**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. : C-2015-2468131

:

Continental Communities, LLC and :

Hickory Hills MHC, LLC :

**SCHEDULING ORDER**

On February 19, 2015, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E) filed with the Commission a formal complaint against Continental Communities, LLC and Hickory Hills MHC, LLC, Docket Number C-2015-2468131. In its Complaint, I&E averred that Continental and Hickory Hills violated various provisions of the Gas Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101, *et seq*. (Act 127), as well as the Code of Federal Regulations.

On April 10, 2015, Continental and Hickory Hills filed an Answer and New Matter. In their Answer, Continental and Hickory Hills admitted or denied the various averments made by I&E in its Complaint. In particular, Continental and Hickory Hills denied that they are pipeline operators as defined by state regulations. Continental also denied that it is subject to the Commission’s jurisdiction.

Also on April 10, 2015, Continental and Hickory Hills filed Preliminary Objections in response to I&E’s Complaint. In its Preliminary Objections, which were also accompanied by a Notice to Plead, Continental and Hickory Hills sought dismissal of all or part of the Complaint because 1) it fails to state any cause of action against Continental because Continental has never owned or operated pipeline facilities in Pennsylvania and 2) it fails to state a cause of action against either Continental or Hickory Hills because there is no basis in law or in the factual allegations to create a nexus between the explosion and the alleged statutory violations.

On April 20, 2015, I&E filed an Answer to the New Matter raised by Continental and Hickory Hills. In its Answer, I&E responded to each of the affirmative defenses raised in the New Matter. I&E concluded by requesting that the allegations raised in the New Matter be rejected and that Continental and Hickory Hills be found to be in violation of each and every count in the Complaint.

Also on April 20, 2015, I&E filed an Answer to the Preliminary Objections filed by Continental and Hickory Hills. In its Answer, I&E argued that, while Hickory Hills may be the deed holder of the real estate where the explosion occurred, Continental is the *de facto* owner and operator of Hickory Hills and the associated pipeline facility.

By Order dated September 30, 2015, the Preliminary Objections were denied. The Order directed that the Complaint filed by I&E proceed to a hearing before an Administrative Law Judge.

On October 14, 2015, the Commission issued a Notice establishing an Initial Prehearing Conference for this case for Thursday, December 3, 2015 at 10:00 a.m. in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Order dated October 16, 2015 was issued setting forth various rules that would govern the Initial Prehearing Conference.

On November 20, 2015, Continental and Hickory Hills filed an Unopposed Motion for Continuance of Prehearing Conference. That Motion was granted via Order dated November 30, 2015. As a result, the Commission issued a Hearing Cancellation/Reschedule Notice rescheduling the Initial Prehearing Conference for Wednesday, December 16, 2015.

In response to the Prehearing Conference Order, Prehearing Memoranda were received by Continental and Hickory Hills and I&E.

The Initial Prehearing Conference convened on December 16, 2015, as scheduled. The following counsel entered their appearance: Kevin J. McKeon, Esquire, on behalf of Continental and Hickory Hills; and Adam Young, Esquire, on behalf of I&E.

During the Initial Prehearing Conference, various procedural matters were discussed. Most notably, the following procedural schedule was agreed upon:

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| I&E Direct Expert Testimony | May 2, 2016 |
| Respondent Rebuttal Expert Testimony | July 15, 2016 |
| I&E Expert Rebuttal Testimony | August 15, 2016 |
| Hearings | August 29-31, 2016 |

A schedule for submission of briefs will be established at the conclusion of the hearings. The Hearings will be held in Harrisburg in a hearing room in the Commonwealth Keystone Building and will begin at 10:00 a.m.

Additionally, there was no request for any modifications to the Commission’s discovery rules or for a Protective Order to be entered for this case.

Finally, the parties are reminded that Commission policy promotes settlements. 52 Pa.Code § 5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. Any settlement, however, must be supported by substantial record evidence. 2 Pa.C.S. § 704.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following schedule is adopted for this proceeding:

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| --- | --- |
| I&E Direct Expert Testimony | May 2, 2016 |
| Respondent Rebuttal Expert Testimony | July 15, 2016 |
| I&E Expert Rebuttal Testimony | August 15, 2016 |
| Hearings | August 29-31, 2016 |

1. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on me. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officer no later than 4:00 p.m. on the dates listed, unless otherwise indicated. Parties may serve the documents listed above via e-mail to meet this requirement, with hard copy to follow by regular first class mail, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
2. That written testimony shall comply with the requirements of 52 Pa.Code § 5.412 and shall be marked with numerical, sequential statement numbers. Parties serving pre-served testimony pursuant to 52 Pa.Code § 5.412(f) are required, within thirty (30) days after the final hearing, to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.
3. That all parties shall comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
4. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373 as modified consistent with the discussion above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.
5. That the evidentiary hearing will be held in Harrisburg and will commence at 10:00 a.m. on August 29, 2016, unless changed by the presiding officer.
6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.
7. That the evidentiary hearings in this matter constitute a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That any provision of this Order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: December 17, 2015

Joel H. Cheskis

Administrative Law Judge

**C-2015-2468131 - PUC INVESTIGATION AND ENFORCEMENT v. CONTINENTAL COMMUNITIES LLC/HICKORY HILLS MHC LLC**

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