

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

Docket No. DW 22-058

Bedford Waste Services Corporation

Permanent Rate Proceeding

**RESPONSE TO REQUEST FOR HEARING**

NOW COMES, Bedford Waste Services Corporation (Bedford or Company) in accordance with N.H. Admin. R. Puc 203.07(e), and hereby respectfully responds to Mr. Steven Rizzo's request for a hearing and requests the Commission deny the request. In support of this response, the Company states as follows:

**Summary of Relevant Facts**

1. On March 23, 2023, the Commission held a duly-noticed hearing on temporary rates and issued its order approving temporary rates on March 29, 2023.
2. On July 12, 2023, the Commission held a hearing on permanent rates. Mr. Rizzo attended the hearing and offered public comments. Mr. Rizzo did not intervene in the proceeding. Mr. Rizzo acknowledged that he was on the service list and had received filings related to the proceeding for the previous four months. Hearing Transcript of 07/12/23 at 5-6.
3. On September 12, 2023, the Commission issued Order No. 26,884 and approved terms of a settlement agreement entered into evidence at the July 12, 2023 hearing. That order required the Company to file its proposed surcharge for recoupment under RSA 378:29 of the difference between temporary and permanent rates and to file its rate case expense documentation and proposed surcharge.

4. On September 27, 2023, the Company filed its compliance filing containing its calculation of the rate case expense surcharge and temporary-permanent rate recoupment surcharge. The Company also filed a motion for confidential treatment to protect information exempt from public disclosure under RSA 91-A:5. The Department of Energy (DOE) did not object to the motion and in fact no objections were filed regarding the motion.

5. On November 14, 2023, the DOE filed a technical statement following its review of and discovery on the Company's rate case expenses. The DOE recommended the Commission approve a slightly different rate case expense recovery amount (based on disallowances and October updates) and approve the temporary-permanent rate recoupment as calculated by the Company. The DOE also recommended that the surcharges be recovered over three years instead of the two years proposed by the Company.

6. On December 14, 2023, the Commission issued *Nisi* Order No. 26,912 approving the rate case expenses and the reconciliation of the Company's temporary and permanent rates. The Commission found that Bedford provided "adequate support" for its rate case expenses. Order at 4. The Commission also approved extending recovery of the same over a three-year period so as to "minimize the financial burden on Bedford's limited customer base. *Id.* The Commission found the surcharges "just and reasonable". *Id.*

7. On December 19, 2023, Mr. Steve Rizzo of 223 Pulpit Road, Bedford, filed a request for hearing of Order No. 26,912. Mr. Rizzo raised the following issues: (1) he objected to the motion for confidential treatment; (2) he objected to raising rates from \$155 per quarter to approximately \$270 per quarter without any open meeting for ratepayers to express their concern; (3) he questioned how the Company can recover expenses that equal one year's revenue; (4) he averred that a small utility should not have to follow the same rules that apply to much larger utilities and that there needs to be exemptions made in these cases for the rate

holders and owners of Bedford Waste to make this work; (5) he argued that if Bedford Waste is a for profit company, it should be covering the shortfalls instead of ratepayers; and (6) requested a “plain language explanation of how the PUC came to this decision.”

### **Legal Authorities**

8. Pursuant to N.H. Admin. Rule Puc 203.07(e), “[o]bjections to a motion, except for motions for rehearing, shall be in writing and filed within 10 days of the date on which the motion is filed.”

9. Pursuant to 541:3, motions for rehearing must be filed “within 30 days after any order”. Pursuant to RSA 541-A:31, III (d), issues considered by the Commission in contested cases must first be properly noticed.

10. Pursuant to RSA 91-A:5, confidential hourly rates of consultants are protected from public disclosure. RSA 91-A:5 does not require a hearing before protecting such confidential information.

11. Pursuant to RSA 378:6, the Commission has 12 months within which to suspend the taking effect of and investigate rates.

12. Pursuant to the N.H. and U.S. Constitutions, a utility cannot be forced to provide utility service at rates that do not cover costs, otherwise those rates are confiscatory, and constitute an unconstitutional taking. *Public Service Company of New Hampshire*, 130 N.H. 265, 268 (1988) (rates must “produce neither confiscatory nor exploitative rates.”). *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980) (“public utilities have a right not to be forced to accept rates that are so low as to be confiscatory.”) *Bluefield Waterworks v. Pub. Serv. Comm’n*, 262 US 679, 690 (1923) (“Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory.”)

### Argument

13. Mr. Rizzo purports to be speaking on behalf of the Bedford Three Corners Owners Association, Inc., however, he did not provide any evidence of his authority to act in that capacity. Therefore, the Company will address the concerns as to Mr. Rizzo, not as to Bedford Three Corners Owners Association, Inc. In addition, the Company understands that Mr. Rizzo is *pro se*, and as such, that he may not fully know the statutory and constitutional laws governing contested proceedings and compensation of regulated utility monopolies. Notwithstanding that, the Company is still compelled to provide the below response.

#### **Mr. Rizzo's Objection to the Motion for Confidential Treatment is Untimely**

14. With respect to Mr. Rizzo's first objection, pursuant to Puc 203.07(e), Motions, and Puc 202.03, Computation of Time, Mr. Rizzo's objection to the Company's motion was due October 9, 2023. Mr. Rizzo just now raises his objection but in the form of a request for a hearing. Being late, the Commission need not consider Mr. Rizzo's objection. This lateness prejudices the Company by delaying an otherwise prompt, orderly, and efficient proceeding that the Company has a right to. Because Mr. Rizzo withheld his comments until now, the Commission did not have the benefit of Mr. Rizzo's concerns when it issued Order No. 26,912 and thus it had no opportunity to address the concerns and offer a "plain language explanation" sought by Mr. Rizzo. Further, Mr. Rizzo makes no argument as to why Order No. 26,912 is unjust or unlawful.

15. To directly respond to Mr. Rizzo's inquiry "who is hiding what?", the Company's legal counsel sought to protect from public disclosure its confidential hourly rates. There is no nefarious hiding. In addition to be affirmatively protected by RSA 91-A:5, protection of confidential hourly rates is Commission policy pursuant to its rules, CHAPTER Puc 1900. Those rules require that consultant expenses of \$10,000 or greater be competitively bid.

Competitive bidding, by its very nature, requires that bids not be public. Indeed, in this case, the Company's legal counsel, like other law firms, does not make its rates public. Therefore, public disclosure of confidential hourly rates of consultants would undermine the competition goal of those rules. Further, the policy of protecting confidential hourly rates is not before this Commission. The Commission's application of that policy to the facts of this case in Order No. 26,912 was consistent with past precedent.

16. As noted in the motion for protective treatment, only the confidential hourly rate data protected by RSA 91-A:5 was redacted. The total amounts billed, as well as the description of the work performed, remained public. That public information remains freely available on the Commission's website. Further, the DOE and Office of the Consumer Advocate can review such confidential data and make adjustments-therby protecting utility customers from any errors in a utility's rate case expenses. The DOE did just that in this instant case. Lastly, granting motions for protective treatment does not require a hearing. For these reasons, and given the lack of any compelling argument or evidence of error, the Company requests the Commission deny Mr. Rizzo's request for a hearing on this issue.

**Mr. Rizzo's Objection to Approved Temporary and Permanent Rates is Untimely**

17. In Mr. Rizzo's second argument, he objects to raising rates from \$155 per quarter to approximately \$270 per quarter absent a hearing. This objection is moot because the Commission in fact held a hearing on temporary rates on March 23, 2023 and issued its order on March 29, 2023. The Commission held a hearing on permanent rates on July 12, 2023 and issued an order on permanent rates on September 12, 2023. Mr. Rizzo in fact attended the July hearing. Also, Mr. Rizzo did not request reconsideration of either of those approvals within the 30-day timeframe mandated in RSA 541:3 and the Commission, being a creature of statutes itself, cannot waive a statute.

18. To the extent Mr. Rizzo's second argument relates to the amount of rate case expenses or the term over which the rate case expenses and temporary-permanent recoupment is collected, the DOE already addressed this concern and the Commission found the rate case expense surcharges just and reasonable. Both surcharges are already spread out over three years. Per RSA 378:7, the Company could be eligible to come back in for another rate case in three years. Extending the surcharges could result in pancaking surcharges from this and the next rate case. Pancaking of surcharges will cause confusion to customers and is not a favored rate design concept.

19. Further, the \$51.14 rate case expense surcharge was based on the Company's expenses incurred through October. DOE has already reviewed and verified these expenses. Also, the Company is incurring additional rate case expense responding to this motion, and if a hearing is scheduled, it will incur additional expenses that are not otherwise compensated for in its revenue requirement. Given that, compensation of these costs through the surcharge will drive up the rate case expenses surcharge. Thus, if the Commission grants a hearing to consider the term over which the surcharges are collected, it will likely increase the total bill for all customers. The pancaking problem will also exist. For these reasons, the Company does not believe holding a hearing on the issue of the amount of rate case expenses and the term of the surcharges will result in a positive outcome for customers especially given that consideration of temporary and permanent rates is passed, the DOE considered the concerns expressed by Mr. Rizzo, and the Commission approved the DOE recommendations.

20. As to Mr. Rizzo's third issue, which questions "[h]ow does the PUC allow Bedford Waste to recover expense that equal to one year's revenue", the DOE is involved with numerous utility rate cases and is thus familiar with how much it costs to prosecute a full rate case. The DOE filed its opinion that the rate case expenses incurred for this case were just and

reasonable. Mr. Rizzo offers no argument that the expenses were unreasonably incurred. His chief complaint is that the expenses are too high, but he offers no argument as to what they should have been. The Company plans to reach out to Mr. Rizzo to discuss his concerns on this issue.

21. For the above reasons, however, the Company does not believe Mr. Rizzo has offered sufficient argument as to why holding a hearing to re-address issues already addressed by the DOE would be beneficial. Accordingly, the Company respectfully requests the Commission deny Mr. Rizzo's hearing request.

**The Company Concurrs that Streamlined Rate Cases for Small Utilities Should Occur  
But this Issue is not Noticed in this Proceeding**

22. Mr. Rizzo's fourth issue is that a small utility with only 78 users should not have to follow the "same rules that apply to much larger utilities." This is a policy issue that has not been noticed for this proceeding, therefore, it cannot be considered in this proceeding. RSA 541-A:31, III (d). Although the Company concurs that streamlining rate cases for small utilities is warranted, this policy issue is beyond the noticed scope of Order No. 26,912. Order No. 26,912 concerns: (1) the correctness of the calculation of the recoupment between the approved temporary and permanent rates; (2) the length of time the surcharge collecting that recoupment should be; (3) the reasonableness of the rate case expenses submitted to the Commission and validated by the DOE; and (4) whether the Commission's approval of the rate case expenses and two surcharges was just and reasonable. Streamlining small utility rate cases is not among those issues and, thus, the Company respectfully requests that the Commission deny Mr. Rizzo's request for a hearing on this policy issue.

**The Suggestion to Cover a ‘Shortfall’ has Already been Addressed or is Unconstitutional**

23. Mr. Rizzo’s fifth issue suggests that the Company should cover ‘shortfalls’ instead of ratepayers. First, the Company’s owner has covered shortfalls. In Docket No. DW 22-054, the Commission approved the owner’s own financing to the Company.<sup>1</sup> Second, to the extend Mr. Rizzo seeks the Company to cover the shortfall without compensation, the N.H. and U.S. Supreme Courts have long recognized that a utility cannot be forced to provide utility service at rates that do not cover costs, otherwise those rates are confiscatory, and constitute an unconstitutional taking. *Public Service Company of New Hampshire*, 130 N.H. 265, 268 (1988) (rates must “produce neither confiscatory nor exploitative rates.”). *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980) (“public utilities have a right not to be forced to accept rates that are so low as to be confiscatory.”) *Bluefield Waterworks v. Pub. Serv. Comm’n*, 262 US 679, 690 (1923) (“Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory.”) Thus, it is not constitutional for the Company to cover any “shortfall” suggested by Mr. Rizzo unless it is compensated. Therefore, this suggested relief is either not within the Commission’s jurisdiction to provide or is outside the scope of this proceeding.

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<sup>1</sup> Bedford Waste Services Corporation, Order No. 26,800 (April 12, 2023) (order approving financing of \$186,207.24 to cover refinancing; a \$30,000 non-interest-bearing advance for rate case expenses; and a \$12,000 working line of credit to cover the cost to purchase and install one pump.)



WHEREFORE, for the reasons stated above, Bedford Waste Services Corporation respectfully requests that the Commission:

- A. Deny Mr. Rizzo's request for a hearing; and
- B. Grant such other relief as is just and equitable.

Bedford Waste Services Corporation

By Its Attorney,

NH Brown Law, PLLC

Dated: December 28, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of December, 2023, a copy of the foregoing response has been sent by electronic mail to the electronic service list in this docket.

Dated: December 28, 2023

By: Marcia A. Brown  
Marcia A. Brown, Esq.