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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.)	

APPEAL TO MARCH 22, 2017 DECISION

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APRIL 21, 2017

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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) **APPEAL TO MARCH 22, 2017**
16) **DECISION**

17 **APPEAL TO MARCH 22, 2017 DECISION**

18 In Response to Karen V. Clopton, Chief Administrative Law Judge cover letter filed
19 March 22, 2017 and the attached “Decision PRESIDING OFFICER’S DECISION (Mailed
20 3/22/2017)” of Administrative Law Judge Eric Wildgrube, Complainant Charles Paul
21 Varvayanis (hereafter “Complainant”), files his Appeal as follows:

22 **I. 1. BACKGROUND - ERROR # 1**

23 March 22, 2017 Decision, Beginning on page 2, in paragraph 3 “...Following a
24 prehearing conference in C.12-03-017, Odd Fellows determined the expense for water service
25 for fiscal year 2012 would be \$571.60per lot1.”

1 ALJ-1, Report of the Odd Fellows Sierra Recreation Association, filed on December 7, 2012 in C-12.03.017.

1 It is inappropriate and in error to use \$571.60 per lot for water service for fiscal year
2 2012:

3 Complainant purposely objected to admission into evidence the following item identified
4 in the body of the January 12, 2017 ruling for the proposed purpose to establish Odd Fellows
5 stated a budgeted expense of \$571.60 per lot for water service for fiscal year 2012:

6 ALJ-1. *Report of the Odd Fellows Sierra Recreation Association*, filed on
7 December 7, 2012 in C-12.03.017.

8 Since it may have be inappropriate to object the ALJ-1's admission into evidence, it was
9 however appropriate to request the use of ALJ-1 be excluded from the proposed purpose to
10 establish Odd Fellows stated a budgeted expense of \$571.60 per lot for water service for fiscal
11 year 2012 for the following reasons:

12 The contents of ALJ-1 were never verified, confirmed or endorsed by the Commission in
13 any way. The Division of Water and Audits (hereafter "DWA" or "Water Division") requested
14 updates to estimated information. Finally, the DWA stated "*...Staff could not rely on the accuracy of*
15 *the historical financial information presented by the Recreation Association*" and "*...Staff reviewed*
16 *the invoices that justified the expenses reported by the Recreation Association in A. 13-09-023.*
17 *However, staff was unable to find sufficient explanations to justify many of the expenditures*
18 *claimed.*" as follows:

19 On September 30, 2014 the California Public Utilities Commission, Division of Water
20 and Audits issued its "STAFF REPORT ON APPLICATION OF Odd Fellows Sierra Recreation
21 Association and Sierra Park Water Company, Inc. For Certificate of Public Convenience and
22 Necessity A. 13-09-023 AND Complaint by Fred Coleman, Steven Wallace, Larry L. Vaughn
23 and Ruth Dargitz Vs Odd Fellows Sierra Recreation Association C 13-03-017" (Exhibit CV-23).
24 The DWA questioned the updates to estimated information in CV-23, Page 7, starting at paragraph
25 1:

1 *“The Recreation Association provided its financial report updated to May 31, 2013.²*
2 *In the financial report, the auditors state that*

3 *. . . the financial statements do not express an opinion or provide any*
4 *assurances about whether the financial statements are in accordance with*
5 *accounting principles generally accepted in the United States of America . . .*
6 *The policy is to prepare the financial statements on the modified basis of each*
7 *cash receipts and cash disbursements. Accordingly, the accompanying*
8 *financial statements are not intended to present the financial position or*
9 *results of operations in conformity with accounting principles generally*
10 *accepted in the United States of America. . . . We are not independent with*
11 *respect to Odd Fellows Sierra Recreation Association, Inc. ³*

12 *The financial report did not segregate all water related income and expenses.*
13 *Rather, it presented all information for the Recreation Association for all*
14 *activities that were handled by the Recreation Association. The Recreation*
15 *Association also stated that it did not segregate records for the water service*
16 *offered. Due to this, Staff could not rely on the accuracy of the historical financial*
17 *information presented by the Recreation Association. **In addition to the financial***
18 ***statements, Staff reviewed the invoices that justified the expenses reported by***
19 ***the Recreation Association in A. 13-09-023. However, staff was unable to find***
20 ***sufficient explanations to justify many of the expenditures claimed.”***

21 Note: Underlining and bolding added for emphasis.

22 The Commission rejected the arguments presented in Odd Fellows November 19, 2015
23 filing “COMMENTS OF APPLICANT ODD FELLOWS SIERRA RECREATION
24 ASSOCIATION ON REVISED PROPOSED DECISION RESOLVING A COMPLAINT AND
25 AUTHORIZING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AS
26 MODIFIED” including the \$571.60 figure based on guidance from the CPUC Division of Water
27 and Audits (hereafter “DWA” or “Water Division”) as documented in the Original Decision
28 (Exhibit CV-20), 8. Comments on Proposed Decision starting at the first paragraph on Page 31:

29 *“In its comments to the revised proposed decision Odd Fellows also now*
30 *questions the Water Division’s computation of water rates, although it did not*
31 *question them in its comments to the initial proposed decision. The Water*
32 *Division requested cost information from Odd Fellows and the Water Company*

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34 ² Odd Fellows Sierra Recreation Association Inc., Compiled Financial Statements, May 31, 2013.

35 ³ Id, at page 1

1 *prior to writing its report, but had issues with the accuracy and usefulness of the*
2 *unsegregated information it received. (See Final Report at 14-16.) The Water*
3 *Division therefore used the best available information such as Budget Reports*
4 *that came from the Water Company’s Board of Director Minutes. Once it*
5 *determined Fiscal Year 2013 financials, the Water Division then backcast or*
6 *deflated this amount using approved inflation factors to determine the Fiscal*
7 *Year 2011 and 2012 revenue requirement. We therefore make no changes to the*
8 *Final Report in response to Odd Fellow’s comments.”*

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

11 *“The Recreation Association provided its financial report updated to May 31,*
12 *2013. ⁴⁶ In the financial report, the auditors state that*

13 *. . . the financial statements do not express an opinion or provide any*
14 *assurances about whether the financial statements are in accordance*
15 *with accounting principles generally accepted in the United States of*
16 *America . . . The policy is to prepare the financial statements on the*
17 *modified basis of each cash receipts and cash disbursements.*
18 *Accordingly, the accompanying financial statements are not intended to*
19 *present the financial position or results of operations in conformity with*
20 *accounting principles generally accepted in the United States of America.*
21 *. . . We are not independent with respect to Odd Fellows Sierra*
22 *Recreation Association, Inc ^{45 46}*

23 *The CPA’s clarified that they performed a compilation based on data provided by*
24 *OFSRA without conducting any testing of the underlying data. They did not audit*
25 *the financial records. The financial report did not segregate all water related*
26 *income and expenses. Rather, it presented all information for the Recreation*
27 *Association for all activities that were handled by the Recreation Association. The*
28 *Recreation Association also stated that it did not segregate records for the water*
29 *service offered. Due to this, Staff could not rely on the accuracy of the historical”*

30 The DWA’s report attached to the Original Decision as ATTACHMENT A, starting at
31 page 26, third paragraph states:

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46 Odd Fellows Sierra Recreation Association Inc., Compiled Financial Statements, May 31, 2013.

45 Id, at page 1

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

1 *“Applicants based their rate design on estimates that exceeded actual costs by a*
2 *significant amount. Some items included: higher than historical estimates for*
3 *purchased power; charging full-time employee wages, benefits and taxes for an*
4 *employee who devoted only 61% of his time for Water Company related matters;*
5 *charging inflated amounts for materials and water testing, charging unjustified*
6 *legal and consulting expenses; charging higher than reasonable general*
7 *expenses; charging for lease payments for easements to water related assets; and*
8 *setting up a replacement reserve schedule without proper justification.”*

9 On June 29, 2016, Odd Fellows filed a CPUC Petition for Modification of the Original
10 Decision (hereafter “Petition for Modification”) specifically seeking a modification of Ordering
11 Paragraph 3.b on page 37.

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

14 The Modified Decision does not incorporate reference, endorse, recognize, etc. the
15 \$571.60 figure presented by Odd Fellows or Appendix B of the Petition for Modification,
16 making it irrelevant and moot. Instead the Modified Decision paragraph 3.b. on Page 10, clearly
17 states:

18 *“Odd Fellows must make a refund to all customers who made payments in excess*
19 *of reasonable rates only...”*

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

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

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

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

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

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

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

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

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

The Original Decision and the Modified Decision both rely on findings by the Water 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 Lot	Unimproved Lot	per staff Recommendation w/o special study	Per Improved Lot	Per Unimproved Lot	Improved Lot (305 lots)	Unimproved Lot (59 lots)	Total	
	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

1 refund payments as ordered in the Original Decision and Modified Decisions yield individual
2 payments of \$15.55 for improved lots and \$12.25 for unimproved lots.

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

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

9 The above was previously presented in the complainant's "VERIFIED RESPONSE TO
10 JANUARY 12, 2017 RULING" dated January 20, 2017 and "VERIFIED COMPLAINANT'S
11 OPPOSITION TO THE MOTION TO DISMISS" dated January 20, 2017.

12 13 **II. 1. BACKGROUND - ERROR # 2**

14 March 22, 2017 Decision, Beginning on page 3, top of page "*...Therefore, on December*
15 *12, 2012, Odd Fellows invoiced Complainant \$571.60 for water service only, for each of his four*
16 *lots⁴⁷.*"

17 Complainant never received any invoice \$571.60 for water service only.

18 This was previously addressed in the "VERIFIED COMPLAINANT'S OPPOSITION TO
19 THE MOTION TO DISMISS" dated January 20, 2017.

20 21 **III. 1. BACKGROUND - ERROR # 3**

22 March 22, 2017 Decision, Beginning on page 3, beginning at paragraph 2:

23 "*On March 14, 2013, Complainant paid \$571.60 for water for lot #24.041.*

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⁴⁷ OF-5, OF-6, OF-7, and OF-8, Odd Fellows Invoices #599, #600, #601, and #602, respectively, dated December 12, 2012.

1 *On March 19, 2013, Complainant paid \$571.60 for water for lot #09.007A.⁴⁸*

2 *On April 4, 2013, Complainant paid \$452.40 for the other services provided by*
3 *Odd Fellows for lot #09.007A. On April 5, 2013, Complainant paid \$452.40 for the other*
4 *services provided by Odd Fellows for lot #24.041.6⁴⁹ On April 9, 2014,*
5 *Complainant paid \$453.42 for legal fees relating to each of his two lots.⁵⁰*

6
7 Having received no invoice and on January 22, 2013 the Complainant heard from several
8 persons the amount owed per lot had been reduce from \$1,024.00. The Complainant telephoned
9 Odd Fellows' Agent/Account Carlson, Hass and Associates (hereafter "Agent") and asked,
10 "How much do I owe?" The agent responded \$571.60.

11 Under the impression the \$1,024.00 had been reduced \$571.60, on March 14, 2013 and
12 March 19, 2013 the Complainant made the \$571.60 payments for his two lots understanding he
13 had paid both water and other services in full.

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

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

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22 ⁴⁸ CV-7, Front and reverse of Check no. 0000008105, dated April 4, 2013, payable to Odd Fellows, for account:
23 25431 Wheeler Road-Varvayanis, in the amount of \$452.40; and, CV-8, Front and reverse of Check no.
24 0000008106, dated April 5, 2013, payable to Odd Fellows, for account: 24982 Jordan Way West-Varvayanis, in the
25 amount of \$452.40; each drawn on the account of Charles P. Varvayanis and Pat Jones.

26 ⁴⁹ CV-7, Front and reverse of Check no. 0000008105, dated April 4, 2013, payable to Odd Fellows, for account:
27 25431 Wheeler Road-Varvayanis, in the amount of \$452.40; and, CV-8, Front and reverse of Check no.
28 0000008106, dated April 5, 2013, payable to Odd Fellows, for account: 24982 Jordan Way West-Varvayanis, in the
29 amount of \$452.40; each drawn on the account of Charles P. Varvayanis and Pat Jones.

30 ⁵⁰ CV-9, Odd Fellows receipt dated 4/9/2014.

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

5 The was no indication what so ever to the complainant the \$571.00 was for water only.
6 This was previously indicated in the “VERIFIED COMPLAINANT'S OPPOSITION TO THE
7 MOTION TO DISMISS” dated January 20, 2017.


8
9 **IV. CONCLUSION**

10 The above applies to all other sections of the “MARCH 22, 2017 DECISION”. The
11 \$571.60 amount is not endorsed in any CPUC generated document. The \$571.60 amount was
12 unilaterally provided by Odd Fellows and Odd Fellows unilaterally generated the \$571.60
13 amount using figures that the were rejected by the DWA. Because of this, the DWA generated
14 its own amounts. The Original Decision and the Modified Decision both rely on findings by the
15 Water Division that rate payers paid \$825 for water for improved lots and \$759 for water for
16 unimproved lots as published and attached to the Original Decision as ATTACHMENT A and in
17 other documents previously generated by the DWA.

18 The Decision should be updated to reject \$571.60 amount and use the amounts of \$825
19 for water for improved lots and \$759 for water for unimproved lots.

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22 DATED: April 21, 2017

Respectfully submitted,

23 By: 
24 Charles P. Varvayanis

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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 April 21, 2017, at Long Barn, California.

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