

**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.)	

STAFF’S MOTION TO FOR DISCOVERY CONFERENCE

COMES NOW Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Motion for Discovery Conference* states as follows:

1. On February 8, 2023, the Commission entered an *Order Denying I-70 Mobile City Park’s Motion for a Protective Order*. By denying Respondent I-70 Mobile City Park (hereafter “I-70 MCP”), a protective order from Staff’s discovery requests, the Commission found that those requests “are appropriate and reasonably calculated to lead to the discovery of admissible evidence.” I-70 MCP was ordered to respond to Staff’s discovery requests.

2. At that time, four Discovery Requests (DRs) were still outstanding and had not been responded to by I-70, specifically DR 45.3, 45.4, 48.1, and 48.2. As of the date of this *Motion*, only a response to DR 45.4 has been submitted¹. No responses have been submitted by I-70 MCP to DRs 45.3, 48.1, or 48.2.

3. Counsel for Staff has spoken to and has corresponded with Counsel for I-70 MCP by phone and by email on several occasions regarding the three outstanding

¹ The response to DR 45.4 was filed by Responded I-70 MCP on March 2, 2023, 104 days after it was initially filed, and 22 days after the Order Denying Respondent’s Motion for Protective Order was issued by the Commission. That Order specifically stated, “This order shall be effective when issued.”

DRs and has been told to either wait for a response because the Order Denying I-70 MCP's Motion for Protective Order "was not final," that responses would be forthcoming in general, or that responses would be provided on various given dates².

4. To date, no responses have been submitted by I-70 MCP to DRs 45.3, 48.1, or 48.2.

5. On March 15, 2022, Counsel for Staff emailed Counsel for I-70 MCP and requested her to update any DRs that had been served on Respondent previously. Counsel for Staff specifically listed nine DRs in her email, and requested that they be updated no later than March 27, 2023.

6. To date, nothing has been filed by Respondent I-70 MCP, and Counsel for Staff has received no response to that March 15, 2023 email.

7. Staff filed revised responses to three DRs that had been previously served upon it on March 24, 2023, specifically, DRs 0001, 0002, and 0003.

8. On March 16, 2023, the Commission also entered an *Order Directing the Filing of a Proposed Procedural Schedule* in this matter, including a "date by which Staff believes it can respond to I-70 Mobile City Park's summary determination motion³." That Order directed parties to file a joint proposed procedural schedule.

9. When Counsel for Staff last spoke to Counsel for Respondent I-70 MCP regarding the proposed *joint* procedural schedule, Counsel for Respondent stated that

² For example, an email on March 3, 2023, from Counsel for Staff asked Counsel for I-70 MCP when responses to DRs 45.3, 48.1, and 48.2 could be expected. Although no email response was received, on March 8, 2023, while the parties were at the I-70 MCP premises for the on-site Inspection, counsel for I-70 MCP told counsel for Staff that the responses to those would be submitted on March 10, 2023. Nothing was filed on March 10, 2023.

³ Respondent's Motion for Summary Determination was filed on November 23, 2022.

Counsel for Staff should propose a schedule with the assumption that the DRs would be answered by March 27, 2023.

10. Responding to a Motion for Summary Determination without any or incomplete answers to discovery requests is a formidable task. But that is what Staff will have to do if it must file a Procedural Schedule without knowing when or if Respondent will answer or update the DRs that have been served upon it.

11. Respondent I-70 MCP should be required to provide Staff and the Commission information and explanations for its lack of response and action in this case. Respondent's behavior and tactics have delayed the progress of this case, and a discovery conference is necessary to resolve the issues set forth above to move this matter forward to a hearing and ultimate resolution.

12. Title 20 CSR 4240-2.090(1) allows parties to obtain discovery "by the same means and under the same conditions as in civil actions in the circuit court." The use of data requests are one means of obtaining such discovery. 20 CSR 4240-2.090(2).

13. 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."

14. The subject matter of the pending action is whether the Respondent is operating a water and sewer corporation subject to the Commission's regulation. Operating water and sewer systems and billing their tenants for their use are necessary elements of the alleged violations.

15. As such, the information requested by Staff in its DRs are relevant to the subject matter of the pending case, and likely to lead to the discovery of admissible evidence.

16. The Commission's discovery rule provides that it will not entertain any discovery motions 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.

17. The Commission's rule also provides that if the issues remain unresolved after the attorney have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. 20 CSR 4240-2.090(8)(B). Pursuant to that rule, the undersigned certifies compliance with this rule.

18. This Motion is made in the interest of justice and not with the intent to unreasonably delay or hinder these proceedings in any manner.

WHEREFORE, for the foregoing reasons, Staff requests the Commission to schedule an immediate telephone conference with the presiding officer and opposing counsel and for any other orders it deems reasonable and just under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr

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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 29th day of March, 2023, to all counsel of record.

/s/ Carolyn H. Kerr