

**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.)	

**I-70 MOBILE CITY’S RESPONSE TO STAFF’S MOTION FOR
JUDGEMENT ON THE PLEADINGS**

Respondent, I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (“I-70 Mobile City”), by and through counsel, and for its Response to Staff’s Motion for Judgment on the Pleadings, states as follows:

Staff’s Motion is Untimely

1. On December 5, 2023, at approximately 2:00 p.m. the day before a hearing on the merits was scheduled to begin, and after a representative from I-70 Mobile City had flown from Florida to Missouri for such hearing, the Staff filed a “Motion for Judgment on the Pleadings.”
2. Staff now claims on the basis of I-70 Mobile City’s Answer alone (filed on May 31, 2022), that it is entitled to judgment on the pleadings.
3. Rule 55.27(b) provides “After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”
4. The pleadings closed approximately eighteen months before Staff

filed its motion.

5. The motion necessarily would have resulted in a delay in the trial (and actually resulted in its cancellation) as under the Commission's rules, I-70 Mobile City has ten days to file a response to the Motion. *See* 20 CSR 4240-2.080(13).

6. As explained by the Missouri Supreme Court, a party, like Defendant here, waives his rights, if any, to move for judgment on the pleadings by not timely seeking such relief. *See Parks v. Thompson*, 253 S.W.2d 796, 798 (Mo. 1952).

Staff's Motion Directly Contradicts its Previous Pleadings

7. Staff's Motion claims it is entitled to judgment as a matter of law based solely on the Complaint and Answer.

8. Staff's Motion directly contradicts what Staff pled in its Response to I-70 Mobile City's Motion for Summary Determination. Staff claimed:

[G]enuine 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.

See Staff's Response in Opposition to I-70 Mobile City's Amended Motion for Summary Determination (filed October 30, 2023) (Item No. 73), p. 2, ¶5. Staff has misrepresented its position to the Commission on at least one, if not both, of the signed pleadings.

Staff is not entitled to Judgment on the Pleadings

9. Staff's Motion consists of just four substantive paragraphs and fails to cite any statutes that would authorize Commission regulation of I-70 Mobile City.

10. Neither of the cases cited by Staff were decided on a Motion for Judgment on the Pleadings. *See Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W. 2d 569 (Mo. App. S.D. 1997); *Hurricane Deck Holding Co. v. Public Service Comm'n*, 289 S.W. 3d 260, 264-5 (Mo. App. W.D. 2009).

11. A judgment on the pleadings "is appropriate where the question before the court is strictly one of law." *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599-600 (Mo. banc 2007). "The question presented by a motion for judgment on the pleadings is whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *RGB2, Inc. v. Chestnut Plaza, Inc.*, 103 S.W.3d 420, 424 (Mo. App. S.D. 2003).

12. Staff claims it is entitled to judgment on the pleadings because "I-70 admitted 'that certain tenants of the I-70 Mobile City Park request water and sewer service and admits that I-70 Mobile City provides water and sewer service to certain tenants. I-70 Mobile City admits that such tenants are billed for water and sewer service by I-70 MHP based on their usage of water and sewer service.'"

13. This admission does not entitle Staff to relief. Staff has admitted that I-70 Mobile City can bill for water and sewer service without being subject to Commission regulation, as long as certain billing methods are used like adding the charges in the "pad rent" or utilizing a "pass through" billing.

14. Staff's Motion (and the Complaint and Answer) does not establish that I-70 Mobile City is a water corporation because it does not establish that

I-70 Mobile City operates, controls, or manages a plant or property for the purposes of distributing or supplying water.

15. Staff's Motion also fails to establish that I-70 Mobile City is a sewer corporation because it fails to establish I-70 Mobile City has at least 25 hookups.

16. 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." Staff's Motion does not establish it is entitled to judgment as a matter of law because it does not establish that any service provided by I-70 Mobile City has been devoted to public use.

WHEREFORE, for the foregoing reasons, I-70 Mobile City respectfully requests the Commission deny Staff's Motion for Judgment on the Pleadings, and for such other orders as are just and reasonable under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on this December 14, 2023.

/s/ Stephanie S. Bell _____
Stephanie S. Bell