

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.)	

AMENDED MOTION FOR SUMMARY DETERMINATION

I-70 Mobile City pursuant to 20 CSR 4240-2.117, and for its Amended Motion for Summary Determination, states as follows:

Introduction

1. By its Complaint herein, the Commission Staff attempts to extend the PSC’s jurisdiction over utilities to include rental lots for mobile homes and recreational vehicles, where the property owner divides and allocates its utility bill and costs between tenants.

2. The Commission has never attempted to regulate owners of mobile home communities or recreational vehicle lots in Missouri. The ramifications of making these mobile home community and recreational vehicle lot owners regulated utilities are large. It could have a significant impact upon thousands of property owners, and upon hundreds of thousands of tenants.

3. Any such extension of Commission jurisdiction should be accomplished through the legislative process, or through the Commission’s rulemaking process, so that interested stakeholders would have proper

notice, equal opportunity for participation, and equitable, competitively-neutral sharing of the benefits and burdens of such regulation.

4. Instead, here, the Commission Staff seeks to obtain an extension of jurisdiction by a complaint against I-70 Mobile City, a single mobile home community and recreational vehicle lot owner, and its approximately 60 tenants. This attempt at extending the Commission's jurisdiction by Complaint, against only one of hundreds of other similarly situated owners is inappropriate. It creates a disparate competitive impact upon I-70 Mobile City, which must stand the expense of defending this action, while other landlords and do not.

5. I-70 is a private business engaged in renting lots to tenants. Its charging for water and sewer to some tenants is governed by rental agreements and Missouri's landlord tenant law. *See* 441.005, RSMo. This fact alone does not transform I-70 into a "public utility." In any event, it is undisputed that I-70 does not engage in any water or sewer functions "for gain."

6. Still, I-70 Mobile City recognizes that there could be disputes of fact as to whether I-70 Mobile City meets the statutory definitions of a water corporation,¹ a sewer corporation,² or a public utility.³ I-70 Mobile City recognizes that there could be disputes of fact as to whether I-70 Mobile City owns facilities that meet the statutory definitions of a water system⁴ or sewer system.⁵ Therefore this Motion for Summary Determination does not focus upon those statutory definitions.

¹ 386.020 (59), RSMo.

² 386.020 (49), RSMo.

³ 386.020 (43), RSMo.

⁴ 386.020 (60), RSMo.

⁵ 386.020 (50), RSMo.

7. The Missouri courts, and ensuing decisions of this Commission, have recognized that, in addition to meeting statutory definitions giving rise to Commission jurisdiction, the service in question must be “devoted to public use.” I-70 Mobile City does not believe a private mobile home community can be considered devoted to a public use as a matter of law, and the complaint should be dismissed on that basis.

8. This Motion for Summary Determination is directed to the lack of the devotion to public use element. This Motion is accompanied by the affidavit of Jennifer Hunt of I-70 Mobile City. This Motion is also accompanied by a legal memorandum explaining why summary determination should be granted.

9. There are no genuine issues of material facts as to the operations of I-70; based on these facts, and as detailed in the Memorandum filed concurrently with this Motion, as a matter of law, the Commission lacks jurisdiction over I-70.

Material Facts for which there is No Genuine Issue

1. I-70 Mobile City, Inc. is a Missouri corporation with its principal place of business at 1449 Outer Road, Bates City, Missouri, 64011. Jennifer Hunt is the President of I-70 Mobile City.⁶

2. I-70 Mobile City has been operating a mobile home, RV, and rental lot community for almost 40 years (since 1985) in the same location.⁷

3. I-70 Mobile City has never been contacted by the Commission until April 2021.⁸

4. I-70 Mobile City has never been the subject of a Commission

⁶ Hunt Affidavit, ¶4 & ¶2.

⁷ Hunt Affidavit, ¶5.

⁸ Hunt Affidavit, ¶6.

complaint or investigation until this matter.⁹

5. 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).¹⁰

6. On the property owned by I-70 Mobile City, there are rental areas for parking spaces for removable items with wheels, like cars, motorcycles, utility trailers, RVs, mobile homes, tiny homes, boats, etc. There are approximately 141 rental areas in I-70 Mobile City. As of July 2022, 45 of the rental areas were occupied by mobile homes, 23 were occupied by recreational vehicles, and 1 was occupied by a tiny home. Approximately 64 tenants were receiving water or sewer service.¹¹

I-70 Experience with the Commission

7. In April 2021, a disgruntled tenant at I-70 called the Commission to make a complaint about the cost of her utility bill; the Commission staff investigated and determined the claims made by the tenant were false; the Staff nevertheless decided to “investigate” I-70.¹²

8. I-70 voluntarily answered a “questionnaire” from the Commission Staff and met with Staff to answer any questions.¹³

9. Staff then filed a complaint; pursuant to Commission rule, I-70 requested mediation, which the Commission Staff refused.¹⁴

⁹ Hunt Affidavit, ¶7.

¹⁰ Hunt Affidavit, ¶8.

¹¹ Hunt Affidavit, ¶9.

¹² Hunt Affidavit, ¶10; Exhibit A.

¹³ Hunt Affidavit, ¶11.

¹⁴ Hunt Affidavit, ¶12.

10. Upon learning that mediation was off the table, and the Commission had ordered I-70 to file a response to the complaint, Commission Staff emailed each other “Let’s get this party started.”¹⁵

11. I-70 maintains government entry upon private property is not a laughing matter or cause for celebration.¹⁶

12. I-70 has admitted (though the PSC discovery process) how many and what facilities and assets are on its property.¹⁷

13. Staff’s Complaint makes not a single allegation about the condition or quality of equipment used or about the safety or quality of the water and/or sewer service at I-70.¹⁸

14. Prior to Staff filing the Complaint, I-70 voluntarily provided to the Commission:

- Copies of water bills and payments, and payment ledger to Bates City;
- Water for the park’s service for June 2020 to June 2021;
- Sample forms of communications to tenants for their utility service;
- Excel Billing Histories for June 2020 to September 2020;
- Ledgers of tenant payments from June 2020 to September 2020;
- Software ledger from billing program for October 2020 to June 2021; and
- A summary of I-70 Mobile City billing and payment of water vs. tenant utility services from May 5, 2020 to June 5, 2021.¹⁹

¹⁵ Hunt Affidavit, ¶13; Exhibit B.

¹⁶ Hunt Affidavit, ¶14.

¹⁷ Hunt Affidavit, ¶15.

¹⁸ Hunt Affidavit, ¶16.

¹⁹ Hunt Affidavit, ¶17.

15. Since the filing of the Complaint, I-70 responded to 54 separate data requests issued by the Commission Staff.²⁰

I-70 Mobile City Operations

16. At I-70 Mobile City, water is supplied through Bates City.²¹

17. The sewer or wastewater services for I-70 Mobile City is provided through a lagoon which is permitted and regulated by the Missouri Department of Natural Resources.²²

18. In some of its leases with its tenants at I-70 Mobile City, I-70 makes contractual arrangements for tenants to reimburse I-70 for the tenants' share of I-70's water and wastewater service bills.²³

19. I-70 allocates the costs for water and sewer service to individual tenants pursuant to the contractual arrangements.²⁴

20. Individually allocated amounts for water and sewer service are collected by I-70 Mobile City.²⁵

21. I-70 only leases individual lots at I-70 Mobile City to persons who sign a lease agreeing to the arrangements as described herein for water and sewer service and billing.²⁶

22. I-70 Mobile City does not provide water or sewer services to the public.²⁷

23. I-70 Mobile City does not provide water or sewer services to all

²⁰ Hunt Affidavit, ¶18.

²¹ Hunt Affidavit, ¶19.

²² Hunt Affidavit, ¶20.

²³ Hunt Affidavit, ¶21.

²⁴ Hunt Affidavit, ¶22.

²⁵ Hunt Affidavit, ¶23.

²⁶ Hunt Affidavit, ¶24.

²⁷ Hunt Affidavit, ¶25.

individuals who rent spaces or land at I-70 Mobile City.²⁸

24. As of April 1, 2023, 13 of the 69 tenants at I-70 were not receiving any provision of water or sewer.²⁹

25. I-70 only obtains reimbursement for the provision of water and sewer service from tenants at I-70 Mobile City.³⁰

26. I-70's costs related to the provision of water and sewer service exceeds the amount reimbursed from tenants.³¹

27. I-70 Mobile City is a private property belonging to I-70 Mobile City, subject to the leasehold interests of tenants.³²

28. With respect to leasing individual lots at I-70 Mobile City, I-70 does not offer the lots to the general public indiscriminately. I-70 only leases individual rental lots to persons meeting the eligibility criteria of I-70 Mobile City. The eligibility criteria includes management approval, length of stay, vehicle storage tank capabilities, and available rental space, and entering into a lease contract in a form approved by or acceptable to I-70 Mobile City where the tenant agrees to the terms and condition of leasing a lot from I-70 Mobile City.³³

29. I-70 offers private water and sewer connections to certain tenants, who meet specific criteria, who then also execute a contract with I-70 Mobile City. Under some contracts, I-70 will offer rental space but may not offer water/sewer service at any time during the rental period. Some tenants will be billed for rental space but not for water/sewer service. Some examples of criteria include that new and established individuals must pass a thorough

²⁸ Hunt Affidavit, ¶26.

²⁹ Hunt Affidavit, ¶27; Exhibit C

³⁰ Hunt Affidavit, ¶28.

³¹ Hunt Affidavit, ¶29; Exhibit D.

³² Hunt Affidavit, ¶30.

³³ Hunt Affidavit, ¶31.

land rental application process, which includes various informational questions, credit and criminal background searches. Any home must meet I-70's criteria and standards for proper appearance, repair, and maintenance during the application process and duration of the entire rental period.³⁴

Mobile Home and RV Communities in Missouri, Generally

30. According to the Missouri Manufactured Housing Association (www.mmha.net), there are more than sixty “communities” of manufactured homes in Missouri.³⁵

31. According to Mobile Home Village Park Store, there are more than 900 mobile home communities and 450 RV communities in Missouri.³⁶

32. On information and belief, the Commission only regulates one mobile home community in Missouri, a community that voluntarily applied for and obtained certificates of convenience and necessity in Missouri PSC Case Nos. SM-2018-0017 and WM-2018-0018.³⁷

Aspen Woods Case

10. In 2010, the Commission Staff brought a nearly identical complaint against Aspen Woods Apartment Associates, LLC. A true and accurate copy of the complaint is attached as Exhibit 2.

11. In that complaint, like here, the Commission sought to extend jurisdiction. In Aspen Woods, the Commission sought to regulate owners of apartments for this first time in the Commission's history.

12. The Commission Staff claimed the Apartment owners, who divided utility bills and costs among tenants, met the statutory definition of a

³⁴ Hunt Affidavit, ¶32.

³⁵ Hunt Affidavit, ¶33.

³⁶ Hunt Affidavit, ¶34.

³⁷ Hunt Affidavit, ¶35.

water corporation, sewer corporation, public utility and that the facilities owned by Aspen woods met the statutory definitions of water systems and sewer systems.

13. Aspen Woods argued the Commission lacked jurisdiction because Aspen Woods did not indiscriminately dedicate their property for the provisions of utility service to the general public. See Exhibit 3.

14. The jurisdictional issue was briefed extensively. See Exhibit 3.

15. On January 13, 2011, The Commission issued an Order Staying the Complaint and Opening Workshop. A true and accurate copy of the order is attached as Exhibit 3.

16. In that Order, the Commission recognized the jurisdictional issue, explaining:

The issues involved in this matter involve a complex interplay between the statutes and regulations governing public utilities, consumer protection, and contract law. Any ultimate decisions regarding the interpretation and application of law and policy in this matter will have a major affect on Missouri citizens receiving utility service in landlord tenant relationships. Consequently, the Commission will stay this action and open a workshop to allow all stakeholders the opportunity to accurately delineate the full reach of the Commission's jurisdiction and what appropriate regulations and mechanisms are required to ensure safe and adequate utility services are being provided to this segment of Missouri ratepayers at just and reasonable rates.

Exhibit 3.

17. On January 19, 2011, the Commission issued an "Order Opening Investigation and Workshops, Directing Notice, and Directing Filing" reiterating:

The Commission recognized that any ultimate decisions regarding the interpretation and application of law and policy in this matter will have a major affect on Missouri citizens receiving utility service in landlord-tenant relationships. Consequently, the Commission stayed the

complaint and is opening this investigation and workshops to allow all stakeholders the opportunity to accurately delineate the full reach of the Commission's jurisdiction and what appropriate regulations and mechanisms are required to ensure safe and adequate utility services are being provided to this segment of Missouri ratepayers at just and reasonable rates.

A true and accurate copy of the order is attached as Exhibit 4.

18. Nine months later, in September 2011, the Commission issued an "Order Closing Investigation and Workshops." In that order, the Commission explained:

The Commission has since had further time to evaluate the reasons that prompted the investigation and has concluded that there is no reason to further explore those issues. The Commission's jurisdiction and its duties are defined in the pertinent chapters of the Missouri Revised Statutes. There is no action the Commission could take to alter the extent of its jurisdiction or statutory duties.

A true and accurate copy of the order is attached as Exhibit 5.

19. On October 15, 2011, the Commission issued an "Order dismissing Complaint" in the Aspen Woods Case stating the "Staff[s] Complaint against Aspen Woods...is dismissed for lack of jurisdiction." A true and accurate copy of the order is attached as Exhibit 6.

WHEREFORE, I-70 Mobile City requests an order of the Commission dismissing Staff's Complaint for lack of jurisdiction and for such other and further relief just and proper under the circumstances.

Respectfully submitted,

ELLINGER BELL

By: /s/ Stephanie S. Bell

Marc H. Ellinger, #40828

Stephanie S. Bell #61855

308 East High Street, Suite 300

Jefferson City, MO 65101

Telephone: 573-750-4100

Facsimile: 314-334-0450

Email: mellinger@ellingerlaw.com

Email: sbell@ellingerlaw.com

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 September 22, 2023.

 /s/ Stephanie S. Bell
Stephanie S. Bell