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Witness: *Curt B. Gateley*
Sponsoring Party: *MoPSC Staff*
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MISSOURI PUBLIC SERVICE COMMISSION

INDUSTRY ANALYSIS DIVISION

WATER, SEWER & STEAM DEPARTMENT

SURREBUTTAL TESTIMONY

OF

CURT B. GATELEY

**Staff of the Missouri Public Service Commission,
COMPLAINANT**

v.

**I-70 Mobile City, Inc., d/b/a I-70 Mobile City Park,
RESPONDENT**

CASE NO. WC-2022-0295

*Jefferson City, Missouri
November 2023*

1 Q. In her rebuttal testimony, Ms. Hunt claims that I-70 MCP's situation is identical
2 to a previous complaint case involving some apartments.¹ Is that true?

3 A. I did not participate in the case she references, so I do not know if the apartment
4 complex was engaging in the activities that fall under the Commission's jurisdiction as
5 I-70 MCP is doing. I can say that in her argument about the apartment complex case, Ms. Hunt
6 conveniently ignores that the apartment complex she references did not own and operate their
7 own sewer collection system and treatment facility, or bill renters for the utility service they
8 owned. This means that in at least one glaring instance, the cases are not identical at all.

9 Q. In the case she references, did the Commission order that Staff not bring
10 complaints against apartment complexes when it was clear that a facility was operating as a
11 public utility?

12 A. No. The Commission examined the situation and dismissed the complaint. I am
13 not familiar with how Staff presented their evidence, or what other extenuating circumstances
14 existed. I do know that I have been told by the last three chairs of the Commission that Staff
15 should bring before the Commission any situation in which Staff feels Commission action is
16 necessary.

17 Q. Is it possible for a facility which is a wholesale water customer to sub-meter
18 water to their customers without falling under Commission jurisdiction?

19 A. Yes. If the facility in question is only using the sub-metering to collect the water
20 usage charges from the water provider, without adding any fees to the cost of the water usage
21 itself, it is Staff's position that this kind of pass-through charge can be done without falling

¹ Beginning on page 8, line 1, referring to the *Aspen Woods* case.

1 under Commission jurisdiction or regulation. This assumes of course that the water provider
2 does not prohibit that type of sub-metering as part of their contract with the original customer
3 or facility or city or county ordinances. This also assumes that besides not collecting more than
4 their water usage charges, the facility is not shutting off water for nonpayment, or charging
5 other fees such as to turn off or turn on service, late payment fees, or other charges which would
6 result in the company operating “for gain”².

7 Q. Does Staff believe a similar condition can exist for a facility with their own
8 drinking water or wastewater system, which offers that utility service to the public, and charges
9 for use of that service?

10 A. I cannot think of a scenario with these conditions that would avoid Commission
11 jurisdiction and regulation. Ms. Hunt’s argument, taken to its logical conclusion, would mean
12 that any facility providing rental living space can create its own monopoly utility and charge
13 whatever rate it wants, whether gas, electric, water, steam, or sewer. There is nothing special
14 about customers renting a living space that exempts them from Commission jurisdiction. If the
15 legislature intended customers renting a home, an apartment, or a pad for a mobile home to not
16 enjoy the protections afforded by Commission regulation, it would have written an exemption
17 into the statutes. They did not.

18 Q. Does Ms. Hunt admit to charging more than simply recovering the cost of water
19 usage that I-70 MCP pays to their water provider.

² See Section 386.020(49) definition of “sewer corporation” and (59) definition of “water corporation.”

1 A. Yes. For example, on line 1, page 10 of her Rebuttal testimony, Ms. Hunt admits
2 that I-70 MCP charges late fees.³

3 Q. Ms. Hunt referenced an email in her Rebuttal testimony on lines 13-14, page 9
4 about Staff’s reaction to a Commission’s procedural order. Does Staff consider its
5 investigations to be a “party”?

6 A. Certainly not. Staff considers it a very serious matter. This is reflected in Staff’s
7 determined efforts to force I-70 MCP to appear before the Commission, despite its
8 extraordinary efforts to delay these proceedings.

9 Q. Has Staff explained to I-70 MCP that there are options for the company to
10 modify their business operations and avoid Commission regulation?

11 A. Yes. I find it baffling that I-70 MCP did not make the easy change. Staff
12 routinely encounters mobile home parks, camp grounds, and subdivisions operating as electric,
13 water, or sewer utilities that would fall under Commission jurisdiction. Staff explains that if
14 they include the cost of utility services in the pad rent instead of metering, billing, and
15 functioning as a utility, there is no requirement for them to obtain a certificate from the
16 Commission. Staff also advises they are not allowed to add fees or ‘up charges’ to utility
17 services they receive as a wholesale customer. Nearly all of them simply change their practices
18 and include the true cost of renting in the pad rent following an explanation from Staff. Some
19 have even decided that being regulated by the Commission is preferable so they can recover

³ See also I-70 MCP’s responses to DR 44 which included copies of its “Month-to-Month Lease Agreements” which included the “Water & Sewer Utility Service Contract” attachment, referencing “Late Charges and Consequences.”

1 utility costs in a legitimate manner, such as TUK, LLC, The Willows Utility Company, and
2 188 North Summit, LLC.⁴

3 Q. Why do mobile home parks who are wholesale customers of city or county water
4 districts serving their facilities begin charging separately for utility services?

5 A. Some mobile home park managers have indicated to Staff that they installed
6 individual water meters to reduce water wastage and thereby lower costs for everyone. Some
7 have indicated they are in very competitive markets, and charging separately for utilities makes
8 their lower pad rent more attractive to prospective customers. But ultimately, we cannot know
9 how these situations initially come to pass.

10 Q. Is this because illicit utility operations generally begin without Staff's
11 knowledge?

12 A. Yes. Since Staff does not have the capacity or desire to inspect every water or
13 sewer system in the state, Staff has no way of knowing these exist until such a system is
14 brought to Staff's attention. Staff generally becomes aware due to customer complaints, and
15 sometimes through referrals from another agency, such as the Missouri Department of Natural
16 Resources ("DNR").

17 Q. On lines 15-21 on page 10 of her Rebuttal testimony, Ms. Hunt makes statements
18 about the economic vulnerability of some customers who would choose to live in communities
19 like what I-70 MCP provides. Does this mean that the Commission should be less likely to
20 regulate facilities like I-70 MCP?

⁴ The Willows Utility Company was acquired by Confluence Utility Operating Company and no longer holds a certificate, WM-2018-0116.

1 A. No, quite the opposite. Those with lower incomes are the most vulnerable to
2 unjust or unreasonable rates, inadequate service, or unsafe service. They are the least likely to
3 be able to move to a different location, least likely to be able to obtain a lawyer and fight for
4 their legal rights, and most likely to simply try to pay up to keep from being put in an even
5 worse situation. I do not believe the Commission should ignore those low-income customers,
6 as Ms. Hunt suggests. These customers need an agency like the Commission looking out for
7 them even more than customers in better economic situations.

8 Q. Is it the Commission's responsibility to help I-70 MCP keep their rent artificially
9 low by allowing them to separately charge for sewer and water services without Commission
10 authorization?

11 A. Certainly not.

12 Q. Ms. Hunt discusses provision of water and sewer to the general public on
13 pages 12 and 13 of her Rebuttal testimony. Is this an accurate representation of what makes a
14 company a water or sewer corporation?

15 A. No. None of the water companies regulated by the Commission provide water
16 to just any member of the general public as customers. Certificated companies provide service
17 within their certificated area, subject to the customer and company's rights contained in their
18 tariff, and subject to the restrictions in the law. It is no different than the myriad subdivisions
19 that have certificated service areas. The utility is authorized to only provide service to those
20 customers who live in that confined subdivision which is the service area authorized by the
21 Commission.

1 Q. Is I-70 MCP putting themselves out as a utility providing water and sewer
2 service in a defined service area?

3 A. Yes. The water and sewer utility services are not maintained only for their
4 personal structures. They are available to members of the public who rent pads within the
5 mobile home park.

6 Q. Do customers have other choices for the provision of water and sewer utilities
7 within I-70 MCP?

8 A. No. I-70 MCP is the only water or sewer utility available to these customers.

9 Q. On line 25 of page 12, and on lines 1-5 of page 13 of her Rebuttal testimony,
10 Ms. Hunt claims that water and sewer services are optional. Does that have any impact on
11 whether I-70 MCP is the only option for water or sewer services?

12 A. No. The fact that some person renting space within the mobile home park does
13 not partake of the water or sewer service is not an indication that there are other utilities
14 available to the customers for water or sewer service. If a customer is allowed to haul in water
15 and haul out waste, and the local health department allows this to occur, it doesn't mean there
16 are other utilities available.

17 Q. Ms. Hunt testifies that I-70 MHC's costs to provide water and sewer service "far
18 exceeds" what they make off their tenants. Do water or sewer corporations have to actually
19 make a profit, in order to be considered "for gain"?

20 A. No. Whether or not a utility actually makes a profit depends on the
21 establishment of just and reasonable rates along with efficient management of the utility. No
22 audit of the company has been conducted by Staff, therefore Staff does not know if the company

1 is recovering appropriate costs or not. The company has admitted to billing for sewer service
2 they own and provide, and admitted to collecting additional fees beyond recovering the water
3 usage for which they are billed. Whether or not a utility company successfully makes a profit
4 is not relevant to the question of whether or not they are subject to Commission regulation.
5 A utility company operating without Commission approval can change their rates whenever
6 they want, and recover whatever revenue they see fit, with no protection for customers.

7 Q. In lines 7-12 on page 15 of her Rebuttal testimony, Ms. Hunt responds to a
8 question about how many communities are subject to PSC regulation by saying she is only
9 aware of one. She cites WM-2018-0018 and SM-2018-0017 when stating that only one mobile
10 home park is regulated by the PSC in Missouri.⁵ Is this true?

11 A. No. There are over 160 water and sewer treatment systems subject to regulation
12 by the PSC, serving many communities. I am aware of at least two mobile home parks regulated
13 by the PSC, 188 North Summit and TUK, LLC, as stated above in my testimony. In addition
14 to these, there are other mobile home parks that are served by PSC regulated companies. These
15 are not tracked separately by the PSC. Some were acquired as separate acquisitions, and some
16 exist within the service areas of large companies that have provided service for a long time.

17 Q. In that same section, she contends that that particular mobile home park applied
18 for a certificate voluntarily. Is this true?

19 A. It is an odd statement, so I do not know what Ms. Hunt means by this. From my
20 perspective, businesses who chose to operate a utility subject to PSC regulation do so

⁵ The certificated company is 188 North Summit, LLC. Seges Partners Mobile Home Park, LLC was the previous owner. Ms. Hunt incorrectly identified the certificated company as “Seges Mobile Home Park” on page. 15, line 10 of her Rebuttal testimony.

1 voluntarily. In this instance, there is nothing extraordinary in the applications that suggests it
2 was especially voluntary, and I personally spoke with persons involved in this transaction.
3 I would describe the application as submitted with reluctance. But the seller had a choice,
4 to either change practices so as not to be regulated by the PSC and terminate its certificate
5 before the sale, or file the application with the purchaser to have a new certificate issued to
6 188 North Summit.

7 Q. On lines 19-20 on page 15 of her Rebuttal testimony, Ms. Hunt claims it is
8 “unfair for I-70 to be the only mobile home community subjected to a complaint case when its
9 competitors are not.” How do you respond to this assertion?

10 A. It is Staff’s position that to allow I-70 MCP to operate in a manner in which its
11 competitors are not allowed is unfair.

12 Q. Does the lack of other current complaint cases suggest that Staff is only
13 investigating I-70 MCP?

14 A. Not at all. Other mobile home parks that Staff has investigated in the past, and
15 some which Staff is actively investigating as of the date of this testimony, have chosen to
16 modify their business operations so as not to be subject to PSC regulation. This means that
17 Staff did not have to file their own formal complaint. Staff receives several complaints each
18 year from customers about subdivisions, recreational vehicle facilities, and mobile home parks
19 operating in a manner that makes them subject to PSC regulation. Beyond the apartment case
20 Ms. Hunt referenced, I am not personally aware of a company that Staff has investigated which
21 chose to argue that the PSC does not have jurisdiction to regulate their utility.

1 Q. Does the fact that I-70 MCP is a mobile home park exempt it from PSC
2 regulation?

3 A. No. There is no exemption from PSC regulation simply because a company
4 operates a utility serving a mobile home park.

5 Q. On page 18, lines 16-21 of her Rebuttal testimony, Ms. Hunt discusses the
6 inspection that Staff was eventually able to conduct after having to seek a court order. She
7 contends that it was not “limited.” Was this inspection “limited” in your opinion?

8 A. Yes, the inspection was limited in scope by Staff in its request to the
9 Commission and the Circuit Court.⁶ Additionally, once Staff arrived at the I-70 MCP property
10 on March 8, 2023, the inspection was limited due to the behavior of the I-70 MCP personnel
11 and employees.

12 Q. Who was at that site inspection in March?

13 A. Andrew Harris, our Staff Attorney Carolyn Kerr, and I were present from Staff.
14 Also present were two attorneys representing I-70 MCP, and three company personnel.

15 Q. You mentioned the behavior of the I-70 MCP personnel and employees limited
16 the inspection. How so? Can you describe some of this behavior?

17 A. In over two decades of civil service as a regulator, I have not experienced a
18 similar situation. We met with law enforcement before the inspection because we anticipated
19 we may need assistance enforcing the court order, given the extreme efforts I-70 MCP had
20 undergone in their attempts to keep Staff from viewing the property. Two officers met with us
21 prior to entering the premises, and they insisted that both of them accompany us during the

⁶ Direct Testimony of Andrew Harris, PE, lines 5-11 on page 8.

1 inspection due to their knowledge of and history with the personnel who manage the mobile
2 home park. They told us it would be unsafe for us to enter without them.

3 When we arrived, we were followed by I-70 MCP's two attorneys, and the two company
4 personnel who were prominently armed, who followed closely and documented every move we
5 made. A third armed person was initially present and followed us, but returned to the office at
6 some point during the inspection.

7 The attorneys for the mobile home park claimed that Staff was barred from inspecting
8 the sewer treatment facility by language of the operating permit issued by the DNR. Shortly
9 after the inspection, I confirmed that the language these attorneys relied upon is no longer used
10 in DNR permits so as to avoid such intentional misinterpretation. Despite the difficulties, Staff
11 was able to confirm some of the conditions we believed to exist at the facility, and obtain
12 additional details.

13 Q. Have you inspected many drinking water, wastewater, sewer, and stormwater
14 facilities during your career?

15 A. Yes, I would estimate the number to be between 300 and 500, along with
16 inspections conducted under my supervision somewhere in the low thousands.

17 Q. Are inspections of drinking water, wastewater, and steam facilities routine for
18 Staff of the Water, Sewer, and Steam Department?

19 A. Yes, we conduct many each year. While most are of regulated facilities, some
20 will be unregulated systems for which we received a complaint.

21 Q. Have you ever had to obtain a court order to gain access to a property?

22 A. No.

1 Q. Are you aware of any other Staff members needing a Court order to gain access
2 to a property?

3 A. I have not heard of any members of Staff needing a Court order to gain access
4 to a property.

5 Q. Do you ever have law enforcement accompany you on such inspections? How
6 often and under what circumstances?

7 A. I do not recall ever having law enforcement accompany me on an inspection of
8 a water or sewer facility. As I do not recall having to obtain a court order to gain access, and
9 personal safety is not generally a concern where I have conducted inspections, law enforcement
10 was unnecessary.

11 Q. Have you or another Staff member ever been followed by armed personnel when
12 conducting such an inspection?

13 A. This has never happened to me before, and I am not aware of it happening to
14 any other Staff member inspecting drinking water or wastewater facilities.

15 Q. Does this conclude your testimony?

16 A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

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 *Surrebuttal Testimony of Curt B. Gateley*; 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 6th day of November 2023.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: April 04, 2025 Commission Number: 12412070



 Notary Public

Curt B. Gateley

I am the Regulatory Compliance Manager of the Water, Sewer, & Steam Department, in the Industry Analysis Division of the Missouri Public Service Commission. I have been employed by the State of Missouri for 23 years, and have been with the Commission nine years. My duties as Manager involve all aspects of the Commission’s regulation of the water, sewer, and steam industries including customer complaints, reviewing testimony, setting policy, and working with the utilities to promote best practices in their provision of safe and adequate service at just and reasonable rates.

Educational Background and Work Experience

I have a Bachelor of Science degree in Fisheries and Wildlife from the University of Missouri-Columbia. Prior to joining the Public Service Commission I was employed by the Missouri Department of Natural Resources from 2000-2014, as an Environmental Specialist and a Unit Chief. During my time with the agency I worked in compliance and enforcement, industrial and domestic wastewater permitting, industrial stormwater permitting, and eventually oversaw a staff of eight Permit Writers. I have served as expert witness before the Administrative Hearing Commission, as well as expert witness in State and Federal enforcement cases.

Previous Testimony Before the Public Service Commission

<u>Case No.</u>	<u>Company</u>	<u>Type of Filing</u>	<u>Issue</u>
SR-2014-0153	Peaceful Valley	Live Testimony only	Compliance with Dept. of Natural Resources Regulations
WR-2015-0301	Missouri American Water Company	Direct and Rebuttal Testimony	Class Cost of Service Report
SR-2016-0202	Raccoon Creek Utility Operating Company	Direct and Rebuttal Testimony	Rate Design and Tariff Review
WO-2017-0236	Ridge Creek Utility Company, LLC	Live Testimony only	Petition for Interim Receiver
WR-2017-0110	Terre Du Lac Utilities Corporation	Direct Testimony	Rate Design and Tariff Review
WR-2017-0259	Indian Hills Utility Operating Company	Direct, Rebuttal and Surrebuttal Testimony	Rate Design
WR-2017-0285	Missouri American Water Company	Direct, Rebuttal and Surrebuttal Testimony	Class Cost of Service, Rate Design
WR-2018-0285	Liberty Utilities	Direct Testimony	Contract Services, Miscellaneous Service Charges, Tariff Revisions
WR-2020-0344	Missouri American Water Company	Direct Testimony	Class Cost of Service Report
WA-2020-0397	Liberty Utilities	Direct and Rebuttal Testimony	Staff Recommendation, Rate Base

cont'd Curt B. Gateley
Case Participation

<u>Case No.</u>	<u>Company</u>	<u>Type of Filing</u>	<u>Issue</u>
WA-2021-0376	Missouri American Water Company	Rebuttal Testimony	Staff Recommendation
WO-2022-0253	Liberty Utilities	Staff Report	Operations, Quality of Service, Prudency, Acquisitions
WR-2023-0006	Confluence Rivers	Direct & Surrebuttal Testimony	Operations, Quality of Service
WC-2023-0353	Blevins-Misty Water Works	Live Testimony	Operations, Quality of Service, Receivership