

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

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

**REPLY TO RESPONDENT’S RESPONSE TO STAFF’S MOTION
FOR WITNESS SUBSTITUTION AND
MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply to Respondent’s Response to Staff’s Motion for Witness Substitution and Motion for Judgment on the Pleadings*, states as follows:

Reply to Respondent’s Response:

1. On December 4, 2023, in view of the hearing scheduled to start on December 6, 2023, Staff as a courtesy advised the Commission and the parties that Mr. Busch would appear for Mr. Gateley, due to Mr. Gateley’s illness, via its *Motion Regarding Witness Availability*.

2. On December 5, 2023, Respondent filed its *Response*, in which it stated “I-70 objects to substituting Mr. Busch for Mr. Gateley.” As grounds for its objection, I-70 stated, “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” and “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" "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'" and similar assertions in this vein.

3. Such substitutions are a common practice in PSC proceedings and, to the knowledge of the undersigned, have never before drawn an objection. The reality is that witnesses get sick and other life events occur, such that a scheduled witness cannot always appear. In order to avoid delay, another competent witness is substituted. Mr. Busch is Mr. Gateley's direct supervisor and he is fully informed as to the specifics of this case and has been from its inception. Indeed, Mr. Busch held the position now held by Mr. Gateley immediately prior to Mr. Gateley's incumbency. Mr. Busch can certainly testify as to "this particular case, and the process in arriving at a complaint."

4. I-70 also asserts, "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."

5. The reality is that I-70 is in no wise prejudiced by this substitution. Mr. Busch will adopt Mr. Gateley's pre-filed testimony, so no surprises there. Although Mr. Busch cannot testify as to what Mr. Gateley observed while inspecting I-70's premises, which are apparently the subject of I-70's planned cross-examination, those observations are legally irrelevant in that they cannot constitute a defense or avoidance of Staff's *Complaint*. Denying I-70 an opportunity to elicit legally irrelevant cross-examination cannot be a denial of Due Process. Additionally, Mr. Harris, Staff's

other scheduled witness, was present at the inspection and can be cross-examined regarding it.

6. Nothing in the Commission's practice rules at 20 CSR 4240-2 precludes the substitution of one witness for another; neither does anything in the *Public Service Commission Law* or the *Missouri Administrative Procedures Act*. The assertion that the proposed substitution would constitute a denial of Due Process is fatuous at best.

WHEREFORE, Staff prays that the Commission will hold the hearing in this matter as scheduled, allowing Staff to substitute Mr. Busch for Mr. Gateley, and grant such other and further relief as the Commission deems just in the circumstances.

Motion for Judgment on the Pleadings:

7. Staff re-alleges by reference the contents of Paragraphs 1-6, above, as though the same were fully set out.

8. I-70 has already admitted the truth of Staff's *Complaint* and no hearing is necessary.

9. In its *Complaint*, Staff charged that I-70 is reselling water to some of its tenants for gain and is selling sewer services to 25 or more of its tenants for gain. As Staff notes in its *Complaint*, Missouri courts have held that entities act as public utilities when they sell services to the public for compensation and have undertaken the responsibility to provide such services to all members of the public within their capability. *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W. 569, 574- 5 (Mo.App. S.D. 1997); *Hurricane Deck Holding Co. v. Public Service Comm'n*, 289 S.W. 3d 260, 264-5 (Mo.App. W.D. 2009).

10. In its *Answer*, Paragraph 17, I-70 admitted “that certain tenants of the I-70 Mobile City Park request water and sewer service and admits that I-70 Mobile City provides water and sewer service to certain tenants. I-70 Mobile City admits that such tenants are billed for water and sewer service by I-70 MHP based on their usage of water and sewer service.”

11. None of I-70’s purported affirmative defenses constitutes a legally sufficient defense or avoidance to Staff’s *Complaint*.

WHEREFORE, Staff prays that the Commission will grant judgment on the pleadings in favor of Staff as authorized by Commission Rule 20 CSR 4240-2.117(2); and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson
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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 5th day of December, 2023**, to all counsel and parties of record.

/s/ Kevin A. Thompson