

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

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

STAFF RESPONSE TO MOTION FOR PROTECTIVE ORDER

COMES NOW, the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and for its Response to Respondent I-70 Mobile City, Inc., d/b/a I-70 Mobile City Park’s (“I-70 MCP”) *Motion for Protective Order* hereby states as follows:

1. On November 18, 2022, Staff served four data requests (“DRs”) upon Respondent. On December 8, 2022, Respondent I-70 MCP filed a *Motion for Protective Order*, arguing that discovery in this matter should be stayed, because it responded to Staff’s 44 previously served DRs, and that these additional four DRs are duplicative and irrelevant. Respondent requested “discovery be stayed until such time as the Motion for Summary Determination ... is decided.”
2. Respondent I-70 previously filed a *Motion for Summary Determination* in this case on November 23, 2022, and the Commission set December 23, 2022, as the due date for a response by Staff to that *Motion*.

3. Staff filed its *Motion to Stay Response Deadline to Motion for Summary Determination Pursuant to 20 CSR 4240-2.117(1)(D)*, on December 7, 2022, arguing that this case should remain open until discovery is complete.

4. “When faced with a motion for summary judgment asserting that a claimant cannot prove all the essential elements of the cause of action asserted, the motion can only be sustained after the claimant is entitled to a reasonable period of discovery.” *Adams v. USAA Cas. Ins. Co.*, 317 S.W.3d 66, 75 (Mo.App. E.D.2010) (quoting *Eastwood v. N. Cent. Mo. Drug Task Force*, 15 S.W.3d 65, 70 (Mo.App. W.D.2000)).

5. The issue raised in Respondent’s motions before the Commission and the Cole County Circuit Court¹ is whether Respondent I-70 MCP is a public utility requiring the Commission’s regulation. Physically examining the water and sewer systems and obtaining written answers to DRs 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 exactly what the motion for summary determination currently before the Commission seeks to answer.

6. The four DRs sent to Respondent I-70 MCP on November 18, 2022, for which Respondent requests a protective order, ask for follow-up information that was not candidly previously provided to Staff in response to prior DRs and facts that are relevant and necessary about potential fact witnesses and the nature and structure of the water and sewer facilities operated by Respondent I-70 MCP. Specifically,

¹ *Motion for Summary Determination*, filed in WC-2022-0295 on November 23, 2022, *Motion to Stay*, filed in 22AC-CC05836 on November 23, 2022, and *Motion for Protective Order*, filed in WC-2022-0295 on December 8, 2022.

a. DR 43.3 requests information regarding “Michael (Mike) Hanavan,” all positions he held while employed for I-70 MCP, and his dates of employment. Previously, Staff asked if I-70 MCP had any employees that worked at the on-site office and for any employees or managers named “Mike.” Responded denied any such knowledge, yet listed a “Mike Hanavan” on its Department of Natural Resources Application for Operating Permit (DNR Application) as “Manager.” Staff sent this follow-up DR for information of a possible fact witness who might be able to testify about I-70 MCP’s water and sewer facilities and operations.

b. DR 45.4 asked about persons or employees on-site at the I-70 MCP who might be available to customers who wish to enter into short-term agreements if Jennifer Hunt or Dennis Filger, both of whom live out of state, are unavailable during business hours. Again, Staff sent this follow-up DR to get information of possible fact witnesses who might be able to testify about I-70 MCP’s water and sewer facilities and operations.

c. DR 48.1 was a follow-up to DR 48, which asked for I-70 MCP’s “most recent DNR inspection of its wastewater system.” Instead of responding with a copy of an inspection report, I-70 MCP answered DR 48 with a copy of its DNR Application. Based on a Sunshine Law request from DNR, Staff had knowledge of a December 18, 2019 inspection DNR conducted of I-70 MCP’s premises. DR 48.1 confronted Responded with that knowledge and requested information about whether DNR had conducted any more recent inspections of I-70 MCP’s wastewater facilities and what the results of such inspections were. This DR requests relevant information about the I-70 MCP’s sewer operations and

whether I-70 MCP's operation of the sewer system is satisfactorily protecting the public. It also questions the credibility of the Respondent.

d. DR 48.2 asks whether DNR has issued any Letters of Warning or other written admonitions to I-70 MCP since December 18, 2020. This DR seeks to get information about any other documents Respondents may have in its possession from the DNR regarding its wastewater facilities, which may be relevant in Staff's fact-finding discovery efforts. And similar to DR 48.1, it inquires whether the public is being satisfactorily protected.

7. In order to answer the questions at the heart of this case, facts need to be examined and discovery needs to be completed. As this Commission previously found, "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 discovery of admissible evidence."²

WHEREFORE, Staff submits its Response to Respondent I-70 Mobile City, Inc., d/b/a I-70 Mobile City Park's *Motion for Protective Order* and requests that said Motion be denied, that Staff's discovery be allowed to move forward and be completed, and for such other orders as are just and reasonable under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr
Senior Staff Counsel
Missouri Bar Number 45718
Attorney for Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-5397 (Voice)

² *Order Granting Staff's Motion to Compel and Denying Respondent's Request for a Protective Order*, in WC-2022-0295, dated July 27, 2022.

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 13th day of December, 2022, to all counsel of record.

/s/ Carolyn H. Kerr