

Decision PROPOSED DECISION OF ALJ WILSON (Mailed 1/27/2014)**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)

And Related Matter.

Investigation 12-03-008

**DECISION DENYING PETITIONS FOR MODIFICATION
OF DECISION (D.) 12-03-025 AND D.12-09-006**

1. Summary

The Commission denies the petitions of the Division of Water and Audits and Adrian Maaskant to modify Decisions (D.) 12-03-025 and D.12-09-006, respectively.

2. Background

By Decision (D.) 12-03-025 and D.12-09-006, the Commission opened an Order Instituting Rulemaking (OII); and resolved Application (A.) 11-08-019 and Investigation (I.) 12-03-008, respectively. In A.11-08-019, Golden Hills Sanitation Company (GHSC) requested authority for an increase in rates, I.12-03-008 was opened to determine whether or not the Commission should petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC.

Pursuant to Rule 16.4(b) of the Commission's Rule of Practice and Procedure, "A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."

In D.13-05-037, the Commission clarified that Riley C. Walter was served as the attorney of GHSC, not as a Respondent; and denied GHSC's and the Executors of the Kentucky Estates of Carlie W. Smith and Lillian Smith (Kentucky Estates) joint petition to modify D.12-03-025. In D.13-05-036, the Commission granted limited rehearing of D.12-09-006 in order to determine the source and validity of the debt listed in GHSC's A.11-08-019.

We remind GHSC that it must comply with all applicable Commission rules, regulations and decisions. In particular, we remind GHSC that it must request our authority for a proposed change in ownership.

3. Outstanding Petitions to Modify

3.1. Division of Water and Audits Petition

On May 25, 2012, the Division of Water and Audits (DWA) filed a petition for modification of D.12-03-025, to which Adrian Maaskant responded on June 11, 2012 and GHSC and the Executors of the Kentucky Estates jointly responded on June 25, 2012.

In its petition for modification, DWA requested that the California Probate Estate of Carlie W. Smith be added as a Respondent to I.12-03-008, the Commission take official notice of this probate proceeding, and require GHSC to continue paying for and providing service until a new owner is provided

(instead of until a receiver is appointed). DWA makes this request in order that the Commission has a full and complete record on which to base its decisions in the current proceedings.

Adrian Maaskant supports DWA's petition for modification, positing that GHSC's owners deliberately withheld information regarding the existence of the California Probate Estate of Carlie W. Smith.

3.1.1. Discussion

Even though DWA's petition for modification requests modification of D.12-03-025 (the decision that instituted I.12-03-018), the Commission finds that DWA's concerns are addressed in D.12-09-006.

With regards to DWA's concern about the responsibilities of the owners of GHSC to continue paying for and providing service, the Commission refers to Ordering Paragraph (OP) 5 of D.12-09-006, which states that until such time as the receiver disposes of GHSC, the utility retains its public utility obligations and responsibilities granted under the Certificate of Public Convenience and Necessity (CPCN). We also refer to OP 11 and 14,¹ which denied with prejudice another party's request that the responsibilities and liabilities of the Estates be explored, and denied with prejudice all outstanding motions not specifically addressed, some of which dealt with funding of GHSC by the Estates. As new rates were authorized in D.12-09-006, any need for revenues beyond what is

¹ See D.12-09-006 at OPs 11 and 14:

11. We deny with prejudice Adrian Maaskant's request to explore the responsibilities and liabilities of the Estates of Carlie and Lillian Smith because this issue is outside the scope of the consolidated proceedings.

14. We deny with prejudice all outstanding motions not specifically addressed in the foregoing ordering paragraphs.

collected in rates continues to be the responsibility of GHSC. We therefore reiterate our orders in D.12-09-006, and remind GHSC of its responsibilities under the CPCN granted to GHSC. Also, parties have not provided us with any new information that would cause us to change our order in D.12-09-006.

As I.12-03-008 was opened in order for the Commission to determine whether or not it should petition for a receiver, and this issue has been resolved, there is no reason to add the California Probate Estate of Carlie W. Smith as a respondent to I.12-03-008 at this time.

The Commission therefore denies DWA's petition for modification.

3.2. Adrian Maaskant, Petitioner

On January 25, 2013, Maaskant filed a petition for modification of D.12-09-006, to which the Executors of the Kentucky Estates jointly responded on February 25, 2013. Maaskant replied to this response on March 6, 2013.

In his petition for modification, Maaskant requested that: 1) when GHSC is sold, only Commission authorized indebtedness be transferred to the new owner; 2) liabilities incurred by GHSC prior to appointment of a receiver should remain the responsibility of GHSC and its owners; 3) GHSC should be held responsible for the costs of resolving all deferred maintenance and/or repairs; and 4) GHSC and its owners should pay for the cost of the receivership.

3.2.1. Discussion

As discussed in Section 2 above, the Commission has already granted limited rehearing of D.12-09-006 in order to determine the source and validity of the debt listed in GHSC's A.11-08-019. Therefore, there is no need for the Commission to reiterate its authority herein.

On March 26, 2012, Maaskant filed a motion requesting that the Commission order the owners of GHSC to continue to subsidize the operations

of GHSC. In D.12-09-006, the Commission denied with prejudice, this and all other outstanding motions, including but not limited to Maaskant's March 26, 2012 motion - that the owners of GHSC should be responsible for the costs of the utility. As detailed in Section 3.1.1 above, the Commission also denied Maaskant's motion to explore the responsibilities and liabilities of the owners be explored. Maaskant's petition for modification asks for basically the same thing as these previous requests did, both of which were denied with prejudice. Also, parties have not provided us with any new information that would cause us to change our order in D.12-09-006. In addition, as discussed in Section 3.1.1 above, GHSC retains its public utility obligations and responsibilities granted under the CPCN. New rates were authorized in D.12-09-006. If further funding is necessary, the receiver can file a request with the Commission for increased rates. Therefore, the Commission denies Maaskant's petition for modification.

4. Comments on Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g) (1), the proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties on January 27, 2014. Opening Comments were filed on February 16, 2014 by Maaskant and jointly on February 18, 2014 by the Executors of the Kentucky Estates. Reply Comments were filed on February 21, 2014 by Maaskant, and on February 24, 2014 jointly by the Executors of the Kentucky Estates. Comments have been considered herein for purposes of clarification.

5. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. By D.12-03-025 and D.12-09-006, the Commission opened an OII; and resolved A.11-08-019 and I.12-03-008, respectively.
2. In A.11-08-019, GHSC requested authority for an increase in rates.
3. The purpose for the Commission to open I.12-03-008 was to determine whether or not the Commission should petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC.
4. Pursuant to Rule 16.4(b) of the Commission's Rule of Practice and Procedure, "A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."
5. In D.13-05-037, the Commission clarified that Riley C. Walter was served as the attorney of GHSC, not as a Respondent; and denied GHSC's and the Executors joint petition to modify D.12-03-025.
6. In D.13-05-036, the Commission granted limited rehearing of D.12-09-006 in order to determine the source and validity of the debt listed in GHSC's A.11-08-019.
7. On May 25, 2012, DWA filed a petition for modification of D.12-03-025, requesting that: 1) the California Probate Estate of Carlie W. Smith be added as a Respondent to I.12-03-008; 2) the Commission take official notice of this probate proceeding; and 3) require GHSC to continue paying for and providing service until a new owner is provided (instead of until a receiver is appointed).

8. On January 25, 2013, Maaskant filed a petition for modification of D.12-09-006, requesting that: 1) when GHSC is sold, only Commission authorized indebtedness be transferred to the new owner; 2) liabilities incurred by GHSC prior to appointment of a receiver should remain the responsibility of GHSC and its owners; 3) GHSC should be held responsible for the costs of resolving all deferred maintenance and/or repairs; and 4) GHSC and its owners should pay for the cost of the receivership.

9. OP 5 of D.12-09-006 states that until such time as the receiver disposes of GHSC, the utility retains its public utility obligations and responsibilities granted under the CPCN.

10. I.12-03-008 was opened in order for the Commission to determine whether or not it should petition for a receiver, and this issue has been resolved.

11. On March 26, 2012, Maaskant filed a motion requesting that the Commission order the owners to continue to subsidize the operations of GHSC.

12. In OP 11 of D.12-09-006, the Commission denied with prejudice Maaskant's request to explore the responsibilities and liabilities of the Estates.

13. In OP 14 of D.12-09-006, the Commission denied all outstanding motions not otherwise rule on, with prejudice.

14. New rates for GHSC were authorized in D.12-09-006.

15. Parties have not provided us with any new information that would cause us to change our order in D.12-09-006.

16. If further funding beyond what is currently collected in rates is necessary, the receiver can file a request with the Commission for increased rates.

17. We remind GHSC that it must comply with all applicable Commission rules, regulations and decisions. In particular, we remind GHSC that it must request our authority for a proposed change in ownership.

Conclusions of Law

1. Because any need for revenues beyond what is collected in rates continues to be the responsibility of GHSC, we denied motions with prejudice in D.12-09-006 that address similar requests as made in the petitions to modify, and parties have not provided us with any new information that would cause us to change our order in D.12-09-006, DWA's and Maaskant's petitions to modify D.12-03-025 and D.12-09-006, respectively, regarding liabilities and cost, should be denied.

2. Because I.12-03-008 was opened so that the Commission could determine whether or not it should petition for receiver, and such issue has been resolved, DWA's petition for modification of D.12-03-025 to add the California estate as a respondent to I.12-03-008 should be denied.

3. Since the Commission has already granted limited rehearing of D.12-09-006 in order to determine the source and validity of the debt listed in GHSC's A.11-08-019, there is no need for the Commission to reiterate its authority herein.

O R D E R

IT IS ORDERED that:

1. The Division of Water and Audit's petition to modify Decision 12-03-025 is denied.

2. Adrian Maaskant's petition to modify Decision 12-09-006 is denied.
This order is effective today.

Dated _____, at San Francisco, California.