

**STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

**Docket No. DW 18-101**

**PENNICHUCK EAST UTILITY, INC.**

**VERIFIED SUPPLEMENTAL PETITION FOR APPROVAL OF SPECIAL CONTRACT  
FOR WOODMONT COMMONS IN LONDONDERRY**

Pennichuck East Utility, Inc. (“PEU” or “Company”) hereby files the attached supplemental special contract and supportive testimony and schedules with the Commission and respectfully requests the Commission find that, notwithstanding the recent modifications to the underlying tank project, the special contract between PEU and Pillsbury Realty Development, LLC, (“Pillsbury”) continues to be consistent with the public interest and warrants approval. In support of this request, PEU states as follows:

1. On June 29, 2018, PEU filed a petition for approval of a special contract between itself and Pillsbury. The contract involved Pillsbury’s development, Woodmont Commons, in the Town of Londonderry and the construction of water system infrastructure necessary to provide potable and fire protection water service to the development.

2. On August 9, 2019, after ample discovery and Staff’s June 28, 2019 recommendation for approval, the Commission approved the special contract by Order No. 26,285. In that order, the Commission stated that it “recognized the ultimate goal of PEU and Pillsbury is to construct a 1.1 million gallon water tank.” The Commission further stated that it was withholding a determination on prudence and that its approval would allow PEU to collect funds from Pillsbury should the parties proceed with the project.

3. A precondition of the special contract included that PEU would obtain all required local permits. As explained in the supplemental testimony of John Boisvert, PEU sought local approvals, however, the Town of Londonderry Zoning Board of Adjustment (“ZBA”) denied PEU’s application for a variance and denied rehearing. PEU has filed an appeal in Superior Court and will stay that appeal pending the Commission’s instant review. PEU considered seeking a waiver from the Commission of the local ordinance under RSA 674:30, however, PEU rejected that option because it would cause additional litigation and possibly delay the project.

4. The ZBA denial of the variance was largely due to the height of the tank. To address this concern and lower the height profile of the tank, PEU has revised the project. The revisions are explained in Mr. Boisvert’s testimony. Notwithstanding the physical changes to the project, the project still meets the following goals: (1) Constructing a water tank of sufficient size to meet both PEU’s long-term water supply needs for its Londonderry Core System (“LCS”) and Pillsbury’s needs for potable and fire protection service within its Woodmont Commons development; (2) Maintain the construction and tax cost-share percentages approved by the Commission in Order No. 26,285; (3) Not appreciably delay construction of the project; (4) Provide the same benefits to PEU and Pillsbury as with the prior tank project; (5) Avoid litigating the ZBA denials; and (6) Stay reasonably within the construction costs previously anticipated by the parties.

5. PEU has updated the special contract with Pillsbury, Statement of Special Circumstances, Mr. Boisvert’s testimony, as well as certain schedules attached to Mr. Boisvert’s testimony to reflect the revised tank project. As noted in the testimony and schedules, the tank project will still incorporate the 49% (PEU)/51% (Pillsbury) cost share formula. PEU and

Pillsbury intend to apply that 49%/51% formula to the estimated prepayments, final payment of construction costs, and Contribution in Aid of Construction (“CIAC”) tax costs. The prior tank project costs were based on 2017 estimates. PEU brought those costs forward to 2020 dollars to compare the costs to the cost of the new tank project. The expected capital costs for the revised tank project is less than the prior tank project, a decrease from \$3,400,000 to about \$3,152,000, or a reduction of about \$248,000.

6. This reduction in cost benefits PEU, Pillsbury, and PEU’s customers. The correlative benefits of the project to PEU, PEU’s customers, and Pillsbury for purposes of the special contract have not changed. The cost share percentages on the construction and tax costs have not changed. For these reasons, PEU believes the record still supports that the special contract is still consistent with the public interest and ought to be approved.

7. PEU avers that these changes do not necessitate re-noticing this docket because the Commission declined to address the prudence of the underlying project and only addressed whether the financial arrangement between PEU and Pillsbury was consistent the public interest. Order 26,285 at 5. (“Approval of the special contract merely allows PEU to collect funds from Pillsbury should it decide to proceed.”) As noted above, the financial arrangement has proportionally remained the same. The cost of the project has decreased slightly.

WHEREFORE, PEU respectfully requests the Commission:

- A. Affirm its approval of the special contract between PEU and Pillsbury; and
- B. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

PENNICHUCK EAST UTILITY, INC.

By its Attorney,

Date: March 9, 2020

By: Marcia A. Brown

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I, John J. Boisvert, Chief Engineer of Pennichuck Water Works, Inc. and Pennichuck East Utility, Inc., being first duly sworn, hereby depose and say that I have read the foregoing verified petition, accompanying testimony, and schedules, and the facts alleged therein are true to the best of my knowledge and belief.

Dated: 3/6/2020

John J. Boisvert  
John J. Boisvert

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

Sworn to and subscribed before me this 6<sup>th</sup> day of March, 2020.

Michelle Collins  
Justice of the Peace/Notary Public

MICHELLE M. COLLINS, Notary Public  
State of New Hampshire  
My Commission Expires April 19, 2022

My Commission Expires: 4/19/2022

Certificate of Service

I hereby certify that a copy of the foregoing supplemental petition and supporting materials have been emailed to the Docket Related Service list for this proceeding.

Date: March 9, 2020

By: Marcia A. Brown  
Marcia A. Brown