IN THE
INDIANA SUPREME COURT

CAUSE NO. _____

NORTHCREST R.V. PARK, BARBEE LANDING MOBILE HOME PARK, KUHN LAKE LAKESIDE RESORT, Appellants (Complainants Below), v. LAKELAND REGIONAL SEWER DISTRICT, Appellee (Respondent Below).	Indiana Court of Appeals Cause No. 18A-EX-01243 Appeal from Indiana Utility Regulatory Commission Cause No. 44973 The Hon. James F. Huston, Chair The Hon. Sarah Freeman, The Hon. David E. Ziegner, The Hon. David Ober, Commissioners Administrative Law Judge The Hon. Lora L. Manion,

COMPLAINANTS' REPLY IN SUPPORT OF PETITION TO TRANSFER

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INTRODUCTION

This Court has never interpreted the IURC's role in adjudicating campground disputes under Ind. Code §§ 13-26-11-2 and -2.1 ("Section 2" and "Section 2.1"); therefore, transfer is appropriate. The decisions of the Court of Appeals and the Indiana Utility Regulatory Commission ("IURC") should be reversed because regional sewer districts ("RSD's") cannot apply a definition of "campground" that, like Lakeland Regional Sewer District's ("LRSD"), conflicts with the term's ordinary dictionary definition. Moreover, because the IURC has a duty to adjudicate campground disputes, it has the necessary authority to interpret and apply the meaning of "campground" under the statute.

ARGUMENT

1. RSDs cannot apply a definition of "campground" contrary to the term's ordinary dictionary definition.

LRSD cites *Bd. of Dir. Of the Bass Lake Conservancy Dist. v. Brewer*, 839 N.E.2d 699 (Ind. 2005)("*Bass Lake*") for the proposition that a technical definition should be applied whenever government expresses intent to use a term in a manner other than its ordinary dictionary definition. Yet unlike *Bass Lake*, the legislature did nothing to express intent to apply a technical meaning to "campground" for purposes of Sections 2 and 2.1. When a statute is silent on the meaning of a term, the ordinary dictionary definition applies. *Id.* at 702. LRSD's contention that the legislature was required to specifically invoke the ordinary dictionary definition must be rejected.

LRSD struggles to demonstrate legislative intent to employ LRSD's technical meaning, claiming that RSDs have exclusive authority to define user classifications. Ind. Code § 13-26-11-4 generally grants discretion in classifying rates, but that general power is limited by the specific provisions of Section 2 governing campground rates.[1] If an entity qualifies as a "campground" within the meaning of the statute, RSDs do not have discretion to charge rates in excess of Section 2 limits based on conflicting ordinance classification. The statutory structure does not evidence legislative intent to enable RSDs to employ their own definitions because (1) the statute's purpose is to limit authority of RSDs over campgrounds; and (2) this would result in multiple conflicting definitions of a statutory term with statewide applicability.

LRSD's interpretation renders Section 2 meaningless, because it allows RSDs to charge legitimate campgrounds more than Section 2 permits. LRSD contends Section 2 is not rendered meaningless because some campgrounds are being charged a statutorily compliant rate, but the statute cannot be satisfied by charging at least one campground correctly. Charges to *all* campgrounds must be lawful. LRSD's interpretation also renders the statute subject to abuse, enabling RSDs to identify only certain facilities as "campgrounds" at the expense of similarly situated competition.

2. <u>The IURC can interpret and apply the meaning of "campground."</u>

LRSD's contention that the IURC lacks authority to interpret and apply the meaning of "campground" for purposes of Sections 2 and 2.1 ignores longstanding

[1] LRSD's claim that the Court of Appeals did not subordinate Section 2 to Section 4 discusses only Section 2.1, ignoring Section 2.

precedent that agencies have authority necessary to fulfill their statutory duties. LRSD cites *N. Ind. Pub. Serv. Co. v. Citizens Action Coal.*, 548 N.E.2d 153 (Ind. 1989) for the proposition that the IURC has implicit power and authority to effectuate a regulatory scheme only when it has been granted broad powers to accomplish a comprehensive regulatory scheme. Yet nothing limits *NIPSCO*'s holding to duties imposed by broad statutes, and other cases have found the same authority in different agencies. *See State Bd. of Registration for Professional Engineers v. Eberenz*, 723 N.E.2d 422, 426-27 (Ind. 2000); *Barco Beverage Corp. v. Ind. Alcoholic Beverage Comm'n*, 595 N.E.2d 250, 254 (Ind. 1992). Furthermore, statutes imposing duties on agencies must be interpreted to give agencies authority to fulfill those duties, or the statutes would be rendered meaningless. *ESPN, Inc. v. University of Notre Dame Police Dept.*, 62 N.E.3d 1192, 1199 (Ind. 2016).

LRSD's attempt to distinguish *State ex rel. Paynter v. Marion County Sup. Ct., Rm. No. 5*, 264 Ind. 345, 344 N.E.2d 846 (Ind. 1976) fails. LRSD incorrectly contends that the statute in *Paynter* expressly gave the agency jurisdiction to determine whether a party is a health care provider. However, the statute did not say the agency may define "health facility," rather it spoke only of the agency's authority to determine whether a person is "operating" a facility and whether the facility "is being operated." 264 Ind. at 350, 344 N.E.2d at 849. Importantly, LRSD does not distinguish other cases following *Paynter*'s holding. *Sun Life Assur. Co. v. Comp. Health Ins.*, 827 N.E.2d 1206, 1210 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 186; *Scales v. State*, 563 N.E.2d 664, 666 (Ind. Ct. App. 1990); *Ind. Civil Rights Com'n v. Meridian Hills Country Club*, 171 Ind. App. 341, 345, 357 N.E.2d 5, 7 (Ind. Ct. App. 1976)).

Furthermore, LRSD relies upon *Yankee Park* and *Bass Lake* for the proposition that any IURC review over campground charges is limited to an arbitrary, capricious, or contrary to law standard. Such reliance is misplaced because those cases are based on a premise that ratemaking is not a judicial function, which clearly does not apply to the IURC. *Bass Lake*, 839 N.E.2d at 701; *Yankee Park Homeowners Ass'n., Inc. v. LaGrange County Sewer District*, 891 N.E.2d 128, 131 (Ind. App. 2008), *trans. denied*, 898 N.E.2d 1229 (Ind. 2008). Even if that were the standard, Complainants have satisfied it by demonstrating that LRSD has employed a definition of "campground" contrary to law.

Finally, for cases originating at the IURC, trial courts cannot determine the IURC's jurisdiction. I.C. § 8-1-3-1 (providing for direct appeal of IURC decisions to the Court of Appeals). Accordingly, trial courts lack jurisdiction to review whether the IURC has correctly exercised jurisdiction under Section 2.1 or employed the proper definition of "campground."

CONCLUSION

The decisions of the Court of Appeals and the IURC should be reversed because LRSD has applied a definition of "campground" contrary to the term's ordinary dictionary definition and because the IURC has the authority and duty to interpret and apply the meaning of "campground" under the statute.

Respectfully submitted,

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WORD COUNT CERTIFICATE

The undersigned counsel hereby verifies, in accordance with Ind. Appellate Rules 44 and 57, that except for those portions of the Reply in Support of Petition to Transfer excluded from the word count, the foregoing *Complainants' Reply in Support of Petition to Transfer* contains no more than 1,000 words as calculated by the word count function of the word processing software used to prepare the Reply in Support of Petition to Transfer.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that copies of the foregoing *Complainants' Reply in Support of Petition to Transfer* were served on the following Public Service Contacts through E-Service using the IEFS, this 4th day of April, 2019:

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