

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Discovery Conference

July 1, 2011

Jefferson City, Missouri

Volume 3

In the Matter of:

Veolia Energy Kansas City,) File No. HR-2011-0241
Inc. for Authority to File) Tariff Nos. YH-2011-0532
Tariffs to Increase Rates) and YH-2011-0533

DANIEL JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:

Shelley L. Mayer, CCR
TIGER COURT REPORTING, LLC

1 APPEARANCES

2 MS. DIANA VUYLSTEKE

3 MS. CAROLE ILES

4 Bryan Cave LLP

5 211 North Broadway, Suite 3600

6 St. Louis, MO 63102

7 314.259.2543

8 FOR: Veolia Energy Kansas City, Inc.

9 MR. DEAN L. COOPER

10 Brydon, Swearingen & England

11 312 East Capitol Avenue

12 P.O. Box 456

13 Jefferson City, MO 65102

14 573.635.7166

15 FOR: Souther Union Company d/b/a Missouri Gas
16 Energy

17 MR. JAMES M. FISCHER

18 Fischer & Dority, PC

19 101 Madison, Suite 400

20 Jefferson City, MO 65101

21 573.636.6758

22 FOR: Kansas City Power & Light Company

23 MS. SARA KLIETHERMES

24 MR. BRETT PRENGER

25 Public Service Commission

200 Madison Street

P.O. Box 309

Jefferson City, MO 65102

573.751.6514

FOR: The Staff of the Missouri Public Service
Commission

1 JUDGE JORDAN: Let's go ahead and go on
2 the record. Commission is calling the case in
3 File No. HR-2011-0241. This is the application of
4 Veolia Energy for a rate increase.

5 I'll start by taking entries of
6 appearance. We'll begin with the applicant.

7 MS. VUYLSTEKE: Diana Vuylsteke and
8 Carole Iles of the law firm Bryan Cave LLP, 211 North
9 Broadway, St. Louis, Missouri 63102 appearing for
10 Veolia.

11 JUDGE JORDAN: And for Staff?

12 MS. KLIETHERMES: Thank you, Judge. For
13 the Staff of the Commission, Sara Kliethermes, 200
14 Madison Street, Jefferson City, 65101.

15 JUDGE JORDAN: Thank you. And you have a
16 representative of Staff with you?

17 MS. KLIETHERMES: Yes, this is Brett
18 Prenger.

19 JUDGE JORDAN: Thank you.

20 Mr. Cooper?

21 MR. COOPER: Dean Cooper, P.O. Box 456,
22 Jefferson City, 65102, appearing on behalf of
23 Southern Union Company doing business as Missouri Gas
24 Energy.

25 JUDGE JORDAN: Thank you. And with you?

1 MR. FISCHER: James M. Fischer, Fischer &
2 Dority PC, 101 Madison Street, Suite 400 in Jefferson
3 City, Missouri 651051, appearing on behalf of Kansas
4 City Power & Light Company.

5 JUDGE JORDAN: Thank you. Next?

6 MS. VUYLSTEKE: Thank you, your Honor.
7 These gentlemen are both with Veolia. This is Dan
8 Dennis, the vice president and general manager of
9 Veolia, and also Steve Carver who's the outside
10 expert for Veolia Energy.

11 JUDGE JORDAN: Okay. Thank you. Thank
12 you. It's now seven minutes after 10:00 and no one
13 has dialed in, so I'm going to go ahead and hang up
14 this connection right now because it's a little
15 distracting to what we're doing.

16 Okay. We're here for a discovery
17 conference. These are scheduled periodically
18 throughout these proceedings to deal with discovery
19 issues as they arise and make sure that discovery
20 issues don't delay the processing of this case.

21 I am -- I will introduce myself now on
22 the record. I am Daniel Jordan, I'm senior
23 regulatory law judge assigned to this action.

24 I am aware of one outstanding discovery
25 dispute which is a motion to compel, and we have a

1 response to that also on file. Will there be any
2 further -- will there be a reply from Kansas City
3 Power & Light? Would Kansas City Power & Light like
4 the chance to reply?

5 MR. FISCHER: Your Honor, we can file a
6 written reply or if you prefer, I can address it, but
7 we were planning to file a written reply.

8 JUDGE JORDAN: That's fine. I will await
9 your reply to -- since it is -- Mr. Cooper?

10 MR. COOPER: Judge, I believe Southern
11 Union will also be looking to file a reply to that
12 motion for a protective order. While we weren't
13 specifically a part of the original motion to compel,
14 the issues are similarly situated to an issue we're
15 going to have that's not quite as far along but may
16 be able to be addressed in this same motion by the
17 Commission, so.

18 JUDGE JORDAN: Okay. Will Staff be
19 filing anything on that?

20 MS. KLIETHERMES: I'm frankly not sure,
21 Judge.

22 JUDGE JORDAN: Okay. That's fine. Well,
23 since we have more than one reply outstanding, do the
24 parties feel a need to -- for guidance in scheduling
25 replies or shall we just stand upon the usual ten

1 days?

2 MR. FISCHER: Given the Fourth of July
3 holiday, it would probably be nice to at least have
4 the option of having the full ten days.

5 JUDGE JORDAN: Okay. It's Kansas City
6 Power & Light's motion, so.

7 MR. FISCHER: We do need to move the
8 issue along.

9 JUDGE JORDAN: Right.

10 MR. FISCHER: But if it will be helpful,
11 we'll file a reply.

12 JUDGE JORDAN: I think it would be
13 helpful. And so we'll just go ahead and say replies
14 in ten days then.

15 All right. I was not planning to make
16 any ruling on the record today, and I'll appreciate
17 replies and further arguments discussing these
18 issues.

19 I was planning to inquire a little bit as
20 to the motion, and I'll get to that in a minute.

21 First I want to see whether there are any
22 other discovery matters that the parties would like
23 me to address today.

24 MS. KLIETHERMES: Judge, I wouldn't -- I
25 wouldn't say that this rises to the level of a

1 dispute at this time; I just wanted to indicate that
2 should -- should Staff pursue any of these matters
3 further in the future, it's my understanding that
4 Veolia has objected to a number, if not all of
5 Staff's data requests, and has provided some
6 information on the vast majority of those, if not all
7 data requests. But we're, I think, still confirming
8 whether we've received adequate responses to all of
9 those. So I just didn't want to let silence
10 foreclose relief on that if we pursue the matter
11 further in the future.

12 JUDGE JORDAN: Well, I appreciate that
13 because it's to make sure the Commission is aware of
14 these things that we convene these conferences.

15 Does Veolia have something to say about
16 that?

17 MS. VUYLSTEKE: We only -- my only
18 response to that is that it is my understanding that
19 it's so far, with the caveat of what Ms. Kliethermes
20 said, that there have been adequate responses, at
21 least to the extent that the Staff has given us
22 input. And that the reason that we objected to the
23 data requests we have with all of them is because
24 they addressed the data request address issues that
25 we feel are related entirely to some of our

1 unregulated operations. And so in order to preserve
2 our rights on those, we objected, but subject to
3 those objection, we have been providing responses to
4 the Staff. And I believe most of those response have
5 been complete.

6 But if there's any issue, we'll certainly
7 address that right away with Staff.

8 JUDGE JORDAN: Okay. Anything further on
9 that?

10 MS. KLIETHERMES: No, no. As I said, I
11 don't think there's any problems on that right now.

12 JUDGE JORDAN: Well, good. Anything else
13 that anyone else wants to raise?

14 Mr. Cooper.

15 MR. COOPER: Yes, Judge. As I mentioned
16 before, we have a potential dispute. It hasn't
17 arisen to the level that we would have anything to
18 present to you today, but we may be working that
19 direction.

20 JUDGE JORDAN: Okay. Is that related to
21 the motion to compel or are we talking about
22 something else?

23 MR. COOPER: I think the issues are going
24 to be similar to the motion to compel.

25 JUDGE JORDAN: Okay.

1 MR. FISCHER: Yes, Judge. I guess I
2 needed to inquire of counsel for the Company, we have
3 a dispute that I think is being addressed as a part
4 of the pleadings that have been filed related to the
5 objection of the Company to providing outside experts
6 with the data requests from Staff.

7 My question would be: Is that issue
8 covered already or do we need to file another motion
9 to compel on that, that aspect of it? And if that's
10 the case, I'd like to have the obligatory meeting
11 with the judge before we file our motion to compel.

12 MS. VUYLSTEKE: No, that's fine. And I
13 think that, your Honor, you'll see from our response
14 to the motion that our position is, and it's outlined
15 and supported in our response, that an outside
16 consultant might not be appropriately on the list of
17 people that can -- this information can be disclosed
18 if that outside consultant is heavily engaged in
19 company decision making. And so even an outside
20 consultant in our view, it may be inappropriate to
21 disclose information to such an outside consultant.
22 It really depends on who that person is and some
23 facts regarding what they do on a day-to-day basis
24 for KCPL. And therefore we propounded some discovery
25 to KCPL regarding facts about what those employees or

1 outside consultants actually do. And I think those
2 responses will probably be due before the replies get
3 filed. And so, you know, if that helps and answers
4 your questions.

5 MR. FISCHER: Well, it's really just a
6 question of whether I need to file another motion to
7 compel or whether that issue has been teed up already
8 in your mind. Or -- and if I did need to file
9 another motion to compel, there's the rule that
10 requires a meeting with the judge before I do that
11 and I just wanted to take care of that, you know,
12 while we're here. Otherwise, I think it's teed up as
13 I understand the pleadings, but.

14 MS. VUYLSTEKE: I agree. I think it's
15 been presented.

16 JUDGE JORDAN: Okay. I think we can --
17 okay. So you're not planning to file another motion
18 to compel; is that correct?

19 MR. FISCHER: That's what I understand.

20 JUDGE JORDAN: I understand the issue
21 that you're discussing is the one mentioned in the
22 findings related to the motion to compel, that is, is
23 a certain outside expert really outside for these
24 purposes? Okay. I'm seeing nodding.

25 MS. VUYLSTEKE: Correct. Yes.

1 JUDGE JORDAN: Okay. Good. All right.

2 Anything else before I start my inquiries
3 on this motion to compel? I'm not seeing anything.
4 Okay.

5 I have taken a look at Veolia's response
6 to the motion to compel and I did have a few
7 questions that I -- that the parties may be able to
8 help me with on this issue. And I think one matter
9 that may help me with this discovery dispute is to
10 understand the nature of KCP&L's intervention, and
11 I'll tell you what I'm talking about here. Of course
12 KCP&L filed a motion to intervene. There was no
13 objection. The Commission granted the motion. I'm
14 having a hard time grasping KCP&L's interest in the
15 case. And I'll tell you where I'm coming from with
16 that. Generally the law doesn't provide protection
17 to anyone from economic competition, and for that
18 reason ordinarily, economic competition is not a
19 basis for intervention. I understand that the
20 practice is to allow intervention freely here, but
21 I'm wondering if there is some other basis for
22 KCP&L's presence in this case as a party other than
23 economic competition. Can you help me out with
24 that?

25 MR. FISCHER: As you mentioned, Judge,

1 historically competitors have been permitted to
2 intervene in these cases as Trigen for example
3 intervened in most of the KCP&L cases using outside
4 experts to look at highly confidential information of
5 KCP&L's, making proposals in KCP&L's cases related to
6 KCP&L's rate design particularly.

7 I think usually those went to questions
8 about what the cost of service of particular areas.
9 That's the kind of thing that -- that traditionally
10 competitors would look at, and that would be one of
11 the issues among others that KCP&L might look at,
12 whether those rate structures are appropriate,
13 whether the cost of service study was properly done
14 and -- and that would be the area that would be
15 relevant I think.

16 JUDGE JORDAN: Now, I'm unclear about --
17 as to that. Was Trigen and is Veolia also a customer
18 of KCP&L? Do they buy power for their operations?

19 MR. FISCHER: I suspect they were, but
20 they were intervening principally on the issues of
21 electric rate design not related to all electric
22 commercial customers. As a matter of fact, they
23 proposed that those be frozen which, after two cases
24 the Commission adopted that position.

25 JUDGE JORDAN: Okay. So --

1 MR. FISCHER: And they used the outside
2 expert of Joe Herz (ph.) and outside counsel, they
3 were provided with all the outside -- or all the
4 highly confidential information that KCP&L had given
5 to Staff as they had requested.

6 JUDGE JORDAN: Okay. So there may have
7 been some customer interest, but there was --

8 MR. FISCHER: As a matter of fact --

9 JUDGE JORDAN: -- other interest?

10 MR. FISCHER: -- in the last Trigen
11 cases, that issue was addressed and disposed of very
12 quickly by Judge Stearley.

13 I've got a copy of that order if you'd
14 like to have it.

15 JUDGE JORDAN: Oh, sure, come up.

16 MR. FISCHER: He ruled that the rule was
17 very clear, unambiguous and --

18 JUDGE JORDAN: And that's an order dated
19 May 14th, 2008.

20 Do you recall if -- do you recall whether
21 Kansas City Energy Corporation raised the issues that
22 Veolia is raising here?

23 MR. FISCHER: Very similar. It was
24 principally going to the -- whether inside, in-house
25 counsel could look at it, not so much on whether

1 outside counsel could look at it as they're now
2 contending.

3 And also the Commission ruled that the
4 rule -- if you look on page 7, the Commission says,
5 The Commission rules are clear and unambiguous with
6 regard to who can have access to highly confidential
7 information and how that information may be used.
8 Moreover the rule has adequate safeguards for
9 protecting access to the use of information and
10 Trigen's motion shall be denied.

11 JUDGE JORDAN: Okay. Anything else that
12 you want to tell me before I get the flip side of
13 this issue?

14 MR. FISCHER: I'd be happy to answer your
15 other questions.

16 JUDGE JORDAN: I think that's it for now.

17 Ms. Vuylsteke?

18 MS. VUYLSTEKE: Actually I will defer to
19 my co-counsel, Carole Iles who actually did most of
20 the work on this response on answering the questions
21 you have and maybe addressing some of the
22 Mr. Fischer's comments.

23 JUDGE JORDAN: Splendid. Counsel?

24 MS. ILES: Judge, I guess we would not
25 agree that the same arguments were raised in the last

1 case. It was generally the same issue, but the
2 approach taken by counsel for Trigen was a little
3 different than what we've taken in this case.

4 And essentially what we're showing you I
5 hope in our response to the motion to compel is that
6 the Commission's rules -- I think in the last case,
7 everyone kind of got focused on that provision that
8 allows the -- the disclosure of the highly
9 confidential information to in-house counsel, and all
10 the focus was on that part of the rule.

11 Meanwhile there's another paragraph of
12 the rule that states very clearly that in some cases,
13 it may be appropriate to have more restrictions on
14 the use of highly confidential information and we
15 think this is exactly that case.

16 Because as we've also pointed out in our
17 motion, you know, you can talk about Trigen or
18 Veolia's participation in KCP&L's case; it's really
19 not the same. It's not the same when you look at the
20 two companies and you say, Well, Trigen saw their
21 confidential information we so ought to be able to
22 see theirs. If you look at the way the businesses
23 are structured and what they do, and I think we
24 pointed this out in our response, Veolia is not in a
25 position to take away all Kansas City Power & Light's

1 customers. There's no way they could do that.
2 They're just not in a position to do substantial harm
3 to their business with any confidential information
4 they may glean. The opposite is not true.

5 You know, we know, you know -- I don't
6 want this to sound like I'm attacking anyone's
7 integrity, but it's just a matter of fact that if you
8 look at what could happen to Veolia if someone, not
9 necessarily counsel, but someone who happened to
10 learn information through counsel, perhaps even
11 inadvertently, you know, what could they do with that
12 information. Well, we think it's pretty clear they
13 would completely undermine Veolia's business if they
14 chose to.

15 JUDGE JORDAN: Okay.

16 MS. ILES: So I mean it's a different
17 situation. And yes, we are raising different
18 arguments. We think that both the Commission's rule
19 and the rules of civil procedure and -- that that
20 issue just wasn't addressed. I mean, we've looked at
21 the pleadings from the prior case and we know what
22 counsel for Trigen argued. He didn't even raise, you
23 know, the fact that there's this whole body of case
24 law out there that recognizes that you just don't
25 give trade secrets, and that's what we're talking

1 about when we're talking about highly confidential
2 information. You just don't give that to in-house
3 counsel; you don't give that to people who are in
4 competitive decision making positions in other
5 corporations.

6 JUDGE JORDAN: Anything else before I go
7 back to Mr. Fischer for one more round?

8 MS. VUYLSTEKE: I would just like to
9 briefly address your question, your Honor, about
10 intervention and Mr. Fischer's comment on that.

11 JUDGE JORDAN: Uh-huh.

12 MS. VUYLSTEKE: It's true that Veolia has
13 intervened in KCPL cases in the past and that Veolia
14 is a customer of KCPL, and rate design issues have
15 been raised. I do believe that Veolia, the nature of
16 Veolia's participation in the prior cases is very
17 different than what it seems KCPL is -- the scope of
18 what they're trying to do here.

19 KCPL has asked for the response to every
20 data request that the Staff has put in so far. It's
21 not tailored to any rate design issue. And beyond
22 that we think that it would be appropriate given the
23 competitive positions of the companies which is truly
24 unique I think in terms of the companies who appear
25 before the Commission, given the unique circumstances

1 of this case, it seems to us that there is no
2 legitimate interest that KCPL would have in the --
3 the body of responses that Veolia has made to the
4 Staff.

5 And I think it would be good policy for
6 the Commission at the outset when we have an
7 intervention pleading that doesn't state a position
8 on the issues, it's an early intervention, to ask the
9 Company to define the scope and purpose of its
10 intervention and what it seeks to gain with this
11 information.

12 JUDGE JORDAN: Well, I'm glad you
13 mentioned that, Counselor, because one of the
14 concerns I had about this was that Veolia is saying
15 now these people are competitors as parties. If
16 they -- if they get this discovery, it'll be
17 dangerous to our ability to conduct business because
18 they're competitors. There was no objection to their
19 motion to intervene.

20 MS. VUYLSTEKE: And, your Honor, when
21 they filed the motion to intervene, first of all the
22 Commission freely grants motions to intervene,
23 particularly at an early stage of the case. We did
24 not think it was appropriate or reasonable to object
25 to their intervention when their pleading itself

1 stated that they -- the case was at an early stage
2 and they were not in a position -- they could not
3 take a position on the issues in the case yet. And
4 so to us it wasn't clear what the purpose of their
5 intervention was and it seemed to us the wise course
6 to see what they intended to do in the case before we
7 actually objected. On what basis would we have
8 objected?

9 You know, now Mr. Fisher has stated on
10 the record that the purpose is, you know, perhaps
11 rate design, cost of service issues, and I think that
12 should be -- should be vetted because that was not in
13 their petition for intervention.

14 JUDGE JORDAN: Okay. Anything else
15 before I go back to Mr. Fischer.

16 Mr. Fischer, I'll give you the last
17 word --

18 MR. FISCHER: All right. Thank you,
19 Judge.

20 JUDGE JORDAN: -- on this before we have
21 replies filed.

22 MR. FISCHER: I think as Counsel for
23 Veolia pointed out in the pleading, in typical cases
24 over the last 25 years since this approach has been
25 used for this confidential information, all counsel

1 of record and outside experts have been given full
2 access to the confidential business information of
3 the company. Counsel also mentioned the rule that
4 allows for a higher level of protection and she
5 actually quotes it here on page 3 and 4 of her
6 pleading. But that particular rule says that they
7 may file a motion explaining what information must be
8 protected -- they haven't done that -- the harm to
9 the disclosing entity or the public that may result
10 from the disclosure of the information, and an
11 explanation of how the information may be disclosed
12 to the parties that require the information while
13 protecting the interest of disclosing entity or the
14 public.

15 They filed a response to our motion to
16 compel. They haven't filed the motion that's
17 required here that would put the burden on them, not
18 on KCP&L to explain why we think the information that
19 is typically provided to everybody in the case is
20 relevant.

21 JUDGE JORDAN: Right.

22 MR. FISCHER: So that's -- that would be
23 my -- my comment. But certainly, typically counsel
24 for all the parties are given access to this kind of
25 information.

1 JUDGE JORDAN: Okay.

2 MR. FISCHER: Inside or outside.

3 MS. ILES: Judge, could I just point out
4 one thing?

5 JUDGE JORDAN: Please.

6 MS. ILES: We have styled our response as
7 both a response and a motion for exactly that
8 purpose. We understand that the rule requires a
9 motion on our part, as does Rule 56.01. And
10 therefore this -- we'd ask that the Commission
11 consider this as our motion for that purpose.

12 JUDGE JORDAN: Okay. And anything else
13 from anyone else or anyone on this before we move
14 on?

15 While Veolia's counsel referring to its
16 representative, I'll just mention to everyone that I
17 hope the parties will continue to work to discuss
18 these matters and work them through to some solution
19 that they can all agree to. Because that will
20 probably suit the parties better than anything I
21 could order. There's a likelihood that I will --
22 that I or the Commission will issue an order that
23 will make someone or perhaps everyone unhappy. So I
24 hope the parties will continue their discussions.

25 Is there anything else on this motion?

1 MS. VUYLSTEKE: Okay. Your Honor, after
2 conferring with our expert and client, they had a
3 couple of points that they thought it would be
4 important for me to raise. You know, KCPL will be
5 filing a reply, and we understand that there is some
6 discovery that we have propounded to KCPL regarding
7 Mr. Giles and Mr. Steiner, and particularly Mr. Giles
8 as an outside expert, what his role is and if we
9 adduce those facts, we may want to bring those
10 forward to the Commission. And so that -- if we had
11 the opportunity to file something with you, we'd like
12 to be able to do that. We could do an affidavit or
13 even do a hearing, but there were will be facts that
14 we're bringing forward about the definition of what
15 really is an outside consultant.

16 And then the other issue we wanted to
17 raise is that we have provided the Staff with a great
18 deal of information regarding unregulated
19 operations. And in the event that we -- that Veolia
20 would be required to provide any data at all to KCPL,
21 our position is that we should not have to provide
22 the data that we provided to Staff. But in the event
23 that that were done, there would be a tremendous
24 burden to try to separate out the information we
25 provided to the Staff from the unregulated and

1 regulated operations. And it would be tremendously
2 burdensome to the Company. And so there may be
3 certain facts that we need to bring forward too
4 regarding the level of that burden which may be
5 relevant to your decision as well.

6 JUDGE JORDAN: Well, I'm glad you
7 mentioned that because I want to emphasize something
8 that I've noticed in practice before the Commission
9 and that is that I occasionally see motions,
10 sometimes for interlocutory orders, sometimes for a
11 final decision in which counsel will make assertions
12 that are not supported by the record. I mean, there
13 is no evidence, no evidence admitted into the record
14 to support them.

15 I want to remind everyone to be careful
16 that if you want me to find some kind of facts for
17 this, make sure you have admissible evidence for it.
18 And that could include -- my statement includes the
19 possibility of stipulating or admissions which
20 eliminate the need to have evidence admitted on the
21 record, okay? Happens all the time, but I can't find
22 facts that are not in the record.

23 Anything else before we leave this
24 matter? I'm hearing and seeing nothing.

25 Is there anything else that the parties

1 would like to raise before we go off the record?

2 MS. VUYLSTEKE: Just, your Honor, that
3 given your comment about, you know, factfinding, I
4 just wanted to let you know that we would be happy to
5 have a hearing if it's necessary on what can't be
6 done by affidavit or stipulation. It might be worth
7 considering having a hearing on the various motions
8 as well, and we're happy to do that if we need to.

9 JUDGE JORDAN: Mr. Fischer.

10 MR. FISCHER: One comment I would make,
11 Judge, even if the counsel doesn't have opportunity
12 to look at the data request answers provided to the
13 other parties in the case, particularly Staff, it's
14 hard to know whether you need to hire an outside
15 expert or a particular outside expert if you don't
16 know what the information is. And you know, we've
17 got a designated outside expert and we believe it's
18 an appropriate person, but it's possible that if
19 counsel is able to look at other -- at the data,
20 which typically happens, then you're in a position to
21 know whether you need to go find somebody else that
22 has a different expertise.

23 JUDGE JORDAN: Okay. Okay. And while
24 we're on that topic, I also want to mention that
25 there are certain thing that I believe counsel can

1 state and I can take as firsthand knowledge,
2 particularly in the discovery context. So for
3 example counsel can say, We received this on such and
4 such date. I think that's firsthand knowledge that
5 counsel can state. Otherwise I'll ask everyone to be
6 careful about the foundation of facts that they put
7 in their motions.

8 Is there something else?

9 MS. VUYLSTEKE: I just wanted to mention
10 that obviously Mr. Fischer is the outside counsel to
11 KCPL and considering -- I apologize, he is outside
12 counsel. And I think we feel his position at this
13 point is that the in-house counsel and the outside
14 counsel should receive responses to data requests.
15 Am I correct?

16 MR. FISCHER: Yes.

17 MS. VUYLSTEKE: I don't want to
18 mischaracterize your position. And I think that the
19 issue for us is simply who is the competitive
20 decision maker within the Company. And if
21 Mr. Fischer is not such, then certainly, you know, if
22 necessary, Mr. Fischer could look at data to
23 determine which data requests are really relevant and
24 necessary and which ones would need retention of
25 truly an outside expert to review, et cetera. So I

1 think that our argument would be KCPL has that
2 capability in Mr. Fischer.

3 JUDGE JORDAN: Okay. Anything else from
4 anyone?

5 All right. I hope that the parties are
6 able to come to some resolution on this without my
7 order, as I've mentioned. I think there ought to be
8 room for some kind of agreement on this. And as the
9 parties move towards this, I'd be grateful if they'd
10 keep me updated if there's progress in that direction
11 because I will otherwise be drafting an order that
12 will resolve these pending motions.

13 Mr. Cooper?

14 MR. COOPER: Your Honor, you are waiting
15 for replies?

16 JUDGE JORDAN: Correct. But I don't wait
17 until the last filing to start my drafting.

18 Anything else before we leave this
19 matter?

20 MS. ILES: In light of what you said,
21 your Honor, would it be appropriate if we, you know,
22 look -- review our filing and determine that we could
23 submit supporting affidavits? Would you accept them
24 at this point to support the allegations in our
25 motion?

1 JUDGE JORDAN: Well, that's a fair
2 question. If there's an affidavit submitted and if
3 it's not objected to, I don't see why I wouldn't take
4 it just like any other unobjected hearsay. I'd also
5 consider counter affidavits as well. That may be a
6 good way to resolve evidentiary issues and the
7 parties will probably want to discuss that as well.
8 If there are evidentiary issues to resolve,
9 admissions, stipulations, affidavits. And let me
10 also say, I think this will be closing, that the
11 Commission has the personnel that can help parties
12 come to resolutions on these matters, all of the
13 regulatory law judges are trained in medication and
14 maybe that resource can help the parties work
15 something out on this.

16 Are there any other matters before we go
17 off the record?

18 I'm not seeing anything, so I thank you
19 for your work and your filings; it'll help me revolve
20 this issue. And I think you helping the Commission
21 resolve this issue and for your work on trying to
22 resolve it without a Commission order.

23 Okay. Thank you. And with that we will
24 go off the record.

25 (Off the record.)

1 CERTIFICATE

2 I, Shelley L. Mayer, a Certified Court Reporter,
3 CCR No. 679, the officer before whom the foregoing
4 hearing was taken, do hereby certify that the
5 testimony which appears in the foregoing hearing was
6 taken by me to the best of my ability and thereafter
7 reduced to typewriting under my direction; that I am
8 neither counsel for, related to, nor employed by any
9 of the parties to the action in which this hearing
10 was taken, and further, that I am not a relative or
11 employee of any attorney or counsel employed by the
12 parties thereto, nor financially or otherwise
13 interested in the outcome of the action.

14
15
16 _____
17 Shelley L. Mayer, CCR
18
19
20
21
22
23
24
25