



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 2, 2023

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 Nos. C-2022-3030251; P-2021-3030002
I&E's Answer in Opposition to Westover's Motion for Summary Judgment

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") Answer in Opposition to the Motion for Summary Judgment of Westover Property Management Company, L.P. d/b/a Westover Companies with regard to the above-referenced matter.

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,

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
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KLR/ac
Enclosures

cc: Per Certificate of Service
Hon. Christopher P. Pell, OALJ-Philadelphia (*via email*)
Athena Delvillar, OALJ Legal Assistant (*via email*)
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Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email*)
Scott B. Granger, Prosecutor (*via email*)
Gina L. Miller, Prosecutor (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER IN OPPOSITION OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE MOTION FOR SUMMARY JUDGMENT OF
WESTOVER PROPERTY MANAGEMENT COMPANY, L.P.,
d/b/a WESTOVER COMPANIES**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.102(b), and files this Answer in Opposition to the Motion for Summary Judgment of Westover Property Management Company, L.P., d/b/a Westover Companies (“Westover”). For the reasons stated herein, I&E respectfully requests that the Commission deny Westover’s Motion for Summary Judgment (“Motion”) because genuine issues of material fact exist and Westover is not entitled to summary judgment as a matter of law.

I. I&E’s Argument in Opposition to Westover’s Motion for Summary Judgment

A. Westover’s Motion Ignores the Commission’s Determination that Genuine Issues of Material Facts Are Ripe for Resolution in this Case

Westover’s Motion ignores the inconvenient, but critical fact that the Commission has *already* determined that material facts are at issue in this case and that they must be resolved. To

be sure, over six months ago, when the Commission issued its Order denying Westover's Amended Petition for a Declaratory Order at this docket, it also expressly indicated that material facts are in dispute here.¹ For purposes of illustration, in addressing the similarly heavy burden necessary to warrant a declaratory order (it should only be issued when there is no outstanding issue of fact), the Commission indicated as follows:

It is clear from the allegations in the Amended Petition and I&E's answer thereto, that material facts are in dispute as to the physical makeup of each of Westover's systems, including whether or not the tenants are the ultimate consumers of gas, whether the tenants pay for the gas in rents or directly to the NGDC, and whether any given system is wholly contained within a single building or complex. Since I&E has already filed a Formal Complaint against Westover alleging, *inter alia*, violations of Act 127, these material fact issues, as well as the various legal issues raised in the Amended Petition should be resolved in the Formal Complaint proceeding at Docket No. C-2022-3030251.²

As the passage above leaves free from doubt, this Complaint case is the forum prescribed by the Commission to resolve identified material facts in dispute (including but not limited to Westover's facilities and the recoupment of gas costs).

Notwithstanding its identification of unresolved material issues of fact, the Commission also expressly directed this case to resolve the disputed legal issues implicated by the parties. The Commission memorialized its determination by way of an ordering paragraph directing that the Petition of Westover be consolidated into the Complaint case (now the instant consolidated case) and that it be "assigned to the Office of Administrative Law Judge for resolution of the **disputed material facts and legal issues** in the ongoing controversy at Docket No. C-2022-3030251, and issuance of a recommended decision."³ Now, six months later, Westover's Motion

¹ 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, P-2021-3030002 et al (Order issued on August 25, 2022).

² *Id.* at p. 6.

³ *Id.* at p. 8, Ordering Paragraph 2.

seeks to evade the prescribed resolution of the factual and legal disputes ripe for resolution in this case by making semantical arguments hinging on its unilateral interpretation of state and federal law, as well as the Merriam-Webster Online Dictionary. I&E submits that Westover's contrived arguments should be rejected. As explained further below, Westover's Motion fails to meet the heavy burden necessary to warrant the requested relief of Summary Judgment and therefore it should be denied.

B. Westover Fails the Legal Standard for Summary Judgment

In this case, as the moving party, Westover bears the heavy burden of showing that no genuine issue of material facts exists and that it is entitled to a judgment as a matter of law.⁴ An entry of summary judgment may be granted only in cases where the right is clear and free from doubt.⁵ The moving party has the burden of proving the non-existence of any genuine issue of material fact.⁶ The record must be viewed in the light most favorable to the non-moving party (I&E), and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party (Westover).⁷ Summary judgment is properly granted only where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.⁸ As the Commission has already determined that disputed material facts remain unresolved in this case, and Westover's attempt to bypass the resolution hinges on a novel and contrived legal analysis, it has failed to meet its heavy burden. Accordingly, Westover's Motion should be denied.

⁴ 52 Pa. Code § 5.102(d)(1).

⁵ *Davis v. Brennan*, 698 A.2d 1382 (Pa. Cmwlth. 1997).

⁶ *Id.*

⁷ *Schnupp v. Port Auth. of Allegheny County*, 710 A.2d 1235 (Pa. Cmwlth. 1998).

⁸ *Pa. State Univ. v. County of Centre*, 532 Pa. 142, 144-45 (1992).

II. I&E's Answer in Opposition to Westover's Motion for Summary Judgment

A. Westover's Petition for Declaratory Order

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

B. I&E's Complaint

5. Admitted in part and denied in part. It is admitted that I&E filed the Formal Complaint ("Complaint") that initiated this proceeding on January 3, 2022, and that the Secretary's Bureau served the Complaint on January 5, 2022. I&E is without sufficient information or knowledge to form a belief as to the Secretary's Bureau's method of service and the same is therefore denied.

6. Admitted.

7. Admitted

8. Admitted. By way of further response, in its Order, the Commission directed that disputed issues of material fact and ongoing legal issues were being assigned to the ALJ for resolution.

9. Admitted.

10. Admitted. By way of further response, in its Order, the Commission reiterated that material facts remained in dispute, including facts regarding the ultimate consumer of gas at Westover's gas facilities "which may establish whether the Commission retains jurisdiction over Westover under Act 127."⁹

⁹ Petition of Westover Property Management Company, L.P., d/b/a Westover Companies for Review and Answer to Material Questions and for Immediate Stay of Proceedings, Docket Nos. C-2022-3030251; P-2021-3030002 (Opinion and Order entered November 14, 2022), pg. 14.

C. Interim Order Addressing Motions to Compel Filed by Westover and I&E

11. Admitted.

12. Admitted. By way of further response, Jamestown Village Apartments was also mentioned in the Complaint.

13. Admitted.

14. Denied. By way of further response, the commercial properties listed, the two Bryn Mawr Medical Buildings, are not within the scope of this proceeding. The casual reference to the properties in the Act 127 registration which was attached as an exhibit does not equate to their inclusion in this matter. The inclusion of Carlisle Park Apartments can be distinguished from these commercial properties as Westover specifically pled facts related to the Carlisle Park Apartments in its Amended Petition for Declaratory Order, whereas no facts related to these commercial properties were pled or offered until this Motion was filed.¹⁰

D. Westover's Registration as an Act 127 Pipeline Operator

15. Admitted in part, denied in part. By way of further response, the Act 127 registration is signed and dated as June 28, 2021. I&E is without sufficient information or belief to determine if the registration was filed on July 12, 2021.

16. Admitted in part, denied in part. By way of further response, the Act 127 registration is signed and dated as August 6, 2021. I&E is without sufficient information or belief to determine if the registration was filed on August 26, 2021.

17. Admitted in part, denied in part. By way of further response, the Act 127 registration correction is signed and dated as September 17, 2021. I&E is without sufficient information or belief to determine if the correction was filed on September 21, 2021.

¹⁰ Amended 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 (filed May 16, 2022), pgs. 18-19.

18. Admitted in part, denied in part. By way of further response, the Act 127 registration renewal is signed and dated as February 22, 2022. I&E is without sufficient information or belief to determine if the registration was filed on February 23, 2022.

Legal Standards

19. Admitted. By way of further response, 52 Pa. Code § 5.102 speaks for itself.

20. Admitted in part, denied in part. To the extent that the averment contained in this paragraph is consistent with the cited cases, it is admitted. To the extent that it is not consistent with the cited cases, it is denied.

Westover's Statement of Facts

21. Admitted in part, denied in part. By way of further response, it is admitted that Westover operates gas facilities at its apartment complexes. Denied that Westover does not own the facilities.

22. Admitted in part, denied in part. It is admitted that the general location of Westover's gas facilities is not in dispute. The remainder of the averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

23. The averment contained in Paragraph 23 fails to set forth facts that can be admitted or denied; therefore, no response should be required. To the extent that any response is deemed to be required, I&E denies Westover's self-determined conclusion that "background information" is immaterial.

1. Park Court Apartments

24. Denied. By way of further response, the gas facilities at Park Court Apartments consist of two NGDC-owned meters located at two (2) residential buildings which service all four (4) residential buildings. The gas facilities past the NGDC-owned meter include Westover-

owned underground piping. In reference to footnote 3, it is specifically denied that, in all gas systems involved, the gas is transferred from the NGDC to a customer at the meter, as explained in more detail below.

25. Admitted.

2. Oak Forest Apartments

26. Admitted. By way of further response, the gas facilities at Oak Forest Apartments consist of one NGDC-owned meter located at one of the residential buildings which services seven (7) residential buildings and Westover's leasing office. The gas facilities beyond the NGDC-owned meter include Westover-owned underground piping.

27. Admitted.

3. Woodland Plaza Apartments

28. Admitted. By way of further response, a NGDC-owned meter is located at each of the seventeen (17) residential buildings.

29. Admitted.

4. Mill Creek Village

30. Admitted.

31. Admitted. By way of further response, the gas facilities at Mill Creek Village I consist of one NGDC-owned meter which services six (6) residential buildings. The gas facilities beyond the NGDC-owned meter include Westover-owned underground piping.

32. Admitted.

33. Admitted.

5. Country Manor Apartments

34. Admitted. By way of further response, a NGDC-owned meter is located at each residential building, some of which service twenty-six (26) units and some which service twelve

(12) units.

35. Admitted.

6. Fox Run Apartments

36. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter at each building which connects to gas piping and then to a Westover-owned sub-meter in each unit.

37. Admitted.

7. Main Line Berwyn Apartments

38. Admitted. By way of further response, a NGDC-owned meter is located at one of the residential buildings and services a total of three (3) residential buildings. The gas facilities beyond the NGDC-owned meter include Westover-owned underground piping and a Westover-owned sub-meter.

39. Admitted.

8. Black Hawk Apartments

40. Admitted. By way of further response, Westover charges the tenant, the ultimate consumer, for the gas service through rent.

41. Admitted.

9. Paoli Place

42. Admitted.

43. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter at each building which connects to gas piping and then to a Westover-owned sub-meter in each unit.

44. Admitted.

45. Admitted in part, denied in part. By way of further response, each apartment unit

is serviced by an individual, NGDC-owned meter. I&E is without sufficient information or belief to determine what a “meter bank” is, and therefore any reference therein is denied.

46. Admitted.

47. Admitted. By way of further response, each apartment unit is serviced by an individual, NGDC-owned meter.

48. Admitted.

49. Admitted.

50. Admitted.

51. Admitted.

52. Admitted.

10. Concord Court Apartments

53. Admitted. By way of further response, Westover bills the tenant, the ultimate consumer, for the gas service based upon the square footage of the tenant’s unit and/or square footage of the tenant’s unit and the number of the persons residing in the unit.

54. Admitted.

11. Gladstone Towers Apartments

55. Admitted. By way of further response, Westover bills the tenant, the ultimate consumer, for the gas service based upon an actual reading meter from a Westover-owned and installed sub-meter.

56. Admitted.

12. Hillcrest Apartments

57. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter located at one (1) residential building which services a total of seven (7) residential buildings. The gas facilities beyond the NGDC-owned meter include Westover-owned

underground piping.

58. Admitted.

13. Lansdowne Towers Apartments

59. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter located at one (1) residential building which services a total of five (5) residential buildings. The gas facilities beyond the NGDC-owned meter include Westover-owned underground piping and sub-meter.

60. Admitted.

14. Lansdale Village Apartments

61. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter located at one (1) residential building which services a single boiler to supply heat and hot water to all residents in the three (3) residential buildings. Westover bills the tenant, the ultimate consumer, for the gas service based upon an allocation basis related to the square footage of the unit and the number of persons residing in the unit.

62. Admitted.

15. Norriton East Apartments

63. Admitted.

64. Admitted.

16. Valley Stream Apartments

65. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter located at one (1) maintenance building which provides service to twenty-two (22) residential buildings, one (1) office, and the maintenance building. The gas facilities beyond the NGDC-owned meter include Westover-owned underground piping.

66. Admitted.

17. Willow Run Apartments

67. Admitted.

68. Admitted.

18. Carlisle Park Apartments

69. Admitted. By way of further response, the gas facilities consist of a NGDC-owned meter located in the apartment complex which services twenty-six (26) residential buildings. The gas facilities beyond the NGDC-owned meter include Westover-owned underground piping.

70. Admitted in part, denied in part. By way of further response, the phrase “apartment complex” in relation to Carlisle Park Apartments is misleading. The Carlisle Park Apartment complex includes a residential building which is accessed by crossing a public road, Cherry Street, i.e., all but one of the residential buildings are located on the same side of the street whereas the one residential building is located across the street. *See* Westover’s Confidential Exhibit 5. While the residential buildings and gas facilities are technically located within the apartment complex, the apartment complex in this scenario encompasses a building located across a public street.

19. Bryn Mawr Medical Building

71. Admitted in part, denied in part. It is admitted that the commercial properties were attached to the Act 127 registration form. I&E is without sufficient information or belief as to the remainder of the averments, and therefore the same is denied.

72. Denied. By way of further response. I&E is without sufficient information or belief as to the gas configurations as this location, and therefore the same is denied.

73. Admitted in part, denied in part. It is admitted that I&E objected to requests for admissions related to this location. By way of further response. I&E is without sufficient

information or belief to determine the locations of the gas facilities at this location, and therefore the same is denied. Moreover, as explained in I&E's Answer to Paragraph 14, this commercial property is not included in this matter and all averments offered by Westover should be struck.

74. Denied. By way of further response. I&E is without sufficient information or belief as to the gas configurations as this location, and therefore the same is denied.

75. Admitted in part, denied in part. It is admitted that I&E objected to requests for admissions related to this location. By way of further response. I&E is without sufficient information or belief to determine the locations of the gas facilities at this location, and therefore the same is denied. Moreover, as explained in I&E's Answer to Paragraph 14, this commercial property is not included in this matter and all averments offered by Westover should be struck.

Argument: Westover's Motion Should be Denied Because Westover's Gas Systems Meet the Definition of "Master Meter System"

A. Westover's Claimed Reservation of Rights

76. The averments contained in this paragraph contain only Westover's characterization of I&E's position. To that end, they are denied. By way of further response, I&E's Complaint and Reply to New Matter speaks for themselves, and any interpretation or characterization thereof is denied.

77. Admitted in part, denied in part. It is admitted that Westover offered arguments but it is denied that they are determinative. By way of further response, Westover's Petition and other pleadings speak for themselves, and any interpretations or characterization thereof is denied.

78. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is admitted that Westover is requesting dismissal of I&E's Complaint but it is denied that such relief is appropriate or warranted.

B. Westover is a “Pipeline Operator” Pursuant to Act 127 as it Operates a “Master Meter System” as Defined in the Federal Pipeline Safety Laws

79. Denied. The averment states a conclusion of law to which no response is required.

To the extent a response is deemed to be required, Act 127 speaks for itself, and any interpretation or characterization thereof is denied.

80. Denied. The averment states a conclusion of law to which no response is required.

To the extent a response is deemed to be required, Act 127 speaks for itself, and any interpretation or characterization thereof is denied.

81. Admitted in part, denied in part. By way of further response, I&E’s Complaint speaks for itself, and any interpretation or characterization thereof is denied.

82. Admitted. By way of further response, Act 127 speaks for itself, and any interpretation or characterization thereof is denied.

83. Admitted. By way of further response, 49 CFR § 191.3 speaks for itself, and any interpretation or characterization thereof is denied.

C. The Gas Facilities at Westover’s Apartment Complexes Meet the Definition of “Master Meter System”

84. Admitted in part, denied in part. It is admitted that Westover is arguing that its Systems do not fall within the definition of a “master meter system” but it is denied that Westover’s position has any merit. By way of further response, Westover meets the definition of a “master meter system” because its gas facilities are located entirely within a definable area, i.e., the apartment complex.

85. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same are therefore denied.

86. Admitted. By way of further response, 49 CFR § 191.3 speaks for itself, and any interpretation or characterization thereof is denied.

87. Upon information and belief, admitted. By way of further response, Exhibit 10 speaks for itself, and any interpretation or characterization thereof is denied.

88. Denied. I&E is without knowledge sufficient to form a belief as to the outcome of any research that Westover may have performed, and therefore its representations of same are denied. By way of further response, while PHMSA interpretations have not specifically addressed the phrase “within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex,” PHMSA interpretations can provide guidance on what has previously been determined to be a master meter system. For example, PHMSA has issued interpretations finding an apartment complex,¹¹ a housing development,¹² and a mall complex¹³ to be master meter systems.

89. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, the cases cited speak for themselves, and any interpretation or characterization thereof is denied.

90. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, it is not erroneous for PHMSA or the Commission to use plain language interpretation in determining that “within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex” means that the definable area can include an apartment complex, i.e., that an apartment complex, mobile home park, or housing project are examples of a definable area but are not the only examples of a definable area.

Moreover, prior to the enactment of Act 127, the Secretary of Transportation submitted a report to Congress detailing how master meter systems include those distribution systems which

¹¹ PHMSA Interpretation PI-11-0014 (March 27, 2012) and (August 27, 2012).

¹² PHMSA Interpretation PI-01-0113 (June 25, 2001).

¹³ PHMSA Interpretation PI-16-0012 (December 6, 2016).

purchase natural gas and resell such gas to consumers in connection with rental, leasing, or management of real property.¹⁴ The Report continues to state that master meter systems exist at a variety of locations, including apartment complexes.¹⁵ Most importantly, Westover's need to argue the merits of its position based on principles of statutory construction exemplifies that summary judgment is not appropriate here.

91. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. Most importantly, Westover's need to argue the merits of its position based on principles of statutory construction exemplifies that summary judgment is not appropriate here.

92. Admitted in part, denied in part. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. It is admitted that the definition of the adjective version of "within," as provided in the Merriam-Webster Dictionary, is "being inside:enclosed." By way of further response, "within" is "used as a function word to indicate enclosure or containment," or "to indicate situation or circumstance in the limits," which demonstrate that the pipeline system for distributing gas must be located in a definable area, such as an apartment complex.¹⁶ Most importantly, Westover's need to argue the merits of its position based on principles of statutory construction exemplifies that summary judgment is not appropriate here.

93. Upon information and belief, admitted.

94. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, I&E

¹⁴ See *Assessment of the Need for an Improved Inspection Program for Master Meter Systems*, Report of the Secretary of Transportation to Congress, prepared pursuant to Section 108 of Public Law 100-561, January 2002 (attached as Attachment E to I&E's Answer in Opposition to Westover's Petition for Declaratory Order) (hereinafter "Report").

¹⁵ *Id.*

¹⁶ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/within>.

disagrees that the definition of “master meter system” requires the gas facilities to be located partly within and partly outside the apartment complex. To the contrary, the plain language of the definition states that the gas system must be located within a definable area, such as an apartment complex.

95. Admitted in part, denied in part. Upon information and belief, it is admitted that the referenced Frequently Asked Questions (“FAQs”) document existed on the Commission’s website and is dated February 2014. By way of further response, it is denied that the FAQs document is controlling or that Westover’s interpretation of it is accurate. The FAQs are not regulation, statute, case law, policy, or any other legal authority by which the Commission is required to interpret and follow. Moreover, the quoted section “ultimate consumers who own service lines on their real property (including master meter systems serving their own property)” is the correct interpretation of Section 191.3. Specifically, it is true that master meter system operators who service their own property, i.e., are the ultimate consumers, are not considered master meter systems. An example of a master meter system which is not a pipeline operator is as follows. Mr. Smith owns a business which includes an office and two (2) warehouses, all located in a definable area, i.e., the business complex. The local natural gas distribution company provides gas to one meter connected to the office building. The gas service then flows through underground piping to provide service to each of the warehouses located within the business complex. Mr. Smith purchases the gas from the local natural gas distribution company and utilizes the gas service to provide heat and hot water service to all three buildings. In this situation, while Mr. Smith’s gas configuration is a master meter system in the truest sense, he is not considered a master meter system subject to federal safety regulations as a pipeline operator because Mr. Smith purchases the gas and is the ultimate consumer. Moreover, Part 191.3 does not include any requirement that the master meter system provides service to property owned by

a third party.

The Commission has previously reviewed and approved settlement agreements involving master meter systems. *See Pa. Pub. Util. Comm'n v. Brookhaven MHP Management, LLC, Meadowview Management, LLC, Mill Creek MHP Management, LLC, Northwood Manor Management, LLC, and ATG Properties, LLC d/b/a Greenleaf Gas Company*, Docket Nos. C-2017-2613983; C-2017-2613984; C-2017-2613985; C-2017-2613986, and C-2017-2613987 (Opinion and Order dated August 23, 2018) (Commission approved settlement whereas company who owned four (4) mobile home parks was operating as a master meter system but failed to register as an Act 127 pipeline operator); *Pa. Pub. Util. Comm'n v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Order dated August 11, 2016, Initial Decision dated June 7, 2016) (Commission approved settlement whereas company owned and operated a propane distribution system that served a residential mobile home community where an explosion occurred, resulting in one fatality, one injured person, and substantial property damage.); and *Pa. Pub. Util. Comm'n v. Bushkill Group, Inc.*, Docket No. C-2015-2512950 (Final Order dated November 30, 2018, Initial Decision dated October 9, 2018) (Commission approved settlement whereas company owned and operated timeshare and vacation rental villas which used a propane distribution system to service the timeshare and rental villas, and had failed to register as an Act 127 pipeline operator.). While I&E acknowledges that settlements are not binding, the settlements do demonstrate that the Commission has acknowledged and confirmed its jurisdiction over master meter systems, particularly those master meter systems which own and operate pipeline systems within a definable area that provide gas service to the ultimate user, i.e., a specific class of persons.

In reference to Westover's footnote, the standard and analysis for a public utility versus a master meter system are not comparable. Specifically, it is I&E's position that Westover does not

meet the definition of public utility as Westover does not offer gas service “to or for the public for compensation.” 66 Pa.C.S. § 102. Rather, the only individuals who demand gas service are those in the landlord-tenant relationship and not the public at large. *See Drexelbrook Associates v. Pa. Pub. Util. Comm’n*, 212 A.2d 237 (Pa. 1965); *see also Warwick Water Works, Inc. v. Pa. Pub. Util. Comm’n*, 699 A.2d 770 (Pa. 1997), *Collazo v. Stillwater Sewer Corporation*, Docket No. C-20066892 (Order entered January 28, 2008), and *Petition of Republic Development Corporation for a Declaratory Order that the Provision of Water Service to a Small, Defined, Privileged and Limited Group Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2016-2576068 (Order entered March 16, 2017) (Well-settled proposition that if a utility lacks the ability to control or select the occupants of the dwellings or structures connected to its system, the utility service is being provided to an open class of persons, i.e., the public.). To the contrary, the definition of master meter system does not include such requirement; instead, it focuses on the location of the pipeline system, i.e., within a definable area, who is purchasing the gas, and who is ultimately using the gas service. 49 CFR § 191.3.

96. Admitted in part, denied in part. It is admitted that Westover operates gas systems which are located within the apartment complex. By way of further response, as explained in more detail in Paragraph 70, one of the residential buildings which is a part of Carlisle Park Apartments is accessible by crossing a public street. The Westover-owned pipeline facilities connects to the NGDC-owned meter on one side of the street and then connects to the Westover-owned regulator located outside the residential building on the other side of the street. Further, it is denied that Westover is not a master meter system.

97. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, the

Uniform Construction Code and International Fuel Gas Code speak for themselves, and any interpretation or characterization thereof is denied. To the contrary, public safety will be compromised by allowing Westover's rather backward interpretation to stand as these unsafe, uninspected, non-maintained systems will continue in existence until such time a failure occurs. Notably, Westover speculates that enforcing federal pipeline safety laws will conflict with the Uniform Construction Code but provides no examples of such conflict. Even assuming, arguendo, a conflict may exist (it does not), the conflict would be a disputed legal issue that makes summary judgment inappropriate here.

98. Denied. The averment states Westover's policy argument to which no response is required. To the extent a response is deemed to be required, it is denied.

99. Admitted.

100. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, Westover operates master meters systems and is subject to the Commission's jurisdiction.

101. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. Instead, the Commission's prior determinations issued in this case, as well as Westover's demonstrated need to advance its position with arguments hinging on statutory construction and policy arguments, make it clear that both issues of material fact and law exist in this case. For these reasons, summary judgment is not appropriate or warranted here.

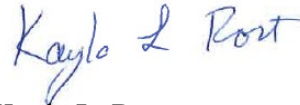
III. Conclusion and Request for Relief

Denied. The averment sets forth a conclusion and request for relief to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, Westover's Motion should be denied because genuine issue of material facts

and law exist.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission deny the Motion for Summary Judgment filed by Westover Property Management Company, L.P. d/b/a Westover Companies.

Respectfully submitted,



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Date: March 2, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIFICATION

I, Scott Orr, Fixed Utility Valuation Engineer – 3, 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: March 2, 2023



Scott Orr
Fixed Utility Valuation Engineer – 3
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket Nos. C-2022-3030251;
	:	P-2021-3030002
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 **Bureau of Investigation and Enforcement’s Answer in Opposition to the Motion for Summary Judgment of Westover Property Management Company, L.P. d/b/a Westover Companies**, 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:

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Dated: March 2, 2023