

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-____
Bodwell Waste Services Corporation

PETITION TO DISCONTINUE OPERATIONS
AND
TRANSFER ASSETS AND FRANCHISE

NOW COMES, Bodwell Waste Services Corporation (Bodwell), pursuant to RSA Chapter 374 and hereby petitions the Commission for authority to discontinue service and to transfer Bodwell’s sewer mains, manholes, pump stations, force mains, and appurtenances (collectively, Sewer Facilities) and franchise to the City of Manchester (City) and Town of Londonderry (Town or Londonderry), as described below. In support of its petition, Bodwell states as follows:

Parties and Background

1. Bodwell is a regulated public utility that serves approximately 528 residential customers in the Town of Londonderry and City of Manchester. The Commission first authorized Bodwell to provide sewer service in Order No. 20,404, dated February 28, 1992. In Order No. 22,295 (August 8, 1998), the Commission established Bodwell’s flat quarterly-rate rate design. Bodwell currently charges \$64.17 per quarter (or \$256.68 per year). Customers also pay an additional quarterly flat and volumetric fee to the City.

2. Bodwell’s sewage collection system is more thoroughly described in the testimony of Stephen P. St. Cyr, which is accompanying this petition. Generally, Bodwell’s system includes two small pump stations that feed into a larger station, which in turn pumps into

the City's sewer system via a force main installed and owned by Bodwell. Testimony Attachment A contains a map of Bodwell's facilities in Manchester and Londonderry. Much of the infrastructure has been contributed and Bodwell has an outstanding secured loan with Merrimack County Savings Bank (MCSB). See, *Bodwell Waste Services Corporation*, Docket No. DW 17-142, Order No. 26,072 (November 9, 2017). In that docket, the Commission approved a \$450,000/fifteen-year financing. This MCSB note matures in 2032.

3. The City of Manchester is a municipal corporation that provides wastewater collection services within and without its corporation boundary. The City's Division of Public Works-Environmental Protection Division (DPW-EPD) provides services for the collection and treatment of wastewater for the City of Manchester and portions of the Towns of Bedford, Goffstown, and Londonderry. Although the City provides service in Londonderry, the City is only taking Bodwell assets that are within the City; it will not be taking Bodwell assets in Londonderry or providing additional service in Londonderry as part of this instant transaction. The DPW-EPD functions as an enterprise and is fully supported by user fees and grants. The DPW-EPD has 44 full-time employees and complies with all State and Federal wastewater regulations.

4. The Town of Londonderry is a municipal corporation that provides public sewer service in within portions of its corporate boundary. Bodwell provides sewer service to the Mill Pond Subdivision within Londonderry by way of an 8-inch sanitary sewer. This sanitary sewer transports the wastewater to the City for treatment. It is these assets within Londonderry that are excluded from the MOU with the City and will be the subject of an MOU with Londonderry. Thereafter, Bodwell expects the City and Town to enter into their own agreement concerning the City's use of any assets Londonderry acquires.

Sewer Project

5. Since approximately 2009, the City has been upgrading its wastewater collection system and expanding its public sewer service. The City is now in phase 4 of what it calls its Cohas Brook Sewer Project, Contract 4 (Project). The phases of the Cohas Brook Sewer Project is shown in Testimony Attachment B, page 1. The Project is shown on page 2. The Project includes construction of new sewers in southeast Manchester, including approximately 10,800 feet of new 24-inch sanitary sewer and 7,500 feet of new 8-inch sanitary sewer in Sunset Pine Drive, Bodwell Road, Pheasant Lane and cross-country areas at depths up to 27 feet, appurtenances, roadway reconstruction of affected streets, and restoration of private property. The work also includes abandonment/removal of up to five (5) sewer pumping stations and abandonment/removal of approximately 9,600 feet of associated 4-inch to 8- inch force main. Construction duration is expected to take 675 calendar days for substantial completion and 900 calendar days for final completion. Substantial completion of the Project is expected to occur by January 21, 2023, with final completion expected by September 3, 2023. See Testimony Attachment C, Memorandum of Understanding (MOU) at 3, para. 1.

6. The City's Project will extend a new 24-inch interceptor sewer to the Londonderry town line in the vicinity of Bodwell's existing Aaron Drive Pump Station and will further extend the interceptor sewer approximately 600 linear feet into Londonderry, where the interceptor will connect to Bodwell's 8-inch sanitary sewer that receives flow from the Mill Pond Subdivision in Londonderry. Notwithstanding this extension of the interceptor, the City will not be owning or operating this asset in Londonderry, rather, this line will be owned and operated by Londonderry.

Memoranda of Understanding

7. Bodwell and the City have entered into an MOU. Testimony Attachment C. This MOU calls for the City to extend public sewer service to Bodwell such that customers can connect to public sewer and Bodwell can terminate operations. Assuming Commission approval, upon completion of the interconnection, completion of all conditions contained in the MOU, and upon the recording of a deed from Bodwell to the City transferring ownership of Bodwell's Sewer Facilities located in Manchester, the City agrees to take over all "care, operation, maintenance, and repair of the Sewer Facilities" from Bodwell. Testimony Attachment C at 4, para. 4. The transfer of the Sewer Facilities is not a stock transfer or corporate acquisition of Bodwell by the City. Rather, this transaction involves transfer of certain assets and Bodwell's franchise only. Consideration for this transaction on the part of the City is that the City will bear the cost of constructing a main to Bodwell's Sewer Facilities and the City will cover the cost of owning, operating, and maintaining the Sewer Facilities after the transfer of the assets. Bodwell's consideration is that it is transferring its franchise.

8. An MOU between Bodwell and the Town of Londonderry is expected to be completed soon and will be filed with the Commission.

9. In order to meet and maintain the City's construction schedule, Bodwell is required to obtain Commission approval no later than September 15, 2022. See, Testimony Attachment C, at 4 and Testimony Attachment D at 2.

Legal Authority for Discontinuation of Regulated Utility Service

10. 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.

Legal Authority for Franchise Transfer

11. Pursuant to RSA 374:22, I, “[n]o person or business entity ... shall commence business as a public utility within this state ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.” The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after a hearing, that the exercise of the right, privilege, or franchise is for the public good. RSA 374:26. Pursuant to RSA 374:30, I, “[a]ny public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.” In determining whether a proposed franchise or franchise transfer is for the public good, the Commission assesses, among other things, the managerial, financial, and technical expertise of the petitioners. *Lakes Region Water Company, Inc.*, Order No. 26,144 at 5; see also, e.g., *Lakes Region Water Company, Inc.*, Order No. 25,964 (November 10, 2016); *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,987 (February 8, 2017).

12. Under RSA 362:4, I through III, municipal corporations furnishing sewage disposal services outside their corporate boundaries are not considered regulated public utilities for purposes of accounting, reporting, or auditing functions. If such municipal corporation is providing service to outside customers at the same rates as inside customers, the municipal

corporation is not considered a regulated public utility. RSA 362:4, III. Here, the City will be charging Bodwell's customers the same rates as it charges inside customers. Further, the City and Town's relationship will continue to be governed by an existing Intermunicipal Sewer Agreement. See Order No. DR 97-239 (August 4, 1998) for reference to the agreement and it not being subject to the Commission's regulation. For these reasons, there are no other approvals needed beyond what is being requested herein.

Orderly Discontinuance of Regulated Service

13. As noted earlier, the Commission has experience with the orderly discontinuance of regulated utility service. The *Concord Steam Corporation* case presented this issue in 2016. In that case, the Commission exercised its authority under RSA Chapter 374 to fashion an orderly discontinuation of regulated utility service and transition of customers to another utility. See, *Concord Steam Corporation*, Docket No. DG 16-769. Here, Bodwell also seeks an orderly discontinuation of its service. Different from the *Concord Steam* case where steam customers transitioned to natural gas or to other forms of energy, sewer service will not be transitioned to another provider. The Bodwell customers presently receive a bill from the City and will continue to receive a bill from the City after Bodwell ceases operation. Importantly, because these customers use Bodwell's service to transport their wastewater to the City for treatment, they will no longer receive a bill from Bodwell after the City's Project is complete and Bodwell's assets are transferred to the City and Town. For this reason, Bodwell's discontinuance of regulated utility service will be much simpler than the *Concord Steam* case and will more easily satisfy the public good standard under RSA 374:28.

Phase-Out of Customer Rates and Payment of Regulatory and Administrative Expenses

14. As noted above, Bodwell has an outstanding loan commitment and satisfaction of that loan will not occur until 2032. The Commission approved this loan as a refinancing of an existing loan that were, in turn, incurred for plant additions and to pay expenses such as the loan from the owner. As part of the phase-out of its business, Bodwell requests that the Commission approve continuation of Bodwell's present customer rates, \$64.17 per quarter (or \$256.68 per year), and that the proceeds of these rates be applied fully and directly to pay off the MCSB note sooner than its existing term. According to the schedule in Attachment E, if all customer proceeds are applied to pay off the MCSB note, pay-off is expected to occur after receipt of the first quarter customer billing in January 2025. This payoff would be seven years earlier than the present maturity and would allow Bodwell to conclude its financial obligations of the sewer company. This schedule assumes all current customers pay their bills in entirety.

15. Bodwell also requests recovery of its other reasonable administrative expenses and regulatory costs for winding down its affairs as a regulated utility. Such expenses associated with winding down the affairs of a regulated utility have been approved in the past by this Commission. See e.g., *Concord Steam* where the Commission approved recovery of decommissioning costs. *Concord Steam Corporation*, Docket No. DG 16-769, Order No. 25,966 (November 10, 2016). Further, the Commission regularly approves regulatory costs for recovery as well as costs customarily incurred to start a utility. See, e.g., *Mill Brook Village Water System*, Order No. 25,754 (January 14, 2015) whereby the Commission approved Mill Brook's pre-regulated utility costs in rates (see, e.g., N.H. Uniform System of Accounts for Water Utilities, Account 186 Miscellaneous Deferred Debits.) Bodwell requests that these expenses to

wind down its affairs be recovered as a one-time surcharge on customer bills once these expenses are known at the end of the proceeding.

Conclusion

16. Bodwell believes termination of operations is in the best interest of its customers because after payoff of the MCSB loan and Bodwell's costs to wind down its affairs, customers will only pay for sewer charges from the City; they will no longer have a sewer bill from both Bodwell and the City. Bodwell expects the transfer to be seamless to customers in that after the transfer of assets, customers will still be able to call the City's customer service department as they do now for any billing or service questions. Bodwell believes acquisition of its Sewer Facilities and franchise by the City under the MOU is in the public interest because the City has demonstrated through its operation of its public sewer service and decades-long sewer project, that it has the requisite managerial, technical, financial, and legal expertise to provide sewer service within the Bodwell franchise.

WHEREFORE, Bodwell respectfully requests that the Commission:

- A. Authorize Bodwell to discontinue operations upon interconnection with the City's public sewer system;
- B. Find that the City possesses the requisite managerial, technical, financial, and legal expertise to provide sewer service outside of its corporate bounds within the Bodwell service territory;
- C. Authorize Bodwell to collect its current rates from customers until the MCSB loan is fully repaid;
- D. Relieve Bodwell of all reporting obligations, including the filing of Annual Reports;

E. Authorize Bodwell to recover its expenses and costs related to winding down its affairs; and

F. Grant such other relief as is just and equitable.

Respectfully submitted,

Bodwell Waste Services Corporation

By its Attorney,
NH BROWN LAW, PLLC

Date: March 10, 2022

By:

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Certificate of Service

I hereby certify that on this day a copy of this petition has been emailed to the Office of the Consumer Advocate and the Department of Energy.

Date: March 10, 2022

Marcia A. Brown

Marcia A. Brown, Esq.