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September 17, 2001

VIA FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
Jefferson City, MO 65101



Re: In the Matter of the Joint Application of Gateway
Pipeline Co., 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

FILED
SEP 18 2001
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above matter are an original and eight (8) copies of the Brief of AmerenUE.

Please kindly acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed, self-addressed, stamped envelope.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Byrne".

Thomas M. Byrne
Associate General Counsel

TMB:rd
Enclosures

**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)
and the Acquisition by Gateway Pipeline)
Company of the Outstanding Shares of)
UtiliCorp Pipeline Systems, Inc.)

Case No. GM-2001-585

BRIEF OF AMERENUE

In this proceeding, Gateway Pipeline Company, Inc. ("Gateway"), Missouri Gas Company ("MGC") and Missouri Pipeline Company ("MPC") (collectively the "Applicants"), have filed a joint application with the Missouri Public Service Commission ("Commission") requesting approval of Gateway's proposed acquisition of all of the outstanding shares of stock of UtiliCorp Pipeline Systems, Inc. ("UPL"), the parent corporation of both MGC and MPC (the "Transaction"). MPC and MGC are intrastate natural gas pipelines that provide access to gas supplies for Union Electric Company d/b/a AmerenUE ("AmerenUE"), Laclede Gas Company ("Laclede") and various other shippers. AmerenUE subscribes to firm transportation on MPC which is necessary to provide gas supplies to its Wentzville District Service Area on peak days. Without the gas supplies provided through MPC, AmerenUE would be unable to provide service to its Wentzville District Service Area customers on the coldest winter days.

(Exh. No. 7, p. 4.)

AmerenUE has not taken a position in this proceeding either in favor of or against Gateway's proposed acquisition of the stock of UPL. As many of the parties in this case

have pointed out, the legal standard to be applied in this proceeding is that the Transaction must be approved unless it can be demonstrated that it is detrimental to the public interest. See State ex rel. Fee Fee Trunk Sewer Co., Inc. v. Litz, 596 S.W.2d 466 (Mo. App. 1980). Based on this standard, in AmerenUE's view, the Commission, as a general rule, should approve transactions of this type. Utilities, like other entities, should have the right to sell or otherwise dispose of their private property unless there is clear evidence that a public detriment will result. In this case, AmerenUE has been unable to determine to its satisfaction whether or not there is clear evidence of a public detriment. This is due to the fact that the Applicants have designated much of the information about their ownership, financing and business plans associated with this Transaction as "Highly Confidential." Under the terms of the protective order issued by the Commission in this case, AmerenUE business personnel are precluded from reviewing such information.

As a consequence, AmerenUE has elected to identify the concerns it has about this Transaction that it believes the Commission must consider in deciding whether to approve the Transaction. AmerenUE witness Julianne J. Heins listed five areas of concern in her Rebuttal Testimony. The first concern Ms. Heins identified was the continued operational reliability of MPC upon its acquisition by Gateway. (Exh. No. 7, p. 5.) However, subsequent developments in this proceeding have substantially ameliorated AmerenUE's concern about this issue. In particular, Gateway has agreed to the operations-related conditions proposed in the Rebuttal Testimony of Staff Witness John D. Kottwitz. (Exh. No. 14, pp. 3-4; Ex. No. 5, p. 2.) These conditions require MPC and MGC to follow applicable pipeline safety regulations; use an adequate number of qualified personnel to operate and maintain the pipelines and respond to emergencies;

and fully maintain the call center, dispatch, emergency response, SCADA monitoring and gas control functions of the pipelines. As Ms. Heins acknowledged in her Cross Surrebuttal Testimony, if these conditions are required by the Commission, and adhered to by Gateway, they will substantially alleviate the concern AmerenUE expressed regarding operational reliability of the MPC system. (Exh. No. 8, p. 3.) It is also worth noting that the executive at Gateway who will be in charge of the operations of the MPC and MGC systems, David J. Ries, has significant experience in operating natural gas pipelines, as he explained in his direct testimony and in response to questions raised at the hearing. (See Exh. No. 4, Schedule 1 and Tr. pp. 305-306.) AmerenUE does not have any concerns about Mr. Ries' qualifications, or his ability to operate the MPC and MGC systems.

However, the other concerns raised in Ms. Heins' Rebuttal Testimony still remain, and in fact have only increased as this case has progressed. The second concern identified in Ms. Heins' testimony is that Gateway may not have adequate financial resources to operate and maintain MPC over the long run. (Exh. No. 7, p. 5.) Although AmerenUE's business personnel did not have access to the detailed financial information that Gateway provided in this proceeding, the information that was available suggests that the financial viability of Gateway should be a serious concern of the Commission's. The two Staff witnesses who conducted a detailed review of Gateway's pro forma financial statements and other financial information concluded that this Transaction is detrimental to the public because of financial problems, among other reasons. (See Exh. No. 17, Rebuttal Testimony of Mark L. Oligschlaeger and Exh. No. 19, Reclassified Rebuttal Testimony of Roberta A. McKiddy.) Ms. McKiddy, in particular, argued that

Gateway has provided no definitive plan to make the operations of MPC and MGC financially viable in the future. (Exh. No. 19, p. 22.) In addition, Ms. McKiddy testified that if this Transaction was approved, the parent of Gateway would have the ability to pledge UPL's common stock as collateral for its own indebtedness without Commission approval, thereby placing the assets of MPC and MGC at risk. (Exh. No. 19, p. 17).

The Applicants have provided little or nothing to rebut the Staff's testimony challenging the financial viability of the Transaction. Moreover, they have been reluctant to publicly disclose the ownership of Mogas Energy LLC ("Mogas"), which would be the ultimate parent of the pipelines if this transaction is approved. Although it is now clear that Dennis M. Langly will be the majority owner of Mogas (Exh. 19, pp. 16-17), it is still not clear, after extensive discovery and three days of hearing, who will be the other equity holders of that parent. In particular, TCW's share of the ownership represents investment by TCW on behalf of unidentified parties. As Ms. McKiddy testified, the ultimate investor for this part of the ownership of Mogas could be Mr. Langly, or it could be someone else. (Tr. 880-881.) In any event, Gateway's failure to provide information about the ultimate owners of its parent corporation have only increased AmerenUE's concerns about the financial viability of the pipelines if this Transaction is approved. The bottom line on this issue is that the Commission should not lightly dismiss the conclusions of the Staff experts who have reviewed the financial information provided by Gateway.

The next concerns identified by AmerenUE witness Heins are that MPC's rates may increase and the quality of service may diminish if this Transaction is approved. Ms. Heins testified that MPC has had very stable rates and a high level of service in the

years since it began its operations, and these circumstances may not continue if Gateway is permitted to purchase the pipelines. (Exh. No. 7, pp. 5-6.) In response to these concerns, the Applicants have argued that whether this Transaction is approved or not, the owner of MPC and MGC will always be able to propose changes in tariffed rates and services, and, in any event, any such proposed change would be subject to the approval of the Commission in a separate proceeding. (Exh. No. 6, pp. 6-7). In addition, at the hearing, in response to questions from Commissioner Murray, Ms. Heins acknowledged that AmerenUE's concerns about service diminution are speculative at this point. (Tr. p. 504.)

Indeed all of the remaining concerns of AmerenUE are speculative, in the sense that the future cannot be predicted with certainty. But in this case, there is evidence that increases in rates and decreases in service level are more likely to occur if this Transaction is approved. The Staff witnesses' testimony regarding the lack of apparent financial viability for the project suggests, to Staff witness McKiddy at least, that Gateway may need to seek rate relief to earn any return on MPC and MGC operations. (Exh. 19, pp. 22-23.) In addition, Laclede, through the testimony of Dr. Christopher C. Pflaum, has submitted extensive evidence concerning the track record of Mr. Langly in operating Kansas Pipeline in Missouri, Kansas and Oklahoma. This evidence suggests that rates sharply increased and serious service disruptions occurred following Mr. Langly's acquisition of these properties. (Exh. 9, pp. 5-8.) Gateway's witness, Jeff D. Makholm, argues that Dr. Pflaum has presented the facts regarding Kansas Pipeline in a misleading fashion, and in any event they are a distraction to the Commission that is irrelevant in deciding this case. (Exh. No. 6, pp. 16-17.) AmerenUE completely

disagrees with the latter point. In fact, it is hard to imagine anything that could be more germane to the Commission's decision in this case than the track record of the ultimate equity owner of Gateway in operating similar facilities. If Dr. Pflaum's characterization of Kansas Pipeline's operations is correct, the risk of increases in rates and decreases in service for MPC is certainly more than mere speculation.

The Commission itself has been extremely critical of Kansas Pipeline's operations in proceedings before the Federal Energy Regulatory Commission ("FERC"). (Exh.9, p. 11-12.) This is another factor that suggests that AmerenUE's concerns regarding rates and services are more than empty speculation. In this case, the Commission should carefully review the evidence submitted by all of the parties concerning Mr. Langly's track record as an operator of gas pipelines. The Commission should only approve this Transaction if it concludes that Mr. Langly's ultimate ownership of the pipelines involved in this case will not be detrimental to the public.

AmerenUE also notes that although any changes to MPC and MGC rates would have to be the subject of a separate proceeding before the Commission, that fact alone does not make the potential for such changes irrelevant to the Commission's decision in this case. If, through mismanagement or lack of financial viability, the pipelines were required to file a rate case to relieve financial distress, the Commission would be faced with the Hobson's choice of approving the rate increase, or having a bankrupt natural gas pipeline in the state. The time to consider the financial viability of the pipeline, and its potential to require rate increases in the future, is now, before the Commission is faced with such a no-win decision.

The final concern expressed in Ms. Heins' testimony is that if this Transaction is approved, the Commission should not permit it to close over the winter period, between mid-October, 2001 and April 1, 2002. The risk of service disruptions due to the ownership transition is simply too great a risk to permit the Transaction to close over the critical winter period. (Exh. No. 7, pp. 7-8.) Significantly, Mr. Ries also raised this concern in his Direct Testimony filed on behalf of Gateway. (Exh. No. 4, p. 4.) At the hearing, in response to questions from Commissioner Murray, Ms. Heins acknowledged that if Gateway retained the existing MPC/MGC employees under contract for the winter, it would resolve some of the concerns created by a winter transition. (Tr. p. 506.) But in the absence of such a commitment from Gateway, AmerenUE continues to recommend that the Applicants should be required to close this Transaction outside the winter period, if their application is approved.

As was stated at the beginning of this brief, AmerenUE is taking no position on whether this application should be approved. But if the application is approved, it is clear from the record in this proceeding that the Commission should require Gateway to meet certain conditions. Such conditions are required by the Commission in almost all stock acquisition/merger cases (Tr. 687), and this case should be no exception.

One set of conditions that should clearly be included in any order approving this Transaction are the operational conditions proposed by Staff witness Kottwitz and accepted by Gateway. In addition, AmerenUE supports the implementation of the seven conditions proposed in the Rebuttal Testimony of Laclede witness Dr. Pflaum. (Exh. No. 9, pp. 14-15.) These conditions would:

1. Impose a rate cap for a period of not less than five years.

2. Place MPC and MGC at risk for any loss of transportation volumes or incremental expenditures designed to increase the throughput capacity of the pipelines.
3. Prohibit MPC or MGC from bypassing local distribution companies.
4. Require that MPC and MGC provide their existing customers with a “right of first refusal” to retain their existing contract entitlements to firm transportation capacity at the end of the contract terms if they agree to match the highest rate and term of service offered by another potential customer.
5. Prohibit MPC or MGC from taking any action that would subject them to FERC jurisdiction without prior approval of the Commission.
6. Require MPC and MGC to submit plans showing that the addition of any firm transportation customers that increase their peak throughput will not impose costs or compromise service to existing customers.
7. Require MPC and MGC to use firm services on interstate pipelines to support firm service to their customers.

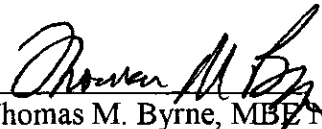
AmerenUE believes that it is particularly important for the Commission to impose three of these conditions. First, it should retain the prohibition against bypass that currently exists for MPC. If MPC is allowed to bypass its local distribution company (“LDC”) customers to directly serve industrial end users, increasing costs will have to be borne by the remaining customers of the bypassed LDC. This is clearly contrary to the public interest. Second, AmerenUE strongly supports permitting existing firm customers of MPC and MGC to exercise a “right of first refusal” which will enable them to retain

their capacity at the end of their contract term by agreeing to match the highest rate and longest term offered by an alternative customer for the capacity. This condition will prevent the pipelines from selling firm capacity, which is needed to serve the winter needs of residential customers, out from under LDCs at the end of their contract terms. Third, AmerenUE strongly supports the imposition of a requirement that MPC and MGC must affirmatively demonstrate that the addition of new customers will not compromise service to its existing customers. For example, AmerenUE has certain pressure requirements for its deliveries from MPC that should not be compromised as a result of the addition of new customers. At a bare minimum, these conditions should be required if the Commission chooses to approve this Transaction.

Respectfully submitted,

UNION ELECTRIC COMPANY

d/b/a AmerenUE

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Dated: September 17, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, *Brief of AmerenUE / MPSC Case No. GM-2001-585*, has been served on this 17th day of September 2001, to all parties listed on the attached Service List.

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