

**CHAIRMAN**  
Martin P. Honigberg

**COMMISSIONERS**  
Kathryn M. Bailey  
Michael S. Giarno

**EXECUTIVE DIRECTOR**  
Debra A. Howland

**STATE OF NEW HAMPSHIRE**



**PUBLIC UTILITIES COMMISSION**  
21 S. Fruit St., Suite 10  
Concord, N.H. 03301-2429

TDD Access: Relay NH  
1-800-735-2964

Tel. (603) 271-2431

FAX No. 271-3878

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

November 28, 2018

Debra A. Howland, Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

NHPUC 28NOV18PM2:58

Re: DW 18-101 Pennichuck East Utilities, Inc.  
Petition for Approval of Special Contract for Service to Woodmont Commons  
Staff Recommendation for Approval

Dear Ms. Howland:

On June 29, 2018, Pennichuck East Utility, Inc. (PEU or Company) filed a petition (Petition) pursuant to RSA 378:18, for a Special Contract (Contract) with Pillsbury Development Realty, LLC (Pillsbury) for the construction of a 1.1 million gallon water storage tank that would serve existing as well as future PEU Londonderry Core System customers as well as the Woodmont Commons Planned Unit Development (Woodmont Commons) which Pillsbury is the principal developer. The Petition is accompanied by the testimony and associated attachments of John J. Boisvert, Chief Engineer of PWW<sup>1</sup>. PEU's filing also includes a statement of special circumstances as required by Puc 1606.02(b). After review, Staff recommends approval of the Company's Petition as filed.

Mr. Boisvert's pre-filed testimony stated that the Special Contract with Pillsbury for construction of the storage tank is needed to address the anticipated growth in water usage and required fire flows over the next 10 years in the Londonderry Core System, inclusive of Woodmont Commons. Before petitioning for the Special Contract, PEU considered two options. The first option, costing approximately \$3,100,000, involved increasing multiple existing mains and doubling the size of the existing Mountain Homes Pumping Station. The second option involved constructing a 1.1 million gallon water tank on a parcel of land adjacent to Woodmont Commons owned by PEU. The cost of the tank is estimated at \$2,835,000. The Company decided the second option is the better choice. Mr. Boisvert's testimony indicated this option would provide storage capability, which among other benefits, shifts the dependence for maintaining system pressure from electrically driven pumps to the storage tank.<sup>2</sup> The tank also has the potential to reduce the rates PEU pays to Manchester Water Works (MWW) by allowing PEU to meet its own fire flow demands.<sup>3</sup>

<sup>1</sup> PWW is a related company that performs Operations and Maintenance work for PEU on a work order basis.

<sup>2</sup> See Staff 1-2

<sup>3</sup> See Staff 1-4

Regarding the cost of the tank, Mr. Boisvert's testimony explained how PEU and Pillsbury reached a cost sharing agreement whereby PEU conducted an analysis of the growth needs of the Londonderry Core System and compared that growth to the impact of adding Woodmont Commons to PEU's water system. PEU then allocated the costs of the tank size increase between PEU and Pillsbury according to future demand. The Company then incorporated those costs into a proposed special contract whereby the estimated cost of the tank is divided between PEU and Pillsbury. As a result, Pillsbury agreed to pay 51%, or an estimated \$1,441,421, and PEU will pay the remaining 49%, or \$1,393,579 of the estimated cost.

Pillsbury will make periodic payments to PEU, according to a schedule attached to the Special Contract, and PEU will oversee the construction of the tank.<sup>4</sup> After the tank is in service and Pillsbury has made all of its payments, PEU's regular tariffs and terms of service will apply, and the special contract will be terminated.

The Company asserts that, pursuant to RSA 378:14, no public utility "shall charge or receive a greater or different compensation for any service rendered to any person, firm, or corporation than the compensation fixed for such service by the schedules on file with the Commission and in effect at the time such service is rendered." PEU's filed tariff and rate schedules state its rates and terms of service. PEU also asserts that, pursuant to RSA 378:18, the Commission may deviate from RSA 378:14 and approve special rates for utility service if it finds that "special circumstances exist which render such departure from the general schedules just and consistent with the public interest."

PEU states, in its Statement of Special Circumstances<sup>5</sup> it believes special circumstances exist which warrant a departure from PEU's general rate schedules. While PEU's tariff does not directly authorize PEU to charge Woodmont Commons for the tank, it does contain an analogous path for approval for charging Pillsbury for the proposed costs of construction. Specifically, PEU's tariff (Original Page 35 and First Revised Page 36) presently enables PEU to collect from customers, in advance, for the cost of constructing main extensions necessary to serve new customers. In this instance, due to the lack of relevant similar projects, the disparity in water service needs and the relative costs between the projected Woodmont Commons customers and the other customers within PEU's Londonderry Core System, PEU believes a Special Contract allowing Pillsbury to make periodic payments to PEU to aid in the cost of construction of the tank should be approved.

This project did not qualify for either State Revolving Fund (SRF) or Drinking Water and Ground Water Trust Fund (DWGTF) in 2018. Therefore, the Company will most likely be using its CoBank Fixed Asset Line of Credit (FALOC), previously approved by the Commission<sup>6</sup>, to initially finance the project during construction<sup>7</sup>. The Company explained that it will again attempt to obtain SRF or DWGTF financing for the project during 2019. If neither financing source is approved by the end of the construction phase, the Company foresees securing a long term loan from CoBank.

---

<sup>4</sup> See Attachment JJB-C to the Pre-filed Testimony of John J. Boisvert.

<sup>5</sup> See Attachment JJB-D to the Pre-filed Testimony of John J. Boisvert.

<sup>6</sup> See Commission Order No. 26,117 (March 30, 2018) in DW 17-157.

<sup>7</sup> See Staff Tech 1-1.



DW 18-101 Pennichuck East Utilities, Inc.  
Petition for Approval of a Special Contract

As Pillsbury's payments constitute contributions in aid of construction (CIAC) that may be subject to federal income tax under recently passed tax legislation, the Company has made efforts to better understand its implication at the federal and state level. At this time, with no further changes to the taxability of CIAC, and no definitive indication of the restoration of the CIAC tax exemption for water utilities, the Company anticipates filing a tariff change petition to address this issue before accepting any payments from Pillsbury. The first Pillsbury payment is estimated to be made in or around May 2019<sup>8</sup>. Staff currently estimates the gross tax impact to PEU at \$302,669 (21% x \$1,441,427).

The Company stated it will track its costs associated with the tank project and, after the tank is used and useful, the Company anticipates submitting those costs for rate recovery. PEU's Petition, and the Testimony of Mr. Boisvert, discussed two methods for recovery: 1) PEU's Qualified Capital Project Adjustment Charge (QCPAC) program<sup>9</sup>, which was recently approved by the Commission in docket DW 17-128<sup>10</sup>; and 2) a system upgrade fee on new Londonderry Core customers. The water tank is not anticipated to be completed until late 2020, therefore Staff anticipates a formal filing from PEU in that timeframe to address recovery of its share of the tank cost.

Based on Staff's review of this filing, the technical session presentation and discussions, and discovery, Staff recommends approval of the special contract. If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Anthony J. Leone  
Utility Analyst, Gas & Water Division

Discovery  
cc: Service list

---

<sup>8</sup> See Staff Tech 1-1 Schedule A- Cash Flow

<sup>9</sup> See Petition page 3, Paragraph 8.

<sup>10</sup> See Commission Order No. 26,179 (October 4, 2018).

**Pennichuck East Utilities, Inc.**  
**DW 18-101**

Petition for Approval of Special Contract for Woodmont Commons in Londonderry  
Responses to Staff Data Requests – Set 1

Date Request Received: 8/9/18  
Request No. Staff 1-2

Date of Response: 8/20/18  
Witness: John Boisvert

---

**REQUEST: Re: Boisvert Testimony, Page 7, Line 23 – Page 8, Line 2:** With regard to the pipe upgrade option (Option 1), please provide further clarification regarding the specific concerns of the Company that this option does not address.

**RESPONSE:**

The Londonderry Core System is a constant pressure system. This means that the Mountain Homes Station must meet all variations in demand (from average day flows to instantaneous peak flows) by either turning pumps on or off, or speeding pumps up or down. The tank buffers demand variations, and does not require this pump modulation. Pumps starting and stopping or speeding up or slowing down causes pressure variations in the distribution system, which is problematic over time. Having the tank in place better manages and reduces pressure variations in the system. Pumps starting and stopping or speeding up or slowing down is inefficient from an electrical perspective, when compared to pumps starting and then stopping, but running at full speed while filling a tank. As such, the tank allows pumps to run at more constant rates while filling the tank, and come to a complete stop when the tank is full. Mechanical systems (pumping stations) require constant monitoring and maintenance, whereas the tank requires very little ongoing maintenance. The tank also ensures supply if there are failures in the pipelines leading to and from the Mountain Homes Station, ensuring service to the majority of other customers in Londonderry.



**Pennichuck East Utilities, Inc.**  
**DW 18-101**

Petition for Approval of Special Contract for Woodmont Commons in Londonderry  
Responses to Staff Data Requests – Set 1

Date Request Received: 8/9/18  
Request No. Staff 1-4

Date of Response: 8/20/18  
Witness: John Boisvert

---

**REQUEST: Re: Boisvert Testimony, Page 12, Lines 3-5:** Please explain and provide support for the statement that, “PEU will receive a lower volumetric rate from MWW once the storage tank is completed and in-service.”

**RESPONSE:**

The AMENDED PENNICHUCK WATER WORKS INC. WHOLESAL WATER AGREEMENT (see Attached) dated February 3, 2003 between the Company and Manchester Water Works supports the statement. Specifically, section 302.1 of the Agreement calls for a volumetric water rate for Pennichuck systems where Manchester Water Works (“MWW”) provides fire flow to Pennichuck, and a lower rate where they do not provide fire flow. MWW currently provides fire flow to the Londonderry Core system, based upon its current structure and design. Once the tank is in service, peak fire flows are provided by the tank, not by MWW, thus qualifying PEU for a lower water rate for water supplied to Londonderry purchased from MWW. It is to be understood, however, that both the fire flow and non-fire flow rates are adjusted periodically by MWW.

**AMENDED PENNICHUCK WATER WORKS, INC.  
WHOLESALE WATER AGREEMENT**

Agreement made and entered into this 21st day of March, 1997 ("Agreement"), and amended as of Feb 3<sup>rd</sup>, 2003 by and between the MANCHESTER WATER WORKS ("MWW"), a duly established municipal water works, and Pennichuck Water Works, Inc. ("Pennichuck"), a New Hampshire corporation.

**Recitals.**

1. MWW and Pennichuck have existing waterworks systems;
2. Pennichuck desires to purchase from MWW certain volumes of water on a wholesale basis;
3. MWW has supplied water to Consumers New Hampshire Water Company and subsequently Pennichuck under a Wholesale Water Contract dated October 29, 1987 amended May 25, 1988, March 25, 1989 and March 21, 1997, and due to expire March 21, 2022, which contract each party wishes to terminate;
4. In or around November 1997, Consumers assigned its rights under the Wholesale Water Contract to the Town of Hudson, to which MWW consented. In or around April 1998, the Town of Hudson assigned its rights under the Wholesale Water Contract to Pennichuck, to which MWW consented.
5. MWW and Pennichuck have determined to enter into this legally binding Agreement to establish the conditions for wholesale supply of water.
6. The terms of this Agreement will be submitted to the NHPUC for and subject to its approval.

NOW THEREFORE, in consideration of the mutual promises and covenants herein set forth, and in order to secure the services described below, the parties hereto, each binding itself, its respective representatives, successors, and assigns, agree as follows:

**ARTICLE 1. SHORT TITLE, DEFINITIONS AND INTERPRETATIONS**

Section 101. Short Title. This Agreement may be referred to as the "Pennichuck Wholesale Water Agreement".

Section 102. Meanings and Construction.

102.1. Definitions. For all purposes of this Agreement, including any amendments, the terms shall have the meanings set forth below.

102.1.1. "Anniversary Date" means the day and month on which the Agreement was signed in each year.

102.1.2. "Average Daily Flow" means the total volume of water measured in gallons or cubic feet at a metering station or stations during two consecutive monthly billing periods divided by the actual number of days in the two billing periods.

102.1.3. "Fire Flow" means the flow described in section 201.3.1.

102.1.4. "Maximum Daily Flow" means the highest total volume of water measured in gallons or cubic feet at a metering station or stations over any consecutive twenty-four (24) hour period.

102.1.5. "MSDC" means the Merrimack Source Development Charge which is a capital charge for contribution for the development of new water sources to maintain and extend service in circumstances of growing demand.



102.1.6. "NHPUC" means the Public Utilities Commission of the State of New Hampshire.

102.1.7. "Period" means any length of time.

102.1.8. "Person" means any individual, firm, company, association, society, corporation, political subdivision, fire district, or group.

102.1.9. "Waterworks" means facilities for collection, storage, supply, distribution, treatment, pumping, metering, or transmission of water.

Section 103. Construction. This Agreement, except where the context clearly indicates otherwise, shall be construed as follows:

103.1 Definitions include both singular and plural;

103.2 Pronouns include both singular and plural and include both genders.

Section 104. Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire.

## ARTICLE 2. TERMS OF SUPPLY

Section 201. Obligations of Pennichuck. Pennichuck agrees to the following obligations and limitations made in return for MWW's agreement to permit connection and supply of water into Pennichuck's waterworks.

201.1. Limitation of Rights. Nothing in this Agreement is intended as a grant by MWW of any exclusive right or privilege.

201.2. Charges and Fees. Pennichuck shall make timely payment of all charges described in this Agreement in accordance with Sections 305, 306 and 307 below.

201.3 Quantity of Water. Pennichuck shall limit its usage of MWW's waterworks to the following:

Average Daily Flow - 2.1 Million Gallons Per Day

Maximum Daily Flow - 3.5 Million Gallons Per Day

MWW shall have no responsibility to supply water in excess of these stated amounts.

201.3.1 Fire Flow. In consideration of the rate per million gallons charged to Pennichuck pursuant to Section 302.1, MWW shall take reasonable measures to provide Fire Flow to Pennichuck of 750 gallons per minute. MWW shall have no obligation to provide Fire Flows in excess of 750 gallons per minute nor does it guarantee adequate Fire Flow or any aspect of fire service.

201.4 Assignment and Sale. Pennichuck may (i) assign its contract right to the quantities of water specified in Section 201.3 to another Person or (ii) sell water purchased pursuant to this Agreement to Persons located outside of or transporting water outside of the geographic areas for which it has or obtains NHPUC water service franchise authority, only with MWW's written consent, which consent shall not be unreasonably withheld.

201.5. Control of System Leaks and Wasteful Use. Pennichuck shall operate and maintain its waterworks in accordance with customary engineering practices and with the guidelines set forth below.

201.5.1. Pennichuck shall minimize any wasteful use of water within its service area.

201.5.2. In any period in which Pennichuck receives water pursuant to this Agreement, Pennichuck shall impose the same voluntary or mandatory restrictions on water use by its customers (e.g. sprinkling bans) as MWW shall impose on its customers within one week of such imposition by MWW. The imposition and re-

removal of any restrictions shall be within the sole and exclusive discretion of MWW, but nothing in this Agreement shall prevent Pennichuck from imposing its own restrictions which are more restrictive than those imposed by MWW.

201.6. Conformance of Law. Pennichuck shall comply and shall ensure that its customers and any private water systems connected to Pennichuck waterworks comply with all applicable laws of the United States and of the State of New Hampshire, including but not limited to all rules and regulations of the New Hampshire Department of Environmental Services, and all applicable rules and regulations of the NHPUC. If Pennichuck fails to comply with this Section 201 after written notice from MWW, MWW may discontinue all services to Pennichuck until such time as Pennichuck demonstrates its compliance with this Section.

201.7. Quality of Water. MWW shall supply water meeting the drinking water quality criteria established from time to time by the United States Environmental Protection Agency and the State of New Hampshire.

Section 202. Obligations of MWW. MWW agrees to the following obligations and limitations in return for the timely payment by Pennichuck of the charges specified in this Agreement.

202.1. Metering Point. MWW shall supply water to Pennichuck at one or more of the following locations subject to the limitations contained herein.

- A. The intersection of Joanne Dr. and Londonderry Turnpike, Hooksett.
- B. The intersection of Harvey Rd. and Burton Dr., Londonderry.
- C. The intersection of Mammoth Rd. and Rockingham Rd., Londonderry.
- D. The intersection of Seasons Lane and Rockingham Rd., Londonderry.



- E. The intersection of County Road and Patton Road, Bedford.
- F. To the east of the intersection of Donald Street and Route 114 at the Donald Street pumping station, Bedford.

Additional metering points may be added by mutual agreement and subject to the provisions of this Agreement.

202.2 Measurement of Flows. The measurement of water delivered to Pennichuck shall be undertaken by MWW. Such flow measurements shall be made by one or more metering devices placed at locations selected by MWW.

202.3. Construction of Connection. Any and all connections between MWW's waterworks and Pennichuck's waterworks, including modifications or upgrades which may be necessary to effectuate this Agreement, including but not limited to meter vaults and metering devices, shall be designed by MWW, reviewed with Pennichuck for reasonableness, and constructed by MWW, and/or any subcontractors as MWW shall choose to employ, such decision to be made at MWW's sole discretion. The cost of all construction undertaken to construct, modify or upgrade the connection of MWW's waterworks to Pennichuck's waterworks, including the purchase of metering devices and appurtenances, shall be paid by Pennichuck. The necessity of and selection of all materials and equipment and the location thereof shall be within the sole discretion of MWW.

202.4. Ownership of Connection Facilities. MWW shall own all pipes laid from its presently existing waterworks to within ten (10) feet of the outside wall of the metering vault and it shall own the metering device. All other waterworks, piping, and vaults constructed to make the connection necessary to effectuate this Agreement shall be the property of Pennichuck and shall be maintained by Pennichuck in a manner satisfactory to MWW.

**202.5. Maintenance of Metering Devices.**

**202.5.1. Any and all metering devices installed pursuant to this Agreement shall be inspected and calibrated in the manner provided by regulations of the NHPUC at MWW expense. A copy of any inspection and calibration reports shall be filed at MWW's offices and shall be available for examination by Pennichuck at the offices of MWW during normal business hours.**

**202.5.2. Pennichuck may request MWW to test and certify as to the accuracy of any metering device at any time. If the metering device reads within specifications accepted by the NHPUC, the cost of such tests shall be borne by Pennichuck. If the average error over different test rates is greater than that allowed by the NHPUC, the cost of the tests shall be paid by MWW. Any adjustments will be made in accordance with NHPUC regulations.**

**202.5.3. In the case of missing or inaccurate flow records, due to faulty metering device operation or other circumstances, an estimate of flow shall be made by MWW based on past records for a comparable period. The estimates shall be used by MWW to calculate the payments due from Pennichuck. Such payments shall be subject to the provisions of Sections 303, 304, 305, 306 and 307 hereof below.**

**202.6 Record, Accounts and Audits. MWW shall maintain records of all financial transactions with Pennichuck, and these records shall be available for inspection by Pennichuck or any customer of Pennichuck at the office of MWW during normal business hours. Said records shall be available for inspection by other parties only upon presentation to MWW of a written authorization from Pennichuck. The financial statements of MWW shall be available for inspection by Pennichuck within a reasonable time after it has been accepted by the MWW's Board of Water Commissioners.**

**Section 203. Responsibility for System Operation and Maintenance.** MWW assumes no responsibility for operation and maintenance of waterworks constructed and owned by Pennichuck including those described in Sections 202.3 and 202.4 hereof. MWW's sole duty hereunder shall be to supply water up to the maximum amounts specified in Section 201.3 at the locations specified in Section 202.1 subject to the terms and conditions contained herein.

**Section 204. Limitation of Liability.**

**204.1 Liability for Non-Negligent Acts.** If MWW shall be unable to supply some or all of the water demanded by Pennichuck under this Agreement for any reason other than MWW's own negligence, MWW shall not be liable to Pennichuck for any damages arising out of such failure to supply water. Pennichuck hereby waives any rights it might have to any damages.

**204.2 Impairment of Supply.** Existing customers of MWW have first right to any water supplied by MWW, and this Agreement shall not impair the supply of water to them. If MWW is unable to supply both its other customers and Pennichuck with water for any reason other than the negligence of MWW, Pennichuck cannot compel MWW to supply it with water, nor shall it be entitled to any damages as a result of MWW's failure to supply it with water. In addition, MWW cannot be compelled to furnish Pennichuck with water if MWW's waterworks or the source upon which MWW is dependent for its supply of water is impaired, and Pennichuck shall be entitled to no damages as a result of MWW's failure to supply it with water. MWW shall be the sole judge as to whether the water available to it is adequate to supply both Pennichuck and MWW's other customers and whether MWW's waterworks or source of supply is impaired. MWW judgment shall be reasonable. MWW's decision shall be final and binding on Pennichuck. Notwithstanding the foregoing, if MWW reduces the amount of



water which it supplies to Pennichuck pursuant to this Section 204.2, such reduction shall be proportionally equal to reductions made to other wholesale customer of MWW, based on the average amount of water received by each wholesale customer during the ninety (90) days preceding such reduction.

204.3 Liability for Accident. Neither MWW nor Pennichuck shall be liable in damages or otherwise for failure to perform any obligation under this Agreement, which failure is occasioned by or in consequence of any act of God, act of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, drought, fires, storms, floods, winter freeze, washouts, vandalism, arrests and restraints of rulers and peoples, civil disturbances, labor strikes, power failures, explosions, breakage or accident to machinery or lines of pipe, failure or want of water supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the control of such party and which act, omission or circumstances such party is unable to prevent or overcome by the exercise of reasonable care.

204.4 Liability Resulting from Negligence. Neither Pennichuck nor MWW shall be relieved of liability for loss resulting from its negligence, intentional actions, or its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve Pennichuck from its obligations to make payments of amounts then due with respect to water theretofore supplied.

204.5 Pennichuck's Liability for Capital Expenditures and for Water Supplied. Nothing herein shall be construed as relieving Pennichuck under any circum-

stances from its duty to pay for capital expenditures made by MWW pursuant to Section 202.3 hereof or for water supplied pursuant to this Agreement.

Section 205. Indemnification and Insurance. Pennichuck shall exonerate, indemnify and save harmless MWW from all claims and demands for injuries to Persons, loss of life, damage to property or other losses arising out of or connected with the performance of this Agreement in Londonderry and Hooksett, New Hampshire, which MWW is legally bound to pay excepting, however, such claims and demands as shall result from negligence on the part of MWW. The phrase "claims and demands" shall include, but shall not be limited to, damages, judgments, settlements, costs and defense of legal actions, claims or proceedings and appeal therefrom. Pennichuck shall maintain liability insurance in the amount of \$1,000,000 bodily injury and property damage (each occurrence), together with a \$1,000,000 umbrella policy. Pennichuck agrees to furnish certificate(s) of the above-mentioned insurance to the City of Manchester within fourteen (14) days from the date of this agreement and, with respect to the renewals of the current insurance policies, at least thirty (30) days in advance of each renewal date. Such certificates shall name the City of Manchester and the Manchester Water Works as an additional insured (except Workers Compensation) and shall state that in the event of cancellation or material change, written notice shall be given to the City of Manchester, Manchester Water Works, 281 Lincoln Street, Manchester, New Hampshire, 03103, at least thirty (30) days in advance of such cancellation or change. For its part, MWW agrees to and does exonerate, indemnify and save harmless Pennichuck from all claims or demands for injuries to Persons, loss of life, damage to property or other losses arising out of or connected with the performance of this Agreement to the extent such claims and demands resulted from the negligence or fault of MWW.

**Section 206. Notices. All notices and other writings sent pursuant to this**

**Agreement shall be addressed to the Director of MWW at:**

**Manchester Water Works  
Attention: Director  
281 Lincoln Street  
Manchester, NH 03103**

**and to Pennichuck at:**

**Pennichuck Water Works Attention: President  
4 Water Street P.O. Box 448  
Nashua, NH 03061-0448**

**or at such other address as is indicated by written notice to the other party.**

**ARTICLE 3. PAYMENTS FOR SERVICES**

**Section 301. Basis for Payments. Pennichuck shall pay MWW for each gallon of water supplied to Pennichuck at the locations stated in Section 202.1 hereof at the rate specified in Section 302 and 304 and subject to the Merrimack Source Development Charge (MSDC) specified in Section 303 hereof. Payment shall be made in accordance with the provisions of Sections 305, 306 and 307 hereof. The volume of water supplied to Pennichuck shall be determined by means of one or more metering devices which shall meet all the requirements of Federal and State law, and which shall be owned, installed and maintained by MWW at one or more locations selected by it in its discretion.**

**Section 302. Rates.**

**302.1 Rate Per Gallon. The rate charged for water supplied to Pennichuck shall be \$0.778 per hundred cubic feet (\$1,040.13 per million gallons) at those sites where MWW provides Fire Flow capacity and shall be \$0.596 per hundred cubic feet (\$796.86 per million gallons) at those sites where MWW does not provide Fire Flow capacity.**



At such time as Pennichuck constructs facilities for the purpose of providing its own Fire Flow capacity such that it no longer requires the Fire Flow established in Section 201.3.1 at a site, the rate charged for water at that site shall be adjusted to a rate of \$0.595 per CCF (\$796.07 per million gallons). Pennichuck shall provide to MWW written documentation of the completion of such construction and of the date of its completion.

**302.2 Service Charge.** The monthly charge shall be as follows in accordance with MWW rate schedule and based upon the size of the meter or meters required by Pennichuck.

3"	\$ 24.95
4"	\$ 35.53
6"	\$ 59.14
8"	\$100.25

**302.3 Adjustments in Rate.** The rates and charge established in Section 302.1 and 302.2 shall be adjusted each time MWW establishes a new permanent rate for MWW's customers being served outside the City of Manchester. The adjustment in the rate charged under this Agreement shall be equal to the percentage by which the order of the MWW Board of Water Commissioners increases or decreases the monthly total of the metered water rate and other charges that would be charged to an industrial customer of MWW located outside the City of Manchester who uses 2.1 million gallons per day and whose water from MWW is metered at a single location by the same number and size of water meters that are used to meter the water transported to Pennichuck by MWW at the date of the order of the MWW Board of Water Commissioners. Such increases in the rate charged under the Agreement shall be effective as of the same date on which the increase in rates charged to customers residing outside the City of Manchester is effective.

**Section 303. MSDC.** Pennichuck shall pay MWW a source development charge of \$1.14 for each gallon of the 2.1 million gallons of the average daily flow specified in Section 201.3 ("MSDC"), in accordance with and subject to the following:

**303.1 Payment.** Beginning in 1997 and for the duration of this Agreement, Pennichuck shall pay MSDC annually, on or before January 15 of each year, for additional Average Daily Flow at a rate of \$1.14 per gallon. Such amount shall be determined annually based upon Pennichuck's estimate of the increase in the Average Daily Flow from the Average Daily Flow for which Pennichuck has previously made MSDC payment, but in no event shall the estimated increase in Average Daily Flow equal less than 3% of the Average Daily Flow for which Pennichuck has previously made MSDC payment. Should the actual Average Daily Flow for which payment was made in January of that year exceed the estimated Average Daily Flow for which payment was made in January of that year, Pennichuck will promptly pay MSDC for the full amount of the difference between the estimated increase and the actual increase in Average Daily Flow. Should the actual increase in Average Daily Flow be less than the estimated increase, the difference between the two will be credited against the MSDC payment for the succeeding year. Payments shall be made by Pennichuck for the duration of this Agreement until the contractual limit of Average Daily Flow capacity is reached.

The 1997 refund, if any, due Pennichuck from MWW pursuant to the October 29, 1987 Wholesale Water Agreement, as amended, shall be made within forty-five (45) days of receipt of notice of NHPUC approval of this Agreement. Except as specified in the preceding sentence and in paragraph 303.3 of this Agreement, no refund of MSDC payments shall be required of MWW.

**303.2** It is intended that the total payments to MWW under this Section

303 shall not exceed \$2,394,000, representing 2.1 MGD unless the \$1.14 per gallon rate is adjusted by the MWW Board of Water Commissioners for all customers subject to the MSDC. MWW shall provide Pennichuck ninety (90) days written notice of any proposed change to the MSDC rate. Within this 90 day period, Pennichuck shall have the option to purchase any or all of its remaining 2.1 MGD allotment at the rate of \$1.14 per gallon.

303.3 Under no circumstances shall Pennichuck be entitled to any reimbursement of any payment made under this Section 303, except to the extent and in the manner that customers of MWW receive reimbursement of the Merrimack Source Development Charge or in accordance with an order of the NHPUC.

Section 304. Emergency Use. Should Pennichuck require water from MWW in excess of the limits allocated in Section 201.3 and MWW in its absolute discretion agrees to supply such water to Pennichuck, Pennichuck shall pay a rate equal to two (2) times the rate specified in Section 302.1 for each gallon in excess of the Average Daily Flow or Maximum Daily Flow, as the case may be, allocated in Section 201.3 which Pennichuck consumes. Nothing in this section, however, shall be construed as giving Pennichuck a right to any water in excess of the limits specified. MWW shall have sole and exclusive discretion as to the determination of the availability of water in excess of the amount stated in Section 201.3, and the determination of the length of any prolonged emergency use.

Section 305. Billing Cycle. MWW shall bill Pennichuck on a monthly basis in arrears for amounts due under Section 302. Payment on bills shall be due upon presentation.

Section 306. Delinquent Bills. Bills remaining unpaid for thirty (30) days or longer from the billing date shall be subject to one and one-half (1 1/2) percent interest

per month on the unpaid balance from the original due date. If bills or payments to be made pursuant to this agreement remain unpaid for thirty (30) days or longer after the due date, MWW may issue a notice of intent to discontinue service to Pennichuck and to the NHPUC. If the bill remains unpaid for five (5) days or longer after the date of the notice of intent to discontinue service described above, all supply of water by MWW to Pennichuck shall cease and said supply shall not be renewed until all outstanding bills are paid in full at the office of MWW. In lieu of such discontinuance, MWW may require Pennichuck to post a deposit and make payments more frequently than at monthly intervals.

Section 307. Charge for Resumption of Service. If MWW ceases to supply water to Pennichuck pursuant to Section 201.6 or Section 306 above, MWW may impose a reasonable charge for resumption of said supply of water.

Section 308. Expansion and/or Upgrading of MWW. In all cases, MWW shall be the sole judge as to all improvements, additions or expansions to its waterworks, provided that the undertaking of such improvements, additions or expansions does not impair the ability of MWW to provide water to Pennichuck pursuant to this Agreement.

Section 309. Capital Expenditures. Pennichuck shall pay for any capital expenditures made by MWW which MWW reasonably believes are necessary or advisable in order to provide or continue services to Pennichuck under this Agreement, whether or not such expenditures are made within or without the boundaries of Pennichuck; provided, however, that MWW shall give written notice to Pennichuck of any such capital expenditure at least six months prior to the need for funds to be available. Said notice shall include a brief description of the purpose of the capital expenditure, its total costs and Pennichuck's pro rata share of the total costs. Pennichuck shall have sixty (60) days from the date of said notice in which to commit itself to pay or to refuse to pay its



pro rata share of the capital expenditure as stated in said notice. A refusal by Pennichuck to pay its pro rata share of the capital expenditure as stated in said notice must be made in writing in accordance with Section 206 hereof. Failure by Pennichuck to notify MWW in writing within sixty (60) days after the date of said notice that Pennichuck refuses to pay its pro rata share of the capital expenditure as stated in said notice shall constitute a commitment by Pennichuck to pay said pro rata share. If Pennichuck has failed to properly notify MWW and refuses to pay its pro rata share of the capital expenditure, this Agreement shall terminate at the end of the quarter in which such refusal shall be made in accordance with Section 407 hereof.

#### **ARTICLE 4. ASSIGNMENT, AMENDMENT AND TERMINATION**

Section 401. Amendment. The provisions, terms and conditions of this Agreement may be modified only by written amendments, executed with the same formality as this Agreement.

Section 402. Assignment. Except as provided in section 201.4, no assignment by Pennichuck of its rights or duties under this Agreement shall be binding on MWW, unless MWW consents to such an assignment in writing.

Section 403. Waiver. Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party to exercise at some future time said rights or another right it may have hereunder.

Section 404. Date Effective, Supersession and Duration. Subject to approval of the NHPUC, this Agreement shall be effective as of the date first written above. Upon receipt of NHPUC approval, this Agreement shall supersede and replace all prior agreements between the parties with respect to the subject matter hereto, including the Southern New Hampshire Water Company Wholesale Water Agreement dated October

29, 1987, as amended, which shall be considered terminated and have no further force or effect from the date of execution of this Agreement (or such later date as may be determined by the NHPUC), except with respect to any refund of MSDC payments due in 1997. This Agreement does not supersede and replace the Southern New Hampshire Water Company Wholesale Water Connection Construction Agreement dated as of October 29, 1987. This Agreement shall be in full force and effect and shall be exclusive and binding on the parties for 25 years from \_\_\_\_\_, 2003, as long as Pennichuck is not in default of its obligations hereunder. It is the intent of both parties that on or before the expiration of the term of this Agreement, this Agreement will be renegotiated and extended upon terms mutually agreeable to both parties. The parties agree to meet to discuss renewal at least three (3) years in advance of the termination of this Agreement. In the event that the parties cannot agree to terms of renewal, and so long as Pennichuck remains a regulated public utility, the matter shall be submitted to the NHPUC, which may act as a mediator in an effort to have the parties reach an agreement.

**Section 405. Termination.** In the event of unforeseen circumstances which materially alter the circumstances upon which this Agreement is based, either party shall have the right to terminate this Agreement without liability to the other of any sort upon approval by the NHPUC of a petition requesting authority to so terminate this Agreement. Termination of this Agreement by Pennichuck under this Section 405 shall not relieve Pennichuck of its obligation to pay MWW for any services rendered, capital expenditures made pursuant to this Agreement prior to the date of termination or the MSD charge specified in Section 303.

**Section 406. Breach.** Either party may terminate this Agreement prior to the time specified in Section 404 if the other party has violated any of the covenants un-

dertaken herein, or any of the duties imposed upon it by this Agreement; provided that the party seeking to terminate for such cause shall give the offending party sixty (60) days written notice, specifying the particulars of the violation claimed; and if at the end of such time the party so notified has not removed the cause of complaint, or remedied the purported violation, then the termination of this Agreement shall be deemed complete.

Section 407. Termination Pursuant to Section 309. If this Agreement is terminated pursuant to Section 309 hereof by Pennichuck's refusal to pay its pro rata share of a capital expenditure, Pennichuck shall not be relieved of its obligation to pay MWW for any services rendered or capital expenditures made pursuant to this Agreement prior to its termination, other than those capital expenditures for which Pennichuck refused to pay pursuant to Section 309.

#### **ARTICLE 5. MISCELLANEOUS PROVISIONS**

Section 501. Severability. If any clause or provision of this Agreement or application thereof shall be held unlawful or invalid, no other clause or provision or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

Section 502. Exercise of Judgment. Where MWW is directly or implicitly authorized to exercise its judgment under this Agreement, its judgment shall be valid unless clearly unreasonable.

Section 503. Status of Legal Representatives, Successors, and Assigns. The benefits and burdens of this Agreement shall inure to and be binding upon the respective legal successors to the parties hereto.

Section 504. Thlrđ Parties. MWW assumes no responsibility for any facility not included in its waterworks, and in the event that a facility of a third party shall be involved in the furnishing of service to, or the receipt of service from Pennichuck, Pennichuck shall look solely to such third party for any such services. Pennichuck assumes sole responsibility for compliance with this Agreement by all third party users or customers of its waterworks. MWW shall deal directly with Pennichuck which shall, in turn, make certain that all users and customers comply with this Agreement and with all applicable rules and regulations.

Section 505. Disputes, Arbitration. Disputes, including but not limited to those related to supply of water, connection facilities, operation and maintenance, impairment of supply, and charges and payment, shall be submitted to the NHPUC.

IN WITNESS WHEREOF, this Amended Agreement is executed in multiple counterparts each of which shall be deemed an original this 3<sup>rd</sup> day of February, 2003.

In the Presence of:

PENNICHUCK WATER WORKS, INC.

By its ~~President~~ CEO

Stephyn DeBurger  
Witness

John Keich

MANCHESTER WATER WORKS  
By the Board of Water Commissioners  
President

Thomas A. Brown  
Witness

C. Arthur Soucy  
C. Arthur Soucy

agreement/pww wholesale agr final-16

**Pennichuck East Utilities, Inc.**  
**DW 18-101**

Petition for Approval of Special Contract for Woodmont Commons in Londonderry  
Responses to Staff Technical Session Data Requests

Date Request Received: 10/22/18  
Request No. Staff Tech 1-1

Date of Response: 10/31/18  
Witness: John Boisvert

---

REQUEST: Please explain how the Company plans to finance the construction phases of the project prior to securing the financing listed in Attachment JJB-A, Page 6 of 7. Please provide a cash flow analysis in your response.

RESPONSE:

Financing of the construction phases of the project prior to securing the financing listed in Attachment JJB-A, Page 6 of 7 has not been fully determined through the life of the project. The project did not qualify for the State Revolving Fund Loan ("SRF") or the NH Drinking Water and Groundwater Trust Fund ("DWGTF") for 2018 or 2019. Therefore, the CoBank fixed asset line of credit ("FALOC") as approved in by the Commission in Order No. 26,117 is available, which will be used to fund the Construction Work in Progress for this project when other less costly funding is not available.

The Company will request funds from the DWGTF again in late 2019. We anticipate the DWGTF Commission will publish that program's priority list in September or October 2019. If approved, that would most likely be the preferable source of long-term debt financing for this project throughout 2020 based upon the anticipated more favorable rates, term of repayment, and overall cost of issuance for that type of debt than using the FALOC for CWIP funding, with a conversion to long term CoBank term debt. The Company will also request funds from the SRF for use in 2020. The outcome is not determinable at this time. If neither the DWGTF or SRF become available as the source of permanent financing for this project, the Company will file a financing petition requesting approval to enter into a term loan with CoBank, in order to repay the funds drawn on the CoBank FALOC during the construction phase of the project, at the time the project is slated to go used and useful.

The cash flow analysis detailing monthly estimated project expenditures and developer funding is attached (Schedule A). This is based on an anticipated project completion date of December 1, 2020.



Pennichuck East Utilities, Inc.  
 DW 18-101  
 Petition for Approval of Special Contract for Woodmont Commons in Londonderry  
 Responses to Staff Technical Session Data Requests  
 Staff Tech 1-1 Schedule A

WOODMONT COMMONS in Londerry  
 DW 18-101  
 Projected Cash Flow

Pennichuck East Utility Funding - 49.156%  
 Pillsbury LLC Funding - 50.844%

Londonderry Tank  
 Cash Flow Projections

	January	February	March	April	May	June	July	August	September	October	November	December	PEU Total	Pillsbury Total	Totals
2019															
Pennichuck East Utility					\$ 99,997	\$ 99,997	\$ 99,997	\$ 99,997	\$ 99,997	\$ 99,997	\$ 99,997		\$ 699,981		\$ 699,981
Pillsbury LLC					\$ 103,431	\$ 103,431	\$ 103,431	\$ 103,431	\$ 103,431	\$ 103,431	\$ 103,431			\$ 724,019	\$ 724,019
2020															
Pennichuck East Utility				\$ 86,699	\$ 86,699	\$ 86,699	\$ 86,699	\$ 86,699	\$ 86,699	\$ 86,699	\$ 86,699		\$ 693,591		\$ 693,591
Pillsbury LLC				\$ 89,676	\$ 89,676	\$ 89,676	\$ 89,676	\$ 89,676	\$ 89,676	\$ 89,676	\$ 89,676			\$ 717,409	\$ 717,409
Total Expenses													\$ 1,393,573	\$ 1,441,427	\$ 2,835,000

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

---

---

**Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.**

Executive.Director@puc.nh.gov  
amanda.noonan@puc.nh.gov  
anthony.leone@puc.nh.gov  
Christopher.tuomala@puc.nh.gov  
f.anne.ross@puc.nh.gov  
jayson.laflamme@puc.nh.gov  
john.boisvert@pennichuck.com  
mab@nhbrownlaw.com  
ocalitigation@oca.nh.gov  
robyn.descoteau@puc.nh.gov  
steve.frink@puc.nh.gov

Docket #: 18-101-1      Printed: November 28, 2018

**FILING INSTRUCTIONS:**

**a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

DEBRA A HOWLAND  
EXECUTIVE DIRECTOR  
NHPUC  
21 S. FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

**b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**

**c) Serve a written copy on each person on the service list not able to receive electronic mail.**