



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 12, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Bushkill Group, Inc.
Docket No. C-2015-2512950
I&E Reply to New Matter

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply of the Bureau of Investigation and Enforcement to the New Matter of Bushkill Group, Inc. in the above referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Swindler", with a long horizontal flourish extending to the right.

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Enclosures

cc: Honorable Dennis J. Buckley
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	C-2015-2512950
	:	
Bushkill Group, Inc.	:	
Respondent	:	

**REPLY OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE NEW MATTER OF BUSHKILL GROUP, INC.**

NOW COMES, the Bureau of Investigation and Enforcement (“I&E” or “Complainant”) of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) by and through its prosecuting attorneys, and files this Reply to the New Matter of Bushkill Group, Inc. (“Bushkill” or “Company” or “Respondent”), pursuant to 52 Pa. Code § 5.63. In support thereof, I&E avers as follows:

I. INTRODUCTION

The following is an abbreviated procedural history of this proceeding:

On November 15, 2015, I&E filed a Formal Complaint (“Complaint”) against Bushkill alleging violations of the Gas and Hazardous Liquids Pipeline Act, 58 P.S. §§ 801.101, *et seq.* (“Pipeline Act” or “Act 127”). Specifically, I&E asserts that Bushkill operates a propane distribution system at The Villas at Tree Tops and Fairway (“the Villas”), a property containing timeshare and vacation rental units located in Middle Smithfield Township, Monroe County. I&E avers that this propane distribution system is subject to the federal pipeline safety regulations because portions of the system serve ten (10) or more customers. 49 CFR § 192.1(b)(5)(i). As such, I&E asserts that Bushkill is a pipeline operator, as defined in 58 P.S. § 801.102, and must comply with Act 127 and federal pipeline safety laws and regulations.

In the Complaint, I&E alleges that Bushkill failed to initially register with the Commission as an Act 127 pipeline operator in 2012, and failed to renew its registration on an annual basis for 2013, 2014 and 2015. I&E further alleges that Bushkill failed to maintain a procedural manual for operations, maintenance and emergencies and failed to comply with federal pipeline safety regulations requiring it to submit an incident report concerning a propane explosion, which was later determined to be non-jurisdictional, that occurred on its property on October 15, 2014. I&E seeks a civil penalty of \$70,000 for the above-described violations, requests that Bushkill file Act 127 registration forms from 2012 through 2015, and requests that Bushkill be directed to file annual Act 127 registration forms on a going-forward basis.

On December 16, 2015, Bushkill filed Preliminary Objections, which seek dismissal of the Complaint on grounds of insufficient specificity and legal insufficiency.¹ As Bushkill's Preliminary Objections alleged insufficient specificity in the Complaint, Bushkill did not file an Answer to I&E's Complaint pursuant to Section 5.101(e) of the Commission's regulations, 52 Pa. Code § 5.101(e).

On January 7, 2016, I&E filed an Answer to the Preliminary Objections of Bushkill and requested that the Preliminary Objections be denied and I&E's Complaint be sustained.² Bushkill's Preliminary Objections were denied by Order of the Presiding Administrative Law Judge ("ALJ") dated June 5, 2018.

On June 22, 2018, Bushkill filed an Answer to I&E's Complaint and raised New Matter.

On June 29, 2018, a Prehearing Conference was held, which, in part, established a litigation schedule in this matter.

¹ By Secretarial Letter dated November 25, 2015 in the above-captioned proceeding, Bushkill was granted an extension of time until December 16, 2015 to file any pleadings in response to the Complaint.

² By Secretarial Letter dated December 22, 2015 in the above-captioned proceeding, I&E was granted an extension of time until January 7, 2016 to file its response to Bushkill's Preliminary Objections.

For the reasons stated herein, I&E contends that Respondent's Answer and New Matter are without merit and should be denied, and I&E's Complaint should be sustained.

II. ANSWER

31. Denied. Bushkill is a pipeline operator as defined by Act 127 at 58 P.S. § 801.102 since ten (10) or more of its timeshare and/or rental units are supplied propane from a single tank at the Villas, pursuant to 49 CFR § 192.1(b)(5)(i). Alternatively, Bushkill is also a pipeline operator within the meaning of Act 127 because it serves more than one customer in a public place, pursuant to 49 CFR § 192.1(b)(5)(ii), as any member of the public may stay in one of the units at the Villas. As such, the Commission has jurisdiction over Bushkill's propane distribution system at the Villas.

32. Admitted, in part, and denied, in part. It is admitted that Bushkill provides propane service to buildings located on its own real property. The remainder of the averments set forth in Paragraph 32 are denied. It is specifically denied that Bushkill is excluded from the definition of pipeline operator because it provides service to itself as the "ultimate consumer." By way of further answer, the occupants of the timeshare and/or rental units at the Villas are the ultimate consumers of the gas.

33. Denied. Bushkill is a pipeline operator and is subject to Act 127, 58 P.S. §§ 801.101, *et seq.*, and federal pipeline safety regulations implemented at 49 CFR Parts 191-193, 195 and 199.

34. Denied. Bushkill was required to submit an incident report immediately following the October 15, 2014 incident because property damage of \$50,000 or more was sustained due to the release of liquefied petroleum gas. 49 CFR §§ 191.3 and 191.5.

35. Denied. After reasonable investigation, I&E is without knowledge as to whether Bushkill was aware that it was and is subject to Act 127. By way of further answer, ignorance of the law is not a valid defense. *Linde Enter. v. Prevailing Wage Appeals Bd.*, 676 A.2d 310, 314 (Pa. Cmwlth. 1996) (citing *Pa. Liquor Control Bd. v. 302 Chelton*, 459 A.2d 893 (Pa. Cmwlth. 1983)). The remaining averment set forth in Paragraph 35 is a conclusion of law to which no response is required. To the extent that a response is required, it is denied.

36. This is a conclusion of law to which no response is required. To the extent that a response is required, it is denied. By way of further answer, it is denied that Act 127 does not define “pipeline operator.” The definition of “pipeline operator” appears at 58 P.S. § 801.102.

37. Admitted, in part, and denied, in part. It is admitted that the Commission has not promulgated regulations implementing Act 127. It is denied that Act 127 instructs or mandates the Commission to implement such regulations or requires such regulations to be implemented in order to effectuate Act 127. It is denied that Act 127 and the Commission Orders implementing Act 127 at Docket No. M-2012-2282031 fail to provide notice to regulated entities.

38. This is a conclusion of law to which no response is required. To the extent that a response is required, it is denied. By way of further answer, I&E’s requested civil penalty is in alignment with similar cases alleging violations of Act 127 reporting requirements. Further, pursuant to the civil penalty scheme authorized by Act 127, 58 P.S. § 801.502(a), I&E could have sought \$200,000 for each violation and for each day that the violation persists, subject to a maximum civil penalty of \$2,000,000. I&E’s proposed civil penalty is far lower than the maximum it was permitted by law to seek.

39. This is a conclusion of law to which no response is required. To the extent that a

response is required, it is denied. By way of further answer, I&E's requested civil penalty is in alignment with similar cases alleging violations of Act 127 reporting requirements. Further, pursuant to the civil penalty scheme authorized by Act 127, 58 P.S. § 801.502(a), I&E could have sought \$200,000 for each violation and for each day that the violation persists, subject to a maximum civil penalty of \$2,000,000 or penalties provided under Federal pipeline safety laws, whichever is greater. I&E's proposed civil penalty is far lower than the maximum it was permitted by law to seek. Additionally, the matter referenced by Bushkill, *Pa. Pub. Util. Comm'n v. The Peoples Natural Gas Company, d/b/a, Dominion Peoples*, Docket No. C-2009-2027991 (Order entered May 20, 2010), predates Act 127 and increased statutory maximum civil penalties for gas pipeline safety violations, both of which went into effect in 2012. 58 P.S. § 801.502 and 66 Pa.C.S. § 3301(c).

40. Denied. It is specifically denied that I&E's Safety Division has admitted that it is aware that entities like Bushkill are unaware that they are regulated. Strict proof thereof is demanded. By way of further answer, ignorance of the law is not a valid defense. *Linde Enter. v. Prevailing Wage Appeals Bd.*, 676 A.2d 310, 314 (Pa. Cmwlth. 1996) (citing *Pa. Liquor Control Bd. v. 302 Chelton*, 459 A.2d 893 (Pa. Cmwlth. 1983)). Thus, while it is Bushkill's sole obligation to be aware of and familiarize itself with Act 127, the Safety Division did in fact conduct numerous outreach efforts, including conference calls and meeting with pertinent associations, around the time that Act 127 went into effect in 2012. In this instance, the Safety Division specifically advised Bushkill in 2014 that it is a jurisdictional pipeline operator and yet, Bushkill continued to ignore Act 127 and to this day still has not registered with the Commission. It is further denied that the Safety Division's application for a grant to the Pipeline

and Hazardous Materials Safety Administration (“PHMSA”) bears any relevance to the instant matter.

41. Denied. It is denied that I&E’s enforcement of Act 127 is “random,” and therefore arbitrary and discriminatory. It is further denied that the Safety Division’s application for a grant to PHMSA bears any relevance to the instant matter. By way of further answer, Bushkill has misconstrued the cited portion of the PHMSA application, the full text of which reads as follows:

Major enforcement cases that are expected to take large amounts of resources:
Major enforcement cases are random and are based upon reportable incidents or consistent patterns of non-compliance.

Pa. Pub. Util. Comm’n 2014 Natural Gas Pipeline Safety Program, 60105 Certification

Submission, Base Grant Application at 6. “Random” refers to the frequency of major enforcement cases to which I&E could not assign a specific time commitment or dollar amount in the PHMSA application and thus described the occurrences as “random.”

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Presiding Administrative Law Judge and the Commission dismiss Respondent's New Matter and find Respondent to be in violation of each and every count set forth in the Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Swindler", with a horizontal line extending to the right from the end of the signature.

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

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Dated: July 12, 2018

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

v.

Docket No. C-2015-2512950

Bushkill Group, Inc.,
Respondent

VERIFICATION

I, Michael Chilek, Fixed Utility Valuation Engineer Supervisor of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect 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).

Date: July 12, 2018



Michael Chilek
Fixed Utility Valuation Engineer Supervisor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

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

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).

Service by First Class Mail and Electronic Mail:

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Counsel for Bushkill Group Inc.



Michael L. Swindler
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