STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor
PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 7, 2016

Proposed Resolution W-5106
Agenda ID: 15218

To: All Interested Persons

Enclosed is Proposed Resolution W-5106 of the Water Division, which denies the recovery of excess labor costs from 2009 through 2012 and orders a refund of $184,772 plus interest through a surcredit of $13.69 per month for 36 months. Proposed Resolution W-5106 is scheduled to appear on the November 10, 2016 Commission Meeting Agenda (ID# 15218).

The Commission may act on this resolution or it may postpone action until later. When the Commission acts on a proposed resolution, the Commission may adopt all or part of the proposed resolution, as written, or amend or modify the proposed resolution; or the Commission may set the proposed resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on Proposed Resolution W-5106 via email to Water.Division@cpuc.ca.gov on or before **October 31, 2016**. **Please reference "Proposed Resolution W-5106" in the subject line.**

Interested persons must also serve a copy of their comments on the utility on the same date that the comments are submitted to the Water Division. If email is unavailable, please submit comments to:

California Public Utilities Commission
Water Division
505 Van Ness Avenue
San Francisco, CA 94102

Comments should focus on factual, legal, technical errors, or policy issues in the proposed resolution.

Persons interested in receiving comments submitted may contact the Water Division at Water.Division@cpuc.ca.gov or (415) 703-1133. Please reference "Proposed Resolution W-5106."

/s/ RAMI S. KAHLON
Rami S. Kahlon, Director
Water Division

Enclosures: Proposed Resolution W-5106
Certificate of Service
Service List

PROPOSED RESOLUTION

Resolution W-5106 **Agenda ID #15218**
WD

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION **RESOLUTION W-5106**
Water and Sewer Advisory Branch **November 10, 2016**

R E S O L U T I O N

(RESOLUTION W-5106), CYPRESS RIDGE SEWER COMPANY. ORDER DENYING RECOVERY OF EXCESS LABOR COSTS FROM 2009 THROUGH 2012 AND ORDERING A REFUND OF $184,772 PLUS INTEREST THROUGH A SURCREDIT OF $13.69 PER MONTH FOR 36 MONTHS.

SUMMARY

This Resolution finds, in accordance with Commission Decision (D.) 14-08-059, that: (1) the amounts collected by Cypress Ridge Sewer Company (Cypress) for excess labor costs from 2009 through 2012 pursuant to Resolutions W-4946 and W-4968 violated the Commission's rule against retroactive ratemaking[1] and should be refunded; and (2) Cypress did not receive proper Commission certification and authorization to serve the Cypress Ridge Subdivision[2] and to collect rates for that purpose. This Resolution orders Cypress to refund to ratepayers, the total amounts collected through surcharges, of $184,772 plus interest at the 90 day commercial paper rate on the unpaid balance via a monthly sur-credit of $13.69 per customer for 36 months.

BACKGROUND

Cypress is a Class D sewer utility which serves 367 residential and 8 commercial sewer customers in its service area near the town of Arroyo Grande, in San Luis Obispo County.

[1] It is a fundamental rule that utility rates are exclusively prospective in nature. Correcting a pre-existing rate by changing previously approved rates and applying those changes to a past period constitute retroactive ratemaking, unless the Commission authorizes and the utility sets up a tracking account for later recovery.

[2] Cypress Ridge Sewer Company's service area is referred to as "Cypress Ridge Subdivision"

The majority of customers are full-time residents, being a mixture of retired and working individuals.

In Decision (D.) 02-06-005, issued on June 6, 2002, the Commission granted Rural Water Company (Rural) a Certificate of Public Convenience and Necessity (CPCN) authorizing Rural to provide sewer service to the Cypress Ridge Subdivision. The Commission also directed Cypress Ridge Service Company, a subsidiary of the developer of the Cypress Ridge subdivision, to transfer its sewer system property to Rural. [3] Pursuant to the Commission's order, Rural operated the sewer system as an independent operating unit from Rural's water utility since that time. On April 11, 2008, Rural incorporated Cypress Ridge Sewer (Cypress) and transferred most of its sewer utility assets to Cypress. Rural claims that it decided to incorporate Cypress in consultation with Commission staff. [4] Cypress then began providing sewer utility service to the service territory included in Rural's CPCN. No authorization was received from the Commission by Rural to either transfer assets to Cypress or for Cypress to offer sewer utility services under Rural's CPCN. Both Cypress and Rural are wholly owned by the same individual, Charles M. Baker (Baker).

By D.15-06-049, issued on June 25, 2015, the Commission approved Rural's request to sell all water related assets to Golden State Water Company. To ensure continuity of sewer service and address the unauthorized transfer of Rural's sewer utility assets to Cypress, the Commission presented three options to Rural and Cypress.[5] In response, Rural and

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[3] D. 02-06-005, Ordering Paragraph 3.

[4] Testimony of Charles M. Baker, Application No. 15-08-025 and 15-012-015, Response to Q. 10, pg. 5.

[5] D. 15-06-049, Ordering Paragraph Number 10 states:

> 10. Rural Water Company shall elect one of the following options to address the provision of sewer service to the Cypress Ridge subdivision 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.

Footnote continued on next page

Cypress filed an application to obtain a CPCN for Cypress to provide sewer service to the Cypress Subdivision.[6] Subsequently, Rural filed a § 851 application requesting Commission authorization to transfer a public utility asset to Cypress. [7] By a Ruling dated May 27, 2016, the Commission ordered Rural to amend its Application to seek authority to transfer to Cypress all the sewer utility assets, including those transferred to Cypress without authorization in 2008. [8] These applications are currently under consideration by the Commission.

Cypress' present rates were established on April 2, 2012, by approval of Advice Letter (AL) 18-SS, which authorized a Consumer Price Index increase of $7,841, or 1.7% in gross annual revenues.

The last general rate case (GRC) for Cypress, which approved a $98,628 or 29.8% increase in gross annual revenues with a rate of margin of 20%, became effective on November 20, 2009 by Resolution W-4795. Resolution W-4795, Ordering Paragraph (OP) 5 states:

> Cypress Ridge Sewer Company is authorized to establish a memorandum account to post employee labor expenses exceeding $120,000 annually and is allowed to apply for approval and collection of accumulated excesses.

Cypress failed to subsequently ask for permission to establish the excess labor memorandum account and had been recording these excess labor expenses in its regular

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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.

[6] Application 15-08-025, filed August 25, 2015

[7] Application 15-12-015, filed December 10, 2015

[8] Ruling number 3, Assigned Commissioner's Scoping Memo and Ruling, dated May 27, 2016.

labor account. In response to a staff query regarding the basis of recovery of excess labor costs in the absence of a properly established special memorandum account to track excess labor costs, Cypress stated:

> "The basis for filing for the recovery of excess labor costs was that Cypress Ridge Sewer assumed that the special memorandum account was properly established since it was completed in conformance with DWA staff instructions and concurrence, and with Commission approval…." [9]

Cypress filed an advice letter to establish the special memorandum account and recover expenses from it in AL-12-SS on March 23, 2010. However, Cypress had to withdraw that AL because Resolution W-4795 required that recovery of the excess employee labor expenses could not be requested until after Cypress had "achieved normalcy." Achieving normalcy meant that the California Regional Water Quality Control Board (RWQCB) Cleanup and Abatement Order No. R3-2008-0022 issued on January 24, 2008, had to be rescinded first. As noted in Resolution W-4795, the contractor providing services to Cypress to operate the plant was unsuccessful in bringing the plant into compliance with the RWQCB requirements. Consequently, in order to meet the RWQCB requirements, Cypress dismissed the contractor and used its own employees to operate the plant. The RWQCB Cleanup and Abatement Order was rescinded on May 19, 2011. As of that date, Cypress is considered by the RWQCB to have returned to normalcy. However, this change resulted in additional labor costs, as discussed below.

By Advice Letter 16-SS, dated August 9, 2011, Cypress requested the following: (a) an expense offset rate increase of $146,969 through a surcharge of $32.66 per month, or a 31.6% annual revenue increase over a 12-month period, plus interest at the 90-day commercial paper rate, to cover additional labor costs incurred in 2009 and 2010; and (b) a change in rates for future labor costs. Cypress subsequently filed a supplement to Advice Letter 16-SS-A, which the Division of Water and Audits[10] received on September 15, 2011. In the supplement, Cypress retracted its request for a change in rates for future labor costs. Advice Letter 16-SS-A requested a labor expense offset of $146,969 to be

[9] Response to Request 2b, Letter from Jose E. Guzman to Ravi Kumra, dated July 5, 2016. See Exhibit 1.

[10] The "Division of Water and Audits" (or DWA) was re-named "Water Division" (or WD) in July 2016.

collected via a surcharge over a 12-month period. The $146,969 amount was for the labor expense Cypress incurred in excess of $120,000 for all of 2009 plus the labor expenses Cypress incurred in excess of $120,000 for 2010.

On April 19, 2013, the Commission issued Resolution W-4946 and granted a total expense offset revenue increase of $119,749 or a 9.0% increase in annual revenue through a surcharge of $8.87 per month over a 36-month period plus allowance for interest at the 90-day commercial paper rate.[11] Subsequent to the adoption of this Resolution, Cypress implemented the surcharge on all customers from May 2013 through March 2016 (35 months). The total amount collected was $118,049 which was $1,697 less than the authorized amount.[12]

On December 5, 2013, the Commission issued Resolution W-4968, granting an advice letter (AL 19-SS) request by Cypress for an expense offset rate increase of $58,007 through a surcharge of $6.45 per month, which represented a 4.5% annual revenue increase over a 24-month period, plus interest at the 90-day commercial paper rate, to cover additional labor costs incurred in 2011 and 2012. [13] Cypress actually collected $66,723 in surcharges from its customers from January 2014 through March 2016 over a 27 month period. The over-collection of $8,716 over a longer than authorized period was due to the following: Cypress' new billing staff was not familiar with the surcharge process; the closing of sale of Rural Water assets to Golden State Water in October 2015 put a strain on staffing resources; and year end accounting was delayed because of follow up on the Rural Asset sale to Golden State Water.[14]

Applications for Rehearing and Commission actions

On May 20, 2013, Cypress Ridge Owners Association (CROA) filed an application for

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[11] Resolution W-4946, Ordering Paragraphs 1 and 2.

[12] Response to requests 5 and 6 by Joe Guzman, Attorney for Cypress Sewer Company to Ravi Kumra, Senior Utilities Engineer, Water Division, dated July 05, 2016. Attached hereto as Exhibit 1.

[13] Resolution W-4968, Ordering Paragraphs 1 and 2.

[14] See Fn 12 above

rehearing of Resolution W-4946. The rehearing application challenged Resolution W-4946 on the following grounds:
(1) The record does not support Findings of Fact Nos. 4, 5, 6, and 12, and no factual findings address CROA's arguments regarding the reasonableness of Cypress ' excess labor costs for 2009 and 2010; (2) the Decision is not supported by adequate Findings of Fact, and Finding of Fact No. 10 is an "ultimate" finding; (3) Findings of Fact Nos. 6 and 7 are actually conclusions of law, erroneously conclude that the relief provided in Resolution W-4946 does not violate the rule against retroactive ratemaking, and thereby constitute a failure to proceed in the manner required by law; (4) Findings of Fact Nos. 12 and 13 do not meet the requirements of Section 1705 [15]; and (5) the Commission failed to proceed in the manner required by law and exceeded its jurisdiction by authorizing Cypress to recover costs that weren't recorded in a memorandum account as required by the rule against retroactive ratemaking memorialized in Standard Practice U-27-W (Standard Practice for Processing Rate Offsets and Establishing and Amortizing Memorandum Accounts), paragraph 6. No responses were filed to CROA's application for rehearing of Resolution W-4946.

On January 6, 2014, CROA filed an application for rehearing of Resolution W-4968. In its rehearing application, CROA alleged the same errors outlined in its application for rehearing of Resolution W-4946, and also included the following additional allegations of error: (1) Cypress is not certified to provide sewer service in the Cypress Ridge Subdivision, and the Commission therefore failed to proceed in the manner required by law in awarding rate relief to Cypress ; and (2) Resolution W-4968 fails to proceed in the manner required by law by failing to determine whether an evidentiary hearing is required, and failing to explain the basis for that determination in the face of a protest by the entire customer base of the utility. No responses were filed to CROA's application for rehearing of Resolution W-4968.

The Commission issued D.14-08-059 on August 29, 2014 [16] granting Rehearing of Resolutions W-4946 and W-4968. The Commission found that because Cypress failed to

[15] Unless otherwise specified, all statutory references are to the Public Utilities Code.

[16] "Order granting rehearing of Resolution W-4946 and Resolution W-4968 on factual and ratemaking issues, and denying rehearing in all other respects", Decision 14-08- 059, Issued August 29, 2014.

establish memorandum accounts tracking labor and expense offset costs, the rule against retroactive ratemaking could not allow such recovery. Decision 14-08-059 also required the following:

1. On rehearing, the Commission's Water Division (WD) is directed to consider and develop a record regarding all of the facts which led Cypress to track its excess labor costs in its regular labor account, rather than properly establish a special memorandum account as directed by the Commission to track excess labor costs in 2009 and 2010. WD is also directed to consider which, if any, of these facts would permit recovery of excess labor costs by Cypress in the absence of a properly established memorandum account to track these costs. WD is directed to consider this matter in light of the rule against retroactive ratemaking (Pub. Util. Code, Section 728), and any applicable and legally recognized exceptions to this rule established either by statute or California case law. WD is further directed to determine, on the basis of factual data provided by the parties, whether and when the Cypress sewer system was formally and properly transferred from Rural to Cypress with requisite Commission approvals.

2. WD will conduct the rehearing, and at the conclusion of the rehearing, WD shall prepare a Resolution for the Commission's consideration.

DISCUSSION

As directed by D. 14-08-059, WD gathered information from Cypress to develop a record. WD asked the following questions:

- Cypress' reasons for tracking its excess labor costs in its regular labor account rather than in a properly established special memorandum account as directed by the Commission for 2009 through 2012.

- Did Cypress contend that any of the facts set forth in response to WD's questions would permit recovery of excess labor costs by Cypress in the absence of a properly established memorandum account to track these costs? If so, why?

- Did Cypress hire an expert (attorney, consultant or other professional) to handle its ratemaking filings?
- Summary of amounts collected by Cypress for each of the two surcharges approved by Resolutions W-4946 and W-4968 and justification if the surcharges were collected beyond the Commission authorized period.

Based on a review of Cypress' responses, WD makes the following recommendations. See Exhibits 1 through 3 for Cypress' responses.

a. Appropriateness of recovery of excess labor costs in view of violation of the rule against retroactive ratemaking

In Resolution W-4946, the Commission authorized the recovery of excess labor costs that were incurred in 2009 and 2010. Similarly, Resolution W-4948 approved recovery of excess labor costs incurred in 2010 and 2011. Each of these costs were incurred well before the issuance of these Resolutions. In either case, Cypress failed to establish a memorandum account as directed by the Commission in Resolution W-4795 to track the labor costs at issue in this proceeding. In each case, the Commission's rationale for doing so was that the Commission has once previously made such an exception for another "small" utility under similar circumstances.

Resolution W-4946 states as follows: "Normally, a utility would not be allowed to recover costs that it failed to record in an appropriate memorandum account." However, an exception was made for Cypress, because "….allowing Cypress to recover costs that were reasonably incurred is a fair outcome and consistent with Commission precedent." [17] As a basis for this determination, Resolution W-4946 cites Resolution W-4815, which in 2010 permitted a small water company (Lake Forest Water Company or "Lake Forest") to recover "certain authorized costs where the utility had failed to properly request the establishment of a memorandum account to book the costs." [18] In Resolution W-4815, the

[17] Resolution W-4946, p. 3

[18] Ibid

Commission found that Lake Forest was small and unsophisticated with respect to Commission procedures, but that the costs incurred were reasonable and necessary and would have properly been tracked in a special memorandum account if the water company had taken the necessary steps to create such an account. [19] In the present proceeding, the Commission determined in Resolution W-4946 that Cypress should receive the same treatment as was afforded to Lake Forest in Resolution W-4815, for the same reasons. [20]

It is important to note that Resolution W-4815, referenced above, was an uncontested proceeding, received no protests, and no rehearing application was filed challenging the Commission's approval of costs in that proceeding that had not been properly tracked in a memorandum account. [21] In addition, Resolution W-4946 cites to no authority other than Resolution W-4815 for the proposition that the Commission may avoid application of the rule against retroactive ratemaking in the interest of equity.

As a general matter, the labor costs at issue in this proceeding should not be recoverable by Cypress because they were not properly tracked in a memorandum account. The Commission's power to fix rates is prospective in nature, and the California Supreme Court has noted that the Commission may not, even on grounds of unreasonableness, require refunds of charges fixed by a formal Commission finding which has become final. [22] The California Supreme Court further noted that there may be policy arguments for giving the Commission power to adjust rates retroactively where rates are found to be unreasonable, or to prevent unjust enrichment, but the Court also determined that such arguments should be addressed to the Legislature, which has not changed any of the relevant statutory provisions with respect to the rule against retroactive ratemaking.[23]

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[19] Resolution W-4815, pp. 4-5

[20] Resolution W-4946, p. 4

[21] Resolution W-4815, pp. 3, 8

[22] See City of Los Angeles v. Public Utilities Comm. (1972) 7 Cal.3d 331, 356-357; Pac. Tel. & Tel. v. Public Utilities Comm. (1965) 62 Cal.2d 634, 650-655; Pub. Util. Code, § 728, which sets forth the prohibition against retroactive ratemaking.

[23] Pac. Tel. & Tel., supra, 62 Cal.2d at p. 655; City of Los Angeles, supra, 7 Cal.3d at pp. 356-357.

Cypress' rate consultant has over 22 years of regulatory experience [24] and handled its ratemaking filings for excess labor costs for 2009 through 2012. [25] That consultant could have easily set up a memorandum account to record costs as ordered in Resolution W-4795 but elected not to do so. Cypress cannot be considered "unsophisticated" and should not be accorded the same treatment as was accorded to Lake Forest in Resolution W-4815. Cypress' failure to set up the memorandum account allowed in Resolution W-4795 is fatal to its claim to recover $146,969 in excess labor costs for 2009 and 2010 claimed in Resolution W-4946 and $58,007 for excess labor costs for 2011 and 2012 claimed in Resolution W-4968, under the prohibition on retroactive ratemaking.

Cypress actually collected $184,772 [26] in surcharges from customers by implementing Resolutions W-4946 and W-4968. Due to the prohibition against retroactive ratemaking, WD recommends that Cypress refund $184,772 plus interest at the 90 day commercial paper rate on the unpaid balance to Cypress' ratepayers through a monthly sur-credit of $13.69 with interest at the 90 day commercial paper rate on the unpaid balance in the excess labor memorandum account spread over 36 months starting December 1, 2016.

b. Whether Cypress has received proper Commission certification and authorization to serve Cypress Ridge and to collect rates for that purpose

Cypress Ridge Sewer has operated as a separate "Division" of Rural and has been providing sewer service to Cypress Ridge subdivision since 2002.[27] After Cypress filed its Articles of Incorporation with the California Secretary of State on April 11, 2008, Rural simply transferred its sewer system serving the Cypress Ridge subdivision to Cypress, without Commission authorization. Similarly, the CPCN granted to Rural was not transferred to Cypress Ridge Sewer.[28] Thus, Cypress has never been certified by the

[24] Response to Request 2b, letter from Jose E. Guzman to Ravi Kumra, dated July 5, 2016. Attached hereto as Exhibit 1.

[25] Response to Request 8, letter from Jose Guzman to Ravi Kumra, dated August 15, 2016. Attached hereto as Exhibit 2.

[26] Comprised of $118,049 surcharge collected pursuant to Resolution W-4946 and $66,723 surcharge collected pursuant to Resolution W-4968.

[27] Testimony of Charles M. Baker, Application No. 15-08-025 and 15-012-015, Response to Q. 13, pg. 13.

[28] Ibid

Commission to serve the Cypress Ridge Subdivision, and its sewer system was transferred to it by Rural Water Company without first obtaining Commission approval as required by Section 851.[29] In a Assigned Commissioner Ruling, it was noted that "because Baker/Rural has not "secured an order" or "obtained approval" from the Commission authorizing the transfer of Rural's sewer utility assets , as required by section 851, the unauthorized transfer of sewer utility assets to Cypress Ridge in 2008 is void." [30] Consequently, Rural, not Cypress, is the only currently authorized entity which may file tariffs and collect rates for providing sewer service in the Cypress Ridge Subdivision.

In summary : (a) the overage of labor charges for 2009 through 2012 were not recorded in a separately established memorandum account pursuant to Resolution W-4795. (b) such failure to establish a memorandum account is not excusable and, (c) the sewer system serving Cypress Ridge Subdivision was transferred without authorization from the Commission. Rural has been doing business as (dba) Cypress Sewer Company and is the only entity that is authorized to file tariffs and collect rates for sewer service in the Cypress Ridge Subdivision.

In D. 14-08-059, the Commission granted rehearing of Resolutions W-4946 and W-4968. This Resolution W-5106 finds Cypress' collections of surcharges pursuant to those Resolutions inappropriate. This invalidates the two Resolutions W-4946 and W-4968 and Resolution W-5106 should supersede and replace the previous Resolutions.

WD recommends that: (1) surcharge amounts collected pursuant to Resolutions W-4946 and W-4968 should be refunded to ratepayers with interest at the 90 day commercial paper rate on the unpaid balance from 2009 through 2012 [31]; and (2) Rural Water Company, dba as Cypress Ridge Sewer Company, should file tariffs shown in Appendix

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[29] "Rural did not receive formal approval for the transfer of the sewer system assets to Cypress Ridge Sewer", Response to Request 3, E-mail from Joe Guzman, Attorney for Cypress Sewer Company to Ravi Kumra, Senior Utilities Engineer, Water Division, dated June 21, 2016, attached hereto as Exhibit 3.

[30] Pg. 5, Assigned Commissioner's scoping Memo and Ruling, Filed May 27, 2016, A. 15-08-025 and A. 15-12-015.

[31] Standard Practice U-27-W (August 2009), paragraph 30, allows memo account balances to earn interest at the 90 day commercial paper rate.

A replacing Cypress Ridge Sewer Company Tariff Sheets Number 188-SS : Schedule No. 1, Residential Flat Rate Sewer Service and 189-SS: Schedule No. 2, Commercial Flat Rate Sewer Service.

COMPLIANCE

Service by Cypress is satisfactory. There are no Commission orders requiring system improvements, nor are there any service problems requiring corrective actions. The utility has been filing annual reports as required.

SAFETY

The rates approved in this Resolution will provide the utility with financial resources to safely operate and maintain operations for the benefit of its customers, employees, and members of the general public.

COMMENTS

Public Utilities Code Section 311(g)(1) generally requires that resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

Accordingly, this draft resolution was mailed to the utility and the protestants and was made available for public comment on October 7, 2016.

FINDINGS

1. Cypress Ridge Sewer Company (Cypress') last general rate case (GRC), Resolution W-4795, issued on November 20, 2009, authorized Cypress to establish a memorandum account for labor costs in excess of $120,000 per year.

2. Cypress failed to properly request and record excess labor related costs in a separate labor memorandum account authorized in Resolution W-4795.

3. As a general matter, the labor costs at issue in this proceeding should not be recoverable by Cypress because they were not properly tracked in a memorandum account.

4. In 2010, the Commission in Resolution W-4815 permitted a small water company (Lake Forest Water Company or "Lake Forest") to recover "certain authorized costs where the utility had failed to properly request the establishment of a memorandum account to book the costs."

5. In Resolution W-4815, the Commission found that Lake Forest was small and unsophisticated with respect to Commission procedures, but that the costs incurred were reasonable and necessary and would have properly been tracked in a special memorandum account if the water company had taken the necessary steps to create such an account.

6. Cypress had access to an experienced regulatory consultant who could easily set up a memorandum account ordered in Resolution W-4795**.**

7. Cypress should not be accorded the same treatment as was afforded to Lake Forest in Resolution W-4815 because it cannot be considered as unsophisticated.

8. Despite being authorized by the Commission in Resolution W-4795 to take the ministerial step of establishing a separate labor memorandum account, Cypress failed to establish or book excess labor costs to that memorandum account.

9. Resolution W-4946, adopted on April 18, 2013, authorized Cypress to collect, through a surcharge, $119,749 plus interest at the 90 day commercial paper rate via a surcharge of $8.87 per month from customers over a 36 month period.

10. Cypress actually collected total surcharges of $118,049 from customers over 35 months pursuant to Resolution W-4946.

11. Resolution W-4968, adopted on December 5, 2013 authorized an increase of $58,007 plus interest at the 90-day commercial paper rate to be collected via a surcharge of $6.45 per month from each customer over a 24-month period.

12. Cypress actually collected total surcharges of $66,723 from customers over 27 months pursuant to Resolution W-4968.

13. On May 20, 2013, Cypress Ridge Owners Association (CROA) filed an application for rehearing alleging legal error in Resolution W-4946.

14. On January 6, 2014, CROA filed an application for rehearing of Resolution W-4968.

15. CROA's applications for rehearing Resolutions W-4946 and W-4968 were granted by Decision (D.) 14-08-059 on August 28, 2014.

16. Cypress' failure to set up the memorandum account allowed in Resolution W-4795 is fatal to its claim to recover excess labor costs approved in Resolutions W-4946 and W-4968, under the prohibition on retroactive ratemaking.

17. Cypress has failed to cite any facts that warrant reversal of the D.14-08-059 finding that it may not recover the excess labor costs.

18. Cypress' request to recover $119,749 plus interest for excess labor costs for the period 2009 and 2010 would constitute retroactive ratemaking and should be denied.

19. Cypress collected $118,049 in surcharges for excess labor costs for 2009 and 2010 over a period of 35 months from customers pursuant to Resolution W-4946.

20. Cypress' request to recover $58,007 plus interest for excess labor costs for the period 2011 and 2012 would constitute retroactive ratemaking and should be denied.

21. Cypress collected $66,723 in surcharges over a period of 27 months from customers pursuant to Resolution W-4968.

22. Total surcharges collected by Cypress for excess labor costs from 2009 through 2012 pursuant to Resolutions W-4946 and W-4968 amounted to $184,772.

23. It is reasonable for Cypress to refund $184,772 through a sur-credit of $13.69 plus interest at the 90 day commercial paper rate on the unpaid balance to customers over a period of 36 months from the date of this resolution.

24. The rates recommended by the Water Division in Appendix A are reasonable and should be adopted.

25. Cypress has never been certified by the Commission to serve Cypress Ridge, and that Cypress' sewer system was transferred to it by Rural Water Company without first obtaining Commission approval as required by Section 851.

26. After Cypress filed its Articles of Incorporation with the California Secretary of State on April 11, 2008, Rural transferred its sewer system serving the Cypress Ridge subdivision to Cypress, without Commission authorization.

27. The only entity currently authorized to file tariffs and collect rates for providing sewer service in the Cypress Ridge Development is Rural, and not Cypress.

THEREFORE, IT IS ORDERED THAT:

1. Cypress Ridge Sewer Company's request to recover excess labor costs incurred during 2009 through 2012 is denied.

2. Rural Water Company, doing business as Cypress Ridge Sewer Company, is authorized to file an Advice Letter with the Rate Schedules attached to this Resolution as Appendix A, and concurrently cancel Cypress Ridge Sewer Company's presently effective Schedule No. 1, Residential Flat Rate Sewer Service, and Schedule No. 2, Commercial Flat Rate Sewer Service, attached to this resolution, and to concurrently cancel its presently effective rate schedules. The effective date of the revised rate schedules shall be five days after the date of filing.

3. Rural Water Company, doing business as Cypress Ridge Sewer Company, is ordered to file a Tier 2 Advice Letter within 30 days from the effective date of this Resolution to refund the amounts collected from customers pursuant to Resolutions W-4946 and W-4968. The total amount to be refunded shall be $184,772 plus interest at the 90 day commercial paper rate on the unpaid balance through a monthly sur-credit of $13.69 to all customers for a period of 36 months starting January 1, 2017.

4. This resolution is effective today.

PROPOSED RESOLUTION

Resolution W-5106 **November 10, 2016**
WD

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 10, 2016; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

APPENDIX A

CYPRESS RIDGE SEWER COMPANY
Schedule No. 1
Sheet 1

RESIDENTIAL FLAT RATE SEWER SERVICE

APPLICABILITY

Applicable to all residential sewer service.

TERRITORY

Cypress Ridge, within Tract # 1933, including Golf Course Complex, San Luis Obispo County.

RATES

	Per Connection Per Month
For all residential sewer service.....	$108.21

SPECIAL CONDITIONS

1. For a period of 36 months beginning January 1, 2017, all sewer service will have a monthly sur-credit of $13.69, subject to interest at the 90-day commercial paper rate on the unpaid balance for the excess labor charges collected from 2009 through 2012. (N) (N) (N) (N) (D)
2. All bills include the reimbursement fee set forth in Schedule No. UF. (D)

APPENDIX A (CONT.)

CYPRESS RIDGE SEWER COMPANY
Schedule No. 2
Sheet 2
COMMERCIAL FLAT RATE SEWER SERVICE

APPLICABILITY

Applicable to all commercial sewer service.

TERRITORY

Cypress Ridge, within Tract # 1933, including Golf Course Complex, San Luis Obispo County.

RATES

	Per Connection Per Month	
For Golf Pro Shop.....	$108.21	
For Golf Maintenance Facility.....	$108.21	
For Commercial/Office Facility...	$108.21	
For Pavilion..... ..	$108.21	(D)

SPECIAL CONDITIONS

1. A late charge will be imposed per Schedule No. LC.

2. Bills will be rendered in advance of the period for which service will be provided.

3. For a period of 36 months beginning January 1, 2017, all sewer service will have a monthly sur-credit of $13.69, subject to interest at the 90-day commercial paper rate on the unpaid balance for excess labor charges collected from 2009 through 2012. (N) (N) (N) (D) (D)

4. All bills include the reimbursement fee set forth in Schedule No. UF.

END OF APPENDIX A

CERTIFICATE OF SERVICE

I certify that I have by either electronic mail or postal mail, this day, served a true copy of Proposed Resolution No. W-5106 on all parties in these filings or their attorneys as shown on the attached lists.

Dated October 7, 2016, at San Francisco, California.

/s/ JENNIFER PEREZ

Jennifer Perez

Parties should notify the Water Division, Third Floor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on which your name appears.

Exhibit 1

JOSE E. GUZMAN, JR.
Guzman Law Offices
288 Third Street, #306 • Oakland, CA 94607
(415) 515-4034
jeguzmanjr@gmail.com

July 5, 2016

VIA ELECTRONIC MAIL

Mr. Ravi Kumra
Division of Water and Audits
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Cypress Ridge Sewer Co. – Rehearing of Resolutions W-4946 and W-4968

Dear Mr. Kumra:

This responds to several of your data requests related to the rehearing of the above-referenced resolutions establishing surcharges for Cypress Ridge Sewer Co. Cypress Ridge Sewer had previously replied to all four data requests set forth in your June 3rd email to be except for request 2b, to which we now respond. This letter also responds to your data requests 4 and 5 set forth in your June 13th email to me.

Request 2 b:

Request: What is the basis of recovery of excess labor costs in the absence of a properly established special memorandum account to track these excess labor costs?

Response to Request 2 b:

The basis for the filing for the recovery of excess labor costs was that Cypress Ridge Sewer assumed that the special memorandum account was properly established since it was completed in conformance with DWA staff instruction and concurrence, and with Commission approval.

During this same period of time, Cypress Ridge Sewer's rate consultant, Frank Brommenschenkel, was working with other Commission staff in developing a template preliminary statement filing for all Class C and D companies to cover pre-Commission authorized memorandum and balancing accounts so they were in fact in place to avoid issues such as this. Mr. Brommenschenkel recalls having filed for recovery of Commission pre-

authorized recovery of costs without it being in the preliminary statement and having them approved.

For the past 22 years, Mr. Brommenschenkel has been helping Class C and D companies, many at the request of Commission staff, in preparing filings to assist these small companies in getting them out of financial trouble. All of those filings over the years have been done in good faith at the request of staff or with staff's full concurrence.

Requests 5 and 6:

Requests 5 and 6 ask for a summary of amounts collected by month for each of the two surcharges approved by Resolutions W-4946 and W-4968, and for a justification if the surcharges were collected beyond the Commission authorized period.

Response to Requests 5 and 6:

Attached to the email that transmits this letter to you is an Excel spreadsheet which shows the amounts collected by month for each of the two surcharges. It appears that one surcharge was over-collected and one surcharge was under-collected. The over-collected surcharge was billed beyond the authorized period for several months at the beginning of 2016. The under-collected surcharge was terminated a few months early (and thus under-collected) when it was discovered that the other surcharge had been over collected. The net result from one surcharge being billed beyond the authorized period and the other surcharge being terminated early is a net over-collection of $6,715.40.

The reasons for the over-collection of the one surcharge is that:

1. New billing staff of Cypress Ridge Sewer was not familiar with the surcharge process or when the surcharge was supposed to end.

2. The closing of the sale of Rural Water's assets to Golden State Water in October 2015 put a strain on staffing resources, thus leaving some matters uncovered.

3. Detailed accounting is done at the end of the year and the start of that process was again delayed because of the follow-up required on the Rural asset sale to Golden State Water.

Please let me know if you have any further questions.

Sincerely,

Jose E. Guzman, Jr.

Attorney for Cypress Ridge Sewer Co.

Exhibit 2

JOSE E. GUZMAN, JR.
Guzman Law Offices
288 Third Street, #306 • Oakland, CA 94607
(415) 515-4034
jeguzmanjr@gmail.com

August 15, 2016

VIA ELECTRONIC MAIL

Mr. Ravi Kumra
Division of Water and Audits
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Cypress Ridge Sewer Co. – Rehearing of Resolutions W-4946 and W-4968

Dear Mr. Kumra:

This responds to your data requests 7, 8 and 9, from August 1, related to the rehearing of the above-referenced resolutions establishing surcharges for Cypress Ridge Sewer Co.

Request 7:

In response to Request 2b, it is stated ". . . that Cypress ridge Sewer assumed that the special memorandum account was properly established since it was completed in conformance with DWA staff instruction and concurrence, and with Commission approval.:

Why did Cypress Ridge Sewer (Cypress) track its excess labor costs in its regular labor account, rather than in the special memorandum account as directed by the Commission to track excess labor costs in 2009, 2010, 2011 and 2012?

Response to Request 7:

All operating costs are tracked in the books of a particular company and remain as expenses on the books until such time as the Commission approves those expenses, and then they are moved to a balancing account during the recovery period. Memo accounts are taken directly from the recorded expense accounts on the company books. Please see Standard Practice U-27, Section 26:

1

Memorandum Accounts.

26. A memo account is not recorded in the utility's accounting books; it represents an off-book accounting record. Trackable costs are recorded in the memo account, and they are also recorded in the accounting records normally, in accordance with the Uniform System of Accounts. For example, costs normally expensed would continue to be expensed in the accounting records even though a memo account is set up to track these costs for potential future recovery. Memo accounts track a) expenses, b) the carrying costs and depreciation on capital investments, and c) offsetting revenues, such as insurance proceeds, from the effective date of the account."

Amounts for labor expenses were recorded in the company's books. The amounts eventually recorded in the memorandum account came directly from the company's accounting books. The only problem would be if the amounts in the memorandum account did not match those in the company's accounting books.

Request 8:

In response to Request 2b, it is stated that Cypress' ". . . rate consultant . . . was working with other Commission staff in developing a template preliminary statement filing for all Class C and D companies to cover pre-Commission authorized memorandum and balancing accounts so they were in fact in place to avoid issues such as this . . ." It was further indicated that Cypress' consultant was involved with filing for recovery of Commission pre-authorized recovery of costs without it being in the preliminary statement and having them approved and the rate consultant has over 22 years of regulatory experience.

Dud Cypress' rate consultant handle its ratemaking filings for excess labor costs in 2009 through 2012?

Response to Request 8:

Yes, and the company's consultant has processed many other recovery requests in the very same manner. The consultant always goes back to the source data to verify that the amounts recorded in any memorandum account agree with the annual reports made to the Commission, so only the actual costs incurred are requested for recovery.

Request 9:

Does Cypress contend that any of the facts set forth in response to Request 7 above would permit recovery of excess labor costs by Cypress in the absence of a properly established memorandum account to track these costs? If so, please provide reasons for the same.

Response to Request 9:

No. The policies and procedures of the Commission have been precisely followed, and the Cypress Ridge Sewer filing was done in accordance with Commission policy or it would not have been accepted for processing, or processed by DWA.

Please let me know if you have any further questions.

Sincerely,

Jose E. Guzman, Jr.

Jose E. Guzman, Jr.

Attorney for Cypress Ridge Sewer Co.

cc: Mr. Frank Brommenschenkel

Exhibit 3

From Joe Guzman **Date** Tuesday, June 21, 2016 3:21:51 PM
To Kumra, Ravi
Cc
Subject Cypress Ridge Sewer Co. - Response to June 3 Data Requests

Hi Ravi -- here is the response to Cypress Ridge Sewer Co. to your June 3rd data requests on the rehearing of Resolutions W-4946 and W-4968:

Request 1: Contact Information

I will be the formal contact for the rehearing of Resolutions W-4946 and W-4968. My contact information is below.

Request 2: Tracking of excess labor costs for 2009 and 2010

Cypress Ridge has 23 responsive documents to this request. I will be forwarding them to you via two (2) separate emails later this afternoon.

Request 3: Transfer of Cypress sewer system from Rural

Rural did not receive formal approval for the transfer of sewer system assets to Cypress Ridge Sewer.

Request 4: Dates for site visit

Per your instructions, we will not reply at this time to this request.

Please call me should you have any questions.

CYPRESS RIDGE SEWER COMPANY
SERVICE LIST

County Government Center
1050 Monterey Street, Rm. 207
San Luis Obispo, CA 93408

Cypress Ridge Owners' Association
Attn. President
3563 Empleo Street, Ste "B"
San Luis Obispo, CA 93401

Robert Miller, Wallace GP
Nipomo Mesa Management Area
612 Clarion Ct.
San Luis Obispo, CA 93401

Roland Tanner
Golden State Water Company
1920 West Corporate Way
Anaheim, CA 92801

California Regional Water Control Bd.
Attn. David Le Caro
895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-7906
DLaCaro@waterboards.ca.gov

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