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AUG 06 2001

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

Missouri Public  
Service Commission

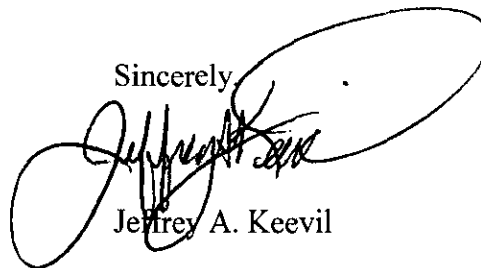
RE: Case No. GM-2001-585

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 DECLASSIFY HIGHLY CONFIDENTIAL PORTIONS OF WITNESS TESTIMONY FILED ON BEHALF OF THE OFFICE OF THE PUBLIC COUNSEL 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>3</sup>  
AUG 06 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 DECLASSIFY HIGHLY CONFIDENTIAL  
PORTIONS OF WITNESS TESTIMONY FILED ON BEHALF OF  
THE OFFICE OF THE PUBLIC COUNSEL**

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 August 1, 2001 (the "Second Motion"), to declassify highly confidential portions of witness testimony filed on behalf of the Office of the Public Counsel, states as follows:

1. Gateway would first note that OPC filed a motion to remove the highly confidential designations of data request responses on or about July 19, 2001 (the "First Motion"), in this proceeding. Gateway responded to the First Motion on July 24, 2001, and incorporates herein by reference the arguments set forth in that response. Paragraph B of the Protective Order states "The requesting party [*i.e.*, the party requesting information through data requests or other discovery devices] may then [after a response designated Highly Confidential or Proprietary is received] file a motion challenging the designation. The party designating the information confidential shall have five days after the filing of the challenge to file a response. *No other filings are authorized.*" (emphasis added) Presumably, OPC's Second Motion is intended to supersede the First Motion, necessitating this response by Gateway.

2. In the Second Motion, OPC raises no new arguments from its First Motion nor does it give any real reasons why the motion should be granted; once again, OPC cannot allege that its ability to conduct discovery or present its case is hampered in the slightest degree by the designation of certain information as Highly Confidential, and once again OPC ignores the harm to Gateway that could be affected by public disclosure of certain information. The only real difference<sup>1</sup> between the First Motion and the Second Motion is that OPC can now point to specific passages of testimony and data requests attached to testimony which it seeks to declassify -- those passages and data requests being virtually all of the Highly Confidential testimony filed herein by OPC's witnesses. The fact that the Second Motion is more specific in this regard than the First Motion highlights the fact that some of the data requests (and the corresponding testimony passages based thereon) which OPC seeks to declassify were not even submitted to Gateway by OPC, but were in fact submitted by Staff and Union Electric. As discussed in detail in Gateway's response to the First Motion (which is incorporated herein by reference), as to these data requests, OPC was not the "requesting party" under paragraph B of the Protective Order, and accordingly lacks authorization or standing to challenge the designation of these data request responses (and corresponding testimony passages based thereon) under the terms of the Protective Order.

3. Gateway would also note that in paragraph number 3 of the Second Motion, OPC purports to quote from paragraph B of the Protective Order for the proposition that "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

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<sup>1</sup> One other difference being that in the Second Motion OPC cited to the Commission Protective Order rule, rather than the rule concerning Tariff Filings Which Create Cases as in OPC's First Motion.

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)”. Although quoted by OPC as though the foregoing appears somewhere in paragraph B of the Protective Order, a review of paragraph B of the Protective Order reveals no such language. Even if such language was to be found in paragraph B of the Protective Order, OPC points to nothing to indicate that the information it seeks to declassify can in fact be found in any public documents. As discussed in Gateway’s response (which is incorporated herein by reference) to OPC’s First Motion, Gateway is not a publicly-held, publicly-traded corporation, and accordingly, certain information which might be public information about other corporations is not public information concerning Gateway.

4. The Commission should also be aware that, as a result of discussions at the prehearing conference held on August 1, 2001, Gateway voluntarily declassified entirely or re-classified from Highly Confidential to Proprietary certain data request responses and portions of responses (including responses to some OPC data requests) in an effort to accommodate the other parties; in fact, some of the material which OPC seeks to declassify in its Second Motion has already been voluntarily declassified or re-classified by Gateway on August 1, 2001.

5. This response will now address the specific portions of testimony and attachments which OPC seeks to declassify in its Second Motion:

**Bolin testimony:**

a) page 4, lines 7-8 – This information was voluntarily declassified by Gateway on August 1, 2001. Gateway would note, for the Commission’s information, that the

referenced information was contained in a data request response which contained other, additional information which has not been declassified, and it was this other information which necessitated the designation of the response as Highly Confidential. As discussed in Gateway's response to OPC's First Motion, 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.<sup>2</sup>

b) page 4, lines 10-14 – OPC's Second Motion does not indicate the source of this information, and Gateway is not aware of what response contains this information as OPC alleges, but Gateway would note that the information is already public in that it is contained in the Stock Purchase Agreement attached to the Joint Application and the testimony of Mr. Kreul.

c) page 5, lines 2-22 – This refers to a data request submitted by Staff, and accordingly OPC lacks standing/authority to challenge the designation of the response under the terms of the Protective Order. However, Gateway would note that the response referenced on lines 2-18<sup>3</sup> is similar to a response to a Union Electric data request which has been voluntarily re-classified by Gateway as Proprietary, rather than Highly Confidential, and accordingly Gateway would not oppose re-classification of the referenced information as Proprietary, rather than Highly Confidential. The information clearly relates to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others, and accordingly should continue to be protected.

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<sup>2</sup> 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.

<sup>3</sup> Gateway is unsure of the source of the information on lines 20-22.

d) page 5, lines 26-27 -- This refers to a data request submitted by Union Electric, and accordingly OPC lacks standing/authority to challenge the designation of the response under the terms of the Protective Order. However, this response to Union Electric has been voluntarily re-classified by Gateway as Proprietary, rather than Highly Confidential (as OPC is aware), and therefore Gateway has no objection to treating page 5, lines 26-27 as Proprietary, rather than Highly Confidential. The information clearly relates to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others, and accordingly should continue to be protected.

e) page 13, lines 15-16 -- The referenced information and the data request response upon which it is based (Schedule KKB-3) relates to the confidential business negotiations/strategies employed in contract negotiations between UtiliCorp and Gateway, and the response upon which it is based (Schedule KKB-3) also relates to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others; accordingly, the information and response were appropriately designated. However, in an effort to accommodate OPC, Gateway would not oppose re-classification of the referenced information on page 13, lines 15-16 as Proprietary, rather than Highly Confidential (Schedule KKB-3 is addressed in paragraph (h) below).

f) page 24, lines 2-5 -- This information was voluntarily declassified by Gateway on August 1, 2001.

g) schedule 2 -- This schedule is a response to a data request submitted by Union Electric, and accordingly OPC lacks standing/authority to challenge the designation of

the response under the terms of the Protective Order. However, the Commission should be aware that this response to Union Electric has been voluntarily re-classified by Gateway as Proprietary, rather than Highly Confidential (as OPC is aware). The response clearly relates to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others, and accordingly should continue to be protected.

h) schedule 3 -- This schedule is a response to a data request which relates to the confidential business negotiations/strategies employed in contract negotiations between UtiliCorp and Gateway, and relates to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others; accordingly, the response was appropriately designated. However, in an effort to accommodate OPC, Gateway would not oppose re-classification of the *first sentence and last sentence of the response* as Proprietary, rather than Highly Confidential. The remainder of the response should remain as originally designated.

i) schedule 4 -- This information was voluntarily declassified by Gateway on August 1, 2001.

**Burdette testimony:**

a) page 3, lines 3-8 -- Since Mr. Burdette does not quote from the data request responses he claims as support for his statements at page 3, lines 3-8, but merely gives his spin on the responses, Gateway does not oppose declassifying his statements at page 3, lines 3-8; however, Gateway does object to declassifying the referenced data request responses themselves (Schedule/attachment 2 and Schedule/attachment 3), and will address them under paragraphs (e) and (f) below.

b) page 3, lines 15-24 – Gateway is not certain what response contains the information in the first sentence of the referenced information as OPC alleges but Gateway would note that the dollar amounts set forth in the first sentence of the referenced information are already public in that they are contained in the Stock Purchase Agreement attached to the Joint Application and the testimony of Mr. Kreul, and accordingly Gateway does not object to declassifying *the first sentence* of the referenced information which begins on line 15 and ends on line 17. However, the remainder of the referenced information and the data request response upon which it is based (Schedule/attachment 1) relate to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others and the response upon which it is based (Schedule/attachment 1) also relates to the confidential business negotiations/strategies employed in contract negotiations between UtiliCorp and Gateway; accordingly, the information and response were appropriately designated. However, in an effort to accommodate OPC, Gateway would not oppose re-classification of the remainder of the referenced information on page 3, lines 17-24 as Proprietary, rather than Highly Confidential (Schedule/attachment 1 is addressed in paragraph (d) below, and is the same as Schedule KKB-3 attached to the testimony of witness Bolin and discussed above under paragraph (h) addressed to Bolin testimony).

c) page 4, lines 1-6 – The source of the referenced information is primarily a response to a data request submitted by Staff (schedule 3), and accordingly OPC lacks standing/authority to challenge the designation of the information under the terms of the Protective Order. Furthermore, neither Gateway nor its parent are publicly-held or



publicly-traded entities; therefore certain information which might be public about other corporations is not public concerning Gateway. The referenced information concerns confidential personal, individual financial/ownership information which is not public information. It could also be detrimental to Gateway if the information were to become known beyond those allowed to view Highly Confidential information pursuant to the Protective Order. Retaining the Highly Confidential designation of the information protects the legitimate privacy interests of the individuals involved, and does not impede the Commission's, or OPC's, access to the information or use of the information in this case. The Highly Confidential designation of this information should be maintained.

d) schedule (attachment) 1 -- This schedule is a response to a data request which relates to the confidential business negotiations/strategies employed in contract negotiations between UtiliCorp and Gateway, and relates to future business plans and strategies which have not been made public, as well as services which are offered (or may be contemplated) in competition with others; accordingly, the response was appropriately designated. However, in an effort to accommodate OPC, Gateway would not oppose re-classification of the *first sentence and last sentence of the response* as Proprietary, rather than Highly Confidential. The remainder of the response should remain as originally designated. This schedule is the same as Schedule KKB-3 attached to the testimony of witness Bolin and discussed above under paragraph (h) addressed to Bolin testimony.

e) schedule (attachment) 2 -- This schedule is a response to a data request which concerns confidential personal, individual financial investment and ownership information which is not public information. It also concerns the business financial plans of Gateway and could also be detrimental to Gateway if the information were to become

known beyond those allowed to view Highly Confidential information pursuant to the Protective Order. As stated above, neither Gateway nor its parent are publicly-held or publicly-traded entities; therefore certain information which might be public about other corporations is not public concerning Gateway. Retaining the Highly Confidential designation of the information protects the legitimate privacy interests of the individuals involved, and does not impede the Commission's, or OPC's, access to the information or use of the information in this case. The Highly Confidential designation of this information should be maintained.

f) schedule (attachment) 3 -- This schedule is a response to a data request submitted by Staff, and accordingly OPC lacks standing/authority to challenge the designation of the response under the terms of the Protective Order. Furthermore, neither Gateway nor its parent are publicly-held or publicly-traded entities; therefore certain information which might be public about other corporations is not public concerning Gateway. This schedule is a response to a data request (from Staff) which concerns confidential personal, individual financial investment and ownership information which is not public information. It also concerns the business financial plans of Gateway and the *Highly Confidential financing/loan terms* between Gateway and its lender and could be detrimental to Gateway if the information were to become known beyond those allowed to view Highly Confidential information pursuant to the Protective Order. The Commission should also be aware that the response attached to Mr. Burdette's testimony as attachment 3 has been updated and the updated response<sup>4</sup>, with an 11 page attachment containing the formal term sheet from Gateway's lender, was provided to OPC prior to

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<sup>4</sup> Although the response has been updated, the earlier response, which is attached to Mr. Burdette's testimony, should continue to be designated Highly Confidential; the mere fact that it has been updated so as to be more complete does not affect the need to protect the initial information provided.

the filing of Mr. Burdette's testimony. *This formal term sheet was designated as Confidential by Gateway's lender, so it is not only Gateway that seeks to maintain this information as Confidential.* Disclosure could also hamper Gateway's ability to negotiate for the most favorable financing terms in the future. Retaining the Highly Confidential designation of the information protects the legitimate privacy interests of the individuals involved, and does not impede the Commission's, or OPC's, access to the information or use of the information in this case. Schedule 2 and Schedule 3 are textbook examples of why Protective Orders were developed, and why Highly Confidential designations are recognized. The Highly Confidential designation of this information should be maintained.

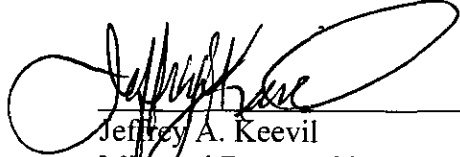
6. Rather than repeat at length the arguments set forth in Gateway's response to OPC's First Motion, Gateway would refer the Commission to Gateway's response filed herein on July 24, 2001.

WHEREFORE, for all of the reasons set forth herein and in Gateway's response filed on July 24, 2001, Gateway respectfully requests the Commission issue an order denying OPC's Motion to Remove Highly Confidential Designations (the First Motion), denying OPC's Motion to De-classify Highly Confidential Portions of Witness Testimony Filed on Behalf of the Office of the Public Counsel<sup>5</sup> (the Second Motion), and ordering the classifications set forth above in paragraph numbered 5 (and its sub-paragraphs) of this response.

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<sup>5</sup> Except as set forth in paragraph numbered 5 of this response.

Respectfully submitted,



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### **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 6th day of August, 2001.

