

**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 Petition to Intervene**

Pillsbury Realty Development, LLC (“Pillsbury”) submits this petition to intervene, consistent with N.H. Admin. R. Puc 203.17 and RSA 541-A:32, and respectfully petitions the New Hampshire Public Utilities Commission (“Commission”) for intervention as a full party in the above-captioned proceeding. In support of this petition, Pillsbury states as follows:

Background

1. Pillsbury is a New Hampshire business registered with the N.H. Secretary of State. It is the developer of Woodmont Commons Planned Unit Development (“Woodmont Commons”). Pillsbury has received approval from the Town of Londonderry to develop Woodmont Commons.
2. Pennichuck East Utility, Inc. (“PEU”) holds a franchise to provide water service in parts of the Town of Londonderry and currently serves an estimated 4,165 people through 1,243 service connections in Londonderry.
3. PEU has initiated a verified petition for approval of a special contract for Woodmont Commons. See PUC Docket No. DW 18-101. Within PEU’s verified petition, it asserts that “PEU and Pillsbury have determined that the most suitable means of supplying Woodmont Commons with the water service it needs is for PEU to construct a larger water

storage tank than it had initially planned to address its projected growth and to have Pillsbury share in the cost of that larger tank.” Verified Petition ¶ 3. The prefiled direct testimony of PEU’s Chief Engineer filed with the Verified Petition provided details of PEU’s need to address projected growth in the Londonderry Core System as well as growth in the Woodmont Commons. See Direct Testimony of John J. Boisvert at page 4, lines 11–14. The cost of the storage tank will be approximately \$2.8 million. As part of that proposed agreement, Pillsbury will pay for 51% of the costs to construct the tank in the form of a contribution in aid of construction (CIAC) to help defray the cost of PEU’s construction of the storage tank.

4. At the end of December 2017, the United States Congress voted and the President signed into law major federal tax law changes, which would be effective for tax year 2018 (“2017 Tax Act”). On December 19, 2018, Pennichuck Water Works, Inc., PEU, and Pittsfield Aqueduct Company, Inc. (the “Companies”) sought to amend their respective tariffs in response to the 2017 Tax Act. As the Companies discuss in their submission, prior to the 2017 Tax Act, CIAC payments to regulated water utilities were excluded from taxable income if they were not incorporated into the utility’s rate base. With the removal of this exclusion due to the 2017 changes, the Companies aver that CIAC payments to the Companies no longer fully cover the true cost to the Company. The Companies seek to amend their tariffs to allow them to recover the resulting tax costs when CIAC property or payments are received by the Companies. They intend to do this through a formula articulated within the Technical Statement of Larry Goodhue and intend to recover these costs from developers.

#### Legal Standard

5. N.H. Admin. R. Puc 203.17 provides that “[t]he commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32.” RSA 541-A:32,

I provides, in pertinent part, that the presiding officer shall grant a petition to intervene if the petitioner demonstrates that “the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding . . . ” and “the presiding officer determines that the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” See RSA 541-A:32, I(b); RSA 541-A:32, I(c). The statutory scheme further provides that “[t]he presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II (emphasis added).

6. As set forth below, whether analyzed under Section I or II of RSA 541-A:32, Pillsbury has met the requisite elements for intervention and should be granted full intervenor status in the above-captioned docket.

#### Legal Analysis

7. As a threshold matter, Pillsbury qualifies for intervention under the mandatory provisions of RSA 541-A:32, I because its substantial interests will be affected by the proceeding and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. Pillsbury is a developer that is directly impacted by the Companies’ proposed CIAC tariff amendments. As indicated in the Technical Statement of Larry Goodhue, the Companies seek to require developers—including Pillsbury—to pay the tax costs that are incurred by the Companies when they receive CIAC payments. Given the pending request for approval of the special contract between PEU and Pillsbury, the tariff amendments, if they are approved or otherwise take effect, will have a direct impact on the potential costs that Pillsbury would incur in relation to that agreement. In fact, should the gross-up formula

contained in PEU's proposed amended tariff be approved, Pillsbury would be charged approximately \$500,000 more for its portion of the water tank costs. For these reasons, Pillsbury has demonstrated that its interests in the proceeding satisfy the requisite language of RSA 541-A:32, I and its petition to intervene should be granted.

8. Additionally, Pillsbury also qualifies for intervention under the discretionary standard articulated in RSA 541-A:32, II. Pillsbury acknowledges the significance of the 2017 Tax Act. It seeks intervenor status to ensure that the Commission considers all the impacts the 2017 Tax Act may have on PEU, and, further, whether an alternative formula or methodology would best assure collection of the true tax costs associated with CIAC as is the case in certain other jurisdictions. The interests of justice and orderly conduct of the proceedings would be promoted by granting Pillsbury's intervention and will assist the Commission in rendering a determination in this matter.

9. If allowed to intervene, Pillsbury will abide by the Commission's rules and any applicable procedural schedule in the docket. Pillsbury's principal interest in seeking intervenor status is to participate in public hearings and technical sessions in order to engage the Companies and Staff in discussions concerning the tax treatment of CIAC. While Pillsbury does not anticipate conducting its own discovery or presenting or examining witnesses, it does not wish to expressly waive the right to do so, at least, at this time. Pillsbury does seek to review discovery conducted by others. Pillsbury has no interest in prolonging or complicating this proceeding.

#### Conclusion

10. For these reasons, Pillsbury requests that the Commission grant its petition to intervene and allow it to participate in this proceeding.

11. Pillsbury has sought the assent of the Companies with respect to the relief in this petition. Pillsbury and the Companies were not able to agree despite an effort to do so.

**WHEREFORE** Pillsbury Realty Development, LLC respectfully requests the following affirmative relief:

- A. Grant this petition to intervene; and
- B. Grant such other relief that is just.

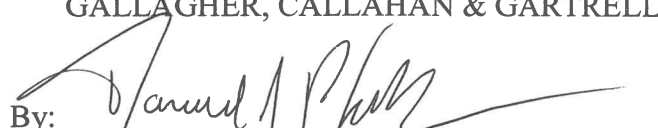
Respectfully submitted,

PILLSBURY REALTY DEVELOPMENT, LLC

By Its Attorneys

GALLAGHER, CALLAHAN & GARTRELL, P.C.

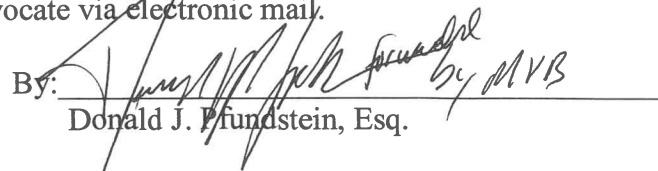
Dated: February 1, 2019

By:   
Donald J. Pfundstein, Esq. (NH Bar #2016)  
Matthew V. Burrows, Esq. (NH Bar #20914)  
214 North Main Street  
Concord, NH 03301  
[pfundstein@gcglaw.com](mailto:pfundstein@gcglaw.com)  
[burrows@gcglaw.com](mailto:burrows@gcglaw.com)  
(603) 228-1181

Certificate of Service

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

Dated: February 1, 2019

By:   
Donald J. Pfundstein, Esq. *forwaded by MVB*