

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

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

APPLICATION FOR REHEARING

Comes now Veolia Energy Kansas City, Inc. (“Veolia”) and pursuant to 4 CSR 240.2.160 and 386.500 RSMo files its Application for Rehearing of the Commission’s *Order Granting Kansas City Power & Light’s (“KCPL”) Motion to Compel, Denying Veolia’s Motion for Protective Order, and Denying Veolia’s Motion for Evidentiary Hearing* dated July 18, 2011 and *Order Granting Expedited Treatment, Denying Stay and Sustaining Discovery Rulings* dated July 22, 2011 (“Orders”).

1. The Orders require Veolia Energy Kansas City, Inc. to comply with Kansas City Power & Light Company’s Data Request 1 and denied Veolia’s request for an evidentiary hearing.

2. Some of the highly confidential data that Veolia has provided to the Missouri Public Service Commission Staff (“Staff”) involves non-jurisdictional, non-regulated operations and Veolia cannot lawfully be required to produce such data to KCPL. It is unduly burdensome and logistically impractical for Veolia to separate its jurisdictional data (*i.e.*, information relating to processes regulated by the Commission) from its non-jurisdictional data (*i.e.*, information relating to the processes not regulated by the Commission) by July 22, 2011. Moreover, Veolia is filing this Motion for Reconsideration because Veolia respectfully asserts that, for numerous reasons, the Orders constitute an abuse of discretion.

I. The Orders are an Abuse of Discretion because the Orders Did Not Evaluate Evidence Demonstrating that Many of Veolia’s Responses to Staff’s Data Requests Contain Information that is Not Regulated by the Commission.

3. Staff requested that Veolia respond to over 100 data requests, nearly all of which are designated as highly confidential pursuant to 4 CSR 240-2.135(4). In an effort to disclose information to Staff, Veolia provided responses to all of Staff’s requests, even though Veolia raised numerous objections.

4. Specifically, Veolia objected to each data request to the extent that the data request seeks information regarding Veolia’s parent company or affiliates, and especially Veolia Energy Missouri. Reproduced below is language that Veolia has provided to Staff in its objections:

Staff’s requests 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 amassing 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.

See, e.g., paragraph 7 of Veolia’s General Objections to Staff filed throughout this proceeding.

5. On July 1, 2011, in its 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) (“Response to

Motion to Compel”), Veolia discussed how an unregulated affiliate of Veolia, Veolia Energy Missouri, utilizes the steam produced by Veolia in the operation of a chilling service in Kansas City. *See* Response to Motion to Compel, ¶¶1, 3, 4, 6, and 11. Veolia discussed at length how KCPL has no legal basis to obtain any data involving Veolia Missouri’s unregulated operations, and if KCPL were to obtain this information, how it would be harmful to Veolia’s business interests.

6. On July 13, 2011, in its Request for Evidentiary Hearing on Motion for Protective Order and Motion to Compel Responses to Data Request (“Request for Evidentiary Hearing”), Veolia specifically stated that, if granted, KCPL’s Motion to Compel would require Veolia to prepare the non-jurisdictional data for transmittal to KCPL. *See* Request for Evidentiary Hearing, ¶5. Veolia also discussed how it is prepared to present facts discussing the costs that Veolia would have to incur if required to comply with KCPL’s Motion to Compel. *Id.*

7. The Order does not even mention, much less discuss, that the Order will require Veolia to provide non-jurisdictional data from Veolia Energy Missouri to KCPL. Rather, the Order only states the following: “Similarly, the Commission considers Veolia’s burden of compliance against the protection of KCP&L and the public. As KCP&L notes, and Data Request 1’s text shows, the matters sought already exist. There could scarcely be a more convenient production than of matters already assembled so that balance weights in favor of compliance.” *See* Order, page 8.

8. The Order ignores Veolia’s argument that it is unduly burdensome and costly for Veolia to provide non-jurisdictional data to KCPL. Granted, the non-jurisdictional data regarding Veolia Energy Missouri’s operations has already been provided to Staff. After filing its necessary objections, Veolia willingly provided the information to Staff out of good faith.

Veolia had no reason to believe at the time it produced the non-jurisdictional data to Staff that KCPL would request, much less file a Motion to Compel, to receive Veolia's responses to all of Staff's data requests.

9. The Orders unjustly and unlawfully denied Veolia's request for an evidentiary hearing to show that the costs associated with separating the non-jurisdictional data from the jurisdictional data are both burdensome and unnecessary and the lack of prejudice to KCPL if it does not receive Veolia's data for an unregulated affiliate.

10. The Orders also unjustly and unlawfully denied Veolia's request to exclude the non-jurisdictional data that Veolia has provided to the Staff, including, but not limited to, Veolia's nontariff steam sales and the unregulated operations of Veolia Energy Missouri and its sales of chilling service.

II. Since the Commission Liberally Grants Intervention, the Orders are an Abuse of Discretion in that Veolia Should Not have been Expected to Object to KCPL's Intervention.

11. The Commission found that Veolia should have objected to KCPL's intervention, stating that Veolia "knew that competition was KCP&L's reason for intervening," and as a result, should have objected. *See* Order, pp. 7 – 8.

12. The Commission has routinely held that intervention in matters is liberally granted. *See, e.g., In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Gas Service*, 2010 Mo. PSC LEXIS 735, at *3 (July 28, 2010) (holding that MoGas Pipeline LLC could intervene in the matter for, among other reasons, "because the Commission has liberally granted interventions"). In fact, in a 2005 Order, the Commission boldly stated that "any person" is allowed to intervene. *See In the Matter of the*

Application of Aquila, Inc., 2005 Mo. PSC LEXIS 197, at *2 (Feb. 10, 2005) (holding that “[b]ut the Commission’s intervention rules are more liberal, and allow any person to intervene”).

13. Due to the Commission’s clear preference of liberally granting parties to intervene, Veolia did not object to KCPL’s intervention in this matter.

14. Moreover, Veolia hardly could have anticipated that KCPL would request that Veolia produce responses to all of the data requests that the Staff issued. It is both unjust and unreasonable for Veolia to be expected to know, based upon KCPL’s brief statement of interest filed in its intervention paperwork, that KCPL would demand that Veolia produce all information Veolia provided to the Staff.

III. The Orders are an Abuse of Discretion because the Orders Did Not Evaluate Veolia’s Evidence Demonstrating the Competitive Business Environment Between Veolia and KCPL and that the Information Contains Trade Secrets.

15. In Veolia’s Response to Motion to Compel, Veolia not only discussed the unique environment surrounding KCPL and Veolia’s competitive business relationship, but also explained how much of the information sought involved Veolia’s trade secrets. *See* Response to Motion to Compel, ¶¶2 – 6, 8, and 11-15.

16. In Veolia’s Request for Evidentiary Hearing, Veolia underscored that there were disputed factual allegations regarding whether the information requested constituted as trade secrets and whether KCPL has demonstrated a specific need for the documents requested. *See* Request for Evidentiary Hearing, ¶4.

17. The Commission unjustly and unreasonably states the following regarding KCPL meeting its “burden” to seek the information: “Because KCPL is seeking discovery, establishing relevance is KCP&L’s burden, but that burden is met in the text of Data Request 1, the breadth of which raises an inference – at least – that the matter sought is relevant to claims or defenses in

this action.” *See* Order, p. 9. The Commission unjustly and unreasonably concludes relevance based on an inference in KCPL’s Data Request that KCPL needs all of the responses to Staff’s data requests to Veolia without any examination of the Staff data requests involved. The Orders do not address Veolia’s arguments and request for hearing to show that a Protective Order was necessary to provide alternate relief.

18. After spending countless hours reviewing, organizing, and distributing responses to over one-hundred data requests to Staff, Veolia is very familiar with the information that KCPL is requesting. It was unjust and unreasonable for the Commission to deny Veolia’s request for an evidentiary hearing to resolve the factual dispute as to whether the information requested has trade secrets, Veolia’s competitive relationship with KCPL and how KCPL, if able to receive this information, would gain a significant competitive advantage over Veolia.

19. The Commission has unjustly and unreasonably failed to consider the purpose of its Rule 4 CSR 240-2.135. KCPL is one of Veolia’s key competitors. The provisions governing highly confidential information are intended to prevent a competitor from acquiring sensitive business information that would jeopardize the stability of the company providing information to the Commission.

WHEREFORE, Veolia respectfully requests that the Commission grant its Application for Rehearing.

Dated: July 26, 2011

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 transmitted by e-mail this 26th day of July, 2011, to all persons on the Commission's service list.

/s/ Diana Vuylsteke