

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-012

Bodwell Waste Services Corporation

Petition to Discontinue Operations and Transfer Assets and Franchise

PETITIONER'S BRIEF

NOW COMES, Bodwell Waste Services Corporation (Bodwell) and pursuant to the Commission's direction at the prehearing conference offer the following response to the questions posed:

1. Please provide additional context concerning the statement that Bodwell was an interim solution to the wastewater needs of its customers.

On April 17, 1991, with the support of the City of Manchester, Bodwell petitioned the Commission for authority to provide wastewater transportation services in a limited area of the City of Manchester (Hampshire Meadows development) so as to collect wastewater from the residential development and transport it to the City of Manchester for treatment. *Bodwell Waste Corporation*, Docket No. DE 91-050. The record reflected that the City of Manchester did not yet have sewage disposal infrastructure in that section of Manchester. The record also reflected that customers were made aware that sewage disposal would be provided by both Bodwell and the City of Manchester under this partnership and that customers would receive sewer bills from both entities. The Notice to Residents specifically stated that public sewer service was now available to the Bodwell Road area of Manchester by virtue of Bodwell and Manchester's

cooperation: “Bodwell has been created for the specific purpose of operating a sewer line as a public utility, which will link homes in the Bodwell Road service area to the City’s sewer system.”

The Commission approved Bodwell’s request by Order No. 20,404 dated February 28, 1992. Also in 1992, Bodwell sought rates for its 71 customers. See Docket No. 92-027. The record reflected that Bodwell only intended to expand to serve about 485 customers at full build out. Order No. 20,532 (July 6, 1992).

After Bodwell was created, the City of Manchester completed a major plant upgrade in 1996 which enabled it to treat increased flows: 34 Million Gallons per Day (MGD) design capacity and 85 MGD at peak wet weather flows. After that plant upgrade, the City commenced numerous expansion projects. Phase 1 of the Cohas Brook Interceptor project was completed in September 2002. At the prehearing that the City of Manchester explained that it is now in phase 4 of a decades-long construction project to expand its wastewater infrastructure and protect natural resources such as Lake Massabesic, which continues to serve as the primary source of drinking water for the City of Manchester and several surrounding communities. Phase 4 of the Cohas Brook Sewer Project will now connect to Bodwell’s infrastructure and allow the City of Manchester to provide direct sewer service to these residents. Because the City of Manchester needed time to upgrade its plant and expand its facilities, Bodwell’s owners always viewed its partnership with the City of Manchester as a temporary solution to the residential developments’ wastewater needs.

2. Can Bodwell still bill customers after the transfer of its assets and franchise?

The short answer is yes, the Commission has exercised authority over a regulated utility and its customers after the utility has technically abandoned its utility assets. The Commission

has done so under the unique circumstances of a regulated utility winding down its affairs, which are the very circumstances presented by Bodwell. The longer answer is that this exercise of authority depends on the circumstances and on how long after the termination of service the Commission deems it is in the public interest to maintain its jurisdiction.

As previously stated in Bodwell's petition, the Commission's jurisdiction over franchise market entry also applies to market exit. *Petition of St. James*, Docket No. DW 06-001, Order No. 24,649 at 12 (2006). Pursuant to RSA 374:28, "[t]he commission may authorize any public utility to discontinue ... any part of its service ... permanently and remove the equipment essential to the same, whenever it shall appear that the public good does not require the further continuance of such service." *Concord Steam Corporation*, Docket DG 16-769, Order No. 25,966 (November 10, 2016) at 12. Additionally, "[t]he New Hampshire Supreme Court has held on a number of occasions that the Commission's ratemaking authority under RSA 378:7 is plenary and that the Commission has general ratemaking authority under RSA chapter 378 to implement the method in which rates are put into effect." *Public Service Company of New Hampshire*, Docket No. DR 97-014, Order No. 22,847 (February 10, 1998) at 38, citing *State v. New England Telephone and Telegraph Co.*, 103 N.H. 394, 397 (1961); *Nelson v. Public Service Company of New Hampshire*, 119 N.H. 327, 332 (1979). The Commission also retains authority to alter or modify its orders pursuant to RSA 365:28.

Therefore, Bodwell submits that the combination of these authorities allows the Commission to entertain Bodwell's bill payment proposal in the context of Bodwell's orderly market exit from serving its customers.

Most recently, the Commission has exercised jurisdiction over a regulated utility after it abandoned its assets. See *Concord Steam Corporation*, *supra* at 4. The Commission ordered

one customer (State of New Hampshire) to pay Concord Steam Corporation after the May 31, 2017 discontinuation date for administrative expenses associated with maintaining a holding company relating to a lease between Concord Steam and the State.¹ The Commission ordered Concord Steam Corporation to pay customers any over-billing, post May 31, 2017. *Id.* Finally, the Commission retained jurisdiction over Concord Steam Corporation's compliance with the settlement agreement. *Id.*

As applied to this instant case, Bodwell envisions ultimate transfer of the assets to the City of Manchester and Town of Londonderry occurring once the existing pump stations are bypassed and the sewage is being gravity fed to the City of Manchester. Customer billing would cease upon payment of the Merrimack County Savings Bank loan, regulatory costs, and administrative costs for the winding down of Bodwell's affairs.

How far customer bills are spread out will be dictated by how long it takes to pay the MSCB loan, regulatory costs, and administrative costs. In its petition, Bodwell proposed spreading out over two to three years recovery of its Commission-approved investment in order to minimize rate shock to its customers such that customer rates could remain at \$64.17 per quarter. Bodwell notes that the Commission approved varied charges per month in *Concord Steam Corporation* to accommodate similar expenses. An alternative method of recovering its investment would be for Bodwell to issue final bill to customers and recover from customers in one lump sum per the terms of a settlement agreement that the Commission would retain jurisdiction over.

¹ *Concord Steam Corporation*, Docket No. DG 16-769, Order No. 25,966 (November 10, 2016) at 4 and 16. See also "the Commission shall retain jurisdiction over Concord Steam until the terms of the Settlement Agreement are fully complied with and it has fulfilled its decommissioning obligations." Order at 19.

Bodwell notes that there does not appear to be a bright line that billing must stop as of the day of discontinuation of service given that the Commission exercised authority over the timing of customer payments post-discontinuation of service and transfer of assets in *Concord Steam Corporation*.

It is important to remind the Commission and parties that during this interim time and winding down of Bodwell's affairs, the City of Manchester will still continue to issue its bills to Bodwell's Manchester customers as it presently does. The Town of Londonderry will also continue to bill Bodwell for the Londonderry customers' use of the wastewater services from Manchester.² These bills are not regulated by the Commission. Both municipalities issue bills to Bodwell customers or to Bodwell at present. This is because the City of Manchester, Town of Londonderry, and Bodwell are all and have all been involved in collecting wastewater from these residential developments and conveying it to the City of Manchester's wastewater treatment plant for processing. The goal of this proceeding is to remove Bodwell from this wastewater transportation arrangement.

3. Please explain Bodwell's contingency in the event Londonderry does not take Bodwell's customers located within Londonderry.

Bodwell does not have an immediate plan for addressing billing of customers in Londonderry in the event the Town of Londonderry does not take those Bodwell customers as its own. After the City of Manchester connects to Bodwell's system, the infrastructure will be such that there will be no shut offs. Therefore, acceptance of the customers' waste will still occur even if Londonderry does not take the Bodwell's customers in Londonderry. The situation becomes an issue of how to bill those Londonderry/Bodwell customers and at what rates.

² The Town of Londonderry and Bodwell have an arrangement whereby Londonderry bills Bodwell and Bodwell in turn recovers that unregulated fee from its Londonderry customers.

Bodwell would likely have to file a rate case to determine the rates to support Bodwell's cost to maintain service to those few customers.

4. Please explain what information has been provided to Bodwell's loan holders?

Bodwell and Merrimack County Savings Bank (MCSB) continue to be in regular contact about Bodwell's present and future financing needs.

Respectfully submitted,

Bodwell Waste Services Corporation

By its Attorney,
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Date: June 17, 2022

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Date: June 17, 2022

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