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**STATE OF INDIANA**  
**INDIANA UTILITY REGULATORY COMMISSION**

IN THE MATTER OF THE PETITION OF THE TOWN OF )  
CLEAR LAKE, INDIANA FOR REVIEW OF RATES AND )  
CHARGES FOR WHOLESALE SEWAGE SERVICE )  
PURSUANT TO IND. CODE§ 8-1-2-61.7; AND, ON BEHALF )  
OF AT LEAST TWENTY-FIVE USERS OF THE TOWN OF )  
FREMONT, INDIANA’S MUNICIPAL WASTEWATER )  
UTILITY, FOR REVIEW OF THE RATES AND CHARGES )  
IMPOSED ON USERS OF THE WORKS FOR SERVICE TO )  
PROPERTY LOCATED OUTSIDE THE CORPORATE )  
BOUNDARIES OF THE MUNICIPALITY PURSUANT TO )  
IND. CODE§ 8-1.5-3-8.3. )

CAUSE NO. 44925

RESPONDENT: THE TOWN OF FREMONT, INDIANA )

IN THE MATTER OF THE PETITION OF THE STEUBEN )  
LAKES REGIONAL WASTE DISTRICT FOR REVIEW OF )  
RATES AND CHARGES FOR WHOLESALE SEWAGE )  
SERVICE PURSUANT TO IND. CODE § 8-1-2-61.7; AND, ON )  
BEHALF OF ALL USERS OF THE TOWN OF FREMONT, )  
INDIANA’S MUNICIPAL WASTEWATER UTILITY, FOR )  
REVIEW OF THE RATES AND CHARGES IMPOSED ON )  
USERS OF THE WORKS FOR SERVICE TO PROPERTY )  
LOCATED OUTSIDE THE CORPORATE BOUNDARIES OF )  
THE MUNICIPALITY PURSUANT TO IND. CODE § 8-1.5-3- )  
8.3. )

CAUSE NO. 44940

APPROVED: NOV 21 2017

RESPONDENT: THE TOWN OF FREMONT, INDIANA )

**ORDER OF THE COMMISSION**

**Presiding Officers:**  
**Sarah E. Freeman, Commissioner**  
**Loraine L. Seyfried, Chief Administrative Law Judge**

On March 29, 2017, the Town of Clear Lake, Indiana (“Clear Lake”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) in Cause No. 44925 seeking review under Ind. Code § 8-1-2-61.7 (“Section 61.7”) of the rates and charges for wholesale sewage service charged by the Town of Fremont, Indiana (“Fremont”). On behalf of at least 25 users of Fremont’s wastewater utility works whose property is located outside the corporate boundaries of Fremont, Clear Lake also requested review under Ind. Code § 8-1.5-3-8.3 (“Section 8.3”) of a 2017 Fremont ordinance that increased sewer rates.

On May 12, 2017, the Steuben Lakes Regional Waste District (“Steuben Lakes”) filed its Petition with the Commission in Cause No. 44940 seeking review under Section 61.7 of the rates and charges for wholesale sewage service charged by Fremont. On behalf of itself and its customers that are located outside the corporate boundaries of Fremont, Steuben Lakes also requested review under Section 8.3 of a 2017 Fremont ordinance that increased sewer rates.

In response to a Motion to Consolidate filed by Clear Lake and Steuben Lakes, the Presiding Officers consolidated Cause Nos. 44925 and 44940 on May 19, 2017, and established a procedural schedule for the filing of dispositive motions. On June 21, 2017, Fremont filed separate Motions to Dismiss the Petitions of Clear Lake and Steuben Lakes for lack of jurisdiction. Fremont also filed a Motion for Administrative Notice and Tender of Exhibits in support of its Motions. On July 26, 2017, Clear Lake and Steuben Lakes filed their respective responses to the Motions to Dismiss and for Administrative Notice. On August 16, 2017, Fremont filed its reply in support of its Motions to Dismiss and for Administrative Notice.

Also on August 16, 2017, Fremont filed a Request for Oral Argument. Clear Lake and Steuben Lakes filed a Joint Response on August 23, 2017, indicating they were willing to present an oral argument. Fremont filed its Reply on August 25, 2017. Given the relevant facts are undisputed and we are presented with simply a question of jurisdiction, we deny Fremont’s Request for Oral Argument.

Based on the applicable law and evidence presented, the Commission finds:

**1. Characteristics of the Parties.** Clear Lake is a municipally owned utility as defined in Ind. Code § 8-1-2-1(h). Clear Lake owns and operates a wastewater utility that is not subject to the Commission’s jurisdiction for the approval of rates and charges. Accordingly, Clear Lake is also a utility as defined in Section 61.7 and Ind. Code § 8-1.5-3-8.1.

Steuben Lakes is a regional waste district organized and existing pursuant to Ind. Code ch. 13-26-1. Steuben Lakes owns and operates a wastewater utility that is not subject to the Commission’s jurisdiction for the approval of rates and charges. Accordingly, Steuben Lakes is also a utility as defined in Section 61.7 and Ind. Code § 8-1.5-3-8.1.

Fremont is a municipally owned utility as defined in Ind. Code § 8-1-2-1(h). Fremont owns and operates a wastewater utility that serves customers within and outside of its corporate boundaries. Clear Lake and Steuben Lakes are wholesale customers of Fremont, which are located outside of Fremont’s corporate boundaries. Fremont is not subject to the Commission’s jurisdiction for the approval of rates and charges. Accordingly, Fremont is also a utility as defined in Section 61.7 and Ind. Code § 8-1.5-3-8.1.

**2. Background.** Fremont provides wholesale sewage treatment service to Clear Lake and Steuben Lakes pursuant to individual contracts. Neither Clear Lake’s nor Steuben Lakes’ contract contains specific rates and charges for the sewer service. Rather, Fremont has historically adopted various rate ordinances governing the rates and charges to its customers, which the contracts contemplated would be applied to Clear Lake and Steuben Lakes.

Fremont provides sewage treatment service to Clear Lake pursuant to a Sewage Treatment Agreement (“Clear Lake Agreement”) dated October 24, 2001. The Clear Lake Agreement provides

that Clear Lake's system cannot be withdrawn from Fremont's system for a period of 30 years and Clear Lake cannot use another sewage disposal system without the written consent of Fremont during this 30-year term.

Fremont provides sewage treatment service to Steuben Lakes pursuant to a Sewer Treatment Agreement ("Steuben Lakes Agreement") dated September 19, 2006. The Steuben Lakes Agreement provides that it shall remain in effect until terminated by the agreement of the parties. It also provides for the parties' agreement that Steuben Circuit Court is the exclusive venue for the litigation of any actual or potential breach of contract.

On March 22, 2017, Fremont adopted Ordinance No. 2017-01 ("Ordinance 2017"), which increased sewer rates and charges to all customers, both those located outside and inside Fremont's corporate boundaries, by 36.5%. The increase in rates was necessary, at least in part, to pay for improvements to Fremont's wastewater treatment facility as a result of findings of violation by the Indiana Department of Environmental Management ("IDEM").

Ordinance 2017 repealed Fremont's prior rate ordinances, Ordinance No. 2012-01 and Amending Ordinance 2015-06 (jointly "Ordinance 2012"), which included a rate surcharge that had been approved by the Commission pursuant to Section 8.3(c). Section 8.3(c) requires the Commission to approve the percentage difference between utility rates and charges in effect on March 31, 2012, that had been established for property within and property outside the corporate boundaries of a municipality if the municipality files a petition with the Commission satisfying certain requirements. Ordinance 2012 imposed a 50% sewer rate surcharge on users located outside Fremont's corporate boundaries.

**3. Relevant Statutes.**

**A. Section 61.7.** This section provides,

[a] utility that:

- (1) either provides or receives wholesale sewage service; and
- (2) negotiates to renew or enter into a new contract for wholesale sewage service on expiration of a contract for the same wholesale sewage service;

may file a petition for review of rates and charges for wholesale sewage service with the commission....

Section 61.7(c). Wholesale sewage service is defined as "the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste provided by a utility to another utility." Section. 61.7(b).

**B. Section 8.3.** Section 8.3(d) provides,

[i]f a municipality...adopts an ordinance...after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than the sum of the percentage difference approved or considered approved by the commission under [Section 8.3(c)] plus fifteen percent

(15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:

- (1) The municipality.
- (2) The lesser of:
  - (A) ten percent (10%) of all; or
  - (B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

A petition filed under this subsection must be filed not more than fourteen (14) days after the date on which the ordinance referred to in this subsection is adopted....

**4. Motion for Administrative Notice.** With its Motions to the Dismiss, Fremont filed a request for the Commission to take administrative notice of certain documents. On July 26, 2017, Clear Lake and Steuben Lakes filed a response indicating their objection to the Commission taking administrative notice of all documents except for Exhibit A because the documents are inappropriate for administrative notice and require a sponsoring witness. However, Clear Lake and Steuben Lakes indicated that they did not object to the Commission's consideration of the exhibits for purposes of ruling on Fremont's Motion to Dismiss provided the Commission also considered the documents submitted in support of their respective responses to the Motion to Dismiss. On August 16, 2017, Fremont filed its Reply acknowledging the documents were submitted for purposes of the Motion to Dismiss only and indicating it did not object to the documents submitted by Clear Lake and Steuben Lakes. Accordingly, the Commission grants Fremont's Motion for Administrative Notice for purposes of ruling on its Motions to Dismiss.

**5. Review of a Motion to Dismiss.** In ruling on a motion to dismiss, the Commission may consider the complaint, motion, and any affidavits or evidence submitted in reaching its conclusion. *Porter Co. Alliance*, Cause No. 42526, 2004 WL 2697260 at \*2 (IURC Aug. 18, 2004) (citing *GKN Co. v. Magness*, 744 N.E.2d 397, 400 (Ind. 2001)). In addition, we accept the allegations of the complaint as true and consider the pleadings in the light most favorable to the non-moving party. *Id.*

**6. Motion to Dismiss Clear Lake's Petition.**

**A. Section 61.7.** Fremont argues that the Commission lacks jurisdiction to consider Clear Lake's Petition because the requirements of Section 61.7 have not been satisfied. Specifically, Fremont argues the Clear Lake Agreement has 14 years remaining on its 30-year term and there have been no negotiations to renew or enter into a new contract upon the expiration of the Clear Lake Agreement. Further, Fremont argues there has there been no change in the law that would require re-negotiation under Paragraph 5 of the Clear Lake Agreement. For the reasons set forth below, we agree.

Section 61.7(c) provides the Commission with jurisdiction to review the rates and charges of a utility that provides wholesale sewage service when a utility "negotiates to **renew** or **enter into a new contract** for wholesale sewage service **on expiration of a contract** for the same wholesale sewage service." (emphasis added). As expressed by Indiana courts, "the goal in statutory interpretation is to determine, give effect to, and implement the intent of the legislature as expressed in the plain language of its statutes." *Clark County Drainage Bd. v. Isgregg*, 966 N.E.2d 678, 680

(Ind. Ct. App. 2012). Words and phrases shall be taken in their plain, or ordinary and usual, sense. *Id.* Interpretation of statutory language is warranted only when the meaning is unclear or ambiguous. *Daugherty v. State*, 466 N.E.2d 46, 52 (Ind. Ct. App. 1984).

The clear language of Section 61.7(c) provides for Commission jurisdiction only when a utility negotiates to either renew a contract for wholesale sewage service or enter into a new contract for wholesale sewage service on expiration of a contract for such service. The word “renew” is generally defined as “to restore to existence,” “to do again,” or “to begin again.”<sup>1</sup> Similarly, the word “expiration” means “the fact of coming to an end or the point at which something ends.”<sup>2</sup> The record reflects that the Clear Lake Agreement is for a period of 30 years and that there are 14 years remaining. Consequently, the Clear Lake Agreement has not expired, is not about to expire, and does not need to be renewed for another 14 years. Although Clear Lake argues that it has engaged or attempted to engage in negotiations with Fremont to enter into a new contract or otherwise amend its current contract because it disagrees with the applicable rate class, such negotiations are not those identified in Section 61.7.<sup>3</sup> Clear Lake is neither negotiating to renew a contract nor negotiating to enter into a new contract upon the expiration of one.

Clear Lake also asserts that the Clear Lake Agreement is subject to re-negotiation under Paragraph 5 of that agreement because at least a portion of the rate increase approved in Ordinance 2017 is related to environmental compliance issues alleged by IDEM. Paragraph 5 provides that “[i]n the event State or Federal legislation or regulations substantially alter the position of the parties or their rights and duties, this Agreement shall be subject to re-negotiation.” There is no evidence that state or federal law has changed since the Clear Lake Agreement was entered into. Rather, the evidence demonstrates that Fremont’s ability to comply with existing environmental regulations has changed, and that Fremont now needs to make an investment in its facilities to come back into compliance. Consequently, we do not find the Clear Lake Agreement is subject to re-negotiation under Paragraph 5.

Accordingly, we grant Fremont’s Motion to Dismiss Clear Lake’s Petition for relief under Section 61.7.

**B. Section 8.3.** Fremont argues that the Commission lacks jurisdiction to consider Clear Lake’s Petition under Section 8.3(d) because the Petition was not filed by 25 users of the works. Fremont argues that the individuals identified in Exhibit C of the Petition are not Fremont’s customers and are not billed by Fremont for sewer service. Instead, those individuals are customers of Clear Lake and users of Clear Lake’s system, and only Clear Lake is a user of Fremont’s works. Further, Fremont argues that the Commission lacks jurisdiction because the rates adopted in Ordinance 2017 and imposed on users of the works located outside Fremont’s corporate boundaries do not exceed the rates imposed on users of the works located inside Fremont’s corporate boundaries by more than the sum of the percentage difference approved by the Commission under Section 8.3(c) plus 15%.

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<sup>1</sup> [www.merriam-webster.com/dictionary/renew](http://www.merriam-webster.com/dictionary/renew).

<sup>2</sup> [www.merriam-webster.com/dictionary/expiration](http://www.merriam-webster.com/dictionary/expiration).

<sup>3</sup> The Commission does not have jurisdiction over the rates and charges for sewer service of either Clear Lake or Fremont. If Clear Lake believes it is being billed incorrectly by Fremont under the terms of the Clear Lake Agreement, the local trial court has jurisdiction to resolve that dispute. See *Austin Lakes Joint Venture v. Avon Utilities, Inc.*, 648 N.E.2d 641 (Ind. 1995), holding construction of contracts and actions for their breach are matters for judicial determination.

As noted above, the Commission approved Fremont's 50% rate surcharge imposed by Ordinance 2012 on users of the works for service to property located outside the corporate limits of Fremont pursuant to a petition filed under Section 8.3(c). Clear Lake argues that Section 8.3(d) limits a subsequent percentage increase on users located outside Fremont's corporate boundaries to 15% and therefore, Fremont's imposition of a 36.5% rate increase through Ordinance 2017 is subject to Commission review. We disagree. Section 8.3(d) provides for Commission review only when the rates and charges imposed for service to property located outside the corporate boundaries of the municipality exceed the rates and charges for service to property located inside the corporate boundaries "by more than the **sum of the percentage difference approved** or considered approved by the commission under subsection (c) **plus fifteen percent (15%)...**" (emphasis added). In other words, the percentage difference between the rates and charges imposed on users located outside the corporate boundaries compared to those located inside the corporate boundaries must be more than the sum of the approved percentage (which in this case is 50%) plus 15% (for a total of 65% in this case) to trigger Commission jurisdiction. Ordinance 2017 imposes a 36.5% increase on all users, both those outside and inside Fremont's corporate boundaries. Therefore, Ordinance 2017 does not change the 50% rate surcharge imposed for service to property outside Fremont's corporate boundaries that was approved under Section 8.3(c). Accordingly, Fremont's adoption of Ordinance 2017 is not subject to Commission review under Section 8.3(d).

Clear Lake also argues that the Commission did not actually approve the 50% rate surcharge because a substantive review of the bases for the surcharge was not conducted. However, Section 8.3(c) does not require such review. Instead, Section 8.3(c) allows a municipality to petition the commission to "approve the percentage difference" if the municipality: (1) files a petition by September 30, 2012; (2) adopts an ordinance that is in effect on March 31, 2012, that imposes rates and charges on users of the works for service to property located outside municipal corporate boundaries that exceed by more than 15%, but not more than 50%, the rates and charges imposed on users of the works for service to property located within the municipal corporate boundaries; and (3) is a water utility works, wastewater utility works, or both. If the Commission determines that the petition satisfies these requirements – none of which involve conducting a substantive review of the percentage surcharge and the bases for that surcharge – then the Commission must "approve the petition, including the percentage difference...."

Because Ordinance 2017 does not impose rates and charges for service to property located outside Fremont's corporate boundaries that exceed the rates and charges for service to property located inside Fremont's corporate boundaries by a percentage difference of more than 65%, we need not resolve the issue of whether the Petition was filed by 25 users of the works. Accordingly, we grant Fremont's Motion to Dismiss Clear Lake's Petition for relief under Section 8.3(d).

**7. Motion to Dismiss Steuben Lake's Petition.**

**A. Section 61.7.** Fremont argues that the Commission lacks jurisdiction to consider Steuben Lakes' Petition because the requirements of Section 61.7 have not been satisfied. Specifically, Fremont argues that the parties have not engaged in negotiations to renew the Steuben Lakes Agreement or enter into a new agreement upon expiration of the Steuben Lakes Agreement. Fremont also asserts that the Steuben Lakes Agreement is not subject to re-negotiation, is not indefinite, or terminable at will. Further, Fremont argues that the Commission lacks jurisdiction to determine Steuben Lakes' breach of contract claim because the Commission's jurisdiction is limited

to rates and charges and the parties agreed that the Steuben Circuit Court has exclusive jurisdiction of breach of contract claims. For the reasons set forth below, we agree.

As stated above, the clear language of Section 61.7(c) provides for Commission jurisdiction only when a utility negotiates to either renew a contract for wholesale sewage service or enter into a new contract for wholesale sewage service on expiration of a contract for such service. The Steuben Lakes Agreement provides that it shall remain in effect until terminated by agreement of the parties. There is no allegation that any action has been taken by either party to terminate the Agreement and no evidence that the parties have agreed to terminate it. Therefore, the Steuben Lakes Agreement remains in effect and there has been no expiration of an existing agreement that would require its renewal or the entering into of a new agreement as required by Section 61.7.

Steuben Lakes makes several arguments as to why the Steuben Lakes Agreement is invalid or otherwise unenforceable. These arguments include: (1) the Agreement is terminable at will because it is for an indefinite duration; (2) changes in state and environmental regulations have substantially altered the positions of the parties so as require re-negotiation; (3) Fremont has breached the contract by failing to create a Joint Board; and (4) Fremont's rates and charges are not just, reasonable, and non-discriminatory. However, we have no jurisdiction to resolve these contractual issues. The Commission is a creature of statute and its power and authority is derived solely from statute. *See Citizens Action Coal. Of Ind., Inc. v. N. Ind. Pub. Serv. Co.*, 485 N.E. 2d 610, 612 (Ind. 1985). Unless a grant of power and authority can be found in the statute, it must be concluded that there is none. *Id.* Nothing in Section 61.7, or any other statute, provides the Commission with jurisdiction to resolve contract disputes or to determine the validity of an existing contract between utilities that have opted out of the Commission's jurisdiction for rates and charges or are not otherwise subject to the Commission's general jurisdiction. The Commission's authority under Section 61.7 is limited to reviewing the rates and charges of non-jurisdictional utilities upon the expiration of an existing contract. Therefore, the construction of the Steuben Lakes Agreement and any action for breach is a matter for judicial determination. *See Austin Lakes Joint Venture v. Avon Utilities, Inc.*, 648 N.E.2d 641 (Ind. 1995).

Accordingly, we grant Fremont's Motion to Dismiss Steuben Lakes' Petition for relief under Section 61.7.

**B. Section 8.3.** Fremont argues that the Commission lacks jurisdiction to consider Steuben Lakes' Petition under Section 8.3(d) because: (1) Steuben Lakes failed to file its Petition with the Commission within 14 days after the date on which Fremont adopted Ordinance 2017; (2) Steuben Lakes' customers are not users of the works and Steuben Lakes failed to identify the requisite number of users of the works under Section 8.3(d); and (3) the rates imposed by Ordinance 2017 on users of the works located outside of Fremont's corporate boundaries do not exceed the rates imposed on users of the works located within by more than the sum of the percentage difference approved or considered approved by the Commission under Section 8.3(c) plus 15%.

As explained above, Ordinance 2017 imposes a 36.5% increase in rates and charges on all users of Fremont's works. It does not change the 50% rate surcharge imposed for service to property outside Fremont's corporate boundaries that was approved under Section 8.3(c). Therefore, to trigger Commission jurisdiction under Section 8.3(d), the percentage difference between the rates and charges imposed on users located outside the corporate boundaries compared to those located inside the corporate boundaries of Fremont must be more than 65%. Because Ordinance 2017 does not

impose rates and charges for service to property located outside Fremont's corporate boundaries that exceed the rates and charges for service to property located inside Fremont's corporate boundaries by a percentage difference of more than 65%, we do not have jurisdiction to review the rates and charges imposed by Ordinance 2017.

Because we lack jurisdiction to review Ordinance 2017, we need not determine whether Steuben Lakes' Petition was timely filed or filed by the requisite number of users of the works. Accordingly, we grant Fremont's Motion to Dismiss Steuben Lakes' Petition for relief under Section 8.3(d).

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

1. Fremont's Motion to Dismiss Clear Lake's Petition for Lack of Jurisdiction is granted.
2. Fremont's Motion to Dismiss Steuben Lakes Regional Waste District's Petition for Lack of Jurisdiction is granted.
3. In accordance with Ind. Code § 8-1-2-70, Clear Lake shall pay the following itemized charges within 20 days from the date of the Order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	\$ 616.52
OUCG Charges:	\$ 77.69
Legal Advertising Charges:	\$ <u>36.70</u>
Total:	\$ 730.91

4. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:**

**APPROVED:** NOV 21 2017

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



**Mary M. Becerra**  
**Secretary of the Commission**