

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-058

BEDFORD WASTE SERVICES CORPORATION

Request for Change in Rates

Order Denying Mr. Steven Rizzo's Motion for Hearing on Order No. 26,912

O R D E R N O. 26,931

January 8, 2024

In this order, the Commission denies Mr. Steven Rizzo's motion for reconsideration and request for a hearing on Order No. 26,912 (December 14, 2023), which both approved Bedford Waste Services Corporation's (Bedford or the Company) request to recover rate case expenses and reconcile the temporary- to- permanent rates and granted the Company's motion for confidential treatment.

All docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-058.html>.

I. BACKGROUND

Bedford is a sewer utility providing sewer services to 78 customers in Bedford, New Hampshire. On October 17, 2022, Bedford petitioned the Commission for authority to implement new permanent rates for water services. On March 30, 2023, the Commission issued an order authorizing temporary rates. See Order No. 26,793. On June 28, 2023, Bedford and the New Hampshire Department of Energy (DOE) filed a settlement on permanent rates (Settlement). The Commission held a final hearing on the proposed Settlement on July 12, 2023. On September 12, 2023, the Commission approved both the Settlement and resulting permanent rates. See Order No. 26,884.

Per RSA 541:3, the deadline for appealing Order No. 26,884 was October 12, 2023. No party appealed the order.

Mr. Rizzo appeared at the July 12, 2023, hearing. Mr. Rizzo did not file a petition to intervene in Docket No. DW 22-058. He was allowed to present his concerns as a public comment. In his public comments, he stated that he had been a customer of Bedford for 18 years. His concerns in July 2023 included the increasing rates and lack of communication between Bedford and its customers. *See* Order No. 26,884 (September 12, 2023) at 5. Mr. Rizzo objected to the Settlement at the hearing.

In addition to setting permanent rates, Order No. 26,884 authorized Bedford to file both its request to recover rate case expenses pursuant to New Hampshire Code of Administrative Rules, Puc 1905.02 and its request to recoup the difference between the temporary to permanent rates within thirty days of the order. *See* Order No. 26,884 at 15.

On September 27, 2023, Bedford filed its request to recover rate case expenses and a motion for confidential treatment. Bedford and the DOE engaged in discovery on the issue of rate case expenses and the temporary-to-permanent rate recoupment surcharge. On November 14, 2023, the DOE filed its technical statement.

The Commission reviewed the rate case expenses and the reconciliation documents. The Commission noted that the parties had agreed to recovery over a period of 12 quarters which was greater than the initial request from Bedford of 8 quarters. The additional time to recover expenses was found to be in the public interest to minimize the effect of recovery on the Bedford ratepayers. The Commission also found that Bedford's request to recover its rate case expenses in the amount of \$47,864, which when divided by the customer base of 78 yields a surcharge of \$51.14 per quarter for 12 quarters, to be just and reasonable pursuant to RSA 378:7.

Furthermore, the Commission found that Bedford had accurately calculated its recoupment from temporary to permanent rates of \$7,101.29. Accordingly, the proposed surcharge of \$7.59 per quarter for 12 quarters to recoup the difference between temporary to permanent rates was found to be just and reasonable. See Order No. 26,912. The effective date of Order No. 26,912 is January 16, 2024. The order was issued on a *nisi* basis. The ordering clauses include the following provisions:

FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than December 21, 2023 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 28, 2023;

See Order No. 26,912 at 7. Additionally, Order No. 26,912 grants Bedford's motion for confidential treatment pertaining to legal invoices. Specifically, the number of hours charged and Bedford's legal counsels' hourly rate were deemed confidential information and therefore redacted from the public record. See Order No. 26,912 at 4–6. On December 19, 2023, the Commission received a two-page correspondence from Mr. Rizzo entitled "Request for Hearing on Decision." On December 28, 2023, Bedford filed its "Response to Request for Hearing."

II. MR. RIZZO'S MOTION FOR HEARING

Mr. Rizzo's¹ December 19, 2023, motion for hearing questions a "74% increase in rates" from \$155 per quarter to approximately \$270 per quarter without a hearing.

¹Mr. Rizzo included in his motion a signature byline for a condominium association. However, there is no evidence, other than this signature line, that Mr. Rizzo is authorized to speak for his condominium association. Therefore, the Commission assumes Mr. Rizzo filed this motion strictly on his own behalf.

See Motion at 1. Mr. Rizzo further objects to the Commission's granting of Bedford's motion for confidential treatment of its attorney billing invoices. It is unclear from Mr. Rizzo's motion how he calculated the increase.

III. BEDFORD WASTE SERVICES CORPORATION'S RESPONSE TO MOTION FOR HEARING

Bedford objects to Mr. Rizzo's motion. First, Bedford asserts that the motion is untimely to the extent it challenges the permanent rates because the rates were established by Order No. 26,884 on September 12, 2023 and the motion for rehearing was not filed within 30 days, as required by statute. Bedford further asserts that, even if his motion was timely, Mr. Rizzo has failed to provide any facts or law to support his request. Second, with respect to the motion for confidential treatment, Bedford notes that the time to object was within 10 days of the filing of the motion. Because Bedford filed the motion on September 27, 2023, Bedford argues that Mr. Rizzo should have filed an objection by October 9, 2023. Bedford maintains that, because Mr. Rizzo did not file an objection to the motion by that date, the Commission should not consider his current challenge to the confidentiality of its attorneys' hourly billing rates. Furthermore, Bedford argues that, even if the Commission were to consider Mr. Rizzo's challenge, the Commission should reject it on its merits because Bedford's decision to disclose the total amounts paid for legal billing while concealing the hourly rates was consistent with the Commission's past practices.

IV. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" when the moving party demonstrates that the decision is "unlawful or unreasonable." RSA 541:3, RSA 541:4; see *Rural Telephone Companies*, Order No. 25,291 at 9 (November 21, 2011); see also *Eversource Energy*, Order No. 26,079 at 8 (November 29, 2017). Good reason exists if there are matters that the Commission "overlooked or mistakenly

conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or if the movant presents new evidence that could not have been presented in the underlying proceeding, *O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977); see also *Hollis Telephone, Inc.*, Order No. 25,088 at 14 (April 2, 2010). In denying a motion for rehearing, the Commission must provide the reasoning behind its decision. RSA 363:17-b, II.

In his motion for reconsideration of Order No. 26,912, Mr. Rizzo challenges two of the Commission’s actions: (1) the increase in rates²; and (2) the decision to grant confidential treatment for Bedford’s billing hours. The Commission will consider each challenge in turn.

With respect to permanent rates, the Commission finds Mr. Rizzo’s challenge untimely. The issue of the reasonableness of the 2023 permanent rates was adjudicated by the September 2023 order approving the settlement agreement and resulting permanent rates. See Order No. 26,884.

Pursuant to RSA 541:3, a motion for rehearing concerning the approved permanent rate and Step I rate must have been received at the Commission by October 12, 2023. Because Mr. Rizzo did not file a motion for rehearing by that time, the Commission rejects it on that basis alone.

However, even if Mr. Rizzo had filed his December 19, 2023 correspondence on or before October 12, 2023, his request for rehearing on the permanent rate would have been denied. Prior to 2022, Bedford last increased its permanent rates in 2004. The increase that Mr. Rizzo appears to reference in his December 19, 2023

² Mr. Rizzo objects to a 74% increase in Bedford’s rates from \$155 per quarter to approximately \$270 per quarter. It is unclear if he is objecting solely to the increase in permanent rates approved by Order 26,884 or including the additional surcharge approved for collection of the rate case expense by Order No. 26,912. Because it is unclear how he arrived at this number, this order will address both the Permanent Rate Order and the Rate Case Expense Order.

correspondence is the 2004 permanent rate to the 2023 rate inclusive of the Step I rate and the surcharges for recoupment of the expenses and adjustment from temporary to permanent rate. Mr. Rizzo asserts that these adjustments were made without hearing. Mr. Rizzo fails to acknowledge the hearings held for both the temporary rate and the permanent rate. Mr. Rizzo's argument against the amount of rate expenses fails to articulate an error in the calculation. *See* December 19, 2023 Motion. However, Mr. Rizzo fails to identify any expense that was misidentified by the Commission as improperly approved.

Although unclear from his motion, if Mr. Rizzo were challenging the authorization of Bedford's rate case expenses, his motion for hearing would be denied, as he fails to articulate any expense that was approved that is not consistent with law and rules.

The Commission's review of the rate case expenses and the reconciliation of the temporary to permanent rate was thorough. It involved review of the DOE's technical statement and attachments. The attachments included responses to an October 6, 2023 DOE discovery request. The type of expenses put forth by Bedford are articulated as allowable expenses pursuant to Puc 1906.01. For every stated expense, Bedford produced a corresponding invoice. The DOE's reconciliation of expenses and invoices resulted in the disallowance of three (3) billed expenses totaling \$1,355.00. The disallowed expenses were found to be not directly associated to the rate case docket. *See* November 14, 2023, DOE Technical Statement at 2. Therefore, it is found that approval of Bedford's expense request was based in RSA 365:8, X and Puc chapter 1900. Mr. Rizzo's request for hearing is denied based on his failure to articulate an error of law or fact whereby recovery of the expenses provided is an error.

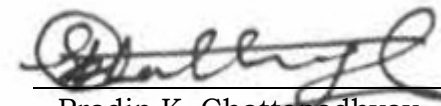
The Commission next addresses Mr. Rizzo's request for a hearing concerning the Commission's granting of the motion for confidential treatment of line items on Bedford's legal invoices. As properly noted by Bedford's legal counsel, Mr. Rizzo failed to properly file an objection to the motion for confidential treatment. The Commission rejects Mr. Rizzo's objection on that basis alone.

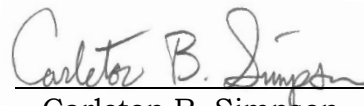
However, even if Mr. Rizzo's objection had been timely filed, the Commission would still deny it because his request for hearing fails to articulate a basis for reconsideration. As noted in Order No. 26,912, motions for confidential treatment of attorney billing rates have been historically protected by the Commission pursuant to RSA 91-A. In that order, the Commission found that disclosure of billing rates could result in a competitive disadvantage to attorneys hired by Bedford. The Commission further found there was no indication that disclosure of the information would inform the public about the workings of the Commission. The Commission concluded that confidential treatment was appropriate on these grounds. Therefore, Mr. Rizzo has failed to articulate any basis for reconsidering the conclusion or the predicate findings.

Based upon the foregoing, it is hereby

ORDERED, that Mr. Rizzo's Motion for hearing of Order No. 26,912 is DENIED as discussed herein;

By order of the Public Utilities Commission of New Hampshire this eighth day of January 2024.


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-058

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