



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

February 26, 2024

Docket No. A-2019-3007513
Utility Code: 1721803

PETER J STEFFEN
CLUB EXPLORIA LLC
POCONO MOUNTAIN VILLAS
PO BOX 447 RT 209
BUSHKILL PA 18324

RE: Application for the Abandonment of Act 127 Registration

Dear Mr. Steffen:

On March 30, 2023, Club Exploria, LLC-Pocono Mountain Villas (Club Exploria) applied to abandon its Act 127 registration (Application) and be declared non-jurisdictional by the Pennsylvania Public Utility Commission (Commission). Club Exploria stated that its original Act 127 classification as jurisdictional was primarily due to the interconnection of 171 villas on its private property in Bushkill, Pennsylvania. Club Exploria stated that it utilized small gas distribution lines from several interconnected tanks. Club Exploria stated that it recently removed all interconnected appurtenances between tanks, as well as each of its tank locations, or propane sources. Club Exploria stated that its lines now feed eight villas or less, within its private community. Club Exploria stated that because of the recent system changes, it should be removed from the Act 127 pipeline registry.

On November 16, 2023, the Commission's Bureau of Technical Utility Services (TUS) staff sent Club Exploria data requests asking for, among other items, proof of documentation from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) designating Club Exploria as non-jurisdictional and exempt from federal pipeline safety laws. Additionally, TUS staff requested an explanation as to whether any of Club Exploria's gas lines are in or cross any public areas.

In its reply on November 30, 2023, Club Exploria was not able to provide the requested documentation from PHMSA. Moreover, with respect to whether any of Club Exploria's lines are in or cross any public areas, Club Exploria simply responded, "This has been documented as NO they do not exist in public areas."

In its Application, Club Exploria asserts that it is exempt from federal pipeline safety laws because it now serves fewer than 10 customers. 49 CFR § 192.1 defines the scope in which the transportation of natural and other gas by pipeline minimum federal safety standards applies

to pipeline operations and carves out five exceptions. As relevant here, subsection (b)(5) states:

(b)(5) 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).¹

PHMSA develops and enforces regulations for the pipeline transportation system as well as shipments of hazardous materials. PHMSA also issues written clarifications in the form of interpretation letters which reflect the current application of the regulations.² According to PHMSA, a public place is defined as “a place which is generally open to all persons in a community as opposed to being restricted to specific persons . . . churches, schools, and commercial buildings as well as any publicly owned rights-of-way or property which if frequented by persons are public places.”³ “Publicly owned rights-of-way” includes streets and roadways. Crossing into (or under) a street would be considered having part of the property on a public right-of-way, and therefore prevents that pipeline operator from claiming the exclusion.⁴

Based on a review of the information, TUS staff believes that Club Exploria did not demonstrate that the property itself is not a public place. Club Exploria holds itself out to be a “resort.”⁵ Furthermore, Club Exploria has noted that it operates as a vacation ownership company that owns and manages vacation properties.⁶ PHMSA has interpreted hotels and motels to be considered commercial buildings, and therefore a public place. Pursuant to the information provided in Club Exploria’s Application, as well as its responses to TUS staff’s data requests, it appears to TUS staff that Club Exploria is subject to Act 127 regulations and advises Club Exploria to file their Act 127 registration form with the Commission by March 31st annually.

This informal staff opinion is advisory only, and not binding upon the Commission. 52 Pa. Code § 1.96. For a binding Commission determination to remove uncertainty about Club Exploria’s Act 127 jurisdictional status, Club Exploria may file a Petition for Declaratory Order under 66 Pa. C.S. § 331(f) and 52 Pa. Code § 5.42.

¹ 49 CFR § 192.1(b)(5). (emphasis added).

² Pipeline and Hazardous Materials Safety Administration, *interpretation document* (March 20, 2023).

³ Pipeline and Hazardous Materials Safety Administration, *interpretation document* (March 24, 1978).

⁴ Pipeline and Hazardous Materials Safety Administration, *interpretation document* (June 15, 2020).

⁵ Pennsylvania Pipeline Operator Annual Registration Form (2013) @ docket no. A-2019-3007513; *Club Exploria v. Aaronson*, 2020 U.S. Dist. LEXIS 210098, *2.

⁶ *Moore v. Club Exploria*, 2023 U.S. Dist. LEXIS 144183, *5.

Please direct any questions to Lee Yalcin, Financial Analyst, Technical Utility Services at email lyalcin@pa.gov (preferred) or (717) 787-6723.

Sincerely,

Paul T. Diskin

Paul T. Diskin
Director, Bureau of Technical Utility Services

Cc: Amy Zuvich, Bureau of Administration, Financial and Assessments