



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 14, 2022

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Westover Property Management Company, L.P.
d/b/a Westover Companies
Docket No. C-2022-3030251
I&E Reply to New Matter

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply of the Bureau of Investigation and Enforcement to the New Matter of Westover Property Management Company, L.P. d/b/a Westover Companies with regard to the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer'.

Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522
(717) 772-8839
stwimer@pa.gov

SMW/ac
Enclosures

cc: Per Certificate of Service
Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email*)
Kayla L. Rost, I&E Prosecutor (*via email*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030251
	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

**REPLY OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT TO THE NEW MATTER OF
WESTOVER PROPERTY MANAGEMENT
COMPANY, L.P. d/b/a WESTOVER COMPANIES**

NOW COMES, the Bureau of Investigation and Enforcement (“I&E” or “Complainant”) of the Pennsylvania Public Utility Commission (“Commission”) by and through its prosecuting attorneys, and files this Reply to the New Matter of Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover,” “Company” or “Respondent”), pursuant to 52 Pa. Code § 5.63(a). In support thereof, I&E avers as follows:

46. Denied. To the extent that Respondent attempts to incorporate any and all assertions made in paragraphs 1-45 as “New Matter,” this is denied. Pursuant to 52 Pa. Code § 5.62(b), affirmative defenses must be set forth under the heading of “New Matter.” New matter is limited to material facts that are not merely denials of the

averments of the preceding pleadings. *Id.* Respondent cannot avoid these requirements simply by incorporating all paragraphs of their Answer as “New Matter,” and I&E rejects this attempt and denies these allegations.

47. The averments in Paragraph 47 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

48. Admitted.

49. The averments in Paragraph 49 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, when enacting Act 127, the General Assembly expressly adopted the Federal pipeline safety laws as implemented in 49 CFR, Subtitle B, Chapter I, Subchapter D, which includes, in pertinent part, Parts 191 and 192. 58 P.S. § 801.302(a). The definition of “master meter system” in Part 191 unambiguously includes an “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.

50. Admitted in part and denied in part. It is admitted that I&E alleges that Westover is a pipeline operator subject to Commission jurisdiction pursuant to Act 127 due to Westover’s operation of regulated master meter systems at various apartment complexes located in the Commonwealth. It is denied that Westover does not operate a “master meter system” at any of its apartment complexes in Pennsylvania. By way of further answer, the Federal pipeline safety laws, as adopted by Act 127, deem the

intrastate transportation of gas *via* pipeline as affecting interstate commerce. I&E hereby incorporates by reference I&E’s Answer in Opposition to Westover’s Petition for Declaratory Order filed January 3, 2022 at P-2021-3030002, Paragraph 26 of which describes, in detail, Congress’ intention to broadly apply the minimum Federal pipeline safety standards to intrastate pipelines.

51. Denied. Westover fits squarely within the definition of “pipeline operator” at 58 P.S. § 801.102. The Westover pipeline systems that distribute natural gas to tenants who purchase the gas either through a metered charge, rent, or some other means, constitute “master meter systems” subject to the Federal pipeline safety laws, as adopted by Act 127. By way of further answer, “Frequently Asked Questions” posted on a website are not binding and are not law.

52. Admitted in part and denied in part. It is admitted that Westover, as well as I&E, are entitled to due process in this proceeding. It is denied that Westover is being punished for failing to concede to I&E’s interpretation of the law. The law is abundantly clear – Act 127 includes the regulation of intrastate master meter systems for pipeline safety purposes. Westover’s continued failure to accept the law rendered prosecution necessary. I&E has a duty to enforce violations of Act 127. 58 P.S. § 801.501(a).

53. The averments in Paragraph 53(A)-(G) set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the master meter system at Jamestown Village Apartments did in fact experience a natural gas leak, which was reported to the I&E Safety Division by PECO Gas and resulted in a natural gas service outage. Out of sheer

fortune, no injuries or fatalities occurred. The safety of Westover's master meter systems is frankly tenuous as Westover refuses to abide by the Federal pipeline safety regulations. Hundreds of tenants are impacted by the potential for serious harm. Moreover, I&E is not required to present evidence of actual injury or harm because unlawful conduct by its nature is injurious to the public. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723 (Order entered September 1, 2016) (citing *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317, 321 (Pa. 1947) (holding that "[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such conduct constitutes irreparable injury.")) Furthermore, Act 127 and its adoption of the Federal pipeline safety regulations, including 49 CFR § 191.3, render it abundantly clear that master meter systems in apartment complexes are subject to regulation. Although the Commission has not yet had the opportunity to rule on a case involving a master meter system operated in an apartment complex, it has determined that master meter systems operated in mobile home parks are jurisdictional. *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 refuses to accept the law and continues to advance unmeritorious claims and contentions in this proceeding.

54. The averments in Paragraph 54 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Westover is unable to illustrate that I&E's requested civil penalty

of \$200,000.00, which is less than 1/10th of the maximum statutory civil penalty that I&E is permitted to seek in this matter,¹ is grossly disproportional to the gravity of Westover's offenses, the treatment of other offenders subject to the Commission's jurisdiction, and the treatment of the same offenses. *HIKO Energy LLC v. Pa. Pub. Util. Comm'n*, 209 A.3d 246 (Pa. 2019).

55. The averments in Paragraph 55 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further response, the enactment of Act 127 afforded fair notice to persons and entities of conduct that is required or forbidden. "Long ago, the Supreme Court decided that the protections of procedural due process do not extend to legislative actions," *Rogin v. Bensalem Twp.*, 616 F.2d 680, 693 (3d Cir. 2006) (citing *Bi-Metallic Inv. Co. v. State Bd. Of Equalization*, 239 U.S. 441, 445); *South Union Township v. Commonwealth of Pa.*, 839 A.2d 1179 (Pa. Cmwlth. 2003). "Plaintiffs are constructively noticed and present for every legislative act of government through their elected representatives." *Common Cause of Pa. v. Pennsylvania*, 447, F. Supp. 2d 415, 432 (M.D. Pa. 2006) *aff'd*, 558 F.3d 249 (3d Cir. 2009).

56. The averments in Paragraph 56 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further response, persons and entities impacted by Act 127 received fair notice when the statute was enacted. Act 127 does not obligate the Commission to issue

¹ The maximum civil penalty that I&E is authorized to seek against Westover is \$2,251,334.00. 86 Fed. Reg. 23241 (May 3, 2021).

regulations. “The commission *may* adopt regulations, consistent with the Federal pipeline safety laws, as may be necessary or proper in the exercise of its powers and perform its duties under this act.” 58 P.S. § 801.501(a) (emphasis added).

57. The averments in Paragraph 57 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further response, I&E, as an independent, prosecutory bureau, is without sufficient information or knowledge to form a belief regarding the averment in Paragraph 57 of Respondent’s New Matter that the Commission avoided the regulatory review process. Therefore, it is denied strict proof thereof is demanded.

58. The averments in Paragraph 58 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the Natural Gas Act is irrelevant to this proceeding. Rather, the Federal Pipeline Safety Act, 49 U.S.C. §§ 60101-60143 (“PSA”), as implemented in 49 CFR, Subtitle B, Chapter I, Subchapter D, and adopted by Act 127 at 58 P.S. § 801.302(a), is the applicable body of law governing pipeline safety.

59. The averments in Paragraph 59 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the Natural Gas Act is irrelevant to this proceeding. Rather, the PSA, 49 U.S.C. §§ 60101-60143, as implemented in 49 CFR, Subtitle B, Chapter I, Subchapter D, and adopted by Act 127 at 58 P.S. § 801.302(a), is the applicable body of law governing pipeline safety. In enacting the PSA, Congress determined that the transportation of gas by pipeline has a substantial effect on interstate commerce. Indeed,

the legislative history of the PSA demonstrates that Congress intended that all aspects of the transportation of gas from the well head to the consumer affects interstate commerce. H.R. Rep. No. 90-1390, at 18 (May 15, 1968).

60. The averments in Paragraph 60 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the General Assembly expressly included intrastate natural gas systems when enacting Act 127. Indeed, the definition of “pipeline” excludes pipelines subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission, which, *inter alia*, regulates the transportation of natural gas in interstate commerce. 58 P.S. § 801.102; 15 U.S.C. § 717(b). The entire purpose of Act 127 is to extend pipeline safety regulation and enforcement, consistent with the minimum Federal pipeline safety standards, to non-public utility pipelines operating within Pennsylvania. Moreover, it is specifically denied that Westover is not engaged in the “transportation of gas” as defined in Federal pipeline safety laws. *See* I&E’s Answer to Paragraph 59, *supra*.

61. The averments in Paragraph 61 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the General Assembly expressly adopted the Federal pipeline safety laws as implemented in 49 CFR, Subtitle B, Chapter I, Subchapter D, which includes, “master meter system[s]” as defined in 49 CFR § 191.3. Apartment complexes are included in 49 CFR § 191.3 as a type of master meter system that is regulated. Moreover, Westover offers no citation to legislative history to support its argument, which lack merit.

62. Denied. The I&E Safety Division's investigation of Westover commenced when PECO Gas reported a natural gas leak and subsequent service outage at Westover's Jamestown Village Apartments. The I&E Safety Division investigated the leak as it does for every leak reported to it. Such investigation revealed the discovery of Westover's master meter systems as well as additional natural gas leaks on the master meter system at Jamestown Village Apartments. For nearly one year, the I&E Safety Division attempted to work with Westover to achieve compliance with the Federal pipeline safety laws and regulations using methods that did not involve litigation. However, Westover simply refused and continues to refuse to abide by the law, rendering prosecution to be necessary. To the extent that other landlords operate master meter systems as defined in 49 CFR § 191.3, the I&E Safety Division would similarly investigate and prosecute, if warranted, such operators.

63. Denied. The averments set forth in Paragraph 63 are denied and strict proof thereof is demanded. It is specifically denied that I&E "field investigators" are uncertain as to Westover's jurisdictional status.

64. The averments in Paragraph 64 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, any inference that the instant matter constitutes a discriminatory prosecution is specifically denied.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission deny Westover's New Matter and request to dismiss the Complaint and find Westover in violation of each and every count as set forth in the Complaint.

Respectfully submitted,



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

Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

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

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Date: February 14, 2022

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
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v.	:	Docket No. C-2022-3030251
	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

VERIFICATION

I, Scott Orr, Fixed Utility Valuation Engineer – 2, in the Bureau of Investigation and Enforcement’s Safety Division, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 14, 2022



Scott Orr
Fixed Utility Valuation Engineer – 2
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**BEFORE THE
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	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail:¹

David P. Zambito, Esq.
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Stephanie M. Wimer
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Dated: February 14, 2022

¹ See *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021) (permitting electronic service by Commission staff on parties).