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July 26, 2001

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

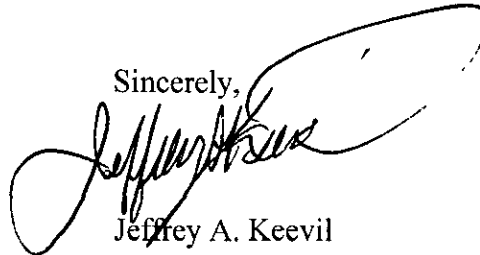
**FILED<sup>2</sup>**  
JUL 26 2001  
Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of a RESPONSE IN OPPOSITION TO STAFF REQUEST FOR MODIFICATION OF PROCEDURAL SCHEDULE 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

FILED<sup>2</sup>  
JUL 26 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 IN OPPOSITION TO STAFF REQUEST  
FOR MODIFICATION OF PROCEDURAL SCHEDULE**

COMES NOW Gateway Pipeline Company, Inc. ("Gateway"), and for its  
Response in Opposition to Staff Request for Modification of Procedural Schedule  
pursuant to 4 CSR 240-2.080(16) respectfully states as follows:

1. Staff's Request for Modification of Procedural Schedule ("Request") was  
filed on July 20, 2001. 4 CSR 240-2.080(16) allows parties 10 days in which to respond  
to any pleading unless otherwise ordered by the Commission. In the Request, Staff  
requests that the Commission grant its Request prior to July 30, 2001, *i.e.*, in less than 10  
days from the date it was filed. However, Staff's Request fails to comply with the  
requirements of 4 CSR 240-2.080(17) regarding expedited treatment, which provides:

Any party seeking expedited treatment in any case shall include in the title  
of the pleading the words "Motion for Expedited Treatment." [Staff's  
Request does not] The pleading shall also set out *with particularity*  
(emphasis added) the following:

(A) The date by which the party desires the commission to act [Staff's  
Request merely states "prior to July 30, 2001"];

(B) The harm that will be avoided, or the benefit that will accrue,  
including a statement of the negative effect, or that there will be no  
negative effect, on the party's customers or the general public, if the  
commission acts by the date desired by the party [Staff's Request states  
nothing with particularity in this regard]; and

(C) That the pleading was filed as soon as it could have been or an  
explanation why it was not [Staff's Request is silent in this regard].

Staff's Request is also silent as to the harm its Request would cause Gateway; as indicated in Gateway's direct testimony filed on July 10, 2001, the transaction which is the subject of this case needs to close prior to the onset of the winter heating season. It should be obvious to all concerned, including Staff, why the transfer of ownership and operation of natural gas pipelines, with all of the contractual, operational and personnel matters attendant thereto, should be accomplished outside of the winter heating season if at all possible. A closing prior to, rather than during, the winter heating season would also benefit the employees of the pipelines as well as the customers of the pipelines, and they have so indicated to Gateway during informal discussions. Granting Staff's Request would prevent closing of the transaction prior to the winter heating season. Finally, the longer this proceeding goes on, the longer the associated regulatory uncertainty will exist, which impairs Gateway's ability to finalize financial commitments associated with the transaction.

2. Staff's Request states, in paragraph 1, "that UtiliCorp United, Inc. announced the sale . . . as early as February 2001, so that it is reasonable to think that the companies, . . . could have made their initial filings earlier." As reflected in the attachments to the direct testimony of UtiliCorp witness Richard C. Kreul as well as the attachments to the Joint Application, the purchase agreement was amended as late as April 12, 2001. The Joint Application was filed on April 19, 2001, one week later. It is difficult to imagine that the Joint Applicants could have been more diligent in getting the Joint Application filed, and Staff's reference to statements made by UtiliCorp in February are simply disingenuous.

3. (i) What Staff's Request does not say is that, although the Joint Application was filed on April 19, 2001, Gateway received no data requests from Staff until after *Gateway requested* to meet with representatives of Staff and the Office of the Public Counsel ("Public Counsel") on June 6, 2001. At that meeting, Gateway representatives answered questions, many of which were later submitted in the form of written data requests, from both Staff and Public Counsel about Gateway and the proposed transaction. Since that meeting, Gateway representatives have had several further discussions with Staff and/or Public Counsel regarding questions from Staff and/or Public Counsel in an effort to quickly and accurately respond to their questions. The first written data requests received by Gateway from Staff, which totaled 17 in number, were dated June 6 and 7, 2001 (*i.e.*, **48 days after the Joint Application was filed** on April 19, which provided Staff more time in which to conduct discovery than the 45 day modification Staff now seeks had Staff used the time available), and were responded to by Gateway on June 18 and June 22, 2001 – substantially sooner than the 20 days provided for in the Commission's rule relating to data request responses. Since then and prior to the filing of Staff's Request, Gateway had received an additional 8 data requests from Staff, all of which have been responded to in less than 10 days, as agreed to by all parties in the joint procedural schedule proposal filed on or about July 2, 2001. In total, as of the filing of Staff's Request, Gateway had received 25 data requests from Staff, all of which have been fully answered.

(ii) Similarly, prior to the filing date of Staff's Request, Gateway had received 11 data requests from Public Counsel. Six were dated June 7, 2001, and responded to on June 22, 2001; five were dated July 2, 2001, and responded to on July 6, 2001. Public

Counsel stated, in their Motion to Join in [Staff's] Request to Modify Procedural Schedule, which was filed on July 23, 2001, that "Public Counsel originally agreed to an expedited schedule in this matter under the express condition that the applicant companies comply with discovery requests made by the parties." Any implication that Gateway has not so complied is erroneous; Gateway promptly and fully complied with all discovery requests which had been received from Public Counsel as of the date Staff filed its Request, and even Public Counsel does not state otherwise in its filing of July 23, 2001. In fact, prior to the filing of Staff's Request, even though it was not required to do so, in an effort to speed the dissemination of information and to see that Staff and Public Counsel had equal access to information, Gateway had provided copies of its responses to Staff's data requests to Public Counsel, and vice versa.

(iii) Staff and Public Counsel have been aware of the need to close this transaction by September 30, 2001, since the Joint Application was filed on April 19, 2001, given that the Joint Application itself contained a request for expedited treatment (which complied with the requirements of 4 CSR 240-2.080(17)) and attachments to the Joint Application clearly contain that closing date. If Staff or Public Counsel felt they needed additional information regarding Gateway they could easily have begun issuing data requests prior to June 6, 2001 (again, **48 days after the Joint Application was filed** on April 19, which provided Staff and Public Counsel more time in which to conduct discovery than the 45 day modification now sought had Staff and Public Counsel used the time available at the beginning), and could have submitted more than a total of 25 data requests prior to the filing date of Staff's Request (in the case of Staff), or 11 data requests prior to the filing date of Staff's Request (in the case of Public Counsel). The

Commission should also recognize that this is not a rate case; Gateway is seeking no changes to the rates or services or other tariffs of Missouri Gas Company ("MGC") or Missouri Pipeline Company ("MPC"). Therefore, the alleged "concerns" of Staff and Public Counsel are simply unfounded under the *not detrimental* standard applicable to this case, as will be discussed in greater detail in paragraph number 5 herein. If Staff or Public Counsel truly need additional information, which Gateway doubts, their situation is entirely of their own making and their disregard of the need to close this transaction by September 30, 2001.<sup>1</sup>

(iv) Public Counsel's Motion to Join in [Staff's] Request to Modify Procedural Schedule, filed on July 23, 2001, raises no alleged "issues" which are not raised in Staff's Request. Therefore, from this point on, this Response will address only Staff and Staff's Request, but applies equally to Public Counsel and Public Counsel's July 23, 2001, filing.

4. In its Request, Staff refers to certain towns which are customers of MGC and MPC. However, apparently none of these towns are concerned about the proposed transaction (and rightfully not), since none have to date applied for intervention in this case and the intervention deadline has long since passed.

5. In its Request, Staff makes several vague, cryptic remarks, apparently in an attempt to cause concern on the part of the Commission in the hope that the Commission will then grant its Request, without any reference to a *factual* basis for such remarks. This is because they are baseless, as will be discussed below.

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<sup>1</sup> As an example of Staff's delay in submitting data requests, from the date the Joint Application was filed on April 19, 2001, until July 24, 2001, Gateway had received no data requests from the Staff's procurement analysis department; on July 24, 2001, after Staff had filed its Request and six days before the scheduled due date of Staff's rebuttal testimony, Gateway received, via email, thirteen data requests from the procurement analysis department. Why it took over three months to submit these thirteen data requests is unexplained. In the case of Public Counsel, on July 20, 2001, the date Staff filed its Request, Public Counsel submitted three additional data requests to Gateway, bringing their total of data requests submitted to Gateway to fourteen.

(i) Staff states that the “impact if gas supply to these areas were to be lost or if the rates were to be increased needs to be evaluated.” First, Staff has no factual basis on which to base the implication that gas supply to any areas is likely to be lost or that rates are likely to increase; none of the responses to Staff’s data requests have indicated this to be a likely result of the transaction. Although it is not clear from the Request how Staff postulates that gas supply could be lost, it is possible - although unlikely - that utility plant can be abandoned. However, as the Commission is aware, a regulated public utility cannot be abandoned, nor can its rates be increased, without an order from the Commission; therefore, even if either of these results were sought, they could not be accomplished without further action before the Commission in a future case and the Commission could make appropriate orders at such time. Again, it is important to recognize that this is not a rate case - Gateway is seeking no changes to the rates, terms of service or other tariffs of MGC or MPC in this case. Finally, the current owner could seek abandonment of the pipelines or an increase in their rates (not that they would, but it is just as likely as Staff’s hypothetical). The Commission must remember that the standard applicable to this case is whether the proposed transaction is *not detrimental* to the public interest. Since the current owner could seek abandonment of the pipelines or an increase in their rates, Staff’s apparent fear of whether the future owner at some nebulous future point in time might seek Commission authorization to do the same has no bearing on whether the proposed transaction meets the *not detrimental* standard applicable to this case.

(ii) Staff’s Request claims a “concern” about “the probability of the new owners seeking Federal Energy Regulatory Commission jurisdiction of the pipelines and their

rates.” How Staff could have developed such a “concern” is a mystery. At no time has Gateway indicated any desire or intent to seek FERC jurisdiction for MGC or MPC. Furthermore, even if it was a possibility (not probability), as also discussed above concerning the possibility of an increase in rates, it is just as possible for the current owner to seek FERC jurisdiction as for the future owner. Therefore, under the *not detrimental* standard applicable to this case, this baseless alleged “concern” is irrelevant to a determination of whether the proposed transaction is *not detrimental* to the public interest.

(iii) Staff’s Request states that “[c]urrently these pipelines are supported by a large Missouri utility with rates regulated by the Commission”, that “a change in ownership from a large Missouri utility to an out of state partnership needs further evaluation”, and claims a “concern” about “a reduction in financial resources supporting these pipelines.” Presumably, Staff’s reference to a “large Missouri utility” is a reference to UtiliCorp United Inc. (“UCU”), which currently owns UtiliCorp Pipeline Systems (“UPL”), which in turn owns MGC and MPC. In the transaction which is the subject of this case, Gateway is seeking to buy all of the issued and outstanding shares of stock of UPL from UCU. UCU is a Delaware corporation; UPL is a Delaware corporation; MGC and MPC are Delaware corporations; and Gateway is a Delaware corporation. Therefore, contrary to Staff’s assertion, there will be no change in ownership from a large Missouri utility to an out of state partnership, but a change in ownership of the stock of a Delaware corporation from one Delaware corporation to another Delaware corporation.

Staff’s implication that UCU currently subsidizes the rates of MGC and MPC – that its financial resources support the pipelines - is puzzling. Surely Staff does not mean



that the local distribution customers of UCU's Missouri Public Service division are set higher than they otherwise would be in order to either directly or indirectly subsidize the rates paid by the customers of MGC and MPC (which are municipal distribution systems and local distribution systems themselves, since MGC and MPC are pipelines, not local distribution companies). Therefore, Staff must be under the mistaken impression that UCU, a Delaware corporation which owns the stock of UPL, which owns the stock of MGC and MPC, is somehow obligated as a stockholder – two corporations removed – for the continued financial needs of MGC and MPC. Such an impression runs directly contrary to the basic legal theories underlying corporate law and the financial liability of stockholders for corporate acts.

(iv) Each of Staff's alleged reasons for modifying the procedural schedule – the costs and rates and potential changes in regulatory jurisdiction mentioned in the Commission's July 24, 2001, Order Directing Response - has been discussed above, and each has been shown to be without merit. If Staff's investigation to date has revealed any legitimate concerns regarding the financial resources of Gateway – which Gateway doubts – the proper avenue for Staff to raise those concerns is in rebuttal testimony as currently scheduled, based on factual support. If Staff's investigation has not revealed any financial problems, the transaction should not be delayed simply to allow Staff to chase ghosts. As discussed in detail above, Gateway has responded fully and completely to all data requests received as of the date Staff filed its Request; even Staff does not claim otherwise in its Request. If Staff has now decided, at the eleventh hour, that it has not been diligent in its investigation of this case, Gateway and the other Joint Applicants should not be made to suffer by means of a modified procedural schedule with a

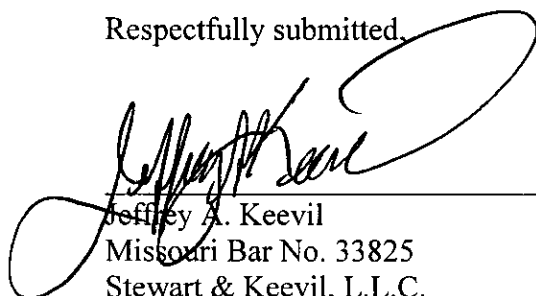
corresponding closing of the transaction during the winter heating season rather than before due to Staff's tardiness in submitting data requests. Nothing has changed since the parties jointly agreed to an expedited schedule for this case, and Staff should be held to the schedule it agreed to and the Commission ordered.

6. Staff's request "that the Commission extend the procedural schedule by 45 days" is unclear. Presumably, Staff desires each remaining date in the procedural schedule be extended 45 days, since this interpretation of Staff's Request would delay this proceeding longest and accordingly be of greatest benefit to Staff, assuming any legitimate "issues" existed (which, as discussed above, do not exist). Staff originally agreed in the joint procedural schedule proposal to a 20-day period between the filing of the Joint Applicants' direct testimony and the filing of rebuttal; granting Staff an additional 45 days, or over twice the 20-day period Staff originally agreed to, would mean that Staff would have 65 days – over two months – from the filing of the Joint Applicants' direct testimony until its rebuttal testimony was due. The Joint Application has already been on file for over three months. Such a delay would be inexcusable in light of the fact that the Joint Application – filed over three months ago – clearly requested expedited consideration, and the fact that the Joint Applicants have clearly articulated a legitimate need for such treatment, *i.e.*, that the closing of the transaction involving the transfer of ownership and operation of natural gas pipelines take place prior to the start of the winter heating season. In addition, Staff's Request fails to consider the effect of its Request on the schedules of the other parties to the case and their respective counsels and witnesses, or on the schedule of the Commission and regulatory law judge.

7. In summary, Staff has failed to show good cause why the schedule that *it agreed to* should now be modified. Staff's Request fails to set forth any legitimate, factually-based reasons for its Request, but instead relies on unfounded innuendo and purported justifications which are irrelevant to a determination under the *not detrimental* standard. Gateway has responded promptly and fully to all data requests received prior to the filing date of Staff's Request, and will continue to do so, and any time constraint Staff feels it now faces is wholly of Staff's own making. Staff's Request fails to comply with the Commission's rule governing requests for expedited consideration. Gateway and the Joint Applicants have, on the other hand, shown good reason why the transaction should be closed by September 30, 2001, namely, to transfer the ownership and operation of the subject natural gas pipelines prior to the onset of the winter heating season. If Staff has any factually-based concerns regarding the transaction, the proper procedure to present those concerns and have them addressed is for Staff to set them forth, along with the supporting facts, in Staff's rebuttal testimony as scheduled on July 30, 2001.

WHEREFORE, for the reasons set forth above, Gateway requests that the Commission issue an order denying Staff's Request for Modification of Procedural Schedule.

Respectfully submitted,



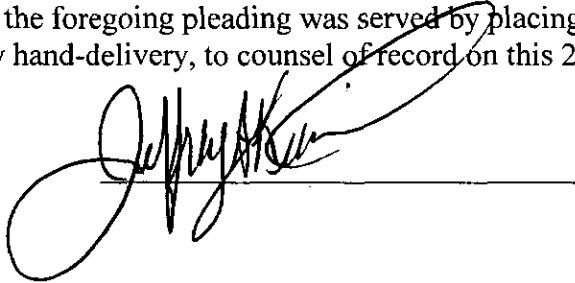
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ATTORNEY FOR GATEWAY  
PIPELINE COMPANY, INC.

**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 26th day of July, 2001.

A handwritten signature in black ink, appearing to read "Jeffrey A. Kline", is written over a horizontal line.