

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 12-346

BEDFORD WASTE SERVICES CORPORATION

Petition for Financing

Order Approving Financing

ORDER NO. 25,563

August 7, 2013

I. BACKGROUND

On December 3, 2012, and pursuant to RSA 369:1, Bedford Waste Services Corporation (Bedford or the Company) filed a petition for authority to refinance an existing note, amounts past-due on that note, and 2012 improvements to its system. Along with the petition, Bedford submitted the prefiled testimony of Stephen P. St. Cyr, a financial consultant to the Company. Bedford is a regulated sewer utility pursuant to RSA 362:2 and serves 78 customers in a limited portion of the Town of Bedford. Bedford seeks to issue new financing in the amount of \$170,000, with a term of 15 years and at an interest rate of 8%. This new financing, which is in the form of a loan with the Company's owner Robert S. LaMontagne, is to refinance an existing loan with a current balance of \$111,837; to repay three missed semi-annual payments on that loan totaling \$29,883; to pay the balance owed on 2012 improvements made to Bedford's leach field rejuvenation project totaling \$24,280; and to pay the costs of pursuing the financing of \$4,000. Bedford indicates that it sought financing from local banks but was not able to acquire bank financing. The company subsequently requested its owner to provide financing, and the owner agreed. The proposed new loan is at the same interest rate as the existing loan. The

company will not need to seek new rates because the term of the new loan is 15 years and the corresponding payment amounts are almost identical to those previously being made by the company.

Bedford states that a portion of the new financing will be used to pay the balance owed on its 2012 leach field rejuvenation project. In 2011 the company had an assessment made of the condition of its five leach fields, and in 2012 had one of them rejuvenated. In addition the company replaced existing vents at the other four fields, and added additional vents, to increase air flow throughout the leach fields. These projects were completed prior to the end of 2012.

On January 3, 2013, the Commission issued an Order of Notice establishing a prehearing conference on February 12, 2013. On February 5, 2013, the Commission received a request for intervention from Bedford Three Corners Owners Association, Inc. (Home Owners Association). Subsequent to the prehearing conference, Commission Staff filed a letter on February 14, 2013 with an agreed-upon procedural schedule, which was approved by secretarial letter dated February 25, 2013. Staff and the parties agreed to two sets of discovery requests before recommendations would be submitted to the Commission on April 9. A subsequent approved modification of the procedural schedule moved the date for submission of recommendations to April 30, 2013.

On April 30, 2013, the Home Owners Association and Staff filed recommendations. On May 10, 2013, Bedford filed comments on those recommendations. On June 7, 2013, the Commission issued a secretarial letter requesting additional information from Bedford. Specifically the Commission queried why Bedford believes that an 8% interest rate is appropriate given that the loan approved in 2000 had an 8% interest rate and interest rates have

declined since 2000. On June 21, 2013, Bedford responded stating that the proposed loan was the only loan available to the company, despite its efforts to seek outside financing. Bedford argued that the rate could have been higher, given Bedford's history of missed payments on the existing loan. Bedford further stated that it is not proposing an increase in rates as a result of the proposed financing and the recent capital improvements, and that the loan terms help to maintain the company's present cash flow within its current rates.

II. HOME OWNERS ASSOCIATION AND STAFF RECOMMENDATIONS AND BEDFORD RESPONSE

A. HOME OWNERS ASSOCIATION RECOMMENDATION

The Home Owners Association filed its recommendation on April 30, 2013. The Home Owners Association asserted that Bedford has not met its burden of proof that the financing request was in the public interest, and the financing should be rejected. The Home Owners Association opined that the proposed 8% interest rate was not commercially reasonable, pointing to evidence produced during discovery that showed that Centrix Bank was prepared to provide financing at a rate of 4.75%, fixed for five years and adjustable thereafter. In addition, the Home Owners Association asserts that the company made no effort to seek fixed rate financing that may have been higher than 4.75% but lower than 8%. The Home Owners Association also expressed concerns with the costs proposed to be financed; the service provided by Bedford and particularly the lack of communication on basic matters of concern with the system; and the responsibility of individual members to maintain equipment located on their premises. The Home Owners Association also provided recommendations on the operational side of the utility, requesting that the Commission direct the company to physically inspect the leach fields

annually and provide a report of the results to the Home Owners Association and Commission Staff; provide a copy of all recorded plans of the system; provide a copy of all records relating to the sewer-related equipment located within the homes of the residents of the Home Owners Association; provide periodic summaries of maintenance activities; provide a door tag or similar document following the completion of any work performed on a homeowner's property; mark the location of all septic tank openings at the time of the next scheduled pumping; consult with the Home Owners Association board prior to performing any maintenance or repair activity expected to cost in excess of \$5,000; provide the Home Owners Association owners detailed information on the pumps for each of the 78 homes; and provide educational materials regarding the sewer system, its proper maintenance, and what steps are appropriate in an emergency.

B. STAFF RECOMMENDATION

Staff supported granting the petition for the proposed financing. Staff noted that the specific components of the proposed loan of \$170,000 were revised through discovery, with retirement of the existing note balance now \$101,232; repayment of four past due payments totaling \$38,949; balance owed on the capital improvements of \$16,177; financing costs of \$8,000; and replenishment of operating cash of \$5,642. Staff stated that, while the proposed 8% interest rate may seem somewhat high, Staff finds it acceptable in light of the company's inability to obtain financing from any other source. Staff further recommended that the Commission direct Bedford to follow up upon its recent capital improvements efforts by clearly delineating any division of responsibility between the company and the Home Owners Association for mowing and brush and tree removal over and around the leach fields; by reporting on the status of remaining work on protective devices for the leach field vents; and by

resuming its annual customer education efforts regarding materials suitable and unsuitable for disposal in the system.

C. BEDFORD RESPONSE

Bedford provided a response to the Home Owners Association and Staff recommendations on May 10. Bedford opposed the Home Owners Association's recommendation and took issue with the characterization that the proposed Centrix Bank financing was offered at 4.75% fixed for five years. Bedford pointed out that Centrix made it clear it was not making a commitment to offer that financing. Bedford further indicated that none of the lending institutions it had approached would consider fixed rate financing. With respect to the specific operational recommendations from the Home Owners Association, Bedford suggested it intends to adopt and implement some of those recommendations but does not believe it is necessary for the Commission to order the Company to do so. Bedford stated that each additional requirement takes time and money and would put upward pressure on rates. With respect to the Staff recommendation, Bedford indicated that it supported the Staff's additional recommendations for following up on recent work done in the system.

III. COMMISSION ANALYSIS

Public utilities may issue evidence of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." RSA 369:1. In order to insure that the public good is protected, we look beyond actual terms of the proposed financing to the use of the proceeds and the effect on rates. *See Appeal of Easton*, 125 N.H. 205, 211 (1984). As we have previously noted, "certain financing related circumstances are routine, calling for more limited Commission review of the purposes and

impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.” *In re Public Service Company of New Hampshire*, Order No. 25,050, 94 NH PUC 691, 699 (2009).

We find that a limited review of the proposed financing is appropriate in this case.

Bedford has asked to borrow \$170,000 from its shareholder in order to refinance an existing note, repay missed payments on that existing note, pay its remaining bills for recent capital improvements, and cover the costs of this financing. There will be no immediate rate impact from this financing, because Bedford’s current earnings are adequate, and there is no cash flow impact on the Company because the payments would stay virtually the same. While we note the concerns of the Home Owners Association regarding the interest rate on the proposed financing, and while we share that concern, we will approve the financing as proposed. In other dockets regarding small utilities we have recognized the difficulties in acquiring capital, and while the 8% rate may be high compared to other financings we have approved recently, the willingness of Bedford’s owner to provide capital is valuable to the utility’s ability to provide safe and adequate service. After review of the record, we approve the financing and find that the terms and conditions of the loan are reasonable under the circumstances. We find the use of the proceeds to be reasonable and appropriate because the funds will be used to refinance an existing loan, bring past due payments current, and finance recent capital improvements.

Both the Home Owners Association and Staff have provided additional recommendations for our consideration, primarily in areas related to the operation of the utility. We believe several of these recommendations are appropriate either as part of an effort to engage customers in the safe operation of the system, or as a matter of basic management relations between Bedford and

the Home Owners Association. We therefore impose the conditions recommended by Staff and agreed to by Bedford: Within thirty days of this order, Bedford shall file a statement of the division of responsibility between Bedford and the Home Owners Association for mowing and tree and brush removal over and around the leach fields, file a report on the status of remaining work to be done on protective devices for the leach field vents, and resume the distribution of educational materials regarding proper disposal practices for homeowners.

Additionally, we impose on Bedford several of the conditions recommended by the Home Owners Association. Bedford shall therefore provide to the Home Owners Association copies of all existing recorded plans of the system, provide to the Home Owners Association copies of updated and revised plans of the system as they are recorded in future, and consult with the Home Owners Association prior to performing any maintenance, repair, or construction expected to exceed \$5,000 in cost. With regard to this latter condition, we do not go so far as to require the Home Owners Association's approval of maintenance, repair, or construction. Instead, we intend only to encourage Bedford and the Home Owners Association to establish a dialogue at the Home Owners Association board meetings such that the Home Owners Association's concerns can be taken into consideration as the utility makes decisions in future. Finally, we require Bedford to distribute bill inserts summarizing planned maintenance, repair, and construction activities along with summaries of recently completed work of that nature on an ongoing basis, and to provide a homeowner with a door tag or other notice after completing work on that homeowner's property. The remaining conditions requested by the Home Owners Association are denied as unnecessarily burdensome.

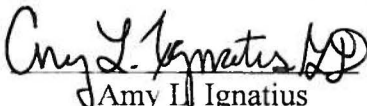
Having reviewed the record we find that Bedford has demonstrated that, as conditioned above, the use of the funds is reasonable and appropriate and the financing is consistent with the public good. The financing has no impact on the company's current cash flows and has no immediate impact on rates. We approve the financing of \$170,000, on a term of 15 years and at an interest rate of 8%, as proposed.

Based upon the foregoing, it is hereby

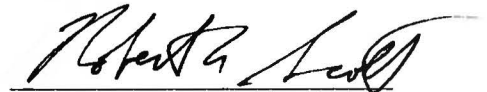
ORDERED, that Bedford Three Corners Owners Association, Inc.'s request for intervention is **GRANTED**; and it is

FURTHER ORDERED, that pursuant to RSA 369:1, the \$170,000 financing as proposed by Bedford Waste Services Corporation, under the terms and conditions presented in the petition and as conditioned above, is hereby **APPROVED**.

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 2013.


Amy I. Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director