

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Trigen-)
Kansas City Energy Corporation for a)
Certificate of Public Convenience and)
Necessity Authorizing It to Construct, Install,)
Own, Operate, Control, Manage and Maintain)
a Steam Heat Distribution System to Provide)
Steam Heat Service in Kansas City, Missouri,)
as an Expansion of Its Existing Certified Area)

Case No. HA-2006-0294

ORDER CONCERNING MGE'S REQUEST
FOR EXTENSION OF FILING DEADLINES
AND REQUEST FOR EXPEDITED TREATMENT

Issue Date: April 13, 2006

Effective Date: April 13, 2006

Trigen-Kansas City Energy Corporation (Trigen) filed an Application on January 10, 2006, seeking Commission authority to expand its service territory in downtown Kansas City, Missouri. With its Application, Trigen filed a Motion for Protective Order requesting protection of confidential information that would be late filed in Appendix C to its Application. In paragraph three of its Motion, Trigen suggested that it “may also respond to data requests in a confidential manner” and that a protective order would “facilitate the timely exchange of information relevant to the issues presented by the Application.”

Several parties sought intervention in the case. Missouri Gas Energy (MGE) was allowed to intervene on February 24, 2006. The parties met for a prehearing conference and agreed to a procedural schedule including deadlines for testimony, a list of issues, and briefs. Rebuttal testimony was due on April 13, 2006.

On April 12, 2006, at 12:16 p.m., one day before its rebuttal testimony was due, Missouri Gas Energy (MGE) filed a Request for Extension of Filing Deadlines and Request for Expedited Treatment. MGE asks the Commission to “hurry up and slow down” so it will be afforded the chance to file rebuttal testimony.

MGE claims in its Request that it “had not planned on hiring an outside consultant for this matter,” but because “many of the data request responses from Trigen and Truman were marked as highly confidential...MGE decided to hire a consultant to review the responses.”¹ MGE claims in paragraph three of its Request that it served data requests on Trigen and Truman on March 20, 2006, and that responses from Trigen and Truman were received by March 29 and April 10, respectively. MGE states that its outside consultant signed a nondisclosure agreement on April 10 but “has not yet had an opportunity to review the data request responses and other HC information involved in this proceeding.”² MGE seeks until April 27 to file rebuttal testimony and asks the Commission to extend the dates for surrebuttal, the list of issues, and the prehearing brief.

The Commission directed the parties to respond to MGE’s Request. Trigen notes in its response that it included highly confidential information with its initial Application, that its direct testimony filed March 16 includes two schedules designated highly confidential, and that its data request responses served on MGE by March 29 included highly confidential information. Trigen argues that MGE’s “feigned surprise”³ is “disingenuous.”⁴

¹ Paragraph 4 of MGE’s Request.

² Id.

³ Paragraph 2 of Trigen’s Response.

⁴ Id.

Trigen also takes issue with MGE's assertion that MGE served data requests on Truman on March 20, 2006. Trigen claims those data requests were not served until April 4 and that Truman responded on April 10. Truman then filed a response to MGE's Request "adopt[ing] and incorporate[ing] by reference the response of Trigen,"⁵ thereby asserting that it did not received data requests until April 4.

The Commission notes that MGE's Request does not include a statement as to whether it contacted counsel for the parties to this case before filing its Request. MGE asks that the Commission act quickly, yet it places the onus on the Commission to discern for itself the position of the parties. The Commission also notes that MGE seeks to unilaterally change the procedural schedule to accommodate its inability to file timely rebuttal testimony. Such a change would likely have a detrimental impact on the other parties to this case who have labored to adhere to the procedural schedule as agreed.

The Commission finds that MGE did not intend to hire an outside consultant until late in this case, in spite of its knowledge of highly confidential information as early as the date it filed for intervention, February 9, 2006. The Commission also finds that in spite of Trigen's filing of highly confidential schedules on March 16, MGE did not seek a consultant until late in the case. The Commission further finds that MGE should have known that the nature of its data requests, whether served on March 20 or April 4, may well invite a highly confidential response, necessitating the need for an outside consultant to review the material. This dilemma is one of MGE's making. The Commission will not substitute forgiveness for the failure to implement sound litigation strategy.

⁵ Paragraph 1 of Truman's Response.

MGE's Request for Expedited Treatment will be granted. MGE's Request to Extend Filing Deadlines will be denied.

IT IS ORDERED THAT:

1. Missouri Gas Energy's Request for Expedited Treatment is granted.
2. Missouri Gas Energy's Request for Extension of Filing Deadlines is denied.
3. This order shall become effective on April 13, 2006.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Steven C. Reed, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 13th day of April, 2006.