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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

WESTERN AIRCRAFT, INC.,)	
)	CASE NO. SUZ-W-21-01
COMPLAINANT,)	
)	
vs.)	COMMENTS OF THE
)	COMMISSION STAFF
SUEZ WATER IDAHO INC.)	
)	
RESPONDENT.)	
_____)	

The Staff of the Idaho Public Utilities Commission (“Staff”) submits the following comments.

BACKGROUND

1. Western Aircraft, Inc., Complaint

Western Aircraft, Inc., (“Western”) receives water service from SUEZ Water Idaho Inc. (“SUEZ”) at its existing airplane hangar (“Hangar 1”) on the south side of the Boise Airport. *Complaint* at 1 and 3. Western states it is building a new, larger hangar (“Hangar 0”) that will be separated from Hangar 1 by a “covered Walkway” (the “Walkway”) that is 46 feet long and 15 feet 8 inches wide. *Id.* at 3. Western contends the Walkway is in a former right of way of the abandoned Boeing Street and contains the water main and sewer line from which Hangar 1 receives service. *Id.* at 3-4.

Western claims its maps did not correctly show the water line locations and depths and that the water main and sewer lines under the Walkway are inadequately separated. *Id.* at 4. Western claims it proposed a revised water-connection plan for Hangar 0 that met all Idaho Department of Environmental Quality (“IDEQ”) water, sewer and fire line location, separation and crossing requirements on August 20, 2020. *Id.* Western asserts SUEZ has unreasonably withheld its approval of Western’s proposal. *Id.* Western also claims it requested “Commission mediation” of its disputes with SUEZ, through which it received a second proposed water-connection solution in a September 1, 2020 letter from Staff. *Id.* Western claims SUEZ also has unreasonably withheld its approval of this second proposal. *Id.*

Western asserts it obtained, at SUEZ’s suggestion, an IDEQ conditional water line separation variance that would permit the water line to be placed under the Walkway. *Id.* Western alleges SUEZ then changed course and unreasonably withheld its cooperation. *Id.*

Western requests that the Commission order SUEZ:

1. To allow a temporary water connection to Hangar 0 from the existing Hangar 1 water line pending the final resolution of this matter.
2. To negotiate in good faith with Western by:
 - a. providing the requested comparative cost estimates for different proposals; and either
 - b. approving the revised connection plan; or
 - c. indicating which proposed alternative solution will work without charging excessive costs to Western.
3. To not charge Western excessive, unreasonable, and discriminatory fees, nor to bear any costs to upgrade or relocate SUEZ’s own water mains on or adjacent to Western’s rented real property.

Id. at 6-7.

Western states “[a] formal hearing herein is requested, if necessary, to seek the relief, obtain water service and avoid the damages described herein. *Id.* at 7.

2. SUEZ

SUEZ asserts Western wants to place the Walkway, what it calls a permanent building with walls—directly above a water main. *SUEZ Answer to Western Aircraft’s Formal Customer Complaint* at 1-2. SUEZ alleges this would put its water system out of compliance with IDEQ

rules. *Id.* at 2; *see also Idaho Rule for Public Drinking Water Systems* 542.11, IDAPA 58.01.08.542.11. SUEZ asserts 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. SUEZ asserts placing the Walkway on top of the water main would prevent it from accessing, maintaining, and repairing the water main, and create the potential for damage to Western’s structure and surrounding structures. *Id.* SUEZ asserts that the Commission should not order SUEZ to provide water service if a customer chooses to construct a building that creates these problems. *Id.* at 3.

SUEZ states it has worked with Western in good faith and will continue to work with Western to ensure Western’s proposal complies with applicable rules while allowing SUEZ sufficient access to maintain and repair its water system. *Id.* at 3 and 11.

SUEZ also states the Commission should not require it to provide cost estimates for work that Western may or may not need to perform to ensure that Western’s proposal complies with the rules. *Id.* at 12.

SUEZ denies that the August 20, 2020, plan proposed by Western’s engineers complies with applicable rules. *Id.* at 13. SUEZ alleges that Western acknowledged that its proposal does not comply with the rules by requesting a waiver from those rules, which was denied by IDEQ (contrary to Western’s assertion that a variance was granted). *Id.*

Suez submits that the Commission should not endorse any particular “proposed alternative solution” to Western’s dilemma because IDEQ, not the Commission, interprets and administers the rules of public drinking water systems. *Id.* However, if the Commission is inclined to select an alternative, SUEZ requests that the Commission determine with specificity which party must pay for the components of any proposed water line solution. *Id.* at 14.

SUEZ states that Western has not alleged or proven any discriminatory treatment by SUEZ. *Id.* at 14. SUEZ asserts developers’ plans must comply with IDEQ and other rules and allow SUEZ to access, repair, and maintain its water system. *Id.* SUEZ alleges Western is responsible for any costs needed to construct its project, including any costs needed to ensure that its project does not detrimentally impact water service to Western or other customers. *Id.*

SUEZ also denies that any relief is necessary and proper based on the Complaint. *Id.* at 14. SUEZ denies that a formal hearing is required or needed in this case. However, SUEZ would not object to a hearing if the Commission determines one is necessary. *Id.* at 14.

STAFF ANALYSIS

1. The Walkway

The crux of the Western/SUEZ dispute is whether domestic water service can be provided to Hangar 0 and if an existing water main can be covered by the Walkway. The Walkway would be a fully enclosed structure according to Western. *See Complaint* at 3 and *Exhibit A to the Complaint* at page 1. The existing water main provides water service to Western and other customers.

Based on the record in this case, Staff believes the Walkway is a permanent structure in commonly understood terms. As a result, Staff believes IDEQ Drinking Water Rule 542.11 would prohibit 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. Due to Rule 542.11 applicability to this matter, IDEQ is the agency who would need to decide whether a fully enclosed Walkway built over the existing water main is allowable in the first instance. The record in this case demonstrates that IDEQ has not granted a waiver of Rule 542.11's requirement. *See Answer* at 7; *see also Exhibit 4*, (October 7 email from IDEQ official denying the requested waiver).

Further, Staff agrees with SUEZ that placing a fully enclosed structure over the existing water main would be problematic. The existing water main currently provides domestic water service to Western's Hangar 1 and fire flows to other customers in this area. Staff believes that a fully enclosed structure on top of a water main could prevent SUEZ from easily, quickly, and safely accessing the water main as necessary to conduct repairs, maintenance, and other activities. In an emergency, the Walkway's obstruction to access the existing water main could delay actions that could maintain service to Hangar 1 and/or negatively impact fire flows. Further, accessing the water main under the Walkway could also create a risk of damage to Western's structures or airport property-if the water main ruptures and SUEZ cannot quickly access the main location of the breach. Staff notes that workers associated with the construction of Hangar 0 breached the existing water main three times, on August 10, September 10, and October 6, 2020. Exhibit 5 to SUEZ's Answer is a copy of a photograph showing the third water main breach and associated damage. Based on the foregoing and concern related to potential liability on the part of SUEZ, Staff now does not believe that constructing the Walkway over the existing water main is a workable solution. If the Walkway is built, Staff now believes the existing main between Hangar 1 and Hangar 0 would need to be abandoned and relocated.

2. Proposed Settlement Agreement

Western, SUEZ, and Staff (“Parties”) have negotiated a possible solution to the dispute which was finalized and executed on the same date as the comment deadline for Staff. The proposed settlement agreement (“Settlement Agreement”) would allow Western to receive domestic water service and required fire flows to Hangar 0 in conformance to IDEQ requirements based upon certain conditions:

- Western would not construct 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.
- Prior to receiving water service Western shall:
 - Conform the northern area sewer line crossing location to DEQ separation standards at Western’s cost.
 - 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.
 - Install an approved backflow device on the fire tank supply line at Western’s cost.
- Upon execution of the Settlement Agreement SUEZ will begin preparations for the connection to domestic service so that water service to Hangar 0 can be promptly provided after Commission approval of such an agreement; and,
- As soon as possible after the Commission's approval of this Settlement Agreement and upon SUEZ’s confirmation that the construction described in paragraph 9 above has been completed, SUEZ agrees to provide water service to the newly constructed facility identified as Hangar 0, with a target date of May 15, 2021.
- Upon the approval of this Settlement Agreement by the Commission without change or condition, Western Aircraft shall dismiss the Complaint.

Staff believes the Settlement Agreement represents a reasonable resolution of the dispute between SUEZ and Western.

3. Cost Responsibility for Improvements if the Walkway is Built.

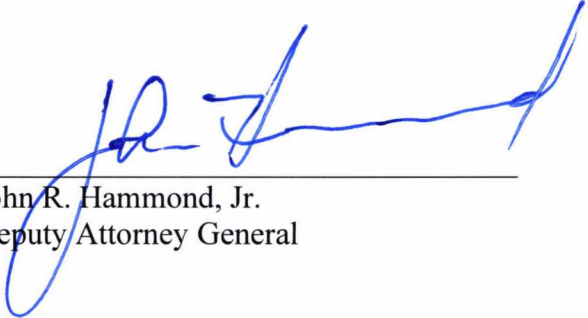
The Parties have not reached an agreement on the improvements or relocation plan of the existing main or associated cost responsibilities if the Walkway is built. Absent an agreement on this matter in this case, Staff believes that if the Walkway is built and improvements with main relocation are needed to maintain domestic water service and fire flows for Western and other customers, Western should be responsible for paying the associated incremental costs. Relocation of the existing main could be accomplished with an upgrade to other mains on the south side of the airport. *See Exhibit 2* to the Answer. Absent building of the Walkway, upgrades are not required. Staff recommends cost causer principles be followed, making Western responsible for the incremental cost of any upgrades or relocation to continue service and fire flows to other existing customers.

STAFF RECOMMENDATION

Staff recommends approval of the Settlement Agreement.

If the Commission does not approve the Settlement Agreement, Staff recommends that the Commission deny Western's request for domestic water service using the existing main if the Walkway is built over it.

Respectfully submitted this 28th day of April 2021.



John R. Hammond, Jr.
Deputy Attorney General

Technical Staff: Michael Morrison
Chris Hecht
Kevin Keyt

i.umisc.comments/suzw21.1jhmmkskewh comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 28TH DAY OF APRIL 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. SUZ-W-21-01, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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