

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3195/October 2, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16729

In the Matter of

MILLER ENERGY RESOURCES, INC.,
PAUL W. BOYD, CPA,
DAVID M. HALL, and
CARLTON W. VOGT, III, CPA

ORDER SETTING HEARING LOCATION

After the Securities and Exchange Commission instituted this proceeding, I held a prehearing conference and ordered that the hearing in this matter will begin on January 25, 2016. *Miller Energy Res., Inc.*, Admin. Proc. Rulings Release No. 3130, 2015 SEC LEXIS 3779, at *1-3 (Sept. 15, 2015). I also asked the parties to submit letters setting forth their positions regarding where the hearing should be held. *Id.* at *1. Having considered the parties' submissions, I order that the hearing in this matter will take place in Knoxville, Tennessee.

Discussion

The Administrative Procedure Act and the Commission's Rules of Practice require that in deciding where to hold a hearing, I should consider "the convenience and necessity of the parties[,] their representatives," 5 U.S.C. § 554(b), and "other participants," *i.e.*, witnesses, 17 C.F.R. § 201.200(c). The term "parties" encompasses Respondents and the Division of Enforcement. *See Maremont Corp. v. FTC*, 431 F.2d 124, 129 (7th Cir. 1970); *John Thomas Capital Mgmt. Grp. LLC*, Securities Act of 1933 Release No. 9492, 2013 SEC LEXIS 3860, at *28 (Dec. 6, 2013) (denying interlocutory review).

The parties disagree about where the hearing in this matter should be held. The Division of Enforcement asserts that the hearing should be held in Washington, D.C. Division Letter at 2. Respondents Paul W. Boyd and David M. Hall assert that the hearing should be held in Atlanta, but have no objection to it being held in Knoxville, Tennessee. Respondents' Letter at 2; Tr. 11. Counsel for Respondent Carlton W. Vogt, III, takes no position other than noting that traveling to Knoxville would present logistical challenges. Tr. 12.

Mr. Boyd is located in Knoxville, Mr. Hall is located in Alaska, and Mr. Vogt is located in New York. Division Letter at App. A. Respondent Miller Energy Resources was located in

Knoxville, but now appears to be located in Houston. *Id.* at 1 n.1. Counsel for Mr. Boyd, Mr. Hall, and Miller Energy are located in Los Angeles. Tr. 12. Mr. Vogt's counsel are located in New York. Tr. 12. The Division's attorneys are based in Atlanta. Tr. 2. Consideration of the location and convenience of the parties and their attorneys does not favor any particular location.

Consideration of the location of the witnesses, including the flesh-and-blood Respondents, suggests that three locations could be appropriate. It appears that five witnesses are located in New York, five are in Knoxville, and five or six are in Houston. Division Letter at App. A. Three other witnesses are located in Washington, D.C. *Id.* at 2. The remaining witnesses are spread about the country. *Id.* at App. A. Two of the other witnesses, however, are located within two to three hours' drive of Knoxville. *See id.* Holding the hearing in Washington or Atlanta will thus mean that almost everyone involved has to travel. Holding the hearing in Houston, Knoxville, or New York will mean that at least some people will not have to travel.

No location among the three choices is perfect. If one includes witnesses within a few hours' drive, however, Knoxville has the highest concentration of witnesses. Knoxville will presumably be less expensive than either New York or Houston. *See Pope v. Dep't of Transp.*, 10 M.S.P.B. 645, 648-49 (June 10, 1982) (considering reduction of expenses as a factor in deciding where to hold a hearing). Its airport is served by non-stop air service for most, though unfortunately not all, participants in this matter. *See* <http://flyknoxville.com/tys/assets/PDF/RouteMap2013.pdf>. It is also roughly half-way between New York and Houston. Given the foregoing, I ORDER that the hearing in this matter will take place in Knoxville, Tennessee.

The parties are free to consult with each other and jointly suggest that it would be preferable to hold the hearing in another location. If the parties submit notice by November 2, 2015, that they have agreed to hold the hearing in a different location, I will consider entering an order directing that that the hearing take place at the agreed location.

James E. Grimes
Administrative Law Judge