

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SUEZ WATER PENNSYLVANIA, INC.**

**Docket No. R-2018-3000834**

**DIRECT TESTIMONY**

**OF**

**Daniel E. Durden**

**July 20, 2018**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Daniel E. Durden. My business address is 2509 N. Front Street, Harrisburg,  
3 PA 17110.

4 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
5 **PROFESSIONAL EXPERIENCE.**

6 A. Since October of 2014, I have served as the Chief Executive Officer for the Pennsylvania  
7 Builders Association, a trade association primarily representing the interests of the  
8 residential building community, its producers and consumers. Prior to that, I served for  
9 seventeen years as General Counsel for the National Association of Home Builders.  
10 Before joining the home builders, I engaged in the private practice of law in the District  
11 of Columbia. I am an active member of the District of Columbia bar and an inactive  
12 member of the Pennsylvania bar. I hold a bachelor's degree in English and a Juris Doctor  
13 degree.

14 **Q. DO YOU HAVE ANY EXPERIENCE TESTIFYING IN REGULATORY**  
15 **MATTERS?**

16 A. I have litigated more than one hundred administrative cases before various federal  
17 agencies, primarily the US Department of Labor; but have never testified in a regulatory  
18 matter at the federal, state, or local level. I have not previously provided testimony or  
19 was otherwise directly engaged with or before a public utility commission.

20 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

21 A. I am testifying on behalf of the Pennsylvania Builders Association ("PBA"). The PBA is  
22 a professional trade organization representing nearly 5,000 members, located throughout  
23 Pennsylvania, including in the service territory of Suez, that are involved in the building  
24 industry, primarily as builders, developers, remodelers, material suppliers,  
25 subcontractors, and consultants. Chartered in 1945, the PBA represents its members on

1 state regulatory and legislative issues. The PBA is the primary organization representing  
2 individuals and businesses in the residential building industry.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

4 A. The purpose of my testimony is to address the proposal of Suez Water Pennsylvania, Inc.  
5 (“Suez” or the “Company”) insofar as it relates to the impact of the Federal Tax Cuts and  
6 Jobs Act (“TCJA”) on the requirement for water and sewer utilities to recognize  
7 Contributions in Aid of Construction (“CIAC”) as taxable income and the associated  
8 effect on charges to developers and customers who remit those CIAC charges.

9 **Q. WHAT IS CIAC?**

10 A. CIAC is money or property that a developer or potential customer contributes for the  
11 development of main and service line extensions to expand utility services to new  
12 customers or locations.

13 **Q. CAN YOU PLEASE PROVIDE A BRIEF BACKGROUND ON THE TCJA AND**  
14 **THE INCOME TAX CONSEQUENCES OF CIAC?**

15 A. CIAC has been taxable for electric and gas utilities since the Tax Reform Act of 1986.  
16 Prior to TCJA, however, water and sewer utilities had been exempt from taxable CIAC  
17 since 1996, and CIAC was treated as nontaxable contributions to capital. As such, water  
18 and sewer utilities were prohibited from including property funded by CIAC in their rate  
19 base and taking depreciation deductions with respect to said property. The TCJA  
20 eliminated the exemption for water and sewer utilities from recognizing CIAC as federal  
21 taxable income. Pursuant to Pennsylvania’s Corporate Net Income Tax, CIAC are now  
22 recognized as state taxable income as well.

23 **Q. WHAT IS THE COMPANY’S PROPOSAL RELATED TO THE IMPACT OF**  
24 **TCJA ON THE REQUIREMENT FOR WATER AND SEWER UTILITIES TO**  
25 **RECOGNIZE CIAC AS TAXABLE INCOME?**

1 A. Suez has proposed that the Commission grant it authority to require developers or others  
2 requesting service line extensions to pay the entirety of the income tax consequences of  
3 CIAC. Specifically, the Company has proposed that it be permitted to gross-up the CIAC  
4 charged to developers at the net present value of cash flows resulting from the taxability  
5 of the CIAC and the future deductibility for income tax purposes of the resulting asset.  
6 The Company has also proposed that the deferred income tax impact of said transaction  
7 be held outside the ratemaking process, so that water service customers are not impacted.  
8 The Company proposes to utilize the actual structure and debt cost rate of Suez Water  
9 Resources and the water proxy group return on equity amount in effect as of December  
10 31 of each year and to update this calculation once per year. *See* SWPA Statement No. 3  
11 at 8-9.

12 **Q. DO YOU AGREE WITH SUEZ'S PROPOSAL RELATED TO THE TAX**  
13 **CONSEQUENCES OF CIAC?**

14 A. No, I do not. I disagree with Suez's proposal to utilize the "gross-up method" and require  
15 developers to pay the entirety of the income tax consequences of CIAC. The Company's  
16 proposal puts an extreme financial burden on developers in the development and  
17 construction of main and service line extensions. This new financial burden may serve as  
18 a deterrent for developers to undertake such projects. Main and service line extensions  
19 are necessary to expand utility services to new customers or locations. It is in the public  
20 interest for Suez to have adequate resources to invest in new infrastructure and capital  
21 developments and to increase consumer access to water supply. Providing more  
22 customers access to water supply from Suez also gives the Company a larger customer  
23 base in which to spread its overall cost of service.

24 **Q. ARE THERE ANY PUBLIC POLICY IMPLICATIONS OF SUEZ'S PROPOSED**  
25 **POSITION?**

1 A. Yes. By imposing the tax on the customer or developer seeking the service extension,  
2 Suez is creating a disincentive to use public utilities to serve a new customer's water  
3 needs and could push new users to rely instead on wells. This scenario robs the utility of  
4 the ability to spread fixed costs over a greater number of customers, which results in  
5 increased costs in the long run to all customers. This is also contrary to PUC policy.

6 **Q. DO YOU HAVE AN ALTERNATIVE PROPOSAL?**

7 A. Yes. I recommend that Suez adopt the "no gross-up method," consistent with the  
8 proposal of Pennsylvania American Water Company at Docket No. R-2018-3002504.  
9 Pursuant to this proposal, Suez will be required to initially absorb the tax, and then spread  
10 the cost to all customers through the ratemaking process. Suez will record the income  
11 taxes in a segregated, deferred account for inclusion in rate base in a future rate case  
12 proceeding, which will reduce its Accumulated Deferred Income Tax ("ADIT") liabilities  
13 in future base rate cases. The Company will also treat the facilities funded by CIAC as  
14 depreciable assets, although the Company will not record this future tax depreciation  
15 when calculating tax expense in future base rate cases. The future tax depreciation will  
16 cause the deferred tax asset to reverse over the tax life of the depreciable asset and  
17 increase net ADIT liabilities, as the additional tax depreciation is realized. The future tax  
18 depreciation will provide a benefit to Suez in the form of depreciation deductions. In  
19 other words, Suez will be compensated for the time lag between its payment of income  
20 taxes on CIAC and the future recovery of those amounts when depreciation deductions  
21 are recognized by the increase in rate base that results from treating the deferred amount  
22 as a deferred tax asset that offsets ADIT. The timing difference will be normalized by  
23 reflecting the deferred amount in rate base.

1 **Q. DOES YOUR PROPOSAL BENEFIT RATEPAYERS?**

2 A. Yes. Customers will benefit from the advances in infrastructure and extensions to  
3 facilities that are funded through CIAC. It is also worth noting that the costs associated  
4 with taxable CIAC will be offset by the additional revenue generated from the additional  
5 customers that have access to the system. Additionally, under this proposal, the tax  
6 expense that Suez incurs will be recovered over the life of the property, which is  
7 generally a better result.

8 **Q. IS THE COMPANY'S PROPOSAL CONSISTENT WITH REASONABLE**  
9 **RATEMAKING POLICY?**

10 A. Yes. The Commission has approved similar "no gross-up methods" for other utilities  
11 with taxable CIACs, demonstrating that the no gross-up method is just, reasonable,  
12 lawful, and nondiscriminatory. *See e.g.* Columbia Gas of Pennsylvania, Inc., Tariff Gas –  
13 Pa. P.U.C. No 9, Rule 8.2.5 Taxes on Deposits for Construction & Customer Advances,  
14 page 49a; *see also* York Water Company, Tariff Water – Pa. P.U.C. 14, Rule 3.11.8  
15 Taxes on Deposits for Construction & Customer Advances, page 15.

16 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

17 A. Yes. It does. I reserve my right to supplement this testimony should new information  
18 become available.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3000834
	:	
Office of Consumer Advocate	:	C-2018-3001786
	:	
Office of Small Business Advocate	:	C-2018-3002132
	:	
v.	:	
	:	
Suez Water Pennsylvania, Inc.	:	

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**VERIFICATION**

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I, Daniel E. Durden, Chief Executive Officer for the Pennsylvania Builders Association, hereby state that the facts set forth in my Direct Testimony, PBA St. 1, in the above-captioned proceeding are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to sworn falsification to authorities).



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Daniel E. Durden  
Chief Executive Officer  
Pennsylvania Builders Association

Date: July 20, 2018