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AUDIO RECORDING
IN RE: I-70 MOBILE CITY PARK
WC-2022-0295
DISCOVERY CONFERENCE
JUNE 30, 2022

(Due to the quality of the recorded media, portions were unable to be transcribed and include inaudible portions. The transcript may also include misinterpreted words and/or unidentified speakers. The transcriber was not present at the time of the recording; therefore, this transcript should not be considered verbatim.)

TRANSCRIBED BY: MELISSA LANE

AUDIO TRANSCRIPTION

1 MS. BELL: For respondents, Your Honor.

2 LAW JUDGE CLARK: Thank you, Ms. Bell.

3 MS. KERR: Your Honor, I was (inaudible)
4 we're going to join just to listen in, but as far
5 as --

6 LAW JUDGE CLARK: Ms. Kerr, you are
7 expecting a few other people; is that correct?

8 MS. KERR: One other person.

9 LAW JUDGE CLARK: Okay.

10 MS. KERR: (Inaudible) yes.

11 LAW JUDGE CLARK: And whom is that?

12 MS. KERR: Andy Harris.

13 LAW JUDGE CLARK: Okay. Mr. Harris is
14 already on.

15 MS. KERR: Oh, okay. Well, then.

16 LAW JUDGE CLARK: I appear to have one
17 additional person. Who just joined?

18 MR. POSTON: Hi. This is Marc Poston with
19 OPC.

20 LAW JUDGE CLARK: Oh, thank you,
21 Mr. Poston.

22 All right. Are we expecting anybody else?
23 I don't believe so. But -- well, in any event, it is
24 11 o'clock. So let's go on the record.

25 Today's date is June 30th, 2022, and it is

1 11:00 a.m. The commission has set aside this
2 discovery conference in the case captioned as a staff
3 of Missouri Public Service Commission, complainant
4 versus I-70 Mobile Park City, Inc., doing business as
5 I-70 Mobile City Park, respondent. And that is file
6 number WC-2022-0295. We do not have a court reporter
7 for today's proceeding. I am recording today's
8 proceeding. If for some reason it becomes necessary
9 for the parties to have a transcript to address any
10 pleading or filing, I can have it sent off to a
11 professional transcription service to have it
12 transcribed.

13 My name is John Clark. I'm the regulatory
14 law judge assigned to this matter. I'm going to begin
15 by asking the attorneys to make their entry of
16 appearance for the record. Starting with staff.

17 MS. KERR: My name is Caroline Kerr,
18 attorney for staff.

19 LAW JUDGE CLARK: Okay. Thank you,
20 Ms. Kerr. For I-70 Mobile City Park.

21 MS. BELL: Stephanie Bell, Ellinger &
22 Associates, and my address is in the -- is on my
23 pleadings.

24 LAW JUDGE CLARK: Okay. Thank you,
25 Ms. Bell.

1 And for the office of public council.

2 MR. POSTON: (Inaudible) Poston, attorney
3 for the Office of Public Counsel.

4 LAW JUDGE CLARK: Okay. Have I missed any
5 other Counsel of record?

6 UNIDENTIFIED FEMALE: (Inaudible) for
7 staff. I'm just sitting in here.

8 LAW JUDGE CLARK: I'm sorry, who else?

9 UNIDENTIFIED FEMALE: (Inaudible) for
10 staff. I'm just sitting in -- in the meeting.

11 LAW JUDGE CLARK: Okay. Thank you,
12 Ms. Bretts (phonetic), I've had a chance to re-review
13 the filings in this case. I'm going to let staff
14 start, so staff, why don't you summarize for me the
15 nature of the discovery request and the nature of the
16 discovery dispute at this point as staff sees it.

17 MS. KERR: Well, we filed some data
18 requests back on June 6th. Prior to that, I had
19 called Ms. Bell -- let's see. I had -- sometime at
20 the end of May, I had called Ms. Bell just to ask her
21 client if we could go, the -- me and Mr. Bell -- or
22 Mr. Harris could go and just do a site visit on -- at
23 the I-70 mobile home park just to see what the -- the
24 park looked like, kind of get an idea of what the site
25 looked like, how it was set up on a voluntary basis,

1 if we could just go out and take some pictures. She
2 said she was -- check with her client, see if that was
3 possible, and then later on, on the 26th of May, I got
4 an e-mail back from Ms. Bell saying that her client
5 would not consent to a site visit, but that she
6 understood that we worked -- that we could under the
7 discovery rules seek an entry upon (inaudible) for
8 inspection and that she was happy to discuss that by
9 phone. And, so after I got that e-mail, you know,
10 we -- we discussed that internally, and then we
11 decided that we would go ahead and file a formal
12 discovery to request permission to enter land on for
13 inspection. And, so we went ahead and filed that the
14 beginning of June. We asked to go in and inspect and
15 take pictures of five locations on the -- on I-70
16 mobile home park. Subsequent to that is when I-70
17 filed their objection to the discovery request and
18 asked for a motion for productive order, and then
19 we -- we received your order directing staff response,
20 and then we -- between that time is when we had --
21 also filed those 32 data requests. The day before the
22 28th, the day before the -- our response was due on
23 the 28th, I still hadn't received any data -- data
24 request responses from Ms. Bell. And, so I called her
25 on the morning of the 28th and asked whether we were

1 going to -- whether and when we were going to get any
2 discovery or data requests responses, and I -- that
3 was in the morning. I called her, and she said they
4 didn't have any responses yet. She had -- then she
5 had missed -- miscalculated when the data request were
6 due and thought they were due this coming Friday,
7 but -- so she didn't have them, and ask if she could
8 respond to them this Friday, the 1st. I told her that
9 my response to the objection was due on Wednesday.
10 And, so I really needed to have those responses before
11 then, and she had told me, well, she could have them
12 to me by the following morning, that would be fine.
13 Go ahead and do that.

14 Later on that morning -- later on that
15 morning she called and said that she wouldn't be able
16 to have them the following morning. She would have
17 them to me by Friday and asked about an extension,
18 asking for a joint motion for an extension. I told
19 her, you know, I didn't need an extension, because I'm
20 not the one who -- you know, who filed the objection
21 to the discovery, and subsequently, I -- I received
22 a -- a request for joint motion for extension. I sent
23 her an e-mail later that -- that afternoon saying, you
24 know, we're not going to consent to a joint motion for
25 extension. You know, if you wanted -- if she wanted

1 to withdraw her objection to the discovery, then, you
2 know, we can talk about when the data request
3 responses are due, but, you know, that's really the
4 only issue is, you know, we can go on the land, if we
5 can go and take pictures and, you know, do our
6 discovery, and she gets us the answers to the data
7 request, you know, we can move on. We can discuss the
8 issue of when the data responses are due separate from
9 the discovery motion, and we can just, you know, move
10 on with -- with this and get this case moving. That's
11 fine. And then, you know, here we are, so. That's,
12 basically, what's gone on.

13 LAW JUDGE CLARK: Okay. So it sounds like
14 at this point there are two discovery issues, and
15 correct me if I'm wrong, I'm just rephrasing this, so
16 that I can clarify it in my own head, it sounds like
17 there are two discovery issues for staff right now,
18 and it sounds like one involves the answering of
19 several data requests, and the other involves the
20 entry onto land; is that correct?

21 MS. KERR: Yes.

22 LAW JUDGE CLARK: Okay. And Ms. Bell, it
23 appears, at least from your client's perspective,
24 looking at filing, it looks like in your objections to
25 let's address the entry onto land first, you have

1 objections and a request for protective order and your
2 objections say that it seeks irrelevant information is
3 unduly burdensome is not proportional to the needs of
4 the case, and claimant has not asserted any claim to
5 which the request and information is relevant. Now
6 that's just restating irrelevant. Why do you believe
7 that the entry onto the land is irrelevant and
8 duplicative?

9 MS. BELL: Sure. So, I mean, you can
10 imagine -- I think some facts and some context is
11 important here. So you can imagine my client who's
12 been operating the same business in the same manner
13 for 30 years, never being contacted by the Public
14 Service Commission, getting an inquiry, now almost a
15 year ago from -- from the commission about their
16 operations, having some hesitancy when first
17 contacted.

18 As far as the entry upon land again,
19 they -- the whole -- the whole argument is a legal
20 argument. We really don't disagree on the basic
21 facts, and I think if you read our answer, we admitted
22 to a lot of things that the staff is wanting to
23 confirm through their entry upon land, but many of
24 those items have already been admitted. I think here,
25 you know, it's really a disagreement about whether the

1 business is subject to regulation at all. And, so as
2 a -- as a, you know, businessowner that's never been
3 subject to the PSC regulation, you know, we do have an
4 objection to entry upon land, and it's not a situation
5 where, you know, it's a tour of the Amren plant. It's
6 people's homes. It's a small community, and really,
7 these are -- you know, these are folks' homes that,
8 you know, having people from the government, you know,
9 coming through really is -- you know, my client has
10 significant concerns about their tenants' privacy, and
11 the ability, you know, how that will be perceived by
12 them.

13 Many of the things -- I mean, they can
14 request photos through the data request, and really, I
15 mean, it's -- it is burdensome, and it is not
16 proportional. This isn't Amren. This is, you know, a
17 very small mobile home in Missouri with very limited
18 staff. And, so to receive the 32 data request, many
19 of which I think could resolve some of the issues that
20 staff is trying to gather from entry upon land, I
21 mean, the rules clearly state that if there's a -- you
22 know, a less burdensome, less expensive way or if
23 what's being sought is duplicative, then we should --
24 we should seek the less burdensome and less expensive
25 way to do that, and here, the data request process,

1 you know, I -- I have been involved in a lot of Public
2 Service Commission cases. I've been involved in plane
3 cases. I've never been in a case with an entry upon
4 land. I think that's greatly disproportional to the
5 facts of the case and what's needed here for staff to
6 prove up their case. And again, relevance. If we
7 admit that we're -- that the -- I mean, no one
8 disagrees that the site -- that there is a D&R permit,
9 that there's a lagoon on the property. No one -- I
10 mean, if you read the answer, no one disagrees that
11 they are -- there's a provision of water. Really,
12 there's disagreement on the law. And, so that's why
13 it's irrelevant because the -- the things they want to
14 seek are really -- have been admitted. I don't -- I
15 don't know what the entry upon land would -- would
16 gain them as far as -- as far as relevance to the
17 legal issues in the case. And, so -- and entry upon
18 land is not, you know, insignificant, particularly for
19 private citizens, private businesses, and that's why
20 the case law says that you have to have a good -- you
21 have to show good cause and staff hasn't said, you
22 know, why out of, you know, all the other PSC cases
23 why all of the mobile homes, why in this case what's
24 the good cause for, you know, coming to someone's
25 property, and then, you know, especially where it's --

1 it's places where people live, they want to take
2 place -- they want to take photos of -- of people's --
3 basically, people's homes, and we -- we aren't going
4 to -- you know, we aren't going to consent to that,
5 and that's why we've objected, so I think here, not
6 only is it, you know, they haven't shown the relevance
7 separate from that, they haven't shown good cause why
8 they need to do entry upon land, and then third of
9 all, I think -- I think it's duplicative, and I don't
10 think we'll necessarily -- and that's why we -- these
11 two discovery issues are really intertwined because --
12 and that's why I kind of tried to talk to staff about,
13 hey, let's -- let me respond to the data request, and
14 then you can review those, and then if there's
15 something that -- you know, that from all of that
16 information, if you still feel like you can't prove
17 your case based on what I provided in the data
18 request, then let's talk about entry upon land or
19 photos, but with 32 data requests, I think you should
20 be able to get to your case without having to come
21 onto our property and take photos of -- of people's
22 homes and require us to be there and require your
23 staff to travel there. I mean, it's extremely
24 expensive, extremely burdensome, and I think
25 disproportional to the needs of this case. And on the

1 timing -- sorry, Your Honor -- one other thing. On
2 the timing issue, I know it seems like, you know,
3 we're kind of in a -- it feels like we're trying to be
4 in a hurry and maybe staff's argument is that, well,
5 they won't have enough time after, you know, I respond
6 to the data request to -- to determine that, but we
7 just got a procedural order yesterday. Our hearing's
8 in October. We've been -- previously submitted a
9 bunch of information to staff, and that's outlined in
10 the most recent motion we filed. Staff first
11 contacted I-70, I believe, in June of 2021. You know,
12 so this went on for a year before a complaint was even
13 filed. Our hearing still is months away, so I think
14 there's plenty of time, and we're not -- I mean, we're
15 not trying to do this for the purposes of delay, but I
16 think there's plenty of time to let us respond to the
17 data request, and then determine, you know, from
18 those -- you know, what -- beyond what the responses
19 were, what else is needed.

20 LAW JUDGE CLARK: Let me ask this.
21 There's -- there's two things that -- there's the data
22 request, and then there's the request for entry onto
23 land. And you're objecting wholesale to the entry on
24 land at this point; correct?

25 MS. BELL: Uh-huh. Correct.

1 LAW JUDGE CLARK: And it looks like in a
2 subsequent filing, it sounds like -- and correct me if
3 I'm wrong -- you're not opposed to answering the data
4 request, but you asked for an advance or for
5 additional time; is that correct?

6 MS. BELL: Correct, Your Honor, and
7 there -- I mean, it really is -- again, going back to
8 my client right now, Ms. Hunt, who is the president of
9 the organization, basically, took over the family
10 business. This business has never been regulated by
11 the PSC. So imagine a remote mobile home with very
12 limited staff, so whereas, when the staff shoots a
13 data request over to Evergy or Ameren, they have a
14 team of 30 people who regularly report this to the PSC
15 every, you know, six months or -- you know, during
16 every rate case, and they know exactly what report to
17 run, and everything's already electronic. You know,
18 most small businesses aren't -- aren't set up that way
19 and -- and my client had no expectation of that type
20 of -- of turnaround and never been involved in
21 litigation, so you can imagine going -- you know,
22 having paper files, having to travel there, having to
23 sort through years of paper files, and then scan those
24 files. So the 20-day turn around, I mean, it's not --
25 I mean, we will have some objections, but many -- then

1 also it's in part we provided a lot of this
2 information early on in response to a questionnaire.
3 And, so staff has a lot of this information already.
4 We -- and, so if staff -- you know, so I'm just
5 saying, you know, in the past, we -- we don't have an
6 objection to providing some of the documentation, the
7 documentation which is responsive and relevant which
8 we have because we've already provided a lot of it,
9 and I understand staff's need to get that same
10 information in the form of a data request response in
11 preparation for the hearing, which we are trying to
12 do, but, you know, for a business that has never had
13 to respond to a data request ever, 20 days is -- is --
14 is -- has been difficult, I will say. And, so that's
15 why we're requesting more time, not because we don't
16 plan to provide any, you know, documents.

17 LAW JUDGE CLARK: Ms. Kerr, other than --
18 and I'm just going to address the data request at this
19 point. Ms. Kerr, other than the fact that there's the
20 20-day discovery limitation to answer data request, is
21 there a reason that a reasonable delay in -- in
22 receiving the answers to these requests couldn't be
23 tolerated?

24 MS. KERR: Well, first of all, we -- she --
25 we did receive an objection letter to all of the data

1 request. We received -- the letter that we got
2 objected to -- with a blanket objection to all of the
3 data request, there were nine objections to every
4 single data request, and then there was a last
5 paragraph that said to the extent that there might be
6 some responses -- there might be some data requests
7 that can be responded to. They would be responded to
8 within the time allotted. When the data request were
9 due, which was the 26th, I understand that, you know,
10 that was a Sunday. So, you know, on the 27th, I -- I
11 didn't receive any notice or any call from Ms. Bell
12 that says, hey, you know, we're not going to be able
13 to get these to you today. Let's -- you know, can we
14 get them to you later. I didn't receive any calls
15 until I called Ms. Bell on the 28th, and asked her,
16 hey, am I going to be able -- am I going to get the
17 data request? It -- it wasn't until I asked her
18 whether I was going to get data request that she said,
19 oh, hey, I'm not going to be able to get them to you,
20 can I have more time?

21 So, you know, if she needed more time, you
22 know, I would have expected her to ask me for that,
23 and then when I did call her on the 28th, she told me
24 that she had -- that her calendar was -- was ticked
25 for the wrong Friday, that it was -- that her -- her

1 calendar said that it was ticked for Friday, July 1st,
2 instead of July 24th, you know, whether -- whether
3 that's accurate or not, I don't know, but -- but you
4 know -- and then she told me, well, you know, I'll try
5 to get these to you on the 29th, the morning of the
6 29th. I said, fine, get them to me. You know, fine.
7 You know, she wanted to give them to me on the 1st. I
8 said, you know, I've got to respond to her objection.
9 You know, I need -- I need to have that information.
10 She said, fine, I'll get it to you on the 29th. I
11 said, okay, get it to me on the 29th. And she called
12 back and said, hey, I just found out we got all
13 these -- all these documents. I can't get them to you
14 then. How about the 1st? You know, I said -- you
15 know, I -- I need this information, and you know,
16 if -- the data request were received on the 6th, she
17 objected to them soon after that, and -- on the 13th,
18 I believe, we got the objection letter. I mean, we've
19 got direct testimony due to be filed on July 29th.
20 You know, it -- if -- if they're working on the data
21 request since they received them on the 6th, you know,
22 I am assuming they should be able to get these done
23 relatively quickly. Now, if they needed, you know, a
24 week or so, you know, whatever, but in addition, the
25 information that we received from the questionnaire

1 that was sent to them, sent to the company, back in --
2 back in '21, 2021, that was sent to a different
3 attorney that was representing I-70 a year ago. That
4 information that was received from the other -- from
5 the other attorney that was representing I-70 was
6 received from that attorney a year ago. It was
7 received from a different attorney, not Ms. Bell, and
8 a year -- the information that we received a year ago
9 could have changed, you know. I mean, some of it's,
10 obviously, you know, probably the same, but some of
11 it's changed. That information is sent -- isn't part
12 of this case. It's not under oath. It's not
13 necessarily admissible. The data request that we sent
14 for this case is for information at this time, not
15 information that was probably accurate a year,
16 18 months ago. We need information that's accurate
17 and relevant and -- and current, and that's what these
18 data requests are asking for, so.

19 LAW JUDGE CLARK: Whether or not there's a
20 different attorney or not, there's an ongoing duty by
21 opposing counsel to update discovery changes.

22 MS. KERR: Right. And, so just because it
23 was done last year doesn't -- I mean, he needs to be
24 updated, and that's what these data requests are
25 asking for updated information.

1 LAW JUDGE CLARK: And that's just as a side
2 comment. Ms. Bell, is I-70 objecting to all the data
3 requests?

4 MS. BELL: So I did send a letter -- but
5 it's --

6 LAW JUDGE CLARK: Currently, is I-70
7 objecting to all the data requests?

8 MS. BELL: Yeah. For preservation
9 purposes, I sent a standard objection letter that just
10 preserves the discovery -- the general discovery
11 objections. It doesn't mean that we do not plan to
12 respond with documents to many of the data requests.
13 We just need, again, more time to review all of the
14 documents and get those responses done, and I'd
15 rather -- rather than submitting incomplete responses
16 to Ms. Kerr and saying, I'll supplement these as soon
17 as we're done going through all the documents, I'd
18 rather have a little bit more time and try to provide
19 more complete information, and the point about
20 providing the documents in the past in response to the
21 questionnaire was just that, you know, we're not going
22 to not provide anything, because we provided a lot
23 already. And to the extent staff just needs the basic
24 facts of what's going on, we provided, you know, 20
25 responses to questionnaire -- to the questionnaire and

1 also, you know, a whole -- I guess, a share file of
2 basic information, and again, I'll go back to the fact
3 that, you know, same business for 30 years. So, yes,
4 I agree that staff deserves updated information, but
5 to the extent they just need to know basic facts for
6 the purpose of their direct, they've had that for a
7 year.

8 LAW JUDGE CLARK: I don't really care about
9 the questionnaire at this point. What I care about
10 are the data requests, and I care about the entry, and
11 you put me in an odd position when you say, yes, we're
12 doing across the board objection to all of these data
13 requests, but we might answer some and that doesn't
14 give any ideas as to which ones you're willing to
15 answer, how much time it would take to answer those.
16 So that's what I need to know at this point is which
17 data request are you going to answer, and how long is
18 it going to take to provide answers to those?

19 MS. BELL: Well -- and that's why I had
20 requested an extension until July 11th, and that way
21 in our motion, I feel like by July 11th, we can
22 provide complete responses and that would give staff,
23 not -- well -- and at that time staff would know which
24 answers we are completely objecting to and which ones
25 we are responding to. We do intend to provide, you

1 know, responses to many of the requests. Again, I
2 have to review all of the documents. They all have to
3 be -- before I know what I have, before I can say
4 whether I can say what staff is wanting, so I feel
5 like July 11th, they can review our complete
6 responses, and then at that point if there are a few
7 data requests that I completely objected to, and we
8 need to, you know, talk about whether and fight over
9 those two or three data requests or however many there
10 are, then we can do that at that time, but again,
11 20 days on a business that is, you know, has not ever
12 done this before, we just need more time to review and
13 to properly prepare the response.

14 LAW JUDGE CLARK: Ms. Kerr, if you were to
15 receive responses to some of those data requests on
16 July 11th, articulated objections to the other ones,
17 would that be sufficient to proceed at this time? I
18 know you said that the -- and we're all aware that the
19 procedural schedule calls for direct testimony to be
20 due, I believe it was July 29th; is that correct?

21 MS. KERR: I believe so, yes. Yes.

22 LAW JUDGE CLARK: But is -- and let me ask
23 just off subject, the -- the allegation is operating
24 without a CCN, the -- the -- there's no allegations at
25 this point that the service being provided is -- is

1 unsafe; is that correct?

2 MS. KERR: As far as we know, but again,
3 we'd like to --

4 LAW JUDGE CLARK: Ascertain yourself.

5 MS. KERR: Have an inspection, you know,
6 it -- currently, that's the allegation, yes, that
7 there's no -- they're operating without a CCN. Of
8 course, an inspection on land would -- it would --

9 LAW JUDGE CLARK: Alleviate all of that.

10 MS. KERR: But -- but we did -- you know,
11 we've had a consumer -- a consumer complaint is what
12 started all of this. With regard to the data request,
13 Ms. Bell had time to object to any particular data
14 request was -- has come and gone. I mean, she filed a
15 general objections to all of them, but if there's any
16 specific ones, you know, she had ten days to object
17 and that ten days was June 16th. You know, if they
18 have any particular objections to any particular ones,
19 I think those -- that time to object has come and
20 gone. And I'm sorry, I don't remember what your
21 question was.

22 LAW JUDGE CLARK: Well, are you just
23 asking, is this conference just perfunctory? Is this
24 just -- are you asking to be able to file a motion to
25 compel? I mean, because there's ways of doing this.

1 Clearly, a lot of what you said -- if I can finish.
2 And I am aware I asked you a question, and I cut you
3 off, and I apologize, but clearly, a lot of what
4 you've said is correct. Clearly, you know, 20 days
5 had passed. Clearly, there was a time to object to
6 this. Clearly, I don't know when you received the
7 blanket objections, but that time either has or has
8 not passed. That's all correct. At the same time I
9 am aware that this isn't a larger entity, and I am
10 not -- have any idea what they're dealing with in the
11 way of trying to answer these or -- or whether they're
12 choosing not to. I have no idea.

13 So there's essentially two paths which is
14 to try and work out at least as to some of it and
15 agree by a time period whereby both parties can get
16 what they want which is some additional time and get
17 some of these requests answered or we can just ask the
18 commission, if they want to compel discovery which
19 means filing a motion to compel. It's always my
20 preference where parties can work out something that's
21 agreeable, it's my preference to do so.

22 So I am going to get back to my original
23 question is, would the commission staff be unduly
24 prejudiced if these data requests, the ones that were
25 going to be answered were answered by July 11th, and

1 if by July 11th, you received articulated objections
2 as to the other ones.

3 MS. KERR: I don't think so. I mean, I
4 didn't -- I didn't ask -- I didn't file a motion for
5 discovery conference.

6 LAW JUDGE CLARK: No, you did not.

7 MS. KERR: I don't think so, but I would --
8 I want to make sure that every -- all of the data
9 requests are answered fully or objected to, and you
10 know, this doesn't keep dragging on.

11 LAW JUDGE CLARK: Ms. Bell, can you have
12 that done by the 11th with the understanding there
13 wouldn't be an extension at that time staff would be
14 authorized to file a motion to compel?

15 MS. BELL: Yes, that's what we requested,
16 Your Honor. We prepared to articulate individualized
17 objections as well as respond and note which data
18 requests were standing on our objections by July 11th.

19 LAW JUDGE CLARK: Okay. All right. So
20 that at least leaves us where we are with the data
21 request, and we'll deal with the objections on the
22 other side of that.

23 So now let's go back to the entry onto the
24 land, because that one is a particular interest to me.

25 Ms. Bell, you had indicated that they had

1 requested to do some photographs. You indicated
2 that -- that you had somebody that could do those
3 photographs; is that correct?

4 MS. BELL: I mean, I assume they could
5 request a -- make a data request for photographs of
6 the property, and if we have those, we can provide
7 them. I think that could potentially be a compromise,
8 if they just need a photograph of a certain piece of
9 equipment.

10 LAW JUDGE CLARK: Well, generally --
11 generally, you don't -- with discovery, you can ask
12 somebody, and as you are articulated there, you can
13 ask somebody for something they have, but you can't
14 necessarily ask them to create something, so.

15 MS. BELL: Correct.

16 LAW JUDGE CLARK: It puts us in a little
17 bit of a conundrum there, you know, if they're asking
18 for photos, and you're like, well, we don't have the
19 photos, and you can't make us create them, well, then
20 it looks like the only way they can get this done is
21 not through data request, but by being allowed entry
22 onto the land to do so.

23 MS. BELL: I guess I don't understand
24 what -- what the photo would be proving. So if the
25 photo is they have water meters, I mean, we -- I mean,

1 I think they've asked us in a data request how many
2 meters do you have, we will respond, here's how many
3 meters we have, you know, do you have a D&R permitted,
4 you know, facility on your property, they have the
5 permit, and we've basically said, yes, we have that, a
6 photo of that, you know.

7 So what's on the land is -- is provable
8 through the data request and other -- other items. I
9 don't know how a photo of it -- I mean, unless there
10 is an allegation that for some reason it's unsafe,
11 it's being operated incorrectly, it's damaged, you
12 know, whatever the -- you know, none of those -- none
13 of those allegations have been made, so I don't know
14 what a picture of the items on the property does to
15 advance staff's case.

16 LAW JUDGE CLARK: Well, I'm going to ask
17 staff, you had indicated two questions in regard to
18 that, and I'm going to ask staff about those as well,
19 why does staff need photographs on the property?

20 MS. KERR: Well, pictures are worth a
21 thousand words, number one. And it's -- it's an
22 open -- we -- we've put that information in our
23 response, but --

24 LAW JUDGE CLARK: Let me pull that up,
25 please. Okay. I've got it in front of me.

1 MS. KERR: You know, we also want to verify
2 that, you know -- you know, what do the meters look
3 like? How are they connected? I mean, just because
4 the answer to a data request is, yes, we have meters,
5 okay, how are they connected? How many meter -- you
6 know, how -- how are they -- how are they set up?

7 LAW JUDGE CLARK: Aren't those -- aren't
8 those just follow-up data requests?

9 MS. KERR: Not necessarily. You know,
10 we're not taking pictures of people's homes as -- as
11 she alluded to earlier. You know, we -- we need to
12 see what the condition is. If there is -- if there
13 is -- is a safety concern, then, you know, maybe
14 that -- that does -- maybe we need to amend our
15 complaint. I don't know if Andy Harris, if there's
16 anything you need to -- you wanted to add to what
17 pictures would add -- would help.

18 ANDY HARRIS: Generally, inspections in
19 special investigations is the most common part of my
20 function for the water and sewer department. As a
21 professional engineer and a state certified operator
22 of water and sewer systems, I can't fully understand
23 what hazards there may be, how they're configured,
24 basic operation of the system without being able to
25 see them. The photos are just for history record and

1 discussion with others in my department for the file,
2 so to speak. It's -- not a primary goal is just to
3 take a picture. The primary goal is to understand how
4 the systems are set up and how they operate.

5 LAW JUDGE CLARK: Yes. Ms. Bell.

6 MS. BELL: Your Honor, if I may, that's
7 really at the heart of this -- I mean, it's the crux
8 of the case, and if the commission determines that my
9 client should be a regulated utility, of course, we
10 would be open to inspections and complying with
11 everything under the PSC law, but the question --
12 there's a threshold question here and that is, is my
13 client subject to PSC regulation, and I am saying that
14 it's not. So why would I volunteer to be subject to
15 an inspection before I have consented and before the
16 commission has even decided that I should be a
17 regulated entity, and if you -- you know, in our
18 answer, there are a hundreds of mobile homes across
19 the state, none of them as far as I -- i think --
20 okay. One, I think, has voluntarily said they want to
21 be subject to PSC regulation. The rest are not.
22 There are other cases out there where the facts are
23 similar, which we've cited in our answer.
24 Specifically, Aspen Woods Apartment where the facts
25 are very similar and the commission has said -- that

1 case got dismissed, and there were a lot of arguments
2 in there, why they shouldn't be subject to regulation.
3 So, of course, if -- you know, we -- but that first
4 question has to be answered. It has to -- am I
5 subject to regulation? If I am, then come in and
6 inspect me, but if I'm not, then -- then -- then the
7 statute allows for inspections does not apply to me.

8 LAW JUDGE CLARK: I'm not sure I agree with
9 you.

10 MS. KERR: What I'm asking --

11 LAW JUDGE CLARK: I don't think --

12 MS. KERR: We're not asking --

13 LAW JUDGE CLARK: Ms. Kerr, I'm talking.

14 MS. KERR: -- for a full -- I'm sorry. I'm
15 sorry.

16 LAW JUDGE CLARK: I don't agree with you
17 there, Ms. Bell. I think there's a difference.
18 There's certainly -- there are entities that are
19 regulated by the commission directly, and there are
20 commissions over -- and there are integrities not
21 regulated by the commission over which the commission
22 has some supervisory powers in regard to health and
23 safety, so I don't really necessarily agree with you
24 in regard to that. Certainly, we have no direct --
25 for example, certainly, we have no direct regulation

1 except in a very limited fashion of rural
2 cooperatives, but -- but we certainly have oversight
3 in regard to the safety of the service that -- that
4 those entities and even municipalities provide and
5 that itself could necessitate going onto the land to
6 ascertain the system whether or not there's an
7 allegation that the service at that point is unsafe.

8 MS. BELL: And I agree, Your Honor, in
9 circumstances that the PSC does have some authority,
10 but again, there are no allegations of unsafe service.
11 Again, this -- this whole thing started with a
12 complaint by a tenant who did not pay. My
13 understanding, who did not pay their fees and was
14 evicted and angry. And, so I believe it was a billing
15 complaint. I don't believe there are any allegations,
16 and at this time it's not that we're completely
17 unregulated. We do have a D&R permit, so that permit
18 is -- is active and live. And, so it's not that --
19 you know, we would say that, you know, there's no
20 oversight, but at this point the threshold legal issue
21 here is, you know, are we under the authority of the
22 PSC? And I think that question needs to be answered
23 before, you know, we -- we voluntarily submit to an
24 inspection.

25 LAW JUDGE CLARK: Okay. I think -- I think

1 we are where we are with that, so. Ms. Kerr, did you
2 have anything additional you wanted to add? I'd -- I
3 stopped you before.

4 MS. KERR: Yeah. What I was going to say
5 is, we're not asking to go onto the property for an
6 inspection. We're asking to go on the property for
7 discovery purposes to -- to look at it. Maybe take
8 some pictures. We're not going to go on the property
9 and do a full inspection like we would if they were
10 fully regulated, and we're going to go on and look
11 at -- do this thorough inspection. We -- we want to
12 look at a small percentage of, you know, take a look
13 at what the lagoon looks like, take a look at how
14 the -- the property is set up. Open -- this is -- you
15 know, open and -- open land. We're not going to go to
16 people's houses. We're not going to walk on
17 somebody's yard and go in their yard and take pictures
18 of their houses. This -- this -- the purpose -- the
19 purpose of our request is for discovery. We -- we
20 want to look and see if there's information that we
21 can get that will lead us to relevant information.
22 That's what we're asking for. I --

23 LAW JUDGE CLARK: That is the core of a
24 discovery request that it be --

25 MS. KERR: Right. And that's all we're

1 asking for.

2 LAW JUDGE CLARK: And reasonably calculated
3 to lead to discoverable information.

4 MS. KERR: Right. And that's all we're
5 asking for. We're -- and I think we're entitled to
6 that.

7 LAW JUDGE CLARK: Okay.

8 ANDY HARRIS: Can I add something to that,
9 Judge?

10 LAW JUDGE CLARK: Not at this point. Who
11 is speaking?

12 ANDY HARRIS: Andy Harris.

13 LAW JUDGE CLARK: Okay. Can you hold just
14 a second, Mr. Harris? I will get to you.

15 ANDY HARRIS: Yes.

16 LAW JUDGE CLARK: Mr. Poston, I realize
17 that you are not a -- a participant in this discovery
18 dispute, but you are here, and certainly, I want to
19 give you an opportunity to speak if you wish to be
20 heard.

21 MR. POSTON: Well, thanks, Judge. I do not
22 have anything to add. I'll be honest. I'm not
23 thoroughly up to speed on the legal arguments here
24 (inaudible) discover disputes. I really have nothing
25 to add. Thank you.

1 LAW JUDGE CLARK: Okay. Thank you,
2 Mr. Poston. Mr. Harris, I'm going to give you the
3 last word before I say my bet. Go ahead.

4 ANDY HARRIS: Just to clarify there, we
5 might end up on a lawn of a residence to be able to
6 take a photo of the meter, but there would be no
7 intent to photo the home itself. Maybe the
8 connections.

9 LAW JUDGE CLARK: Well, here's what we're
10 going to do. I'm going to issue an order today by
11 delegation, basically, saying that we had this meeting
12 and that, Ms. Bell, you agreed that your clients could
13 answer any outstanding data requests or provide
14 articulated objections to those requests no later than
15 July 11th, so that order will go out.

16 In regards to the entry onto the land, I
17 prefer whenever possible to do things in the least
18 intrusive way possible, so if this can possibly be
19 furthered along with data request, that would be
20 great. The -- however, the commissions rule says,
21 however, when there is a discovery dispute, and there
22 has been a good faith effort to work it out, and there
23 has been, and there's also been cross pleadings into
24 that regard, that there should be an immediate
25 telephone conference with the regulatory law judge or

1 presiding officer which is me, and this -- this
2 discovery conference is that and in that regard -- I
3 don't see a need to have a further conference in that
4 regard. So at this time I am going to -- if you can
5 further along with data request, I think that would be
6 great, but I think you've satisfied the burden to file
7 a motion to compel to ask the commission to order
8 entry onto the land, if you wish to, and then have the
9 commission rule on that, so.

10 MS. KERR: Okay.

11 LAW JUDGE CLARK: I believe you've met the
12 minimal requirements to do that if -- if -- if staff
13 wishes to file a motion to compel, and that's -- that,
14 as I said, is just as to the land entry at this point.
15 We're probably going to have to come back on the data
16 request that are objected to. Until there's an
17 allegation that the service is in some way unsafe or
18 that these people are in some way at risk, given that
19 this is a complaint case without a clear outside
20 deadline, I'm a little less worried about the
21 procedural schedule than I might be in other cases, so
22 if we start to butt up against some deadlines, it's
23 certainly -- I would certainly rather move the
24 deadlines than prejudice a party.

25 MS. KERR: I understand.

1 LAW JUDGE CLARK: So that's where I stand
2 on this. Obviously, there's no time limit on staff
3 filing a motion to compel, but sooner would be better
4 if you wish to get it in front of the commission.

5 MS. KERR: Okay.

6 LAW JUDGE CLARK: Is there anything else in
7 regards to the data request or the entry onto the land
8 that -- that counsel wants to address at this time?

9 MS. BELL: No, Your Honor.

10 LAW JUDGE CLARK: And while -- and I'll say
11 this, Ms. Bell. While I'm very forgiving and
12 understand that this person maybe wasn't aware that
13 the PSC was out here and unaware that -- that they
14 might have to answer data requests, unaware, you know,
15 kind of stumbled in this 20-day process, that's really
16 something that their attorney is supposed to, as much
17 as possible, lead them through, so that they do comply
18 as much as possible with the -- with the commission's
19 rules. I understand that you may have miscalendared
20 something, and that's certainly understandable, but
21 the hardest part of any discovery dispute for me is
22 when I feel that the parties aren't communicating over
23 discovery requests, and it sounds like Ms. Kerr has
24 had to reach out to you to try and find out what's
25 going on with these rather than vice versa, so it

1 would be my hope that at least throughout the reminder
2 of this process that you guys communicate, basically,
3 so I'm not having everybody articulate their positions
4 for the first time in front of me.

5 MS. BELL: Understood, Your Honor. I
6 apologize for the calendaring mistake, and it won't
7 happen again.

8 LAW JUDGE CLARK: Well, calendaring
9 mistakes happen to everybody. They certainly happen
10 to me. With that, are there any other matters or
11 issues that need to be addressed by the commission at
12 this time?

13 MS. KERR: None from me. Thank you.

14 LAW JUDGE CLARK: Okay. Hearing none, I
15 will adjourn this discovery conference, and we will go
16 off the record. Ms. Kerr, I will -- Kerr, it's Kerr;
17 right?

18 MS. KERR: Yes, it is.

19 LAW JUDGE CLARK: I apologize for all the
20 times I mispronounced it during this discovery
21 conference.

22 MS. KERR: That's all right.

23 LAW JUDGE CLARK: But -- but I will -- I
24 will -- I will possibly look for a motion from staff
25 or possibly not. We'll see. Thank you very much for

1 your time.

2 MS. KERR: Okay.

3 MS. BELL: Thank you, Your Honor.

4 MS. KERR: Thank you. Bye-bye.

5 LAW JUDGE CLARK: Bye.

6 (Audio ended.)

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