

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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 GRANTING EXPEDITED TREATMENT, DENYING STAY, AND SUSTAINING DISCOVERY RULINGS

Issue Date: July 22, 2011

Effective Date: July 22, 2011

The Missouri Public Service Commission sustains the rulings in the discovery order dated July 18, 2011 (“discovery order”)¹ and denies the stay requested in the motion for reconsideration (“motion”).² The Commission has granted the request for expedited treatment in the motion.

A. Expedited Treatment

Veolia Energy Kansas City, Inc. (“Veolia”) filed the motion on July 21, 2011. The discovery order is effective on July 22, 2011, and this action is subject to a statutory deadline.³ Therefore, the Commission will dispense with the regulatory response time.⁴ This order issues pursuant to the Commission’s express delegation of authority to “rule on any discovery dispute, including any motion to compel compliance with discovery, notwithstanding the provisions of Commission regulation 4 CSR 240-2.090(8).”⁵

¹ *Order Granting Motion To Compel, Denying Motion For Protective Order, and Denying Motion For Evidentiary Hearing.*

² *Motion for Reconsideration of Order Granting Motion To Compel, Denying Motion For Protective Order, and Denying Motion For Evidentiary Hearing.*

³ Section 393.150. All sections are in RSMo 2000.

⁴ 4 CSR 240-2.080(15).

⁵ *Order Suspending Tariff, Notice of Contested Case, and Order Delegating Authority*, issued May 4, 2011, effective May 11, 2011; page 3, first paragraph, last line; page 4, paragraph 4; Section 386.240, RSMo 2000.

B. Reconsideration

The motion seeks reconsideration⁶ of the discovery order's rulings. Those rulings:

- Denied the motion for protective order filed by Veolia.
- Granted the motion to compel of Kansas City Power & Light Company ("KCP&L").
- Denied the motion for evidentiary hearing filed by Veolia.

The matters subject to the discovery order are matters that Veolia has already assembled, are reasonably calculated to lead to the discovery of admissible evidence, and are subject to the protections of the Commission regulation on confidential information.⁷

Those rulings apply to Veolia and any non-utility affiliate. Such affiliate is an "other business" subject to limited jurisdiction of the Commission. The Commission may:

. . . inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of [steam heat] as distinguished from such other business . . .

as the statutes expressly provide.⁸

Veolia asks the Commission to protect its trade secrets from KCP&L's internal counsel and expert witness. Veolia cites federal case law allowing, but not requiring, such additional protections. The Commission exercised its discretion in favor of discovery under the Commission regulation on confidential information.

⁶ 4 CSR 240-2.160.

⁷ 4 CSR 240-2.135.

⁸ Section 393.140(12), made applicable to Veolia under Section 393.290.

The discovery order's rulings are similar to—but more limited than—an earlier case involving the same movants (“Trigen order”).⁹ Therefore, the broader Trigen order was more likely to cause harm than the narrower discovery order. But Veolia does not allege that any harm followed from the Trigen order.

As to the allegations that Veolia did make in its motion to compel, Veolia did not proffer evidence with the motion for protective order, and did not file the motion for evidentiary hearing, until:

- 12 days after Veolia filed the motion for protective order,
- 21 days after KCP&L filed the motion to compel, and
- 47 days after the service of Data Request 1.

Against further delay are:

- the statutory deadline cited above, and
- Veolia's notice of the issues since KCP&L's motion to intervene.¹⁰

Competition was the basis of KCP&L's motion for intervention.¹¹

Despite the Trigen order and Veolia's notice of a similar issue in this action, Veolia argues that the disputed discovery was unforeseeable and the discovery order was unreasonable, which the Commission finds unpersuasive.

⁹ In the Matter of the Tariff Filing of Trigen-Kansas City Energy Corporation to Implement a General Rate Increase for Regulated Steam Heating Service Provided to Customers in the Company's Missouri Service Area, File No. HR-2008-0300, *Order Denying Trigen-Kansas City Energy Corporation's Motion To Restrict Access To Highly Confidential Information* (May 14, 2008). In that order, the Commission found its confidential treatment regulation adequate on the same allegations and arguments. The Trigen order is attached to this order.

¹⁰ KCP&L filed its application for intervention on May 11, 2011. The Commission received no response. Therefore, the Commission granted the applications for intervention on May 24, 2011.

¹¹ Called an “application to intervene” in the Commission's regulation 4 CSR 240-2.075.

C. Ruling

Therefore, the Commission will sustain its rulings in the discovery order and request for stay.

THE COMMISSION ORDERS THAT:

1. The Commission has granted expedited treatment as requested
2. On reconsideration, the rulings in the *Order Granting Motion To Compel, Denying Motion For Protective Order, and Denying Motion For Evidentiary Hearing* are sustained.
3. Such rulings are incorporated in this order as if fully set forth.
4. The request for stay in the *Motion for Reconsideration of Order Granting Motion To Compel, Denying Motion For Protective Order, and Denying Motion For Evidentiary Hearing* is denied.
5. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 22nd day of July, 2011.