

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Verified Joint Petition of Veolia Environnement S.A., Veolia North America, Inc., SUEZ S.A., and SUEZ Water New York Inc. for Approval Pursuant to Section 89-h of the Public Service Law of the Acquisition of SUEZ S.A. by Veolia Environnement S.A.**

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**Case 21-W-0338**

**REPLY STATEMENT  
OF VEOLIA ENVIRONNEMENT S.A.,  
VEOLIA NORTH AMERICA, INC., SUEZ S.A., and  
SUEZ WATER NEW YORK INC.  
IN SUPPORT OF THE JOINT PROPOSAL AND  
COMMISSION APPROVAL OF THE TRANSACTION**

**Dated: November 19, 2021**

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**REPLY STATEMENT**

On November 12, 2021, Veolia Environnement S.A., Veolia North America, Inc. (together with Veolia Environnement, “Veolia”), SUEZ S.A., and SUEZ Water New York Inc. (“SWNY”; collectively, “Petitioners”) filed a Statement in Support of the Joint Proposal in this matter, requesting the New York State Public Service Commission (“Commission”) adopt, without modification, the Joint Proposal filed on November 5, 2021 and approve Veolia’s acquisition of a majority or all of the outstanding shares of SUEZ (“Transaction”) pursuant to Public Service Law (“PSL”) § 89-h. Statements in support also were submitted by Department of Public Service Staff (“DPS Staff”) and the Utility Intervention Unit of the New York State Department of State (“UIU”). Mr. Robert Tompkins, a customer of SWNY, filed a Statement Opposing Joint Proposal and Petition (“Tompkins Statement”) and the City of Rye, Village of Port Chester, and Village of Rye Brook (collectively, “Municipal Intervenors”) jointly submitted a request for modifications to the Joint Proposal.

Petitioners submit the following response to Mr. Tompkins and the Municipal Intervenors. For the reasons set forth herein, neither Party provides a rational basis for modifying the Joint Proposal or denying approval of the Transaction. Despite their protestations and alternative

proposals, the Joint Proposal reflects a reasonable and fair balancing of customer and shareholder interests, is consistent with Commission precedent, and is in the public interest.

### **RESPONSE TO MR. TOMPKINS**

Mr. Tompkins raises several issues in his Statement, but none have merit or the proper factual or legal basis to reject or modify the Joint Proposal.

First, Mr. Tompkins asserts that Veolia lacks experience as the owner of a regulated water company in the United States.<sup>1</sup> This assertion is inapposite. Mr. Tompkins offers no explanation as to why such prior experience should be a determinative factor and his position is contrary to Commission precedent approving upstream mergers under similar circumstances.<sup>2</sup> There can be no question regarding Veolia's vast experience in the water industry or its financial and technical capability to indirectly own SWNY. Further, Mr. Tompkins disregards the fact that SWNY's management and employees will remain in place, ensuring continuity of operations and service by a highly experienced work force with extensive familiarity with the Commission and the requirements of being a New York regulated utility.

Second, Mr. Tompkins calls into question Veolia's business practices because certain Veolia subsidiaries have incurred a small number of penalties for regulatory violations.<sup>3</sup> He wrongly implies that the mere issuance of a violation, or payment of a fine, is a conclusive

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<sup>1</sup> Tompkins Statement at 3-4.

<sup>2</sup> *See, e.g.*, Cases 99-W-1542 and 94-W-0486, Joint Petition of United Water Resources, Inc. and Lyonnaise American Holding, Inc. for Approval of the Acquisition by Lyonnaise American Holding, Inc. of the Stock of United Water Resources, Inc. It Does Not Already Own, Order Approving Stock Acquisition (issued July 27, 2000) ("United Water Acquisition Order").

<sup>3</sup> Tompkins Statement at 3-4.

indication of Veolia's business practices and ability to operate. It is not. There is no credible basis for drawing such a conclusion, and his position lacks merit.

In advancing this spurious argument, Mr. Tompkins omits salient details. In particular, he ignores the fact that Veolia often is retained by a municipality when the municipality already has experienced problems, such as regulatory compliance problems. In the Oklahoma case,<sup>4</sup> Veolia was brought in to assist a community with a facility that was known to be in severe need of upgrades. The parties contractually agreed that Veolia would not be responsible for regulatory fines until the equipment was upgraded. The fine Mr. Tompkins references was levied before the upgrades were completed and related to conditions at the facility prior to Veolia's involvement with it. In the Plymouth situation,<sup>5</sup> Veolia had, over a period of years, warned the municipality of the potential problem with the system design, but the municipality declined to address the problem and implement changes. The Commission should not countenance Mr. Tompkins' disregard for the facts, and it should not consider the mere issuance of a fine to be a determinative factor in deciding whether to approve an upstream transaction involving a New York utility company.

Third, Mr. Tompkins erroneously draws a negative inference regarding Veolia's business practices due to the termination of a few contracts involving Veolia.<sup>6</sup> Again, he ignores important facts. The City of Indianapolis terminated its contract with Veolia because it decided to privatize its water and wastewater utilities to reduce debt and the funding burdens associated with owning a water utility. The termination was wholly unrelated to Veolia's performance.

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<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

In the City of Pittsburgh situation,<sup>7</sup> there was no contract termination as Veolia's contract with that customer had expired. Many inaccuracies surfaced during a dispute between Pittsburgh and Veolia; the facts, however, demonstrate that Veolia provided superior service to customers and helped mitigate rate increases. That dispute simply is not relevant to this proceeding.

In sum, there is no pattern of improper business conduct by Veolia. Reliance on a mere internet search without providing the underlying facts and circumstances, as Mr. Tompkins has done, is not meaningful or probative of Veolia's competence and ability to acquire SUEZ and indirectly own SWNY. Further, it does not provide a rational basis for modifying or rejecting the Joint Proposal.

Fourth, Mr. Tompkins suggests that the New York Joint Proposal should have included additional provisions about entities that are not directly subject to the Commission's jurisdiction.<sup>8</sup> The Joint Proposal properly is limited to matters within the Commission's jurisdiction.

Fifth, Mr. Tompkins is critical of the fact that Veolia is an international corporation with a wide and diverse group of stakeholders, including governmental entities.<sup>9</sup> He suggests, without any basis or support, that the Transaction could endanger national security.<sup>10</sup> Such claims are specious and should be disregarded in their entirety.

The Commission has never previously considered foreign ownership as a determinative factor and it should not do so here. In fact, the Commission has approved a large number of upstream transfers involving foreign corporations. Among them, the Commission approved the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4-5.

<sup>9</sup> *Id.* at 5-7.

<sup>10</sup> *Id.* at 5.

acquisition of United Water by SUEZ, a French corporation,<sup>11</sup> the acquisition of multiple electric and gas utilities by Iberdrola, S.A., a Spanish corporation,<sup>12</sup> the acquisition of an electric and gas utility by National Grid plc, an English corporation,<sup>13</sup> and the acquisition of an electric and gas utility by Fortis Inc., a Canadian corporation.<sup>14</sup>

As to national security implications, the Transaction was notified to the Committee on Foreign Investment in the United States (“CFIUS”), an interagency committee led by the U.S. Department of the Treasury that has authority to review transactions involving foreign investments in U.S. businesses to evaluate the extent to which such transactions could impact U.S. national security.<sup>15</sup> Formal notice of the Transaction was submitted to CFIUS on September 3, 2021 and formally accepted by CFIUS on September 14, 2021.<sup>16</sup> CFIUS personnel then asked a series of questions regarding the Transaction, and responses were provided by Petitioners. At the conclusion of its initial 45-day review period on October 28, 2021, and without electing to utilize its additional, optional 45-day investigation period, CFIUS determined that additional

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<sup>11</sup> United Water Acquisition Order.

<sup>12</sup> Case 07-M-0906, Joint Petition of Iberdrola, S.A., Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009).

<sup>13</sup> Case 01-M-0075, Joint Petition of Niagara Mohawk Holdings, Inc., Niagara Mohawk Power Corporation, National Grid Group plc and National Grid USA for Approval of Merger and Stock Acquisition, Opinion and Order Authorizing Merger and Adopting Rate Plan (issued December 3, 2001).

<sup>14</sup> Case 12-M-0192, Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions, Order Authorizing Acquisition Subject to Conditions (issued June 26, 2013).

<sup>15</sup> Defense Production Act of 1950, Title VII, Section 721, 50 U.S.C. § 4565, as amended by the Foreign Investment and National Security Act of 2007.

<sup>16</sup> CFIUS Case 21-192: Veolia Environnement S.A. (France)/U.S. Businesses of SUEZ S.A.

investigation was not required. It determined that there are no unresolved national security concerns associated with the Transaction and cleared the Transaction without any mitigation measures.<sup>17</sup> The Commission should provide significant weight to the determination made by CFIUS and reject the unfounded speculation offered by Mr. Tompkins.

Sixth, the issue of municipalization is beyond the scope of this proceeding. Petitioners strongly believe that there are substantial benefits to customers associated with private ownership of SWNY, and DPS Staff and UIU share this belief, as evidenced by their execution of the Joint Proposal and Statements in Support of the Joint Proposal. Veolia will be able to leverage more resources more quickly than a municipalized water authority if and when needed, and customers will benefit from Veolia's extensive research and development and best practices activities. The existence of a signature drive in Rockland County that seeks support for a feasibility study for municipalization does not form a valid basis for rejecting the Joint Proposal or denying approval of the Transaction.

Finally, Petitioners note that Mr. Tompkins' appearance in this proceeding is in an individual capacity; in such capacity he does not speak for any other SWNY customers or the public, generally. In contrast, both DPS Staff and the UIU are tasked with protecting and representing the public, and both executed the Joint Proposal, agreeing that the Transaction is in the public interest.<sup>18</sup> The Commission should take this into account when weighing the positions of the parties in this proceeding.

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<sup>17</sup> A copy of the letter received from CFIUS is attached hereto as Exhibit A.

<sup>18</sup> Joint Proposal at 2-3 and 14.

## RESPONSE TO MUNICIPAL INTERVENORS

Notably, Municipal Intervenors only provided comments on the Joint Proposal and did not file a statement in opposition. In fact, they acknowledge that “[t]he [Joint Proposal] does contain some excellent provisions.”<sup>19</sup> Municipal Intervenors wrongly suggest, however, that the Joint Proposal is insufficient to meet the Commission’s public interest standard and that there are no significant benefits accruing to SWNY customers as part of the Transaction.<sup>20</sup> As shown in the Joint Proposal and Petitioners’ Statement in Support, customers will receive immediate, tangible benefits that would not arise but for the Transaction. In total, they will receive benefits valued at approximately \$10 million. In addition, Veolia has committed to maintain current employment levels and benefits for at least 18 months, providing job security and stability for employees and customers. When viewed in totality, these benefits are significant.

Municipal Intervenors also raise concerns about the long-term stability of SWNY. The suggestion that short-term goals are involved in the Transaction, and the intimation that the provision of a safe water supply is at risk, have no factual basis and are disproved by Veolia’s long and distinguished track record in the water industry. Veolia has been in the water business for over 150 years, and it is acquiring SUEZ in order to grow and secure its position as the leading water company in the world. On a daily basis, it provides drinking water to over 95 million people worldwide. It spends millions of dollars on ways to remove contaminants and provide safe and clean drinking water to its customers. There can be no question that Veolia is committed to serving SWNY for the long-term, and to do so in a safe and responsible manner.

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<sup>19</sup> Municipal Statement at 4.

<sup>20</sup> *Id.* at 1-2, 5-6.

In their Statement, Municipal Intervenors seek a series of modifications to the Joint Proposal.<sup>21</sup> However, they offer little justification for these modifications. The asserted need for a Master Plan is misplaced as the Joint Proposal provides for the continuation of the existing rate plan, which governs capital expenditures, operations, and planning. In addition, the Joint Proposal also contains provisions to ensure employee continuity and stability.<sup>22</sup>

As to Municipal Intervenors' request related to the ongoing dispute with Westchester Joint Water Works, Petitioners note that the dispute, which pertains to the costs charged by an unrelated third party, is wholly unrelated to the Transaction. Municipal Intervenors' suggestion as to why Veolia's shareholders should bear responsibility for purchased water increases should be rejected as the Commission-approved rate plan provides for treatment of these costs. Further, an incentive to control purchased water costs already exists as evidenced by the ongoing dispute with Westchester Joint Water Works.

Municipal Intervenors also seek to modify the Commission-approved rate plan for SWNY notwithstanding that they actively supported the rate plan, including the Year 4 rates and its four-year term. They also seek to disrupt the Joint Proposal negotiated in this proceeding in accordance with the Commission's regulations and Settlement Guidelines. Notice of this proceeding and of the settlement negotiations was issued as required by law and Commission precedent. The Commission should not allow a late intervenor to undo a settlement that enjoys broad support, especially when the changes requested would alter the fair balance between customer and shareholder interests reflected in the settlement and lack factual support.

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<sup>21</sup> *Id.* at 5-6.

<sup>22</sup> Joint Proposal at 3-4.

## CONCLUSION

The Joint Proposal constitutes a comprehensive set of commitments and conditions that reasonably resolves all of the issues in this proceeding. Neither Mr. Tompkins nor Municipal Intervenor offer any valid or reasonable basis for modifying the Joint Proposal or denying approval of the Transaction on the terms and conditions set forth in the Joint Proposal. Accordingly, the Commission should disregard their objections and proposed modifications and find that the Joint Proposal meets the public interest standard of the Settlement Guidelines and produces an overall reasonable balance of competing customer and investor interests. The Commission also should find that the Joint Proposal, together with the Petition, Pre-filed Direct Testimony, discovery responses, Petitioners' Statement and Reply Statement in Support, and the Statements in Support submitted by DPS Staff and the UIU, establish a rational basis for finding that the Transaction is in the public interest.

Accordingly, Petitioners respectfully request that the Commission approve the Joint Proposal in its entirety and without modifications and approve the Transaction without further conditions.

Respectfully submitted,

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Dated: November 19, 2021  
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