

RECEIVED

2020 NOV 20 PM 3: 31

IDAHO PUBLIC  
UTILITIES COMMISSION

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.*

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 TO ACCEPT REPLY IN  
SUPPORT OF MOTION IN  
OPPOSITION TO  
INTERMOUNTAIN FAIR HOUSING  
COUNCIL'S PETITION TO  
INTERVENE

**Introduction**

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 Rules 56 and 75, submits this Motion to Accept Reply in Support of Motion in Opposition to Intermountain Fair Housing Council's ("IFHC") Petition to Intervene.<sup>1</sup>

---

<sup>1</sup> The Commission's rules do not specifically address reply briefs. However, SUEZ believes the Commission has discretion to accept reply briefs as necessary to facilitate deciding a motion. Here SUEZ submits that a reply brief is appropriate to address the *City of LaGrange* case, which IFHC did not cite in its Petition to Intervene and which, as explained below, does not apply to this proceeding.

## Argument

On November 18, 2020 SUEZ Water moved to deny the IFHC's Petition to Intervene. On November 19, 2020, the IFHC filed a response. SUEZ Water does not see a need to reply to the entirety of IFHC's response; many of the assertions made in the Response are self-defeating.<sup>2</sup>

**1. The *LaGrange* case—which is not binding in Idaho—does not apply to ratemaking proceedings brought by an investor-owned utility.**

IFHC cites a single case from the Eleventh Circuit Court of Appeals—which is not binding in Idaho—for the proposition that the Fair Housing Act applies to this proceeding. See Response at 3 (citing *Georgia State Conference of the NAACP v. City of LaGrange, Georgia*, 940 F.3d 627, 631-32 (11th Cir. 2019)).

The *LaGrange* case does not apply here. In that case, the City of LaGrange was the “sole provider of electricity, gas, and water to its residents.” *LaGrange*, 940 F.3d at 630. The City denied its residents from obtaining *any* utility services if the resident owed *any* debt to the City, including court judgments and fines. *Id.* at 630 (noting that, to obtain service, “both applicants and current utility customers must pay debts they owe to the City, including court judgments and fines”). In other words, the City denied gas, water, and electric services to its residents if the residents had an outstanding parking ticket. Under those circumstances, the Court held that the City's denial of services

---

<sup>2</sup> For example, IFHC asserts that “Suez has apparently consulted only guidance contained in a HUD website in support of its contentions that the FHA does not apply to the matters at issue in this proceeding.” Response at 2. However, SUEZ addressed each operative provision of the Act, the U.S. Supreme Court caselaw that governs disparate-impact claims, and HUD regulations. All of which the IFHC ignores.

rendered housing unavailable to certain residents and could therefore be viewed as a violation of the Fair Housing Act.<sup>3</sup> *LaGrange*, 940 F.3d at 635.

In this proceeding, SUEZ proposes nothing of the sort. SUEZ's Application seeks a rate increase, to be applied equally among all customer classes, in accordance with utility ratemaking proceedings. No more, no less. The proceeding has nothing to do with the sale or rental of a dwelling, the denial of sale or rental of a dwelling, or anything else related to the sale or rental of a dwelling. Construing the Fair Housing Act as applying to this case would indeed "expand that Act into a civil rights statute of general applicability rather than one dealing with the specific problems of fair housing opportunities," a result that *LaGrange* warned against. *LaGrange*, 940 F.3d at 633 (quoting *Clifton Terrac Assocs, Ltd. v. United Tech. Corp.*, 929 F.3d 714, 720 (D.C. Cir. 1991)).

Stated another way, the *LaGrange* decision related to the denial of utility services to a City resident if the resident had an unrelated, past-due debt to the City. In this case, SUEZ does not propose to deny utility services. SUEZ's Application relates to setting a fair rate for the utility services that SUEZ will actually provide to its customers.

In addition, in *LaGrange* the Court dealt with a municipal provider that provided all utility services to its residents, and that attempted to leverage the necessary nature of utility services to secure payment of unrelated debt. The case did not involve a rate increase by an investor-owned utility. *E.g.*, *LaGrange*, 940 F.3d at 630 ("The municipal government of the City of LaGrange, Georgia, is the sole provider of electricity, gas, and water utility services in LaGrange." (emphasis added)); *id.* at 633 ("[W]e must decide

---

<sup>3</sup> Because that case was decided on a motion to dismiss, the Court did not determine whether the City actually violated the Fair Housing Act. The Court also did not decide whether the plaintiff had met the pleading requirements for disparate-impact claims. *LaGrange*, 940 F.3d at 635 n.5.

whether § 3604(b) applies to the specific post-acquisition services at issue here: municipally provided electricity, gas, and water services.” (emphasis added)); *id.* (discussing precedent “involving services provided by local governments” (emphasis added)); *id.* at 634 (“In this case, the City is the sole provider of the basic utility services of water, gas, and electricity.” (footnote omitted)).

By contrast, SUEZ is an investor-owned utility seeking an across-the-board general rate increase in accordance with general ratemaking principles. Idaho Fair Housing Council has failed to identify any authority that applies the Fair Housing Act to a ratemaking case brought by an investor-owned utility.

IFHC does cite 24 CFR § 100.5(b), which expresses HUD’s interpretation of the Fair Housing Act as applying to the sale or rental of dwellings or the provision of services in connection to the sale or rental of dwellings. IFHC Response at 3 (quoting 24 CFR § 100.5(b)). But SUEZ’s application is not connected to the sale or rental of dwellings. IFHC does not cite to any caselaw, HUD regulation, or other authority that applies the Fair Housing Act to a general rate case brought by an investor-owned utility.

**2. IFHC has not met, and does not attempt to meet, the pleading requirements for disparate-impact claims. Nor has it explained how an across-the-board rate increase could constitute discrimination on the basis of sex, race, color, national origin, religion, sex, familial status, or disability.**

IFHC fails to address, much less meet, the heightened pleading requirements for a disparate-impact case. See SUEZ Motion in Opposition to IFHC’s Motion to Intervene at 7 n.2 (setting forth U.S. Supreme Court caselaw and HUD regulations regarding pleadings requirements for disparate-impact claims). If IFHC is allowed to argue that SUEZ’s Application, SUEZ’s notices, and, by implication, the Commission’s practices,

violate the Fair Housing Act, then IFHC must meet the procedural requirements that apply to its claims.

In addition, the Fair Housing Act prohibits housing discrimination on the basis of certain classes—race, color, national origin, religion, sex, familial status, or disability. SUEZ's Application seeks a uniform rate increase for all customers, based on prudently incurred expenses related to provision of water service. IFHC entirely fails to explain how such an increase could possibly constitute discrimination on the basis of a protected class.

IFHC argues that it could later be dismissed from the proceeding if it turns out that it has no direct or substantial interest in the proceeding. IFHC Response at 5. But we already know what IFHC's alleged interests are—it alleges that the proposal, and the notice provided, violates the Fair Housing Act. But as noted above, the Fair Housing Act does not apply to this proceeding. The Commission need not wait to determine whether IFHC seeks to inject irrelevant issues in this proceeding. The entire basis that IFHC sets forth for its intervention is irrelevant.

IFHC argues that SUEZ's "only argument in support" of SUEZ's argument that its notices were sufficient "is that such notices have always been provided in English." IFHC Response at 5. That is incorrect. SUEZ argues that 1) its notices fully comply with the Commission's rules, and 2) the Fair Housing Act—which forms the basis for IFHC's arguments that notice in English constitutes housing discrimination in violation of the Fair Housing Act—does not apply.

It would be one thing if the IFHC represented, for example, Spanish-speaking SUEZ customers and requested that SUEZ and the Commission provide notice in

Spanish. But that is not what IFHC argues. IFHC argues only that it seeks to prohibit unlawful housing discrimination, and that the notices allegedly violate the Fair Housing Act. Housing discrimination and the Fair Housing Act is not at issue in this proceeding. IFHC's petition should be denied on that basis.

### **Conclusion**

The Intermountain Fair Housing Council requests that this Commission apply the Fair Housing Act to a utility ratemaking proceeding initiated by an investor-owned utility, and to hold that a uniform rate increase justified by prudently incurred expenses constitutes discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability. In doing so, it cites a single case, from a non-binding jurisdiction, that involves a factually distinct scenario.

IFHC's intervention in this case has already diverted the parties' and the Commission's resources away from the ratemaking principles actually at issue to legal wrangling over an irrelevant statute. If allowed to intervene, IFHC's participation will continue to divert attention and resources away from the ratemaking issues presented in the Application. Because IFHC's participation as an intervenor will unduly broaden the issues in the case, SUEZ Water respectfully submits that the Commission deny Intermountain Fair Housing Council's Petition to Intervene.

DATED: November 20, 2020.

SUEZ WATER IDAHO INC.



By: \_\_\_\_\_

Michael C. Creamer  
Preston N. Carter  
*Attorneys for Applicant*

## CERTIFICATE OF SERVICE

I certify that on November 20, 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](mailto: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](mailto:dayn.hardie@puc.idaho.gov)

**Electronic Mail**

Ken Nagy  
Attorney at Law  
P.O. Box 164  
Lewiston, ID 83501  
[knagy@lewiston.com](mailto:knagy@lewiston.com)

**Electronic Mail**



---

Preston N. Carter