

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



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In the Matter of the Application of Golden Hills Sanitation Company (U 438-SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014.

Application 11-08-019
(Filed August 26, 2011)

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.

Investigation 12-03-008
(Filed March 8, 2012)

**APPLICATION OF GOLDEN HILLS SANITATION COMPANY, BB&T WEALTH
MANAGEMENT, LINDA MAYCOCK AND RILEY C. WALTER
FOR REHEARING OF DECISION 12-03-025**

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**BB&T WEALTH MANAGEMENT,
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April 12, 2012

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

In the Matter of the Application of Golden Hills Sanitation Company (U 438-SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014.

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FOR REHEARING OF DECISION 12-03-025**

Pursuant to Section 1731(b) of the Public Utilities Code and Rule 16.1 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, Golden Hills Sanitation Company, Inc. (U 438-SWR), a Class D sewer system corporation ("GHSC"), BB&T Wealth Management, in its capacity as the Executor of the Estate of Carlie W. Smith ("BB&T"), Linda Maycock, in her capacity as the surviving Executor of the Estate of Lillian W. Smith ("Maycock"), and Riley C. Walter, Attorney at Law ("Mr. Walter") respectfully and timely file this Application for Rehearing ("Application") of Decision (D.) 12-03-025 ("Decision"), with a

Date of Issuance of March 14, 2012..¹ This Application is timely filed within 30 days after the “date of issuance” or mailing of D.12-03-025.² In applying to the Commission for rehearing of the Decision, BB&T and Maycock (referred together herein as the “Estates”) are appearing specially and are not consenting to jurisdiction of the courts in California or to jurisdiction of the Commission over either of them in their capacities as executors, nor over the Estate of Carlie W. Smith or the Estate of Lillian W. Smith (“Estates”). The Estates are not proper parties named in the Decision. Mr. Walter is not a proper party named in the Decision because his only relationship to GHSC (and his only relationship to the subject of this proceeding and the Decision) is as legal counsel to GHSC.

I. BACKGROUND AND SUMMARY

The Decision was issued by the Commission on March 14, 2012, in accordance with Public Utilities Code Section 855, as an Order Instituting Investigation and Order to Show Cause (“OII/OSC”) to give notice and a hearing and orders ‘GHSC and its owners’ (collectively referred to in the Decision as the “Respondents”) to appear and show cause why the Commission should not petition the Kern County Superior Court (“Court”) for the appointment of a receiver to assume possession of GHSC and its sewer system upon terms and conditions as the Court shall prescribe.

The Decision also consolidated the OII/OSC with Application (A.) 11-08-019. Because it was desired that there be an expeditious ruling on whether the Commission’s Legal Division should petition the Court to appoint a receiver to operate GHSC, the Commission deferred

¹ On April 6, 2012, the parties to this Application filed a Petition for Modification of D.12-03-025 in this proceeding seeking modifications to D.12-03-025 that would correct erroneous requirements in that decision, which are also addressed in this Application.

² Public Utilities (P.U.) Code §1731(b)(1) and (3); Commission Rules of Practice and Procedure, Rule 16.1(a).

addressing any other issues related to A.11-08-019, including all outstanding motions, until after appointment the receiver.

This Application is not being filed with respect to the decision of the Commission to direct the Commission's Legal Division to move expeditiously for the appointment of a receiver. Rather this Application is filed seeking to have the Estates and Mr. Walter removed as Respondents because the Commission has committed legal error by naming them as Respondents and/or "Parties" subject to the Commission's jurisdiction. Stated another way, the purpose of this Application is to ask the Commission to modify the Decision to remove the Estates and Mr. Walter as Respondents because they were unlawfully named as such in the Decision and should therefore not be parties to any aspect of this consolidated proceeding going forward.

II. THE DECISION EXCEEDS THE SCOPE OF THE COMMISSION'S JURISDICTION BY NAMING THE ESTATES AND WALTERS AS RESPONDENTS

The Decision names "GHSC and its owners" as Respondents to I.12-03-008.³ In Conclusion of Law 6 and Ordering Paragraph 7 of D.12-03-025, the Commission's Executive Director is directed to "cause service of this Order to be made on the owners of GHSC and GHSC." The entities designated as "Respondents" (other than GHSC) are not subject to the Commission's jurisdiction, and therefore cannot be considered "Respondents" to a Commission investigation, for the reasons discussed below.

A. The Decision Must be Modified to Remove the Estates as Respondents.

The California Public Utilities Commission (the "Commission" or the "PUC") does not have jurisdiction over the probate estates of Carlie W. Smith (the "Carlie Estate") or Lillian W. Smith (the "Lillian Estate"), nor over their executors, BB&T and Maycock, respectively. The

³ D.12-03-025, at p. 2.

Carlie Estate and BB&T as its executor are subject to the jurisdiction of the Warren County Probate Court located in Kentucky in Case No. 10-P-00032; the Lillian Estate and Maycock as its surviving executor are subject to the jurisdiction of the Warren County Probate Court located in Kentucky in Case No. 09-P-0472. Neither the Carlie Estate nor the Lillian Estate (together, the “Estates”), nor either of their executors are public utilities subject to the jurisdiction of the Commission.

It has been contended that the Commission has jurisdiction over “sewer system corporations” such as GHSC, and that such jurisdiction over “sewer system corporations” gives the Commission jurisdiction over the shareholders of that corporation because the definition of a sewer system corporation (allegedly) encompasses the owners of that corporation. But that is an improper reading of the definition of “sewer system corporation.” The term sewer system corporation is defined in Public Utilities Code §230.6 as follows:

"Sewer system corporation" includes every corporation or person owning, controlling, operating, or managing any sewer system for compensation within this state.

The reference to “persons owning” is not a reference to “persons owning” the “corporation.” Rather, the reference in the definition of sewer system corporation to a “person owning” is to a “person owning . . . a *sewer system*” The term “sewer system” is defined in Public Utilities Code §230.5 as follows:

"Sewer system" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including any and all lateral and connecting sewers, interceptors, trunk and outfall lines and sanitary sewage treatment or disposal plants or works, and any and all drains, conduits, and outlets for surface or storm waters, and any and all other works, property or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. "Sewer system" shall not include a sewer system which merely collects sewage on the property of a single owner.

Neither the Estates nor their respective executors are “owners” of a “sewer system” as that term is defined in Public Utilities Code §230.5. Consequently, the definition of sewer system corporation does not support a finding that and of the Carlie Estate, the Lillian Estate, BB&T or Maycock is subject to the jurisdiction of the PUC.

In fact, there is affirmative evidence from the California Constitution that the PUC was intentionally ***not*** granted jurisdiction over mere shareholders of a corporation that owns a public utility and that such shareholders are ***not*** the guarantors of the debts owed by the utility and ***cannot*** be compelled to subsidize the operating shortfalls of the utility. Prior to 1930, Article XII § 3 of the California Constitution read:

Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such director or trustee.

Nothing in the preceding paragraph of this section shall be held to apply to any corporation organized under the laws of this State which shall adopt and use as the last word of its corporate name, the word 'Limited' or its abbreviation, 'Ltd.'; but the stockholders of such corporation shall be subject to such liabilities as may be provided by the Legislature; and provided, further, that nothing in this section shall apply to any stockholder's liability already incurred against stockholders in corporations created prior to the adoption of this amendment. Nothing in the preceding paragraph of this section shall be held to apply to any exposition company organized to promote and carry on any fairs, sports, games or exhibitions authorized or to be held under authority of the constitution or laws of California.

In 1930, the foregoing provision ***was repealed***. Article XII § 3 of the California Constitution ***now reads***:

§ 3. Utilities subject to legislative control

Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities.

Once again it is relevant to note that the reference to “persons that own” is to the ownership of “a line, plant, or system” and not to the “private corporation.” The repeal of the prior Article XII § 3 is indicative of a rejection that shareholders of utilities serve as the “guarantors” of the debts of the utility. It is hardly surprising shareholders are not the guarantors of a corporate entity’s liabilities given that the purpose of the corporate form of ownership is limited liability. It is also not surprising that the jurisdiction of the Commission would not extend to probate estates or their executors since such entities are already subject to judicial oversight. But the point here is not that those realities are unsurprising. The point is that there is no legal basis for concluding that the Commission has jurisdiction over either of the Estates or their respective executors and therefore there is no basis upon which the relief requested in the Motion can be imposed upon the Estates or their executors.

B. The Decision Must be Modified to Remove Mr. Walter as a Respondent.

Mr. Riley C. Walter is an attorney representing GHSC on civil matters related to its insolvency. Mr. Walter is not a public utility or any other corporation or entity subject to Commission jurisdiction and, therefore, does not fall within the categories named in the phrase “Golden Hills Sanitation Co., Inc. (GHSC) and its owners,” which phrase is used in D.12-03-025 to describe the “Respondents” to I.12-03-008. D.12-03-025 errs by including Mr. Walter in any list that is, or can be considered to be, a list of “Respondents” to I.12-03-008.

For the reasons discussed above GHSC, the Estates, and Mr. Walter ask the Commission to correct the Decision accordingly and modify both Conclusion of Law 6 and Ordering Paragraph 7, at pages 11, 13 and 14 of the Decision by deleting Conclusion of Law 6, at page 11), and Ordering Paragraph 7, at pages 13-14), except as Conclusion of Law 6 and Ordering Paragraph 7 refer solely to:

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III. CONCLUSION

The Commission should modify the Decision to correct legal errors discussed herein by removing Mr. Walter, BB&T, Maycock, the Estate of Carlie W. Smith, and the Estate of Lillian Smith as named “Respondents” or “Parties.”

Respectfully submitted,

/s/
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