

STATE OF NEW HAMPSHIRE

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August 7, 2020

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DW 20-106 Bedford Waste Services Corporation
Petition for Approval of Long Term Financing – Change in Interest Rate
Staff Recommendation for Approval

Dear Ms. Howland:

The purpose of this letter is to offer the New Hampshire Public Utilities Commission Staff's ("Staff") recommendation regarding a request from Bedford Waste Services Corporation ("Bedford Waste" or "the Company") to enter into a Change in Terms Agreement with Merrimack County Savings Bank (MCSB). After a thorough review of the petition and prior *Bedford Waste Services Corporation*, Order No. 26,073 (November 9, 2017), which approved the original terms of this loan, Staff recommends the Commission take notice of the Change in Terms Agreement, or in the alternative, approve the Company's request by Secretarial Letter.

Bedford Waste is a regulated sewer utility pursuant to RSA 362:2 and RSA 362:4 serving approximately 78 customers in Bedford, New Hampshire. On July 2, 2020, Bedford Waste filed a petition seeking approval to enter into a Change in Terms proposed by MCSB which reduces the interest rate of their current loan with an outstanding balance of \$148,620 from 4.75% to 3.95%. All other provisions of the previously approved MCSB loan remain in effect. *See* Order No. 26,073 at 2 (describing other financing conditions). In support of its petition, Bedford Waste submitted the pre-filed testimony of its financial consultant, Stephen St. Cyr.

Order No. 26,073 authorized Bedford Waste's commitment from MCSB of a \$170,000 term loan with a 15-year term. The loan had a fixed interest rate of 4.75% for the first five years, and then that rate adjusts every 5 years based on the Federal Home Loan Bank amortizing advance rate plus a margin of 2.75%. Bedford Waste provided a first security lien on all its business assets. *Id.* at 2 Bedford Waste's shareholder, Robert S. LaMontagne, is an unlimited guarantor. *Id.*

The filing shows that a lower interest rate will result in lower monthly payments, improved cash flow and improved earnings. There will be no impact on customer rates. Mr. St. Cyr detailed the savings as \$59.07 per month or \$708.84 per year based on reduced monthly

payments from \$1,322.31 to \$1,263.24. The loan documents provided to Staff by Bedford Waste and included in this recommendation as Attachment 1 calculate the monthly payments at a slightly higher rate by using a calendar year based on 360 days, rather than the 365 days employed in Mr. St. Cyr's calculations. Attachment 1 indicates a monthly loan payment of \$1,269.80, for a savings of \$52.51 per month, or \$630.12 per year. The monthly payment variance between the filing and the loan documents is \$6.56 per month, or \$78.72 per year. Both calculations, however, show that Bedford Waste will be reducing its debt service on the loan.

Staff supports Bedford Waste's request. As Bedford Waste's last rate filing preceded the Commission's financing approval in 2017, the original financing is not reflected in the utility's current rates. *See Bedford Waste Services Corporation*, Order No. 24,479 (July 1, 2005) (Order approving last rate increase). As such, a modification to the underlying terms with MCSB as proposed will have no impact on rates. The change in terms, however, will enable the Company to pay down its loan with MCSB at a lower interest expense, slightly improving Bedford Waste's cash flow.

Staff's position is that a decrease in the originally approved interest rate is not a modification of the Commission's original finding of the public good and approval of the financing in Order No. 26,073, per RSA 369:1-4 (statutes regarding public utility financing approval in the context of a finding of the public good). Staff contends that is especially true as all other terms of the financing remain unchanged. The currently proposed adjustment does not exceed in any way the financing authority previously approved by the Commission. Staff, furthermore, argues that the current modification is akin to the five-year adjustment clause for interest rates. Order No. 26,073 at 2. As such, Staff argues that the Commission should merely take notice of the signed Change in Terms Agreement, and that Commission approval is unnecessary given the directive in Order No. 26,073.

While Staff does not consider a decrease in the interest rate of the approved underlying financing a material alteration to Order No. 26,073, thus requiring Commission approval per RSA 365:28, Staff recommends that the Commission approve the modification to the extent that it is necessary.¹ The only change to the prior Commission authorization, as stated, is a decreased interest rate. The decreased interest rate is strictly beneficial to the utility, and ultimately the ratepayer. The proposed modification of a decreased interest rate, furthermore, serves only to provide additional evidence to the already determined consistency of the underlying financing with the public good. RSA 369:1.

Staff recommends that the Commission take notice of Bedford Waste's request for the change in terms to the underlying financing by Secretarial Letter as approval is not necessary. As stated, Staff further recommends that modification to Order No. 26,073 be approved per RSA 365:28 in the event and to the extent necessary that Commission approval is required. Staff recommends, however, that approval be conditioned upon further review by Staff of the executed Change in Terms Agreement. Thus, Staff requests that the Commission also direct Bedford

¹ RSA 365:28 states "[a]t any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the commission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held."

Waste to submit the final Change in Terms Agreement within 10 days of execution, for review and recommendation of closure of the docket by Staff as appropriate.

If there are any questions regarding this recommendation, please let me know.

Sincerely,

/s/ Robyn J. Descoteau

Robyn J. Descoteau
Utility Analyst, Gas & Water Division

Attachment: Change in Terms Agreement, MCSB

CHANGE IN TERMS AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$148,620.81	12-07-2017	12-07-2032	4000109861	4A / 044	BAA7623	TRD	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

Borrower: Bedford Waste Services Corp.
17 Sky Oaks Drive
Biddeford, ME 04005

Lender: Merrimack County Savings Bank
89 North Main St.
P.O. Box 2826
Concord, NH 03302-2826
(603) 225-2793

Principal Amount: \$148,620.81

Date of Agreement: July 7, 2020

DESCRIPTION OF EXISTING INDEBTEDNESS. Promissory Note number 4000109861, a commercial term loan by Borrower in favor of Lender, in the original amount of \$170,000.00, dated December 7, 2017, with a current principal balance of \$148,620.81, and a current interest rate of 4.75% until December 7, 2022, at which time the rate will adjust to the Federal Home Loan Bank Boston Amortizing Rate 5/15 plus 2.75%, adjusting every five years.

DESCRIPTION OF COLLATERAL. A first security lien interest in all business assets of Bedford Waste Services Corp., as described in a Security Agreement dated December 7, 2017 and referenced by UCC-1 Filing 1712130001133 filed on December 11, 2017 with the NH Secretary of State office in favor of Lender.

DESCRIPTION OF CHANGE IN TERMS. The Borrower and Lender hereby agree to amend the indebtedness as follows:

Effective July 7, 2020 the interest rate shall be reduced from 4.75% to 3.95% until the next scheduled rate review date on December 7, 2022. A rate floor of 3.95% will be added for the life of the loan. The Borrower shall make monthly payments as outlined in the "Payment Paragraph" below.

All other terms and conditions of the Note and related documents, including amendments, shall remain in full force and effect.

PAYMENT. Borrower will pay this loan in accordance with the following payment schedule, which calculates interest on the unpaid principal balances as described in the "INTEREST CALCULATION METHOD" paragraph using the interest rates described in this paragraph: 29 monthly consecutive principal and interest payments in the initial amount of \$1,269.80 each, beginning August 7, 2020, with interest calculated on the unpaid principal balances using an interest rate of 3.950% per annum based on a year of 360 days; 119 monthly consecutive principal and interest payments in the initial amount of \$1,342.63 each, beginning January 7, 2023, with interest calculated on the unpaid principal balances using an interest rate based on the 5 Year Federal Home Loan Bank of Boston Regular 5/15 Amortizing Advance Rate (currently 2.540%), plus a margin of 2.750 percentage points, adjusted if necessary for the minimum and maximum rate limitations for this loan, resulting in an initial interest rate of 5.290% per annum based on a year of 360 days; and one principal and interest payment of \$1,342.64 on December 7, 2032, with interest calculated on the unpaid principal balances using an interest rate based on the 5 Year Federal Home Loan Bank of Boston Regular 5/15 Amortizing Advance Rate (currently 2.540%), plus a margin of 2.750 percentage points, adjusted if necessary for the minimum and maximum rate limitations for this loan, resulting in an initial interest rate of 5.290% per annum based on a year of 360 days. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled and that the Index does not change; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts on this loan.

VARIABLE INTEREST RATE. The interest rate on this loan is subject to change from time to time based on changes in an independent index which is the 5 Year Federal Home Loan Bank of Boston Regular 5/15 Amortizing Advance Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If Lender determines, in its sole discretion, that the Index for this loan has become unavailable or unreliable, either temporarily, indefinitely, or permanently, during the term of this loan, Lender may amend this loan by designating a substantially similar substitute index. Lender may also amend and adjust any margin corresponding to the Index being substituted to accompany the substitute index. Margins corresponding to the Index are described in the "Payments" section. The change to the margin may be a positive or negative value, or zero. In making these amendments, Lender may take into consideration any then-prevailing market convention for selecting a substitute index and margin for the specific Index that is unavailable or unreliable. Such an amendment to the terms of this loan will become effective and bind Borrower 10 business days after Lender gives written notice to Borrower without any action or consent of the Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each five years. Borrower understands that Lender may make loans based on other rates as well. **The Index currently is 2.540% per annum.** The interest rate or rates to be applied to the unpaid principal balance during this loan will be the rate or rates set forth herein in the "Payment" section. Notwithstanding any other provision of this Agreement, after the first payment stream, the interest rate for each subsequent payment stream will be effective as of the due date of the last payment in the just-ending payment stream. **NOTICE:** Under no circumstances will the interest rate on this loan be less than 3.950% per annum or more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

INTEREST CALCULATION METHOD. Interest on this loan is computed on a 30/360 basis; that is, with the exception of odd days before the first full payment cycle, monthly interest is calculated by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by a month of 30 days. Interest for the odd days before the first full month is calculated on the basis of the actual days and a 360-day year. All interest payable under this loan is computed using this method.

CONTINUING VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

E-SIGNATURE. Delivery of a signature page to, or an executed counterpart of, this document by facsimile, email transmission of a scanned image, or other electronic means, shall be effective as delivery of an originally executed counterpart. The parties hereto agree that "execution," "signed," "signature," and words of like import in this document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation,

**CHANGE IN TERMS AGREEMENT
(Continued)**

DW 20-106
Attachment 1

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Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act or the Uniform Commercial Code, and the parties hereto hereby waive any objection to the contrary..

BENEFICIAL OWNER'S DISCLOSURE. In compliance with the Beneficial Owner rules under the Bank Secrecy Act, each time an account is opened on behalf of a covered "legal entity," the representative opening the account will be required to complete a Certification of Beneficial Owners Form or Certification of Accuracy of Prior Certification Form. If/when your account is renewed or amended for any reason, we will rely on your most recent Certification of Beneficial Owners Form for this account as true and accurate so long as you agree to notify us of any changes in ownership or changed in regard to the Certification. Businesses excluded from these rules include: sole proprietorships, DBAs, unincorporated associations, personal trusts and individuals. Your acceptance of these terms and establishment of this account serve as your agreement to provide such notification.

GUARANTOR CONSENT. The Guarantor(s) hereby consents to the change in terms and reaffirms the guaranty remains in full force and effect and continues to guaranty the loan as modified.

PRIOR TO SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE AGREEMENT.

CHANGE IN TERMS SIGNERS:

BEDFORD WASTE SERVICES CORP.

By: _____
Robert S. LaMontagne, President of Bedford Waste
Services Corp.

X _____
Robert S. LaMontagne, Guarantor

LENDER:

MERRIMACK COUNTY SAVINGS BANK

X _____
Thomas R. Dustin, Vice President

Executive.Director@puc.nh.gov

amanda.noonan@puc.nh.gov

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