

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

07-20-12  
01:35 PM

In the Matter of the Application of GOLDEN HILLS SANITATION COMPANY (U 438-SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014.

Application 11-08-019  
(Filed August 26, 2011)

Order Instituting Investigation on the Commission's own motion into the Operations and Practices of Golden Hills Sanitation Company, and Order to Show Cause why Findings should not be entered by the Commission under Public Utilities Code Section 855.

Investigation 12-03-008  
(Filed March 8, 2012)

**MOTION OF  
GOLDEN HILLS SANITATION COMPANY (U 438-SWR) FOR RULING  
CONFIRMING COMMISSION SUSPENSION OF RATE CASE**

SARA STECK MYERS  
Attorney at Law  
122 – 28<sup>th</sup> Avenue  
San Francisco, CA 94121  
(415) 387-1904 (Telephone)  
(415) 387-4708 (FAX)  
[ssmyers@att.net](mailto:ssmyers@att.net) (e-mail)

Dated: July 20, 2012

Attorney for  
GOLDEN HILLS SANITATION COMPANY  
A.11-08-019

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Application of GOLDEN HILLS SANITATION COMPANY (U 438-SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014.

Application 11-08-019  
(Filed August 26, 2011)

Order Instituting Investigation on the Commission's own motion into the Operations and Practices of Golden Hills Sanitation Company, and Order to Show Cause why Findings should not be entered by the Commission under Public Utilities Code Section 855.

Investigation 12-03-008  
(Filed March 8, 2012)

**MOTION OF  
GOLDEN HILLS SANITATION COMPANY (U 438-SWR) FOR RULING  
CONFIRMING COMMISSION SUSPENSION OF RATE CASE**

Golden Hills Sanitation Company, Inc. ("GHSC") (U 438-SWR), a Class D sewer system corporation, respectfully moves for a ruling or decision confirming the Commission's suspension of the rate case, Application (A.) 11-08-019 ("Application"), and providing other related procedural relief in this consolidated proceeding consistent with Commission actions to date. This Motion is timely filed and served pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure.

**I.  
INTRODUCTION**

As the facts set forth in Section II below make clear, the Commission has taken actions that have superseded and effectively suspended the Application. These facts include: (a) the Commission's decision not to enforce the only rate case schedule adopted for this Application in January 2012, for which all dates have now past, or adopt any new one to replace it; (b) the Commission's express determination to address "rate issues" separately from, but in

consideration of, the appointment of a Receiver for GHSC in Superior Court; and (c) the Commission's requested order from the Kern County Superior Court that the Receiver, appointed effective April 5, 2012, shall be empowered to "take immediate and exclusive possession, operate, manage, and control the Defendant [GHSC] and its sewer system," including, but not limited to "substitut[ing] the Receiver as the legal representative for the Defendant in any Commission proceedings currently open or to be filed after appointment of the Receiver."<sup>1</sup> Following the Receiver's appointment on an *ex parte* basis effective April 4, 2012, when he filed his Oath of Office, the Receiver (Clifford Bressler), as confirmed in his report filed with the Kern County Superior Court on July 5, 2012, has, in fact: (a) acted to take custody of all income and assets of GHSC, including its books and records; (b) has hired protestants to the Application to assist in the operation and management of GHSC; and (c) has already committed not to seek a rate increase beyond the interim rates already authorized by the Commission in the Application.

This appointment of a Receiver has been in response to Commission rulings and Decision (D.) 12-03-025 that have been issued in this proceeding to address a situation that GHSC has repeatedly made clear since February 2012, including a still-pending motion by GHSC for a stay of the Application filed on February 16, 2012. Namely, GHSC has "insufficient funds and personnel to continue to advance and participate in this proceeding" or operate the sewer service.<sup>2</sup>

---

<sup>1</sup> California Public Utilities Commission (CPUC) Proposed Ex Parte Order Appointing Receiver, filed on March 26, 2012, in Case No. S-1500-MS-375 in Kern County Superior Court, at pp. 4-7. On March 29, 2012, the Kern County Superior Court issued an order granting appointment of a receiver for GHSC pending confirmation upon a fully noticed hearing, but also altered the proposed order by the CPUC to adopt changes proposed by Defendant GHSC, including changing the CPUC's references to "Defendants" to "Defendant," referencing GHSC alone as being subject to receivership.

<sup>2</sup> GHSC Motion (2-16-12), at p. 1; GHSC Comments on Proposed Order to Show Cause (OSC) (March 1, 2012), at pp. 1-6; Attachment A (Declaration of Kathy Omachi).

With the appointment of the Receiver and pending confirmation of that order, GHSC also no longer has authority to pursue the relief requested in the Application since it is the Receiver, according to the form of receivership order proposed by the Commission in Kern County Superior Court, that is now vested with the power to substitute in for GHSC in all proceedings before the Commission, including the Application.

Thus, GHSC has no authority and no means to pursue any relief before the Commission or respond to data requests or other discovery propounded by parties ostensibly relating to the Application. In fact, not only does GHSC have neither the financial means nor the personnel to advance the Application or participate in discovery, to require GHSC to do so would not only deplete any remaining assets unnecessarily, to the extent any exist, but would also interfere with the Receiver in his determination of whether the Application should go forward or not. At this point, the Commission's sole focus should be, as it has been, on applying its own available resources on ensuring that a final order empowering the Receiver is issued by the Kern County Superior Court as soon as possible.

In this regard, once the powers of the Receiver are confirmed and/or are more explicitly defined by a further order of the Kern County Superior Court,<sup>3</sup> GHSC would expect that the Commission, as it has done in other similar circumstances, would ask the Kern County Superior Court to empower the Receiver to make any rate or service changes requests required to continue

---

<sup>3</sup> To be clear: The Receiver was appointed by an order issued on March 29, 2012. However, because the Receiver was appointed by an *ex parte* application, the Kern County Superior Court is required to hold a subsequent hearing on notice to the parties at which the appointment will be either confirmed or rescinded. That hearing to confirm the appointment of the Receiver is presently on "hold" because the Kern County Superior Court requested briefing on whether the Kern County Superior Court should wait for a ruling by the Commission on a Petition for Modification filed by Commission staff (Division of Water and Audits [DWA]) with respect to D. 12-03-025. The hearing on that question is posed as an "Order to Show Cause" that will be heard on August 2, 2012. In the meantime, the Receiver remains in place, albeit on an interim bases, as his report to the County Court makes clear, is in control of the operation, maintenance, billing, and all other decisions affecting the sewer service provided by GHSC.

to provide the sewer service.<sup>4</sup> For that reason, GHSC has deemed it appropriate to move for a ruling by the Commission “suspending” the Application, consistent with the Commission’s own actions detailed below, as opposed to a request for a “dismissal” of the Application, a decision that should be made by the Receiver, if he chooses to do so.

## II. FACTS IN SUPPORT OF MOTION

The following facts support GHSC’s motion for a ruling confirming the Commission’s suspension of the Application:

1. On January 23, 2012, an Assigned Commissioner’s Scoping Memo and Ruling was issued in the Application “Scoping Memo”). To date, this has been the *only* Scoping Memo issued in or directed to the Application.
2. By that Scoping Memo, the Commission adopted a schedule whereby Interested Party Testimony would be served on April 9, 2012; Rebuttal Testimony would be served on May

---

<sup>4</sup> See, e.g., County of San Mateo, Complainant, vs. Citizens Utilities Company of California, Defendant, Decision No. 90-08-016, Case No. 87-05-034 (Filed May 21, 1987), 1990 Cal. PUC LEXIS 740; 37 CPUC2d 128, August 8, 1990; Louis C. DePerine, Complainant, vs. Milton G. Cole, DBA/Freshwater Water Company, Defendant, Decision No. 92-03-075, Case No. 91-05-059 (Filed May 30, 1991), 1992 Cal. PUC LEXIS 254; 43 CPUC2d 520, March 31, 1992, March 31, 1992; Order Instituting Investigation on the Commission's own motion into the operations and practices of Mineral City Water Company and its Owner and Operator, JoAnn Perkins, and Order to Show Cause why findings should not be entered by the Commission under Public Utilities Code Section 855, Decision No. 02-01-021, Investigation No. 01-10-003 (Filed October 10, 2001), 2002 Cal. PUC LEXIS 41, January 9, 2002; Order Instituting Investigation of the Commission’s own Motion into the Operations and Practices of Ponderosa Sky Ranch Water Company and its Owner and Operator, Orville Figs, and Order to Show Cause Why Findings Should Not Be Entered by the Commission under Public Utilities Code Section 855, Decision 02-09-004; Investigation 02-03-023 (Filed March 21, 2002), 2002 Cal. PUC LEXIS 525, September 5, 2002; Order Instituting Investigation on the Commission's own Motion into the Operations and practices of Bidwell Water Company and its Owners and Operators, Thomas and Vicki Jernigan, and Order to Show Cause why findings should not be entered by the Commission under Public Utilities Code Section 855, Decision 03-04-046; Investigation 01-10-002 (Filed October 2, 2001), 2003 Cal. PUC LEXIS 276, April 17, 2003; Application of Conlin-Strawberry Water Company, Inc., a California corporation (U-177- W), for Authority to Sell and Del Oro Water Co., Inc. (U-61-W), for Authority to Buy, the Conlin-Strawberry Water Company Water System in Tuolumne County Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), an its Owner/Operator, Danny T. Colin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Colin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855, Decision 06-05-032; Application 05-12-001; Investigation 03-10-038, 2006 Cal. PUC LEXIS 205, May 25, 2006.

7, 2012; Evidentiary Hearings would be held on May 14 and 15, 2012; Opening and Reply Briefs would be filed on May 30 and June 6, 2012, respectively; and a Proposed Decision would be issued in September 2012, with a final Commission Decision issued in October 2012.

3. At no point, from the issuance of the Scoping Memo to the present time, has the schedule adopted in that Scoping Memo been met by the Commission, Commission staff, or any party; nor has the Commission taken any action to enforce that schedule. All dates set by that Scoping Memo, including the submission of testimony or any hearings to consider such testimony or evidence, have past.
4. On February 16, 2012, GHSC moved for a stay of the Application (“February 16 Motion”). In that motion, GHSC confirmed that it “had insufficient funds and personnel to continue to advance and participate in this proceeding.”<sup>5</sup>
5. On February 16, 2012, ALJ Wilson sent an e-mail reply to the electronic service of GHSC’s February 16 Motion stating: “Parties may file comments by February 23, 2012, as to whether Application 11-08-019 should be dismissed without prejudice instead of staying.”
6. On February 22, 2012, an Assigned Commissioner’s Ruling (“February 22 ACR”)<sup>6</sup> was issued imposing a temporary restraining order requiring GHSC to continue to operate and provide sewer service until such time as a receiver is assigned to operate the utility and directing the owners of GHSC to meet with the DWA to discuss a schedule for the appointment of a receiver.
7. On February 23, 2012, three parties filed comments based on the ALJ’s directive relative to GHSC’s February 16 Motion stating their preference for a “dismissal” of the Application versus a stay of the rate case schedule. Specifically, in their comments, the three parties – Barbara Miller, David Stegall, and Adrian Maaskant - all asked that the Application be dismissed. GHSC also filed comments, but urged suspension or stay, based on a concern that

---

<sup>5</sup> GHSC Motion (2-16-12), at p. 1.

<sup>6</sup> The electronic rulings of February 22 and a later one of March 12 (both ACRs) were formalized in an ACR dated March 16, 2012.

dismissal of the Application might adversely affect the still inadequate rates in place to support sewer service.<sup>7</sup>

8. On March 8, 2012, the Commission issued Decision (D.) 12-03-025 instituting Investigation (I.) 12-03-008 (“OII”) pursuant to Public Utilities Code Section 855 for the purpose of giving notice of an Order to Show Cause (“OSC”) hearing at which GHSC and its owners (“Respondents”) were ordered “to appear and show cause why the Commission should not petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC and its sewer system upon terms and conditions as the Court shall prescribe.”<sup>8</sup> The OII/OSC also required Respondents, “as with” the February 22 ACR, “to continue to provide service to GHSC’s ratepayers until a receiver has been appointed for GHSC.”<sup>9</sup> D.12-03-025 makes clear that the OII/OSC was issued solely for these two purposes: (1) “to give notice to Respondents and orders them to appear before this Commission on March 15, 2012, to respond to why under Pub. Util. Code §855, the Commission should not petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC’s property and to operate its system,” and (2) to order Respondents to “continue providing sewer service until a receiver is appointed.”<sup>10</sup> D.12-05-035 further made it clear that the *Scoping Memo* for the OII also consisted only of those orders directing Respondents to appear at the OSC hearing and to continue service.<sup>11</sup>
9. GHSC has already *fully complied* with both orders issued in D.12-05-035 and within the scope of the OII. Namely, it has appeared at the March 15 OSC Hearing (see below), and it continued to operate the system and provide sewer service until the Receiver took possession on April 5, 2012. No other orders directing GHSC to take any further action pursuant to I.12-03-008 have been issued by the Commission.
10. On March 12, 2012, an Assigned Commissioner’s Ruling (“March 12 ACR”) was issued “order[ing] the Commission’s Legal Division to petition the Kern County Superior Court (Kern County Superior Court) to appoint a receiver to operate Golden Hills Sanitation

---

<sup>7</sup> Comments by Barbara Miller (February 22, 2012), at p. 2; Comments of Adrian Maaskant (February 17, 2012), at p. 1; Comments of David Stegall (February 20, 2012); GHSC Comments (February 23, 2012), at pp. 1-2.

<sup>8</sup> D.12-03-025, at p. 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, at pp. 6-7.

<sup>11</sup> *Id.*, at pp. 9-11.

Company (GHSC).”<sup>12</sup> The March 12 ACR notes that Adrian Maaskant, David Stegall, and Barbara Miller, while joining GHSC in stipulating to a receiver, had also asked that “hearings” or “an appropriate venue” be provided for customers to “voice” concerns about “the determination of present and future rates as well as who is appointed as the receiver.”<sup>13</sup> In response, the March 12 ACR finds: “I understand the parties [sic] concerns that the ratepayers be heard, but since: 1) the Commission hearings will be held *only* to discuss whether the Commissions [sic] Legal Division should petition the Kern County Superior Court for the appointment of a receiver and not to determine who the receiver should be; 2) *rates will be addressed separately from the receivership issue*; and 3) as GHSC, Maaskant and Stegall have stipulated to receivership, it is appropriate to begin the process of petitioning the Kern County Superior Court as soon as possible.”<sup>14</sup>

11. On March 15, 2012, the OSC was held as required by D.12-05-035. Prior to that hearing, insolvency counsel for GHSC advised Administrative Law Judge Wilson via an email message that was copied to all parties that “GHS has already stated that it welcomes the appointment of a receiver and will cooperate with the receiver once appointed. It will also waive any right to a hearing on the Order to Show Cause so as to expedite petitioning the Superior Court for the County of Kern.” In that same email message, insolvency counsel stated: “The Order to Show Cause states that GHS is to appear at the OSC hearing, as should the ‘owners.’ The owners, being deceased, cannot appear.” Similarly, counsel for the executor of the Kentucky probate estate of Carlie Smith (BB&T Wealth Management (BB&T)) sent an email to assigned ALJ Wilson on March 13, 2012, advising her that “BB&T has no evidence or argument to present as to why a receiver should NOT be appointed. One should be. Therefore, if BB&T is properly considered a ‘Respondent’ it waives its right to be heard on March 15.” (Emphasis original.)

12. GHSC, however, did appear at the March 15 OCS to confirm that it was agreeable to the appointment of a receiver. At that time, ALJ Wilson also took formal recognition of the record in A.11-08-019 in I.12-03-008, which included, among other things, the declaration of

---

<sup>12</sup> March 12 ACR, at p. 1.

<sup>13</sup> *Id.*, at p. 2.

<sup>14</sup> *Id.*, at pp. 2-3; emphasis added.

Kathy Omachi, an officer of GHSC, stipulating to the appointment of a receiver.<sup>15</sup> Further, in response to statements by Adrian Maaskant that he was “not even a customer,” but sought to “address the concerns of customers” and was worried about the Superior Court not allowing him to participate as the Commission has in this proceeding, DWA attorney Lee confirmed that the Commission (Legal Division/DWA) would be filing the required petition at Court and would be “representing all ratepayers in this matter.”<sup>16</sup>

13. On March 16, 2012, an Assigned Commissioner’s Ruling was issued “formalizing” the February 22 and March 12 ACRs. That ruling noted that the February 22 ACR had been ratified by the full Commission in D.12-03-025; the March 22 ACR was to be ratified by the full Commission at a later date.
14. On March 26, 2012, the Commission, represented by DWA/Legal Division attorney Lee, petitioned the Kern County Superior Court pursuant to Public Utilities Code Section 855 “for the Court to appoint a receiver to take possession, control, operate, and manage the Golden Hills Sanitation Co., Inc., a public utility.” (Case No. S-1500-MS-375, Lee Declaration, at pp. 1-2.) At the same time, this requested relief included a proposed “Ex Parte Order Appointing Receiver,” which (as noted in the Introduction above), directs that the Receiver is empowered, among other things, to take immediate and exclusive possession, operate, manage, and control GHSC and its sewer system; identify all revenue sources; change any and all locks on the property; hire personnel; retain existing employees; accept risks or obligations incurred by sewer service corporations; take possession of all licenses and permits issued and as necessary to continue the operation of the sewer system; borrow funds the Receiver deems are needed to continue the operation of the system; collect all rates; and—significantly here—be substituted in this proceeding “as the legal representative” for GHSC.<sup>17</sup>
15. On March 26, 2012, Adrian Maaskant filed two motions in this proceeding, one asking the Commission to nullify an \$800,504 Debt of GHSC to the Carlie Smith and Lillian Smith Estates and the other seeking an Order for the Continued Subsidy of Operating Expenses for

---

<sup>15</sup> March 15 OSC Reporter’s Transcript, at 4-6.

<sup>16</sup> *Id.*, at 41-42.

<sup>17</sup> Case No. S-1500-MS-375, CPUC Requested Ex Parte Order (March 26, 2012), at pp. 4-7.

Golden Hills Sanitation Company from the Estates of Carlie Smith and Lillian Smith.

Timely responses to these motions were filed on April 6, 2012, Mr. Maaskant filed replies to each on April 16, 2012, and these motions were submitted for Commission ruling or order as of that date. As of this date, no action by the Commission has been taken on either motion.

16. On March 29, 2012, by order of the Kern County Superior Court in Case No. S-1500-MS-375 and conditioned upon certain changes to the Commission's proposed order (including deleting the term "Defendants" for the word "Defendant" to refer only to GHSC) and the filing of an Oath of Office, Mr. Clifford Bressler was appointed as Receiver for GHSC and its assets. Mr. Bressler filed his Oath of Office on April 4, 2012.
17. From March 21 through June 16, 2012, Adrian Maaskant sent four "data requests" (discovery) to GHSC. Each of these data requests, which seek information on GHSC's long-term debt; probate proceedings involving the estates of Carlie Smith or Lillian Smith; participation by GHSC in a meeting with Kern County held on January 13, 2012; corporate organization documents; and attorney compensation, were propounded based on Ordering Paragraph 2 of D.12-03-025 *only*. No other basis or purpose for this discovery was offered, until an oral assertion made at a later "meet and confer" detailed in Paragraph 22 below.
18. From April 4 through June 20, 2012, GHSC timely responded and objected to each of the Maaskant data requests identified in Paragraph 17 above. Specifically, GHSC objected that these data requests were not relevant to nor reasonably calculated to lead to the discovery of admissible evidence since they were based on an order that related solely to an OSC hearing that (a) had already been held on March 15, 2012 (and in which Mr. Maaskant had participated) and (b) resulted (and was solely intended to result) in the Commission petitioning the Kern County Superior Court for the appointment of a receiver for GHSC, an action that took place on March 26, 2012. GHSC also stated that Mr. Maaskant had not identified any "pending" matter in this consolidated proceeding to which his discovery was relevant.
19. On May 7, 2012, an Assigned Commissioner's Ruling ("May 7 ACR") "Amending Scoping Memo" was issued in this consolidated proceeding. The "amendments," however, went exclusively to the "categorization of Investigation (I.) 12-03-008, which is consolidated with Application (A.) 11-08-019....from adjudicatory to ratesetting," with changes to the

applicable ex parte rules.<sup>18</sup> This ACR, however, made *no amendments*, or even reference, to the January 23 Scoping Memo for A.11-08-019. This Assigned Commissioner’s Ruling, therefore, did not reinstitute or reference the rate case schedule adopted in the Scoping Memo nor did it take any steps to identify any further schedule for either A.11-08-019 *or* I.12-03-008.

20. On June 14, 2012, Adrian Maaskant wrote an email to Administrative Law Judge Wilson asking: “[C]an I presume that the discovery process related to A.11-08-019/I.12-03-008 is not suspended and that the parties are free to pursue discovery at this time?” Administrative Law Judge Wilson responded by email: “Neither proceeding has been suspended.” She did not address Mr. Maaskant’s question regarding discovery.
21. On July 5, 2012, Clifford Bressler, the appointed receiver for GHSC, filed his “First Report and Accounting of Receiver” (“Receiver’s Report”) with the Kern County Superior Court. In that Receiver’s Report, Mr. Bressler recounted the services he had performed as Receiver for GHSC from the period April 5 through June 30, 2012. These services included, among many other things, having taken over possession, management, and operation of GHSC, including its books, accounts, and billings, and having “hired Dave Stegall for help in managing the sewer plant” and “Barbara Miller to help with administration of GHSC since she is so knowledgeable about the sewer district and it’s [sic] customers.”<sup>19</sup> In addition, Exhibit B (“2012 Sewer Project Update,” prepared by Barbara Miller) to the Receiver’s Report states that “Mr. Bressler stands firm that he will not request an increase over the interim rates currently being charged” customers.<sup>20</sup>
22. On July 6, 2012, GHSC participated in a “meet and confer” conference call with Adrian Maaskant regarding his four data requests referenced above. At that time, and for the first time, Mr. Maaskant represented that his data requests (allegedly) related to Mr. Maaskant’s Motion to Nullify the \$800,504 Debt of GHSC to the Carlie Smith and Lillian Smith Estates, which, as further noted above, has been submitted for a decision by the Commission since April 16, 2012, and no further response, reply, or briefing is allowed.

---

<sup>18</sup> May 7 ACR, at pp. 1-2.

<sup>19</sup> Case No. S-1500-MS-375, First Report and Accounting of Receiver, at p. 3.

<sup>20</sup> *Id.*, at Exhibit B, page 2.

23. Again, as noted in Paragraph 1 above, from the issuance of the Scoping Memo to the present time, the assigned Administrative Law Judge Wilson and the Assigned Commissioner for this combined proceeding have not taken any steps to enforce the rate case schedule adopted in the Scoping Memo (all dates for which have past), provide a new one in its place, or process the relief originally requested by GHSC in the Application in any way. Thus, no interested party to this consolidated proceeding has submitted any testimony on any issue raised in the Application, no evidentiary hearings were ever held on May 14 or May 15 on the Application, no briefs have been filed as originally scheduled or at all on the Application, and the Commission has not set any schedule in this consolidated proceeding for taking any “evidence” on any issue.
24. Finally, on July 10, 2012, the Commission published a “Table of Submission Dates” for Commission proceedings in its Daily Calendar, which included the following, as of July 3, 2012:

**“TABLE OF SUBMISSION DATES FOR THE PRECEDING TWO WEEKS”**

“7/3/12            **A.11-08-019** - In the Matter of the Application of Golden Hills Sanitation Company (U438SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014, and  
 “ALJ Wilson      **I.12-03-008** - Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Golden Hills Sanitation Company, and Order to Show Cause why Findings should not be entered by the Commission under Public Utilities Code Section 855.”

**III.  
 THE FACTS DEMONSTRATE THAT THE COMMISSION  
 HAS ACTED TO SUSPEND THE APPLICATION.**

Clearly, the facts and circumstances that have transpired since GHSC filed its Motion to Stay the Application on February 12, 2012, confirm that GHSC does not have the financial means, the intent, or even the authority to continue to pursue the Application, that the Commission has abandoned the adopted schedule for acting on the Application, and that any issue or decision related to the operation, management, maintenance of GHSC, or the rates

charged by GHSC, has now been transferred to the Receiver appointed by the County Court effective April 5, 2012 (Mr. Clifford Bressler). Most significantly, as empowered, the Receiver, by the Commission's own request, serves as the "legal representative" of GHSC in this consolidated proceeding. Finally, the Assigned Commissioner has also made it clear that "rates will be addressed separately" from the appointment of a receiver, but has set no schedule to do so, focusing instead solely on the appointment of a receiver for GHSC, to which all of the decisions, orders and rulings of the Commission since early March have been directed.

Only one conclusion can be reached given these facts: the Commission has acted to suspend the Application, and any future action in this consolidated proceeding relative to rates charged to GHSC customers will not rest with GHSC, but rather with the Receiver appointed by the Kern County Superior Court. Again, the Commission has not taken any steps to enforce the only schedule that has ever been adopted for the rate case and all dates for submission or consideration of "evidence" or testimony on that application have past. Thus, ALJ Wilson's statement that neither A.11-08-019 nor I.12-03-008 has been "suspended" is simply not supported by the facts, and there is no issue or "evidence" currently "pending" or scheduled for submission or consideration in the Application.<sup>21</sup>

Further, of the three parties that had indicated their intent to submit testimony on the rate case, that is, Mr. Maaskant, Mr. Stegall, and Ms. Miller, two of them are now *employed* in the operation and management of the sewer service by the Receiver, Mr. Bressler. In addition, as confirmed in a report prepared by Ms. Miller, Mr. Bressler does not intend to seek an increase

---

<sup>21</sup> Under Rule 10.1 of the Commission's Rules of Practice and Procedure, a key condition precedent to discovery being propounded or obtained is that it must be "relevant to the subject matter involved in the pending proceeding" and be "reasonably calculated to lead to the discovery of admissible evidence." Here no "evidence" is scheduled or called for now in the Application, and the only adopted scheduled dates for such "evidence" was not enforced and has long since past.

over the interim rates currently being charged. Those interim rates represented only a small portion of the relief requested by the Application. Finally, statements made by Mr. Maaskant during the course of the July 6 “Meet and Confer” make it abundantly clear that his discovery is directed at limiting or reducing rates charged for sewer service.

The financial difficulties and limitations on GHSC being able to continue to provide service are now facts well documented before the Commission. Those facts supported the appointment of a Receiver who “took office” several months ago. The Receiver has been tasked with taking over all of the affairs of GHSC, including serving as the legal representative for the public utility in this Application and deciding whether to seek any rate change other than what has been authorized to date. There is no role for GHSC to play at this time in the Application, and there are no pending matters or “evidence” scheduled for A.11-08-019 or I. 12-03-008. Consequently, there is also no relevance or justification for requiring GHSC to respond to discovery in either proceeding (see, footnote 21, *supra*). Again, the Receiver appointed for GHSC, Clifford Bressler, now operates and manages the sewer service, with two of the parties that had originally protested the Application employed to assist him for that purpose and is to serve as the legal representative of GHSC in this proceeding.

In view of these circumstances, GHSC moves for expeditious action by the Commission to grant this motion to suspend the Application. In doing so, the Commission must confirm that there is *no* schedule currently pending in the Application *or* the OII identifying any issue on which evidence will be considered or taken that could serve as the basis for discovery by any party directed to GHSC. Again, even in the May 7 ACR amending the Scoping Memo for I.12-03-008, *no amendments* were made to change or reinstitute the rate case schedule adopted in the January 23 Scoping Memo or take any further action in I.12-03-008 beyond the OSC hearing,

GHSC continuing service until the appointment of a Receiver, and, finally, the appointment of a Receiver, all of which have already taken place. At this point, it is the Receiver (not GHSC) that operates and manages the sewer system and will make any decisions and representations in this consolidated proceeding regarding any rate or service changes needed to continue to provide sewer service.

**IV.  
CONCLUSION: REQUESTED RELIEF**

For all of the foregoing reasons, GHSC respectfully moves for the Commission to confirm that the Application has been suspended, and no new schedule has been adopted to consider any issue or take any evidence in either A.11-08-019 or I.12-03-008. By doing so, the Commission should also confirm the suspension of discovery in A.11-08-019 and I.12-03-008. It remains GHSC's firm hope that the available resources of the Commission should and will be focused on finalizing the duties and powers of the Receiver for GHSC.

Respectfully submitted,

July 20, 2012

By:           /s/ SARA STECK MYERS            
SARA STECK MYERS  
Attorney for GHSC

122 – 28<sup>th</sup> Avenue  
San Francisco, California 94121  
(415) 387-1904 (Telephone)  
(415) 387-4708 (Facsimile)  
[ssmyers@att.net](mailto:ssmyers@att.net) (E-mail)