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APR 08 2019  
BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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April 8, 2019

**VIA EMAIL and FEDERAL EXPRESS**

Honorable Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Re: In the Matter of the Joint Petition for Approval of SUEZ Water New Jersey Inc.  
for Approval of a Pilot Program to Facilitate the Replacement of Lead Service  
Lines and a Related Cost Recovery Mechanism  
BPU Docket No. WO19030381

Dear Secretary Camacho-Welch:

This firm represents SUEZ Water New Jersey ("SWNJ" or the "Company") in the above-referenced matter, which was filed with the Board of Public Utilities ("BPU" or "Board") on March 22, 2019.

The filing requests BPU approval of a pilot program designed to deal with the issue of possible Lead Service Lines ("LSLs") between the Company-owned mains in the streets and residential properties. Exhibits A and B to our Petition more fully describe which portions of the LSLs are generally owned by customers and which portions are owned by SWNJ. Under the requirements of 40 C.F.R. § 141.84 (attached to this letter), SUEZ is required to replace at least 7% of its connections each year for LSLs, and, in order to accomplish that 7% in 2019, the Company must promptly begin its replacement program.

After discussing these LSL issues with the Division of Rate Counsel, BPU Staff, representatives from the Department of Environmental Protection ("DEP"), and Deputy Attorneys General representing BPU and DEP, we submit this letter to formally clarify and adjust one aspect of our filed Petition.

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cons  
water  
Legal  
DAG  
S. Patrucco, Legal

SWNJ continues to request BPU action in April to assign a BPU Commissioner to process the request for approval of a pilot program to address SUEZ's LSL issues, as well as for deferred accounting for any aspects of the pilot program. By so acting, after due deliberation, along with providing interested parties the ability to comment on the pilot program, the BPU may at an appropriate time deal with the issue of costs of the program.

However, as noted in the attached email from Mr. Cagle on March 29, one aspect of the Company's filed Petition for a pilot program was a request that at its April meeting, the BPU, on an interim basis, adopt a tariff permitting the Company to implement the part of the pilot program which allows the Company to collect replacement charges from agreeing property owners (normally the water customers) and which provides for a cost sharing mechanism for such property owners who are willing to replace the "*customer owned*" side of their Lead Service Line. After the discussions described above, and taking into consideration that the DAGs, BPU Staff and DEP staff were, at that time, unwilling to agree to such a cost sharing arrangement with respect to customer owned property, the Company has agreed to withdraw the request for a tariff (Exhibit E to the Petition) to be implemented at the BPU's April Agenda meeting, anticipating that discussions will continue with respect to the costs of and payments for resolving customer side Lead Service Line issues under a presiding Commissioner's supervision.

To be clear, under that provision, the Company would have replaced the Company side of an LSL and have the customer side of the LSL replaced for a customer cost of \$1,000. The requested tariff would have provided for that customer's \$1,000 to be surcharged on that customer's bill for up to one year (\$83.33/month). The difference between that \$1,000 and the total cost of the customer side replacement (estimated to be about \$3,000 - \$8,000 for most residences) would be deferred under the pilot program, amortized over a 7 year period, with the Company recovering full carrying costs on only the unamortized balance, but not owning the customer side of the LSL either during the amortization period or subsequently.

The Company requested action on the entire pilot program at the BPU's April meeting so that it could meet the requirements of 40 C.F.R. § 141.84 (attached) of replacing the required 7% of Company side LSLs, testing the customer side and for customer notification (known as the 45 day letter) as required by regulation. For the Board's and Rate Counsel's edification, the Company and DEP have been diligently working to agree upon that notification to SWNJ customers whereby the Company can begin to replace LSLs, where such notification is required, as soon as possible in order to meet the 7% replacement requirements. We believe we are close to an agreement on such a letter, and will file that letter upon its finalization (hopefully before the BPU's April Agenda session).

As can be seen from the attached, these regulations require that the Company offer to provide replacement of the customer side of the LSLs, but at the customer's expense. Under the proposed pilot program and the regulations, if found to contain lead, the Company will be replacing its side of the LSL (to be included in rate base as normal). The Company continues to propose (but is not requesting the Board to approve at its April meeting) that under the pilot program, it should offer to replace the customer side (if lead is found) at a cost to the customer of \$1,000 as described above, with proposed regulatory treatment.

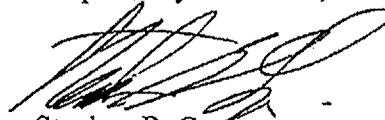
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We hope this letter is consistent with the discussions between BPU Staff and DEP, and will act to formally clarify the Company's request of the BPU for action at its April Agenda meeting.

As always, if there are any questions, please feel free to contact me at any time.

Respectfully submitted,



Stephen B. Genzer

SBG/jg

Enclosures

cc: Attached Service List (via email only; w/attachments)

## SERVICE LIST

In the Matter of the Petition of  
SUEZ Water New Jersey Inc. for Approval of a Pilot Program to Facilitate the  
Replacement of Lead Service Lines and a Related Cost Recovery Mechanism  
BPU Docket No. WO19030381

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for finished water entering the distribution system under paragraph (b)(4) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(7) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (b) (2), (4), or (6) of this section and issue Federal treatment determinations consistent with the requirements of those paragraphs where the Administrator finds that:

(i) A State has failed to issue a treatment determination by the applicable deadlines contained in § 141.83(a).

(ii) A state has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or

(iii) The technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

**§ 141.84 Lead service line replacement requirements.**

(a) Systems that fail to meet the lead action level in tap samples taken pursuant to § 141.86(d)(2), after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of § 141.81 or § 141.83 for failure to install source water or corrosion control treatment, the State may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under § 141.86(d)(2) has passed.

(b) A water system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system, including an identification of the portion(s) owned by the system, based on a materials evaluation, including the evaluation required under § 141.86(a) and relevant legal authorities (e.g., contracts, local ordinances) regarding the portion owned by the system. The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in paragraph (a) of this section.

(c) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L.

(d) A water system shall replace that portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the privately-owned portion where the owner chooses not to pay the cost of replacing the privately-owned portion of the line, or where replacing the privately-owned portion would be precluded by State, local or common law. A water system that does not replace the entire length of the service line also shall complete the following tasks.

(i) At least 45 days prior to commencing with the partial replacement of a lead service line, the water system shall provide notice to the resident(s) of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The

## Environmental Protection Agency

## § 141.85

State may allow the water system to provide notice under the previous sentence less than 45 days prior to commencing partial lead service line replacement where such replacement is in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed under § 141.86(b)(3), within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices post-marked within three business days of receiving the results shall be considered "on time."

(2) The water system shall provide the information required by paragraph (d)(1) of this section to the residents of individual dwellings by mail or by other methods approved by the State. In instances where multi-family dwellings are served by the line, the water system shall have the option to post the information at a conspicuous location.

(e) The State shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The State shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring referenced in paragraph (a) of this section.

(f) Any system may cease replacing lead service lines whenever first draw samples collected pursuant to § 141.86(b)(2) meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the State. If first draw tap samples collected in any such system thereafter exceeds the lead action level, the system shall recommence re-

placing lead service lines pursuant to paragraph (b) of this section.

(g) To demonstrate compliance with paragraphs (a) through (d) of this section, a system shall report to the State the information specified in § 141.90(e).

[56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992, as amended at 65 FR 2005, Jan. 12, 2000]

### § 141.85 Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraphs (a) and (b) of this section in accordance with the requirements in paragraph (c) of this section.

(a) *Content of written public education materials.* (1) *Community water systems.* A community water system shall include the following text in all of the printed materials it distributes through its lead public education program. Systems may delete information pertaining to lead service lines, upon approval by the State, if no lead service lines exist anywhere in the water system service area. Public education language at paragraphs (a)(1)(iv)(B)(5) and (a)(1)(iv)(D)(2) of this section may be modified regarding building permit record availability and consumer access to these records, if approved by the State. Systems may also continue to utilize pre-printed materials that meet the public education language requirements in 40 CFR 141.85, effective November 6, 1991, and contained in the 40 CFR, parts 100 to 149, edition revised as of July 1, 1991. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

(i) *Introduction.* The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program

**Gisbey, Jane H.**

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**From:** Cagle, James <jim.cagle@suez.com>  
**Sent:** Friday, March 29, 2019 6:27 PM  
**To:** Stephanie Brand; Flanagan, Paul; Kammer, Mike; Robinson, Debra; Lipman, Brian; McClure, Susan; Juarez, Christine; Geoffrey Gersten; Patricia Krogman; Felton, Kyle; Welch, Kenneth; Hart, Kathryn; Camacho, Aida; Graham, Karriemah; OGrady, Jackie; Thomas, Donna; Witherell, Benjamin; Patel, Rupal; Lai, Son-Lin; Power, Grace; Caroline Vachier (caroline.vachier@dol.lps.state.nj.us); peter.vanbrunt@law.njoag.gov; Lupo, Megan; P. E. Howard J. Woods Jr. (howard@howardwoods.com); Sebest, Donna; Sadovy, Christine; Artale, Carol; Patnaude, Suzanne; Lykins, Chance; Gardner, Patricia; Putnam, Michele; Hansen, Kristin; Kristen Heinzerling; Ofori, Linda  
**Cc:** Prettyman, Gary; Gonzalez, Bryant; Visconti, Debra; Vitale, Eric; Foley, Colleen A.; Genzer, Stephen B.; Mcelroy, Andrea; Vial, Debra  
**Subject:** The Company's petition

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All,

Thank you for meeting last Wednesday. I believe it was very productive. At the end of the meeting, a hard copy draft of a proposed letter was provided to the DEP which, as it relates to the meeting discussion, provides for the customer/owner to bear the costs of LSL replacement. The Company and DEP are working on the final details of that letter. As the letter contains no sharing of costs between SUEZ and the customer/owner, an approved tariff at the April BPU Agenda meeting is no longer necessary. The Company will be adjusting its request for a pilot program accordingly.

Many thanks,

Jim

James C. Cagle  
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