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IN THE COURT OF APPEALS OF INDIANA

Amberly Pointe Manufactured Home Community,

Appellant-Petitioner,

v.

Stucker Fork Conservancy District,

Appellee-Respondent

August 18, 2022

Court of Appeals Case No. 21A-EX-2805

Appeal from the Indiana Utility Regulatory Commission

The Honorable James F. Huston, Chairman

The Honorable Sarah E. Freeman, Stefanie Krevda, David L. Ober, and David E. Ziegner, Commissioners

The Honorable Loraine L. Seyfried, Chief Administrative Law Judge

IURC Cause No. 45572

Crone, Judge.

Case Summary

[1] Amberly Pointe Manufactured Home Community (Amberly Pointe) filed a complaint with the Indiana Utility Regulatory Commission (the Commission), seeking a determination of whether a bill payment rule enacted by the Stucker Fork Conservancy District (Stucker Fork) violates Indiana Code Section 8-1.5-3-8(l) and whether Stucker Fork's customer disconnect rules violate 170 Indiana Administrative Code (IAC) 6-1-16. The parties filed cross-motions for summary judgment. The Commission dismissed the cause for lack of subject matter jurisdiction, finding that Stucker Fork is not subject to either provision. Amberly Pointe now appeals, arguing that the Commission erred. We affirm.

Facts and Procedural History

[2] The relevant facts are undisputed. "Stucker Fork is a conservancy district that has elected to furnish water service to the public within its service territory under" Indiana Code Chapter 14-33-20. Appealed Order at 1. "Amberly Pointe is a manufactured home community that owns a number of residential properties located within Stucker Fork's water service territory." *Id.* at 2.

[3] In June 2006, the Commission issued an order approving a settlement agreement between Stucker Fork and the Indiana Office of Utility Consumer Counselor (the OUCC) "that provided for a new schedule of rates and charges regarding Stucker Fork's provision of water service." *Id.* The settlement agreement "also set forth Stucker Fork's agreement to revise its 'existing bad-debt rules to comply with the current [Commission] standards.'" *Id.* In a

subsequent proceeding, "the OUCC asserted that Stucker Fork had not amended its bad debt rules as agreed to in the Settlement Agreement …." *Id*. In an October 2013 order, the Commission "noted that Stucker Fork [was] not required to comply with the Commission's regulations but required Stucker Fork to comply with the Settlement Agreement because it failed to offer any reason or explanation to justify why it should not do so." *Id*. "The Commission approved Stucker Fork's bad debt rules/policy on January 15, 2014." *Id*. "Stucker Fork's rules or policies governing the provision of water service to all properties within its service territory, including to businesses and rental properties, is that Stucker Fork will treat the property owner (not the tenant) as the customer." *Id*. "Consequently, if the water bill goes unpaid, Stucker Fork will hold the property owner responsible for bill payment." *Id*.

[4] In February 2021, Amberly Pointe filed an informal complaint with the Commission's consumer affairs division, and the complaint "was referred to the Commission for its consideration." *Id*. at 1. In an amended complaint, Amberly Pointe sought a determination as to whether Stucker Fork's bill payment rule violates Indiana Code Section 8-1.5-3-8(l) and whether its customer disconnect rules violate 170 IAC 6-1-16. Amberly Pointe and Stucker Fork filed cross-motions for summary judgment.[1] In November 2021, the Commission issued an order dismissing the cause for lack of subject matter jurisdiction, finding that

[1] The OUCC also filed a summary judgment motion aligned with Amberly Pointe's position, but the OUCC does not participate in this appeal.

neither Section 8-1.5-3-8(l) nor 170 IAC 6-1-16 applies to Stucker Fork. Amberly Pointe now appeals. Additional facts will be provided below.

Discussion and Decision

[5] Amberly Pointe argues that the Commission erred in dismissing this cause for lack of subject matter jurisdiction. The General Assembly created the Commission "primarily as a fact-finding body with the technical expertise to administer the regulatory scheme devised by the legislature." *U.S. Steel Corp. v. N. Ind. Pub. Serv. Co.*, 951 N.E.2d 542, 550 (Ind. Ct. App. 2011), *trans. denied* (2012). "The Commission can only exercise power conferred upon it by statute, and any doubts regarding the Commission's statutory authority must be resolved against the existence of such authority." *Id*. "[A]n administrative body generally possesses authority to determine initially whether a matter presented to it falls within the jurisdiction conveyed to that body." *Guinn v. Light*, 558 N.E.2d 821, 823 (Ind. 1990). "[A] party cannot confer jurisdiction upon an administrative agency by consent or agreement." *Howell v. Ind.-Am. Water Co.*, 668 N.E.2d 1272, 1275 (Ind. Ct. App. 1996), *trans. denied* (1997). "Any act of an agency in excess of its power is ultra vires and void." *Id*. at 1276 (italics omitted). Summary judgment is a judgment on the merits, and it may not be rendered by an entity that lacks subject matter jurisdiction. *Smith v. Gary Pub. Transp. Corp.*, 893 N.E.2d 1137, 1140 (Ind. Ct. App. 2008), *trans. denied* (2009).

[6] "To the extent the issue turns on statutory construction, whether an agency possesses jurisdiction over a matter is a question of law for the courts." *Walczak*

v. Labor Works-Ft. Wayne LLC, 983 N.E.2d 1146, 1152 (Ind. 2013) (quoting *Ind. Dep't of Env't Mgmt. v. Twin Eagle LLC*, 798 N.E.2d 839, 844 (Ind. 2003)). That is, an issue of statutory construction dispositive on the question of an agency's jurisdiction "lies squarely within the judicial bailiwick." *Id*. at 1153. We review this issue de novo. *U.S. Steel*, 951 N.E.2d at 551.

Section 1 – Stucker Fork is not subject to Indiana Code Section 8-1.5-3-8(l).

[7] "A conservancy district is a special taxing district created for local public improvement." *In re Petition for Establishment of Millpond Conservancy Dist.*, 891 N.E.2d 54, 55 (Ind. Ct. App. 2008). A conservancy district may be established to provide "water supply, including treatment and distribution, for domestic, industrial, and public use." Ind. Code § 14-33-1-1(a). A conservancy district is governed by a board of directors, who are elected by the freeholders of the district. Ind. Code § 14-33-5-2.[2] Among other things, the board "[e]xercise[s] general supervision of and make[s] regulations for the administration of the affairs of the district[,]" "[s]upervise[s] the fiscal affairs and responsibilities of the district[,]" and has the capacity to sue and be sued. Ind. Code § 14-33-5-20(1), -(3), -(8).

[2] For purposes of Indiana Code Article 14-33, a "freeholder" is a person who holds land in fee, for life, or for some indeterminate period of time, whether or not in joint title with at least one other person. Ind. Code § 14-8-2-104.

[8] Indiana Code Section 14-33-20-5(b)(2) provides that a conservancy district "has the rights and powers granted by this article to the extent consistent with this chapter." Pursuant to Indiana Code Section 14-33-20-13(a), a conservancy district "shall furnish reasonably adequate services and facilities" for "reasonable and just" charges. "A reasonable and just charge for services is a charge that produces sufficient revenue to pay all the legal and other necessary expenses incident to the operation of the water facilities[.]" *Id*. A conservancy district's "rates may include a reasonable profit on the investment, so that the charges produce an income sufficient to maintain the water facilities in a sound physical and financial condition to provide adequate and efficient service." Ind. Code § 14-33-20-13(b). A conservancy district and its board "shall enforce the collection of the rates and charges" for water supply services and, "if necessary, may discontinue water service to a water user for the nonpayment of rates and charges." Ind. Code § 14-33-20-13(c).

[9] Indiana Code Section 14-33-20-14 provides that a conservancy district "shall file the initial schedule of rates and charges to patrons of the district with the [C]ommission" and that "[i]f changes in rates and charges are necessary, the district is subject to the jurisdiction of the [C]ommission in the same manner as provided by statute for the regulation of rates and charges of municipal water utilities." That "manner" is spelled out in Indiana Code Section 8-1.5-3-8, which governs rates and charges for municipal water utilities. *See* Ind. Code § 8-1.5-3-8(f) ("Rates and charges established under this section are subject to the approval of: (1) the municipal legislative body by ordinance; and (2) the

[C]ommission, *in accordance with the procedures set forth in IC 8-1-2*.") (emphasis added).

[10] Amberly Pointe argues that, by virtue of Section 14-33-20-14, Stucker Fork is also subject to subsection (l) of Section 8-1.5-3-8, which reads as follows:

> With respect to property that is served by a municipally owned utility and that is occupied by someone other than the owner of the property, subsection (k)[3] does not allow a municipal legislative body to impose a requirement that the owner of the property must:
>
> > (1) ensure the creditworthiness of the person occupying the property; or
> >
> > (2) accept responsibility for charges incurred by the person occupying the property;
>
> by cosigning an agreement or by any other method.

Amberly Pointe argues that Section 8-1.5-3-8(l) subjects Stucker Fork to the Commission's jurisdiction because the provision "regulates charges—namely,

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[3] Section 8-1.5-3-8(k) provides in pertinent part that, with respect to property that is served by a municipally owned utility and occupied by someone other than the owner of the property, the statute does not

> prohibit a municipal legislative body from imposing any:
>
> > (A) requirement for a deposit to ensure payment by the person occupying the property of the rates, charges, and fees assessed for the services rendered by the municipally owned utility with respect to the property; or
> >
> > (B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;
>
> that the municipal legislative body may lawfully impose[.]

who may be charged for water service." Appellant's Br. at 18. But this argument ignores the inescapable fact that subsection (l) specifically applies only to municipal legislative bodies, and Stucker Fork is not a municipal legislative body.[4] *See Stucker Fork Conservancy Dist. v. Ind. Util. Regul. Comm'n*, 600 N.E.2d 955, 958 (Ind. Ct. App. 1992) (noting that Indiana Code Chapters 8-1.5-1 through -3 "apply only to municipalities, except consolidated cities, that own or operate utilities" and that the legislature did not intend to classify conservancy districts as municipal utilities); *Ind. Office of Util. Consumer Couns. v. Citizens Wastewater of Westfield, LLC*, 177 N.E.3d 449, 457-58 (Ind. Ct. App. 2021) ("The goal of statutory construction is to determine, give effect to, and implement the legislature's intent. The language of the statute is the best evidence of legislative intent, and all words must be given their plain and ordinary meaning. We may not read into a statute that which is not the expressed intent of the legislature; thus, it is just as important to recognize what a statute does not say as it is to recognize what it does say.") (citations and quotation marks omitted), *trans. denied* (2022). Accordingly, we affirm the Commission on this issue.

Section 2 – Stucker Fork is not subject to 170 IAC 6-1-16.

[11] In its amended complaint, Amberly Pointe alleged that Stucker Fork disconnected service to one of its rental properties for nonpayment after sending written notice addressed only to the tenant, and then restored service after

[4] We also note that Section 8-1.5-3-8(l) was enacted in 2020, years after Stucker Fork enacted its rule making property owners responsible for their tenants' unpaid bills.

Amberly Pointe paid the tenant's outstanding balance. Amberly Pointe further alleged that Stucker Fork later disconnected service to that property upon the tenant's request and without Amberly Pointe's consent. According to Amberly Pointe, Stucker Fork's actions violated certain provisions of Title 170 of the IAC, which were adopted by and are administered by the Commission. Specifically, Amberly Pointe alleged that Stucker Fork violated 170 IAC 6-1-16, which provides in pertinent part that "service to any residential customer shall not be disconnected for … nonpayment of a bill, except after seven (7) days prior written notice to the customer" by mail or personal delivery, and that service may be disconnected "upon the customer's request[.]" 170 IAC 6-1-16(e), -(a); *see* Appellant's App. Vol. 2 at 138 (amended complaint alleging that although Stucker Fork "has taken the position that [Amberly Pointe] is the 'customer' for water services, it nevertheless … improperly disconnected water service for nonpayment without written notice to [Amberly Pointe]" and allowed the tenant "to direct the disconnection of service without [Amberly Pointe's] consent.").

[12] 170 IAC 6-1-2 provides that 170 IAC Rule 6-1, entitled "Standards of Service," "shall apply to any public water utility that meets the definition in section 1(h) of this rule." 170 IAC 6-1-1(h) provides,

> (h) "Utility" or "water utility" means any public water utility that is:
>
> (1) subject to the jurisdiction of the commission under:

(A) IC 8-1-2; or

(B) any other statute of the state of Indiana; and

(2) engaged in the:

(A) production;

(B) sale; or

(C) distribution;

of water service.

In its order, the Commission acknowledged that Stucker Fork is a public utility that is subject to the Commission's jurisdiction for "approval of changes in the district's rates and charges[,]" but the Commission concluded that it "lacks jurisdiction over Stucker Fork's terms and conditions of service to customers, including who is responsible for payment of water service." Appealed Order at 6, 7.

[13] The Commission gave the following rationale for its decision:

> Generally, statutes addressing the same subject matter are to be harmonized, if possible. *Wright v. Gettinger*, 428 N.E.2d 1212 (Ind. 1981). In addition, a more detailed or specific statute will prevail over a more general statute when there is a conflict. *Freeman v. State*, 658 N.E.2d 68 [(Ind. 1995)]. It is also generally presumed that the legislature in enacting a particular piece of legislation has in mind existing statutes covering the same subject and the most recent expression of legislative intent should therefore control. *Podraza v. Grande*, 712 N.E.2d 1007 (Ind. Ct.

App. 1999). Accordingly, we presume that the Legislature, in enacting the conservancy district statutes and authorizing conservancy districts to provide water service to the public, was aware of the Commission's regulation of public utilities generally.

Indiana's public utilities are required under Ind. Code § 8-1-2-4 to furnish reasonably adequate service and facilities. Consistent with the Commission's authority in Ind. Code § 8-1-1-3(g) to formulate rules necessary to carry out its duties, the Commission has adopted rules and regulations governing a public utility's provision of water service to its customers in 170 IAC 6-1. Similar to the requirement in Ind. Code § 8-1-2-4, conservancy districts are also required under Ind. Code § 14-33-20-13(a) to furnish reasonably adequate service and facilities. However, unlike a conservancy district's rates and charges, which are subject to the Commission's jurisdiction like a municipal utility's rates and charges, a conservancy district's rules and regulations for water service are vested with the conservancy district and its board. Specifically, Ind. Code § 14-33-20-13(c) provides that the conservancy district, its board, officers, and employees are to enforce the collection of the rates and charges and, if necessary, may disconnect water service to a water user for the nonpayment of rates and charges. Ind. Code § 14-33-20-5(b) further provides that a conservancy district providing water service retains the rights and powers granted by Article 33 of Title 14 to the extent it is consistent with Chapter 20. Ind. Code § 14-33-5-20(1) specifically vests the conservancy district board with the authority to make regulations for the administration of the affairs of the district, which we find is consistent with the authority provided to the conservancy district in Ind. Code § 14-33-20-13(c).

Accordingly, we find that although Stucker Fork is a public utility, it is not subject to the Commission's general jurisdiction concerning the utility's rules and regulations. Instead, Stucker Fork is subject to the more specific statutes governing the

> conservancy district's provision of water service, which vests authority for the utility's rules and regulations of service with the conservancy district's board.

Id. at 8.

[14] On appeal, Amberly Pointe does not challenge the black-letter legal principles recited in the first excerpted paragraph. Amberly Pointe does argue, however, that

> nothing in the language of [Indiana Code Section] 14-33-20-14 purports to otherwise limit the Commission's regulatory jurisdiction over conservancy districts—which are public utilities—for purposes *other* than rates and charges. Had the legislature intended to exempt conservancy districts from the Commission's general regulatory authority over public utilities, it would have done so expressly, as it has done in the case of municipal utilities. *See* [Ind. Code] § 8-1-2-1(a) (expressly excluding municipal utilities from the definition of public utility).

Appellant's Br. at 15.

[15] But there is more than one way to crack an egg, as the saying goes. On de novo review, we agree with the Commission that the legislature expressly gave conservancy districts, via their boards of directors, the authority to regulate the administration of their own affairs, including billing for and discontinuing water service, by enacting Indiana Code Sections 14-33-5-20 and 14-33-20-13. Amberly Pointe complains that this interpretation "leave[s] conservancy district customers without a voice or a vehicle to raise concerns regarding the district's policies and practices." *Id*. at 17. On the contrary, as Stucker Fork observes, "to

the extent Amberly Pointe does not like Stucker Fork's policies, it could attempt to change them by electing a new board." Appellee's Br. at 20 n.1.[5] We conclude that Stucker Fork is not subject to 170 IAC 6-1-16, and therefore we affirm the Commission's order.

[16] Affirmed.

Vaidik, J., and Altice, J., concur.

[5] Amberly Pointe notes that only freeholders are permitted to vote for directors and asserts that "[t]his leaves a large swath of the population residing within a conservancy district's exclusive service territory—namely, renters—unable to influence the board's actions through the electoral process." Reply Br. at 9. This concern may be redressed by our legislature.