

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

Joint Application of)	
)	
Trigen-Kansas City Energy Corp.)	
)	
and)	Case No. HM-2004-0618
)	
Thermal North America, Inc.)	
)	
For Grant of the Authority Necessary)	
for the Transfer of Control, Sale of)	
All Stock Currently Owned by)	
Trigen Energy Corporation, Inc. to)	
Thermal North America, Inc.)	

STIPULATION AND AGREEMENT

I. Procedural History

On June 29, 2004, Trigen-Kansas City Energy Corp. ("Trigen KC") and Thermal North America, Inc. ("Thermal NA") (together, "Applicants"), filed their Joint Application with the Missouri Public Service Commission ("Commission") for authority to transfer from Trigen Energy Corporation, Inc. to Thermal NA the control and stock of Trigen KC (the "Transaction"). On June 30, 2004, Applicants filed with the Commission a motion for a protective order that the Commission granted on July 6, 2004.

On July 1, 2004, the Commission issued its Order Directing Notice and Setting Dates for Submission of Intervention Requests. On July 22, 2004, the Commission issued its Order directing the Commission Staff ("Staff") to indicate when it could file a recommendation regarding the Joint Application and on August 2, 2004, Staff filed its response thereto, in which the Staff also requested the scheduling of an early prehearing conference.

Thereafter, on August 3, 2004, the Commission issued its Order setting a prehearing conference for August 16th. After the prehearing conference, the Commission issued its

Order regarding the filing of a progress report. On August 24, 2004, the Applicants, Staff and the Office of Public Counsel (“OPC”) filed a joint motion to establish a procedural schedule.

On August 30, 2004, the Commission issued its Order Adopting Procedural Schedule in which it established the following procedural schedule:

Direct Testimony by Trigen KC and Thermal NA	September 1, 2004
Response time for data requests reduced from 20 to 10 days	September 1, 2004
Staff Recommendation filed (only if Staff does not file testimony)	October 1, 2004
Technical Conference	October 6, 2004
Rebuttal Testimony filed by Staff and OPC	October 14, 2004
Surrebuttal Testimony	November 4, 2004
Issues List, Order of Witnesses, and Order of Cross	November 11, 2004
Prehearing Briefs	November 16, 2004
Hearing	November 22, 23 and 24, 2004

The Applicants filed direct testimony on September 1, 2004. The parties held a Technical Conference on October 6, 2004. The Staff filed rebuttal testimony on October 14, 2004. The Applicants filed surrebuttal testimony on November 8, 2004.

The parties have engaged in various discovery and discussions and as a consequence, the Signatory Parties have reached the following agreements which are set forth in this Stipulation and Agreement and which dispose of all issues in this case except for one.

II. Conditions of Approval

1. FILING AND REPORTING REQUIREMENTS

Trigen KC agrees to comply with all filing and reporting requirements set forth in Missouri Commission rules applicable to Steam Heating Utilities.

Trigen KC agrees to specifically identify, as a part of its annual filing of its Cost Allocation Manual, the processes used to allocate administrative and general costs, merger and acquisition costs, sale costs and non-regulated function expenses to its regulated divisions as well as its non-regulated affiliates and, if merger and acquisition costs (acquisition adjustments, transaction costs, transition costs) are allocated to Trigen KC, Applicants agree that, upon request, they will provide to Staff and OPC all data related to such costs.

Applicants agree that the allocation procedures for Trigen KC shall employ cost allocation manuals, timesheets, time studies and/or other means of tracking and allocating costs and that the procedures shall permit an auditor to identify and substantiate the allocations of the time of each individual, and associated payroll cost, to the activities regulated by the Commission and to each of the activities not regulated by the Commission.

To the extent Trigen KC ever seeks to recover such costs, Applicants agree to create and maintain, for all work related to all merger and acquisition activities and specifically to Trigen KC, through the end of the test year, updated test year or true-up test year in Trigen KC's next general rate case, records listing the names of Thermal NA's employees together with the number of hours worked, the type of work performed, and their travel and other expenses incurred.

Applicants agree that the amount of any employee severance benefits made by Thermal NA or Trigen KC related to the Transaction shall be treated below the line for ratemaking purposes in Missouri and not recovered in retail distribution rates in Missouri.

Thermal NA agrees to segregate all costs related to any employee severance payments made as a result of its acquisition of Trigen KC. Applicants agree that all amounts paid to Trigen KC employees as severance payments will not be subject to allocation for cost recovery in any rate case filed in Missouri. Applicants will keep separate accounting records for severance payments that can be audited in Trigen KC's next Missouri rate case.

Trigen KC agrees to submit to the manager of the Energy Department of the Staff a monthly report that would include operational and performance data in the form currently collected, including for example:

1. Gross boiler steam generation.
2. Monthly total fuel usage by fuel.
3. Boiler and turbine forced outage hours, planned and unplanned.
4. Boiler and turbine planned outage annual schedule.
5. Citations or notices of violation received from any state or federal agency.
6. Any other customer outages, forced or scheduled.

And by telephone within one business day following discovery, and in writing within five business days to the manager of the Energy Department of the Staff the following:

1. Any outages which materially affect service to customers anticipated to last more than three days.
2. Details of any accident at the steam plant involving serious physical injury or death or property damage in excess of \$100,000.

Trigen KC agrees to submit to the Commission on a quarterly basis "surveillance reports" that include the type of information shown in the exemplar form attached hereto as Appendix A.

2. UNIFORM SYSTEM OF ACCOUNTS

The Signatory Parties agree that Trigen KC should maintain and comply with the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts (USOA) for electric companies. Commission Rule 4 CSR 240-80.020 prescribes that Steam Heating Companies must maintain accounts pursuant to the January 1, 1915 Uniform System of Accounts; therefore, the Signatory Parties request that the Commission waive the requirements of 4 CSR 240-80.020 for Trigen KC and order it to comply, instead, with the FERC USOA for electric companies.

3. NET PLANT AND ACQUISITION ADJUSTMENT

The Signatory Parties agree that it is appropriate to use net original cost, as that term is defined by the Electric Plant Instruction Section of the FERC USOA, for valuing rate base. The Signatory Parties further agree that no acquisition adjustment from the transaction that is the subject of this case, or any prior transactions, should be considered in future Trigen KC ratemaking proceedings. Trigen KC is committed to original cost ratemaking.

4. ASSET IMPAIRMENT

During calendar year 2000, Trigen KC took an impairment write-down. The Signatory Parties, by this Agreement, seek Commission concurrence that the impairment should not have been recorded by Trigen KC and Trigen Missouri Energy Corporation, and a Commission Order authorizing reversal of the impairment for accounting and ratemaking purposes. The Signatory Parties agree that the impairment, although recorded by Trigen KC, was never used as a basis for changing regulated rates for steam heat service nor did it result in any claimed income tax deduction or any tax savings. As a result of Commission approval, future rate base, for both financial and regulatory purposes, will be valued at the

same net original cost that would have otherwise existed, but for the improper impairment write-down.

5. ORIGINAL COST AND DEPRECIATION RATES

A. *Original Cost.* As set forth in Section II., paragraphs 3. and 4. herein, the parties agree that the accounting records of Trigen KC should recognize original cost accounting, as set forth in the FERC USOA, and that no asset impairments or acquisition adjustments should be recognized in future ratemaking proceedings. So as to minimize areas of potential accounting complexity, the parties agree that the original cost of the property purchased by Trigen KC from Kansas City Power & Light Company ("KCPL") as of the March 1990 closing should be set at \$21,722,306 for gross plant in service and \$21,113,902 for the accumulated depreciation reserve. The Signatory Parties will use these amounts as a starting point for any analysis to determine the plant and reserve balances going forward from March 1990 to the end of the test year, and any true-up period, in the next rate proceeding for Trigen KC, or its successor. In that rate proceeding the appropriate plant and reserve balances shall be determined by employing FERC USOA original cost concepts and adjustments based on additions and retirements reflected in appropriate accounts maintained in conformance with the FERC USOA.

B. *Depreciation Rates.* The parties agree that the Commission has, and will continue to have, the authority to review, modify and determine the financial accounting and regulatory ratemaking purposes. The parties further agree that the accounting records of Trigen KC have not been maintained in accordance with Commission requirements and, therefore, the book depreciation reserve balances historically reported by Trigen KC have been inconsistent with past findings of the Commission as to how such depreciation reserve

balances should be determined. Trigen KC did not use Commission prescribed depreciation rates and did not properly account for plant additions and retirements. It will be necessary to “restate” Trigen KC’s books and records to conform them to the proper treatment of past plant additions and retirements. In order to comply with the Commission prescribed book depreciation rates and conform its accounting records to regulatory requirements, the parties also agree that Trigen KC will be required to quantify certain adjustments correcting these past accounting deficiencies. For purposes of clarifying the intent of the parties and avoid further confusion on this matter, the parties agree that the Commission authorized book depreciation rates that Trigen KC should have employed since the March 1990 purchase from KCPL and should continue to be applied until subsequently revised by the Commission are specifically set forth in Depreciation Authority Order No. 148, issued on June 9, 1986.

6. RECORDS AVAILABILITY

Commission Rule 4 CSR 240-10.010 and section 393.140 RSMo 2000 require the maintenance of books and records and their availability to the Commission. Applicants must acquire, maintain and safeguard all books and records that exist concerning the operations of Trigen KC and Trigen Missouri Energy Corporation—in particular, those books and records that concern the valuation of assets including all plant additions and retirements, accumulated depreciation reserve, plant depreciation expense records and deferred income taxes.

A. Prior to close, Trigen Energy Corporation and Tractabel North America, Inc. (“Tractebel North America”), each will perform exhaustive searches of their papers and electronic records, providing to Thermal NA originals, or copies where no originals can be found, of any records in their possession that are directly related to Trigen KC. Subsequent to close, should Trigen Energy Corporation or Tractebel North America, or any of their

affiliates or subsidiaries discover additional documents related to Trigen KC that were overlooked in the initial search, these documents will be promptly provided to Trigen KC.

B. Upon request, Applicants agree to make available to Staff and Public Counsel, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of Trigen KC, Thermal NA and its affiliates and subsidiaries, including Trigen Missouri Energy Corporation, as may be reasonably required to verify compliance with the conditions set forth in this Stipulation and Agreement. Applicants shall also provide Staff and Public counsel any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Trigen KC or Trigen Missouri Energy Corporation; provided that Trigen KC and any affiliate or subsidiary of Thermal NA, including Trigen Missouri Energy Corporation, shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries are (1) not within the possession or control of Trigen KC, or Trigen Missouri Energy Corporation, or (2) either not relevant or are not subject to the Commission's jurisdiction and statutory authority by virtue of or as a result of the implementation of the proposed acquisition. Trigen Energy Corporation and Tractebel North America, to the extent they have any such records or personnel with such knowledge, shall also comply with the terms of this provision. Requests to Trigen Energy Corporation and Tractebel North America shall be limited to information first requested of Applicants where Applicants are unable to provide an adequate response.

1) The type of information that may be requested as contemplated in this provision includes, but is not limited to the following:

- a) written information provided to common stock, bond or bond rating analysts which directly, or indirectly, pertains to Thermal NA or any affiliate of Thermal NA that exercises influence or control over Thermal NA, or engages in transactions with Thermal NA;
- b) documents and interviews pertaining to the allocation of joint and common administrative and general costs, merger and acquisition costs, sale costs and non-regulated function expenses to Trigen KC, as well as to Thermal NA and its affiliates;

C. Trigen KC, each affiliate and Thermal NA will maintain records supporting its affiliated transactions relevant to Commission jurisdiction.

D. Applicants agree to make available to Staff and OPC all raw data required to perform allocations of corporate overhead costs (administrative and general) to Trigen KC and Trigen Missouri Energy Corporation, and to provide documentation detailing the allocation methods employed by Applicants and Trigen Missouri Energy Corporation. The raw data shall include, but not be limited to: regulated and non-regulated information concerning customer numbers and billing information, revenue data, asset information (gross and net plant, etc.), management work time allocations, employee numbers and other payroll data, and the Missouri jurisdictional rate of return on investment (ROR) and return on equity (ROE).

E. Applicants, Trigen Energy Corporation and Tractebel North America agree that after the transaction Trigen KC will have control of the following information for Trigen KC,

to the extent that it now exists and that Trigen KC will maintain all such information in the future:

- 1) Annual dollar additions and dollar retirements by vintage year and year of retirement, beginning with the earliest year of data recorded;
- 2) Reserve for depreciation;
- 3) Surviving plant balance as of the depreciation study date;
- 4) Annual gross salvage and cost of removal for the most recent 15 years;
- 5) An inventory of property record units, including locations, which can be readily checked for proof of existence;
- 6) The association of original costs with such property record units;
- 7) The dates of installation and removal of plant;
- 8) A description of each retirement unit used by Trigen KC.

7. COMMISSION AUTHORITY

Trigen KC acknowledges that the Commission has, and will not lose as a result of the Transaction, the authority after the proposed acquisition to regulate, through the lawful exercise of its current 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 Trigen KC to meet its Missouri steam heat utility obligations. Thermal NA also acknowledges that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Trigen KC for regulated utility service are not increased as a result of the unregulated and/or nonjurisdictional activities of Thermal NA's affiliates and Thermal NA agrees, consistent with such standard, that rates should not be increased due to such activities.

Applicants agree that, unless specifically addressed in this agreement, Commission approval of this stipulation and agreement is not a finding by the Commission of the value of this transaction for ratemaking purposes, and they further acknowledge and agree that the Commission will have authority to consider the ratemaking treatment of this transaction in a subsequent proceeding.

8. COMMITMENTS AND REPRESENTATIONS ARE MISSOURI JURISDICTIONAL

The commitments and representations made by Thermal NA in this Stipulation and Agreement are intended to apply only in the context of Missouri jurisdictional regulatory activities. Commission approval of this Stipulation and Agreement is not intended, and shall not be construed, to restrict in any way the ability of either the Commission, Thermal NA or any party hereto to take any position whatsoever regarding matters covered by this Stipulation and Agreement in proceedings before the FERC or any other non-Missouri jurisdictional regulatory authority.

9. PREFILED TESTIMONY TO BE RECEIVED INTO EVIDENCE

The Commission may receive the prefiled testimony and schedules submitted by Applicants and Staff into evidence without the necessity of the witnesses taking the stand.

10. A. This Stipulation and Agreement has resulted from extensive negotiations among the parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the parties to take other positions in other proceedings.

B. This Stipulation and Agreement is being entered into for the purpose of disposing of all issues in this case with the exception of whether the Commission has jurisdiction to regulate Trigen Missouri Energy Corporation.

C. All parties further understand and agree that the provisions of this Stipulation and Agreement relate only to the specific matters referred to in the Stipulation and Agreement and no party waives any claim or right which it otherwise may have with respect to any matters not expressly provided for in this Stipulation. All parties further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation and Agreement in a manner which is adverse to the party withdrawing its support and further, all parties reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the party contesting such Commission order.

D. Notwithstanding the other provisions of this section, the parties agree that several commitments set forth in this Stipulation and Agreement are fundamental to the establishment of just and reasonable rates in future regulatory proceedings before this Commission. As part of the settlement reached by the parties the parties hereby understand and commit to certain fundamental facts hereinabove discussed for future ratemaking purposes: the net original cost of the property acquired in March 1990; the reversal of the impairment improperly recorded by Trigen KC in 2000; the book depreciation rates authorized by the Commission that should have been used by Trigen KC since the March 1990 acquisition; and the analysis that must be performed to determine the proper plant additions and retirements since March 1990 when Trigen KC acquired the property from KCPL. Recognizing that Staff has expressed its intent to continue its review of the plant

accounting records of Trigen KC since March 1990, the parties' commitment to these basic facts and principles for ratemaking purposes will limit the complexities of any accounting and/or ratemaking adjustments that might be required in future proceedings.

11. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive, with respect to the issues explicitly resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Nothing in this provision is designed to prevent any party from presenting oral testimony at any evidentiary hearing held regarding this Agreement. The parties agree to cooperate with each other in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to approval of this Agreement. If this Stipulation and Agreement is not approved by the Commission, the parties request that a revised procedural schedule be established which provides for a hearing, to include the opportunity for cross-examination.

12. The Staff shall file suggestions or testimony in support of this Agreement, and the other parties shall have the right to file responsive suggestions or prepared testimony.

13. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall

respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

14. To assist the Commission in its review of this Stipulation and Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in this Stipulation and Agreement, including any procedures for furnishing such information to the Commission.

WHEREFORE, the Signatory Parties respectfully request that the Commission issue its order approving the Transaction and this Stipulation and Agreement at its earliest opportunity so as to be effective and permit the transaction to close by December 31, 2004, if possible, and by said order:

A. finding that the transfer of the ownership of Trigen KC to Thermal NA, directly or indirectly, according to the terms of the Purchase and Sale Agreement and subject to the terms of the Stipulation and Agreement, is not detrimental to the public ;

B. authorizing Thermal NA to directly or indirectly acquire up to and including one hundred percent (100%) of the equity interests of Trigen KC according to the terms of the Purchase and Sale Agreement, Appendix D to the Joint Application;

C. authorizing Thermal NA and Trigen KC to enter into, execute and perform in accordance with, or as may be permitted by or result from, the terms of the Purchase and Sale Agreement, Appendix D to the Joint Application as they relate to transfer of the ownership of Trigen KC to Thermal NA, directly or indirectly;

D. authorizing Thermal NA to enter into, execute and perform in accordance with, or as may be permitted by or result from, the terms of all other documents and to take any and all other actions which may be reasonably necessary and incidental to the performance of the Transaction, as it relates to transfer of ownership of Trigen KC to Thermal NA, directly or indirectly; and

E. granting such other relief as may be necessary and appropriate to accomplish the transfer of ownership of Trigen KC to Thermal NA in accordance with the Purchase and Sale Agreement, Appendix D to the Joint Application.

Respectfully submitted,

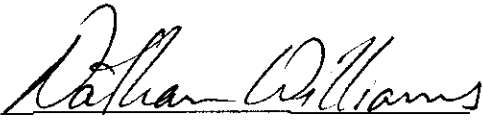
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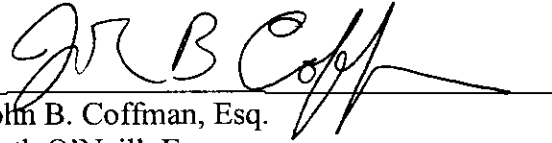
***Attorneys for Trigen-Kansas City Energy Corp.,
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Dated: 11-19-04



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Dated: 11/19/04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 19th day of November 2004.


Nathan Williams