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July 30, 2001

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

FILED³

JUL 30 2001

Missouri Public
Service Commission

**Re: Gateway Pipeline Company
Case No. GM-2001-585**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **MOTION TO ALLOW FILING OF SUPPLEMENTAL REBUTTAL TESTIMONY BY WITNESSES ON BEHALF OF THE OFFICE OF THE PUBLIC COUNSEL**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

FILED³

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

JUL 30 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

**MOTION TO ALLOW FILING OF SUPPLEMENTAL REBUTTAL
TESTIMONY BY WITNESSES ON BEHALF OF
THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW, the Office of the Public Counsel (Public Counsel), and respectfully moves the Missouri Public Service Commission (Commission), for an Order allowing witnesses Kimberly Bolin and Mark Burdette leave to file supplemental rebuttal testimony in the above-captioned matter, following the filing of initial rebuttal testimony on July 30, 2001. This motion is made for the reason that, despite diligently working to obtain discovery in this matter, Public Counsel's witnesses Bolin and Burdette have not been able to obtain sufficient information from applicant Gateway Pipeline Company regarding the details of the proposed transaction to be able to conduct the required analysis of the Application.

In support of the motion, Public Counsel states the following:

1. On April 19, 2001, the Joint Applicants filed their application in this matter, along with a request that the Commission decline jurisdiction. The Commission accepted jurisdiction on May 24, 2001. No significant discovery was conducted prior to the date the Commission accepted jurisdiction. On June 28, the parties proposed an accelerated procedural schedule with the understanding that discovery would be accelerated, and that a party could request that the procedural schedule be extended if there were difficulties in the discovery process.

2. On Friday, July 17, the Staff of the Public Service Commission (Staff) filed a Motion to Extend Procedural Schedule in this case. On Monday, July 20, Public Counsel filed a similar motion and also asked that the procedural schedule be extended.

3. UtiliCorp United (UtiliCorp), the parent company of two of the applicants in this matter, filed a response in opposition to the Motions to Extend.

4. Under the accelerated procedural schedule originally agreed to in this case, Public Counsel's witnesses must file rebuttal testimony today. Because no ruling has been received from the Commission concerning the Motions to Extend the Procedural Schedule, testimony is being filed today by witnesses Bolin and Burdette. However, this testimony, especially on the part of Mr. Burdette, is incomplete because, despite due diligence in attempting to complete discovery sufficiently to prepare rebuttal testimony on time, Applicant Gateway's incomplete answers and lack of information have prevented the witnesses from performing a proper and complete analysis of the proposed transaction. Under these circumstances, Public Counsel has no choice but to recommend that the Commission not approve the pending application.

5. Public Counsel has sent numerous data requests to Gateway, and has received a response to these requests. However, a response in this case is not the same as an answer to the questions presented in the data requests. Frequently, the response failed to contain the information requested. In general, Gateway's responses to Public Counsel's requests for information have been incomplete and/or evasive. Public Counsel cannot provide concrete examples without filing this motion as "highly confidential" because virtually all responses from Gateway come stamped "highly confidential." However,

schedules to testimony being filed today by Public Counsel witnesses do contain examples of the responses Gateway has provided thus far.

6. Public Counsel has no way of knowing whether the quality of Gateway's responses is based upon a desire to withhold information or whether there is no information due to the fact that many financing issues have not been resolved. Public Counsel anticipates that, as Gateway proceeds in its attempts to obtain financing for this transaction, more information may become available. If Gateway becomes able to provide the requested information, our recommendation could change. However, without adequate information, Public Counsel is forced to recommend against approving the transaction due to the significant likelihood that the transaction will result in a situation which operates to the detriment of the interests of captive customers, including the ultimate consumers of the gas transported on these intrastate pipelines. Therefore, Public Counsel is forced to take the position that this proposed transaction is not in the public interest.


7. Although much has been made, by the applicants, of their desire to "close this transaction on September 30, 2001" (Joint Application, at p. 6 [filed April 19, 2001]) the purchase agreement has a deadline of December 31, 2001. Time is therefore *not* of the essence in this matter. The Joint Applicants will not be harmed by the granting of this motion. However, even if the Commission decides against extending the procedural schedule as requested in prior pleadings, the witnesses on behalf of Public must be able to supplement their rebuttal testimony filed this date in order to provide the Commission with information on all relevant factors. Without allowing supplemental rebuttal in this case, the Commission may be deprived of important information related to whether it

should approve the proposed transfer of ownership of Missouri Gas Company and Missouri Pipeline Company to Gateway.

WHEREFORE, in the interest of providing full and complete information to the Commission concerning the proposed transaction, it is respectfully moved that the Commission grant witnesses on behalf of the Office of the Public Counsel leave to file supplemental rebuttal testimony when further information becomes available.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 30th day of July 2001:

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