

Decision 10-05-025 May 20, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Golden Hills Sanitation Co., Inc., a California corporation for a Certificate of Public Convenience and Necessity to Maintain and Operate an existing Public Utility Wastewater System for the Golden Hills Community near Tehachapi in Kern County and to Affirm Rates for Service and Issue Stock.

Application 08-08-011
(Filed August 19, 2008)

**DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY, AFFIRMING EXISTING RATES
AND AUTHORIZING MEMORANDUM ACCOUNTS**

1. Summary

Today's decision grants a certificate of public convenience and necessity (CPCN) to Golden Hills Sanitation Company (GHSC), affirms existing sanitation rates, and authorizes memorandum accounts.

This decision finds that no California Environmental Quality Act (CEQA) review is required as a condition of granting the CPCN to GHSC. However, if GHSC seeks to expand its service territory, a new application will be necessary. At the time such new application is submitted to the Commission, the Commission will determine if a CEQA review is required.

This decision allows GHSC to establish certain memorandum accounts and provides that GHSC may file Tier 3 advice letters to request authority to establish other memorandum accounts.

This proceeding is closed.

2. Background

Golden Hills Sanitation Company (GHSC) is a privately-owned wastewater facility providing sewer service to 168 connections¹ in the community of Golden Hills near Tehachapi, California. In 1980, GHSC entered into an agreement (District Agreement) with the Golden Hills Community Services District (District) to build a wastewater treatment plant on land owned by the District. Construction of the wastewater treatment plant was finished in 1984. The plant was constructed to a maximum discharge of 100,000 gallons per day. The current maximum discharge is approximately 24,000 gallons per day.

On May 12, 1981, the California Regional Water Quality Control Board (RWQCB) made a California Environmental Quality Act (CEQA) determination which adopted a negative declaration for the wastewater treatment plant. The RWQCB determination allowed for a maximum wastewater discharge of 200,000 gallons per day. GHSC planned to discharge wastewater on a golf course; however, the golf course was not constructed. GHSC currently discharges treated effluent wastewater into Tom Sawyer Lake (TSL), consistent with RWQCB Order No. 81-123.²

¹ GHSC qualifies as a Class D sewer company (those serving less than 500 customers).

² TSL is a water storage reservoir on the land of the proposed golf course.

GHSC built and operated the plant on land owned by the District. The District Agreement anticipated that the District would acquire the wastewater facility. However, in 2001 the District quitclaimed the real property and sewer system to GHSC. Since 2001 GHSC has been the sole provider of sewer service in the Golden Hills Community.³ Golden Hills Community residents who are not customers of GHSC operate privately-owned septic systems for disposal of wastewater.

3. Procedural Background

GHSC filed A.08-08-011 (Application) on August 19, 2008, requesting a certificate of public convenience and necessity (CPCN), expansion of its service territory, and an increase in current rates. The Application was initially processed by the Commission's Division of Water and Audits (DWA), and later transferred to the Administrative Law Judge (ALJ) Division in late April 2009.⁴

A prehearing conference (PHC) was held on May 29, 2009. During the PHC, the assigned ALJ indicated that the Application was deficient in certain respects, and therefore an amendment to the Application was necessary. At the PHC, the ALJ determined that the first phase of the proceeding should address granting a CPCN, and a later phase would consider GHSC's request to expand its service territory and increase existing rates.

On May 29, 2009, the District protested the Application.

³ Application (A.) 08-08-011 at 1-3.

⁴ During the time that the Application was processed in DWA, DWA requested information from GHSC and held an informal public participation hearing (PPH) in November 2008.

On June 5, 2009, an ALJ ruling granted the District's request for late-filing its May 29, 2009 protest, and requested information from the District regarding certain statements made at the PHC and in the District's protest. The District responded to the June 5, 2009 ALJ ruling on June 19, 2009.

On June 29, 2009, GHSC replied to the District's protest and to the information provided by the District in response to the June 5, 2009 ALJ ruling.

On July 21, 2009, GHSC filed an Amendment to Application (Amended Application). The Amended Application provides additional information and makes major changes in the Application. These changes eliminate GHSC's request to expand its service territory and its request to increase existing sanitation rates. The Amended Application requests a CPCN, affirmation of existing rates, authority to issue stock, and also requests authority to establish certain memorandum accounts.

On August 18, 2009, an ALJ ruling required that GHSC provide a defined service territory map. GHSC provided its service territory map on September 3, 2009. (See Attachment A.)

On August 20, 2009, the Amended Application was timely protested by the District, AB Land Development, Inc. (AB Land), and the County of Kern (County). GHSC replied to the protests on August 31, 2009.

On September 8, 2009, a second PHC was held to discuss the issues, develop a schedule, and consider holding a PPH. At the second PHC GHSC stated that it would consider filing a future separate application regarding expansion of its service territory and an increase in rates. The ALJ noted that

GHSC's current summary of earnings reflects negative income.⁵ GHSC indicated it would provide a revised summary of earnings and a declaration by GHSC's majority owner regarding GHSC's financial condition. Parties at the second PHC indicated that they did not believe evidentiary hearings were required but that issues could be addressed through briefs.

On September 11, 2009, Assigned Commissioner John A. Bohn issued a Scoping Memo and Ruling (Scoping Memo). The Scoping Memo states that the scope of the proceeding will consider whether a CEQA review is required as a condition of granting a CPCN, the financial viability of GHSC, and affirmation of existing rates.

On October 9, 2009, GHSC provided a revised summary of earnings, a balance sheet and estimated plant and depreciation information⁶ and a Declaration by Carlie Smith affirming financial support.⁷

Opening and reply briefs were filed by GHSC, the County, AB Land and the District, on October 14, and October 26, 2009, respectively.

A PPH was held on October 21, 2009. The hearing was attended by over 250 people, and about 30 of the attendees spoke. Many attendees who are not GHSC customers expressed a concern that this proceeding would require forced wastewater connections to GHSC's system or that GHSC would be authorized to

⁵ Amended Application at 30.

⁶ Attachment B.

⁷ The revised summary of earnings (Appendix A to the Amended Application) indicates that GHSC would require approximately \$100,000 in additional revenue in order for the rate of return to equate to 0.0%. The Declaration of Carlie Smith (Appendix B) states that he owns about 77% of GHSC common stock and that he is committed to pay for

Footnote continued on next page

expand its service territory. We thank each person who attended the PPH, and those who spoke. We expect that these attendees understand that the action we take in this proceeding is not an expansion of GHSC's service territory or an action to force non-customers to connect to GHSC involuntarily.

On January 25, 2010, GHSC filed a supplemental response to the September 8, 2009 ALJ ruling. This supplemental response notes that Carlie Smith passed away on December 26, 2009. The supplemental response includes a declaration of Cody Tellis affirming financial support for GHSC⁸ which replaces the declaration of Carlie Smith filed on October 9, 2009.

This proceeding was submitted on January 25, 2010.

4. Discussion

4.1. CPCN Requirements

For a small sewer company like GHSC, the provisions of the Public Utilities Code,⁹ the Commission's Rules of Practice and Procedure (Rules), and Resolution M-4708 (August 28, 1979) set forth requirements and criteria that must be satisfied before a CPCN is granted.

4.2. Public Utilities Code

The Public Utilities Code contains substantive requirements for an entity to be considered a public utility and issued a CPCN. Section 216 defines a

GHSC's operating expenses, exclusive of catastrophic expenses, for a period of two years.

⁸ The Declaration of Cody Tellis, the present Trustee for Carlie Smith, states that the Estates of Lillian and Carlie Smith are committed to continue paying for a minimum of two years the operating expenses of GHSC.

⁹ All references to Code sections are to the California Public Utilities Code unless otherwise noted.

Commission-regulated sewer utility as one “where the service is performed for, or the commodity is delivered to, the public or any portion thereof for which any compensation or payment whatsoever is received.” Section 216(b) states that when any person or corporation performs a service or delivers a commodity to the public for which compensation or payment is received, that corporation is a public utility subject to the jurisdiction, control and regulation of the Commission.

In this proceeding, GHSC affirmatively seeks public utility status. GHSC’s Amended Application indicates it will continue to provide sanitation service to approximately 168 existing customers. GHSC proposes that its sanitation service be provided under rates approved by the Commission. Under the substantive law, GHSC will operate as a public utility.

4.3. Rules of Practice and Procedure

The Commission’s Rules of Practice and Procedure¹⁰ also include procedural requirements. Applicant must file a detailed statement of the amount and basis (estimated if not known) of the original cost of all plant and depreciation reserve (Rule 3.1(n)(1)), a summary of earnings when the proposed rates are the same as existing rates (Rule 3.1(n)(2)), and other additional information as may be necessary to a full understanding of the situation. (Rule 3.1(o).)¹¹

¹⁰ All references to Rules are to the Commission’s Rules of Practice and Procedure unless otherwise noted.

¹¹ While Rule 3.1 technically only applies to applications to construct or extend facilities, the information required by that Rule described in this section of the decision is also relevant to the current application, and has been provided by GHSC.

In its Application, GHSC provided its Certification of Incorporation¹² issued by the Secretary of State. Under GHSC's Articles of Incorporation it is authorized to issue 25,000 shares of common stock. GHSC states that there are currently 238 shares outstanding, and that the principal shareholders are Carlie and Lillian Smith. GHSC also states that its only indebtedness is a secured promissory note for \$343,075, for which interest is deferred to July 1, 2010. GHSC has also provided RWQCB Order 81-122¹³ which provides wastewater discharge requirements for GHSC,¹⁴ and a permit to operate from the Kern County Air Pollution Control District.¹⁵ Finally, GHSC provided a revised summary of earnings, a balance sheet (December 31, 2009) projected, Sewer Plant in Service, and the Reserve for Depreciation of Utility Plant.¹⁶

Article 2 and Rule 3.1 of the Rules set forth requirements for water [sewer] utilities that must be satisfied as part of an application for a CPCN and to authorize rates. The relevant requirements of Rule 3.1 include a full description and map of the system, identification of potential competitors, financial information, ratesetting information, and facts supporting the issuance of a CPCN. An important provision of Rule 3.1 is the requirement that the

¹² See, Application, Exhibit A (incorporated by reference).

¹³ *Id.*, Exhibit E (incorporated by reference).

¹⁴ Although the County and AB Land contend there are problems with the current discharge of wastewater into TSL (see, Opening Brief, County of Kern at 2-4, and AB Land Brief) the granting of a CPCN does not determine the discharge site for current wastewater. The authority for the regulation of a wastewater discharge site clearly rests with the RWQCB. Disputes arising between the parties regarding the discharge site should be addressed before the RWQCB.

¹⁵ See, Application, Exhibit I (incorporated by reference).

¹⁶ See, Attachment B.

application demonstrate “[f]acts showing that public convenience and necessity require...the proposed construction or extension, and its operation,” or in this case, the operation of the existing sewer system as a public utility. The Amended Application demonstrates that public utility regulation is necessary to safeguard a number of customers who have no sanitation system alternatives, ensure reasonable and fair rates for both the ratepayers and the company, and monitor sanitation service and quality in an area where the alternative is installation of privately-owned septic systems.

Rule 2.3 requires more specific financial information and Rule 2.4 addresses CEQA matters as discussed later in this decision. GHSC has submitted all of the information required for issuance of a CPCN.

Because we are issuing a CPCN to an existing sewer system, there are no identified impacts to recreation and park areas or historical and aesthetic values. Any impact to the environment is addressed under the discussion of CEQA below.

4.4. Resolution M-4708

Resolution M-4708 sets forth six basic criteria that are used to evaluate the certificate application of small water companies (Class D companies, i.e., those serving less than 500 customers), which we will apply to a small sewer company such as GHSC. As pertinent to this application, the resolution specifies that the Commission will issue CPCNs only when the water [or sewer] company is able to render adequate service and remain financially viable; and no other existing viable provider is available to serve the proposed area.

In this instance, GHSC fulfills the requirements of the resolution as it is an existing sewer system and there are no other sewer systems capable of serving

the proposed area. GHSC's financial viability is discussed elsewhere in this decision (see, Section 6, below).

We also note that no GHSC customers have complained about service, and that during the PPH some customers expressed satisfaction with GHSC's service.¹⁷

5. The California Environmental Quality Act (CEQA)¹⁸

In addition to other requirements, we must consider whether the Commission's approval of GHSC's Amended Application for a CPCN triggers CEQA and, if so, what steps must be taken to satisfy the statute's requirements.

CEQA (Pub. Resources Code §§ 21000, *et. seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereafter "CEQA Guidelines," Section 15002.) CEQA defines a project as "an activity which may cause a direct change in the environment, or reasonably foreseeable change in the environment, and which is..., an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resources Code § 21065.)

Issuance of a CPCN may be a project under CEQA since it involves the discretionary governmental activity in issuing a "certificate or other entitlement," and a CPCN is an entitlement since it allows an entity to operate as

¹⁷ TR 29.

¹⁸ See, Rule 2.4, CEQA Compliance.

a public utility within a specified service area.¹⁹ While the Commission has previously held that the mere granting of a CPCN involving existing facilities is exempt from CEQA,²⁰ this exemption was based on a finding that there was no possibility that granting the relief requested would have a significant impact on the environment.²¹ The question in this proceeding is whether the issuance of a CPCN as requested in the Amended Application will cause a direct or reasonably foreseeable indirect physical change in the environment.

The District, the County and AB Land contend that the “project” in this case includes not only granting the CPCN, but also an increase in customers either by expansion of GHSC’s service territory boundaries or addition of new customers within a defined service territory through the operation of the Plumbing Code.²²

5.1. The Amended Application Does Not Request Expansion of Service Territory

The District,²³ the County²⁴ and AB Land²⁵ contend that GHSC requests expansion of its service territory. In this regard, AB Land and the County argue

¹⁹ See, Decision (D.) 05-11-030, November 18, 2005 at 16-18.

²⁰ D.02-06-005 at 18.

²¹ *Id.*, Finding of Fact 23 at 22.

²² The Plumbing Code (Section 713, Title 24 of the California Code of Regulations, also referred to as the California Building Standards Code) states that no permit will be issued to build, alter or change a private sewer system if a public sewer is within 200 feet from the proposed building. When drainage to the public sewer is hindered, there is an exception to this rule which provides that the building may remain connected to the private sewer disposal system.

²³ District Opening Brief at 7.

²⁴ County Reply Brief at 2.

that granting a CPCN constitutes “piecemealing”²⁶ of the true project. Piecemealing of projects is prohibited under CEQA. Consequently, the County, AB Land and the District conclude that CEQA categorical exemptions²⁷ do not apply to GHSC’s Amended Application.

Contrary to the assertions of parties opposed to granting the CPCN, the relief requested by the Amended Application is clear. The Amended Application requests that GHSC be granted a CPCN for a defined service territory using an existing wastewater system. Although the County and the District argue that GHSC intends to use the granting of a CPCN as a first step in expanding its service territory, these arguments are conjecture. The Application as originally filed requested service territory expansion and an increase in existing rates. However, the Amended Application which we approve does not request that relief. GHSC, as a regulated utility holding a CPCN from this Commission, must obtain CPUC approval to expand its service territory or to increase its rates. Our approval of GHSC’s CPCN neither prejudices nor pre-approves any such subsequent application.

If and when GHSC submits an application to expand its service territory or to increase existing rates, it will be reviewed, and the determination will be made whether that application is subject to CEQA review. There is no “piecemealing” here, because GHSC’s future plans are not before this Commission, any such

²⁵ AB Land Brief at 4.

²⁶ “Piecemealing” refers to the separation of a project into individual projects in order to avoid the responsibility for considering the environmental impact of the project as a whole. (District Opening Brief at 6).

²⁷ CEQA Guidelines provide categorical exemptions. (CEQA Guidelines, Section 15061.)

plans it may have are too speculative to require CEQA review, and our action today does not approve any plans other than those specifically before this Commission.

5.2. Granting a CPCN Does Not Cause Enforcement of the Plumbing Code

The County and the District argue that the operation of the Plumbing Code could potentially require existing residences, currently utilizing septic systems, to connect to GHSC's mains.²⁸ According to the County and the District, the Plumbing Code requires

...a homeowner to connect to an existent public sewer that is within 200 feet of any building or exterior drainage facility on any lot that abuts the land on which the public sewer is located if that homeowner has a septic tank which requires replacement, alteration or repair.²⁹

In this way, they argue, the granting of a CPCN and enforcement of the Plumbing Code could result in new GHSC sewer connections even if the service territory boundaries are not expanded.

The District, the County, and AB Land contend that these potential new connections of existing residences already within the service territory constitute an expansion of service territory which results in environmental effects.³⁰ There are two major problems with this contention.

First, there is no information on the record as to how many (if any) residences could be required to switch from a septic system to the sewer system.

²⁸ County Reply Brief at 4-5, District Opening Brief at 9-10.

²⁹ County Reply Brief at 5.

³⁰ District Opening Brief at 9.

Accordingly, we cannot meaningfully evaluate any potential environmental impacts, as such an evaluation would be purely speculative.

Second, it appears that the County is responsible for enforcement of the Plumbing Code.³¹ The County will determine whether a particular residence will be required to connect to the sewer system. Any environmental impact of such connections would be the result of the County's determination, not this Commission's granting of a CPCN. We cannot tell from the record before us if the County's determination is discretionary or ministerial. If the County's determination is discretionary, then the County would be the appropriate agency to perform any necessary CEQA review. If that determination is ministerial, then the County's decision requiring a connection to the sewer system is exempt from CEQA. (CEQA Guideline 15268.)

Neither the Plumbing Code nor the County's enforcement of that Code constitutes an environmental impact.

5.3. CEQA Exemption

The project in this proceeding is the issuance of a CPCN to GHSC for the operation of an existing sanitation system with no change in its physical characteristics or operation. Since it can be seen with certainty that there is no possibility that granting the relief requested will have a significant impact on the environment, the project qualifies for an exemption from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. Therefore, no further environmental review by the Commission is required.

³¹ GHSC Reply Brief at 9.

6. Financial Ability

The Amended Application requests authority to issue stock, approve a promissory note of \$343,075 and establish existing rates. Although no party opposes any of these requests, the financial statements provided in the Amended Application³² indicate that GHSC's current operations will operate at significant negative net income. In order to clarify this financial condition, the ALJ requested that GHSC file a revised summary of earnings and a declaration by the majority owner of GHSC addressing GHSC's ability to finance its operations.³³

In response,³⁴ GHSC provided a revised summary of earnings which indicates that GHSC would require about \$100,000 in additional revenues above revenues at existing rates to achieve a 0% return on estimated rate base. GHSC also provided the Declaration of Carlie Smith now superseded by the Declaration of Cody Tellis which states that the estates of Lillian and Carlie Smith own approximately 77% of GHSC's common stock,³⁵ and that these estates are committed to pay for GHSC operating expenses, exclusive of catastrophic expenses, for a period of two years from September 2009. Although the declaration of Cody Tellis provides some assurance to current GHSC ratepayers regarding the financial viability of GHSC, it is apparent that GHSC will have to address its long-term financial viability. Although we do not direct GHSC to take specific actions with regard to future financial viability, we expect that

³² See, pp. 29-30.

³³ TR 165-168.

³⁴ See, Response of GHSC to ALJ Ruling Requesting Revised Summary of Earnings and Declaration of Carlie Smith (October 9, 2009).

³⁵ The Declaration of Carlie Smith has been superseded by the Declaration of Cody Tellis, the current Trustee for the Estates of Lillian and Carlie Smith.

GHSC will adhere to all of the requirements of a California public utility including appropriate accounting, applicable Commission general orders and standard practices.

As the issuance of stock and the promissory note occurred prior to GHSC's application for a CPCN it is not necessary to include an approval of these actions in our decision. However, this decision does not authorize GHSC to issue any additional stock, or incur additional debt, and the issuance of any additional stock or incurrence of debt must comply with the requirements under Section 816, *et. seq.*

7. Proposed Wastewater Service Rates

GHSC currently assesses a flat rate fee for sewer services from its wastewater treatment facility. GHSC currently provides wastewater service to 142 residential customers, one motel utilizing 4 service connections, one apartment building utilizing 22 service connections and 87 undeveloped properties not in service which each pay a monthly service commitment fee. These fees by class of customer are:

Customer Class	Monthly Fee per Connection
Single Family Resident Sewer Service	\$58.00
Apartment Service Connection	52.87
Motel Service Connection	56.25
Service Commitment Fee	10.00

No party opposes the current monthly service rates. We will adopt GHSC's existing rates.

8. Memorandum Accounts

GHSC requests authority to establish eight memorandum accounts for the following costs:

1. Unanticipated Repair Costs
2. Catastrophic Events
3. Infrastructure Act
4. Purchased Power
5. Payroll, payroll tax, and contract work for operation and maintenance of plant facilities
6. Litigation expense
7. Water contamination litigation expense
8. Necessary costs to comply with lawful orders affecting plant operations.

Commission Resolution W-4467, adopted April 22, 2004, allows a Class D sewer company such as GHSC to establish memorandum accounts to track changes to purchased power expenses, and unanticipated changes beyond the utility's control in payroll, payroll taxes, and that portion of contract work that is for operation and maintenance of the plant facilities.³⁶ Class D sewer companies are also allowed to establish an unanticipated repair cost memorandum account.³⁷

Commission Resolution E-3238, adopted July 24, 1991, provides that all utilities except common carriers and toll bridge corporations may establish a

³⁶ Res. W-4467 at 7, Ordering Paragraph (O.P.) 4.

³⁷ *Id.*, O.P. 6.

catastrophic event memorandum account to record costs resulting from declared disasters.

We will allow GHSC to establish memorandum accounts for unanticipated repair costs, catastrophic events, and unanticipated changes beyond the utility's control in payroll, payroll taxes and that portion of contract work that is for operation and maintenance of the plant facilities. We do not at this time grant authority to establish any of the other memorandum accounts that GHSC has requested. GHSC may request authority to establish memorandum accounts other than those authorized by this decision by filing a Tier 3 advice letter.

While these advice letters could be filed as Tier 2 advice letters pursuant to the Water Industry Rules,³⁸ pursuant to the general rules³⁹ if the decision regarding whether to approve the memorandum account requires an exercise of discretion, staff will prepare a resolution so that the Commission may determine the issue.

A memorandum account allows a utility to track costs arising from events that were not reasonably foreseen when existing rates were set, e.g., in the utility's last general rate case. By tracking these costs in a memorandum account, a utility preserves the opportunity to seek recovery of these costs at a later date without raising retroactive ratemaking issues. Authorization of a memorandum account does not mean that the Commission has decided that the types of costs to be recorded in the account should be recoverable in addition to rates that have been otherwise authorized, unless so specified. Instead, the

³⁸ See, Decision 07-01-024, Appendix C (Water Industry Rules).

³⁹ *Id.*, Appendix A.

utility shall bear the burden when it requests recovery of the recorded costs, to show that additional recovery of the types of costs recorded in the account is appropriate, that the utility acted prudently when it incurred these costs and that the level of costs is reasonable.

These memorandum accounts typically include only the additional amount by which expenses have “changed.” Normally, this means the amount by which these expenses have increased above the level of expenses used in setting the utility’s otherwise-authorized, cost-based rates. However, the rates adopted in this decision are not cost-based. Accordingly, it is necessary to specify the level of expenses to be used for determining whether GHSC’s expenses have “changed.” For this purpose only, we will use the level of expense shown in GHSC’s revised summary of earnings (Appendix A to the Amended Application) for the particular category of expense involved. We will attach GHSC’s revised summary of earnings to this Decision (as Attachment B), so that it will be easy to refer to this document if GHSC later seeks recovery of any amounts recorded in its memorandum accounts.

9. Conclusion

For all of the foregoing reasons, GHSC should be granted a CPCN and authorized to charge existing sewer rates and establish certain memorandum accounts.

10. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. Opening comments were filed by AB Land on August 23, 2010 and GHSC and the District on April 26, 2010. Reply comments were filed by GHSC and the District on May 3, 2010. We make no substantive

changes to the proposed decision in response to the comments, but make minor corrections to the ordering paragraphs regarding the filing of an application for future service territory expansion and the tiers used for establishing advice letters.

11. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. GHSC is a privately-owned wastewater facility providing sewer service to approximately 168 connections in the community of Golden Hills near Tehachapi, California.
2. GHSC's wastewater facility began operation in 1984.
3. GHSC's wastewater treatment plant was built to a capacity of 100,000 gallons per day, but current maximum discharge is approximately 24,000 gallons per day.
4. In 1981 the RWQCB made a CEQA determination which adopted a negative declaration for the wastewater treatment plant.
5. RWQCB Order No. 81-123 provides for a maximum wastewater discharge of 200,000 gallons per day.
6. Since 2001 GHSC has been the sole provider of sewer service in the Golden Hills Community. Golden Hills' residents who are not customers of GHSC operate privately-owned septic systems for disposal of wastewater.
7. Some GHSC customers have expressed satisfaction with GHSC's service.
8. GHSC's initial Application filed on August 19, 2008, requested a CPCN, expansion of service territory, authorization to issue stock, and an increase in existing sewer rates.

9. GHSC filed an Amended Application on July 21, 2009. The Amended Application requests a CPCN, adoption of existing sewer rates, authority to issue stock and authority to establish certain memorandum accounts.

10. Because GHSC is an existing sewer system, the issuance of a CPCN will not affect recreation, park areas, or historical or aesthetic values.

11. GHSC's revised summary of earnings indicates that under existing rates and sewer connections GHSC will operate at significant negative net income.

12. GHSC would require about \$100,000 in additional revenues to achieve a 0% return on rate base.

13. The Declaration of Cody Tellis, the current Trustee for the estates of Lillian and Carlie Smith, states that the estates will pay operating expenses, exclusive of catastrophic expenses, for a period of two years from September 2009, and thus provides financial assurance to current GHSC customers.

14. There are no other sewer systems capable of serving GHSC's proposed service territory.

15. GHSC has filed its Amended Application for a CPCN and supplemental information and documents including certified copies of its articles of incorporation, service territory map, financial information, and existing sewer rates, a summary of earnings, a balance sheet, and statements of sewer plant and depreciation reserve.

16. GHSC has been operating the sanitation system on its own behalf since at least 2001 and now seeks to do so in conformity with the Public Utilities Code. The Commission's granting of a CPCN will only establish the service area, authorize existing sewer rates, and grant authority to establish certain memorandum accounts. The Commission's decision will not authorize any construction or modification of the system.

17. Any future expansion of GHSC's service territory would require approval of this Commission via application.

18. Neither the Plumbing Code nor the County's enforcement of the Plumbing Code constitutes an environmental impact.

19. Under these circumstances, we find with certainty that there is no possibility that the granting of a CPCN in this proceeding will have a significant impact on the environment.

Conclusions of Law

1. GHSC has satisfied all of the relevant requirements Article 2 and Rule 3.1 of the Commission's Rules.

2. Once granted a CPCN, GHSC will be classified as a Class D sewer utility.

3. GHSC has satisfied all of the relevant requirements of Commission Resolution M-4708 which applies to water utilities, but which also are appropriate to apply to a small sewer company such as GHSC.

4. Public utility regulation of GHSC is necessary and convenient to provide protection to existing GHSC customers who have no sewer alternatives.

5. GHSC should be granted a CPCN authorizing it to operate as a public utility within the State of California with all the rights and obligations thereof.

6. 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. Commission Resolution W-4467 provides that a Class D sewer company may establish memorandum accounts to track purchased power expense, unanticipated changes beyond the utility's control in payroll, payroll taxes and that portion of contract work that is for operation and maintenance of the plant facilities.

8. Commission Resolution E-3238 provides that all utilities may establish a catastrophic event memorandum account to record costs resulting from declared disasters.

9. Authorization of a memorandum account does not mean that the Commission has decided that the types of costs to be recorded in the account should be recoverable in addition to rates that have been otherwise authorized, unless so specified. Instead, the utility shall bear the burden when it requests recovery of the recorded costs, to show that additional recovery of the types of costs recorded in the account is appropriate, that the utility acted prudently when it incurred these costs and that the level of costs is reasonable.

10. For the limited purpose of determining whether GHSC's expenses have changed, as required by a particular memorandum account, the level of expense shown in GHSC's revised summary of earnings (Attachment B to this Decision) for the particular category of expense involved should be used as the base level of expense.

11. The issuance of a CPCN to GHSC is exempt from CEQA because it can be seen with certainty that there is no possibility that granting the CPCN will have a significant impact on the environment.

ORDER

IT IS ORDERED that:

1. Golden Hills Sanitation Company, Inc. is granted a certificate of public convenience and necessity to provide sewer service to the Golden Hills Community as defined in the attached service territory map (Attachment A). Golden Hills Sanitation Company shall fulfill its obligation to serve, as set forth in the Public Utilities Code and prior decisions and orders of the Commission.

2. Golden Hills Sanitation Company shall establish and maintain a set of accounts in accordance with the Commission's Uniform System of Accounts for its sewer service.

3. Golden Hills Sanitation Company shall file an annual report with the Director of the Division of Water and Audits in compliance with General Order 104-A on a calendar-year basis.

4. Golden Hills Sanitation Company is authorized to charge its existing rates for sewer service.

5. Golden Hills Sanitation Company is authorized to make Tier 2 advice letter filing to establish memorandum accounts for changes to purchased power expenses; unanticipated changes beyond the utility's control for catastrophic events; payroll, payroll taxes and contract work for operation and maintenance of plant facilities; and unanticipated repair costs.

6. Golden Hills Sanitation Company shall make a Tier 2 advice letter filing within 30 days after the effective date of this order, to establish tariffs consistent with General Order 96-B reflecting its authorized rates for sewer service.

7. Golden Hills Sanitation Company may file Tier 3 advice letters to request establishment of memorandum accounts in addition to those authorized in Ordering Paragraph 5.

8. Golden Hills Sanitation Company shall use the base levels of expenses shown in Attachment B to this Decision to determine whether Golden Hills Sanitation Company's expenses have changed, as required by a particular memorandum account.

9. Any request by Golden Hills Sanitation Company to expand its service territory will require Commission approval via an application.

10. Application 08-08-011 is closed.

This order is effective today.

Dated May 20, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

[D1005025 Attachments A and B](#)