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November 22, 2002

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Missouri Public Service Commission

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Mo. 65102-0360

RE: Case No. GN-2003-0017

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case is an original and the appropriate number of copies of a RESPONSE TO ORDER DIRECTING FILING on behalf of Missouri Pipeline Company.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,

Jeffrey A. Keevil

JAK/er
Enclosures
cc: counsel of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Application of Missouri Pipeline Company for Authorization to Convert to a Limited Liability Company and Change its Name Accordingly	)))))	Case No. GN-2003-0017

RESPONSE TO ORDER DIRECTING FILING

COMES NOW Applicant, Missouri Pipeline Company (hereafter "Applicant"), and in response to the Commission's Order Directing Filing ("Order") issued herein on November 18, 2002, respectfully states as follows:

1. In its November 18, 2002 Order the Commission appeared concerned that there was no precedent for a portion of the relief requested in the Unanimous Stipulation and Agreement ("Stipulation") submitted by the parties. In the Stipulation all the parties have agreed that the Commission should allow Missouri Pipeline Company, LLC, to adopt Missouri Pipeline Company's certificates of convenience and necessity. The Commission has raised the question whether it has taken this approach before.

2. There is ample precedent to clearly establish that the Commission has allowed the transfer of certificates of convenience and necessity from one company to another on numerous prior occasions. For example, *see, e.g., In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company*, Case No. EM-2000-292, 2000 Mo. PSC LEXIS 1646 (2000); *In the Matter of the Joint Application of Missouri-American Water Company and Missouri Cities Water Company,* 3 MPSC 3d 262 (1994); *In the Matter of the Joint Application of Western Resources, Inc., d/b/a Gas*

Service, a Western Resources Company and Southern Union Company, d/b/a Missouri Gas Energy, 2 MPSC 3d 598 (1993). ***See also*** *Footnote 1 herein.*

3. By using the phrase "certificate of service authority" in the Order rather than "certificate of convenience and necessity" (the latter of which is used in the Stipulation), the Order appears to confuse certificates applicable to telecommunications companies and recent Commission treatment of telecommunications certificates of service authority in telecommunications company asset or stock transfer cases with certificates granted to energy, water and sewer companies. This case is not a telecommunications case, nor does it involve an asset or stock transfer (neither is it a merger or acquisition case for that matter). As the Commission is aware, the statutes, terminology and requirements applicable to telecommunications companies, especially in a supposedly competitive environment, regulated under Chapter 392 RSMo are different from those applicable to energy, water and sewer companies regulated under Chapter 393 RSMo. Therefore, whether there would be a concern if this case dealt with a telecommunications company asset or stock transfer is not relevant to this case, and the Commission need not be concerned that it is somehow creating contradictory precedent.

4. More importantly, the relief requested in this case and which is at issue in the Order – authorizing the adoption of the certificates of convenience and necessity of Missouri Pipeline Company in the name of Missouri Pipeline Company, LLC – does not even constitute a "transfer" of the certificates from one company to another. Since Applicant is a Delaware corporation and seeks only authorization to *convert* to a limited liability company (LLC), under the applicable law *the conversion constitutes a continuation of the existence of the converting corporation in the form of an LLC.* As set

forth in the Application, pursuant to Section 266 of the Delaware General Corporation Law:

> (e) After the time the certificate of conversion becomes effective *the corporation shall continue to exist as a limited liability company* . . . and the laws of this State shall apply to the entity to the same extent as prior to such time.
>
> (f) Unless otherwise provided in a resolution of conversion . . . the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion *shall not constitute a dissolution of such corporation and shall constitute a continuation of the existence of the converting corporation in the form of the applicable other entity* [*i.e.,* limited liability company] of this State. (emphasis added)

Also the parties (including Staff) have agreed in the Stipulation with what Delaware law provides, which is that after the conversion, the company's capitalization, balance sheet, assets, liabilities, rate base, income and expenses will remain unchanged. Section 266 of the Delaware General Corporation Law is unambiguously consistent with the Stipulation as it states:

> (d) The conversion of a corporation pursuant to a certificate of conversion under this section *shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion.* . . .

Under Delaware law the company never goes out of existence; it merely changes from a C-corporation to a limited liability company. Since the conversion does not amount to a transfer of assets or liabilities, after the conversion the company's owners, assets, obligations, etc. will remain unchanged. Therefore Missouri Pipeline Company, the corporation, having already been granted by the Commission certificates of convenience and necessity, there exists no legal, practical or other reason to not allow Missouri Pipeline Company, LLC, the limited liability company, to continue to operate under the certificates already granted to Missouri Pipeline Company.

5. The matters set forth in paragraph 4 above – that the conversion will constitute merely a continuation of the corporation in the form of a limited liability company, without affecting its assets, liabilities or obligations – also explain why the Applicant originally sought the relief requested in this case through a simple name change application. This case does not involve a merger, acquisition or sale of assets or stock, but a *conversion*, as to which none of the Commission's statutes or rules clearly apply. As the Commission may recall, in Case No. GN-2002-1102 Applicant filed an adoption notice and tariff to convert to a limited liability company under Delaware law pursuant to the procedure previously set forth in *In the Matter of the Joint Application of Claricom Networks, Inc. et al.,* Case No. TM-2001-669[1], as well as the instructions of the Commission's Chief Regulatory Law Judge. The adoption notice and tariff bore a **proposed effective date of July 1, 2002**, in order to allow Applicant to achieve certain tax efficiencies associated with limited liability companies as soon as possible. Staff, however, filed a recommendation in Case No. GN-2002-1102 to reject Applicant's filing in that case on the basis that Applicant's proposed conversion under Delaware law from a Delaware corporation to a Delaware limited liability company required an application under Section 393.250 RSMo pertaining to reorganizations. On June 27, 2002, the Commission issued an Order Suspending Applicant's Tariff in Case No. GN-2002-1102 on the basis of Staff's recommendation. Therefore, Applicant filed an application (which

[1] In the *Claricom* case, even though it dealt with a telecommunications company, the Staff recognized that Claricom, which was organized and existing under Delaware law, was merely converting from a corporation to a limited liability company and that such a "transaction will not affect the status of the regulated company (Claricom) other than to convert Claricom from a corporation to a limited liability company" and that "**Claricom will continue to hold the certificate and tariff.**" The Commission then required Claricom to merely file a name change application. The same is true of the instant case, thus, Applicant originally sought to accomplish this desired result through the filing of a name change application/adoption notice. The *Claricom* case also dealt with additional matters which are not present in the instant case and therefore do not apply to the proposed transaction.

initiated this case) for approval under Section 393.250 RSMo although it did not believe that its proposed conversion to a limited liability company constitutes the type of corporate reorganization to which 393.250 was intended to apply. At the same time Applicant filed a motion for expedited treatment in which it requested the Commission act on its application by **September 15, 2002**, so that it could make the necessary filings with and receive the required approval from the Delaware Secretary of State by the end of the third quarter of 2002, again with the hope that it could at least receive the desired tax efficiencies for the fourth quarter of 2002.

6. Applicant, as well as the Staff and Office of the Public Counsel ("OPC"), sought to avoid the necessity of a hearing in this case and to that end negotiated in good faith a Unanimous Stipulation and Agreement (the "Stipulation") which resolves all issues raised by any party in this case and requires Applicant to provide certain documentation to Staff and OPC upon the happening of certain conditions. All parties recognized and agreed in the Stipulation that the conversion will not change the company's capitalization, balance sheet, assets, liabilities, tariffs, operations, income or expenses as discussed above. Although due to the progress of either this case or the prior name change case it was unable to achieve the desired tax efficiencies associated with limited liability companies by the end of either the second or third quarter of 2002, Applicant filed the Stipulation on October 24, 2002, with the hope of achieving the desired Commission approval in time to make its conversion by the end of 2002 and receive the desired tax efficiencies with the beginning of the new year.

7. Then, a full 25 days after the Stipulation was filed, the Order Directing Filing was issued which raised an issue no party to the case had raised – and which, as

shown at length above, is not and should not really be an issue – and ordered Staff to make a filing by December 2, 2002. In order to allow Applicant adequate time to make the necessary filings with and receive the required approval from the Delaware Secretary of State to allow the conversion to take effect January 1, 2003, with consideration being given to the holidays, thereby allowing Applicant to achieve the aforementioned tax efficiencies which were originally sought by July 1, 2002, Applicant needs an order from this Commission granting the relief sought in the Stipulation **with an effective date no later than December 12, 2002**.

8. For the reasons set forth hereinabove, Applicant does not believe the Commission needs to wait for a Staff pleading which is not due until December 2 to issue its order; however, if the Commission chooses to so wait, it could still issue an order on December 2 with an effective date of December 12, 2002. Applicant has already gone through more procedural hurdles, at the cost of more time and expense, than the applicant in the *Claricom* case in order to receive the relief the Commission stated therein could be achieved through merely a name change filing. No reason exists to further delay Applicant's requested relief, particularly since Missouri Pipeline Company, LLC constitutes a continuation of Missouri Pipeline Company under Delaware law and will simply continue to hold the certificates under the new name (*see, e.g.*, Footnote 1).

WHEREFORE, Applicant requests an Order from this Commission granting the relief sought in the Stipulation **with an effective date of the Order no later than December 12, 2002.**

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by placing same in United States mail, first class postage paid, or by hand delivery, to the Commission's General Counsel's Office and the Office of the Public Counsel on this 22nd day of November, 2002.