



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

August 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 Reply Brief**

Dear Secretary Chiavetta:

Enclosed please find the **Reply 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'.

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

KLR/ac  
Enclosures

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

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

---

Kayla L. Rost  
Prosecutor  
PA Attorney ID No. 322768

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

Dated: August 3, 2023

**TABLE OF CONTENTS**

**I. PROCEDURAL HISTORY .....1**

**II. SUMMARY OF ARGUMENT .....1**

**III. ARGUMENT .....2**

    A. WESTOVER’S CLAIM THAT ACT 127 DOES NOT INCLUDE  
    REGULATION OF APARTMENT COMPLEXES THAT OWN OR  
    OPERATE NATURAL GAS FACILITIES IS WITHOUT MERIT ..... 2

    B. WESTOVER’S APARTMENT COMPLEXES ARE MASTER  
    METER SYSTEMS ..... 8

        1. Westover’s Claim that the Definition of Master Meter System  
        Requires Gas Facilities to be Located “Within and Outside”  
        an Apartment Complex is Without Merit..... 8

        2. Apartment Complexes are Distinguishable from College  
        Campuses ..... 12

        3. All of Westover’s Apartment Complexes Distribute Gas  
        “In or Affecting Interstate or Foreign Commerce” ..... 14

    C. I&E DID NOT WAIVE ITS POSITION THAT WESTOVER  
    VIOLATED ACT 127 ..... 16

**IV. CONCLUSION.....16**

**TABLE OF AUTHORITIES**

**Cases**

*Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008)..... 4

*Arizona v. United States*, 567 U. S. 387, 401 (2012)..... 3

*California v. ARC America Corp.*, 490 U. S. 93, 100, 101 (1989)..... 3

*Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992)..... 3

*Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 881–82 (2000)..... 3

*Maryland v. Wirtz*, 392 U.S. 183, fn. 27 (1968)..... 15

*Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1479 (2018)..... 3

*NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)..... 14

*Sprietsma v. Mercury Marine*, 537 U. S. 51, 64 (2002) ..... 3

*United States v. Gomez*, 87 F.3d 1093, 1095-96 (9th Cir. 1996)..... 15

*Wickard v. Filburn*, 317 U.S. 111 (1942)..... 14, 15

**Statutes**

35 Pa.C.S. § 7210.301 ..... 5

58 P.S. § 801.302..... 7

58 P.S. § 801.302(a) ..... 1

58 P.S. § 801.501 ..... 7

58 P.S. §§ 801.101 et seq..... passim

**Regulations**

49 CFR § 191..... 5

49 CFR § 191.3..... passim

49 CFR § 192..... 5

49 CFR § 192.353..... 6

49 CFR § 192.379(c) ..... 6

49 CFR § 192.727(d)(3) ..... 6

49 CFR §§ 192.801-192.809 .....	5
49 CFR Parts 191-193, 195 and 199.....	8
49 CFR Subtitle B Ch. I Subch. D.....	7
49 U.S.C. § 60102.....	6
49 U.S.C. § 60102(a)(1)-(2) .....	4
49 U.S.C. § 60102(a)(2) .....	4
49 U.S.C. § 60102(a)(2)(B) .....	6
49 U.S.C. § 60104(c) .....	6, 8
49 U.S.C. § 60105(a) .....	4, 8
49 U.S.C. § 60108.....	5
49 U.S.C. § 60112.....	5
49 U.S.C. § 60105(a) .....	7
49 U.S.C. §§ 60101-60143 .....	1
49 U.S.C. §§ 60101 et seq. ....	7
49 U.S.C.A. §§ 60101-60503 .....	8
52 Pa. Code § 59.33 .....	8
52 Pa. Code §§ 5.501-5.502.....	1

**Other Authorities**

2018 International Fuel Gas Code § 202 .....	6
2018 International Fuel Gas Code §§ 101.2; 101.2.2 .....	5
<i>Assessment of the Need for an Improved Inspection Program for Master Meter Systems</i> , Report of the Secretary of Transportation to Congress, prepared pursuant to Section 108 of Public Law 100-561, January 2002.....	2, 10
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.....	4
<a href="https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-09/2022-Appendix-F-State-Program-Certification-Agreement-Status.pdf">https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-09/2022-Appendix-F-State-Program-Certification-Agreement-Status.pdf</a> ; <a href="https://www.cpuc.ca.gov/regulatory-services/safety/mhp">https://www.cpuc.ca.gov/regulatory-services/safety/mhp</a> .....	8
Merriam-Webster Dictionary, <a href="https://www.merriam-webster.com/dictionary/within">https://www.merriam-webster.com/dictionary/within</a> .....	10

PHMSA Letter of Interpretation to Indiana Utility Regulatory Commission, PI-11-0014 (March 27, 2012) and (August 27, 2012).....	2, 9
PHMSA Letter of Interpretation to Minnesota Department of Public Safety, PI-16-0012 (December 6, 2016).....	2, 9
PHMSA Letter of Interpretation to Montana Public Service Commission, PI-01-0113 (June 25, 2001).....	2, 9
PHMSA Letter of Interpretation to Rhode Island Division of Public Utilities & Carriers, PI-03-0101 (February 14, 2003).....	13
U.S. Const. art. VI, cl. 2.....	3

## **I. PROCEDURAL HISTORY**

The Bureau of Investigation and Enforcement (“I&E”) incorporates the procedural history as set forth in its Main Brief submitted on July 3, 2023, on pages 1 through 6. A Main Brief was also submitted by Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) on July 3, 2023. Pursuant to the procedural schedule established in the May 15, 2023 Briefing Order and in accordance with Commission regulations at Sections 5.501- 5.502, I&E now submits this Reply Brief.<sup>1</sup>

I&E herein references and incorporates the Statement of the Case section as set forth in its Main Brief submitted on July 3, 2023 on pages 6 through 10, as well as Appendix A – I&E’s Additional Proposed Findings of Fact. I&E’s Main Brief and accompanying appendices, in addition to the Joint Stipulation of Facts attached to the Joint Petition for Partial Settlement filed on June 13, 2023, include an extensive discussion of the facts that are supported by the record in a substantial and credible manner.

## **II. SUMMARY OF ARGUMENT**

As discussed in more detail below, Westover arguments are not supported by legal precedent or the guidance provided in the federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) interpretation letters. Specifically, the tenet of federal preemption dictates that the Gas and Hazardous Liquids Pipelines Act (“Act 127”), which adopts the federal pipeline safety laws,<sup>2</sup> trumps any conflicting state law which stands as an obstacle to the accomplishment and execution of the purposes and objectives found in the federal Pipeline Safety Act.<sup>3</sup> Moreover, the plain language of the definition of master meter

---

<sup>1</sup> 52 Pa. Code §§ 5.501-5.502; *see also* Briefing Order, dated March 2, 2022.

<sup>2</sup> 58 P.S. § 801.302(a).

<sup>3</sup> 49 U.S.C. §§ 60101-60143.

system, coupled with the various PHMSA interpretations<sup>4</sup> and Report of the Secretary of Transportation to Congress,<sup>5</sup> clearly articulate that a master meter system is located within a definable area, such as an apartment complex, and that the facts related to an apartment complex can be distinguished from a college campus. Last, the distribution of natural gas by way of a master meter system affects interstate or foreign commerce, and any argument made related to the “insignificant” amount of gas used at an apartment complex is misguided and immaterial.

### **III. ARGUMENT**

#### **A. WESTOVER’S CLAIM THAT ACT 127 DOES NOT INCLUDE REGULATION OF APARTMENT COMPLEXES THAT OWN OR OPERATE NATURAL GAS FACILITIES IS WITHOUT MERIT**

Westover argues in its Main Brief that the overarching question is whether the Pennsylvania General Assembly intended for Act 127 to apply to apartment complexes, and proceeds to go through a lengthy discussion into statutory interpretation and an alleged conflict with the Pennsylvania Uniform Construction Code. Westover takes the wrong approach as the focus is not based upon the General Assembly’s intent, but rather whether the federal law, as adopted in Pennsylvania under Act 127, preempts any other state or local regulation, such as the Pennsylvania Uniform Construction Code.

---

<sup>4</sup> See generally 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); 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); 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).

<sup>5</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”).



The Constitution’s Supremacy Clause provides that “the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”<sup>6</sup> This language is the foundation for the doctrine of federal preemption, under which federal law supersedes conflicting state laws.<sup>7</sup> Congress may pre-empt a state law through federal legislation. It may do so through express language in a statute. But even where a statute does not refer expressly to pre-emption, Congress may implicitly pre-empt a state law, rule, or other state action.<sup>8</sup>

Congress may take such preemption action either through “field” pre-emption or “conflict” pre-emption. As to the former, Congress may have intended “to foreclose any state regulation in the area,” irrespective of whether state law is consistent or inconsistent with “federal standards.”<sup>9</sup> In such situations, Congress has forbidden the State to take action in the field that the federal statute pre-empts. By contrast, conflict pre-emption exists where “compliance with both state and federal law is impossible,” or where “the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”<sup>10</sup> In either situation, federal law must prevail.

In this matter, prior to the enactment of Act 127, PHMSA was charged with the enforcement of the federal pipeline safety regulations, which included the regulation of

---

<sup>6</sup> U.S. Const. art. VI, cl. 2.

<sup>7</sup> *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1479 (2018); *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992).

<sup>8</sup> *See Sprietsma v. Mercury Marine*, 537 U. S. 51, 64 (2002). The presence of a preemption clause in a federal statute does not preclude the possibility of implied preemption. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 881–82 (2000) (holding that a federal regulatory scheme impliedly preempted state common law claims involving automobile safety, even though a preemption clause in the relevant statute did not expressly encompass those claims).

<sup>9</sup> *Arizona v. United States*, 567 U. S. 387, 401 (2012).

<sup>10</sup> *California v. ARC America Corp.*, 490 U. S. 93, 100, 101 (1989).

master meter systems.<sup>11</sup> Indeed, the purpose of the Pipeline Safety Act is to “provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities” by empowering the Secretary of the Department of Transportation to “prescribe minimum safety standards for pipeline transportation and for pipeline facilities.”<sup>12</sup> These minimum federal safety standards apply to *both* interstate and intrastate pipeline facilities; however, the Secretary of the Department of Transportation “may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a [s]tate authority . . . that submits to the Secretary annually a certification for the facilities and transportation.”<sup>13</sup> Thus, prior to the enactment of Act 127, PHMSA retained jurisdiction over master meter systems in Pennsylvania, and Congress made its preemptive intent explicit in the federal Pipeline Safety Act through the inclusion of an express preemption provision over conflicting state law.

The next question is whether the Pennsylvania Uniform Construction Code is the type of law Congress intended to preempt.<sup>14</sup> As stated above, the federal Pipeline Safety Act sets the minimum *safety* standards for pipeline transportation and for pipeline facilities,<sup>15</sup> and includes a variety of tasks and requirements for pipeline operators: preparation and

---

<sup>11</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>12</sup> 49 U.S.C. § 60102(a)(1)-(2).

<sup>13</sup> 49 U.S.C. § 60105(a).

<sup>14</sup> *Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008) (Even when there is an “express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress’ displacement of state law still remains.”).

<sup>15</sup> 49 U.S.C. § 60102(a)(2).

implementation of written plans for inspection and maintenance of facilities,<sup>16</sup> take necessary corrective action if a facility is hazardous to life, property, or the environment,<sup>17</sup> annual and immediate reporting requirements for accidents and safety-related conditions such as corrosion,<sup>18</sup> mandating specifications for the pipeline facilities materials, designs, welding, components, etc.,<sup>19</sup> and the minimum requirements for an individual to be qualified to perform covered tasks on a pipeline facility.<sup>20</sup>

The International Fuel Gas Code, as adopted by the Pennsylvania Uniform Construction Code,<sup>21</sup> applies to the installation of fuel-gas piping and includes piping system requirements such as design, materials, components, fabrication, assembly, installation, testing, inspection, operation, and maintenance.<sup>22</sup> Thus, on its face, the International Fuel Gas Code appears to impose regulations relating to pipeline facilities that conflict with the federal pipeline safety regulations. Accordingly, the federal pipeline safety regulations in fact preempt and override the International Fuel Gas Code of the Pennsylvania Uniform Construction Code as it relates to master meter systems.

Admittedly, there are some situations where the International Fuel Gas Code does not conflict with the federal regulations. For example, in the factual scenario where a Westover-owned sub-meter is located in the individual units of the apartment complex (Fox Run, Gladstone Towers, Jamestown Village, Lansdowne Towers, Main Line Berwyn, and Paoli Place-North), the federal regulations would apply up to and including the sub-meter, and the

---

<sup>16</sup> 49 U.S.C. § 60108; *see generally* 49 CFR §§ 191; 192.

<sup>17</sup> 49 U.S.C. § 60112.

<sup>18</sup> *See generally* 49 C.F.R. § 191.

<sup>19</sup> *See generally* 49 C.F.R. § 192.

<sup>20</sup> 49 C.F.R. §§ 192.801-192.809.

<sup>21</sup> 35 Pa.C.S. § 7210.301.

<sup>22</sup> 2018 International Fuel Gas Code §§ 101.2; 101.2.2.

pipng past the sub-meter to the appliance(s) would fall under the International Fuel Gas Code.<sup>23</sup> In the factual scenario where the gas exclusively provides service to a central boiler/hot water system, the federal regulations would apply to the gas facilities, and the facilities which transport hot water and/or heat would fall under the Pennsylvania Uniform Construction Code.

On the other hand, the factual scenario where the International Fuel Gas Code conflicts with the federal law, and where preemption exists, is where Westover operates a master meter system that does not include a sub-meter, i.e., natural gas distribution system delivers gas to single meter on Westover’s property, gas is piped (either through underground, exterior, or interior piping) to a either the tenants’ individual unit for use (cooking, heating, dryers, etc.), a community laundry room, or a combination of tenants’ individual units and a central hot water/boiler system. In this scenario, federal law would preempt the International Fuel Gas Code because the federal Pipeline Safety Act provides explicit regulation over the safety, installation, inspection, etc., of these facilities through its regulation of master meter systems.<sup>24</sup>

---

<sup>23</sup> See generally 2018 International Fuel Gas Code § 202 (Piping system defined as “the fuel piping, valves and fittings from the outlet of the point of delivery to the outlets of the appliance shutoff valves.” Point of delivery defined as “for natural gas systems, the point of delivery is the outlet of the service meter assembly or the outlet of the service regulator or service shutoff valve where a meter is not provided. Where a valve is provided at the outlet of the service meter assembly, such valve shall be considered to be downstream, of the point of delivery. . . .”).

<sup>24</sup> The preemptive force of Section 60104(c) extends to all intrastate piping whose function is the transportation, conveyance, or distribution of natural gas. Moreover, 49 U.S.C. § 60102 provides for a broad spectrum of duties to which the safety standards prescribed by the Pipeline Safety Act may apply: “the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities.” 49 U.S.C. § 60102(a)(2)(B). Thus, the Pipeline Safety Act contemplates the control over and regulation of a massive expanse of natural gas-related activities, including those that occur on or inside a customer’s premises. See, e.g., 49 C.F.R. § 192.353 (providing for the proper and safe installation of individual customer gas meters “whether inside or outside of a building”); 49 C.F.R. § 192.379(c) (providing that “the customer’s piping must be physically disconnected from the gas supply and the open pipe ends sealed” under circumstances when a service line is not placed in operation); 49 C.F.R. § 192.727(d)(3) (requiring that the “customer’s piping must be physically disconnected from the gas supply and the open pipe ends sealed” when a customer’s gas service is discontinued).

Notwithstanding federal preemption, even if the Commission were to review the General Assembly's intent when enacting Act 127, reviewing the legislative journals are limited because, at the end of the day, the legislature did not limit Act 127 to just those federal regulations which apply to Marcellus Shale. Thus, if the legislature only wanted to regulate or address its Marcellus Shale concerns, then they would have limited the applicability of Act 127 to those regulations which would apply to Marcellus Shale. Instead, the Commonwealth of Pennsylvania, via the Commission, participates as a certified state in the pipeline safety program administered by the U.S. DOT's PHMSA, pursuant to the federal Pipeline Safety Act.<sup>25</sup> Act 127 establishes the Commission's authority to regulate non-public utility gas and hazardous liquid pipeline operators and pipeline facilities within the Commonwealth and establishes the applicable safety standards as being those issued under Federal pipeline safety laws and implemented in PHMSA's regulations, including all subsequent amendments thereto.<sup>26</sup> Specifically, Act 127 adopted the federal safety laws found in 49 CFR Subtitle B Ch. I Subch. D.<sup>27</sup> Subchapter D encompasses Parts 190-199, which includes the definition of master meter system.<sup>28</sup> While Westover attempts to argue that the sole focus of Act 127 was to address the unregulated pipelines carrying Marcellus Shale, Parts 190-199 encompass a larger field of regulation and applicability, i.e., natural gas, liquified gas, hazardous liquids, damage prevention, distribution systems, and transmission systems.

---

<sup>25</sup> 49 U.S.C. §§ 60101 et seq., at 49 U.S.C. § 60105(a).

<sup>26</sup> 58 P.S. §§ 801.302, 801.501.

<sup>27</sup> 58 P.S. § 801.302.

<sup>28</sup> 49 CFR § 191.3.

Notably, the Commission’s regulations related to gas safety limit the minimum safety standards for all natural gas and hazardous liquid *public utilities* to those federal pipeline safety laws found in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto.<sup>29</sup> Accordingly, if the General Assembly intended for Act 127 to be limited or to exclude master meter systems, it would have expressly done so. While the legislative intent can be helpful, the actual language of act/regulation/statute is the ultimate determining factor.<sup>30</sup>

**B. WESTOVER’S APARTMENT COMPLEXES ARE MASTER METER SYSTEMS**

1. Westover’s Claim that the Definition of Master Meter System Requires Gas Facilities to be Located “Within and Outside” an Apartment Complex is Without Merit.

As cited throughout I&E’s Main Brief, a “master meter system” is defined 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>31</sup>

Thus, one of the elements of a master meter system is that the distribution system is “within, but not limited to, a definable area, such as a mobile home park, housing project, or

---

<sup>29</sup> 52 Pa. Code § 59.33; *see also* 49 U.S. Code § 60104(c) “A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter.”

<sup>30</sup> For example, the California Public Utilities Commission does not exercise jurisdiction over master meter facilities that do not serve mobile home parks. <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-09/2022-Appendix-F-State-Program-Certification-Agreement-Status.pdf>; <https://www.cpuc.ca.gov/regulatory-services/safety/mhp>.

<sup>31</sup> 49 CFR § 191.3 (emphasis added).

apartment complex . . . .”<sup>32</sup> Westover argues a tiresome position that the definition of a master meter system requires the gas facilities to be located “within and outside” an apartment complex. This position was previously rejected by Deputy Chief ALJ Pell in his April 18, 2023 Order denying Westover’s Motion for Summary Judgement.<sup>33</sup>

Acknowledging that PHMSA has not specifically issued an interpretation of “within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex,” the interpretations issued by PHMSA clearly provide guidance on how that element of the definition is applied. For example, as previously explained in more detail in I&E’s Main Brief, PHMSA has issued interpretations finding an apartment complex,<sup>34</sup> a housing development,<sup>35</sup> and a mall complex<sup>36</sup> to be master meter systems. None of those interpretations included a review or analysis of whether the natural gas facilities were located outside of the definable area.

Ironically, Westover argues that the Commission should arbitrarily select which PHMSA interpretations it should follow and/or use as guidance, and the interpretations which uniformly find master meter systems located within a definable area are the letters Westover wants the Commission to find unpersuasive.<sup>37</sup> To the contrary, I&E posits that all the PHMSA interpretations letters should be persuasive and should be used as guidance in

---

<sup>32</sup> 49 CFR § 191.3.

<sup>33</sup> *See generally* Interim Order Denying the Motion for Summary Judgment Filed by Westover Property Management Company, L.P., entered April 18, 2023 (“I am not persuaded by Westover’s position that a gas system must be partly within and partly outside the apartment complex in order to satisfy the definition of a ‘master meter system.’”).

<sup>34</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>35</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>36</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).

<sup>37</sup> *See generally* Westover’s Main Brief, pgs. 35, 41 (filed July 3, 2023).

determining the fact pattern or patterns which meet the definition of a master meter system. The PHMSA interpretations are the only guidance in existence which look at real-world situations and apply the definition, and thus cannot be casually pushed aside because the interpretation is not consistent with Westover's position.

Notably, the January 2002 Report submitted by the Secretary of the Department of Transportation supports and bolsters the PHMSA interpretations. The Secretary of the Department 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>38</sup> The Report continues to state that master meter systems exist at a variety of locations, including apartment complexes, and that the category with the most master meter systems is apartment buildings and complexes.<sup>39</sup>

Additionally, the plain language and definitions of the words used are in stark contrast to Westover's argument. "Within" is also defined as "used as a function word to indicate enclosure or containment," or "to indicate situation or circumstance in the limits," which demonstrate that the pipeline system for distributing gas must be located in a definable area, such as an apartment complex.<sup>40</sup> Next, the phrase "within, but not limited to" is a common idiomatic expression included in contracts or statutes/regulations which means that the definition is applicable to the examples cited and other uncited examples which are similar in

---

<sup>38</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>39</sup> *Id.*

<sup>40</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/within>.



purpose. The placement of the commas and order of the words further exacerbates this common understanding: within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex. Thus, the distribution system must be within a definable area, but is not limited to the examples provided.

Moreover, the document on the Commission’s website entitled “Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions,”<sup>41</sup> that Westover alleges it so heavily relied upon, is not a regulation, statute, case law, policy, or any other legal authority. The quoted section “ultimate consumers who own service lines on their real property (including master meter systems serving their own property)” is the correct interpretation of Section 191.3. Specifically, it is true that master meter system operators who service their own property, i.e., are the ultimate consumers, are not considered master meter systems subject to federal regulation. Two examples of a master meter system which are not subject to federal regulation because the ultimate consumer services their own real property are as follows. Mr. Smith owns a business which includes an office and two (2) warehouses, all located in a definable area, i.e., the business complex. The local natural gas distribution company provides gas to one meter connected to the office building. The gas service then flows through underground piping and exterior piping to provide service to each of the warehouses located within the business complex. Mr. Smith purchases the gas from the local natural gas distribution company and utilizes the gas service to provide heat and hot water service to all three buildings. In this situation, while Mr. Smith’s gas configuration is a master meter system in the truest sense, he is not considered a master meter system subject to

---

<sup>41</sup> See Westover Statement No. 2, pg. 11; Westover Exhibit AS-3.

federal safety regulations as a pipeline operator because Mr. Smith purchases the gas and is the ultimate consumer.

Similarly, Ms. Jones owns a single-family home on 2 acres of land. In addition to the home, she also owns a garage which is located approximately 100 feet from the home. The local natural gas distribution company provides gas to one meter connected to the home. The gas then flows through underground piping and exterior piping to the garage where Ms. Jones utilizes the gas service to run a furnace for her glass-blowing hobby. While the gas configuration on Ms. Jones' home meets the definition of a master meter system, Ms. Jones is not a pipeline operator subject to the federal safety regulations because she purchases the gas and is the ultimate consumer, i.e., the gas services her own property.

Thus, the definition of a master meter system under Act 127 requires the gas facilities to be located within a definable area, such as an apartment complex. This interpretation is consistent with the plain meaning of the words, the PHMSA interpretations, and the common knowledge of the application of the phrase. Moreover, even though the Frequently Asked Questions document cited by Westover is not controlling or binding legal precedent/guidance, Westover's reliance on the document is misguided because Westover is not the ultimate consumer of the gas service on its property. Rather, the gas facilities located within the apartment complex which are owned and operated by Westover are distribution lines, not service lines.

## 2. Apartment Complexes are Distinguishable from College Campuses

To be clear, I&E is not suggesting that pipe which transports water, heat, or steam is subject to Act 127. Rather, I&E's position is that Act 127 applies to pipeline facilities which transport natural gas. Westover argues that the gas infrastructure configurations at Black

Hawk, Concord Court, and Lansdale Village do not meet the definition of master meter system because the gas services a central boiler which produces heat and/or hot water that is distributed to the tenants. Westover cites to two PHMSA interpretations which relate to college campuses to support this proposition.

I&E acknowledges that some prior PHMSA interpretations suggest that a pipeline distribution system which services a central boiler/hot water system, by which the college in turn provides heat and/or hot water to the building occupants, is not a pipeline operator.<sup>42</sup> However, there is a stark difference between a college campus and an apartment complex.

In PHMSA interpretation PI-03-0101, a request was made related to whether Bryant College's gas system was a master meter system subject to federal regulation.<sup>43</sup> In rendering the interpretation, PHMSA stated that providing heat and hot water to campus buildings renders the college the consumer of the gas service, but specifically noted that if Bryant College provided gas to *consumers, such as concessioners, tenants, or others*, it is engaged in the distribution of gas.<sup>44</sup> The distinction between providing heat and/or hot water to campus buildings and gas to consumers or tenants is routed in the functionality of a college campus.

A college campus generally encompasses buildings which house an array of functions- classrooms, laboratories, libraries, a gymnasium, a cafeteria, a medical center, student housing, etc. The college campus is functional regardless of whether students are on

---

<sup>42</sup> PHMSA Letter of Interpretation to Rhode Island Division of Public Utilities & Carriers, PI-03-0101 (February 14, 2003) (attached in Appendix D in Main Brief).

<sup>43</sup> PHMSA Letter of Interpretation to Rhode Island Division of Public Utilities & Carriers, PI-03-0101 (February 14, 2003).

<sup>44</sup> PHMSA Letter of Interpretation to Rhode Island Division of Public Utilities & Carriers, PI-03-0101 (February 14, 2003).

campus and/or taking classes, and utilities are not included in housing costs. To the contrary, the amount of gas used at Westover’s apartment complexes is determined by the tenants, i.e., the tenants control the temperature in their respective apartment/unit, the tenants use as much or as little hot water as needed/desired, and the tenants use the gas-operated dryers or cooking appliances as needed/desired. Moreover, as explained in more detail in I&E’s Main Brief, the tenants of Westover’s apartment complexes pay for the gas service, either indirectly through rents, directly through a sub-meter readings, or both. Thus, the PHMSA interpretations related to college campuses are distinguishable from the facts related to apartment complexes.

3. All of Westover’s Apartment Complexes Distribute Gas “In or Affecting Interstate or Foreign Commerce”

Westover erroneously argues that the amount of gas used and purchased at any of its apartment complexes is so small that it does not affect interstate or foreign commerce. This argument is inconsistent with legal precedent. The Supreme Court has determined that intrastate activities that “have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions” are within Congress’ power to regulate.<sup>45</sup> In *Wickard v. Filburn*, 317 U.S. 111 (1942), the Supreme Court upheld the application of the Agricultural Adjustment Act of 1938 to the production and consumption of homegrown wheat.<sup>46</sup> In rendering its decision, the Supreme Court stated:

Even if appellee’s activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect

---

<sup>45</sup> *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937).

<sup>46</sup> *Wickard v. Filburn*, 317 U.S. 111 (1942).

is what might at some earlier time have been defined as “direct” or “indirect.”<sup>47</sup>

The Supreme Court determined that “appellee’s own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial.”<sup>48</sup> The purpose of the Agricultural Adjustment Act was to regulate the market price and volume of wheat, and appellee’s practice of growing wheat for his own consumption/use clearly affected the wheat market and prices, i.e., home-grown wheat competed with wheat in commerce and appellee’s consumption is not reflected in the market.<sup>49</sup> Thus, the Supreme Court found that one individual’s wheat farm had a substantial economic effect on interstate commerce.

Contrary to Westover’s argument, Westover’s distribution of gas to its tenants does increase the amount of gas purchased and sold, and thus affects interstate commerce and the natural gas market. As explained above, the amount of gas used at the various Westover-owned/operated apartment complexes is dependent upon the tenants. The number of tenants in the apartment complex and the tenant’s consumption of the gas dictates how much gas is used and sold, i.e., the amount of gas used by one (1) tenant will differ from the amount of gas used by ten (10) tenants, not to mention the variables relating to the characteristics of the tenant (individual v. family), the season (summer v. winter), and the preferences of the tenant

---

<sup>47</sup> *Wickard v. Filburn*, 317 U.S. 111, 125 (1942).

<sup>48</sup> *Wickard v. Filburn*, 317 U.S. 111, 127-128 (1942); *see also Maryland v. Wirtz*, 392 U.S. 183, fn. 27 (1968) (“The Court has said only that where a general regulatory statute bears a substantial relation to commerce, the de minimis character of individual instances arising under that statute is of no consequence.”); *see also United States v. Gomez*, 87 F.3d 1093, 1095-96 (9th Cir. 1996) (affirming conviction of arson of six-unit apartment building because considered in the aggregate the rental of one unit can have a substantial effect on interstate commerce).

<sup>49</sup> *Wickard v. Filburn*, 317 U.S. 111 (1942).

(hot shower v. cold shower; cooking at home v. eating out/take-out). Moreover, common sense dictates that the amount of gas used at the apartment complex is more than the amount of gas used by a single-family home. Accordingly, Westover's distribution of natural gas affects interstate commerce, regardless of the *de minimis* nature or Westover's claim that it uses a "small" amount of gas.

**C. I&E DID NOT WAIVE ITS POSITION THAT WESTOVER VIOLATED ACT 127**

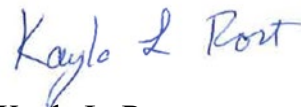
I&E vehemently objects to Westover's footnote which suggests that I&E waived its position that Westover violated Act 127. The lack of civil penalty sought in this matter does not demonstrate an admission or waiver of violations, rather the absence of a civil penalty was made for legal and settlement purposes. I&E maintains its position that Westover is a pipeline operator who operates master meter systems at its various apartment complexes, and has violated Act 127 by failing to register as a pipeline operator and failing to be compliant with Act 127 and the applicable federal regulations. However, I&E determined that substantially decreasing the time spent on litigation so that an ultimate decision on the overarching legal issues could be rendered expeditiously, coupled with the safety measures Westover agreed to implement in the Partial Settlement, justified the absence of a civil penalty in this matter.

**IV. CONCLUSION**

In conclusion, I&E has fully articulated and addressed the various legal considerations and interpretations related to the definition of a master meter system, and has met its burden in proving that Westover is a pipeline operator who operates master meter systems at its various apartment complexes in Pennsylvania.

WHEREFORE, 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 (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,



Kayla L. Rost  
Prosecutor  
PA Attorney ID No. 322768

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

Dated: August 3, 2023

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, August 3, 2023, served a true copy of the foregoing **Reply 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:**

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

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

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