

**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 MOTION TO STRIKE PORTIONS OF
JENNIFER HUNT’S REBUTTAL TESTIMONY**

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and for its *Motion to Strike Portions of Jennifer Hunt’s Surrebuttal Testimony* hereby states and alleges as follows:

1. On October 5, 2023, Staff filed written Direct Testimony of Andrew Harris as required by the Procedural Schedule entered in this case.
2. On October 25, 2023, Jennifer Hunt filed her written Rebuttal Testimony as required by the Procedural Schedule entered in this case, which includes testimony that invades the province of the trier of fact, in that her testimony elicits conclusions of law and fact and makes observations and ultimate statements of fact and application of standards as they apply to the facts of this case.
3. On several occasions, Ms. Hunt’s written Rebuttal testimony includes “expert” testimony and her legal opinion and conclusions relating to issues central to this case, and to which the trier of fact and the Commission must ultimately decide the result.
4. Specifically, on page 7, lines 20-22, Ms. Hunt testifies about her “reaction to the filing of the complaint,” stating her opinion as to why “I-70 Mobile City is not subject to Commission jurisdiction.” She goes on to explain, on page 8, lines 1-33 and page 9,

lines 1-4, how this case is “different that [sic] the facts that were presented in the *Aspen Woods*¹ case” and that based on the facts of that case, she believes “this Complaint should meet the same result” and “reach the same conclusion.”

5. Again, specifically on page 15, lines 19-24, and page 16, lines 1-11, Ms. Hunt testifies about the “notion of fairness” and advises the Commission to open a “rulemaking proceeding or working docket ... to determine important questions such as: how big is this issue, ... and how should it be regulated?” She suggests to the trier of fact that “a working docket is a better forum for such a resolution” and opines that that was the reason the Commission opened one in the *Aspen Woods* case and dismissed that case.

6. Through her testimony, Ms. Hunt makes legal arguments on page 15, lines 19-24, and page 16, lines 1-11, tying the case currently before the Commission to the aforementioned *Aspen Woods* case, which is factually and legally unrelated to it.

7. Further, on page 16, lines 12-22, and page 17, lines 1-13 of her Rebuttal testimony, Ms. Hunt states that “[t]he basis for Commission jurisdiction is the existence of a monopoly” and goes on to differentiate the facts of this case with *Hurricane Deck Holding Co.*² and why, in her opinion, I-70 MCP should not be similarly regulated like the utility services offered in the *Hurricane Deck* case. Ms. Hunt’s testimony discusses how the “market provides some inherent protections” for residents and declares that “consumers are protected by consumer protection statutes (Chapter 407) and by Missouri’s landlord-tenant laws (Chapter 441).”

¹ *Staff v. Aspen Woods Apartment Assoc., LLC. & Nat’l Water & Power, Inc.*, Case No. WC-2010-0227.

² *MO PSC v. Hurricane Deck Holding Co.*, 302 S.W.3d 786 (Mo.App. W.D. 2010)

8. Finally, on page 19, lines 1-11, of her Rebuttal testimony, Ms. Hunt discusses whether the Commission has jurisdiction in this case and how that should be determined. She analyses several court cases³ and concludes, for the judge and Commission, how it should rule, based on the law in those cases. She concludes, that based on the “factors” in the *Aspen Woods* case, when taken into consideration with the Missouri Supreme Court cases, “the facts in this case all point in the same direction,” of a dismissal for lack of jurisdiction.

9. No portion of Ms. Hunt’s testimony contained on page 19, lines 1-11 is fact based. She is not testifying as a fact witness when she discussed how the “five factors in *Aspen Woods*,” as applied by the court cases she cites to bolster her legal argument, should, for the same reasons, ultimately lead to the dismissal of this case. Instead, she is attempting to insert her legal opinions into her testimony, something a lay witness may not do.

10. On multiple occasions, as described paragraphs 4, 5, 6, 7, 8, and 9, above, in her Rebuttal testimony, Ms. Hunt improperly attempts to step into the shoes of the judge to make legal arguments and give him advice on what he and, by extension, the Commission should do, and how they should ultimately rule in this case.

11. Ms. Hunt admits she “is not a lawyer, and does “not purport to be.” Nothing in her educational and work experience nor any of her duties with respect to her business operations dealing with I-70 MCP include the study or practice of law or that she has knowledge regarding the regulation of public utilities. She does not practice, nor is

³ Ms. Hunt analyses the following cases: *State ex rel. M.O. Danciger & Co. v. MO PSC*, 205 S.W. 36 (Mo. 1918); *Davis v. Laclede Gas Co.*, 603 S.W.2d 554 (Mo.banc 1980); *MO PSC v. Hurricane Deck Holding Co.*, 302 S.W.3d 786 (Mo.App. W.D. 2010); and *WATS Resale by Hotels, et al.*, Case Nos TO-84-222, et al., 29 Mo. P.S.C. (N.S.) 535.

she licensed as a paraprofessional in any manner in any field of the law. In short, she is not an expert in the law nor in the utility regulatory field. She is a lay witness. And “lay witnesses are not permitted to give opinion testimony about matters in dispute because they do “not possess ‘scientific, technical or other specialized knowledge.’”⁴ *State v. Bivines*, 231 S.W.3d 889, 892-893 (Mo.App. W.D. 2007).

12. As a general rule, lay witness testimony is limited to statements of fact rather than opinion or conclusions. “Generally a lay witness may not testify regarding the witness’ opinion on a matter in dispute because the lay witness lacks specialized knowledge about the matter and, therefore, the jury and lay witness ‘are in equal positions to form an accurate opinion.’” *State v. Presberry*, 128 S.W.3d 80, 86 (Mo. App. E.D. 2003), citing, *State v. Winston*, 959 S.W.2d 874, 877 (Mo. App. E.D. 1997)). When “the trier of fact is as capable as the witness to draw conclusions from the facts provided,” opinion testimony is usually inadmissible. *Id.*, citing *State v. Gardner*, 955 S.W.2d 819, 823 (Mo.App. E.D. 1997). It is well settled law that “a witness’s legal conclusions, especially a layperson’s, are generally not binding on the court.” *State v. Case*, 140 S.W.3d 80, 92–93 (Mo.App. W.D. 2004).

13. As such, each portion, described in paragraphs 4, 5, 6, 7, 8, and 9, above, of Ms. Hunt’s Rebuttal testimony should be stricken from the record, in that a lay witness cannot make legal conclusions and testify to matters that go to ultimate issues of fact or applications of facts to law, as it invades the province of the trier of fact.

WHEREFORE, Staff prays the Commission granting Staff’s Motion to Strike each portion, specifically described in paragraphs 4, 5, 6, 7, 8, and 9, above, of Jennifer Hunt’s

⁴ § 490.065.1, RSMo.

written Rebuttal testimony, and for such other orders as are just and reasonable under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr

Missouri Bar Number 45718

Senior Staff Counsel

Missouri Public Service Commission

P.O. Box 360

Jefferson City, MO 65102

573-751-5397 (Voice)

573-526-6969 (Fax)

Carolyn.kerr@psc.mo.gov

Attorney for Staff of the

Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on this 2nd day of November, 2023, to all counsel of record.

/s/ Carolyn H. Kerr