

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



February 8, 2019

Proposed Resolution W-5187
Agenda ID: 17183

To: All Interested Persons

Enclosed is Proposed Resolution W-5187 of the Water Division, which authorizes Cypress Ridge Sewer Company a general rate increase producing an additional annual revenue of \$46,657, or 9.12%, for test year 2018 to be paid by the Ratepayers. Proposed Resolution W-5187 is scheduled to appear on the March 14, 2019 Commission Meeting Agenda (ID #17183).

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-5187 via email to Water.Division@cpuc.ca.gov on or before February 28, 2019. **Please reference "Proposed Resolution W-5187" 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-5187."

/s/RAMI S. KAHLON

Rami S. Kahlon, Director
Water Division

Enclosures: Proposed Resolution W-5187
Certificate of Service
Service List

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION W-5187

March 14, 2019

RESOLUTION

**(RES. W-5187) CYPRESS RIDGE SEWER COMPANY.
ORDER AUTHORIZING A GENERAL RATE INCREASE
PRODUCING AN ADDITIONAL ANNUAL REVENUE OF
\$46,657, OR 9.12%, FOR TEST YEAR 2018 TO BE PAID BY
THE RATEPAYERS.**

SUMMARY

By Advice Letter (AL) 31-SS, filed on December 19, 2017, Cypress Ridge Sewer Company (Cypress Ridge) seeks a general rate increase producing additional annual revenues of \$110,507, or 21.59%, to recover increased operating expenses and utility plant investments.

This Resolution grants Cypress Ridge an increase in gross annual revenues of \$46,657, or 9.12%, for Test Year (TY) 2018, which is estimated to provide a Rate of Margin (ROM) of 24.00%.

BACKGROUND

In compliance with Commission Decision (D.) 17-10-013, Ordering Paragraph Number 7, on December 19, 2017, Cypress Ridge filed its general rate case (GRC) by AL 31-SS.¹ Cypress Ridge has requested authority under General Order (GO) 96-B, Water Industry Rule 7.3.3(5), and Section 454 of the Public Utilities Code to increase its sewer service rates by \$110,507 or 21.59% for TY 2018 which is estimated to provide a ROM of 23.87%. Cypress Ridge's last GRC was granted on November 20, 2009 by Commission Resolution (Res.) W-4795 which authorized a general rate increase of \$98,628, or 29.80%, for TY 2008. Cypress Ridge's present rates became effective on March 19, 2017, by

¹ D. 17-10-013, ordered Cypress Ridge to file a general rate case within 60-days from the effective date of the decision.

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Advice Letter 29-SS which authorized a Consumer Price Index rate increase of \$9,850, or 2.10%.

Cypress Ridge is a Class D investor-owned sewer utility with 386 service connections. Cypress Ridge's service area is located near the town of Arroyo Grande, in San Luis Obispo County. The median household income for Arroyo Grande is \$63,558.²

Cypress Ridge's sewer treatment plant is a Sequence Batch Reactor (SBR) system with sand filter tertiary treatment. Cypress Ridge's SBR system is considered a complex wastewater system requiring a Grade III wastewater system operator certification for its operation. A tertiary treatment system is generally required if the wastewater is going to be recycled for landscape or agricultural uses, since individuals may come in contact with the recycled water, and in this case Cypress Ridge's wastewater is recycled and used for the golf course in the Cypress Ridge Development. Cypress Ridge's sewer plant has a capacity of treating 140,000 gallons of sewer per day and is currently operating at approximately 30% of its permitted capacity, since the plant was designed to accommodate additional planned development that has not materialized.

On June 12, 2018, the WD issued for public comment proposed Res. W-5170 for Cypress Ridge's GRC for TY 2018. On July 2, 2018, the WD received comments from Cypress Ridge Owners Association (CROA)³ on the proposed Res. W-5170. The CROA took issue with the inclusion of income taxes as expenses in Cypress Ridge's GRC since, as an S-Corporation, Cypress Ridge pays no federal income tax and only a small amount of state income tax. The company's shareholder, however, is responsible for paying federal and state income tax on taxable revenue deriving from the company as part of his personal income taxes. Accordingly, we address this income tax issue in more detail in the Income Taxes section of this Resolution.

NOTICE, PROTESTS, AND PUBLIC MEETING

In accordance with GO. 96-B, Cypress Ridge served a copy of AL 31-SS to its service list on December 9, 2017. A notice of the proposed rate increase was mailed to each customer and to the general service list on March 23, 2018.

² <http://www.areavibes.com/arroyo+grande-ca/employment/>

³ The Cypress Ridge Owners Association represents the residents and homeowners of the Cypress Ridge development, consisting of approximately 375 of Cypress Ridge's customers.

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Two protests were timely received on Cypress Ridge's rate increase request and the utility replied. One of the protests was filed by CROA. CROA in its protest contends that the requested operating expenses by Cypress Ridge for TY 2018 are excessive based on the previously authorized amounts by Res. W-4795, in Cypress Ridge's last GRC for TY 2008. The second protest takes issue with the level of documentation provided by the utility in support of its rate increase request and its ROM percentage amount being requested.

Cypress Ridge, in its January 16, 2018 reply to CROA's protest, indicates that the requested expense amounts for TY 2018 are based on the expenses the utility has incurred over the last several years which reflect the changes the company has made to its day-to-day plant operations since its last GRC was filed almost 10 years ago. One significant change in the utility's sewer plant operations, as discussed in the Operating Expenses section of this Resolution, is that the utility now employs three full-time plant operators, whereas in its last GRC filing, the company was transitioning from contracted labor of its day-to-day operations and maintenance to full-time employees. Furthermore, the WD required Cypress Ridge to submit additional documentation to support its operating expense estimates for TY 2018, as part of the WD's independent analysis of the utility's operations and expenses related to those operations.

Regarding the issue raised in the second protest on the level of documentation submitted by Cypress Ridge in support of its rate increase, Cypress Ridge's AL filing was based on the minimum information requirements prescribed by the Commission's Standard Practice U-9-SM, Standard Practice for Processing Informal General Rate Cases of Small Water and Sewer Utilities (Class B, C, and D).⁴ However, as previously stated and discussed further in this Resolution, WD in its analysis of the utility's request required Cypress Ridge to submit additional documentation to support its rate increase request. The ROM percentage amount requested by Cypress Ridge for its rate increase was based on the WD's recommended ROM for Class D water utilities⁵ for 2017, as discussed further in this Resolution.

⁴ <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M088/K264/88264810.pdf>

⁵ As defined in General Order 96-B Water Industry Rules Section 1.2, Class B, C, and D utilities serve 2,001 through 10,000, 501 through 2,000, and less than 500 service connections, respectively.

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An informal public meeting was scheduled on April 19, 2018 at 6:00 PM, at Cypress Ridge Pavilion located at 1050 Cypress Ridge Parkway in Arroyo Grande California. The meeting started at 6:00 PM and approximately seventy-seven customers attended the meeting. Staff from Water Division (WD) provided an overview of the Commission's GRC process for Class C and D sewer utilities, and Cypress Ridge's representatives provided a general overview of its rate increase request, including information on how sewer plant operations have changed since the company's last GRC. Customers mainly expressed concerns over the magnitude of the rate increase, the amount they currently pay for their sewer utility service, and the high ROM percentage amount that Class C and D sewer utilities are allowed to earn. No concerns were raised regarding Cypress Ridge's quality of service or billing dispute issues.

DISCUSSION

In reviewing Cypress Ridge's rate increase request, the WD made an independent analysis of the utility's rate increase request and its operations. Appendix A provides Cypress Ridge's and the WD's estimated Summary of Earnings (SOE) at present, requested and recommended rates, which is further discussed below. Cypress Ridge was informed of the WD's differing views of revenues, expenses, and rate base, and the company agrees with the WD's findings.

Operating Expenses

The WD reviewed operating revenue and expenses including employee labor, materials, contract work, transportation expenses, other volume related expenses, office and management salaries, office supplies and expenses, insurance, general expense, depreciation, and taxes other than income. The WD verified the operating expenses by reviewing supporting documents for substantiation and accuracy, and included the amounts that were deemed reasonable and prudent.

Purchased Power

The WD's recommended amount for purchased power of \$32,086 is lower than Cypress Ridge's estimate of \$32,569 because WD used a three-year average (2015-2017) plus a

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3.20% non-labor escalation factor⁶ to estimate purchased power for TY 2018, and the utility's estimate is based solely on 2017 purchase power costs and usage. The WD recommends using a three-year average for estimating purchased power costs because it provides a better estimate since it factors in the fluctuations in energy usage, resulting from varying conditions in the sewer plant operations and sewage treatment.

Labor Expenses

The WD finds Cypress Ridge's \$167,997 request for labor expenses for TY 2018 reasonable based on WD's analysis of salaries and pay scales for comparable employment positions and qualifications for wastewater treatment operators in the cities of Santa Maria, Solvang, and within the Ventura County. As noted in D.17-10-013, the Cypress Ridge's sewer plant is a SBR system with sand filter tertiary treatment system that requires a Grade III wastewater system operator certification by the Regional Water Quality Control Board (RWQCB).⁷ Additionally, the sewer plant requires to be operational 24-hours, seven days a week, and monitored 365 days a year, including holidays. Therefore, in order to provide adequate staffing to operate, maintain, and monitor the sewer facility, Cypress Ridge employs three full-time employees with Grades III, II, and I operator certifications. WD finds Cypress Ridge's staffing for the sewer plant reasonable because it provides the necessary staffing to adequately staff and monitor the sewer facility daily, seven days a week, including holidays with reasonable work schedules that can accommodate vacation time-off for its employees. Most importantly, Cypress Ridge has multiple staff available in case an emergency situation arises with the sewer treatment facility.

Cypress Ridge's labor expenses request of \$167,997 is based on the company's labor expenses averaged over 2014 through 2017. Cypress Ridge's Grade III operator is the only salary employee with an annual salary of \$61,526 and the Grade II and I operators are employed at an hourly rate of \$28.34 and \$25.32, respectively. In 2017, the gross pay for the company's Grade I and II operators were \$54,641 and \$60,866, respectively.⁸

⁶ Office of Ratepayer Advocates: Estimates of non-labor and wage escalation rates for 2018 through 2022 from February 2018 IHS Global Insight U.S. Economic Outlook.

⁷ D.17-10-013, pg. 22.

⁸ Gross pay for Grade I and II operators is based on 2,229 and 2,193 total hours, respectively, and includes annual vacation and sick leave paid hours.

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The WD determined the reasonableness of Cypress Ridge's request by comparing the Cypress Ridge's employee salaries with the salaries paid for sewer plant operators with Grades I, II, and III certifications in the cities of Santa Maria, Solvang, and within the Ventura County. The WD found that the salaries paid by Cypress Ridge are within a comparable salary range of what these cities and the county pay its sewer plant system operators. The salary range for Grade I-III wastewater treatment plant operators for: 1) the Ventura Water Department in the Ventura County is \$58,056 to \$81,144; 2) the City of Santa Maria salary range is \$52,680 to \$101,400; and 3) the city of Solvang is from \$45,720 to \$63,048. These salary ranges exclude any pension or other benefits provided by these cities and county. Accordingly, the WD finds Cypress Ridge's request for labor expenses reasonable and necessary for the company's retention of qualified personnel. In this instance, Cypress Ridge's sewer plant operators have been with the company since 2008.

Contract Work

The WD's recommended amount of \$54,255 for contract work is lower than the company's estimated amount of \$67,438 because the utility's estimate is based on the average contract work expenses for the 2014 through 2016 time-period, whereas WD's estimate is based on average expenses over the 2015 through 2017 time-period, plus a 2.10% labor escalation⁹ factor for TY 2018. Cypress Ridge's contract work expenses cover the sewer facility's wastewater disposal, testing and analysis of wastewater discharge, and repair and maintenance for the plant. Based on the WD review of the company's contract work expenses over the last five years, these expenses decreased in 2016 and 2017 compared to prior years, and the company's requested amount of \$67,438 does not reflect the current level of contract work expenditures. For these reasons, the WD finds that averaging the contract work expenses over the last three years provides a better estimate of company's contract work for TY 2018.

Management Salaries

The WD finds Cypress Ridge's request of \$10,000 for management salary reasonable for the owner and manager Mr. Baker, since Mr. Baker remains involved in the company's overall decisions regarding the sewer treatment plant operations, required infrastructure investments, and business decisions for the utility. Mr. Baker, as the owner and manager, is also responsible for ensuring Cypress Ridge has the necessary

⁹ Id.

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finances and staffing to provide safe and reliable sewer service for its customers. For these reasons, WD finds Cypress Ridge's request for management salaries reasonable.

Employee Pension and Benefits

The WD's recommended amount of \$14,564 for employee pension and benefits is lower than the company's requested amount of \$16,725 because the utility's estimate is based on average employee pension and benefits during the 2014 through 2016 time-period and WD's recommended amount is based on the documentation the utility provided for its 2017 actual employee pension and benefits premiums escalated to TY 2018 by a 3.20% non-labor escalation factor. The WD did not find support for the utility's approach of averaging employee pension and benefits over 2014 through 2016 time-period for its expense estimate, since the estimate should be based on the premiums the company is currently paying and not the prior years. Cypress Ridge's employee pension and benefits covers the costs of providing medical, dental and vision insurance coverage for its employees.

Professional Services

For professional services, Cypress Ridge requested \$72,497 based on the company's average professional services expenses over the last four years (2014-2017). Cypress Ridge's professional services expenses include expenses for the company's accounting, bookkeeping, legal, and regulatory consulting services. In 2016 and 2017, Cypress Ridge incurred significant legal and regulatory consulting expenses resulting from its Applications (A.) 15-12-015 and A.15-08-025 filings required by D.15-06-049 to address the unauthorized transfer of the sewer utility assets by Rural Water Company to Cypress Ridge, and for the approval of Cypress Ridge's Certificate of Public Convenience and Necessity (CPCN). Therefore, the legal and regulatory consulting expenses during these years were extraordinary and unique to these circumstances requiring formal application filings and legal representation.

Furthermore, on December 3, 2015 by AL 23-SS, Cypress Ridge received Commission approval to establish a Legal and Regulatory Services Cost Memorandum Account (LRCMA) to record legal and regulatory expenses due to its formal filings which were not previously authorized in the company's GRC. Based on the company's February 23, 2018 response to the WD's Data Request #1, the LRCMA balance as of December 31, 2017 was \$150,152. In addition, CROA in its November 30, 2017 Application for rehearing of D.17-10-013 is challenging whether Cypress Ridge's customers should be

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responsible for the company's expenses associated with A. 15-12-015 and A.15-08-025 filings which are recorded in Cypress Ridge's LRCMA. Therefore, since the professional service expenses recorded in the company's LRCMA are subject to the CROA's pending Application for rehearing, this resolution only addresses Cypress Ridge's professional service request for this GRC and not the professional services expenses recorded in the company's LRCMA.

Based on the WD's review of Cypress Ridge's professional service request for TY 2018, the WD recommends \$35,000. The WD's recommended amount is based on the company's 2016 and 2017 professional services expenses required for the utility's overall operations. The WD's recommended amount includes: 1) \$6,000 for the company's accounting and annual report preparation and filing with the Commission; 2) \$10,000 for bookkeeping; 3) \$3,000 for regulatory consulting; and 4) \$16,000 for legal representation and/or technical consulting services. The WD did not find support for Cypress Ridge's request for the inclusion of \$72,497 as part of the utility's base rates, since the estimated amount is inflated due to the inclusion of the 2016 and 2017 professional services expenses associated with the company's formal applications, which are also recorded in its LRCMA and remain subject to a reasonableness review for cost recovery.

Insurance

WD's recommended amount of \$17,964 for insurance is based on Cypress Ridge's 2017 insurance cost, plus a 3.20% non-labor escalation factor for TY 2018.

Regulatory Compliance Expense

The WD's recommended amount of \$7,500 for Regulatory and Compliance Expense¹⁰ is lower than Cypress Ridge's estimated amount of \$8,712 because the utility's estimate included its 2018 utility user fees which are not part of the company's base rates since they are collected separately through a separate tariff. However, for accounting purposes, the utility should track its user fees in the Regulatory Compliance Expense Account 688 with an off-settable account entry to the Other Water Revenue Account 480. The WD recommended amount of \$7,500 for Regulatory Compliance Expense

¹⁰ D.16-11-006 renamed account 688 from Regulatory Commission Expense to Regulatory Compliance Expense.

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provides the necessary funds for the utility's GRC and other necessary AL filings (such as expense off-sets, Consumer Price Index, memorandum and balancing account recovery, etc.) associated with its utility operations.

General Expenses

WD found Cypress Ridge's request of \$17,000 for general expenses for TY 2018 reasonable since the requested amount covers the expenses associated with its annual fees and operating permits required by the RWQCB and Air Pollution Control District.

Income Taxes

As previously noted on July 2, 2018, the WD received comments from CROA on the proposed Res. W-5170 which was withdrawn from the Commission's agenda on October 9, 2018 in order to fully address the income tax issue raised by CROA in its comments. CROA in its comments explains that Cypress Ridge as a S-Corporation does not pay corporate¹¹ income taxes.¹² Pass-through entities like S-Corporations, Limited Liability Companies and Partnerships typically pay no federal income tax and very little state income tax. CROA contends that ratepayers should not be required to reimburse Cypress Ridge for taxes it does not pay. In support of its position, CROA cites a Court of Appeal case in which Santa Fe Pacific Pipeline L.P. (SFPP) challenged two Commission rate setting decisions (D. 11-05-045 and D.12-03-026) that denied federal income tax allowance in rates because SFPP was structured as a limited partnership instead of a C-Corporation.¹³ SFPP's appeal of these two Commission orders was denied by the Court of Appeal. The Court stated that "...the PUC's decision regarding the treatment of partnerships for tax purposes is a policy question, and thus, not subject to reversal by this court." Given that opinion, staff believes that the Commission must determine as a matter of policy for Cypress Ridge whether a S-Corporation, which does not pay income taxes as a corporation, but rather has taxable income assigned to the shareholders or owners, should have that income tax expense included in its revenue requirement paid by ratepayers. Although this discussion addresses Cypress Ridge's federal income tax liability, the arguments also apply to C-

¹¹ Corporations pay income tax liability as "C" Corporations.

¹² CROA did not include an income tax issue in its protest of Cypress Ridge AL filed on January 8, 2017.

¹³ SFPP v. Public Utilities Commission, 217 Cal. App. 4th 784, 2013.

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Corporation and S-Corporation state income tax liability. Further, these principles apply to other pass-through entities besides S-Corporations, including Limited Liability Companies and Partnerships.

Although Cypress Ridge, as a S-Corporation, does not pay corporate income taxes, income taxes attributable to Cypress Ridge Operations are paid by the owner

The WD's staff agrees that Cypress Ridge as a S-Corporation does not pay income taxes as a corporation. Instead, Cypress Ridge taxable income is allocated to the S-Corporation shareholders. Those shareholders in turn pay income taxes at individual income tax rates which vary depending on individual income tax circumstances. As noted by CROA, Cypress Ridge is owned by a single individual, in this instance Mr. Charles Baker the shareholder/owner of Cypress Ridge. The WD's staff review of past resolutions for Cypress Ridge shows that income tax expenses calculated at corporate income tax rates have consistently been included as an expense for ratemaking purposes in Cypress Ridge's revenue requirement. However, it is not apparent that the Commission has specifically considered the issue or arguments for inclusion or exclusion of income tax expense for S-Corporations in the adopted revenue requirement.

Under the federal and state income tax codes, S-Corporations taxable income is "passed through" to the owner-shareholder(s) and paid under personal income tax rates. Since individual owners pay income taxes according to their personal income tax filing status and personal taxable income, that rate will vary from year to year and will depend on the individual owners' other income and deductions. For example, an owner whose personal taxable income is above \$400,000 and filing jointly as a married couple would pay at a federal income tax rate of 35.00% for additional income received from a S-Corporation. With a personal income of \$200,000, the same owner would pay at a rate of 24.00%.¹⁴

By comparison, a corporation would pay income taxes at the 21.00% income tax rate.¹⁵ A corporation would then decide whether to distribute net revenues to shareholders as

¹⁴ An additional benefit may accrue to S Corporation shareholders as under the Tax Cuts and Jobs Act (TCJA) a qualifying business may deduct 20.00% of income before determining the taxable income of the business owner. Consequently, an owner that might otherwise file their income taxes at a 35.00% rate, would only file income taxes at a 28.00% rate.

¹⁵ Tax Cuts and Jobs Act 2017.

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dividends and then these dividends would then be taxable at personal income tax rates to the shareholder.

It is equitable for a S-Corporation's income tax expense be included as a ratepayer expense

As a matter of equity, ratepayers should bear any income tax liability that accrues due to utility's operations regardless of ownership structure. It is established policy that ratepayers bear the cost of service burden for expenses incurred to provide their utility's cost of service. The income tax expense for corporate owned utilities are included in their revenue requirements and paid by ratepayers. Similarly, income taxes paid as a result of utility operations for a S-Corporation should be included in the revenue requirement and therefore in customer rates. While the income tax expenses may not be paid as corporate income taxes, nevertheless income taxes are paid on the taxable revenues generated by Cypress Ridge by the shareholder/owner. As a matter of equity income tax expenses should be included in utility rates as an expense of conducting business and providing utility service.

Other government agencies also recognize this principle. The Federal Energy Regulatory Commission (FERC) permits an income tax allowance for all entities or individuals, including S-Corporations, owning an interest in regulated public utility assets provided that the entity or individual has an actual or potential income tax liability to be paid on the income from those assets.¹⁶ FERC further explained, "the income taxes that S-Corporation shareholders pay are just as much a cost of acquiring and operating the assets of that entity as if the utility assets were owned by a corporation, and that the income taxes paid by S-Corporation shareholders are a cost of doing the S-Corporation's business, regardless of whether the utility itself or the shareholders actually pay the taxes."¹⁷ Similarly, the Federal Communications Commission (FCC) in commenting on income taxes attributable to S-Corporations, and more particularly cable operators, stated that it (the FCC) should design an income tax treatment that permits recovery of income taxes regardless of the form of ownership of the regulated cable service enterprise. As explained by the FCC's deputy chief,

¹⁶ FERC Policy Statement on Income Tax Allowances, 111 FERC Section 61, 139, Para. 32 (2005) (FERC Statement).

¹⁷ FERC Statement, para. 33.

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“[a]llowing S-Corporation shareholders to recover an income tax allowance is also consistent with industry practice.”¹⁸

It would be discriminatory to allow an income tax liability in rates for a C-Corporation while disallowing an income tax liability for a S-Corporation because the S-Corporation does not pay income taxes in the traditional manner as does a C-Corporation. Instead the S-Corporation does pay income taxes but through the individual shareholders or owners at their personal income tax rates.

Use of a corporate tax rate to determine income tax expense is less costly for ratepayers than using personal income tax rates

A comparison of the income tax expense and rates using the federal corporate tax rate and a comparable personal tax rate is insightful to demonstrate actual federal income tax liability under different income tax methods. The current federal corporate tax rate is 21.00%. As shown in Appendix D, Cypress Ridge’s taxable federal income is \$123,496 resulting in federal income taxes of \$25,934. By comparison and using conservative assumptions, a single taxpayer, with no deductions, whose only income is that from Cypress Ridge operations, would pay at the incremental federal tax rate of 24.00% with total income taxes of \$29,639.¹⁹ This outcome is not surprising since the corporate federal tax rate of 21.00% does not increase with greater taxable income, while personal incremental income tax rates exceed the 21.00% corporate level at personal incomes over \$39,000.²⁰ If the Commission were to adopt a methodology based on personal income tax rates rather than the corporate rate for inclusion of income taxes in determining a revenue requirement, regulatory income taxes would increase. This outcome would not benefit Cypress Ridge’s ratepayers.

Use of personal tax rates to calculate utility income tax expense has other significant and potentially restrictive implications. The corporate federal income tax rate is currently at 21.00%, however, personal federal income tax rates vary annually according to personal income, deductions taken, tax status and other variables. These variables would create a significant burden in determining utility income tax liability

¹⁸ FCC May 2, 2014 letter from Carol Matthey, Deputy Chief, Wireline Competition Bureau, to Richard Belden, Chief Operating Officer, Universal Service Administrative Company.

¹⁹ 2018 Internal Revenue Service Federal individual income tax rates.

²⁰ Id.

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under a personal income tax methodology. In addition, use of this methodology would require either access to personal income tax filings by shareholders, or a verification of the income tax rate used in the personal income tax calculation. This method is made more difficult since access to personal income tax information is protected by statute.²¹ An additional complication in the use of personal income tax rates in setting utility income taxes is the ability of small Class C and D water and sewer utilities to file annually for GRC rate changes.²² Consequently, annual GRC filings are likely to result in different taxation rates and raise the potential to “game” GRC filings based on changing personal tax rates. The timeliness of using personal income tax rates may also be problematic, since this method would entail receipt of personal income tax information, that may or may not be timely available as individuals may either delay personal income tax filings or may contest certain deductions that are otherwise disallowed.

As explained above there are many reasons why use of the current corporate federal income tax rate of 21.00%, and the appropriate state income tax liability to calculate Cypress Ridge’s income tax expense is just, reasonable and equitable. Simply stated, the provision of utility service by Cypress Ridge, a S-Corporation, results in income tax liability. This expense is paid by the shareholder/owner. Inclusion of this liability in utility expenses could be either through the simplified use of the corporate income tax rate or use of personal tax rates that change annually. In the case of the Cypress Ridge revenue requirement, use of the corporate income liability tax rate shows that income tax expense is less than the liability and income tax expenses using personal tax rates even under very conservative assumptions, and much worse if the utility income is considered as incremental to other personal tax liability. Furthermore, in the ratemaking for GRCs utility expenses and revenues cannot be estimated with 100% accuracy given the variability in utility operations and expenses. For this reason, the Commission uses a test year as the baseline and historical expense data to address this variability and develop reasonable expense estimates that fairly reflect the utility’s actual expenses. For these reasons, inclusion of the income tax expense for Cypress Ridge using corporate income tax rates rather than a method based on personal income

²¹ See, Internal Revenue Code Section 6103, which generally prohibits the release of tax information other than certain exceptions such as provided to law enforcement agencies and State agencies responsible for tax administration.

²² A review of currently regulated water and sewer utilities shows that 6 water utilities, and one sewer utility (Cypress Ridge) is a S Corporation.

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tax rates is a more reasonable method for including income tax expense in Cypress Ridge cost of service.

Utility Plant and Rate Base

For TY 2018, the WD's analysis of Cypress Ridge's rate base estimate included examining utility plant-in-service since the company's last GRC authorized by Res. W-4795, utility plant additions, materials and supplies, working cash, and depreciation reserve.

The WD's average plant estimate of \$5,179,323 for TY 2018 is lower than Cypress Ridge's estimate because it excludes \$22,601 of the \$50,000 associated with the shared building structure previously used by Rural Water Company and Cypress Ridge that the company added to its utility plant accounts in 2017. Based on the documentation provided by Cypress Ridge, the building structure is contributed plant with a remaining un-amortized value of \$27,399.²³ Accordingly, WD included the un-amortized amount of \$27,399 as part of the Contribution in Aid of Construction (CIAC) calculation.

The WD's estimate of averaged accumulated depreciation amount of \$2,284,979 for TY 2018 was calculated using the \$661,300 adopted accumulated depreciation amount by Res. W-4795 for TY 2008. The WD then estimated an average amortization amount of \$2,185,161 contributed plant plus a depreciation amount of \$99,818 on utility plant for TY 2018 using the reported information in Cypress Ridge's annual reports through 2017. Whereas, Cypress Ridge's calculation uses a projected amortization amount of \$2,270,449 for 2017 plus a \$144,076 amortization amount for TY 2018.

Similarly, the WD's estimated CIAC using the adopted amount of \$4,760,000 by Res. W-4795 for TY 2008, plus \$4,500 and \$27,399 in additional contributed plant made during 2010 and 2017, respectively, minus the average amortization amount of \$2,185,161 on contributed plant. Hence, the WD's estimated CIAC amount of \$2,606,738 is based on the average of 2018 beginning-of year and end-of-year CIAC balances of \$2,690,203 and \$2,523,723, respectively with an amortization amount of \$166,930 on contributed plant for TY 2018.

²³ Cypress Ridge's 2017 Annual Report, pg. 2 of 2017 Book Depreciation Schedule.

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The difference in the estimated amounts for rate base between WD and Cypress Ridge is therefore due to different estimates for average plant, accumulated depreciation and CIAC as discussed above.

Rate of Return

Cypress Ridge's rate increase request was based on a ROM of 23.87%. In accordance with Commission ratemaking policies adopted for Class C and D water utilities by D. 92-03-093, two methods can be used for ratemaking, the Rate of Return (ROR) and ROM methods.²⁴ D. 92-03-093 directs the WD to calculate the company's rates and revenue requirement using both of these methods and to recommend the ratemaking method resulting in the greater return.²⁵ The Commission, in D. 02-06-005, clarified the applicability of this ratemaking policy for small sewer utilities, such as Cypress Ridge, where the Commission states that it has long been recognized that small water and sewer frequently have higher depreciated rate bases, so its [the Commission] standard ratemaking policy for small utilities has been to use whichever method [ROR or ROM] is more beneficial for the company.²⁶ In D.02-06-005, the Commission determined that the ROM method was more beneficial for Cypress Ridge's GRC for TY 2005 and applied this ratemaking method in determining the company's adopted revenue requirement and rates.²⁷ The Commission also implemented this ratemaking policy for the Class D sewer utilities in the GRCs adopted by Resolutions W-5098, W-4837, W-5097, W-4680, and in Cypress Ridge last GRC for TY 2008 in Res. W-4795.

Accordingly, in this rate case, the WD determined that the ROM method produced the higher revenue requirement. For 2018, the WD's recommended ROM for Class D water utilities is 24.00%.²⁸ Using the recommended ROM of 24.00%, the WD calculated a revenue requirement of \$558,400. By comparison, using the mid-range of the

²⁴The revenue requirement and rates under the ROR method are based on company's rate base. Under the ROM method the revenue requirement is based on the company's overall expenses which include operating and maintenance and depreciation expenses, income and other taxes, and an operating margin percentage.

²⁵D. 92-03-093, Ordering Paragraph 8.

²⁶D.02-06-005, pg. 5, footnote 2.

²⁷D.02-06-005, Appendix A.

²⁸Water Division's February 27, 2018 memorandum on the recommended Rates of Return and Rates of Margin for Class C and D Water Utilities:

<http://www.cpuc.ca.gov/General.aspx?id=1404>.

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recommended ROR on rate base of 11.06% for Class D sewer utilities, the revenue requirement would be \$465,040. Therefore, the WD recommends that the ROM method be used for Cypress Ridge's TY 2018 GRC.

Rates and Rate Design

Cypress Ridge's rate structure consists of two rate schedules: Schedule No. 1, Residential Flat Rate Sewer Service and Schedule No. 2, Commercial Flat Rate Sewer Service. At the recommended ROM, the increase in revenues will be \$46,657 or 9.12% for TY 2018. The rates proposed by the WD are shown in Appendix B. At the recommended rates for TY 2018, a monthly customer's bill for the residential and commercial customers will increase from \$110.48 to \$120.55 or 9.12%. A comparison of customer bills at present and recommended rates is provided in Appendix C of this resolution.

Comparing Cypress Ridge's sewer service rates with other sewer utilities is challenging due to the variables associated with each sewer plant and the WD does not believe it provides a reasonable benchmark for evaluating Cypress Ridge's costs of providing sewer service for the following reasons: 1) most sewer utility service in California²⁹ is provided by publicly-owned utilities with different mechanisms for funding construction of their sewer treatment facilities than the investor-owned utilities; 2) publicly-owned sewer utilities use different methods for establishing sewer rates and charges; 3) sewer facilities vary greatly in the type, size, and complexity of sewer treatment use, and age with varying construction, maintenance and operational costs and requirements; and 4) different sizes of customer bases for recovering construction, operational and maintenance costs that affect the economies of scale that are achieved. However, in Cypress Ridge's CPCN application filings (A.15-08-025 and A.15-12-015) Cypress Ridge provided a rate comparison for the City of Santa Paula and Filmore, as shown in the rate comparison table below. The WD also included the sewer rates for the Nipomo Community Services District's Black Lake Division which provides sewer service near Cypress Ridge's service area.

²⁹ The Commission currently regulates 14 sewer utilities, and most of these utilities have less than 500 service connections.

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Single Family Rate Comparison Table

<u>Utility</u>	<u>MonthlyService Charge</u>	<u>Quantity Charge at CCF</u>	<u>Type of Treatment Plant</u>	<u># of Service Connections</u>	<u>Total</u>
Cypress Ridge Sewer Co.	\$ 120.55	\$ -	SBR	386	\$ 120.55
City of Santa Paula	\$ 77.21	\$ 17.92 *	Membrane Bioreactors	7,000	\$ 95.13
City of Filmore	\$ 103.36	\$ -	Membrane Bioreactors	3,500	\$ 103.36
Nipomo Community Service: BlackLake Division	\$ 72.76		Pond	559	\$ 72.76

* Based on water usage of 16 CCF at \$1.21 per CCF

While the sewer rates for the Cities of Santa Paula and Filmore, and Nipomo Community Service's Black Lake Division shown above do not provide a direct comparison given the difference in number of service connections and water treatment facilities, it illustrates the range of the sewer rates customers are paying in these areas.

Affordability of Proposed Rates

As discussed above at the recommended rates for TY 2018, a monthly customer's bill for the residential and commercial customers will increase from \$110.48 to \$120.55 which is 2.28% of the median household income of \$63,558 for Arroyo Grande where Cypress Ridge's service area is located.

It should be noted that no affordability criteria has been developed and adopted in any Commission Decision or legislation. Instead, the discussion regarding affordability is presented to indicate to the Commission the relationship between the proposed rates and local incomes.

COMPLIANCE

Cypress Ridge has no outstanding compliance orders and has been filing annual reports as required. Cypress Ridge is in compliance with the RWQCB's applicable regulations for the safe operation of its sewer treatment plant as required under its permit, Order No. 97-66.

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UTILITY SAFETY

As previously noted, Cypress Ridge is in compliance with the RWQCB's applicable regulations for the safe operation of its sewer treatment plant under its permit, Order No. 97-66. Cypress Ridge also has developed and prepared an Emergency Response Plan and Operation and Maintenance Plan for its sewer utility.

COMMENTS

Public Utilities Code section 311(g)(1), provides that resolutions generally 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, the draft resolution was mailed to the service list, protestants, and made available for public comment on February 8, 2019.

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FINDINGS

1. The Summary of Earnings (Appendix A) recommended by the Water Division (WD) is reasonable and should be adopted.
2. The rates recommended by the WD (Appendix B) are reasonable and should be adopted.
3. The quantities (Appendix D) used to develop the WD's recommendations are reasonable and should be adopted.
4. The sewer rate increase authorized herein is justified and the resulting rates are just and reasonable.
5. The sewer service provided by Cypress Ridge Sewer Company (Cypress Ridge) is in compliance with the Regional Water Quality Control Board's applicable regulations for the safe operation of its sewer treatment plant under its permit, Order No. 97-66.
6. S-Corporations do not pay corporate federal income taxes; instead, the taxable revenue is allocated to individual S-Corporation shareholders.
7. S-corporation shareholders pay any taxable revenues at personal tax rates.
8. Personal federal income tax rates increase with taxable personal income.
9. It would be inequitable to allow corporate income taxes attributable to utility operations in utility rates for C-Corporation utilities, and not allow S-Corporation income taxes attributable to utility operations, such as Cypress Ridge, in utility rates.
10. The income taxes that Cypress Ridge shareholders or the owner pay are just as much a cost of acquiring and operating the assets of Cypress Ridge as if Cypress Ridge assets were owned by a C-Corporation.

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11. The income taxes paid by Cypress Ridge's shareholder/owner are a cost of doing Cypress Ridge business, regardless of whether Cypress Ridge itself or the individual owner pay the income taxes.
12. It would be discriminatory to allow an income tax liability in C-Corporation utility rates while disallowing an income tax liability for a S-Corporation such as Cypress Ridge.
13. It is less costly to ratepayers to calculate utility income tax expense using corporate income tax rates than using personal income tax rates applying very conservative assumptions of a single taxpayer, with no deductions, whose only income is S-Corporation utility income.
14. Unlike the federal corporate income tax rate at 21.00%, personal tax rates increase with taxable income.
15. The personal federal income tax rate of 21.00% begins at a taxable income of \$39,000 and goes higher with greater taxable income.
16. Cypress Ridge's income taxes using a corporate federal income tax rate of 21.00% results in less cost to Cypress Ridge ratepayers than applying a conservative personal income tax rate, and conservative filing status.
17. Personal income taxes vary as a result of many factors including income, tax filing status, deductions and other variables.
18. Personal income tax information is protected by Federal statute.
19. Personal income tax information may not be timely in determining utility income tax expense for ratemaking purposes.
20. Class C and D water utilities, and all sewer utilities, including Cypress Ridge may request changes in general rates annually.

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21. Utility income tax rates based on personal income tax rates are likely to vary with every GRC filing.
22. It is equitable and reasonable to include Cypress Ridge income tax expense in rates at the corporate income tax rate of 21.00%.
23. In D.02-06-005, the Commission clarified the applicability of its ratemaking policies adopted for Class C and D water utilities by D.92-03-093 for small sewer utilities, such as Cypress Ridge, requiring that the revenue requirement in GRCs be calculated using the ROR and ROM methods, and to recommend the method resulting in the greater return.
24. The Commission implemented the ratemaking policy adopted by D.92-03-093 for the Class D sewer utilities GRCs adopted by Resolutions W-5098, W-4837, W-5097, W-4680, and in Cypress Ridge's last GRC for TY 2008 in Res. W-4795.
25. For 2018, the WD's recommended ROM for Class D water utilities is 24.00%.
26. The WD recommends using the recommended ROM of 24.00% for Cypress Ridge's TY 2018 GRC since it results in the higher revenue requirement, consistent with the Commission's ratemaking policy adopted by D.92-03-093.
27. The WD included the applicable State and Federal income taxes in the revenue requirement calculation for Cypress Ridge's GRC for TY 2018, consistent with the Commission's rate setting practice for water and sewer GRCs.
28. Cypress Ridge should be allowed to file a supplement to Advice Letter No. 31-SS to incorporate the revised rate schedules (Appendix B) and to concurrently cancel its presently effective rate Schedules.

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THEREFORE, IT IS ORDERED THAT:

1. Authority is granted under Public Utilities Code Section 454 for Cypress Ridge Sewer Company to file a supplemental Advice Letter with the revised rate schedules attached to this Resolution as Appendix B, and concurrently cancel its presently effective rate Schedules: Schedule No. 1, Residential Flat Rate Sewer Service and Schedule No. 2, Commercial Flat Rate Sewer Service. The effective date of the revised schedules shall be five days after the date of filing.

This Resolution is effective today.

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 March 14, 2019; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

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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-5187 on all parties in these filings or their attorneys as shown on the attached lists.

Dated February 8, 2019 at San Francisco, California.

/s/ ROBIN BRYANT

Robin Bryant

Parties should notify the Division of Water and Audits, 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.

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APPENDIX A Cypress Ridge Sewer Co. Summary of Earnings Test Year 2018

	Cypress Ridge		Water Division	
	Present Rates	Requested Rates	Present Rates	Recommended Rates
Operating Revenues				
Unmetered Revenue	\$ 511,743	\$ 622,250	\$ 511,743	\$ 558,400
Total Revenue	\$ 511,743	\$ 622,250	\$ 511,743	\$ 558,400
Operating Expenses				
610 Purchased Water	\$ -	\$ -	\$ -	\$ -
615 Purchased Power	\$ 32,569	\$ 32,569	\$ 32,086	\$ 32,086
618 Other Volume Related Expenses	\$ 10,374	\$ 10,374	\$ 10,374	\$ 10,374
630 Employee Labor	\$ 167,997	\$ 167,997	\$ 167,997	\$ 167,997
640 Materials	\$ 13,089	\$ 13,089	\$ 13,089	\$ 13,089
650 Contract Work	\$ 67,438	\$ 67,438	\$ 54,255	\$ 54,255
660 Transportation Expenses	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500
664 Other Plant Maintenance	\$ 1,355	\$ 1,355	\$ 1,355	\$ 1,355
670 Office Salaries	\$ -	\$ -	\$ -	\$ -
671 Management Salaries	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000
674 Employee Pensions and Benefits	\$ 16,725	\$ 16,725	\$ 14,564	\$ 14,564
676 Uncollectable Accounts	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
678 Office Services and Rentals	\$ 5,529	\$ 5,529	\$ 5,529	\$ 5,529
681 Office Supplies and Expenses	\$ 3,675	\$ 3,675	\$ 3,675	\$ 3,675
682 Professional Services	\$ 72,497	\$ 72,497	\$ 35,000	\$ 35,000
684 Insurance	\$ 20,000	\$ 20,000	\$ 17,964	\$ 17,964
688 Regulatory Compliance Expense	\$ 8,712	\$ 8,712	\$ 7,500	\$ 7,500
689 General Expenses	\$ 17,000	\$ 17,000	\$ 17,000	\$ 17,000
Subtotal	\$ 450,460	\$ 450,460	\$ 393,888	\$ 393,888
403 Depreciation	\$ 12,703	\$ 12,703	\$ 12,703	\$ 12,703
408 Taxes Other Than Income	\$ 16,338	\$ 16,338	\$ 16,338	\$ 16,338
409 State Income Taxes	\$ 3,047	\$ 9,371	\$ 7,851	\$ 11,976
410 Federal Income Taxes	\$ 9,450	\$ 22,806	\$ 17,002	\$ 25,934
Total Expenses	\$ 41,538	\$ 61,218	\$ 53,894	\$ 66,951
Net Revenue	\$ 19,745	\$ 110,572	\$ 63,961	\$ 97,562
Rate Base				
Average Plant	\$ 5,201,924	\$ 5,201,924	\$ 5,179,323	\$ 5,179,323
Average Accumulated Depreciation	\$ 2,414,525	\$ 2,414,525	\$ 2,284,979	\$ 2,284,979
Net Plant	\$ 2,787,399	\$ 2,787,399	\$ 2,894,344	\$ 2,894,344
Less:				
Advances	\$ -	\$ -	\$ -	\$ -
Contributions in Aid of Construction	\$ 2,476,831	\$ 2,476,831	\$ 2,606,738	\$ 2,606,738
Plus:				
Construction Work in Progress	\$ -	\$ -	\$ -	\$ -
Working Cash	\$ -	\$ -	\$ -	\$ -
Materials and Supplies	\$ 13,925	\$ 13,925	\$ 13,925	\$ 13,925
Rate Base	\$ 324,493	\$ 324,493	\$ 301,531	\$ 301,531
Rate of Margin	4.26%	23.87%	15.73%	24.00%

END OF APPENDIX A

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**APPENDIX B
Cypress Ridge Sewer Co.**

**Test Year 2018
(Page 1 of 2)**

Schedule No. 1
RESIDENTIAL FLAT RATE SEWER SERVICE

APPLICABILITY

Applicable to all residential sewer service.

TERRITORY

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

RATES

Per Connection
Per Month

For all residential sewer servic \$120..55 (I)

SPECIAL CONDITIONS

1. A late charge will apply per Schedule No. LC.
2. Bills will be rendered in advance of the period for which service will be provided.
3. All bills are subject to the reimbursement fee set forth in Schedule No. UF.
4. 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.

(cont.)

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**APPENDIX B
Cypress Ridge Sewer Co.
Test Year 2018
(Page 2 of 2)**

Schedule No. 2
COMMERCIAL FLAT RATE SEWER SERVICE

APPLICABILITY

Applicable to all residential sewer service.

TERRITORY

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

RATES

Per Connection
Per Month

For Golf Pro Shop	\$ 120.55	(I)
For Golf Maintenance Facility	\$ 120.55	(I)
For Commercial/Office Facility	\$ 120.55	(I)
For Pavillion	\$ 120.55	(I)

SPECIAL CONDITIONS

1. A late charge will apply per Schedule No. LC.
2. Bills will be rendered in advance of the period for which service will be provided.
3. All bills are subject to the reimbursement fee set forth in Schedule No. UF.
4. 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.

END OF APPENDIX B

PROPOSED RESOLUTION

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APPENDIX C Cypress Ridge Sewer Co. Comparison of Rates Test Year 2018

		<u>Per Service Connection Per Month</u>		
		Present	Recommended	Percent
		<u>Rates</u>	<u>Rates</u>	<u>Increase</u>
	Residential	\$ 110.48	\$ 120.55	9.12%
	Golf Pro Shop	\$ 110.48	\$ 120.55	9.12%
	Golf Municipal Facility	\$ 110.48	\$ 120.55	9.12%
	Commercial Facility	\$ 110.48	\$ 120.55	9.12%
	Pavillion	\$ 110.48	\$ 120.55	9.12%

END OF APPENDIX C

PROPOSED RESOLUTION

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APPENDIX D

Cypress Ridge Sewer Co. Adopted Quantities Test Year 2018

1.	Purchased Power	\$32,086
	Energy Provider	Pacific Gas and Electric
	Energy Tariff Schedule	A1X Small General Time-of-Use Service
2.	Service Connections –	
	Residential	382
	Commercial	<u>4</u>
	Total	386

<u>Tax Calculations</u>	<u>TY 2018</u>
Operating Revenues	\$ 558,400
Operating Expenses	\$ 393,888
Taxes Other than Income	\$ 16,338
Depreciation	\$ 12,703
Interest	\$ -
Taxable Income for State	\$ 135,471
State Taxes (tax rate of 8.84%)	\$ 11,976
Taxable Income for Federal	\$ 123,496
Federal Income Taxes (tax rate of 21.00%)	\$ 25,934

END OF APPENDIX D

PROPOSED RESOLUTION

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CYPRESS RIDGE SEWER COMPANY ADVICE LETTER 31-SS SERVICE LIST

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PROPOSED RESOLUTION

Resolution W-5170
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March 14, 2019

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WD

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