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September 24, 2001

Mr. Dale Hardy Roberts, Secretary
Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, MO 65102-0360

FILED³
SEP 24 2001

Missouri Public
Service Commission

**Re: Gateway Pipeline Company, et al.
Case No. GM-2001-585**

Dear Mr. Roberts:

On behalf of UtiliCorp United Inc., Missouri Pipeline Company and Missouri Gas Company, enclosed for filing in the above-referenced case please find an original and eight (8) copies of Objection to Brief of the Staff and/or Motion to Strike or Disregard Selected Portions Thereof. A copy has also been hand-delivered to the Office of the Public Counsel and mailed to all parties of record.

Thank you for your assistance with this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:


Paul A. Boudreau

PAB/aw

Enclosures

cc: Office of the Public Counsel
Parties of Record

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

FILED³

SEP 24 2001

In the Matter of the Joint Application of)
Gateway Pipeline Company, Inc.)
Missouri Gas Company and Missouri)
Pipeline Company.)

Case No. GM-2001-585

Missouri Public
Service Commission

**OBJECTION TO BRIEF OF THE STAFF AND/OR
MOTION TO STRIKE OR DISREGARD SELECTED PORTIONS THEREOF**

COME NOW UtiliCorp United Inc. ("UtiliCorp"), Missouri Pipeline Company ("MPC") and Missouri Gas Company ("MGC"), and respectfully state as follows to the Missouri Public Service Commission ("Commission"):

1. UtiliCorp, MPC and MGC object to the argument included in the Brief of the Staff of the Commission that addresses an "issue" not heretofore identified in the case and request that the Commission strike or disregard those portions of Staff's Brief identified herein.

2. Staff has raised a new "issue" in its post-hearing Brief. Specifically, the first full paragraph on page 4 of Staff's Brief contends that there is a procedural defect in the Joint Application in this case. UtiliCorp, Staff contends, "made itself a party to the case, by the entry of appearance of counsel," but, Staff continues, "UtiliCorp has never made any application to this Commission to sell these assets." Staff elaborates on this new contention at pages 27 and 28 of its Brief under the topic "**V. Procedural Issues.**" There, Staff requests that "the Commission postpone a decision until UtiliCorp completes the required application."

3. This procedural issue, raised for the first time in Staff's post-hearing Brief, is not properly before the Commission. Indeed, Staff did not include this issue on its List of Issues filed with the Commission on August 17, 2001. Moreover, at no time prior to this has any party, formally or informally, suggested that the Joint Application was deficient in any respect because UtiliCorp was not identified as one of the Joint Applicants at the outset. Rather, this new

argument clearly is calculated to induce the Commission to deny the Joint Application or further delay the proceedings. It is essentially a motion to dismiss or stay on procedural grounds which should have been (but was not) filed long before the close of the record in this case. Consequently, this new issue should be disregarded on the grounds it has been waived or, as explained below, that it already has been addressed by the Commission.

4. The procedural argument offered by Staff is totally without merit. Indeed, it appears to be an effort calculated to obfuscate the facts and mislead the Commission. UtiliCorp did not "make itself a party to the case" as Staff claims. To the contrary, the Commission made UtiliCorp a party to the case. This Commission will recall that in its May 24, 2001, Order Denying Jurisdiction and Order Directing Filing and Order Directing Notice, the Commission determined it had jurisdiction over the subject matter of the Joint Application. In doing so, it stated as follows:

UtiliCorp United Inc., a Necessary Party

Although UtiliCorp is the seller, it did not join in the application. Because UtiliCorp is a necessary party to a full and fair adjudication of this matter, the Commission will add UtiliCorp as a party to this case. UtiliCorp should direct its attorney to file an entry of appearance as soon as possible.

Shortly thereafter, on June 1, 2001, attorneys for UtiliCorp entered their appearance in accordance with that directive.

5. Putting Staff's factual misrepresentations aside, there is no technical deficiency in the Joint Application. The actual transaction involves the purchase of capital stock of UtiliCorp Pipeline Systems, Inc. ("UPL"), the unregulated parent company of MPC and MGC by Gateway Pipeline Company, Inc. ("Gateway"). The Joint Application for approval for Gateway to acquire UPL's stock was filed on April 19, 2001, by Gateway, MPC and MGC pursuant to §393.190 RSMo. 2000. The Joint Application requested that the Commission find it lacked jurisdiction

over the involved Stock Purchase Agreement or, in the alternative, that it authorize the acquisition by Gateway of the capital stock of UPL. The Joint Application conformed in all respects with the Commission's rule governing utility stock acquisitions appearing at 4 C.S.R. 240-2.060 (12). That rule requires that an Application for approval to purchase stock include a copy of "any agreement entered into with shareholders to purchase stock", which was provided; a certified copy of the Resolution of the Board of Directors of the purchaser (i.e., Gateway), which was provided; and "reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest," which was also provided. As noted above, Gateway was a named applicant. Consequently, the Joint Application was complete in all material and relevant respects.

6. The Joint Application is in full compliance as well with the Commission's rule governing application for a sale of utility's franchise, works or system. *See*, 4 C.S.R. 240-2.060 (7). The Joint Applicants complied with the Commission's specific request that a Tax Impact Statement be filed.¹ Moreover, the prepared direct testimony of Joint Applicants witnesses Richard Kreul and David Ries offered information and schedules addressing each of the necessary elements of that rule, as well as the rule governing stock acquisitions. All technical filing requirements have been met.

7. Finally, Staff appears to have ignored two crucial and overriding facts. First, the owners of the regulated assets in this case (the intrastate pipeline system), MPC and MGC, are named applicants in the case. Ultimately, it is their works and systems that are the real subject of this proceeding. Further, as noted above, the Commission has previously determined that

¹ The Joint Applicants filed a Tax Impact Statement on June 5, 2001.

UtiliCorp is a necessary party and expressly made it a party to this case in its May 24, 2001, Order to provide for a "full and fair adjudication of this matter." Essentially, the Commission made UtiliCorp a party applicant and, thus has already dealt with the Staff's procedural concern.² Far from "rid[ing] the coattails of Gateway," as has been alleged by Staff,³ UtiliCorp has participated fully throughout the case answering numerous Staff data requests, sponsoring testimony and exhibits, cross-examining witnesses and filing a post-hearing brief. No party has been denied due process and, significantly, Staff claims no resulting prejudice or inadequacy of the record. Consequently, there is no procedural or conceptual deficiency with the Joint Application or the proceedings that have taken place in this case.

8. To summarize, Staff's argument that the Joint Application is procedurally flawed simply because UtiliCorp was not originally named as one of the applicants is not properly before the Commission. The Commission dealt with the substance of this matter when it made UtiliCorp a party to the case. At no time since during the course of the proceedings was this matter identified as an issue. Consequently, Staff is barred at this late date from injecting it in the case in an effort to revisit the matter. Moreover, Staff's argument is simply wrong on the facts and the law. The Joint Application for approval of the Stock Purchase Agreement is properly before the Commission. Gateway, MPC and MGC are all applicants in this case and have fully complied with all applicable provisions of the Commission's rules. UtiliCorp has been made a party to the case by the Commission and it has participated fully throughout the proceedings. UtiliCorp's interest in the proceedings has been known from the outset. Indeed, its ownership of UPL's common stock is the very reason the Commission claimed jurisdiction in the

² Staff did not object to the Commission's handling of the matter. Its failure to say anything about this topic at that time is ample evidence that the new procedural issue has no merit and, rather, has the solitary purpose of creating confusion and delay.

³ Staff Brief at p. 28.

first place. Consequently, the new "Procedural Issues" addressed by Staff should be stricken or disregarded.

WHEREFORE, UtiliCorp, MPC and MGC object to Staff's Brief for the reasons aforesaid. For good cause shown, the first full paragraph on page 4 of Staff's Brief and, also, pages 27 and 28 of Staff's Brief should be stricken and/or disregarded by the Commission.

Respectfully submitted,



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Pipeline Company and Missouri Gas Company

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 24th day of September, 2001, to the following:

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A handwritten signature in black ink, appearing to read 'P. A. Boudreau', written over a horizontal line.

Paul A. Boudreau