

At a session of the Public Service Commission held at its office in Jefferson City on the 27th day of April, 2006.

**Case No. HA-2006-0294**

Effective Date: April 27, 2006

Several parties sought intervention in the case. Missouri Gas Energy (MGE) was allowed to intervene on February 24, 2006. Truman Medical Center (Truman) also intervened. The parties met for a prehearing conference and agreed to a procedural

schedule, including deadlines for testimony, a list of issues, and briefs. Rebuttal testimony was due on April 13, 2006.

On April 12, 2006, at 12:16 p.m., one day before its rebuttal testimony was due, MGE filed a Request for Extension of Filing Deadlines and Request for Expedited Treatment. MGE claimed in its Request that it “had not planned on hiring an outside consultant for this matter,” but because “many of the data request responses from Trigen and Truman were marked as highly confidential . . . MGE decided to hire a consultant to review the responses.”<sup>1</sup> MGE claimed in paragraph three of its Request that it served data requests on Trigen and Truman on March 20, 2006, and that responses from Trigen and Truman were received by March 29 and April 10, respectively. MGE stated that its outside consultant signed a nondisclosure agreement on April 10 but “has not yet had an opportunity to review the data request responses and other HC information involved in this proceeding.”<sup>2</sup> MGE sought until April 27 to file rebuttal testimony and asked the Commission to extend the dates for surrebuttal, the list of issues, and the prehearing brief.

The Commission directed the parties to respond to MGE’s Request. Trigen noted in its response that it included highly confidential information with its initial Application, that its direct testimony filed March 16 included two schedules designated highly confidential, and that its data request responses served on MGE by March 29 included highly confidential information. Trigen argued that MGE was aware of highly confidential information in the case as early as the date Trigen filed its Application in January, 2006. Trigen also argued that the reference to highly confidential information in its data request responses was

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<sup>1</sup> Paragraph 4 of MGE’s Request.

<sup>2</sup> Id.

limited to five, two of which referred MGE to highly confidential Appendix C to its January 10, 2006 Application.

Trigen also took issue with MGE's assertion that MGE served data requests on Truman on March 20, 2006. Trigen claimed those data requests were not served until April 4 and that Truman responded on April 10. Truman then filed a response to MGE's Request "adopt[ing] and incorporate[ing] by reference the response of Trigen,"<sup>3</sup> thereby asserting that it did not received data requests until April 4.

The Staff of the Commission filed a response to MGE's Request on April 13. The pleading was captioned Joint Motion for Expedited Procedural Schedule and Other Procedural Matters. But the title of the pleading belied its substance because Staff did not argue for a change of the procedural schedule. Instead, Staff proposed another alternative to MGE's proposals, which included a modest extension of the filing deadlines. Thereafter, Staff filed a corrected pleading entitled Staff's Response to MGE's Request for Extension of Filing Deadlines and Request for Expedited Treatment. The substance of that pleading was the same as the one titled Joint Motion.

The Commission issued an order denying the request to extend filing deadlines on April 13, 2006, finding that MGE did not intend to hire an outside consultant until late in this case, notwithstanding its knowledge of highly confidential information as early as the date it filed for intervention, February 9, 2006. The Commission also found that in spite of Trigen's filing of highly confidential schedules on March 16, MGE did not seek a consultant until late in the case. The Commission further found that MGE should have known that the nature of

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<sup>3</sup> Paragraph 1 of Truman's Response.

its data requests, whether served on March 20 or April 4, would invite a highly confidential response, necessitating the need for an outside consultant to review the material.

After the Commission's April 13 order was entered, MGE filed a Motion for Reconsideration and Response to Staff's Motion for Expedited Procedural Schedule. MGE adopts a new rationale for extending the filing deadlines. MGE now claims that because Trigen provided information to MGE in the form of data request (DR) responses that seem to be inconsistent with other information that Trigen had provided to MGE, a modest amendment to the procedural schedule was appropriate. Specifically, MGE points to responses to DR Nos. 6, 7, and 8 as "evidence of Trigen engaging in construction activities outside of its certificated territory."<sup>4</sup> Therefore, the procedural schedule should be amended to allow the Staff of the Commission to investigate.

Trigen filed a response to the Motion for Reconsideration on April 14. Trigen points out that the Motion for Reconsideration offers a new rationale for MGE's request to extend the filing deadlines. Trigen further asserts that the Staff has been aware of the information provided in the responses to DR Nos. 6, 7, and 8 since February 1, 2006, and that it had discussed this matter with the Staff.

The Staff of the Commission filed a response on April 17 noting MGE's new rationale for extension of the filing deadlines. The Staff agrees with Trigen that the matter concerning Trigen's responses to DR Nos. 6, 7, and 8 is not a matter appropriately addressed by altering the procedural schedule in this case. The Staff asks the Commission to deny MGE's Motion for Reconsideration.

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<sup>4</sup> Motion for Reconsideration at para 7.

The Commission finds that the data request responses that MGE complains of in this Motion for Reconsideration are not related to those it complained of in its original request to extend filing deadlines. MGE originally complained that the inclusion of highly confidential information in data responses caused it to seek an outside consultant. Trigen's responses to DR Nos. 6, 7 and 8 do not contain highly confidential information and are unrelated to the grounds for which MGE first sought to extend the filing deadlines.

Commission Rule 4 CSR 240-2.160 provides that motions for reconsideration shall set forth specifically the grounds on which the applicant considers an order to be unlawful, unjust, or unreasonable. The Commission finds that MGE has not set forth the grounds on which the Commission's April 13, 2006 order denying the request to extend filing deadlines was unlawful, unjust, or unreasonable.

**IT IS ORDERED THAT:**

1. Missouri Gas Energy's Motion for Reconsideration dated April 13, 2006, is denied.
2. This order shall become effective on April 27, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Reed, Regulatory Law Judge