

BOROUGH OF MIDDLETOWN
STATEMENT TO THE PUBLIC AND PRESS
April 5, 2019

As you know, SUEZ and its investors, known as Middletown Water Joint Venture, is the Concessionaire under the lease agreement for the Borough's Water and Sewer System. Beginning last year, SUEZ imposed an 11.5% surcharge on all customer bills, based upon a "water sales shortfall." The Borough has been fighting SUEZ's entitlement to this surcharge, and this has been the subject of an ongoing arbitration proceeding and a federal court litigation that the Borough brought early last year.

On March 27th, the federal court in Harrisburg dismissed the Borough's civil action asking the court to reform the lease Agreement to eliminate or modify the water sales shortfall provisions. Despite the dismissal of the federal action, the arbitration proceeding between the Borough and Middletown Water Joint Venture continues. An important element of the arbitration case is that while SUEZ claims entitlement to a surcharge based on metered water sales being below a specified amount, the Borough has presented evidence that the meters serving major customers have failed performance tests on multiple occasions without timely repairs, and that SUEZ has not actively monitored the accuracy of its meters. SUEZ claims that it is entitled to its surcharge even though its meters under-recorded the amount of water provided to customers, and that it was entitled to use estimated billing techniques that did not comply with the Borough's ordinance. This position stands in sharp contrast to a recent ABC27 news report that SUEZ is insisting on charging a residential customer in Enhaut, PA \$992.36 in back charges, supposedly because her meter was under recording for a period of months.

An arbitration hearing was held last November, and an additional day of hearing has been scheduled for April 8 to address the problems caused by SUEZ's malfunctioning meters. Also involved in the arbitration is SUEZ's claim, which the Borough disputes, that it is entitled to impose additional charges on the system's retail customers in order to pass on millions of dollars in costs to be incurred for water main replacement. A decision should be forthcoming in the arbitration within a couple of months.

The Borough continues to dispute the Concessionaire's right to additional charges and to carefully monitor the Concessionaire's efforts to find ways to increase rates. At its meeting on March 19, 2019, the Borough Council formally disapproved the Concessionaire's proposed capital expenditure plan for the years 2019-2023, and it has requested the Concessionaire to submit a new capital expenditure plan consistent with the Borough's objections.