

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



HEED

1-30-17
04:59 PM

January 26, 2017

William Ordwein, Chief Operating Officer
Sierra Park Water Company
P. O. Box 424
Mi Wuk Village, CA 95346

Del Wallis, President
Odd Fellows Sierra Recreation Association
P. O. Box 6
Long Barn, CA 95335

Re: Advice Letter 2: Transfer of Water Service related assets by Odd Fellows Sierra Recreation Association (Odd Fellows) to Sierra Park Water Company (Water Company)

This is to inform you that the Water Division is rejecting, without prejudice, Odd Fellows and Water Company's (collectively referred to as Utility) Advice Letter (AL) Number 2, filed on December 13, 2016. If the Utility wishes to request that Odd Fellows' name be removed as a regulated utility, it must file a new Tier 2 Advice Letter after completing the transfer assets including land and easements for unfettered access to those assets as directed by Decision (D.) 16-01-047, Order No. 1.

Background

Decision 16-01-047 Order No.1 states:

"1. A certificate of Public Convenience and Necessity is conditionally granted to Sierra Park Water Company, Inc. (Water Company), provided that Odd Fellows Sierra Recreation Association (Odd Fellows) transfers to Water Company, at no expense to Water Company customers, all of the assets it used when it provided water service as an uncertificated utility in and near Long Barn, California. Odd Fellows and Water Company must file a Tier 2 Advice Letter to demonstrate the completion of the asset transfer. The assets to be transferred are as described in the Division of Water and Audit's April 5, 2015 staff Report (Attachment A to this decision) and incorporated herein."

In AL Number 2, the Utility requests that the Odd Fellows should be removed from the conditional Certificate of Public Convenience and Necessity (CPCN) that was granted in D. 16-0-047, Order Number 1 because all assets that were used for provisioning water service were transferred by Odd Fellows at no cost to the Water Company customers. A list of assets transferred, and copies of the Grant Deed that was recorded with the County Recorder of Tuolumne County on April 8, 2016 were also furnished.

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Two protests to AL Number 2 were timely filed with the Water Division (WD)^{1 2}. The Utility timely filed responses to the protests.

Protestors recommend that AL Number 2 should be rejected because: Odd Fellows did not properly transfer all required assets and legal access to those assets as ordered by the Commission; the list of assets was incomplete; exact location of distribution pipes being transferred were not provided; a Back Hoe and a Pickup truck should not have been accepted by the Water Company; and the Commission should hold hearings prior to approving AL Number 2.

(1) Assets transferred to Water Company

Protestants believe that Odd Fellows did not properly transfer all assets which are necessary for the provisioning of water service to the Water Company as required by D. 16-01-047, Order No. 1. Specifically; the Shop Block building, the Corporate Yard metal building, the Overseas Container and a fuel tank were transferred but without land or legal access to them; the list of transferred assets did not include easements for the road leading to Tank Parcel # 1 and # 2; all water mains in the distribution system were not identified individually, some water mains were omitted from the list of assets transferred as were some mains which go through private property; and, a loan by Odd Fellows using the property owned by Odd Fellows as collateral could expose the Water Company to unnecessary risks of access in the future in case of default.

In its response, the Utility states that it is not necessary to transfer land in order to have unfettered access to the assets; it will be expensive to transfer the land due to the way the parcels were originally sold to Odd Fellows; it has reached an agreement with the owners for access to water distribution mains that cross private property and the tank farms; and, since the bill of sale from Odd Fellows to the Water Company is for all water lines regardless of where they are located, there is no need to identify the location of each pipe individually. Since the location of all mains in the system is not currently available, the Utility will eventually identify all mains in its distribution system and will prepare and register permanent easement to access the assets with Tuolumne County at no cost to the Water Company customers.. Regarding access to mains located on private property, if the Water Company fails to get a property owner's permission to access lines for maintenance or repair, it will go through the condemnation process to gain access.

WD notes that D. 16-01-047, Order 1 requires Odd Fellows to transfer, at no cost to the Water Company customers, all assets required for provisioning of water services. This includes land, legal rights for unfettered access to assets that were available to Odd Fellows prior to formation of the Water Company. Further guidance in this regard is also provided in the subject Decision.^{3 4}. Odd Fellows has not transferred title to all land on which the assets in question are located.

¹ Protest filed by Fred Coleman and Steve Wallace on December 29, 2016.

² Late filed Protest by Charles Varvayanis on January 4, 2017.

³ Decision 16-01-047, Section 4.1 in relevant part, states:

“.... As determined in this decision, we can only grant a CPCN to Water Company if Odd Fellows modifies its transactions and transfers to Water Company, at no expense to Water Company's customers, all of the relevant water service related assets including land and legal rights, which were instead contemplated to be transferred to Service Company. Absent granting a CPCN to the Water Company, we would otherwise

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Neither has it identified all mains in its distribution system or transferred rights for permanent unfettered access to all assets to the Water Company. Therefore, the Utility is not in compliance with D. 16-01-047, Order Number .1.

(2) *Future access to encumbered assets*

Protestants state that Odd Fellows has taken a loan against the land that it owns. In case of a default and an unfriendly owner, the Water Company could be forced to go through a costly condemnation process for gaining access to assets used to provision water services. .

In its response, the Utility states that Protestants concerns are unfounded because Odd Fellows is in the process of preparing and registering permanent easement to access the assets transferred to the Water Company with Tuolumne County. Those easements will permit the Water Company to access the properties in perpetuity and at no cost irrespective of the new owners.

WD notes that Odd Fellows has yet to complete the transaction for grant of permanent easement in perpetuity to access all assets located on the encumbered property to the Water Company. Therefore, it is not in compliance with D. 16-01-047, Order Number 1.

(3) *Transfer of land around Wells Number 1 and 2*

Protestants state that the land around Wells Number 1 and 2 that is being transferred is too small to accommodate equipment needed for necessary repairs and maintenance. They recommend that the land being transferred and easements to that land should be enlarged accordingly. .

find Odd Fellows has been and continues to be a water utility subject to this Commission's jurisdiction and we would order the transaction between the Odd Fellows with Water Company and Service Company to be voided. The transfer of all water service related assets to Water Company is necessary to make it whole and functionally viable to succeed Odd Fellows as the service provider. Placing valuable land and other related rights in the hands of the Service Company decreases the reliability of water service by Water Company, makes Water Company a weaker entity and an unreasonable successor service provider." [Emphasis added]

⁴ Decision 16-01-047, pg. 13, last paragraph in relevant part states:

"..... The Water Company would always be dependent on Service Company for access to Wells sites and tanks unless it were to purchase or condemn land as needed later. There was no interference like this when Odd Fellows was operating as an uncertificated utility; the assets necessary for water service were available and dedicated to water service. Therefore, as a condition of the CPCN, Odd Fellows or the Service Company if it owns any of these assets, must transfer to the Water Company at no expense to the water Company customers all water utility-related assets including land, water rights, and any equipment used for providing water service that Odd Fellows owns or which it assigned to Service Company at the time of forming the Service Company and Water Company. These assets were used by Odd Fellows to provide service and unless Odd Fellows wish to remain in the business, and now be regulated, all assets for water service need to be directly held by the Water Company separately from both Odd Fellows and Service Company. Odd Fellows is currently an uncertificated utility subject to Commission jurisdiction and until it complies with this directive, all transactions to Water Company and Service Company are null and void pursuant to Section 851."

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The Utility believes that the land transferred at the well sites and easements are adequate to perform necessary repairs and maintenance. There is no need to change the amount of land transferred for maintenance at the two well sites.

WD believes that the land around the two Well sites and access to the same are adequate.

(4) *Transfer of Water Rights to the Water Company*

Protestants are unsure if water rights have been transferred by Odd Fellows to the Water Company. They recommend that all water rights should be transferred to the Water Company by Odd Fellows.

The Utility states that the water rights for the two wells were transferred to the Water Company by Odd Fellows.⁵

WD believes that all water rights have been properly transferred to the Water Company.

(5) *Transfer of Back Hoe and a Pickup truck to water Company*

Protestants claim that the Water Company should not accept a Back Hoe and a pickup truck from Odd Fellows because the equipment is predominantly used by the Service Company possibly without adequate compensation.

In their response, the Utility states that it was justified in accepting the equipment because the equipment is used for its operations and the Water Company receives compensation when equipment is used by the Service Company.

WD notes that accepting the Back Hoe and the pickup truck from Odd Fellows are business decisions by the Water Company. The Water Company is justified in accepting the equipment.

(6) *Evidentiary hearings prior to accepting AL Number 2*

One Protestant believes that AL Number 2 should be rejected and evidentiary hearings should be held to resolve issues related to review/effective dates and inconsistencies regarding asset transfers contained in the AL.

WD notes that filing a protest to an AL process is not the appropriate vehicle for requesting evidentiary hearings. In any case, all issues raised in the Protest have been addressed herein. There is no need to hold Evidentiary Hearings for AL Number 2.

In summary, WD finds that: Odd Fellows did not transfer all assets and unfettered access to those assets to the Water Company as ordered by Decision 16-01-047, Ordering Paragraph No. 1; easement agreements for access to assets used for provisioning water services that are located on land that has been encumbered by the Odd Fellows have not been finalized. Absent such an agreement, future access to those properties could be jeopardized in case of default by Odd Fellows; the land around Wells # 1 and # 2 and easements are adequate; water rights have been

⁵ E-mail from Bill Ordwein, COO, Sierra Park Water Company to Ravi Kumra, Senior Engineer, Water Division, on January 18, 2017.

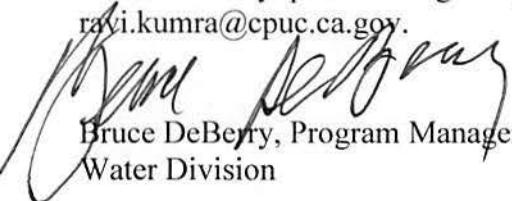
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appropriately transferred to the Water Company; all mains in the distribution system have not been identified; easements to all mains going through private property have not been transferred to the Water Company; the transfer of the Back Hoe and the pickup truck is appropriate; and, a protest to an AL is not the appropriate vehicle for requesting evidentiary hearings.

Recommendations

WD recommends that AL Number 2 should be rejected without prejudice because Odd Fellows has not complied with the requirements of transferring all assets, including legal access, that are used for provisioning of water services at no cost to Water Company customers in accordance with D. 16-0-047, Order Number 1. After the Utility has complied with those requirements, it can file a Tier 2 AL to request the removal of Odd Fellows' name as a regulated utility in the Conditional CPCN issued to the Water Company.

If there are any questions regarding this letter, please contact Ravi Kumra at (415) 703-2571 or ravi.kumra@cpuc.ca.gov.



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