

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 27<sup>th</sup> day of July, 2022.

The Staff of the Missouri Public Service Commission,  
Complainant,  
v.  
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park.  
Respondent.

**File No. WC-2022-0295**

**ORDER GRANTING STAFF’S MOTION TO COMPEL AND DENYING  
RESPONDENT’S REQUEST FOR A PROTECTIVE ORDER**

Issue Date: July 27, 2022

Effective Date: July 27, 2022

The Staff of the Commission (Staff) filed a motion to compel entry onto I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park’s (I-70) business premises for the purpose of conducting an inspection of the water and sewer facilities and to take some photographs. I-70 objects to Staff’s request and asks that the Commission issue a protective order.

**Background**

Staff filed a complaint with the Commission on April 22, 2022, alleging that I-70 is offering water and sewer services to the public, for gain, without certification or other authority from the Commission, in violation of Section 393.170, RSMo. The Commission issued an order consolidating the sewer case, File No. SC-2022-0296, into this case.

On June 3, 2022, Staff, as part of the discovery process, filed *Complainant’s Request for Permission for Entry Upon Land for Inspection*. Staff sought entry onto I-70’s

business premises to conduct an inspection. The request asks to inspect the following water system facilities on I-70's property:

1. I-70's City Wastewater Treatment Facility and lagoon, as more fully described in the Missouri State Operating Permit issued by the Department of Natural Resources to I-70 and included as Attachment A to the Complaint.
2. Water service connections that are visible.
3. Sewer service connections that are visible.
4. A representative number of water meters located in I-70 (approximately 20 percent) plus the master meter to I-70.
5. System appurtenances that are at or above grade, including access to any structures containing systems-related components.
6. Photographs of the above-listed locations.

On June 13, 2022, I-70 filed *Respondent's Objection to Complainant's Request for Permission for Entry upon Land for Inspection and Motion for Protective Order*. I-70's pleading objects to Staff's entry on land for inspection and requests a protective order to prevent Staff's entry onto I-70's business premises. I-70 states that Staff's request seeks irrelevant information, is unduly burdensome, is not proportional to the needs of this matter, and is made for the purpose of vexing and harassing I-70. I-70 also asserts that the request is duplicative of 32 data requests.

The Commission ordered Staff to respond to I-70's objections and motion for a protective order. Staff's June 28, 2022, response asserts that the information it seeks 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. Staff further avers that not all details are available through publicly available means, or can be determined from I-70's answer to the complaint or in responses to data requests.

Also on June 28, 2022, I-70 filed its *Motion for Extension, Motion for Abeyance, and Request for Discovery Conference*. I-70's motion stated that it could provide answers to outstanding data requests by July 11, 2022. The motion also requested that the Regulatory Judge hold a discovery conference.

The Commission held a discovery conference on June 30, 2022. Staff, I-70, and the Office of the Public Counsel appeared at the conference. I-70 again stated that it could provide answers or objections to data requests by July 11, 2022. Staff indicated that it would not be unduly prejudiced by that delay, so I-70 was ordered to provide answers or objections to 32 outstanding data requests no later than July 11, 2022. However, the discovery conference failed to resolve the dispute concerning Staff's entry onto I-70's property for inspection, and the Regulatory Law Judge authorized Staff to file a motion to compel, finding that Staff had fulfilled the requirements of Commission Rule 20 CSR 4240-2.090(8).

On July 8, 2022, Staff filed a motion asking the Commission to compel I-70 to permit entry onto land for inspection. Pursuant to Commission Rule 20 CSR 4240-2.080(13) other parties had ten days to respond to respond to the motion to compel. I-70 filed a response reiterating its objections.

### **Applicable Law and Decision**

Commission Rule 20 CSR 4240-2.090(1) provides that discovery in matters before the Commission may be obtained by the same means and under the same conditions as

in civil actions in the circuit court. Thus the Commission will examine the Missouri rules of civil procedure.

Missouri Rule of Civil Procedure 56.01(a), **Discovery Methods**, provides:

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or **permission to enter upon land or other property, for inspection and other purposes**; physical and mental examinations; and requests for admission.

Missouri Rule of Civil Procedure 56.01(b), **Scope of Discovery**, provides in part:

- (1) Parties may obtain discovery regarding any matter, not privileged, that 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 amount in controversy, 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.

Information within the scope of discovery need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall bear the burden of establishing relevance.

In determining whether Staffs' Motion to Compel should be granted, the Commission will evaluate whether the information sought is relevant to the subject matter at issue in this case, is reasonably calculated to lead to the discovery of admissible evidence, and is proportional to the needs of the case and not overly burdensome. To do that, the Commission must consider the complaint that will be the subject of the upcoming evidentiary hearing.

Complaints before the Commission are governed by Section 386.390, RSMo. The Commission's statutory jurisdiction is to determine whether I-70 violated any provision of law subject to the Commission's authority, of any rule promulgated by the Commission, of any utility tariff, or of any order or decision of the Commission.

The subject matter of the pending action, pursuant to Missouri Court Rule 56.01(b)(1), is whether I-70 is operating a water and sewer corporation that would be subject to the Commission regulation. Operation of a water and sewer system are necessary elements of the alleged violation. Staff states that 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."<sup>1</sup> The Commission finds that the information Staff seeks is relevant to the subject matter of the pending action, and because the information involves the physical structure of the water and sewer systems it is also likely to lead to the discovery of admissible evidence.

I-70 argues that Staff's use of taxpayer resources for an in-person inspection is unprecedented. I-70 states that Staff's request is unduly burdensome, is not proportional to the needs of this matter, and is made for the purpose of vexing and harassing I-70. Additionally, the president of I-70 resides out of state and desires to be present for any in-person inspection and would have to travel to Missouri.

Staff states that inspections of premises are consistent with a typical Staff investigation. Obtaining discovery by permission to enter upon land or other property, for

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<sup>1</sup> *Complainant's Response to Respondent's Objection to Complainant's Request for Permission for Entry upon Land for Inspection and Motion for Protective Order*, p. 4, filed June 28, 2022.

inspection and other purposes is an acceptable method of obtaining discovery pursuant to Missouri Supreme Court Rule 56.01(a). Water systems and sewer systems occupy a large physical presence and an In-person examination of those systems is a reasonable method of ascertaining information about the physical structure of the water and sewer systems. The Commission does not find Staff's request to enter I-70's property to inspect the water and sewer systems unreasonable.

The Commission is not persuaded that Staff's request is made for the purpose of vexing and harassing I-70. The Commission will therefore examine whether Staff's request is proportional to the needs of the case as set forth in Missouri Court Rule 56.01(b)(1).

Staff seeks information related to the physical structure and layout of the water and sewer systems. At the discovery conference, Staff engineer, Andy Harris, stated "The primary goal is to understand how the systems are set up and how they operate."<sup>2</sup> Additionally, Staff has not expressed a desire to enter any residence or disrupt day to day operations. I-70 asserts that an in-person inspection is overly burdensome and not proportional to the needs of this case. In support of this proposition I-70 asserts that the president of I-70 resides out of state and desires to be present for any in-person examination, which would be a burden. However, that is a preference of I-70's president and not a requirement for an in-person inspection. Someone manages day-to-day operations and manages the property in the president's absence, so that person should be available to show Staff the water and sewer system.

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<sup>2</sup> Transcript, Vol. 1, p. 26-27, filed July 20, 2022.

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.<sup>3</sup> 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. The Commission does not find that Staff's request is overly burdensome or disproportional to the needs of this case.

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. The Commission will grant Staff's motion to compel entry onto land for inspection. The Commission will deny I-70's motion for a protective order.

**THE COMMISSION ORDERS THAT:**

1. Staff's motion to compel is granted. I-70 shall provide Staff access to the property for the purpose of inspecting the water and sewer system and taking photographs of the systems.
2. I-70's motion for a protective order is denied.
3. This order is effective when issued.

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<sup>3</sup> "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).



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and  
Kolkmeier CC., concur.

Clark, Senior Regulatory Judge




**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS** my hand and seal of the Public Service Commission,  
at Jefferson City, Missouri, this 27<sup>th</sup> day of July, 2022.



  
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**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 27, 2022**

**File/Case No. WC-2022-0295**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.