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April 5, 2005

The Honorable Morris Woodruff  
Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Re: Case No. HC-2005-0331

Dear Judge Woodruff:

**FILED<sup>4</sup>**  
**APR 05 2005**  
**Missouri Public  
Service Commission**

During the hearing yesterday, the Commission granted the City of Kansas City leave to late file a certificate of the City Clerk covering several sections of the Charter of Kansas City. It was my belief that those sections of the Charter required City Clerk certification for admission. With additional research upon my return to the office after the hearing, I learned that judicial notice may be taken of Kansas City's Charter. *See, Pollard v. Board of Police Commissioners*, 665 S.W.2d 333, 341 (Mo.banc 1984). Accordingly, I will convert my request that the Commission take official notice of the provisions of the Charter of Kansas City, particularly sections 404, 405 and 409. I have included a page where these sections have been printed. I recall that an exhibit number may have been reserved for the certificate of the clerk and unless the page I have enclosed needs to be separately identified, that exhibit number may go unused.

Also, Mr. DeFord and I have discussed the two pieces of correspondence I referred to as our hearing closed yesterday, and we jointly offer them into evidence in this matter. Enclosed you will find:

1. Letter dated January 18, 2005 to Wayne Cauthen, City Manager of Kansas City from Brian P. Kirk, General Manager of Trigen.
2. Letter dated February 3, 2005 to Brian Kirk from Wayne Cauthen.

The Commission reserved exhibit numbers 12 and 13 for these letters if my notes serve me correctly.

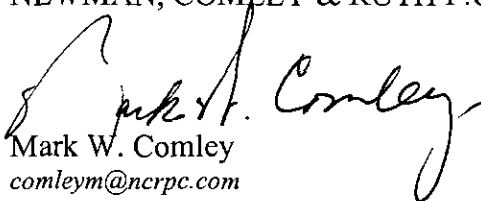
The Honorable Morris Woodruff  
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Copies of this letter and its enclosures were served electronically on the parties today. If there are any questions, please do not hesitate to contact me. Thank you very much.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
[comleym@ncrpc.com](mailto:comleym@ncrpc.com)

MWC:kjh  
Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
William Geary  
Dale Hardy Roberts  
All parties of record

#### **Sec. 404. Council may grant franchises.**

Subject to the limitations as to time and the conditions contained in this charter, the council may by ordinance grant a franchise to any individual, individuals or corporation to construct and operate a public utility including common carriers in the streets and public grounds of the city. It may prescribe in the ordinance the kind and character of service or product to be furnished, the manner in which the streets and public grounds shall be used and occupied and any other terms and conditions conducive to the public interest. The council may also, subject to said limitations and conditions, renew any grant for the construction and operation of any utility upon such terms as may be conducive to the public interest. Every such ordinance shall be passed subject to the provisions relating to the passage of such ordinances set forth in sections 14 and 15 of this charter.

#### **Sec. 405. Terms and manner of granting franchises.**

Except as hereinafter provided, every franchise hereafter granted, renewed or extended by the city shall have a time fixed therein for the expiration of such franchise so granted, renewed or extended. No franchise shall be granted, renewed or extended for a longer period of time than thirty (30) years, unless the ordinance granting, renewing or extending such franchise shall be submitted to and ratified by a majority of the qualified voters voting upon such proposition at an election to be held for that purpose. Any ordinance, however, granting, renewing or extending a franchise for a term of thirty (30) years or less may provide that the same shall not take effect or be valid unless ratified as above provided; and in every such case, the ordinance shall not take effect or be of any validity until submitted to the qualified voters of said city and ratified by a majority of said qualified voters voting upon such proposition at an election to be held for that purpose. The expense of any special election called for a vote on such ordinances shall be paid by the grantee or grantees named in the franchise ordinance so submitted.

#### **Sec. 409. Regulations.**

The council shall at all times control the distribution of space in, over, under or across all streets or public grounds occupied by public utility fixtures. All rights granted for the construction and operation of public utilities shall be subject to the continuing right of the council to require such reconstruction, relocation, change or discontinuance of the appliances used by the utility in the streets, alleys, avenues, highways, parks and public places of the city, as shall in the opinion of the council be necessary in the public interest.

File

**TRIGEN ENERGY KANSAS CITY**

115 GRAND BOULEVARD  
KANSAS CITY, MO 64106  
(816) 889-4900 FAX (816) 842-4272

January 18, 2005

Office of the City Manager  
414 East 12<sup>th</sup> Street  
Kansas City, MO 64106  
Attn: Mr. Wayne Cauthen; City Manager

Subject: Settlement of Trigen Steam System Relocation Dispute

Dear Mr. Cauthen:

Thank you for taking the time to meet with us last Friday. We appreciated the opportunity to meet with you and have a candid discussion of the issues surrounding the disposition of buried steam facilities in the south loop area.

I've discussed the matter with my managers at Tractebel, as well as with the prospective new owner, and our belief is essentially unchanged that Trigen does not bear cost responsibility for most of the necessary removals and relocations. Nonetheless, we recognize that the City has an urgent need. Further, and particularly in the case of the prospective buyer, Trigen wants to help advance the City's cause and forge a positive working relationship going forward. As such, we are prepared to assume the costs of the demands made thus far by the City, subject to several conditions as follows:

1. Negotiation of Contract on the Arena. Trigen requests that the City or designee negotiate conditions of Trigen becoming the heating and cooling energy provider to the constructed Arena facility.
2. Street Opening Permits. Trigen anticipates addition of a significant new industrial process customer load, near downtown, in the immediate future. This will enable this company to expand its business in Kansas City. Construction of this service will require street opening permits to build the pipeline necessary to join the customer to the system. Trigen requests expedited treatment in permit procurement from the City pertaining to this unrelated project. Addition of this significant load imparts benefits over all of Trigen's district energy customer base, including the City.
3. Partnering with the City on Economic Development. Trigen also asks the City to engage in serious discussions with Trigen to explore partnering with the City on its energy needs and expansion downtown, including the potential for economic incentives for Trigen.
4. Demolition of the Facilities. Finally, regarding actual demolition operations required to remove and relocate facilities, Trigen would like to discuss details relating to logistics and schedule. Any settlement would also be conditioned upon satisfactory

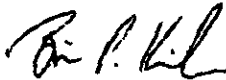
agreement between us as to how to manage this fairly extensive work scope in a mutually satisfactory manner.

In return for these commitments from the City, Trigen will reimburse or directly pay costs already incurred by the City related to removal of abandoned facilities. Trigen would also take responsibility for prospective removal of abandoned steam structures already identified and for relocation of the active steam line on the Arena site.

As outlined above, Trigen is offering to cooperate with the City. In return we request the City's cooperation in a matter that is reasonable, fiscally responsible, and will save the City money in the near- and long-term. It further ensures ongoing reliability of heating and cooling supply to all City properties in downtown.

We would like to meet with you or your staff at your earliest opportunity to discuss details and reduce a settlement to writing.

Sincerely,



Brian P. Kirk  
General Manager

CC: Jerry Riffel



Office of the City Manager

29th Floor, City Hall  
414 East 12th Street  
Kansas City, Missouri 64106

(816) 513-1408  
Fax: (816) 513-1363

February 3, 2005

Mr. Brian Kirk  
Trigen Energy Kansas City  
115 Grand Blvd.  
Kansas City, MO 64106

***Subject: Removal and Cost Recovery of Trigen Steam Lines in the KC Live/Entertainment District and Arena Site.***

Mr. Kirk:

This is response to your January 18, 2005 letter confirming Trigen's willingness to comply with the demands made by the City thus far. While I appreciate Trigen's positive response, the City's position stands unchanged, that Trigen has a responsibility under our franchise agreement, the City Charter and the Missouri common law to remove the lines at Trigen's cost.

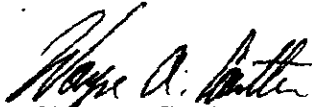
Regarding the "conditions" you raised in your letter, my response is as follows:

1. **Negotiation of Contract on the Arena** - Our development partner for the Arena, AEG Entertainment Group, is currently engaged in negotiations to procure utility services for the Arena Facility. I have been informed that AEG has already contacted Trigen to discuss this matter. They will consider various options for service delivery and weigh those options against capital costs and long-term operating costs, to determine the best option for the project. However, we cannot guarantee at this time that Trigen will be the energy supplier to the Arena.
2. **Street Opening Permits** - I am glad to see that Trigen expects to expand its business in Kansas City. The City will work with Trigen to expedite the permit process for street opening permits as requested. This commitment is subject to Trigen's compliance with all permit requirements, including the payment of all applicable fees and the prompt and timely submission of all required information and documentation.
3. **Partnering with the City on Economic Development** - We are always open to engage in serious discussions regarding partnering with local businesses to foster economic development in Kansas City. I would welcome discussions on energy requirements for downtown redevelopment.

4. **Demolition of the Facilities** - As you know, demolition of Trigen lines in the KC Live/Entertainment District area has already begun. Trigen lines have already been removed in Blocks 125 and 126. The remaining Blocks are scheduled to be removed in the coming 3 months. City staff has already discussed the details relating to logistics and schedule with Trigen. We will gladly meet with you to reiterate the specific terms of our demands regarding the KC Live Entertainment District. We would also entertain discussions of Trigen removing subsequent lines with the footprint of the Arena.

I would like to emphasize the City's position that the Trigen facilities must be removed under the time schedule set for development of these two areas. We have spent more than seven months since our first request trying to get Trigen's cooperation. The City must remove and relocate all utilities, demolish buildings and provide a site ready for development as agreed upon with our development partners. We must stay on schedule. The Capital Improvements Management Office will contact you to arrange for the reimbursement of costs incurred by the City so far and to schedule subsequent work.

Respectfully,



Wayne A. Cauthen  
City Manager

cc: Nelson Munoz  
Michael McClure  
Mike Musgrave