



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 13, 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
Joint Petition for Partial Settlement

Dear Secretary Chiavetta:

Enclosed please find the **Joint Petition for Partial Settlement** and accompanying documents filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") and Westover Property Management Company, L.P. d/b/a Westover Companies ("Westover") in the above-referenced matter:

Attachment A - Joint Stipulation of Facts
Attachment B - Joint Chart of Apartment Complexes
Attachment C - Joint Proposed Conclusions of Law
Attachment D - Joint Proposed Ordering Paragraphs
Attachment E - I&E's Statement in Support
Attachment F - Westover's Statement in Support

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

Enclosures

cc: Per Certificate of Service
Michael L. Swindler, Deputy Chief Prosecutor (via email - mwindler@pa.gov)
Scott B. Granger, Prosecutor (via email- sgranger@pa.gov)

**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 | : | |

JOINT PETITION FOR PARTIAL SETTLEMENT

I. SUMMARY

1. This Joint Petition for Partial Settlement (“Partial Settlement”) provides a process for resolving all issues arising out of the Petition for Declaratory Order (as amended, the “Petition”) filed by Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) at Docket No. P-2021-3030002 and the Formal Complaint (the “Complaint”) filed by the Bureau of Investigation and Enforcement (“I&E”) at Docket No. C-2022-3030251.

II. PROCEDURE

2. I&E and Westover (collectively, the “Parties”) agree to submit this Partial Settlement, a Joint Stipulation of Facts (which is attached and herein incorporated as “Attachment A”), a Joint Chart of Apartment Complexes (which is attached and herein incorporated as “Attachment B”), Joint Proposed Conclusions of Law (which is attached and herein incorporated as “Attachment C”), Joint Proposed Ordering Paragraphs (which is

attached and herein incorporated as “Attachment D”), and Statements in Support of the Partial Settlement (which are attached and herein incorporated as “Attachment E” and “Attachment F”), to the Deputy Chief Administrative Law Judge (“ALJ”). The Partial Settlement resolves certain issues but preserves other issues for litigation through briefing.

3. In order to effectuate the Partial Settlement, the Parties request that the ALJ issue a Recommended Decision or an Initial Decision approving the Partial Settlement without modification, and resolving the Litigated Issues (as defined in Section III, Paragraph 6). If the ALJ approves the Partial Settlement without modification, the Parties waive their right to file Exceptions on the portion of the Recommended Decision or Initial Decision pertaining to the Partial Settlement. However, any Party may file Exceptions and/or Replies to Exceptions, in accordance with the Commission’s Rules of Administrative Practice and Procedure, on the portion of the Recommended Decision or Initial Decision resolving the Litigated Issues.

4. Following the issuance of a Commission Opinion and Order, any Party may file a Petition for Reconsideration or seek such other relief as may be allowed by law.

5. If the ALJ’s Recommended or Initial Decision, or the Commission’s Opinion and Order, does not approve the Partial Settlement without modification, any party may give notice to the other party that it is withdrawing from the Partial Settlement, including the Joint Stipulation of Facts and the Joint Chart of Apartment Complexes. Such notice must be in writing and must be given within five (5) business days of the issuance of the ALJ’s decision or the entry of the Commission’s Opinion and Order. The consequence of any party withdrawing from this Partial Settlement is that all issues described in the case will be fully litigated, (including full evidentiary hearings regarding the facts to which the parties previously stipulated) unless otherwise stipulated between the Parties, and all obligations of the Parties to

each other are terminated and of no force and effect. In the event that a Party withdraws from this Partial Settlement as set forth in this paragraph, I&E and Westover jointly agree that nothing in this Partial Settlement shall be construed as an admission against or as prejudice to any position which any party might adopt during the subsequent litigation of this case.

III. DELINEATION OF THE ISSUES

6. The Parties agree to submit the questions of law identified below (the “Litigated Issues”) to the ALJ:

- A. Whether Act 127 applies to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a natural gas distribution company (“NGDC”)?
- B. Whether the natural gas system at any apartment complex identified in the Joint Stipulation of Facts is a “master meter system” as defined in 49 CFR § 191.3?
 - 1. Are Westover’s gas facilities limited to the apartment complex?
 - 2. Does Westover purchase gas for resale through a distribution system and supply it to the ultimate consumer?
 - 3. Who is the ultimate consumer of the gas service at the apartment complexes identified in the Joint Stipulation of Facts?
 - 4. Does a natural gas system that is exclusively or primarily comprised of interior piping satisfy the definition of a “master meter system”?

5. Under what circumstances does a natural gas system which includes a sub-meter owned by the apartment complex satisfy the definition of a “master meter system”?
6. At which properties (if any) does Westover distribute gas “in or affecting interstate or foreign commerce”?
7. The Parties agree that the following issues shall be resolved as follows:
 - A. Issues in the Complaint
 1. Westover is not a pipeline operator, pursuant to Act 127, with respect to the gas systems at the following apartment complexes:
 - a. Paoli Place (South Valley Townhomes); and
 - b. Willow Run.
 2. Westover should not be ordered to pay a civil penalty due to (a) Westover’s reliance on the “Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions” document posted on the Commission’s website; (b) the specific, unique facts and circumstances presented in this matter; (c) I&E modifying its litigation position to no longer seek a civil penalty in this proceeding; and (d) Westover voluntarily agreeing to implement and follow the terms outlined below in Section IV beginning on October 1, 2023, even in the absence of a Commission Order approving the Partial Settlement by that date.

B. Issues in the Petition

1. Westover's Act 127 Registration is null and void *ab initio*, in its entirety, if Act 127 does not apply to an apartment complex which owns or operates natural gas facilities downstream from an NGDC.
2. In the alternative, Westover's Act 127 Registration is null and void *ab initio* as to any system (or any portion of a system) that does not satisfy the definition of a "master meter system" in 49 CFR § 191.3.

IV. PARTIES' ACTIONS PENDING A FINAL, UNAPPEALABLE DECISION ON THE LITIGATED ISSUES

8. Beginning on October 1, 2023, and continuing until a Commission or court Order regarding the Litigated Issues becomes final and unappealable, Westover agrees to the following:

- A. Westover will have at least one employee complete Operator Qualification training and Westover will also provide I&E with the name of the trained employee and evidence of the completed training. Westover also agrees to hire, retain, or contract with at least one (1) third-party contractor or consultant who has received Operator Qualification training by others. Westover's employee and hired, retained, or contracted entity should be capable of assisting with safe operations in addition to advising on procedures for leak and failure response(s), and

should also be able to respond to any gas-related incident or leak at any of Westover's apartment complexes.

1. Westover agrees to, within forty-five (45) days of October 1, 2023, complete the following:
 - i. Confirm and/or keep records which confirm that the Westover employee and the third-party contractor or consultant are qualified;
 - ii. Provide I&E with a list of other third-party contractors or consultants available to Westover in the event that its designated Operator Qualified employee or third-party contractor or consultant leaves employment or is otherwise unavailable;
 - iii. Identify the tasks the employee and third-party contractor or consultant are qualified to complete; and
 - iv. Provide training or opportunities for training, as appropriate, for the employee to maintain his/her qualification status.
 2. At each apartment complex or commercial property involved in this litigation, Westover will post the contact information for the OQ certified employee and contractor in the office.
- B. If any individual detects the odor of gas or reasonably suspects a natural gas leak at any of the apartment complexes identified in the attached Joint Stipulation of Facts, Westover shall promptly report the odor of gas

and/or suspected natural gas leak to the NGDC, and I&E's Pipeline Safety Division ("Pipeline Safety").

1. Notifications to Pipeline Safety should not impede or delay any onsite safety efforts.
2. If the odor of gas or suspected leak is located indoors, Westover shall also immediately report the odor of gas and/or suspected natural gas leak to the local fire company and take immediate action to evacuate all persons from the building.
3. If the NGDC determines that the leak is on Westover's facilities indoors, Westover, with the assistance of emergency responders, will promptly evacuate the building (if it was not previously evacuated) and contact the Operator Qualified individual/company/employee described in Paragraph 8(A) for repair. Westover shall not permit tenants or others to reenter the building until such time as the necessary repairs have been made and clearance has been given by the fire company (if the fire company is on-site), the NGDC, or an appropriate government official.

- C. Westover agrees to create and distribute educational materials to the tenants of the apartment complexes identified in the Joint Stipulation of Facts once a year, and as part of its welcome packet, and to post the educational materials in any community laundry room where natural gas

is used. The topics of these materials will include but are not limited to the following:

1. General notification that gas facilities are on the property;
2. How to recognize and respond to the odor of gas; and
3. How to receive additional information/who to contact.

D. With respect to the apartment complexes identified in the attached Joint Stipulation of Facts, Westover agrees to continue its efforts to work with the local NGDCs to move the meters, regulators, and over-pressure protection devices from inside an apartment complex building to outside the building, while protecting these devices.

E. Westover agrees to identify above-ground valve(s) used in an emergency, identify the location of the valve(s), and learn how to properly operate the valve(s). In the event Westover determines that the aforementioned valve(s) is inoperable, Westover shall endeavor to make the appropriate corrective action(s) to render the valve operable.

F. Westover agrees to provide documentation evidencing that it is a member of the Pennsylvania One Call System.

9. Until a Commission or court Order regarding the Litigated Issues becomes final and unappealable, I&E agrees to the following:

A. I&E will not file another complaint alleging that any of the following is a pipeline operator, as that term is defined in Act 127: (a) Westover, (b) the owner of any of the apartment complexes identified in the incorporated Joint Stipulation of Facts, (c) the owner or operator of

any commercial property identified on Westover’s Act 127 Registration for 2022, or (d) the owner/operator of any apartment complex acquired by an affiliate of Westover within three years of the date of entry of the ALJ’s Recommended Decision or Initial Decision approving this Partial Settlement, without modification.

V. PARTIES’ ACTIONS AFTER A FINAL, UNAPPEALABLE DECISION IS RENDERED ON THE LITIGATED ISSUES

10. If a final, unappealable Commission or court order on the Litigated Issues determines that: (i) Act 127 does not apply to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a NGDC, or (ii) none of the apartment complexes identified on the attached Joint Stipulation of Facts is a “master meter system” as defined in 49 CFR § 191.3, then Westover’s obligations under Paragraph 8 of this Partial Settlement shall cease immediately and Westover shall have no obligation to comply with the requirements of Act 127 or the federal pipeline safety laws with regard to the apartment complexes identified in the attached Joint Stipulation of Facts.

11. If a final, unappealable Commission or court order on the Litigated Issues determines that: (i) Act 127 applies to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a NGDC, and (ii) at least one of the apartment complexes identified on the attached Joint Stipulation of Facts is a “master meter system” as defined in 49 CFR § 191.3, then Westover agrees to the following for those systems that are found to be “master meter systems”:

- A. Within sixty (60) days of the date that the Commission’s or court’s decision on the Litigated Issues becomes final and unappealable,

Westover agrees to provide its implementation plan to become compliant with Part 192 and Act 127 to Pipeline Safety for review.

- B. Westover and Pipeline Safety will meet and discuss the implementation plan proposed by Westover and will endeavor to reach an agreement on a reasonable time-frame, not to exceed four (4) years, for Westover to become compliant.
- C. Within one hundred twenty (120) days of the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, Westover agrees to provide its procedural manual for operations, maintenance, and emergencies to Pipeline Safety for review.
- D. Beginning on the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, and for subsequent years, Westover agrees to submit reports to the Commission, pursuant to 58 P.S. § 801.503(d), as an Act 127 pipeline operator on an annual basis.
- E. Beginning on the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, and for subsequent years, Westover agrees to file and pay annual assessments to the Commission, pursuant to 58 P.S. § 801.503(b).
- F. If Westover timely submits the compliance filings described in Paragraph 11(A)-(C), the Complaint in this matter shall be closed. The closure of this matter shall not impinge upon I&E's ability to file a complaint in the event Westover fails to meet the obligations and

deadlines outlined in the compliance filings or for any other violation(s) of Act 127 or Part 192.

12. After the Commission's or court's Order on the Litigated Issues becomes final and unappealable, I&E shall apply the guidance from the Commission's decision when deciding whether to file a complaint against Westover or any affiliate of Westover regarding any apartment complex or commercial property that is not identified in the attached Joint Stipulation. In the event that I&E files a complaint against Westover or any affiliate of Westover regarding any apartment complex or commercial property that is not identified in the attached Joint Stipulation, the Parties reserve the right to assert all claims and defenses in that litigation.

13. Within thirty (30) days of the date that the Commission's or court's decision on the Litigated Issues becomes final and unappealable, Westover agrees to provide a list of any apartment complexes or commercial properties acquired by Westover and/or its affiliates after November 1, 2020.

VI. CONDITIONS OF PARTIAL SETTLEMENT

14. This Partial Settlement Agreement reflects the Parties' compromise and settlement of disputed claims and question of material facts. Its constituent provisions shall not be construed as or deemed to be evidence of an admission of guilt or liability.

15. The Parties jointly acknowledge that approval of this Partial Settlement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Commission will serve the public interest by adopting this Partial Settlement.

16. This Partial Settlement avoids the time and expense of evidentiary hearings in this matter before the Commission as well as the limitation of disputed issues. The Parties recognize that by resolving the issues identified in this Settlement and negating the need for evidentiary hearings they will conserve their own resources and costs, as well as the Commission's, in a manner that does not jeopardize the resolution of the disputed issues that remain. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the identified disputed issues and question of material facts through this Partial Settlement.

17. The Parties further agree that the facts agreed-to in the Joint Stipulation are sufficient to find that the Partial Settlement is in the public interest.

18. The benefits and obligations of this Partial Settlement shall be binding upon the successors and assigns of the Parties to this Partial Settlement.

19. This Partial Settlement may be signed in counterparts and all signatures attached hereto will be considered as originals.

****THIS SECTION INTENTIONALLY LEFT BLANK****

Respectfully submitted,

Kayla L Rost

Kayla L. Rost, Prosecutor
Scott B. Granger, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-1888
karost@pa.gov
sgranger@pa.gov

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

Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
jnase@cozen.com

Respectfully submitted,

Kayla L. Rost, Prosecutor
Scott B. Granger, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-1888
karost@pa.gov
sgranger@pa.gov



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



Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
jnase@cozen.com

Attachment A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

JOINT STIPULATION OF FACTS

Parties

1. The Commission’s Bureau of Investigation and Enforcement (“I&E”) is the bureau established to take enforcement action against public utilities and other entities subject to the Commission’s jurisdiction. 66 Pa. C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).
2. Westover Property Management Company, L.P. d/b/a/ Westover Companies (“Westover”), with a business address of 550 American Avenue, Suite 1, King of Prussia, PA 19406, is a property management company that operates apartment complexes and commercial properties in Pennsylvania.

Background

3. The Parties stipulate to the entry into the record of the following pleadings (including all attachments and exhibits):
 - a. The Petition for Declaratory Order, filed by Westover on December 13, 2021;
 - b. The Answer in Opposition to the Petition for Declaratory Order, filed by I&E on January 3, 2022;
 - c. The Complaint filed by I&E on January 3, 2022;
 - d. The Answer to the Complaint, and New Matter, filed by Westover on January 25, 2022;
 - e. The Reply to New Matter, filed by I&E on February 14, 2022;
 - f. The Amended Petition for Declaratory Order, filed by Westover on May 16, 2022;
 - g. The Answer in Opposition to the Amended Petition for Declaratory Order, filed by I&E on June 6, 2022;
 - h. The Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding, filed by Westover on October 28, 2022;
 - i. The Brief in Support of the Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding, filed by Westover on November 7, 2022;
 - j. The Brief in Opposition to the Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding, filed by I&E on November 7, 2022;
 - k. The Motion for Summary Judgment, filed by Westover on February 10, 2023;
and

1. The Answer in Opposition to the Motion for Summary Judgment, filed by I&E on March 2, 2023.
4. The Parties stipulate to the entry into the record of the following testimony (including all attachments and exhibits):
 - a. Westover Statement No. 1, Direct Testimony of Peter Quercetti, including Exhibits PQ-1 through PQ-30;
 - b. Westover Statement No. 2, Direct Testimony of Alexander Stefanelli, including Exhibits AS-1 through AS-18;
 - c. Westover Statement No. 1-R, Rebuttal Testimony of Peter Quercetti (Proprietary Version), including Exhibits PQ-31 through PQ-37;
 - d. Westover Statement No. 1-R, Rebuttal Testimony of Peter Quercetti (Non-Proprietary Version), including Exhibits PQ-31 through PQ-37;
 - e. Westover Statement No. 2-R, Rebuttal Testimony of Alexander Stefanelli, including Exhibits AS-19 through AS-25;
 - f. I&E Statement No. 1, Direct Testimony of Scott Orr (Proprietary Version), including I&E Exhibits 1-58;
 - g. I&E Statement No. 1, Direct Testimony of Scott Orr (Non-Proprietary Version), including I&E Exhibits 1-58; and
 - h. I&E Statement No. 1-R, Rebuttal Testimony of Scott Orr, including I&E Exhibit 59.

The Gas Configurations at Each Property

5. The local natural gas distribution companies which provide natural gas service to Westover's apartment complexes, as identified below, are PECO Energy Company ("PECO") and UGI Corporation ("UGI").

Black Hawk Apartments

6. Black Hawk Apartments consists of fourteen (14) separate residential buildings which house a total of 202 units and/or individual apartments.
7. Gas service is delivered from PECO to Westover at a meter located outside each apartment building.
8. The gas facilities at Black Hawk Apartments are located within and are limited to the apartment complex. Westover's gas facilities consist of exterior and interior piping.
9. The gas facilities service a central boiler and hot water heater, which uses the gas purchased by Westover; heat and hot water is distributed to building occupants. Westover does not distribute gas to building occupants at this apartment complex.
10. The building occupants use electricity for cooking.
11. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Carlisle Park Apartments

12. Carlisle Park Apartments consists of one (1) office building and twenty-six (26) separate residential buildings which house a total of 208 units and/or individual apartments.
13. Gas is delivered by UGI to Westover at one rotary meter located on the property. The gas is then delivered to each apartment building through underground and exterior gas

pipng. The gas pipe continues into each building and branches out to each apartment unit.

14. The gas facilities at Carlisle Park are located within and are limited to the apartment complex, noting that one residential building is accessible by crossing a public roadway located within the apartment complex, and thus the gas facilities traverse under the public roadway via underground piping to that residential building. Westover's gas facilities consist of underground, exterior, and interior piping.
15. The gas service is used by the building occupants for heating and cooking.
16. Westover purchases the gas from UGI and then charges the building occupants for the gas through rents.

Concord Court Apartments

17. Concord Court Apartments consists of seven (7) residential buildings which house a total of 84 units and/or individual apartments.
18. Gas service is delivered from PECO to Westover at a meter located outside each apartment building.
19. The gas facilities at Concord Court Apartments are located within and are limited to the apartment complex. Westover's gas facilities consist of exterior and interior piping.
20. The gas facilities service a central boiler and hot water heater, which uses the gas purchased by Westover. Westover distributes heat and hot water to building occupants. Westover does not distribute gas to building occupants at this apartment complex.
21. Building occupants use electricity for cooking.
22. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents. Specifically, building occupants are billed based on the square

footage of the building occupant's unit and/or square footage of the building occupant's unit and the number of the persons residing in the unit.

Country Manor Apartments

23. Country Manor Apartments is comprised of nine (9) residential buildings, seven (7) of which are comprised of two buildings, resulting in a total of sixteen (16) buildings. Some of the buildings have twenty-six (26) units, while others have twelve (12) units, resulting in a total of 200 units and/or individual apartments.
24. PECO delivers gas to Westover at meters located in the basements of the buildings or on the exterior of the buildings.
25. The gas facilities at Country Manor Apartments are located within and limited to the apartment complex. Westover's gas facilities consist primarily of interior piping; the only exterior piping is between the outside gas meter and the exterior wall of the building.
26. The gas facilities service a central boiler and hot water heater, which uses some of the gas and distributes heat and hot water to the building occupants. Some gas is distributed to the building occupants' individual units for cooking.
27. The building occupants all share several laundry rooms that have gas-operated dryers that the building occupant must pay to use.
28. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Fox Run Apartments

29. Fox Run consists of six (6) residential buildings, which house a total of 196 units and/or individual apartments, and a barn.

30. PECO delivers gas to Westover at meters located on the exterior of each apartment building. Westover uses some of the gas to produce hot water, and distributes the rest to building occupants. The gas is piped to a Westover-owned sub-meter at each unit.
31. The gas facilities at Fox Run Apartments are located within and are limited to the apartment complex. Westover's gas facilities are primarily located inside the buildings; the only exterior piping is between the outside gas meters and the exterior wall of the building.
32. Building occupants use gas to produce heat, which is controlled by the building occupant at each unit.
33. Westover purchases the gas from PECO. Building occupants are billed for the gas they use based upon an actual reading from the sub-meter; building occupants are billed for the gas that Westover uses through rent.

Gladstone Towers Apartments

34. Gladstone Towers consists of two (2) residential buildings which houses a total of 121 units and/or individual apartments.
35. PECO delivers gas to two (2) meters located outside of Building AB, which provides gas service to both buildings, Building AB and Building CD.
36. The gas is piped to Building CD through underground and exterior piping.
37. The gas is then piped inside each building to a Westover-owned sub-meter.
38. The gas facilities at Gladstone Tower Apartments are located within and are limited to the apartment complex. Westover's gas facilities consist of underground, exterior, and interior piping, and sub-meters.

39. At each building, Westover uses some of the gas to produce hot water, which is distributed to building occupants. The remainder of the gas is distributed to each unit for heating, cooking, and running dryers.
40. Westover purchases the gas from PECO and bills the building occupants for the gas they use based upon actual meter readings from the sub-meter. Westover bills the building occupants for the gas it uses through rents.

Hillcrest Apartments

41. Hillcrest Apartments consists of seven (7) separate residential buildings, which house a total of 84 units and/or individual apartments.
42. PECO delivers gas to one rotary meter which provides gas service to the entire apartment complex.
43. The gas is piped through underground and exterior piping to each building. The gas is then piped through interior piping to each unit in the apartment building to service a gas-run furnace.
44. The gas facilities at Hillcrest which distribute gas to the building occupants are located within and are limited to the apartment complex, and Westover's gas facilities consist of underground, exterior, and interior piping.
45. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Jamestown Village

46. Jamestown Village Apartments consists of twenty-three (23) residential buildings which house a total of 253 units and/or individual apartments.

47. PECO delivers gas to multiple meters located outside each apartment building. The gas is then piped from exterior piping to interior piping which connects to a sub-meter in each unit's mechanical space.
48. The gas facilities at Jamestown Village which distribute gas to the building occupants are limited to the apartment complex, and Westover's gas facilities consist of exterior piping, interior piping, and sub-meters.
49. Westover purchases the gas from PECO and bills the tenant based upon an actual meter reading from the sub-meter.

Lansdale Village

50. Lansdale Village Apartments consists of three (3) residential buildings which house a total of 41 units and/or individual apartments.
51. PECO delivers gas to a single meter on the exterior of one residential building. Westover's gas facilities service a central boiler in one building, which uses the gas purchased by Westover; heat and hot water is distributed to all three buildings for use by the building occupants. Building occupants use electricity for cooking.
52. The gas facilities at Lansdale Apartments are located within and are limited to the apartment complex. Westover does not distribute gas to building occupants at this apartment complex. Westover's gas facilities consist primarily of interior piping; the only exterior piping is between the outside gas meter and the exterior wall of the building.
53. Westover purchases the gas from PECO, and then bills the resident based upon an allocated basis related to the square footage of the unit and the number of persons residing in the unit.

Lansdowne Towers

54. Lansdowne Towers consists of five (5) residential buildings which house a total of 231 units and/or individual apartments.
55. PECO delivers gas to a single meter outside Building B. The gas is then piped through underground and exterior piping to the other buildings in the apartment complex. Westover uses some of the gas to produce hot water, which is distributed to building occupants. The remainder of the gas is distributed through interior piping to a sub-meter installed in each unit. The gas is used by building occupants for heating and coin-operated dryers.
56. The gas facilities at Lansdowne Towers Apartments are located within and are limited to the apartment complex, and Westover's gas facilities consist of underground piping, exterior piping, interior piping, and sub-meters.
57. Westover purchases the gas from PECO and bills building occupants for the gas they use based upon an actual meter reading from the sub-meter for the unit's usage. Westover bills building occupants through rents for the gas it uses to produce hot water.

Main Line Berwyn

58. Main Line Berwyn Apartments consists of one (1) office building and three (3) residential buildings which house a total of 180 units and/or individual apartments.
59. PECO delivers gas to a single meter located at Building A. The gas is then piped through underground and exterior piping to the other buildings, where it is then piped through interior piping to a sub-meter.

60. The gas facilities at Main Line Berwyn Apartments are located within and are limited to the apartment complex, and Westover's gas facilities consist of underground piping, exterior piping, interior piping, and sub-meters.
61. Building occupants use the gas for heating and cooking. Westover uses the gas to produce hot water, which is distributed to building occupants.
62. Westover purchases the gas from PECO and bills building occupants, for gas used by the building occupants, based upon an actual meter reading from the sub-meter for the unit's usage. Westover bills building occupants through rents for the gas it uses to produce hot water.

Mill Creek I

63. Mill Creek I consists of one (1) office and six (6) separate residential buildings which house a total of 174 units and/or individual apartments.
64. PECO delivers gas to a single rotary meter located on the property. The gas is then piped through underground and exterior piping to each building, where it is then piped through interior piping to a central boiler and to each unit in the apartment buildings.
65. The gas facilities at Mill Creek I are located within and are limited to the apartment complex, and Westover's gas facilities consist of underground, exterior, and interior piping.
66. Westover uses some of the gas (to produce heat and hot water, which is distributed to the building occupants) and building occupants use the remainder of the gas for cooking.
67. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Mill Creek II

68. Mill Creek II consists of three (3) separate residential buildings which house a total of 68 units and/or individual apartments.
69. PECO delivers gas to a meter located inside a mechanical room at each building.
70. The gas facilities at Mill Creek II are located within and are limited to the apartment complex, and Westover's gas facilities consist entirely of interior piping.
71. Westover uses some of the gas (to produce heat and hot water, which is distributed to the building occupants) and building occupants use the remainder of the gas for cooking.
72. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Norriton East

73. Norriton East Apartments consists of one (1) residential building which houses a total of 68 units and/or individual apartments.
74. PECO delivers gas to one rotary meter on the exterior of the building. The gas is then piped through exterior piping into the building and to an external emergency generator. The gas services a central boiler through interior piping.
75. The gas facilities at Norriton East are located within and limited to the apartment complex. Westover's gas facilities primarily consist of interior piping; the only exterior piping is (a) between the outside gas meter and the exterior wall of the building, and (b) between the exterior wall of the building and an emergency generator about 10 yards away from the building.

76. Westover uses some of the gas (to produce heat and hot water, which is distributed to the building occupants) and building occupants use the remainder of the gas for cooking and coin-operated dryers.
77. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Oak Forest

78. Oak Forest Apartments consist of seven (7) separate residential building which house a total of 143 units and/or individual apartments.
79. UGI delivers gas to one meter at the property. The gas is then piped through underground and exterior piping to the other residential buildings, and then through interior piping.
80. The gas facilities at Oak Forest are located within and limited to the apartment complex, and Westover's gas facilities consist of underground, exterior, and interior piping.
81. Westover uses some of the gas (to produce heat and hot water, which is distributed to building occupants) and building occupants use the remainder of the gas for cooking.
82. Westover purchases the gas from UGI and then charges the building occupants for the gas through rents.

Paoli Place

83. Paoli Place consists of three (3) separate apartment complexes: Paoli Place North located at 27 East Central Ave.; Paoli Place South located at 55 South Valley Road; and Paoli Place South Valley Townhomes located at 50 South Valley Road.
84. Paoli Place North consists of eighteen (18) residential buildings which house a total of 204 units and/or individual apartments.

85. At Paoli Place North, Buildings A-K, PECO delivers gas to a meter located inside each residential building, and is then piped through interior piping to a sub-meter located inside the building occupant's mechanical closet located outside the building occupant's unit/accessible from the building occupant's back porch area.
86. The gas facilities at Paoli Place North, Buildings A-K, are located within and are limited to the apartment complex, and Westover's gas facilities consist of interior piping and sub-meters.
87. Westover uses some of the gas (to produce hot water, which is distributed to the building occupants) and building occupants use the remainder of the gas for cooking and heating.
88. Westover purchases the gas from PECO and bills building occupants for the gas they use based upon an actual meter reading from the sub-meter for the unit's usage. Westover bills building occupants through rents for the gas it uses to produce hot water.
89. At Paoli Place North, Buildings L-R, PECO delivers gas to multiple meters located outside of each residential building. These meters provide gas service to the individual units.
90. The gas facilities at Paoli Place North, Buildings L-R are located within and are limited to the apartment complex.
91. Building occupants use gas for heat and hot water, and use electricity for cooking.
92. PECO bills the building occupants based upon an actual meter reading. Westover does not purchase gas at this apartment complex.

93. At Paoli Place South, Buildings A-D, PECO delivers gas to a meter located outside each of the residential buildings. Westover uses some of the gas. The remainder is piped through exterior piping to interior piping and ends at a sub-meter.
94. The gas facilities at Paoli Place South, Buildings A-D are located within and limited to the apartment complex. Westover's gas facilities primarily consist of interior piping and interior sub-meters; the only external piping is between the outside gas meters and the exterior wall of the building.
95. Westover uses some of the gas (to produce heat and hot water, which is distributed to the building occupants) and building occupants use the remainder of the gas for cooking.
96. Westover purchases the gas from PECO and bills the building occupants through rents for the gas it uses to produce hot water and heat. PECO bills the building occupants based upon an actual meter reading for gas used for cooking.
97. At Paoli Place South, Buildings E-H, PECO delivers gas to a meter located outside one of the residential buildings.
98. The gas facilities at Paoli Place South, Buildings E-H, are located in and are limited to the apartment complex, and Westover's gas facilities consist of exterior, interior, and underground piping.
99. Westover uses some of the gas (to produce heat and hot water, which is distributed to building occupants) and building occupants use the remainder of the gas for cooking.
100. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Park Court

101. Park Court consists of four (4) residential buildings which house a total of 66 units and/or individual apartments.
102. UGI delivers gas to meters located outside the buildings.¹ The gas is then piped through underground and exterior piping to the other two residential buildings, and then through interior piping.
103. The gas facilities at Park Court Apartments are located within and are limited to the apartment complex, and Westover's gas facilities consist of underground, exterior, and interior piping.
104. Westover uses some of the gas (to produce hot water, which is distributed to building occupants) and building occupants use the remainder of the gas for cooking, heating, and coin-operated dryers.
105. Westover purchases the gas from UGI, and then bills the building occupant based upon an allocated basis related to the square footage of the unit.

Valley Stream

106. Valley Stream Apartments consists of one (1) office, one (1) maintenance building, and twenty-two (22) residential buildings for a total of 242 units.
107. PECO delivers gas to two (2) meters located in the maintenance building. The gas is then piped through underground and exterior piping to each apartment building, and is then distributed through interior piping.

¹ The Parties note that the gas facilities at Park Court were modified during the pendency of this matter. Prior to the modification, UGI delivered gas to a meter located outside of two (2) of the four (4) residential buildings. The gas was the piped through underground and exterior piping to the other two (2) residential buildings.

108. The gas facilities at Valley Stream Apartments are located within and limited to the apartment complex, and Westover's gas facilities consist of underground, exterior, and interior piping.
109. Westover uses some of the gas (to produce hot water, which is distributed to building occupants) and building occupants use the remainder of the gas for cooking, heating, and dryers.
110. Westover purchases the gas from PECO and then charges the building occupants for the gas through rents.

Woodland Plaza

111. Woodland Plaza Apartments consists of seventeen (18) residential buildings and one (1) office building, which house a total of 144 units and/or individual apartments.
112. UGI delivers gas to a meter located outside each residential building. The gas is then piped through exterior piping to the building and then through interior piping to provide service to a central hot water heater and boiler system and to the individual units.
113. The gas facilities at Woodland Plaza Apartments are located within and are limited to the apartment complex. Westover's gas facilities primarily consist of interior piping; the only exterior piping is between the outside gas meter and the exterior wall of the building.
114. Westover uses some of the gas (to produce heat and hot water, which is distributed to building occupants) and building occupants use the remainder of the gas for cooking.
115. Westover purchases the gas from UGI, and then bills the building occupant based upon an allocated basis related to the square footage of the unit.

Attachment B

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

| Apartment Complex | Number of Buildings | Number of Units | NGDC | Location of NGDC Meter | Sub-meter? | Underground piping? | Exterior piping? | Longest single piece of exterior piping* | Interior piping? | Central heater or hot water system? | Heat | Hot Water | Cooking | Dryers | Misc. | Payment |
|--|-----------------------------|-----------------|------|-------------------------------------|-----------------|--|------------------|--|------------------|---|------|-----------|----------|--------|-------|---|
| Paoli Place- North (27 East Central Ave.,), Buildings A-K | | | PECO | inside buildings | yes | no | no | | yes | central boiler, heat provided by forced air | gas | gas | gas | | | Westover charges tenant based upon sub-meter reading and through rents |
| Paoli Place- North (27 East Central Ave.,), Buildings L-R | | 204 | PECO | multiple meters outside of building | no | yes | no | | yes | no | gas | gas | electric | | | PECO charges tenant based upon actual meter reading |
| Paoli Place- South (55 South Valley Road), Buildings A-D | 4 | | PECO | outside each building | yes, PECO-owned | no | yes | | yes | yes, heat provided by forced air | gas | electric | gas | | | tenant pays PECO based upon actual meter reading; PECO charges Westover, who charges tenant through rents |
| Paoli Place- South (55 South Valley Road), Buildings E-H | 4 | | PECO | outside of Building E | no | yes, however underground piping was removed as of April 27, 2023 | yes | | yes | yes, heat provided by hot water/steam | gas | gas | gas | | | PECO charges Westover, who charges tenant through rents |
| Park Court | 4 | 66 | UGI | outside each building | no | yes | yes | less than 15 feet | yes | hot water | gas | gas | gas | gas | | UGI charges Westover, who charges tenant through allocation |
| Valley Stream | 22, 1 office, 1 maintenance | 242 | PECO | 2 in maintenance building | no | yes | yes | | yes | hot water | gas | gas | gas | gas | | PECO charges Westover, who charges tenant through rents |
| Woodland Plaza | 18, 1 office | 144 | UGI | outside each building | no | no | yes | less than 10 feet | yes | yes, heat provided by hot water/steam | gas | gas | gas | | | UGI charges Westover, who charges tenant through allocation |

*not total footage of exterior piping; lack of measurement indicates extensive exterior piping

Attachment C

**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 | : | |

**JOINT PROPOSED CONCLUSIONS OF LAW
PERTAINING TO THE PARTIAL SETTLEMENT**

1. The Commission has jurisdiction to decide the instant Petition for Declaratory Order and Complaint. 66 Pa. C.S. §§ 701 and 331(f).
2. Commission policy promotes settlements. 52 Pa. Code § 5.231.
3. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.
4. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).
5. The Commission has a Statement of Policy listing the factors and standards for determining whether a civil penalty is appropriate. 52 Pa. Code § 69.1201.

6. The Partial Settlement is consistent with the Statement of Policy at 52 Pa. Code § 69.1201.

7. The Partial Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

Attachment D

**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 | : | |

**JOINT PROPOSED ORDERING PARAGRAPHS
PERTAINING TO THE PARTIAL SETTLEMENT**

1. That the following pleadings (including all attachments and exhibits) are entered into the record:
 - a. The Petition for Declaratory Order, filed by Westover on December 13, 2021;
 - b. The Answer in Opposition to the Petition for Declaratory Order, filed by I&E on January 3, 2022;
 - c. The Complaint filed by I&E on January 3, 2022;
 - d. The Answer to the Complaint, and New Matter, filed by Westover on January 25, 2022;
 - e. The Reply to New Matter, filed by I&E on February 14, 2022;
 - f. The Amended Petition for Declaratory Order, filed by Westover on May 16, 2022;

- g. The Answer in Opposition to the Amended Petition for Declaratory Order, filed by I&E on June 6, 2022;
- h. The Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding, filed by Westover on October 28, 2022;
- i. The Brief in Support of the Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding, filed by Westover on November 7, 2022;
- j. The Brief in Opposition to the Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding, filed by I&E on November 7, 2022;
- k. The Motion for Summary Judgment, filed by Westover on February 10, 2023; and
- l. The Answer in Opposition to the Motion for Summary Judgment, filed by I&E on March 2, 2023.

2. That the following testimony (including all attachments and exhibits) are admitted into the record:

- a. Westover Statement No. 1, Direct Testimony of Peter Quercetti, including Exhibits PQ-1 through PQ-30 (with verification);
- b. Westover Statement No. 2, Direct Testimony of Alexander Stefanelli, including Exhibits AS-1 through AS-18 (with verification);
- c. Westover Statement No. 1-R, Rebuttal Testimony of Peter Quercetti (Proprietary Version), including Exhibits PQ-31 through PQ-37 (with verification);

- d. Westover Statement No. 1-R, Rebuttal Testimony of Peter Quercetti (Non-Proprietary Version), including Exhibits PQ-31 through PQ-37 (with verification);
 - e. Westover Statement No. 2-R, Rebuttal Testimony of Alexander Stefanelli, including Exhibits AS-19 through AS-25 (with verification);
 - f. I&E Statement No. 1, Direct Testimony of Scott Orr (Proprietary Version), including I&E Exhibits 1-58 (with verification);
 - g. I&E Statement No. 1, Direct Testimony of Scott Orr (Non-Proprietary Version), including I&E Exhibits 1-58 (with verification); and
 - h. I&E Statement No. 1-R, Rebuttal Testimony of Scott Orr, including I&E Exhibit 59 (with verification).
3. That the Joint Stipulation of Facts is reasonable and will be approved.
 4. That the Joint Petition for Partial Settlement is approved as submitted, including all terms and conditions thereof, without modification.
 5. That Westover is not a pipeline operator, pursuant to Act 127, with respect to the gas systems at the following apartment complexes:
 - a. Paoli Place (South Valley Townhomes); and
 - b. Willow Run.
 6. That Westover will not be ordered to pay civil penalty in this matter, due to (a) Westover's reliance on the "Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions" document posted on the Commission's website; (b) the specific, unique facts and circumstances presented in this matter; (c) I&E modifying its litigation position to no longer seek a civil penalty in this proceeding; and (d) Westover

voluntarily agreeing to implement and follow the terms outlined below in Section IV of the Partial Settlement, beginning on October 1, 2023, even in the absence of a Commission Order approving the Partial Settlement by that date.

7. That Westover’s Act 127 Registration is null and void *ab initio*, in its entirety, if Act 127 does not apply to an apartment complex which owns or operates natural gas facilities downstream from an NGDC. In the alternative, Westover’s Act 127 Registration is null and void *ab initio* as to any system (or any portion of a system) that does not satisfy the definition of a “master meter system” in 49 CFR § 191.3.

8. That, if a final, unappealable Commission or court order on the Litigated Issues determines that: (i) Act 127 does not apply to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a NGDC, or (ii) none of the apartment complexes identified on the Joint Stipulation of Facts is a “master meter system” as defined in 49 CFR § 191.3, then Westover’s obligations under Paragraph 9 of the Partial Settlement shall cease immediately and Westover shall have no obligation to comply with the requirements of Act 127 or the federal pipeline safety laws with regard to the apartment complexes identified in the attached Joint Stipulation of Facts.

9. That, if a final, unappealable Commission or court order on the Litigated Issues determines that: (i) Act 127 applies to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a NGDC, and (ii) at least one of the apartment complexes identified on the Joint Stipulation of Facts is a “master meter system” as defined in 49 CFR § 191.3, then Westover shall do the following for those systems that are found to be “master meter systems”:

Attachment D

- A. Within sixty (60) days of the date that the Commission's or court's decision on the Litigated Issues becomes final and unappealable, Westover will provide its implementation plan to become compliant with Part 192 and Act 127 to Pipeline Safety for review.
- B. Westover and Pipeline Safety will meet and discuss the implementation plan proposed by Westover and will endeavor to reach an agreement on a reasonable time-frame, not to exceed four (4) years, for Westover to become compliant.
- C. Within one hundred twenty (120) days of the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, Westover will provide its procedural manual for operations, maintenance, and emergencies to Pipeline Safety for review.
- D. Beginning on the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, and for subsequent years, Westover will submit reports to the Commission, pursuant to 58 P.S. § 801.503(d), as an Act 127 pipeline operator on an annual basis.
- E. Beginning on the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, and for subsequent years, Westover will file and pay annual assessments to the Commission, pursuant to 58 P.S. § 801.503(b).
- F. If Westover timely submits the compliance filings described in Paragraph 9(A)-(C), the Secretary's Bureau will close the Complaint at Docket No. C-2022-3030251. The closure of this matter shall not

impinge upon I&E's ability to file a complaint in the event Westover fails to meet the obligations and deadlines outlined in the compliance filings or for any other violation(s) of Act 127 or Part 192.

10. That, after the Commission's or court's Order on the Litigated Issues becomes final and unappealable, I&E shall apply the guidance from the Commission's decision when deciding whether to file a complaint against Westover or any affiliate of Westover regarding any apartment complex or commercial property that is not identified in the Joint Stipulation. In the event that I&E files a complaint against Westover or any affiliate of Westover regarding any apartment complex or commercial property that is not identified in the Joint Stipulation, the Parties may assert all claims and defenses in that litigation.

11. That, within thirty (30) days of the date that the Commission's or court's decision on the Litigated Issues becomes final and unappealable, Westover will provide a list of any apartment complexes or commercial properties acquired by Westover and/or its affiliates after November 1, 2020.

Attachment E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR PARTIAL SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232, and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Partial Settlement (“Joint Petition” or “Partial Settlement”) filed in the matter docketed above, submits this Statement in Support of the Partial Settlement between I&E and Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”).¹ I&E avers that the terms and conditions of the Partial Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and Westover are collectively referred to herein as the “Parties.”

I. Background

On December 13, 2021, Westover filed a Petition for Declaratory Order pursuant to 66 Pa. C.S. § 331(f) and 52 Pa. Code § 5.42 (“Original Petition”) to resolve a case and controversy regarding whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 et seq. (“Act 127”). The Original Petition was docketed at P-2021-3030002.

On January 3, 2022, I&E filed an Answer in Opposition to Westover’s Original Petition. Additionally, on January 3, 2022, I&E filed a Formal Complaint (“Complaint”) against Westover alleging violations of the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 et seq. (“Act 127”), and Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1-192.1015. The Complaint was docketed at C-2022-3030251.

On January 25, 2022, Westover filed an Answer and New Matter.

On February 14, 2022, I&E filed a Reply to New Matter.

On May 16, 2022, Westover filed an Amended Petition for Declaratory Order (“Amended Petition”) that provided factual details concerning Westover’s natural gas pipeline facilities.

On June 6, 2022, I&E filed an Answer in Opposition to Westover’s Amended Petition for Declaratory Order.

By Order entered on August 25, 2022, the Commission consolidated Westover’s Petition with the Complaint proceeding and assigned the matter to the Office of Administrative Law Judge for resolution of the disputed material facts and legal issues, and the issuance of a recommended decision.

On October 28, 2022, Westover filed a Petition for Review and Answer to Material

Questions and for Immediate Stay of Proceedings (“Petition for Interlocutory Review”). Westover subsequently filed a Brief in Support of the Petition for Interlocutory Review and I&E filed a Brief in Opposition to the Petition for Interlocutory Review.

On November 22, 2022, the Commission issued an Opinion and Order declining to answer the Petition for Interlocutory Review.

On February 10, 2023, Westover filed a Motion for Summary Judgment asserting that the gas systems operated by Westover are located entirely within the apartment complexes and thus does not satisfy the definition of master meter systems set out in 49 CFR § 191.3.

On March 2, 2023, I&E filed an Answer in Opposition, noting that genuine issues of material fact exist and that Westover’s natural gas facilities are master meter systems.

On April 18, 2023, ALJ Pell issued an Interim Ordering denying Westover’s Motion for Summary Judgment.

After the submission of written direct testimony and acknowledging the potential extended timeframe for a final decision to be issued in this matter, I&E and Westover began discussing settlement to amicably resolve the factual portion of the instant matter to streamline the process and for the implementation of important safety measures during the pendency of the ultimate legal issues presented. This Statement in Support is submitted in conjunction with the Partial Settlement.

II. The Public Interest

Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Partial Settlement, which, once approved, will establish a

record with a Joint Stipulation of Fact, outline the legal issues, and will establish a list of safety measures to be implemented by Westover during the pendency of this matter.

This Partial Settlement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a fully contested proceeding, the benefits to amicably resolving the disputed facts through settlement outweigh the risks and expenditures of litigation. I&E submits that the Partial Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Partial Settlement without modification.

III. Terms of Settlement

Under the terms of the Partial Settlement Agreement, I&E and Westover have agreed to the following:

1. An agreement among the Parties relating to the facts, which includes a Joint Stipulation of Facts, a Joint Chart of Apartment Complexes, and admission of all pleadings and testimony submitted in this matter. See Section II, Procedure.
2. An agreement among the Parties relating to the specific issues to be argued and presented to the Administrative Law Judge for adjudication. See Section III, Delineation of the Issues.
3. An agreement among the Parties that the Paoli Place (South Valley Townhomes) and Willow Run Apartments are not master meter systems pursuant to Act 127. See Section III, Delineation of the Issues.
4. I&E's agreement to not seek civil penalties against Westover in light of (a) Westover's reliance on the "Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions" document posted on the

Commission's website; (b) the specific, unique facts and circumstances presented in this matter; (c) I&E modifying its litigation position to no longer seek a civil penalty in this proceeding; and (d) Westover voluntarily agreeing to implement and follow the terms outlined below in Section IV beginning on October 1, 2023, even in the absence of a Commission Order approving the Partial Settlement by that date. See Section III, Delineation of the Issues.

5. Westover's agreement to implement various safety measures on October 1, 2023 and continuing until a Commission or Court Order becomes final and unappealable. See Section IV, Parties' Actions Pending a Final, Unappealable Decision on the Litigated Issues.
6. I&E's agreement to not file a complaint alleging that Westover is a pipeline operator as defined in Act 127 within three (3) years of the date of entry of the ALJ's Recommended Decision or Initial Decision approving the Partial Settlement without modification. See Section IV, Parties' Actions Pending a Final, Unappealable Decision on the Litigated Issues.
7. The Parties' agreements relating to a resolution of Westover's Petition and I&E's Formal Complaint after a final, unappealable decision is rendered, including a time-period for compliance if it is determined that Act 127 applies to owners or operators of apartment complexes and one of Westover's apartment complexes meets the definition of master meter system. See Section V, Parties' Actions After a Final, Unappealable Decision is Rendered on the Litigated Issues.

IV. Legal Standard for Settlement Agreements

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Partial Settlement in the above-captioned matter is consistent with the Commission’s Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (“Policy Statement”), 52 Pa. Code § 69.1201; *see also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in

settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

As noted in Section III, the Partial Settlement does not include a civil penalty, and thus an in-depth analysis of the *Rosi* factors is not appropriate in this matter. I&E supports approval of this Partial Settlement because whether the case was settled or litigated is of pivotal importance to this Partial Settlement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser penalty or other remedial action. Both parties negotiate from their initial litigation positions. The penalties and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

Here, this Partial Settlement not only creates a Joint Stipulation of Fact so that the Parties can focus on the legal issues presented, but it provides specific safety measures which Westover has agreed to implement on October 1, 2023 without the need or requirement of a Recommended or Initial Decision, and which will continue during the pendency of the litigated issues.

In conclusion, I&E fully supports the terms and conditions of the Partial Settlement. The terms of the Partial Settlement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Partial Settlement is in the public interest.

WHEREFORE, I&E supports the Partial Settlement as being in the public interest and respectfully requests that the Commission approve the Partial Settlement in its entirety without modification.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kayla L. Rost". The signature is written in a cursive style.

Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-1888
karost@pa.gov

Dated: June 13, 2023

Attachment F

APPENDIX F

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Christopher P. Pell

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

**STATEMENT OF WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A
WESTOVER COMPANIES IN SUPPORT OF PARTIAL SETTLEMENT**

Westover Property Management Company, L.P., d/b/a Westover Companies (“Westover”) files this Statement in Support of the “Joint Petition for Partial Settlement” (“Partial Settlement”) entered into by Westover and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (the “Commission”) (singularly a “Petitioner” and collectively the “Joint Petitioners”) in the above-captioned proceeding. Westover respectfully requests that the Honorable Deputy Chief Administrative Law Judge Christopher P. Pell (the “ALJ”) recommend approval of, and that the Commission approve, the Partial Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

The Partial Settlement pertains to the Petition for Declaratory Order (as amended, the “Petition”), that Westover filed at Docket No. P-2021-3030002, and the formal complaint (“Complaint”) that I&E filed against Westover at Docket No. C-2022-3030251. The Partial Settlement asks the Commission to decide specific legal questions raised in these proceedings (the “Litigated Issues”), and to approve the Joint Petitioners’ proposed resolution or waiver of the remaining issues in the case.

Significantly, the Joint Petitioners have agreed to abide by certain rules of conduct until a final, unappealable order is rendered in this matter by the Commission or an appellate court. These rules include safety procedures that Westover will implement at its natural gas systems (the “Systems”) at the apartment complexes involved in this case. Westover has agreed to implement these procedures beginning October 1, 2023 – even if the Commission has not approved the Partial Settlement by that date.

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners. For the reasons set forth below, the Settlement is in the public interest and should be approved without modification.

II. LEGAL STANDARD

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must determine that the proposed terms

and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-400049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

III. THE PARTIAL SETTLEMENT IS IN THE PUBLIC INTEREST

The Partial Settlement is in the public interest for several reasons: (1) it contains a Joint Stipulation of Facts (“Stipulation”) describing the configuration of each System in this litigation; (2) it limits the issues in the case, resolving some issues and clearly delineating those that the Commission is being asked to resolve; (3) it will ultimately result in Commission resolution of uncertainty surrounding material legal questions, with statewide implications, regarding apartment complex owner and operator compliance with the requirements of Pennsylvania’s Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* (“Act 127”);¹ (4) it contains an agreement regarding the Joint Petitioners’ conduct pending a final, unappealable decision on the Litigated Issues; (5) it also contains an agreement regarding the Joint Petitioners’ conduct after the Commission or an appellate court issues a final, unappealable decision in this case; and (6) it contains conditions that are standard in settlement agreements submitted to the Commission. This Statement in Support will address each of these points in turn.

A. Stipulation

In its Complaint, I&E alleges that Westover’s Systems are subject to Act 127 because they are “master meter systems” as that term is defined in 49 CFR § 191.3. Complaint ¶ 7. To resolve this issue, the Commission must consider, in detail, the configuration of the gas system at eighteen

¹ The Commission’s resolution of the issues may also impact colleges, universities, health care facilities, commercial retail centers, industrial parks, and other building owners and operators with natural gas systems located entirely on their own properties.

apartment complexes (some of which have different configurations in different parts of the complex).

There is virtually no dispute between the Joint Petitioners about the facts at each System. Consequently, the Partial Settlement includes a Stipulation, together with a chart, that describes the configuration of the System at each apartment complex. Partial Settlement ¶ 2 and Attachments A and B. In addition, the Joint Petitioners have agreed that certain testimony and exhibits, as well as certain pleadings and exhibits, should be admitted into the record. Stipulation ¶¶ 3 and 4.

The Stipulation eases the process of introducing testimony, pleadings, and their associated exhibits into the record. The Stipulation allowed the ALJ to cancel the evidentiary hearing, which was scheduled to take two days, saving the Joint Petitioners and the Commission significant expenses. This result is in the public interest.

The Stipulation is also in the public interest because it limits the need for the ALJ and the Commission to resolve disputed issues of material fact. Instead, the ALJ and the Commission can focus on resolving the Litigated Issues by applying the law to the stipulated facts at each System. This is in the public interest because it facilitates the decision-making process and allows this case to be brought to a conclusion more quickly than would otherwise be the case. It also mitigates the risk of an appeal based on a question of fact.

B. Limiting the Issues in This Proceeding

The Partial Settlement is in the public interest because it significantly limits the issues in this proceeding, which reduces litigation expenses for the Joint Petitioners and promotes administrative economy for the Commission. This case raises important legal questions of first impression, which are preserved for the Commission's decision in the Litigated Issues. Partial

Settlement ¶ 6. In the Partial Settlement, the Joint Petitioners resolve or waive all other issues raised by the Petition and the Complaint – allowing the Commission to focus on the Litigated Issues.

The Litigated Issues are:

- Whether Act 127 applies to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a natural gas distribution company (NGDC”).
- Whether the natural gas system at any apartment complex identified in the Stipulation is a “master meter system” as defined in 49 CFR § 191.3.
 - Are Westover’s gas facilities limited to the apartment complex?
 - Does Westover purchase gas for resale through a distribution system and supply it to the ultimate consumer?
 - Who is the ultimate consumer of the gas service at the apartment complexes identified in the Stipulation?
 - Does a natural gas system that is exclusively or primarily comprised of interior piping satisfy the definition of a “master meter system?”
 - Under what circumstances does a natural gas system which includes a sub-meter owned by the apartment complex satisfy the definition of a “master meter system?”
 - At which properties (if any) does Westover distribute gas “in or affecting interstate or foreign commerce?”

The issues that would not be litigated include whether Westover’s systems at Willow Run and Paoli Place (South Valley Townhomes) are subject to Commission regulation pursuant to Act 127. At both Willow Run and Paoli Place (South Valley Townhomes), the NGDC transfers gas directly to building occupants, who pay the NGDC for the gas. These Systems clearly fail to meet the definition of a “master meter system,” which requires that a pipeline operator purchase gas from the NGDC and resell and supply that gas to building occupants, who pay the pipeline operator for the gas. 49 CFR § 191.3. The Joint Petitioners agree that Westover is not a pipeline operator pursuant to Act 127 with respect to these Systems. Partial Settlement ¶ 7.A.1. Paragraph 7.A.1. of the Partial Settlement is in the public interest because these Systems clearly are not “master meter systems” as defined in federal law. Therefore, the Commission lacks authority to regulate these Systems – even if Act 127 gives the Commission authority to regulate apartment complexes

downstream from an NGDC. It would be a waste of administrative resources for the Joint Petitioners to submit this issue to the ALJ and the Commission for a decision.

The Joint Petitioners also agree that Westover should not be ordered to pay a civil penalty. The Joint Petitioners agree that a penalty is not warranted because of: (a) Westover's reliance on the "Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions" document posted on the Commission's website; (b) the specific, unique facts and circumstances presented in this matter; (c) I&E modified its litigation position to withdraw its request that Westover be ordered to pay a civil penalty; I&E Statement 1-R p. 10, and (d) Westover voluntarily agreed to implement certain safety procedures beginning October 1, 2023, even in the absence of a Commission Order approving the Partial Settlement by that date. Partial Settlement ¶ 7.A.2.

Because the Joint Petitioners agree that the Commission should not order Westover to pay a civil penalty, the Joint Petitioners' briefs will not need to address the ten factors in the Commission's statement of policy concerning the factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations, 52 Pa. Code § 69.1201. This could be a considerable savings in legal fees. Additionally, the ALJ and the Commissioners will not need to address the issue of whether Westover should pay a civil penalty and, if so, how much of a penalty it should pay. This result will promote administrative economy.

Because the Joint Petitioners have agreed that Westover should not be ordered to pay a civil penalty, and have asked the Commission to address only specific questions of law, the ALJ and the Commission need not address I&E's allegation that Westover violated certain provisions in Act 127 and the Federal pipeline safety laws (as it is currently uncertain whether Westover is

even subject to Act 127). Complaint ¶ 45. The Partial Settlement saves the Joint Petitioners and the Commission a considerable amount of time and money by waiving this issue.

The Partial Settlement is in the public interest because it essentially waives all the issues in the Complaint and allows the ALJ and the Commission to focus on the critical issues of first impression that were raised in Westover’s Petition – questions concerning the scope of the Commission’s authority to regulate gas facilities owned/operated by entities that are not public utilities. It is in the public interest for these issues to be resolved. By waiving other issues, the ALJ and the Commissioners can focus on these critical legal questions and resolve them expeditiously.

C. Agreement Regarding the Joint Petitioners’ Conduct Pending a Final, Unappealable Decision on the Litigated Issues

Normally, a settlement in a Commission proceeding is not binding on the settling parties until the settlement is approved by the Commission. One of the primary reasons why the Partial Settlement is in the public interest is that the Joint Petitioners agree to certain rules of conduct before the Commission or an appellate court renders a final, unappealable decision in this matter. Partial Settlement Section IV.

Westover agrees to implement certain safety measures at its Systems beginning October 1, 2023. Partial Settlement ¶ 8. These measures include:

- Westover will have at least one employee complete Operator Qualification (“OQ”) training and will retain at least one contractor who has received OQ training;
- At each apartment complex involved in this litigation, Westover will post the contact information of the OQ-trained employee and contractor in its office;
- Westover will undertake specified safety measures in response to a suspected gas leak at any of the apartment complexes involved in this litigation;
- Westover will create and distribute educational materials regarding gas safety to residents of the apartment complexes involved in this case at least once each year;
- Westover will continue to work with NGDCs to move meters, regulators and over-pressure protection devices from inside buildings to outside buildings at the apartment complexes involved in this case;

- Westover will identify the location of emergency valves at the apartment complexes involved in this case and learn how to properly operate them; and,
- Westover will provide documentation to I&E confirming that Westover is a member of the Pennsylvania One Call system.

These measures, while not necessarily required by the law, promote public safety. They are therefore in the public interest.

In turn, I&E agrees that, until a final unappealable order is rendered on the Litigated Issues, it will not file another complaint alleging that any of the following is a pipeline operator pursuant to Act 127:

- Westover (who operates but does not own the apartment complexes involved in this case);
- the owner of any of those apartment complexes;
- the owner/operator of any commercial property identified on Westover's Act 127 Registration form for 2022; or,
- the owner/operator of any apartment complex acquired by an affiliate of Westover within three years of the date of entry of the ALJ's decision approving the Partial Settlement without modification.

Partial Settlement ¶ 9. This provision is in the public interest because it prevents further litigation between the Joint Petitioners, or related parties, that essentially raise the same issues raised in this case. This provision saves the Joint Petitioners money in litigation expenses and promotes administrative economy for the Commission.

D. Agreement Regarding the Joint Petitioners' Conduct After a Final, Unappealable Decision is Rendered on the Litigated Issues

The Partial Settlement is also in the public interest because it contains a plan for bringing Westover into compliance with the law in the event that a final, unappealable Commission or appellate court order determines that (i) Act 127 applies to the owner/operator of an apartment complex with natural gas facilities downstream from an NGDC, and (ii) at least one Westover System is a "master meter system" as defined in 49 CFR § 191.3. Partial Settlement ¶ 11. The

Commission should encourage compliance with the law rather than simply imposing civil penalties on someone who violates the law.

Westover does not believe that it is subject to Commission regulation pursuant to Act 127. Nevertheless, Westover submits that it is in the public interest that an orderly process be in place for bringing Westover into compliance with the law, in the event that the Commission or an appellate court issues an unfavorable final, unappealable order. In the Partial Settlement, the Joint Petitioners identify the steps that Westover will need to complete to comply with the law, and agree to timeframes for completing those steps.

The Partial Settlement is also in the public interest because it seeks to avoid future litigation between the Joint Petitioners regarding similar issues at other Westover owned or operated apartment complexes or commercial properties. Partial Settlement ¶ 12. The Joint Petitioners expect that a final, unappealable order on the Litigated Issues will resolve many outstanding questions about the Commission's authority to regulate apartment complexes downstream from an NGDC pursuant to Act 127. I&E agrees to apply the guidance from that final, unappealable order in the future, when deciding whether to file a complaint against Westover (or any affiliate of Westover) regarding any apartment complex or commercial property not involved in this litigation. It would not be in the public interest for the Joint Petitioners to pursue the Litigated Issues to a final, unappealable order in this case, only to turn around and begin litigating the same issues again at a different property.

E. Conditions of Partial Settlement

Finally, the Partial Settlement is in the public interest because it contains conditions that are standard in many settlement agreements submitted to, and approved by, the Commission. These conditions include a waiver of the right to file Exceptions to the portion of the ALJ's

decision approving the Partial Settlement, if the ALJ approves the Partial Settlement without modification. Partial Settlement ¶ 3. Another condition is the right to withdraw from the Partial Settlement if the ALJ or the Commission does not approve the Partial Settlement without modification. Partial Settlement ¶ 5. This condition is important for encouraging parties to enter into a settlement. If the Commission modifies the Partial Settlement in a manner that is unacceptable to either Joint Petitioner, that Petitioner can withdraw from the Partial Settlement and either litigate the case in full or try to negotiate a new settlement that might be acceptable to the Commission.

IV. CONCLUSION

WHEREFORE, Westover Property Management Company, L.P., d/b/a Westover Companies respectfully requests that the Honorable Deputy Chief Administrative Law Judge Christopher P. Pell (the “ALJ”) recommend approval of, and that the Commission approve, the Partial Settlement, including all terms and conditions thereof, without modification.

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

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

Date: June 13, 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 | : | |


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Partial Settlement** dated June 13, 2023, 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:

Deputy Chief Administrative Law Judge
Christopher P. Pell
Athena DelVillar, Legal Assistant
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Room 4063
Philadelphia, PA 19107
cpell@pa.gov
sdelvillar@pa.gov

David P. Zambito, Esq.
Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com
jnase@cozen.com
*Counsel for Westover Property
Management Company, L.P.
d/b/a Westover Companies*



Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov