

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

In the Matter of the Tariff Filing of)	
Trigen-Kansas City Energy Corporation)	
To Implement a General Rate Increase for)	Case No. HR-2008-0300
Regulated Steam Heating Service Provided)	Tariff Nos. YH-2008-0553 and
To Customers in the Company's Missouri)	YH-2008-0554
Service Area)	

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

COMES NOW Trigen-Kansas City Energy Corporation ("Trigen"), through the undersigned counsel, and for its Reply to Kansas City Power & Light Company's Response to Trigen's Motion to Restrict Access and Motion to Compel Trigen to Provide Workpapers, filed herein on or about May 9, 2008, pursuant to 4 CSR 240-2.080 respectfully states as follows:

1. In its Response to Trigen's Motion to Restrict Access to the Highly Confidential information of Trigen in this case, Kansas City Power & Light Company ("KCPL") misstates Trigen's argument as set forth in Trigen's Motion for Order Restricting Access to Highly Confidential Information filed herein on May 1, 2008. In paragraph 3 of its Response, KCPL states that Trigen's argument is that KCPL's in-house counsel might some day represent KCPL in commercial contract negotiations *with Trigen*. This was not Trigen's argument in its Motion; Trigen's argument on this point¹ was, and continues to be, that KCPL's in-house counsel could use – and in fact would be

¹ Trigen's Motion contained additional arguments why KCPL's in-house counsel should be denied access to Trigen's Highly Confidential information; KCPL's Response addressed only this argument.

unable to avoid using – Trigen’s confidential information in negotiations *with customers*, be they existing or potential customers of KCPL, not in negotiations with Trigen.

2. KCPL’s Response also denies that there is any distinction between in-house counsel and outside counsel; such a denial flies in the face of common sense and simple logic. If nothing else, proximity to other KCPL employees distinguishes in-house counsel from outside counsel. For easy example, if in-house counsel had a document on his desk and another KCPL employee walked into the office while he was away from the desk, such employee might well be able to view such document. Such an inadvertent disclosure could not occur in the case of outside counsel, since outside counsel offices are not shared with KCPL employees. Furthermore, while KCPL claims the Commission’s rule on confidential information (4 CSR 240-2.135) is clear in regard to attorneys, although some subsections of the rule may distinguish between attorney employees and non-attorney employees, subsection (6) makes no such distinction and simply refers to “[a]ny employee of a party.” Therefore, as stated in Trigen’s Motion, it is not clear that in-house attorneys of record are or are not precluded from having access to Highly Confidential information. In any event, for the reasons set forth in Trigen’s Motion, in the instant case the Commission should issue an order preventing *any* employees (whether or not they are attorneys) of KCPL (or its affiliates) from having access to the highly confidential information of Trigen produced in this case.

3. As for KCPL’s claimed “burden” from not having access to Trigen’s Highly Confidential information, the Commission should recall that Trigen has participated in KCPL’s last two rate cases under this same alleged “burden.” Denying KCPL’s in-house counsel access to Trigen’s Highly Confidential information will not

prevent him from reviewing the non-Highly Confidential testimony filed herein, which should enable him to select an outside expert – which is the reason claimed in KCPL’s Response as to why KCPL’s in-house counsel needs access. As for KCPL’s claim that Trigen’s requested restriction would require KCPL to incur greater expenses than it otherwise would, the Commission recently rejected a similar argument when made by Trigen in KCPL’s Case No. EE-2008-0238 when the Commission rejected Trigen’s argument that KCPL’s request to set a procedural schedule would require Trigen to hire an outside expert prior to a Commission ruling on dispositive motions. (See *Order Establishing Procedural Schedule* issued on April 8, 2008, in Case No. EE-2008-0238) No legitimate reason exists for granting KCPL’s in-house counsel access to the Highly Confidential workpapers and other information of Trigen in this case – in fact, no reason exists at all other than gaining information which could be used to place Trigen at an extreme competitive disadvantage.

4. In its Motion to Compel Trigen to provide workpapers to KCPL, KCPL first makes the unsubstantiated assertion that Trigen should have provided counsel for KCPL with Trigen’s workpapers when KCPL became a party to this case. KCPL cites no authority for this assertion – this is probably due to the fact that there is no such obligation on Trigen. No rule, order or statute imposes such a requirement.

5. KCPL next states that it requested the workpapers on April 18, and refers to this as having been acknowledged by Trigen. What Trigen previously “acknowledged” in its Motion was that it had received an *informal request* from KCPL’s in-house attorney of record for the workpapers supporting Trigen’s rate case. To this date, Trigen has not received an actual, formal data request for the workpapers from

KCPL, or any other data requests from KCPL in this case. Once a data request is received, pursuant to Commission rule, Trigen has 20 days to respond. At this point, there is nothing for the Commission to compel.

6. KCPL's Motion to Compel also asks the Commission to order Trigen to provide a Highly Confidential version of its workpapers *and* a Public version of the workpapers. Once again, KCPL cites no authority for its request for two versions of the workpapers, because there is none. This is not testimony, which is required to be *filed* in different versions, but workpapers, for which there is no such requirement.

7. Finally, KCPL's Motion to Compel *completely ignores* subsection (8) of 4 CSR 240-2.090 which provides that:

(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

Even if there was an outstanding data request to which to compel a response – which there is not, as set forth above – KCPL's complete failure to comply with this rule would necessitate a denial of KCPL's Motion to Compel.

WHEREFORE, Trigen's Motion for Order Restricting Access to Highly Confidential Information should be granted for the reasons set forth therein and above, and KCPL's Motion to Compel must be denied.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil #33825
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635
(573) 499-0638 (fax)
per594@aol.com
Attorney for Trigen-Kansas City
Energy Corporation

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was sent to counsel of record by depositing same in the U.S. Mail first class postage paid, by hand-delivery, or by electronic transmission, this 13th day of May, 2008.

/s/ Jeffrey A. Keevil
