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June 27, 2018

BY ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission Bureau of Investigation & Enforcement,
Complainant v. Bushkill Group, Inc., Respondent; Docket No. C-2015-2512950;
BUSHKILL GROUP, INC. PREHEARING MEMORANDUM

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is Bushkill Group, Inc.'s Prehearing Memorandum in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service.

Thank you. If you have any questions regarding this matter, please contact me.

Sincerely,

Thomas J. Sniscak
Whitney E. Snyder

Counsel for Bushkill Group Inc.

WES/das
Enclosure

cc: Honorable Dennis J. Buckley (by electronic and first class mail)
Per the Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	Docket No. C-2015-2512950
v.	:	
	:	
Bushkill Group, Inc.	:	

**PREHEARING MEMORANDUM
OF BUSHKILL GROUP, INC.**

TO: THE HONORABLE DENNIS J. BUCKLEY

Pursuant to Your Honor's June 13, 2018 Order, Bushkill Group, Inc. (Bushkill) submits this prehearing memorandum.

I. ACCEPTANCE OF SERVICE

Service of paper documents in this proceeding shall be accepted on behalf of Bushkill by:

Thomas J. Sniscak, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
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Phone: 717-236-1300
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Counsel for Bushkill also requests that any electronic service list utilized by the parties in this proceeding include Thomas J. Sniscak (tjsniscak@hmslegal.com) and Whitney E. Snyder (wesnyder@hmslegal.com). Bushkill is willing to extend the same courtesy upon request of any other party for any e-mails or electronic service to the parties.

II. SETTLEMENT

Bushkill will continue to engage in settlement discussions with I&E.

III. SCHEDULE

Bushkill agrees to the schedule I&E has proposed.

IV. ISSUES

Bushkill will address the following issues in this proceeding. Bushkill reserves its rights to raise additional issues and address additional issues that I&E may raise as the proceeding progresses.

- A.** Whether the Commission lacks jurisdiction over Bushkill because Bushkill is not a pipeline operator within the meaning of Act 127.

Position: The Commission lacks jurisdiction because Bushkill only provides service to buildings located on its own real property and therefore only provides service to itself as the “ultimate consumer” and is thus excluded from the definition of pipeline operator within Act 127.

- B.** Whether, assuming the Commission has jurisdiction, Bushkill has violated Act 127 or any PHMSA regulations because Bushkill is not a pipeline operator within the meaning of Act 127.

Position: Bushkill has not violated Act 127 or any PHMSA regulations because Bushkill is not subject to these laws. Bushkill only provides service to buildings located on its own real property and therefore only provides service to itself as the “ultimate consumer” and thus is excluded from the definition of pipeline operator within Act 127.

- C.** Whether Act 127 is unconstitutionally vague in that it fails to sufficiently define terms, such as pipeline operator, and, therefore, fails to provide notice of what entities are regulated.

Position: Act 127 as applied to Bushkill is unconstitutionally vague.

- D.** Whether, assuming arguendo Bushkill is a pipeline operator, Bushkill violated 49 CFR § 191.5 because the 2014 fire was not a reportable incident.

Position: Bushkill did not violate 49 CFR § 191.5.

- E.** Whether, assuming arguendo Bushkill is a pipeline operator, I&E's requested penalty is unreasonably and unconstitutionally punitive and violates Bushkill's due process rights.

Position: The penalty requested is unreasonably and unconstitutionally punitive and violates Bushkill's due process rights.

V. WITNESSES

Bushkill may present the following witnesses:

- A.** Company representative(s) or other individual(s) with knowledge of the 2014 fire and Bushkill's operations.
- B.** Potential expert witnesses as necessary to address the testimony I&E may present.
- C.** Bushkill may also present via subpoena, or as of cross, a Gas Safety personnel representative regarding enforcement of Act 127 on entities similar to Bushkill, efforts to notify such entities of Act 127 status, and efforts to assist such entities with compliance.

Bushkill reserves the right to offer additional witnesses and exhibits as may be necessary to address the testimony, exhibits, or evidence that may be presented by any party in this proceeding.

Respectfully submitted,



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Counsel for Bushkill Group, Inc.

DATED: June 27, 2018

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
mwindler@pa.gov



Thomas J. Sniscak
Whitney E. Snyder

Dated this 27th day of June, 2018