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May 13, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC, Docket No. C-2015-2468131; **JOINT PETITION FOR SETTLEMENT**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Joint Petition for Settlement of Continental Communities, LLC and Hickory Hills MHC, LLC, and Appendices A through E consisting of: Appendix A Joint Stipulation of Facts, Appendix B Joint Proposed Conclusions of Law, Appendix C Joint Proposed Ordering Paragraphs, Appendix D The Bureau of Investigation and Enforcement's Statement In Support, and Appendix E Continental Communities, LLC and Hickory Hills MHC, LLC Statement In Support in the above-captioned docket. Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your consideration in this matter. Please contact me if you have any questions or concerns.

Very truly yours,

Kevin J. McKeon
Whitney E. Snyder
*Counsel for Continental Communities, LLC
and Hickory Hills MHC, LLC*

KJM/WES/jld
Enclosure

cc: Honorable Joel H. Cheskis (via email and regular mail)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed and served a true copy of the foregoing documents upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA FIRST CLASS MAIL AND EMAIL

Adam D. Young, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
adyoung@pa.gov



Kevin J. McKeon
Whitney E. Snyder

DATED: May 13, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2468131
	:	
Continental Communities, LLC	:	
And	:	
Hickory Hills MHC, LLC	:	

PETITION FOR APPROVAL OF SETTLEMENT

PRESIDING ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Continental Communities, LLC (“Continental Communities”) and Hickory Hills MHC, LLC (“Hickory Hills”) (collectively, “Respondents”) hereby submit this Joint Settlement Petition to resolve all issues related to the above-docketed I&E Complaint proceeding alleging violations of the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* (“Act 127”), and Code of Federal Regulations. As part of this Joint Settlement Petition, the parties request that Your Honor issue an initial decision or recommended decision approving the Settlement, without modification. A Joint Stipulation of Facts in Support of Settlement is attached as Appendix A. Joint Proposed Conclusions of Law are attached as Appendix B. Proposed Ordering Paragraphs are attached as Appendix C.

Statements in Support of this Joint Settlement Petition expressing the individual views of I&E and Respondents are attached as Appendix D and Appendix E, respectively.

I. INTRODUCTION

1. The parties to this Joint Settlement Petition (“Settlement” or “Settlement Agreement”) are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, Respondent Continental Communities, with a principal place of business at 2015 Spring Road Suite 600 Oak Brook, IL 60523 and Respondent Hickory Hills, with a principal place of business at 121 Hickory Hills Drive, Bath, PA 18014.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (the “Code”), 66 Pa.C.S. §§ 101, *et seq.*

3. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject

to the Commission’s authority for violations of the Code, certain other statutes the Commission administers, the Commission’s regulations, and certain Federal regulations the Commission administers. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s).

6. I&E alleges that Respondents Continental Communities and Hickory Hills are or were at all times relevant to its allegations in this proceeding “pipeline operators” as that term is defined under the Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, in that they “own[] or operate[] equipment or facilities in [the Commonwealth of Pennsylvania] for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.” Respondents do not dispute that Hickory Hills owned the pipeline facilities that are the subject of I&E’s allegations in this proceeding on February 14, 2014, and that Continental Communities was at that time and still is the sole member of Hickory Hills.

7. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, defines “pipeline facility” as “a new or existing pipeline . . . facility or building used in the transportation of gas or hazardous liquids”

8. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, defines “gas” as “natural gas, liquefied natural gas . . . and other gas as defined under the Federal pipeline safety laws.”

9. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, defines “transportation of gas” as “the gathering, transmission or distribution of gas by pipeline or the storage of gas.”

10. The Federal Pipeline Safety Laws, 49 CFR § 192.3 defines “gas” as “natural gas, flammable gas, or gas which is toxic or corrosive.” Additionally, the same section defines “petroleum gas” as, among other things, “propane. . . .”

11. Section 501(a) of Act 127, 58 P.S. § 801.501(a), authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with federal pipeline safety laws.

12. Section 501(a)(7) of Act 127, 58 P.S. § 801.501(a)(7), authorizes the Commission to enforce federal pipeline safety laws and, after notice and opportunity for a hearing, impose civil penalties and take other appropriate enforcement action.

13. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators who violate the Act. Under section 502(a), pipeline operators can be subject to a civil penalty provided under federal pipeline safety laws or section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), whichever is greater. Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), allows for the imposition of a separate civil penalty for each violation and each day’s continuance of such violation(s).

14. Pipeline operators are subject to the power and authority of this Commission pursuant to Section 501(b) of Act 127, 58 P.S. § 801.501(b), which requires pipeline operators to comply with the Act and the terms and conditions of the orders issued under the Act.

15. Pursuant to the Commission’s regulations at 52 Pa. Code § 59.33(b), the

Commission's Gas Safety Division, which is part of I&E, also has the authority to enforce federal gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.* and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

16. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, and for the purposes of this Settlement Agreement, the Commission has jurisdiction over the subject matter of I&E's Complaint.

II. BACKGROUND

17. A propane gas explosion occurred on February 14, 2014 at approximately 9:15pm at 118 Hickory Hills Dr., Bath, PA, within the manufactured home community owned and operated by Hickory Hills.

18. On February 18, 2014 Commission Gas Safety Inspector Rob Horensky visited the explosion site and concluded that the propane distribution system that served the site of the explosion was jurisdictional and the incident warranted further investigation.

19. On Thursday, February 20, 2014 Commission Gas Safety Supervisor Michael Chilek continued the investigation into the explosion at the site ("the residence") and into the history of the propane distribution system. After conducting its own investigation into the incident and reviewing the state police investigation report, summary of witness interviews, and the autopsy report, the Gas Safety Division made determinations that became the basis for I&E'S February 19, 2015 Complaint in this proceeding, in which I &E alleged:

- a. The resulting explosion and fire completely destroyed the residence of Hilda Parsons and William Donald Neith Sr. at 118 Hickory Hills Drive, Bath, PA, and caused severe damage to surrounding properties. Two adjacent properties on either side of 118 Hickory Hills Dr. were rendered uninhabitable. One resident of 118 Hickory Hills Dr., William Donald Neith Sr., was caught in the explosion and suffered multiple blunt force trauma wounds resulting in his death. Another individual at the adjacent property 119 Hickory Hills Dr. suffered a minor head injury.
- b. Hickory Hills' propane distribution system was approximately three (3) miles in length, and served 301 metered customers of the mobile home park. Each of these residences had a separate meter/regulator to reduce the propane gas pressure to between 11 and 13 inches of water column ("wci"). The propane normally left the on-site, above-ground 30,000-gallon storage tank at a pressure between 10 and 15 pounds per square inch ("psi").
- c. The original pritec-coated steel pipe was installed in about 1970 at the inception of the mobile home park. The steel distribution pipe is 2" in diameter with steel service lines of 1" in diameter. Approximately 1/3 of the original 2" steel distribution pipe has been replaced with 2" diameter plastic pipe, and some of the 1" steel service lines have been replaced with plastic service lines.
- d. The distribution system was, at one time, protected by a cathodic protection ("CP") system, which would impress a small electric current on the pipeline

to prevent loss of electrons from the metal in the form of corrosion. At the time of the incident, the CP system was no longer working and/or not operating.

- e. A leak survey conducted on September 26, 2006 revealed eight (8) underground leaks on this distribution system, and recommended, among other things, a metallic pipe replacement program for the entire system.
- f. In the early morning hours of January 7, 2014, the residents at 118 Hickory Hills Dr. awoke with no heat. One of the residents, Hilda Parsons, contacted the Hickory Hills office, who immediately sent a maintenance worker to the residence. The maintenance worker replaced the regulator at the meter set, and after doing so, the heat worked again. From this point forward, Hilda Parsons and the decedent William Neath began smelling the odor of propane gas both inside and outside of their home.
- g. The residents contacted Hickory Hills' office multiple times about the odor of propane over the next few weeks. Hickory Hills sent maintenance worker William Gordon Noble to the residence several times, but he was unable to find a leak. A "gas sniffer" was unable to identify the source of a leak, but Mr. Noble admitted to the state police that the smell of propane gas was really bad, especially under the residence. Hickory Hills Community Manager John William Boehm then referred Ms. Parsons to a local handyman named Dale "Smitty" Smith.

- h. Mr. Smith is a self-employed handyman with previous work experience and certifications in propane gas system repairs. Mr. Smith came to the residence on or about January 31, 2014 accompanied by Mr. Noble and checked all the gas fittings inside and underneath the residence, but could not find a leak.
- i. Mr. Smith and Mr. Noble returned to the residence on February 4, 2014 because the residents again complained of the strong odor of propane gas. Mr. Smith could smell a strong odor of gas when he exited his vehicle in the driveway of the residence. Inside the house, he described the odor of gas to be about 6 out of 10, so he once again began checking all the fittings underneath and inside the residence. Upon checking some fittings near the hot water heater he noticed that the odor of propane gas was strongest in this area. The gas regulator/meter was located immediately through the exterior wall of the residence behind where the water heater was located.
- m. Mr. Smith fixed a nut on the copper pipe attached to a “T” fitting adjacent to the gas meter. Mr. Smith received a voicemail from Hilda Parsons stating that the problem “appeared” to be fixed, however, the smell of propane gas returned a few days later. Ms. Parsons indicated that the smell would return intermittently, but that it could always be smelled in the area of the parking pad (driveway) and the front door.

- n. In the weeks leading up to the incident, John William Boehm reported receiving several other complaints from residents smelling propane gas, but the maintenance workers were unable to find any leaks.
- o. In the two weeks leading up to the incident, both next-door neighbors reported smelling propane gas, which got progressively worse each day to the point that when they would step out of their house, it would burn their eyes.
- p. On February 14, 2014, the day of the incident, the odor of propane gas was very strong outside the house near the area of the porch steps, and inside the house throughout, but especially strong, once again, in the area of the water heater.
- q. Ms. Parsons stated that on the evening of the incident, the decedent, William Neith had been burning candles in the residence to mask the odor of gas, which they did only after being told several times that it was safe to stay in their home.
- r. At approximately 9:15pm On February 14, 2014, the propane gas that had built up underneath and inside the residence ignited, resulting in a catastrophic explosion.
- s. On March 7, 2014 gas safety inspectors from the Public Utility Commission instructed Hickory Hills to perform a pressure test on the service line at 118 Hickory Hills Drive. The pressure was tested at 10psi from the tap at the service line to the riser protruding a few feet above the

ground. The service line failed to hold pressure for more than a few seconds. This pressure test was performed by Hickory Hills' contractor Franchelli Enterprises.

- t. On March 11, 2014, Franchelli Enterprises removed the service line to 118 Hickory Hills Drive. The service line was wrapped in a tarp and stored by Hickory Hills in their maintenance shed.
- u. On March 26, 2014, the service line was viewed and photographed intact at the Hickory Hills service shed with a representative of the Commission's gas safety division present, as well as engineers and lawyers representing both Continental Communities and the homeowners insurance of 118 Hickory Hills Drive. The service line/riser, regulator, and meter were then shipped to AEL Laboratories in New Jersey for analysis.
- v. On March 27, 2014, the distribution pipe was disconnected from the 30,000 gallon above ground propane tank, and all customers were switched to bottled gas.
- w. On June 19, 2014, a metallurgical investigative analysis was performed on the service line/riser, regulator, and meter. The results of the investigation show that the cause of the propane gas leak was localized corrosion of the steel pipe (riser) where the pipe was in contact with the ground and at the point where the riser emerged from the ground.

20. As set forth in Respondents' April 10, 2015 Answer and New Matter, Respondents contest the factual allegations in I&E's Complaint, including the allegations concerning the cause of the explosion, and would have proffered evidence and legal arguments in defense of those allegations had this matter been fully litigated.

21. Hickory Hills ceased operating the pipeline facilities on its premises on March 25, 2014, abandoned the propane distribution system on April 10, 2014, and removed the propane tank on May 8, 2014. With respect to Hickory Hills' premises, it is the position of Hickory Hills and Continental Communities that neither have owned pipeline facilities or have been pipeline operators within the meaning of Pennsylvania's Gas and Hazardous Liquids Pipeline Act or the Federal Pipeline Safety Laws since April 10, 2014.

III. VIOLATIONS

22. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Continental Communities and Hickory Hills committed the following violations:

- a. Continental Communities and Hickory Hills failed to properly register pipeline facilities with the Public Utility Commission pursuant to Act 127, in that the initial registration was required by March 31, 2012 and the following year by the same date.

If proven, this is a violation of 58 P.S. § 801.301(c)(1).

- b. Continental Communities and Hickory Hills failed to accurately report to the Commission their total intrastate regulated distribution pipelines in that they did not report *at least* two (2) miles of propane distribution pipelines both in 2011 and 2012.

If proven, this is a violation of 58 P.S. § 801.503(d).

- c. Continental Communities and Hickory Hills did not pay an appropriate assessment to the Commission, in that they did not register their total intrastate regulated distribution pipelines for the 2012-13 and 2013-14 fiscal years based upon jurisdictional distribution pipeline miles.

If proven, this is a violation of 58 P.S. § 801.503(b).

- d. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not prepare or follow a manual of written procedures for its pipeline for conducting operations and maintenance activities and emergency response.

If proven, this is a violation of 49 CFR § 192.605(a).

- e. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for operating, maintaining, and repairing the pipeline in accordance with Subparts L and M of Chapter 192 (49 CFR § 192.601 and 701 *et seq.*).

If proven, this is a violation of 49 CFR § 192.605(b)(1).

- f. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for controlling corrosion in accordance with the operations and maintenance requirements of Subpart I of Chapter 192 (49 CFR § 192.451 *et seq.*).

If proven, this is a violation of 49 CFR § 192.605(b)(2).

- g. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for making construction records, maps, and operating history available to appropriate operating personnel.

If proven, this is a violation of 49 CFR § 192.605(b)(3).

- h. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for gathering data needed for reporting incidents under Part 191 (49 CFR § 191.1 *et seq.*) in a timely and effective manner.

If proven, this is a violation of 49 CFR § 192.605(b)(4).

- i. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for starting up and shutting down any part of the pipeline in a manner designated to assure operation within the MAOP (Maximum Allowable Operating Pressure) limits prescribed by Chapter 192, plus the build-up allowed for operation of pressure-limiting and control devices.

If proven, this is a violation of 49 CFR § 192.605(b)(5).

- j. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance, and modifying the procedures when deficiencies are found.

If proven, this is a violation of 49 CFR § 192.605(b)(8).

- k. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and a rescue harness and line.

If proven, this is a violation of 49 CFR § 192.605(b)(9).

- l. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a manual which included procedures for responding promptly to a report of gas odor inside or near a building.

If proven, this is a violation of 49 CFR § 192.605(b)(11).

- m. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not have a written procedures to minimize the hazard resulting from a gas pipeline emergency.

If proven, this is a violation of 49 CFR § 192.615(a)(1), (2), (3)(i-iv), (4), (5), (6), (7), (8), (9), (10), and (11).

- n. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not furnish its employees who are responsible for emergency action with a copy of the latest portion of the emergency provisions; did not train appropriate operating personnel to assure they are knowledgeable of the emergency procedures; and did not review employee activities to determine whether the procedures were effectively followed.

If proven, this is a violation of 49 CFR § 192.615(b)(1), (2), and (3).

- o. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they did not establish and maintain liaison with appropriate fire, police, and other public officials to learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency; acquaint the officials with the operator's ability in responding to a gas pipeline emergency; identify the types of gas pipeline emergencies of which the operator notifies the officials; and plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

If proven, this is a violation of 49 CFR § 192.615(c)(1), (2), (3), and (4).

- p. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they failed to cathodically protect the steel pipe in the distribution system installed before August 1, 1971.

If proven, this is a violation of 49 CFR § 192.457(b)(3).

- q. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they failed to cathodically protect the steel pipe in the distribution system installed after July 31, 1971.

If proven, this is a violation of 49 CFR § 192.455(a)(2).

- r. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that they could not produce any documentation pertaining to the level of corrosion control on its distribution system or to the monitoring of its cathodic protection system.

If proven, this is a violation of 49 CFR § 192.463(a); 49 CFR § 192.465(a), (b), (c), (d), and (e).

- s. Continental Communities and Hickory Hills violated the Code of Federal Regulations, in that at the earliest practicable moment following the discovery of the incident, they failed to notify National Response center of the incident by telephone at 800-424-8802 or 202-267-2675 or electronically at <http://www.nrc.uscg.mil>.

If proven, this is a violation of 49 CFR 191.5.

- 23. Had this matter been litigated, Respondents would have raised defenses to each of these allegations and defended against the same at hearing.

IV. SETTLEMENT TERMS

24. The purpose of this Joint Settlement Petition is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's Complaint proceeding docketed at C-2015-2468131. The parties have stipulated to relevant facts, *see* Appendix A attached hereto, and a Commission order approving the Settlement shall have the effect of admitting into the record of this proceeding the parties' verified pleadings, *see* P 27(d) *infra*.

25. Respondents fully acknowledge the seriousness of I&E's allegations, namely, failing to register with the Commission as a pipeline operator pursuant to Section 30(c)(1) of Act 127, 58 P.S. § 801.301(c)(1), by March 31, 2012 and March 31, 2013 as required by 58 P.S. § 801.503(d) and violating several regulations under the Code of Federal Regulations as described above. Although the Respondents dispute I&E's allegations, Continental Communities and Hickory Hills recognize the significant public safety concerns raised by I&E, including that the Gas Safety Division of I&E have the opportunity through proper pipeline operator registration and reporting to inspect and monitor regulated pipeline facilities.

26. The parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the parties further recognize the benefits of amicably resolving the disputed issues through settlement.

27. I&E and Respondents, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission

order approving the Settlement without modification shall create the following rights and obligations:

- a. Respondents will pay a total amount of One Million Dollars (\$1,000,000) (“Settlement Amount”) to the general fund. Said payment shall be made by check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

No amount in addition to the Settlement Amount shall be sought by I&E or any other bureau of the Commission, or by the Commission itself, or paid by Respondents, for liability or potential liability that arose or could have arisen out of the subject matter of the above-docketed Complaint.

- b. Respondents will pay the Settlement Amount within One Hundred Twenty (120) days of the Commission’s Order approving the Settlement.
- c. Upon payment by Respondents of the Settlement Amount:

- i. *Pennsylvania Public Utility Commission v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (the “Matter”) shall be deemed terminated and shall be marked closed.

- ii. The Commission, including I&E, shall be deemed to have forever released Respondents from all past, existing and future claims that were made or could have been made for monetary and/or other relief, including civil or equitable relief, based on allegations that Respondents: failed to register with the Commission as a pipeline operator; violated state or federal statutes or regulations pertaining to pipeline operators; violated any law, regulation, or legal duty with respect to the explosion that occurred at the residence at Hickory Hills on February 14, 2014; violated any law, regulation, or legal duty with respect to Respondents’ action or inaction in connection with the pipeline facilities at Hickory Hills after February 14, 2014; or took any other unlawful action related to the pipeline facilities at Hickory Hills. Nothing contained in this Settlement Agreement shall affect the Commission’s authority to receive and resolve any future formal or informal complaints filed by any affected party regarding Continental Communities and Hickory

Hills' business that are unrelated to the matters addressed in the Settlement Agreement.

- d. The verified pleadings submitted in this case shall be deemed admitted into the record of this proceeding.

28. I&E and Respondents jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, and avoids the time and expense of litigation, which entails hearings, travel for Respondents' out-of-state witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices D and E are Statements in Support submitted by I&E and Respondents, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

29. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

30. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Settlement Petition without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw

from this Joint Settlement Petition and may proceed with litigation and, in such event, this Joint Settlement Petition shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

31. In the event that the presiding Administrative Law Judge issues an initial decision or recommended decision approving this Joint Settlement Petition without modification, the Joint Petitioners agree to waive the exception period, thereby allowing this Joint Settlement Petition to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e).

32. The Joint Petitioners agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this complaint proceeding. It is further understood that, by entering into this Joint Settlement Petition, Respondents have made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Joint Settlement Petition.

33. The Joint Petitioners acknowledge that this Joint Settlement Petition reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

34. This Joint Settlement Petition is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Joint Settlement Petition is presented without prejudice to any position that any of

the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Joint Settlement Petition. This Joint Settlement Petition does not preclude the parties from taking other positions in any other proceeding.

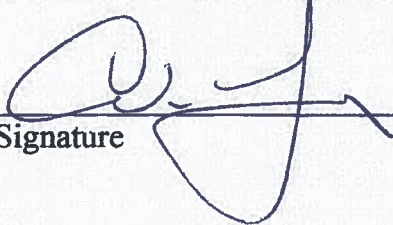
35. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Continental Communities, LLC and Hickory Hills MHC, LLC respectfully request that the Presiding Administrative Law Judge issue an initial decision or recommended decision approving the terms of this Joint Settlement Petition in their entirety as being in the public interest.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the

13th day of May 2016.


FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT:


Signature

Senior Prosecutor
Title

May 13, 2016
Date

FOR CONTINENTAL COMMUNITIES, LLC and HICKORY HILLS MHC, LLC:


Signature

Counsel for Continental Communities
& Hickory Hills
Title

5/13/16
Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2468131
	:	
Continental Communities, LLC	:	
And	:	
Hickory Hills MHC, LLC	:	

JOINT STIPULATION OF FACTS IN SUPPORT OF SETTLEMENT

Pursuant to 52 Pa. Code § 5.232(a) and the direction of Administrative Law Judge Joel H. Cheskis (ALJ), the Public Utility Commission’s Bureau of Investigation and Enforcement (I&E), Continental Communities, LLC, and Hickory Hills MHC, LLC (Respondents), by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the Joint Petition for Approval of Settlement (Joint Petition or Settlement) in the above-captioned matter by the Pennsylvania Public Utility Commission (Commission).

I&E and Respondents have entered into the Settlement, which they recognize is a compromise of disputed claims. I&E also recognizes that the Settlement is entered into without admission of wrongdoing or liability by Respondents.

The pleadings in this case, which are incorporated into the record by operation of the Joint Petition, contain sworn statements of facts that are the basis for this Joint

Stipulation. Certain facts, particularly those related to causation of the February 14, 2014 explosion that gave rise to this proceeding, remain disputed, are not part of this Joint Stipulation, and are not material for purposes of the Joint Petition.

PROCEDURAL HISTORY

1. On February 19, 2015, I&E filed a verified Formal Complaint against Respondents at Docket No. C-2015-2468131, alleging that Respondents violated the Act of December 22, 2011, P.L. 586, No. 127; 58 P.S. §§ 801.101 *et seq.* (Act 127) as well as numerous provisions of the Code of Federal Regulations, by failing to register with the Commission the underground propane pipeline distribution system at Hickory Hills' manufactured housing community, failing to maintain adequate operational manuals for the pipeline, failing to pay assessment fees, and failing to adhere to federal cathodic protection requirements.

2. I&E sought relief, including that the Commission:
- a. Find Respondents to be in violation of Act 127 and the Code of Federal Regulations for each of the thirty-nine (39) violations alleged in the Formal Complaint;
 - b. Impose a civil penalty upon Respondents in the amount of Two Million Dollars (\$2,000,000.00)¹;
 - c. Direct Respondents to pay an assessment of \$3,384 for the 2012-13 and 2013-14 fiscal year(s); and
 - d. Order such other remedy as the Commission may deem to be appropriate.

¹ This proposed civil penalty is the maximum permitted to be assessed pursuant to 66 Pa.C.S. § 3301(c).

3. On April 10, 2015, Respondents filed a verified Answer and New Matter. In their Answer, Respondents admitted or denied the various averments made by I&E in its Complaint. In particular, Respondents admitted that on February 14, 2014, the day an explosion that resulted in a fatality occurred at Respondent Hickory Hills' premises, Hickory Hills owned the pipeline system that served the home in which the explosion occurred, and that Continental was at that time (and remains) a limited liability company that was the sole member of Hickory Hills.

4. In its New Matter, Respondents raised various affirmative defenses, including 1) that Continental has no obligation under Act 127, 2) Hickory Hills had no duty to register with the Commission, as I&E averred, 3) Hickory Hills was not responsible for the explosion that is the subject of the I&E Complaint, 4) settlement set off, 5) estoppel and 6) that there is no basis for civil penalty on facts unrelated to the alleged violations. As to the issue of causation, Respondents averred that the explosion was not caused by leaks or failures within Hickory Hills' pipeline system but rather by leaks or other equipment failures on the resident's side of the interface.

5. Also on April 10, 2015, Respondents filed Preliminary Objections to the Formal Complaint, at the above docket in addition to an Answer and New Matter. In Respondents' Preliminary Objections, Respondents alleged, (1) the Formal Complaint fails to state any cause of action against Respondent Continental Communities as it "does not now and has never owned or operated 'equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline laws'" 58 P.S. § 801.102; and (2) the Formal Complaint fails to

state any cause of action against Respondent Continental Communities or Hickory Hills that justifies the requested maximum civil penalty based on the alleged “egregious and serious nature of this incident” because there “is no basis in law or in the factual allegations pleaded in the Formal Complaint to create a nexus between the explosion that occurred on February 14, 2014 at Hickory Hills and the statutory violations alleged in the Formal complaint.”

6. On April 20, 2015, I&E filed an Answer to the New Matter raised by Respondents. In its Answer, I&E responded to each of the affirmative defenses raised in the New Matter. In particular, I&E denied that Continental has never acted and operated in the past as owner of Hickory Hills. I&E also denied that Continental and Hickory Hills had no legal obligation to register with the Commission. I&E refuted the assertion by Hickory Hills that it was not responsible for the explosion that is the subject of I&E’s Complaint. I&E also denied the assertion that any statutorily imposed civil penalty is offset by any civil settlements or judgments or barred by the doctrine of estoppel. Finally, I&E also asserted that there is a basis for a civil penalty based on the facts of this case.

7. Also on April 20, 2015, I&E filed an Answer to the Preliminary Objections filed by Respondents. 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. I&E provided several attachments to its Answer in support of its position that the first Preliminary Objection should be rejected. I&E also argued that there is a causal nexus between the

explosion and the failure of Continental and Hickory Hills to comply with various state and federal pipeline safety laws. I&E added that the explosion may have been avoided had Continental and Hickory Hills been in compliance with those laws.

8. By Opinion and Order dated September 30, 2015, Administrative Law Judge Joel H. Cheskis denied Respondents' Preliminary Objections, because "accepting as true all well pleaded material facts averred by I&E, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to I&E, as is required when disposing of the Preliminary Objections" it "does not appear that I&E would not be entitled to any relief under any circumstances as a matter of law." Order at 5,7. Accordingly, the matter was set for hearing.

FACTS

9. The parties, having reached a fair and equitable settlement resolving all issues in the above-captioned case, stipulate to the following facts:

10. Respondent Continental is a limited liability company formed under the laws of the State of Delaware. Continental is the sole member of Respondent Hickory Hills, a limited liability company formed under the laws of the State of Delaware that owns and operates a manufactured housing community located in Bath, PA. Continental maintains a principal business address at 2015 Spring Road Suite 600 Oak Brook, IL 60523.

11. Respondent Hickory Hills maintains its principal place of business at *121 Hickory Hills Drive, Bath, PA 18014*.

12. On February 14, 2014, at approximately 9:15pm, a propane gas explosion occurred at Hickory Hills, resulting in a fatality.

13. On February 15, 2014, the Commission's Gas Safety Division was notified by the Pennsylvania Emergency Management Agency (PEMA) about the February 14, 2014 explosion.

14. On February 18, 2014, a Commission Gas Safety Inspector inspected the scene of the propane explosion.

15. The explosion and resulting fire completely destroyed the residence of Hilda Parsons and William Donald Neith Sr. at 118 Hickory Hills Drive, Bath, PA, and caused damage to surrounding properties.

16. Two properties on either side of 118 Hickory Hills Dr. were rendered uninhabitable.

17. Mr. Neith died in the explosion. Another individual at the adjacent property 119 Hickory Hills Dr. suffered a minor head injury.

18. Between 1999 when it purchased the property and 2014 when the explosion occurred, Hickory Hills replaced sections of the underground propane distribution system, performed leak detection surveys, and responded to complaints received about propane odor.

19. Hickory Hills' propane distribution system was approximately three (3) miles in length, and served 301 metered customers of the mobile home park. Each residence had a separate meter/regulator to reduce the propane gas pressure to between 11 and 13 inches of water column (wci). The propane normally left the on-site, above-

ground 30,000-gallon storage tank at a pressure between 10 and 15 pounds per square inch (psi).

20. The original steel pipe installed in about 1970 was coated for corrosion resistance. The steel distribution pipe was 2" in diameter with steel service lines of 1" in diameter.

21. As of February 2014, approximately 1/3 of the original 2" steel distribution pipe had been replaced with 2" diameter plastic pipe, and some of the 1" steel service lines had been replaced with plastic service lines.

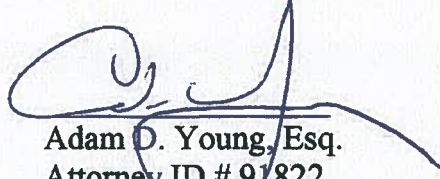
22. The distribution system was, at one time, protected by a cathodic protection (CP) system, which would impress a small electric current on the pipeline to prevent loss of electrons from the metal in the form of corrosion. As of February 14, 2014, the CP system was no longer working and/or not operating.

23. During the two weeks before the explosion, the residents at 118 Hickory Drive contacted Hickory Hills' office about the odor of propane inside and outside the residence and Hickory Hills' maintenance staff responded, but no leaks in the distribution system were discovered.

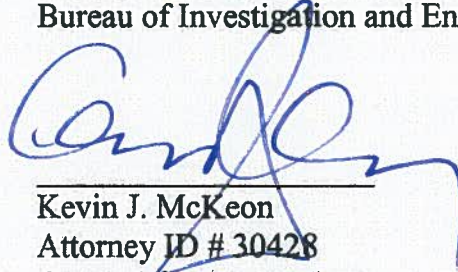
24. At approximately 9:15pm On February 14, 2014, an explosion occurred, destroying the residence and killing Mr. Neith.

25. On March 27, 2014, the distribution pipe was disconnected from the 30,000 gallon above ground propane tank, and all residences at Hickory Hills were switched to bottled gas. The distribution system was removed on April 10, 2014 and the tank was removed on May 8, 2014.

26. This Stipulation of Facts is not an admission of wrongdoing or liability by Continental Communities or Hickory Hills.



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Counsel for Respondents

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	
	:	Docket No. C-2015-2468131
Continental Communities, LLC	:	
And	:	
Hickory Hills MHC, LLC	:	

**JOINT PROPOSED CONCLUSIONS OF LAW
IN SUPPORT OF SETTLEMENT**

1. Respondent Hickory Hills MHC, LLC (“Hickory Hills”) was, as of February 14, 2014, the date of a propane gas explosion on its premises, a “pipeline operator” as that term is defined under the Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102 (“Act 127”) , in that it owned or operated equipment or facilities in the Commonwealth of Pennsylvania “for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.”

2. Respondent Continental Communities, LLC was on February 14, 2014, and remains, the sole member of Hickory Hills.

3. The propane distribution pipeline facilities that were in place at Hickory Hills on February 14, 2014, were removed as of April 10, 2014; as of that time, Hickory Hills was no longer a pipeline operator within the meaning of Act 127.

4. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, defines “pipeline facility” as “a new or existing pipeline . . . facility or building used in the transportation of gas or hazardous liquids”

5. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, defines “gas” as “natural gas, liquefied natural gas . . . and other gas as defined under the Federal pipeline safety laws.”

6. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.102, defines “transportation of gas” as “the gathering, transmission or distribution of gas by pipeline or the storage of gas.”

7. The Federal Pipeline Safety Laws, 49 CFR § 192.3 defines “gas” as “natural gas, flammable gas, or gas which is toxic or corrosive.” Additionally, the same section defines “petroleum gas” as, among other things, “propane. . . .”

8. Section 501(a) of Act 127, 58 P.S. § 801.501(a), authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with federal pipeline safety laws.

9. Section 501(a)(7) of Act 127, 58 P.S. § 801.501(a)(7), authorizes the Commission to enforce federal pipeline safety laws and, after notice and opportunity for a hearing, impose civil penalties and take other appropriate enforcement action.

10. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators who violate the Act. Under section 502(a), pipeline operators can be subject to a civil penalty provided under federal

pipeline safety laws or section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), whichever is greater. Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), allows for the imposition of a separate civil penalty for each violation and each day's continuance of such violation(s).

11. Pipeline operators are subject to the power and authority of this Commission pursuant to Section 501(b) of Act 127, 58 P.S. § 801.501(b), which requires pipeline operators to comply with the Act and the terms and conditions of the orders issued under the Act.

12. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Gas Safety Division, which is part of I&E, also has the authority to enforce federal gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.* and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

13. The Commission encourages and promotes settlements. See 52 Pa. Code § 5.231.

14. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. See e.g. Pa. PUC v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103, Order at 11 (July 14, 2011).

15. The Commission's Policy Statement at 52 Pa. Code § 69.1201 sets forth ten factors (*Rosi* Factors) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order,

regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest.

The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

APPENDIX B

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

16. When applied in settled cases, the *Rosi* Factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa. Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. Id.

17. Taking into consideration all of the *Rosi* factors, the Settlement is in the public interest.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2468131
	:	
Continental Communities, LLC	:	
And	:	
Hickory Hills MHC, LLC	:	

**JOINT PROPOSED ORDERING PARAGRAPHS IN SUPPORT OF
SETTLEMENT**

1. That the verified pleadings submitted in this case are admitted into the record of this proceeding.

2. That the Stipulation of Facts in Support of the Settlement submitted on May 13, 2016 as Exhibit A to the Joint Petition for Approval of Settlement is admitted into the record of this proceeding.

3. That the Joint Petition for Approval of Settlement dated May 13, 2016 and submitted at Docket Numbers C-2015-2468131 by the Public Utility Commission's Bureau of Investigation and Enforcement, and Respondents Continental Communities and Hickory Hills is hereby approved in its entirety without modification.

4. That upon fulfillment of the conditions set forth in Paragraph 27 of the Joint Petition for Approval of Settlement the Complaint filed by the Public Utility

Commission's Bureau of Investigation and Enforcement on February 19, 2015 will be marked satisfied and that Docket No. C-2015-2468131 will be marked closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2468131
	:	
Continental Communities, LLC	:	
And	:	
Hickory Hills MHC, LLC	:	
Respondents	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S STATEMENT IN
SUPPORT OF PETITION FOR APPROVAL OF SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201 The Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Petition for Approval of Settlement filed in the matter docketed above at C-2015-2468131, submits this statement in support of the Settlement Agreement between Respondents Continental Communities, LLC (“Continental Communities”) and Hickory Hills MHC, LLC (“Hickory Hills”) (collectively, “Respondents”) and I&E. The terms and conditions in the Settlement are just and reasonable and in the public interest for the following reasons:

I. BACKGROUND

On February 15, 2014, The Commission’s Gas Safety Division was notified about a possible propane gas explosion that occurred on February 14, 2014 at approximately 9:15pm at 118 Hickory Hills Dr., Bath, PA. Commission Gas Safety Division personnel

arrived at the scene of the propane explosion, at approximately 3:30pm on February 18, 2014. After conducting its own investigation into the incident and reviewing the state police investigation report, summary of witness interviews, and the autopsy report, the Gas Safety Division determined that the incident was jurisdictional. The resulting explosion and fire completely destroyed the residence of Hilda Parsons and William Donald Neith Sr. at 118 Hickory Hills Drive, Bath, PA, and caused severe damage to surrounding properties. Two adjacent properties on either side of 118 Hickory Hills Dr. were rendered uninhabitable. One resident of 118 Hickory Hills Dr., William Donald Neith Sr., was fatally wounded. Another individual at the adjacent property 119 Hickory Hills Dr. suffered a minor head injury.

Hickory Hills' propane distribution system was approximately three (3) miles in length, and served 301 metered customers of the mobile home park. Each of these residences had a separate meter/regulator to reduce the propane gas pressure to between 11 and 13 inches of water column (wci). The propane normally left the on-site, above-ground 30,000-gallon storage tank at a pressure between 10 and 15 pounds per square inch (psi).

The original pritec-coated steel pipe was installed in about 1970 at the inception of the mobile home park. The steel distribution pipe is 2" in diameter with steel service lines of 1" in diameter. Approximately 1/3 of the original 2" steel distribution pipe has been replaced with 2" diameter plastic pipe, and some of the 1" steel service lines have been replaced with plastic service lines. The distribution system was, at one time, protected by a cathodic protection (CP) system, which would impress a small electric current on the pipeline to prevent loss of electrons from the metal in the form of corrosion. At the time of the incident, the CP system was no longer working and/or not operating.

On March 7, 2014 gas safety inspectors from the Public Utility Commission instructed Hickory Hills to perform a pressure test on the service line at 118 Hickory Hills Drive. The pressure was tested at 10psi from the tap at the service line to the riser

protruding a few feet above the ground. The service line failed to hold pressure for more than a few seconds.

On March 11, 2014, the service line to 118 Hickory Hills Drive was removed, wrapped in a tarp, and stored by Hickory Hills in their maintenance shed. On March 26, 2014, the service line was viewed and photographed intact at the Hickory Hills service shed with a representative of the Commission's Gas Safety Division present, as well as engineers and lawyers representing both Continental Communities and the homeowners insurance of 118 Hickory Hills Drive. The service line/riser, regulator, and meter were then shipped to AEL Laboratories in New Jersey for analysis.

On March 27, 2014, the distribution pipe was disconnected from the 30,000 gallon above ground propane tank, and all customers were switched to bottled gas. On June 19, 2014, a metallurgical investigative analysis was performed on the service line/riser, regulator, and meter. The results of the investigation concluded that the cause of the propane gas leak was localized corrosion of the steel pipe (riser) where the pipe was in contact with the ground and at the point where the riser emerged from the ground.

II. LEGAL STANDARD

52 Pa. Code § 69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations -- statement of policy:

- (a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.
- (b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement

explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

- (c) The factors and standards that will be considered by the Commission include the following:
- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
 - (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
 - (3) Whether the conduct at issue was deemed intentional or negligent. This Factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
 - (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
 - (5) The number of customers affected and the duration of the violation.
 - (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
 - (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
 - (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
 - (9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201.

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation*, M-2009-2058182 (Opinion and Order November 23, 2009); *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

III. PUBLIC INTEREST

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Joint Settlement Petition in the above-captioned matter is consistent with the Commission’s Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations (“Policy Statement”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201. Commission regulations expressly contemplate the use of statements in support as the basis for consideration and approval of settlements. *See* 52 Pa. Code §§ 232(a); 69.1201(b).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

Approval of the Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as stated in *Rosi v. Bell Atlantic – Pennsylvania, Inc.*, 94 Pa. P.U.C. 103 (2000) and codified in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. The substantial public benefits of the Settlement, as well as the ten factors that the Commission considers in reviewing a settlement of an alleged violation, is addressed in the section that follows. For the reasons explained below, the Settlement is in the public interest and should be approved.

A. First Factor:

The first factor to be considered under the Policy Statement is whether the alleged conduct was of a serious nature, such as willful fraud or misrepresentation, or was less egregious, such as administrative filing or technical errors. 52 Pa. Code § 69.1201(c)(1). I&E made no allegations of willful fraud or misrepresentation in its Formal Complaint

against Hickory Hills and Continental Communities. The conduct the Formal Complaint alleges is that Hickory Hills failed to register its pipeline system with the Commission, failed to maintain adequate operational manuals for the pipeline, failed to pay assessment fees, and failed to adhere to federal cathodic protection requirements. I&E submits that the failure to comply with these requirements, in this particular case, while not amounting to willful fraud or misrepresentation, were more than mere technical or administrative errors. I&E submits, therefore, that the civil penalty agreed upon in the Settlement is justified by the nature of the conduct. I&E further submits that the imposition of the civil penalty agreed upon in the Settlement will relay to other pipeline operators around the state the importance of timely registration and monitoring of pipeline safety standards.

B. Second Factor:

The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). In this case, a resident of the Hickory Hills Mobile Home Community was killed in a propane explosion on February 14, 2014. I&E submits that any jurisdictional incident resulting in a fatality is of a serious nature. I&E further submits that the Settlement amount agreed upon is appropriate given the serious nature of this incident, and given that Respondent is no longer a jurisdictional pipeline operator.

C. Third Factor:

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Since this matter is being resolved by Settlement of the parties, this factor is not relevant here. To the extent the ALJ and the Commission wishes to consider this factor, I&E submits that there is no evidence indicating that the actions of Respondent were intentional.

D. Fourth Factor

The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Hickory Hills ceased operating the pipeline facilities on its premises on March 25, 2014, abandoned the propane distribution system on April 10, 2014, and removed the propane tank on May 8, 2014. I&E submits that Respondents are not affiliated with any other Pennsylvania manufactured housing community that owns or operates pipeline facilities. Thus, by ceasing pipeline operation altogether, Respondents have modified their practices and procedures to insure that conduct similar to the actions alleged cannot occur in the future.

E. Fifth Factor

The fifth factor to be considered under the Policy Statement relates to the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Hickory Hills mobile home community has over 300 individual sites for mobile homes, and the failure to register the pipeline system and generally adhere to the federal pipeline safety regulations affected every resident from the time Act 127 went into effect (February 20, 2012) until Hickory Hills abandoned the propane pipeline system (April 10, 2014).

F. Sixth Factor

The sixth factor to be considered under the Policy Statement relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Respondents have no previous history of noncompliance.

G. Seventh Factor

The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code §

69.1201(c)(7). I&E submits that Respondents cooperated with the Commission’s Gas Safety Division at all times relevant to this proceeding.

H. Eighth Factor

The eighth factor to be considered is the size of the settlement amount, and whether it is an amount “necessary to deter future violations.” 52 Pa. Code § 69.1201(c)(8). Because Respondents removed the pipeline system, and therefore, is no longer jurisdictional, deterrence of future violations by Respondents is not a consideration. The Settlement amount (\$1,000,000) is sufficient to send a message to similarly situated pipeline operators that may have neglected to register its pipeline system with the Commission. The civil penalty imposed in this case will undoubtedly encourage registration and compliance by potentially affected operators, to the benefit of the public interest. Moreover, Continental Communities / Hickory Hills are not affiliated with any other manufactured housing community in Pennsylvania or any other jurisdiction that utilizes a pipeline system to distribute propane. So future violations by other manufactured housing community in Pennsylvania operated by Respondents, likewise, is not a concern.

I. Ninth Factor

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E is not aware of any other similar cases involving Act 127 pipeline operators in the Commonwealth of Pennsylvania. This is one of the first gas safety incidents before the Commission since the civil penalty maximum has been increased.^[1] Nonetheless, I&E submits that past Commission decisions

^[1] Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c), provided that any public utility that violates any gas safety provisions of the Code shall be subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation persists, and that the maximum civil penalty shall not exceed \$500,000 for any related series of violations. Act 11 of 2012 amended this Section to increase the maximum penalties to \$200,000 for each violation for each day and \$2,000,000 for any related series of violations. Act 11 became effective on April 16, 2012.

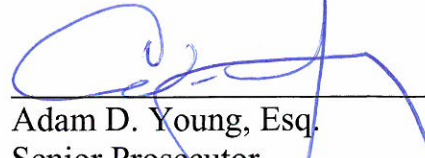
responsive to similar gas safety situations have reached similar conclusions. For example, in *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.* (Docket No. C-2012-2308997”), the Commission ordered UGI to pay the maximum allowable civil penalty (\$500,000) for its conduct, which resulted in several houses being destroyed and five deaths. In *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.* (Docket No. C-2012-2295974) the Commission approved a Settlement in the amount of \$200,000 (also prior to the effective date of Act 11) for an incident that destroyed one house with no injuries or death. Finally, in *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Penn Natural Gas, Inc.* (Docket No. M-2013-2338981) the Commission approved a Settlement for \$1,000,000 for the conduct alleged in that incident.

I&E submits that the civil penalty proposed in this Settlement is fair, adequate, and consistent given the particular facts of this case. While in line with past Commission decisions in similar situations, this case should be viewed on its own merits, accounting for any aggravating or mitigating circumstances that exist. Accordingly, this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

III. CONCLUSION

WHEREFORE, I&E respectfully requests that the Honorable Administrative Law Judge Joel Cheskis recommend approval of, and the Commission approve by final order, the Petition for Settlement, including all terms, conditions and findings set forth therein without modification.

Respectfully submitted,



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Dated: May 13, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2468131
	:	
Continental Communities, LLC	:	
And	:	
Hickory Hills MHC, LLC	:	
Respondents	:	

**RESPONDENTS' STATEMENT
IN SUPPORT OF SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201 Respondents Continental Communities, LLC (“Continental Communities”) and Hickory Hills MHC, LLC (“Hickory Hills”) (collectively, “Respondents”) submit this statement in support of the Settlement Agreement between Respondents and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) in the above-captioned matter (the “Settlement”). Respondents and I&E are the only parties to the matter. The Settlement is in the public interest, and thus should be approved by the Commission without delay, for the following reasons.

I. INTRODUCTION

The Settlement is in the public interest because it calls appropriate attention to the need for registration and compliance by non-traditional pipelines such as the propane distribution system within the Hickory Hills manufactured housing community at issue here, addresses I&E's allegations that are the subject of this proceeding, avoids the time and expense of litigation before the Presiding Judge and the Commission, and avoids the possibility of appeals involving the Commission's authority under Act 127. Upon approval and implementation of the Settlement without modification, Respondents will pay a civil penalty in the amount of \$1,000,000. Respondents have already abandoned the pipeline system in question and as a consequence are no longer subject to Commission regulation.

As discussed in the following section, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission's regulations set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231. The Commission reviews proposed settlements to determine whether the terms are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Pa. P.U.C. Jan. 7, 2004). The Commission's rules expressly contemplate the use of statements in support as the basis for consideration and approval of settlements. *See* 52 Pa. Code §§ 232(a), 69.1201(b) (parties should include in settlement agreement

statement(s) in support of settlement explaining how and why the settlement is in the public interest); *see, e.g., Pa. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112, slip op. (Pa. P.U.C. Nov. 13, 2014) (settlement was found to be in the public interest based on settlement agreement, statements in support and supplemental statements in support); *Pa. PUC v. Energy Services Providers, Inc. dba Pennsylvania Gas & Elec.*, Docket No. M-2013-2325122, slip op. (Pa. P.U.C. Oct. 2, 2014) (settlement was found to be in the public interest based on revised settlement agreement and statements in support); *Pa. PUC v. PPL Elec. Utils. Corp.* Docket No. M-2013-2275471, slip op. (Pa. P.U.C. Oct. 31, 2013) (same).

Approval of the Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic – Pennsylvania, Inc.*, 94 Pa. P.U.C. 103 (2000) and codified in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. The Policy Statement recognizes that in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

Consideration of the factors listed in the Policy Statement, as applied to the facts of this case, leads to the conclusion that the Settlement is in the public interest and should be approved:

1. The first factor to be considered under the Policy Statement is whether the alleged conduct was of a serious nature, such as willful fraud or misrepresentation, or was less egregious, such as administrative filing or technical errors. 52 Pa. Code § 69.1201(c)(1). Here there is no allegation that the alleged conduct involved willful fraud or misrepresentation. As set forth in Respondents' Answer and New Matter, Respondent Hickory Hills purchased the manufactured housing community in question in 1999 and maintained the propane distribution system the previous owner had installed, including application for renewals of the only regulatory oversight authorizations of which it was aware and believed were applicable, issued by the Pennsylvania Department of Labor and Industry. Hickory Hills was unaware of federal regulation of such pipelines and unaware that the Commission assumed responsibility for the safety regulation of such pipelines under Act 127 in 2011. Hickory Hills is the only Continental Communities site that used underground piping for propane distribution, and Respondents moved promptly after the explosion that gave rise to this proceeding to remove and abandon the underground pipeline system at Hickory Hills. The conduct the Complaint alleges is that Hickory Hills failed to register its pipeline system with the Commission, failed to maintain adequate operational manuals for the pipeline, failed to pay assessment fees, and failed to adhere to federal cathodic protection requirements. Respondents acknowledge that these allegations raise serious concerns about compliance with Commission oversight and regulation of pipeline safety. Respondents recognize that the Gas Safety Division of I&E must have the opportunity through proper pipeline operator registration

and reporting to inspect and monitor regulated pipeline facilities. Respondents submit that the settlement amount appropriately underscores the importance of these goals and will encourage universal compliance with Commission registration and monitoring of pipeline safety standards.

2. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). Here, the Hickory Hills pipeline system came to the attention of the Gas Safety Division because of the February 14, 2014 explosion and resulting death of a resident. Respondents readily acknowledge that the death that occurred is of a very serious matter. Respondents point out that the matter was also the subject of a civil settlement that directly compensated the estate of the deceased. Respondents submit that the settlement amount in this proceeding further acknowledges the gravity of the circumstances.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Since this matter is being resolved by settlement of the parties, this factor is not relevant here. Respondents point out, however, that there is no allegation that the conduct was intentional: Respondents were unaware of Commission regulation or the need for registration. Moreover, as the Respondents’ Answer and New Matter reveals, Respondents engaged in ongoing

maintenance of the preexisting propane distribution system from the time they acquired the Hickory Hills site.

4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As set forth in the Settlement, Hickory Hills ceased operating the pipeline facilities on its premises on March 25, 2014, abandoned the propane distribution system on April 10, 2014, and removed the propane tank on May 8, 2014. With respect to Hickory Hills' premises, neither Hickory Hills nor Continental Communities have owned pipeline facilities or have been pipeline operators within the meaning of Pennsylvania's Gas and Hazardous Liquids Pipeline Act or the Federal Pipeline Safety Laws since April 10, 2014. (Settlement at P 21). Continental Communities is not affiliated with any other Pennsylvania manufactured housing community that owns or operates pipeline facilities, and has no intention to own or operate pipeline facilities in the future. Thus, Respondents have modified their practices and procedures by ceasing pipeline operation altogether, thereby insuring that conduct by Respondents similar to the actions alleged will not occur in the future.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Hickory Hills contains 353 pad sites for manufactured housing units. The alleged conduct (failure to register, failure to maintain adequate operational manuals for the pipeline, failure to pay assessment fees, and failure to adhere to federal cathodic

protection requirements) in theory affected all sites from February 20, 2012, when Act 127 went into effect, until April 10, 2014, when Hickory Hills abandoned the propane pipeline system. However, Respondents were unaware of Commission regulation of pipeline facilities, or of any alleged violations, until February 15, 2014, and acted promptly thereafter to minimize and then eliminate the possibility of future potential problems.

6. The sixth factor to be considered under the Policy Statement relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Here, Hickory Hills' first and only experience with Commission regulation was as a result of the February 14, 2014 explosion. To the degree this factor applies here (i.e., Hickory Hills is not a regulated public utility and until February 15, 2014 was unaware that the Commission viewed Hickory Hills as a pipeline operator with safety related obligations), this factor weighs in favor of the settlement because Hickory Hills acted promptly to eliminate the possibility of future noncompliance.

7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Respondents cooperated with the Gas Safety Division from February 15, 2014, when representatives of the Division first arrived at Hickory Hills to investigate the explosion, through the abandonment of the pipeline facilities at Hickory Hills in the weeks that followed, to the present.

8. The eighth factor to be considered is the size of the settlement amount, and whether it is an amount “necessary to deter future violations.” 52 Pa. Code § 69.1201(c)(8). Here, deterrence of future violations by Respondents is unnecessary, because after the explosion Hickory Hills promptly removed and therefore no longer operates the propane pipeline distribution system on its premises. Continental Communities is not affiliated with any other manufactured housing community in Pennsylvania or any other jurisdiction that utilizes a pipeline system to distribute propane. Therefore, no possibility of future violations exists. However, to the extent this factor can be interpreted to mean deterring future violations by similarly situated nontraditional pipeline owners that may likewise be unaware of Commission regulation, the \$1,000,000 settlement amount agreed to by Respondents will doubtless encourage registration and compliance by potentially affected operators, to the benefit of the public interest.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). Other matters involving distribution pipeline safety allegations in which there has been loss of life have resulted in penalties significantly less than the settlement amount here:

Company, Year and Location of Explosion	Penalty	Fatality	Date of Order	Docket No.
UGI 2011 Allentown	\$500,000	5 residents	February 19, 2013	C-2012- 2308997
PGW 2011 Philadelphia	\$400,000 plus \$100,000 contribution to smoke alarm program	1 PGW employee	July 26, 2013	C-2011- 2278312
Dominion Peoples 2008 Plum Borough	\$80,000	1 resident	January 13, 2011	C-2009- 2027991

Although the alleged violations in the above cases pre-dated the effective date of Act 127 and its increased penalty authority, the respondents there were large public utilities, that were well aware of their regulatory responsibilities, who were rendering a service that was their core business, under the Commission's regular oversight, with full intent to continue to provide the service that caused the violation and fatality. Here, in contrast, Hickory Hills and Continental Communities are small businesses, not public utilities subject to Commission jurisdiction, rendering a propane distribution service that was incidental to their core housing business, who were unaware of the Commission's registration requirements and oversight, and who voluntarily and permanently terminated their provision of the service in question after the incident that caused the fatality. Under these circumstances, and by comparison to previous cases, the settlement amount fairly balances the significant mitigating factors that weigh in Respondents' favor, including small size, lack of awareness of Commission regulation, prompt response to the crisis,

APPENDIX E

willingness to cooperate, and withdrawal from the provision of pipeline service, against the increased penalty authority under Act 127.

III. CONCLUSION

Respondents Continental Communities, LLC and Hickory Hills MHC, LLC respectfully submit that the above-captioned Settlement is in the public interest and should be approved and, therefore, request that the Honorable Administrative Law Judge Joel H. Cheskis recommend approval of and the Commission approve the Settlement without modification.

Respectfully submitted,



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Dated: May 13, 2016