

you are permitted under discovery rules to seek Entry Upon Land for Inspection. I'm happy to discuss via phone."

4. 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.

5. 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.

6. On June 13, 2022, Respondent filed its *Objection* to Complainant's formal discovery objecting to Complainant's *Request* and further requested a *Protective Order* to prohibit Staff from conducting such discovery.

7. The Commission ordered Staff to respond to Respondent's *Objection* and *Request for Protective Order* no later than June 29, 2022. Staff filed its *Response* on June 28, 2022.

8. On June 30, 2022, after the Commission entered its *Order Establishing the Procedural Schedule*, and after Staff filed its *Response to Respondent's Objection and Motion for Protective Order*, Staff Counsel, Respondent's Counsel, Counsel for the Office for Public Counsel, and Staff Member Andy Harris engaged in a WebEx Discovery Conference with the Regulatory Law Judge assigned to this case.¹

9. Following the Discovery Conference on June 30, 2022, and after hearing arguments and testimony from the parties, the Commission ordered Respondent to answer all outstanding DRs or provide objections no later than July 11, 2022. The Judge also suggested at the end of the conference that Staff could petition the Commission for a Motion to Compel Discovery regarding its previously filed *Request for Permission for Entry Upon Land for Inspection*.²

10. 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.*

11. 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 held³ or the circuit court of Cole County, after notice and hearing. § 536.073.2, RSMo.

¹ Respondent filed a Request for Discovery Conference on June 28, 2022.

² A written transcript has been requested but is not available at this time. However, a digital recording of the June 30, 2022 Discovery Conference is available for review.

³ The location of the hearing in this case has not yet been determined.

12. 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).

13. The Commission’s discovery rule provides that it will not entertain a discovery motion until the moving party conferred or attempted to confer by telephone or in person with the opposing counsel concerning the matter prior to filing of the motion. 20 CSR 4240-2.090(8)(A). Pursuant to that rule, the undersigned certifies compliance with this rule.

14. Under Rule 56.01(b)(1), as long as the matter “is relevant to the subject matter involved in the pending action, ... 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.”

15. 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.

16. Staff seeks to verify the service being provided, 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.

17. 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. Allowing an inspection of I-70 MHP's premises for the purpose of discovery would not interfere with the Commission's responsibility and authority to regulate public utilities if it could execute discovery in situations such as this to potentially bring unregulated utilities under its control.

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* compelling Respondent to comply with Staff's discovery request 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), authorize the Public Service Commission's General Counsel to seek a Circuit Court Order under § 536.073.2, RSMo (2016) to enforce Staff's discovery request, and for such other orders it deems reasonable and just under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr
Senior Staff Counsel
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Attorney for the Staff of the
Missouri Public Service Commission
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573-526-6969 (Fax)
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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 8th day of July, 2022, to all counsel of record

/s/ Carolyn H. Kerr

~~c. to document the condition and quality of the equipment used for provision of safe~~

water and/or sewer service; and

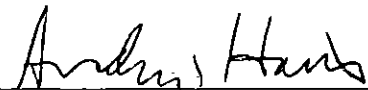
d. to examine the discharge from a wastewater treatment system and document any visible impacts on human health and the environment.

4. As part of Complainant's *Request*, 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 1st day of July, 2022.

DIANNA L VAUGHT
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
My Commission Expires: July 18, 2023
Commission #: 15207377

Dianna L. Vaught
Notary Public

My commission expires July 18, 2023