

LAW OFFICES  
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION  
312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

DEAN L. COOPER  
MARK G. ANDERSON  
TIMOTHY T. STEWART  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
DALE T. SMITH  
BRIAN K. BOGARD

OF COUNSEL  
RICHARD T. CIOTONE

April 19, 2001

FILED<sup>2</sup>  
APR 19 2001  
Missouri Public  
Service Commission  
Gm-2001-585

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

Dear Mr. Roberts:

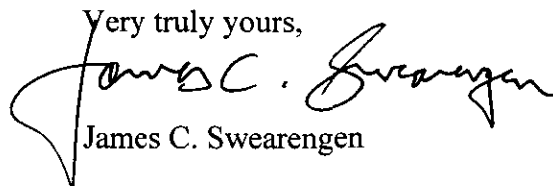
On behalf of Gateway Pipeline Company, Inc., Missouri Gas Company and Missouri Pipeline Company, I deliver herewith for filing with the Missouri Public Service Commission the following:

- An original and eight (8) copies of a public version and an original and eight (8) copies of a Highly Confidential version of a Joint Application for Finding of Lack of Jurisdiction or, Alternatively, for Authority for Gateway Pipeline Company, Inc. to Acquire the Outstanding Shares of UtiliCorp Pipeline Systems, Inc., and Motion for Expedited Treatment.
- An original and eight (8) copies of a Motion for Protective Order.

A copy of the Highly Confidential version of the Joint Application and a copy of the Motion for Protective Order will be served on the Commission's General Counsel and the Office of the Public Counsel.

Would you please bring this filing to the immediate attention of the appropriate Commission personnel. Thank you very much for your assistance and cooperation.

Very truly yours,

  
James C. Swearengen

Enclosures

cc: Tim Schwarz  
Office of the Public Counsel  
David Ries  
Richard C. Kreul

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

HIGHLY  
CONFIDENTIAL  
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 No. GM-2001-585

**JOINT APPLICATION FOR FINDING OF LACK OF  
JURISDICTION OR, ALTERNATIVELY, FOR AUTHORITY  
FOR GATEWAY PIPELINE COMPANY, INC. TO ACQUIRE  
THE OUTSTANDING SHARES OF UTILICORP PIPELINE  
SYSTEMS, INC., AND MOTION FOR EXPEDITED TREATMENT**

COME NOW Gateway Pipeline Company, Inc. ("Gateway"), Missouri Gas Company ("MGC") and Missouri Pipeline Company ("MPC") pursuant to § 393.190, RSMo 2000, 4 CSR 240-2.060(12) and 4 CSR 240-2.080(17), and, for their Joint Application for Finding of Lack of Jurisdiction or, Alternatively, for Authority for Gateway to Acquire the Outstanding Shares of UtiliCorp Pipeline Systems, Inc. ("UPL") and Motion for Expedited Treatment, respectfully state as follows to the Missouri Public Service Commission (the "Commission"):

**Background Information**

1. Gateway is a Delaware corporation, in good standing in all respects, with offices at 7662 Davis Peak Road, Littleton, Colorado 80127. A certificate of authority from the Missouri Secretary of State to the effect that Gateway, a foreign corporation, is duly authorized to do business in the State of Missouri is marked Appendix 1, attached hereto and made a part hereof for all purposes. Marked Appendix 2, attached hereto and made a part hereof for all purposes is Gateway's Certificate of Good Standing issued by the Missouri Secretary of State. Gateway currently conducts no business operations in Missouri, or elsewhere, and has no pending actions against it or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates within the three (3) years immediately preceding the filing of this Joint Application. Gateway conducts no operations subject to the jurisdiction,

3

control and regulation of the Commission and therefore is not a "public utility" as that term is defined by § 386.020(32), RSMo 2000. Accordingly, Gateway has no overdue Commission annual reports or assessment fees.

2. MGC and MPC are both Delaware corporations, in good standing in all respects, and wholly-owned subsidiaries of UPL. Marked Appendix 3, attached hereto and made a part hereof for all purposes is MGC's Certificate of Good Standing issued by the Missouri Secretary of State. Marked Appendix 4, attached hereto and made a part hereof for all purposes is MPC's Certificate of Good Standing issued by the Missouri Secretary of State. Both MGC and MPC are engaged in owning and operating natural gas transmission pipelines in the State of Missouri and are subject to the jurisdiction of the Commission as provided by law. Neither MGC nor MPC has any pending actions against it or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates within the three (3) years immediately preceding the filing of this Joint Application. Neither MGC nor MPC has any overdue Commission annual reports or assessment fees.

3. UPL is a Delaware corporation and a wholly-owned subsidiary of UtiliCorp United Inc. ("UtiliCorp"). UPL conducts no operations subject to the jurisdiction, control and regulation of the Commission and therefore is not a "public utility" as that term is defined by Section 386.020(32), RSMo 2000. UtiliCorp is a Delaware corporation, in good standing in all respects, with its principal office and place of business at 20 W. Ninth Street, Kansas City, Missouri 64105. UtiliCorp is authorized to conduct business in Missouri through its Missouri Public Service and St. Joseph Light & Power operating divisions and, as such, is engaged in providing electrical and natural gas utility service in Missouri to customers in its service areas subject to the jurisdiction of the Commission as provided by law.

4. Pleadings, Notices, Orders and other correspondence and communications concerning this Joint Application should be addressed to the undersigned counsel, as well as to:

Gateway Pipeline Company, Inc.  
7662 Davis Peak Road  
Littleton, CO 80127  
Attention: David Ries

Missouri Gas Company  
20 West Ninth Street  
Kansas City, MO 64105  
Attention: Richard C. Kreul

Missouri Pipeline Company  
20 West Ninth Street  
Kansas City, MO 64105  
Attention: Richard C. Kreul

### **The Transaction**

5. Subject to the terms of a Stock Purchase Agreement, as amended, a copy of which is marked Appendix 5 attached hereto and made a part hereof for all purposes<sup>1</sup>, UtiliCorp has agreed to sell and Gateway has agreed to buy all of the issued and outstanding shares of the capital stock of UPL (the "Transaction"). After the Transaction, both MGC and MPC will continue to be owned by their non-regulated parent, UPL, and both MGC and MPC will continue to be regulated by the Commission as provided by law. The essence of the Transaction is that the parent of UPL will be changed from UtiliCorp to Gateway with no change in the ownership of MGC or MPC, the regulated Missouri utilities. Marked Appendix 6, attached hereto, and made a part hereof for all purposes is a diagram which shows the corporate structure of the involved entities before and after the Transaction.

### **Request for Finding of Lack of Jurisdiction**

6. Neither UPL nor Gateway is engaged in the provision of utility service in this state. Accordingly, UPL and Gateway are not "public utilities" as that term is defined in §

---

<sup>1</sup> Several pages of attachments to the Stock Purchase Agreement 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. Pursuant to 4 CSR 240-2.085(2), one (1) original and eight (8) copies of the public (NP) version of the Joint Application, 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 together with Motion for Protective Order. A Highly Confidential copy of said Joint Application will be served on the Commission's General Counsel and the Office of the Public Counsel.

386.020, RSMo 2000 and, therefore, are not subject to the jurisdiction of the Commission. As indicated, the Transaction simply involves the acquisition of the stock of a non-regulated parent corporation, UPL, by an entity which is also non-regulated, Gateway. The end result will be that UPL will continue to own all of the stock of MGC and MPC, the entities which are regulated by the Commission. Under § 393.190, RSMo 2000, the source of the Commission's jurisdiction over stock acquisitions and mergers, the Commission does not have jurisdiction over the Transaction.

7. The proposed stock acquisition is virtually identical, from a jurisdictional standpoint, to the transaction which was the subject of the Commission's Report and Order issued in a case styled *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 ("United Water"). The United Water case involved the acquisition of stock and the merger of the non-regulated corporate parents of two regulated Missouri utilities. By its Order Closing Case issued in United Water on December 7, 1999, the Commission found and concluded: **"... because it lacks jurisdiction over the proposed transaction, the Commission will close this case."** (Emphasis added)<sup>2</sup> A copy of a Memorandum Indicating Lack of Jurisdiction filed by the Staff of the Commission in the United Water case, is marked Appendix 7, attached hereto and made a part hereof for all purposes.

8. As the Staff candidly observed in United Water, "Section 393.190(2) clearly does not apply to the facts of this transaction because UWMO (United Water Missouri Inc.) 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." Because § 393.190(2) did not apply in United

---

<sup>2</sup> See also Case No. WM-99-224, Report and Order, issued March 23, 1999, where the Commission found as follows:

"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. The Commission's past approach to mergers of this type has been the proper one, and will be followed here. Since the Commission has no jurisdiction over this merger, it will close this case."

Water, the Commission concluded that it lacked jurisdiction to examine the proposed transaction and, therefore, closed the United Water case.

9. Gateway, MGC and MPC submit that the Staff Memorandum in United Water, Appendix 7, correctly describes the analysis to be applied in the present case. Namely, the Commission does not have jurisdiction to review the Transaction because there is nothing in the applicable statutes, including § 393.190(2), that confers jurisdiction on the Commission to examine the sale of the stock of one non-regulated parent corporation (i.e., UPL) to another non-regulated parent corporation (i.e., Gateway) even though the former owns the stock of utility companies which are subject to the jurisdiction of this Commission (i.e., MGC and MPC).

10. Consistent with its decisions and the Staff's Memorandum in United Water, Appendix 7, the Commission should dismiss this Joint Application and close this case for lack of jurisdiction over the Transaction.

#### **Joint Application**

11. In the alternative, while Gateway, MGC and MPC submit that the Transaction does not require the approval of the Commission and without consenting to the Commission's jurisdiction or waiving their right to contest the Commission's jurisdiction, if the Commission elects to review the Joint Application, Gateway, MGC and MPC request the Commission's approval of the Transaction pursuant to § 393.190(2), RSMo 2000.

12. A certified copy of the resolutions of the Board of Directors of Gateway authorizing the Transaction is marked Appendix 8, attached hereto and made a part hereof for all purposes.

13. The proposed transaction is not detrimental to the public interest for the following reasons:

- MGC and MPC will continue to be wholly-owned subsidiaries of UPL.
- There will be no change in the operations of MGC or MPC. MGC and MPC will continue to provide service to their customers pursuant to the rates, rules, regulations and other

tariff provisions of MGC and MPC currently on file with and approved by the Commission until such time as they may be modified according to law.

- The existing customers of both MGC and MPC will continue to experience quality day-to-day utility service at approved rates and the transaction will be entirely transparent to them.
- The Commission will retain full authority to regulate the rates and terms and conditions of service rendered by MGC and MPC as provided by law.

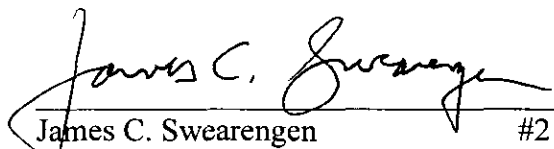
#### **Motion to Expedite**

14. Gateway desires to close this transaction on September 30, 2001 and may require up to sixty (60) days prior to that date to accomplish any necessary pre-closing activities. Consequently, Gateway requests that on or before August 1, 2001, the Commission issue its order either (a) finding and concluding that it lacks jurisdiction with respect to the Transaction or, alternatively, (b) approving the Transaction with such order bearing an effective date no later than September 30, 2001. Such action by the Commission will benefit Gateway by permitting it to close the Transaction on schedule as desired. Such action will not, however, result in any negative effect on the customers of MGC or MPC or the general public because, as indicated, the Transaction will be entirely transparent to said customers and general public. This Motion for Expedited Treatment is filed with the Commission as soon as possible after the execution of the Stock Purchase Agreement, as amended, Appendix 5, hereto.

WHEREFORE, Gateway, MGC and MPC respectfully move the Commission to expedite the processing of this Joint Application upon said processing on or before August 1, 2001, issue its order effective no later than September 30, 2001: (a) dismissing the Joint Application and closing this case based upon the finding that the Commission has no jurisdiction over the subject transaction; or, in the alternative, (b) authorizing Gateway to enter into, execute and perform in accordance with the terms and conditions set out in the Stock Purchase Agreement, as amended, Appendix 5 hereto, and to take any and all other actions which may be reasonably necessary and incidental to the performance of the transaction described therein; and, (c) granting such other

further relief as may be deemed necessary and appropriate.

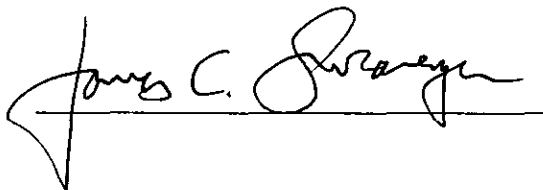
Respectfully submitted,

  
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.  
Missouri Gas Company and Missouri Pipeline  
Company

**Certificate of Service**

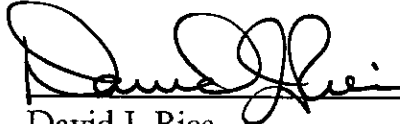
I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 19<sup>TH</sup> day of April, 2001, to all parties of record.



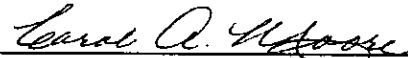


State of Kansas                    )  
  ) ss  
County of Johnson                )

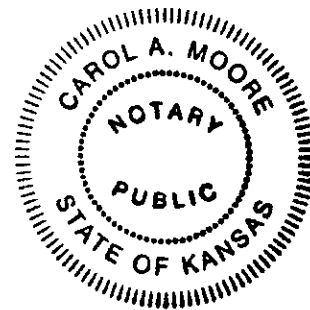
David J. Ries, having been duly sworn upon his oath, states that he is the President of Gateway Pipeline Company, Inc., and duly authorized to make this affidavit on its behalf and that the matters and things stated in the foregoing Joint Application and appendices thereto are true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
David J. Ries

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of April, 2001.

  
\_\_\_\_\_  
Notary Public

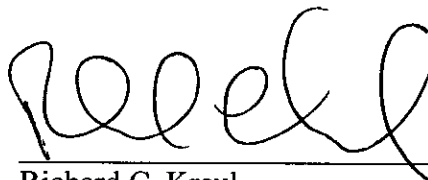
My commission expires: *August 23, 2004*



**AFFIDAVIT**

State of Missouri     )  
                              )  
County of Jackson    )     ss

Richard C. Kreul, having been duly sworn upon his oath, states that he is President of Missouri Gas Company and Missouri Pipeline Company, and duly authorized to make this affidavit on their behalf and that the matters and things stated in the foregoing Joint Application and appendices thereto are true and correct to the best of his information, knowledge, and belief.



Richard C. Kreul

Subscribed and sworn to before me this 18<sup>th</sup> day of April,  
2001.



Notary Public

My commission expires:

Linda C. Howell  
Notary Public-Notary Seal  
State of Missouri  
Jackson County  
Commission Expires: May 4, 2004