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July 9, 1999

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

FILED

JUL 9 1999

Missouri Public  
Service Commission

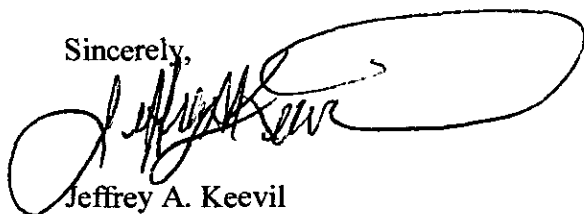
RE: Case No. 11,110 (00-99-44)  
In the Matter of the Assessment Against the Public Utilities in the State of  
Missouri for the Expenses of the Commission for the Fiscal Year Commencing  
July 1, 1999.

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and fourteen (14)  
copies of an APPLICATION FOR REHEARING AND STAY AND REQUEST FOR  
HEARING on behalf of Trigen-Kansas City Energy Corporation.

Copies of this filing have on this date been mailed or hand-delivered to counsel  
for Staff and the Office of the Public Counsel. Thank you for your attention to this  
matter.

Sincerely,



Jeffrey A. Keevil

JAK/er

Enclosures

cc: counsel for Staff  
Office of the Public Counsel

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

**FILED**

JUL 9 1999

Missouri Public  
Service Commission

In the Matter of the Assessment )  
Against the Public Utilities in the )  
State of Missouri for the Expenses )  
of the Commission for the Fiscal )  
Year Commencing July 1, 1999. )

Case No. 11,110

00-99-44

**APPLICATION FOR REHEARING AND STAY  
AND REQUEST FOR HEARING**

COMES NOW Trigen-Kansas City Energy Corporation ("Trigen"), pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160, and requests rehearing of the Commission's Supplemental Order No. 53 in Case No. 11,110 issued on June 24, 1999, and in support thereof respectfully states as follows:

1. On June 24, 1999, the Commission issued Supplemental Order No. 53 (the "Order") in Case No. 11,110; such Order is the assessment order for Commission fiscal year 2000. Although the Order was originally made effective on the date of issuance, on July 1, 1999, the Commission issued an order extending the effective date of Supplemental Order No. 53 to July 10, 1999.

2. The Order resulted in an assessment against Trigen for fiscal year 2000 which is 277% of the fiscal year 1999 assessment against Trigen<sup>1</sup>; in other words, Trigen's assessment nearly tripled from the previous year's assessment. On its face, an Order which results in such an assessment, without any explanation therefor, is unlawful, unreasonable, arbitrary, capricious and an abuse of discretion.

<sup>1</sup> The reduced assessment against Trigen which resulted from Case No. 00-99-44.

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3. The Order fails to set forth adequate findings of fact and conclusions of law as required by Missouri law. Accordingly, the Order is unlawful and unreasonable as a matter of law. As a result of the Order's failure to set forth adequate findings of fact and conclusions of law, Trigen is unable to ascertain what expenses were included in its assessment or how or why those expenses were assessed against Trigen, or any explanation for the near tripling of its assessment. Also as a result of the Order's failure to set forth adequate findings of fact and conclusions of law, Trigen is unable to ascertain if the Order comports with the requirements of Section 386.370 RSMo.

4. The Order is unlawful and unreasonable because there is no competent and substantial evidence to support it. Furthermore, there is no information to show that the estimation of expenses directly and indirectly attributable to particular utility groups, or the assessments to particular companies within the groups, comports with the requirements of Section 386.370 RSMo.

5. The Commission will recall that several utilities sought a reduction in their assessment last year (as a result of Supplemental Order No. 52) in Case No. OO-99-44. Much of the discussion in that case centered on the propriety of including amounts related to Article X transfers for Hancock refunds in Commission assessments. Trigen cannot discern from the Order, based on the insufficient findings of fact and conclusions of law contained in the Order, whether amounts related to Article X transfers for Hancock refunds were included in the calculation of the fiscal year 2000 assessment; if such amounts were included, the Order is unlawful, unreasonable, arbitrary, capricious and an abuse of discretion for the following reasons:

- Any amount included in the assessment for fiscal year 2000 to cover the cost of Hancock Amendment refunds for prior tax years is unauthorized by law because an Article X transfer out of the Public Service Commission Fund does not represent an "expense to be incurred by" the Commission during the 2000 fiscal year. *See*, Section 386.370 RSMo.

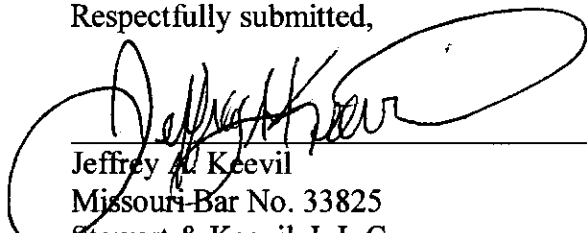
- Any amount included in the assessment for fiscal year 2000 to cover the cost of Hancock Amendment refunds is unauthorized by law because an Article X transfer out of the Public Service Commission Fund is not "reasonably attributable to the regulation of public utilities" as required by Section 386.370 RSMo.

- Any amount included in the assessment for fiscal year 2000 to cover the cost of Hancock Amendment refunds is unauthorized by law because the Public Service Commission Fund is not funded from general tax revenues and, accordingly, is not an appropriate funding source for refunding excessive taxes to the general public as is provided for by Article X of the Missouri Constitution. Furthermore, any Article X transfer out of the Public Service Commission Fund to facilitate the Hancock refunds is an unlawful attempt to recover a tax refund; the Hancock Amendment is a constitutional provision the purpose of which is to refund to citizens tax revenues paid by them to which the State is not entitled. Any effort to finance such a tax refund through a Commission assessment violates the provisions of the Missouri Constitution (Article X).

6. Due to the above, Trigen believes that the Commission should stay the effectiveness and enforcement of Supplemental Order No. 53 and open a case so that Trigen may inquire into the near tripling of its assessment and the matters described above may be inquired into, reheard and reconsidered by the Commission.

WHEREFORE, Trigen respectfully requests that the Commission stay the effectiveness and enforcement of Supplemental Order No. 53, grant a rehearing and enter upon a hearing concerning the propriety of its public utility assessments and other matters related thereto and, upon rehearing, issue a new Supplemental Order setting aside Supplemental Order No. 53 issued on June 24, 1999, which new Supplemental Order is consistent with the evidence and law.

Respectfully submitted,



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ATTORNEY FOR TRIGEN-KANSAS  
CITY ENERGY CORPORATION

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was delivered by first-class mail, or hand-delivery, to counsel for Staff of the Missouri Public Service Commission and the Office of the Public Counsel on this 9th day of July, 1999.

