

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

In the Matter of the Joint Application of AIP)
Project Franklin Bidco, Inc., Veolia Energy)
North America Holdings, Inc., Thermal North)
America Holdings, Inc., Veolia Energy)
Missouri, Inc., and Veolia Energy Kansas)
City, Inc., for Approval of Indirect Merger by)
Stock Acquisition and Related Encumbrances)

File No. HM-2020-0039

STIPULATION AND AGREEMENT

COME NOW AIP Project Franklin Bidco, Inc. ("Bidco"), Veolia Energy North America Holdings, Inc. ("VENA"), Thermal North America, Inc. ("TNAI"), Veolia Energy Missouri, Inc. ("VEMI"), Veolia Energy Kansas City, Inc. ("VEKC") (collectively the "Applicants"); and Staff of the Missouri Public Service Commission; (collectively the "Signatories"), and for this Stipulation and Agreement ("Stipulation") respectfully state as follows:

I. Factual Background

1. On August 14, 2019, the Applicants filed their Joint Application for Approval of Indirect Merger by Stock Acquisition and Related Encumbrance, Waivers, and Motion for Expedited Treatment with the Commission. Applicants seek approval of a transaction by which Bidco will acquire from VENA 100% of the issued and outstanding common stock of TNAI, the parent of VEKC and VEMI, and thereby indirectly merge Bidco with VEKC and VEMI, as well as approval of the encumbrance on VEKC assets related to debt to be obtained for partial funding of the acquisition (collectively the "Transaction").

2. VEKC (formerly known as Trigen-Kansas City Energy Corporation, see File No. HN-2011-0286), is a public utility that provides steam heating service to the public in downtown Kansas City, Missouri, pursuant to regulation and supervision by the Commission. It is owned by TNAI, which has steam heat subsidiaries in four other states in addition to Missouri, two of which are regulated – Pennsylvania and Massachusetts (safety only). It has other subsidiaries in other states that provide chilled water, hot water, and land-fill-to-gas services.

3. VEMI (formerly known as Trigen-Missouri Energy Corporation) provides chilled water service to a limited number of customers by contract. The Commission held that VEMI's chilled water operations were unregulated activity in Case No. HM-2004-0618. VEMI is also owned by TNAI, which has similar chilled water operations in other states. VEMI's business has not changed substantively since the Commission's 2004 order. It now has 10 customers rather than 6. The customers are still large entities, some governmental. Service is still by contract and not offered at a set price or to the public at large. In 2004, the Commission held that it had never regulated chilled water service but noted that at another time with different facts it might conclude that it should. Applicants have requested that the Commission adhere to its 2004 decision.

4. In their application, Applicants represent that the Transaction will not be detrimental to the public interest because it will not have a negative impact on the regulated operations of VEKC, its rates, or its ability to continue to serve the public. Day-to-day management at VEKC will remain consistent and no specific changes in employment at VEKC are contemplated. The Transaction concerns upstream ownership and VEKC will continue to have access to capital and support necessary for its successful

operations and provision of public service. VEKC's regulated rates will not be impacted by the Transaction. VEKC will not seek to recover any Transaction costs in rates. VEKC will remain subject to Commission oversight and regulation and Missouri laws and regulations. VEKC will continue to have sound management and remain in a strong position to finance, maintain and improve its operations as a result of becoming associated with AIP S.A.S (as defined below).

5. Immediately following closing of the Transaction, Bidco will merge into TNAI, with the TNAI being the surviving entity (the "Post-Closing Merger"). After completion of the Post-Closing Merger, a new Delaware corporation to be formed prior to the closing of the Transaction shall hold one hundred percent (100%) of the issued and outstanding shares of TNAI. Antin Infrastructure Partners IV-A SCSp ("Fund A"), Antin Infrastructure Partners IV-B SCSp ("Fund B"), Antin Infrastructure Partners IV-C SCSp ("Fund C"),¹ and Antin Infrastructure Partners IV FPCI² ("Fund D" and collectively with Fund A, Fund B and Fund C, the "Antin Funds"), will own approximately 100% of the equity of TNAI through a series of subsidiaries.³ Management and control would ultimately reside with AIP S.A.S.

6. Applicants represent that: (i) As of March 31, 2019, AIP S.A.S's total current assets under management (including net asset value undrawn commitments) were

¹ Each of Fund A, Fund B and Fund C is a *société en commandite spéciale* formed in Luxembourg and is managed by AIP S.A.S.

² Fund D is a Fonds Professionnel de Capital Investissement formed in France and AIP S.A.S. is the management company of Fund D.

³ The management team and Antin are in discussions concerning (i) a possible investment by the management team and (ii) the issuance of possible equity incentives (i.e. profits interests) to the management team. Such discussions are ongoing. In any event, no member of the management team will own in excess of twenty percent (20%) of the voting interests. Such investment would occur at or after the closing of the Transaction.

approximately \$10.5 billion (€9.3 billion), including funds and co-investment vehicles; (ii) In 2018, AIP S.A.S. directed €631 million in capital expenditures spend across its current portfolio, and (iii) Since the firm's inception, AIP S.A.S. has overseen approximately €4 billion in capital expenditures spend across 23 investments.

7. The funding entities would supply equity to Bidco. AIP S.A.S. expects to arrange for up to \$770 million in committed long-term financing from a syndicate of banks and other institutions for the acquisition and development of TNAI, including a \$625 million acquisition term loan facility, a \$80 million capital expenditure facility, and a \$65 million revolving and letter of credit facility available to finance working capital and other general corporate purposes. Such credit facilities are expected to be secured in part by the assets and operations of VEKC. Applicants seek approval of such encumbrance as part of the Transaction.

8. Within 60 days after closing of the Transaction, VEKC's name will have to be changed to reflect it is no longer part of Veolia. Separate filings will be made outside of this case to address the name change and accompanying tariff revision.

9. Applicants have requested that the Commission waive the requirements of rule 4 CSR 240-4.017(1)⁴. Bidco participated in a bidding process for TNAI opened by VENA and the parties did not know until July 31, 2019 that there would be an acceptable bidder or that Bidco definitively would be the acquiring party. Accordingly, advance notice could not have been filed with the Commission regarding this matter. Good cause exists to waive the requirement of notice of intent to file this case, in that such a delay would be

⁴ Effective August 28, 2019, all of the Commission's regulations were transferred from Title 4, Division 240 to Title 20, Division 4240.

prejudicial and harmful to the Transaction. Applicants all verify that they had no communications with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. Applicants also seek waiver of: rule 4 CSR 240-10.115 to the extent it would require Applicants other than TNAI, VEKC and VEMI to include balance sheets and income statements with this application, given that such additional information is not pertinent to the operations of the regulated utility; and rule 4 CSR 240-2.060 to the extent it would require proof of authority to do business in Missouri for entities that will not be doing so. No party has objected to these waiver requests.

10. Applicants requested expeditious consideration and approval of the Transaction by November 12, 2019 to allow it to close in a timely manner. No party has objected.

11. The Signatories agree that the Commission should grant the relief requested by the Applicants, with a finding that the merger by stock acquisition and related encumbrances, as contemplated by the Joint Application filed on August 14, 2019, are not detrimental to the public interest, subject to the provisions of this Stipulation and Agreement including the following conditions:

II. Conditions of Approval

12. Taking into account the Applicants' sworn application stating that there will not be any detriment to the public interest arising from the Transaction, nonetheless TNAI, VEKC and their owners post-closing of the Transaction shall take all reasonable efforts to prevent any unforeseen potential detriment to the public interest should any such potential detriment be discovered. Any adverse financial effects of the Transaction shall be borne by TNAI's stockholders and not by Missouri rate payers.

13. TNAI and VEKC shall exclude all costs of the Transaction ("transaction costs") from VEKC's "above-the-line" utility accounts kept pursuant to rule 20 CSR 4240-80.020. Within 90-days following the Transaction's completion, TNAI will provide to Staff a preliminary accounting of the cost of the Transaction.

14. VEKC shall not seek to directly or indirectly include any transaction costs, transition costs or acquisition premium ("goodwill" or otherwise) costs arising from the Transaction in the cost of service for VEKC.

15. VEKC shall not seek an increase in the cost of capital for VEKC, established in its most recent rate case, as a result of the Transaction. Any net increase in the cost of capital VEKC seeks shall be supported by documented proof that: (a) the increases are a result of factors not associated with the Transaction; (b) the increases are a result of changes in business, market, economic or other conditions unrelated to the Transaction; and (c) the increases are a result of changes in the risk profile of VEKC unrelated to the Transaction. The provision of this condition is intended to recognize the Commission's authority to consider, in appropriate proceedings, whether the Transaction has resulted in capital cost increases for VEKC and to disallow such capital cost increases from recovery in VEKC rates.

16. As established by Missouri law, any lender of any debt of VEKC or its parent companies or assign thereof shall be subject to the full authority and jurisdiction of the Missouri Public Service Commission in the event that the lender (or their assign) asserts any right of ownership, operation or control over the collateralized assets or operations of VEKC.

17. While the obligations related to the Transaction remain outstanding, VEKC shall promptly submit to Staff copies of any quarterly compliance certificates that its owners will be providing to their lenders as a requirement of any debt that will be secured by VEKC, so as to report any material communications with the lenders concerning individual debt facilities or securities issued in connection with the Transaction, including but not limited to communications regarding financial covenants.

18. TNAI shall provide the most recent audited annual and unaudited quarterly financial statements with each annual report to the Commission made by VEKC, to the extent such documentation is otherwise available.

19. While the obligations related to the Transaction remain outstanding, TNAI shall promptly provide Staff with copies of any credit rating agency reports issued on TNAI or VEKC or their debt securities.

20. TNAI shall file with the Commission in Case No. HM-2020-0039 a description and organizational chart of the post-closing corporate structure, upon completion of the Transaction.

21. TNAI shall cause the maintenance of all material records pertaining to the Transaction for at least five years after closing of the Transaction and make them available to the Staff upon Staff's request.

22. TNAI shall separately maintain all material records of cost allocations to non-VEKC entities and provide them to Staff upon Staff's request.

23. TNAI shall identify any material costs borne by Missouri ratepayers related to these non-VEKC entities in the monthly surveillance reports sent to the Staff.

24. To the extent the good will assigned to TNAI is impaired and negatively affects VEKC's or TNAI's cost of capital as a result of the Transaction, all net costs associated with such decline, considering all other capital cost effects of the Transaction and impairment, shall be excluded from the determination of rates of VEKC.

25. All obligations in these conditions shall be deemed automatically transferred to the successor entity if there are any structural changes to the parent companies of VEKC.

26. That nothing in the Commission's order approving the Transaction shall be considered a finding by the Commission of the value of the Transaction for future rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their results in cost of capital in any later proceeding.

27. The Applicants represent that they do not currently plan to change the day-to-day management or employee staffing at VEKC as a result of the Transaction, and for two years from the closing of the Transaction TNAI and VEKC commit to notify Staff of any change in such plans at least 180 days prior to implementation of any such change.

28. This stipulation including the foregoing conditions shall continue to apply regardless of any change in name of any of the Applicants.

III. General Provisions

29. This Stipulation has resulted from negotiations among the parties, and the terms herein are interdependent and non-severable. If the Commission does not approve this Stipulation unconditionally and without modification, or if the Commission approves the Stipulation with modifications or conditions to which a Signatory objects, then this

Stipulation shall be void and none of the Signatories shall be bound by any of the agreements or provisions hereof.

30. The Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of this case in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting principle, ratemaking principle, or cost of service determination underlying or purported to underlie any of the issues provided for herein. Except to the extent necessary to implement the terms of this Stipulation, this agreement shall not be construed to have precedential impact in any other Commission proceeding.

31. Staff has entered into this Stipulation in reliance upon information provided to it by the Applicants, and this Stipulation is explicitly predicated upon the representations made by the Applicants.

32. In the event the Commission accepts the specific terms of this Stipulation without condition or modification, the Signatories waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §386.500, and their respective rights to judicial review pursuant to §386.510. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. These waivers do not apply to any issues not explicitly addressed by this Stipulation. The Signatories agree that any and all discussions, suggestions, or memoranda reviewed or discussed, related to this Stipulation shall be

privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

33. When approved by the Commission, this Stipulation shall constitute a binding agreement among the Signatories hereto. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein.

34. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigatory powers or other statutory powers which the Commission presently has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information.

WHEREFORE, the Signatories respectfully request the Commission:

(1) Approve the Transaction with a finding that the merger by stock acquisition and related encumbrances, as contemplated by the Joint Application filed on August 14, 2019 and pursuant to the provisions of this Stipulation and Agreement, are not detrimental to the public interest;

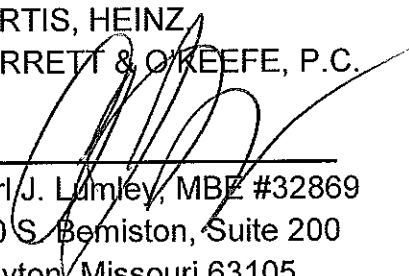
(2) Waive the requirements of 20 CSR 4240-4.017(1), 10.115 and 2.060 as described above;

(3) Confirm the prior ruling of no jurisdiction over VEMI;

(4) Approve the specific terms and conditions of this Stipulation and Agreement as a full and complete resolution of Case No. HM-2020-0039.

Respectfully submitted,

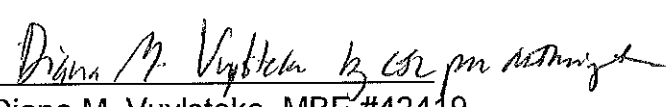
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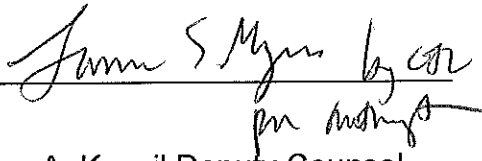
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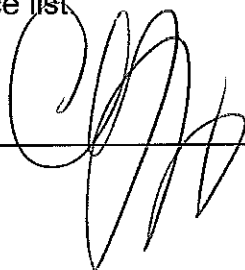
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Commission

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either mailed, faxed, or emailed
this 21 day of October 2019, to counsel of record and the persons listed on the below
service list.



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