

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Hearing
6 April 4, 2005
7 Jefferson City, Missouri
8 Volume 1
9 County of Jackson, Missouri,)
10 Complainant,)
11 v.) Case No. HC-2005-0331
12 Trigen-Kansas City Energy Corp.,)
13 and Thermal North America, Inc.,)
Respondents.)
14
15 MORRIS L. WOODRUFF, Presiding,
16 SENIOR REGULATORY LAW JUDGE.
17
18 CONNIE MURRAY,
19 STEVE GAW,
20 ROBERT M. CLAYTON,
21 LINWARD "LIN" APPLING,
22 COMMISSIONERS.
23
24 REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good morning, everyone.

3 Let's go ahead and get started. We're here today for a
4 hearing in case of Jackson County vs. Trigen Energy
5 Corporation, HC-2005-0331. I want to thank you all for
6 coming here on such short notice, and we'll see how things
7 go today.

8 We'll begin by taking entries of
9 appearance, and then we'll take a short break and go up
10 and get the Commissioners that want to come down and then
11 we'll start with opening statements. So let's begin with
12 entries of appearance, beginning with Jackson County.

13 MR. FINNEGAN: On behalf of Jackson County,
14 Jeremiah Finnegan, 3100 Broadway, Suite 1209, Kansas City,
15 Missouri 64111.

16 JUDGE WOODRUFF: For Trigen-Kansas City?

17 MR. DeFORD: Paul S. DeFord with the law
18 firm of Lathrop and Gage, 2345 Grand Boulevard, Kansas
19 City, Missouri 64108.

20 JUDGE WOODRUFF: And the City of Kansas
21 City?

22 MR. COMLEY: Thank you, Judge Woodruff.
23 Let the record reflect the entry of appearance of Mark W.
24 Comley, Newman, Comley & Ruth, 601 Monroe, Suite 301,
25 Jefferson City, Missouri 65101, on behalf of City of

1 Kansas City.

2 JUDGE WOODRUFF: Thank you. And for Staff?

3 MR. FRANSON: Robert Franson appearing on

4 behalf of the Staff of the Public Service Commission,

5 P.O. Box 360, Jefferson City, Missouri 65102.

6 JUDGE WOODRUFF: And Public Counsel would

7 be a party in this case, but I don't see anyone here from

8 Public Counsel.

9 As indicated, we're -- we'll start with

10 opening statements, and I was figuring probably starting

11 with Jackson County, followed by Trigen, Kansas City,

12 Public Counsel and Staff. Does anyone have any objections

13 to that order? I see --

14 MR. DeFORD: I really don't have any

15 objection to that. Since I don't know where the other

16 parties stand in this -- well, I guess I know where the

17 City stands. I guess since I'm the Respondent, I would

18 prefer -- at least when we take evidence, I would prefer

19 to go last.

20 JUDGE WOODRUFF: Okay.

21 MR. DeFORD: As far as openings go.

22 MR. FRANSON: Ordinarily I'd like to

23 reserve the opportunity to be last, Judge, in the sense

24 that Staff's in a little bit different position, but maybe

25 we can -- maybe I can talk to Mr. DeFord at a break and if

1 we have a dispute on that when we see how it's going.

2 JUDGE WOODRUFF: All right. Well, we are

3 going to take a break right now, so you can go ahead and

4 have that discussion. We'll take a break for ten minutes.

5 We'll come back at 9:10 with the Commissioners.

6 (A BREAK WAS TAKEN.)

7 JUDGE WOODRUFF: We're back live on the

8 Internet. Let's go ahead and get started.

9 Mr. Franson, before we broke there was a

10 question about order of proceeding.

11 MR. FRANSON: Yes, your Honor. Staff had

12 indicated a desire to go with the initial order that you

13 had stated, and I believe that was Jackson County, the

14 City of Kansas City, Trigen and then Staff. And I spoke

15 to Mr. DeFord, and I believe he will confirm that that is

16 the order we would like to go with.

17 JUDGE WOODRUFF: Actually, I said Jackson

18 County --

19 MR. FRANSON: Staff would rather go last.

20 JUDGE WOODRUFF: Staff goes last, but flip

21 Trigen and Kansas City, so Kansas City goes before Trigen.

22 I see nods of agreement from Mr. DeFord.

23 MR. DEFORD: That is correct, your Honor.

24 JUDGE WOODRUFF: All right. Let's go ahead

25 and get started with opening statements, then, and we will

1 begin with Jackson County.

2 MR. FINNEGAN: May it please the
3 Commission, Judge Woodruff? Jackson County has brought
4 this complaint because of its concern with the downgrading
5 of the steam system by cutting the loop. And I think
6 everyone knows that a loop is the best way to perform
7 utility service, the most reliable way, because if there
8 is an outage on one leg of the loop, the other leg can
9 serve it.

10 Jackson County's got a special concern.
11 For one thing Jackson County is very responsible for
12 keeping the steam system in Kansas City. When Kansas City
13 Power & Light tried to discontinue it, Jackson County
14 intervened in the case and was able to convince the
15 Commission or the Commission went along with Jackson
16 County's position that they ought to try to sell the
17 system first. They did put it out for bids, and the
18 system was purchased and has continued ever since that
19 time.

20 The system has only about 60 customers on
21 it, so it is -- any impact on the economics involved has a
22 severe economic impact on the customers. In this case
23 you'll hear that the cost of cutting and recapping and
24 reinstalling an alternative loop will run somewhere in the
25 neighborhood of 800,000 to \$900,000, and when spread over

1 60 customers, it's -- obviously that is a large impact.
2 Even if it's 15 or 20 percent of that amount a year is a
3 tremendous impact on the ratepayers.

4 The major concern with this is the
5 reliability. Jackson County is in a unique position that
6 not only is it an office building -- operates office
7 buildings, but the county jail is on the system, and the
8 county jail has 800 beds, of which 793, at least the last
9 I'd heard, were occupied. They are occupied by Class A, B
10 and C felons. They're being controlled by the federal
11 courts. They have to provide minimum standards for -- or
12 at least minimum standards for their prisoners,
13 one of which of course is heat. Another would be hot
14 water, which is also impacted by this loop, by the
15 reliability.

16 Unlike other places where you can -- you
17 know, if the system is shut down for a couple days you can
18 move out to the Motel 6, they can't do it with these
19 prisoners. I think there's three serial killers. There's
20 a bunch of murderers and other high crime people in this
21 jail. The ones with misdemeanors are kind of like a
22 revolving door; they're in and they're out, the fact that
23 there's not enough room in the jails. And there's no
24 place we can send these prisoners should there be a
25 shutdown of the system and it stays down for a couple days

1 or so.

2 So basically that is our concern. Our
3 concern is that with the accuracy of the service,
4 presently the service is adequate because it is supplied
5 by a loop. When the loop is severed, it means that you
6 have two legs, and one leg can't supply the service to the
7 other leg anymore. And as a result, any time there's any
8 disturbance or perhaps a large -- say a collapse or a
9 bombing or something downtown on the one leg, the
10 customers downstream from that occurrence cannot receive
11 steam service and will not receive steam service until it
12 can be corrected.

13 Presently if that were to happen on one of
14 the legs, the steam service would continue because it
15 would come around from the other direction. So that
16 basically is our position.

17 We are very, very concerned also with the
18 economic development downtown. This is a unique tool in
19 the Kansas City area. Downtown Kansas City is the only
20 area that has steam heat in the metropolitan area, and as
21 such, it provides a different source of power heating than
22 any other source down there. And so we think it's -- it
23 needs to be continued in a good state and improved, not
24 degraded as the proposal is here. Thank you.

25 JUDGE WOODRUFF: Okay. City of Kansas

1 City?

2 MR. COMLEY: May it please the Commission?

3 Good morning, Judge Woodruff.

4 First I think what we are tailoring our
5 presentation to is more in line to what the Order said,
6 and I think the Commission's hearing this morning is
7 designed to figure out is there any likelihood of an
8 imminent threat or serious harm to the life or property of
9 any of the customers or any of the people that may be
10 frequenting Jackson County offices or anything related to
11 the Jackson County facilities in the event that this loop
12 is severed.

13 And in that respect, I'm hoping that the
14 evidence will be tailored toward that this morning.
15 Otherwise it sounds like from what Mr. Finnegan said, we
16 may be here for a long time.

17 But as far as our presentation today,
18 Kansas City is engaged in a rather large civic partnership
19 with not only consultants in Kansas City but outside
20 consultants from around the world in connection with
21 Sprint Center. It's also referred to as the Sprint Arena.

22 This is approximately an eight-acre
23 project. It will cost in the vicinity of \$235 million.
24 This project is not in its earliest stages. It has been
25 ongoing for some time. We are now at a stage where

1 relocation of existing underground utilities is critical.
2 We're looking at an area that is bounded by 13th Street on
3 the north, Truman Boulevard on the south -- Truman Street
4 rather on the south, Oak Street on the east and Grand
5 Avenue on the west.

6 Notice was given to Trigen about relocation
7 of its steam line in October of 2004. It has had
8 sufficient time to make inquiries of the City. It has
9 done so, it has discussed this, and my understanding is it
10 has agreed to relocate the line. It notified its
11 customers of this. Without the relocation of the line
12 through this area that I've just described to you, then
13 construction of Sprint Arena will stop.

14 From what I understand, the issue that
15 Mr. Finnegan has raised with you is that if the system is
16 non-looped, then there will be a sacrifice of reliability
17 so intense that it will cause felons to be released from
18 jail, that employees will not have heat. Let me remind
19 the Commission that we are now beginning a season when the
20 cooling season is upon us, not the heating season, a time
21 when summer will be appropriate for construction and when
22 air conditioning will take over for the comfort of inmates
23 and employees alike.

24 I have available today Mr. Ralph Davis who
25 is the project manager for the arena, and he will be

1 outlining for the Commission the facts and circumstances
2 of any further delay in having the line relocated. Our
3 position is that, based upon what we have seen in the
4 complaint, there is not sufficient allegation that there
5 is any serious or imminent threat to employees, to the
6 inmates of Jackson County if the loop is severed and
7 terminated at the spots that we have talked about in the
8 correspondence you're going to see.

9 Also, we did file a motion to dismiss this
10 case, and I'm not going to repeat those allegations and
11 arguments here, but I'm hoping that at the conclusion of
12 this hearing we'll have an opportunity to sum up and would
13 at that time remind the Commission of our arguments in
14 that motion.

15 JUDGE WOODRUFF: Thank you. For Trigen?

16 MR. DeFORD: Thank you, your Honor. My
17 name is Paul DeFord. I'm here today representing
18 Trigen-Kansas City. Trigen's position in this matter is
19 relatively simple. First, Trigen is much less than
20 enthusiastic about being instructed to cut and cap its
21 steam loop. Having said that, Trigen nonetheless
22 understands its obligation to comply with the directive
23 pursuant to the franchise granted by the City of Kansas
24 City.

25 Even after cutting and capping the steam

1 loop, hopefully on a temporary basis, Trigen is confident
2 that it will continue to be able to provide safe and
3 adequate service to all of its customers.

4 And I think finally the Commission asked
5 that the parties be prepared to address whether the
6 Commission has the authority to grant the relief requested
7 by the County.

8 Trigen's answer to that is, yes, we believe
9 the Commission does have the authority to grant the relief
10 requested, but that I don't believe the Commission can do
11 so unilaterally. I think the Commission would be required
12 to make Findings of Fact, Conclusions of Law and then seek
13 an injunction in circuit court to enforce its order.

14 I'll be pleased to answers any questions
15 the Commission may have, and we have today with us Brian
16 Kirk, the plant manager of Trigen-Kansas City. He too
17 will be pleased to address any questions or concerns that
18 the Commission may have.

19 JUDGE WOODRUFF: And on that note, I will
20 mention that I'm going to give the Commissioners an
21 opportunity to ask questions of all the attorneys before
22 we start taking evidence.

23 Thank you, Mr. DeFord. Public Counsel's
24 not here, so we'll let Staff give a statement now.

25 MR. FRANSON: Thank you, your Honor. May

1 it please the Commission?

2 Staff has had very limited time to address

3 this and we, therefore, are obviously very interested in

4 what's going to transpire. Now, what has Staff done?

5 Staff has had extensive contact with Trigen, especially

6 Mr. Kirk, and Staff had two engineers do an onsite visit,

7 and I believe they met with Mr. Kirk. And yet Staff still

8 has a concern that Trigen has not filed any kind of

9 responsive pleading.

10 I think we've heard Mr. -- we've heard

11 Mr. DeFord state Trigen's position here today. Certainly

12 Jackson County has the burden of proof in this matter, and

13 Staff wants to hear that, and that will help Staff

14 understand quite a bit more because -- as well as the

15 Commission, because we are in a highly evolving situation

16 here today, and everyone's waiting to see what the

17 evidence produces.

18 Staff does have one concern in particular

19 on page 6, paragraph 11 of the complaint. It is also

20 County's understanding that Trigen has been advised that

21 it is to bear the entire cost of the removal and

22 relocation project to clear the way for the new arena

23 construction. Staff will be interested to hear any

24 evidence on that issue.

25 There's also the question of the State's

1 police powers for the health and safety of its residents.
2 How far can you go? Staff has had limited opportunity,
3 but the research that I have seen would indicate that it's
4 probably not viable that Trigen could be ordered to take
5 all necessary action, including litigation if necessary,
6 in an effort to impose upon the arena project and its
7 owners the cost of severing the steam mains, removal of
8 the steam mains and relocation of the steam mains to
9 provide an alternative steam loop.

10 The question is, what can the Commission
11 do? Can the Commission issue an Order? Staff believes
12 so, yes. But can it possibly go as far as the County's
13 wanting? As far as reliability, safety, and adequacy of
14 the system as Mr. DeFord indicated, yes. As far as going
15 further about the cost, that would seem to be beyond this
16 proceeding and would also seem to be beyond the State's
17 police power. However, that would obviously be a question
18 of law that would have to be researched and presented to
19 the Commission for a ruling.

20 And with that, Staff concludes its opening
21 statement and awaits the evidence.

22 JUDGE WOODRUFF: Thank you, Mr. Franson.
23 As indicated, I'm going to give the Commissioners an
24 opportunity to ask any questions that they have of the
25 attorneys. Commissioner Murray?

1 COMMISSIONER MURRAY: I don't believe I
2 have any for the attorneys. Thank you.

3 JUDGE WOODRUFF: Commissioner Appling?

4 COMMISSIONER APPLING: Thanks, Judge. Just
5 a couple questions to Trigen if you don't mind. What is
6 the -- who is connected and provides the chilled water
7 loop for the customers? And also in that same answer,
8 could you give me your larger customer? And I know the
9 State-owned building used to be on that. So what I'm
10 asking is, is the federal building on the loop also?

11 MR. DeFORD: Your Honor, I'm sorry. Did
12 you say the steam or the chilled water?

13 COMMISSIONER APPLING: I know that the
14 steam is on, but I'm trying to clear up where we get the
15 chilled water from. Is that independently by each
16 building or is it -- is it on the loop also?

17 MR. DeFORD: Your Honor, I would defer that
18 to Mr. Kirk, but I can give you a basic answer. I think
19 that there are certain buildings that are separate and
20 apart, they are not part of the chilled water loop. And
21 then there are another group of buildings that are on what
22 would be considered, I think, a chilled water loop.

23 COMMISSIONER APPLING: Right.

24 MR. DeFORD: A relatively small number of
25 customers on both.

1 COMMISSIONER APPLING: Okay. I reckon my
2 real question is, will the chilled water be interfered
3 along with the line that we're running the heat on? No?
4 MR. DeFORD: No.
5 COMMISSIONER APPLING: Okay. I think my
6 answer to the second question was already answered. How
7 long have we been talking about the cut of this line? Is
8 that -- I think Mr. Comley indicated it was back in 2004
9 that we made notice that we was going to be changing this?
10 MR. DeFORD: Again, as to the specific
11 date, I would defer to Mr. Kirk, but it has been, I think,
12 at least a year.
13 COMMISSIONER APPLING: Okay. Mr. Kirk --
14 MR. DeFORD: Nine months maybe.
15 COMMISSIONER APPLING: Mr. Kirk, give me a
16 little information on your backup system for how you're
17 going to handle this if there is some problem with a
18 customer once you -- if your line is cut.
19 JUDGE WOODRUFF: Mr. Kirk, before you
20 answer I'm going to swear you in as a witness. You can
21 stay there. Please raise your right hand.
22 (Witness sworn.)
23 JUDGE WOODRUFF: You can answer the
24 question.
25 MR. KIRK: Okay. The cutting or the

1 severing of the line will separate what is now currently a
2 loop network-type system into two radial lines. It will
3 still be able to provide adequate and safe service through
4 those radial lines. However, the configuration of the
5 system changes, but it's still again adequate service to
6 the customer.

7 COMMISSIONER APPLING: Well, you know what
8 I'm trying to get at here, I'm trying to get at what is
9 going to be the difficulty if you cut the lines and go
10 with Kansas City and they can put down the Sprint Center,
11 how much reliability do we have here? And how much have
12 we had problems with this line in the past?

13 MR. KIRK: No, sir. Right now the
14 reliability is at an extremely high level, and it will be
15 at a somewhat reduced level, but whether that's a
16 significant amount is -- I don't believe it's significant,
17 but I don't believe it's entirely significant. I think it
18 will still be quite high reliability.

19 COMMISSIONER APPLING: Okay. Thank you,
20 Judge.

21 JUDGE WOODRUFF: All right. Thank you.

22 COMMISSIONER MURRAY: Judge, I do have one
23 question.

24 JUDGE WOODRUFF: Commissioner Murray?

25 COMMISSIONER MURRAY: For Staff attorney

1 and any other attorney that would like to answer this. If
2 Jackson County's complaint were to be granted to not allow
3 Trigen to disconnect that loop at this time, what would be
4 the standard that we would have to apply to get there?

5 MR. FRANSON: Well, Commissioner, that --
6 I'll have to look at the statute. First of all, I believe
7 the answer to that is it is not the same standard that the
8 Commission used to order this, the Order the Commission
9 already issued that put us here, because that particular
10 provision of the statute goes only to delaying notice and
11 a hearing, and that's why we're here today.

12 The statute -- really I think the
13 Commission -- I didn't see anything specific in there, but
14 what we're really talking about is I think you need some
15 evidence that -- and I think it would be the same as any
16 complaint case. You need evidence of the -- that somehow
17 there's inadequate, unreliable or there's simply not
18 adequate and reliable and safe service. I've looked at
19 the statute. I've looked at the case law under it. I
20 just don't find anything.

21 We're in a rather unique area, but we're
22 also in a complaint situation. So Jackson County would
23 have to come forth with some evidence, and I'm not sure of
24 its preponderance or higher standard, but I don't believe
25 it's necessarily any different than a regular complaint

1 case in the sense that the statute doesn't provide for
2 anything else that I can see, and I'm certainly -- I have
3 read the statute, and I have looked at the cases under it,
4 and I just don't see anything. It's as if we're in a
5 unique area.

6 But there is one thing, Commissioner, I
7 wanted to follow up on. The reason I say the standard is
8 not imminent -- likelihood of imminent threat of serious
9 harm to life or property is at the very end of 386.310.1,
10 it talks about waiving -- the Commission may waive the
11 requirements for notice and hearing to provide for
12 expeditious issuance of an Order if you have the
13 likelihood of imminent threat of serious harm to life or
14 property.

15 The Commission already found that, and that
16 has already been done. This is not the standard because
17 we're at the hearing provided for, and I -- my most
18 immediate reaction is it would be the standard complaint,
19 standard of review, which would be preponderance of the
20 evidence. But I just haven't found anything different.

21 COMMISSIONER MURRAY: Would the other
22 counsel like to respond to that question?

23 MR. FINNEGAN: I would basically. I don't
24 have a microphone here. It's our position that what
25 Mr. Franson had indicated was correct, that the second

1 paragraph 386.310 has already been complied with, as we're
2 doing here. We're getting back to the question of, is the
3 company going to be operating the system in a manner as to
4 promote and safeguard the health and safety of its
5 employees, customers and public? That's the provisions in
6 310, and in Section 393.130, the utility is required to
7 furnish or provide such service to the facility as shall
8 be safe and adequate and in all respects just and
9 reasonable. And I think that's our burden to show that
10 that's not what will happen as a result of this cut will
11 reduce the service, reduce the adequacy.

12 COMMISSIONER MURRAY: I see Mr. DeFord
13 shaking his head. I assume you agree with that?

14 MR. DeFORD: I agree with Mr. Finnegan.

15 COMMISSIONER MURRAY: Mr. Comley?

16 MR. COMLEY: Well, I may have a different
17 idea about the statute. I'm looking at 386.310, and I
18 think it targets the safety and health of people and does
19 not talk about reliability of service.

20 If our hearing today is to determine that
21 the suggested relocation of Trigen's lines will be an
22 imminent threat or serious -- an imminent threat or a
23 serious harm to life and property, that's going to the
24 safety of the relocation. And I'm thinking the basis for
25 this hearing now is to determine that. Then it's up to

1 Mr. Finnegan to show that there is going to be a serious
2 safety threat in the event these lines are relocated.

3 As far as the reliability of service goes,
4 I'd have to look at that statute again, but I'm thinking
5 the burden on Mr. Finnegan will have to be that a non-loop
6 system, a non-looped heating system is inherently
7 unreliable and inadequate to serve the needs of the
8 customers. So that's my take on these statutes and how
9 they come together.

10 COMMISSIONER MURRAY: And can I ask if
11 there was -- if there has been any legal requirement that
12 Trigen have the backup system that it has right now, the
13 secondary loop or however -- whatever the proper reference
14 would be?

15 MR. FRANSON: May I respond to that,
16 Commissioner?

17 COMMISSIONER MURRAY: Yes.

18 MR. FRANSON: Staff is not aware of any,
19 and Staff has a witness here today who has reviewed the
20 tariffs and we don't find anything in there about
21 requiring a looped system. So the best we've been able to
22 tell -- and by that I've talked to Staff members who work
23 in the electric and the heating steam area -- no one is
24 aware of that, and I have not found anything that would
25 require a looped system. And certainly my best

1 information at this point is the tariffs don't require
2 that.

3 COMMISSIONER MURRAY: Thank you. Anybody
4 have any different information?

5 MR. DeFORD: Your Honor, I don't think that
6 has ever been an issue, because this, in fact, has been a
7 loop since the early 1900s and there's never been any
8 suggestion that the loop be cut. So we're in uncharted
9 territory. Again, I think we would express Trigen's
10 strong preference that ultimately it remain a loop, even
11 if we do go ahead with the cut in this instance.

12 COMMISSIONER MURRAY: Thank you. That's
13 all I have for the counsel.

14 JUDGE WOODRUFF: All right. Thank you.
15 Let's go ahead then start taking evidence, beginning with
16 Jackson County.

17 MR. FINNEGAN: Have some exhibits to mark
18 first, your Honor. I'd like to get some exhibits marked.

19 MR. FRANSON: Judge, that does bring up the
20 question. Are we going to do consecutive numbers?

21 JUDGE WOODRUFF: Consecutive numbers will
22 be fine.

23 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR
24 IDENTIFICATION BY THE REPORTER.)

25 MR. FINNEGAN: For my first witness I'd

1 like to call Brian Kirk, please.

2 JUDGE WOODRUFF: Mr. Kirk, please come

3 forward. I swore you in a minute ago, so you're still

4 under oath.

5 BRIAN KIRK testified as follows:

6 DIRECT EXAMINATION BY MR. FINNEGAN:

7 Q. Mr. Kirk, would you state your name for the

8 record.

9 A. Brian Kirk.

10 Q. And by whom are you employed?

11 A. Trigen Energy Corporation.

12 Q. In what position are you?

13 A. I'm the general manager for Grand Avenue

14 Station in Kansas City, steam and chill water system.

15 Q. What's your background in steam heat?

16 A. I'm an engineer by education, and have

17 worked in utility and district energy industry for about

18 the past 18 years.

19 Q. Okay. Mr. Kirk, show you what's been

20 marked as --

21 MR. FINNEGAN: May I approach?

22 JUDGE WOODRUFF: You may.

23 BY MR. FINNEGAN:

24 Q. -- Exhibit 1. And would you identify this?

25 A. Okay. This is system map of Trigen-Kansas

1 City.

2 MR. FRANSON: Your Honor, at this point I
3 need to object for the simple reason if we're getting into
4 highly confidential matters, we are talking about a map of
5 a public utility system, and my question is sometimes
6 these are considered highly confidential and -- in the
7 sense they're not supposed to be in the public domain. Is
8 that our situation here, would be my question?

9 JUDGE WOODRUFF: Let me ask the witness.
10 Is this anything highly confidential?

11 THE WITNESS: I wouldn't call that map
12 highly confidential

13 COMMISSIONER MURRAY: Judge, may I ask a
14 question?

15 JUDGE WOODRUFF: Yes, Commissioner.

16 COMMISSIONER MURRAY: I just would like
17 some clarification. You're calling the Trigen employee as
18 your witness. Is this a hostile witness?

19 MR. FINNEGAN: Yes.

20 MR. FRANSON: Your Honor, that's fine, but
21 that brings in, are we going to be seeing all the
22 ramifications that go with a hostile witness at this
23 point? That may come up in questioning.

24 JUDGE WOODRUFF: We'll see what happens as
25 we go.

1 BY MR. FINNEGAN:

2 Q. All right. I believe I asked you to

3 describe this exhibit.

4 A. Right. This is the system map for

5 Trigen-Kansas City, the regulated steam business in Kansas

6 City, and also shows the district chilled water systems,

7 Trigen Missouri chilled water systems, as well as the

8 plant.

9 Q. Okay. And the plant as I understand is

10 marked in yellow?

11 A. That's correct.

12 Q. And it's up near the top of the page

13 actually near the river, correct?

14 A. Correct.

15 Q. And then you have these orange lines coming

16 out of the plant; is that correct?

17 A. Correct.

18 Q. And the orange lines are the steam system?

19 A. That's correct.

20 Q. Okay. How does the steam system presently

21 work?

22 A. Okay. The steam system is comprised of a

23 loop network, two 14-inch mains that exit the plant.

24 They're joined at the southern end of the system, and

25 there's -- and the customers are individually served off

1 of this piping network.

2 Q. So there's -- and what are the blue lines?

3 A. The blue lines is a separate chilled water
4 system.

5 Q. Okay. So there's like -- looks like
6 there's two of those; there's one independent and then one
7 comes from the plant?

8 A. That's correct. And they're not joined or
9 networked into the steam system.

10 Q. Okay. Now, there's an area marked in
11 green?

12 A. Correct.

13 Q. Would you just tell me what that is?

14 A. That is the area of the arena site, that
15 four-block area.

16 Q. Okay. And showing that inside that green
17 box is a steam line that runs -- continues down McGee and
18 then runs into -- turns on 15th Street; is that correct?

19 A. It's 14th Street.

20 Q. 14th Street. Okay. And makes a complete
21 loop around the downtown area?

22 A. That's correct. It's part of the loop
23 network.

24 Q. Okay. My understanding is that if --

25 MR. FRANSON: Your Honor, I'm sorry to

1 interrupt. I don't really have an objection, but I still
2 have a concern. And my concern again is, is this map
3 providing information not necessarily highly confidential
4 in the sense, but about the last three years we have made
5 certain details of utilities' distribution systems highly
6 confidential for security reasons, if nothing else. So --
7 and we're going into great detail here, and I anticipate
8 very shortly Mr. Finnegan will be offering this into
9 evidence, thus making this a public document.

10 I at this time will move that it be made
11 highly confidential for that purpose and any and all
12 questions about this that identifies the distribution
13 system, the location of it, should be highly confidential
14 for security reasons, if nothing else.

15 JUDGE WOODRUFF: Let me ask the witness,
16 would this information already be available to the public
17 in this form?

18 THE WITNESS: This is not distributed to
19 the public in this form, no.

20 JUDGE WOODRUFF: Let me ask Trigen's
21 counsel, does Trigen have concern about making this
22 available?

23 MR. DeFORD: Your Honor, I believe that
24 that may have already been provided in the public record
25 in the merger acquisition case. It could well be that we

1 may have marked it proprietary. It certainly wasn't
2 classified as highly confidential. I would object to the
3 questions had I thought that it were highly confidential.

4 MR. FRANSON: Then if there's no concern on
5 the part of Trigen, Judge, I have far less concern.

6 JUDGE WOODRUFF: All right. Well, at this
7 time I'll overrule the motion and we'll proceed in the
8 public forum.

9 BY MR. FINNEGAN:

10 Q. Okay. Mr. Kirk, could you tell us where
11 the Jackson County Courthouse is on this map?

12 A. It is between 12th and 13th Street, between
13 Oak and Locust Street.

14 Q. And it says Jackson County Courthouse on
15 it?

16 A. Yes, sir.

17 JUDGE WOODRUFF: Could the witness please
18 point that out on the chart?

19 THE WITNESS: Okay. That's right there
20 (indicating).

21 JUDGE WOODRUFF: Thank you.

22 BY MR. FINNEGAN:

23 Q. The courthouse is presently on what is
24 known as the loop?

25 A. It's on a radial line off the loop.

1 Q. Right.

2 A. But it's --

3 Q. But basically if something were to occur --

4 and I believe is this Grand Avenue that it runs down the

5 one leg?

6 A. The east leg runs down McGee actually.

7 Q. McGee. The east leg runs down McGee, and

8 the west leg runs down Wyandotte?

9 A. Correct.

10 Q. Presently if there were a disruption of

11 service anywhere north of the courthouse on the McGee leg,

12 the County would continue to be served from the other leg;

13 is that correct?

14 A. Generally speaking, yes, it would -- it

15 could be isolated elsewhere and fed, back fed.

16 Q. But it could not receive steam service from

17 the McGee Street leg if --

18 A. If --

19 Q. Go ahead.

20 A. If there was a disruption as you said north

21 of there.

22 Q. What is -- to cut the loop and you

23 indicated you wanted to restore it at some date. Do you

24 know what time frame you're talking?

25 A. At this point, no. We have to identify

1 routing either in the public right of way or through some
2 means, but there's not a -- there's not a specified date
3 that we have to reconnect. It would be our desire to
4 reconnect it at some point.

5 Q. Will there be a loop in place -- if this
6 were cut, would there be a loop in place by October 1st,
7 the beginning of the next heating season?

8 A. I don't expect that it would be done by
9 that time, no.

10 Q. If you were ordered to do so, would that
11 change when it will happen?

12 A. If we -- I presume if we were ordered by
13 some governmental body to reconnect it, yes, we would.

14 Q. Does the -- do you provide steam service
15 year round?

16 A. That's correct, year round.

17 Q. Do some customers use both steam and
18 chilled water?

19 A. Yes. Yes.

20 Q. And that's a year-round activity, too, is
21 it not?

22 A. Some customers use both steam and chilled
23 water year round.

24 Q. For air conditioning you can reduce the
25 coolness by adding more heat and vice versa?

1 A. For humidity control, sometimes heating is
2 used in air conditioning systems, correct.

3 Q. Now I'd ask you to look at what's been
4 marked as Exhibit 2, and that's also the map on the wall.
5 I'm sorry. On the stand over there. Now, what is
6 different between Exhibit 1 and Exhibit 2?

7 A. Okay. The -- the steam loop has been
8 severed at 13th and McGee and 14th and Grand, forming two
9 radial lines.

10 Q. So the steam line that's shown in the green
11 box on Exhibit 1 is no longer in that box; is that
12 correct?

13 A. That's correct. It's out of service.

14 Q. And that box basically represents the arena
15 project; is that correct?

16 A. That's correct.

17 Q. And when the City directed you to cut the
18 steam loop for the arena project, who did they say should
19 pay for this?

20 MR. COMLEY: Objection. There is no
21 evidence that the City directed Trigen to cut the line.

22 JUDGE WOODRUFF: I'll sustain the objection
23 if you want to rephrase the question.

24 BY MR. FINNEGAN:

25 Q. Has the City ordered Trigen to cut the

1 line?

2 A. The City -- the City told us that we had to
3 remove our utilities from the arena site, disconnect. So
4 cutting and remo-- cutting a line was a necessity to do
5 that. That was the way to comply with the request from
6 the City.

7 Q. So you'd have to cut it at the 13th and
8 McGee?

9 A. 13th and -- correct, 13th and McGee and
10 14th and Grand in order to be able to be clear of the
11 site.

12 Q. And when you cut this, what would you do
13 with the steam line that was cut?

14 A. That would -- that also has to come out of
15 the site, the old facilities utilities have to come out of
16 the site.

17 Q. Okay. And then the end of the lines that
18 are no longer looped, what would you do with those?

19 A. They would form terminal or radial lines.
20 They would be fed -- they would remain live up to those
21 points from the plant but be fed separately.

22 Q. And then they'd be shut down at that point?

23 A. Mechanically capped, disconnected and
24 capped.

25 Q. And what do you estimate the cost is to cut

1 and cap the line and remove the line?

2 A. Cutting and capping and removing a line,
3 again an approximation, would be not -- not higher than
4 \$200,000 for that work, for the cutting and capping and
5 removal of the line.

6 Q. And what about replacing the line in a
7 different route?

8 A. A different route to reconnect the loop
9 would be in the neighborhood of three-quarters of a
10 million dollars or 800,000, somewhere in there.

11 Q. So the entire project would be somewhere
12 over a million or in the neighborhood of a million
13 dollars?

14 A. In that general neighborhood.

15 Q. Okay. And who is to pay for this cutting
16 and relocation?

17 A. That would ultimately be Trigen's
18 responsibility to disconnect and reconnect the loop.

19 Q. Has the City indicated that they will
20 reimburse you?

21 A. No.

22 Q. Do you expect to be reimbursed?

23 A. No, I don't.

24 Q. So you will have to do this on your own out
25 of your own pocket?

1 A. The company will need to do that, yes.

2 Q. What impact would this have on your rate

3 structure?

4 A. I would view it as a cost of doing

5 business, and we would have to seek through the -- through

6 the ratemaking procedure to recover these costs from our

7 customer base in a future rate case.

8 Q. And how many customers do you have?

9 A. We do have approximately 60.

10 Q. Is the City of Kansas City on the steam

11 system?

12 A. Yes, sir.

13 Q. Are they on both legs or -- at this point?

14 A. Yes, sir. As a matter of fact, there's

15 buildings on both sides of the loop that are City owned.

16 Q. So like the City Hall is near the McGee

17 Street loop?

18 A. Correct.

19 Q. Leg I mean. Leg. And Municipal

20 Auditorium, Artle Hall (ph. sp.), those are city operated,

21 are they not, and they're on the Wyandotte leg?

22 A. That's correct.

23 Q. If this leg were -- this loop were cut,

24 severed, closed off, capped off, you'd have two terminals,

25 right?

1 A. That's correct.

2 Q. For people remaining on one of the legs,
3 does their reliability -- their chance of reliability is
4 reduced for the service that there could be more down time
5 possible, that there would be the potential of more -- or
6 I'm sorry -- less reliable service?

7 A. It's likely there's somewhat less
8 reliability on a radial versus a loop system.

9 Q. And on the radial system, say you were to
10 have an explosion down at say 6th and Grand or 6th and
11 Walnut, put the system out for days. What would happen to
12 the people on the other -- or downstream from that?

13 A. Those customers if it was -- if it was a
14 major system upset or disruption, those customers wouldn't
15 have a means through the steam system to -- or through the
16 district steam system to be supplied during that time
17 period.

18 Q. So if it were zero degrees for a period of
19 four or five days like we've had in Kansas City in the
20 middle of winter, they would be without heat?

21 A. Without heat from the steam system. They
22 would be without heat from the steam system, yeah.

23 Q. Do many of these customers have alternate
24 methods of getting heat?

25 A. Most don't have alternatives installed in

1 their buildings.

2 Q. Most do not you say?

3 A. Most do not.

4 Q. Isn't it true that some of the customers

5 have no room in their system or in their building to put a

6 steam boiler in there?

7 A. I don't have personal knowledge of that,

8 but that could be true -- could be true that there's

9 limited space.

10 Q. And because you're providing steam service

11 year round, this could have year round -- this has year

12 round impact on its customers, does it not?

13 A. Yes.

14 MR. FINNEGAN: I think that's all the

15 questions I have. I'd like to offer Exhibits 1 and 2 at

16 this time.

17 JUDGE WOODRUFF: All right. Exhibits 1 and

18 2 have been offered. Any objections to their receipt?

19 MR. FRANSON: Staff has no objection, but

20 we would like to ask, there's been reference to this green

21 section. Could we just get a little notation down in the

22 legend what the green section, in fact, is? That may help

23 clarify, because all the other colors are covered and,

24 quite frankly, Staff had a smaller version of this, and

25 that's the only difference. I don't know if that would

1 help you out in clarity or people looking at this to be
2 sure what that is, Jerry.

3 MR. FINNEGAN: That would be fine, but I
4 don't have a green pen right now.

5 MR. FRANSON: Well, maybe the witness could
6 mark the exhibits that are actually put into evidence.

7 JUDGE WOODRUFF: Can the witness do that?
8 Just write green.

9 MR. FRANSON: And it's the arena site.

10 JUDGE WOODRUFF: Mr. Finnegan, do you have
11 anything else for this witness?

12 MR. FINNEGAN: I have no further questions.

13 JUDGE WOODRUFF: Since we don't have an
14 order of cross prepared beforehand for this quick hearing,
15 I thought going with Staff, Kansas City and Trigen for
16 cross-examination. Does anyone have any objection to
17 that?

18 (No response.)

19 JUDGE WOODRUFF: All right. Then
20 cross-examination by Staff?

21 MR. FRANSON: Thank you, your Honor. May I
22 proceed, your Honor?

23 JUDGE WOODRUFF: You may.

24 CROSS-EXAMINATION BY MR. FRANSON:

25 Q. Mr. Kirk, there's -- if this project goes

1 through and these lines are cut, we will have a radial
2 system at least for the short term; is that correct?

3 A. That's correct.

4 Q. Okay. Are there radial steam systems that
5 are owned and operated by Trigen in other locations?

6 A. That's correct, there are.

7 Q. Could you please identify where those
8 locations are, where those are?

9 A. The ones I know of are Trenton, New Jersey,
10 Oklahoma City and Tulsa, Oklahoma.

11 Q. Okay. And are they comparable in size to
12 the Kansas City system that we're talking about here in
13 Exhibits 1 and 2 and during your testimony?

14 A. They're smaller.

15 Q. Okay. Do you know anything about the
16 reliability of those systems?

17 A. I received some information from the Tulsa
18 system about reliability.

19 Q. And what, if anything, was that
20 information?

21 A. It was that it's a highly reliable system.

22 Q. Okay. Now, in some of the pleadings there
23 was a letter, and I'm just going to call it to -- your
24 notice letter from February 22nd, 2005. Do you know what
25 I'm referring to? It was your letter notifying customers,

1 and I believe it was attached to the complaint. Do you
2 know the -- do you know what letter I'm referring to?

3 A. Yes.

4 Q. Okay. You -- in your letter you refer to
5 the four-block arena project area. Do you remember that?

6 A. Yes.

7 Q. Okay. Isn't it true that the planned
8 downtown area is referred to as the Sprint Center, this
9 area that's going to be built?

10 A. Yes.

11 Q. And then are you also familiar with the
12 February 3, 2005 ordinance from the City of Kansas City as
13 it refers to the main south loop TIF plan development area
14 in the Kansas City downtown arena project area?

15 A. Yes.

16 Q. Okay. Are those the same areas? Are those
17 document talking about the same areas?

18 A. I believe that the arena is within that
19 area. It may be a larger area, but I believe it is
20 within.

21 Q. Now, this 800 feet of main steam loop that
22 will be permanently removed from service, is that under or
23 along the streets of downtown Kansas City?

24 A. That's correct. It's under the streets.

25 Q. That's currently true now, correct?

1 A. Correct.

2 Q. If the area is redeveloped and we have this
3 arena, will the streets that are there now within that
4 arena project be removed?

5 A. That's my understanding.

6 Q. Your understanding is there won't be any
7 traffic there; is that correct?

8 A. Correct.

9 Q. Okay. Do you know -- and this is strictly
10 on your knowledge. Do you know whether the City of Kansas
11 City passed any other ordinances regarding other
12 utilities, specifically Kansas City Power & Light?

13 A. I don't know of any.

14 Q. Okay. And that would be true, you don't
15 know about any of the utilities in that area?

16 A. No, sir.

17 Q. Okay. When was the first time that Trigen
18 notified Jackson County that the steam system would be cut
19 and capped and thus would be a radial system instead of a
20 loop system?

21 A. I met with people from the county and some
22 of our larger customers kind of on an informal basis, I
23 think it was around the first of the year, and then that
24 official -- that notice was in the February 22nd letter.

25 Q. Okay. Do you know whether Trigen ever

1 notified the Commission or the Commission Staff about this
2 matter?

3 A. I didn't notify the Commission Staff. I
4 don't know that anyone did. I don't believe anyone did.

5 Q. Okay. This letter that -- your
6 February 22nd letter, was that -- was a similar letter
7 sent to all of the Kansas City steam customers of Trigen?

8 A. All of the ones that were affected by the
9 outage, which was a majority of customers. It wasn't each
10 and every customer, I don't believe.

11 Q. Okay. Did a copy of your letter go to the
12 Commission or its Staff, do you know?

13 A. I don't believe it did.

14 Q. Now, about the April 2nd date, when did
15 Trigen first notify Jackson County that the line would be
16 cut and capped on April 2nd?

17 A. That was there was -- I believe the
18 February 22nd letter expected a March -- March -- around
19 March 1st cut and cap. So it was the April -- the
20 April 2nd date was actually after getting some feedback
21 from our customers, it was postponed to put the -- to put
22 the disconnection out of the winter heating season. So
23 the April 2nd date was actually an adjusted date or a
24 changed date.

25 Q. Okay. Now, in your February 2nd letter,

1 you're talking about -- you use the word "hardship." In
2 your February 2nd letter, do you recall using the word
3 "hardship"?

4 A. I may have. I don't recall.

5 Q. Okay. Bear with me just a moment.

6 MR. FRANSON: Your Honor, may I approach
7 the witness?

8 JUDGE WOODRUFF: You may.

9 BY MR. FRANSON:

10 Q. Mr. Kirk, could you take a look at that,
11 please. And I've handed you a document. Could you tell
12 us what that is?

13 A. Okay. This is a letter to Bruce Palmer at
14 the Jackson County Courthouse informing the County about
15 the disconnection of the steam main.

16 Q. Is that letter from you?

17 A. Yes, it is.

18 Q. And this a fair and accurate copy of your
19 letter?

20 A. Yes.

21 Q. Okay. Could you take a look, I believe
22 it's the last paragraph, and read that to yourself,
23 please. Actually, if you could read it out loud.

24 A. Given the relatively large portion of the
25 right of way being vacated in order to affect land

1 clearance for the arena, a significant portion (800 feet)
2 of our main steam loop must be taken out of service
3 permanently and removed from the ground. For the time
4 being this means that Trigen's steam system will no longer
5 form a loop network. Rather steam will be distributed
6 through two radial (or terminal connections) originating
7 from our plant. As above the reliability of heating steam
8 supply following this alteration is expected to remain
9 comparable in virtually all respects to that which you've
10 become accustomed over the past 15 years of Trigen
11 service.

12 Q. If you keep going just a little bit
13 further.

14 A. In sum, the switch to terminal service from
15 pre-existing loop service will not affect the frequency or
16 duration of outage downtime that the system -- steam
17 system experiences. What may change is the number of
18 customers whose service is interrupted for a given
19 maintenance operation on the system.

20 Q. Mr. Kirk, let me interrupt. If you would
21 go down to -- I'm sorry. I mean the very last paragraph
22 on page 2, the very last paragraph of your letter, if you
23 could read that.

24 A. In any event, I want to thank you for your
25 patience through this period. While this is somewhat of a

1 hardship for all involved, we believe it is worthwhile to
2 do our part to help further the City's goal of building a
3 more vital downtown. If you have any questions or
4 comments, please call or e-mail me at 816-894-9154.

5 Q. The word "hardship" as you use it there,
6 what do you mean by that?

7 A. Well, that it -- it's somewhat -- it's an
8 inconvenience for the customers. It's cost on Trigen's
9 part that might eventually be passed along to the
10 customers, and that it's a somewhat very moderately
11 diminished reliability and inconvenience that would be on
12 the customers.

13 MR. FRANSON: Your Honor, if I may approach
14 the witness to recover the document?

15 JUDGE WOODRUFF: You may.

16 BY MR. FRANSON:

17 Q. Mr. Kirk, do you know whether it's been
18 determined who will provide heating and cooling services
19 to the Sprint Center once it is, in fact, constructed?

20 A. I believe that's still being reviewed by
21 developers and by the City.

22 Q. So you don't know if that's been determined
23 and if --

24 A. No, not to my knowledge.

25 Q. Okay. You don't know when it might be

1 made?

2 A. My understanding is it's going to happen

3 soon, but I really don't know the timeframe.

4 Q. Would Trigen like to have the Sprint Center

5 as a customer?

6 A. Trigen would like to compete to get that

7 business, yes.

8 Q. Now, the new headquarters of H&R Block is

9 being constructed near the Sprint Center isn't that true?

10 A. That's correct.

11 Q. Okay. Do you know, has it been determined

12 who will provide heating and cooling service to the H&R

13 Block building?

14 A. My understanding is that it has.

15 Q. Did Trigen have to move or remove any part

16 of its steam system because of construction including

17 excavation of the H&R Block headquarters?

18 A. There were retired -- old steam facilities,

19 not active facilities, but there were retired facilities

20 that needed to be moved for that.

21 Q. But not active?

22 A. Non-active.

23 Q. Okay. And I believe you said that it had

24 been determined who would be providing heating and cooling

25 services to the H&R Block building. Has that been

1 publicly announced?

2 A. I don't know if it's been publicly
3 announced.

4 Q. Well, let me ask you, do you know whether
5 Trigen will be doing that?

6 A. No, Trigen will not be.

7 Q. Okay. You also have a law degree, isn't
8 that true, Mr. Kirk?

9 A. That's correct.

10 Q. Are you a licensed Missouri attorney?

11 A. I am licensed. I don't really practice.

12 Q. In the state of Missouri?

13 A. That's correct.

14 Q. Thank you. Okay. What -- does Trigen have
15 plans if it is feasible to reconnect this loop in some
16 way, somewhere downline in the future?

17 A. That would be -- that would be -- I believe
18 the system would operate best reconnected. So I think
19 Trigen would want to reconnect it.

20 Q. Are you, in fact, talking to the developer
21 of the arena about that subject?

22 A. It's been mentioned, not in any depth.
23 There's -- has to be design considerations in order to be
24 able to route -- perhaps route the main through there, but
25 I think that could economize the reconnection of the loop

1 to perhaps go through the site.

2 Q. Okay. That is something the company
3 desires to do, but you're not doing anything specific in
4 that regard right now?

5 A. Not at this point. It hasn't advanced to
6 that point, but it's something we have approached.

7 Q. Okay. Have you looked at your tariffs
8 recently that are on file with the Commission?

9 A. I'm familiar with them. I look at them.

10 Q. To your knowledge, is there anything in
11 those tariffs that requires that Trigen provide steam
12 service through a loop system?

13 A. No, I don't know of anything in the tariff
14 that requires that.

15 Q. Are there service contracts that Trigen has
16 with some of its customers?

17 A. On the district steam system?

18 Q. Yes.

19 A. The commercial customers in town, they're
20 all according to a published tariff. There is a process
21 industrial customer, actually it's not even shown on that
22 map, that is subject of a contract between Trigen and the
23 customer.

24 Q. Okay. Does that contract customer receive
25 service through a -- through a looped or is that what

1 you're going --

2 A. No, sir. It's a radial. It's an above
3 ground radial main.

4 Q. Okay. But is that one -- is that customer,
5 without identifying that customers, is that customer
6 rather unique in that that's the only one you have on a
7 service contract?

8 A. That's correct.

9 Q. And all the rest of your customers receive
10 service through this loop system and they're covered by
11 your tariffs?

12 A. That's correct.

13 Q. And when you use the term "publish the
14 tariff," you're talking about the tariffs you have on file
15 with the Public Service Commission?

16 A. That's correct.

17 Q. Okay. Now, you talked a few moments ago
18 about you talked to your customers and then you, in fact,
19 delayed this 'til April 2nd. Was that to get out of the
20 heating season?

21 A. That's correct.

22 Q. Okay. Now, which leads to my next
23 question. Do your customers use steam service during the
24 spring, summer and fall months?

25 A. Some district customers use it, but in much

1 less magnitude, and I believe the needs are generally less
2 critical in the spring, summer and fall months.

3 Q. Okay. This question is to your knowledge,
4 talking about the Commission Report and Order in Case
5 No. HM-2004-061, that was the purchase case of Trigen.
6 Are you familiar with that?

7 A. Yes.

8 Q. Do you know whether the Commission
9 determined that it did not have jurisdiction over the
10 chilled water system?

11 A. I'm not familiar with what it is, but I
12 don't think it was ruled -- it was ruled on. My
13 understanding was what it wasn't ruled on whether the
14 Commission had jurisdiction or not. But I think at this
15 point it does not have jurisdiction.

16 Q. Now, in this proceeding here today, what is
17 Trigen seeking? What would you like to see come out of
18 this?

19 A. I'd like to be in a position to comply with
20 the City's directive from this proceeding, but perform, be
21 able to do what we need to do to comply with the
22 ordinance.

23 Q. Are you seeking any type of order from the
24 Commission today that would say that the cost of complying
25 with the City ordinance can be recovered from the

1 customers?

2 A. I don't -- I don't think this is a

3 proceeding where we could do that, so I'm not --

4 MR. FRANSON: Okay. I don't believe I have

5 any further questions of this witness, your Honor.

6 JUDGE WOODRUFF: All right. Thank you.

7 Further cross-examination by City of Kansas City?

8 MR. COMLEY: Seeing that there may be a

9 parlay between counsel, I think I'll wait.

10 MR. FRANSON: Your Honor, if I may

11 continue, actually?

12 JUDGE WOODRUFF: You may go ahead.

13 MR. FRANSON: Thank you.

14 BY MR. FRANSON:

15 Q. Mr. Kirk, let's talk about what happens if

16 you cut and cap the system. Would it be possible once

17 that's done but prior to any pipe being removed, would it

18 be possible to reconnect it?

19 A. It would be possible.

20 Q. Okay. Once pipe's removed, would it then

21 be impossible?

22 A. New piping would have to be laid in some

23 routing, so it's quite a bit more difficult.

24 Q. Let me ask you this: Are you familiar with

25 the schedule of what is supposed to take place -- let's

1 say this had proceeded on April 2nd. Are you familiar
2 with the schedule that would have gone -- that would have
3 been followed?

4 A. Generally, yes.

5 Q. Okay. Just a moment.

6 MR. FRANSON: Your Honor, if I may
7 approach?

8 JUDGE WOODRUFF: You may.

9 (EXHIBIT NO. 3 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 BY MR. FRANSON:

12 Q. Mr. Kirk, if you could take a look at what
13 has been marked as Exhibit 3. Have you seen this before?

14 A. Yes, I have.

15 Q. What is it?

16 A. It's kind of a work schedule for the
17 operations necessary to cut and cap the mains and sever
18 that section of the loop.

19 Q. Okay. Now, how many pages are there in
20 this exhibit?

21 A. There are three.

22 Q. Okay. The first page is February 2005; is
23 that correct?

24 A. That's correct.

25 Q. And in fact, you originally were going to

1 start this process, and it's described in some detail, the
2 process was originally going to start on February 16th; is
3 that correct?

4 A. That's correct.

5 Q. Okay. And then on page 2 it shows some
6 things running through March 11th. Then on page 3, we
7 have a schedule timeline with comments; is that correct?

8 A. Correct.

9 Q. Okay. Did you, in fact, create this
10 document?

11 A. I did not.

12 Q. But to your knowledge is it a fair and
13 accurate description of how this project would have
14 proceeded to remove the Trigen works from the arena site
15 if it had started on February 16th and concluded on
16 March 11th?

17 A. Yes, it is.

18 Q. Where would we have been on March 11th if
19 this project had gone through starting on February 16th?
20 What would have been the result?

21 A. Okay. We would have had two radial mains
22 similar to what this diagram shows.

23 Q. And you would have been complied -- you
24 would have, in fact, complied with the City ordinance; is
25 that correct?

1 A. Part of it. The rest is removal of the
2 mains and facilities left behind that formerly comprise
3 the loop.

4 Q. Would that, in fact, later be done by
5 Trigen?

6 A. Yes.

7 MR. FRANSON: Okay. Your Honor, at this
8 time I would offer into evidence Exhibit 3.

9 MR. FRANSON: All right. Exhibit 3 has
10 been offered into evidence. Are there any objections to
11 its receipt?

12 (No response.)

13 JUDGE WOODRUFF: Hearing none it will be
14 received into evidence.

15 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

16 BY MR. FRANSON:

17 Q. Mr. Kirk, if you could explain generally
18 the time this would start, what would be involved in
19 removing the Trigen system. And also I'm inquiring about
20 the cost of the system, not redoing it or reconstituting
21 it, reconfiguring it, but just the actual cost of removal.

22 A. Removal. It depends upon the construction
23 of the main that's in there. Typically most of the mains
24 in downtown Kansas City are constructed as a masonry
25 insulation and then there's a carrier pipe. So there's --

1 and very often that insulation is asbestos, so there's
2 abatement process, asbestos abatement has to be
3 controlled.

4 Now, apparently we have some testing we've
5 done shows that main may well not be asbestos insulated,
6 which could moderate the cost somewhat. Typically it
7 involves an asbestos abatement project, so that process
8 has to be implemented as you remove those structures.

9 Q. To remove this, do you know approximately
10 what it would cost to -- just the removal?

11 A. Yes. The cost is different whether it's
12 asbestos or non-asbestos, but somewhere in the
13 neighborhood of 120, 150,000 if it's asbestos.

14 Q. Okay. And if it's not asbestos, it might
15 be somewhat lower?

16 A. Correct.

17 Q. Now, the -- once it's cut and capped, what
18 do you do after that? Once the system's cut and capped,
19 is there anything else to the removal process that would
20 be done initially?

21 A. Well, it has to -- there has to be
22 excavation done to remove the old main. There's reference
23 to trapping. That's ensuring proper drainage from the
24 pipe, accommodating expansion of the pipe at either end,
25 there's some changes there. Actually construction of a

1 manhole in this case.

2 MR. FRANSON: I don't believe I have any
3 further questions of the witness at this point in time.

4 JUDGE WOODRUFF: Then we'll go to City of
5 Kansas City.

6 CROSS-EXAMINATION BY MR. COMLEY:

7 Q. Mr. Kirk, my name is Mark Comley. We met
8 earlier. I'm the attorney for the City of Kansas City.
9 And I had not realized you had a law degree, but that
10 doesn't excuse you. I know that you've been quizzed about
11 this before, but let me go back through some of the
12 questions, and forgive me if they're duplications.

13 After receiving notice of the relocation
14 request from Kansas City, tell me again, did you specially
15 contact Jackson County and advise them that a relocation
16 request had been made?

17 A. Yes, I did.

18 Q. And can you remember when you did that?

19 A. I think it was the first part of January.

20 Q. It was the first part of January. Now, do
21 you remember when you got the notice?

22 A. The notice was sometime in 2004.

23 MR. COMLEY: All right. I need to have an
24 exhibit marked.

25 (EXHIBIT NO. 4 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 MR. COMLEY: May I approach Mr. Kirk?

3 JUDGE WOODRUFF: You may. Do you have

4 copies for the bench?

5 MR. COMLEY: Yes, I do.

6 JUDGE WOODRUFF: This will be Exhibit 4,

7 then.

8 BY MR. COMLEY:

9 Q. Mr. Kirk --

10 JUDGE WOODRUFF: Do you have a couple more?

11 MR. COMLEY: I'm short. I'm sorry.

12 JUDGE WOODRUFF: We'll make do.

13 MR. COMLEY: I can deliver more when you

14 need them.

15 BY MR. COMLEY:

16 Q. Mr. Kirk, the court reporter has marked for

17 identification Exhibit No. 4. Do you recognize that

18 document?

19 A. Yes, sir.

20 Q. Can you briefly identify it for the

21 Commission, please?

22 A. Yes. It's a -- it's a notice to Trigen

23 Energy addressed to myself informing Trigen of the

24 vacation of the streets and alleys and requesting that we

25 remove our facilities from the arena site.

1 Q. The letter speaks for itself, but did you
2 receive this letter?

3 A. Yes.

4 Q. And is this the notice that we've been
5 talking, the notice to relocate your facilities?

6 A. Yes, sir.

7 MR. COMLEY: Your Honor, I'd move for the
8 admission of Exhibit 4.

9 JUDGE WOODRUFF: Exhibit 4 has been offered
10 into evidence. Are there any objections to its receipt?

11 (No response.)

12 JUDGE WOODRUFF: Hearing none, it will be
13 received into evidence.

14 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

15 MR. COMLEY: I have another one to mark as
16 well.

17 (EXHIBIT NO. 5 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 MR. COMLEY: Exhibit 5.

20 BY MR. COMLEY:

21 Q. Mr. Kirk, the court reporter has marked for
22 identification Exhibit 5. Let me ask you this question.
23 Are you familiar with this document?

24 A. Yes.

25 Q. Have you seen this document before?

1 A. Yes, I have.

2 Q. Can you describe it for us, please?

3 A. It's a letter addressed to Tom Casten,
4 former CEO of Trigen, addressed to White Plains, New York
5 quarters that doesn't exist anymore, but it relates the
6 plans for downtown Kansas City and requests cooperation
7 with the removal of facilities from the arena site.

8 Q. So basically the letter dated October 27,
9 2004, which is Exhibit 5, it was a follow-up to the notice
10 of October 19th; is that correct?

11 A. Yes, sir.

12 Q. And it's true, isn't it, that Mr. Casten
13 was at that time the chief executive officer in charge
14 during that period of time?

15 A. No, sir.

16 Q. Okay. How did you get a copy of this
17 letter to you?

18 A. I honestly don't know.

19 Q. But you did get a copy of this somehow?

20 A. I did. It somehow made it there. I think
21 that headquarters closed a couple of years ago.

22 Q. It's fair to say in the month of October
23 Trigen and its officials were notified that relocation was
24 scheduled for March 1st; is that correct?

25 A. This letter I believe came to our local

1 subsidiary. So I was notified of it.

2 Q. You were notified?

3 A. I was notified.

4 Q. So it was in January that you visited with
5 Jackson County?

6 A. Right.

7 Q. Did you follow up your visit with Jackson
8 County by any correspondence excepting the February 22nd
9 letter that's attached to the complaint?

10 A. I don't recall.

11 Q. Let me ask you this question. Did Jackson
12 County contact you in advance of filing its complaint in
13 this case?

14 A. Yes.

15 Q. Did you verify any of the material in the
16 complaint?

17 A. I don't recall, no.

18 Q. Do you know why Jackson County contacted
19 you in advance of filing the complaint? Let me take that
20 back. Why did they -- when did they contact you about the
21 complaint?

22 A. It would have been, I think just prior.

23 Q. Was it last week?

24 A. I believe so.

25 Q. Last week. Did you contact anybody at

1 Jackson County after you received notice that they were
2 filing a complaint?

3 A. I don't recall.

4 Q. Let's turn to what's been marked as
5 Exhibit 1. I think you have Exhibit 2 nearer to you. Do
6 you have a copy of Exhibit 1 in front of you, Mr. Kirk?

7 A. I do.

8 Q. I'm going to look at the west side of the
9 Trigen distribution plan map that's been marked as
10 Exhibit 1. And in the lower right-hand corner can you go
11 through me and tell -- go through with me the number of
12 customers that are on one of the lines for Trigen? Let's
13 stay in that quadrant that looks to be bounded at the
14 north on 13th Street and bounded on the west by Oak
15 Street.

16 I think I got my directions mixed up. I'm
17 looking at the east side of the map.

18 A. Right.

19 Q. I'm looking at the east side of the map.

20 A. Right.

21 Q. So I know the customers would include
22 Jackson County. What other customers are in that area?

23 A. There's the federal office building is
24 there, the police building, municipal court building,
25 Jackson County Courthouse. There's the jail, the jail

1 annex.

2 Q. Where is the state office building located
3 on this, if you can tell us?

4 A. The state office building is --

5 Q. It's hard to tell. I think I can barely
6 make out the name on it, but I wanted to check with you.

7 A. It is on that. It is on that leg. I'm
8 trying to --

9 Q. Is it shown directly across from the
10 federal office building on this map?

11 A. I believe it's south of the federal office
12 building.

13 Q. The Commissioner who used to be in charge
14 of that facility knows exactly where it is.

15 COMMISSIONER APPLING: Absolutely.

16 BY MR. COMLEY:

17 Q. My understanding is looking at this map
18 that the state office building not only receives steam
19 service from Trigen but also chilled water service?

20 A. It does not receive chilled water. It
21 receives steam only.

22 Q. Let's look at the leg -- I'll call it the
23 leg -- that precedes in an east/westerly fashion along
24 what is I think marked as 13th Street. Is that a 24-inch
25 main?

1 A. No. That's actually referring to the
2 chilled water, the 24 inch. It's a -- I believe it's a
3 10-inch main, the steam main.

4 Q. All right. And would you -- is that easier
5 to refer to as a stub?

6 A. We call something like that a radial or a
7 radial line.

8 Q. So it's not loop, it's radial?

9 A. Correct.

10 Q. Is that the way of saying it? Okay. So
11 right now Jackson County, the federal office building, the
12 state office building, they're all served by a radial off
13 the loop; is that correct?

14 A. That's correct.

15 Q. And if I -- I have this understanding, if
16 there is a service interruption, say, located east of the
17 intersection of 13th Street and McGee, that all of the
18 facilities served off that particular radial would be
19 affected; is that correct?

20 A. That's correct.

21 Q. The loop on the other hand, if there was
22 some kind of interruption along one part of the loop, the
23 other side of the loop could continue to serve it?

24 A. Correct.

25 Q. There was some questions by Mr. Finnegan in

1 which he was talking an Order to cap the lines. I wanted
2 to make it clear, isn't it true the City has not directed
3 Trigen to cap the line? Isn't that correct?

4 A. That's correct.

5 Q. The only thing the City has done is direct
6 that you relocate the line?

7 A. That's correct.

8 Q. The decision on capping the line and
9 terminating it in the places we've described so far, that
10 has been Trigen's decision unilaterally; is that correct?

11 A. That's true.

12 Q. And you know it's the City's position that
13 Trigen is responsible itself, at its sole cost and expense
14 of moving those lines; isn't that correct?

15 A. That's correct.

16 Q. We talked a little bit about the removal of
17 the inactive line for the H&R Block project. Now, that is
18 a line that you yourself voluntarily agreed to remove; is
19 that correct?

20 A. That's correct.

21 Q. And that is not a part of this case; is
22 that correct?

23 A. No, it's not part of the case.

24 Q. You're not seeking compensation in any way
25 for the removal of that line at least within this matter;

1 is that correct?

2 A. That's correct.

3 Q. And I'm taking it from -- and I'm taking it
4 from earlier questioning and I wanted to confirm, it is
5 your intention, short of any order from a governmental
6 body with jurisdiction, to relocate the lines pursuant to
7 the municipal ordinance and the franchise that Trigen
8 received from the City of Kansas City; is that correct?

9 A. That's correct.

10 Q. For my own clarification, I want to know
11 how you intend to configure these lines after you remove
12 them and after you go through the process of capping them.
13 And is that on Exhibit 2, I think? And I'd like to go
14 with you with that -- go through that with you if we
15 could.

16 What I'm visualizing is that there will be
17 a line coming from the north, I'll say, and a line coming
18 from the west, and they will be capped at 13th Street and
19 at Grand Avenue; is that correct?

20 A. That's correct.

21 Q. Now, is the process of removing those lines
22 underway right now?

23 A. There's been preparatory work to cap the
24 lines. There's not -- there's not work underway to remove
25 the line, to actually physically remove the lines.

1 Q. Can tell me this: If you are not ordered
2 to stop the process, how many days would it take to remove
3 the lines and perfect the capping process?

4 A. The capping process would proceed sooner.
5 That could be done probably in a week to ten days. The
6 removal, two to four weeks, somewhere in that range.

7 Q. So we're looking at between now and the
8 first of May to have all this process completed, absent
9 some governmental body intervening; is that correct?

10 A. Yes, sir.

11 Q. In your letter that Mr. Franson was
12 visiting with you about, the one that was attached to the
13 complaint, and I don't know if you have a copy of it, but
14 you say at some point in the future though most likely one
15 or more years out, it is Trigen's intention to restore the
16 system to its prior configuration.

17 Is that a correct rendition of what you
18 said?

19 A. Yes.

20 Q. How would you do that? Can you explain to
21 the Commission how you can reconfigure the loop so that it
22 would be a loop again?

23 A. It could be run a couple of different ways.
24 It could be run through detouring around through other
25 streets and rejoining at some point, or potentially if the

1 opportunity exists, perhaps through routing it through the
2 arena site with the agreement of the arena developers and
3 operators of the arena.

4 Q. So it was a combination, you would use the
5 public rights of way pursuant to your franchise --

6 A. Correct.

7 Q. -- and perhaps the entity of a private
8 agreement or easement with the arena owner?

9 A. That's correct.

10 Q. Let me ask you this: How did you come up
11 with the costs of the removal that you discussed with the
12 Commission?

13 A. It's based on historical types of records
14 for that type of -- for installation of new main, for
15 operations of maintenance on the pipe. So it's based on
16 experience we have. Also for when there's congested
17 interference, known as interference, other utilities that
18 you have to work around.

19 Q. Did the City also bid this into one of
20 their construction contracts or excavation contracts for
21 you?

22 A. The City actually did give some pricing for
23 the removal piece of it. Now, the parts of the cut and
24 cap and the construction of manholes and the various
25 excavations involved in that, that's done by us and

1 actually is already proceeding by us. But actually the
2 City did come up with some pricing.

3 Q. Was the pricing comparable to what you've
4 told the Commission?

5 A. Yes.

6 Q. Let's talk about reliability issues. I've
7 explained to the Commission how I understand this case. I
8 look at it as if Jackson County would have to show that
9 there's some serious threat to the customers, some serious
10 threat to Jackson County employees as a consequence of
11 relocating these lines and capping them as you have done
12 this. Let me ask you this: As a consequence of the
13 capping procedure that you've described, isn't it true
14 that you anticipate no greater likelihood of rupture on
15 the system?

16 A. That's true. There's no greater
17 likelihood.

18 Q. And would it also be true that despite the
19 capping of this and converting it into a rather lengthy
20 radial system, you would expect no greater likelihood of
21 higher maintenance on the lines?

22 A. No, there shouldn't be higher maintenance
23 on lines.

24 Q. And let me ask you this: Wouldn't it be
25 true that despite the capping procedure you're describing,

1 you would foresee no more service interruptions than
2 you've experienced in the past over the last 15 years; is
3 that correct?

4 A. No, there shouldn't be more system service
5 interruptions.

6 Q. Let's visit about a catastrophic event.
7 Mr. Finnegan had mentioned an explosion. Has your system
8 experienced catastrophic types of ruptures or events that
9 have affected service in the past?

10 A. No, sir.

11 Q. Let's say that it does. Does your company
12 have in place a plan by which to handle catastrophic
13 events occurring on your system?

14 A. Not of that nature, but we have -- we have
15 some plans we can undertake, some measures we can
16 undertake if something like that happens.

17 Q. Let's talk about them. Let's see. What
18 would be one of them? is there a possibility that your
19 company could supply temporary boilers in the event of a
20 catastrophic event?

21 A. That's is something -- that's one
22 potential.

23 Q. Is it conceivable that even in a
24 catastrophic event, your company could probably restore
25 service at least on a Band-Aid basis, I'll call it that,

1 within 48 hours?

2 A. Depending on the severity of it, yes,
3 that's likely.

4 Q. There was some discussion about Trigen's
5 operation of radial systems in other jurisdictions. I
6 think you identified three, Trenton, New Jersey, Tulsa and
7 Oklahoma City in Oklahoma?

8 A. That's correct.

9 Q. Now, in terms of reliability, if you were
10 to apply a percentage of reliability to these radial
11 systems, I think you mentioned that the one in Tulsa was
12 highly reliable. What kind of percentage reliability are
13 we looking at, Mr. Kirk?

14 A. I think it's in the neighborhood of
15 99.8 percent.

16 Q. This is a radial system and it's operating
17 at 99.8 percent. Talking about the loop system in Kansas
18 City, how would you consider its percentage of reliability
19 as a loop system at this point?

20 A. Approximately 99.98 percent.

21 Q. And if it is becoming a radial system as a
22 consequence of the capping procedure you've described,
23 would it be your opinion that its reliability percentage
24 would be equal to the one in Tulsa, Oklahoma?

25 A. I would expect it would be in the same

1 range.

2 Q. Would it even be higher?

3 A. I can't say.

4 Q. But it would be in the same range. Would

5 you expect it to dip below 99.5 percent?

6 A. I don't think so.

7 Q. Let me ask you this, Mr. Kirk. Has there

8 ever been a reported rolling heat out for any of these

9 central energy systems that we're talking about?

10 A. I've never heard of such a thing.

11 Q. Is it true that this system will maintain

12 its reliability irrespective of the capping procedure

13 you've described?

14 A. It will maintain high reliability.

15 Q. Isn't it true that there's no serious

16 threat to life or to property as a consequence of the

17 capping procedure you've described today?

18 A. I don't believe there is.

19 MR. COMLEY: We did have some short notice

20 on getting ready for this hearing. If you could just give

21 me a moment or two, I'd like to talk to the gentleman

22 who's come down here to help me on this and see if I need

23 to follow up with anything. Mr. Dottheim and Mr. Franson

24 did that.

25 JUDGE WOODRUFF: It worked well for them.

1 MR. FRANSON: Your Honor, I'd certainly
2 have no objection to that, but what I'd like to do is
3 clean up something. I'd intended to offer an exhibit,
4 specifically the letter from Mr. Kirk to Mr. Palmer. I
5 now have enough copies of that, and in fact Mr. Comley's
6 gone into that. I'd like to offer that at this point.

7 JUDGE WOODRUFF: That was the one that was
8 attached to the complaint?

9 MR. FRANSON: Complaint, yes. And I didn't
10 do that earlier because I didn't have enough copies, and
11 it's gone into further. If I could distribute and maybe
12 at the conclusion of Mr. Comley's --

13 JUDGE WOODRUFF: Bring that up when
14 Mr. Comley's finished.

15 MR. COMLEY: Thank you very much. I have
16 no other questions. I'd like to offer into evidence if I
17 haven't already Exhibit 5.

18 JUDGE WOODRUFF: You had not, but Exhibit 5
19 has been offered. Are there any objections to its
20 receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, it will be
23 received into evidence.

24 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

25 JUDGE WOODRUFF: Mr. Franson, if you want

1 to address that letter.

2 MR. FRANSON: Your Honor, it will take just
3 a couple questions of the witness, but let me go ahead and
4 distribute those copies.

5 (EXHIBIT NO. 6 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 MR. FRANSON: If I may approach, your
8 Honor?

9 JUDGE WOODRUFF: You may.

10 CROSS-EXAMINATION (CONT.) BY MR. FRANSON:

11 Q. Mr. Kirk, you've been handed what's marked
12 as Exhibit 6. What is that?

13 A. This is a letter I sent out to customers
14 affected by the prospective operation cut in capital main.

15 Q. Is this a fair and accurate copy of your
16 letter?

17 A. Yes, it is.

18 Q. In fact, I asked you some questions about
19 this letter earlier?

20 A. Yes.

21 Q. And so did Mr. Comley?

22 A. Right.

23 Q. And this is the letter that was referred to
24 in those questions?

25 A. Yes.

1 MR. FRANSON: Your Honor, at this time I
2 offer into evidence Exhibit No. 6.

3 JUDGE WOODRUFF: No. 6 has been offered
4 into evidence. Any objections to its receipt?

5 (No response.)

6 JUDGE WOODRUFF: Hearing none, it will be
7 received into evidence.

8 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE WOODRUFF: And nothing else from
10 Staff at this time?

11 MR. FRANSON: Not at this time, your Honor.

12 JUDGE WOODRUFF: Thank you. For Trigen?

13 MR. DeFORD: No questions, your Honor.

14 JUDGE WOODRUFF: All right. Let's come up
15 for questions from the Bench, then. Commissioner Murray?

16 Oh, I'm sorry. She's not here. I need to
17 look first. Commissioner Clayton?

18 COMMISSIONER CLAYTON: No questions.

19 JUDGE WOODRUFF: Commissioner Appling?

20 QUESTIONS BY COMMISSIONER APPLING:

21 Q. I think I have one question. And I've
22 probably done misplaced it here, Mr. Comley, but the
23 attorney for Kansas City has indicated that we're coming
24 into the heating system. We have a 235 million project
25 coming up. So let's get down where the rubber meets the

1 road here. We are coming into the summer season and you
2 probably won't have as much need for steam as we have had
3 during the winter.

4 Say for an example in November on
5 Thanksgiving day we have 18 inches of snow in Kansas City
6 and the rain freezes. What happens around October, is
7 your system going to continue to perform, or am I going to
8 be called back from the Bahamas to come back here and
9 settle a case? What does it look like? What's going to
10 happen in October when it starts cooling off again?

11 A. I believe we'll be serving steam through
12 the radial mains and at an adequate level of reliability.

13 Q. So you're telling me here today that you
14 feel that you will be able to provide Jackson County and
15 the rest of your customers safe and adequate service until
16 this project has been completed?

17 A. Yes, I do.

18 Q. Have there been any communication between
19 you and the City on routing the system through this new
20 project, the Sprint project? Have you had any
21 communication with the City? Has the City even talked to
22 you about that?

23 A. I have spoken with the consultants and the
24 developers, but on a very -- it's really just the idea has
25 been introduced. We haven't gotten into the actual

1 routing, architecture, engineering of such a thing, but
2 it's something we're interested in talking -- very
3 interested in talking to the developer about.

4 COMMISSIONER APPLING: Okay. Thank you,
5 sir.

6 JUDGE WOODRUFF: I have a couple questions.
7 QUESTIONS BY JUDGE WOODRUFF:

8 Q. First of all, to follow up on what
9 Commissioner Appling was just talking about with the
10 routing of the replacement steam line through the project,
11 is that going to depend upon whether Trigen gets the
12 contract to provide the heat and cooling for this project?

13 A. It would. I think it's something that
14 could at least be discussed either way. Even if they
15 elected not to go with us, with our service, steam or
16 chilled water, I think I would like to offer the
17 possibility of us using a private property routing kind of
18 an easement or encroachment to route our steam through to
19 kind of alleviate the cost effect of this to our
20 customers.

21 Q. Would this like run through the basement of
22 a building or something?

23 A. That's correct, or basically a hung piping
24 along some portion of the structure through the basement
25 or through corridors or something like that, if such a

1 possibility exists. At this point I don't know whether
2 that will exist, but I think it's -- I think we have to
3 look at every possible option.

4 Q. Is that possibility the reason why the
5 company has not at this point come up with a plan for
6 reconnecting the loop?

7 A. That's correct, because there's quite a bit
8 of congestion partly created by the project that's moved a
9 lot of utilities into some very tight routes, and that
10 adds to the cost for us to rush to reconnect it. It's --
11 that is the reason, yes.

12 Q. All right. Now, you mentioned in answer to
13 one of the attorneys' questions that if ordered to do so
14 Trigen would reconnect the loop sooner than it planned on
15 doing so. I assume there would be a higher cost for that?

16 A. Yes, sir. Yes.

17 Q. Do you know what the cost would be?

18 A. It would be, I think you start at around
19 three-quarters of a million dollars for the reconnection,
20 and if it was on a compressed time schedule and with all
21 the other work, with all the downtown renovation that's
22 going on, traffic restrictions become very difficult,
23 traffic is being pushed to other streets, so getting the
24 time to where you'd be working odd shifts. I think it
25 goes up from there. To answer your question, yes, the

1 cost would go up.

2 Q. Okay. Assume you are -- you're not ordered
3 to do otherwise. When could the cut of the lines actually
4 proceed?

5 A. They actually could proceed almost any day
6 now because a lot of prep work has been done, the
7 excavation, the placement of the manhole. Within a matter
8 of days we could go ahead with that or actually get the
9 work done.

10 Q. And has the City set any sort of firm
11 deadline saying it has to be done by now or the project
12 can't go forward?

13 A. I know the City's work is really proceeding
14 on that site. We -- I don't know specifically. I don't
15 have personal knowledge of the deadlines, but I think that
16 they're anxious for us to get that done and be clear.

17 Q. All right. One last question. Can you
18 tell me, show me on the map where the H&R Block building
19 is going to be? Tell me the street address.

20 A. I believe it's on the block between 14th
21 and 13th between Main and Baltimore.

22 Q. That's about two blocks west of the arena
23 site?

24 A. That's correct.

25 JUDGE APPLING: Thank you. Commissioner

1 Appling, do you have further questions?

2 FURTHER QUESTIONS BY COMMISSIONER APPLING:

3 Q. One follow-up question. When is your

4 normal switching time from summer to -- from winter to

5 summer on your steam? What is your take on that?

6 A. For those customers that you call seasonal

7 that only use steam, in the -- in the winter, it would be

8 April, it would be approximately the middle of April. So

9 we're right in there.

10 Q. So you don't anticipate any problems with

11 the snow coming or dropping down to zero in the next few

12 days?

13 A. No, sir.

14 COMMISSIONER APPLING: Okay. Thank you.

15 JUDGE WOODRUFF: Commissioner Murray, do

16 you have any questions?

17 COMMISSIONER MURRAY: A couple. Thank you.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Good morning. Is any existing customer

20 affected in any manner other than removal of the

21 redundancy?

22 A. Other than removal of the redundancy, no.

23 Q. And is it true that some of those customers

24 to some extent at least do not currently have redundancy

25 because they're on a radial part of the system?

1 A. I believe all customers benefit from the
2 redundancy, because even if they're out on a radial from
3 the main loop, there's a smaller affected length of line
4 on which they're a radial. I don't know if I'm making
5 myself clear. But I believe all customers in the system
6 do, because it gives a lot more optionality in the supply
7 of steam.

8 Q. And then you were asked a few questions
9 about if an emergency situation such as Mr. Finnegan had
10 described were to occur, would there be other things that
11 you can do in response. And I believe you listed several
12 possibilities to respond to an emergency; is that correct?

13 A. That's correct.

14 Q. So it's not a given that even if these
15 customers are on a radial system and some explosion were
16 to occur that would prevent normal operation for an
17 extended period, that they would necessarily be without
18 service for an extended period?

19 A. That's correct. There are -- there are
20 some measures that can be taken.

21 Q. And when did you say you first talked to
22 the County?

23 A. I believe it was in January when I first
24 approach the County.

25 Q. Of '05?

1 A. '05.

2 Q. Okay. And when you received notice from

3 Kansas City in October, the letter that was offered as

4 Exhibit 5 said if you know of any potential delays or

5 reasons this project cannot continue to move at this rapid

6 pace, please contact us immediately. At that time did you

7 think there was any reason that anybody would be creating

8 a problem with your going ahead with the time schedule?

9 A. We had concerns of our own. We had

10 discussions with the City about the cost impact and things

11 like that. There was a number of discussions I had with

12 people at the City about expressing concern particularly

13 about the cost and to some extent the reliability aspects

14 of this, yes.

15 Q. And how were those resolved in your

16 opinion?

17 A. Well, we weren't pleased that we had to

18 foot the bill for this entire thing and potentially pass

19 this along to the customers as a cost of doing business,

20 but that's kind of -- that's the -- we accepted that as

21 the outcome.

22 Q. Now, you mentioned reliability concerns.

23 What were those?

24 A. Again, just the fact that there's not in my

25 opinion a very greatly significant difference, but there

1 is somewhat of a difference in the reliability of the loop
2 system versus radial system, as we've talked about.

3 Q. And you had that concern in October that
4 you expressed to Kansas City?

5 A. It may have been expressed. The more --
6 the focal point of those discussions were really the cost
7 of it, were more the cost of it as opposed to the
8 reliability.

9 Q. Okay. Would it be accurate to say that you
10 never had any significant concerns about reliability?

11 A. Not -- not significant.

12 Q. And do you have any significant concerns
13 about reliability today?

14 A. No. I think we'll adequately supply steam.

15 Q. And you sent a letter to Jackson County
16 Courthouse, Mr. Bruce Palmer, on February 22nd that you
17 signed, correct?

18 A. Yes, ma'am.

19 Q. And in that letter you state, we do not
20 expect the reliability or quality of Trigen's service to
21 suffer; is that correct?

22 A. I did say that.

23 Q. And I also -- further in that letter is it
24 true that you said this alteration is expected to remain
25 comparable in virtually all respects to that to which you

1 have become accustomed over the past 15 years of Trigen's
2 service?

3 A. Yes, ma'am.

4 Q. And that was your position at the time?

5 A. Yes, ma'am.

6 Q. I assume that's still your position?

7 A. Yes, ma'am.

8 Q. You further said, in sum, the switch to
9 terminal service from pre-existing loop service will not
10 affect the frequency or duration of outage downtime that
11 the steam systems experience. You still agree with that?

12 A. Yes.

13 Q. And later you said, the impact from the
14 individual customers standpoint is expected to be minimal,
15 if felt at all. That's still your position?

16 A. Yes, ma'am.

17 COMMISSIONER MURRAY: I think that's all I
18 have. Thank you.

19 JUDGE WOODRUFF: All right. Thank you.

20 For recross based on questions from the Bench, then,
21 beginning with Staff.

22 MR. FRANSON: No questions, your Honor.

23 JUDGE WOODRUFF: Kansas City?

24 MR. COMLEY: No questions, thank you.

25 JUDGE WOODRUFF: Trigen?

1 MR. DeFORD: No questions, thank you.

2 JUDGE WOODRUFF: Redirect?

3 MR. FINNEGAN: Just a few questions, your

4 Honor.

5 REDIRECT EXAMINATION MR. FINNEGAN:

6 Q. Mr. Kirk, in the February 22nd letter to

7 the County, the second to last paragraph, you discuss that

8 the system would not be reconnected 'til most likely one

9 or more years out. By more, could it be two or three

10 or --

11 A. Yes, that's possible. I can't say for

12 sure.

13 Q. Now, in your paragraph just above that on

14 page 2, you indicate that the switch to terminal service

15 from loop pre-existing loop service will not affect the

16 frequency of duration or outage downtime the steam system

17 experiences. What may change is the number of customers

18 whose service is interrupted for given maintenance for

19 operation on the system; is that correct?

20 A. Yes.

21 Q. So what you're saying is that the

22 reliability of the system is not affected very much by

23 this, but the potential for certain customers to be

24 impacted is greater --

25 A. That's correct.

1 Q. -- once -- if they do not have a loop?

2 A. Right.

3 Q. And so, for example, if there were a major,

4 major outage at 6th and Walnut, 6th and McGee -- I'm

5 sorry -- 6th and McGee, people down at 13th and McGee

6 would be out of steam service?

7 A. That's correct.

8 Q. Whereas if the loop were still in place,

9 they'll have steam service?

10 A. That's correct.

11 Q. And so all those buildings that -- between

12 where the loop starts now and goes down are all

13 potentially impacted either at the McGee Street loop --

14 leg, I'm sorry -- McGee Street leg or the Wyandotte leg?

15 A. Yes, sir.

16 Q. So there presently -- and you have the

17 loop. Why do you have a loop?

18 A. The loop for that -- for that reason, the

19 loop allows back feed and allows -- during outage periods,

20 it allows back feed or alternate feed, redundant feed to

21 the customers while that maintenance operation is going

22 on.

23 Q. Is that the superior service than a radial

24 system?

25 A. Yes, it is superior service.

1 Q. And the customers currently have that
2 service now?

3 A. Yes, sir.

4 Q. And what is being proposed here is to take
5 away that service?

6 A. Yes, sir.

7 Q. You indicated that there was another
8 customer -- process steam customer that was not shown on
9 this, referring to Exhibit 2 there. Is this customer
10 across the river?

11 A. Yes, sir.

12 Q. And how does the steam get to them?

13 A. It's distributed in a pipeline, above
14 ground pipeline that crosses a bridge and goes over.

15 Q. You have a contract with that customer?

16 A. That's correct.

17 Q. With respect to temporary boilers, are
18 there some discussions about that? Do many of these
19 buildings not have the ability to put a temporary boiler
20 in?

21 A. That's -- that is possible that the
22 fittings aren't there. The fittings could probably be
23 fabricated relatively -- relatively easily.

24 Q. Where would you plan to put the boiler,
25 like outside or something?

1 A. Typically it would be like a truck-mounted
2 boiler.

3 Q. Do you have those boilers available?

4 A. No, sir.

5 Q. You'd have to get them?

6 A. Yes. There's rental services that can
7 bring them to the system.

8 Q. How long would that take?

9 A. If -- it can be done fairly quickly. They
10 can be dispatched from places where they're parked or
11 staged.

12 Q. Talking a day, two days?

13 A. Sometimes as quickly as eight hours or so.
14 I'd say between 8 and 24 hours is my experience.

15 MR. FINNEGAN: I think that's all the
16 questions I have.

17 JUDGE WOODRUFF: Thank you. Mr. Kirk, you
18 may step down.

19 Mr. Finnegan, did you have any other
20 witnesses?

21 THE WITNESS: Yes, I do.

22 JUDGE WOODRUFF: Let's go ahead and take a
23 break and come back at 11:20.

24 (A BREAK WAS TAKEN.)

25 JUDGE WOODRUFF: We're back after our

1 break, and during the break the court reporter indicated
2 to me that Exhibits 1 and 2 were offered into evidence and
3 she indicated that I had not shown them as being received.
4 Exhibit 1 and 2 will be received into evidence at this
5 time.

6 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
7 EVIDENCE.)

8 JUDGE WOODRUFF: All right. Mr. Finnegan,
9 you can call your next witness.

10 MR. FINNEGAN: At this time I call Bruce
11 Palmer.

12 (Witness sworn.)

13 JUDGE WOODRUFF: You may inquire.

14 BRUCE PALMER testified as follows:

15 DIRECT EXAMINATION BY MR. FINNEGAN:

16 Q. Would you state your name, please.

17 A. I'm Bruce Palmer.

18 Q. And what is your occupation?

19 A. I'm director of facilities management for
20 Jackson County, Missouri.

21 Q. How long have you had that job?

22 A. Almost two years.

23 Q. And what is your background for that job?

24 A. I am a registered architect in the state of
25 Missouri since 1981, and also I have 24 years of

1 experience as an architect and building professional.

2 Q. Okay. What about your educational
3 experience?

4 A. I have a bachelor's degree from Kansas
5 State University, bachelor of architecture, and I'm
6 currently under way for a master's degree in construction
7 management.

8 Q. Mr. Palmer, you said you're director of
9 facilities management for Jackson County, and what does
10 that entail?

11 A. The County has approximately a dozen
12 buildings that I'm responsible for, both in Kansas City
13 and in Independence. The Kansas City facilities include
14 the downtown courthouse, the Jackson County Detention
15 Center and the -- what we call the CJB, which is the
16 Community Justice Building, and those Kansas City
17 facilities are connected to the steam loop that we've been
18 talking about.

19 And so I supervise a staff of approximately
20 40 people, and that includes building superintendents,
21 carpenters, electricians, painters, craftsmen that
22 maintain and operate our County buildings.

23 Q. You indicated that the county jail or the
24 detention center, that's also known as the county jail?

25 A. Yes.

1 Q. Or the jail annex?

2 A. Right. There's actually two buildings
3 there. The jail is sort of a separate structure from the
4 jail annex, but they are connected, so I call that whole
5 complex the detention center.

6 Q. How many square feet are in the detention
7 center?

8 A. The detention center has approximately
9 250,000 square feet.

10 Q. And how about the courthouse?

11 A. The courthouse has about 266,000 square
12 foot.

13 Q. The county jail or the detention center,
14 how many -- what size is this as far as the number of
15 prisoners it can hold?

16 A. It holds up to 800.

17 Q. Do you know how many there are right now or
18 is that someone else?

19 A. I'm not aware. I know that they are a lot
20 of times at real close to capacity.

21 Q. Okay. And what kind of prisoners are
22 detained in the county jail?

23 A. It's my understanding they are -- well, I
24 can't answer that question.

25 Q. Okay. With respect to the county jail, is

1 that under some federal or state court orders as to
2 operation or do you know?

3 A. I'm not very aware of that.

4 Q. With respect to the County's usage of
5 steam, is that a year-round usage?

6 A. Yes, it is.

7 Q. How much -- do you know how much steam
8 apparently is used in the summer as compared to the
9 wintertime?

10 A. Well, it's much less in the summer, but we
11 still require steam utility in the buildings for that
12 period of time.

13 Q. And what do you use it for in the
14 summertime?

15 A. In the summertime, we actually have to
16 bring heat into the buildings at the jail for domestic hot
17 water, and also we run hot water from the steam system in
18 our air conditioning system so that we can provide both
19 cooling and heating to deliver adequate temperatures to
20 the occupants in our buildings.

21 Q. So you kind of regulate the amount of steam
22 as to chilled water that is --

23 A. Right. We don't switch over to totally
24 only chilled water in the summer and then switch back to
25 only heat in the winter. We use a combination of both

1 throughout the year.

2 Q. Do you use steam to heat hot water in the
3 courthouse?

4 A. No. We have our own hot water heaters in
5 the basement of the old courthouse.

6 Q. Are these gas or electric or what are they?

7 A. They're gas.

8 Q. Is there room for a boiler in the
9 courthouse?

10 A. I can't answer that question.

11 Q. Okay. I mean, like, so it wouldn't be
12 placed in a middle of the lobby or something?

13 A. No, I don't know where they would put the
14 boiler if we were to put a boiler --

15 Q. Okay.

16 A. -- in the courthouse.

17 Q. Is the same true with respect to the county
18 detention center?

19 A. Yes.

20 Q. These were built without boilers; is that
21 correct?

22 A. Right.

23 Q. And when was the county detention center
24 built?

25 A. Well, the jail portion was built in '84,

1 and the annex then was added in approximately the mid to
2 late '90s.

3 Q. And both of these are heated with steam and
4 cooled with chilled water; is that correct?

5 A. Correct.

6 Q. In your experience, do you find that when a
7 system is taxed, when it's at more -- when it's at its
8 highest usage when it's coasting along?

9 A. Could you repeat the question?

10 Q. In your experience, is a system such as a
11 steam system taxed more when it's at its highest use
12 period during its peak usage than during a down time or
13 slower period of time when it's not so cold outside?

14 A. Yes.

15 Q. Do you find the redundant reliability of
16 the steam system critical for the county operations?

17 A. In my opinion, yes.

18 Q. Is that for all the operations or is the
19 county jail an even higher requirement?

20 A. Well, the jail buildings are 24 hours a
21 day, 7 days a week, 365 days a year, and so that would be
22 possibly more critical than the downtown courthouse,
23 although the court has operations going on, too, that
24 disruption of that would be very disruptive.

25 Q. Would it have an impact on the health,

1 safety of the people in the buildings?

2 A. In my opinion, it would.

3 MR. FINNEGAN: That's all the questions I

4 have.

5 JUDGE WOODRUFF: All right. For

6 cross-examination, then, beginning with Staff.

7 MR. FRANSON: Thank you, your Honor.

8 Briefly.

9 CROSS-EXAMINATION BY MR. FRANSON:

10 Q. Mr. Palmer, one of the areas I was

11 interested in that didn't happen here was, does the --

12 that we've heard some questions about. Does Jackson

13 County for its buildings have any backup for emergency

14 situations such as electric or are there capabilities in

15 your buildings?

16 A. We have electrical generators in both the

17 detention center and the downtown courthouse, but that is

18 limited only really to get the building vacated in the

19 event of an emergency. It doesn't keep the building

20 running as if nothing had happened.

21 Q. Okay. Do you have -- in fact have

22 evacuation plans for the jail if that should ever be

23 necessary for any reason?

24 A. I'm sure there are evacuation plans with

25 the detention center. I'm not personally aware of those

1 plans. For the courthouse, the downtown courthouse there
2 is an evacuation plan in place.

3 Q. And that's for any type of emergency where
4 an evacuation might be necessary?

5 A. Correct.

6 MR. FRANSON: No further questions.

7 JUDGE WOODRUFF: All right. For City of
8 Kansas City?

9 MR. COMLEY: Thank you, Judge.

10 CROSS-EXAMINATION BY MR. COMLEY:

11 Q. Mr. Palmer, going through your background,
12 your degree is in architecture; is that correct?

13 A. That's correct.

14 Q. And are you taking advanced degrees past
15 architecture now, and if so, what are they?

16 A. I'm working on a master's degree in
17 construction management.

18 Q. When did you graduate from Kansas
19 University -- excuse me -- K State?

20 A. Yeah. I graduated 1977.

21 Q. And then following graduation, where did
22 you go?

23 A. I came to Kansas City and had a job for a
24 year with Team One Architects, and then in 1978 I started
25 working with the City of Kansas City, Missouri.

1 Q. And you had a long tenure there; is that
2 correct?

3 A. Yes, I did.

4 Q. How long did you work for the City?

5 A. Four years.

6 Q. And you've recently went to the County you
7 said for two years?

8 A. Correct.

9 Q. Isn't it true, Mr. Palmer, that you're not
10 a mechanical engineer? Isn't that correct?

11 A. That's correct.

12 Q. And you've had -- recounting your
13 background, you've had no experience in the management of
14 steam heating companies; is that correct?

15 A. That's correct.

16 Q. You said in your testimony with
17 Mr. Finnegan that you think redundancy of the steam loop
18 is critical to its reliability; is that correct?

19 A. That's my opinion, yes.

20 Q. And your opinion is strictly based upon
21 your position as an architect; is that correct?

22 A. And director of the facilities that I'm
23 responsible for in the downtown area and out in
24 Independence.

25 Q. And what I'm gathering is that you doubt

1 the position of Mr. Kirk that even with the capping
2 procedure he's described, the facilities would be served
3 at 99.5 percent reliability. Is that what you doubt?

4 A. No, that's not my testimony in that regard.
5 I just believe that if you have redundancy and a loop for
6 facilities that I'm responsible for, to disrupt that or to
7 not keep that loop is -- that would adversely impact the
8 public health, safety and welfare of the folks in my
9 building.

10 Q. Well, the only time that would happen is if
11 there is a disruption that would cause someone to lose
12 heat; is that correct?

13 A. Yes, correct.

14 Q. We're talking about inmates not having a
15 temperature that's comfortable for them in the jail; is
16 that correct?

17 A. Well, that's part of it. I mean, we also
18 have a laundry and a kitchen facility that provides food
19 and their clothing. And also just the cleanliness of the
20 facility relies on the domestic hot water, which is also
21 hooked to the steam system.

22 Q. Okay. So we're talking about times when
23 they would be without hot water, times that they might be
24 without --

25 A. Heat.

1 Q. -- food production or clean clothing; is
2 that correct?

3 A. Correct.

4 Q. And what I'm trying to get at is, even if
5 this is capped tomorrow, that same day, you would not
6 expect any of these things to happen at the jail; isn't
7 that correct? Just because that is capped, you wouldn't
8 expect automatically those things would happen at the
9 jail; is that correct?

10 A. It wouldn't automatically happen as a
11 result of that. We would still have steam as described
12 earlier, but the possibility of losing it is increased.

13 Q. And you say the possibility is increased.
14 Do you have any reason to doubt Mr. Kirk's testimony that
15 his Tulsa, Oklahoma plant is operating at a 99.5 to
16 99.8 reliability?

17 A. No, I don't have any reason to doubt his
18 statement.

19 MR. COMLEY: That's all I have.

20 JUDGE WOODRUFF: Thank you. For Trigen?

21 MR. DeFORD: No questions, your Honor.

22 JUDGE WOODRUFF: We'll come up for
23 questions from the Bench. Commissioner Murray?

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good morning.

1 A. Hi.

2 Q. You're the facilities manager; is that
3 correct?

4 A. Director of facilities management.

5 Q. Okay. For -- for the buildings that are
6 located within the area that we're talking about?

7 A. Yes, that's correct.

8 Q. Okay. And do you receive -- do these
9 facilities receive other utility services?

10 A. Yes, they do.

11 Q. Such as?

12 A. Electrical and water.

13 Q. Okay. And for electric, is there a backup
14 for that if something would go out?

15 A. Yes, we have emergency generators that
16 provide lighting and other emergency power for vacating
17 the buildings.

18 Q. How about water, what kind of backup or
19 redundancy is there for the water service that you
20 receive?

21 A. Well, I'm not aware of a redundant water
22 service.

23 Q. Okay. Do you receive any -- you don't
24 receive natural gas; is that correct?

25 A. We do have natural gas service, I think, in

1 the jail for limited purposes.

2 Q. Okay. Is there a redundancy built into
3 that system?

4 A. Only in the sense that water and gas are
5 loops in the -- in the ground, if you will. I mean, in a
6 sense those are sort of similar services where you have
7 loop systems and then you tap off to that to go to the
8 building. So if there's a break in the water main, for
9 instance, you can isolate that, but you maintain water
10 service to other facilities in that area. And I think the
11 same way with gas.

12 Q. Okay. But if there is an interruption to a
13 gas -- a location that involves a gas main and that would
14 create a potential danger, don't the gas utilities
15 sometimes shut off the gas service?

16 A. I can't answer the question on how they
17 respond to that, I guess.

18 Q. Do you know if the facilities in question
19 here have ever been -- had any of their utility services
20 shut down?

21 A. Yes. We had an interruption of service
22 prior to my becoming the director of facilities management
23 for chilled water, and Trigen brought in the truck-mounted
24 chilled water system for us, and it was very inconvenient.

25 Q. Okay. But there was that emergency

1 response similar to what Mr. Kirk referred to would happen
2 if there was an interruption today, is that correct --

3 A. Right. Yes.

4 Q. -- for the steam heat?

5 COMMISSIONER MURRAY: I think that's all I
6 have. Thank you.

7 JUDGE WOODRUFF: Commissioner Appling?

8 QUESTIONS BY COMMISSIONER APPLING:

9 Q. Mr. Palmer, good morning. How you doing?

10 A. I'm doing fine.

11 Q. I'm sorry, and I apologize, I was not here
12 when you stated -- I don't know what your responsibilities
13 are. Could you restate that for me, please?

14 A. I'd be glad to. I'm director of facilities
15 management for Jackson County, Missouri, and I'm
16 responsible for approximately 12 buildings, some located
17 in downtown Kansas City and also located in Independence.
18 I supervise a staff of about 40 people. That includes
19 carpenters, painters, electricians, and we operate and
20 maintain the county facilities.

21 Q. Okay. How many of the County's buildings
22 are on the loop at the present time, two, three, four?

23 A. It's four buildings.

24 Q. Okay. What is your real fear here going
25 away from the loop system? What scares you the most?

1 A. Well, it's the loss of reliability of
2 delivering the steam to the detention center probably more
3 so than the courthouse, but the courthouse as well. And
4 then the disruption to the ongoing operations of our
5 buildings because of the fact that the detention center
6 houses inmates 24 hours a day, 7 days a week and 365 days
7 a year. So in terms of managing a facility, you want to
8 build redundancy into your operations so that if something
9 happens, you can accomplish the same thing in a different
10 way that will be as minimally disruptive to our ongoing
11 operations as possible.

12 And sometimes that happens in the heat of
13 the summer you'll lose your cooling, and the dead of
14 winter you lose your heat, and if that happens, you may be
15 not able to get the rental equipment. It may be being
16 used by other customers. We would need some kind of
17 assurances that -- that that's in place and poised, ready
18 to go. We've got to design that ahead of time. We plan
19 for it ahead of time.

20 Q. What you're telling me is you need a backup
21 plan?

22 A. Yes, sir.

23 Q. I empathize with you because I ran all the
24 state-owned buildings for the last eight or ten years, and
25 I can understand what you must anticipate in order to

1 cover that. However, the City has a major project that
2 they would like to go forward with, and I think everybody
3 in this room probably would like to see that happen
4 because we think it's a great economical fit for the City
5 of Kansas City.

6 A. Yes, sir.

7 Q. What can you suggest to us that we do here
8 to allow both of these projects -- for you to get some
9 reliability and for the City to proceed with? What's your
10 suggestion?

11 A. Well, that's a great question. I think
12 they should hook the new arena to the steam loop and
13 maintain the integrity of that system.

14 Q. I see Trigen about to fall out of their
15 seats over there at this time, but --

16 A. I don't know if I'm -- that's my opinion as
17 I'm sitting here as a witness.

18 Q. Last question. When you're in downtown
19 Kansas City working, you had steam under you at that time
20 and you're out in the county now, what has been your
21 experience with disruption? Have you had many? Is it
22 just something that can be the normal wear and tear of
23 equipment? Say a system blows, how long does it take you
24 to get it back up? What's been your experience?

25 You're the guy that is right down there

1 where the rubber meets the road. You're the guy that's
2 got your hands on this mechanism every day. Give me your
3 experience.

4 A. Well, my experience is that you work as
5 hard as you can to get it back up as quick as you can.
6 And again, that all needs to be planned out ahead of time
7 so that these aren't just cold calls you're making.
8 You're actually calling the people we talked about ahead
9 of time. Unfortunately this has happened, now let's put
10 our plan into action for this eventuality that we were
11 hoping wasn't going to happen. So I heard about the
12 experience before I came on board with the county of
13 losing the chilled water at the jail and Trigen provided
14 that, and that's about the only specific.

15 Q. And how many years has that been?

16 A. Well, for me with the City, I was with the
17 City for 24 years.

18 Q. So you don't -- outside of that, you don't
19 have any major experiences of disruption and outage that
20 has been for days?

21 A. Other than --

22 Q. The chilled water?

23 A. Yeah, that's it.

24 Q. Okay. Is the courthouse under your watch?

25 A. Yes, sir.

1 Q. Got some great -- some important people
2 waiting there that want services right away, don't they?

3 A. Yes, sir.

4 COMMISSIONER APPLING: Thank you very much,
5 sir.

6 JUDGE WOODRUFF: For recross, then,
7 beginning with Staff.

8 MR. FRANSON: No questions, your Honor.

9 JUDGE WOODRUFF: Kansas City?

10 MR. COMLEY: I have none.

11 JUDGE WOODRUFF: Trigen?

12 MR. DeFORD: None, your Honor.

13 JUDGE WOODRUFF: All right. Redirect?

14 REDIRECT EXAMINATION BY MR. FINNEGAN:

15 Q. Just one or two questions. Starting on
16 the chilled water outage that the County experienced, is
17 the County on a loop for chilled water? You can look at
18 the --

19 A. Well, the chilled water is a little bit
20 different than steam in that chilled water you have a
21 supply and then a return. So it is kind of a loop in
22 itself, even though it just comes from the plant. So if
23 there's a break in that, wherever that break happens,
24 that's -- you've got to get the -- you've got to get that
25 repaired and back up. So you lose the chilled water.

1 It's -- whereas the steam is providing the supply all the
2 way around the whole circuit.

3 Q. Correct. Okay. But if there's a loop
4 involved with the chilled water, you've got chilled water
5 coming from the Grand Avenue Station and the return water
6 from the -- after it's been used?

7 A. By the buildings, yes.

8 Q. By the buildings. It goes back to Grand
9 Avenue, but it goes along the same route, right?

10 A. Right.

11 Q. And there is no redundancy with respect to
12 both of these lines going all the way back to Grand
13 Station?

14 A. That's correct.

15 Q. Grand Avenue Station?

16 A. That's correct.

17 Q. So you're a terminal customer on a loop of
18 water --

19 A. For the chilled water, yes.

20 Q. For the chilled water, and had that outage
21 that you had, if you were on a loop, is it possible that
22 that would not have resulted in an outage?

23 A. Yes.

24 MR. FINNEGAN: That's all the questions.

25 JUDGE WOODRUFF: Thank you. You may step

1 down, then. Call your next witness.

2 MR. FINNEGAN: My next witness is Katherine

3 Shields, County Executive for Jackson County.

4 (Witness sworn.)

5 JUDGE WOODRUFF: You may be seated and you

6 may inquire.

7 KATHERINE SHIELDS testified as follows:

8 DIRECT EXAMINATION BY MR. FINNEGAN:

9 Q. Would you state your name, please, for the

10 record.

11 A. Katherine Shields.

12 Q. And what is your occupation?

13 A. I'm the Jackson County Executive.

14 Q. How long have you been a County Executive?

15 A. Ten years.

16 Q. And prior to that, what was your

17 experience?

18 A. Well, I was on the Kansas City, Missouri

19 City Council for eight years. I am also an attorney, and

20 before going on the council, I was an Assistant County

21 Counselor in Jackson County. So in the early '80s, I was

22 Assistant County Counselor.

23 Q. Did you first become aware of the steam

24 system back in the '80s when you were the Assistant County

25 Counselor?

1 A. Yes, I did.

2 Q. How did you become aware of it at that

3 point?

4 A. At that point in the early '80s, I don't

5 remember exactly when, KCP&L was planning to close down

6 the steam loop and had sent notice to all of its customers

7 on the steam loop, including Jackson County, that that

8 loop would be shut down. And the County under the

9 leadership of the County Executive at that time petitioned

10 the Public Service Commission to not allow KCP&L to close

11 down the steam loop, that either they would run it

12 themselves or be required to sell it to someone who would

13 run it. And that was, in fact, in the early '80s, the

14 Order that was entered by the Public Service Commission.

15 Q. They ordered KCPL to find somebody that --

16 A. To either run it themselves or find someone

17 to run it, sell it to someone who would run it.

18 Q. And did they find someone to run it?

19 A. Yes, they did.

20 Q. And that was first Kinetic Energy and then

21 Trigen; is that correct?

22 A. That's -- I knew there was -- I didn't

23 remember the name of the first one, but yes, Trigen is the

24 one I'm familiar with.

25 Q. And then so the County -- in your

1 experience, you became quite well aware of the steam loop
2 and its benefits to the -- to the downtown area; is that
3 correct?

4 A. Right.

5 Q. What are the benefits of the steam loop?

6 A. Well, there are many benefits. One is the
7 fact of district heating and cooling, in this case
8 heating. There are environmental benefits. There are
9 cost benefits. In a loop situation, there are reliability
10 benefits. To the individual owners who are in place, many
11 of us went on either in the '30s or even earlier so that
12 our buildings are not set up where we could convert to
13 some other form of heating.

14 It's also an economic development tool for
15 the future. Kansas City is one of the few areas where --
16 certainly in the metropolitan area, where a company can
17 build a new building and not have to bear the cost of the
18 HVAC system, that mechanical system. They don't have to
19 give up the space for a mechanical system. And so the
20 steam loop and the accompanying chilled water lines are a
21 great economic development tool and also a historic
22 preservation tool for downtown Kansas City.

23 Q. Historic preservation tool, how is that?

24 A. Well, in terms of the older buildings, all
25 of the City buildings are on it, and they are all Art Deco

1 in nature. The County buildings are on, and most of ours
2 are Art Deco in nature. Municipal Hall, the Follies
3 Theatre, the Lyric Opera, all of these buildings are
4 historic in nature. And most of them I said are
5 constructed in a way that it does not allow for them to be
6 converted to another method of heating.

7 For example, for the Follies, I don't know
8 whether you put the boiler in the orchestra pit or on
9 stage, but it's a small building. And the viability of
10 these older buildings, they are -- it's necessary to their
11 viability that the steam loop remain in place and that it
12 remain strong and that it remain reliable.

13 Q. As far as reliability, do you find the
14 current system with the loop to be more reliable than
15 cutting the loop?

16 A. Well, obviously a loop is more reliable
17 because you can, in fact, feed heat around from it from a
18 different direction. When Brian says that the system has
19 a 98 or 99 whatever percent reliability and he's asked if
20 it's going to have any more downtime, the system's going
21 to be any less reliable, the system is not less
22 reliability, but you may -- each outage or each down
23 situation, whether it's a repair or whatever, will have an
24 impact on a greater number of the customers because it is
25 no longer a loop.

1 And I can't quantify what that greater
2 impact is, but by the nature of it no longer being a loop,
3 there will be a greater impact. Every time there is an
4 outage between the plant and the customer and you can no
5 longer back feed around the other way to that customer,
6 then you will have an outage that you would not have
7 suffered under the loop system.

8 Q. So --

9 A. And that's sort of the difference between
10 the steam and the chilled water. The chilled water, in
11 fact, is the radial and the major outage that we suffered
12 was on the chilled water loop, which is a radial line.
13 There was no way to feed around from the other direction.

14 Q. And in that case, they provided chillers
15 for the courthouse or for the courthouse and the jail or
16 do you recall?

17 A. At least for the jail. I can't remember if
18 it was the jail and the courthouse. I just don't
19 remember.

20 Q. Do you know how long that system was down?

21 A. It was several days, but I don't remember
22 the exact number.

23 Q. Now, you indicated that when the buildings
24 were built in the '30s, you didn't build them, but they
25 were built without any place for a steam boiler; is that

1 correct?

2 A. Yes. Most of the downtown buildings that
3 are of that age or older are of that nature.

4 Q. And you built the jail in the '80s?

5 A. Right. The jail was opened in 1984, and
6 the jail annex opened in 1998, and both were built without
7 central heating systems because we had the steam loop.
8 And by that time with the annex we also had the chilled
9 water loop, and so we did not add separate air
10 conditioning units for the annex.

11 Q. Okay. In your opinion, would the --
12 cutting this degrade the system, cutting the loop?

13 A. I believe that --

14 MR. COMLEY: Objection, there's no
15 foundation for Ms. Shields' opinion on whether it would
16 degrade the system.

17 JUDGE WOODRUFF: I'll sustain the
18 objection.

19 BY MR. FINNEGAN:

20 Q. With respect to the County Jail, do you
21 have a special concern with respect to that facility?

22 A. I do, because while I'm proud of our jail
23 and how we maintain it, how we operate it, I don't wish to
24 be a guest of it. And we are under a federal court order,
25 and we have been sued for basically the conditions under

1 which we maintain our jail and which our inmates reside,
2 how we treat them, what -- the conditions that they are
3 in.

4 The lawsuit came out of the original jail
5 which used to be on the top of the courthouse and -- but
6 we are still under that federal court order, and I am very
7 concerned that we be able to maintain minimal standards,
8 acceptable standards for the inmates that are locked up in
9 there. And that would include obviously heat for the
10 buildings. It would also include hot water for the
11 kitchens or for the preparation of food.

12 You can very easily in a jail have problems
13 with strep and other infections, and it's very important
14 to have very hot water to be able to clean on a very, very
15 constant basis, and the hot water, the steam loop is how
16 we provide that hot water to the jail for all of those
17 different necessary services or tasks.

18 Q. Does the jail have its own laundry?

19 A. It does have its own laundry.

20 Q. How does the laundry operate -- or what
21 field?

22 A. We have the steam loop.

23 Q. With respect to the economic development
24 tool, you indicated that one of the reasons that you went
25 ahead with the jail on the steam loop was because -- on

1 the steam system because there was a loop; is that
2 correct?

3 A. Yes. And because the more customers you
4 have on it, then the stronger that service, that entity
5 becomes for serving all the downtown, those older
6 buildings and new.

7 Q. Do you have a financial concern for the
8 County and the other ratepayers with respect to if the
9 steam loop were cut and they had to -- Trigen had to
10 relocate it at its own expense?

11 A. Well, I am -- I am concerned about what the
12 rates might ultimately be and -- to the individual, as
13 there are only 60 customers. Then obviously costs of this
14 nature being passed along to those customers could
15 significantly impact on the individual customers. It
16 could particularly have an impact on the smaller customers
17 who are by the nature of them not particularly financially
18 viable, but for a larger customer like the County, it
19 could also have a big impact.

20 Q. Isn't the City a large customer, too?

21 A. The City is a large customer.

22 Q. So if there's a rate increase granted as a
23 result of this, the City's going to have their rates
24 increased?

25 A. I would assume all customers would.

1 Q. Are you familiar with the jail population?

2 A. Yes. It's -- I don't know the exact
3 figure, but I think today it's around 270, 280 some -- I
4 mean, 760, 770, 780, somewhere around there.

5 Q. And what kind of crimes are these people in
6 there for?

7 A. Most of -- almost all of them are felonies.
8 Many A and B felonies. We do have, as you mentioned, a
9 couple of serial -- people allegedly who have been
10 arrested and charged with being serial murderers, as well
11 as other serious crimes.

12 Q. If the steam were shut down to the jail for
13 an extended period of time in an ice storm, what would you
14 do with the prisoners?

15 A. Well, they have to stay there. I'm not
16 taking them home with me, and we can't just release them.
17 I mean, we're under state court orders to hold them. So
18 we would have to find some way to heat those facilities.

19 Q. Does the County have anything like that
20 available at this point?

21 A. No, we do not.

22 Q. I believe that's all the questions.
23 Anything else you want to add in this proceeding?

24 A. No.

25 JUDGE WOODRUFF: All right. For cross,

1 then, beginning with Staff.

2 MR. FRANSON: No questions, your Honor.

3 JUDGE WOODRUFF: Kansas City?

4 MR. COMLEY: Thank you, Judge.

5 CROSS-EXAMINATION BY MR. COMLEY:

6 Q. Mrs. Shields, you were talking about the

7 benefits of district heating and cooling systems?

8 A. Right.

9 Q. When you refer to a district heating and

10 cooling system, it would be something like a system that

11 is a central plant with a variety of lines that laterally

12 serve other customers. Is that a correct description for

13 that?

14 A. Well, obviously it is for the chilled loop.

15 They obviously -- the steam loop and the issue here is

16 that it is primarily a loop, although it has then some

17 lines on it.

18 Q. Some lateral lines?

19 A. Yes.

20 Q. Okay. So you're -- I was just going to get

21 my definition correct --

22 A. Right.

23 Q. -- of what a district system would look

24 like to both of us.

25 A. Right.

1 Q. And you said you're benefited by having a
2 loop system?

3 A. Right.

4 Q. Isn't there also a benefit to a radial
5 system?

6 A. Well, it's more of a benefit than no system
7 at all.

8 Q. Okay. So there would be a benefit even if
9 there is a radial system? It can be a benefit, it's a
10 central system?

11 A. Absolutely.

12 Q. And I think that's what your point was, is
13 that central systems --

14 A. Right.

15 Q. -- do provide benefits for economic
16 growth --

17 A. Right.

18 Q. -- an attraction of more industry,
19 attraction of more office space, et cetera; is that
20 correct?

21 A. Yes, but what you have to -- one of the
22 things even today, even though -- in Europe, central
23 systems are a very common thing and people are very
24 comfortable with them. In the United States, we are not
25 so comfortable with them. And anything you do that

1 diminishes in fact as well as in perception the
2 reliability of a central district heating system
3 negatively impacts not only the ability to provide the
4 service but people's comfort with either staying on that
5 service or new individuals coming on that service.

6 Q. Let me make sure I've got your testimony --
7 you have your testimony correct. You're saying that the
8 loop system is more reliable than the non-loop system?

9 A. Yes.

10 Q. It's not your testimony that it becomes
11 unreliable; is that correct?

12 A. That a non-loop system becomes unreliable?
13 It is certainly less reliable than a loop system, and the
14 individual customers -- you may -- if you end up with a
15 loop with two radials versus a circle, the radials may
16 have no more outages on them or downtime than it did when
17 it was a circle, but the impact on the customers and the
18 number of customers impacted is greater when it's a radial
19 versus when it is a circle.

20 Q. And let me get you this question.

21 A. Okay.

22 Q. Are you filing the complaint for Jackson
23 County?

24 A. Jackson County has filed this complaint.

25 Q. It's not filing for the other customers; is

1 that correct?

2 A. Well, I think in the sense that if Jackson
3 County were comfortable -- were successful in this, I
4 think it would benefit the other customers as well as
5 Jackson County.

6 Q. And there's a customer -- the City of
7 Kansas City is a customer, too?

8 A. Absolutely.

9 Q. And you can tell what our position is; is
10 that correct?

11 A. Well, I think the City of Kansas City --

12 Q. That's not the question.

13 A. Okay. Okay.

14 Q. Another question.

15 A. Was there a question I was supposed to
16 respond to?

17 Q. Well, the question was, you know what the
18 City's position is in this proceeding, don't you?

19 A. Absolutely, I do.

20 Q. That was the question.

21 A. I do. But even in this proceeding, I don't
22 know the City's position is that they're opposed to a
23 loop. I think their position is, is they want the
24 severing to take place. I myself don't care if the
25 severing takes place as long as there is a firmly

1 committed either through -- preferably through Commission
2 ordered time when the loop will be reconnected. I want
3 there to be a loop.

4 Q. So what you're telling the Commission is --
5 as I gather is that right now you're not concerned about
6 the safety of the system to your employees now; is that
7 correct? The system is safe now, isn't it?

8 A. You mean the circle, the loop?

9 Q. The loop system is safe?

10 A. Yeah. Yeah.

11 Q. And isn't it true that when the capping
12 procedure is complete, it will still be safe?

13 A. It will be safe, but it will not be as
14 reliable and if -- depending on where an outage comes and
15 how long it comes, then it might reach the point where it
16 is not safe. For example, for individuals in the jail.

17 Q. Getting back to once the capping procedure
18 is done --

19 A. Right.

20 Q. -- at that moment --

21 A. At that moment it does not become unsafe.

22 Q. -- it will not be unsafe?

23 A. No.

24 Q. All right. Now, there is nothing --

25 A. But --

1 Q. Go ahead.

2 A. I was just going to say, but it does -- the
3 severing of the loop and then not reconnecting it does put
4 the County and the other customers in a situation where
5 you have a greater chance of there being a negative impact
6 in the future, and particularly in a situation where we
7 have a jail.

8 Q. So what you're asking the Commission is at
9 some point, not necessarily now, but to fashion an Order
10 that directs Trigen to work with all deliberate speed --
11 to borrow a phrase from an old judge -- to make sure that
12 the loop reconnects?

13 A. What I'm asking the Court, because we have
14 a loop in place now, is I would like from the Court an
15 order with a time certain -- certain to reconnect the loop
16 prior to the loop being severed. Now, not reconnected
17 prior to the loop being severed, but the Order before the
18 loop's severed.

19 Q. Is it Jackson County's intention to stop
20 the City arena project?

21 A. We have no desire to stop the City arena
22 project. We do, however, have a desire to have a loop
23 continue in place, and there are many ways that can occur
24 that does not in any way delay the arena project.

25 Q. And that's something we'll have to get

1 into.

2 A. Okay.

3 Q. But you're -- basically you want an order
4 from the Commission against Trigen that basically says you
5 have this deadline within which to reconnect the loop?

6 A. Right.

7 Q. You talked about the economic development
8 of the area, and it seemed to me that you were assuming
9 that the system was going to somehow evaporate. There's
10 been no proposal that I know of, and I'm presuming the
11 County does not know of any proposal, that the system is
12 going to be abandoned in place and the company leave it in
13 place; is that correct?

14 A. That's correct. However, I think one of
15 the problems with a central heating/cooling system --
16 again in the United States because of the lack of
17 confidence in them, I think that as you begin to chip away
18 at them and make them less viable, for example, going from
19 a loop to two laterals, that you can then begin the
20 process of not only diminished service but also loss of
21 confidence in the system, so that you have less people
22 coming on, which is a problem for future viability. You
23 have less people staying on, which is a problem for
24 current viability.

25 So I do see any degrading of this system

1 as -- how should I put this -- what could become the
2 beginning steps on a slippery slope to not having a
3 central heating and cooling system. And that would be
4 very bad for downtown, and so --

5 Q. Have you talked to Trigen about your
6 thoughts on this? Have they confirmed that they intend to
7 degrade the system?

8 A. Well, I think Trigen is in a situation
9 because, first of all, they're trying to sell, and they
10 have a buyer who's not yet able to buy because of other
11 Public Service Commissions elsewhere.

12 Q. You're just assuming these things. You
13 haven't talked with Trigen about their intentions on
14 expanding or enlarging the system?

15 A. Well, no, I know what Trigen's intentions
16 are on expanding. They have -- they were aggressively
17 pursuing expanding in the late '90s, and in fact, that's
18 when they built the chilled water radials that we've
19 discussed.

20 Q. And you've heard testimony today from
21 Mr. Kirk about how they're pursuing other customers in the
22 area; isn't that correct?

23 A. However --

24 Q. Is that true?

25 A. Well, I don't know exactly what his

1 testimony was.

2 Q. You can't remember his testimony; is that
3 true?

4 A. No. They are pursuing the two customers.
5 They're certainly pursuing the arena, but --

6 Q. Let me ask you this question.

7 A. Well, I wanted to finish answering that
8 one.

9 Q. I think you did.

10 A. Okay.

11 Q. I think you did answer it.

12 MR. FINNEGAN: Your Honor, I think she has
13 a right to finish.

14 JUDGE WOODRUFF: I'll overrule the
15 objection, so go ahead and --

16 BY MR. COMLEY:

17 Q. The question I have, isn't it true that
18 there are still central systems being constructed now that
19 are radial systems?

20 A. I don't know.

21 Q. Isn't it true that there are radial systems
22 serving Kansas City facilities that at the inception were
23 radial systems? For example, Kansas City International
24 Airport, are you aware of that systems?

25 A. Okay.

1 Q. It's a central system, radial system?

2 A. Uh-huh.

3 Q. Been there since the '70s. So it's

4 possible, isn't it, to construct a central system without

5 a loop --

6 A. Oh, sure.

7 Q. -- that still breeds economic activity;

8 isn't that correct?

9 A. Yes, but it does not have the degree of

10 reliability that a loop system has.

11 Q. I think the Kansas City International

12 Airport may differ with you. Would you agree with that?

13 A. Not necessarily. I think they might say if

14 they had a looping system, they would not reach out today

15 and sever it. They would keep that loop.

16 Q. We're going well beyond what's in front of

17 us, but anyway, we do know that there's a reliable system

18 in place; is that correct?

19 A. With a loop, yeah.

20 Q. And the capping procedure that's outlined

21 today in the testimony is not going to render that system

22 unsafe; is that correct?

23 A. No, but less reliable and ultimately in the

24 wrong circumstances could be certainly unsafe,

25 particularly for a detention facility.

1 Q. And that is well beyond right now, the
2 present. You're talking about possibilities, things that
3 could happen?

4 A. Well, I think as a County Executive and I
5 would hope as a Public Service Commission that we would
6 not just rule on -- we would look at a whole system and
7 the effects of actions on that whole system. I would wish
8 that Kansas City, Missouri would look at the whole system
9 and the effects on a whole system and make decisions based
10 on that.

11 Q. And yet the complaint is not designed to
12 stop the arena; we've already established that?

13 A. No, absolutely not.

14 Q. That's correct. In the body of the
15 complaint -- and I don't know whether you have a copy in
16 front of you, but I wanted to visit with you as the
17 executive.

18 MR. FINNEGAN: Your Honor, may I provide
19 her with a copy?

20 MR. COMLEY: Thank you.

21 THE WITNESS: If you do that, you have to
22 give me my glasses as well.

23 MR. COMLEY: I will wait for her to have
24 her glasses.

25 BY MR. COMLEY:

1 Q. And I may have been able to do this. On
2 page 4 of the complaint at the bottom of the page in
3 paragraph 8, the Complainant talks about in these days of
4 terrorism with concern for attacks on utilities, it is
5 obvious that such looping is even more essential.

6 A. Uh-huh.

7 Q. With the system looped, an attack on the
8 building at 6th and Grand presumably would not result in
9 termination of service, et cetera, et cetera.

10 Let me ask you this, Ms. Shields. Do you
11 or any of the law enforcement people connected to the
12 County have any idea of an impending terrorist attack at
13 this location?

14 A. Well, no, but I think as was mentioned
15 here, we had the Public Service Commission Staff who
16 didn't want us to show a map of the system because of
17 anti-terrorism concerns or safety concerns. I'm not sure
18 exactly the phrase he used. And so I think we live in a
19 different time than we lived before 9/11, and I think we
20 have to make plans that involve those types of potential
21 contingencies.

22 MR. COMLEY: With deference to the witness,
23 I'm going to move that everything except the first part of
24 her answer be stricken. She has gone well beyond the
25 question. I think the answer was no, and as far as the

1 other, I would ask that it be stricken.

2 MR. FINNEGAN: Your Honor, no is just not
3 the answer you can give when there's more to explain.

4 JUDGE WOODRUFF: I think that was a yes or
5 no question. The further answer will be stricken. If you
6 wish to follow further during your redirect, you'll have
7 an opportunity to do that.

8 MR. FINNEGAN: Can I have the question read
9 back?

10 JUDGE WOODRUFF: The court reporter can
11 read back the question.

12 (THE REQUESTED TESTIMONY WAS READ BY THE
13 REPORTER.)

14 JUDGE WOODRUFF: Everything after but will
15 be stricken.

16 BY MR. COMLEY:

17 Q. In connection with terrorist activities,
18 have you or the county law enforcement officers and other
19 authorities engaged in planning for any disruption of
20 service that may be caused by a terrorist attack to the
21 central district energy system?

22 A. We have a plan with separate location,
23 et cetera for any major emergency, whether terrorism or
24 tornado or a variety of things.

25 Q. Do you think the law enforcement

1 authorities have established a place of the greatest
2 vulnerability for the operation of this system?

3 A. I'm sorry?

4 Q. Do you think the law enforcement
5 authorities within your control have established a central
6 point of vulnerability for a terrorist attack for this
7 system? And I'm not going to say which it is.

8 A. I guess I'm sorry. I don't know. I don't
9 understand your question.

10 Q. Have you figured out where a terrorist
11 might have the greatest benefit of an attack on this
12 system?

13 A. On the heating and cooling system? No, I
14 don't know that I have.

15 MR. COMLEY: I have no other questions.

16 JUDGE WOODRUFF: For Trigen?

17 MR. DeFORD: No questions, thank you.

18 JUDGE WOODRUFF: Commissioner Murray?

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good afternoon.

21 A. Good afternoon. You indicated earlier, I
22 believe, that you want this Commission to order Trigen to
23 by a date certain reestablish a loop connection. Is that
24 your testimony?

25 A. Yes.

1 Q. Would that be your position if it drives up
2 costs to Trigen due to removal of flexibility and the time
3 it would take to consider all alternatives?

4 A. Well, I think it is imperative that the
5 system have the capability to continue as a loop, and I
6 think there are ways between Trigen, the County, the City
7 working together that we can, in fact, find a way to have
8 a loop that does not impact on that cost, move upwards
9 that cost of, what he was saying, three-quarters of a
10 million. I think that working cooperatively we can do
11 that.

12 Q. Okay. Would you be concerned about driving
13 the cost up to Kansas City for delaying a project?

14 A. Well, I don't think that I am -- I think
15 there are solutions that can be found that don't delay
16 this project.

17 Q. Like right this minute that can be found?
18 Because it's my understanding this project is being
19 delayed as we speak and that --

20 A. Well, I guess what I'm saying is if -- for
21 example, if the Commission entered an Order that said by
22 October 1st you can disconnect, you can cap now, but you
23 need to reconnect by October 1st.

24 Q. Okay. And my question to you was, if that
25 drives the cost up to Trigen, is that still your position,

1 if it does?

2 A. Yeah, if it does. I think that the

3 continuation of the loop is very important.

4 Q. So is that a yes or a no?

5 A. That's a yes.

6 Q. If a utility provides superior service

7 because it is able to for some reason -- and by superior I

8 mean more than is necessary to provide safe and adequate

9 service -- should that utility be forever held to provide

10 that higher standard of service?

11 A. I think that if a system is in place and

12 customers have come on and have foregone providing other

13 options for themselves to provide that service because

14 this level of service provides -- exists in a company,

15 then yes, I think that company should be required to

16 continue to provide that level of service, because the --

17 part of the decision of the customers coming into that

18 service was because that level of reliability and service

19 existed.

20 Q. Okay. As the customer, the County as a

21 customer, did the County come on to be a customer because

22 it was provided in a loop or because it was steam service

23 that was provided and would have taken service had it been

24 a loop or a --

25 A. I can't speak for when the courthouse first

1 came on in the 1930s, but the decision to bring the jail
2 on and not to provide heating and cooling in that facility
3 separate from Trigen, particularly the heating, was based
4 on the effectiveness and redundancy of that system.

5 Q. And when was that decision made?

6 A. Well, it would have been made for the older
7 part of the jail in the early '80s, and for the annex in
8 about -- well, it was built in 1998. So it would have
9 been mid '90s.

10 Q. And the other option at that time, at those
11 times?

12 A. Would have been to include heating and
13 cooling systems within the facility as we build them.

14 COMMISSIONER MURRAY: I don't think I have
15 anything else. Thank you.

16 JUDGE WOODRUFF: Commissioner Appling?

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. Ms. Shields, good morning.

19 A. Good morning.

20 Q. How are you doing?

21 A. Just fine. Thank you.

22 Q. In the last few minutes here we've talked
23 about economic development. We talked about the
24 reliability of the loop. We talked about the sports --
25 the Sprint Arena.

1 A. Right.

2 Q. And we've also talked about rates to the
3 customers that's going to either increase or whatever the
4 case is.

5 A. Uh-huh.

6 Q. You've been in Kansas City for a long time.
7 You've been with government for a long time and I'm sure
8 you love that City and the County.

9 A. I do.

10 Q. What is it that you see that we're not
11 doing right now that would be helpful for this project to
12 move ahead? What can we do? What can you suggest that is
13 a way for the City and the County to get together to give
14 you some comfort on your reliability, get the loop back in
15 place at some date and time? Do you have a suggestion
16 that we could -- or something that we could try if the
17 City's willing to work on it? I'm looking for a solution.

18 A. Well -- right, and so have I. I think that
19 there are a couple of things. I think first of all that
20 if this body entered an Order directing Trigen by a
21 certain time to reconnect the loop but allowed them to go
22 on and sever the line, that that would be a good first
23 step.

24 I think that if the City would look at
25 either using Trigen, either allowing their steam lines to

1 go through the arena so that it either heated the arena or
2 at least allowed them to go through so that it could be
3 above ground pathway for reconnecting, that that would be
4 a cost-effective way to reconnect the loop.

5 And I mean, I think those are two things.
6 Obviously I know that you-all don't have control over the
7 City half of that. All you have is some control over --
8 over what you might or might not be able to require of
9 Trigen, but I think those two things, I think the arena
10 project could go forward, I think that the steam loop
11 could be reconnected, and that it could be done at a very
12 minimal cost because it would be an above ground solution
13 to Trigen.

14 Q. Have you had any communication with the
15 City at all --

16 A. Yes.

17 Q. -- concerning this -- these recommendations
18 that you're making here this morning?

19 A. Yes.

20 Q. I'm sure their open arms welcome you,
21 right?

22 A. We've had good discussions, but there
23 hasn't been any commitment on the part of the City to
24 either include the steam loop as a heating source for the
25 arena, which would obviously automatically make a

1 connection, nor to -- to allow it to have just an easement
2 through even though the arena was perhaps heated in some
3 other fashion.

4 COMMISSIONER APPLING: Thanks, ma'am, and
5 thanks for your comments.

6 JUDGE WOODRUFF: Thank you.

7 For recross based on questions from the
8 Bench, beginning with Staff.

9 MR. FRANSON: No questions, your Honor.

10 JUDGE WOODRUFF: Kansas City?

11 MR. COMLEY: Thank you.

12 RECROSS-EXAMINATION BY MR. COMLEY:

13 Q. Commissioner Murray asked you questions
14 about potential increases in your expense based upon
15 decisions that they may make. If Kansas City were of the
16 mind to not agree to give Trigen its franchise after its
17 up for renewal, wouldn't that be an increase in expense
18 for the loop?

19 A. Well, I guess I don't know exac-- I don't
20 know exactly what the impact of that would be. I guess
21 they would be out of business, would be my sense.

22 Q. You do realize that they use the public
23 rights of way instead of privately acquired easements or
24 condemned easements?

25 A. Uh-huh. Okay.

1 Q. And they've been spared the costs of that?

2 A. Okay.

3 Q. You understand that?

4 A. Okay.

5 Q. So if they like the franchise they either

6 do have to leave or they have find other ways of putting

7 their pipes in, in the ground?

8 A. Uh-huh.

9 Q. Isn't it true that the City, by allowing

10 the public rights of way to be used like this, has spared

11 Trigen substantial expense?

12 A. I think that's probably undoubtedly true.

13 I think it was pre-Trigen when most of it was put in, but

14 I think that's undoubtedly true.

15 Q. And it's true, isn't it, that the City and

16 the County have been engaged in negotiations and talks

17 about this?

18 A. Oh, absolutely.

19 Q. As recently has last Thursday or Friday?

20 A. Friday morning.

21 Q. Friday morning. And you visited about how

22 we might be able to work out something with Trigen

23 included. We have talked about that; isn't that correct?

24 A. Absolutely.

25 Q. But your complaint was not necessarily

1 designed to try to force the City and Trigen into some
2 sort of agreement on how to serve the arena; is that
3 correct?

4 A. No. That was not the purpose. The purpose
5 was -- the purpose was to try to get a resolution on when
6 the loop would be reconnected. I like Brian. I think
7 he's well intended. But when you say it might be a year,
8 might be two years, it might be longer, it's his desire I
9 believe to reconnect the loop, but that does not mean that
10 that is a commitment from Trigen or from any future buyer
11 of the service that they're actually going to reconnect
12 the loop.

13 Q. Okay. I wanted to make that clear. There
14 has been discourse between the two political
15 subdivisions --

16 A. Uh-huh.

17 Q. -- and I didn't want that to leave the
18 wrong impression.

19 A. I'm sorry. No, if I made that impression,
20 I didn't mean to.

21 MR. COMLEY: I didn't think you did. Just
22 wanted to make sure.

23 JUDGE WOODRUFF: For Trigen?

24 MR. DeFORD: No questions, thank you.

25 JUDGE WOODRUFF: Redirect?

1 REDIRECT EXAMINATION BY MR. FINNEGAN:

2 Q. Just a couple. I believe you were asked do
3 you know of any terrorist activities that are currently
4 planned for the downtown steam loop?

5 A. Yeah.

6 Q. And your answer was no?

7 A. No, I don't know.

8 Q. But it's possible that it could happen
9 tomorrow or a week from now or whenever the loop is cut.
10 It could happen then, it could happen in a year, it could
11 happen any time. And not just terrorist activities, there
12 could be a collapse of the system, couldn't there?

13 A. There's even -- even routine maintenance
14 now, the impact to the customers is minimized because
15 there is a loop and there's a way to feed around to the
16 largest number of customers.

17 Q. And without the loop, that's gone?

18 A. That's gone.

19 Q. And if there were a terrorist explosion on
20 6th and Grand after the loop was gone, you're going to be
21 without steam for an extended period?

22 A. Yes.

23 MR. FINNEGAN: That's all the questions I
24 have.

25 JUDGE WOODRUFF: All right. Thank you.

1 You may step down, Ms. Shields.

2 We're due for a break for lunch. Let me

3 just ask so we know what's going to happen this afternoon.

4 Mr. Finnegan, do you have any other witnesses?

5 MR. FINNEGAN: I have one witness.

6 JUDGE WOODRUFF: All right. And does

7 Kansas City have witnesses?

8 MR. COMLEY: Yes, I have one, maybe two.

9 JUDGE WOODRUFF: Trigen have witnesses?

10 MR. DeFORD: No.

11 JUDGE WOODRUFF: And Staff has a witness, I

12 believe?

13 MR. FRANSON: One, yes. At this point

14 that's how many I plan to have.

15 JUDGE WOODRUFF: All right. Well, let's go

16 ahead and take a break and we'll come back at 1:30.

17 (A BREAK WAS TAKEN.)

18 JUDGE WOODRUFF: We're back from lunch.

19 And, Mr. Finnegan, I believe you have one more witness.

20 MR. FINNEGAN: Yes, I do. Call Graham

21 Morris.

22 (Witness sworn.)

23 JUDGE WOODRUFF: You may be seated and you

24 may inquire.

25 GRAHAM MORRIS testified as follows:

1 DIRECT EXAMINATION BY MR. FINNEGAN:

2 Q. Would you state your name for the record.

3 A. I'm Graham Morris.

4 Q. And where do you live?

5 A. I live in Lee's Summit, Missouri.

6 Q. By whom are you employed?

7 A. I'm employed by Jackson County, Missouri.

8 Q. And what's your position?

9 A. I'm the director of the Department of

10 Corrections.

11 Q. And how long have you been director of the

12 Department of Corrections?

13 A. Since September of 2002.

14 Q. Before that, what was your -- what did you

15 do?

16 A. I was employed by Jackson County. I was

17 the director of finance.

18 Q. And prior to that, what was your work

19 experience?

20 A. Prior to going to the finance department, I

21 was the manager of support services for the Department of

22 Corrections.

23 Q. Okay. And have you had any other jobs

24 prior to that or since then?

25 A. I taught at the University of Missouri.

1 Q. And what is your educational background?

2 A. I have a master of science in accounting.

3 Q. Now, as director of corrections, where do

4 you operate from?

5 A. I'm at the detention center, which is at

6 1300 Cherry in Kansas City, Missouri.

7 Q. Okay. And does the detention center take

8 steam heat and chilled water?

9 A. Yes, sir, we do.

10 Q. Okay. How many people are under your

11 supervision and control?

12 A. I have 277 employees, and we're charged

13 with the custody and control of up to 800 adult offenders.

14 Q. How many do you have presently in the

15 system, in the detention center?

16 A. That's sort of a moving target. Yesterday

17 at one point we had 798. This morning I believe we were

18 down to about 750.

19 Q. What happens to the -- where did the 40 go?

20 A. Some were released on bond, but a

21 significant portion were transferred to the Missouri

22 Institute of Adult Detention, or they went to prison.

23 Q. And what's the typical makeup of the inmate

24 population as far as crimes that are concerned?

25 A. Most of our -- most of the people in our

1 custody are charged with felonies, serious felonies, and
2 most of them are charged with violent felonies.

3 Q. By most, like 50 percent or 60 percent?

4 A. Yes, sir. 60 percent were charged with
5 either homicide or some other crime against a person, and
6 that was as of Friday at 5:30.

7 Q. And do you have any non-violent misdemeanor
8 inmates?

9 A. A few. I believe on Friday at 5:30 we had
10 40.

11 Q. And is there kind of a revolving door as
12 far as the non-violent misdemeanor?

13 A. Yes, sir. While our capacity is 800, we
14 will book and release about 11,000 people a year.

15 Q. And most of those would be misdemeanors?

16 A. Some of them are misdemeanors. Really a
17 lot of them are non-violent felonies that get booked on
18 drug charges, spend a couple days waiting to go see the
19 judge and then are released back into the community
20 awaiting final adjudication.

21 Q. Do you have any alleged serial killers?

22 A. Yes, sir, there is two or three.

23 Q. Now, tell us about the jail or the
24 detention center operation. Could you just -- generally
25 how it operates?

1 A. We operate under the -- we operate our jail
2 to meet United States constitutional standards. We have
3 to take care of all these people that are in our custody
4 and provide them minimal services to keep them healthy and
5 well fed and generally take good care of their bodies.

6 Q. Does this include heating their quarters?

7 A. Yes, sir, it does.

8 Q. Do you use steam for any other purpose of
9 heating?

10 A. Yes, sir, we do. We use steam to operate
11 some of our kitchen devices, as far as kitchen kettles.
12 We use steam to heat water to wash the inmates' dishes.
13 We use steam to heat water to operate the laundry, both
14 the washers and the dryers.

15 Q. You operate the dryers on steam?

16 A. On steam, yes.

17 Q. How does that operate?

18 A. There's a heat exchanger in there somewhere
19 that cranks it over.

20 Q. Okay. And does the jail require steam on a
21 24-hour basis?

22 A. Yes, it does.

23 Q. Does it require this on a 365 day a year
24 basis?

25 A. Yes, sir, it does.

1 Q. And why is that?

2 A. Because we have people in custody 365 days

3 a year who have to eat.

4 Q. Eat?

5 A. And we have to keep the place clean and

6 maintain hygiene standards.

7 Q. Okay. Do you also use steam to mix it with

8 the chilled water?

9 A. It's my understanding that's how the air is

10 conditioned. It's a mixture of both hot air and

11 chilled -- and chilled water that maintains the

12 temperature of the environment within the building. It's

13 not like we can open the windows.

14 Q. No. So if you were to shut down for two or

15 three days without any heat in the middle of the winter,

16 what would you do?

17 A. I don't know.

18 Q. What did you do when the chilled water went

19 out?

20 A. At that point, we were -- the chilled water

21 trucks that were hooked up into the chilled water line and

22 air conditioning was provided with those chillers on

23 trucks.

24 Q. How many trucks were there?

25 A. I believe there were two trucks parked

1 behind the courthouse there.

2 Q. These were big trucks?

3 A. Yeah, they were flatbed trailers.

4 Q. And the unit on top is a rather large unit,
5 I assume?

6 A. It took up the whole trailer, sir.

7 Q. Have you ever had a need to have steam
8 trucks come out there?

9 A. No, we haven't.

10 Q. Do you know if there is such an animal as a
11 steam service?

12 A. I don't know.

13 Q. If the steam loop were severed and so that
14 there were only two radial arms instead of the loop, how
15 would that adversely impact the jail?

16 A. I'm concerned about our ability to get the
17 temperature heated to the degree which we need it heated
18 to. We have to operate our dishwasher at 160 degrees in
19 order to eliminate food-borne illnesses and diseases from
20 the population. We also need to make sure that all the
21 clothes that we launder are washed in water that's
22 160 degrees and dried in air that's 160 degrees to kill
23 any possible bacteria or viruses that may be -- that the
24 clothes may be contaminated with.

25 Q. So do you use hot water for both in the

1 kitchen for cooking and for cleaning; is that correct?

2 A. That's right.

3 Q. How many people -- or how many meals do you

4 serve a day?

5 A. Over 2,500.

6 Q. Is that like three times a day?

7 A. Yes.

8 Q. Is there any any place you could release

9 these prisoners to another facility in the area?

10 A. No, sir, there's not. There is no other

11 facility that's designed to hold people with these kind of

12 charges.

13 Q. Okay. And these are basically A, B and C

14 felonies?

15 A. That's right. This is a maximum security

16 facility.

17 MR. FINNEGAN: That's all the questions

18 that I have at this time. Thank you.

19 JUDGE WOODRUFF: Cross-examination, Staff?

20 MR. FRANSON: Thank you, your Honor.

21 CROSS-EXAMINATION BY MR. FRANSON:

22 Q. Mr. Morris, I believe that Mr. Finnegan

23 used the term "revolving door" to describe your population

24 of your facility; is that true?

25 A. Yes, he did.

1 Q. Is that a generally accurate term in that
2 you have a lot of people come in and go out?

3 A. That's right.

4 Q. Does that apply to all of the aspects of
5 the jail population, whatever they're charged with?

6 A. It can. We house people based on their
7 experience with the criminal justice system. So people
8 who come in through the -- through our intake are
9 classified to housing units based on their history with
10 the past. So you may have someone come in with a traffic
11 ticket who has penitentiary experience. He would go and
12 be housed with -- in the area where we keep other people
13 who have significant history with the penitentiary. And
14 then perhaps he'd be released back to the street in a
15 relatively short time, since this was a minor charge.

16 And therein is our concern. We need to
17 make sure that all areas of the facility are kept clean
18 and that we're not contaminating the community from the
19 jail.

20 Q. My question, though, is regardless of --
21 what I'm getting at, people are arrested, charged with a
22 crime, they're put in your facility; is that right?

23 A. That's right.

24 Q. And then when and if they bond out or get
25 released by -- that's not really up to you, that's up to

1 the courts, isn't it?

2 A. That's entirely up to the court, yes.

3 Q. And so the end result for you is you have

4 to be prepared to house anybody that comes in your doors?

5 A. Yes, sir.

6 Q. And that person, whatever they're charged

7 with, could come or go at any time?

8 A. That's right.

9 MR. FRANSON: Thank you. No further

10 questions.

11 JUDGE WOODRUFF: Thank you. To Kansas

12 City?

13 CROSS-EXAMINATION BY MR. COMLEY:

14 Q. Mr. Morris, have there been opportunities

15 when your facility is at full capacity?

16 A. Yes, sir.

17 Q. And when there are occasions when it is at

18 full capacity and there are people bound over for trial

19 from other Jackson County proceedings, where are those

20 people held?

21 A. They're released to the streets under the

22 federal court order.

23 Q. So you're saying that at full capacity and

24 Jackson County has a serial murderer that's charged with

25 murder, they are released?

1 A. Hopefully not.

2 Q. Do you know if that's happened?

3 A. There have been instances where we have had

4 to release people with some serious charges due to

5 overcrowding.

6 Q. Are you a regional jail?

7 A. No, sir, I'm not.

8 Q. Do you have any compacts with area county

9 jails by which to have overflow prisoners transported?

10 A. No, sir, the capacity does not exist.

11 Q. In the Cass County Justice Center, for

12 instance?

13 A. No, sir.

14 Q. There's no capacity in Cass County Justice

15 Center?

16 A. They can't handle my inmates.

17 Q. What about Cole County?

18 A. I don't believe Cole County could handle my

19 inmates either.

20 Q. Cole County houses Class A felons.

21 A. Uh-huh.

22 Q. That's what you have in your jail, isn't

23 it?

24 A. Uh-huh. That's right.

25 Q. And Cole County does have felons like

1 George Tiny Mercer who had been in this jail here?

2 A. I'm sure they could.

3 Q. And you're saying that you have no compacts
4 with other area county jails by which to handle overflow
5 prisoners?

6 A. No, sir.

7 Q. In your questioning with Mr. Finnegan in a
8 question concerning your understanding of adverse effects
9 if the loop is severed, you said you were worried about
10 the temperature being correct. Is it your understanding
11 if the loop is severed, that there will be a change in the
12 temperature delivered in the steam system?

13 A. I'm concerned about a couple of things.
14 First of all, the decrease in reliability.

15 Q. Let's go back to the temperature.

16 A. Okay.

17 Q. Talking about the temperature. Is it your
18 understanding that because of the severance of the loop,
19 that Trigen will have a difficult time reaching the
20 temperature that's needed for the steam?

21 A. It's my understanding it's not as an
22 efficient way to deliver steam.

23 Q. It's not as efficient way to deliver steam?

24 A. Uh-huh.

25 MR. COMLEY: Okay. It's delivery. All

1 right. That's all I have.

2 JUDGE WOODRUFF: For Trigen?

3 MR. DeFORD: No questions, your Honor.

4 JUDGE WOODRUFF: Questions from the Bench

5 then. Commissioner Murray?

6 COMMISSIONER MURRAY: I don't believe I

7 have any.

8 JUDGE WOODRUFF: Commissioner Appling?

9 COMMISSIONER APPLING: I don't think I have

10 any questions. You're not going to run away, are you?

11 THE WITNESS: No, sir.

12 COMMISSIONER APPLING: If I have some, I

13 can call you back later. Thank you, sir.

14 JUDGE WOODRUFF: All right. Commissioner

15 Clayton, did you have any questions for this witness?

16 COMMISSIONER CLAYTON: Thank you for the

17 opportunity.

18 JUDGE WOODRUFF: All right. There were no

19 questions from the Bench, so no recross. Any redirect?

20 REDIRECT EXAMINATION BY MR. FINNEGAN:

21 Q. Mr. Morris, Mr. Franson for the Commission

22 asked you about the revolving door. By revolving door

23 basically are we talking about that as far as misdemeanors

24 are concerned?

25 A. Yeah. It's almost a guarantee that a

1 misdemeanor gets out pretty quickly, but also there's
2 felons that go in and out as well.

3 Q. But when you reach a certain level of
4 prison population, you need to start releasing people; is
5 that the situation?

6 A. That's right.

7 Q. And are other county jails similarly
8 crowded?

9 A. It's my understanding that they are, yes.

10 Q. If you were to -- if you could release some
11 of your prisoners to another facility, what do you think
12 the impact would be on the facility?

13 A. On another facility?

14 Q. Yes.

15 A. That's hard to predict. Most places don't
16 really want to take our inmates.

17 Q. Why is that?

18 A. They're a particularly difficult breed.

19 Q. Okay. And do you generally operate at or
20 near capacity?

21 A. Yes, sir, I do.

22 Q. That's year round?

23 A. Yes, sir. My design capacity is 710, and
24 I'm always over 710.

25 Q. You're over 710 right now, aren't you?

1 A. Yes, sir, I am.

2 MR. FINNEGAN: That's all the questions.

3 JUDGE WOODRUFF: All right. You may step
4 down. I believe then we'll move on to Kansas City, if you
5 have any witnesses.

6 MR. COMLEY: I'd be happy to. I was
7 thinking about the Staff. Did you want to follow that
8 order? Doesn't make any difference to me.

9 JUDGE WOODRUFF: I'm going by the same
10 order we did the opening statements in.

11 MR. COMLEY: Very well. Yes, I would call
12 Mr. Ralph Davis to the stand.

13 (Witness sworn.)

14 JUDGE WOODRUFF: You may be seated, and you
15 may inquire.

16 MR. COMLEY: Thank you, Judge. And as part
17 of our presentation today, I have had certified by the
18 City clerk two matters out of the ordinances of the City,
19 and I need to have them marked as exhibits in advance.
20 Kind of to give a little background to our presentation,
21 two exhibits. The first is a certificate of the City
22 Clerk governing Ordinance No. 64457, which is the
23 franchise given to Trigen's predecessor.

24 The second is a certificate of the City
25 concerning Ordinance No. 050084 passed February 3rd, 2005.

1 This is the same ordinance which was attached to the
2 complaint. I thought we'd get that in the record by
3 certificate.

4 JUDGE WOODRUFF: All right. The franchise
5 ordinance would be 7, and the second ordinance would be 8.

6 (EXHIBIT NOS. 7 AND 8 WERE MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 MR. COMLEY: Your Honor, on the strength of
9 the certificates of the City Clerk, I'd offer Exhibit 7
10 and 8 into the record.

11 JUDGE WOODRUFF: 7 and 8 have been offered
12 into evidence. Are there any objections to their receipt?

13 (No response.)

14 JUDGE WOODRUFF: Hearing none, they will be
15 received into evidence.

16 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
17 EVIDENCE.)

18 MR. COMLEY: We were in haste and there are
19 portions of the city charter that I would like the
20 Commission to review. I do not have a certificate
21 concerning those sections. I would ask the Commission if
22 it would give me leave to have a certificate prepared and
23 late file the certificate, and I would like to read to you
24 the portions of -- I'll just tell you the section numbers.

25 I won't read those sections, but I wanted

1 the Commission to give me an opportunity to bring a
2 certificate regarding Sections 404, 405, 406, 407, 408 and
3 409, basically sections 404 through 409 of the City
4 charter. These concern the council's ability to grant
5 franchises, the terms and manner of granting those
6 franchises, regulations concerning franchises.

7 And I'm sorry we didn't get a certificate
8 for that, but I would like the parties to use whatever
9 they would see fit to allow us to amend our record with a
10 certificate concerning those regulations and ordinance
11 provisions.

12 JUDGE WOODRUFF: How quickly would you be
13 be able to late file that?

14 MR. COMLEY: Tomorrow morning.

15 MR. FINNEGAN: I'm going to object to that.
16 If there's no hearing tomorrow, I won't be able to
17 cross-examine.

18 MR. COMLEY: Well, it'd be coming as a
19 certificate of the City Clerk. It's just simply a copy of
20 the City Charter. I think that's the only way it would
21 happen. This witness would not be able to qualify the
22 document. It would go under its own certificate, just
23 like these.

24 JUDGE WOODRUFF: Mr. Finnegan?

25 MR. FINNEGAN: To me it's -- I mean, I have

1 no knowledge of what it is. I have not seen it. It
2 hasn't been supplied to us previously.

3 JUDGE WOODRUFF: What I'm going to do is
4 allow you to late file the document.

5 MR. COMLEY: If it's any help, it is on the
6 website for the City, so you can go to Kansas City's
7 website and the charter is a public document.

8 JUDGE WOODRUFF: Let me continue. I'll let
9 you late file the document. I'll give the other parties
10 an opportunity to object, assuming you'll file it
11 tomorrow.

12 MR. COMLEY: Should be tomorrow.

13 JUDGE WOODRUFF: File it tomorrow. The
14 parties can have until Wednesday at noon to object.

15 MR. FRANSON: Your Honor, at this time
16 could we go ahead and assign an exhibit number to that
17 proposed thing, because we may have other things come up?

18 JUDGE WOODRUFF: Yes. Let's go ahead and
19 make it Exhibit 9.

20 MR. COMLEY: Thank you very much. Your
21 Honor, that's all I have -- the exhibits I have in advance
22 of Mr. Davis' testimony.

23 JUDGE WOODRUFF: You may inquire.

24 MR. COMLEY: Thank you.

25 RALPH DAVIS testified as follows:

1 DIRECT EXAMINATION BY MR. COMLEY:

2 Q. Mr. Davis, would you state your full name

3 for the Commission, please.

4 A. Full name is Ralph Shelby Davis.

5 Q. What is your position with the City of

6 Kansas City?

7 A. Currently I'm a project manager for the

8 Sprint Arena project and the manager of product delivery

9 in the capital improvement office of the City of Kansas

10 City.

11 Q. How long have you been employed by the City

12 of Kansas City?

13 A. Ten years.

14 Q. And how long have you held your present

15 job?

16 A. I've been in this position for

17 approximately a year.

18 Q. Can you explain to the Commission what your

19 job duties are as the project manager for the Sprint

20 Center Arena?

21 A. My main duties are to ensure the delivery

22 of this project on schedule, on budget and with the

23 desired result. Primarily that means working with the

24 architect, the developer, the contractor and all those

25 parties. In addition, our major task on this project is

1 to deliver this site in preparation for the actual
2 construction of the building. The City's got that sole
3 responsibility.

4 Q. In your position, do you coordinate the
5 efforts of not only your city staff, but also the staffs
6 of other organizations involved in this construction
7 effort?

8 A. Yes, we do. I've got -- we have companies
9 that we've hired as a project management team to help us
10 provide staff. We also work with the architects, which is
11 a conglomeration called Downtown Arena Design Team, which
12 is four prominent architectural firms, HOK Sport, Ellerbe
13 Beckett, 360 Architecture and Rafael, that have come
14 together along with some smaller players to deliver this
15 project design.

16 We've also got companies that do -- have
17 done environmental investigations, environmental design,
18 city utility design, whole plethora of different companies
19 that are supporting us in this project.

20 Q. Is there a developer involved in this
21 project with the City?

22 A. Yes, there is. It's called AEG, Anschutz
23 Entertainment Group. They are a contributor to this
24 project. They will -- are contributing funds and
25 guaranteeing cost overruns for the project, and they will

1 also manage and run the facility and will be overseeing
2 part of the design and construction.

3 Q. Let's talk about the project in general.
4 Can you give the Commission briefly the concept of the
5 project and what it is?

6 A. Basic concept, it's a \$250 million facility
7 designed for basketball and hockey to compete region wide,
8 Indiana, Texas, all around this region with the intent of
9 attracting either an NBA or NHL team that will probably
10 have around 17,000 plus or minus seats for hockey and
11 18,000 for basketball. It would be those kind of
12 attractions.

13 It's sitting in an approximate four block
14 area of Grand, Oak, 13th to Truman, with the exception of
15 the upper northeast corner which is occupied by the Court
16 of Appeals, and it will remain. This is a very dynamic
17 project with a very quick timeframe.

18 Q. With respect to the location in the City
19 would Exhibit 2 help you describe the location of the
20 arena for the Commission?

21 A. It's in general the area that's been
22 outlined in this green box (indicating) with the exception
23 of the two, the two northeast most parcels, which
24 currently house the State of Missouri Western Court of
25 Appeals building and in the uppermost corner and the lot

1 directly west of that, which is their parking facility for
2 that.

3 Q. What stage of the project are we in right
4 now?

5 A. We're currently in the site clearing phase
6 with abatement and demolition currently going on.

7 Q. Have you and the consultants that you
8 worked with prepare a construction schedule for this?

9 A. Yes, we have.

10 MR. COMLEY: I need to mark another
11 exhibit.

12 (EXHIBIT NO. 10 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. COMLEY:

15 Q. Mr. Davis, the court reporter has handed
16 you what has been marked for identification as Exhibit
17 No. 10. Can you describe this for the Commission, please?

18 A. This is a summary schedule showing the
19 different aspects for the construction of the Sprint
20 Arena. The blue -- the blue items on the left-hand side
21 are ones that are currently -- that much has currently
22 been completed, so some tasks like architecture selection,
23 contractor selection are already complete. Design is
24 underway. It's partially completed. Site clearing is
25 also partially completed. Mass excavation and the other

1 ones have yet to begin. And those are all the things in
2 the yellow, are the things that have not yet started or
3 that are still in progress.

4 Q. Do you think this exhibit would help the
5 Commission to understand the critical pathways for this
6 construction?

7 A. This lists major items. It's again a
8 summary of highly detailed long schedules that us and our
9 architects and our construction people have been working
10 on in different aspects of.

11 Q. Would this also help you explain the
12 schedule to the Commission?

13 A. I think it should.

14 MR. COMLEY: I'd like to move for the
15 admission of Exhibit 10.

16 JUDGE WOODRUFF: Exhibit 10 has been
17 offered into evidence. Are there any objections?

18 (No response.)

19 JUDGE WOODRUFF: It will be received into
20 evidence.

21 (EXHIBIT NO. 10 WAS RECEIVED INTO
22 EVIDENCE.)

23 BY MR. COMLEY:

24 Q. Let me take you now to the subject of
25 Trigen, and we've talked a little bit about this before,

1 but can you tell me when did your office start
2 communicating with Trigen and other utilities on
3 relocation of their facilities within the rights of way
4 affected by the project?

5 A. We had an initial letter that went out in
6 October -- I do believe it was around the 19th -- that was
7 under my signature that went out to not only Trigen but
8 all the rest of the utilities, including telephone, power,
9 fiberoptic, different communication companies, gas,
10 everything that we could think of that got notification
11 that whatever they had, first off, we had to identify
12 them, and secondly, we wanted them to relocate whatever
13 was currently along MaGee from 13th to Truman or McGee
14 from Oak to Grand and those areas.

15 Q. With the exception of Trigen at this point,
16 are there still utilities that need to be relocated?

17 A. Most of them have either completed their
18 relocation or are in the late stages of progress. We have
19 one additional one that has not yet made significant
20 progress, but it's a very -- it's a single strand of fiber
21 that can be done in rather quick measure.

22 Q. Were deadlines given to the utilities to
23 remove or relocate their utilities in these areas?

24 A. We, as indicated in that letter, gave
25 everybody a March 1st deadline, have been really pushing

1 that March 1st deadline to meet the schedule of the
2 project. The project has been basically short of time
3 since the very beginning. The initial schedule from day
4 one when we first started said that we should have started
5 two to three months earlier just to get this project
6 completed when we desired it done.

7 Q. Specifically do you have in mind why
8 March 1st was selected as a deadline for the removal or
9 relocation of those lines?

10 A. Well, because of activities that are going
11 to precede, which is the demolition. As you purchase the
12 property, you demolish the buildings, you remove the
13 foundations in that we were abandoning the streets and
14 roadways themselves and dig them up. So the site is going
15 to have its initial phases of demolition and excavation
16 starting -- we anticipated originally starting on
17 March 1st and that lagged about two weeks before that
18 actually began.

19 Q. Let me take you back to your Exhibit 10.
20 Can you explain to the Commission where the relocation of
21 utilities would fit within the schedule here, under what
22 category and what timeframe?

23 A. The utilities normally would fall under the
24 site clearing phase and started off with some preplanning
25 and then some notification, and we've had members of my

1 project team have had weekly meetings or almost weekly
2 meetings to monitor progress and schedule, and we've
3 intensely worked to help them relocate their facilities to
4 a location that lets them serve their customers and also
5 clears our site.

6 Q. Going back to schedule, the Exhibit 10
7 again, can you tell the Commission when do you think site
8 clearing should be finished? Maybe you said this. I'm
9 sorry.

10 Q. No, I did not give it a date. Site
11 clearing needs to be completed no later than mid June so
12 that it can be quickly followed by mass excavation to
13 clear the rem-- to actually dig for the foundation of the
14 building. In our original working with our contractor
15 that we currently have under place to do the demolition,
16 he had identified a desire to actually have Trigen
17 leaving, say, as of the soonest the 26th of April, but
18 those become critical in June, because in June we start
19 digging a much deeper hole. By the end of June we want to
20 dig about a 20-foot deep hole to put this facility in.

21 Q. As part of your testimony today, did you
22 bring a diagram showing the location of the arena and --
23 and a rendering of how it would look from above and its
24 relationship to the facilities that are already in place
25 for Trigen?

1 A. Yes, I did.

2 MR. COMLEY: I have another exhibit to

3 mark.

4 JUDGE WOODRUFF: All right.

5 (EXHIBIT NO. 11 WAS MARKED FOR

6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. COMLEY:

8 Q. Mr. Davis, the court reporter has marked

9 for identification Exhibit No. 11, and if I could direct

10 your attention to that. Exhibit No. 11, is that a smaller

11 version of the diagram that you have behind you?

12 A. Yes, it is.

13 Q. Would this diagram help you in explaining

14 to the Commission the location of the existing Trigen

15 lines compared to the area of the arena that's to be

16 constructed?

17 A. Yes, it will.

18 Q. Can you point to the -- can you explain the

19 diagram?

20 A. This is where the Trigen line currently

21 exists along McGee and 14th Street.

22 Q. And you're pointing to a dashed line that's

23 a red-dashed line on your diagram. I think it's a

24 green-dashed line in the smaller diagram. And it has

25 highlights in yellow; is that correct?

1 A. That's correct. This line runs right
2 through the middle of what you'd call center court. We're
3 going to excavate in the mid 20 to 22 feet in this area to
4 the finished floor to where the basketball playing court
5 or the ice floor would be. We'll probably also excavate
6 another four feet below that to put those foundations in.
7 I don't have an exact number the depth of Trigen's line,
8 but I anticipate somewhere around five feet, give or take,
9 which would mean this line would be approximately 15 feet
10 above the basketball floor, which means it would go over
11 the top of the basketball hoop and the goal posts in the
12 building.

13 Q. So there is an aesthetic need to have this
14 moved, I guess?

15 A. It would hinder play definitely.

16 Q. All right. Let's talk about your direct
17 communications with Trigen again. Since the notice, have
18 you visited with Trigen representatives about the
19 relocation of their line?

20 A. Members of -- members of my work team, I
21 have a rather extensive team to help deliver this project,
22 have visited with them in the past, and we -- there's been
23 e-mails exchanged. I talked with Mr. Kirk directly
24 probably in March, and at that time was when we agreed to
25 delay the cutoff 'til sometime this first week in April

1 with the provision that they have a line removed by the
2 first of May.

3 Q. The people that you're working with, what
4 are the reports about any outcomes and agreements toward
5 getting this relocated?

6 A. It went through a series of pieces. I
7 think originally that Trigen had talked about actually
8 replacing, relocating the line to a different location,
9 and they were saying they thought they could do that by
10 May. We were pushing more for the March timeframe. And
11 then eventually it turned into, well, we don't think we'll
12 relocate it. We think we can live with a cutoff system at
13 the -- at the project boundaries.

14 Q. I know the Commission's going to be
15 interested in this next question. This is the question I
16 think they've been hinting at. What -- is there a route
17 around the arena or through the arena that could complete
18 the loop at some point in the future?

19 A. It's possible it could go throughout -- and
20 I can't say for sure, but it's possible we can reach an
21 agreement to go through the property at some point in
22 time. Going through the building is --

23 Q. Explain the reasons why -- are the reasons
24 why it would not be feasible within the building?

25 A. Part of it's size. If I read their diagram

1 correctly, it's approximately a 14-inch line. Then you
2 add the insulation to it, so if I just approximate say
3 three inches of insulation, I now have a 20-inch diameter
4 pipe running through my facility. This facility's already
5 been compressed. The actual square footage, the usable
6 square footage has been compressed to fit into budget
7 constraints. So I do not have a lot of surplus area and
8 volume to actually run this, plus I have concerns because
9 it's a -- for my reading of their diagram, a high pressure
10 high temperature line that I would now have inside my
11 facility, which means I would have to allow them access to
12 service it, plus it would open up the potential for damage
13 if it was through a loading zone or those type of issues.

14 Q. Is there a possible way of routing the line
15 around the arena in public rights of way?

16 A. It could go down 13th Street.

17 Q. Can you point that out on the diagram?

18 A. 13th Street is this upper street. They can
19 go any number of different ways. They could go this way
20 and then down here (indicating), they could even go in the
21 property around the perimeter of the building at the
22 proper time.

23 Q. Now, let's talk about the proper time. In
24 your estimation and with your experience on this project,
25 if Trigen were to come about with a plan to reconfigure

1 the loop, kind of along the route you just outlined, is
2 there a time within the construction schedule that would
3 be better than others?

4 A. It would have to go through several phases.
5 I mean, to get through the mass -- following our
6 demolition start of mass excavation, mass excavation will
7 be completed sometime around September 1st, and mass
8 excavation should say environmental remediation for any
9 contaminants we have on the site, which we do have some.
10 Then they will start doing deep foundations and bringing
11 this building up out of the ground. That -- and then
12 there will be much construction activity surrounding the
13 building.

14 It will be approximately a year from this
15 fall before that area will be sufficiently clear to even
16 have somebody come and work in that area where you didn't
17 cranes -- either an open hole or cranes or heavy equipment
18 located directly on top of something that we would be
19 afraid to break or rupture.

20 Q. And Mrs. Shields mentioned that -- their
21 preference for an Order some sort of configuration by
22 October 1st, 2005. Now what you're explaining would be,
23 within your construction schedule, that would not be
24 feasible?

25 A. Not within the construction schedule, no.

1 Q. When do you think would be feasible? And
2 maybe you've said this, but go ahead.

3 A. Well, I said fall. It would be like in
4 October 2006 probably the earliest date that the site
5 could be sufficiently clear to do some kind of activity
6 like that.

7 Q. Describe for the Commission what would
8 happen if there is any further delay in Trigen's
9 relocation of it's lines.

10 A. According to our schedule, when we
11 anticipate the site to be totally clear by the mid June,
12 past that point when we start to clear the site, now I'm
13 only partially able to dig this excavation because I have
14 a live high pressure steam line in the way that I have to
15 stay a certain distance away from.

16 So at the most it would let me dig down in
17 here (indicating), but then I start to be extremely
18 limited by going any farther than that. By the summer I'd
19 have to stop. There would be no further work I could do
20 and the project would be stopped, and if it's not
21 relocated at all, then the project's over.

22 Q. If there is a delay in the stopping, does
23 the City or the developer face any penalties?

24 A. There's agreements where either side can
25 opt out. The City's currently spent over \$20 million on

1 this site. By the time that we start mass excavation, we
2 would be closer to 30 or \$35 million worth of involvement
3 in the site, plus we would also owe fees to the developer
4 and to the architects and all those parties. We would be
5 out considerable money.

6 MR. COMLEY: Thank you. I have no other
7 questions.

8 JUDGE WOODRUFF: All right. For
9 cross-examination we'll begin with Staff.

10 MR. FRANSON: No questions, your Honor.

11 JUDGE WOODRUFF: Trigen?

12 MR. DeFORD: No questions, your Honor.

13 JUDGE WOODRUFF: Jackson County.

14 CROSS-EXAMINATION BY MR. FINNEGAN:

15 Q. Mr. Davis, I'm looking at your Exhibit 10,
16 and I believe you said that in the site clearing is where
17 we're talking about -- now about getting the line removed
18 out of the site clearing; is that where it is?

19 A. Correct.

20 Q. And looking at this graph line here, it
21 looks like you expect this to be done by first of June or
22 somewhere in there; is that correct?

23 A. Mid June or so, first to mid June.

24 Q. And so if Trigen were not to relocate it
25 'til the first of June, would there be a problem?

1 A. It would be -- delays would -- with any
2 contractor, delays cost you money. Any time that they're
3 unable to work is -- as freely as they're normally
4 allowed, they're always asking for additional charges.
5 The concern is they'll be going back in, removing the road
6 bed, removing -- working over top of this line, and I am
7 concerned having a lot of heavy equipment and grading and
8 things going on over the top of their -- of their live
9 line. Plus I do not want to delay my contractor.

10 Q. So what time are we talking about?

11 A. Early to mid May, starts becoming critical.
12 My contractor when -- has earlier said that we put a line
13 item in there to bid it just for Trigen's convenience.
14 When he submitted me a schedule, he said he would start
15 working on the removal of that line on April 26th.

16 Q. So Trigen's got to like April 23rd, which
17 is a Saturday if I recall, to begin the cutting of the
18 line and removing it?

19 A. They could -- they could delay it up until
20 then if they had to. It does crimp the schedule, gives me
21 no possibility of bad weather or any other events, yes.
22 You always build a schedule with a few days. You try to
23 anticipate any disasters and head them off ahead of time.

24 Q. With respect to your Exhibit 11, which is
25 the chart over there, I believe you said something that --

1 testified that if they really couldn't do anything to
2 relocate this line if it were cut until fall of 2006?

3 A. It has to do with the construction -- the
4 construction sequence. You know, the first order of
5 business is to excavate the site. Then after you have the
6 site excavated sufficiently deep, go back and do piers and
7 caissons and start building up from there. And what
8 you're going to want to do is get the outside of the
9 building coming up, put the roof on and back fill, and the
10 idea is you're going to have a lot of equipment moving
11 around the site. And one, you don't want two contractors
12 working from two different companies at the same time.

13 The other thing is, I'd hate to have a
14 fresh line in the ground and have a crane sitting on top
15 of it trying to set steel trusses, huge long hundred plus
16 foot long pieces of steel, and have something happen to
17 that line, put undue stress on it.

18 Q. So basically this only applies to the area
19 around the arena; is that correct?

20 A. Correct. If they choose to go, you know,
21 somewhere not directly adjacent to the construction or,
22 you know, or even try to go through the building, those
23 are the prohibitive things is that construction activity.
24 If they go somewhere else, it's -- they can have whatever
25 timeframe they want to have.

1 Q. So they can do it as soon as they were
2 capable or --

3 A. If they want to go down 13th Street and
4 Grand, they can start as soon as they can pull a permit to
5 close the streets.

6 Q. I'm sorry. 13th and Grand?

7 A. 13th.

8 MR. FINNEGAN: May I approach?

9 JUDGE WOODRUFF: Yes.

10 THE WITNESS: If they wanted to go that way
11 (indicating).

12 BY MR. FINNEGAN:

13 Q. That would would not create any problem?

14 A. There would be issues, but just because
15 it's very congested. We've got contractors working here
16 and contractors working everywhere.

17 Q. It's only the congestion that's the
18 problem?

19 A. It's only congestion.

20 Q. If I may show you Exhibit 2 here. It looks
21 like there's a stub here and a stub here that could be
22 connected. That would be no problem, would it?

23 A. Not that I know of.

24 Q. I mean, there's no construction going on at
25 that point?

1 A. What street is that?

2 Q. That's 12th Street.

3 A. There will be construction of this building

4 here, part of the Kansas City Entertainment District.

5 Other than that, I don't know of anything else.

6 Q. As the project manager for the Sprint

7 project, you don't have any input into what the impact of

8 this severing the line would have on the City itself and

9 the City's steam usage?

10 A. I'm not following you.

11 Q. Okay. You're not the one who -- you're not

12 involved with how the City uses its steam?

13 A. No, sir.

14 Q. And your major concern is to get the steam

15 line out of there so you can --

16 A. Correct.

17 Q. -- do your construction easily?

18 A. The area -- we deliver capital projects to

19 the City is what me and my group do.

20 Q. And if this were to make the system serving

21 the City less reliable, that's not in your domain, is it?

22 A. No, not my direct domain.

23 MR. FINNEGAN: That's all the questions I

24 have.

25 JUDGE WOODRUFF: Mr. Finnegan, I've lost

1 track here. Exhibit 11, was that yours or was that
2 from --

3 MR. FINNEGAN: That was from the City.

4 JUDGE WOODRUFF: That was from the City.
5 Okay.

6 MR. FINNEGAN: 10 and 11. Exhibit 2 is
7 mine, 1 and 2.

8 JUDGE WOODRUFF: Okay. Let me go back and
9 take care of that. Was 11 offered?

10 MR. COMLEY: Yes, I think so. I'll do it
11 again.

12 JUDGE WOODRUFF: Well, that's all right. I
13 assume there were no objections to it, and I'll show it as
14 received. I think I just forgot to do it on my chart.

15 (EXHIBIT NO. 11 WAS RECEIVED INTO
16 EVIDENCE.)

17 MR. FRANSON: And Judge, while we're at it,
18 do you show 10 offered?

19 JUDGE WOODRUFF: 10 I show offered and
20 received, and I missed 11.

21 Okay. So we'll come up for questions from
22 the Bench. Commissioner Murray?

23 QUESTIONS BY COMMISSIONER MURRAY:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. Has the project been delayed at all,
2 measurably delayed at all to date by Trigen not having
3 relocated these facilities?

4 A. No, there's no delays caused by them to
5 date.

6 Q. At such time as there would be delay, is
7 there a way to measure the cost per day?

8 A. Depends on how far you want to look
9 forward, look ahead. If we were to get a professional
10 sports team in, i.e. hockey or basketball, and we were
11 unable to open the facility by the fall of 2007, then the
12 potential there is a tremendous amount of lost revenue.

13 Q. Okay. But there's no way to really
14 calculate a cost per day?

15 A. Not directly. If I've got to accelerate my
16 demolition contractor, as an example, to make up for lost
17 time so we can continue on schedule, we've not negotiated
18 a rate for acceleration. But if I apply the fact that
19 he's got a liquidated damages charge if he's late of
20 \$1,500 a day, he's going to want at least that much to
21 move ahead.

22 Q. Okay. You mentioned that the City has
23 worked I believe you said intensely with the -- to help
24 the utilities, the other utilities relocate their
25 facilities. How has the City helped?

1 A. Actually, I've got one gentleman that has
2 worked almost exclusively with them conducting weekly
3 meetings. Currently he's been helping KCP&L. They've got
4 a piece of switch gear in the alley, and he went as far as
5 meeting -- helping them and going meeting with the chief
6 judge for the Court of Appeals to help them, to help that
7 progress move ahead.

8 The -- if they've got issues, we try to
9 help them find ways to work around them. If they need
10 permits from the State Highway Department, if they
11 relocate along Truman Road, that becomes the State right
12 of way. We go and we talk to the State reviewers and ask
13 them if they can help us expedite this.

14 So we -- whatever we can do to help them
15 coordinate or talk to somebody or if -- another thing we
16 try to do is help schedule it, because if you can imagine,
17 you know, five to ten companies trying to do something all
18 at the same time, it could be mass chaos. So we try to
19 help say everybody get -- everybody get a lane basically
20 and so they don't conflict with one another.

21 Q. Okay. There was some discussion that you
22 had regarding placing the line within the footprint of the
23 new facilities?

24 A. Uh-huh.

25 Q. And you indicated that, I believe, that it

1 would not be possible to even begin that until somewhere
2 in the fall of 2007 if that were to be the option for
3 replacement.

4 A. You'd have to get the actual shell of the
5 building up to actually have a place to even -- if we were
6 to go inside, we'd actually have to have the spaces
7 constructed to actually build that.

8 Q. That was fall of '06, right, not '07?

9 A. It was fall '06, yeah.

10 Q. My question is, would there be any
11 advantage -- and I don't know whether anything like this
12 is even technically possible, but would there be any
13 advantage to placing a line within the -- while the
14 excavation and all of the other construction is going on
15 but not activating it until everything was complete? Is
16 there any --

17 A. It could be possible, if the site was in
18 such condition that it could be placed and not damaged.
19 It maybe would have to be a little deeper or something
20 else. There may be a way that -- my main concern is
21 damage, because there's a lot of equipment moving around
22 on a site like this.

23 Q. But if you -- you have a site opened up,
24 just intuitively it seems like it would be easier to put
25 something in it while it's open than to go back later and

1 put something in it.

2 A. Again, damage, compacting the soil. You
3 don't want to -- you can't wait too long. Sometimes it's
4 easier to actually fill it up and then redig it where you
5 want it than trying to work around it as everything --
6 it's a coordination issue.

7 COMMISSIONER MURRAY: I don't think I have
8 any other questions. Thank you.

9 JUDGE WOODRUFF: Commissioner Clayton?

10 COMMISSIONER CLAYTON: No questions.

11 JUDGE WOODRUFF: Commissioner Appling?

12 QUESTIONS BY COMMISSIONER APPLING:

13 Q. Mr. Davis, how you doing?

14 A. I'm doing fine, sir.

15 Q. It seemed to me, maybe I'm wrong, but I'm a
16 country boy. I was not born in a place like Kansas City,
17 so I don't understand how the streets run and all that
18 stuff.

19 But it seems to me this is, from what I've
20 heard today, is an operation of good neighbors. It seem
21 to me now with this arena going up -- and I really want to
22 make it clear here that I would like to see this go, and I
23 want to be helpful in making it go and see your project
24 start on time because I think the County as well as the
25 City and several of the people that's putting this arena

1 up is going to benefit from it for many years to come.

2 So you have other companies, though, out
3 there that's -- like the federal building and all those
4 that probably pays taxes to the City for their property.
5 So the \$20 million that the City's already spent that you
6 mentioned a few minutes ago, enlighten me on where did the
7 City get that money from? Is it going to come from the
8 company that operates in the City? Is that where that
9 money come from?

10 A. Most of the money, we've actually spent it
11 anticipating selling bonds later on this month. In August
12 the voters of Kansas City agreed to a user fee on motel
13 rooms and rental cars. So that's what's funding -- that's
14 the basis of paying back the bonds.

15 Our partner has agreed to put up up to
16 \$50 million and to guarantee our cost overruns. And then,
17 of course, there's -- with a new facility like this, the
18 good part is user fees help pay for part of it, too.

19 Q. Right.

20 A. So that's where the money's coming from.
21 And what we've spent is, knowing that we're going to sell
22 bonds, we've said, okay, we can -- we can borrow against
23 our other accounts until those bonds come due to the
24 appropriate.

25 Q. Is the City interested in sitting down with

1 Trigen and the County and working out some of the route
2 here to get that loop completed?

3 A. We're always interested in making this --
4 making this thing work.

5 Q. I'm not putting you on the spot because I'm
6 not sure if you're the guy that's making the decision, but
7 I'm interested in is the mayor of the City really
8 interested in doing this?

9 A. The mayor's interested and the city
10 manager's interested. They -- they want --

11 Q. Somebody's got to get in the room and talk,
12 you know. I'm interested in getting it there, and every
13 day we stand by here somebody's going to lose. The
14 contractor is going to come back to you-all and somebody
15 else is going to come back to you. But I haven't heard
16 Trigen say that they're not willing to make this project
17 go.

18 I'm interested in, is the City willing to
19 sit down and honestly talk about making this project go?
20 Because it seem to me that everybody has a shot at
21 benefiting here. And I've been in construction all my
22 life, and I know when you start delaying that, then it
23 becomes July, then it become August and then you got a big
24 mud hole out there and you don't have a building up and
25 that's not good.

1 I'm just asking a question, because I'm
2 going to have to rule one way or the other here to help
3 this cause. I'm just asking, is people back in Kansas
4 City ready and willing to sit down and talk about this
5 project?

6 Now, if Trigen can't do the project, that's
7 a different thing, and if they can't put the money in it
8 and get it there, but I'm just interested in what people
9 are willing to sit down and talk.

10 A. If they're willing to come in and say we
11 want to build a line and let's find a spot for it, we're
12 willing to help.

13 Q. So since you're the message carrier, I'd
14 like to see somebody talking.

15 COMMISSIONER APPLING: Thank you.

16 JUDGE WOODRUFF: All right. Recross based
17 on the questions from the Bench then, beginning with
18 Staff.

19 MR. FRANSON: No questions, your Honor.

20 JUDGE WOODRUFF: Trigen?

21 MR. DeFORD: No, thank you.

22 JUDGE WOODRUFF: Jackson County?

23 MR. FINNEGAN: Just one, your Honor.

24 RE CROSS-EXAMINATION BY MR. FINNEGAN:

25 Q. With respect to the bond issue bonds that

1 you're talking about selling in a month or two; is that
2 correct?

3 A. Later on this month.

4 Q. Later on this month. And is this going to
5 require voter approval to get a bond issue?

6 A. We've already got -- that's already been
7 cleared. It was cleared last year.

8 Q. It was?

9 A. Yes.

10 MR. FINNEGAN: That's the questions I have.

11 JUDGE WOODRUFF: Thank you. Redirect?

12 REDIRECT EXAMINATION BY MR. COMLEY:

13 Q. I think it was Commissioner Murray that was
14 talking to you about the routing of the loop within the
15 footprint of the arena, and maybe I didn't get this clear
16 with you, Mr. Davis. Is there a way for the loop to be
17 completed outside the footprint of the arena? And I think
18 you got into that. Where would it go if it was going to
19 be outside the footprint of the arena, or where would you
20 think it would go? I'll ask that question.

21 A. The most likely idea in my mind is to go
22 around the perimeter somewhat. We're looking at a
23 building -- could go under the building. I don't know
24 what that does to their line, their feasibility and their
25 expansion coefficients and things like that. If it can

1 run where there's not structure, it's much easier. The
2 closer they get to the building, the more the site
3 activity is and the more soil and compaction issues there
4 are.

5 Q. But otherwise if they're staying in the
6 public street, they won't have that kind of a factor to
7 consider?

8 A. If they're in the public street, they don't
9 have those factors to consider.

10 Q. And if Trigen were to make the business
11 decision to complete the loop within the public rights of
12 way around the footprint, when could they do that and not
13 interfere with construction of the arena?

14 A. I mean, that would be a matter of them
15 getting their plans together and getting a permit to do
16 the work in the street.

17 Q. So that could be done by October?

18 A. That could be done by October.

19 Q. Of this year?

20 A. I think so. I'm not an expert on
21 constructing steam lines.

22 Q. Nothing about the arena would be
23 obstructing Trigen's decision to construct the
24 reconfiguration of the loop within the public rights of
25 way between now and October?

1 A. No.

2 Q. Okay. All right. Commissioner Murray

3 asked you about any advantages of putting the pipe in

4 during the course of construction, say a pipe within the

5 footprint of the arena. Can you explain why there might

6 be some damage to that pipe if it's put in during the

7 course of construction?

8 A. It's just the fact you have lots of

9 subcontractors, you have lots of heavy equipment.

10 Q. What kind of heavy equipment are we talking

11 about?

12 A. Cranes, loaders, forklifts, all kinds of

13 things run around the site to do the various aspects.

14 You're going to have different pieces of equipment to do

15 grading and things like that.

16 Q. Why would it be proper coordination to have

17 that area filled in first and then come back and put a

18 line in?

19 A. That way I've only got -- that way my

20 general contractor would have control of his subs working

21 in that area, and I don't -- I'm not trying to interject a

22 third piece in there that would -- that could possibly

23 have issues coordinating or tear each other's work up or

24 something like that.

25 Q. Aside from the convenience to you, are

1 there any cost benefits achieved by doing that?

2 A. Doing them separately?

3 Q. Yes.

4 A. Yes.

5 Q. Can you identify them for the Commission?

6 A. It's typically the type of things where any

7 time you get two contractors close side by side, I'm sure

8 the one Commissioner can appreciate this, they always

9 claim the other's done something to them or delayed

10 something. It's like putting two kids in a room, they

11 always fight.

12 Q. I'll not get any further into that.

13 Liquidated damages, you mentioned the liquidated damages

14 clause. Are liquidated damages clauses part and parcel of

15 each contractor's contract on this project?

16 A. Yes, it is.

17 Q. And what's the average amount of liquidated

18 damages after the contract sequence of days expires?

19 A. It depends on what the contractor is. The

20 demolition contractor is \$1,500 a day. That's to complete

21 his schedule. And I'm not recalling the general

22 contractor's liquidated damage clause, but it's

23 significant.

24 Q. Is it over \$1,500 a day?

25 A. Yes.

1 MR. COMLEY: That's all I have on redirect.

2 JUDGE WOODRUFF: All right. Thank you.

3 MR. COMLEY: We have no other witnesses.

4 JUDGE WOODRUFF: No other witnesses. All

5 right. We're due for a break. Let's come back at ten

6 minutes 'til three.

7 (A BREAK WAS TAKEN.)

8 JUDGE WOODRUFF: All right. We're back

9 from break, and before the break Kansas City indicated

10 they had no further evidence. Does Trigen have any

11 witnesses?

12 MR. DeFORD: None, your Honor.

13 JUDGE WOODRUFF: We'll move to Staff.

14 MR. FRANSON: Yes, your Honor. As I

15 indicated before, we will have two witnesses. I'll first

16 call Warren Wood.

17 (Witness sworn.)

18 JUDGE WOODRUFF: You may inquire.

19 MR. FRANSON: Thank you, your Honor.

20 WARREN WOOD testified as follows:

21 DIRECT EXAMINATION BY MR. FRANSON:

22 Q. Sir, please state your name.

23 A. Warren Wood.

24 Q. Mr. Wood, how are you employed?

25 A. I'm the Energy Department Manager with

1 Public Service Commission Staff.

2 Q. What are the duties of an Energy Department
3 Manager with the Public Service Commission Staff?

4 A. I oversee the operations of five sections
5 within the energy department, the gas safety section, the
6 rate and tariff section, the federal policy and cases,
7 economic analysis and engineering analysis.

8 Q. And how long have you been an employee with
9 the Public Service Commission?

10 A. Coming up on six years.

11 Q. And has that six years been involved with
12 being the manager of the energy department?

13 A. I also worked in our procurement analysis
14 department related to natural gas issues, and as the gas
15 department manager and energy department manager.

16 Q. And how long have you been the energy
17 department manager?

18 A. I think coming up on three years.

19 Q. Okay. What is your educational background,
20 Mr. Wood?

21 A. I have a bachelor's in engineering from the
22 University of Missouri - Columbia.

23 Q. Are you a professional engineer?

24 A. Yes, in the states of Kansas and Missouri.

25 Q. Okay. Are you aware of the subject matter

1 of the Jackson County complaint that brings us here today?

2 A. Based on the information provided in the

3 complaint which was filed last week, that's the extent of

4 the information we have, and based on a site visit

5 conducted last week.

6 Q. Well, when Staff became aware of the

7 complaint, what actions did the Staff take?

8 A. Well, we obviously immediately reviewed all

9 the filings that have been conducted, made a number of

10 phone calls in to the parties in the case to get more

11 information. And as soon as the agenda session was

12 completed on Thursday where it was indicated a hearing

13 would be held today, we dispatched two staff to go to the

14 site.

15 Q. And are you -- are you in a position today

16 to give opinions specifically? The change in the

17 configuration of this system, that being the construction

18 of this arena that is scheduled to take place, do you

19 know, in your opinion, will that make Trigen's system less

20 reliable?

21 A. In going from the current configuration,

22 which is a looped system, basically if you completed the

23 orange line on this exhibit, to a system where they capped

24 the ends of the line at both ends of the arena property

25 basically creating two radials, there is -- there is

1 some -- all other things being equal, the system wouldn't
2 necessarily have the same level of reliability.

3 Basically different customers downstream of
4 different points on the system as you get farther and
5 farther away from the plant producing the steam have a
6 somewhat higher risk of experiencing outages.

7 Q. Now, the change that we're talking about
8 here and you've referred to the exhibit, will that, in
9 fact, make -- if that does take place and it becomes a
10 radial system, would that make this system unsafe and
11 inadequate?

12 A. Based on the information we've had to
13 review thus far and our visit to the site and our review
14 of the -- basically the lack of complaints of reliability
15 from parties regarding this system, we've seen nothing
16 thus far that would indicate to us that this system will
17 become unsafe or inadequate when it becomes a dual radial
18 system.

19 Q. Have you heard anything here today during
20 the hearing that would change the opinion you just gave?

21 A. No.

22 Q. With that being said, I don't believe --
23 well, Mr. Wood, do you have anything to add to what you've
24 testified about today?

25 A. I do not.

1 MR. FRANSON: No further questions of this
2 witness at this point, your Honor.

3 JUDGE WOODRUFF: All right. For
4 cross-examination, begin with Kansas City.

5 CROSS-EXAMINATION BY MR. COMLEY:

6 Q. Basically, Mr. Wood, based upon your
7 understanding of the complaint, your understanding of the
8 system in place now, your understanding of the capping
9 procedure that's been described by Mr. Cook (sic), based
10 upon your education and experience, is it your opinion,
11 then, that the capping procedure that's been described
12 will not render the central heating system, the district
13 energy system for Trigen unsafe or inadequate; is that
14 correct?

15 A. Yes.

16 Q. Can I add, is it your opinion as well that
17 it will not render it unreliable?

18 A. Defining reliable is, you know, there's not
19 a lot of good standards out there to go to. I would say
20 it diminishes the reliability of the system in a very
21 minor way. I wouldn't say that it creates an unreliable
22 system.

23 MR. COMLEY: All right. That's all I have.

24 JUDGE WOODRUFF: Trigen?

25 MR. DeFORD: No questions, your Honor.

1 JUDGE WOODRUFF: Jackson County?

2 CROSS-EXAMINATION BY MR. FINNEGAN:

3 Q. Mr. Wood, I believe your testimony was that
4 two radials would not have the same level of reliability
5 as the loop; is that correct?

6 A. Yes.

7 Q. And as far as the system is concerned, the
8 reliability may reduce, be diminished only a small amount,
9 the system, but how about customers that are on a leg that
10 are far from the source, such as Jackson County which is
11 almost near the end of the -- of the line from the -- as
12 far away as you can get from the steam plant?

13 A. The further you get away from the plant,
14 the higher the probability that some individual problem on
15 the system will take a customer downstream of that point
16 off of the system for some time period.

17 Q. Okay. And if the loop were still in place,
18 the customer may not necessarily go down because he could
19 continue to receive steam from the other side?

20 A. Yeah. And that is the base advantage of a
21 loop system over a radial system.

22 Q. If you were building a steam system, would
23 you build one with a radial or not?

24 MR. FRANSON: Objection as to relevance. I
25 mean, whether -- what someone might hypothetically build

1 has no relation to what we, in fact, have here, your
2 Honor.

3 JUDGE WOODRUFF: I'll overrule the
4 objection.

5 THE WITNESS: Could you repeat the
6 question?

7 BY MR. FINNEGAN:

8 Q. I believe the question was, if you were to
9 build a steam system, would you prefer to build it with a
10 loop or separate radials?

11 A. The question you asked is a common one in
12 engineering when you're looking at laying out a system,
13 and you can see in our current utility systems, water,
14 gas, steam, electric, different outcomes of that question
15 depending on the density of the customers, where your
16 plant generating the utility service is coming from, and
17 the level of reliability that is needed by those
18 customers.

19 We have numerous systems in the state right
20 now that are radial systems that provide very safe and
21 adequate service, and we do have loop systems at different
22 locations in the state providing different types of
23 service. And it really comes down to customer density and
24 the level of reliability you are hoping to achieve in the
25 system to decide, and what you want to pay, because a

1 radial system can be less expensive than a loop system.

2 Q. Generally systems start out as a radial and
3 then get looped later?

4 A. If the configuration is convenient to bring
5 it to provide for a loop out of a radial system as the
6 system grows, that will sometimes be done.

7 MR. FINNEGAN: That's all the questions.

8 JUDGE WOODRUFF: All right. Then come up
9 for questions from the Bench. Commissioner Murray, do you
10 have any questions?

11 COMMISSIONER MURRAY: I do. I don't have
12 very many.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Good afternoon, Mr. Wood.

15 A. Good afternoon.

16 Q. There is no requirement that redundancy be
17 built into a system, is there?

18 A. No. In fact, the tariffs right now in
19 effect with Trigen do have a specific provision regarding
20 continuity of service, and the tariffs do not provide for
21 a requirement for continuous service now.

22 Q. And in terms of comparing this to other
23 utilities, and by comparing I mean to compare the
24 applicability of redundancy, how -- can you make a
25 comparison to, say, a gas utility or an electric utility?

1 A. In term of the necessity for having
2 redundancy in the system? As was talked about here some,
3 a steam system has -- there are customers that in terms of
4 heating have only that utility service for steam, and they
5 also have electricity. There are parallels between those,
6 the needs of those customers and customers receive natural
7 gas, for instance, where it is largely for heating and
8 they also have electricity.

9 In those systems it is not uncommon where
10 large numbers of customers are served and the
11 configuration is convenient to do so to see pressurized
12 gas in a loop configuration, which provides once again the
13 ability to shut off at a particular point on the system
14 and back flow to customers who would have been downstream
15 on that on a radial system.

16 Q. How about for water utilities?

17 A. Much of my engineering experience is
18 related to electric distribution and pipelines and steam
19 and power plant design. So I could only venture a guess
20 regarding water plant design, not necessarily water
21 distribution system.

22 Q. I won't ask you to go there.

23 A. Okay. Thank you.

24 COMMISSIONER MURRAY: I don't think I have
25 anything else. Thank you.

1 JUDGE WOODRUFF: I just have one question
2 for you, Mr. Wood.

3 QUESTIONS BY JUDGE WOODRUFF:

4 Q. Does Staff see a need for the Commission to
5 be involved in the decision how to reconnect the loop
6 after the construction?

7 A. Actually, we've discussed, based on the
8 discussions today, we have questioned that ourselves. At
9 this point in time we really, based on our review starting
10 mid last week to now, didn't really have time to form an
11 opinion on how that -- if it has to be done, when it would
12 be done, how it would be configured and any cost recovery
13 issues or anything like that. We have no position on that
14 today.

15 Q. You have no positions on specifics, but
16 would Staff want to be involved?

17 A. In terms of if there was a cost recovery
18 issue or the timing of it, when it would take place if it
19 was required?

20 Q. Yes.

21 A. I know in terms of safe and adequate
22 service, our group would be interested in any changes in
23 the configuration to be -- to be confident that it was
24 continued providing safe and adequate service.

25 JUDGE WOODRUFF: That's all the questions I

1 have, then. So for recross, beginning with Kansas City?

2 MR. COMLEY: I have none. Thank you.

3 JUDGE WOODRUFF: Trigen?

4 MR. DeFORD: None. Thank you.

5 JUDGE WOODRUFF: Jackson County?

6 MR. FINNEGAN: No questions.

7 JUDGE WOODRUFF: Any redirect?

8 MR. FRANSON: Yes, your Honor.

9 REDIRECT EXAMINATION BY MR. FRANSON:

10 Q. Mr. Wood, a couple questions from the Bench

11 that you answered. Are you saying that any questions

12 about cost and deferring costs and cost recovery should be

13 answered by another Staff witness, specifically

14 Mr. Featherstone?

15 A. Yeah. I was referring to the engineering

16 aspects in my responses. If we have cost issues, things

17 like that, witness Featherstone would be better to answer

18 those questions.

19 Q. Okay. Now, you were asked questions about

20 whether you have an opinion about whether this system

21 should be relooped and, if so, where, and I believe your

22 answer was that you haven't had an opportunity to study

23 that adequately; is that correct?

24 A. I talked about what things you would

25 consider in designing such a system, and you can --

1 depending on what you're hoping to achieve from the
2 system, the density of customers, the configuration of the
3 system, you can arrive at either solution.

4 That is, I suppose, another way of saying
5 that in this proceeding we haven't had the opportunity to
6 form an opinion if it should be looped or radial.

7 Q. And that's in regard to this particular
8 system that we've been talking about?

9 A. Yes.

10 Q. Okay. Would it be fair to say that you
11 believe both of those questions, whether it should be
12 relooped, if so how, would need to be further studied
13 before you would have an opinion?

14 A. Certainly from Wednesday, Thursday of last
15 week to now we haven't formulated a position on which way
16 those decisions would go.

17 MR. FRANSON: I don't believe I have any
18 further questions of this witness, your Honor.

19 JUDGE WOODRUFF: Mr. Wood, you may step
20 down. You can call your next witness.

21 MR. FRANSON: Cary Featherstone, your
22 Honor.

23 (Witness sworn.)

24 JUDGE WOODRUFF: You may inquire.

25 MR. FRANSON: Thank you, your Honor.

1 CARY FEATHERSTONE testified as follows:

2 DIRECT EXAMINATION BY MR. FRANSON:

3 Q. Sir, please state your name.

4 A. Cary G. Featherstone.

5 Q. Mr. Featherstone, how are you employed?

6 A. I'm a regulatory auditor with the Missouri

7 Public Service Commission.

8 Q. What are the duties of a regulatory

9 auditor?

10 A. We review applications, generally rate

11 case, sometimes merger and acquisitions, certification

12 cases.

13 Q. And Mr. Featherstone, what's your

14 educational background?

15 A. Bachelor in economics. I've had probably

16 27 hours of accounting.

17 Q. In fact, you're one of the most senior

18 regulatory auditors at the Commission; isn't that true?

19 A. I've been employed since March of 1979.

20 Q. Okay. And you've been at the Commission

21 that entire time?

22 A. Yes.

23 Q. Okay. Are you -- you conduct financial

24 audits and, in fact, you've directed several audits of

25 various companies in rate proceedings before the

1 Commission; isn't that true, sir?

2 A. Yes.

3 Q. Okay. Now, are you somewhat familiar with
4 the history of the system that we've been talking about
5 here today?

6 A. Yes. I've been involved in, well, I guess
7 since about 1980 all of their rate cases.

8 Q. Now, this is of the financial audits of the
9 steam heating system that was formerly owned by Kansas
10 City Power & Light; is that correct, sir?

11 A. Yes. All of the rate cases have been with
12 the steam heating system as it was owned by Kansas City
13 Power & Light.

14 Q. Okay. Mr. Featherstone, were you a Staff
15 witness in a Commission case, I believe in 1986, to
16 investigate the continuation of the steam system in
17 downtown Kansas City?

18 A. Yes. That was the KCPL case that requested
19 abandonment of the district heating in downtown Kansas
20 City. I supervised and oversaw the Staff's -- we did a
21 revenue requirement calculation because it was a rate case
22 that was a request, requested along with the application,
23 and we also formulated a position that the Commission
24 should authorize a bidding process or at least to
25 investigate to see if Kansas City Power & Light could find

1 a buyer of the system.

2 Q. So Staff actually opposed the
3 discontinuation of the system at that point in time?

4 A. That's right.

5 Q. Okay. Were you involved in the -- in part
6 of the Staff case in Case No. HM-2004-0618, which was the
7 sale of the downtown system by, I believe, Trigen to
8 Thermal?

9 A. Yes. Unlike all the other cases where I
10 filed testimony in the proceedings, I oversaw the work and
11 supervised the individual who was the witness in that
12 proceeding.

13 Q. Do you know whether the Commission made the
14 determination of whether it had jurisdiction over the
15 chilled water system?

16 A. I believe -- and it's been a while since I
17 looked at that Order. I believe the Commission decided
18 that it did not have jurisdiction over chilled water.

19 Q. Okay. Now --

20 A. A better way maybe to say is that they
21 would not assert the jurisdiction if it had.

22 Q. Okay. Thank you, Mr. Featherstone.

23 Now, is it your understanding in this
24 proceeding today that the Commission is not addressing
25 recovery of any costs that would be incurred by Trigen in

1 removing its steam lines from the Sprint Center project?

2 A. It's my understanding that that's not the
3 request. However, it is certainly part of the complaint
4 that's been addressed by Jackson County that the entity
5 that is responsible for the costs should be those that are
6 forcing the occurrence of the cost.

7 Q. Let me ask you this. We talked -- my last
8 question was about cost to Trigen in removing its steam
9 lines from this project. Is it also your understanding
10 that the purpose here today isn't to address any costs
11 that might be incurred by Trigen to reloop this system if
12 that, in fact, were to be done?

13 A. It's my understanding, and again also their
14 application -- or their complaint I should say addresses
15 that aspect, too.

16 Q. Now, do you know what position Staff might
17 take regarding cost of these -- recovery of these costs
18 from Trigen's customers?

19 A. Typically these kinds of costs on a project
20 of this size and magnitude, and you have to bear in mind
21 it also would be a financial hardship for Trigen to bear
22 those costs, and with the limited number of customers that
23 Trigen has, 60 I believe approximately, we would more than
24 likely take the position, although we haven't done a lot
25 of the leg work and necessary audit processes, but we

1 would probably take the position that those costs should
2 be borne by those that are responsible or that caused the
3 cost, and that would be in this instance the City of
4 Kansas City.

5 Q. Is this consistent with Staff's position on
6 items of this nature in the past?

7 A. Yeah, I think so. It's the concept of the
8 cost causer bears the cost responsibility.

9 Q. Are you aware of any contacts by Trigen to
10 the Staff regarding how Staff might approach the cost of
11 cutting, capping, removing and reestablishing the steam
12 line around the Sprint Center that's been discussed here
13 today?

14 A. No. To my knowledge, the first that Staff
15 became aware of this issue, while we certainly knew that
16 the downtown arena was an active project, we were unaware
17 of any of the correspondence or the transmittals going
18 back and forth as early as October of last year. I became
19 personally aware of this issue Friday afternoon, I think.

20 Q. Let me ask you this. Are you aware of the
21 present franchise that exists between the City of Kansas
22 City and Trigen as far as where they -- their franchise
23 for them, for Trigen to operate in the city?

24 A. I knew that one existed, and I read the, I
25 believe it was an attachment to the City of Kansas City's

1 response.

2 Q. And do you know what -- what time frame
3 that runs from?

4 A. It was a 30-year -- it was a 30-year
5 franchise, I think beginning in 1989.

6 Q. And adding 30 years to that, what do you
7 come up with?

8 A. 2019.

9 MR. FRANSON: No further questions, your
10 Honor, at this point.

11 JUDGE WOODRUFF: Cross-examination then
12 beginning with Kansas City?

13 CROSS-EXAMINATION BY MR. COMLEY:

14 Q. Mr. Featherstone, my understanding of the
15 procedures would be if the Staff were going to consider
16 the cost analysis of their relocation of Trigen's lines,
17 it would be up to the company to come forward with a rate
18 relief, request for rate relief; is that right?

19 A. That's correct.

20 Q. So you have the relocation done. The costs
21 are then assessed. I say assessed. They're evaluated.
22 And at that point Trigen would have the option of coming
23 to the Commission and asking for some sort of a rate
24 relief at that point, right?

25 A. Correct.

1 Q. It does have the option of not doing that;
2 is that correct?

3 A. It would have the option of absorbing the
4 costs themselves. With Trigen's financial situation and
5 the size that Trigen is, as an example at page 6 of the
6 complaint, and I don't know whether these numbers are
7 right, but they're probably order of magnitude, between
8 17.5 percent and 19.5 percent is what the estimate of
9 Trigen's revenues, and that's very sizable.

10 Q. But they'd have to make the decision to --
11 Trigen would have to make the decision depending upon a
12 lot of other factors, including the prospect of more
13 customers in the area, the prospect of perhaps deferring
14 these costs throughout its affiliated nature. Would those
15 kinds of factors be part of the decision to bring a rate
16 case?

17 A. It would.

18 Q. So basically we'd have to wait to see
19 whether Trigen would bring a rate case and whether or not
20 and to what extent costs may be assessed against the other
21 customers?

22 A. In my -- yes, and in my dealings with
23 Trigen in their last case before the Commission, which was
24 the 2004 case, it's been an indication to us that they
25 plan on filing a rate case very shortly, sometime this

1 year. And, you know, you get into a situation where
2 financial viability of a company, if they incur such
3 costs, wouldn't even think of absorbing those costs
4 themselves. It may be that it would be such a financial
5 hardship that while they may not request the costs, there
6 would be an issue of how would you stay viable, how would
7 you stay afloat if you -- if you chose to do that.

8 Q. So you contemplate that this cost would be
9 in their test year, and you'd have to make a separate
10 evaluation about that cost, and if they didn't bring it up
11 you'd make the inquiry; is that correct?

12 A. Yes.

13 Q. But basically your testimony is that within
14 the confines of a complaint case, it's not really
15 appropriate to bring up the cost of this relocation
16 effort?

17 A. That's right. Only to the extent that
18 Jackson County has made it part of their application or
19 their complaint.

20 Q. As far as treatment, it would be for a rate
21 case?

22 A. It would be for a future rate case, yes.

23 MR. COMLEY: Thank you.

24 JUDGE WOODRUFF: All right. For Trigen?

25 MR. DeFORD: No questions, your Honor.

1 Thank you.

2 JUDGE WOODRUFF: Jackson County?

3 MR. FINNEGAN: No questions.

4 JUDGE WOODRUFF: Questions from the Bench,
5 Commissioner Murray?

6 QUESTIONS BY COMMISSIONER MURRAY:

7 Q. Good afternoon, Mr. Featherstone.

8 A. Good afternoon.

9 Q. Let me see if I understand what you're
10 saying. Are you saying that if Trigen brought a rate
11 case, that the Staff would recommend disallowance of
12 recovery of any costs associated with removal for these
13 facilities?

14 A. This is more than just removal. This is
15 a --

16 Q. I'm just asking you removal right now,
17 breaking it into parts.

18 A. I'm not sure I've seen or could really
19 address that specifically. I'm not sure that I would know
20 what the costs are associated with just the removal
21 aspect.

22 Q. Does it matter what the costs are, or is it
23 a question of who's causing the costs?

24 A. Well, if the removal costs are
25 substantial --

1 Q. So it does matter?

2 A. -- then we would have to find a way to

3 address those substantial costs. As an example, I've

4 heard a figure of \$200,000 would be for the relocation and

5 the capping. I don't know how much --

6 Q. Relocation or just --

7 A. The relocation and capping of the severed

8 loop line.

9 Q. But that's not relooping?

10 A. No, that's not the relooping. Those would

11 be separate costs. I heard that those are between 700 and

12 900,000, quarter of a -- excuse me -- three-quarters of a

13 million dollars and \$900,000. I don't know how much of

14 any of those amounts relate to what would be the removal

15 costs.

16 Q. I understood Mr. Kirk to say earlier cut,

17 cap and remove, \$200,000 or less. And I understood him to

18 stay replacing with a different route, 750 to 800,000. Is

19 that your understanding?

20 A. That's what I -- that's what I heard him

21 testify this morning. And at page 6 of the complaint,

22 Jackson County uses a figure of between 800 and 900,000.

23 I'm not sure where they get their numbers. So I think

24 there's some question as to what those amounts are.

25 They're all in the ballpark, though. I think the total

1 figure that I calculated was between 750,000 and a million
2 dollars for all of it.

3 Q. Okay. Well, I'm wanting to figure out what
4 kind of position this leaves Trigen in. If they cut, cap
5 and remove and then they come in for recovery in a rate
6 case, you're not taking the position today that you would
7 recommend disallowance, are you?

8 A. I think we would take the position that
9 they should have negotiated with the City of Kansas City
10 to help pay for those costs in some fashion, whether
11 that's in total or in part.

12 I think it's important to maybe make that
13 as part of the testimony today as to set Trigen and Kansas
14 City and Jackson County, that it's important that they sit
15 down and perhaps find a way to not only make the project
16 complete but what's financially in everyone's best
17 interests, including Trigen's.

18 Q. So you think Trigen has the ability to
19 ignore the Kansas City ordinance and not go forward if
20 Kansas City doesn't agree to pay for it?

21 A. I don't have an opinion, know that I can
22 answer whether they can ignore.

23 Q. Well, if they're between a rock and a hard
24 place and they have no choice, do they have a choice?

25 A. I don't know.

1 Q. But regardless, you would say that you
2 would recommend disallowance in a rate case if they didn't
3 negotiate?

4 A. Well, I think we'd have to look at all the
5 facts and circumstances surrounding that. If Trigen --
6 one example as a hypothetical, Trigen has done an
7 evaluation and the City has done their own analysis and
8 said that Trigen should supply this steam load and perhaps
9 the chilled water cooling load, that becomes a financial
10 factor that Trigen has considered, and clearly there have
11 been instances where when it's in everyone's interests to
12 seek out new revenue streams, in this case would be a
13 substantial revenue stream to Trigen, that it would be in
14 their interests to pay for part of those costs entirely.

15 Q. I think I lost you with new revenue stream.
16 Maybe I wasn't paying attention. I don't know where that
17 new revenue stream automatically comes from.

18 A. The revenue stream would be if they would
19 serve steam load and provide the chilled water cooling of
20 the arena. If they would have the opportunity to provide
21 that service, then obviously there's going to be a
22 financial impact. They're going to be providing a new
23 service which would increase their revenues, and at that
24 point in their analysis it may be beneficial for them to
25 absorb or pay for the relocation costs.

1 Q. But do you think it's possible for them to
2 know that before they have to go forward?

3 A. Well, I think eventually they have to go
4 forward one way or the other. They're not going to stop
5 the arena, and nobody in this room is saying they should.
6 The City has got to have the relocation of those lines.
7 And the arena's -- it is in downtown Kansas City, and the
8 City has got the authority to, I assume, to request them
9 to relocate the lines, and eventually they're going to
10 have to do it. It's just a matter of when, how and how
11 much.

12 Q. And bottom line is always who pays, right?

13 A. That's always the answer.

14 Q. Now, I'm assuming if you're taking that
15 position on cut, capping and removing, that you'd be
16 definitely taking that position on replacing with a
17 different route, that any request for recovery in rates
18 that you would be inclined to recommend against?

19 A. Well, you're projecting forward a case that
20 hasn't been filed yet, and as Mr. Comley said, the company
21 may not -- may make the decision not to request recovery.
22 That would be their decision.

23 Q. Do you think the company would be likely to
24 expend 750 to 800,000 or \$900,000 to replace with a
25 different route and not request recovery?

1 A. I don't know.

2 Q. Do you think it would be likely that the
3 company would just decide not to replace with the
4 different route if they were pretty sure that they
5 wouldn't get recovery?

6 A. They might decide not to loop it, although
7 that's been their testimony today and what I in my reading
8 of the complaint and in the letters that have gone back
9 and forth between the parties, it would seem that their
10 position is that they want to reloop at some point.

11 Q. And did you hear Mr. Kirk make a statement
12 regarding seeking recovery?

13 A. I think he used the phrase that he would
14 regard it as just a cost of doing business.

15 Q. That wasn't his entire phrase. I
16 understood him to say he would view it as a cost of doing
17 business and would have to seek recovery from the 60
18 customers.

19 A. If that's -- if that was his statement,
20 then that would -- that would probably be filed in a rate
21 application and we'd have to evaluate at that point in
22 time.

23 Q. And I thought I heard you say -- the reason
24 I'm questioning you about this now, I understand this is a
25 matter for a rate case and not a matter for this case, but

1 I thought I heard you say earlier when you were being
2 questioned that you did not think it would be appropriate
3 to recover from the ratepayers.

4 A. I think that it would be -- that the
5 appropriate place to get the recovery would be the City of
6 Kansas City who was causing the cost.

7 Q. And if you took that position in the rate
8 case, that means that you would recommend disallowance; is
9 that correct?

10 A. Or that the parties would sit down and
11 negotiate what would be a fair and reasonable
12 reimbursement by the City of Kansas City.

13 Q. And you think that would happen after the
14 fact, that Kansas City would be willing to come back in
15 and say, by the way, I'd like to help you out on that
16 expense that you had?

17 A. No. I think that's the importance of
18 talking about it now is that it is not after the fact, so
19 that they can sit down and talk about it today and
20 tomorrow and the immediate future, so that it won't have
21 to happen where Kansas City would come in after the fact
22 and say -- at that point they wouldn't probably come in
23 and say they'd help out. If they have an opportunity to
24 negotiate and deal with that issue now while they're
25 dealing with it before the costs are incurred.

1 Q. And once again, if Trigen is between a rock
2 and a hard place, unable to negotiate that, would it still
3 be your position that that would not be a ratepayer
4 expense?

5 A. Hopefully they'll be able to, and I don't
6 think they're between a rock and a hard place now. They
7 will be after the fact. And if the City doesn't pay any
8 reimbursement, at the time of their rate filing they will
9 be between a rock and a hard place, and of course so will
10 we, so will the Commission.

11 Q. And I can almost understand that analysis
12 from the prospect of putting in the facilities to reloop,
13 but I'm not sure I understand that from the standpoint of
14 cutting, capping and removing.

15 A. Well, on all site preparation site costs
16 for any construction project, whether a power plant or in
17 this case it's a sports arena, there are costs associated
18 with acquisition of land, razing the buildings. When they
19 acquired the building, they didn't go to the owners of the
20 buildings and say, oh, by the way, we're buying the
21 building from you and you're going to tear the building
22 down at your own cost. It's part of the project.

23 It's a \$250 million project. And while
24 there is engineering involved, there's architectural
25 involved, there's structural steel and materials, there's

1 also excavation. This is simply another cost in my view
2 associated with this project, relocation of all
3 facilities, all lines, whether it's the fiberoptic lines
4 or whether it's the gas lines or electric lines or in this
5 instance it's the district heating, the steam lines, these
6 are costs that are nothing more than responsibility of
7 those that were building the project.

8 COMMISSIONER MURRAY: I can't think of
9 anything else right now. Thank you.

10 JUDGE WOODRUFF: Commissioner Gaw, do you
11 have any questions?

12 COMMISSIONER GAW: I'll pass for the time
13 being.

14 JUDGE WOODRUFF: Commissioner Appling?

15 COMMISSIONER APPLING: Judge, I was out and
16 didn't hear the complete testimony, and I apologize for
17 that, but I can't think of anything right now that I can
18 ask him.

19 JUDGE WOODRUFF: Back to you, then,
20 Commissioner Gaw.

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Mr. Featherstone, are you suggesting that
23 there needs to be some sort of an agreement in regard to
24 payment of these costs before there's a lifting of any
25 stay by the Commission or not?

1 A. I don't think that that has anything to do
2 with the stay.

3 Q. Okay. So in other words, you just think
4 that there needs to be continued discussion and work
5 toward trying to resolve how this line is going to be
6 relocated, No. 1; would that be accurate?

7 A. Yes.

8 Q. And who's going to pay for it?

9 A. Who's going to reimburse Trigen for the
10 costs associated with relocation, capping, and ultimately
11 maybe even the relooping of the line.

12 Q. Okay. And do you know whether there is any
13 precedent in regard -- I'm sure there must be -- in regard
14 to who's responsible for those costs either in regard to
15 this particular type of utility or other utilities?

16 A. I can't think of a project offhand.

17 Q. It happens all the time, the lines are
18 relocated in other utilities, correct?

19 A. Yes. I know that in -- generally when
20 highway projects, when they are granted rights of way to
21 build facilities along highways and there's road
22 construction all the time, those are generally at the
23 expense of the company.

24 Q. Of the utility?

25 A. Of the utility, and those are spread back

1 to ratepayers. In those instances, I can't think of any
2 that would be -- that would rise to the level of
3 15 percent of the company's revenues.

4 Q. Right. But in general in those situations
5 there is not -- first of all, there is not any question
6 about the company being responsible for the charges; that
7 would be correct?

8 A. That's correct.

9 Q. And second of all, Staff would not be
10 questioning the prudence of those expenditures by the
11 company?

12 A. That's right.

13 Q. In this case, you're suggesting that
14 there's a difference, and as I understand it in both of
15 those issues. Am I following you correctly or not?

16 A. I don't think we've addressed the need and
17 whether or not it's prudent. We just don't have enough
18 information. It may be that as you study the system,
19 maybe it doesn't need to be relooped, but that's way too
20 early to tell. So that's a substantial part of the cost.
21 In terms of prudence, we're not taking a position that
22 it's imprudent by any means.

23 Q. So what is the -- first of all, what
24 authority does -- if you know, and this may not be an
25 appropriate question. What authority is there for this

1 Commission to continue to analyze whether or not Kansas
2 City pays the cost of this relocation in a proceeding in
3 front of the Commission, if you know?

4 And again, if this is -- if you don't know
5 the answer to that, if it's a legal question, I'll defer
6 it to the attorneys in a little while.

7 A. It's probably more a legal question. I
8 have looked at the tariffs, and there doesn't seem to be
9 any direction. The tariffs are silent on how to handle
10 this kind of situation.

11 There is a portion of the tariffs that
12 address extensions, and while that isn't right on point,
13 it's the same concept. When they do an evaluation of any
14 future revenue impact or load increase to their company's
15 sales, and they at some point make a determination with
16 the customer as to how much reimbursement, if any, is
17 going to be required of the customer to make the line
18 extension, that's fairly common. And, of course, the
19 concept underlying that is the cost causer.

20 Q. Okay. So what is the -- what's the result
21 of that again? What's the result of those provisions in
22 the tariff?

23 A. What they do is they allow for the company
24 to sit down with a prospective customer and to make a
25 determination about how much cost the customer is going to

1 cause the company to provide the service. And if the
2 revenues are going to be sufficient long term, then
3 through negotiation they can sit down and determine how
4 much, if any, of the costs would be borne by the customer.

5 Q. Okay. And I know there's been -- I'm sure
6 there's been plenty of testimony on this, but for my sake,
7 what -- are these lines currently located in street right
8 of way or --

9 A. It's my understanding they are. I'm not
10 the best person to ask the operational side.

11 Q. That's okay.

12 COMMISSIONER GAW: I think that's all I
13 have, Judge. Thank you.

14 JUDGE WOODRUFF: All right. Thank you.
15 Then for recross based on questions from the Bench,
16 beginning with Kansas City?

17 MR. COMLEY: I don't have any questions.

18 JUDGE WOODRUFF: Trigen?

19 MR. DeFORD: Just one, your Honor.

20 RE CROSS-EXAMINATION BY MR. DeFORD:

21 Q. Good afternoon, Mr. Featherstone.

22 A. Good afternoon.

23 Q. Mr. Featherstone, assuming that the
24 Staff -- let me back up.

25 Assuming the City and Trigen have

1 negotiated to impasse on cost recovery for all of these
2 particular type of costs, whether it be cutting and
3 capping or relooping, and the City has declined to
4 reimburse Trigen any of those costs, what would Staff's
5 position be on recovery of those costs in rates for
6 Trigen's other customers?

7 A. I think we'd have to look at it at the time
8 you filed the rate application to seek recovery and the
9 review of how that process between the City and Trigen
10 actually unfolded. We would have to, I think, be able to
11 try to see, try to get behind those negotiations and see
12 how good faith they were, how hard Trigen pushed to get
13 that recovery, and I think equally what is going to be the
14 rate impact.

15 This is a fairly unusual situation in the
16 sense that I dare say that Missouri Gas Energy, Kansas
17 City Power & Light, while they're relocating lines, it's
18 not 15 percent of their revenues, and they don't have 60
19 customers that they can pass these costs on to. So the
20 circumstances are much different for Trigen, and the
21 financial impacts would be much different for Trigen than
22 they would for other utilities that are involved in this
23 project.

24 So I can't really say what our position
25 would be. If you -- my best read today is there's been no

1 attempt to sit down with the City to negotiate. If you
2 tell me that there is an attempt later and two years from
3 now you file a rate case, we would just have to review
4 that at the time.

5 MR. DeFORD: Thank you, Mr. Featherstone.

6 JUDGE WOODRUFF: All right. And for
7 Jackson County?

8 MR. FINNEGAN: No questions.

9 JUDGE WOODRUFF: Any redirect?

10 MR. FRANSON: No, your Honor.

11 JUDGE WOODRUFF: Mr. Featherstone, you can
12 step down.

13 Is that all the evidence the Staff has?

14 MR. FRANSON: Staff has no other evidence
15 or witnesses. Thank you, your Honor.

16 JUDGE WOODRUFF: Well, then we need to
17 decide what to do about any sort of written argument or
18 closing statements from the parties. The Commission needs
19 to act on this very quickly. I'm going to ask the court
20 reporter to expedite the transcript. I believe I told her
21 earlier Wednesday, but I'm going to ask for it tomorrow.

22 And what I'd like is either closing
23 arguments today or written arguments on Wednesday, and
24 I'll just throw it out to the parties, which would they
25 prefer to do?

1 MR. FINNEGAN: I think I'd prefer the
2 written argument.

3 JUDGE WOODRUFF: It's been my experience
4 I'll probably get a better result from the written
5 argument. What I'd like to do, then, is request the
6 written arguments by Wednesday at noon.

7 COMMISSIONER GAW: I have just a few
8 questions. From Trigen's standpoint, is Trigen currently
9 being represented by the current owner, by the prospective
10 owner, and are both here?

11 MR. DeFORD: Your Honor, that's part of the
12 problem that we're experiencing. Current ownership
13 remains in Suez Track Development. Thermal has not yet
14 closed the transaction, and in large part it's because the
15 Pennsylvania Commission has yet to decide, and the
16 entirety of the transaction can't close until we receive
17 that decision.

18 If you believe the current rumor, they are
19 meeting on the 7th of April and we could have a decision
20 on that date, and the closing could occur then as early as
21 the end of April.

22 COMMISSIONER GAW: Does this matter impact
23 that closing in any way?

24 MR. DeFORD: This matter does not, to my
25 knowledge.

1 COMMISSIONER GAW: All right.

2 MR. DeFORD: In fact, your Honor, the

3 Missouri Commission had already approved the --

4 COMMISSIONER GAW: I'm aware of that. I'm

5 just trying to understand. I guess the premise of that is

6 whether or not the buyer was aware of this issue at the

7 time that they entered into the initial contract to

8 purchase.

9 MR. DeFORD: The buyer was generally aware

10 of the issue. I don't believe that the buyer had the

11 knowledge that we do today as to where the negotiations

12 have taken us.

13 COMMISSIONER GAW: And the seller, were

14 they aware of it?

15 MR. DeFORD: Yes, the seller has been aware

16 of this as it progressed.

17 COMMISSIONER GAW: Okay. Are there -- will

18 there be legal arguments as to whether or not the cost of

19 this relocation could potentially be placed in part on the

20 City of Kansas City?

21 MR. COMLEY: Yes.

22 COMMISSIONER GAW: Yes, there will be from

23 the County?

24 MR. FINNEGAN: Yes.

25 COMMISSIONER GAW: And the City I'm

1 assuming is not willing to pay those costs still?

2 MR. COMLEY: I'll go on the record as

3 saying that, yes.

4 MR. DeFORD: And I believe we'd indicate

5 that we have engaged in extensive negotiations with the

6 City and we have, in fact, reached impasse and the

7 decision that the City would not reimburse. I think

8 that's where we are.

9 MR. COMLEY: I think there's two pieces of

10 correspondence that I'll talk to Mr. DeFord about that may

11 be enlightening to the Commission.

12 COMMISSIONER GAW: I think that's all I

13 have, Judge. Thank you.

14 JUDGE WOODRUFF: All right, then. As I

15 indicated, we will expect a transcript tomorrow, written

16 arguments Wednesday at noon, and there was also the matter

17 of the Exhibit 9, which is late-filed exhibit, which is to

18 be filed tomorrow. If there's objections to its receipt,

19 you can make that in your arguments on Wednesday.

20 MR. FRANSON: One other thing, your Honor.

21 Mr. Comley referred to the possibility of two documents

22 that might be enlightening. Are we going to be seeing

23 other late-filed exhibits?

24 MR. COMLEY: I don't know. I'll talk to

25 Mr. DeFord. If we do, we'll ask special leave to add

1 those to the record.

2 MR. FRANSON: Thank you.

3 JUDGE WOODRUFF: If you can do that

4 tomorrow also.

5 MR. FINNEGAN: I have one question. What

6 is Exhibit 6?

7 JUDGE WOODRUFF: That was the letter from

8 Trigen to Jackson County dated February 22nd. It was

9 attached to your complaint.

10 MR. FINNEGAN: Okay.

11 JUDGE WOODRUFF: And I show all the

12 exhibits except Exhibit 9 -- 11 exhibits altogether, and I

13 show them all as being received other than Exhibit 9.

14 Anything else while we're on the record?

15 MR. FRANSON: Yes, your Honor. Briefly in

16 regard to the documents that may or may not be forthcoming

17 from Mr. Comley and/or Mr. DeFord, Staff certainly hasn't

18 seen those, but there's been an indication they may shed

19 some light on some of the issues before the Commission,

20 including cost recovery. And the Staff would certainly

21 encourage production of those documents as timely and as

22 quickly as possible so we have a complete record.

23 JUDGE WOODRUFF: In fact, let's go ahead

24 and assign those documents a prospective No. 12 so that

25 they'll be separate from 9. And also show them to be

1 filed Tuesday, and any objections would be in the
2 Wednesday argument filing.

3 Anything else? All right. Hearing nothing
4 and seeing nothing, at this time then we are adjourned.
5 Thank you.

6 WHEREUPON, the hearing of this case was
7 concluded.

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