

**CAUSE NO.: 06-47 A**  
**NAME: RIVER CITY ELEVATOR**  
**ADMINISTRATIVE LAW JUDGE: WILLIAM K. TEEGUARDEN**  
**DATE: August 2, 2007**  
**COMMISSION ACTION: AFFIRMED**

**FINDINGS OF FACT**

1. The Agency is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and 675 IAC 12 apply to this proceeding.
3. The Agency is the state body responsible for inspecting and licensing elevators in the State of Indiana.
4. The Commission is the ultimate authority over reviewable actions of the Agency within the meaning of IC 4-21.5.
5. At all times relevant to this matter, the Company was in the business of installing and maintaining elevators in Indiana.
6. On October 6, 2006, the Company requested an inspection of work done on passenger elevator 11464 ("Elevator") located on Walnut Street in Evansville, Indiana.
7. On October 13, 2006, a duly authorized employee of the Agency conducted the requested alteration inspection.
8. The Elevator did not pass the inspection because the unattended car motion did not work properly.
9. The Elevator did pass the rest of the inspection.
10. The inspector remained at the facility for the remainder of the afternoon while the Company contacted the manufacturer for guidance on how to solve the problem.
11. Unfortunately, the manufacturer's technical representative with whom the Company representative talked was apparently non-English speaking and a three hour attempt for help from the manufacturer failed.
12. When his work day was ending, the inspector filled out his "Report of Inspection" noting the one violation.
13. On October 16, 2006, the Company received the technical support it needed from the manufacturer and corrected the problem.
14. As a prerequisite to a reinspection, the Company paid additional fees of \$1750 and the inspector conducted the reinspection on October 16, 2006, and cleared the violation.
15. The Company filed a timely petition for review of the \$1750 fee required on October 16.
16. Fees for services charged by the Division of Fire and Building Safety are set by the General Administrative Rules, 675 IAC 12.
17. The specified fees for elevator inspections are found in 675 IAC 12-3-14 which was adopted by the Commission in 2006 and took effect August 30, 2006.
18. 675 IAC 12-13-14(d) requires payment of \$1000 for a subsequent inspection to complete and initial inspection of a new device or alteration when the device was

- not ready for inspection.
19. 675 IAC 12-3-14(e) requires a \$750 fee by assessed for follow up inspections where the initial inspection revealed noncompliance with the rules of the Commission.
  20. The only way the Agency can refund one of these fees is if it was collected in error.
  21. The Agency does not have the power to waive collection of these fees as set by the Commission.
  22. Only the Commission can vary the rules of the Commission and that is done through the Variance process as provided in IC 22-13-2, not through the administrative review process as provided in IC 4-21.5.
  23. While the Agency filed a motion entitled “Motion for Summary Judgment”, the administrative law judge will consider it a motion to dismiss for the reason that the relief requested cannot be granted by administrative review of the fees assessed.

**NONFINAL ORDER**

The \$1750 in re-inspection fees assessed by the Agency is affirmed.