

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-012

BODWELL WASTE SERVICES CORPORATION

Petition for Approval to Terminate Service

Order Approving Petition

ORDER NO. 26,687

September 15, 2022

In this order, the Commission approves a request submitted by Bodwell Waste Services Corporation to discontinue wastewater service and transfer related assets and franchise rights to the City of Manchester and the Town of Londonderry.

I. PROCEDURAL HISTORY

On March 10, 2022, Bodwell Waste Services Corporation (Bodwell) filed a petition (Petition) pursuant to RSA 374:28 for approval to discontinue its wastewater operations and transfer its existing assets and franchise rights to the City of Manchester (Manchester or the City) and the Town of Londonderry (Londonderry or the Town). With its Petition, Bodwell filed a Memorandum of Understanding (MOU) concluded with Manchester concerning the proposed transfer of assets and franchise rights.¹

The Office of the Consumer Advocate (OCA) filed a letter of participation on March 21, 2022. The NH Department of Energy (DOE) filed a notice of appearance on April 1, 2022.

On May 10, 2022, the Commission issued a notice of adjudicative proceeding and prehearing conference in this matter, requiring Manchester and Londonderry to

¹ Bodwell concluded a similar MOU with Londonderry, which it filed on September 14, 2022.

participate as mandatory parties. Bodwell, DOE, OCA, Manchester, and Londonderry (collectively, the Parties) participated in the prehearing conference held on June 1, 2022. On June 20, 2022, pursuant to Commission request, Bodwell, DOE, and OCA submitted legal positions on certain issues raised at the prehearing conference. On June 17, 2022 and June 20, 2020 Manchester and Londonderry, respectfully, filed letters taking no position concerning the Commission's authority to grant Bodwell's request.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at

<https://www.puc.nh.gov/regulatory/Docketbk/2022/22-012.html>.

II. BACKGROUND

Bodwell is a regulated public utility that serves approximately 528 customers within Londonderry and Manchester. The Commission granted Bodwell franchise rights to provide sewer service in 1992. *See* Order No. 20,404 (Feb. 28, 1992).

Bodwell's existing system consists of two small pump stations that feed into a larger station, which in turn pumps wastewater into the City's sewer system through a force main installed and owned by Bodwell. According to the Petition, Bodwell has an outstanding secured loan with Merrimack County Savings Bank (MCSB) that was approved by the Commission in Docket No. DW 17-142 to finance \$450,000 of Bodwell infrastructure over a fifteen-year term. Order No. 26,072 (Nov. 9, 2017). The current MCSB note matures in 2032.

The City of Manchester provides wastewater collection and treatment services within and beyond its boundaries, including portions of the Towns of Bedford, Goffstown, and Londonderry. According to the Petition, the City has been upgrading

its wastewater collection system and expanding its public sewer service lines since approximately 2009, and is now in phase 4 of its “Cohas Brook Sewer Project” (the Project). Substantial completion of the Project is expected to occur in January 2023, with final completion expected in September 2023. The Project will include the extension of a new, 24-inch interceptor sewer to the Londonderry town line in the vicinity of Bodwell’s Aaron Drive Pump Station. Furthermore, the Project will extend approximately 600 feet into Londonderry, where the interceptor will connect to Bodwell’s existing 8-inch sanitary sewer line, which receives flow from the Mill Pond subdivision in Londonderry. This line will be owned and operated by Londonderry.

Londonderry currently provides public sewer service within portions of its corporate boundaries. Bodwell’s 8-inch sanitary sewer line serving customers in the Mill Pond subdivision in Londonderry transports wastewater from those customers to Manchester for treatment. These assets within Londonderry are excluded from the MOU with Manchester and are subject to the MOU with Londonderry.

III. PETITION

In its Petition, Bodwell requested the following actions from the Commission:

- Authorization to discontinue operations upon interconnection with the City of Manchester’s public sewer system;
- A finding that the City possesses the managerial, technical, financial, and legal expertise to provide sewer service outside of its corporate bounds within Bodwell’s service territory;
- Authorization permitting Bodwell to continue to collect its current rates from customers until the MCSB loan is fully repaid;²
- Relief from all Commission-related reporting obligations, including the filing of Annual Reports; and

² This request was withdrawn on July 12, 2022.

- Authorization for Bodwell to recover from customers its expenses and costs related to winding down its affairs.³

An MOU between Bodwell and Manchester signed in December of 2021 accompanied the Petition (Manchester MOU). The Manchester MOU describes the agreement between Manchester and Bodwell under which the City would assume ownership of Bodwell's sewer facilities. Upon completion of the interconnection and all conditions contained in the MOU, and upon the recording of a deed from Bodwell to the City transferring ownership of Bodwell's sewer facilities located in Manchester, the City would take over all "care, operation, maintenance, and repair" of those facilities. To meet and maintain Manchester's construction schedule, Bodwell is required under the MOU with the City to obtain Commission approval no later than September 15, 2022.

The Petition anticipated an MOU between Bodwell and Londonderry; that MOU was filed with the Commission as Exhibit 5 on August 22, 2022 and approved by the Londonderry Town Council on September 12, 2022. Bodwell expects Manchester and Londonderry to enter into a separate agreement concerning the City's use of any assets that Londonderry acquires.

In its Petition, Bodwell requested authority to continue billing customers for repayment of an existing MCSB loan commitment that extends until 2032. The Commission approved a refinancing of that MSCB loan in 2017. *See* Order No. 26,072 in Docket No. DW 17-142.⁴ On July 21, 2022, Bodwell withdrew its request to bill customers for the outstanding financing expenses. At hearing on August 22, 2022, Bodwell testified that upon Commission approval of the Petition, as amended by the

³ This request was withdrawn on August 16, 2022.

⁴ Bodwell initially requested Commission approval for the continuation of Bodwell's current customer rates (currently, \$64.17 per quarter, or \$256.68 per year), and the application of those proceeds to pay off the MCSB note on an accelerated schedule by 2025.

Company's withdrawal of the request to continue to collect its current rates from customers until the MSCB loan is fully repaid, the President and owner of Bodwell agreed to personally contribute the funds needed for Bodwell to pay off the MSCB loan. Also in its Petition, Bodwell requested recovery of administrative expenses and regulatory costs incurred to wind down its affairs as a regulated utility. Bodwell withdrew that request on August 16, 2022.

At the hearing held on August 22, 2022, Bodwell filed a "Settlement Term Sheet" (Term Sheet) marked as Exhibit 9. The Term Sheet was not signed by any party, including Bodwell; however, it laid out certain terms that the Parties to this docket supported at the August 22 hearing. *See* Transcript of hearing held 08/22/22. The terms included agreement that Manchester and Londonderry possess the requisite financial, legal, managerial, and technical expertise to serve Bodwell's current customers in Manchester and Londonderry, and that it is in the public interest for Bodwell to cease providing service to those customers and to transfer its assets to Manchester and Londonderry.⁵ The Term Sheet also stated that it is in the public interest for Bodwell to cease providing service in its authorized franchise on or about December 31, 2022. Finally, the Parties agreed that it is in the public interest for Bodwell to inform the Commission and Parties, by letter filed with the Commission, no later than November 30, 2022, on construction progress in meeting the target termination date of December 31, 2022. The Parties further "do not object to Bodwell pursuing collections against customers who have not paid their bills from Bodwell for sewer service taken prior to termination of its franchise and provided by Bodwell"

⁵ The "Term Sheet" stated that the parties agreed that it is in the public interest for Bodwell to transfer its assets in Londonderry "[s]ubject to review of discovery and receipt of the Londonderry MOU". As noted, the Parties supported the "Term Sheet" at the hearing on August 22, 2022. On September 12, 2022, the Londonderry Town Council approved the MOU reached between Londonderry and Bodwell.

under its governing tariff. Finally, the Parties agreed that Bodwell shall file with the Commission an affidavit attesting that the deeds of transfer have been effectuated by the parties and that Bodwell has fully repaid the loan approved in Docket No. DW 17-142.

IV. COMMISSION ANALYSIS

A. Discontinuation of Regulated Utility Service

Pursuant to RSA 374:28, “[t]he commission may authorize any public utility to discontinue ... any part of its service ... permanently and remove the equipment essential to the same, whenever it shall appear that the public good does not require the further continuance of such service.”

Here, Bodwell proposes to discontinue its service operations and franchise rights in the City of Manchester and the Town of Londonderry pursuant to separate memoranda of understanding with the City and the Town. Thus, we examine whether the transfer of Bodwell’s existing franchise to Manchester and Londonderry, municipal corporations that currently provide wastewater service to their respective residents and operate their own, separate sewer facilities, would be in the public good.

Based on the request presented in Bodwell’s Petition and subsequent filings to the record, including the provisions of the Settlement Term Sheet supported by the Parties, Bodwell’s withdrawal of its requests to recover certain costs and administrative expenses and to bill customers for outstanding loan payments, and Bodwell’s assurance that the outstanding MSCB loan will be repaid by the Company’s President and owner, we find that Bodwell’s proposed discontinuation of service to its customers in Londonderry and Manchester to be in the public good. The record supports a finding that both Londonderry and Manchester have the capability to continue the service provided by Bodwell, through existing and proposed system

infrastructure that will connect Bodwell's customers in Manchester and Londonderry to the wastewater systems operated by the City of Manchester and the Town of Londonderry. Furthermore, Bodwell has the right to pursue collection of delinquent payments predating the termination of its franchise for service provided under the rates, terms, and conditions of its tariff.

B. Transfer of Franchise and Assets

Pursuant to RSA 374:30, I, "[a]ny public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise...." RSA 362:4, III-a(b) permits the Commission, after notice and a hearing, to exempt a municipal corporation from any and all provisions governing public utilities except the franchise application requirements of RSA 374 upon finding that the transfer of franchise rights and assets is consistent with the public good.

As Bodwell has noted, the service it proposes to transfer to Manchester and Londonderry was initiated with the intent to serve customers of those municipalities until the Cohas Brook Project was completed. The transfer of system assets and customer service is expected to be completed by December 31, 2022. The parties have agreed that it is in the public interest for Bodwell and the City of Manchester to inform the Commission and the parties to this proceeding, by letter filed with the Commission no later than November 30, 2022, on construction progress and the status of the target termination date of December 31, 2022.

Based on the record before us, we find that the City of Manchester and the Town of Londonderry each possess the requisite financial, legal, managerial, and technical expertise to serve Bodwell Waste Service Corporation's customers in

Manchester and Londonderry, as set forth in the Petition and in the record and supported by the terms supported by the parties in this proceeding. We, therefore, find that proposed transfer satisfies the requirements of RSA 374:30, I.

C. Conclusion

We find Bodwell's request to transfer certain wastewater system assets and franchise rights to the City of Manchester and the Town of Londonderry and to discontinue operations upon the completion of the proposed interconnection with the City of Manchester's public wastewater system to be in the public good. The Commission further concludes that the requests set forth in the Petition, as amended and supported by the various subsequent filings in this proceeding, including Bodwell's withdrawal of its requests for approval of continued billing of customers to pay outstanding financing expenses, the withdrawal of its request to recover costs related to the "winding down and termination of its operations," and the Settlement Term Sheet, to be in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the petition of Bodwell to transfer certain assets to the City of Manchester and the Town of Londonderry is **APPROVED**; and it is

FURTHER ORDERED, that the request of Bodwell to discontinue water service to certain wastewater customers in the City of Manchester and the Town of Londonderry is **APPROVED**; and it is

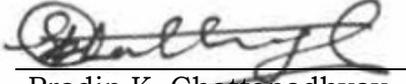
FURTHER ORDERED, that, no later than 30 days from the date of this order, Bodwell shall publish a copy of this order on its website; and it is

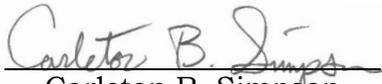
FURTHER ORDERED that Bodwell shall notify customers through a bill insert in the next billing cycle following issuance of this order that the proposed transfer of assets and discontinuance of service by Bodwell has been approved; and it is

FURTHER ORDERED, that Bodwell, in cooperation with the City of Manchester, shall inform the Commission and the parties to this proceeding by November 30, 2022, of the progress of system interconnections and construction and the status of the target termination of service date of December 31, 2022; and it is

FURTHER ORDERED, that Bodwell shall file with the Commission no later than January 31, 2023, an affidavit attesting that the deeds of transfer have been effectuated by the parties and that Bodwell has fully repaid the loan financing approved in Docket No. DW 17-142.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September 2022.


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-012

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