



DONALD J. PFUNDSTEIN

214 N. Main Street
Concord, NH 03301

Ph. (603) 545-3600
Ph: (800) 528-1181
Fax: (603) 226-3477
pfundstein@gcglaw.com

February 15, 2019

VIA EMAIL

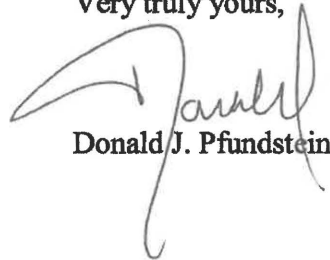
Richard W. Head
Rath, Young and Pignatelli, P.C.
One Capital Plaza
Concord, NH 03302-2600

Re: Docket #DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and
Pittsfield Aqueduct Company, Inc.
2018 CIAC Tariff Amendments
Pillsbury Set 1 Data Requests

Dear Attorney Head:

Attached please find Pillsbury's first set of data requests in the above-captioned docket. Pursuant to the procedural schedule, please provide your responses by February 25, 2019. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Donald J. Pfundstein

DJP:bal
Attachment

Discovery Service List (electronically)

**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 First Set of Data Requests (“Requests”)

Pillsbury Realty Development, LLC (“Pillsbury”) serves these Data Requests (“Requests”) on Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. (the “Companies”) pursuant to the Commission’s secretarial letter dated February 7, 2019.

INSTRUCTIONS

1. For purposes of these Requests, “Document” is used in its broadest sense and means all original writings of any nature whatsoever and all non-identical copies and drafts thereof, in your possession, custody or control, regardless of location, and without limitation the following items, whether printed or recorded or filmed or reproduced by any other mechanical or electrical processes, or written or produced by hand, including all originals, masters and copies, namely; agreements, contracts, memoranda of understanding, correspondence or communications, including intra-company correspondence and communications, electronic mail, cablegrams, telefax and telegrams, reports, notes and memoranda, summaries and recordings of conversations, manuals, publications, calendars, diaries, technical and engineering reports, data sheets and notebooks, photographs, audio and video tapes and discs, models and mockups, expert and consultant reports, drafts of originals with marginal comments or other markings that

differentiate such copies from the original, and any other information containing paper, writing, or physical thing.

2. Please answer these Requests under oath and indicate who will be available for cross examination with respect to each Request and return them to Gallagher, Callahan & Gartrell, P.C.

3. Each Request and response should be answered by each company, unless the context clearly indicates otherwise, and should start on a new page as illustrated by the following example:

UTILITY NAME [HERE]

INSERT DOCKET NUMBER [HERE]

IDENTIFY DATA RESPONSE SET NUMBER AND TITLE [HERE]

Date Request Received: 00/00/19

Date of Response: 00/00/19

Request No. Pillsbury 1-1

Witness: [Witness Name]

REQUEST: [Type out]

RESPONSE: [Type out]

4. If the Companies have no document that is responsive in any way to any portion of a particular Request, please so indicate. Additionally, please identify the person who determined that no such document exists.

5. Please furnish responses to these Requests on or before February 25, 2019.

6. These Requests are continuing in nature and thus, the Companies are under a continuing duty to supplement, correct, or revise any response provided or any documents produced when the passage of time or change of circumstances would require a response to be supplemented, corrected, or revised. N.H. Admin. R. Puc 203.09(k).

7. If you find a Request unclear or imprecise, please request clarification, by telephone or electronic mail, by contacting Donald Pfundstein as soon as possible at 603-228-1181 or pfundstein@gcglaw.com.

DATA REQUESTS

Pillsbury 1-1

Please list and describe all methodologies the Companies, individually or collectively, considered to address the 2017 Tax Act changes to the tax treatment of CIAC. In so doing, please provide all documents related to the Companies' consideration of these methodologies.

Pillsbury 1-2

Please confirm whether Pennichuck Corporation has ever paid federal income tax since the City of Nashua acquired 100% of the stock of Pennichuck Corporation effective on or about January 25, 2012.

Pillsbury 1-3

If Pennichuck Corporation has, in fact, paid federal income tax during any tax year since on or about January 25, 2012, please specify the year or years and the amount of federal income tax paid. Alternatively, you may provide copies of all relevant federal tax returns.

Pillsbury 1-4

Please confirm the accuracy of the 2017 and 2016 "effective income tax rate[s]" displayed on page 28 of the Independent Auditors' Report in Pennichuck Corporation's Annual Report to the Sole Shareholder dated March 27, 2018.

a. 2017: (- 20.8%)

Confirmation Yes _____ No _____

If no, please explain.

b. 2016: (-12.4%)

Confirmation Yes _____ No _____

If no, please explain.

Pillsbury 1-5

Please confirm the accuracy of the federal net operating loss in 2017 and 2016 on page 29 of the Independent Auditors' Report in Pennichuck Corporation's Annual Report to the Sole Shareholder dated March 27, 2018.

a. 2017: \$6.7 Million

Confirmation Yes _____ No _____

If no, please explain.

b. 2016: \$1.6 Million

Confirmation Yes _____ No _____

If no, please explain.

Pillsbury 1-6

Please confirm the accuracy of the New Hampshire net operating loss in 2017 and 2016 on page 29 of the Independent Auditors' Report in Pennichuck Corporation's Annual Report to the Sole Shareholder dated March 27, 2018.

a. 2017: \$7.3 Million

Confirmation Yes _____ No _____

If no, please explain.

b. 2016: \$2.5 Million

Confirmation Yes _____ No _____

If no, please explain.

Pillsbury 1-7

Please explain how Pennichuck Corporation anticipates using the “cumulative federal alternative minimum tax credits” described on page 29 of the Independent Auditors’ Report in Pennichuck Corporation’s Annual Report to the Sole Shareholder dated March 27, 2018.

Pillsbury 1-8

Please confirm whether the Companies or Pennichuck Corporation has ever received a “going concern” opinion from any of its outside accountants or auditors. If so, please attach copies of all relevant documents.

Pillsbury 1-9

Please list the name of the project and developer contact for the five (5) largest projects, which are likely to make CIAC payments during 2019 or later, of which the Companies or any of them are currently aware in their respective franchise areas.

Pillsbury 1-10

On page 2, lines 21-23 of the Direct Prefiled Testimony of Larry D. Goodhue (“Testimony”) appears the following statement: “...even though the value of the CIAC being provided has no association with them [current ratepayers] and brings no financial benefit to them going forward.”

- a. Please explain this statement in light of the fact that you intend to depreciate the CIAC asset which the ratepayers did not pay for and you wish not to credit the contributor in any meaningful way for the tax benefits associated therewith.
- b. Please respond to the Commission’s observation in Re Contribution In Aid of Construction, DF 87-13, Order No. 19,055, 73 NH PUC 137 at p.145: “Pennichuck’s position does not address the fact that the general body of ratepayers would derive the

benefit of future tax depreciation deductions for the amount of the contribution in the event that the contributor paid the tax.”

Pillsbury 1-11

On page 3, line 25 onto page 4 line 1 of the Testimony, the following statement appears with respect to the Companies’ proposed depreciation practice: “This is in conformity with the rate structure of the Company and its rates methodology. . . .” Additionally, on page 4, lines 2-4, of the Testimony appears the following statement: “Credit is not given for depreciation after year one, as the ownership of the asset resides with the utility, and the depreciation in those subsequent years is the generator of cash flow to pay for the ongoing obligations related to CIAC assets, . . .” Please explain these statements in light of the fact that for PEU in DW 17-128, utility plant and depreciation are no longer factors in the determination of customer rates.

Pillsbury 1-12

Please confirm whether the gross up methodology your Companies propose includes a further “gross-up” to pay the tax incurred on the “gross-up” tax payment (“tax on tax”) on the CIAC.

Confirmation Yes _____ No _____

If no, please explain.

Pillsbury 1-13

If the “tax on tax” reality is confirmed in the response to the previous Request, please respond to the following Commission finding:

“The Commission does not believe that it is appropriate to ask a contributor to pay the tax on the contribution-in-aid-of construction. If the tax was required, an additional tax upon the tax would be assessed thereby increasing the cost to society as a whole with no

apparent benefit to anyone except for increased tax flow.” Re Contribution in Aid of Construction DF 87-113, Order No. 19,055, 73 NH PUC 137 at p.149.

Pillsbury 1-14

By way of analogy to the Companies which express cash flow concerns with their liability for federal income tax on CIAC, “In the case of a small water utility that has problems raising funds, we [the Commission] will consider a policy of allowing taxes on CIAC to be collected.

However, as the tax benefits are realized, refunds will be made to the contributor.” Re Contribution in Aid of Construction DF 87-113, Order No. 19,055, 73 NH PUC 137 at p.150.

Please explain why the Companies are apparently of the view that the “public good” would not require the refunds, sharing meaningful depreciation benefits, or some net present value or similar methodology.

Pillsbury 1-15

Assume for the purpose of your response the following:

Currently for federal income tax purposes, there is allowed a 100% Bonus Depreciation deduction for Qualified Property in the year the asset is placed in service through December 31, 2022. This deduction is phased out during 2023 through 2026. Water Utility Property as defined in IRS Code Sec. 168(e)(5) is Qualified Property.

Please explain why it would be prudent for Pennichuck Corporation to not take the 100% Bonus Depreciation thus offsetting the inclusion of CIAC in income for federal income tax purposes, particularly when doing so would appear to create additional net operating losses with an indefinite carry forward period to offset future income?

Pillsbury 1-16

Assume for the purposes of your response the following:

After taking advantage of the 100% federal Bonus Depreciation the tax associated with a particular CIAC payment would only be the total owed to New Hampshire before deductions and other offsets.

Please confirm that the following calculation is correct for the New Hampshire tax before application of any available net operating loss: After applying the tax benefit of the New Hampshire deduction on the federal return, the resulting New Hampshire tax rate is 6.24% of the CIAC payment.

Confirmation Yes _____ No _____

If no, please explain.

Pillsbury 1-17

During years 1-5 after the water tank subject to the special contract between Pennichuck East Utility, Inc. and Pillsbury is placed in service, please specify the maintenance and operating costs associated therewith and provide any documents with respect thereto.

Respectfully submitted,

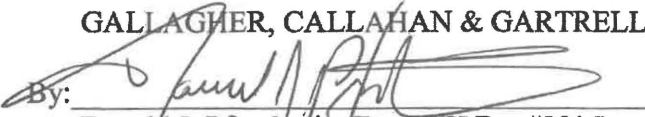
PILLSBURY REALTY DEVELOPMENT, LLC

By Its Attorneys

GALLAGHER, CALLAHAN & GARTRELL, P.C.

Dated: February 15, 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

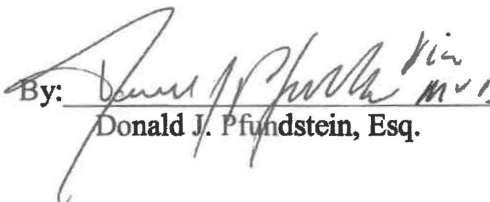
burrows@gcglaw.com

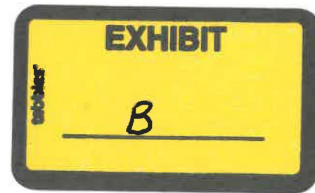
(603) 228-1181

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: February 15, 2019

By:  Donald J. Pfundstein, Esq. *via m-13*



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 CERTAIN DATA REQUESTS PROPOUNDED BY PILLSBURY REALTY DEVELOPMENT

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") Data Requests Nos. 1, 2, 3, 4, 5, 6, 8 and 9. Pursuant to PUC 203.09, this Objection is being served only on the Discovery Service List and not with the Commission.

INTRODUCTION AND BACKGROUND

1. On December 19, 2018, 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 contributions in aid of construction ("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.

2. As the Commission is aware, the Companies are unusual when compared to other regulated utilities in that the shareholder of the parent company is a municipality, the City of Nashua. It is also unusual in that it is funded entirely by revenues from customers and debt. There is no equity source of funding, and the rates for the Companies do not include a component of return on investment. Currently, at least, there is no mechanism in the Companies' ratemaking methodologies to collect for federal income and state business enterprise taxes.

3. 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.

4. 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. The Companies objected.

5. At the preliminary hearing on February 6, 2019, the Commission granted Pillsbury's Petition to Intervene. The Companies requested that Pillsbury's intervention be limited to participation in technical sessions and presenting argument at hearing, but the Commission declined to place limits on Pillsbury's data requests, without prejudice to further consideration of that decision.

6. At the technical session on February 6, 2019, the parties reached an agreement on a procedural schedule, which was filed with the Commission on February 6, 2019. That schedule provides for one round of data requests, to be filed by February

15, 2019 and to be answered by February 25, 2019. Due to the time sensitive nature of this docket, the parties agreed that objections would be filed by February 20, 2019.

7. On February 15, 2019, Pillsbury submitted 17 data requests, a copy of which is attached as Exhibit 1. The Companies object to data requests 1, 2, 3, 4, 5, 6, 8 and 9.

Standard of Review

8. In Order No. 25,997 (March 7, 2017), the Commission described, in detail, the standard for data requests. The Commission wrote

To prevail on their Motion, the Labor Intervenors must demonstrate that their data requests seek facts that are admissible or are reasonably calculated to lead to the discovery of admissible evidence. Public Service Co. of N.H., Order No. 25,646 (April 8, 2014) (citations omitted). “Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence.” City of Nashua, Order No. 24,485 (July 8, 2005) at 4. Data requests are a “vehicle for developing factual information.” Freedom Ring Communications, LLC d/b/a Bay Ring Communications, Order No. 24,760 (June 7, 2007) at 2. We have long recognized that:

In the context of civil litigation, New Hampshire law favors liberal discovery, ... and that discovery is regarded as “an important procedure ‘for probing in advance of trial the adversary’s claims and his possession or knowledge of information pertaining to the controversy between the parties.’” ... Consistent with Superior Court Rule 35(b) regarding the scope of discovery, we require parties to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.

City of Nashua, Order No. 24,681 (October 23, 2006) at 2.

In ruling on a motion to compel, we “enjoy ‘broad discretion in the management of discovery.’” We weigh “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria.” Public Service Co. of N.H., Order No. 25,595 (November 15, 2013) at 3-4; City of Nashua, Order No. 24,485 at 4. If we perceive of no circumstance in which the requested data would be relevant, we will deny a request to compel its production. Valley Green Natural Gas, LLC, Order No. 25,867 (February 17, 2016) at 5.

Order No. 25,997, emphasis added, some citations omitted.

9. The petition that gives rise to this docket is a request to amend the Companies' tariffs to collect for taxes on contributions in aid of construction ("CIAC"). The Companies have described the proposed formula it is seeking permission to apply when developers and other CIAC contributors, to fully and adequately fund the tax liability associated with the CIAC property and/or monies being contributed to the Company. Absent the ability to provide for this in the tariffs, the Company's current ratepayers will bear the burden for those tax payments, even though the value of the CIAC being provided has no association with them and brings no financial benefit to them going forward. See prefiled testimony of Larry Goodhue at 2.

10. For the reasons described in more detail below, the Companies object to the referenced data requests from Pillsbury as irrelevant to the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

SPECIFIC OBJECTIONS

Pillsbury 1-1

11. Pillsbury 1-1 seek a list and description of all methodologies the Companies considered to address changes to the tax treatment of CIAC.

12. The Companies first objection is based on attorney-client privilege. In order to develop an understanding of the implications of the changes to the taxation of CIAC and the formula for how the Companies should collect the tax, the Companies developed the proposed formula with the advice of legal counsel. All options for collecting the tax were discussed with legal counsel and the approach on how to present the formula was developed with legal counsel's advice. Thus, the Companies object on

the basis of attorney-client privilege.

13. Second, the data request is irrelevant and unlikely to lead to the discovery of admissible evidence. Prior to receiving Pillsbury's petition to intervene, the Company met with Attorney Pfundstein to answer questions he may have and to explain the reasoning behind the formula. The Companies expressed a willingness to consider alternative formulas. In fact, the Companies modified the requested formula to reduce the tax payment sought from developers based on that conversation. *See* prefiled testimony of Larry Goodhue. As was described above, however, discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence. To the extent Pillsbury wishes to propose an alternative formula it can do so. Seeking an understanding of what the Companies considered, however, is not relevant to the proceeding and is not likely to lead to the discovery of admissible evidence.

Pillsbury 1-2 and 1-3

14. Data request number 2 seeks information on whether Pennichuck Corporation ("Penn Corp") has ever paid federal income tax since 2012. Whether or not Penn Corp has paid federal income tax since the City of Nashua became Penn Corp's sole shareholder is irrelevant to this proceeding. The questions before the Commission in this proceeding are (1) what are the tax implications of the TCJA on CIAC; (2) how should those taxes be funded; and (3) is it fair for existing ratepayers to pay for a developer's profit-making projects and/or should those ratepayers lose tax credits they previously earned. The question of past payment of federal taxes is not relevant nor is it likely to lead to the discovery of admissible evidence.

15. Data request number 3 is related to number 2 and asks for the years and amounts of federal income tax paid. For the reasons described in the previous paragraph, the Companies object.

Pillsbury 1-4, 1-5, 1-6

16. Data request number 4 asks the Companies to confirm the accuracy of the Independent Auditor's Report dated March 27, 2018. To the extent it is a question about the methodologies and accuracy of an independent auditor's report, the question seeks expert opinions beyond the scope of data requests to the Companies. Furthermore, such confirmation is not relevant and is unlikely to lead to the discovery of admissible evidence. To the extent Pillsbury wishes to make an argument based on the numbers and data contained in the Independent Auditor's report, it should do so and can do so without the need to propound this data request.

17. Data requests 5 and 6 are similar to 4 but request confirmation of other data contained in the Independent Auditor's Report. For the reasons described in the previous paragraph, the Companies object.

Pillsbury 1-8

18. Data request number 8 seeks information on whether the Companies or Penn Corp have ever received "going concern" opinions. This data request fails to account for the fact that the Companies are regulated by the PUC, are subject to audit and review by the PUC and are subject to detailed examinations during every rate case proceeding. The financial status of the Companies and Penn Corp is irrelevant and not likely to lead to the discovery of admissible evidence. What is relevant is whether the TCJA imposes a new tax liability on the Companies (and it appears to be undisputed that

it does) and what is the fairest way of assessing that new tax burden as between developers and existing ratepayers. Whether or not the Companies are financially viable is certainly important to the Commission generally, but is completely irrelevant to the limited questions before the Commission.

Pillsbury 1-9

19. Data request number 9 asks for information on the five largest projects which are likely to be subject to CIAC payments. Similar to previous objections, this data request exceeds the scope of what is at issue in this docket. If the Intervenor has an alternative formula it wishes to present, it is free to do so. Seeking the identity of other companies that are likely to deliver taxable CIAC assets is not going to assist the Commission with its deliberations.

20. As Mr. Goodhue described in his testimony, the Companies regularly receive contributed CIAC. It is that regular receipt of CIAC that makes this docket time sensitive. Seeking information about specific developer contacts for future potential CIAC only serves to delay the proceeding. Delays if the tariff change only erode the Company's available NOL's and Deferred Tax Liabilities, to the detriment of ratepayers.

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 20, 2019

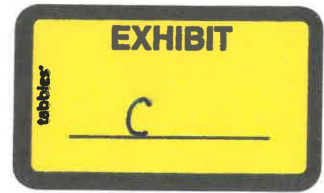
By:


Richard W. Head
One Capital Plaza
Concord, NH 03301
(603) 226-2600

Certificate of Service

I hereby certify that on this 20th day of February, 2019, a copy of this motion has been served electronically to the Docket No. DW 18-189 Discovery Service List.


Richard W. Head



DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-1

Date of Response: 2/25/19
Witness: None

REQUEST:

Please list and describe all methodologies the Companies, individually or collectively, considered to address the 2017 Tax Act changes to the tax treatment of CIAC. In so doing, please provide all documents related to the Companies' consideration of these methodologies.

RESPONSE:

This data request was included in an "Objection to Certain Data Requests Propounded by Pillsbury Realty Development," as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-2

Date of Response: 2/25/19
Witness: None

REQUEST:

Please confirm whether Pennichuck Corporation has ever paid federal income tax since the City of Nashua acquired 100% of the stock of Pennichuck Corporation effective on or about January 25, 2012.

RESPONSE:

This data request was included in an “Objection to Certain Data Requests Propounded by Pillsbury Realty Development,” as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-3

Date of Response: 2/25/19
Witness: None

REQUEST:

If Pennichuck Corporation has, in fact, paid federal income tax during any tax year since on or about January 25, 2012, please specify the year or years and the amount of federal income tax paid. Alternatively, you may provide copies of all relevant federal tax returns.

RESPONSE:

This data request was included in an “Objection to Certain Data Requests Propounded by Pillsbury Realty Development,” as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-4

Date of Response: 2/25/19
Witness: None

REQUEST:

Please confirm the accuracy of the 2017 and 2016 “effective income tax rate[s]” displayed on page 28 of the Independent Auditors’ Report in Pennichuck Corporation’s Annual Report to the Sole Shareholder dated March 27, 2018.

a. 2017: (- 20.8%)

Confirmation Yes _____ No _____

If no, please explain.

b. 2016: (-12.4%)

Confirmation Yes _____ No _____

If no, please explain.

RESPONSE:

This data request was included in an “Objection to Certain Data Requests Propounded by Pillsbury Realty Development,” as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-5

Date of Response: 2/25/19
Witness: None

REQUEST:

Please confirm the accuracy of the federal net operating loss in 2017 and 2016 on page 29 of the Independent Auditors' Report in Pennichuck Corporation's Annual Report to the Sole Shareholder dated March 27, 2018.

a. 2017: \$6.7 Million

Confirmation Yes _____ No _____

If no, please explain.

b. 2016: \$1.6 Million

Confirmation Yes _____ No _____

If no, please explain.

RESPONSE:

This data request was included in an "Objection to Certain Data Requests Propounded by Pillsbury Realty Development," as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-6

Date of Response: 2/25/19
Witness: None

REQUEST:

Please confirm the accuracy of the New Hampshire net operating loss in 2017 and 2016 on page 29 of the Independent Auditors' Report in Pennichuck Corporation's Annual Report to the Sole Shareholder dated March 27, 2018.

a. 2017: \$7.3 Million

Confirmation Yes _____ No _____

If no, please explain.

b. 2016: \$2.5 Million

Confirmation Yes _____ No _____

If no, please explain.

RESPONSE:

This data request was included in an "Objection to Certain Data Requests Propounded by Pillsbury Realty Development," as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-7

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Please explain how Pennichuck Corporation anticipates using the “cumulative federal alternative minimum tax credits” described on page 29 of the Independent Auditors’ Report in Pennichuck Corporation’s Annual Report to the Sole Shareholder dated March 27, 2018.

RESPONSE:

The cumulative federal alternative minimum tax credits would be used in conjunction with the NOL carryforwards generated before Tax Cut and Jobs Act (“TCJA”) was enacted.

The Tax Cuts and Jobs Act repealed the AMT on corporations. Conforming changes also simplified dozens of other tax code sections that were related to the corporate AMT. The TCJA also allows corporations to offset regular tax liability by any minimum tax credit (“MTC”) they may have for any tax year. And, a corporation's MTC is refundable for any tax year beginning after 2017 and before 2022 in an amount equal to 50% (100% for tax years beginning in 2021) of the excess MTC for the tax year, over the amount of the credit allowable for the year against regular tax liability. Thus, the full amount of the corporation's MTC will be allowed in tax years beginning before 2022.

As the AMT credits currently on the books of the Companies was earned and paid for out of ongoing business activities, directly tied to revenues generated and paid for by ratepayers (and not by pre-TCJA CIAC activities), these credits will be used in conjunction with the NOL carryforwards available to the Company, to offset tax liabilities associated with non-CIAC activities, which only became taxable as of TCJA, and after these AMT credits were earned and generated.

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-8

Date of Response: 2/25/19
Witness: None

REQUEST:

Please confirm whether the Companies or Pennichuck Corporation has ever received a “going concern” opinion from any of its outside accountants or auditors. If so, please attach copies of all relevant documents.

RESPONSE:

Neither the Companies nor Pennichuck Corporation have received a “going concern” opinion from any of its outside accountants or auditors.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-9

Date of Response: 2/25/19
Witness: None

REQUEST:

Please list the name of the project and developer contact for the five (5) largest projects, which are likely to make CIAC payments during 2019 or later, of which the Companies or any of them are currently aware in their respective franchise areas.

RESPONSE:

This data request was included in an “Objection to Certain Data Requests Propounded by Pillsbury Realty Development,” as filed with the parties in Docket DW 18-189 on February 20, 2019. As such, no response to this data request is included herein, or would be forthcoming.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-10

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

On page 2, lines 21-23 of the Direct Prefiled Testimony of Larry D. Goodhue (“Testimony”) appears the following statement: “...even though the value of the CIAC being provided has no association with them [current ratepayers] and brings no financial benefit to them going forward.”

- a. Please explain this statement in light of the fact that you intend to depreciate the CIAC asset which the ratepayers did not pay for and you wish not to credit the contributor in any meaningful way for the tax benefits associated therewith.
- b. Please respond to the Commission’s observation in Re Contribution In Aid of Construction, DF 87-13, Order No. 19,055, 73 NH PUC 137 at p.145: “Pennichuck’s position does not address the fact that the general body of ratepayers would derive the benefit of future tax depreciation deductions for the amount of the contribution in the event that the contributor paid the tax.”

RESPONSE:

- a. The following response has been submitted to Staff Data Request 1-6, under this docket.

As EBITDA is the factor that provides cash for all operations of the Company, all revenues of the Company are used for one of three purposes: to cover the CBFRR debt costs, to cover the DSRR debt service costs (including the 0.1 DSRR), and to cover the OERR costs for operating expenses exclusive of depreciation, amortization, interest expense and income taxes. As such, the company does not have a return on rate base any longer, which would allow depreciation to provide cash to pay for the ongoing obligations related to plant assets. In a normal rate structure, the company would get a return on rate base and a return on equity, to provide cash from depreciation to fund principal debt repayments, and to fund normal maintenance and operating costs. However, as was brought to bear in the two dockets cited, as well as DW 11-026, these factors are not applicable to our company as we do not have an ROE component, and the ROR was insufficient to fund the principal repayments on debt for plant assets. Additionally, in a normal rate structure, the depreciation on CIAC assets does nothing to support funding for principal, as the offsetting CIAC Liability in rate base, eliminates that. Under TCJA, we now have a new permanent difference between book and tax income. CIAC assets that are not a component of normal rate base and are not included in any of our current allowed revenue

buckets, are now considered as taxable income by the IRS and the State. As such, there is no component of our current rate structure that provides for the incremental cost of supporting these CIAC assets in our allowed revenues. Our current allowed revenues include the legacy and regular CBFRR funds needed, our DSRR (coupled with annual QCPAC surcharges) funds the monies needed to service debt on company installed plant and equipment, and our OERR revenues cover the operating costs of the company associated with existing assets. The depreciation being spoken about in testimony is the IRS allowed depreciation on water utility assets (including CIAC assets as of the enactment of TCJA), which are specified to have a 25-year life. This depreciation is used to offset tax liability associated with the CIAC assets over their life, and devoid of other taxable activities of the company, in that manner provides some funding towards the coverage of ongoing costs of the CIAC assets by the company.

In light of this, the proposed “gross up” formula does give credit to contributors of CIAC the first year of depreciation, which is under the IRS half-year convention. This is tied to the tax obligation in the year of income inclusion for the CIAC, which is in conformity with what is described above. Further to this point, is the response given to Staff Data Request 1-9, which describes the overall impact of TCJA as passed by the U.S. Congress, whereby the inclusion of taxable CIAC was partially offset by the reduction in the Corporate Income Tax rate for the contributors. The result of this, is that a significant portion of the CIAC “gross up” tax borne by the contributor (approximately 40% of that burden) is paid back to them in the form of the reduced federal tax rate.

- b. As to the sharing of burden for the contributed property between ratepayers and the contributing developer, the overall burden is actually borne by the ratepayers and not the developer. The economic value of the benefit of the depreciation, on a tax basis, is dwarfed by the overall economic and monetary cost of state and local property taxes on the contributed property, as well as ongoing maintenance and regulatory inspections, which actually exceed the depreciable life of the property for which the depreciation deduction is included for federal tax purposes (the IRS depreciation life for water utility assets is 25 years).

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-11

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

On page 3, line 25 onto page 4 line 1 of the Testimony, the following statement appears with respect to the Companies' proposed depreciation practice: "This is in conformity with the rate structure of the Company and its rates methodology. . . ." Additionally, on page 4, lines 2-4, of the Testimony appears the following statement: "Credit is not given for depreciation after year one, as the ownership of the asset resides with the utility, and the depreciation in those subsequent years is the generator of cash flow to pay for the ongoing obligations related to CIAC assets,..." Please explain these statements in light of the fact that for PEU in DW 17-128, utility plant and depreciation are no longer factors in the determination of customer rates.

RESPONSE:

We would offer the same response as was provided on Staff Data Request 1-6 to this docket, which states:

As EBITDA is the factor that provides cash for all operations of the Company, all revenues of the Company are used for one of three purposes: to cover the CBFRR debt costs, to cover the DSRR debt service costs (including the 0.1 DSRR), and to cover the OERR costs for operating expenses exclusive of depreciation, amortization, interest expense and income taxes. As such, the company does not have a return on rate base any longer, which would allow depreciation to provide cash to pay for the ongoing obligations related to plant assets. In a normal rate structure, the company would get a return on rate base and a return on equity, to provide cash from depreciation to fund principal debt repayments, and to fund normal maintenance and operating costs. However, as was brought to bear in the two dockets cited, as well as DW 11-026, these factors are not applicable to our company as we do not have an ROE component, and the ROR was insufficient to fund the principal repayments on debt for plant assets. Additionally, in a normal rate structure, the depreciation on CIAC assets does nothing to support funding for principal, as the offsetting CIAC Liability in rate base, eliminates that. Under TCJA, we now have a new permanent difference between book and tax income. CIAC assets that are not a component of normal rate base and are not included in any of our current allowed revenue buckets, are now considered as taxable income by the IRS and the State. As such, there is no component of our current rate structure that provides for the incremental cost of supporting these CIAC assets in our allowed revenues. Our current allowed revenues include the legacy

and regular CBFRR funds needed, our DSRR (coupled with annual QCPAC surcharges) funds the monies needed to service debt on company installed plant and equipment, and our OERR revenues cover the operating costs of the company associated with existing assets. The depreciation being spoken about in testimony is the IRS allowed depreciation on water utility assets (including CIAC assets as of the enactment of TCJA), which are specified to have a 25-year life. This depreciation is used to offset tax liability associated with the CIAC assets over their life, and devoid of other taxable activities of the company, in that manner provides some funding towards the coverage of ongoing costs of the CIAC assets by the company.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-12

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Please confirm whether the gross up methodology your Companies propose includes a further “gross-up” to pay the tax incurred on the “gross-up” tax payment (“tax on tax”) on the CIAC.

Confirmation Yes _____ No _____

If no, please explain.

RESPONSE:

Any “gross up” formula for taxes by its very nature does include a tax on the tax. That is how the math works. If it was not the case, you could never “close” the calculation to arrive at a net value equal to the base amount, in this case, the value of the contributed CIAC property.

This is exactly the same type of calculation that would be done in other “gross up” calculations, such as payments of bonuses to individuals of private and/or publicly-traded companies. If a corporation was to pay a bonus to an individual of a certain amount, and wanted to insure that, their net amount received after the withholding of payroll taxes, they have to gross up the value being paid by (1-tax rate) in order to arrive at a gross payment amount, that when taxes by the tax rate, nets back to the amount desiring to be paid.

It is important to note that the Congress, when it passed the TCJA, intended to increase revenues through federal taxes on CIAC received by water utilities. This fact has been verified by the companies thru communications with the NH Delegation to the U.S. Senate. However, it is important to also take into consideration the other aspects of TCJA which serve to partially mitigate the impact of these taxes, as discussed in the Companies’ response to Staff Data Request 1-9 under this docket.

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-13

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

If the “tax on tax” reality is confirmed in the response to the previous Request, please respond to the following Commission finding:

“The Commission does not believe that it is appropriate to ask a contributor to pay the tax on the contribution-in-aid-of construction. If the tax was required, an additional tax upon the tax would be assessed thereby increasing the cost to society as a whole with no apparent benefit to anyone except for increased tax flow.” Re Contribution in Aid of Construction DF 87-113, Order No. 19,055, 73 NH PUC 137 at p.149.

RESPONSE:

Again, we would refer to the companies’ response to Staff Data Request 1-9 under this docket, which states:

The Companies’ response to this inquiry is as follows. As to item 6 above; the contributor paying a tax upon a tax, that is a reality in a “gross up” calculation. However, this is the only way to get to the net economic value of the contributed property being equal to the federal and state tax basis for the contributed property. As to the increased cost to society as a whole, the cost borne by and passed onto ratepayers is what is truly identified to the cost to society as a whole. The cost borne by the contributor is typically tied to a project that has an alternate economic value and profit motivation. As such, the increased cost of the CIAC being contributed to include the “gross up” does get factored into that economic value, but it is for a much narrower slice of society than the overall impact on a broad base of regulated utility customers. And, as to the underlying fact of the cost to society, that question really rests with the U.S. Government and their intentions in re-enacting a tax on water utility CIAC assets. It appears that their intention was to have this cost borne by corporations doing development and contributing it to water utilities, while at the same time lowering the Corporate Federal Income tax rate from 34% to 21% to offset that impact upon them. An analysis of the real impact of this, is as demonstrated below.

Under the proposed “gross-up” formula for contributed plant and equipment, which is:

$$\text{Tax Cost} = ((\text{CIAC} - [\text{CIAC} * (1/\text{Tax Life}) * .5]) / (1 - \text{Current Effective Tax Rate})) - \text{CIAC}$$

Using this formula and a contribution value of \$1,000,000 of property, and the current statutory tax rates of 21% Federal and 7.9% State (for a Current Effective Statutory Rate of 27.24%, the calculation is as follows:

$$\text{Tax Cost} = ((\$1,000,000 - [\$1,000,000 * (1/25) * .5]) / (1 - .2724)) - \$1,000,000$$

$$\text{Tax Cost} = (\$980,000 / .7276) - \$1,000,000$$

$$\text{Tax Cost} = \$1,346,894 - \$1,000,000 = \$346,894$$

Thus, under this formula, the total cost (CIAC and tax) is \$1,346,894. If you analyze the total cost/deduction for the contributor at the new Federal tax rate of 21%, the benefit they derive from the \$1,346,894 tax deduction (either in one year under sec 179 or bonus depreciation rules, or the sale of the project assets, or over the life of the depreciation of their project assets) is \$282,848. Under tax law prior to TCJA, they would have a \$1,000,000 tax deduction benefit at the then existing 34% rate, or \$340,000.

Based upon this, the tax on the tax was intentionally and partially offset in TCJA by the two factors working in opposition to each other. Under TCJA, the contributor gets \$57,152 in reduced federal tax impact (\$340,000-\$282,848), whereas the pure tax on tax of the “gross up” is \$94,494, and as such, the TCJA provides for \$37,342 of the tax on tax (or 39.52% of it) to be funded by the reduction in the federal corporate income tax rate.

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Date Request Received: 2/15/19
Request No. Intervenor 1-14

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

By way of analogy to the Companies which express cash flow concerns with their liability for federal income tax on CIAC, “In the case of a small water utility that has problems raising funds, we [the Commission] will consider a policy of allowing taxes on CIAC to be collected. However, as the tax benefits are realized, refunds will be made to the contributor.” Re Contribution in Aid of Construction DF 87-113, Order No. 19,055, 73 NH PUC 137 at p.150. Please explain why the Companies are apparently of the view that the “public good” would not require the refunds, sharing meaningful depreciation benefits, or some net present value or similar methodology.

RESPONSE:

Again, we would refer to the companies’ response to Staff Data Request 1-9 under this docket, which states:

As to item 7 above, we cannot answer this question without considering our Companies’ unique corporate and capital structure. As has been demonstrated in DW 11-026, DW 16-806 and DW 17-128, our Companies’ rate structure is purely and totally dedicated and constructed towards dollar for dollar coverage of debt service and operating costs, without excess dollars being earned that can benefit anyone except the Companies’ ratepayers, from which those revenue dollars have been collected. If the Companies’ have a year in which revenues are earned above allowed levels, the cash from those revenues is held in restricted cash accounts for repayment back to ratepayers or to defer the incurrence of additional debt incurred for projects that benefit the Companies ratepayers. As such, similar to small water companies, the Companies do not have excess cash flow that could fund the tax burden created by CIAC. Unlike small water companies, tax benefits are not subsequently realized because the added CIAC assets themselves do not fund themselves, but instead result in a burden on the system in terms of operation, maintenance, property taxes and replacement at the end of their life.

As such, an in consideration of the public good, the companies feel that the “gross up” methodology is in support of that. In considering that, we consider the following factors: (1) is

the benefit being shared dedicated to the customer base as a whole, or does it offer preferential treatment to a small of limited subset of that base, (2) is there any intergenerational inequity that would result from the alteration of a sharing of costs and benefits, and (3) does the sharing of costs and benefits in a disproportionate manner, cause an increased or undue future burden on the Companies' existing customer base.

When looking at a limited project that derives a specific future benefit for a limited set of future customers, offering a sharing of pre-existing deferred tax assets, would be granting a preferential treatment to that limited set of customers, to the detriment of the customer base as a whole.

Under our rate structure, and the manner in which pre-existing NOL's and credits have been earned and paid for, using those to the benefit of a contributor of CIAC, for which they did not contribute to those deferred tax assets, would fly in the face of intergenerational inequity considerations.

As to the future burden on the Companies' existing customer base, again offering a disproportionate sharing of pre-existing deferred tax assets would create an increased burden on existing customers by prematurely exhausting these deferred tax assets. And, as the Companies' rate structures do not derive allowed revenues from rate base or depreciation on a book basis, the sharing of these deferred tax assets is not inclusive in the Companies' allowed revenues, and as such, would require future rate increases to pay for tax liabilities above the level for which they would be incurred, if the CIAC contribution had never occurred.

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Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-15

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Assume for the purpose of your response the following:

Currently for federal income tax purposes, there is allowed a 100% Bonus Depreciation deduction for Qualified Property in the year the asset is placed in service through December 31, 2022. This deduction is phased out during 2023 through 2026. Water Utility Property as defined in IRS Code Sec. 168(e)(5) is Qualified Property.

Please explain why it would be prudent for Pennichuck Corporation to not take the 100% Bonus Depreciation thus offsetting the inclusion of CIAC in income for federal income tax purposes, particularly when doing so would appear to create additional net operating losses with an indefinite carry forward period to offset future income?

RESPONSE:

The Company reviewed both the Sec 179 and Bonus Depreciation rules as included and modified under TCJA. Unfortunately, Sec 179 is not available to the Companies under this CIAC taxation scenario, as there are limitations which make Sec 179 unavailable. Under Sec 179, there is a \$1,000,000 limitation on property assets allowable to take 100% depreciation in the year the asset is placed in service. However, there is also a limit that states that all assets placed in service cannot exceed \$2.5 million, and for every dollar of assets placed in service above \$2.5 million, the \$1 million limitation is reduced by a dollar. As such, corporations investing more than \$3.5 million in assets in any given year cannot take advantage of Sec 179 as an accelerated depreciation deduction mechanism. Why is this important? Because under Sec 179 a corporation can “cherry pick” which assets it wants to apply the Sec 179 deduction to. If that was available, the Companies’ would and could offer up this accelerated depreciation to contributors of CIAC up to the \$1 million limitation. But, as our companies invest over \$3.5 million in Capex annually, and our Federal and State Income Taxes are filed on a consolidated basis for the Corporation as a whole (inclusive of these three regulated utility subsidiary Companies), we are unable to offer this.

As to the Bonus Depreciation cited in Code Sec 168(e)(5), as cited above, all of our utility assets are 25-year property under IRS rules, but are also included by exception as qualifying to be includable for Bonus Depreciation. Without this exception, our assets would not be eligible for

bonus depreciation, as the IRS only allows property with up to 20-year depreciable lives to be qualified for this Bonus accelerated depreciation.

The real issue with including Bonus Depreciation in the CIAC tax “gross up” formula is that it does not allow a corporation to “cherry pick” and apply the bonus depreciation to individual projects or assets. As such, it is an “all or nothing” application of the bonus depreciation on assets placed in service during a given year. The result of this is that the Companies’ would get a benefit of generating some NOL’s in the current year from the bonus depreciation, but in year two all of the non-CIAC assets would have depreciation as permanent difference between book and tax income and be fully subject to federal and state taxes. This increased burden would accelerate the usage of the NOL’s generated pre-TCJA, which can shelter taxable income at 100%, and would result (in a short amount of time) where the only NOL’s available to shelter taxable income were post-TCJA NOL’s, which can only shelter taxable income at 80%. This would prematurely and disproportionately put the burden of cash payments for income taxes on non-CIAC customers that paid for the pre-TCJA NOL’s but did not get the full benefit of them by the premature exhaustion due to granting Bonus Depreciation on CIAC taxable assets.

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-16

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Assume for the purposes of your response the following:

After taking advantage of the 100% federal Bonus Depreciation the tax associated with a particular CIAC payment would only be the total owed to New Hampshire before deductions and other offsets.

Please confirm that the following calculation is correct for the New Hampshire tax before application of any available net operating loss: After applying the tax benefit of the New Hampshire deduction on the federal return, the resulting New Hampshire tax rate is 6.24% of the CIAC payment.

Confirmation Yes _____ No _____

If no, please explain.

RESPONSE:

Yes, the current NH tax rate, net of the federal tax deduction benefit is 6.24%. This is calculated as follows:

$(1 - \text{Federal Tax Rate}) \times \text{State Tax Rate} = \text{Net State Tax Rate}$, or

$(1-.21) \times .079 = .0624 = 6.24\%$

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Pillsbury Data Requests – Set 1

Date Request Received: 2/15/19
Request No. Intervenor 1-17

Date of Response: 2/25/19
Witness: Donald Ware

REQUEST:

During years 1-5 after the water tank subject to the special contract between Pennichuck East Utility, Inc. and Pillsbury is placed in service, please specify the maintenance and operating costs associated therewith and provide any documents with respect thereto.

RESPONSE:

Annual Tank Maintenance and Operating Costs:

Weekly Security Check – 1 Hour, Truck and Labor @ \$68.77/hr	= \$	3,676/year
Summer Grounds Maintenance @ \$75/wk for 10 weeks	= \$	750/year
Winter Plowing @ \$1,000 per year	= \$	1,000/year
Statewide Utility Tax on \$2.835 million @ \$6.60/\$1,000	= \$	18,711/year
Local Property Tax on \$2.835 million @ \$28.64/\$1,000	= \$	81,194/year
Tank inspection (1x every five years, internal and external) @ \$7,500	= \$	<u>1,500/Year</u>

Total Average Annual Tank Maintenance and Operating costs = \$ 106,831/Year

Annual maintenance and Operating Costs (listed above) do not include the cost of one tank painting every 15 to 20 years at a projected cost of about \$1.2 to \$1.5 million (which amortizes to a cost of between \$60,000 and \$100,000 per annum).



DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Staff Data Requests – Set 1

Date Request Received: 2/14/19
Request No. Staff 1-1

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Please provide the following amounts:

- a. CIAC received by each of the three utilities by source (i.e. NHDES Grant, developer, single customer) during 2017 and 2018 in the forms of (a) property and equipment (including land), and (b) cash.
- b. The anticipated resulting tax obligations and cash flow impact of each utility for 2018.

Please explain how each utility intends to meet its 2018 income tax obligation resulting from the receipt of CIAC?

RESPONSE:

- a. The table below shows the amount of CIAC received by utility for 2017 and 2018:

	2017	2018
CIAC Property Received		
PWW	1,821,265	3,698,398
PEU	6,333,948	1,295,504
PAC	<u>0</u>	<u>0</u>
Subtotals	<u>8,155,213</u>	<u>4,993,902</u>
CIAC Cash Received		
PWW	31,264	2,947
PEU	29,502	693,172
PAC	<u>0</u>	<u>0</u>
Subtotals	<u>60,766</u>	<u>696,119</u>
Total CIAC Received	<u>8,215,979</u>	<u>5,690,021</u>

- b. The resulting tax obligation for each utility for 2018, is as follows. Some of the CIAC earned in 2018 is not subject to the TCJA tax, as the contracts underlying that property was fully executed and entered into prior to the effective date of the tax act, which “grandfathered” those projects with respect to CIAC taxation.

	Federal	State	Total
PWW 2018 Tax Liability for CIAC	777,282	292,406	1,069,688
PEU 2018 Tax Liability for CIAC	408,678	153,741	562,419
PAC 2018 Tax Liability for CIAC	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>1,185,960</u>	<u>446,147</u>	<u>1,632,107</u>

Each utility is meeting its tax obligation thru the usage of NOL carryforwards earned prior to 2018, for which they can be used 100% to offset the resulting tax liability. The overall estimated tax liability for the consolidated tax return for the Corporation for 2018, which included the three regulated utilities, the two unregulated subsidiaries, and the parent holding company is estimated to be \$255,604 for Federal and \$63,423 for State. As such, an equal amount of NOL carryforward usage will be used to offset this aggregate tax liability. It is important to note, that absent the change in law that eliminated the CIAC tax exemption for water utilities, the aggregate tax liability would have been reduced to zero and would have generated NOLs that could be used in future periods. As a result of the change in tax law that results in taxation of CIAC, the opposite result has occurred. Compounding this issue is the fact the Companies do not have an ROE that they earn, and no excess cash is generated in their rate structures to pay this tax liability, absent the available NOL’s being used.

DW 18-189

**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Staff Data Requests – Set 1**

Date Request Received: 2/14/19
Request No. Staff 1-2

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Please provide the anticipated accounting entries that the three utilities will record upon the receipt of CIAC and the tax thereon in the forms of (a) property and equipment (including land), and (b) cash.

RESPONSE:

a. For CIAC Property

Dr. Property, Plant and Equipment	xxxx	
Dr. CIAC Tax Gross-up Restricted Cash	xxxx	
Cr. CIAC Liability		xxxx
Cr. Income Taxes Payable - CIAC		xxxx

b. For CIAC cash received

Dr. Main Operating Cash	xxxx	
Dr. CIAC Tax Gross-up Restricted Cash	xxxx	
Cr. CIAC Liability		xxxx
Cr. Income Taxes Payable - CIAC		xxxx

For CIAC cash received, this is either a reimbursement for money already paid to install plant and equipment, or if a grant, as part of the cash needed to install plant and equipment. As such, the CIAC liability for cash is amortized in a composite life consistent with those underlying plant and equipment assets.

DW 18-189
Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.
2018 CIAC Tariff Amendments
Responses to Staff Data Requests – Set 1

Date Request Received: 2/14/19
Request No. Staff 1-3

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Please provide the anticipated accounting entries that the three utilities will record at the time either when (1) income taxes become due, or (2) NOL's and/or some other offsetting credits are utilized for CIAC received in the forms of (a) property and equipment (including land), and (b) cash.

RESPONSE:

- | | | |
|---------------------------------------|------|------|
| 1) Dr. Income Taxes Payable – CIAC | xxxx | |
| Cr. CIAC Tax Gross-up Restricted Cash | | xxxx |
| 2) Dr. Income Taxes Payable – CIAC | xxxx | |
| Cr. Deferred Tax Asset | | xxxx |

This is the entry if NOL carryforwards are used that were earned prior to TCJA. If those are fully exhausted, and only NOL carryforwards are available earned after TCJA, then only 80% of the tax liability can be used to offset the tax liability. It is important to note, however, that tax liability calculation and entries are done in the aggregate for all taxable activities of the Corporation and are not segregated in any filings with the IRS or the State. As such, these entries are being represented as the “stand alone” impact of the CIAC transactions.

The actual usage of NOL's and the entries may be altered from these in totality, as all of the other normal operating activities of the companies are represented in those entries, payments and usage of NOL's.

This is important, as it may appear that NOL's provide a shelter for CIAC taxation, but the genesis of those NOL's, especially at this current juncture, were all generated from non-CIAC activities. As such, the over usage, or accelerated usage of pre-TCJA NOL's to benefit CIAC activities, only seeks to use those up quicker than they should be, as it pertains to the benefit of the companies' rate payers who earned the use of the NOLs.

The entry for (2) would be as follows, if all pre-TCJA NOL's are exhausted, and NOL's can only shelter 80% of the tax liability:

Dr. Income Taxes Payable – CIAC	xxxx	
Cr. Deferred Tax Asset		xxxx
Cr. CIAC Tax Gross-up Restricted Cash (note 1)		xxxx

Note 1 – this amount is 20% of the total income taxes payable.

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
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Responses to Staff Data Requests – Set 1

Date Request Received: 2/14/19
Request No. Staff 1-4

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

It is currently anticipated that, for tax years ending on or after December 31, 2019, the NHBPT rate will be 7.7%. Will the three utilities be incorporating this rate, instead of 7.9%, in its formula relative to the tax on CIAC collected during 2019? Please explain.

RESPONSE:

Yes, in our filing we have asked that the Tariff include a “gross up” for CIAC taxation at the then current statutory rates. On an annual basis, the “gross up” calculation will be adjusted to reflect the current Federal Income Tax Rate and NH State BPT rate to be in effect for that year. As such, as of 1/1/2020, the “gross up” calculation will be modified to include the new 7.7% BPT rate.

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Date Request Received: 2/14/19
Request No. Staff 1-5

Date of Response: 2/25/19
Witness: Donald Ware

REQUEST:

Re: Technical Statement of Larry D. Goodhue, Bates Page 6, Part C: Mr. Goodhue states, in part, “. . . the policy of the State of New Hampshire has been to require developers to fund the capital costs of expanding a utility’s service into new areas . . .” Please explain the basis of this statement as well as cite any relevant documentation in support of such.

RESPONSE:

The basis of this statement is the Companies’ allowed level of investment in developer projects as defined in the Main Extension portion of each Company’s tariff. The language in all three utility tariffs is identical and reads as follows in PW’s tariff NHPUC NO 6, Section 35 Main Pipe Extensions, Para. B.2 through B.5. which reads as follows:

B. Specific Terms regarding Credits and Refunds

1. For each Customer served from the main pipe extension at the regular filed and published tariff rates including the Customer Advance provisions of Section 35, Paragraph A.4. above, the Company will credit or refund to the original Customer a portion of the Customer Advance (if installed by the Company) or a portion of the installation cost of the main pipe extension (if installed by the Customer) in an amount computed by capitalizing the projected net operating income from such Customer in accordance with Paragraph B.2. below. For the purpose of this Paragraph B, each service connection of a permanent nature will be considered as one Customer.
2. Projected revenue will be based on historical usage of a typical comparable Customer. The refund to the original Customer as a result of the connection of the original or any additional Customer will be in an amount equal to one (1) times the estimated annual water revenues to be realized from each such Customer served from the main pipe extension.
3. Additionally, if the main pipe extension and hydrant(s) are accepted as part of the municipal fire system, the Company will credit or refund to the original Customer an

4. allowance allocable to fire protection. The amount allocable to fire protection will be an amount equal to one (1) times estimated annual revenue to be realized from the fire protection charge associated with the main pipe extension.
5. The credit or refund to the original Customer shall be made when, and if, service to a Customer is commenced, provided that no such credit or refund shall be made after five (5) years from the time that service to the original Customer is commenced from the main pipe extension.

This section of the tariff was added in response to a docket held by the NHPUC in the mid 1990's where the Commission established a limit to the level of a Utility's investment in the facilities required to service a new customer of one times the annual revenue generated by the new customer. The order found that any investment beyond the level of one times revenue resulted in the Utilities existing customers subsidizing the facilities built by developers to service new customers beyond the value of that portion of the new customers revenues that helped defer the Utilities fixed expenses over a larger customer base. I was unable to find the order issued by the Commission referenced above but confirmed the existence of the order during this last week with Mr. Douglass Brogan, the Commission's Water Engineer during the time the order was issued.

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Date Request Received: 2/14/19
Request No. Staff 1-6

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Re: Pre-filed Testimony of Larry D. Goodhue, Page 4, Lines 2 – 7: Please provide further explanation for this statement and specifically, “. . . the depreciation in those subsequent years is the generator of cash flows to pay for the ongoing obligations related to the CIAC assets . . .”, in light of the fact that for PWW in DW 16-806 and PEU in DW 17-128, utility plant and depreciation are no longer factors in the determination of customer rates.

RESPONSE:

As EBITDA is the factor that provides cash for all operations of the Company, all revenues of the Company are used for one of three purposes: to cover the CBFRR debt costs, to cover the DSRR debt service costs (including the 0.1 DSRR), and to cover the OERR costs for operating expenses exclusive of depreciation, amortization, interest expense and income taxes. As such, the company does not have a return on rate base any longer, which would allow depreciation to provide cash to pay for the ongoing obligations related to plant assets. In a normal rate structure, the company would get a return on rate base and a return on equity, to provide cash from depreciation to fund principal debt repayments, and to fund normal maintenance and operating costs. However, as was brought to bear in the two dockets cited, as well as DW 11-026, these factors are not applicable to our company as we do not have an ROE component, and the ROR was insufficient to fund the principal repayments on debt for plant assets. Additionally, in a normal rate structure, the depreciation on CIAC assets does nothing to support funding for principal, as the offsetting CIAC Liability in rate base, eliminates that. Under TCJA, we now have a new permanent difference between book and tax income. CIAC assets that are not a component of normal rate base and are not included in any of our current allowed revenue buckets, are now considered as taxable income by the IRS and the State. As such, there is no component of our current rate structure that provides for the incremental cost of supporting these CIAC assets in our allowed revenues. Our current allowed revenues include the legacy and regular CBFRR funds needed, our DSRR (coupled with annual QCPAC surcharges) funds the monies needed to service debt on company installed plant and equipment, and our OERR revenues cover the operating costs of the company associated with existing assets. The depreciation being spoken about in testimony is the IRS allowed depreciation on water utility

assets (including CIAC assets as of the enactment of TCJA), which are specified to have a 25-year life. This depreciation is used to offset tax liability associated with the CIAC assets over their life, and devoid of other taxable activities of the company, in that manner provides some funding towards the coverage of ongoing costs of the CIAC assets by the company.

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Date Request Received: 2/14/19
Request No. Staff 1-7

Date of Response: 2/25/19
Witness: Donald Ware

REQUEST:

Re: Pre-filed Testimony of Larry D. Goodhue, Page 4, Lines 2 – 7: Please provide a comparison and analysis of the referenced generated cash flows against the ongoing obligations for a typical newly installed main by a developer.

RESPONSE:

The CIAC value of 5,280 LF of 8” water main would be about \$624,760 based on the following contributed assets:

1. 5,280 LF of water main @ \$87 per foot installed by the developer results in a CIAC value of \$459,360 (based on Mean’s cost data for an 8” CL52 DIPCL water main installed at subgrade, no road restoration).
2. 70 Main to Stop portion of service. Based on assumption that the water main provides service to both sides of the street and an average lot is 150 wide. Each service would have a CIAC value (for the M-S portion of the service) of about \$2,635 per service resulting in a CIAC value of about \$184,450.
3. 7 Hydrants. Based on a hydrant spacing of 1 hydrant every 800 feet there would be a total of about 7 hydrants installed along this section of water main with an average cost of about \$4,200 per hydrant installation resulting in about \$29,400 of CIAC.
4. 5 Gate Valves. Based on an anticipated gate spacing would be 1 gate for every 1,000 feet of water main or a total of 5 valves at about \$800 per valve or \$4,000 in CIAC.

Resulting in a total CIAC value of \$677,210.

The Company’s expenses associated with this contributed water main are as follows:

Investment in 70 meters and radios @ \$255 per service inclusive of installation	= \$ 17,850
One times revenue paid to developer @ \$935 per PEU customer	= \$ 65,450
One times municipal fire protection charges	= \$ <u>7,587</u>
Total Utility investment in project as required by tariff	= \$ <u>90,887</u>

Ongoing Annual Obligations associated with new water main –

1.1 times P&I created by Utility tariffed investment in water main	= \$ 7,453
Annual Hydrant Maintenance (1 wet check, 1 dry check, clearing snow) of 3.5 hours per 7 hydrants per year @ \$63 per hour or about \$220/hydrant/year	= \$ 1,540
Annual flushing (7 hydrants @ 15 minutes each)	= \$ 110
Annual gate valve maintenance (1 gate per year, 2 man crew @ 0.5 hour)	= \$ 63
Meter Period Test (every 10 years, one hour per meter, plus bench test) \$88 per meter times 70 meters divided by 10	= \$ 616
Dig Safe – 1 marking every other year	= \$ 32
Annual State-Wide Utility Tax @ \$6.60/\$1,000	= \$ 4,470
Annual Local property Tax @ \$28.89/\$1,000	= \$ 19,565
 Annual Obligations created by 1 mile of water main	 <u>= \$ 33,849</u>

Please note that this obligation does not include the cost to replace this water main in the future which will be entirely borne by the rate payer.

Also, please note that the expenses noted above do not include all the other expenses to service this customer such as purchased/produced water cost, power for pumping, meter reading, billing and customer service.

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Date Request Received: 2/14/19
Request No. Staff 1-8

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Re: Pre-filed Testimony of Larry D. Goodhue, Page 5, Line 1 – Page 6, Line 10: Please demonstrate the respective calculations of the “effective tax rates” for each of the three utilities for the years (a) 2017, and (b) 2018, if available

RESPONSE:

It is important to note that the effective tax rate that is truly to be considered is the effective tax rate for the Companies Federal and State Income Tax Returns, before any liabilities are offset by the usage of NOL carryforwards and tax credits. This is the actual cash draw on the companies, as it related to taxes.

The effective tax rate for book accounting purposes, includes the generation or usage of deferred tax assets and liabilities for the companies, in any given year. And, it includes the calculation of temporary and permanent differences for book versus tax basis income. This is important, as the regulated utilities have a significant permanent book to tax income adjustment each year, for the amortization of MARA, which is a deduction for book purposes, but not for tax purposes. If the amortization of the MARA is less than the absolute value of pre-tax income/(loss), it can flip a book loss to be taxable income for tax purposes or can cause the taxation on a small amount of pre-tax income to have an exaggerated effective tax rate (as exemplified below for PEU and PAC).

For 2017 and 2018 the effective absolute book tax rates by utility are as follows:

	<u>2017</u>	<u>2018</u>
PWW – Income Before Taxes	1,855,690	2,809,857
Income Tax Provision	1,365,761	2,350,789
Effective Tax Rate	73.6%	83.66%
PEU – Income Before Taxes	(574,259)	230,854
Income Tax Provision	(66,209)	771,010
Effective Tax Rate	11.53%	333.98%

PAC – Income Before Taxes	(6,500)	(3,064)
Income Tax Provision	17,053	110,837
Effective Tax Rate	262.35%	3,617.4%

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Date Request Received: 2/14/19
Request No. Staff 1-9

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

A similar CIAC Tax change occurred with the passing of the Tax Reform Act of 1986 (TRA 86). In Docket DF 87-113 the Commission contemplated and analyzed the implications of this change on Commission regulated NH utilities. As a result, the Commission issued Order No. 19,055 detailing the most appropriate solution for Commission regulated NH utilities (at 6 - 7). In light of this Order, please explain in what way the Companies feel their proposed solution is in the public good and should be authorized? Please provide an in-depth analysis beyond the justification based on the petitioner's unique corporate structure.

RESPONSE:

Commission Order No. 19,055 (at 6-7) stated the following:

6. EXPENSES, § 114 — Federal income tax — Contributions in aid of construction — Appropriate taxable entity. [N.H.] The commission does not believe that it is appropriate to ask a contributor to pay the tax on the contribution in aid of construction, because if such a tax were required, an additional tax upon the tax would be assessed thereby increasing the cost of society as a whole, with no apparent benefit to anyone except for increased tax flow. p. 149.

7. EXPENSES, § 114 — Federal income tax — Contributions in aid of construction — Effect of prepayment on cash flow. [N.H.] Because a majority of utilities expressed concern about the possible negative effect that prepayment of contributions in aid of construction (CIAC) related tax could have on a utility's cash flow, the commission ruled that if a small water utility has problems raising funds, that the commission would consider a policy of allowing taxes on CIAC to be collected, but as tax benefits are realized, refunds would be made to the contributor. p. 150.

The Companies' response to this inquiry is as follows. As to item 6 above; the contributor paying a tax upon a tax, that is a reality in a "gross up" calculation. However, this is the only way to get to the net economic value of the contributed property being equal to the federal and state tax basis for the contributed property. As to the increased cost to society as a whole, the

cost borne by and passed onto ratepayers is what is truly identified to the cost to society as a whole. The cost borne by the contributor is typically tied to a project that has an alternate economic value and profit motivation. As such, the increased cost of the CIAC being contributed to include the “gross up” does get factored into that economic value, but it is for a much narrower slice of society than the overall impact on a broad base of regulated utility customers. And, as to the underlying fact of the cost to society, that question really rests with the U.S. Government and their intentions in re-enacting a tax on water utility CIAC assets. It appears that their intention was to have this cost borne by corporations doing development and contributing it to water utilities, while at the same time lowering the Corporate Federal Income tax rate from 34% to 21% to offset that impact upon them. An analysis of the real impact of this, is as demonstrated below.

Under the proposed “gross-up” formula for contributed plant and equipment, which is:

$$\text{Tax Cost} = ((\text{CIAC} - [\text{CIAC} * (1/\text{Tax Life}) * .5]) / (1 - \text{Current Effective Tax Rate})) - \text{CIAC}$$

Using this formula and a contribution value of \$1,000,000 of property, and the current statutory tax rates of 21% Federal and 7.9% State (for a Current Effective Statutory Rate of 27.24%, the calculation is as follows:

$$\text{Tax Cost} = ((\$1,000,000 - [\$1,000,000 * (1/25) * .5]) / (1 - .2724)) - \$1,000,000$$

$$\text{Tax Cost} = (\$980,000 / .7276) - \$1,000,000$$

$$\text{Tax Cost} = \$1,346,894 - \$1,000,000 = \$346,894$$

Thus, under this formula, the total cost (CIAC and tax) is \$1,346,894. If you analyze the total cost/deduction for the contributor at the new Federal tax rate of 21%, the benefit they derive from the \$1,346,894 tax deduction (either in one year under sec 179 or bonus depreciation rules, or the sale of the project assets, or over the life of the depreciation of their project assets) is \$282,848. Under tax law prior to TCJA, they would have a \$1,000,000 tax deduction benefit at the then existing 34% rate, or \$340,000.

Based upon this, the tax on the tax was intentionally and partially offset in TCJA by the two factors working in opposition to each other. Under TCJA, the contributor gets \$57,152 in reduced federal tax impact (\$340,000-\$282,848), whereas the pure tax on tax of the “gross up” is \$94,494, and as such, the TCJA provides for \$37,342 of the tax on tax (or 39.52% of it) to be funded by the reduction in the federal corporate income tax rate.

As to item 7 above, we cannot answer this question without considering our Companies' unique corporate and capital structure. As has been demonstrated in DW 11-026, DW 16-806 and DW 17-128, our Companies' rate structure is purely and totally dedicated and constructed towards dollar for dollar coverage of debt service and operating costs, without excess dollars being earned that can benefit anyone except the Companies' ratepayers, from which those revenue dollars have been collected. If the Companies' have a year in which revenues are earned above allowed levels, the cash from those revenues is held in restricted cash accounts for repayment back to ratepayers or to defer the incurrence of additional debt incurred for projects that benefit the Companies ratepayers. As such, similar to small water companies, the Companies do not have excess cash flow that could fund the tax burden created by CIAC. Unlike small water companies, tax benefits are not subsequently realized because the added CIAC assets themselves do not fund themselves, but instead result in a burden on the system in terms of operation, maintenance, property taxes and replacement at the end of their life.

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Date Request Received: 2/14/19
Request No. Staff 1-10

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Do the Companies anticipate that the proposed tariff changes will impact its treatment of NHDES administered grants and principal loan forgiveness? Please explain.

- a. Please specifically discuss the anticipated impact the proposed change will have on the Companies' future ability to compete for and receive NHDES administered grants and principal loan forgiveness.
- b. Please provide an estimate of the tax obligations generated from NHDES administered grants and principal loan forgiveness for 2018.

Please explain why it is in the public good to have grant monies, sourced from Federal and or State dollars, used to pay the Companies' tax obligations from receipt of such funds.

RESPONSE:

- a. The impact of TCJA on the Companies' ability to receive NHDES administered grants is either: (1) that the net impact of the grant will be reduced by the taxation on the grant received, or (2) the grant will have to be "grossed up" for the taxation impact. If it is option (1), the Companies' will have to pay a larger portion of the overall cost of a project out of borrowed monies or 0.1 DSRR funds for that project. If it is option (2), the Company will have to receive a grant amount in excess of the needed project funds, to include the taxation "gross up." The impact on principal forgiveness is not impacted by this. Principal forgiveness, as earned on a per payment basis, is included in the Companies operating expenses as "Gain on Forgiveness of SRF Debt," and as such is not a component of CIAC.
- b. During 2018, PEU received a \$600,000 grant from the NH Drinking Water and Groundwater Trust Fund, for its interconnection main under the Merrimack River. This grant was subject to 21% Federal Income Tax and 7.9% NH BPT Tax, or a blended rate of 27.24% (giving consideration to the deduction of State Income Taxes for Federal tax).

It is in the public good to have grant monies, sourced from Federal and State dollars, used to pay the Companies' tax obligations from the receipt of such funds, in that the net impact of this is still a reduction in the overall amount of debt that would be incurred and serviced to install the underlying funding plant assets. Receiving a grant, for example, of \$500,000, for which

\$136,200 would be used to pay the tax on that grant, would still result in \$363,800 of the cost of a project not needing to be funded by debt at rates of between 3-5.5%, depending on the debt funding source for the project. The annual debt service on the net amount in this example (if those funds were borrowed instead of being net grant funded) would be approximately \$20,700 for funds borrowed at 3% for 25 years, or approximately \$24,800 for funds borrowed at 5.5% for 30 years. In our rate structure, this total debt service would be included in our revenue requirement at 1.1x those total debt service amounts, and would therefore, be borne by ratepayers. So, even though the impact of sending money to the IRS or NHDRA for income taxes on grant monies does not on its face seem logical, the net impact is still positive for the public good, just less so without the impact of TCJA tempering that overall benefit.

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Date Request Received: 2/14/19
Request No. Staff 1-11

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

In *Application for Approval of Tariff for the Gross-Up of CIAC in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida*, Order No. PSC-2018-0162-TRF-WS (May 11, 2018) (2018 WL 2254551 (Fla.P.S.C.)), the petitioner, Utilities, Inc. of Florida (UIF), requested approval from the Florida Public Service Commission (FLPSC) to terminate its tariff for the gross-up of CIAC, approved less than two months before (Order No. PSC-2018-0162-TRF-WS (March 26, 2018)). UIF stated that its concerns of requiring a gross-up of CIAC “will eliminate its opportunity to obtain government grants, since it would require the amount of the grant to be increased to cover the income tax liability.” *Id.* at 1. UIF further opined that the “gross-up may put the utility at a competitive disadvantage because developers may choose other alternatives in lieu of the utility’s services to avoid paying the higher gross-up CIAC,” such as seeking an alternative arrangement with a local municipality to avoid the tax. *Id.* The FLPSC allowed UIF to modify its tariff, stating:

“[i]f CIAC is not gross-up for taxes, the utility will pay the tax itself and will remain whole by netting debit deferred taxes against credit deferred taxes or including the debit deferred taxes in rate base. Such treatment is beneficial because it will allow UIF to obtain government grants without having to charge the governmental entity additional amount for taxes and will keep from putting UIF at a competitive disadvantage regarding growth by avoiding a gross-up charge for taxes associated with CIAC.” *Id.* at 2.

With this in mind:

- a. Please address the concerns raised by UIF in the preceding case and the Companies’ position related to each.
- b. Would the Companies be amenable to similar flexibility in its tariff? Specifically, would the Companies be willing to carve-out a provision in its tariff for government grants, such as a full exemption from its tariff? Alternatively, would the Companies be amenable to allowing the government supplying the grant to choose whether or not it would supply the funds for the CIAC tax liability in addition to the grant funds?
- c. Would the Companies be amenable to a provision in the tariff that it would be a decision by the Companies, in regards to private contributors/developers, to either have the contributor to gross-up the amount of CIAC, or split the liability, depending on the

specific circumstances and a possible avoidance of the private contributor/developer seeking its water needs elsewhere because of the CIAC tax liability?

- d. Please explain the anticipated impact to any Deferred Tax Assets included in the Companies' consolidated Federal / State Tax Returns if the Companies followed a similar path of UIF.

RESPONSE:

a. As to the concern about the Companies' ability to access available grants, we don't currently see this as an impediment. The NHDES is fully aware of this new taxation, and as such, when they have considered grants for projects, they are of the understanding that either the grant money would need to be "grossed up," or that the Companies' would have to increase the portion of a given project that needed to be debt funded.

As to the taxation putting the Companies' at a competitive disadvantage, our Companies are regulated water utilities with defined and authorized franchise areas. As such, we have an obligation to serve within those franchise areas. Could a developer choose to put in their own private well, subject to NHDES permitting and approval, yes. Would that put us at a competitive disadvantage, no. We do not compete with other public water companies in the franchise areas we serve, by very definition. And, we do not compete with private residents and entities within our franchise areas, who might choose to have their own private wells.

UIF is an entity with a profit motivation that includes, we assume, both an ROR and an ROE component in their rate structure. As such, the expansion of their water systems creates a larger rate base and an increased weighted average cost of capital, from which they can derive increasing profit. Our Companies have neither of those underlying factors and profit motivations. Our rate structure is designed simply to recover the necessary cash to meet our operating and debt obligations and have the ability to meet financial covenant with lenders from which we source our debt.

b. The Companies would be amenable, if required, that the revised tariff specify that government issued grants could be issued without the "gross up," with the full understanding that this would now cause a portion of the grant money to be used to pay the taxation on the grant. It is unclear to the Companies' at this time, whether or not the governmental entities would give the grants to the Companies, if this was a specification. Absent the ability to use the grant monies in this manner (using a portion of the monies received in the grant to pay for the taxes upon the grant), the Companies would not be amenable to this modification, as it needs to fully recover the cash to pay these taxes on CIAC grants, with the understanding that anything less

than that has an ultimate negative impact on existing ratepayers, either through the payment of taxes or the consumption of NOL's.

c. Under our rate structure, the Companies would not be amenable to sharing the cost of the CIAC tax with developers. As stated earlier, the Companies are unlike other utilities (like UIF) competing for business and aggressively seeking to expand our franchise areas or customer bases. We have an obligation to serve our existing customers and franchise areas. As a part of that, we need to ensure that we procure the cash from developers to pay the tax on contributed CIAC assets for which our Companies and ratepayers bear the burden of owning, maintaining and replacing in the future. Should a developer decide to seek an alternative solution, they then bear that burden, and can cover those costs, in lieu of paying the "gross up" on the CIAC.

d. If the Companies follow a similar path as UIF, the NOL's associated with the Companies deferred tax liabilities would be consumed in an accelerated manner. While it is unknown how quickly that would occur, the Companies recognize the time over which these NOLs would be consumed could be significantly shorter. The Companies cannot calculate precisely how quickly, however, as there are many factors included in the calculations of taxable versus book income, and the various permanent and temporary tax differences. But, with significant CIAC amounts being contributed in the current year, the consumption of the Companies' pre-TCJA NOL's would occur first, which can be utilized to shelter 100% of taxable income. After those NOL's are consumed, all NOL's generated in 2018 or after, can only shelter taxable income at 80%, and as such, without the "gross up" for CIAC, the timeframe for which normal operating income can benefit from NOL's provided from ratepayer activities would be shortened, and after that only 80% of taxable income from normal operating activities would result in the payment of taxes, even if NOL carryforward amounts are available.

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Date Request Received: 2/14/19
Request No. Staff 1-12

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Do the Companies anticipate that the proposed tariff changes will impact its treatment of customer advances? Please explain.

RESPONSE:

No, we do not feel that the proposed tariff changes will impact the treatment of customer advances. As those advances are not CIAC, it is not determined that they would be subject to this tax.

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Date Request Received: 2/14/19
Request No. Staff 1-13

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Re: Pre-filed Testimony of Larry D. Goodhue, Page 2, Line 20-23:

Please further explain if there are any instances where all existing ratepayers may benefit from the Companies receipt of CIAC in the expansion of service and/or additions of customers.

RESPONSE:

Generally, no. When there are projects that benefit existing ratepayers and developers, the Companies enter into cost sharing agreements that relate to those shared benefits. An example of that is the current open docket related to the building of the water tank in the Woodmont Commons project (docket DW 18-101; for the special contract). In this case, PEU's existing ratepayers benefit from the extra capacity to meet fire flow needs and the ability to source lower purchase water costs. In order to accommodate the additional growth created by the Developer, however, the new tank must be significantly larger than is needed for existing ratepayers. Thus, the cost-sharing arrangement eliminates the issue of a developer being forced to pay taxes on an asset that benefits ratepayers as a whole.

As to the addition of customers, in the rate structure of the Companies, there is no revenue or profitability benefit related to the additional customers, in light of the taxation on CIAC. As a rule, the incremental revenue generated does not cover the incremental State and Local property taxes, as well as the ongoing operational costs to serve those additional customers.

DW 18-189
**Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct
Company, Inc.**
2018 CIAC Tariff Amendments
Responses to Staff Data Requests – Set 1

Date Request Received: 2/14/19
Request No. Staff 1-14

Date of Response: 2/25/19
Witness: Larry Goodhue

REQUEST:

Re: Pre-filed Testimony of Larry D. Goodhue, Page 8, Line 8:

Please explain further the “large value” of CIAC that is anticipated to be placed in service in 2019.

RESPONSE:

Pennichuck East Utility will have a further expansion of its water system in Litchfield, NH, related to the ongoing mitigation efforts for PFOA contamination as it relates to the Saint-Gobain plant in Merrimack. This project is to be completed no later than November 2019, per the Consent Decree, which was entered into between Saint-Gobain (“S-G”) and the NHDES. As such, the project must be started by the summer of 2019, in order to meet that binding deadline. And, the Company must enter into contractual agreements with S-G in the next few weeks in order to be able to schedule, bid and engage this project for the expansion of public water to additional homes in that community. S-G provides the funds for these projects, and escrows the monies to be drawdown, as the Company acts as the Construction Management firm in the installation of the new mains and service connections. This project is estimated to include approximately \$1.3-1.5 million of CIAC, in addition to the funds being provided by S-G which will be owned by the residents (for their service lines) and the State or Town (for the paving and reconstruction of roads where mains are to be installed).

Additionally, S-G will be funding the remaining costs of the buildout of the Pennichuck Water Works system in Bedford, also related to this PFOA contamination event and Consent Decree. The total value of the CIAC portion of that project to be completed and used and useful in 2019 is estimated to be approximately \$400,000-\$500,000. The balance of the total project CIAC for this buildout was already incurred and used and useful as taxable CIAC in 2018. And, as this contract was entered into after TCJA went into effect, and the impact of the new CIAC taxation was known, the contract costs for this project were not inclusive of the CIAC taxation “gross up” for which the Company could not have assessed, absent this requested tariff change.