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July 24, 2001

FILED³

JUL 24 2001

Missouri Public
Service Commission

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Mo. 65102-0360

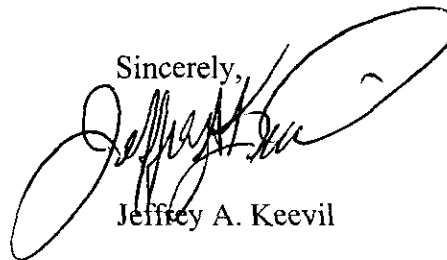
RE: Case No. GM-2001-585

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of a RESPONSE TO MOTION TO REMOVE HIGHLY CONFIDENTIAL DESIGNATIONS on behalf of Gateway Pipeline Company, Inc.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er
Enclosures
cc: counsel of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
JUL 24 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 TO MOTION TO REMOVE HIGHLY
CONFIDENTIAL DESIGNATIONS**

COMES NOW Gateway Pipeline Company, Inc. ("Gateway"), pursuant to paragraph B of the Protective Order issued by the Commission in this case, and for its response to the motion filed by the Office of the Public Counsel ("OPC") on or about July 19, 2001, to remove highly confidential designations (the "Motion"), states as follows:

1. OPC's Motion should be denied because the authority cited by OPC as authorizing the filing of the Motion does not grant OPC the authority or standing to file the Motion; OPC did not indicate which responses, or portions of which responses, it is seeking to have declassified (indeed, it cannot be ascertained from the Motion which responses OPC seeks to declassify or whether OPC is only seeking to declassify portions of those responses or the entire responses) and the Commission cannot allow OPC to decide what responses, or portions of what responses, are or are not confidential; the denial of its Motion will cause no harm to OPC, while granting the Motion could cause Gateway to sustain the very type of harm protective orders were designed to prevent; and the examples of responses referenced by OPC in its Motion are irrelevant and/or misleading. Each of these reasons will be discussed in greater detail below.

2. In its Motion, OPC states that the Motion was filed “pursuant to 4 CSR 24002.065 [*sic*; presumably this reference is to 4 CSR 240-2.065] and paragraph B of the Commission’s protective order.” 4 CSR 240-2.065 relates to Tariff Filings Which Create Cases, and as such, is wholly inapplicable to this case. Paragraph B of the Protective Order provides that after a party designates a response to a discovery request as Highly Confidential or Proprietary, “[t]he requesting party [*i.e.*, the party which issued the discovery request/data request] may then file a motion challenging the designation.” To the extent that there was any “agreement” between Staff, OPC and Gateway¹ to share data request responses as asserted by OPC in its Motion, it was an effort to expedite this case by expediting the dissemination of information and providing OPC and Staff with equal information, on the basis of representations that OPC and Staff were willing to work toward an expedited resolution of this case, preferably in the form of a stipulation and agreement, which OPC and Staff are apparently no longer willing to do if they were in fact ever so inclined. Since it is difficult, if not impossible, to ascertain from OPC’s Motion exactly which data request responses it seeks to declassify since OPC did not bother to divulge the numbers of the data requests it believes are the subject of its Motion in its Motion², and since the majority of data requests³ which have been received by Gateway have come from Staff, OPC must be seeking to declassify responses to data requests received by Gateway from Staff and voluntarily provided to OPC – responses as

¹ Gateway recalls no formal “agreement” as alleged by OPC, but admits that it has voluntarily disseminated information by providing copies of its responses to Staff’s data requests to OPC and vice versa; Gateway would note that its voluntary dissemination of information was apparently the wrong thing to do, since OPC now seeks to use Gateway responses to Staff data requests as the basis of its Motion, which has the effect of chilling the free exchange of information between parties.

² Although it is difficult to tell which responses OPC seeks to declassify since OPC did not provide the responses under seal or the numbers of the data requests, Gateway would note that some of the responses provided to OPC were provided as early as June 22, 2001, whereas OPC did not file its Motion until July 19, 2001. Gateway responded to many data requests within less than 10 days, to all within less than 20.

³ While the majority of requests have come from Staff, the number is still relatively small.

to which Staff, not OPC, was the “requesting party” pursuant to paragraph B of the protective order. Accordingly, since 4 CSR 240-2.065 does not grant OPC standing to file its Motion, and paragraph B of the protective order only allows the “requesting party” – which OPC is not, or at least has not so indicated in its Motion - to seek to declassify information designated as highly confidential or proprietary, OPC has no standing or basis to file its Motion.

3. As stated above, in its Motion OPC did not list the numbers of the data request responses which it is seeking to declassify. Before filing its Motion OPC did not contact Gateway’s counsel to determine if portions of responses which had been classified as highly confidential and/or proprietary could be declassified by agreement, as is often done in Commission proceedings. Therefore, Gateway is not certain which responses OPC seeks to declassify, or whether OPC is only seeking to declassify portions of those responses or the entire responses. Accordingly, Gateway is hampered in its ability to respond to OPC’s motion. OPC seems to concede that some information contained in the responses is highly confidential information, while claiming that other information is not highly confidential; OPC seems to suggest that it, and not Gateway, should be allowed to determine what information concerning Gateway is or is not highly confidential. Protective orders were developed to allow for the free exchange of information between parties to a case while allowing the party who considers information to be highly confidential to have some assurance that the information will not be divulged publicly; to allow OPC to pick and choose what responses, or what portions of certain responses, are or are not highly confidential would render the protective order process meaningless, and have a chilling effect on the exchange of information in Commission

proceedings. If portions of the responses were considered highly confidential, Gateway had no choice but to designate the entire response, since responses are not subject to the redacting procedure for testimony.⁴ Given OPC's failure to file the responses it seeks to declassify under seal with its Motion, or to even list the numbers of the responses in its Motion, Gateway cannot respond more fully to OPC's Motion, nor can the Commission grant OPC *carte blanche* to unilaterally declassify certain responses or portions of certain responses, since even OPC itself seems to concede that some information contained in the responses is highly confidential information.

4. OPC does not claim, nor can it claim, that it will be harmed in the slightest degree or that its ability to present its case will be harmed in the slightest degree if the Motion is denied. This is because OPC has full access to information designated highly confidential under the terms of the protective order. The closest thing to harm alleged by OPC in its Motion is that its witnesses will be required to file testimony according to the protective order, which they have often done before and can reasonably be expected to do in the future. Accordingly, no harm will come to OPC if its Motion is denied; however, if OPC is allowed to determine what information concerning Gateway is or is not highly confidential by picking and choosing from among responses or as to portions within responses, Gateway may be subject to the very harm that protective orders were designed to prevent.

5. Gateway is not a publicly-held, publicly-traded corporation; therefore, certain information which might be public information about other corporations is not public concerning Gateway. It should also be remembered that the standard applicable to

⁴ Gateway does not intend to imply that responses should be subject to the redacting procedure for testimony, but merely points out that responses and testimony are treated differently, as they should be.

this case is whether the proposed transaction is *not detrimental* to the public interest. Frankly, much of the information sought to date through data requests has been irrelevant to a determination of this question, especially since no changes are being sought to the rates or other tariffs of Missouri Gas Company or Missouri Pipeline Company in this proceeding. A good example of this is the information referenced at the bottom of page 3 of OPC's Motion regarding whether Gateway will seek to recover certain costs; no cost recovery is being sought in this case and if they ever are, the Commission will have full opportunity to address such recovery at the time they are sought to be recovered. As to such irrelevant matters, data requests should not have been submitted in the first place. Also, the Commission should be aware that OPC's Motion is somewhat misleading, particularly in regard to its averment concerning litigation and proceedings before regulators, since as of the date OPC's Motion was filed, the only data request received which concerned litigation had been submitted by Staff (therefore, OPC was not the "requesting party" under the protective order) and counsel for Staff had specifically indicated to the undersigned that the request was *not* seeking information regarding regulatory proceedings. Therefore, no data request as described in OPC's Motion existed. As another example of OPC's Motion being misleading, Gateway has previously provided resumes, which detail the prior experience, of what OPC refers to as "the principles [*sic*] of Gateway" which were not designated confidential, despite OPC's allegation on page 3 of its Motion to the contrary.

WHEREFORE, for all of the foregoing reasons, namely:

- because the authority cited by OPC as authorizing the filing of the Motion does not grant OPC the authority or standing to file the Motion;

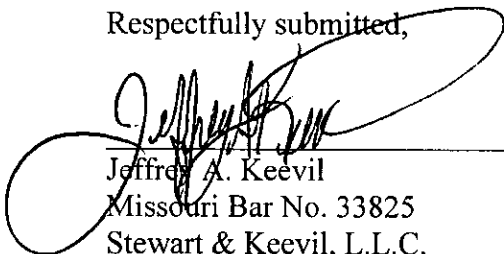
- OPC did not indicate which responses, or portions of which responses, it is seeking to have declassified (indeed, it cannot be ascertained from the Motion which responses OPC seeks to declassify or whether OPC is only seeking to declassify portions of those responses or the entire responses) and the Commission cannot allow OPC to decide what responses, or portions of what responses, are or are not confidential;

- the denial of its Motion will cause no harm to OPC, while granting the Motion could cause Gateway to sustain the very type of harm protective orders were designed to prevent;

- and the examples of responses referenced by OPC in its Motion are irrelevant and/or misleading;

Gateway respectfully requests that the Commission issue its order denying OPC's Motion to Remove Highly Confidential Designations, reminding OPC that the standard applicable to this case is whether the transaction is *not detrimental* to the public interest, and making such further orders as the Commission deems just and reasonable under the circumstances.

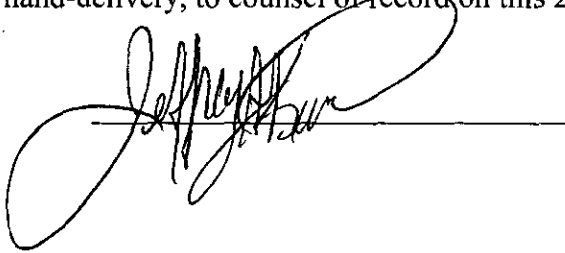
Respectfully submitted,



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ATTORNEY FOR GATEWAY
PIPELINE COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by placing same in first-class mail, postage paid, or by hand-delivery, to counsel of record on this 24th day of July, 2001.

A handwritten signature in black ink, appearing to read "Jeffrey A. H.", is written over a solid horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.