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| **Exhibit No.:** | |
| **Issues:** | *Reasons for Sale and Sale Process* |
| **Witness:** | Mark P. Barry |
| **Sponsoring Party:** | Trigen-Kansas City Energy Corporation |
| **Type of Exhibit:** | Direct Testimony |
| **Case No.:** | HM-2004-0618 |
| **Date Testimony Prepared:** | September 1, 2004 |

# MISSOURI PUBLIC SERVICE COMMISSION

# UTILITY OPERATIONS DIVISION

# DIRECT TESTIMONY

# OF

# MARK P. BARRY

## TRIGEN-KANSAS CITY ENERGY CORP. and THERMAL NORTH AMERICA, INC.

## CASE NO. HM-2004-0618

## September 2004

**BEFORE THE**

**MISSOURI PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| Joint Application of | ) | |
| | ) | |
| **Trigen-Kansas City Energy Corp.** | ) | |
| | ) | |
| and | ) | Case No. HM-2004-0618 |
| | ) | |
| **Thermal North America, Inc.** | ) | |
| | ) | |
| For Grant of the Authority Necessary | ) | |
| for the Transfer of Control and Sale of | ) | |
| All Stock Currently Owned by | ) | |
| Trigen Energy Corporation, Inc. to | ) | |
| Thermal North America, Inc. | ) | |

**AFFIDAVIT OF MARK P. BARRY**

STATE OF _____)
) ss
COUNTY OF _____)

Mark P. Barry, of lawful age, on his oath states: that he has participated in the preparation of the following Direct Testimony in question and answer form, consisting of 16 pages of Direct Testimony to be presented in the above case, that the answers in the following Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers, and that such matters are true to the best of his knowledge and belief.

_____
Mark P. Barry

Subscribed and sworn to before me this _____ day of _____, 2004.

_____
Notary Public

My Commission Expires:

_____

**DIRECT TESTIMONY OF**

**MARK P. BARRY**

**TRIGEN-KANSAS CITY ENERGY CORP.**

**CASE NO. HM-2004-0618**

**Q. What is your name and address?**

A. My name is Mark P. Barry and my business address is 1990 Post Oak Boulevard, Suite 1900, Houston, Texas 77056-4499.

**Q. By whom are you employed and in what capacity?**

A. I am Vice President, Strategy Development for Tractebel North America, Inc., which is an indirect, wholly-owned subsidiary of Suez Tractebel, S.A., which is a subsidiary of Suez S.A., an international energy, water, waste and communications company headquartered in Paris, France. I will refer to Suez-Tractebel, S.A., together with its subsidiaries and affiliates, as "Tractebel". I will refer to Tractebel's ultimate parent, Suez S.A., as "Suez". I am authorized to testify today on behalf of Tractebel North America, Inc. and its affiliates.

**Q. Please describe your educational background and professional experience.**

A. I hold a B.S. degree in Mechanical Engineering Technology from Northeastern University and an M.B.A. from the Carroll School of Management at Boston College. I have been employed as a project engineer at Harvard University's MATEP cogeneration facility, where I designed and implemented mechanical, electrical and instrumentation projects, worked with steam and chilled water production and distribution system and assisted institutional and hospital customers with utilities management and energy conservation

projects. I then became a senior planner for Boston Edison Company in its Energy Resource Planning and Forecasting group, where I designed and implemented large-scale demand side management and energy conservation programs. While at Boston Edison I also held software development and performance engineering positions and worked at Boston Edison's 780 megawatt New Boston station and 970 megawatt Mystic station. I then moved on to The Coastal Corporation of Houston, Texas, where I held several positions. As president of Coastal Technology, Inc., I was responsible for the operation and management of power generation and cogeneration facilities with 540 megawatts of electrical capacity and steam sales of over one million pounds per hour. I also served as Vice President for Business Development with Coastal Power Company, where I evaluated and acquired generation assets in the United States and offshore. I also served as vice president and general manager of Coastal's North American power business unit where, in addition to overall management of the project portfolio, I participated in the restructuring negotiations between Niagara Mohawk Power Company and various independent power producers. I also held other positions at Coastal in financial analysis and asset management. In 1998 I joined Tractebel, where I have managed acquisition, divestiture and business development activities. As Vice President Business Development with Tractebel Project Development, Inc., I managed Tractebel's efforts to divest its District Heating and Cooling Systems business. In my current position as Vice President Strategy Development, I am responsible for the development and articulation of Tractebel's corporate strategy with respect to its energy business in North America.

**Q. Have you ever testified before this Commission or any other regulatory commission?**

A. I have not testified previously in Missouri. I have previously testified before the Commonwealth of Virginia's State Corporation Commission, which I will refer to as the "SCC", in a proceeding that sought SCC issuance of a Certificate of Public Convenience and Necessity for a 1,400 megawatt natural gas-fired merchant power generation facility to be located in Loudoun County, Virginia. I have also testified before the New York State Public Service Commission and participated in commission-sponsored settlement negotiations in matters relating to non-utility power generation in general and the Fulton Cogeneration Facility in particular. While at Boston Edison I was an active participant in the regulatory process, particularly with respect to the planning, design and effectiveness of the company's demand side management and large-scale energy conservation programs.

**Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to describe from the seller's perspective the decisions and process that led to the decision to sell the Kansas City steam system and other assets and why we believe the sale is in the public interest.

**Q. Please describe the Kansas City steam system currently owned by Trigen - Kansas City Energy Corporation that is included in the proposed acquisition by Thermal North America, Inc.**

A. Trigen-Kansas City Energy Corporation, which I will refer to as "Trigen-KC", is the district steam system that operates in the downtown business district of Kansas City, Missouri. Trigen-KC distributes high- and low-pressure steam to its customers through a network of six and one-half miles of pipeline buried beneath the city streets. Trigen-KC is a

public utility subject to the jurisdiction of the Commission. The system is described in more detail by Mr. Schopman in his testimony.

**Q. Can you explain where Trigen-KC fits within the Trigen Energy and Tractebel or Suez organizations today?**

A. Yes. **Barry Appendix No. 1** (which is the same diagram as **Schopman Appendix No. 1**) is a schematic diagram that summarizes the current ownership of Trigen-KC, its sister district heating and cooling systems and other affiliates related to their respective operations. As depicted in this diagram, Trigen-KC remains a wholly-owned subsidiary of Trigen Energy Corporation, which I will refer to as "Trigen Energy", which in turn is owned by Suez-Tractebel, S.A. and its parent, Suez S.A.

**Q. In Mr. Schopman's testimony, he refers to the acquisition and privatization of Trigen Energy by Suez, through its subsidiaries Cofreth American Corporation and ELYO, beginning in 1993. Please describe the circumstances by which Trigen Energy moved over to Tractebel from ELYO.**

A. During 2001 Suez undertook a reorganization that resulted in placement of its energy businesses outside of Western Europe under the control of Tractebel Electricity and Gas International. As part of that reorganization, ELYO transferred Trigen Energy to Suez Tractebel S.A. The result was the functional integration of Trigen Energy into Tractebel North America and the elimination of Trigen Energy as a separately organized and managed entity. Mr. Schopman's testimony describes the closure of Trigen's former headquarters in White Plains, New York, the reductions and other changes in the workforce, and how various management and support functions have been picked up by Tractebel personnel.

**Q. Please describe the functional relationship between Trigen Energy and Tractebel North America.**

A. The responsibilities for administering, managing and operating Trigen Energy's projects in North America have been delegated to Tractebel North America. These responsibilities are commingled with similar responsibilities for projects owned and operated Tractebel Power, Inc. and are carried out through the appropriate Tractebel subsidiaries, as described elsewhere in Mr. Schopman's testimony. Effectively, the Trigen Energy projects are treated just as if Tractebel Power owned them.

**Q. What types of projects make up the Trigen Energy-Tractebel Power portfolio?**

A. Trigen Energy consists of two different types of operations. There are, of course, the district heating and cooling steam systems, of which Trigen-KC is an example. I will refer to this as the DHCS Businesses. The second element of the Trigen Energy portfolio largely consists of single-site ventures that typically serve a single customer with one or more product streams, such as steam, chilled water, electricity or compressed air, or that serve a thermal host and sell cogenerated electricity at wholesale for resale. An example of a single-site operation with a single customer is the Coors Brewing Company facility in Golden, Colorado, where we are responsible for electric and thermal production. Nassau Community College in Nassau, Long Island, New York is an example of a single site operation that provides steam and chilled water to the College and adjacent facilities and sells electricity under contract to the Long Island Power Authority.

Tractebel's facilities include PURPA qualifying facilities, which are referred to as "QF"s, larger cogeneration plants and exempt wholesale generators selling their electricity output under contract, and large merchant power generation facilities. Examples of

Tractebel's QF portfolio include the 16 megawatt waste wood-fired facility in Fitchburg, Massachusetts and the 51 megawatt culm-fired NEPCO facility in Pennsylvania. An example of a larger cogeneration project is the 365 megawatt Hopewell Cogeneration facility that sells steam to an adjacent thermal host and electricity under contract to Dominion Virginia Power Company. The Red Hills Generating Facility in Mississippi is a 440 megawatt EWG selling to TVA and the Wise County, Texas project is a 746 megawatt merchant power facility selling in the ERCOT market. Tractebel's other businesses in the U.S. also include a large liquid natural gas, or "LNG", receiving and regasification facility in Everett, Massachusetts and Tractebel Energy Services, Inc., which is a competitive energy provider licensed to do business in eight states including Pennsylvania.

**Q. Mr. Barry, please explain how the decision to sell Trigen-KC was reached.**

A. During the first quarter of 2003, in response to rating agency and investor concerns arising from high profile events such as the collapse of Enron and subsequent bankruptcies or financial difficulties encountered by energy industry participants such as Mirant, PG&E National Energy Group, NRG Energy, El Paso and others, Suez announced and began implementing an action plan to strengthen its financial structure and improve its return on capital employed. Elements of the action plan included focusing on core businesses, debt reduction and an "Optimax" program that required close examination of business practices and resulted in reductions in operating costs and more efficient use of working capital.

As part of the action plan, Tractebel North America identified a number of its non-core businesses that could be sold and thereby contribute to accomplishing the dual objectives of increasing Suez's focus on what it viewed as its core businesses and raising cash to repay debt. One of the businesses identified for sale was the DHCS Business that

was operating in eight cities located in the eastern and Midwestern United States. In addition to Trigen-KC, the DHCS Business designated for sale also included district energy systems in Baltimore, Maryland; Boston, Massachusetts; Oklahoma City, Oklahoma; Philadelphia, Pennsylvania; St. Louis, Missouri; Trenton, New Jersey and Tulsa, Oklahoma. Trigen Energy's ownership share of the Grays Ferry Cogeneration Project was also included with the DHCS portfolio for sale because of its tight physical, operational and contractual linkage with Trigen-Philadelphia. In addition to their status as non-core businesses in the context of the Company's strategy that I will discuss further, the DHCS Businesses were evaluated by Suez and its advisors as having unique appeal to potential buyers and thus the portfolio would likely be more salable than other assets thought to be coming to the mergers and acquisitions market.

**Q. Would you explain why, or in what way, the DHCS Businesses do not fit Tractebel's corporate model and plan?**

A. In North America, Tractebel has been pursuing a strategy to become an integrated energy player and has been developing its businesses along a vertically integrated value chain that extends downstream from LNG regasification to power generation to retail energy sales. Tractebel's strategy favors mature and liquid markets with irreversible commitments to competitive generation. It relies on convergence in natural gas and electricity markets and the ability to employ asset-backed trading capabilities to manage risks and enhance economic returns available in commodity energy markets.

Excluding the addition of the Trigen Energy projects, the most recent additions to Tractebel's portfolio in the U.S. include its fleet of natural gas-fired combined cycle merchant plants and the LNG receiving and regasification terminal. The smallest merchant

facility is rated at 346 megawatts. The most recently completed facility in Wise County, Texas and the two that are currently under construction are each more than 700 megawatts. For comparison to the generation facilities, the LNG facility can fuel approximately 3,000 megawatts of combined cycle power generation based on its firm regasification capacity. Tractebel's recent portfolio additions all were developed or acquired to fit the model I described previously and all share the characteristics of large scale and low-cost production. Tractebel's retail energy business is being developed on a similar scale and it is the downstream link in the energy value chain.

Many of Tractebel's older projects are smaller than the new additions to the portfolio and do not fit into the integrated energy value chain I described. Tractebel's long run plan has been to implement an asset rotation strategy where these legacy projects are rotated or sold out of the portfolio and the capital is redeployed into larger scale businesses consistent with the integrated energy business model. Part of this strategy was realized last year when Tractebel arranged to sell two gas-fired QF projects, located in California, that totaled approximately 92 megawatts.

Both elements of the Trigen Energy portfolio that I described earlier are inconsistent with the Tractebel integrated energy business model. Trigen Energy's single site ventures are at least an order of magnitude smaller than the latest additions to Tractebel's portfolio and many are dispersed in illiquid markets where Tractebel does not wish to maintain a presence. Similarly, the four Midwestern DHCS Businesses are in markets that are also not focus areas for Tractebel. Individually or as a group, the DHCS Businesses do not fit into Tractebel's energy value chain; can't be centrally managed and dispatched; nor do they provide opportunities for cross commodity arbitrage in the same way that Tractebel's other

businesses do. The DHCS Businesses also require a management orientation that differs from Tractebel's standard model, which Mr. Schopman describes in his testimony. By this I mean that the DHCS Business is too "personal" compared to other Tractebel businesses and that for a DHCS system to be successful, the general manager and marketing staff must be visible and empowered in a way that isn't part of Tractebel's culture.

**Q. Beyond being designated as "for sale", what are some other implications of acknowledging that the DHCS Businesses do not fit with Tractebel's integrated energy business model?**

A. The most notable effects were additional restrictions on capital spending, particularly for expansion projects, and a reduction in the decision-making flexibility delegated to the individual general managers. Already, because of Optimax and the preference for Tractebel to invest in projects in line with its business model, capital was becoming constrained. Initiation of the sales process further limited Tractebel's appetite for any non-essential investments.

**Q. What process was followed for the evaluation and selection of prospective buyers?**

A. Following the decision to sell the DHCS Businesses during spring 2003, we began the process of preparing the business for sale. Preparations included the selection of financial and legal advisors, the determination of the exact composition of the portfolio to be offered for sale and that it would be offered as a single bundle, and the gathering and organization of due diligence materials. In parallel, we worked with our financial advisor, Banc of America Securities, to identify a group of potential buyers for the portfolio. Candidates included both strategic and financial buyers and they were grouped into tiers according to judgments about

their potential interest in the transaction, their ability to perform a quick evaluation and make a binding bid in a timely fashion, and membership in the "write the check" club, meaning that they had to have sufficient financial resources to close the transaction without an external financing contingency. At this stage we also considered whether we believed any particular buyer would present a problem to either of the regulatory commissions that would be involved in approving the transaction, in Pennsylvania and here in Missouri. From a potential buyer group with more than 100 entries, approximately 34 were approached about joining a confidential "fast forward" process where we would accelerate the timing of a two-stage auction to a pace that would be as fast as the leading bidders could maintain. The process began with 31 companies signing confidentiality agreements and lasted throughout the summer and fall of 2003. Five second round bids were received at the end of October and negotiations began with another bidder in early December. When those negotiations stalled in early 2004, the buyer group that has evolved into Thermal North America was invited to begin a separate negotiation. Ultimately, a Purchase and Sale Agreement by and between Trigen Energy Corporation and Thermal North America, Inc. dated April 30, 2004, was executed. I will refer to that document as the "PSA".

**Q. Were there any factors that could be of interest to the Commission that were considered as part of the evaluation of the potential buyers?**

A. Yes. For example, we continually evaluated the PSA documents as they were evolving with each buyer as to how the document might be received in the context of seeking regulatory approvals in Missouri, Pennsylvania and other jurisdictions. We were convinced that both parties could pick up operation and management of the DHCS Businesses without any negative effects on service to customers as a result of the transition and that they could

both demonstrate financial sophistication and wherewithal to satisfy any regulatory standard. With Thermal North America, four areas stood out in the comparison to the other potential buyer: the financial resources and top-rated credit behind their offer; their commitment to the district energy business as the foundation of a highly focused customer-centered business plan; the vision, leadership and enthusiasm for the district energy business expressed by Mr. Zien in meetings that predated the announcement of the sale; and their willingness to maintain continuity with the employee group. We believed that the Pennsylvania Commission in particular would look favorably on a new owner who would be completely focused on the district energy business.

**Q. During the planning process, did Tractebel consider the ability of a start-up company or financial sponsor to take over operation of the DHCS Businesses?**

A. Yes. We felt strongly that for a transaction to be approved, the operation of the businesses must continue without interruption or diminution of quality. When we considered the instance of a sale to a financial sponsor with no operating infrastructure, we concluded that such a buyer who would retain the key operating personnel associated with the DHCS Businesses would begin with a large and very experienced operating group with approximately 340 employees and a group of general managers that averaged more than ten years service with the Company. Most of the employees, including Trigen-KC General Manager Brian Kirk, had been with the DHCS Businesses through at least one ownership transfer and we were confident that continuity would be maintained as a matter of course after one more stock sale as we were contemplating.

From seller's point of view, the key areas to insure a smooth transition included finding an adequately capitalized buyer who would be capable of understanding and

managing the swings in working capital associated with an obviously seasonal business and having back office and administrative infrastructure in place to take over functions such as accounting, billing, and IT support that were being provided by Tractebel from Houston as part of its central shared services model. Capitalization was viewed as a matter that would be resolved by the bid process since a thinly capitalized buyer would be evaluated poorly on its ability to step into Trigen/Tractebel's guarantee and letter of credit responsibilities and would be judged as having a high closing risk. We addressed the back office and support issues by indicating that Tractebel was willing to negotiate a transition services agreement with the buyer to allow shared services to continue after closing on a reimbursable basis to provide overlap and continuity to a buyer in the process of developing the necessary capabilities. I had first-hand knowledge of these issues from my experiences at MATEP which built a very successful DHCS operation from the ground up and Coastal Corporation where I was the project manager on an acquisition, negotiated a transition services agreement with the seller, and moved to operations in time to benefit from the agreement when the deal closed. Measured against my experiences, I was confident that between the personnel already in the businesses and Tractebel's offer to provide transition services, that there would be no difficulty in transferring operations to a new owner.

**Q. How does Thermal compare to the hypothetical financial buyer that you just described?**

A. In all respects, the comparison is very favorable with respect to Thermal. We quickly became comfortable with the advantages that Johnson Controls, Inc., which I shall refer to as "JCI", brings to the operation over and above the capabilities that Thermal gains by retaining the existing employees. The hypothetical buyer also would not have had the advantage of

Mr. Zien as its chief operating officer through the contractual arrangement contemplated with ThermalSource LLC. I strongly believe that with respect to operations, customer interface issues, and matters requiring technical insight and leadership that he will serve the DHCS Businesses well. Mr. Zien has designated Charlie Abbott, presently the general manager in Baltimore and Tractebel's vice president in charge of the eastern DHCS Businesses, to head up its operations after closing, which is a strong personnel move. Mr. Abbott is an experienced and savvy manager who has the respect of people everywhere in the Tractebel organization and he has developed a very capable successor in Baltimore which will enable him to take on his expanded duties for Thermal immediately at closing.

With respect to capitalization, Thermal is very strong and comes to the deal with a sophisticated ownership group that is likely to be the most creditworthy owner in the history of any of the businesses, including Trigen-KC. As will be discussed later, the PSA contemplates a transition services agreement that will bridge any potential gaps in the administration or support of the businesses during the transition period. We are already working closely with Thermal on transition issues and will develop the agreement to provide a menu of services on a reimbursable basis from which they can choose. In sum, compared to a hypothetical financial buyer, or a real strategic buyer, Thermal will have the motivation, wherewithal and personnel to provide reliable and high quality operation of the businesses, including Trigen-KC, for the benefit of its customers.

**Q. Mr. Barry, I am going to ask you a series of questions pertaining to the PSA. When responding, please focus to the extent possible on Trigen-KC and the other Kansas City operations. First, would you please describe the assets being sold?**

A. In general terms, the PSA describes the sale of Trigen's DHCS Businesses, including the district heating and cooling systems in Baltimore, Boston, Kansas City, Oklahoma City, Philadelphia, St. Louis, Trenton and Tulsa. In some instances this includes more than a single company or entity. Thus, all of the direct and indirect subsidiaries of Trigen Energy with some role in the operation of the Steam System are being conveyed as a group.

**Q. What will happen to the personnel at Trigen-KC?**

A. As has been the case throughout the history of Trigen-KC, changes in corporate ownership have not resulted in any substantial change to the individuals operating the Steam System, and none is anticipated in the case either. The PSA provides that if existing personnel are not retained in the new buyer's organization, then Thermal North America may be responsible to pay certain severance money that may be due to those workers. In point of fact, however, we believe that with only a few rare exceptions, there will be no change at the local level in personnel performing business operations, plant or distribution system operations or maintenance functions. We understand that the organizational structure in which those workers are employed may differ from the current model, and is intended to involve Johnson Controls, Inc. and ThermalSource LLC, as will be described in more detail by other witnesses. However, the local personnel operating Trigen-KC are not expected to change.

**Q. When is the PSA expected to close?**

A. The outside date, unless agreed otherwise by the buyer and seller, is December 31, 2004. The date is important for various accounting, tax and business reasons associated with the common calendar and fiscal year of various Suez and Tractebel entities.

**Q. What assistance, if any, will Tractebel and Trigen Energy provide after the DHCS Businesses have been conveyed to Thermal North America, Inc.?**

A. We have offered a menu of services that can be provided on a transitional basis for up to six months. These services include accounting, treasury, tax, human resources, information technology, engineering, and other areas as requested by Thermal and agreed to by Tractebel. The extent to which the buyer will need that assistance will depend on a variety of factors including when the financial closing occurs, the pace at which various business functions are absorbed, the pace at which the buyer and its contractor, ThermalSource, are able to fill certain vacant positions.

**Q. Mr. Barry, does that conclude your testimony?**

A. Yes. However, I reserve the right to submit rebuttal testimony at a later date if it is necessary or desirable.

**Barry Appendix No. 1**