NEWMAN, COMLEY & RUTH
PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
MONROE BLUFF EXECUTIVE CENTER
601 MONROE STREET, SUITE 301
P.O. BOX 537
JEFFERSON CITY, MISSOURI 65102-0537
www.ncrpc.com

ROBERT K. ANGSTEAD
MARK W. COMLEY
CATHLEEN A. MARTIN
STEPHEN G. NEWMAN
JOHN A. RUTH
ALICIA EMBLEY TURNER

TELEPHONE: (573) 634-2266
FACSIMILE: (573) 636-3306

September 18, 2001

FILED
SEP 1 8 2001
Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Case No. GM-2001-585

Dear Judge Roberts:

Please find enclosed for filing in the above-referenced matter the Brief of Laclede Gas Company. I enclose the original and eight copies of the highly confidential version, filed under seal, and one copy of the non-proprietary version.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By: Mark W. Comley
Mark W. Comley
comleym@ncrpc.com

MWC:ab
Enclosure
cc: M. Ruth O'Neill, Office of Public Counsel
Lera L. Shemwell, General Counsel's Office
Michael C. Pendergast
Paul A. Boudreau
Thomas M. Byrne
William D. Steinmeier
Jeffrey A. Keevil

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

In the Matter of the Joint Application of Gateway Pipeline Company, Inc., Missouri Gas Company and Missouri Pipeline Company.	))))	Case No. GM-2001-585

BRIEF OF LACLEDE GAS COMPANY

Pursuant to the briefing schedule established in this proceeding, Laclede Gas Company ("Laclede" or "Company") hereby submits the following brief for the Commission's consideration.

I.
ARGUMENT

1. Should the request of the Joint Applicants to acquire all of the stock of UtiliCorp Pipeline Systems, Inc. (UPL) be approved?

Laclede respectfully submits that the Commission should not approve the request of the Joint Applicants in this proceeding that Gateway Pipeline, Inc. ("Gateway" or "Applicants") be authorized to acquire the stock of UtiliCorp Pipeline Systems, Inc. (hereinafter the "Proposed Sale").[1] Although Laclede has proposed certain conditions

[1] Laclede is the largest recipient of the natural gas supplies delivered through Missouri Pipeline Company's ("MPC's") facilities, with the right to take 55,000 MMBtu per day of the line's 85,000 Mcf/d capacity. (Exh. 9HC, pp. 3-4). While supplies delivered through MPC represent only about 10% of Laclede's total annual requirements, such supplies represent the only current source of gas for some of Laclede's customers. (*Id.*). Therefore, it is an important component of the supply on which Laclede depends to meet the needs of its customers. (*Id.*). Under such circumstances, Laclede has an obvious interest in the Proposed Sale in terms of ensuring that it will be able to maintain reliable access to these critical pipeline facilities and in protecting its customers from inflated gas costs that have been increased for reasons unrelated to competitive market conditions.

91 NP

which it believes the Commission should adopt in the event it nevertheless decides to approve the Proposed Sale, the Company wishes to emphasize its strong belief that outright denial of the authorization sought in this case is the only result that will provide Missouri consumers with the protection to which they are entitled under the law. Laclede would also note that it has not arrived at this recommendation lightly. As a public utility regulated by this Commission, Laclede fully subscribes to the proposition that utilities, just like other firms, should be given wide latitude in the exercise of their property rights, including their rights to transfer or dispose of utility property without unreasonable regulatory barriers. However, such rights are not absolute. (Exh. 9HC, p. 13). Every public utility that purchases or constructs facilities dedicated to public use accepts reasonable limitations on how such facilities may be transferred to a new owner. *(Id.)*. Specifically, they do so with the explicit understanding that any subsequent sale of used and useful facilities will necessarily be conditioned on whether the proposed buyer has the requisite attributes, in terms of both fitness and financial viability, to provide the Commission with reasonable assurances that the transfer will not be detrimental to the public interest. *(Id.)*. In certain exceptional cases this minimum standard will not be met. As discussed below, the evidence presented in this proceeding clearly demonstrates that this is one of those exceptional cases and that the Proposed Sale should therefore be disapproved.

A. Would the sale be detrimental to the public interest?

As the threshold issue identified by the parties to this case makes clear, the legal standard governing the Commission's decision on whether to authorize the Proposed

Acquisition is relatively simple and straight-forward -- namely, will authorization of the sale be detrimental to the public interest? The parties have, of course, expressed divergent opinions regarding who bears the burden of proof on this issue and what constitutes the kind of detriment that requires disapproval. No party, however, has disputed that a core consideration in making such a determination is whether the acquiring party is qualified and fit to own and operate the pipelines that would be transferred in the event the Proposed Acquisition were to be approved. To the contrary, the Applicants themselves repeatedly recognized the relevance of this consideration to the Commission's public detriment determination by introducing evidence which purported to demonstrate that those individuals who would own and operate the pipelines are, in fact, fit and qualified to undertake that responsibility. (*See* e.g. Exh. 4, pp. 6-8).

The Commission has also recognized that the fitness and qualifications of a prospective owner is a critical consideration in determining whether that party should be permitted to acquire and/or own pipeline facilities in Missouri. Indeed, such considerations were at the forefront of the Commission's previous determination to reject an applicant's competing request to construct, own and operate some of the very facilities at issue in this case. ***In Re Intercon Gas, Inc.***, 30 Mo.P.S.C. N.S. 554 (1991) (hereinafter ***"Intercon"***), the Commission was confronted with competing applications by Intercon Gas, Inc. ("Intercon") and Missouri Gas Company ("MGC") for authority to construct and operate intrastate pipeline facilities along the route that is currently served by MGC. In rejecting Intercon's application, the Commission noted that Intercon had made extremely self-serving estimates of its predicted load, load factors, construction costs, and as a result, its rates. ***Intercon***, at 579. The Commission also noted that such estimates had changed throughout the course of the proceeding. *(Id.* at 580). In the Commission's view, Intercon's unrealistic and constantly changing estimates of the project's fundamental financial characteristics had raised questions about both its qualifications to provide service and the credibility of its witnesses. *(Id.)*. In other words, Intercon's failure to provide a concrete, reliable business plan demonstrating the financial feasibility of its proposal was, in and of itself, a significant indicator of the applicant's lack of qualifications to provide public utility service.

Perhaps even more significantly, the Commission noted that these concerns over the qualifications and fitness of Intercon to provide public utility service had only been heightened by a review of Intercon's previous track record on other projects and the prior activities of its principal owners. As the Commission stated:

> The Commission has also considered evidence regarding Intercon's past dealings in Michigan and Arkansas. In Michigan, Intercon filed a competing application to build a pipeline originally proposed by the Saginaw Bay Pipeline Company. Before the matter was heard by the Michigan Public Service Commission, Intercon withdrew its application and, in exchange for a 10% equity position in Saginaw Bay's project, supported its former rival.
>
> In Arkansas, Intercon won approval to construct the NOARK pipeline after proposing, as it has done in this case, to fund the project with 20% equity and 80% debt. Although NOARK has been authorized for over a year, construction has never commenced, the project has never been financed, and Intercon is no longer a participant.
>
> Intercon, although a corporation, is wholly owned by two gentlemen from Texas, Cy Wagner and Jack Brown. Neither Mr. Wagner nor Mr. Brown were willing to divulge anything to this Commission regarding their net worth. Their banker did fly up from Texas, but the Commission was not reassured. Mr. Wagner and Mr. Brown have been associates of T. Boone Pickens. At hearing, the Commission heard of their hostile takeover attempts of Gulf Oil, Phillips Petroleum, Panhandle Eastern Pipeline and others.

> The Commission realizes that there is nothing illegal or immoral about hostile takeovers, "greenmail," or pursuing business opportunities in Michigan and Arkansas. Nevertheless, as innocent as these events seem to be when considered individually, they take on a different look when combined with the Commission's findings regarding the lack of credibility in witnesses Ginnard and Bolton. The Commission is of the opinion that Intercon's application(s) have more of the character of a speculation than a well reasoned business undertaking.
>
> ***Intercon**, supra,* at 580

In view of these considerations – all of which went to the qualifications and fitness of Intercon to provide public utility service in Missouri – the Commission rejected Intercon's application for authority to provide such service. Notably, the lawfulness and reasonableness of the Commission's decision to reject Intercon's application, as well as the criteria it used in making that determination, were broadly reaffirmed on judicial review by the Western District Court of Appeals. *See* ***State ex rel. Intercon Gas, Inc. v. Public Service Commission of Missouri,*** 848 S.W.2d 593 (1993).

These fundamental considerations of an applicant's qualifications and fitness to provide public utility service are, of course, even more critical in a proceeding, such as this one, where the applicant seeks to acquire, own and operate facilities that are already being used to provide utility service. At least in the ***Intercon*** case, the applicant's failure to perform would have only resulted in Missouri consumers not receiving natural gas service that they had never had access to in the first instance. In this case, however, the failure to perform, or to provide service in a safe and adequate manner, would have cost and reliability consequences for Missouri consumers and LDCs who are *currently* taking service through MPC and MGC facilities – LDCs and consumers who in many instances depend on those facilities as the sole source of their natural gas service (*See* Exh. 9HC, pp. 3-4), and who have invested millions of dollars in pipes and appliances on the assumption that such service will continue to be available on reasonable terms.

Given these considerations, the qualifications and fitness of the Applicant to render public utility service in Missouri is absolutely critical to a determination of whether the Proposed Sale will be detrimental to the public interest. And under the criteria utilized by the Commission in ***Intercon*** – indeed under any reasonable standard at all – it is clear that the Application must be denied on this ground alone.

As in ***Intercon***, the Applicant in this case has failed to provide any reliable cost, load or revenue information to demonstrate the financial feasibility of the transaction. Indeed, in contrast to the Applicant in ***Intercon***, who at least provided some data to support its cost, load and revenue estimates, Gateway has furnished virtually nothing in this case to demonstrate how its proposed business endeavor can possibly work. **____

[2]

[2] **

.**

[redacted].

[redacted].[3] [redacted]

[3]** [redacted].**

____________.**

As in ***Intercon,*** the qualification and fitness concerns raised by Gateway's wholly inadequate efforts to demonstrate the financial feasibility of its future operation is also heightened by a consideration of the track record of Gateway's principal owner. The first task for the Commission in determining the qualifications and fitness of the individuals who would control and chart the business activities of Gateway is, of course, to identify who those individuals are. That task has not been made easy by the Applicants. As the evidence in this case disclosed, one must sort their way through five separate levels of ownership to ultimately arrive at who will presumably own and control MGC and MPC. The journey begins with MGC and MPC, which will apparently continue to be owned by UtiliCorp Pipelines Systems, Inc., albeit under a different name. (Tr. 207). UtiliCorp Pipelines Systems, Inc. would, in turn, be owned by Gateway. (Tr. 208). Gateway would, in turn, be owned MoGas Energy, LLC subject to a senior note from BancOne secured by the assets of Gateway. (*Id.*). Finally, at the top of the ownership chain are three principles, including TCW Asset Management Inc. ("TCW"), a firm that appears to be primarily engaged in managing investments for firms and individuals, Mr. Dennis Langley and Mr. David J. Reis. (*Id.*).

Having arrived at this final destination, however, it is still not clear who will really own and control Gateway's operations. To the contrary, it is impossible to determine from the evidence presented in this proceeding what the participation of TCW in this venture really means in terms of who will own and control MoGas Energy and hence Gateway. As Staff witness McKiddy testified, she was unaware of having received a single document from Gateway throughout the course of this proceeding that purported to memorialize the terms and conditions under which TCW was investing in MoGas Energy or even confirm that such an investment was being made. (Tr. 880). Nor was there any documentation provided to show whether the equity investment being made by TCW is being furnished on behalf of the firm itself, one of the funds it manages, or on behalf of one or more individual investors who have directed TCW to make such an investment in MoGas Energy utilizing funds provided by those investors. (Tr. 880-81). Under such circumstances, it is impossible to determine who or what stands behind this investment, who or what ultimately controls it, or the circumstances under which the investment can or will be reduced, altered, supplemented or otherwise changed. As a consequence, far from approving a proposed acquisition that, as Gateway has attempted to suggest, has an $80 billion equity investor standing behind it in the form of TCW, the Commission is being asked to turn over control of these pipelines to a principal investor that, for intents and purposes, is completely unknown to the Commission. While the Commission may have found the principal investors in ***Intercon*** to be wanting, it at least knew who they were. The fact that it doesn't in this case should be fatal to the request for authority to sell these facilities.

This is especially true in light of what the historical record says about the principal equity investor that *has* been disclosed in this case. As previously noted, Mr. Dennis Langley is the only other prospective owner of MoGas Energy who is making a cash investment in that Company. Mr. Langley is the prior owner of The Bishop Group (Bishop); an organization that owned and operated pipelines in Kansas, Missouri and Oklahoma, including Kansas Pipeline Company. (Exh. 9HC, p. 3). In his rebuttal testimony, Laclede witness Christopher C. Pflaum described in detail the extremely poor record compiled by Mr. Langley in operating these pipelines -- a record characterized by service problems, extremely high rates, claims of financial distress and bankruptcy, and seemingly endless litigation. (Exh. 9HC, pp.4-13). It is a record that, in Laclede's view, makes it impossible for the Commission to determine that the prospective owners of Gateway are fit and qualified to own these pipeline facilities and provide service in Missouri.

Notably, Laclede is not the only stakeholder in this proceeding to have expressed strong and extremely unfavorable comments regarding the operational history of Mr. Langely. In a recent FERC proceeding, this Commission itself submitted testimony in which it soundly criticized Mr. Langely's prior management and operation of these pipelines. The Commission's views in this regard, the accuracy of which were confirmed by Staff witness Morrissey during the hearing in this case (Tr. 824-825), are contained in the following excerpt from the Initial Decision in FERC Docket No. RP99-485-000h. As the initial decision in that case notes:

> According to MoPSC witness Morrissey, various actions by KPC's previous owners and managers have negatively affected the KPC's rates, its relationship with its customers, its regulatory affairs, and its business operations. MoPSC witness Morrissey contends that "various acquisitions and changes in KPC's ownership have produced increased costs that have not resulted in corresponding benefits to ratepayers.... [and that] KPC's owners and managers have repeatedly made decisions which have been to their benefit while being detrimental to its ratepayers." Moreover, the lack of adequate internal controls has allowed KPC's operating expenses

> to exceed reasonable levels, which has resulted in KPC's cost-of-service being driven to a level where it is not competitive with other pipelines.
>
> MoPSC believes that above-market prices have prevented KPC from increasing its market share and have eroded its current market. The increased prices have further caused dissension among KPC's customers and state regulatory bodies, thereby triggering contractual disputes and prudence reviews. MoPSC states that all of these factors are the result of KPC's own inefficient management. Commission policy requires that under such circumstances, KPC's owners, not its customers, must bear the burden of shouldering the costs that result from KPC's increased business risk. *(Id. p. 54).*
>
> (Exh. 9HC; p. 12).

Laclede has every confidence that the Commission was not exaggerating when it asserted that "KPC's owners and managers have repeatedly made decisions which have been to their benefit while being detrimental to its ratepayers." Laclede is also certain that the Commission was not overstating the case when it alleged before FERC that the "lack of adequate internal controls has allowed KPC's operating expenses to exceed reasonable levels," and permitted its rates to increase to "a level where it is not competitive with other pipelines." Finally, Laclede is confident that the Commission chose its words very carefully when it observed that these actions have "caused dissension among KPC's customers and state regulatory bodies" and that such factors "are the result of KPC's own inefficient management." In view of the Commission's own observations regarding the extremely poor performance of the principal owner of Gateway in operating pipeline systems, it is difficult to understand how the Commission could possibly conclude in this case that Gateway should be entrusted with owning and operating two critical pipeline facilities in Missouri.

This is particularly true in light of the evidence presented in this proceeding which, if anything, suggests that the Commission's concerns may have been understated. As Laclede witness Pflaum's testimony demonstrated each of the concerns expressed by the Commission regarding the prospective owners of MGC and MPC is amply supported by the historical record. (*See* Exh. 9HC, pp. 4-13). Based on years of personal involvement in regulatory proceedings involving the pipelines owned by Mr. Langley, Dr. Pflaum recounted in detail how those pipelines used litigation, claims of financial distress, and other tactics to secure and maintain contracts with LDCs and municipalities at prices well above the cost of other pipeline alternatives. *(Id.)*. Among the examples cited by Dr. Pflaum were the following:

> Kansas Pipeline Partnership (KPP), controlled by **_________ **, received its first gas transportation contract with Western Resources, Inc. (WRI) after intervening in a rate application. After the contract was secured, KPP persuaded WRI to lift the price ceiling on its contract from the rate charged by the dominant pipeline, Williams Natural Gas (Williams), to a level based on cost of service. Subsequent to the lifting of the contract cap, in 1994, KPP filed for a further increase in rates based on a hypothetical cost of service. The contract amendment alone has resulted in over $13 million per year in increased costs to Kansas gas consumers over the past six years. (Exh. 9HC, p. 5).
>
> KPP secured a transportation contract for gas with United Cities Gas (UCG) shortly after it intervened in UCG's Kansas rate case. After securing the contract, KPP withdrew its intervention. Although this contract was on far

better terms than WRI's, it was still at a cost above that of Williams. (Exh. 9HC, p. 5).

- KPP secured contracts to construct a small pipeline and provide bundled gas and transportation services at very high rates to several Kansas communities in settlement of litigation with WRI regarding the so-called "Linchpin" and "Wraparound" contracts. Once again, these contracts have cost consumers tens of millions of dollars in unnecessary costs over their duration. (Exh. 9HC, p. 5).

  Bishop affiliates, Mid-Kansas and Riverside Pipeline, secured high cost contracts with MGE as the result of settling the Linchpin and Wraparound contract lawsuits. (Exh. 9HC, pp. 5-6).

  KPP is currently in litigation with WRI's successor in Kansas, the Kansas Gas Service division of Oneok, over KPP's alleged breach of the Linchpin and Wraparound settlements. (Exh. 9HC, p. 6).

As the foregoing suggests, the total excess costs to consumers as a result of these arrangements have been substantial. For example, the rates charged by the Kansas pipelines owned by Mr. Langley were some three times higher than those being charged by the alternative pipeline supplier. (Tr. 543). And in Case Nos. GR-94-101 and GR-94-228, it was estimated that the total excess cost to Kansas and Missouri consumers of the various uneconomic contracts with **_______ **-affiliated entities, barring regulatory intervention, would have been $547 million. (Exh. 9HC, p. 6).

Unfortunately, even with regulatory intervention, consumers have found themselves burdened with excess costs because of repeated claims by these pipelines at the Kansas Corporation Commission and before FERC that regulatory action would lead to financial ruin. For example, in its Kansas rate case, Bishop made numerous, nontraditional claims for why its rates should be increased. (Exh. 9HC, p. 7). Among these were that it should be allowed to claim the capitalized losses of an unrelated predecessor as an element of rate base. (*Id.*). The claim was framed that the losses were market entry costs. The KCC ultimately rejected these arguments, however, and established a cost of service of $22 million. (*Id.*). Bishop then appealed to the KCC that the return on this level of investment would be insufficient to meet the indenture coverage ratios on its debt. (Exh. 9HC, pp. 7-8). This debt greatly exceeded KPP's utility investment and KPP never did provide the KCC with an accounting of the uses of these funds. (Exh. 9HC, p. 8). Rather than see a Kansas utility fall into bankruptcy, however, the KCC permitted a revenue requirement of $31 million, an amount sufficient to cover the indenture requirements. (*Id.*). After FERC asserted jurisdiction over KPP because of action undertaken by its management, KPP repeated these financial need arguments in its FERC case when the FERC found that the KPP rate base and cost of service were inflated. (*Id.*).

Given the exceptionally high prices charged by these pipelines, one would at least expect that these pipelines would have provided a premium service, free of any interruption. As Dr. Pflaum testified, however, Kansas Pipeline interrupted firm service to WRI (presently Kansas Gas Service) and United Cities Gas in the winter of 1993-94 in connection with a delivered supply arrangement. (Exh. 9HC, p. 7). These interruptions by KPP seem to have occurred because it was using interruptible transportation on interstate pipelines to provide firm delivered service on KPP. (*Id.*). As Dr. Pflaum observed, while interruptible service was fairly firm during this time and the risk associated with the mismatch was small, it was not non-existent. (*Id.*). Nevertheless, KPP risked service reliability to its customers by its actions and its customers would, in fact, have been interrupted had Williams not stepped in to make up for the lost supplies. (*Id.*). Schedule 2 to Dr. Pflaum's rebuttal testimony (Exh. 9HC) contains voluminous material illustrating the seriousness with which this lapse in reliability was taken by the parties who were affected, including copies of the correspondence between Bishop and WRI, internal memos, and a copy of the complaint and request for emergency show cause proceeding that WRI filed with the KCC.

In view of this historical record, it is clear that the Commission's previous observations before FERC regarding the extraordinary history of mismanagement by the would-be owners of MGC and MPC have a solid basis in fact. Unfortunately, past is often prologue, and Gateway's owners have done nothing in this proceeding to dispel these concerns or explain why the Commission should suddenly conclude that they will perform any better in operating these pipeline assets in Missouri than they have in operating their prior pipeline holdings. To the contrary, Gateway's wholly inadequate and evasive response to these concerns, as well as its other actions in this proceeding, have only reinforced the conclusion that its acquisition of the MGC and MPC properties would be profoundly detrimental. For example:

> Rather than dispute the extraordinary record of excessive costs and rates that plagued its prior pipeline holdings, the Applicant would have the Commission believe that such costs were somehow caused by the actions

of the incumbent pipeline against which it was competing. As this Commission has already recognized and asserted in its testimony before the FERC, however, those excess costs can not be laid at the doorstep of an overly aggressive competitor. Instead, they are, in the words of the Commission, directly attributable to the fact that "KPC's owners and managers have repeatedly made decisions which have been to their benefit while being detrimental to its ratepayers"; the "lack of adequate internal controls [which] has allowed KPC's operating expenses to exceed reasonable levels"; and permitted its rates to increase to "a level where it is not competitive with other pipelines"; and "KPC's own inefficient management." (Exh. 9HC, p. 12).

Rather than dispute any of the particulars of Dr. Pflaum's contentions regarding prior interruptions of service by its pipeline operations in Kansas, the Applicant simply noted that the Complaint surrounding those interruptions was ultimately dismissed. In doing so, Gateway conveniently ignored the fact that such dismissal did not occur until some fifteen months after the interruptions occurred and then only after a settlement was reached among the parties. (Tr. 581-582). Nor did Gateway mention the complete absence in the order dismissing the complaint of any language that would suggest the pipeline had adequate supplies at the time the interruptions occurred. (*Id.*).

Rather than dispute the extraordinary degree of litigation which the actions and excessively costly service contracts of its prior pipeline operations have engendered over the years, the Applicant sought to suggest, once again, that such litigation was competitively motivated and not the result of any deficiency on the part of those pipelines. The record, however, shows that the prudence and reasonableness of these service contracts have been challenged by the Kansas Corporation Commission Staff, the Missouri Public Service Commission Staff, and representatives of the cities in which the pipelines provide service. (Tr. 380). The record also shows a continuing pattern of lawsuits between these pipelines and their customers, with one of the more recent ones alleging common law fraud and breach of contract on the part of such pipelines. (Tr. 402).

In view of all of these considerations, Laclede believes that the Commission has no choice but to disapprove the Proposed Sale. Using the criteria employed by the Commission in ***Intercon,*** it is abundantly clear from the record in this case, and the Commission's own prior pronouncements, that the would-be owners of MPC and MGC are not qualified or fit to own and operate these pipelines. Indeed, some of them are not even known. Moreover, it is clear from Gateway's assertions regarding the Commission's lack of jurisdiction over any future merger or sale involving Gateway, (Tr. 264-265) that should the Commission approve the Proposed Sale, it will lose any meaningful power to determine who will own these facilities in the future. Under such circumstances, approval of the Proposed Sale would unquestionably be detrimental to the public interest and the authorization sought in this case should therefore be denied.

B. If so, are there conditions that the Commission could impose to reduce or eliminate any detriment?

Given the legal uncertainties over the Commission's ability to formulate conditions that cannot be circumvented through an assertion of FERC jurisdiction or otherwise, as well as the other concerns that have been raised in this case regarding the qualifications and fitness of the Applicant, Laclede views the imposition of conditions as an ineffective substitute for disapproval. (Exh. 9Hc, p. 13). Nevertheless, if the Commission decides to approve the Proposed Sale, thus requiring Laclede to contract and deal with a party from whom it would prefer not to take service, Laclede believes it is essential that very clear ground rules be established at the outset to govern the service relationship between MPC, MGC and its existing customers following any acquisition by Gateway. Specifically, Laclede recommends that approval of the acquisition be conditioned on the following requirements, each of which will be discussed in order:

1) MPC and MGC should be required to continue to provide firm transmission (FT) service to existing users of the pipelines, including Laclede, at rates reflecting their cost of service, provided that such rates should be capped for a period of not less than 5 years. This rate cap should include a prohibition on any type of rate restructuring, including any changes that would establish rate or zone boundaries or require an LDC to purchase services that have traditionally been included as part of MPC's or MGC's tariffs. (Exh. 9HC, p. 14).

Given the extraordinary history of litigation and excess costs produced by Gateway's owners in connection with their prior pipeline operation, Laclede believes that the imposition of a rate cap is reasonable and even essential. (Exh. 9HC, p. 15). Simply put, Gateway should be led to understand from the outset that its financial fate will depend on how well it performs not how will it litigates. For the rate conditions to work effectively, however, it is also critical that indirect increases not be sanctioned through the simple device of changing existing rate boundaries or restructuring rates. For example, Laclede takes service from MPC on various points including the St. Louis city gate and at connections on the boundaries of small towns outside the metropolitan area. (Exh. 9HC, p. 16). All this service is at a single rate. By establishing rate boundaries, Gateway could raise additional revenues based on Laclede's take points. *(Id.).* On two separate occasions, in relation to the assets involved in the instant proceeding, Case Nos. GR-92-314 and GA-95-231, this Commission has rejected the establishment of rate boundaries or zoned rates. Any attempt to establish rate boundaries should be considered as a form of "back door" increase in overall rates and a detriment to gas consumers. This detriment can be prevented by the Commission by preventing the pipelines from establishing zoned rates or rate boundaries. *(Id.).* Another form of "back door" increase that the Commission should guard against is a rate restructuring. By either unbundling or rebundling services, Gateway could attempt to extract additional monies without adding any value to its standard tariff services. *(Id.).* The Commission should not permit any changes to standard tariff services during the 5 year rate cap. This condition will prevent such a result from occurring. *(Id.).*

2) MPC and MGC should be at risk for any loss of transportation volumes or any incremental expenditures designed to increase the throughput capability of the pipelines. Should MPC's or MGC's revenues fall because customers leave it or its capital or operational costs increase above the amounts currently reflected in rates in order to serve new loads, these pipelines should not be permitted to raise their rates to existing users to make up that shortfall. (Exh. 9HC, p. 14).

To avoid, or at least lessen, the chances that the Proposed Sale will result in a public detriment, MPC and MGC should also be prevented from adjusting rates in response to lost volumes or to reflect the incremental costs required to serve new loads. Like the rate cap condition, such a requirement may prevent the rates paid by existing users from being increased indirectly because service problems have driven customers off the system, thereby decreasing the volumes over which the fixed costs of the pipeline can be spread or because uneconomic decisions have been made to serve new loads that cannot pay for the incremental investment. (Exh. 9HC, p. 16-17).

3) MPC and MGC's certificates should continue to forbid them from bypassing the LDCs they serve and from providing direct service to industrial customers. (Exh. 9HC, p. 14).

Gateway should also be barred from serving retail load through MPC and MGC. MPC and MGC are certificated as intrastate pipelines not local distribution companies. It has been this Commission's policy that intrastate pipelines are not allowed to bypass the LDC's that they serve to directly connect with the LDC's customers. The benefit of such a policy is clear: it prevents the pipeline from cherry picking large profitable loads and leaving behind stranded LDC investment to be collected from captive, human needs consumers. The present owner is operating under such a restriction. (Exh. 9HC, p. 17).

4) MPC and MGC should be required to provide existing users, including Laclede, with a right of first refusal to continue to take up to their existing contract entitlements for firm transportation. (Exh. 9HC, p. 14).

Gateway, through MPC and MGC, should also be required to provide existing users of their system with a right of first refusal. In the past, regulation has recognized the need to provide incumbent LDC users of pipeline facilities with a mechanism to preserve their traditional access to such facilities, particularly where such access is needed to maintain service to firm customers. (Exh. 9HC, p. 17). A right of first refusal would accomplish this goal by giving existing users of the pipeline the opportunity to match any offer to take service by a new customer up to a level equal to the existing user's contract entitlement. In light of the previous concerns identified herein, Laclede views this protection as critical. *(Id.)*.

5) MPC and MGC should be prohibited from taking any actions that would subject them to FERC jurisdiction without prior approval of the Commission. ** ______________________________

______________________________.** (Exh. 9HC, p. 15).

In addition to requiring that Gateway seek Commission approval for any action that would potentially subject it to FERC jurisdiction, the ** ______________________________

____

____________________________.** *(Id.)*.

6) MPC and MGC should be required to submit plans showing that their addition of any firm transportation customers that increase their peak throughput will not impose additional costs or lessen service reliability to existing users of the pipelines. (Exh. 9HC, p. 15).

For reliability reasons, it is critical that Gateway provide the same high-pressure supply, and hourly volume flexibility comparable to MPC's present service level in order for Laclede to meet its customers' demands. Any significant additional firm subscription to the Gateway pipeline system in the future without additional compression or pipe installation would erode service to Laclede, thereby jeopardizing service to Laclede's customers. (Exh. 9HC, p. 18-19).

Accordingly, as part of any order approving the proposed acquisition, the Commission should require that prior to adding any additional firm subscription that would increase peak throughput on MPC's or MGC's system above existing levels, Gateway must submit a plan for Commission approval detailing what measures will be taken to ensure that such increased throughput will not jeopardize service to existing users and verifying that any costs incurred to provide such assurance will not be paid by existing users. (Exh. 9HC, p. 19).

7) Finally, to ensure reliability, MPC and MGC should be obligated to use firm services on interstate pipelines, whenever obligated to provide a firm delivered service to their customers. (Exh. 9HC, p. 15).

Given the representations made by Gateway during the hearing in this case that it will not provide any sales service through MPC and MGC, Laclede does not believe that this proposed condition is necessary and accordingly withdraws its recommendation that such a condition be adopted.

2. Does the condition that the Commission placed on UtiliCorp when it acquired these properties, that UtiliCorp would not connect the intrastate pipelines to the interstate Trans Mississippi Pipeline, apply to Gateway should the Commission approve the proposed transaction?

**

**

A. If so, should the Commission waive this provision?

No. The Commission should not waive this position. **

**

B. Might the Commission lose jurisdiction over these pipelines? If so, how would the loss of jurisdiction affect the public interest?

**

**

CONCLUSION

For all of these reasons, Laclede respectfully requests that the Commission deny the authorization that has been sought in this proceeding.

Respectfully submitted,

Michael C. Pendergast by MWC

Michael C. Pendergast
Assistant Vice President and
Associate General Counsel
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
(314) 342-0532 Phone
(314) 421-1979 Fax

CERTIFICATE OF SERVICE

Mark W. Comley, for Laclede Gas Company, hereby certifies that the foregoing Statement of Position of Laclede Gas Company has been duly served upon the General Counsel of the Staff of the Public Service Commission, Office of the Public Counsel and all parties of record to this proceeding by placing a copy thereof in the United States mail, postage prepaid, or by hand delivery, on this 18th day of September, 2001.

Mark W. Comley

Mark W. Comley