

**BEFORE THE PUBLIC SERVICE  
COMMISSION OF THE STATE OF  
MISSOURI**

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	Case No. WC-2022-0295
v.	)	SC-2022-0296
	)	
I-70 Mobile City, Inc.	)	
d/b/a I-70 Mobile City Park	)	
	)	
Respondent.	)	

**ANSWER AND AFFIRMATIVE DEFENSES OF I-70 MOBILE CITY,  
INC.**

I-70 Mobile City, Inc., by and through counsel, and for its Answer and Affirmative Defenses, states as follows:

Introduction

1. This matter concerns the unauthorized provision of water and sewer service by Respondent to the public, namely to residents of the I-70 Mobile City Park, for gain, without certification or other authority from the Missouri Public Service Commission.[<sup>1</sup>]

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<sup>1</sup> Respondent has set forth each and every allegation of the Complaint as asserted against it by Complainant for the sole purpose of ease of response to each allegation, for the benefit of the parties and Commission. This restatement of allegations is not an admission by Respondent. Respondent’s responses to each allegation are explicitly set forth in the “**ANSWER**” section following each allegation.

**ANSWER: I-70 Mobile City admits that it provides water and sewer service to certain tenants of the I-70 Mobile City Park. I-70 Mobile City denies all other allegations in this paragraph.**

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission, acting by and through the Staff Counsel as authorized by 20 CSR 4240-2.070(1).

**ANSWER: I-70 Mobile City admits the allegations of this paragraph.**

Respondent

3. Respondent I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (hereafter "I-70 MHP"), is a Missouri corporation with its principal place of business located at 1449 Outer Rd., Bates City, Missouri 64011. Its registered agent is Robert T. Steinkemp, located at 132 Westwoods Drive, Liberty, Missouri 64068.

**ANSWER: I-70 Mobile City admits the allegations of this paragraph.**

Jurisdiction

4. Section 386.390.1, RSMo, authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to

be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission . . . .

**ANSWER: I-70 Mobile City states that Section 386.390.1, RSMo, speaks for itself; I-70 Mobile City denies any remaining allegations in this paragraph.**

5. Pursuant to 20 CSR 4240-2.070(1), "A complaint may also be filed with the commission staff through the staff counsel"

**ANSWER: I-70 Mobile City states that 20 CSR 4240-2.070(1) speaks for itself; I-70 Mobile City denies any remaining allegations in this paragraph.**

6. I-70 MHP operates, controls or manages a plant or property, or a dam or a water supply, canal, or power station, and distributes or sells for distribution, or sells or supplies water for gain, in Lafayette County, Missouri.

**ANSWER: I-70 Mobile City admits that it provides water service to certain tenants of the I-70 Mobile City Park. I-70 Mobile City denies all other allegations in this paragraph.**

7. I-70 MHP is thus a water corporation pursuant to § 386.020(59), RSMo, and a public utility pursuant to § 386.020(43), RSMo.

**ANSWER: This paragraph states a legal conclusion requiring no response. To the extent a response is required, I-70 Mobile City denies all other allegations in this paragraph.**

8. I-70 MHP owns, operates, controls or manages a sewer system, plant or property with more than 25 connections, for the collection, carriage, treatment, or disposal of sewage for gain in Clay County, Missouri.

**ANSWER: I-70 Mobile City denies the allegations in this paragraph.**

9. I-70 MHP is thus a sewer corporation pursuant to § 386.020(49), RSMo, and a public utility pursuant to § 386.020(43), RSMo.

**ANSWER: This paragraph states a legal conclusion requiring no response. To the extent a response is required, I-70 Mobile City denies all other allegations in this paragraph.**

10. As a water and a sewer corporation and a public utility, I-70 MHP is subject to the jurisdiction, regulation, and control of this Commission. Section 386.250, RSMo, and Chapters 386 and 393, RSMo, the *Public Service Commission Law*.

**ANSWER: This paragraph states a legal conclusion requiring no response. To the extent a response is required, I-70 Mobile City denies all other allegations in this paragraph.**

11. Section 393.170.2, RSMo, states, in pertinent part, as follows:

No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, ... without first having obtained the permission and approval of the commission....

**ANSWER: I-70 Mobile City states that 393.170.2, RSMo, speaks for itself; I-70 Mobile City denies any remaining allegations in this paragraph.**

12. Section 386.570, RSMo, states as follows:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or

requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.
3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

**ANSWER: I-70 Mobile City states that Section 386.570, RSMo, speaks for itself; I-70 Mobile City denies any remaining allegations in this paragraph.**

13. Section 386.600, RSMo, states, in pertinent part, as follows:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission....

**ANSWER: I-70 Mobile City states that Section 386.600, RSMo,**

**speaks for itself; I-70 Mobile City denies any remaining allegations in this paragraph.**

Facts and Cause of Action

14. I-70 MHP owns the real property located at 1449 Outer Road, Bates City, Missouri 64011, which it operates as a mobile home park identified as I-70 Mobile City Park.

**ANSWER: I-70 Mobile City admits it owns the real property located at 1449 Outer Road, Bates City, Missouri 64011, identified as I-70 Mobile City Park. I-70 Mobile City admits it operates the property as both a mobile home and recreational vehicle (RV) park.**

15. I-70 MHP purchases its water from Bates City, Missouri, which purchases its water from Consolidated PWS #2 of Lafayette, Johnson, and Saline Counties, Missouri.

**ANSWER: I-70 Mobile City admits the allegations in this paragraph.**

16. I-70 MHP has a permitted lagoon system on-site operated by a Department of Natural Resources (DNR) permitted operator, which it uses to serve the residents of the I-70 Mobile City Park. See copy of I-70 MHP's Missouri State Operating Permit issued by DNR effective December 1, 2018, as Attachment A.

**ANSWER: I-70 Mobile City admits it has a permitted lagoon system on-site and that Attachment A is a copy of I-70 MHP's Missouri State Operating Permit issued by DNR effective December 1, 2018; I-70 Mobile City denies any remaining allegations in this paragraph.**

17. Residents of the I-70 Mobile City Park requesting water and

sewer service for their units are provided such service by I-70 MHP and are subsequently billed for water and sewer service by I-70 MHP based on their usage of water and sewer service separate from their pad rent. See copy of Residential Water, Sewer, and Lot Rent Bill and Security Deposit Statement, as Attachment B.

**ANSWER: I-70 Mobile City admits that certain tenants of the I-70 Mobile City Park request water and sewer service and admits that I-70 Mobile City provides water and sewer service to certain tenants. I-70 Mobile City admits that such tenants are billed for water and sewer service by I-70 MHP based on their usage of water and sewer service. I-70 Mobile City admits that Attachment B is a screenshot of a tenant's online portal; I-70 Mobile City denies any remaining allegations in this paragraph.**

18. Missouri courts have held that entities act as public utilities when they sell services to the public for compensation and have undertaken the responsibility to provide such services to all members of the public within their capability.<sup>2</sup>

**ANSWER: This paragraph states a legal conclusion requiring no response. To the extent a response is required, I-70 Mobile City denies all other allegations in this paragraph.**

19. Although I-70 MHP is operating water and sewer utilities and providing water and sewer service for the public use, I-70 MHP does not

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<sup>2</sup> *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W. 569, 574-5 (Mo.App. S.D. 1997); *Hurricane Deck Holding Co. v. Public Service Comm'n*, 289 S.W.3d 260, 264-5 (Mo.App. W.D. 2009).

have certificates of convenience and necessity from the Commission allowing it to legally provide these services to residents of the I-70 Mobile City Park.

**ANSWER: I-70 denies it is operating water and sewer utilities. I-70 denies it is providing water and sewer service for the public use. I-70 admits that it does not have certificates of convenience and necessity from the Commission. Whether I-70 Mobile City Park can “legally provide...services to residents” is a legal conclusion requiring no response. To the extent a response is required, I-70 Mobile City denies all other allegations in this paragraph.**

20. I-70 MHP is engaging in the unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission, in violation of § 393.170.2, RSMo.

**ANSWER: This paragraph states a legal conclusion requiring no response. To the extent a response is required, I-70 Mobile City denies all other allegations in this paragraph.**

#### **AFFIRMATIVE DEFENSES**

A. The Complaint fails to state a claim upon which relief may be granted in that the Commission previously dismissed a nearly identical complaint against Aspen Woods Apartment Associates L.L.C. *See* File No. WC-2010-0027, Order Dismissing Complaint (October 5, 2011).

B. The Complaint fails to state a claim upon which relief may be granted in that the Commission has never sought to regulate I-70 Mobile City before and currently does not regulate other similarly situated



entities, in that:

- a. I-70 Mobile City has been operating a mobile home park since 1985 in the same location;
- b. I-70 Mobile City was not contacted by the Commission until April 2021;
- c. I-70 Mobile City has never been the subject of a Commission complaint or investigation until this matter;
- d. I-70 Mobile City has never been the subject of any complaints made to any other federal agencies (e.g., HUD) or any other state agencies (e.g., the Attorney General's Office);
- e. According to the Missouri Manufactured Housing Association ([www.mmha.net](http://www.mmha.net)) there are more than sixty "communities" of manufactured homes in Missouri; and
- f. On information and belief, the Commission only regulates one mobile home park in Missouri.

C. The Complaint fails to state a claim upon which relief may be granted in that:

- a. I-70 Mobile City does not provide water or sewer services to the public;
- b. I-70 Mobile City does not provide water or sewer services to all individuals who rent pads at I-70 Mobile City Park;
- c. I-70 Mobile City only provides water or sewer services to certain individuals pursuant to contract;
- d. I-70 Mobile City is not a water corporation;
- e. I-70 Mobile City is not a sewer corporation; and
- f. I-70 Mobile City is not a public utility.

D. The Complaint fails to state a claim upon which relief may be granted in that I-70 Mobile City in that Missouri Landlord-Tenant law (*see* Chapters 441 and 535, RSMo) controls or otherwise preempts the Commission's jurisdiction over I-70 Mobile City.

E. I-70 Mobile City reserves the right to assert additional affirmative defenses that may come to its attention as a result of the ongoing investigation of this matter and which may be revealed in discovery.

**WHEREFORE**, Respondent prays that the Commission dismiss the Complaint with prejudice, award all attorneys fees and costs associated with defending this matter to Respondent, and for such other relief as may be just and proper in the circumstances.

Respectfully submitted,

ELLINGER & ASSOCIATES, LLC

By:           /s/ Stephanie S. Bell            
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on May 31, 2022.

*/s/ Stephanie S. Bell*  
Stephanie S. Bell