STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Bodwell Waste Services Corporation

Petition for Approval to Terminate Service

Docket No. DW 22-012

Brief of the New Hampshire Department of Energy

NOW COMES the New Hampshire Department of Energy (DOE), a party in this docket, and provides the following argument in support of its contention that the New Hampshire Public Utilities Commission (Commission) does not have the statutory authority to grant approval for a business entity to continue charging rates for service or charges rendered after that business entity has been approved to cease utility operations, per RSA 374:28, and therefore no longer meets the statutory definition of a public utility.

In the instant matter, Bodwell Waste Services Corporation (Bodwell) petitioned the Commission for, among other things, authority to do the following: (1) transfer some of its utility property to the City of Manchester and the Town of Londonderry, per RSA 374:30; (2) cease operating as a utility, per RSA 374:28; and (3) continue to charge its current customers Bodwell's current rate for an undetermined period of at least 10 to 12 quarters in order to pay an outstanding loan balance Bodwell owes, partially related to the underlying utility plant to be transferred, at an accelerated rate, in a total amount in excess of $340,000. The applicable loan is set to mature in 2032. Bodwell Waste Services Corporation, Direct Testimony of Stephen P. St. Cyr, March 10, 2022 at 2.

At this stage of the proceeding, the DOE does not oppose Bodwell's request to cease utility service and transfer its plant to the respective municipalities. Ultimately the DOE may even support those requests. The DOE, however, does not support continuation of the current customer charge if the Commission approves Bodwell's complete cessation of utility service to its customers. The DOE contends that, once Bodwell ceases to provide sewer service, if so authorized under RSA 374:28, the Commission cannot then authorize Bodwell to charge its current customers, as sewer utility service would no longer be rendered to those customers. *See* RSA 374:2 ("[a]ll charges made or demanded by *any public utility* for *any service* rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the public utilities commission." (emphasis added)). As soon as Bodwell has transferred its assets and discontinued the provision of utility services, if so authorized by the Commission, Bodwell would no longer be a "public utility" as defined in statute. *See* RSA 362:2, I (the "term 'public utility' shall include every corporation, company, association … owning, operating or managing any plant or equipment or any part of the same for … sewage disposal."); and RSA 362:4, I ("[e]very corporation, company, association … shall be deemed to be a public utility by reason of the *ownership or operation of any water or sewage disposal system or part thereof*" (emphasis added)).

Rather, once the proposed transfer of plant is complete and Bodwell has ceased to provide sewer service, it would no longer be a public utility and would continue to conduct business, if at all, only as a non-regulated entity. In that instance, the Commission would no longer have authority to regulate Bodwell in that different capacity because it would not meet the definition of a "public utility." *See* RSA 362:2, I and RSA 362:4, I. As such, the Commission would no longer have the authority to set rates for that entity under the just and reasonable

standard. *See* RSA 374:2 ("[a]ll charges made or demanded by *any public utility for any service rendered* … shall be just and reasonable…[e]very charge that is unjust or unreasonable, or in excess of that allowed by law or order of the commission, is prohibited" (emphasis added)); and RSA 378:7 ("[w]henever the commission shall be of opinion … that the rates, fares or charges demanded or collected, proposed to be demanded or collected, by any *public utility for service rendered or to be rendered* are unjust or unreasonable … the commission shall determine the just and reasonable or lawful rates" (emphasis added)). The Commission therefore cannot approve Bodwell's request to charge its current customers any regulated rate once it ceases to provide utility service to those customers, let alone do so for a period of years thereafter.

The DOE is not arguing that a public utility cannot issue bills after cessation of utility service is approved by the Commission if those bills relate to service rendered *prior* to the date on which cessation of utility service is approved. That includes bills for past due amounts to specific customers for service rendered, and possibly other various minor administrative or regulatory costs, such as rate case expenses, that the Commission deems appropriate for recovery by the public utility.[1] The DOE contends, however, that those allowable charges are markedly different from Bodwell's request to pay off an outstanding loan which is related to utility property that will no longer be in Bodwell's possession if the transfer of utility assets is approved by the Commission.

Typically, when a public utility is acquired, both the assets and liabilities associated with those assets are transferred to the assuming utility. *See Abenaki Water Company, Inc./Tioga River Water Company, Inc.*, Order No. 26,231 (March 28, 2019) at 9 (authorizing Abenaki Water Company, Inc. to assume State Revolving Fund loans from the purchased utility, Tioga River

[1] To be clear, the DOE is not supporting Bodwell's claims for those charges either at this stage of the proceeding.

Water Company, Inc.). The assuming utility would then charge those customers a rate to provide utility service, which includes the costs of those liabilities, such as the loan. In the instant case, Bodwell is proposing to transfer only its assets and retain the liability of the outstanding loan. If Bodwell were allowed to charge its current customers for that liability, those customers would essentially be paying a charge for nothing in return as Bodwell would no longer be providing any service to those customers. Those customers, furthermore, would in fact be double charged as they would also be paying the respective municipality for the provision of sewer service as well. The loan is an additional cost that is not related to the provision of service, thus cannot be charged to those customers, nor can that charge be authorized by the Commission. The DOE argues that as Bodwell did not include the loan in the transfer agreement, it would be Bodwell's responsibility to satisfy the loan, not its current customers.

Bodwell's petition might be read to suggest that the Commission has previously approved a similar mechanism in an analogous situation. *See* Bodwell Waste Services Corporation Petition to Discontinue Operations and Transfer Assets and Franchise, March 10, 2022, at 7 (citing *Concord Steam Corporation*, Order No. 25, 966 (November 10, 2016), as a basis for approval of its request to recover "administrative expenses and regulatory costs for winding down its affairs as a regulated utility").[2] Bodwell did not, however, provide any specific legal authority supporting its request that the Commission approve a continuing charge to customers after a public utility has ceased all utility operations. *Id*.

Even if Bodwell had clearly cited to Order No. 25,966 as precedent supporting its request, that order is distinguishable and does not provide a basis for approval of a continuing

[2] The DOE notes that Bodwell did not make any specific or direct legal citations in support of its request to charge its customers at $64.17 per quarter until its loan is paid off. Bodwell Waste Services Corporation Petition to Discontinue Operations and Transfer Assets and Franchise, March 10, 2022, at 7.

customer charge following utility service termination. In that order, the Commission approved a settlement providing for emergency rates to be charged until the public utility ceased providing utility service to customers but not thereafter. *See* Order No. 25,966 at 5 (environmental remediation costs included in the decommissioning costs recovered from customers through utility rates prior to the discontinuance of service on or about a specified date). In effect, the Commission merely approved emergency rates for the public utility *until* it ceased operations on May 31, 2017, and did not provide further authority to charge customers any regulated rate following that date. *See* Order No. 25,966 at 19 ("FURTHER ORDERED, that, subject to the terms of the [approved] Settlement Agreement and this Order, that Concord Steam may terminate service on or about May 31, 2017").

In conclusion, the Commission should reject Bodwell's request to charge customers after it ceases utility operations for repayment of its loan because the Commission's statutory authority extends only to public utilities, the utility services they provide to customers, and the rates charged to those utility service customers. Once Bodwell ceases to provide sewer service, it will no longer be a "public utility" as defined in statute. The Commission therefore cannot find that those charges are just and reasonable under RSA 374:2 and RSA 378:7. Bodwell, furthermore, has provided no statutory or precedential support to conclude otherwise. Accordingly, the DOE respectfully requests that the Commission dismiss Bodwell's request to charge customers following its cessation of utility services in order to repay its outstanding loan, thereby allowing the parties to focus on Bodwell's remaining requests to transfer its assets and terminate its utility service.

Respectfully submitted,

June 20, 2022

N.H. DEPARTMENT OF ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.

/s/ Christopher R. Tuomala

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