

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MISSOURI 64111

(816) 753-1122
TELECOPIER (816) 756-0373

JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
C. EDWARD PETERSON*

*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

March 28, 2005

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

FILED²

MAR 29 2005

Missouri Public
Service Commission

**RE: County of Jackson, Missouri v. Trigen-Kansas City Energy Corp., et al.
Complaint and Motion for Expedited Treatment and For Issuance of an
Order by March 31, 2005 Ordering Trigen Not to Sever its Steam Loop on
April 2, 2005**

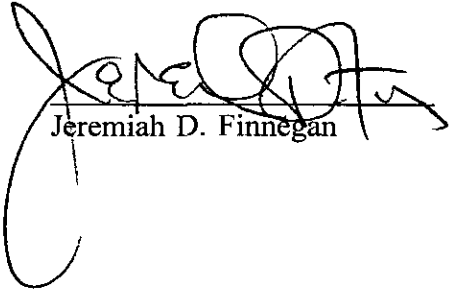
Dear Mr. Roberts:

Enclosed find the original and 8 copies of the Complaint of Jackson County, Missouri v. Trigen-Kansas City Energy Corp. and Thermal North America, Inc. Please file and call the Complaint to the immediate attention of the Commission. Time is of the essence and Complainant has requested Expedited Treatment and the issuance of an order by March 31, 2005 ordering Trigen not to sever its steam loop on April 2, 2005.

Very truly yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By:


Jeremiah D. Finnegan

JDF:ach
Enclosures
cc: Paul DeFord
John Coffman
F:\DOCS\JDF\63640.1

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

COUNTY OF JACKSON, MISSOURI,)

COMPLAINANT)

v.)

TRIGEN-KANSAS CITY ENERGY)
CORP.)

and)

THERMAL NORTH AMERICA, INC.)

RESPONDENTS)

CASE NO. _____

FILED²

MAR 29 2005

Missouri Public
Service Commission

COMPLAINT

AND

MOTION FOR EXPEDITED TREATMENT

AND

FOR ISSUANCE OF AN INTERIM ORDER BY MARCH 31, 2005
ORDERING TRIGEN NOT TO SEVER ITS STEAM LOOP ON APRIL 2, 2005

COMES NOW Complainant County of Jackson, Missouri ("Jackson County" or "County") and pursuant to Section 386.390, RSMo. and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, and for its Complaint against Trigen-Kansas City Energy Corp. ("Trigen") and Thermal North America, Inc. ("Thermal") and its motion for expedited treatment and issuance of an interim order by March 31, 2005, respectfully shows that:

1. Complainant Jackson County is a first class county and political subdivision of the State of Missouri. The County and many of its downtown Kansas City commercial,

residential, and government neighbors receive steam heating service from Trigen and are totally reliant upon such steam service for all their heating needs.

2. Communications, orders and decisions in this Matter should be addressed to:

Edward B. Rucker
County Counselor
Jackson County Courthouse
415 E. 12th Street
Kansas City, Missouri 64106
(816)881-3355 Fax (816)881-3398
erucker@jacksongov.org

Jeremiah D. Finnegan
Finnegan, Conrad & Peterson, LC
1209 Penntower Building
3100 Broadway
Kansas City, Missouri 64111
(816)753-1122 Fax (816)756-0373
jfinnegan@fcplaw.com

3. Respondent Trigen, is a Delaware corporation with its principal offices located at 1990 Post Oak Boulevard, Suite 1990, Houston Texas 77056. Trigen is authorized to provide steam heating service pursuant to a certificate granted by the Commission in Case No. HA-90-5. Trigen is currently providing steam heating service to approximately 60 downtown Kansas City commercial, industrial and governmental buildings, including, *inter alia*, the Jackson County Courthouse and Jail buildings, the Federal Building and Courthouse, and the Missouri State office building as well as numerous office and residential buildings.

4. Respondent Thermal, is a Delaware holding company with its principal offices located at 600 Atlantic Avenue, Boston, Massachusetts 02210. On December 21,

2004, the Commission in Case No. HM-2004-0618, in an Order effective December 31, 2004, authorized Thermal to purchase all the stock of Trigen.

COMPLAINT

5. By letter dated February 22, 2005, Complainant County was notified by Trigen that approximately 800' of its existing 14" steam line in 14th Street between Grand and McGee and in McGee between 14th and 13th Streets needs to be permanently removed for the development of a future arena site. (A copy of which is attached as Appendix 1 and incorporated herein by reference.) In such letter, Trigen advised that on February 3, 2005, the City Council of Kansas City enacted Ordinance No. 050084 requiring such action by Trigen. (A copy of such Ordinance is attached as Appendix 2 and incorporated herein by reference.) According to Trigen's letter, such removal was to commence on March 5, 2005 and that steam service through most of Trigen's network would be unavailable for a minimum of 12 hours that day. After Complainant Jackson County and several other steam users impacted by such outage had talks with the City and Trigen, the City and Trigen agreed that removal of the steam line set for March 5, 2005 would be postponed for a month until April 2, 2005. The County was notified on March 28, 2005, that no such further talks will take place, and, therefore, the steam loop will be severed in two locations commencing on April 2nd and the steam lines between such locations will be removed. The result of such action is the termination of the downtown steam loop and, consequently, the inadequacy of the remaining non-looped service.

6. In such letter, Trigen also notified Complainant Jackson County that after

the cutting of the main steam loop, Trigen proposes to operate the system without a loop for one or more years before it reconnects the terminals with new mains following a different route and, at such time, once again provides the necessary steam loop.

7. Trigen, by providing a looped steam system, is currently providing such service instrumentalities and facilities which are safe and adequate as required by Section 393.130, RSMo. However, if Trigen were to remove the lines and sever the steam loop as contemplated, the result of such action would be that the existing, active steam loop would no longer exist. In its place would be two non-looped radial main lines originating from Trigen's plant on the Missouri River and extending to the south to 14th Street. One such leg of the loop running down McGee Street would now terminate at 13th and Grand. The other leg of the loop running down Wanted Street would now terminate at 14th and Grand. There would no longer be a main steam line connecting the two points. With the steam system no longer being looped, Trigen would no longer be providing safe, reliable and adequate service as required by law.

8. Under current conditions with the steam system being looped, all customers on the loop are capable of receiving steam service from two directions so that if there is an interruption on one leg of the loop they will continue to receive service from the other leg of the loop. Thus, despite a shutdown upstream anywhere on of one of the legs to perform scheduled maintenance or to repair a damaged portion of the system, all customers except those at the point of repair will continue to receive steam service. In these days of terrorism, with concern for attacks on utilities, it is obvious that such

looping is even more essential. With the system looped, an attack on a building at 6th and Grand, for example, would not result in termination of the service to the Jackson County Courthouse and Jail at 13th and Oak, or any other customers downstream of the attack occurring on the McGee Street leg, because service would be available from the other leg running down Wanted Street. The same is true for customers on the Wanted leg, should there be a problem on the McGee leg.

9. By severing the steam loop as proposed at its most distant locations, the reliability, safety and adequacy of Trigen's service would be severely impacted adversely by longer and more frequent downtimes for virtually all customers downstream on the leg affected by a shutdown due to the fact that there would no longer be any redundancy on the system. Without the system being looped an interruption anywhere upstream on the steam line from a customer, such as Jackson County which is located near the end of the McGee leg and, therefore, more susceptible to outages due to its distance from the steam plant, such customer would have its service interrupted. It will no longer be able to receive service from the other leg because it is no longer part of the loop. Also, the farther one is from the river, the more frequently such interruptions upstream could occur and last for longer periods of time. Such would be detrimental to the health and safety of Trigen's customers and the public.

10. Complainant Jackson County, like many downtown steam customers, is totally dependent upon steam heat for all of its heating needs. The downtown steam customers have built their buildings in reliance on existence of the steam loop and,

therefore, did not provide space for boilers in the buildings. They are, thus, captive customers of Trigen for all their steam heating requirements. Steam service is not only used by commercial establishments and office buildings, which are occupied only during the daytime, there is also a substantial nighttime population. Thus, the severing of the steam loop not only impacts the daytime population of the County Courthouse and other commercial businesses, offices and government buildings served by the steam loop, but also the 24 hour inmate population of the County Jail and others, such as transient hotel guests, who also occupy their respective buildings on a 24 hour basis. Residential customers would also be impacted by a shutdown since in recent years, more and more buildings in the downtown area are being converted to residential living. As such, Jackson County is most distressed with the proposed severing of the steam loop and the resulting inadequacy and unreliability of the steam system to Jackson County and the other customers on the steam loop, should such loop be severed before new lines were constructed to reconnect the loop and the new loop placed in service.

11. It is County's understanding that the cost to cap, remove and relocate Trigen's steam loop is estimated at \$800,000 to \$900,000, which amount is equal to approximately 17.5% to 19.5% of Trigen's 2004 total revenues of \$4.6 million. It is also County's understanding that Trigen has been advised that it is to bear the entire cost of this removal and relocation project to clear the way for the new arena construction. If Trigen were to incur such cost, this would mean a substantially increased rate base and expenses, which would surely be followed by a rate case to attempt to recover such costs

from its customers. The end result would be increased rates for Trigen's 60 customers for a project that severs the steam loop and makes the steam system less safe, less reliable and inadequate. It is County's position that the owners of the arena project, the beneficiary of the removal of the lines, should rightly bear this cost, not Trigen and the ratepayers on the steam system.

12. Pursuant to Section 393.290, RSMo., Trigen is subject to regulation by the Commission, under Chapters 386 and 393, RSMo., including regulation of the safety and adequacy of its service instrumentalities and facilities pursuant to Sections 393.130 and 393.140, RSMo.

13. The state has vested the police power over public utilities exclusively in the Public Service Commission. The Commission has the exclusive power to regulate the rates and service of utilities under its control. It has been held by the Missouri Supreme Court since the inception of the Commission that municipal ordinances, which invade the province of the Commission, are inoperative and void. See *State ex rel. United Railways Company v. Public Service Commission*, 192 SW 958 (Mo. 1917); *Ex parte Packman*, 296 SW 366 (Mo. 1927); *State ex rel. Kansas City Public Service, Co. v. Latshaw*, 30 SW2d 105 (Mo. 1930).

14. Also, in addition to its general powers to regulate utilities under Section 386.250 and 386.320, RSMo., the Commission is granted the broad power pursuant to Section 386.310, RSMo., to require Trigen, after hearing:

...to maintain and operate its line, plant, system, equipment, apparatus, and

premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand...

15. Inasmuch as it is obvious that the severing of the steam loop and reducing its reliability will not "promote and safeguard the health and safety of its ...customers and the public", the Commission should exercise its regulatory powers over Trigen by ordering it to cease and desist from cutting its mains and severing the steam loop until such time as Trigen has constructed lines in an alternate route to assure the continued existence of the steam loop without unnecessary interruption.

16. Further, Trigen should be ordered to take all necessary action, including litigation, if necessary, in an effort to impose upon the arena project and its owners, the costs of severing the steam mains, the removal of the steam mains and the relocation of the steam mains to provide an alternate steam loop.

**MOTION FOR EXPEDITED TREATMENT
AND
ISSUANCE OF AN INTERIM ORDER BY MARCH 31, 2005
ORDERING TRIGEN NOT TO SEVER ITS STEAM LOOP ON APRIL 2, 2005**

17. Complainant County herein incorporates by reference paragraphs 1 through 15 of this pleading.

18. Pursuant to Commission's Rule 4 CSR 2-40.080(16), Complainant Jackson County is seeking expedited treatment of its Complaint to maintain the status quo and

issue an order by March 31, 2005, prohibiting the severing of the steam loop on April 2, 2005, because severing the steam loop, before a new steam loop can be placed in service, would negatively effect Complainant and the public served by the steam loop by making the steam system less reliable, unsafe and inadequate.

19. In addition, pursuant to Section 386.310, RSMo., Complainant County is seeking the expeditious issuance of an interim order no later than March 31, 2005, ordering a hearing on the Complaint and ordering Trigen not to sever its line nor remove any steam line pending hearing on the Complaint, because the failure to do so would result in the likelihood of imminent threat of serious harm to life or property if Trigen severs its steam line on April 2, 2005 as proposed before the Commission has an opportunity to hear evidence on the Complaint. Therefore, time is of the essence.

20. Complainant County has filed this pleading as soon as it could have been filed because it only learned on March 28, 2005, that the new date for severing the steam loop was scheduled for April 2, 2005 and will not be postponed.

WHEREFORE, Complainant Jackson County requests an order from this Commission:

1. Ordering Trigen to cease and desist from cutting and capping its steam lines and removing a portion of its steam main, thereby severing the steam loop, until such time as Trigen has built an alternate steam main route that would be capable of providing continuous operation of the steam loop without interruption immediately upon the removal of its lines on McGee Street and 14th Street for the arena project;

2. Requiring Trigen to negotiate and, if necessary, institute litigation for the purpose of imposing upon the arena project and its owners, the costs of cutting Trigen's steam mains, the removal of the steam mains and the relocation of the steam mains to provide an alternate steam loop;

3. Because Trigen has been directed to sever its steam line and remove the intervening portion of its line commencing April 2, 2005, time is of the essence. Thus, pending the hearing on this Complaint, Complainant requests that the Commission issue an order, immediately or no later than March 31, 2005, setting a hearing on this Complaint and ordering Trigen to cease and desist from severing its steam main pending final adjudication of this Complaint, a procedure provided for in Section 386.310, RSMo. where, as here, the failure to do so would result in the likelihood of imminent threat of serious harm to life or property; and

4. Such further and other relief as the Commission may deem just and equitable.

Respectfully submitted,

EDWARD B. RUCKER
COUNTY COUNSELOR
Jackson County Courthouse
415 E. 12th Street
Kansas City, Missouri 64106
(816)881-3355 Fax (816)881-3398

FINNEGAN, CONRAD & PETERSON, LC

By: 

JEREMIAH D. FINNEGAN, #18416

3100 Broadway, Suite 1209

Kansas City, Missouri 64111

(816)753-1122 Fax (816)756-0373

jfinnegan@fcplaw.com

ATTORNEYS FOR COMPLAINANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Complaint has been mailed postage prepaid and by e-mail to Paul S. DeFord, Lathrop & Gage, L.C., 2345 Grand Boulevard, Suite 2800, Kansas City, MO 64108 and John B. Coffman, Office of the Public Counsel, P.O. Box 2230, Jefferson City, MO 65102, this 28th day of March 2005.


Jeremiah D. Finnegan



TRIGEN ENERGY KANSAS CITY

115 GRAND BOULEVARD
KANSAS CITY, MO 64106
(816) 889-4900 FAX (816) 842-1272

February 22, 2005

Jackson County Court House
Facility Management
Attn: Mr. Bruce Palmer
415 E. 12th Street, Room 106
Kansas City, MO 64106

Dear Mr. Palmer:

In order to accommodate site preparation for the planned downtown arena, Trigen has been ordered by the City of Kansas City to permanently remove a section of its active steam heating network from service. The reason for the piping removal is that these steam facilities, which currently reside in public right-of-way, occupy what will become the downtown arena site. The ordinance (#050084) directing Trigen to make this modification to its steam heating infrastructure was passed by the City Council on February 3, 2005.

The purpose of this letter is to inform our customers as to the near-and long-term effects of Trigen's compliance with this directive. In the immediate future, we have tentatively scheduled an outage affecting your property, as well as a number of other customers. The outage is scheduled for Saturday, March 5th, and its purpose is to perform the mechanical work necessary to terminate the steam main that goes through the four-block arena project area centered at 14th and McGee Streets. Steam service through much of Trigen's network will therefore be unavailable for a minimum of a 12-hour period that day. However, when the termination work is completed, all customers will have their steam service restored.

While steam service will be restored following the work, one characteristic of the physical configuration of Trigen's system will change. Please be advised that we do not expect the reliability or quality of Trigen service to suffer. Nonetheless, we want to inform you of the change.

Given the relatively large proportion of public right-of-way being vacated in order to effect land clearance for the arena, a significant portion (800 feet) of our main steam loop must be taken out of service permanently and removed from the ground. For the time being, this means that Trigen's steam system will no longer form a loop network. Rather, steam will be distributed through two radial (or terminal) connections originating from our plant. As above, the reliability of heating steam supply following this alteration is expected to remain comparable in virtually all respects to that to which you have become accustomed over the past 15 years of Trigen service.

Tractebel Electricity & Gas
International



In sum, the switch to terminal service from pre-existing loop service will not affect the frequency or duration of outage downtime that the steam system experiences. What may change is the number of customers whose service is interrupted for a given maintenance operation on the system. Again, by no means does the modification necessitated by the ordinance make downtime more likely. Therefore, the impact from the individual customer standpoint is expected to be minimal, if felt at all.

At some point in the future, (though most likely one or more years out), it is Trigen's intention to restore the system to its prior configuration by reconnecting the terminals. The main will be constructed in a new routing, once such a path is identified and becomes available. We are already working to determine the best means to accomplish this.

In any event I want to thank you for your patience through this period. While this is somewhat of a hardship for all involved, we believe it is worthwhile to do our part to help further the City's goal of building a more vital downtown. If you have any questions or comments, please call or email me at (816) 889-4915 or bkirk@tpikansascity.com.

Sincerely,

Brian P. Kirk
General Manager

ORDINANCE NO. 050084

Requiring the removal, relocation, change or discontinuance of all plants, mains, facilities, lines, and other appliances owned or operated by Trigen, its successors and assigns, from any streets, boulevards, alleys, avenues, lanes and public grounds within the Main/South Loop TIF Plan Development area and the Kansas City Downtown Arena Project area as necessary in the public interest and for a public purpose.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the City Council requires Trigen, its successors and assigns, to remove, relocate, change or discontinue all plants, mains, facilities, lines, and other appliances from any streets, boulevards, alleys, avenues, lanes and public grounds within the Main/South Loop TIF Plan Development area and the Kansas City Downtown Arena Project area as necessary in the public interest and for a public purpose.

Approved as to form and legality:


Nelson V. Munoz
Assistant City Attorney

Authenticated as Passed


KAY BARNES, Mayor


City Clerk

DATE PASSED **FEB 03 2005**

