

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

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

STAFF RESPONSE TO COMMISSION ORDER OF JULY 27, 2007

On July 27, 2007 the Commission issued an Order Granting Extension Of Time To File Response And Order Directing Filing, wherein the Commission directed the Staff to file, no later than August 3, 2007, whether the averments in the June 5, 2007 Reply of Trigen-Kansas City Energy Corporation To Staff Response To Commission Order have altered the position of the Staff. On the basis of the June 5, 2007 Reply of Trigen-Kansas City Energy Corporation ("Trigen") and the analysis performed by the Staff related in its May 31, 2007 Memorandum Staff Recommendation, the Staff recommends that the Commission decline jurisdiction over Trigen's sale or transfer of its interest in a coal purchase contract and related agreements with Ricci Mining, L.L.C (collectively the "Coal Contract"). In support thereof, the Staff states as follows:

1. Section 393.190.1 RSMo 2000¹ states in relevant part:

No gas corporation, electrical corporation, water corporation or sewer 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**, nor 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**. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or

¹ Section 393.190 is applicable to Trigen, a heating company, pursuant to Section 393.290 RSMo 2000.

consolidation made other than in accordance with the order of the commission authorizing same shall be void. . . .

(Emphasis supplied).

2. The May 31, 2007 Memorandum Staff Recommendation relates that the quantity of coal obtained from the Ricci mine through the Coal Contract in question has not been sufficient to meet Trigen's minimum production needs nor is the quality of the coal sufficient to meet the requirements of pending environmental regulations as they pertain to the operation of the Trigen steam facility, the Grand Avenue Station coal-fired district energy plant.² The May 31, 2007 Memorandum Staff Recommendation notes that Trigen has been supplying and continues to supply steam load to its existing customers without the Ricci Mine 19 coal supply; the Coal Contract is not needed by Trigen to provide safe and adequate service to the customers of Trigen's regulated Missouri operations; and the Coal Contract has not been, is not presently and will not in the future be beneficial to the customers of Trigen's regulated Missouri operations.

3. In the June 5, 2007 Reply of Trigen-Kansas City Energy Corporation To Staff Response To Commission Order, Trigen states in paragraph 3 on page 2: "Trigen hereby affirms the prior representations of Mr. Kirk and unequivocally states for the record that it will not seek recovery from its Missouri regulated operations customers of its investment in the Ricci Mine 19 coal reclamation project."

4. As a consequence of the aforementioned items set out in the May 31, 2007 Memorandum Staff Recommendation and the commitment of Trigen not to seek rate recovery of its investment in the Ricci Mine 19 coal reclamation project, the Staff recommends that the

² Pending Industrial Boiler Maximum Available Control Technology ("Boiler MACT") regulations limit plant emissions of mercury, chlorine, and particulate matter. Also, much of the Ricci Mine 19 coal exceeds the fuel sulfur content requirements of Trigen's Title V air permit of less than 4% sulfur content. As a consequence, the Coal Contract cannot be a reliable source of coal supply for Trigen.

Commission disclaim jurisdiction over Trigen's proposed transaction of the sale or transfer of Trigen's interest in the coal purchase contract and related agreements to an unrelated third-party purchaser or an affiliated entity 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 its duties to the public, under Section 393.190.1 RSMo 2000.

Wherefore the Staff files this response to the Commission's Order of July 27, 2007 and on the basis of Trigen's averment in its June 5, 2007 Reply that it will not seek recovery from its Missouri regulated operations customers of its investment in the Ricci Mine 19 coal reclamation project and the matters addressed in the May 31, 2007 Memorandum Staff Recommendation, the Staff recommends that the Commission 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.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 3rd day of August 2007.

/s/ Steven Dottheim