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August 1, 2001
~~July 30, 2001~~

FILED³
AUG 01 2001
Missouri Public
Service Commission

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

**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 De-Classify Highly Confidential Portions of Witness Testimony Filed 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

AUG 01 2001

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

Missouri Public
Service Commission

**MOTION TO DE-CLASSIFY HIGHLY CONFIDENTIAL PORTIONS OF
WITNESS TESTIMONY FILED 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) to declassify portions of testimony filed by Kimberly Bolin and Mark Burdette on July 30, 2001.

This motion is made for the following reasons: Ms. Bolin and Mr. Burdette filed rebuttal testimony in this case which contained reference to information obtained from Gateway Pipeline, Inc. (Gateway) and UtiliCorp United (UtiliCorp) pursuant to the discovery process. Specifically, the testimony references responses to data requests served on Gateway by Public Counsel and the Staff of the Public Service Commission (Staff).

Practically all of Gateway's responses to data requests were stamped "highly confidential" following the Commission's granting of a protective order. However, the information contained in those responses did not fit the protective order's definition of "highly confidential" information.

1. In Kimberly Bolin's pre-filed rebuttal testimony, Public Counsel seeks to have the following portions of the testimony declassified, and made a part of the public record portion of this case:

- a) at page 4, lines 7-8.
- b) at page 4, lines 10-14.
- c) at page 5, lines 2-22.
- d) at page 5, lines 26-27.

- e) at page 13, lines 15-16.
- f) at page 24, lines 2-5.
- g) schedule 2 in its entirety
- h) schedule 3 in its entirety
- i) schedule 4 in its entirety

2. In Mark Burdette's pre-filed rebuttal testimony, Public Counsel seeks to have the following portions of the testimony declassified, and made a part of the public record portion of this case:

- a) at page 3, lines 3-8.
- b) at page 3, lines 15-24.
- c) at page 4, lines 1-6.
- d) schedule (attachment) 1 in its entirety.
- e) schedule (attachment) 2 in its entirety.
- f) schedule 3 (attachment) in its entirety.

3. Pursuant to 4 CSR 240-2.085, in paragraph B of the Commission's protective order filed May 2, the Commission granted permission for certain types of information to be filed in this case under a the designation "highly confidential." In order for information to be considered "highly confidential, it must be "information that is not made available to the general public **and** which cannot be found in any format in a public document including financial and business information, customer specific information and non-public salary information." (Protective Order, at paragraph B) (emphasis added.) However, the order did **not** provide that all information meeting the above two criteria could be classified as "highly confidential." Rather, in addition to the two criteria above, the information which a party seeks to have treated in a highly confidential manner must fall into one of the following categories:

- 1) material or documents that contain information **relating directly to specific customers;**

- 2) **employee-sensitive** information;
- 3) marketing analyses or other market-specific information **relating to services offered in competition with others;**
- 4) reports, work papers or other documentation **related to work produced by internal or external auditors or consultants, and**
- 5) **strategies** employed, to be employed, or under consideration **in contract negotiations.** (emphases added.)

4. The testimony filed by Ms. Bolin and Mr. Burdette contain passages designated as “highly confidential” because that is the designation placed on the information when it was received from Gateway, not because it falls into any of the categories of information set forth in paragraph 3 above. **None of the information sought to be declassified in the above-referenced testimony falls into any of the categories set forth in the protective order.**

5. Public Counsel agrees that some information which may be sought in proceedings before the Commission should be designated as “highly confidential” in order to protect legitimate business interests and concerns. However, if the highly confidential classification remains on the above listed portions of testimony, the effect will be to preclude the public from having access to much of the relevant information in this case concerning whether this transaction is in the public interest, or, at least, will not operate to the detriment of the public interest. None of the designated portions of Public Counsel testimony should be considered highly confidential.

6. When the Commission decides whether or not to keep certain testimony and information under seal, it should limit the application of such designations as much as possible so that government decisions are made in the most open manner possible.

7. In considering this request, Public Counsel asks that the Commission determine that the information contained at the above-listed locations in pre-filed rebuttal testimony does not meet the definition of “highly confidential” as that term is used in 4 CSR 240-2.085. If the information designated does not meet the definition of “highly confidential”, the Commission need not consider any other factor before declassifying the material. It should be noted that, in making its application for a protective order in this case, Gateway failed to “state with particularity why the moving party seeks protection, and (state with particularity) what harm may occur if the information is made public” as required by 4 CSR 240-2.085.1. Rather, the motion contains mere “boilerplate” language alleging unspecified dire consequences (“harm”) if the protective order is not granted.

8. It should also be noted, that, while “harm” is not specifically defined in the above rule, **“harm” should not be construed to cover information which is simply “unfavorable” in a general sense.** An example of information which may be “unfavorable” could include answers to data requests which state that the information sought does not exist. When one party submits a routine request for information, and the other party responds that such information does not exist or a routine analysis has not been performed, that is an important factor for the Commission to consider. **It may cast a company in an unfavorable light, but it is not “highly confidential” information.**

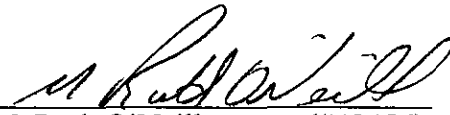
9. The Commission faces the formidable task of determining whether the proposed transaction may be detrimental to the public interest. It is important that the

Commission be aware of unfavorable information about a company, if such exists, where that information may constitute evidence against approving the application. The Commission is a public body, and conducts its hearings and deliberations in a public forum. It is reasonable for the public to assume that when it makes a decision, that the basis for that decision also be part of the public record to the greatest extent possible.

WHEREFORE, it is respectfully requested that the Commission issue an Order declassifying the above-designated portions of the pre-filed rebuttal testimony of Kimberly Bolin and Mark Burdette.

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 1st day of August 2001:

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