

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of October, 2011.

In the Matter of)	<u>File No. HR-2011-0241</u>
Veolia Energy Kansas City, Inc.)	Tracking Nos. YH-2011-0532
for Authority to File Tariffs to Increase Rates)	and YH-2011-0533

**ORDER APPROVING AND INCORPORATING
STIPULATION AND AGREEMENT,
REJECTING TARIFFS, AND DIRECTING FILING OF NEW TARIFFS**

Issue Date: October 12, 2011

Effective Date: October 19, 2011

The Missouri Public Service Commission is rejecting the pending tariff and ordering Veolia Energy Kansas City, Inc. ("Veolia") to file new tariff sheets in compliance with this order. This order sets forth the terms of, and charges for, Veolia's steam service as proposed in the *Stipulation and Agreement* filed on September 29, 2011. The *Stipulation and Agreement's* terms include a revenue increase of approximately \$1,379,210, which accounts for a part of its current revenue deficiency. Veolia's customers include commercial office, government and institutional facilities, hospitality and event venue customers, and owners or managers of multi-unit residential property, but Veolia does not provide steam service directly to any residential customers.

The Commission makes each ruling on consideration of all allegations and arguments of each party. The Commission has considered the substantial and competent evidence upon the whole record but does not specifically address matters that are not dispositive. The Commission's findings reflect its determinations of credibility.

On those grounds, the Commission independently makes the following findings and conclusions.

Table of Contents

A. Appearances.....	2
B. Procedural Background	3
C. The <i>Stipulation and Agreement's</i> Provisions	4
D. Jurisdiction.....	5
E. Service.....	6
F. Rates.....	6
G. Expedited Filings	8
H. Decision.....	9

A. Appearances

For Veolia:

Diana M. Vuylsteke
Bryan Cave, LLP
211 N. Broadway, Suite 3600, St. Louis, Missouri 63102.

For Staff:

Jennifer Hernandez, Associate Staff Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, MO 65102.

For the City of Kansas City, Missouri:

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 30, P.O. Box 537, Jefferson City, MO 65102

For Kansas City Power & Light Company:

James M. Fischer
Fischer & Dority, P.C.
101 Madison Jefferson City, Missouri 65101

For Southern Union Company d/b/a Missouri Gas Energy:

Dean L. Cooper
Brydon, Swearngen & England, PC,
312 East Capitol, P.O. Box 456, Jefferson City, MO 65102.

Senior Regulatory Law Judge: Daniel Jordan.

B. Procedural Background

On April 22, 2011, Veolia filed schedules setting forth proposed terms of and rates for service (“tariffs”). The tariffs proposed a general rate increase of approximately 19 percent. The tariffs bore an effective date of May 22, 2011. By order dated May 4, 2011, the Commission suspended the tariff until February 16, 2012, the maximum time allowed by statute.¹ The suspension of the tariffs initiated a contested case.² A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities³ and a decision without a hearing,⁴ including by stipulation and agreement.⁵

By order dated May 2, 2011, the Commission directed that notice of this action be provided to the public and to certain parties and set a deadline for filing applications to intervene. The Commission granted applications to intervene from:

- The City of Kansas City, Missouri;
- Kansas City Power & Light Company; and
- Southern Union Company d/b/a Missouri Gas Energy.

The Commission established the test year relevant to Veolia’s rates by order dated May 19, 2011. As of September 2, 2011, the parties pre-filed all direct and rebuttal testimony, and filed no surrebuttal. The Commission scheduled an evidentiary hearing for October 17-21 and 24-28, 2011.

¹ Section 393.150, RSMo 2000.

² Section 393.150.1, RSMo 2000; and Section 536.010(4), RSMo Supp. 2010.

³ Sections 536.060(3) and 536.063(3), RSMo 2000.

⁴ Sections 536.060, RSMo 2000.

On September 29, 2011, Veolia, Staff, and the City of Kansas City filed the *Stipulation and Agreement*, signed by all parties except the following non-signatory parties:

- Kansas City Power & Light Company; and
- Southern Union Company d/b/a Missouri Gas Energy.

No party filed any opposition to the *Stipulation and Agreement* by the seven-day deadline that the Commission's regulations set,⁶ so the Commission cancelled the evidentiary hearing, and will treat the *Stipulation and Agreement* as unanimous.⁷

C. The *Stipulation and Agreement's* Provisions

The *Stipulation and Agreement* waives procedural requirements that would otherwise be necessary before final decision.⁸ The *Stipulation and Agreement* resolves all issues among the signatory parties and seeks an "order approving all of the specific terms and conditions of" the *Stipulation and Agreement*. The specific terms and conditions of the *Stipulation and Agreement* include the following.

As to some matters, the *Stipulation and Agreement* provides that the parties will separately discuss certain matters ("deferred matters"). Deferred matters appear in the *Stipulation and Agreement* as follows.

- 3(c) Single Metering Point for the City under LCS Tariff.
6. Payroll Distribution.
7. Corporate Cost Study.

⁵ *Id.* and 4 CSR 240-2.115.

⁶ 4 CSR 240-2.115(2)(B).

⁷ 4 CSR 240-2.115(2)(C).

⁸ Section 536.060, RSMo 2000.

This order includes no determination on the deferred matters in those paragraphs. As to the remaining matters, the *Stipulation and Agreement* submits a proposed resolution for the terms of and rates for Veolia's steam service.

In support of the *Stipulation and Agreement's* provisions, the signatory parties ask to enter all pre-filed testimony into the record, and the Commission will grant that request. The Commission's review of the record shows that substantial and competent evidence weighs in favor of the *Stipulation and Agreement's* provisions. Therefore, the Commission will incorporate the *Stipulation and Agreement's* provisions into this order and lift the suspension of the tariffs.

Because the Commission is lifting the suspension, and no party seeks an evidentiary hearing, the Commission need not convene an evidentiary hearing. Because no hearing is required on an undisputed matter,⁹ the Commission will decide this action as a non-contested case. Therefore, the Commission need not separately state its findings of fact.¹⁰

The Commission reports the following conclusions.¹¹

D. Jurisdiction

Because the Commission is a creature of statute, the statutes determine the Commission's jurisdiction.¹² The Commission's jurisdiction generally includes every public

⁹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

¹⁰ Section 536.090, RSMo 2000.

¹¹ Section 386.420.2, RSMo 2000.

¹² *State ex rel. Monsanto v. Public Service Comm'n*, 716 S.W.2d 791, 796 (Mo. banc 1986).

utility corporation,¹³ which includes heating companies.¹⁴ Heating companies include Veolia because Veolia provides steam heat service to 54 customers.¹⁵ Regulating Veolia's service and rates is specifically within the Commission's jurisdiction by the filing of tariffs.¹⁶ The filing of tariffs began this action.

E. Service

The standard for service is that "service instrumentalities and facilities as shall be safe and adequate [.17]" Upon review of the record and the *Stipulation and Agreement*, the Commission independently finds and concludes that the *Stipulation and Agreement's* proposed terms support safe and adequate service. Without further discussion, the Commission incorporates such provisions, as if fully set forth, into this *Report and Order*.

F. Rates

The standard for rates is "just and reasonable,"¹⁸ a standard founded on constitutional provisions, as the United States Supreme Court has explained.¹⁹ But the Commission must also consider the customers.²⁰ Further, the balancing of investor and consumer interests is not reducible to a single formula.²¹ Moreover, making such pragmatic

¹³ Section 386.250(5), RSMo 2000.

¹⁴ Section 386.020(43), RSMo Supp. 2010; Sections 393.140(1) and 393.290, RSMo 2000.

¹⁵ Section 386.020(20), RSMo Supp. 2010.

¹⁶ Sections 393.140(11), 393.150, and 393.290, RSMo 2000.

¹⁷ Section 393.130.1, RSMo Supp. 2010 and Section 393.290, RSMo 2000.

¹⁸ *Id.* and Section 393.150.2, RSMo 2000.

¹⁹ *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of the State of West Virginia*, 262 U.S. 679, 690 (1923).

²⁰ *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

²¹ *Id.* at 586 (1942).

adjustments is part of the Commission's duty.²² Thus, the law requires a just and reasonable end, but does not specify a means.²³

(i) Revenue Adjustment

Determining whether an adjustment is necessary requires comparing Veolia's current net income to Veolia's revenue requirement. Revenue requirement is the amount of money that a utility may collect per year, which depends on the requirements for providing safe and effective service at a profit. Those requirements are tangible and intangible.²⁴

The Commission determines the revenue requirement from the conventional analysis of the resources devoted to service. To provide service, a utility devotes resources, which the conventions of accountancy classify as either expense or investment as follows.

- Expenses include operation, replacement of capital items as they depreciate ("current depreciation"), and taxes on the return.
- Investment is the capital basis devoted to public utility service ("rate base") on which the utility seeks profit ("return" on investment).
- Return is therefore a percentage ("rate of return") of rate base.
- Rate base includes capital assets ("gross plant"), less historic deterioration of such assets ("accumulated depreciation"), plus other items.

Those components relate to each other in the following formula:

- Revenue Requirement = Expenses + (Rate Base x Return)

²² *Bluefield*, 262 U.S. at 692; *State ex rel. Associated Natural Gas Co. v. Public Serv. Comm'n*, 706 S.W.2d 870, 873 (Mo. App., W.D. 1985) (citing *Hope Natural Gas Co.*, 320 U.S. at 602-03).

²³ *Id.*

²⁴ *Hope Natural Gas Co.*, 320 U.S. at 603 (1944).

- Expenses = Operating Costs + Current Depreciation + Taxes
- Rate Base = Gross Plant – Accumulated Depreciation + Other Items

The rate of return depends on the cost of each component in the utility's capital structure.

But determining the revenue requirement is not the entire analysis. That is because the utility collects that amount from its customers. Customers are not all the same and need not receive the same treatment.

(ii) Rate Design

Rate design is how a utility distributes its revenue requirement among its various classes of customer. Customers vary as to the costs attributable to their service and their rates should reflect their costs respectively. Just and reasonable rates may account for such differences among customers.

(iii) Rates Proposed in the Settlement

A utility has the burden of proving that increased rates are just and reasonable²⁵ by a preponderance of the evidence.²⁶ The Commission has compared the evidence on the whole record with the *Stipulation and Agreement* as to both rate adjustment and rate design. The Commission independently finds and concludes that the rates proposed in the *Stipulation and Agreement* are just and reasonable rates. Therefore, the Commission incorporates those provisions, as if fully set forth, into this order without further discussion.

G. Expedited Filings

For those reasons, the Commission will reject the tariffs and order the filing of new tariff sheets in compliance with this *Report and Order* ("compliance tariffs"). Compliance

²⁵ Section 393.150.2, RSMo 2000.

²⁶ *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

tariffs constitute Appendix A to the *Stipulation and Agreement* and the parties request approval of such compliance tariffs effective on November 1, 2011. To accommodate that request, the Commission will order an expedited date for this order becoming effective,²⁷ the filing of compliance tariffs, and the filing of Staff's recommendation on the compliance tariffs.

H. Decision

The Commission makes the following rulings.

THE COMMISSION ORDERS THAT:

1. All pre-filed testimony and accompanying exhibits are entered into the record and such documents already on file, in the Commission's electronic filing and information system, shall suffice for that purpose without the filing of hard copy.

2. The provisions of the *Stipulation and Agreement* are approved and incorporated into this order as if fully set forth.

3. The Commission makes no determination as to the deferred matters described in the body of this order.

4. The suspension of the tariffs number YH-2011-0532 and YH-2011-0533 is lifted and tariff numbers YH-2011-0532 and YH-2011-0533 are rejected.

5. No later than October 19, 2011, Veolia shall file a new tariff ("compliance tariff") consistent with the *Stipulation and Agreement*.

6. The filing of the compliance tariff shall initiate a new action that shall receive a new file number.

²⁷ Section 386.490.3, RSMo 2000.

7. No later than October 26, 2011, the Commission's staff shall file its recommendation on the compliance tariff.

8. This order shall become effective on October 19, 2011.

9. This file shall close on October 20, 2011.

(S E A L)

Gunn, Chm., Davis, Jarrett,
and Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge

BY THE COMMISSION



Steven C. Reed
Secretary