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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of July, 1999.

In the Matter of the Missouri Public)	
Service Commission's Motion to Adopt)	<u>Case No. HX-99-265</u>
Rules Regarding HVAC Services Affiliate)	
Transactions.)	

ORDER DENYING APPLICATION FOR REHEARING
AND MOTION FOR RECONSIDERATION

On May 25, 1999, the Commission authorized an Order of Rulemaking that was subsequently transmitted to the Missouri Secretary of State for publication in the Missouri Register and the Code of State Regulations. The Order of Rulemaking was published in the Missouri Register (Vol. 24, No. 13, page 1682) on July 1, 1999. The rule will become effective 30 days after its publication in the Code of State Regulations. On June 23, Trigen-Kansas City Energy Corporation (Trigen), filed an Application for Rehearing and Motion for Reconsideration.

Trigen purportedly filed its Application for Rehearing and Motion for Reconsideration by the authority found in Section 386.500, RSMo 1994, and 4 CSR 240-2.160. Section 386.500.1 provides in part as follows:

After an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, . . .

An application for rehearing or reconsideration is usually filed with regard to a decision or order issued in a contested case. A rulemaking

is not a contested case. See State ex rel. City of Springfield et al v. Public Service Commission, 812 S.W.2d 827, 834 (Mo. App. W.D. 1991). Nevertheless, the Commission will rule on the Application for Rehearing and Motion for Reconsideration on its merits, without deciding whether or not such an application is necessary or appropriate with regard to the Order of Rulemaking.

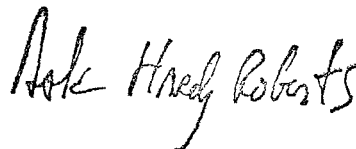
Section 386.500, RSMo (1994) provides that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." Trigen raises the same issues that the Commission considered during the comment period and public hearing mandated by Section 536.021, RSMo (1994). Those issues have been addressed by the Commission in the summary of comments contained within the Order of Rulemaking and will not be addressed again. Trigen has, in the judgment of the Commission, failed to establish sufficient reason to grant its Application for Rehearing and Motion for Reconsideration. The Application for Rehearing and Motion for Reconsideration will be denied.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing and Motion for Reconsideration filed by Trigen-Kansas City Energy Corporation is denied.

2. That this order shall become effective on July 8, 1999.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer and Schemenauer,
CC., concur.

Murray, C., dissents, with separate
dissenting opinion.

Crompton, C., absent.

Woodruff, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

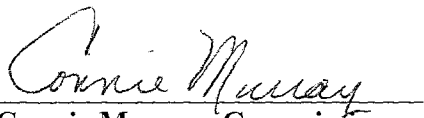
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DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I would grant the Application for Rehearing and Motion for Reconsideration. Applicant (Trigen-Kansas City Energy Corporation) raised legitimate concerns that the rule unlawfully adds to the provisions of Sections 386.754 to 386.764 RSMo Supp. 1998 (the HVAC Services Act). Section 386.760.1 of that Act expressly forbids the Commission to impose requirements regarding HVAC services that are inconsistent with or in addition to those set forth in the HVAC Services Act.

Therefore, I respectfully dissent from the denial of the Application for Rehearing and Motion for Reconsideration.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 8th day of July, 1999.