

**DW 04-144**

**BEDFORD WASTE SERVICES CORPORATION**

**Petition for Rate Increase**

**Order Approving Settlement Agreement**

**O R D E R   N O.   24,479**

**July 1, 2005**

**APPEARANCES:** Stephen P. St. Cyr & Assoc. by Stephen P. St. Cyr for Bedford Waste Services Corporation; Robert T. Moore for Bedford Three Corners Owners Association, Inc.; and Marcia A.B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.   PROCEDURAL HISTORY**

Bedford Waste Services Corporation (Bedford) is a public sewer utility providing sewer service to customers in portions of Bedford, New Hampshire. On November 1, 2004, Bedford filed with the New Hampshire Public Utilities Commission (Commission) a tariff seeking to permanently increase rates. Bedford sought to collect annual revenues of \$48,726 from its 78 residential customers, through a fixed quarterly charge of \$156.17 per customer. In support of the rate increase, Bedford provided testimony and supporting financial schedules.

Bedford requested in its testimony that, in the event the Commission suspended the permanent rate, the proposed permanent rate be made a temporary rate pursuant to RSA 378:27. On November 19, 2004, the Commission issued Order No. 24,403, which suspended the tariff filed by Bedford, and ordered a prehearing conference and technical session be held on January 4, 2005.

On December 29, 2004, the Commission received a Petition to Intervene from the Bedford Three Corners Owners Association, Inc. (Association). At hearing, there was no opposition to the Association's Motion to Intervene.

Subsequent to the hearing and technical session, the Commission received and approved a procedural schedule which set a hearing on temporary rates for January 28, 2005. On January 21, 2005, Staff, Bedford, and the Association filed a Stipulation on temporary rates for the Commission's consideration at hearing and, on February 11, 2005, the Commission issued its Order No. 24,429 approving the Stipulation on temporary rates. The Commission approved Bedford's existing rate of \$137.21 per quarter per customer as a temporary rate.

In accordance with the procedural schedule, Staff filed the testimony of Jayson P. Laflamme, Utility Analyst, and Douglas W. Brogan, Water Engineer. The Association also filed a statement of its positions. Staff, Bedford, and the Association filed with the Commission a Stipulation Agreement (Stipulation) on June 3, 2005, and the Commission held a hearing on the matter on June 9, 2005.

On June 15, 2005, Bedford filed its request for recovery of rate case expenses, as well as its calculation of a recoupment of temporary rates. Bedford sought to recover \$13,295.71 in rate case expenses and stated that would result in a total surcharge of \$170.46 per customer. Bedford proposed a recovery period of 8 billing quarters in which it would bill each customer a surcharge of \$21.31 per quarter. In addition to seeking recovery of rate case expenses, Bedford submitted a calculation of its temporary rate recoupment of \$2,413.12. Bedford proposed a recovery period of 2 billing quarters, in which it would bill each customer a surcharge of \$15.47 per quarter.

On June 17, 2005, Staff filed its recommendation on rate case expenses and temporary rate recoupment. Staff determined that \$665 of the expenses should be disallowed because they were deemed to be related to the Commission Staff's audit of Bedford's books and records. Staff stated that the Commission traditionally does not allow recovery of audit-related

expenses in rate case expenses. Accounting for this deduction, Staff recommended the Commission approve Bedford's recovery of \$12,630.71. Staff recommended a surcharge of \$161.93 per customer.

Upon review of Bedford's calculation of the temporary rate recoupment, Staff determined that Bedford's calculation included recovery of \$1,523 associated with a Step Adjustment, as well as \$500 associated with insurance. Staff stated that the Stipulation prohibited inclusion of the amounts. Removing these two items, Staff recommended the Commission approve \$1,570.14 as Bedford's temporary rate recoupment. Staff stated this would result in a combined surcharge of \$20.13 per customer. Because Staff believed that Bedford's proposed 8 quarter recovery period would be onerous for customers, it recommended the surcharges be collected over 12, rather than 8 billing quarters. Under Staff's recommendation, customers would be billed a combined surcharge of \$15.17 per quarter for 12 quarters, beginning with bills issued on or about July 1, 2005.

## **II. TERMS OF SETTLEMENT AGREEMENT**

Staff, Bedford, and the Association entered into a Stipulation resolving issues regarding customer education, compliance with Commission reporting and record keeping requirements, collection of accounts receivable, rate base, test year adjustments, rates, insurance, bidding of certain expenses, and maintenance of a depreciation fund. These terms are summarized below.

### **A. Customer Education**

Bedford agrees to annually provide all customers with educational materials regarding disposal of allowable waste material. Bedford will also provide the Association with a copy of the Annual Report it files with the Commission.

### **B. Reporting and Accounting Requirements**

Bedford will comply with the Uniform System of Accounts (USOA) for Sewer Utilities. Bedford will implement and maintain a Work Order System and will maintain

detailed and current Continuing Property Records (CPRs) on a consistent basis. At the conclusion of six months after the date of the order approving the stipulation, the Commission Audit Staff will conduct a compliance audit and will report its findings and conclusions to the Commission.

If the Commission Audit Staff finds that Bedford has not achieved full compliance, Bedford will pay a \$100 per day fine. The daily fine is capped at \$100 per day for non-compliance and any fines will be deposited in the Depreciation Fund Account, with proof of deposit provided to the Commission and Association within 7 business days of the deposit.

C. Past-due Accounts Receivables

Bedford will make a filing within 15 days from the date of an order approving this Stipulation to update its collection procedures and fees and will aggressively pursue the collection of past-due accounts receivables. Bedford will include in its Annual Report, beginning with 2005, and for every year thereafter, an Aged Accounts Receivable Report as well as a report of its collections efforts.

D. Rate Base and other Expenses

The parties agree that it is appropriate for Bedford's test year rate base components to be calculated on a 5-quarter average, that it is appropriate for Bedford's test year expenses to include costs incurred for AAA pump in the amount of \$621; and that Bedford, the Association, and Staff agree that Bedford shall insure its utility facilities and that the first year insurance premium of \$500 shall be included in the revenue requirement provided for in this Agreement. Bedford shall file proof of insurance coverage with the Commission within three months of the Commission's Order approving this Agreement. Bedford and Staff agree that the insurance expense shall not be included in the calculation of temporary rate recoupment.

E. Depreciation Fund Account

Bedford will make deposits to the Depreciation Fund account for year 2001 in the amount of \$5,032 and for year 2002 in the amount of \$3,340. At hearing, Bedford testified that it had made such deposits and offered proof of deposit as Hearing Exhibit 8.

The Stipulation further provides that deposits for year 2003 shall reflect deductions for State and Local Property Taxes paid for in 2003 and that subsequent years' deposits shall also reflect deductions for State and Local Property Taxes paid during that given year. This provision does not preclude Bedford from requesting Commission approval to withdraw funds from the Depreciation Fund account for expenditures that were not known at the time of the test year. The annual debt service amount used as part of the calculation for deposits to the Depreciation Fund account shall not exceed the scheduled annual debt service for any note with shareholders.

Within 30 days of a Commission order approving the Stipulation, Bedford will seek to place the Depreciation Fund with an institution(s) which will provide a return on the fund assets greater than the return the fund is presently receiving. Bedford will notify the Association and Staff of its investment choices at least 14 days prior to committing any funds to new investments. Bedford agrees to consider the comments of the Association and Staff with respect to those investment choices.

Bedford agrees that it will provide the Association with a form E-22 at the same time it may be required to file a form E-22 with Commission Staff for any anticipated capital improvements, whether to be funded from the Depreciation Fund or not. Bedford agrees to consider the comments of the Association, if any, in the same manner it considers comments from Commission Staff.

Bedford agrees that Bedford will provide with its PUC Annual Report an accounting of the annual activity in the Depreciation Fund, and agrees to provide copies of the year-end investment statements, redacted as appropriate to protect confidentiality, with the Annual Report.

F. Management Fee

Staff and the Parties agree to a Management Fee of \$4,000 to be included in the Bedford's revenue requirement. Bedford agrees to file with the Commission within 30 days of Commission approval of the Stipulation, a management agreement between Bedford and Stephen P. St. Cyr & Associates regarding work Mr. St. Cyr performs on behalf of Bedford.

G. Competitive Bidding

Within 3 months of a Commission order approving this Stipulation, Bedford will seek competitive bids for system maintenance and repair work performed by Dave's Septic and AAA pump. Bedford will provide a summary of its reasons for its selection of a bidder to perform the work with its Annual Report filed with the Commission. Bedford will seek competitive bids every two years thereafter.

H. Permanent Rate Increase

Staff and the Parties recommend the Commission approve a 9.97% increase in Bedford's permanent rates and that these rates be reconciled pursuant to RSA 378:29. Staff and the Parties recommend the Commission approve a total revenue requirement, inclusive of a step adjustment detailed below, of \$48,601.

I. Step Adjustment

To take into consideration 2004 plant additions, Staff and the Parties recommend the Commission approve one step adjustment to its permanent rates in the amount of 3.23%, effective with the Commission order approving the Stipulation.

**III. COMMISSION ANALYSIS**

New Hampshire RSA 378:7 authorizes the Commission to fix rates pursuant to an order after a hearing. In determining just and reasonable rates, the Commission must balance the consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In circumstances where a utility wishes to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8.

Applying these standards to the instant case, and after reviewing the record before us, we find the rates proposed by the Staff and the Parties to be just and reasonable. In its initial filing, Bedford sought to increase its rates by 13.82% in order to achieve a revenue requirement of \$48,726. Bedford cited the recent assessment of state and local utility property taxes as one of the reasons for the rate increase. Exh. 3 at 3. In its pre-filed testimony, Staff agreed that Bedford was operating with a deficiency but recommended a revenue requirement of \$44,976, \$3,750 less than Bedford's proposal. Exh. 4 at 3 lines 18-22 and at 4 lines 1-2. The Stipulation yields a revenue requirement of \$48,601 and represents a combination of a 9.97% rate increase, based on a 2003 test year, and a 3.23% step adjustment to take in to consideration post test year plant additions. Exh. 6 at 18. Staff and the Parties made certain adjustments to Bedford's initial proposal to produce the revenue requirement proposed in the Stipulation. We find the revenue requirement and rates resulting therefrom to be reasonable.

We also find reasonable the Stipulation's provisions regarding customer education, supplements to Annual Reports filed with the Commission, collection procedures, rate base, management agreement, maintenance expense, insurance, and bidding. With respect to the depreciation fund account we remind Bedford that in *Bedford Waste Services Corporation*, 85 NH PUC 31, 36 (2000) we invoked our authority to require Bedford to maintain a depreciation account and ordered Bedford to place certain excess revenues in that account. Staff's pre-filed testimony indicated that Bedford's sewer system utilizes five leach field sites within the development, and that replacement of the leach fields could cost \$320,000. Exh. 5 at 1 lines 16-17 and at 3 line 5. Given that Bedford's annual revenue requirement is \$48,601, customers could face substantial rate increases as Bedford seeks to fund eventual replacement of the leach fields. It is thus imperative that Bedford comply with the mandate that deposits be made to that account. We instruct Staff to review Bedford's Annual Reports for the status of the depreciation fund account and alert us to any non-compliance.

With respect to Bedford's record keeping and accounting practices, Staff's pre-filed testimony identified areas of non-compliance. We note the Stipulation before us requires Bedford to remedy these deficiencies or face stipulated per-day penalties. We instruct Bedford to promptly comply with the Commission's Uniform System of Accounts for Sewer Utilities, identified in N.H. Admin. Rule, Puc 706, and as specified in the Stipulation. We acknowledge the Stipulation allows Bedford approximately six months to come into compliance; however, we note these rules went into effect March 25, 1997 and Bedford should have come into compliance shortly thereafter. Indeed, we previously ordered Bedford to comply with the USOA's continuing property records requirement and gave Bedford six months to certify compliance. *Bedford Waste Services Corp.*, 85 NH PUC 31 (2000). Bedford certified its compliance on

August 10, 2000, yet Staff determined during discovery that Bedford CPRs were still in noncompliance. Exh. 4 at 14 lines 17-22. Notwithstanding this pattern of noncompliance, we will accept Bedford's testimony that it misunderstood the level of detail required for continuing property records and that its computer system may have hampered its compliance. Hearing Transcript of June 9, 2005 (6/9/05 Tr.) at 20 lines 10-18. At hearing, Bedford also testified that it had corrected some of the USOA deficiencies. *Id.* In order to encourage Bedford to cure all deficiencies, we will approve the Stipulation's six-month grace period and penalty provisions in the event of future noncompliance.

While we support the Stipulation with respect to the \$100 penalty for non-compliance, we will defer ruling on the application of the proceeds until such time as there is an event of non-compliance.

With respect to recovery of rate case expenses, we have reviewed Staff's recommendations and agree with Staff that recovery of audit expenses as rate case expenses is inappropriate. Response to audit requests is a continuing obligation of utilities under RSA 374:18 and is recognized in calculating the permanent rate in RSA 378:28. Allowing expenses associated with audit requests in the surcharge for rate case expenses would in effect amount to double recovery of these expenses.

With respect to temporary rate recoupment allowed pursuant to RSA 378:29, we will presume that signatories to an agreement will adhere to the requirements of that agreement. Staff's recommendation noted that Bedford had included in the calculation of the recoupment an amount for insurance. We note that section H of the Stipulation expressly states that "the insurance expense shall not be included in the calculation of temporary rate recoupment." Exh. 6 at 6. For this reason, we will deduct \$500 relating to insurance from Bedford's calculation.



With respect to Staff's recommendation that the step adjustment be removed from calculation of the temporary rate reconciliation, we also find that reasonable. The Commission has traditionally excluded step adjustments from calculations performed pursuant to RSA 378:29. See, *Lakes Region Water Company*, 88 NH PUC 382 (2003); *Pennichuck Water Works, Inc.*, 87 NH PUC 97 (2002); and *Pennichuck Water Works, Inc.*, 83 NH PUC 197 (1998). The Commission is authorized to set temporary rates and permanent rates pursuant to RSA 378:27 and RSA 378:28, respectively. Pursuant to RSA 378:29, the Commission is authorized to permit a surcharge to recover the difference between the gross income obtained from temporary rates and the gross income obtained "under the rates finally determined." In Commission Order No. 24,429 (February 11, 2005), we approved implementation of temporary rates effective for service on or after February 1, 2005. According to the Stipulation, Staff and the Parties agreed to a 9.97% permanent rate increase. Exh. 6 at 6. Staff testified that the proposed rate increase contained in the Stipulation would result in a \$155.77 charge per customer per quarter, which is an increase of \$74.25 on an annual basis, or \$18.56 per quarter. 6/9/05 Tr. at 42 lines 9-14. Bedford testified that it sought to implement permanent rates July 1, 2005. 6/9/05 Tr. at 42 lines 20-23. Staff and the Parties request the Commission approve a step increase effective no sooner than the Commission order approving the Stipulation. Staff and the Parties address the step adjustment separately from permanent rates. Based on this intent to separate the step adjustment from permanent rates and our reading of RSA 378:27, 378:28, and 378:29, we conclude that Staff's exclusion of the step adjustment from temporary rate reconciliation is reasonable. We will thus approve reconciliation between the temporary rate of \$137.21 per quarter and the permanent rate of \$155.77 charge per quarter for the time period February 1, 2005, through June 30, 2005.

With respect to recovery of the surcharges proposed, we agree with Staff that recovery of rate case expenses over 8 billing quarters and recovery of the temporary rate recoupment over 2 billing quarters would be onerous for customers. This would result in a surcharge of \$30.31 for 2 billing quarters and \$20.24 for 6 billing quarters. We accept and approve Staff's recommendation that the surcharges be combined and recovered over 12 billing quarters to produce a surcharge of \$15.17 per quarter, beginning with bills issued on or about July 1, 2005. We find that Staff's recommended surcharge is consistent with past Commission decisions, minimizes rate impacts on customers, and ensures that Bedford fully recovers its expenses and rates.

Based upon our review of the Stipulation as well as the supporting testimony and exhibits provided at the hearing, we find that the terms of the Stipulation are reasonable and will benefit customers of Bedford. We conclude that the Stipulation and the rates established therein are just and reasonable and are consistent with the public interest.

As a final matter, the Association sought intervention without objection. Inasmuch as the Association has demonstrated "rights, duties, privileges, immunities or other substantial interests that may be affected by the proceeding" and intervention will not impair the orderly interests of justice, pursuant to RSA 541-A:32, I (b) and (c), we will grant the requests to intervene.

**Based upon the foregoing, it is hereby**

**ORDERED**, the Stipulation is APPROVED in all parts except as to disposition of any penalties collected in the future, as discussed herein; and it is

**FURTHER ORDERED**, that Bedford Waste Service Corporation shall submit reports to the Commission as identified in the Stipulation as specified above; and it is

**FURTHER ORDERED**, that Bedford Waste Services Corporation is authorized to recover \$12,630.71 in rate case expenses in a surcharge to customer bills over twelve quarters as specified above; and it is

**FURTHER ORDERED**, that Bedford Waste Services Corporation is authorized to recover a temporary rate recoupment amount of \$1,570.14 in a surcharge to customer bills over twelve quarters as specified above; and it is

**FURTHER ORDERED**, that Bedford Waste Services Corporation file with the Commission a compliance tariff within ten days of the date of this order; and it is

**FURTHER ORDERED**, that Bedford Three Corners Owners Association Inc.'s request to intervene is GRANTED.

By order of the Public Utilities Commission of New Hampshire this first day of July, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary