

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
May 24, 2001**

CASE NO: GM-2001-585

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Jefferson City, MO 65102

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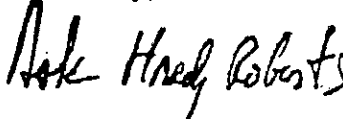
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General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

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Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copies:

To county clerks of Pulaski, Phelps, Crawford, Franklin, St. Charles, Lincoln & Pike counties

To Laclede Gas, Union Electric, Fidelity Natural Gas, Missouri Public Service, Missouri Gas Company & Missouri Pipeline Company.

To cities of Richland, Waynesville, St. Robert, St. James & Cuba

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public
Service Commission held at
its office in Jefferson City
on the 24th day of May, 2001.

In the Matter of the Joint Application of)	
Gateway Pipeline Company, Inc., Missouri)	
Gas Company and Missouri Pipeline Company)	<u>Case No. GM-2001-585</u>
and the Acquisition by Gateway Pipeline)	
Company of the Outstanding Shares of)	
UtiliCorp Pipeline Systems, Inc.)	

ORDER DETERMINING JURISDICTION
AND
ORDER DIRECTING FILING
AND
ORDER DIRECTING NOTICE

On April 19, 2001, Gateway Pipeline Company, Inc. (Gateway), Missouri Gas Company (MGC), and Missouri Pipeline Company (MPC) filed a joint application with the Commission seeking either a determination that the Commission is without jurisdiction or, in the alternative, authorization on an expedited basis, for Gateway, to acquire the outstanding shares of UtiliCorp Pipeline Systems (UPL).

According to the application, Gateway and UtiliCorp United Inc. (UtiliCorp) have entered a stock purchase agreement where Gateway has agreed to purchase, and UtiliCorp has agreed to sell, all the outstanding shares of the capital stock of UPL. UPL is, according to the application, the parent and owner of MGC and MPC, which are regulated Missouri utilities. Appendices filed with the application show that MGC and MPC own and operate intrastate natural gas transmission pipelines in Missouri.

The applicants state that under the transaction the parent of UPL will be changed from UtiliCorp to Gateway with no change in the ownership of MGC or MPC. Under the facts presented UtiliCorp is the seller. UtiliCorp did not, however, join as a party to the application filed on April 19, 2001.

The Commission determined that its procedures and review regarding the application turn on whether the Commission finds that it has jurisdiction over the transaction. The Commission issued an order on May 2, 2001, directing the Staff of the Missouri Public Service Commission to file its response concerning jurisdiction. Further responses or any reply to the Staff memorandum were due not later than ten days after the Staff response.

Staff filed its response on May 11, 2001. The Office of the Public Counsel filed its response regarding jurisdiction on May 1, 2001. The applicants filed their reply on May 18, 2001.

Applicants' Position

Applicants assert that the Commission has, since 1997, declined jurisdiction over mergers or acquisitions "involving unregulated parent companies." Applicants state that the facts presented in the application "fit perfectly in that narrow category of cases." As an example, Applicants cite the Commission Report and Order in Case No. WM-99-224 and the Commission's statement 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." (Applicants' emphasis).

Applicants cite a total of eight Commission cases where the Commission determined that it did not have jurisdiction in transactions

presenting the merger or other restructuring activities between two non-regulated parent corporations.

Applicants criticized Staff's position as treating the sale of stock as a *de facto* sale of assets and an impermissible bootstrapping of jurisdiction under §393.190.1, RSMo 2000 (hereafter all statutory cites are to the 2000 edition unless otherwise stated).

The Applicants criticized the Public Counsel's position as impermissibly equating the sale of stock to the sale of a public utility's franchise, works or system under §393.190.1. Applicants also cited a 1969 opinion by the Commission's general counsel that when an individual sells all the stock of a public utility company to another individual, the Commission would not have jurisdiction since the purchaser was not a "stock corporation" under §392.300(2), RSMo 1959.

Public Counsel's Position

The Public Counsel asserted that the Commission has jurisdiction in this matter because the seller, UtiliCorp, is a public utility under §386.020(42) and because the Commission has general jurisdiction over public utilities under §386.250. The Public Counsel asserts the Commission has specific jurisdiction under §390.190.1 because UtiliCorp is, in effect, selling a part of its works or system useful in the performance of its duties to the public.

Public Counsel distinguished the cases presented by the Applicants stating that those cases presented facts where the seller and purchaser were both unregulated companies. Public Counsel contrasted this case where the seller, UtiliCorp, is a regulated company.

Staff's Position

Staff asserted that in this case the seller is UtiliCorp and that UtiliCorp is a regulated gas utility under §386.250. Staff then cited §393.190(1) that "no gas corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole, or any part of its franchise, works or system, necessary or useful in the performance of its public duties, nor by any means direct or indirect, merge or consolidate, such works, or system, or franchise, or any part thereof with any other corporation, person or public utility, without first having secured from the commission an order authorizing it so to do." (emphasis by Staff).

Staff asserted that the transaction falls under 4 CSR 240-2.060(7) and that it must be supported by a finding that it is "not detrimental to the public interest" under 4 CSR 240-2.060(7)(D).

Commission's Jurisdiction

The Public Service Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the Statutes and powers reasonably incidental thereto. *State ex rel. and to Use of Kansas City Power & Light Company v. Buzard*, 168 S.W.2d 1044, (Mo. Banc 1943). Under §386.250(1) and (5) the Commission has jurisdiction extending to the distribution of natural gas within the state and to all public utility corporations subject to the Public Service Commission law.

Even though UtiliCorp has not joined in the application, it is the seller in the transaction presented and is both a gas and an electrical corporation under §386.020. UtiliCorp is a public utility and is subject to the jurisdiction of the Commission.

Under §393.190(1) no gas corporation may sell or otherwise dispose of any part of its works or system nor by any means, direct or indirect, merge or consolidate such works or system with any other corporation without first obtaining the order of the Commission authorizing it to do so. In this case UtiliCorp, a regulated public utility, is selling its wholly owned affiliate that in turn owns two regulated companies that own intrastate gas transmission pipelines.

The cases and opinions cited by the Applicants where the Commission has declined jurisdiction are not applicable to the transaction presented in this case. All those instances presented transactions exclusively between non-regulated persons or corporations. In this instance the seller, UtiliCorp, is a regulated public utility corporation. The subsidiaries, MGC and MPC, are also regulated public utilities and are wholly owned and controlled by UtiliCorp through UPL.

The transaction presented is not between two non-regulated persons or corporations.

The Commission finds that it has jurisdiction and a duty to review the matter presented. The Commission will determine whether the transaction is not detrimental to the public interest prior to its authorization pursuant to 4 CSR 240-2.060, whether under sections (7), (8) or (12).

UtiliCorp United Inc., a Necessary Party

Although UtiliCorp is the seller, it did not join in the application. Because UtiliCorp is a necessary party to a full and fair adjudication of this matter, the Commission will add UtiliCorp as a party to this case. UtiliCorp should direct its attorney to file an entry of appearance as soon as possible.

Further Information Required

Applicants characterized the subject transaction as falling under §393.190 generally and 4 CSR 240-2.060(12) in particular. The latter regulation applies when the applicant seeks authority to acquire the stock of a public utility. Under the applicants view the transaction would fall under §393.190(2) applicable to stock transactions.

Staff characterized subject transaction as representing a sale of a part of UtiliCorp's works or system under §393.190(1) and 4 CSR 240-2.060(7). The Commission notes that the transaction might also have characteristics of a consolidation under 4 CSR 240-2.060(8).

Under §393.190(1) and the regulation noted by Staff the applicants are required to provide a statement of the tax impact, if any, the transaction will have on the tax revenues of political subdivisions in which any structures, facilities or equipment of the companies involved are located. The Commission notes that because of the methods of assessment and distribution of taxable assessments used in Missouri, this transaction could affect local tax revenues even if the structures, facilities and equipment in service remain substantially unchanged after the transaction is completed.

The Commission is required to send a copy of the tax impact information, if any, to the county clerk of each county in which political subdivisions may be affected. Because this information may be required and because the applicants have requested expedited consideration, the applicants shall provide this information to the Commission within 15 days of the date of this order. Applicants should particularly consider if the transaction and change in the corporate

parent of MPC and MGC will affect the assessment or distribution of assessable values in Missouri.

Notice

Proper parties should be given notice and an opportunity to intervene in this matter. The Records Department of the Commission shall send a copy of this order to the county clerks for the seven counties traversed by the transmission pipelines owned and operated by MGC and MPC and to identifiable companies or municipalities owning distribution systems that may be served by these transmission pipelines. These counties include the counties of Pulaski, Phelps, Crawford, Franklin, St. Charles, Lincoln and Pike. The companies¹ and municipalities include Laclede Gas Company, Union Electric Company, d/b/a AmerenUE, Fidelity Natural Gas, Missouri Public Service, and the cities of Richland, Waynesville, St. Robert, St. James, and Cuba.

The Information Office of the Commission shall send notice of this application to the members of the General Assembly who represent the counties listed above, and to the newspapers that serve these counties as listed in the newspaper directory of the current **Official Manual of the State of Missouri**.

Anyone wishing to intervene must submit an application to intervene to:

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

¹ Ameren's application to intervene was filed on May 9, 2001. Laclede's application to intervene was filed May 22, 2001. These applications are pending before the Commission.

Copies of the application to intervene should be sent to:

James C. Swearengen
Paul A. Boudreau
Brydon, Swearengen & England
Post Office Box 456
Jefferson City, Missouri 63166-6149
Attorneys for Applicants

and

Office of the Public Counsel
Post Office Box 7800
Jefferson City, Missouri 65102

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no proper party is granted intervention and neither the Commission's Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary and that the applicant may submit its evidence in support of the application by verified statement.

State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

IT IS THEREFORE ORDERED:

1. That the Commission has jurisdiction over the proposed transaction.
2. That UtiliCorp United Inc., is made a party to this case.
3. That the Commission's Records Department and Public Information Office shall provide the notices described in this order.
4. That any persons desiring to file an application to intervene and not already having done so shall file their application no later than 15 days after the issue date of this order.

5. That the applicants shall provide the tax impact information described in this order no later than 15 days after the issue date of this order.

6. That this order shall become effective on June 3, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Simmons and Gaw, CC., concur
Murray, C., dissents with dissenting opinion attached

Thornburg, Regulatory Law Judge

ALJ/Secretary: Thornburg/Le
Date Circulated 5-22 CASE NO. CM-2001-585
Lumpke, Chair 88 p 8, 5
Draimer, Vice Chair
Murray, Commissioner on NO Dissent to Attack
Simmons, Commissioner KS
Gaw, Commissioner 11/19
Agenda Date 5-24
Action taken: 3-1 AA
Must Vote Not Later Than _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 24th day of May 2001.

Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge