



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF SUEZ WATER)	ORDER DESIGNATING
ARLINGTON HILLS INC. FOR APPROVAL OF AN)	COMMISSIONER ON REMAND
INCREASE IN RATES FOR WASTEWATER SERVICE)	FROM THE SUPERIOR COURT,
AND OTHER TARIFF CHANGES)	APPELLATE DIVISION ¹
)	
)	DOCKET NO. WR16060510
)	OAL DOCKET NO. PUC 09261-2016

Parties of Record:

Stephen B. Genzer, Esq., Saul Ewing Arnstein & Lehr, LLP, on behalf of SUEZ Water Arlington Hills Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:²

BACKGROUND AND PROCEDURAL HISTORY

On June 15, 2016, pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.12, and other relevant statutes and regulations, SUEZ Water Arlington Hills Inc. ("SUEZ" or "Company"), a public utility having its principal offices at 461 From Road, Paramus, New Jersey, and subject to the jurisdiction of the Board, filed a petition seeking to increase its rates for wastewater service amounting to approximately \$1,404,396 or 118% above the annual level of test year revenues as of April 30, 2016.³ To mitigate the effects of the proposed rate increase on its customers, the

¹ This Order reflects Board action following the New Jersey Superior Court, Appellate Division's ("Appellate Division" or "court") September 10, 2018 Order on Motion in the New Jersey Division of Rate Counsel's ("Rate Counsel") appeal of the Board of Public Utility's ("Board") October 20, 2017 Decision in the rate increase petition of Suez. The Appellate Division granted the Board's motion and ordered that this matter be remanded to the Board for further proceedings regarding its calculation of the Consolidated Tax Adjustment. In re the Petition of Suez Water Arlington Hills Inc. for Approval of an Increase in Rates for Wastewater Service and Other Tariff Changes, Order on Motion, Docket No. No. A-1832-17T3 (App. Div. September 10, 2018).

² Commissioner Robert M. Gordon is recused from this matter due to a potential conflict of interest and, as such, took no part in the discussion or deliberation of this matter.

³ I/M/O Petition of Suez Water Arlington Hills, Inc. for Approval of an Increase in Rate for Wastewater Service and Other Tariff Changes - Order Adopting Initial Decision with Modifications and Clarifications, Order Denying Motion of Oral Argument, Order Denying Motion to Reopen the Evidentiary Record, BPU Docket No. WR1608050 (November 13, 2017) ("Suez Order") at 1.

Company also proposed that the rate increase be implemented in four installments and increase rates annually over the course of the next four years. The Company requested that the initial increase in rates become effective on July 29, 2016.⁴

On June 20, 2016, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearings. Administrative Law Judge ("ALJ") Danielle Pasquale was originally assigned to hear the matter. On July 29, 2016, the Board issued an Order suspending the Company's proposed rate increase until November 29, 2016.⁵ On October 21, 2016, the matter was reassigned to ALJ Irene Jones. Thereafter, on October 31, 2016 the Board issued an Order further suspending the proposed rate increase until March 29, 2017. A duly noticed public hearing was held on November 14, 2016. No members of the public appeared at the hearing.⁶

Evidentiary hearings were held before ALJ Jones on March 13 and March 16, 2017.⁷ With respect to the Consolidated Tax Adjustment ("CTA"), SUEZ and Rate Counsel provided pre-filed and live testimony of witnesses addressing, among other things, the appropriate CTA methodology and resulting calculation to be utilized in determining SUEZ's rate base. Rate Counsel's expert recommended a CTA based on a twenty-year look-back period,⁸ which was different from the methodology in the Board's CTA Generic Order⁹ and produced a CTA of \$107,440. SUEZ's expert applied the CTA methodology set forth in the Generic Order, which resulted in a CTA of \$79,381.¹⁰

Suez, Rate Counsel and Board staff filed initial briefs on April 13, 2017 and Suez and Rate Counsel filed reply briefs on May 4, 2017. The record in this matter closed on May 8, 2017.¹¹ By proposed form of Order dated June 22, 2017, Acting Director and Chief ALJ Laura Sanders requested that the Board extend the time for filing ALJ Jones's Initial Decision until August 7, 2017 pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1-1-18.8. The Board extended the time for filing ALJ Jones's Initial Decision until August 7, 2017 at its June 30, 2017 public agenda meeting.¹²

On August 4, 2017, while ALJ Jones's Initial Decision was pending, SUEZ filed a motion requesting oral argument before the Board on all or some of the issues in this matter, which Rate Counsel moved to strike on August 14, 2017.¹³ The Company filed a response to Rate Counsel's cross-motion to strike on August 15, 2017.¹⁴

⁴ Ibid.

⁵ Id. at 2.

⁶ Ibid.

⁷ Ibid.

⁸ Id. at 5.

⁹ After extensive stakeholder proceedings, the CTA methodology in place for several years was modified by Board Order on December 17, 2014 in In re the Board's Review of the Applicability & Calculation of a Consolidated Tax Adjustment, Docket No. EO12121072 ("Generic Order"). Rate Counsel appealed the Generic Order to the Appellate Division, which issued a decision reversing the Generic Order. The court found that the Board should have implemented changes to the CTA by rulemaking. The Appellate Division did not address whether the Generic Order lacked sufficient support in the record or was otherwise contrary to law. In re the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment, Docket No. A-1153-14T1 (App. Div. September 18, 2017) (slip op. at 23-27).

¹⁰ Suez Order at 5.

¹¹ Id. at 2.

¹² Ibid.

¹³ Ibid.

¹⁴ Id. at 3.

ALJ Jones issued her written Initial Decision on August 16, 2017.¹⁵ With respect to the CTA, ALJ Jones recommended an adjustment of \$79,381 as proposed by SUEZ and Board Staff, finding that while the Generic Order was being appealed, it was still Board policy and had precedential value unless and until it was overturned by the court.¹⁶

On August 28, 2017, the Board and the OAL executed an Order of Extension allowing the Board to issue a final agency decision by November 14, 2017.¹⁷ Following the Appellate Division's September 18, 2017 reversal of the Generic Order, and prior to the Board's issuance of a final agency decision in the Suez rate case, Rate Counsel moved before the Board to re-open the Suez evidentiary record to allow for the submission of additional evidence on the appropriate CTA to be utilized in light of the Appellate Division's decision.¹⁸

Thereafter, the Board issued its Final Decision and Order in this matter, adopting ALJ Jones's Initial Decision with certain modifications and clarifications and denying Suez's motion for oral argument as well as Rate Counsel's motion to reopen the evidentiary record.¹⁹ With regard to the CTA, the Board adopted ALJ Jones's recommended use of the Generic Order methodology and resulting rate base adjustment of \$79,381.

On December 18, 2017, Rate Counsel filed a Notice of Appeal with regard to the Suez Order. An Order was entered by the Appellate Division on February 21, 2018 that established the briefing schedule with regard to the issues on appeal. Amended briefing schedules were issued on March 13, 2018 and March 27, 2018 that extended the time period for the filing of briefs. Rate Counsel filed its corrected initial brief on May 11, 2018 and SUEZ filed its initial brief on August 10, 2018.

Additionally, on August 10, 2018, the Board filed a motion to remand the case to the Board for further proceedings after giving further consideration to the evidentiary record in the Suez matter and the Appellate Division's decision in the Generic Order appeal. On August 20, 2018, Rate Counsel filed a response to the motion, consenting to the relief sought on the condition that, should the court grant the Board's motion, the order include a provision that SUEZ's current rates are provisional, subject to refund, pending further action by the Board. On August 30, 2018, SUEZ filed a response opposing the motion, arguing, amongst other things, that it was unnecessary to reconsider any additional issues or evidence with regard to the CTA.

On September 10, 2018, the Appellate Division granted the Board's motion for remand, and issued an Order requiring the Board to complete the proceeding on remand within 90 days or by Wednesday, December 5, 2018. The Appellate Division further ordered that the Company's current rates shall be considered provisional, subject to refund, pending the remand. The Appellate Division did not retain jurisdiction.²⁰

Following the Appellate Division's remand of this proceeding, Rate Counsel, Suez and Board Staff discussed and agreed upon an accelerated procedural schedule, which provides for

¹⁵ Other key elements of the Initial Decision, such as the Board's findings as to overall rate of return and return on common equity, for example, are more fully set forth in the Suez Order.

¹⁶ Suez Order at 9. An apparent clerical error in the Initial Decision indicates a CTA of \$79,981.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 1.

²⁰ In re the Petition of Suez Water Arlington Hills Inc. for Approval of an Increase in Rates for Wastewater Service and Other Tariff Changes, Order on Motion, Appellate Division Docket No. A-1832-17T3 (App. Div. September 10, 2018).

additional discovery, submission of rebuttal testimony, an evidentiary hearing and a briefing schedule following the evidentiary hearing.

DISCUSSION

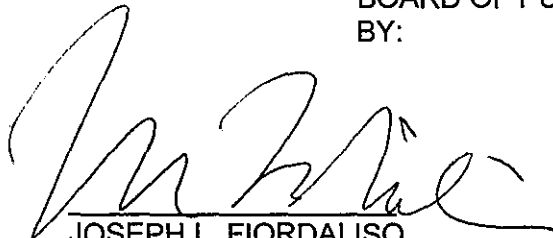
Based upon the Appellate Division's directive that the Board reconsider the limited issue of the appropriate CTA methodology to be applied to SUEZ's rate case on remand within 90 days, the Board has determined that this matter on remand as described above should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, **HEREBY DESIGNATES** Commissioner Mary-Anna Holden as the presiding officer who is authorized to hear testimony and evidence in this matter, rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.


The Company's rates shall remain provisional until a final rate has been determined, at which time the Company may be required to refund any excess income with interest.

This Order shall be effective November 8, 2018.

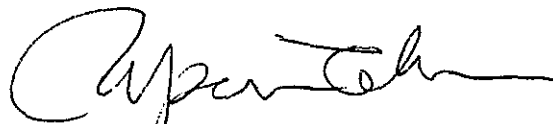
DATED: 10/29/18

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.
4

DOCKET NO. WR16060510
OAL DOCKET NO. PUC 09261-2016

IN THE MATTER OF THE PETITION OF SUEZ WATER ARLINGTON HILLS INC.
FOR APPROVAL OF AN INCREASE IN RATES FOR WASTEWATER SERVICE
AND OTHER TARIFF CHANGES

BPU DOCKET NO. WR16060510
OAL DOCKET NO. PUC 09261-2016

SERVICE LIST

Stephen B. Genzer, Esq.
Saul Ewing Arnstein & Lehr LLP
One Riverfront Plaza, Suite 1520
1037 Raymond Blvd. Newark,
New Jersey 07102
sgenzer@saul.com

Stefanie A. Brand, Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Brian Lipman, Litigation Manager
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
blipman@rpa.state.nj.us

Christine Juarez, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
cjuarez@rpa.state.nj.us

Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

Alex Moreau, DAG
alex.moreau@law.njoag.gov

Carolyn McIntosh, DAG
carolyn.mcintosh@law.njoag.gov

Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
board.secretary@bpu.nj.gov

Maria L. Moran, Director
Division of Water
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
maria.moran@bpu.nj.gov

Mike Kammer, Bureau Chief
Division of Water
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
mike.kammer@bpu.nj.gov

Megan Lupo, Esq.
Office of Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
megan.lupo@bpu.nj.gov

Exhibit A

**IN THE MATTER OF THE PETITION OF SUEZ WATER ARLINGTON HILLS INC.
FOR APPROVAL OF AN INCREASE IN RATES FOR WASTEWATER SERVICE
AND OTHER TARIFF CHANGES**

BPU DOCKET NO. WR16060510
OAL DOCKET NO. PUC 09261-2016

Procedural Schedule

- October 12, 2018:** Deadline for filing additional testimony
- October 15, 2018:** Deadline for propounding additional discovery
- October 17, 2018:** Deadline for propounding discovery on additional testimony
- October 22, 2018:** Deadline for discovery responses on additional testimony
- October 24, 2018:** Deadline for responses to additional discovery
- October 25, 2018:** Deadline for filing rebuttal testimony
- Week of October 29, 2018:** Evidentiary hearing (with live sur-rebuttal) at the Board of Public Utilities in Trenton, New Jersey
- November 6, 2018:** Deadline for filing initial briefs
- November 14, 2018:** Deadline for filing reply briefs
- December 2018:** Anticipated decision