

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Verified Joint Petition of SUEZ Water New York :
Inc. and Heritage Hills Water Works Corporation :
for Approval, Pursuant to New York State Public :
Service Law Section 89-h, for SUEZ Water New :
York Inc. to Acquire 100% of the Water System :
Assets of Heritage Hills Water Works :
Corporation :

Case 19-W-_____

**VERIFIED JOINT PETITION OF SUEZ WATER NEW YORK INC. AND HERITAGE
HILLS WATER WORKS CORPORATION FOR APPROVAL, PURSUANT TO
NEW YORK STATE PUBLIC SERVICE LAW SECTION 89-H, FOR
SUEZ WATER NEW YORK INC. TO ACQUIRE 100% OF THE WATER SYSTEM
ASSETS OF HERITAGE HILLS WATER WORKS CORPORATION**

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Dated: November 14, 2019

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I. INTRODUCTION

1. SUEZ Water New York Inc. (“SWNY”) and Heritage Hills Water Works Corporation (“Heritage Hills,” and together with SWNY, the “Joint Petitioners”) hereby file this duly Verified Joint Petition and request that the New York State Public Service Commission (“Commission” or “PSC”) approve, pursuant to Public Service Law (“PSL”) Section 89-h, Parts 17, 18, 31 and 39 of the Commission’s regulations and such other statutory and regulatory authority deemed appropriate, SWNY’s acquisition of 100% of the assets of Heritage Hills, a regulated public water utility (the “Proposed Transfer”). The Joint Petitioners submit that the Proposed Transfer is in the public interest and will result in the continuous and seamless provision of reliable, safe and adequate water service by SWNY to all of Heritage Hill’s customers at just and reasonable rates.

2. In support of this Joint Petition, the Joint Petitioners state the following:

II. DESCRIPTION OF THE JOINT PETITIONERS

A. SWNY

3. SWNY is a water-works corporation organized under the laws of the State of New York, having its principal office at 360 West Nyack Road, New York 10994. A certified copy of its Certificate of Incorporation, as amended, is attached hereto as Exhibit 1.

4. SWNY provides a public water supply system, including drinking water and water for fire protection, to over 75,000 residential, non-residential, and fire protection customers in Rockland County, New York, excluding the Villages of Suffern, Nyack, and South Nyack. SWNY also serves a small portion of Orange County, in portions of the Towns of Tuxedo, Warwick, and Monroe.

5. SWNY is a wholly owned subsidiary of SUEZ Water New Jersey Inc., a New Jersey corporation, which in turn is a wholly owned subsidiary of SUEZ Water Resources LLC.

B. Heritage Hills

6. Heritage Hills is a New York water-works corporation with its corporate office located at P.O. Box 873, 465 Heritage Road, Southbury, Connecticut 06488. A certified copy of its Certificate of Incorporation, as amended, is attached hereto as Exhibit 2.

7. Heritage Hills provides metered water service to 2,606 residential customers and 37 commercial customers in the Heritage Hills of Westchester condominium complex in the Town of Somers, Westchester County. Fire protection service is also provided. Heritage Hills last increased rates in 2009.¹

¹ Case 08-W-1201 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Heritage Hills Water Works Corp., Order Denying Motion, Determining Revenue Requirement, Authorizing Implementation of a Meter Replacement Program Surcharge Mechanism and Directing the Company to File an Electronic Tariff Schedule (Nov. 13, 2009) (“2009 Heritage Hills Rate Order”).

8. Heritage Hills has no employees. Instead, Heritage Hills' operations services are provided by VRI Environmental Services, Inc. ("VRI"), an outside contractor. VRI has operated and maintained the Heritage Hills system since February 2018. Heritage Development Group, Inc., an affiliated company of Heritage Hills, provides the overall management services for the system including: all accounting functions, billing, collections, annual financials and capital management, PSC reports, bank reconciliations, accounts payable, contract negotiations and management (including VRI), filing of rate cases, system planning, working with all regulatory agencies, health boards and customer service issues, monitoring well production, leak detections and capital expenditure issues.

III. DESCRIPTION OF THE PROPOSED TRANSFER

9. Pursuant to the Agreement of Sale between SWNY and Heritage Hills ("Agreement of Sale"), SWNY will purchase 100% of the water system assets of Heritage Hills used to serve Heritage Hills' customers, which generally consists of water production, storage and distribution facilities (the "Water System"). SWNY will also acquire certain real property consisting of a water treatment building parcel and water storage tank parcel (the "Land") as part of the Proposed Transfer. In addition, SWNY will acquire from Heritage Hills certain rights and interests under the easement agreements that are required in connection with the operation of the Water System. A copy of the Agreement of Sale is attached hereto as Exhibit 3.²

10. As described in the Agreement of Sale, the purchase price that SWNY will pay Heritage Hills is the sum equal to the product obtained by multiplying 1.2 by Heritage Hills' rate base ("Rate Base"), plus \$100,000 for the Land, the total of which is not to exceed \$5,200,000.00

² Some of the exhibits to the schedules to the Agreement of Sale are not included in Exhibit 3.

in the aggregate.³ The Rate Base to be used for calculating the purchase price is the Rate Base approved by the Commission in the 2009 Heritage Hills Rate Order rolled forward to the date of the closing of the Proposed Transfer.

11. As described in the Agreement of Sale and as required by PSL Section 89-h, the Proposed Transfer must be approved by the Commission prior to its consummation.

12. An affiliate of SWNY is also purchasing the sewer company affiliated with Heritage Hills and providing service in the same area. That transaction is contingent on the approval of the Proposed Transfer.

IV. THE PROPOSED TRANSFER IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED

13. PSL Section 89-h provides, in pertinent part, that “[n]o water-works corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission.” “In considering a proposed transfer, the Commission must ensure that the safe and adequate provision of service is not jeopardized and that the transaction is otherwise in the public interest.”⁴ Joint Petitioners respectfully submit that the Proposed Transfer fully satisfies the “public interest” test for the following reasons:

14. Upon the closing of the Proposed Transfer, the Water Treatment System Operation and Maintenance Agreement by and between Heritage Hills and VRI will be assigned to the Company and VRI will continue to operate and maintain the Water System for at least six (6) months so as to maintain continuity of services and a smooth transition. Thereafter, SWNY

³ If the total exceeds \$5,200,000.00 in the aggregate, the \$100,000 payable for the Land will be reduced by such an amount that will make the total equal \$5,200,000.00.

⁴ Case 14-W-0072 - Petition of New York American Water Company, Inc. for Approval of a Transfer or Lease of Certain Property Located at 733 Sunrise Highway, Lynbrook, New York to 733 Sunrise Realty, LLC, Order Authorizing Sale at 2 (June 12, 2014).

will assume responsibility for the operation and management of the Water System, which will benefit the customers of Heritage Hills by enabling operational and administrative efficiencies, and economies of scale that should, over time, moderate system costs.

15. Heritage Hills customers will also have access to the operational, technical, and managerial capabilities of SWNY. Moreover, SWNY has a stronger financial posture than Heritage Hills and is able to access the operational, technical, and managerial capabilities of SUEZ Water Resources LLC, which include infrastructure renewal, water treatment, research and development, customer service, information technology, and water quality monitoring. SWNY's financial strength, technical expertise and managerial excellence will especially benefit the customers of Heritage Hills as new drinking water standards are adopted to address emerging contaminants, which may require significant expenditures (both capital and operations and maintenance expense).

16. The Proposed Transfer will also enable capital investment and infrastructure replacement project costs to be spread out over a larger rate and customer base, making such projects more economical on a per customer basis.

17. The Proposed Transfer is also in the public interest as it is consistent with the Commission's policy goal of consolidating small water systems to improve the water service afforded to customers through mergers and acquisitions of larger systems.⁵

18. The ability of SWNY to provide safe and adequate service will be unaffected by the Proposed Transfer. SWNY is a well-established, experienced water utility that provides excellent service to its customers through its plants, equipment, and operations. SWNY's

⁵ Case 93-W-0962 - Acquisition and Merger of Small Utilities, Statement of Policy on Acquisition Incentive Mechanisms for Small Water Companies (Aug. 8, 1994).

existing management team is well-known to the Commission, respected in the industry and well positioned to own and operate the Heritage Hills Water System. SWNY has a proven record of making the necessary investment in infrastructure in order to provide its customers with high-quality water and customer service at reasonable prices. The customers of Heritage Hills will receive the same level of high-quality water and customer service at reasonable prices. Given Heritage Hills' size and potential need for capital investment, the customers of Heritage Hills will also, as discussed above, benefit from SWNY's access to capital and operational expertise.

19. The Joint Petitioners recognize the importance of maintaining their dedication to customers and their strong support for customer service. The Proposed Transfer will not alter SWNY's continuous provision of the same high-quality service to its customers without interruption.

20. The Proposed Transfer will not constrain or limit the Commission's ability to regulate the operations of the Joint Petitioners. SWNY, inclusive of the Heritage Hills Water System, will continue to be regulated in the same manner by the Commission, pursuant to the PSL and the Commission's regulations. The Proposed Transfer will also have no impact on any Commission orders, rulings, or regulations in effect and applicable to the Joint Petitioners.

21. Following the Proposed Transfer, all Heritage Hills customers would move from their existing tariff rates to SWNY's tariff rates. The average Heritage Hills customer, using 3.68 CCFs of water, would see a reduction of approximately 17% in their bill using SWNY's current rates (inclusive of surcharges).⁶

⁶ SWNY has a rate case currently pending before the PSC and the outcome of that proceeding will influence these bill impacts. Cases 19-W-0168 et al. - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of SUEZ Water New York Inc., SUEZ Water Westchester Inc. and SUEZ Water Owego-Nichols Inc. for Water Service (the "Rate Case").

22. SWNY proposes that all revenue, production costs (purchased power, purchased water, chemicals and sludge removal) and property taxes associated with the Heritage Hills Water System be excluded from reconciliation calculations pursuant to SWNY's existing Revenue, Production Cost and Property Tax Cost Reconciliation Adjustment Clause ("RAC") and any future RAC that may be implemented in SWNY's pending Rate Case.

V. SUPPORTING INFORMATION REQUIRED UNDER THE COMMISSION'S REGULATIONS

23. In further support of this Verified Joint Petition, the Joint Petitioners set forth the following information in compliance with 16 NYCRR Part 31, or more specifically, 16 NYCRR 31.1(a)-(l) and (as subsection 31.1(a) incorporates by reference) 18.1(f)-(i) and (p). A brief description of these requirements is set forth below with references to the attached Exhibits.

24. **16 NYCRR 31.1(a) -- Financial Condition.** This provision incorporates by reference the requirements of 16 NYCRR 18.1(f)-(i). There, the regulations call for information pertaining to bonds, notes or other evidence of indebtedness, mortgages, and affiliated interests. SWNY has outstanding long term debt in the amount of \$82.0 million as further described in Exhibit 4 (see also Exhibit 5) and has no bonds, mortgages, or other evidence of indebtedness. SWNY does not have any advances from and is not otherwise indebted to any affiliated interest. Heritage Hills has no notes, bonds, mortgages, or other evidence of indebtedness, other than \$3.5 million in outstanding advances from affiliated interests (see Exhibit 6). Also incorporated by reference are the requirements of 16 NYCRR 18.1(p), which pertains to a detailed income statement and balance sheet for the latest fiscal year. SWNY and Heritage Hills have provided the requisite information in Exhibits 5 and 6, respectively.

25. **16 NYCRR 31.1(b) -- General Description of the Facilities to be Transferred.** The property to be transferred includes: Heritage Hills' entire Water System and associated

Land, which is located in located in the Town of Somers, County of Westchester, New York. A more detailed description of the interests in the real and personal property to be transferred is included in Exhibit A to the Agreement of Sale and Schedule 1.1(J) to the Disclosure Schedule to the Agreement of Sale, both of which are included in Exhibit 3 attached hereto, as well as in Exhibits A-C to Schedule 1.1(J) to the Disclosure Schedule to the Agreement of Sale, which is attached hereto as Exhibit 7.⁷

26. **16 NYCRR 31.1(c) -- List of Franchises, Consents and Rights to be Transferred.** Upon consummation of the Proposed Transfer, all franchises, consents, permits, contracts, licenses and certificates held by Heritage Hills related to its provision of water service to customers located in the in the Heritage Hills of Westchester condominium complex in the Town of Somers, County of Westchester, New York, will vest in or be assigned to SWNY.

27. **16 NYCRR 31.1(d) -- Local Approvals.** Upon information and belief, no consents or approvals of any municipality are required in connection with the Proposed Transfer.

28. **16 NYCRR 31.1(e) -- A Copy of the Proposed Agreement to be Approved.** As stated above, a copy of the Agreement of Sale is attached hereto as Exhibit 3.

29. **16 NYCRR 31.1(f) and (g) -- Original Cost of the Property to be Transferred.** A summary of the property to be transferred from Heritage Hills to SWNY, including original cost, is included in Exhibit 8.

30. **16 NYCRR 31.1(h) -- Accumulated Depreciation Reserve of the Property to be Transferred.** The depreciation associated with the property to be transferred is set forth in Exhibit 8.

⁷ A list of easements granted to or obtained by Heritage Hills that will be transferred to SWNY is provided in Schedule I to Exhibit E of the Agreement of Sale which is included in Exhibit 3 attached hereto. See also Exhibit 7.

31. **16 NYCRR 31.1(i) -- Cost of the Property to be Transferred.** A summary of the property to be transferred from Heritage Hills to SWNY, including cost as shown on Heritage Hill's balance sheet, is included in Exhibit 8.

32. **16 NYCRR 31.1(j) -- Depreciation Reserves of Property to be Transferred.** A summary of the depreciation and amortization reserves applicable to the property to be transferred from Heritage Hills to SWNY is set forth in Exhibit 8.

33. **16 NYCRR 31.1(k) -- Statement of Contributions.** There is one contribution in aid of construction from Mancini Building Corp. in the amount of \$64,352.89.

34. **16 NYCRR 31.1(l) -- Statement of Operating Revenues, Expenses and Taxes Relating to the Property to be Transferred.** This information is set forth in Exhibits 6 and 9.

35. Pursuant to 16 NYCRR 39.1(a), "the financial condition of the applicant if a public utility and of the corporation whose stock or bonds are sought to be acquired or held" must be provided. As indicated above, the financial condition of SWNY and Heritage Hills is provided, as specified by 16 NYCRR 18.1, in Exhibits 5 and 6, respectively.

36. Pursuant to 16 NYCRR 39.1(b), the Joint Petitioners are required to state "[t]he reasons in detail why the applicant desires to make the purchase and the amount of such stock or bonds already owned by the applicant." SWNY seeks to acquire 100% of the water system assets of Heritage Hills because doing so is in the public interest as it results in the benefits discussed more fully above. SWNY has a stronger financial posture and following the Proposed Transfer the customers of Heritage Hills will be able to access SWNY's current operational, technical, and managerial capabilities, including infrastructure renewal, water treatment, research and development, customer service, information technology, and water quality monitoring.

The Proposed Transfer will also promote operational efficiencies and is consistent with the Commission's policy regarding consolidation of water utilities.

37. Pursuant to 16 NYCRR 39.1(c), applicants are required to show “[t]he market value of the stock or bonds to be purchased, if practicable, with highest and lowest sale price during a period of at least three years prior to the making of the petition and the dates of such sales; dividends, if any, paid on the stock proposed to be acquired for a period of five years prior to the making of the petition; the price proposed to be paid and the terms of payment.” The Proposed Transfer involves an asset purchase and not a stock acquisition.

38. Pursuant to 16 NYCRR 39.1(d), an applicant to purchase a utility system must submit “certified cop[ies] of authorizations already received and a statement of authorizations which must be obtained from other State or Federal authorities before acquisition of the securities may legally be consummated.” The Proposed Transfer does not require any additional permissions or approvals from other State or Federal authorities, nor does it require a filing under the Hart-Scott-Rodino Act.⁸

VI. NOTICE

39. A draft form of notification for publication in the New York State Register pursuant to the provisions of the New York State Administrative Procedure Act is attached hereto as Exhibit 10.

⁸ Heritage Hills holds certain permits from the New York State Department of Environmental Conservation (“DEC”), New York State Department of Health (“DOH”) and Westchester County Department of Health (“WCDOH”). Subsequent to receiving authorization from the Commission to consummate the Proposed Transfer, the Joint Petitioners will make any necessary filings with, and submit any necessary applications to, the DEC, DOH and WCDOH in order to effectuate the required permit amendments.

VII. STATE ENVIRONMENTAL QUALITY REVIEW ACT

40. Under the State Environmental Quality Review Act (“SEQRA”), the Proposed Transfer does not meet the definition of either Type I or Type II actions and, therefore, the Proposed Transfer is appropriately classified as an “unlisted” action requiring SEQRA review. Accordingly, it is proper for the Commission, as lead agency, to conduct an environmental assessment and to determine the significance of the actions proposed. To facilitate such assessment, attached hereto as Exhibit 11 is a completed Short Environmental Assessment Form describing the potential impact of the Proposed Transfer. There will be no physical changes to the Water System as part of the Proposed Transfer. Following consummation of the Proposed Transfer, the Water System will continue to be operated in accordance with all applicable requirements, relevant environmental permits and all applicable environmental laws and, therefore, no action is proposed that will result in a potentially significant adverse environmental impact. Accordingly, the Joint Petitioners respectfully submit that the Proposed Transfer will have no potentially significant adverse environmental impact based on the criteria for determining significance listed in 6 NYCRR 617.7(c) and request that the Commission issue, pursuant to SEQRA, a Determination of Nonsignificance (Negative Declaration) for the Proposed Transfer.

VIII. CONCLUSION

41. WHEREFORE, for the foregoing reasons, the Joint Petitioners respectfully request that the Commission approve on an expedited basis the Proposed Transfer as described herein.

Dated November 14, 2019



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Respectfully submitted,



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VERIFICATION

STATE OF)
) ss.:
COUNTY OF)

I, Chris GRIANO, being first duly sworn, attest that I am
Vice President for SUEZ Water New York Inc. and that I have authority
to verify the foregoing Verified Petition on behalf of the SUEZ Water New York Inc. I have
read the foregoing Verified Petition and I affirm that the facts, representations and statements set
forth therein regarding SUEZ Water New York Inc. are true and correct to the best of my
knowledge, information and belief.



Sworn to and subscribed before me
this 13th day of November, 2019.


Notary Public

LARISA QUINN
Notary Public, State of New York
No. 01QU6382297
Qualified in Rockland County
Commission Expires October 22, 2022

