**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. : C-2015-2468131

:

Continental Communities, LLC and :

Hickory Hills MHC, LLC :

**PREHEARING ORDER**

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

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

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

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

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

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

On October 14, 2015, the Commission issued a Notice establishing an Initial Prehearing Conference for this case for Thursday, December 3, 2015 at 10:00 a.m. in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. In anticipation of that Hearing, this Prehearing Order is being issued.

ORDER

THEREFORE,

IT IS ORDERED:

1. That an Initial Hearing shall be held at 10:00 a.m. on Thursday, December 3, 2015, in Hearing Room 3, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania. **If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party**.

2. That, pursuant to 52 Pa.Code § 1.55, each party shall be limited to one entry on the service list. Parties shall provide the name, address, telephone number and e-mail address of the person they wish to have listed on the service list.

3. That, all parties must serve me, and all other parties, directly with any document you file in this proceeding electronically at [jcheskis@pa.gov](mailto:jcheskis@pa.gov) and by hard copy. My address is:

Joel H. Cheskis

Administrative Law Judge

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, Pa. 17105-3265

Telephone: (717) 787-1399

Email: [jcheskis@pa.gov](mailto:jcheskis@pa.gov)

4. That on or before **Tuesday, December 1, 2015**, parties shall file and serve a Prehearing Memoranda which shall include:

1. The information described in Paragraph 2, above.
2. A proposed schedule for litigation.
3. Names, business addresses, and telephone numbers of witnesses the party expects to call and the subject matter of each witness’ testimony.
4. A list of the issues and sub-issues of this proceeding which the party intends to address and a statement of the party’s position on each of the issues and sub-issues listed.
5. A brief statement describing the evidence the party proposes to present at hearing, relating the evidence to each of the issues and sub-issues the party intends to address.
6. That the hearing is a formal proceeding and will be conducted in accordance with the Commission’s Rules of Practice and Procedure.
7. That, pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, **if you are a partnership, corporation, trust, association, or governmental agency or subdivision, an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, must represent you in this proceeding**. Unless you are an attorney, you may not represent someone else. Attorneys shall enter their appearance in accordance with the provisions of 52 Pa. Code §1.24(b).
8. That, pursuant to 52 Pa. Code § 1.24, parties must promptly report to the Commission and the other parties a change in address that occurs during the course of the proceeding.
9. That, a request for a change of the scheduled hearing date must be submitted in writing no later than five (5) days prior to the hearing. 52 Pa. Code § 1.15(b). The requesting party must contact the other party to determine whether there is agreement to the change prior to contacting the Presiding Officer. Requests for changes of initial hearings must be sent to me with copies to all parties of record. Changes are granted only where sufficient cause exists.
10. That the parties are encouraged to review the regulations relating to discovery, specifically at 52 Pa. Code § 5.331(b), which provides, inter alia, that participants try to initiate discovery as early in the proceeding as possible, and 52 Pa. Code § 5.322, which encourages parties to exchange information on an informal basis. The parties are expected to pursue resolution of discovery issues among themselves. Motions to compel should be filed only after such efforts have failed.
11. That Commission policy is to encourage settlements. 52 Pa. Code § 5.231(a). If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.
12. That a finding of a violation of a Commission Order, regulation or statute may result in the imposition of a civil penalty consistent with 66 Pa. C.S. § 3301 or other provision of the Public Utility Code.
13. That, if you, or anyone you plan to call as a witness on your behalf, has a limited ability to speak or understand English or are deaf or hearing-impaired, a qualified interpreter can be provided upon your request. If you need an interpreter, please contact the scheduling office for the Office of Administrative Law Judge at (717) 787-1399 at least ten (10) days before the hearing to make your request. The AT&T Relay Service number for persons who are deaf or hearing-impaired is 1-800-654-5988.

Date: October 16, 2015

Joel H. Cheskis

Administrative Law Judge

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ADAM D YOUNG ESQUIREWAYNE T SCOTT ESQUIREPA PUC BUREAU OF INVESTIGATION AND ENFORCEMENTPO BOX 3265HARRISBURG PA 17105-3265717.783.6150***-ACCEPTS ELECTRONIC SERVICE-***

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