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August 28, 2001

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

FILED²

AUG 28 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 **POSITION STATEMENT 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,

A handwritten signature in cursive script, appearing to read "M. Ruth O'Neill".

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 28 2001

Missouri Public
Service Commission

In the Matter of the Joint Application of)
Gateway Pipeline Company, Inc.,)
Missouri Gas Company and Missouri)
Pipeline Company and the Acquisition by)
Gateway Pipeline Company of the)
Outstanding Shares of UtiliCorp Pipeline)
Systems, Inc.)

Case No. GM-2001-585

POSITION STATEMENT OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW, the Office of the Public Counsel, and hereby files with the Missouri Public Service Commission this Statement of Position on the matters at issue in this case.

1. Should the request of the Joint Applicants for Gateway to acquire all of the stock of UPL be approved?

No. The Commission should not approve the sale of the Missouri regulated pipelines, Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC), by a regulated utility, UtiliCorp United, to Gateway Pipeline Company, an unregulated entity with no substantial ties to Missouri, and no other business interests likely to come before this Commission. Gateway has failed to establish that this acquisition will not be detrimental to the public interest.

A. Would the sale be detrimental to the public interest?

Yes. Gateway has failed to establish that it can guarantee the continued operational reliability of the pipeline system. Gateway has failed to establish that it will

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be financially viable after the transaction is completed. Gateway has failed to establish that this transaction will be transparent to customers regarding levels of service and rates.

To allow Gateway to assume ownership and control over Missouri regulated intrastate pipelines would be detrimental to the public interest in Missouri.

B. If so, are there conditions that the Commission could impose to reduce or eliminate any detriment?

No. However, if the Commission decides to approve the transaction, Public Counsel respectfully requests that the Commission impose conditions which, if honored, would mitigate the level of public detriment.

2. Does the condition that the Commission placed on UtiliCorp when it acquired these properties (MPC and MGC), that UtiliCorp would not connect the intrastate pipelines to the interstate Trans Mississippi Pipeline, apply to Gateway should the Commission approve the transaction?

Yes. This restriction is contained in MPC's certificate of convenience and necessity. *In re Missouri Pipeline Company*, 30 Mo. PSC (N.S.) 10, 15 (1989). By agreement, UtiliCorp did not seek to have this restriction removed at the time it purchased the pipeline. *In the Matter of the Joint Application of Missouri Gas Pipeline, et al.*, 3 Mo. PSC 3d 216, 225 & 228 (1994). Hence, UtiliCorp does not currently own the right to connect MPC to the Trans Mississippi Pipeline (TMP). UtiliCorp cannot transfer rights it does not own as part of this transaction. Only the Commission can grant MPC and its owner's permission to connect to an interstate pipeline.

A. If so, should the Commission waive this provision?

No. The only current condition which mitigates the detriment to the public interest which will likely to result from this transaction is the restriction prohibiting the connection of MPC with TMP.

B. Might the Commission lose jurisdiction over these pipelines? Is so, how would the loss of jurisdiction affect the public interest?

Yes. The Commission could very well lose jurisdiction over MPC and MGC, especially if the Commission waives the condition in MPC's current certificate which prohibits MPC from connecting to TMP. The Commission could also lose jurisdiction if Gateway acquired another pipeline which crossed state lines and connected MPC and/or MGC to that pipeline, or if Gateway connected MPC and TMP without Commission approval. The Commission should not rely on statements by Gateway that it will not *seek* to become FERC jurisdictional even if it is allowed to connect MPC and TMP. The FERC has previously exercised jurisdiction over chains of interconnected intrastate affiliates that collectively functioned as interstate pipelines. *See, KansOk Partnership v. Williams Natural Gas Co.*, 73 F.E.R.C. ¶ 61,160 (1995); and *Louisiana Gas System Inc. v. Panhandle Eastern Corp.* 73 F.E.R.C. ¶ 61,161 (1995).

This removal from state to FERC jurisdiction will detrimentally affect the public interest for a number of reasons. The FERC's approach to rate increase determinations differs significantly from that of the Missouri Public Service Commission. There is no operation of law date by which a final order must be issued. Soon after a rate case is filed, a rate increase is allowed to take effect, subject to refund, for the months, and even years it takes for a final determination of the rate increase request on the merits. The FERC has a duty to decide cases in the public interest, but the FERC's perspective and

priorities are different than those of the Missouri Commission, because its constituency is different. The interests of Missouri customers will be not be considered a priority at FERC the way they are before the state Commission.

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 28th day of August 2001:

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