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Witness: Phillip K. Williams, CPA, CIA
Sponsoring Party: MoPSC Staff
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Case No.: HM-2004-0618
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

PHILLIP K. WILLIAMS, CPA, CIA

**TRIGEN-KANSAS CITY ENERGY CORP. and
THERMAL NORTH AMERICA, INC.**

CASE NO. HM-2004-0618

*Jefferson City, Missouri
October 2004*

****Denotes Highly Confidential Information****

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

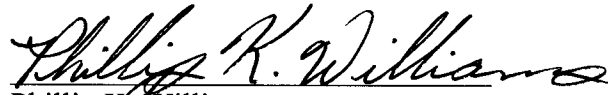
In The Matter of the Joint Application of Trigen-)
Kansas City Energy Corp. and Thermal North)
America, Inc. for the Authority Necessary for)
the Transfer of Control, and Sale of All Stock)
Currently Owned by Trigen Energy Corporation,)
Inc. to Thermal North America, Inc.)

Case No. HM-2004-0618

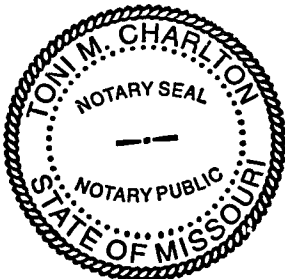
AFFIDAVIT OF PHILLIP K. WILLIAMS

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

Phillip K. Williams, being of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 45 pages to be presented in the above case; that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


Phillip K. Williams

Subscribed and sworn to before me this 14th day of October 2004.





TONI M. CHARLTON
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF COLE
My Commission Expires December 28, 2004

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PHILLIP K. WILLIAMS, CPA, CIA

TRIGEN ENERGY CORP.

CASE NO. HM-2004-0618

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Q. Please state your name and business address.

A. My name is Phillip K. Williams, and my business address is the Fletcher Daniels State Office Building, Room G8, 615 East 13th Street, Kansas City, MO 64106.

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1 A. Yes. Please refer to Schedule 1, attached to this direct testimony, for a list of
2 cases in which I have filed testimony before this Commission.

3 Q. What knowledge, skill, experience, training or education do you have in
4 regulatory matters?

5 A. I have acquired general knowledge of utility regulation through my
6 participation, review and analyses in prior rate and merger cases before this Commission. I
7 have reviewed Staff workpapers for cases that were brought before this Commission. I have
8 reviewed Commission decisions with regard to these areas, including testimony, workpapers
9 and responses to Staff data requests addressing these topics. The Certified Public
10 Accountants' Exam which I passed, included sections on accounting practice and theory, as
11 well as, auditing. Since commencing employment with the Commission in September 1980,
12 I have attended various in-house training seminars and NARUC conferences. I have
13 participated in approximately 40 formal rate case proceedings. I have also participated in
14 and supervised work on a number of informal rate proceedings. As a senior auditor and the
15 lead auditor on a number of cases I have participated in the supervision and instruction of
16 new accountants and auditors within the Utility Services Division.

17 **PURPOSE OF TESTIMONY**

18 Q. With reference to Case No. HM-2004-0618, have you made an examination of
19 the books and records of Trigen Kansas City Energy Corp. (Trigen Kansas City) and the
20 Application and direct testimony of the Joint Applicants in this case?

21 A. Yes, I have, with the assistance of other members of the Commission Staff
22 (Staff).

23 Q. What are your areas of responsibility in regard to Case No. HM-2004-0618?

1 A. My areas of responsibility include plant-in-service, accumulated depreciation
2 and the determination of whether there is an acquisition premium associated with this
3 application and to present the Staff's recommendation regarding the sale/transfer proposed in
4 this case.

5 Q. What is the purpose of your rebuttal testimony?

6 A. The purpose of my testimony is to respond to the direct testimony of Trigen
7 Kansas City and Thermal North America, Inc. (Thermal) together referred to as the "Joint
8 Applicants" or "Companies," with respect to Thermal's purchase of Trigen Kansas City, the
9 district heating (steam) system in downtown Kansas City, Missouri.

10 I will address the concept known as "original cost" as it relates to asset valuation and
11 the problems that Trigen Kansas City has had with the asset valuation of the properties
12 acquired from Kansas City Power & Light (KCPL) in March 1990. These problems have
13 affected Trigen Kansas City's ability to support rate relief and make filings with this
14 Commission. I will address the problems that Trigen Kansas City has had with its books and
15 records since March 1990. I will provide testimony concerning the asset impairment and
16 subsequent write-down of the assets of Trigen Kansas City in accordance with Statements of
17 Financial Accounting Standards (SFAS) 121. Trigen Kansas City made the write-down of
18 the assets in 2000 and then subsequently in 2003 made a restatement of those assets for
19 regulated purposes on the 2002 Federal Energy Regulatory Commission (FERC) Form 1,
20 while not restating their 2002 financial statements or Federal Income Tax Return.

21 Q. Does the purchase of Trigen Kansas City by Thermal involve properties
22 besides the steam system operated by Trigen Kansas City?

1 A. Yes. Included in the purchase agreement are the chilled water facilities and
2 operations provided by Trigen Missouri Energy to select customers in downtown Kansas
3 City, Missouri. The purchase transaction also includes the acquisition of Trigen Energy
4 Corporation's district heating and the chilled water services that are operated in a few of
5 these cities: Baltimore, Maryland; Boston, Massachusetts; Oklahoma City and Tulsa,
6 Oklahoma; Philadelphia, Pennsylvania; St. Louis, Missouri; and Trenton, New Jersey. There
7 are other related properties referenced in the direct testimony of applicants Mark P. Barry
8 (pages 6 and 7 of his direct testimony) and identified in the purchase agreement which is
9 titled, "Purchase And Sale Agreement," dated April 30, 2004, attached as Appendix D to the
10 Joint Application filed in this case.

11 Q. How will you be using the company names and organization in this
12 testimony?

13 A. My testimony will use the following names for the seller and buyer of the
14 Trigen Kansas City and Trigen Missouri properties:

15 Seller:

16 Trigen Energy Corporation (Trigen Energy)

17 Trigen Kansas City Energy Corp. (Trigen Kansas City)

18 Trigen Missouri Energy Corp. (Trigen Missouri)

19 Tractebel (Tractebel)

20 Buyer:

21 Thermal North America (Thermal)

22 ThermalSource which will provide management oversight of the
23 Trigen properties

24 Johnson Controls which will provide operational function of the
25 Trigen properties.

1 Q. Does Trigen Kansas City currently provide utility services within the State of
2 Missouri?

3 A. Yes. Trigen Kansas City provides steam to some 69 customers in downtown
4 Kansas City. Trigen Kansas City's customers include the City of Kansas City (governmental
5 buildings such as City Hall and the City Jail), the State of Missouri (Fletcher Daniels State
6 Office Building), the federal government (federal government building), hotels, restaurants,
7 banks and other individual customers and entire office buildings.

8 The steam operations were owned by Kansas City Power & Light (KCPL) during
9 much of the last century and Trigen Kansas City acquired them from KCPL.. The steam
10 operations were included in the Grand Avenue electric generating plant which KCPL
11 primarily used to produce electricity. KCPL also used the steam from the Grand Avenue
12 station facility for its district heating service. With the Wolf Creek Nuclear Generating
13 Station going into commercial service, KCPL decided to discontinue steam operations in
14 Kansas City and filed Case No. HO-86-139 for Commission authorization to abandon
15 regulated steam service. In that case, KCPL proposed to serve its Kansas City steam heating
16 customers with electricity rather than steam heat. The Commission rejected KCPL's
17 proposal and ordered KCPL to seek a buyer for the steam operations. KCPL requested bids
18 for its steam operations, and Trigen Kansas City purchased KCPL's district steam heating
19 facilities and operations.

20 Q. Does KCPL still have equipment located at Trigen Kansas City's Grand
21 Avenue Station?

22 A. Yes. KCPL still has electric switching equipment that continues to be used
23 for its electric operations. KCPL also owns a portion of the Grand Avenue Building in which

1 Trigen Kansas City has its administrative offices which Trigen Kansas City leases from
2 KCPL. KCPL also has its downtown substation adjacent to the Grand Avenue Plant.

3 In addition, KCPL also has two steam turbines each capable of generating
4 approximately 35 megawatts (combined total of 70 megawatts). It is Staff's understanding
5 that KCPL has not operated these turbines since 2002 and, according to Trigen Kansas City,
6 KCPL plans to discontinue the use of these turbines. KCPL intends on retiring and
7 dismantling these units.

8 **STANDARD OF NOT DETRIMENTAL TO THE PUBLIC**

9 Q. What standard did Staff use to evaluate this application and develop its
10 recommendation regarding the proposed sale of Trigen Kansas City to Thermal?

11 A. Staff used the standard of "not detrimental to the public interest," as it has in
12 other merger/acquisition cases. If the Joint Applicants fail to show that the proposed sale of
13 Trigen Kansas City to Thermal is not detrimental to the public interest in Missouri, i.e., if it
14 is not demonstrated that the Missouri public will not be harmed by the proposed sale, then
15 the Commission should reject this Joint Application and not approve the proposed sale. Staff
16 counsel has advised that the "not detrimental to the public interest" standard is based on case
17 law generally cited in Commission Orders as State ex rel. City of St. Louis v. Public Serv.
18 Comm'n, 73 S.W.2d 393 (Mo. banc 1934); State ex rel. Fee Fee Trunk Sewer Co., Inc. v.
19 Litz, 596 S.W.2d 466 (Mo.App. 1980). Staff counsel also advises that the Commission has
20 incorporated the "not detrimental to the public interest" standard in its rules regarding
21 applications, 4 CSR 240-2.060(8)(D).

22 Q. How is Staff defining the term "public?"

1 A. Consistent with Staff's position in other merger/acquisition cases, Staff views
2 the members of the "public" that are to be protected as those consumers taking utility service
3 from Trigen Kansas City steam and/or chilled water operations in the State of Missouri.

4 Q. Have there been any recent cases that have addressed the stand of not
5 detrimental to the public?

6 A Yes. The Commission has recently reaffirmed the standard of not detrimental
7 to the public in Case No. EF-2003-0465 which was an application by Aquila for the authority
8 to assign, transfer, mortgage or encumber its utility franchise, works or system in order to
9 secure revised bank financing arrangements. The Commission stated at pages 6-7 of its
10 February 24, 2004 Report And Order:

11 The Commission has already concluded that it should approve Aquila's
12 request if doing so would not be detrimental to the public interest. The
13 parties opposing Aquila want the Commission to find the affirmative
14 of that issue. That is, if the Commission approved Aquila's
15 application, a detriment to the public interest would occur. Therefore,
16 those parties have the burden of proof.

17 The Commission concludes a detriment to the public interest includes
18 a risk of harm to ratepayers. In reviewing a recent merger case
19 involving the same parties, the Supreme Court of Missouri ruled that...
20 "(w)hile (the Commission) may be unable to speculate about future
21 merger-related rate increases, it can determine whether the acquisition
22 premium was reasonable, and it should have considered (the
23 premium)... when evaluating whether the proposed merger was
24 detrimental to the public." In other words, the Commission could not
25 have known whether the acquisition premium would result in rate
26 increases. But it should have looked at the premium's reasonableness.
27 Likewise, the Commission cannot know whether the encumbrances
28 will result in rate increases. But the Commission should look at the
29 reasonableness of the risk of the increases. This analysis conforms to
30 the concept that... "(n)o one can lawfully do that which has a tendency
31 to be injurious to the public welfare." [footnotes omitted]

32 In a more recent case decided by the Commission, Case No. EO-2004-0108, the
33 application of Union Electric Company for authority to transfer some of its generating plants

1 to Central Illinois Public Service Company (AmerenCIPS). In this case, the Commission
2 stated at pages 41-42 of its October 6, 2004 Report And Order:

3 In the *AG Processing* case, the Commission approved an acquisition
4 and merger by Aquila, Inc. - then called UtiliCorp - that involved an
5 acquisition premium of \$92,000,000. Although the Commission
6 rejected Aquila's proposed regulatory plan, under which a portion of
7 the acquisition premium would be recovered in rates, the Commission
8 refused to consider the recoupment of the acquisition premium on the
9 grounds that it was a rate case issue. The Missouri Supreme Court
10 reversed, saying:

11 The fact that the acquisition premium recoupment issue
12 could be addressed in a subsequent ratemaking case did
13 not relieve the PSC of the duty of deciding it as a
14 relevant and critical issue when ruling on the proposed
15 merger. While PSC may be unable to speculate about
16 future merger-related rate increases, it can determine
17 whether the acquisition premium was reasonable, and it
18 should have considered it as part of the cost analysis
19 when evaluating whether the proposed merger would be
20 detrimental to the public. The PSC's refusal to consider
21 this issue in conjunction with the other issues raised by
22 the PSC staff may have substantially impacted the
23 weight of the evidence evaluated to approve the merger.
24 The PSC erred when determining whether to approve
25 the merger because it failed to consider and decide all
26 the unnecessary and essential issues, primarily the issue
27 of UtiliCorp's being allowed to recoup the acquisition
28 premium.

29 The Missouri Supreme Court did not announce a new standard for
30 asset transfers in *AG Processing*, but rather restated the existing "not
31 detrimental to the public" standard. In particular, the Court clarified
32 the analytical use of the standard. What is required is a cost-benefit
33 analysis in which all of the benefits and detriments in evidence are
34 considered. The *AG Processing* decision does not, as Public Counsel
35 asserts, require the Commission to deny approval where a risk of
36 future rate increases exists. Rather, it requires the Commission to
37 consider this risk together with the other possible benefits and
38 detriments and determine whether the proposed transaction is likely to
39 be a net benefit or a net detriment to the public. Approval should be
40 based upon a finding of no net detriment. Likewise, contrary to UE's
41 position, the *AG Processing* decision does not allow the Commission
42 to defer issues with ratemaking impact to the next rate case. Such
43 issues are not irrelevant or moot because UE is under a temporary rate

freeze; the effects of the transfer will still exist when the rate freeze ends.

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides sale and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.

In cases brought under Section 393.190.1 and the Commission's implementing regulations, the applicant bears the burden of proof. That burden does not shift. Thus, a failure of proof requires a finding against the applicant.

[footnotes omitted]

STAFF'S INVESTIGATION

Q. How did Staff approach this Joint Application by Trigen Kansas City and Thermal?

A. Staff reviewed the direct testimony and Joint Application filed by Trigen Kansas City and Thermal. Staff issued data requests, conducted telephone and in-person interviews of past and present Trigen Kansas City personnel and participated in a Commission-scheduled technical conference. Staff also engaged in a document review of the accounting practices of Trigen Kansas City and interviewed a former employee of Trigen Kansas City, now working for KCPL. Although the applicant included no information regarding chilled water, during its investigation, the Staff made inquiry as to chilled water service as well as steam heat. Chilled water services are provided by Trigen Missouri. Staff issued data requests, conducted telephone and in-person interviews of past and present

1 Trigen personnel and, as scheduled, attended a technical conference. Staff reviewed
2 documents and queried a former employee to understand the accounting practices of Trigen
3 Kansas City and Trigen Missouri. Staff toured Trigen Kansas City's Grand Avenue steam
4 production plant to gain an understanding of the steam and chilled water services provided by
5 the affiliates Trigen Kansas City and Trigen Missouri. In addition, because the steam
6 generating and distribution facilities were acquired from KCPL, Staff issued data requests to
7 KCPL. Staff reviewed some of its past files regarding the original purchase from KCPL and
8 previous work performed in rate (and other) cases filed after KCPL transferred the steam heat
9 systems operations in Kansas City to Trigen Kansas City.

10 **BACKGROUND AND HISTORY OF DOWNTOWN KANSAS CITY STEAM**
11 **OPERATIONS**

12 Q. Please provide a history of the district heating system in downtown Kansas
13 City.

14 A. The district heating system in Kansas City, Missouri was originally owned
15 and operated by KCPL until March 1990. Trigen Energy, Inc. (Trigen Energy) of White
16 Plains New York entered into a purchase agreement and, in acquiring the system, transferred
17 it into a subsidiary -- Trigen Kansas City Energy Corp. (Trigen Kansas City). Trigen Energy
18 owns, directly or through subsidiaries steam heating, chilled water and electric co-generation
19 systems at several locations around the United States.

20 In 1990, this Commission approved the sale of the district heating system from KCPL
21 to Trigen Kansas City and granted the Trigen Kansas City a Certificate of Public
22 Convenience and Necessity in Case No. HA-90-5.

1 In 1993, Trigen-Kansas City filed for a rate increase designated as Case No.
2 HR-93-278 but withdrew the case without rate relief. Trigen Kansas City filed an application
3 to expand its service territory in the mid-1990's which this Commission granted. Trigen
4 Kansas City filed to expand its service territory again in late 1990's but withdrew that
5 application without relief.

6 During late 2000, Trigen Kansas City requested that the Staff review its operations to
7 see if rate relief was warranted. During discussions with Trigen Kansas City the Staff
8 became aware of an issue concerning asset impairment (write-down). The Staff came to
9 understand that Trigen's parent company had, before Trigen Kansas City requested the Staff
10 to review its operations, decided to write-down the asset base upon which Trigen Kansas
11 City could have earned a return. Shortly after the Staff came to this understanding and
12 related its understanding to Trigen Kansas City in early 2001, communications between
13 Trigen Kansas City and the Staff regarding the rate review ceased.

14 During late 1997 to early 1998, Trigen decided to offer chilled water services in the
15 downtown Kansas City area through an affiliate to Trigen-Kansas City called Trigen
16 Missouri. The chilled water services are used by Trigen Missouri customers for space
17 cooling of buildings located in downtown Kansas City. Trigen Missouri purchases steam
18 from Trigen Kansas City at the tariffed rates. Thus far, Trigen Missouri operated as if it is
19 not subject to regulation by this Commission. To the Staff's knowledge, neither Trigen
20 Missouri nor its parent has ever sought a determination by this Commission that the chilled
21 water service it provides is not subject to regulation by this Commission, i.e. that it is outside
22 this Commission's jurisdiction. Trigen Missouri leases space at Trigen Kansas City's Grand

1 Avenue plant for the chiller equipment. These chillers cool the water that Trigen Missouri
2 customer's use for space cooling.

3 On June 29, 2004 Trigen Kansas City and Thermal filed the Joint Application in this
4 case to request that the Commission grant authority to permit Applicants to consummate a
5 transaction through which Thermal will acquire all the assets of Trigen-Kansas City and
6 Trigen Missouri as well as properties in other states.

7 Q. Has Trigen Energy been part of any corporate reorganization since 1990?

8 A. Yes. Trigen Kansas City purchased the Kansas City steam property in March
9 of 1990 and they have remained the owner of the property through numerous corporate
10 changes that have taken place over the years. Some of these changes are described in part in
11 the 2000 annual report footnotes.

12 Trigen Kansas City Energy Corp. is a wholly owned subsidiary of Trigen Energy
13 Corporation. On March 27, 2000, Elyo, Trigen's parent company acquired ownership of
14 approximately 96% of Trigen's Stock. T Acquisition Corp. an indirect wholly-owned
15 subsidiary of Elyo, the parent company of Trigen, entered into a merger agreement pursuant
16 to which Elyo, through TAC, would acquire all of the outstanding shares of common stock of
17 Trigen, which it did not already own. On March 27, 2000, Elyo announced the completion of
18 the Tender Offer, (the "Acquisition"). As of that date, Elyo had beneficial ownership of
19 approximately 96% of Trigen's common stock and as of December 31, 2000 owned 100% of
20 Trigen's common stock. Elyo is an energy subsidiary of Suez, formerly Suez Lyonnaise des
21 Eaux Group.

22 On April 6, 2000, Trigen was merged in TAC and TAC changed its name to Trigen.
23 Subsequent to the TAC Merger, Cofreth American Corporation a Delaware Corporation, and

1 an indirect wholly owned subsidiary of Elyo, acquired all of the stock of the Successor for
2 money borrowed from Elyo. Concurrently with CAC Acquisition, the Successor was merged
3 into CAC and CAC changed its name to Trigen. The total debt then owed by the Company
4 to Elyo was then converted into Elyo's equity in the Company.

5 As a result of the transactions described in the preceding paragraphs, Elyo, through its
6 subsidiaries, acquired 47% equity interest previously held by Trigen's public shareholders.
7 Accordingly, the accompanying financial statements for the year ended December 31, 2000
8 reflected the acquisition of this interest using the purchase method of accounting. The excess
9 of the purchase price over the fair market value of the net assets was approximately
10 \$100 million and is being amortized over 25 years.

11 Of the \$100 million goodwill generated from this transaction, \$5,004,930 pertains to
12 Trigen Kansas City and represents the excess of the allocated purchase price over the fair
13 value of Trigen Kansas City's assets as of the date of the acquisition. Trigen Kansas City is
14 amortizing the goodwill over 25 years from the time of the stockholder buyout.

15 By the end of 2000, Elyo and its external auditors decided to write-down the Trigen
16 Kansas City Energy Corp. assets assuming an asset impairment loss of ** _____ ** in
17 accordance with SFAS No. 121, in addition to the write-off of the ** _____ **
18 goodwill/ acquisition premium paid in acquiring the outstanding stock.

19 In 2002 there was a corporate reorganization and Trigen Energy was transferred from
20 Elyo to Tractebel. Shortly after Tractebel took control of Trigen Energy, Tractebel put the
21 Trigen Energy properties up for sale, which resulted in the joint application.

22 **PROBLEMS WITH TRIGEN'S FINANCIAL RECORDS**

23 Q. Has Trigen Kansas City experienced problems with its books and records?

1 A. Yes. From our review Staff has determined the following:

2 1. Trigen Kansas City did not use original cost investment to
3 value its assets from the very beginning, when it purchased the district steam
4 heating system from KCPL in March 1990, consequently Trigen Kansas City
5 has never known the actual valuation of its assets, i.e., the starting point of its
6 investment in the district steam heating systems. There is disagreement as to
7 what the purchase price to KCPL for the electric and heating system is, thus,
8 Trigen Kansas City does not know its acquisition premium paid for this
9 property at that time.

10 2. Trigen Kansas City has never used the FERC uniform system
11 of accounts (USOA) to identify its costs.

12 3. The annual FERC Form 1 report submitted to the Commission
13 by Trigen Kansas City has never been correct, i.e., the annual FERC Form 1
14 has never tracked the USOA and has never been in compliance with the
15 original cost valuation concept.

16 4. The financial records were used by Trigen Kansas City to
17 develop the FERC Form 1 costs from 1990 to 1999. This system reflects the
18 financial reporting as though Trigen Kansas City was a non-regulated entity
19 which was consistent with its parent company, Trigen Energy. This reporting
20 system ignored the regulated books and records of Trigen Kansas City.

21 5. During 2001, preparing its 2000 financial reports, Trigen
22 Kansas City wrote down a significant amount of its investment and then used

1 these documents to report its investment to the Commission in its 2000 annual
2 report submission.

3 6. The Trigen Kansas City 2001 reports reflect the write-down of
4 the assets and were the source for the Form 1 report provided to the
5 Commission in April 2002 by Trigen Kansas City.

6 7. During 2003, Trigen Kansas City went through a lengthy
7 process in an attempt to restate investment to original cost for its regulated
8 books but did not change its financial books, i.e., reverse the write-down.
9 This process was undertaken to “restate” the regulatory assets to original costs
10 and ignoring the write-down of the assets.

11 8. After restating the 2002 regulatory books and records during
12 2003, Trigen Kansas City’s financial balance sheet accounts were not used as
13 the source for the 2002 Form 1 annual report submitted to the Commission by
14 Trigen Kansas City. The “regulatory” books and records are inconsistent with
15 the “financial” books and records.

16 9. Through this process, Trigen Kansas City discovered that the
17 Commission authorized depreciation rates were never used by Trigen Kansas
18 City for either the financial reporting or the FERC Form 1 reporting in the
19 annual reports, thus, affecting the depreciation reserve and income statement
20 amounts for all years in which Trigen Kansas City has operated the former
21 KCPL steam business.

22 10. Other issues discovered by Trigen Kansas City were that plant
23 additions and retirements were not correctly made. Examples given by Trigen

1 Kansas City were as follows: a) Plant investment was netted with retirements,
2 i.e., a \$1,000,000 investment and a \$300,000 retirement were recorded as a net
3 \$700,000 addition to plant. An attempt was made in the 2003 analysis to
4 reverse this conflation out and to properly reflect the \$1,000,000 plant
5 addition and the \$300,000 retirement; b) Costs that should have been
6 capitalized were expensed and costs that should have been expensed were
7 capitalized; c) Plant additions were made such as replacing buried
8 distribution pipe but no retirements were booked; d) A fire occurred at the
9 Grand Avenue Station in 1990 and the insurance proceeds were not properly
10 recorded.

11 11. The 2003 analysis performed by Trigen Kansas City attempted
12 to “fix” all of these problems.

13 **ASSET IMPAIRMENT/WRITE-DOWN OF THE STEAM SYSTEM**

14 Q. Does Staff believe that the analysis performed by Trigen Kansas City properly
15 restates the plant-in-service and accumulated depreciation reserve as of the date of the Trigen
16 Kansas City analysis?

17 A. No. Trigen Kansas City has attempted to restate the plant and depreciation
18 reserve balances but Staff does not believe that these balances are properly stated as of the
19 date of the analysis performed by Trigen Kansas City. Staff believes one of the major
20 reasons to restate the plant-in-service and accumulated depreciation reserve was to reverse
21 the prior write-off. Trigen Energy and its public accountants believed in 2000 that Trigen
22 Kansas City’s assets were impaired at that time.

1 Staff believes that after discussions with Staff in 2001 and then later with outside
2 consultants with regulatory experience, Trigen Kansas City determined that it had written off
3 assets it had not requested a rate increase requesting, and, therefore, Trigen Kansas City had
4 prematurely written-off the assets as impaired.

5 Staff tried to determine if the balance used by Trigen Kansas City for its starting point
6 for 1990 was appropriate. Staff has not been able to confirm what the situation and numbers
7 were with the documents provided by Trigen Kansas City. In an attempt to independently
8 identify the purchase price and the amount of the original cost investment, Staff submitted a
9 data request to KCPL to obtain a list of the assets that were transferred to Trigen Kansas City
10 at the completion of the 1990 sale of the steam plant and operations to Trigen Kansas City.
11 Further complicating this issue is the situation that the information received from KCPL did
12 not agree with the amounts provided by Trigen Kansas City. An analysis of the differences
13 in the balances of plant, accumulated depreciation reserve, net plant, the purchase/sale price
14 and the goodwill acquired/premium paid is attached to this testimony as Schedule 2.

15 Schedule 2 shows a difference in plant of ** _____ ** and accumulated
16 depreciation reserve of ** _____ **. Staff has been able to ascertain the cause of the
17 differences at this time. Schedule 2 also identifies the disputed amount for the purchase price
18 reported by Trigen Kansas City and KCPL

19 Staff has performed a number of analyses of the approximate balances of plant and
20 the accumulated depreciation reserve based upon the beginning balances provided by KCPL
21 and the annual additions and retirements calculated by Trigen Kansas City.

22 Staff's analyses include a calculation of the plant as if Trigen Kansas City had never
23 taken an impairment write-down of the assets under SFAS No. 121, which has been

1 superseded by SFAS No. 144; a calculation of the depreciation expense associated with that
2 plant; and also an analysis of the accumulated depreciation reserve associated with that plant.
3 Staff's analysis of the yearly plant and annualized depreciation is included as an attachment
4 to my testimony as Schedule 3, pages 1 through 3. This schedule depicts the restated plant
5 using the balances transferred to Trigen Kansas City that were supplied by KCPL and the
6 yearly plant additions and retirements that were included in Trigen Kansas City's analysis
7 restating the plant through 2003, as if the write-off was never made. This produces a plant
8 balance of ** _____ **. Staff's analysis of the accumulated depreciation reserve
9 associated with this plant is attached to my testimony as Schedule 4, pages 1 through 4.
10 Using the balances transferred to Trigen Kansas City that were supplied by KCPL and the
11 yearly additions and retirements included in Trigen Kansas City's analysis, produces an
12 accumulated depreciation reserve balance of ** _____ **. The net plant value upon
13 which a return would be calculated under the scenario that: a) plant was incorrectly written-
14 down; and b) this Commission allows this restatement of the assets, would result in
15 ** _____ **.

16 Staff also performed an analysis of the plant as adjusted for the impairment write-
17 down taken in 2000, (which Trigen Kansas City attempted to restate in 2002). For purposes
18 of this analysis, Staff ignored the restatement of the assets made by Trigen. This analysis
19 depicts the impairment write-down (without restatement) and is included in my testimony as
20 Schedule 5, pages 1 through 3. The start point of the plant balances was supplied by KCPL
21 and the yearly plant additions and retirements were identified by Trigen Kansas City. This
22 analysis includes annualized depreciation expense calculated using Staff's plant balances and

1 the additions and retirements used by Trigen Kansas City in its analysis. The newly
2 calculated plant balance for the impaired assets at December 31, 2003 is ** _____ **.

3 Staff also calculated an accumulated depreciation reserve associated with this plant.
4 Staff's accumulated depreciation reserve is attached to my testimony as Schedule 6, pages 1
5 through 4. The starting point for the accumulated reserve balance was an amount provided
6 by KCPL and is adjusted for the restated depreciation expense and the retirements as
7 determined by Trigen Kansas City.

8 Schedule 7 is an analysis that compares the restated plant, accumulated depreciation
9 reserve and net plant-in-service balances by year, for the amounts originally filed by Trigen
10 Kansas City in its FERC Form 1 by year from 1990 through 2003, the Staff's balances
11 assuming the asset impairment write-down can be and was restored and the Staff's balances
12 assuming the asset impairment was made but cannot be or is not restored.

13 **ASSET IMPAIRMENT/WRITE-DOWN OF THE STEAM SYSTEM**

14 Q. Please describe the asset impairment write-down that occurred on Trigen's
15 books and records.

16 A. During late 2000, Trigen Kansas City requested Staff to review its operations
17 to determine if it needed to increase its rates for steam service. During discussions with the
18 Company in February 2001, Staff learned that Trigen Energy was considering taking an asset
19 impairment write-down under SFAS No. 121, later superseded by SFAS 144. Staff discussed
20 with the Company the need for writing down the assets and concluded that it was not
21 necessary. Despite Staff's objection, Trigen Energy made the write-down of the Trigen
22 Kansas City assets. Follow-up discussions with the Company's regional

1 accountant/controller indicated she believed that the corporate office had already written-
2 down the assets prior to the original discussion.

3 Q. Would you please explain what the effect the Company's write-down of the
4 systems asset under SFAS 144, has on this application?

5 The Company, in writing down its assets has created a dilemma for this Commission and for
6 the Company purchasing this property. The delima is how the Commission will treat the
7 value of the regulated assets for valuation in this sale case. Staff believes that based upon our
8 interpretation of SFAS 144, Trigen cannot restate the Company's financial statements unless
9 this Commission allows the recovery of the assets that were written-off in rates, which would
10 have to be a direct result of findings in a rate case proceeding..

11 The joint applicants believe that this issue is something to be addressed in a future
12 rate proceeding and has no relevance in the current sale application. However, Staff believes
13 that this issue must be determined first before there can be a determination of the value of the
14 assets being sold and what effect this has on the determination of whether a premium was
15 paid for this property in relation to the sale price of the property. Should the value of the
16 property be the value as recorded in the financial statements or the value as recorded in the
17 FERC Form 1 and the annual report amounts reported to the Commission. However Staff
18 believes this Commission must first understand the requirements of SFAS 144 which has
19 superceded SFAS No. 121 which the Company used to write-down the value of their assets
20 for an impairment loss.

21 Q. What are the requirements of SFAS 144?

A. SFAS 144, discusses the Accounting for the Impairment or Disposal of Long-Lived Assets, the requirements that apply regarding the methodology for determining if an asset is impaired are as follows:

1) Long-Lived Assets to be Held and Used Recognition and Measurement of an Impairment Loss, paragraph 7:

For purposes of this Statement, impairment is the condition that exists when the carrying amount of a long-lived asset (asset group) exceed its fair value. An Impairment loss shall be recognized only if the carrying amount of a long-lived asset (asset group) is not recoverable and exceeds fair value. The Carrying amount of a long-lived asset (asset group) is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset (asset group). That assessment shall be based on the carrying amount of the asset (asset group) at the date it is tested for recoverability, whether in use (paragraph 19) or under development (paragraph 20. An impairment loss shall be measured as the amount by which the carrying amount of a long lived asset (asset group) exceeds its fair value.

2) Estimates of Future Cash Flows Used to Test a Long-Lived Asset for Recoverability, paragraph 16:

Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) shall include only the future cash flows (cash inflows less associated cash outflows) that are directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset (asset group). Those estimates shall exclude interest charges that will be recognized as an expense when incurred.

3) Paragraph 17:

Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) shall incorporate the entity's own assumptions about it use of the asset (asset group) and shall consider all available evidence. The assumptions used in developing those estimates shall be reasonable in relation to the assumptions used in developing other information used by the entity for comparable periods, such as internal budgets and projections, accruals related to incentive compensation plans, or information communicated to others. However, if alternative courses of action to recover the carrying amount of

1 a long-lived asset (asset group) are under consideration or if a
2 range is estimated for the amount of possible outcomes shall be
3 considered. A probability-weighted approach may be useful in
4 considering the likelihood of those possible outcomes.

5 4) Fair Value, paragraph 22:

6 The fair value of an asset (liability) is the amount at which that
7 asset (liability) could be bought (incurred) or sold (settled) in a
8 current transaction between willing parties, that is, other than
9 in a forced or liquidation sale. Quoted market prices in active
10 markets are the best evidence of fair value and shall be used as
11 the basis for the measurement, if available. However, in many
12 instances, quoted market prices in active markets will not be
13 available for the long-lived assets (asset groups) covered by
14 this Statement. In those instances, the estimate of fair value
15 shall be based on the best information available, including
16 prices for similar assets (groups) and the results of using other
17 valuation techniques.

18 5) New Cost Basis, paragraph 15:

19 If an impairment loss is recognized, the adjusted carrying
20 amount of a long-lived asset shall be its new cost basis. For a
21 depreciable long-lived asset, the new cost basis shall be
22 depreciated (amortized) over the remaining useful life of the
23 asset. **Restoration of a previously recognized impairment**
24 **loss is prohibited.** [emphasis added]

25 Staff learned of the possibility of Trigen's parent company's decision to write-down
26 the assets during a meeting in January 2001 at which time Staff informed the Company that it
27 did not believe a write-down of the assets would be necessary. Staff explained to the
28 Company that the value of the asset is basis for what the Company is allowed to earn a return
29 on and upon which rates are set. Staff also indicated to the Company that if the assets were
30 written-down there would be a problem as there would no longer be a value to those assets
31 for setting future rates. Company informed Staff that they believed that the parent
32 corporation had already made the decision to write-down the assets under SFAS 121.

1 Q. Would you please provide a basis for Staff's belief that the asset cannot be
2 restated on the financial books and records unless this Commission allows for the recovery of
3 the written-off assets in rates?

4 A. Yes. SFAS 144 addresses in paragraph B59 and B60 its Amendment to
5 Statement 121 and FASB Statement No. 71, Accounting for the Effects of Certain Types of
6 Regulation. Paragraph B61, addresses Paragraph 135 of Statement 121 further clarified that
7 accounting for previously disallowed costs that are subsequently allowed by a regulator:

8 The board decided that previously disallowed costs that are
9 subsequently allowed by a regulator should be recorded as an asset,
10 consistent with the classification that would have resulted had those
11 costs initially been included in allowable costs. Thus, plant costs
12 subsequently allowed should be classified as regulatory assets. The
13 Board amended Statement 71 to reflect this decision. The Board
14 decided to restore the original classification because there is no
15 economic change to the asset-it is as if the regulator never had
16 disallowed the cost. The Board determined that restoration of cost is
17 allowed for rate-regulated enterprises in this situation, in contrast to
18 other impairment situations, because the event requiring recognition of
19 the impairment resulted from actions of an independent party and not
20 management's own judgment or determination of recoverability.

21 The preceding paragraph leads to the following question, since the Company wrote
22 the asset-down for impairment when they had not requested the assets be considered in
23 setting rates, can they restate the asset on their financial books and records?

24 Q. Does Staff believe that this Commission should allow the restatement of the
25 assets as if they had not been written-off under SFAS No. 121?

26 A. Staff believes that unless this Commission allows the restatement of these
27 assets, then neither the seller if they retain ownership of Trigen Kansas City nor the buyer if
28 the property is sold has any value upon which to earn a return on any investment that they
29 have previously made.

ORIGINAL COST TO BASE RATES/ACQUISITION PREMIUM

Q. What is “original cost?”

A. The term “original cost” as defined by the Electric Plant Instructions Section of the FERC Uniform System of Accounts (USOA), relates to:

All amounts included in the accounts for electric plant acquired as an operating unit or system, except as otherwise provided in the texts of the intangible plant accounts, shall be stated at the cost incurred by the person who first devoted the property to utility service. (Paragraph 15,052 of USOA).

Depreciation and amortization of the utility property from the previous owner must be deducted from original cost, which results in a net original cost figure to be recorded on the purchaser’s books and records. The acquired property is valued at the same value the seller placed on it, hence the “original cost when first devoted to public service,” adjusted for depreciation and amortization, concept.

Q. Is use of net original cost for valuing rate base still the predominant form of regulation?

A. Yes. In the State of Missouri, the use of original cost less depreciation and amortization, i.e., net original cost, to set rates is not only the predominate form of regulation, but to my knowledge, the only form that has been employed by this Commission.

Q. How does an acquisition adjustment result?

A. Utility property is recorded on the company’s books and records at net original cost. A utility must account for any difference between the acquisition cost or purchase price of property and the net original cost, i.e., the amount paid to the original owner (the seller) for utility property being first placed into service and the recorded net original cost amount. This difference in purchase price is recorded in USOA Account 114, Electric Plant Acquisition Adjustments. The amortization of the acquisition adjustment is

1 made to Account 406, Amortization of Electric Plant Acquisition Adjustments, if
2 authorization is granted to include the adjustment in cost of service for ratemaking purposes
3 (above-the-line treatment). If no authorization is given to include an amortization for
4 ratemaking purposes (i.e., below-the-line treatment occurs), then Account 425,
5 Miscellaneous Amortization must be used.

6 Account 114 states:

7 A. This account shall include the difference between (1) the cost to
8 the accounting utility of electric plant acquired as an operating unit or
9 system by purchase, merger, consolidation, liquidation, or otherwise,
10 and (2) the original cost, estimated, if not known, of such property,
11 less the amount or amounts credited by the accounting utility at the
12 time of acquisition to accumulated provisions for depreciation and
13 amortization and contributions in aid of construction with respect to
14 such property.

15

16 C. Debit amounts recorded in this account related to plant and land
17 acquisition may be amortized to account 425, Miscellaneous
18 Amortization, over a period not longer than the estimated remaining
19 life of the properties to which such amounts relate. Amounts related to
20 the acquisition of land only may be amortized to account 425 over a
21 period of not more than 15 years. Should a utility wish to account for
22 debit amounts in this account in any other matter, it shall petition the
23 Commission for authority to do so. Credit amounts recorded in this
24 account shall be accounted for as directed by the Commission.

25 Account 406 states:

26
27 This account shall be debited or credited, as the case may be, with
28 amounts includible in operating expenses, pursuant to approval or
29 order of the Commission, for the purpose of providing for the
30 extinguishment of the amount in account 114, Electric Plant
31 Acquisition Adjustments.

32 Account 425 states:

33
34 This account shall include amortization charges not includible in other
35 accounts which are properly deductible in determining the income of
36 the utility before interest charges. Charges includible herein, if

significant in amount, must be in accordance with an orderly and systematic amortization program.

ITEMS

1. Amortization of utility plant acquisition adjustments, or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.

2. Other miscellaneous amortization charges allowed to be included in this account by the Commission.

Q. Has the Commission recently endorsed the original cost concept to value utility assets for ratemaking purposes?

A. Yes. In the acquisition of St. Joseph Light & Power by Aquila Inc. (formerly UtiliCorp United, Inc.) in 2000 designated as Case No. EM-2000-292, the Commission found that the use of the original cost for investment in utility property has been the consistent standard to which rates have been based. The Commission stated in this recent Order:

For regulatory purposes, an acquisition adjustment is simply the difference between the consideration that the purchaser pays for the assets and the net book value of those assets. As a general rule, only the original cost of utility plant to the first owner devoting the property to public service, adjusted for depreciation, should be included in the utility's rate base. That principle is known as the net original cost rule.

The net original cost rule was developed in order to protect ratepayers from having to pay higher rates simply because ownership of utility plant has changed, without any actual change in the usefulness of the plant. If a utility were allowed to revalue its assets each time they changed hands, it could artificially inflate its rate base by selling and repurchasing assets at a higher cost, while recovering those costs from its ratepayers. Thus, ratepayers would be required to pay for the same utility plant over and over again. The sale of assets to artificially inflate rate base was an abuse that was prevalent in the 1920s and 1930s and such abuse could still occur.

....

Missouri has traditionally applied the net original cost standard when considering the ratemaking treatment of acquisition adjustments. That means that the purchasing utility has not been allowed to recover an acquisition premium from its ratepayers. But it also means that

1 ratepayers do not receive lower rates through a decreased rate base
2 when the utility receives a negative acquisition adjustment. Even if a
3 company acquires an asset at a bargain price, it is allowed to put the
4 asset into its rate base at its net original cost. Similarly, ratepayers do
5 not share in the gains a utility may realize from selling assets at prices
6 above their net original cost. Those gains flow only to the utility's
7 shareholders.

8 [Commission's Order in Case No. EM-2000-292, pages 4 and 5]
9

10 Under the Conclusions of Law section of the Order in Case No. EM-2000-292 the
11 Commission stated:

12 This Commission has consistently applied the net original cost
13 standard when placing a value on assets for purposes of establishing a
14 utility's rates. No party has cited a single instance in which the
15 Commission has allowed a utility to directly recover an acquisition
16 premium through its rates.

17 [Commission's Order in Case No. EM-2000-292, page 6]
18

19 The Commission further stated:

20
21 For many years, the Commission has used a net original cost standard
22 to place a value on utility plant after a merger. That standard has
23 proven to be fair to utilities as well as to ratepayers. There is no
24 reason to vary from that standard in this case. The Commission
25 concludes that UtiliCorp should not be allowed to recover any of the
26 acquisition premium in its rates.

27 [Commission's Order in Case No. EM-2000-292, page 8]

28 **DESCRIPTION OF CHILLED WATER SYSTEM**

29 Q. Who owns and operates the chilled water systems in Kansas City, Missouri
30 that are included in the transaction that is the subject of this case?

31 A. Based on an interview of the general manager of Trigen-Kansas City Energy
32 Corporation, Brian Kirk, it is the Staff's understanding that an affiliate of Trigen-Kansas City
33 Energy Corporation named Trigen-Missouri Energy Corporation owns and operates the
34 chilled water systems.

1 Q. What is the source of your knowledge of the chilled water systems?

2 A. Principally the information that Brian Kirk provided in an interview
3 conducted for this case. Mr. Kirk has a degree in marine engineering, which he states is
4 similar to mechanical engineering.

5 Q. Do you know how long Brian Kirk has been familiar with the chilled water
6 systems of Trigen-Missouri Energy Corporation?

7 A. Mr. Kirk stated that he has been familiar with them since they first went into
8 service in 1998 and that he has managed them since that time.

9 Q. Can you describe the chilled water systems of Trigen-Missouri Energy
10 Corporation?

11 A. Trigen-Missouri Energy Corporation has two separate chilled water systems.
12 The system it refers to as the "East Loop" it both owns and operates. Trigen-Missouri
13 Energy Corporation purchases steam from its affiliate Trigen-Kansas City Energy
14 Corporation that it uses in the process that cools the water that it then circulates to its
15 customers for their use. The physical plant where the steam is used in the process to cool the
16 circulating water is located in the same building at 115 Grand Avenue, Kansas City,
17 Missouri, where Trigen-Kansas City Energy Corporation has its steam generating plant. The
18 chilled water leaves that building and travels about 1.5 miles in a north/south direction along
19 or in Oak and McGee Streets in Kansas City, Missouri to the greatest extent of the loop it
20 travels in. The chilled water then returns to the steam generating plant building where it is
21 cooled and recirculated. Staff witness Elliott provides a description of the portion of the
22 chilled water system that is located in the steam generating plant building.

1 The system that Trigen-Missouri Energy Corporation refers to as the “West Loop” is
2 leased physical plant that Trigen-Missouri Energy Corporation operates. The “West Loop”
3 has a much shorter run of distribution piping.

4 Q. What customers does Trigen-Missouri Energy Corporation serve on its “East
5 Loop”?

6 A. ** _____
7 _____
8 _____ **

9 Q. What facilities does Trigen-Missouri Energy Corporation serve on its “East
10 Loop” for each of these customers?

11 A. ** _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____ **

19 Q. When did Trigen-Missouri Energy Corporation begin serving each of the
20 customers on its “East Loop”?

21 A. Trigen-Missouri Energy Corporation began serving ** _____
22 _____ ** in 1998 when it

1 began chilled water operations. It added ** _____
2 _____ ** onto the system around 2000.

3 Q. Turning now to the “West Loop,” what customers does Trigen-Missouri
4 Energy Corporation serve on its “West Loop”?

5 A. It serves ** _____ **.

6 Q. What facilities does it serve for ** _____ **?

7 A. Trigen-Missouri Energy Corporation serves ** _____
8 _____ ** on the west side of Kansas City.

9 Q. Did Trigen-Missouri Energy Corporation engage in any marketing of its
10 chilled water service before it began providing that service, or afterward?

11 A. Mr. Kirk related that Trigen-Missouri Energy Corporation ** _____
12 _____ **.

13 Q. Does Trigen-Missouri Energy Corporation consider its chilled water
14 operations to be subject to the jurisdiction of this Commission?

15 A. No. ** _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____ **

1 Q. Did Trigen-Missouri Energy Corporation obtain any authority to lay its chilled
2 water system in public rights-of-way in the City of Kansas City, Missouri?

3 A. Yes. Trigen-Missouri Energy Corporation has such authority for thirty years
4 under a municipal ordinance enacted by the City of Kansas City, Missouri in 1989. A copy
5 of the ordinance is attached to this testimony as Schedule 8.

6 Q. Does the Staff believe that Trigen-Missouri Energy Corporation's chilled
7 water operations fall within the jurisdiction of the Public Service Commission of the State of
8 Missouri?

9 A. Yes, based on the advice of counsel. Section 386.020(20), RSMo. 2000
10 states:

11 "Heating company" includes every corporation, company, association,
12 joint stock company or association, partnership and person, their
13 lessees, trustees or receivers, appointed by any court whatsoever,
14 owning, operating, managing or controlling any plant or property for
15 manufacturing and distributing and selling, for distribution, or
16 distributing hot or cold water, steam or currents of hot or cold air for
17 motive power, heating, cooking, or for any public use or service, in
18 any city, town or village in this state; provided, that no agency or
19 authority created by or operated pursuant to an interstate compact
20 established pursuant to section 70.370, RSMo, shall be a heating
21 company or subject to regulation by the commission;

22 and section 393.290, RSMo. 2000 provides:

23 All provisions of chapters 386, 387, 390, 392 and 393, RSMo, in
24 reference to railroad corporations, street railroad corporations,
25 common carriers, gas corporations, electrical corporations, water
26 corporations, telephone and telegraph corporations, and sewer
27 corporations, in reference to hearings, summoning witnesses, taking of
28 testimony, reports, approval of incorporation and certificates of
29 franchises, the approval of issues of stocks, bonds, notes and other
30 evidence of indebtedness, consolidation, lease, transfer of franchises,
31 valuation of property, grants and franchises, keeping of accounts,
32 complaints as to quality, price, facilities furnished, the fixing of just
33 and reasonable rates and adequacy of service, forfeitures of all
34 descriptions, forfeitures for noncompliance with the orders, summary
35 proceedings under chapters 386, 387, 390, 392 and 393, RSMo,

1 excessive charges for product, service or facilities, proceedings before
2 the commission, and proceedings in any court mentioned in chapters
3 386, 387, 390, 392 and 393, RSMo, and in all other sections,
4 paragraphs, provisions and parts of chapters 386, 387, 390, 392 and
5 393, RSMo, in reference to any other corporations subject to any of the
6 provisions of chapters 386, 387, 390, 392 and 393, RSMo, so far as the
7 same shall be practically, legally or necessarily applicable to heating
8 companies in this state, are hereby made applicable to such heating
9 companies as designated in said chapters, and shall have full
10 application thereto.

11 Staff's counsel will present Staff's legal position on this issue in Staff's prehearing brief.

12 **AFFILIATED TRANSACTIONS**

13 Q. If the transaction is approved by the Commission, will Thermal be required to
14 comply with the Commission's Affiliated Transactions Rule for Steam heating utilities?

15 A. Yes. Thermal will be required to submit a Cost Allocation Manual (CAM)
16 and report affiliated transactions for each preceding calendar year by March 15th in
17 compliance with 4CSR-24-080.015, the Affiliated Transactions Rule for steam heating
18 utilities. Thermal will also be required to maintain records in compliance with
19 4 CSR-240-80.015 Section 5, Records of Affiliated Entities.

20 The Staff requests that Thermal be required to maintain its books and records so that
21 all acquisition costs are segregated and recorded separately. During Thermal's next general
22 rate proceeding, Thermal should be required to disclose to the Staff, Public Counsel, and
23 other interested parties subject to a Commission protective order acquisition, merger,
24 transition, and transaction costs recorded in Thermal's books and records in the appropriate
25 test year. Upon request by the Staff or Public Counsel, Thermal shall also disclose this
26 information as it relates to affiliated transactions and allocation factors to be included in its
27 annual report to the Commission as required by the Affiliated Transactions Rules.

1 The Staff also requests that Thermal should be required to specifically identify the
2 process it uses to allocate administrative and general (A&G) costs, sale and non-regulated
3 function expenses to its regulated divisions as well as its non-regulated subsidiaries. Thermal
4 should be required to maintain the raw data necessary to perform allocations of corporate
5 overhead costs including all data required to calculate the A&G allocations and the source of
6 the data. The raw data should include, but not be limited to, regulated and non-regulated
7 information concerning customer numbers and billing information, revenue data, asset
8 information (gross and net plant, etc.), management work time allocations, employee
9 numbers and other payroll data, and the Missouri jurisdictional rate of return on investment
10 ("ROR") and return of equity ("ROE").

11 Q. Are the Staff's proposed affiliated transactions record maintenance
12 requirements consistent with those requested from other Missouri utilities?

13 A. Yes, recent acquisitions by Missouri regulated utilities, Missouri Gas Energy,
14 a Division of Southern Union Company, Case No. GO-2005-0019 and Atmos Energy
15 Corporation's Case No. GM-2004-0607. The Commission has included similar agreed upon
16 record maintenance requirements. Both of these acquisitions were stipulated and agreed to
17 by the Companies and the Staff and were ultimately approved by the Commission. These
18 requested records will facilitate the Staff in its surveillance of affiliated transactions.

19 Q. What are the filing requirements for Steam Heating Utilities that would apply
20 to the steam company?

21 A. The filing requirements for Steam Heating Utilities are included in
22 4 CSR 240-3, Chapter 3 of the Code of State Regulations. The requirement is
23 4 CSR 240-3.435 Annual Report Submission Requirements for Steam Heating Utilities.

1 (1) All steam heating utilities shall submit an annual report to the
2 commission on or before April 15 of each year, except as is otherwise provided for in
3 this rule.

4 **RECOMMENDATIONS**

5 Q. What conditions and recommendations does the Staff make to the
6 Commission before the Commission authorizes the transfer of the subsidiaries its regulates to
7 Thermal North America, Inc.?

8 A. Staff recommends the following:

9 **Acquisition Adjustment/Acquisition Premium**

10 1) That unless the Joint Applicants, Staff and Public Counsel can come to
11 an agreement as to the value of the assets then this application should not be approved
12 as it is a detriment to the ratepayers of Trigen Kansas City. The issues concerning the
13 valuation of the assets are: a) the “original cost” value of the plant, accumulated
14 depreciation reserve and net plant at the March, 1990 closing date when the property
15 was originally purchased from KCPL by Trigen Energy. b) The purchase price paid
16 by Trigen Energy to KCPL. c) the amount of the premium associated with this
17 transaction that should have been recorded at that time.

18 2) That the application should not be approved unless the Commission
19 allows the restatement of the asset impairment that was taken under SFAS No. 121.
20 The decision by the Commission on the restatement of the assets determines if the
21 purchasing company has net plant upon which a return can be earned.

1 3) No recovery in future rate proceedings of any acquisition adjustment
2 (acquisition premium) for the original purchase by Trigen Energy from KCPL in
3 March 1990.

4 4) No recovery in future rate proceedings of any acquisition adjustment
5 (acquisition premium) for the acquisition by Thermal from Trigen Energy when this
6 transaction is completed.

7 5) No recovery in future rate proceedings of any acquisition adjustment
8 (acquisition premium) for the reorganization and purchase made in 2000 by the
9 Trigen's parent for 100% interest in Trigen Energy allocated to Trigen Kansas City.

10 6) No recovery in future rate proceedings for any purported merger
11 savings that would allow either direct or indirect recovery of the acquisition
12 adjustment (acquisition premium) through a savings/sharing mechanism.

13 **Uniform System of Accounts (USOA)**

14 7) The new owners must maintain and comply in full with the FERC
15 Uniform System of Accounts.

16 **Books and Records Safekeeping**

17 8) The new owners must acquire, maintain and safeguard all books and
18 records concerning the Trigen Kansas City and Trigen Missouri operations. In
19 particular, those books and records that concern the valuation of assets including all
20 plant additions and retirements, accumulated depreciation reserve, plant depreciation
21 expense records and deferred income taxes.

Regulatory Assistance from Tractebel through First Rate Case

9) The seller of the property, Trigen Energy and Tractebel, must provide regulatory assistance to the buyer, Thermal, through a period of time at least to the end of the first rate case filed after the purchase is approved by the Commission.

Joint and Common Cost Allocations

10) Thermal must agree to develop an appropriate allocation for purposes of setting retail rates in its next general rate case procedure for joint and common costs of Thermal and its related companies and any contracts related to the operations of the steam and chilled water systems. Thermal must agree to make available to Staff and Public Counsel, at reasonable times and places, all books and records and employees and officers of Thermal, Thermal Source and any affiliate, division or subsidiary of Thermal as provided under applicable law and Commission rules. Thermal agrees that, in any Thermal-initiated general rate proceeding, it has the burden of proving the reasonableness of any allocated or assigned cost to the Missouri operations of Trigen Kansas City and Trigen Missouri.

Separation of Costs and Allocations Procedures

11) Thermal shall maintain its books and records so that all acquisition costs (including the Transaction and future Thermal merger and acquisition transactions) are segregated and recorded separately. During Thermal's next general rate proceeding, Thermal must agree to disclose to the Staff, Public Counsel, and other interested parties subject to a Commission protective order acquisition, merger, transition costs and transaction costs recorded in Thermal's books and records in the appropriate test year. Upon request by the Staff or Public Counsel, Thermal also

1 must agree to disclose this information as it relates to affiliated transactions and
2 allocation factors to be included in its annual report to the Commission as required by
3 the Affiliated Transactions Rules, 4 CSR 240-80.015.

4 12) Thermal must agree to create and maintain records listing the names of
5 Thermal's employees, number of hours worked, type of work performed and travel
6 and other expenses incurred for all work related to all merger and acquisition
7 activities and specifically to Trigen Kansas City through the end of the test year,
8 updated test year or true-up test year in Thermal's next general rate case. Upon
9 request by the Staff or Public Counsel, Thermal must agree to disclose this
10 information as it relates to affiliated transactions and allocation factors reported
11 annually to the Commission under the Affiliated Transactions Rules.

12 13) Thermal will specifically identify, as a part of its annual filing of the
13 Cost Allocation Manual, the process used to allocate administrative and general
14 (A&G) costs, merger and acquisition costs, sale costs and non-regulated function
15 expenses to its regulated divisions as well as its non-regulated subsidiaries. If
16 Thermal decides not to retain merger and acquisition costs (including acquisition
17 adjustments, transaction costs, transition costs and a reasonable allocation of
18 corporate employee payroll and benefits) at the corporate level, it shall provide to the
19 Staff and Public Counsel all the data in which to make a reasonable allocation of
20 these costs to the corporate office cost center (i.e., retained at the corporate level).

21 14) Thermal must agree that the types and availability of raw data
22 necessary to perform allocations of corporate overhead costs will include all data
23 required to calculate the A&G allocations (e.g., an allocation factor based upon

1 revenues will include the revenue amount of each entity and the cumulative revenues
2 used to calculate the percentage to be allocated to each entity to which the factor is
3 being applied) and the source of the data (e.g., financial statement for the fiscal year
4 ending). The raw data to be discussed shall include, but not be limited to, regulated
5 and non-regulated information concerning customer numbers and billing information,
6 revenue data, asset information (gross and net plant, etc.), management work time
7 allocations, employee numbers and other payroll data, and the Missouri jurisdictional
8 rate of return on investment (ROR) and return on equity (ROE).

9 15) The allocation procedures shall include, but need not be limited to, the
10 use of cost allocation manuals, timesheets, time studies, and/or other means of
11 tracking and allocating costs. The allocation procedures shall provide a means to
12 identify and substantiate the portions of each individual corporate employee's time
13 and associated payroll cost being allocated to Thermal's regulated divisions as well as
14 its non-regulated subsidiaries.

15 **Severance Agreements and Retained Liabilities**

16 16) The amount of any employee severance benefits made by Thermal
17 shall be treated below the line for ratemaking purposes in Missouri and not recovered
18 in retail distribution rates in Missouri. Thermal must agree to segregate all costs
19 related to any employee severance payments made as a result of the Trigen Kansas
20 City acquisition. All amounts paid as a severance payment to Trigen Kansas City
21 employees will not be subject to allocation for cost recovery in any rate case filed in
22 Missouri. Thermal will keep separate accounting records for severance payments
23 which can be audited in the next Missouri rate case.

Commission Authority

17) Thermal must agree that the Commission has, and will continue to have, the authority after the proposed acquisition to regulate, through the lawful exercise of its statutory powers, and ensure the provision of service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable and not jeopardize the ability of Thermal to meet its Missouri utility obligations. Thermal also must agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Thermal for regulated utility service are not increased as a result of the unregulated and/or nonjurisdictional activities of Thermal's affiliates and Thermal. In addition, Thermal must agree, consistent with such standard, that rates should not be increased due to such activities.

Access to Information

18) Thermal shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Thermal or any affiliate that exercises influence or control over Thermal or has affiliate transactions with Thermal. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to: any written and printed material, audio and videotapes, computer disks and electronically stored information. Nothing in this condition shall be deemed to be a waiver of Thermals' right to seek protection of the information or to object, for

1 purposes of submitting such information as evidence in any evidentiary proceeding,
2 to the relevancy or use of such information by any party.

3 19) Upon request, Thermal must agree to make available to Staff and
4 Public Counsel, upon written notice during normal working hours and subject to
5 appropriate confidentiality and discovery procedures, all books, records and
6 employees of Thermal and its affiliates and subsidiaries as may be reasonably
7 required to verify compliance. Thermal shall also provide Staff and Public Counsel
8 all other such information (including access to employees) relevant to the
9 Commission's ratemaking, financing, safety, quality of service and other regulatory
10 authority over Thermal; provided that Thermal and any affiliate or subsidiary of
11 Thermal shall have the right to object to such production of records or personnel on
12 any basis under applicable law and Commission rules, excluding any objection that
13 such records and personnel of affiliates or subsidiaries: (a) are not within the
14 possession or control of Thermal; or (b) are either not relevant or are not subject to
15 the Commission's jurisdiction and statutory authority by virtue of, or as a result of,
16 the implementation of the proposed acquisition.

17 **Surveillance**

18 20) The Company should file any additional surveillance documents that
19 Company has been required to file as Trigen Kansas City. Additional requirements
20 are set forth in the Code Of State Regulations.

21 **Ratemaking Treatment**

22 21) That nothing in the Commission's Report And Order shall be
23 considered a finding by the Commission of the value of this transaction for

1 ratemaking purposes, and that the Commission reserves the right to consider the
2 ratemaking treatment to be afforded this transaction in any subsequent proceeding.

3 **Chilled Water Service**

4 22) That this Commission should make a finding of fact and conclusion of
5 law before approving this sale that the chilled water service provided by Trigen
6 Missouri is regulated.

7 Q. Does the Staff have any immediate concerns about the state of Trigen Kansas
8 City's books and records in addition to its most immediate concern regarding attempting to
9 determine whether the proposed transfer transaction is detrimental to the public?

10 A. Yes. Thermal has told the Staff that if the Commission authorizes the
11 proposed transaction, it will soon file for a rate increase. The Staff is concerned that given
12 the present state of Trigen Kansas City's books and records, it will be very difficult, if not
13 impossible, for the Staff to make a revenue requirement determination within the maximum
14 11 month suspension period. It is imperative that the Commission put Trigen Kansas City on
15 notice that the success of any rate increase it might file is dependent on, among other things,
16 Thermal addressing the present unacceptable state of the Trigen Kansas City books and
17 records. The Staff has attempted in the present audit to address the problematic state of
18 Trigen Kansas City's books and records and will continue to be interested in working and
19 willing to work with Thermal in resolving this matter. It is difficult for the Staff to fully
20 indicate how crucial this matter is.

21 Q. Would Thermal proceeding under the Commission's rule 4 CSR 240-3.440
22 Small Steam Heating Utility Rate Case Procedure resolve the Staff's concerns about the
23 present state of Trigen Kansas City's books and records?

1 A. No. The problems created by Trigen Kansas City's books and records would
2 not be resolved by Thermal seeking a rate increase by means of 4 CSR 240-3.440 Small
3 Steam Heating Utility Rate Case Procedure.

4 Q. Why does Staff believe it is necessary to make an asset valuation
5 determination in this merger/transfer application filed by the Joint Applicants?

6 A. The Joint Applicants have made it very clear that a rate case will be file as
7 soon as possible by either the buyer, if the sale is consummated, or seller if the sale is not
8 consummated, of the Trigen Kansas City property. It is a detriment to not know the value of
9 this property on which rates will have to eventually be set. It is essential that all books and
10 records, including electronic version, be secured by the buyer if the transaction is approved.
11 It would be impossible to reconstruct the plant and depreciation reserve without such
12 information as plant additions and retirements, and more importantly, the underlying
13 supporting documentation such as general and plant ledgers, plant addition and retirement
14 records, work orders, invoices, etc. If the Commission authorizes the transfer of the assets to
15 Thermal and releases the seller from further obligation to provide records, it will be near
16 impossible to determine the appropriate investment on which to set rates.

17 Q. Should the Commission require seller to provide access to all books and
18 records of Trigen Kansas City?

19 A. Yes. Staff recommends that the Commission require that the seller should
20 provide regulatory services to the buyer for at least the period through the end of any future
21 rate case. Tractebel and Trigen Energy have indicated that it will provide a "menu of
22 services" to the Thermal "on a transitional basis for up to six months. These services include
23 accounting, treasury, tax, human resources, information technology, engineering, and other

1 areas as requested by Thermal and agreed to by Tractebel.” (Trigen Energy witness Mark P.
2 Barry, direct testimony, page 15). To the extent that these services are needed to make the
3 transition of the sale of this property, Staff believes that Trigen Energy and Tractebel must be
4 available to assist in the reconstruction of the books and records, the pronounced problems
5 which were the responsibility and creation of the seller. This is especially important if the
6 buyer intends on filing a rate increase case as it has indicated it will do soon after the transfer
7 is consummated.

8 **CONCLUSIONS**

9 Q. What conclusions has Staff reached concerning the Joint Application?

10 A. Staff has concluded the following:

11 1) The books and records of Trigen Kansas City have never been in
12 conformance with the USOA or FERC chart of accounts.

13 2) Trigen Kansas City set the books and records up incorrectly when they
14 purchased the property from KCP&L in March 1990.

15 3) Trigen Kansas City depreciated the property using corporate
16 depreciation rates and not the Commission authorized depreciation rates.

17 4) Trigen Kansas City incorrectly took a write-down of the assets under
18 SFAS No. 121 in 2000 which it later tried to restate for regulatory purposes by
19 restating the FERC Form 1 or annual report filed with this Commission for 2002.

20 5) Trigen Kansas City has not restated its financials which means that
21 there are two sets of books: a) regulated books, and b) financial books.

1 6) Staff believes that the assets cannot be restated based upon SFAS No.
2 144 unless the Commission agrees in a rate proceeding to allow recovery of a return
3 on the assets that the Company wrote-off as impaired.

4 7) The Staff cannot ascertain the actual value of the assets purchased
5 from KCPL in 1990 based upon the records that Trigen has provided for review at
6 this time.

7 8) The value the Joint Applicants place on the assets was restated by
8 Trigen Kansas City through a process, that took place in 2003, when the Company
9 determined that the assets were incorrectly valued.

10 9) Staff cannot agree with the restated value based upon the
11 documentation that the Staff has been able to review to date.

12 10) Staff believes that a conservative valuation of the assets is the best
13 alternative to use in valuing the assets. Staff's valuation of the assets uses as a
14 starting point for the restatement of assets the balances provided by KCPL in
15 response to and an informal data request submitted by Staff in the context of the
16 present case.

17 11) The Joint Applicants have stated that irrespective of which of the Joint
18 Applicants owns the assets at the end of this proceeding there will be a rate increase
19 request filed some time in 2005.

20 12) That the Joint Applicants, Staff and Public Counsel can come to an
21 agreement as to the current value of the assets and agreement reached on the other
22 recommendations made by the Staff, then there will be no known detriment to the
23 sale of this property to Thermal at this time.

1 Q. Has Staff completed its investigation into the Joint Application of the
2 proposed purchase of Trigen Kansas City to Thermal?

3 A. No. As of this rebuttal filing, Staff has not received responses to numerous
4 Staff data requests. In addition, Staff has an outstanding issue relating to any tax benefits
5 that Trigen Kansas City may have taken for the asset write-down made in 2000 by Trigen's
6 parent, Trigen Energy. Trigen Energy has taken the position that there were no tax benefits
7 ever taken for the asset impairment charge made for 2000. Staff is awaiting evidence that
8 would indicate whether or not a tax deduction was taken for the impairment charge. If it
9 becomes necessary, Staff will file supplemental rebuttal testimony concerning these
10 outstanding issues.

11 Q. Mr. Williams, does this conclude your rebuttal testimony?

12 A. Yes, it does.

CASE PROCEEDING PARTICIPATION

PHILLIP K. WILLIAMS

Date Filed	Issue	Case Number	Exhibit	Company Name
	Advertising, Dues & Donations, Plant, Depreciation Reserve, Property Taxes	ER-81-42		Kansas City Power & Light Company
	Material and Supplies, Cash Working Capital	GR-81-155		The Gas Service Company
	Cash Working Capital	TR-81-302		United Telephone Company
	Payroll, O&M Expenses	GR-81-332		Rich Hill-Hume Gas Company
	Cash Working Capital	ER-82-39		Missouri Public Service Company
	Cash Working Capital	WR-82-50		Missouri Public Service Company
	Cash Working Capital	GR-82-151		The Gas Service Company
		GR-82-194		Missouri Public Service
	Revenues	WR-82-279		Missouri Water Company-Lexington Division
	Fuel Expense	ER-83-40		Missouri Public Service Company
	Cash Working Capital	GR-83-225		The Gas Service Company
	Revenues	GR-14-24		Rich Hill-Hume Gas Company
	Unit 3/Extra Work, Unit 3/Back charges; Phase IV	ER-85-128		Kansas City Power & Light Company
	Unit 3/Extra Work, Unit 3/Back charges; Phase IV	ER-85-185		Kansas City Power & Light Company
	Payroll, Payroll Taxes, Pensions	GR-86-76		KPL Gas Service Company
	Payroll, Payroll Taxes	TC-87-57		General Telephone Company of the Midwest

Date Filed	Issue	Case Number	Exhibit	Company Name
	Pensions	GR-88-194		Missouri Public Service Company
	Revenues, Pumping Power Expense, Chemical Expense, Vehicle Lease Expense, Interest Expense on Customer Deposits, Bad Debt Expense, Materials & Supplies, Prepayments, Customer Advances, Contributions in Aid of Construction	WR-88-255	Direct	U.S. Water/Lexington, Mo., Inc.
	Cash Working Capital	GR-90-50		KPL Gas Service
		ER-90-101		UtiliCorp United, Inc., Missouri Public Service
9/6/1991	Deferred Income Taxes; Liability Insurance Expense; Commission Assessment Expense; Income Taxes; Injuries and Damages Accrual; WOMAC Employee Expense; Exempt Employee Compensation Study Expense; Rate Case Expense; Employee Relocation Expense	GR-91-291	Direct	Kansas Power and Light Company Gas Service Division

Date Filed	Issue	Case Number	Exhibit	Company Name
	Revenue Requirement, Project Feasibility	GA-92-269	Direct	Missouri Public Service
	Payroll, Employee Benefits, Payroll Taxes, Administrative and General Expense, Donations, Board Fees, Outside Services, Rate Case Expense Payroll, Salary Increases	WR-92- 85	Direct Surrebuttal	Raytown Water Company
		GR-93-240		Western Resources, Inc.
1/22/1993	Ralph Green No. 3 Lease Expense; Injuries and Damages Expense; Property Tax Expense ; Interest Expense on Customer Deposits; Customer Deposits; Customer Advances; Prepayments; Materials and Supplies; Depreciation Expense; Plant in Service; Amortization Expense; Rate Base; Depreciation Reserve	ER-93-37	Direct	UtiliCorp United Inc. d/b/a MO Public Service
5/28/1993	Plant in Service; Accounting Authority Order; Corporate Overheads; Injuries and Damages Expense; Property Tax Expense; Interest Expense on Customer Deposits; Customer Deposits; Customer Advances; Prepayments; Materials & Supplies; Amortization Expense; Depreciation Reserve; Rate Base;	GR-93-172	Direct	Missouri Public Service a Division of UtiliCorp United, Inc.

Date Filed	Issue	Case Number	Exhibit	Company Name
	Depreciation Expense			
	Payroll, Payroll Taxes, Insurance, Employee Benefits, Materials and Supplies, Prepayments, Customer Deposits, PSC Assessment, Maintenance Expense, Admin and General Expenses, Donations, Board Fees	WR-94-211	Direct	Raytown Water Company
		GR-96-285		Missouri Gas Energy
3/28/1997	Plant; Amortization of Authority Orders; Sale of Accounts Receivable; Property Taxes; Customer Advances; Customer Deposits; Prepayments; Materials and Supplies; Depreciation Reserve; Depreciation Expense	EO-97-144	Direct	UtiliCorp United Inc. d/b/a MO Public Service
3/28/1997	Prepayments; Amortization of Authority Orders; Sale of Accounts Receivable; Plant; Property Taxes; Customer Advances; Customer Deposits; Materials and Supplies; Depreciation Reserve; Depreciation Expense	EC-97-362	Direct	UtiliCorp United Inc. d/b/a MO Public Service
9/16/1997	Plant; Property Taxes; Depreciation Reserve; Depreciation Expense; Accounting Authority Order Amortization; Accounts Receivable Sales; Property Taxes	ER-97-394	Direct	MO Public Service, A Division of UtiliCorp United Inc.

Date Filed	Issue	Case Number	Exhibit	Company Name
9/30/1997	Gain on Sale of Assets	GM-97-435	Rebuttal	Missouri Public Service, A Division of UtiliCorp United Inc.
		EC-98-126		UtiliCorp United, Inc., Missouri Public Service
5/15/1998	Public Affairs and Community Relations	GR-98-140	Surrebuttal	Missouri Gas Energy, A Division of Southern Union Company
7/10/1998	Staffs' Accounting Schedules; True-Up Methodology; Payroll; Payroll Taxes; Payroll Expense Ratio; AMR Employee Savings	GR-98-140	True-Up	Missouri Gas Energy, A Division of Southern Union Company
1/4/1999	Gross Down Factor; Gross Up	GR-98-140	Rehearing Rebuttal	Missouri Gas Energy, A Division of Southern Union Company
4/26/1999	Rate Disparity; Advertising Savings; Insurance Savings; Vehicle Savings; Facility Savings; Administrative and General Savings	EM-97-515	Rebuttal	Western Resources Inc. and Kansas City Power and Light Company
5/2/2000	Historical Rate Increases/ Reductions; Cost per kWh Comparison	EM-2000-292	Rebuttal	UtiliCorp United Inc. / St. Joseph Light and Power
6/21/2000	Historical Rate Increases/ Reductions; Cost Per kWh Comparisons	EM-2000-369	Rebuttal	UtiliCorp United Inc. / Empire District Electric Company
11/30/2000	Revenue Requirements	TT-2001-116	Rebuttal	Iamo Telephone Company
4/3/2001	Postage Expense; Test Year/True Up; Iatan Maintenance Expense; Bad Debt; Banking Fees; State Line Plant Maintenance Expense; Interest on Customer Deposits; Injuries and Damages;	ER-2001-299	Direct	The Empire District Electric Company

Date Filed	Issue	Case Number	Exhibit	Company Name
8/7/2001	Maintenance Expense	ER-2001-299	True-up Direct	The Empire District Electric Company
12/6/2001	AFUDC; Test Year; Sale of Accounting Receivable; Plant; True-Up; Jurisdictional Allocations; Cost per Kwh Comparison; Historical Rate Increases/Decreases; Cash Working Capital; Depreciation Expense/Depreciation Reserve; Accounting Authority Order; Pensions and OPEBS	ER-2001-672	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
1/22/2002	Cost Per kWh Comparison	ER-2001-672	Surrebuttal	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Accounting Authority Order; Test Year; True-Up Jurisdictional Allocations; Historical Rate Increases/Decreases; Depreciation Expense/ Depreciation Reserve; Cost per Kwh Comparison; Revenues; Uncollectible Expense; AFUDC and Sale of Accounts Receivable; Cash Working Capital Plant	EC-2002-265	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
1/22/2002	Cost Per kWh Comparison	EC-2002-265	Surrebuttal	UtiliCorp United Inc. d/b/a Missouri Public
8/16/2002	Test Year; Jurisdictional Allocators; State Line Maintenance Contract; State Line 1 and Energy Center 1 & 2	ER-2002-424	Direct	The Empire District Electric Company

Date Filed	Issue	Case Number	Exhibit	Company Name
	Maintenance Contract; Iatan Maintenance Expense; Asbury Maintenance Expense; Miscellaneous Expenses & Banking Fees;			
9/24/2002	Security Rider	ER-2002-424	Rebuttal	The Empire District Electric Company
12/09/2003	Test Year; Jurisdictional Allocations; Revenue Requirement; Rate History	ER-2004-0034 and HR-2004-0024	Direct	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P
01/06/2004	Test Year, Jurisdictional Allocation Factors, Asset Impairment Write-Down of Eastern System	GR-2004-0072	Direct	Aquila, Inc. d/b/a Aquila Networks MPS Gas and Aquila Networks-L&P Gas

SCHEDULES 2 THROUGH 7
HAVE BEEN DEEMED
HIGHLY CONFIDENTIAL
IN THEIR ENTIRETY

64457

AN ORDINANCE

GRANTING TRIGEN-KANSAS CITY DISTRICT ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION, PRIVILEGE AND AUTHORITY TO CONSTRUCT, MAINTAIN AND OPERATE PLANTS, MAINS AND OTHER APPLIANCES FOR THE PURPOSE OF SUPPLYING THERMAL ENERGY FOR DOMESTIC AND INDUSTRIAL PURPOSES.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. " Trigen-Kansas City District Energy Corporation, a corporation organized and existing under the laws of the State of Delaware and duly qualified in the State of Missouri, its successors and assigns, are hereby granted the right, permission, privilege and authority for a period of thirty (30) years from and after the date when this ordinance takes effect, within the corporate limits of Kansas City, Missouri, as now or hereafter established, to construct, maintain and operate plants, mains and other appliances for the purpose of generating, distributing and selling heat, steam, hot, chilled or condenser water, or other heating or cooling services ("Thermal Energy") for public and private use for all purposes for which Thermal Energy of any character may be used, to such persons, firms and corporations as may desire to purchase the same and to take and receive compensation therefor; and for said purposes to construct, maintain and operate pipes, conduits and manholes through, across and under any and all streets, boulevards, alleys, avenues, lanes and public grounds within said city, including the construction, maintenance and operation of service pipes through, across and under any and all streets, boulevards, alleys, avenues, lanes and public grounds within said city, to buildings and houses to be supplied with Thermal Energy for any purposes and to accomplish such purposes, the said Trigen-Kansas City District Energy Corporation, its successors and assigns, may enter upon any street, boulevard, alley, avenue, lane or public grounds within said city, and make such excavations therein as may be necessary for the purposes aforesaid under the restrictions and regulations hereinafter provided.

Section 2. All pavements and sidewalks shall be taken up and all excavations in the streets, boulevards, alleys, avenues, lanes and public grounds shall be made under the supervision of the Director of Public Works of Kansas City, and such pipes, conduits and appliances shall be located in such portion of the streets, boulevards, alleys, avenues, lanes and public grounds as may be designated by the Director of Public Works, using alleys as far as practicable. No excavations shall be made by the said Trigen-Kansas City District Energy Corporation, its successors and assigns, at any time in any street, boulevard, alley, avenue, lane or public grounds unless and until a permit therefor shall be obtained from the Director of Public Works, which permit shall state the particular street, boulevard, alley, avenue, lane or

Form 1777 - Law
(03247)

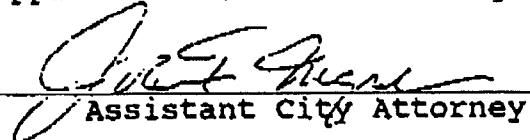
public grounds where the work is to be done, and the length of time the permit shall authorize the work to be done thereunder. All excavations shall be refilled by Trigen-Kansas City District Energy Corporation, its successors and assigns, and all pavements and sidewalks shall be replaced and restored at the expense of Trigen-Kansas City District Energy Corporation, its successors and assigns, and all of the aforesaid restoration shall be approved by the Director of Public Works. When used herein, "Director of Public Works" shall be construed to include such other officials as may be designated by the Director of Public Works or by ordinance.

Section 3. Trigen-Kansas City District Energy Corporation its successors and assigns, shall at all times use every reasonable and proper precaution to avoid damage and injury to persons or property and shall fully protect, indemnify and save harmless the City from and against any and all loss, damage, costs, expense (including a reasonable attorney's fee incurred in the defense of any action for damages), settlements, decrees, awards, penalties and claims of every kind or character arising from or growing out of, directly or indirectly, injury to or death of any person whomsoever or damage to any property whatsoever caused or occasioned by reason of any act or failure to act of said Trigen-Kansas City District Energy Corporation, its successors and assigns, in the construction, maintenance or operation of said plant, mains and appliances, or any part thereof.

Section 4. This grant is made subject to the provisions of the present Charter of Kansas City, Missouri, and any amendments thereto, and subject to the provisions which may be embodied in any future charter of said City and any amendments thereto, and all of the same are hereby made a part of this ordinance by reference thereto.

Section 5. This ordinance shall not become effective unless within ten (10) days after its passage Trigen-Kansas City District Energy Corporation shall file with the City Clerk of Kansas City, Missouri, its written acceptance thereof in form approved by the City Counselor of Kansas City, Missouri.

Approved as to form and legality:


Assistant City Attorney



Office of the City Attorney

City of Kansas City, Missouri
Heart of America

28th Floor, City Hall
Kansas City, Missouri 64106

816 274-1415

August 25, 1989

Mr. George E. Rider
Morrison, Hecker, Curtis, Kuder
& Parrish
1700 Bryant Building
1102 Grand Avenue
Kansas City, Missouri 64106-2370

Re: Acceptance of Ordinance No. 64457 by Trigen-Kansas City
District Energy Corporation

Dear Mr. Rider:

We have reviewed your written acceptance of the terms and conditions of Ordinance 64457 to be filed in the Office of the City Clerk of the City of Kansas City, Missouri this date and do hereby approve the form of such acceptance as presented for filing.

Yours very truly,

John F. Ingraham
Assistant City Attorney

JFI/smk

1700 BRYANT BUILDING
1102 GRAND AVENUE
KANSAS CITY, MISSOURI 64106-2370
(816) 842-3910

TELEX 488885
TELECOPIER (010) 474-4308

cc: Mr. John F. Ingraham
Mr. Eugene E. Murphy