

**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.)	

RESPONSE TO STAFF MOTION FOR WITNESS SUBSTITUTION

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 Staff’s Motion for Witness Substitution, states as follows:

1. On December 4, 2023, with a hearing scheduled on December 6. 2023, the Staff filed a Motion asking to substitute one of its two witnesses.
2. Staff wishes to substitute Mr. Busch for Mr. Gateley due to “illness.”
3. I-70 has no objection to Mr. Gateley testifying via WebEx for health reasons.
4. However, I-70 objects to substituting Mr. Busch for Mr. Gateley.
5. Staff also asserts Mr. Gateley is entirely unavailable on one of the two days scheduled for hearing – something disclosed to the Judge and I-70 for the first time 48 hours in advance of the hearing.
6. Mr. Gateley’s testimony covers personal observations on the inspection. The cross examination I-70 has prepared for Wednesday mainly concerns Mr. Gateley’s personal observations.

7. Substituting is a common practice when a Staff witness testified about a report in which several Staff members participated or in which a Staff witness testifies about general rate making policy. That is not what Staff is requesting here.

8. Much of Mr. Gateley's testimony is in regard to an in-person inspection he conducted – I-70 is entitled to the opportunity to cross examine him about what he did or didn't observe and what did or didn't occur as part of that inspection.

9. Mr. Busch was not there and cannot testify to any personal knowledge of that inspection. The only truthful answer Mr. Busch could give regarding the inspection is "I don't know."

10. Gateley's testimony also contains other facts about this particular case, and the process in arriving at a complaint. Mr. Busch has not been involved in this case, does not have any background in this area and cannot testify to it, making cross examination on those topics impossible.

11. Mr. Gateley's testimony reflects his background and possible expertise to offer opinions. Mr. Busch has not submitted such background, or curriculum vitae qualifying him to offer or adopt any opinions.

12. Mr. Busch had the opportunity to file rebuttal testimony on general Commission jurisdiction policy, but failed to do so. Allowing him to do so now violates the procedural schedule. The Commission should not allow a last minute surprise substitution. The request for a surprise substitution of Busch for Gateley on the eve of the hearing forecloses I-70's right to cross-examination and denies it due process.

13. When I-70 previously requested an extension on data requests because the owner's "fifteen year old daughter was rushed to the hospital and

remained unresponsive in the ICU” the Staff refused, and three days later,¹ additionally requested supplements to various data requests that had been answered months before. *See Exhibit A.*

14. The Commission should schedule arguments on the Motion for Summary Determination which is pending (and which does not require the participation of Mr. Gateley) on Wednesday, December 6, which could, based on the Commission’s decision, render the need for a hearing with Mr. Gateley unnecessary.

15. Alternatively, the Commission should either (1) reschedule the hearing to a date when Staff’s witnesses can appear in person and be cross-examined or (2) should order Gateley’s testimony stricken from the record and proceed with the hearing as scheduled.

WHEREFORE, for the foregoing reasons, I-70 Mobile City requests the Commission to (1) set the Motion for Summary Determination for oral argument on Wednesday, December 6, or (2) in the alternative, (a) continue the hearing to a date when Staff’s witnesses can appear in person and be cross-examined or (b) order Gateley’s testimony stricken from the record and proceed with the hearing as scheduled, and for such other orders it deems reasonable and just under the circumstances.

¹ Staff continues to accuse I-70 of intentional delay. Obviously, this family tragedy caused several weeks of unintentional delay. Still, it was the Staff who sent I-70 a “questionnaire” in April 2021, to which I-70 responded to in August of 2021 (Harris Direct, p. 3, ln. 15-16). Staff did not reach back out to I-70 until seven months later – in February of 2022. *See Exhibit B.*

Respectfully submitted,

ELLINGER BELL LLC

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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 December 5, 2023.

/s/ Stephanie S. Bell
Stephanie S. Bell