Martha S. Hogerty
Public Counsel

State of Missouri

Bob Holden
Governor

Office of the Public Counsel
Governor Office Building
200 Madison, Suite 650
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Web: http://www.mo-opc.org
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

August 7, 2001

FILED
AUG 0 7 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 **Supplemental Suggestions in Support of Motion to Remove Highly Confidential Designations** along with original and eight copies of **Highly Confidential Attachment 1** to the motion. 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

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

SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF MOTION TO REMOVE HIGHLY CONFIDENTIAL DESIGNATIONS

COMES NOW, the Office of the Public Counsel (Public Counsel), and respectfully submits to the Missouri Public Service Commission (Commission) these supplemental suggestions in support of the previously filed motion to declassify certain responses of Gateway Pipeline Company, Inc. to certain data requests. These supplemental suggestions are made at the direction of the Commission in its Order Directing Filing dated August 3, 2001.

1. Subsequent to the filing of the initial Motion to Remove Highly Confidential Designations, two witnesses, Kimberly Bolin and Mark Burdette, filed testimony in this matter on behalf of the Public Counsel. At the time their testimony was filed, Public Counsel filed a Motion to Declassify certain portions of that testimony, because portions of that testimony contained information gleaned from responses to data requests which had been stamped "highly confidential" by the Company. Public Counsel will continue to rely on the arguments made in the motion for the declassification of that testimony and attachments to testimony.

2. On August 1, 2001, counsel for the Public Counsel and for Gateway Pipeline Company, Inc. (Gateway) met and discussed whether any responses to data requests

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could be declassified by agreement of the parties. The parties discussed all responses received as of that date. As a result, the following responses were declassified:

a. The response to data request #RO3 .
b. The first paragraph to the response to data request #RO2.
c. The name Mogas Energy, LLC, in the response to data request #2002.
d. The response to data request #2003.
e. The responses to data requests #2004 and 2005, but not the material referenced in the responses, which is contained in other documents designated "highly confidential" by the Company.

Public Counsel believes that its previous request to remove highly confidential designation from the above response and portion of response is moot.

3. Public Counsel seeks, in this motion, a Commission order removing the highly confidential designation from the responses to the following listed data requests:

a. The remainder of the response to DR# RO2
b. The response to DR# RO3
c. The remainder of the response to DR# 2002
d. The response to DR# 2006
e. The response to DR# 2001
f. The response to DR# RO12
g. The response to DR# RO13

Public Counsel has attached, under seal, copies of the above responses for the Commission's review of this request.

4. 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.)

5. Public Counsel asks this Commission to remove all restrictive designations placed on the information by Gateway in its responses to Public Counsel data requests numbered RO2, RO3, RO12, RO13 (first paragraph), 2001, 2002 (except dollar amounts in lines 1 and 3), and 2006 because these responses do not fall into any of the categories of information set forth in paragraph 4 above. **None of the information sought to be declassified in the above-referenced responses falls into any of the categories set forth in the protective order.**

6. Public Counsel also asks this Commission to remove the restrictive designations which Gateway placed on its responses to the data requests listed in paragraph (3) because, while some of the information may meet some of the criteria for

highly confidential information, it is information which is otherwise available, in some format, in a public document, although it may not be readily accessible to persons outside the company in another format. Because the information is otherwise available, it does not meet the definition of "highly confidential" in the Commission's protective order. Alternatively, even if some of the information contained in these responses falls under the definition of "highly confidential" (such as the dollar amounts at lines 1 and 3 of the response to DR# 2002, and the identities of entities named in the second paragraph of the response to DR# RO13) the information should be declassified because the Company has failed to identify, **with particularity**, that any harm to the Company will result from declassifying the information.

7. 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 responses, 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 the above listed responses should be considered highly confidential.

8. When the Commission decides whether or not to keep certain 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.

9. In considering this request, Public Counsel asks that the Commission determine that the information contained at the above-listed responses to data requests 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. In the event that the Company continues to protest the declassification of the above-designated responses, the burden is on the Company to show that the information at issue is properly within the scope of the protective order, and to state **with particularity** the harm which will result to the Company is the information is made a part of the public record. This Commission should not merely accept an unsupported statement that an item of information should be treated as highly confidential as complying with the Company's burden to state with particularity the harm which will result if the information is declassified, nor should the Commission accept assertions that a matter may fall into one of the listed categories at some unspecified date in the future.

10. 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.**

11. The Commission faces the formidable task of determining whether the proposed transaction will 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 is a relevant factor to be considered in deciding whether to approve 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 the Commission makes a decision, that the basis for that decision will be part of the public record to the greatest extent possible. If a Company which seeks to acquire Missouri regulated utilities does not have a financially viable plan in place to assure that its acquisition of Missouri regulated utilities will not be detrimental to Missouri customers, whose collective interest is the public interest in this matter, that should be a matter of record. Likewise, if a Company has a sound financial plan which does not operate to the detriment of the public interest, that should also be a matter of record.

WHEREFORE, it is respectfully requested that the Commission issue an Order removing the "highly confidential designation from the above listed responses to data requests.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

By: M Ruth O'Neill

M. Ruth O'Neill (#49456)
Assistant Public Counsel
P O Box 7800
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 7th day of August 2001:

Ms. Lera L. Shemwell
Missouri Public Service Commission
P O Box 360
Jefferson City, MO 65102

Mr. Michael Pendergast
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Mr. Thomas M. Byrne/
Ronald K. Evans
Ameren Services Company
1901 Chouteau Avenue
P O Box 66149 (MC 1310)
St. Louis, MO 63166-6149

Mr. William D. Steinmeier/
Mary Ann (Garr) Young
William D. Steinmeier, P.C.
2031 Tower Drive
P O Box 104595
Jefferson City, MO 65110-4595

Mr. Paul A. Boudreau
Brydon, Swearengen & England, PC
P O Box 456
Jefferson City, MO 65102

Jeffrey A. Keevil
Stewart & Keevil, LLC
1001 Cherry St., Suite 302
Columbia, MO 65201

Mark W. Comley
Newman, Comley & Ruth, PC
601 Monroe, Suite 301
P O Box 537
Jefferson City, MO 65102

ATTACHMENT 1 HAS BEEN DEEMED

"HIGHLY CONFIDENTIAL"

IN ITS ENTIRETY.