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Director

May 20, 2020

via Electronic Mail

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

Re: I/M/O 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:

Please accept this letter in response to the May 18th submission by the Suez Water New Jersey (“Suez”) seeking judicial notice of filings in electric vehicle matters pending before the Board into the record of the above-captioned matter. Preliminarily, Rate Counsel notes that the briefs filed in an unrelated matter fail to meet the standard for a judicially noticeable fact or decision and Your Honor already rejected this request in a status conference on May 15, 2020.

As Rate Counsel explained at that conference, it is unclear why Your Honor would need to take judicial notice of the Electric Vehicle proceedings pending before the Board. The documents are all public, and to the extent Your Honor wishes to read them, you may of course do so. There is, however, no reason to take judicial notice of the briefs or the underlying proceedings. First, the briefs cover a significant variety of topics. One is whether a utility may charge ratepayers for property that is not “used and useful.” There is also an issue as to whether the Plug-in Vehicle Act, N.J.S.A. 48:2-25.1, et seq. provides the Board with legal authority to approve the Electric Utilities’ proposals. There is also an issue about whether the main extension rules should apply, as the infrastructure is being built for specific customers. A decision on Rate Counsel’s motion to dismiss could turn on any of these topics without touching the “used and useful” discussion.

The actual briefs submitted by Suez will add nothing to Your Honor's analysis. There is no allegation that any party has taken an inconsistent position. Rather, the arguments contained in the briefs are cumulative to the record already before Your Honor. Suez has presumably adequately argued its position and does not need to rely upon arguments by Atlantic City Electric or Public Service Electric and Gas to support its argument. Likewise, Rate Counsel is comfortable with the record it has established in this matter. While the briefs are in fact publically filed and available, they are simply unnecessary for this matter to proceed.

Finally, Your Honor should not rely upon the June 10 date for a decision from Commissioner Chivukula. As stated above, that decision may not even be relevant to the present matter. More importantly, there is no guarantee there will be any decision by June 10th. Procedural schedules tend to slip, especially under current circumstances. Furthermore, yesterday, the Board Staff issued a New Jersey Electric Vehicles Infrastructure Ecosystem 2020 Straw Proposal, which could further delay a decision in the Electric Vehicle cases pending before the Board. In any event, this matter is fully briefed and argued and is ripe for decision. Your Honor should simply ignore the distractions from Suez and proceed to a decision on the current record.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: /s/ Brian O. Lipman
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