

THE STATE OF NEW HAMPSHIRE



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November 25, 2019

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

NHPUC 25NOV19PM2:43

Re: DW 18-189 – Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and
Pittsfield Aqueduct Company, Inc. - 2018 CIAC Tariff Amendments
Supplemental Staff Recommendation

Dear Ms. Howland:

The purpose of this letter is to advise the Commission on proposed revisions submitted by Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility, Inc. (PEU), and Pittsfield Aqueduct Company, Inc. (PAC) (collectively, the Companies) on November 11, 2019, to the Companies' tariffs relative to contributions in aid of construction (CIAC). After review, Staff recommends the Commission approve the revised tariff pages.

Background

On March 28, 2019, in Docket No. DW 18-189, Staff filed a recommendation for approval of the Companies' proposed tariff revisions, subject to Staff's amendments as outlined on pages 2 and 3 of the March 28, 2019 recommendation.¹ Attachment A. The changes proposed by Staff, and agreed to by the Companies, are meant to ensure customers, both existing and potential, and any interested parties, are given the necessary information to calculate the possible tax implications contemplated within the Companies' proposed tariff revisions. These tax implications are the result of the passage of the 2017 Tax Cuts and Jobs Act (TCJA) where regulated water utilities who accept CIAC may have increased income taxes as a result of that CIAC.²

¹ The original Staff Recommendation, filed on March 25, 2019, inadvertently left out the Discovery. No changes were made to the Recommendation itself.

² See *Pennichuck East Utility, Inc.*, Order No. 26,285 at 1 (August 9, 2019) ("the federal 2017 Tax Cuts and Jobs Act, effective January 1, 2018, removed the exclusion of contributions in aid of construction (CIAC) from gross

DW 18-189: PWW, PEU, PAC CIAC Tariff Amendments

On April 2, 2019, PEU filed revisions to the special contract under review in Docket No. DW 18-101.³ The revisions to the special contract were to inform the Commission of the resolution of the unanticipated CIAC tax issues between the parties of the special contract, PEU and Pillsbury Realty Development, LLC (Pillsbury). These tax issues were also the result of the passage of the TCJA. On April 15, 2019, in Docket No. DW 18-189, Pillsbury filed a position statement seeking a Commission resolution on the revised special contract in Docket No. DW 18-101 prior to any hearings and Commission Order in Docket No. DW 18-189. Attachment B. On April 18, 2019, PWW, PEU and PAC all acknowledged and respectfully joined Pillsbury's April 15 request. Attachment C.

On June 28, 2019, Staff completed its review of the revisions to the special contract under contemplation in Docket DW 18-101 and issued its recommendation for approval of the revised special contract. Commission Order No. 26,285 was then issued on August 9, 2019 approving the revised special contract.

On November 12, 2019, subsequent to the resolution in Docket No. DW 18-101, the Companies submitted updated tariff pages containing the revisions agreed upon earlier. The revised tariff pages contain an effective date of December 1, 2019. After review, Staff concludes the updated tariff pages properly reflect the revisions proposed by the Companies and the changes proposed by Staff in Staff's original March 28, 2019 recommendation. As such, Staff recommends the Commission approve the revised tariff pages.

Thank you for your attention and assistance with this matter. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Anthony J. Leone
Utility Analyst, Gas-Water Division

cc: Service List

income for tax purposes for water companies. As of January 1, 2018, water companies were responsible for income tax on CIAC received").

³ Docket No. DW 18-101 was opened June 29, 2018.

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March 28, 2019

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

**Re: DW 18-189, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and
Pittsfield Aqueduct Company, Inc.
2018 CIAC Tariff Amendments
Staff Recommendation Re-filing**

Dear Ms. Howland:

Enclosed for filing in the above-referenced docket is a re-filing of the Staff Recommendation originally submitted on March 25, 2019. This recommendation includes the discovery that was inadvertently left out of the original submission. There are no additional changes to the March 25, 2019 recommendation, which this filing is intended to replace.

Thank you for your attention, and if you should have any questions regarding this matter please contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Leone".

Anthony J. Leone
Utility Analyst

Enclosures
cc: Service List

CHAIRMAN
Martin P. Honigberg

COMMISSIONERS
Kathryn M. Bailey
Michael S. Gialmo

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STATE OF NEW HAMPSHIRE



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March 25, 2019

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

Re: DW 18-189 Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield
Aqueduct Company, Inc. - 2018 CIAC Tariff Amendments
Staff Recommendation for Approval

Dear Ms. Howland:

On December 19, 2018, Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility, Inc. (PEU), and Pittsfield Aqueduct Company, Inc. (PAC) (collectively, the Companies), filed multiple tariff revisions to recover the tax liabilities associated with the receipt of contributions in the aid of construction (CIAC), both in the forms of both property and cash payments. In this letter, Staff recommends the Commission approve these tariff revisions as amended by Staff.

The Companies' submissions were supported by direct testimony and a technical statement from Larry D. Goodhue, CEO, CFO and Treasurer of the respective Companies. Mr. Goodhue stated that changes in federal tax law enacted as part of the 2017 Tax Cuts and Jobs Act (TCJA) have adversely impacted the Companies relative to their receipt of CIAC. Specifically, Congress amended Section 118 of the Internal Revenue Code (IRC), removing the tax exclusion of CIAC received by regulated water utilities. These changes became effective beginning 2018.

As a result, CIAC received by the Companies, in the form of either property or cash towards the cost of construction, are no longer adequate to cover the true cost to the Companies. Additional funds are now necessary in order to cover the tax liability triggered by the receipt of CIAC. Therefore, the Companies submitted revised tariff pages, establishing a "gross up" mechanism, equal to the value of the CIAC and the addition of further funds necessary to cover the new tax liability. The "gross-up" formulas proposed by the Companies' are based on their applicable statutory tax rates rather than their effective tax rates.

The Companies, Pillsbury Realty Development, LLC (Pillsbury), the sole intervenor, the Office of the Consumer Advocate (OCA), and the Staff of the Public Utilities Commission (Staff), met in a Technical Session at the Commission on February 6, 2019. Subsequently, Staff and Pillsbury propounded discovery to the Companies, which Staff has attached to this recommendation. The

Page 2
DW 18-189 PWW, PEU & PAC CIAC Tariff Amendments

Companies provided responses to Staff's Data Requests but filed an Objection to several of Pillsbury's requests. Pillsbury subsequently filed a Motion to Compel upon the Companies on February 26, 2019, to which the Companies objected to on March 7. At this time, Staff takes no position on Pillsbury's motion to compel, but Staff asserts it does not require any of Pillsbury's requests to be answered as a basis for its recommendation. After two technical sessions, and review of the filings and discovery, Staff concludes the tariff revisions, as amended by Staff, are just and reasonable.

Specifically, Staff notes the Companies' response to Staff 1-11(a), whereby the Companies explained that, in the absence of a return on equity (ROE), the Companies' no longer have a financial incentive to expand their water service. In addition, as stated in the last sentence of the Companies' response in Staff 1-1(b), the Companies' current rate structures, devoid of an ROE, neither generate the excess cash to pay the tax liability associated with the receipt of CIAC, nor provide the route whereby shareholders of a traditional regulated utility would be able to provide liquidity through capital markets.

Further, as evidenced in the Companies' response to Staff 1-7, the Companies already incur significant annual expenses relative to new customers added with the receipt of CIAC. In Staff 1-13, the Companies again stated that, in light of the taxation on CIAC, there is inadequate revenue and profitability related to the additional customers, thereby solidifying the Companies' motivations not to expand or add new customers by receiving CIAC. Lastly, the Companies explained in Staff 1-9, that additional customers brought on by receiving CIAC creates additional burdens to the existing system and ratepayers. For the reasons stated above, Staff believes it is appropriate to allow the Companies to "gross-up" the amount or value of CIAC received.

In addition, Staff reviewed the Companies' responses relative to the use of Net Operating Losses (NOL) to offset tax liabilities from the receipt of CIAC. As Mr. Goodhue explained in his testimony on page 7, lines 8-14, all of the Companies' current NOL's were previously generated to the benefit of current ratepayers. Therefore, to use these NOL's to offset CIAC tax obligations would allow the relatively new CIAC contributors to use a tax benefit that should benefit existing ratepayers. Such a decision would prevent the existing ratepayers from realizing these benefits to their full extent in current and future tax years. For the reasons stated above and further explained in the testimony of Mr. Goodhue, starting on line 1, page 5, and Staff 1-8, Staff agrees that in the absence of NOL's, the cost to the Companies from the receipt of CIAC should be the current statutory tax rates. Therefore, the most appropriate rates in the "gross-up" formulas should be the statutory tax rate.

Staff, however, recommends that the Commission approve the tariff amendments with the following additions:

- 1) In addition to the formulas the Companies propose to add to their respective "Miscellaneous Utility Service Fees" Tariff Pages, the Companies shall include examples of the "gross-up" formula similar to that found in the Testimony of Mr. Goodhue on page 4, lines 16-23. Such examples shall use the statutory federal and state tax rates for 2019, and shall be based upon \$1,000 of CIAC property and \$1,000 of CIAC cash, with the resulting tax obligation due to the Companies.

Page 3

DW 18-189 PWW, PEU & PAC CIAC Tariff Amendments

- 2) The Companies shall highlight that the above examples use tax rates effective as of 1/1/2019 and that these tax rates are subject to change in the future;
- 3) As the tax rates are subject to change, the Companies shall include links to the appropriate taxing agencies, i.e. the Internal Revenue Service (IRS) and the NH Department of Revenue Administration (DRA), where customers can periodically visit and obtain the most current tax rates in effect. This will provide assurance that anyone may calculate the CIAC tax implication using the most up to date tax rates. The inclusion of these links also obviate the need for the Companies to refile tariffs to update the formula examples every time tax rates change.

Staff concludes, based upon all the information presented, the proposed tariffs with Staff's amendments result in just and reasonable charges, pursuant to RSA 378:7. Staff further believes, given the unique facts presented in this Docket, this outcome best matches the costs associated with the expansion of public water service to the customers who are to receive the benefits of that service.

Prior to the filing of this recommendation, Staff provided a copy to the Companies, Pillsbury, and the OCA. The Companies indicated they are on board with Staff's position and Staff's additions to the Companies' proposed tariff amendments. The OCA did not respond and Pillsbury indicated that, "at this time, Pillsbury takes no position on staff's recommendation in light of its discussions with PEU concerning cost allocations involving the special contract in Docket No. 18-101".

Thank you for your attention, and if you should have any questions regarding this matter, please contact me.

Sincerely,



Anthony J. Leone
Utility Analyst, Gas & Water Division

Discovery
cc: Service list

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DW 18-189

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

2018 CIAC Tariff Amendments

**Pillsbury Realty Development, LLC's Position Statement
and Conditional Request for a Hearing**

Pillsbury Realty Development, LLC ("Pillsbury") submits this position statement related to the above-captioned docket and says:

1. On December 19, 2018, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. ("the Companies") requested that the Commission amend their tariff pages to reflect recent changes in federal tax law in order to recover the tax liabilities associated with the receipt of contributions in aid of construction ("CIAC"). Pillsbury timely intervened. Pillsbury cited, as a basis for intervention, the financial impact that the tariff amendments would have on Pillsbury with respect to a proposed special contract between Pillsbury and PEU that is the subject of Docket No. DW 18-101. See Pillsbury's Pet. to Intervene, dated Feb. 1, 2019. The Commission granted Pillsbury full intervenor status with respect to the proceedings.

2. Following discovery and a technical session, on March 25, 2019, Staff provided a recommendation of approval for the proposed tariff amendments with certain additions. Within its recommendation, Staff noted Pillsbury "indicated that, 'at this time, Pillsbury takes no position on staff's recommendation in light of its discussions with PEU concerning cost

allocations involving the special contract in Docket No. 18-101.” Staff Recommendation, March 25, 2019, at 3.

3. PEU and Pillsbury have successfully negotiated a resolution of the unanticipated tax costs associated with Pillsbury’s CIAC (representing 51% of the estimated costs of the water storage tank, which is the subject of the special contract in Docket No. DW 18-101). The CIAC tax costs associated with the water storage tank will be shared according to the same ratio as the other costs associated with the tank—namely, 51% to Pillsbury and 49% to PEU. PEU filed a revised special contract incorporating the resolution of the unanticipated tax costs in Docket No. DW 18-101. As part of its submission to the Commission, PEU provided a letter of support from Pillsbury with respect to the revised special contract. At the present time, the Commission has not approved the revised special contract, although Staff did previously recommend approval of the original special contract on November 28, 2018. A Supplemental Order of Notice was issued in Docket No. DW 18-101 on April 10, 2019, which scheduled a prehearing conference—at which each party will provide a preliminary statement with regard to the revised special contract—for May 9, 2019 with a technical session immediately following.

4. Provided the Commission approves the revised special contract in Docket No. DW 18-101 in the form proposed by Pillsbury and PEU, Pillsbury has no objection to the tariff revisions being approved. Absent such prior approval of the revised special contract, Pillsbury requests a hearing in the present docket to address the impact of the Companies’ proposed tariffs and to seek imposition of the “net present value” or some other similar, alternative methodology yielding just and reasonable charges. However, Pillsbury respectfully points out that administrative efficiency supports resolving Docket No. DW 18-101 prior to any hearing in the instant matter.

Respectfully submitted,

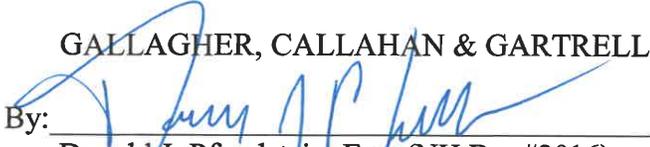
PILLSBURY REALTY DEVELOPMENT, LLC

By Its Attorneys

GALLAGHER, CALLAHAN & GARTRELL, P.C.

Dated: April 15, 2019

By:



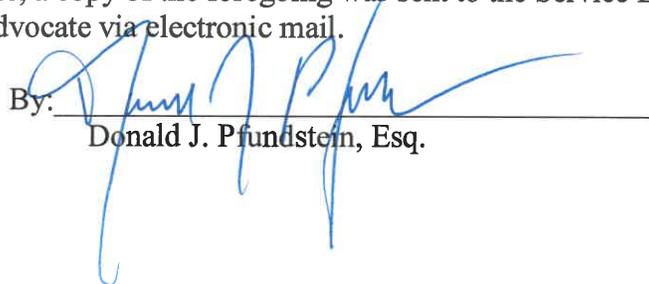
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(603) 228-1181

Certificate of Service

I hereby certify that on this date, a copy of the foregoing was sent to the Service List as well as the Office of the Consumer Advocate via electronic mail.

Dated: April 15, 2019

By:



Donald J. Pfundstein, Esq.

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,

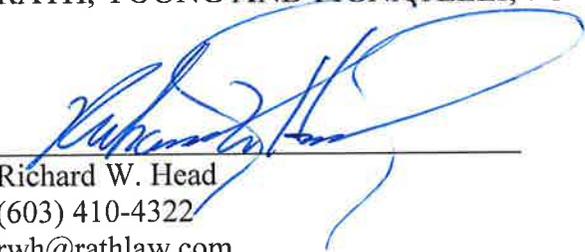
PENNICHUCK WATER WORKS, INC.,
PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY, INC.

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

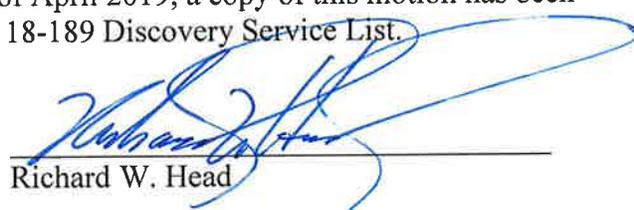
Date: April 18, 2019

By:


Richard W. Head
(603) 410-4322
rwh@rathlaw.com

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

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