

Decision **PROPOSED DECISION OF ALJ WILSON** (Mailed 2/27/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

Investigation _____

**ORDER INSTITUTING INVESTIGATION AND
ORDER TO SHOW CAUSE WHY THE COMMISSION
SHOULD NOT HAVE A COURT APPOINT A RECEIVER AND
TO ENJOIN GOLDEN HILLS SANITATION COMPANY FROM CEASING
OPERATION WITHOUT PRIOR COMMISSION AUTHORIZATION**

1. Summary

In accordance with Public Utilities Code Section 855,¹ this Order Instituting Investigation and Order to Show Cause (OII/OSC) is to give notice and a hearing and orders the Golden Hills Sanitation Co., Inc. (GHSC) and its owners (hereafter collectively referred to as “the Respondents”) to appear and show cause why the Commission should not petition the Kern County Superior 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. As with the Assigned Commissioner’s Ruling dated February 22, 2012, this OII/OSC also requires the Respondents to continue providing service to GHSC’s ratepayers until a receiver has been appointed for GHSC.

As stated below, the presiding officer of the Commission is the Administrative Law Judge Division, which set a hearing for March 15, 2012 at 10:00 a.m. in the Commission’s San Francisco Hearing Room. Attached hereto is the Report of Bruce DeBerry, Program Manager, Water and Sewer Branch, Division of Water and Audits. This presents the chronology of events preceding

¹ Unless otherwise stated, the term “Section” means a statutory provision of the California Public Utilities Code Section 855 provides:

Whenever the Commission determines, after notice and hearing, that any water or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission, the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of the property and to operate its system upon such terms and conditions as the court shall prescribe. The court may require, as a condition to the appointment of such receiver, that a sufficient bond be given by the receiver and conditioned upon compliance with the orders of the court and the commission, and the protection of all property rights involved. The court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state.

the attached GHSC notice to ratepayers dated February 21, 2012,² which stated that the Respondents would cease sewer service as of February 29, 2012.

We consolidate this OII/OSC with Application (A.) 11-08-019. Since we must expeditiously rule on whether the Commission's Legal Division should petition the Kern County Superior Court to appoint a receiver to operate GHSC, we will not address other issues related to GHSC's A.11-08-019 at this time, including all outstanding motions. Subsequent to resolution of the receivership issue, we will address these other important issues related to GHSC's A.11-08-019.

2. Background

In Commission Decision (D.) 10-05-025, the Commission granted Golden Hills Sanitation Co., Inc. (GHSC) a certificate of public convenience and necessity (CPCN) to provide sewer service to the Golden Hills Community located in Tehachapi, Kern County, California. GHSC, which is a regulated Class D sewer utility, provides sewer service to 168 customers and 87 inactive service connection commitments, totaling 255 revenue producing connections. Under D.10-05-025, GHSC is also authorized to establish and maintain tariff schedules, Commission-compliant accounts for sewer service and to file an annual report with the Commission.

On August 26, 2011, GHSC filed Application (A.) 11-08-019, in which requested an increase to its tariff rates by \$148,076 or 120% in January 2012; \$148,076 or 54% in January 2013; and \$148,076 or 35% in January 2014. On December 16, 2011, an assigned Administrative Law Judge (ALJ) ruling granted

² See Attachment A.

GHSC interim rates and required GHSC to request authorization to establish a memorandum account to track the difference between the interim rates and the final rates adopted by the Commission in A.11-08-019.

On February 16, 2012, GHSC filed a motion to stay its A.11-08-019, because of *inter alia* insufficient funds and personnel to pursue A.11-08-019. GHSC would inform the Commission if it wanted to resume the current proceeding.

On February 21, 2012, GHSC sent a notice to its customers (Notice) stating that it would initiate “closure and cessation of sewer service effective February 29, 2012.” This was given without any prior Commission authorization to cease operations.

On February 22, 2012, Commissioner Michel P. Florio, the assigned Commissioner to A.11-08-019, issued an Assigned Commissioner’s Ruling (ACR), which imposed a temporary restraining order against the Respondents ordering them to continue sewer service until the Commission could have a court-appointed receiver take possession and operate GHSC.³ That February 22, 2012 Ruling is incorporated by reference as if fully set forth hereafter.

Although GHSC has stated that it raised the matter of the appointment of a receiver verbally with staff in November 2011, this issue was not raised by GHSC in its motion for interim rate relief, its motion to stay A.11-08-019, or at the January 5, 2012 prehearing conference in A.11-08-019.

Under Public Utilities (Pub. Util.) Code § 855, GHSC is entitled to notice and a full hearing, in which it will receive an opportunity to explain why the allegations set forth in any declaration are insufficient grounds for the court to

³ *Assigned Commissioner’s Ruling Issuing a Temporary Restraining Order Requiring Golden Hills Sanitation Company to Continue to Operate Until a Receiver is Assigned.*

rely on in determining whether a receiver should be appointed. Under Pub. Util. Code § 701, “The Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”⁴ In the case of utilities serving in competitive markets, the Commission can revoke a CPCN and require the problematic entity to cease utility operations. However, in the case of a sewer company, that remedy would leave the innocent captive customers, dependent on sewer service as a basic need of life, in an untenable situation. Hence, Pub. Util. Code § 855 provides one course of action that this Commission can elect to ensure that basic orders of the Commission are followed and the public convenience and necessity are served.

3. Discussion

3.1. Order Instituting Investigation and Order to Show Cause (OII/OSC) Seeks to Protect Public Health and Safety

Based on Division of Water and Audits (DWA)’s report⁵ and the information received to date in A.11-08-019, the Respondent is unable to operate GHSC, which includes meeting regulatory requirements, including the provision of healthy and safe sewer service. It is vital that sewer service continue to be provided to the customers of GHSC, and since GHSC has noticed its customers (without Commission authorization) that they are no longer willing to provide sewer service, it is necessary to replace the owners of GHSC with someone who will provide service to the customers of GHSC pursuant to all applicable rules

⁴ See also California Constitution., Article. 12, § 6.

⁵ See Attachment B, DWA Report.

and regulations. By its actions, GHSC demonstrates its unresponsiveness to rules or orders of the Commission and its inability or unwillingness to adequately serve its ratepayers.⁶ GHSC's failure to adequately serve its ratepayers cannot be allowed to continue. GHSC's conduct, in particular its issuance of the notice on February 21, 2012 that it planned to cease operation in one week's time, constitutes an effective abandonment⁷ of the sewer system. We see no alternative to requesting that the Superior Court appoint a receiver.

Because GHSC's sewer service is vital to the public health and safety of its ratepayers, on February 22, 2012, the Commission responded to the February 21, 2012 Notice by issuing a temporary restraining order ordering the Respondents to continue serving their ratepayers until a receiver is appointed for GHSC. It also ordered the Respondents to meet with Staff to discuss a schedule for the Respondents to transfer their operations to a receiver.

This OII/OSC is "in the nature of a citation to a party to appear at a stated time and place to show cause why the requested relief should not be granted." (*Difani v. Riverside County Oil Co.* (1927) 201 Cal.210, 213-214; 6 Witkin, Cal Proc. (4th ed. 1997) Proceedings Without Trial, § 55, at 454.). At the hearing, with regards to the OSC the Respondents have the burden of proof. Accordingly, this is to give notice to Respondents, and orders them to appear before this Commission on March 15, 2012, to respond to why under Pub. Util. Code § 855,

⁶ See D.10-05-025 at Conclusion of Law 5, which expressly states that "In being granted a CPCN, GHSC assumes the obligation to serve as set forth in the Public Utilities Code (including but not limited) to Section 451."

⁷ Abandon is defined as to stop doing something in progress. GHSC's notice to customers that it would cease providing service that it had been providing fits this definition.

the Commission should not petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC's property and to operate its system.

3.2. Respondents Further Enjoined from Ceasing Operation

Under Pub. Util. Code § 451, the Respondents must continue to operate their sewer system in a manner that promotes the health and safety of the ratepayers.⁸ The Respondents therefore may not abandon their statutory duty to serve their ratepayers unless so authorized by the Commission. Therefore, the Respondents' unauthorized February 21, 2012 Notice constitutes not only a violation of its CPCN and Commission rules and regulations, it also endangers the health and safety of its ratepayers. The Respondents are legally bound to continue providing sewer service until a receiver is appointed. For these reasons, the Commission has twice enjoined the Respondents from quitting, in its ACR and in this OII/OSC.

4. Comments

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, parties may file comments on this proposed decision. Pursuant to Rule 14.6 of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of a proposed order where temporary injunctive relief is under consideration. This OII/OSC

⁸ Pub. Util. Code § 451 states in pertinent part, Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

takes such action, whereas: 1) we enjoin GHSC from ceasing operation until a receiver is appointed; and 2) we are giving notice and a hearing to GHSC, and ordering GHSC and its owners to appear and show cause why under the Commission should not petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC and its sewer system. Therefore, parties have three days to file comments on this proposed decision. Comments were filed by Adrian Maaskant and David Stegall on February 29, 2012. Comments were filed by GHSC on March 1, 2012.⁹ GHSC has not shown cause why we should not proceed in accordance with Pub. Util. Code § 855. Even though GHSC has stipulated to the appointment of a receiver, there are other parties involved in this proceeding that must be given an opportunity to be heard. Any extenuating concerns will be considered at the evidentiary hearing scheduled for March 15, 2012.

The filed comments have been considered in this decision.

Findings of Fact

1. In D. 10-05-025, the GHSC was granted a CPCN by the Commission to provide sewer service to the Golden Hills Community as a Class D sewer utility.
2. GHSC serves 168 customers and 87 inactive service connection commitments, totaling 255 revenue producing connections.

⁹ GHSC's comments filed on March 1, 2012 include a *Declaration of Kathy Omachi in Support of Stipulation to Commission Petition to Appoint a Receiver* (declaration). Ms. Omachi was hired as Interim Officer of GHSC on February 1, 2012, and stated that "I have no experience operating a sewage treatment plant and am not a licensed operator of a waste water treatment plant. I have never visited the premises of GHSC." Ms. Omachi states that she was appointed "to wind up" GHSC's affairs. Ms. Omachi also declares that since November 9, 2011, GHSC has repeatedly stated that it is willing to stipulate to appointment of a receiver.

3. On August 26, 2011, GHSC filed A. 11-08-019, for Authority to Increase Rates Charged for Sewer Service in 2012, 2013, and 2014.

4. On December 16, 2011, an assigned ALJ ruling granted GHSC interim rates and required GHSC to request authorization to establish a memorandum account to track the difference between the interim rates and the final rates adopted by the Commission in A.11-08-019.

5. On February 16, 2012, GHSC filed a motion to stay its A.11-08-019. The Respondents stated that since they have insufficient funds and personnel, they could not participate further in the proceeding. They will inform the Commission if circumstances change allowing them to resume the proceeding.

6. On February 21, 2012, GHSC sent a notice to its customers stating it would initiate "closure and cessation of sewer service effective February 29, 2012."

7. On February 22, 2012, Commissioner Michel P. Florio, the assigned Commissioner to A.11-08-019, issued an ACR, in which he imposed a temporary restraining order on GHSC, enjoining them from ceasing operations.

8. DWA provided a report to the Commission (Attachment B) that describes the chronology of events preceding GHSC's February 21, 2012 Notice.

Conclusions of Law

1. We should confirm the ACR, which requires the Respondents to continue to serving their ratepayers until a receiver is appointed.

2. GHSC and its owners should be named as Respondents herein, and should be afforded an opportunity to show cause in an evidentiary hearing before the Commission why the Commission should not find the following:

- a. GHSC is unable or unwilling to adequately serve its ratepayers.

- b. GHSC has been actually or effectively abandoned or will be abandoned by its owners.
- c. GHSC is unresponsive to the rules or orders of the Public Utilities Commission.

3. The presiding officer or the ALJ should set a hearing on March 15, 2012, at which the Respondents named below are ordered to appear before the Commission and show cause as required by this OII/OSC.

4. The preliminary scoping memo required by Rule 7.1 (c) of the Commission's Rules of Practice and Procedure shall consist of the Ordering Paragraphs stated below. This proceeding should be categorized as a ratesetting proceeding with regards to application. This proceeding should be categorized as adjudicatory with regards to the OII/OSC under Rule 1.3, subdivision (e). The purpose of the OII/OSC is limited to determining whether good cause is shown for the Commission to petition the Kern County Superior Court under Pub. Util. Code § 855 to appoint a receiver for GHSC. This order, as to categorization of this proceeding, is appealable under the procedures in Rule 5.2. Any person filing a response to this OII/OSC must state in the response any objections to the Order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual decision on the merits, and not on factual assertions that are the subject of the hearing. The proceeding may be expedited as an emergency matter in order to protect GHSC ratepayers.

5. The Commission's DWA should be named a party to this proceeding.

6. The Executive Director should cause service of this Order to be made on the owners of GHSC and GHSC, via electronic mail or regular mail as required, as follows:

Golden Hills Sanitation Co, Inc.
P.O. Box 1468
Tehachapi, CA 93581
(818)331-0304 (661)823-1496 fax
info@goldenhillssanitation.com

Riley C. Walter
Walter & Wilhelm Law Group, a Professional Corporation
205 E. River Park Circle, Suite 410
Fresno, CA 93720
rileywalter@W2LG.com

The Estate of Carlie W. Smith
BB&T Wealth Management
1820 Scottsville Road
Bowling Green, KY 42104

The Estate of Lillian M. Smith
c/o Linda Maycock and Cherrie Middleton
BB&T Wealth management
1820 Scottsdale Road
Bowling Green, KY 42104

7. We should consolidate this OII/OSC with A.11-08-019.

IT IS ORDERED that:

1. We confirm the Assigned Commissioner's Ruling, which requires the owners of Golden Hills Sanitation Co., Inc. (GHSC) to continue to provide sewer service to GHSC customers until a receiver is appointed.
2. Golden Hills Sanitation Co., Inc. and its owners are named as Respondents herein, and are hereby afforded an opportunity to show cause before the Commission why the Commission should not enter findings that Respondents conduct falls into one or more of the following categories:

- a. Golden Hills Sanitation Co., Inc. (GHSC) is unable or unwilling to adequately serve its ratepayers;
- b. GHSC has been actually or effectively abandoned by its owners; or
- c. GHSC is unresponsive to the rules or orders of the Public Utilities Commission.

3. Except as ordered in Ordering Paragraph (OP) 1, this proceeding is limited to the question of whether the Respondents can show that their operational and financial conduct does not fall into one or more of the categories listed in OP 2, above.

4. The Commission's Division of Water and Audits is hereby named a party to this proceeding.

5. The presiding officer or the Administrative Law Judge have set a hearing for March 15, 2012 at which Respondents must appear before the Commission and show cause as required by this order.

6. This ordering paragraph suffices as the "preliminary scoping memo" required by Rule 7.1 (c) of the Commission's Rules of Practice and Procedure. This proceeding is categorized as a ratesetting proceeding with regards to the application. This proceeding is categorized as adjudicatory with regards to the Order Instituting Investigation and Order to Show Cause (OII/OSC). The purpose of the OII/OSC is limited to determining whether the next step should be pursued in the statutorily designated court. The issues to be resolved in this proceeding are framed in the preceding ordering paragraphs, and are limited to the question of whether good cause can be shown why the Commission should not petition the superior court under Public Utilities Code Section 855 to appoint a receiver to operate Golden Hills Sanitation Co., Inc. (GHSC). This order, as to

categorization of this proceeding, is appealable under the procedures in Rule 5.2. Any person filing a response to this OII must state in the response any objections to the Order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual decision on the merits, and not on factual assertions that are the subject of the hearing. The proceeding may be expedited as an emergency matter in order to protect GHSC ratepayers.

7. The Executive Director must cause service of this Order to be made on the owners of Golden Hills Sanitation Co., Inc. (GHSC), and on GHSC, via electronic mail or regular mail (as required), to:

Golden Hills Sanitation Co., Inc.
P.O. Box 1468
Tehachapi, CA 93581
(818)331-0304 (661)823-1496 fax
info@goldenhillssanitation.com

Riley C. Walter
Walter & Wilhelm Law Group, a Professional Corporation
205 E. River Park Circle, Suite 410
Fresno, CA 93720
rileywalter@W2LG.com

The Estate of Carlie W. Smith
BB&T Wealth Management
1820 Scottsville Road
Bowling Green, KY 42104

The Estate of Lillian M. Smith
c/o Linda Maycock and Cherrie Middleton
BB&T Wealth management
1820 Scottsdale Road
Bowling Green, KY 42104

8. We consolidate this Order Instituting Investigation and Order to Show Cause with Application 11-08-019.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment A

Golden Hills Sanitation Company
February 21, 2012
Notice to Customers

**GOLDEN HILLS SANITATION CO., INC.
PO Box 3015
Pinedale, CA 93650**

February 21, 2012

NOTICE TO CUSTOMERS OF CLOSURE AND CESSATION OF SEWER SERVICE
EFFECTIVE FEBRUARY 29, 2012

It is with great regret that Golden Hills Sanitation Co., Inc. ("GHS") notifies you that on February 29, 2012, it must cease operation of its waste water plant and close its Tehachapi office. As a consequence, customers will no longer receive sewer service from GHS after 5:00 p.m. on February 29, 2012.

The reason for this closure and cessation of service is that GHS lacks revenue required based on currently authorized rates to continue its public utility operations beyond February 29, 2012. GHS has taken steps to seek funding sufficient to continue operations or to transfer its wastewater facility to another public or private entity. However, its currently pending application to the California Public Utilities Commission ("CPUC") (Application (A.) 11-08-019) to increase its rates commensurate with its required revenue, of which customers have been previously notified, has not been resolved in time to raise rates to the level required to continue or sustain the service, and no decision is expected in that application before October 2012 at the earliest. Further, despite GHS's ongoing, best efforts to transfer its plant to another public or private entity so that service could continue, no transferee has been found to step in and take over the facility and service.

In these circumstances, GHS has had no choice but to cease operations and close its office. GHS greatly regrets this unavoidable outcome.

As to questions you may have regarding alternatives to the sewer service that has been provided by GHS, GHS recommends that your questions be directed to: Golden Hills Community Service District, at (661) 822-3064; Kern County, Department of Public Health, at (661) 321-3000; the California Regional Water Quality Control Board, Central Valley Region 5

Fresno Office, at (559) 445-5116; and the California Public Utilities Commission, Consumer Affairs Branch, at (800) 649-7570.

Regretfully,

GOLDEN HILLS SANITATION CO., INC.



Kathy Omachi, Director and Officer

- cc: Honorable Zack Scrivner, Supervisor, County of Kern
- Honorable Jean Fuller, California State Senate
- Honorable Shannon Grove, California State Assembly
- Teresa Goldner, Esq., County Counsel, County of Kern
- Kirk Perkins, Esq., Chief Deputy County Counsel, County of Kern
- Bruce DeBerry, California Public Utilities Commission
- Rami Kahlon, California Public Utilities Commission
- Mr. Cody Tellis
- Ms. Kathy Omachi
- Mr. Clifford Bressler
- Ms. Sara Steck Myers, Esq.
- Mr. Lonnie Wass, California Regional Water Quality Control Board
- Mr. Clint Hilderbrand
- Golden Hills Community Services District
- Bakersfield Californian
- Tehachapi News
- Kkey TV
- Kero-TV 23 ABC
- Three Angels Broadcasting Network
- Kbak -TV 29
- KZKC
- Fox 58
- Jab Broadcasting
- KBBV
- The Eyewitness News Station
- KUVI
- KABE
- KGET TV 17
- Latin Eyes

(End of Attachment A)

Attachment B

Division of Water and Audits
Report on the Golden Hills Sanitation Company

1. On May 10, 2011, Golden Hills Sanitation Company (GHSC) met with the staff of the Division of Water and Audits (DWA) to discuss its draft advice letter filing for a general rate increase.
2. On May 31, 2011, GHSC filed Advice Letter (AL) 2-SWR requesting authority to increase sewer rates by \$263,144 or 213% in Test Year 2011 over present rates.
3. A public meeting to discuss the rate increase was held by DWA on June 23, 2011 in Tehachapi, California. GHSC's request was protested by 105 out of the 168 connections it serves, which represents over 50% of the customers.
4. On July 21, 2011, DWA rejected AL 2-SWR and directed GHSC to file an application in compliance with D.10-05-025. DWA assisted with the application process by providing samples and guidance via several phone calls and emails.
5. GHSC filed its general rate case application, (A.)11-08-019, on August 26, 2011.
6. A meeting/conference call was held on November 9th, 2011 by DWA and other stakeholders to search for and find solutions to the various problems plaguing GHSC's sewer system.
7. During the meeting GHSC's operator, Clint Hilderbrand, expressed concern that GHSC would not be able to pay its electric bill, water testing bills and other operational expenses if something wasn't done soon to increase GHSC's cash flow.
8. On December 27, 2011, GHSC filed AL 3-SWR requesting authority to implement the interim rate increase authorized in the December 16, 2011 Administrative Law Judge's Ruling totaling \$62,099 for 2012.
9. DWA discovered procedural and calculation errors in the advice letter and ordered GHSC to file a supplemental advice letter correcting the errors. A supplemental advice letter, AL 3-A-SWR, was filed on January 24, 2012 correcting the errors. This advice letter was protested by 9 customers. Stated concerns include that it would be difficult for residences with limited income to pay the higher sewer rates. The advice letter was approved by DWA on the January 25, 2012.
10. A letter dated February 16, 2012 was received by DWA from the Walter & Wilhelm Law Group, attorneys for the GHSC on February 17, 2012, declaring a cessation of operations for GHSC by February 29, 2012 due to insolvency.

(End of Attachment B)