

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 9th day of  
August, 2007.

In the Matter of Trigen-Kansas City Energy	)	
Corporation's Application for a Finding of No	)	
Jurisdiction or, in the Alternative, for Grant of	)	<b><u>Case No. HO-2007-0419</u></b>
Authority for the Transfer or Sale of a Contract	)	
Currently Owned by Trigen-Kansas City	)	
Energy Corp. to Affiliate or Third Party.	)	

**ORDER CLOSING CASE**

Issue Date: August 9, 2007

Effective Date: August 9, 2007

On April 27, 2007, Trigen-Kansas City Energy Corporation filed an application requesting that the Commission "find that it has no jurisdiction over the sale or transfer of Applicant's interest in a coal purchase contract and related agreements" to an affiliated entity or third-party purchaser. In the alternative, if the Commission finds that it has authority over this transaction under Section 393.190.1, RSMo,<sup>1</sup> Trigen seeks preapproval of the transaction. Prospective transferees or purchasers have not yet been identified.

Section 393.190.1, RSMo, states in relevant part:

No . . . [steam] corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, not by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

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<sup>1</sup> All citations are to the Revised Statutes of Missouri 2000 unless otherwise noted.

Trigen holds a certificate to provide steam heating service.<sup>2</sup> Trigen is a wholly owned subsidiary of Thermal North America, Inc. Trigen has a contract with Ricci Mining, L.L.C., a waste coal processing facility in southeast Kansas. Under the contract, Trigen agreed to make prepayments for a ten-year supply of coal in order to aid Ricci in obtaining the necessary startup capital for the development of its mining operation. The contract also provides Trigen an option to purchase the first 100,000 tons per year of Mine 19 coal. Ricci has the right to sell up to 30,000 tons per year of its mined coal to third parties.

Trigen entered into the contract as a means to supply itself with a reliable source of fuel at attractive prices for use in its Grand Avenue Station plant. Trigen invested shareholder money in the contract as a venture capital project. Since entering into the contract, Trigen has decided that it is no longer prudent to remain bound by the contract. Ricci's Mine 19 has not yet attained a level of economic yield necessary to satisfy Trigen's coal source requirements, nor has it managed to produce coal at a consistent quality or quantity. Because of its sulfur content, Trigen has been unable to use the coal under its current air emissions permits, and the coal will also not meet new environmental standards. Trigen seeks to transfer its interest in the coal contract to an affiliated entity or to an unrelated third party.

The Staff of the Missouri Public Service Commission filed its original recommendation on June 1, 2007. Staff filed an additional response on August 3, 2007.

In its original recommendation, Staff stated that the Commission should assert authority over the coal contract, because it was unclear as to whether Trigen would attempt to recover costs of the contract in rates. Staff concurred that the proposed sale or transfer

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<sup>2</sup> Case No. HA-90-5 (issued December 29, 1989).

of the coal contract would not be detrimental to the public interest so long as Trigen did not seek to recover any of its investment or the costs of transferring the asset in rates. Staff also confirmed that Trigen has been able to provide steam to its customers without this coal supply. Even though Staff agreed that a transfer of the assets would not be detrimental to the public, Staff advised against preapproval of the sale.

Trigen responded to Staff's recommendation on June 5, 2007. Trigen affirmed that "it will not seek recovery from its Missouri regulated operations customers of its investment in the Ricci Mine 19 coal reclamation project." Trigen further reasserted that because Staff agrees that the coal contract has never been considered necessary in the provision of steam to its customers, the Commission should affirm that Section 393.190, RSMo, is not applicable.

On August 3, 2007, Staff filed a clarification of its position. Staff stated that because Trigen affirms that it will not seek recovery in rates, "the Commission [should] disclaim jurisdiction over Trigen's proposed transaction on the basis that the Coal Contract is not a part of Trigen's franchise, works or system, necessary or useful in the performance of Trigen's duties to the public, under Section 393.190.1 RSMo 2000."

The Commission has reviewed the application and other filings in this matter. The Commission determines that this particular transaction involving a coal purchasing contract is not the type of transaction which falls under Section 393.190.1, RSMo. Thus, the Commission determines that no approval under Section 393.190.1, RSMo, is necessary and this case shall be closed. The Commission continues to have authority to review the prudence of Trigen's decisions regarding acquisitions and sales in subsequent rate case proceedings.

**IT IS ORDERED THAT:**

1. No action of the Commission is required under Section 393.190.1, RSMo.
2. This case is closed.
3. This order shall become effective on August 9, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge