

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held in Jefferson  
City on the 26<sup>th</sup> day of March,  
2014.

In the Matter of Veolia Energy	)	<b><u>File No. HR-2014-0066</u></b>
Kansas City, Inc. for Authority	)	Tracking Nos.: YH-2014-0240,
To File Tariffs to Increase Rates	)	YH-2014-0242

**ORDER GRANTING MOTION TO INTERVENE**

Issue Date: March 26, 2014

Effective Date: April 4, 2014

On November 27, 2013, Veolia Energy Kansas City, Inc. (“Veolia”) filed revised tariffs to increase rates. On December 3, 2013, the Commission issued an order suspending Veolia’s tariff and setting a December 24, 2013 deadline for the submission of applications to intervene. Truman Medical Center, Inc. (“TMC”) filed a petition to intervene on February 3, 2014. On February 26, 2014, the Commission issued an *Order Denying Application to Intervene*, which denied the petition, but set a March 3<sup>rd</sup> deadline for TMC to re-file a motion to intervene and show good cause for its failure to file a motion prior to the December 24, 2013 deadline. TMC timely filed an Amended Petition to Intervene Out of Time. On March 10, 2014, Veolia filed its *Objection to Amended Application to Intervene Out of Time and Opposition to Appearance of Counsel*.<sup>1</sup>

Commission Rule 4 CSR 240-2.075(3)(A) allows for the granting of a motion to intervene if the Commission finds the proposed intervenor has an interest different from that of the general public which may be adversely affected by a final order in the case. As a hospital system which is the largest provider of uncompensated health care in Missouri,

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<sup>1</sup> On March 11, 2014 Veolia filed Exhibit A, Affidavit of Charles P. Melcher.

TMC estimates it pays approximately \$150,000 per month to Veolia for steam service. The Commission finds TMC has an interest different from that of the general public that may be adversely affected by a final order in this case.

In addition to determining if TMC meets the requirements of 4 CSR 240-2.075(3)(A), since TMC's application was filed after the December 24<sup>th</sup> deadline, Commission Rule 4 CSR 240-2.075(10) requires a showing of good cause for the late filing.<sup>2</sup> In its Amended Petition, TMC states it had no knowledge of the Commission's December 3, 2013 order setting the intervention deadline. TMC states that it was unaware of the Veolia rate case until it was contacted by an outside consultant during the second week of January. While TMC acknowledges receiving a letter from Veolia, dated December 2, 2013, which informed customers Veolia was "in the process of filing a rate case" with the Commission to "take effect in the fall of 2014,"<sup>3</sup> TMC points out that nothing in Veolia's letter indicated the rate case had already been filed. In its Objection to TMC's application, Veolia states that TMC was notified of the anticipated rate case filing during an August 29, 2013 meeting between representatives for both entities. While a factual dispute exists between TMC and Veolia as to whether a proposed rate case was even discussed at the August 29, 2013 meeting, Veolia presents no facts to dispute TMC's claim of lack of notice of Veolia's November 27, 2013 filing for a rate increase. Instead, Veolia only states that it informed TMC's representatives that it planned to file a rate increase case with the Commission in October 2013.<sup>4</sup> Based on the facts presented, the Commission finds good cause exists for TMC's failure to comply with the December 24, 2013 deadline.

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<sup>2</sup> 4 CSR 240-2.075(10) also requires an entity seeking to intervene accept the record established in the case. TMC acknowledged its acceptance of the record in ¶ 9 of its Amended Petition.

<sup>3</sup> Exhibit A, *Truman Medical Center's Amended Petition to Intervene Out of Time*.

<sup>4</sup> See ¶2 of Affidavit of Charles P. Melcher. It is noted that while Mr. Melcher's Sworn Statement identifies it took place in the County of Cook in the State of Illinois, the attesting Notary Public's seal is for the Commonwealth of Massachusetts.

Veolia also opposes the appearance of TMC's counsel in this matter and requests the Commission issue an order requiring Polsinelli PC to withdraw from representing TMC. Veolia states that by representing TMC, Polsinelli PC is violating an "Outside Counsel Agreement" in which Polsinelli PC agreed to "not represent clients adverse to Veolia or its affiliates."<sup>5</sup> Veolia also asserts that Polsinelli PC is violating Rule 4-1.7 of the Missouri Rules of Professional Conduct, which restricts a lawyer from representing a client in a matter adverse to a current client without first obtaining a conflict waiver.<sup>6</sup> TMC disputes the existence of such a conflict, raising both factual and legal issues.

While Veolia correctly points out that Commission Rule 4 CSR 240-4.020(14)(E) requires a law firm appearing before the Commission to comply with all the Missouri Rules of Professional Conduct, it is not clear that a violation of those rules exists. If Polsinelli PC's representation of TMC creates a conflict of interest justifying disqualification, the issue has not been fully presented for determination. The issue that has been properly submitted and fully briefed for the Commission's consideration is TMC's Motion to Intervene, which the Commission has considered. Because the possible conflict of interest is separate and distinct from TMC's request to intervene and is not relevant to the Commission's decision on intervention, the Commission may properly rule on intervention without addressing it. The Commission will grant TMC's motion to intervene.

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**THE COMMISSION ORDERS THAT:**

1. The Motion to Intervene filed by Truman Medical Center is granted.

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<sup>5</sup> Footnote to Veolia's Objections.

<sup>6</sup> Comment 34 on Rule 4-1.7 explains that a lawyer representing an organization does not necessarily also represent that organization's affiliates unless the lawyer and the client have an understanding that the lawyer will refrain from representation adverse to interests of the client's affiliates, among other things.

2. This order shall become effective on April 4, 2014.

**BY THE COMMISSION**



*Morris L Woodruff*

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
and Hall, CC., concur.

Burton, Regulatory Law Judge