

KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

P. O. BOX 418679

KANSAS CITY, MISSOURI 64141-9679

LAW DEPARTMENT
(816) 556-2765

July 6, 1989

See
Mr. Harvey G. Hubbs
Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

HM-90-4

RE: In the matter of the application of Kansas City Power & Light Company for authority to sell its downtown Kansas City, Missouri, central station steam heat distribution system, and for the revocation of its Certificate of Public Convenience and Necessity to provide steam heat service.

Dear Mr. Hubbs:

In its Report and Order dated October 7, 1987, in Case No. HO-86-139, the Commission authorized KCPL to terminate central station steam heating utility service in downtown Kansas City, Missouri, as of December 31, 1991. The Commission as well directed KCPL to make a good faith effort to sell its steam system to a purchaser willing and able to provide steam service. Pursuant to that directive, KCPL issued a Request for Proposals and engaged in sales negotiations with Kinetic Energy Development Corporation. The history of these efforts is detailed in the filing KCPL made in Case No. HO-86-139 on December 30, 1988.

Subsequent to that time, KCPL has engaged in negotiations for the sale of the steam system with Trigen Energy Corporation, and is in the process of finalizing sales documentation. In order to afford the Commission and its Staff sufficient time to investigate this proposed sale to Trigen-Kansas City District Energy Corporation (a subsidiary of Trigen Energy Corporation), KCPL today files the above Application with currently available drafts of the sales documentation. KCPL anticipates that the documentation will be completed by the end of this month, and the definitive documents will be filed as late exhibits to this Application.

Trigen-Kansas City is filing concurrently its application for a certificate of public convenience and necessity to provide steam service to downtown Kansas City, Missouri. KCPL respectfully suggests that, due to their interrelation, KCPL's and Trigen's applications be consolidated.

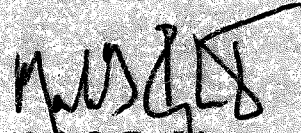
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JUL 6 1989

PUBLIC SERVICE COMMISSION

HD

Would you please bring this matter to the Commission's attention.


Mark G. English
Deputy General Counsel

cc: Martha Hogerty
George Rider

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of)
Kansas City Power & Light Company)
for authority to sell its downtown)
Kansas City, Missouri, central station)
steam heat distribution system, and for)
the revocation of its Certificate of)
Public Convenience and Necessity to)
provide steam heat service.)

Case No. HM-90-4

APPLICATION OF KANSAS CITY POWER & LIGHT COMPANY FOR AUTHORITY
TO SELL ITS DOWNTOWN KANSAS CITY, MISSOURI, CENTRAL STATION
STEAM HEAT DISTRIBUTION SYSTEM, AND TO CONFIRM THE REVOCATION OF ITS
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE
STEAM HEAT SERVICE.

Comes now Kansas City Power & Light Company (KCPL), pursuant to Sections 393.190, 393.130, 393.140 and 393.290, RSMo 1986, and 4 CSR 240-2.060, et seq., and applies (a) for authority to sell its downtown Kansas City, Missouri, central station steam heat distribution system to Trigen-Kansas City District Energy Corporation (Trigen-Kansas City), and (b) for confirmation of the cancellation of its Certificate of Public Convenience and Necessity to provide steam heat service in Kansas City, Missouri. In support thereof, KCPL states:

1. KCPL is a corporation duly organized and existing under the laws of the State of Missouri, with its principal office at 1330 Baltimore Avenue, Kansas City, MO 64105, and is an electrical corporation, heating company and public utility as defined in Section

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386.020, RSMo 1986. KCPL is engaged principally in the generation, transmission, distribution and sale of electric energy and power, and to a lesser extent in the furnishing of steam heating service. Electric energy is distributed in the States of Missouri and Kansas, and steam heating service is furnished to a certain area of downtown Kansas City, Missouri. The major portion of KCPL's revenues is derived from operations in Kansas City, Missouri, and adjacent areas.

2. Communications regarding this matter should be addressed to:

L. C. Rasmussen
Vice Chairman
Kansas City Power & Light Company
1330 Baltimore Avenue
Kansas City, MO 64105

Mark G. English
Deputy General Counsel
1330 Baltimore Avenue
Kansas City, MO 64105

3. In its Report and Order in Case No. HO-86-139, the Commission authorized the cessation of public utility steam service in downtown Kansas City, subject to KCPL's undertaking a good faith effort to sell the central station steam distribution system. KCPL was required to solicit proposals for sale or transfer of the system and conduct negotiations with respect to purchasers, and to report to the Commission as to its progress by December 31, 1988.

4. On December 30, 1988, KCPL filed its report in Case No. HO-86-139. The report detailed KCPL's efforts in preparing a Request for Proposal and attempting to negotiate a sale of the steam distribution piping with Kinetic Energy Development Corporation. KCPL stated that the negotiations were unsuccessful, and requested that the Commission relieve it of further obligation to seek a buyer. Subsequent to that time,

Trigen Energy Corporation (Trigen-Kansas City's parent) emerged as a potential financial supporter of Kinetic and ultimately became the principal with which KCPL resumed negotiations.

5. On June 1, 1989, KCPL, Trigen Energy Corporation (Trigen) and Kinetic signed a Memorandum of Understanding concerning the sale of KCPL's central station steam distribution system to Trigen for the sum of six million dollars (\$6,000,000.00), which was the amount offered for the system by Kinetic. KCPL and Trigen are in the final stages of negotiating the sales agreement and ancillary documents for this transaction. Copies of the current drafts of the sales documents are attached as Exhibit 1 hereto. The major documents drafted, and to be drafted, are briefly described as follows:

- a. Central Station Steam Distribution System Sales Agreement, which contains the terms, conditions, representations and warranties associated with the sale;
- b. Bill of sale and deed conveying KCPL's interest in the system to Trigen;
- c. Assignment of the Steam Service Agreement between KCPL and National Starch and Chemical Company to Trigen-Kansas City;
- d. Steam Service Agreement between KCPL and Trigen-Kansas City, providing for steam service to KCPL's turbine generators located at Grand Avenue Station.
- e. Transfer by KCPL to Trigen-Kansas City of 5,955 tons of banked SO₂ credits, which were created when KCPL switched from coal to gas as the primary fuel source for Grand Avenue Station.

6. KCPL believes that the contents of the sales documents will not change substantially from the current drafts in Exhibit 1. The Board of Directors of KCPL will

consider these documents in August, 1989, when Company management will recommend that the Board approve the transaction. A certified copy of the resolution of the Board approving this sale, and copies of the final sales documents, will be filed as late exhibits to this Application. It is anticipated that the sales documents will be completed by the end of July, 1989. KCPL has filed this Application in advance of the final sales documents to allow the Commission and its Staff additional time to conduct an investigation of this transaction.

7. Included in the assets proposed to be transferred to Trigen-Kansas City are 5,955 tons of SO₂ credits created as a result of changes to Grand Avenue Station's air emissions permit. After the electrical generation at Grand Avenue Station was retired in 1984, the remaining steam load did not permit the efficient burning of coal in the Station's boilers. KCPL thus switched from coal to gas as the primary fuel for Grand Avenue Station. This fuel switch resulted in significant reductions in the amount of SO₂ emissions from the Station, and KCPL applied to Missouri Department of Natural Resources for permission to "bank" these reductions. The Department approved KCPL's request, and as a result the permissible level of SO₂ emissions at the Station was greatly reduced; it is permissible to burn coal at the Station only when gas supplies are curtailed, and then for only ten days per year. Since Trigen-Kansas City intends to burn coal at the Station, it requested that these credits be transferred along with the assets of the steam system. The credits have potential value to KCPL, since KCPL may be able to use those credits to achieve SO₂ emissions limits to be imposed in the future on its existing power plants, or to meet such limits on future KCPL power plants. Because these credits are potentially useful at present or future electric generation facilities, KCPL requests that the

Commission specifically find that the proposed transfer of the credits is reasonable and approve such transfer.

8. KCPL thus requests authority and approval from the Commission of the sale of its central station steam distribution system, and a specific finding that the transfer of the banked credits is reasonable, upon the terms and conditions set forth in the documents contained in Exhibit 1.

9. Trigen-Kansas City has contemporaneously filed its Application for a certificate of public convenience and necessity to furnish public utility steam service to downtown Kansas City, Missouri, and for approval of rates and conditions for such service. In the event that the Commission approves and authorizes the sale of the system to Trigen-Kansas City, and grants its application of a certificate, KCPL requests that the Commission, pursuant to its October 7, 1987 Report and Order in Case No. HO-86-139 (authorizing KCPL to abandon steam service as of December 31, 1991) confirm the revocation, as of the closing of the sale, of any and all Certificates of Public Convenience and Necessity, or portions thereof, issued to KCPL pertaining to public utility steam service, and the release of KCPL from all public utility obligations to provide public utility steam service. KCPL is unaware of any Certificate issued to it which pertains specifically to public utility steam service; it has provided such steam service pursuant to the "blanket" certificate granted to it in Case No. 8560 (1934). The Commission did approve a public utility steam service territorial description in Case No. HO-83-274, and KCPL requests that this description also be cancelled upon sales closing.

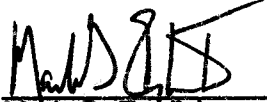
10. The proposed sale to Trigen-Kansas City will not be detrimental to the public interest.

WHEREFORE, KCPL respectfully requests the Order of the Commission (a) authorizing and approving the sale of its central station steam distribution system upon substantially the terms and conditions set forth in Exhibit 1, (b) specifically find that the transfer of the "banked" SO₂ credits to Trigen-Kansas City is reasonable, and approve such transfer, and (c) confirming the revocation, as of closing of the sale, of all Certificates of Public Convenience and Necessity, or portions thereof, granted to KCPL and relating to public utility steam service, and the release of KCPL from all public utility obligations to provide steam service.

Respectfully submitted,

Kansas City Power & Light Company

By 
L. C. Rasmussen


Mark G. English
Kansas City Power & Light Company
1330 Baltimore Avenue
Kansas City, MO 64105

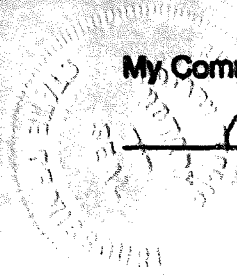
Attorney for Applicant
Kansas City Power & Light Company

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 6th day of July, 1989, before me, the undersigned, a notary public in and for the county and state aforesaid, came L. C. Rasmussen, Vice Chairman of Kansas City Power & Light Company, a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and who is personally known to me to be the same person who executed the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the free act and

deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the date last above written.


Ruth Butler
Notary Public

My Commission expires:

Aug 17, 1989

RUTH BUTLER
NOTARY PUBLIC STATE OF MISSOURI
JACKSON CO.
MY COMMISSION EXP. AUG. 17, 1989
ISSUED THRU MISSOURI NOTARY ASSOC.

July 5, 1989

CENTRAL STATION STEAM DISTRIBUTION SYSTEM SALES AGREEMENT

This Central Station Steam Distribution System Sales Agreement ("Agreement"), is entered into this ____ day of July, 1989, by and between Kansas City Power & Light Company ("KCPL"), a Missouri corporation, and Trigen-Kansas City District Energy Corporation ("Trigen"), a Delaware corporation.

WITNESSETH:

WHEREAS, the Missouri Public Service Commission ("Commission") in its Report and Order in Case No. HO-86-139 authorized KCPL to terminate central station district steam service in downtown Kansas City as of December 31, 1990, and directed it to make a good faith effort to sell its central station steam distribution system to a party willing and able to operate the steam system on a successful basis; and

WHEREAS, KCPL issued a Request for Proposals on January 25, 1988, seeking proposals for the purchase of its steam system, and

WHEREAS, KCPL received certain proposals on March 25, 1988, for the purchase of the steam system, including two alternative proposals from Kinetic Energy Development Corporation ("Kinetic"); and

WHEREAS, after evaluation of the proposals, KCPL accepted one of the Kinetic proposals on May 24, 1988; and

WHEREAS, subsequent to that acceptance KCPL, Trigen Energy Corporation (the parent company of Trigen) and Kinetic entered into

a Memorandum of Understanding dated June 1, 1989, whereby Trigen Energy Corporation agreed to purchase (either directly or through its subsidiary), and KCPL agreed to sell, the steam system upon certain terms and conditions.

NOW, THEREFORE, in consideration of the respective agreements hereinafter set forth, the parties agree as follows:

1. Sale of Steam System. Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties of KCPL and Trigen contained herein, KCPL hereby agrees to sell, and Trigen hereby agrees to purchase, the following properties comprising KCPL's downtown Kansas City central station steam generation and distribution system (collectively, the "Steam System"):

A. Grand Avenue Station. The real estate, structures, improvements, steam boilers, piping, coal handling facilities, oil tanks, intake structure, transformers and other fixtures and equipment described in Exhibit 1 hereto, subject to the reservation of certain properties, easements and rights by KCPL, as described in Exhibit 1 hereto, ("Grand Avenue Station");

B. Piping. All of the steam piping and associated easements, licenses, rights-of-way and similar property rights of KCPL, and the fittings, valves and metering which collectively comprise KCPL's downtown Kansas City, Missouri, steam distribution system, both in service and retired in

place, including, without limitation, the rights and property described in Exhibit 2 hereto;

C. Pressure Reducing Stations. The real estate interest (consisting of an easement), structures and improvements located at 6th Street and Baltimore, together with all of the equipment, piping and fixtures comprising the two pressure reducing stations located at 6th Street and Baltimore and in KCPL's garage at 1319 Wyandotte, all as described in Exhibit 3 hereto;

D. Materials, Supplies and Documentation. All of the materials and supplies associated with the Steam System in KCPL's possession as of the date of Closing, which are generally described in Exhibit 4 hereto as well as all records (including customer records), documentation, information, diagrams, charts, maps, schematics, blueprints, and other written materials related to the Steam System and related business conducted by KCPL (collectively the "System Records"), provided, however, that KCPL may provide to Trigen copies, and retain for itself the originals, of those System Records which KCPL is required (by applicable law or regulation) or reasonably desires to retain for its permanent records;

E. National Starch Agreement and Other Contracts. All of KCPL's right, title and interest under that certain Steam Service Agreement dated October 16, 1985 between KCPL and National Starch and Chemical Corporation ("National Starch

Agreement") and under the contracts, both oral and written, identified in Exhibit 5, the assignment or transfer of which is requested by Trigen; and

F. Permits and Emissions Credits. All of KCPL's right, title and interest in and to the Federal, State and local environmental and other permits, licenses, easements, franchises, certificates and approvals associated with the Steam System which KCPL now holds (to the extent that such permits, licenses, easements, franchises, certificates and approvals exist and are transferable by their terms), all of which have been listed and described by KCPL in Exhibit 6 hereto, and all of KCPL's right, title and interest in and to 5,955 tons of sulfur dioxide emissions credits banked with the Missouri Department of Natural Resources.

All properties of KCPL not identified above shall be retained by KCPL.

2. Assumed Liabilities. As further consideration for the properties of KCPL to be purchased by Trigen pursuant to this Agreement, Trigen agrees, subject to the terms and conditions set forth in this Agreement, to assume, at the Closing, only the following debts, liabilities and obligations of KCPL, as the same shall exist on the date of Closing:

A. All duties, obligations and undertakings of KCPL arising from and after the date of Closing under the National Starch Agreement, the extent of such assumption to be in accordance with the Assignment attached hereto as Exhibit 11

(or a substitute steam service agreement, in form acceptable to Trigen, may be executed between Trigen and National Starch and Chemical Corporation, provided that KCPL is released from liability for further performance of its obligations under the National Starch Agreement); and

B. All duties, obligations and undertakings of KCPL arising from and after the date of Closing under the contracts listed in Exhibit 5 which have been assigned to Trigen, at Trigen's request and option, the extent of such assumption to be in accordance with the form of Assignment and Assumption Agreement attached hereto as Exhibit ____.

3. Nonassumed Liabilities. Trigen shall not assume any liabilities or obligations of KCPL not specifically set forth in Section 2 above, it being understood, however, that Trigen has agreed to indemnify KCPL with respect to the matters described in Section 16B. The liabilities or obligations of KCPL not specifically assumed by Trigen hereunder which remain in existence at the date of Closing shall continue to be liabilities and obligations of KCPL. The liabilities and obligations of KCPL not assumed by Trigen hereunder include, without limitation, the following:

A. Liabilities or obligations of KCPL arising out of the indemnification contained in Section 16 hereof;

B. Any claims, liabilities or obligations, known or unknown, whether absolute, contingent or otherwise, the existence of which is a breach of, or inconsistent with, any

representation, warranty or covenant of KCPL as set forth in this Agreement;

C. Liabilities or obligations of KCPL, if any, arising out of this Agreement or the transactions contemplated hereby or incurred in respect of any transaction occurring after the date of Closing, including taxes, if any, attributable to the sale of properties hereunder;

D. Any liability or obligation of KCPL for customer deposits held by KCPL, and KCPL shall be solely responsible for settling such deposits with each such customer.

KCPL covenants to pay promptly all liabilities and to fulfill all obligations of KCPL not assumed by Trigen hereunder as and when the same become due, subject to KCPL's right to contest in good faith the existence, validity or extent of any such obligations or liabilities.

4. Assignment of Contracts. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an assignment of any contract, agreement, or commitment or any claim, right, or benefit arising thereunder or resulting therefrom, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a material breach thereof or would be ineffective, if such consent has not been obtained. KCPL shall use all reasonable efforts to obtain all required consents to assignments of contracts, agreements and commitments requested by Trigen prior to the Closing. If any such consent has not been obtained as of the Closing (other than the consent required with

respect to the National Starch Agreement, which shall be a condition precedent to Closing as described in Sections 12 and 13), or if an attempted assignment of any such contract, agreement, or commitment would be ineffective, Trigen shall have the option (which it may elect at its sole discretion) of performing the obligations under such contract, agreement, or commitment in the name of KCPL, subject to all defenses available to KCPL and KCPL will cooperate with Trigen in any reasonable arrangement designed to provide for Trigen the benefits under such contract, agreement, or commitment, including the receipt of all monies due thereunder and enforcement for the benefit of Trigen (at Trigen's expense) of any and all rights of KCPL against a third party thereto arising out of the breach or cancellation by such third party or otherwise.

5. Purchase Price. As and in consideration for the purchase of the assets described in Section 1 above, Trigen agrees to pay to KCPL the sum of SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00) as follows: ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) was paid by Trigen on June 2, 1989, as earnest money, the receipt of which is hereby acknowledged by KCPL, and at the Closing, Trigen shall pay to KCPL in immediately available funds the sum of FIVE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,900,000.00), less interest accruing on said earnest money at the prime rate of interest charged by the CitiBank New York ("Prime Rate") during the period from June 2, 1989 through the date of Closing, and as further adjusted by the following items to be prorated and apportioned between the parties as of the date of Closing:

A. Taxes. All real and personal property taxes for the then-current tax year levied or assessed against the property to be sold; the taxes shall be based on the latest available tax bills, whether for the year of Closing or for the preceding tax year;

B. License Fees. All license fees on the sale for consumption of steam within the City of Kansas City, Missouri, for the then current year for which such license fees are levied or assessed, to the extent the licenses for which such fees are levied or assessed are transferred to Trigen;

C. Assessments. All assessments by the Commission against KCPL's public utility steam service for the then current year to which such assessments apply.

6. Training Services. For a period of one year from the date of this Agreement KCPL will provide such reasonable training services for Trigen's supervisory and operations personnel as requested by Trigen upon at least five (5) days' notice. KCPL shall invoice Trigen, and Trigen shall pay within thirty days of receipt of such invoice, for the reasonable incremental costs to KCPL of such training services, including direct labor costs and applicable loadings and overheads. Invoices not paid within thirty days after receipt by Trigen shall bear interest at the rate of 1-1/2% per month, or the highest rate allowed by law, whichever is less.

7. Employees. KCPL grants Trigen permission to interview all present KCPL employees who perform duties related to the Steam

System, and, at Trigen's sole discretion, to offer employment with Trigen to any or all of such employees. KCPL has the right, however, to offer any or all of such employees continued employment with KCPL, and Trigen shall have no obligation to employ or to offer employment to any of such employees. Trigen does not assume any responsibility for any obligations or liabilities of KCPL to its employees or under any employment contracts, employee benefit plans or collective bargaining agreements, including but not limited to, any potential liabilities under the Multi-Employer Pension Plans Amendment Act of 1980 or under any group health plan continuation coverage (commonly referred to as "Cobra").

8. Access and Information. KCPL will give to Trigen and to Trigen's counsel, accountants and other representatives full access, during normal business hours throughout the period prior to the date of Closing, to all of KCPL's properties, books, contracts, commitments and records which relate to the Steam System and may be relevant to the transactions herein contemplated, including but not limited to information regarding the location, description, construction, placement, operation and cost of the Steam System, access for the purpose of conducting, at Trigen's expense, an inventory of materials and supplies, and information concerning current steam service customers. KCPL shall provide copies of all existing and available information (including maps and drawings) requested by Trigen. In the event the cost of reproduction of any information results in unreasonable expense to KCPL, Trigen shall reimburse KCPL for the reasonable costs of

reproduction. In the event that the Closing of the transaction contemplated herein shall occur, Trigen shall be allowed to retain permanently all copies of any such materials or information which it has obtained.

9. License, Easements and Operating Agreement. KCPL shall, at Closing, grant Trigen a license substantially in the form of Exhibit 7 hereto, for the purposes of owning, operating, maintaining, repairing, replacing and removing the pressure reducing station equipment, piping and fixtures located in KCPL's garage at 1319 Wyandotte. In addition, KCPL shall, at Closing, grant Trigen an easement substantially in the form of Exhibit ____ hereto for purposes of Trigen's access to and use of the real estate and facilities retained by KCPL which are adjacent to Grand Avenue Station and which are commonly referred to collectively as the "switchroom addition"; and Trigen shall, at Closing, grant KCPL an easement substantially in the form of Exhibit ____ hereto, for KCPL's access to and use of certain portions of Grand Avenue Station. The parties have also agreed to execute and enter into an Operating Agreement which will be delivered at Closing, substantially in the form of Exhibit ____ hereto, which will govern matters related to costs and operating procedures related to those portions of Grand Avenue Station and the adjacent facility which are the subject of the respective easements. Each such easement shall be an easement touching and running with the land, and shall be binding upon the successors and assigns of KCPL and Trigen and

shall be recorded on the date of Closing in the office of the Recorder of Deeds for Jackson County, Missouri.

10. Closing. The Closing shall take place on Friday, September 1, 1989, at 10:00 a.m. in KCPL's offices at 1330 Baltimore Avenue, Kansas City, Missouri, or at some agreed-upon earlier date in the event that all conditions precedent to Closing have been satisfied; and both parties agree to use their best efforts to satisfy all conditions precedent prior to September 1, 1989. At the time of Closing:

A. Trigen shall deliver or cause to be delivered to KCPL the following:

- (i) Steam Service Agreement in the form of Exhibit 8 hereto, executed by Trigen;
- (ii) Certificate of Officer in the form of Exhibit 9 hereto;
- (iii) Opinion of counsel in the form of Exhibit 10 hereto;
- (iv) Assignment of National Starch Agreement in the form of Exhibit 11 hereto, executed by Trigen (or in the alternative and at Trigen's option, if available, notice to KCPL that a substitute agreement, in form acceptable to Trigen, has been executed between Trigen and National Starch and Chemical Corporation);
- (v) Operating Agreement in the form of Exhibit ____ hereto, executed by Trigen;

- (vi) Executed Easement (related to Grand Avenue Station) in the form of Exhibit ___ hereto; and
- (vii) The remainder of the purchase price, in immediately available funds, as adjusted pursuant to Section 5 herein.

B. KCPL shall deliver or cause to be delivered to Trigen the following:

- (i) Assignment of National Starch Agreement in the form of Exhibit 11 hereto, executed by KCPL;
- (ii) Executed License (related to the garage at 1319 Wyandotte) in the form of Exhibit 7 hereto;
- (iii) Executed Special Warranty Deeds, in the form of Exhibit 12 hereto, for the real estate component of Grand Avenue Station, described in Exhibit 1 hereto, and the pressure reduction facility located at 6th and Baltimore, described in Exhibit 3 hereto;
- (iv) Special Warranty Deed and Assignment of Easements in the form of Exhibit 13 hereto;
- (v) Executed Steam Service Agreement in the form of Exhibit 8 hereto;
- (vi) Instruments of conveyance in the form of Exhibit 14 hereto conveying the properties identified in Section 1 herein;
- (vii) Certificate of Officer in the form of Exhibit 2 hereto;

- (viii) Opinion of Counsel in the form of Exhibit 10 hereto;
- (ix) Operating Agreement in the form of Exhibit ____ hereto, executed by KCPL;
- (x) Executed Easement (related to Grand Avenue Station) in the form of Exhibit ____ hereto;
- (xi) Keys to Steam System customers' premises (except that KCPL shall not be required to deliver keys with respect to any customer that has objected in writing to such delivery) ; and
- (xii) Executed Assignment and Assumption Agreements in the form of Exhibit 15 hereto for each contract listed on Exhibit 5, the assignment or transfer of which was requested by Trigen.

11. Final Meter Reading; Collection of Accounts. As close to Closing as possible, KCPL shall take a final meter reading for all of the existing steam service customers, and as soon as practicable thereafter, shall render final bills thereon. KCPL shall inform Trigen before taking these final meter readings, and Trigen shall have the right to accompany KCPL to verify these final readings. Trigen assumes no responsibility for collection of amounts due KCPL from customers for steam service provided by KCPL prior to the date of Closing, and Trigen shall have no obligation to assist KCPL in collection of such amounts due.

12. Conditions Precedent of Trigen. All obligations of Trigen under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

A. Performance. KCPL shall have performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

B. No Actions or Proceedings. No action or proceeding shall have been instituted before a court or other governmental body, or by any public authority, to restrain or prohibit the consummation of the transactions contemplated herein.

C. Accuracy of Representations and Warranties. The representations and warranties contained in this Agreement on the part of KCPL shall be true on and as of the date of Closing with the same effect as though they had been made on and as of such date, and Trigen shall have received a certificate, dated as of the date of Closing, of an executive officer of KCPL to such effect, in the form of Exhibit 2 hereto. Such representations and warranties shall survive the Closing.

D. Title Policy. Trigen shall have received (at its expense) a commitment from a title insurance company acceptable to it, and such title insurance company shall be prepared to issue its title policy, in a form acceptable to Trigen and at Trigen's cost, insuring title to all real

property to be transferred pursuant to this Agreement in Trigen, subject only to such exceptions or defects in title as are acceptable to Trigen.

E. Franchise. Trigen shall have obtained a franchise, easement or other transfer of right from the City of Kansas City, Missouri and from all other municipal or other public corporate entities with jurisdiction over KCPL's certificated service territory for placement of steam pipes under the streets or other rights-of-way in such form, to such extent and for such duration as acceptable to Trigen.

F. No Material Adverse Change. No event shall have occurred which would have a material adverse effect on the Steam System or the ability of Trigen to operate the steam distribution business in substantially the same manner as it is currently operated.

G. Board Authorization. The board of directors of Trigen and KCPL shall have authorized the execution and performance of this Agreement and associated documents.

H. Commission Approval. The Commission shall have approved this Agreement and associated documents without modification (except as may be mutually agreed by the parties), and shall have found reasonable and approved transfer by KCPL to Trigen of 5,955 tons of sulfur dioxide emissions credits banked with the Missouri Department of Natural Resources.

I. Trigen Certificate and Rate Approval. The Commission shall have granted a Certificate of Public Convenience and Necessity to Trigen to provide steam service in the contemplated service area and approved Trigen's rates, charges and terms relating to steam service.

J. Release of Liens. KCPL shall have obtained the release of all liens of indentures or mortgage upon the properties to be conveyed to Trigen.

K. National Starch Agreement. The National Starch Agreement shall have been assigned by KCPL to Trigen, such assignment to be substantially in the form of Exhibit 11 hereto, or a substitute steam service agreement between National Starch and Chemical Corporation and Trigen in a form acceptable to Trigen shall have been executed, and a release from liability for performance of KCPL's obligations under the National Starch Agreement shall have been obtained.

L. Gross Receipts Tax. The City of Kansas City, Missouri shall have formally agreed to and adopted a proposal, acceptable to Trigen, which results in a gross receipts tax imposition or other imposition of tax or fees on Trigen's thermal energy sales at a rate no greater than the gross receipts tax burden imposed on comparable production of thermal energy by any existing or potential Trigen customers in Kansas City, Missouri.

M. Permits and Emissions. The legally binding transfer or reissuance, as the case may be, of all existing permits,

licenses, franchises, easements, certificates and approvals required for Trigen's ownership and operation of the Steam System, all as identified on Exhibit 6 hereto; the issuance to Trigen of any additional permits, licenses, franchises, easements, certificates and approvals which are reasonably determined by Trigen to be required for its ownership and operation of the Steam System; and the legally binding transfer of KCPL's rights in and to 5,955 tons of sulfur dioxide emissions credits banked with the Missouri Department of Natural Resources shall have been completed.

N. Maintenance of Customer Load. Between June 1, 1989 and the date of Closing, there shall have been no loss of annualized noncontract steam customer load greater than 40,000 mlb.

O. Environmental Matters. Trigen shall not have received notice or information that there are any conditions or events related to the properties to be acquired by Trigen under this Agreement which, if known to KCPL, would constitute a violation of Section 15I, or which are reasonably estimated to cause or require Trigen to incur any material cost, damage or expense under the Environmental Laws (as defined in Section 15I) or in order to bring such properties into full compliance with the Environmental Laws and satisfy any related remedial requirements.

In the event each of the conditions described in this Section are not satisfied or waived by Trigen, Trigen may cancel this sale

without further obligation and shall be entitled to the return of the earnest money paid, plus interest accrued thereon at the Prime Rate, or Trigen may pursue its other remedies provided in Section 21.

13. Conditions Precedent of KCPL. All obligations of KCPL under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

A. Performance. Trigen shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

B. No Actions or Proceedings. No action or proceeding shall have been instituted before a court or other governmental body, or by any public authority, to restrain or prohibit the consummation of the transactions contemplated herein.

C. Accuracy of Representations and Warranties. The representations and warranties contained in this Agreement on the part of Trigen shall be true on and as of the date of Closing with the same effect as though they had been made on and as of such date, and KCPL shall have received a certificate, dated the date of Closing, of an executive officer of Trigen to such effect, in the form of Exhibit 2 hereto. Such representations and warranties shall survive the Closing.

D. Board Authorization. The board of directors of KCPL and Trigen shall have authorized the execution and performance of this Agreement and associated documents.

E. Commission Approval. The Commission shall have approved this Agreement and associated documents without modification (except as may be mutually agreed by the parties) and shall have found reasonable and approved transfer by KCPL to Trigen of 5,955 tons of sulfur dioxide emissions credits banked with the Missouri Department of Natural Resources; provided, however, that approval of such transfer of sulfur dioxide emissions credits shall not be required (and such condition shall be waived) if Trigen waives the requirement for such sulfur dioxide emissions credits to be transferred to it.

F. KCPL Certificate. The Commission shall have revoked KCPL's Certificate of Public Convenience and Necessity to provide steam service in downtown Kansas City, Missouri.

G. National Starch Agreement. The National Starch Agreement shall have been assigned by KCPL to Trigen, such assignment to be substantially in the form of Exhibit 11 hereto, or Trigen shall have notified KCPL that it has entered into a substitute steam service agreement with National Starch and Chemical Corporation in form acceptable to Trigen, and a release from liability for performance of KCPL's obligations under the National Starch Agreement shall have been obtained.

In the event each of the conditions described in this Section are not satisfied or waived by KCPL, KCPL may cancel this sale without further obligation and shall thereupon return to Trigen the earnest money paid, plus interest accrued thereon at the Prime Rate or KCPL may pursue either of its other remedies provided in Section 21.

14. Warranties, Covenants and Representations of Trigen.

Trigen warrants, covenants and represents as follows:

A. Organization and Standing. Trigen is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power and authority to enter into and perform this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

B. Authorization and Validity. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Trigen, and this Agreement is a valid and binding obligation of Trigen, enforceable in accordance with its terms, except as such terms may be limited by general principles of equity, bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights in general.

C. No Violation. The execution, delivery and performance of the Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in a violation of, or constitute a default under any

provision of the Articles of Incorporation or Bylaws of Trigen or of any agreement, note, mortgage, indenture, instrument, order, writ, judgment, decree, ordinance, regulation, or any other restriction of any kind to which any property of Trigen is subject or by which Trigen is bound.

D. Environmental. Trigen acknowledges that asbestos is used for insulation purposes on the steam distribution piping and in Grand Avenue Station and that one of the 13,200/2,400 volt transformers located at Grand Avenue Station is a PCB Transformer, as defined under the Toxic Substances Control Act. Trigen warrants that it will at all times subsequent to Closing faithfully observe all Federal, State and local laws, statutes, ordinances and regulations regarding the possession, use, removal, transfer and disposal of such asbestos and PCB Transformer.

E. Noncompetition. Trigen covenants that for a period of ten years following the date of Closing it shall:

- (i) use the properties acquired under this Agreement only for the principal purposes of providing steam, hot water, chilled water or other thermal energy services to customers of Trigen, including customers in Kansas City, Missouri, except that, Trigen may use any or all of such properties for additional or unrelated purposes (subject to the other restrictions herein provided) during such

period if such properties are also used for the purposes of providing thermal energy services, and Trigen may, without restriction, replace, sell, transfer or dispose of any one or more of the items of personal property or fixtures acquired by Trigen under this Agreement if such items are no longer required by Trigen in conjunction with its provision of thermal energy services; and the properties acquired under this Agreement shall be fully and forever released from the restrictions stated in this subparagraph (i) if Trigen acquires alternative or replacement properties or services which will be used by Trigen for the purpose of providing steam heating service to customers in Kansas City, Missouri during the remainder of the ten-year period to which this covenant applies;

- (ii) not enter into competition with KCPL as a supplier of electricity to any electric energy customer now or hereafter located within KCPL's present certificated retail service territory, by the generation of electrical energy and power with, at, or on any of the properties or plants to be acquired pursuant to this Agreement; provided, however that the mere sale

of steam by Trigen to a third party, who generates electricity utilizing such steam, without Trigen having an interest in said third party other than as a provider of steam, shall not be deemed to be a violation of this provision; and provided further, however, that the generation of electrical energy or power by Trigen with, at or on any of its properties, including, without limitation, the properties or plants to be acquired pursuant to this Agreement, for use or consumption by Trigen for its internal operations or purposes shall not be deemed to be a violation of this provision; and

- (iii) waive any rights or privileges it may now have or hereafter acquire to require KCPL to purchase or wheel any electrical energy and power generated with, at, or on any of the properties or plants to be acquired pursuant to this Agreement.

A listing of KCPL's present certificated retail service territories is contained in Exhibit 16 hereto. This covenant is agreed to be a covenant touching and running with the lands and fixtures to be transferred pursuant to this Agreement, and shall be binding upon Trigen's successors and assigns. In the event that Trigen breaches any provision of this Section, the

parties agree that KCPL shall have the right to bring an action for specific performance by Trigen of this Section, for damages, or for both. Trigen agrees not to contest or challenge, in any proceeding or action brought by KCPL for specific performance of this Section, the court's jurisdiction or authority to order specific performance of this Section. Trigen further agrees and covenants to not contest or challenge in any proceeding or action brought by KCPL the lawfulness, validity or enforceability of this Section, or to assert in any fashion that this Section is unlawful, void or unenforceable.

F. Relocation of Steam Lines. If any relocation of the steam lines extending to the east of the garage located at 1319 Wyandotte to Baltimore Avenue is required due to future construction activities engaged in by KCPL in whole or in part, such relocation shall be done at Trigen's sole expense.

G. Disclaimer. Trigen has formed its own opinion as to the value of the Steam System being purchased hereunder. KCPL and Trigen agree that KCPL's warranties include only such express written warranties as are contained in this Agreement. Any other express warranties, oral or written, not contained in this Agreement, are of no force and effect. KCPL hereby disclaims, and Trigen hereby acknowledges such disclaimer, all implied warranties, including without limitation, implied warranties of merchantability and implied warranties of

fitness for special, particular or ordinary uses or purposes. The parties acknowledge further that Trigen has inspected the Steam System, and the properties comprising the same, to the full extent of Trigen's desire, and that KCPL has given Trigen ample opportunity to conduct such inspections. Trigen recognizes that the success of the business in which the Steam System will be utilized is dependent upon the skill and ability of Trigen as a provider of district steam service.

H. Access to Documentation. Trigen covenants that it will retain for a period of not less than five years all of the records and documentation (including customer records) which it is to receive from KCPL in conjunction with the purchase of the Steam System, and Trigen will provide reasonable access to such records and documentation at any reasonable time and upon reasonable notice from KCPL for KCPL to review such records and documentation (and make copies thereof, if desired) for any legitimate business purpose.

15. Warranties, Covenants and Representations of KCPL. KCPL warrants, covenants and represents as follows:

A. Organization and Standing. KCPL is a corporation duly organized, validly existing and in good standing under the laws of the state of Missouri and has the corporate power and authority to enter into and perform this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

B. Authorization and Validity. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of KCPL, and this Agreement is a valid and binding obligation of KCPL, enforceable in accordance with its terms except as such terms may be limited by general principles of equity, bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights in general.

C. No Violation. The execution, delivery and performance of the Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in the violation of, or constitute a default under any provision of the Articles of Incorporation or Bylaws of KCPL or of any agreement, note, mortgage, indenture, instrument, order, writ, judgment, decree, ordinance, regulation or any other restriction of any kind to which any property of KCPL is subject or by which KCPL is bound.

D. Title. KCPL has good and marketable title to all of the properties to be conveyed to Trigen pursuant to this Agreement subject only to matters of public record with respect to real estate (or any interest therein) to be acquired by Trigen hereunder, and at the time of Closing good and marketable title to such properties will be transferred and delivered to Trigen and such properties shall be subject to no mortgage, pledge, lien, encumbrance, security interest

or charge, except for liens for taxes and assessments not yet due and payable and such matters of public record with respect to real estate (and subject to Trigen's right pursuant to Section 18 to withdraw from its obligation to purchase in the event such matters materially affect the value or intended use of the property)..

E. Actions and Compliance. To the best of its knowledge, there are no actions, proceedings or investigations presently pending or threatened which concern or affect the Steam System, and KCPL and the Steam System are in full compliance with all Federal, State and local statutes, laws, ordinances and regulations applicable to the Steam System or KCPL's ownership or operation of the Steam System;

F. No Misstatements of Material Fact. No written information provided to Trigen in connection with the transactions contemplated under this Agreement contains any untrue statement of material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading, and there is no material fact which adversely affects or, in the future may, insofar as KCPL can now foresee, adversely affect the properties to be transferred pursuant to this Agreement, which has not been disclosed to Trigen in writing.

G. Conduct of Business Pending Closing. KCPL covenants that, pending the Closing:

- (i) KCPL shall continue operation of the Steam System in its normal and ordinary course;
- (ii) No contract or commitment will be entered into by or on behalf of KCPL and relating to the Steam System which will be binding upon or create any liability or obligation of Trigen or which will create or suffer to exist any lien, encumbrance, security interest or charge upon any of the properties to be acquired by Trigen hereunder; and
- (iii) KCPL will use its best efforts to preserve KCPL's Steam System business intact, and to preserve for KCPL the goodwill of its suppliers, customers and others having business relations with KCPL in connection with the Steam System.

H. Noncompetition. KCPL covenants and agrees that for a period of ten years following the date of Closing, neither KCPL nor any of its affiliates, successors or assigns will compete with Trigen as a supplier of steam, hot water or chilled water, directly or indirectly; provided, however, that the mere sale of electricity by KCPL to a third party (but to the exclusion of also providing steam generating equipment or facilities to such party) who generates steam utilizing such electricity, without KCPL having an interest in said third party other than as a provider of electricity, shall not be

deemed to be in violation of this provision. Without limiting the generality of the foregoing, KCPL specifically covenants that during such ten-year period, it will not initiate contact with current customers (as of the date of Closing) of the Steam System in an attempt to induce them to discontinue use of the Steam System as operated by Trigen or to convert to any alternative heating source.

I. Compliance with Environmental Laws. To the best of KCPL's knowledge, the Steam System has been, and as of the date of Closing will be, operating in compliance with all Environmental Laws (as hereinafter defined); there are no pending or threatened demands, suits, orders, administrative proceedings, writs, judgments, injunctions or decrees issued, sought or made by any federal, state or local court or any administrative authority administering the Environmental Laws with respect to the Steam System or the use or operation thereof predicated on any Environmental Law, and there is no basis or grounds for any such demand, suit, proceeding or relief; except as specifically described in Exhibit ___, the real property to be transferred to Trigen pursuant to this Agreement is free of all "hazardous waste" and "hazardous substances" (as defined in the Environmental Laws) (other than the asbestos insulation and PCB Transformer, the presence of which was acknowledged in Section 14 herein); except as specifically described in Exhibit ___, there has been no "hazardous waste" or "hazardous substance" (as such terms are

defined under the Environmental Laws) disposed or released from or on any of the real property to be transferred to Trigen pursuant to this Agreement; all necessary permits, licenses and registrations under the Environmental Laws have been obtained by KCPL and are included on Exhibit 6 hereto; and, as of the date of Closing, all asbestos located in or on or incorporated into any of the property or assets to be transferred to Trigen pursuant to this Agreement, shall be in a non-friable condition or shall be properly encapsulated or encased, such that all such asbestos is in compliance with the requirements of the Environmental Laws. As used herein, "Environmental Laws" shall mean (i) all federal laws, including, but not limited to, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, and all regulations, rules, orders, or ordinances or judicial or administrative interpretations issued incident thereto, and (ii) all state or local laws, regulations, rules, orders or ordinances, or judicial or administrative orders or ordinances, or judicial or administrative interpretations thereof, any of which govern or purport to govern air emissions, water discharges, hazardous or toxic substances, solid or hazardous wastes and

occupational health and safety as any of these terms are or may be defined in such laws, regulations, rules, orders, or ordinances, or judicial or administrative interpretations thereof.

J. Adequacy of Property; Permits. The properties to be acquired by Trigen pursuant to this Agreement are sufficient to allow Trigen to operate the steam distribution business substantially as it is currently being conducted by KCPL. Without limiting the generality of the foregoing, no patent, patent application, copyright, trade secret, trade name, trademark, or other proprietary right or technology are currently owned or used by KCPL or required in order to operate the steam distribution business substantially as it is currently being conducted by KCPL. The easements, permits, licenses, franchises, approvals and certificates identified in Exhibit 6 hereto comprise all easements, permits, licenses, franchises, approvals, certificates and other rights required for the uninterrupted operation of the Steam System as it is currently being conducted by KCPL, except for a franchise, easement or similar right from the City of Kansas City, Missouri for placement of steam pipes under the city streets.

K. Franchise Renewal. KCPL shall use its best efforts to assist Trigen in obtaining, prior to the date of Closing, a franchise, easement or similar right for the placement of steam pipes under the city streets, such as the franchise held by KCPL which expired in 1985. Trigen shall be responsible

for the payment of any fees required in connection with such issuance of such right.

L. Material Contracts. Except for the contracts, commitments and obligations described in Exhibit 5 hereto, KCPL is not a party to and has no obligations, contingent or otherwise, written or oral, under any of the following which would affect the business or properties of KCPL relating to the Steam System:

- (i) contracts not made in the ordinary course of business;
- (ii) customer agreements;
- (iii) continuing contracts for the future purchase of materials, supplies, or equipment;
- (iv) contracts or commitments for capital expenditures; or
- (v) contracts continuing over a period more than one year from their date.

KCPL shall assign any such contracts or agreements identified in Exhibit 5 (other than implied customer contracts for customers receiving steam service pursuant to KCPL's filed tariff) which Trigen, in its discretion, requests, such assignment to be pursuant to the form of Assignment and Assumption Agreement attached as Exhibit 14, and KCPL shall use its best efforts to obtain any required consents to such assignments prior to the date of Closing.

M. Steam Service Contracts. Other than pursuant to the National Starch Agreement, KCPL provides no steam service pursuant to contract. All steam customers other than National Starch and Chemical Corporation receive steam service from KCPL pursuant to tariff obligations.

N. Customer Deposits. Except as identified in Exhibit ___, KCPL holds no customer deposits or similar refundable fees and has no liabilities or responsibilities to any customer for customer deposits or refundable fees.

O. Taxes. All taxes which are or will be payable on or before the date of Closing have been paid.

P. Consent of Customers. KCPL shall use its best efforts to obtain the consent of customers to the transfer of keys to Trigen for the purpose of providing access by Trigen to customer meters.

Q. No Material Change. KCPL has delivered to Trigen copies of (i) its internally prepared Report 24S, Steam Production Expenses, for the 12-month period ending December 31, 1988 and for the month of May 1989 and the five-month period ending May 31, 1989, and (ii) its internally prepared Report 25S, Steam Fuel Statistics, for the 12-month period ending December 31, 1988 and for the month of May 1989 and the five-month period ending May 31, 1989 (all of the foregoing Reports 24S and 25S are hereinafter referred to collectively as the "Production Expense Reports" and are attached hereto as Exhibit ___). The Production Expense Reports have been

prepared in accordance with generally accepted accounting principles as to the matters reflected therein and present a fair and complete statement of the costs of operating the Steam System as of the respective dates specified therein except that the Production Expense Reports do not include costs for steam distribution, administrative expenses, depreciation and tax expenses. There have been no material increases in operating expenses since the respective dates of the Production Expense Reports and KCPL is not aware of any condition which is likely to result in any such material increase in operating expenses. There has been no destruction, damage to, or loss of any of the properties to be transferred pursuant to this Agreement that materially or adversely will affect the property, business or future prospects of the operation of the Steam System since January 1, 1989. The customers for whom KCPL was providing steam services on _____ are listed on Exhibit 17 hereto, and such Exhibit accurately identifies the gross billings paid by each such customer to KCPL for steam service during the 12-month period preceding such date; and except as identified on Exhibit 18 hereto, no customers have discontinued their steam service from KCPL since such date. To the best of KCPL's knowledge, none of the customers listed on Exhibit 17 intend to terminate steam service.

R. No Default. There exists no event or condition which now constitutes a default or which, with the giving of

notice or passage of time (or both) would constitute a default on the part of KCPL under the National Starch Agreement or any of the contracts, commitments or obligations described in Exhibit 5 hereto; the National Starch Agreement and all such contracts, obligations and commitments are in full force and effect and KCPL has not received any notice of cancellation or termination of the National Starch Agreement or any of such contracts, commitments or agreements prior to the expiration specified therein; no circumstances have arisen which would (or would with notice or passage of time) entitle any person to any abatement or reduction of payment or right of setoff against amounts payable under the National Starch Agreement or any of such agreements, commitments or obligations, except for any exercises of express rights under such agreements, contracts or obligations, which exercises have in each instance been identified to Trigen, and KCPL will not modify or amend the National Starch Agreement or any such contracts, commitments or obligations without the prior written consent of Trigen.

S. Insurance. KCPL has in full force and effect policies of insurance of the type and in the amounts set forth in Exhibit 18 hereto, will continue all such insurance in full force and effect up to and including the date of Closing, and is the sole owner of all such policies.

16. Indemnification.

A. Indemnification by KCPL. KCPL shall indemnify, defend and hold harmless Trigen, at all times after the date of this Agreement, against and in respect of:

- (i) All liabilities, obligations and claims of or against KCPL not expressly assumed by Trigen pursuant to Section 2 hereof, except any such matters for which Trigen is required to indemnify KCPL pursuant to Section 16B;
- (ii) Any loss, damage or deficiency resulting from any misrepresentation or breach of warranty or nonfulfillment of any obligations by KCPL under this Agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to Trigen pursuant to this Agreement;
- (iii) All liabilities, obligations and claims, including liabilities under Environmental Laws or otherwise, arising from or related to: (a) the condition, ownership, operation, use, conduct of any business associated with or disposal of all or any part of the Steam System prior to the date of Closing; or (b) any decision by Trigen to employ or not employ any current or former employee of KCPL (except any such claim resulting from the breach by Trigen of any express agreements to which Trigen may

hereafter become a party, to employ any such person); and

- (iv) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including legal expenses) incident to any of the foregoing.

B. Indemnification by Trigen. Trigen shall indemnify, defend and hold harmless KCPL, at all times after the date of this Agreement, against and in respect of:

- (i) Any and all loss, damage or deficiency resulting from any misrepresentation or breach of warranty or nonfulfillment of any obligation by Trigen under this Agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to KCPL pursuant to this Agreement;
- (ii) All liabilities, obligations and claims, including liability under Environmental Laws or otherwise, arising from or relating to the condition, ownership, operation, use, conduct of any business associated with or disposal of all or any part of the Steam System after the date of Closing, except that this subsection (ii) shall not apply, and no indemnification by Trigen of KCPL shall be required, with

respect to any liabilities, obligations or claims arising from or relating to any condition, event or matter for which KCPL is required to indemnify Trigen under Section 16A(ii); and

- (iii) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including legal expenses) incident to any of the foregoing provisions.

C. Defense of Claims. For the purposes of this Section 16, the party from whom indemnification is sought under this Agreement shall be referred to as the "Indemnitor" and the party who is seeking such indemnification shall be referred to as the "Indemnatee." Should any claim be made by a person not a party to this Agreement with respect to any matter to which the foregoing indemnification provisions relate or should any claim for indemnification otherwise come to the attention of the Indemnatee, the Indemnatee shall promptly give the Indemnitor written notice of such claim (provided that failure to give or delay in giving such notice shall not affect the Indemnatee's entitlement to indemnification unless the Indemnitor is materially prejudiced thereby), and the Indemnitor shall thereafter defend or settle any such claim, at its sole expense, on its behalf and with counsel of its choosing; provided, however, that the Indemnatee's written consent to any settlement or disposition shall be a

requirement thereto, which consent shall not be unreasonably withheld. In such defense or settlement, the Indemnitee shall cooperate and assist the Indemnitor to the maximum extent reasonably possible and the Indemnitee may participate therein at its own expense and with counsel of its own choosing.

17. Trigen to Supply Steam to KCPL. KCPL and Trigen will enter into a Steam Service Agreement substantially in the form of Exhibit 8 hereto pursuant to which Trigen will agree to generate steam for KCPL's turbine-generators at Grand Avenue Station and to supply condensing water to condense the steam until May 31, 1991. KCPL agrees to entertain proposals from Trigen regarding the sale to KCPL by Trigen of steam for electric generation, and to consider such proposals in good faith in KCPL's next capacity planning process cycle. Trigen will not be obligated to offer any such proposal, and KCPL will not be obligated to accept any such proposal.

18. Title Search. Trigen shall bear the expense of any title search or title examination conducted by it with respect to the real property to be transferred to Trigen pursuant to this Agreement. Trigen shall notify KCPL in writing of any objections to title as soon as practicable after Trigen becomes aware thereof. Any defects or objections to title of the real property to be transferred to Trigen hereunder that are shown as a matter of public record, which are specifically disclosed in writing by KCPL to Trigen, which are disclosed by a proper survey provided to Trigen by KCPL prior to Closing, or which arise as the result of

applicable zoning requirements of the City of Kansas City, Missouri, and which are not corrected prior to the date of Closing shall be waived. This waiver shall be effective regardless of any warranties of title contained in any deed or other document of conveyance or assignment, shall survive the Closing and shall not merge with the conveyance of title.

In the event of a timely noticed defect in or objection to title which, in Trigen's sole good faith opinion, materially affects the value or intended use of the property or any part thereof transferred pursuant to this Agreement, KCPL shall have a reasonable time to correct or cause the same to be corrected. If KCPL is unable or unwilling to correct or cause to be corrected such defects or objections prior to the date of Closing, Trigen may either accept said title as is or may withdraw from its obligation to purchase; in such event the earnest money paid by Trigen shall be refunded by KCPL, with interest at the rate provided in Section 5, and neither party shall have any further obligation to the other hereunder.

19. Disclaimer of Warranties. Except as expressly provided with respect to title to realty or otherwise as expressly provided in this Agreement, KCPL gives no warranty, express or implied, as to the description, quality, merchantability, fitness for any particular purpose, productiveness, or any other matter concerning the properties to be transferred pursuant to this Agreement. Said properties are sold "as is", "where is" and "with all faults".

20. Risk of Loss. Should any damage or loss occur to the properties to be transferred pursuant to this Agreement prior to the date of Closing, which in the sole good faith judgment of Trigen is so substantial as to materially affect the value of the properties taken as a whole or to materially affect the intended use of such properties, Trigen may either accept the properties as they then exist with a reduction in the purchase price to the extent that KCPL receives insurance proceeds on account of said loss, in satisfaction of KCPL's obligations hereunder, or Trigen may withdraw from its obligation to purchase the properties and KCPL shall refund the earnest money paid by Trigen, with interest at the rate provided in Section 5, and neither party shall have any further obligation to the other hereunder.

21. Breach. In the event KCPL fails to perform any of its obligations hereunder, Trigen shall have the option of either (a) terminating this Agreement and receiving a refund of the earnest money paid, plus interest accrued thereon from June 2, 1989, at the Prime Rate, or (b) bringing an action for specific performance, for damages, or for both. In the event of any failure on the part of Trigen to perform its obligations hereunder, KCPL may (a) retain any part of the purchase price paid by Trigen as liquidated damages, or (b) have the right to bring an action for specific performance, for damages, or for both. It is agreed that the liquidated damages provision herein is fair and reasonable and that Trigen accepts the same.

22. Binding Effect and No Assignment. This Agreement shall be binding upon KCPL and Trigen and their respective successors and assigns. This Agreement shall not be assigned by either party without the express written consent of the other party (which shall not be withheld unreasonably); provided, however, that Trigen may, by written notice delivered at least five days before the date of Closing, designate that title to any or all of the properties to be transferred pursuant to this Agreement be conveyed to a municipality or other public corporate entity with jurisdiction and authority in KCPL's certificated service territory.

23. Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Missouri.

24. Notices. Any notices, requests, consents and other communications hereunder shall be in writing and mailed by United States first class mail, postage prepaid to the parties as follows:

To KCPL: Kansas City Power & Light Company
1330 Baltimore Avenue
Kansas City, MO 64105
Attn: L. C. Rasmussen

To TRIGEN: Trigen Energy Corporation
1 Water Street
White Plains, NY 10601
Attn: Thomas R. Casten

25. Severability. The invalidity or unenforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof shall in no way affect the validity or enforcement of any other provision, or any part thereof.

26. Captions. The captions and titles in this agreement are for convenience of reference only, and shall not be deemed to define or limit any of the terms, conditions or provisions of this Agreement.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. Necessary Actions. Each party hereby agrees to execute and deliver all such other documents or instruments and to take any action as may reasonably be required in order to effectuate the transactions contemplated by this Agreement.

29. Waiver. Any waiver by either party of any breach of any term or condition of this Agreement shall not be deemed a waiver of any other breach of such term or condition or of any other term or condition, nor shall the failure of either party to enforce such provision constitute a waiver of such provision or of any other provision, nor shall such action be deemed a waiver or release of any other party for any claims arising out of or connected with this Agreement.

30. Remittances. Payments received after the date of Closing by one party which belong to the other party shall be promptly forwarded to the party entitled to them.

IN WITNESS WHEREOF, the parties have cause this Agreement to be duly executed and their corporate seals to be affixed.

KANSAS CITY POWER & LIGHT COMPANY

By: _____
L. C. Rasmussen, Vice Chairman

Attest:

Secretary

TRIGEN-KANSAS CITY DISTRICT ENERGY
CORPORATION

By: _____
Thomas R. Casten, President

Attest:

Secretary

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July 5, 1989

LICENSE

This License is granted this ____ day of _____, 1989, by Kansas City Power & Light Company (KCPL) to Trigen-Kansas City District Energy Corporation ("Trigen").

Witnesseth:

Whereas, KCPL and Trigen have entered into a certain agreement for the sale of the properties comprising KCPL's downtown Kansas City, Missouri, central station steam distribution system, and

Whereas, said properties include facilities for pressure reducing located in KCPL's garage (the "Garage") at 1319 Wyandotte, Kansas City, Missouri, and

Whereas, the parties wish that Trigen be granted reasonable access to and use of said pressure reducing facilities.

It is agreed as follows:

1. KCPL, for itself and on behalf of its successors and assigns in interest, hereby grants to Trigen a nonexclusive license to enter and use the premises commonly known as 1319 Wyandotte, Kansas City, Missouri, for the sole purposes of locating, keeping, operating, maintaining, repairing, replacing and removing the facilities currently comprising the steam pressure reducing station, and associated steam piping, located within said premises.

2. KCPL will provide Trigen with a reasonable number of keys or other means of access to said premises. Trigen shall safeguard said keys or means, and shall be liable for any loss or damage to KCPL arising out of the unauthorized use of said keys or means in gaining access to said premises. In the case of loss or theft of said keys or means, Trigen shall immediately notify KCPL, which shall then have the right, at its sole option, to replace keys, locks, bolts and associated equipment on said premises, and Trigen shall reimburse KCPL for the entire cost thereof.

3. Trigen shall not unreasonably interfere with KCPL's usual and normal current use, as of the date hereof, of the premises, and shall not store, locate or place any materials, equipment or other items anywhere on the premises, except within the present steam pressure reducing station enclosure; provided, however, that Trigen's access to and use of the premises solely for the purposes described in paragraph 1 and restricted to that part of the premises reasonably required to accomplish such purposes will not be deemed to interfere with KCPL's usual and normal use of the premises. If KCPL, in its reasonable good faith opinion, believes that any of Trigen's actions violate this License by unreasonably interfering with KCPL's usual and normal use of the premises, KCPL

shall notify Trigen, and Trigen shall immediately cease any such actions which violate the terms hereof.

4. Trigen shall comply with the following insurance conditions and requirements for as long as this License is in effect. KCPL retains the right to reasonably alter these insurance conditions and requirements, at which time Trigen upon written notice shall comply with the altered conditions and requirements:

A. Certificates of Insurance. Certificates from insurance carriers evidencing compliance by Trigen with insurance coverage requirements as provided herein, shall be submitted to KCPL, and Trigen shall not enter KCPL premises until such certificates of insurance shall have been furnished. KCPL shall not be liable for delays occasioned due to, or in connection with, furnishing such certificates.

B. Notice of Cancellation or Change. Trigen shall have an endorsement attached to the policy or policies of insurance which shall provide that at least ten (10) days prior to the termination of the policy or policies the insurance carrier shall notify KCPL of such termination and that at least ten (10) days prior to the effective date of any change in such policy or policies, if such change restricts or reduces the amount of insurance or insurance coverage provided therein or changes the name or names of the insured(s), the insurance carrier shall notify KCPL in writing of the nature of such change. The certificates of insurance required under A. above shall evidence this endorsement.

C. Workers' Compensation or Employer's Liability. Trigen shall comply with all provisions of all Workers' Compensation laws and Employer's Liability Acts of the State of Missouri and shall carry full insurance coverage for or be authorized to self-insure liability to, its employees under such Laws or Acts.

D. Public Liability and Property Damage. Trigen shall carry public liability and property damage insurance, including automobile coverage, in amounts not less than \$1,000,000 public liability and \$1,000,000 property damage per occurrence with responsible insurance companies having a Best's rating of B+ or better.

5. Except as provided in paragraph 10 below, this License is nontransferable by Trigen without the express written consent of KCPL, and shall terminate (a) upon breach of any of the terms hereof by Trigen, if such breach is not completely cured within 30 days of receipt by Trigen of written notice from KCPL of such breach, provided, however that if the nature of the condition resulting in such breach is such that it cannot reasonably be cured within such 30 day period, such grace period shall be extended for such reasonable additional period of time as may be required for Trigen to cure such breach, so long as Trigen diligently pursues

such cure, (b) upon one year's prior written notice given by any party (other than an affiliate of KCPL) who has purchased or otherwise acquired KCPL's interest in the premises, or (c) upon Trigen's permanent removal, retirement or termination of operation of said pressure reducing station. Upon termination, Trigen shall immediately remove all of its items, equipment, facilities, piping and fixtures comprising said pressure reducing station and associated piping from the premises, and shall repair any damage to the premises caused by such removal, all at its sole expense.

6. Trigen shall reimburse, indemnify and hold harmless KCPL from and against any loss, demand, claim, suit, costs and cause of action (including reasonable attorneys fees) associated with or arising out of Trigen's, its employee's or agents' use of, or actions, inaction or obligations under this License.

7. Trigen may, at its discretion, record this License in the appropriate real estate records to indicate Trigen's right to access and use the pressure reducing facilities, as herein provided, and to assure that any successor or assign of KCPL's interest in all or any part of the Garage will be bound by and required to honor this License and provide to Trigen the notice required by Section 5 hereof prior to terminating the rights herein granted to Trigen. Trigen shall have no property interest, real or otherwise, in and to the Garage, other than the personal license rights granted herein.

8. Trigen shall not drive, park, locate or otherwise bring any automobiles, trucks or other vehicles of any nature upon the premises.

9. Trigen agrees that it will exercise its rights and privileges under this Easement, and shall operate, use, maintain, repair and replace said pressure reducing station in a safe and proper manner, and in conformance with all relevant laws, codes, regulations and ordinances.

10. Notwithstanding anything herein to the contrary, Trigen may assign its rights and interests herein to a municipally-controlled entity that has acquired the related steam distribution system from Trigen, provided, however, that no such assignment by Trigen shall release Trigen from its duties or obligations hereunder.

In witness whereof, KCPL has signed this instrument on the date first above written.

KANSAS CITY POWER & LIGHT COMPANY

By: _____

Attest:

Secretary

(SEAL)

Accepted and Agreed to:

Trigen-Kansas City District Energy Corporation

Attest:

Secretary

(SEAL)

ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss.

On this ____ day of _____, 1989, before me, appeared _____, to me personally known, who being by me duly sworn, did say that he is the _____ of KANSAS CITY POWER & LIGHT COMPANY, a _____ corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in _____, the day and year last above written.

Notary Public in and for said County and State

My Commission Expires: (The Notary Public must type or print his/her name immediately beneath his/her signature.)

STATE OF _____)
COUNTY OF _____) ss.

On this ____ day of _____, 1989, before me, appeared _____, to me personally known, who being by me duly sworn, did say that he is the _____ of TRIGEN-KANSAS CITY DISTRICT ENERGY CORPORATION, a Delaware corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in _____, the day and year last above written.

Notary Public in and for said County and State

My Commission Expires: (The Notary Public must type or print his/her name immediately beneath his/her signature.)

July 5, 1989

ASSIGNMENT

This Assignment is made as of this ____ day of _____, 1989, (the "Effective Date") by and between Kansas City Power & Light Company (KCPL) and Trigen Energy Corporation (Trigen).

Witnesseth:

Whereas, KCPL and National Starch and Chemical Corporation entered into a certain Steam Service Agreement dated October 16, 1985, as amended, and

Whereas, KCPL and Trigen have entered into the Central Station Steam Distribution Sales Agreement dated _____, 1989 (the "Agreement") whereby KCPL agreed to sell and Trigen agreed to purchase the properties comprising KCPL's downtown Kansas City central station steam distribution system, and

Whereas, as part of said sale and purchase the parties wish to assign the Steam Service Agreement, and the rights and obligations of KCPL from KCPL to Trigen,

It is agreed as follows:

1. KCPL hereby assigns all of its right, title, interest, duties, obligations and undertakings under that certain Steam Service Agreement dated October 16, 1985, between KCPL and National Starch and Chemical Company to Trigen.

2. Trigen hereby assumes, and covenants with KCPL to perform, all of the duties, obligations and undertakings of KCPL arising from and after the Effective Date under said Steam Service Agreement; provided, however, that Trigen has not assumed any duties, obligations or undertakings of KCPL under said Steam Service Agreement arising prior to the Effective Date, or any liability, claims, demands or causes of action of or against KCPL related thereto.

3. The rights, duties and obligations of KCPL and Trigen pursuant to the Agreement shall survive the execution and delivery of this Assignment and are not merged herein, including, without limitation, the respective obligations of indemnification under the Agreement.

In witness whereof, the parties have signed this Assignment.

KANSAS CITY POWER & LIGHT COMPANY

By: _____

Attest:

Secretary

(SEAL)

TRIGEN ENERGY CORPORATION

By: _____
President

Attest:

Secretary

(SEAL)

Approval of Assignment and Release

National Starch and Chemical Company (National Starch) hereby approves of and consents to the above assignment of the rights, duties, obligations and undertakings of KCPL under the Steam Service Agreement to Trigen. National Starch further releases KCPL from any and all liability, claims, demands and causes of action arising out of the performance of said assigned duties, obligations and undertakings by Trigen from and after the Effective Date.

NATIONAL STARCH AND CHEMICAL COMPANY

By: _____
President

Attest:

Secretary

(SEAL)