

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. WC-2022-0295
	)	SC-2022-0296
	)	
I-70 Mobile City, Inc.	)	
d/b/a I-70 Mobile City Park	)	
	)	
Respondent.	)	

**SUGGESTIONS IN OPPOSITION TO  
STAFF’S MOTION TO COMPEL DISCOVERY**

I-70 Mobile City, Inc., by and through counsel, and for its Suggestions in Opposition to Staff’s Motion to Compel Discovery states as follows:

**Tenant’s “Complaint”**

1. On or before April 1, 2021, a tenant at I-70 spoke with the Commission. The tenant claimed (1) she talked to a “Commissioner” and (2) her water bill averaged \$120 per month. See Exhibit A.

2. By April 6, 2021, the Commission Staff had determined the tenant (1) did not talk to a Commissioner and (2) the amount owed by the tenant was for “multiple months” and (3) the water bill had been impacted by a leak. See Exhibit B.

**The Initial Investigation & “Questionnaire”**

3. On April 6, 2021, the Staff of the Commission first reached out to I-70 inquiring about I-70’s operations.

4. On June 28, 2021, after discussions between the Staff and I-70,

the Staff sent a “questionnaire” to I-70 with twenty questions (or essentially, data requests) regarding its operations.

5. Less than a month later, I-70, through counsel Doug Silvius, responded to the twenty questions. Mr. Silvius followed up with a second response to the “questionnaire” on September 8, 2021, including a link to the following documents:

- Copies of water bills and payments and payments 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;
- A Summary of I-70 Mobile City billing and payment of water vs. tenant utility services from 5/5/2020-6/5/21.

6. Following the submission of such information, I-70 was not contacted again by the Commission.

7. In an effort to resolve the “investigation” and move forward, counsel for I-70 (now, Stephanie Bell) called Staff on December 22, 2021 regarding next steps.

8. It was not until more than 45 days later, or February 15, 2022, that I-70 was contacted again by the Staff.

9. On February 23, 2022, representatives of I-70 voluntarily agreed to meet with and did meet with the Commission Staff to go over the questionnaire, documents provided, and questions about its operations.

### **Staff’s Formal Complaint**

10. On April 22, 2022, the Staff filed its Complaint.

11. Pleased with the Commission directing the Respondent to file an

answer, the Commission Staff emailed each other, “**Let’s get this party started.**” See Exhibit C.

### **Staff’s Data Requests & Request for Entry Upon Land**

12. On June 3, 2022, Staff filed its Request for Permission for Entry Upon Land for Inspection.

13. On June 6, 2022, Staff submitted thirty-two (32) data requests to Complainant.

14. Many of the 32 data requests filed in June 2022 include requests for the same information that was already provided by I-70 in August and September of 2021.

15. On June 13, 2022, I-70 filed an Objection to Complainant’s Request for Permission for Entry Upon Land. Staff filed a response on June 28, 2022. The Regulatory Law Judge held a discovery conference on June 30, 2022.

16. On July 11, 2022, I-70 submitted responses to 29 of the 32 requests. One additional response was submitted on July 12, 2022. Respondents only stood on objections for two of the 32 requests.

### **Staff’s Motion to Compel**

17. On July 8, 2022, Staff filed a Motion to Compel Discovery related to its Request for Permission for Entry Upon Land for Inspection.

### **Staff’s Motion to Compel Should Be Denied**

I-70 objects to Staff’s Request for Permission for Entry Upon Land for Inspection on the basis that it seeks irrelevant information, is unduly burdensome and is not proportional to the needs of this case. Staff has not asserted any claim to which the requested information is relevant, and the

request appears to be made for the purpose harassing I-70. Furthermore, the request is duplicative of the thirty-two (32) data requests already submitted by Staff. Finally, the Staff has not carried its burden to show good cause for why the inspection should be allowed.

**Staff's Request Ignores the Threshold Question to be  
Decided by the Commission**

Staff's Request ignores the threshold question before the Commission – is I-70 subject to Commission jurisdiction and regulation? I-70 notes that despite Missouri being home to more than 60 communities of manufactured homes, the Commission currently only regulates one. Here, Staff's Complaint alleges that I-70 "is engaging in the unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the...Commission." Complaint, ¶20.

I-70 asserts it is not subject to Commission jurisdiction, noting the Commission dismissed a nearly identical complaint in *Aspen Woods Apartment Associates LLC*, WC-2010-0027. Answer, p. 8. There, the Respondents claimed that Missouri Landlord-Tenant law controls or otherwise preempts the Commission's jurisdiction. I-70 asserts the same here. Answer, p. 10. Further, I-70 asserts it is not subject to Commission jurisdiction because it does not provide water or sewer service to the public, does not provide water or sewer service to all renters at I-70, and it only provides certain services to certain individuals pursuant to contract. Answer, p. 9.

The Staff now requests a "general inspection" of I-70's premises. A "general inspection" should not be permitted until the threshold legal question of whether I-70 is subject to Commission jurisdiction at all is answered. The legislature has decided which entities are subject to the

Commission's jurisdiction (and therefore inspections). To allow the Staff to attempt to expand that jurisdiction by simply making a Complaint against an entity that has never been subject to regulation before, makes the statute governing the Commission's jurisdiction meaningless, and the Commission's jurisdiction boundless.

**Staff's Request is outside the scope permitted by Rule 56.01 and is further cumulative and duplicative as the relevant discovery needed for this case can be obtained through data requests, which are less burdensome and less expensive**

Rule 56.01 also requires that discovery must be limited if the tribunal determines that:

- (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (B) The party seeking discovery as had ample opportunity to obtain the information by discovery in the action;
- (C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

First and foremost, the discovery sought by Staff is outside the scope permitted by Rule 56.01(b)(1) in that it is irrelevant. The party seeking discovery has the burden of establishing relevance. Missouri Rules of Civil Procedure 56.01(b)(1). The parties here do not disagree on the basic facts. See I-70's Answer. The case is largely a disagreement on the law. Staff's Complaint alleges that I-70 "is engaging in the unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the...Commission." Complaint, ¶20. The only violation of statute alleged by the Staff is Section 393.170.2, RSMo (the CCN statute). See Complaint, ¶5. Staff's Original Request for Permission for Entry Upon Land and its Motion to Compel demonstrate it seeks an "inspection" far beyond the facts it alleged in its Complaint and far beyond the facts necessary for this Commission to make the threshold determination raised by

Staff's complaint.

Staff attached an affidavit of Mr. Andrew Harris to its Motion to Compel.

Mr. Harris suggests he intends to take photographs:

- (1) to capture images of the assets with enough background to demonstrate the location of the assets;
- (2) to document water and/or sewer service connections provided to residents of the I-70 Mobile City...;
- (3) to document the condition and quality of the equipment used for provision of safe water and/or sewer service; and
- (4) to examine the discharge from a wastewater treatment system and document and visible impacts on human health and the environment.

None of these are relevant to the question before the Commission. The first two items are not in dispute. I-70 has admitted, through data requests, there is a lagoon on the property and that the rental pads are separately metered. The Staff fails to demonstrate how the exact location of any asset changes or is relevant to the analysis of whether I-70 should be regulated by the Commission. With respect to the second category, I-70 has admitted, through data requests, the number of tenants connected to water and/or sewer service. These photographs will not assist the Commission in determining the relevant, threshold issues of whether (1) Missouri Landlord-Tenant law controls or otherwise preempts the Commission's jurisdiction and (2) whether I-70 is not subject to jurisdiction because it does not provide water or sewer service to the public, does not provide water or sewer service to all renters at I-70, and only provides certain services to certain individuals pursuant to contract.

The second two items are wholly irrelevant. 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. Similarly, Staff's Complaint makes no allegations about any issues with the discharge from a wastewater treatment system or any questions about impacts of any

service on human health or the environment. Indeed, the call from the tenant that caused the initial inquiry by Staff was a complaint about the price of the water (which was quickly explained by Staff). *See* Exhibits and B. There is no evidence that a tenant has ever complained about the safety or quality of the water.

Staff offers a single paragraph in its Motion for why such intrusion onto private property is necessary:

Staff seeks to verify the service being provided, existing plant, equipment condition, and utility operations and the actual condition and function of the equipment, which can only be determined by physically viewing it. Staff needs to be able to conduct a general inspection to ensure that I-70 MHP [*sic*] is operating lawfully and to determine the nature of its water and sewer services, which would ultimately determine whether I-70 MHP [*sic*] should fall under the jurisdiction and regulation of the Commission.

See Motion to Compel, ¶ 16. Again, there is no dispute that some tenants on at I-70 Mobile City are receiving water and/or sewer service and the same has been admitted in data request responses. There are no allegations in Staff's Complaint about the condition or function of plant or equipment, or issues with the operation of the same. For the same reason as each identified "verification" is irrelevant for the Commission's resolution of this dispute is also reason to deny any broader request for a "general inspection" to ensure "lawful" operation. Staff has not met their burden of the relevance of the inspection requests and thus the inspection should not be allowed by the Commission.

In addition, the discovery sought by Staff is cumulative and duplicative in three respects. First, I-70 previously provided responses to a questionnaire and many of the documents requested in August and September of 2021. Second, I-70's Answer already admits that I-70 is providing water and sewer service to certain tenants and it has a permitted lagoon. As a result, there is

simply no need to “inspect” a premises to determine what has already been admitted in the case.

Third, Staff issued 32 Data Requests on June 6, 2022. *See* Exhibit C. The requests already encompass inquiries regarding water and sewer service connections, water meters, and the wastewater treatment facility and lagoon. The discovery sought in the inspection requests is duplicative of the information requested in the data requests (which are more convenient, less burdensome and less expensive for both parties). On July 11, 2022, I-70 provided responses to 30 of the 32 Data Requests along with numerous responsive documents. Rule 56.01 requires that discovery must be limited if the tribunal determines that the discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Here, Staff the Commission should deny Staff’s Motion because Staff seeks irrelevant information which is cumulative, duplicative and can be obtained through the standard data request process.

**Staff’s Request is Disproportional to the Needs of the Case**

Discovery is governed by Commission Rule 20 CSR 4240-2.090(1), which provides that discovery “may be obtained by the same means and under the same conditions as in civil actions in the circuit court.” The applicable Missouri civil procedure rule is Rule 56.01. That rule provides that generally parties may obtain discovery regarding any relevant matter that is not privileged. In deciding whether discovery is to be had, the court is to consider whether the discovery is:

proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.



Here, Staff desires to take multiple taxpayer funded employees to spend time to inspect and photograph a mobile home site with approximately 65 tenants which has been in operation for at least thirty years after a single tenant complained about her bill being too high. The parties' resources do not justify the travel required for an in-person inspection request. Not only has Staff failed to justify the use of taxpayer resources for an unprecedented in-person inspection, but also it would be expensive and burdensome for the Respondent. The President of I-70 Mobile City, Jennifer Hunt, lives in Texas. The time and expense of the inspection request given the parties' resources is not justified and the burden of such travel outweighs any benefit of an in-person inspection.

### **Staff has Failed to Demonstrate Good Cause**

Government inspection of private property or of a private business is a serious matter. While Staff wants to “get the party started ” (see Exhibit C), for most, government entry upon private property is not a laughing matter or cause for celebration. It is with this respect for privacy and individual rights that the legislature has required a party to show “good cause” for entry upon land. *See* Section 510.030, RSMo.

A party seeking such inspection must demonstrate **good cause** for the same. Failing such showing, an inspection is not warranted. *See, e.g., State ex rel. Bostelmann v. Aronson*, 235 S.W.2d 384, 390 (Mo. banc 1950) (“We think the evidence offered in support of the motion [to inspect] was wholly insufficient...to show ‘good cause’ for the issuance of the order [to inspect]...”); *State ex rel. Headrick v. Bailey*, 365 Mo. 160, 278 S.W.2d 737 (Mo. banc 1955). Here, the Staff has made no showing of any cause, much less good cause, to enter the private property, cause concern to residents, and disrupt day-to-day operations. What good cause exists here? As detailed above, Staff's requests relate to undisputed or irrelevant facts and issues. Staff wishes to conduct a

“general inspection” of I-70’s property without the Commission first answering the threshold legal questions regarding jurisdiction. Without any showing of good cause, the Commission should deny the Staff’s request.

**WHEREFORE**, for the foregoing reasons, I-70 respectfully requests that (1) the Commission deny the Staff’s Motion to Compel Discovery and (2) grant I-70’s Motion for Protective Order.

Respectfully submitted,

ELLINGER & ASSOCIATES, LLC

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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 July 18, 2022.

    /s/ Stephanie S. Bell      
Stephanie S. Bell