

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

In the Matter of the Trigen-Kansas City Energy)	
Corporation's Tariffs to Increase Rates for)	Case No. HR-2008-0300
Customers of its Steam Service)	

**RESPONSE OF KANSAS CITY POWER & LIGHT COMPANY TO
TRIGEN'S MOTION TO RESTRICT ACCESS AND
MOTION TO COMPEL TRIGEN TO PROVIDE WORKPAPERS**

Kansas City Power & Light Company ("KCPL") hereby responds to the motion of Trigen-Kansas City Energy Corporation ("Trigen") to restrict access to highly confidential information. KCPL also respectfully requests that the Missouri Public Service Commission ("Commission") direct Trigen to provide the workpapers associated with its pre-filed testimony in this case. In support thereof, KCPL states as follows:

BACKGROUND

1. On March 12, 2008, Trigen filed an application for a rate increase in the above-captioned proceeding. Accompanying that application was the pre-filed direct testimony of six witnesses. On April 1, 2008, KCPL submitted an application to intervene in this proceeding. No objections were made to KCPL's application and on April 14, 2008, the Commission issued an order granting KCPL's application.

2. On May 1, 2008, Trigen submitted a motion to restrict access to "highly confidential" information, as that term is used in 4 CSR 240-2.135. The rule expressly restricts access to such information to "attorneys of record, or to outside experts that have been retained for purposes of the case."¹ Trigen seeks in its motion to choose which "attorneys of record" may receive highly confidential information.

¹ 4 CSR 240-2.135(4).

KCPL'S RESPONSE TO TRIGEN'S MOTION TO RESTRICT ACCESS

3. The gravamen of Trigen's position comes down to the fact that it draws a false distinction between in-house and outside counsel. Trigen argues that the distinction is relevant because the same in-house counsel for KCPL that reviews highly confidential information in this proceeding might some day represent KCPL in commercial contract negotiations with Trigen.² That argument is equally true for outside counsel. The same outside counsel that reviews highly confidential, commercially sensitive information in KCPL's rate cases might some day represent Trigen in commercial contract negotiations with KCPL. Rule 4 CSR 240-2.135(4) does not distinguish between in-house counsel for KCPL and outside counsel for Trigen.

4. KCPL also respectfully disagrees with Trigen's claim that "it is not clear that in-house attorneys of record (in reality, direct employees who happen to be attorneys) are precluded from having access to highly confidential information pursuant to the language of the rule."³ To the contrary, the rule is perfectly clear on this point. The rule provides:

Highly confidential information may be disclosed only to the attorneys of record, or outside experts that have been retained for the purpose of the case.

(A) Employees, officers, or directors of any of the parties in the proceeding, or any affiliate of a party, may not be outside experts for the purposes of this rule.⁴

5. Section A quoted above makes an express distinction between in-house and outside experts, *i.e.*, in-house experts do not have access to highly confidential information; outside experts hired for the case do have such access. There is no such distinction in all of Rule 4 CSR 240-2.135(4) for attorneys of record. The Commission could have treated experts and

2 Trigen Motion, at ¶ 5.

3 Trigen Motion, at ¶ 2.

4 4 CSR 240-2.135(4)(A).

attorneys of record similarly in this regard when it promulgated the rule, but it did not. A plain reading of the rule clearly conveys that attorneys of record have access to highly confidential information, period. The rule does not distinguish between in-house and outside counsel. It should also be noted that Rule 4 CSR 240-2.135 holds in-house and outside counsel to the same standard concerning their duty to control access to and the distribution of highly confidential information.

6. Trigen also incorrectly claims that preventing KCPL's in-house counsel from having access to highly confidential information will not burden the Company. This is incorrect for several reasons. First, such a restriction would require KCPL to incur greater legal expenses for outside counsel than it otherwise would. Second, KCPL intends for in-house counsel to participate in the selection of an outside expert for use in this case. Counsel needs to review Trigen's case in total to determine what skill sets it seeks in such an expert. Lastly, Trigen should not be permitted to dictate how KCPL allocates its legal resources or how in-house and outside counsel for KCPL interact. As Trigen points out, "substantial portions" of information undersigned counsel has already requested from Trigen "are deemed highly confidential by Trigen."⁵ Denying in-house counsel access to that information will greatly limit his ability to interact with outside counsel concerning the Company's legal strategy in this case.

5 Trigen Motion, at ¶ 2.

MOTION TO COMPEL

7. KCPL became a party to this proceeding on April 14, 2008. At that point, Trigen should have provided counsel for KCPL the workpapers associated with the pre-filed testimony of Trigen's witnesses. As acknowledged by Trigen, on April 18, 2008, undersigned counsel for KCPL requested those workpapers. Trigen has failed to provide them to undersigned counsel or to KCPL's outside counsel. Trigen has raised no objections to providing the workpapers to KCPL's outside counsel. Trigen has also failed even to provide a public version of the workpapers with the highly confidential information redacted.

8. Trigen's continuing failure to provide workpapers prejudices KCPL. KCPL is in the process of selecting an outside expert for this case. Counsel needs to review the workpapers of Trigen's witnesses to ascertain what specific skills the Company will require of its expert. Moreover, KCPL's employees that will participate in the case are hindered by Trigen's refusal to provide a public version of the workpapers. Each day Trigen refuses to provide its workpapers hinders KCPL in the preparation of its rebuttal testimony. If necessary, KCPL will move for additional time to submit its rebuttal testimony on this basis.

9. Trigen has not demonstrated good cause for its failure to provide workpapers to KCPL. KCPL therefore respectfully requests that the Commission direct Trigen to provide to counsel for KCPL a highly confidential version and a public version of the workpapers of its witnesses who pre-filed testimony in this case.

WHEREFORE, KCPL respectfully requests that the Commission deny Trigen's request to restrict access to highly confidential information and direct Trigen to provide the workpapers of its witnesses to undersigned counsel.

Respectfully submitted,

/s/ *Curtis D. Blanc*

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Dated: May 9, 2008

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, this 9th day of May, 2008 to all counsel of record in this case.

*/s/ Curtis D. Blanc*_____

Curtis D. Blanc