**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 :

**ORDER**

**SUSPENDING LITIGATION SCHEDULE**

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 (Continental) and Hickory Hills MHC, LLC (Hickory Hills), 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, relating to an alleged propane gas explosion that occurred on February 14, 2014 in Bath, Pennsylvania.

On April 10, 2015, Continental and Hickory Hills filed an Answer and New Matter in response to I&E’s Complaint. 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, Continental and Hickory Hills sought dismissal of all or part of the Complaint because 1) it fails to state any cause of action against Continental because Continental has never owned or operated pipeline facilities in Pennsylvania and 2) it fails to state a cause of action against either Continental or Hickory Hills because there is no basis in law or in the factual allegations to create a nexus between the explosion and the alleged statutory violations.

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

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

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

As a result, on October 14, 2015, the Commission issued a Notice establishing an Initial Prehearing Conference for this case for Thursday, December 3, 2015 at 10:00 a.m. in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Order dated October 16, 2015 was issued setting forth various rules that would govern the Initial Prehearing Conference. On November 20, 2015, Continental and Hickory Hills filed an Unopposed Motion for Continuance of Prehearing Conference. That Motion was granted via Order dated November 30, 2015. As a result, the Commission issued a Hearing Cancellation/Reschedule Notice rescheduling the Initial Prehearing Conference for Wednesday, December 16, 2015.

The Initial Prehearing Conference convened on December 16, 2015, as scheduled. The following counsel entered their appearance: Kevin J. McKeon, Esquire, on behalf of Continental and Hickory Hills; and Adam Young, Esquire, on behalf of I&E. During the Initial Prehearing Conference, various procedural matters were discussed. A Scheduling Order dated December 17, 2015 was issued memorializing the procedural matters that were discussed. The parties were reminded that Commission policy promotes settlements, 52 Pa.Code § 5.231(a), and encouraged to commence settlement discussions as early as possible.

On April 12, 2016, the parties indicated that a settlement had been reached. A conference call was convened to discuss procedural issues pertaining to filing the settlement. In part, the parties requested that the litigation schedule be suspended pending disposition of the settlement. As a result, the purpose of this Order is to suspend the litigation schedule pending disposition of the settlement.

Section 5.483(a) of the Commission’s regulations provides Presiding Officers the authority to regulate the course of the proceeding. 52 Pa.Code § 5.483(a). Furthermore, Section 1.2 of the Commission’s regulations also provides that the Commission’s rules shall be “liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding.” 52 Pa.Code § 1.2(a). Commission policy promotes settlements. 52 Pa.Code § 5.231(a). The parties were encouraged to commence settlement discussions as early as possible. In this case, those discussions were successful. It is, therefore, appropriate to suspend the litigation schedule, including cancelling the hearing scheduled for August 29-31, 2016, while the settlement is pending disposition. Suspending the litigation schedule would help to secure the just, speedy and inexpensive determination of this proceeding and would be consistent with Commission policy promoting settlement. To the extent the settlement is approved in its entirety, no hearing is required. To the extent the settlement is denied in whole or in part, a new litigation schedule will be established and the hearing will be rescheduled. Therefore, at this time, the procedural schedule established in the Scheduling Order dated December 17, 2015 should be suspended.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the procedural schedule established in the Scheduling Order dated December 17, 2015 at Docket Number C-2015-2468131 is suspended.
2. That the parties are required to submit Statements in Support of the Settlement, as well as proposed Findings of Fact, proposed Conclusions of Law and proposed Ordering Paragraphs, at the time the settlement is submitted.

Date: April 15, 2016

Joel H. Cheskis

Administrative Law Judge

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

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