

DW 02-025

BODWELL WASTE SERVICES CORPORATION

Petition for Franchise Expansion

Order Granting Petition with Condition

O R D E R N O. 23,975

May 22, 2002

APPEARANCES: Stephen P. St. Cyr for Bodwell Waste Services Corp.; Backus, Meyer, Solomon, Rood & Branch, P.A. by Robert A. Backus, Esq. for Newtons Meadows Condominium Association and East Meadow Condominium Association; Bossie, Kelly Hodes, Buckley & Wilson, P.A. by David E. LeFevre, Esq. for William Socha Development, L.L.C.; and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

Bodwell Waste Services Corporation (Bodwell) instituted this proceeding before the New Hampshire Public Utilities Commission (Commission) on February 11, 2002, by filing a petition for franchise expansion pursuant to RSA Chapter 374. A sewer utility with approximately 417 customers in the Bodwell Road area of Manchester, Bodwell is essentially a pipeline company that interconnects its customers with the City of Manchester's sewage disposal system. By its present petition, Bodwell seeks to provide service to the Cohas Overlook development, which is to consist of approximately 20 rental townhouse units located on a parcel of land adjacent to Bodwell's present service territory.

The Commission issued an Order of Notice on March 18, 2002, scheduling a Pre-Hearing Conference for March 29, 2002 and directing Bodwell to provide notice by publication on or before March 20, 2002. An affidavit of publication is on file indicating that the Order of Notice appeared in *The Union Leader* of Manchester on March 20. The Order of Notice specified that petitions to intervene were due on or before March 26, 2002. None were submitted pursuant to that deadline.

The Pre-Hearing Conference took place as scheduled, before Hearings Examiner Edward N. Damon. Thereafter, Bodwell and the Commission Staff convened in a technical session for the purpose of conducting discovery and discussing a proposed procedural schedule to govern the remainder of the docket. Staff posed five data requests, three of which received responses at the technical session. Accordingly, by letter dated March 29, 2002, Staff indicated that pending receipt of responses to its remaining data requests, it would support the petition and believed that no hearing would be necessary. See RSA 374:26 (noting that franchise authority "may be granted without hearing when all interested parties are in agreement"). Mr. Damon submitted his written report of the Pre-Hearing Conference on April 10, 2002; his recommendations

were consistent with Staff's.

By written motion received on April 22, 2002, the Newtons Meadow Condominium Association sought intervenor status and requested that the Commission hold a hearing on the Bodwell petition. Newtons Meadow, a neighboring, 68-unit condominium development, made clear in its petition that it opposes the Bodwell petition. Bodwell, in turn, filed a pleading in opposition to the intervention request on May 5, 2002.

By secretarial letter dated May 10, 2002, the Commission notified Bodwell and Newtons Meadow that it would conduct a merits hearing on May 16, 2002 at which time it would also take up the pending intervention request. The hearing took place as scheduled.¹

At the hearing, counsel for Newtons Meadow indicated that he was requesting intervenor status not only on behalf of that condominium association but also on behalf of the East Meadow Condominium Association (East Meadow). Counsel

¹ Chairman Getz indicated at hearing that he had recently stepped down as a member of the City of Manchester's Planning Board, that matters relating to the Cohas Overlook development had been pending before the Board during his tenure, but that he had disqualified himself from participating in such matters when he became aware that they were related to the instant docket. No party objected to the Chairman's participation in the case after being given an opportunity to do so.

explained that, unlike Newtons Meadow, East Meadow's owners are customers of Bodwell. Counsel explained that Newtons Meadow was concerned about the effect that the Cohas Overlook development would have on the local community, in terms of density and construction delays occasioned by the Bodwell system being extended across Bodwell Road to serve the new complex. Counsel also stated that East Meadow was concerned that allowing Bodwell to serve Cohas Overlook would lead to rate increases.

Also appearing through counsel at hearing was William Socha Development, L.L.C. (Socha Development). Socha Development indicated that it was seeking intervenor status, but only if the Commission granted the intervention petitions of Newtons Meadow and East Meadows, which Socha Development opposed. Staff took no position on the various intervention petitions beyond noting that the applicable standard appears in RSA 541-A:32. The Commission then granted all pending intervention requests and all parties present were permitted to participate fully in the merits hearing.

II. POSITIONS OF THE PARTIES AND STAFF

A. Bodwell Waste Services Corporation

In its petition and through the testimony of its manager, Stephen P. St. Cyr, Bodwell indicated that it was

essentially requesting permission to expand its franchise territory to include the Cohas Overlook development, to interconnect Cohas with Bodwell's existing system, and pay to Bodwell the Company's regular, quarterly flat rate (presently \$52.64) for each unit to be served thereby. Bodwell noted that all of its customers also pay sewer-related charges to the City of Manchester; the Company indicated that it presumed that such charges would thus be paid by Cohas Overlook.

According to Bodwell, Cohas Overlook had agreed to finance the cost of the infrastructure necessary to connect the individual units of the development to Bodwell's existing system at a point inside the Company's existing service territory. Bodwell noted that among the plant to be constructed by Cohas Overlook would be a pumping station on the development's premises. The Company indicated that it was confident the incremental cost of providing the additional service would be more than offset by the additional revenue. According to Bodwell, the chief incremental cost would be the additional electricity consumed by its pumping facilities in connection with the additional flowage through the Bodwell system.

Bodwell indicated that it had not entered into a written contract or other formal agreement to memorialize the

arrangement whereby Cohas Overlook would build, own and maintain the additional plant necessary to interconnect Cohas Overlook with the existing Bodwell system. Through Mr. St. Cyr, Bodwell stressed its view that the proposed expansion would have no rate impact, except insofar as it could serve to reduce any upward pressure on rates. This is because the expansion did not require any additional plant investment on the part of the Company and because the Company would be receiving an additional revenue stream generated by Cohas.

Mr. St. Cyr noted that Bodwell has adequate capacity to handle the additional customers and he expressed the view that the Company has the necessary managerial, technical and financial capability.

B. Newtons Meadow Condominium Association and East Meadows Condominium Association

These two parties appeared jointly and presented the testimony of Alan O'Brien of Cedar Management Group, which provides management services to each association. Mr. O'Brien indicated that because past extensions of Bodwell's service territory have led to rate increases to fund additional capital expenditures, he believed that the granting of the instant petition would drive up rates for the owners of East Meadows units.

C. William Socha Development, L.L.C.

Socha Development did not present a witness at hearing, but indicated through counsel that it believed that granting the Bodwell petition would be in the public interest, that any concerns about the density or construction of the Cohas Overlook development are not within the Commission's jurisdiction and that the record adduced by Bodwell amply demonstrated that the proposed expansion of Bodwell's franchise territory would not have any adverse rate impacts.

D. Staff

Staff did not present any witnesses but indicated its support of the petition. However, Staff agreed with a concern expressed by Commissioner Geiger that, in light of the obligation to serve residents of Cohas Overlook that would be undertaken by Bodwell pursuant to its petition, it would be appropriate to require Bodwell to enter into some kind of formal arrangement with respect to Socha Development's commitments to construct and to operate the necessary plant that would be owned by Socha but located within the franchise area.

III. COMMISSION ANALYSIS

RSA 374:26 provides that the Commission shall grant requests for franchise authority when it finds after due hearing that the granting of such authority would be for the public good. In making that determination, the Commission

focuses on the managerial, technical and financial expertise of the petitioner. See *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

We find that the petitioner possesses the necessary capability to undertake the expanded service and, contrary to the suggestions of the two intervenors appearing in opposition to the petition, do not believe there are any other reasons why allowing Bodwell to serve the proposed Cohas Overlook development would not be for the public good.

Bodwell's 2001 annual report, dated March 29, 2002 and of which the Commission takes official notice here, indicates Operations and Maintenance Expenses of \$52,712, or approximately \$126.40 per existing customer. Assuming approval of the instant petition, an additional revenue stream slightly in excess of \$200.00 per Cohas Overlook unit would be available. Given that virtually all of the Company's additional expenses related to serving Cohas Overlook would be in Operations and Maintenance, we agree with Bodwell's hypothesis that it is unlikely the additional service will exert upward pressure on rates as alleged by East Meadow.

As pointed out by Socha Development, the opposing intervenors adduced no evidence at hearing relative to the development-related impacts cited by Newtons Meadow in its

intervention request. We accordingly do not consider these issues, and express no view as to whether they are properly among those factors we should consider in making our public good assessment.

Finally, as noted at hearing by Commissioner Geiger and Staff, by undertaking to expand its service territory into the Cohas Overlook development, Bodwell would be assuming an obligation to serve that could well survive the present owners of the Cohas Overlook development. The proposed arrangement, whereby Bodwell would not own or operate significant elements of the plant necessary to provide service to the development, is an unconventional one. In these circumstances, we believe that Bodwell and its customers would be well-served if there were a formal arrangement between Bodwell and Cohas Overlook that would bind both the current owner of the development and any successors with regard to the obligations Cohas Overlook has agreed to take on. Accordingly, we will condition our approval of the Bodwell petition on Bodwell entering into such an arrangement to the satisfaction of the Commission's general counsel or his designee.

Based upon the foregoing, it is hereby

ORDERED, that the petition for franchise expansion of Bodwell Waste Services Corporation is GRANTED, subject to the condition enumerated above.

By order of the Public Utilities Commission of New
Hampshire this twenty-second day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary