

DW 00-090

BODWELL WASTE SERVICES CORPORATION

Petition for Franchise Extension

Order Approving Settlement Agreement

O R D E R N O. 23,578

October 30, 2000

APPEARANCES: Wadleigh, Starr & Peters, PLLC by Charles F. Cleary, Esq. for Bodwell Waste Services Corporation and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

On April 20, 2000, Bodwell Waste Services Corporation (Bodwell or Company) filed with the New Hampshire Public Utilities Commission a petition seeking authority to extend the Company's franchise area into a portion of Londonderry, including the 98-home Mill Pond subdivision now under construction. The Commission conducted a duly noticed prehearing conference on June 20, 2000. There were no requests for intervention. Pursuant to the procedural schedule established at the prehearing conference, Bodwell and the Staff exchanged discovery and, on October 11, 2000, submitted a Stipulation and Settlement Agreement with a proposed resolution of all issues raised in the docket.

Bodwell received its original franchise, to provide sewage service in a Manchester subdivision known as Hampshire

Meadows North and South, in Order No. 20,404 (February 28, 1992). The subdivision plan was subsequently modified so that certain homes in the Rosecliff and Megan's Meadow subdivisions were included in the franchise area. As noted in the prefiled testimony of Douglas Brogan of the Commission's Engineering Department, Bodwell currently serves 403 customers. Exh. 6 at 1:7. Its sewage collection system includes two small pump stations that feed into a larger station, which in turn pumps into the City of Manchester's sewer system via a force main installed, owned and maintained by Bodwell. *Id.* at 1:8-11. The instant request would involve ultimately adding 124 single-family homes in neighboring Londonderry to the system, to be serviced entirely by a gravity sewer system feeding into one of Bodwell's two smaller existing pump stations, ultimately reaching the City of Manchester's system. *Id.* at 1:15-19.

In Order No. 22,295 (August 8, 1998), the Commission established Bodwell's current flat quarterly charge of \$38.72, with an additional rate surcharge of \$1.42 per customer in effect for approximately four more quarters. Customers are charged an additional sum, remitted to the City of Manchester, of \$11.00 per quarter plus \$1.55 per hundred cubic feet of water consumed. Both Bodwell and the developer of the Mill

Pond subdivision are owned by Robert S. LaMontagne.

II. SETTLEMENT AGREEMENT

The Stipulation and Settlement Agreement entered into by the Company and Staff indicates that no change in rates is anticipated as a result of the proposed expansion. Exh. 5 at I:3. Staff stipulated to Bodwell possessing the requisite technical, operational, managerial and financial ability to provide service in the expanded franchise area. *Id.* at III:15. Bodwell agreed to contribute the full capital cost of the new plant and facilities needed to serve customers in the expanded franchise area, minus an amount equal to the value of force main abandoned on Corning and Sheffield Roads in 2000 as a result of Bodwell connecting its system to the City of Manchester's sewer facilities further north on Bodwell Road. *Id.* at III:16. Bodwell stipulated that this abandoned main is no longer in service. *Id.*

The Agreement requires Bodwell to apply its current rates to customers in Londonderry until such rates are revised in a subsequent rate proceeding. *Id.* at III:17. The Company and Staff explicitly noted the apparent inability of the current rate structure to generate sufficient revenues to meet the Company's principal and interest obligation under an existing \$400,000 note from Mr. LaMontagne to Bodwell. *Id.* at

III:18. Bodwell agreed to report to the Commission annually, during the buildout of the Mill Pond subdivision, on its efforts to notify all prospective customers of the fact that they will be paying sewer charges both to Bodwell and to the Town of Londonderry (which has an intermunicipal agreement with the City of Manchester relating to the City's's provision of sewer service to homes in Londonderry). *Id.* at III:20. Additionally, the Company agreed to provide to the Commission a copy of a proposed customer bill clearly and separately delineating the Bodwell charges and the Town of Londonderry charges. *Id.* at III:22. Finally, Bodwell agreed that it would promptly develop continuing property records as required by Puc 706.06 and will certify in writing that it has done so within six months. *Id.* at III:23.

James Lenihan of the Commission's Economics Department testified at the hearing in support of the Stipulation and Settlement Agreement, supplementing his prefiled testimony. In addition, the Commission received into evidence the prefiled testimony of Mr. Brogan, referenced above. Mr. Lenihan indicated in his testimony that the intent of the Agreement is for the franchise expansion itself to have no effect on rates. He testified that it is appropriate to defer valuation of the abandoned force main until Bodwell has

complied with the requirement to develop continuing property records, noting that the Agreement is structured so that the valuation will ultimately have no effect on rates because the resulting decrease in rate base will be offset by the portion of the expansion project that does not comprise contributed plant.

III. COMMISSION ANALYSIS

Pursuant to RSA 374:22, I and RSA 374:26, the Commission may grant a utility's request for a franchise expansion after due hearing and upon a finding that such an expansion is for the public good. Upon a review of the record adduced at hearing, we conclude that the instant request, as conditioned by the Stipulation and Settlement Agreement entered into between Bodwell and the Commission Staff, is for the public good and should be approved.

We reach that conclusion, in particular, in light of the Company's commitment to assure that potential purchasers of homes in the Mill Pond subdivision are duly informed that they will be paying sewer charges both to the Company and to the Town of Londonderry. We also note and commend Bodwell's commitment that the franchise expansion will have no effect on currently authorized rates. It is obviously of some concern that the Company is unable to remain current on the debt

financing provided by its owner, particularly because that financing was in place at the time the Company's existing rates were set, by agreement with Staff, in 1998. However, we agree with the Company and Staff that the appropriate juncture for taking up such matters is in a separate rate proceeding. It suffices to note here that offsetting Mr. LaMontagne's prospective contribution in aid of construction by the value of the abandoned main is a reasonable compromise in the circumstances.

Finally, we share Staff's concern about Bodwell's failure to develop and maintain continuing property records as required by Puc 706.06. The problem arising in this docket - Bodwell's inability to value certain abandoned plant adequately - illustrates precisely why such a requirement exists and why compliance with it is essential for effective regulation of utilities in the public interest. We will strictly hold Bodwell to its commitment to attain full compliance with PUC 706.06 within six months and put the Company on notice that we will verify compliance through the Commission's audit staff.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation and Settlement Agreement entered into by Staff and Bodwell Waste Services

Corporation, recommending the request of the Company for franchise expansion, is approved; and it is

FURTHER ORDERED, that the Company shall submit revised tariff pages to reflect the expanded franchise territory within ten working days of this order; and it is

FURTHER ORDERED, that such revised tariff pages reflect that the Company shall apply its currently authorized rates to customers in Londonderry, effective on a prorated basis for bills rendered after the date of this order; and it is

FURTHER ORDERED, that the Company shall submit a revised map reflecting the amended franchise area within 30 days; and it is

FURTHER ORDERED, that the Company shall report to the Commission annually, on the anniversary date of this order, on the status and extent of its efforts to notify prospective customers that they will be incurring sewer charges from both the Company and the Town of Londonderry; and it is

FURTHER ORDERED, that prior to rendering any further bills the Company shall provide to the Commission a copy of a proposed customer bill clearly and separately delineating its own and the Town of Londonderry's charges; and it is

FURTHER ORDERED, that the company shall certify to the Commission within six months of the date of this order that it is in full compliance with the requirement for continuing property records as specified in Puc 706.06; and it is

FURTHER ORDERED, pursuant to RSA 374:27, that the franchise authority granted by this Order shall be exercised within two years, and shall not be exercised thereafter without further order of the Commission.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary