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August 13, 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>**

AUG 13 2001 *mh*

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 TO SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF MOTION TO REMOVE HIGHLY CONFIDENTIAL DESIGNATIONS 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>

AUG 13 2001

Missouri Public  
Service Commission

In the Matter of the Joint Application of )  
Gateway Pipeline Company, Inc., ) Case No. GM-2001-585  
Missouri Gas Company and Missouri )  
Pipeline Company. )

**RESPONSE TO SUPPLEMENTAL SUGGESTIONS IN SUPPORT  
OF MOTION TO REMOVE HIGHLY CONFIDENTIAL DESIGNATIONS**

COMES NOW Gateway Pipeline Company, Inc. ("Gateway"), pursuant to the Order Directing Filing issued herein on August 3, 2001, and for its response to the Supplemental Suggestions in Support of Motion to Remove Highly Confidential Designations (the "Third Motion") filed by the Office of the Public Counsel ("OPC") on August 7, 2001, to declassify certain data request responses of Gateway, states as follows:

1. Gateway would note that OPC first filed its motion to remove the highly confidential designations of data request responses on or about July 19, 2001 (the "First Motion"). Gateway responded to the First Motion on July 24, 2001, and incorporates herein by reference the arguments set forth in that response. Thereafter, on August 1, 2001, OPC filed a motion to declassify highly confidential portions of witness testimony filed on behalf of the Office of the Public Counsel (the "Second Motion"). Gateway responded to the Second Motion on August 6, 2001, and incorporates herein by reference the arguments set forth in that response. Although one would think that, having filed the Second Motion to declassify portions of its witnesses' testimony OPC would be content to wait for the Commission's decision on the Second Motion, OPC has now filed the

Third Motion (denominated as "suggestions") which seeks to declassify some data request responses which OPC did not even use in its testimony and others which were fully covered in OPC's Second Motion and Gateway's response thereto. However, OPC's Third Motion, if granted, still presents the danger of harm to Gateway, because if it is granted the responses (which have been provided to other parties pursuant to data requests) will be available to persons other than those allowed to view Highly Confidential information pursuant to the Protective Order. Also, responses could be used at the hearing without going in camera to protect the information.

2. Gateway would also note that 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) Despite no other filings being authorized by the terms of the Protective Order, Gateway has now been forced to respond to three filings by OPC.

3. OPC bases its right to file the Third Motion on the Commission's Order Directing Filing, issued on August 3, 2001. However, that Order specifically required that **"Public Counsel shall state the specific harm it will experience if the classification is not removed with respect to each of the data requests."** (emphasis added) A review of the Third Motion clearly reveals that OPC has not done so; this should end the inquiry and OPC's repeated requests should be denied for failure to comply with the Order. OPC has not stated any specific harm it will experience because

there is no harm to OPC by maintaining the classifications of each of the data request responses. Pursuant to the Protective Order, OPC has full access to and use of the designated information; its ability to prepare and present its case is harmed in no way. Once again OPC ignores the harm to Gateway that could be affected by public disclosure of certain information.

4. In paragraph 6 of the Third Motion, OPC claims the information it seeks to declassify is otherwise available in a public document; however, OPC does not state where, or in what public document. As reflected in Gateway's response to OPC's Second Motion, when Gateway was aware of certain information being available in a public document, Gateway pointed it out for OPC's benefit. In fact, if the information OPC now seeks to declassify is available somewhere in a public document, OPC should have ready access to it and could freely use such information. *All OPC had to do was point to the public document in which the information was available; they have not.*

5. Also in paragraph 6 of the Third Motion, and more specifically in paragraph 9 thereof, OPC refers to the Commission's rule governing the procedure for *obtaining* a Protective Order, and what is to be included in a pleading requesting the *issuance* of a Protective Order. What OPC fails to recognize, however, is that a Protective Order was issued in this case several months ago and the time to argue whether the requirements of 4 CSR 240-2.085 have been met is past; that ship has already sailed. In providing its responses to data requests Gateway followed the procedure set forth in the Protective Order, and the responses should remain as designated. Regarding the designation of responses, OPC admits in paragraph 2 that Gateway has voluntarily declassified certain responses, or portions of responses. As stated in Gateway's response

to OPC's Second Motion, 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. Apparently unsatisfied with Gateway's voluntary accommodation, OPC continues to seek to declassify additional responses.

6. Furthermore, it continues to be unclear exactly what OPC wants to declassify. Paragraphs 3 and 6 indicate that OPC is seeking to declassify the responses listed in paragraph 3 in their entirety, while paragraph 5 seems to indicate that OPC wants to declassify only portions of some of the responses, while paragraph 7 seems to indicate both. Like its failure to state the specific harm it will experience if the classification is not removed with respect to each of the data requests, this fails to satisfy the Commission's August 3 Order Directing Filing, which provided that "Public Counsel may file a sealed exhibit with its motion copying the subject data requests and responses **and highlighting or otherwise marking the information proposed to be declassified.**" (emphasis added) Although OPC did file the entire responses under seal, this does not remove the uncertainty discussed above, so Gateway is once again, as in its response to OPC's First Motion, forced to respond *without knowing precisely what it is that OPC is seeking*.

7. Before turning to the responses listed in paragraph 3 of OPC's Third Motion, Gateway would note that OPC has taken the opportunity in each of its Motions to "brief" its case without factual support (see paragraphs 10 and 11 of the Third Motion) and attempt to set the Commission's mind against Gateway before either OPC or

Gateway has had the opportunity to present their case on the record. Contrary to OPC's unfounded innuendo, Gateway takes exception to OPC's implication that certain responses contain "information which is simply unfavorable" or that there is any genuine issue concerning Gateway's financial plan. In fact, Gateway believes the responses indicate precisely the opposite is true. However, maintaining the designation of the responses does not impair OPC's ability to present any responses to the Commission for its consideration, nor does it restrict the Commission's access to or ability to rely upon any responses.

8. This response will now address the data request responses set forth in paragraph 3<sup>1</sup> which OPC seeks to declassify in its Third Motion:

a. the remainder of the response to DR #RO2 – As recognized in paragraph 2 of OPC's Third Motion, Gateway previously declassified the first paragraph of this response. The remainder of this response contains a reference to another DR with customer-specific information and should remain as classified.

b. the response to DR #RO3 – As recognized in paragraph 2 of OPC's Third Motion, this response was previously voluntarily declassified by Gateway in its entirety.

c. the remainder of the response to DR #2002 -- As recognized in paragraph 2 of OPC's Third Motion, Gateway previously voluntarily declassified a portion of this response. As stated in Gateway's response to OPC's Second Motion (response to Bolin testimony, page 4, lines 7-8), the portion which has been voluntarily declassified is 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

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<sup>1</sup> As for the responses set forth in paragraph 2 of OPC's Third Motion, OPC admits in paragraph 2 that its efforts to declassify those responses are now moot. Accordingly, OPC's previous efforts to declassify those responses should be considered abandoned.

designation of the response as Highly Confidential. OPC now seeks to declassify those portions of the response which necessitated the designation of the response as Highly Confidential in the first place. This response, which OPC seeks to declassify, is the same as schedule/attachment 2 to the testimony of Mark Burdette, which OPC sought to declassify in its Second Motion. As stated in Gateway's response to OPC's Second Motion (response to Burdette testimony, schedule (attachment) 2) this 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. 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.

d. the response to DR #2006 -- This is a response to a data request which relates to the confidential business negotiations/strategies employed in contract negotiations between UtiliCorp and Gateway, and also relates to the evaluation of 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.

e. the response to DR #2001 – This data request response was addressed in Gateway's response to OPC's Second Motion; it is the same as Bolin's schedule KKB-3 and Burdette's schedule/attachment 1. As stated in Gateway's response to OPC's Second Motion, this 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.

f. the response to DR #RO12 – The *request* itself contains confidential information from the response to DR #2002 (see discussion under paragraph (c) above), and the request and response should not be declassified for the same reasons the response to DR #2002 should not be declassified, as discussed in paragraph (c) above. The response also concerns the business financial plans of Gateway, refers to confidential financial negotiations of Gateway, and refers to another data request response (to a Staff data request) which contains the *Highly Confidential financing/loan terms* between Gateway and its lender (see Gateway's response to Burdette testimony, schedule (attachment) 3, contained in Gateway's response to OPC's Second Motion, for additional reasons not to declassify this response). The response should remain as designated.

g. the response to DR #RO13 – It should first be noted that the *request* itself contains information which was originally classified as Highly Confidential, but has since



been re-classified as Proprietary (see discussion under paragraph (e) above regarding response to DR #2001) and the request itself should continue to be classified, at a minimum, as Proprietary since it 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. The response concerns market-specific information relating to services offered in competition with others, strategies which may be employed in contract negotiations, and 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. The response should continue to be classified Highly Confidential.

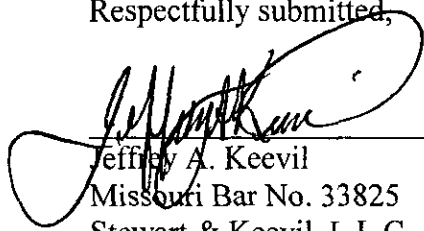
9. Rather than repeat at length the arguments set forth in Gateway's responses to OPC's First Motion and Second Motion, Gateway would refer the Commission to Gateway's responses filed herein on July 24, 2001, and August 6, 2001, which are incorporated herein by reference.

WHEREFORE, for all of the reasons set forth herein and in Gateway's responses filed on July 24, 2001, and August 6, 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>2</sup> (the Second Motion), denying OPC's Supplemental Suggestions in Support of Motion to Remove Highly Confidential Designations (the Third Motion), and ordering the classifications set forth above in paragraph numbered 8 (and its sub-paragraphs) of this response.

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<sup>2</sup> Except as set forth in paragraph numbered 5 of Gateway's response to OPC's Second Motion.

Respectfully submitted,



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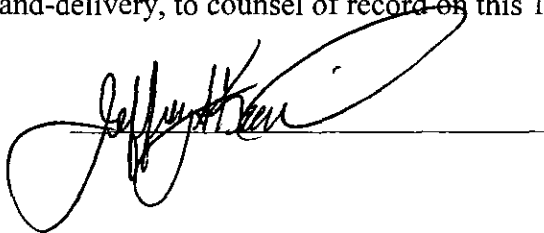
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ATTORNEY FOR GATEWAY  
PIPELINE COMPANY, INC.

### **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 13th day of August, 2001.



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