

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

[Handwritten signatures and initials: JLB, and others]

IN RE: THE COMPLAINT OF LAGRANGE) CAUSE NO. 43616
 COUNTY REGIONAL SEWER DISTRICT)
 NOTICE TO APPEAL FROM A DECISION BY) ORDER ON CONSUMER
 THE INDIANA UTILITY REGULATORY) AFFAIRS DIVISION APPEAL
 COMMISSION'S CONSUMER AFFAIRS)
 DIVISION) APPROVED: APR 29 2009

BY THE COMMISSION:
 Jeffrey L. Golc, Commissioner
 Lorraine Hitz-Bradley, Administrative Law Judge

This matter comes to the Indiana Utility Regulatory Commission ("Commission") as an appeal from a decision of the Commission's Consumer Affairs Division ("CAD"). On November 21, 2008, the CAD issued an informal complaint resolution ("CAD Decision") regarding a consumer complaint of Gordon's Campground ("Gordon's") against LaGrange County Regional Sewer District ("LaGrange"). The CAD found that LaGrange was obligated to pay a refund to Gordon's, retroactive to January 1, 2005. On December 1, 2008, LaGrange appealed the CAD's decision that LaGrange was charging Gordon's an impermissible rate pursuant to I.C. § 13-26, *et seq.*

1. **Commission Jurisdiction and Review.** LaGrange is a "regional sewage district", as defined in I.C. § 5-19-1-4 and I.C. § 13-11-2-164. Gordon's is a campground. Under I.C. § 13-26-11-2.1, a campground may file a complaint with a regional sewer district regarding the fees assessed on it. If the campground is not satisfied with the resolution of its complaint, it may thereafter file a complaint with the Commission's CAD. Gordon's filed a complaint with the CAD after attempting to resolve a rate dispute with LaGrange. The CAD made a finding on the matter which LaGrange timely appealed. Therefore, we have jurisdiction over the parties and the subject matter of this cause.

Our review of a CAD decision is based on the record presented to the CAD by the parties, which is consistent with I.C. § 8-1-2-34.5. In this case, we have determined that the question is one of law that does not require additional information other than the allegations in LaGrange's appeal.

2. **Procedural History.** On March 22, 2006, Gordon's filed its complaint with the CAD alleging that LaGrange was impermissibly charging Gordon's a rate higher than that allowed under I.C. § 13-26, *et seq.* This complaint was filed by Gordon's after it attempted to resolve the matter with LaGrange, and LaGrange reviewed and affirmed the rate charged to Gordon's.

In its *Appeal* hereunder, LaGrange stated that on April 4, 2006, counsel for LaGrange spoke with the Director of CAD, Ja-Deen Johnson, who informed him that the matter would be resolved pursuant to 170 I.A.C. § 8.5-2-5. LaGrange stated that it had no subsequent contact with CAD until

March 14, 2007, when CAD made ten (10) data and document requests of LaGrange and advised LaGrange that CAD would conduct an informal review.

On April 16, 2007, LaGrange filed a *Motion to Dismiss* the complaint on grounds that the review had not been completed under the time frame set forth in 170 I.A.C. § 8.5-2-5. LaGrange cited language that “the Commission shall provide an informal review within twenty-one (21) days... result[ing] in a written decision ...within thirty (30) days of the customer’s request [complaint].” 170 I.A.C. § 8.5-2-5(b)(1). LaGrange argued that because the Commission had not acted within that time frame, the Commission was divested of jurisdiction to determine the matter. The CAD advised LaGrange on May 29, 2007 that its *Motion to Dismiss* had been denied. LaGrange subsequently complied with CAD’s document request on September 24, 2007.

On November 21, 2008, CAD issued its decision on Gordon’s complaint. Finding largely for LaGrange, the CAD nonetheless found that LaGrange was to “reimburse the campground for monthly meter fees charged to the campground from January 1, 2005 forward”, based on a finding that LaGrange had “failed to justify or support any amount for meter calibration.” In addition, the CAD found unpersuasive LaGrange’s evidence of either rate monitoring or engineering costs, and therefore excluded these sums as well, stating that “the monthly reimbursement fee assessed to the customer should not have exceeded \$34.38.” November 21, 2008 finding letter, at 7. The CAD therefore ordered LaGrange to credit “the customer the difference between the Monthly Reimbursement Fee the customer has actually paid and the amount determined appropriate by the CAD.” *Id.* at 8. It is from these findings that LaGrange timely appealed on December 1, 2008. LaGrange argues that the Commission was divested of its jurisdiction to make a finding on a consumer complaint in November 2008 because the underlying complaint was filed in March 2006.

3. Commission Analysis and Decision. The applicable statute which governs rate disputes by campground owners and operators is I.C. § 13-26-11-2.1. This section requires that a campground owner attempt resolution of its dispute with the regional utility district’s Board, and we find that Gordon’s met this requirement by filing its complaint with LaGrange before seeking the assistance of the Commission. If a campground is not satisfied after the informal attempt, it may thereafter appeal to the Commission, and a review will:

(c)...be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in

dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

- (1) the owner or operator of the campground; and
- (2) the board;

by United States mail. Not later than seven (7) days after receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

I.C. § 13-26-11-2.1.

A. *Applicability of 170 I.A.C. 8.5-2-5.* LaGrange states that it was informed by the director of CAD in March 2006 that 170 I.A.C. § 8.5-2-5(b)(1) governed the initial dispute brought by the owners of the campground. There is no evidence in the record supporting this assertion, but assuming for the sake of argument that LaGrange's assertion is true, those 'rules' in fact do not apply.

The rules under 170 I.A.C. § 8.5-2-5(b)(1) pertain to and are entitled "Sewage Disposal Services," which, contrary to LaGrange's assertion, addresses more than merely resolution of rate-making disputes. The regulations apply generally to "sewage disposal company[ies]," which are defined as any natural person, firm, association, corporation, or partnership that owns, leases or operates any sewage disposal service within the rural areas of the state. 170 I.A.C. § 8.5-1-1(l). LaGrange is a regional sewage district, which is defined as a political subdivision under both I.C. § 5-19-1-4 and I.C. § 13-11-2-164. The definitions are not interchangeable; a "sewage disposal company" for purposes of 170 I.A.C. § 8.5-2-5(b)(1) is *not* a "regional utility district," and vice versa. To hold otherwise would render the language of I.C. § 13-26-9-1 superfluous.¹

¹ Every word in a statute must be given meaning and effect if possible, and the meaning of a statute must be considered in context with all other sections. *Shettle v. Meeks*, 465 N.E.2d 1136 (Ind. App. 1984). Ignoring words of a statute violates rules of statutory construction because to do so means that every word is not being given effect and meaning. *Union Twp. Sch. Corp. v. State ex rel. Joyce*, 706 N.E.2d 183 (Ind. App. 1998).

A request to review the decision of the CAD under 170 I.A.C. § 8.5-2-5 states that “the Commission shall provide an informal review within twenty-one days...and shall result in a written decision to be mailed to the customer and the company within thirty (30) days of the customer’s request.” *Id.* However, because 170 I.A.C. § 8.5-2-5(b)(1) applies only to sewage disposal companies, not regional sewer districts, LaGrange’s argument that CAD’s review must have been concluded within thirty (30) days of Gordon’s complaint is without merit.

B. Timeliness of Review. LaGrange argues that the language of I.C. § 13-26-11-2.1, which references a ‘prompt and thorough investigation of the dispute’ by CAD, means that the delay between the initiation of the complaint in March 2006 and resolution in November 2008 divests the Commission of its ability to determine the matter.

We recognize the length of time taken by CAD in resolving the dispute took longer than usual and that the dispute could have been handled in a more timely fashion. However, we also note that CAD’s decision in this case was on an issue of first impression before the Commission; it contains detailed technical findings, including financial analysis and conclusions, all of which indicate that a longer period of time was needed for review and resolution. While the Commission strives to provide a timely resolution of complaints, the statute contains no specific timeframe for issuance of a decision by CAD and we decline to impose one. Furthermore, regardless of whether the CAD could have conducted its investigation and review in a timelier manner, there is nothing in the statute which would support the loss of Commission jurisdiction to resolve this matter. We therefore reject this argument by LaGrange.

Similarly LaGrange argues that the length of time for complaint resolution violates principles of fairness. Viewing it conversely, however, a refusal to resolve Gordon’s complaint because of a lapse in time is a certain violation of fairness principles. Gordon’s was given the opportunity to file a complaint, and there is nothing in the statute, either directly or indirectly, that indicates that they lose that right because of the passage of time, notably not of their making. LaGrange was on notice that its rates were being questioned. It therefore had the opportunity to take such action as it deemed necessary to “hedge” against a possible judgment against it. The fact that LaGrange may not have done so is not a cause to overturn the CAD’s determination. In addition, the fact that the decision was later in time than LaGrange may have expected does not, *de facto*, make it unfair. The decision was not so unfair as to make it fundamentally unreasonable and subject to reversal.

C. Retroactive Refund. The CAD’s decision ordered a refund to Gordon’s retroactive to January 2005, the date on which the statute retroactively became operative.

LaGrange argues that “at most, the IURC can grant relief only for the period of time that its own rule [170 I.A.C. § 8.5-2-5(b)(1)] allows for review and notification of its decisions: one month.” Alternatively, LaGrange cites I.C. § 13-26-11-2.1(e), which states that “[i]f the basic monthly charge

paid while the review [by CAD] is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board [of the regional sewage district] shall refund or credit the excess amount paid to the owner or operator." LaGrange therefore argues that because the complaint was filed on March 26, 2006, the CAD could not go back further than the date of complaint, *or* only a month under 170 I.A.C. § 8.5-2-5. As we noted above, 170 I.A.C. § 8.5-2-5(b)(1) does not apply to this action.

We first note that although the statute was made retroactive to January 2005, this does not create a right to a cause of action that accrues on that date, absent circumstances that meet the statute's requirements. A review of the documents tendered to the record by docket entry on December 19, 2008 shows that on April 16, 2007, LaGrange filed its *Motion to Dismiss* the pending CAD complaint. In its recitation of the facts, LaGrange stated that Gordon's owners had written to LaGrange "on or about February 20, 2006." In addition, the letter from Gordon's to the Commission requesting review of the decision, dated March 22, 2006, stated that "up to 12-30-05, we have paid the LaGrange sewer district \$520,272 in sewer bills[.]" Further, Gordon's stated that "[i]t took us 7 years and a new law (I.C. § 13-26-11-2) to allow our campground to meter." While Gordon's may have been engaged in a dispute with LaGrange that spanned the time including January 2005, the dispute for purposes of our review is constrained to the time during which the complaint was pending. I.C. § 13-26-11-2.1(e) states that "[i]f the basic monthly charge paid *while the review is pending* exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator." (Emphasis added.) We therefore find that March 22, 2006, the date on which Gordon's complained to the Commission, to be the appropriate date from which to calculate the refund payable to Gordon's by LaGrange. In all other respects, we affirm the CAD's finding.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The November 21, 2008 decision of the Consumer Affairs Decision in this Cause is modified consistent with the terms of this Order.
2. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER, AND ZIEGNER CONCUR:

APPROVED: APR 29 2009

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe
Secretary to the Commission