

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

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

**MOTION FOR AN ORDER DIRECTING GENERAL COUNSEL  
TO SEEK ENFORCEMENT OF THE COMMISSION’S ORDER**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), through counsel, and moves for an order directing General Counsel to seek enforcement of the Commission’s July 27, 2022 *Order Granting Staff’s Motion to Compel and Denying Respondent’s Request for a Protective Order*, and in support thereof, Staff states as follows:

1. On April 22, 2022, Staff filed a Complaint in the above-captioned case against Respondent I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (“I-70 MHP”) alleging that I-70 is a water and sewer corporation, as defined in § 386.020(59) and § 386.020(49), respectively, and is providing water and sewer services to the public without authorization required by § 393.170.2.<sup>1</sup> Respondent filed its Answer and Affirmative Defenses on May 31, 2022 denying Staff’s allegations.

2. Prior to filing formal discovery on Respondent, Attorney for Staff contacted I-70 MHP’s attorney and asked about arranging a site visit to the I-70 MHP property

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<sup>1</sup> Unless information is obtained through data requests and/or an inspection of the I-70 property through discovery or a tenant complaint, no allegation of a safety risk is being made at this point. Without being able to physically view the property, however, that issue remains open.

on a voluntary basis. Staff's attorney received an email in late May from I-70's attorney stating, "my client does not consent to a 'site visit,' although I understand you are permitted under discovery rules to seek Entry Upon Land for Inspection."

3. Using the authority granted to it under Commission Rule 20 CSR 4240-2.090(1) and Missouri Rule of Civil Procedure, 56.01(a), Staff filed its *Request for Permission for Entry Upon Land for Inspection* (hereafter referred to as "Request") pursuant to Missouri Rules of Civil Procedure 58.01(a)(2) and § 393.140(7), RSMo (2016), on June 3, 2022.

4. The *Request* asked permission to inspect five locations and take photographs of each, specifically;

- a. The I-70 MHP on-site wastewater treatment facility and lagoon;
- b. Visible water service connections;
- c. Visible sewer connections;
- d. Approximately 20% of the water meters located in the I-70 MHP and the water meter to the mobile home park; and
- e. System appurtenances that are at or above grade, including access to any structures containing systems-related components.

5. On June 13, 2022, I-70 MHP filed its *Objection* to Complainant's *Request* and requested a *Protective Order* to prohibit Staff from conducting such discovery. Staff filed a response to Respondent's *Objection* on June 28, 2022.

6. Section 536.073, RSMo (2016) authorizes the Commission, and any other agency authorized to hear contested cases, to make rules "to provide that parties may obtain all or any designated part of the same discovery that any Missouri Supreme Court rule provides for civil actions in circuit court." The Commission may also enforce discovery by the same methods, terms and conditions as provided in the rules of civil procedure. *Id.*

7. However, no agency order that permits entrance upon land or inspection of property without permission of the owner shall be enforceable except upon order of the circuit court of the county in which the hearing will be held<sup>2</sup> or the circuit court of Cole County, after notice and hearing. § 536.073.2, RSMo.

8. The Commission has promulgated discovery rules that “Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.” 20 CSR 4240-2.090(1).

9. Section 393.140(7), RSMo, gives the Commission and its duly authorized employees the power to inspect the “property, building, plants, factories, powerhouses, ducts, conduits and offices” of any water or sewer corporation.” This broad authority is acceptable as long as its actions are consistent with its mission, which is to ensure that Missourians receive safe and reliable utility services at just and reasonable rates, such that the Commission could interpret the above statutes and rules to indicate authority to conduct an inspection of Respondent’s premises.

10. On July 27, 2022, the Commission granted Staff’s *Motion to Compel*, stating in its Order, “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 information sought is reasonably likely to lead to discoverable information.” It further ordered I-70 to “provide Staff access to the property for the purpose of inspecting the water and sewer system and taking photographs of the systems.”

11. Whether I-70 MHP is a public entity requiring the Commission’s regulation is within the primary jurisdiction of the Commission. Physically examining the water and sewer system at I-70 MHP will provide evidence relevant to whether and to what extent Respondent

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<sup>2</sup> The location of the hearing in this case has not yet been determined. Attorneys for Respondents are located and practice in Cole County.

is providing water and sewer service to the public, and whether that service safe and adequate.

12. Staff seeks to verify the type of water and sewer services being provided, that is, the 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 is operating lawfully and to determine the nature of its water and sewer services, which would ultimately determine whether I-70 MHP should fall under the jurisdiction and regulation of the Commission. See Affidavit of Andy Harris, which is attached hereto as Attachment A.

13. The Commission's July 27, 2022 Order specifically stated that it was "effective when issued."

14. Staff's Counsel contacted I-70 MHP's attorney via email after the Order was issued on July 27, 2022, asking if the parties could schedule the inspection on a voluntary basis, in that § 536.073.2, RSMo, allows such action to proceed to enforce the discovery order if the owner of the property gives permission.

15. On several occasions, the attorney for I-70 MHP made it clear that I-70 MHP would not permit the discovery to proceed without a an order from the circuit court, pursuant to § 536.073.2, RSMo, and that until such order was acquired, no such inspection would take place.

16. Despite efforts to resolve this issue, an impasse has been reached, and Staff is unable to proceed with gathering evidence from a physical inspection of the water and sewer system at I-70 MHP. Based on the good faith attempts to resolve this, matter, it is apparent that a circuit court order will be necessary to enforce the Commission's order to physically inspect the I-70 MHP water and sewer systems.

17. In accordance with Rule 20 CSR 4240-2.090(8), the undersigned counsel certifies that she has attempted to confer by telephone with opposing counsel concerning this matter prior to filing this motion.

**WHEREFORE**, Staff prays that the Commission will grant this *Motion* directing General Counsel to seek enforcement of the Commission's July 27, 2022 *Order Granting Staff's Motion to Compel* in Circuit Court, issue an order in accordance with this *Motion*, and grant such other and further relief as the Commission considers just and reasonable in the circumstances.

Respectfully submitted,

**/s/ Carolyn H. Kerr**

Missouri Bar Number 45718

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Attorney for Staff of the

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 6th day of September, 2022, to all counsel of record.

**/s/ Carolyn H. Kerr**



a. to capture images of the assets with enough background to demonstrate the location of the assets;

b. to document water and/or sewer service connections provided to residents of the I-70 Mobile City Park ("I-70 MHP");

c. to document the condition and quality of the equipment used for the provision of safe water and/or sewer service;

d. to document the physical structure and layout of the water and sewer systems of the I-70 MHP; and


e. to examine the discharge from a wastewater treatment system and document any visible impacts on human health and the environment.

4. Staff does not intend to inspect or take photographs of the I-70 MHP business office or any of the residents' homes, nor enter either locations. Although images of these locations may be included in the pictures taken of the locations specifically listed in the *Request*, the images would be incidental to and not the focus of the photographs taken for the purpose of this discovery *Request*. Staff may take photographs of any water or sewer system equipment that is contained within a building, shed, or other obscuring structure as described in its *Request*.

5. Staff will speak with any customers who may approach a Staff member during an inspection and will consider pertinent information provided from such customer, including billing or other issues associated with PSC regulation. It is possible Staff may take photographs at a customer's residence during such a voluntary encounter.

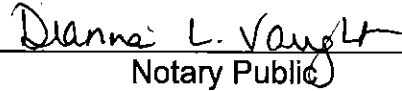
6. Depending on what Staff may encounter on site and depending on information that may come to Staff's attention afterward, Staff may exercise its right to conduct follow up discovery.

Further affiant sayeth not.



Andrew Harris

Subscribed and sworn before me this 6<sup>th</sup> day of September, 2022.



Notary Public

My commission expires July 18, 2023

