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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for SUEZ Water Idaho Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE JOINT
APPLICATION OF SUEZ WATER
IDAHO AND EAGLE WATER
COMPANY FOR THE ACQUISITION
OF EAGLE WATER COMPANY**

**Case Nos. SUZ-W-18-02/
EAG-W-18-01**

**SUEZ'S ANSWER TO CITIZENS
ALLIED FOR INTEGRITY AND
ACCOUNTABILITY'S MOTION
FOR EXTENSION OF TIME TO
RESPOND TO DISCOVERY**

COMES NOW SUEZ Water Idaho Inc. ("SUEZ"), through undersigned counsel of record, Givens Pursley LLP, and pursuant to Commission Rule 57.03 (IDAPA 31.01.01.057.03), hereby files its Answer to Citizens Allied for Integrity and Accountability's ("CAIA") Motion for Extension of Time to Respond to Discovery ("Motion"). For the reasons set out below, SUEZ requests that the Commission order CAIA to serve its responses to SUEZ's First Production Request to CAIA on or before March 1, 2019, which is the date that is twenty-one days following the date the Production Requests were served on CAIA. In the alternative, SUEZ requests that CAIA be ordered to serve its responses within a reasonable time after the current response deadline of March 1, which SUEZ submits should be no more than fourteen days under the circumstances.

ORIGINAL

1. BACKGROUND

CAIA was granted intervenor status in this docket by Commission Order 34229 issued on January 10, 2019. In its Petition to Intervene, CAIA asserted, among other things, that CAIA is a preexisting advocacy group whose mission “is broad enough to include the current Petition” because its members have an interest in maintaining high quality water resources that adequately support current users and future development in Eagle, in maintaining local control of resources, and protecting citizens from rate hikes. *Id.* at 2. CAIA also asserted its members stand to be impacted from “possible environmental harms stemming from the merger;” that the proposed phased-in rate increase threatens to impose substantial financial hardship on Eagle Water customers who are single parents, elderly or living with disabilities on fixed and limited incomes; and that “[n]o other party can adequately represent the interests of CAIA.” *Id.* CAIA did not identify how many members it has, the classes of persons that it purports to represent (Eagle Water customers, elderly, disabled, those on fixed and limited incomes, other?) or the basis for its asserted impacts from possible environmental harms.

A hearing scheduled for this matter has yet to be discussed by the parties or set by the Commission due to an assertion by intervenor City of Eagle that it has a contractual right of first refusal (“ROFR”) to acquire Eagle Water Company (“Eagle Water”) or its assets. The original scheduling conference among the parties was postponed to January 30 to allow the City and Eagle Water Company time to evaluate whether the City intended to enforce its alleged ROFR. At the January 30th meeting of the parties and staff, the scheduling conference was postponed again—until March 4th. At both meetings, SUEZ agreed to the extensions so long as this case, including discovery in this case, should continue in the interim. No parties objected. In the meantime, Commission Staff has served SUEZ, Eagle Water and the City of Eagle with

Production Requests, to which SUEZ has timely responded. Staff also scheduled an informational meeting, during which SUEZ responded to questions posed by Staff and conducted a presentation on information it had provided. All parties were invited, and all but CAIA and CAPAI attended.

On February 8, 2019 SUEZ served its First Production Requests on CAIA, City of Eagle and the Eagle Water Customer Group, making March 1, 2019 the deadline for responding. Eleven days later, on February 19 counsel for CAIA emailed SUEZ's counsel Preston Carter requesting a sixty-day extension of the time to respond to SUEZ's production requests, asserting that it would be a waste of resources to provide responses because of the pending contractual issue between the City of Eagle and Eagle Water. Mr. Carter responded the following day indicating that SUEZ was not inclined to agree to the requested sixty-day extension. The grounds for this response were that the Production Requests were not burdensome, particularly as they seek information that should be easily accessible to CAIA and its counsel—information such as how many members it has, how they become members, who its officers or directors are, and information supporting the contentions CAIA made in its Petition to Intervene. Mr. Carter also indicated to CAIA's counsel that if CAIA needed more time to gather documents SUEZ could consider agreeing to an extension of time to produce those documents, but would still want CAIA's narrative responses to the Production Requests. A true and correct copy of the email exchange between counsel is attached as Attachment A hereto. SUEZ's counsel anticipated further discussion, and perhaps a more limited request for extension of time. Instead, CAIA filed its Motion on February 22, 2019.

Under Commission Rule 057.03 the deadline for answering CAIA's Motion is March 8, 2019. Therefore, this Answer is timely.

2. ARGUMENT

SUEZ reiterates that this matter currently is not stayed. SUEZ, Eagle Water and Staff have been proceeding accordingly consistent with the understandings developed in the previous two meetings of the parties.

In its Answer to the Petitions to Intervene, SUEZ pointed out that it had genuine questions concerning the nature and bona fides of the CAIA and EWCG organizations and their membership. SUEZ's Production Requests were limited and tailored to learn who these groups actually represent, what the basis for their asserted concerns about the Joint Application were and what these organizations were telling members or would-be members about the Joint Application. These requests all involve production of information that one must assume is readily at hand to CAIA.

In addition, in his response to CAIA's counsel, Mr. Carter suggested the possibility of providing CAIA an extension of time to respond with respect to those of its requests that contemplated documents would need to be collected and produced. CAIA did not follow up on that proposal or request anything other than a sixty-day extension.

SUEZ is certainly sensitive to the fact that the City of Eagle has asserted contractual rights with respect to Eagle Water Company. If litigation is filed, or if the City takes other actions pursuant to its purported legal rights, those actions may impact this case. This is why SUEZ did not object to postponing a final schedule in this matter. SUEZ is committed to working with the other parties and the Commission to resolve this case in a reasonable manner, which will be determined as the situation further unfolds.

SUEZ is, however, understandably concerned that the City's assertion of legal rights not derail this case at such an early stage. *Any* sale of Eagle Water will be somewhat controversial,

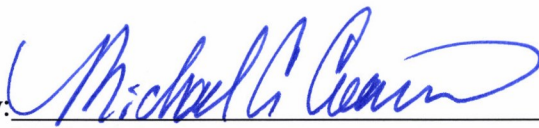
and if controversy is allowed to derail or delay a case, controversy (real or imagined) is what SUEZ and the Commission can expect going forward whenever the topic is broached. By declining to agree to a 60-day extension, and by requesting that discovery be answered, SUEZ is merely asking that the Commission allow the case to play out without, in effect, granting a stay.

At this point, what rights the City of Eagle may have with respect to Eagle Water, whether it ultimately may seek to enforce them, whether it can enforce them, what remedies it might have, and whether it could convince City electors to pass a revenue bond if it does have enforceable rights that it chooses to enforce are all questions without answers.¹ In any event, the City—not the Commission, SUEZ or Eagle Water—is in complete control over whether and when it may elect to press its claimed ROFR. CAIA essentially is asking for a stay of this matter, which the other parties have not agreed to and the Commission has not ordered.

For the foregoing reasons, SUEZ respectfully submits that CAIA should be ordered to respond to SUEZ's pending Production Requests, if not within the twenty-one day period established by Commission Rules, then within a reasonable time thereafter, which SUEZ asserts should not be more than an additional fourteen days.

DATED this 26th day of February, 2019.

SUEZ Water Idaho Inc.

By: 
Michael C. Creamer
Givens Pursley LLP
Attorneys for SUEZ Water Idaho Inc.

¹Absent a pending application seeking approval of a sale of assets by Eagle Water to the City it also would be pure speculation as to whether this Commission would approve such a sale.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of February, 2019, a true and correct copy of the foregoing document was served on the following in the manner indicated:

Diane M. Hanian
Commission Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702
IPUC

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Michael C. Creamer

ATTACHMENT A

CASE NOS.:
SUZ-W-18-02
EAG-W-18-01

From: Preston N. Carter <prestoncarter@givenspursley.com>
Sent: Wednesday, February 20, 2019 4:38 PM
To: 'James Piotrowski'
Cc: Michael C Creamer; Kendra Hoffman
Subject: RE: Joint Application of SUEZ Water and Eagle Water Co for the Acquisition of Eagle Water - Case No. SUZ-W-18-01 and EAG-W-18-01: Production Requests to Citizens Allied for Integrity and Accountability [IWOV-GPDMS.FID834574]

James,

Thanks for your email. Apologies on the delay in responding. At this time, SUEZ is not inclined to grant an extension of time for responding to discovery. The requests should not be burdensome, as they focus on easily accessible information, such as membership, and assertions that CAIA has already made in the proceeding. Many are, in fact, yes-or-no questions that should not require expenditure of significant resources.

In addition, SUEZ has made very clear that it has agreed to the 30-day scheduling extensions on the condition that the proceeding advance in the interim. There is no stay in the proceeding and SUEZ is not prepared to act as if there were. SUEZ has been diligently answering discovery and attending informational meetings to which the parties have been invited.

If CAIA needs some additional time to gather documents, that's something we can perhaps consider. However, SUEZ would still want timely narrative responses to the questions even if additional time is needed to gather and produce documents.

Please let me know if you have questions or would like to discuss further.

Preston

From: James Piotrowski <james@idunionlaw.com>
Sent: Tuesday, February 19, 2019 10:10 AM
To: Kendra Hoffman <kendrah@givenspursley.com>; Preston N. Carter <prestoncarter@givenspursley.com>
Subject: RE: Joint Application of SUEZ Water and Eagle Water Co for the Acquisition of Eagle Water - Case No. SUZ-W-18-01 and EAG-W-18-01: Production Requests to Citizens Allied for Integrity and Accountability [IWOV-GPDMS.FID834574]

Mr. Carter,

In light of the current status of this matter, and in order to avoid wasting resources, I am requesting a 60-day extension of time to provide responses to your discovery requests. At present, this case is essentially on hold while the City of Eagle and Eagle Water make at least some progress in determining how they will resolve their contractual dispute. Spending time and money on discovery requests in a case that doesn't even have a scheduling order in place is wasteful. Will you agree to a 60-day extension at this time?

James Piotrowski
Piotrowski Durand, PLLC
Attorneys for CAIA