

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
August 28, 2001**

**CASE NO: GM-2001-585**

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**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office in  
Jefferson City on the 28th day of  
August, 2001.

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.

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**Case No. GM-2001-585**

**ORDER REGARDING CLASSIFICATION OF  
RESPONSES TO DATA REQUESTS**

**Summary:**

The Office of the Public Counsel has filed various motions requesting that the Commission declassify responses of Gateway Pipeline Company to certain data requests and thereby cause this information to become public. This order determines the appropriate classification of the responses to the data requests.

The parties should note that the Commission's determination of the motions does not limit the information that the Commission may subsequently make public upon its own order or upon determination of this case.

**Protective Order:**

The applicants in this case requested that the Commission issue its protective order on April 19, 2001. There were no objections to this request and the Commission issued its standard protective order on May 2, 2001. Under the terms of the Commission's

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protective order information disclosed in discovery or testimony is public unless it is classified as Highly Confidential or as Proprietary.

The protective order sets conditions for access to the information by the parties to the case and by expert witnesses. For example, access to Highly Confidential information may be limited to on-premises inspections and access may be restricted to outside expert witnesses. Proprietary information is less restricted and may be viewed off-premises and may be viewed by employees of a party so long as the employee is identified and complies with the terms of the protective order.

The terms of the protective order require that a party responding to discovery and classifying information as Highly Confidential or as Proprietary to state the grounds for the classification. The requesting party may challenge the classification. The responding party is allowed five days to respond to the challenge.

**Highly Confidential** information is: "Information concerning (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; (5) strategies employed, to be employed, or under consideration in contract negotiations."

**Proprietary** information is: "Information concerning trade secrets, as well as confidential or private technical, financial and business information."

**Positions of the Parties:**

The Public Counsel filed motions on July 19, 2001 and August 7, 2001, challenging Gateway's classification of certain data request responses. The August 7,

2001, motion was in response to the Commission's Order Directing Filing requiring the Public Counsel to resubmit its July 19 motion and identify the specific data requests and responses at issue.

On August 1 and 14, 2001, the Public Counsel filed motions to declassify testimony of two of its witnesses. These motions present the same issues as the motions regarding the data request responses because the Public Counsel seeks to make the information provided in the data requests public through the testimony of its witnesses. Resolving the classification of the data request responses under the August 7 motion will dispose of all the motions presented by Public Counsel.

Public Counsel asserts that the information classified by Gateway does not fall into the categories allowed under the Commission's protective order and that some of the information is already in the public domain. The Public Counsel states generally that Commission proceedings and the information presented in Commission proceedings should be public.

Gateway responded to the Public Counsel's motions regarding the data request responses on July 24 and August 13, 2001. Gateway states that Public Counsel does not have standing with respect to the data requests submitted by the Commission's Staff. Gateway states that Public Counsel has not identified any harm to Public Counsel regarding the classification of the data request responses. Gateway asserts that Public Counsel's motion is vague even after being resubmitted.

In its August 13 response, Gateway addresses the specific data request responses at issue. Gateway also filed a response on August 20, 2001, concerning classification of Public Counsel's witness testimony.

The Commission's Staff filed a "statement" on August 14, 2001, stating that it had filed some of its rebuttal testimony as Highly Confidential and taken a "conservative" approach in doing so to preserve Gateway's classifications. Staff "urged" Gateway to declassify some of the information presented in Staff's testimony. Gateway filed a response on August 20, 2001. Gateway stated it had not provided all the information referenced by Staff, some information had never been classified, some information had been voluntarily declassified, and some additional information might be declassified.

Staff's "statement" and Gateway's response do not require any action by the Commission. Staff may resubmit its testimony with appropriate designations if it chooses to do so.

**Public Counsel's Standing:**

Information furnished to the Commission by any corporation is generally protected from public disclosure pursuant to Section 386.480, RSMo 2000. The Public Counsel has full access to all such information. *Id.* Officers and employees of the Commission and the Public Counsel may not divulge confidential information under penalty of law. *Id.*

The Commission has adopted procedures to facilitate discovery in cases before the Commission and also to conduct its hearings in a public forum so that the public may be fully aware of the matters pending before the Commission. The Commission's standard protective order reflects a balancing of these interests.

The Public Counsel, by way of its unique status, has access to the information provided to the Commission's Staff in response to Staff's data requests. The Public Counsel may also submit data requests independently. There is no purpose served by

requiring Public Counsel to duplicate Staff's data requests so long as Public Counsel is bound by statute and the Commission's orders concerning preservation of the confidential status of information furnished to the Commission in any matter. Gateway recognizes this practicality by referring Public Counsel to Gateway's responses to Staff data requests in answering Public Counsel's data requests. See for example the response to DR No. 2002.

Public Counsel has not asked to be excused from the requirements of the Commission's protective order. Public Counsel has standing to present objections to the classification of information provided in response to data requests submitted by Public Counsel or by Staff.

**Review of Each Data Request Response at Issue:**

The Commission will set out each data request and then address the classification of the response at issue as presented in Public Counsel's August 7 motion. This order does not address the classification of any supplemental response material submitted after August 7.

**Data Request No. RO2 – 2<sup>nd</sup> paragraph of response**

**Has Gateway Pipeline entered any negotiations and/or agreements with UtiliCorp United regarding contracting any services to UtiliCorp's local gas distribution companies, including but not limited to Missouri Public Service Company? Please describe such services in detail, and state whether or not Gateway has agreed to provide such services at a preferential rate. Please include all documentation in support of any response.**

Gateway states that this paragraph references another data request response that contains customer specific information. However, no customer specific information appears in this response. This response contains no information that is Highly Confidential or Proprietary. Accordingly the response must be declassified.

**Data Request No. RO3**

**In the event that the Commission approves the sale of UtiliCorp Pipeline and its subsidiaries to Gateway Pipeline, will the Company ask the Missouri Public Service Commission to allow the regulated subsidiaries to recover, in rates, any of the following costs? a) Market entry costs; b) acquisition adjustment; c) transaction costs; d) transition costs; e) carrying costs for any of the above (a-d)?**

**For any answer other than "no", please provide all documentation in the possession or control of Gateway Pipeline which would support or otherwise provide notice of the approximate total dollar amount it will seek to recover in rates for each category.**

Gateway states that it has voluntarily declassified its response. Thus no issue remains.

**Data Request No. 2002**

**Please provide complete copies of all financial agreements pertaining to any funds pertinent to this case. This request includes but is not limited to any funds applied towards good faith money, purchase price, transaction fees, etc. This request includes the \$[ ] dollar equity investment by Dennis Langley (including all associated agreements with any banks or investment companies) and all monies provided by or promised by TCW.**

**If any documents are not provided to the Office of the Public Counsel, please provide a detailed explanation as to why they are not being provided.**

Gateway agreed to declassify the name "Mogas Energy, LLC." The response provides information about the sources of funds for the purchase presented in this case. Gateway states that this financial information is not public because it involves private individuals and companies whose stock is not publicly held or traded. The response indicates that some terms are still being negotiated.

The only category of information presented by the response that could be considered *Highly Confidential* relates to contract negotiations. However the response does not reveal any strategies employed, to be employed or under consideration. Therefore, no part of the response is *Highly Confidential*.

The information, however, is Proprietary because it presents financial and business information. The Commission finds that this response should be classified as Proprietary. The names revealed in the response – both of individuals and of corporate entities – do not constitute financial and business information. The names presented in the response are not Highly Confidential or Proprietary.

**Data Request No. 2006**

**Please provide any and all risk assessment analysis performed for or by Gateway Pipeline Company regarding the assets pertinent to this transaction. If no such risk analysis was performed, please explain why it was not performed.**

Gateway states that its response is properly designated Highly Confidential because it relates to confidential business negotiations and strategies between Gateway and UtiliCorp and to future business plans and strategies and competition with others.

However, the Commission finds that the response does not reveal any contract negotiation strategy. The response does not present any Highly Confidential information.

The response is very general and does not reveal any trade secrets or private technical, financial or business information. Therefore the response does not reveal any Proprietary information. The Commission finds that this response should be declassified.

**Data Request No. 2001**

**Please provide documentation of the valuation of the assets subject to this transaction. This request includes evaluations by both Gateway Pipeline Company and UtiliCorp United.**

**If no valuation documentation is available, please explain how a purchase price was evaluated and agreed by the parties.**

Gateway states that its response relates to confidential business negotiations and strategies between UtiliCorp and Gateway and presents future business plans and



strategies. Gateway agreed to reclassify the first and last sentences of the response as Proprietary and asserted that the remainder should remain Highly Confidential.

The first sentence of the response does not present Highly Confidential information and does not present trade secrets or confidential or private technical, financial or business information to support a Proprietary classification. The Commission finds that the first sentence of the response should be declassified.

The remainder of the response does not present any information that is Highly Confidential. The response is descriptive of the negotiations between UtiliCorp and Gateway and describes very generally Gateway's intentions to generate more revenues using the pipeline assets at issue but there is no detail provided sufficient to support a Highly Confidential designation.

The remainder of the response does reveal business information, albeit very general, that could be considered Proprietary. The Commission finds that the remainder of the response should be reclassified as Proprietary.

**Data Request No. RO12**

**[The data request refers back to prior request DR No. 2002] Please provide:**

- 1) Complete copies of all financial agreements between Dennis Langley, Mogas Energy LLC and /or Gateway regarding the \$[] which funded Gateway's deposit required under the subject stock purchase agreement.**
- 2) Complete copies of all documents regarding the financial agreement between Mogas Energy and Gateway for [sic] "the balance of funds necessary to close this stock transactions." (other than institutional lender financing.)**
- 3) If no documentation of these agreements exists, please provide a detailed explanation of why no documentation exists.**
- 4) If financial agreements have now been finalized with the institutional lender for a portion of the financing, please include complete copies of those agreements.**

Gateway asserts that its response to this data request is Highly Confidential for the same reasons as its response to DR 2002 and because it refers to Gateway's confidential financial negotiations and refers to a response to a data request submitted by Staff (DR 3810).

None of the information presented in this response is Highly Confidential under the Commission's protective order. The Commission determined above that the names presented in the response to DR 2002 should be declassified and that the rest of the response should be classified as Proprietary.

The response to DR No. RO12 is general and does not reveal trade secrets or confidential or private technical, financial and business information to support a Proprietary classification. The response describes generally the status of the transaction presented to the Commission in this case without any details presenting technical, financial or business information. Thus, the Commission finds that this response should be declassified. The Commission's finding on this response does not affect the status of Gateway's response to DR 3810 that is referenced in this response.

**Data Request No. RO13**

**[This data request refers back to DR 2001] Please provide all documentation regarding this analysis, and all information related to Gateway's efforts to date to secure higher throughput volumes.**

**If no documentation exists, please fully explain how this conclusion [omitted] was reached, and who reached this conclusion. If any other contingency has been contemplated to justify the purchase price in this case, please explain in detail any and all other plans which Gateway or its parent company believes would justify the purchase price.**

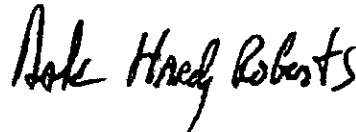
Gateway asserted that the request itself contains Proprietary information. Gateway asserted that its response should be Highly Confidential because it presents

market specific information, strategies that might be employed in contract negotiations and future business plans and strategies. The Commission finds that the response does not contain any information that is Highly Confidential. The information is very general but may be viewed as presenting confidential or private business information. The response will be reclassified as Proprietary.

**IT IS THEREFORE ORDERED:**

1. That the Office of the Public Counsel's motions regarding the classification of data requests and testimony are granted in part and denied in part as presented in this order.
2. That any party presenting pre-filed testimony in this case may re-file the testimony to reflect the classification of information as public, Highly Confidential, or Proprietary as reflected in this order or as agreed and clarified by the parties between themselves.
3. That this order shall become effective on August 31, 2001.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Murray, Lumpe and Gaw, CC., concur  
Keith Thornburg, Regulatory Law Judge

Alt/Secretary:

Thornburg/L. Boyce

Date Circulated

8-23 PM-2001-585  
CASE NO.

KS  
Simmons, Chair

07  
Murray, Commissioner

8-23, 10  
Lumpe, Commissioner

7  
Gaw, Commissioner

Commissioner

Agenda Date

8-28

Action taken:

4-0 4A

Must Vote Not Later Than

*Why don't we  
wait + give the parties to  
an opportunity to  
argue their positions*

## STATE OF MISSOURI

### OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 28<sup>th</sup> day of August 2001.

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

