

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

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

**STAFF MOTION TO STAY RESPONSE DEADLINE
TO MOTION FOR SUMMARY DETERMINATION
PURSUANT TO 20 CSR 4240-2.117(1)(D)**

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and for its *Motion to Stay Response Deadline to Motion for Summary Determination Pursuant to 20 CSR 4240-2.117(1)(D)* hereby states:

1. Commission Rule 20 CSR 4240-2.117(1)(D) provides that, “[f]or good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.”

2. Commission Rule 20 CSR 4240-2.117(1)(D) is analogous to Missouri Supreme Court Rule of Civil Procedure 74.04(f). Under Rule 74.04(f), a court has discretion “to postpone any ruling on a pending summary judgment motion to accommodate further discovery.” *Matysyuk v. Pantyukhin*, 595 S.W.3d 543, 548 (Mo.App.W.D. 2020).

3. It is well established that the Commission has primary jurisdiction to determine, in the first instance, whether it has jurisdiction over a particular company. *State ex rel. & to Use of Cirese v. Ridge*, 138 S.W.2d 1012, 1016 (Mo.banc 1940) (“We adhere to the theory of the commission’s exclusive jurisdiction in the first instance.”)

4. As in *Hurricane Deck Holding Co. v. Pub. Serv. Comm’n*, 289 S.W.3d 260, 267-68 (Mo.App.W.D. 2009), “it would be anomalous” to expect the Commission to decide exclusively and in the first instance whether it had jurisdiction in a matter without first conducting a reasonable investigation of the circumstances.

5. Here, the Commission should continue Respondent’s *Motion for Summary Determination* until the discovery at issue in Cole County Circuit Court Case Number 22AC-CC05836 is had or otherwise resolved because such discovery is necessary to permit a response to Respondent’s pending *Motion*¹ in this case.

6. The issue raised in Respondent’s *Motion* is whether Respondent I-70 MCP is a public utility requiring the Commission’s regulation. Physically examining the water and sewer systems at I-70 MCP will provide evidence relevant to whether and to what extent Respondent I-70 MCP is providing water and sewer service to the public, and whether that service is safe and adequate, which is evidence directly relevant to the summary determination motion.

7. In its July 27, 2022 Order granting Staff’s motion for discovery, the Commission decided that “Staff has demonstrated that the request to enter onto I-70’s property for inspection is relevant to the subject matter of this action and that the

¹ The Circuit Court held a hearing on November 28, 2022, on whether the Commission’s July 27, 2022 Order granting Staff’s discovery request is enforceable. Following the hearing, the court asked the parties to submit proposed Orders no later than December 9, 2022, and took the matter under advisement.

information sought is reasonably likely to lead to discoverable information.” It further ordered Respondent I-70 MHC to “provide Staff access to the property for the purpose of inspecting the water and sewer system and taking photographs of the systems.”

8. In addition, the Commission stated,

Whether an entity is a public utility requiring the Commission’s regulation is within the primary jurisdiction of the Commission and is of utmost importance in determining whether an entity should be regulated by the Commission for the provision of safe and adequate service. Staff’s response points out that what an entity says it does and what it actually does may be different. The only way Staff can ascertain that I-70 is providing the services as it professes is by physically examining the water and sewer systems.

9. Accordingly, the Commission has sought to enforce its discovery order in Cole County Circuit Court, pursuant to § 536.073.2, RSMo. *Cole Co. Circ. Ct. Case No. 22AC-CC05836*.

10. To date, no decision has been rendered in case number 22AC-CC05836, and that case is still pending in Cole County Circuit Court.

11. Until the Cole County Circuit Court case 22AC-CC05836 is resolved, and any subsequent discovery had, deciding Respondent’s *Motion for Summary Determination* would be based on an incomplete record.

12. Therefore, no decision on Respondent’s *Motion for Summary Determination* can be made in this case unless and until the discovery in this case is completed by Staff.

13. Staff has shown good cause, pursuant to 20 CSR 4240-2.117(1)(D), that this matter should be continued for a reasonable time to allow for a decision in Cole County case number 22AC-CC05836, and for Staff to conduct discovery in accordance with the resolution of that case as is necessary to permit Staff to draft a full

and complete response to the *Motion for Summary Determination* that is before the Commission.

14. Staff requests that Respondent I-70 MHC's *Motion for Summary Determination* be stayed, and that the case remain open, until discovery in this case is completed.

15. This *Motion* is made in the interest of justice and not with the intent to unreasonably delay or hinder these proceedings in any manner.

WHEREFORE, Staff submits its *Motion to Stay Response Deadline to Motion for Summary Determination Pursuant to 20 CSR 4240-2.117(1)(D)* and requests that any response to Respondent's *Motion* be stayed until discovery in this case is completed and for such other orders as are just and reasonable under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr

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Missouri Public Service Commission

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 7th day of December, 2022, to all counsel of record.

/s/ Carolyn H. Kerr