

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

WESTERN AIRCRAFT, INC.,)	CASE NO. SUZ-W-21-01
)	
COMPLAINANT,)	
)	ORDER NO. 35040
vs.)	
)	
SUEZ WATER IDAHO INC.,)	
)	
RESPONDENT.)	
)	
)	
)	

The Commission has before it a Settlement Agreement under which Complainant, Western Aircraft, Inc. (“Western”) and Respondent, Suez Water Idaho Inc. (“SUEZ”) propose to resolve a dispute about how Western can connect to SUEZ’s water system so it can receive water service. With this Order, the Commission approves the parties’ Settlement Agreement and dismisses Western’s Complaint.

BACKGROUND

On January 28, 2021, Western filed a formal Complaint against SUEZ. Western alleged that SUEZ is failing to deliver service, adopting unfair and discriminatory practices, attempting to impose unreasonable and unjust charges, and failing to follow existing rules, regulations, and tariffs for proposed water service to a new aircraft hangar that Western is building (“Hangar 0”). *Complaint*. at 3. Western requested that the Commission order SUEZ to: (1) allow a temporary water connection to Hangar 0 from Western’s existing aircraft hangar (“Hangar 1”) water line pending the final resolution of this matter; (2) negotiate in good faith with Western; and (3) not charge Western excessive, unreasonable, and discriminatory fees, nor any costs to upgrade or relocate SUEZ’s water mains on or adjacent to Western’s rented real property. *Id.* at 6-7.

SUEZ filed its Answer to Western’s Complaint on February 24, 2021. SUEZ asserted Western wants to place a permanent building with walls—which Western calls a “breezeway” (the “Walkway”)—directly above a water main that is used to provide service to customers. *Answer* at 1-2. SUEZ alleged this would put its water system out of compliance with Idaho Department of Environmental Quality (“IDEQ”) rules. *Id.* at 2; *see also* IDAPA 58.01.08.542.11. SUEZ

asserted it will work with Western to identify solutions but Western must refrain from construction that will place SUEZ's system out of compliance with IDEQ's rules. *Id.* at 2-3.

After SUEZ filed its Answer, Western, SUEZ and the Commission Staff ("Staff") participated in settlement negotiations that resulted in an agreement to resolve the disputes in this case. On April 28, 2021, Western filed the executed Settlement Agreement and Motion to Approve Settlement Agreement ("Settlement Agreement") for the Commission's review.

PROPOSED SETTLEMENT AGREEMENT

Through the proposed Settlement Agreement, Western, SUEZ and Staff reached a compromise whereby SUEZ would connect Western's Hangar 0 for domestic water service and required fire flows in exchange for certain commitments and concessions by Western. Under the Settlement Agreement:

1. Western will not build the Walkway at this time. If Western chooses to construct the Walkway later, Western must provide notice to SUEZ and Staff at least ninety (90) days before construction begins. The parties agree to discuss, in good faith, options for constructing the Walkway that comply with all applicable rules and regulations, and that allow SUEZ to access its water system for, among other things, repair and maintenance. Western shall not begin construction of the Walkway without SUEZ's written consent. The water service provided shall be terminated if Western constructs the Walkway without SUEZ's written consent.
2. Western proposes SUEZ will connect Hangar 0 for domestic water service and fire flows pursuant to plans provided by T-O Engineers on April 22, 2021, after revision and approval by SUEZ to ensure compliance with IDEQ requirements.
3. Before receiving water service, Western shall:
 - a. Conform the northern area sewer line crossing location to IDEQ separation standards at Western's cost;
 - b. Inspect the South sewer line connection's separation to confirm its placement and, if needed, also conform that to IDEQ standards at Western's cost; and
 - c. Install an approved backflow device on the fire tank supply line at Western's cost.

- d. SUEZ will work with Western in good faith to promptly resolve any issues which arise in planning, inspecting and approving construction to IDEQ standards or in installing the backflow device.
4. Upon execution of the Settlement Agreement, SUEZ will prepare to connect its water system to Hangar 0 so it can promptly provide domestic service to Hangar 0 after the Commission approves the Settlement Agreement.
5. As soon as possible after the Commission approves the Settlement Agreement, and upon SUEZ's confirmation that the conditions 3.a-d. above have been completed, SUEZ will provide water service to Hangar 0, with a target date of May 15, 2021.
6. After Commission approval of the Settlement Agreement without change or condition, Western shall dismiss the Complaint.

STAFF COMMENTS

Staff filed comments on April 28, 2021. Staff believes the Settlement Agreement represents a reasonable resolution of the dispute between SUEZ and Western and recommends that the Commission accept it.

Staff also addressed two other issues in its comments. First, Staff believes IDEQ Drinking Water Rule 542.11 prohibits the Walkway from being built over the existing water main if it is continued to be used to provide domestic water service and fire flows. IDAPA 58.01.08.542.11. Staff also asserted that, if Western decides to build the Walkway, IDEQ would need to determine whether a fully enclosed Walkway built over the existing water main is allowable. Second, Staff noted that Western, SUEZ and Staff have not agreed on the improvements or relocation plan of the existing main or associated cost responsibilities if the Walkway is built. Absent an agreement, Staff believed that if the Walkway is built and improvements with main relocation are needed to maintain domestic water service and fire flows for Western and other customers, Western should pay for the associated incremental costs. Staff asserted that absent building of the Walkway, upgrades are not required.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission has the express statutory authority to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just,

reasonable, preferential, or discriminatory, or in violation of any provision of law, and may fix the same by Order. *Idaho Code* §§ 61-502 and 61-503.

The Commission's process for considering settlement stipulations is set forth in its Rules of Procedure 271-277. IDAPA 31.01.01.271-277. When a settlement is presented to the Commission, it “will prescribe the procedures appropriate to the nature of the settlement to consider the settlement.” IDAPA 31.01.01.274. The Commission may summarily accept settlement of an essentially private dispute that has no significant implications for regulatory law or policy or for other utilities or customers upon the written request of the affected parties. *Id.* Proponents of a proposed 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 settlement agreements. IDAPA 31.01.01.276. 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.” *Id.*

The Commission has reviewed the Complaint, Answer, proposed Settlement Agreement, and Staff Comments. We are pleased that the parties worked diligently to reach a compromise that resolves the disputes between them by providing Western’s Hangar 0 a connection for water service, addressing the concerns SUEZ raised in its Answer, and providing for the dismissal of the Complaint. Based on the record, we find that the Settlement is in the public interest and is fair, just, and reasonable and shall be approved. Consistent with the agreement of the parties, the Commission also finds it reasonable to dismiss Western’s Complaint.

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement is approved, and the Complaint is dismissed.

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 other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th
day of May 2021.



PAUL KJELLANDER, PRESIDENT

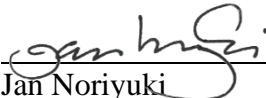


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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