

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

In the Matter of the Application of Evergy )  
Metro, Inc. d/b/a Evergy Missouri Metro )  
and Evergy Missouri West, Inc. d/b/a )  
Evergy Missouri West for an Accounting )  
Authority Order Allowing the Companies )  
to Record and Preserve Costs Related to )  
COVID-19 Expenses )

File No. EU-2020-0350

**SIERRA CLUB’S POSITION ON A REMOTE HEARING**

On September 3, 2020, the Public Service Commission of the State of Missouri (“Commission”) ordered all parties to advise the Commission whether they would request: (1) a hearing by telephone or video conference; or (2) appearance of counsel and/or witnesses by telephone or video conference; and (3) the reasons for such anticipated requests. Sierra Club understands that due to the COVID-19 pandemic, Commission offices remain closed to the public at this time and that the Commission is holding hearings remotely. Sierra Club hereby indicates its consent to the Commission holding the hearing by remote means.

If the Commission holds an in-person hearing, Sierra Club would respectfully request that the Commission allow Sierra Club witness Cheryl Roberto to give her testimony by remote means and allow Sierra Club attorneys Kristin Henry and Sunil Bector to participate in the hearings by remote means. In support of these requests, Sierra Club states that:

1. On March 13, 2020, Governor Parson issued an Executive Order declaring a state of emergency throughout the State of Missouri, which has been extended twice. In Executive Order 20-12, the Governor noted that “steps must be taken to prevent a substantial risk to public health and safety as we reopen Missouri’s economic and social activity” and “resources of the State of Missouri continue to be needed to combat the public health threat caused by COVID-19

and to aid the recovery phase of the State’s response to this emergency” and, thus, extended the state of emergency through December 30, 2020.<sup>1</sup>

2. COVID-19 is “a potentially fatal illness with the ability to spread through asymptomatic or pre-symptomatic carriers, with no approved cure, treatment, or vaccine.”<sup>2</sup> As the Centers for Disease Control and Prevention (“CDC”) explains, “COVID-19 spreads mainly among people who are in close contact (within about 6 feet) for a prolonged period.”<sup>3</sup> According to the CDC, travel and especially travel by airplane “increases your chances of getting and spreading COVID-19.”<sup>4</sup> Generally, “the more closely you interact with others and the longer that interaction, the higher the risk of COVID-19 spread.”<sup>5</sup> Some studies even suggest that the CDC recommendation to maintain 6 feet of distance from other people “is likely not enough under many indoor conditions, where aerosols can remain airborne for hours, accumulate over time, and follow airflows over distances further than 6 feet.”<sup>6</sup> A peer-reviewed article published in late August suggests a significant risk of transmission persists in settings where individuals are indoors together for a prolonged time, even with low occupancy and use of face coverings.<sup>7</sup> In

---

<sup>1</sup> Governor’s Executive Order 20-12 (June 11, 2020), *available at*:

<https://www.sos.mo.gov/library/reference/orders/2020/eo12>.

<sup>2</sup> *Joffe v. King & Spalding LLP*, No. 17-CV-3392 (VEC), 2020 WL 3453452, at \*7 (S.D.N.Y. June 24, 2020).

<sup>3</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Social Distancing, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited Aug. 25, 2020).

<sup>4</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Travel: Frequently Asked Questions and Answers, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html> (last visited Aug. 25, 2020).

<sup>5</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), “Deciding to Go Out”, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html> (last visited Aug. 25, 2020).

<sup>6</sup> Kimberly A. Prather et al., *Reducing transmission of SARS-CoV-2*, *Science* (May 27, 2020), <https://science.sciencemag.org/content/368/6498/1422> (last visited Aug. 25, 2020). *See also* Ben Guarino, *Six feet might not be enough social distance to protect against the coronavirus, experts warn*, *Wash. Post* (Aug. 27, 2020), <https://www.washingtonpost.com/health/2020/08/27/coronavirus-social-distancing-6-feet/> (“‘Distance alone will never solve the aerosol problem. If you are in the same room, you can get infected,’ said University of Colorado aerosol expert Jose-Luis Jimenez.”).

<sup>7</sup> Nicholas Jones, et. al, *Two metre or one: what is the evidence for physical distancing*, *The BMJ* (Aug. 25, 2020) (*available at*: <https://www.bmj.com/content/370/bmj.m3223>) (explaining that transmission risk varies with setting, occupancy level, contact time, and use of face coverings).

another study, researchers collected viable viruses capable of causing infection from air samples at distances of seven to sixteen feet from an infected individual.<sup>8</sup> The researchers concluded, “[f]or aerosol-based transmission, measures such as physical distancing by 6 feet would not be helpful in an indoor-setting, provide a false-sense of security and lead to exposures and outbreaks.”<sup>9</sup>

3. While active measures to prevent the spread of COVID-19 in Missouri have been in place for many months, Missouri surpassed 100,000 confirmed coronavirus cases this past weekend.<sup>10</sup> On September 12, 2020, the Missouri Department of Health and Senior Services added 1,974 new cases, three new deaths, and reported 1,040 COVID-19 hospitalizations across Missouri, the highest single-day increase since the pandemic began.<sup>11</sup> According to CDC data, Missouri had the sixth-highest number of new cases over the seven-day period of September 4, 2020 through September 10, 2020.<sup>12</sup> COVID-19 remains a threat to the health, safety, and welfare of all Missourians such that efforts are still needed to continue to address, control, and reduce the threat posed by the virus.

4. Sierra Club’s witness Cheryl Roberto and attorneys Kristin Henry and Sunil Bector would need to travel to Jefferson City from other states, thereby posing the risk of bringing additional COVID-19 cases into Missouri from other states and airports, and of spreading COVID-19 to family and others upon their return home. In addition, several of these

---

<sup>8</sup> John A. Lednicky et al., *Viable SARS-CoV-2 in the air of a hospital room with COVID-19 patients*, medRxiv, <https://www.medrxiv.org/content/10.1101/2020.08.03.20167395v1>.

<sup>9</sup> *Id.*

<sup>10</sup> Missouri Department of Health and Senior Services, COVID-19 Outbreak, *available at*: <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/>.

<sup>11</sup> KMOV.com Staff, *Missouri COVID-19 cases top 100,000* (Sept. 12, 2020), *available at*: [https://www.kmov.com/news/missouri-covid-19-cases-top-100-000/article\\_2336b836-f549-11ea-85f5-ef01ff93cf02.html](https://www.kmov.com/news/missouri-covid-19-cases-top-100-000/article_2336b836-f549-11ea-85f5-ef01ff93cf02.html).

<sup>12</sup> *A milestone for Missouri, as the number of COVID-19 cases tops 100,000*, St. Louis Post-Dispatch (Sept. 13, 2020), *available at*: [https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/a-milestone-for-missouri-as-the-number-of-covid-19-cases-tops-100-000/article\\_613db8ba-d466-59ba-bc36-91a02724702f.html](https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/a-milestone-for-missouri-as-the-number-of-covid-19-cases-tops-100-000/article_613db8ba-d466-59ba-bc36-91a02724702f.html).

individuals and/or their immediate family members are within populations that are at higher risk for COVID-19 due to age or underlying medical conditions.

5. Ms. Roberto resides in New York. In late June, New York's Governor issued an Executive Order requiring individuals to quarantine for 14 days after traveling to states with significant rates of transmission of COVID-19.<sup>13</sup> Missouri is among the restricted states,<sup>14</sup> meaning residents of New York returning from Missouri will be required to quarantine for 14 days upon their return home. In addition, Ms. Roberto is subject to her employer's policy limiting travel during the pandemic.

6. Ms. Henry and Mr. Bector reside in California, where COVID-19 cases have come down but are still extremely high. For example, California has gone from a 3-day rolling average of 6,908 cases per day on June 29 to a 3-day rolling average of 4,710 cases per day on August 29.<sup>15</sup> While that is a decline, over that two-month period the 3-day rolling average in California has ranged between 4,700 and 11,604 new cases per day. If counsel residing in California were to attend the hearing in person, they would also do so against their employer's coronavirus policy.

7. Sierra Club will ensure that its witness and attorneys have access to high speed internet connections that allow them to participate with clear video and audio connections.

Sierra Club consents to the Commission holding the hearing by remote means and, alternatively, if the Commission does hold an in-person hearing, Sierra Club would respectfully

---

<sup>13</sup> State of New York, Executive Order No. 205 (June 24, 2020), *available at:*

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO205.pdf>.

<sup>14</sup> New York State, COVID-19 Travel Advisory (last visited Aug. 31, 2020), *available at:*

<https://coronavirus.health.ny.gov/covid-19-travel-advisory>. The quarantine order applies to anyone traveling from any state with a positive test rate higher than 10 per 100,000 residents or higher than a 10% positivity rate over a seven-day rolling average. Missouri has a 7-day rolling average of 147 new cases per 100,000 residents. *See* Shapiro, L., *et. al.*, *At least 192,000 people have died from coronavirus in the U.S.*, Wash. Post, *available at:* <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/> (last visited Sept. 15, 2020).

<sup>15</sup> Johns Hopkins University, Coronavirus Resource Center, *America is Reopening. But Have We Flattened the Curve?* (last visited Sept. 15, 2020), *available at:* <https://coronavirus.jhu.edu/data/new-cases-50-states/missouri>.

request that the Commission allow Sierra Club witness Cheryl Roberto and out-of-state counsel Kristin Henry and Sunil Bector to participate in the hearings by remote means.

/s/ Henry B. Robertson

Henry B. Robertson  
Great Rivers Environmental Law Center  
319 N. 4th St., Suite 800  
St Louis, MO 63102  
314-231-4181  
[hrobertson@greatriverslaw.org](mailto:hrobertson@greatriverslaw.org)

Kristin Henry  
Managing Attorney  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
415-977-5716  
[kristin.henry@sierraclub.org](mailto:kristin.henry@sierraclub.org)

Sunil Bector  
Staff Attorney  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
415-977-5759  
[sunil.bector@sierraclub.org](mailto:sunil.bector@sierraclub.org)

*Counsel for Sierra Club*

Dated: September 16, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing document was filed in EFIS on this 16th day of September, 2020, with notice of the same being sent to all counsel of record.

*/s/ Kristin Henry* \_\_\_\_\_