BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Veolia Energy Kansas City, Inc.	)	
For Authority to File Tariffs to Increase Rates.	)	File No. HR-2011-0241

MGE'S MOTION TO COMPEL VEOLIA TO RESPOND TO DATA REQUESTS

COMES NOW Southern Union Company d/b/a Missouri Gas Energy ("MGE"), and, as its Motion to Compel Veolia to Respond to Data Requests, states as follows to the Missouri Public Service Commission (the "Commission"):

DATA REQUESTS AT ISSUE

1. On June 10, 2011, MGE served the following data requests[1] on Veolia Energy Kansas City, Inc ("Veolia"):

> **DR 1-1:** Please provide MGE with a copy of Veolia's responses to Commission Staff data requests 67.0 and 84.0.[2]
>
> **DR 1-2**:[3] Referring to pages 401a, 401b and 402 of Trigen/Veolia's annual reports to the Commission, please provide:
> a) Copies of pages 401a, 401b and 402 of Trigen/Veolia's annual reports to the Commission for 2009 (amended annual report) and 2010; and,
> b) A reconciliation of fuel burned to generate steam to the actual amount of steam generation for 2008, 2009 and 2010 (refer to page 402 of the annual reports) (e.g. 1 mlb of steam = X mmbtu).

VEOLIA OBJECTIONS

2. On June 17, 2011, Veolia received the attached objection letter (**Appendix B**).

The objections contained both "General Objections" and "Specific Objections" to both of MGE's

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[1] MGE hereby confirms that its requests do not seek information that is privileged pursuant to the attorney work-product and the attorney-client privilege, except as to where those privileges have been waived by Veolia.

[2] Attached as **Appendix A** are Staff Data Requests 67.0 and 84.0.

[3] MGE Data Request 1.2(a) is not at issue in this Motion to Compel, as Veolia subsequently amended its 2009 and 2010 Annual Reports on July 8, 2011, thereby making available to the public the pages sought by MGE. MGE Data Request 1.2(b) remains at issue.

Data Requests. The Specific Objections closed by stating "Subject to these objections, a response will be provided to MGE-1.1" and "Subject to these objections, a response will be provided to MGE-1.2."

3. On June 29, 2011, MGE received correspondence from Veolia (**Appendix C**) indicating that "Attached are Veolia's responses to MGE data requests 1-1 and 1-2." The attached document provided only specific objections to MGE's data requests and no responses.

4. In response to MGE Data Request 1.1, Veolia indicated it was unable to provide the responses because they had been identified as "Highly Confidential" and/or "Proprietary" pursuant to 4 CSR 240-3.135. Veolia further argued that "to the extent that the information requested herein is relevant and discoverable in the State Court Litigation[4], then MGE is advised to seek the information in accordance with the Missouri Civil Rules of Civil Procedure and applicable local rules."

5. As to MGE Data Request 1.2, Veolia only indicated that it was unable to provide the responses because they had been identified as "Highly Confidential" and/or "Proprietary" pursuant to 4 CSR 240-3.135.

MGE RESPONSE TO OBJECTIONS

A. Confidential Nature of Responses

6. The Commission appears to have addressed Veolia's objection related to the "Highly Confidential" and "Proprietary" status of the answers in Veolia's (then Trigen) last rate case, where the Commission found 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

[4] Trigen-Kansas City Energy Corporation (a prior name of Veolia) filed a law suit against MGE in the Circuit Court of Jackson County, Missouri on August 6, 2010, concerning a billing dispute between the companies. That case has been identified by the courts as Case No. 1016-CV24880.

used.[5] Further, on July 18, 2011, the Commission issued its Order Granting Motion to Compel, Denying Motion for Protective Order, and Denying Motion for Evidentiary Hearing in this case. That order concerned a similar dispute between Veolia and Kansas City Power & Light Company and, among other things, further denied a Veolia request for a protective order seeking additional protection to that provided by 4 CSR 240-2.135. Veolia's objections to MGE Data Requests 1.1 and 1.2 based on the Highly Confidential or Proprietary nature of the responses is therefore without basis.

B. EXISTENCE OF OTHER LITIGATION

7. Veolia's argument that it should not be required to provide copies of its responses to Staff Data Requests 67.0 and 84.0 because the parties are involved in civil litigation initiated by Veolia (which was provided only in reference to MGE DR 1.1) is equally without basis. MGE is aware of no support for this proposition and Veolia offers none. MGE believes the proper standard is whether the information sought is relevant to this case, not whether it may also be relevant to some other matter.

8. Staff Data Request 67.0 concerns Veolia's natural gas purchases for its steam operations – something that is inherently relevant to a determination of Veolia's revenue requirement, as well as the setting of its rates.

9. Staff Data Request 84.0 concerns background information related to the litigation between Veolia and MGE. One need look no further than Veolia's direct testimony in this case to see that Veolia believes that this litigation is relevant to the case before the Commission. As is evident from the Staff data request, Veolia witness Steven R. Weafer testifies in his Direct Testimony (p. 13-15) concerning the background and status of the Veolia/MGE litigation. It is in

[5] *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).

reference to that Veolia testimony that Staff propounded the subject data request. The Veolia/MGE litigation is further addressed in the Direct Testimony of Veolia witness Steven C. Carver (p. 27-28), wherein Mr. Carver suggests that Veolia may, in certain circumstances, seek recovery of payments it may make, depending on the outcome of the referenced litigation (". . . [Veolia] will consider what options might be available with respect to any unrecovered payments to MGE associated with the natural gas billing dispute.").

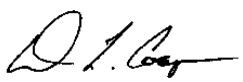
10. Because MGE has asked for responses to specific data requests previously propounded by the Staff and, presumably, previously compiled and provided by Veolia, there should be little to no burden on Veolia associated with the compilation and provision of these responses.

CONFERENCES WITH COUNSEL AND PRESIDING OFFICER

11. Finally, in accordance with Commission Rule 4 CSR 240-2.090(8), MGE hereby states that the July 1, 2011, counsel for MGE has conferred with counsel for Veolia in person concerning the subject of this motion. Counsel for the parties further discussed this matter with the presiding officer during a telephone conference on July 18, 2011. The matter is therefore ripe for the filing of a motion to compel.

WHEREFORE, MGE respectfully requests that the Commission issue its order compelling Veolia's responses to MGE's data requests described herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 22nd day of July, 2011, to:

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APPENDIX A

Staff 67.0

For the Veolia Energy Kansas City's Missouri steam operations, provide all natural gas purchases: 1) the natural gas supplier, indicating if the Company has a contract with the supplier or made spot purchases. 2) For contract suppliers of natural gas and any transportation pipeline, provide the current contracts and any signed contracts not yet in effect. 3) For period January 1, 2008 to March 31, 2011, provide the date, quantity (mmbtu) and cost of all natural gas purchased by pure commodity cost, variable transportation costs, fixed transportation and any other incidental cost for 2008 to March 31, 2011, by month. 4) From January 2008 through March 31, 2011, please provide the following data, by month, for any natural gas purchased using some type of hedging instrument for Veolia Energy Kansas City steam operations. a. mmbtu b. Cost before Derivative (Gain)/Loss c. Derivative (Gain)/Loss d. Cost after Derivative (Gain)/Loss e. Net Price per mmbtu to Veolia Energy Kansas City. Please provide any supporting calculations for this information. 5) A copy of all current invoices for natural gas purchases and transportation charges for the period January 1, 2008 to March 31, 2011. 6) Provide a listing of all discontinuances of natural gas interruptions or curtailments for January 1, 2008 to March 31, 2011. For each supply interruption, provide the reason, the dates, and the duration of the interruption. (Case No. HR-2008-0300, DR 68)

Staff 84.0

With respect to the Missouri Gas Energy (MGE) natural gas billing dispute referenced on pages 13-15 of Mr. Weafer's direct testimony please provide the following: 1) Please identify and describe in detail the issue that led up to the claim against Missouri Gas Energy. 2) Please provide any and all documentation (including, but not limited to, interrogatories, copies of depositions, document requests, or other discovery matters, correspondences with MGE) related to the dispute including but not limited to correspondence to and from Missouri Gas Energy and legal documents with the Circuit Court of Jackson County, Missouri, Case No. 1016-CV24880. 3a) Provide the details for adjustment C-5 referenced in Mr. Carver's schedule SCC-3.C attached to his direct testimony. 3b) Please provide a copy of the journal entries made on the Company's books and records including the dates of such journal entries. 4) Identify any and all costs incurred by a) Veolia Energy Kansas City b) Thermal North America, Inc. c). Veolia Energy North America Holdings, Inc. d). Veolia Energy North America LLC e). Veolia Environment related to this dispute broken down by FERC account (ex. outside services, legal fees, consulting fees, etc). 5) Is Veolia Energy Kansas City seeking monetary settlement from Missouri Gas Energy? If so, what amount is the Company seeking. 6) What is the status of Case No. 1016-CV24880?