

Michael C. Creamer (ISB No. 4030)
Preston N. Carter (ISB No. 8462)
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
mcc@givenspursley.com
prestoncarter@givenspursley.com

Attorneys for SUEZ Water Idaho Inc.

RECEIVED
2020 NOV 18 PM 1:29
IDAHO PUBLIC
UTILITIES COMMISSION

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

MOTION IN OPPOSITION TO
INTERMOUNTAIN FAIR HOUSING
COUNCIL'S PETITION TO
INTERVENE

SUEZ Water Idaho Inc., (“SUEZ Water,” “Applicant,” or “Company”), by and through its attorneys of record, Givens Pursley LLP, and in accordance with Idaho Public Utilities Commission Rule 75, submits this Motion in Opposition to Intermountain Fair Housing Council’s (“IFHC”) Petition to Intervene.

Introduction

SUEZ Water recognizes and respects the Commission’s traditional approach of broadly allowing intervention to interested parties. Ratemaking is a public process, and a broad range of perspectives can make the outcome of the process thorough, transparent, accurate, and fair.

While broad intervention is appropriate—indeed, laudable—a line must be drawn somewhere. Injecting complicated, contentious, and irrelevant legal issues into a

ratemaking proceeding can impede rather than facilitate a process designed to result in rates that are fair, just, and reasonable. See Idaho Code § 61-504 (requiring Commission to establish rates that are “fair, just and reasonable”).

So it is here. In this case, the IFHC has petitioned to intervene. IFHC does not purport to represent a particular customer segment; does not identify any ratemaking issue that it would like to address; and does not otherwise express an interest in the relevant ratemaking principles. Instead, IFHC alleges that the proposed rate increase is likely to violate the Fair Housing Act. Petition at 2. IFHC also alleges that the public notices provided by SUEZ Water—which fully comply with the Commission’s rules—violate the Fair Housing Act. *Id.* at 3.

While the Fair Housing Act is an important federal law, it applies to specific and enumerated circumstances—activities related to selling, renting, or financing dwellings. The Fair Housing Act does not apply to SUEZ Water, or to utility ratemaking proceedings by investor-owned utilities. Accordingly, SUEZ Water respectfully submits that the IFHC’s intervention would unduly broaden the issues in this proceeding. IFHC’s Petition to Intervene should be denied.

Factual Background

On September 30, 2020, SUEZ Water filed an application to initiate a general rate case to increase SUEZ Water’s rates across all customer classes by approximately 22.3%. Case No. SUZ-W-20-02, Application (filed Sept. 30, 2020) (“Application”) at 2. The proposed rate increase, which would reflect an expected rate of return of approximately 7.46% is based on prudent investments and other utility ratemaking principles. *Id.* at 2-3.

As required by the Commission's rules, on July 30, 2020, SUEZ Water filed with the Commission a notice of intent to file a general rate case. See Case No. SUZ-W-20-02, Notice of Intent to File General Rate Case (filed July 30, 2020); IDAPA 31.01.01.122 (requiring large utilities to file notice before initiating a general rate case).

As required by the Commission's rules, SUEZ Water provided news releases to local media and mailed notices to each individual customer. Both are attached to SUEZ's Application. Application at 4; IDAPA 31.01.01.125.01 (requiring customer notice) & .04 (requiring press release).

After processing the Application, the Commission issued notice—in English—informing the public that SUEZ Water had filed the Application, providing information about the Application, and providing instructions on how to participate in this proceeding. Case No. SUZ-W-20-02, Notice of Application & Order No. 34819 (filed Oct. 21, 2020); IDAPA 31.01.01.123.02 (requiring Commission to provide public notice).

On November 11, 2020, the Intermountain Fair Housing Council petitioned to intervene. The Petition focuses exclusively on housing discrimination. IFHC alleges:

- 1) The IFHC seeks to “ensure open and inclusive housing for all people” and to eradicate discrimination under the federal Fair Housing Act and other laws and regulations which prohibit housing discrimination. Petition at 2 (emphasis added).
- 2) IFHC believes the proposed rate increase will likely cause a disparate impact “in violation of the FHA [Fair Housing Act] and other laws and regulations which prohibit housing discrimination.” *Id* (emphasis added).
- 3) IFHC alleges that the notices provided by SUEZ—which were in English, not other languages spoken in SUEZ's service area—“violat[e] the FHA [Fair Housing Act] and other laws and regulations which prohibit housing discrimination.” *Id.* at 3 (emphasis added).
- 4) IFHC alleges that granting intervention will allow it “to provide further input on the possible violations of the FHA and other laws and regulations which prohibit housing discrimination.” *Id.* (emphasis added).

Five additional groups have petitioned to intervene in this proceeding:

(1) Community Action Partnership Association of Idaho (“CAPAI”), which states that it represent SUEZ’s low-income customers; (2) Ada County, which states that it represents SUEZ’s customers within the County as well as itself as a SUEZ customer; (3) the City of Boise, which states that it represents SUEZ’s customers within the City as well as itself as a SUEZ customer; (4) John Gannon, Stephanie Montero, Kyme Graziano, and Karoline Philp, who state that they will represent themselves as SUEZ customers; and (5) a group styled as SUEZ Water Customer Group, which states that it represents SUEZ ratepayers.

SUEZ Water does not oppose intervention by these groups.

Legal Standards

The Commission has discretion to deny intervention “to prevent disruption, prejudice to existing parties, or undue broadening of the issues, or for other reasons.” IDAPA 31.01.01.072.

The Fair Housing Act prohibits housing discrimination on the basis of race, sex, national origin, and other characteristics. See, e.g., Housing Discrimination Under the Fair Housing Act, U.S. Department of Housing and Urban Development, *available at https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overvie* w (last visited Nov. 13, 2020) (“The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.”)

The Fair Housing Act reflects the nationwide importance of prohibiting discrimination in housing-related practices. However, it does not apply to ratemaking by

investor-owned utilities. It applies to, and prohibits, discrimination in enumerated, specific circumstances related to the sale, rental, and financing of dwellings. None of the activities to which the Fair Housing Act applies are at issue in this proceeding.

Argument

1. If allowed to intervene, IFHC will unduly broaden the issue in this proceeding.

A. IFHC does not express an interest in, or a position regarding, any of the utility ratemaking issues addressed in the Application.

SUEZ Water's Application is based on generally accepted utility ratemaking principles. SUEZ proposes to increase rates such that the expected rate of return on prudently incurred investments will be approximately 7.46%. Application at 2. The testimony submitted in support of the Application discusses SUEZ's financial statements, analysis of SUEZ's revenues, analysis of cost of service, analysis of cost of capital, and description of recent capital improvements. *Id.* at 3. SUEZ proposes to implement the requested increase by a uniform percentage to all rate elements; it does not propose to alter customer classes, or the allocation of costs between them. *Id.*

Intermountain Fair Housing Council does not address any of the ratemaking concepts presented in the Application. Nor does IFHC purport to represent any segment of SUEZ's customers. Instead, IFHC's petition to intervene specifically alleges that the proposed rate increase, and notice of the Application, constitute housing discrimination on the basis of protected classes.¹ IFHC's Petition at ¶¶3-6. IFHC does not express an interest in, or otherwise address, the ratemaking principles at issue in the Application.

¹ The Fair Housing Act prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status, and disability.

SUEZ Water does not question that housing discrimination is an important national issue, or that IFHC may do important work in other areas of the law. However, SUEZ Water's Application raises issues of utility ratemaking. IFHC's Petition to Intervene does not address any issues related to utility ratemaking, but instead presents issues entirely outside the scope of this proceeding. IFHC's intervention would unduly broaden the issues in the proceeding.

B. The Fair Housing Act applies to persons engaged in the business of renting, selling, or financing dwellings. It does not apply to investor owned utilities like SUEZ Water.

The Fair Housing Act "protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities." Housing Discrimination Under the Fair Housing Act, U.S. Department of Housing and Urban Development, website provided above.

The Act contains three main sections, each of which prohibits discrimination in a specific, housing-related circumstance.

42 U.S.C. § 3604(a)-(f) prohibits discrimination in the sale or rental of dwellings; discrimination in the terms, conditions, or privileges of sale or rental of a dwelling; discrimination in advertising for the sale or rental of a dwelling; representing to a person that a dwelling is not available for inspection, sale, or rental when the dwelling is in fact available; inducing any person from selling or renting a dwelling in a neighborhood based on that person's membership in a protected class; and discriminating in the sale or rental of a dwelling because of a disability.

42 U.S.C. § 3605 prohibits discrimination in "residential real estate-related transactions," defined as "the making or purchasing of loans or providing other financial

assistance – (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or (B) secured by residential real estate.”

42 U.S.C. § 3606 prohibits “deny[ing] any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization or other service . . . relating to the business of selling or renting dwellings” on the basis of membership in a protected class.

The Fair Housing Act does not contain any provision regarding utility ratemaking. IFHC does not identify any statute, regulation, or authority that applies the Fair Housing Act to ratemaking by an investor-owned utility. SUEZ Water’s independent research has not revealed any.

SUEZ Water does not engage in the housing-related activities regulated by the Fair Housing Act. Nor does the Application involve any of the housing-related activities regulated by the Fair Housing Act. Accordingly, IFHC’s intervention would unduly broaden the issues in the case.²

C. SUEZ’s notices comply with the Commission’s rules, which do not implicate—much less violate—the Fair Housing Act.

IFHC alleges that the notices provided in this case violate the Fair Housing Act because they were not provided “in languages commonly spoken in Suez’s service

² IFHC alleges that the proposed rate increase “will likely constitute a disparate impact upon ratepayers in violation of the FHA.” Petition at 2. Disparate-impact claims are subject to specific pleadings requirements that are designed to “protect potential defendants against abusive disparate-impact claims,” and to allow governmental entities to “achiev[e] legitimate objectives.” *Texas Dept. of Housing & Commtty. Affairs vs. Inclusive Commtys Project, Inc.*, 576 U.S. 519, 544 (2015). U.S. Department of Housing and Urban Development regulations likewise impose specific pleading requirements for disparate-impact claims. See 24 CFR § 100.500(b) (“At the pleading stage, to state a discriminatory effects claim based on an allegation that a specific, identifiable policy or practice has a discriminatory effect, a plaintiff or charging party must sufficiently plead facts to support each of the following elements: (1) That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law”). If IFHC is allowed to intervene, it must comply with the pleading requirements for disparate impact claims.

area.” Petition at 2. SUEZ’s notices fully comply with the Commission’s rules. See IDAPA 31.01.01.122 (requiring notice of intent to file general rate case); 125.01 (requiring customer notice); 125.04 (requiring press release). The notices provided by the Commission in this case—and in every other case in which SUEZ is aware—were provided in English.

Neither SUEZ nor the Commission engages in any of the housing-related activities regulated by the Fair Housing Act. Accordingly, the Fair Housing Act’s notice requirements do not apply to the notices provided in this case. Allowing IFHC to intervene would inject this irrelevant issue into the proceeding, unduly broadening the case and diverting the parties’ attention from what is at issue.

2. The proceeding is not a proper forum to seek expansion of the Fair Housing Act.

As discussed above, IFHC does not identify any specific aspect of SUEZ Water’s Application that implicates its interests. Instead, IFHC broadly asserts that the proposed rate increases may have a disparate impact upon members of classes protected by the Fair Housing Act. Petition at 2. In addition, IFHC does not identify anything specific to SUEZ Water’s notice of the Application, but rather contends generally that notices given in English violate the Fair Housing Act. *Id.* at 3.

Accordingly, IFHC’s allegations are not so much arguments about SUEZ Water’s proposal, but instead allegations that utility ratemaking and the Commission’s notice requirements, more generally, violate the Fair Housing Act. The implications of IFHC’s arguments are not limited to the case. If the Fair Housing Act applies to utility ratemaking, then all rate increases must be analyzed for disparate impact, and notice

provided in accordance with Commission rules have violated the Fair Housing Act in all ratemaking proceedings.

Simply stated, IFHC's issue does not appear to be SUEZ Water, but rather with the entire endeavor of utility ratemaking in this Commission.

IFHC is free to argue that the Fair Housing Act should be expanded to include utility ratemaking. However, those arguments should be made to the political branches, to a court, or perhaps (at most) in an independent proceeding in this Commission. The parties and the Commission have enough to handle in the context of this case. Allowing IFHC to intervene to advance its unsupported interpretation of the Fair Housing Act will unduly broaden the issues and detract from the parties' abilities to focus on the merits of SUEZ's Application.

Conclusion

For these reasons, SUEZ Water respectfully submits that the Commission deny Intermountain Fair Housing Council's Petition to Intervene.

DATED: November 18, 2020.

SUEZ WATER IDAHO INC.



By: _____
Michael C. Creamer
Preston N. Carter
Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that on November 18, 2020, a true and correct copy of the foregoing was served upon all parties of record in this proceeding via electronic mail as indicated below:

Commission Staff

Jan Noriyuki, Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste. 201-A
Boise, ID 83714
jan.noriyuki@puc.idaho.gov

Electronic Mail

Dayn Hardie
Deputy Attorney General
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste. 201-A
Boise, ID 83714
dayn.hardie@puc.idaho.gov

Electronic Mail

Ken Nagy
Attorney at Law
P.O. Box 164
Lewiston, ID 83501
knagy@lewiston.com

Electronic Mail



Preston N. Carter