

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

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

**STAFF’S RESPONSE TO I-70 MOBILE CITY’S
MOTION FOR STAY AND MOTION TO OPEN WORKING DOCKET
AND STAFF’S RESPONSE IN SUPPORT OF
ITS MOTION FOR JUDGEMENT ON THE PLEADINGS**

COMES NOW Staff of the Missouri Public Service Commission (“Staff”),
by and through counsel, and states as follows:

1. *Staff’s Complaint* was filed in this case on April 22, 2022, and on May 31, 2022, Respondent I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (“I-70 MCP”) filed its *Answer and Affirmative Defenses*.
2. On September 22, 2023, I-70 MCP filed its *Amended Motion for Summary Determination*, and on October 20, 2023, Staff filed its Response.
3. By its *Order Resetting Evidentiary Hearing*, issued on November 17, 2023, this case was scheduled for a two-day evidentiary hearing on December 6 and 8, 2023.
4. On December 4, 2023, Staff filed a *Motion Regarding Witness Availability*, notifying the Commission that it would be substituting one of its Staff witnesses for a different Staff witness. I-70 MCP filed a *Response*, objecting to the substitution on December 5, 2023.
5. On December 5, 2023, Staff filed a *Reply to Respondent’s Response to Staff’s Motion for Witness Substitution and Motion for Judgement on the Pleadings*.

Staff argued that no party would be prejudiced by the substitution of the witness, and asked that the hearing, which was to begin December 6, 2023, proceed as scheduled.

6. Nevertheless, the evidentiary hearing scheduled for December 6 and 8, 2023, was canceled by the Commission's *Order*¹ on December 5, 2023, and the parties were directed to file available dates for a rescheduled hearing on the matter no later than December 14, 2023.

7. On December 7, 2023, the Commission entered an *Order* denying I-70 MCP's *Motion for Summary Determination*. The Commission held that "Respondent's motion does not contain sufficient material facts to support its contention that it is not devoted to public use. Therefore, Respondent's motion does not entitle it to judgement as a matter of law because Respondent has not met its burden to show that they are not providing water or sewer services indiscriminately to the public within I-70 Mobile City Park."² As such, the Commission made no finding as to the merits of the above-captioned case.

8. Additionally, the Commission found that I-70 MCP's *Motion for Summary Determination* was "legally defective," in that it failed to follow Commission rules governing motions for summary determination by setting out multiple material facts within multiple paragraphs throughout the document. Specifically, it held, "The Commission need not address the sufficiency of Staff's response because Respondent's motion is defective on its face and fails to meet its burden."³

¹ Commission *Order Canceling Evidentiary Hearing, and Directing the Filing of New Dates for Evidentiary Hearing*, File No. WC-2022-0295, Issued December 5, 2023

² Commission *Order Denying Motion for Summary Determination*, File No. WC-2022-0295, Issued December 7, 2023, at page 9.

³ *Id.*, at pp. 9-10.

9. On December 8, 2023, Staff filed its *Availability for Evidentiary Hearing* with the Commission. Staff provided multiple days during which it and its witness are available for a proposed two-day hearing.

10. On December 14, 2023, I-70 MCP, filed three documents with the Commission: its *Availability for Evidentiary Hearing*, its *Motion for Stay and Motion to Open Working Docket*, and its *Response to Staff's Motion for Judgement on the Pleadings*.

11. According to I-70 MCP, Respondent is only available for a hearing on two non-consecutive days at the end of January.

12. I-70 MCP uses the fact that it is a mobile home and RV park and the *Aspen Woods*⁴ case as the basis of its *Motion for a Stay, Motion to Open a Working Docket* and objection to Staff's *Motion for Judgment on the Pleadings* in this case and argues that because it operates a Missouri Department of Natural Resources (MDNR) permitted and regulated "community water system" and wastewater system, it somehow does not fall under the jurisdiction or "reach" of the Commission.

13. A working docket is often opened when the issue or issues in a case are nebulous or no clear statute or regulation exists which can be used or relied upon by the parties and/or the Commission to arrive at a workable or clear solution or resolution. This is not such a case.

14. The issues in the case before the Commission are clear, and statutes exist which squarely and specifically apply to the facts at issue. There is no need to open a

⁴ *Staff of the Missouri PSC v. Aspen Woods Apt. Assoc., LLC and Nat'l Water & Power, Inc.*, File No. WC-2010-0227.

working docket and prolong this matter any further. An evidentiary hearing should be scheduled, and a decision rendered based on the evidence presented by the parties.

15. The questions presented are as follows:⁵

- a. Does the Commission have jurisdiction over I-70 Mobile City pursuant to §386.250, RSMo?
- b. Is I-70 Mobile City a sewer corporation?
- c. Is I-70 Mobile City a water corporation?
- d. Is I-70 Mobile City engaging in the unlawful provision of water and sewer services to the public for gain, without certification or other authority from the Commission?

16. Specific statutes apply to each of those issues. The only determinations are factual ones based on the parties' answers to those issues. And those answers can only be resolved by looking at the specific facts of this case as they apply to those statutes. Both parties agree to what those statutes are: §§ 386.020(43), (49), and (59), and 393.170.2, RSMo.⁶

17. Additionally, there need not be a discussion with "interested stakeholders" about the "public policy" of regulating I-70 MCP or any other mobile home park or other entity that provides water and/or sewer system to its tenants for gain and meets the definitions and conditions of the applicable statutes.

18. This is not a novel concept that needs "input" from "all stakeholders ..." to accurately delineate the full reach of the Commission's jurisdiction." The legislature

⁵ See, *Joint List of Issues, Order of Opening Statements, and List of Issues*, filed jointly by both parties in this case on November 17, 2023.

⁶ *Id.*

has already done so. By promulgating specific statutes that state that when a company takes specific actions (owns a wastewater facility with 25 or more connections, or provides water service to the public, for gain), it is considered a sewer and/or water corporation and public utility and falls under the jurisdiction of the Commission and therefore must be duly authorized to provide those services. Otherwise, it is operating in violation of the law.

19. Furthermore, if I-70 MCP wants to propose a settlement, no workshop is necessary to do so. Multiple, unrelated entities need not be involved in a days' long workshop to determine what resolution might be best for this particular company. The Staff previously suggested several alternatives, including, but not limited to, the two listed in Respondent's *Motion for Stay and Motion to Open Working Docket*, to I-70 MCP's current business model. Nothing prevents I-70 MCP from re-opening settlement discussions or entering into a settlement agreement with Staff, and a workshop is certainly not needed to do so.

20. With regard to I-70 MCP's other motions, many of its arguments in support thereof are misplaced. To begin, the fact that another state agency regulates a portion of its facilities is beside the point. It is irrelevant that MDNR permits I-70 MCP's wastewater system or considers its wells "community water systems." In fact, Staff points out that every water and sewer utility regulated by the Commission is also regulated by MDNR. The fact of MDNR regulation does not excuse or exempt Respondent from regulation as a public utility by the Commission.

21. The fact that I-70 MCP owns its own sewer treatment facility with more than 25 connections and charges the public for its use for gain is enough to

place I-70 MCP under the jurisdiction of the Commission pursuant to §§ 386.020(49) and 393.170.2, RSMo. Respondent's own Exhibit 4⁷, states on the second to last page of the Application for Operating Permit for Facilities, that there are approximately 300 "people presently connected" and that there are 71 trailers "presently connected" to the facility at I-70 MCP – well over the statutory requisite of 25 to be considered a "sewer corporation" under § 386.020(49), RSMo.

22. Additionally, I-70 MCP asserts it has a permit from the MDNR as a "community water system" authorized to dispense water to the public, and that it must follow that agency's rules and regulations with regard to distributing that water service to its tenants.⁸ However, MDNR's rules do not apply to, and MDNR does not regulate the utility rates I-70 MCP may charge its water customers.

23. Furthermore, I-70 MCP is not the original "supplier" of the water it provides to its tenants. In fact, at least according to Respondent's *Answer to Staff's Complaint*, its responses to various Staff Data Requests (DRs), and statements made in its *Amended Motion for Summary Determination*, I-70 MCP is a secondary, or retail, seller of water to its tenants after it purchases and is billed by Bates City, Missouri, and dispenses it to renters of lots at its facility and charges them for their individual usage.

24. The fact that I-70 MCP purchases its water as a wholesaler from Bates City and re-sells it to its tenants, subsequently billing those tenants for their usage separate from their pad rent places Respondent's action clearly within the jurisdiction of the Commission, pursuant to §§ 386.020(59) and 393.170.2, RSMo.

⁷ See, Exhibit 4, attached to *I-70 Mobile City's Motion for Stay and Motion to Open Working Docket*.

⁸ See, Exhibit 3, attached to *I-70 Mobile City's Motion for Stay and Motion to Open Working Docket*.

25. Furthermore, I-70 MCP admits in its Answer to Staff's *Complaint*, in answers to various Staff DRs, and in its *Amended Motion for Summary Determination* that it charges its tenants for the use of sewer and water services. Specifically, in its Answer to Staff's *Complaint*, it admitted that Attachment B of the *Complaint* is an actual screenshot of a tenant's rent and utility bill showing that I-70 MCP charges for water and sewer usage above and in addition to what it charges its tenants for lot rent, making it subject to regulation by the Commission.⁹ Respondent also admits in its *Answer* it does so without having certificates of convenience and necessity (CCNs) from the Commission.¹⁰

26. In its *Order Denying Motion for Summary Determination*, the Commission made no finding that merely operating as a mobile home or RV park gave I-70 MCP any special standing or exception from being regulated as a sewer or water corporation by the Commission. In fact, it cited *Osage Water Co.*, stating, "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 does."¹¹

27. "[A] motion for judgment on the pleadings should be sustained if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law." *Woods v. Missouri Dep't of Corr.*, 595 S.W.3d 504, 505 (Mo. 2020), citing *Madison Block Pharmacy, Inc. v. U.S. Fid. & Guar. Co.*, 620 S.W.2d 343, 345 (Mo. banc 1981).

28. The Court went on to say, "The well-pleaded facts of the non-moving party's pleading are treated as admitted for purposes of the motion [for judgment on the

⁹ *Answer and Affirmative Defenses of I-70 Mobile City, Inc.*, File No. WC-2022-0295, paragraph 17.

¹⁰ *Answer and Affirmative Defenses of I-70 Mobile City, Inc.*, File No. WC-2022-0295, paragraph 19.

¹¹ *Osage Water Co., v Miller County Water Auth., Inc.*, 950 S.W.2d 569, 574 (Mo.App. S.D. 1997)

pleadings].” *Id.*, citing *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 362 S.W.3d 7, 12 (Mo. banc 2012).

29. As such, based on the evidence presented in the pleadings filed to date, and Respondent’s own admissions, specifically Respondent’s *Answer and Affirmative Defenses* and *Amended Motion for Summary Determination*,

- a. I-70 MCP is a sewer corporation to § 386.020(49), RSMo, and is operating as a public utility pursuant to § 386.020(43), RSMo, as it owns its own a sewer treatment facility with more than 25 connections and charges the public for provision of its utility services for gain;
- b. I-70 MCP is a water corporation pursuant to § 386.020(59), RSMo, and is operating as a public utility pursuant to § 386.020(43), RSMo, as it purchases water as a wholesale customer and charges the public for provision of this utility service for gain; and
- c. 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.

WHEREFORE, for the foregoing reasons, Staff prays the Commission deny Respondent I-70 MCP’s *Motion for Stay and Motion to Open Working Docket*, grant Staff’s *Motion for Judgment on the Pleadings*, and for such other orders it deems reasonable and just under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr

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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 21st day of December, 2023, to all counsel of record.

/s/ Carolyn H. Kerr