

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

Anchor’s Point Condominium Owners,)
Association, Inc.,)
Complainant)
v.)
TRR Management, LLC; Frank J. Steed JR.)
d/b/a Steed Communities, JM Land Holdings,)
LLC; TRR Time Share, LLC; Carroll James)
Christiansen; Kimberling Inn, Inc.; and)
Kimberling Properties, Inc.,)
Respondents.)

Case No. WC-2020-0048

STAFF REPORT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through undersigned counsel, and submits its *Staff Report*.

Procedural History

1. On August 26, 2019, Anchor’s Point Condominium Owners Association, Inc. (“APCOA” or Complainant”) filed a complaint with the Commission against TRR Management, LLC; Frank J. Steed, JR. d/b/a Steed Communities; JM Land Holdings, LLC; TRR Time Share, LLC; Carroll James Christiansen; Kimberling Inn, Inc.; and Kimberling Properties, Inc. According to the Complaint, “Respondents either currently own and/or formerly owned and/or operated a public utility under the jurisdiction of the Missouri Public Service Commission...pursuant to § 386.250 of the Missouri Revised Statutes.”

2. On August 28, 2019, the Commission issued its *Order Giving Notice of Contested Case and Directing Answer* (“Order”). The *Order* directed Staff to conduct an investigation under the requirements of 20 CSR 4240-2.070(11) and file a report no later than October 11, 2019.

3 On September 25, 2019, TRR Management, LLC; Frank J. Steed, JR.; Steed Communities; JM Land Holdings, LLC; and TRR Time Share, LLC (“Respondents”)¹ filed their *Answer to Complaint*, denying the allegations and requesting the Commission to dismiss the Complaint for lack of jurisdiction.

4. On October 11, 2019, Staff filed its *Motion for Extension of Time* requesting a 90 day extension on the deadline to file its report.

5. On October 15, 2019, the Commission granted Staff’s request in its *Order Granting Motion for Extension of Time to File Staff’s Report* and ordered Staff to file a report no later than January 9, 2020.

6. On January 8, 2020, Staff filed its second *Motion for Extension of Time* requesting a seven day extension on the deadline to file its report.

7. On January 8, 2020, the Commission granted Staff’s request in its *Order Further Extending Time to File Staff’s Report* and ordered Staff to file a report no later than January 16, 2020.

8. As stated in its *Staff Report*, attached hereto as *Appendix A*, it is Staff’s position that the Respondents do not hold themselves out to serve the public, indiscriminately, and therefore, are not subject to the jurisdiction of this Commission.

¹ On September 3, 2019, Matthew Growcock entered his appearance on behalf of TRR Management, LLC; Frank J. Steed, JR.; Steed Communities; JM Land Holdings, LLC; and TRR Time Share, LLC. On September 27, 2019, a letter was filed on behalf of Carroll James Christensen; Kimberling Inn, Inc.; and Kimberling Properties stating, “The properties addressed in this complaint have not been owned by any of these entities for several years.” When referencing “Respondents, Staff is only referring to TRR Management, LLC; Frank J. Steed, JR.; Steed Communities; JM Land Holdings, LLC; and TRR Time Share, LLC.

Parties

9. APCOA is a non-profit corporation and common interest community in Stone County, Missouri. The complaint that initiated this case was brought on behalf of all APCOA unit owners.²

10. Carroll James Christiansen; Kimberling Inn, Inc.; and Kimberling Properties (referred to by Complainant as the “Christiansen Respondents”) “developed the unified tract of land into various commercial units, condominium units and timeshare units and, in connection with that enterprise, the Christiansen Respondents sold condominiums to individual Unit Owners who then became part of [APCOA].”³

11. TRR Management, LLC; Frank J. Steed JR. d/b/a Steed Communities; JM Land Holdings, LLC; and TRR Time Share, LLC have common ownership and acquired the water system and tract of land previously owned by the Christiansen Respondents in August 2013.⁴

12. Respondents, through TRR Management, LLC,⁵ currently provide water service to the development of condominiums, time share units, and common areas (previously owned by the Christiansen Respondents) located in Kimberling City, Missouri.⁶

² See *Complaint*, par. 4 and 5.

³ See *Complaint*, par. 10.

⁴ See *Complaint* par. 11.

⁵ Respondents’ response to Staff DR 0016 states in part, “Currently, TRR Management, LLC owns the water system.”

⁶ Respondents’ response to Staff DR 0009 states, “[TRR Management, LLC] provides water service to Kimberling Inn Report and Vacation Club and the Anchor’s Point Condo Association.”

Commission Jurisdiction

13. Missouri law states that every water and sewer corporation, as defined in Chapter 386, RSMo, is a public utility subject to Commission jurisdiction, control, and regulation and the provisions of Chapter 386, RSMo.⁷

14. Section 386.020(59), RSMo, defines a water corporation as every corporation or person “owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]”

15. In addition to meeting the definition supra, utility plant must be dedicated to the public use. The Supreme Court of Missouri stated in *State ex rel. M.O. Danciger & Co. v. Public Service Comm’n*, 205 S.W. 36, 38 (Mo. 1918) that while the definition of an electric utility includes no language stating that the utility must be for the public use, a public use requirement is implicit from the definition. This requirement is applicable to water utilities. Further:

For the operation of the electric plant must be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to regulation.⁸

Indiscriminant Service for Public Use

16. *Danciger*, cited supra, set forth the public use requirement in the state of Missouri. The matter originated as an action before the Commission requesting that M.O.

⁷ See Section 386.020(43), RSMo.

⁸ *Danciger* at 38 (citing *Munn v. Illinois*, 94 U.S. 113 (1876)).

Danciger & Co. be compelled to furnish electrical current to the complainant. M.O. Danciger & Co. was the parent company of a brewery that generated electricity for its own use, which upon discovering it was producing more than its operation required, entered into unwritten⁹ special contracts to sell the excess electricity.¹⁰ While the Commission held that M.O. Danciger's operations constituted that of a public utility, and thus it owed the duty of serving the complainant, the Appellate Court found otherwise. In developing its holding, the Court relied on cases from several other jurisdictions, and perhaps most prominently on *Wyman on Public Service Corporations*, quoting:

The fundamental characteristic of a public calling is indiscriminate dealing with the general public. As Baron Alderson said in the leading case: "Everybody who undertakes to carry for any one who asks him is a common carrier. ***The criterion is whether he carries for particular persons only, or whether he carries for every one. If a man holds himself out to do it for every one who ask him, he is a common carrier; but if he does not do it for every one, but carries for you and me only, that is a matter of special contract.***" This regular course of public service without respect of persons makes out a plain case of public profession by reason of the inevitable inference which the general public will put upon it. "One transporting goods from place to place for hire, for such as see fit to employ him, whether usually or occasionally, whether as a principal or an incidental occupation, is a common carrier" *Danciger* at 42 (quoting 1 *Wyman on Pub. Service Corps.* 227)(emphasis added).

17. Pursuant to *Danciger*, and the line of cases based on it, jurisdiction of this Commission is not triggered if there is no intent to serve the general public. Missouri appellate courts have historically listed three independent factors to be considered when determining whether an entity is indiscriminately providing service for public use:

⁹ *Danciger* at 38. "There are no contracts in writing with any of the customers of respondent. The arrangement for furnishing the 5 or 6, lights to the city, which the city pays, was made verbally.."

¹⁰ *Danciger* at 37.

(a) Whether the entity solicited customers within the area it was capable of serving;¹¹

(b) Whether the entity “refused to provide water service” to eligible customers;¹²

and

(c) Whether the entity provides service via a special contract.¹³

18. Determining whether an entity indiscriminately provides services for public use is a fact specific analysis. “[I]n determining whether a corporation is or is not a public utility, the important thing is, not what its charter says it may do, but what it actually does.”¹⁴ While any of the above considerations may be treated as an independent, definitive factor, the most persuasive consideration appears to be whether the providing entity “holds itself out to serve the public.”

Provision of Service “For Gain”

19. Aside from the “public use” requirement, the other necessary element for Commission jurisdiction over either a water or sewer corporation is that the entity is operating “for gain.” The phrase “for gain” has been interpreted by the *Osage Water* court to mean “for compensation.” A more analytical discussion in *Hurricane Deck Holding Co. v. Public Service Comm’n of State*, reaffirms and strengthens the *Osage Water* court’s

¹¹ *State ex. Rel. Cirese v. Public Service Commission*, 178 S.W.2d 788, 790 (Mo. App. W.D. 1944); see also *Hurricane Deck Holding Co. v. Public Service Comm’n of State*, 289 S.W. 3d 260, 266 (Mo. App. W.D. 2009)(finding that providing water service indiscriminately to all homeowners constituted engaged in the business as a public utility)(quoting *Cirese* at 791).

¹² *Osage Water Co. v. Miller County Water Authority, Inc.* 950 S.W. 2d 575 (Mo. App. S.D. 1997)(finding the record void of evidence that the company had refused service. See also, *Danciger*, at 40-41 (finding the company had refused service beyond its production capacity).

¹³ *Hurricane Deck* at 266, quoting *Danciger* at 41 (“[W]here the company supplying electricity has not professed to sell the public indiscriminately at regular rates, but has from the beginning adopted the policy of entering into special contracts upon its own terms[,] such companies are plainly engaged in private business”)(internal citations omitted).

¹⁴ *Osage Water* at 574, quoting *Danciger* at 39. See also *State Ex. Rel. and to Use of Cirese v. Public Serv. Comm’n of Missouri*, 178 S.W. 2d 788, 790 (Mo. App. 1944).

conclusions. The *Hurricane Deck* court quotes the underlying Commission Report and Order, affirming that:

The definition [of water corporation] depends upon an intent to supply water or sewer service for gain or compensation. Sending a bill to customers for the provision of water and sewer service meets the definition of operating a system for gain, regardless of whether any customer actually pays the bills.

20. Thus, pursuant to *Osage Water* and *Hurricane Deck*, a water provider that sends bills to customers for the provision of water service, in any amount, is operating “for gain.”

Relevant Facts Related to Commission Jurisdiction

21. TRR Management, LLC¹⁵ currently owns and operates a well and system that provides water to a development of common areas, time shares, and condominiums located in Stone County, Missouri.¹⁶

22. TRR Management, LLC “provides water service to its own property and that of related companies (common ownership),”¹⁷ and APCOA.

23. APCOA is the only entity billed by TRR Management, LLC for water service.¹⁸ While there is no written agreement or contract between TRR Management, LLC and APCOA,¹⁹ TRR Management, LLC sends monthly bills to APCOA designed to cover costs associated with road maintenance, lawn care, snow removal, electric for lights

¹⁵ Respondents’ response to Staff DR 0016 states in part, “Currently, TRR Management, LLC owns the water system.”

¹⁶ Respondents’ response to Staff DR 0009 states, “[TRR Management, LLC] provides water service to Kimberling Inn Resort and Vacation Club and the Anchor’s Point Condo Association.”

¹⁷ See Response to Staff DR 0043.

¹⁸ See Response to Staff DR 0044.

¹⁹ See Response to Staff DR 0010. “There are no contracts between the [TRR Management, LLC] and APCA.”

on shared roads and parking lots, landscaping, a reserve for future road repaving, and necessary operational costs, maintenance, and repairs to the water well and system.²⁰ Since the development of the land around APCOA, they have been continually served by Carroll James Christensen (or companies owned by Mr. Christiansen) or TRR Management, LLC.²¹

24. TRR Management, LLC has never solicited new customers to connect to its water system.²²

25. A nearby water company, Ozarks Clean Water Company, serves customers throughout the area, and has the capacity and is willing to serve APCOA.²³

Discussion

26. For a water utility in the state of Missouri to fall under the jurisdiction of the Commission, it must both provide water service “for gain” and provide its service indiscriminately to the public. It is the opinion of Staff Counsel that only one of these two requirements is met in this instance.

27. As outlined supra, pursuant to *Osage Water* and *Hurricane Deck*, a water provider that sends bills to customers for the provision of water service, in any amount, is operating “for gain.” TRR Management, LLC bills APCOA monthly in part to recover costs associated with operating and maintaining its water system. Therefore, it is Staff

²⁰ See Response to Staff DR 0023.

²¹ See *Complaint*, par. 10 and 13. “After purchasing the above-described land, the Steed Respondents, through TRR, began to send bills for water, sewer, and road maintenance to Complainant, and Complainant paid those invoices on behalf of and for the benefit of Unit Owners.”

²² See Response to Staff DR 0042.

²³ See letter attached in response to Staff DR 0015, “...Ozarks Clean Water Company (OCWC) preliminary opinion is that our well that now services the Kimberling City shopping Center and Port Holiday Condos has the capacity to also serve the 67 condo units at Anchors Point.”

Counsel's conclusion that TRR Management, LLC provides water service "for gain," pursuant to the definition of a water corporation under section 386.020(59) RSMo.

28. However, based upon the facts known to Staff, it is Staff Counsel's conclusion that Respondents are not providing indiscriminant service for public use, and therefore, are not subject to the jurisdiction of the Commission. As stated supra, TRR Management, LLC provides two entities with water service; APCOA and the Kimberling Inn Resort and Vacation Club, a property with which it has common ownership. In addition, TRR Management, LLC does not solicit other customers to connect to its system. While TRR Management, LLC bills APCOA monthly, the Kimberling Inn Resort and Vacation Club is under common ownership and is not billed. Hence, it is apparent to Staff that TRR Management, LLC operates a water system for its own use, and has a special contract with APCOA for the provision of water service.²⁴ While there is no written contract between APCOA and TRR Management, LLC, based upon the facts available, Staff concludes that service is rendered via an implicit special contract based on ongoing provision of service by the owner of the water system. Therefore, pursuant to *Danciger*, and the line of cases based on it, the Respondents are not providing, and have no intent to provide, indiscriminant service to the public.

Conclusion

29. Although TRR Management, LLC provides water service for gain, Staff Counsel's analysis leads to the conclusion that they do not fall under Commission

²⁴ This situation presented in this case is much like the one presented in *Danciger* (described above in par.15): TRR Management, LLC provides water service to itself (through companies with common ownership) and has only entered into an unwritten special contract with one customer, APCOA.

jurisdiction, and, thus, should not be regulated. TRR Management, LLC does not provide indiscriminate service to the public; they provide service to (1) properties with which they share common ownership and (2) APCOA through an implicit special contract of continual service. Importantly, APCOA is not bound to be served by TRR Management, LLC, as there is another water company nearby willing to serve them. Accordingly, APCOA's *Complaint* should be dismissed.

WHEREFORE, Staff respectfully submits this Staff Report for the Commission's information and consideration, and requests the Commission dismiss this *Complaint*, and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Casi Aslin

Casi Aslin
Associate Counsel
Missouri Bar No. 67934
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 751-8517
casi.aslin@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of January, 2020.

/s/ Casi Aslin

REPORT OF THE STAFF

TO: Missouri Public Service Commission Official Case File
Case No. WC-2020-0048

FROM: Curt B. Gateley, Utility Policy Analyst II, Water and Sewer Dept.
David A. Spratt, Utility Operations Technical Specialist II, Water and Sewer Dept.
Deborah Ann Bernsen, Utility Management Analyst III, Customer Experience Dept.
Ben Rankin, Utility Management Analyst II, Customer Experience Dept.
Amanda C. McMellen, Utility Regulatory Auditor V, Auditing Dept.

/s/ Curt B. Gateley / 01-16-2020
Case Manager / Date

/s/ Casi Aslin / 01-16-2020
Staff Counsel's Office / Date

SUBJECT: Staff Investigation and Report

DATE: January 16, 2020

EXECUTIVE SUMMARY

This report provides Staff's investigation and recommendations concerning Anchor's Point Condominium Owners Association's formal complaint against TRR Management, LLC, Frank J. Steed, Jr. d/b/a Steed Communities, JM Land Holdings, LLC, TRR Time Share, LLC, Carroll James Christiansen, Kimberling Inn, Inc., and Kimberling Properties, Inc. (collectively "Respondents"). The Complainants allege that the Respondents currently or formerly owned and operated a public water utility for gain without authorization from the Commission. Based on its investigation, and also upon Staff Counsel's analysis of jurisdiction, Staff takes the position that the Respondents' provision of service is not subject to regulation by the Commission.

INTRODUCTION AND BACKGROUND

The Anchors Point Condominium Owners Association (APCOA) is a property association located in Kimberling City, Missouri, and consists of 67 condo units, a swimming pool, and a laundromat for which it receives water service. APCOA was founded by Respondent Carroll James Christiansen. The Anchors Point condominium was constructed on an undeveloped portion of property originally owned by the Kimberling Inn, which included conference facilities, a hotel, timeshare units, restaurants, and recreational facilities. Carroll James Christiansen originally developed the properties, and provided water service to both through Kimberling Inn and

Kimberling Properties. In 2010, APCOA purchased the building that would become Anchor's Point. In 2013, the assets of Kimberling Inn were purchased by Respondent Frank J. Steed, Jr. (aka Jay Steed), through several entities, including TRR, LLC, TRR Management, LLC, and TRR Timeshare, LLC.

TRR Management, LLC, Frank J. Steed JR. d/b/a Steed Communities, JM Land Holdings, LLC; and TRR Time Share, LLC are all entities under the common ownership and control of Frank J. Steed. However, because of the company structures, the exact roles of each entity are not entirely clear. TRR Management, LLC states that it currently owns the water system at issue in this matter,¹ and issues bills to APCOA designed to recover costs associated with road maintenance, lawn care, snow removal, electric for lights on shared roads and parking lots, landscaping, a reserve for future road repaving, sewer, and necessary operational costs, maintenance, and repairs to the water well and system.² However, in the course of Staff's investigation, APCOA provided Staff a bill of sale indicating that TRR, LLC³ owns the assets. Stone County GIS lists JM Land Holdings, LLC as owning the well. TRR Timeshare, LLC, owns the Kimberling Inn and Vacation Club. According to the asset purchase agreement provided in the Complainant's response to Staff DR 0041, TRR, LLC, is the entity that purchased the assets of Kimberly Inn. None of the Respondents in this case have any ownership interest in APCOA

On August 26, 2019, APCOA filed a formal complaint, on behalf of all APCOA condo unit owners, with the Missouri Public Service Commission against the Respondents. APCOA alleges that "neither the Christiansen Respondents nor the Steed Respondents has obtained a [CCN] from the Commission," yet have "tried to establish rates for water service" and "charged Complainant for operational costs of the Water System facilities". APCOA has requested that the Commission grant relief by exerting jurisdiction over the water system, requiring the Respondents to obtain a CCN, and prohibit discontinuance of water service to APCOA for prior accrued balances.

On August 28, 2019, the Commission ordered Staff to investigate this formal complaint and file a report or request for additional time no later than October 11, 2019. Staff filed a Motion for

1 See Response to Staff DR 0016.

2 See Response to Staff DR 0023.

3 TRR, LLC was not listed as a respondent in the Complaint filed by APCOA.

Extension of Time on October 11, 2019, in order to complete a thorough investigation into the allegations against eight unregulated entities. The Commission granted the extension and ordered Staff to file a report no later than January 9, 2020. Staff filed a further Motion for Extension of Time on January 8, 2020, in order to finalize its report; The Commission granted this request and ordered Staff to file its report no later than January 16, 2020.

STAFF'S INVESTIGATION

On October 1, 2019, Staff submitted Data Requests (DRs) to both TRR Management and APCOA. Staff completed a thorough investigation of APCOA's formal complaint, reviewing copies of bills, account ledgers, written communications between the Complainant and Respondents, and other technical data. TRR Management provides one monthly invoice for various utility, maintenance, and infrastructure services; it does not separately bill APCOA for water. The APCOA does not have a written agreement regarding use of the water system with any of the Respondents. TRR Management also provides service to Kimberling Inn Resort and Vacation Club, a condominium owned by TRR Timeshare, LLC; however, TRR Management does not bill this entity for service.⁴ Further, per its response to Staff DR 0042, TRR Management has never solicited new customers to connect to its system.

TRR Management asserts they own the water system that serves APCOA. Satellite photos and Staff observations show the APCOA condominiums are an adjoining wing of one larger building, with the remainder owned by TRR Timeshare, LLC. APCOA stated in DR responses that TRR Management holds easements over, across, and under the APCOA property and owns the distribution lines of the water system. Sewer service is provided by the City of Kimberling City via a nearby small wastewater treatment facility, through an account for TRR Management. The sewer bill is determined by TRR Management based on the number of individual units served by the system, with 40% of the total cost being rebilled to APCOA. This is discussed in further detail below.

According to the parties when the Steed companies acquired the Kimberling Inn assets, APCOA was notified that there would be increases in the infrastructure fees it had previously paid.

⁴ See Response to Staff DR 0044.

This led to billing disputes, and after negotiations between the parties failed to reach an agreement, APCOA filed a lawsuit in the Circuit Court of Stone County, Missouri on August 14, 2017. The lawsuit is still ongoing, but is currently stayed pending the results of the Commission's investigation.

Description of Water System

The source of water is a single well drilled in 1994 to a depth of 745 feet. Water is pumped using a submersible 25-horsepower pump intended, according to Drinking Water Watch from the Missouri Department of Natural Resources (DNR) website, to produce 440 gallons per minute (gpm), a ground storage tank with 30,400 gallons volume, two high service pumps to pressurize the distribution system, and a nine bladder tanks to maintain water pressure. The service area consists of a two resorts with 94 unmetered service connections. APCOA states it has 67 individual units, TRR Timeshare, LLC has 105. The water is chemically treated using sodium hypochlorite prior to detention in the 30,400-gallon ground level storage tank. The system is pressurized by two alternating 10-horsepower high service pumps. Pressure is maintained on the distribution system by seven 86-gallon and two 62-gallon bladder tanks.

According to the DNR there are two additional wells associated with this site. A well drilled in 1962 is not in service but has been maintained as an emergency source in the event there are problems with the main well. The third well has been properly closed and abandoned.

Staff Observations of the Water System

Staff visited the area on November 4, 2019, where it observed the ground storage tank, the well house, and the distribution system.

The water system appeared to be in proper working order at the time of Staff's visit. The well house appeared structurally sound and the inside was dry and well maintained. TRR Management stated that it replaces equipment as needed from its own funds. As discussed below, TRR Management states they would prefer to have a separate reserve fund dedicated to the water system funded solely by water fees, but that such a dedicated water reserve fund has not yet been possible due to infrastructure billing disputes with APCOA.

According to the February 10, 2016, DNR inspection, TRR Management had recently replaced a high service pump, bladder tanks, and the chlorine pump. The standpipe is showing some

wear on the outside and is due to be cleaned and repainted. TRR Management stated that the tank had been cleaned, repaired, and painted last in 2013. No water quality violations have been documented by DNR.

A map of the water system, provided by APCOA, shows a looped water system providing water service to both resorts and an interconnection, with a nearby water system owned by Ozarks Clean Water Company which provides water service to some neighboring condos and a strip mall next to the Kimberling Inn Resort and Vacation Club office. The interconnection allows for emergency backup water in the event of an outage, which would provide time to conduct repairs or bring the emergency well online.

It has been reported to Staff by APCOA that the distribution system was constructed in such a manner that individual connections and meters to the APCOA portion of the customers is not physically possible. The mains lie along the foundation of the buildings, under sidewalks, meaning that the mains would have to be reinstalled with sufficient spacing to allow installation of vaults and meter boxes. Staff cannot verify the location of piping underground, but Staff did observe the location where the parties state the pipes are laid. Because of how APCOA and TRR Management properties are located with water lines that cannot have shut offs and meters installed between them, water cannot be shut off to APCOA without also shutting off water to portions of the property owned by TRR as the distribution system is currently constructed.

TRR claims that because the APCOA has not been paying the full amount it has been charged for monthly fees some repairs were unable to be made in a timely fashion that impacted the APCOA. Because of the delayed response by TRR, the APCOA hired its own contractor, Kimberling City Plumbing, to make two repairs to a leaking water main in March and June 2017. During Staff's observations there were no significant repair or maintenance needs.

DNR Permits

The drinking water system operates a non-transient, non-community water system under Missouri State Operating Permit MO 5211572. As mentioned above, the most recent DNR inspection from February 10, 2016, found no significant deficiencies.

Billing and Customer Service Practices

As stated above, TRR Management provides water service to APCOA and Kimberling Inn Resort and Vacation Club; however, TRR Management only bills APCOA, which includes amounts for maintaining the water facilities, and does not bill the other entities. TRR Management stated it started sending monthly bills to APCOA in January 2014, after TRR acquired the water system assets from Kimberling Inn. TRR Management states that APCOA “is responsible for paying the water, sewer, and infrastructure bills” included in the lump sum amount for all APCOA usage of shared infrastructure assets.⁵ TRR Management stated the charge for water service is not itemized on the invoice, but is included in a category called ‘infrastructure’ on the bills. APCOA states that TRR Management sent these bills directly to Ray Loehr, one of the board members of APCOA, until January 2019.

Copies of invoices provided by TRR Management and APCOA show that ‘infrastructure’ has been billed at a flat rate of \$4,666.42 per month since January 2014. Specific infrastructure costs are not itemized, with bills only listing ‘Sewer Expense’ and ‘Infrastructure’. TRR Management stated the infrastructure charge includes APCOA and TRR’s shared costs for water, roads, and common grounds. In response to a request from APCOA, TRR Management broke down the \$56,000 annual infrastructure charge as \$28,000 for water, \$18,000 for common grounds, and \$10,000 for roads. The water portion of the infrastructure charge, according to TRR Management, is “designed to cover well maintenance, water testing, man hours to maintain the water system, and a reserve for new bladder tanks and other necessary maintenance or repairs.” The charge for ‘Sewer Expense’, which is calculated based upon a percentage of the actual charges from Kimberling City, is billed to TRR Management and subsequently passed through to APCOA.

The Complainant has not been paying the invoices they receive from TRR Management in full. Monthly invoices with amounts ranging from \$5,443.42 to \$5,714.26, based on the monthly variance in the actual sewer bill from Kimberling City, have been sent by TRR Management to APCOA. APCOA has only been making partial payments of \$2452.00 on the invoices they receive. The Complainant states that partial payments were made due to TRR Management failing to provide

⁵ See Response to Staff DR 0024.

“documents or information that justify the amounts” on the bills. The Complainant attributes \$1,340.00 per month for water service and water system maintenance reserves with the remainder attributed to sewer and road infrastructure. Although the rate is designed to fund a reserve account for maintenance and repairs, TRR states that “no reserve has been able to be established because the amount paid by [APCOA] is not sufficient to establish any reserves.” APCOA states they stopped receiving invoices in January 2019, but have continued to remit monthly payments. TRR Management provided Staff with copies of invoices from 2019 that are addressed to an APCOA post office box, but it is not clear if these invoices were actually mailed.

Customer service functions for the water services are handled directly by TRR Management. The APCOA currently contacts Frank J. Steed, or one of his employees at TRR Management, with any questions or concerns regarding their water service. The Complainant has alleged that Steed has threatened to shut off water service on several occasions. The APCOA states they have received verbal threats, beginning in January 2016, that water service would be shut off if the payment demanded for water, road, and common grounds was not received in full. There is no documentation of these alleged verbal threats, so the specific dates and details of the purported threats are unclear. TRR Management states that they have never issued a written disconnect notice to APCOA, and service has never been disconnected.

Are Other Sources of Water Available to APCOA?

Documents filed by the parties discuss an alternative water source for APCOA. Ozarks Clean Water Company (OCWC) provides service within the area. As mentioned above, OCWC is connected to the TRR water system near the well house to provide emergency backup water in the event of an outage, but for OCWC to serve APCOA a new connection and associated distribution system would have to be constructed. APCOA stated this option is more costly because a new line would need to be installed to provide water service and an easement will need to be provided by TRR for OCWC to cross over its property. Counsel for TRR stated that it would not oppose an easement if APCOA wanted to change water providers.

APCOA has looked into the option of drilling its own well but deemed that is not viable. APCOA stated that they are not allowed by the State of Missouri to install a well on APCOA property.

CONCLUSION and RECOMMENDATION

Based upon the evidence Staff has reviewed during the course of its investigation, and also based upon Staff Counsel's analysis of jurisdiction, Staff concludes that none of the eight Respondents are providing water service indiscriminately to the general public. TRR Management owns and operates a water system that provides water to Kimberling Inn Resort and Vacation Club, an entity with which it shares common ownership. Water service is also provided to APCOA through what appears to be an implicit special contract. Pursuant to this agreement, TRR Management bills APCOA for costs associated with water, roads, common grounds, and other services. It is Staff's opinion that Respondents do not hold themselves out to the public as a water utility, nor are they soliciting new customers to connect to the system. Therefore, Staff concludes that the provision of water service by the Respondents is not subject to the jurisdiction of this Commission.

Staff recommends that this complaint be dismissed.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Anchor's Point Condominium Owners)	
Association, Inc., Complainants)	Case No. WC-2020-0048
)	
v.)	
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TRR Management, LLC; Frank J. Steed, JR.)	
d/b/a Steed Communities; JM Land Holdings,)	
LLC; TRR Time Share, LLC; Carroll James)	
Christiansen; Kimberling Inn, Inc.; and)	
Kimberling Properties, Inc., Respondents)	

AFFIDAVIT OF CURT B. GATELEY

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COMES NOW CURT B. GATELEY and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff's Report in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



CURT B. GATELEY

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16th day of January 2020.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: December 12, 2020 Commission Number: 12412070
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Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

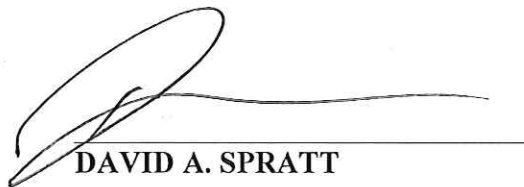
Anchor's Point Condominium Owners)	
Association, Inc., Complainants)	Case No. WC-2020-0048
)	
v.)	
)	
TRR Management, LLC; Frank J. Steed, JR.)	
d/b/a Steed Communities; JM Land Holdings,)	
LLC; TRR Time Share, LLC; Carroll James)	
Christiansen; Kimberling Inn, Inc.; and)	
Kimberling Properties, Inc., Respondents)	

AFFIDAVIT OF DAVID A. SPRATT

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COMES NOW DAVID A. SPRATT and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff's Report in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

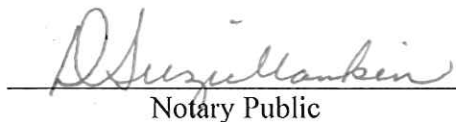


DAVID A. SPRATT

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16th day of January 2020.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: December 12, 2020 Commission Number: 12412070
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Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Anchor's Point Condominium Owners)
Association, Inc., Complainants)
)
v.)
)
TRR Management, LLC; Frank J. Steed, JR.)
d/b/a Steed Communities; JM Land Holdings,)
LLC; TRR Time Share, LLC; Carroll James)
Christiansen; Kimberling Inn, Inc.; and)
Kimberling Properties, Inc., Respondents)

Case No. WC-2020-0048

AFFIDAVIT OF DEBORAH ANN BERNSEN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW DEBORAH ANN BERNSEN and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff's Report in Memorandum form*; and that the same is true and correct according to her best knowledge and belief.


Further the Affiant sayeth not.


DEBORAH ANN BERNSEN

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16th day of January 2020.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2020
Commission Number: 12412070


Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Anchor's Point Condominium Owners)	
Association, Inc., Complainants)	Case No. WC-2020-0048
)	
v.)	
)	
TRR Management, LLC; Frank J. Steed, JR.)	
d/b/a Steed Communities; JM Land Holdings,)	
LLC; TRR Time Share, LLC; Carroll James)	
Christiansen; Kimberling Inn, Inc.; and)	
Kimberling Properties, Inc., Respondents)	

AFFIDAVIT OF BEN RANKIN

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COMES NOW BEN RANKIN and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff's Report in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

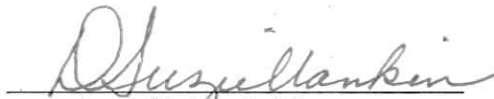


 BEN RANKIN

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16th day of January 2020.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: December 12, 2020 Commission Number: 12412070
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 Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Anchor's Point Condominium Owners)
Association, Inc., Complainants)

Case No. WC-2020-0048

v.)

TRR Management, LLC; Frank J. Steed, JR.)
d/b/a Steed Communities; JM Land Holdings,)
LLC; TRR Time Share, LLC; Carroll James)
Christiansen; Kimberling Inn, Inc.; and)
Kimberling Properties, Inc., Respondents)

AFFIDAVIT OF AMANDA C. McMELLEN

STATE OF MISSOURI)

ss.

COUNTY OF COLE)

COMES NOW AMANDA C. McMELLEN and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff's Report in Memorandum form*; and that the same is true and correct according to her best knowledge and belief.

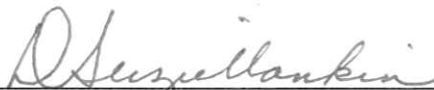
Further the Affiant sayeth not.


AMANDA C. McMELLEN

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16th day of January 2020.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2020
Commission Number: 12412070


Notary Public