



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

07-31-12

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.

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.

FILED
PUBLIC UTILITIES
COMMISSION
MARCH 8, 2012
SAN FRANCISCO OFFICE
INVESTIGATION 12-03-008

RESPONSE TO MOTION OF GOLDEN HILLS SANITATION COMPANY (U 438-SWR) FOR RULING CONFIRMING COMMISSION SUSPENSION OF RATE CASE

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This Reply is filed on behalf of the undersigned and the following persons: Angelina Adkins, Irene G. Torres, Natalie Bullock, Jorge & Zoila Recinos, Ryan & Stacy Estrella, Willow Springs Apartments (Marice Silitonga), and Golden Hills Motel (John Kapadia)

July 31, 2012

I Introduction

Pursuant to Rule 11.1 and 1.15 of Rules of Practice and Procedures, this *Response to Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case* (Response), filed on July 20, 2012, must be filed no later than August 6, 2012. This Response is timely filed.

II Discussion

Golden Hills Sanitation Company (GHSC) misstates facts and draws erroneous conclusions in its *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case* (Motion). I quote from the Motion the basis cited by GHSC for its hope that the Commission will suspend A.11-08-019/I.12-03-008:

- (a) the Commission's decision not to enforce the only rate case schedule adopted for this Application in January 2012, for which all dates have now past, or adopt any new one to replace it;
- (b) the Commission's express determination to address "rate issues" separately from, but in consideration of, the appointment of a Receiver for GHSC in Superior Court; and
- (c) the Commission's requested order from the Kern County Superior Court that the Receiver, appointed effective April 5, 2012, shall be empowered to "take immediate and exclusive possession, operate, manage, and control the Defendant [GHSC] and its sewer system," including, but not limited to "substitut[ing] the Receiver as the legal representative for the Defendant in any Commission proceedings currently open or to be filed after appointment of the Receiver."¹

Part (a)

The Commission's failure to adhere to the schedule adopted in January 2012 is a direct result of two deliberate actions of GHSC itself. First GHSC, on February 16, 2012, filed *Motion of Golden Hills Sanitation Company (U 438- SWR) for Stay of Application 11-08-019*. Second, GHSC sent notice to its customers on February 21, 2012 that it would cease operations on February 29, 2012, an action that precipitated Investigation 12-03-008. These affirmative actions on the part of GHSC resulted in the

¹ Page 1, last paragraph to page 2, first paragraph of *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case*.

suspension of the schedule adopted by the Commission in January 2012, **but did not result in the suspension of the proceeding known as Application 11-08-019 consolidated with Investigation 12-03-008**, as GHSC so ardently argues.

GHSC's inappropriate threat of shutting off sewer service to its customers in violation of Commission regulations caused the Commission to focus its resources and attention on the need to continue sewer service to GHSC customers rather than the quadrupling of rates requested in GHSC's application. For this reason, ALJ Wilson wrote that the evidentiary hearing scheduled for March 15, 2012 would only address the issue of directing the Commission's Legal Division to petition Kern County Superior Court to appoint a receiver to operate GHSC. In her email of March 5, 2012 (provided as Exhibit I) Judge Wilson specifically notes:

“Other issues related to GHSC's Application 11-08-019 will be addressed at a later date.”

Part (b)

In its Motion, GHSC states: “... the Commission's express determination to address ‘rate issues’ separately from, but in consideration of, the appointment of a Receiver for GHSC in Superior Court” This statement further supports not only the fact of the Commission's deliberate non-suspension of Application 11-08-019, but also demonstrates that GHSC has all along understood that the proceeding is not suspended. Only the schedule was suspended because of the actions of GHSC.

Part (c)

Clifford Bressler was appointed on an interim basis as receiver of GHSC on April 5, 2012 by Kern County Superior Court. Final disposition of this appointment and the powers and authority the receiver will possess are yet to be determined, as evidenced by the Minute Order dated June 26, 2012 (See Exhibit II). GHSC argues as if the powers and authority requested by the Commission had been granted. While it is hoped that these powers and authority will be granted in some future ruling from Superior Court, that has yet to occur. At this point in time, Mr. Bressler's authority

would seem to extend only to the day-to-day operation of the facilities related to providing GHSC's customers waste water service.

In its Motion GHSC goes on to state:

"... GHSC has deemed it appropriate to move for a ruling by the Commission "suspending" the Application, consistent with the Commission's own actions detailed below, as opposed to a request for a "dismissal" of the Application, a decision that should be made by the Receiver, if he chooses to do so."²

GHSC's actual motive in asking the Commission to now "suspend" the Application (and presumably the entire proceeding A.11-08-019/I.12-03-008) is to avoid discovery. This fact is evidenced by the knowledge of GHSC that this proceeding had never been suspended at all, as noted on page 7 of the Motion, Item 10: "... rates will be addressed separately from the receivership issue ..." quoted from the Assigned Commissioner's Ruling of March 12, 2012. Only now, after my *Motion to Compel Compliance with Discovery* (Motion to Compel) has been filed with the Commission, does GHSC wish to circumvent addressing discovery and this Motion to Compel by having the proceeding suspended.

Attempts to gain meaningful cooperation from GHSC in the discovery process have been a frustrating exercise in addressing a series of artificial barriers erected by GHSC and its attorneys. Another such artificial barrier is noted in the following quote from the Motion:

"22. On July 6, 2012, GHSC participated in a "meet and confer" conference call with Adrian Maaskant regarding his four data requests referenced above. At that time, and for the first time, Mr. Maaskant represented that his data requests (allegedly) related to Mr. Maaskant's Motion to Nullify the \$800,504 Debt of GHSC to the Carlie Smith and Lillian Smith Estates, which, as further noted above, has been submitted

² Page 4, first paragraph of *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case*.

for a decision by the Commission since April 16, 2012, and no further response, reply, or briefing is allowed.”³

The relationship between the discovery requests and motions pending are obvious – GHSC and its lawyers certainly possess sufficient mental acuity and sophistication to connect the discovery requests with the pending motions. Furthermore, nowhere in the Commission’s Rules of Practice and Procedure is there reference to a requirement that the specific motion before the Commission must be referenced within a data request in order for the request to elicit a response. When Ms. Myers indicated that she wanted me to do this, I complied. I did this in the context of Motion to Compel.

Now we have another artificial barrier. Now GHSC argues that the motions referenced have already generated responses and replies from the parties, and that nothing more can be added to the argument related to such motions. In other words, Ms. Myers now contends that no further briefing, written or oral, is allowed. Ms. Myers thus ignores the fact that at some point the Commission will schedule evidentiary hearings on matters before the Commission in this proceeding. It is for this purpose of gathering relevant evidence for such an evidentiary hearing that discovery is appropriate and necessary.

Furthermore, Ms. Myers has implied in her argument that the Commission’s process related to discovery would have a party first conduct discovery followed by the filing of a motion related to that discovery because the filing of the motion followed by the argument presented in the responses and replies to the motion would close off additional discovery to support additional argument:

“Mr. Maaskant represented that his **data requests** (allegedly) **related to** Mr. Maaskant’s **Motion to Nullify** the \$800,504 **Debt** of GHSC to the Carlie Smith and Lillian Smith Estates, which, as further noted above, **has been submitted for a decision by the Commission since April 16, 2012,**

³ Page 10, last paragraph of *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case*.

and no further response, reply, or briefing is allowed.⁴ (Bold emphasis added)

Of course, if that were the proper procedure, there would be no motion to which to relate the discovery request in the first place. Yet Ms. Myers also insists that GHSC cannot respond to discovery because I've failed to name the motion to which that discovery relates:

“GHSC also stated that Mr. Maaskant had not identified any “pending” matter in this consolidated proceeding to which his discovery was relevant.”⁵

Perhaps Ms. Myers could provide for us the authority that supports her Alice-in-Wonderland procedure related to the proper order of discovery vis-à-vis related motions.

Unfortunately, GHSC has contorted discovery into a cynical game of chasing every new and specious argument they can contrive. In doing so, GHSC and its attorneys are demonstrating bad faith in violation of guidelines of the Commission related to discovery:

If all or a portion of the information sought in discovery is considered proprietary or confidential by the responding party, the responding party will ordinarily propose that the propounding party execute a non-disclosure agreement. **Parties are expected to negotiate in good faith with respect to the terms of such agreements.** Additional time may be allowed to respond to discovery if necessary for the negotiation of a nondisclosure agreement with parties other than Commission staff; however, parties should not engage in undue delay as a litigation tactic.⁶ (Bold emphasis added)

⁴ Page 10, last paragraph of *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case*.

⁵ Page 9, last sentence of Item 18 of *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case*.

⁶ Quoted from the CPUC's website: http://docs.cpuc.ca.gov/word_pdf/REPORT/117475.pdf, Discovery: Custom and Practice Guidelines.

While this passage only makes reference to negotiating in good faith with respect to the terms of a non-disclosure agreement, surely the “good faith” provision extends to the entire process of discovery.

GHSC states in its Motion:

“...not only does GHSC have neither the financial means nor the personnel to advance the Application or participate in discovery, to require GHSC to do so would not only deplete any remaining assets unnecessarily, to the extent any exist, ...”⁷

GHSC continues to advance the notion that it cannot afford the cost of participating in discovery, all the while paying two high-priced attorneys to file multiple motions to circumvent discovery and maneuver to frustrate discovery at every possible juncture. GHSC’s Motion is filed with no other purpose but to frustrate discovery. So are the recently filed *Objection of Branch Banking & Trust, Executor of the Domiciliary Estate of Carlie W. Smith to Motion of Adrian Maaskant to Compel Discovery* and *Response of Golden Hills Sanitation Company (U 438-Swr) to Maaskant Motion to Compel Compliance with Discovery*. It would have been far less expensive had GHSC simply responded to the questions and document requests of *AM-Data Requests Sets 1 – 4*. It is becoming increasingly obvious that the reason GHSC resists discovery is that:

- It cannot produce documents supporting its claim to the approximately \$940,000 to \$1,400,000 debt it hopes customers of GHSC will someday pay to the Estates. If such documents existed, GHSC’s interests would have been served by their production. (AM Data Request Set 1, requests 1 – 4)
- It will not produce documents that would undermine its claim to insolvency, such as the California probate it tried to hide from the Commission (and therefore its claim that GHSC is unable rather than unwilling to continue operating the facility). (AM Data Request Set 1, requests 5 – 6)

⁷ Page 3, second paragraph of *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case*.

- It will not produce documents that threaten its claim that it had fully abandoned GHSC, because in fact, GHSC has only sought to abandon the liabilities of GHSC, but not its asset to the Estates of the anticipated debt payments – and in so doing preventing the possibility of finding a new owner. (AM Data Request Set 2, request 1)
- It cannot produce documents supportive of its claim that it really is a corporation under California law and has fulfilled all the obligations required of corporations – this in spite of the fact that GHSC relies on its claim to corporate status in its defense in motions filed with the Commission. (AM Data Request Set 3, requests 1 – 3)
- It will not disclose whose interests its attorneys represent, and if GHSC anticipates that GHSC’s Owners’ legal costs will ultimately be billed to its customers. (AM Data Request Set 4, requests 1 – 3)

All of these discovery requests fall well within the guidelines provided by Rules of Practice and Procedure, Rule 10.1:

(Rule 10.1) Discovery from Parties.

Without limitation to the rights of the Commission or its staff under Pub. Util. Code Sections 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

None of the information requested is privileged. All of it is relevant to the subject matter of the proceeding by way of motions before the Commission or responses submitted by GHSC. Disclosure of this information by GHSC is reasonably calculated to lead to the discovery of admissible evidence. None of this discovery imposes a burden, expense or intrusiveness upon GHSC that outweighs the likelihood that the

information sought will lead to the discovery of admissible evidence. Compliance with discovery would be less expensive for GHSC than the legal costs of defying discovery.

Prayer:

Golden Hills Sanitation Company's *Motion of Golden Hills Sanitation Company (U 438-Swr) for Ruling Confirming Commission Suspension of Rate Case* should be denied. It is a thinly disguised attempt at avoiding discovery. Adrian Maaskant's *Motion to Compel Compliance with Discovery – AM Data Request Sets 1, 2, 3 & 4* should be granted so that the Commission will have all the information required to make just and equitable decisions in the matter of A.11-08-019/I.12-03-008. 77

Respectfully Submitted,

/s/Adrian Maaskant
Adrian Maaskant

July 31, 2012
Date

EXHIBIT I

From: [Wilson, Sean](#)

To: amaaskant@bak.rr.com ; dstegall@bak.rr.com ; bjmiller@bak.rr.com ; ssmyers@att.net ; liddell@energyattorney.com ; childerbrand@goldenhillssanitation.com ; [Nixon, Marcus](#) ; [Wilson, Sean](#) ; info@goldenhillssanitation.com ; rileywalter@W2LG.com

Cc: [Poirier, Marcelo](#) ; [Kahlon, Raminder](#) ; [DeBerry, Bruce](#)

Sent: Monday, March 05, 2012 12:59 PM

Subject: Draft Note re Golden Hills Waive of Hearings

Good morning. Per their comments to the proposed order, dated March 1, 2012, Golden Hills Sanitation Company (GHSC) stipulates to the appointment of a receiver. Given this, I ask each party to inform me as to whether they agree to waive evidentiary hearings on March 15, 2012, which would only address whether the Commission should direct its Legal Division to petition the Kern County Superior Court to appoint a receiver to operate GHSC. Please provide your response by Friday, March 9, 2012 at Noon.

Other issues related to GHSC's Application 11-08-019 will be addressed at a later date.

Thank you. -Judge Wilson

Seaneen McCarthy Wilson
Administrative Law Judge
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EXHIBIT II

6/26/2012	RULING.
	THE COURT ORDERS AS FOLLOWS:
	<p>THE COURT HAS RECEIVED AND CONSIDERED ADDITIONAL DOCUMENTS SUBMITTED BY THE PARTIES AT THE REQUEST OF THE COURT. THE REQUEST OF THE COMMISSION FOR JUDICIAL NOTICE IS GRANTED, AND NOTICE IS TAKEN. IT APPEARS THAT THE COMMISSION HAS UNDER CONSIDERATION A FURTHER PETITION FOR MODIFICATION FILED 5/25/12. AUTHORITIES CITED BY THE COMMISSION SUGGEST THAT THE COMMISSION HAS JURISDICTION OF SHAREHOLDERS AND THE SHAREHOLDERS' ESTATES. PUB. UTIL. CODE SEC. 1759(A) PRECLUDES THE COURT FROM REVIEWING, REVERSING, CORRECTING OR ANNULLING ANY ORDER OR DECISION OF THE COMMISSION OR OTHERWISE INTERFERING WITH THE COMMISSION'S PERFORMANCE OF ITS OFFICIAL DUTIES. THE COURT IS WARY OF PROCEEDING PRIOR TO DETERMINATION OF THE PETITION FOR MODIFICATION BY THE COMMISSION, IN THAT THE PROCEEDINGS MAY "OTHERWISE INTERFERE WITH" THE COMMISSION'S PERFORMANCE OF ITS OFFICIAL DUTIES. CONSEQUENTLY, THE CASE IS REMOVED FROM ITS SUBMITTED STATUS, AND AN OSC WHY THE ACTION SHOULD NOT BE STAYED PENDING DISPOSITION OF THE 5/25/12 PETITION FOR MODIFICATION SHALL BE HEARD ON 8/02/12, 8:30 AM, DEPT. 14. THE COURT SHALL CONSIDER CONCURRENTLY WHETHER MODIFICATION OF THE POWERS GRANTED TO THE RECEIVER ARE NECESSARY AND/OR APPROPRIATE. FURTHER BRIEFING IS PERMITTED, AND, IF PARTIES CHOOSE TO SUBMIT FURTHER BRIEFS, INITIAL PAPERS SHALL BE FILED AND SERVED BY NO LATER THAN 7/13/12 AND REPLY BRIEFS BY NO LATER THAN 7/27/12.</p>
	COPY OF MINUTE ORDER MAILED TO PARTIES AS STATED ON THE ATTACHED DECLARATION.