



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 3, 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 Main Brief**

Dear Secretary Chiavetta:

Enclosed please find the **Main Brief** of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L Rost'.

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**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	:	

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**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: July 3, 2023

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## I. PROCEDURAL HISTORY

On or about November 2020, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") Pipeline Safety Division ("Pipeline Safety") initiated an investigation into whether Westover Property Management Company, L.P. d/b/a Westover Companies ("Westover") operates master meter systems at its apartment complexes and is thus a "pipeline operator" subject to the Gas and Hazardous Liquids Pipelines Act ("Act 127").<sup>1</sup> Pipeline Safety became aware of Westover's potential master meter systems after responding to a natural gas leak and service outage at one of its apartment complexes, Jamestown Village Apartments, in May 2018.<sup>2</sup>

On or about December 2, 2020, Pipeline Safety personnel conducted a virtual TEAMS meeting with Westover representatives due to restrictions in place at the time in response to the COVID-19 pandemic.<sup>3</sup> Pipeline Safety personnel scheduled this meeting to explain Act 127 and Part 192 of the Code of Federal Regulations and to explain the Commission's jurisdiction over master meter systems.<sup>4</sup> At the conclusion of the meeting, Pipeline Safety personnel requested that Westover provide certain documents and records, including an Operations, Maintenance, & Emergencies ("O&M") Plan.<sup>5</sup>

Westover did not provide the requested documentation or respond to Pipeline Safety's several attempts to contact Westover.<sup>6</sup> Accordingly, I&E issued a Non-Compliance Letter (NC-77-20) on February 3, 2021.<sup>7</sup> Westover did not respond to NC-77-20, which resulted in I&E

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<sup>1</sup> I&E Statement No. 1, pgs. 4-5.

<sup>2</sup> I&E Statement No. 1, pg. 4.

<sup>3</sup> I&E Statement No. 1, pg. 5; Westover Statement No. 2, pg. 15.

<sup>4</sup> I&E Statement No. 1, pg. 5.

<sup>5</sup> I&E Statement No. 1, pg. 5.

<sup>6</sup> I&E Statement No. 1, pg. 5.

<sup>7</sup> I&E Statement No. 1, pg. 5; I&E Exhibit 2; Westover Statement No. 2, pg. 15.

issuing a second Non-Compliance Letter (NC-08-21) on March 30, 2021.<sup>8</sup> Westover did not respond to NC-08-21.<sup>9</sup> Pipeline Safety referred the investigation to I&E Enforcement due to Westover's failure to respond with Pipeline Safety or comply with applicable state and federal regulations.<sup>10</sup>

On June 2, 2021, I&E Enforcement issued a Warning Letter to Westover.<sup>11</sup>

On August 23, 2021, Alexander Stefanelli, Westover's Chief Financial Officer, issued a letter to I&E.<sup>12</sup> Mr. Stefanelli stated that Westover fully acknowledges the Commission's jurisdiction over certain facilities owned and operated by Westover, and that Westover intends to comply with Safety's three (3) items to comply with all federal and state regulations applicable to a master meter operator.<sup>13</sup> Mr. Stefanelli explained that Westover contracted with two companies to take immediate steps to be compliant.<sup>14</sup>

On or about August 24, 2021, Pipeline Safety inspectors met with representatives from Westover. At this meeting, Westover's representatives indicated that Westover had hired Oaktree Group LLC and Entech Engineering.<sup>15</sup> On September 20, 2021, Pipeline Safety met with Westover and a representative from Entech Engineering to review Westover's Operations, Maintenance, & Emergencies ("O&M") Plan. On October 12, 2021, Pipeline Safety met with Westover, Entech Engineering, and the Oak Tree Group to review Westover's Operator Qualification ("OQ") Plan.<sup>16</sup>

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<sup>8</sup> I&E Statement No. 1, pgs. 5-6; I&E Exhibit 3; Westover Statement No. 2, pg. 15.

<sup>9</sup> I&E Statement No. 1, pg. 6; Westover Statement No. 2, pg. 15.

<sup>10</sup> I&E Statement No. 1, pg. 6.

<sup>11</sup> I&E Statement No. 1, pg. 6; I&E Exhibit 5; Westover Statement No. 2, pgs. 15-16.

<sup>12</sup> I&E Statement No. 1, pg. 7; I&E Exhibit 7.

<sup>13</sup> I&E Statement No. 1, pg. 7; I&E Exhibit 7.

<sup>14</sup> I&E Statement No. 1, pg. 7; I&E Exhibit 7.

<sup>15</sup> I&E Statement No. 1, pg. 8.

<sup>16</sup> I&E Statement No. 1, pgs. 8-9.

On November 3, 2021, Mr. Stefanelli advised I&E that it believes that its facilities are not jurisdictional and that it retained counsel.<sup>17</sup>

On November 4, 2021, Westover's counsel served a letter to I&E disputing the Commission's jurisdiction over the natural gas systems that Westover operates.<sup>18</sup>

On November 22, 2021, I&E Enforcement responded to Westover's letter to explain the Commission's jurisdiction over master meter systems.<sup>19</sup>

As part of its investigation, I&E issued a total of three (3) Non-Compliance Letters to Westover: NC-77-20 dated February 3, 2021; NC-08-21 dated March 30, 2021; and NC-12-22 dated June 29, 2022.<sup>20</sup>

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.

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

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<sup>17</sup> I&E Statement No. 1, pg. 9; I&E Exhibit 8.

<sup>18</sup> I&E Statement No. 1, pg. 9; I&E Exhibit 9.

<sup>19</sup> See I&E Exhibit 10.

<sup>20</sup> See I&E Exhibits 2, 3, and 4.



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 docketed at C-2022-3030251, 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 February 22, 2023, I&E and Westover filed pre-served written direct testimony with exhibits.

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

On April 17, 2023, I&E and Westover filed pre-served written rebuttal testimony with exhibits.

On April 18, 2023, ALJ Pell issued an Interim Ordering denying Westover's Motion for Summary Judgment. Notably, ALJ Pell stated that he was not persuaded by Westover's position that a gas system must be partly within and partly outside an apartment complex in order to satisfy the definition of master meter system.

The Parties engaged in extensive discovery throughout litigation, which included, but is not limited to, approximately four (4) sets of interrogatories served by Westover, four (4) objections filed by I&E, four (4) motions to dismiss objections/motions to compel filed by Westover, two (2) sets of interrogatories served by I&E, two (2) sets of requests for entry served by I&E, one (1) objection filed by Westover, two (2) motions to dismiss objections/motions to compel filed by I&E, two (2) sets of requests for admissions served by Westover, and various amended answers and supplemental answers filed by both parties.

On May 15, 2023, ALJ Pell issued a Briefing Order noting that the Parties have reached a partial settlement and providing the litigation procedure moving forward. Specifically, the Parties were instructed to file Main Briefs on July 3, 2023 and Reply Briefs on August 3, 2023.

On June 13, 2023, the Parties filed a Joint Petition for Partial Settlement ("Partial Settlement") which included Attachments A-F. Of importance, the Partial Settlement included a Joint Stipulation of Fact.

I&E submits this Main Brief in accordance with the briefing schedule that was established through the May 15, 2023 Briefing Order. Additional Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs are attached as Appendix A, B, and C, respectively.

## **II. STATEMENT OF THE CASE**

This matter began as an investigation by I&E's Pipeline Safety Division and escalated into the tumultuous, litigated matter as demonstrated through the various pleadings and

discovery disputes clearly articulated in the record. I&E's Pipeline Safety, as the entity responsible for enforcing Act 127 and the Federal Pipeline Safety Regulations, is solely committed to public safety and the safe distribution of natural gas. This commitment is evidenced through the various communications, attempts to educate, and attempts to bring Westover in compliance with Act 127 and the applicable Federal Pipeline Safety Regulations.<sup>21</sup> However, after approximately one year of various communications and meetings, Westover suddenly challenged the expertise of Pipeline Safety and challenged the Commission's jurisdiction.<sup>22</sup> Thus, this matter involves an issue of first impression as the jurisdiction and applicability related to master meter systems at apartment complexes has not yet been challenged through a formal litigated process.<sup>23</sup>

Notwithstanding the lack of a decision resulting from formal litigation on these legal issues, the plain language of the various statutes and regulations and the legislative history clearly show that the Commission has jurisdiction over apartment complexes that own or operate master meter systems. The regulations and enforcement of Act 127 and the Federal Regulations at apartment complexes that own or operate master meter systems is consistent with public policy and the safety of the numerous tenants who reside at these apartment complexes. As demonstrated in the expert testimony of Scott Orr and the exhibits showcasing the reality of the

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<sup>21</sup> See generally I&E Statement No. 1, pgs. 4-9.

<sup>22</sup> See generally I&E Statement No. 1, pgs. 4-9; I&E Exhibit 8.

<sup>23</sup> I&E notes that the Commission has approved and/or recognized the registration of companies that own/operate apartment complexes who own/operate master meter systems, see generally *Annual Pipeline Operator Registration of KBF Associates, LP d/b/a Brookside Manor Apartments*, Docket No. A-2017-2616022, and *Annual Pipeline Operator Registration of Village on Pennbrook 2 LLC*, Docket No. A-2022-3032506, and has determined that master meter systems operated in mobile home parks are jurisdictional, *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Brookhaven MHP Management* (Docket No. C-2017-2613983), *Meadowview Management LLC* (Docket No. C-2017-2613984), *Mill Creek MHP Management LLC* (Docket No. C-2017-2613985), *Northwood Manor Management LLC* (Docket No. C-2017-2613986) (Order entered August 23, 2018), and *ATG Properties, LLC d/b/a Greenleaf Gas Company* (Docket No. C-2017-2613987) (Order entered August 23, 2018). However, there is no prior Commission decision which resulted from a litigated matter relating to master meter systems at apartment complexes. See I&E Statement No. 1, pg. 3.

condition of the pipeline facilities at the various apartment complexes,<sup>24</sup> it would be unconscionable for these conditions to exist without any oversight by a governmental entity in light of the catastrophic events which could occur from a failure or leak.<sup>25</sup>

While the rest of this brief will discuss the legal analysis, let's not forget the personal, real impact of this decision. The reality is that there is a large, undefined number of individuals and families who reside in apartment complexes which use gas for heating, cooking, hot water, and/or laundry purposes. When the average person is looking for an apartment, he/she is comparing prices, locations, amenities, number of bedrooms, number of bathrooms, etc. The one item likely not on his/her list is whether or not the gas facilities are safe. The individual/tenant-to-be may be aware that an appliance or function of the apartment uses gas service, which may be paid separately or as part of rents, but the average person's inquiry or knowledge does not include a question or inquiry on whether the gas services are safe. The safeness of the gas service is assumed, an expectation. The individual most likely assumes that the gas facilities are safe because of the regulatory oversight of the Pennsylvania Public Utility Commission and the federal government.

Moreover, it is only a matter of time before the lack of maintenance and compliance with state and federal regulations results in a catastrophic event.<sup>26</sup> It is undisputed that I&E detected the odor of gas during two (2) of its visits to Westover's apartment complexes and that another natural gas leak was discovered at a third apartment complex in 2022.<sup>27</sup> Mr. Orr provided a

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<sup>24</sup> See generally I&E Statement No. 1; I&E Statement No. 1-R; I&E Exhibits 12, 20, 21, 23, 25, 28, 30, 33, 35, 37, 39, 41, 43, 45, 47, 48, 50, 52, 54, 56, and 57 (Confidential).

<sup>25</sup> See generally I&E Statement No. 1, pgs. 23-26 (Mr. Orr explaining an over pressurization event and the explosion and fire which occurred at Flower Branch Apartment Complex in Silver Spring, Maryland, that resulted in the death of seven (7) residents, hospitalization of sixty-five (65) residents, treatment of three (3) firefighters, and excess of \$1 million dollar in damage.).

<sup>26</sup> See generally I&E Statement No. 1, pgs. 23-26, 66-67.

<sup>27</sup> I&E Statement No. 1, pgs. 37-38, 40; Westover Statement No. 1, pgs. 4-5.

possible explanation for I&E’s discovery of leaks during I&E’s limited visits to the apartment complexes: the rate of failure, or bathtub curve.<sup>28</sup> Mr. Orr explained that the bathtub curve is a visual representation of the failure rate of a product or group of products over time.<sup>29</sup> By plotting the occurrences of failure over time, a bathtub curve maps out three (3) periods that an asset experiences within its lifetime: (1) infant mortality period; (2) normal life period; and (3) end of life period.<sup>30</sup> This model, shaped like a “U,” basically explains that a system will fail in the early stages on deployment, but this failure will be immediately seen as “early failure.”<sup>31</sup> An example of an early failure is a leak in a garden hose from a loose connection to the water faucet.<sup>32</sup> Once the connection is tightened, the hose will function as designed.<sup>33</sup> The garden hose will function as designed, normal life or useful life, until it reaches its “wear out” stage or end of life period, i.e., the hose has several holes, cracks etc., and needs to be replaced.<sup>34</sup> The leaks discovered during I&E’s visit suggest that the systems are getting closer to the wear out stage or end-of-life stage and need to be replaced.<sup>35</sup>

In conclusion, the plain language of the regulations and statutes, the legislative history, and the PHMSA interpretations all prove that the Commission has jurisdiction over apartment complexes that own or operate master meter systems, and such a finding is also rooted in sound policy and public interest for the safety of Pennsylvanians who reside at these apartment complexes.

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<sup>28</sup> I&E Statement No. 1-R, pg. 13.

<sup>29</sup> I&E Statement No. 1-R, pg. 13.

<sup>30</sup> I&E Statement No. 1-R, pg. 13.

<sup>31</sup> I&E Statement No. 1-R, pg. 13.

<sup>32</sup> I&E Statement No. 1-R, pg. 13.

<sup>33</sup> I&E Statement No. 1-R, pg. 13.

<sup>34</sup> I&E Statement No. 1-R, pg. 13.

<sup>35</sup> I&E Statement No. 1-R, pgs. 13-14.

### III. LEGAL STANDARD

Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>36</sup> Such a showing must be by a preponderance of the evidence.<sup>37</sup> “A preponderance of the evidence means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.”<sup>38</sup>

#### **Petition**

The Commission may, in its discretion, issue a declaratory order to terminate a controversy or remove uncertainty.<sup>39</sup> A declaratory order should be issued only when there is no outstanding issue of material fact.<sup>40</sup> The Commission’s decision must be supported by substantial evidence in the record; more than a mere trace of evidence or a suspicion of the existence of a fact ought to be established.<sup>41</sup> Declaratory orders are adjudications and result in a binding order when final.<sup>42</sup> Accordingly, Westover, the party who filed the Original and Amended Petition for Declaratory Order, has the burden of proof.<sup>43</sup>

#### **Complaint**

In reference to the Formal Complaint, I&E, as the complainant, has the burden of proving by a preponderance of evidence that Westover owns or operates master meter systems at its apartment complexes in Pennsylvania, and thus is a pipeline operator subject to Act 127 and the

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<sup>36</sup> 66 Pa.C.S. § 332(a); *see also Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 n. 1 (Pa. Cmwlth. 1990); *Borough of Bridgewater v. Pa. P.U.C.*, 124 A.2d 165 (Pa. Super. 1956); *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237 (Pa. Cmwlth. 2008) 49 CFR § 191.3.

<sup>37</sup> *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

<sup>38</sup> *Energy Conservation Council of Pennsylvania v. Pa. P.U.C.*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010).

<sup>39</sup> 66 Pa.C.S. § 331(f).

<sup>40</sup> *Petition of the Pennsylvania State University for a Declaratory Order*, Docket No. P-2007-2001828 (Order Entered April 9, 2008).

<sup>41</sup> *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

<sup>42</sup> *Dee Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593 (Pa. Cmwlth. 2003).

<sup>43</sup> 66 Pa.C.S. § 332(a).

applicable federal regulations.

#### **IV. STATEMENT OF THE QUESTIONS**

Question: Whether the Commission should exercise its discretion to issue a declaratory order.

Proposed Answer: Yes.

Question: 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”)?

Proposed Answer: Yes.

Question: 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?

Proposed Answer: Yes, all of the apartment complexes identified in the Joint Stipulation of Facts are master meter systems.

Question: Are Westover’s gas facilities limited to the apartment complex?

Proposed Answer: Yes.

Question: Does Westover purchase gas for resale through a distribution system and supply it to the ultimate consumer?

Proposed Answer: Yes.

Question: Who is the ultimate consumer of the gas service at the apartment complexes identified in the Joint Stipulation of Facts?

Proposed Answer: The tenants at Westover’s various apartment complexes are the ultimate consumers of the gas service.

Question: Does a natural gas system that is exclusively or primarily comprised of interior piping satisfy the definition of a “master meter system”?

Proposed Answer: Yes.

Question: 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”?

Proposed Answer: The existence of a sub-meter owned by the apartment complex is dispositive of a master meter system.

Question: At which properties (if any) does Westover distribute gas “in or affecting interstate or foreign commerce”?

Proposed Answer: Westover distributes gas in or affecting interstate or foreign commerce at all apartment complexes identified in the Joint Stipulation of Facts.

## **V. SUMMARY OF ARGUMENT**

Westover owns/operates natural gas distribution systems at various apartment complexes within the state of Pennsylvania. As an entity who transports and distributes gas within its apartment complexes, Westover is a pipeline operator pursuant to 58 P.S. § 801.102 and is an operator pursuant to 49 CFR § 191.3, and thus is subject to the regulations of Act 127 and the applicable Federal pipeline safety regulations. Specifically, Westover is a pipeline operator that operates master meter systems at its apartment complexes.



Accordingly, I&E respectfully requests that Your Honor (1) find that the Commission has jurisdiction over this matter; (2) find that the apartment complexes listed in the Joint Stipulation of Facts are master meter systems as defined by 49 CFR § 191.3; (3) find that Westover is a pipeline operator subject to Act 127 and applicable federal regulations; and (4) order Westover to become compliant with Act 127 and the applicable federal regulations consistent with the terms outlined in the Joint Petition for Partial Settlement.

## **VI. ARGUMENT**

### **A. COMMISSION SHOULD EXERCISE ITS DISCRETION TO ISSUE A DECLARATORY ORDER**

Section 331(f) of the Public Utility Code (“Code”) authorizes the Commission to “issue a declaratory order to terminate a controversy or remove uncertainty.”<sup>44</sup> Commission orders disposing of controversy or uncertainty through such petitions are adjudications, and when final, result in binding orders like any other Commission order.<sup>45</sup> Thus, the Commission may use its discretion to grant or deny such petitions to achieve finality on a controversy or uncertainty concerning existing rights, status, or legal relations.<sup>46</sup> A determination should only be issued when there is no outstanding issue of fact.<sup>47</sup>

I&E and Westover jointly acknowledged the need for a controversy or uncertainty to be removed in light of the legal issues and arguments presented in the instant matters. Accordingly, I&E and Westover, through the submission of the Partial Settlement, filed a Joint Stipulation of

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<sup>44</sup> 66 Pa.C.S. § 331(f); *see also* 52 Pa. Code § 5.42(a).

<sup>45</sup> *Professional Paramedical Services, Inc. v. Pa. Pub. Util. Comm’n*, 525 A.2d 1274, 1276 (Pa. Cmwlth. 1987).

<sup>46</sup> *Pennsylvania Indep. Petroleum Producers v. Dep’t of Envtl. Res.*, 525 A.2d 829 (Pa. Cmwlth. 1987), *aff’d*, 550 A.2d 195 (Pa. 1988), *cert. denied*, 489 U.S. 1096 (1989).

<sup>47</sup> *Petition of the Pennsylvania State University for Declaratory Order Concerning the Generation Rate Cap of the West Penn Power Company d/b/a Allegheny Power; Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period for Tariff 37 Providing Service to the Pennsylvania State University*, Docket Nos. P-2007-2001828 and P-2008-2021608 (Order entered September 11, 2008).

Fact so that the Commission would have a record and undisputed facts to render a decision. There are no material facts related to the natural gas facilities at the various apartment complexes in dispute, rather, the question at issue is a matter of law and how the law is applied to the undisputed facts. Therefore, I&E requests that the Commission utilize its discretion to issue a Declaratory Order conclusively determining Westover to be a pipeline operator subject to Act 127, and to send a clear message to other similarly situated apartment complex owners/operators that have not yet registered with the Commission that master meter systems are subject to the Commission's safety oversight.

**B. ACT 127 APPLIES TO APARTMENT COMPLEXES WHICH OWN OR OPERATE NATURAL GAS FACILITIES**

Act 127 was enacted on December 22, 2011, with an effective date sixty (60) days later.<sup>48</sup> Section 801.302 (Adoption of Federal pipeline safety laws) provides that the safety standards and regulations for pipeline operators will be pursuant to 49 CFR Subtitle B, Ch. 1 Subch. D (relating to pipeline safety).<sup>49</sup> Act 127 further provides that the Commission will have the administrative authority to supervise and regulate pipeline operators within the Commonwealth consistent with the Federal pipeline safety laws, and allows the Commission to adopt regulations which may be necessary or proper to exercise this duty.<sup>50</sup>

49 CFR Subtitle B, Ch. 1 Subch. D (relating to pipeline safety) includes Section 191.3, which defines a "master meter system" as:

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

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<sup>48</sup> House Bill 344, P.L. 586, Act 2011-127.

<sup>49</sup> 58 P.S. § 801.302(a).

<sup>50</sup> 58 P.S. § 801.501.

consumer who either purchases the gas directly through a meter or by other means, such as by rents.<sup>51</sup>

Prior to the enactment of Act 127, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) enforced the Federal pipeline safety laws and regulations on master meter systems in Pennsylvania.<sup>52</sup> Thus, after Act 127 was enacted, the Commission, through the I&E Pipeline Safety Division which serves as an agent of PHMSA certified to regulate intrastate pipeline facilities for safety purposes pursuant to 49 U.S.C. § 60105, is authorized to enforce the Federal pipeline safety laws and regulations on master meter systems distributing gas in Pennsylvania.<sup>53</sup> Act 127’s express adoption of the Federal pipeline safety laws and regulations at 58 P.S. § 801.302 clearly and unambiguously include the pipeline safety regulation of master meter systems.

Moreover, the plain language of Section 191.3 clearly articulates that master meter systems can be found at apartment complexes. Specifically, Section 191.3 provides “a pipeline<sup>54</sup> system<sup>55</sup> for distributing gas within, but not limited to, **a definable area, such as** a mobile home park, housing project, **or apartment complex.**”<sup>56</sup> A finding that master meter systems exist in a definable area, such as an apartment complex, is further supported by a 2002 report issued by the

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<sup>51</sup> 49 CFR § 191.3.

<sup>52</sup> See Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety letter dated March 6, 1998 to Mr. Ernie Nepa of Governor Sproul Associates (attached as I&E Exhibit 3 to I&E’s Brief in Opposition to Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding).

<sup>53</sup> I&E Statement No. 1-R, pg. 6.

<sup>54</sup> Pursuant to Section 192.3, pipeline means “all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies” and a pipeline facility means “new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.” 49 CFR § 192.3.

<sup>55</sup> Pursuant to Section 191.3, pipeline systems means “all parts of those physical facilities through which gas moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.” 49 CFR § 191.3.

<sup>56</sup> 49 CFR § 191.3 (emphasis added).

Secretary of Transportation and various PHMSA interpretations. Specifically, 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 purchase natural gas and resell such gas to consumers in connection with rental, leasing, or management of real property.<sup>57</sup> The Report continues to state that master meter systems exist at a variety of locations, including apartment complexes.<sup>58</sup> Moreover, more recently than 2002, PHMSA has issued interpretations finding an apartment complex,<sup>59</sup> a housing development,<sup>60</sup> and a mall complex<sup>61</sup> to be master meter systems. Thus, Act 127 applies to apartment complexes which own or operate natural gas facilities.

Westover may attempt to argue that such a finding would have a detrimental impact on an undefined number of apartment complex owners and/or landlords and attempt to make related policy arguments. However, such arguments are without merit. Notwithstanding the plain language of the regulation and the history thereof, the impact of regulatory oversight over apartment complexes which operate master meters systems is substantial. While Westover may cite to an undefined number of apartment complex owners, there are thousands more tenants, people, and families are who impacted and whose safety is at risk.

For example, Westover is one landlord/apartment complex owner. Simply looking at the approximately twenty-two (22) apartments (noting that Paoli Place and Mill Creek are separated

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<sup>57</sup> 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").

<sup>58</sup> *Id.*

<sup>59</sup> PHMSA Letter of Interpretation to Indiana Utility Regulatory Commission, PI-11-0014 (March 27, 2012) and (August 27, 2012) (attached as Attachment D to I&E's Answer in Opposition to Westover's Petition for Declaratory Order)

<sup>60</sup> PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001) (attached as I&E Exhibit 4 to I&E's Answer in Opposition to Westover's Amended Petition).

<sup>61</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016) (attached as I&E Exhibit 6 to I&E's Answer in Opposition to Westover's Amended Petition).

into more than one apartment complex) which are discussed in depth in this matter and do not include the entirety of Westover's apartment complexes, there are, at a minimum, three thousand seventy-two (3,072) people who are and will continue to be at risk until this matter is resolved.<sup>62</sup> And that is only the minimum because these individual apartments at the various apartment complexes could be housing one person, two people, or more. In short, the potential impact on apartment complex owners/operators is not lost on I&E, however, the bigger picture showcases the deleterious effect that a catastrophic event could have on thousands of Pennsylvania renters who are blindly unaware of the possible unsafe conditions lurking within their rental home/apartment. This risk to the public far outweighs any argument conjured by Westover to decry the inconvenience to the landlords of such critical safety oversight. Accordingly, Act 127 applies to apartment complexes who own or operate natural gas facilities.

### **C. WESTOVER'S APARTMENT COMPLEXES ARE MASTER METER SYSTEMS**

As stated above, a "master meter system" is:

a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.<sup>63</sup>

Thus, to be a master meter system, the following elements must be met:

1. Pipeline distribution system within, but not limited to a definable area, such as an apartment complex;
2. Operator purchases gas from outside source for resale;
3. Pipeline distribution system supplies the ultimate consumer; and

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<sup>62</sup> Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B; *see also* Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A.

<sup>63</sup> 49 CFR § 191.3.

4. Ultimate consumer purchases the gas either through a meter or by other means, such as rent.

The apartment complexes owned or operated by Westover which are the subject of this proceeding are as follows:

- Black Hawk Apartments;
- Carlisle Park Apartments;
- Concord Court Apartments;
- Country Manor Apartments;
- Fox Run Apartments;
- Gladstone Towers Apartments;
- Hillcrest Apartments;
- Jamestown Village;
- Lansdale Village Apartments;
- Lansdowne Towers Apartments;
- Main Line Berwyn Apartments;
- Mill Creek Apartments I & II;
- Norriton East Apartments;
- Oak Forest Apartments;
- Paoli Place Apartments (North, South, and South Valley Townhomes);
- Park Court Apartments;
- Valley Stream Apartments;
- Willow Run Apartments; and
- Woodland Plaza Apartments.

Pursuant to the Partial Settlement filed on June 13, 2023, the Parties agreed that the apartment complexes at Paoli Place- South Valley Townhomes and Willow Run Apartments are not master meter systems. However, as explained in more detail below, the remaining apartment complexes are clearly master meter systems.

### **Black Hawk Apartments**

Black Hawk Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>64</sup> Black Hawk Apartments consists of fourteen (14) separate residential buildings and houses a total of 202 units/individual apartments.<sup>65</sup> Natural gas is delivered from PECO Energy Company (“PECO”) to Westover at a meter located outside each apartment building, and all of the gas facilities are limited to the apartment complex.<sup>66</sup> The gas facilities service a central boiler and hot water heater which creates heat and hot water that is distributed to the tenants of Black Hawk Apartments.<sup>67</sup> Westover purchases the gas from PECO and then charges the tenants for the gas through rents.<sup>68</sup>

Accordingly, Black Hawk Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Carlisle Park**

Carlisle Park Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>69</sup> Carlisle Park consists of one (1) office building and twenty-six (26) separate residential buildings with a total of 208 units/individual apartments.<sup>70</sup> Natural gas is

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<sup>64</sup> 49 CFR § 191.3.

<sup>65</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 6.

<sup>66</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 7-8; *see also* I&E Statement No. 1, pg. 22; I&E Exhibit 12.

<sup>67</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 9; *see also* I&E Statement No. 1, pg. 22.

<sup>68</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 11; *see also* I&E Statement No. 1, pg. 22; I&E Exhibits 14, 19, and 58.

<sup>69</sup> 49 CFR § 191.3.

<sup>70</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 12; *see also* I&E Statement No. 1, pg. 27.

delivered by UGI Corporation (“UGI”) to a single rotary meter located on the property which provides gas service to all buildings.<sup>71</sup> The gas service is piped to each individual apartment unit where the tenant consumes the gas for heating and cooking.<sup>72</sup> Westover purchases the gas from UGI and then charges the tenant for the gas through rents.<sup>73</sup>

Accordingly, Carlisle Park Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex (as stipulated by the Parties and further explained below); (2) Westover purchases the gas from an outside source, i.e., UGI, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants use the gas for heating and cooking; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Concord Court**

Concord Court Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>74</sup> Concord Court consists of seven (7) residential buildings which house a total of 84 units/individual apartments.<sup>75</sup> Natural gas is delivered by PECO to Westover at a meter located outside each apartment building and the gas facilities are limited to the apartment complex.<sup>76</sup> The gas services a central boiler and hot water heater, which in turn generates heat and hot water that is distributed to the tenants.<sup>77</sup> Westover purchases the gas from

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<sup>71</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 13; *see also* I&E Statement No. 1, pg. 27; I&E Exhibit 21B.

<sup>72</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 13-15; *see also* I&E Statement No. 1, pg. 27.

<sup>73</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 16; *see also* I&E Statement No. 1, pg. 28; I&E Exhibit 15.

<sup>74</sup> 49 CFR § 191.3.

<sup>75</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 17; *see also* I&E Statement No. 1, pg. 29.

<sup>76</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 18-19; *see also* I&E Statement No. 1, pg. 29; I&E Exhibit 12.

<sup>77</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 20; *see also* I&E Statement No. 1, pg. 29.



PECO and then charges the tenants through a cost allocation through rents.<sup>78</sup> Specifically, the tenant is billed based upon the square footage of the unit and/or square footage of the unit and the number of persons residing in the unit.<sup>79</sup>

Accordingly, Concord Court Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents by way of a cost allocation.

### **Country Manor**

Country Manor Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>80</sup> Country Manor consists of a total of sixteen (16) buildings which house a total of 200 units/individual apartments.<sup>81</sup> Natural gas is delivered by PECO to Westover at meters located in or at each apartment building and all gas facilities are limited to the apartment complex.<sup>82</sup> The gas services a central boiler and hot water heater, which in turn generates heat and hot water which is distributed to the tenants.<sup>83</sup> The gas is also distributed to the individual apartment units for cooking and to a community laundry room for gas-operated

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<sup>78</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 22; *see also* I&E Statement No. 1, pg. 29; I&E Exhibits 11, 14, 22, and 58.

<sup>79</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 22; *see also* I&E Statement No. 1, pg. 29; I&E Exhibits 11, 14, and 22.

<sup>80</sup> 49 CFR § 191.3.

<sup>81</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 23; *see also* I&E Statement No. 1, pg. 31.

<sup>82</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 24-25; *see also* I&E Statement No. 1, pg. 31; I&E Exhibit 12.

<sup>83</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 26; *see also* I&E Statement No. 1, pg. 31.

dryers which the tenant must pay to use.<sup>84</sup> Westover purchases the gas from PECO, and then charges the tenants for the gas through rents.<sup>85</sup>

Accordingly, Country Manor Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water, use the gas for cooking in their individual apartment unit, and use the gas in the community laundry room; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Fox Run**

Fox Run Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>86</sup> Fox Run consists of six (6) residential buildings which house a total of 196 units/individual apartments.<sup>87</sup> PECO delivers gas to Westover at meters located on the exterior of each apartment building and the gas facilities are limited to the apartment complex.<sup>88</sup> Natural gas is used for the generation of hot water, which is distributed to the tenants, and is distributed to each individual apartment for heating purposes.<sup>89</sup> A Westover-owned sub-meter is located in each individual apartment unit.<sup>90</sup> Westover purchases the gas from PECO, and bills the tenants

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<sup>84</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 26-27; *see also* I&E Statement No. 1, pg. 31; I&E Exhibits 25H, 25I, and 25U.

<sup>85</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 28; *see also* I&E Statement No. 1, pg. 31; I&E Exhibits 14, 24, and 58.

<sup>86</sup> 49 CFR § 191.3.

<sup>87</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 28; *see also* I&E Statement No. 1, pg. 33.

<sup>88</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 30-31; *see also* I&E Statement No. 1, pg. 33; I&E Exhibit 12.

<sup>89</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 30, 32; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B; *see also* I&E Statement No. 1, pg. 33.

<sup>90</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 30; *see also* I&E Statement No. 1, pg. 33.

for the gas consumed for heat based upon a meter reading from the sub-meter and for the gas used to produce hot water through rents.<sup>91</sup>

Accordingly, Fox Run Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and gas service for heat; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas used to produce hot water through rents and charges the tenant for the gas used for heat based upon a sub-meter reading.

### **Gladstone Towers**

Gladstone Towers is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>92</sup> Gladstone Towers consists of two (2) residential buildings which house a total of 121 units/individual apartments.<sup>93</sup> Natural gas is delivered by PECO to two (2) meters located outside of Building AB, which provides gas service to both Building AB and Building CD, and all gas facilities are limited to the apartment complex.<sup>94</sup> All individual apartment units contain a Westover-owned sub-meter.<sup>95</sup> The gas is used to produce hot water, which is distributed to the tenants, and is distributed to each individual unit for heating, cooking, and running dryers.<sup>96</sup>

Westover purchases the gas from PECO, bills the tenants for the gas consumed for heating,

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<sup>91</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 33; *see also* I&E Statement No. 1, pgs. 33-34; I&E Exhibits 11, 14, 26, and 58.

<sup>92</sup> 49 CFR § 191.3.

<sup>93</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 34; *see also* I&E Statement No. 1, pg. 35.

<sup>94</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 35, 38; *see also* I&E Statement No. 1, pgs. 35-36; I&E Exhibit 12.

<sup>95</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 37; *see also* I&E Statement No. 1, pg. 36; I&E Exhibits 12 and 28D.

<sup>96</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 39.

cooking, and running dryers based upon a meter reading from the sub-meter and for the gas used to produce hot water through rents.<sup>97</sup>

Accordingly, Gladstone Towers Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and use gas for heating, cooking, and running dryers; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas used to produce hot water through rents and charges the tenant for the gas used for heating, cooking, and running dryers based upon a sub-meter reading.

### **Hillcrest**

Hillcrest Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>98</sup> Hillcrest consists of seven (7) separate residential buildings which house a total of 84 units/individual apartments.<sup>99</sup> Natural gas is delivered by PECO to one rotary meter which provides gas service to the entire apartment complex, and the gas facilities are limited to the apartment complex.<sup>100</sup> Each individual unit at Hillcrest consumes gas to run furnaces for heat.<sup>101</sup> Westover purchases the gas from PECO, and then charges the tenants for the gas through rents.<sup>102</sup>

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<sup>97</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 40; *see also* I&E Statement No. 1, pg. 36; I&E Exhibits 11, 16, 27, and 58.

<sup>98</sup> 49 CFR § 191.3.

<sup>99</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 41; *see also* I&E Statement No. 1, pg. 38.

<sup>100</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 42, 44; *see also* I&E Statement No. 1, pgs. 38-39; I&E Exhibit 12.

<sup>101</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 43; *see also* I&E Statement No. 1, pg. 39.

<sup>102</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 45; *see also* I&E Statement No. 1, pg. 39; I&E Exhibits 15, 29, and 58.

Accordingly, Hillcrest Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with gas to operate their gas-run furnaces; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Jamestown Village**

Jamestown Village Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>103</sup> Jamestown Village consists of twenty-three (23) residential buildings which house a total of 253 units/individual apartments.<sup>104</sup> Natural gas is delivered by PECO to multiple meters located outside each apartment building, and the gas facilities are limited to the apartment complex.<sup>105</sup> Each individual apartment contains a Westover-owned sub-meter.<sup>106</sup> The gas is distributed to a central forced-air heat system and to each individual unit for hot water and cooking.<sup>107</sup> Westover purchases the gas from PECO and then bills the tenant based upon an actual meter reading from the sub-meter.<sup>108</sup>

Accordingly, Jamestown Village Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat, hot water, and gas for cooking purposes; and (4) the

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<sup>103</sup> 49 CFR § 191.3.

<sup>104</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 46.

<sup>105</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 47-48; *see also* I&E Statement No 1, pg. 41; I&E Exhibit 12.

<sup>106</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 47; *see also* I&E Statement No. 1, pg. 41.

<sup>107</sup> Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>108</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 49; *see also* I&E Statement No. 1, pg. 41; I&E Exhibits 11 and 31.

ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas based upon a reading from a Westover-owned sub-meter.

### **Lansdale Village**

Lansdale Village Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>109</sup> Lansdale Village consists of three (3) residential buildings which house a total of 41 units/individual apartments.<sup>110</sup> Natural gas is delivered by PECO to a single meter located on one residential building, and the gas facilities are limited to the apartment complex.<sup>111</sup> The gas services a central boiler system located in one of the buildings which produces heat and hot water.<sup>112</sup> Heat and hot water are distributed to all three (3) residential buildings for use by the tenants.<sup>113</sup> Westover purchases the gas from PECO, and then bills the tenants based upon an allocation basis related to the square footage of the unit and the number of persons residing in the unit.<sup>114</sup>

Accordingly, Lansdale Village Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas based upon

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<sup>109</sup> 49 CFR § 191.3.

<sup>110</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 50; *see also* I&E Statement No. 1, pg. 43.

<sup>111</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 51-52; *see also* I&E Statement No. 1, pg. 43; I&E Exhibit 12.

<sup>112</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 51; *see also* I&E Statement No. 1, pg. 43.

<sup>113</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 51; *see also* I&E Statement No. 1, pg. 43.

<sup>114</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 53; *see also* I&E Statement No. 1, pg. 43; I&E Exhibits 11, 14, 32, and 58.

an allocation related to the square footage of the unit and the number of persons residing in the unit.

### **Lansdowne Towers**

Lansdowne Towers Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>115</sup> Lansdowne Towers consists of five (5) residential buildings which house a total of 231 units/individual apartments.<sup>116</sup> Natural gas is delivered by PECO to a single meter outside of Building B, and the gas facilities are limited to the apartment complex.<sup>117</sup> Westover-owned sub-meters are located in each individual unit.<sup>118</sup> The gas service is used to service a central hot water system which produces hot water for the tenants, and is consumed by the tenants for heating and coin-operated dryers.<sup>119</sup> Westover purchases the gas from PECO, and then bills the tenants for the gas used based upon an actual sub-meter reading in addition to billing the tenants for the gas used to produce hot water through rents.<sup>120</sup>

Accordingly, Lansdowne Towers Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and use gas for heating and coin-operated dryers; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover

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<sup>115</sup> 49 CFR § 191.3.

<sup>116</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 54; *see also* I&E Statement No. 1, pg. 45.

<sup>117</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 55-56; *see also* I&E Statement No. 1, pg. 45; I&E Exhibit 12.

<sup>118</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 55-56; *see also* I&E Statement No. 1, pg. 45; I&E Exhibit 12.

<sup>119</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 55; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>120</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 57; *see also* I&E Statement No. 1, pg. 45; I&E Exhibits 11, 16, and 34.

charges the tenants for the gas used to produce hot water through rents and charges the tenant for the gas used for heat based upon a sub-meter reading.

### **Main Line Berwyn**

Main Line Berwyn Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>121</sup> Main Line Berwyn consists of one (1) office building and three (3) residential buildings which house a total of 180 units/individual apartments.<sup>122</sup> Natural gas is delivered by PECO to a single meter located at Building A, and the gas facilities are limited to the apartment complex.<sup>123</sup> Each individual apartment contains a Westover-owned sub-meter.<sup>124</sup> The gas service is consumed by the tenants for heating and cooking, and is used to service a central hot water system which distributes hot water to the tenants.<sup>125</sup> Westover purchases the gas from PECO, and then bills the tenants for the gas used to produce hot water through rents and the gas consumed by the tenants based upon an actual meter reading from the sub-meter.<sup>126</sup>

Accordingly, Main Line Berwyn Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and use the gas for heating and cooking purposes; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover

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<sup>121</sup> 49 CFR § 191.3.

<sup>122</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 58; *see also* I&E Statement No. 1, pg. 47.

<sup>123</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 59-60; *see also* I&E Statement No. 1, pgs. 47-48; I&E Exhibit 12.

<sup>124</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 59-60; *see also* I&E Statement No. 1, pgs. 47-48; I&E Exhibit 12.

<sup>125</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 61.

<sup>126</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 62; *see also* I&E Statement No. 1, pg. 48; I&E Exhibits 11, 16, and 36.



charges the tenants for the gas used to produce hot water through rents and charges the tenant for the gas used for heat and cooking based upon a sub-meter reading.

### **Mill Creek I**

Mill Creek I Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>127</sup> Mill Creek I consists of one (1) office building and six (6) residential buildings which house a total of 174 units/individual apartments.<sup>128</sup> Natural gas is delivered by PECO to a single rotary meter on the property and the gas facilities are limited to the apartment complex.<sup>129</sup> The gas services a central boiler system, which distributes heat and hot water to the tenants, and is consumed by the tenants for cooking.<sup>130</sup> Westover purchases the gas from PECO, and then bills the tenants for the gas through rents.<sup>131</sup>

Accordingly, Mill Creek I Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water and use the gas for cooking purposes; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Mill Creek II**

Mill Creek II Apartments is a master meter system because it satisfies the definition

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<sup>127</sup> 49 CFR § 191.3.

<sup>128</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 63; *see also* I&E Statement No. 1, pg. 49.

<sup>129</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 64-65; *see also* I&E Statement No. 1, pgs. 49-50; I&E Exhibit 12.

<sup>130</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 66; *see also* I&E Statement No. 1, pgs. 49-50.

<sup>131</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 67; *see also* I&E Statement No. 1, pg. 50; I&E Exhibit 17, 38, and 58.

pursuant to Section 191.3.<sup>132</sup> Mill Creek II consists of three (3) residential buildings which house a total of 68 units/individual apartments.<sup>133</sup> Natural gas is delivered by PECO to a meter located inside a mechanical room at each building, and the gas facilities are limited to the apartment complex.<sup>134</sup> The gas services a central boiler system which generates heat and hot water, which in turn is distributed to the tenants.<sup>135</sup> The gas also is consumed by tenants for cooking.<sup>136</sup> Westover purchases the gas from PECO and then bills the tenants through rents.

Accordingly, Mill Creek II Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water, and use gas for cooking; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Norriton East**

Norriton East Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>137</sup> Norriton East consists of one (1) residential building which houses 68 units/individual apartments.<sup>138</sup> Natural gas service is delivered by PECO to one rotary meter located outside the residential building, and the gas facilities are limited to the apartment

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<sup>132</sup> 49 CFR § 191.3.

<sup>133</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 68; *see also* I&E Statement No. 1, pg. 51.

<sup>134</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 69-70; *see also* I&E Statement No. 1, pg. 51; I&E Exhibit 12.

<sup>135</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 71; *see also* I&E Statement No. 1, pg. 51.

<sup>136</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 71.

<sup>137</sup> 49 CFR § 191.3.

<sup>138</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 73; *see also* I&E Statement No. 1, pg. 52.

complex.<sup>139</sup> The gas services a central boiler system which generates heat and hot water, which in turn is distributed to the tenants.<sup>140</sup> The gas is also consumed by the tenants for cooking and coin-operated dryers.<sup>141</sup> Westover purchases the gas from PECO, and then charges the tenants for the gas service through rents.<sup>142</sup>

Accordingly, Norriton East Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water, and use gas for cooking and coin-operated dryers; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Oak Forest**

Oak Forest Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>143</sup> Oak Forest consists of seven (7) residential buildings which house a total of 143 units/individual apartments.<sup>144</sup> Natural gas is delivered by UGI to one meter located on the property, and the gas facilities are limited to the apartment complex.<sup>145</sup> The gas services a central hot water-steam system which generates heat and hot water for use by the tenants.<sup>146</sup> The

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<sup>139</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 74-75; *see also* I&E Statement No. 1, pg. 52.

<sup>140</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 74, 76; *see also* I&E Statement No. 1, pg. 52.

<sup>141</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 76.

<sup>142</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 77; *see also* I&E Statement No. 1, pg. 52; I&E Exhibits 14, 42, and 58.

<sup>143</sup> 49 CFR § 191.3.

<sup>144</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 78; *see also* I&E Statement No. 1, pg. 54.

<sup>145</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 79-80; *see also* I&E Statement No. 1, pg. 54.

<sup>146</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 81.

gas is also consumed by the tenants for cooking.<sup>147</sup> Westover purchases the gas from UGI, and the charges the tenants for the gas through rents.<sup>148</sup>

Accordingly, Oak Forest Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., UGI, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water, and consume gas for cooking; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Paoli Place**

While the Joint Stipulation provides a building specific breakdown of Paoli Place-North and Paoli Place- South to showcase the difference in natural gas system at each or a group of residential buildings, the definition of a master meter system does not include a separation or building specific breakdown of an apartment complex, and thus either a master meter system exists or does not exist at the apartment complex. Moreover, it would be unconscionable for the Commission to regulate only a portion or select number of residential buildings at an apartment complex while forgoing regulation and oversight at others. Additionally, it would be challenging for apartment complex owners/operators to only be responsible for following the Federal and State pipeline safety laws at only a select number of buildings in an apartment complex. For this reason, Paoli Place- North and Paoli Place- South will each be discussed as an apartment complex, not a specific building or set of buildings.

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<sup>147</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 81.

<sup>148</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 82; *see also* I&E Statement No. 1, pg. 54; I&E Exhibits 17, 44, and 58.

### **Paoli Place- North**

Paoli Place- North Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>149</sup> Paoli Place- North consists of eighteen (18) residential buildings which house a total of 204 units/individual apartments.<sup>150</sup> Natural gas is delivered by PECO to meters located either inside or outside the residential buildings, and all gas facilities are limited to the apartment complex.<sup>151</sup> At some of the residential buildings, a Westover-owned sub-meter is located in the tenant's mechanical closet.<sup>152</sup> At some of the residential buildings, the gas services a central boiler system which generates hot water that is distributed to the tenants, and also is consumed by tenants for cooking and heating.<sup>153</sup> At some of the residential buildings, Westover purchases the gas from PECO, and then bills the tenant for the gas consumed based upon an actual meter reading from the sub-meter and also bills the tenant for the gas used to produce hot water through rents.<sup>154</sup>

Accordingly, Paoli Place- North Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and consume gas for heating and cooking; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas used to supply hot water through rents and bills the tenants for the gas consumed for heating and cooking based upon an actual meter reading from a sub-meter.

### **Paoli Place-South**

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<sup>149</sup> 49 CFR § 191.3.

<sup>150</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 84.

<sup>151</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 85-89, 89-90.

<sup>152</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 85.

<sup>153</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 87.

<sup>154</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 88; *see also* I&E Exhibits 11, 14, and 46.

Paoli Place-South Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>155</sup> Natural gas is delivered by PECO to a meter located outside each residential building or outside one of the residential buildings, and the gas facilities are located within the apartment complex.<sup>156</sup> A Westover-owned sub-meter is located in each individual apartment at some of the residential buildings.<sup>157</sup> At all residential buildings, the gas service is used to produce heat and hot water, which is distributed to the tenants, and is consumed by tenants for cooking.<sup>158</sup> At some of the residential buildings, Westover purchases the gas from PECO, and bills the tenants for the gas used to produce hot water and heat through rents, and bills the tenants for the gas used for cooking based upon an actual meter reading.<sup>159</sup> At the other residential buildings, Westover purchases the gas from PECO and charges the tenants for the gas through rents.<sup>160</sup>

Accordingly, Paoli Place-South Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water, and consume gas for cooking; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover either charges the tenants for the gas through rents or a combination of rents and sub-meter readings.

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<sup>155</sup> 49 CFR § 191.3.

<sup>156</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 93-94, 97-98.

<sup>157</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 93.

<sup>158</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 95, 99.

<sup>159</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 96; I&E Exhibits 13, 14, and 46.

<sup>160</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 100; I&E Exhibits 13, 14, and 46.

### **Park Court**

Park Court Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>161</sup> Park Court consists of four (4) residential buildings which house a total of 66 units/individual apartments.<sup>162</sup> Natural gas is delivered by UGI to meters located outside the residential buildings, and the gas facilities are limited to the apartment complex.<sup>163</sup> The gas services a central hot water system, which generates hot water that is distributed to the tenants, and is consumed by the tenants for cooking, heating, and coin-operated dryers.<sup>164</sup> Westover purchases the gas from UGI, and then bills the tenants based upon an allocated basis related to the square footage of the unit.<sup>165</sup>

Accordingly, Park Court Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., UGI, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and consume gas for cooking, hearing, and coin-operated dryers; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas based upon an allocation related to the square footage of the unit.

### **Valley Stream**

Valley Stream Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>166</sup> Valley Stream consists of one (1) office building, one (1)

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<sup>161</sup> 49 CFR § 191.3.

<sup>162</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 101; *see also* I&E Statement No. 1, pg. 59.

<sup>163</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 102-103; *see also* I&E Statement No. 1, pgs. 59-60 (noting the original meter set-up)

<sup>164</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 104.

<sup>165</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 105; *see also* I&E Statement No. 1, pg. 60; I&E Exhibits 11, 13, 18, and 49.

<sup>166</sup> 49 CFR § 191.3.

maintenance building, and twenty-two (22) residential buildings which house a total of 242 units/individual apartments.<sup>167</sup> Natural gas is delivered by PECO to two (2) meters located in the maintenance building, and the gas facilities are limited to the apartment complex.<sup>168</sup> The gas services a central hot water system, which generates hot water that is distributed to the tenants, and is consumed by the tenants for cooking, heating, and dryers.<sup>169</sup> Westover purchases the gas from PECO, and then charges the tenants for the gas through rents.<sup>170</sup>

Accordingly, Valley Stream Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., PECO, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with hot water and consume gas for cooking, heating, and dryers; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas through rents.

### **Woodland Plaza**

Woodland Plaza Apartments is a master meter system because it satisfies the definition pursuant to Section 191.3.<sup>171</sup> Woodland Plaza consists of eighteen (18) residential buildings which house a total of 144 units/individual apartments.<sup>172</sup> Natural gas is delivered by UGI to a meter located outside each residential building, and the gas facilities are limited to the apartment complex.<sup>173</sup> The gas services a central hot water heater and boiler system which generates heat

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<sup>167</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 106; *see also* I&E Statement No. 1, pg. 61.

<sup>168</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 107-108; *see also* I&E Statement No. 1, pg. 61.

<sup>169</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 109.

<sup>170</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 110; *see also* I&E Statement No. 1, pg. 61; I&E Exhibits 15, 51, and 58.

<sup>171</sup> 49 CFR § 191.3.

<sup>172</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 111; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>173</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 112-113.



and hot water that is distributed to the tenants.<sup>174</sup> The gas is also consumed by the tenants for cooking.<sup>175</sup> Westover purchases the gas from UGI, and then bills the tenants for the gas based upon an allocation related to the square footage of the unit.<sup>176</sup>

Accordingly, Woodland Plaza Apartments is a master meter system because (1) the pipeline system is limited to the apartment complex; (2) Westover purchases the gas from an outside source, i.e., UGI, for resale; (3) the pipeline system supplies the ultimate consumer, i.e., the tenants are supplied with heat and hot water, and consume gas for cooking; and (4) the ultimate consumer purchases the gas either through a meter or by rents, i.e., Westover charges the tenants for the gas based upon an allocation related to the square footage of the unit.

Thus, as explained in detail above, the apartment complexes identified by I&E in the Complaint are master meter systems consistent with Part 191.3 and are subject to the Commission's jurisdiction.<sup>177</sup>

### **1. Westover's Gas Facilities are Limited to the Apartment Complex**

Pursuant to the Partial Settlement filed on June 13, 2023, the Parties entered into a Joint Stipulation of Fact which stated that the gas facilities at all of the apartment complexes, noting the nuance of Carlisle Park, are limited to the apartment complex.<sup>178</sup> The apartment complex at Carlisle Park is a unique situation where one of the apartment buildings is accessible by crossing a public roadway.<sup>179</sup> The single rotary meter which provides gas service to the entire apartment

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<sup>174</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 112, 114; *see also* I&E Statement No. 1, pg. 63.

<sup>175</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 114; *see also* I&E Statement No. 1, pg. 63; I&E Exhibit 14.

<sup>176</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 115; *see also* I&E Statement No. 1, pg. 63; I&E Exhibits 11, 14, and 55.

<sup>177</sup> 49 CFR § 191.3.

<sup>178</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, Nos. 8, 14, 19, 25, 31, 38, 44, 48, 52, 56, 60, 65, 70, 75, 80, 86, 90, 94, 98, 103, 108, and 113.

<sup>179</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 14. *See also* I&E Exhibit 12 and 21D.

complex is located across the street from this singular building, and thus the gas facilities traverse under the public roadway via underground piping to this building.<sup>180</sup> Noting that the single building is part of the Carlisle Park apartment complex, the Parties stipulated that the natural gas facilities at Carlisle Park are limited to a definable area, i.e., the apartment complex.<sup>181</sup> Thus, Westover's natural gas facilities are limited to the apartment complex.

## **2. Westover Purchases Gas for Resale through a Distribution System and Supplies to the Ultimate Consumer**

At the onset, it is important to note where the local NGDC's facilities end and where Westover's gas facilities begin. In reference to PECO, the gas piping past the first fitting after the outlet side of PECO's meter is part of Westover's gas facilities.<sup>182</sup> In reference to UGI, the gas piping past the first flange after the outlet side of UGI's meter is part of Westover's gas facilities.<sup>183</sup> Thus, all gas facilities past the first flange or first fitting after the outlet side of the meter are Westover's facilities.

PHMSA has issued interpretations furthering evidencing that apartment complex owners or operators are responsible for natural gas distribution systems. "We consider the mains and service lines downstream from the LDC [local distribution company] master meter (whether or not there are multiple buildings being served by a single meter) to be a distribution system that is subject to the Federal pipeline safety regulations in 49 CFR Parts 191 and 192."<sup>184</sup> "The gas distribution lines downstream from the master meter are a Master Meter System that is subject to the federal gas pipeline safety regulations in 49 CFR Parts 191 and 192."<sup>185</sup>

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<sup>180</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 14.

<sup>181</sup> Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A, No. 14.

<sup>182</sup> I&E Statement No. 1-R, pg. 4.

<sup>183</sup> I&E Statement No. 1-R, pg. 4.

<sup>184</sup> PHMSA Letter of Interpretation to Indiana Utility Regulatory Commission, PI-11-0014 (March 27, 2012) and (August 27, 2012) (finding that apartment complex is a master meter system).

<sup>185</sup> PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001).

The facts surrounding Westover are similar to PHMSA’s interpretation in the Mall of America.<sup>186</sup> The Mall of America (“Mall”) is a large shopping mall in Minnesota which operates its own gas system.<sup>187</sup> Specifically, the Mall buys gas from the local distribution company and resells it to the Mall tenants using gas meter readings.<sup>188</sup> The Mall reads the meters of the tenants connected to the gas system and bills the customers for their gas usage.<sup>189</sup> Accordingly, PHMSA determined that the Mall is a master meter system because it is engaged in the distribution of gas by transferring gas to the ultimate consumers (the Mall tenants) and sells the gas to the ultimate consumers (the Mall tenants).<sup>190</sup>

Additionally, in PHMSA Interpretation PI-73-0112, PHMSA began its interpretation by noting and explaining a letter issued by the Office of Pipeline Safety in December 1970 which stated that municipal housing complexes and mobile home parks that are supplied gas through a master meter and in turn distribute the gas by their own mains and services lines to the tenants are master meter systems.<sup>191</sup> PHMSA continued to discuss the letter, noting that the letter explained that mains and service lines downstream of the master meter are considered distribution lines, and that the housing authority or mobile home park is a pipeline operator within the meaning of Part 192.<sup>192</sup>

Moreover, PHMSA has determined that a housing authority which distributes gas to its tenants but does not bill or receive payment from the tenants for gas service is a master meter system.<sup>193</sup> In rendering this determination, PHMSA stated that the tenants are clearly paying rent

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<sup>186</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>187</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>188</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>189</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>190</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>191</sup> PHMSA Letter of Interpretation to Public Service Commission of Utah, PI-73-0112 (June 18, 1973) (attached as I&E Exhibit 5 to I&E’s Answer in Opposition to Westover’s Amended Petition).

<sup>192</sup> PHMSA Letter of Interpretation to Public Service Commission of Utah, PI-73-0112 (June 18, 1973).

<sup>193</sup> PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001).

for the privilege of occupying a housing unit and receiving utilities, which include gas.<sup>194</sup>

PHMSA decided that the fact that the tenants are not being billed for gas and that subsidiaries for utility costs are received by the housing authority is not relevant to the master meter determination.<sup>195</sup> Thus, PHMSA determined that the housing authority was a master meter system subject to the pipeline safety regulations.<sup>196</sup>

Here, Westover purchases gas from the local NGDC, PECO or UGI, and resells the gas to its tenants, either through rents, an allocation, a sub-meter reading, or a combination of rents and sub-meter reading.<sup>197</sup> Specifically, Westover purchases the gas for resale through rents in the following apartment complexes: Black Hawk, Carlisle Park, Country Manor, Hillcrest, Mill Creek I, Mill Creek II, Norriton East, Oak Forest, Paoli Place-South, and Valley Stream.<sup>198</sup> Westover purchases the gas for resale through a cost allocation at the following apartment complexes: Concord Court, Lansdale Village, Park Court, and Woodland Plaza.<sup>199</sup> Westover purchases the gas for resale through both rents and an actual meter reading from a sub-meter at the following apartment complexes: Fox Run, Gladstone Towers, Lansdowne Towers, Main Line Berwyn, and Paoli Place- North.<sup>200</sup> Lastly, Westover purchases the gas for resale through an actual meter reading from a sub-meter at Jamestown Village.<sup>201</sup>

The gas is distributed to either a central heater/hot water system, to the tenants directly,

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<sup>194</sup> PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001).

<sup>195</sup> PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001).

<sup>196</sup> PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001).

<sup>197</sup> *See generally* Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>198</sup> *See generally* Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>199</sup> *See generally* Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>200</sup> *See generally* Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>201</sup> *See generally* Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

or to a combination of a central heater/hot water system and the tenants.<sup>202</sup> Specifically, Westover distributes the gas to a central heater/hot water system, which in turn provides heat and/or hot water to the tenants, at Black Hawk, Concord Court, and Lansdale Village.<sup>203</sup> Westover distributes the gas to both a central heater/hot water system and to the tenants directly at the following apartment complexes: Country Manor, Fox Run, Gladstone Towers, Jamestown Village, Lansdowne Towers, Main Line Berwyn, Mill Creek I, Mill Creek II, Norriton East, Oak Forest, Paoli Place- North, Paoli Place- South, Park Court, Valley Stream, and Woodland Plaza.<sup>204</sup> Lastly, Westover distributes gas directly to the tenants at Carlisle Park and Hillcrest.<sup>205</sup>

Thus, the record is clear that Westover purchases gas from the local NGDC for resale to its tenants, and that it operates a natural gas distribution system when providing this gas service to its tenants.

### **3. Westover's Tenants are the Ultimate Consumer of the Gas Service**

In PHMSA Interpretation PI-73-0112, PHMSA reviewed three master meter situations to determine which are jurisdictional following the change in definition of a “service line.”<sup>206</sup> In short, PHMSA stated that the definition of service line does not affect the status of a master meter system.<sup>207</sup> Of importance, PHMSA provided the following analysis:

[Scenario] The gas leaves master meter, travels through the ground, serves a plant unit, then on to offices and various other plant units, warehouses, etc.

One of the characteristics of a master meter system that makes it subject to the regulations is a transfer of gas from the operator (landlord) to other persons who

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<sup>202</sup> See generally Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>203</sup> See generally Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>204</sup> See generally Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>205</sup> See generally Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>206</sup> PHMSA Letter of Interpretation to Public Service Commission of Utah, PI-73-0112 (June 18, 1973).

<sup>207</sup> PHMSA Letter of Interpretation to Public Service Commission of Utah, PI-73-0112 (June 18, 1973).

are the ultimate consumers of the gas. In the situation described, however, the person (company) taking delivery of gas through the "master" meter is using the gas for its own purposes, i.e., offices, plant, warehouses, etc. There is no indication that the gas is resold by the company for use by another consumer or that the gas is being distributed by the company to any other person.

Here, all available information indicates that the gas is being used by the company employees for company purposes on company property. We are, therefore, unable to identify this as a master meter system subject to the regulations.<sup>208</sup>

In contrast, Westover and/or its employees are not the ultimate consumers of the gas, rather their tenants are the ultimate consumers. As mentioned above, there are three (3) categories of consumption at Westover's apartment complexes: (1) Westover uses the gas for a central heater/hot water system which distributes heat or hot water to the tenants; (2) Westover uses some of the gas for a central heater/hot water system which distributes heat or hot water to the tenants, the tenants consume the remainder of the gas; and (3) Westover distributes the gas to the tenants for their sole usage. None of the categories describe a scenario or situation where Westover consumes the gas for its own use/purpose, rather, the gas is consumed for the exclusive benefit of and use by the tenants.

Westover may attempt to argue that it is the ultimate consumer in the few situations where a central heater/hot water system consumes the gas, but this argument is misguided. The tenants, not Westover, receive the ultimate benefit and use of the gas service, i.e., heat and/or hot water. While Westover may be responsible for the maintenance of the central heater/hot water system, the tenants are the ultimate users and consumers of the gas service, i.e., heat and/or hot water is distributed to the tenants for their usage. This is further evidenced by the fact that Westover charges the tenants for the gas service through rents, an allocation, or a sub-meter reading. Were Westover the ultimate consumer of the gas service and the sole beneficiary of the

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<sup>208</sup> PHMSA Letter of Interpretation to Public Service Commission of Utah, PI-73-0112 (June 18, 1973).

service, there would be no basis by which the tenants could be billed. Rent payments account for gas usage, not the heat or hot water byproducts of that usage. Tenants are billed for the gas service because they are the ultimate consumer of the gas.

Moreover, this sound reasoning is bolstered by PHMSA interpretations. As discussed briefly above, PHMSA issued an interpretation relating to the Mall of America.<sup>209</sup> The Mall reads the meters of the tenants connected to the gas system and bills the customers for their gas usage.<sup>210</sup> PHMSA determined that the Mall is a master meter system because it is engaged in the distribution of gas by transferring gas to the ultimate consumers (the Mall tenants) and sells the gas to the ultimate consumers (the Mall tenants).<sup>211</sup>

Additionally, PHMSA issued an interpretation on February 6, 2020 which reinforced the determination rendered in the Mall of America.<sup>212</sup> In the matter involving Cal Farley's Boys Ranch, PHMSA cited to a prior case<sup>213</sup> when it stated that "if the entity provides gas to consumers, such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered customers even though they may not be individually metered."<sup>214</sup> Accordingly, the tenants of Westover's apartment complexes are the ultimate consumers.

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<sup>209</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>210</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>211</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>212</sup> PHMSA Letter of Interpretation to Cal Farley's Boys Ranch, PI-19-0002 (February 6, 2020) (attached in Appendix D).

<sup>213</sup> PHMSA Letter of Interpretation to Rhode Island Division of Public Utilities & Carriers, PI-03-0101 (February 14, 2003) (attached in Appendix D).

<sup>214</sup> PHMSA Letter of Interpretation to Cal Farley's Boys Ranch, PI-19-0002 (February 6, 2020).

4. **A Natural Gas System that is Exclusively or Primarily Comprised of Interior Piping Satisfies the Definition of Master Meter System.**

First, the definition of master meter system does not differentiate between interior and exterior piping.<sup>215</sup> Second, the terms in the definition of master meter system also do not exclude or create an exception for interior piping. A “pipeline” is defined as

A part of the physical facilities through which gas or hazardous liquids move in transportation, including a pipe valve and other appurtenance attached to the pipe, compressor unit, metering station, regulator station, delivery station, holder and fabricated assembly. The term only includes pipeline regulated by Federal pipeline safety laws. The term does not include a pipeline subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission.<sup>216</sup>

The Pennsylvania definition is consistent with the federal pipeline safety laws which define “pipeline” or “pipeline system” as “all parts of those physical facilities through which gas moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.”<sup>217</sup> A “pipeline facility” is defined as:

A new or existing pipeline, right-of-way and any equipment, facility or building used in the transportation of gas or hazardous liquids or in the treatment of gas or hazardous liquids during the course of transportation. The term does not include a pipeline facility subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission.<sup>218</sup>

A “pipeline operator” is defined as

A person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws. The term does not include a public utility or an ultimate consumer who owns a service line on his real property.<sup>219</sup>

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<sup>215</sup> 49 CFR § 191.3 (defining “master meter system” as “a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.”)

<sup>216</sup> 58 P.S. § 801.102.

<sup>217</sup> 49 CFR § 191.3.

<sup>218</sup> 58 P.S. § 801.102.

<sup>219</sup> 58 P.S. § 801.102.



The Pennsylvania definition is consistent with the federal pipeline safety laws which defines an “operator” as a person who engages in the transportation of gas.<sup>220</sup> Notably, neither the definition of master meter system nor the definitions of the terms within the definition explicitly exclude interior piping.

While the definition of pipeline operator excludes an ultimate consumer who owns a service line on his real property, this exception does not apply to Westover. As explained in much detail above, Westover is not the ultimate consumer of the gas service. Instead, the tenants are the beneficiaries of the gas service and pay for that benefit either through rents, an allocation, a sub-meter reading, or a combination of rents and sub-meter reading. The exception carved out in the definition of a pipeline operator applies to the individual or business which consumes the gas service on his/her/its own property, i.e., homeowner consuming gas to heat home or business consuming gas to operate equipment. Westover is a landlord and operator/owner of apartment complexes, and thus the exception is not applicable.

Westover may attempt to argue that piping which is entirely or primarily interior does not satisfy the definition of master meter system in light of the January 2002 Congressional Report.<sup>221</sup> However, this position is difficult to enforce and the argument is misguided when the Report is reviewed in its entirety and in conjunction with more recent PHMSA interpretations. A decision which states that piping that is entirely or primarily interior is a subjective standard which would result in inconsistent interpretations and applicability. How would a regulatory entity determine what is primarily a specific number of inches, feet, or other measurement? What

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<sup>220</sup> 49 CFR § 191.3.

<sup>221</sup> 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”).

if the piping transitioned from interior piping in one building to either underground or exterior piping to another building, would that change the end result? How would a regulatory entity enforce such a standard? Accordingly, such a subjective standard would be difficult to enforce and would provide inconsistent results.

The Congressional Report states that it is the Office of Pipeline Safety's *policy* to interpret master meter systems as applying to gas distribution systems serving multiple buildings in contrast to a system consisting entirely or primarily of interior piping located within a single building.<sup>222</sup> Thus, the Report noted a distinction between a system which provides service to a single building versus multiple buildings. Additionally, the Report stated that those systems which consist entirely or primarily of interior piping located within a single building may be referred to as master meter systems by local utilities and utility regulators for rate purposes, and "by some state gas pipeline safety regulators for *safety regulation purposes*."<sup>223</sup> Thus, while the policy in 2002 may have been to exclude some master meters from federal regulations, the policy did not affect a state's ability to regulate those master meter systems for safety purposes.

Moreover, in the Mall of America PHMSA Interpretation which was issued in December 2016, PHMSA determined that the definition of master meter system does not prohibit regulation for non-buried gas pipelines.<sup>224</sup> It further stated that PHMSA does not regulate gas piping inside a building unless the interior piping is used by the gas pipeline operator to distribute gas.<sup>225</sup> Thus, since the pipeline system in the Mall was used to distribute gas to the Mall tenants, the solely interior nature of the pipe did not change the determination that the Mall was engaged in

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<sup>222</sup> *Id.*

<sup>223</sup> *Id.* (emphasis added)

<sup>224</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>225</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

the distribution of gas, and thus a master meter system.<sup>226</sup> Accordingly, the 2016 interpretation suggests a change in policy related to piping located entirely or primarily inside a building.

Here, the gas facilities downstream from the local NGDC meter are Westover's facilities and are used by Westover as part of its distribution system. Westover is not merely a customer responsible for its own service, but rather it is distributing the gas through its own facilities to a third-party, i.e., the tenants, who have no responsibility or control in the maintenance of those gas facilities. Since Westover is a pipeline operator distributing gas to its tenants, whether the gas facilities are exclusively or primarily interior has no bearing on whether Westover is a master meter system. To render a decision to the contrary would result in a determination that Westover is a master meter system subject to the Commission's jurisdiction, but that the Commission's jurisdiction is rendered moot at apartment complexes where the piping is primarily or exclusively interior. Or, such a decision would limit the Commission's jurisdiction over the master meter system to only those pipe facilities which are underground or exterior. Both of these results would be in stark contrast to the definition of master meter system and the Mall of America PHMSA Interpretation.

As explained in Mr. Orr's expert testimony, interior/indoor gas facilities are a major safety concern if not properly maintained and inspected.<sup>227</sup> While a gas leak outside is a safety concern in itself, a gas leak inside a home, building, basement, or apartment poses a higher risk because the gas has nowhere to go, allowing the gas to accumulate to an explosive level.<sup>228</sup> Thus, the interior nature of gas facilities at an apartment complex has no bearing on whether the definition of a master meter system is met.

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<sup>226</sup> PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).

<sup>227</sup> I&E Statement No. 1, pgs. 23-26.

<sup>228</sup> I&E Statement No. 1, pg. 25; *see also generally* I&E Statement No. 1 and I&E Statement 1-R, pgs. 13-14.

**5. The Existence of a Sub-Meter not owned by the Natural Gas Distribution Company is dispositive of a Master Meter System**

Six (6) of the apartment complexes identified in the Joint Stipulation have Westover-owned sub-meters installed in the unit or the unit's mechanical closet.<sup>229</sup> The apartment complexes are Fox Run, Gladstone Towers, Jamestown Village, Lansdowne Towers, Main Line Berwyn, and Paoli Place- North.<sup>230</sup> The existence of a sub-meter at an apartment complex which is not owned by the local gas distribution company is dispositive of a master meter system. The existence of a sub-meter is resounding proof that the apartment complex owner/operator is responsible for the distribution of the gas and is purchasing the gas for resale. Westover, or its third-party contractor, acts as a distribution company when it transports the gas to the tenant, records the amount of gas used by the tenant, and then bills the tenant for the gas used. This control and/or ownership satisfies the definition of a master meter system: (1) pipeline distribution system within, but not limited to a definable area, such as an apartment complex; (2) operator purchases gas from outside source for resale; (3) pipeline distribution system supplies the ultimate consumer; and (4) ultimate consumer purchases the gas either through a meter or by other means, such as rent. Accordingly, the existence of a sub-meter owned by the apartment complex is dispositive of a master meter system.

**6. All of Westover's Apartment Complexes Distribute Gas "In or Affecting Interstate or Foreign Commerce"**

The Commerce clause of the U.S. Constitution<sup>231</sup> is the authority underlying the Federal Pipeline Safety Act ("PSA"). Congress may mandate federal regulation for the use of the

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<sup>229</sup> See generally Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>230</sup> See generally Joint Petition for Partial Settlement, Joint Stipulation of Facts, Attachment A; Joint Petition for Partial Settlement, Chart of Apartment Complexes, Attachment B.

<sup>231</sup> U.S. Const. Art. I, § 8, cl. 3.

channels of interstate commerce, the instrumentalities or and persons or things in interstate commerce, and any activity that has a substantial effect on interstate commerce.<sup>232</sup> With regard to the third category, Congress is empowered to regulate purely local activities that are part of an economic “class of activities” that have a substantial effect on interstate commerce.<sup>233</sup> Regulation is squarely within Congress’ commerce power when production of a commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity.<sup>234</sup> The transportation of gas by pipeline has a substantial effect on interstate commerce.

The PSA defines “intrastate gas pipeline facility” as a “gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the [Federal Energy Regulatory] Commission pursuant to the Natural Gas Act, 15 U.S.C. §§ 717, *et seq.*”<sup>235</sup> Notably, the Natural Gas Act limits the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) to the transportation and sale of natural gas in interstate and foreign commerce and not merely *affecting* interstate or foreign commerce, as is the case under the PSA.<sup>236</sup> PHMSA has likewise determined that even though the transportation of gas may entirely be within one State, every element of a gas gathering, transmission, and distribution line is moving gas that is either in or affects interstate commerce.<sup>237</sup> Accordingly, pipeline safety jurisdiction is not limited only to interstate pipelines.

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<sup>232</sup> *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005).

<sup>233</sup> *Id.* at 17, citing *Perez v. U.S.*, 402 U.S. 146, 151 (1971); *Wickard v. Filburn*, 317 U.S. 111, 128-129 (1942).

<sup>234</sup> *Delta Smelt Consol. Cases v. Salazar*, 663 F. Supp. 2d 922, 937, (E.D. Cal. 2009)(citing *Gonzales v. Raich*, 545 U.S. 1 (2005)).

<sup>235</sup> 49 U.S.C. § 60101(a)(9).

<sup>236</sup> *See* 15 U.S.C. § 717(a); 49 U.S.C. § 60101(a)(8)(A)(ii).

<sup>237</sup> PHMSA Interpretation PI-71-036 (March 16, 1971) (attached as Attachment C to I&E’s Answer in Opposition to Westover’s Petition for Declaratory Order)

The minimum Federal pipeline safety standards apply broadly to both interstate and intrastate pipelines through the PSA.<sup>238</sup> Congress originally enacted the PSA in 1968 “to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.”<sup>239</sup> The legislative history of PSA further exemplifies the notion that the transportation of gas applies to intrastate pipeline systems distributing natural gas as the Congressional report provided:

The term “transportation of gas” is defined as the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce. With exception as to gathering in certain circumstances, this means all aspects of the transportation of gas from the well head to the consumer. As testified by Secretary Boyd:

‘There is no question but what every element of a gas gathering, transmission, and distribution line is moving gas which is either in or affects interstate commerce. \* \* \* (p. 35).

I don’t think that it even requires any elasticity of the commerce clause of the Constitution to define 99 44/100 percent of this activity as being clearly within the commerce clause. (p. 36).’<sup>240</sup>

Accordingly, the Federal pipeline safety laws define “interstate or foreign commerce,” in pertinent part, as:

- (A) related to gas, means commerce - -
  - (i) between a place in a State and a place outside that State; or
  - (ii) that affects any commerce described in subclause (A)(i) of this clause.”<sup>241</sup>

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<sup>238</sup> 49 U.S.C. §§ 60101-60143.

<sup>239</sup> Pipeline Safety Act, Pub. L. 90-481, 82 Stat. 720 (Aug. 12, 1968), currently codified at 49 U.S.C. § 60102(a)(1).

<sup>240</sup> H.R. Rep. No. 90-1390, at 18 (May 15, 1968) (attached as I&E Exhibit 1 to I&E’s Formal Complaint).

<sup>241</sup> 49 U.S.C. § 60101(a)(8)(A)(i)-(ii).

The Pennsylvania General Assembly adopted the federal pipeline safety laws and regulations, as well as all amendments thereto, as the safety standards for non-public utility pipeline operators in Pennsylvania by enacting Act 127.<sup>242</sup> Additionally, the Pennsylvania General Assembly authorized the Commission to supervise and regulate pipeline operators within Pennsylvania consistent with (but not more stringent than) Federal pipeline safety laws.<sup>243</sup>

As it relates to Westover, the regulation of intrastate master meter systems fits squarely within the purview of Section 191.3 of the federal pipeline safety regulations.<sup>244</sup> Intrastate gas master meter systems have for decades been subject to pipeline safety regulation either through PHMSA or an authorized State. Since Act 127 became effective, the Commission has enforced violations of Act 127 on pipeline operators operating master meter systems in Pennsylvania.<sup>245</sup> Accordingly, even though the operation of the gas facility may be entirely within Pennsylvania, there is no question that every element of gas gathering, transmission, and distribution line is moving gas, which is either in or affecting interstate commerce.

## **VII. CONCLUSION**

WHEREFORE, based upon the reasons stated above, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commissions respectfully requests that presiding Deputy Chief Administrative Law Judge Christopher Pell and the Commission (1) find that the Commission has jurisdiction over this matter; (2) find that the apartment complexes listed in the Joint Stipulation of Facts are master meter systems as defined by 49 CFR § 191.3; (3) find that Westover Property Management Company, L.P. d/b/a Westover Companies is a pipeline operator subject to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.*; and

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<sup>242</sup> See 58 P.S. § 801.302.

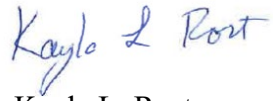
<sup>243</sup> 58 P.S. § 801.501.

<sup>244</sup> 49 C.F.R. § 191.3.

<sup>245</sup> See *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Brookhaven MHP Management LLC, et al.*, Docket No. C-2017-2613983 (Order entered August 23, 2018).

(4) order Westover Property Management Company, L.P. d/b/a Westover Companies to become compliant with Act 127 and the applicable federal regulations consistent with the terms outlined in the Joint Petition for Partial Settlement.

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

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Dated: July 3, 2023



**I&E**  
**APPENDIX A**

**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	:	

**ADDITIONAL PROPOSED FINDINGS OF FACT**

**I&E’s Expert Witness- Scott Orr**

1. I&E presented the expert testimony of Mr. Scott Orr, a Fixed Utility Valuation Engineer- 3 for the Bureau of Investigation and Enforcement (“I&E”), Pipeline Safety Section.<sup>1</sup>

2. Mr. Orr has been employed in I&E’s Pipeline Safety Section since November 2016 and has completed approximately fifty-four (54) Pipeline and Hazardous Materials Safety Administration (“PHMSA”) courses.<sup>2</sup>

3. In addition to completing voluminous PHMSA courses, Mr. Orr is also an Assistant Lead Instructor for PHMSA and teaches courses at PHMSA’s federal training center in Oklahoma.<sup>3</sup>

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<sup>1</sup> See generally I&E Statement No 1; I&E Statement No. 1-R.

<sup>2</sup> I&E Statement No. 1, pg. 1.

<sup>3</sup> I&E Statement No. 1, pg. 1.

4. In his capacity as a Fixed Utility Valuation Engineer- 3, Mr. Orr is responsible for performing compliance inspections and completing reportable and non-reportable incident investigations. He is responsible for the enforcement of federal and Commission regulations related to pipeline systems that are under the Commission's jurisdiction.<sup>4</sup>

5. In his capacity as a Fixed Utility Valuation Engineer- 3, Mr. Orr is familiar with the Public Utility Code, the Pennsylvania Code, and the Code of Federal Regulations.<sup>5</sup>

6. Mr. Orr credibly testified that an apartment complex which operates a master meter system, pursuant to Section 191.3, must comply with the applicable parts of Part 191 and Part 192 of the Federal Pipeline Safety Regulations and Pennsylvania's Gas and Hazardous Liquids Pipelines Act (Act 127).<sup>6</sup>

7. Mr. Orr is personally aware of two apartment complexes which the Commission has recognized as an operator of a master meter system. The two apartment complexes are KBF Associates, LP, Brookside Manor Apts., Docket No. A-2017-2616022, and Village of Pennbrook 2 LLC, Docket No. A-2022-3032506.<sup>7</sup>

8. Mr. Orr provided some background on how gas is transported through a pipeline system. Gas is transported at elevated pressures through pipelines and pipeline systems are designed to safely transport gas at certain pressures. Gas is ultimately delivered to a typical customer at what is defined as "low pressure" or approximately ¼

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<sup>4</sup> I&E Statement No. 1, pg. 2.

<sup>5</sup> I&E Statement No. 1, pg. 2.

<sup>6</sup> I&E Statement No. 1, pg. 3; 49 CFR § 191.3; 49 CFR §§ 191, 192; 58 P.S. § 801.101 *et seq.*

<sup>7</sup> I&E Statement No. 1, pg. 3.

pounds per square inch gauge (“psig”).<sup>8</sup>

9. Service regulators are used to reduce the gas pressure for safe delivery to the customer. As part of reducing pressure at various stages of the transportation process, regulations require over-pressure protection to protect the piping from pressures above which they are designed to safely operate. Pressure reduction is accomplished through a pressure regulator that reduces the outlet pressure below the higher inlet pressure. Some regulators have internal overpressure protection reliefs and some require separate overpressure protection devices.<sup>9</sup>

10. Over pressuring a pipeline or the piping within a structure can lead to a grave and catastrophic result. Unmaintained, severed, obstructed or improperly placed vent lines in and around a building can lead to ruptures, leaks, and gas accumulation in a confined indoor space. Allowing gas to accumulate within a building must be avoided or devastating consequences could result due to the explosive level of gas being reached when there is a concentration of 5% gas in air mixture. These consequences can be compounded in an apartment complex or multifamily dwellings where tenants unknowingly assume the risk of compromised lines.<sup>10</sup>

11. An example of a catastrophic over-pressurization event is the event which occurred on August 10, 2016 at Flower Branch Apartment Complex in Silver Spring, Maryland. The explosion and fire resulted in the death of seven (7) residents, hospitalization of sixty-five (65) residents, treatment of three (3) firefighters, and in excess of \$1 million dollars in property damage. The explosion was the result of an unconnected

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<sup>8</sup> I&E Statement No. 1, pg. 24.

<sup>9</sup> I&E Statement No. 1, pg. 24.

<sup>10</sup> I&E Statement No. 1, pgs. 24-25.

vent line, which allowed natural gas to flow into the room where the meter was located, accumulate, and become ignited from an unknown source.<sup>11</sup>

### **Background**

12. On or about November 2020, I&E initiated an investigation into whether Westover operates master meter systems at its apartment complexes and is a pipeline operator subject to the Gas and Hazardous Liquids Pipelines Act (“Act 127”).<sup>12</sup>

13. I&E became aware of Westover’s potential master meter systems after responding to a natural gas leak and service outage at one of their apartment complexes, Jamestown Village Apartments, in May 2018.<sup>13</sup>

14. On or about December 2, 2020, I&E’s Pipeline Safety personnel conducted a virtual TEAMS meeting with Westover representatives due to restrictions in place in response to the COVID-19 pandemic. Pipeline Safety personnel scheduled this meeting to explain Act 127 and Part 192 of the federal regulations and to explain the Commission’s jurisdiction over master meter systems. At the conclusion of the meeting, Pipeline Safety personnel requested that Westover provide certain documents and records, including an Operations, Maintenance, & Emergencies (O&M) Plan.<sup>14</sup>

15. Westover did not provide the requested documentation or respond to Pipeline Safety’s several attempts to contact Westover. Accordingly, I&E issued a Non-Compliance Letter (NC-77-20) on February 3, 2021.<sup>15</sup>

16. Westover did not respond to NC-77-20, which resulted in I&E issuing a

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<sup>11</sup> I&E Statement No. 1, pg. 25.

<sup>12</sup> I&E Statement No. 1, pgs. 4-5.

<sup>13</sup> I&E Statement No. 1, pg. 4.

<sup>14</sup> I&E Statement No. 1, pg. 5.

<sup>15</sup> I&E Statement No. 1, pg. 5; I&E Exhibit 2.

second Non-Compliance Letter (NC-08-21) on March 30, 2021.<sup>16</sup>

17. Westover did not respond to NC-08-21.<sup>17</sup>

18. Pipeline Safety referred the investigation to I&E Enforcement due to Westover's non-responsiveness and non-compliance with applicable state and federal regulations.<sup>18</sup>

19. On June 2, 2021, I&E Enforcement issued a Warning Letter to Westover.<sup>19</sup>

20. On August 23, 2021, Alexander Stefanelli, Westover's Chief Financial Officer, issued a letter to I&E. Mr. Stefanelli stated that Westover fully acknowledges the Commission's jurisdiction over certain facilities owned and operated by Westover, and that Westover intends to comply with Safety's three (3) items to comply with all federal and state regulations applicable to a master meter operator. Mr. Stefanelli explained that Westover contracted with two companies to take immediate steps to be compliant.<sup>20</sup>

21. On or about August 24, 2021, Pipeline Safety inspectors met with representatives from Westover. At this meeting, Westover's representatives indicated that Westover had hired Oaktree Group LLC and Entech Engineering.<sup>21</sup>

22. On September 20, 2021, Pipeline Safety met with Westover and a representative from Entech Engineering to review Westover's Operations, Maintenance, & Emergencies ("O&M") Plan.

23. On October 12, 2021, Pipeline Safety met with Westover, Entech Engineering, and the Oak Tree Group to review Westover's Operator Qualification

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<sup>16</sup> I&E Statement No. 1, pgs. 5-6; I&E Exhibit 3.

<sup>17</sup> I&E Statement No. 1, pg. 6; Westover Statement No. 2, pg. 15.

<sup>18</sup> I&E Statement No. 1, pg. 6.

<sup>19</sup> I&E Statement No. 1, pg. 6; I&E Exhibit 5.

<sup>20</sup> I&E Statement No. 1, pg. 7; I&E Exhibit 7.

<sup>21</sup> I&E Statement No. 1, pg. 8.

(“OQ”) Plan.

24. On November 3, 2021, Mr. Stefanelli advised I&E that it believes that its facilities are not jurisdictional and that it retained counsel.<sup>22</sup>

25. On November 4, 2021, Westover’s counsel served a letter to I&E disputing the Commission’s jurisdiction over the natural gas systems that Westover operates.<sup>23</sup>

26. On November 22, 2021, I&E Enforcement responded to Westover’s letter to explain the Commission’s jurisdiction over master meter systems.<sup>24</sup>

27. In January 2022, Westover first became aware of a document on the Commission’s website entitled “Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions,” dated February 2014.<sup>25</sup>

28. As part of its investigation, I&E issued a total of three (3) Non-Compliance Letters to Westover: NC-77-20 dated February 3, 2021; NC-08-21 dated March 30, 2021; and NC-12-22 dated June 29, 2022.<sup>26</sup>

29. As part of its investigation, and through the discovery process, Mr. Orr personally visited 21 of the 22<sup>27</sup> apartment complexes owned/operated by Westover which were the focus of I&E’s investigation. The only apartment complex Mr. Orr did not personally visit was Jamestown Village.<sup>28</sup>

30. During Mr. Orr’s visits to the various apartment complexes, he observed

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<sup>22</sup> I&E Statement No. 1, pg. 9; I&E Exhibit 8.

<sup>23</sup> I&E Statement No. 1, pg. 9; I&E Exhibit 9.

<sup>24</sup> I&E Exhibit 10.

<sup>25</sup> Westover Statement No. 2, pg. 11.

<sup>26</sup> I&E Exhibits 2, 3, and 4.

<sup>27</sup> I&E notes that some of the apartment complexes are comprised of more than one complex, i.e., Mill Creek 1 and Mill Creek II, and the various Paoli Places.

<sup>28</sup> I&E Statement No. 1, pg. 13.

corrosion on multiple parts of Westover's pipeline facilities.<sup>29</sup>

31. According to PHMSA, corrosion is listed as one of the main reasons for failures and leaks on distribution piping, noting that 18% of pipeline incidents from 1998-2017 were caused by corrosion.<sup>30</sup>

### **Act 127 Registration**

32. On or about June 28, 2021, Westover filed an Act 127 Pennsylvania Pipeline Operator Annual Registration Form ("Act 127 Registration"), Docket No. A-2021-3027219, only listing Jamestown Village.<sup>31</sup>

33. On July 28, 2021, I&E Enforcement issued a Clarification Letter to Westover acknowledging the June 28, 2021 Act 127 registration, but noting that Westover failed to include on the registration form all apartment complexes where Westover operated a master meter system.<sup>32</sup>

34. On or about August 6, 2021, Westover filed a second Act 127 Pennsylvania Pipeline Operator Annual Registration Form, Docket No. A-2021-3028141, which included a list of eleven (11) apartment complexes and one (1) commercial property.<sup>33</sup>

35. By letter dated August 19, 2021, Westover requested the cancellation of the Act 127 registration at Docket No. A-2021-3027219. The Act 127 registration at Docket No. A-2021-3027219 was canceled by Secretarial Letter dated August 30, 2021.<sup>34</sup>

36. On or about September 7, 2021, Westover filed an amended Act 127 Registration at Docket No. A-2021-3028141 to make a correction on the listed miles of

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<sup>29</sup> See generally I&E Statement No. 1, pgs. 23, 26-64; I&E Exhibits 12, 20-57.

<sup>30</sup> I&E Statement No. 1, pg. 23; PHMSA: Fact Sheet: Corrosion, <https://primis.phmsa.dot.gov/comm/FactSheets/FSCorrosion.htm>.

<sup>31</sup> I&E Statement No. 1, pg. 7; Westover Exhibit AS-11.

<sup>32</sup> I&E Statement No. 1, pg. 7; I&E Exhibit 6.

<sup>33</sup> Westover Exhibit AS-14.

<sup>34</sup> Westover Exhibit AS-12; Westover Exhibit AS-13.



gas pipelines.<sup>35</sup>

37. On or about February 22, 2022, under protest, Westover filed the Act 127 Registration for 2022.<sup>36</sup>

38. On or about September 23, 2022, Westover paid an annual assessment fee of \$1,278.00.<sup>37</sup>

**Natural Gas Leaks at the Apartment Complexes**

39. In reference to the apartment complexes in PECO Energy Company's territory, the gas piping past the first fitting after the outlet side of PECO's meter is part of Westover's gas facilities.<sup>38</sup>

40. In reference to the apartment complexes in UGI Corporation's territory, the gas piping past the first flange after the outlet side of UGI's meter is part of Westover's gas facilities.<sup>39</sup>

41. On May 9, 2022, Hillcrest Apartments experienced a gas service outage due to a leak found on the Westover-owned steel riser cause by corrosion.<sup>40</sup>

42. A Non-Compliance Letter was issued to Westover and went unanswered. Notably, one of the probable violations listed in the Non-Compliance Letter included active corrosion, which existed on numerous steel service risers throughout the apartment complex and which Westover lacked proper procedures and programs to address.<sup>41</sup>

43. During a November 15, 2022 visual inspection at Woodland Plaza Apartments, I&E Pipeline Safety detected the odor of natural gas while looking at the gas

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<sup>35</sup> Westover Exhibit AS-15.

<sup>36</sup> Westover Exhibit AS-16.

<sup>37</sup> Westover Statement No. 2, pg. 22.

<sup>38</sup> I&E Statement No. 1-R, pg. 4.

<sup>39</sup> I&E Statement No. 1-R, pg. 4.

<sup>40</sup> I&E Statement No. 1, pg. 40.

<sup>41</sup> I&E Statement No. 1, pg. 40; I&E Exhibit 4.

facilities located at Building J/K and Building H. The odor was reported to UGI who immediately responded and tested the facilities.<sup>42</sup>

44. Natural gas leaks were found on the pipeline facilities at Woodland Plaza Apartments, which UGI promptly remediated.<sup>43</sup>

45. During a January 18, 2023 visual inspection at Gladstone Towers, I&E Pipeline Safety detected the odor of natural gas while looking at the gas facilities outside of Building A. The odor was reported to PECO.<sup>44</sup>

46. Natural gas leaks were found on both PECO-owned and Westover-owned gas facilities at Gladstone Towers.<sup>45</sup>

47. Westover made the decision to stop the flow of gas overnight, resulting in an outage for over 120 residents at Gladstone Towers.<sup>46</sup>

48. Gas service at Gladstone Towers was restored to the residents when repairs were made on January 19, 2023.<sup>47</sup>

49. An explanation of the natural gas leaks found during I&E's visit to the various apartment complexes is the rate of failure, or the bathtub curve.<sup>48</sup>

50. The bathtub curve is a visual representation of the failure rate of a product or group of products over time. By plotting the occurrences of failure over time, a bathtub curve maps out three (3) periods that an asset experiences within its lifetime: (1) infant mortality period; (2) normal life period; and (3) end of life period. This model, shaped like

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<sup>42</sup> I&E Statement No. 1, pg. 63.

<sup>43</sup> I&E Statement No. 1, pgs. 63-64.

<sup>44</sup> I&E Statement No. 1, pg. 37.

<sup>45</sup> I&E Statement No. 1, pg. 37; I&E Exhibit 57.

<sup>46</sup> I&E Statement No. 1, pgs. 37-38.

<sup>47</sup> I&E Statement No. 1, pg. 38.

<sup>48</sup> I&E Statement No. 1-R, pg. 13.

a “U,” basically explains that a system will fail in the early stages on deployment, but this failure will be immediately seen as “early failure.”<sup>49</sup>

51. An example of an early failure is a leak in a garden hose from a loose connection to the water faucet. Once the connection is tightened, the hose will function as designed. The garden hose will function as designed, normal life or useful life, until it reaches its “wear out” stage or end of life period, i.e., the hose has several holes, cracks etc., and needs to be replaced.<sup>50</sup>

52. The leaks discovered during I&E’s visit are proof that the systems are getting closer to the wear out stage or end of life stage and need to be replaced.<sup>51</sup>

### **Westover’s Billing Methods**

53. In the situations where the gas service is not included in rent, Westover either bills the tenant directly for the gas service or utilizes a third party, MultiFamily Utility Company, Monitor Data, or NWP, to issue the gas bill and collect payment.<sup>52</sup>

54. In 2021, the total number of tenants that received natural gas which was resold and billed by Westover was as follows: 1st Quarter 2021: 4,180; 2nd Quarter 2021: 3,754; 3rd Quarter: 17 1,611; and 4th Quarter: 540. This response was provided to I&E in November 2021, so the fourth quarter number does not reflect a full quarter.

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<sup>49</sup> I&E Statement No. 1-R, pg. 13.

<sup>50</sup> I&E Statement No. 1-R, pg. 13.

<sup>51</sup> I&E Statement No. 1-R, pgs. 13-14.

<sup>52</sup> I&E Statement No. 1, pg. 65.

**I&E**  
**APPENDIX B**

**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	:	

**PROPOSED CONCLUSIONS OF LAW**

1. The Pennsylvania Public Utility Commission (“Commission”), as a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate pipeline operators, has jurisdiction over the subject matter of and the parties to this proceeding. 58 P.S. § 801.501(a).

2. The Commission, through the Commission’s Bureau of Investigation and Enforcement (“I&E”) Pipeline Safety Division, serves as an agent of the Federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and is certified to regulate intrastate pipeline facilities for safety purposes pursuant to 49 U.S.C. § 60105.

3. Section 801.302 of Act 127 adopts the Federal pipeline safety laws as implemented in 49 CFR Subtitle B, Chapter I, Subchapter D as the safety standards and regulations for pipeline operators in Pennsylvania. 58 P.S. § 801.302.

4. Section 501(a) of Act 127 authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws. 58 P.S. § 801.501(a).

5. Section 501(a)(7) of Act 127, authorizes the Commission to enforce Federal pipeline safety laws and, after notice and opportunity for a hearing, impose civil penalties and take other appropriate enforcement action. 58 P.S. § 801.501(a)(7).

6. The Bureau of Investigation and Enforcement and Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) are parties to these proceedings.

7. The Commission may, in its discretion, issue a declaratory order to terminate a controversy or remove uncertainty. 66 Pa.C.S. § 331(f). A declaratory order should be issued only when there is no outstanding issue of material fact. *Petition of the Pennsylvania State University for a Declaratory Order*, Docket No. P-2007-2001828 (Order Entered April 9, 2008).

8. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

9. Westover Property Management Company, L.P. d/b/a Westover Companies, as the party who filed a Petition for Declaratory Order and an Amended Petition for Declaratory Order, holds the burden of proof to show that Westover is not subject to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 et seq. (“Act 127”). 66 Pa.C.S. § 332(a).

10. The Bureau of Investigation and Enforcement, as the party who filed the Formal Complaint, holds the burden of proof to show that Westover owns or operates master meter systems at its apartment complexes in Pennsylvania, and thus is a pipeline operator

subject to 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 §§ 191.1-192.1015. 66 Pa.C.S. § 332(a).

11. Westover Property Management Company, L.P. d/b/a Westover Companies is a “pipeline operator” as that term is defined under Act 127 in that it “owns or operates equipment or facilities in this Commonwealth for the transportation of gas . . . by pipeline or pipeline facility regulated under Federal pipeline safety laws.” 58 P.S. § 801.102.

12. Westover Property Management Company, L.P. d/b/a Westover Companies, as a pipeline operator, is subject to the power and authority of this Commission pursuant to Section 501(b) of Act 127 which requires pipeline operators to comply with the Act and the terms and conditions of the orders issued under the Act. 58 P.S. § 801.501(b).

13. Westover Property Management Company, L.P. d/b/a Westover Companies operates “master meter systems” as that term is defined under Part 191.3 in that Westover distributes gas “within, but not limited to, a definable area, such as a . . . apartment complex,” purchases the gas from an outside source for resale, and “supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.” 49 CFR § 191.3.

14. That the following apartment complexes of Westover Property Management Company, L.P. d/b/a Westover Companies are master meter systems:

- a. Black Hawk
- b. Carlisle Park
- c. Concord Court
- d. Country Manor

- e. Fox Run
- f. Gladstone Towers
- g. Hillcrest
- h. Jamestown Village
- i. Lansdale Village
- j. Lansdowne Towers
- k. Main Line Berwyn
- l. Mill Creek I
- m. Mill Creek II
- n. Norriton East
- o. Oak Forest
- p. Paoli Place- North
- q. Paoli Place- South
- r. Park Court
- s. Valley Stream
- t. Woodland Plaza

15. That the apartment complexes of Westover Property Management Company, L.P. d/b/a Westover Companies are not master meter systems:

- a. Paoli Place- South Valley Townhomes
- b. Willow Run



**I&E**  
**APPENDIX 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	:		

**PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Petition for Partial Settlement filed on June 13, 2023 is approved without modification.

2. That the following apartment complexes of Westover Property Management Company, L.P. d/b/a Westover Companies are master meter systems:

- a. Black Hawk
- b. Carlisle Park
- c. Concord Court
- d. Country Manor
- e. Fox Run
- f. Gladstone Towers
- g. Hillcrest
- h. Jamestown Village
- i. Lansdale Village
- j. Lansdowne Towers
- k. Main Line Berwyn

- l. Mill Creek I
- m. Mill Creek II
- n. Norriton East
- o. Oak Forest
- p. Paoli Place- North
- q. Paoli Place- South
- r. Park Court
- s. Valley Stream
- t. Woodland Plaza

3. That the apartment complexes of Westover Property Management Company, L.P. d/b/a Westover Companies are not master meter systems:

- a. Paoli Place- South Valley Townhomes
- b. Willow Run

4. That, within sixty (60) days of this Order, Westover Property Management Company, L.P. d/b/a Westover Companies shall draft and provide its implementation plan to become compliant with Part 192 and Act 127 to the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section for review.

5. That Westover Property Management Company, L.P. d/b/a Westover Companies and the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section shall meet and discuss the implementation plan to reach an agreement on a reasonable time-frame for Westover to become complaint, not to exceed four (4) years.

6. That, within one hundred twenty (120) days of this Order, Westover Property Management Company, L.P. d/b/a Westover Companies shall provide its procedural manual

for operations, maintenance, and emergencies to the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section for review.

7. That, within thirty (30) days of this Order, Westover Property Management Company, L.P. d/b/a Westover Companies shall provide a list of all apartment complexes or commercial properties acquired by Westover Property Management Company, L.P. d/b/a Westover Companies and/or its affiliates after November 1, 2020.

8. That Westover Property Management Company, L.P. d/b/a Westover Companies shall submit report to the Commission pursuant to Section 801.503(d), 58 P.S. § 801.503(d), as an Act 127 pipeline operator on an annual basis.

9. That Westover Property Management Company, L.P. d/b/a Westover Companies shall file and pay annual assessments pursuant to Section 801.503(b), 58 P.S. § 801.503(b).

10. That upon the Commission receiving written notice from Westover Property Management Company, L.P. d/b/a Westover Companies that the compliance filings outlined in Paragraphs 4-6 were timely filed, and there are no outstanding issues, the Complaint at Docket No. C-2022-3030251 shall be deemed satisfied and marked closed.

**I&E**  
**APPENDIX D**



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Avenue SE  
Washington DC 20590

**FEB 06 2020**

Mr. Mark Al Strother  
Executive Vice President and  
Chief Operating Officer  
Cal Farley's Boys Ranch  
600 SW 11<sup>th</sup> Avenue  
Amarillo, TX 79101

Dear Mr. Strother:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), you requested an interpretation of 49 Code of Federal Regulations (CFR) Part 191. Specifically, you requested an interpretation of § 191.3 as it relates to a master meter system.

You described the Cal Farley's Boys Ranch (Ranch) as an-unincorporated community in northeastern Oldham County, Texas. You stated that as a non-profit organization, the purpose of the ranch is to provide a stable living and learning environment to nurture children who have experienced qualifying challenges that would stifle their potential. The citizen-residents of the Ranch fall into two categories, employees of the Ranch and opportunity-challenged youth. All personnel that reside on the Ranch are paid employees living in provided homes. The Ranch does not rent living space to any individual or family.

You described the Ranch's gas system as an odorized natural gas pipeline purchased through a master meter that enters a network of mains and services to serve gas deliveries to the campus's facilities. All associated piping and appliances downstream of the purchase meter is owned, operated, and maintained by Cal Farley's Boys Ranch. Gas is delivered through the mains and services to provide energy for central air conditioning, central heating, water heating, and cooking appliances for the school education and administrative buildings, gymnasiums, cafeterias, living quarters, and out-buildings, as applicable.

You asked PHMSA to provide insight on the regulatory status of the Ranch and you have provided arguments that suggest you believe the Ranch is unique and distinct from a master meter system. Based on the limited information provided in your request, PHMSA asked follow-up questions and you provided the responses on June 7, 2019.<sup>1</sup>

**PHMSA question** - Is the Cal Farley's Boys Ranch gas pipeline system operated and maintained by a third party?

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<sup>1</sup> The questions and responses have been modified for clarity.

**Your response** – No.

**PHMSA question** - Does the Ranch sell gas to a tenant (coffee shop, restaurant, etc.)?

**Your response** – No.

**PHMSA question** - Are the employee tenants of the Ranch paying for the gas directly or indirectly? That is, does the Ranch pay the employee-tenants less than what it should pay than if the employees where to live outside of the Ranch?

**Your response** – No, employee-tenants of the Ranch do not pay for gas directly or indirectly. Cal Farley would only reduce an employee-tenant's pay for living on the Ranch when their position is not absolutely required to live on the Ranch. We do not meter for utilities, so whether a house is occupied or not, the utility usage would be about the same.

**PHMSA question** – Do all employees live on the Ranch? If not, is there a pay difference between employees living on the Ranch and employees living off the Ranch?

**Your response** – No, all employees do not live on the Ranch. Employees living off the Ranch do not have the option to live on the Ranch.

Section 191.3 defines a master meter system as a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

To determine whether Cal Farley's Boys Ranch meets the definition of a master meter system under 49 CFR § 191.3 and, therefore, is subject to the requirements of 49 CFR Parts 191 and 192, we must determine if the pipeline facilities are delivering gas to the ultimate consumer who pays for the gas directly, via a bill, or pays for the gas indirectly through other means, such as rents.

In previous interpretations, PHMSA has stated that an entity would not meet the definition of a master meter system if it were only "using the gas delivered through its pipeline to provide heat or hot water to its buildings."<sup>2</sup> In that instance, the entity would be the consumer of the gas. PHMSA went on to say that if the entity provides gas to consumers, such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered customers even though they may not be individually metered.<sup>3</sup>

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<sup>2</sup> Mr. Don A. Ledversis, Pipeline Safety Engineer, Rhode Island Division of Public Utilities & Carriers, PI-03-0101, February 14, 2003.

<sup>3</sup> *Id.*

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

Based on your responses to PHMSA's questions, it appears the Cal Farley's Boys Ranch would be the consumer of gas since it does not provide gas to concessionaries or tenants. Rather, Cal Farley's Boys Ranch uses the gas to provide energy to the various buildings it owns. Keep in mind that this response letter reflects the agency's current application of the regulations to the specific facts you presented. If your response to any of the questions PHMSA posed changes, then the regulatory status of the pipeline system for the Cal Farley's Boys Ranch may change.

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

Sincerely,



John A. Gale  
Director, Office of Standards  
and Rulemaking





Cal Farley's provides professional programs and services in a Christ-centered atmosphere to strengthen families and support the overall development of children.

600 SW 11th Ave. Amarillo, TX 79101  
800-687-3722 • calfarley.org

Mark A Strother  
600 SW 11<sup>th</sup> Ave  
Amarillo, TX 79101

Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

To: Pipeline and Hazardous Materials Safety Administration

After researching the various interpretations regarding the definition of a regulated gas distribution system, we at Cal Farley's Boys Ranch have not been able to identify a PHMSA interpretation pertaining to what we believe as our unique circumstances. We are seeking clarification regarding what we believe are residents that do not fall within the traditional definition of a "tenant."

The Cal Farley's Boys Ranch is an unincorporated community in northeastern Oldham County, Texas that has the appearance and functions much like a typical college campus. Originally established to serve boys only, the Ranch today encompasses girls as well. As a non-profit organization, the purpose of the ranch is to provide a stable living and learning environment to nurture children who have experienced qualifying challenges that would stifle their potential. The citizen-residents of Boys Ranch fall into two categories, employees of the Ranch and opportunity-challenged youth. All personnel that reside on the Boys Ranch campus are paid employees living in provided homes and compensated to do so. It functions as a mutual benefit of their employment and serves the interest of employee and the functionality of the Ranch. The Ranch does not rent living space to any individual or family.

A description of the Cal Farley's Boys Ranch gas system.

Odorized natural gas is purchased through a master meter and enters a network of mains and services that serve as deliveries to the campus facilities. All associated pipe and appliances downstream of the purchase meter is owned, operated, and maintained by Cal Farley's Boys Ranch. Gas is delivered through the mains and services to the following types of buildings, none of which are metered.

Where natural gas provides energy for Boys Ranch owned central air conditioning, water heating, and cooking appliances operated and managed by the employed personnel; School Education and Administrative Buildings, Gymnasiums, Cafeterias, out-buildings.

Where natural gas provides energy for domestic use in hot water heaters and air conditioning furnaces inside Boys Ranch owned homes inhabited by Boys Ranch employed house-parents and their assigned children. The house-parents do not pay rent, rather are paid to live in and provide parenting to children in the home by the Ranch at any hour of need. As Cal Farley's Boys Ranch employees, house parents are on duty and employed while they live inside the provided residence just as employees are on duty and employed while they live at work inside other Ranch owned buildings where natural gas provides central heating and water heating as a service to the building.

Similarly, where natural gas provides energy for domestic use in hot water heaters and air conditioning furnaces inside Boys Ranch provided homes, inhabited by Boys Ranch employees. Likewise, the resident employees do not pay rent, rather are paid to live in and provide services to the Ranch at a moment's notice. As Cal Farley's Boys Ranch employees, employees are on duty and employed while they live inside the provided residence just as employees are on duty and employed while they live at work inside other buildings where natural gas provides central heating and water heating as a service to the building.

Through previous interpretations it is understood that gas, delivered to a tenant residence through house/building piping owned by the property owner and consumed by the tenant via appliances owned by the property owner, is still considered to be transported gas "in commerce." However, the scenarios defined in previous interpretations seemed to encompass only tenants who are paying to rent the residence and not tenants such as the Ranch has that are continuous employees around the clock and who are paid to reside inside the Cal Farley's Boys Ranch homes.

Any insight you may provide to the regulatory status of Cal Farley's Boys Ranch is appreciated.

Sincerely,



Mark A Strother  
Executive VP & Chief Operating Officer  
Cal Farley's Boys Ranch

PI-03-0101

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

February 14, 2003

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

Dear Mr. Ledversis:

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

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

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

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

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

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

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

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

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

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

**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, July 3, 2023, served a true copy of the foregoing **Main Brief of the Bureau of Investigation and Enforcement**, 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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