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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

City of Ojai,

Complainant,

vs.

Golden State Water Company (U133W),

Defendant.

Case No. (C.) 16-06-008

(Filed June 14, 2016)

**GOLDEN STATE WATER COMPANY'S (U133W)  
ANSWER TO COMPLAINT OF CITY OF OJAI**

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July 25, 2016

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Pursuant to Rule 4.4 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Golden State Water Company ("Golden State") respectfully submits its answer to the Complaint of the City of Ojai ("Complainant").

**I. INTRODUCTION**

This complaint relates to a main break that occurred in the City of Ojai in July of 2014. Flooding from the main break damaged a nearby playhouse building located at 145 East Ojai Avenue ("Playhouse") and affected several businesses. Golden State and its primary insurer have diligently pursued the repair of the Playhouse and have worked closely with the owners of the Playhouse, Khaled A. Al-Awar and Walid A. Al-Awar ("Owners"), and their contractor in performing the restoration work. As with many construction projects, the Playhouse restoration project has encountered unforeseen circumstances and there have been disputes among the interested parties that have resulted in delay of the project's completion. These disputes are

currently being resolved pursuant to litigation initiated by the Owners of the Playhouse in the Ventura County Superior Court.

Notwithstanding the efforts of the stakeholders to resolve the issues surrounding the repair of the Playhouse, certain vocal members of the Ojai community are frustrated as to the pace of the repair work and have successfully lobbied Complainant to bring this complaint in an effort to get the Commission to step in and dictate the speed and manner in which the damage to the Playhouse will be addressed. This effort should be rejected as there is no legal basis for the Commission to get involved with the Playhouse repairs, and if it did the issues will only become more complicated and will likely engender even more delay.

Accordingly, Golden State is simultaneously filing a Motion to Dismiss the Complaint of the City of Ojai on the grounds that (1) Complainant lacks standing to bring this complaint because Complainant is not the owner of the Playhouse, (2) the complaint fails to state a cause of action even assuming all of the allegations of the complaint are true, and (3) the claim for violation of General Order 103-A is procedurally improper because the same claim is currently pending before the Commission in Application 14-07-006. Alternatively, if the Commission determines that the Complaint should not be dismissed with prejudice, Golden State has also requested that the Commission exercise its discretion to dismiss this case without prejudice to permit the Ventura County Superior Court to adjudicate the related claims that are pending in that court, with the Playhouse Owners' claims set for trial on December 12, 2016.

## **II. MATERIAL ALLEGATIONS OF THE COMPLAINT**

As to Section (C) of the complaint, Golden State lacks information sufficient to form a belief as to the truth of the allegations regarding Complainant's attempt to resolve the matter informally, any response to Complainant's request, whether Complainant appealed to the

Consumer Affairs Manager, and whether it has money on deposit with the Commission. Golden State admits that Complainant's service is not disconnected.

As to Section (D) of the complaint, Golden State admits on information and belief the allegation that the name, address, and telephone number listed is that of Complainant.

As to Section (E) of the complaint, Golden State admits the allegation that it has office space at the listed address and that the telephone number listed is that of Golden State.

As to Section (F) of the complaint, Golden State responds to the STATEMENT OF FACTS as follows:

Golden State admits the facts in paragraph one that a water main break occurred in Ojai, California, on July 20, 2014, and the main break resulted in flooding to a nearby building. Golden State admits that the building was “home to two businesses,” and that as a result of the flooding, the building was red tagged. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph one and on that basis denies them.

Golden State admits the facts in paragraph two that the building is still red tagged and repairs are not currently being made. Golden State admits the fact that repairs began on the Playhouse, but as a result of the coverage dispute between its insurance companies James River Insurance Company and Starr Indemnity & Liability Company, and the fact that the Owners had chosen not to make a claim under the Playhouse's property insurance policy (among other things), the repair of the Playhouse came to a halt. Golden State admits on information and belief that the “stucco [is] removed from a large wall exposing a façade of Tyvek plastic wrap.” Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph two and on that basis denies them.

Golden State denies the allegation in paragraph three that “[t]he location of the building, and the eye sore the disrepair has created, cannot be emphasized enough.” Golden State lacks sufficient information to form a belief as to the truth of the allegations that “[t]he building sits at Ojai's busiest intersection” and on that basis denies them. Golden State admits on information and belief the remaining allegations in paragraph three.

Golden State admits the facts in paragraph four that “[i]nitially there was no indication that the repairs to the building would encounter any problems. Repairs to the building began shortly after the main break occurred and things were moving forward in a reasonable manner.” Golden State further admits that there is pending litigation between its primary and excess insurance companies, and also admits that there is pending litigation between the Owners of the Ojai Playhouse and Golden State. The allegation in paragraph four that Golden State has exhausted its insurance coverage with its primary insurance company is a legal conclusion as to which no response is required. Golden State lacks sufficient information to form a belief as to the remaining allegations of paragraph four and on that basis denies them.

Golden State lacks sufficient information to form a belief as to the truth of the facts alleged in paragraph five and on that basis denies them.

Golden State admits the facts in paragraph six that the building is not currently being fixed in part due to a pending insurance coverage disputes. Golden State denies the characterization of the insurance coverage dispute as “the squabbling of the insurance companies.” Golden State lacks sufficient information to form a belief as to the remaining allegations of paragraph six and on that basis denies them.

Golden State lacks sufficient information to form a belief as to the truth of the facts alleged in paragraph seven and on that basis denies them.

Golden State denies the allegation in paragraph eight that the CPUC is the community's "last hope" as a resolution of the issues regarding the damage to the Playhouse will be reached pursuant to the litigation initiated by the Owners of the Playhouse against Golden State in the Ventura County Superior Court, and that lawsuit is set for trial in December of this year. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph eight and on that basis denies them.

As to Section (F) of the complaint, Golden State responds to the ARGUMENT as follows:

Golden State denies the allegation in the section heading that it is "Obligated . . . To Promptly Repair Any Damage To Any Street or Public Improvement and Should Be Obligate [sic.] to Treat the Repair of the Ojai Playhouse Building in the Same Manner."

The allegations that Golden State has violated Ojai City Ordinance Number 382, Section 10 (f) are legal conclusions as to which no response is required. To the extent these allegations contain factual allegations requiring a response, Golden State lacks sufficient information to form a belief as to the truth of the facts alleged in paragraph one and on that basis denies them.

Golden State lacks sufficient information to form a belief as to the truth of the allegations in paragraph two and on that basis denies them.

Golden State admits that Complainant has quoted Exhibit E in paragraph three, but lacks sufficient information to form a belief as to the truth of the allegations contained in the quote and on that basis denies them. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph three and on that basis denies them.

Golden State admits that Complainant has quoted Exhibit F in paragraph four, but lacks sufficient information to form a belief as to the truth of the allegations contained in the quote and

on that basis denies them. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph four and on that basis denies them.

Golden State admits that Complainant has quoted Exhibit G in paragraph five, but lacks sufficient information to form a belief as to the truth of the allegations contained in the quote and on that basis denies them. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph five and on that basis denies them.

Golden State admits the allegation in paragraph six that it is a member of the Ojai Valley Chamber of Commerce. Golden State admits that Complainant has quoted Exhibit H in paragraph six, but lacks sufficient information to form a belief as to the truth of the allegations contained in the quote and on that basis denies them. Golden State admits the procedural history of its challenge of the use of the Mello-Roos bond to acquire the Ojai CSA. Golden State denies the allegation that “[o]nly through a full investigation by the CPUC can it be determined whether GSWC’s ulterior motives are causing the delay in the Ojai Playhouse building being repaired.” Golden State specifically denies that it has any “ulterior motive” related to the repair of the Ojai Playhouse building. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph six and on that basis denies them.

Golden State admits that Complainant has quoted Exhibits I and J in paragraph seven, but lacks sufficient information to form a belief as to the truth of the allegations contained in the quotes and on that basis denies them. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph seven and on that basis denies them.

Golden State denies the allegations that “[t]he damage caused by the failure to repair the building is public in nature, in the same manner as ‘damage to any street or public improvement’ is public in nature.” Golden State denies the allegations that “[t]he CPUC should step in and use

its authority to protect the community from this continuing harm.” Golden State denies the allegations that “[t]here is no question that GSWC is at fault.” Golden State denies the fact that it “has admitted that it is responsible for the repairs.” Golden State has admitted that it is, generally speaking, responsible for the damage to the Ojai Playhouse building; the question, however, to be determined by the Ventura County Superior Court is the nature and extent of the damage to the Playhouse as well as the proper methodology for the remedy to be applied, i.e., cost of repair or diminution in value. Golden State denies the allegation that “[t]he CPUC must be able to provide some relief to a community that is being held hostage by the whims of insurance companies who do not have any interest in the vitality of the Ojai community.” Golden State denies the allegations that “[t]he damages caused to the public by the failure to repair this building will never be fully compensated. The community will never be made whole. Only an order requiring the prompt repair of the Ojai Playhouse building will stop the continuing harm to the community and mitigate the damage to the public.” Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph eight and on that basis denies them.

Golden State denies the fact alleged in the section heading that its “Failure to Adequately Inspect and Maintain Pipeline Valves . . . Violated Commission General Order 103-A and Exacerbated Damage to the Ojai Playhouse Building.”

Golden State admits the fact in paragraph nine that pipeline valves are used during water main breaks to isolate leaks and re-route water around the main break. Golden State denies that it did not have a pipeline valve maintenance program until June 2014. Golden State has not conducted an investigation into historical pipeline valve maintenance in the Ojai service district and as such Golden State lacks sufficient information to form a belief as to the truth of the

allegations that Golden State did not do any pipeline valve maintenance in the Ojai service district from 2009 to February 2015, and on that basis denies them. Golden State admits that it does not have any records of pipeline valve maintenance in the Ojai service district from 2009 until February 2015. Golden State admits that Complainant has quoted the brief submitted by Ojai FLOW in the currently pending General Rate Case No. 14-07006. The allegations contained in Ojai FLOW's brief are legal arguments and conclusions as to which no response is required.

Golden State has not conducted an investigation into historical pipeline valve maintenance in the Ojai service district and as such Golden State lacks sufficient information to form a belief as to the truth of the allegations in paragraph 10 that “[a]t the time of the main break, GSWC had done no valve maintenance for numerous years[,]” and on that basis denies them. Golden State denies the allegation that its “failure to maintain pipeline valves exacerbated the severe damage caused to the Ojai Playhouse building.” Golden State specifically denies that it has violated Commission Order 103-A. Golden State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph ten and on that basis denies them.

As to Section (F) of the complaint, Golden State responds to the CONCLUSION as follows:

Golden State admits the allegation that the CPUC's mission statement includes the statement quoted by Claimant in paragraph one. Golden State denies the remaining allegations in paragraph one.

Golden State lacks sufficient information to form a belief as to the allegations in paragraph two that “[t]he failure to repair the Ojai Playhouse building is hurting the Ojai economy” and on that basis denies them. Golden State denies that “[a]llowing the harm to

continue would [] result in the CPUC failing in its, `commitment to a healthy California economy.'”

Golden State admits the allegation in paragraph three that the CPUC's core values include “accountability and integrity.” Golden State denies that these core values are “at issue in this case.” Golden State denies that the CPUC “needs to hold GSWC accountable for the damage it has caused to the Ojai Playhouse building and the continuing damage it is causing the public.”

Golden State denies the allegation in paragraph four that the “integrity of the CPUC and GSWC is at issue in this case.” Golden State admits that Complainant has “accused [Golden State] of retaliating against the Ojai community for its vote to oust the company as water purveyor in Ojai” but denies that it is “retaliating” in any way and further denies that the delay of the Ojai Playhouse building repairs is in any way related to Complainant's attempt to acquire the Ojai CSA. Golden State lacks sufficient information to form a belief as to the truth of the allegation that “[t]his feeling does not just permeate the Ojai community, but is shared by the Ventura County Supervisor representing Ojai” and on that basis denies them. Golden State denies that “[t]he failure to repair the Ojai Playhouse building cannot be detached from the fact that Ojai no longer wants GSWC to operate in Ojai, and that the public has voted to tax itself to fund the acquisition of GSWC by Casitas Municipal Water District.”

Golden State admits the allegation in paragraph five that “[t]he City of Ojai acknowledges that the CPUC does not have the authority to award damages” and further admits that the CPUC does not have authority to do so in this case. Golden State admits that the CPUC has authority to address the cause of the water main break through a full investigation into the situation pursuant to California Public Utilities Code, Section 315. Golden State admits that

Complainant has correctly quoted from Section 315 of the Public Utilities Code but denies that an investigation is necessary in this case. Golden State admits the fact that the “[t]he CPUC has the authority to make orders as in its judgment seems just and reasonable.” Golden State admits that the City of Ojai is requesting that “the CPUC investigate and make such orders, including but not limited to, ordering GSWC to immediately complete repairs to the Ojai Playhouse building.” However, Golden State denies that it is necessary for the CPUC to investigate and make such an order in this case.

Golden State denies the allegation in paragraph six that “[t]he harm caused by the failure to repair the Ojai Playhouse building rises to a level of a CPUC investigation.” Golden State denies the allegation that “[t]he harm is extensive and cannot be adequately addressed by the public in any other forum.” Golden State avers that the issue of repairing the Ojai Playhouse building is already being addressed in another forum—California state court, with a trial in that case set for December 12, 2016. Golden State denies the allegation that “[t]he harm is continuing and public in nature. The harm is irreparable and without CPUC assistance the harm will continue.” Golden State admits that the CPUC has authority to “investigate the situation” but denies that it is “the appropriate authority to investigate the situation and make orders as are deemed just and reasonable” in this particular case.

Golden State admits the allegation in paragraph seven that Complainant has requested “that the CPUC make orders to ensure that this situation does not happen again.” Golden State denies the remaining allegations in paragraph seven.

Golden State denies the allegation in paragraph eight that “[t]he franchise agreement with the City of Ojai must provide some relief to the continuing harm to the public.” Golden State lacks sufficient information to form a belief as to the truth of the allegations that “[t]he Ojai City

Council would never have entered into an agreement that left it powerless to protect the public from continuing harm” and on that basis denies them. Golden State lacks sufficient information to form a belief as to the truth of the allegations that “[f]or the Ojai City Council to be unable to provide protection from continuing harm to the public is unconscionable” and on that basis denies them. Golden State admits that the CPUC has “authority to protect the public” but denies that action by the CPUC is necessary in this case to “protect the public.”

As to Section (G) of the complaint, Golden State responds as follows:

As to Section G(1), Golden State admits that this complaint is properly categorized as adjudicatory.

As to Section G(2), Golden States' position is that the complaint fails as a matter of law and should be dismissed with prejudice by the Commission. Golden State has filed a motion to dismiss the complaint contemporaneously with this answer. To the extent that the Commission determines that this complaint proceeding should not be dismissed, Golden State believes that evidentiary hearings will be necessary as Golden State disputes many of the facts alleged in the complaint.

As to Section G(3), Golden State admits the allegation that this complaint is a regular complaint.

As to Section G(4), Golden States' position is that the complaint fails as a matter of law and should be dismissed with prejudice by the Commission. Golden State has filed a motion to dismiss the complaint contemporaneously with this answer and believes that the Commission should grant this motion and therefore there are no issues to be decided by the Commission in this complaint proceeding. To the extent that the Commission determines that this complaint proceeding should not be dismissed, Golden State disagrees with Complainant's description of

the issues to be considered by the Commission. Golden State's position is that the issues Complainant has identified are procedurally improper and not appropriate for a complaint proceeding. Complainant's allegations in Section G(4) consist of Complainant's requested relief, as to which no response is required. Insofar as a response is required, Golden State admits that Complainant is seeking the specified relief, but denies that Complainant is entitled to the relief requested, or any other relief from the Commission or Golden State.

As to Section G(5), Golden States' position is that the complaint fails as a matter of law and should be dismissed with prejudice by the Commission. Golden State has filed a motion to dismiss the complaint contemporaneously with this answer and believes that the Commission should grant this motion and therefore a prehearing conference and evidentiary hearings are not necessary in this complaint proceeding. To the extent that the Commission determines that this complaint proceeding should not be dismissed, Golden State disagrees with Complainant's proposed schedule. Complainant's request to hold a prehearing conference no more than 14 days from the filing of the complaint is unreasonable and ignores the Commission's established procedure and rules governing complaint proceedings. In the event that Golden State's motion to dismiss the complaint is not granted expeditiously, the Commission should set a prehearing conference in this proceeding pursuant to Rule 7.2 of the Commission's Rules of Practice and Procedure. Complainant's request that the Commission hold evidentiary hearings 21 days after the prehearing conference and not more than 35 days from the filing of the complaint likewise is unreasonable and ignores the Commission's established procedure and rules governing complaint proceedings. In the event that Golden State's motion to dismiss the complaint is not granted expeditiously, the Commission should establish a hearing schedule at the prehearing conference in this proceeding held pursuant to Rule 7.2 of the Commission's Rules of Practice

and Procedure. In the event evidentiary hearings are held in this complaint proceeding, Golden State's preliminary comment is that such evidentiary hearings should be held at least 90 days after the prehearing conference. Golden State reserves the right to further comment on the schedule in this matter in a prehearing conference statement and at the prehearing conference. Golden State specifically denies the allegation that the facts in this case are uncontroverted. Golden State disputes many facts alleged by Complainant. Golden State admits the allegation that the Ojai Playhouse's building was damaged on July 20, 2014. Golden State denies the remainder of the allegations in Section G(5).

As to Section H of the complaint, this section consists of Complainant's requested relief, as to which no response is required. Insofar as a response is required, Golden State admits that Complainant is seeking the specified relief, but denies that Complainant is entitled to the relief requested, or any other relief from the Commission or Golden State. Golden State avers that Complainant is not entitled to relief from Golden State under this complaint as a matter of law and this case should be dismissed.

#### **AFFIRMATIVE DEFENSES**

Golden State asserts the following affirmative defenses:

##### **FIRST AFFIRMATIVE DEFENSE**

Golden State re-alleges and incorporates herein each and every one of its affirmative allegations set forth above.

##### **SECOND AFFIRMATIVE DEFENSE**

The complaint as a whole, and each purported cause of action alleged therein, fails to state facts sufficient to constitute a cause of action.

### **THIRD AFFIRMATIVE DEFENSE**

Complainant has failed to allege any act or thing done or omitted to be done by Golden State, including any rule or charge established or fixed by or for Golden State, in violation or claimed to be in violation of any provision of the law or any rule of the Commission as required by Public Utilities Code Section 1702. Thus, the complaint fails to state a cause of action under Section 1702.

### **FOURTH AFFIRMATIVE DEFENSE**

The complaint violates Rule 4.2 of the Commission's Rules of Practice and Procedure because it is vague, uncertain, ambiguous, and unintelligible. The complaint does not adequately advise Golden State or the Commission of the grounds of the complaint or what Golden State has purportedly done to injure the Complainant.

### **FIFTH AFFIRMATIVE DEFENSE**

Golden State has acted reasonably and in good faith at all times material hereto, based on all relevant facts and circumstances known by it at the time so acted.

### **SIXTH AFFIRMATIVE DEFENSE**

No act or omission of Golden State was the cause of Complainant's injury, if any.

### **SEVENTH AFFIRMATIVE DEFENSE**

Complainant failed to mitigate its injury, if any.

### **EIGHTH AFFIRMATIVE DEFENSE**

Complainant has waived and is equitably estopped and barred from asserting any and all challenges to the adequacy of Golden State's valve maintenance and inspection program in Ojai, California because Complainant had a full and fair opportunity to take part, and actually did take part, in Application 14-07-006.

**NINTH AFFIRMATIVE DEFENSE**

The complaint is procedurally improper because it raises the same issues that are currently pending in Application 14-07-006.

**TENTH AFFIRMATIVE DEFENSE**

Complainant lacks standing to assert its claims.

**ELEVENTH AFFIRMATIVE DEFENSE**

The CPUC should abstain, temporarily or permanently, from deciding the issues presented in Complaint or granting any of the relief requested by Complainant, in order to avoid interference with the ongoing state court litigation in Ventura County Superior Court, *Al-Awar, et al. v. Golden State*, Case No. 56-2015-00474589-CU-PO-VTA and *James River Insurance Company v. Starr Indemnity & Liability Company*, Case No. 56-2015-00474653-CU-IC-VTA.

**TWELFTH AFFIRMATIVE DEFENSE**

The complaint will be an improper collateral attack on the Commission's decision in Golden State's general rate case, Application 14-07-006, and all duly authorized Commission decisions.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

Golden State cannot fully anticipate at this time all defenses that may be applicable. Accordingly, Golden State reserves the right to assert additional affirmative defenses if and to the extent such affirmative defenses are later discovered and found to be applicable.

Dated: July 25, 2016

Respectfully submitted,

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