

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

|                                   |   |                       |
|-----------------------------------|---|-----------------------|
| In the Matter of Veolia Energy    | ) |                       |
| Kansas City, Inc. for Authority   | ) | Case No. HR-2011-0241 |
| to File Tariffs to Increase Rates | ) |                       |

**MOTION FOR RECONSIDERATION OF ORDER GRANTING  
MOTION TO COMPEL, DENYING MOTION FOR PROTECTIVE  
ORDER, AND DENYING MOTION FOR EVIDENTIARY HEARING**

Comes now Veolia Energy Kansas City, Inc. (“Veolia”) and pursuant to 4 CSR 240-2.160, respectfully requests that the Missouri Public Service Commission (“Commission”) grant its Motion for Reconsideration of Judge Daniel Jordan’s *Order Granting Kansas City Power & Light’s (“KCPL”) Motion to Compel, Denying Veolia’s Motion for Protective Order, and Denying Veolia’s Motion for Evidentiary Hearing* dated July 18, 2011 (“Order”). Moreover, pursuant to 4 CSR 240-2.160(3), Veolia respectfully requests that the Commission stay the effective date of the Order insomuch that Veolia does not have to provide a response to KCPL’s Data Request 1 by July 22, 2011 so the Commission has time to evaluate Veolia’s arguments raised in this Motion for Reconsideration. Veolia respectfully requests that the Commission delay the effective date of Veolia’s production to KCPL by three business days after the Commission has made its ruling on the Motion for Reconsideration, and Veolia has been provided the opportunity to seek review from the Western District Court of Appeals. Veolia respectfully asks that the Commission rule on this Motion for Reconsideration in an expedited manner. In support of this request, Veolia states as follows:

## PROCEDURAL BACKGROUND

1. 4 CSR 240-2.160(2) states: “Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.”

2. On July 18, 2011, the Commission filed its Order addressing a discovery dispute between Veolia and KCPL. As the Order is procedural in nature, 4 CSR 240-2.160(2) is applicable. Veolia is filing its Motion for Reconsideration within the appropriate time period and, as described below, sets forth the grounds by which Veolia considers the Order to be unlawful, unjust, and/or unreasonable.

3. 4 CSR 240-2.160(3) states: “The filing of a motion for reconsideration shall not excuse any party from complying with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, unless otherwise ordered by the commission.” (emphasis added).

4. The Order required the following: “Veolia Energy Kansas City, Inc. shall complete compliance with Kansas City Power & Light Company’s Data Request 1 subject to 4 CSR 240-2.135 no later than July 22, 2011.” *See* Order, pg. 11. Pursuant to 4 CSR 240-2.160(3), the Commission has the discretion to excuse Veolia from complying with the Order.

5. As discussed below, some of the highly confidential data that Veolia has provided to the Missouri Public Service Commission Staff (“Staff”) thus far is data that involves non-jurisdictional, non-regulated operations. The Commission, much less KCPL, has no purpose in acquiring or reviewing this information. It is unduly burdensome and logistically impractical for Veolia to separate its jurisdictional data (i.e. information relating to processes regulated by the

Commission) from its non-jurisdictional data (*i.e.*, information relating to the processes not regulated by the Commission) by July 22, 2011. Moreover, Veolia is filing this Motion for Reconsideration because Veolia respectfully asserts that, for numerous reasons, the Order is an abuse of discretion. Accordingly, pursuant to 4 CSR 240-2.160(3), Veolia respectfully requests that the Commission stay the effective date of the Order insomuch that Veolia does not have to provide a response to KCPL's Data Request 1 by July 22, 2011 so the Commission has time to evaluate Veolia's arguments raised in this Motion for Reconsideration. Veolia respectfully requests that the Commission delay the effective date of Veolia's production to KCPL by three business days after the Commission has made its ruling on the Motion for Reconsideration, and Veolia has been provided the opportunity to seek review from the Western District Court of Appeals. Veolia respectfully asks that the Commission rule on this Motion for Reconsideration in an expedited manner.

## **ARGUMENT**

### **I. The Order is an Abuse of Discretion because the Order Did Not Evaluate Evidence Demonstrating that Many of Veolia's Responses to Staff's Data Requests Contain Information that is Not Regulated by the Commission.**

6. Staff has requested that Veolia respond to over 100 data requests, nearly all of which are designated as highly confidential pursuant to 4 CSR 240-2.135(4). In an effort to disclose information to Staff, Veolia has provided responses to all of Staff's requests, even though Veolia has raised numerous objections.

7. Specifically, Veolia has objected to each data request to the extent that it seeks information regarding Veolia's parent company or affiliates, and especially Veolia Energy Missouri. Reproduced below is language that Veolia has provided to Staff in its objections:

Staff's requests make numerous references to and specifically seek detailed operational, revenue, expense, cost, investment and customer information about affiliate Veolia Energy Missouri.

Veolia Energy Missouri provides chilling service and does not provide steam service regulated by the Commission. Veolia's application does not seek approval or authority to adjust Veolia Energy Missouri's unregulated rates and charges or recover from its customers any expense or investment attributable to Veolia Energy Missouri's unregulated business.

Veolia objects to providing of detailed operational, revenue, expense, cost, investment and customer information about Veolia Energy Missouri to the extent such information is sought or intended to be applied in any manner other than amassing the allocation of joint and common costs between the regulated steam operations of Veolia and the unregulated chilling service of Veolia Energy Missouri – both wholly owned subsidiaries of Thermal North America, Inc.

*See, e.g.,* paragraph 7 of Veolia's General Objections to Staff filed throughout this proceeding.

8. On July 1, 2011, in its Response to Motion to Compel Responses to Data Request and Motion for Protective Order Pursuant to 4 CSR 240-2.135(2)(C) and (5) ("Response to Motion to Compel"), Veolia discussed how an unregulated affiliate of Veolia, Veolia Energy Missouri, utilizes the steam produced by Veolia in the operation of a chilling service in Kansas City. *See* Response to Motion to Compel, ¶¶1, 3, 4, 6, and 11. Veolia discussed at length how KCPL has no basis to receive any data involving Veolia Missouri's unregulated operations, and if KCPL were to receive this information, how it would be harmful to Veolia's business interests.

9. On July 13, 2011, in its Request for Evidentiary Hearing on Motion for Protective Order and Motion to Compel Responses to Data Request ("Request for Evidentiary Hearing"), Veolia specifically stated that, if granted, KCPL's Motion to Compel would require Veolia to prepare the non-jurisdictional data for transmittal to KCPL. *See* Request for Evidentiary

Hearing, ¶5. Veolia also discussed how it is prepared to present facts discussing the costs that Veolia would have to incur if required to comply with KCPL's Motion to Compel. *Id.*

10. The Order does not even mention, much less discuss, that the Order will require Veolia to provide non-jurisdictional data from Veolia Energy Missouri to KCPL. Rather, the Order only states the following: "Similarly, the Commission considers Veolia's burden of compliance against the protection of KCP&L and the public. As KCP&L notes, and Data Request 1's text shows, the matters sought already exist. There could scarcely be a more convenient production than of matters already assembled so that balance weights in favor of compliance." *See* Order, page 8.

11. The Order ignores Veolia's argument that it is unduly burdensome and costly for Veolia to provide non-jurisdictional data to KCPL. Granted, the non-jurisdictional data regarding Veolia Energy Missouri's operations has already been provided to Staff. After filing its necessary objections, Veolia willingly provided the information to Staff out of good faith. Veolia had no reason to believe at the time it produced the non-jurisdictional data to Staff that KCPL would request, much less file a Motion to Compel, to receive Veolia's responses to all of Staff's data requests.

12. KCPL has no reason to acquire unregulated data. As Veolia is prepared to discuss in an evidentiary hearing, the costs associated with separating the non-jurisdictional data from the jurisdictional data are both burdensome and unnecessary. KCPL will be able to prepare its case without any prejudice if it does not receive Veolia's data for an unregulated affiliate.

13. Veolia renews its request for an evidentiary hearing to discuss these matters in greater detail. In the alternative, if the Commission insists that Veolia must provide all of its responses to KCPL-1 without an evidentiary hearing, Veolia requests that, at a minimum, Veolia

be allowed to exclude the non-jurisdictional data that it has provided to the Staff, including, but not limited to, Veolia's nontariff steam sales and the unregulated operations of Veolia Energy Missouri and its sales of chilling service.

**II. Since the Commission Liberally Grants Intervention, the Order is an Abuse of Discretion in that Veolia Should Not have been Expected to Object to KCPL's Intervention.**

14. The Order criticized Veolia for not objecting to KCPL's intervention, stating that Veolia "knew that competition was KCP&L's reason for intervening," and as a result, should have objected. *See* Order, pp. 7 – 8.

15. The Commission has routinely held that intervention in matters is liberally granted. *See, e.g., In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Gas Service*, 2010 Mo. PSC LEXIS 735, at \*3 (July 28, 2010) (holding that MoGas Pipeline LLC could intervene in the matter for, among other reasons, "because the Commission has liberally granted interventions"). In fact, in a 2005 Order, the Commission boldly stated that "any person" is allowed to intervene. *See In the Matter of the Application of Aquila, Inc.*, 2005 Mo. PSC LEXIS 197, at \*2 (Feb. 10, 2005) (holding that "[b]ut the Commission's intervention rules are more liberal, and allow any person to intervene").

16. Due to the Commission's clear preference of liberally granting parties to intervene, Veolia did not object to KCPL's intervention in this matter.

17. Moreover, Veolia hardly could have anticipated that KCPL would request that Veolia produce responses to all of the data requests that the Staff issued. It is both unjust and unreasonable for Judge Jordan to have expected Veolia to know, based upon KCPL's brief

statement of interest filed in its intervention paperwork, that KCPL would demand that Veolia produce all of this information Veolia provided to the Staff.

**III. The Order is an Abuse of Discretion because the Order Did Not Evaluate Veolia's Evidence Demonstrating the Competitive Business Environment Between Veolia and KCPL and that the Information Contains Trade Secrets.**

18. In Veolia's Response to Motion to Compel, Veolia not only discussed the unique environment surrounding KCPL and Veolia's competitive business relationship, but also explained how much of the information sought involved Veolia's trade secrets. *See* Response to Motion to Compel, ¶¶2 – 6, 8, and 11-15.

19. In Veolia's Request for Evidentiary Hearing, Veolia underscored that there were disputed factual allegations regarding whether the information requested constituted as trade secrets and whether KCPL has demonstrated a specific need for the documents requested. *See* Request for Evidentiary Hearing, ¶4.

20. The Order, quite simply, does not address these issues. Judge Jordan states the following regarding KCPL meeting its "burden" to seek the information: "Because KCPL is seeking discovery, establishing relevance is KCP&L's burden, but that burden is met in the text of Data Request 1, the breadth of which raises an inference – at least – that the matter sought is relevant to claims or defenses in this action." *See* Order, p. 9. The Order relies upon an inference stated in the Data Request that KCPL needs all of the responses to Staff's data requests to Veolia. The Order does not address why the information requested by KCPL does not contain trade secrets. The Order also does not address why KCPL needs all of Veolia's responses to Staff's data requests, and especially those pertaining to Veolia Energy Missouri. Veolia reasserts its request for a Protective Order as alternate relief.

21. After spending countless hours reviewing, organizing, and distributing responses to over one-hundred data requests to Staff, Veolia is very familiar with the information that KCPL is requesting. Veolia underscores its request for an evidentiary hearing to resolve the factual dispute as to whether the information requested has trade secrets. Veolia will present -- with confidence -- that this information contains trade secrets. Veolia is also prepared to present evidence further describing its competitive relationship with KCPL and how KCPL, if able to receive this information, would gain a significant competitive advantage over Veolia.

22. Veolia urges the Commission to consider the purpose of 4 CSR 240-2.135. KCPL is one of Veolia's key competitors. The provisions governing highly confidential information were drafted to prevent a competitor from acquiring sensitive business information that would jeopardize the stability of the company providing information to the Commission. The Order does not address how Veolia is being forced to provide confidential information to KCPL -- the exact entity that the regulation should, in theory, protect Veolia from disclosing sensitive data to.

## **CONCLUSION**

WHEREFORE based on the foregoing, Veolia respectfully requests that the Commission, pursuant to 4 CSR 240-2.160, grant its Motion for Reconsideration of Judge Jordan's Order Granting KCPL's Motion to Compel, Denying Veolia's Motion for Protective Order, and Denying Veolia's Motion for Evidentiary Hearing. Moreover, pursuant to 4 CSR 240-2.160(3), Veolia respectfully requests that the Commission stay the effective date of the Order inasmuch that Veolia does not have to provide a response to KCPL's Data Request 1 by July 22, 2011 so the Commission has time to evaluate Veolia's arguments raised in this Motion for



Reconsideration. Veolia respectfully requests that the Commission delay the effective date of Veolia's production to KCPL by three business days after the Commission has made its ruling on the Motion for Reconsideration, and Veolia has been provided the opportunity to seek review from the Western District Court of Appeals. Veolia respectfully asks that the Commission rule on this Motion for Reconsideration in an expedited manner.

Dated: July 21, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been transmitted by e-mail this 21<sup>st</sup> day of July, 2011, to all persons on the Commission's service list.

/s/ Diana Vuylsteke