

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

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

**MGE’S SURREPLY REGARDING MOTION TO AUTHORIZE DEPOSITION
OF MISSOURI PUBLIC SERVICE COMMISSION STAFF MEMBERS
FILED BY HEARTLAND MIDWEST, LLC.**

COMES NOW Respondent Missouri Gas Energy (“MGE”), and respectfully replies to Heartland Midwest, LLC’s Reply as follows:

1. Although MGE appreciates Heartland’s acknowledgment that settlement discussions between MGE and Staff are off-limits, MGE still objects to Heartland’s request to question Staff about information received from MGE. Allowing Heartland to take the depositions of Commission Staff personnel would have a chilling effect on the function of the Commission in future investigations if information provided to Staff in the course of an investigation is subject to discovery in civil litigation arising from the incident.

2. Heartland’s Reply confuses the concept of definition with the concept of limitation. It is true that Heartland defined the scope of the depositions and the waiver it requests, but Heartland’s proposed definition is so broad that it is virtually unlimited. The “discussions” that Heartland seeks would include Staff’s and the Commission’s deliberative process and work product, as well as anything discussed between Staff and MGE. Since the recommendations of Staff are contained in Staff’s Gas Incident Report at pages 26-28, Heartland’s proposed scope includes such recommendations, as well as the complaint the report recommends on page 28.

3. In contrast to the almost unlimited scope of the inquiry it seeks, Heartland identifies very little factual information that Staff members possess that is not available from other sources. For instance, MGE has already produced for deposition in the civil cases all of the MGE employees who responded to the emergency caused by Heartland boring directly into MGE's two-inch gas main. Heartland cannot seriously suggest that the Missouri Rules of Civil Procedure do not provide Heartland with adequate means to obtain factual information from those that possess first-hand knowledge of such information.

4. It appears, instead, that Heartland seeks Staff's initial legal analysis and conclusions based on the facts known when the February 19, 2014, Gas Incident Report was released. But allowing Staff to discuss those issues necessarily draws questions about whether Staff's February 19, 2014 conclusions have changed or been called into question by the ongoing investigation. Heartland's assertion (at ¶¶ 74-76) that it does not want to question Staff about the ongoing investigation betrays Heartland's desire to have the record frozen as it existed on February 19, 2014, rather than what Staff now understands after reviewing much more extensive information. In a very real sense, Heartland's suggestion that questions about the ongoing investigation are also off-limits suggests that Heartland is asking the Commission to authorize depositions to preserve disinformation.

5. The Staff personnel Heartland seeks to depose have no personal knowledge of any facts that Heartland does not have access to through other means. The Staff personnel were not present prior to the explosion and others, including representatives of Heartland, were present for post-incident scene investigation. To the extent that Heartland seeks the identity of the unnamed witnesses, other than MGE employees, who Staff cited in the Gas Incident Report, and the content of those person's statements to Staff, such information is protected by Staff's investigatory

privilege. It would be one thing for the Commission to authorize Staff to release that information, it is quite another to authorize an open ended “discussion” of Staff’s investigation, findings and reports.

6. As MGE acknowledged at the outset, this is a matter for the Commission’s discretion, at least until the depositions are convened. Heartland has presented no legitimate reason for the Commission to stray from the protections provided by RSMo 386.480 and to permit such ill-defined “discussions” about Staff’s preliminary work.

WHEREFORE, for these and the reasons Respondent Missouri Gas Energy previously provided, MGE respectfully requests that Heartland’s Motion to Authorize Depositions of Staff Members be DENIED, and for such other relief as the Commission deems appropriate.

Respectfully submitted

LACLEDE GAS COMPANY
Doing business as MGE

/s/ Rick Zucker

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2014, a true and accurate copy of the foregoing was filed with the Missouri Public Service Commission *electronically* and also served by **email**, and by **United States mail**, postage prepaid, on the following:

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