

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF KAREN ERICKSON’S) CASE NO. IPC-E-21-22
PETITION THAT THE IDAHO PUBLIC)
UTILITIES COMMISSION REQUIRE)
PUBLIC UTILITIES TO COMPLY WITH) ORDER NO. 35124
THE AMERICANS WITH DISABILITIES)
ACT)

On June 14, 2021, Karen Erickson filed¹ a two-page petition with the Commission in which she made two requests. First, Ms. Erickson asked the Commission to require public utilities to comply with the federal Americans with Disabilities Act (“ADA”) and provide disabled persons equal access to utility services. Second, Ms. Erickson asked the Commission to comply with the accessibility requirements of the ADA. For background, the Petition directs the Commission to review Ms. Erickson’s informal complaints with the Commission’s consumer division.

FINDINGS

Having reviewed the Petition and Ms. Erickson’s 2021 informal complaints, we dismiss the Petition without prejudice pursuant to procedural Rule 65. IDAPA 31.01.01.065. While dismissals under procedural Rule 65 are usually done without issuance of an order, we issue this order today because Ms. Erickson’s Petition is somewhat unique in the history of this Commission: it asks us to enforce the ADA on public utilities. The Commission lacks statutory authority to enforce the ADA and is ill-suited for such a role.

We decline to enforce ADA-based claims against public utilities because we lack the statutory authority to do so. As earlier noted, Ms. Erickson’s Petition makes two requests: 1) that the Commission require public utilities to comply with the ADA and provide disabled persons equal access to utility services, and 2) that the Commission comply with the accessibility requirements of the ADA. While Ms. Erickson states her first request as a general request, her Petition and communications with Commission Staff have alleged ADA violations by two specific Commission-regulated public utilities², and the alleged violations have been against Ms. Erickson

¹ Ms. Erickson’s document was handed to Commission Staff during a June 14, 2021, meeting. Ms. Erickson asked that Staff file the document with the Commission as a petition.

² In her 2021 informal complaints, Ms. Erickson accused only one Commission-regulated public utility (Idaho Power Company) of violating the ADA. In the Petition, Ms. Erickson also accuses Intermountain Gas Company of failing to comply with the ADA. As earlier noted, however, the Petition does not explain the facts around the alleged ADA violation, and does not cite the particular provisions of the ADA violated.

alone. The ADA and supporting federal regulations are clear: the Commission is not the appropriate government entity to investigate an alleged ADA violation. An individual who believes it has been subjected to discrimination because of disability may file a civil action. 42 U.S.C. § 12133 (enforcement against a public entity); 42 U.S.C. § 12188 (enforcement against a private entity). Additionally, the U.S. Attorney General has broad investigative authority under the ADA. 42 U.S.C. §§ 12117 and 12188. When an individual believes it has been subjected to discrimination because of disability by a public entity, federal regulations provide an administrative process. 28 C.F.R. § 35.190. Therefore, the ADA clearly describes by what means ADA-based claims may be made. This Commission has not been delegated the authority to process such a claim.

Additionally, Ms. Erickson's Petition does not comply with the form and content requirements for petitions. Under procedural Rule 53 (IDAPA 31.01.01.053), petitions must "[f]ully state the facts upon which they are based" and "[r]efer to the particular provisions of statute, rule, order or other controlling law upon which [the petitions] are based." Ms. Erickson asserted in the Petition that "Idaho Utilities at present fail [to] comply with Federal ADA requirements protecting equal access to public utilities." Ms. Erickson also asserted that "[l]ack of ADA compliance by Public Utilities has created a significant barrier to community integration for me over a 9 year period." Ms. Erickson concluded that, "This extreme length of time is the result of the lack of an accessible complaint process by both Public Utilities and the [Commission] neither of which provide accessible information regarding a complaint process or an effective ADA grievance process, as required by Federal ADA Regulation, to accommodate the access and communication needs of disabled Idaho Residents." The Petition, then, is an unsupported assertion that Idaho public utilities and the Commission are not compliant with the ADA. The facts upon which Ms. Erickson's Petition is based are not fully stated. Likewise, Ms. Erickson's Petition refers to the ADA and "ADA Regulation," but the Petition does not refer to any particular provisions of statute or rule upon which the Petition is based. On the Petition's failure to comply with procedural Rule 53 alone, we may dismiss this Petition without prejudice under procedural Rule 65.

Regarding the Petition's second request—that the Commission comply with the accessibility requirements of the ADA—Ms. Erickson fails to provide the facts upon which this request is based and fails to refer to any particular provisions of statute and regulation upon which

her request is based. Indeed, Ms. Erickson's 2021 informal complaints show Staff went to great lengths to try to reach Ms. Erickson so that Staff could determine what reasonable accommodation she needed. In its July 9, 2021, decision memorandum, Staff asserted it would "continue to work with Ms. Erickson to determine what reasonable accommodations she requires to participate in and enjoy the services, programs, or activities" of the Commission.

So far as this Commission is aware, it has complied with the ADA. Nothing in the Petition or Ms. Erickson's informal complaints shed light on an identifiable ADA violation by this Commission. We take compliance with the ADA very seriously, but Ms. Erickson has failed to state the facts and specific statutory authority supporting her allegation.

For these reasons, Ms. Erickson's Petition is defective and insufficient under procedural Rule 65. We dismiss the Petition without prejudice.

ORDER

IT IS HEREBY ORDERED that Ms. Erickson's Petition is dismissed without prejudice pursuant to procedural Rule 65. IDAPA 31.01.01.065

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. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 4th day
of August 2021.



PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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