

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

In the Matter of Missouri Gas Energy, a)	
Division of Southern Union Company,)	<u>File No. GS-2013-0400</u>
Concerning a Natural Gas Incident at 910 West)	
48 th Street in Kansas City, Missouri.)	

**MGE’S OPPOSITION TO REHEARING OF THE ORDER
REGARDING HEARTLAND MIDWEST’S MOTION TO AUTHORIZE
DEPOSITIONS OF COMMISSION STAFF MEMBERS**

COMES NOW Respondent, Missouri Gas Energy (“MGE”), and respectfully opposes Heartland Midwest, LLC’s Motion for Rehearing for the following reasons:

1. On November 12, 2014, the Commission entered its Order Regarding Heartland Midwest’s Motion to Authorize Depositions of Commissions Staff Members (respectively the “Order” and the “Motion”). The Commission declined Heartland Midwest’s request to waive the provisions of Section 386.480, RSMo. 2000, and permit Staff to be questioned about information received from third party sources.

2. On November 21, 2014, Heartland Midwest filed a lengthy Motion for Rehearing of the November 12, 2014, Order. The standard for granting rehearing under Commission Rule 4 CSR 240-2.160(1) and Section 386.500(1), RSMo 2000, is well-established and generally requires something more than a mere rehashing of arguments previously made. *See In the matter of Tariff No. 3 of Time Warner Cable Information Services*, Case LT-2006-0162, 2006 WL 2572088 (Mo. P.S.C., September 7, 2006)(“The Commission finds that Time Warner Cable largely rehashes its previous arguments, and has failed to establish sufficient reason to grant its application.”). In this instance, Heartland Midwest’s Motion for Rehearing does not raise any issue not addressed by

Heartland Midwest's multiple filings in support of its motion and provides no good cause for rehearing. For this reason alone, Heartland Midwest's motion for rehearing should be denied.

3. Heartland Midwest's reprise of the balancing test stated in *OPC v. GTE Midwest Inc.*, Case No. TC-96-270 (Nov. 1, 1996), does not merit rehearing because Heartland Midwest's analysis is riddled with contradictions that fatally undercut its arguments.

4. On the one hand, Heartland Midwest proclaims "the public's right to know is paramount" (Motion for Rehearing at heading "A" and ¶¶ 15-23). On the other hand, Heartland Midwest suggests the entry of a Protective Order so that "No one outside the litigation will learn of the information disclosed by Staff." (Motion for Rehearing at ¶¶ 32, 48-53). As noted by Heartland Midwest, the public's right to know has already been considered in the civil case and found to be subordinate to the orderly prosecution of those cases (Motion for Rehearing at ¶¶ 48-53). The issue before the Commission is not the "public's right to know" – it is whether the civil litigants can intrude on Staff's investigatory process and whether the requested waiver is contrary to good public policy and the orderly and expeditious work of the Commission and its Staff. The Commission has ruled that such an intrusion is not warranted and Heartland has provided no additional rationale to the contrary.

5. Similarly, Heartland Midwest urges that waiver of Section 386.480, RSMo. 2000, is compelled by the strong public policy of full pre-trial disclosure (Motion for Rehearing at ¶ 30). However, Heartland Midwest ignores that Section 386.480 is itself a declaration of public policy by the Legislature and is therefore superior to any declaration by a court. *State on Information of Dalton v. Miles Laboratories*, 365 Mo. 350, 366, 282 S.W.2d 564, 574 (Mo. banc 1955) ("For, when the legislature, acting within its constitutional orbit, has declared the public policy of the state, 'such declared policy is sacred ground which we may not invade.'").

6. As the Commission recognized in its Order, application of the public policy set forth in Section 386.480, RSMo. 2000, requires a consideration and balancing of a far broader array of competing interests than the limited policy concern cited by Heartland Midwest. Moreover, the weighing of these interests and the determination of whether a waiver of the statute's protections is within the public interest is a matter entrusted exclusively to the Commission's judgment. As well stated in *In the Matter of the Joint Application of Great Plains Energy Inc.*, Case No. EM-2007-0374, 2008 WL 4764273, at notes 30-35 (Mo. P.S.C. Aug. 5, 2008):

The public interest is a matter of policy to be determined by the Commission. It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served. Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed. This means that some of the public may suffer adverse consequences for the total public interest. Individual rights are subservient to the rights of the public. (Footnotes omitted.)

MGE submits that the Commission carefully and fairly exercised this discretion in its Order when it determined what course of action would best serve the public interest and that nothing asserted by Heartland Midwest demonstrates otherwise.

7. Perhaps the biggest contradiction is that Heartland Midwest suggests that it has a compelling need to know who Staff spoke with so it knows whether there has been complete disclosure of persons with knowledge who should be deposed in the civil cases (Motion for Rehearing at ¶¶ 27-29). A comparison by Staff of Heartland's witness list with its own may well be outside the scope of Section 386.480. However, Heartland Midwest does not retreat from its position that the information must be discussed in depositions subject to the very liberal scope applicable to civil cases.

8. Heartland Midwest is obviously not interested in simply determining whether it has missed any witnesses. Heartland Midwest seeks to conduct depositions, which are under control

of the Court, not the Commission, so that Heartland Midwest can attempt to co-opt the preliminary findings of the interim February 6, 2014, Staff Report into unpaid expert opinions. Indeed, several of the civil plaintiffs have already filed expert witness disclosures indicating that they intend to attempt to qualify Staff as expert witnesses in the civil proceedings.

9. Heartland Midwest's effort to make its request for depositions of Staff seem limited and reasonable ignores the fact that once Staff appears for a deposition, Staff is subject to very broad examination by all parties, and the Commission is without power to stop or limit the civil depositions. *See State ex rel. Tracy v. Dandurand*, 30 S.W.3d 831, 834-35 (Mo. 2000) ("The deposition, with no specific limitations, allows for opposing counsel to probe the expert on the expert's qualifications, knowledge of the subject, information the expert has been provided, the expert's opinions, and all other matters bearing on the expert's opinions and the bases for the opinions.").

10. Heartland Midwest's arguments that a waiver of Section 386.480 will not cause any interference with ongoing proceedings are based on the continued mischaracterization of the February 6, 2014 Report entered in File No. GS-2013-0400 as a "closed investigation" (Motion for Rehearing ¶¶ 37-39). Simultaneously with the February 6, 2014, Report, Staff filed a Complaint in File No. GC-2014-0216, making various allegations against MGE concerning its response to the Incident. On February 19, 2014, the Commission entered an Order closing File No. GS-2013-0400 to avoid any confusion with the ongoing Complaint action, File No. GC-2014-0216. As directed by the Order Establishing Procedural Schedule, dated May 12, 2014, in File No. GC-2014-0216, this continued investigation is ongoing, and MGE continues to supply Staff with the unabridged information obtained in the consolidated discovery in the civil cases. The continued work of Staff concerning the February 19, 2014, incident in File No. GC-2014-0216

would be within the permissible scope of cross examination. The limitations suggested by Heartland Midwest are wholly illusory.

11. Finally, Heartland Midwest resorts to a disingenuous insinuation that MGE is trying to hide information from the civil process or the Commission (Motion for Rehearing ¶¶ 40-46). As Staff has reported to the Commission, MGE has provided the Commission with all information requested by Staff and with complete copies of everything produced or testified to by all parties to the litigation. The MGE personnel involved have been produced for deposition in the civil litigation, along with over one hundred fact witnesses. Heartland Midwest's willingness to mischaracterize and impugn MGE's extraordinary efforts to provide relevant information and comply with all proper discovery requests should only serve to inform the Commission of how little Heartland Midwest can be trusted to obey any of the limits or guidelines it proposes in its Motion for Rehearing.

12. As held by the Commission in the Order, Heartland has presented no reason, let alone an overriding one, for the Commission to deviate from the protections provided by RSMo 386.480 and to permit such ill-defined "discussions" about Staff's preliminary work in a civil deposition. Heartland Midwest's motion for rehearing does not demonstrate any error in the Commission's Order and should accordingly be denied.

WHEREFORE, for these and the reasons Respondent Missouri Gas Energy previously provided, MGE respectfully requests that Heartland Midwest's Motion for Rehearing be DENIED, and for such other relief as the Commission deems appropriate.

Respectfully submitted

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Doing business as MGE

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2014, a true and accurate copy of the foregoing was *electronically* filed with the Missouri Public Service Commission, and served by **email** and **United States mail**, postage prepaid, on the following:

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