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IDAHO PUBLIC UTILITIES COMMISSION

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)	PUBLIC COMMENT OF
AND CHARGES FOR WATER SERVICE)	INTERMOUNTAIN FAIR HOUSING
IN IDAHO)	COUNCIL, INC.
)	
_____)	

COMES NOW the Intermountain Fair Housing Council, Inc. (hereinafter "IFHC") and hereby provides public comment to the Idaho Public Utilities Commission (hereinafter "IPUC") in the above-entitled proceeding.

I. PRELIMINARY MATTERS

As a preliminary matter, IFHC notes that it was granted leave to intervene as a party to this proceeding by the IPUC by Order No. 34861 entered on the 4th day of December, 2020. The purpose of IFHC participation, as stated in its Petition for Leave to Intervene, was to "provide further input on the possible violations of the FHA and other laws and regulations which prohibit housing discrimination that will result in the event that the proposed rate increase is approved."

Pet. at 3. As a party, IFHC participated in this proceeding and conducted discovery on Suez Idaho Water, Inc. (hereinafter "Suez") and on the IPUC. IFHC also previously filed with the IPUC its Testimony of Zoe Ann Olson dated the 17th day of March, 2021 which provided input on the matters described above. Finally, IFHC filed with the IPUC its Motion for Leave to

PUBLIC COMMENT OF INTERMOUNTAIN
FAIR HOUSING COUNCIL, INC.

Withdraw as Party dated the 18th day of March, 2021 for the reason that it had provided such input to the IPUC and it felt that its participation in this proceeding was no longer necessary.

IFHC has not yet been granted leave to withdraw as a party to this proceeding by the IPUC. It now submits this public comment in an abundance of caution to be certain that its input is received and considered by the IPUC. This public comment does not materially differ from the Testimony of Zoe Ann Olson previously filed with the IPUC.

II. PUBLIC COMMENT

A. Mission of IFHC

IFHC is a private, nonprofit organization organized under the laws of the State of Idaho with its principal place of business at 4696 West Overland Road, Suite 140, Boise, Idaho 83705. Its mission is to ensure open and inclusive housing for all people, and to advance equal access to housing for all persons without regard to race, color, sex, religion, national origin, familial status, sexual orientation, gender identity, source of income, or disability (the term “handicap”, as that term is used and defined in the federal Fair Housing Act, 42 U.S.C. §3601 *et seq.*, is used herein interchangeably with the term “disability”). IFHC attempts to eradicate discrimination through, among other things, education on the fair housing laws, housing information and referrals, housing counseling, and assistance with mediating and or filing complaints. IFHC also provides education and outreach on fair housing laws and practices to housing consumers, providers, and others.

B. Lack of Proper Notice

The notice that Suez gave notice to the public regarding the matters at issue in this proceeding did not comply with federal fair housing laws because it was given only in English.

A significant percentage of Suez’s customers do not speak English as their first language or are

not proficient in English. Such housing consumers are therefore not put on proper and effective notice as to the matters at issue in this proceeding, cannot be expected to be fully aware of the matters at issue in this proceeding, and have therefore been denied the full opportunity to give effective input into this proceeding.

As recipients of federal funding, both Suez and IPUC are required to comply with the Fair Housing Act (Title VIII of the Civil Rights Act) in regard to land use decisions as they relate to housing. The Fair Housing Act prohibits discrimination against people who are of a different national origin, which includes many people who are not proficient in English. Providers of federally-assisted housing, housing transactors, and programs must also comply with Title VI of the Civil Rights Act. Title VI requires additional language assistance measures. The Fair Housing Act is meant to ensure equal treatment of people who are limited English proficient. Title VI is meant to result in an equal outcome for those who are limited English proficient because of the additional language assistance measures. Limited English proficiency is not listed among the protected classes in either title of the Civil Rights Act. However, case law and a HUD Office of General Counsel guidance document <https://ifhcidaho.org/wp-content/uploads/2019/07/2-2016-HUD-General-Counsel-Guidance.pdf> equate limited English proficiency to race and national origin which are both protected classes. https://ifhcidaho.org/wp-content/uploads/2019/07/3-HUD_guidance_Jan07.pdf

C. Impact on Housing Affordability

Furthermore, the evidence in the record indicates that Suez unilaterally proceeded to complete approximately \$115,000,000.00 in modifications to its water delivery system at issue in this proceeding prior to seeking or obtaining approval from IPUC for a rate increase. The purpose of those modifications are to increase Suez's long-term profitability and Suez predicts

that they will increase its revenues by \$10,200,000.00 per year. It does not appear from the record that Suez completed such modifications in order to resolve all of its water quality issues, such as its delivery of brown water to its customers in the Boise Bench area. Such matters should have been given priority when Suez made its modifications.

There is also nothing in the record that indicates that Suez considered affordability issues when it completed its modifications. Instead, Suez unilaterally incurred significant expense in making modifications of its choosing and now seeks a rate increase from IPUC to cover the costs of such modifications. Such actions by Suez turns logic on its head. Had Suez first sought a rate increase from IPUC to cover the costs of making modifications to its water delivery system, IPUC could have required Suez to prioritize affordability and water quality issues based on input from the public as a condition to obtaining a rate increase.

Unless IPUC now places such conditions on Suez, any input from the public on such matters as affordability and water quality are irrelevant to this proceeding. By comparison, when an Idaho municipality wishes to complete significant and costly modifications of its public works, it first conducts public hearings and, if it determines that it wishes to proceed, submits the matter to a public referendum by seeking a bond levy. In so doing, the public can have effective input and the municipality can receive and consider that input before it decides whether to proceed. In contrast, in this proceeding, the issue before IPUC is not whether to grant the increase but how much to grant. Therefore, the rate increase that Suez is seeking is a foregone conclusion and as a result of that rate increase, housing affordability will certainly be impacted.

D. Disparate Impact on Housing Consumers in Violation of FHA

Finally, the evidence in the record indicates that Suez wholly failed to conduct any studies or inquiries into the impact that the rate increase it is seeking will have on housing

consumers on the basis of race, color, sex, religion, national origin, familial status, and disability, which are protected statuses under the federal Fair Housing Act, 42 U.S.C. §3601 *et seq.* (hereinafter “FHA”). There is no dispute that any increase in rates will impact housing affordability. However, IFHC has reviewed the increase that Suez is seeking and is concerned that the increase will constitute a disparate impact specifically on housing consumers who are members of the above-listed protected statuses.

The FHA prohibits policies or practices which have a discriminatory effect on any of the protected statuses, even if the specific practice was not motivated by discriminatory intent. *See*, 24 C.F.R. §100.500. Thus, although there is no evidence at this time that Suez intends to engage in discriminatory conduct on any of the protected statuses, the granting of the rate increase that Suez would nevertheless constitute a violation of the FHA. *Id.* Fair housing regulations provide that when such a claim is brought, the defending party must “produc[e] evidence showing that the challenged policy or practice advances a valid interest (or interests) and is therefore not arbitrary, artificial, and unnecessary.” *Id.* at §100.500(c). However, Suez would be unable to make such a showing in light of the facts in the record discussed above, including:

1) Suez’s failure to provide proper or effective notice as to the matters at issue in this proceeding to customers who do not speak English as their first language or are not proficient in English, thereby denying them the full opportunity to give effective input into this proceeding, which shows its interest in obtaining a rate increase is arbitrary. Suez has arbitrarily chosen to provide a meaningful opportunity for participation in this proceeding only for English-speaking customers.

2) Suez’s actions in unilaterally deciding to proceed to complete modifications to its water delivery system at issue prior to seeking or obtaining approval from IPUC for a

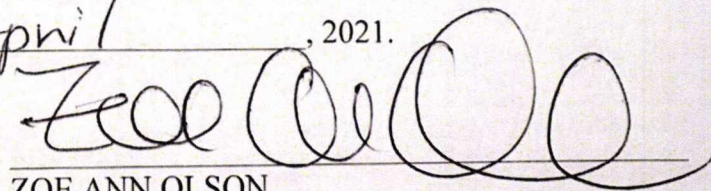
rate increase, which shows its interest in obtaining a rate increase is artificial and unnecessary. Suez has artificially and unnecessarily attempted to create a need for a rate increase without considering affordability and water quality issues, and instead placing its profits over such other concerns.

E. Requested Relief

While IFHC recognizes that the IPUC is not the proper forum to make a determination that the FHA has been violated by Suez, it wishes to bring these considerations to the attention of the IPUC and urges the IPUC to require Suez to address water quality issues and affordability prior to approving a rate increase. If the rate increase that Suez has requested is granted without these issues being properly addressed, each and every customer of Suez who is impacted by the discriminatory effect of Suez's actions would be an injured party under the FHA and has the right to initiate formal legal action.

In order to remedy this situation, the IPUC should require Suez to first conduct a comprehensive study or inquiry into how the proposed rate increase will impact housing affordability in the relevant service area. Once this is accomplished, in the event that Suez wishes to proceed with its rate increase, it should be required by the IPUC to comply with fair housing requirements to give notice of such a request in all languages commonly spoken in the relevant service area. Until such steps are accomplished, the IPUC cannot proceed with this matter without contributing to the discriminatory effect of Suez's actions.

DATED this 13th day of April, 2021.

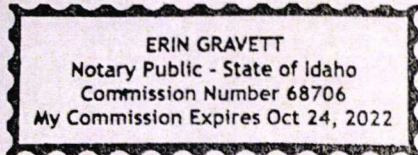


ZOE ANN OLSON
Executive Director
Intermountain Fair Housing Council, Inc.

STATE OF IDAHO)
) ss
County of Ada)

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of
April, 2021.

(SEAL)



Erin Gravett
Notary Public in and for the State of Idaho,
Residing at Boise, Idaho
My commission expires: Oct. 24, 2022

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2021, 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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