



been granted direct limited jurisdiction over sewer districts, namely Indiana Code §13-26-11, related to specific disputes of campground customers of regional sewer districts.

Complainant presents and relies upon a broad and incorrect reading of the *Stucker Fork* case to suggest that the holding in that case directly applies and thus the Commission should determine that WWRSD is a “public utility”. This expansive application is both a misinterpretation of the *Stucker Fork* case and runs contrary to the more specific statutory language and local Board oversight authority granted to WWRSD under Ind. Code 13-26. WWRS is not magically somehow now a “public utility” overseen and regulated by the IURC. *Stucker Fork* was a very unique case and the Court of Appeals found the Commission had jurisdiction over a limited situation based upon fact sensitive circumstances. Those facts and circumstances just do not apply here. A more compelling argument can be made under the *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, (Ind. 2000), Indiana Supreme Court decision where the Court found that the Commission specifically lacked jurisdiction and stated: “Other statutes’ explicit references to municipal utilities in conjunction with public utilities show that the legislature knows how to say and include municipal utilities when it so desires. See, e.g., Ind. Code § 8-1-2-42(a),(g); accord *Stucker Fork Conservancy Dist. v. Indiana Utility Regulatory Comm’n*, 600 N.E.2d 955, 957-58 (Ind. Ct. App. 1992) (municipal utilities are subject to Commission’s jurisdiction “only when specifically provided for by statute”). Thus, we hold that the Commission correctly determined that its jurisdiction under Section 54 did not extend to Citizens Gas.” *Id.*, at 797. Just as was the case in *United States Gypsum*, there is and has been no clear inclusion of regional sewer districts under the definition of public utilities. Rather, the Indiana legislature explicitly made a distinction when it enacted Ind. Code § 8-1-30-2 and separately referenced and distinguished “public utilities” from regional sewer and water

districts<sup>1</sup>. Thus applying the rationale from *United States Gypsum*, Complainant's argument that the Commission's jurisdiction extends so broadly as to cover WWRSB is flawed and unpersuasive.

Sugar Creek then goes so far as to attempt to turn the general rule and limitation of grant of statutory authority on its head by stating, *in the reverse*, that: "Further, no provision in Ind. Code Art. 13-26 or *otherwise exempts* regional districts from Commission jurisdiction." (Emphasis added). (See Sugar Creek Complaint, Para. 13). It is well settled that the Commission is creature of statute. The Commission's jurisdiction is governed by statute, *Indiana Bell Telephone Co. v. Ind. Util. Regulatory Comm'n*, 715 N.E.2d 351, 354 (Ind. 1999), and the "Commission can exercise only such power as the legislature delegates to it." *Cities & Towns of Anderson v. Public Serv. Comm.*, 397 N.E.2d 303, 305 (Ind. Ct. App. 1979); see also *South Eastern Ind. Nat. Gas Co. v. Ingram*, 617 N.E.2d 943, 947 (Ind. Ct. App. 1993) ("[T]he IURC derives its power solely from the legislature; if the power to act has not been conferred by statute, it does not exist."); *Indiana Bell Telephone Company, Inc. v. Friedland*, 373 N.E.2d 344, 347 (Ind. Ct. App. 1978) (the "Commission is a creature of the legislature ... and it possesses only that jurisdiction or authority granted to it by statute."). "Thus, unless a grant of power can be found in the statute, we must conclude there is none." *Micronet, Inc. v. Ind. Util. Regulatory Comm'n*, 866 N.E.2d 278, 294 (Ind. Ct. App. 2007). And "any doubt about the existence of authority must be resolved against a finding of authority." *Id.* Further, just because an operative statutory section does not explicitly cross reference the Commission or as Complainant argues in the negative, "...no provision in Ind. Code Art. 13-26 or *otherwise exempts* regional districts..."

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<sup>1</sup> IC 8-1-30-2

**"Utility company" defined**

Sec. 2. As used in this chapter, "utility company" refers to *either of* the following:

- (1) A public utility that provides water or sewer service.
- (2) A regional sewer and water district.

(Emphasis added).

does not bestow authority upon the Commission. More directly, "nothing may be read into a statute which is not within the manifest intention of the legislature' as ascertained from 'the plain and obvious meaning' of the words of the statute." *Indiana Bell*, 715 N.E.2d 351, 354 (quoting *Ind. Dep't of State Revenue v. Horizon Bancorp.*, 644 N.E.2d 870, 872 (Ind. 1994)). In short, if a statute does not grant the Commission explicit jurisdiction over a matter, the Commission does not have such wide sweeping "public utility" jurisdiction over WWRSD.

The Respondent, WWRSD does recognize that the Commission has limited authority and jurisdiction under Ind. Code § 8-1-30-3 to review the specific aspects set forth there under of the WWRSD's operations. Accordingly, WWRSD files the following responsive Answer based upon that specific statutory oversight authority.

## **II. Limited Review of the Ind. Code § 8-1-30 Complaint and Introduction**

This case generally concerns a complaint by Sugar Creek requesting a Commission involvement and review of WWRSD's operations alleging certain deficiencies of its provision of service to customers including, and most specifically, Sugar Creek. More particularly, Sugar Creek contends that certain flow commitments made by WWRSD in 2015 to accommodate the new water and discharge sewage flows from Sugar Creek were not met. The issues presented by Complainant are a fairly recent development following the expansion by Sugar Creek of the former facilities which was completed in September 2016. Part of those expansion efforts included Sugar Creek installing or upgrading pretreatment equipment and holding tanks and facilities. The Complainant implies that there were problems prior since 2015, but does not provide specifics. At all times WWRSD has worked closely with Complainant representatives to incorporate and accommodate the new larger flows from the expanded Sugar Creek facilities. As noted in the Complaint, WWRSD even replaced the pumps in its lift station nearest Sugar

Creek to address and accommodate Complainant's needs and flows. The suggestion and allegation that Sugar Creek was forced to monitor one of the WWRSD lift station to avoid problems is misleading.

### **III. Answer to Specific Allegations**

WWRSD hereinafter responds to each numbered paragraph of Sugar Creek's Complaint as follows:

1. WWRSD admits that Sugar Creek operates a facility located in the Gateway Industrial Park in Cambridge City, Indiana which is and has been connected to WWRSD's system. WWRSD lacks sufficient information to admit or deny the remaining allegations in Numerical Paragraph 1.

2. WWRSD admits that it is a regional sewer district in Wayne County, Indiana and its address is 200 S. Plum St., Cambridge City, IN 47327. WWRSD denies that it is a public utility for the reasons set forth above.

3. WWRSD lacks sufficient information to admit or deny the allegations in Numerical Paragraph 3.

4. WWRSD admits that it did indicate to Sugar Creek that it could treat a daily flow of 200,000 per day. WWRSD lacks sufficient specific information to be able to admit or deny the remaining allegations and therefore denies the balance of the allegations contained in Numerical Paragraph 4.

5. WWRSD admits that it did, in conjunction and coordination with Sugar Creek, replace certain pumps in a WWRSD lift station servicing Sugar Creek, and has allowed Sugar Creek access to monitor the facilities to assist. However, WWRSD lacks sufficient specific information to be able to admit or deny any remaining allegations in Numerical Paragraph 5.

6. WWRSD lacks sufficient specific information to be able to admit or deny the allegations and therefore denies the balance of the allegations contained in Numerical Paragraph

7. WWRSD responds by incorporating and restating its positions regarding the Commission's statutory authority and any limitations thereon. Further, the specific statutes raised by Complainant in Numerical Paragraph 7 speak for themselves and the Commission can ably review and apply them and thus there is no need for WWRSD to either admit or deny any allegations that may or may not be contained therein.

8. WWRSD responds by incorporating and restating its positions regarding the Commission's statutory authority and any limitations thereon. Further, the specific statutes raised by Complainant in Numerical Paragraph 8 speak for themselves and the Commission can ably review and apply them and thus there is no need for WWRSD to either admit or deny any allegations that may or may not be contained therein.

9. WWRSD responds by incorporating and restating its positions regarding the Commission's statutory authority and any limitations thereon. Further, the specific statutes raised by Complainant in Numerical Paragraph 9 speak for themselves and the Commission can

ably review and apply them. WWRSD denies that it is a public utility and any allegations suggesting that is denied.

10. WWRSD denies the allegations of Numerical Paragraph 10, and further states this is a hypothetical legal argument which is irrelevant at this stage of the requested relief.

11. WWRSD denies the allegations of Numerical Paragraph 11, and further states this is a hypothetical legal argument which is irrelevant at this stage of the requested relief.

12. WWRSD denies the allegations of Numerical Paragraph 12, and further states this is a hypothetical legal argument which is irrelevant at this stage of the requested relief.

13. WWRSD denies the allegations of Numerical Paragraph 13 and its attempt to preempt or deny WWRSD notice and hearing on relevant issues or arguments, and further states this is a hypothetical legal argument which is irrelevant at this stage of the requested relief.

14. WWRSD admits that the Commission does not have jurisdiction over a regional district for purposes of issuing a certificate of territorial authority, issuing debt, or regulating rates and charges. WWRSD responds to the balance of Numerical Paragraph 14 by incorporating and restating its positions regarding the Commission's statutory authority and any limitations thereon. Further, the specific statutes raised by Complainant in Numerical Paragraph 13 speak for themselves and the Commission can ably review and apply them. WWRSD denies that it is a public utility and any allegations suggesting that is denied.

15. WWRSD accepts and recognizes the attorneys listed are duly authorized and able to accept service as noted in Numerical Paragraph 14.

16. WWRSD neither admits nor denies Numerical Paragraph 16, but states that the statutory process under which Sugar Creek filed its complaint, namely Ind. Code § 8-1-30-3(b), should control.

#### **IV. Affirmative Defenses and Reservation of Rights**

Until Respondent has the ability to and avails itself of the discovery process, it cannot reasonably determine whether the following defenses may be asserted or necessary. These defenses, however, are asserted here in order to preserve Respondent's right to assert them at hearing, as well as to avoid waiver of any affirmative defenses, and should not be deemed to contradict the answers above or as admissions. Respondent reserves the right to amend and assert any additional defenses that may be discovered or developed during this proceeding.

##### **First Defense**

Complainant's claims are barred because Sugar Creek interfered with and/or failed to mitigate their damages.

##### **Second Defense**

The Commission lacks jurisdiction to require WWRSD to pay monetary damages to a customer.



### **Third Defense**

The Commission lacks subject matter jurisdiction over Sugar Creek's request to restrict or limit WWRSD's authority under Ind. Code § 13-26-23-30 or otherwise entertain any territorial jurisdiction claims.

### **Fourth Defense**

The Complaint fails to state a claim because Sugar Creek has not plead facts which, even if true, constitute severe deficiencies and a failure to remedy a provision of service.

### **Fifth Defense**

The Complaint fails to state a claim upon which relief can be granted, because the Commission cannot order or direct WWRSD to install plant and facilities.

### **Sixth Defense**

Sugar Creek's alleged claims are barred by res judicata and collateral estoppel.

### **Seventh Defense**

Sugar Creek's alleged claims are barred by laches.

### **Eighth Defense**

The Complaint fails to state a claim because if as Complainant alleges WWRSD is a public utility, which WWRSD does not concede, then Ind. Code § 8-1-2-54 requires complaints against a "public utility" to be brought by at least ten persons.

### **Sugar Creek's Request for Review or Investigation**

The Complaint's request for the Commission to initiate a review or investigation concerning the service quality allegations under Ind. Code § 8-1-30 should be denied. Sugar Creek alleges certain service issues, but also concedes WWRSD has made efforts to address any alleged problems or deficiencies. Further, WWRSD continues to seek information and take

remedial action to prevent any possible future problems, but Sugar Creek has, through its own actions either intentionally or circuitously refused to cooperate or assist in such efforts. Instead, the Complainant makes unsubstantiated allegations that "WWRSD has been unable or unwilling to make necessary improvements to its system..." Complaint, ¶ 6. However, the facts stated in the Complaint itself (see Complaint, ¶ 5), as well as the ongoing actions of WWRSD clearly refute such claims. Sugar Creek is well aware of WWRSD plans and efforts to upgrade its treatment system and has had Company representative Edward Rodden regularly attend and participate in all WWRSD Board meetings. WWRSD is and has been in the process of evaluating system needs and upgrades and what additional equipment is necessary to provide all customers with safe, reliable, and quality sewage collection and treatment service.

Moreover, the broad-based review or investigation Sugar Creek seeks will not only fail to address its alleged concerns, but frustrate any positive efforts to allow WWRSD to move forward with reasonable and necessary plans to update and improve facilities for all WWRSD customers. This Ind. Code § 8-1-30 review could, if allowed unchecked, require and drain significant WWRSD limited resources as well as those of the Commission and ultimately fail to identify the requisite allegations, facts, or statutory basis to be able to address the real issues present.

WWRSD is presently providing sewage treatment service to Sugar Creek and is moving forward on putting into place the necessary plant and equipment to provide the service it has agreed and committed to provide. Accordingly, there are no deficiencies that WWRSD has failed to remedy and this matter should be dismissed.

#### **V. Conclusion**

WHEREFORE, WWRSD respectfully requests that: (1) Sugar Creek be required to come forward with sufficient facts and evidence to support its Complaint and any request under Ind.

Code § 8-1-30-3(b); (2) provide WWRSD and any interested party the requisite statutory order and facts and scope of any further review; and, (3) provide WWRSD notice and an opportunity to be heard in response to any facts and evidence as part of any further review before considering any further action under Ind. Code § 8-1-30; OR find in favor of WWRSD that no serious violations have occurred sufficient to trigger any further action or review by this Commission; and for all other relief appropriate and proper in its premises.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>nd</sup> day of June 2017, copies of this “Answer and Defenses” filed on behalf of Respondent Western Wayne Regional Sewage District has been served via electronic mail delivery to the following counsel of record:

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