



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

IN REPLY PLEASE
REFER TO OUR FILE

August 28, 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
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement and Appendix A, the Bureau of Investigation and Enforcement's Statement in Support, and Appendix B, the Statement in Support of the Bushkill Group, Inc. in the above-captioned 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 blue ink, appearing to read "S. Wimer".

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

Enclosure

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

3265, Harrisburg, PA 17105-3265, and Bushkill Group, Inc. with a mailing address of RR 209, P.O. Box 447, Bushkill, PA 18324-0447.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate pipeline operators pursuant to Section 501(a) of Act 127, 58 P.S. § 801.501(a).

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of Act 127, 58 P.S. § 801.501(a), authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws. Respondent is a “pipeline operator” in that it owns or operates “equipment or facilities in [the Commonwealth of Pennsylvania] for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.” 58 P.S. § 801.102.

5. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators for violations of Act 127. A pipeline operator may be subject to the civil penalties provided under Federal pipeline safety laws or Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), whichever is greater.

6. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Respondent in its capacity as a pipeline operator in Pennsylvania.

II. STIPULATION OF FACTS

7. Bushkill operates timeshare and vacation rental units at a resort called The Villas at Tree Tops and Fairway (“the Villas”) in the Pocono Mountains in Pennsylvania.

8. On October 15, 2014, personnel of I&E’s Safety Division were made aware of news reports of a propane gas fire and possible explosion at the Villas.

9. The initial assessment of the inspectors of the Safety Division concluded that the propane system at the Villas was jurisdictional and further investigation would be required. Upon further investigation into the incident, including testing and analysis of the pipeline facilities involved, the Safety Division determined that the incident itself was not jurisdictional as to the Commission.

10. Bushkill provided Safety Division personnel with a confidential map of the propane system at the Villas as well as a spreadsheet of tanks and buildings served by that propane distribution system.

11. At least sixteen (16) of the system’s tanks distribute propane to ten (10) or more individual timeshare and vacation rental units at the Villas.

12. Prior to the incident, the I&E Safety Division had been unaware of the existence of Bushkill’s propane distribution system at the Villas.

13. On November 12, 2015, I&E filed a Formal Complaint (“Complaint”) with the Commission against Bushkill. The Complaint alleges that Bushkill’s propane distribution system is subject to Federal pipeline safety laws and regulations in that it transports petroleum gas, which includes propane, to ten (10) or more customers, pursuant to 49 CFR § 192.1(b)(5)(i). I&E alleges that since portions of Bushkill’s propane distribution system are subject to Federal pipeline safety laws and regulations, Bushkill was required to comply with Act 127. I&E further alleges that Bushkill failed to submit an initial registration form in 2012 to register with the

Commission as a pipeline operator pursuant to Act 127 and failed to file Pennsylvania Pipeline Operator Annual Registration Forms to report total intrastate regulated transmission, distribution and gathering pipeline miles that were in operation during the 2013, 2014 and 2015 calendar years.

14. I&E's Complaint also alleges that Bushkill failed to maintain a procedural manual for operations, maintenance and emergencies, and failed to notify the National Response Center of the October 15, 2014 incident at the Villas at the earliest practicable moment.

15. The Complaint requests that the Office of Administrative Law Judge and the Commission: (a) impose a civil penalty of \$70,000 against Respondent; (b) direct Respondent to file 2012, 2013, 2014 and 2015 Pipeline Operator Annual Registration Forms with the Commission; (c) direct Respondent to timely file Pipeline Operator Annual Registration Forms for all future years; and (d) order such further relief as is just and reasonable.

16. On December 16, 2015, after receiving an extension of time, Bushkill filed Preliminary Objections to I&E's Complaint seeking dismissal of the Complaint on grounds of insufficient specificity and legal insufficiency.

17. On January 7, 2016, after receiving an extension of time to respond, I&E filed an Answer to the Preliminary Objections of Bushkill and requested that the Preliminary Objections be dismissed and I&E's Complaint be sustained.

18. By Hearing Notice dated January 27, 2016, an Initial Hearing was scheduled in this matter for February 26, 2016 at 10:00 AM in Harrisburg, PA before ALJ Dennis J. Buckley.

19. On February 22, 2016, the Parties filed a Joint Motion for Continuance requesting a continuance of the Initial Hearing, which was granted by Interim Order dated February 25, 2016.

20. By Notice dated August 16, 2017, an Initial Prehearing Conference was scheduled for October 4, 2017 at 10:00 AM in Harrisburg. On September 20, 2017, the Parties renewed their Joint Motion for Continuance.

21. By Notice dated November 16, 2017, a further Prehearing Conference was scheduled for January 3, 2018. On January 3, 2018, an off-the-record prehearing conference was held in which the Parties were afforded until February 23, 2018 to hold settlement discussions.

22. Two additional requests for continuances were advanced and granted up until June 1, 2018, to provide additional time for the Parties to engage in settlement negotiations.

23. The Parties were unable to resolve the matter by June 1, 2018, and requested an additional continuance.

24. By Order dated June 5, 2018, the presiding ALJ denied Bushkill's Preliminary Objections and the Parties' request for a further continuance.

25. By Hearing Notice dated June 12, 2018, an Initial Hearing was scheduled for June 28, 2018 in Harrisburg.

26. On June 13, 2018, I&E filed a Motion to Postpone the Initial Hearing by one day.¹

27. By Hearing Notice dated June 13, 2018, the Initial Hearing was rescheduled for June 29, 2018. Additionally, on June 13, 2018, the parties received an Order from the presiding ALJ that granted, in part, I&E's Motion to Postpone the Initial Hearing by one day. The Order converted the Initial Hearing scheduled for June 29, 2018 into a prehearing conference.

28. On June 22, 2018, Bushkill filed an Answer to I&E's Motion to Postpone the Hearing. Also on June 22, 2018, Bushkill filed an Answer to I&E's Complaint and raised New Matter.

¹ I&E's Motion also sought, *inter alia*, a ruling on the Preliminary Objections filed by Bushkill as I&E had not been served with, and was thus unaware of, the June 5, 2018 Order denying Bushkill's Preliminary Objections.

29. On June 29, 2018, the Parties participated in a prehearing conference in which a litigation schedule was established.

30. On July 12, 2018, I&E filed a Reply to Bushkill's New Matter.

31. Prior to deadline for the service of I&E's written direct testimony in this matter, I&E and Bushkill reached a settlement in principle and advised the presiding ALJ of the Settlement by e-mail dated July 24, 2018.

III. ALLEGED VIOLATIONS

32. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Respondent committed the following violations:

- A. Bushkill failed to register with the Commission as an Act 127 pipeline operator in that it failed to file an Initial Pennsylvania Pipeline Operator Registration Form by the 2012 registration deadline of March 16, 2012, as set forth in *Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031 (Final Implementation Order entered February 17, 2012), including the reporting of total intrastate regulated transmission, regulated distribution and regulated onshore gathering pipeline miles in operation for the transportation of gas and hazardous liquids in this Commonwealth during the prior calendar year.

If proven, I&E alleges that such conduct would have violated 58 P.S. § 801.301(c). (1 count)

- B. Bushkill failed to renew its registration with the Commission as an Act 127 pipeline operator on an annual basis in that it failed to report pipeline miles on or before March 31 of each subsequent calendar year following the submission of the initial application by filing Pennsylvania Pipeline Operator Annual Registration Forms for 2013, 2014 and 2015.

If proven, I&E alleges that such conduct would have violated 58 P.S. § 801.503(d). (3 counts)

- C. Bushkill failed to maintain a procedural manual for operations, maintenance and emergencies in that as a Company operating a jurisdictional Act 127 propane distribution system governed under the Federal pipeline safety laws, Bushkill failed to prepare and follow relevant written procedures for conducting operations and maintenance activities.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.605(a), (b)(1)-(5), (8)-(9), (11), (c)(2)-(4), (d) and (e). (1 count)

- D. Bushkill failed to comply with CFR Part 191 incident report regulations in that upon discovery of the October 15, 2014 incident, the operator failed to, at the earliest practicable moment following discovery, give notice of the incident to the National Response Center by telephone or electronically as required by the regulations.

If proven, I&E alleges that such conduct would have violated 49 CFR § 191.5. (1 count).

IV. SETTLEMENT TERMS

33. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,² the Parties held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's Complaint proceeding.

34. It is understood that this Settlement is the compromise of the allegations in the Complaint, which I&E intended to prove and that Respondent intended to dispute. However, Respondent fully acknowledges the seriousness of I&E's allegations, namely that failing to identify jurisdictional pipeline facilities with the Commission deprives the I&E Safety Division of knowing the existence and location of such facilities and, consequently, the ability to inspect the facilities to determine compliance with Federal pipeline safety laws and regulations.

35. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the parties further recognize the benefits of amicably resolving the disputed issues through settlement.

² See 52 Pa. Code § 5.231(a).

36. I&E and Respondent, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

- A. Respondent will pay a civil penalty in the amount of Thirty-Seven Thousand, Five Hundred Dollars (\$37,500) pursuant to 58 P.S. § 801.502. Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C-2015-2512950, shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. Pursuant to 58 P.S. §§ 801.301(c) and 801.503(d) and within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement, Respondent will submit the Initial Pennsylvania Pipeline Operator Registration Form that was due on March 16, 2012, and will submit Pennsylvania Pipeline Operator Annual Registration Forms for all subsequent years, including, 2013, 2014, 2015, 2016 and 2017. Respondent will submit Pennsylvania Pipeline Operator Annual Registration Forms for future years beginning with 2018.
- C. Pursuant to 58 P.S. § 801.503(c), Respondent will pay annual assessments to the Commission based on its intrastate regulated transmission, distribution and onshore gathering pipeline miles as reported in the past due Act 127 registration forms set forth in Paragraph 36(b) of this Settlement, *supra*. Said payment shall be made within thirty (30) days of the date of the Commission’s Notice of Amount Due and shall be made in accordance with instructions on the Notice. The docket number of this proceeding, C-2015-2512950, shall be indicated on the payment and the payment shall be sent to:

Pennsylvania Public Utility Commission
Bureau of Administrative Services
Assessment Section
P.O. Box 3265
Harrisburg, PA 17105-3265

- D. Bushkill agrees that it will fully comply with Federal pipeline safety laws and regulations, including developing the necessary plans and manuals as required by applicable Federal pipeline safety regulations, within four (4) months following the entry of a Commission Order approving any settlement in this matter.
- E. Bushkill agrees that it will permit the I&E Safety Division to review the plans and manuals that Bushkill will develop in order to comply with Federal pipeline safety regulations, as set forth in Paragraph 36(d) of this Settlement, *supra*.
- F. Bushkill agrees to provide I&E with the contract between Bushkill and the operator trainer subcontractor that Bushkill retains.

37. Upon payment by Respondent of the civil penalty and assessments and the submission of applicable Act 127 registration forms, I&E's Formal Complaint shall be deemed satisfied and the matter shall be marked closed.

38. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released Respondent from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Respondent failed to comply with the obligations set forth in Act 127 for the time periods covered by I&E's Complaint. Nothing contained in this Settlement Agreement shall affect the Commission's authority to receive and resolve any future formal or informal complaints filed by any affected party related to the allegations set forth in I&E's Complaint.

39. I&E and Respondent jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, and avoids the time and expense of litigation, which entails hearings, travel for Respondent's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as

possible appeals. Attached as Appendices A and B are Statements in Support submitted by I&E and Respondent, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. **CONDITIONS OF SETTLEMENT**

40. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

41. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the Parties within twenty (20) days after entry of an Order modifying the Settlement.

42. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law, beyond those stipulated herein, and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in the Settlement.

43. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

44. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the parties from taking other positions in any other proceeding.

45. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and the Bushkill Group, Inc. respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 28th day of August 2018.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT:


Signature

Senior Prosecutor
Title

8/28/18
Date

FOR THE BUSHKILL GROUP, INC.:


Signature

Outside Counsel
Title

8/28/18
Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE DENNIS J. BUCKLEY:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and the Bushkill Group, Inc. (“Bushkill” or “Respondent” or “Company”). I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

I. BACKGROUND

This matter involves Bushkill, which operates timeshare and vacation rental units at a resort called The Villas at Tree Tops and Fairway (“the Villas”) in the Pocono Mountains, Pennsylvania. The I&E Safety Division first became aware of Bushkill *via* news reports of a propane fire and apparent explosion at the Villas that took place on October 15, 2014.

Subsequent investigation, which included testing and laboratory analysis of the pipeline facilities involved, did not confirm that the incident itself was jurisdictional. However, the investigation of I&E's Safety Division determined that the portions of Bushkill's propane distribution system that serve ten (10) or more customers are jurisdictional and subject to Federal pipeline safety laws and regulations. *See* 49 CFR § 192.1(b)(5)(i) (providing that pipeline systems transporting petroleum to fewer than ten (10) customers, if no portion of the system is located in a public place, are exempt from Federal pipeline safety regulations). The I&E Safety Division concluded that the propane tanks that serve ten (10) or more timeshare and/or rental units are jurisdictional because, *inter alia*, the occupants of the individual units are the ultimate customers.¹ As such, I&E determined that Bushkill is a "pipeline operator," as that term is defined in the Gas and Hazardous Liquids Pipeline Act, 58 P.S. §§ 801.501, *et seq.* ("Act 127") in that it "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." 58 P.S. § 801.102.

Pursuant to Act 127, the Respondent was required to submit an initial registration form in 2012 to register with the Commission as a pipeline operator and, for each year thereafter, was required to annually renew its registration by reporting its jurisdictional pipeline miles. I&E submits that the I&E Safety Division relies on pipeline operators to completely and accurately report jurisdictional pipeline miles so that the Safety Division may inspect those facilities to ensure compliance with pipeline safety regulations.

On November 12, 2015, I&E filed a Formal Complaint ("Complaint") with the

¹ *See* 58 P.S. § 801.102, which excludes an ultimate consumer owning a service line on his or her real property from the definition of "pipeline operator." Bushkill is not the ultimate consumer of the propane gas even though the propane distribution system is located on Bushkill's real property.

Commission against Bushkill. The Complaint alleges that Bushkill's propane distribution system is subject to Federal pipeline safety laws and regulations in that it transports petroleum gas, which includes propane, to ten (10) or more customers, pursuant to 49 CFR § 192.1(b)(5)(i). I&E alleges that since portions of Bushkill's propane distribution system are subject to Federal pipeline safety laws and regulations, Bushkill is required to comply with Act 127. I&E further alleges that Bushkill failed to submit an initial registration form in 2012 to register with the Commission as a pipeline operator pursuant to Act 127 and failed to file Pennsylvania Pipeline Operator Annual Registration Forms to report total intrastate regulated transmission, distribution and gathering pipeline miles that were in operation during the 2013, 2014 and 2015 calendar years.

I&E's Complaint also alleges that Bushkill failed to maintain a procedural manual for operations, maintenance and emergencies, and failed to notify the National Response Center of the October 15, 2014 incident at the Villas at the earliest practicable moment.

The Complaint requests that the Office of Administrative Law Judge and the Commission: (a) impose a civil penalty of \$70,000 against the Respondent; (b) direct the Respondent to file 2012, 2013, 2014 and 2015 Pipeline Operator Annual Registration Forms with the Commission; (c) direct the Respondent to timely file Pipeline Operator Annual Registration Forms for all future years; and (d) order such further relief as is just and reasonable.

Bushkill filed Preliminary Objections to I&E's Complaint, which were ultimately denied by the presiding Administrative Law Judge ("ALJ"). On June 29, 2018, I&E and Bushkill participated in a prehearing conference in which a litigation schedule was developed. Prior to

the deadline for the service of I&E's written direct testimony, I&E and Bushkill reached a settlement in principle and advised the presiding ALJ of the same.

On August 28, 2018, I&E and Bushkill (collectively, the "Parties") filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Bushkill in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant I&E Complaint proceeding.

I&E intended to prove the factual allegations set forth in its Complaint at hearing, to which Bushkill would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and Bushkill may disagree with respect to I&E's factual allegations, Bushkill recognizes the need to prevent similar allegations from reoccurring.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits of amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the presiding ALJ and the Commission approve the Settlement without modification.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and Bushkill have agreed as follows:

- A. Respondent will pay a civil penalty in the amount of Thirty-Seven Thousand, Five Hundred Dollars (\$37,500) pursuant to 58 P.S. § 801.502.

Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2015-2512950, shall be indicated with the certified check or money order and the payment shall be sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. Pursuant to 58 P.S. §§ 801.301(c) and 801.503(d) and within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement, Respondent will submit the Initial Pennsylvania Pipeline Operator Registration Form that was due on March 16, 2012, and will submit Pennsylvania Pipeline Operator Annual Registration Forms for all subsequent years, including, 2013, 2014, 2015, 2016 and 2017. Respondent will submit Pennsylvania Pipeline Operator Annual Registration Forms for future years beginning with 2018.
- C. Pursuant to 58 P.S. § 801.503(c), Respondent will pay annual assessments to the Commission based on its intrastate regulated transmission, distribution and onshore gathering pipeline miles as reported in the past due Act 127 registration forms set forth in Paragraph 36(b) of this Settlement, *supra*. Said payment shall be made within thirty (30) days of the date of the Commission's Notice of Amount Due and shall be made in accordance with instructions on the Notice. The docket number of this proceeding, C-2015-2512950, shall be indicated on the payment and the payment shall be sent to:

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- D. Bushkill agrees that it will fully comply with Federal pipeline safety laws and regulations, including developing the necessary plans and manuals as required by applicable Federal pipeline safety regulations, within four (4) months following the entry of a Commission Order approving any settlement in this matter.

- E. Bushkill agrees that it will permit the I&E Safety Division to review the plans and manuals that Bushkill will develop in order to comply with Federal pipeline safety regulations, as set forth in Paragraph 36(d) of this Settlement, *supra*.
- F. Bushkill agrees to provide I&E with the contract between Bushkill and the operator trainer subcontractor that Bushkill retains.

In consideration of Bushkill's payment of a monetary civil penalty and assessments, as well as the submission of applicable Act 127 registration forms, and upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released the Respondent from all past claims that were made or could have been made for monetary and/or other relief based on allegations that the Respondent failed to properly register, submit reports and pay assessments with respect to the obligations set forth in Act 127 for the time periods covered by I&E's Complaint. Upon payment by Bushkill of the civil penalty and assessments and the submission of applicable Act 127 registration forms, I&E's Complaint shall be deemed satisfied and the matter shall be marked closed.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). The violations averred in I&E's Complaint are of a serious nature in that Bushkill did not initially register with the Commission and thereafter file Pennsylvania Pipeline Operator Annual Registration Forms, pursuant to Act 127. The Safety Division depends on the accurate completion of Act 127 forms so that the Safety Division may locate and inspect all jurisdictional facilities to ensure compliance with Federal pipeline safety laws and regulations. Significant public safety concerns are present when an operator's pipeline is not timely reported to the Commission. The Commission has agreed that failing to file Act 127 reports is a serious

violation and stated that “accurate, diligent, and prompt compliance with the reporting and compliance requirements in Act 127 is critical in ensuring public safety.” *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Brookhaven MHP Management LLC, et al.*, Docket Nos. C-2017-2613983, C-2017-2613984, C-2017-2613985, C-2017-2613986 and C-2017-2613987 (Order entered August 23, 2018) at 10 (“*Greenleaf*”).

Moreover, Bushkill did not maintain a procedural manual for operations, maintenance and emergencies pursuant to 49 CFR § 192.605. This manual is required to be in place before pipeline operations commence and delineates how a pipeline operator will manage its system in accordance with Federal pipeline safety laws and regulations. Indeed, a propane fire and apparent explosion occurred at a Bushkill property called the Villas and while it could not be determined that the facilities that failed were jurisdictional, portions of this very same propane distribution system are jurisdictional and must be maintained in accordance with applicable laws and regulations. Thus, I&E submits that the Respondent’s alleged conduct is of a serious nature and was considered in arriving at the civil penalty in the Settlement Agreement.

The second factor considered is whether the resulting consequences of the Respondent’s alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). A propane fire and apparent explosion occurred at the Villas on October 15, 2014 where there was estimated property damage of at least \$50,000. However, subsequent testing and laboratory analysis did not conclude that the facilities that failed were jurisdictional. Thus, the alleged violations in I&E’s Complaint do not include the incident itself aside from the allegation that Respondent failed to immediately report the explosion.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether the Respondent’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by Settlement of the Parties.

The fourth factor to be considered is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Bushkill has hired a third-party consultant to assist it into coming into compliance with all applicable laws and regulations.

The fifth factor to be considered relates to the number of customers affected by the Respondent’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Each timeshare and/or rental unit served by the Respondent’s propane distribution system could potentially have been subjected to serious safety issues given that the Respondent’s system was not reported to the Commission and, consequently, the Safety Division had no knowledge of the system and could not have inspected it to ensure compliance with Federal pipeline safety laws and regulations. At least sixteen (16) of the system’s tanks distribute propane to ten (10) or more units. Thus, numerous units were impacted and any occupant of those units was affected. The violations began on March 16, 2012, the date that the initial Act 127 registration forms were due to the Commission, and continue to the present time.

The sixth factor to be considered relates to the Respondent’s compliance history. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Aside from the instant matter, Bushkill does not have a history of noncompliance at

the Commission. However, I&E, which is the bureau within the Commission charged with the responsibility to enforce applicable laws, was unaware of the existence of Bushkill until the October 15, 2014 propane fire and apparent explosion since Bushkill failed to register as a pipeline operator in accordance with Act 127.

The seventh factor to be considered relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). “Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.” *Id.* Bushkill has been forthcoming with information and has cooperated with the Safety Division.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil penalty of \$37,500, which may not be claimed as a tax deduction by operation of law, is substantial and sufficient to deter the Respondent from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement, which resolves allegations of failing to file Act 127 reports, failing to maintain a procedural manual for operations, maintenance and emergencies of its pipeline system and failing to file an incident report, provides comparable relief to a largely similar matter that was previously decided by the Commission. In *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. XTO Energy, Inc. and Mountain Gathering, LLC*, Docket No. C-2014-2444722 (Order entered September 3, 2015) (“*XTO Energy*”), the Commission approved a settlement agreement wherein the respondents agreed to pay a civil penalty of \$30,000 to resolve allegations that the

respondents failed to timely identify and classify pipelines for reporting and assessment purposes pursuant to Act 127. Thus, while Act 127 reports had been filed, I&E had argued that the reports were not based on accurate data derived from classification studies and rather, that the reported jurisdictional pipeline miles were “estimated” on two Act 127 annual reports. Nonetheless, I&E had argued in *XTO Energy* just as I&E argues in the instant matter that the purpose of the reporting requirements under Act 127 is, in part, to permit the Safety Division to evaluate jurisdictional pipelines for safety. In *XTO Energy*, the Commission agreed and stated that “accurate, diligent and prompt compliance with the reporting and compliance requirements under Act 127 is critical for helping to ensure public safety.” *Id.* at 9-10.

In the *Greenleaf* matter, the Commission entered an Order on August 23, 2018 approving a Joint Petition for Approval of Settlement that resolved allegations pertaining to a failure to submit Act 127 annual registration forms for 2015 and 2016 and a failure to pay related Act 127 assessments. Greenleaf, which owns four mobile home parks in York County where the jurisdictional systems are located, agreed to pay a civil penalty of \$25,000 and pay past due assessments to resolve the matter for a total of \$30,060.40. I&E views *Greenleaf* as being similar to Bushkill particularly because Greenleaf is a non-traditional pipeline operator involved in owning and managing mobile home parks where the jurisdictional systems are located, but is nonetheless regulated by the Commission pursuant to Act 127.

One other Commission decision involves an Act 127 enforcement proceeding. In *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Initial Decision issued June 7, 2016) (Final Order entered August 11, 2016) (“*Hickory Hills*”), the Commission approved a settlement agreement wherein the respondents agreed to pay a civil penalty of \$1,000,000 to

resolve allegations that the respondents, *inter alia*, failed to register with the Commission the underground propane pipeline distribution system at the Hickory Hills' manufactured housing community and failed to pay Act 127 assessment fees. However, *Hickory Hills* is distinguishable from the instant matter in that a jurisdictional explosion occurred in the community resulting in one fatality, injury to another person and substantial property damage, in addition to violations pertaining to Act 127 reporting and assessment requirements.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the presiding ALJ and Commission approve the Joint Petition for Approval of Settlement, including all the terms and conditions set forth therein, without modification.

Respectfully submitted,



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Dated: August 28, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BUSHKILL GROUP, INC.'S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, Respondent Bushkill Group, Inc. submits this statement in support of the Settlement Agreement between Respondent and the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") in the above-captioned matter (the "Settlement"). Respondent and I&E are the only parties to the matter. The Settlement is in the public interest, and thus should be approved by the Commission without delay, for the following reasons.

I. INTRODUCTION

The Settlement is in the public interest because it provides for compliance with Act 127, addresses I&E's allegations that are the subject of this proceeding, avoids the time and expense of litigation before the Presiding Judge and the Commission, and avoids the possibility of appeals involving the Commission's authority under Act 127. Upon approval and implementation of the Settlement without modification, Respondents will:

- pay a civil penalty in the amount of \$37,500;
- submit Pennsylvania Pipeline Operator Registration Forms for 2012-2017 and for future years beginning with 2018 and pay the associated annual assessments;

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- fully comply with Federal pipeline safety laws and regulations, including developing the necessary plans and manuals as required by applicable Federal pipeline safety regulations, within four (4) months following the entry of a Commission Order approving any settlement; and
- provide I&E the opportunity to review the plans and manuals Bushkill will develop for compliance and provide I&E with Bushkill's contract and the operator trainer subcontractor that Bushkill retains.

As discussed in the following section, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission's regulations set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231. The Commission reviews proposed settlements to determine whether the terms are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Pa. P.U.C. Jan. 7, 2004). The Commission's rules expressly contemplate the use of statements in support as the basis for consideration and approval of settlements. *See* 52 Pa. Code §§ 232(a), 69.1201(b) (parties should include in settlement agreement statement(s) in support of settlement explaining how and why the settlement is in the public interest); *see, e.g., Pa. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112, slip op. (Pa. P.U.C. Nov. 13, 2014) (settlement was found to be in the public interest based on settlement agreement, statements in support and supplemental statements in support); *Pa. PUC v. Energy Services Providers, Inc. dba Pennsylvania Gas & Elec.*, Docket No. M-2013-2325122, slip op. (Pa. P.U.C. Oct. 2, 2014) (settlement was found to be in the public interest based on revised settlement agreement and

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statements in support); *Pa. PUC v. PPL Elec. Utils. Corp.* Docket No. M-2013-2275471, slip op. (Pa. P.U.C. Oct. 31, 2013) (same).

Approval of the Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic – Pennsylvania, Inc.*, 94 Pa. P.U.C. 103 (2000) and codified in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. The Policy Statement recognizes that in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

Consideration of the factors listed in the Policy Statement, as applied to the facts of this case, leads to the conclusion that the Settlement is in the public interest and should be approved:

1. The first factor to be considered under the Policy Statement is whether the alleged conduct was of a serious nature, such as willful fraud or misrepresentation, or was less egregious, such as administrative filing or technical errors. 52 Pa. Code § 69.1201(c)(1). Here there is no allegation that the alleged conduct involved willful fraud or misrepresentation. Bushkill operates timeshare and vacation rental units at a resort called The Villas at Tree Tops and Fairway (“the Villas”) in the Pocono Mountains in Pennsylvania that includes propane tanks that distribute propane to individual timeshare and vacation rental units. Bushkill was unaware that federal regulation of these pipelines applied to Bushkill because Bushkill was under the belief that it did not fall within the definition of a pipeline operator and was not subject to Act 127 of 2011. The conduct the Complaint alleges is that Respondent failed to register its pipeline system with the Commission, failed to maintain adequate operational manuals for the pipeline, failed to pay assessment fees, and failed to adhere to federal incident reporting regulations. Respondent acknowledges that these allegations raise serious concerns about compliance with Commission oversight and regulation of pipeline safety. Joint Petition at P 34. Respondent recognizes that

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the Gas Safety Division of I&E must have the opportunity, through proper pipeline operator registration and reporting, to inspect and monitor regulated pipeline facilities. Respondent submits that the settlement amount appropriately underscores the importance of these goals and will encourage universal compliance with Commission registration and monitoring of pipeline safety standards.

2. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). Respondent's actions set forth in the Settlement did not result in consequences of a serious nature which would warrant a higher penalty under this factor. While Respondent's pipeline system came to the attention of the Gas Safety Division because of a 2015 fire, no one was injured by the fire and it was later determined that the fire was not jurisdictional as to the Commission. Joint Petition at ¶ 15 (Stipulation of Fact). Thus, there are no consequences of a serious nature involved relating to the alleged violations of the Complaint.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Since this matter is being resolved by settlement of the parties, this factor is not relevant here.

4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As set forth in the Settlement, Respondent has agreed to come into compliance and change its practices so similar conduct in the future will be prevented. Respondent's recent actions indicate compliance and support a lower civil penalty.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Bushkill

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does not charge for propane and does not have customers. There is no indication that any occupants of Bushkill's Villas were affected by the alleged violations. There is no basis to conclude that the duration of the alleged violations supports a higher civil penalty.

6. The sixth factor to be considered under the Policy Statement relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Other than the alleged non-compliance that the Complaint alleges, there is no record of prior violations by Respondent. Respondent believed that Commission regulation of pipeline facilities did not apply to their facilities. Once Respondent understood the basis for I&E's allegations, it worked with I&E to reach this settlement, which includes coming into compliance for all past registration years by filing the required registration reports and paying past assessment fees. Thus, this factor does not pose a barrier to approval of the settlement.

7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Respondent cooperated with the Gas Safety Division from October 15, 2014 forward, when representatives of the Division first arrived at Bushkill to investigate the explosion. This includes cooperation at the request of the Division by having independent testing and analysis of the facilities involved in the fire completed at Bushkill's expense.

8. The eighth factor to be considered is the size of the settlement amount and whether it is an amount "necessary to deter future violations." 52 Pa. Code § 69.1201(c)(8). Here, deterrence of future violations by Respondent is unnecessary because part of the settlement is Bushkill's agreement to comply.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). There are few other matters involving distribution pipeline safety allegations that are non-conventional pipeline

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operators (ie. companies engaged in operation of a pipeline as their main business) in which there have been allegations similar to those here. The most analogous case is *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Brookhaven MHP Management LLC et al*, Docket No. C-2017-2613983 *et al.* (Order entered Aug. 23, 2018). There, the Commission approved a settlement between I&E and Brookhaven MHP Management *et al.* regarding allegations of failing to register, under Act 127, mobile home parks providing natural gas service. That settlement consisted of a \$25,000.00 penalty and payment of back assessments. Under the circumstances here, and by comparison to *Brookhaven*, the settlement is consistent with prior Commission determinations and fairly balances the mitigating factors that weigh in Respondent's favor, including small size, prompt response to the incident, willingness to cooperate, and willingness to comply.

The Commission may also consider other relevant factors. 52 Pa. Code § 69.1201(c)(10).

In *Brookhaven*, the Commission stated:

it is in the public interest to approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals. In addition, we believe that the Settlement is in the public interest because it promotes safety through enforcement of the Respondents' registration and assessment obligations under Act 127, which will aid the Pipeline Safety Division in locating and inspecting jurisdictional facilities to ensure compliance with Federal pipeline safety regulations.

Id. at 13. That same reasoning applies here, as the parties have avoided the expense of litigation and the settlement terms include compliance.

III. CONCLUSION

Respondent Bushkill Group Inc. respectfully submits that the above-captioned Settlement is in the public interest and should be approved and, therefore, request that the Honorable Administrative Law Judge Jeffery Watson recommend approval of and the Commission approve the Settlement without modification.

Respectfully submitted,



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DATED: August 28, 2018

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

v.

Bushkill Group, Inc.,
Respondent

Docket No. C-2015-2512950

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).

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