



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

**FILED**  
05-25-12  
04:59 PM

In the Matter of the Application of Golden Hills Sanitation Company (U438SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014.

A.11-08-019  
(Filed August 26, 2011)

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

I.12-03-008  
(Filed March 8, 2012)

**PETITION FOR MODIFICATION  
OF DECISION 12-03-025**

**I INTRODUCTION**

In accordance with Rule 16.4, subdivision (d),<sup>1</sup> the Division of Water and Audits (DWA) petitions the California Public Utilities Commission (Commission) to modify its Decision (D.) 12-03-025, basically as follows:

- (a) Add as a Respondent the California Probate Estate of Carlie W. Smith (California Probate Estate); and

---

<sup>1</sup> The term "Rule" means a regulatory provision of the California Public Utilities Commission Rules of Practice and Procedure, and Rule 16.4(d) is codified at Cal. Code Regs., tit. 20, § 16.4(d) (LEXIS current through Register 2012, No. 18, May 4, 2012).

(b) Change Conclusion of Law (COL) 1 and Ordering Paragraph (O.P.) 1 in D.12-03-025 to require that the owners of Golden Hills Sanitation Co., Inc. (GHSC) continue to pay for and provide sewer service to GHSC customers until another owner is substituted for them as approved by the Kern County Superior Court (Court) and the Commission.

The modifications stated above and others are shown in attached Exhibit 1.<sup>2</sup> The justification for these changes is that but for Respondents' failure to disclose the existence of the California Probate Estate and its assets, the Commission would have included it as an additional Respondent in D.12-03-025, along with the Kentucky Probate Estates of Carl W. Smith and of Lillian M. Smith (Kentucky Probate Estates) at *id.*, COL 7 and O.P. 8.

Moreover, if it had known of the California Probate Estate before issuing D.12-03-025, the Commission would not have stated in COL 1 and O.P. 1 that the Respondent had to serve the GHSC customers "until a Receiver is appointed," because the California Probate Estate consists of real and personal properties valued at nearly \$13 million which in 2011 the Respondents were using to keep the GHSC sewer system running.

The California Probate Estate is now before the San Diego County Probate Court as "In re the Matter of the Estate of Carlie W. Smith, also known as Carlie Smith, No. 37-2010-00151892-PR-LS" (California Probate Estate).<sup>3</sup> In accordance with Rule 13.9,<sup>4</sup> DWA requests that the Commission take official notice of the attached San Diego Probate Court records, which support this Petition for Modification (Petition). They are

---

<sup>2</sup> Pursuant to Rule 16.4, subd. (b) (*id.*, § 16.4(b)), the proposed specific wordings to carry out all requested modifications of D.12-03-025 are presented in italics at attached Ex. 1.

<sup>3</sup> Petn. of Letters of Special Administration, *Est. of Carlie W. Smith*, No. 37-2010-00151892-PR-LS-CTL (San Diego Cnty Prob. Ct, C.D., Dept. PC-2, Aug. 13, 2010), available at <https://roa.sdcourt.ca.gov/roa/faces/CaseSearch.xhtml/> (at line Register of Actions (ROA) #1), copy attached at Ex. 2.

<sup>4</sup> See *supra* note 1, at § 13.9.

“[r]ecords of . . . any court of this state” under Evidence Code § 452, subdivision (d) (1). Therefore pursuant to § 453, these Probate Court records are entitled to official notice upon DWA’s request. This Petition gives the Respondents sufficient notice of DWA’s request to enable them to meet it.<sup>5</sup>

## II. BACKGROUND

### A. DWA discovers the California Probate Estate.

In late April 2012, DWA discovered the California Probate Estate and brought it to the Commission’s attention in responding to the Respondents’ Application for Rehearing and Petition for Modification.<sup>6</sup> At no time during the two proceedings consolidated in this docket had Respondents divulged the California Probate Estate; its assets; or its role in keeping the sewer system running.

### B. Probate Court records show that in August 2010, the California Probate Estate was filed in the San Diego County Probate Court.

Carlie W. Smith died in December 2009. On August 13, 2010, Lincoln H. Banks petitioned the San Diego County Probate Court for Letters of Special Administration regarding the “Estate of Carlie W. Smith aka Carlie Smith” (California Probate Estate).<sup>7</sup>

---

<sup>5</sup> Evid. Code §§ 452(d)(1) and 453 (Deering, LEXIS through Chapter 12 of the 2012 Leg. Sess.).

<sup>6</sup> DWA Resp. to Appl. for Rehr’g at 2 and Exs. 1–4, *GHSC*, A.11-08-019/I. 12-03-008 (consolidated), filed Ap. 27, 2012, *available at* <http://docs.cpuc.ca.gov/EFILE/RESP/165249.htm>; DWA Resp. to Petn. for Mod. at 2–3 and Exs. 1–5, *id.*, filed May 7, 2012, *available at* <http://docs.cpuc.ca.gov/EFILE/RESP/166101.htm/>. DWA’s two Responses are incorporated by reference as if fully stated herein.

<sup>7</sup> First Account and Report of Special Administrator and Administrator [sic] with the Will Annexed and Petn. for Its Settlement; for Allowance of a Portion of the Statutory Commissions and a Portion of the Statutory Attorneys’ Fee; and Fees for Extraordinary Services; for Reimbursement of Costs Advanced; for Discharge of Special Administrator; and for Continuing Administration of Estate at 1-2, *Est. of Carlie W. Smith*, *supra* note 3, *available at* <https://roa.sdcourt.ca.gov/roa/faces/casesearch.xhtml/> (line ROA #102). Copy of line ROA #102 and First Account pp. 1-19, attached at Ex. 3.

That Estate consists of real and personal properties in California valued at nearly \$13 million.<sup>8</sup>

On August 20, 2010, the San Diego Court appointed Petitioner Banks as special administrator of the Smith Estate and issued Letters of Special Administration.<sup>9</sup> On October 27, 2010, the San Diego Court admitted to probate the Decedent's Will dated June 19, 2009, with its First Codicil dated October 12, 2009, which were both executed in Kentucky. With the domiciliary administration in Kentucky, the San Diego County probate proceeding is an ancillary administration of his California properties.<sup>10</sup>

**C. The California Probate Estate funded operations of the GHSC sewer system**

According to Court records, Carlie W. Smith owned all the outstanding GHSC shares, and income from "multi-million dollar"<sup>11</sup> properties in his California Probate Estate was used to fund GHSC's operations, as stated below:

[GHSC] was maintained in corporate ownership, with Carlie as the owner of the corporate shares . . . . [domiciliary executor] BB&T utilizes some of the cash-flow from the California properties to maintain this asset [i.e., GHSC's sewer system].<sup>12</sup>

On various dates during February through August 2011, the California Probate Estate transferred funds to GHSC's Bank of the West account in amounts totaling over

---

<sup>8</sup> Prob. Notes pp. 1–3 (dated Oct. 24, 2010) ("Beginning Assets on Hand: \$12,585,498.53"), *Est. of Carlie W. Smith, id.*, available at <http://www.sandiego.courts.ca.gov/v3pbnotes/SeekCase.aspx?CaseNo=2010-00151892>, attached at Ex. 4.

<sup>9</sup> See line ROA #9, *Est. of Carlie W. Smith, supra* note 3 and Ex. 2.

<sup>10</sup> Lines ROA #s 35–37, *id.*, attached at Ex. 5.

<sup>11</sup> Decl. of Attorney re Extraordinary Attorney Fees by Frederick R. Vandever, at p. 11: line 3, *Est. of Carlie W. Smith, supra* note 7 (at line ROA #102), attached at Ex. 6.

<sup>12</sup> *Id.* at p. 18: lls. 24–25 and p. 19: line 2, attached at Exhibit 7.

\$70,000. A tabular listing of the dates and amounts of these transfers are presented in attached Exhibit 8.<sup>13</sup>

**D. In Commission Decision (D.) 12-03-025, the Commission named the two Kentucky Probate Estates, which should have included the California Probate Estate.**

In Conclusion of Law (COL) 2 and Ordering Paragraph (O.P.) 3, *id.*, the Commission held that “GHSC and its owners should be named as Respondents herein.” Because the owners Carlie W. Smith and Lillian M. Smith died in 2009, in COL 7 and O.P. 8 the Commission ordered that D.12-03-025 be served on the Kentucky Probate Estates.<sup>14</sup>

**E. Respondents abandoned the GHSC sewer system on February 29, 2012, because “transition funding” by the Kentucky Probate Estates was no longer possible.**

In a motion dated November 22, 2011, Respondents warned that one of the Kentucky Probate Estates was providing “transitional funding” for the GHSC sewer system, but when that is exhausted the Respondents would have to abandon the sewer system, as follows:

[T]he significant revenue undercollection resulting from GHSC’s existing rates has been exacerbated by the expiration on September 30, 2011, of the “transition funding” by GHSC’s principal shareholder.<sup>15</sup>

Accordingly, on February 21, 2012, Respondents notified customers that they were ceasing operation, because:

---

<sup>13</sup> See attached Ex. 8, tbl. 1. Listing of California Probate Estate Funding Transfers to GHSC in 2011.

<sup>14</sup> GHSC, D.12-03-025, COLs 2 and 7, respectively at pp. 10 and 13-14, available at [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/161616.htm/](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/161616.htm/).

<sup>15</sup> Motn. of GHSC for Expedited Interim Rate Relief at p. 2, 1<sup>st</sup> para., GHSC, A.11-08-019/I. 12-03-008, available at <http://docs.cpuc.ca.gov/EFILE/MOTION/154004.htm/> (caption and p. 2 attached at Ex. 9).

GHS lacks revenue required based on currently authorized rates to continue its public utility operations beyond February 29, 2012.<sup>16</sup>

Neither in GHSC Motion stated above nor at any time thereafter did the Respondents mention the California Probate Estate, which was filed in August 2010. Moreover, they remained silent about the California Probate Estate's funding of the sewer system from February through August 2011 of over \$70,000, and never explained why such funding is unavailable.<sup>17</sup>

**F. Relying on Respondents' reference only to the Kentucky Probate Estates and uninformed about the California Probate Estate, the Commission only required the Respondents to serve GHSC customers "until a receiver is appointed."**

In an Assigned Commissioner Ruling (ACR) dated February 22, 2012 (Feb. 22 ACR), the Commissioner Michel Peter Florio issued a temporary restraining order (TRO) which "requires the owners and operators of GHSC to continue providing service to GHSC until such time that a receiver is appointed."<sup>18</sup>

On February 27, 2012, the Commission issued its proposed Order Instituting Investigation and Order to Show Cause (OII/OSC) to Respondents, which was to appear on the Commission's March 8, 2012 agenda for a vote. The proposed OII/OSC at COL 1 and O.P. 1 confirm February 22 ACR as requiring "the Respondents to continue to [sic] serving their ratepayers until a receiver is appointed." And at COL 2 and O.P. 2, it names "GHSC and its owners" as Respondents.<sup>19</sup>

---

<sup>16</sup> GHSC Feb. 21 Notice of Cessation, D.12-03-025 at attach. A, attached at Ex. 10.

<sup>17</sup> See *supra* note 13, tbl. 1 at Ex. 8.

<sup>18</sup> Assigned Comm'r Rul'g Formalizing Electronic Rul'gs (dated Mar. 16, 2012), *GHSC*, A.11-08-019/I.12-03-008 (Feb. 27, 2012), attached at Ex. 11.

<sup>19</sup> Prop. OII/OSC of ALJ Seaneen M. Wilson at 8, *GHSC*, A.11-08-019/I.12-03-008 (Feb. 27, 2012), available at <http://docs.cpuc.ca.gov/EFILE/PD/160386.htm/>.

On March 1, 2012, Respondents filed Comments opposing the Commission's jurisdiction over the Kentucky Probate Estates, because "[t]he estates are already subject to the jurisdiction of judicial tribunals."<sup>20</sup> That filing did not acknowledge the existence of the California Probate Estate; its funding of GHSC during 2011; or raise the issue whether the Commission has jurisdiction over the California Probate Estate.<sup>21</sup>

On March 8, 2012, the Commission ratified the Feb. 22 ACR and approved and adopted the proposed OII/OSC Decision, which on March 14, 2012, was issued as D.12-03-025.

At the OII/OSC hearing on March 15, 2012, the Respondents presented no witnesses but only stated that at least one of the Kentucky Probate Estates waived the right to a hearing. The Respondents presented no information regarding the California Probate Estate and its 2011 funding of GHSC.<sup>22</sup>

On April 6, 2012, the Respondents filed a Petition for Modification and on April 12, 2012, filed an Application for Rehearing.<sup>23</sup> DWA responded to both filings in a timely manner, attaching Probate Court records of the California Probate Estate. As in their March 1 Comments, neither the Respondents' Petition nor its Application stated above disclose that nearly two years ago, the California Probate Estate proceeding was begun in San Diego County with assets of nearly \$13 million.<sup>24</sup>

---

<sup>20</sup> GHSC Comments (filed Mar. 1, 2012) at p. 5, para. 12, A.11-08-019, *available at* <http://docs.cpuc.ca.gov/EFILE/CM/160763.htm/>.

<sup>21</sup> *See id.*

<sup>22</sup> *See* OII/OSC Hr'g Tr. of R. at 4:15-26 (dated Mar. 19, 2012), available on file with the Reporting Division (no mention of the California Probate Estate during hearing), attached at Ex. 12.

<sup>23</sup> GHSC Petn. for Modif. and Appl. for Reh'g, A.11-08-019, *available at* <http://docs.cpuc.ca.gov/EFILE/PM/163742.htm> and <http://docs.cpuc.ca.gov/EFILE/R/164039.htm/>.

<sup>24</sup> *See supra* notes 3, 7, 8, 11, and 13.

**G. Respondents refuse to pay for the sewer system's operations and maintenance after the Court appoints Clifford Bressler as receiver.**

On May 7, 2012, in a telephone call, Clifford Bressler, the court-appointed receiver informed the DWA's attorney of record that Respondents have stopped paying the sewer system's electricity bills, water testing expenses, and other operational or maintenance expenses, because of O.P. 1 in D.12-03-025. While the Receiver has made written demand of the Respondents to pay these and other bills, the Respondents have not responded.

**III. ARGUMENTS AND AUTHORITIES**

**A. Based on COL 2 and O.P. 2, D.12-03-025, the California Probate Estate should be added as a Respondent.**

Respondents' administrative appeals have failed to prove that COL 2 or O.P. 2 is legally invalid or unsupported by the record.<sup>25</sup> Therefore, as with the two Kentucky Probate Estates, the Commission should modify D.12-03-025 to name the California Probate Estate as a Respondent.

In the *Arrowhead Water Co.* receivership case, the Commission included the probate estate of a deceased owner as a respondent, when applying for court appointment of a receiver. In that case, the San Bernardino County Superior Court granted the Commission's request (docket civil case no. SCVSS98680). Respondents have presented no superior court decisions or any other legal authorities that would bar the Commission from naming the California Probate Estate as a Respondent.

---

<sup>25</sup> See DWA Resp. to Resp'ts Pet. for Mod. at 2-3 (filed May 7, 2012), *GHSC*, A.11-08-019/I. 12-03-008 (consolidated), available at <http://docs.cpuc.ca.gov/EFILE/RESP/166101.htm> (unrefuted evidence showing Carlie W. Smith *de facto* owned, operated, controlled, or managed the GHSC sewer system).

**B. The Respondents are legally responsible for keeping the GHSC sewer system running even after a receiver has been appointed.**

In D.12-03-025, O.P. 1, the Commission ordered the Respondents to continue serving their ratepayers “until a receiver is appointed.” This, however, was based on Respondents’ nondisclosure of the California Probate Estate and their reference to only the Kentucky Probate Estates as providing “transition funding.”

If the Commission had known of the California Probate Estate, its \$13 million of assets, and its past funding of the sewer system, more than likely it would have included it as a Respondent. As this DWA Petition shows, the Respondents did not have to shut down the sewer system in February 2012 for lack of funding. Moreover, even though a receiver has been appointed, they can pay for sewer system’s electricity bills, water testing expenses, and other operational or maintenance expenses by using their California Probate Estate assets, as they had done in 2011. The Commission should modify D.12-03-025 as requested to enforce the Respondents’ duty as a public utility.

**IV. CONCLUSION**

The Respondents have misled the Commission into issuing a Decision that is not based on a full and complete record and thus allows the Respondents to shirk their public utility obligations. Therefore, DWA urges the Commission to modify D.12-03-025 as requested to correct this oversight caused by the Respondents. Even though a receiver has been appointed, the Commission should order the Respondents to continue paying the sewer system’s operational and maintenance expenses. They alone are certificated to provide the sewer services, and only they have \$13 million of California Probate Estate assets to do so until a new owner is substituted.

The Commission should consider imposing fines and penalties on the Respondents for violating Rule 1.1. That Rule prohibits Respondents from “misleading the Commission or its staff by an artifice or false statement of fact or law.” In this case, the Respondents’ artifice is not disclosing to the Commission the California Probate Estate.

Respectfully submitted,

/s/ CLEVELAND W. LEE

---

CLEVELAND W. LEE

Attorney for the Division of Water and Audits  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-1792  
E-mail: [cleveland.lee@cpuc.ca.gov](mailto:cleveland.lee@cpuc.ca.gov)

May 25, 2012