

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

In the matter of the application of Trigen- )  
Kansas City Energy Corporation for a )  
Certificate of Public Convenience and )  
Necessity authorizing it to construct, install, ) Case No. HA-2006-0294  
own, operate, control, manage and maintain )  
a steam heat distribution system to provide )  
steam heat service in Kansas City, Missouri, )  
as an expansion of its existing certified area. )

**RESPONSE IN OPPOSITION TO MGE’S REQUEST  
FOR EXTENSION OF FILING DEADLINES**

COMES NOW Trigen-Kansas City Energy Corporation (“Trigen”), by and through its counsel, and for its Response in Opposition to MGE’s Request for Extension of Filing Deadlines and Request for Expedited Treatment (“MGE’s Request”) respectfully states as follows:

1. On April 12, 2006, one day before rebuttal testimony was scheduled to be filed pursuant to the procedural schedule which MGE admits had been agreed upon by all parties (including MGE) and which had been adopted by Order dated March 13, 2006, MGE filed its Request for Extension of Filing Deadlines and Request for Expedited Treatment which MGE claims is based on the fact that certain data request responses by Trigen and Truman Medical Center (“TMC”) to MGE data requests were designated as highly confidential. MGE’s current procedural predicament set forth in MGE’s Request is of its own making as shown below, and granting MGE’s Request would be prejudicial to Trigen and any other party with a legitimate interest in this case and should be denied.

2. MGE's Request alleges that it "had not planned on hiring an outside consultant" but that it "decided to hire a consultant" because many of the data request responses from Trigen and TMC were designated as highly confidential, and that the need to hire this outside consultant is what led to MGE's Request. For MGE to feign surprise that some data request responses were designated as highly confidential is disingenuous, because when Trigen filed its Application on January 10, 2006, Trigen indicated that Appendix C to the Application was highly confidential and would be late-filed after the Commission issued its protective order in this case. Simultaneously with the filing of the Application, Trigen filed a motion for protective order. Highly confidential Appendix C was then late-filed on January 13, 2006. Therefore, MGE has known since January 10 – even prior to MGE's intervention herein – that it would need to hire an outside consultant if it wished to have someone other than its counsel of record review the entire application, and that it would need to hire an outside consultant if it wished to file testimony and actively participate in this case.

Furthermore, when Trigen filed its direct testimony on March 16, 2006, it included two schedules designated as highly confidential (one of which was a copy of highly confidential Appendix C to the Application). However, MGE did not retain an outside consultant until only a few days ago – in fact, MGE's consultant did not sign and file a non-disclosure agreement in this case until April 10, 2006. For MGE to imply that it did not know that certain information would be designated as highly confidential until after it received data request responses does not stand up to the facts. Furthermore, as a regular party in Commission proceedings, MGE knew or should have known that certain material would be classified as highly confidential. The situation in which MGE finds

itself is simply due to MGE's delay in hiring an outside consultant; no party other than MGE controlled or influenced that untimely decision by MGE and MGE should not be rewarded for its failure to pursue this case in a timely manner.

3. MGE's Application to Intervene in this case was granted on February 24, 2006; however, MGE's Request states that MGE did not serve data requests on Trigen or TMC until March 20, 2006. MGE's Request also states that it received responses from Trigen on March 24 and March 29 – less than ten days after serving its data requests. Yet MGE waited until April 10 to hire an outside consultant – a delay of MGE's making.

4. MGE's Request also claims "many" responses were designated highly confidential. However, of the twenty-two data requests served on Trigen by MGE, the responses to only three (two of which were objectionable on other grounds anyway; in those two responses, Trigen stated its objection to preserve said objection but responded nevertheless, in the spirit of cooperation and the hope that the schedule for this case would not be altered) were designated as highly confidential, and two other responses contained references to the highly confidential Appendix C to the Application filed on January 13 and attached to Trigen's direct testimony filed March 16. MGE's characterization of "many", at least in regard to Trigen's responses, is, therefore, slanted at best.

5. Also, although MGE's Request states that MGE served data requests on TMC on March 20, 2006, it should be noted that those data requests were not served on counsel for TMC on that date; in fact, MGE did not serve its data requests on counsel for TMC until at least April 4, 2006. According to MGE's Request, TMC responded on April 10 – less than ten days after the requests were served on counsel for TMC.

6. In its Request, MGE seeks to extend the date for filing rebuttal testimony for MGE only. While Trigen appreciates the fact that MGE has not proposed to alter the hearing dates for this matter, MGE's Request is still prejudicial to Trigen and any other party filing surrebuttal testimony (presumably Staff, and possibly TMC) because it reduces by almost half (from fifteen days to eight days) the time between this rebuttal and surrebuttal testimony. This eight day period requested by MGE is not enough time for Trigen (and any other party filing surrebuttal testimony) to conduct meaningful discovery concerning MGE's rebuttal testimony filing and prepare and file meaningful, responsive surrebuttal testimony (even with MGE's hollow "concession" to a five-day turnaround for data requests regarding MGE's testimony). The Commission should remember that Trigen and TMC filed their direct testimony on March 16; if MGE's Request is granted, MGE would have had approximately a month and a half to file its rebuttal testimony, while MGE's Request would allow merely eight days to conduct discovery and file surrebuttal testimony to MGE's rebuttal.

7. MGE's Request would also reduce the time between the filing of surrebuttal testimony and the filing of prehearing briefs from thirteen days to seven days, and the time between filing the list of issues and prehearing briefs from seven days to four days. As the Applicant in this case, this reduction of time for preparing and filing a prehearing brief would be particularly prejudicial to Trigen, since Trigen will presumably need to respond in its brief to all issues raised by other parties to this case, unlike intervenor MGE which may only address certain limited issues in its brief if it deems it necessary to file a brief at all.

8. MGE's Request claims it is not made to hinder or delay, yet that is precisely what MGE's participation in this case has done to date, since MGE is the only party so far which has opposed Trigen's Application, thereby eliminating the possibility that the case could be resolved on the basis of a Staff recommendation. When Trigen originally filed its Application herein, Trigen and TMC hoped that the Commission would grant Trigen's Application in sufficient time for Trigen to complete the necessary construction and begin to serve TMC prior to the next winter heating season. Trigen and TMC still hope that Trigen can begin to serve TMC prior to the next winter heating season or for as much of the next winter heating season as possible. Time is of the essence because, as stated in TMC's Application to Intervene:

- TMC is a Missouri non-profit corporation which operates a health care delivery system comprised of acute inpatient, outpatient and behavioral health services;
- TMC is the safety net hospital provider for the indigent citizens of Kansas City, Missouri and Jackson County, Missouri pursuant to contracts for such services with the City and County;
- TMC is also the primary teaching hospital for the UMKC School of Medicine, the UMKC School of Dentistry, the UMKC School of Pharmacy and the UMKC School of Health Sciences;
- TMC's analysis is that steam heating service from Trigen will result in a significant utility cost savings to TMC and that, as a non-profit health care provider to the indigent of Kansas City, Missouri and Jackson County, Missouri, such a cost savings serves to conserve and stretch the already scarce health care resources currently available;

- TMC believes that the cost savings inherent in receiving steam heating service from Trigen is vital to its continued efforts to find methods of stretching the financial resources available to it to fulfill its charitable mission, and that the cost savings inherent in the delivery of steam heating service directly affects TMC's cost of delivering indigent health care to the citizens of Kansas City, Missouri and Jackson County, Missouri.

9. MGE's Request claims that granting said Request would be in the best interest of justice and would not prejudice any other party. Given the matters set forth in paragraph 8 above, it is difficult to imagine what connection MGE's Request, or for that matter, MGE's continued opposition to Trigen's Application, has with the best interest of justice. Furthermore, the prejudice which would result to Trigen and any other party filing surrebuttal testimony has also been set forth above. MGE's claimed inability to file rebuttal testimony on April 13, 2006, and its claimed need for an extension is both self-inflicted and self-serving, due to MGE's failure to pursue this case in a timely manner.

WHEREFORE, Trigen respectfully (i) requests that the Commission issue its order denying MGE's Request for Extension of Filing Deadlines and, (ii) in the event that MGE attempts to file rebuttal testimony after April 13, 2006, requests that the Commission issue its order striking such late-filed testimony.

Respectfully submitted,

/s/ **Jeffrey A. Keevil**

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel for parties of record by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 12th day of April, 2006.

**/s/ Jeffrey A. Keevil**

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