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IDAHO PUBLIC UTILITIES COMMISSION

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BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF SUEZ WATER)	CASE NO. SUZ-W-20-02
IDAHO INC.'S APPLICATION FOR)	
AUTHORITY TO INCREASE ITS RATES)	INTERVENOR'S RESPONSE TO
AND CHARGES FOR WATER SERVICE)	SUEZ'S MOTION IN OPPOSITION
IN IDAHO)	TO PETITION TO INTERVENE
_____)	

COMES NOW Intervenor Intermountain Fair Housing Council, Inc. (hereinafter "Intervenor") and hereby responds to the *Motion in Opposition to Intermountain Fair Housing Council's Petition to Intervene* (hereinafter "Motion in Opposition") filed by Suez Water Idaho Inc. (hereinafter "Suez") dated the 18th day of November, 2020.

I.

As a preliminary matter, Suez has filed its Motion in Opposition pursuant to Rule 75 of the Rules of Procedure of the Idaho Public Utilities Commission. *Mtn. in Opp.* at 1. Suez does not reference the particular rule or rules pursuant to which it files its Motion in Opposition and the Intervenor presumes that it is filed pursuant to IDAPA §31.01.01.075, which is the rule that

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provides for the filing of a motion in opposition to a petition to intervene. IDAPA §31.01.01.075. That rule does not expressly provide for the filing of a response by the intervening party and there does not appear to be any other rule which provides for such a response.

However, the Intervenor feels compelled to submit this response because in its Motion in Opposition, Suez has made several gross misrepresentations with regards to the application of the federal Fair Housing Act, 42 U.S.C. §3601 *et seq.* (hereinafter “FHA”). The purpose of this response is to set the record straight with regards to the applicability of that federal statute.

II.

Suez asserts in its Motion in Opposition that “the Fair Housing Act...applies to specific and enumerated circumstances—activities related to selling, renting, or financing dwellings.” *Mtn. in Opp.* at 2 and 5. On the basis of this assertion, Suez contends that the Intervenor’s petition to intervene should be denied because “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.” *Mtn. in Opp.* at 7.

The United States Department of Housing and Urban Development (hereinafter “HUD”) is designated as the federal agency that administers the FHA. 42 U.S.C. §3608. In making the above argument, Suez has apparently consulted only guidance contained a HUD website in support of its contentions that the FHA does not apply to the matters at issue in this proceeding. *Mtn. in Opp.* at 4 (referencing HUD website located at: https://www.hud.gov/program/offices/fair_housing_equal_opp/fair_housing_act_overview). In so doing, Suez has disregarded

the ample legal authorities which may it clear that the application of the FHA is not so limited as Suez contends.

HUD has promulgated official regulations pertaining to the FHA, which are set forth at 24 C.F.R. §100 *et seq.* As to the scope of those regulations, they explicitly provide that “[t]his part provides the Department’s interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate transactions.” 24 C.F.R. §100.5(b) (emphasis added).

It is well-settled in the federal courts that the FHA does not merely apply to housing transactions and that it applies to a wide range of actions affecting housing. The United States Supreme Court has held that “the language of the [FHA] is broad and inclusive.” *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 93 S.Ct. 364 (1972). Relying in part on the *Trafficante* Court’s reasoning, the Eleventh Circuit Court of Appeals recently rejected a municipality’s argument that the FHA did not apply to its provision of utility services, holding that the FHA “prohibits a wide range of conduct, has a broad remedial purpose, and is written in decidedly far-reaching terms. The statute does not contain any language limiting its application to discriminatory conduct that occurs prior to or at the moment of the sale or rental.” *Georgia State Conference of the NAACP v. City of LaGrange, Georgia*, 940 F.3d 627, 631-32 (11th Cir. 2019) (internal quotations and citations omitted). The *City of LaGrange* court concluded that “[t]he basic utility services at issue here— water, gas, and electricity— are distinct from other municipal services in two critical ways, both of which demonstrate their direct connection to the sale or rental of a dwelling: (1) they are services closely tied to the sale or rental of a dwelling,

and (2) they are essential to the habitability of a dwelling. As explained further, these two distinctions support our conclusion that the water, gas, and electricity services at issue here fall within the scope of [the FHA]”. *Id.* at 634.

Given these authorities, it is clear that Suez’s contention that the FHA does not apply to the matters before the Commission are erroneous.

III.

Suez further contends that the Intervenor’s petition to intervene “presents issues entirely outside the scope of this proceeding” and that the Intervenor’s participation “would unduly broaden the issues in the proceeding.” *Mtn. in Opp.* at 6. Suez explicitly prefers that this Commission deny the Intervenor’s participation in this proceeding and that the Intervenor instead direct its concerns regarding the impact of Suez’s requested relief “to the political branches, to a court, or perhaps (at most) in an independent proceeding in this Commission.” *Mtn. in Opp.* at 9.

The Intervenor’s purpose in seeking intervention is to raise issues concerning the public interest, specifically whether the rate increase that Suez is seeking will violate the ratepayer’s fair housing rights. In considering whether to grant Suez’s requested increase in rate, such matters are certainly within “the scope of this proceeding”.

Furthermore, it is indeed an unusual argument that the Intervenor should be denied participation in this Commission’s forum, where it can provide input into the rate-setting process and how the ratepayer’s fair housing rights may be impacted, and instead require the Intervenor to seek redress through formal litigation. The Intervenor’s intention in seeking to participate in this proceeding is to hopefully avoid the necessity of potentially costly litigation for the parties involved. Suez is essentially arguing that the rate-setting process should proceed with disregard

for the legal rights of the ratepayers and that any possible violations of the law should be addressed after the rate-setting process is concluded. Such an argument turns logic and common sense on its head.

As this Commission is well-aware, the rules provide that it may grant intervention to a party and subject such intervention to “reasonable conditions”. IDAPA §31.01.01.074. Further, “[i]f it later appears that an intervenor has no direct or substantial interest in the proceeding, or that the intervention is not in the public interest, the Commission may dismiss the intervenor from the proceeding.” *Id.* The Intervenor has explained the reasons that is seeking intervention in its Petition for Leave to Intervene, previously submitted to the Commission. The Intervenor is seeking intervention so that the implications of the FHA may be addressed when the Commission is considering whether to grant the rate increase that Suez is requesting. Such matters are best addressed at the time of rate-setting rather than afterwards. In the event that the Commission grants intervention to the Intervenor and later determines that the issues it is raising are not in the public interest, it may dismiss the Intervenor as a party to the proceeding. However, in such a situation, at least the Intervenor was afforded the opportunity to raise the issues with which it is concerned and the Commission was afforded the opportunity to consider those issues. Denying intervention to the Intervenor, as Suez has requested, would cut-off such opportunities.

IV.

Finally, Suez contends that it had no obligation to provide notices to the rate-payers in any other language besides English. *Mtn. in Opp.* at 7-8. Its only argument in support is that such notices have always been provided in English. *Id.* at 8.

In making this argument, Suez overlooks the provision in the rules concerning the issuing of notices to the public, which provides that the information contained such notices is to be “easily understood”. IDAPA §31.01.01.125(03). Furthermore, the rule has the stated purpose of “encourag[ing] wide dissemination to customers of information concerning proposed rate changes for utility services.” IDAPA §31.01.01.125(06). There is therefore no foundation for the argument that the public notices issued herein complied with this rule if they were all issued in English and a significant portion of the area’s population are non-English speakers or are of limited English proficiency.

Furthermore, the FHA prohibits discrimination in the “terms, conditions, or privileges [in] the provision of services” in housing on the basis of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. §3604(b). The failure to provide meaningful notice in this proceeding to non-English speaking ratepayers and to ratepayers of limited English proficiency appears to implicate this portion of the FHA by discriminating on the basis of national origin. This matter therefore is not, as Suez contends, an “irrelevant issue”. *Mtn. in Opp.* at 8. Adequate notice to the public is a threshold issue that should be considered as early as feasible in this proceeding, rather than leaving it off for possible future litigation, as Suez seems to prefer.

DATED this 19th day of November, 2020.

Ken Nagy

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2020, I caused to be served a full, true, and accurate copy of the foregoing by the method/s indicated below, and addressed to the following:

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