

December 13, 2021

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (Filing Room)
Harrisburg, PA 17120
Telephone: 717-772-7777 (Filing Room)

Please accept the following filing via overnight delivery.

In re: Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for a Declaratory Order Regarding the Applicability of the Gas and Hazardous Liquids Pipeline Act; Docket No. P-2021-3030002

Attached are the both the CONFIDENTIAL and Non-Confidential Exhibits to Westover Companies Petition for a Declaratory Order which was eFiled today. Thank you.

DATE OF DEPOSIT

DEC 13 2021

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX 1

DATE OF DEPOSIT

01/01/2011

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 28, 2021

Via Electronic Mail Only

Mr. Alexander Steffanelli
Westover Property Management Company, L.P.
d/b/a Westover Companies
550 American Avenue
Suite 1
King of Prussia, PA 19406
alex@westovercompanies.com

Re: Investigation of Westover Property Management Company, L.P. d/b/a Westover Companies Relating to Possible Violations of the Gas and Hazardous Liquids Pipelines Act and Federal Pipeline Safety Laws and Regulations
Bp8CaseID# 3025977
I&E Letter

Dear Mr. Steffanelli,

As you are aware, the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") has been investigating Westover Property Management Company, L.P. d/b/a Westover Companies ("Westover") pursuant to Section 801.501 of the Gas and Hazardous Liquids Pipelines Act ("Act 127"), 58 P.S. § 801.501, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. This investigation focuses on determining which apartment complexes owned or managed by Westover meet the definitions of "pipeline operator" and "master meter system" set forth in 58 P.S. § 801.102 and 49 CFR § 191.3, respectively, such that compliance with Federal pipeline safety laws and regulations, including 49 CFR Part 192, is obligatory.

Also, as you are aware, I&E issued a Warning Letter dated June 2, 2021, to prompt Westover's compliance with Act 127 by, *inter alia*, registering as a pipeline operator and developing and implementing an Operations and Maintenance ("O&M") Manual required by 49 CFR Part 192, prior to I&E's initiation of a formal enforcement action that would seek civil penalties. The assertions set forth in the Warning Letter were based on a preliminary determination by the I&E Safety Division that Westover operates a regulated master meter system at Jamestown Village Apartments in Willow Grove, PA.

Subsequently, by email dated June 4, 2021, I&E clarified its Warning Letter to indicate that any O&M Manual that is developed by or on behalf of Westover should encompass **all** jurisdictional master meter systems operated by Westover in any of the apartment complexes that it manages in Pennsylvania.

Thereafter, on June 28, 2021, Westover registered only Jamestown Village Apartments, LP as an Act 127 pipeline operator and reported zero jurisdictional intrastate pipeline miles. On July 10, 2021, Westover provided a draft O&M Manual to I&E that included the Jamestown Village Apartments and not any other Westover apartment complex in Pennsylvania.

On July 15, 2021, the I&E Safety Division inspected Westover's records and scheduled a follow-up inspection for August 24, 2021. Prior to the August 24, 2021 inspection, the I&E Safety Division expects Westover to complete various tasks and prepare certain documents for inspection by I&E. The following items are to be completed and electronically provided to the undersigned **on or before August 9, 2021**:

1. Compile and provide a list of all Westover properties in Pennsylvania with a jurisdictional master meter system;
2. Provide a list of all Westover emergency contacts, including the names of individuals and mobile and office numbers that can be contacted on a 24/7 basis; and
3. File an Act 127 pipeline operator registration or registrations that include all jurisdictional master meter systems in Pennsylvania and provide a copy of the filing(s).

The following items are to be completed and presented to the I&E Safety Division **at the inspection scheduled for August 24, 2021**:

4. Develop and implement an O&M plan for all jurisdictional master meter locations in Pennsylvania and have ready for inspection a complete manual;
5. Develop a map of all jurisdictional master meter locations in Pennsylvania that shows gas mains and facilities; and
6. Develop and implement an Operator Qualification Plan.

A failure to comply with the above-listed items will subject Westover to prosecution that will seek the imposition of civil penalties.

Thank you for your immediate attention to this important matter.

Sincerely,



Stephanie M. Wimer
Senior Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

cc: Michael L. Swindler, I&E Deputy Chief Prosecutor (*via e-mail only*)
Kayla L. Rost, I&E Prosecutor (*via e-mail only*)
Robert D. Horensky, Manager - Safety Division (*via e-mail only*)

APPENDIX 2

DATE OF DEPOSIT

00013 11

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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

IN REPLY PLEASE
REFER TO OUR FILE

February 3, 2021

REFERENCE:
NC-77-20
IREF: 13663

VIA EMAIL DELIVERY

Alexander Steffanelli, CFO
Westover Company
2501 Maryland Road
Willow Grove, PA 19090

Dear Mr. Steffanelli:

On December 2, 2020 Pennsylvania Public Utility Commission's Pipeline Safety Engineer S. Orr and Supervisor T. Cooper Smith completed inspections of facilities and/or records on Westover Companies in Willow Grove, PA. As a result of the inspection, the Pipeline Safety Section of the Pennsylvania Public Utility Commission has discovered that Westover Company is in violation of the following federal and state regulations:

- (1) **49 CFR § 192.13 What general requirements apply to pipelines regulated under this part?**
 - (c) Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this part.
- (2) **49 CFR § 192.605 Procedural manual for operations, maintenance, and emergencies**
 - (a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least one each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Code Section	Inspector's Comments
§192.13(c)	Westover Companies does not have a manual required by Part 192
§192.605(a)	Westover Companies does not have a procedural manual for Operations, Maintenance, & Emergencies (O&M).

Mr. Orr and Ms. Cooper Smith conducted an Operations and Maintenance (O&M) inspections for the Westover Companies. During the inspection, it was discovered the Westover Companies does not have any written O&M plans as required by 49CFR Part 192.

Therefore, you are hereby requested to submit to this office in writing, on or before March 17, 2021, the following:

- 1) Develop and implement an Operations, Maintenance, and Emergency Response manual as required by 49CFR§192.
- 2) Develop a process to document and track all records required by these manuals and procedures.

This office is committed to ensuring that pipeline companies comply with the provisions of the Public Utility Code. Therefore, you are advised that, if you fail to comply with the above requests this office will initiate all appropriate enforcement actions pursuant to the Public Utility Code against the utility and its officers, agents and employees.

Yours truly,



Robert Horensky, Manager
Safety Division
Bureau of Investigation and Enforcement

RH:rb

PC: Richard Kanaskie, Director, I&E
Terri Cooper Smith, Fixed Utility Valuation Supervisor
Scott Orr, Fixed Utility Valuation Engineer



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

IN REPLY PLEASE
REFER TO OUR FILE

March 30, 2021

REFERENCE:

NC-08-21

IREF:13651

VIA EMAIL DELIVERY

Alexander Steffanelli CFO
Westover Companies
2501 Maryland Road
Willow Grove, PA 19090

Dear: Mr. Steffanelli

During the calendar year 2020 and 2021 Pennsylvania Public Utility Commission's Pipeline Safety Engineer, S. Orr has attempted to conduct inspections of facilities and/or records on Westover Companies in Willow Grove, PA. As a result of these inspections, the Pipeline Safety Section of the Pennsylvania Public Utility Commission has discovered that Westover Companies is in violation of the following federal and state regulations:

(1) 49 CFR §190.203 Inspections and Investigations

- (a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq., or regulations, or orders issued there under.

Code Section	Inspector's Comments
§190.203(a)	Westover Companies is not responding to requests for inspections on records and facilities.

Westover Companies has been identified as a master meter operator in the Commonwealth of Pennsylvania. The Gas and Hazardous Liquids Pipelines Act (also known as "the Pipeline Act" or Act 127 of 2011) was signed by Governor Corbett on Dec. 22, 2011 and went into effect on February 20, 2012. This law expands the Commission's authority to enforce federal pipeline safety laws as they relate to gas and hazardous liquids pipeline equipment and facilities within the Commonwealth of Pennsylvania.

On Feb. 16, 2012, the PUC adopted an Implementation Order at Docket M-2012-2282031. It establishes the Act 127 initiatives of creating a statewide registry for non-public utility gas and hazardous liquids pipeline equipment and facilities within the Commonwealth; conducting safety inspections to enforce Federal pipeline safety laws on certain classifications of pipeline; and assessing entities for the costs.

ACT 127 gives the Bureau of Investigation and Enforcement(I&E) authority to enforce federal regulations found under 49 CFR Part 190, 191, and 192 on pipeline operators in the Commonwealth of Pennsylvania. Specifically, 49 CFR Part 190.203(a) gives I&E Safety Division access to inspect records and facilities owned by the company. I&E Pipeline Safety inspectors met with Westover Companies in December 2020. At that time, an inspector discussed the requirements that the company would need to follow in operating their gas system after the meter with PECO. Attempts were made on December 17, December 24, and December 30, 2020 and January 11 and January 14, 2021 to schedule follow up inspections and review records and procedures with no response received back from the company.

This letter is to serve as notice of Westover Companies responsibility to respond to the request for meetings and inspections. Continued failure of response by Westover Companies will result in the Bureau of Investigation and Enforcement Safety Division in taking legal action against the company including possibly civil penalties. Westover has yet to respond in writing to NC 77-20 dated February 2, 2021 and was due by March 17,2021

Therefore, you are hereby requested to submit to this office, in writing, on or before April 29, 2021, the following:

- 1) Respond to the request of the inspector to schedule inspections on Westover Companies records and facilities.
- 2) Provide a written response to NC 77-20.

This office is committed to ensuring that pipeline companies comply with the provisions of the Public Utility Code. Therefore, you are advised that, if you fail to comply with the above requests this office will initiate all appropriate enforcement actions pursuant to the Public Utility Code against the utility and its officers, agents and employees.

Yours truly,



Robert Horensky, Manager
Safety Division
Bureau of Investigation and Enforcement

RH:rb

PC: Richard Kanaskie, Director, I&E
Terri Cooper Smith, Pipeline Safety Supervisor
Scott Orr, Fixed Utility Valuation Engineer II

APPENDIX 3

DATE OF DEPOSIT

DEC 18 121

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



November 4, 2021

VIA EMAIL (stwimer@pa.gov)

David P. Zambito

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Stephanie M. Wimer, Esq.
Senior Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Investigation of Westover Property Management Company, L.P. d/b/a Westover Companies Relating to Possible Violations of the Gas and Hazardous Liquids Pipelines Act and Federal Pipeline Safety Laws and Regulations; Bp8CaseID# 3025977

Westover Property Management Company, L.P. d/b/a Westover Companies' Response to the July 28, 2021 Letter from the Bureau of Investigation and Enforcement

Dear Senior Prosecutor Wimer:

This correspondence is in response to your letter dated July 28, 2021 regarding the investigation by the Bureau of Investigation and Enforcement ("I&E") into whether the Westover Property Management Company, L.P. d/b/a Westover Companies ("Westover") is in compliance with the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* ("Act 127"). You indicated that "[t]his investigation focuses on determining which apartment complexes owned or managed by Westover meet the definitions of "pipeline operator" and "master meter system" set forth in 58 P.S. § 801.102 and 49 CFR § 191.3, respectively, such that compliance with Federal pipeline safety laws and regulations, including 49 CFR Part 192, is obligatory."

For the reasons set forth below, Westover respectfully submits that its natural gas systems are not subject to regulation by the Pennsylvania Public Utility Commission ("Commission").

I. FACTS

Westover owns several apartment complexes in Pennsylvania. In each complex, Westover purchases gas at a point in Pennsylvania from a Commission-regulated public utility (a natural gas distribution company ("NGDC")) and distributes it to the tenants in the complex, charging them for the gas through a meter or rents in compliance with the requirements of 66 Pa. C.S. § 1313 (regarding "Price upon resale of public utility services"). Westover controls who may be a tenant through leases. All of Westover's gas facilities are located on Westover's property, and all of Westover's natural gas customers rent their apartments from Westover. To date, Westover has spent in excess of \$70,000 in response to the activities of I&E field inspectors.

II. WESTOVER'S NATURAL GAS SYSTEMS ARE NOT SUBJECT TO REGULATION BY THE COMMISSION

As an agency created by the General Assembly, the Commission has only the powers given to it by the General Assembly, either explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The question therefore is whether the Commission has authority to regulate Westover's natural gas systems.

A. The Commission does not have Authority to Regulate Westover's Natural Gas Systems Pursuant to 52 Pa. Code § 59.33

Commission regulations at 52 Pa. Code § 59.33 state that the Commission adopts, as the minimum safety standards for all natural gas and hazardous liquid public utilities, the safety standards found in 49 U.S.C. §§ 60101-60503 and 49 CFR Parts 191-193, 195 and 199. Westover, however, is not a public utility. It is not providing natural gas to the public for compensation; it is only providing gas to tenants of its properties, whom it selects by contract. *Drexelbrook Associates v. Pa. Pub. Util. Comm'n*, 418 Pa. 430, 212 A.2d 237 (1965) (holding that a landlord was not subject to Commission jurisdiction where the landlord-tenant contractual relationship established the only persons who could demand utility service). Therefore, the Commission does not have authority to regulate Westover's natural gas systems pursuant to this regulation.

B. The Commission does not have Authority to Regulate Westover's Natural Gas Systems Pursuant to Act 127

In 2011, the General Assembly enacted Act 127 in response to the growth of Marcellus Shale in Pennsylvania. In pertinent part, Section 501(a) of Act 127, 58 P.S. § 801.501(a), gives the Commission the general administrative authority to supervise and regulate "pipeline operators" within this Commonwealth who are subject to Federal pipeline safety laws. The General Assembly also empowered the Commission to adopt regulations, consistent with the Federal pipeline safety laws, but the Commission -- after a decade -- has not promulgated regulations implementing Act 127 or specifically defining its interpretation of the limits of its powers under Act 127.¹

Act 127 gives the Commission authority to regulate Westover's natural gas systems only if Westover is a pipeline operator. A "pipeline operator" is defined as:

"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.

¹ Under the Pennsylvania regulatory review process, interested parties would have had an opportunity to provide comments on the appropriate implementation of Act 127 and binding norms on all similarly-situated entities could have been developed. Moreover, the Pennsylvania General Assembly would have had an opportunity to review the Commission regulations and assess consistency with the legislative intent of Act 127. See Pa. Regulatory Review Act, 71 P.S. §§ 745.1 - 745.15; see also Pa. Commonwealth Documents Law, 45 P.S. §§ 1102 - 1208. Without clear binding norms, the risk of selective and discriminatory prosecution is greatly increased.

58 P.S. § 801.102 ("Definitions") (emphasis added).² The definition of "pipeline" in Act 127 reiterates that Act 127 only pertains to pipelines regulated by the Federal pipeline safety laws.

Act 127 defines "Federal pipeline safety laws" as:

"Federal pipeline safety laws." The provisions of 49 U.S.C. Ch. 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 the acts.

Id.

I&E is investigating whether Westover is a "pipeline operator" as defined in Act 127 because it owns or operates a "master meter system," which is allegedly regulated under the Federal pipeline safety laws. The Federal pipeline safety laws define a master meter system as:

... a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the **operator** purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents[.]

49 CFR § 191.3 (emphasis added). An operator, in turn, is defined as "a person who engages in the transportation of gas." *Id.* Finally, the transportation of gas is defined as "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, **in or affecting interstate or foreign commerce.**" *Id.* (emphasis added).

Westover does not gather, transmit or store gas. Therefore, Westover's distribution of gas by pipeline must be in or must affect interstate or foreign commerce in order for Westover to be an operator of a master meter system.

Westover's natural gas systems clearly do not distribute gas by pipeline in interstate or foreign commerce. Westover purchases gas in Pennsylvania from an Commission-regulated NGDC. NGDCs are regulated by the Commission rather than by FERC (pursuant to the Hinshaw Amendment, 15 U.S.C. § 717(c)). Consequently, Westover's purchase of the gas is in intrastate commerce because an NGDC is considered to be an intrastate gas pipeline facility pursuant to the Federal pipeline safety laws. 49 U.S.C. § 60101(a)(9) (defining an "intrastate gas pipeline facility" as a gas pipeline facility and gas transportation within a state that is not subject to FERC pursuant to 15 U.S.C. § 717). Westover transports the gas a short distance and sells it to tenants located in Pennsylvania and located on Westover's property. From beginning to end, Westover's purchase, transportation, and sale of the gas is entirely intrastate commerce. Consequently, Westover is not an "operator" as defined in the Federal pipeline safety laws, its system is not a "master meter system" as defined in the Federal pipeline safety laws, and Westover is not a "pipeline operator" as defined in Act 127 because it does not own or operate equipment or facilities

² The Supreme Court of Pennsylvania has held that, "if the General Assembly defines words that are used in a statute, those definitions are binding." *Pa. Associated Builders & Contractors, Inc. v. Dep't of Gen. Servs.*, 932 A.2d 1271, 1278 (Pa. 2007); see also *Lower Swatara Twp. v. Pa. Labor Relations Bd.*, 208 A.3d 521 (Pa. Cmwlth. No. 1276 C.D. 2018, filed May 2, 2019).

that are regulated under the Federal pipeline safety laws. The Commission therefore lacks authority to regulate Westover pursuant to Act 127.

There is also no federal jurisdiction over Westover under the negative implications of the Commerce Clause of the United States Constitution, also known as the Dormant Commerce Clause. The Natural Gas Act, including 15 U.S.C. § 717, was intended to fill a regulatory gap and define the nature of federal jurisdiction over interstate and intrastate commerce. *Pub. Utils. Comm'n of State of Cal. v. FERC*, 900 F.2d 269, 275 (D.C. Cir. 1990). This was a reaction to the United States Supreme Court's *ad hoc* and case-by-case definitions of federal jurisdiction over the gas industry under Dormant Commerce Clause cases. The field of federal jurisdiction under the Natural Gas Act is roughly the same as that determined by the Supreme Court in these Dormant Commerce Clause cases; however, the statute intended to make the lines between state and federal jurisdiction clearer. *Fed. Power Comm'n v. E. Ohio Gas Co.*, 338 U.S. 464, 467 (1950).

Today, when assessing what constitutes an undue burden on interstate commerce under the Dormant Commerce Clause, courts engage in a balancing test and consider "legitimate state interests" against any burden on interstate commerce that such state-level regulation imposes. See *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375 (1983). Further, the Supreme Court has stated that "the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the State." *Id.* at 377. Here, while the analysis under the Natural Gas Act already excludes natural gas systems similar to Westover's (as discussed above), any purported balancing test under the Dormant Commerce Clause would yield the same result because the tenuous connection to interstate commerce by Westover means that any unintended burden on interstate commerce would be minimal. Because Westover engages entirely in intrastate commerce, the Commonwealth has a greater interest than the federal government in regulating its purely intrastate commerce, which outweighs the minimal effect on interstate commerce even where the Pennsylvania General Assembly has knowingly chosen not to regulate.

The Pennsylvania General Assembly, in enacting Act 127, could have expressly included intrastate natural gas systems, such as Westover's, within the Commission's enforcement jurisdiction – but it did not.³ Instead, the General Assembly limited the Commission's enforcement jurisdiction to pipeline operators who are subject to Federal pipeline safety laws. Westover is not such an entity because federal law does not, under Dormant Commerce Clause jurisprudence, extend to Westover's purely intrastate activity.

We have reviewed several letters from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration interpreting the definition of "master meter system" in 49 CFR § 191.3. None of those letters addresses the question of whether the operator of the master meter system was engaged in or affecting interstate or foreign commerce. As a result, they are of limited usefulness in addressing Westover's situation. In any event, those non-legal opinion letters merely reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification; they do not create legally-enforceable rights or obligations. They certainly do not constitute precedent binding on the Commission or upon Pennsylvania's appellate courts in interpreting Act 127.

³ See *Feingold, supra* (regarding limitations on Commission powers).

Finally, construing 49 CFR § 191.3 as applying to landlords such as Westover would effectively give the PUC jurisdiction over every landlord in Pennsylvania that operates a natural gas master meter system to provide gas to its tenants. There are hundreds, perhaps thousands of such systems. If the General Assembly intended to effect such a dramatic change in law, by giving the Commission authority to regulate these entities in Act 127, it would have said so. The fact that it did not do so reflects the General Assembly's intent that these entities would not be regulated by the Commission.

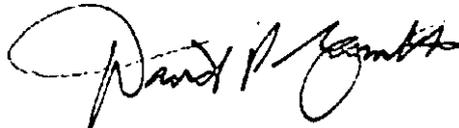
III. Conclusion

Westover appreciates the opportunity to address I&E's concerns about whether Westover's natural gas systems are in compliance with Act 127. In the interest of resolving this matter without the need for litigation, I would welcome the opportunity to discuss Westover's position after you have had an opportunity to review this response and conduct your own research on what constitutes an "operator" of a master meter system that operates exclusively in intrastate commerce.

Thank you for your consideration of this matter. Please do not hesitate to contact me with any question.

Sincerely,

Cozen O'Connor



Counsel for *Westover Property Management Company, L.P. d/b/a Westover Companies*

DPZ:kmg

cc: Alexander Stefanelli, CFO, Westover Companies
Peter Quercetti, Vice President Operations Management, Westover Companies
Richard A. Kanaskie, Esq., Director, I&E
Michael L. Swindler, Esq., Deputy Chief Prosecutor, I&E

APPENDIX 4

DATE OF DEPOSIT

07/01/01

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 22, 2021

Via Electronic Mail Only

David P. Zambito, Esq.
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Re: Investigation of Westover Property Management Company, L.P. d/b/a
Westover Companies Relating to Possible Violations of the Gas and
Hazardous Liquids Pipelines Act and Federal Pipeline Safety Laws and
Regulations
Bp8CaseID# 3025977
I&E Letter

Dear Attorney Zambito,

The Bureau of Investigation and Enforcement ("I&E") is in receipt of your letter dated November 4, 2021, wherein you claim that the natural gas systems of your client, Westover Property Management Company, L.P. d/b/a Westover Companies ("Westover"), are not subject to pipeline safety regulation by the Pennsylvania Public Utility Commission ("Commission"). For the reasons set forth herein, I&E disagrees with Westover's position.

I&E continues to maintain that the pipeline facilities at some, but not all, Pennsylvania apartment complexes owned or managed by Westover constitute "master meter systems" as defined in 49 CFR § 191.3 of the federal pipeline safety regulations and, consequently, are subject to Commission oversight through the Gas and Hazardous Liquids Pipelines Act ("Act 127"), 58 P.S. §§ 801.101, *et seq.* Therefore, I&E's position that Westover is a "pipeline operator" as defined in Act 127, Section 801.102 remains unchanged. 58 P.S. § 801.102. I&E has never alleged that Westover is a public utility.

Your claim that Westover's transportation of gas by pipeline does not *affect* interstate or foreign commerce and therefore renders Westover not to be subject to the federal pipeline safety regulations is incorrect. The minimum federal pipeline safety standards apply broadly to both interstate and intrastate pipelines through the federal Pipeline Safety Act, 49 U.S.C. §§ 60101-60143 ("PSA").

Pursuant to the PSA, States may assume responsibility for regulating intrastate pipeline facilities by submitting an annual certification to the Secretary of the U.S. Department of Transportation pursuant to 49 U.S.C. § 60105. A State that has submitted a certification under Section 60105(a) of the PSA may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum federal pipeline safety standards. 49 U.S.C. § 60104. Pennsylvania, through the Commission's I&E Safety Division, is certified to regulate the safety of intrastate pipelines.

The Pennsylvania General Assembly adopted the federal pipeline safety laws and regulations, as well as all amendments thereto, as the safety standards for non-public utility pipeline operators in Pennsylvania by enacting Act 127. *See* 58 P.S. § 801.302. Additionally, the Pennsylvania General Assembly authorized the Commission to supervise and regulate pipeline operators within Pennsylvania consistent with (but not more stringent than) Federal pipeline safety laws. 58 P.S. § 801.501.

As it relates to Westover, the regulation of intrastate master meter systems fits squarely within the purview of Section 191.3 of the federal pipeline safety regulations, 49 C.F.R. § 191.3. Intrastate gas master meter systems have for decades been subject to pipeline safety regulation either through PHMSA or an authorized State. Since Act 127 became effective, the Commission has enforced violations of Act 127 on pipeline operators operating master meter systems in Pennsylvania. *See Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Brookhaven MHP Management LLC, et al.*, Docket No. C-2017-2613983 (Order entered August 23, 2018).

Westover's position is contrary to well-established law and the sound policy of the PSA, which is to provide adequate protection against risks to life and property posed by pipeline transportation and facilities.

I&E has attempted for nearly one-year to amicably work with Westover to aid Westover into becoming compliant with the minimum federal pipeline safety standards. Westover's unregulated master meter systems in their current state pose a risk to Westover's residents, employees, and the general public. Should Westover refuse to submit to the Commission's oversight for pipeline safety purposes, I&E will initiate an enforcement action and seek the imposition of civil penalties pursuant to 58 P.S. § 801.502.

David P. Zambito, Esq.
November 22, 2021
Page 3

Please advise by **December 13, 2021** whether Westover will submit to the Commission's jurisdiction pursuant to Act 127 and finalize the steps necessary to fully comply with the federal pipeline safety regulations. Should Westover respond in the negative and continue to disregard its responsibilities under Act 127, I&E will proceed with formal enforcement action and prepare and file a Formal Complaint.

Sincerely,



Stephanie M. Wimer
Senior Prosecutor, I&E

cc: *(via email only)*
Michael L. Swindler, Esq., I&E Deputy Chief Prosecutor
Kayla L. Rost, Esq., I&E Prosecutor
Terri C. Cooper Smith, Supervisor – Safety Division
Scott Orr, Engineer – Safety Division

APPENDIX 16

DATE OF DEPOSIT

DEC 19 1992

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

JAN 27 2020

Ms. Stephanie M. Wimer
Senior Prosecutor
Pennsylvania PUC
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Ms. Wimer:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated October 17, 2019, you requested an interpretation of the pipeline safety regulations in 49 Code of Federal Regulations (CFR) Parts 191 and 192. Specifically, you requested clarification on the definition of "transportation of gas" under § 191.3.

You stated the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E) Safety Division is currently investigating a natural gas pipeline incident that happened on September 10, 2018, in Center Township, Beaver County, Pennsylvania. The incident occurred on the Revolution Pipeline, which is made of carbon steel and is 24 inches in diameter. The pipeline runs approximately 42 miles from a compressor station in Butler County, Pennsylvania to a cryogenic processing plant in Washington County, Pennsylvania.

You stated the Revolution Pipeline is owned and operated by Energy Transfer Company (ETC), OPID 32099, and construction of the pipeline was completed in or about March 2018. When the incident occurred on September 10, 2018, the line was being brought up to optimal operating pressure and the valve serving the cryogenic processing plant was closed. With that valve closed, the cryogenic processing plant was unable to receive natural gas. You stated that on the date of the incident, ETC had not reached the deadline to register the Revolution Pipeline with the Commission, because registration of pipeline miles for the 2018 calendar year was due on March 31, 2019.

You stated that on the date of the incident, the Revolution Pipeline was in the commissioning phase and, therefore, not all valves along the pipeline were open for packing the line and, as noted above, the valve at the cryogenic processing plant was shut such that the plant could not receive gas.

You ask PHMSA's responses for the following questions:

Question 1: Is packing the pipeline with product during the commissioning phase, where the line is in the process of being brought up to optimal operating pressure, remote

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations are not generally applicable, do not create legally-enforceable rights or obligations, and are provided to help the specific requestor understand how to comply with the regulations.

valves are disengaged and the downstream valve to the cryogenic processing plant is closed, still deemed the "transportation of gas?"

Response to Question 1:

Yes, once a pipeline has gas to flow into it, regardless of flow conditions and pressurization, the line is in-service and deemed to be transporting gas.

Section 191.3 defines transportation of gas as:

Transportation of gas means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce.

Placing gas into an empty pipeline during the commissioning phase, and adding pressure into it is "transportation of gas."

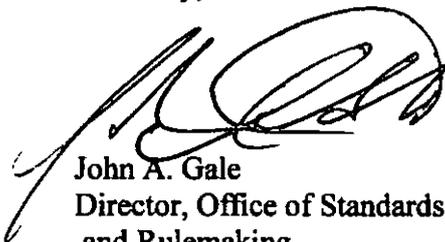
Question 2: If Question 1 is answered in the negative, does PHMSA agree that the Revolution Pipeline was not jurisdictional to the Commission at the time of the September 10, 2018 incident?

Response to question 2:

The answer to Question 1 is in the affirmative. Therefore, the Revolution Pipeline was a regulated pipeline at the time of the incident. It is important to note that the Revolution Pipeline was also subject to the pipeline safety regulations before the line began transporting gas. Part 192 of the pipeline safety regulations prescribes the minimum safety requirements for pipeline facilities *and* the transportation of gas. *See*, 49 C.F.R. § 192.1. The pipeline safety regulations apply to the materials, design, construction and testing of the Revolution Pipeline before the facility transported gas.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,



John A. Gale
Director, Office of Standards
and Rulemaking



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

IN REPLY PLEASE
REFER TO OUR FILE

October 17, 2019

Via Electronic Mail and First-Class Mail

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590
infocntr@dot.gov

Re: Request for Written Regulatory Interpretation

Dear Mr. Kelley:

This letter represents a request from the Safety Division of the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") for an interpretation of the Pipeline and Hazardous Materials Safety Administration ("PHMSA") pipeline safety regulations under 49 CFR § 191.3 related to the definition of "transportation of gas."

The I&E Safety Division participates in PHMSA's State Pipeline Safety Program. Through its agreement with PHMSA and participation in the Program, the I&E Safety Division has assumed the safety responsibilities of intrastate pipeline facilities in Pennsylvania over which it has jurisdiction as authorized by state law.

Pursuant to Pennsylvania's Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.*, the Commission has authority to regulate and supervise pipeline operators within Pennsylvania consistent with Federal pipeline safety laws. 58 P.S. § 801.501(a). Pipeline operators are defined as "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.*" 58 P.S. § 801.102 (emphasis added). Pipeline operators are required to register with the Commission by March 31 of each year and report gathering, transmission and distribution pipeline mileage in class 1, 2, 3 and 4 locations for the preceding calendar year. *See* 58 P.S. § § 801.301(c)(1) and *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).

The PHMSA pipeline safety regulations define "operator" as a "person who engages in the *transportation of gas.*" 49 CFR §§ 191.3 and 192.3 (emphasis added). Moreover, "pipeline" means "all parts of those physical facilities thorough which *gas*

moves in transportation.” 49 CFR § 192.3 (emphasis added). “Pipeline facility” is defined as “new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the *transportation of gas* or in the treatment of *gas during the course of transportation.*” 49 CFR § 192.3 (emphasis added).

The I&E Safety Division is currently investigating a natural gas pipeline incident that happened on September 10, 2018 in Center Township, Beaver County, Pennsylvania. The incident occurred on the Revolution Pipeline, which is a twenty-four (24) inch carbon steel pipeline that was constructed between 2016 and 2018. The pipeline extends approximately forty-two (42) miles from a compressor station in Butler County, PA to a cryogenic processing plant in Washington County, PA. The Revolution Pipeline is owned and operated by Energy Transfer Company (“ETC”), OPID 32099.

Construction of the Revolution Pipeline was completed in approximately March of 2018. When the incident occurred on September 10, 2018, the line was being brought up to optimal operating pressure and the valve serving the cryogenic processing plant was closed. Thus, the cryogenic processing plant was unable to receive natural gas.

As of the date of the incident, ETC had not reached the deadline to register the Revolution Pipeline with the Commission pursuant to the Gas and Hazardous Liquids Pipelines Act as construction of the pipeline was only completed in March of 2018. Registration of pipeline miles for the 2018 calendar year was due on March 31, 2019.

On the date of the incident, the Revolution Pipeline was in the commissioning phase in that construction of the pipeline was complete but transportation had not started. Some, but not all, of the valves along the pipeline were open for packing the line and notably, the valve at the cryogenic processing plant was shut such that the plant could not receive gas. While it is clear that the Revolution Pipeline was constructed to transport gas by pipeline, it appears that such transportation had not yet been initiated. The PHMSA pipeline safety regulations, as mentioned above, appear to be predicated on a pipeline transporting gas, and not merely packing gas, in order for the regulations to apply to this incident.

I&E seeks an interpretation from PHMSA related to the definition of “transportation of gas,” which means “the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce.” 49 CFR § 191.3. The I&E Safety Division has classified the Revolution Pipeline as a gathering line and the incident occurred on an area of the pipeline that the I&E Safety Division classified as a class 3 gathering line. A “gathering line” is defined as a “pipeline that transports gas from a current production facility to a transmission line or main.” 49 CFR § 192.3. The I&E Safety Division’s classification of the Revolution Pipeline as a gathering line is also based upon the definition of “gathering line” in the American

Petroleum Institute's Recommended Practice 80, API RP80, incorporated by reference, Docket No. PHMSA-1998-4868; Amdt. 192-102, Final Rule April 14, 2006.¹

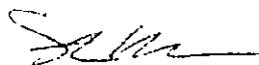
I&E's questions to PHMSA are as follows:

(1) Is packing the pipeline with product during the commissioning phase where the line is in the process of being brought up to optimal operating pressure, remote valves are disengaged and the downstream valve to the cryogenic processing plant is closed still deemed the "transportation of gas?"; and

(2) If Question No. 1 is answered in the negative, does PHMSA agree that the Revolution Pipeline was not jurisdictional to the Commission at the time of the September 10, 2018 incident?

Thank you for your consideration in this matter. Should you have any questions or seek further clarification or details with respect to this request, please do not hesitate to contact the undersigned.

Sincerely,



Stephanie M. Wimer
Senior Prosecutor
PA Public Utility Commission
Bureau of Investigation and Enforcement
717.772.8839
stwimer@pa.gov

cc: Richard A. Kanaskie, Director, I&E (*via e-mail only*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via e-mail only*)
Michael Chilek, I&E Safety Division (*via e-mail only*)
Matthew Matse, I&E Safety Division (*via e-mail only*)

¹ Should PHMSA disagree with I&E's classification of the Revolution Pipeline as a gathering line, I&E would also request PHMSA's interpretation with respect to the pipeline's classification.



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

NOV 06 2017

**Mr. Jonathan Heitzinger
Associate Director: Utility Services
Northern Arizona University
PO Box 6016
Flagstaff, AZ 86011-6016**

Dear Mr. Heitzinger:

In a July 20, 2017 email to the Pipeline and Hazardous Materials Safety Administration (PHMSA), you requested an interpretation of 49 CFR Part 191. Specifically, you requested an interpretation on the requirements of § 191.3 as it relates to a master meter system.

You described your pipeline system as follows:

Northern Arizona University currently operates as a Master Meter System. We purchase natural gas from Unisource Energy Services through four master meters and distribute natural gas through our internally owned and operated distribution system to buildings within our property line. Currently the piping systems total 42,467 feet in length, at pressures ranging from 10 to 54 psi, serving 112 risers with 5 pressure reducing stations and are not interconnected. The buildings are owned and operated by NAU, owned by NAU with portions rented to external entities, or have land leased to external organizations where they own and operate the buildings to support the primary mission of the university. The external organizations include retail, food service, laboratories, offices, and student housing and are charged for natural gas consumption through meters or rent.

Upon review of interpretations PI-03-0101 and PI-73-030 it seems that a college or university is classified as a master meter system if there is underground piping and there are instances where the college or university is not the ultimate consumer. Additionally, there did not appear to be a limit to the size of systems, number of systems, or varying types of concessionaires or tenants. Based on the interpretations and regulations it seems that the Master Meter System definition does apply to NAU, and that our system is subject to the distribution regulations from 192-199 with the exceptions identified for a Master Meter System.

You asked whether the Northern Arizona University (NAU) falls under the Master Meter System definition of 49 CFR 191.3 and could operate the pipeline system under the exceptions for a master meter system. Specifically, you asked for clarification of whether the definition of a Master Meter System is limited by size or by the number of types of services.

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

Section 191.3 defines a master meter system as:

[A] pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

In PI-73-030, PHMSA stated that “If the college owned gas system provides gas to consumers such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered the customers even though they may not be individually metered. In this situation the pipelines downstream of the master meter used to distribute the gas to these ultimate consumers would be considered mains and service lines subject to the Federal pipeline safety standards.” (Collins Interpretation, PI-73-030, issued Oct. 24, 1973).

In PI-03-0101, PHMSA explained that a college would not meet the definition of Master Meter System if it were only “using the gas delivered through its pipeline system to provide heat and hot water to campus buildings.” In that instance “the college would be the consumer of the gas.” It continued to explain, however, that if the college “gas system provides gas to consumers, such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered the customers even though they may not be individually metered. In this situation, the pipelines downstream of the master meter used to distribute the gas to these ultimate consumers would be considered mains and service lines subject to the Federal pipeline safety regulations.” In conclusion, the college would be considered a master meter system subject to the pipeline safety regulations if it provides gas to customers in addition to providing heat and hot water to campus buildings. (Bryant College Interpretation, PI03-0101, issued Feb. 14, 2003).

You have indicated that NAU's system is within the university's property line and distributes gas to buildings that are "owned and operated by NAU, owned by NAU with portions rented to external entities, or have land leased to external organizations where they own and operate the buildings to support the primary mission of the university. The external organizations include retail, food service, laboratories, offices, and student housing and are charged for natural gas consumption through meters or rent." NAU's gas distribution pipeline system therefore "supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents." Consequently, it meets the definition of a master meter system and NAU operates the pipeline system as a master meter system operator.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,



John A. Gale
Director, Office of Standards
and Rulemaking

U.S Department of Transportation
Pipeline and Hazardous Materials Safety Administration
East Building, 2nd Floor
Mail Stop: E24-455
1200 New Jersey Avenue, SE, Mail Stop: E24-455
Washington, DC 20590

Dear Sir/ Madam,

I am writing you to determine if Northern Arizona University (NAU) falls under the Master Meter System definition from Title 49 CFR 191.3 and should operate our distribution system under the exceptions for a master meter system under CFR 191-199. Specifically, I am seeking clarification of whether the definition of a Master Meter System is limited by size or by the number of types of services.

Northern Arizona University currently operates as a Master Meter System. We purchase natural gas from Unisource Energy Services through four master meters and distribute natural gas through our internally owned and operated distribution system to buildings within our property line. Currently the piping systems total 42,467 feet in length, at pressures ranging from 10 to 54 psi, serving 112 risers with 5 pressure reducing stations and are not interconnected. The buildings are owned and operated by NAU, owned by NAU with portions rented to external entities, or have land leased to external organizations where they own and operate the buildings to support the primary mission of the university. The external organizations include retail, food service, laboratories, offices, and student housing and are charged for natural gas consumption through meters or rent.

Upon review of interpretations PI-03-0101 and PI-73-030 it seems that a college or university is classified as a master meter system if there is underground piping and there are instances where the college or university is not the ultimate consumer. Additionally, there did not appear to be a limit to the size of systems, number of systems, or varying types of concessionaires or tenants. Based on the interpretations and regulations it seems that the Master Meter System definition does apply to NAU, and that our system is subject to the distribution regulations from 192-199 with the exceptions identified for a Master Meter System. Do you agree?

Sincerely,



Jon Heitzinger
Associate Director of Utility Services
Northern Arizona University

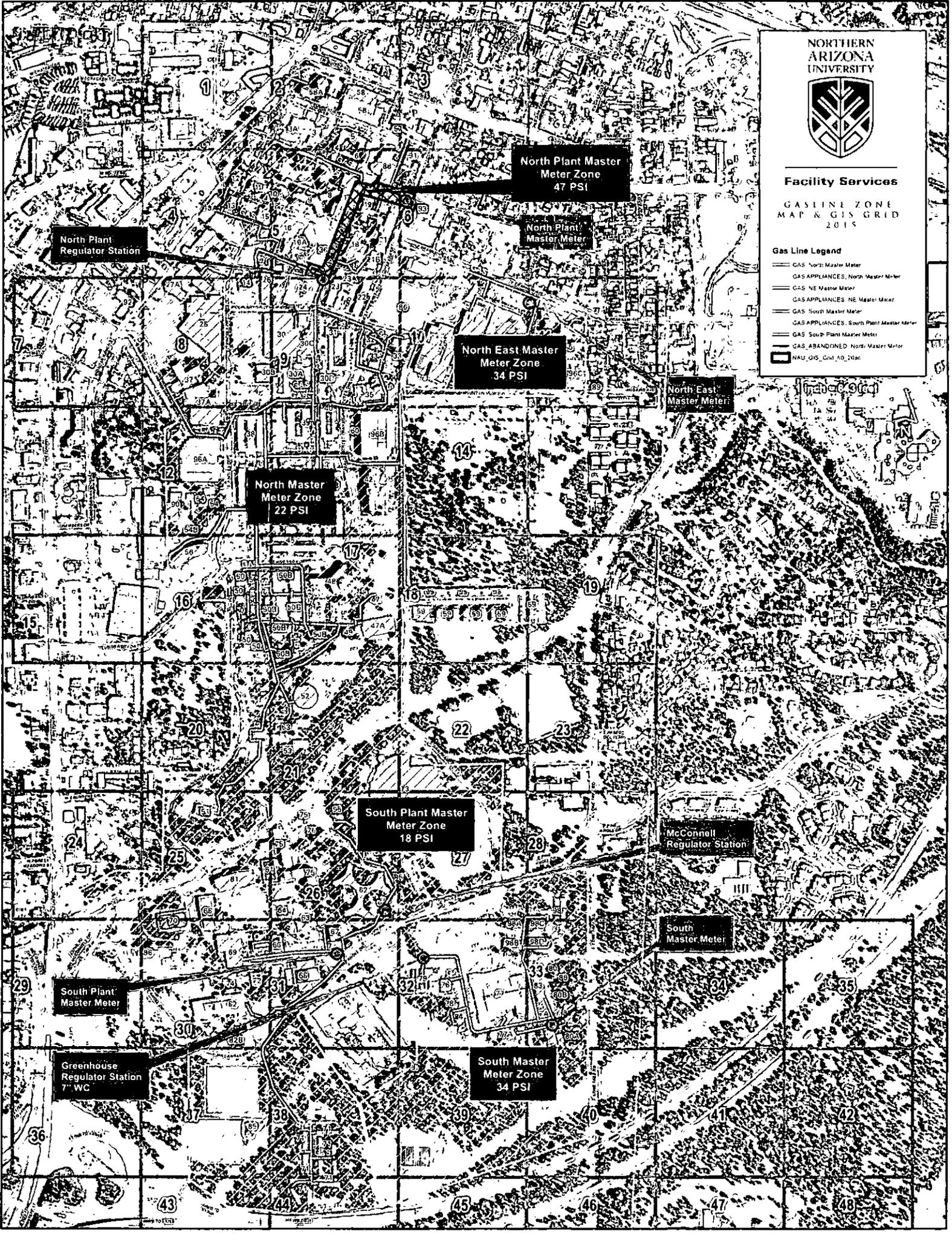


Facility Services

GASLINE ZONE MAP & GIS GRID 2015

Gas Line Legend

- GAS North Master Meter
- GAS APPLIANCES, North Master Meter
- GAS NE Master Meter
- GAS APPLIANCES NE Master Meter
- GAS South Master Meter
- GAS APPLIANCES, South Plant Master Meter
- GAS South Plant Master Meter
- GAS ABANDONED North Master Meter
- NAU GIS_Grid_10_20ac



North Plant Master Meter Zone
47 PSI

North Plant Master Meter

North East Master Meter Zone
34 PSI

North East Master Meter

North Master Meter Zone
22 PSI

South Plant Master Meter Zone
18 PSI

McConnell Regulator Station

South Master Meter

South Plant Master Meter

Greenhouse Regulator Station
7 WC

South Master Meter Zone
34 PSI

PI-03-0101

U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

February 14, 2003

Mr. Don A. Ledversis
Pipeline Safety Engineer
Rhode Island Division of Public Utilities & Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Dear Mr. Ledversis:

This is in response to your request of January 25, 2002, for an interpretation of the jurisdictional status of the campus gas distribution system operated by Bryant College in Smithfield, Rhode Island. The question is whether the campus gas piping system is a *Master Meter* System subject to the gas pipeline safety regulations in 49 CFR Parts 191 and 192. The college claims that this system does not meet the definition of *Master Meter* System because it only uses gas to provide heat and hot water to the campus buildings and does not resell the gas.

To conclude that the Bryant College gas distribution pipeline facilities are subject to safety regulation, we need to determine that the system is a pipeline facility and that the gas is being delivered to consumers who, directly or indirectly, pay for the gas. *Master Meter* System is defined in the pipeline safety regulations at 49 CFR § 191.3:

.. a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

Pipeline facility is defined in the pipeline safety regulations at 49 CFR § 192.3:

...new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

Bryant College's system is clearly a pipeline facility. It distributes gas through underground pipelines to campus buildings. It does not appear to meet the definition of *Master Meter* System because it is using the gas delivered through its pipeline system to provide heat and hot water to campus buildings. In this instance the college would be the consumer of the gas.

However, if the Bryant College gas system provides gas to consumers, such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered the customers even though they may not be individually metered. In this situation the pipelines downstream of the master meter used to distribute the gas to these ultimate consumers would be considered mains and service lines subject to the Federal pipeline safety regulations. The Bryant College pipeline system would then be a *Master Meter* System.

In conclusion, the Bryant College gas distribution system is a *Master Meter* System subject to pipeline safety regulation under 49 CFR Parts 191 and 192 if it is providing gas to customers in addition to providing heat and hot water to campus buildings.

If you have any further questions about the pipeline safety regulations, please contact me at (202) 366-4565.

Sincerely,
Richard D. Huriaux, P.E.
Manager, Regulations
Office of Pipeline Safety

October 24, 1973

Mr. James H. Collins
Electrical-Mechanical Engineer
1310 Short Street
New Orleans, LA 70118

Dear Mr. Collins:

This is in response to your letter of September 25, 1973, to our Houston Regional Field Office which was forwarded to this office for reply.

Your letter indicates that the gas system concerned is an intermediate pressure (typically 25 psi) distribution system, serving the buildings on a college campus and owned by the college. Gas is supplied through a regulator-metering station from odorized mains of a gas service utility company. The system comprises approximately 4.5 miles of welded steel mains and service lines 5 inch to 1 1/2 inch diameter, serving 45 regulators at campus buildings, installed largely prior to 1970. Cathodic protection was installed in June 1971, monitored weekly at key points by owner-personnel, and checked so far at 16-month intervals by a corrosion engineer.

The gas system as described raises the jurisdictional question of whether the pipelines on the college campus constitute a master meter system subject to the Federal gas pipeline safety regulations or whether the college is the ultimate customer and therefore the lines in the college are not subject to the regulations. In order to assist you in making this determination, if the college owned gas system consumes the gas and provides another type of service such as heat or air conditioning, to the individual buildings, then the college is not engaged in the distribution of gas. In this instance the college would be the ultimate consumer, and the Federal pipeline safety standards would only apply to mains and service lines upstream of the meter.

If the college owned gas system provides gas to consumers such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered the customers even though they may not be individually metered. In this situation the pipelines downstream of the master meter used to distribute the gas to these ultimate consumers would be considered mains and service lines subject to the Federal pipeline safety standards.

The answers to your specific questions are predicated on the assumption that this system is a distribution system subject to the jurisdiction of the Federal pipeline safety standards.

Question 1. Is an annual report on the monitoring and engineering check of the cathodic protection required to be made by the owner (the college) and if so on what Form?

Answer. Section 192.453 of the Code of Federal Regulations requires that all phases of work performed during design, installation, operation and maintenance including recordkeeping in connection with corrosion control be carried out by, or under the direction of a person qualified by experience and training in pipeline corrosion control methods.

An annual report to the Office of Pipeline Safety (OPS) on the monitoring and engineering check of the cathodic protection of a gas pipeline is not currently required and there are no Federal forms for this purpose. However §192.491 does require each operator to keep records in sufficient detail to demonstrate the adequacy of his corrosion control measures or that a corrosive condition does not exist.

Question 2. Is an annual report on leaks from any cause required to be made by the owner, and if so on what Form?

Answer. Section 191.11, 49 CFR requires that each operator of a distribution system submit an annual report on Department of Transportation Form DOT-F-7100.1-1 (copy enclosed) not later than February 15 for the preceding calendar year.

Your attention is also directed to Section 191.5, 49 CFR which sets out the requirements for telephonic notice of certain leaks by all gas operators.

Question 3. Is a gas detector leakage survey required by OPS regulations, per No. 192.723, and if so, per (b)(1) as in a business district at 1-year intervals, or per (b)(2) as a system outside of principal business areas, at intervals not exceeding 5-years. What Form is available for the report to OPS?

Answer. Your attention is directed to the language of paragraph (b) of Section 192.723, stating that the type and scope of the leakage control program must be determined by the nature of the operations and local conditions, but it must meet the minimum requirements of a gas detector survey (1) at least once a year in business districts, and (2) as frequently as necessary, but at least every 5 years, outside the principal business areas. In the interest of continuing safe pipeline operation it is contemplated by this section that whenever local conditions warrant it surveys will be conducted more frequently than once a year in business districts, and more frequently than every 5 years outside the municipal business areas. It follows that there may very well be instances in which conducting a survey only once a year in a particular business district, or only once in 5 years in a particular area outside of the principal business district would be considered inadequate. An evaluation of the potential hazard due to the nature of buildings such as those on campus and the specific condition and environment of the pipeline system could indicate that consideration to conducting leakage surveys "as frequently as necessary" would mean more frequently than the minimum interval of 5 years.

The answer to the recordkeeping and report filing requirement in question one also applies here.

Question 4. Are periodic tests of odorization per No. 192.625 required of the owner or is he covered by tests made by the supply utility company?

Answer. Section 192.625(f), 49 CFR, requires that each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Based on the assumption that the college is operating a gas distribution system, periodic tests of odorization by the owner are required.

The enclosed literature includes Parts 190 and 192 which you requested.

We trust that this will clarify the matter for you. If we can be of further assistance to you, please let us know.

Sincerely,

\signed\

Joseph C. Caldwell
Director
Office of Pipeline Safety

Enclosures

