



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CAL**

**FILED**  
10-26-16  
04:59 PM

In the Matter of the Application of Cypress Ridge Sewer Co. for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service to the Cypress Ridge Development in San Luis Obispo County, California.

Application No. 15-08-025

And Related Matter.

Application No. 15-12-015

**JOINT OPENING BRIEF OF APPLICANTS CYPRESS RIDGE SEWER CO.  
AND CHARLES M. BAKER, SUCCESSOR IN INTEREST  
TO RURAL WATER COMPANY**

DATED: October 25, 2016

Jose E. Guzman, Jr.  
Guzman Law Offices  
288 Third Street, Suite 306  
Oakland, CA 94607  
(415) 515-4034  
jeguzmanjr@gmail.com

Attorney for Cypress Ridge Sewer Co., and  
Charles M. Baker, Successor in Interest to  
Rural Water Company

TABLE OF CONTENTS

Table of Contents	.....	i
Table of Authorities	.....	iii
Summary of Joint Applicants Recommendations	.....	v
I. INTRODUCTION	.....	1
A. Summary of Consolidated Applications.	.....	1
B. Factual Background.	.....	3
II. DISCUSSION	.....	7
A. Issue 1: Whether Rural Should Be Ordered to Show Cause For Failing to Comply With the Requirements of D.15-06-049 Concerning the 2008 Transfer of Sewer Assets to Cypress Ridge.	.....	7
B. Issue 2: Whether the Transfer of Rural’s Sewer Assets to Cypress Ridge Should Be Approved and, If So, Under What Terms and Conditions.	.....	10
C. Issue 3: What Penalties, If Any, Should Be Imposed on Rural For the Transfer of Rural’s Sewer Assets to Cypress Ridge in Violation of §851.	.....	14
D. Issue 4: Whether or Not Rural Has Been Relieved of Its Public Utility Obligations in Light of the Transfer of Its Water System Public Utility Assets to Golden State.	.....	16
E. Issue 5: Whether or Not Gain on Sale Applies to the Sale of Rural’s Water Utility Assets and Whether or Not This Issue Should Be Considered As Being Part of These Two Proceedings.	.....	17
1. Gain on Sale Issues Are Completely Irrelevant to Both Applications in These Consolidated Proceedings.	.....	17

2.	There Is No Gain on Sale Issue Related to the Sale of Rural Water’s Water Utility Assets to Golden State Water; The Commission’s Gain on Sale Rules Do Not Apply to the Sale of An Entire Utility System Where the System Continues in Service to the Ratepayers Formerly Served by the Selling Utility. ....	19
3.	None of the Commission Decisions Authorizing the Sale of All Assets of One Utility to Another Utility Implicates Gain on Sale Issues. ....	22
F.	Issue 6: Whether or Not Cypress Ridge Is Fit to Operate a Sewer System and to Provide Sewer Service to the Cypress Ridge Service Area. ....	23
G.	Issue 7: Whether or Not Cypress Ridge’s Principal Operator Possess the Necessary Licenses and Qualifications to Operate the Cypress Ridge Sewer System. ....	26
H.	Issue 8: Whether or Not the Application Raises Any Safety Issues. ....	27
III.	CONCLUSION .....	28

## TABLE OF AUTHORITIES

<u>California Statutes</u>	<u>Page</u>
Public Utilities Code Section 851 .....	11, 12, 13, 14, 15, 16
Public Utilities Code Section 853 .....	11, 12, 13
 <u>California Public Utilities Commission Decisions</u>	
<i>Application of Aerial Acres Water System</i> (1970) 71 Cal P.U.C. 92 .....	11
<i>Application of Applied Theory Corporation</i> , (2000) D.00-09-033 .....	12, 14
<i>Application of California-American Water Company and John W. Richardson &amp; Associates Re: Toro Water Service, Inc.</i> , D.07-11-034, 2007 Cal. PUC LEXIS 658 .....	22
<i>Application of California-American Water Company and Garrapata Water Company</i> , D.13-01-033 .....	23
<i>Application of Citizens Utilities Company of California and California-American Water Company</i> , D.01-09-057, 2001 Cal. PUC LEXIS 826 .....	22
<i>Application of Cypress Ridge Service Company, Inc. and Rural Water Company</i> , D.02-06-005 .....	4, 12, 15
<i>Application of Golden State Water Company and Rural Water Company</i> , D. 15-06-049 .....	3, 5, 6, 7, 8, 9, 13, 16, 23
<i>Application of F. Patrick Flynn, Joyce H. Flynn, and California-Michigan Land and Water Company Re: Mesa Crest Water Company</i> , D.04-07-032, 2004 Cal. PUC LEXIS 357 .....	22
<i>Application of John W. Richardson and California Water Service Company Re: Alisal Water Corporation</i> , D.07-09-013, 2007 Cal. PUC LEXIS 434 .....	22
<i>Application of Lake Forest Utility Company, Inc.</i> (2009) D.09-03-032 .....	13, 14, 23
<i>Application of Star &amp; Boat Co.</i> (1962) 59 Cal. P.U.C. 317 .....	12, 15, 16
<i>Application of Western Water Holdings, LLC, Park Water Company</i> ,	

<i>et al.</i> , D.11-12-007, 2011 Cal. PUC LEXIS 540	..... 23
<i>In the Matter of Gains on Sale (Redding II)</i> D.89-01-016	..... 20
<i>Joint Application of California Water Service Company, Dominguez Water Corporation, et al.</i> , D.00-05-047, 2000 Cal. PUC LEXIS 314	..... 22
<i>Order Instituting Investigation Re: Gains From Sales of Energy, Telecommunications and Water Utility Assets</i> , D.06-05-04	..... 19, 20, 22
<u>California Public Utilities Commission Resolutions</u>	
Commission Resolution W-4794, dated November 23, 2009	..... 25
Commission Resolution W-4795, dated November 20, 2009	..... 2, 10, 13, 15, 25
<u>California Public Utilities Commission Regulations</u>	
CPUC Standard Practice U-24-W, <i>Transfer of a Water System or Sewer System and Sale of Utility Property</i>	..... 21, 22
<u>Other Authorities</u>	
Assigned Commissioner’s Scoping Memo and Ruling, dated May 27, 2016	..... 7

## SUMMARY OF JOINT APPLICANTS' RECOMMENDATIONS

The Assigned Commissioner's Scoping Memo and Ruling, dated May 27, 2016, identified eight issues to be addressed in these consolidated application proceedings. Applicants Cypress Ridge Sewer Co. (A.15-08-025) and Rural Water Company and/or Charles M. Baker, Successor in Interest to Rural Water Company (A.15-12-015) make the following recommendations in their joint opening brief regarding each of the identified issues:

Issue 1: Rural Water Company/Charles M. Baker urge that no show cause order should be issued for failing to comply with the requirements of D.15-06-049 concerning the 2008 transfer of sewer assets to Cypress Ridge Sewer.

Issue 2: The Transfer of Rural Water's sewer utility assets to Cypress Ridge Sewer should be approved without terms or conditions.

Issue 3: No penalties should be imposed on Rural Water/Mr. Baker for the transfer of sewer assets to Cypress Ridge Sewer.

Issue 4: Rural Water has already been relieved of its public utility obligations to provide water utility service by Ordering Paragraph 3 of D.15-06-049. Rural Water should be relieved of any public utility obligations to provide sewer utility service should Cypress Ridge Sewer be granted a CPCN in A.15-06-025.

Issue 5: The issue of gain on sale is not an issue relevant to either Cypress Ridge Sewer's CPCN application or Rural Water/Baker's transfer application. There is no gain on sale issue raised by the sale of Rural Water's water utility assets to Golden State Water Company.

Issue 6: Cypress Ridge is technically and financially capable of providing sewer utility service, has cooperated and worked with the Commission and its staff, and should be granted a CPCN to provide sewer utility service to the Cypress Ridge Development.

Issue 7: All of Cypress Ridge Sewer's operators possess all of the necessary licenses and qualifications to operate the Cypress Ridge Sewer system.

Issue 8: No safety issues are raised by either Cypress Ridge Sewer's CPCN application or Rural Water/Baker's transfer application.

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

In the Matter of the Application of Cypress Ridge Sewer Co. for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service to the Cypress Ridge Development in San Luis Obispo County, California.

Application No. 15-08-025

And Related Matter.

Application No. 15-12-015

**JOINT OPENING BRIEF OF APPLICANTS CYPRESS RIDGE SEWER CO.  
AND CHARLES M. BAKER, SUCCESSOR IN INTEREST  
TO RURAL WATER COMPANY**

Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the schedule established by the presiding Administrative Law Judge, Applicants Cypress Ridge Sewer Co. (“Cypress Ridge Sewer”) and Charles M. Baker (“Mr. Baker”), Successor in Interest to Rural Water Company (“Rural Water”), hereby submit their Joint Opening Brief in these consolidated proceedings. Cypress Ridge Sewer and Rural Water/Mr. Baker are sometimes referred to herein as “Joint Applicants.”

**I. INTRODUCTION**

**A. Summary of Consolidated Applications.**

Application 15-08-025 is an application by Cypress Ridge Sewer Co. for a Certificate of Public Convenience and Necessity (“CPCN”) to provide sewer utility services to the Cypress Ridge Development in San Luis Obispo County, California. Application 15-12-015 is an application by Rural Water Company and/or Charles M. Baker, as Successor in Interest to Rural Water Company, for authority to transfer certain sewer utility assets to Cypress Ridge Sewer.

The Rural Water/Baker application was amended on July 26, 2016 to include additional sewer utility assets to be transferred to Cypress Ridge Sewer. Additional information on the sewer assets to be transferred was provided by Mr. Baker on October 17, 2016 in response to the “Administrative Law Judge’s Ruling Requesting Additional Information,” dated October 12, 2016. The two applications were consolidated by the “Administrative Law Judge’s Ruling Consolidating Proceedings,” dated April 11, 2016.

Both the Cypress Ridge Sewer application and the Rural Water/Baker application were protested by the Cypress Ridge Owner’ Association (“CROA”), the association of homeowners owning homes within the Cypress Ridge Development. No other parties, including the Commission’s Division of Ratepayer Advocates and its Division of Water & Audits (“Water Division”), protested the applications.

A Prehearing Conference on both applications was held on April 5, 2016. Evidentiary hearings were held on the consolidated applications on September 21 and 22, 2016.

Based on the evidence presented at the evidentiary hearings, Joint Applicants urge the Commission to approve both applications. As discussed in greater detail below, Cypress Ridge Sewer has been providing sewer service – albeit without a CPCN – to approximately 390 customers<sup>1</sup> in the Cypress Ridge Development since it was incorporated as a separate corporation in 2008<sup>2</sup>, based on rates set by Commission Resolution W-4795, dated November 20, 2009. Cypress Ridge has demonstrated that it is technically and financially capable of operating the sewer system in full compliance with the regulations of the California Regional Water Quality Control Board (the “State Water Board”).

---

<sup>1</sup> Eric Sweeney, on behalf of Joint Applicants, Reporter’s Transcript (“RT”), at 107:1-4.

<sup>2</sup> Testimony of Charles M. Baker, on behalf of Joint Applicants, Hearing Exhibit A-1, as revised at hearing, at 2.

Mr. Baker is the sole shareholder of Cypress Ridge Sewer. Mr. Baker was also the sole shareholder of Rural Water, formerly a Class C water utility regulated by the Commission. Rural Water sold its water utility assets to Golden State Water Company in October 2015, and was relieved of its public utility obligations pursuant to the authority granted by the Commission in *Application of Golden State Water Company and Rural Water Company*, Decision (“D.”) 15-06-049 (the “Golden State/Rural Water Decision”). Rural Water was dissolved in December 2015.<sup>3</sup> Prior to April 2008 when Cypress Ridge Sewer was incorporated and began providing sewer utility service, Rural Water held a CPCN to provide sewer utility service to the Cypress Ridge Development and did provide sewer service to the Cypress Ridge Development. Rural Water transferred the sewer utility assets to Cypress Ridge Sewer – without formal Commission authorization – in 2008, except for one asset: a building owned by Rural and utilized for the provision of both water service (currently provided by Golden State Water) and sewer service (provided by Cypress Ridge Sewer). If Cypress Ridge Sewer is granted a CPCN, there should be no reason that Mr. Baker, as successor in interest to Rural Water, should not be authorized to transfer all sewer utility assets to Cypress Ridge Sewer, which will need such assets in order to continue to provide sewer service to the Cypress Ridge Development.

For these reasons, as discussed in greater detail below, Joint Applicants urge the Commission to grant both applications.

**B. Factual Background.**

In 2002, Rural Water acquired the sewer utility assets that served the Cypress Ridge Development from the Cypress Ridge Service Company, the developer of the Cypress Ridge Development. The Commission approved Rural’s acquisition of the sewer assets and granted Rural Water a CPCN to provide sewer utility service to the Cypress Ridge Development in

---

<sup>3</sup> *Id.*, at 8.

*Application of Cypress Ridge Service Company, Inc. and Rural Water Company*, D.02-06-005 (the “2002 Sewer CPCN Decision”).<sup>4</sup> Pursuant to Ordering Paragraph 5 of the 2002 Sewer CPCN Decision, Rural was required to establish a separate set of accounts for the sewer system in accordance with the Commission’s Uniform System of Accounts and keep the sewer assets and operations separate from the water assets and operations. Rural established a separate sewer operating unit and accepted into that operating unit as contributed plant all of the sewer utility assets of Cypress Ridge Service Company.<sup>5</sup> From 2002 to 2008, when Mr. Baker incorporated Cypress Ridge Sewer, Rural Water, through its separate operating unit, provided sewer utility service to the Cypress Ridge Development. *Cypress Ridge Sewer Application*, at 3.

In 2008, Mr. Baker incorporated Cypress Ridge Sewer as a separate corporation and Cypress Ridge Sewer began providing sewer service to the Cypress Ridge Development with all of the contributed assets acquired by Rural Water in 2002.<sup>6</sup> Mr. Baker also transferred the sewer utility assets that had been accounted for separately by Rural Water to Cypress Ridge Sewer. He did not obtain Commission authority for the transfer, although Cypress Ridge Sewer claimed and ended up with those assets on its books and in its accounts.<sup>7</sup> Mr. Baker did not transfer the sewer CPCN to Cypress Ridge Sewer.<sup>8</sup> However, the Commission did approve Resolution W-4795, dated November 23, 2009, naming Cypress Ridge Sewer as the sewer service provider and setting rates for sewer service provided to the Cypress Ridge Development, as well as recognizing the sewer assets as part of the Cypress Ridge Sewer system.

Cypress Ridge Sewer, without a CPCN and without formal Commission-approved ownership of the sewer assets, nonetheless has been providing sewer service to the Cypress

---

<sup>4</sup> *Id.*, at 2.

<sup>5</sup> *Id.*, at 2.

<sup>6</sup> *Id.*, at 2.

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

<sup>8</sup> *Id.*, at 6-7.

Ridge Development since 2008. Mr. Baker explained Rural Water’s failure to obtain Commission authority for the transfer of sewer assets and its failure to transfer the sewer CPCN to Cypress Ridge Sewer:

“[A]t the time Rural acquired the sewer assets from the developer, the Commission ordered that the sewer assets were to have separate books and accounts and separate tariffs, separate from Rural’s water utility assets and water tariffs. We complied with the Commission’s order and the sewer assets and service were completely separate from Rural’s water assets and service. So when Cypress Ridge Sewer became a separate corporation it just didn’t occur to me that we had to seek authority to transfer the sewer utility assets from Rural to Cypress Ridge Sewer since those assets had always been kept separate from the water utility assets. I guess my thinking was that since the assets were always separate from the water assets, there was no need to seek authority to transfer them because they always belonged to the sewer operation.

“ . . .

“Since 2002, Cypress Ridge Sewer – as a separate “division” of Rural, if you will – had been providing sewer service with sewer assets that were accounted for separately from Rural’s water assets. Once Cypress Ridge Sewer was incorporated nothing changed operationally and it just did not occur to me that I had to change anything. So . . . the CPCN granted to Rural was not transferred to Cypress Ridge Sewer.”<sup>9</sup>

Cypress Ridge Sewer’s lack of a CPCN and the lack of authority for the 2008 transfer of the sewer assets to Cypress Ridge Sewer came to light in the course of the Golden State/Rural Water proceeding (Application 13-10-011).<sup>10</sup> The Golden State/Rural Water Decision which concluded that proceeding approved a settlement agreement among the parties to that proceeding.<sup>11</sup> The settlement agreement approved by the Commission in that proceeding addressed the issues of continued sewer utility service to the Cypress Ridge Development, by either Cypress or by Rural Water, and the lack of a sewer CPCN for Cypress, by providing that:

---

<sup>9</sup> *Id.*, at 6-7.

<sup>10</sup> Rebuttal Testimony of Frank Brommenschenkel, on behalf of Joint Applicants, Hearing Exhibit A-7, at 3.

<sup>11</sup> In addition to Rural Water and Golden State Water, the joint applicants in A.13-10-011, the parties to that proceeding included the Commission’s Office of Ratepayer Advocates (“ORA”) and CROA.

“Rural Water Company shall elect one of the following options to address the provision of sewer service to the Cypress Ridge [Development] within 60 days of the effective date of this decision:

“a) Rural Water Company shall work with Cypress Ridge Sewer Co. to file an application with the Commission for a Certificate of Public Convenience and Necessity pursuant to Section 1001 of the Public Utilities Code. If Cypress Ridge Sewer Co. does so, Rural Water Company shall file a Section 851 application requesting California Public Utilities Commission (Commission) authorization to transfer all of Rural’s sewer utility assets to Cypress Ridge Sewer Co. upon certification of Cypress Ridge Sewer Co.

“b) Rural Water Company shall change its name to Rural Sewer Company, Inc. and request Commission approval to amend the current Cypress Ridge Sewer Co. tariffs to reflect that sewer service is provided by Rural Sewer Company, Inc. In this event, Rural Sewer Company shall obtain from Cypress Ridge Sewer Co. all easements and other assets related to the provision of sewer service.

“c) Rural Water Company, in conjunction with Cypress Ridge Sewer Co., shall seek Commission authorization pursuant to Public Utilities Code Section 854 to merge, with Rural to survive, and thereafter Rural shall be renamed Cypress Ridge Sewer Co.”<sup>12</sup>

Rural Water chose the first of the options described above and Cypress Ridge Sewer filed its CPCN application. Also in accordance with the first of the options described above, Rural Water filed its application for authority to transfer the only remaining sewer asset it owned at the time: the Shared Building that was the subject of the original Rural Water application and that was not a part of the assets sold to Golden State. Rural Water had previously (in 2008) transferred all other sewer assets to Cypress Ridge Sewer, albeit without Commission authority. Subsequent to Rural’s application for authority to transfer, the application on was amended (on July 26, 2016) to include those sewer assets transferred to the new corporation, Cypress Ridge Sewer, in 2008 without Commission authority. Further information on those sewer assets was provided by Mr. Baker on October 17, 2016, in response to the “Administrative Law Judge’s Ruling Requesting Additional Information,” dated October 12, 2016.

---

<sup>12</sup> See, Section 6.0 of the settlement agreement, attached as Appendix A to the Golden State/Rural Water Decision (D.15-06-049). See, also, Ordering Paragraph 10 of the Golden State/Rural Water Decision.

Since Rural Water has been dissolved, Mr. Baker, as successor in interest to Rural Water, owns the sewer utility assets to be formally approved for transfer to Cypress Ridge Sewer. Mr. Baker explained:

Prior to the dissolution of Rural, Rural, Cypress Ridge Sewer and my wife Kathy and I, as trustees of the Baker Living Trust, entered into a distribution agreement. That agreement states the intent of the parties to distribute the Shared Building, which is the subject of Rural application in this proceeding, “and any other sewer utility assets deemed to be owned by Rural,” to the trustees for the benefit of Cypress Ridge Sewer. The distribution agreement also provides that “[a]t such time as regulatory approval is obtained for transfer of the [Shared] Building and any other sewer utility assets deemed to be owned by Rural, the trustees . . . shall transfer the Building and any other sewer utility assets deemed to be owned by Rural to Cypress [Ridge Sewer].” So my wife and I, as trustees of the Baker Living Trust, are holding the Shared Building and any other sewer utility assets for the benefit of Cypress Ridge Sewer and, upon regulatory approval, will transfer those assets to Cypress Ridge Sewer.<sup>13</sup>

## **II. DISCUSSION**

The “Assigned Commissioner’s Scoping Memo and Ruling,” dated May 27, 2016, identified – based on the applications, protests and discussions at the Prehearing Conference – eight issues to be addressed in these consolidated application proceedings. The eight issues are enumerated and discussed below.

### **A. Issue 1: Whether Rural Should Be Ordered to Show Cause For Failing to Comply With the Requirements of D.15-06-049 Concerning the 2008 Transfer of Sewer Assets to Cypress Ridge.**

---

Joint Applicants urge that Rural Water should not be ordered to show cause for failing to comply with requirements of D.15-06-049 concerning the 2008 transfer of sewer assets to Cypress Ridge Sewer. Rural Water’s failure to include in its present application a request for authority to transfer the sewer assets transferred without formal Commission authority in 2008 was based on its interpretation, at the time, of which sewer assets it needed to seek authority to transfer to Cypress Ridge Sewer. In hindsight, that interpretation was not consistent with what

---

<sup>13</sup> Testimony of Charles M. Baker, Hearing Exhibit A-1, as revised at hearing, at 8.

the Commission intended, but there was no intent by Rural Water to purposely evade its obligations as set forth in the Golden State/Rural Water Decision. There was certainly no reason for Rural Water or Cypress Ridge Sewer to want to create yet another controversial situation that they would have to address and resolve.

Ordering Paragraph 10 of the Golden State/Rural Water Decision (D.15-06-049) provided three options for Rural Water and Cypress Ridge Sewer to pursue in connection with the continued provision of sewer service to the Cypress Ridge Development by Cypress Ridge Sewer. Rural Water chose the first of the three options which provided that Cypress Ridge Sewer would file a CPCN application, and that Rural Water would “file a Section 851 application requesting California Public Utilities Commission (Commission) authority to transfer all of Rural’s sewer utility assets to Cypress Ridge Sewer Co. upon certification of Cypress Ridge Sewer Co.” Golden State/Rural Decision, Ordering Paragraph 10a., *mimeo*, at 27. At the time that Rural Water’s application was being prepared, its reading of the Golden State/Rural Water Decision, revealed a focus on the Shared Building that Rural Water had never transferred to the books and accounts of Cypress Ridge Sewer and that it continued to own at the time of the Golden State transaction.

There is no specific reference in the Golden State/Rural Water Decision or in the settlement agreement signed by all parties to that transaction to an unauthorized 2008 transfer of sewer assets from Rural Water to Cypress Ridge Sewer. There are, however, specific references to Rural Water having to seek authority to transfer the Shared Building to Cypress Ridge Sewer pursuant to an amendment to the Golden State/Rural asset Purchase Agreement:

“As noted above, on February 27, 2014, Rural and Golden State filed an Amendment to [their joint application] to incorporate the First Amendment to the Asset Purchase Agreement into the record in this proceeding . . . The First Amendment requires Rural to seek Commission approval to transfer its CPCN authorizing Rural to provide sewer

service to the Cypress Ridge Development to Cypress Ridge Sewer and to seek the Commission’s approval to transfer pursuant to Section 851 of the Public Utilities Code, *the building referenced in Article 5 of the Asset Purchase Agreement*, as well as all of Rural’s other sewer assets to Cypress Ridge Sewer.” Golden State/Rural Water Decision, *mimeo*, at 8; emphasis added.

Even the First Amendment to the Asset Purchase Agreement seemed focused on the Shared Building without specific reference to sewer assets that had been transferred without formal Commission authority in 2008:

“[Rural Water, Golden State] and Cypress Ridge desire to amend the Agreement to require [Rural Water] to file an appropriate request with the CPUC to convey its CPCN for ownership and operation of the sewer system and provision of sewer utility service and its sewer system assets, to Cypress Ridge, and to reflect that unless and until the CPUC approves the transfer, *the Building* will be owned by [Rural Water] and the Shared Facilities Agreement will need to include [Rural Water] as a party . . .” First Amendment to Asset Purchase Agreement, Recital E, at 1; emphasis added.<sup>14</sup>

All of the foregoing references in the Golden State/Rural Water Decision, the amended Asset Purchase Agreement, and the Settlement Agreement to “all of Rural’s other sewer utility assets” or “all of Rural’s sewer utility assets” did not, at the time the Rural Water transfer application was being prepared, obviously appear to include the sewer assets transferred in 2008 without formal Commission authority. Those assets had been transferred and had been carried on the books and accounts of Cypress Ridge Sewer for several years and, at least in Rural Water’s view, were not “Rural’s sewer utility assets.” At the time the Rural Water transfer application was being prepared, the only sewer utility asset that Rural Water had not transferred to the books and accounts of Cypress Ridge Sewer and that it still owned was the Shared Building. Thus, the Shared Building and only the Shared Building was included in A.15-12-015.

Perhaps a more focused and integrated reading of the Golden State/Rural Water Decision, the amended Asset Purchase Agreement, and the Settlement Agreement (which revised some of

---

<sup>14</sup> The Asset Purchase Agreement, as amended, is Exhibit 1 to the Golden State/Rural Water application, A.13-10-011.

the obligations of the amended Asset Purchase Agreement) together would have led to the conclusion that the assets transferred in 2008 without formal Commission authority should have been included in Rural Water's transfer application. In any event, Mr. Baker, as successor in interest to Rural Water, has amended A.15-12-015 to include those sewer assets transferred to Cypress Ridge Sewer in 2008 and has provided further information regarding those assets in his response to the "Administrative Law Judge's Ruling Requesting Additional Information," dated October 12, 2016. The Joint Applicants assure the Commission that the omission was not intentional and urge the Commission not to issue a show cause order.

**B. Issue 2: Whether the Transfer of Rural's Sewer Assets to Cypress Ridge Should Be Approved and, If So, Under What Terms and Conditions.**

The Commission should formally approve the transfer of Rural Water's sewer assets to Cypress Ridge Sewer without conditions, and should grant a CPCN to Cypress Ridge Sewer. Cypress Ridge Sewer has utilized the sewer plant since 2008 to provide sewer service to the Cypress Ridge Development, which service has been fully compliant with all State Water Board regulations since 2010 when Eric and Shannon Sweeney began operating the sewer system.<sup>15</sup> Those sewer assets are currently carried on the books and accounts of Cypress Ridge Sewer since the unauthorized 2008 transfer of the assets by Rural Water. DWA staff reviewed Cypress Ridge Sewer's books and records in connection with Cypress Ridge Sewer's 2008 GRC Advice Letter 10-SS filing which resulted in Commission Resolution W-4795, dated November 20, 2009, and found no problems with such books and accounts. *See*, Resolution W-4795, at 2-3.

There are several ways for the Commission to approve the transfer of the sewer utility assets to Cypress Ridge Sewer. The Commission could grant the Rural Water/Baker transfer

---

<sup>15</sup> Testimony of Eric B. Sweeney, on behalf of Joint Applicants, Hearing Exhibit A-4, at 5, and Exhibit 1 thereto.

application and given all of the evidence in the record that Cypress Ridge Sewer is technically and financially qualified to continue providing sewer service to the Cypress Ridge Development, there is no good reason not to grant the Rural Water/Baker application. In providing sewer service since 2008 – and in full compliance with State Water Board regulations since 2010 – Cypress Ridge Sewer has continuously utilized the sewer assets, and has added to those assets. The formal, Commission-approved transfer of those assets should be made.

The Commission could also approve Rural Water’s 2008 transfer of the sewer assets to Cypress Ridge Sewer *nunc pro tunc* (retroactively), or pursuant to Public Utilities Code Section 853, the Commission could exempt the 2008 transfer from the provisions of Section 851, particularly since there had been a *de facto* recognition of the transfer by the Commission’s issuance of Resolution W-4795. Substantial precedent for these two options exists.

P.U. Code §853(b) provides, in pertinent part that:

“The Commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if its finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest.”

In *Application of Aerial Acres Water System* (1970) 71 Cal P.U.C. 92, the Commission held that pursuant to Section 853, it could exempt an unauthorized transfer of utility assets when no tangible benefit to the system’s customers could flow from declaring the transfer void. In that case, a water system had been constructed and operated for a number of years without a CPCN being issued from the Commission. The system was later sold. The Commission held that declaring the transfer void and holding the transferor to be the owner “would produce [no] tangible benefits to the public interests involved [citation omitted] . . . nor does it appear that any other benefits to the system’s customers could flow from an exercise of the provisions of Section 851.” *Aerial Acres Water System, supra*, 71 Cal P.U.C., at 93.

Similarly, in *Application of Star & Boat Co.* (1962) 59 Cal. P.U.C. 317, a small water taxi firm operating in San Diego Bay sold its operative rights and eight boats without Commission authority to a larger vessel common carrier more able to handle the volume of traffic in San Diego Bay. In the subsequent application for retroactive approval of the transfer the Commission held that it would approve the transfer and sale if the failure to seek authority was inadvertent. The Commission stated that “it appears . . . that [the Applicants’] failure to [seek Commission authority] was through inadvertence and with no intent to evade the provisions of the Public Utilities Code. When the requirements of the code were called to applicants’ attention, they forthwith filed [an application for approval of the transfer] and requested Commission approval . . .” *Star & Boat Co., supra*, 59 Cal. P.U.C., at 318. Pursuant to Section 853, the Commission ended up exempting the transaction from the provisions of Section 851. *See, also, Application of Applied Theory Corporation*, (2000) D.00-09-033, *mimeo*, at 5 (“under Section 853, when the public interest so requires, the Commission has discretion to exempt a transfer that would otherwise be void . . .”).

In the present case, the Commission could also exempt Rural Water’s 2008 transfer of sewer assets to Cypress Ridge Sewer. There are no tangible benefits to the public interest or to the system’s customers from declaring the 2008 transfer to be void. And clearly, the failure to seek such transfer was inadvertent. Mr. Baker testified that he had kept the sewer assets and operations separate from Rural Water’s water assets and operations as directed by D. 02-06-005 and that by the time he incorporated Cypress Ridge Sewer Co. six years later, it didn’t occur to him that he needed Commission authority because “I guess my thinking was that since the assets were always separate from the water assets, there was no need to seek authority to transfer them

because they always belonged to the sewer operation.”<sup>16</sup> The intent was to follow the suggestions of Commission staff and put a corporate shield around the sewer assets to separate them from Rural Water’s water utility assets and services. There was no intent to evade the provisions of Section 851. What possible benefit would evading the provisions of Section 851 provide to Rural Water or Mr. Baker? Indeed, it was the DWA staff that “periodically suggested [to Rural Water] . . . that a separate corporation should be formed for the sewer business”<sup>17</sup>

Moreover, DWA staff and the Commission, through its issuance in 2009 of Resolution W-4795, which set rates for Cypress Ridge Sewer’s sewer service, had seemingly tacitly approved Cypress Ridge Sewer’s ownership of the transferred sewer assets. As the Commission stated in the Golden State/Rural Water Decision, after noting that Rural had never filed an application or advice letter formally transferring either its sewer CPCN or its sewer assets:

“Nevertheless, since the formation of Cypress Ridge Sewer in 2008, the Commission has approved several advice letter filings made by Cypress Ridge Sewer related to the provision of sewer service, including the approval of an amended tariff indicating that Cypress Ridge Sewer is the utility providing sewer service to the Cypress Ridge [Development] [footnote omitted].” Golden State/Rural Water Decision, *mimeo*, at 9.

Thus, the Commission should exercise its authority under Section 853 to exempt the 2008 transfer from the provisions of Section 851.

The Commission could also approve the 2008 transfer of sewer assets to Cypress Ridge Sewer *nunc pro tunc*. In *Application of Lake Forest Utility Company, Inc.* (2009) D.09-03-032, the Commission approved, *nunc pro tunc*, the joint application requesting approval (twelve years after the fact) of a 1996 sale of assets of Lake Forest Utility Company, Inc. to Tahoe Park Water Company subject to conditions regarding system improvements. There, the Commission held that:

---

<sup>16</sup> Testimony of Charles M. Baker, Hearing Exhibit A-1, as revised at hearing, at 6-7.

<sup>17</sup> *Id.*, at 5.

“This decision [to approve the transfer *nunc pro tunc*] brings the regulatory status of the system into conformity with its putative ownership, in pragmatic recognition of the realities and the need to clarify its ownership in order to accomplish urgently needed improvements now.

“Although we do not condone the fact that the sale and purchase were concluded without our prior approval, we cannot overlook the fact that the system has been continuously operated by [Tahoe Park Water Company] since it changed hands in 1996. The circumstance that it remains in a state of regulatory limbo does not serve the interests of its customers or the public, and the question of ownership must be settled before vital improvements can be made to the system . . .” D.09-3-032, *mimeo*, at 2.

Similarly, in *Applied Theory Corporation, supra*, where the Commission was asked to retroactively approve a transfer of control of an interexchange carrier, the Commission noted that “we have granted *nunc pro tunc* approval to transfers of control in situations where we found that such approval was in the public interest [citations omitted].” D.00-09-033, *mimeo*, at 5.

Here, approving the 2008 transfer of sewer assets to Cypress Ridge Sewer *nunc pro tunc* would achieve the same goals that the Commission recognized to be important in the *Lake Forest Utility Company* decision discussed above. *Nunc pro tunc* approval would bring the regulatory status of the sewer assets into conformity with their putative ownership “in pragmatic recognition of the realities” that Cypress Ridge Sewer has utilized those assets to provide sewer service for the last eight years. The circumstance that the sewer assets remain in a state of regulatory limbo does not serve the interests of Cypress Ridge Sewer’s customers or the public.

The Commission should approve the transfer of the sewer assets one way or another. No public interest would be served by denying approval of the transfer.

**C. Issue 3: What Penalties, If Any, Should Be Imposed on Rural for the Transfer of Rural’s Sewer Assets to Cypress Ridge in Violation of §851.**

No penalties should be imposed on Rural for the unauthorized transfer of the sewer utility assets to Cypress Sewer in 2008. There is no evidence in the record or elsewhere that Rural Water or Mr. Baker purposely intended to evade the provisions of Section 851. No benefit could

have or would have accrued to Rural Water or Mr. Baker from purposely evading the provisions of Section 851. To the contrary, the evidence of record shows that Rural Water worked with DWA staff regarding the sewer service. As Mr. Baker testified, he followed the directive of D.02-06-005 to keep the sewer assets and operations separate from Rural's water assets and operations. "Thereafter, we worked with Commission staff on the sewer service, and it was periodically suggested by staff that a separate corporation should be formed for the sewer business."<sup>18</sup> The evidence also shows that Mr. Brommenschenkel wrote to the General Counsel of the Commission to determine if there were additional actions to be taken as a result of the formation of a separate corporation for the sewer service. Mr. Brommenschenkel testified that after the letter was sent he received a call from an attorney in the Legal Division who advised him to follow the directives of staff and that the attorney "saw no issues."<sup>19</sup> DWA staff even visited Cypress Ridge Sewer and inspected its book and records and operations in the course of processing Cypress Ridge Sewer's 2008 general rate case advice letter and made no mention of the how the sewer assets might have come to be Cypress Ridge Sewer's property as reflected in its book and accounts.<sup>20</sup>

Mr. Baker's testimony about why he did not seek Commission authority to transfer the sewer assets to Cypress Ridge Sewer<sup>21</sup> described above in Section I.B. makes perfect sense given that the sewer assets and operations were from the beginning always kept separate from Rural Water's water assets and operations and that nothing changed after the incorporation of Cypress Ridge Sewer. Clearly, failing to seek Commission authority for the transfer of the sewer assets was inadvertent. In *Star & Boat Co., supra*, the Commission found the failure of the applicants

---

<sup>18</sup> *Id.*, at 4-5.

<sup>19</sup> Testimony of Frank Brommenschenkel, Hearing Exhibit A-6, at 4, and Exhibit 1; Frank Brommenschenkel, RT, at 128:3-15.

<sup>20</sup> *See*, Commission Resolution W-4795, at 2-3.

<sup>21</sup> Testimony of Charles M. Baker, Hearing Exhibit A-1, as revised at hearing, at 6.

to seek Commission authority to be inadvertent, and the evidence of record indicates the same here. In *Star & Boat Co.*, the Commission not only did not fine or penalize the applicants, it exempted the unauthorized transfer of assets from the provisions of Section 851.

Given the evidence in this case, the Commission should find the failure to obtain approval for the 2008 transfer to be inadvertent and not penalize Rural Water or Mr. Baker.

**D. Issue 4: Whether or Not Rural Has Been Relieved of Its Public Utility Obligations in Light of the Transfer of Its Water System Public Utility Assets to Golden State.**

Ordering Paragraph 3 of the Golden State/Rural Water Decision provided that “[u]pon Golden State Water Company’s acquisition of Rural Water Utility’s [*sic*] water utility assets Rural Water Company shall be relieved of its public utility water obligations.” The closing of the sale of water utility assets to Golden State occurred in October 2015.<sup>22</sup> Thus, Rural Water’s obligation to provide public utility water service was extinguished at that time.

With respect to Rural Water’s obligations to provide public utility sewer service in connection with the 2002 sewer CPCN granted to it, Rural Water/Mr. Baker should be formally relieved of such obligation should a CPCN be granted to Cypress Ridge Sewer. Cypress Ridge Sewer – not Rural Water – has been providing sewer service since 2008 and continues to successfully do so today. In the “Administrative Law Judge’s Ruling Requesting Additional Information,” dated October 12, 2016, the ALJ requested Rural Water/Mr. Baker to describe the sewer assets to be transferred to Cypress Ridge Sewer and also ordered that “Rural Water Company must include a request to be relieved of its public utility obligations. In its response to the ALJ Ruling, dated October 17, 2016, Mr. Baker, as successor in interest to Rural Water, stated that “[s]hould the [Cypress Ridge Sewer and Rural Water/Baker] applications be granted, Mr. Baker, as successor in interest to Rural Water, respectfully requests that Rural Water be

---

<sup>22</sup> *Id.*, at 2.

relieved of its public utility obligations to provide sewer utility service.”<sup>23</sup> Should Cypress Ridge Sewer’s application for a CPCN be granted, Cypress Ridge Sewer will be the authorized sewer service provider and Rural Water should be formally relieved of any obligation it has under the 2002 sewer CPCN.

**E. Issue 5: Whether or Not Gain on Sale Applies to the Sale of Rural’s Water Utility Assets and Whether or Not This Issue Should Be Considered As Being Part of These Two Proceedings.**

By an Administrative Law Judge Ruling (“ALJ Ruling”), dated April 15, 2016, the assigned ALJ asked the parties to “provide additional information . . . explaining why any gain on sale derived from the sale of Rural’s water system to Golden State is or is not relevant to either or both of the current proceedings. Parties should explain how the issue of gain on sale is necessary in resolving either or both of the two proceedings.” ALJ Ruling, at 1-2. The Joint Applicants responded on April 29, 2016 with their “Joint Response of Cypress Ridge Sewer Co. and Charles M. Baker, Successor in Interest to Rural Water Company, to ALJ Ruling Regarding Gain on Sale Issue.” In the interest of having one document that addresses all of the identified issues in these consolidated proceedings, the Joint Applicants address the gain on sale issue again in this brief.

**1. Gain on Sale Issues Are Completely Irrelevant to Both Applications in These Consolidated Proceedings.**

Joint Applicants assert that any gain on sale issue related to the sale of all of the water utility assets of Rural Water to Golden State should *not* be an issue addressed in these consolidated applications. The sale of Rural Water’s water utility assets to Golden State has absolutely no connection with either of the two consolidated applications here, one for the issuance of a sewer CPCN to Cypress Ridge Sewer, and the other for authority for Rural

---

<sup>23</sup> “Response of Charles M. Baker, Successor in Interest to Rural Water Company, to Administrative Law Judge’s Ruling Requesting Additional Information,” dated October 17, 2016, at 4.

Water/Mr. Baker to transfer its sewer utility asset to Cypress Ridge Sewer. The ALJ Ruling asks the critical question: “why [is the] determination of this [gain on sale] issue . . . necessary in resolving either of the two proceedings.” ALJ Ruling, at 2. The *only* answer is that any gain on sale issue related to the sale of Rural Water’s water utility assets to Golden State is totally irrelevant to any issues presented by either of these two applications. The Cypress Ridge Sewer application seeks a sewer CPCN. The issues there, as in any CPCN application, are whether Cypress Ridge Sewer is operationally and financially capable of providing public utility *sewer* service. The Rural Water/Baker application seeks authority to transfer sewer assets used in the provision of public utility *sewer* service to Cypress Ridge Sewer, which has provided sewer service to the Cypress Ridge Development since 2008. Any gain on sale derived from Rural Water’s sale of *water* utility assets to Golden State has absolutely no connection to any issue relevant to the two present applications.

CROA was an active participant in the Rural Water/Golden State application proceeding and was a signatory to the settlement agreement in that case which the Commission approved and which led to the sale of Rural Water’s water utility assets to Golden State. With the sale of its water utility assets, Rural Water was also relieved of its obligation to provide water utility service to the Cypress Ridge Development. If there was any gain on sale issue related to the sale of Rural Water’s water utility assets, CROA should have raised the issue in that proceeding. However, CROA did not raise any gain on sale issues in that proceeding.

CROA cannot raise a gain on sale issue in the two present applications because there is simply no nexus between that issue and any issues presented by either of the two applications. Addressing any gain on sale issue will have no bearing on determining whether either of the two

present applications should be granted on denied. The gain on sale issue is simply irrelevant to these consolidated applications.

2. There Is No Gain on Sale Issue Related to the Sale of Rural Water's Water Utility Assets to Golden State Water; The Commission's Gain on Sale Rules Do Not Apply to the Sale of An Entire Utility System Where the System Continues in Service to the Ratepayers Formerly Served by the Selling Utility.

Putting aside the fact that any gain on sale issue is completely irrelevant to the present consolidated applications, it is clear that no gain on sale issue arises from the sale of Rural Water's water utility assets to Golden State. The Commission's gain on sale rules apply to the sale of individual assets that are sold off and no longer available for use in the provision of utility service. The gain on sale rules do not apply when an entire system is sold and where the system continues in service to the ratepayers formerly served by the selling utility.

The Commission's gain on sale rules were adopted in D.06-05-041, *Order Instituting Investigation Re: Gains From Sales of Energy, Telecommunications and Water Utility Assets* (the "Gain on Sale Decision"). There, the Commission stated:

"A utility receives a gain on sale when it sells *an asset* such as land, buildings or other tangible or intangible assets at a price higher than the acquisition cost of the non-depreciable *asset* or the depreciated book value of the depreciable *asset*." Gain on Sale Decision, Appendix B, *mimeo*, at 1; emphasis added.

The CPUC summarized the Gain on Sale Decision by stating that:

"This decision adopts a process for allocating gains (and losses) on sale received by certain electric, gas, telecommunications and water utilities when they sell utility land, assets such as buildings, or other tangible or intangible assets *formerly used to serve utility customers*. In most cases, utility ratepayers should receive 100% of the gain from depreciable property such as buildings . . ." *Id.*, Appendix B, *mimeo*, at 2; emphasis added.

It is clear from the context of the Gain on Sale Decision that the subject being addressed is the sale of individual utility assets, not the sale of the entirety of the utility's assets where the selling utility is relieved of its public utility obligation to provide utility service to its customers

and the buying utility assumes the obligation to provide utility service with the assets purchased from the selling utility.

Conversely, the Gain on Sale Decision also discussed the *Redding II* decision, D.89-01-016, whose holding was *not* repudiated by the Commission. In *Redding II*, the Commission held that where (1) a public utility sells a distribution system to a governmental entity, (2) the distribution system consists of part or all of the utility operating system located within a geographically defined area, (3) the components of the system are or have been included in the rate base of the utility, and (4) the sale of the system is concurrent with the utility being relieved of, and the governmental entity assuming, the public utility obligations to the customers within the area served by the system, then the gains or losses from the sale of the system should be allocated to utility shareholders, provided that the ratepayers have not contributed capital to the distribution system and remaining ratepayers are not adversely affected by the transfer of the system. *Redding II, mimeo*, at 18.

While *Redding II* technically does not apply to the Rural Water/Golden State transaction because Rural did not sell to a governmental entity, the circumstances described in *Redding II* are analogous to the sale of the entirety of a utility's assets to another utility: the sale of part or all of a utility's operating system located within a geographically defined area where the sale of the system is concurrent with the selling utility being relieved of, and the buyer utility assuming the public utility obligations to the customers within the area served by the system. Under these circumstances, the Commission has *never* allocated gains or losses between ratepayers and shareholders from the sale of an entire system. When a public utility sells all of its assets to another public utility and ceases to be responsible for utility service, any "gains" from the sale of the assets belong entirely to the selling utility.

The key difference between the sale of an individual asset and the sale of the entirety of a utility's assets to another utility that assumes the duty to serve is that when an individual asset is sold, the utility loses the use of that asset for the purpose of providing service to its customers. Allocating some or all of the gain on the sale of that asset "repays" the ratepayers who arguably paid for the cost of the rate-based asset which is no longer available to them.<sup>24</sup> When a utility sells all of its assets to another utility that will continue to provide utility service to customers, the customers have lost nothing. All of the assets previously employed to provide service are still available to the new utility for purposes of providing utility service. In the case of the Golden State/Rural Water asset sale, all of the assets formerly utilized by Rural Water to provide water service continue to be utilized by Golden State to continue to provide water service. The customers in the Cypress Ridge Development have lost nothing.

No gain on sale issue was raised in the Rural Water/Golden State proceeding because there was no gain on sale issue to be raised. That continues to be the case in these two consolidated applications.

There are two final important points to note. First, the principles, rules and regulations adopted in the Gain on Sale Decision were incorporated into a water utility standard practice – Standard Practice U-24-W, *Transfer of a Water System or Sewer System and Sale of Utility Property*. Section B of Standard Practice U-24-W, *Transfer of an Entire System*, addresses the requirements and rules relating to the sale of an entire water or sewer system by one utility to another. The subject of gain on sale is not addressed in Section B. Section C of Standard Practice U-24-W, *Sale of Part of a System*, devotes two paragraphs to the rules adopted in the Gain on Sale Decision for the allocation of gains on the sale of an asset or part of a system as

---

<sup>24</sup> Incidentally, Joint Applicants do not agree that ratepayers "pay" for assets. Joint Applicants believe that ratepayers pay for service, not for the assets used to provide service.

between ratepayers and shareholders. Standard Practice U-24, ¶¶ 10 and 11, at 3. Thus, it is clear that the allocation of gains on sale are applicable to the sale of a part of a system or to the sale of individual assets, but are not applicable to the sale of an entire system.

Second, in the Gain on Sale Decision the Commission noted that it had “deferred allocation of the gain [on sale] in many past cases,” and listed those cases in Appendix A to the decision. Gain on Sale Decision, *mimeo*, at 3. Appendix A to the Gain on Sale Decision lists twenty-five Commission decisions in which the issue of the allocation of gains on sale was deferred. A review of each of those decisions reveals that *all* twenty-five of the decisions listed in Appendix A involved the sale of individual pieces of property. None of them dealt with the sale of an entire system or company. The only conclusion that can be drawn is that the allocation of gains on sale are applicable to the sale of a part of a system or to the sale of individual assets, but are not applicable to the sale of an entire system.

3. None of the Commission Decisions Authorizing the Sale of All Assets of One Utility to Another Utility Implicates Gain on Sale Issues.

A review of Commission decisions that authorized the purchase and sale of all of one water utility’s assets to another water utility, with the buying utility assuming the public utility obligation to provide service to the customers of the selling utility, confirm the conclusion that the allocation of gains on sale are applicable to the sale of a part of a system or to the sale of individual assets, but are not applicable to the sale of an entire system.<sup>25</sup> None of these decisions

---

<sup>25</sup> The acquisition decisions reviewed are: *Joint Application of California Water Service Company, Dominguez Water Corporation, et al.*, D.00-05-047, 2000 Cal. PUC LEXIS 314; *Application of Citizens Utilities Company of California and California-American Water Company*, D.01-09-057, 2001 Cal. PUC LEXIS 826; *Application of F. Patrick Flynn, Joyce H. Flynn, and California-Michigan Land and Water Company Re: Mesa Crest Water Company*, D.04-07-032, 2004 Cal. PUC LEXIS 357; *Application of California-American Water Company and John W. Richardson & Associates Re: Toro Water Service, Inc.*, D.07-11-034, 2007 Cal. PUC LEXIS 658; *Application of John W. Richardson and California Water Service Company Re: Alisal Water Corporation*, D.07-09-013, 2007 Cal. PUC LEXIS 434; *Application of*

authorizing the sale and purchase of all of one water utility's assets to another water utility addressed any gain on sale issues or allocated any gains as between ratepayers and shareholders in connection with the sale and purchase of all of a utility's assets. The same was true of the Golden State/Rural Water Decision.

It is abundantly clear that the Commission's gain on sale rules do not apply to the sale of all of Rural Water's water utility assets to Golden State.

**F. Issue 6: Whether or Not Cypress Ridge Is Fit to Operate a Sewer System and to Provide Sewer Service to the Cypress Ridge Service Area.**

In proceedings regarding the transfer of assets, the central issue is whether the transferee is technically and financially fit to utilize the transferred assets to provide public utility service. *Lake Forest Utility Company, supra, mimeo*, at 17. The record demonstrates that Cypress Ridge Sewer is both technically and financially capable of providing sewer service.

Cypress Ridge Sewer Co. is totally fit to operate the Cypress Ridge sewer system and has demonstrated that fitness over the last six years. Although Cypress Ridge Sewer has been operating the sewer system since 2008, until 2011, it did so under a Cleanup and Abatement Order issued by the State Water Board. However, since 2010, shortly after Eric and Shannon Sweeney took over the operation of the sewer system, the system has operated in full compliance with all regulations of the State Water Board. The State Water Board rescinded its Cleanup and Abate Order in May 2011 after a year of the Sweeneys having successfully operated the sewer system in full compliance with the State Water Board's regulations.<sup>26</sup> Thus, operationally, there is no question that Cypress Ridge Sewer is fit to operate its sewer system.

---

*Western Water Holdings, LLC, Park Water Company, et al.*, D.11-12-007, 2011 Cal. PUC LEXIS 540; and *Application of California-American Water Company and Garrapata Water Company*, D.13-01-033.

<sup>26</sup> Testimony of Eric B. Sweeney, on behalf of Joint Applicants, Hearing Exhibit A-4, at 5, and Exhibit 1 thereto.

Financially, Mr. Baker testified that Cypress Ridge Sewer is financially capable of providing sewer service. Specifically he testified that:

“we have invested almost \$400,000 (that has been recognized by the Commission) in the sewer system. Cypress Ridge Sewer currently has no debt or any need to incur any indebtedness. We are capable and prepared to make any other capital investments in the sewer [system] that are necessary.”<sup>27</sup>

Mr. Baker also testified that:

“the plant has been operating perfectly for the last six and a half years, and . . . we have future plans to continue to operate it that way. And whatever costs it might take to improve it, we’re prepared to do that because it’s a viable company and very successful.”<sup>28</sup>

Mr. Sweeney testified that “the Bakers have approved . . . every piece of capital equipment that we’ve requested.”<sup>29</sup> Mr. Brommenschenkel presented Exhibit A-8, a five year forecast of planned capital improvements to the sewer system. When cross-examined about how the Commission could guarantee that such capital improvements would be made, Mr. Brommenschenkel testified that he has “worked with [Mr. and Mrs. Baker] now for 10 years . . . [a]nd I have never gotten a commitment out of them that they didn’t fulfill. And I do not foresee a hiccup in this capital-improvement program. It’s only word of mouth. I have nothing in writing. I mean, but it is a commitment.”<sup>30</sup>

Clearly, Cypress Ridge Sewer is technically and financially capable of operating the Cypress Ridge Sewer system.

In addition to Cypress Ridge Sewer’s clear technical and financial capability to provide sewer service to the Cypress Ridge Development, it has always respected the Commission’s jurisdiction and attempted to comply with all Commission rules and regulations, contrary to the

---

<sup>27</sup> Testimony of Charles M. Baker, Hearing Exhibit A-1, as revised at hearing, at 10.

<sup>28</sup> Baker, RT, at 32:17-24.

<sup>30</sup> Frank Brommenschenkel, RT, at 218:24 – 219:4.

assertions of CROA witness Ron Green. Mr. Green spends a great portion of his testimony asserting that Rural Water and Cypress Ridge Sewer have consistently and purposely evaded and disregarded Commission orders and directives.<sup>31</sup> The record shows otherwise.

Mr. Baker testified:

“I have always intended and attempted to comply with all Commission orders and directives and all Commission rules and regulations . . . [W]e always strive to be in compliance with all Commission rules and regulations. We have never hidden from the Commission. We have worked with Commission staff on various advice letters and other filings and always have been cooperative with staff.”<sup>32</sup>

“While we have not been perfect, we have always tried and will continue to try to comply with all of the Commission’s regulations . . . [B]oth Rural Water and Cypress Ridge Sewer have always worked closely with Water Division staff. Many things CROA complains about were done with the full knowledge and guidance of staff, and we have always responded to their inquiries when they have been made.”<sup>33</sup>

The record affirms Mr. Baker’s testimony. When Cypress Ridge Sewer was incorporated, Mr. Brommenschenkel worked with DWA staff and even communicated with the Commission’s General Counsel seeking advice on what, if anything, needed to be done with respect to the new corporation and the transfer of sewer assets from Rural Water to Cypress Ridge Sewer.<sup>34</sup> Mr. Brommenschenkel filed Cypress Ridge Sewer’s 2008 GRC advice letter and “worked with Commission staff on the review of Cypress Ridge Sewer’s books, records and plant, and assisted the company through to the conclusion of the process which culminated with Resolution W- 4795.”<sup>35</sup> When Rural Water was ordered to make refunds by Commission Resolution W-4794, dated November 23, 2009, it did not thumb its nose to the Commission, but rather “worked closely with Water Division staff when it was discovered that there were flaws in

---

<sup>31</sup> See, Prepared Direct Testimony of Ron Green (“Testimony of Ron Green”), on behalf of CROA, Exhibit CROA-10, generally at 12-25.

<sup>32</sup> Testimony of Charles M. Baker, Hearing Exhibit A-1, as revised at hearing, at 7-8.

<sup>33</sup> Rebuttal Testimony of Charles M. Baker, Hearing Exhibit A-3, at 3.

<sup>34</sup> Testimony of Frank Brommenschenkel, Hearing Exhibit A-6, at 4.

<sup>35</sup> *Id.*, at 4.

the way the refund amount was calculated . . . [and corresponded with staff on] the amounts, terms and the timing of the refund . . .”<sup>36</sup>

Mr. Brommenschenkel presented and testified about Cypress Ridge Sewer’s capital and operating outlook for the next five years (Hearing Exhibit A-8). He was questioned by CROA counsel about the recovery of expenses tracked in an employee labor memorandum account and over what time period he would seek to amortize that recovery. Mr. Brommenschenkel responded without hesitation that “I hadn’t really thought about that. I generally converse with Commission staff [about that] ahead of time.”<sup>37</sup>

Clearly, neither Rural Water nor Cypress Ridge Sewer has hidden from Commission oversight, nor have they been non-responsive or purposely attempted to evade Commission orders and directives. To the contrary, both companies have consistently worked with and sought advice from Commission staff. For a company with “less than 400 service connections . . . [and no] full time legal person or a full time regulatory person,”<sup>38</sup> Cypress Ridge Sewer has done its best before the Commission. Cypress Ridge Sewer is fit to operate its sewer system and deserves to be granted a CPCN.

**G. Issue 7: Whether or Not Cypress Ridge’s Principal Operator Possess the Necessary Licenses and Qualifications to Operate the Cypress Ridge Sewer System.**

Cypress Ridge Sewer has two part-time employees – Shannon Sweeney, designated by Cypress Ridge Sewer to the State Water Board as the Chief Plant Operator, and Eric Sweeney, the Manager of the sewer system – and two full time employees: Seth Hutchinson and Patrick Stebbins.<sup>39</sup> Mr. Sweeney testified that Shannon Sweeney, the Chief Plant Operator holds a

---

<sup>36</sup> Rebuttal Testimony of Frank Brommenschenkel, Hearing Exhibit A-7, at 4-5, and Exhibit 1.

<sup>37</sup> Brommenschenkel, RT, at 212: 2-26.

<sup>38</sup> Testimony of Charles M. Baker, Hearing Exhibit A-1, as revised at hearing, at 7.

<sup>39</sup> Rebuttal Testimony of Eric B. Sweeney, Hearing Exhibit A-5, at 2-3.

Grade 5 license, the highest grade of license that exists, although the Chief Plant Operator is only required to hold a Grade 3 license. Mr. Sweeney further testified that he holds a Grade 3 license. Mr. Sweeney testified that “Cypress Ridge has, at all times, been compliant with the Regional Water Quality Control Board’s . . . requirements for licensed operators,” adding that the four people operating the Cypress Ridge Sewer system hold all of the necessary licenses and qualifications to operate the Cypress Ridge system.”<sup>40</sup>

None of this testimony was refuted by CROA. Thus, it is clear that all of the four people who operate the Cypress Ridge Sewer system possess all of the necessary licenses and qualifications to operate the sewer system, and that Shannon Sweeney, the Chief Plant Operator, holds the highest grade of license that exists.

**H. Issue 8: Whether or Not the Application Raises Any Safety Issues.**

Neither the Cypress Ridge application nor the Rural Water/Baker application raises any issues of safety. Since 2010, shortly after Eric and Shannon Sweeney took over the operation of the sewer system, the system has operated in full compliance with all regulations of the State Water Resources Control Board. All of the personnel, whether employed or contracted, possess the necessary licenses and qualifications to operate the sewer system.<sup>41</sup> Granting of the Cypress Ridge Sewer CPCN application and the Rural Water/Baker application for authority to transfer the sewer assets to Cypress Ridge Sewer will maintain the *status quo*, meaning that the fully compliant sewer operations will continue. Thus, neither the applications themselves, nor the granting of the applications raise any safety issues.

---

<sup>40</sup> *Id.*, at 2-3.

<sup>41</sup> Rebuttal Testimony of Eric B. Sweeney, Hearing Exhibit A-5, at 2-3.

### III. CONCLUSION

Based on the record in these proceedings and on the discussion of the issues herein, Joint Applicants urge the Commission (1) to grant Cypress Ridge Sewer's application for a Certificate of Public Convenience and Necessity to provide sewer service to the Cypress Ridge Development, and (2) grant the Rural Water/Baker application for authority to transfer all of the sewer utility assets to Cypress Ridge Sewer by either granting the application before the Commission, exempting the transfer pursuant to the provisions of P.U. Code Section 853, or approving the transfer *nunc pro tunc*.

Dated: October 25, 2016

Respectfully submitted,

CYPRESS RIDGE SEWER CO.

and

CHARLES M. BAKER, Successor in Interest to  
Rural Water Company

By /s/ Jose E. Guzman, Jr.

Jose E. Guzman, Jr.  
Guzman Law Offices  
288 Third Street, Suite 306  
Oakland, CA 94607  
(415) 515-4034  
jeguzmanjr@gmail.com

Attorney for Cypress Ridge Sewer Co., and  
Charles M. Baker, Successor in Interest to  
Rural Water Company