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May 11, 2001

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

RE: Case No. GM-2001-585

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **RESPONSE OF THE STAFF TO 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.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Lera L. Shemwell
Associate General Counsel
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LLS:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAY 11 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

**RESPONSE OF THE STAFF TO 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**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and responds to the 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 (Application). In response the Staff states:

1. Gateway Pipeline Company Inc., (Gateway) Missouri Gas Company (MGC) and Missouri Pipeline Company (MPC) (or Joint Applicants) have jointly filed this Application with the Commission seeking a Commission determination that the Commission lacks jurisdiction over the proposed sale of the outstanding shares of UtiliCorp Pipeline Systems, Inc., (UPL) to Gateway.

2. Joint Applicants suggest that since UPL and Gateway are not jurisdictional companies, as defined in § 386.020 RSMo 2000, the Commission lacks jurisdiction. (Joint Applicant's Brief at 4). Joint Applicants further urge that since this is merely a stock transaction among non-regulated entities, under § 393.190 RSMo 2000, the "Commission does not have jurisdiction over the Transaction." (Joint Applicants Br. at 4).

3. Staff notes, however, that this proposed transaction is, in fact, a proposal by UtiliCorp United Inc., (Utilicorp), a regulated gas utility, to sell part of its system to Gateway. In proposing to sell the outstanding shares of UPL, the parent of MPC and MGC, to Gateway, UtiliCorp is proposing to sell regulated assets. UtiliCorp is not one of the Joint Applicants, and Staff suggests that this does not reflect the actual intent and effect of the transaction, which is that UtiliCorp would be selling or otherwise disposing of assets used to serve Missouri customers.

4. Like UtiliCorp, both MPC and MGC are regulated by the Commission under its authority granted in § 386.250 RSMo 2000, which gives the Commission jurisdiction over the “manufacture sale or distribution of gas, natural and artificial . . . for heat and power within the state . . . and to persons, or corporations owning, leasing operating or controlling the same. Joint Applicants do not deny that Utilicorp, MPC and MGC are regulated entities. (Joint Applicant’s Br. at 2)

5. The fact that neither UPL nor Gateway are regulated is not relevant to the analysis of Commission jurisdiction, since it is the regulated entity, UtiliCorp, that is selling or otherwise disposing of assets. Under §393.190, such a sale requires Commission approval.

6. Section 393.190(1) says 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.”

7. The proposed transaction certainly involves a gas corporation, UtiliCorp, selling or otherwise disposing of UPL, the parent of MGC and MPC, and both MGC and MPC operate

pipelines that are part of UtiliCorp's works or system that is necessary or useful in performance of UtiliCorp's public duties. Not only does the Commission have jurisdiction over this proposed sale, but Commission approval of the proposed transaction is required by statute.

8. Joint Applicant's attempt to analogize this transaction to the transaction in *In the Matter of the Application of Untied Water Missouri Inc., for authority for Lyonnaise American Holding Inc., to Acquire the Common Stock of Untied Water Resources Inc. and in Connection There with to Enter into Certain Other Related Transactions* in Case No. WM-2000-318, fails. In the *United Water* case the transaction involved a stock transfer between two non-regulated parent corporations, while, in contrast, this proposed transaction involves the sale or disposal by a regulated utility of part of its system that is useful in the performance of its duties to the public.

9. Joint Applicant's attempt to apply § 393.190(2) RSMo 2000 to this transaction also fails and for the same reason. UtiliCorp is a regulated utility disposing of part of its system. This is not just Gateway, an unregulated company, proposing to buy another unregulated company, as Joint Applicant's argument would suggest. But this proposed transaction is, in reality, a regulated gas utility proposing to sell assets. As regulated utility UtiliCorp must obtain Commission approval for the transaction, and must furnish information to demonstrate that the transaction is not detrimental to the public interest.

10. The standard that the Commission applies to a transaction such as this is found in 4 CSR 240-2.060(7)(D) which is that the proposed sale of assets is not detrimental to the public interest.

11. In order to be able to make a recommendation to the Commission as to whether the proposed transaction is "not detrimental to the public interest", Staff would like to obtain additional information. Staff is concerned with safety issues and whether the transfer of safety

support, such as call center operations, from UtiliCorp to Gateway could be accomplished in a manner that is not detrimental to the public interest. Additional information is also required to ensure that the Missouri properties that are regulated by the Commission are being sold to an owner that has the managerial, financial, and operational ability to manage this property in a manner that is not detrimental to the public.

12. Staff respectfully suggests obtaining adequate discovery may not be compatible with the expedited treatment requested by Joint Applicants and that determining if this proposed transaction is or is not detrimental to the public interest may require a hearing. The Company has not shown the good cause for expedited treatment. The Company is responsible for the time taken to negotiate this arrangement. The situation created as a result of those negotiations was within the Company's control. Thus, the reason for the requested expedited treatment was created by the entity claiming the need for such treatment.

13. The Commission should not grant Joint Applicant's request to deny jurisdiction, as the Commission has jurisdiction over the proposed transaction. The Commission should investigate the proposed transaction to assure that it is not detrimental to the public interest before determining whether the transaction should be approved.

WHEREFORE Staff requests that the Commission deny Joint Applicants request for a finding of lack of jurisdiction and authorize Staff to investigate whether the proposed transaction is not detrimental to the public interest.

Respectfully submitted,

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General Counsel



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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 11th day of May, 2001.



Service List for
Case No. GM-2001-585
Revised: May 11, 2001 (SW)

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