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## Missouri Public Service Commission

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September 18, 2001

ROBERT J. QUINN, JR.  
Executive Director  
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Director, Utility Operations  
ROBERT SCHALLENBERG  
Director, Utility Services  
DONNA M. KOLILIS  
Director, Administration  
DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

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

FILED

SEP 18 2001

Missouri Public  
Service Commission

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

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies each of the two versions of **FINDINGS OF FACT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Lera L. Shemwell  
Associate General Counsel  
(573) 751-7431  
(573) 751-9285 (Fax)

LLS:sw  
Enclosure  
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

FILED  
SEP 18 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

**Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

UtiliCorp is a Delaware corporation, authorized to do business in Missouri, and is a gas corporation as defined in 386.

UtiliCorp Pipeline Systems, Inc. (UPL) is a wholly owned subsidiary of UtiliCorp that presently holds all of the capital stock of Missouri Pipeline Company and Missouri Gas Company.

Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC) are Delaware corporations and a wholly owned subsidiaries of UPL.

Gateway is a Delaware corporation in good standing authorized to do business in Missouri, and a wholly owned subsidiary of Mogas, LLC. Gateway currently conducts no business operations in Missouri or elsewhere.

UtiliCorp, Gateway and UPL entered into a stock purchase agreement on April 12, 2001, whereby Gateway agreed to purchase and UtiliCorp agreed to sell all of the outstanding shares of UPL.

As a newly-formed corporation, Gateway itself has no experience in the natural gas utility industry. The record shows that Gateway has applied for authority to acquire the outstanding shares of UPL. UtiliCorp has not applied for authority to sell the capital stock of UPL. Intervenors have expressed concerns about operational reliability. Staff and Intervenors have challenged Gateway's general financial health and its ability to absorb losses that may result from the proposed transaction. Staff has raised concerns about the inability of the system to be made profitable because of Gateway's inability to raise rates because of, among other things, competition in the area.

This Commission determined that it had jurisdiction to decide this case because UtiliCorp is the actual seller of assets that are used and useful in the performance of its duties to the public. Under Section 393.190.1, a gas utility must apply for and receive authorization from this Commission before it can sell, transfer, assign or otherwise dispose of assets that are used and useful in the performance of its duties to the public.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law.

UtiliCorp is a gas corporation as defined in Section 386.020, RSMo 2000. Consequently, the Missouri Public Service Commission has jurisdiction over the services, activities, and rates of UtiliCorp pursuant to Section 386.250 and Chapter 393.

Section 393.190.1 of the Missouri statutes requires a gas corporation, before selling, leasing, transferring, mortgaging, or otherwise disposing of any part of its franchise works or system necessary or useful in the performance of its duties to the public nor by any means direct or indirect merge or consolidate any such works or system or any part thereof without first securing from the Commission an order authorizing it so to do.

Before a utility can sell assets that are necessary and useful in the performance of its duties to the public it must obtain approval of the Commission.” (State ex rel Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466(Mo.App. 1980).

In order to approve this transaction, the Commission must determine that the proposed transaction is not detrimental to the public interest. State ex rel City of St. Louis v. Public Service Comm’n., 73 S.W.2d 393, 400 (Mo.banc 1934).

The Commission has determined that the proposed transaction should not be authorized. It is detrimental to the public interest because of the higher cost of service related to capital structure with no substantive evidence of offsetting benefits, the fact that there is no reasonable plan to make this currently uneconomic system viable and the potential for loss of jurisdiction over this system.

There are no conditions that this Commission can order that would protect the public from the detriments noted above.

**Service List for  
Case No. GM-2001-585  
Revised: September 18, 2001 (SW)**

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**FILED**

SEP 18 2001

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Missouri Public  
Service Commission

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

**Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

UtiliCorp is a Delaware corporation, authorized to do business in Missouri, and is a gas corporation as defined in 386.

UtiliCorp Pipeline Systems, Inc. (UPL) is a wholly owned subsidiary of UtiliCorp that presently holds all of the capital stock of Missouri Pipeline Company and Missouri Gas Company.

Missouri Pipeline Company (MPC) Missouri Gas Company (MGC) are Delaware corporations and wholly owned subsidiaries of UPL.

Gateway is a Delaware corporation in good standing authorized to do business in Missouri, and is a wholly owned subsidiary of Mogas, LLC. Gateway currently conducts no business operations in Missouri or elsewhere.

UtiliCorp, Gateway and UPL entered into a stock purchase agreement on April 12, 2001, whereby Gateway agreed to purchase and UtiliCorp agreed to sell all of the outstanding shares of UPL.

Gateway itself has no experience in the natural gas utility industry. One of its owners does have extensive experience. The record shows that Gateway has applied for authority to acquire the outstanding shares of UPL. UtiliCorp has not applied for authority to sell the capital stock of UPL. Intervenors have expressed concerns about operational reliability. Staff and Intervenors have challenged Gateway's general financial health and its ability to absorb losses that may result from the proposed transaction. Staff has raised concerns about the inability of the system to be made profitable because of Gateway's inability to raise rates because of competition in the

area in addition to the flex-down contracts that currently exist on the MPC and MGC pipelines.

This Commission determined that it had jurisdiction to decide this case because UtiliCorp is the actual seller of assets that are used and useful in the performance of its duties to the public. Under Section 393.190.1, a gas utility must apply for and receive authorization from this Commission before it can sell, transfer, assign or otherwise dispose of assets that are used and useful in the performance of its duties to the public.

The Commission finds that UtiliCorp must apply to this Commission for an order authorizing it to sell, assign, transfer or otherwise dispose of these assets. Absent such authorization, any such sale, assignment, transfer or other disposal is void. Application by Gateway to acquire this stock does not relieve UtiliCorp from its statutory obligation to request such authority.

The Commission may consolidate this case with any future application by UtiliCorp.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law.

UtiliCorp is a gas corporation as defined in Section 386.020, RSMo 2000. Consequently, the Missouri Public Service Commission has jurisdiction over the services, activities, and rates of UtiliCorp pursuant to Section 386.250 and Chapter 393.

Section 393.190.1 of the Missouri statutes requires a gas corporation, before selling, leasing, transferring, mortgaging, or otherwise disposing of any part of its franchise works or system necessary or useful in the performance of its duties to the public nor by any means direct or indirect merge or consolidate any such works or system or any part thereof without first securing from the Commission an order authorizing it so to do.

Before a utility can sell assets that are necessary and useful in the performance of its duties to the public it must obtain approval of the Commission." (State ex rel Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466(Mo.App. 1980).

By Commission Rule, a gas corporation seeking such authorization must show "why the proposed acquisition of the stock of the public utility is not detrimental to the public interest." 4 CSR 240-2.060(7)(D). Based on the findings of fact made herein, the Commission concludes that UtiliCorp must apply to this Commission for authorization to sell, transfer, lease, mortgage, or otherwise dispose of MPC and MGC or such sale, transfer, mortgage, or other disposal will be void.

### **IT IS THEREFORE ORDERED:**

1. Any decision in this case will be postponed until UtiliCorp completes the required application for authority to sell, transfer, assign, or otherwise dispose of the assets, Missouri Pipeline Company and Missouri GAs Company.

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Case No. GM-2001-585  
Revised: September 18, 2001 (SW)**

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