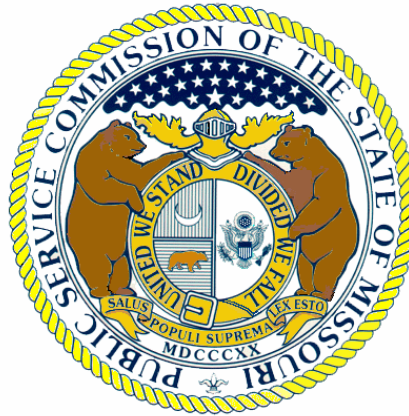


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

REPORT AND ORDER

Issue Date: May 25, 2006

Effective Date: June 1, 2006

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Case No. HA-2006-0294

APPEARANCES

Jeffrey A. Keevil, Stewart & Keevil, L.L.C., 4603 John Garry Drive, Suite 11, Columbia, Missouri 65203, for Trigen-Kansas City Energy Corporation

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G. David Porter, Office of General Counsel, 2301 Holmes, Kansas City, Missouri 64108, for Truman Medical Center, Incorporated

Robert Franson, Senior Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission

REGULATORY LAW JUDGE: Steven C. Reed

REPORT AND ORDER

Syllabus

This report and order grants the application of Trigen-Kansas City Energy Corp. for a certificate of 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 service area, and imposes conditions upon that certificate.

FINDINGS BY THE COMMISSION

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Procedural History

On January 10, 2006, Trigen-Kansas City Energy Corp. filed an application for a certificate of convenience and necessity seeking authority to expand its service area in Kansas City, Missouri. With its application, Trigen included a map showing its existing and proposed service areas. Trigen alleged that a prospective customer, Truman Medical Center (TMC), had requested that Trigen provide TMC's property with steam heating service. Trigen does not currently hold a certificate from the Commission to serve the area where Truman Medical Center is located. The proposed area also contains other potential steam heat customers.

The Commission invited intervenors to apply. Missouri Gas Energy (MGE), Kansas City Power & Light Company (KCPL), and Truman Medical Center (TMC) sought and were granted intervention. The parties filed a joint motion for an expedited procedural schedule including a hearing date of May 15. The parties also agreed to request the Commission to issue a decision in this case with an effective date no later than June 1, 2006.

The parties filed direct, rebuttal and surrebuttal testimony. KCPL withdrew from the case prior to the evidentiary hearing held May 15, 2006.

Issues Presented

Consistent with practice before the Commission, the parties filed an agreed-upon list of issues for determination by the Commission. Those issues are:

1. Should the Commission grant Trigen's request for a certificate of convenience and necessity to construct, install, own, operate, manage and maintain a system for the provision of steam heating service to the public in Kansas City, Missouri, as an expansion of its current service territory as being "necessary or convenient for the public service"; and
2. If so, should any conditions be imposed on the certificate of convenience and necessity.

Findings of Fact

Trigen's prefiled direct testimony was presented by Brian P. Kirk, the Vice President and General Manager of Trigen. Trigen owns and operates a district steam heating system located in the central business district of the City of Kansas City in an area commonly known as the "downtown loop." Trigen distributes steam through a network of 6.5 miles of underground pipe to approximately 65 customers located within the loop. The steam is primarily used to heat occupied spaces in buildings, and is also used to humidify spaces, heat domestic water, provide heat for laundry or prepare food. In other cases, the steam is used for industrial purposes. Trigen's customers include commercial and governmental office buildings, hotels, and apartment buildings.

Trigen seeks to expand its certificated service area into an area extending south of the downtown loop to encompass the "Hospital Hill" area of Kansas City. The area is more particularly described in Exhibit 8 (also Appendix A to the application), which is a map of the current and proposed service area. Trigen plans to apply its current tariffs to the new service area. Kirk's testimony established that there is a need for steam heating service in the proposed area because, at present, central district steam heating service is neither

available nor offered by any regulated or non-regulated entity in the proposed expansion area. TMC and other businesses in the proposed area may maintain and operate their own boilers to generate steam, but Trigen would offer an alternative supply source, offer a competitive choice to users of steam, enhance customer choice, and promote economic development through cost savings. Trigen's service offers the opportunity for potential customers to leave the business of self-generation of steam to others and focus on core competencies.

Trigen is qualified to provide steam heating in the proposed area because it has been providing steam service in its current service territory for many years and the nature of the steam service in the new area will be identical. Trigen also possesses the financial ability to provide the service because it has access to sufficient capital to finance the proposed expansion. Kirk's HC Schedule BPK-1, attached to his prefiled direct testimony, shows that Trigen possesses the financial ability to fund the project.

Trigen also presented a feasibility study as HC Schedule BPK-2, which demonstrates the expected economics of the expansion. The study considers only TMC as a customer, but even given that assumption, the expansion is expected to be accretive to earnings.

Kirk addressed in his testimony whether the expansion would promote the public interest. Enhanced customer choice and a less costly alternative to self-generation of steam would promote economic development in the area. Customers would not be limited to natural gas or electricity as sources to support the self-generation of steam. In addition, the Commission notes that the request to expand Trigen's services was made by TMC.

The hospital documented substantial future cost savings if it switches from self-generation by a natural gas fired plant to Trigen steam heat service.

David A. Wagner of Truman Medical Center offered testimony regarding the background of TMC and the reasons it had intervened to support Trigen's application. TMC is a Missouri non-profit corporation that serves as the safety net healthcare provider for its catchment area in Kansas City and Jackson County. TMC is also the primary teaching hospital for the University of Missouri-Kansas City Schools of Health Sciences. TMC contracts with the City of Kansas City and the County of Jackson to provide indigent care at its facilities. TMC expects that obtaining steam from Trigen will allow TMC to operate its utility system in a more economical manner and save significant operating expense. Those savings could be used to provide healthcare for the indigent of Kansas City and Jackson County. Beyond cost savings, Trigen steam will offer a redundant supply of energy to assure uninterrupted operations at TMC. TMC's boiler system is over 30 years old and needs to be replaced. TMC is a Level 1 Trauma Center and leader in emergency care for all of Kansas City. Trigen's services are important to the continued operation of TMC.

TMC undertook an analysis of the financial impact of switching to Trigen steam service. TMC took the daily average cost of natural gas over the year 2005 and calculated the cost based on usage history. TMC then did the same thing based on the tariff rate from Trigen. TMC estimated cost savings of approximately \$700,000 per year.¹ Finally, Wagner

¹ Transcript of Hearing, p. 128 (May 15, 2006).

testified at the hearing that TMC was willing to finance the entire cost of Trigen's expansion to serve TMC.²

The Staff of the Commission filed rebuttal testimony through Alan J. Bax and V. William Harris. Bax was familiar with the plans to expand Trigen's services to TMC. Based on Bax's testimony, the Commission finds that the extension of Trigen's facilities can be done in a safe and reliable manner and that Trigen has sufficient capacity to serve TMC.

William Harris testified that the Staff of the Commission recommends approval of Trigen's application with two conditions. First, Trigen's existing customers should be "held harmless" from any potential losses that may result from the project. Second, Truman Medical Center should finance the entire cost of the project construction extending Trigen's facilities to serve TMC. In his prefiled testimony, Harris stated that he believed condition one could be "accomplished by Truman financing the entire cost of the project's construction and specific language in the Commission's order conditioning the Commission's approval on Trigen being completely 'at risk' for covering any operating losses resulting from the project."³ Harris defined the public interest at issue in this case as, at least, those customers taking and receiving utility service from Trigen. In his analysis, Harris expressed his concern that the public being served by Trigen must not experience harm because of the proposed expansion.

The Commission agrees with Mr. Harris that current Trigen customers should not bear the risk of any adverse effects or losses occasioned by the project. If TMC finances the cost of construction, the risk to current customers is minimized. Further, current

² Id., p. 137.

³ Rebuttal Testimony of V. William Harris, page 3, lines 5-8.

customers are protected by Trigen's tariff filings in place at the Commission and any adverse effects may be dealt with by the Commission during a ratemaking case.

Missouri Gas Energy presented surrebuttal testimony from Michael R. Noack, the Vice President of Pricing and Regulatory Affairs. MGE provides transportation services to TMC. Noack testified, and the Commission agrees, that the public considered in this case should not be limited to customers of Trigen, but should include customers of MGE. Noack urges the Commission to look beyond the effect the expansion will have on TMC cost savings. Noack argues that several large transportation customers of MGE, including TMC, are included in Trigen's proposed expansion area and that those customers may cease taking service from MGE altogether, resulting in a substantial revenue shortfall and higher rates for MGE customers. On balance, MGE recommends that Trigen's application be denied.

The Commission recognizes Mr. Noack's concerns regarding MGE's revenues and ratepayers, but the Commission is obligated to consider a much larger picture than that proposed by the Staff or MGE. Rather, the Commission must consider the public as a whole in its determination. The Commission concludes that approving Trigen's application for a certificate of convenience and necessity is in the public interest.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

Trigen is a "heating company" as defined in Section 386.020, RSMo 2000, and a "steam heating utility" as defined in 4 CSR 240-3.010, and is subject to the jurisdiction of the Missouri Public Service Commission. Section 393.170, RSMo 2000, provides that the

Commission has the power to grant a certificate of public convenience and necessity if it finds that the certificate is necessary or convenient for the public service. “The term necessity does not mean ‘essential’ or ‘absolutely indispensable’ but that an additional service would be an improvement justifying its cost.”⁴ The Commission has set forth the following criteria for evaluating certificate applications:

1. There must be a need;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant’s proposal must be economically feasible; and,
5. The service must promote the public interest.⁵

“The requirement that an applicant’s proposal promote the public interest is in essence a conclusory finding.... Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.”⁶

Section 393.170.3 also provides that the Commission may impose such conditions on a certificate as it deems reasonable and necessary.

DECISION

The Certificate

The Commission concludes that there is a need for Trigen’s service in the proposed expansion area. There are no other providers of district steam heating service in the area

⁴ *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. 1993).

⁵ *In the Matter of the Application of Tartan Energy Corporation, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d 173, 177 (1994)(citing *In Re Intercon Gas, Inc.*, 30 Mo. P.S.C. 554, 561 (1991).

⁶ *Id.* at 189.

and TMC has a need for the service. Trigen's service to the area need not be essential or indispensable, rather the question is whether the service would be an improvement justifying its cost. This is clearly so in this case. TMC's self-generated natural gas boiler is 30 years old and in need of replacement. Rather than expend additional capital resources to replace or repair the boiler, TMC has asked Trigen to supply its steam heating needs. TMC anticipates savings of as much as \$700,000 per year and even if asked to pay for the entire cost of construction, TMC can pay off the construction costs within a few years.

The Commission concludes that granting a certificate of convenience and necessity will serve the public interest. As noted above in the Commission's findings, Trigen has established sufficient evidence to prove the first four criteria. Proof of the first four generally proves the fifth. But the Commission will go further. Section 386.610 requires the Commission to consider the public welfare, efficient facilities and substantial justice between patrons and public utilities. "The ultimate interest is that of the public as a whole...and not the potential hardship to individuals."⁷ The public as a whole includes ratepayers from Trigen and MGE. It also includes TMC's patients and taxpayers in Kansas City and Jackson County. MGE complains of revenue loss and potential higher rates for its customer, of which the Commission is cognizant. But on the whole, considering the public at large, the public interest is served by the significant savings anticipated by TMC, which will inure to the benefit of the public in general. The Commission also concludes that the expansion will lead to more efficient facilities. TMC's gas fired boiler obviously does not provide steam heat as efficiently as Trigen's service. If it did, the economics of the project would not result in such disproportionate cost savings to TMC vis-à-vis the revenue loss to

⁷ *State ex rel. Public Water Supply Dist. No. 8 v. Public Service Commission*, 600 S.W.2d 147, 155 (Mo. App. 1980)

MGE. MGE may lose \$150,000 in annual revenue, but TMC anticipates saving \$700,000 per year. The provision of Trigen's service is also important to TMC's continued operation as a safety net healthcare provider and emergency service provider to the people of Kansas City and Jackson County. The determination of the public interest is often balancing test between public and private interests where no one factor is dispositive.⁸ On balance, the Commission concludes that granting the certificate of convenience and necessity is in the public interest and will grant the certificate with the conditions that follow.

Conditions

The conditions considered are whether the proposed customer should pay the costs of construction and whether Trigen's customers should be "held harmless" by including a condition imposing the risk of loss on Trigen. As for the first, the Commission finds that it is common in the utility industry for potential customers to provide funds for construction. This practice offers a measure of protection for current customers and shifts the risk of operating losses to the shareholders of the company. As for the second, the Commission has reviewed the cases submitted by the parties in their post-hearing briefs and notes that this is a case where a regulated utility proposes to expand its service area to meet the needs of a single customer, TMC. Trigen is not expanding in order to seek and find customers, a riskier business venture where the potential for losses is more significant.

The Commission concludes that it is reasonable and necessary to impose the first condition requested by the Staff. In order to minimize the risk of adverse effects on Trigen's current customers, any potential customer in the expanded service area must finance the cost of construction of facilities to provide steam heating service to the

⁸ *Rhein v. City of Frontenac*, 809 S.W.2d 107, 110 (Mo. App. 1991).

customer. Trigen and TMC will be directed to put their agreement in principle in writing, setting forth the details regarding TMC's commitment to take service and fund the construction costs, and the proposal for any refund of construction funds to TMC.

The Commission concludes that it will not condition the certificate upon Trigen holding its current customers harmless. The cases cited by Mr. Harris in his rebuttal testimony deal primarily with the extension of services into an area where there was a significant dispute about whether there were enough customers in the proposed area to make the project feasible. In those cases, a substantial number of customers in the expansion area would have to subscribe to the new services before the project became profitable. In Trigen's case, TMC has committed to take service and the project is economically feasible and expected to be profitable even if TMC is the only customer in the new service area. The Commission's resolution of the Staff's request to condition the certificate on a hold harmless clause may have the same practical effect in the long run. The Commission in this order is not adjudicating the prudence of this or any other project within this new service territory. The Commission will consider the reasonableness and prudence of any additional costs or operating losses occasioned by the project in a future Trigen ratemaking case.

IT IS ORDERED THAT:

1. The Application for a Certificate of Convenience and Necessity filed by Trigen-Kansas City Energy Corporation is granted, subject to the conditions set forth below.
2. Trigen-Kansas City Energy Corporation is granted a Certificate of 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 more particularly described in Exhibit 8 (Appendix A to the application) presented at the hearing.

3. This Certificate is conditioned upon Truman Medical Center funding the cost of construction for the proposed extension of Trigen's facilities to serve Truman Medical Center.

4. Trigen-Kansas City Energy Corp. and Truman Medical Center shall file a written agreement setting forth the details of their construction and funding plans for the project, as well as their agreement regarding the mechanism for any refund to Truman for advancing construction costs.

5. The Commission reserves the right to consider any ratemaking treatment to be afforded the facilities, properties and transactions involved in this project in a later proceeding.

6. This report and order shall become effective on June 1, 2006.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,
concur and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 25th day of May, 2006.