

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Discovery and Settlement/Technical Conference

September 7 & 8, 2011

Jefferson City, Missouri

Volume 5

In the Matter of:

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

DANIEL JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:

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22
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25

1 JUDGE JORDAN: Let's go on the record.

2 The Commission calls File No. HR-2011-0241 in the
3 matter of Veolia Energy Kansas City Inc.'s tariff to
4 increase rates.

5 I'm Daniel Jordan; I'm the regulatory law
6 judge assigned to this action. And we're here with
7 several purposes. They are a conference dealing with
8 discovery, technical issues, and settlement.

9 I'll begin by taking entries of
10 appearance. We'll start with the applicant.

11 MS. VUYLSTEKE: Diana Vuylsteke with
12 Bryan Cave, 211 North Broadway, Suite 3600,
13 St. Louis, Missouri 63102.

14 JUDGE JORDAN: Thank you. Do you have
15 some representatives of Veolia here with you?

16 MS. VUYLSTEKE: Yes, we do. We have a
17 number of representatives of the company and experts
18 as well. We have Keith Oldewurtel, who's vice
19 president for Veolia Energy for the midwest region.
20 We have Dan Dennis who's the vice president and
21 general manager for Veolia Energy Kansas City. And
22 we also have with us Steve Weafer who is the
23 controller for Veolia. And then we have Joe Herz and
24 Steve Kerner who are both retained outside experts.

25 JUDGE JORDAN: Thank you. And for Staff?

1 MS. HERNANDEZ: Jennifer Hernandez
2 appearing on behalf of the Staff of the Missouri
3 Public Service Commission. Our address is P.O. Box
4 360, Jefferson City, Missouri 65102.

5 And we have staff experts here this
6 morning: Brett Prenger, Karen Lyons, Carey
7 Featherstone, Tom Imhoff, Kim Cox, Patricia Gaskins,
8 Henry Warren, and Sean Furey. I believe that's all.
9 Thank you.

10 JUDGE JORDAN: Thank you. Anyone here
11 for the Office of Public Counsel?

12 Not hearing or seeing anyone for Public
13 Counsel, we'll move on to the intervenors.

14 MR. COMLEY: Appearing on behalf of the
15 City of Kansas City, Missouri, let the record reflect
16 the entries of appearance of Mark W. Comley; Newman,
17 Comley & Ruth, 601 Monroe, Suite 301, Jefferson City,
18 Missouri.

19 And today with me representing the City
20 is Mr. Robert Reeves, facilities manager for the
21 City; Mr. Keith Kraus, an expert witness that we've
22 hired for this case, and also Mr. Michael McGarry of
23 Blue Ridge Consulting Service.

24 JUDGE JORDAN: Thank you, Counsel.

25 MR. COMLEY: Howard Silgenic (ph.),

1 another one of our witnesses to join us later on the
2 phone.

3 JUDGE JORDAN: Very good. Thank you.

4 MR. COOPER: Dean Cooper from the law
5 firm Brydon, Swearingen & England, P.C.; P.O. Box
6 456, Jefferson City, Missouri 65102 appearing on
7 behalf of Southern Union Company doing business as
8 Missouri Gas Energy.

9 JUDGE JORDAN: And do you have any
10 representatives of your client with you today?

11 MR. COOPER: I do not.

12 JUDGE JORDAN: Okay.

13 MR. FISCHER: Let the record reflect the
14 appearance of James M. Fischer on behalf of Kansas
15 City Power & Light Company. My address is 101
16 Madison Street, Jefferson City, Missouri 65101.

17 I will have a witness, Chris Giles,
18 available by phone today and hopefully in person
19 tomorrow to discuss settlement.

20 JUDGE JORDAN: Thank you. I think that's
21 everyone. Anyone else?

22 Not seeing anyone, what I'm going to do
23 now is I'm going to close this phone line. This was
24 the number that I listed in my order setting the
25 conference, but the Commission is going to need it

1 for its agenda. And we are -- we have arranged for
2 witnesses to call in on a separate line, so I'm going
3 to close this line now.

4 All right. Well, let's start with
5 discovery issues. Are there any discovery issues
6 that I can help the parties with this morning?

7 MR. FISCHER: Yes, Judge. On behalf of
8 Kansas City Power & Light Company I'd like to raise a
9 couple of issues here. As you know, on July 18th,
10 2011, Veolia was ordered to answer KCPL data request
11 number one which simply requested copies of the Staff
12 DR's, and they were ordered to answer those by July
13 the 22nd, 2011. Veolia's request for a stay of the
14 order was denied on July 22nd, 2011, by yourself.
15 And then on August 24th, 2011, the Commission denied
16 Veolia's motion for reconsideration of the July 18
17 and the July 22nd order.

18 Veolia's efforts to reverse or stay the
19 order have been, as far as I know, unsuccessful in
20 the courts. However, as of today, KCPL still has not
21 received copies of 22 of the responses of Staff's
22 DR's related primarily to the chilled water issue.
23 And those are DR No. 7, No. 10, No. 15, No. 17, No.
24 20, No. 21, No. 22, No. 28, No. 39, No. 40, No. 41,
25 No. 42, No. 43, No. 44, No. 73, No. 75, No. 76, No.

1 83, No. 85, No. 105, No. 111, and No. 14.

2 I just wanted to bring that to the
3 Commission's attention and hopefully revolve the
4 issue.

5 JUDGE JORDAN: Thank you, Counselor. We
6 did have pending at the last conference a motion to
7 compel, and parties were going to report to me how
8 that worked out, whether the documents had been
9 delivered or not delivered.

10 Is it -- are these matters within that?

11 MR. FISCHER: We have discussed these.
12 We did receive work papers which of course have been
13 ordered or were typically to be provided within a
14 couple days. We did receive those. But these are
15 outstanding DR's which, my understanding, that has
16 not been -- we've not been given access to.

17 JUDGE JORDAN: Okay. And these are --
18 these are subject to the motion to compel --

19 MR. FISCHER: Yes.

20 JUDGE JORDAN: -- that the Commission has
21 already ruled on?

22 Okay. Anything from Veolia on this?

23 MS. VUYLSTEKE: Yes, your Honor. The
24 data requests at issue here relate to unregulated
25 operations of Veolia Missouri regarding their

1 chilling water operations. They contain highly
2 sensitive information that could result in great harm
3 to the company. We have responded diligently to
4 dozens and dozens of data requests from the Staff and
5 the City of Kansas City as well as KCPL and we will
6 continue to work diligently to try to resolve these
7 issues.

8 As you know we have filed a number of
9 motions for reconsideration and an application for a
10 rehearing, which has not yet been ruled upon, as well
11 as an appeal with the Missouri Court of Appeals for
12 the Western District. There are some of these
13 discovery requests that we think we could provide
14 some answers, some limited answers to in redacted
15 form, and we may be able to do that in the next day
16 or two.

17 But we would like to preserve our legal
18 rights with respect to some of the core information
19 that is outside -- in our view, outside of the
20 Commission's jurisdiction and await rulings on our
21 application for rehearing and our Western District
22 appeal.

23 JUDGE JORDAN: Okay. Now, I recall that
24 there was a -- there was a writ filed in the Western
25 District, and what was the result of that?

1 MS. VUYLSTEKE: It is still pending, your
2 Honor. There's a writ of prohibition and a separate
3 appeal regarding the Commission's order.

4 JUDGE JORDAN: Well, first let's talk
5 about the writ. Has the writ been decided?

6 MS. VUYLSTEKE: The writ of prohibition
7 was decided, and it did not issue, the Court did not
8 issue a writ.

9 JUDGE JORDAN: All right. Then there was
10 a notice of appeal, wasn't there? A motion to
11 dismiss pending in the Court of Appeals on that
12 notice of appeal?

13 MS. VUYLSTEKE: KCP&L filed a motion to
14 dismiss and that has not been ruled on.

15 JUDGE JORDAN: Mr. Fischer?

16 MR. FISCHER: My understanding, it was
17 the Commission Staff that did that, but.

18 JUDGE JORDAN: Okay. So what you're
19 telling me is that the notice of appeal is still
20 pending in the Western District? Is that what you're
21 telling me?

22 MS. VUYLSTEKE: That's correct, your
23 Honor.

24 And I think given the gravity of the
25 issues and critical, you know, other considerations

1 involved pertaining to Veolia's business, that I
2 would request that the judge allow the parties to
3 continue to try to work out what kind of information
4 can be provided and if there's any protection that
5 can be agreed upon for data that relates to the
6 completely unregulated business.

7 It's a small portion of the overall data
8 request that KCP&L requested. It's not a large part
9 of the information. And it's now confined to the
10 chilling water operation. They have everything
11 else.

12 MR. FISCHER: Judge, I would just suggest
13 that under the statutes of Missouri, a stay is not
14 issued because they filed an appeal or writ of review
15 or otherwise. Their writ of prohibition was denied.

16 I'm told by co-counsel that the mandate
17 may have come down on the writ itself, but under
18 this -- under 386.510 and 520, the stay is not going
19 in effect merely by filing the writ. And Veolia's
20 been unsuccessful in getting the Court to step in to
21 tell the Commission that its long-standing practice
22 is somehow unlawful.

23 One of the issues that is raised in our
24 witness's testimony is the fact that we believe that
25 chilled water is being used to subsidize regulated

1 steam service, and it's certainly a very relevant
2 issue.

3 JUDGE JORDAN: I don't know of any law
4 that prohibits the enforcement of order pending a
5 notice of appeal, especially on interlocutory order
6 off the top of my head.

7 Staff, anything to add on this?

8 MS. HERNANDEZ: With the Commission's
9 Staff filing motions in the Western District, I don't
10 know if I have authority to comment since I'm
11 representing the Staff, not the Commission in the
12 Western District matter.

13 JUDGE JORDAN: Well, I'll tell you what.
14 If KCPL wants to compel the production of these
15 documents, I'd undertake a motion in writing and I'd
16 address it in an expedited fashion.

17 MR. FISCHER: Judge, we did that prior to
18 the July 18th order. Be happy to reiterate that on
19 the record right now.

20 JUDGE JORDAN: Okay. What I want to do
21 is narrow down the matters that are still
22 outstanding. Are you telling me that they are
23 identical to what we decided in July?

24 MR. FISCHER: No. I'm telling you that
25 the data requests simply request copies of what the

1 Staff's DR's were, and the ones that have not been
2 answered are the ones I'd recite on the record.

3 JUDGE JORDAN: All right.

4 MR. FISCHER: I'd be happy to put it in
5 writing, but that's all the pleading would say.

6 JUDGE JORDAN: Okay. I think I
7 understand.

8 Well, then why don't I set a time for
9 Veolia to respond to that motion. I understand the
10 motion to compel is being made on the record. Am I
11 summarizing --

12 MR. FISCHER: Yes, sir.

13 JUDGE JORDAN: -- your statement
14 correctly?

15 And let's see. What is today. Today is
16 Wednesday. Veolia's set forth its arguments, and if
17 Veolia has any more authority they would like to
18 cite, I would like to see that say Friday, end of the
19 day Friday.

20 MR. FISCHER: I would suggest, Judge,
21 that all of these arguments have already been made
22 before the Commission, have been addressed three
23 times now by the Commission. And it looks to me like
24 the Company is simply defying the Commission's
25 orders.

1 JUDGE JORDAN: Well, and this is why I
2 thought a motion in writing would be helpful, so that
3 KCP&L could set forth the remedy that it wants the
4 Commission to order. I don't know what more we can
5 do.

6 MR. FISCHER: We'd reiterate the motion
7 to compel.

8 MS. VUYLSTEKE: Your Honor, we will
9 provide a response on Friday as you request. We also
10 will request a hearing on that motion, that the --
11 your Honor has not actually scheduled a formal
12 hearing on the motion to compel. We have requested
13 the opportunity to bring forward witnesses. Given
14 the gravity of this issue, we think it would be
15 useful.

16 We have our witnesses here to provide
17 some information to the Commission regarding the
18 basis for our withholding of some of the information
19 on nonregulated operations. I certainly don't think
20 it would need to be an extensive hearing, but since
21 the parties are here, if you could give us a little
22 time on the record, that would be very helpful.

23 JUDGE JORDAN: Well, here's my -- here's
24 my question for both the parties. I've -- the
25 Commission has already issued its motion denying a

1 protective order and granting a motion to compel.

2 Can the Commission do anything more for KCP&L? I
3 mean, asking -- for us to say the same thing, I don't
4 see that moving the case along any further.

5 MR. FISCHER: Judge, I guess under the
6 rules there are sanctions available. We've been
7 hesitant to go down that path because typically the
8 parties, especially regulated industries like Veolia,
9 like Kansas City Power & Light try to comply with the
10 Commission's orders.

11 This has been very clear. I mean, the
12 Commission has issued the order to compel. It's been
13 addressed twice since then and they've been in the
14 courts and they've been unsuccessful.

15 Apparently in spite of the Commission's
16 orders, the Company does not intend to answer these
17 questions or give us access. It's -- and --

18 JUDGE JORDAN: That's why -- that's why
19 I'm focusing on the remedy that KCP&L would like to
20 have, because we've already issued our motion to
21 compel.

22 MR. FISCHER: I guess if the Company is
23 going to say they are not going to provide this
24 information even though the Commission has clearly
25 stated that it should be provided, then that would be

1 helpful to know that. And then perhaps we should
2 then file some other motion. But it's very
3 unfortunate we're in this situation.

4 JUDGE JORDAN: I have to agree.

5 MS. VUYLSTEKE: Your Honor, we'd be glad
6 to address KCPL's arguments regarding what remedy
7 they believe they're entitled to regarding the issue
8 of nonregulated operations, but the Commission and
9 your Honor has the discretion to revisit these issues
10 at any time. You have the discretion to take
11 information from the parties regarding their
12 positions and evidence supporting our position. We
13 have not had that opportunity. And since we've
14 provided almost all of the data requests, I would
15 once again reiterate our request for a hearing, which
16 is something that hasn't been scheduled on our motion
17 to compel --

18 JUDGE JORDAN: What would we do at a
19 hearing?

20 MS. VUYLSTEKE: We would like to provide
21 evidence as to why the nonregulated operations are
22 not relevant to this case. That there is no proper
23 purpose under discovery rules to require Veolia to
24 produce this information outside of the Commission's
25 authority. We have evidence also to demonstrate why

1 that's not relevant through the testimony of our
2 witnesses.

3 JUDGE JORDAN: Well, I don't think
4 there's any doubt as to what information is at issue.
5 The parties agree that's what's been asked for, don't
6 they?

7 MS. VUYLSTEKE: What we don't agree to is
8 the facts that support that this is not unregulated
9 and not relevant to the case.

10 JUDGE JORDAN: Well, I don't -- I think
11 the type of information the parties agree on, as to
12 whether it's relevant, that sounds to me more like an
13 argument of law. I think we've already been down
14 this road. I think the Commission's already issued
15 its motion to compel and I don't think it has any
16 more to say about that.

17 So if KCP&L wants to file a motion in
18 short order, what I'll do is I'll set an expedited
19 response date for it.

20 MR. FISCHER: Thank you, Judge.

21 JUDGE JORDAN: You're welcome.

22 Is there anything else that I can help
23 the parties with? Not seeing anything.

24 All right. So I want to recite on the
25 record that what we'll do now is we'll soon go off

1 the record; I'll leave the room. The parties can use
2 this phone line to make contact with witnesses who
3 are absent but will be calling in. And the rest of
4 this day and tomorrow will be spent in conference
5 over technical matters and hope-- hopefully, we hope,
6 work towards settlement, settlement of these issues.

7 I will be available all of today and
8 tomorrow if the parties need me to help with
9 anything.

10 Is there anything else before we go off
11 the record and I leave the room?

12 Not hearing anything, then I will adjourn
13 this part of the conference and we'll go off the
14 record.

15 (Off the record.)

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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 witness whose testimony appears in the foregoing
6 hearing was duly sworn by me; that the testimony of
7 said witness was taken by me to the best of my
8 ability and thereafter reduced to typewriting under
9 my direction; that I am neither counsel for, related
10 to, nor employed by any of the parties to the action
11 in which this hearing was taken, and further, that I
12 am not a relative or employee of any attorney or
13 counsel employed by the parties thereto, nor
14 financially or otherwise interested in the outcome
15 of the action.

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18 _____
19 Shelley L. Mayer, CCR
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