



Agenda Date: 12/15/21
Agenda Item: 5G

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE JOINT PETITION OF VEOLIA)
ENVIRONNEMENT S.A., VEOLIA NORTH AMERICA,)
INC., SUEZ S.A., AND SUEZ WATER NEW JERSEY,)
INC., FOR APPROVAL OF A CHANGE OF CONTROL)
OF SUEZ WATER NEW JERSEY, INC., AND OTHER)
RELATED APPROVALS)

ORDER

DOCKET NO. WM21060909

Parties of Record:

Kenneth R. Stark, Adeolu A. Bakare, McNees Wallace & Nurick LLC, on behalf of Veolia Environnement S.A. and Veolia North America, Inc.,

Stephen B. Genzer, Shane P. Simon, Saul Ewing Arnstein & Lehr LLP, on behalf of SUEZ S.A. and SUEZ Water New Jersey Inc.

Brian Lipman, Director, on behalf of the New Jersey Division of Rate Counsel

BY THE BOARD:

On June 11, 2021, Veolia Environnement S.A. (“Veolia”), a French société anonyme, Veolia North America, Inc., a Delaware corporation and wholly-owned subsidiary of Veolia (“Veolia North America”), SUEZ S.A., a French société anonyme (“SUEZ”), SUEZ Water New Jersey Inc. (“SWNJ”), a New Jersey corporation (together, “Joint Petitioners”), filed a joint petition, pursuant to N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14, and related statutes and regulations, for a change in control (“Petition”). The Joint Petitioners sought the approval from the New Jersey Board of Public Utilities (“Board” or “BPU”) of Veolia’s acquisition of a majority or all of the outstanding shares of SUEZ in accordance with a Combination Agreement entered into between those entities on May 14, 2021. As a result of this acquisition, Veolia would acquire a majority control of or all of SUEZ’s equity interests in SWR and its subsidiary, SWNJ (hereinafter, “Transaction”).

BACKGROUND AND PROCEDURAL HISTORY

On July 14, 2021, the Board issued an Order determining that the Petition should be retained by the Board and designating President Joseph Fiordaliso as the presiding officer with the authority to rule on all motions that arise and to modify any schedules that may be set as necessary to

secure a just and expeditious determination of the issues.¹ With the filing of the Joint Petition, Kenneth R. Stark, Esq., an attorney of the State of New Jersey, filed a motion pursuant to N.J.A.C. 1:1-5.2 to permit the appearances *pro hac vice* of Adeolu A. Bakare, Esq. and Teresa Harrold, members of the bar of Pennsylvania, which was granted in the July Order. The Board, by way of the July Order, also set an intervention deadline of July 28, 2021. No additional parties intervened in this proceeding.

Board Staff (“Staff”) and the New Jersey Division of Rate Counsel (“Rate Counsel”) issued several rounds of discovery to the Joint Petitioners. The Joint Petitioners responded to those requests and participated in several informal discovery conferences. A series of formal settlement discussions followed, which ultimately resulted in agreement on the attached Joint Stipulation on December 1, 2021 (“Stipulation”).

On November 4, 2021, the Joint Petitioners, Rate Counsel and Staff (together, “Parties”) attended a virtual public hearing conducted by Suzanne N. Patnaude, Senior Counsel and Administrative Practice Officer, on behalf of President Joseph Fiordaliso. No members of the public spoke or submitted written comments on the Petition.

THE PROPOSED TRANSACTION

In the Petition, the Joint Petitioners asserted that the Transaction combines the expertise of Veolia and SUEZ as world leaders in water and wastewater treatment and distribution/collection services that will enable Veolia, on a global level, to accelerate its development of technological solutions to, *inter alia*, satisfy the need for safe and sufficient supplies of water, and to create value and opportunities for its employees, shareholders, and customers. For New Jersey, the Joint Petitioners pointed to benefits including the continuation of SWNJ’s capital plan, the continuation and potential improvements to customer service, continued robust access to the financial markets, and continued enhanced community engagement. Veolia stated it would also commit to providing financial support to reduce arrearages caused by the COVID-19 pandemic and to contribute additional funding in light of the hardships imposed by COVID-19 on low-income customers.

Through the Transaction, Veolia will acquire six (6) other regulated water and wastewater utilities held by SUEZ in the United States. These include SUEZ Water New York, Inc., SUEZ Water Idaho, Inc., SUEZ Water Delaware, Inc., SUEZ Water Pennsylvania, Inc., SUEZ Water Bethel, Inc., and SUEZ Water Rhode Island, Inc. The Joint Petitioners represent that in Idaho and Rhode Island, no regulatory approval is required, but Veolia will provide notice of the Transaction to those states’ Public Utility Commissions (“PUCs”). Pursuant to the statutes in New York, Delaware, and Pennsylvania (in which both SUEZ Water Pennsylvania, Inc. and SUEZ Water Bethel, Inc. operate), Veolia must also obtain approval from each state’s respective PUCs for the transfer of control of a regulated water or wastewater utility.

¹ In re the Matter of the Joint Petition of Veolia Environnement S.A., Veolia North America, Inc., Suez S.A., and Suez Water New Jersey, Inc., for Approval of a Change of Control of Suez Water New Jersey, Inc., and Other Related Approvals, BPU Docket No. WM21060909, Order dated July 14, 2021 (“July Order”).

STIPULATION

Pursuant to the terms of the Stipulation, the Parties agree that the proposed Transaction will not adversely impact competition, rates, employees or the provision of safe, adequate and proper utility service at just and reasonable rates, and that positive benefits will accrue to customers and the State of New Jersey. The Parties agree to recommend that the Board approve the proposed Transaction subject to the below settlement terms, which are set forth in Paragraph 7 of the Stipulation:²

a. Operational Stability.

- i. The Joint Petitioners commit not to materially reduce in number or otherwise make any material adverse changes to management, jobs, employee compensation and benefits (including pensions, bonuses, medical benefits, etc.), or other contractual rights and obligations for at least three years following consummation of the Transaction.³ The Joint Petitioners will file semi-annual detailed reports with the BPU Chief Economist and with Rate Counsel on job levels during the three-year period following the close of the transaction.
- ii. The guarantee of no material changes to management, employees, employee compensation and benefits extends to 865 SUEZ employee positions in New Jersey, plus six Veolia employee positions located in New Jersey that are involved in municipal water/wastewater operations.⁴ The guarantee applies only to matters within the Joint Petitioners' reasonable control.⁵ For example,

² Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Each letter and number designation for the paragraphs set forth herein are lettered and numbered to coincide with the paragraphs in the Stipulation. By contrast, the footnote numbers appearing in quoted sections of the Stipulation in this Order do not coincide with the numbering of footnotes in the Stipulation. The text of the aforementioned footnotes does coincide with that appearing in the Stipulation.

³ Consummation of the transaction refers to closing on the transaction.

⁴ These Veolia employee positions include the one employee in Mendham Township involved in operations and maintenance of two municipal wastewater plants and two pumping stations; the three employees in Washington, Borough involved in the operations and maintenance of one municipal wastewater plant and collection system; and the two employees at the Plumstead Municipal Utility Authority in New Egypt.

⁵ The number of employee positions in New Jersey includes 55 employee positions in SUEZ WTS USA Inc. and SUEZ WTS Systems USA Inc. (collectively, "WTS"), which are U.S. subsidiaries of SUEZ Water Technologies & Solutions S.A., a French entity that is majority (70%) owned, indirectly, by SUEZ S.A. WTS is a global business headquartered in Pennsylvania that is managed separately from SUEZ North America Inc. ("SNA") and does not report through SNA. Given the changing business climate and the engagement of WTS in providing services pursuant to various short-term contracts with numerous counterparties across the United States, the WTS business is expected to change going forward. Accordingly, WTS employee positions may be impacted in the ordinary course of business during the three-year period in a manner that is not predictable at this time. In addition, WTS is party to a real estate lease in New Jersey that was recently subject to a two-year extension and may not be renewed upon expiration. For these reasons, the three-year commitment for WTS employees remains in place upon expiration of the lease, absent non-renewal of a contract or other matter beyond the Joint Petitioners' reasonable control.

with regard to employees operating under municipal contracts, the guarantee is predicated upon those contracts remaining in place (and not expiring as to term, or otherwise terminating for reasons such as material breach of contract by the counterparty municipality or a termination by convenience by the municipality).

- iii. The collective bargaining agreements with the unionized work force that are currently in effect will be honored in full by the Joint Petitioners through the remaining terms and beyond the expiration dates until new agreements are negotiated.

b. Rate Stability.

- i. Upon consummation of the Transaction, SWNJ agrees not to file for an increase to distribution base rates with the Board before June 30, 2023.⁶
- ii. The Joint Petitioners will not seek recovery of any Transaction or transition costs directly associated with the Transaction, including costs related to brokers fees, insurance, consulting or advisory costs, accounting fees, or legal fees from SWNJ's customers.
- iii. No asset impairment or goodwill adjustments shall be passed on directly or indirectly to New Jersey ratepayers.
- iv. Customers of SUEZ Water New Jersey will be held harmless from any impact the proposed merger may have on SWNJ's accumulated deferred income tax balances.

c. Low Income Relief.

- i. As stated in the Petition, Veolia commits to expanding its shareholder-funded relief to low-income customers, with details to be determined in subsequent consultations with Board Staff, and Rate Counsel, and with input from interested stakeholders. Once the Transaction is consummated, \$1,185,000 will be contributed to SWNJ's CARES program. This contribution will not be recovered from SWNJ's customers.
- ii. Veolia will also further promote the CARES program through public advertising and community outreach within the SWNJ's service territories.
- iii. The Joint Petitioners will work with Board Staff and Rate Counsel, after conferring with other state agencies, and other interested stakeholders as appropriate, to implement other low-income programs which are currently being developed, including a Low-Income Household Water Assistance Program (LIHWAP) funded by the American Rescue Plan and the Consolidated Appropriations Act of 2021 and other state or federally funded plans.

⁶ Changes to SWNJ's distribution system improvement charge or any other clauses are not included in this moratorium.

- iv. The Joint Petitioners will work with Board Staff and Rate Counsel, and solicit input from other interested stakeholders to enhance the CARES program. No other program rules related to the CARES program will be diminished.

d. Arrearage/COVID-19 Relief.

- i. Veolia proposes that its shareholders contribute an amount equal to 30% of the total residential and commercial customers' arrears that are more than 60 days overdue, measured as of the date of a Board Order approving the Transaction. Bill credits will be provided equal to 30% of each residential and commercial customer's arrears that are more than 60 days overdue, measured as of the date of the Board's Order approving the Transaction.
- ii. Only active customers with arrears that are more than 60 days overdue will receive such credits.
- iii. The credits will appear on customers' bills within 90 days of consummation of the Transaction.
- iv. The arrearage relief set forth here shall be incremental to any relief provided by LIHWAP or other state-funded programs and is to be separate and distinct from any relief ordered by the Board in its generic COVID-19 docket, I/M/O The Board of Utilities Response to the Covid-19 Pandemic Order Authorizing Establishment of a Regulatory Asset for Incremental Covid-19 Related Expenses, Docket No. AO20060471.

e. Affiliate Interest Agreements.

- i. No changes will be made to SWNJ's affiliate interest agreement with SUEZ Water Management & Services Inc. or other affiliate agreements as a result of the Transaction.
- ii. To the extent upstream changes occur in the future that require any amendment to affiliate interest or other operating agreements, SWNJ will seek all necessary regulatory approvals in advance of finalizing such changes.
- iii. To the extent that SWNJ has any existing agreements with Veolia entities for the provision of services, materials or the like, or to the extent that SWNJ enters into such an agreement prior to closing, Veolia will promptly submit those agreements to the Board for review and approval of those affiliate transaction agreements.

f. Capital Plans.

- i. The Joint Petitioners will continue to implement SWNJ's existing robust capital plans, DSIC Filings, and Foundational Filings.

- ii. Veolia will evaluate the potential of its Actiflo⁷ and other technologies to reduce the costs of water treatment, which will include the cost of the capital investment and retirements of any existing equipment or assets.
- iii. Veolia will ascertain whether and how to implement its Hubgrade data optimization system within existing budgets to conduct probabilistic assessments for prioritization of capital projects, identify and reduce leaks, and generally improve system performance at reduced costs.⁸
- iv. After the efforts outlined in f.ii. and f.iii. are completed, the Joint Petitioners will develop and, subject to any required Board review, implement a best practices plan, including a cost-benefit analysis related to any planned operational changes. In the event any current management system is replaced, recovery of any stranded costs of the existing system will not be sought.
- v. Veolia will implement the capital improvement plan developed by SUEZ through 2024, as summarized in Attachment A, and including the approved DSIC Foundational Filing.

g. Community Benefits.

- i. As stated in the Petition, Veolia will continue to provide financial and educational support to its local communities through SWNJ, and it will improve upon the level of presence and engagement in New Jersey that now exists. In addition to preserving the approximately \$100,000 per annum normally contributed by SWNJ, an additional \$775,000 in total over the following three years will be spent in support of community, charitable, or conservation and sustainability organizations impacting SWNJ's service territories. This contribution will not be recovered from SWNJ's customers.
- ii. The Joint Petitioners will build and expand upon the community activities that SWNJ is currently engaged in and additionally will work with local communities to identify how the Joint Petitioners can improve relations with the community.
- iii. In addition to continuing SWNJ's existing community outreach programs, the Joint Petitioners will continue to coordinate with community leaders in New Jersey. The Joint Petitioners are committed to supporting the communities SWNJ serves, whether through collaborating to support local events or supporting local organizations

⁷ Actiflo is a Veolia-patented high-performance water clarifier for municipal and industrial water treatment offering compact, high flow rate water clarification. It has been exclusively developed by Veolia Water Technologies.

⁸ Hubgrade encompasses a wide range of digital solutions for monitoring, evaluating, and optimizing data which, combined with human expertise, allows optimization of facilities and infrastructure. See Petition, p. 17.

- iv. Veolia will maintain in New Jersey a customer call center materially similar to the DeVoe Place, Hackensack call center for a period of five years from closing of this transaction.

h. Lead Service Lines.

- i. The Joint Petitioners will ensure that SWNJ complies with the laws and regulations mandating the replacement of lead service lines pursuant to the recent legislation signed by the Governor in New Jersey as well as the U.S. Environmental Protection Agency's Lead and Copper Rule and any revisions thereto.
- ii. SWNJ will complete a service line inventory identifying the composition of all company and customer side service lines.
- iii. Recovery of the costs of h.i. and h.ii. above will be treated as state mandated costs pursuant to regular ratemaking procedures, subject to BPU approval.

i. Ring-Fencing.

- i. All currently existing ring-fencing, including all ring-fencing described in Attachment B, will remain in place for at least two years from consummation of the Transaction.
- ii. After the two-year period referenced in Paragraph 7.i.i., the Joint Petitioners will notify Board Staff and Rate Counsel regarding any changes to existing ring-fencing 60 days in advance of such changes taking effect and seek any necessary Board approvals.
- iii. Related to existing commitments to utility regulatory agencies in New Jersey and New York:
 - a. Through December 31, 2023, should the common equity ratio of SWR fall below 50 percent on a 12-month rolling basis, the Joint Petitioners will notify the Board Staff and Rate Counsel.
 - b. Through February 27, 2024, if the equity portion of the SWR capital structure rises above 54% at December 31, the Joint Petitioners will notify the Board Staff and Rate Counsel.
- iv. Long-term debt financial covenants for SWR which contribute to the existing ring-fencing of SWR will remain in place for at least four years following the consummation of the proposed transaction, including:
 - a. Regulated Utility Revenues must be 90% of the consolidated revenues of SWR.
 - b. The minimum consolidated tangible net worth is \$900 million.
 - c. Net utility assets no less than \$400 million.
 - d. The debt portion of the capital structure of SWR is limited to 65% of Total Capitalization.

- e. Short Term Debt may not exceed 20% of Total Capitalization.
 - f. Total secured debt cannot be more than 15% of total indebtedness or \$15 million. Currently, SWR has no secured debt.
 - g. A subsidiary of SWR may not have more than \$15 million of secured debt. Currently, there is no secured debt at the SWR subsidiary level.
- j. Other Transaction-Related Commitments.
- i. The Joint Petitioners will adhere to all other commitments in the Joint Petition filed on June 11, 2021 at the above-referenced docket.
 - ii. Subject to the execution, where appropriate, of acceptable confidentiality agreements, Board Staff and Rate Counsel shall be provided with reasonable access to the books and records of SWNJ and to the books and records of its regulated or unregulated subsidiaries or affiliates that pertain to their transactions with SWNJ, for the purposes of reviewing whether there has been a proper allocation of costs to SWNJ. Nothing herein shall be construed to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq.

DISCUSSION AND FINDINGS

N.J.S.A. 48:2-51.1(a) provides in part:

...In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

In addition to the statutory requirements, N.J.A.C. 14:1-5.14(c) provides:

The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1

Thus, in considering a request for approval pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c), the Board looks to determine whether positive benefits will flow to customers and the State and that the transaction will not adversely impact any of the four factors set forth under N.J.S.A. 48:2-51.1. Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must consider whether the public utility, or a wholly-owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

The Board, having reviewed the Petition, the Stipulation and the entire record, **FINDS** that positive benefits will flow to customers and the State from the Transaction, that the Transaction is consistent with the applicable law, that the Transaction will not adversely impact any of the four factors set forth under N.J.S.A. 48:2-51.1, and it will not adversely affect the public interest. The commitments concerning job stability for three years post-merger, rate case stay-out through June 2023, shareholder giving to Suez NJ's CARES program, significant bill credits for certain arrearages of customers hardest hit by the COVID-19 pandemic, \$875,000 in community benefits over three years and continued support for SWNJ's capital improvement program provide strong support for the Board's approval of the Transaction.

Accordingly, the Board, having reviewed the Petition and the entire record, **HEREBY FINDS** that the proposed Transaction and the Stipulation among the Parties are reasonable, in the public interest and in accordance with the law. Accordingly, the Board **HEREBY APPROVES** the Stipulation attached hereto, as its own, incorporating by reference the terms and conditions of the Stipulation, as if fully set forth at length herein.

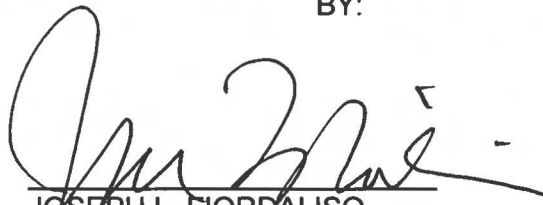
The Board **HEREBY APPROVES** the proposed Transaction, including the change of control of SWNJ, as more fully described in the Petition. Having considered the magnitude of the proposed Transaction, the Board **HEREBY FINDS** that the proposed merger is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of the Transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such;
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting SWNJ;
3. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liability now owned or hereafter to be owned by SWNJ; and
4. Within 30 days of the date of the Closing of the proposed Transaction, the Joint Petitioners shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation of all expenses related to the proposed Transaction.

This Order shall be effective on December 22, 2021.

DATED: December 15, 2021

BOARD OF PUBLIC UTILITIES
BY:



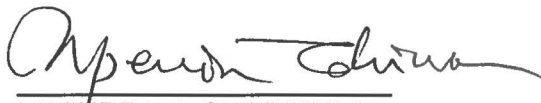
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE JOINT PETITION OF VEOLIA ENVIRONNEMENT S.A., VEOLIA
NORTH AMERICA, INC., SUEZ S.A., AND SUEZ WATER NEW JERSEY, INC., FOR
APPROVAL OF A CHANGE OF CONTROL OF SUEZ WATER NEW JERSEY, INC., AND
OTHER RELATED APPROVALS

DOCKET NO. WM21060909

SERVICE LIST

<p>SUEZ WATER NEW JERSEY INC. 461 From Road, Suite 400 Paramus, NJ 07652</p> <p>James C. Cagle Vice President Regulatory Business jim.cagle@suez.com</p> <p>Gary S. Prettyman Senior Director Regulatory Business gary.prettyman@suez.com</p> <p>Debra Visconti, Regulatory Coordinator debra.visconti@suez.com</p> <p>Bryant Gonzalez bryant.gonzalez@suez.com</p> <p>Elda Gil, Manager Regulatory Business elda.gil@suez.com</p> <p>Stephen B. Genzer, Esq. Saul Ewing Arnstein & Lehr LLP One Riverfront Plaza, Suite 1520 1037 Raymond Blvd. Newark, NJ 07102 stephen.genzer@saul.com</p> <p>Shane P. Simon, Esq. Saul Ewing Arnstein & Lehr LLP Centre Square West 1500 Market Street, 38th Floor Philadelphia, PA 19102-2186 shane.simon@saul.com</p>	<p>BOARD OF PUBLIC UTILITIES 44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Secretary board.secretary@bpu.nj.gov</p> <p><u>Economist's Office</u></p> <p>Dr. Benjamin Witherell, Chief Economist benjamin.witherell@bpu.nj.gov</p> <p>Christine Lin christine.lin@bpu.nj.gov</p> <p>Jackie O'Grady jackie.ograde@bpu.nj.gov</p> <p><u>Division of Water</u></p> <p>Michael Kammer, Director mike.kammer@bpu.nj.gov</p> <p>Justin Cederberg justin.cederberg@bpu.nj.gov</p> <p>Rupal Patel rupal.patel@bpu.nj.gov</p> <p>NJ DEPARTMENT OF LAW AND PUBLIC SAFETY Richard J. Hughes Justice Complex Public Utilities Section 25 Market Street, P.O. Box 112 Trenton, NJ 08625</p> <p>Brandon Simmons, DAG brandon.simmons@law.njoag.gov</p>
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<p>COUNSEL TO VEOLIA NORTH AMERICA, INC. McNees Wallace & Nurick LLC Counsel to Veolia North America, Inc. 100 Pine Street P.O. Box 1166 Harrisburg, PA 17108-1166</p> <p>Kenneth R. Stark kstark@mcneeslaw.com</p> <p>Adeolu A. Bakare abakare@mcneeslaw.com</p> <p>Teresa Harrold tharrold@mcneeslaw.com</p> <p>DIVISION OF RATE COUNSEL 140 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003</p> <p>Brian O. Lipman, Esq., Director blipman@rpa.nj.gov</p> <p>Susan McClure, Esq., Managing Attorney-Water smcclure@rpa.nj.gov</p> <p>Christine M. Juarez, Esq. cjuarez@rpa.nj.gov</p> <p>Emily Smithman, Esq. esmithman@rpa.nj.gov</p> <p>Marylin Silva msilva@rpa.nj.gov</p>	<p>Meliha Arnautovic, DAG meliha.arnautovic@law.njoag.gov</p> <p>Pamela Owen, DAG, Assistant Section Chief pamela.owen@law.njoag.gov</p>
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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

JOINT PETITION OF VEOLIA	:	
ENVIRONNEMENT S.A., VEOLIA	:	
NORTH AMERICA, INC., SUEZ S.A.,	:	BPU Docket No. WM21060909
AND SUEZ WATER NEW JERSEY	:	
INC. FOR APPROVAL OF A CHANGE	:	
OF CONTROL OF SUEZ WATER	:	
NEW JERSEY INC. AND OTHER	:	STIPULATION OF SETTLEMENT
RELATED APPROVALS	:	

APPEARANCES:

Kenneth R. Stark, Adeolu A. Bakare, McNees Wallace & Nurick LLC, on behalf of Veolia Environnement S.A. and Veolia North America, Inc., Petitioners,

Stephen B. Genzer, Shane P. Simon, Saul Ewing Arnstein & Lehr LLP, on behalf of SUEZ S.A. and SUEZ Water New Jersey Inc., Petitioners,

Meliha Arnautovic, Deputy Attorney General, on behalf of the Staff of the New Jersey Board of Public Utilities, and

Brian Lipman, Director, Susan McClure, Deputy Rate Counsel, Christine Juarez, Assistant Deputy Rate Counsel, and Emily Smithman, Assistant Deputy Rate Counsel, on behalf of the New Jersey Division of Rate Counsel.

**TO THE HONORABLE COMMISSIONERS OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES:**

Veolia Environnement S.A. (“Veolia”), a French *société anonyme*, Veolia North America, Inc., a Delaware corporation and wholly-owned subsidiary of Veolia (“Veolia North America”), SUEZ S.A., a French *société anonyme* (“SUEZ”), SUEZ Water New Jersey Inc. (“SWNJ”), a New Jersey corporation (together, the “Joint Petitioners”), along with the Division of Rate Counsel (“Rate Counsel”), and the Staff of the New Jersey Board of Public Utilities (“Staff”) (collectively, the “Settlement Parties”) hereby join in this Joint Stipulation of Settlement (“Settlement” or “Joint

Stipulation”) and respectfully request that the Commissioners of the Board of Public Utilities (“Board”) approve this Settlement. In support of the Settlement, the Settlement Parties provide as follows:

I. PROCEDURAL HISTORY

1. SUEZ is headquartered in Paris, France and is listed on Euronext Paris under the symbol SEV. SUEZ’s primary business activities include: (1) water management and technology services, including worldwide municipal water activities and the manufacturing of water treatment systems, and (2) waste management services, including general waste management, hazardous waste treatment, and other environmental solutions for industrial and municipal customers. SUEZ employs nearly 90,000 employees worldwide and has operations in all fifty states of the United States, including New Jersey. SUEZ Water Resources LLC ("SWR") is the parent company of all of SUEZ’s regulated water and wastewater utilities in the United States, including SUEZ Water New Jersey Inc.

2. By Verified Joint Petition dated June 11, 2021, filed pursuant to N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14, and related statutes and regulations for a change in control, the Joint Petitioners sought approval by the Board of Public Utilities of Veolia’s acquisition of a majority or all of the outstanding shares of SUEZ in accordance with a Combination Agreement entered into between those entities on May 14, 2021. As a result of this acquisition, Veolia would acquire a majority control of or all of SUEZ’s equity interests in SWR and its subsidiary, SWNJ (hereinafter, the "Transaction").

3. On July 14, 2021, the Board issued an order determining that the Joint Petition would be retained by the Board and designated President Joseph Fiordaliso as the presiding officer with the authority to rule on all motions that arise and to modify any schedules that may be set as

necessary to secure a just and expeditious determination of the issues. The Board set forth an intervention deadline of July 28, 2021.

4. No additional parties intervened in this proceeding.

5. Soon after the July 28, 2021 intervention deadline passed, Rate Counsel and Board Staff issued several, extensive rounds of discovery to the Joint Petitioners. The Joint Petitioners responded to those requests and participated in several rounds of informal discovery conferences as well as several rounds of formal settlement discussions, which ultimately resulted in this Joint Stipulation.

6. On November 4, 2021, Settlement Parties attended a virtual Public Input Hearing conducted by Suzanne N. Patnaude, Senior Counsel and Administrative Practice Officer, on behalf of President Joseph Fiordaliso.

II. SETTLEMENT PROVISIONS

7. The Settlement Parties have engaged in several detailed settlement discussions, and have reached agreements during these discussions, resulting in the provisions included in the instant Joint Stipulation of Settlement. The Settlement Parties agree that the proposed Transaction will not adversely impact competition, rates, employees or the provision of safe, adequate and proper utility service at just and reasonable rates, and that positive benefits will accrue to customers and the State of New Jersey. Accordingly, the Settlement Parties agree that the Board should approve the Petition requesting approval of the proposed Transaction subject to the below settlement terms:

a. Operational Stability.

- i. The Joint Petitioners commit not to materially reduce in number or otherwise make any material adverse changes to management, jobs,

employee compensation and benefits (including pensions, bonuses, medical benefits, etc.), or other contractual rights and obligations for at least three years following consummation of the Transaction.¹ The Joint Petitioners will file semi-annual detailed reports with the BPU Chief Economist and with Rate Counsel on job levels during the three-year period following the close of the transaction.

- ii. The guarantee of no material changes to management, employees, employee compensation and benefits extends to 865 SUEZ employee positions in New Jersey, plus six Veolia employee positions located in New Jersey that are involved in municipal water/wastewater operations.² The guarantee applies only to matters within the Joint Petitioners' reasonable control.³ For example, with regard to employees operating under municipal contracts, the guarantee is predicated upon those contracts remaining in place (and not expiring as to term, or otherwise terminating for reasons such

¹ Consummation of the transaction refers to closing on the transaction.

² These Veolia employee positions include the one employee in Mendham Township involved in operations and maintenance of two municipal wastewater plants and two pumping stations; the three employees in Washington, Borough involved in the operations and maintenance of one municipal wastewater plant and collection system; and the two employees at the Plumstead Municipal Utility Authority in New Egypt.

³ The number of employee positions in New Jersey includes 55 employee positions in SUEZ WTS USA Inc. and SUEZ WTS Systems USA Inc. (collectively, "WTS"), which are U.S. subsidiaries of SUEZ Water Technologies & Solutions S.A., a French entity that is majority (70%) owned, indirectly, by SUEZ S.A. WTS is a global business headquartered in Pennsylvania that is managed separately from SUEZ North America Inc. ("SNA") and does not report through SNA. Given the changing business climate and the engagement of WTS in providing services pursuant to various short-term contracts with numerous counterparties across the United States, the WTS business is expected to change going forward. Accordingly, WTS employee positions may be impacted in the ordinary course of business during the three-year period in a manner that is not predictable at this time. In addition, WTS is party to a real estate lease in New Jersey that was recently subject to a two-year extension and may not be renewed upon expiration. For these reasons, the three-year commitment for WTS employees remains in place upon expiration of the lease, absent non-renewal of a contract or other matter beyond the Joint Petitioners' reasonable control.

as material breach of contract by the counterparty municipality or a termination by convenience by the municipality).

- iii. The collective bargaining agreements with the unionized work force that are currently in effect will be honored in full by the Joint Petitioners through the remaining terms and beyond the expiration dates until new agreements are negotiated.

b. Rate Stability.

- i. Upon consummation of the Transaction, SWNJ agrees not to file for an increase to distribution base rates with the Board before June 30, 2023.⁴
- ii. The Joint Petitioners will not seek recovery of any Transaction or transition costs directly associated with the Transaction, including costs related to brokers fees, insurance, consulting or advisory costs, accounting fees, or legal fees from SWNJ's customers.
- iii. No asset impairment or goodwill adjustments shall be passed on directly or indirectly to New Jersey ratepayers.
- iv. Customers of SUEZ Water New Jersey will be held harmless from any impact the proposed merger may have on SWNJ's accumulated deferred income tax balances.

c. Low Income Relief.

- i. As stated in the Petition, Veolia commits to expanding its shareholder-funded relief to low-income customers, with details to be determined in

⁴ Changes to SWNJ's distribution system improvement charge or any other clauses are not included in this moratorium.

subsequent consultations with Board Staff, and Rate Counsel, and with input from interested stakeholders. Once the Transaction is consummated, \$1,185,000 will be contributed to SWNJ's CARES program. This contribution will not be recovered from SWNJ's customers.

- ii. Veolia will also further promote the CARES program through public advertising and community outreach within the SWNJ's service territories.
- iii. The Joint Petitioners will work with Board Staff and Rate Counsel, after conferring with other state agencies, and other interested stakeholders as appropriate, to implement other low-income programs which are currently being developed, including a Low-Income Household Water Assistance Program (LIHWAP) funded by the American Rescue Plan and the Consolidated Appropriations Act of 2021 and other state or federally funded plans.
- iv. The Joint Petitioners will work with Board Staff and Rate Counsel, and solicit input from other interested stakeholders to enhance the CARES program. No other program rules related to the CARES program will be diminished.

d. Arrearage/COVID-19 Relief.

- i. Veolia proposes that its shareholders contribute an amount equal to 30% of the total residential and commercial customers' arrears that are more than 60 days overdue, measured as of the date of a Board Order

approving the Transaction. Bill credits will be provided equal to 30% of each residential and commercial customer's arrears that are more than 60 days overdue, measured as of the date of the Board's Order approving the Transaction.

- ii. Only active customers with arrears that are more than 60 days overdue will receive such credits.
- iii. The credits will appear on customers' bills within 90 days of consummation of the Transaction.
- iv. The arrearage relief set forth here shall be incremental to any relief provided by LIHWAP or other state-funded programs and is to be separate and distinct from any relief ordered by the Board in its generic COVID-19 docket, I/M/O The Board of Utilities Response to the Covid-19 Pandemic Order Authorizing Establishment of a Regulatory Asset for Incremental Covid-19 Related Expenses, Docket No. AO20060471.

e. Affiliate Interest Agreements.

- i. No changes will be made to SWNJ's affiliate interest agreement with SUEZ Water Management & Services Inc. or other affiliate agreements as a result of the Transaction.
- ii. To the extent upstream changes occur in the future that require any amendment to affiliate interest or other operating agreements, SWNJ will seek all necessary regulatory approvals in advance of finalizing such changes.

iii. To the extent that SWNJ has any existing agreements with Veolia entities for the provision of services, materials or the like, or to the extent that SWNJ enters into such an agreement prior to closing, Veolia will promptly submit those agreements to the Board for review and approval of those affiliate transaction agreements.

f. Capital Plans.

- i. The Joint Petitioners will continue to implement SWNJ's existing robust capital plans, DISC Filings, and Foundational Filings.
- ii. Veolia will evaluate the potential of its Actiflo⁵ and other technologies to reduce the costs of water treatment, which will include the cost of the capital investment and retirements of any existing equipment or assets.
- iii. Veolia will ascertain whether and how to implement its Hubgrade data optimization system within existing budgets to conduct probabilistic assessments for prioritization of capital projects, identify and reduce leaks, and generally improve system performance at reduced costs.⁶
- iv. After the efforts outlined in 7.f.ii. and 7.f.iii. are completed, the Joint Petitioners will develop and, subject to any required Board review, implement a best practices plan, including a cost-benefit analysis related to any planned operational changes. In the event any current

⁵ Actiflo is a Veolia-patented high-performance water clarifier for municipal and industrial water treatment offering compact, high flow rate water clarification. It has been exclusively developed by Veolia Water Technologies.

⁶ Hubgrade encompasses a wide range of digital solutions for monitoring, evaluating, and optimizing data which, combined with human expertise, allows optimization of facilities and infrastructure. *See* Petition, p. 17.

management system is replaced, recovery of any stranded costs of the existing system will not be sought.

- v. Veolia will implement the capital improvement plan developed by SUEZ through 2024, as summarized in Attachment A, and including the approved DSIC Foundational Filing.

g. Community Benefits.

- i. As stated in the Petition, Veolia will continue to provide financial and educational support to its local communities through SWNJ, and it will improve upon the level of presence and engagement in New Jersey that now exists. In addition to preserving the approximately \$100,000 per annum normally contributed by SWNJ, an additional \$775,000 in total over the following three years will be spent in support of community, charitable, or conservation and sustainability organizations impacting SWNJ's service territories. This contribution will not be recovered from SWNJ's customers.
- ii. The Joint Petitioners will build and expand upon the community activities that SWNJ is currently engaged in and additionally will work with local communities to identify how the Joint Petitioners can improve relations with the community.
- iii. In addition to continuing SWNJ's existing community outreach programs, the Joint Petitioners will continue to coordinate with community leaders in New Jersey. The Joint Petitioners are committed

to supporting the communities SWNJ serves, whether through collaborating to support local events or supporting local organizations

- iv. Veolia will maintain in New Jersey a customer call center materially similar to the DeVoe Place, Hackensack call center for a period of five years from closing of this transaction.

h. Lead Service Lines.

- i. The Joint Petitioners will ensure that SWNJ complies with the laws and regulations mandating the replacement of lead service lines pursuant to the recent legislation signed by the Governor in New Jersey as well as the U.S. Environmental Protection Agency's Lead and Copper Rule and any revisions thereto.
- ii. SWNJ will complete a service line inventory identifying the composition of all company and customer side service lines.
- iii. Recovery of the costs of 7.h.i. and 7.h.ii. above will be treated as state mandated costs pursuant to regular ratemaking procedures, subject to BPU approval.

i. Ring-Fencing.

- i. All currently existing ring-fencing, including all ring-fencing described in Attachment B, will remain in place for at least two years from consummation of the Transaction.
- ii. After the two-year period referenced in Paragraph 7.i.i., the Joint Petitioners will notify Board Staff and Rate Counsel regarding any changes to existing ring-fencing 60 days in advance of such changes

taking effect and seek any necessary Board approvals.

- iii. Related to existing commitments to utility regulatory agencies in New Jersey and New York:
 - a. Through December 31, 2023, should the common equity ratio of SWR fall below 50 percent on a 12-month rolling basis, the Joint Petitioners will notify the Board Staff and Rate Counsel.
 - b. Through February 27, 2024, if the equity portion of the SWR capital structure rises above 54% at December 31, the Joint Petitioners will notify the Board Staff and Rate Counsel.
- iv. Long-term debt financial covenants for SWR which contribute to the existing ring-fencing of SWR will remain in place for at least four years following the consummation of the proposed transaction, including:
 - a. Regulated Utility Revenues must be 90% of the consolidated revenues of SWR.
 - b. The minimum consolidated tangible net worth is \$900 million.
 - c. Net utility assets no less than \$400 million.
 - d. The debt portion of the capital structure of SWR is limited to 65% of Total Capitalization.
 - e. Short Term Debt may not exceed 20% of Total Capitalization.
 - f. Total secured debt cannot be more than 15% of total indebtedness or \$15 million. Currently, SWR has no secured debt.
 - g. A subsidiary of SWR may not have more than \$15 million of

secured debt. Currently, there is no secured debt at the SWR subsidiary level.

j. Other Transaction-Related Commitments.

- i. The Joint Petitioners will adhere to all other commitments in the Joint Petition filed on June 11, 2021 at the above-referenced docket.
- ii. Subject to the execution, where appropriate, of acceptable confidentiality agreements, Board Staff and Rate Counsel shall be provided with reasonable access to the books and records of SWNJ and to the books and records of its regulated or unregulated subsidiaries or affiliates that pertain to their transactions with SWNJ, for the purposes of reviewing whether there has been a proper allocation of costs to SWNJ. Nothing herein shall be construed to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq.

8. The instant Stipulation is the product of extensive negotiations by the Settlement Parties. It is an express condition of the settlement that it be presented to the Board and approved thereby without modification or condition. It is the intent of Settlement Parties that once approved by the Board, the Stipulation shall govern all issues as specified and agreed to. The Settlement Parties specifically agree that if adopted by the Board, no appeal shall be taken from the Order granting such approval concerning the issues contained in the Stipulation. The Settlement Parties agree that the Stipulation represents mutual balancing of multiple issues and positions. In the event that any aspect of the Stipulation is not approved by the Board, any Settlement Party materially affected thereby shall not be bound to implement terms under the Stipulation. No Settlement Party shall be prohibited from or prejudiced in arguing a different policy or position before the Board in

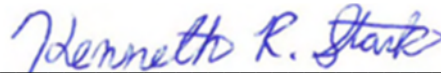
any other proceeding, as the agreements made in the instant Stipulation pertain, solely to the matter at the above-captioned docket.

9. The Stipulation may be executed in as many counterparts as there are Signatory Parties to this Stipulation; each counterpart shall be an original, but all counterparts shall constitute one and the same instrument.

III. CONCLUSION

WHEREFORE, Veolia Environnement S.A., Veolia North America, Inc., SUEZ S.A., and SUEZ Water New Jersey Inc., along with the Division of Rate Counsel, and the Staff of the Board of Public Utilities, respectfully request that the Board approve the Petition as modified by this Stipulation of Settlement.

Respectfully submitted,



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Attorney for Staff of the New Jersey Board of Public Utilities

Dated: November 30, 2021

Attachment A

SUEZ Water New Jersey Inc. Capital Plan

2021 through 2024 (in 000's)

Capital Plan	2021	2022	2023	2024
SUEZ Water New Jersey Consolidated				
Plant large projects:				
Princeton Meadows WWTP Upgrade	\$ 16,639	\$ 11,697	\$ 17,456	\$ 2,630
Oradell Dam Improvements - Phase I (Stability & Concrete)	\$ 218	\$ 217	\$ 218	\$ 217
Replace HWTP FW PS #1 MCC	\$ 1,963	\$ -	\$ -	\$ -
Fairview PS Upgrade	\$ 2,726	\$ 3,803	\$ -	\$ -
Haworth Hypo & ZOP Additional Storage	\$ 4,503	\$ -	\$ -	\$ -
Western Reservoir II (new) Pump Station Building	\$ 1,526	\$ -	\$ -	\$ -
SCADA - Implementation National Standards & Guidelines	\$ 545	\$ 1,481	\$ 3,165	\$ 1,675
West Milford Wastewater Plant Replacements	\$ 3,271	\$ 14,507	\$ 18,496	\$ -
Western Reservoir I Pump Station Upgrade	\$ 164	\$ 543	\$ 2,176	\$ 2,166
New Haworth Warehouse	\$ -	\$ 3,803	\$ -	\$ -
Oradell Dam Improvements - Phase II (Mechanical Imps) ~\$7.5M	\$ -	\$ -	\$ -	\$ -
Future PD10 Tank (5 MG) ~\$15M	\$ -	\$ -	\$ 326	\$ 6,499
New Dundee Plant 20 MGD for >~\$ 50M	\$ -	\$ -	\$ -	\$ 108
NW Bergen: Upper Saddle River A Station Upgrades ~7.5M	\$ -	\$ -	\$ -	\$ 162
Pompton PS MCC / Switchgear Replacement ~\$10M	\$ -	\$ 163	\$ 544	\$ 2,708
PFAS - USR Wells (deferred to after 2025) ~\$10M				\$ 1,611
PFAS - Wyandotte Well	\$ 2,121	\$ 3,198	\$ 1,000	
PFAS - HWTP (110MGD Treatment) - Preliminary Design	\$ 1,880	\$ 1,755	\$ 459	
PFAS - Highlands ~10 sites	\$ 3,518	\$ 6,382	\$ 4,308	\$ 2,559
New Montvale Elevated Tank (1-2 MG) ~\$10M				\$ 108
Matchaponix New Clearwell		\$ 2,375		
Windsor Plant Improvements	\$ 155	\$ 400	\$ 2,760	\$ 5,315
Plant large projects total	\$ 39,228	\$ 50,326	\$ 50,909	\$ 25,760
Plant common projects	\$ 6,207	\$ 4,951	\$ 5,016	\$ 5,368
Plant roll-up	\$ 8,176	\$ 9,259	\$ 5,347	\$ 4,726
Network large projects	\$ 267	\$ 1,725	\$ 6,825	\$ 22,513
Network common projects	\$ 2,397	\$ 1,378	\$ 4,623	\$ 10,904
Network blankets	\$ 15,250	\$ 15,182	\$ 15,177	\$ 15,090
Meter blankets	\$ 15,376	\$ 9,948	\$ 8,680	\$ 9,919
DSIC Projects (Excluding Lead Service Lines Replacement)	\$ 51,374	\$ 46,169	\$ 49,161	\$ 60,699
Lead Service Lines Replacement	\$ 21,703	\$ 21,800	\$ 21,794	\$ 21,669
Total NJ Consolidated	\$ 159,979	\$ 160,739	\$ 167,532	\$ 176,650

Attachment B

The following ring-fencing measures are currently in place for the SUEZ New Jersey Utilities:

Organizational Structure:

Regulated and unregulated functions are organized as separate corporate structures. Within the current structure of SUEZ Water Resources LLC (“SWR”), each utility is a separate legal entity and, outside of SUEZ Operations Inc. (“SOI”), Corwick Realty Company (“Corwick”), and SUEZ Water New Jersey Inc.’s 50% interest in The Dundee Water Power and Land Company which are immaterial, they are all regulated by a Commission or other economic regulator.

Corporate subsidiaries maintain their own corporate officers and directors.

Corporate subsidiaries maintain their current status as subsidiaries and are organized in a manner that provides corporate separation of regulated and non-regulated activities.

Employees of the regulated entities are not direct employees of the parent or non-regulated entities.

Accounting:

Each utility subsidiary of SWR (singularly, a “Utility Subsidiary” or collectively, the “Utility Subsidiaries”) maintains its own accounting records and financial statements to reflect its own assets and liabilities.

Affiliate Agreements:

Transactions among the Utility Subsidiaries and their corporate affiliates take place pursuant to the terms of a Commission-approved affiliated agreement where required.

Debt Issuances:

Each Utility Subsidiary maintains the capability to issue its own long-term debt (with such debt issuances subject to Commission approval if required). Historically, debt is issued at the immediate parent level (i.e., the SWR level) for the benefit of each SWR subsidiary. This methodology has been utilized for ratemaking in each of the Company’s base rate cases. In the event subsidiary debt should be issued, such issuances would be made in accordance with any required Commission approvals.

The Utility Subsidiaries do not pledge or encumber their assets or make any loan guarantees for the benefit of corporate affiliates.

No Utility Subsidiary assumes debt issued by a holding company nor does any Utility Subsidiary guarantee any debt for its parent or affiliates. If such debt were assumed or guaranteed, all applicable Commission approvals would be sought.

The SWR subsidiaries each participate in an approved money pooling agreement as required by the applicable regulatory commission.

Currently, no debt exists at any of SWR's Utility Subsidiaries except for an immaterial amount of legacy debt (approximately \$63k) at SUEZ Water New Jersey Inc. ("SWNJ"). In the past, debt that was issued at a utility subsidiary level maintained its own credit rating. SWNJ debt is currently rated "A" by S&P Global.

Money pooling:

Money pools are maintained separately for regulated and unregulated operations. The current Money Pooling agreement includes SWR entities only. Only SWR's unregulated affiliates (SOI and Corwick) are included. Per the current Money Pooling agreement, SOI and Corwick may only be net contributors to the money pool.

Governance Measures:

The following governance measures are currently in place:

Stitching Depository PGGM Infrastructure Funds, acting in its capacity as title holder of PGGM Infrastructure Fund (together, "PGGM"), a cooperative Dutch pension fund service provider, headquartered in the Netherlands, is the 20% owner of SUEZ Utility Holdings Inc. ("SUHI"), the immediate parent company of SWR. Anti-dilutive measures are in place to ensure PGGM can maintain its economic interest at current levels and there are no cross-default provisions between SUEZ S.A. and SUEZ Utility Holdings Inc. (or its subsidiaries).

As a part of the current governance structure, in recognition of PGGM's 20% ownership in SUHI, SUHI's Board of Directors comprises members from SUEZ (3 employee directors), PGGM (1 director and 1 non-voting observer) and one non-employee (independent) director.