

DW 01-208

BODWELL WASTE SERVICES CORPORATION

Petition for Approval of \$45,000 Financing And Consolidation With
Existing Long Term Financing

Order Nisi Approving \$45,000 Financing and Authorizing a
Consolidated \$445,000 Term Loan With Certain Provisions

O R D E R N O. 23,900

January 17, 2002

On October 18, 2001, Bodwell Waste Services Corporation (Bodwell or the Company), filed a Petition with the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 369 for authority to finance long term debt in the amount of \$45,000 (the new financing). Bodwell also requested to consolidate its existing note of \$400,000 (the original note) into one new note of \$445,000 payable monthly at an annual rate of 8.5% for a term of 25 years, and to reclassify its accrued interest to-date as paid-in capital. Both the new financing and the original note are payable to Bodwell's sole stockholder, Robert Lamontagne.

The funds under the new financing in the amount of \$45,000 have already been provided to Bodwell. That amount was used to pay a significant portion of the State of New Hampshire mandated main replacement project, a result of the reconstruction of Interstate 93 above Bodwell Road. The instant petition was required by a Settlement Agreement (the Agreement) between Bodwell and Commission Staff in DW 01-030, Bodwell's recent

permanent rate case, whereby Bodwell was to seek approval *nunc pro tunc* by petition within 30 days of the Commission's final order in that proceeding.

Staff has advised us that the Company's exhibits attached to its petition do not reflect two accounting adjustments called for in the Agreement. The Agreement called for reclassification of accrued but unpaid interest on the original note to Paid-in Capital, although we note that Bodwell has requested approval to do so in the instant docket. Paragraph 7 of Section IV. of the Settlement Agreement permits the Company to reclassify accrued interest, but does not stipulate how much.

The second issue identified by Staff is the increase to Contributions in Aid of Construction (CIAC) of \$64,391 resulting from the testimony of Finance Director Mark A. Naylor in DW 01-030. Mr. Naylor testified regarding the agreement between the parties in DW 00-090, Bodwell's franchise expansion docket. That agreement provided for a portion of the fixed assets installed for the expansion to be allowed into rate base as compensation for early retirement of a section of force main. Mr. Naylor's testimony asserted that such treatment was unnecessary, since Bodwell through proper retirement accounting had already been compensated. Although the text of the Agreement in DW 01-030 is silent on this issue, the schedules attached to the Agreement

provide for Bodwell to book additional CIAC in accordance with Mr. Naylor's recommendation. Staff indicates to us that Bodwell has yet to reflect this accounting change on the exhibits submitted with the instant petition.

We will approve Bodwell's request for approval of the new note of \$45,000 *nunc pro tunc*. In addition, we will provide our approval of the Company's request to consolidate the new financing with the existing note to the Company's sole shareholder. It is our expectation that, as provided in paragraph 4 of Section IV. of the Agreement, this restructuring of Bodwell's notes to Mr. Lamontagne will enable the Company to repay its debt obligation in a timely manner in the future. Further, to provide clarification of the amount of accrued interest that should be reclassified to paid-in capital, and given the timing of this Order providing the requisite financing approval, we will authorize the Company to reclassify all accrued interest on the original note that remains unpaid through December 31, 2001. We will not, however, permit any accrued interest that may exist from the new financing to be reclassified, given that our approval for that financing under RSA 369 was not first sought. Further, we place Bodwell on notice that any future failure to seek financing approvals before the fact will result in sanctions.

We expect Bodwell to comply with all aspects of the Agreement, and therefore we direct the Company to increase its CIAC balance by the \$64,391 in accordance with the schedules attached to the Agreement. Such accounting should be reflected in the Company's 2001 Annual Report to this Commission.

Based upon the foregoing, it is hereby

ORDERED NISI, that Bodwell Waste Services Corporation's request for authority to borrow \$45,000 from its sole shareholder is granted *nunc pro tunc*; and it is

FURTHER ORDERED, that Bodwell is authorized to consolidate the \$45,000 note in the instant petition and its existing note of \$400,000 into one new note of \$445,000 payable monthly at the annual rate of 8.5% for a term of 25 years; and it is

FURTHER ORDERED, that this \$445,000 note replaces and cancels the \$45,000 note, executed on May 1, 2000, and replaces and cancels any and all references to the existing note(s) of \$400,000, executed by Mr. Lamontagne on May 31, 1998; and it is

FURTHER ORDERED, that Bodwell is authorized to reclassify the accrued interest through December 31, 2001 on its existing note of \$400,000, as paid-in capital; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than January 28, 2002 and to be documented by affidavit filed with this office on or before February 11, 2002; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 4, 2002; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 11, 2002; and it is

FURTHER ORDERED, that this Order Nisi shall be effective February 18, 2002, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New
Hampshire this seventeenth day of January, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary