

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Bodwell Waste Services Corporation

Petition to Discontinue Operations and Transfer Assets and Franchise

Docket No. DW 22-012

Brief of the Office of the Consumer Advocate

Pursuant to the briefing schedule adopted by the Commission at hearing on June 1, 2022, the Office of the Consumer Advocate (“OCA”), in its capacity as the RSA 363:28 representative of residential utility customers, submits the following brief in support of its position that the Commission has no legal authority to approve the two requests by Bodwell Waste Services Corporation (the Company) to bill ratepayers after it is no longer a public utility providing service to them.

I. Introduction

In its petition the Company first seeks Commission approval to continue to regularly bill ratepayers \$64.17 per quarter (or \$256.68 per year) until January, 2025 to pay off an outstanding bank loan after the Company is no longer a public utility providing service to its residential customers.

The Company’s other request is Commission approval of a surcharge for the Company “to recover its expenses and the costs related to winding down its affairs,”

again after it is no longer a public utility providing service to its residential customers.¹

The Commission conducted a prehearing conference on June 1, 2022 and requested parties provide legal briefs as to the Commission's legal authority to grant these two requests. It is the position of the OCA that the Company cannot bill ratepayers, nor can the Commission approve the Company's request to bill ratepayers, when it is no longer a regulated utility and providing service.

II. Legal Standard

The OCA agrees with the Company that the Commission may authorize a public utility to discontinue service pursuant to RSA 374:28. The OCA further agrees that RSA 374:30 authorizes the Commission to approve franchise transfer.

The Company cites *Concord Steam Corporation*, Docket No. DG 16-769 and Order No. 25,966 (November 10, 2016) as an example of orderly discontinuance of regulated service and states that the discontinuance of the Company's regulated utility service will be much simpler than the Concord Steam case. While the discontinuance of service may be simple in this matter, there is no legal authority to continue to bill customers of a formerly regulated utility when there is no longer utility service provided by the Company.

Pursuant to RSA 363:17-a, the Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities. The Company

¹ See Bodwell Waste Services Corporation, Petition to Discontinue Operations and Transfer Assets and Franchise at page 9 https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-012/INITIAL%20FILING%20-%20PETITION/22-012_2022-03-10_BWSC_PETITION-TO-DISCONTINUE-OPERATIONS.PDF

seeks to discontinue service and no longer be a regulated utility. Further the Company will no longer have customers as defined by Puc 702.02.²

Lastly, pursuant to RSA 378:7, rates set by the Commission must be just and reasonable.

III. This is not Concord Steam

In Concord Steam the Commission approved a settlement agreement on November 10, 2016 for Concord Steam's discontinuation of service on or about May 31, 2017. *See Concord Steam Corporation*, Docket No. DG 16-769, Order No. 25,966 (November 10, 2016).

Concord Steam had over six months, from the Commission order to its projected decommissioning, to recover costs and any rate case expenses through a surcharge on customers' bills prior to its discontinuation of service. *Id.* Additionally in Concord Steam the Commission approved a monthly usage rate adjustment mechanism where any over collection greater than 5 percent would be refunded to customers and the Commission ordered additional reporting requirements such as monthly revenue calculation reports, information on collection efforts for past due accounts, monthly summary of physical plan status to cite a few of the requirements imposed. *Id.*

Here the Company's petition states that final completion of Manchester's sewer project is expected by September 3, 2023, presumably that would be the date the Company will no longer provide sewer service to customers; the petition is unclear.

² Puc 702.02 "Customer" means any person, firm, corporation, municipality or any other entity being supplied sewage disposal service by a utility.

What is clear is the Company's request to continue to bill former customers until receipt of its first quarter billing in January, 2025, assuming all customers pay, per Attachment E to the prefiled direct testimony of Stephen P. St. Cyr to enable the Company to satisfy a bank loan and to collect regulatory expenses.³ Presumably on or about September 3, 2023 the Company will cease to provide service to customers, and it logically follows that the Company will no longer have customers as defined by Puc 702.02.

If the Company's petition is granted, there will no longer be customers nor a regulated utility; thus, there is no longer a need for an arbiter between their interests. The Commission lacks authority to approve any continued billing of former customers of a formerly regulated utility.

According to the Commission's website it is "vested with general jurisdiction over electric, natural gas, water and sewer utilities as defined in RSA 362:2 for issues such as rates, quality of service, finance, accounting, and safety and with limited jurisdiction over telecommunications as defined in 362:7, 362:8, 363:22 and 365:1. It is the NHPUC's mission to ensure that customers of regulated utilities receive safe, adequate and reliable service at just and reasonable rates."⁴ Should the Company discontinue service the Commission will lack jurisdiction over the

³ PUC DW 22-012 Attachments found at https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-012/INITIAL%20FILING%20-%20PETITION/22-012_2022-03-10_BWSC_ATT-PETITION-TO-DISCONTINUE-OPERATIONS.PDF

⁴ See <https://www.puc.nh.gov/Home/aboutus.htm>

Company as a regulated utility and the Commission will no longer have authority to allow for rates or costs to be billed to former customers of the Company.

IV. Rates must be Just and Reasonable

The Company seeks Commission authorization to charge customers after it has ceased providing sewer service to customers. Such a request would not satisfy the requirements of RSA 378:7. The Company would no longer be a public utility and the Company would no longer be providing service to customers. Thus the Commission can not conclude that the rates would be just and reasonable.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Deny any request by the Company to continue to bill customers following its discontinuance of regulated service, and
- B. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,



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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.



Julianne M. Desmet