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October 1, 2001

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General Counsel

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

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 of **STAFF'S REPLY TO UTILICORP'S OBJECTION TO BRIEF OF THE STAFF AND/OR MOTION TO STRIKE.**

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,

Vera L. Shemwell
Associate General Counsel
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LLS:sw
Enclosure
cc: Counsel of Record

FILED³

OCT - 1 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)
Pipeline Company.)

Case No. GM-2001-585

**STAFF'S REPLY TO UTILICORP'S OBJECTION TO BRIEF
OF THE STAFF AND/OR MOTION TO STRIKE**

COMES NOW the Staff of the Commission (Staff) and for its response to UtiliCorp's
Objection to Staff's Brief and/or Motion to Strike states:

1. UtiliCorp has taken an unusual step, asking the Commission to strike a portion of
Staff's brief, which Staff believes warrants a reply.

2. Contrary to UtiliCorp's assertion that Staff raised an "'issue' not heretofore
identified in the case," Objection to Brief of Staff And/Or Motion to Strike Portions Thereof
(Objection to Brief. p. 1), the first issues raised by Joint Applicants and decided by this
Commission were the jurisdiction of the Commission and the procedures that follow.

3. The "Joint Application for Finding of Lack of Jurisdiction or, Alternatively, for
Authority for Gateway Pipeline Company, Inc. to Acquire the Outstanding Shares of UtiliCorp
Pipeline Systems, Inc., and Motion for Expedited Treatment" (Joint Application) argued that the
Commission lacked jurisdiction because this proposed transactio is "simply" a stock transaction
under §393.190.2 RSMo 2000. The Commission, however, determined that the transaction was
a sale by UtiliCorp, the Commission has jurisdiction under §393.190.1, and that UtiliCorp is the
seller under that section of the statute.

4. In its Order Determining Jurisdiction and Order Directing Filing and Order
Directing Notice, (Order Determining Jurisdiction) the Commission concluded that UtiliCorp is

the seller, that UtiliCorp had not joined in the Joint Application, and that the statute requires UtiliCorp to obtain the authorization of the Commission prior to selling or otherwise disposing of assets either directly or indirectly. In that Order, the Commission stated:

“Even though UtiliCorp has not joined in the application, it is the **seller** in the transaction presented and is both a gas and an electrical corporation under §386.020. UtiliCorp is a public utility and is subject to the jurisdiction of the Commission. Under §393.190(1) no gas corporation may sell or otherwise dispose of any part of its works or system nor by any means, direct or indirect, merge or consolidate such works or system with any other corporation **without first obtaining the order of the Commission authorizing it to do so**. In this case UtiliCorp, a regulated public utility, is selling its wholly owned affiliate that in turn owns two regulated companies that own intrastate gas transmission pipelines.” Order Determining Jurisdiction(emphasis added).

5. Even at this late date, UtiliCorp continues to deny Commission jurisdiction, stating in its most recent pleading that the “actual transaction involves the purchase of capital stock” of the unregulated UPL, despite the Commission’s finding of jurisdiction on the basis that UtiliCorp is selling its wholly owned affiliate.

6. The Commission’s determination of jurisdiction, and the order that UtiliCorp be made a party to the case have consequences under the Commission’s rules. There are specific rules for making application to sell assets, 4 CSR 240.2-060 (1), (7) (asset sale rules), that are separate from the application rules for a stock transaction 4 CSR 240.2-060 (1), (12) (stock transaction rules) and UtiliCorp has never filed such an application. Section 393.190.1 requires Commission authorization of a sale of assets, without which the sale is void.

7. UtiliCorp’s claim, in its Objection to Brief, that the Joint Application filed by Gateway and MPC and MGC is in full compliance with the Commission’s rule for sale of assets cannot withstand scrutiny. The asset sale rules require the information listed in 4 CSR 240.2.060(1) to be included in the application. UtiliCorp did not fully comply with these requirements either before or after the Commission’s finding of jurisdiction. The fact that some

of the required information may be contained in the Application by Gateway, MPC and MGC, or that it may be contained in testimony does not help their claim. The rules require completion of an application to sell, and none has never been filed.

8. Contrary to UtiliCorp's statement (Objection to Brief, p. 4) that "at no time prior to this has any party, formally or informally, suggested that the Joint Application was deficient in any respect" the Commission noted a major deficiency early on, stating that "even though UtiliCorp has not joined the application, it is the seller"

9. Based on that finding, the fact that MPC and MGC, who UtiliCorp now portrays as the owners of the regulated assets (Objection to Brief, p. 3), are named applicants is irrelevant. MPC and MGC are not the "seller," - UtiliCorp is.

10. From the discussions in agenda, Staff recognizes that the Commission has generally made its decision in this case. However, Staff is simply pointing out that it benefits no one, not UtiliCorp, not Gateway, not Staff, not the Commission, and not the intervenors, nor their residential consumers, to subject this sale to later attack because statutory requirements were not met. The only request currently in front of the Commission is Gateway's request to authorize Gateway to enter into the purchase agreement. There is no request by Utilicorp for authorization to sell. Therefore, the best way to avoid uncertainty is for UtiliCorp to complete an application and request Commission authorization to sell, in compliance with statutory requirements.

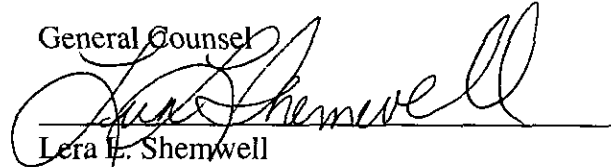
WHEREFORE to eliminate any uncertainty concerning this transaction and to assure that all necessary statutory requirements are satisfied, Staff suggests the Commission require UtiliCorp to complete the requisite application for sale of assets and request an order of this

Commission authorizing it to sell, or otherwise dispose of these assets, prior to completion of this transaction.

Respectfully submitted,

DANA K. JOYCE

General Counsel



Lera E. Shemwell

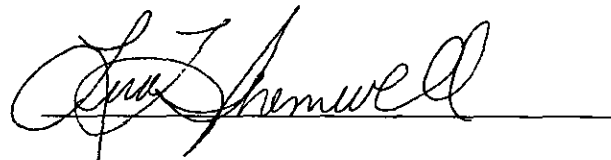
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 1st day of October 2001.



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Revised: October 1, 2001 (SW)**

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