

 **H**awke
  **M**cKeon &
 **S**niscak LLP
ATTORNEYS AT LAW

Kevin J. McKeon
Direct: 717 703-0801
kjmckeon@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

April 10, 2015

VIA ELECTRONIC FILING

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

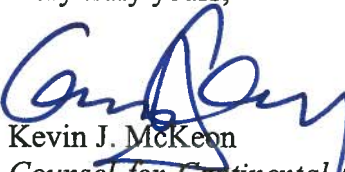
RE: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC,
Docket No. C-2015-2468131; **PRELIMINARY OBJECTIONS**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the Preliminary Objections to the Complaint filed 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 do not hesitate to contact me if you have any questions or concerns.

Very truly yours,



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

KJM/jld
Enclosure
cc: Per Certificate of Service



Kevin J. McKeon, Attorney I.D. # 30428
Whitney E. Snyder, Attorney I.D. # 316625
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: kjmckeon@hmslegal.com
E-mail: wesnyder@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Dated: April 10, 2015

*Counsel for Continental Communities, LLC
and Hickory Hills, MHC, LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Complainants,

v.

Continental Communities, LLC and Hickory
Hills, MHC, LLC

Respondents.

Docket No. C-2015-2468131

PRELIMINARY OBJECTIONS

Respondents Continental Communities, LLC (“Continental Communities”) and Hickory Hills, MHC, LLC (“Hickory Hills”) (collectively, “Respondents”), file these Preliminary Objections to the Bureau of Investigation and Enforcement’s (“B I&E”) Formal Complaint pursuant to 52 Pa. Code § 5.101(a), and in connection therewith avers as follows:

I. INTRODUCTION AND BACKGROUND

1. B I&E’s Formal Complaint filed February 19, 2015 alleges that Continental Communities, LLC (“Continental Communities”) and Hickory Hills, MHC, LLC (“Hickory Hills”) (collectively, “Respondents”) violated the Act of December 22, 2011, P. L. 586, No. 127, 58 P.S. §§ 801.101-801.1101 (“Act 127”) by failing to register pipeline facilities with the Commission, failing to report total intrastate regulated distribution pipeline miles, failing to pay an assessment, failing to have a manual of written procedures, failing to maintain cathodic protection on the pipeline, and failing

to report an incident that occurred on February 14, 2014. It seeks payment of \$3,384 in retroactive assessments and a civil penalty of \$ 2,000,000, the alleged statutory maximum due to “the egregious and serious nature of” the explosion that occurred at Hickory Hills on February 14, 2014.

2. Contemporaneously with the filing of these Preliminary Objections, Respondents filed an Answer and New Matter, which generally denies any wrongdoing.

3. Through these Preliminary Objections, Respondents seek dismissal of all or parts of the Formal Complaint, as follows:

- a. The Formal Complaint fails to state any cause of action against Respondent Continental Communities because Continental Communities 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 safety laws.” 58 P.S. § 801.102; and
- b. The Formal Complaint fails to state a cause of action against either Respondent Continental Communities or Respondent Hickory Hills for the alleged statutory 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.

II. PRELIMINARY OBJECTIONS

A. Legal Standard.

4. The Commission’s regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation*

Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa.R.C.P. 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (Pa. 1979).

5. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusion of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787- 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

B. Preliminary Objection No. 1: The Formal Complaint Fails to State a Cause of Action Against Continental Communities Because Continental Communities Has No Obligation Under Act 127

6. Hickory Hills is a limited liability company formed under the laws of the State of Delaware.

7. Continental Communities, also a limited liability company formed under the laws of the State of Delaware, is the sole member of Hickory Hills.

8. Hickory Hills, not Continental Communities, is now and has since January 1999 been the sole fee simple owner of the real estate and fixtures that comprise the manufactured home community at 121 Hickory Hills Drive, Bath, PA 18014. A copy of Hickory Hills' deed to the property is attached hereto as **Appendix "A."**

9. Hickory Hills, not Continental Communities, was the sole owner of the propane pipeline system on the Hickory Hills premises from January 1999, when Hickory Hills purchased the manufactured home community at 121 Hickory Hills Drive, Bath, PA 18014, including the existing propane pipeline system, from its previous owners, until the propane pipeline system was abandoned on April 10, 2014.

10. Hickory Hills, not Continental Communities, was the sole operator of the propane pipeline system on the Hickory Hills premises from January 1999 until the propane pipeline system was abandoned on April 10, 2014, in that Hickory Hills' employees, not employees of Continental Communities, operated the pipeline system, performed necessary service, and contracted for third party servicing of the system.

11. Continental Communities was never the owner or the operator of the propane pipeline system that was on the Hickory Hills premises.

12. Therefore, Continental Communities has no obligation of any kind under Act 127, and the complaint fails to state a claim against Continental Communities upon which relief can be granted.

C. Preliminary Objection No. 2: The Complaint Fails to State A Cause of Action Against Either Continental Communities or Hickory Hills To the Extent It Seeks The Alleged Maximum Civil Penalty Based on the Circumstances of the Explosion That Occurred At Hickory Hills on February 14, 2014

13. Paragraphs 17-19 of the Formal Complaint allege facts related to an explosion that occurred at Hickory Hills on February 14, 2014.

14. These facts bear no relation to the violations alleged against Respondents in Paragraph 26 of the Formal Complaint.

15. However, in the prayer for relief of the Formal Complaint, B I&E requests that due to “the egregious and serious nature of this incident” the Commission assess what BI&E alleges to be the maximum civil penalty (\$2,000,000) against Respondents.

16. Nothing in Act 127 suggests that factors other than a pipeline operator’s failure to comply with the registration and reporting provisions in Act 127 may be considered as a basis for assessing a civil penalty.

17. Nothing in 66 Pa. C.S. § 3301 suggests that factors other than a pipeline operator’s failure to comply with the registration and reporting provisions in Act 127 may be considered as a basis for assessing a civil penalty.

18. Nothing in the Commission’s policy statement at 52 Pa. Code § 69.1201, relating to factors to be considered in assessing penalties in litigated or settled proceedings, to the extent applicable to proceedings under Act 127 involving non-public utilities, suggests that factors other than a pipeline operator’s failure to comply with the registration and reporting provisions in Act 127 may be considered as a basis for assessing a civil penalty.

19. There is no basis in law or in the facts as pleaded in the Formal Complaint for the Commission to assess civil penalty based on facts that have nothing to do with the violations alleged.

20. Therefore, to the extent the Formal Complaint seeks a civil penalty based on facts pleaded in Paragraphs 17-19 which facts have nothing to do with the violations alleged in Paragraph 26, it fails to state a claim against Respondents upon which relief can be granted.

WHEREFORE, Continental Communities, LLC and Hickory Hills, MHC, LLC respectfully request that its Preliminary Objections be granted in their entirety and that the Commission grant the relief requested herein.

Respectfully submitted,



Kevin J. McKeon, Attorney I.D. # 30428
Whitney E. Snyder, Attorney I.D. # 316625
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: kjmckeon@hmslegal.com
E-mail: wesnyder@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

*Counsel for Continental Communities, LLC
and Hickory Hills, MHC, LLC*

APPENDIX "A"

This Indenture,

Made the 6th day of JANUARY
in the year of our Lord one thousand nine hundred and ninety-nine.

Between Old Orchard Development Corporation, a Pennsylvania business corporation, with its principal place of business in Moore Township, County of Northampton, Grantor,

AND

Hickory Hills MHC, LLC, a Delaware limited liability company, with its principal place of business in Oak Brook, County of DuPage, Illinois,

Grantee

Witnesseth, That the said party of the first part, for and in consideration of the sum of

-----One and no/100-----(\$ 1.00) Dollars
unto it well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, its succ's. and assigns, forever:

All THAT CERTAIN piece or parcel of land with improvements located thereon, situated in the Township of Moore, County of Northampton and Commonwealth of Pennsylvania, and more particularly bounded and described as follows, to wit:

BEGINNING at a point on the legal right-of-way line of S.R. 512 (50 feet wide);

Thence along said right-of-way the following two courses and distances:

1. Along a curve to the right having a radius of 2266.83 feet, a central angle of 12°-31'-06", an arc length of 495.27 feet and the chord being N 62°-17'-36" E, 494.28 feet to a point;
2. N 68°-33'-09" E, 289.80 feet to a point;

Thence along lands now or late of Edward R. & Marie R. Laubach S 20°-57'-10" E, 105.74 feet to a monument found;

Thence along lands now or late of Edward R. & Marie R. Laubach, Harold R. & Sandra P. Wisner and Patrick W. Rogan N 68°-11'-04" E, 527.18 feet to a monument found;

Thence along lands now or late of the Star Grange S 43°-41'-47" E, 147.73 feet to a monument found;

Thence continuing along aforesaid lands N 20°-02'-04" E, 115.63 feet to a point;

Thence along lands now or late of Stephen F. Delker S 58°-25'-14" E, 108.89 feet to a monument found;

Thence continuing along aforesaid lands N 20°-45'-50" E, 125.08 feet to a monument found;

Thence along lands now or late of Nazareth National Bank & Trust Co., and Floyd E. Schlegel S 58°-20'-06" E, 456.84 feet to an iron pipe found;

Thence along lands now or late of Wynn K. & Diane M. Umstead S 59°-24'-49" E, 96.43 feet to a monument found;

Thence along the Clewell Place, Section 2, Subdivision the following four courses and distances:

1. S 37°-34'-34" W, 1374.92 feet to a monument found;
2. S 52°-48'-53" E, 399.15 feet to a monument found;
3. S 58°-18'-22" E, 93.49 feet to a point;
4. S 63°-17'-53" E, 184.14 feet to a monument found;

VOL: 1999-1
PAGE:

003036

RECORDER OF DEEDS
NORTHAMPTON COUNTY
PENNSYLVANIA

INSTRUMENT NUMBER
1999000862

RECORDED ON
Jan 07, 1999
4:10:32 PM

AFFORDABLE HOUSING \$11.05
AFFORDABLE HOUSING \$1.95
-- ADMIN FEE
RECORDING FEES \$13.00
STATE TRANSFER \$45,000.00
TAX
STATE WRIT TAX \$0.50
MOORE TOWNSHIP \$22,500.00
NORTHAMPTON \$22,500.00
AREA SCHOOL DISTRICT
COUNTY RECORDS \$1.00
IMPROVEMENT FEE
DEEDS RECORDS \$1.00
IMPROVEMENT FEE
TOTAL \$90,028.50



I hereby CERTIFY that this
document is recorded in
the Recorder's Office of
Northampton County,
Pennsylvania.

Ann L. Achatz

Thence along the Alberta Bartholomew Subdivision the following six courses and distances:

1. S 39°-41'-03" W, 417.17 feet to an iron pipe found;
2. N 71°-43'-30" W, 149.03 feet to an iron pipe found;
3. N 54°-55'-31" W, 134.01 feet to a railroad spike found;
4. S 36°-35'-16" W, 940.59 feet to a point;
5. S 70°-39'-39" E, 332.91 feet to a point;
6. S 27°-39'-41" W, 356.50 feet to a point;

Thence along lands now or late of James H. & Patricia A. Gordon N 58°-55'-20" W, 49.83 feet to a point;

Thence continuing along aforesaid lands S 31°-4'-40" W, 184.79 feet to an iron pipe found;

Thence along lands now or late of Thomas S. & Cheryl A. Digiacommo and Mark Bukowski N 58°-58'-00" W, 303.41 feet to an iron pipe found;

Thence along lands now or late of Mark Bukowski S 30°-50'-02" W, 313.61 feet to a point on the right-of-way of George Lane;

Thence along said right-of-way the following three courses and distances:

1. N 69°-09'-58" W, 15.00 feet to a point;
2. Along a curve to the right having a radius of 20.00 feet, a central angle of 49°-59'-41", an arc length of 17.45 feet and the chord being N 44°-10'-08" W, 16.90 feet to a point;
3. Along a curve to the left having a radius of 50.00 feet, a central angle of 139°-59'-41", an arc length of 122.17 feet and the chord being N 89°-10'-08" W, 93.97 feet to a point;

Thence along lands now or late of Robert B. & Carol M. Bell N 84°-54'-57" W, 234.36 feet to a point;

Thence along lands now or late of Frank & Carolyn Morone the following four courses and distances:

1. N 74°-30'-30" W, 184.52 feet to a monument found;
2. N 03°-01'-19" W, 231.00 feet to a point;
3. N 08°-34'-01" W, 84.17 feet to a point;
4. S 77°-26'-19" W, 126.25 feet to a monument found;

Thence along aforesaid lands of Morone and lands now or late of Louis L. and Theresa Pflugler N 17°-18'-41" W, 282.36 feet to a point;

Thence continuing along aforesaid lands of Pflugler N 16°-10'-18" W, 316.10 feet to a monument found;

Thence along lands now or late of Gregory A. & Michele F. Gulick the following four courses and distances:

1. S 70°-39'-58" E, 165.62 feet to a monument found;
2. N 31°-00'-50" E, 1214.89 feet to a monument found;
3. N 73°-12'-08" W, 211.06 feet to an iron pin found;
4. N 03°-15'-32" E, 886.51 feet to a point in the legal right-of-way line of S.R. 512, the PLACE of BEGINNING

CONTAINING 102.1775 acres of land (4,450,849.77 Square Feet)

BEING ALL OF THE SAME PREMISES which:

(a) Richard N. Wisner and Esther S. Wisner, husband and wife, by their Deed dated 10 September 1970, granted and conveyed the same unto Old Orchard Development Corp., Grantor herein, the same having been recorded at the office for the Recorder of Deeds, County of Northampton, in Deed Book volume 389, page 258.

(b) Alberta M. Bartholomew, Widow, by her Deed dated 3 October 1972, granted and conveyed to Old Orchard Development Corp., Grantor herein, the same having been recorded at the office for the Recorder of Deeds, County of Northampton, in Deed Book Volume 439, Page 200.

(c) Kevin W. Quinter and Terri L. Quinter, by their Deed dated 12 August 1991, granted and conveyed unto Old Orchard Development Corp., Grantor herein, the same having been recorded at the office for the Recorder of Deeds, County of Northampton, in Deed Book Volume 839, Page 244.

Being Northampton County I.D. # H6-20-20 and # H6-20-13

003038

VOL: 1999-1
PAGE: 1

Together with all and singular the buildings, utilities, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, its successors and assigns, in law, equity or otherwise, howsoever, of, in and to the same, and every part thereof.

To have and to hold the said lot or piece of ground above described with message or tenements thereon erected, *hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, to and for the only proper use and behoof of the said party of the second part, its succ's. and assigns, forever*

And the said party of the first part, for itself and its successors, does by these presents covenant, grant and agree to and with the said party of the second part, its succ's. and assigns, that it, the said party of the first part, and its successors, all and singular the hereditaments and premises herein above described and granted, or mentioned, and intended so to be, with the appurtenances, unto the said party of the second part, its succ's. and assigns, against it, the said party of the first part and its successors, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, or any part thereof,

shall and will Warrant and forever Defend

The Old Orchard Development Corporation, the said party of the first part, doth hereby constitute and appoint its President and Chairman of its Board of Directors, Louis Staiano, to be its attorney, for it and in its name, and as and for its corporate act and deed, to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

This Deed is made under and by virtue of a resolution of the Board of Directors of the party of the first part, duly passed at a meeting thereof duly and legally held on the 12th day of September 1998.

In Witness Whereof,

the said party of the first part, has caused these presents to be signed by its President and its corporate seal to be hereunto affixed, the day and year first above written.

OLD ORCHARD DEVELOPMENT CORPORATION

By: Louis Staiano
Louis Staiano
President

The actual consideration for this purchase is \$4,500,000.00.

Commonwealth of Pennsylvania

County of LEHIGH

ss.:

I HEREBY CERTIFY that on this 6th day of January A.D. 1999, before me, the subscriber, a Notary Public in and for said Commonwealth and County, personally appeared LOUIS STAIANO, PRES. OF OLD ORCHARD DEVELOPMENT CORP., the attorney named in the foregoing Indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said INDENTURE to be the act and deed of the said LOUIS STAIANO to the intent that the same may be duly recorded.

Witness my hand and notarial seal the day and year aforesaid.

NOTARIAL SEAL
BONNIE L. PUTCHER, Notary Public
City of Allentown, Lehigh County
My Commission Expires Oct. 2, 2000

Bonnie L. Putcher
MY COMMISSION EXPIRES

I Herely Certify that the precise address of the grantee herein is

c/o Continental Communities
Suite 102
915 Harger Road
Oak Brook, IL 60523-1400

VOL: 1999-1
PAGE:
003039

[Signature]

DEED

TO

Dated _____, 19____

Commonwealth of Pennsylvania }
County of _____ } s.s.:

Recorded on this _____ day of _____ A.D. 19____
in the Recorder's Office of said County
in DEED Book _____, Vol. _____, Page _____
Given under my hand and seal of the said office the date
above written.

RECORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Complainants,

v.

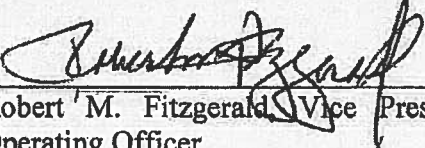
Continental Communities, LLC and Hickory
Hills, MHC, LLC

Respondents.

Docket No. C-2015-2468131

VERIFICATION

I, Robert M. Fitzgerald, Vice President & Chief Operating Officer, Continental Communities, LLC hereby state that I am authorized to make this Verification on behalf of Continental Communities, LLC and verify that the factual averments contained in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief. I would expect to be able to prove the same at any hearing that may be held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.



Robert M. Fitzgerald, Vice President & Chief
Operating Officer
Continental Communities, LLC

DATE: April 10, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission.
Bureau of Investigation and Enforcement,

Complainants.

Docket No. C-2015-2468131

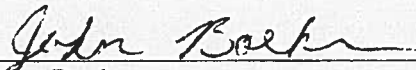
v.

Continental Communities, LLC and Hickory
Hills, MHC, LLC

Respondents.

VERIFICATION

I, John Boehm, manager of Hickory Hills, MHC, LLC, ("Hickory Hills") hereby state that I am authorized to make this Verification on behalf of Hickory Hills and verify that the factual averments contained in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief. I would expect to be able to prove the same at any hearing that may be held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.



John Boehm
Manager
Hickory Hills, MHC, LLC

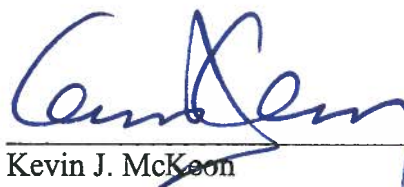
DATE: April 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document 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
Wayne T. Scott, First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265



Kevin J. McKeon

Dated: April 10, 2015