

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

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

MOTION FOR PROTECTIVE ORDER

Respondent, I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (“I-70 Mobile City”), pursuant to Missouri Rule of Civil Procedure 56.01(c), requests that this Commission enter its Protective Order to protect I-70 Mobile City from annoyance, oppression, and undue burden or expense in connection with Respondent’s Data Requests. In support, I-70 Mobile City states:

1. At its core, this case is about a question of law -- whether the Commission has jurisdiction over I-70 Mobile City.
2. On November 23, 2022, Respondent filed their Motion for Summary Determination (the “MSD”) by which I-70 Mobile City asks the Commission to determine the jurisdictional question.
3. Petitioner’s Response to Respondent’s Motion for Summary Determination is due December 23, 2022.
4. The scope of any discovery in this case at this time should be limited to any factual questions specifically related to the jurisdictional question, if any.
5. Whether or not I-70 is subject to the Commission’s jurisdiction is

based on the statutory definition and the case law. By way of example: Section 386.020(49), RSMo, defines “sewer corporation” as including “every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets...”

6. There are five elements present in the statutory definition: Is I-70 a (1) corporation, company, association, joint stock company or association, partnership, or person that (2) owns, operates, controls, or manages any property (3) for the collection, carriage, treatment, or disposal of sewage (4) for gain (5) with 25 outlets or more?

7. Facts related to those elements are relevant for purposes of the Commission’s determination of I-70’s Motion for Summary Determination.

8. The other statutes cited by Staff in its Complaint contain similar elements.

9. I-70 has already responded to forty-four (44) data requests of the Staff, some of which related to those five elements.

10. On November 18, 2022, Staff served an additional four (4) data requests on I-70 Mobile City.

11. Despite the Complaint containing no allegations of service that is not safe or adequate the Staff has requested:

Request No. 48.1: Has the Missouri Dept. of Natural Resources (DNR) conducted any inspections since its December 18, 2019 inspection of I-70 Mobile City’s Wastewater Treatment Facility system, including, but not limited to its facility’s limitations, monitoring requirements, design flow, water pollution, water quality, effluent limits, etc.? If so, what were the date(s) of those subsequent inspection(s), and what were the result(s) of

those inspections? Did I-70 receive any documentation of the result(s) of those inspection(s)? If so, please provide copies of all such documentation and copies of all correspondence between DNR and I-70 Mobile City. (See attached copy of DNR “Letter of Warning Response Required” dated January 8, 2020.) Carolyn H. Kerr (Carolyn.Kerr@psc.mo.gov)

Request No. 48.2: Has the Missouri Dept. of Natural Resources (DNR) issued any Letter of Warning or other written admonition to I-70 Mobile City since December 18, 2020, regarding its Wastewater Treatment Facility, including, but not limited to effluent limitations, monitoring requirements, permit conditions, water quality, reporting requirements, etc.? If so, please provide copies of all such documentation and copies of all correspondence between DNR and I-70 Mobile City. Carolyn H. Kerr (Carolyn.Kerr@psc.mo.gov)

12. Neither Request No. 48.1 nor 48.2 have any relevance to the jurisdictional question at issue in the pending Motion for Summary Determination.

13. Staff also made significant inquiries regarding former employees of I-70:

Request No. 0045.3: Please provide Michael (Mike) Hanavan’s dates of employment at I-70 Mobile City, all positions he has held and/or continues to hold while employed by I-70 Mobile City and job descriptions of each of those positions, and the dates of each position he held and/or continues to hold while employed by I-70 Mobile City. Please also provide Mr. Hanavan’s last known street address, phone number, and email address. (See the attached “Missouri State Operating Permit,” specifically, “Form B: Application for Operating Permit for Facilities that Receive Primarily Domestic Waste and Have a Design Flow Less Than or Equal to 100,000 Gallons Per Day,” “30570” and stamped “received AUG 27 2018” specifically page 6 of 8.)

14. The statute makes no reference to the employees or staffing of an entity. The Complaint makes no reference to the DNR Operating Permit, or any violation of statute or rule related to the actions of a former employee. If the Staff believes I-70 is in violation of the DNR permitting process, then it

should present such information to and make a referral to DNR.

15. Request No. 45.3 has no relevance to the jurisdictional question at issue in the pending Motion for Summary Determination.

16. The Staff also requests:

Request No. 0045.4: Who is available to customers who wish to enter into a “Short-Term (Per Night/Boondocking) Agreement” or “RV Short-Term (Per Week or Per Night) Agreement” (“Agreements”) if Jennifer Hunt or Dennis Filger are not physically at the business office during business hours? Is there anyone that can act on behalf of I-70 Mobile City to enter into any of those Agreements with the customer other than Jennifer Hunt or Dennis Filger located on site at the business office at I-70 Mobile City in Bates City, MO? Please identify all individuals, other than Jennifer Hunt and Dennis Filger who check the photo ID(s), run the applicant(s) background checks, sign the Agreements, and enforce the Agreements? If so, please state whether those persons are employed or contracted by I-70 Mobile City and in what capacity, what those persons’ job titles are, and their respective contact information (address and phone number). (See the attachments to I-70 Mobile City’s 7/11/2022 response to DR 0016 for copies of the Agreements referred to in this DR, specifically, 16.2.pdf, 16.4.pdf, and 16.6.pdf.) Carolyn H. Kerr (Carolyn.Kerr@psc.mo.gov)

17. I-70 is not aware of any statute or rule, in particular any PSC statute or rule, that requires a physical presence during a particular set of hours at a mobile home community, apartment building, or other rental properties or lots. Certainly, the Complaint makes no allegations related to or cites any statute or rule that requires physical presence at a mobile home community or apartment building during a specific set of hours.

18. Request No. 45.4 has no relevance to the jurisdictional question at issue in the pending Motion for Summary Determination.

19. Although the Commission rules separately provide for data requests, the Commission rules do provide: “Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit

court. *See* 20 CSR 4240-2.090.

20. The legislature recently recognized that litigants can often use discovery to harass, annoy, burden, and cause great expense to opposing parties. That recognition led the legislature to limit interrogatories to a total of twenty-five (including subparts) without a court order. *See* Senate Bill 224 (2019); Rule 57.01.

21. To date, I-70 Mobile City has already provided responses to 44 data requests (many of which contained multiple subparts) from the Staff – answering questions and providing requested documents. To date, the responses and requested documents provided by I-70 to Staff totals 245 pages.

22. I-70 Mobile City requests this Commission to enter its protective order that discovery be stayed until such a time as the Motion for Summary Determination – which involves a question of law – not dependent on any of the pending data requests – is decided.

WHEREFORE, Respondent, I-70 Mobile City, respectfully requests this Commission, for good cause shown, enter its protective order staying discovery in this case until such time as the Motion for Summary Determination is decided and grant such other and further relief as the Commission deems appropriate in the circumstances.

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 the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on December 8, 2022.

 /s/ Stephanie S. Bell
Stephanie S. Bell