

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION)
OF SUEZ WATER DELAWARE INC.)
CONCERNING THE SEMI-ANNUAL)
ADJUSTMENT TO THE DISTRIBUTION) PSC DOCKET NO. 18-0899
SYSTEM IMPROVEMENT CHARGE ("DSIC"))
EFFECTIVE JULY 1, 2018 PURSUANT TO)
26 *DEL. C.* § 314(b)(5))
(FILED JUNE 5, 2018))

ORDER NO. 9264

This 6th day of September 2018, the Delaware Public Service Commission (the "Commission") determines and orders the following:

WHEREAS, on June 5, 2018, Suez Water Delaware, Inc. ("Suez" or the "Company") filed an application to increase its Distribution System Improvement Charge ("DSIC") rate from 2.33% to 3.41% effective July 1, 2018 (the "Application"); and

WHEREAS, on June 6, 2018, the Delaware Division of the Public Advocate (the "DPA") filed its Statutory Notice of Intervention pursuant to 29 *Del. C.* § 8716; and

WHEREAS, by letter dated June 12, 2018, the Commission Secretary notified Suez that its Application had been rejected for its failure to file at least 30 days prior to the July 1, 2018 effective date, in violation of 26 *Del. C.* § 314(b)(4) and 26 *Del. Admin. C.* § 1009.2.1; and

WHEREAS, on June 15, 2018, Suez filed a letter requesting that the Commission consider an exception to its late filing; Staff promptly informed the Company that such a request required a formal motion under the Commission's Rules of Practice and Procedure; and

WHEREAS, on June 29, 2018, Suez filed a Motion for Reconsideration ("Motion") acknowledging that the Application was filed late due to the Company's recent staffing changes; notwithstanding, Suez requested the Commission to: (i) grant a limited, one-time exception; (ii) allow Suez to implement a new DSIC rate effective September 1, 2018; and (iii) enable Suez to create a truncated DISC period from September 1, 2018 through January 1, 2019; or alternatively, (iv) permit Suez to include the investments made during the period from November 1, 2017 through April 30, 2018 in its January 1, 2019 DSIC filing;¹ and

WHEREAS, on July 3, 2018, Staff and the DPA each filed an Opposition to Suez's Motion for Reconsideration (collectively, the "Oppositions");² and

WHEREAS, on July 10, 2018, the Commission heard oral argument from Suez, Staff, and the DPA; and

WHEREAS, at oral argument Suez contended that although it failed to file its Application on or before the "**regulatory** cut-off date of May 31, 2018 by three (3) business days[,]"³ there would be no prejudice to any party if the Commission were to grant "[a] limited, one-time exception to the requirement that the DSIC rate be implemented on July 1, and instead allow the Company to implement the DISC rate as of September, 1 2018 (utilizing the same DSIC rate as set forth in the [June 5, 2018 Application]. Thereby creating an abbreviated DSIC period from September 1, 2018 through January 1, 2019. Thereafter, [the Company's] DSIC rate

¹ Suez's alternative request "(iv)" was proposed in its June 15, 2018 Letter attached as Exhibit C to the Motion.

² Staff's and the DPA's respective written Oppositions and oral arguments were essentially the same and are therefore considered in unison.

³ Motion at ¶ 5. (Emphasis added).

would be updated in accordance with the statutory and regulatory requirements[;]"⁴ and

WHEREAS, Suez further argued that if the Commission would not allow creation of the foregoing abbreviated DSIC period, the Commission should, in the alternative, permit Suez to include the investments made during the period from November 1, 2017 through April 30, 2018 in its January 1, 2019 DSIC filing; and

WHEREAS, Staff and the DPA argued that the Commission lacks authority to grant the Motion because: (a) DSIC filing period requirements are statutorily mandated under 26 *Del. C.* § 314(b)(3) and (b)(4), which expressly state "shall"; (b) it is well-settled that the Commission has no authority to vary the terms of a statute or ignore its mandatory provisions; (c) the Commission has no discretion to extend the filing period under 26 *Del. Admin. C.* § 1001.1.9.2 which states, in pertinent part, "[u]pon good cause shown, the Commission ... may extend the period of time prescribed by **these rules**[,]"⁵ because the statute - 26 *Del. C.* § 314 - controls, not "these rules"; and (d) Suez's alternative request to include the investments made during the period from November 1, 2017 through April 30, 2018 in its January 1, 2019 DSIC filing would be tantamount to impermissible retroactive ratemaking in derogation of the Commission's statutory mandate and its own regulations; and

WHEREAS, at the conclusion of oral argument, the Commission voted unanimously to deny Suez's Motion for Reconsideration on the bases of Staff's and the DPA's arguments;

⁴ *Id.* at ¶ 6.

⁵ (Emphasis added).

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Suez Water Delaware, Inc.'s Motion for Reconsideration, including any and all alternative requests, is hereby denied.
2. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary