

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

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

**STAFF RESPONSE IN OPPOSITION TO  
I-70 MOBILE CITY, INC. D/B/A I-70 MOBILE CITY PARK'S  
AMENDED MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through undersigned counsel, pursuant to 20 CSR 4240-2.117(1)(C), and for its *Response in Opposition to I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park's ("I-70 MCP") Amended Motion for Summary Determination* hereby states as follows:

**Introduction**

1. Commission Rule 20 CSR 4240-2.117(1)(B) requires the party filing a motion for summary determination to “state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue.”

2. The Commission may grant the motion for summary determination only if the movant can “show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.” 20 CSR 4240-2.117(1)(E).

3. “[I]n determining a summary judgment motion, the judge ... is not to decide what the facts are or to make credibility determinations, but simply to determine whether there is a triable issue of fact.” *Sauvain v. Acceptance Indem. Ins. Co.*, 339 SW3d 555, 569 (Mo.App. W.D. 2007), citing *Care and Treatment of Schottel v. State*, 159 S.W.3d 836, 844 (Mo. banc 2005).

4. “A ‘material fact’ is one having such probative value that it would control or determine the litigation.” *Auto-Owners Mut. Ins. Co., Inc. v. Newman*, 851 S.W.2d 22, 24 (Mo.App. W.D. 1993).

5. Staff objects to I-70 MCP’s *Amended Motion for Summary Determination* in this case because genuine issues of material fact exist as to whether I-70 MCP is engaging in the unlawful provision of water and sewer services to the public for gain, without certification or other authority from the Commission, in violation of § 393.170.2, RSMo, as alleged in Staff’s Complaint and further outlined in the attached Legal Memorandum. Those issues have not been disposed of by the facts presented by the parties up to this point in the litigation. Multiple, disputed facts, known and unknown remain to be presented to the Commission for interpretation.

6. Staff has filed with this document, a *Legal Memorandum* in support of its *Response in Opposition to I-70 MCP’s Amended Motion for Summary Determination* setting forth its reasons and legal arguments why I-70 MCP is not entitled to relief as a matter of law as all or any part of this case and that this matter should proceed to a hearing on the merits, as genuine issues of material fact exist between the parties. See, *Staff’s Legal Memorandum in Support of Its Response in Opposition to I-70 Mobile City*,

*Inc. d/b/a I-70 Mobile City Park's Amended Motion for Summary Determination*, which is attached hereto as **Attachment A** and incorporated herein by reference.

**Staff Responses to I-70 MCP's  
Statement of Material Facts for which there is No Genuine Issue**

Pursuant to 20 CSR 4240-2.117(1)(C), Staff provides the following responses to I-70 MCP's factual statements:

1. Staff admits the statements contained in Paragraph 1.
2. Staff admits that I-70 MCP 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. Staff lacks sufficient knowledge to admit or deny the remainder of the statements contained in Paragraph 2, and therefore denies the same.
3. The statements in Paragraph 3 are not material. To the extent a response is required, Staff states that the statement lacks competent and substantial evidentiary support because the statement in paragraph 3 of the Hunt Affidavit lacks evidentiary foundation, as Ms. Hunt states that she has been president and has had general supervisory responsibility for I-70 operations only since April 2016, even though Ms. Hunt also states that I-70 has been in operation for almost 40 years. Accordingly, there is no evidentiary basis to establish that Ms. Hunt would have personal knowledge whether or not Commission Staff has contacted I-70 between 1985 and 2016. Further, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 3, and therefore denies the same. Staff cannot state with certainty that no member of the PSC Staff never contacted I-70 MCP prior to April 2021.
4. The statements in Paragraph 4 are not material. To the extent a response is required, Staff states that the statement lacks competent and substantial evidentiary

support, as the statement in paragraph 4 of the Hunt Affidavit lacks evidentiary foundation, as Ms. Hunt states that she has been president and has had general supervisory responsibility for I-70 operations only since April 2016, even though Ms. Hunt also states that I-70 has been in operation for almost 40 years. Accordingly, there is no evidentiary basis to establish that Ms. Hunt would have personal knowledge whether or not I-70 has been the subject of a Commission complaint or investigation until this matter. Although Staff has no knowledge of any prior investigation of I-70 MCP other than this case, Staff cannot state with certainty that it has never investigated or received a complaint against I-70 MCP.

5. The statements in Paragraph 5 are not material. To the extent a response is required, Staff states that the statement lacks competent and substantial evidentiary support, as the statement in paragraph 8 of the Hunt Affidavit is hearsay and lacks evidentiary foundation, as Ms. Hunt states that she has been president and has had general supervisory responsibility for I-70 operations only since April 2016, even though Ms. Hunt also states that I-70 has been in operation for almost 40 years. Accordingly, there is no evidentiary basis to establish that Ms. Hunt would have personal knowledge whether or not I-70 has been the subject of a complaint between 1985 and 2016. Additionally, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 5, and therefore denies the same.

6. Respondent I-70 MCP makes multiple factual statements in Paragraph 6, in violation of 20 CSR 4240-2.117(1)(B), which requires the moving party to “state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue.” To the extent a response is required,

Staff states that based on discovery responses received from Respondent I-70 MCP and Staff's own physical inspection of the property, there are rental areas occupied by mobile homes and tenants receiving water or sewer service as alleged in Paragraph 6. However, Staff lacks sufficient knowledge to admit or deny the remainder of the statements contained in Paragraph 6, and therefore denies the same.

7. Respondent I-70 MCP makes multiple factual statements in Paragraph 7, in violation of 20 CSR 4240-2.117(1)(B), which requires the moving party to "state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue." To the extent a response is required, Staff admits that a tenant and customer of I-70 MCP called the Commission to complain **"about the cost of her utility bill"** and that Staff investigated the complaint. (emphasis added). The statement that the tenant was "disgruntled" lacks evidentiary foundation, as it cites the Hunt affidavit, and Ms. Hunt lacks competence to establish the mental state of the individual that called the Commission to complain. Here, the facts alleged by I-70 MCP in Paragraph 7 fail to set forth material facts essential to the cause of action asserted. Additionally, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 7, and therefore denies the same.

8. Staff admits Respondent I-70 MCP answered a "questionnaire" from the Commission Staff. The questionnaire was initially sent to an attorney representing Respondent I-70 MCP in April 2021 requesting information regarding its operations. A full response to the questionnaire was received by Staff sometime in August and September 2021. Staff acknowledges email and telephone correspondence occurred

between the parties regarding the questionnaire, but denies that in-person meetings were held, and therefore denies the remainder of the facts alleged in Paragraph 8.

9. Staff admits that it filed a Complaint on April 3, 2022, as alleged in Paragraph 9. However, to the extent a response is required relating to the remainder of the allegations set forth in Paragraph 9, Staff states that the facts alleged by I-70 MCP in Paragraph 9 fail to set forth material facts essential to the cause of action asserted, that it is irrelevant and has no bearing on the cause of action, and therefore denies the same.

10. The facts alleged by I-70 MCP in Paragraph 10 fail to set forth material facts essential to the cause of action asserted. To the extent a response is required, Staff admits the statement was made, but asserts that it is irrelevant and has no bearing on the cause of action.

11. The statements made by I-70 MCP in Paragraph 11 fail to set forth material facts essential to the cause of action asserted, is argumentative, and is irrelevant and has no bearing on the cause of action. To the extent a response is required, Staff denies the same.

12. The statements made by I-70 MCP in Paragraph 12 contain vague and ambiguous assertions and fail to set forth material facts essential to the cause of action asserted. To the extent a response is required to Paragraph 12, Staff denies the same.

13. The statements made by I-70 MCP in Paragraph 13 fail to set forth material facts essential to the cause of action asserted. To the extent a response is required, Staff denies the same.

14. The statements made by I-70 MCP in Paragraph 14 fail to set forth material facts essential to the cause of action asserted. To the extent a response is required,

Staff admits that Respondent I-70 provided the information listed in the bullet points in Paragraph 14, but states that the documentation provided in that list was given to the Staff in response to Data Requests submitted to I-70 after the Complaint was filed in April 2022. Further, Staff's initial Data Requests were not fully answered and discovery issues persisted for approximately a year before Staff notified the Commission that it had finally received sufficient discovery to respond to this Motion in August 2023.

15. The facts alleged by I-70 MCP in Paragraph 15 fail to set forth material facts essential to the cause of action asserted. To the extent a response is required, Staff admits that it submitted data requests to I-70 MCP to answer. However, the fact that data requests have been filed and the extent to which they have been responded to as set forth in Paragraph 15 is irrelevant and has no bearing on the cause of action.

16. Staff admits that Bates City provides water at wholesale to I-70 MCP, in response to Paragraph 16. To the extent Paragraph 16 suggests that Bates City provides retail water to I-70 MCP residents, Staff denies that portion of Paragraph 16.

17. Staff admits the statements contained in Paragraph 17.

18. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 18, and therefore denies the same.

19. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 19, and therefore denies the same.

20. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 21, and therefore denies the same. Neither Paragraph 21 nor the remainder of I-70 MCP's statement of facts establishes an evidentiary record that "individually allocated amounts for water and sewer service are collected by" I-70 MCP or how such

amounts are purportedly “individually allocated,” and Staff therefore denies any such implication of Paragraph 20.

21. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 21, and therefore denies the same.

22. Paragraph 22 is a legal conclusion, not a statement of fact, and therefore, Staff denies Paragraph 22. To the extent a response is required, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 22, and therefore denies the same.

23. Paragraph 23 fails to allege material facts. For example, to the extent Paragraph 23 suggests that I-70 MCP does not provide water or service to those who, as referenced earlier in I-70 MCP’s statement of facts rent “parking space for removable items with wheels, like cars, motorcycles, [or] utility trailers,” this statement in Paragraph 23 is irrelevant, as Staff would not expect I-70 to offer water and sewer service to a customer renting a motorcycle parking space<sup>1</sup>. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 23, and therefore denies the same.

24. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 24, and therefore denies the same.

25. The statements in Paragraph 25 fail to allege material fact, lack evidentiary foundation, and are opinion. Further, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 25, and therefore denies the same.

26. Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 26, and therefore denies the same.

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<sup>1</sup> See Respondent’s Material Facts for which there is No Genuine Issue, Paragraph 6.



27. Paragraph 27 is a legal conclusion, not a statement of fact. To the extent a response is required, Staff admits for purposes of this case that I-70 MCP owns certain real property that it refers to as I-70 Mobile City. Furthermore, the statements made by I-70 MCP in Paragraph 27 fail to set forth material facts essential to the cause of action asserted. To the extent a response is required, Staff lacks sufficient knowledge to admit or deny the remaining statements contained in Paragraph 27.

28. I-70 MCP makes multiple factual statements in Paragraph 28, in violation of 20 CSR 4240-2.117(1)(B), which requires the moving party to “state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue.” Here, the facts alleged by I-70 MCP in Paragraph 28 fail to set forth material facts essential to the cause of action asserted. Paragraph 28 sets forth leasing criteria and says nothing in particular about how or when water and sewer service is offered to customers of I-70 MCP. Additionally, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 28, and therefore denies the same.

29. I-70 MCP makes multiple factual statements in Paragraph 29, in violation of 20 CSR 4240-2.117(1)(B), which requires the moving party to “state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue.” Here, the facts alleged by I-70 MCP in Paragraph 29 fail to set forth material facts essential to the cause of action asserted. Additionally, Staff lacks sufficient knowledge to admit or deny the statements contained in Paragraph 29, and therefore denies the same.

30. The statements made in Paragraph 30 are not material irrelevant and have no bearing on the cause of action. Paragraph 30 lacks competent and substantial

evidentiary support, as the statement in Paragraph 30 is hearsay and lacks evidentiary foundation, as it cites an unidentified website, and not Ms. Hunt's personal knowledge or observation. To the extent a response is required to Paragraph 30, Staff denies the same.

31. The statements made in Paragraph 31 are not material and have no bearing on the cause of action. The statements also lack competent and substantial evidentiary support because they are hearsay and lack evidentiary foundation, as they cite an unidentified source of information, and not Ms. Hunt's personal observation or knowledge. To the extent a response is required to Paragraph 31, Staff denies the same.

32. The statements made by I-70 MCP in Paragraph 32 fail to set forth material facts essential to the cause of action asserted and have no bearing on the cause of action. Whether the public served by a public utility is a mobile home community or not is not a distinction made in Chapters 386 or 393 of the Revised Statutes of Missouri. Further, the phrase "mobile home community" is not defined and lacks particularity such that the statement in Paragraph 32 is incapable of meaningful admission or denial. Moreover, Paragraph 32 lacks evidentiary support as it is supported by Hunt affidavit Paragraph 35, which is made "[o]n information and belief," and not on personal knowledge and information. To the extent a response is required, Staff denies the same.

#### **Additional Material Facts that Remain in Dispute**

Pursuant to 20 CSR 4240-2.117(1)(C), Staff sets forth the following additional material facts that remain in dispute:

1. Safe and adequate water is a service necessary to maintain adequate quality of life for residents of Missouri.

2. Safe and adequate sewer service is a service necessary to maintain adequate quality of life for residents of Missouri.
3. Residents of I-70 MCP are residents of Missouri, either permanently or temporarily.
4. Residents of I-70 MCP have access to only one provider of water service, and that provider is I-70 MCP.
5. Residents of I-70 MCP have access to only one provider of sewer service, and that provider is I-70 MCP.
6. Residents of I-70 MCP have no direct or indirect decision-making authority as to how much I-70 MCP customers are charged for water service.
7. Residents of I-70 MCP have no direct or indirect decision-making authority as to how much I-70 MCP customers are charged for sewer service.
8. I-70 MCP offers all of its residential customers water service, even if not all of those customers accept.
9. I-70 MCP offers all of its residential customers sewer service, even if not all of those customers accept.
10. I-70 MCP does not have certificates of convenience and necessity from the Commission granting it authority to provide water and sewer service to residents of the I-70 Mobile City Park.
11. I-70 MCP is not a municipally-owned water system.
12. I-70 MCP is not a municipally-owned sewer system.
13. I-70 MCP is not a public water district organized under Missouri law.
14. I-70 MCP is not a public water and sewer district organized under Missouri law.

15. I-70 MCP owns the lagoon located on its premises at 1449 Outer Road, Bates City, Missouri.

16. I-70 operates the lagoon located on its premises at 1449 Outer Road, Bates City, Missouri for the benefit of its tenants.

17. I-70's ownership and operation of the lagoon is to provide sewer service to the residents at I-70 MCP.

18. If a tenant of I-70 MCP wants water or sewer service, the only available service provider is I-70 MCP, as no other water or sewer company is available to that tenant from which to receive water or sewer service.

19. I-70 charges its tenants a minimum charge for water and sewer service every month, even if the tenant does not use any water or sewer service during that month.

20. I-70 tenants who fail to pay their water and sewer bills are charged late fees and may have their service shut off and be charged a reconnection fee prior to having their service restarted.

**WHEREFORE**, for the reasons set forth herein and as set forth in Staff's Legal Memorandum filed in conjunction with this Response, Staff submits its *Response in Opposition to I-70 MCP's Amended Motion for Summary Determination* and requests that Respondent's *Motion* be denied in this case and for such other orders as are just and reasonable under the circumstances.

Respectfully submitted,

**/s/ Carolyn H. Kerr**

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Attorney for Staff of the

Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 20th day of October, 2023, to all counsel of record.

**/s/ Carolyn H. Kerr**

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

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

**STAFF'S LEGAL MEMORANDUM IN SUPPORT OF  
ITS RESPONSE IN OPPOSITION TO  
I-70 MOBILE CITY, INC. D/B/A I-70 MOBILE CITY PARK'S  
AMENDED MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through undersigned counsel, pursuant to 20 CSR 4240-2.117(1)(C), and in support of its *Response in Opposition to I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park's ("I-70 MCP") Amended Motion for Summary Determination* hereby sets forth the following legal memorandum:

**Introduction**

Commission Rule 20 CSR 4240-2.117(1)(A) allows a party to “seek disposition of all or any part of a case by summary determination....” Further,

the Commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.

I-70 MCP is not entitled to relief as a matter of law because there are genuine issues of material fact still pending before the Commission that have not yet been resolved in this

case. See, *Gateway Hotel Holdings, Inc. v. Chapman-Sander, Inc.*, 474 S.W.3d 579, 584 (Mo.App. E.D. 2013). “A ‘material fact’ is one having such probative value that it would control or determine the litigation.” *Auto-Owners Mut. Ins. Co., Inc. v. Newman*, 851 S.W.2d 22, 24 (Mo.App. W.D. 1993). A motion for summary judgment must be denied if the factual assertions are not sufficient to entitle the movant to judgment as a matter of law. *Almat Builders & Remodeling, Inc. v. Midwest Lodging, LLC*, 615 S.W.3d 70, 84 (Mo.App. E.D. 2020), citing *Jordan v. Peet*, 409 S.W.3d 553 (Mo.App. W.D. 2013).

The burden of proof in this case, as in all cases arising under Chapter 386, RSMo, and the powers granted to the Staff to bring this action before the Commission shall be upon the party adverse to such action or “seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order ... is unreasonable or unlawful.” § 386.430, RSMo. I-70 MCP fails to meet its burden to show that it should be granted a summary determination in this case, as genuine issues of material fact remain to be decided herein. An evidentiary hearing must be granted before any decision on the merits can be rendered.

### **Legal Argument**

Respondent I-70 MCP argues the Commission lacks the jurisdiction to exercise regulatory control over it and other mobile home parks. It states that no statute or regulation gives the Commission authority to regulate mobile home communities or recreational vehicle lot owners. While it is true that the statutes do not specifically list the types of business or corporations that it regulates, the relevant statutes, specifically, §§ 386.020, 386.250, 386.570, and 393.170.2, RSMo, discuss corporations generally and

the Commission's jurisdiction and regulation over them. "[A]n agency does not divest itself of the authority granted to it by its enabling statutes merely by failing to exercise the full extent of that authority from time to time. Since 1913, the General Assembly has vested the PSC with 'all powers necessary or proper to enable it to carry out fully and effectually' the agency's mission. § 386.040; § 10412, RSMo 1919 (citing Mo. Laws 1913 at 561) (same). As this Court has concluded, although convenience, expedience, and necessity are not proper considerations for determining whether the PSC has been granted a certain power, the PSC's enabling 'statutes are remedial in nature and should be liberally construed in order to effectuate the purpose for which they were enacted.'" *Matter of Amendment of Commission's Rule Regarding Applications for Certificates of Convenience and Necessity*, 618 S.W.3d 520, 525 (Mo. banc, 2021) (internal citations omitted). The Commission has exclusive jurisdiction over all public utility corporations, including all water and sewer corporations within Missouri. §§ 386.020(43), (49), and (59), and 386.250, RSMo. It has the duty to determine, in the first instance, whether an entity, regardless of its corporate makeup, alleged to be offering utility services unlawfully, is a public utility subject to its jurisdiction. *State v. Carroll*, 620 S.W.2d 22, 24 (Mo.Ct. App. S.D. 1981); *State ex rel. & to the Use of Cirese v. Ridge*, 138 S.W.2d 1012, 1014-15 (Mo.banc 1940); *State ex rel. & to the Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo.banc 1943).

The issues central to this case to which material facts are genuinely disputed center around two questions.<sup>1</sup> Does the company, here, I-70 MCP, own, operate, control, or manage a sewer system, plant or property with more than 25 connections for the

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<sup>1</sup> See *Almat Builders*, 615 S.W.3d at 78.



collection, carriage, treatment, or disposal of sewage for gain?<sup>2</sup> Does the company, again, I-70 MCP, own, operate, control, or manage any plant or property, dam or a water supply, canal, or power station, distribute or sell for distribution, or sell or supply water for gain?<sup>3</sup> The answer to those two questions are what is at issue, and the facts that lead to those answers are what is in dispute.

In this case, facts that would help the Commission answer those questions exist to which the parties disagree; material facts that are dispositive of the ultimate issues in this case. According to the facts admitted by I-70 MCP in its pleadings and DR responses, I-70 MCP buys its water from Bates City, Missouri (Consolidated PWSD #2 of Lafayette, Johnson, and Saline Counties, Missouri) and bills its tenants on an individual basis, by lot, for each individual lot's consumption or water use. (Answer, DRs 14, 44) I-70 MCP operates a Missouri Department of Natural Resources (DNR) permitted two-cell waste stabilization lagoon as its wastewater system, and its tenants attach their sewer lines to the system to access sewer service. (Answer, DR 23) According to its own admissions, well over 25 units are connected and obtain sewer service from I-70 MCP's wastewater service. (DR 21 and 48). I-70 MCP also bills tenants individually based on their water and sewer usage on a monthly basis. (Answer, DR 14)

I-70 MCP argues that although it enters into contracts with its tenants and individually bills them for their water and sewer usage on a monthly basis, it should not be treated like a public utility. It claims that, like *in State ex rel. and to the Use of Cirese v. PSC*, 178 S.W.2d 788 (Mo.App. W.D. 1944), I-70 MCP is not a public utility

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<sup>2</sup> See § 386.020(49), RSMo

<sup>3</sup> See § 386.020(59), RSMo

because it only sells water and sewer service to its own tenants and not to the public in general. However, in *Hurricane Deck*, the Commission decided the "dedicated to public use" issue, stating that:

The key fact is that by sending out bills to the residents, Hurricane Deck Holding Company offered service to all residents of the given subdivisions. It is not purporting to merely offer services to a few friends. By offering water and sewer utility services to the public, even if that public is confined to the residents of a few subdivisions, Hurricane Deck Holding Company has made itself subject to regulation as a public utility.

*Hurricane Deck Holding Co. v. Pub. Serv. Comm'n*, 289 S.W.3d 260, 262 (Mo.App. W.D., 2009). The Court affirmed the Commission's decision, holding that Hurricane Deck was a public utility, even though its services were limited to only two subdivisions, where it offered service to all persons located within that service area. *Id.* at 266. After all, "in 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." *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n*, 205 S.W. 36, 39 (Mo. 1918).

Staff asked questions about how the tenants are billed, the types and number of individual meters, how those meters are used, and how I-70 MCP checks the accuracy of the meters. Staff asked for copies of the actual bills sent to tenants of I-70 MCP and for tenant leases. What it found out was that I-70 MCP appears to be the only choice renters have for their water and sewer service. And if they want that service, they must pay I-70 MCP the rates I-70 MCP charges for the amount they use. If the renters fail to pay those charges, the renters will lose their water and sewer service and be charged fees for their failure to pay and fees to hook back up to those services (DR 14, 44).

As stated in the *Hurricane Deck Holding Co.* case, “[T]he definitions depend 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 bill.” The Court in that case agreed with the Commission that “for gain” means “the operation of a water or sewer system for the purpose of receiving compensation.” *Id.*, at 267. Just as in the *Hurricane Deck Holding Co.* case, it appears from the facts so far admitted by I-70 MCP and discovered through DR responses that I-70 MCP is “[holding] itself out to serve the public for compensation.” *Osage Water Co. v. Miller County Water Auth., Inc.*, 950 S.W.2d 569, 574 (Mo.App. S.D.1997). Like *Hurricane Deck*, I-70 MCP’s bills show an individual accounting of how much water or sewer service was used by each tenant within a 30-day period and requests payment for that specific amount no later than the fifth day of the following month to be paid to I-70 MCP, and that a late fee would be assessed by I-70 MCP if the payment is late. Under those facts, I-70 MCP, like *Hurricane Deck*, is operating as a “public utility” and should be subject to Commission regulation.

“If the record ‘contains competent evidence that two plausible, but contradictory, accounts of essential facts exist,’ then a genuine issue of material fact remains to be resolved.” *Bickerton, Inc. v. American States Ins. Co.*, 898 S.W.2d 595, 600 (Mo.App. W.D. 1995), citing *D.E. Properties Corp. v. Food for Less*, 859 S.W.2d 197, 200 (Mo.App.1993). “Such evidence must be substantial and essential facts cannot be inferred nor may they rest upon speculation or conjecture. *Id.*, citing *Courtney v. Emmons*, 702 S.W.2d 139, 141 (Mo.App.1985).

## Conclusion

The facts in this case, as known to this point based on Respondent's answers to DRs propounded by Staff and Staff's site visit to the I-70 MCP itself leave many questions open for the commission to decide. The most important of which and material to this case is whether I-70 MCP is operating as a public utility. By building a lagoon and sewer system facility that serves all of the tenants of I-70 MCP and purchasing water from the public water system and selling it to all tenants who want such service and billing them based on their individual metered usage, Staff argues I-70 MCP is holding itself out as a water and sewer corporation and should be regulated as a public utility. I-70 MCP argues that it should not. There is without a doubt a genuine dispute as to the material facts which would entitle only one of the parties herein to relief in this case under the law. As such, Respondent I-70 MCP's Amended Motion for Summary Determination should be denied, and this matter should proceed to an evidentiary hearing in order for the commission to determine how those disputed, material facts should apply to the applicable law, and whether, in fact, I-70 MCP is operating its water and sewer businesses as public utilities as Staff contends.

**WHEREFORE**, for the reasons set forth herein and in its *Response in Opposition to I-70 MCP's Amended Motion for Summary Determination* Staff requests that Respondent's *Amended Motion for Summary Determination* be denied and for such other orders as are just and reasonable under the circumstances.

Respectfully submitted,

**/s/ Carolyn H. Kerr**

Missouri Bar Number 45718

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Attorney for Staff of the

Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 20th day of October, 2023, to all counsel of record.

**/s/ Carolyn H. Kerr**