IN THE COURT OF APPEALS OF IOWA

No. 0-714 / 10-0357
Filed February 9, 2011

OWEGO DAIRY, LLC,
Petitioner-Appellant,

vs.

IOWA UTILITIES BOARD, a DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA,
Respondent-Appellee,

and,

WOODBURY COUNTY RURAL ELECTRIC COOPERATIVE,
Intervenor-Appellee,

and,

OFFICE OF CONSUMER ADVOCATE,
Intervenor-Appellee.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

A utility customer contests an Iowa Utilities Board denial of the customer's request for a formal complaint proceeding relative to an allegation that the customer was being unreasonably prejudiced or disadvantaged. **AFFIRMED.**

Bradley R. Kruse of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellant.

Gary Stump and David Lynch of Iowa Utilities Board, Des Moines, for appellee.

John F. Dwyer and Jennifer C. Easler of the Office of Consumer Advocate, Des Moines.

Dennis L. Puckett, John T. Ward, and Elizabeth N. Overton of Sullivan & Ward, West Des Moines, and Glenn A. Metcalf of Metcalf Law Office, Moville, for intervenor Woodbury County Rural Electric Cooperative.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

OWEGO Dairy, which received electricity from Woodbury County Rural Electric Cooperative (Woodbury County REC), filed a complaint with the Iowa Utilities Board alleging it was charged significantly more for electric service than neighboring dairies serviced by MidAmerican Energy. OWEGO requested a formal hearing before the board to present evidence of MidAmerican's rates relative to those paid by OWEGO. In a final agency decision, the board denied the request, and OWEGO petitioned for judicial review. The district court upheld the board's decision to deny a formal hearing for the presentation of rate comparisons. OWEGO appealed this aspect of the court's decision.[1]

I. Standard of Review

Iowa Code section 17A.19(10) (2009) sets forth the standards for review of agency action. The parties agree that the appeal raises a statutory interpretation question. This implicates the standards set forth in sections 17A.19(10)(c) and (*l*). If the interpretation of the pertinent statute is clearly vested by a provision of law in the discretion of the agency, our review is to determine whether the agency action was "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation." Iowa Code § 17A.19(10)(*l*). On the other hand, if the interpretation of the provision is not clearly vested by a provision of law in the discretion of the agency, our review is to determine whether the agency action was "[b]ased upon an erroneous interpretation of a provision of

[1] The court disagreed with the board's disposition of OWEGO's related claim that its rates exceeded the rates charged by Woodbury REC to its residential customers. The court remanded this allegation to the agency for further development. The board has not cross-appealed from this portion of the court's decision.

law." *Id.* § 17A.19(10)(c). The key question, then, is whether the interpretation of the pertinent statute is vested in the discretion of the agency. *See id.* § 17A.19(11); *Thoms v. Iowa Pub. Employees' Ret. Sys.*, 715 N.W.2d 7, 11 (Iowa 2006).

In deciding this question, we first look to the agency's enabling statute to determine whether the statute explicitly addresses the issue. *See Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 11 (Iowa 2010). If the statute does not explicitly grant the agency discretion to interpret its provisions, we must examine "the phrases or statutory provisions to be interpreted, their context, the purpose of the statute, and other practical considerations to determine whether the legislature intended to give interpretive authority to an agency." *Id.* at 11–12.

Iowa Code chapter 476 governs public utility regulation. The legislature has not explicitly granted the board authority to interpret that chapter's provisions. Therefore, we must examine the other factors cited in *Renda* to determine whether interpretation of the pertinent statutory provision was clearly vested by a provision of law in the discretion of the agency.

We begin with the statutory provision to be interpreted, Iowa Code section 476.1A(3). It provides:

> Electric cooperative corporations and associations and electric public utilities exempt from rate regulation under this section shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

Iowa Code § 476.1A(3). This provision is part of a statutory scheme that exempts rural electric cooperatives such as Woodbury County REC from the rate

regulation authority of the board, but subjects them to other types of regulation. *See id.* § 476.1A(1), (2).

There is no disagreement that the board has "been granted broad authority by the legislature to regulate the rates and services of public utilities." *See AT&T Commc'ns of the Midwest v. Iowa Utils. Bd.*, 687 N.W.2d 554, 561 (Iowa 2004). But, OWEGO asserts this broad authority does not give the agency "the authority to interpret *all* statutory language." *Renda*, 784 N.W.2d at 13. OWEGO is correct. *See The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 423–24 (Iowa 2010) (concluding department was not vested with discretion to interpret the term "manufacturer"); *Andover Volunteer Fire Dep't v. Grinnell Mut. Reins. Co.*, 787 N.W.2d 75, 80 (Iowa 2010) (concluding "summoned to duty" was not a phrase uniquely within the subject matter expertise of the workers' compensation commissioner); *Xenia Rural Water Dist. v. Vegors*, 786 N.W.2d 250, 253 (Iowa 2010) (concluding "arising out of and in the course of the employment" and "third-party" have "an independent legal definition not uniquely within the subject matter of the expertise of the agency" (citation omitted)); *Iowa Network Servs., Inc. v. Iowa Dep't of Revenue*, 784 N.W.2d 772, 775 (Iowa 2010) (concluding legislature did not intend to vest the Department of Revenue with authority to interpret a provision of Iowa Code chapter 476 dealing with utility regulation). We must focus on the specific language at issue. The question here is whether the board has been clearly vested with discretion to interpret the last portion of section 476.1A(3), the prohibition against subjecting "any person to any unreasonable prejudice or disadvantage."

We conclude the answer to this question is yes. *See Renda*, 784 N.W.2d at 14 ("[W]hen the statutory provision being interpreted is a substantive term within the special expertise of the agency, we have concluded that the agency has been vested with the authority to interpret the provisions."). The pertinent clause has to be interpreted and applied in the context of the rates set by utilities and the services provided by utilities. *See id* at 11–12. In this context, the contested phrase is substantive language "uniquely within the subject matter expertise of the agency." *Id*. at 14; *see Office of Consumer Advocate v. Iowa Utils. Bd.*, 663 N.W.2d 873, 875–76 (Iowa 2003) (noting board's expertise critical to effective management of telecommunications area).

We recognize the phrase can be defined broadly. *See* Leonard M. Baynes, *Deregulatory Injustice and Electronic Redlining: The Color of Access to Telecommunications*, 56 Admin. L. Rev. 263, 279 (Spring 2004) (examining identical language in 47 U.S.C. § 202, and concluding the language of § "202(a) is broad enough to bar all forms of discrimination or disparity in service by carriers against any person, class of person, or community"). We also recognize discrimination is a concept that the board is not uniquely equipped to handle. *See Renda*, 784 N.W.2d at 15 (noting terms subject to interpretation "are widely used in areas of law other than" the area within the purview of that agency). But it is also true that the contested phrase has been narrowly used to address discrimination in the setting of rates and the provision of services. *See Texas & Pac. Ry. Co. v. United States*, 289 U.S. 627, 633, 53 S. Ct. 768, 770, 77 L. Ed. 1410, 1419–20 (1933) (citing similar language in the Interstate Commerce Act, 49 U.S.C. § 3(1)); *Pub. Serv. Comm'n of Kentucky v. Commonwealth*, 320

S.W.3d 660, 667 (Ky. 2010) (citing Ky. Rev. Stat. § 278.170(1) and concluding legislature's inclusion of "unreasonable prejudice or disadvantage" clause "clearly points to the conclusion that reasonable distinctions between recipients of utility services, 'classes of service' or utility rates are legally appropriate"); *O'Sullivan v. Feinberg*, 114 N.Y.S.2d 515, 518 (N.Y. Sup. Ct. 1951) (citing N.Y. Pub. Serv. Law § 65(3) and concluding legislature left it to public service commission to determine "whether acts of gas corporations are unjust, discriminatory, unduly preferential or in any wise in violation of law"); *Chase Gardens, Inc. v. Oregon Pub. Util. Comm'n*, 886 P.2d 1087, 1091 (Or. Ct. App. 1994) (citing Or. Rev. Stat. § 757.325); *Mill v. Commonwealth*, 447 A.2d 1100, 1101–02 (Pa. Commw. Ct. 1982) (citing 66 Pa. Cons. Stat. § 1304 and concluding "that it falls to the PUC to determine under what circumstances and in what amounts such a preference would be reasonable").

We conclude the interpretation of the contested phrase has to be made in the context of the utility regulatory scheme set forth in Iowa Code chapter 476. We further conclude the board is clearly vested by a provision of law with discretion to interpret the last phrase of Iowa Code section 476.1A(3). Accordingly, we will not reverse the board unless the agency's interpretation is "irrational, illogical, or wholly unjustified." Iowa Code § 17A.19(10)(*l*).

II. Board's Interpretation of "Unreasonable Prejudice or Disadvantage"

The issue before the board and before us is whether the statutory prohibition against subjecting "any person to any unreasonable prejudice or

disadvantage" allows a customer of one utility to compare the rates being charged by its utility to the rates being charged by a utility serving similarly-situated neighboring customers. OWEGO concedes that the first clause of section 476.1A(3), prohibiting "unreasonable preferences or advantages as to rates or services," only allows for a comparison of rates among a single utility's customers. It argues, however, that the second clause, prohibiting unreasonable prejudice and disadvantage, authorizes a comparison of rates among different utilities. In its view, the second clause has to apply to rates and services among utilities to avoid a redundancy with the first clause. *See Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 260 (Iowa 2009) ("When construing a statute, we avoid a construction that makes part of a statute redundant or irrelevant.").

The board rejected this assertion, concluding:

> [B]oth clauses refer to the treatment of customers by the same electric utility. The first clause focuses on rates and services, while the second clause applies to any other interaction between the utility and its customers.

OWEGO correctly points out that the board did not identify the "other interactions" a customer might have with a utility pursuant to the second clause. Nonetheless, we are convinced the board's interpretation of the second clause does not create a redundancy as OWEGO claims. As noted, OWEGO concedes the first clause of section 476.1A(3) applies to customers within a single utility. When the second clause is read with this concession in mind, the meaning of section 476.1A(3) is clear. As Woodbury County REC states, "The first clause applies to those customers who receive an unreasonable preference or

advantage while the second clause applies to those customers receiving an unreasonable prejudice or disadvantage." Essentially, the second clause is the mirror image of the first clause. Interpreted in this manner, there is no redundancy; both sets of practices are prohibited. *Cf. Texas & Pac. Ry.*, 289 U.S. at 649–50, 53 S. Ct. at 776–77, 77 L. Ed. at 1428 (interpreting similar provision in Interstate Commerce Act to apply only to rates that a single carrier has some manner of control over); *City of Coralville v. Iowa Utils. Bd.*, 750 N.W.2d 523, 530 (Iowa 2008) ("Citizens serviced by different public utilities are not similarly situated, and consequently the City cannot sustain a constitutional challenge based on the fact that customers of different utilities may pay different rates.").

We recognize the board's decision does not explicitly state that the second clause is simply the mirror image of the first clause. This does not render the board's interpretation irrational. Ultimately, the board expressed a view that the second clause does not allow for a comparison of different utilities' rates. Under the highly deferential standard set forth in 17A.19(10)(*l*), we conclude this view must be upheld. *See* Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, 70 (1998) ("[T]he court may not substitute its judgment *de novo* for that of the agency but, instead, may overturn the agency interpretation only if it is unreasonable, that is, "irrational, illogical, or wholly unjustifiable.").

As the board's denial of the formal hearing was premised on its interpretation of the second clause of section 476A.1(3), an interpretation we do not find irrational, illogical, or wholly unjustified, we affirm the board's decision.

AFFIRMED.