

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

In the Matter of Veolia Energy Kansas City, Inc.)
for Authority to File Tariffs to Increase Rates)

Case No. HR-2011-0241

**KANSAS CITY POWER & LIGHT COMPANY
MOTION TO COMPEL RESPONSES TO DATA REQUEST**

Kansas City Power & Light Company (“KCP&L”), submits its Motion to Compel responses to KCP&L’s data request no. 1. In support thereof, KCP&L states:

BACKGROUND

1. On January 11, 2011, Veolia Energy Kansas City, Inc. (“Veolia”) filed an application for a rate increase in the above-captioned proceeding. On May 11, 2011, KCP&L submitted an application to intervene in this proceeding. No objections were made to KCP&L’s application and on May 24, 2011, the Commission issued an order granting KCP&L’s application.

2. On May 27, 2011, KCP&L submitted data request no. 1 to Veolia requesting copies of all data requests and responses offered by Veolia in this case.

3. On June 3, 2011 Veolia submitted its objections to data request no. 1. A copy of the data request and Veolia’s objection is attached as Exhibit 1. Veolia indicated that a response would be provided to KCP&L, subject to its objections.

4. Missouri Public Service Commission Staff (“Staff”) has issued over 100 data requests to Veolia in this case.

5. On June 16, 2011 Veolia’s counsel emailed Veolia’s response to five staff data requests.

6. On June 17, 2011 undersigned counsel left a message for Veolia's counsel regarding the status of the remaining responses to staff data requests.

7. On June 20, 2011, counsel for Veolia indicated that the missing responses were highly confidential and that Veolia would not provide them to counsel for KCP&L.

8. On June 22, 2011, a conference was held with Regulatory Law Judge Jordan pursuant to 4 CSR 240-2.090(8).

MOTION TO COMPEL

The Commission's rule provides access to Highly Confidential information to attorneys of record.

9. Veolia's claim that attorneys of record are precluded from having access to highly confidential information is not supported by the Commission's rule. To the contrary, the rule is perfectly clear on this point. The rule¹ provides:

Highly confidential information may be disclosed only to the attorneys of record, or outside experts that have been retained for the purpose of the case.

(A) Employees, officers, or directors of any of the parties in the proceeding, or any affiliate of a party, may not be outside experts for the purposes of this rule.

* * *

(E) Subject to subsection (4)(B), the party disclosing information designated as highly confidential shall serve the information on the attorneys for the requesting party. (emphasis added)

10. Section A quoted above makes an express distinction between in-house and outside experts, *i.e.*, in-house experts do not have access to highly confidential information; outside experts

¹ 4 CSR 240-2.135(4).

hired for the case do have such access. There is no such distinction in all of Rule 4 CSR 240-2.135(4) for attorneys of record. The Commission could have treated experts and attorneys of record similarly in this regard when it promulgated the rule, but it did not. A plain reading of the rule clearly conveys that attorneys of record have access to highly confidential information, period. It should also be noted that Rule 4 CSR 240-2.135(16) requires attorneys to keep highly confidential information secure and prevents them from using highly confidential information outside of the case in which it was provided.

11. Veolia's continuing failure to provide data request responses prejudices KCP& L. KCP&L is in the process of selecting an outside expert for this case. Counsel needs to review the data request responses to ascertain what specific skills the Company will require of its expert. Each day Veolia refuses to provide its data request responses hinders KCP&L in the preparation of its rebuttal testimony. If necessary, KCP&L will move for additional time to submit its rebuttal testimony on this basis.

12. In Veolia's last rate case (HR-2008-0300, Veolia was known as Trigen at that time), Veolia by motion attempted to restrict KCP&L in-house counsel from accessing highly confidential information. The Commission rejected this motion stating that 4 CSR 240-2.135 is clear and unambiguous with regard to who can have access to highly confidential information and how that information may be used.² The Commission also noted that the rule has safeguards for protecting access to and the use of highly confidential information. Even though Veolia's position in the current case is broader (it refuses to provide information to any KCP&L counsel, whether in-house

² See *Order Denying Trigen-Kansas City Energy Corporation's Motion To Restrict Access To Highly Confidential Information*, p. 7, Case No. HR-2008-0300 (May 14, 2008).

or not) than its position in its previous rate case, the Commission's findings on the rule and rejection of Veolia's argument is applicable in this case.

WHEREFORE, KCP&L respectfully requests that the Commission order Veolia to produce a response, including all highly confidential information, to data request no. 1 to KCP&L's attorneys of record immediately.

Respectfully submitted,

/s/ Roger W. Steiner

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ATTORNEY FOR
KANSAS CITY POWER & LIGHT COMPANY

Dated: June 22, 2011

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, this 22nd day of June, 2011 to all counsel of record in this case.

/s/ Roger W. Steiner

Roger W. Steiner



Diana M. Vuylsteke
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June 3, 2011

VIA E-MAIL

Tim Rush
Kansas City Power & Light
1200 Main Street
Kansas City, MO 64141

Re: Veolia Energy Kansas City, Inc. ("Veolia"), Case No. HR-2011-0241
Veolia's Objections to KCP&L Data Request 1

Dear Tim:

This letter and attached document are to provide Veolia's Objections to Kansas City Power & Light's ("KCP&L") Data Request No. 1 dated May 27, 2011. Veolia's General Objections are set forth in this letter and Veolia's Specific Objections are attached to this letter and incorporated herein by reference.

GENERAL OBJECTIONS

1. Veolia objects to the Data Request to the extent that the response sought is overly broad, unduly burdensome, oppressive, and compliance with the request would be cost-prohibitive, impracticable and/or impossible.

2. Veolia objects to the Data Request to the extent that the request seeks information that is neither relevant, material, nor reasonably calculated to lead to the discovery of admissible evidence in Case No. HR-2011-0241.

3. Veolia objects to the Data Request to the extent that the request seeks information and documents protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or doctrine. Nothing contained in these Objections is intended as a waiver of any applicable privilege or doctrine.

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4. Veolia objects to the Data Request to the extent the request seeks information that is a trade secret, commercially sensitive, or confidential financial information, the release of which may be injurious to Veolia.

5. Veolia objects to the Data Request to the extent the request is overbroad, vague, ambiguous, confusing, or fails to describe the information sought with sufficient clarity or specificity to enable Veolia to provide responsive answers.

6. Veolia objects to the Data Request to the extent that the request calls for information or documents already in the Staff's possession or which is readily obtainable from another source that is equally available to Staff.

7. Veolia objects to the Data Request to the extent that it seeks information regarding its parent company or affiliates.

In KCPL-1, KCP&L asks Veolia to provide copies of all data requests and responses offered by Veolia in this rate case. Staff's requests to Veolia 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 assessing 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.

Additionally, Veolia objects to the characterization of the services offered by Veolia Energy Missouri as "chilled water" in multiple Staff Data requests. Veolia Energy Missouri has never offered chilled water service to any customers. To the extent Staff's characterization that Veolia Energy Missouri is providing "chilled water" is intended to again raise an argument that Veolia Energy Missouri's chilling service should be regulated by the Commission, Veolia objects to the use of its responses to Staff's data requests.

8. These General Objections are applicable to, and incorporated in, each of the Objections below as if specifically set forth therein. The failure to repeat, renew or reassert any of the General Objections or the assertion of other objections in no way implies a failure to assert each and every General Objection in any way.

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Veolia reserves the right to revise, correct, supplement or clarify any of the Objections set forth above.

Sincerely,

/s/ Diana M. Vuylsteke

Diana M. Vuylsteke

Attachment

**Missouri Public Service Commission
Case No. HR-2011-0241
Response of Veolia Energy Kansas City, Inc. to
Data Request No. KCPL - 1
Date Received: May 27, 2011
Objection Deadline: June 3, 2011
Response Due: June 11, 2011**

KCPL DATA REQUEST NO. 1

Please provide KCP&L copies of all data requests and responses offered by Veolia Energy in Case No. HR-2011-0241. Send the copies to:

Tim Rush
1200 Main Street
Kansas City, MO 64141
Tim.rush@kcpl.com
816-556-2344

OBJECTION:

Veolia objects to the extent that this data request seeks information about its parent company and any other affiliated companies/divisions for the reasons set forth in Veolia's General Objections. The information sought would have no bearing on the subject matter of this case, which is Veolia's application for a general rate increase for steam service.

In addition to its General Objections, Veolia objects to this request to the extent that the information requested is privileged pursuant to the attorney work-product and the attorney-client privilege. Importantly, many of Veolia's responses to Staff's data requests are designated as "Highly Confidential" pursuant to 4 CSR 240-2.135 (1) (B) and/or "Proprietary" pursuant to 4 CSR 240-2.135(1)(A). Per 4 CSR 240-2.135(4), "Highly Confidential" information may only be disclosed to the attorneys of record or to outside experts that have been retained for the purpose of the case. Per 4 CSR 240-2.135(3), "Proprietary" information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

Veolia further objects to the extent that the request is overbroad, burdensome, cost-prohibitive, and impractical, and would place an undue burden upon Veolia. Veolia further objects to the extent that the request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, a response will be provided to KCPL-1.