

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**

**OBJECTION TO PILLSBURY REALTY DEVELOPMENT'S
PETITION TO INTERVENE**

NOW COME Pennichuck Water Works, Inc. ("PWW"), Pennichuck East Utility, Inc. ("PEU") and Pittsfield Aqueduct Company, Inc. ("PAC") (collectively the "Companies"), and respectfully object to Pillsbury Realty Development LLC's ("Pillsbury") Petition to Intervene. In support of this Objection, the Companies state as follows:

1. On January 18, 2019, the Commission issued Order No. 26,211 scheduling this matter for a hearing and technical session on February 6, 2019. That Order also provided that any person seeking to intervene must file a motion by February 4, 2019 and any objections to such motions to intervene are due by February 6, 2019.

2. On February 1, 2019, Pillsbury filed a timely motion to intervene. Pillsbury argues 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.

3. Puc 203.17 provides that "the commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32." RSA 541-A:32 provides in relevant part:

- I. The presiding officer shall grant one or more petitions for intervention if: ...
 - (b) The petition states facts demonstrating that the petitioner's rights, duties,

privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

4. Pillsbury incorrectly describes RSA 541-A:32, I as a “mandatory provision.” Instead, RSA 541-A:32, I has a two part test. The first part of the test requires that the petition state facts demonstrating a substantial interest may be affected by the proceeding. The Companies do not contest that the proposed gross up tax formula proposed by the Companies will impact one project Pillsbury is currently working on within PEU’s service area known as Woodmont Commons. *See* Docket DW 18-101, Petition for Approval of Special Contract. That single contract, however, should not qualify as a “substantial” interest sufficient to be granted intervenor status and all of the appurtenant rights that come with becoming a party.

5. Simply having an interest in a docket is insufficient basis for intervention. Indeed, the Commission’s rules provide for involvement by an interested party that does not require intervenor status. Puc 203.18 provides that “[p]ersons who do not have intervenor status in a proceeding but having interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their position.” Given that the issues presented in this docket are principally issues of law and the application of that law to the unique ratemaking methodologies that apply to the Companies, interested party status would be appropriate for Pillsbury. With that interested party status, Pillsbury can present any alternative formula or other argument to the Commission.

6. The Companies' primary concern, however, lies with the second part of the test in RSA 541-A:32, I under which the Commission must find that "the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention."

7. As Mr. Goodhue described in his prefiled testimony filed on January 31, 2019, the issues presented in this docket are highly time sensitive. *See* Goodhue prefiled testimony at 8. The most significant contract that could be affected by any delay in this proceeding is the extension of public water to private wells affected by PFOA contamination in southern New Hampshire. Delays could endanger the timeline for providing clean drinking water to those residents affected by the contamination. *Id.*

8. Pillsbury's participation as an intervenor has the potential to cause significant impact on the "orderly and prompt conduct of the proceedings." Pillsbury's Petition reserves the right to conduct discovery, present its own witnesses and examine other witnesses. Indeed, Pillsbury's Petition states only that "[t]he 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." Pillsbury Petition at ¶8. Pillsbury provides no assurances that it will not adversely affect the "orderly and prompt conduct of the proceedings." RSA 541-A:32, I(c).

9. Given that *any* further delay in this proceeding could have significant negative consequences, and given that additional discovery and witnesses would likely result in further delay, the Companies respectfully request that this Commission decline Pillsbury's Petition under the "orderly and prompt conduct" standard in RSA 541-A:32, I(c).

10. Should the Commission grant Pillsbury intervenor status, the Companies request that the Commission impose conditions on its participation in accordance with RSA 541-A:32, III. If granted intervenor status, Pillsbury should be limited to participating in technical sessions, reviewing discovery and presenting argument to the Commission.

WHEREFORE, the Companies respectfully requests that the Commission:

- A. Deny Pillsbury's Petition to Intervene; or
- B. Should the Commission grant intervention status, limit Pillsbury's role to participation in technical sessions, reviewing discovery and presenting argument to the Commission; and
- C. Provide such other relief as is just and equitable.

Respectfully submitted,

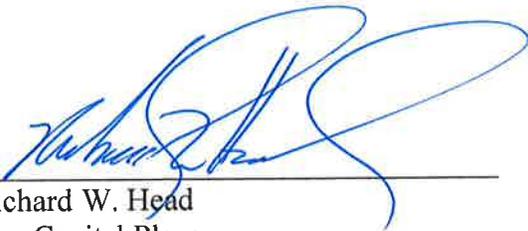
PENNICHUCK WATER WORKS, INC.,
PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY, INC.

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

Date: February 4, 2019

By:


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Certificate of Service

I hereby certify that on this 4th day of February, 2019, a copy of this motion has been served electronically to the Docket No. DW 18-189 Service List and via email to Donald J. Pfundstein, Esq, and Matthew V. Burrows, Esq., counsel for Pillsbury Realty Development.



Richard W. Head