

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DW 18-189

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

RESPONSE IN SUPPORT OF PILLSBURY REALTY
DEVELOPMENT'S POSITION STATEMENT

NOW COME Pennichuck Water Works, Inc. ("PWW"), Pennichuck East Utility, Inc. ("PEU") and Pittsfield Aqueduct Company, Inc. ("PAC") (collectively the "Companies"), and respectfully respond to Pillsbury Realty Development LLC's ("Pillsbury") Position Statement and Conditional Request for a Hearing dated April 15, 2019 ("Position Statement") as follows:

INTRODUCTION AND BACKGROUND

1. Two dockets are at issue in Pillsbury's Position Statement: (1) Docket DW 18-101 involving a Special Contract between Pillsbury and PEU; and (2) this docket, Docket DW 18-189 regarding contributions in aid of construction ("CIAC").

2. In Docket No. 18-189, the Companies filed a Technical Statement asking the Commission to amend their tariff pages to reflect changes to federal tax law. Prior to the 2017 changes to the Federal Tax Act described as the Tax Cuts and Jobs Act, 26 U.S.C. §118 ("TCJA"), federal tax law included special rules for regulated utilities that received CIAC (either in the form of cash payments given to the Company or property constructed and transferred by the developer to the Company) whereby CIAC payments to regulated water utilities were excluded from taxable income if they were not incorporated into the regulated utility's rate base. In late 2017, as a part of the TCJA,

Congress amended Section 118 to remove the exclusion from taxation for CIAC payments to regulated water utilities.

3. On February 1, 2019, Pillsbury filed a timely motion to intervene. Pillsbury argued it is a developer directly impacted by the potential costs Pillsbury would incur for payment of taxes on a CIAC contribution covered by the Companies' proposed tariff amendments. At the preliminary hearing on February 6, 2019, the Commission granted Pillsbury's Petition to Intervene.

4. On April 2, 2019, PEU filed a revised Special Contract in DW 18-101 along with testimony of Mr. Goodhue and a letter of support from Pillsbury. *See* Docket DW 18-101 (April 2, 2019). That revised Special Contract resolved the issue of allocation of the CIAC payment as to Pillsbury's Woodmont Commons project. The Commission has scheduled a prehearing conference and technical session for May 7, 2019 regarding the revised Special Contract.

5. On April 15, 2019, Pillsbury filed a Position Statement in DW 18-189 asking the Commission to approve the revised Special Contract in DW 18-101 prior to issuing a ruling in DW 18-189. If the rulings occur in the order requested by Pillsbury, Pillsbury has no objection to the proposed CIAC tariff described in DW 18-189.

**COMPANIES' POSITION ON
PILLSBURY'S POSITION STATEMENT**

6. The Companies support Pillsbury's request that the Commission first issue a ruling in DW 18-101 and request the Commission approve the revised Special Contract. The Special Contract has limited applicability since it relates to only one project and involves only two parties, PEU and Pillsbury. As is noted by Pillsbury in its Position Statement, there is administrative efficiency achieved if DW 18-101 is resolved prior to

any hearing in DW 18-189. The Companies agree with this conclusion and respectfully join Pillsbury in its request for a ruling in DW 18-101 first.

7. In addition to supporting Pillsbury's Position Statement, the Companies request an expedited review of both dockets. As Mr. Goodhue described in his testimony filed in this docket, DW 18-189, the Companies regularly receive contributed CIAC. Until such time as the tariff changes are approved, Company's available NOL's and Deferred Tax Liabilities are eroded to the detriment of ratepayers.

8. In addition to the regular CIAC payments, PWW is unable to enter into another contract with Saint-Gobain for the expansion of public water in Litchfield necessitated by PFAS contamination of the groundwater. Under a Consent Decree between DES and Saint Gobain, the expansion must be completed by November of this year. Until such time as the Companies have amended tariffs in place for taxation of CIAC, however, PWW cannot enter into this very time-sensitive contract.

9. As such, the Companies further request that the Commission expedite its review of both dockets in order to minimize the negative impact of the changes in federal tax law have on ratepayers and also to allow PWW to begin work on the Litchfield expansion.

WHEREFORE, the Companies:

- A. Support Pillsbury's Position Statement;
 - B. Request that the Commission's review of dockets DW 18-101 and DW 18-189 be done on an expedited basis; and
- Grant such other relief as the Commission feels is just and equitable.

Respectfully submitted,

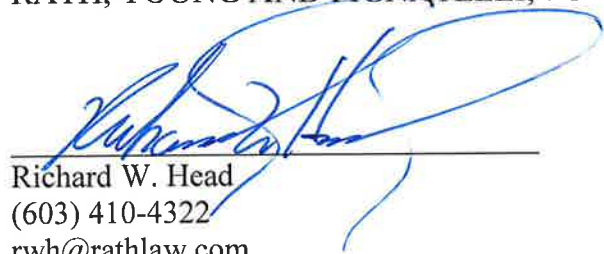
PENNICHUCK WATER WORKS, INC.,
PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY, INC.

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

Date: April 18, 2019

By:


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Certificate of Service

I hereby certify that on this 18th day of April 2019, a copy of this motion has been served electronically to the Docket No. DW 18-189 Discovery Service List.


Richard W. Head