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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 APPLICATION  
OF SUEZ WATER IDAHO INC. FOR  
AUTHORITY TO INCREASE ITS RATES  
AND CHARGES FOR WATER SERVICE  
IN THE STATE OF IDAHO

Case No. SUZ-W-20-02

SUEZ WATER IDAHO, INC.'S  
OPPOSITION TO CITY OF BOISE'S  
MOTION FOR EXTENSION OF TIME

SUEZ Water Idaho Inc., ("SUEZ Water," or "Company"), files this in Opposition to the City of Boise's Motion for Extension of Time ("Motion").

INTRODUCTION

By statute, the Idaho Public Utilities Commission ("Commission") may suspend the effective date of proposed rate changes for thirty days plus five months. Idaho Code § 61-622(4). The Commission is authorized to extend the effective date for an additional sixty days upon a showing of "good cause." *Id.* But under no circumstance can the effective date be extended further.

This statute exists for good reason. Under traditional ratemaking practices, as historically applied by this Commission, a regulated utility is entitled to timely recover its operating costs and a fair rate of return on its investment. SUEZ will be increasingly prejudiced to the extent a decision determining its current revenue requirement and fair

return is delayed in this proceeding. The statutory deadlines recognize the importance of expeditiously processing rate cases.

Intervenors request that the Commission delay the currently proposed schedule for forty-five days. This would place the hearing during the first week of June, leaving the Commission with a hard, unmovable deadline to issue a decision just three weeks after the hearing. And using the sixty-day “good cause” period at this early stage will preclude extensions for truly unforeseen disruption or other events—such as the Commission’s workload, illness or unavailability of witness, or technological disruption—of the sort that would typically provide good cause to extend the statutory deadline.

To support their request, Intervenors point to a number of factors: the number of Intervenors; the relative inexperience of two intervenors with the Commission’s procedures; the number of issues in the case; the amount of discovery exchanged; and the rapid pace of settlement negotiations. Motions for Extension of Time (“Motion”) at 3-5. SUEZ respectfully submits that the Intervenors have done nothing more than describe a general rate case. It is neither justified nor prudent to use forty-five of the available sixty days for “good cause” at this point in the case. Accordingly, SUEZ respectfully requests that the Motion be denied.

To be clear, while SUEZ opposes the currently requested extension, it does not necessarily oppose any and all extensions of time. If good cause arises in the future, SUEZ would not oppose extending the statutory deadline, for example, to provide the Commission sufficient time to issue a decision after the currently scheduled hearing. However, SUEZ submits that at this time the Intervenors have not demonstrated good

cause to extend the statutory deadline. The currently requested extension should therefore be denied.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 30, 2020, SUEZ filed with the Commission a Notice of Intent to file a general rate case. On September 30, 2020, SUEZ filed its application and supporting testimony. That same day, and again through the following months, SUEZ provided notice of the rate case through a variety of outlets.<sup>1</sup>

The Commission issued its Notice of Application and Notice of Intervention on October 21, 2020. The Notice states that this general rate case could involve the following issues:

- The Company's intrastate revenue requirement, and every component of it, both rate and expense;
- All of the Company's retail rates and charges, and every component of every existing and proposed rate and charge;
- All existing or proposed relationships between and among rates and charges within, between, or among customer classes or rate groupings;
- All rate blocks or categories, or rates and charges, or customer classes or rate groupings; and
- All tariffs, practices, rules, and regulations, service, instrumentalities, equipment, facilities, classifications, and customer relations.

Order No. 34819 at 2.

Discovery began promptly after the case was filed. Between October 7, 2020 and

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<sup>1</sup> Specifically, on September 30, 2020, SUEZ provided a news release to local news media. On October 1, 2020, SUEZ published to social media a link to a website that contained information on the rate case. SUEZ reposted the message on October 22, 2020; October 29, 2020; November 5, 2020; and November 12, 2020. On October 1, 2020, SUEZ sent an email regarding the rate case to all customers for whom SUEZ has email addresses—approximately 50,000 accounts. SUEZ provided individual mailed notices of the rate case to each customer starting on October 19, 2020.

January 27, 2021, Commission Staff served, and SUEZ responded to, eight sets of discovery requests.

The Intervenors petitioned for intervention between November 7, 2020 and November 18, 2020. Even before the Commission granted intervention, SUEZ corresponded with several of the intervenors in an attempt to begin discussions about the issues in the case.

All Intervenors were admitted as parties to the case on December 4, 2020. On that same day—December 4, 2020—counsel for SUEZ provided to all Intervenors copies of the protective order to facilitate Intervenors' access to confidential discovery materials. A copy of this correspondence is attached as Exhibit 1.

SUEZ provided Intervenors with access to discovery materials on an ongoing basis beginning on December 9, 2020. Confidential materials were provided promptly after each intervenor signed the protective order. Throughout the case, counsel for SUEZ has remained in touch with Intervenors regarding discovery responses and other procedural and technical issues.

Despite the Company's proactive efforts, the first discovery response from an intervenor was served on February 1, 2021. By rule, a party must be provided at least twenty-one days to respond to discovery. See IDAPA 31.01.01.225.03 ("Unless otherwise provided by order, notice, or these rules . . . parties have at minimum fourteen (14) days to object or explain why a question cannot be answered according to this rule and twenty-one (21) days to answer." (emphasis added)).

The initial settlement conference in this case was held on February 11, 2021. Intervenors served additional discovery requests on February 12, 2021; February 16,

2021; February 20, 2021; February 23, 2021; February 25, 2021; and March 3, 2021.

Through great effort, the Company has timely responded to each discovery request filed in this case.<sup>2</sup>

After the first settlement conference, attorneys for Commission Staff circulated a proposed schedule for testimony and a hearing. To provide the parties with the maximum amount of time before the statutory deadline, the existing schedule proposed a hearing on April 20-22, shortly before expiration of the initial statutory period.

Despite the Commission and the Company's notices, Commission Staff's early discovery, the Company's outreach efforts, and the Company's timely discovery responses, the Intervenors have requested that the Commission extend the statutory deadline and delay the current schedule by forty-five days. As described in more detail below, the proposed extension would prejudice the Company and compress the timeframe for issuing a decision in the case. Intervenors have not provided good cause for the extension. SUEZ therefore respectfully requests that the motion for extension of time be denied.

## **ARGUMENT**

### **1. Legal standard**

Under Idaho Code § 61-622, the Commission has the authority to suspend the proposed effective date of a change in rates "for a period not exceeding five (5) months." The Commission can extend the effective date for a rate change for "an

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<sup>2</sup> The Company may have obtained one three- or four-day extension to one of Staff's set of discovery requests. As for pending discovery requests, the Company has attempted to expedite responses and will provide responses as soon as possible and, in any case, on or before the twenty-one days provided by rule.

additional sixty (60) days”, but only “after a showing of good cause on the record.” Idaho Code § 61-622(4).

There is no allowance for additional suspensions. The Commission must issue an order allowing rate changes to become effective at the end of the sixty-day good-cause period.

“Good cause” for invoking the additional sixty days includes the Commission’s need to consider all the evidence and issue a fully considered decision. Order No. 32642, Case No. FLS-W-12-01 (Sept. 13, 2012) (“[T]he Commission finds it needs additional time to thoroughly review the record and analyze the comments and the parties’ respective positions.”); *Wash. Water Power Co. v. Idaho Public Utilities Comm’n*, 101 Idaho 567, 572 (1980) (upholding Commission’s suspension of effective date).

SUEZ is not aware of any decision extending the statutory deadline based on the number of intervenors, the inexperience of some intervenors, the chance of an additional settlement conference, or many of the other arguments currently presented by Intervenor as “good cause”

**2. Delaying the schedule would prejudice SUEZ and, potentially, the Commission and the parties if *bona fide* unforeseen difficulties arise.**

As noted above, a utility has the right to a reasonable opportunity to collect its revenue requirement. A sixty-day delay interferes with this opportunity: the utility does not have the opportunity to make up the revenue that was foregone during the sixty-day extension period. This inherent prejudice is, presumably, why the sixty-day extension can be granted only upon a showing of good cause.

If the Intervenor's request is granted, the Commission may be prejudiced as well. The Intervenor seeks to delay the hearing from April 20-22 to the week of June 7, 2021. This would provide the Commission with only three weeks to obtain transcripts, review the record, and issue a decision. And—perhaps more importantly—this schedule would leave no additional time for *bona fide* unforeseen or unexpected additional delays, such as the Commission's workload at the time, illness or unavailability of witnesses, technological issues, or other matters that would constitute good cause for an additional extension. SUEZ respectfully submits that the additional good-cause time period should be reserved for truly unforeseen or unexpected circumstances. Not issues that are commonplace in general rate cases.

SUEZ recognizes that the Commission may need additional time to issue a decision after the currently scheduled hearing. SUEZ does not object to a reasonable extension of the statutory deadline for this purpose if the need arises. But SUEZ does submit that Intervenor has not demonstrated good cause to extend the currently contemplated hearing past the statutory deadline.

**3. Intervenor has not established good cause to delay the current schedule by forty-five days.**

Intervenor presents several arguments in support of extending the statutory deadline. SUEZ respectfully submits that these arguments are not availing.

**Number of intervenors.** Intervenor argues that an extension is granted in part because "there are a substantial number of intervenors in this rate case." Motion at 3. In recent years, the Commission has considered a number of cases that involve between

five and thirteen intervenors.<sup>3</sup> This case involves seven. The number of Intervenor is well within the normal bounds of a general rate case or other complex proceeding.

Next, Intervenor argue that “each [intervenor] raises important issues, some of which are independent of others raised.” Motion at 3. Again, that is common—if not routine—in Commission proceedings. Rate cases and other complex proceedings involve important issues. But they still must be decided in accordance with the statutory deadline.

In addition, while each intervenor may raise important issues, those issues are not all distinct. Indeed, there appears to be considerable overlap of Intervenor’s interests. For example, the City of Boise, Ada County, and the SUEZ Water Customer Group each purports to represent some ill-defined but overlapping subset of SUEZ customers.<sup>4</sup> The Individual Intervenor represent persons who reside on the Boise Bench, and who therefore reside within the City of Boise and who might also be included within the SUEZ Water Customer Group. CAPAI represents low-income customers, some of which presumably reside within the City of Boise, some of which presumably reside within Ada County, and some of which may be members of the SUEZ Water Customer Group. The City of Boise and Ada County are themselves SUEZ customers, but appear to have similar facilities and therefore interests in this regard. Certainly, each Intervenor may have slightly different interests here, and each may have

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<sup>3</sup> Examples include IPC-E-18-16 (thirteen intervenors); IPC-E-19-15 (ten intervenors); INT-G-16-02 (seven intervenors); AVU-E-17-09 (seven intervenors); AVU-E-19-04 (five intervenors).

<sup>4</sup> The geographical location of customers within Ada County and the City of Boise are, obviously, well-defined, but customers’ interests do not split along municipal boundaries. As for SUEZ Water Customer Group, it is entirely unclear which subset of customers the group purports to represent. But any representative group of SUEZ customers would include customers within both Ada County and the City of Boise.



important issues. But there appears to be at least substantial overlap in their interests and goals in the case.

SUEZ recognizes that cases with a large number of Intervenors can be difficult to process. But the statutory deadlines exist to avoid undue delay in processing rate cases. SUEZ would submit that this case is complex, but not exceedingly so. The number of Intervenors, and their varying interests, does not provide good cause to delay the scheduling order in this case.

**Inexperience of Intervenors.** Intervenors state that “[s]everal of the intervenors are not usual participants to Commission proceedings and, despite exercising diligence in the matter, seek additional time to navigate” the case. Motion at 3. However, all but two of the Intervenors or their counsel have participated in prior Commission proceedings, and several have decades of experience in this area.<sup>5</sup>

In addition, throughout the case SUEZ has reached out to intervenors to invite discussions, to discuss procedure, to ensure intervenors received discovery responses, and with offers to discuss other issues. SUEZ understands and recognizes that the Commission’s procedures can be intimidating to some. At the same time, the presence of two inexperienced intervenors does not itself give rise to good cause to extend the statutory deadline in this case.

**Issues in the case.** Intervenors claim that a number of issues have come to light through discovery: “Suez[’s] underlying assumptions for projects; items not known or

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<sup>5</sup> For example, Micron, CAPAI, and the City of Boise have participated in Commission proceedings for decades. Mr. Semanko has represented what appear to ad hoc customer groups in at least two other proceedings within the past several years, and Ms. Durand (here representing the Individual Intervenors) or colleagues in her law firm appear to have participated in several Commission proceedings. The only entirely new participants appear to be Ada County and the Intermountain Fair Housing Council.

measurable at this time; prudence and justification for projects included for the rate change and portions of the revenue requirement; presumptions or deficiencies in underlying cost of service analyses; rates among customer class,” and others. Motion at 3-4.

Intervenors are correct that this case may involve such issues. But so does every general rate case. Indeed, the Commission’s notice in this case specifically identifies many of the items that Intervenors purport to have discovered through discovery here.

To the extent Intervenors purport to have discovered these issues only recently, that is a crisis of their own making. Intervenors have been on notice that these issues are involved in the case. Only one intervenor requested discovery before the initial settlement conference. Discovery requests were sent as late as March 3, making the responses due well after Intervenors’ would be required to file testimony on the current schedule.

In short, neither the presence of these issues nor the purported recent discovery of these issues constitutes good cause to extend the statutory deadline.

**Discovery.** Intervenors argue that delay is needed because “many discovery requests are outstanding, which information would inform and may aid in settlement progress.” Motion at 3. It is true that Intervenors filed discovery requests as late as March 3, 2021, and that responses to these requests are forthcoming. SUEZ will attempt to expedite these requests and will provide responses on or before they are due.

But Intervenors control the timing of their own discovery requests. SUEZ’s counsel emailed all Intervenors on December 4, 2020 providing notice that discovery

was ongoing. Intervenors cannot rely on a crises of their own making as good cause to extend the statutory deadline.

**Logistics of settlement.** Intervenors argue that “[t]he schedule between settlement negotiations has been inadequate to consider the Staff’s proposal, the Company’s counterproposal, as well as additional technical matters continuing to come into the proceeding.” Motion at 5. Intervenors further argue that, due to these logistics, without an extension “the case becomes a settlement discussion limited to the PUC staff and SUEZ, and excludes Intervenors who represent parties with a significant interest in the outcome.” *Id.* at 4.

Again, SUEZ recognizes that the number of settlement conferences, and their pace, can be intimidating. However, that is standard practice for rate cases. It does not provide good cause for an extension.

It is simply not true that the case threatens to become a settlement discussion limited to the PUC staff and SUEZ. Every intervenor has been represented in the settlement conferences. While the contents of the conferences are confidential, participation has been robust. Yes, the issues move rapidly. But they move rapidly for everyone. Commission Staff continues, through great efforts, to remain engaged both with the Company and with Intervenors. But the pace of settlement discussions does not provide good cause for an extension of time.

In addition, while SUEZ appreciates Intervenors’ expressed interest in settlement, delaying the collection of revenue requirement at this time is likely to decrease the likelihood of settlement. As noted, a utility cannot make up for delayed collection of a revenue requirement. Delaying implementation of rates thus creates a

financial burden on the Company that moves the parties farther apart, rather than closer together, regarding possible common ground over revenue requirement.

Intervenors note that additional time “would enable the parties to schedule an additional settlement conference.” Motion at 4. The parties have already scheduled an additional conference for March 8, 2021. This concern appears to be resolved. It is far from clear that an additional settlement conference will be helpful—if the parties cannot agree after four conferences, a fifth may not be useful or necessary. The logistics regarding settlement, or the possibility of another settlement conference does not provide good cause to extend the statutory deadline.

In short, SUEZ respectfully submits that Intervenors have not provided good cause to extend the statutory deadline or to delay the processing of this case by the requested forty-five days.

**4. SUEZ does not oppose an extension of the statutory deadline to accommodate a decision after the currently scheduled hearing, and will work with intervenors to accommodate legitimate unforeseen need for additional time.**

As noted above, the existing schedule proposes a hearing on April 20-22, 2021. This hearing is, admittedly, close to the statutory deadline. The existing schedule allows as much time as possible for the parties to exchange discovery and engage in settlement discussions. SUEZ does not oppose a reasonable extension of the statutory deadline to allow the Commission to issue a decision after the currently scheduled hearing.

In addition, to the extent individual Intervenors have experienced, or experience in the future, legitimate unforeseen difficulties such as the departure of an important client party, an illness or injury, or other issues, SUEZ is willing to stipulate to

reasonable extensions regarding deadlines for filing pre-filed testimony. However, Intervenor has failed to show sufficient good cause for a forty-five day delay in the case.

#### CONCLUSION

SUEZ respectfully submits that the Intervenor has not demonstrated good cause to extend the statutory deadline to process this case. The extension will prejudice the Company and place the Commission and the parties in the position of having no additional time for truly unforeseen circumstances. For this reason, SUEZ requests that the Commission deny the Motion for Extension of Time.

That said, SUEZ does not oppose a reasonable extension of the Commission's deadline to issue a decision after the currently scheduled hearing. SUEZ continues to be amenable to working with the parties to accommodate unforeseen difficulties as needed on an ongoing basis.

DATED: March 5, 2021.

SUEZ WATER IDAHO INC.



By: \_\_\_\_\_

Michael C. Creamer  
Preston N. Carter  
*Attorneys for Applicant*

## CERTIFICATE OF SERVICE

I certify that on March 5, 2021, a true and correct copy of the foregoing was served upon all parties of record in this proceeding via electronic mail as indicated below:

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Preston N. Carter

**EXHIBIT 1**

**EXHIBIT 1**



## Preston N. Carter

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**From:** Preston N. Carter  
**Sent:** Friday, December 4, 2020 1:42 PM  
**To:** 'civilpafiles@adaweb.net'; 'agermaine@cityofboise.org';  
'NSemanko@parsonsbehle.com'; 'Boisedocket@parsonsbehle.com';  
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'glgarganomari@hollandhart.com'; 'jswier@micron.com'; 'gbharwood@micron.com';  
'Matt Hunter'; 'Dayn Hardie'  
**Cc:** Michael C Creamer; Kendra Hoffman  
**Subject:** 2020-10-09 Protective Agreement -SUEZ\_PUC Executed.PDF [IWOV-  
GPDMS.FID1017471]  
**Attachments:** 15350522\_1\_2020-10-09 Protective Agreement -SUEZ\_PUC Executed.PDF

All,

I am reaching out today to all intervenors in SUZ-W-20-02, the SUEZ Water Idaho Inc. general rate case. Commission Staff has served SUEZ with three sets of production requests. A response to the second set is due December 9. SUEZ anticipates that the response will include confidential information. If intervenors would like to receive the confidential information, please sign the attached Protective Agreement and return a copy to me. Any persons within the Intervenor organization who will have access to the confidential information will also need to sign Exhibit A and provide a signed copy to me as well.

Logistically, SUEZ will need to focus on providing the responses to the second set of production requests on December 9; shortly after that we can provide to intervenors the responses to the first set of production requests.

Please let me know if you have questions.

Thank you,  
Preston

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PRESTON N. CARTER

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