

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 18-101

PENNICHUCK EAST UTILITY, INC.

Petition for Approval of Special Contract for Woodmont Commons in Londonderry

Order Approving Special Contract

ORDER NO. 26,285

August 9, 2019

This order approves a special contract between Pennichuck East Utility, Inc., and Pillsbury Realty Development, LLC. The special contract allows Pennichuck East Utility, Inc., to deviate from its general tariff and collect funds from the developer, enabling the parties to share the costs of constructing a 1.1 million gallon water tank.

I. PROCEDURAL HISTORY

Pennichuck East Utility, Inc. (PEU or the Company), filed a petition for approval of a special contract with Pillsbury Realty Development, LLC (Pillsbury), on June 29, 2018. The special contract would enable PEU to collect from Pillsbury its portion of the cost to construct a 1.1 million gallon water tank that would serve Woodmont Commons. An Order of Notice was issued on August 23, 2018, scheduling a Prehearing Conference for October 22, followed by a technical session. Commission Staff (Staff) filed its recommendation supporting approval of the original version of the parties' special contract on November 28, 2018.

Prior to PEU's filing, the federal 2017 Tax Cuts and Jobs Act, effective January 1, 2018, removed the exclusion of contributions in aid of construction (CIAC) from gross income for tax purposes for water companies. As of January 1, 2018, water companies were responsible for income tax on CIAC received. PEU filed a revised special contract on April 2, 2019, which

added language concerning the cost sharing of the Company's tax liability with the receipt of CIAC from Pillsbury. A Supplemental Order of Notice was issued on April 12, scheduling an additional Prehearing Conference and technical session on May 7.

Staff submitted its recommendation on June 28, 2019. Staff attached the Company's statement of special circumstances and a final revised special contract to that recommendation. *See Staff Recommendation, June 28, 2019, Attachments Q and M.*

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2018/18-101.html>.

II. POSITIONS

A. PEU

PEU's franchise area in Londonderry includes Woodmont Commons, an approximate \$1 billion development of which Pillsbury is the principal developer. PEU and Pillsbury considered a number of options for providing water services to Woodmont Commons, and determined that the least costly option would be to construct a 1.1 million gallon water tank. They also determined that the total cost of the project would be approximately \$2,835,000, and they agree to share that total cost. The tank would provide the additional benefit of satisfying the New Hampshire Department of Environmental Services' (DES) concern over adequate flows for fire-fighting purposes.

According to PEU, sharing the cost of the water tank with the developer would provide benefits to both current and future PEU ratepayers. Those benefits would include less dependence on the Mountain Homes Estates Development pump station and associated costs. The Company further argued that the tank would provide storage for fire flows, which in turn

would reduce the amount of water PEU currently purchases from Manchester Water Works, Inc., thus saving the Company and its ratepayers approximately \$63,000 annually.

After calculating the required fire flows, and considering expected growth of PEU's existing Londonderry Core water system, PEU and Pillsbury agreed to the exact cost allocation. Per the proposed special contract, PEU would be responsible for 49 percent of the cost of the tank, currently estimated at \$1,393,579; Pillsbury would be responsible for the remaining 51 percent, currently estimated at \$1,441,421. As Pillsbury's 51 percent is CIAC, and thus now taxable income to PEU, the parties were faced with an additional liability currently estimated at \$495,760. The Company and Pillsbury agreed to allocate the tax cost in the same manner as the tank with PEU responsible for 49 percent of the income tax, currently estimated at \$242,922 and Pillsbury responsible for the remaining 51 percent of the tax, currently estimated at \$252,838.

PEU did not believe that its tariff would allow it to receive contributions for the construction of a large infrastructure project such as the tank. PEU further believed that its tariff did not allow for the collection of income taxes related to the receipt of CIAC. PEU argued that a special contract was necessary to allow it to collect the construction and tax funds from Pillsbury, and that it was reasonable because the water tank would be constructed, at least in part, to serve Woodmont Commons.

PEU contended that the cost sharing arrangement would benefit the Company and its customers as it would reduce the cost of future projects necessary to maintain reliable service, reduce the amount and cost of water purchased from Manchester Water Works in the future, and lower PEU's tax liability associated with CIAC. PEU stated that prior to considering the water needs associated with Woodmont Commons, the Company was contemplating the future

construction of a smaller water tank. The cost sharing arrangement would thus secure water storage in a cost-effective manner for all involved.

B. Staff

Based on review of the filings, technical session discussions, discovery, and a technical review by Commission Safety Division Engineer Joe Vercellotti, Staff recommended approval of the special contract. Staff agreed that the special contract allowed for the receipt of funds that would produce benefits to PEU and its current and future customers.

Staff noted that the tax liability assumed by PEU would be met by using a portion of available accumulated Net Operating Loss (NOL) carryforwards. NOL carryforwards are tax losses from previous fiscal years that can be used to offset future taxable income, thereby reducing the Company's income tax liability. Use of NOL carryforwards would not impact PEU's cash flow, which is necessary to avoid disruption to its current rate-making structure. Staff agreed with the Company that the available NOLs were previously generated and should be used exclusively for the benefit of existing ratepayers. Staff determined that using the NOLs for the tax liability in this case would benefit PEU ratepayers.

Staff reported that similar cost sharing arrangements with other developers are unlikely, because the Company filed a tariff revision to address income tax associated with the receipt of CIAC in Docket No. DW 18-189. Staff clarified that, while it supported the special contract, it was not recommending recovery of costs in rates at this time.

Staff concurred with the Company that special circumstances exist, and that under those circumstances, departure from PEU's tariff is just and consistent with the public interest.

III. COMMISSION ANALYSIS

RSA 378:14 requires public utilities to only charge customers rates identified in the utility's tariff. The Commission may, however, approve special contracts for services by a public utility, "if special circumstances exist which render such departure from the general schedules just and consistent with the public interest." RSA 378:18. We find that special circumstances exist that render departure from PEU's tariff just and consistent with the public interest. *See* RSA 378:18. Sharing the cost of constructing a 1.1 million gallon water tank and related tax costs with Pillsbury will provide benefits to PEU's current and future ratepayers, and enable provision of service to the customers in Woodmont Commons. PEU and its customers will face reduced future project costs and lower costs of water purchases from Manchester Water Works, Inc. As such, we approve the special contract and find that it is just and reasonable and consistent with the public interest.

While we recognize the ultimate goal of PEU and Pillsbury is to construct a 1.1 million gallon water tank, we are not deciding whether PEU's investment is prudent at this time. Approval of the special contract merely allows PEU to collect funds from Pillsbury should it decide to proceed.

Staff's recommendation noted that the Company may propose additional cost sharing for a water main at Woodmont Commons. Our approval in this docket does not extend to any other special contract. The Commission has stated it does not believe "it is appropriate for special contracts to be a means by which a utility regularly offers something other than its tariffed rate." *Generic Discounted Rates Docket*, Order No. 20,633 (October 19, 1992), 77 NH PUC 650, 654. Each special contract must meet the standards of RSA 378:18 on an individual basis in order for approval.

Based upon the foregoing, it is hereby

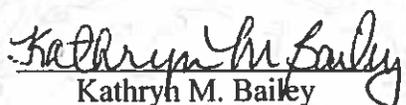
ORDERED, that the special contract between PEU and Pillsbury is hereby **APPROVED**;
and it is

FURTHER ORDERED, that PEU shall resubmit to the Commission an executed copy of the special contract, as reflected in Attachment Q of Staff's June 28 recommendation, along with its statement of special circumstances, as reflected in Attachment M, on or before (15 days of issuance of this order).

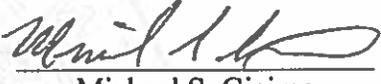
By order of the Public Utilities Commission of New Hampshire this ninth day of August, 2019.



Martin P. Honigberg
Chairman

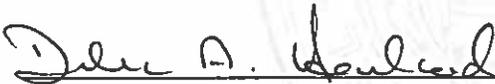


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



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