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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
|  | Public Meeting held August 23, 2018 |
| Commissioner’s Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Norman J. Kennard  David W. Sweet  John F. Coleman, Jr. | |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.  Brookhaven MHP Management LLC,  Meadowview Management LLC,  Mill Creek MHP Management LLC,  Northwood Manor Management LLC, and  ATG Properties LLC d/b/a Greenleaf  Gas Company | C-2017-2613983  C-2017-2613984  C-2017-2613985  C-2017-2613986  C-2017-2613987 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement) filed on September 6, 2017, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Brookhaven MHP Management LLC (Brookhaven); Meadowview Management LLC (Meadowview); Mill Creek MHP Management LLC (Mill Creek); Northwood Manor Management LLC (Northwood Manor); and ATG Properties LLC d/b/a Greenleaf Gas Company (ATG Properties) (collectively, Respondents). Both I&E and the Respondents filed a Statement in Support of the Settlement (Statement in Support). For the reasons set forth herein, we will approve the Settlement as filed.

**History of the Proceeding**

On July 11, 2017, I&E filed a Formal Complaint (Complaint) against the Respondents. I&E alleged that the Respondents failed to file an Initial Registration Form in 2012 to register with the Commission as pipeline operators and failed to file Pennsylvania Pipeline Operator Annual Registration Forms (Annual Registration Forms)[[1]](#footnote-1) to report total intrastate regulated transmission, distribution, and gathering pipeline miles in operation for the transportation of gas and hazardous liquids during the 2012, 2013, 2014, and 2015 calendar years, as required by the Gas and Hazardous Liquids Pipelines Act (Act 127), 58 P.S. §§ 801.101, *et seq.*[[2]](#footnote-2) Complaint at 8-9. I&E averred that the Respondents’ failure to file Annual Registration Forms on or before March 31, 2015, and March 31, 2016, for the preceding respective calendar years was a violation of 58 P.S. § 801.503(d).[[3]](#footnote-3) Complaint at 10.

I&E also alleged that the Respondents failed to pay assessments to the Commission for the 2015-2016 and 2016-2017 fiscal years because they did not report their total regulated distribution pipeline miles that were in operation during the 2014 and 2015 calendar years. I&E stated that had the Respondents registered as pipeline operators and submitted the requisite reports, the Commission would have assessed a cumulative total of $3,080.40 for the 2015-2016 fiscal year for the pipeline operations of Brookhaven, Meadowview, Mill Creek, and Northwood Manor, representing a $700.09 cost per mile of pipeline that was in operation during the 2014 calendar year. Additionally, I&E stated that had the Respondents registered as pipeline operators and submitted the requisite reports, the Commission would have assessed a cumulative total of $1,980 for the 2016-2017 fiscal year for the pipeline operations of Brookhaven, Meadowview, Mill Creek, and Northwood Manor, representing a cost of $450 per mile of pipeline that was in operation during the 2015 calendar year. *Id*. at 9. I&E averred that the Respondents’ failure to pay an appropriate assessment to the Commission for the 2015-2016 and 2016-2017 fiscal years was a violation of 58 P.S. § 801.503(b).[[4]](#footnote-4) Complaint at 10. As relief, I&E requested that the Commission: (1) impose a civil penalty of $40,000 against the Respondents, and (2) direct the Respondents to pay a total assessment of $5,060.40 for the 2015-2016 and 2016-2017 fiscal years. *Id*. at 11.

By letter filed August 1, 2017, the Respondents requested an unopposed extension of time to file an Answer to I&E’s Complaint on the basis that the Parties had reached a settlement in principle that could obviate the need for an Answer. The Respondents’ request was granted by Secretarial Letter dated August 2, 2017.

The Parties entered into negotiations and agreed to resolve this matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. As previously indicated, the Parties filed the instant Settlement on September 6, 2017.

**Background**

ATG Properties owns four mobile home parks in York County: (1) Brookhaven; (2) Meadowview; (3)Mill Creek; (4) and Northwood Manor. Greenleaf Gas Company (Greenleaf) bills individually-metered residents for three of these four mobile home parks (*i.e.*, Brookhaven, Meadowview, and Mill Creek) for natural gas service that Columbia Gas Company provides through a single master meter.[[5]](#footnote-5) Settlement at 3. Brookhaven serves 156 homes using 1.2 miles of pipe; Meadowview serves 127 homes using 1.2 miles of pipe; and Mill Creek serves 168 homes using 1.3 miles of pipe. Northwood Manor operates a propane gas distribution system serving twenty-seven homes using 0.7 miles of pipe. Northwood Manor’s propane gas distribution system is subject to Federal pipeline safety laws. *See* 49 C.F.R. §§ 192.1(b)(5)(i) and 192.3. The Respondents operated the described pipeline facilities when Act 127 became effective on February 20, 2012, and presently operate the facilities. The Respondents plan to remove the propane distribution system at Northwood Manor by the end of August 2017. Settlement at 4.

Section 501(a) of Act 127, 58 P.S. § 801.501(a), authorizes the Commission to supervise and regulate pipeline operators within Pennsylvania consistent with Federal pipeline safety laws. The Respondents are pipeline operators, as defined in 58 P.S. § 801.102, because they own or operate “equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.” Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators for Act 127 violations, either under the Federal pipeline safety laws or under Section 3301(c) of the Public Utility Code (Code), 66 Pa. C.S. § 3301(c), whichever provides for greater penalties. Brookhaven, Meadowview, Mill Creek, and Northwood Manor registered as pipeline operators with the Commission for the first time on March 29, 2017, at Docket Nos. A-2017-2597503, A-2017-2597508, A-2017-2597480, and A-2017-2597492.

If this matter had been fully litigated, I&E would have alleged that: (1) the Respondents violated 58 P.S. § 801.503(d) (two counts) by failing to report total regulated intrastate pipeline miles on or before March 31, 2015, and March 31, 2016, for the preceding respective calendar years, and (2) the Respondents violated 58 P.S. § 801.503(b) (two counts) by failing to register their total intrastate regulated distribution pipelines that were in operation during the 2014 and 2015 calendar years. Had this matter been fully litigated, the Respondents would have disputed the allegations. Settlement at 6.

**Terms of the Settlement Agreement**

The Settlement is a comprehensive resolution of all issues in this proceeding. The Settlement includes the following terms and conditions:

A. Respondents will pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) pursuant to 58 P.S. § 801.502. Said payment shall be made within sixty (60) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket numbers of this proceeding, C‑2017-2613983, C-2017-2613984, C-2017-2613985, and C‑2017-2613987, shall be indicated with the certified check or money order and the payment shall be sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Pursuant to 58 P.S. § 801.53, Respondents will pay a total assessment to the Commission in the amount of Five Thousand, Sixty Dollars and Forty Cents ($5,060.40), which represents what the Commission would have assessed for the pipeline operations of Brookhaven, Meadowview, Mill Creek, and Northwood for the 2015-16 and 2016-17 fiscal years had Respondents properly reported their jurisdictional pipeline miles. Said payment shall be made within sixty (60) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket numbers of this proceeding, C-2017-2613983, C-2017-2613984, C-2017-2613985, and C-2017-2613987, shall be indicated with the certified check or money order and the payment shall be sent to:

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Settlement at 7-8.

The Settlement is conditioned upon the Commission’s approval, without modification, of all the Settlement terms. The Parties state that if the Commission modifies the Settlement, then any Party may elect to withdraw from the Settlement and proceed with litigation of this proceeding. *Id*. at 9. Upon Commission approval of the Settlement without modification, I&E agrees to release the Respondents from all past claims that were made or could have been made for monetary and/or other relief based on allegations that the Respondents failed to properly register, submit reports and pay assessments regarding the obligations set forth in Act 127. Settlement at 8.

Additionally, the Settlement is made without any admission by any Party as to any matter of fact or law and is without prejudice to any position advanced by a Party in this proceeding or that may be advanced by a Party in future litigation, except to the extent necessary to effectuate this Settlement. *Id*. at 9-10. The Settlement does not preclude the Parties from taking other positions in any other proceeding. *Id*. at 10.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

The Code sets forth the maximum civil penalty amounts that we may levy on public utilities for violations of a Commission Order, Regulation, or a statute. For cases involving gas pipeline safety violations, $2 million is the maximum civil penalty amount that we are authorized to impose under Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c), for any related series of violations.[[6]](#footnote-6)

After a review of the terms of the Settlement, we find that the Settlement is in the public interest. The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or a 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. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement as filed.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id*. In this case, I&E avers the allegations that the Respondents failed to file Annual Registration Forms pursuant to Act 127 are serious in nature. I&E states that the Commission’s Pipeline Safety Division depends on the completion of Act 127 forms so that the Pipeline Safety Division can locate and inspect jurisdictional facilities to ensure compliance with Federal pipeline safety regulations, and significant public safety concerns arise when an operator’s pipeline information is not timely reported to the Commission. I&E’s Statement in Support at 7. The Respondents also acknowledge that the alleged violations are of a serious nature. Respondents’ Statement in Support at 7. We conclude that the civil penalty should be evaluated with a consideration of the seriousness of the allegations set forth in the Complaint. The allegations concern compliance with Act 127 and Federal pipeline safety regulations, which is a serious matter. Accurate, diligent, and prompt compliance with the reporting and compliance requirements in Act 127 is critical in ensuring public safety.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* In this case, there are no allegations that consequences of a serious nature, such as personal injury or property damage, are involved. Accordingly, the Respondents’ actions set forth in the Settlement did not result in consequences of a serious nature which would warrant a higher penalty under this factor.

The third factor pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3). Because this proceeding was settled prior to an evidentiary hearing, this factor is not applicable to this Settlement.

The fourth factor we may consider is 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. 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. 52 Pa. Code § 69.1201(c)(4). The Parties indicate that on March 29, 2017, the Respondents filed the most recent Annual Registration Forms for the calendar year ending December 31, 2016. I&E’s Statement in Support at 8; Respondents’ Statement in Support at 8. The Respondents recognize that subsequent Annual Registration Forms must be filed before March 31 every year going forward. The Respondents also state that Northwood has stopped operating its propane distribution system and is no longer at risk of violating Act 127’s annual registration requirements. Respondents’ Statement in Support at 8. Additionally, our records indicate that Brookhaven, Meadowview, and Mill Creek have paid their assessments for the 2017-2018 fiscal year. We find that the Respondents’ recent actions indicate compliance and support a lower civil penalty.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). The Parties agree that the alleged violations did not affect any customers in terms of personal injuries or property damage. I&E, however, avers that the residences the Respondents serve could potentially have been exposed to safety issues because the Respondents did not report their systems to the Commission and, therefore, the Pipeline Safety Division was not aware of the systems and did not inspect the systems to ensure compliance with federal pipeline safety regulations. I&E notes that a total of 478 residences in Brookhaven, Meadowview, Mill Creek, and Northwood Manor were impacted. I&E additionally states that the Respondents failed to file Annual Registration Forms for four consecutive years for the calendar years 2012, 2013, 2014, and 2015. I&E’s Statement in Support at 8. The Respondents, on the other hand, state that the total number of customers they serve is quite small. The Respondents indicate that while they failed to register for two calendar years – 2014 and 2015 – that period is accounted for by the $25,000 civil penalty in the Settlement, which they aver is about five times the amount of their past due annual

assessments. Respondents’ Statement in Support at 8-9. Here, there is no indication that individual customers were affected by the Respondents’ alleged conduct. Without the benefit of a fully-developed record, we cannot conclude that the duration of the alleged violations supports a higher civil penalty.

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). Based on our research and the Parties’ Statements in Support, there is no record of prior violations by Brookhaven, Meadowview, Mill Creek, Northwood Manor, or ATG Properties. Therefore, we find that the Respondents’ compliance history has been satisfactory and poses no barrier to approval of the Settlement between the Parties.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). I&E represents that the Respondents have been forthcoming with information and have cooperated with the Pipeline Safety Division. I&E’s Statement in Support at 9. The Respondents state that they were not aware of their registration obligations under Act 127; however, once I&E informed them of their obligations, the Respondents registered with the Commission. Respondents’ Statement in Support at 9. In this case, this factor weighs in favor of a lower civil penalty.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). We find that the $25,000 civil penalty amount, which may not be claimed as a tax deduction, will be a sufficient deterrent to prevent similar future occurrences. Based on the serious nature of the alleged violations, the fact that the resulting consequences of the Respondents’ actions did not include personal injury or property damages, and the measures the Respondents have since taken to comply with their registration and assessment obligations, we conclude that our determination regarding this Settlement and the civil penalty amount is consistent with our prior decisions in similar situations. *See Pa. PUC v. XTO Energy, Inc. and Mountain Gathering, LLC*, Docket No. C-2014-2444722 (Order entered September 3, 2015) (approving a settlement agreement where the respondents paid a civil penalty of $30,000 to resolve allegations that they failed to timely identify and classify pipelines for reporting and assessment purposes under Act 127 for the calendar years 2011 through 2013); *Pa. PUC v. ATX Licensing, Inc*., Docket No. C-20031394 (Order entered October 5, 2004) (approving a settlement agreement where the respondent paid a civil penalty of $30,000 to resolve allegations including its failure to file complete and accurate annual financial reports for the years 2000 through 2002).[[7]](#footnote-7)

The tenth factor we may consider is other relevant factors. 52 Pa. Code

§ 69.1201(c)(10). We believe that it is in the public interest to approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals. In addition, we believe that the Settlement is in the public interest because it promotes safety through enforcement of the Respondents’ registration and assessment obligations under Act 127, which will aid the Pipeline Safety Division in locating and inspecting jurisdictional facilities to ensure compliance with Federal pipeline safety regulations.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement Agreement and the Statements in Support thereof, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement filed on September 6, 2017, by the Commission’s Bureau of Investigation and Enforcement and Brookhaven MHP Management LLC; Meadowview Management LLC; Mill Creek MHP Management LLC; Northwood Manor Management LLC; and ATG Properties LLC d/b/a Greenleaf Gas Company is granted, and the Settlement is, hereby, approved.

2. That within sixty (60) days of the entry date of this Opinion and Order, Brookhaven MHP Management LLC, Meadowview Management LLC, Mill Creek MHP Management LLC, Northwood Manor Management LLC, and ATG Properties LLC d/b/a Greenleaf Gas Company shall remit $30,060.40, payable by certified check or money order, to “Commonwealth of Pennsylvania” with the docket numbers of this proceeding listed, and sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA  17120[[8]](#footnote-8)

3. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That the Secretary’s Bureau shall mark this proceeding closed upon receipt of the $30,060.40 payment, as directed in Ordering Paragraph No. 2 above.

**** **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 23, 2018

ORDER ENTERED: August 23, 2018

1. The Commission’s Final Implementation Order in *Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031, Ordering Paragraph No. 1 (Order entered February 17, 2012), provides the following:

   All pipeline operators in the Commonwealth of Pennsylvania shall file with the Commission an Initial Registration Form (attached hereto as Appendix A) by March 16, 2012, and an Annual Registration Form by March 31st of each year thereafter, in accordance with this Final Implementation Order and the then-current Pipeline Operator Annual Registration Form. [↑](#footnote-ref-1)
2. I&E indicated that it was not pursuing prosecution for the Respondents’ alleged failure to file an Initial Registration Form or to file Annual Registration Forms for pipeline miles in operation during the 2012 and 2013 calendar years because these alleged violations were more than three years old. *See* 66 Pa. C.S. § 3314 (related to limitation of actions and cumulation of remedies). Complaint at 8, 9. [↑](#footnote-ref-2)
3. Section 503(d) of Act 127 provides:

   (d) Reporting of miles.**—**Following the submission of the original application, each pipeline operator shall, on or before March 31 of each calendar year, report to the commission its total intrastate regulated transmission, regulated distribution and regulated onshore gathering pipeline miles in operation for the transportation of gas and hazardous liquids in this Commonwealth during the prior calendar year. [↑](#footnote-ref-3)
4. Section 503(b) of Act 127 provides the following, in pertinent part:

   (b)  Assessments.

   (1)  The commission shall determine an appropriate annual assessment based on intrastate regulated transmission, regulated distribution and regulated onshore gathering pipeline miles. The assessment shall be adjusted to collect the commission’s total costs of the pipeline operators’ portion, excluding the costs otherwise reimbursed by the Federal Government, of:

   (i)  The gas pipeline safety program, plus a reasonable allocation of indirect costs.

   (ii)  The hazardous liquids pipeline safety program.

   (2)  The assessment shall be paid by pipeline operators and shall not be applicable to natural gas public utilities. [↑](#footnote-ref-4)
5. Master meter systems are regulated under Federal pipeline safety laws. A master meter system is defined as “[a] pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents. 49 C.F.R. § 191.3. [↑](#footnote-ref-5)
6. Section 3301(c) provides the following:

   (c) Gas pipeline safety violations.—Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater. [↑](#footnote-ref-6)
7. This case is distinguishable from *Pa. PUC v. Continental Communities, LLC and Hickory Hills MHC, LLC* (*Hickory Hills*), Docket No. C-2015-2468131 (Final Order entered August 11, 2016), in which this Commission approved a settlement agreement where the respondents paid a $1,000,000 civil penalty. While *Hickory Hills* involved allegations that the respondents failed to register with the Commission a propane distribution system at a manufactured housing community and failed to pay Act 127 assessment fees, that case also involved an explosion that resulted in one fatality, injury to another individual, and substantial property damage. [↑](#footnote-ref-7)
8. We clarify here that the penalty and assessment should sent to the address listed in Ordering Paragraph No. 2, rather than the P.O. Box listed in the Settlement. [↑](#footnote-ref-8)