

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

February 12, 2013 - 10:00 a.m.
Concord, New Hampshire

NHPUC FEB14'13 AM 9:34

RE: DW 12-346
BEDFORD WASTE SERVICES CORPORATION:
Petition for Approval of Refinancing.
(Prehearing conference)

PRESENT: Alexander F. Speidel, Esq.
(Presiding as Hearings Examiner)

Sandy Deno, Clerk

APPEARANCES: Reptg. Bedford Waste Services Corporation:
Stephen P. St. Cyr
Robert S. LaMontagne

Reptg. Bedford Three Corners Owners Assn.:
Carol J. Holahan, Esq. (McLane Graf...)

Reptg. PUC Staff:
Marcia A. Brown, Esq.
Jayson P. Laflamme, Gas & Water Division
Robyn Descoteau, Gas & Water Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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1 MR. SPEIDEL: Very good. Thank you. As
2 a preliminary ministerial matter, I'd like to ask if the
3 order of notice was published, and if application -- I'm
4 sorry, if an affidavit of publication had been filed for
5 this order of notice?

6 MR. ST. CYR: Yes, it was.

7 MR. SPEIDEL: Thank you. And, what date
8 would the affidavit have been filed for?

9 MR. ST. CYR: The affidavit was dated
10 January 25th, 2013.

11 MR. SPEIDEL: Thank you.

12 MS. BROWN: Hearings Examiner Speidel,
13 if I may also offer. In the Commission's docketbook, the
14 affidavit was filed on January 29th.

15 MR. SPEIDEL: Twenty-ninth.

16 MS. BROWN: In advance of this hearing.

17 MR. SPEIDEL: Very good. Thanks. In
18 any event, I think the one matter I wanted to touch upon
19 would be whether there are any objections to the motion to
20 intervene by the Homeowners Association by any party?

21 MR. ST. CYR: The Company has no
22 objections.

23 MR. SPEIDEL: Thank you. And, does
24 Staff have any objections?

1 MS. BROWN: Staff does not have any
2 objection. Staff understands that the homeowners are
3 customers. Although this financing petition does not have
4 an immediate rate impact, Staff feels that the customers
5 do have an interest that is affected by this proceeding,
6 in that the financing will change the capital structure,
7 which will then be absorbed into a revenue requirement,
8 which will produce rates at some future rate case. So,
9 with that, Staff feels that they -- that the homeowners
10 have satisfied that they have an interest in the
11 proceeding.

12 The second element of 541-A:32 is that
13 interventions not disrupt the orderly proceeding. Staff
14 has a proposed procedural schedule, and does not have any
15 concern that the intervenor's participation, so long as
16 it's within the scope of this notice of proceeding, will
17 deviate from being an orderly participation in the
18 proceeding. Thank you.

19 MR. SPEIDEL: Oh. Thank you, Ms. Brown.
20 In that case, given the fact that there are no objections
21 from any of the parties, I will file a recommendation to
22 the Commissioners as part of my Hearing Examiner's report
23 requesting that discretionary intervention be granted to
24 the homeowners.

1 I also understand that there will most
2 likely be a development of a procedural schedule for this
3 docket at a technical session following this prehearing
4 conference?

5 MS. BROWN: Staff will affirm that, yes.
6 Staff has a proposed procedural schedule, and it would
7 like to discuss that after the prehearing conference with
8 the parties. And, we'll file that procedural schedule or
9 a procedural schedule along with a recap of the technical
10 session with the Commission shortly.

11 MR. SPEIDEL: And, Mr. St. Cyr, would
12 the Company object if the homeowners were to participate
13 at that technical session for the purposes of developing
14 the procedural schedule?

15 MR. ST. CYR: Of course not.

16 MR. SPEIDEL: Okay. That works. Thank
17 you. I will note that to that effect in my report. Are
18 there any other matters or statements that parties would
19 like to make at the prehearing conference public record
20 proceeding?

21 MS. BROWN: Staff is prepared to offer a
22 statement at the appropriate time.

23 MR. SPEIDEL: Does the Company have a
24 statement, Mr. St. Cyr?

1 MR. ST. CYR: Yes, we do.

2 MR. SPEIDEL: Would you like to begin
3 then?

4 MR. ST. CYR: Sure. Bedford Waste
5 Service Corp. is a small sewer utility that serves 78
6 customers in the neighborhood known as "Bedford Three
7 Corners", in Bedford, New Hampshire. Its sewer system
8 consists of 78 septic tanks, each with a pump, service
9 lines, mains, and five common leach fields. The existing
10 2000 promissory note was executed on January 1, 2000. The
11 note obligated the Company to pay its owner \$192,725 over
12 20 years, at an interest rate of 8 percent. At
13 December 31, 2011, the outstanding balance was \$111,836,
14 not including three missed semi-annual payments amounting
15 to \$29,211. Two of the missed payments occurred in 2005,
16 due to cash flow constraints that led to the Company's
17 filing for and receiving its last rate case. The other
18 missed payment occurred in 2010, again, due to cash flow
19 constraints resulting from replacing ten pumps and
20 increased maintenance.

21 The Company is proposing to combine the
22 outstanding balance of the existing note and the three
23 missed payments, along with the addition of new funds to
24 create one new promissory note. The new funds are for the

1 partial payment of the rejuvenation of one of the leach
2 fields and the replacement of leach field vents. In 2011,
3 the Company hired an engineering firm, the H.L. Turner
4 Group, to conduct an assessment of the condition of the
5 Company's five leach fields. Four of the five leach
6 fields were considered in "good" condition, the highest
7 rating; one of the five leach fields was considered "poor
8 to fair". In fact, one half was considered "poor", the
9 other half was considered "fair".

10 In 2012, the Company hired Summit
11 Excavating, Incorporated, an affiliate of the Company, to
12 rejuvenate the one leach field that was in "poor to fair"
13 condition. Summit successfully completed that
14 rejuvenation in July of 2012. Summit also successfully
15 completed the installation of the leach field vents in
16 November 2012. The total cost of the project amounted to
17 \$39,313. To date, the Company has funded this with funds
18 from a reserve account and internally generated cash. The
19 Company still owes Summit \$15,877. The Company is asking
20 its owner to fund \$24,280 of the costs, plus 4,000 of the
21 financing costs, totaling \$28,280.

22 When the \$28,280 is added to the
23 outstanding balance of the existing note and the three
24 missed payments, the total proposed financing is \$170,000.

1 The new promissory note would obligate the Company to pay
2 its owner 170,000 over 15 years, at an interest rate of
3 8 percent. The Company is not seeking a rate increase.
4 The Company believes that the proposed promissory note
5 enables it to work within the existing rates and existing
6 cash flow. The Company respectfully requests the
7 Commission approve the proposed financing of 170,000.
8 Thank you.

9 MR. SPEIDEL: Thank you, Mr. St. Cyr.
10 Now, would the homeowners like to make a preliminary
11 statement at this public proceeding?

12 MS. HOLAHAN: We would, Attorney
13 Speidel.

14 MR. SPEIDEL: Okay. Thank you,
15 Ms. Holahan.

16 MS. HOLAHAN: As Mr. St. Cyr has stated,
17 Bedford Three Corners is a subdivision consisting of
18 approximately 78 homes within a contained subdivision in
19 Bedford. And, they seek now to add approximately \$60,000
20 in debt over a period of fifteen years, at an 8 percent
21 rate -- 8 percent interest rate payable to Mr. LaMontagne.
22 The Company asserts that, simply because they're not
23 seeking a rate increase at this time, it is in the public
24 good or this transaction is in the public good. But that

1 does not mean that the refinancing is not without
2 significant costs to the homeowners in that subdivision,
3 nor does it necessarily mean that it's in the public good.
4 Seven years of additional loan payments, and that \$60,000
5 the homeowners believe includes costs that may have
6 resulted from a failure to inspect or maintain the fields
7 over the course of -- on a regular basis over the course
8 of time. We believe that it is possible -- it is a
9 possible impermissible shifting of costs from -- that
10 should be borne by the shareholders and not by the
11 ratepayers, particularly at an interest rate of 8 percent,
12 which is above the market.

13 The Owners Association is seeking
14 intervention to raise concerns and to get answers to
15 questions that relate to the financial, managerial, and
16 technical soundness of the Company. Specifically, whether
17 the Company has followed routine maintenance and
18 inspections -- a routine maintenance and inspection
19 schedule to inspect the leach fields and other physical
20 plant; whether the failure to maintain necessary
21 engineering documents related to the fields, including
22 as-built plans, contributed to the costs associated with
23 the field rejuvenation and vent installation; and
24 specifically whether the Company had knowledge of the

1 failed field for more than -- or, for some period of time,
2 and, after being notified of the failed field, it took 21
3 months before the rejuvenation and repairs on the field
4 were complete.

5 Moreover, there have been a series of
6 issues that have come up in Commission dockets with
7 respect to Bedford Waste over the course of -- or, since
8 1994, when the utility was first granted authority to
9 operate as a public utility, and continued to be issues
10 for the Homeowners Association going forward, including
11 the establishment of a depreciation fund that is intended
12 to put money aside for the ultimate replacement of the
13 fields; education, ongoing education issues; and the
14 existence of property records related to the leach fields.
15 Some of these issues have been ongoing for more than 15
16 years, and the Homeowners Association would like some
17 resolution, because they believe they are directly related
18 to some of the costs that have been incurred in the course
19 of rejuvenating the fields and the installation of the
20 pipes, and are in part and parcel part of this petition
21 for refinancing. Thank you.

22 MR. SPEIDEL: Thank you, Ms. Holahan.
23 Ms. Brown, would you like to make a statement as well for
24 Staff?

1 MS. BROWN: Yes. Although Staff does
2 not have a firm position to offer at this time, Staff
3 would like to offer an outline of its review. Pursuant to
4 RSA 369, the Commission is obligated to review financings
5 to ensure that they are consistent with the public good.
6 And, in that analysis of whether a financing is consistent
7 with the public good, Staff will be looking at the
8 proposed use of the financing. Staff also understands
9 that Bedford Waste is a small utility. And, generally,
10 small utilities do have difficulty obtaining financing.
11 So, Staff is initially not surprised that the Company
12 sought to secure financing through the owner of the
13 Company.

14 Staff intends to conduct a review of the
15 financing request, expects to propound discovery. Staff
16 will also be looking at compliance issues, both the
17 Company's compliance with past Commission orders and its
18 compliance with DES requirements. Staff has also already
19 looked into making sure that Bedford Waste is compliant
20 with its Secretary of State filings, and knows that the
21 Company is presently in good standing with the Secretary
22 of State. So, it's authorized to do business in this
23 state.

24 At first blush, the capital improvements

1 appear to be within the type of management decisions Staff
2 expects a utility to make in the course of proper utility
3 operation. The utility has an obligation to provide safe
4 and adequate service. And, these improvements appear to
5 go toward ensuring safe and adequate service.

6 In conclusion, Staff looks forward to
7 working with the Company and the intervenors in discovery,
8 and will offer a formal position to the Commission via a
9 proposed procedural schedule, and likely a Staff
10 recommendation. Thank you.

11 MR. SPEIDEL: Thank you very much,
12 Ms. Brown. In terms of timing, I would presume that the
13 procedural schedule will be developed within the course of
14 this week, is that fair to say?

15 MS. BROWN: If we can reach agreement at
16 the technical session, I can file it this afternoon, as
17 well as a recap of the technical session. So, yes. In
18 answer to your question, "will something be filed this
19 week?" Likely so.

20 MR. SPEIDEL: Okay. Thank you,
21 Ms. Brown. Does any party have any additional comments or
22 objections or questions they would like to raise at this
23 point?

24 (No verbal response)

1 MR. SPEIDEL: No? Well, thank you very
2 much for your collective participation. I will file my
3 report. And, its description of the parties' positions
4 will be fairly general, so as to save time and as to avoid
5 the potential for mischaracterization of positions, as
6 they are rather subtle and complex in certain respects.
7 And, I think it's better for the parties to be able to
8 generate their own positions themselves, rather than my
9 regurgitating them in partial fashion.

10 But I understand the general positions.
11 And, I look forward to seeing the proposed procedural
12 schedule. And, as I -- there's two ways to go. I could
13 file my report in advance of the development of the
14 procedural schedule, or after, so that I can adopt it as
15 one of my recommendations. Do the parties have any
16 thoughts about that, as to what they prefer?

17 MS. BROWN: Staff will go first. If we
18 can reach agreement on a procedural schedule, we can file
19 it in the next day or so. If you were to hold off for a
20 couple of days, you'll know whether you can include it in
21 your recommendations.

22 MR. SPEIDEL: That's good. That's good.
23 These subtleties relate to the fact that, although
24 actually I can't make Bench rulings about some of these

1 matters, but I can facilitate the conduit of information,
2 and the Commissioners like to have a little John Hancock
3 or Jane Hancock for a Hearings Examiner Report on that
4 point. So, I thank you all for your time and have a good
5 afternoon.

6 **(Whereupon the prehearing conference**
7 **ended at 10:16 a.m., and a technical**
8 **session was held thereafter.)**

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