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December 16, 2015

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Bureau of Investigation & Enforcement v. Bushkill Group Inc.; Docket  
No. C-2015-2512950; **BUSHKILL GROUP INC.'S PRELIMINARY  
OBJECTIONS TO COMPLAINT**

Dear Secretary Chiavetta:

Enclosed for filing in the referenced matter is Bushkill Group Inc.'s Preliminary Objections to the Complaint of the Bureau of Investigation and Enforcement. Copies of this document have been served in accordance with the Certificate of Service.

Please be advised that this filing raises a preliminary objection to the Complaint on grounds of insufficient specificity and that therefore an answer to the Complaint is not required until further directed by the presiding officer or the Commission. 52 Pa. Code § 5.101(e)(1).

If you have any questions, please contact me.

Very truly yours,

Thomas J. Sniscak  
Christopher M. Arfaa

*Counsel for Bushkill Group Inc.*

TJS/CMA/das  
Enclosures  
cc: Per the Certificate of Service

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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,  
Complainant,

v.

Bushkill Group, Inc.,  
Respondent

Docket No. C-2015-2512950

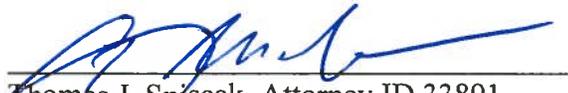
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**NOTICE TO PLEAD**

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TO: Michael L. Swindler, Deputy Chief Prosecutor  
Stephanie M. Wimer, Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265

PLEASE TAKE NOTICE that, pursuant to 52 Pa. Code §§5.101, an answer to the within preliminary objections shall be filed within **ten (10) days** of the date of service of the objections. Please be advised that failure to file an answer within the time allowed may result in a ruling on the objections adverse to your interests without further notice. All pleadings, such as an answer to these preliminary objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Bushkill Group, Inc.



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DATED: December 16, 2015

Counsel for BUSHKILL GROUP INC.

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DATED: December 16, 2015

Counsel for BUSHKILL GROUP INC.

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Respondent, Bushkill Group Inc. (“BGI”), by and through its undersigned counsel, Hawke McKeon & Sniscak, LLP, and pursuant to 52 Pa. Code § 5.101(a), files these Preliminary Objections to the Complaint filed by the Bureau of Investigation and Enforcement (“BI&E”) of the Pennsylvania Public Utility Commission (“Commission”), and in support thereof states as follows:

## **I. PRELIMINARY STATEMENT**

BGI owns and operates a large vacation resort in northeastern Pennsylvania. BGI uses propane to provide heat and hot water in a number of the resort’s buildings. To do so, BGI purchases bulk propane from a distributor who pumps it into a main tank. BGI then uses its own propane truck to transport the propane from the main tank to storage tanks at 28 separate locations. Service lines deliver propane from these tanks to one or more nearby buildings. BGI is the ultimate consumer of the propane and owns all of the tanks and service lines and the real property on which they are located.

In October of 2014, a fire occurred in the utility room of one of the vacation villas BGI heats with propane. A BI&E Gas Safety Inspector, apparently in response to news reports of a fire involving propane, traveled to the site of the fire on the following day to determine whether the fire was caused by a failure of facilities within the Commission’s jurisdiction. During the following weeks, BGI dedicated substantial time and resources to assist BI&E in its investigation. Although it was soon determined that the fire incident was not within the Commission’s jurisdiction, BI&E asserted that “a portion” of the propane tanks and service lines that BGI uses to deliver propane to its own buildings for its own use were subject to the federal pipeline safety laws, thus rendering BGI a natural gas “pipeline operator” subject to the

Commission's enforcement jurisdiction under the Pennsylvania Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101, *et seq.* ("Act 127" or the "Pipeline Act").

Since Act 127 expressly excludes "ultimate consumers" such as BGI from the definition of "pipeline operator," *see* 58 P.S. § 801.102, BGI asked BI&E to explain the basis for contrary interpretation. BI&E's only response was to issue a formal demand that BGI demonstrate compliance with Act 127 and the federal pipeline safety laws by December 31, 2014 or face an enforcement action. When BGI reiterated its request for an explanation of BI&E's reasoning and asked for a list of similarly-situated owner/operators of vacation resorts or similar properties who had been deemed "pipeline operators," BI&E stated that if BGI challenged BI&E's assertion of jurisdiction and lost, BI&E would assess a per-day fine against BGI starting from the day BI&E first approached the company. Nevertheless, BI&E eventually agreed to stay the enforcement deadline pending a meeting with BGI and its counsel scheduled for February 2, 2015 to discuss the jurisdictional issues. However, the meeting was cancelled due to severe winter weather, and BI&E never responded to BGI's repeated attempts to reschedule it. BGI did not hear from BI&E again until it was served with the Complaint.

The Complaint claims that BGI is a "pipeline operator" as that term is defined in Act 127 and demands sanctions for noncompliance with the statute's registration and reporting requirements. The sole basis for this claim is an averment that BGI operates a propane distribution system that is subject "in part" to the federal pipeline safety laws, because "portions" of the system serve ten or more "customers." The Complaint is fatally flawed in at least two respects and should be dismissed.

**First**, the Complaint fails to aver the factual basis for BI&E's claims in sufficient detail to allow BGI to prepare its defense. It does not identify which "portions" of BGI's propane

facilities – which are scattered over twenty-nine locations throughout the resort – serve ten or more “customers.” It does not identify these “customers,” and it does not aver any facts to support the assertion that BGI’s facilities furnish propane to any “customer” other than BGI itself. The Complaint therefore should be dismissed for insufficient specificity.

**Second**, Act 127, at least as applied to businesses like BGI, fails to provide fair notice of what conduct is required or forbidden and encourages arbitrary and discriminatory enforcement. Therefore, the statute is unconstitutionally vague, and the Complaint is legally deficient.

The Act applies only to “pipeline operators,” which are defined as owners and operators of facilities subject to the federal pipeline safety laws for the transportation of natural gas. However, the definition of “pipeline operator” is subject to exceptions and exclusions contained in both Act 127 and the federal laws incorporated into its definitions. The term does not include the “ultimate consumer” of gas who owns service lines on his or her own real property. 58 P.S. § 801.102. Since it only applies to facilities that are subject to federal laws, the term does not apply to owners of facilities that transport gas to fewer than ten “customers” if no portion of the facilities is located in a “public place,” 49 C.F.R. § 192.1(b)(5)(i), or to owners of facilities that serve a “single customer” if the facilities are located entirely on the customer’s premises, *id.* § 192.1(b)(5)(ii). None of the key terms of these exceptions – “ultimate consumer,” “customer,” “public place,” “single customer,” “customer’s premises” – is defined in Act 127 or in the federal pipeline safety regulations it incorporates. As a result, Act 127’s term “pipeline operator” necessarily requires owners of propane equipment who, like BGI, are not in the business of natural gas production, transportation or distribution, to guess at its meaning, thus depriving such owners of the “fair notice” required by due process.

In addition to failing to provide fair notice, the vagueness of the term of “pipeline operator” violates due process because it encourages the arbitrary and discriminatory enforcement of the punitive provisions of Act 127. No operator of a vacation resort or any other business or facility that bears the slightest resemblance to BGI’s business is listed in the Commission’s online Pipeline Operators Registry. To the contrary, each of the listed companies appears to be engaged in the business of producing, transporting or distributing natural gas. Moreover, BGI cannot find any record of an Act 127 enforcement action against an entity like BGI, and BI&E (the office responsible for such actions) cites none in the Complaint. It thus appears that BGI arbitrarily has been singled out for prosecution because it asked for an explanation of the legal and factual bases of BI&E’s conclusory interpretation of Act 127’s vague terms. Act 127 thus “encourages arbitrary or discriminatory enforcement” against owners of propane and natural gas facilities that arguably fall within the vague, overlapping exceptions and exclusions of the statute and the federal laws it incorporates. *See, e.g., Com. v. McCoy*, 895 A.2d 18, 30 (Pa. Super. Ct. 2006). Enforcement of Act 127 against BGI thus violates due process, and the Complaint therefore must be dismissed for legal insufficiency.

## **II. BACKGROUND**

### **A. Pennsylvania Act 127**

1. Act 127 directs the Commission to regulate “pipeline operators” in the Commonwealth pursuant to safety standards established by the “Federal pipeline safety laws” – specifically, the provisions of 49 U.S.C. Chapter 601 (relating to safety), the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989), the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, 116 Stat. 2985) and the regulations promulgated under these Acts. *See* 58 P.S. § 801.102 (definition of “Federal pipeline safety laws”). The relevant federal

regulations are published in Part 49 of the Code of Federal Regulations, Subtitle B, Chapter I, Subchapter D.

2. In order to carry out this mandate, the Pipeline Act authorizes the Commission to create a registry of all jurisdictional pipeline operators. The registration, which shall be renewed annually, shall include the location of the pipeline by class location and approximate aggregate miles of pipeline. The Commission is also authorized to fund these activities through an annual assessment on pipeline operators. In conjunction with the creation of the registry, the Pipeline Act also authorizes the Commission to promulgate regulations necessary to carry out the enforcement of the federal pipeline safety laws, provided that the regulations are no more stringent than, and are not inconsistent with, applicable federal law or regulations. *Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031, Tentative Implementation Order, slip op. at 2 (Pa. Pub. Util. Comm’n Jan. 12, 2012).

3. Section 301(c)(1) of Act 127 requires a “pipeline operator” to register with the Commission, and Section 301(c)(2) provides that failure to register shall subject the operator to a civil penalty. 58 P.S. § 801.301 Section 302(a) provides that the safety standards and regulations for “pipeline operators” shall be “those issued under the Federal pipeline safety laws as implemented in 49 CFR Subtitle B Ch. I Subch. D (relating to pipeline safety).” 58 P.S. § 801.302(a). Section 501(a) confers authority upon the Commission to supervise and regulate “pipeline operators” consistent with the federal pipeline safety laws. *Id.* § 301.501(a). Section 502(a) provides that any “pipeline operator” who violates Act 127 shall be subject to civil penalties. *Id.* § 301.502(a). Section 503(a) provides for the determination and collection of annual assessments of “pipeline operators.” *Id.* § 301.503(a).

4. Section 501(a) also authorizes the Commission to adopt “regulations” necessary to perform its duties under Act 127 that are not “inconsistent with or greater or more stringent than the minimum standards and regulations adopted under the Federal pipeline safety law.” 58 P.S. § 301.501(a).

5. Section 102 of Act 127, 58 P.S. § 301.102, defines a number of terms, including the following:

“Pipeline.” A part of the physical facilities through which gas or hazardous liquids move in transportation, including a pipe valve and other appurtenance attached to the pipe, compressor unit, metering station, regulator station, delivery station, holder and fabricated assembly. The term only includes pipeline regulated by Federal pipeline safety laws. The term does not include a pipeline subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission.

“Pipeline facility.” A new or existing pipeline, right-of-way and any equipment, facility or building used in the transportation of gas or hazardous liquids or in the treatment of gas or hazardous liquids during the course of transportation. The term does not include a pipeline facility subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission.

“Pipeline operator.” A person that owns or operates 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. **The term does not include a public utility or an ultimate consumer who owns a service line on his real property.** (Emphasis added.)

"Transportation of gas." The gathering, transmission or distribution of gas by pipeline or the storage of gas.

6. Pursuant to the definition of “pipeline operator,” the applicability of Act 127 and the Commission’s jurisdiction depends in part on whether the pipeline or pipeline facility in question is regulated under federal pipeline safety laws. This is governed by the regulations promulgated by the federal Pipeline and Hazardous Materials Safety Administration

(“PHMSA”), codified in Part 192 of CFR title 49, which prescribe the federal “minimum safety requirements for pipeline facilities” sought to be enforced by Act 127.

7. By their terms, the PHMSA regulations expressly do not apply to: “Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to— (i) **Fewer than 10 customers**, if no portion of the system is located in a **public place**; or (ii) **A single customer, if the system is located entirely on the customer's premises** (no matter if a portion of the system is located in a public place).” 49 C.F.R. § 192.1(b)(5) (emphasis added).<sup>1</sup>

8. Combining the relevant exceptions established by the federal regulations and Act 127, a person who owns or operates facilities for the transportation of gas<sup>2</sup> is **not** a “pipeline operator” within the meaning of Act 127, and thus is not subject to Commission jurisdiction, where:

- a. The equipment or facilities transport gas to **fewer than 10 customers**, if no portion of the system is located in a **public place**, 49 C.F.R. § 192.1(b)(5)(i); **or**
- b. The equipment or facilities transport gas to **a single customer, if the system is located entirely on the customer's premises** (no matter if a portion of the system is located in a public place), 49 C.F.R. § 192.1(b)(5)(ii); **or**
- c. The person is an **ultimate consumer** who **owns a service line on his or her real property**, 58 P.S. § 301.102 (definition of “pipeline operator”).

9. The PHMSA do not define the meaning of “customer,” “public place,” “single customer,” or “customer’s premises” as they are used in the exceptions set forth in 49 C.F.R. § 192.1(b)(5).

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<sup>1</sup> Petroleum gas includes propane. 49 C.F.R. § 192.3.

<sup>2</sup> The references in Act 127 to “hazardous liquids” are not relevant to this matter and are therefore omitted.

10. Similarly, Act 127 does not define the meaning of the terms “ultimate consumer,” or “his or her real property” used in the definition of “pipeline operator” contained in Section 102 of Act 127, and the Commission has not promulgated any regulations defining the terms.<sup>3</sup>

11. As part of its initial implementation of the Pipeline Act, the Commission adopted an annual registration form, set a registration fee, and initiated the determination and collection of assessments. *See Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031, Final Implementation Order (Pa. Pub. Util. Comm’n Feb. 17, 2012) (“*Final Implementation Order*”), *modified*, Final Order entered June 7, 2012. However, the Commission has not adopted any formal regulations implementing Act 127 pursuant to the rulemaking procedures required by the Commonwealth Documents Law, 45 Pa. C.S. § 1102 *et seq.*, the Commonwealth Attorneys Act, 71 Pa. C.S. § 732–204(b), and the Regulatory Review Act, 71 P.S. §§ 745.1–745.15.

12. When the Commission commenced implementation of the registration and assessment provisions of Act 127, it ordered that a Secretarial Letter, the Tentative Implementation Order and the Registration Form be sent “to entities which the Commission believes are likely to be pipeline operators as defined in the Pipeline Act.” *See Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031, Tentative Implementation Order, slip op. at 8 (Pa. Pub. Util. Comm’n Jan. 12, 2012) (“*Tentative Implementation Order*”). Accordingly, the Commission distributed these

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<sup>3</sup> The Commission acknowledged the exclusion of the “ultimate consumer” who owns a “service line” located on the ultimate consumer’s “real property” from Act 127’s definition of “pipeline operator” when it adopted an annual registration form for pipeline operators, set a registration fee, and initiated the determination and collection of assessments pursuant to Act 127. However, it did not discuss the meaning of the key terms in the exclusion. *See Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031, Final Implementation Order (Pa. Pub. Util. Comm’n Feb. 17, 2012), *modified*, Final Order entered June 7, 2012.

documents “to entities that could be subject to Act 127.” *Final Implementation Order*, slip op. at 1.

13. Upon information and belief, the Commission did not send the materials specified in its Tentative Implementation Order to BGI or any other vacation resort owners or similar entities because the Commission did not “believe[] [such entities] are likely to be pipeline operators as defined in the Pipeline Act.” *Tentative Implementation Order*, slip op. at 8.

14. Approximately 120 Registered Pipeline Operators are listed in the Commission’s online Pipeline Operators Registry. (A printout of the list of Registered Pipeline Operators as of November 24, 2015 is attached hereto as **Exhibit A**.) All of the listed Operators appear to be in the business of producing, transporting or distributing natural gas. None of them appears to be an operator of a vacation resort or any other business or facility that bears the slightest resemblance to BGI.

#### **B. BGI’s Propane Use And Equipment**

15. BGI owns and operates Fernwood Resort and the Villas at Treetops and Fairway, which are vacation resorts located in East Stroudsburg, Pennsylvania (collectively, the “Resort”).

16. Visitors can rent rooms or villas at the Resort on an occasional basis or purchase vacation ownerships (timeshares). Timeshare customers purchase the right to use one or more villas and the resort’s amenities for one or more seasons of the year.

17. Legal title to all of the real property on which the Resort located is held by BGI or its corporate affiliates.

18. BGI uses propane to fuel the heat and hot water appliances in some, but not all, of the buildings and facilities of the Resort.

19. BGI purchases the propane it uses in bulk from a supplier who delivers the propane to BGI's main tank on the Resort property.

20. Using its own delivery truck and drivers, BGI then distributes the bulk propane to forty-seven underground and above-ground tanks at twenty-eight locations throughout the Resort.

21. The forty-seven tanks at these twenty-eight locations are connected via service lines to one or more buildings containing service, commercial or business facilities or vacation villas. (The main tank is separately situated in a 29th location and is not connected to any service lines.)

22. BGI's propane facilities are not connected to the main tank. As stated above, BGI distributes propane from the main tank to tanks at the twenty-eight separate locations by delivery truck.

23. BGI does not transport gas via pipeline to, from or on any of its properties.

24. BGI does not measure or meter propane consumption in any of its buildings or facilities, nor does it collect charges for propane use from any person.

25. Because BGI delivers its own propane to its own facilities without metering or charge, it has always considered itself to be the ultimate consumer of its own supply via service lines on its own real property and, as such, not subject to the jurisdiction of the Commission, Pennsylvania Act 127 or the federal standards contained in 49 CFR Part 192.

### **C. BI&E's Interaction With BGI**

26. On October 15, 2014, a fire occurred in the utility room one of the propane-heated villas of BGI's Tree Tops property. No one was injured in the incident.

27. On October 16, 2014, PUC Gas Safety Supervisor, Michael Chilek visited the Tree Tops property in response to the previous evening's TV news media report on the fire, specifically citing a reference in the media report to an "explosion" and therefore presuming that gas was a factor in the fire.

28. On October 17, 2014, Mr. Chilek returned to the property, accompanied by a PUC engineer, Christopher Whiteash, and met with BGI's Chief Operating Officer, Mark S. Turner. The meeting included discussion about the nature of BGI's propane use and about whether the property fell under the Commission's jurisdiction. Mr. Chilek requested further information from BGI.

29. Also on October 17, 2014, BGI's attorney received a call from Paul Metro, Manager of the BI&E Gas Safety Division, indicating that the PUC should have a decision on the jurisdiction question early the following week.

30. On October 23, 2015, BGI received an e-mail message from Mr. Chilek stating that the Commission was moving forward as if BGI is subject to Commission jurisdiction under Act 127. Mr. Chilek's e-mail also requested a pressure test of the portion of the system involved in the fire and stated that BGI should start operating its system as per 49 CFR Part 192.

31. On October 24, 2014, BGI e-mailed to Mr. Chilek some of the information he had requested on October 17, 2014. In the email, Bushkill requested more detail and explanation of why the BI&E considers Bushkill to be jurisdictional and for a definition of "customer" as used by BI&E personnel in prior discussions. BGI also requested specific information on what equipment BI&E would like to see pressure tested.

32. On October 28, 2014, BGI e-mailed the remaining information Mr. Chilek had requested on October 17, 2014, and again requested a definition of “customer” and an explanation of BI&E’s internal determination of jurisdiction.

33. Also on October 28, 2014, there was a telephone call between BGI and BI&E representatives, in which Mr. Metro provided information on what BI&E would like to see pressure tested. Mr. Metro also defined “Customer” as the ultimate user of the propane. BGI responded that BGI itself is the ultimate user in that it uses the propane to heat its own buildings and facilities. There was further discussion on the question of jurisdiction in which both parties restated their respective positions and BGI indicated it will continue to cooperate with BI&E’s requests on a voluntary basis despite the ongoing questions regarding the Commission’s jurisdiction.

34. On November 7, 2014, BGI conducted the requested pressure test of the gas supply lines running from the nearby tank farm to the villas involved in the fire. The test was conducted in Mr. Chilek’s presence and pursuant to his parameters for test pressure and duration. Mr. Chilek requested, and BGI agreed, to have a separate, independent test performed on the section of riser pipe that served the villa that was the site of the fire’s origin.

35. On November 21, 2014, a letter from Mr. Metro of BI&E was e-mailed to Mr. Turner of BGI. The letter stated that “the PAPUC Gas Safety Office has determined that the Tree Tops propane distribution system is jurisdictional to the PAPUC as per Act 127.” The letter further stated that “the PAPUC has determined that Tree Tops is out of compliance with 49 CFR 192 Pipeline Safety Regulations and as such Tree Tops shall provide the following by December 31, 2014: ... A plan to bring the Tree Tops Inc. propane system (mains service, regulators/risers, appurtenances) into compliance with 49 CFR 192 by December 31, 2014. ...”

36. On December 1, 2014, Mr. Turner sent a letter to Mr. Metro in response to the November 21, 2014 letter, which stated, in part:

For the larger task related to compliance with 49 CFR 192, we will need to become significantly more familiar with all aspects of this section of code in order to determine the amount of work, if any, necessary for our propane gas system to meet all requirements by December 31, 2014. To better understand the scale of the task and how it relates, or does not relate, to certain sections of our property, we would like to be sure we correctly understand the “number of customers” issue you have previously mentioned. It would seem that the PUC’s position is that if a propane gas service line feeds 10 or more “customers”, that line and its appurtenances is jurisdictional. You have also indicated that you consider a single villa, and not a single building housing four villas (a fourplex), to be an individual “customer.” From this we infer that a service line feeding less than 10 individual villas (or any other individual buildings for that matter) is not jurisdictional. Based on this understanding, some of our equipment may be jurisdictional pursuant to the Commission’s interpretation of the applicable law, but other portions of our equipment may be non-jurisdictional. Again, this statement is made without prejudice to our ongoing questions regarding whether any of the equipment falls within the Commission’s jurisdiction. Please confirm if our understanding is correct.

It would also be extremely helpful to us if you could provide a complete list of all the timeshare/vacation resorts, hotels, motels, campgrounds, mobile home parks or other facilities similar to ours that are currently registered with the PAPUC either as a Pipeline Facility or in any other way as a result of the nature of their propane gas system installation. We may then reach out to some of them for help and guidance on how they navigated the registration process and the extent to which the requirements of 49 CFR 192 differed from their previous daily operating procedures. In addition, once we better understand the requirements of 49 CFR 192, we will be in a better position to assess the feasibility of meeting the December 31, 2014 timeline stated in your letter.

A copy of Mr. Turner’s December 1, 2014 letter is attached hereto as **Exhibit B**.

37. On December 4, 2014, Mr. Turner’s December 1, 2014 letter was delivered to BI&E’s Harrisburg offices.

38. During the period from December 5 through December 22, 2014, BGI and BI&E exchanged e-mail messages regarding testing procedures and the selection of a facility to test the riser that served the villa where the fire originated.

39. On December 17, 2014, BGI sent an e-mail message to Mr. Metro of BI&E expressing concern regarding (a) the looming December 31, 2014 deadline for compliance with Act 127 and 49 CFR Part 192 imposed by Mr. Metro's November 21, 2014 letter and (b) the absence of any response to BGI's December 1, 2014 request for the answers and information needed to assess the necessity and feasibility of compliance. The e-mail repeated BGI's request for this information.

40. On December 18, 2014, in an e-mail to Mr. Chilek regarding the selection of a testing facility, BGI again requested the answers and information originally requested in Mr. Turner's December 1, 2014 response to Mr. Metro's November 21, 2014 letter.

41. On December 22, 2014, BGI received an e-mail message from Mr. Metro that stated the PUC's preference regarding testing facilities, repeated his assertion that BGI's propane facilities fell within the PUC's jurisdiction, and suggested a conference call with BGI and its attorney.

42. On December 22, 2014, BGI sent an e-mail message to Mr. Metro that agreed to his request for a conference call, repeated the request for answers and information contained in its December 1, 2014 letter, and asked if the answers and information could be provided in advance of the conference call.

43. On December 29, 2014, BGI's outside counsel, Thomas Sniscak, telephoned Wayne Scott, First Deputy Chief Prosecutor of BI&E. During this conversation, Mr. Sniscak and Mr. Scott agreed on the manner of proceeding in this matter.

44. Later on December 29, 2014, Mr. Sniscak followed up with an e-mail message confirming the conversation and the agreements reached earlier that day. A copy of Mr. Sniscak's December 29, 2014 e-mail message to Mr. Scott is appears at pages 5-6 of the e-mail exchange attached hereto as **Exhibit C**. As set forth in Mr. Sniscak's message, the agreements between BGI and BI&E included the following:

- BGI and BI&E will meet or have a conference call in the first or second week of January to help BGI to understand BI&E's specific reasons and facts that support certain facilities being subject to Act 127. Also discussed will be what BI&E sees as steps to be taken for compliance, and timing.
- The deadline specified in the November 21, 2014 letter is extended while the process above is underway and should BGI and BI&E not be able to resolve the issues then BI&E would then set a new reasonable deadline.

45. On December 30, 2014, Mr. Scott sent a reply to Mr. Sniscak's December 29, 2014 e-mail message. A copy of Mr. Scott's reply appears at pages 4-5 of **Exhibit C**. Mr. Scott's December 30, 2013 reply stated, in pertinent part:

I just want to be clear that if BGI decides to oppose our jurisdiction and they lose, we will assess a per day fine from the day that we first requested any information, including pipe inspection.

46. In the morning of December 31, 2014, Mr. Sniscak replied to Mr. Scott's December 20, 2014 message. A copy of Mr. Sniscak's reply appears at pages 1-4 of **Exhibit C**. In response to the above-quoted assertion by Mr. Scott, Mr. Sniscak's December 31, 2014 e-mail drew Mr. Scott's attention to BGI's request in Mr. Turner's December 1, 2014 letter for an explanation of why BI&E considers BGI's propane facilities jurisdictional under Pennsylvania Act 127 and federal regulations:

3. We do not want to pick a fight with BI&E but Bushkill has asked several fair and relevant questions in its December 1, 2014 letter to Mr. Metro that are vital to the compliance/jurisdictional issue and for Bushkill to determine how to proceed. I draw your

attention to the next to last paragraph in that letter. To date, I've not seen anything other than a summary conclusion without explanation in emails and correspondence from BI&E that the system is jurisdictional. Here is the text of that letter, and in particular we would like answers to the next to the last full paragraph regarding compliance and how BI&E interprets and applies the jurisdictional test under Act 127 and under the Federal parts under Bushkill's individual facts:

\* \* \*

We understand BI&E's position on fines if we were to mount a challenge on jurisdiction and lose, but we'd like to think we are still at the point where both sides are willing to see if we can work out something mutually acceptable.

(**Exhibit C** at 1, 3.)

47. In the afternoon of December 31, 2014, Mr. Scott sent a reply to the message Mr. Sniscak sent that morning. A copy of Mr. Scott's reply appears at page 1 of **Exhibit C**. Mr. Scott's reply was as follows:

As to your answer to number 3, all I can say is that is why I'm glad they hired good utility counsel. We think the law is clear on this and no further explanation was necessary. We will be happy to discuss this with you further when we meet. There will only be a problem if the company decides to fight jurisdiction and loses.

48. On January 21, 2015, the forensic engineering firm S-E-A Limited issued its Gas Riser Examination and Testing Report on the propane riser that BGI had arranged to be tested at BI&E's request. The Report concluded as follows:

There was no physical evidence of any pre-incident failure of the riser. Destructive testing of the riser showed that the plastic piping did not pull out of the riser pre-incident.

The subject riser was compromised during the incident when interior plastic components were damaged as a result of aboveground heat damage incurred during the fire. This is the reason why the post-incident in-situ leak test of the riser did not hold pressure.

The remainder of the unmelted plastic piping (in the underground portion of the riser casing and the short section of incoming plastic piping, including a Permasert coupling, was leak-tested and found to be leak-free.

49. A meeting between BGI and BI&E in Harrisburg to discuss this matter was scheduled for February 2, 2015.

50. The February 2, 2015 meeting was cancelled due to a snow storm.

51. On February 4, 2015, Mr. Scott of BI&E called Mr. Sniscak to request BGI's availability later in the month for to reschedule the meeting.

52. On or about February 5, 2015, Mr. Sniscak gave Mr. Scott four dates in February on which BGI representatives could be available for a meeting with BI&E in Harrisburg.

53. During the following weeks, Mr. Sniscak left multiple messages for Mr. Scott requesting a response to BGI's proposed meeting dates. Neither Mr. Scott nor any other representative of BI&E responded to these messages or to BGI's proposed meeting dates.

54. In the absence of a response from BI&E, the cancelled February 2, 2014 meeting was not rescheduled.

55. After February 5, 2015 neither BGI nor its counsel received any communication from BI&E regarding this matter until the Complaint was served.

56. To date, BI&E has not identified which of BGI's propane facilities it claims are "jurisdictional" under Act 127 nor provided the explanation of the basis for that claim in response to BGI's **eight written requests** (transmitted on October 24, 2014, October 28, 2014, December 1, 2014, December 17, 2014, December 18, 2014, December 22, 2014, December 29, 2014, December 31, 2014) and countless oral requests.

**D. The Complaint**

57. The Complaint was served on BGI on November 13, 2015.<sup>4</sup>

58. The Complaint alleges that BGI operates a propane distribution system that is subject “in part” to the federal pipeline safety laws, because “portions” of the system serve ten or more “customers.” (Complaint ¶ 5.) Solely on the basis of this allegation, the Complaint then asserts that BGI is a “jurisdictional ‘pipeline operator’ as that term is defined in Act 127” (Complaint ¶ 10) and thus “subject to the power and authority of the Commission pursuant to Section 501(b) of Act 127” (Complaint ¶ 13). This allegation also provides the sole basis for the BI&E’s assertion that the Commission has jurisdiction over the subject matter of the Complaint and BGI’s alleged actions. (Complaint ¶ 15.)

59. The only “facts” averred in support of the allegation that “portions” of BGI’s facilities serve ten or more customers and thus are subject to the federal pipeline safety laws are as follows:

- a. “The initial assessment of the Gas Safety inspectors concluded that the propane system was jurisdictional and further investigation would be required.” (Complaint ¶ 16.)
- b. The Gas Safety inspectors “found” that of the facilities listed on a spreadsheet and map provided by BGI, “a portion” fall within the jurisdiction as not exempt under 49 C.F.R. § 192.1(b)(5)(i) (excluding pipeline systems that serve fewer than 10 customers and are located entirely in non-public areas). (Complaint ¶ 17.)

60. The Complaint then alleges that BGI: (a) violated Section 301(c) of Act 127 by failing to file an Initial Pennsylvania Pipeline Operator Registration Form by the 2012

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<sup>4</sup> The time for filing BGI’s answer or other responsive pleading was extended to December 16, 2015 by the Secretary’s Bureau pursuant to BGI’s unopposed request.

registration deadline (1 count); (b) violated Section 503(d) of Act 127 by failing to renew its registration or report pipeline miles annually (3 counts); (c) violated federal regulations by failing to maintain a procedural manual as “ a company operating a jurisdictional Act 127 propane distribution system governed by the Federal pipeline safety laws”; and failed to comply with federal incident reporting regulations with respect to the October 15, 2014 fire. (Complaint ¶ 30.)

61. The Complaint demands that BGI be ordered to pay a civil penalty and file registration forms for 2012, 2013, 2014 and 2015 and subsequent years.

62. The Complaint does not identify any specific “customer” other than BGI, let alone the “ten or more” customers allegedly served by BGI’s propane facilities.

63. The Complaint does not identify which specific “portions” of BGI’s propane facilities allegedly serve ten or more “customers” or which of the 48 tanks situated on the 29 separate propane locations at the Resort is allegedly implicated.

64. The Complaint does not include the specific documents pursuant to which the Gas Safety inspectors allegedly “found” that “a portion” of BGI’s facilities did not fall within the federal exemption to the pipeline safety regulations.

65. The Complaint does not allege specific facts to support the conclusory allegation that BGI, who is the “ultimate consumer” of propane gas and the owner of all service lines at the Resort, is a “pipeline operator” under Act 127 and thus subject to Commission jurisdiction.

### **III. ARGUMENT**

#### **A. Legal Standards**

66. A party may file preliminary objections under the Commission’s regulations. 52 Pa. Code § 5.101. Commission preliminary objection practice is analogous to Pennsylvania civil

practice regarding preliminary objections. *City of Pottsville v. Reading Blue Mtn. & Northern R.*, Docket No. C-2012-2330567, 2014 WL 7149248, at \*2 (Pa. Pub. Util. Comm'n. Nov. 19, 2014) (citation omitted). A preliminary objection seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveler Servs., Inc. v. Pa. Dept. of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (Pa. 1979).

67. A preliminary objection asserting insufficient specificity of a pleading pursuant to section 5.101(a)(3) of the Commission's rules, 52 Pa. Code § 5.101(a)(3), is therefore analogous to Pa. R.C.P. No. 1028(a)(3), which similarly permits a preliminary objection based on insufficient specificity of a pleading. "Preliminary objections in the nature of a motion for a more specific pleading raise the sole question of whether the pleading is sufficiently clear to enable the defendant to prepare a defense." *Unified Sportsmen of Pa. v. Pennsylvania Game Comm'n*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008) (citing *Paz v. Dep't of Corr.*, 135 Pa. Cmwlth. 162, 580 A.2d 452 (1990)).

68. In determining whether to sustain preliminary objections challenging jurisdiction or legal sufficiency, 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 pleader's conclusions 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. First Preliminary Objection: The Averments Of The Complaint Are Insufficiently Specific To Enable BGI To Prepare Its Defense.**

69. “Procedural due process requires that an individual be given adequate notice of the charges against the individual and an opportunity to be heard. Adequate notice for procedural due process purposes requires, at a minimum, that the notice contain a sufficient listing and explanation of the charges against a person, so that he or she may prepare an adequate defense.” *LT Int’l Beauty Sch., Inc. v. Com., Bureau of Prof’l & Occupational Affairs, State Bd. of Cosmetology*, 13 A.3d 1004, 1013 (Pa. Cmwlth. 2011) (citation omitted) (since respondent school was never apprised of which students had incomplete kits or what equipment was missing from the kits, it “had no way to defend against the inspectors’ bald allegations that some student kits were incomplete”).

70. Accordingly, the Commission’s rules of procedure provide that a formal complaint must contain a “clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.” 52 Pa. Code § 5.22(a)(5). The Commission’s rule is based on Pennsylvania’s Rule of Civil Procedure 1019, which requires a plaintiff to plead all the facts that he must prove in order to achieve recovery on the alleged cause of action. *Steven Higgins v. National Fuel Gas Distr. Corp.*, Docket No. C-2012-2338926, Initial Decision, 2013 WL 1100798, at \*2 (Pa. Pub. Util. Comm’n. Feb. 26, 2013) (Colwell, ALJ). The pleading must be sufficiently specific so that the defending party will know how to prepare its defense. *Id.* (citing *Department of Transportation v. Shipley Humble Oil Co.*, 370 A.2d 438 (Pa. Cmwlth. 1977)); accord *Unified Sportsmen of Pa.*, 950 A.2d at 1134 (“This Rule is satisfied if the allegations in a pleading contain averments of all facts the plaintiff must eventually prove in order to recover, and the averments are sufficiently specific to enable the adverse party to prepare a defense.”) (citation omitted).

71. Importantly, Pennsylvania’s rules of pleading require **more** specificity than the minimum that is required to provide notice. “Pennsylvania is a fact-pleading jurisdiction. A complaint must therefore not only give the defendant notice of what the plaintiffs’ claim is and the grounds upon which it rests, but it must also formulate the issues by summarizing those facts essential to support the claim.” *Unified Sportsmen of Pa.*, 950 A.2d at 1134 (quoting *Sevin v. Kelshaw*, 417 Pa. Super. 1, 611 A.2d 1232, 1235 (1992) (further citations omitted)).

72. The Commission has concisely described the degree of specificity required in the complaints it is asked to adjudicate: “the allegations must be set forth in sufficient detail to: (1) allow the [respondent] to respond to them; (2) allow the [respondent] to prepare its defense or to address the problem and settle the case; and (3) allow the adjudicator to recognize an actionable complaint. The allegations must state what Complainant believes that [the respondent] did wrong, where, and when.” *Steven Higgins*, Initial Decision, 2013 WL 1100798, at \*2.

73. The Complaint in this case falls woefully short of this requirement. It does not “formulate the issues by summarizing those facts essential to support the claim.” It does not identify the specific “portions” of BGI’s facilities that allegedly serve “ten or more customers” or even state which of the 48 tanks or 29 tank locations is involved. It does not allege the facts underlying the conclusory allegation that the facilities serve “customers” other than BGI or identify or even describe such “customers”. It does not identify the documents pursuant to which the Gas Safety inspectors allegedly “found” that “a portion” of BGI’s facilities did not fall within the federal exemption, nor does it describe the information in those documents that allegedly supports that “finding.” Similarly, although BGI has repeatedly informed BI&E of its position that it is the “ultimate consumer” of propane gas and the owner of all service lines at the resort,

the Complaint fails to allege any facts to support a contrary finding and thus the conclusion that BGI is a “pipeline operator” under Act 127 and subject to the Commission’s jurisdiction.

74. BI&E’s failure to plead the specific facts on which its allegations of Act 127 violations are based and its claim of Commission jurisdiction rests is remarkable in view of the interaction between BGI and BI&E in the final months of 2014. During this period, BGI cooperated fully and dedicated substantial management time and company resources to assist BI&E’s investigation of the October 15, 2014 fire. It soon became apparent that the incident was not within the Commission’s jurisdiction, as BI&E admits (Complaint ¶ 18). However, rather than thanking BGI for its assistance and allowing it to get on with its affairs, BI&E asserted that BGI’s use of propane on its own property to heat its own buildings rendered BGI a “pipeline operator” subject to regulation under Act 127. Despite BGI’s repeated written (and oral) requests for an explanation of the legal and factual basis for this assertion, none was ever provided. After the one meeting BGI eventually managed to schedule to discuss the issue was cancelled due to inclement weather, BI&E never responded to BGI’s repeated requests to reschedule.

75. BGI asked BI&E to provide the basis for its assertions of jurisdiction and threats of enforcement actions more than a year ago so that BGI could respond to those accusations, determine its obligations under Act 127, and, if necessary, bring its operations into compliance. BI&E failed to do so and instead, after nine months of silence, filed a Complaint that, once again, fails to provide the basis for BI&E’s claims “in sufficient detail to: (1) allow [BGI] to respond to them; (2) allow the [BIG] to prepare its defense or to address the problem and settle the case; and (3) allow the [Commission] to recognize an actionable complaint.” *Steven Higgins*, Initial Decision, 2013 WL 1100798, at \*2.

76. Therefore, BGI's First Preliminary Objection should be sustained and the Complaint should be dismissed for insufficient specificity.

**C. Second Preliminary Objection: The Complaint Is Legally Insufficient Because The Definition Of "Pipeline Operator" In Act 127 Is So Vague As To Its Application To Entities Like BGI That Penalizing BGI For Noncompliance Would Deprive BGI Of Due Process Of Law.**

77. The United States Supreme Court has explained that, in order to satisfy the Fifth Amendment's Due Process Clause - made applicable to the states through the Fourteenth Amendment - laws must not fail to "give [a] person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982). Due process demands that a statute not be vague. *Com. v. Mayfield*, 832 A.2d 418, 422 (Pa. 2003); *Com. v. Barud*, 681 A.2d 162, 165 (Pa. 1996). A statute is vague if it fails to provide fair notice as to what conduct is forbidden or if it prevents the gauging of future, contemplated conduct, or if it encourages arbitrary or discriminatory enforcement. *Com. v. McCoy*, 895 A.2d 18, 30 (Pa. Super. Ct. 2006); *see Barud*, 681 A.2d at 165. A vague law is one whose terms necessarily require people to guess at its meaning. *Mayfield*, 832 A.2d at 422. If a law is deficient (*i.e.*, vague) in any of these ways, then it violates due process and is constitutionally void. *Id.*; *see also Eagle Envtl. II, L.P. v. Com., Dep't of Envtl. Prot.*, 584 Pa. 494, 517, 884 A.2d 867, 881 (2005) ("A law may be unconstitutionally vague and thus violate the Due Process Clause of the United States Constitution if it fails to provide the necessary information such that an ordinary citizen could understand what conduct is prohibited.") (citing *Commonwealth v. Craven*, 572 Pa. 431, 817 A.2d 451, 454 (2003)).

78. In this case, Act 127, augmented by the federal regulations it incorporates by reference but lacking any formal implementing regulations by the Commission, is unconstitutionally vague with respect to its application to entities such as BGI.

79. As discussed above, the requirements of Act 127 and the enforcement powers it confers upon the Commission apply solely to “pipeline operators,” as that term is defined by the Act. To be deemed a “pipeline operator” under Act 127, a person must own or operate equipment or a facility that is subject to regulation under the federal pipeline safety laws for the transportation of natural gas, and **not** be an “ultimate user” that owns a “service line” on his or her own “real property.” 58 P.S. § 301.102.

80. Combining the relevant exceptions to the federal pipeline safety laws established by federal regulations and the exception contained in Act 127’s definition of “pipeline operator,” a person who owns or operates facilities for the transportation of gas is **not** a “pipeline operator” within the meaning of Act 127, and thus is not subject to Commission jurisdiction, where:

- a. The equipment or facilities transport gas to **fewer than 10 customers**, if no portion of the system is located in a **public place**, 49 C.F.R. § 192.1(b)(5)(i); **or**
- b. The equipment or facilities transport gas to **a single customer, if the system is located entirely on the customer's premises** (no matter if a portion of the system is located in a public place), 49 C.F.R. § 192.1(b)(5)(ii); **or**
- c. The person is an **ultimate consumer who owns a service line on his or her real property**, 58 P.S. § 301.102 (definition of “pipeline operator”).

81. The PHMSA regulations do not define the meaning of “customer,” “public place,” “single customer,” or “customer’s premises” as they are used in the exceptions set forth in 49 C.F.R. § 192.1(b)(5). Similarly, Act 127 does not define the meaning of the terms “ultimate consumer,” or “his or her real property” used in the definition of “pipeline operator” contained in Section 102 of Act 127, and the Commission has not promulgated any regulations defining the terms. As a result, Act 127’s term “pipeline operator” “necessarily require[s]

people” who, like BGI, are not in the business of natural gas production, transportation or distribution, “to guess at its meaning.” *Mayfield*, 832 A.2d at 422. The statute thus does not provide “fair notice” of what aspects of BGI’s operations are forbidden absent registration, and it prevents BGI from gauging the effect its future conduct under the law. *See Com. v. McCoy*, 895 A.2d at 30.

82. In addition to failing to provide fair notice, the compound vagueness of the term of “pipeline operator” violates due process because it encourages the arbitrary and discriminatory enforcement of the punitive provisions of Act 127. *Barud*, 681 A.2d at 165; *see also Mikulan*, 504 Pa. at 251, 470 A.2d at 1342 (“The touchstone of due process is protection of the individual against arbitrary action of the government.”) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). The principal business of all of the Registered Pipeline Operators listed in the Commission’s online Pipeline Operators Registry appears to be the production, transportation or distribution of natural gas. (See **Exhibit A**.) None of the registered entities appears to operate a vacation resort or any other business or facility that bears the slightest resemblance to BGI’s Resort property. Indeed, when the Commission distributed its Tentative Implementation Order and proposed Registration Form to “entities that could be subject to Act 127,” *Final Implementation Order*, slip op. at 1, it did not provide them to BGI or any other vacation resort owners or similar entities, presumably because the Commission did not “believe[] [such entities] are likely to be pipeline operators as defined in the Pipeline Act.” *Tentative Implementation Order*, slip op. at 8.<sup>5</sup>

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<sup>5</sup> This helps explain BI&E’s reluctance to provide a “list of all the timeshare/vacation resorts, hotels, motels, campgrounds, mobile home parks or other facilities similar to ours that are currently registered with the PAPUC either as a Pipeline Facility or in any other way as a result of the nature of their propane system installation” as requested by BGI. (See Exhibit A.)

83. BGI can find no record of the Commission having prosecuted the owner/operator of a vacation resort or any other facility that bears the slightest resemblance to BGI's Resort property for failure to register as an Act 127 "pipeline provider." When BGI asked BI&E for this information and for an explanation the legal and factual basis for its assertion of jurisdiction, the only response it ever received was the threat that if BGI opposed BI&E's assertion of jurisdiction and lost, BI&E would "assess a per day fine from the day we first requested any information, including pipe inspection." (Exhibit C p.5.) In other words, the vagueness of Act 127's definition of "pipeline operator" prompted BGI to question BI&E's assertion of jurisdiction, which in turn prompted BI&E to threaten and then to seek sanctions against a propane consumer rather than a supplier, transporter or distributor of natural gas for the first time. One would be hard pressed to find a clearer example of the vagueness of a statute encouraging arbitrary and discriminatory administrative enforcement and in violation of due process.

84. The vague definition of "pipeline operator" in Act 127 thus violates due process **both** by failing to provide fair notice to businesses like BGI that use their own facilities to consume propane on their own property **and** by encouraging arbitrary and discriminatory enforcement of the statute against such businesses. As such, it is void for vagueness, and the Complaint must be dismissed for legal deficiency.

**IV. CONCLUSION**

For all of the foregoing reasons, BGI's Preliminary Objections should be sustained, and the Complaint should be dismissed.

Respectfully submitted,



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DATED: December 16, 2015

Counsel for BUSHKILL GROUP INC.

# EXHIBIT A

## Pipeline Operators Registry

From PUC website  
[http://www.puc.state.pa.us/filing\\_resources/issues\\_laws\\_regulations/act\\_127\\_pipeline\\_act.aspx](http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_127_pipeline_act.aspx)  
(visited 11/24/2015)

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|---|--|-----------------------|
| <u>Utility Code</u>   | <u>Utility Name</u>                              | <u>Utility Status</u> |
| <a href="#">1714682</a>   | ABARTA OIL AND GAS CO INC                        | Active                |
| <a href="#">1714340</a>   | ACCESS MLP OPERATING LLC                         | Active                |
| <a href="#">1717403</a>   | ALLIANCE PETROLEUM CORPORATION                   | Active                |
| <a href="#">1714322</a>   | AMERIGAS PROPANE LP                              | Active                |
| <a href="#">1714422</a>   | ANADARKO PETROLEUM CORPORATION                   | Active                |
| <a href="#">1714412</a>   | ANGELINA GATHERING COMPANY LLC                   | Active                |
| <a href="#">1714708</a>   | ANTERO RESOURCES APPACHAIN CORPORATION           | Active                |
| <a href="#">1717085</a>   | APEX ENERGY (PA) LLC                             | Active                |
| <a href="#">1716273</a>   | ARAPAHO COMMUNICATIONS LP                        | Active                |
| <a href="#">1714416</a>   | ARCELOR MITTAL PLATE LLC - COATESVILLE FACILITY  | Active                |
| <a href="#">1714418</a>   | ARCELOR MITTAL PLATE LLC - CONSHOHOCKEN FACILITY | Active                |
| <a href="#">1715603</a>   | BLUESTONE PIPELINE COMPANY OF PENNSYLVANIA LLC   | Active                |
| <a href="#">1714408</a>   | BUCKEYE PARTNERS LP                              | Active                |
| <a href="#">1714335</a>   | BURNETT OIL CO INC                               | Active                |
| <a href="#">1716962</a>   | CARDINAL PA MIDSTREAM LLC                        | Active                |
| <a href="#">1714344</a>   | CARRIZO MARCELLUS LLC                            | Active                |
| <a href="#">1714308</a>   | CHAMBERSBURG, BOROUGH OF                         | Active                |
| <a href="#">1717596</a>   | CHESAPEAKE OPERATING LLC                         | Pending               |
| <a href="#">1714413</a>   | CHEVRON APPALACHIA LLC                           | Active                |
| <a href="#">1714399</a>   | CHIEF GATHERING LLC                              | Active                |
| <a href="#">1</a> <a href="#">2</a> <a href="#">3</a> <a href="#">4</a> <a href="#">5</a> <a href="#">6</a> <a href="#">7</a> |  |                       |

## Questions & Answers from the Act 127 Teleconference

**Questions & Answers Sheet** - A list of the questions and answers regarding Act 127 Teleconference that took place on January 12, 2012.

## Pipeline Operators Registry

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|-------------------------|--|-----------------------|
| <u>Utility Code</u>     | <u>Utility Name</u>                    | <u>Utility Status</u> |
| <a href="#">1717963</a> | CNG QUAKER LLC                         | Active                |
| <a href="#">1716445</a> | COAL GAS RECOVERY II LLC               | Active                |
| <a href="#">1714397</a> | COLONIAL PIPELINE COMPANY              | Active                |
| <a href="#">1714589</a> | COLUMBIA GAS TRANSMISSION LLC          | Active                |
| <a href="#">1714493</a> | CONSOL ENERGY INC                      | Active                |
| <a href="#">1714376</a> | DELAWARE PIPELINE COMPANY LLC          | Active                |
| <a href="#">1714955</a> | DL RESOURCES INC                       | Active                |
| <a href="#">1714461</a> | DOMINION TRANSMISSION INC              | Active                |
| <a href="#">1714377</a> | DOUGLAS PIPELINE COMPANY               | Active                |
| <a href="#">1714365</a> | EASTERN SHORE NATURAL GAS COMPANY      | Active                |
| <a href="#">1717453</a> | ELLWOOD REALTY ACQUISITION COMPANY LLC | Active                |
| <a href="#">1716809</a> | EM ENERGY PENNSYLVANIA LLC             | Active                |
| <a href="#">1714400</a> | EMKEY GATHERING LLC                    | Active                |
| <a href="#">1714398</a> | ENDLESS MOUNTAIN ENERGY PARTNERS LLC   | Active                |
| <a href="#">1714355</a> | ENERGY CORPORATION OF AMERICA          | Active                |
| <a href="#">1714404</a> | ENERGY EXPLORATION AND DEVELOPMENT LLC | Active                |
| <a href="#">1718158</a> | ENERGY TRANSFER COMPANY                | Active                |
| <a href="#">1714336</a> | ENTERPRISE PRODUCTS OPERATING LLC      | Active                |
| <a href="#">1714364</a> | EOG RESOURCES INC                      | Active                |
| <a href="#">1714362</a> | EQT MIDSTREAM                          | Active                |
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|-------------------------|---|-----------------------|
| <u>Utility Code</u>     | <u>Utility Name</u>                             | <u>Utility Status</u> |
| <a href="#">1714415</a> | EXCO APPALACHIA MIDSTREAM LLC                   | Active                |
| <a href="#">1714419</a> | EXCO RESOURCES (PA) LLC                         | Active                |
| <a href="#">1714751</a> | FLATIRONS DEVELOPMENT LLC                       | Active                |
| <a href="#">1716233</a> | GAS CITY OIL AND GAS CORPORATION                | Active                |
| <a href="#">1714395</a> | GRANGER ENERGY LLC                              | Active                |
| <a href="#">1714446</a> | GREENTREE LANDFILL GAS COMPANY LLC              | Active                |
| <a href="#">1714367</a> | GUARDIAN INDUSTRIES CORP                        | Active                |
| <a href="#">1714803</a> | H.A. GOAL INC                                   | Active                |
| <a href="#">1715830</a> | HALCON FIELD SERVICES LLC                       | Active                |
| <a href="#">1714463</a> | HEC/TOBYHANNA ENERGY PROJECT INC (AMERESCO INC) | Active                |
| <a href="#">1718014</a> | HEP PENNSYLVANIA GATHERING LLC                  | Active                |
| <a href="#">1714814</a> | IAN CHAPPEL                                     | Active                |
| <a href="#">1714430</a> | IMPERIAL LANDFILL GAS COMPANY LLC               | Active                |
| <a href="#">1714402</a> | JOHNSTOWN REGIONAL ENERGY                       | Active                |
| <a href="#">1714391</a> | KAHUNA OPERATING-SARSEN LLC                     | Active                |
| <a href="#">1714420</a> | KEYSTONE COOPERATIVE ASSOCIATION INC            | Active                |
| <a href="#">1714356</a> | KIANTONE PIPELINE CORPORATION                   | Active                |
| <a href="#">1714421</a> | KNOX ENERGY COOPERATIVE ASSOCIATION INC         | Active                |
| <a href="#">1714381</a> | LASER NORTHEAST GATHERING COMPANY LLC           | Active                |
| <a href="#">1714368</a> | LAUREL MOUNTAIN MIDSTREAM OPERATING LLC         | Active                |
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| 1 2 3 4 5 6 7           |  |                       |
|-------------------------|--|-----------------------|
| <u>Utility Code</u>     | <u>Utility Name</u>                        | <u>Utility Status</u> |
| <a href="#">1717064</a> | LEATHERSTOCKING PIPELINE COMPANY LLC       | Active                |
| <a href="#">1714766</a> | LIBERTY COMMUNITY GAS LLC                  | Active                |
| <a href="#">1714389</a> | M3 APPALACHIA GATHERING LLC                | Active                |
| <a href="#">1714316</a> | MARATHON PIPE LINE LLC                     | Active                |
| <a href="#">1714380</a> | MARCELLUS MIDSTREAM ENERGY LLC             | Active                |
| <a href="#">1714386</a> | MARKWEST LIBERTY MIDSTREAM & RESOURCES LLC | Active                |
| <a href="#">1716481</a> | MBS RESOURCES INC                          | Active                |
| <a href="#">1714804</a> | MDS ENERGY LTD                             | Active                |
| <a href="#">1716827</a> | MEDINA REVENUE LLC                         | Active                |
| <a href="#">1716412</a> | MINARD RUN OIL COMPANY                     | Active                |
| <a href="#">1715172</a> | MIPC LLC                                   | Active                |
| <a href="#">1714414</a> | MOUNTAIN GATHERING LLC                     | Active                |
| <a href="#">1714459</a> | NATIONAL FUEL GAS SUPPLY CORPORATION       | Active                |
| <a href="#">1716606</a> | NEW CENTURY PIPELINE LLC                   | Active                |
| <a href="#">1716463</a> | NFG MIDSTREAM CLERMONT LLC                 | Active                |
| <a href="#">1714317</a> | NFG MIDSTREAM COVINGTON LLC                | Active                |
| <a href="#">1716454</a> | NFG MIDSTREAM MT JEWETT LLC                | Active                |
| <a href="#">1717528</a> | NFG MIDSTREAM TIONESTA LLC                 | Active                |
| <a href="#">1715591</a> | NFG MIDSTREAM TROUT RUN LLC                | Active                |
| <a href="#">1718077</a> | NORTH PIER LNG LLC                         | Pending               |
| 1 2 3 4 5 6 7           |  |                       |

## Pipeline Operators Registry

[View Current List of Registered Pipeline Operators](#) [Hide List](#)

**Click on the Utility Code in the list below for additional information.**

| 1 2 3 4 5 6 7           |  |                       |
|-------------------------|--|-----------------------|
| <u>Utility Code</u>     | <u>Utility Name</u>                                      | <u>Utility Status</u> |
| <a href="#">1714406</a> | NORTHEAST NATURAL ENERGY LLC                             | Active                |
| <a href="#">1714492</a> | ONEXX PRODUCTION AND EXPLORATION CORPORATION             | Active                |
| <a href="#">1714801</a> | OTTER EXPLORATION INC                                    | Active                |
| <a href="#">1714304</a> | PAPCO INC  | Active                |
| <a href="#">1714724</a> | PARACO GAS   | Active                |
| <a href="#">1714407</a> | PAULSBORO NATURAL GAS PIPELINE COMPANY LLC               | Active                |
| <a href="#">1714375</a> | PDC MOUNTAINEER LLC                                      | Active                |
| <a href="#">1714613</a> | PEI POWER CORPORATION                                    | Active                |
| <a href="#">1714436</a> | PENN VALLEY GAS INC                                      | Active                |
| <a href="#">1714401</a> | PENN VIRGINIA OIL AND GAS CORPORATION                    | Active                |
| <a href="#">1714417</a> | PENNSYLVANIA GENERAL ENERGY COMPANY LLC                  | Active                |
| <a href="#">1714390</a> | PENNSYLVANIA LAND HOLDING COMPANY LLC                    | Active                |
| <a href="#">1717728</a> | PENTEX NATURAL GAS COMPANY                               | Active                |
| <a href="#">1717533</a> | PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING LLC | Active                |
| <a href="#">1714765</a> | PHILLIPS 66 PIPELINE LLC                                 | Active                |
| <a href="#">1714337</a> | PVR PARTNERS LP  | Active                |
| <a href="#">1714448</a> | R E GAS DEVELOPMENT LLC                                  | Active                |
| <a href="#">1714502</a> | RANGE RESOURCES - APPALACHIA LLC                         | Active                |
| <a href="#">1716464</a> | RICE POSEIDON MIDSTREAM LLC                              | Active                |
| <a href="#">1714393</a> | RW GATHERING LLC   | Active                |
| 1 2 3 4 5 6 7           |  |                       |

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| 1 2 3 4 5 6 7           |   |                       |
|-------------------------|---|-----------------------|
| <u>Utility Code</u>     | <u>Utility Name</u>                             | <u>Utility Status</u> |
| <a href="#">1717406</a> | SAMSON EXPLORATION LLC                          | Active                |
| <a href="#">1714323</a> | SAMSON RESOURCE CORPORATION                     | Active                |
| <a href="#">1714366</a> | SENECA LANDFILL INC                             | Active                |
| <a href="#">1714388</a> | SENECA RESOURCES CORPORATION                    | Active                |
| <a href="#">1717529</a> | SENECA-NFG MIDSTREAM OWLS NEST LLC              | Active                |
| <a href="#">1717933</a> | SEPCO   | Active                |
| <a href="#">1716482</a> | SERGEANT GAS COMPANY INC                        | Active                |
| <a href="#">1714447</a> | SHARP GAS INC - COATESVILLE                     | Active                |
| <a href="#">1714457</a> | SHARP GAS INC - GLEN MILLS                      | Active                |
| <a href="#">1714456</a> | SHARP GAS INC - WEST CHESTER                    | Active                |
| <a href="#">1714458</a> | SHARP GAS INC D/BA/A SHARP ENERGY - HONEY BROOK | Active                |
| <a href="#">1714385</a> | SM ENERGY                                       | Active                |
| <a href="#">1714432</a> | SOMERSET GAS GATHERING OF PENNSYLVANIA LLC      | Active                |
| <a href="#">1714394</a> | STONE ENERGY CORPORATION                        | Active                |
| <a href="#">1714460</a> | SUNOCO INC                                      | Active                |
| <a href="#">1714378</a> | SUPERIOR APPALACHIAN PIPELINE LLC               | Active                |
| <a href="#">1715602</a> | SUSQUEHANNA GATHERING COMPANY 1, LLC            | Active                |
| <a href="#">1714423</a> | SWEPI-LP  | Active                |
| <a href="#">1714805</a> | SYLVAN ENERGY LLC                               | Active                |
| <a href="#">1714384</a> | TALISMAN ENERGY USA INC                         | Active                |
| 1 2 3 4 5 6 7           |   |                       |

## Pipeline Operators Registry

[View Current List of Registered Pipeline Operators](#) [Hide List](#)

**Click on the Utility Code in the list below for additional information.**

| 1 2 3 4 5 6 7           |                                     |                       |
|-------------------------|-------------------------------------|-----------------------|
| <u>Utility Code</u>     | <u>Utility Name</u>                 | <u>Utility Status</u> |
| <a href="#">1716234</a> | TENASKA RESOURCES LLC               | Active                |
| <a href="#">1714510</a> | TENNESSEE GAS PIPELINE COMPANY      | Active                |
| <a href="#">1714396</a> | TRIANA ENERGY LLC                   | Active                |
| <a href="#">1714439</a> | UGI ENERGY SERVICES INC             | Active                |
| <a href="#">1714441</a> | ULTRA RESOURCES                     | Active                |
| <a href="#">1714403</a> | UNITED REFINING COMPANY             | Active                |
| <a href="#">1714338</a> | UNITED STATES GYPSUM CO             | Active                |
| <a href="#">1714462</a> | US STEEL                            | Active                |
| <a href="#">1714440</a> | VINEYARD OIL AND GAS COMPANY        | Active                |
| <a href="#">1714307</a> | VISTA ENERGY INC                    | Active                |
| <a href="#">1714369</a> | VISTA GATHERING LLC                 | Active                |
| <a href="#">1714379</a> | WILLIAMS FIELD SERVICES COMPANY LLC | Active                |
| <a href="#">1714392</a> | WILMOTH INTERESTS INC               | Active                |
| <a href="#">1714405</a> | WPX ENERGY MARCELLUS GATHERING LLC  | Active                |
| <a href="#">1714511</a> | WYANT OPERATING CO                  | Active                |
| <a href="#">1714567</a> | XTO ENERGY INC                      | Active                |
| 1 2 3 4 5 6 7           |                                     |                       |

## Questions & Answers from the Act 127 Teleconference

**Questions & Answers Sheet** - A list of the questions and answers regarding Act 127 Teleconference that took place on January 12, 2012.

# **EXHIBIT B**

Paul J. Metro, Manager  
Gas Safety Division  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Harrisburg, PA 17105

December 1, 2014

Dear Mr. Metro:

We received your letter dated November 21 via email and regular mail and would respond as follows.

We too understand that Mr. Chilek became aware of the fire from local news reports on the evening of October 15<sup>th</sup>. We did not notify PAPUC of the fire because our property was not registered with the PUC and we believe has no cause or requirement to hold such a registration. Moreover, at the time of the fire, the PUC had not itself taken the position that Tree Tops, Inc. was jurisdictional.

The property is located in Monroe County, but we would surmise that neither Monroe County nor Pike County PEMA notified the PAPUC because neither regard us as a Public Utility and it simply would not have occurred to them.

Our records reflect that the lines from the tank to the buildings in question passed the pressure test on November 7 and a portion of the individual supply line to unit # 1270 also held pressure at the required level and for the required period of time. This being the lateral feed off the main line up to approximately six feet before the threshold of the unit, at which point it was capped to allow for the system test. The remaining portion of the lateral, including the riser did not hold pressure and was removed intact and under Mr. Chilek's supervision. It is currently held in safekeeping as he requested. We do not meter our use of propane so there was no meter to recover and the regulator could not be found. It was presumed by the State Fire Marshall to have been completely destroyed by the heat of the fire.

While we continue to take issue with the jurisdictional claim by the PAPUC, we nevertheless want to be as cooperative as possible without limiting our ability to defend our position at a later date, or worse, unwittingly pave the way to retroactive or future penalties and fines.

We interpret your letter and the indicated deadline of December 31, 2014 as notification that the PAPUC does not intend to apply any retroactive penalties or fines if we meet the requested goals by that date. If this is an incorrect reading of your letter, please let us know immediately.

We will arrange for the riser and short section of attached lateral feed line to be delivered to AEL Labs of Edison for testing in the manner you have requested. We will provide an advance copy of the testing procedure for your review together with confirmation of a testing date once scheduled.

For the larger task related to compliance with 49 CFR 192, we will need to become significantly more familiar with all aspects of this section of code in order to determine the amount of work, if any, necessary for our propane system to meet all requirements by December 31, 2014. To better understand the scale of the task and how it relates, or does not relate, to certain sections of our property, we would like to be sure we correctly understand the “number of customers” issue you have previously mentioned. It would seem that the PUC’s position is that if a propane service line feeds 10 or more “customers”, that line and its appurtenances is jurisdictional. You have also indicated that you consider a single villa, and not a single building housing four villas (a fourplex), to be an individual “customer.” From this we infer that a service line feeding less than 10 individual villas (or any other individual buildings for that matter) is not jurisdictional. Based on this understanding, some of our equipment may be jurisdictional pursuant to the Commission’s interpretation of the applicable law, but other portions of our equipment may be non-jurisdictional. Again, this statement is made without prejudice to our ongoing questions regarding whether any of the equipment falls within the Commission’s jurisdiction. Please confirm if our understanding is correct.

It would also be extremely helpful to us if you could provide a complete list of all the timeshare/vacation resorts, hotels, motels, campgrounds, mobile home parks or other facilities similar to ours that are currently registered with the PAPUC either as a Pipeline Facility or in any other way as a result of the nature of their propane system installation. We may then reach out to some of them for help and guidance on how they navigated the registration process and the extent to which the requirements of 49 CFR 192 differed from their previous daily operating procedures. In addition, once we better understand the requirements of 49 CFR 192, we will be in a better position to assess the feasibility of meeting the December 31, 2014 timeline stated in your letter.

Sincerely,

Mark S. Turner

# EXHIBIT C

**From:** [Scott, Wayne](#)  
**To:** [Thomas Sniscak](#)  
**Subject:** RE: Bushkill Group, Inc. --Act 127 matter  
**Date:** Wednesday, December 31, 2014 12:11:48 PM

---

Tom:

As to your answer to number 3, all I can say is that is why I'm glad they hired good utility counsel. We think the law is clear on this and no further explanation was necessary. We will be happy to discuss this with you further when we meet. There will only be a problem if the company decides to fight jurisdiction and loses.

---

**From:** Thomas J. Sniscak [mailto:TJSniscak@hmslegal.com]  
**Sent:** Wednesday, December 31, 2014 9:40 AM  
**To:** Scott, Wayne  
**Cc:** Whitney E. Snyder  
**Subject:** Re: Bushkill Group, Inc. --Act 127 matter

Wayne,

Thank you for response yesterday to my email from the day before. Here is my client's response to your three points:

1. Bushkill believes BI&E's first choice lab, AEL, provided an estimate that is too high for the test at issue. Bushkill asked BI&E via email for another alternative lab to receive a second estimate. By email of 12-22-14 from Betty Biggard BI&E identified an alternate lab, Scientific Expert Analysis of Columbus Ohio. I assumed you were looped in on that. Bushkill emailed that lab with the test information/requirements and we expect to hear from them and have their estimate later today or Friday.
2. That's fine.
3. We do not want to pick a fight with BI&E but Bushkill has asked several fair and relevant questions in its December 1, 2014 letter to Mr. Metro that are vital to the compliance/jurisdictional issue and for Bushkill to determine how to proceed. I draw your attention to the next to last paragraph in that letter. To date, I've not seen anything other than a summary conclusion without explanation in emails and correspondence from BI&E that the system is jurisdictional. Here is the text of that letter, and in particular we would like answers to the next to the last full paragraph regarding compliance and how BI&E interprets and applies the jurisdictional test under Act 127 and under the Federal parts under Bushkill's individual facts:

-----  
Paul J. Metro, Manager  
Gas Safety Division  
Pennsylvania Public Utility Commission  
[P.O. Box 3265, Harrisburg, PA 17105](mailto:Paul.J.Metro@PAPUC.com)

December 1, 2014

Dear Mr. Metro:

We received your letter dated November 21 via email and regular mail and would respond as follows.

We too understand that Mr. Chilek became aware of the fire from local news reports on the evening of October 15<sup>th</sup>. We did not notify PAPUC of the fire because our property was not registered with the PUC and we believe has no cause or requirement to hold such a registration. Moreover, at the time of the fire, the PUC had not itself taken the position that Tree Tops, Inc. was jurisdictional.

The property is located in Monroe County, but we would surmise that neither Monroe County nor Pike County PEMA notified the PAPUC because neither regard us as a Public Utility and it simply would not have occurred to them.

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While we continue to take issue with the jurisdictional claim by the PAPUC, we nevertheless want to be as cooperative as possible without limiting our ability to defend our position at a later date, or worse, unwittingly pave the way to retroactive or future penalties and fines.

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We will arrange for the riser and short section of attached lateral feed line to be delivered to AEL Labs of Edison for testing in the manner you have requested. We will provide an advance copy of the testing procedure for your review together with confirmation of a testing date once scheduled.

For the larger task related to compliance with 49 CFR 192, we will need to become significantly

more familiar with all aspects of this section of code in order to determine the amount of work, if any, necessary for our propane system to meet all requirements by December 31, 2014. To better understand the scale of the task and how it relates, or does not relate, to certain sections of our property, we would like to be sure we correctly understand the "number of customers" issue you have previously mentioned. It would seem that the PUC's position is that if a propane service line feeds 10 or more "customers", that line and its appurtenances is jurisdictional. You have also indicated that you consider a single villa, and not a single building housing four villas (a fourplex), to be an individual "customer." From this we infer that a service line feeding less than 10 individual villas (or any other individual buildings for that matter) is not jurisdictional. Based on this understanding, some of our equipment may be jurisdictional pursuant to the Commission's interpretation of the applicable law, but other portions of our equipment may be non-jurisdictional. Again, this statement is made without prejudice to our ongoing questions regarding whether any of the equipment falls within the Commission's jurisdiction. Please confirm if our understanding is correct.

It would also be extremely helpful to us if you could provide a complete list of all the timeshare/vacation resorts, hotels, motels, campgrounds, mobile home parks or other facilities similar to ours that are currently registered with the PAPUC either as a Pipeline Facility or in any other way as a result of the nature of their propane system installation. We may then reach out to some of them for help and guidance on how they navigated the registration process and the extent to which the requirements of 49 CFR 192 differed from their previous daily operating procedures. In addition, once we better understand the requirements of 49 CFR 192, we will be in a better position to assess the feasibility of meeting the December 31, 2014 timeline stated in your letter.

Sincerely,

Mark S. Turner

-----

3. (continued) We understand BI&E's position on fines if we were to mount a challenge on jurisdiction and lose, but we'd like to think we are still at the point where both sides are willing to see if we can work out something mutually acceptable.

Anytime January 7 would work and January 8 before 10:30 would also work for Bushkill. There are hearings the following week in First Energy's rate cases so that is not so good for my schedule. The week following that is good for my schedule.

Call or email with any questions. Thank you for your consideration.

Tom

Thomas J. Sniscak  
Hawke McKeon & SniscakLLP  
100 North 10th Street  
P.O. Box 1778  
Harrisburg, PA 17105  
PH 717-236-1300 ext. 224  
FX 717-236-4841  
email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

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Hawke McKeon & SniscakLLP  
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On Dec 30, 2014, at 9:14 AM, Scott, Wayne <[WASCOTT@pa.gov](mailto:WASCOTT@pa.gov)> wrote:

Tom:

Just a couple of things for the purpose of clarification.

1. I don't remember discussing the which lab to use. The only acceptable lab for us at this time is the one that we specified.

2. I remember not pushing for a meeting by the end of this week, but I thought that we had planned on meeting the first week of January. Let's compromise and agree to meet or have a conference call on or before January 14.
3. Finally, I just want to be clear that if BGI decides to oppose our jurisdiction and they lose, we will assess a per day fine from the day that we first requested any information, including pipe inspection. I had also informed the company's prior counsel of this so this is nothing new.

With these things understood, I hope we can move forward.

*Wayne T. Scott*  
*First Deputy Chief Prosecutor*  
*PA Public Utility Commission*  
*717-783-6150*

---

**From:** Thomas J. Sniscak [<mailto:TJSniscak@hmslegal.com>]  
**Sent:** Monday, December 29, 2014 4:15 PM  
**To:** Scott, Wayne  
**Subject:** Bushkill Group, Inc. --Act 127 matter

Wayne,

This is to confirm our conversation today and manner of proceeding in this matter:

- I have been retained today to advise the Bushkill Group, Inc. (BGI) regarding Act 127 matter and BI&E's November 21, 2014 letter from Mr. Metro imposing a compliance deadline of December 31, 2014.
- I need time to review the facts and law and to provide the advice.
- BGI will proceed with the pipe testing and presently is pursuing an estimate from an acceptable lab in Ohio in addition to the one BI&E previously suggested.
- BGI and BI&E will meet or have a conference call in the first or second week of January to help BGI to understand BI&E's specific reasons and facts that support certain facilities being subject to Act 127. Also discussed will be what BI&E sees as

- steps to be taken for compliance, and timing.
- The deadline specified in the November 21, 2014 letter is extended while the process above is underway and should BGI and BI&E not be able to resolve the issues then BI&E would then set a new reasonable deadline.
  - BGI will provide BI&E by the end of this week a list of available days/times during that period.

Please confirm that this manner of proceeding is acceptable to BI&E. Thanks.

Tom

**Thomas J. Sniscak**  
**Hawke McKeon & Sniscak LLP**  
100 North 10th Street  
P.O. Box 1778  
Harrisburg, PA 17105  
PH 717-236-1300 ext. 224  
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email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

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## VERIFICATION

I, Mark S. Turner, Chief Operating Officer of Bushkill Group Inc., hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and that I expect Bushkill Group Inc. to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Dated: December 16, 2015



---

MARK S. TURNER

**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 U.S. MAIL AND ELECTRONIC MAIL**

Stephanie M. Wimer, Esquire  
Michael L. Swindler, Esquire  
Bureau of Investigation & Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[stwimer@pa.gov](mailto:stwimer@pa.gov)  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

  
\_\_\_\_\_  
Thomas J. Sniscak  
Christopher M. Arfaa

Dated this 16<sup>th</sup> day of December, 2015