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August 19, 1999

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

FILED

AUG 19 1999

RE: Case No. HX-99-443
In the Matter of 4 CSR 240-80.015

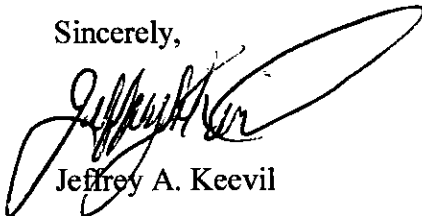
Missouri Public
~~Service~~ Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and fourteen (14) copies of an APPLICATION FOR REHEARING AND MOTION FOR RECONSIDERATION on behalf of Trigen-Kansas City Energy Corporation.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er

Enclosures

cc: counsel of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
AUG 19 1999
Missouri Public
Service Commission

In the Matter of 4 CSR 240-80.015)
Proposed Rule – Steam Heating)
Utilities Affiliate Transactions) Case No. HX-99-443

APPLICATION FOR REHEARING
AND MOTION FOR RECONSIDERATION

COMES NOW Trigen-Kansas City Energy Corporation (“Trigen”), pursuant to Section 386.500 (RSMo. 1994) and 4 CSR 240-2.160 of the Commission’s Rules of Practice and Procedure, and submits its application for rehearing and motion for reconsideration of the Commission’s Order Denying Contested Case Procedures (“Order”) in Case No. HX-99-443 issued on August 10, 1999. The Order is unreasonable, unlawful, arbitrary and capricious, an abuse of discretion, and deprives Trigen of its rights to due process and equal protection as guaranteed by the Missouri and United States Constitutions for the following reasons:

1. The Order ignores, misconstrues and/or misinterprets the law of the State of Missouri regarding what constitutes a “contested case” (as set forth in detail in the Motion to Adopt Contested Case Procedures) and the language of the statutes under the authority of which the Commission has promulgated proposed rule 4 CSR 240-80.015. All of the statutory provisions under which the Commission has promulgated the proposed rule require that the Commission conduct a hearing before it takes action; Section 386.250(6) (RSMo. Supp. 1998) specifically requires that “a hearing shall be held at which affected parties may present evidence as to the reasonableness of [the] proposed rule” and that rules adopted by the Commission must be “supported by evidence as to reasonableness.” Requirements of a hearing and evidence clearly mandate

adoption of contested case procedures as set forth in the Motion to Adopt Contested Case Procedures. The Order denies Trigen of its due process rights to a meaningful hearing and contested case procedural rights and protections that flow therefrom, in violation of Sections 386.250(6) (RSMo. Supp. 1998); 393.140(5) and (8) (RSMo. 1994); and Section 536.021 et seq. (RSMo. Supp. 1998).

2. The Order errs in finding that “[t]he proposed rulemaking in this proceeding is not to determine the legal rights, duties or privileges of specific parties.” In the fiscal note accompanying the proposed rule in the Missouri Register, the Commission specifically stated that it had “sent a letter to all the regulated steam heating utilities in the state” and that “[o]ne of three steam heating utilities replied.” Furthermore, the Commission apparently had no difficulty determining the estimated fiscal impact of the proposed rule on the three steam heating companies. It is indisputable that the proposed rulemaking will determine the legal rights, duties or privileges of the three regulated steam heating utilities in the state and that the Commission knows precisely who those utilities are, since it sent each of them a letter. For the Order to now find that the proposed rulemaking does not determine the legal rights, duties or privileges specific parties is plainly error.

3. The Order misconstrues and/or misinterprets Section 536.021.3 RSMo. Supp. 1998, which provides that a hearing shall not be necessary “**unless otherwise required by law.**” (emphasis added). As set forth above, the statutes under which the Commission promulgated the proposed rule require a hearing and evidence, so Section 536.021.3 RSMo. Supp. 1998 constitutes no basis on which the Commission can deny the Motion to Adopt Contested Case Procedures.

4. The Order ignores, misconstrues and/or misinterprets the law when it states that “[t]he Commission’s authority to promulgate the proposed rule is based on the Commission’s general authority at Section 386.250, RSMo. Supp. 1998, and the Commission’s express authority concerning steam heating utilities at Section 393.140, RSMo. 1994.” Neither of these statutory sections even mention steam heating utilities; therefore they cannot constitute authority to promulgate the proposed rule and clearly do not constitute “express authority concerning steam heating utilities.”

5. The findings and conclusions in the Order as to the “purpose and authority” for the proposed rule are not supported by competent and substantial evidence on the whole record as required by law. Since the Commission has refused to take evidence on the proposed rule there can by definition be no competent and substantial evidence on the whole record; therefore, any findings are not supported by competent and substantial evidence on the whole record and seem to indicate that the outcome of the proposed rule has been predetermined.

6. The Commission erred by failing to serve the Order on the very parties which filed the Motion to Adopt Contested Case Procedures.

7. The Order is unjust, unreasonable, arbitrary and capricious in that it rejects the adoption of contested case procedures on the grounds that the importance of a particular issue under consideration is irrelevant to whether contested case procedures are used. The Order fails to recognize that in making this particular argument in the Motion to Adopt Contested Case Procedures, the movants were appealing to the Commission’s judgment as to what sound public policy requires. Notably, the Commission makes no effort in the Order to explain how the procedures it has adopted for this case are sufficient

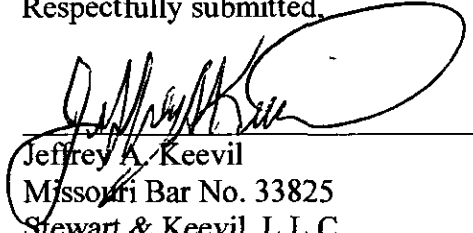
to ensure that the important public policy issues at stake herein will be adequately addressed.

8. The Order fails to set forth adequate findings of fact and conclusions of law as required by Missouri law. Accordingly, the Order is unlawful and unreasonable as a matter of law.

9. In all other respects, the Order is unlawful, unreasonable, and is not supported by competent and substantial evidence upon the whole record in violation of Missouri law.

WHEREFORE, Trigen respectfully requests that the Commission issue its order granting rehearing or reconsideration of its August 10, 1999, Order Denying Contested Case Procedures and upon such rehearing or reconsideration grant the Motion to Adopt Contested Case Procedures jointly filed herein by Associated Natural Gas Company, Laclede Gas Company, Missouri Gas Energy and Trigen-Kansas City Energy Corporation.

Respectfully submitted,



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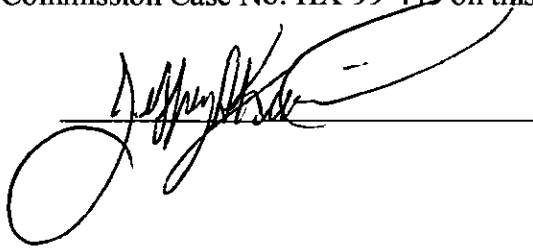
(573) 499-0635

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ATTORNEY FOR TRIGEN-KANSAS
CITY ENERGY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by placing same in first-class mail, with proper postage affixed, or by hand-delivery, to counsel for parties of record according to the service list maintained by the Missouri Public Service Commission in Missouri Public Service Commission Case No. HX-99-443 on this 19th day of August, 1999.

A handwritten signature in black ink, appearing to read "Jeffrey K. Ste...", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end.