

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

APR 19 2001

Missouri Public  
Service Commission

In the Matter of the Joint Application )  
of Gateway Pipeline Company, Inc., )  
Missouri Gas Company and Missouri )  
Pipeline Company )

Case Number Gm-2001-585

**MOTION FOR PROTECTIVE ORDER**

COME NOW Gateway Pipeline Company, Inc. ("Gateway"), Missouri Gas Company ("MGC") and Missouri Pipeline Company ("MPC"), by counsel, and for their Motion for Protective Order pursuant to 4 CSR 240-2.085(2), respectfully state as follows to the Missouri Public Service Commission ("Commission").

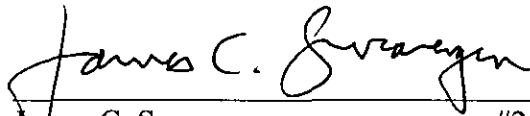
1. Contemporaneously herewith Gateway, MGC and MPC are filing with the Commission a Joint Application for Finding of Lack of Jurisdiction or, Alternatively, for Authority for Gateway to Acquire the Outstanding Shares of UtiliCorp Pipeline Systems, Inc., and Motion for Expedited Treatment. Appendix 5 to said Joint Application is a Stock Purchase Agreement which includes various attachments. Several pages of said attachments contain Highly Confidential information, information which is not available to the general public and which cannot be found in any format in any public document. Included, for example, is customer specific contractual information, salary information concerning individual employees and other non-public financial and business information the release of which would be harmful to MGC and MPC as well as their customers and employees.

2. In view of the foregoing, Gateway, MGC and MPC desire that the Commission issue in this case what has become known generally as its "standard form" protective order which contains both Highly Confidential and Proprietary categories.

3. Pursuant to 4 CSR 240-2.085(2) one (1) original and eight (8) copies of the public (NP) version of the Joint Application and one (1) original and eight (8) copies of the complete (HC) version of the Joint Application containing the information to be protected is being filed herewith. A Highly Confidential copy of said Joint Application will be served on the Commission's General Counsel and the Office of the Public Counsel.

WHEREFORE, Gateway, MGC and MPC respectfully move the Commission to issue its standard form protective order in this case.

Respectfully submitted,

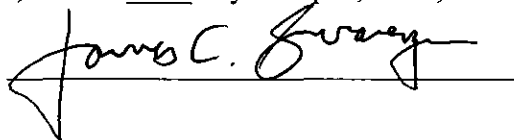


James C. Swearengen #21510  
Paul A. Boudreau #33155  
Brydon, Swearengen & England P.C.  
P.O. Box 456  
Jefferson City, MO 65102  
Telephone (573) 635-7166  
Facsimile (573) 635-0427  
E-Mail LRackers@brydonlaw.com

Attorneys for Gateway Pipeline Company, Inc. and UtiliCorp United Inc.

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 19<sup>TH</sup> day of April, 2001, to all parties of record.



*Office of the Secretary of State*

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I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "GATEWAY PIPELINE COMPANY, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTEENTH DAY OF APRIL, A.D. 2001.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3349214 8300

AUTHENTICATION: 1083483

010184248

DATE: 04-17-01

NOV 2 2004 92730

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

## CORPORATION DIVISION

### CERTIFICATE OF CORPORATE GOOD STANDING - FOREIGN CORPORATION

I, MATT BLUNT, Secretary of State of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that


GATEWAY PIPELINE COMPANY, INC.

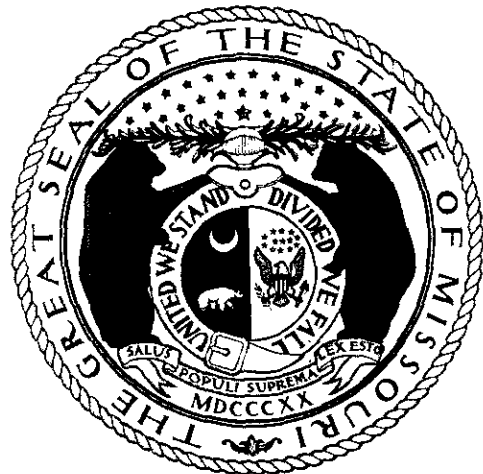
using in Missouri the name

GATEWAY PIPELINE COMPANY, INC.

a DELAWARE corporation filed its Evidence of Incorporation with this State on the 1st day of FEBRUARY, 2001, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 17th day of APRIL, 2001.

  
Secretary of State



No. F00405192

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

## CORPORATION DIVISION

### CERTIFICATE OF CORPORATE GOOD STANDING - FOREIGN CORPORATION

I, MATT BLUNT, Secretary of State of the State of Missouri,  
do hereby certify that the records in my office  
and in my care and custody reveal that


MISSOURI GAS COMPANY

using in Missouri the name

MISSOURI GAS COMPANY

a DELAWARE corporation filed its Evidence of Incorporation  
with this State on the 29th day of DECEMBER, 1994, and is in  
good standing, having fully complied with all requirements  
of this office.

IN TESTIMONY WHEREOF, I have set my  
hand and imprinted the GREAT SEAL of  
the State of Missouri, on this, the  
18th day of APRIL, 2001.

  
Secretary of State



No. F00405191

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

## CORPORATION DIVISION

### CERTIFICATE OF CORPORATE GOOD STANDING - FOREIGN CORPORATION

I, MATT BLUNT, Secretary of State of the State of Missouri,  
do hereby certify that the records in my office  
and in my care and custody reveal that


MISSOURI PIPELINE COMPANY

using in Missouri the name

MISSOURI PIPELINE COMPANY

a DELAWARE corporation filed its Evidence of Incorporation  
with this State on the 29th day of DECEMBER, 1994, and is in  
good standing, having fully complied with all requirements  
of this office.

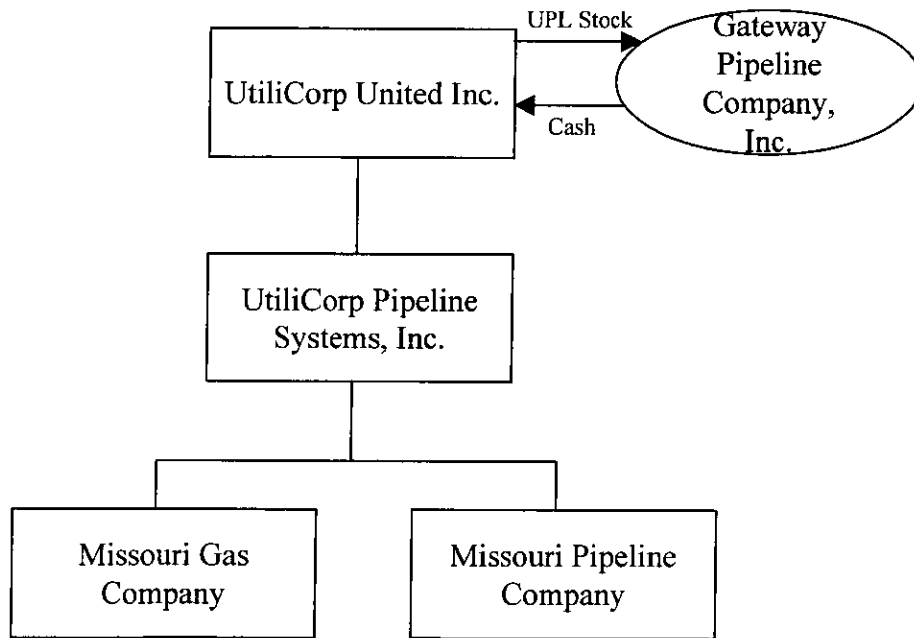
IN TESTIMONY WHEREOF, I have set my  
hand and imprinted the GREAT SEAL of  
the State of Missouri, on this, the  
18th day of APRIL, 2001.

  
Secretary of State

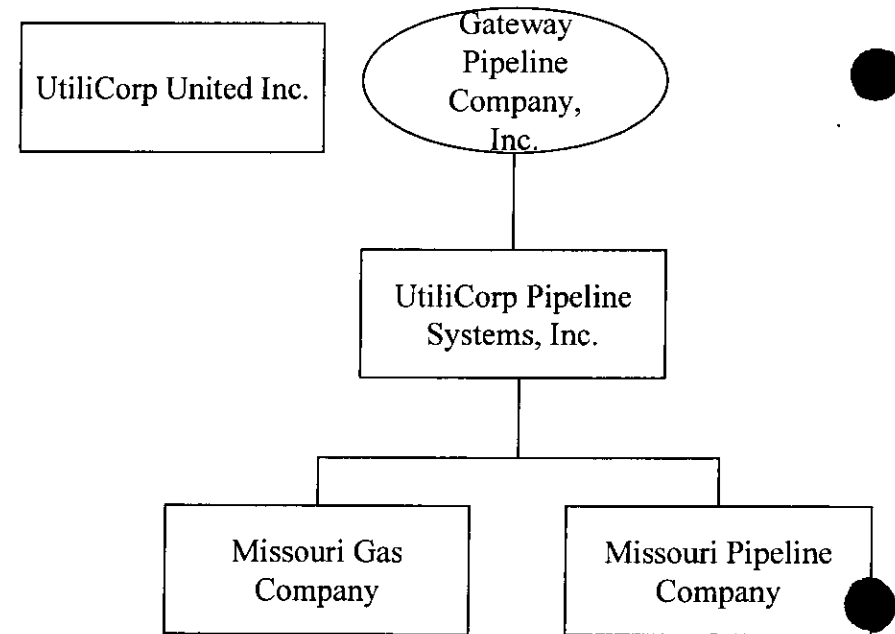


# TRANSACTION STRUCTURE DIAGRAMS\*

## THE TRANSACTION (CURRENT STRUCTURE)



## POST-TRANSACTION STRUCTURE



\* All entities represented are Delaware corporations.

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

In the Matter of the Application of United )  
Water Missouri, Inc., for Authority for )  
Lyonnaise American Holding, Inc., to Acquire )  
The Common Stock of United Water Resources, )  
Inc., and, in Connection Therewith, to Enter )  
Into Certain Other Related Transactions. )

Case No. WM-2000-318

**STAFF MEMORANDUM INDICATING LACK OF JURISDICTION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through one of its attorneys, and pursuant to a Commission Order dated November 8, 1999, files this Memorandum in support of the Staff's position that the Commission lacks jurisdiction over the matter captioned above.

The basic structure of the transaction under review can be briefly described in the following way: United Water Resources, Inc. (UWR) owns United Waterworks, Inc. (UWK). UWK in turn, owns United Water Missouri, Inc. (UWMO) and utilizes UWMO as an operating subsidiary of UWK. UWMO is incorporated under the laws of Missouri and is regulated as a "water corporation" in Missouri. UWR can be characterized as the "ultimate" or "indirect" parent corporation of UWMO. UWMO can be seen as the "second-tier subsidiary" of UWR, while UWK is the "first-tier subsidiary". UWK and UWR are not regulated in Missouri.

C



Suez Lyonnaise des Eaux (SLDE) is a French corporate entity that owns Lyonnaise American Holding, Inc. (LAH). LAH currently owns about thirty percent (30%) of the common stock and ninety-eight percent (98%) of the preferred stock of UWR. SLDE and LAH are not regulated in Missouri.

The key point of analysis in this matter involves the merger between UWR and LAH Acquisition Co., a temporary, non-regulated company apparently formed to facilitate the merger. When the proposed merger is completed, UWR survives, and emerges as the wholly owned subsidiary of LAH. UWRMO becomes a "third-tier subsidiary" of LAH because UWR is the "first-tier" and UWR is the "second-tier" in the corporate ownership chain. (SLDE becomes the "ultimate" corporate parent of UWRMO because it owns LAH.) All of this aside, the essence of the transaction is that LAH acquires UWR through a merger that merely changes the corporate parent of UWRMO from UWR to LAH and SLDE, with no change in UWRMO, the regulated Missouri company.

Several months ago, a case with facts akin to this matter was brought before the Commission, specifically, in In the Matter of the Merger of American Water Works Company with National Enterprises, Inc. and the Indirect Acquisition by American Water Works Company of the Total Capital Stock of St. Louis Water Company, Case No. WM-99-224, (March 23, 1999) the Commission described the proposed merger of American Water Works Company (American Water) and National Enterprises, Inc. (National) as follows:

American Water owns Missouri-American Water Company (MAWC), a Missouri Corporation that operates as a regulated water utility in Missouri. National owns Continental Water Company (Continental), which in turn owns St. Louis County Water Company (SLCWC), a Missouri corporation that operates as a regulated water utility in Missouri. Pursuant to the agreement, American will acquire all of the common stock of National, and after the merger is affected, MAWC and Continental will be first-tier subsidiaries of American and SLCWC will be a second-tier subsidiary.

The Office of Public Counsel in American Water Works above, argued that the Commission had jurisdiction over the transaction pursuant to Sections 386.250(3), 386.330(1), 393.190(1) and 393.190(2), RSMo 1994. The Commission, in closing the case, stated, among other things, that:

The Commission determines that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri regulated utility companies...Since the Commission has no jurisdiction over this merger, it will close this case.

Here, there is an acquisition of stock, and a merger that involves two non-regulated corporations, one of which indirectly owns UWMO, a regulated utility company. Again, all that really happens after the merger is a change in "parental" ownership of the regulated entity from one non-regulated entity to another non-regulated corporate entity. This was the same factual scenario that occurred in the case cited just above, and the Staff respectfully believes that to be consistent with its decision in American Water Works, the Commission should dismiss the Application filed in this matter based upon a finding that it has no jurisdiction over the transaction.

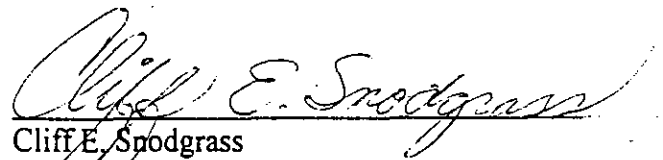
Lastly, since the Application in this case was brought under the theory that Section 393.190 RSMo. 1994 might apply, it would be appropriate to briefly review the language of this statute. Staff would respectfully contend that Section 393.190(1) RSMo.1994 does not apply to this case because UWMO is not transferring, encumbering or otherwise disposing of any part of its "franchise, works or system, necessary or useful in the performance of its duties to the public" as is required by the statute before Commission jurisdiction attaches. No transfer or disposition as described in this statute is occurring.

Section 393.190(2) clearly does not apply to the facts of this transaction because UWMO is not acquiring "the stock or bonds of any other corporation incorporated...or engaged in the same or similar business" as specified in the statute. In addition, none of the stock of UWMO, a Missouri corporation, is being purchased by LAH or any other corporation.

Wherefore, for all the above reasons, the Staff respectfully requests that the Commission enter an Order dismissing the Application in this case for lack of jurisdiction over the transaction whereby LAH acquires UWR.

Respectfully submitted,

DANA K. JOYCE  
General Counsel




Cliff E. Snodgrass  
Senior Counsel  
Illinois Bar No. 3123645

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-3966 (Telephone)  
(573) 751-9285 (Fax)

**CERTIFICATE OF SECRETARY OF  
GATEWAY PIPELINE COMPANY, INC.**

The undersigned hereby certifies as follows:

1. She is the duly elected, qualified and acting Secretary of Gateway Pipeline Company, Inc., a Delaware Corporation in good standing, and is authorized to execute and deliver this Certificate on behalf of Gateway Pipeline Company, Inc.
2. The resolutions set forth in Exhibit "A" attached hereto, were duly adopted by the Board of Directors of Gateway Pipeline Company, Inc. on the date set forth therein, have not been amended or modified in any respect and are in full force and effect on the date of this Certificate.
3. David J. Ries is the duly elected, qualified and acting President of Gateway Pipeline Company, Inc. and the signature appearing below is his signature.

  
Yvette C. Korb

I, David J. Ries, President of Gateway Pipeline Company, Inc. hereby certify that Yvette C. Korb is the Secretary of Gateway Pipeline Company, Inc. and that the signature appearing above is her genuine signature.


  
David J. Ries

Exhibit A

**ACTION BY CONSENT IN LIEU OF  
SPECIAL MEETING OF THE BOARD OF DIRECTORS OF  
GATEWAY PIPELINE COMPANY, INC.**

The undersigned, representing all of the Directors of Gateway Pipeline Company, Inc. (*Corporation*), pursuant to K.S.A. 17-6301(f) (Directors), hereby dispense with notice of a Directors' meeting and hereby severally and collectively consent, adopt, accept and ratify the following actions taken in lieu of a special meeting of the Stockholders and Directors of the *Corporation*.

WHEREAS, the *Corporation* proposes to cause the Stock Purchase Agreement and associated documents with UtiliCorp United Inc. and Utilicorp Pipeline Systems, Inc. (*Agreement*) to be executed.

WHEREAS, the *Corporation* has an opportunity to further its business interests by entering into said Stock Purchase Agreement.

NOW THEREFORE, be it and it is hereby resolved by this Board of Directors and Stockholders of the *Corporation*, as follows:

That the President, any Vice-President or the Treasurer of the *Corporation* be and each of them is hereby authorized, empowered and directed for, in the name of and on behalf of this *Corporation*, to enter into the *Agreement* and/or assign the *Agreement* in such form and on such terms and conditions as such officer deems proper and to execute and deliver to parties thereto the *Agreement* and exhibits thereto, if any, related documents and any other conveyances, documents, instruments and/or like necessary and/or helpful (as determined in the sole discretion of such officer) in furtherance thereof, in the forms presented to the Board of Directors or with such changes, amendments, additions, deletions and supplements to such forms, or any of them as the officer executing the same may in his sole discretion approve. The officers of the corporation are hereby authorized to execute all documents and carry out all acts, including the expenditure of funds, necessary to carry out the terms and provisions of the *Agreement*, and to take all actions necessary on behalf of the *Corporation* or as may be required in the *Agreement*.

NOW THEREFORE, be it and it is hereby resolved by this Board of Directors and Stockholders of the *Corporation*, as follows:

That the President, any Vice-President or the Treasurer of the *Corporation* be and each of them is hereby authorized, empowered and directed for, in the name of and on behalf of this

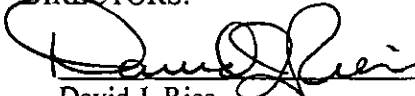
*Corporation* to enter into the *Agreement* and/or assign the *Agreement* in such form and on such terms and conditions as such officer deems proper and to execute and deliver to parties thereto the *Agreement* and exhibits thereto, if any, related documents and any other conveyances, documents, instruments and/or like necessary and/or helpful (as determined in the sole discretion of such officer) in furtherance thereof, in the forms presented to the Board of Directors or with such changes, amendments, additions, deletions and supplements to such forms, or any of them as the officer executing the same may in his sole discretion approve. The officers of the corporation are hereby authorized to execute all documents and carry out all acts necessary to carry out the terms and provisions of the *Agreement*, and to take all actions necessary on behalf of the *Corporation* as may be required in the *Agreement*.

Any one of the above said officers of this *Corporation* is hereby authorized, empowered and directed, in the name and on behalf of this *Corporation*, to execute (i) such further instruments or documents and to perform such further acts and things as may be by any one of them to be deemed necessary or appropriate to comply with or evidence compliance with any of the terms, provisions or conditions of the *Agreement*.

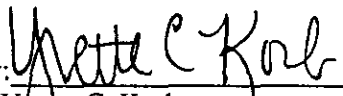
The Secretary of the *Corporation* shall deliver to said entities a certified copy of these resolutions.

Dated and consented to this 7 day of April, 2001.

DIRECTORS:

  
David J. Ries

Attested by:

  
Yvette C. Korb  
Secretary of the Corporation