

CHAIRMAN
Martin P. Honigberg

COMMISSIONERS
Kathryn M. Bailey
Michael S. Giaimo

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

NHPUC 28JUN19PM3:08

June 28, 2019

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

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

Dear Ms. Howland:

On June 29, 2018, Pennichuck East Utility, Inc. (PEU or Company) filed a petition pursuant to RSA 378:18, to deviate from its general tariff and enter into a Special Contract with Pillsbury Development Realty, LLC (Pillsbury). PEU and Pillsbury agreed to share the cost of constructing a 1.1 million gallon water storage tank. Under the terms of the Special Contract, Pillsbury will contribute funds to PEU, who will oversee construction of the tank. Upon completion, the tank will serve PEU's existing and future Londonderry Core System customers, including the Woodmont Commons Planned Unit Development (Woodmont Commons) which is an approximate \$1 billion development of which Pillsbury is the principal developer. The reason for the Special Contract is that PEU's current tariff does not provide for the receipt of funds for the construction of extremely large plant additions, such as this tank project. Therefore, to enable receipt of these funds and begin construction of the project, PEU filed for approval of the Special Contract in the instant docket.

The original petition was accompanied by the testimony and associated attachments of John J. Boisvert, Chief Engineer of Pennichuck Water Works, Inc. (PWW).¹ PEU's filing also included a statement of special circumstances, as required by NH Admin. Rules Puc 1606.02(b). A Prehearing Conference and technical session occurred on October 22, 2018. Commission Staff (Staff) filed its initial recommendation to approve the originally proposed Special Contract on November 28, 2018.

On April 2, 2019, PEU submitted an amended Special Contract, supported by the testimony of Larry D. Goodhue, CEO/CFO of PEU, along with additional attachments and a letter of support from Pillsbury. Amendments to the original Special Contract related primarily to an increase in PEU's income tax liability relative to Pillsbury's contributions, and extending a similar cost-sharing model to that liability. As a result, Staff conducted further discovery and review related to the proposed

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

amendments. An additional Prehearing Conference and technical session were held on May 7, 2019. Upon review of the both the June 2018 and April 2019 filings, and all associated attachments and discovery, Staff recommends approval of the Company's amended Special Contract as submitted to Staff on May 5, 2019. Staff contends, however, that this recommendation does not extend to a proposed method of recovery for the tank, but merely support for the amended Special Contract proposed by PEU. Therefore, Staff intends for this recommendation to replace the previously filed recommendation on November 28, 2018.

Background

Mr. Boisvert's testimony describes PEU's Londonderry Core System as separated in two distinct pressure zones. The first is a high-pressure zone is established by a pumping station in the vicinity of the Mountain Home Estates Development (Mountain Homes Station) serving approximately 200 service connections. The high-pressure zone also serves the Town of Londonderry's municipal center, including the town offices, and the Londonderry public schools along Mammoth Road. The second is a low-pressure zone located in the southeasterly section of Londonderry serving an estimated 4,165 users through approximately 1,243 service connections. The low-pressure zone is established by a pressure-reducing valve (PRV) at the south end of Gilcrest Road. The PRV also serves as the hydraulic boundary between the high and low-pressure zones. According to the Petition, Woodmont Commons will be located within the high-pressure zone and comprised of both the redevelopment of existing properties, as well as new construction in undeveloped areas.

Mr. Boisvert's testimony further explained how PEU calculated the current demand of the Londonderry Core System at approximately 382,402 gallons per day (GPD). Based on customer growth from 2006 to 2015, the Company expects future demand in the Londonderry Core System, over a similar timeframe, to increase by approximately 89,000 GPD. This would result in total demand of approximately 471,402 GPD. Mr. Boisvert's attachments detail how the Company also calculated the total increase in demand resulting from a fully built-out Woodmont Commons at 405,488 GPD.

PEU also indicated, in Mr. Boisvert's testimony, that Woodmont Commons requires fire flows of 3,500 gallons per minute (GPM). Mr. Boisvert's testimony, however, indicated the high-pressure zone served by the Mountain Homes Station is capable of only 1,500 GPM fire flows, while the low-pressure zone served by the South Road Pump Station, is capable of only 1,300 GPM fire flows. As a result of the deficiency in fire flows, Mr. Boisvert included a letter from the NH Department of Environmental Services (DES) that stated new development in Woodmont Commons cannot be approved until an agreement is reached and PEU confirms sufficient flow and pressure is available.

To address the anticipated future growth and the necessary fire flows, PEU considered two options. The first was to double the size of the existing Mountain Homes Station for approximately \$1,000,000 as well as increase multiple existing mains, including those along Mammoth Road, for approximately \$2,100,000, resulting in a total estimated cost of approximately \$3,100,000. Attachments A & B.

The second option, as described in Mr. Boisvert's testimony, is the construction of the proposed 1.1 million gallon tank in the instant Docket at an estimated cost of \$2,835,000. This tank will be larger and built sooner than the smaller tank PEU had contemplated eventually constructing to meet the needs of only the Londonderry Core System. In addition, Mr. Boisvert states the proposed tank will have an anticipated life in excess of 80 years and will be located on a parcel of land currently owned by PEU that is adjacent to Woodmont Commons. Attachments C, D, E & F. Most importantly, as Mr. Boisvert stated, the proposed tank will be able to provide 100% of the required fire flows (3,500 GPM for 180 minutes) and will also act as a buffer for peak daily demand.

In addition to providing for daily supply fluctuations, domestic water demand, and DES's required fire flows, the on-site storage tank will have additional benefits. First, there will be less dependence on the Mountain Homes Station's electrical pumps for maintaining adequate system pressures. This will result in more reliable and consistent system pressures while at the same time reducing electricity costs. Attachment B. It is also anticipated the storage tank will reduce the water rates PEU pays to Manchester Water Works (MWW) as the tank will store the necessary fire flow capacity, and per the PEU & MWW wholesale water contract, PEU would no longer have to pay MWW for that service. Mr. Boisvert calculated that this would reduce PEU's wholesale water rate paid to MWW by \$.341 per one hundred cubic feet of water (CCF) for a calculated annual savings of approximately \$63,000. Attachment D. As such, PEU determined the proposed tank was the most optimal solution to meet the future growth and fire flow demands of the Londonderry Core System.

After analysis of the anticipated cost savings from fire flows, and the expected growth of the Londonderry Core System, as well as the projected growth and required fire flows of Woodmont Commons, PEU and Pillsbury reached the cost sharing arrangement for the tank project that was reflected in the original and revised by the amended Special Contract. Specifically, Pillsbury agreed to pay 51%, or an estimated \$1,441,421, of the projected cost of the tank, while PEU agreed to pay the remaining 49%, or \$1,393,579, of the estimated cost. Schedule A of the amended Special Contract included in Mr. Goodhue's attachments contain the schedule of estimated contributions by Pillsbury to PEU. After the tank is completed and in service, and Pillsbury has made all of its required contributions, the amended Special Contract will be terminated and PEU's regular tariff and terms of service will be applied to Woodmont Commons.

As Pillsbury's contributions will constitute contributions in aid of construction (CIAC), these amounts will be included in PEU's taxable income. This change is the result of the recently passed Tax Cuts and Jobs Act of 2017, which removed the income tax exemption on CIAC previously enjoyed by water utilities. Thus, as Mr. Goodhue pointed out, receipt of the contributed funds from Pillsbury is expected to result in an additional income tax liability for PEU of approximately \$495,760. Accordingly, the Company and Pillsbury filed the amended Special Contract, indicating that responsibility for this income tax liability will mirror that of the regular construction costs for the tank. Therefore, Pillsbury agreed to pay PEU 51%, or \$252,838, of the projected income tax liability, and PEU would be responsible for the remaining 49%, or \$242,922.

PEU contends the construction cost and income tax sharing arrangements, outlined in the amended Special Contract, are just and reasonable and in the public interest. Attachment G. By sharing both the construction and income tax costs, PEU and its ratepayers obtain all of the

earlier discussed benefits of a water storage tank at a combined cost of approximately \$1,636,501 (\$1,393,579 + \$242,922). Even without consideration of the Woodmont Commons development, PEU would likely have built a slightly smaller tank to meet the needs of the existing Londonderry Core System, but at an estimated cost of \$2,782,000. Attachment D.

According to PEU, discussions with Pillsbury commenced in March 2016 and resulted in the original Special Contract filed with the Commission on June 29, 2018. PEU also explains, however, that even though the income tax change relative to the receipt of CIAC was passed at the end of 2017, its financial consequences were not fully realized by the utility industry until later in 2018. Attachment G. As such, PEU argues the income tax change was an unanticipated additional cost that bridged the timeframe of its negotiations with Pillsbury. Attachment H. The Company has filed for tariff changes addressing the CIAC income tax issue², but until a change is authorized, and in the absence of the amended Special Contract, PEU would be responsible for 100% of the \$495,760 income tax liability resulting from the receipt of Pillsbury's contributions. PEU further argues that allocating the potential income tax liability in a similar manner to the cost of construction is a fair and consistent method whereby each party continues to receive the agreed upon benefits at the lowest cost. For PEU, these benefits include greater economic value, lower operating and maintenance costs, lower purchased water costs, more consistent water pressure and a reduction in the projected income tax liability from approximately \$495,760 to \$242,922. Attachment I.

PEU explained that sharing the income tax liability would not affect the Company's cash flow as Pillsbury's contribution to the income liability would be held in a restricted cash account to meet a future PEU income tax liability. In addition, PEU's share of the income tax liability will be met using a portion of its \$3.4 million of Net Operating Loss (NOL) carryforwards. Attachment J. NOL carryforwards are tax losses from previous fiscal years that can be applied against future income thereby reducing the Company's income tax liability. The Company has confirmed that, if approved, it will use NOL's to offset the additional taxable income arising from the receipt of CIAC relative to the tank agreement. *Id.* According to PEU, all of its NOL's were previously generated by ratepayers, and should be used for their exclusive benefit. Attachment K. In this case, Staff believes the proposed amended Special Contract aligns with that argument in that the NOL's that were generated for the benefit of existing ratepayers will be used to offset income thereby obtaining a defined and advantageous benefit now rather than used to offset income at an undetermined point in the future with undefined benefits.³

Outside of additional contemplated construction contributions from Pillsbury to PEU relative to the future installation of a main at Woodmont Commons, PEU states there will not be any further cost sharing arrangements relative to the CIAC tax liability with other developers. Rather, pending Commission approval of the tariff amendments proposed in Docket DW 18-189,

² PEU, PWW, and Pittsfield Aqueduct Company, Inc., filed for tariff changes relative to the income tax associated with the receipt of CIAC on December 19, 2018, in Docket No. DW 18-189.

³ Relative to the amended Special Contract and Staff recommended changes to the tariffs of PWW, PEU and PAC, the Company contends this scenario is different from investments (and CIAC) by St. Gobain because those are due to a consent decree with the DES regarding PFAS ground water contamination. The use of PEU's NOL's to offset tax liabilities in the St. Gobain scenario would result in PEU's ratepayers losing benefits for which they paid for.

responsibility for the payment of the CIAC tax liability will be borne by the contributing developer. Attachment L.

Special Circumstances

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 contain its current 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’s revised Statement of Special Circumstances describes believes special circumstances do exist which warrant a departure from PEU’s general rate schedules. Attachment M. 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, 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. Staff agrees that, due to the clear benefits to both PEU and its present and future customers, special circumstances do exist which render departure from the tariff just and consistent with the public interest.

PEU further noted that this project did not qualify for either State Revolving Fund (SRF) or Drinking Water and Ground Water Trust Fund (DWGTF) loans in 2018 or 2019. PEU stated the project did not score high enough for SRF financing. Attachment N. Current SRF guidelines give a higher score where violations of drinking water standards are currently present, which are not at issue in this project.⁴ While the financing of this project is not a consideration in this Docket, the Company expects to use its CoBank Fixed Asset Line of Credit (FALOC), previously approved in Commission Order 26,117, to finance the project during construction, then securing that short-term amount by a long-term loan from CoBank. Attachment O.

The Company stated after the tank is used and useful, the Company anticipates submitting its costs of construction to the Commission for rate recovery. PEU’s Petition, and the Testimony of Mr. Boisvert, discussed two methods for recovery. The tank is not anticipated to be completed until late 2020 however, and therefore Staff anticipates a formal filing at that time to address the cost recovery. Staff reiterates that its recommendation does not extend to any proposed method of recovery, but merely support for the amended Special Contract proposed by PEU.

⁴ <https://www.des.nh.gov/organization/commissioner/pip/publications/documents/r-wd-18-12.pdf>

Based on Staff's review of the original and updated filing, technical session discussions and discovery, as well as a technical review by Joe Vercellotti, PUC Utility Engineer, Attachment P, Staff recommends approval of the amended Special Contract dated May 5, 2019. Attachment Q. As stated, this amended Special Contract produces great benefits to PEU, and its current and future customers. As such, special circumstances exist, rendering departure from PEU's tariff as just and consistent with the public interest, pursuant to RSA 378:18.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Anthony J. Leone
Utility Analyst, Gas & Water Division

Discovery
cc: Service list

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 1-1

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

REQUEST: Re: Boisvert Testimony, Page 7, Lines 11-14: Did the Company develop a cost estimate relative to Option 1, i.e., upgrade pumping capacity at the Mountain Homes pump station and make significant pipeline upgrades from MWW to the Mountain Homes pump station? If yes, please provide a copy of the Company's calculated estimate.

RESPONSE:

Yes, the Company performed high level cost estimates to upgrade the Mountain Homes Station, as well as pipeline improvements needed to compare that to the storage tank option. For Option 1, to meet present and future demands, the Mountain Homes Station would need to increase its pumping capacity by 2,000 gallons per minute (GPM). To incorporate the increased capacity it would require doubling the size of the existing station. The estimated cost to double the station size would be about \$1,000,000, which is inclusive of the station expansion, larger pumps, larger station piping, electrical system upgrades and larger emergency power facilities. The Company estimated that approximately 3,300 linear feet of new 24-inch diameter water main would need to be installed and approximately 5,100 linear feet of existing 16-inch diameter water main would need to be replaced with 24-inch diameter water main along Mammoth Road north of Mountain Homes to maintain suction pressures above 20 pounds per square inch during fire flow conditions. The cost to install/upgrade 8,400 linear feet of 24 inch water main (at \$250/foot) is estimated at \$2,100,000. The Company estimated the total cost of Option 1 would be about \$3,100,000, which is more than the tank option. Additionally, using the no-tank option would have higher operating costs in terms of electrical costs (see response to Staff DR 1-2 below), as well as higher purchased water costs (see response to Staff DR 1-4 below). Based upon this analysis, Option 1 was not investigated further.

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.

DW 18-101

Petition for Approval of Special Contract for Woodmont Commons in Londonderry
Responses to Staff Data Requests – Set 3

Date Request Received: 4/19/19
Request No. Staff 3-1

Date of Response: 5/2/19
Witness: John Boisvert

REQUEST: Special Contract and Revised Special Contract, Page 2:

Regarding the following statement found in the original Special Contract:

“WHEREAS, absent the Woodmont Commons development and based on its growth projections, PEU would not have a present need to construct a water storage tank, and would not necessarily size the water storage tank as proposed.”

- a. Please explain why the above statement was removed relative to the revised Special Contract.
- b. Please explain further the Company’s original plans and timetable for the construction of a water storage tank to serve the Londonderry core, absent the Woodmont Commons expansion. Please refer to Paragraph 4 of the Company’s original *Statement of Special Circumstances* (June 29, 2018) (“PEU anticipated building a water storage tank to meet the projected growth needs of the core system.”). Within your response, please address the following:
 - i. Does the Company feel that the construction of the tank to serve future PEU customers, absent the addition of the Woodmont Commons customers, was an absolute necessity?
 - ii. Please include any and all supporting documentation including Pennichuck’s and PEU’s respective Board of Director’s meeting notes as well as approvals of such plans.
 - iii. Please explain how the construction of the tank is economically feasible, pursuant to NH Code Admin. Rules Puc 1203.01(e) for the current PEU customers, specifically for those customers to bear the burden of the additional plant in their rates and the additional expense of the tax incurred by PEU’s receipt of CIAC?

RESPONSE:

- a. Hourly flow data provided by Manchester Water Works (MWW) from the Cohas Landing Meter Station show peak hourly domestic flows of the Londonderry Core system have exceeded the allotted domestic capacity of the Mountain Homes Booster Station. Thus, domestic flows at times have reduced the available fire pumping capacity of the Mountain Homes Booster Station. Therefore, the tank is required but the urgency for the tank would be more than five years out.
- b.
 - i. Yes.

DW 18-101

Petition for Approval of Special Contract for Woodmont Commons in Londonderry
Responses to Staff Data Requests – Set 3

Date Request Received: 4/19/19
Request No. Staff 3-5

Date of Response: 5/2/19
Witness: John Boisvert

REQUEST: Re: Mr. Boisvert's Testimony; Page 11, Lines 14 – 18 and Page 12, Lines 7 - 16:

- a. Please provide the estimated size and cost of the water storage tank which would have been required under the scenario whereby there is no anticipated expansion of the Woodmont Commons development.
- b. Would the size of the water storage tank indicated in part (a) still result in the benefit of receiving a lower volumetric rate from MWW? Please explain.
- c. Please explain if the Company considered options other than building a smaller water tank to serve the projected customer growth, apart from the Woodmont Commons development. Specifically, did the Company consider any other alternatives, other than tank construction, to address the projected growth-rate of non-Woodmont Commons future customers? Please include any and all supporting documentation.

RESPONSE:

- a. 750,000 gallons at an estimated cost of \$2,782,000.00 plus an estimated \$710,500.00 in water main additions and upgrades to connect the tank to the distribution system for a total estimated project of \$3,492,500.00
- b. Yes. The purchase water agreement between Manchester Water Works and the Company provides for the lower purchased water rates once the tank goes on line. The current purchased water rate is \$1.450 per 100 cubic feet without the tank and would be \$1.109 per 100 cubic feet with the tank. This represents a savings of \$.341 per 100 cubic feet, or approximately \$63,000.00 per year, as noted in the response to 3-4c, above.
- c. Yes. The Company looked at adding additional water mains, upsizing of existing water mains, and upgrades to the Mountain Homes booster station to increase pumping capacity as an alternate to tank construction.

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 2

Date Request Received: 5/7/19
Request No. Staff Tech 2-6

Date of Response: 5/15/19
Witness: John Boisvert

REQUEST: Reference Staff 3-1(b), how long will the water storage tank provide a benefit to PEU and its customers?

RESPONSE: The Company anticipates that the service life of the tank will be greater than 80 years with proper inspection and maintenance are being performed. The tank will be incorporated into the preventative maintenance and upkeep as part of the Company's Asset Management system. Therefore, PEU expects the tank to benefit customers for the length of time the tank is in service.

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 2

Date Request Received: 5/7/19
Request No. Staff Tech 2-8

Date of Response: 5/15/19
Witness: John Boisvert

REQUEST: Please explain the future cost of the expected maintenance of the water storage tank.

RESPONSE: The tank will be scheduled for regular visual inspection roughly every five years at a cost \$3,000 - \$4,000 per inspection. Typical recoating takes place every 20 years at cost in today's dollars of \$325,000 based on manufacturer's literature.

DW 18-101

Petition for Approval of Special Contract for Woodmont Commons in Londonderry
Responses to Staff Data Requests – Set 3

Date Request Received: 4/19/19
Request No. Staff 3-10
Larry Goodhue

Date of Response: 5/2/19
Witness: John Boisvert and

REQUEST: RE Goodhue Testimony, Page 6, Line 15-17:

Mr. Goodhue stated that “Pillsbury and PEU reached agreement on allocating the cost of the Water Storage Tank before the passage of the 2017 Tax Cuts and Jobs Act.”

- a. Please provide any all supporting documentation in support of that statement. Does the Company assert that the core terms of the contract were settled before December 22, 2017? If so, please explain why the special contract was not filed for Commission approval until June 29, 2018?
- b. Mr. Goodhue stated that “[t]he CIAC tax is thus an unanticipated additional cost.” When did the Company become aware of the additional tax burden faced with the receipt of CIAC? Please provide any and all supporting documentation.

RESPONSE:

- a. The initial meeting with representatives to discuss the scope of the Woodmont Commons Development was held in March 2016. The nature of the development (type of land use), project phasing/timeline, and the associated water demand was not well understood or definable at that time. The initial phase of the development was considered to be a redevelopment of existing properties/uses, thus no new demand was being placed upon the existing Londonderry Core system. The March 2016 meeting set the stage for a series of technical discussions throughout 2017 between the Company and Woodmont Commons representatives regarding future phases of the development. It was through this series of discussions, that it became apparent that future phases of the overall development would have an impact on the ability of the Londonderry Core system to meet the additional domestic demand and fire flows generated by Woodmont Commons. During the last few months of 2017 and the first several months of 2018, Company staff and Woodmont Commons representatives worked to determine the overall domestic and fire flow demands of the remaining phases of the development. The technical conclusions then allowed for the assessment of, and negotiations for, the cost sharing arrangements that would become one part of the Special Contract. Work on the draft Special Contract began in September 2017 with the cost sharing arrangement being more fully understood by December 2017. The text and entire contents of the overall negotiated Agreement was completed just prior to the Company’s filing of the petition under Docket No. DW 18-101, in late June of 2018.

- b. There is no specific supporting documentation as to when the Company first received knowledge of this feature in the TCJA. The Company received a call from the NHDES in 2nd quarter of 2018 related to knowledge they had gained relating to the taxation of CIAC grants issued under the DWGTF. At that point, the Company reached out to its outside tax accountants and tax attorney to corroborate the validity of this extinguishment of the exception for the taxation of CIAC given to water utilities, as a component of the TCJA. As the Act is a very cumbersome and voluminous document, for which many of the minute factors were not understood at the time of its passage, this feature (along with several other factors) began to gain visibility to the general public and by industry and tax professionals, several months after the act was passed. Upon learning about this, knowledge of this feature of the Act began surfacing around the country with other water utilities and State Utility Commissions. The Company did meet with members of the U.S. Senatorial delegation about certain features of the Act, including this provision, to discover if any IRS guidance or rulings would be forthcoming that would reverse this outcome. We later learned from them that no guidance would be forthcoming, and that the exemption elimination was intentional. It was at this time that we began the filing of the case to seek a modification of our CIAC tariffs, and to make this a component of this open docket for the instant special contract.

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 2

Date Request Received: 5/7/19
Request No. Staff Tech 2-1

Date of Response: 5/15/19
Witness: Larry Goodhue

REQUEST: Please explain why the arrangement of PEU and its ratepayers paying 49% of the CIAC tax and Pillsbury paying 51% of the CIAC tax is in the public interest when CIAC contributors like Saint-Gobain are paying 100% of the CIAC tax.

RESPONSE:

The arrangement to share the CIAC tax burden with Pillsbury for this special contract (as beneficial to ratepayers), as opposed to all other normal CIAC contributions, for which the Saint-Gobain contribution is included is as follows: 1) in this special contract, Pillsbury is paying a significant share of the cost of constructing the tank, including all associated costs of doing so. This distinguishes the special contract from Saint-Gobain; 2) Even including the CIAC taxes PEU is paying, the overall cost-sharing is still beneficial to PEU's current and future customers in terms of economic value, operating costs going forward, water pressure, treatment, and distribution needs. As such, the special contract with Pillsbury is a cost-sharing agreement that has unfortunately bridged the time frame for which the CIAC taxation issue has come into place under TCJA.

Additionally, the special contract is distinguishable from the Saint-Gobain project because the Saint-Gobain project is not being funded at all by PEU (no cost sharing) and is solely for the build-out of the water system in response to the PFAS contamination. This is like any normal CIAC situation that PEU would encounter in its normal business operations, in that a developer would pay for the expansion of our current water system infrastructure solely to service new customers.

It is also important to note, that I (as CEO and CFO of PEU) have personally already spoken with Saint-Gobain months ago about the CIAC taxation docket, and they are of the understanding and in agreement that they would be paying for all of the CIAC tax associated with the CIAC they will be paying for and contributing to PEU with the Litchfield phase 2 PFOA water line expansion project. They expressed no concerns about the cost associated with this, as they are compelled under the Consent Decree with the NHDES to cover all costs associated with their responsibilities under that agreement, which are not fully encapsulated at this time, and may increase as more comes under their responsibility going forward. Their biggest concern is getting the CIAC taxation tariff change requested under Docket No. DW 18-189 closed as quickly as possible, such that PEU can enter into agreements with them to get the project started and completed in conformity with their obligations under the Consent Decree.

DW 18-101

Petition for Approval of Special Contract for Woodmont Commons in Londonderry
Responses to Staff Data Requests – Set 3

Date Request Received: 4/19/19
Request No. Staff 3-8

Date of Response: 5/2/19
Witness: Larry Goodhue

REQUEST: Attachment LDG-A-Revised Special Contract- 4-C:

Regarding the Company's proposed CIAC Tax Liability allocation between itself and Pillsbury:

- a. Please provide the supporting calculation showing how the Company derived the estimated CIAC tax liability of \$495,760.
- b. Please explain further why it is in the public interest for PEU's existing ratepayers to subsidize the \$242,922 (\$495,760 x 49%) tax liability that is associated solely with Pillsbury's contribution towards the cost of the water tank project.
- c. How does the Company propose to meet that tax obligation?
- d. What benefit(s), if any, do existing PEU ratepayers derive from subsidizing a portion of the CIAC tax liability that is associated with Pillsbury's contributions enabling the increased size of the tank for purposes of the Woodmont Commons' development?
Please explain.

RESPONSE:

- a. As specified in the testimony of Mr. Goodhue on March 28, 2019, on pages 5-6, the \$495,760 was derived by using the CIAC gross-up formula, at a Statutory rate of 27.08%, which results in a gross-up factor of 34.39386%, which is then applied to the proportionate CIAC share (51%) of the estimated total cost of the project (\$2.835 million, of which \$1,441,421 is estimated to be the Pillsbury share of the total project cost, as identified in Attachment JJB-A to the Testimony of John Boisvert in this docket). As such, the calculation is as follows:
 - $\$1,441,421 \times 34.39386\% = \$495,760$
- b. It is in the public interest for a number of reasons. First, the existing ratepayers are deriving economic and operational benefits as described by John Boisvert in other responses in Set 3. Secondly, every day that the Company does not have approval from the NHPUC in its open docket under DW 18-189, the Company is essentially using ratepayer funded NOL's to offset tax liabilities from CIAC received by the Company. As such, there is an economic value to our current ratepayers to get both this docket and DW 18-189 closed and in effect as soon as possible, to limit the usage of ratepayers funded NOL's to the benefit of developers CIAC. And thirdly, to say that the \$242,922 tax liability is solely associated with the Pillsbury contribution to the tank is negating consideration of some of the tangential benefits that current customers will be deriving from this larger tank, as it relates to current capital and operating costs, and some avoided costs that would need to be fully funded in customer rates as either material operating expenses or debt service costs.

- c. The \$242,922 tax obligation will be offset by NOL's already in place at the Company, funded by existing ratepayers, and for which they have the right to their benefit.
- d. As mentioned in item b immediately above, and as elaborated upon in the responses by John Boisvert earlier in this Set 3.

DW 18-101

Petition for Approval of Special Contract for Woodmont Commons in Londonderry
Responses to Staff Data Requests – Set 3

Date Request Received: 4/19/19
Request No. Staff 3-11

Date of Response: 5/2/19
Witness: Larry Goodhue

REQUEST: Regarding the proposed PEU CIAC Tax liability of \$242,922 and given that the Company has filed consolidated tax returns for at least the last few years:

- a. Is the Company required to choose between using Net Operating Loss (NOL) carry forwards or using contributed cash? Can the Company use both in any 1 year? Please explain further.
- b. In light of subpart (a) above, in what way(s) does the Company anticipate utilizing NOL's and or contributed cash to offset the estimated CIAC tax liability?
- c. If the Company plans to offset, even partially, any potential tax liability with NOL carry forwards, what impact, if any will the immediate collection of the contributed cash have on the Company?
- d. If the Company chose to offset the CIAC tax liability with NOL's as seen in subpart (b) above, would this result in a substantial acceleration in the extinguishment of available NOL carry forwards or any other offsetting tax credits? Please explain.
- e. In light of subpart (d) above, please provide the current amount of NOL's available to the Company.
- f. Please provide the supporting journal entries the Company plans to make to record the chosen transactions.

RESPONSE:

- a. The Company has had discussions with its external tax professionals, as to the usage of NOL carryforwards. It is their determination that the Company is required to use NOL carryforwards to offset taxable income, if any are available. The Company cannot use both in any one year. The only manner in which the Company could do something in this manner, is to take funds collected from developers for the CIAC tax and pay it into the IRS as an estimated payment towards the current year's tax. Unfortunately, this does not change the usage of NOL's to offset taxable income in the current year, but merely results in an overpayment of current year taxes, that would be on deposit with the IRS. Being that these funds collected from the developers are being collected to insure that our customers are not impaired by CIAC activities (and the associated tax), it seems illogical to then deposit that money with the IRS, versus maintaining those funds in a separate designated restricted bank account to be used solely for the payment of net taxes (after the application and usage of NOL's in a given year).
- b. and d. The Company will be required to use its NOL carryforwards in the following sequence: NOL's generated prior to the end of 2017 will be used first, to offset taxable

income 100%. Then NOL's generated beginning in 2018 will be used to offset taxable income to the allowed level of 80% of taxable income. The remaining 20% of taxable income will be paid first with moneys held in the restricted account, as collected from CIAC developers. Lastly, any remaining amounts due will be paid out of working capital funds of the Company, as included in its OERR allowed revenues. This overall scenario does result in the NOL carryforward balances being extinguished in an accelerated manner, but the collection of cash from developers related to the CIAC tax on their specific contributed assets defrays cash costs that become "uncovered" by the accelerated NOL usage from the TCJA tax law change, in consideration of the benefits paid for by ratepayers (inherent in the NOL carryforwards).

c. The immediate collection of cash will have neither a positive or negative effect on the Company's working capital and operating cash positions. The immediate collection of the cash is tied to the tax liability associated with the contributed CIAC, as further described in full detail in Docket No. DW 18-189.

e. As of the end of 2018, the Company has approximately \$3.4 million in NOL carryforwards.

f. The following journal entry(ies) would be required:

- To book the collection of CIAC tax from Pillsbury for their 51% share of the CIAC tax:

Dr. Restricted Cash – CIAC tax	\$252,838.00	
Cr. CIAC Liability		\$252,838.00

- To book the Company's share of the usage of NOL's for the 49% share of the CIAC tax for this project/Special Contract (With the understanding that the entries for year-end tax accounting are not completed on a transaction by transaction basis, and as such, this entry would be a subset of the full set of tax accounting entries done for the Company at year-end. As such this entry analyzed on its own does not reflect the full impact of the year-end tax accounting done for each year):

Dr. Income Taxes Payable	\$242,922.00	
Cr. Deferred Tax Asset - NOL		\$242,922.00

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

**Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield
Aqueduct Company, Inc. 2018 CIAC Tariff Amendments**

DW 18-189

DIRECT PREFILED TESTIMONY OF LARRY D. GOODHUE

January 31, 2019

1 Carry forwards or Deferred Tax Liabilities, all of which were generated by temporary or
2 permanent differences paid for by the rate payers and/or the shareholder, and as such, are
3 not the entitlement of the CIAC contributor or developer.
4

5 Thirdly, under the TCJA, companies can only shelter 80% of their current year's tax
6 liability with NOL carryforwards from previous year (or carrybacks, as it might apply),
7 for any NOL's generated after 2017. For any NOL carryforwards generated thru 2017,
8 these can be utilized 100% to offset current year tax liability. However, any and all of
9 these NOL's were funded by ratepayers or the shareholder, based upon the temporary
10 differences described earlier in this testimony. As such, the usage of any NOL
11 carryforwards to offset tax liabilities from CIAC, to lower the value below the statutory
12 rates is not acceptable. If that were to be the case, the contributors of CIAC would be
13 benefiting from tax benefits that they are not entitled to and would cause the ratepayers to
14 be prohibited from using these benefits to their full extent in current and future tax years.
15

16 For all of these reasons, the Company absolutely feels that the CIAC "gross up"
17 calculation must be done at statutory rates in effect for any given tax year. And that the
18 payment must be received in the tax year for which land or cash is received, and/or when
19 property is transferred to the Company, or when a main extension agreement is bound.
20 This provides the cash to the Company in the year in which the tax liability is incurred.

21 **Q. Are there other factors you wish the Commission to consider with respect to the**
22 **tariff change being requested at this time?**

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 2

Date Request Received: 5/7/19
Request No. Staff Tech 2-9

Date of Response: 5/15/19
Witness: Larry Goodhue

REQUEST: Please explain whether PEU foresees the need for any future special contracts that depart from the CIAC tariffs proposed in Docket No. DW 18-189?

RESPONSE:

There are none, other than the water main special agreement that is directly associated with the construction and connection of this new water tank in the Woodmont Commons docket, which is a shared project to allow the tank to fully meet and supply water to PEU's existing and future customers, as well as Pillsbury, for which there is once again a shared cost burden, but also a shared benefit.

The ability to construct that water main interconnection on Pillsbury property, rather than taking a much longer route in and under roadways in Londonderry and in the right of way, is a far more effective and less costly undertaking, for which the cost sharing contribution by PEU makes sense and will be more economically advantageous to PEU's existing customers.

Originally, this water main was added as a reference in the special contract (See Attachment Staff Tech 2-9) between PEU and Pillsbury to memorialize this one and future need. However, to clarify the overall regulatory filing and approval process for this, that section in the Agreement is being eliminated, but this response in this docket is intended to memorialize this one additional exception that will be sought on its own.

With regards to any other shared project contracts going forward, even though there may be a sharing of project costs with a particular developer, there will be no sharing of CIAC taxation gross up costs related to those activities, as calculated and defined in Docket No. DW 18-189. It is important to note, that this will apply to Pillsbury as well. In their overall project build-out they will be paying for and contributing more CIAC assets to PEU, over and above the tank and this primary interconnection main. All of that additional CIAC contribution will be subject to 100% CIAC taxation gross-up by Pillsbury, payable to PEU, subject to PEU obtaining approval to assess that under the revised tariff requested under Docket No. DW 18-189.

STATEMENT OF THE SPECIAL CIRCUMSTANCES

1. Pursuant to N.H. Code Admin. R. Puc 1606.02(b), Pennichuck East Utility, Inc. ("PEU") submits this statement that special circumstances exist that warrant a departure from its general tariff schedules.
2. Woodmont Commons Planned Unit Development ("Woodmont Commons") in Londonderry has asked PEU to provide water service to the development. Demand from the development is anticipated to be approximately 405,488 GPD which is much larger than the projected growth in the Londonderry core system.
3. PEU anticipated building a water storage tank to meet the projected growth needs of the core system, however, a larger storage tank will be needed to serve Woodmont Commons.
4. PEU's tariff does not directly address the costs to provide service to Woodmont Commons. PEU's tariff (Original Page 35 and First Revised Page 36) enables PEU to collect from customers, in advance, for the cost of constructing main extensions necessary to serve the new customer. Also, System Upgrade Fees (Second Revised Page 37) may be charged to customers for the construction of new water facilities. Neither of these provisions, however, fit the circumstance at hand for the water storage tank. Pursuant to paragraph 5 on First Revised Page 36, "[s]pecial contracts will be negotiated whenever in the opinion of the Company this regular extension tariff should not be used or is not feasible or economical. Each special contract shall be submitted to the Commission for approval."
5. Because a larger storage tank is necessary to serve Woodmont Commons, it is of considerable expense, it does not benefit the entire water system, and it is not a main extension project, PEU believes the situation fits paragraph 5 of First Revised Page 36 and that special circumstances exist.

Testimony of John J. Boisvert
Revised Attachment JJB-D

6. With respect to the CIAC tax liability, PEU believes deviation from the CIAC tax tariff changes proposed in Docket No. DW 18-189 is warranted and consistent with the public interest as to the Woodmont Commons project because of the cost sharing arrangement with Pillsbury Realty Development, LLC (“Pillsbury”) in the instant docket. This cost sharing arrangement benefits PEU and its customers by reducing the cost of projects that have operational benefits to PEU’s water system and by reducing future costs for purchased water. The cost sharing arrangement is a cost-effective way for Pillsbury, PEU, and PEU’s customers to secure future water storage. Because of these mutual benefits, PEU believes it is appropriate to deviate from the proposed CIAC tariff provisions and also allocate the CIAC tax liability according to a cost sharing formula.

< End of Document >

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 2

Date Request Received: 5/7/19
Request No. Staff Tech 2-5

Date of Response: 5/15/19
Witness: John Boisvert

REQUEST: Please explain why the PEU-Pillsbury tank project did not qualify for SRF and DGWTF funding in 2018?

RESPONSE: The SRF Program uses a numerical scoring system to rank project in any given year. This project did not score enough points to be ranked high enough on the priority list to receive a loan. The scoring criteria can be found beginning on page 14 of the NHDES document linked below.

<https://www.des.nh.gov/organization/commissioner/pip/publications/documents/r-wd-18-12.pdf>

The DWGTF ranking criteria was not as structured as the SRF in 2018. It will be difficult to offer a reason other than the evaluation by the DWGTF Commission did not see fit to offer funding to this project over other applications they received.

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

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: June 5, 2019
AT (OFFICE): NHPUC

FROM: Joseph M. Vercellotti, P.E.
Utility Engineer

SUBJECT: Pennichuck East Utility, Inc.
DW 18-101 Petition for Approval of Special Contract for
Service to Woodmont Commons Engineering Prudency Review

TO: Steve Frink, Director Gas-Water Division, NHPUC
Jayson Laflamme, Asst. Director Gas-Water Division, NHPUC
Anthony Leone, Utility Analyst, Gas-Water Division, NHPUC

Introduction

In the above referenced docket Pennichuck East Utility, Inc. (PEU) filed a 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 PEU Londonderry Core System customers as well as the Woodmont Commons Planned Unit Development (Woodmont Commons).

The petition included the testimony and associated attachments of John J. Boisvert, Chief Engineer. The filing also included a statement of special circumstances consistent with Puc 1606.02(b) requirements and technical information regarding the proposed storage tank size and the Pillsbury cost sharing agreement.

This review pertains to the assessment of the engineering and operational aspects of the proposed water storage tank. Staff reviewed the petition and testimony submitted as part of the Docket DW 18-101 including PEU's responses to three sets of data requests and project information discussed in technical sessions.

Proposed Water Storage Tank Assessment

PEU'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. In a January 9, 2018 sanitary survey the Department of Environmental Services ("NHDES") indicated that new development such as Woodmont Commons cannot be approved until PEU can confirm sufficient water system flow and pressure is available.

PEU indicated the core Londonderry system demand is approximately 382,402 gallons per day (“GPD”) and over the next ten years PEU anticipates future growth in Londonderry to increase water demand by about 89,000 GPD. PEU estimates the Woodmont Commons development will create new demand on the Core Londonderry system by approximately 405,488 GPD. This brings the total estimated future demand over the next ten years to approximately 877,506 GPD. Maximum day demand in the Londonderry core increases by a factor of 1.4 times average day demand resulting in a maximum day demand of 1,228,508 GPD. PEU indicated the demand for fire flows will also increase and Woodmont Commons will require 3,500 GPM for fire flow protection.

Before petitioning for the Special Contract, PEU considered two options. The first option involved increasing multiple existing mains and doubling the size of the existing Mountain Homes Pumping Station at an approximate costs of \$3,100,000. The second option involved constructing a 1.1 million gallon steel water tank on a parcel of land owned by PEU adjacent to Woodmont Commons with the cost of the tank estimated at \$2,835,000. PEU indicated this option would provide storage capability, which among other benefits, shift the dependence for maintaining system pressure from electrically driven pumps to the storage tank. The tank storage capacity would likely reduce the rates PEU pays to Manchester Water Works (MWW) by providing capacity to meet fire flow demands.

PEU owns property adjacent to the proposed Woodmont Commons which could accommodate a storage tank. PEU indicated the storage tank would be designed to supply 100% of the required fire flow (3,500 GPM for 180 minutes) for Woodmont Commons and provide capacity for fluctuations in peak daily demand. Building the storage tank would also avoid the need for costly and disruptive off-site pipeline upgrades.

PEU and Pillsbury proposes 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. The Company consulted with two suppliers and based estimated fire flow and system growth requirements that a standard steel tank having a nominal volume of 1,100,000 gallons would be appropriate to serve the Londonderry core system and Woodmont Commons development. 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 is agreeing to pay 51 %, or an estimated \$1,441,421, and PEU will pay the remaining 49%, or \$1,393,579 of the estimated cost.

Conclusion

Based on the assessment of the engineering and operational aspects of the proposed PEU Woodman Commons storage tank project described in the petition, testimony, data requests, and technical sessions, the company's proposed project and estimated costs appear to be prudent and as such, staff supports approval of the company's petition. Please let me know if you need anything further in this regard.

SPECIAL CONTRACT – WATER
CONTRACT NO. NHPUC 2018-____
PENNICHUCK EAST UTILITY, INC.

WITH

PILLSBURY REALTY DEVELOPMENT, LLC
FOR
WOODMONT COMMONS

Date of Execution: _____

Effective Date: _____

Date of Termination: _____

Authorized in Docket No. DW _____

NHPUC Order No. _____

Dated: _____

SPECIAL CONTRACT FOR WATER SUPPLY SERVICE

This special contract for water supply service (“Agreement”) is made and entered into this ____ day of _____, 2019 by and between Pennichuck East Utility, Inc. (“PEU”), a regulated public utility pursuant to RSA 362:2, with an address of 25 Manchester Street, Merrimack, New Hampshire 03054, and Pillsbury Realty Development, LLC (“Pillsbury”), a registered New Hampshire business and principal developer of the Woodmont Commons Planned Unit Development (“Woodmont Commons”) (together, “Parties”).

RECITALS

WHEREAS, PEU was authorized by the N.H. Public Utilities Commission (“NHPUC”) to provide water service in portions of the Town of Londonderry. See, Docket No. DE 86-230, Order No. 18,691, *Southern New Hampshire Water Company, Inc.*, (May 29, 1987) (approving transfer of franchise to Pennichuck Corporation), Docket No. DE 86-230, Order No. 18,760, *Southern New Hampshire Water Company, Inc.*, (July 14, 1987) (approving Southern’s request to provide service to undisputed area of Londonderry and conditionally approving franchise to disputed area), and Docket No. DE 86-230, Order No. 18,807, *Southern New Hampshire Water Company, Inc.*, (Sept. 1, 1987) (rescinding awarding disputed franchise area and ordering that disputed area is not awarded to either Southern or Manchester Water Works).

WHEREAS, Pillsbury has received approval from the Town of Londonderry to construct the Woodmont Commons on approximately 603 acres of land near Rt. 102 and Interstate 93 at Exit 4 and proposed Exit 4A. The \$1 billion development is being constructed over the course of several phases and will include new mixed-use buildings, homes, offices, a hotel, retail space, medical and professional offices, and agricultural areas.

WHEREAS, the Woodmont Commons development is located within PEU’s authorized franchise area in the Town of Londonderry.

WHEREAS, to meet the future water service needs of PEU and the commercial and residential customers within Woodmont Commons, and, in particular, the Woodmont Commons’ fire protection needs, and to satisfy the requirements of the New Hampshire Department of Environmental Services (“NHDES”), PEU is upgrading its system and is constructing an elevated composite-style (concrete pedestal and steel tank) water storage tank (“Water Storage Tank”) with a capacity of 1.1 million gallons on PEU-owned land adjacent to Woodmont Commons. The construction budget for the Water Storage Tank is approximately \$2.835 million dollars.

NOW, THEREFORE, in consideration of the mutual agreements and promises set forth herein and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the Parties agree as follows:

CAPITAL CONTRIBUTIONS

1. Pillsbury agrees to provide a proportionate capital contribution (“Capital Contribution”) to defray the cost of PEU’s construction of the Water Storage Tank.
2. In consideration of Pillsbury’s Capital Contribution, PEU agrees to accelerate its construction of the Water Storage Tank and to enlarge the tank size to provide water and fire protection service with sufficient capacity to supply water to the entirety of Woodmont Commons.
3. Construction of the Water Storage Tank is planned to provide an in-service date of October 1, 2020 (“Operational Date”) that is anticipated to coincide with the water and fire protection service needs of the Woodmont Commons Development and otherwise supplement existing capacity available to Woodmont Commons and others within the service area.
4. PEU and Pillsbury agree that Pillsbury’s payment of the Capital Contribution will be periodic and that the payments will be based on the bid price of the successful bidder selected by PEU through its competitive bidding process.
 - a. Pillsbury agrees to make the periodic payments according to Schedule A, Anticipated Project Phases and Fee Schedule. PEU and Pillsbury acknowledge that time is of the essence with respect to PEU’s construction of the Water Storage Tank and Pillsbury’s payments to PEU.
 - b. Pursuant to Schedule A, Pillsbury agrees to pay PEU fifty-one (51%) percent of the estimated fees associated with the design, permitting, bidding, construction, and construction administration of the Water Storage Tank project. Pillsbury agrees to pay PEU the Pillsbury share within ten (10) days from the date PEU notifies Pillsbury that PEU intends to commence each Anticipated Project Phase.
 - c. Pursuant to Schedule A, Pillsbury agrees to pay PEU fifty-one (51%) percent of the gross-up tax liability for Pillsbury’s Contributions in Aid of Construction (“CIAC”) triggered by the Water Storage Tank project based upon the following formula:

$$\text{Tax Cost} = ((\text{CIAC} - [\text{CIAC} * (1/\text{Tax Life}) * .5]) / (1 - \text{Current Effective Tax Rate})) - \text{CIAC}$$

With a Current Effective Rate of 27.08% (comprised of 21% Federal and 6.08% net State rate, after consideration for Federal deductibility for State taxes), the gross-up percentage is 34.39386%.

Pillsbury agrees to pay PEU the Pillsbury share of the CIAC tax within ten (10) days from the date PEU demands payment of such tax.

- d. In the event the estimated fees or taxes depicted on Schedule A differ from the actual fees or taxes, PEU agrees to inform Pillsbury of the updated fee or tax at least thirty (30) days prior to Pillsbury’s payment of the Pillsbury share to PEU.

5. Notwithstanding the Operational Date set forth above, the terms of this Agreement shall not take effect or bind either party until any necessary approvals of the NHDES and the New Hampshire Public Utilities Commission (“NHPUC”), as well as the Company’s Board of Directors and Shareholder, have been obtained. The final order of the NHPUC approving the Agreement shall constitute the approval date (“Approval Date”) of the Agreement.

WATER SERVICE

6. PEU agrees to operate the Water Storage Tank to the benefit of Woodmont Commons and PEU’s other customers in accordance with all applicable laws and regulations.

7. Pillsbury and PEU agree that service provided by PEU to customers within the Woodmont Commons development shall be according to the rates, fares, charges, and terms of service applied to other customers and as contained in PEU’s approved tariff, as amended from time to time, on file with the NHPUC and according to all applicable laws and regulations, including, NHPUC Chapter Puc 600, *Rules for Water Service* and Chapter Puc 1200, *Uniform Administration of Utility Customer Relations*.

REFUNDS

8. In the event that the Water Storage Tank project costs come in lower than the total of the Anticipated Project Phases estimates such that there is an overpayment by Pillsbury, PEU shall refund Pillsbury the appropriate percentage of unused funds no later than forty-five (45) days after the Operational Date.

9. PEU shall maintain financial and operating records of the construction and use of the Water Storage Tank and these records shall be available for inspection by Pillsbury or its agent at the office of PEU during regular business hours.

CONSTRUCTION OF TANK

10. PEU agrees to apply for and obtain all required permits and government approvals, including but not limited to, those required by the NHPUC and the NHDES, in addition to required State and local permits.

11. PEU agrees to prepare all plans, specifications, and other design documents necessary for the tank project, and to make such documents available to Pillsbury for review and comment.

12. PEU agrees to issue an invitation to bidders for the tank project to pre-qualified contractors acceptable to PEU, to secure bids for the required construction services through a competitive bidding method, and to award the contract(s) for construction to the lowest, responsible and responsive bidder.

13. PEU agrees to supervise, administer, coordinate, and oversee construction of the tank project.

LAWS AND REGULATORY APPROVAL

14. GOVERNING LAW AND VENUE

This Agreement shall be governed, construed, and interpreted by, and in accordance with, the laws of the State of New Hampshire. Any actions concerning enforcement of this Agreement or in any way relating to the subject matter of this Agreement shall be adjudicated by the NHPUC, or its successor for resolution of the dispute. Each party to this Agreement expressly agrees to submit to such jurisdiction and venue as required by the NHPUC or its successor.

ADDITIONAL PROVISIONS

15. AMENDMENT

No waiver or modification of this Agreement or of any covenant, condition, or limitation contained herein shall be valid unless it is in writing and of a subsequent date, duly signed by the Parties hereto, and subject to any required approval of the NHPUC. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties hereto arising out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing and duly signed by the Parties.

16. WAIVER

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

17. DURATION AND TERMINATION

This Agreement shall be exclusive and binding on the Parties from the Approval Date until the Operational Date. Once it is signed and in effect, this Agreement shall supersede and replace all prior agreements between the Parties with respect to the subject matter hereof. The Parties may terminate this Agreement by mutual agreement or as otherwise provided in this Agreement.

18. BINDING EFFECT

The terms and provisions of this Agreement, and the benefits and burdens associated therewith, shall inure to the Parties to this Agreement and their assigns, grantees, and successors in interest but neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by either party hereto without the prior written consent of the other party and the approval of the NHPUC.

19. NOTICES AND PAYMENTS

All notices, requests, demands, and other communications given pursuant to the Agreement shall be in writing and shall be deemed to have been given if they are delivered by hand or by a nationally recognized overnight courier or mailed by certified or registered mail with postage prepaid to either party as the case may be, at the following address or to such other address as the receiving party may have given written notice to the other party:

Notices to Pennichuck East Utility, Inc. shall be delivered to the following address:

Donald L. Ware, Chief Operating Officer
Pennichuck East Utility, Inc.
25 Manchester Street
Merrimack, NH 03054

Notices to Pillsbury Realty Development, LLC shall be delivered to the following address:

Michael L. Kettenbach, Member
Pillsbury Realty Development, LLC
100 Ferry Street
Hudson, NH 03051

With a copy to:

Ari B. Pollack, Esq.
Gallagher, Callahan & Gartrell, P.C.
214 North Main Street
Concord, NH 03301

All payments for Capital Contributions required by this Agreement shall be made by cashier's check and be made payable to "Pennichuck East Utility, Inc."

20. COOPERATION TO COMPLETE TRANSACTION

PEU and Pillsbury each covenant and agree to execute and deliver all such other documents and instruments and take any action that may be reasonably necessary or advisable to evidence or effectuate the consummation of the transactions contemplated hereby, assist, and facilitate the provision of the services to be provided herein, and otherwise to carry out the intent of the Parties herein.

21. HEADINGS

The headings in each section of this Agreement are for the convenience of reference only and do not form a part hereof and in no way modify or shall be used to interpret or construe the meaning of this Agreement.

22. COMPLIANCE WITH THE LAW

Each party hereto agrees that it is responsible at its own expense for compliance with all laws and agrees to indemnify, defend, and save harmless the other party from any claim by a third-party arising out of or related to non-compliance with law.

23. COUNTERPARTS

This Agreement may be signed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

24. SEVERABILITY

If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions.

25. AUTHORITY

Each party represents that it has undertaken all actions necessary for corporate approval of this Agreement, and that the person signing the Agreement has the authority to bind the respective party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their authorized representatives:

PILLSBURY REALTY DEVELOPMENT, LLC

Witness

By: _____

Name: _____

Title: _____

PENNICHUCK EAST UTILITY, INC.

Witness

By: _____

Name: _____

Title: _____

Schedule A: Anticipated Project Phases and Fee Schedule

Phase	Date Range		Estimated Cost	Pillsbury Share (51% of Estimated Cost)
Design	May 2018	August 2018	\$60,000	\$30,506.00
Permitting (Town)	August 2018	October 2018	\$25,000	\$12,711.00
Bidding	November 2018	January 2019	\$5,000	\$2,542.00
Construction	March 2019	September 2020	\$2,700,000.00	\$1,372,783.00
Construction Admin.	March 2019	September 2020	\$45,000	\$22,880.00
(Rounded) Total:			\$2,835,000.00	\$1,441,422.00

			Estimated Cost ¹	Pillsbury's Estimated Share (51% of Estimated Cost)
CIAC Tax Liability			\$495,760	\$252,838

¹ The CIAC tax in this Schedule is an estimate. The final CIAC tax liability, and proportionate shares of the tax liability, will be calculated based on the actual cost of the CIAC asset.

Executive.Director@puc.nh.gov
amanda.noonan@puc.nh.gov
anthony.leone@puc.nh.gov
Christopher.tuomala@puc.nh.gov
F.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