

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)	CASE NOS. SUZ-W-18-02
APPLICATION OF SUEZ WATER IDAHO,)	EAG-W-18-01
INC., TO ACQUIRE EAGLE WATER)	
COMPANY)	
<hr/>		ORDER NO. 35247

On November 15, 2018, SUEZ Water Idaho Inc. (“SUEZ”) and Eagle Water Company, Inc. (“Eagle Water”) filed a Joint Application requesting Commission approval of the proposed acquisition of Eagle Water’s assets by SUEZ (“Joint Application”). On December 7, 2018, the Commission issued a Notice of Application and Notice of Intervention Deadline. Order No. 34203. The City of Eagle, Eagle Water Customer Group (“EWCG”), Boise City, Community Action Partnership Association of Idaho (“CAPAI”)¹, and Citizens Allied for Integrity and Accountability (“CAIA”) were granted intervention. Order No. 34229.

On March 3, 2019, SUEZ filed an unopposed motion for stay citing Case No. CV01-19-03534 filed by the City of Eagle in the District Court for the Fourth Judicial District of Idaho (the “District Court Case”) seeking judicial determinations that could affect the outcome of this case. On March 27, 2019, the Commission granted SUEZ’s motion subject to two conditions: 1) the Commission retained full jurisdiction over the Joint Application; and 2) SUEZ and Eagle Water were required to provide the Commission and parties with quarterly reports on the status of the District Court Case. Order No. 34292.

On June 8, 2021, Eagle Water and SUEZ filed a motion to recommence proceedings in this docket. The same day, Eagle Water and SUEZ filed an amendment (“Amended Joint Application”) to its Joint Application requesting approval of the acquisition of Eagle Water assets by SUEZ and amendment of Certificate of Public Convenience and Necessity No. 143.

On July 14, 2021, the Commission issued a Notice of Amended Application granting SUEZ and Eagle Water’s motion for authority to recommence this proceeding and approval of the Amended Joint Application. Order No. 35104.

At the Commission’s August 31, 2021, Decision Meeting, Staff represented that the parties had met and discussed procedure and scheduling for this case. Staff noted that not all parties

¹ On October 4, 2021, CAPAI filed a motion to withdraw from this case. The Commission granted CAPAI’s motion at its October 26, 2021, Decision Meeting.

agreed on procedure—with some parties preferring a technical hearing to modified procedure—but the parties agreed on a general timeline by which to process this case. On September 9, 2021, the Commission issued a Notice of Scheduling, Notice of Modified Procedure, Notice of Public Workshop, and Notice of Customer Hearing.² Order No. 35160. Order No. 35160 established that a customer hearing would take place at 7:00 PM on November 1, 2021 and included call-in information for customers who were interested in participating.³

On October 5, 2021, Staff held a telephonic customer workshop. 12 customers attended and asked questions to Commission Staff and the Company regarding the case and Staff's investigation.

On October 8, 2021, Staff, SUEZ, and Eagle Water (collectively “Stipulating Parties” or individually “Party”) filed a proposed stipulation and settlement (“Settlement”) and a joint motion of approval of stipulation and settlement. At the Commission’s October 12, 2021, Decision Meeting, Staff recommended the Commission issue a Notice of Proposed Settlement and Notice of Amended Schedule.

On October 15, 2021, the Commission issued a Notice of Proposed Settlement and Notice of Amended Schedule. Order No. 35198.

On November 1, 2021, the Commission held a telephonic customer hearing where 13 customers and interested persons offered testimony.

Staff, Eagle Water, Boise City, EWCG, CAIA, and City of Eagle filed comments. 469 public comments were filed.⁴ SUEZ filed reply comments.

Now, having reviewed the record, the Commission issues this Order approving the Settlement filed in this case.

BACKGROUND

During the proceeding, the City of Eagle sued Eagle Water in District Court and claimed a right of first refusal to buy Eagle Water’s system. Pending resolution of the District Court Case the Commission stayed this case. *See* order No. 34292.

² On October 15, 2021, the Commissions issued an Amended Notice of Customer Hearing modifying the call-in information for interested customers. Order No. 35196.

³ *See Id.*

⁴ 284 public comments were filed before the Commission issued Order No. 35104 lifting the stay. 185 comments were filed after the stay was lifted—17 of these were filed after the public comment deadline ended.

After extended mediation in the District Court, SUEZ, Eagle Water, and the City of Eagle reached a settlement agreement that included the following terms relevant to this proceeding:

1. The previously filed purchase price of \$10,000,000 for Eagle Water's system assets was increased to \$10,500,000.
2. The parties agreed to support a five-year phase-in of any approved SUEZ rate increase for current Eagle Water customers instead of the three-year phase-in proposed in the Joint Application.
3. SUEZ and the City of Eagle entered into a Water Management Agreement ("WMA"). *See* Amended Joint Application, Supplemental Attachment 5.
4. SUEZ agreed to use its best efforts to make improvements to the acquired Eagle Water assets consistent with any improvement schedule approved by the Commission.
5. The parties agreed the Joint Application originally filed with the Commission in 2018 might need to be amended to reflect the settlement agreement's terms.

Amended Joint Application at 3-4.

THE AMENDED JOINT APPLICATION

The settlement agreement between SUEZ, Eagle Water, and the City of Eagle resolved the issues in Case No. CV01-19-03534. On February 24, 2021, the parties filed the settlement agreement and a stipulation of dismissal with the District Court. On March 8, 2021, the District Court dismissed the case.

Eagle Water and SUEZ's June 8, 2021, motion asked the Commission to recommence proceedings in this docket and accept the Amended Joint Application and supporting supplemental written testimony. The Amended Joint Application details the amendments to the 2018 Joint Application agreed to in the settlement agreement and stipulation of dismissal filed with the District Court. Most notably, the purchase price for the Eagle Water assets increased by \$500,000, and the phase-in period to bring Eagle Water rates to parity with SUEZ's rates was changed from three years to five years.

The Amended Joint Application included several attachments, including a WMA between the City of Eagle and SUEZ and the asset purchase agreement. Supplemental written testimony was filed contemporaneously with the Amended Joint Application.

THE SETTLEMENT

All parties met four times to discuss the possibility of settlement. The Stipulating Parties were able to agree to terms and entered the Settlement as a reasonable compromise of the issues raised in the proposed acquisition of Eagle Water’s assets by SUEZ.

The Stipulating Parties agreed that SUEZ will be entitled to an acquisition adjustment amount of \$10,475,000 that will be included for ratemaking treatment in its next rate case. The acquisition adjustment amount will be amortized over 40 years beginning at the implementation of rates in SUEZ’s next rate case. The acquisition adjustment amount will be allocated between the Utility Plant Acquisition regulatory asset and the incurred transaction costs. The gross amount of utility plant in service as related to Eagle Water’s assets acquired and included in rate base will be offset with an equal amount in the related accumulated depreciation account. Costs associated with customer communications will be treated as an operational expense.

The Stipulating Parties agreed that new rates for existing customers of Eagle as of the date on which the transaction closes (“Existing Eagle Water Customers”) shall be implemented over seven years. On January 1, 2022, Existing Eagle Water Customers’ rates will be set at 50% of SUEZ’s approved rates. Each year thereafter on January 1st Existing Eagle Water Customers’ rates will increase approximately 8.33% until Existing Eagle Water Customers’ rates are 100% of SUEZ’s approved rates. The rate phase-in for Existing Eagle Water Customers to SUEZ approved rates will follow this progression:⁵

January 1, 2022—50.00%

January 1, 2023—58.33%

January 1, 2024—66.67%

January 1, 2025—75.00%

January 1, 2026—83.33%

January 1, 2027—91.67%

January 1, 2028—100.00%

The Stipulating Parties agreed that Eagle Water will refund approximately \$592,020.00 to Existing Eagle Water Customers. (The Commission required Eagle Water to set aside certain

⁵ The phase-in schedule for Existing Eagle Water Customers is provided in Exhibit 1 to the Settlement. The percentage will apply to the current authorized rates at the time the phase-in percentage is effective.

funds for the benefit of its customers. *See* Order No. 34265). The proposed refund is intended to offset the increase in rates Existing Eagle Water Customers will experience beginning January 1, 2022.

The Settlement precludes the Stipulating Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals.

The Stipulating Parties agreed that the Settlement should be accepted, without modification, because it is just, fair, and reasonable, in the public interest, and otherwise in accordance with law or regulatory policy. The Stipulating Parties further agreed that the rates and tariffs that SUEZ will charge if the Settlement is accepted are just and reasonable.

The Stipulating Parties agreed to support, and will continue to support, the Commission's adoption of the terms of the Settlement and approval of SUEZ's acquisition of the assets of Eagle Water upon the terms set forth in the Settlement.

If the Commission rejects any part or all of the Settlement or imposes any additional conditions on approval of the Settlement, each Party reserves the right, upon written notice to the Commission and the other Stipulating Parties to this proceeding, within 14 days of the date of such action by the Commission, to withdraw from the Settlement. In such case, no Party shall be bound or prejudiced by the terms of the Settlement, and each Party shall be entitled to seek reconsideration of the Commission's final order and do all other things necessary to put on such case as it deems appropriate.

THE COMMENTS

Staff, Eagle Water, Boise City, EWCG, CAIA, and City of Eagle filed comments. Several members of the public also filed comments. SUEZ filed reply comments.

1. Staff Comments

Staff's evaluation of the transaction focused on the proposed purchase price SUEZ will pay for the Eagle Water system, the value received by SUEZ customers from the acquisition, the value received by Eagle Water customers, and the capital investment necessary to bring the Eagle Water system into compliance with Idaho Department of Environmental Quality ("IDEQ") regulations. Staff recommended the Commission approve the proposed Settlement allowing SUEZ to acquire Eagle Water's assets and amend SUEZ's CPCN to reflect the acquisition. Staff believed that the Settlement was fair, just, and reasonable, and in the public interest.

Idaho Code does not address the acquisition of water companies. However, Staff relied on the standards outlined in *Idaho Code* § 61-328(3) related to the sale of electric utilities⁶ for its review of the proposed acquisition. Those standards require:

- a. The transaction is consistent with the public interest;
- b. The cost of and rates for supplying service will not be increased by reason of such transaction; and
- c. The applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service.

Staff believed the proposed transaction is in the public interest. According to Staff, SUEZ intends—and has the ability—to provide reliable service to Eagle Water customers and enhanced customer experience through various payment platforms, 24-hour customer service, and online access providing instant consumption data.

Staff noted the current owner of Eagle Water, Robert DeShazo, wants to sell the water system to a company that will be able to meet the needs of Eagle Water customers and serve the public interest. Mr. DeShazo has cited the need to comply with water quality regulations, complex utility regulations, and complex operational and technical requirements as reasons prompting his decision to sell. Additionally, significant growth and lack of experience in upgrading water systems is making it difficult for Mr. DeShazo to maintain the current quality of service and obtain adequate financing for operations, maintenance, and infrastructure upgrades.

Staff opined that the proposed transaction is in the public interest because the benefits of interconnecting both systems outweigh the costs of maintaining both systems separately. Staff compared the alternative of operating both systems separately to the alternative of interconnecting and operating the two systems as a common single system to support its belief.

For customers of SUEZ, Staff stated that the main benefit of interconnection is an increase in the water supply to the SUEZ system from Eagle Water’s system at an estimated capital cost avoidance of \$11.2 million. By interconnecting the two systems, SUEZ can employ its

⁶ “No electric public utility or electrical corporation as defined in chapter 1, title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission.” *Idaho Code* § 61-328(1).

existing storage capacity to utilize Eagle Water's non-peak excess pumping capacity and water rights, since Eagle Water does not have significant capacity to store water when its demand is low.

For Eagle Water customers, Staff mentioned several direct benefits that interconnecting to SUEZ's water system would provide to help alleviate current inadequacies. The inadequacies that must be addressed according to Staff, include:

1. Current deficiencies in meeting firewater flow requirements;
2. Insufficient system-peak pumping capacity;
3. Inadequate water rights needed for peak domestic use and firewater flow requirements without investing in additional water storage capacity;
4. Issues in system reliability and operating efficiency;
5. Potential water supply safety issues; and
6. Lack of visibility to customer usage and potential system leaks.

Several of these inadequacies put Eagle Water out of compliance with IDEQ requirements. Staff believed these inadequacies were caused by a lack of proper investment in the Eagle Water system during system expansion.

If Eagle Water does not interconnect with SUEZ, Eagle Water would likely need to drill an additional well, acquire additional water rights, invest in high-capacity water storage, and add standby power to certain existing wells that are without backup generators. Staff stated that these issues can all be addressed with the planned near-term interconnection to SUEZ's Redwood Creek pipeline.

SUEZ plans \$14.6 million of capital improvements for the Eagle Water system during the next five years. In addition to the interconnection to the Redwood Creek pipeline, SUEZ plans to construct a new two-million-gallon water storage tank; add a Supervisory Control and Data Acquisition system to allow 24-hour monitoring of the Eagle Water system to better control pumping operations resulting in an improved system operating efficiency; address delayed investment in safety upgrades; security investments; well cleaning; and distribution piping replacements.

Although rates will increase for Eagle Water customers, Staff noted that the acquisition of Eagle Water's assets by SUEZ is the least cost option to continue to provide reliable water

service to its western service territory. The acquisition by SUEZ also offers a successful succession plan for Eagle Water customers.

Staff discussed the investments necessary just to make Eagle Water system compliant with IDEQ requirements for peak flow and fire flow absent interconnecting with SUEZ. These investments include a storage tank and several safety measures with an estimated cost of \$4.152 million. The additional revenue requirement associated with the necessary capital investment is approximately \$658,000 annually, which would lead to a 96% increase over current Eagle Water rates.

Staff believed that SUEZ has demonstrated its financial ability and bona fide intent to operate its current system plus Eagle Water's system. If the Settlement is approved, SUEZ would operate the Eagle Water system and take additional steps to maintain or improve the water system until such time the two water systems are interconnected.

Acquisition Adjustment

Staff noted that SUEZ proposes to record the Eagle Water assets to Plant-in-Service and record an equivalent amount as Accumulated Depreciation, resulting in a zero-book value of the assets. The acquisition adjustment will then become the final purchase price plus transaction costs. The Stipulating Parties agreed to an acquisition adjustment of \$10.475 million to be amortized over a 40-year period beginning when new rates are implemented in SUEZ's next general rate case proceeding. The stipulated acquisition adjustment removes customer communications and costs associated with the district court case.

The Stipulating Parties agreed that the acquisition adjustment would be allocated between the Utility Plant Acquisition Adjustment regulatory asset account and the incurred transaction cost accounts. The gross amount of utility plant in service of Eagle Water's acquired assets will be included in rate base with an offset of an equal amount in a related accumulated depreciation account.

Surcharge Account and Refund

In Order No. 34295, Case No. EAG-W-15-01, the Commission ordered Eagle Water to establish a surcharge line-of-credit account ("Surcharge Account"). Staff calculated the Surcharge Account balance would be \$592,020 as of December 31, 2021. The Stipulating Parties agreed that the balance of the Surcharge Account should be returned to current Eagle Water customers in the form of a one-time payment upon closing of the transaction. The Surcharge

Account refund will be paid to any Existing Eagle Water Customers as of the date of the Commission's final order according to Staff. Staff noted that the refund would offset the first year increase fully or partially.

Rate Phase-in

The Stipulating Parties agreed that a seven-year rate phase-in would be appropriate, thereby reducing any single-year impact to current Eagle Water customers. Staff believed a rate increase for Eagle Water customers was necessary and inevitable. To mitigate rate shock and provide a more gradual transition of rates, Staff believed that a seven-year phase-in of rates was reasonable. Staff believed the immediate refund of the surcharge could be used to help Eagle Water customers transition to increased rates in year one.

2. City of Eagle Comments

The City of Eagle supported the Settlement, including the seven-year phase-in and the surcharge refund to Existing Eagle Water Customers. The City of Eagle further supported the Settlement because the adoption further aids the implementation of the WMA agreed to by SUEZ and the City of Eagle as part of the settlement in Case No. CV01-19-03534.

3. Boise City Comments

Boise City generally supported the Settlement. The components Boise City supported include the surcharge refund, seven-year rate phase-in, and reduced acquisition adjustment. Boise City's comments described the benefits of SUEZ acquiring Eagle Water and how existing SUEZ customers would stand to benefit. Boise City also acknowledged the existing deficiencies in Eagle Water's system and agreed that interconnection with SUEZ's system was beneficial, but argued the testimony and information provided by SUEZ failed to address water supply concerns. Boise City stated "there is little to no support to show that the acquired water supply portfolio is adequate to service the existing [Eagle Water] customer demand peaks." Boise City Comments at 3. Additionally, Boise City pondered that if the Eagle Water system has excess water rights that would be used to serve SUEZ's northwest service area after the acquisition, but Eagle Water's system currently does not meet the IDEQ standards for capacity and flow requirements in its service territory, then what happens to SUEZ's system and reliability of supply?

Boise City noted that the \$11 million in claimed avoided costs is based on acquiring additional sources of supply at a lower cost instead of obtaining the supply elsewhere. Boise City

stated that the testimony in the case did not address Eagle Water’s system deficiencies and the improvements needed related to the claimed cost avoidance.

Boise City was concerned that SUEZ’s expansion would delay the Company’s attention to existing system deficiencies, including addressing and fixing the discolored water on the Boise bench. Boise City also expressed concerns about the acquisition of SUEZ SA by Veolia Environmental SA (“Veolia”) and that transaction’s potential impact on Idaho customers. Boise City claimed the updated testimony did not address the acquisition by Veolia “and how the international asset purchase will affect the capital improvement[] projects, the costs of the SUEZ system in Idaho and future rates, [and] the customer service in this area. . . .” *Id.* at 3.

Boise City ultimately requested that SUEZ be required to (1) provide a forward-looking planning mechanism that considers future risks to water supply and infrastructure, including weather related events; (2) implement a public outreach process to discuss anticipated projects, O&M cost increases, regulatory changes, proposed system expansions, and cost of service studies in addition to other issues that will impact rates; and (3) provide the Commission with an annual report documenting its groundwater and surface water diversions and points of delivery and additional demonstrations for how and with what supply SUEZ can serve areas of future expansion and/or acquisition.

4. Eagle Water Customer Group Comments

EWCG filed comments arguing that the Commission should (1) reject the Settlement based on the criteria in *Idaho Code* § 61-328; or (2) modify the structure and length of the phase-in included in the Settlement to mitigate any rate shock for existing Eagle Water customers.

EWCG contended that Existing Eagle Water residential customers’ bills would increase by 58% in year 1, and by 231% in year 7 when the phase-in is complete. Rates for Existing Eagle Water commercial customers would increase by 103% in year 1, and by 327% in year 7 when the phase-in is complete.

EWCG’s analysis of *Idaho Code* § 61-328 focused on the requirement that the Commission find “the cost of and rates for supplying [electric] service will not be increased by reason of such transaction.” *See Idaho Code* § 61-328(3)(b). EWCG acknowledged that the record reflects that an increase in rates would be necessary even if SUEZ did not acquire Eagle Water. However, EWCG stated “the amount of [the] potential increase is less than the rate increase following the transaction.” EWCG Comment at 3. EWCG cited several recent water company

acquisitions where the Commission’s final orders noted that rates would not increase because of the acquisition. EWCG argued that the Settlement would depart from this approach. EWCG stated that “the acquisition of Eagle Water Company by SUEZ Water Idaho will result in an increase in the rates of existing customers. This is true even after factoring out the rate increase that would inevitably occur if the acquisition did not happen.” *Id.* at 4. Given the Commission’s former reliance on the factors in *Idaho Code* § 61-328, EWCG believed the Settlement should be rejected.

EWCG expressed its concerns with the length of the proposed rate phase-in. EWCG stated that if the Commission was inclined to approve the acquisition, then it should examine the reasonableness of the phase-in. EWCG cited the Commission’s decision in South County Water (“South County”)—Case No. UWI-W-98-2— acquisition where the Company proposed a five-year phase-in, but the Commission found it reasonable to approve a six-year phase-in. EWCG distinguished the phase-in in South County where rate phase-in began with no increase in year 1 and year 2 represented a 30% increase to South County customers (versus 58% for residential and 103% of commercial customers proposed in year 1 proposed in the Settlement for Existing Eagle Water Customers). EWCG stated that this is rate shock, and continued that to mitigate rate shock, the year 1 increase should be a 30% increase. EWCG concluded that the structure and length of the phase-in should be adjusted to achieve a reasonable rate increase if the Commission did approve the acquisition of Eagle Water’s assets by SUEZ.

5. Citizens Allied for Integrity and Accountability Comments

CAIA expressed concerns over the proposed rate increases for residential and commercial customers. CAIA acknowledged that Eagle Water rates have not increased in “some time,” but stated that it “will be difficult for customers to understand the huge increase in their water bill, with no discernable increase in water quality or service.” CAIA Comments at 3. CAIA claimed that not enough had been done to make customers aware of the acquisition or offer any explanation of the proposed rate increase.

Regarding the phase-in, CAIA stated a longer phase-in was needed because the proposed increase is approximately 2x-3x the increase approved in South County and Existing Eagle Water Customers need additional time to absorb the new rates and adjust their usage accordingly.

CAIA was concerned that the method for determining the surcharge disbursement was not clearly spelled out in the Settlement. CAIA stated that “if entitlement depends on status as a

customer on the date the [Settlement] is approved, this is not fair or just and reasonable to those long-time customers who may have discontinued service the day before approval, and it could provide an unjust windfall to those new customers the day after approval.” *Id.* at 5. CAIA believed that the proposed entitlement and distribution was based on convenience and the chosen method should require full public disclosure.

CAIA shared its concern that some Eagle Water customers would be “treated unfairly and that the transaction will be disproportionately burdensome on low income and fixed income customers.” CAIA cited several statistics about the demographic makeup of Eagle, Idaho to support its reasoning why this acquisition would affect certain customers more than others. CAIA’s analysis of the disproportionate impact ultimately rested upon its assumption that since Eagle Water’s service territory “contains many of the older, more modestly priced homes in Eagle [CAIA] assume[d] many of these residents live there on fixed or limited incomes. . . .” *Id.* at 5-6.

CAIA claimed that water quality would decline, and risk would increase with interconnection of Eagle Water to SUEZ’s water system. CAIA advocated for preservation of the high-quality, groundwater that has been delivered to Eagle Water customers without mixing surface water or the “addition of potentially harmful levels of chlorination” SUEZ proposes if it acquires Eagle Water Company. CAIA’s concern rested on the IDEQ requirement to chlorinate surface water, which is presently part of SUEZ’s system and would become part of Eagle Water’s system once interconnected. CAIA argued that if SUEZ expanded by acquiring Eagle Water, then any error would become a risk for Existing Eagle Water Customers that would have not existed but for the acquisition and interconnection.

CAIA believed local control of water resources was the best option. CAIA’s reasoning followed that local control requires a level of accountability to the local community that would be unavailable if a multinational, for-profit entity controlled the resource.

CAIA stated that the proposed transaction was not conducted transparently for the public and many details of the transaction have remained obscure or unknown. CAIA stated customers were unaware of the terms of the settlement with H2O Eagle.⁷ CAIA implored that the

⁷ H2O Eagle (a separate legal entity formed to facilitate this transaction) and SUEZ entered into an asset purchase agreement whereby H2O Eagle agreed to sell, and SUEZ agreed to purchase Eagle Water’s assets that are to be acquired by H2O Eagle together with all of H2O Eagle’s right to purchase the Eagle Water assets under a separate asset purchase agreement between H2O Eagle and Eagle Water.

public has a strong interest in knowing why the transaction needed a middleman “whose financial interest and profits from the proposed transaction [were] obscure.” *Id.* at 10.

CAIA also argued that until Veolia is publicly disclosed as the utility operator, the Amended Joint Application should be denied. CAIA was concerned that Veolia’s acquisition of SUEZ would reduce transparency surrounding the transaction in this case and would further complicate the questions customers have about service and quality. CAIA stated “the public should be allowed to provide informed comments regarding the ultimate owner and operator of their water system and the impact on local service.” *Id.* at 11.

6. Customer Comments

The Commission received 452 timely public comments and 17 late filed comments in this case. On October 15, 2021, Staff held a customer workshop where 12 members of the public participated by asking questions to Staff and SUEZ about the proposed acquisition. On November 1, 2021, the Commission held a customer hearing where 13 members of the public offered testimony—the majority expressing concerns about the potential acquisition by SUEZ. The overwhelming theme of the written comments and customer testimony recommend the Commission deny SUEZ’s acquisition of Eagle Water.

Reasons commentors requested the Commission deny the Amended Joint Application/Settlement include:

- The quality of water that Eagle Water customers are accustomed to and the fear that mixing surface water with groundwater—as proposed by SUEZ—would diminish the quality;
- The desire for continued local control of Eagle Water;
- The fear that foreign ownership would open the door to water being shipped out of Idaho;
- Concern about SUEZ’s record for customer service;
- The proposed rate increases that would follow the acquisition;
- Concern about the rate increase for customers with low and fixed incomes;
- Concern about the acquisition of SUEZ by Veolia and Veolia’s track record in other domestic markets;
- Transparency regarding the transaction with Norm Bangle (H2O Eagle Acquisitions) and the District Court settlement agreement with City of Eagle; and
- That the City of Eagle should be given an opportunity to reconsider its decision to not purchase Eagle Water.

7. SUEZ Comments

SUEZ filed comments in support of the Settlement and rebutting claims made by CAIA, EWCG, and the public. SUEZ argued that its acquisition of Eagle Water offers Mr. DeShazo a way forward and provides several benefits to Eagle Water customers including continuity of ownership, financial resources, and technical expertise to address the deficiencies in the system. SUEZ iterated its belief that the Settlement provided the Commission a mechanism to “permanently resolve issues regarding Eagle Water Company that have plagued the[] parties, and the Commission, for decades.” SUEZ Reply Comments at 2. SUEZ noted that most of the parties in this case fully support—or support the main provisions of—the Settlement and that the objecting parties only cite their issues and concerns without identifying an alternative path forward. If the Commission followed the objecting parties’ positions, SUEZ argued that Mr. DeShazo would continue to own and operate Eagle Water and the status quo would persist without addressing any of the issues or concerns that exist regarding the state of the Eagle Water system.

SUEZ believed the Settlement represented a fair, just, and reasonable resolution of the issues. SUEZ noted that no party opposed the acquisition adjustment and highlighted the approximately \$11.2 million in avoided costs it would realize from the acquisition of the Eagle Water system. SUEZ also noted that Eagle Water customers would benefit from SUEZ’s management, and that Mr. DeShazo had indicated he no longer wants to operate the system. SUEZ cited South County where the Commission wrote “[t]he regulatory, operation and personal reasons expressed by South County as prompting the decision to sell by its stockholders cannot be casually dismissed.” SUEZ Reply Comments at 4 *quoting* Order No. 27798 at 5.

SUEZ discussed the seven-year rate phase-in and noted it would be the longest transition period the Commission has ever approved, and the year 1 increase would be partially or fully offset by the surcharge refund. SUEZ is aware that EWCG, CAIA, and customers oppose increased rates, but noted the “remarkably low rates” Eagle Water customers have enjoyed. SUEZ Reply Comments at 5. With the substantial investment that is required to address Eagle Water’s system deficiencies regardless of which entity owns and operates the system, SUEZ argued a rate increase was inevitable and a seven-year phase-in was fair, just, and reasonable.

Regarding CAIA’s argument that the proposed surcharge refund was inequitable, SUEZ argued that CAIA’s reasoning was unpersuasive. SUEZ stated “[u]sing CAIA’s reasoning, it would be unjust to charge higher rates to a customer that joined the system right before a rate

increase, since a prior customer received the benefits of the investments without paying higher rates” and that it “would be inequitable not to charge higher rates to a customer that disconnected from the system just before the new rates were implemented, since that customer enjoyed the benefits of the investment but never paid higher rates.” *Id.* at 6. SUEZ noted that CAIA did not propose any alternatives but advocated for a convoluted procedure to refund recently disconnected customers that would inevitably discriminate between customers based on the date they connected.

SUEZ noted Boise City’s support of key components of the Settlement and that Boise City did not suggest the Commission should reject the Settlement. SUEZ argued that the requests Boise City asks the Commission to impose on SUEZ regarding planning and reporting obligations are outside the scope of this case and were recently addressed in a settlement (Case No. SUZ-W-20-02) that Boise City signed, and the Commission approved. In that settlement, SUEZ agreed to broaden its public outreach efforts by providing community project updates, holding townhall sessions, expanding customer notification to include operational initiatives, sending mailers on water quality regarding key projects and initiatives, and holding annual workshops on resource planning and conservation. SUEZ stated the parties to Case No. SUZ-W-20-02 are in the process of implementing these components and the current request of Boise City would replace, duplicate, or conflict with the process already in place.

Regarding EWCG’s objections to the Settlement, SUEZ argued neither objection was persuasive. SUEZ stated that EWCG, like CAIA, objected to the Settlement without proposing an alternate path forward. SUEZ noted that *Idaho Code* § 61-328 applied to the transfer of certain electric utility property and that the Commission has relied on it in some water utility acquisitions and in others the Commission has relied on *Idaho Code* § 61-528. SUEZ submitted that approval of the Settlement was in the public interest and neither *Idaho Code* § 61-328, nor past decisions that have applied these elements to water utility acquisitions, prevent approval of this Settlement by the Commission.

SUEZ argued that South County has many “obvious and compelling” similarities to its proposed acquisition of Eagle Water wherein South County’s customers were generally satisfied with their service and enjoyed continuity of ownership, but the owners were concerned with the increased safety and regulatory burden of owning a water system going forward and wished to sell. SUEZ noted that the transaction provided benefits to both South County and United Water customers—like those proposed in the acquisition of Eagle Water. *Id.* at 11. In South County, the

Commission addressed the concerns customers had and the benefits they would receive. In its final Order, the Commission stated “the mere difference in rates is insufficient to deny the transaction” noting that customers were likely to pay increased rates for future improvements. SUEZ Reply Comments at 11-12 *quoting* Order No. 27798 at 3.

Regarding EWCG’s position that new rates for Eagle Water customer should be implemented differently, SUEZ argued that EWCG failed to provide a persuasive legal or policy-based basis for altering the seven-year phase-in. SUEZ stated that EWCG ignored the surcharge refund amount when arguing that the year-1 phase-in increase is too extreme and would cause rate shock. SUEZ offered that South County customers did not receive a refund and that the proposed surcharge refund in this case would offset all or part of the proposed year-1 increase. Additionally, SUEZ did not believe EWCG’s suggestion for a modest reduction in year-1 phase-in rates is a sufficient basis to jeopardize the Settlement.

CAIA argued that the acquisition might lead to reduced water quality for Eagle Water customers which SUEZ disagreed. SUEZ noted that IDEQ regulates water quality and SUEZ is compliant with those standards. Regarding CAIA and public concerns about chlorine use, SUEZ argued chlorine is a “well-recognized method of complying with IDEQ water quality regulations” (emphasis omitted). *Id.* at 13.

In response to concerns brought by CAIA and members of the public about SUEZ (or Veolia) being a foreign owned entity, SUEZ noted that SUEZ Water Idaho is an Idaho company with Idaho based employees. Additionally, it is regulated by the PUC, IDEQ, and Idaho Department of Water Resources (“IDWR”). SUEZ stated that the “Commission will instead be allowing one highly regulated, for-profit utility to assume operation of a water system when the current owner of the highly regulated, for-profit utility states that he no longer has the desire or ability to do so.” *Id.* at 14.

Regarding issues about transparency, SUEZ notes that CAIA has been a part of this transaction for nearly three years and has utilized its rights as a party to conduct discovery that is not readily available to the public. SUEZ noted that the transaction was conducted in accordance with the Commission’s rules of procedures and pursuant to its orders and any concerns therefore relate to the Commission and its procedural rules rather than this proceeding.

CAIA’s argument that the proposed acquisition of SUEZ by Veolia makes this a “four-party transaction or a dual, dual transfer” SUEZ Reply Comments at 15 *quoting* CAIA’s

Comments at 10. SUEZ argued the Veolia transaction is not before the Commission and therefore CAIA's concerns are not relevant. SUEZ also argued that the Commission has previously recognized that the modern marketplace is increasingly international. SUEZ stated that CAIA did not dispute the benefits of the Settlement, rather it invited the Commission to reject it because of "unsubstantiated fears or 'concerns' about the future, related to the proposed transaction that are outside the Commission's jurisdiction." SUEZ Reply Comments at 16.

COMMISSION DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter and the issues in this case under Title 61 of the Idaho Code. Specifically, the Commission regulates "public utilities," including "water corporations" that serve the public or some portion thereof for compensation. *See Idaho Code* §§ 61-125, -129, and -501. The Commission has an established practice of evaluating the transfer of water systems under the criteria found in *Idaho Code* § 61-328 but is not required by statute to evaluate the acquisition of a water system under these criteria. Eagle Water Company is a privately held water company and public utility as defined in these laws and therefore subject to the Commission's jurisdiction. Having reviewed the record, we approve the Settlement and hereby approve the acquisition of Eagle Water by SUEZ and authorize SUEZ to amend CPCN No. 143 to reflect the acquisition.

The Commission is responsible for ensuring that rates and charges received by a public utility and its rules and regulations pertaining to its rates and charges are "just and reasonable." *Idaho Code* §§ 61-301 and -303. The Commission is authorized to investigate the rates of any public utility and to establish new rates. *Idaho Code* § 61-503. The Commission must ensure that every public utility furnishes service that promotes the "safety, health, comfort, and convenience of its patrons." *Idaho Code* § 61-302.

The Commission considers settlements under Rules 271-277. IDAPA 31.01.01.271-277. When a settlement is presented to the Commission, the Commission will prescribe the procedures appropriate to the nature of the settlement to consider it. IDAPA 31.01.01.274. Further, proponents of a settlement must show that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. IDAPA 31.01.01.275. Finally, the Commission is not bound by settlements. Instead, the Commission "will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in

the public interest, or otherwise in accordance with law or regulatory policy.” IDAPA 31.01.01.276.

We find this transaction and Settlement are in the public interest. Customers of both utilities will benefit from this acquisition. For SUEZ customers, the acquisition allows SUEZ to prospectively avoid about \$11.2 million in future water supply and other expenses. For Eagle Water customers, SUEZ represents a capable system operator with access to capital that can be invested in the much-needed system upgrades. We note that if Mr. DeShazo were to continue operating the system then the inadequacies discussed in this Order would likely go unaddressed, or take longer to address than SUEZ proposes, presenting ongoing health and safety risks to customers. Without this acquisition and SUEZ’s proposed investment, Eagle Water does not meet requirements for firewater flow—among many requirements it fails to meet—creating significant and continuing public safety risks in Eagle Water’s service territory. SUEZ has proven itself a capable water utility operator and we do not question that it will operate the Eagle Water system capably and expeditiously address the existing system deficiencies.

SUEZ Water Idaho is operated as a local utility with local offices, local management, and the ability to operate the Eagle Water system to the regulatory standards imposed by the State of Idaho. SUEZ is regulated by this Commission in addition to IDEQ and IDWR and will be required to operate the Eagle Water system in accordance with the rules and regulations established by the State. SUEZ has consistently complied with the regulations imposed upon it by its various state regulators. SUEZ has been present and operated in the Treasure Valley since 2015 when it acquired United Water. SUEZ has continuously maintained and improved its water system, improving the service its customers receive. We direct SUEZ to concentrate on correcting the critical deficiencies that pose health or safety risks in both systems. We expect that the acquisition of Eagle Water will not impact the prioritization that we recently addressed with SUEZ regarding investments needed for its existing system including the discolored water on the Boise Bench.

We acknowledge that rates will increase because of this transaction but see no other option for Eagle Water customers. It is undisputed that a rate increase is inevitable for Existing Eagle Water Customers no matter who operates the Eagle Water system. Here, we find, it would be unreasonable to deny the transaction since rates must increase. The Eagle Water system has suffered from lack of investment for many years and, as a result, is out of compliance with regulatory rules and regulations. The lack of investment is reflected by the unrealistically low rates

Eagle Water customers are paying today. We believe the acquisition by SUEZ gives the customers of Eagle Water an opportunity to receive water service from a well-run and capable utility operator that can make the necessary investments and deliver quality water service to customers.

We approve the proposed phase-in of rates. The transition in rates for Eagle Water customers to SUEZ's approved rates will occur over seven years pursuant to the terms of the Settlement. We note that the transition to SUEZ's approved rates for current Eagle Water customers is longer than any rate phase-in this Commission has ever approved. We feel the timeline gives Eagle Water customers adequate time to plan for and adjust to their new rates. It is also important to understand that, while the rates of the Existing Eagle Water Customers are increasing, we still find the rates across the seven-year schedule to be just and reasonable and in the public interest. Because of the transaction, Eagle Water customers will receive water service that meets the standards set by state regulatory agencies and enhanced customer service.

The seven-year phase-in is only available to Existing Eagle Water Customers. Any new customers starting service or connecting to service in the present Eagle Water service territory will pay SUEZ rates when beginning service.

We find the proposed surcharge refund to Eagle Water customers to be just and reasonable and, consequently, approve the refund. We find the equal distribution of the surcharge account to existing customers on the service date of this Order as proposed in the Settlement is reasonable. We note that the funds to be distributed were not accrued volumetrically through consumption, but from developers connecting to the system. The funds were set aside to be used for system improvement and therefore belong to all customers. Since the surcharge funds were not collected based on consumption there is no discrimination in the proposed refund, which is prohibited by statute. *See Idaho Code* § 61-315. We are encouraged that the surcharge rebate will help eliminate or offset the first-year rate increase for Existing Eagle Water Customers.

We understand some Eagle Water customers' desire to have the City of Eagle purchase and operate the Eagle Water system. However, this Commission does not dictate who a utility owner contracts with to complete a sale or acquisition. In this case, Mr. DeShazo has elected to sell to SUEZ after prolonged litigation that involved the City of Eagle and SUEZ in which the City of Eagle ultimately decided not to pursue the purchase of Eagle Water's assets. We were not involved in that litigation but are now tasked with determining whether to approve the proposed acquisition of Eagle Water's assets by SUEZ as contemplated in the District Court settlement that

resulted in the civil litigation being dismissed. It would be erroneous for this Commission to reject a proposed sale simply because of who the proposed buyer was so long as the buyer can operate the system according to the rules and regulations prescribed by the State of Idaho and this Commission.

As discussed above, SUEZ is a capable water system operator, and we are confident it will improve the Eagle Water system in which it has indicated it will invest \$14.6 million over five years. We are optimistic this investment will address the current inadequacies of the Eagle Water system. We note that we will determine the prudence of any investments when SUEZ seeks recovery in a future general rate case.

We decline to impose additional planning and reporting requirements advocated for in Boise City's comments. We find these concerns were addressed in Case No. SUZ-W-20-02 and SUEZ is working in furtherance of those Commission directives.

The Commission will consider two timely petitions for intervenor funding later.

ORDER

IT IS HEREBY ORDERED that the acquisition of Eagle Water Company's assets by SUEZ Water Idaho is approved as described in the Settlement, effective January 1, 2022. SUEZ's CPCN No. 143 shall be amended to reflect the acquisition of Eagle Water's service territory and customers. SUEZ shall file a conforming amendment with the Commission. Eagle Water's CPCN No. 278 and tariffs shall be cancelled.

IT IS FURTHER ORDERED that Existing Eagle Water Customers' rates will be phased-in to SUEZ's approved rates over seven years according to the schedule in the Settlement.

IT IS FURTHER ORDERED that Eagle Water shall issue a refund of its surcharge funds as described in the Settlement to all current Eagle Water customers on the service date of this Order.

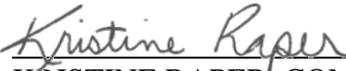
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

///

DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 9th day of December 2021.



PAUL KJELLANDER, PRESIDENT

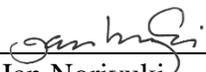


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

I:\Legal\WATER\EAGW1801_SUZW1802\orders\SUZW1802_EAGW1801_final_dh.docx