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) 636-6450

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. CIOTTONE

May 18, 2001

FILED[3]
MAY 18 2001
Missouri Public Service Commission

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

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

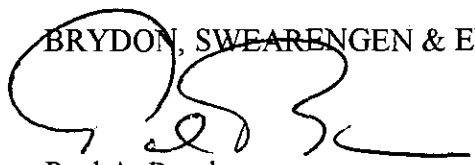
Dear Mr. Roberts:

Enclosed please find the original plus eight (8) copies of Reply to Legal Memoranda of Staff and the Office of the Public Counsel with Respect to the Jurisdiction of the Missouri Public Service Commission for filing on behalf of Gateway Pipeline Company, Inc., Missouri Gas Company and Missouri Pipeline Company in the above referenced matter. Please bring this matter to the attention of the appropriate Commission personnel. A copy of this filing is being sent to all parties of record.

Thank you for your attention to this matter.

Very truly yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: 

Paul A. Boudreau

PAB/k
Enclosures
cc: M. Ruth O'Neill
Lera L. Shemwell
Thomas M. Byrne

FILED[3]
MAY 1 8 2001
Missouri Public Service Commission

**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 |

**REPLY OF GATEWAY PIPELINE COMPANY, MISSOURI GAS COMPANY AND MISSOURI PIPELINE COMPANY TO LEGAL MEMORANDA OF STAFF AND THE OFFICE OF THE PUBLIC COUNSEL WITH RESPECT TO THE JURISDICTION OF THE MISSOURI PUBLIC SERVICE COMMISSION**

Come now Gateway Pipeline Company, Inc. ("Gateway"), Missouri Gas Company, ("MGC") and Missouri Pipeline Company ("MPC") (sometimes hereinafter collectively referred to as the "Joint Applicants"), and for their reply to the 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 of the Staff of the Missouri Public Service Commission ("Staff") and Response in Opposition to Joint Application for Finding of Lack of Jurisdiction of the Office of the Public Counsel ("OPC"), state as follows:

1. OPC's May 1, 2001, filing and Staff's subsequent May 11, 2001 pleading (hereinafter sometimes collectively referred to as the "Responses"), in which it is argued that the Missouri Public Service Commission ("Commission") should assert jurisdiction over the subject matter of the Joint Application of Gateway, MGC and MPC, contain a number of the same arguments that the Commission has expressly rejected on several prior occasions. Since 1997, the Commission has repeatedly and unequivocally stated that it has no statutory authority over mergers or acquisitions involving unregulated parent companies where there is no change in the rates, rules, regulations and other tariff provisions of the regulated subsidiary. The facts presented to the Commission in the Joint Application fit perfectly in that narrow category of cases. The outcome in this case should be the same as the outcome in the long line of prior cases dealing with the



9

same circumstances.

2. Staff and OPC either concede or do not contest each of the following key factual allegations of the Joint Applicants:.

- Gateway proposes to acquire all of the common stock of UtiliCorp Pipeline Systems, Inc. ("UPL"). OPC Response, p. 2, ¶1; Staff Response, p. 3, ¶ 3.
- Gateway is not a public utility regulated by the Commission. OPC Response, p. 1, ¶ 1; Staff Response, p. 2, ¶ 5.
- UPL is not a public utility regulated by the Commission. OPC Response, p. 1, ¶ 1; Staff Response, p. 2, ¶ 5.
- MPC and MGC are wholly-owned subsidiaries of UPL. Staff Response, p. 2, ¶ 7. Joint Application, p. 2, ¶2.
- MPC and MGC are separate and independent corporations, each of which is regulated by the Commission and operating intrastate natural gas pipelines. Joint Application, p. 2, ¶2, OPC Response, p. 2, ¶ 2; Staff Response, p. 2, ¶ 4.
- The proposed acquisition by Gateway of all of the capital stock of UPL will not result in any change in the rates, rules, regulations and other tariff provisions of MPC or MGC. Joint Application, pp. 5-6, ¶ 13.
- Once the proposed stock acquisition is completed, the Commission will retain full authority to regulate the rates and terms and conditions of service rendered by MPC and MGC. Joint Application, p. 6, ¶ 13; Staff Response, p. 2, ¶ 2.

3. The foregoing uncontested facts establish that the transaction described in the Joint Application involves the acquisition by one unregulated company (Gateway) of the capital stock of another unregulated company (UPL) that owns the stock of two regulated subsidiaries (MPC and MGC.) It is also undisputed that Gateway's acquisition of UPL will not result in any change in the rates, rules, regulations and other tariff provisions of MPC or MGC.

4. Staff and OPC argue that this case is different than all of those that have gone before because UPL's parent company is UtiliCorp United Inc. ("UtiliCorp"), which is regulated by the Commission. *See*, OPC Response at ¶8; Staff Response at ¶¶ 7,8. This distinction has absolutely no legal significance for purposes of determining the scope of the Commission's jurisdiction in this case because the transaction does not involve a merger with, an acquisition of or other change in control affecting UtiliCorp, either directly or indirectly. Staff and OPC do not contend otherwise. It is undisputed that UtiliCorp is regulated by the Commission and that, following the proposed transaction, UtiliCorp will no longer have an interest in MPC or MGC. However, the Commission's regulation of UtiliCorp is not based upon or in any way related to UtiliCorp's ownership, directly or indirectly, of UPL, MPC or MGC. For the purpose of determining whether the Commission has jurisdiction over the transaction, the relevant regulated entity is not UtiliCorp, but rather MPC and MGC, separate and independent companies separately and independently regulated by the Commission. Ultimately, this is no different a set of circumstances, implicating no different a set of legal or regulatory considerations, than those presented in Case Nos. WM-2000-318, WM-99-224 and TM-99-76. These cases have been glossed over by Staff and OPC in their Responses. In each of those cases, the Commission declined to assert jurisdiction.

5. The Commission, as a matter of law and regulatory policy, has determined that it has no jurisdiction over mergers or acquisitions involving an unregulated parent company so long as it does not result in any change to the rates, rules, regulations and other tariff provisions of the regulated subsidiary company. These decisions are practical and well reasoned, very recent and quite numerous. In some cases, the orders have addressed very prominent and newsworthy corporate transactions. *See*, Voluntary Dismissal of Application in Case No. TM-98-168 [acquisition of the capital stock of MCI Communications Corp. by WorldCom Inc.]; *Order Dismissing Application and Closing Case* in Case No. TM-98-153 [merger of telephone company with unregulated affiliate]; *Order Regarding Jurisdiction and Dismissing Application* in Case No. TM-98-268 [order declining jurisdiction in merger of unregulated parent company of

telephone company]; *Report and Order* in Case No. TM-99-76 [order declining jurisdiction in merger of SBC Corporation and Ameritech Corporation]; *Report and Order* in Case No. WM-99-224 [order declining jurisdiction in merger of unregulated parent companies of two Missouri water utilities]; *Order Denying Motion to Reconsider Order Closing Case* in Case No. TM-99-261 [order declining jurisdiction in merger of GTE Corporation and Bell Atlantic]; *Order Dismissing Application for Lack of Jurisdiction* in Case No. TM-2000-85 [order declining jurisdiction over merger of unregulated parent companies of telecommunications companies]; and *Order Closing Case* in Case No. WM-2000-318 [order declining jurisdiction over acquisition of the capital stock of unregulated parent company of water utility]. All of these cases are factually similar to the case at hand. The last and most recent decision in Case No. WM-2000-318 dealt with the application for authority for Lyonnaise American Holding, Inc. to acquire all of the capital stock of United Water Resources, Inc., the unregulated grandparent of United Water Missouri, Inc., a Missouri regulated water utility. Citing its prior decision in Case No. WM-99-224, the Commission, with all five commissioners concurring, issued an order on December 7, 1999, declining jurisdiction because the transaction would "have no effect upon the operations of the Missouri regulated utilities." This compelling line of cases reflects the Commission's recognition that parent and grandparent company transactions do not impair the Commission's ability to continue to regulate the rate and terms and conditions of service of regulated subsidiaries. The decisions are an acknowledgment that such transactions are largely irrelevant to the Commission's regulatory mandate to ensure high quality service at just and reasonable rates. Actual experience has borne out the wisdom of this approach.

6. The legal arguments made by Staff and OPC are simply warmed over versions of themes that have been expressly and repeatedly rejected by the Commission. Neither Staff nor OPC point to any change in the applicable law that would require a different conclusion in this case than has been reached by the Commission in all of its many prior decisions noted in the preceding paragraph.

7. OPC in paragraph 3 of its Response, as it has done in the past, merely points to

various provisions in §386.250 RSMo 2000 that contains broad and inapplicable language. Section 386.250(5) RSMo speaks to the Commission jurisdiction over "public utilities." This language is a non-starter. As noted above in paragraph 2, Gateway and UPL are *not* public utilities. Subsection (1) of §386.250 RSMo, which confers upon the Commission jurisdiction over the

> "manufacture, sale, or distribution of gas, natural and artificial, and electricity for light, heat or power, within the state, and to persons or corporations owning, leasing, operating or controlling the same"

is equally inapplicable. This language does not purport to expand the scope of the Commission's jurisdiction to a public utility's unregulated parent. Rather, the language simply points out that the manufacture, sale or distribution of natural gas is a public utility enterprise, a general statement with which the Joint Applicants do not disagree. However, it is undisputed that UPL and Gateway are *not* engaged in the business of manufacturing, selling or distributing natural gas. *See*, ¶ 2, *supra*. Consequently, OPC's reliance on §386.250 RSMo is misplaced.

8. Staff and OPC also point to various provisions in §393.190 RSMo 2000 to contend that the Commission should assert jurisdiction over the acquisition by Gateway of the capital stock of UPL. These are vastly misleading overstatements of the scope of the Commission's statutory authority under the law to which they refer, §393.190.1 RSMo 2000. In essence, Staff contends that a sale of stock is an indirect or *de facto* sale of the operational assets of the regulated subsidiary. The superficial appeal of this argument ignores the fact that the statute upon which it relies does not give the Commission authority over *indirect* sales of assets. The Missouri General Assembly clearly recognizes the difference between direct and indirect actions. *Compare*, §393.190.2, cl.1, RSMo 2000, which makes reference to certain acquisitions of capital stock, "either **directly or indirectly**." (Emphasis added.)[1] No such qualifier is included in the

[1] *Accord, Re Stern Brothers & Co.*, 27 Mo.P.S.C. 337, 341-342 (1946). In this case, the Commission held that the absence of word "indirectly" in statute defining the term "gas corporation" excluded a non-regulated parent company from Commission jurisdiction.

language upon which Staff relies. More importantly, the Commission has expressly rejected Staff's *de facto* merger or sale theory. In its *Report and Order* in Case No. WM-99-224[2] the Commission stated 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**." (Emphasis added) Nearly identical language is contained in the Commission's *Report and Order* in Case No. TM-99-76.[3]

9. OPC takes a slightly different tact. The stock itself is an asset, argues OPC, and subsection 1 of §393.190 RSMo, gives the Commission authority to pre-approve sales of assets. This argument, like that made by Staff, is unsupported by law. The statutory language cited by OPC does not even use the word "assets." Thus, the premise of OPC's argument is defective. Rather, subsection 1 of §393.190 RSMo, uses the phrase "**franchise, works or system** necessary or useful in the performance of [the utility's] performance of its duties to the public." (Emphasis added) The question is *not* whether UPL stock is an asset. The relevant question is whether capital stock in a separate and independent company is part of UtiliCorp's franchise, works or system necessary in providing electric or gas service. The answer is an unqualified "no". In fact, the General Counsel of the Commission in 1969 addressed this specific question in a similar situation, that is, the acquisition of all of the capital stock of a telephone company by an individual investor. The Commission's then chief lawyer advised the Commission that the transfer of all of the capital stock of the utility was *not* a *de facto* transfer of the "franchise, line or system" owned by it. Gen. C. Op. No. 69-1, p. 2 (copy attached). The inherent common sense contained in that simple observation is no less compelling today.

10. Capital stock is not a **franchise**. Moreover, UPL has no municipal franchises to provide gas service within any city in this state. This follows from the undisputed fact that UPL

---

[2]*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.*

[3]*In the Matter of the Merger of SBC Communications, Inc. and Ameritech Corporation.*

is not a public utility.

11. UPL's capital stock is not part of UtiliCorp's **works**. The term "works" is not defined by statute. In the absence of a statutory definition, words of a statute should be given their plain and ordinary meaning but technical words should be given their technical import. §1.090 RSMo 2000. The Missouri Supreme Court has determined that the gas and electric works of UtiliCorp's predecessor in interest, Missouri Public Service Company, is synonymous with the term gas plant. *See, State ex rel. City of Trenton v. Public Service Commission*, 174 S.W.2d 871, 879-880 (Mo. banc 1943). The term "gas plant" is defined at §386.020(19) RSMo 2000 as including:

> all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution or sale or furnishing of gas, natural or manufactured, for light heat and power.

Thus, the term "works" is limited in scope to tangible operational property actually used to serve the public. This definition has no relation to ownership stock because it makes no reference to capital stock or other securities and, in any event, because securities are not a type of property that is or can be necessary or useful in the manufacture, distribution, sale or furnishing of gas to the public. Securities are merely an intangible evidence of ownership in a separate and independent business or enterprise.

12. Likewise, the capital stock of UPL is not part of UtiliCorp's **system**. The term "system" is not separately defined in Chapter 386 RSMo. However the terms "sewer system" and "water system" are defined at §§386.020(49) and (59) RSMo 2000, respectively. Each of these definitions enumerate a series of hard operational utility plant items and "*other* real estate, fixtures and personal property" used to provide that type of utility service (emphasis added).[4] When general words in a statute follow a specific enumeration of things, the general words are

[4] It is reasonable to assume that the term "system", when applied to an electric or gas utility's operations, enjoys a similar scope and application as that of water and sewer utilities.

limited to things of a similar character to those specifically enumerated. *Pollard v. Board of Police Commissioners*, 665 S.W.2d 333, 341, n. 12 (Mo. banc 1984). *See also, Vocational Services, Inc., v. Developmental Disabilities Resource Board*, 5 S.W.3d 625 (Mo. App. 1999) [A general phrase under the rule of *ejusdem generis* must be construed to refer back to the subjects set out in the preceding words]. In the case at hand, the term "system" describes those hard operational assets used by a gas utility to provide utility service to the public. Again, capital stock, an intangible evidence of ownership in a separate and independent company, is not of a similar character as tangible operating assets.

13. Even if, for the sake of argument, UtiliCorp held the stock of MPC and MGC directly, and the transaction subject to review was the sale of that stock by UtiliCorp to Gateway, the transaction would not involve the sale of any part of UtiliCorp's franchise, works or system, for all the reasons enumerated above. Capital stock, whether of UPL, MPC or MGC, simply does not constitute a franchise or any part of the works or system of UtiliCorp. Furthermore, it is useful to emphasize here that MPC and MGC are regulated by the Commission separately and independently from UtiliCorp. MPC and MGC have their own certificates of authority, tariffs, rate schedules, franchises, works and systems and, consequently, they are considered separately and independently for ratemaking purposes. MPC and MGC will continue to be regulated as before by the Commission irrespective of Gateway's acquisition of UPL's capital stock. Similarly, UtiliCorp's separate franchises, works and system will continue to be regulated independently by the Commission following the transaction. There is no legal basis for artificially combining, as the Staff and the OPC seem to want to do, the franchises, works and systems of MPC and MGC with the franchises, works and system of UtiliCorp for the purpose of determining whether this transaction is subject to the Commission's jurisdiction.

14. Finally, OPC's reliance on subsection 2 of §393.190 RSMo is misplaced. OPC argues that because UtiliCorp would have to seek the Commission's authority to acquire the capital stock of Gateway pursuant to §393.190.2 RSMo, the converse is also true, that is, that it should seek approval to dispose of its holdings in UPL. *See*, OPC Response at ¶¶ 6-7. This

argument is flawed on so many different levels, it is difficult to know where to commence with a rebuttal.

15. First of all, UtiliCorp would *not* be required to file for or obtain the Commission's approval to acquire Gateway because Gateway currently conducts no business and, therefore, it is not engaged in "the same or a similar business" as that of UtiliCorp.[5] The statute simply does not apply. Second, there is no correlation between UtiliCorp hypothetically acquiring Gateway and UtiliCorp actually selling UPL. The possibility of the former has no relevance to the probability of the latter. Third, even assuming, for the sake of argument, that Gateway is in the same business as UtiliCorp, and, further, that UtiliCorp had lawfully acquired Gateway stock, there would be no requirement that UtiliCorp file for or obtain the Commission's authority to sell or dispose of any hypothetical holdings in Gateway because §393.190.2 RSMo only requires that the Commission approval be sought to "acquire" its stock. Contrary to OPC's argument at paragraph 7 of its Response, the converse is *not* true because the statute makes absolutely no reference to subsequent sales, transfers or dispositions of capital stock. Again, the plain language of the statute undermines OPC's argument.

16. Staff closes its legal analysis with the observation that it wants to investigate safety and operational issues implicated by the change of control of MPC and MGC and, also, the managerial and financial implications, if any. Staff suggests that such an investigation is necessary to protect the public interest. Staff Response, p. 4, ¶ 11. However, this is not a proposition that has any support in the law. As the Commission just recently observed, "convenience, expediency and necessity are not proper matters for consideration when

[5]OPC's reference to the Commission's 1986 Wolf Creek Nuclear Operating Company ("WCNOC") decision is inapposite. *See*, OPC Response ¶ 6-7. WCNOC was created by the co-owners of the Wolf Creek nuclear generating station to operate, maintain, repair and decommission that facility. Based on those facts, the Commission concluded that the two companies were in the same or a similar business because both would be operating electric plant. The facts in this case are not at all analogous to those confronted by the Commission in 1986.

determining the extent of the Commission's authority."[6] Consequently, Staff's abstract and speculative concerns offer no legitimate basis for the assertion of jurisdiction in this case. Ultimately, the Commission has no general authority over transactions that result in a change of control in ownership of regulated utilities. It only has that authority specifically provided by its enabling legislation.[7] Finally, the very same concerns voiced by Staff about a change of control, to the extent that they have any legitimacy, have been implicated in all of the Commission's prior cases in which it has expressly declined to assert jurisdiction over mergers and acquisitions of unregulated parent companies. UtiliCorp should not be singled out for any different treatment than has been afforded to Southwestern Bell Telephone Company, WorldCom, American Water Works Corporation, GTE Corporation and United Water Missouri, Inc. This would constitute unlawful discriminatory treatment and a denial of equal protection under the law.

17. The Responses of Staff and OPC provide no principled legal basis for the Commission to assert jurisdiction over the transaction described in the Joint Application. The undisputed facts show that it involves the acquisition by one unregulated company of the capital stock of UPL, the unregulated parent company of MPC and MGC. The transaction does not involve a sale, transfer or other disposition of the franchise, works or system of UtiliCorp, MPC or MGC. When the transaction is complete, UPL will still be the parent company of MPC and MGC. There will be no change in the rates, rules, regulations and other tariff provisions of MPC or MGC and both companies will continue to be regulated by the Commission as they are now. The Commission's past decisions are clear. Under these circumstances, the Commission has determined that it has no statutory authority to approve or disapprove the transaction.

---

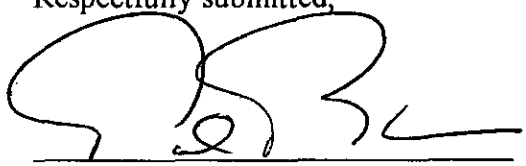
[6]*Order Rejecting Tariff* in Case Nos. HT-2001-485, ET-2001-482 and GT-2001-484 citing *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979) and *Kansas City v. Public Service Commission*, 301 Mo. 179, 257 S.W.2d 462 (Mo. banc 1923).

[7]It is not necessary for an individual to obtain the approval of the Commission to sell the capital stock of a telephone company to another individual even though the corporation is subject to regulation by the Commission. Gen. C. Op. No. 69-1 (Jan. 21, 1969).

Neither Staff nor OPC has shown any factual distinction or change in the applicable law that requires a different result in this case. The Commission's past approach to transactions of this type has been the proper one and should be followed in this case.

WHEREFORE, Gateway, MPC and MGC restate, ratify and confirm their Joint Application and renew their request for (1) an order dismissing the Joint Application for lack of jurisdiction, or (2) the issuance of an order on or before August 1, 2001, approving the Joint Application finding that the transaction described therein by the Stock Purchase Agreement is not detrimental to the public interest and bearing an effective date of no later than September 30, 2001.

Respectfully submitted,



James C. Swearengen #21510
Paul A. Boudreau #33155
BRYDON, SWEARENGEN & ENGLAND P.C.
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone (573) 635-7166
Facsimile (573) 635-0427
E-Mail: PaulB@brydonlaw.com

Attorneys for Gateway Pipeline Company, Inc., Missouri Pipeline Company and Missouri Gas Company

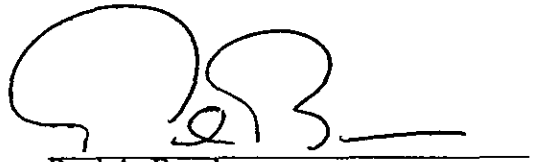
Certificate of Service

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 18th day of May, 2001, to the following:

Ms. Lera L. Shemwell
Missouri Public Service Commission
Governor Office Building
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102

Ms. M. Ruth O'Neill
Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 7800
Jefferson City, MO 65102

Thomas M. Byrne
Ameren Services Company
1901 Chouteau Avenue
P.O. Box 66149 (MC1310)
St. Louis, MO 63166-6149



Paul A. Boudreau

OPINION OF THE GENERAL COUNSEL
MISSOURI PUBLIC SERVICE COMMISSION

TELEPHONE:
TRANSFER OF STOCK:
JURISDICTION AND POWERS
OF THE COMMISSION:

It is not necessary for an individual to obtain the approval of the Missouri Public Service Commission to sell corporate stock of a telephone company to another individual even though the corporation is subject to regulation by the Missouri Public Service Commission.

Opinion No. 69-1

January 21, 1969

Mr. Marvin E. Jones
Commissioner
Missouri Public Service Commission
Jefferson State Office Building
100 East Capital
Jefferson City, Missouri 65101

Dear Commissioner Jones:

This is in reply to your request for an opinion as to whether it is necessary that the Missouri Public Service Commission approve the sale of shares of stock of a telephone corporation by an individual to another individual.

The problem arises under the following facts: Mrs. E. Melba Farrell, as an individual, sold all of the shares of stock of Liberal Telephone Company to Carl Gatliff as an individual.

Section 392.300(1) RSMo 1959 "Transfer of property and ownership of stock without consent of commission prohibited" provides in part as follows:

> "1. No telegraph corporation or telephone corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, line or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line

> or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void." (Emphasis supplied)

Section 386.020(17) RSMo Cum Supp 1967 defines a telephone corporation as:

> ". . .every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telephone communication for hire." (Emphasis supplied)

Subsection 18 of the same section defines a telephone line as:

> ". . .conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telephone corporation to facilitate the business of affording telephonic communication."

The statutory scheme requires the approval by the Commission of the transfer by a telephone corporation of "its franchise, line or system." Under the facts in your letter the transfer is of stock by Mrs. E. Melba Farrell, as an individual and not the "franchise, line or system" of the telephone corporation, Liberal Telephone Company. Therefore, this Commission has no jurisdiction to approve the sale of shares of stock by Mrs. Farrell to Carl Gatliff.

Section 392.300(2) RSMo 1959 also provides in part:

> "Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic

> or foreign, other than a telegraph corporation or telephone corporation shall, without the consent of the commission, purchase or acquire, take or hold more than ten per cent of the total capital stock issued by any telegraph corporation or telephone corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any telegraph corporation or telephone corporation may, without the consent of the commission, acquire and hold the remainder of the capital stock of such telegraph corporation or telephone corporation, or any portion thereof. . . Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such telegraph corporation or telephone corporation, or shall be recognized as effective for any purpose." (Emphasis supplied)

While no Missouri cases have defined "stock corporation" there is a New York decision which may be persuasive since the above statute was copied from New York law. It is Sylvander v. Tabor, 188 N.Y.S.2d 368, 19 Misc. 2d 1005, which considered a "stock corporation" as a corporation having shares of stock and which is authorized by law to distribute dividends to the holders of those shares of stock. Mr. Gatliff, who is purchasing the shares of stock of Liberal Telephone Company, is doing so as an individual, thus would not be within the definition of a "stock corporation." Therefore, this Commission has no jurisdiction to approve the purchase of the shares of stock by Mr. Gatliff from Mrs. Farrell.

## Conclusion

Therefore, it is the opinion of this office that it is not necessary for an individual to obtain the approval of the Missouri Public Service Commission to sell corporate stock of a telephone company to another individual even

though the corporation is subject to regulation by the Missouri Public Service Commission.

The foregoing opinion, which I hereby approve, was prepared by Dale E. Sporleder.

Very truly yours,

Jeremiah D. Finnegan

Jeremiah D. Finnegan
General Counsel