

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

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

**COMPLAINANT’S RESPONSE TO RESPONDENT’S OBJECTION TO
COMPLAINANT’S REQUEST FOR PERMISSION FOR ENTRY UPON LAND
FOR INSPECTION AND MOTION FOR PROTECTIVE ORDER**

COMES NOW Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and in response to *Respondent’s Objection to Complainant’s Request for Permission for Entry Upon Land for Inspection and Motion for Protective Order* states as follows:

BACKGROUND

1. Following the filing of a Complaint against Respondent I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (hereafter “I-70 MHP”) on April 22, 2022, and Respondent’s Answer and Affirmative Defenses on May 31, 2022, Staff filed formal discovery by filing 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.

2. 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

3. On June 13, 2022, Respondent filed its *Objection* to Complainant's formal discovery objecting to *Complainant's Request for Permission for Entry Upon Land for Inspection* and further requested a *Protective Order* to prohibit Staff from conducting such discovery.

4. Commission Rule 20 CSR 4240-2.090(1) allows for discovery to "be obtained by the same means and under the same conditions as in civil actions in the circuit court." The corresponding Missouri Rule of Civil Procedure, 56.01(a) allows parties to obtain discovery by requesting, *inter alia*, "permission to enter upon land or other property, for inspection and other purposes." Using this authority, Staff served discovery upon Respondent pursuant to Rule 58.01(a)(2) and § 393.140(7), RSMo (2016).

5. The scope of discovery under Rule 56.01(b), is broad. As long as the matter "is relevant to the subject matter involved in the pending action, ... including the existence, description, nature, custody, condition and location of any ... tangible things ..., provided 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 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," a party is

entitled to that information sought. The information need only be “reasonably calculated to lead to the discovery of admissible evidence.”

6. Rule 58.01(a)(2) references Rule 56.01(b) to determine the scope of discovery. By referencing the broader Rule 56.01(b), Rule 58.01 expands on what might be considered relevant by mentioning discovery about the existence, nature, or condition of tangible things. The Staff’s Complaint specifically questions the nature of I-70 MHP’s water and sewer services to the public in order to determine whether it is operating as a water and/or sewer utility and should be required to obtain certificates of convenience and need from the Commission. As such, the scope of the Staff’s request for discovery – inspection of the I-70 MHP’s premises - is proper.

7. In determining the scope of discovery issues, “the trial court must not only consider questions of privilege, work product, relevance, and the tendency of the request to lead to discovery of admissible evidence, it must also balance the need of the interrogator to obtain the information against the responding party's burden in furnishing it, including the extent to which the request will be an invasion of privacy.” *State ex rel. LaBarge v. Clifford*, 979 S.W.2d 206, 208 (Mo. App. E.D. 1998). Since the Commission would be inspecting facilities that are out in the open and in an area that is accessible to the public, the burden for Respondent and the risk of invading privacy is very low. The need for the Commission to properly inspect I-70 MHP’s utility services for compliance with the law outweighs any burden to the Respondent.

8. Furthermore, the language of § 393.140(7), RSMo, gives the Commission the power to inspect the property of *any* corporation or person that may fall under the

definition of a gas, water, electricity, or sewer service, regardless of whether it is regulated by the Commission.

9. The Commission is given broad authority as long as its actions are consistent with its mission, which is to ensure that Missourians receive safe and reliable utility services at just, reasonable and affordable rates. This makes it more likely that the Commission could interpret the above statutes and rules to indicate authority to conduct an inspection of Respondent's premises.

10. The information sought is relevant to establish what "real estate, fixtures and personal property" are "owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal domestic or other beneficial use." § 386.020(60), RSMo (Supp. 2021). It is relevant to establish who owns, operates, controls, or manages "any plant or property, dam or water supply, canal, or power station, distributing or selling for or supplying for gain any water." § 386.020(59), RSMo (Supp. 2021). It is relevant to determine whether I-70 provides water and sewer service to all residents.

See, Hurricane Deck Holding Co. v. Pub. Serv. Comm'n, 289 S.w.2d 260, 266 (Mo. App. W.D. 2009).

11. Moreover, the information sought is relevant because "In determining whether a corporation is or is not a public utility, the important thing is, not what its charter says it may do, but what it actually does." *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n. of Mo.*, 205 S.W. 36 (Mo. 1918), citing *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252 (1916). This means that if a business operates as a public utility, it should be considered one and regulated as such. Upon information and belief, I-70 MHP is

currently operating as a public utility while remaining unregulated; therefore the Commission has a relevant interest in conducting an inspection of the site to determine legitimacy.

12. Not all details are available through publicly available means, and not every detail can be determined from Respondent's Answer or responses to data requests. Staff filed 32 data requests on June 6, 2022¹. On June 16, 2022, Respondent filed a letter objecting to all 32 requests, citing nine separate objections to "each Data Request," but stating that "[s]ubject to and without waiving its objections, to the extent I-70 provides a response, such response will be provided in accordance with the response time for data requests specified in Commission rules." Responses to those data requests were due June 26, 2022. To date, Respondent has not filed any responses to any data requests. Respondent did, however, return a call from Staff's attorney inquiring into the status of those responses and asked for an extension until the morning of June 29, 2022, to respond. Staff cannot anticipate whether the responses would be complete or that the objections made in Respondent's June 16, 2022 objection letter would be waived in whole or in part. As such, no details are currently available from Respondent, except by way of its *Answer*, and information obtained previously from Respondent cannot be relied upon since it has not yet been offered as evidence in this case. The data requests were sent to verify the information gained previously. Without answers to those data requests or other discovery, such as an inspection of the land at issue, that information is unreliable.

¹ The data requests asked about subjects including customer contact, general company information, customer billing, company affiliate locations, permits, meters, rates and charges, wastewater treatment, customer information, credit and collection, and contact information.

13. Staff seeks to verify service being provided, existing plant, equipment condition, and utility operations. Inspections of premises are consistent with Staff's typical investigations. The actual condition and function of equipment can only be determined by physically viewing it. If I-70 MHP does not willingly provide information that affirmatively proves that it is not operating as a public utility after a reliable claim to the contrary is made, it seems reasonable to be able to conduct an inspection to ensure that it is operating lawfully.

14. The Commission has stated its expectation that Staff field verifies, to the extent possible, situations arising from a customer complaints. This case arose from a resident of I-70 MHP and consumer of I-70 MHP's water services who contacted Staff in 2021 about the water services she received from I-70 MHP.

15. Additionally, other agencies, such as the Missouri Department of Natural Resources, routinely conduct inspections of facilities they regulate to determine compliance. I-70 MHP states in paragraph 16 of its *Answer* that its sewage lagoon is permitted by the MoDNR. Staff does not believe that its own inspection will be any more intrusive than the existing inspections conducted by other agencies. Typically, a representative or an employee of the utility provides access. It is not necessary for the owner to be present.

16. I-70 MHP cites Rule 56.01(b)(2) to claim the Commission's request is duplicative and, therefore, unnecessary, since it has already admitted in Respondent's *Answer* that it provides water and sewer services. However, what is in question in this case is the nature of their services, which would ultimately determine whether I-70 MHP should fall under the jurisdiction and regulation of the Commission. Because that

subject has not yet been addressed and determined, only the existence of water and sewer service, the request for an in-person inspection should not be considered duplicative.

17. Disallowing an inspection of I-70 MHP's premises for the purpose of discovery would interfere with the Commission's responsibility and authority to regulate public utilities if it could not execute discovery in situations such as this to potentially bring unregulated utilities under its control. The Commission has broad statutory authority that should include such an order to compel Respondent to allow entry when it would mean such a small burden on the company.

WHEREFORE, for the foregoing reasons, Staff requests the Commission to overrule Respondent's *Objection to Complainant's Request for Permission for Entry Upon Land for Inspection*, deny Respondent's *Motion for Protective Order* and issue an order allowing Complainant to enter upon the property of Respondent for the purpose of conducting an inspection pursuant to Missouri Rules of Civil Procedure 58.01(a)(2) and § 393.140(7), RSMo (2016), and for such other orders it deems reasonable and just under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr
Missouri Bar Number 45718
Senior Staff Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-5397 (Voice)
573-526-6969 (Fax)
Carolyn.kerr@psc.mo.gov

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 28th day of June, 2022, to all counsel of record.

/s/ Carolyn H. Kerr