

**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 REPLY TO VEOLIA ENERGY’S RESPONSE TO MOTION TO COMPEL  
AND VEOLIA’S MOTION FOR PROTECTIVE ORDER**

COMES NOW Southern Union Company d/b/a Missouri Gas Energy (“MGE”), and, in reply to Veolia Energy Kansas City’s Response to Motion to Compel Responses to Data Request and Motion for Protective Order Pursuant to 4 CSR 240-2.135(2)(C) and (5) (“Veolia’s Response”), respectfully states as follows to the Missouri Public Service Commission (the “Commission”):

1. Intervener Kansas City Power & Light Company (“KCPL”) filed a Motion to Compel in this case on June 22, 2011. In response, Veolia Energy Kansas City, Inc. (“Veolia”) filed the above-referenced Response on July 1, 2011.

2. MGE is not directly involved in the data requests that are the subject of KCPL’s Motion to Compel and Veolia’s Response. However, Veolia has similarly refused to provide responses to the two data requests MGE has promulgated in this case.<sup>1</sup> Accordingly, MGE believes it has an interest in the general subject of this dispute.

3. Veolia’s Response provides two bases to deny KCPL’s Motion to Compel should be denied – 1) as a consequence of the issuance of a protective order under Commission Rule 4 CSR 240-2.135; or, 2) as a protected matter under Rule 56.01(c) of the Missouri Rules of Civil Procedure.

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<sup>1</sup> 1) asking for Veolia’s responses to two specific Staff data requests; and, 2) requesting certain information found in, and related to, Veolia’s annual report to the Commission.

4. Veolia's Response appears to abandon its earlier argument that it may withhold from parties any documents that have been identified as "Highly Confidential" or "Proprietary."<sup>2</sup> This argument would seem to have been sufficiently addressed 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 used.<sup>3</sup> However, as recently as June 29, 2011, Veolia again used that argument as a basis to refuse to provide responses to MGE's data requests.<sup>4</sup>

5. In its Response, Veolia alleges that its "information must be protected from disclosure more rigorously than would be provided by a highly confidential designation," pursuant to Commission Rule 4 CSR 240-2.135(5). Veolia's believes it needs this more rigorous protection because KCPL is a competitor of Veolia and Veolia's apparent belief that KCPL's counsel and outside consultant will not follow the Commission's rules in regard to the handling of highly confidential and proprietary information.

6. Rule 56.01(c) of the Missouri Rules of Civil Procedure, although designated as a separate defense by Veolia, is not a reason to deny access to the requested information, but really just another basis by which the Commission could issue a protective order. Rule 56.01(c)(7) merely provides a basis for the issuance of a protective order where it is required to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." In fact, Rule 56.01(c)(7) expressly contemplates that "a trade secret or other confidential research, development, or commercial information" may "be disclosed in a designated way." Thus, Rule 56.01(c) does not provide a "privilege, rule of the commission, or the Missouri Rules of Civil

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<sup>2</sup> See KCPL Motion to Compel, Exhibit 1.

<sup>3</sup> 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).

<sup>4</sup> See **Appendix A** attached hereto.

Procedure” that would protect highly confidential information from disclosure in accordance with 4 CSR 240-2.135(2)(C).

7. To a great extent, Commission Rule 4 CSR 240-2.135 has already gone a step beyond Rule 56.01(c), as it is a form of protective order that goes beyond the normal rules of civil procedure that provides for disclosure of information identified as “highly confidential” or “proprietary” in a specifically designated fashion. In the case of “highly confidential” information, the Rule provides that such information may only be viewed by attorneys and outside consultants that have certified their familiarity, and agreed to comply with, the Commission’s confidentiality rule.

8. The Commission’s Rule was not promulgated without regard to competitive situations. The general terms of the Commission’s Rule has been applied for many years (both through the existing rule and previously through the Commission’s “standard protective order”) against the backdrop of the extremely competitive telecommunications industry, without great controversy. It is unclear why Veolia believes its circumstances are so different from those to which the Commission has previously applied the terms of its confidentiality rule.

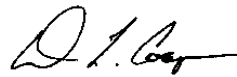
9. Lastly, MGE would note that the Veolia Response purports to request a special protective order pursuant to 4 CSR 240-2.135(5). Veolia’s request is deficient in that it ignores an important element of this request. Commission Rule 4 CSR 240-2.135(5) states that a party requesting this special protective order must provide “an explanation of how the information may be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.”

10. Veolia’s Response offers no such alternative method of disclosure. Instead, Veolia requests that it be allowed to completely withhold the requested information. Veolia’s

Motion should be denied, if for no other reason, than for its non-compliance with this aspect of the rule.

WHEREFORE, MGE respectfully requests that the Commission consider this reply and issue an order granting KCPL's Motion to Compel and denying Veolia's Motion for Protective Order.

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 11<sup>th</sup> day of July, 2011, to:

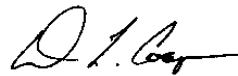
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