



October 31, 2022

**VIA E-FILING**

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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.; Docket Nos. C-2022-3030251 and P-2021-3030002**

**Answer of Westover Property Management Company, L.P. d/b/a Westover Companies to the Motion of the Bureau of Investigation and Enforcement to Compel Entry for Inspection**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the above-referenced Answer. Copies have been served as shown on the enclosed certificate of service.

Please contact me if you have any question or concern. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg  
Enclosures

cc: Deputy Chief Administrative Law Judge Christopher P. Pell  
Per Certificate of Service  
Peter Quercetti  
Alexander Stefanelli

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket Nos. C-2022-3030251 P-2021-3030002
	:	
Westover Property Management Company, L.P. d/b/a Westover Companies	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 31<sup>st</sup> day of October, 2022 served the foregoing **Answer of Westover Property Management Company, L.P. d/b/a Westover Companies to the Motion of the Bureau of Investigation and Enforcement to Compel Entry for Inspection**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA E-MAIL AND FIRST CLASS MAIL**

Stephanie M. Wimer, Esq.  
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David P. Zambito, Esq.  
Counsel for *Westover Property Management  
Company, L.P. d/b/a Westover Companies*

**VERIFICATION**

I, Peter D. Quasetti, hereby state that the facts set forth above 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: October 31, 2022

Peter D. Quasetti

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket Nos. C-2022-3030251
v.	:	P-2021-3030002
	:	
Westover Property Management Company, L.P.	:	

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**ANSWER OF WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A  
WESTOVER COMPANIES TO THE MOTION OF THE BUREAU OF  
INVESTIGATION AND ENFORCEMENT TO COMPEL ENTRY FOR INSPECTION**

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AND NOW COMES Westover Property Management Company, L.P., d/b/a Westover Companies (“Westover”), pursuant to 52 Pa. Code § 5.342(g)(1), to submit this Answer to the Motion to Compel Entry for Inspection (“Motion”) filed by the Bureau of Investigation and Enforcement (“I&E”) on October 24, 2022. For the reasons set forth below, Westover respectfully requests that Deputy Chief Administrative Law Judge Christopher P. Pell (the “ALJ”) deny the Motion.

**I. SUMMARY**

On October 3, 2022, I&E served Westover with a very broad Request for Entry for Inspection (“Inspection Request”). I&E seeks to “enter and inspect the natural gas pipeline facilities at the Westover properties in Pennsylvania identified herein.” Inspection Request p. 1. I&E defined “pipeline facilities” very broadly, as including all parts of physical facilities through which gas moves. *Id.* pp. 2-3. Significantly, each request for an inspection stated that the purpose of the inspection was “to evaluate Respondent’s claim that the pipeline facilities are not a master meter system.” Inspection Request, Requests Nos. 1-8. I&E did not ask to inspect the facilities to

determine whether those pipeline facilities comply with the Federal pipeline safety laws. Westover responded to the Inspection Request accordingly.

Westover granted I&E's request for access to inspect each of the seven identified apartment complexes, on the dates requested by I&E, subject to certain conditions:

- I&E personnel will be accompanied at all times by representatives of Westover (including counsel);
- If photographs are taken, Westover will be provided with a copy of each photograph;
- I&E personnel will be granted unrestricted access to outdoor areas at all identified apartment complexes. At some of the identified apartment complexes, I&E personnel will be granted access to boiler rooms, but at other apartment complexes, I&E personnel will not be permitted any access inside the apartment buildings; and
- I&E personnel will not be granted access to occupied apartments at any apartment complexes.

I&E's Motion treats these conditions as objections to the Inspection Request. I&E asks the ALJ to dismiss Westover's conditions and give I&E unrestricted access to Westover's property to inspect pipeline facilities.<sup>1</sup> I&E's Motion reaffirms the limited purpose of the inspection: It is "an effort to support I&E's claims that [Westover's pipeline facilities] are jurisdictional master meter systems as well as to explore Westover's defenses, described *supra*, that they are not jurisdictional." Motion ¶ 19. *See also* Motion ¶¶ 35-36.<sup>2</sup> Westover respectfully requests that the ALJ deny this request and instead affirm Westover's reasonable conditions, as modified herein.

First, I&E's Motion provides no reason why I&E personnel should be allowed to inspect Westover's property without being accompanied by Westover's personnel, including its counsel. Westover respectfully submits that this condition is common practice in rate cases and other Commission proceedings. As a party to this proceeding, Westover has a right to accompany I&E

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<sup>1</sup> Although not stated in its request for relief, Motion p. 17, I&E apparently accepts the condition that its personnel will not have access to occupied apartments at any apartment complexes. Motion p. 8.

<sup>2</sup> Westover respectfully submits that the ALJ should rule on the Motion based on I&E's proffered justification for the Inspection Request; the ALJ should not overrule Westover's proposed conditions on the inspection based on a justification not offered in either the Inspection Request or the Motion.

on any inspection seeking information reasonably calculated to lead to the discovery of admissible evidence.

Additionally, Westover respectfully submits that it has a right as a property owner to accompany I&E during the inspection of Westover's property. Moreover, as a landlord, Westover has an interest in preserving the safety and privacy of its tenants. Consequently, the ALJ should affirm Westover's condition that I&E personnel must be accompanied by Westover personnel during the inspection.

Second, I&E's Motion provides no reason why the ALJ should strike Westover's condition requiring I&E to provide Westover with copies of photographs taken at Westover properties. Westover previously served I&E with interrogatory Set I, No. 24 ("Provide copies of any other Documents in I&E's possession regarding Westover.") **Exhibit 1**. Consequently, I&E is already obligated to turn over all photographs of Westover property from the inspection as a supplemental discovery response. 52 Pa. Code § 5.332(b). The ALJ should therefore affirm this reasonable condition on I&E's inspection of Westover's property.

Third, I&E's Motion seeks unrestricted access to all interior spaces in each of the identified apartment complexes to inspect Westover's pipeline facilities. This request is overbroad; it asks for permission to undertake a "fishing expedition" on Westover's property to find and inspect gas facilities when (a) I&E has articulated no basis for believing that those facilities even exist, or (b) I&E has not questioned Westover's admission that it resells gas to tenants. The request should be denied because it would cause unreasonable annoyance, oppression, burden or expense to Westover, in violation of 52 Pa. Code § 5.361(a)(2).

At three of the apartment complexes identified in the Inspection Request (Black Hawk Apartments, Concord Court Apartments and Lansdale Village), Westover has claimed that it

consumes all of the gas purchased from a natural gas distribution company (“NGDC”). At each of these apartment complexes, the gas line runs from the outside of the building to the boiler room, where it ends. *By this Answer, Westover amends its conditions to grant I&E access to the boiler room at each of the identified apartment buildings that has one.* As a result, I&E can verify that Westover consumes all of the gas and that the gas line ends in the boiler room.

I&E’s request for access to other interior spaces at these three apartment complexes should be denied. I&E has not articulated any reason to believe that Westover resells gas to tenants at these three apartment complexes; I&E simply argues that it should not be required to accept Westover’s averment that it consumes all the gas it purchases at these apartment complexes. Considering that Westover has granted I&E access to the boiler room to verify that Westover uses all of the gas, and that the gas line ends in the boiler room, it would cause unreasonable annoyance, oppression, burden or expense to Westover, in violation of 52 Pa. Code § 5.361(a)(2), to allow I&E personnel to roam around its buildings searching for pipeline facilities that are not there – and that I&E does not claim are there.

At the remaining apartment buildings identified in the Inspection Request, Westover has admitted reselling some or all of the gas to tenants. I&E does not dispute this averment. Since this fact is not disputed, an inspection to confirm it would not lead to admissible evidence. In fact, I&E articulates no reason why it needs to inspect these facilities “to evaluate Respondent’s claim that the pipeline facilities are not master meter systems.” Inspection Request Nos. 1-8. Under these circumstances, I&E’s request for access to interior areas of Westover’s apartment buildings (other than the boiler room) should be denied on the ground that it would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

Significantly, I&E's request for inspection does not describe how it intends to inspect the pipeline facilities inside Westover's apartment buildings. Except for gas facilities in the boiler rooms (access to which Westover has granted in this Answer), virtually all of the gas facilities inside Westover's apartment buildings are under floors or within walls and cannot be inspected without ripping up floors or cutting holes in walls. Nothing in the Commission's rules of discovery permits a party to damage or destroy another party's property in order to conduct discovery. If the ALJ grants I&E's Motion, the ALJ should limit the inspection to facilities that are in plain sight; I&E should not be permitted to cut holes in walls or ceilings, or to rip up floors, simply to confirm Westover's averment that it resells gas to tenants.

Finally, I&E contends that the purpose of the inspection is to obtain information relevant to I&E's claims that Westover's gas systems are jurisdictional master meter systems and to evaluate Westover's claims that its gas systems are not jurisdictional master meter systems. Motion ¶ 19. Westover has granted I&E unrestricted access to the exterior of its buildings, so I&E can determine that Westover's systems are located entirely within, and are limited to, Westover's apartment complexes – and so are not jurisdictional master meter systems. 49 CFR § 191.3. Under these circumstances, I&E's request for unrestricted access to the interior of Westover's buildings would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2) and is a prime example of prosecutorial overreach. The ALJ should affirm Westover's reasonable condition restricting I&E personnel's access to: (1) areas outside Westover's apartment buildings, and (2) the boiler room (if any) of each of the identified apartment complexes.



## II. ANSWER

### A. Introduction

1. Admitted.

2. Admitted.

3. It is admitted that Westover filed an Amended Petition for Declaratory Order (“Amended Petition”) on May 16, 2022, which was docketed at P-2021-3030002. That document is a written document that speaks for itself. I&E’s characterization of that document is denied.

4. Admitted.

5. It is admitted that the Commission issued an Order on Westover’s Amended Petition on August 25, 2022. That document is a written document that speaks for itself. I&E’s characterization of that document is denied.

6. It is admitted that I&E filed a formal complaint (“Complaint”) against Westover on January 3, 2022, which was docketed at C-2022-3030251. The Complaint is a written document that speaks for itself. I&E’s characterization of the Complaint is denied.

7. The Complaint is a written document that speaks for itself. I&E’s characterization of the Complaint is denied.

8. The Complaint is a written document that speaks for itself. I&E’s characterization of the Complaint is denied.

9. The Complaint is a written document that speaks for itself. I&E’s characterization of the Complaint is denied. By way of further answer, Westover acted in good faith in questioning the Commission’s jurisdiction over it, as demonstrated by Westover’s filing of a Petition for Declaratory Order seeking a Commission order declaring that Westover is not subject to Commission jurisdiction.

10. The Complaint is a written document that speaks for itself. I&E's characterization of the Complaint is denied. By way of further answer, the test for a master meter system is a four-pronged test. Each of the following elements must be satisfied for *any* Westover apartment complex to be considered a master meter system:

- a. The apartment complex must have a pipeline system for distributing gas within, but not limited to, a definable area, such as an apartment complex.
- b. Westover must be the operator of the pipeline system. An "operator" is defined as "a person who engages in the transportation of gas." 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."
- c. Westover must purchase metered gas from an outside source.
- d. Westover must resell that gas to the ultimate consumer through a gas distribution pipeline system. The ultimate consumer must purchase the gas from Westover directly through a meter or by other means (such as by rents).

Westover has granted I&E access to exterior areas at all of its apartment complexes. As a result, I&E personnel can easily determine that each Westover system is not jurisdictional because *every* Westover system distributes gas exclusively within Westover's apartment complex. All of Westover's gas facilities and equipment are located on Westover property and Westover has no customers other than tenants. As a result, Westover does not meet the first prong of the test of a master meter system, and I&E's access to the interior of Westover's apartment buildings is unnecessary.

11. The Complaint is a written document that speaks for itself. I&E's characterization of the Complaint is denied. By way of further answer, Westover denies that it is subject to the Commission's jurisdiction for several reasons, including but not limited to: the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* ("Act 127") does not apply to apartment complexes, and Westover's facilities do not satisfy all four elements of the test of a master meter system.

12. The Complaint is a written document that speaks for itself. I&E's characterization of the Complaint is denied.

13. The Complaint is a written document that speaks for itself. I&E's characterization of the Complaint is denied. By way of further answer, I&E does not justify the Inspection Request on the grounds that it will lead to the discovery of admissible evidence pertaining to whether Westover's pipeline facilities comply with the Federal pipeline safety laws; I&E's sole justification for the Inspection Request is to evaluate whether Westover's gas systems are jurisdictional. Inspection Request Nos. 1-8; Motion ¶¶ 19 and 35-36.

14. The Complaint is a written document that speaks for itself. I&E's characterization of the Complaint is denied. By way of further answer, I&E does not justify the Inspection Request on the grounds that it will lead to the discovery of admissible evidence pertaining to whether Westover's pipeline facilities comply with the Federal pipeline safety laws; I&E's sole justification for the Inspection Request is to evaluate whether Westover's gas systems are jurisdictional. Inspection Request Nos. 1-8; Motion ¶¶ 19 and 35-36. In addition, Westover denies that it is obligated to cooperate with an I&E investigation, since Westover is not subject to Commission jurisdiction for the reasons described in Paragraph 11.

15. It is admitted that Westover filed an Answer and New Matter on January 25, 2022. That document is a written document that speaks for itself. I&E's characterization of the Answer and New Matter is denied. By way of further answer, Westover's Answer and New Matter denied that it is subject to Commission jurisdiction, *inter alia*, for the reasons described in Paragraph 11.

16. This paragraph contains legal argument, to which no response is necessary. By way of further answer, Westover incorporates by reference the averments of Paragraph 11. The legal argument in this paragraph (concerning Westover's claim that its gas facilities are not master

meter systems because they do not engage in or affect interstate or foreign commerce) is not relevant to the disposition of the Motion.<sup>3</sup>

17. It is admitted that Westover has averred that it is the ultimate consumer of *some* of the gas that it purchases from Commission-regulated NGDCs. It is further admitted that Westover has averred that, to the extent it consumes the gas it purchases, it is not a “pipeline operator” as defined in Act 127 and its gas systems do not meet the definition of a master meter system in 49 CFR § 191.3.

18. Admitted.

19. Admitted.

20. Admitted.

21. Westover’s Answers and Conditions is a written document that speaks for itself. I&E’s characterization of that document is denied.

22. It is admitted that the parties had informal discussions to resolve their discovery dispute, but Westover submits that these discussions constitute confidential settlement discussions. 52 Pa. Code § 5.231(d).

23. Westover incorporates by reference its response to Paragraph 22.

24. Denied. I&E could and should accept Westover’s reasonable conditions on the requested inspection.

25. This paragraph states a request for relief to which no response is necessary.

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<sup>3</sup> Nevertheless, Westover questions how a gas system that is entirely internal to a building in Pennsylvania meets the requirement that a master meter system transport gas, which requires that the system be engaged in or affect interstate or foreign commerce. 49 CFR § 191.3.

**B. The ALJ Should Affirm Westover's Reasonable Conditions on I&E's Requested Inspection**

26. This paragraph contains legal argument, to which no response is required. By way of further answer, Westover is not preventing I&E from conducting the discovery necessary to prepare its case; Westover is only imposing reasonable conditions on I&E's access to Westover's apartment complexes. These conditions do not prevent I&E personnel from conducting the discovery necessary to verify that the Commission lacks jurisdiction over Westover's systems. For example, I&E personnel have unrestricted access to outside areas, where they can verify that Westover's gas system is located entirely within Westover's apartment complex.

27. This paragraph contains legal argument, to which no response is required. By way of further answer, Commission regulations limit discovery. One such limit is that discovery is not permitted that would cause unreasonable annoyance, oppression, burden or expense to the party subjected to the discovery. 52 Pa. Code § 5.361(a)(2). Permitting I&E unrestricted access to the interior of Westover's apartment buildings, in order to verify Westover's uncontested admission that it resells gas to tenants, would cause Westover unreasonable annoyance, oppression, burden and expense. It would prolong the inspection as I&E personnel go on a "seek and find" mission trying to find gas facilities in order to confirm what Westover has admitted and I&E has not challenged. This would increase expense and annoyance to Westover, whose personnel will be attending the inspections.

Similarly, permitting I&E unrestricted access throughout the interior of Westover's apartment complexes, in order to verify Westover's averment that it consumes all the gas it purchases from the NGDC at three apartment complexes, would cause unreasonable annoyance, oppression, burden or expense to Westover. 52 Pa. Code § 5.361(a)(2). Westover has agreed to provide access to I&E personnel to inspect the boiler rooms at these complexes to verify that

Westover consumes all of the gas and that the gas line ends in the boiler room. I&E argues that it should not be required to accept Westover's averment that it consumes all of the gas at these apartment complexes, but I&E has not articulated any basis for believing that Westover provides gas service to tenants at these three complexes. Under these circumstances, permitting I&E unrestricted access to the interior of these three apartment complexes would cause Westover unreasonable annoyance, oppression, burden and expense. It would prolong the inspection as I&E personnel go on a "seek and find" mission, trying to find gas facilities that do not exist – in the absence of any claim by I&E that they exist. This would increase expense and annoyance to Westover, whose personnel will be attending the inspections.

Finally, I&E does not explain how it desires to inspect Westover's pipeline facilities. Virtually all of Westover's gas facilities, other than those in the boiler rooms, are located under floor or behind walls. If an inspection is permitted, the ALJ should limit the inspection to facilities that are in plain sight; permitting I&E personnel to cut holes in walls or rip up floors in order to look for or inspect pipeline facilities would cause Westover unreasonable burden and expense to repair.

28. This paragraph contains legal argument, to which no response is required. By way of further answer, evidence that would merely confirm Westover's admission that it resells gas to tenants would not be relevant because it does not tend to make a fact more or less probable than it already is, given Westover's admission.

29. This paragraph contains legal argument, to which no response is required. By way of further answer, Westover is not seeking to prevent I&E from conducting the requested inspection. Westover only seeks to impose reasonable conditions on the requested inspection.

30. This paragraph contains legal argument, to which no response is required. Westover incorporates by reference the averments of Paragraph 27, *supra*.

31. This paragraph contains legal argument, to which no response is required.

32. This paragraph contains legal argument, to which no response is required. By way of further answer, as an agency created by the General Assembly, the Commission only has the power given to it by the General Assembly, either explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). Westover incorporates by reference the averments of Paragraph 11.

33. This paragraph contains legal argument, to which no response is required. By way of further answer, Westover incorporates by reference the averments of Paragraph 10.

34. This paragraph contains legal argument, to which no response is required. By way of further answer, I&E contends that interior piping is subject to Federal pipeline safety laws, citing Interpretation 191.3 (Master Meter) 14, PI-16-0012, in which the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) responded to the question “You asked if the Mall’s natural gas system (facility) is subject to 49 CFR Part 192 as a master meter, or if it is exempt from regulation because it consists entirely of non-buried pipeline facilities.” PHMSA answered the question by stating “The definition for a master meter system does not prohibit regulation for non-buried gas pipelines.” PHMSA went on to discuss PHMSA’s interpretation of its jurisdiction over interior gas lines.

Attached as **Exhibit 2** is a later opinion letter from PHMSA that clarifies PI-16-0012. This opinion letter notes in the disclaimer at the bottom of every page: “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 regulation.” Consequently, PHMSA opinion letters do not establish controlling precedent that the Commission must follow in interpreting Act 127. In addition, **Exhibit 2** demonstrates that PHMSA has reached different conclusions in different cases on whether the pipeline safety laws apply to pipes inside a building.

The Commission should not find PI-16-0012 persuasive. That opinion letter does not consider the requirement that a master meter system be “within, but not limited to, a definable area,” such as an apartment complex. 49 CFR § 191.3. At seven of the eight apartment complexes identified in the Motion:<sup>4</sup> Westover takes gas from the NGDC at a meter on the outside of an apartment complex, all of Westover’s facilities are located within the apartment building, and Westover does not resell gas to any customer who is not a tenant in the apartment building. If a master meter system does not include a system that is located within a definable apartment complex, surely a master meter system does not include a system that is located within an apartment building.

Additionally, PI-16-0012 does not consider the requirement that a master meter system “transports” gas within the meaning of 49 CFR § 191.3 – which requires that the distribution of gas be “in or affecting” interstate or foreign commerce. Westover respectfully submits that a gas system that is entirely internal to a building located entirely in Pennsylvania fails to meet the requirement that a master meter system transport gas, which requires that the system be engaged in or affect interstate or foreign commerce. 49 CFR § 191.3

35. This paragraph contains legal argument to which no response is required. By way of further answer, the PHMSA opinion letter cited in Paragraph 34 of I&E’s Motion to Compel

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<sup>4</sup> All of the apartment complexes other than Park Court, in which Westover takes gas at a point on its property a short distance from any apartment building.



did not permit a party to have unconditional access to the private property of another party to conduct discovery. Consequently, that decision is not helpful for resolving the present discovery dispute. Westover has agreed to the requested inspection, subject to several conditions that still allow I&E to conduct an inspection reasonably calculated to lead to the discovery of admissible evidence relevant to the issue of the Commission's jurisdiction over Westover's gas systems. The proposed conditions prevent I&E from engaging in discovery that would cause unreasonable annoyance, oppression, burden or expense to Westover, in violation of 52 Pa. Code § 5.361(a)(2).

36. Westover incorporates by reference the averments of Paragraphs 10, 11, 17, 26, 27, and 28, *supra*.

i. Woodland Plaza – At this complex, Westover consumes gas to produce heat and hot water, but resells gas to tenants for cooking. By this Answer, Westover agrees to provide I&E personnel with access to the boiler room to verify Westover's claim that it consumes some of the gas that it purchases from the NGDC. However, Westover does not consent to I&E's request for unrestricted access to the remaining interior spaces of this apartment complex. Westover has admitted reselling gas to tenants for cooking. I&E has not articulated any basis for questioning this admission. Granting I&E's request to inspect the building to verify this uncontested admission would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

By way of further answer, the gas line goes from the boiler room through a soffit to apartments for cooking. Other than the boiler room, the gas line is located behind walls and under floors and cannot be inspected without damaging Westover's property. Nothing in the Commission's discovery regulations permits the destruction of a party's property to complete discovery.

ii. Mill Creek – At this complex, Westover consumes gas to produce heat and hot water, but resells gas to tenants for cooking. Westover has agreed to provide I&E personnel with access to the boiler room to verify Westover’s claim that it consumes some of the gas that it purchases from the NGDC. However, Westover does not consent to I&E’s request for unrestricted access to the remaining interior spaces of this apartment complex. Westover has admitted reselling gas to tenants for cooking. I&E has not articulated any basis for questioning this admission. Granting I&E’s request for inspection to verify this uncontested admission would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

By way of further answer, the gas line goes from the boiler room to apartments for cooking. Other than the boiler room, the gas line is located behind walls and under floors, and cannot be inspected without damaging Westover’s property. Nothing in the Commission’s discovery regulations permits the destruction of a party’s property to complete discovery.

iii. Country Manor - At this complex, Westover consumes gas to produce heat and hot water, but resells gas to tenants for cooking. Westover has agreed to provide I&E personnel with access to the boiler room to verify Westover’s claim that it consumes some of the gas that it purchases from the NGDC. I&E complains that Westover was “unclear” in describing the meter in the boiler room at this apartment complex, but Westover has agreed to provide access to the boiler room, so I&E personnel will be able to examine the meter in person.

Westover does not consent to I&E’s request for unrestricted access to the remaining interior spaces of this apartment complex. Westover has admitted reselling gas to tenants

for cooking. I&E has not articulated any basis for questioning this admission. Granting I&E's request for inspection to verify this uncontested admission would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

By way of further answer, the gas line at this complex goes from the boiler room to apartments for cooking. Other than the boiler room, the gas line is located behind walls and under floors, and cannot be inspected without damaging Westover's property. Nothing in the Commission's discovery regulations permits the destruction of a party's property to complete discovery.

iv. Black Hawk – By this Answer, Westover agrees to provide I&E personnel with access to the boiler room to verify Westover's claim that it consumes all of the gas that it purchases from the NGDC. By way of further answer, the gas line goes from the meter to the boiler room, where it ends. I&E personnel will be able to verify this fact.

Westover does not consent to giving I&E personnel unrestricted access to the remaining interior spaces of this apartment complex to search for gas facilities that do not exist. I&E has not articulated any basis for believing that Westover resells gas to tenants at this apartment complex. Westover has agreed to give I&E personnel access to verify that the gas line ends in the boiler room. Under these circumstances, granting I&E's request to inspect other areas, in order to confirm that no gas facilities are present, would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

v. Concord Court – By this Answer, Westover agrees to provide I&E personnel with access to the boiler room to verify Westover's claim that it consumes all of

the gas that Westover purchases from the NGDC. By way of further answer, the gas line goes from the meter to the boiler room, where it ends. I&E personnel will be able to verify this fact.

Westover does not consent to giving I&E personnel unrestricted access to the remaining interior spaces of this apartment complex to search for gas facilities that do not exist. I&E has not articulated any basis for believing that Westover resells gas to tenants at this apartment complex. Westover has agreed to give I&E personnel access to verify that the gas line ends in the boiler room. Under these circumstances, granting I&E's request for inspection of other areas, in order to confirm that no gas facilities are present, would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

vi. Lansdale Village – By this Answer, Westover agrees to provide I&E personnel with access to the boiler room to verify Westover's claim that it consumes all of the gas that Westover purchases from the NGDC. By way of further answer, the gas line goes to the boiler room, where it ends. I&E personnel will be able to verify this fact.

Westover does not consent to giving I&E personnel unrestricted access to the remaining interior spaces of this apartment complex to search for gas facilities that do not exist. I&E has not articulated any reason to believe Westover resells gas to tenants at this apartment complex. Westover has agreed to give I&E personnel access to verify that the gas line ends in the boiler room. Under these circumstances, granting I&E's request for inspection of other areas, in order to confirm that no gas facilities are present, would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

vii. Paoli Place – Paoli South - At this complex, Westover consumes gas to produce heat and hot water, but resells gas to tenants for cooking. Westover has agreed to provide I&E personnel with access to the boiler room to verify Westover’s claim that it consumes some of the gas that it purchases from the NGDC. I&E complains that Westover was “unclear” in describing the meter in the boiler room at this apartment complex, but Westover has agreed to provide access to the boiler room, so I&E personnel will be able to examine the meter in person.

Westover does not consent to I&E’s request for unrestricted access to the remaining interior spaces of this apartment complex because Westover has admitted reselling gas to tenants for cooking. I&E has not articulated any reason to question this admission. Granting I&E’s request for inspection to verify this uncontested admission would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

By way of further answer, the gas line at this complex goes from the boiler room to apartments for cooking. Other than the boiler room, the gas line is located behind walls and under floors, and cannot be inspected without damaging Westover’s property. Nothing in the Commission’s discovery regulations permits the destruction of a party’s property to complete discovery.

viii. Park Court – At this complex, Westover does not consume any of the gas that it purchases from the NGDC. Westover admits that it resells gas to tenants for heating and cooking. Westover does not consent to I&E’s request for unrestricted access to the interior spaces of this apartment complex because Westover has admitted reselling gas to tenants and I&E has not articulated any basis for questioning this admission. Granting

I&E's request for inspection to verify this uncontested admission would cause unreasonable annoyance, oppression, burden or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

By way of further answer, the gas line at this complex goes from outside the building to apartments and to a common laundry room. The gas line is located behind walls and under floors, and cannot be inspected without damaging Westover's property. Nothing in the Commission's discovery regulations permits the destruction of a party's property to complete discovery.

37. Denied. Westover incorporates by reference Paragraphs 26, 27, 35 and 36.

38. Denied. It would be unreasonable to allow I&E to go on a "fishing expedition" searching Westover's properties for gas facilities when (a) I&E has not articulated any basis for believing that Westover has gas facilities transporting gas to tenants, or (b) I&E has not challenged Westover's admission that it has gas facilities transporting gas to tenants. Westover's reasonable conditions for the inspection of its property do not force I&E to take Westover's "word" about Westover's pipeline facilities. To the contrary, Westover's conditions allow I&E to conduct an inspection that might lead to admissible evidence about whether Westover's gas systems are jurisdictional – without causing unreasonable annoyance, oppression, burden or expense to Westover.

39. Denied. Westover has demonstrated that the ALJ should affirm Westover's reasonable conditions on I&E's inspections of Westover's apartment complexes.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) respectfully requests that the ALJ deny the Motion to Compel filed by the Bureau of Investigation and Enforcement on October 24, 2022. If, however, the ALJ grants I&E’s request to inspect all interior spaces at the identified apartment complexes (other than occupied apartments), Westover requests that the inspection be limited to gas facilities that are in plain sight; I&E should not be permitted to cut holes in walls or rip up floors to inspect gas facilities.

Respectfully submitted,



---

David P. Zambito, Esq. (PA ID # 80017)  
Jonathan P. Nase, Esq. (PA ID # 44003)  
Cozen O’Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Phone: (717) 703-5892  
E-mail: dzambito@cozen.com  
E-mail: jnase@cozen.com

Date: October 31, 2022

## **Exhibit 1**

**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**

**Interrogatories and Requests for Production of  
Documents Propounded by Westover Property  
Management Company, L.P. d/b/a Westover  
Companies on the Bureau of Investigation and  
Enforcement – Set I**

**January 31, 2022**



# Exhibit 1



January 31, 2022

**VIA E-MAIL**

**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: 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**

**Interrogatories and Requests for Production of Documents Propounded by  
Westover Property Management Company, L.P. d/b/a Westover Companies on the  
Bureau of Investigation and Enforcement – Set I**

Dear Senior Prosecutor Wimer:

Enclosed please find the Interrogatories and Requests for Production of Documents Propounded by Westover Property Management Company, L.P. d/b/a Westover Companies on the Bureau of Investigation and Enforcement – Set I. Verified answers are due within twenty days. Copies have been served as shown on the attached Certificate of Service.

Please contact me if you have any question or concern. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "David P. Zambito", written over a faint, larger version of the signature.

BY: DAVID P. ZAMBITO  
Counsel for *Westover Property Management, L.P.*  
*d/b/a Westover Companies*

DPZ:kmg  
Enclosures

cc: Per Certificate of Service  
Peter Quercetti, Vice President of Operations Management, Westover Companies  
Alexander Stefanelli, CFO, Westover Companies

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 31<sup>st</sup> day of January , 2022 served a true copy of the foregoing **Interrogatories and Requests for Production of Documents Propounded by Westover Property Management Company, L.P. d/b/a Westover Companies on the Bureau of Investigation and Enforcement – Set I**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA E-MAIL AND FIRST CLASS MAIL**

Stephanie M. Wimer, Esq.  
Kayla L. Rost, Esq.  
Michael L. Swindler, Esq.  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street – 2 West  
Harrisburg, PA 17120  
stwimer@pa.gov  
karost@pa.gov  
mswindler@pa.gov



---

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A  
WESTOVER COMPANIES ON THE BUREAU OF INVESTIGATION AND  
ENFORCEMENT – SET I**

---

Pursuant to 66 Pa. C.S. § 333 and 52 Pa. Code § 5.341 *et seq.*, Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) hereby propounds the following Interrogatories and Requests for Production of Documents on the Bureau of Investigation and Enforcement (“I&E”) – Set I.

INSTRUCTIONS

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. “Complaint” means the Formal Complaint filed by I&E against Westover on January 3, 2022 at Docket No. C-2022-3030251.
4. “Petition” means the Petition for Declaratory Order filed by Westover at Docket No. P-2021-3030002.
5. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.

6. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.

7. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and

d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.). In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

8. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check,

check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

9. “Communication” means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

10. “Date” means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

11. “Person” refers to, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or *ad hoc*), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or organization.

12. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

13. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

14. The answers provided should first restate the question asked and identify the person(s) supplying the information.

15. In answering these interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party’s attorneys, agents, consultants, or investigators, and not merely such

information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

16. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 7 and state the basis of the objection.

17. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

18. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

19. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject

matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

20. These interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A  
WESTOVER COMPANIES ON THE BUREAU OF INVESTIGATION AND  
ENFORCEMENT – SET I**

**DOCKET NOS. C-2022-3030251**

1. Identify all witnesses that I&E intends to call in this proceeding.
2. Provide copies of all documents that I&E intends to introduce as evidence in this proceeding.
3. Provide a list by docket number of all previous Formal Complaints that I&E has filed against alleged operators of master meter systems subject to Commission regulation pursuant to Act 127.
4. Provide a list by docket number of all previous Informal Investigations by I&E that resulted in settlements with an alleged operator of a master meter system subject to Commission regulation pursuant to Act 127.
5. Provide copies of any Documents pertaining to Informal Investigations by I&E of alleged operators of master meter systems, in which the Informal Investigation was closed without a settlement agreement and without I&E filing a Formal Complaint.
6. Provide copies of all Documents in I&E's possession addressing the Commission's jurisdiction over, or authority to regulate, operators of master meter systems pursuant to Act 127.
7. Please describe I&E's input into the "Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions" document on the Commission's website.
8. Describe all educational activities I&E has undertaken to advise master meter operators of their jurisdictional status since the enactment of Act 127.



9. Identify any person who has Communicated with I&E regarding Westover's natural gas systems in the last five years. Provide copies of any Communications between I&E and each person so identified.

10. Provide copies of any Communications between I&E and any member of the Oaktree Group, LLC regarding Westover.

11. Identify any verbal communications between I&E and any member of the Oaktree Group, LLC regarding Westover, including a detailed description of the conversation.

12. Provide copies of any Communications between I&E and any member of Entech Engineering, Inc., regarding Westover.

13. Identify any verbal communications between I&E and any officer, employee or agent of Entech Engineering, Inc.

14. Identify the dates of employment by the Commission of Paul Metro, his job title, and any disciplinary actions against or investigations of him known to I&E.

15. Describe any restrictions on Paul Metro's interactions with the Commission after termination of his employment with the Commission.

16. Identify the dates of employment by the Commission of Anthony Rametta, his job title, and any disciplinary actions against or investigations of him known to I&E.

17. Describe any restrictions on Anthony Rametta's interactions with the Commission after termination of his employment with the Commission.

18. Identify the dates of employment by the Commission of Andrew Geibel, his job title, and any disciplinary actions against or investigations of him known to I&E.

19. Describe any restrictions on Andrew Geibel's interactions with the Commission after termination of his employment with the Commission.

20. Has any I&E personnel ever referred business to Paul Metro, Anthony Rametta, Andre Geibel, or the Oaktree Group, LLC? Identify.

21. Has any I&E personnel ever identified targets of I&E investigation for Paul Metro, Anthony Rametta, Andrew Geibel or the Oaktree Group? Identify.

22. Provide copies of any Communications between I&E and any former Commission employee regarding Westover, including identification of the former employee and his or her dates of employment and job description.

23. Provide copies of any Communications between I&E and Westover.

24. Provide copies of any other Documents in I&E's possession regarding Westover.

25. Identify all actions taken by I&E to investigate Westover prior to filing the Complaint. For every action, identify the I&E staff involved and the date of the action taken.

26. Identify all I&E personnel who participated in any way in the investigation of Westover prior to filing the Complaint.

27. Identify any instance where I&E personnel entered properties owned or operated by Westover without the express consent of Westover. Identify the name and title of the I&E personnel, the date, the time, the location, and the reason for entry. Please provide car or phone GPS tracking logs for these employees on the dates they entered Westover properties.

28. Reference Paragraph 26 of the Complaint. Please explain fully why I&E believes that each of the following apartment complexes constitute a "master meter system" as defined in 49 CFR § 191.3:

- A. Park Court
- B. Oak Forest
- C. Woodland Plaza

- D. Mill Creek
- E. Country Manor
- F. Fox Run
- G. Main Line Berwyn
- H. Black Hawk
- I. Paoli Place
- J. Concord Court
- K. Gladstone Towers
- L. Hillcrest
- M. Lansdowne Towers
- N. Lansdale Village
- O. Norriton East
- P. Valley Stream
- Q. Willow Run

29. Does I&E believe Westover owns or operates any other system that is a “master meter system” as defined in 49 CFR § 191.3? Explain fully why or why not.

30. For each of the apartment complexes listed below, please answer the following question: Does I&E believe that this apartment complex is engaged in the distribution of gas in or affecting interstate or foreign commerce? Fully explain each response.

- A. Park Court
- B. Oak Forest
- C. Woodland Plaza
- D. Mill Creek

- E. Country Manor
- F. Fox Run
- G. Main Line Berwyn
- H. Black Hawk
- I. Paoli Place
- J. Concord Court
- K. Gladstone Towers
- L. Hillcrest
- M. Lansdowne Towers
- N. Lansdale Village
- O. Norriton East
- P. Valley Stream
- Q. Willow Run

31. Does I&E believe that Westover owns or operates any other system that is engaged in the distribution of gas in or affecting interstate or foreign commerce? Explain fully why or why not.

32. Does I&E believe that all systems that distribute gas from a Pennsylvania natural gas distribution company (“NGDC”) to customers in Pennsylvania are engaged in the distribution of gas in or affecting interstate commerce? If not, please explain how the Commission should distinguish those systems that distribute gas in or affecting interstate commerce from those that do not?

33. For each of the apartment complexes listed below, please answer the following question: If this apartment complex is not a “master meter system” as defined in 49 CFR

§ 191.3, does the Commission have jurisdiction over it pursuant to Act 127? Explain fully why or why not.

- A. Park Court
- B. Oak Forest
- C. Woodland Plaza
- D. Mill Creek
- E. Country Manor
- F. Fox Run
- G. Main Line Berwyn
- H. Black Hawk
- I. Paoli Place
- J. Concord Court
- K. Gladstone Towers
- L. Hillcrest
- M. Lansdowne Towers
- N. Lansdale Village
- O. Norriton East
- P. Valley Stream
- Q. Willow Run

34. If Westover does not operate any “master meter systems” as defined in 49 CFR § 191.3, does the Commission have jurisdiction over Westover pursuant to Act 127? Explain fully why or why not.

35. Does I&E believe that an apartment complex that utilizes natural gas exclusively for a central boiler system is jurisdictional under Act 127? Explain.

36. Does I&E believe that an apartment complex that utilizes natural gas primarily for a central boiler system is jurisdictional even though some tenants utilize natural gas for the limited purpose of cooking? Explain.

37. Does I&E believe that an apartment complex that has an NGDC meter attached to the building and has distribution lines located entirely internal to the building are jurisdictional under Act 127? Explain.

38. Reference Paragraph 44 of the Complaint. Please explain the basis for I&E's claim that an immediate threat to public safety exists with every day that Westover fails to submit to Commission jurisdiction.

39. Identify each gas accident, leak or other incident ("Incident") at a Westover apartment complex of which I&E has been notified during the last five years (including the Incident at Jamestown Village on May 22 and 23, 2018). For each Incident, indicate:

- A. The date of the Incident;
- B. The apartment complex at which the Incident occurred;
- C. I&E's response to each Incident; and
- D. Provide copies of all documents relating to each Incident.

40. Reference I&E's Answer to Westover's Petition page 7: "The issuance of such a Declaratory Order would send a clear message not only to Westover but also to similarly situated pipeline operators that have not yet registered with the Commission that master meter systems are, without question, subject to the Commission's safety oversight." Does I&E believe that any

other apartment complex in Pennsylvania operates a “master meter system,” even though it is not registered as a “pipeline operator” pursuant to Act 127? If so:

- A. Identify each such apartment complex;
- B. Explain why I&E believes that each such apartment complex operates a “master meter system;”
- C. Explain all efforts taken by I&E to encourage each such apartment complex to comply with Act 127; and
- D. Identify any informal investigations or complaints instituted against any such apartment complex.

41. Does I&E believe a hearing is necessary in this proceeding? Please explain.

42. Does I&E believe the Complaint may be consolidated with Westover’s Petition?

43. Identify any Commission docket at which I&E requested that civil penalties be assessed on the basis of a violation of Act 127, including the amount of civil penalty requested by I&E, the amount of civil penalty agreed upon under a settlement with I&E and the amount of civil penalty ordered to be paid by the Commission.

44. Explain the specific bases for I&E’s request of a civil penalty of \$200,000 against Westover and how it comports with the Commission’s statement of policy at 52 Pa. Code § 69.1201 (“Factors and Standards for Evaluating Litigated and Settled Proceedings”).

45. Does I&E consider a respondent’s efforts to seek clarification of a disputed legal issue from the Commission to be a mitigating factor in the assessment of civil penalties?

46. To the best of I&E’s knowledge, has the Commission initiated efforts to promulgate regulations to implement Act 127? Provide a detailed explanation of any efforts undertaken or planned to be undertaken.

47. Identify and provide any document within I&E's possession regarding the Commission's efforts to promulgate regulations to implement Act 127.

48. Identify any formal or informal complaint or ethics inquiry received by I&E or the Commission regarding any past or present I&E pipeline safety field investigator.

49. Has the PUC received financial assistance or incentives from the Office of Pipeline Safety through the Pipeline Safety Grants program? If yes, specify how those funds have been used.

50. Has Pennsylvania outlawed the installation of master meter systems?

51. Does the PUC encourage natural gas distribution companies to absorb master meter systems? Why or why not?

52. Is I&E aware of any injuries or deaths at a Pennsylvania apartment complex since 2012 due to a natural gas explosion? If the answer is yes, please provide the date of each explosion, the location, and any other information I&E has about the incident.



## **Exhibit 2**

**Letter to David J. Chislea  
Michigan Public Service Commission**

**Interpretation of 49 CFR Part 192 Re Pipelines  
Located within Buildings**

**September 21, 2020**

# Exhibit 2



U.S. Department  
of Transportation

1200 New Jersey Avenue, SE  
Washington, DC 20590

**Pipeline and Hazardous  
Materials Safety Administration**

September 21, 2020

Mr. David J. Chislea  
Manager of Gas Operations  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, MI 48917

Dear Mr. Chislea:

In a May 1, 2019, letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), you requested an interpretation of 49 Code of Federal Regulations (CFR) § 192.1. Specifically, you requested an interpretation for the applicability of 49 CFR Part 192 in regards to pipelines located within buildings.

You mentioned several PHMSA interpretations on master meter systems which, after a phone call with myself, we summarized into the following question:

**Question:** Interpretation PI-16-0012 states, “The definition for a master meter system does not prohibit regulation for non-buried gas pipelines. PHMSA does not regulate gas piping inside a building unless the interior piping is used by the gas pipeline operator to distribute gas.” However, interpretations PI-73-0112, PI-76-0114, and PI-01-0113 seem to contradict PI-16-0012. What is the reasoning why PI-16-0012 interprets the Mall of America’s inside gas pipeline as regulated while the other three interpret inside gas pipelines as not being regulated by Part 192?

**Answer:** PHMSA’s interpretations respond to a unique set of facts presented by the requestor. Should any of the facts change, PHMSA’s response would be subject to change. In addition, PHMSA’s interpretations reflect the agency’s application of the regulations to the specific facts presented by the person requesting the clarification. Prior interpretations given for a different set of facts are not generally applicable. They are provided to help the specific requestor understand how to comply with the regulations. Regarding the interpretations raised by your question, PHMSA does not see a contradiction between these interpretations. The location of gas pipelines is only one of many factors that determine whether a gas pipeline system is a master meter system or not.

Interpretation PI-73-0112 analyzes three master meter scenarios. It provides two characteristics that are common to several master meter systems. First, the “existence of underground or exterior piping serving multiple buildings” and second, “the transfer (sale) of gas (metered or unmetered) from the master meter system operator to the ultimate gas consumers (tenants) for use in the consumers’ appliances.”

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.

In the first scenario discussed by PI-73-0112, a gas line enters a residence unit, proceeds through the unit to serve various appliances, then leaves the unit and services other residence units in a like manner. The interpretation explained that “normally, interior piping is not considered subject to the regulations, [but] in this case where it is one continuous distribution line without separate risers or services for individual units and is under the sole control of the operator,” the interior segments are subject to the regulations to the same extent as the exterior and underground portions.

In scenario 2, PHMSA discusses a residential master meter system in which a gas line enters a multiple residence unit and travels throughout the residence unit tapping off services to the various residence units within the same building. PHMSA concluded the piping inside the wall is not subject to federal regulations because it is considered “customer piping.” PHMSA stated, “[b]ecause it is impractical in many situations to determine who owns the piping in a building, all the gas lines within a single building downstream of the “master” meter are considered by the OPS to be customer’s piping.” The example PHMSA provided was a condominium, in which all the unit owners may own the piping jointly and it is difficult to separate customer piping from a distribution line. PI-16-0012 (the Mall of America interpretation) is not analogous to a condominium. It is not difficult to determine who owns the interior piping in the Mall of America. The interior piping within the Mall of America is owned by the Mall. The customer piping is located within each store and is metered separately. The stores do not jointly and collectively own the Mall’s piping.

In scenario 3 described by PI-73-0112, PHMSA discussed a facility where a gas line leaves a master meter and travels through the ground, serving a plant unit, offices and other units. PHMSA determined it was not a master meter system because the gas was being used by company employees for company purposes on company property. PHMSA noted that, “[o]ne of the characteristics of a master meter system that makes it subject to the [pipeline safety] regulations [is] the transfer of gas from the operator (landlord) to other persons who are the ultimate consumers of the gas.” This principle is reaffirmed in the Mall of America interpretation. The ultimate consumer of gas in the Mall of America interpretation was the store tenants. The Mall, the landlord, distributes gas to the individual stores, who are the tenants.

In PI-76-0114, PHMSA added additional clarity to the classification of interior piping stating “interior piping is only subject to regulation when it is included in an operator’s system which is otherwise located outside.” Thus, interior piping is subject to regulation when it is part of a “regulated system” which would otherwise be located outside.

In PI-01-011, PHMSA found that a particular multi-family housing complex met the definition of a master meter system even if the tenants did not directly pay for utilities. The interpretation only briefly mentions that the interior piping within the buildings, beyond the first penetration of each building wall is non-jurisdictional. Again, this interpretation discussing a particular multi-family housing complex is not analogous to Mall of America, which has many business customers with separate accounts and separate risers.

Moreover, the Mall of America interpretation aligns with several interpretations PHMSA has issued concerning concessionaries on university campuses, a scenario that is analogous to the

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.

Mall of America's system unlike a multi-family housing complex. As noted in interpretations PI-73-030, PI-03-0101, and PI-17-0012, when a university sells gas to businesses, the university is distributing the gas, and the businesses are the ultimate consumer who either purchase the gas directly through a meter or by other means, such as by rents. These interpretations establish a key consideration when seeking to determine whether a system is a master meter: where does transportation end and consumption by the end user start?

As the Mall of America interpretation stated, gas pipelines inside buildings may be regulated where the gas piping is being used by the gas pipeline operator to transport gas to several businesses who are the ultimate consumers of the gas. If there is transportation of gas inside of a building, above ground or underground, Part 192 applies up to the custody transfer point between the gas distributor (LDC or master meter system operator) and the consumer.

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

Sincerely,

**JOHN A  
GALE**

Digitally signed by JOHN  
A GALE  
Date: 2020.09.30  
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**John A. Gale  
Director, Office of Standards  
and Rulemaking**