

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Odd Fellows Sierra Recreation Association, a California corporation, and Sierra Park Water Company, Inc., a California corporation, for Certificate of Public Convenience and Necessity to Operate a Public Utility Water System near Long Barn, Tuolumne County, California and to Establish Rates for Service and for Sierra Park Water Company, Inc. to Issue Stock.

Application 13-09-023
(Filed September 20, 2013)

And Related Matter.

Case 12-03-017

DECISION GRANTING PETITION TO MODIFY DECISION 16-01-047**Summary**

This decision grants a Petition to Modify Decision (D.) 16-01-047 filed by T. Michael Lechner, a customer of Sierra Park Water Company, on February 1, 2017. Ordering Paragraph 3 of D.16-01-047 (as modified by D.16-08-006) ordered twenty quarterly payments be made to customers of Sierra Park Water Company and Odd Fellows Sierra Recreation Association during 2016, 2017, 2018, 2019, and 2020.

Specifically, we modify Ordering Paragraph 3 of D.16-01-047 to allow interested customers to opt out of receiving the future refunds ordered by D.16-01-047.

No party filed a response to the Petition to Modify, and there is no opposition to granting the modification. For the reasons outlined in the Petition to Modify, we conclude that the requested modification is reasonable, and should be granted. Accordingly, we grant the Petition to Modify, and modify D.16-01-047.

1. Discussion

Rule 16.4, of the Commission's Rules of Practice and Procedure,¹ governs the process for the filing and consideration of petitions for modification. Rule 16.4(b) requires that a petition for modification concisely state the justification for the proposed relief and to propose specific wording for all requested modifications.

The petition contains a concise but thorough statement of justification for the proposed modification and complies with the other requirements of Rule 16.4.

T. Michael Lechner (Petitioner or Lechner) filed the Petition to Modify on February 1, 2017² to seek permission for customers of Sierra Park Water Company (Water Company) to refuse the refunds ordered by D.16-01-047. The Petitioner was granted party status in this proceeding in his capacity of President of Sierra Park Services (SPS). Although Lechner does not presently serve as SPS President, he continues on the SPS Board of Directors. For purposes of the instant Petition, Lechner is acting only in his capacity as a retail customer of Water Company.

¹ Hereinafter all references to "Rule" or "Rules" are to the Commission Rules of Practice and Procedure, Title 20, California Code of Regulations, Division 1, Chapter 1.

² The Petition to Modify was served by U.S. Mail and electronically on January 26, 2017. D.16-01-047 was issued January 29, 2016. Rule 16.4(d) requires a Petition to Modify be filed and served within one year of the effective date of the underlying decision. Due to timely service of

Footnote continued on next page

Lechner states that he and other property owners have been receiving refunds from Water Company, as ordered by D.16-01-047. In D.16-01-047, it was found Odd Fellows Sierra Recreation Association (Odd Fellows) had been acting as a public utility in providing water service to property owners around Long Barn, California. A Certificate of Public Convenience and Necessity (CPCN) was conditionally granted to Sierra Park Water Company, Inc., subject to certain conditions, one of which required Water Company and Odd Fellows to make refunds to their customers in accordance with Ordering Paragraph 3 of that decision.

Lechner further states that many property owners whose lots are served by Water Company believe they have received full value for the assessments levied and paid, and thus requests the ability to opt out of receiving further refunds ordered by D.16-01-047. Petitioner states that it was originally believed by the Water Company and the property owners that if the refund checks were not cashed, the funds would revert to the Water Company. Lechner contends it has since been learned that if property owners do not cash their refund checks, the Water Company, and likely the Odd Fellows too, must ultimately transfer those “unclaimed” monies to the State of California. Petitioner also states that the cost of the unwanted refunds is compounded by related administrative charges that substantially increase Water Company’s expenses for making each quarterly refund disbursement.

To remedy this problem, Petitioner filed the Petition to Modify, asking the Commission to modify Ordering Paragraph 3 of D.16-01-047 to expressly allow

the Petition to Modify and the merit of the petition, any late submission is justified in this instance only.

customers to opt out of receiving any future refunds as directed under the Decision. Petitioner offers proposed modified wording for this purpose, together with a sample form letter, which interested property owners may use to notify Water Company of their intent to opt out.

2. Conclusion

No party filed a response to Lechner's Petition to Modify. We conclude that the requested modification is a reasonable solution to the problem identified by Petitioner, T. M. Lechner. As noted in the Petition to Modify, granting this modification will: 1) satisfy all property owners who believe the refunds they are receiving are inappropriate and unnecessary; 2) benefit all property owners to the extent that Water Company expenses are reduced, and 3) have no financial effect on any property owner who paid their fair share of assessment costs and feels that a refund is in order. Therefore, we grant the Petition to Modify, as requested, and modify Ordering Paragraph 3 of D.16-01-047 as set forth in the ordering paragraphs below. We approve use of the form letter template, as set forth in the attachment to this decision, for use by customers who wish to avail themselves of the newly ordered provision to opt out.

3. Waiver of Comments

Pursuant to Rule 14.6(c), comments on this proposed decision are waived since the Petitioner's requested relief is granted in an uncontested matter.

4. Assignment of Proceeding

President Michael Picker is the assigned Commissioner and Eric Wildgrube is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.16-01-047, issued January 29, 2016, conditionally granted a CPCN to Sierra Park Water Company, Inc., subject to certain conditions, as specified therein.

2. Pursuant to Ordering Paragraph 3 of D.16-01-047 (and as modified by D.16-08-006), Sierra Park Water Company, Inc. and Odd Fellows Sierra Recreation Association were directed to make refunds, as specified in subparagraphs a through c of the Ordering Paragraph.

3. Petitioner states many property owners served by Sierra Park Water Company, Inc. believe they have already received full value for the assessments levied and paid, and thus seek the ability to “opt out” of receiving further refunds as ordered by D.16-01-047, Ordering Paragraph 3.

4. If property owners do not cash the refund checks issued by Sierra Park Water Company, Inc., or Odd Fellows Sierra Recreation Association, such funds would be treated as unclaimed funds by the State of California. For any such funds treated as unclaimed, Sierra Park Water Company, Inc. or Odd Fellows Sierra Recreation Association must ultimately transfer those monies to the State of California, and thereby deprive Sierra Park Water Company, Inc. or Odd Fellows Sierra Recreation Association of the use of such funds.

5. The modification of D.16-01-047, as requested by T.M. Lechner would provide a way for property owners served by Sierra Park Water Company, Inc. to opt of receiving further refunds, and prevent the unintended consequence whereby Sierra Park Water Company, Inc., and Odd Fellows Sierra Recreation Association, would have to transfer those “unclaimed” monies to the State of California, and thereby forfeit any access to such funds.

6. No party filed a response to the Petition, filed by T.M. Lechner, to Modify D.16-01-047.

7. The Petition to Modify was served by U.S. Mail and electronically on January 26, 2017.

Conclusions of Law

1. The Petition to Modify D.6-01-047, as requested by T. M. Lechner, is reasonable and should be granted.

2. Ordering Paragraph 3 of D.16-01-047 should be modified, as set forth in Ordering Paragraph 2 below.

3. Due to timely service of the Petition to Modify, any late submission is justified in this instance only pursuant to Commission Rules of Practice and Procedure, Rule 16.4(d).

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Petition of T.M. Lechner, for Modification of Decision 16-01-047, is granted.

2. Decision 16-01-047 conditionally granting a Certificate of Public Convenience and Necessity to Sierra Park Water Company, Inc. is hereby modified to add subparagraph “d” to Ordering Paragraph 3, to contain the following wording:

d. Notwithstanding subparagraphs a, b, and c. above, Water Company is directed to inform customers that they may opt out of receiving any future refunds as otherwise directed under this Decision, and to provide customers with a sample opt out request form. In order to opt out, the recipient whose name is on the heretofore provided refund checks may submit a signed letter to this

effect to the Water Company using the sample letter template in the attachment of this order (Appendix A). The Water Company shall notify Odd Fellows by way of a copy of the letter of refund revocation. Once revocation of future refunds owed is made, it cannot be rescinded.

3. Application 13-09-023 and Case 12-03-017 are closed.

This decision is effective immediately.

Dated _____, at San Francisco, California.

Appendix A

The following letter template is approved for use by customers to notify Sierra Park Water Company and Odd Fellows Sierra Recreation Association of their intent to voluntarily opt out of any future water bill refunds pursuant to the directives of Ordering Paragraph 3 of Decision 16-01-047:

Sierra Park Water Company, Inc.
P.O. Box 424
Mi Wuk Village, CA 95346

Date: [Today's Date]

Subject: Refunds ordered by California Public Utilities Commission
Decision 16-01-047

Dear Sierra Park Water Company, Inc.,

Effective immediately, the undersigned elects to opt out of any future refunds made pursuant to California Public Utilities Commission Decision 16-01-047. This notification applies to the following lots owned by the undersigned: [provide all applicable lot numbers].

This request concerns refunds being issued to:

Please check one or both:

Sierra Park Water Company, Inc. _____
Print name as it appears on the refund check

Odd Fellows Sierra Recreation Asso. _____
Print name as it appears on the refund check

I understand this request is irrevocable.

Thank you,

Sign name as it appears on the Sierra Park Water Company, Inc. refund check

Sign name as it appears on the Odd Fellows Sierra Recreation Association refund check

(End of Appendix A)