$ 825	\$ 759	\$ 514	\$ 311	\$ 245	\$ 94,957	\$ 14,475	\$ 109,432	Recreation Assoc.
6/1/2013-5/31/2014	\$ 537	\$ 826	\$ 968	\$ 890	\$ 545	\$ 423	\$ 345	\$ 128,884	\$ 20,330	\$ 149,214	Water Company
6/1/2014-5/31/2015	\$ 553	\$ 851	\$ 997	\$ 997	\$ 524	\$ 473	\$ 473	\$ 144,297	\$ 27,911	\$ 172,208	Water Company
								Total Refund	\$ 368,138	\$ 62,715	\$ 430,854
								Total Overcollect	\$ 390,840	\$ 67,107	\$ 457,947

Notes

1. Over/Under Collections for FY 2011 is for 3 months (March through May, 2012).

The refunds were calculated by the DWA as \$311 for improved lots and \$245 for unimproved lots, also documented in Table 3. These refund rates divided by the 20 quarterly refund payments as ordered in the Original Decision and Modified Decisions yield individual payments of \$15.55 for improved lots and \$12.25 for unimproved lots.

Note: The discrepancy between the Complainant’s calculated \$15.57 refund amount and DWA’s \$15.55 refund amount exists because the Complainant used Dollars and Cents throughout all of its calculations while the DWA rounded to whole Dollar amounts in the earlier portions of its calculations.

Complainant notes: He would be satisfied with either the \$15.55 or \$15.57 amount for the quarterly payments and uses them interchangeably.

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 has not competed such required transfers to Water Company.

On December 13, 2016, the Water Company submitted its Tier 2 Advice Letter.

On January 12, 2016, the Water Division issued ADVICE LETTER (AL) SUSPENSION NOTICE (Exhibit CV-21) effective 01/14/2017 to 05/14/2017 for the following reasons: AL Protested, Additional information is required and Additional time is required.

1
2 Complainant's position:

- 3
- 4 • As set forth in the Original Decision on page 37, paragraph 3.b; ordering twenty
 - 5 quarterly refund payments of \$15.57 over five years totaling ~ \$311.33 per lot.
 - 6 • Odd Fellows refuses to pay the \$15.57 quarterly refund payment amounts ordered
 - 7 in both the Original Decision and Modified Decision, but instead is paying \$2.88
 - 8 refund payments.

9 It is worthwhile noting that the Original Decision was the result of a full commission
10 decision of all five commissioners.

11
12
13 **II. RESPONSE TO ODD FELLOWS ARGUMENTS**

14 **A. First Cause of Action**

15 Complainant claims that Odd Fellows owes him quarterly refunds of \$15.57 for March,
16 June and September 2016 for each of his two lots based on the Original Decision and not the
17 quarterly refund of \$2.88 that Odd Fellows has been paying. Complainant has received a total of
18 two (2) quarterly refund checks per lot for March and September 2016. Complainant has not
19 received the quarterly refund check per lot for June 2016. Complainant is therefore seeking
20 recovery of \$81.90 $((\$15.57 \times 6) - (\$2.88 \times 4))$ in the first cause of action.

21 Complainant acknowledges the Modified Decision, however Odd Fellows fails to
22 recognize the Modified Decision does not does not incorporate, reference, endorse, recognize,
23 etc. the \$571.60 figure presented by Odd Fellows or Appendix B of the Petition for Modification,
24 making the \$571.60 figure irrelevant and moot. Furthermore, since the Complainant paid his bill
25
--

1 in full, the Modified Decision changes nothing in respect to the Complainant and as a result has
2 no effect on the Complainant.

3 Complainant is not trying to modify the Original Decision as modified by the Modified
4 Decision.

5 Odd Fellows is subject to the jurisdiction of the Commission because Odd Fellows is a
6 public utility under Public Utilities Code §§ 2701 and 2702 per the CPUC complaint filed with
7 the Commission on March 14, 2012 (Exhibit CV-19) as documented in the Original Decision
8 (Exhibit CV-20), Summary, Paragraph 1 on Page 2:

9 *“This decision finds that Complainants are correct that Odd Fellows Sierra
10 Recreation Association (Odd Fellows) has been acting as a public utility and is
11 subject to this Commission’s jurisdiction and regulation...”*

12 Odd Fellows does not meet the criterial of Public Utilities Code §§ 2704 and 2706(b) and
13 no official document or ruling indicates otherwise.

14 Tier 2 Advice Letter has been suspended by the Water Division (Exhibit CV-21).

15 Tuolumne County Superior Court Case No. SC19463 has been postponed pending the
16 conclusion of California Public Utilities Commission (“CPUC”) Case No. C.16-10-005.
17 SC19463 was postponed to April 28, 2017 and if needed will be further postponed to a later date
18 at which time the complainant prays for a judgment to obtain an abstract of judgement to be used
19 to collect any outstanding refund amounts not paid by Odd Fellows pursuant CPUC Decision 16-
20 01-047 and the outcome of CPUC Case No. C.16-10-005. The postponement was mutually
21 agreed to by the parties in mediation and approved by the court.

22 Because of the foregoing, the First Cause of Action should not be dismissed.

23
24 **B. Second Cause of Action**

1 Complainant claims that Odd Fellows should refund the Complainant the two June 2016
2 refund payments not received by the Complainant without the requirement the Complainant must
3 pay stop payment fees for each of the payments not received by the Complainant before the
4 payments are reissued.

5 Odd Fellows is subject to the jurisdiction of the Commission because Odd Fellows is a
6 public utility under Public Utilities Code §§ 2701 and 2702 per the CPUC complaint filed with
7 the Commission on March 14, 2012 (Exhibit CV-19) as documented in the Original Decision
8 (Exhibit CV-20), Summary, Paragraph 1 on Page 2:

9 *“This decision finds that Complainants are correct that Odd Fellows Sierra*
10 *Recreation Association (Odd Fellows) has been acting as a public utility and is*
11 *subject to this Commission’s jurisdiction and regulation...”*

12 Odd Fellows does not meet the criterial of Public Utilities Code §§ 2704 and 2706(b) and
13 no official document or ruling indicates otherwise.

14 Tier 2 Advice Letter has been suspended by the Water Division (Exhibit CV-21).

15 Tuolumne County Superior Court Case No. SC19463 has been postponed pending the
16 conclusion of California Public Utilities Commission (“CPUC”) Case No. C.16-10-005.
17 SC19463 was postponed to April 28, 2017 and if needed will be further postponed to a later date
18 at which time the complainant prays for a judgment to obtain an abstract of judgement to be used
19 to collect any outstanding refund amounts not paid by Odd Fellows pursuant CPUC Decision 16-
20 01-047 and the outcome of CPUC Case No. C.16-10-005. The postponement was mutually
21 agreed to by the parties in mediation and approved by the court.

22 Because of the foregoing, the Second Cause of Action should not be dismissed.

23
24 **C. Third Cause of Action**

1 The governing WTD 440 Tariff Book does not authorize stop payments fees for
2 payments not received by its ratepayers.

3 Odd Fellows is subject to the jurisdiction of the Commission because Odd Fellows is a
4 public utility under Public Utilities Code §§ 2701 and 2702 per the CPUC complaint filed with
5 the Commission on March 14, 2012 (Exhibit CV-19) as documented in the Original Decision
6 (Exhibit CV-20), Summary, Paragraph 1 on Page 2:

7 *“This decision finds that Complainants are correct that Odd Fellows Sierra
8 Recreation Association (Odd Fellows) has been acting as a public utility and is
9 subject to this Commission’s jurisdiction and regulation...”*

10 Odd Fellows does not meet the criterial of Public Utilities Code §§ 2704 and 2706(b) and
11 no official document or ruling indicates otherwise.

12 Tier 2 Advice Letter has been suspended by the Water Division (Exhibit CV-21).

13 Tuolumne County Superior Court Case No. SC19463 has been postponed pending the
14 conclusion of California Public Utilities Commission (“CPUC”) Case No. C.16-10-005.
15 SC19463 was postponed to April 28, 2017 and if needed will be further postponed to a later date
16 at which time the complainant prays for a judgment to obtain an abstract of judgement to be used
17 to collect any outstanding refund amounts not paid by Odd Fellows pursuant CPUC Decision 16-
18 01-047 and the outcome of CPUC Case No. C.16-10-005. The postponement was mutually
19 agreed to by the parties in mediation and approved by the court.

20 Because of the foregoing, the Third Cause of Action should not be dismissed.

21
22 **III. CONCLUSION**

23 Based on the foregoing, Complainant CHARLES P. VARVAYANIS respectfully
24 requests complaint not be dismissed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
~ ~

DATED: January 20, 2017

Respectfully submitted,

By: *Charles P. Varvayanis*
Charles P. Varvayanis

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
~ ~

VERIFICATION

I am the Complainant Charles P. Varvayanis and I am authorized to make this verification on my behalf. The statements in the foregoing 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 January 20, 2017, at Long Barn, California.

By: *Charles P. Varvayanis*
Charles P. Varvayanis