BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in Its Charges for Electric Service to Begin the Implementation of Its Regulatory Plan	)))))	Case No. ER-2006-0314

MOTION TO COMPEL RESPONSES TO DATA REQUESTS
AND FOR EXPEDITED TREATMENT

COMES NOW Trigen-Kansas City Energy Corporation ("Trigen") and for its Motion to Compel Responses to Data Requests and For Expedited Treatment ("Motion") pursuant to 4 CSR 240-2.090 and 4 CSR 240-2.080 respectfully states as follows:

1. On August 4, 2006, Trigen served its data request numbers 26 through 39 on Kansas City Power & Light Company ("KCPL") (a copy of said data requests are attached hereto and incorporated herein by this reference). On August 14, 2006[1], KCPL sent to counsel for Trigen its objections to the following data requests: 26, 27(b) and 27(c), 28, 29, 30, 31, 32, 34, 35, 37, 38 and 39. (a copy of said objections are attached hereto)

2. Pursuant to 4 CSR 240-2.090(8), the undersigned counsel for Trigen contacted counsel for KCPL by telephone on August 18, 2006, to confer regarding the subject objections. After such telephone conversation, the undersigned attempted to contact the presiding officer to arrange a telephone conference with the presiding officer, counsel for KCPL and counsel for Trigen, but was unable to reach the presiding officer until August 21, 2006. A telephone conference with the presiding officer, counsel for

[1] Counsel for Trigen was out of the office on August 14 when these objections were sent to him, so these objections were actually received by counsel for Trigen on August 15.

KCPL and counsel for Trigen then took place on August 21, 2006, concerning this matter, but to no avail. By his signature below, the undersigned counsel therefore certifies compliance with 4 CSR 240-2.090(8).

3. As a threshold matter, *each* of KCPL's objections claim that the subject data request is "irrelevant and immaterial" and appears to object on the basis that the requested information is confidential or proprietary although the latter objection is not clear ("information that would be of significant benefit to Trigen as a competitor, but of no relevance to the ratemaking process"). Therefore, some background on objections in Commission proceedings based on relevancy and confidentiality will be presented first.

4. Regarding relevancy, as the Commission has previously stated:

> Discovery is available in cases before the Commission on the same basis as in civil cases in circuit court. Likewise, the scope of discovery is the same as in civil cases generally under Supreme Court Rule 56.01(b)(1), which provides:
>
> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

In the Matter of the Application of Union Electric Company, Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions,

2004 Mo. PSC LEXIS 348, Case No. EO-2004-0108, Order Dated March 16, 2004. That case, as the caption would suggest, dealt with a proposed transfer of assets, which was subject only to the "not detrimental" standard. However, in that order, in addressing the discovery issue, the Commission further stated that:

> In Commission proceedings, evidentiary relevance is determined by reference to the Commission's statutory mandate as well as the pleadings and testimony filed by the parties. Thus, for example, the Commission's obligation **in a general rate case is to consider "all relevant factors" in setting just and reasonable rates, not merely those that the parties have included in their pleadings.** The Commission is also mandated to ensure that utility facilities are safe and adequate and that charges are just and reasonable, not in excess of those permitted by law or Commission order, and not discriminatory or preferential. The Commission must also examine the quality of the Company's service and product and determine whether improvements are needed to protect the interest and welfare of the public and the safety and health of the Company's customers and employees. The Commission is expressly required to examine the dealings of regulated entities with their unregulated affiliates. These issues are relevant in actions before the Commission whether or not they appear in the pleadings. *Id.* (emphasis added)

Furthermore, in that case, which was not even a general rate case, the Commission stated that "As a general proposition, every inquiry that relates to the operations of Union Electric . . . will be relevant for the purposes of discovery in this case." *Id.*

5. Given that the instant proceeding is a general rate case filed by KCPL, Trigen submits that each of the attached data requests to which KCPL has objected are clearly relevant, when examined in light of the foregoing. This will be discussed further below.

6. Regarding KCPL's objection that the data requests seek confidential or proprietary information, the Commission must recall that a protective order was issued in this case (as in other rate cases), on or about February 1, 2006. As the Commission found

in *In the Matter of the Application of Missouri RSA No. 5 Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*, 2006 Mo. PSC LEXIS 374, Case No. TO-2006-0172, Order Granting Motion to Compel Dated March 30, 2006, privileged or confidential information can be so designated and protected under the Commission's protective order issued in the case, if such information is properly designated by KCPL pursuant to the protective order. This is therefore not a proper basis for objection, and will not be repeated below but applies to each data request discussed.

7. Many of KCPL's objections are repetitious, raising the same objections whether applicable or not; therefore, many of Trigen's specific responses set forth below are likewise repetitious, and the undersigned would like to apologize for that in advance since it does not make for riveting reading. Turning to the specific data requests at issue[2]:

DR 26:

Given that this is a general rate case filed by KCPL, the marketing operations and activities of KCPL, whether executive-level personnel of KCPL are involved in marketing operations, and marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence. As stated above in paragraph 4, "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . and **the identity and location of persons having knowledge of any discoverable matter**." (emphasis added) The data request is relevant.

[2] The data requests, as well as the objections, are included in their entirety on the attachments hereto. Given the number of data requests to which KCPL has objected, the data requests and the corresponding objections will not be repeated in the body of this Motion.

DR 27[3]:

Again, given that this is a general rate case filed by KCPL, the marketing operations and activities of KCPL, including but not limited to marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence. This is particularly true now that KCPL has had approved, in its "regulatory plan" case, several promotional programs the ostensible purpose of which is to reduce demand load on its system. Given that the marketing efforts (especially efforts directed at moving load from alternative energy sources such as Trigen) would appear to conflict with the promotional programs to reduce demand load, whether and to what extent ratepayers should be required to foot the bill for expenses for such conflicting efforts seems obviously relevant. As for KCPL's objection that subpart (c) seeks information outside the test year, Trigen submits that requesting 5 years' worth of data is relevant for determining a baseline or normalized amount of such expense.[4] However, if the Commission determines that KCPL should not be required to provide this information for any period prior to the test year, KCPL should at least be required to provide the information beginning with the first day of the test year through the present date.

DR 28:

This request relates directly to the prefiled direct testimony of KCPL witness Susan K. Nathan, and the promotional programs approved in KCPL's recent "regulatory plan" case, and as such, the relevance of the request should be beyond question. Furthermore, once again, given that this is a general rate case filed by KCPL, the

[3] KCPL has objected to only subparts (b) and (c) of DR 27.
[4] *See, In the Matter of the Application of Missouri RSA No. 5 Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*, 2006 Mo. PSC LEXIS 374, Case No. TO-2006-0172, Order Granting Motion to Compel Dated March 30, 2006, providing for 3 years' worth of data in that case.

marketing operations and activities of KCPL, including but not limited to marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence. This is particularly true now that KCPL has had approved, in its "regulatory plan" case, several promotional programs the ostensible purpose of which is to reduce demand load on its system. Given that the marketing efforts (especially efforts directed at moving load from alternative energy sources such as Trigen) would appear to conflict with the promotional programs to reduce demand load, whether and to what extent ratepayers should be required to foot the bill for expenses for such conflicting efforts seems obviously relevant.

It is not clear from KCPL's objection how it believes the request to be "vague, ambiguous, imprecise" or "overly broad, unduly burdensome, expensive, oppressive and requires time-consuming responses," but a reading of the data request itself reveals this not to be the case – confirming or denying certain statements and explaining its position and its actions surely does not constitute such a hardship on a company the size of KCPL. As for KCPL's statement that the request seeks information not within its possession, no explanation is given as to why the requested information is not in its possession (and is of a type one would expect KCPL to maintain) nor does KCPL indicate in whose possession such information would be. Finally, as for KCPL's objection that the request is not limited to any stated period of time, if the Commission determines that a period of time should be stated, KCPL should at least be required to provide the information beginning with the first day of the test year through the present date.

DR 29:

Obviously, Trigen disagrees with KCPL's assertion that this request contains "argumentative statements of philosophy rather than requests for factual information;" however, as the Commission is aware, "policy" witnesses are not uncommon in proceedings before the Commission[5] so to the extent that the request seeks KCPL's position on such it would still be relevant. This request relates directly to the promotional programs approved in KCPL's recent "regulatory plan" case which are addressed in the prefiled direct testimony of KCPL witness Susan K. Nathan and are therefore relevant.

It is not clear from KCPL's objection how it believes the request to be "vague, ambiguous, imprecise" or "overly broad, unduly burdensome, expensive, oppressive and requires time-consuming responses," but a reading of the data request itself reveals this not to be the case – confirming or denying certain statements and explaining its position and its actions surely does not constitute such a hardship on a company the size of KCPL. If KCPL is referring to use of the term "societal benefit," such term is used in Ms. Nathan's testimony. As for KCPL's statement that the request seeks information not within its possession, no explanation is given as to what requested information it is referring in its objection, nor does KCPL indicate in whose possession such information would be. Finally, as for KCPL's objection that the request is not limited to any stated period of time, it is not apparent how this objection even applies to this request; however, if the Commission determines that a period of time should be stated, KCPL should at least be required to provide the information beginning with the first day of the test year through the present date.

DR 30:

[5] KCPL's witness Giles' direct testimony is purportedly addressed to the issue of "Overview and Policy."

Once more, given that this is a general rate case filed by KCPL, the marketing operations and activities of KCPL, including but not limited to marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence. This is particularly true now that KCPL has had approved, in its "regulatory plan" case, several promotional programs the ostensible purpose of which is to reduce demand load on its system. Given that the marketing efforts (especially efforts directed at moving load from alternative energy sources such as Trigen) would appear to conflict with the promotional programs to reduce demand load, whether and to what extent ratepayers should be required to foot the bill for expenses for such conflicting efforts seems obviously relevant. Furthermore, the persons responsible for such efforts and the identity of persons having knowledge of discoverable information are relevant and therefore discoverable. Finally, Trigen obviously disagrees with KCPL's assertion that this request contains "argumentative statements of philosophy rather than requests for factual information;" however, as the Commission is aware, "policy" witnesses are not uncommon in proceedings before the Commission so to the extent that the request seeks KCPL's position on such it would still be relevant.

DR 31:

This request relates to the prefiled direct testimony of KCPL witness Susan K. Nathan, and the promotional programs approved in KCPL's recent "regulatory plan" case, and as such, the relevance of the request should be beyond question. Furthermore, once again, given that this is a general rate case filed by KCPL, the marketing operations and activities of KCPL, including but not limited to marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence.

This is particularly true now that KCPL has had approved, in its "regulatory plan" case, several promotional programs the ostensible purpose of which is to reduce demand load on its system. Given that the marketing efforts (especially efforts directed at moving load from alternative energy sources such as Trigen) would appear to conflict with the promotional programs to reduce demand load, whether and to what extent ratepayers should be required to foot the bill for expenses for such conflicting efforts seems obviously relevant.

It is not clear from KCPL's objection how it believes the request to be "vague, ambiguous, imprecise" or "overly broad, unduly burdensome, expensive, oppressive and requires time-consuming responses," but a reading of the data request itself reveals this not to be the case – confirming or denying certain statements and explaining its position and its actions surely does not constitute such a hardship on a company the size of KCPL. As for KCPL's statement that the request seeks information not within its possession, no explanation is given as to why the requested information is not in its possession (and is of a type one would expect KCPL to maintain) nor does KCPL indicate in whose possession such information would be. As for KCPL's objection that the request is not limited to any stated period of time, if the Commission determines that a period of time should be stated, KCPL should at least be required to provide the information beginning with the first day of the test year through the present date. Finally, Trigen obviously disagrees with KCPL's assertion that this request contains "argumentative statements of philosophy rather than requests for factual information;" however, as the Commission is aware, "policy" witnesses are not uncommon in proceedings before the Commission so to the extent that the request seeks KCPL's position on such it would still be relevant.

DR 32:

As stated numerous times above, the marketing operations and activities of KCPL, including but not limited to marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence. This is particularly true now that KCPL has had approved, in its "regulatory plan" case, several promotional programs the ostensible purpose of which is to reduce demand load on its system. Given that the marketing efforts (especially efforts directed at moving load from alternative energy sources such as Trigen) would appear to conflict with the promotional programs to reduce demand load, whether and to what extent ratepayers should be required to foot the bill for expenses for such conflicting efforts seems obviously relevant.

It is not clear from KCPL's objection how it believes the request to be "vague, ambiguous, imprecise" or "overly broad, unduly burdensome, expensive, oppressive and requires time-consuming responses," but a reading of the data request itself reveals this not to be the case. As for KCPL's statement that the request seeks information not within its possession, no explanation is given as to why the requested information is not in its possession (and is of a type one would expect KCPL to maintain) nor does KCPL indicate in whose possession such information would be. Also, it should be noted that KCPL objects that the request **both** requests historical information outside the test year **and** that the request is not limited to any stated period of time; Trigen submits that KCPL should at least be required to provide the requested information beginning with the first day of the test year through the present date. Finally, Trigen obviously disagrees with KCPL's assertion that this request contains "argumentative statements of philosophy

rather than requests for factual information;" however, as the Commission is aware, "policy" witnesses are not uncommon in proceedings before the Commission so to the extent that the request seeks KCPL's position on such it would still be relevant.

DR 34:

KCPL's objection to this data request is truly perplexing, and vividly reveals the spurious nature of KCPL's objections. KCPL's objection states that "DR No. 34 seeks information regarding KCPL's cost of production that is of no relevance." This is a rate case; cost of production is relevant, despite KCPL's desire that it not be.

It is not clear from KCPL's objection how it believes the request to be "vague, ambiguous, imprecise" or "overly broad, unduly burdensome, expensive, oppressive and requires time-consuming responses," but a reading of the data request itself reveals this not to be the case. As for KCPL's statement that the request seeks information not within its possession, no explanation is given as to why the requested information is not in its possession (and is of a type one would expect KCPL to maintain) nor does KCPL indicate in whose possession such information would be. As for KCPL's objection that the request is not limited to any stated period of time, if the Commission determines that a period of time should be stated, KCPL should at least be required to provide the information beginning with the first day of the test year through the present date.

DR 35:

The prefiled direct testimony of KCPL witness Susan K. Nathan (page 10) states, in reference to the promotional programs addressed in KCPL's "regulatory plan," that "The benefits of the program include . . . Other societal benefits such as reduced

environmental emissions." This request relates directly to emissions, and as such is clearly relevant.

Given the information requested in this data request, it is not clear from KCPL's objection why it believes this request must be limited to a stated time period. Further, it is not clear from KCPL's objection how it believes the request to be "vague, ambiguous, imprecise" or "overly broad, unduly burdensome, expensive, oppressive and requires time-consuming responses," but a reading of the data request itself reveals this not to be the case.

DR 37:

Once again, given that this is a general rate case filed by KCPL, the marketing operations and activities of KCPL, including but not limited to marketing expenses and salaries, are clearly relevant, *i.e.*, reasonably calculated to lead to discovery of admissible evidence. This is particularly true now that KCPL has had approved, in its "regulatory plan" case, several promotional programs the ostensible purpose of which is to reduce demand load on its system. Given that the marketing efforts (especially efforts directed at moving load from alternative energy sources such as Trigen) would appear to conflict with the promotional programs to reduce demand load, whether and to what extent ratepayers should be required to foot the bill for expenses for such conflicting efforts seems obviously relevant.

DR 39[6]:

In a general rate case such as this, KCPL's charitable donations – including but not limited to the amount of and criteria for such donations – and whether KCPL is seeking rate recovery for such donations, is obviously relevant. Likewise, how such

[6] Trigen is not seeking at this time to compel response by KCPL to DR 38.

donations may fall within the purview of the Commission's promotional practices rule is also relevant, given that this is a general rate case.

8. During the telephone conference on August 21, 2006, the presiding officer inquired as to what and/or where KCPL should be required to provide responses, *i.e.*, could KCPL simply respond by saying, in effect, "the information is somewhere in our building, come and get it." Trigen respectfully submits that the answer to the foregoing is that KCPL should not be allowed to respond in such manner, but that KCPL should be required to compile and provide the requested material to Trigen, preferably in electronic format. It is KCPL, not Trigen, which knows (or at least should know) who in the KCPL organization has the information or knowledge necessary for full and complete responses, and where within KCPL such information can be found.

The presiding officer's question seemed driven by two considerations – (1) whether the requested information was voluminous and (2) the procedural schedule timeline[7]. In regard to the voluminous consideration, it should be remembered that the protective order issued herein defines "voluminous" as a **single document**, book, etc. of more than 150 pages. It is unlikely that any single document covered by the above data requests is in excess of 150 pages.

As for the procedural schedule timeline, as the Commission can tell from the lengthy discussion above, Trigen believes that the data requests are clearly relevant, and that KCPL should have provided responses to them without forcing a Motion such as this; answering the requests as submitted would not have submitted KCPL to any "time-crunch." Therefore, KCPL should not now be allowed to claim hardship due to the

[7] The settlement conference for this case is set for August 28 – September 1; revenue requirement rebuttal testimony is scheduled for September 8; rate design rebuttal is scheduled for September 15; and the hearing is set to begin October 16.

upcoming procedural schedule events in answering the data requests, nor should KCPL be allowed, through its obfuscation, to impose such a hardship on Trigen (which, as the Commission is aware, is far smaller than KCPL).

Expedited Treatment

9. In support of its request for expedited treatment, pursuant to 4 CSR 240-2.080(16), Trigen states as follows. As stated above, counsel for Trigen was not able to arrange a teleconference with the presiding officer and counsel for KCPL, as required by the Commission's rule, until August 21, 2006. As the Commission is aware, Direct Testimony on rate design and class cost of service was due on August 22, 2006, and workpapers were due to the other parties shortly thereafter. Therefore, this Motion is being filed as soon as it could reasonably be filed.

Under the current procedural schedule for this case, a settlement conference is scheduled for August 28 through September 1, 2006; rebuttal testimony on revenue requirement is due September 8, 2006; rebuttal testimony on rate design and class cost of service is due September 15, 2006; the issue/witness list is due September 29, 2006; surrebuttal testimony is due October 6, 2006; prehearing briefs are due October 12, 2006; and the hearing is set to begin October 16, 2006. Therefore, time is of the essence in this matter if Trigen is to receive KCPL's responses to the subject data requests in sufficient time to do any good. Accordingly, Trigen respectfully requests that the Commission issue an order granting this Motion as expeditiously as possible, preferably by September 5, 2006, and in said order require KCPL to respond to the subject data requests as expeditiously as the Commission deems reasonable given that KCPL has had the subject data requests since August 4, 2006.

WHEREFORE, Trigen respectfully requests the Commission issue its order ordering KCPL to provide Trigen with responses to data request numbers 26, 27(b) and 27(c), 28, 29, 30, 31, 32, 34, 35, 37, and 39 as expeditiously as possible, preferably by September 5, 2006, and in said order require KCPL to respond to the subject data requests as expeditiously as the Commission deems reasonable.

Respectfully submitted,

/s/ Jeffrey A. Keevil

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel of record by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 25th day of August, 2006.

/s/ Jeffrey A. Keevil