



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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COMPLAINT OF NORTHCREST R.V. PARK,)
BARBEE LANDING MOBILE HOME PARK,)
KUHN LAKESIDE RESORT, AND PINE BAY) CAUSE NO. 44973
RESORT AGAINST THE LAKELAND)
REGIONAL SEWER DISTRICT CONCERNING) APPROVED: JUL 25 2018
THE PROVISION OF SEWER UTILITY)
SERVICE)

ORDER OF THE COMMISSION ON RECONSIDERATION AND REHEARING

Presiding Officers:

Sarah E. Freeman, Commissioner

Lora L. Manion, Administrative Law Judge

Complainants Northcrest R.V. Park ("Northcrest"), Barbee Landing Mobile Home Park ("Barbee Landing"), Kuhn Lake Lakeside Resort ("Kuhn Lake"), and Pine Bay Resort ("Pine Bay") (collectively "Complainants") seek reconsideration and rehearing following the Commission's May 16, 2018 Order granting summary judgment on the issue of Respondent Lakeland Regional Sewer District's ("LRSD") classifications of Complainants as Mobile Home Courts rather than Campgrounds under LRSD's rate Ordinance No. 2015-04 and subsequent amendments ("Ordinance"). *Complaint of Northcrest R.V. Park et al.*, Cause No. 44973, 2018 WL 2329328 (IURC May 16, 2018).

Complainants raise the following issues in their May 22, 2018 *Joint Petition for Reconsideration and Rehearing*:

1. Whether the Commission dismissed the Cause without finding whether the Complainants are Campgrounds under LRSD's Ordinance and thereby committed reversible error.
2. Whether the appropriate procedural posture is for this Cause to remain before the Commission and proceed with the presentation of evidence to the full Commission as a hearing or rehearing.
3. Whether the Commission established precedent in the Commission's April 26, 2017 Dismissal Order in Cause No. 44798 and failed to follow that precedent in this Cause. *Complaint of Pine Bay Resort Campground et al.*, Cause No. 44798, 2017 WL 1632317 (IURC Apr. 26, 2017).
4. Whether the Commission erred in this Cause because it did not define "campground" for purposes of the regulatory scheme in Ind. Code art. 13-26.

For the reasons set forth below, we deny Complainants' Joint Petition for Reconsideration and Rehearing:

1. The Commission's May 16, 2018 Order disposed of all issues, finding that the Commission has jurisdiction over billing disputes brought under Ind. Code § 13-26-11-2.1 and that, based on the undisputed evidence, LRSD had not misclassified Complainants as Mobile Home Courts under its Ordinance.

2. Because summary judgment disposed of all issues, it is inappropriate to keep this docket open to receive additional evidence. Moreover, rehearing is not appropriate under 170 IAC 1-1.1-22(e)(1) because Complainants did not state the nature of the evidence to be introduced; the reason such new evidence was not available previously or could not be discovered with due diligence; how such evidence would purportedly effect the outcome if received into the record; and that such evidence will not be merely cumulative.¹

However, each bill potentially creates an additional dispute, even regarding the same issue. *Complaint of Northcrest R.V. Park et al.*, 2018 WL 2329328, at 12 (citing *Schaper v. LaGrange Co. Regional Utility District*, Cause No. 44541, 2015 WL 3453422, at 4 (IURC May 27, 2015)). Therefore, as we explained in the Order, if Complainants feel that LRSD has improperly billed them in a future billing cycle, they may initiate a new complaint under Ind. Code § 13-26-11-2.1 with the Commission's Consumer Affairs Division and present evidence supporting their claim.

3. As the Commission explained in its Order in this Cause, the docket entry discussion in Cause No. 44798 regarding the dictionary definition of "campground" and its potential application to LRSD's Ordinance definition was part of the Commission's preliminary analysis before dismissing that Cause without prejudice on grounds of ripeness. That discussion in Cause No. 44798 included statements about "campground" that were not necessary to the Commission's ultimate determination that the issues presented were not ripe for consideration. Accordingly, the discussion of the definition of "campground" in Cause No. 44798 constitutes dicta, and it does not have precedential effect in this Cause. *CBR Event Decorators v. Gates*, 4 N.E.3d 1210, 1216 (Ind. Ct. App. 2014) (citing *Dean V. Kruse Found., v. Gates*, 973 N.E.2d 583, 590-591 (Ind. Ct. App. 2012) (statements that are not necessary in the determination of the issues presented are dicta and do not become law of the case)).

4. The foundational issue here is that "campground" is undefined for purposes of the statutory scheme enacted throughout Ind. Code art. 13-26. Within this same context, the Indiana General Assembly delegated ratemaking authority to regional sewer districts and limited dispute resolution authority to the Commission. See Ind. Code § 13-26-5-3(b) (a regional sewer district must adopt an ordinance to take legislative action); § 13-26-5-2(7) (a regional sewer district has authority to fix, alter, charge, and collect reasonable rates and charges for sewage service); § 13-26-11-4 (a regional sewer district board may exercise reasonable discretion in adopting different schedules of rates and charges and making classifications within those schedules based on the cost of service to various classes of users); § 13-26-11-2 (a campground may request to be billed at a

¹ Under 170 IAC 1-1.1-22(e)(1), If the petition seeks rehearing, it shall be verified or supported by affidavit and shall set forth the following: (A) The nature and purpose of the evidence to be introduced at rehearing. (B) The reason or reasons such new evidence was not available at the time of the hearing or could not be discovered with due diligence. (C) A statement of how such evidence purportedly would affect the outcome of the proceeding if received into the record. (D) A showing that such evidence will not be merely cumulative.

flat or metered rate); and § 13-26-11-2.1 (a campground has the right to request Commission review of a billing dispute with a regional sewer district).

Accordingly, LRSD exercised its statutory authority by adopting the Ordinance (including defining Campground and Mobile Home Court) and by classifying and billing Complainants as Mobile Home Courts. Next, Complainants brought their billing dispute to the Commission, arguing that they are Campgrounds and should be billed at the Campground rate. Finally, The Commission resolved the billing dispute by reviewing the undisputed evidence before it, finding that LRSD did not misclassify Complainants as Mobile Home Courts under its Ordinance.

We note that the Commission's dispute resolution under this statutory scheme is narrow, and it does not encompass approving or revising the rates and charges adopted by a regional sewer district. The Commission is not required, nor has it found it necessary, to define "campground" in the context of billing by a regional sewer district. Based upon our harmonizing of the pertinent statutes, LRSD is the approved body for defining "campground" in its Ordinance, fixing rates and charges, and classifying Complainants. Therefore, the Commission did not error in this Cause by not defining "campground" for purposes of the regulatory scheme in Ind. Code art. 13-26.

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

1. Complainants' *Joint Petition for Reconsideration and Rehearing* of the Commission's May 16, 2018 Order in Cause No. 44973 is denied.
2. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: JUL 25 2018

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



Mary M. Becerra
Secretary of the Commission