



Agenda Date: 5/24/23
Agenda Item: 5B

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

WATER

IN THE MATTER OF THE PETITION OF VEOLIA)	ORDER ADOPTING
WATER NEW JERSEY INC. FOR APPROVAL TO)	STIPULATION
DEFER COSTS RELATED TO THE REPLACEMENT)	
OF CUSTOMER/PROPERTY OWNER SIDE LEAD)	DOCKET NO. WR22060392
SERVICE LINES AND OTHER RELATED APPROVALS)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Stephen B. Genzer, Esq., Saul Ewing, Arnstein, & Lehr, LLP on behalf of Veolia Water New Jersey

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers a stipulation of settlement ("Stipulation") entered into by Veolia Water New Jersey Inc. ("Veolia" or "Company"), the New Jersey Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") (collectively, "Parties") seeking to resolve all issues related to this matter.

BACKGROUND AND PROCEDURAL HISTORY

Veolia is a Public Utility Corporation in the State of New Jersey engaged in the business of treating and distributing water for retail service to customers located throughout the State. Specifically, Veolia serves approximately 260,000 customers in portions of Bergen, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Sussex, and Warren Counties. Veolia also supplies water service to municipalities, including the Borough of Allendale, the Borough of Fair Lawn, Township of Freehold, Gordon's Corner Water Company, the Borough of Mahwah, the Township of Manalapan, the Borough of Ramsey, the Village of Ridgewood, the Township of Saddle Brook, and the Borough of Saddle River.

Service lines are individual pipes that run from the water main in the street to a building. Service lines consist of two (2) portions: 1) the section of the service line from the water main to the curb stop, owned by the company; and 2) the section from the curb stop to the building, owned by, and which is the responsibility of, the property owner. Many service lines were installed when the use of lead in service lines was standard practice; those lines, and lines made of a galvanized material, are considered Lead Service Lines ("LSLs").

On July 22, 2021, Governor Phil Murphy signed P.L. 2021, c. 183 (“LSLR Law”) into law. The LSLR Law declared that the presence of lead in drinking water poses significant a threat to the health of New Jersey residents. The LSLR Law therefore directed all public water systems in the State of New Jersey to inventory and gradually replace all lead service lines, including those located on private property, and recoup the costs of those replacements from all public water system subscribers.¹

The LSLR Law also requires that, “[i]n order to recoup the costs of lead service line replacements from its customers an investor-owned public community water system shall submit to the board, for approval at its next general rate case proceeding, a petition that includes a proposal for cost recoupment.”²

PETITION

On June 22, 2022, Veolia filed a petition with the Board requesting that the Board authorize it to defer the costs to replace customer/property-side LSLs as a regulatory asset pending the Board’s decision in the Company’s next base rate case filing (“Petition”). The Company further requested that the Board approve its plan to account for the LSL replacements over the course of 10 years.

The Company also noted that it would identify the costs it intends to recover through its Distribution System Improvement Charge foundational filing. Pursuant to the LSLR Law, Veolia proposed that the costs associated with the replacement costs be treated as an operational and maintenance costs.

The Board retained jurisdiction over this matter and designated Commissioner Zenon Christodoulou as the Presiding Commissioner.³

On February 7, 2023, Commissioner Christodoulou issued a Procedural Order setting forth the procedural schedule for this matter.⁴

Following publication of an appropriate public notice in newspapers within the Company’s service territory, the Company held two (2) virtual public hearings on April 26, 2023, over which BPU Commissioner Zenon Christodoulou presided, at 4:30 p.m. and 5:30 p.m. respectively. One (1) member of the public appeared at the 4:30 p.m. hearing but did not provide comments regarding this matter. No members of the public appeared at the 5:30 p.m. hearing. Additionally, no written comments were received by the Board.

¹ N.J.S.A. 58:12A-40.

² N.J.S.A. 58:12A-45(b).

³ In re the Petition of Veolia Water New Jersey Inc. for Approval to Defer Costs Related to the Replacement of Customer/Property Owner Side Lead Service Lines and Other Related Approvals, 2022 N.J. PUC LEXIS 306, BPU No. WR22060392 (Sept. 28, 2022).

⁴ In re the Petition of Veolia Water New Jersey Inc. for Approval to Defer Costs Related to the Replacement of Customer/Property Owner Side Lead Service Lines and Other Related Approvals, BPU No. WR22060392, (Feb. 7, 2023) (Order Adopting Procedural Schedule).

Stipulation

Following a review of the record in this matter, including the Petition and discovery, the Parties executed the Stipulation, which provides for the following:⁵

The Parties agree that, for purposes of the Stipulation, the Board authorizes the Company to defer the following so that in the Company's next base rate case (anticipated to be filed on or around July 2023),⁶ the Board can consider whether and to what extent such costs should be included in the rates:

- (a) the total cost of the replacement of customer/property owner side LSLs (N.J.S.A. 58:12A-45);
- (b) interest on the project costs of property-owner side of lead service line replacement (N.J.S.A. 58:12A-43 and -45);
- (c) the total cost of customer notifications (N.J.S.A. 58:12A-43);
- (d) the costs of in-premise inspections to determine the composition of the property-owner side service lines (N.J.S.A. 58:12A-42(3)(a));
- (e) the costs of inventorying potential LSLs which require excavation in the event all normal methods of determining the composition of a service line has been exhausted [N.J.S.A. 58:12A-42(f)(2)];
- (f) other incremental costs required to comply with the law (N.J.S.A. 58:12A-45);

The Parties further agree to clarify that for purposes of the Stipulation:

- (g) the deferral treatment agreed upon in the Stipulation is limited to non-Company side LSL replacement costs incurred on and after the effective date of P.L 2021, c. 183, i.e., July 22, 2021;⁷

⁵ Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Paragraphs are numbered to coincide with the Stipulation.

⁶ Rate Counsel and Staff acknowledge that the Company has stated its intent to include a plan for recovery of such costs in its next rate case, as detailed in the LSLR. The Company intends to request appropriate recovery of costs for both the non-Company owned side of the service line as well as the Company owned side of the service line. Neither Staff nor Rate Counsel are taking a position on such a plan in the Stipulation.

⁷For clarification, as noted in the Stipulation, there are normally two sides of a service line. The company owned portion is that section connecting the company owned water main (usually in the street), to the non-company owned portion of the service line usually between a curb box and the property owner's premises. The meter can be anywhere along the non-company owned side of that service line. The property owner may or may not be the customer of the company (e.g. including but not limited to rental properties). Therefore, for purposes of the Stipulation, 'customer owned' or 'non-company owned' sides of the service line are used interchangeably.

- (h) the deferral treatment agreed upon in the Stipulation is limited to actual costs incurred for only those activities recognized in P.L 2021, c. 183, since July 22, 2021; and
- (i) the deferral treatment agreed upon in this Stipulation does not guarantee that all claimed deferred costs will be recoverable in the next base rate proceeding. Each party retains its right to challenge Veolia's deferred charges in the next base rate proceeding to the extent such costs are not consistent with the LSLR Law for non-company owned replacements or to the extent they believe they were not prudently incurred.

DISCUSSION AND FINDINGS

The presence of lead in drinking water represents a grave threat to public health, especially to the development of children in the State of New Jersey, and prevents Companies from providing safe drinking water to the citizens of New Jersey. One of the more pressing issues facing the companies in removing the presence of lead in drinking water is the removal of all lead service lines, with the removal of customer-owned lead service lines being the most difficult to replace. The LSLR Law presents a solution while enabling the companies to recoup some of the costs associated with replacing customer-owned lead service lines and thereby remove one of the main sources of lead-contaminated drinking water facing the Citizens of New Jersey.

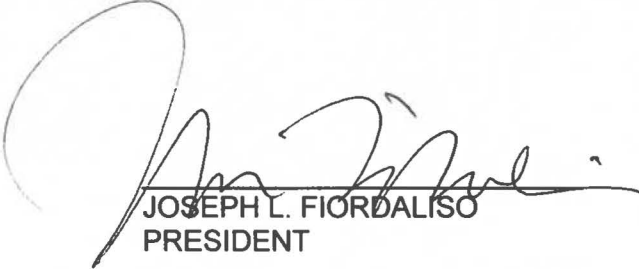
The Board **HEREBY FINDS** that the Stipulation poses no immediate impact on customer rates. The anticipated average monthly bill impact from the replacement of customer-owned lead service lines will vary depending on actual expenses incurred during the replacement period.

In reaching its decision, the Board must balance the needs of the ratepayers to receive safe, adequate, and proper service at reasonable rates, while allowing the Company the opportunity to earn a fair rate of return. As such, having reviewed the full record in this matter including the Petition and the Stipulation, the Board **FURTHER FINDS** that the Parties have voluntarily agreed to the Stipulation, and that the Stipulation fully disposes of all issues in this proceeding and is consistent with the law. Therefore, the Board **HEREBY ADOPTS** the Stipulation in its entirety and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein.

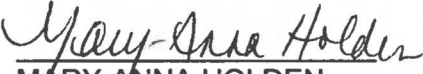
This Order shall be effective on May 31, 2023.

DATED: May 24, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST:



SHERRIL L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE PETITION OF VEOLIA WATER NEW JERSEY INC FOR APPROVAL TO DEFER COSTS. RELATED TO THE REPLACEMENT OF CUSTOMER/PROPERTY OWNNER SIDE LEAD SERVICE LINES AND OTHER RELATED APPROVALS

BPU DOCKET NO. WR22060392

SERVICE LIST

<p><u>New Jersey Board of Public Utilities</u> 44 South Clinton Avenue, 1st Floor P.O. Box 350 Trenton, NJ 08625-0350</p> <p>Sherri L. Golden, Secretary board.secretary@bpu.nj.gov</p> <p>Taryn Boland, Chief of Staff taryn.boland@bpu.nj.gov</p> <p>Bob Brabston, Esq., Executive Director robert.brabston@bpu.nj.gov</p> <p>Stacy Peterson, Deputy Executive Director stacy.peterson@bpu.nj.gov</p> <p><u>Office of General Counsel</u></p> <p>Michael Beck, General Counsel michael.beck@bpu.nj.gov</p> <p>Carol Artale, Deputy General Counsel carol.artale@bpu.nj.gov</p> <p>Michael Hunter, Regulatory Officer michael.hunter@bpu.nj.gov</p> <p><u>Division of Water & Energy</u></p> <p>Mike Kammer, Director mike.kammer@bpu.nj.gov</p> <p>Malike Cummings, Deputy Director malike.cummings@bpu.nj.gov</p> <p>Kofi Ocansey kofi.ocansey@bpu.nj.gov</p> <p>Magdy Mekhaeil magdy.mekhaeil@bpu.nj.gov</p>	<p><u>Veolia Water New Jersey, Inc.</u> 461 From Road, Suite 400 Paramus, NJ 07652</p> <p>Gary S. Prettyman, Sr. Director gary.prettyman@veolia.com</p> <p>Saul Ewing Arnstein & Lehr LLP One Riverfront Plaza, Suite 1530 Newark, NJ 07102</p> <p>Stephen B. Genzer, Esq. stephen.genzer@saull.com</p> <p>Colleen Foley, Esq. colleen.foley@saull.com</p> <p><u>New Jersey Division of Law</u> 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>Pamela Owen, ASC, DAG pamela.owen@law.njoag.gov</p> <p>Daren Eppley, DAG daren.eppley@law.njoag.gov</p> <p>Brandon Simmons, DAG brandon.simmons@law.njoag.gov</p> <p>Meliha Arnautovic meliha.arnautovic@law.njoag.gov</p> <p><u>New Jersey Division of Rate Counsel</u> 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. smcclure@rpa.nj.gov</p> <p>Christine Juarez, Esq. cjuarez@rpa.nj.gov</p>
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PROCEDURAL HISTORY

On June 22, 2022, Petitioner, a public utility corporation of the State of New Jersey, engaged in the business of collecting, treating and distributing water for retail and wholesale customers, and wastewater service to approximately 260,000 customers located in portions of Bergen, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Sussex, and Warren Counties, in the State of New Jersey, filed with the New Jersey Board of Public Utilities (“Board” or “BPU”) a Petition for approval to defer the costs related to the replacement of customer/property owner side lead service lines (including galvanized lines) and other related approvals. As described in the Petition, service lines are the individual pipes that run from the water main in the street to a home or building. Service lines usually consist of two portions: one portion is the section of the service line from the water main to the curb stop which is owned by VWNJ; and the other portion is the section from the curb stop to the home/building which is owned by and is the responsibility of the property owner who may or may not be a customer of the Company. The ownership of the portions of the water service lines is determined by the location of the property line and the curb stop. Many service lines were installed when lead or galvanized lines were standard (if not required) practice and a common installation material. Such service lines, which contain lead, are now all considered Lead Service Lines (“LSLs”).

In order to mitigate the possibility of lead reaching the homes/buildings in its service territory, the Company filed a Petition (BPU Docket No. WO19030381) to deal with the LSL replacement issue. However, as a result of the recent law (“P.L 2021, ch. 183”, or “N.J.S.A. 58:12A-40 et. seq.”, or “LSLR Law”) signed by Governor Murphy on July 22, 2021 requiring LSL replacement and allowing for private utilities to obtain full cost recovery for all prudently

determined expenditures, that earlier application (BPU Docket No. WO19030381) was effectively rendered moot, and the parties agreed to that matter's dismissal.

This new law requires public water systems to fully inventory all service lines and gradually replace all lead service lines within a specified period, including both company-owned and those that exist on private property, and to recoup the prudent costs of those lead service line replacements from subscribers of the public water system. N.J.S.A. 58:12A-40 et. seq.

As authorized in the new statute, and as agreed by all parties, costs associated with the replacement of the Company-owned portion of service lines are currently included in the Distribution System Improvement Charge ("DSIC") and will ultimately be recovered through the normal DSIC and ratemaking processes by including such investments in rate base. Pursuant to the LSLR Law, the costs associated with the replacement of the lead service lines owned by the customer/property owner are to be treated as an operation and maintenance cost and recovered from the Company's customers through the regular rate case surcharge.¹

Over the course of this proceeding and pursuant to the provisions of the LSLR Law, the Company has reported that it has been working to replace its LSLs in order to meet the statutory timeframes. Also pursuant to the statute, except for emergency incidents such as a main or service line break or during a water main replacement, a utility shall make a good faith effort to replace the entire LSL and only conduct a partial replacement as a last resort. As a result, VWNJ has begun replacing non-Company side LSLs in order to meet the requirements of the law and the required timeframes.

¹ N.J.S.A. 58:12A-45(b) specifically requires a semi-annual surcharge for recovery established at the next rate case filing.

Further, the Company has reported to the parties that it has endeavored to meet all aspects of the LSLR Law including reporting various inventories to the New Jersey Department of Environmental Protection and providing required public information, as well as working to provide all required reports to state agencies pursuant to the law.

Two virtual public hearings were conducted in this matter by BPU Commissioner Christodoulou on April 26, 2023 at 4:30 p.m. and 5:30 p.m., following publication of an appropriate public notice. One member of the public appeared and did not provide comments regarding this matter.

Over the course of this proceeding, Petitioner was served with, and responded in full to, discovery requests propounded by Rate Counsel and by Board Staff. Petitioner, Rate Counsel and Board Staff also conferred on a number of occasions regarding this matter. The request for deferred accounting in this matter has no impact on rates currently charged to customers. However, once included in rates following the Company's next base rate case filing, the Company estimates based on currently known information, that the average monthly impact for a residential customer could range from a low of approximately \$0.75 per customer per month to a high of approximately \$2.30 per customer per month.

As a result of an analysis of the Petition and Exhibits, Petitioner's responses to discovery, as well as the Parties' discussions and negotiations in this matter, the Signatory Parties have reached an agreement on this matter, the provisions of which are set forth below.

SETTLEMENT AGREEMENT

Settlement discussions were held and the agreements reached during those discussions have resulted in the following.

The Signatory Parties agree that, for purposes of this settlement, the Board authorizes the Company to defer the following so that in the Company's next base rate case (now anticipated by the Company to be filed or about July, 2023),² the Board can consider whether and to what extent such costs should be included in rates:

- (a) the total cost of the replacement of customer/property owner side LSLs (N.J.S.A. 58:12A-45);
- (b) interest on the project costs of property-owner side of lead service line replacement (N.J.S.A. 58:12A-43 and -45);
- (c) the total cost of customer notifications (N.J.S.A. 58:12A-43);
- (d) the costs of in-premise inspections to determine the composition of the property-owner side service lines (N.J.S.A. 58:12A-42(3)(a));
- (e) the costs of inventorying potential LSLs which require excavation in the event all normal methods of determining the composition of a service line has been exhausted (N.J.S.A. 58:12A-42(f)(2));
- (f) other incremental costs required to comply with the law (N.J.S.A. 58:12A-45);

The Signatory Parties further agree to clarify that for purposes of this settlement:

- (g) the deferral treatment agreed upon in this Stipulation is limited to non-Company side LSL replacement costs incurred on and after the effective date of P.L 2021, ch. 183, i.e., July 22, 2021;³
- (h) the deferral treatment agreed upon in this Stipulation is limited to actual costs incurred for only those activities recognized in P.L 2021, ch. 183, since July 22, 2021; and

² Rate Counsel and the Staff of the Board of Public Utilities acknowledge that the Company has stated its intent to include a plan for recovery of such costs in its next rate case, as detailed in the law. The Company intends to request appropriate recovery of costs for both the non-Company owned side of the service line as well as the Company owned side of the service line. Neither Staff nor Rate Counsel are taking a position on such a plan in this Stipulation.

³ For clarification, as noted above, there are normally two sides of a service line. The company owned portion is that section connecting the company owned water main (usually in the street), to the non-company owned portion of the service line usually between a curb box and the property owner's premises. The meter can be anywhere along the non-company owned side of that service line. The property owner may or may not be the customer of the company (e.g. including but not limited to rental properties). Therefore, for purposes of this Stipulation, 'customer owned' or 'non-company owned' sides of the service line are used interchangeably.

- (i) the deferral treatment agreed upon in this Stipulation does not guarantee that all claimed deferred costs will be recoverable in the next base rate proceeding. Each party retains its right to challenge Veolia's deferred charges in the next base rate proceeding to the extent such costs are not consistent with the LSLR Law for non-company owned replacements or to the extent they believe they were not prudently incurred.

This Stipulation shall be binding on the Signatory Parties to this proceeding upon approval by the Board. This Stipulation shall bind the Signatory Parties in this matter only and shall not be considered precedential in any other proceeding involving the Signatory Parties hereto.

If any modification is made to the terms of this Stipulation, the Signatory Parties must be given the right to be placed in the position in which each Signatory Party was before this Stipulation was executed. It is essential that each Signatory Party be given the option to modify its own position, to accept the proposed change(s), or to resume the proceeding as if no agreement had been reached.

The Signatory Parties believe that these procedures are fair to all concerned and, therefore, are made an integral and essential element of this Stipulation.

This Stipulation may be executed in as many counterparts as there are signatories to this Stipulation, each of which counterpart shall be an original, but all of which shall constitute one and the same instrument.

VEOLIA WATER NEW JERSEY INC.
Attorney for Petitioner



By: _____
Stephen B. Genzer, Esq.
Saul Ewing LLP

May 12, 2023
Date

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey
Board of Public Utilities

Date

By: Meliha Arnautovic
Meliha Arnautovic, Esq.
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.
DIRECTOR, DIVISION OF RATE COUNSEL

5/12/23
Date

By: Christine Juarez
Christine Juarez, Esq.
Assistant Deputy Rate Counsel