

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

COMES NOW Trigen-Kansas City Energy Corporation (“Trigen” or “Applicant”), by and through the undersigned counsel, and for its Reply to the Staff Response to Commission Order filed herein by Staff on June 1, 2007, respectfully states as follows:

1. Section 393.190(1) RSMo requires Commission approval for the sale of an asset that is “necessary or useful” in the provision of utility service; this statute also provides that “Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility . . . of property which is not necessary or useful in the performance of its duties to the public.” Therefore, if the “asset” involved is not necessary or useful, Commission approval for its sale or disposition is not required and the Commission has no jurisdiction over such sale or disposition.

2. Much of the Staff’s discussion supports the fact that the Coal Contract is not a “necessary or useful” asset. In Staff’s Recommendation (attached to its Response), in the final three pages alone, Staff states its belief that:

- “Trigen has been and continues to supply steam load to its existing customers without this coal supply”;
- “the Staff believes that the Coal Contract that is the subject of this Application has not been beneficial, is not currently beneficial and will not be beneficial in the future to the customers of Trigen’s Missouri regulated operations”;
- “the Coal Contract is not needed by Trigen to provide safe and adequate service to the customers of its regulated Missouri operations”;
- “the coal agreement . . . cannot be a reliable source of coal supply for Trigen”; and
- “the Coal Contract has not, is not and will not provide benefit to Trigen’s Missouri regulated operations.”

3. Despite the foregoing discussion throughout the Staff’s Recommendation in support of the absence of Commission jurisdiction over the proposed transaction, Staff remarkably comes to the conclusion that the Commission should assert jurisdiction over the transaction. This is apparently due to Staff’s concern that Trigen would at some point in the future seek ratemaking recovery from Trigen’s Missouri regulated operations customers of a loss respecting the Coal Contract, despite assurances to the contrary from Trigen’s Vice President and General Manager, Mr. Kirk. Therefore, Trigen hereby affirms the prior representations of Mr. Kirk and unequivocally states for the record that it will not seek recovery from its Missouri regulated operations customers of its investment in the Ricci Mine 19 coal reclamation project.

4. Given the foregoing, the Commission should clearly disclaim jurisdiction over the Proposed Transaction (as described in Trigen’s Application filed herein).

5. Another concern of Staff's appears to be that Staff would like to review additional "documentation". One problem with this request is that most of the additional "documentation" sought simply does not yet exist, given that no contract sale has yet been made. Presumably, if the Commission decides to disclaim jurisdiction over the Proposed Transaction, as it should based on the above, such a ruling would obviate the need for any further documentation, as a determination of "not detrimental to the public interest" would no longer need to be made by the Commission.

If, for some reason, despite the applicable law and statements made in Staff's own Recommendation, the Commission does not disclaim jurisdiction over the Proposed Transaction, Trigen re-affirms its representation to provide to Staff all necessary documents upon closing of the Proposed Transaction, together with a statement verifying that the transaction, as executed, is consistent with the description of the Proposed Transaction provided in the Application and the terms and conditions of any Commission order approving the Proposed Transaction. As stated in the Application, to the extent that the Commission determines its approval is necessary, receiving it in advance will assist Trigen in receiving the highest price available in the market as regulatory uncertainty will be decreased.

6. Accordingly, if, for some reason, despite the applicable law and statements made in Staff's own Recommendation, the Commission does not disclaim jurisdiction over the Proposed Transaction, the Commission should approve the Proposed Transaction and grant such waivers as requested and described in detail in Trigen's Application filed herein and as may otherwise be required to issue an approval before the final terms of the Proposed Transaction have been determined.

WHEREFORE, for the reasons stated above and in Trigen's Application, Trigen respectfully submits that the Proposed Transaction does not require Commission approval, and requests that the Commission disclaim jurisdiction over the Proposed Transaction or, in the alternative, approve the Proposed Transaction as not detrimental to the public interest and grant such waivers as requested and described in detail in Trigen's Application filed herein and as may otherwise be required to issue an approval before the final terms of the Proposed Transaction have been determined.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil #33825
Stewart & Keevil, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, MO 65203
(573) 499-0635
(573) 499-0638 (fax)
per594@aol.com

*Attorney for Trigen-Kansas City
Energy Corporation*

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was sent to the following counsel by depositing same in the U.S. Mail First Class postage paid, by hand delivery or by electronic transmission, this 5th day of June, 2007:

Office of the General Counsel
Missouri Public Service Commission
200 Madison Street
Post Office Box 360
Jefferson City, MO 65102-0360

Office of the Public Counsel
200 Madison Street
Post Office Box 2230
Jefferson City, MO 65102

/s/ Jeffrey A. Keevil
