BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Trigen-St. Louis Energy Corporation, a Missouri Corporation,	)	
Complainant,	)	
v.	)	Case No. EC-96-164
Union Electric Company, a Missouri Corporation,	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: August 20, 1997

Effective Date: September 2, 1997

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OF THE STATE OF MISSOURI

Trigen-St. Louis Energy Corporation, a Missouri Corporation, Complainant,	)	
v.	)	Case No. EC-96-164
Union Electric Company, a Missouri Corporation, Respondent.	)	

APPEARANCES

Richard W. French, French & Stewart Law Offices, 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Trigen-St. Louis Energy Corporation.

Joseph H. Raybuck, Attorney, Union Electric Company, 1901 Chouteau Avenue, Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Steven Dottheim, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE LAW JUDGE: **Thomas H. Luckenbill, Deputy Chief.**

REPORT AND ORDER

Procedural History

On November 21, 1995, Trigen-St. Louis Energy Corporation (Trigen) filed a complaint against Union Electric Company (UE). Trigen requested that the Commission order UE to revise its published rates for the

provision of standby service to Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. Section 824a, and the Missouri Code of State Regulations, 4 CSR 240-20.060. Trigen alleges that UE's Rider E violates the provisions of PURPA, the implementing regulations of the Federal Energy Regulatory Commission (FERC), and Missouri regulations. On October 28, 1996, the Commission convened an evidentiary hearing at which the parties conducted cross-examination of the witnesses and exhibits were received into the record. Based upon the evidence provided at the hearing through cross-examination of witnesses and prefiled testimony, the Commission makes the following findings of fact.

Findings of Fact

Trigen is a Missouri corporation with its offices and operations in the City of St. Louis, Missouri. Trigen owns and operates the Ashley Plant, which is located near downtown St. Louis, on the river just north of the Gateway Arch. Trigen was formed to take over the Ashley Plant and the operation of the downtown steam loop. The downtown steam loop is a group of buildings in downtown St. Louis that are heated by the steam produced at the Ashley Plant.

It is Trigen's position that UE violates PURPA, FERC regulations, and PSC regulations by failing to provide required standby service (also known as backup service), supplementary service and maintenance service. The evidence shows that UE does provide these services under its Rider E which is entitled "Supplementary Service."

Trigen states that UE's Rider E must distinguish between supplementary, maintenance and backup services, that UE's rates for these services are not based on the costs of providing these services, and that

Rider E discriminates against QFs in several ways. However, the evidence provided is not sufficient to lead to the conclusion that UE's Rider E is unlawful.

UE witness Mr. Kovach states that Trigen is not currently a Rider E or cogenerator customer and that Trigen elected to file this complaint in the abstract. Mr. Kovach further testifies that Trigen is requesting UE to completely redesign a Commission approved tariff which has been used many years to supply the requirements of existing cogeneration customers on the basis of unspecified projects which may or may not "get beyond the drawing board."

Mr. Kovach states that Missouri's cogeneration rule (4 CSR 240-20.060(6) does not require that supplementary, maintenance and backup services be provided on a separate basis. Even Trigen's witness Mr. Spiewak admits that Rider E's application to all of these services arguably meets the FERC and Missouri requirements that a utility provide supplementary, backup, maintenance and interruptible power.

The Commission finds that Trigen has not met its burden to prove that UE's rates are in violation of PURPA, FERC regulations, or Missouri regulations. The Missouri Commission's rule on rates for sale to cogenerators (4 CSR 240-20.060(6)) was adopted from the FERC rules. The Missouri rule does not require that supplementary, backup, maintenance and interruptible service be provided on a separate basis and the rule does not preclude provision of these services on a bundled basis.

The rule provides:

> (B) Additional Services to be Provided to Qualifying Facilities.
> 1. Upon request of a qualifying facility, each electric utility shall provide supplementary power, back-up power, maintenance power and interruptible power.

The Commission concludes that the mere listing of these four services in 4 CSR 240-20.060(6)(B)(1) and the corresponding definitions in 4 CSR 240-20.060(1) does not mean that the rates for these services must be distinct. However, the Commission does not intend by this decision to preclude Staff, UE, and other interested parties from pursuing this matter in an appropriate rate design docket.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Trigen places great reliance on the FERC decision in Industrial Cogenerators v. Florida Public Service Commission, 43 FERC ¶ 61,545 (1988) (Cogenerators I). In Cogenerators I, FERC determined that application of a single charge applicable to both backup and maintenance services provided to a QF violated previous FERC regulation 18 C.F.R. Part 292 and Order No. 69.[1]

FERC also suggested in Cogenerators I that regulations required that, absent a factual showing by the *utility* justifying a proposed rate, the rates charged for backup and maintenance power should be priced differently. What was required to be demonstrated was that no cost difference existed between supplying power at any time, due to a forced outage of the QF, or supplying power at a particular time by prearrangement. Cogenerators I 43 FERC ¶ 61,545. Thus it appears Trigen is arguing that Cogenerators I places the burden on the providing utility to justify

[1] Small Production and Cogeneration Facilities, Regulations Implementing Section 210 of PURPA, 45 Fed. Reg. 12,214 (Feb. 25, 1980).

a different rate for backup and maintenance power services, and unless such a burden is met, the rates should vary based upon costs.

Finally, FERC suggested in Cogenerators I that an additional burden was placed on the provider utility to ensure that the cost-based analysis used to determine rates for services to QFs must be consistent with system-wide costing principles which may require in turn the use of probability analysis that focuses on the reserve margins attributable to QFs as a class. Cogenerators I 43 FERC ¶ 61,545.

This Commission is not bound by the decisions of other agencies in other jurisdictions. Cogenerators I was a decision by FERC in regard to the review of an order by the Florida Public Service Commission, and thus has no binding effect on this Commission. The value, if any, of Cogenerators I is diminished, if not completely eliminated, by a subsequent Order of FERC vacating the suggestions and interpretations contained therein. In Industrial Cogenerators v. Florida Public Service Commission, 61 FERC ¶ 61,202 (1992) (Cogenerators II), FERC stated:

> While we generally disfavor vacating our orders, this proceeding involves peculiar circumstances... Accordingly we will vacate those portions of our June 27 order [43 FERC ¶ 61,545 (1988)] that interpret or explain PURPA and our QF regulations, and what they do or do not require.

Had Cogenerators I not been vacated, this Commission would still not be bound by the suggestions of FERC regarding the interpretation of PURPA.

In instances wherein a complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, the burden of proof at hearing rests with complainant. Sheldon Margulis v. Union Electric Co., 30 Mo. P.S.C. (N.S.) 517, 523 (1991).

The Commission concludes that Complainant Trigen-St. Louis Energy Corporation has not, for the reasons stated in the findings of fact, successfully discharged its burden of proof against Respondent Union Electric Company.

IT IS THEREFORE ORDERED:

1. That the complaint filed against Union Electric Company by Trigen-St. Louis Energy Corporation on November 21, 1995, is dismissed.

2. That late-filed Exhibit 13 is received into the record.

3. That any outstanding motions or objections are hereby denied.

4. That this Report And Order shall become effective on September 2, 1997.

BY THE COMMISSION

Cecil I. Wright
Executive Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 20th day of August, 1997.