

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 PREHEARING CONFERENCE

5 August 1st, 2001
6 Jefferson City, Missouri
7 Volume 2

8 In the Matter of the Joint)
9 Application of Gateway Pipeline)
10 Company, Inc., Missouri Gas)
11 Company and Missouri Pipeline) Case No.
12 Company and the Acquisition by) GM-2001-585
13 Gateway Pipeline Company of the)
14 Outstanding Shares of UtiliCorp)
15 Pipeline Systems, Inc.)

16
17
18
19 BEFORE: KEITH THORNBURG, Presiding,
20 REGULATORY LAW JUDGE.

21 REPORTED BY:

22 PATRICIA A. STEWART, RMR, RPR, CSR, CCR
23 ASSOCIATED COURT REPORTERS, INC.
24 714 West High Street
25 Post Office Box 1308
JEFFERSON CITY, MISSOURI 65102
(573) 636-7551

ASSOCIATED COURT REPORTERS, INC.
JEFFERSON CITY * COLUMBIA * ROLLA
TOLL FREE - (888) 636-7551
28

1 APPEARANCES:

2 PAUL A. BOUDREAU, Attorney at Law
3 JAMES C. SWEARENGEN, Attorney at Law
4 BRYDON, SWEARENGEN & ENGLAND
5 P. O. Box 456
6 312 East Capitol Avenue
7 Jefferson City, Missouri 65102

8 FOR: UtiliCorp United Inc., Missouri
9 Pipeline Company and Missouri
10 Gas Company.

11 JEFFREY A. KEEVIL, Attorney at Law
12 STEWART & KEEVIL, LLC
13 1001 Cherry Street, Suite 302
14 Columbia, Missouri 65201

15 FOR: Gateway Pipeline Company, Inc.

16 MARK W. COMLEY, Attorney at Law
17 NEWMAN, COMLEY & RUTH
18 601 Monroe Street, Suite 301
19 P. O. Box 537
20 Jefferson City, Missouri 65102-0537

21 AND

22 JOSEPH T. CLENNON, Associate Counsel
23 LACLEDE GAS COMPANY
24 720 Olive Street
25 St. Louis, Missouri 63101

FOR: Laclede Gas Company.

18 WILLIAM D. STEINMEIER, Attorney at Law
19 WILLIAM D. STEINMEIER PROFESSIONAL CORPORATION
20 2031 Tower Drive
21 P. O. Box 104595
22 Jefferson City, Missouri 65102

23 FOR: CMS Panhandle Eastern Pipeline Company.

24 THOMAS M. BYRNE, Counsel
25 AMERENUE
1901 Chouteau Avenue
St. Louis, Missouri 63101

FOR: Union Electric Company d/b/a AmerenUE.

ASSOCIATED COURT REPORTERS, INC.
JEFFERSON CITY * COLUMBIA * ROLLA
TOLL FREE - (888) 636-7551

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (CONT'D):

M. RUTH O'NEILL, Senior Public Counsel
P. O. Box 7800
Jefferson City, Missouri 65102

FOR: Office of the Public Counsel.

LERA SHEMWELL, Associate General Counsel
P. O. Box 360
Jefferson City, Missouri 65102

FOR: Staff of the Missouri Public Service
Commission.

1 P R O C E E D I N G S

2 JUDGE THORNBURG: We're convening today for a
3 prehearing conference in Case No. GM-2001-585. The style
4 of the case is in the matter of the joint application of
5 Gateway Pipeline Company, Inc., Missouri Gas Company and
6 Missouri Pipeline Company and the acquisition by Gateway
7 Pipeline Company of the outstanding shares of UtiliCorp
8 Pipeline Systems, Inc.

9 And this is a second prehearing conference in
10 this matter. Today is August 1st, 2001. It's 10 a.m. My
11 name is Keith Thornburg. I'm the regulatory law judge
12 assigned to this case.

13 At this point we'll take entries of appearance
14 and see who we have here today.

15 Can we begin with Gateway?

16 MR. KEEVIL: Yes, Judge.

17 Appearing on behalf of Gateway Pipeline
18 Company, Jeffrey A. Keevil of the law firm of Stewart and
19 Keevil, LLC, 1001 Cherry Street, Suite 302, Columbia,
20 Missouri, 65201.

21 JUDGE THORNBURG: Thank you.

22 UtiliCorp.

23 MR. BOUDREAU: Yes. Thank you.

24 Appearing on behalf of UtiliCorp United and
25 joint applicants Missouri Pipeline Company and Missouri

1 Gas Company, let the record reflect the appearance of
2 Paul A. Boudreau with Brydon, Swearengen and England, PC,
3 Post Office Box 456, Jefferson City, Missouri.

4 I might point out that my partner Jim
5 Swearengen -- he's not present here at the moment. He's
6 trying to cover another prehearing. He may come in and
7 out as time permits. So Mr. Swearengen may be here as
8 well today.

9 JUDGE THORNBURG: I understand we have another
10 prehearing conference in Room 305.

11 MR. BOUDREAU: Indeed, yes.

12 JUDGE THORNBURG: Thank you.

13 And for the Staff.

14 MS. SHEMWELL: Good morning. Thank you, Your
15 Honor.

16 Lera Shemwell appearing for the Staff of the
17 Missouri Public Service Commission, Post Office Box 360,
18 Jefferson City, Missouri, 65102.

19 JUDGE THORNBURG: And for the Office of Public
20 Counsel.

21 MS. O'NEILL: Good morning.

22 Ruth O'Neill for the Office of Public Counsel,
23 P. O. Box 7800, Jefferson City, Missouri, 65102.

24 JUDGE THORNBURG: Thank you.

25 Do we have anyone here for Laclede Gas?

1 MR. COMLEY: Good morning, Judge Thornburg.

2 Let the record reflect the entry of appearance
3 of Mark W. Comley, Newman, Comley and Ruth, 601 Monroe
4 Street, Suite 301, Jefferson City, Missouri.

5 Also, I'd like to introduce Mr. Joseph Clennon.
6 Mr. Clennon is the attorney for Laclede Gas. He is going
7 to be part of their in-house staff. He is from the State
8 of Illinois, and he is prepared to file a motion for
9 pro hac vice appearance here, but I wanted the court to
10 meet him.

11 JUDGE THORNBURG: Thank you. And you're
12 welcome --

13 MR. CLENNON: Thank you, Your Honor.

14 JUDGE THORNBURG: -- for being here today.

15 Do we have an appearance here for Panhandle
16 Eastern Pipeline Company?

17 MR. STEINMEIER: Yes, Your Honor.

18 William D. Steinmeier, William D. Steinmeier
19 Professional Corporation, Post Office Box 104595,
20 Jefferson City, Missouri, appearing on behalf of CMS
21 Panhandle Eastern Pipeline Company.

22 JUDGE THORNBURG: Thank you.
23 Entering an appearance for AmerenUE?

24 MR. BYRNE: Yes, Your Honor.

25 Thomas M. Byrne appearing on behalf of Union

1 Electric Company, doing business as AmerenUE, 1901 Chateau
2 Avenue, St. Louis, Missouri, 63103.

3 JUDGE THORNBURG: Thank you.

4 Are there any other appearances or parties that
5 I've overlooked today that are here today?

6 Seeing none, we'll continue.

7 The order setting this prehearing conference
8 was issued on July 5th, 2001. A prior prehearing
9 conference was held on June 28th, 2001.

10 Primarily a prehearing conference affords the
11 parties an opportunity to discuss and define and possibly
12 resolve some or all issues presented in this case.

13 I need to take up a matter today addressing the
14 status of the procedural schedule in this case, and then I
15 want to also address a matter raised by the Office of
16 Public Counsel regarding designation of certain
17 confidential information by Gateway Pipeline Company.

18 With respect to the procedural schedule, the
19 Staff and Public Counsel had pending requests to extend
20 the schedule by 45 days. Gateway and UtiliCorp opposed
21 this request.

22 The Commission took this matter up considering
23 an order to grant the extension, took that up in agenda
24 discussion on July 31st.

25 That order failed to obtain the necessary vote

1 required to be issued. The vote was two to two.

2 However, the Commission has directed me to
3 issue an order resetting the procedural dates in this case
4 because I had scheduled this case over the top of another
5 hearing involving Southwestern Bell Telephone Company.
6 And the Commission did not want two evidentiary hearings
7 proceeding at the same time, particularly hearings that
8 they had an interest in participating in.

9 I do have proposed dates for you to consider.
10 Actually, they'll be the dates unless -- we don't have
11 much flexibility on moving them and still meet the
12 resolution of this case by the proposed 30th closing date.

13 But you folks have your calendars. I'll go
14 over what I have in the draft order.

15 The Commission has opened the week of
16 September 4th through 7th for an evidentiary matter
17 hearing in this matter. The Commission prefers that the
18 evidentiary hearing be held on the 4th and 5th, but that
19 week is available.

20 If somebody has an unavoidable conflict, if you
21 know about it today, you can let me know so I get this
22 order out.

23 Because we'd be pushing back the hearing date,
24 we would also move all of the other dates, and I'll just
25 give those to you now.

1 We would move the rebuttal and in the case of
2 supplemental rebuttal testimony to August 13.

3 MR. BYRNE: August 13th, Your Honor, did you
4 say?

5 JUDGE THORNBURG: August 13th.

6 And that would also resolve the pending motions
7 that Public Counsel and the Staff have to extend the
8 rebuttal filing date or have a date to supplement the
9 rebuttal. We would just move that to August 13th, and you
10 can do either one.

11 If there was a desire for a third prehearing
12 conference -- and it might be a good thing to do since the
13 issues might be further refined by this date, we could set
14 that up for August 15th. And I have reserved Hearing
15 Room 305 for that.

16 I can go ahead and schedule that, and if the
17 parties collectively felt that was not necessary, you
18 could file a notice in the case; and if it was represented
19 as all parties concurring in it, we'd just cancel that
20 hearing.

21 We'd have the joint issue statement on
22 August 17th. We'd have the rebuttal testimony of joint
23 applicants and UtiliCorp United and the cross surrebuttal
24 testimony of Staff, Public Counsel and intervenors on
25 August 24th. We'd have position statements filed on

1 August 27th.

2 On the briefing, we had provided for --
3 expedited transcripts were requested at the hearing. We
4 had had a short briefing schedule, that I would probably
5 propose shortening that further by having simultaneous
6 briefs due on September 17th.

7 If the parties desired to do reply briefs, we
8 could consider doing that, but the parties would have to
9 commit to E-mailing and delivering or overnighting their
10 briefs to the opposing counsel. And we could provide for
11 reply briefs on the 19th. And that would all be
12 simultaneous.

13 MR. KEEVIL: The 19th of --

14 JUDGE THORNBURG: If you wanted to do that, I
15 didn't have that penciled in. But I'd be interested in
16 your input on that.

17 MR. KEEVIL: So you have the initials on the
18 17th and the replies on the 19th?

19 JUDGE THORNBURG: Yeah. Just turn them around.
20 You might get them on the 17th and have to write them and
21 file them on the 19th.

22 I need to have -- it is possible we could go
23 the 20th on that, but I'd only have two agenda sessions,
24 on the 25th and 27th, to get an order out for you by the
25 30th.

1 And I would prefer not to provide for reply
2 briefs. I'd rather just do an initial round of briefs and
3 then just go with that.

4 MR. KEEVIL: Well, Judge, you've hit a week
5 there that I've got a hearing scheduled the entire week of
6 the 17th. I don't think the initial briefs due on the
7 17th would necessarily be a problem, but I do see a
8 problem if I had to turn around during a hearing and write
9 a reply brief.

10 JUDGE THORNBURG: I'd really -- I'd just as
11 soon not provide a reply brief date, because I'll be busy
12 just trying to get through the briefs and write an order
13 for the Commission on this.

14 I know the issues haven't really been defined
15 yet, but it would seem this case presents a fairly simple
16 basic question, is it detrimental or not detrimental to
17 approve the merger transition, and any factual issues you
18 raise all relate to that one question.

19 So I don't think -- we'll just go with
20 simultaneous briefs on the 17th and end it right there.

21 MS. O'NEILL: I do have a problem with
22 August 24th. I have a prior commitment. I'm not even
23 going to be in the jurisdiction.

24 So if we're going to be filing briefs,
25 especially since position statements are due that

1 following Monday --

2 JUDGE THORNBURG: On August 24th.

3 MS. O'NEILL: -- August 24th, if we could --
4 surrebuttal testimony is on the 24th. I'm not going to
5 have time -- it doesn't really change my position on this,
6 because the position statements are due August 27th. I'm
7 not going to be in a position to review that and prepare
8 things as far as position statements yet.

9 I would ask that we maybe consider moving that
10 final testimony due date to the 27th and then give us a
11 couple of days for position statements.

12 I also at this time -- I guess, maybe an
13 inquiry, as to whether 30th still needs to be a final date
14 by date given because there is not any -- I don't know
15 that there is that kind of hurry that needs to be done by
16 the 30th as far as getting briefs out the 17th and 19th or
17 20th from a hearing that is going to be just a couple of
18 weeks earlier. I don't know how soon we're going to have
19 the transcripts.

20 And I don't know whether or not -- and denying
21 the motion for extending the procedural schedule -- the
22 Commission was also wanting to keep the 30th as a decision
23 by date. I just don't know the answer to that question.

24 JUDGE THORNBURG: It's not an operational law
25 date in this case.

1 MS. O'NEILL: There is no operational law date.

2 JUDGE THORNBURG: But I think it was the sense
3 of the Commission in not voting -- having a two/two vote,
4 that a basis to extend the schedule and the proposed
5 decision date, there hasn't been a sufficient showing of
6 demonstrative need to move that date.

7 I'm not saying that won't develop in the
8 future, but the Commission denied the extension. The only
9 reason we're reworking these dates is because of my
10 mistake in inadvertently scheduling this over the top of
11 another hearing.

12 MS. SHEMWELL: Perhaps ten days would not make
13 that much difference.

14 JUDGE THORNBURG: You mean on the closing date?

15 MR. BOUDREAU: Might I make a suggestion?

16 We could go back and forth about this on the
17 record for quite some time. My thought is, we'll have
18 some off-the-record discussions between the parties after
19 you've finished your official business here. You've given
20 us an outline of some dates.

21 My thought would be, let us discuss amongst
22 ourselves after the initial part of the discussion here,
23 and some of these things we might be able to work out
24 amongst ourselves, maybe not.

25 And if you're going to be available, we can

1 bring you back in and give you our thoughts at that time.
2 They may be somewhat better developed at that time, rather
3 than have each of the parties one by one go through and
4 basically make a pitch for, you know, a different date on
5 a particular event.

6 JUDGE THORNBURG: That would be appropriate,
7 but I want to turn this order around today or tomorrow if
8 I can, tomorrow at the latest. I'd be looking for your
9 input back today yet.

10 And as far as moving the position statement
11 date which Public Counsel had inquired about, my concern
12 is, I need to have those -- I was trying to get this on an
13 agenda -- the Commission likes to be apprised of the
14 positions of the parties in an agenda meeting immediately
15 prior to the hearings. That would be Thursday,
16 August 30th. And I need a date to put that together in a
17 memo for the Commission to put on agenda on the 30th.

18 MR. KEEVIL: So you need the position
19 statements in by the 28th or 29th?

20 JUDGE THORNBURG: I could go ahead and put this
21 on agenda if I had the position statements by noon on the
22 29th. I could do a quick memo and say here they are.

23 MS. O'NEILL: I don't know if this helps you,
24 Judge, but I know that Staff has a conflict with
25 September 4th for the hearing starting, which is a

1 Tuesday, and I think they were going to suggest that maybe
2 we'd run this the 5th and 6th of that week instead.

3 JUDGE THORNBURG: The week is open. The
4 Commission preferred the 4th and 5th, but I do have a
5 green light to do the 4th, 5th or 6th or perhaps the 7th.

6 If we run all of the way to Friday, then we get
7 into issues of expediting the transcript. We can get that
8 in three working days, but if we get it on Friday, we're
9 getting short on getting the transcripts back to the
10 parties to complete your briefing.

11 Now, of course, we had prefiled testimony, so
12 all you're dealing with is cross-examination. But I think
13 it's still helpful to be able to cite to the transcript if
14 you make factual arguments.

15 I think it would be appropriate to have the
16 off-the-record discussions if the parties want to do that.
17 I would need something filed by nine o'clock in the
18 morning or I'll just issue on the dates I've got.

19 Okay?

20 On the Office of Public Counsel's matter
21 regarding the designation of confidential information on
22 the data request -- is that correct, Ms. O'Neill?

23 MS. O'NEILL: Yeah. That motion was filed a
24 few weeks ago, I believe, yes.

25 JUDGE THORNBURG: I'm taking a look at that,

1 and I'm going to have to have more specific information on
2 the particular data request and the information involved.
3 And I'll try to issue an order directly, filing today.

4 MS. O'NEILL: Your Honor, also -- which may
5 also assist you, as today will be filed a motion to
6 declassify the portions of Public Counsel testimony that
7 was filed and designated highly confidential, and that
8 will have more specific references to information data
9 requests. Some are attached as highly confidential
10 schedules.

11 I felt somewhat hampered in filing the motion
12 because of the fact that it's difficult to argue about
13 things that the company thinks should be considered highly
14 confidential without discussing what those things are, and
15 still my desire to not file a motion under seal but file
16 as much as possible in the public record, since the Office
17 of Public Counsel does represent the public in this
18 matter.

19 So that may clarify it. And if you'd like me
20 to supplement this motion as well, I certainly can do
21 that.

22 JUDGE THORNBURG: I'll be directing you to do
23 that. I need to at least see the data request.

24 And I understand there has also been an issue
25 about who made the request, Staff versus the Office of

1 Public Counsel, but I need to see the data request.

2 And under the standard confidentiality order,
3 Gateway will have five days to respond, which is filed
4 what you file today as what you file supplement prior to
5 filing.

6 Okay?

7 Mr. Keevil, did you have any questions about
8 that?

9 MR. KEEVIL: Well, I mean, as I recall the
10 protective order, it provides for the party submitting the
11 request to challenge the designation five days, for the
12 party who provided the information to respond and then
13 specifically provides no other filings are to be made.

14 I'm a little hamstrung here. If I have five
15 days to respond to all of their filings but they're given
16 unlimited filing chances here to get their motion right,
17 it seems to me the original motion should just simply be
18 denied.

19 And I agree, you can't tell from that motion
20 whether to grant it or not. That was part of my response.

21 JUDGE THORNBURG: I suppose I could do an order
22 denying and they could turn right around and file a new
23 motion.

24 MR. KEEVIL: A new motion on the same thing.

25 JUDGE THORNBURG: It's more definite.

1 MR. KEEVIL: I suppose you could, but I think
2 that that wouldn't get us anywhere.

3 JUDGE THORNBURG: It may not. And hopefully
4 you guys will talk about it today and just come to some
5 accommodation of that.

6 MR. KEEVIL: That is one thing, we have never
7 been contacted by them regarding specific items that they
8 wish to have declassified.

9 JUDGE THORNBURG: Okay.

10 MR. KEEVIL: The only -- the first notice -- I
11 will give Ms. O'Neill, she called me to tell me she was
12 filing the motion, but there was no discussion as to
13 whether certain things could be declassified by agreement.

14 JUDGE THORNBURG: I just didn't have enough
15 here to make a decision.

16 And I understand, also -- I'm not making any --
17 I'm not judging the issue that you also raised about who
18 presented the data request in the first place. I hadn't
19 addressed that at all.

20 And so if we get a more definite request or a
21 new request, then you can present that argument again in
22 response.

23 Are there any matters that the parties want to
24 bring to me today that anyone would like to discuss while
25 I'm still here?

1 MR. KEEVIL: Just one request, if I could.

2 JUDGE THORNBURG: Yes, Mr. Keevil.

3 MR. KEEVIL: You say this reshuffling of the
4 procedural schedule was at the direction of the
5 Commission?

6 JUDGE THORNBURG: Yes, it was.

7 MR. KEEVIL: Okay. Thanks. Not open to debate
8 then.

9 JUDGE THORNBURG: It was from the Chair of the
10 Commission, and that was after he had visited with each
11 individual Commissioner that he came and talked to me.

12 And there was displeasure directed at me for
13 scheduling this on top of the other hearing, and so it's
14 going to -- there will be an order rescheduling it. And
15 if the parties want to file in response to that, they
16 certainly can, but this came directly from the Commission.

17 MR. BOUDREAU: I have nothing at this point.

18 Will you be available after we have our
19 off-the-record discussion?

20 JUDGE THORNBURG: I'll wait and I'll be here
21 today.

22 And, Ms. Shemwell, did you have something?

23 MS. SHEMWELL: Just to note for the record,
24 Your Honor, that we do have a Staff person who will be out
25 of state on the 4th, but we'll be ready to go on the 5th.

1 JUDGE THORNBURG: And that would be fine.

2 And I'll be getting an order out tomorrow.

3 If the parties can come to an agreement on the
4 dates, you could designate one of the parties to file a
5 memoranda or a procedural schedule using this outline of
6 the dates I have.

7 And I would need that by 9 in the morning, so I
8 can get it out before 11.

9 And would it be helpful for the parties if I
10 had that faxed to you, so you just know it's done?

11 I see heads shaking yes.

12 So in addition to having the Records Department
13 mail you copies, we'll make sure it's faxed out.

14 And my other concern is that I need about a day
15 before the last agenda date on the 30th of August to
16 present the position statements to the Commission.

17 If there aren't any further matters, we'll
18 adjourn the formal part of the prehearing discussion, and,
19 of course, you may continue with your discussions today.

20 Thank you.

21 WHEREUPON, the Prehearing Conference was
22 concluded.

23

24

25