

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

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant,	)	
	)	Case No. WC-2022-0295
v.	)	SC-2022-0296
	)	
I-70 Mobile City, Inc.	)	
d/b/a I-70 Mobile City Park,	)	
	)	
Respondent.	)	

**I-70 MOBILE CITY’S RESPONSE TO STAFF’S MOTION TO STRIKE  
PORTIONS OF JENNIFER HUNT’S REBUTTAL TESTIMONY**

Respondent, I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (“I-70 Mobile City”), by and through counsel, and for its Response to Motion to Strike Portions of Jennifer Hunt’s Rebuttal Testimony states as follows:

1. On October 25, 2023, I-70 Mobile City filed the Written Rebuttal Testimony of Jennifer Hunt.
2. On November 2, 2023, Staff filed its Motion to Strike Portions of Jennifer Hunt’s Rebuttal Testimony.
3. The Commission entered an Order Directing Responses, dated November 6, 2023, requiring I-70 Mobile City to respond to Staff’s Motion to Strike Portions of Jennifer Hunt’s Rebuttal Testimony no later than November 14, 2023.
4. Staff claims that Jennifer Hunt’s Rebuttal Testimony includes “expert” testimony and 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.

**A. No authority to support Staff's Position – neither lay witnesses nor experts can make legal conclusions**

Staff only cites four cases in its motion: *State v. Bivines*, 231 S.W.3d 889, 892-893 (Mo. App. W.D. 2007); *State v. Presberry*, 128 S.W.3d 80, 86 (Mo. App. E.D. 2003); *State v. Gardner*, 955 S.W.2d 819, 823 (Mo. App. E.D. 1997); *State v. Case*, 140 S.W.3d 80, 92–93 (Mo. App. W.D. 2004), arguing “lay witnesses cannot make legal conclusions.” All of the cases cited by Staff are criminal jury trial cases. This case is not a jury tried case. This case is not a criminal case. The standards here are different.<sup>1</sup> Furthermore, the admission of testimony is within the sound discretion of the trier of fact.<sup>2</sup> Staff provides no authority from a judge-tried case, no authority from a civil case, and no authority from a Public Service Commission case for support of its position that Ms. Hunt’s testimony be stricken. For this reason alone, Staff’s Motion should be denied.

In addition, Staff seems to suggest that “lay” witnesses can not make legal conclusions because it invades the province of the trier of fact. Nor can expert witnesses. “Expert testimony is not admissible on issues of law.” *State v. Kinder*, 942 S.W.2d 313, 334 (Mo. banc 1996) (citing *Lee v. Hartwig*, 848 S.W.2d 496, 498 (Mo. App. W.D. 1992)).

If the Commission was to sustain Staff’s Motion, then the Direct Testimony of Staff’s own witness, Mr. Harris must meet the same fate. Mr. Harris also makes a number of legal conclusions – all of which should be

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<sup>1</sup> See e.g., *J.J.'s Bar & Grill, Inc. v. Time Warner Cable Midwest, LLC*, 539 S.W.3d 849, 871 (Mo. App. W.D. 2017) (citing *Whitnell v. State*, 129 S.W.3d 409, 413 (Mo. App. E.D. 2004) (“The standard for the admission of expert testimony in civil cases is set forth by section 490.065.”)).

<sup>2</sup> *Id.* at 414.

stricken.<sup>3</sup> I-70 plans to make timely objections to his testimony **if** offered at hearing on this basis. I-70 now requests if the Commission decides to strike “legal conclusions” from Ms. Hunt’s testimony, then it must do the same for Mr. Harris’ Direct Testimony.

**B. Jennifer Hunt’s testimony should not be stricken as she only testifies as to facts**

Despite referring to this litigation as “getting this party started” and taking more than a year to file a complaint, Staff attempts to impart bad motives and blame I-70 for various delays. An important part of Ms. Hunt’s testimony is to describe why she took various actions and when (in rebutting any alleged bad motive or intentional delay on her part).

Staff takes issue with her testimony on page 7, lines 20-22 – wherein she describes her reaction and the basis (her own belief) for that reaction. These are facts about her personal reactions and beliefs. The same is true for page 8, lines 1-33. Ms. Hunt spent hours pouring over the EFIS website and past cases prior to even contacting an attorney in an attempt to understand her situation.

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<sup>3</sup> In his testimony, Mr. Harris purports to testify on issues of law and offer legal conclusions:

- The purpose of his direct testimony is to provide background of “I-70 MCP’s operation of a water and sewer utility.” Harris Direct, 2:2.
- “According to the information provided by I-70 MCP in its Questionnaire response, not only did it appear that I-70 MCP was operating a water corporation without a CCN, they were also operating a sewer corporation.” Harris Direct, 4:6-8.
- “its operation as a public sewer and water utility.” Harris Direct, 9:16-17.
- “Staff’s conclusion is that I-70 MCP....operates as a sewer corporation, a water corporation, and a public utility.” Harris Direct, 10:7-13.

She is capable of comparing the facts of her current operations with what she read in the *Aspen Woods* pleadings.

Similarly, there is nothing improper about Ms. Hunt suggesting a similar outcome here as resulted in the *Aspen Woods* case (Page 15, lines 19-24, and page 16, lines 1-11). Based on reading the pleadings in that case, Ms. Hunt suggests the same outcome that the property owner in that case received. The Staff claims Ms. Hunt's testimony about the *Aspen Woods* case should be stricken because the case itself is "factually and legally unrelated to it [the current case]." This is an argument for briefing – essentially that the *Aspen Woods* case is irrelevant and distinguishable from the present case. It is not an argument for why Ms. Hunt's testimony should be stricken. Again, her beliefs and understanding of the *Aspen Woods* case explain her position in this case and serve to negate any bad faith or intentional delay alleged by Staff. Ms. Hunt had a good faith belief that she was not subject to Commission determination. Whether she is subject to the Commission jurisdiction is a legal conclusion – what she believed is a factual allegation.

Staff also takes issue with page 16, lines 12-22, and page 17, lines 1-13. Again, Ms. Hunt is explaining how she understands Commission jurisdiction to apply, what she has learned about the public policy of the Commission after extensive research, and the facts specific to I-70 as compared with other facts as reported in publicly available filings. She testifies as to the market protections for her tenants (which she is keenly aware of, having operated in the market for almost a decade), other statutory protections available to her tenants (which she had to understand and operate under for almost a decade).

Finally, Staff takes issue with page 19, lines 1-11. Ms. Hunt simply recites factors which can be confirmed in reported cases. She's not purporting to be a legal expert. The Commission here can and will review the cases and

can determine for itself that the factors set forth by Ms. Hunt are indeed the factors the Commission utilized in *Aspen Woods* to dismiss. Ms. Hunt's testimony serves to aid the Commission in reaching its conclusion, but certainly not to invade its ultimate decision-making authority. For each of the factors she examines the question, and makes a factual assertion based on her expertise as to I-70's operations. This is well within the proper scope of testimony.

**C. Jennifer Hunt is an expert and her opinion testimony is proper**

Jennifer Hunt has a master's degree and has served in several supervisory operational roles – both in the private sector and public sector. She has previously worked in jobs that concentrated in areas of wells and wastewater systems. She has managed the operations of I-70 for more than eight years.

Staff complains that Ms. Hunt's testimony covers "conclusions relating to issues central to this case" but [u]nder the liberalized rule governing the admission of expert testimony, § 490.065, the testimony of an expert witness "is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." § 490.065.2. *Glidewell v. S.C. Mgmt., Inc.*, 923 S.W.2d 940, 949 (Mo. App. S.D. 1996).

As an expert, Section 490.065, RSMo, (not the standard for criminal jury trials as suggested by Staff) governs Ms. Hunt's testimony. As such, to the extent any of her testimony could be characterized as concerning "matters that go to ultimate issues of fact" as suggested by Staff, it is not objectionable, and Staff's Motion should be denied.

**WHEREFORE**, for the foregoing reasons, I-70 Mobile City respectfully requests the Commission deny Staff's Motion to Strike, and for such other

orders as are just and reasonable under the circumstances.

Respectfully submitted,

**ELLINGER BELL LLC**

By: /s/ Stephanie S. Bell  
Marc H. Ellinger, #40828  
Stephanie S. Bell, #61855  
308 East High Street, Suite 300  
Jefferson City, MO 65101  
Telephone: 573-750-4100  
Facsimile: 314-334-0450  
Email: mellinger@ellingerlaw.com  
Email: sbell@ellingerlaw.com  
*Attorneys for I-70 Mobile City, Inc.  
d/b/a I-70 Mobile City Park*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on this November 14, 2023.

/s/ Stephanie S. Bell  
Stephanie S. Bell