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September 19, 2001

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

FILED²

SEP 19 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 **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

FILED²
SEP 19 2001

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

Missouri Public
Service Commission

OFFICE OF THE PUBLIC COUNSEL'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

COMES NOW, the Office of the Public Counsel, and submits the following
proposed findings of fact and conclusions of law:

FINDINGS OF FACT

The Missouri Public Service Commission, having considered the evidence presented in pre-filed testimony and at the evidentiary hearing held September 5, 6 and 7, 2001, and upon reviewing the record as a whole, makes the following findings of fact. The positions and arguments of all parties have been considered by the Commission in making these findings. The failure to specifically address a piece of evidence, position or argument of any party does not mean that the Commission has failed to consider relevant evidence.

1. UtiliCorp United is a Delaware Corporation, authorized to do business in Missouri. UtiliCorp is the owner, through its subsidiary, UtiliCorp Pipeline Systems (UPL) of Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC). UPL, MPC and MGC are all Delaware Corporations which are authorized to do business in Missouri. UPL is a wholly owned subsidiary of UtiliCorp. It's holdings consist of MPC, MGC and an unused short interstate pipeline, known in this proceeding as the Trans Mississippi Pipeline (TMP) which runs from Missouri to Illinois under the Mississippi River. The TMP is currently not in use and is currently not regulated.

2. UtiliCorp, MPC and MGC are public utilities as defined at §386.020(42), and all three corporations are subject to the jurisdiction of the Missouri Public Service Commission.

3. Gateway Pipeline Company is a Delaware Corporation which was formed in early 2001. It is authorized to do business in the State of Missouri. Currently, Gateway conducts no business in Missouri or in any other state. Gateway is not regulated by the Commission.

4. Gateway is owned, in its entirety, by Mogas Energy LLC, a Delaware limited liability corporation. Mogas has no assets other than Gateway and is not authorized to do business in the State of Missouri. Mogas conducts no business in Missouri or in any other state. Mogas is not regulated by the Commission.

5. UtiliCorp, Gateway and UPL entered into an agreement on April 12, 2001, in which Gateway agreed to purchase all of UtiliCorp's shares of UPL. As a result of this purchase, the ownership of the regulated utilities MPC and MGC will change from UtiliCorp to Gateway.

6. At the time it was granted a certificate of convenience and necessity, MPC was restricted from connecting with the interstate portion of pipeline owned by the same parent company. That interstate portion of pipeline is that property which has been referred to in this case as the TMP. Prior to its acquisition by UtiliCorp, MPC made no application to remove this restriction from its certificate.

7. UtiliCorp acquired MPC, MGC and the TMP in 1995. At the time of its acquisition of these pipelines, it agreed that no changes would be made to the certificate, and agreed that the restriction against connecting MPC to the interstate portion of the

pipeline would remain in effect. Since its acquisition of these properties in 1995, UtiliCorp has made no application to remove this restriction from the certificate of MPC, or to have this restriction waived. No party has presented any evidence which would suggest that the restriction expired of its own accord.

8. Gateway, as a newly formed corporation has not history or experience in the natural gas utility industry. The record shows that Gateway has applied for the authority to acquire UPL. UtiliCorp has not applied to the Commission for authority to sell the capital stock of UPL. UtiliCorp has not applied to the Commission for the authority to sell the stock of UPL or to sell MPC or MGC.

9. Gateway presented evidence that David Ries has several years of management experience in various interstate pipeline companies. Gateway did not present evidence that Gateway Pipeline would employ persons familiar with the Missouri Commission's regulatory process or requirements. Gateway has suggested to the Commission that it would be able to operate these intrastate pipelines without detriment to the public interest in the event that it is able implement certain changes regarding the three pipelines, MPC, MGC and the TMP. Gateway provided no evidence regarding the costs necessary to implement these changes.

10. Staff, Public Counsel and the Intervenors have expressed concerns about the ability to Gateway to operate the Missouri regulated pipelines without detriment to the public interest. These concerns include valid questions about the operational reliability and financial viability of Gateway. The parties have presented evidence which calls into question the ability of Gateway to operate these intrastate pipelines on an ongoing basis without detriment to the public interest. Several parties have raised concerns about

Gateway's ability to absorb the losses which may result from the proposed transaction. Gateway has stated its intent to abide by certain gas safety provisions, but has not provided any further evidence that operational reliability will not suffer. Gateway has not provided evidence that it will have the ability to maintain or improve the pipelines' economic viability without risking the loss of Commission jurisdiction.

11. Gateway has presented evidence which provides a general outline of the financing provisions of this transaction. The Intervenor and Staff have presented evidence that the known portions of Gateway's financing plan would be detrimental to the public interest. Gateway has not presented evidence which would establish that its proposed financing strategy will not be detrimental to the public interest.

CONCLUSIONS OF LAW

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

1. This Commission has jurisdiction to decide this matter because UtiliCorp is the actual seller of assets that are used and useful in the performance of its duties to the public. The Commission has jurisdiction over the proposed transaction pursuant to §§386.250 and 393.190 RSMo (2000).

2. The Commission's authority to regulate the sale, transfer, or disposition of a utility's system or assets is broad. State ex rel. Marigney Creek v. PSC, 537 S.W.2d 388 (Mo. banc 1988). Before deciding whether to approve this transaction, pursuant to Commission Rule 4 CSR240-2.060(9)(C), the Applicants must show why the proposed acquisition is not detrimental to the public interest. In considering this application, the Commission is mindful that the right to sell property is an important incident of the

ownership thereof and that "[a] property owner should be allowed to sell his property unless it would be detrimental to the public." State ex rel. City of St. Louis v. Public Service Commission, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934).

3. The purpose of the Commission's inquiry is to ensure the continuation of adequate service to the public served by the utility. State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980). To that end, the Commission has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset safely and efficiently. (See In the Matter of the Joint Application of Missouri Gas Energy et al., Case No. GM-94-252 (Report and Order, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.) The Matter of the Joint Application of Missouri-American Water Company and United Water Missouri, Inc., WM-2000-222 (2000),

4. In order to approve this transaction, the Commission must find, on the basis of all of the evidence presented in the case, that the proposed transaction is not detrimental to the public interest. State ex rel. City of St. Louis v. Public Service Commission, 73 S.W.2d 393, 400 (Mo. App. 1980).

5. The burden for establishing that that transaction will not cause a detriment to the public interest is on the applicant. Application of KCPL, EM-2001-464, (Commissioner Gaw, dissenting, at p.3.)

6. The Commission has determined that the application in this case should be denied. The Commission finds that the Joint Applicants have failed to prove that this transaction will not be detrimental to the public interest.

7. The Commission further finds that even if the Joint Applicants had presented sufficient evidence to establish a *prima facie* case that this transaction would not be detrimental to the public interest, the Commission finds that sufficient evidence has been presented in this matter which would rebut such a *prima facie* finding.

8. This transaction is detrimental to the public interest because the higher cost of service solely due to the capital structure, with no offsetting benefits to the pipelines' customers.


9. This transaction is detrimental to the public interest because there is not reasonable plan to make this currently uneconomic system financially viable, and indeed, the current proposal supports a finding that the systems will be in a worse situation economically because of the higher cost of service.

10. While Gateway has proposed a plan which could improve the economic viability of the system, Gateway failed to present evidence of the costs to achieve this improvement. The method Gateway proposed to improve economic viability has the additional detrimental effect of creating the likelihood that this Commission would lose jurisdiction over MPC and MGC. Further, implementing the changes which could improve the system would require that MPC or a parent company apply to this Commission to waive or remove a restriction currently contained in its certificate of convenience and necessity, prohibiting it from connecting to an interstate pipeline also owned by the same parent company.

11. No conditions which this Commission could impose would protect the public from the detriments it will suffer if this transaction is approved.

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 faxed and mailed or hand-delivered to the following this 12th day of September 2001:

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