

May 18, 2020

**VIA FEDERAL EXPRESS**

Honorable Jacob S. Gertsman, ALJ  
Office of Administrative Law  
3444 Quakerbridge Road  
Quakerbridge Plaza, Building 9  
Mercerville, NJ 08619

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  
OAL Docket No. PUC 07138-2019S  
BPU Docket No. WO19030381

Dear Judge Gertsman:

This firm represents SUEZ Water New Jersey Inc. ("SWNJ"), Petitioner, in the above-referenced matter. SWNJ submits this request in the context of Rate Counsel's motion to dismiss this petition which Your Honor is currently considering. As noted during our status conference on Friday, May 15, 2020, we ask that Your Honor take Official Notice of the below referenced documents pursuant to N.J.S.A. 52:14B-10(b).

Over the course of the last month, Rate Counsel has made motions to dismiss elements of separate requests filed by Atlantic City Electric Company ("ACE") and Public Service Electric and Gas Company ("PSE&G") regarding the provision of electric vehicle charging infrastructure in New Jersey.<sup>1</sup> Both matters have been retained by the New Jersey Board of Public Utilities ("NJBP" or "Board"), and on information and belief both motions to dismiss advance the same argument that Rate Counsel has made in the instant matter, *i.e.*, that as a matter of law utilities may not invest in or provide financial incentives for non-utility owned property which would

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<sup>1</sup> See I/M/O the Petition of Public Service Elec. & Gas. Co. for Approval of its Clean Energy Future – Electric Vehicle and Energy Storage ("CEF-EVES") Program on a Regulated Basis, BPU Docket No. EO18101111; I/M/O the Petition of Atlantic City Elec. Co. for Approval of a Voluntary Program for Plug-In Electric Vehicle Charging, BPU Docket No. EO18020190.

then be recovered in utility rates in any way.<sup>2</sup> Even a cursory review of those motions reveals the strikingly similar nature of Rate Counsel's motions, both in our matter and in those of the other utilities. For Your Honor's convenience, we will provide copies of Rate Counsel's motion and ACE's opposition in the ACE proceeding, as well as a copy of PSE&G's opposition in its proceeding. Should Rate Counsel wish to provide additional documents, including from the PSE&G proceeding, or filings by other parties for the sake of completeness, we have no objection.

As noted on the call, it is SWNJ's understanding that Commissioner Chivukula is presiding over the ACE case and has issued a procedural schedule indicating he will rule on Rate Counsel's motion in that matter on or before June 10, 2020. Therefore, SWNJ believes Your Honor should be aware of the complete status of those matters and any actions taken by a decision maker in those proceedings. Of course, we also believe any decision on those motions, when made, should be provided to Your Honor for your edification.

Pursuant to N.J.S.A. 52:14B-10(b), Your Honor may take notice of "judicially noticeable facts." Further, N.J.A.C. 1:1-15.2(a) permits "[o]fficial notice" to "be taken of judicially noticeable facts as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence. See N.J.A.C. 1:1-15.2(a). Specifically, under the guidance provided by New Jersey Rule of Evidence 201, Your Honor is permitted to take notice of "rules of court, ... as well as ordinances, regulations, and determinations of all governmental subdivisions and agencies thereof[.]" N.J.R.E. 201(a), and also "records of the court in which the action is pending and of any other court of this state or federal court sitting for this state." N.J.R.E. 201(b)(4).

Thus, Your Honor is free to take official/judicial notice not only of Commissioner Chivukula's pending decision with respect to these motions, see, e.g., Tri-State Met. Naturists v. Lower Tp., 219 N.J. Super. 103, 108 (Law Div. 1987) (where the court took judicial notice of Board decision), but also the records and motion papers themselves. Matter of Vineland Chem. Co. (Vichem), 243 N.J. Super. 285, 317, n.5 (App. Div. 1990) (where the court took judicial notice of federal court proceeding involving some of the same parties and facts "for sake of completeness of the picture" in reviewing case before it), certif. denied, 127 N.J. 323. See also N.J. Court Rule 2:6-11(d) (permitting a party to "without leave, serve and file a letter calling to the court's attention, with a brief indication of their significance, relevant published opinions issued, or legislation enacted or rules, regulations and ordinances adopted, subsequent to the filing of the brief.").

Given significant overlap between Rate Counsel's "used and useful" argument as applied in the electric vehicle motions and the motion currently pending in this proceeding, SWNJ believes Your Honor needs to be apprised that a Commissioner of the Board is primed to decide the very issue at the center of the motions in this proceeding: whether the "used and useful

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<sup>2</sup> Specifically, Rate Counsel's motions in all three proceedings argue that the "used and useful" principle acts as an absolute bar to utility cost recovery for investment in non-utility property that is not used and useful. For example, the argument concerning the "used and useful" principle on pages 7 to 13 of Rate Counsel's motion in this proceeding is, for all intents and purposes, identical to the argument concerning the "used and useful" principle on pages 11 to 16 of Rate Counsel's motion in the ACE proceeding.

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principle” acts as an absolute bar to utility cost recovery (using any means) for investment in, and financial incentives for, non-utility property and/or property that Rate Counsel argues is not used and useful in the provision of utility service.<sup>3</sup>

Thank you for your consideration of this request.

Respectfully submitted,



Stephen B. Genzer

SBG/jg

Enclosure

cc: Nancy Demling, Judicial Assistant (w/encl., via both email and hard copy)  
Attached Service Lists (w/encl., via email)

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<sup>3</sup> It should be noted that SWNJ is not requesting rate base treatment of any replaced non-company side Lead Service Line, but rather is requesting recovery of the net costs amortized over time (7 years) with the unamortized balance treated as a regulatory asset, including appropriate carrying costs.