

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

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

**STAFF’S RESPONSE TO I-70 MOBILE CITY PARK’S MOTION TO STRIKE**

**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 Mobile City Park’s (hereafter “I-70 MCP”) *Motion to Strike Staff’s Response in Opposition to Amended Motion for Summary Determination* hereby states and alleges as follows:

1. On September 22, 2023, I-70 MCP filed an *Amended Motion for Summary Determination*, and, in response, Staff filed its *Response in Opposition to I-70 MCP’s Amended Motion for Summary Determination* (“*Response*”) on October 20, 2023.

2. On pages 3 – 8 of its *Amended Motion for Summary Determination* Respondent I-70 MCP listed 32 numbered paragraphs denominated or titled “Material Facts for which there is No Genuine Issue.”

3. Staff responded to each and every one of those numbered paragraphs in accordance with the requirements of 20 CSR 4240-2.117(c) by admitting or denying each of the “factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion” and stating “the reason for each denial.”

4. That same rule requires the responding party to “set out each material fact that remains in dispute,” and support its assertion “with specific references to the

pleadings, testimony, discovery, or affidavits.” 20 CSR 4240-2.117(c). Staff’s responses to the numbered “Material Facts for which there is No Genuine Issue” made by Respondent I-70 MCP asserted either: a legal basis for the admission or denial of the material fact, or referenced Respondent I-70’s witness’s testimony/affidavit submitted with its *Amended Motion for Summary Determination*. Staff’s responses to the numbered “Statements of Material Facts for which there is No Genuine Issue” did not assert additional facts. In some of its responses, Staff added language to the original fact statement to explain what portion of the fact that it may admit, while denying the remainder. However, Staff did not raise “additional material facts” that would necessitate an affidavit or specific reference to the pleadings or discovery.<sup>1</sup> Therefore, no requirement existed for Staff to supplement its responses with references to any part of the record or to affidavits. As such, Staff complied with the requirements set forth in 20 CSR 4240-2.117(c).

5. Respondent I-70 MHP argues that Staff’s list of “Additional Material Facts that Remain in Dispute” fails to comply with 20 CSR 4240-2.117(c) because Staff did not “file a counter-affidavit.” An affidavit is required to be filed in support of additional material facts if the party asserts that those facts remain in dispute. *Great Southern Bank v. Blue Chalk Construction, LLC*, 497 S.W.3d 825, 829 (Mo.App.S.D. 2016). I-70 MHP is correct that Staff’s Response did not include such an affidavit. However, a counter-affidavit was not required based on Staff’s filing. Several of the statements in Staff’s *Response* are legal conclusions or are not based on direct observation, and therefore, cannot be

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<sup>1</sup> Paragraph 6 referenced DR responses received from Respondent I-70 MCP. Paragraph 8 gives additional information about the “questionnaire” referenced by Respondent I-70 MCP. Paragraph 14 gives additional explanation of Staff’s investigation. However, Staff is willing to supplement its Response with more specific reference to which DR or an Affidavit if so ordered.

supported by an affidavit. Other statements merely restate many of the assertions made in the Respondent's Statement of Material Facts to assert them as being at issue or in dispute.

6. The facts listed in Staff's Response merely remind the Commission that those facts, admitted by the Respondent, are still in dispute and should be considered in this case. Respondent has already admitted the facts asserted in its *Motion* and those restated in Staff's *Additional Material Facts that Remain in Dispute*.

7. "Until the [movant] meet[s] [his or her] burden under [the rule ..., the non-movant] does not have to show anything." *Gateway Metro Federal Credit Union v. Jones*, 603 S.W.3d 315, 322 (Mo.App.E.D. 2020), citing, *Williams v. Hubbard*, 455 S.W.3d 426, 435 (Mo. banc 2015). Nevertheless, if the Commission finds that, under the circumstances, Staff should file an affidavit and/or cite to specific references in the pleadings, testimony or discovery for each numbered paragraph listed under the "Additional Material Facts that Remain in Dispute" section or any other part of its *Response* to Respondent's *Motion*, Staff respectfully asks for leave to late-file such an affidavit.

**WHEREFORE**, Staff prays the Commission deny Respondent I-70 Mobile City Park's *Motion to Strike Staff's Response in Opposition to Amended Motion for Summary Determination*, to deny its *Amended Motion for Summary Determination*, and for such other orders as are just and reasonable 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 on this 14th day of November, 2023, to all counsel of record.

**/s/ Carolyn H. Kerr**