PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held January 8, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement, Conflict Statement
Kimberly Barrow, Vice Chair, Conflict Statement
Kathryn L. Zerfuss
John F. Coleman, Jr., Joint Statement, Dissenting in part and Concurring in part
Ralph V. Yanora, Joint Statement, Dissenting in part and Concurring in part

Pennsylvania Public Utility Commission,	C-2022-3030251
Bureau of Investigation and Enforcement	P-2021-3030002

v.

Westover Property Management Company, L.P.

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Westover Property Management Company, L.P. d/b/a Westover Companies (Westover), filed on November 20, 2023, to the Recommended Decision (R.D.) of Deputy Chief Administrative Law Judge Christopher P. Pell (ALJ Pell), served by the Commission on October 31, 2023. On November 30, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed Reply Exceptions. In the Recommended Decision the ALJ recommended, *inter alia*, that the Commission approve the Joint Petition for Partial Settlement (Partial Settlement), filed on June 13, 2023, by I&E on behalf of Westover and I&E (the Parties), without modification, as in the public interest.

Upon review, based upon the reasons discussed more fully *infra*, we shall: (1) grant Westover's Exceptions, in part, and deny them, in part, (2) modify the Ordering Paragraphs of the Recommended Decision to be consistent with the stipulation of the Parties, and (3) approve the Partial Settlement, without modification, as in the public interest. We shall further find that certain specified Westover apartment complexes are subject to the Commission's jurisdiction under the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101-801.1101 (Act 127), and are "master meter systems" as defined by 49 C.F.R. § 191.3.

I. Introduction/Procedural History[1]

This matter is a consolidated proceeding, which consists of Westover's Amended Petition for Declaratory Order[2] seeking a Commission order to resolve whether Westover is subject to Act 127, and the Complaint proceeding subsequently initiated by I&E on January 3, 2022, alleging that Westover is in violation of Act 127.[3]

In the Declaratory Order proceeding, Westover amended its original petition to include factual details concerning Westover's natural gas pipeline facilities, which, Westover alleged, support Westover's claim that it is not a pipeline operator subject to Commission jurisdiction. Amended Petition for Declaratory Order at 1-3; 4-20.

In the Complaint proceeding, I&E alleged that the I&E Safety Division responded to reports of a natural gas leak and service outage occurring at one of Westover's apartment complexes. Upon ensuring the safety of gas utility service of the residents of the apartment complex, the I&E Safety Division shifted the focus of its investigation to examine whether the pipeline facilities operated by Westover constitute "master meter systems," as defined in 49 CFR § 191.3, and are therefore subject to Commission regulation through Act 127. Complaint at 9; *see generally*, *Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for a*

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[1] A detailed procedural history of the litigated proceeding is set forth in the ALJ's Recommended Decision, and is incorporated herein by reference. R.D. at 2-6.

[2] Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for a Declaratory Order Regarding Applicability of the Gas and Hazardous Pipeline Act, filed on December 13, 2021, as amended, May 13, 2022. (Declaratory Order proceeding).

[3] On January 3, 2022, I&E concurrently filed its Answer to Westover's original Petition and a Formal Complaint against Westover at Docket No. C-2022-3030251 alleging violations of Act 127 and Part 192 of the Federal pipeline safety regulations, 49 C.F.R. §§ 192.1-192.1015 (Complaint proceeding).

Declaratory Order Regarding Applicability of the Gas and Hazardous Pipeline Act, at Docket Nos. P-2021-3030002 and C-2022-3030251 (Order entered August 25, 2022) (*Order Re: Petition for Declaratory Order*).

In ruling on Westover's Amended Petition for Declaratory Order, the Commission did not grant Westover's request for a ruling as to whether Westover is subject to Commission jurisdiction under Act 127. Rather, the Commission consolidated Westover's Declaratory Order proceeding with the Complaint proceeding for discovery and hearing process for resolution of the questions of disputed facts and whether the Commission retains jurisdiction over Westover under Act 127. The Commission stated:

> It is clear from the allegations in the Amended Petition and I&E's answer thereto, that material facts are in dispute as to the physical makeup of each of Westover's systems, including whether or not the tenants are the ultimate consumers of gas, whether the tenants pay for the gas in rents or directly to the NGDC, and whether any given system is wholly contained within a single building or complex. Since I&E has already filed a Formal Complaint against Westover alleging, inter alia, violations of Act 127, these material fact issues, as well as the various legal issues raised in the Amended Petition should be resolved in the Formal Complaint proceeding at Docket No. C-2022-3030251.

Order Re: Petition for Declaratory Order at 7. The Commission ordered:

> That the matter be assigned to the Office of Administrative Law Judge *for resolution of the disputed material facts and legal issues in the ongoing controversy at Docket No. C-2022-3030251, and issuance of a recommended decision.*

Id. at Ordering para. No. 2. (*emphasis added*).

Following the Commission's *Order Re: Petition for Declaratory Order* in August 2022, the consolidated proceeding was returned to the presiding officer at the Complaint proceeding docket, ALJ Pell. R.D. at 4.

Similarly, on November 22, 2022, the Commission entered its Opinion and Order denying Westover's Petition for Interlocutory Review and Answer to Material Questions and for Immediate Stay of Proceeding, and again returned the matter to ALJ Pell for further proceedings. R.D. at 5.

The Parties submitted testimony pursuant to the litigation schedule before ALJ Pell and notified the ALJ that they had reached a partial settlement of the factual issues related to I&E's Complaint and agreed that evidentiary hearings were not required. However, the Parties' dispute regarding the Act 127 jurisdictional questions remained to be litigated issues. R.D. at 5-6.

On June 13, 2023, the Parties filed their Partial Settlement, along with associated documents, including their Joint Stipulation of Facts and their respective Statements in Support. To effectuate the Partial Settlement, the Parties requested that the ALJ issue a Recommended Decision approving the Partial Settlement, without modification, and resolving the litigated issues, as defined by Section III, Paragraph 6 of the Partial Settlement. If the Partial Settlement were to be approved without modification, the Parties agreed to waive their right to file Exceptions and/or Replies to Exceptions on the stipulated portion of the Partial Settlement, while preserving the Parties' rights to file Exceptions and/or Replies to Exceptions on the ALJ's disposition of the litigated issues. Partial Settlement at 2.

On July 3, 2023, the Parties filed their respective Main Briefs.

On August 3, 2023, the Parties filed their respective Reply Briefs.

On October 18, 2023, the ALJ issued an Interim Order Granting the Joint Stipulation for Admission of Evidence.

On October 31, 2023, the ALJ rendered a Recommended Decision recommending that the Commission: (1) adopt the Joint Petition for Partial Settlement, without modification, as in the public interest; and, (2) find that a number of several Westover specified apartment complexes are "master meter systems" as defined by 49 C.F.R. § 191.3 and are subject to the Commission's jurisdiction under Act 127. R.D. at 1 and 6.

As previously noted, on November 20, 2023, Westover filed Exceptions to the Recommended Decision. On November 30, 2023, I&E filed Replies to Exceptions.

II. Discussion

A. Legal Standards

1. Settlement

a. Applicable Legal Standards for Approval of Settlements

The focus of an inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to the Commission's Regulations (Regulations) at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

Consistent with the Commission's policy to promote settlements, we have promulgated a Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (Policy Statement) at 52 Pa. Code § 69.1201. *See also, Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc*., Docket No. C-00992409 (Order entered March 16, 2000). The Policy Statement sets forth ten (10) factors[4] to be considered in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest.

The factors to be considered pursuant to 52 Pa. Code § 69.1201(c), are as follows:

> (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
>
> (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

[4] The Commission may, in fact, consider more than ten (10) factors, as the tenth listed item allows for the consideration of "other relevant factors." 52 Pa. Code § 69.1201(c)(10).

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c).

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

considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.* Finally, the Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted.

b. The Terms of the Proposed Partial Settlement

The ALJ quoted Sections III-V of the Joint Petition for Partial Settlement setting forth the principal terms of the Partial Settlement, and summarized Section VI setting forth the conditions of the Partial Settlement. Beginning at Section III (the original headings and numbering are maintained here for ease of reference), the Partial Settlement provides that:

> **III. DELINEATION OF THE ISSUES**
>
> 6. The Parties agree to submit the questions of law identified below (the "Litigated Issues") to the ALJ:
>
> A. Whether Act 127 applies to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from a natural gas distribution company ("NGDC")?
>
> B. Whether the natural gas system at any apartment complex identified in the Joint Stipulation of Facts is a "master meter system" as defined in 49 CFR § 191.3?
>
> 1. Are Westover's gas facilities limited to the apartment complex?
> 2. Does Westover purchase gas for resale through a distribution system and supply it to the ultimate consumer?
> 3. Who is the ultimate consumer of the gas service at the apartment complexes

identified in the Joint Stipulation of Facts?

4. Does a natural gas system that is exclusively or primarily comprised of interior piping satisfy the definition of a "master meter system"?
5. Under what circumstances does a natural gas system which includes a sub-meter owned by the apartment complex satisfy the definition of a "master meter system"?
6. At which properties (if any) does Westover distribute gas "in or affecting interstate or foreign commerce"?

7. The Parties agree that the following issues shall be resolved as follows:

A. Issues in the Complaint

1. Westover is not a pipeline operator, pursuant to Act 127, with respect to the gas systems at the following apartment complexes:
   a. Paoli Place (South Valley Townhomes); and
   b. Willow Run.
2. Westover should not be ordered to pay a civil penalty due to (a) Westover's reliance on the "Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act Frequently Asked Questions" document posted on the Commission's website; (b) the specific, unique facts and circumstances presented in this matter; (c) I&E modifying its litigation position to no longer seek a civil penalty in this proceeding; and (d) Westover voluntarily agreeing to implement and follow the terms outlined below in Section IV beginning on October 1, 2023, even in the absence of a Commission Order

approving the Partial Settlement by that date.

B. Issues in the Petition

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

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

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

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

incident or leak at any of Westover's apartment complexes.

1. Westover agrees to, within forty-five (45) days of October 1, 2023, complete the following:
   - ii. Confirm and/or keep records which confirm that the Westover employee and the third-party contractor or consultant are qualified;
   - iii. Provide I&E with a list of other third- party contractors or consultants available to Westover in the event that its designated Operator Qualified employee or third-party contractor or consultant leaves employment or is otherwise unavailable;
   - iv. Identify the tasks the employee and third-party contractor or consultant are qualified to complete; and
   - v. Provide training or opportunities for training, as appropriate, for the employee to maintain his/her qualification status.

2. At each apartment complex or commercial property involved in this litigation, Westover will post the contact information for the OQ certified employee and contractor in the office.

B. If any individual detects the odor of gas or reasonably suspects a natural gas leak

at any of the apartment complexes identified in the attached Joint Stipulation of Facts, Westover shall promptly report the odor of gas and/or suspected natural gas leak to the NGDC, and I&E's Pipeline Safety Division ("Pipeline Safety").

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

C. Westover agrees to create and distribute educational materials to the tenants of the apartment complexes identified in the

Joint Stipulation of Facts once a year, and as part of its welcome packet, and to post the educational materials in any community laundry room where natural gas is used. The topics of these materials will include but are not limited to the following:

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

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

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

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

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

   A. I&E will not file another complaint alleging that any of the following is a pipeline operator, as that term is defined in Act 127: (a) Westover, (b) the owner of any of the apartment complexes identified in the incorporated Joint Stipulation of Facts, (c) the owner or operator of any commercial property identified on Westover's Act 127 Registration for 2022, or (d) the owner/operator of any apartment complex acquired by an affiliate of Westover within three years of the date of entry of the ALJ's Recommended Decision or Initial Decision approving this Partial Settlement, without modification.

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

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

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

    A. Within sixty (60) days of the date that the Commission's or court's decision on the Litigated Issues becomes final and unappealable, Westover agrees to provide its implementation plan to become compliant with Part 192 and Act 127 to Pipeline Safety for review.
    B. Westover and Pipeline Safety will meet and discuss the implementation plan proposed by Westover and will endeavor to reach an agreement on a reasonable timeframe, not to exceed four (4) years, for Westover to become compliant.
    C. Within one hundred twenty (120) days of the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, Westover agrees to provide its procedural manual for operations, maintenance, and emergencies to Pipeline Safety for review.
    D. Beginning on the date that the Commission's or court's Order on the Litigated Issues becomes final and unappealable, and for subsequent years, Westover agrees to submit reports to the Commission, pursuant to 58 P.S. § 801.503(d), as an Act 127 pipeline operator on an annual basis.
    E. Beginning on the date that the Commission's or court's Order on the

Litigated Issues becomes final and unappealable, and for subsequent years, Westover agrees to file and pay annual assessments to the Commission, pursuant to 58 P.S. § 801.503(b).

F. If Westover timely submits the compliance filings described in Paragraph 11(A)-(C), the Complaint in this matter shall be closed. The closure of this matter shall not impinge upon I&E's ability to file a complaint in the event Westover fails to meet the obligations and deadlines outlined in the compliance filings or for any other violation(s) of Act 127 or Part 192.

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

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

VI. CONDITIONS OF THE PARTIAL SETTLEMENT

The Joint Petitioners note that this Partial Settlement Agreement reflects their compromise and

settlement of disputed claims and question of material facts. Its constituent provisions shall not be construed as or deemed to be evidence of an admission of guilt or liability.

The Parties jointly assert that approval of this Partial Settlement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations.[5] The Parties maintain that the Commission will serve the public interest by adopting this Partial Settlement.

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

Lastly, the Parties maintain that the facts agreed to in the Joint Stipulation are sufficient to find that the Partial Settlement is in the public interest. Moreover, the Parties agree that the benefits and obligations of this Partial Settlement shall be binding upon the successors and assigns of the Parties to this Partial Settlement.

R.D. at 32-39.

[5] 52 Pa. Code § 69.1201.

The Joint Petition also contained six attachments, as follows:

Attachment A - Joint Stipulation of Facts
Attachment B - Joint Chart of Apartment Complexes
Attachment C - Joint Proposed Conclusions of Law
Attachment D - Joint Proposed Ordering Paragraphs
Attachment E - I&E's Statement in Support[6]
Attachment F - Westover's Statement in Support[7]

As will be discussed more fully below, in Section II.B.1 of this Opinion and Order, the ALJ found that the Partial Settlement is in the public interest and recommended that the Partial Settlement be approved, without modification. R.D. at 46.

2. Declaratory Order

a. Applicable Legal Standard for Petitions for Declaratory Order

Section 331(f) of the Public Utility Code (Code), 66 Pa.C.S. § 331(f), and Section 5.42 of the Commission's Regulations at 52 Pa. Code § 5.42, provide that the Commission may issue a Declaratory Order to terminate a controversy or to remove uncertainty. Section 331(f) of the Code states: "Declaratory Orders - The commission, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." Section 5.42 of the Commission's Regulations states in part:

[6] *See*, R.D. at 39-40 for a summary of I&E's Statement in Support.

[7] *See*, *Id.* at 40-45 for a summary of Westover's Statement in Support.

§ 5.42. Petitions for declaratory orders.

(a) Petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty must:

(1) State clearly and concisely the controversy or uncertainty which is the subject of the petition.
(2) Cite the statutory provision or other authority involved.
(3) Include a complete statement of the facts and grounds prompting the petition.
(4) Include a full disclosure of the interest of the petitioner.

52 Pa. Code § 5.42.

A declaratory judgment is a means to declare rights, status, and other legal relations[8] and "is to be liberally applied to afford relief from uncertainty and insecurity."[9] But a "declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic."[10]

b. Westover's Petition

Westover's Petition pertains to the Commission's jurisdiction under Act 127, and specifically seeks an order that Westover's properties are not subject to the requirements of Act 127. Petition at 18-20. As the proponent of the rule or order, Westover bears the burden of proof on the Petition. 66 Pa.C.S. § 332(a).

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[8] *See* 42 Pa.C.S. §§ 7532, 7533.

[9] *Twp. of Derry v. Pa. Dep't of Lab. & Indus.*, 932 A.2d 56, 59 (Pa. 2007) (citing 42 Pa.C.S. § 7541(a)).

[10] *Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991).

Westover's Petition, therefore, involves the application of the relevant legal standards under Act 127. Under Act 127, the Commission is delegated general administrative authority to supervise and regulate pipeline operators within the Commonwealth consistent with Federal pipeline safety laws. Regarding general powers of the Commission, Act 127 further explains the Commission's authority, as follows:

> [t]he commission may adopt regulations, consistent with the Federal pipeline safety laws, as may be necessary or proper in the exercise of its powers and perform its duties under this act.
>
> The regulations shall not be inconsistent with or greater or more stringent than the minimum standards and regulations adopted under the Federal pipeline safety law.

58 P.S. § 801.501.

Act 127 further provides, in pertinent part, that the Commission shall have the duty "[t]o enforce the Federal pipeline safety laws[11] and, after notice and opportunity for a hearing, impose civil penalties and fines and take other appropriate enforcement action." 58 P.S. §801.501(a)(7).

Westover first disputes that any of its systems are "master meter systems" as defined by Federal pipeline safety laws and appurtenant regulations. Federal pipeline safety laws define a "master meter system," as follows:

> Master Meter System means 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

[11] These include provisions of 49 U.S.C. Ch. 601 (relating to safety), the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989), the Pipelines Safety Improvement Act of 2002 (Public Law 107-355, 116 Stat. 2985) and the regulations promulgated under the laws.

> 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.

49 C.F.R. § 191.3.

Additionally, Federal Pipeline Safety Laws 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." *Id*.

Lastly, Federal Pipeline Safety Laws define "transportation of gas" as "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce." *Id*.

3. Formal Complaint

a. Applicable Legal Standards/Burden of Proof for Formal Complaints

As the proponent of a rule or order, I&E, bears the burden of proof on the Formal Complaint (Complaint) pursuant to Section 332(a) of Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, I&E, as the Complainant, must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing,

by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to Westover. If the evidence presented by Westover is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of Westover. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

As previously noted, in the Complaint proceeding, I&E alleged that the I&E Safety Division responded to reports of a natural gas leak and service outage occurring at one of Westover's apartment complexes. Upon ensuring the safety of gas utility service of the residents of the apartment complex, the I&E Safety Division shifted the focus of its investigation to examine whether the pipeline facilities operated by Westover constitute "master meter systems," as defined in 49 CFR § 191.3, and are therefore subject to Commission regulation through Act 127. Complaint at 8-9.

The ALJ summarized the Complaint, as follows:

> Specifically, I&E alleged that Westover is a "pipeline operator" as the 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." Moreover, Westover, as a pipeline operator, is subject to the power and authority of the 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. I&E explained that, of the 34 residential apartment complexes that Westover owns and/or maintains in Pennsylvania, 17 contain jurisdictional master meter systems. I&E further explained that at each of these 17 apartment complexes, Westover purchases and receives gas from a natural gas distribution company (NGDC), specifically PECO Gas and UGI Utilities, Inc. The gas flows via pipeline to the NGDC-owed meter located at a Westover apartment complex. After the outlet of the NGDC master meter, the gas flows in pipelines that are wholly owned and/or operated by Westover, where the gas is then distributed to the tenants in the apartment complex. Westover then charges its tenants for the gas either through a metered charge or rent. I&E asserted that an immediate threat to public safety exists with each and every day that Westover fails to submit to the Commission's jurisdiction and implement the pertinent pipeline safety rules at its apartment complexes. In addition to requesting that a $200,000 civil penalty be assessed against Westover for the violations noted in the Complaint, I&E requested that:

- [Westover] be directed to report all regulated intrastate distribution pipeline miles for pipelines in operation during the 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019 calendar years;
- [Westover] be directed to pay an assessment that will be generated by the Commission's Bureau of Administration based on the reported regulated intrastate distribution pipeline miles for pipelines that were in operation during the 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019 calendar years;
- [Westover] be directed to fully comply with all applicable sections of Part 192 of the Federal

pipeline safety regulations and Act 127 now and on a going- forward basis;

- [Westover] be directed to cooperate with I&E Safety Division during all inspections, including the coordination of such inspections, access to all physical facilities, and unfettered access to all documents, maps, and procedures; and
- That the Commission grant such further relief as deemed just and reasonable.

R.D. at 2-3 (footnotes and citations omitted); Complaint at 15-16.

B. ALJ's Recommended Decision

The ALJ made one hundred forty-one (141) Findings of Fact (FOF) and twenty-four (24) Conclusions of Law (COL). R.D. at 7-27; 110-114. We shall adopt the ALJ's Findings of Fact and Conclusions of Law unless expressly rejected or modified by this Opinion and Order.

1. Joint Petition for Partial Settlement

As previously noted, the ALJ weighed the positions of the Parties in support of the Partial Settlement and concluded that the Partial Settlement is in the public interest. The ALJ was persuaded by the positions of I&E and Westover that, although the Settlement did not resolve many legal issues presented, the Partial Settlement and stipulated facts represent a substantial step toward final resolution of the matter. Accordingly, the ALJ recommended that the Commission approve the Partial Settlement as in the public interest. The ALJ noted that the Parties agreed that Westover would voluntarily implement several important safety measures to be put in place during the pendency of this proceeding. The ALJ also noted the substantial savings in time and expense due to the Partial Settlement, which would otherwise be expended on protracted litigation of the issues. Consequently, the ALJ recommended that the Commission adopt

the rationale of the Parties and approve the Partial Settlement as in the public interest. R.D. at 39-46.

2. Litigated issues

Turning to the remaining litigated issues regarding the Commission's jurisdiction over Westover's properties under Act 127, which the Parties specified in Section III, Paragraph 6 of the Partial Settlement, the ALJ addressed the stipulated legal issues *seriatim*. R.D. at 47-107.

The first question addressed by the ALJ was: 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)? R.D. at 47-57. The ALJ concluded that Act 127 *does* apply to the owner or operator of an apartment complex which owns or operates natural gas facilities located downstream from an NGDC. The ALJ agreed with I&E and recommended that the Commission find that the plain language of the definition of a "master meter system" in 49 C.F.R. § 191.3 provides that "master meter systems" can be found at apartment complexes. R.D. at 57-59.

The ALJ then addressed the second overarching question, which includes six sub questions: 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 C.F.R. § 191.3? R.D. at 59-109. As to this question, the ALJ explained the fundamental dispute between the Parties, *i.e.*, I&E's position that *all* of Westover's apartment complexes which are the subject of this proceeding satisfy the elements of a "master meter system," and Westover's contrasting position that, for various reasons, *none* of Westover's apartment complexes at issue satisfy the necessary elements of a

"master meter system." The ALJ noted that the disagreement between the Parties was examined more thoroughly under the six sub questions. *Id*. at 59-61.

The first four sub questions examined by the ALJ pertained to the required elements of a "master meter system," which include that: (1) the pipeline system must be within, but not limited to, a definable area, such as an apartment complex; (2) the operator must purchase gas from an outside source for resale; (3) the pipeline system supplies the ultimate consumer; and (4) the ultimate consumer purchases the gas either directly through a meter, or by other means, such as by rent. R.D. at 66. The ALJ's examination of the sub questions was, as follows:

(1) Are Westover's Gas Facilities limited to the Apartment Complex?

Upon review, the ALJ recommended that the Commission reject Westover's position that, to satisfy the definition's requirement of a "master meter system" that "the pipeline system must be within, but not limited to, a definable area, such as an apartment complex," requires that Westover's gas system must be located partly within, and partly outside, of an apartment complex. Westover asserted that because, as the Joint Stipulation of Facts provides, its systems were entirely within the defined area of the apartment complexes, the systems failed to satisfy the first element of a "master meter system." In rejecting Westover's position, the ALJ found that a plain reading of the definition leads to the conclusion that Westover's systems meet the first element of the definition of a "master meter system." R.D. at 66-67.

The ALJ also noted that 49 C.F.R. § 191.3 provides that "master meter systems" can be found at apartment complexes. The ALJ was also persuaded by the report of the United States Secretary of Transportation (Secretary of Transportation), submitted to Congress in 2002, that answered the question "[w]hat is a master meter system" in pertinent part, to indicate that master meter systems provide gas at a variety of

different types of facilities, including apartment *buildings* and complexes. R.D. at 66-68 (citing *Assessment of the Need for an Improved Inspection Program for Master Meter Systems, Report of the Secretary of Transportation to the Congress, prepared pursuant to Section 108 of Public Law 100 -561*, January 2002 at 5) (attached as Attachment E to I&E's Answer in Opposition to Westover's Petition for Declaratory Order) (*2002 Report*). Accordingly, the ALJ recommended that the Commission find that Westover's apartment complex systems satisfy the first element of a "master meter system." R.D. at 67-68.

(2) Does Westover Purchase Gas for Resale Through a Distribution System, and Supply it to the Ultimate Consumer?

The ALJ recommended that the Commission find that Westover purchases gas for resale through a distribution system and supplies it to the ultimate consumer, which are Westover's occupants/tenants for *some*, but *not all* of Westover's apartment complex systems. The ALJ also recommended that the Commission reject I&E's argument that *all* of Westover's systems supply gas to the ultimate consumer, even those where the pipeline distribution system services a central boiler or hot water system. Rather, the ALJ reasoned that because the definition of a "master meter system" specifically provides that "[t]he 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"[12] the definition specifically provides that gas is supplied to the ultimate consumer and the consumer pays for that gas usage through rents. The ALJ noted that, in the majority of Westover's systems, Westover supplies its occupants/tenants with gas, who are the ultimate consumers, and for which they ultimately pay Westover. However, the ALJ also noted that in some of its systems, Westover does not supply any gas to the occupants/tenants. Instead, it uses the gas internally and generates heat and hot water for the occupants/tenants. In this case, the ALJ reasoned that such usage would be contrary

[12] 49 C.F.R. § 191.3.

to the definition of a "master meter system." The ALJ was persuaded that, as noted by Westover, in two separate interpretation letters[13] where colleges consumed the gas and provided heat and hot water to campus buildings, the Pipeline and Hazardous Materials Safety Administration (PHMSA) determined that the colleges were *not operating "master meter systems"* because in that scenario, the colleges were the consumers of the gas. R.D. at 76-77.

The ALJ also noted that several of Westover's apartment complexes feature a hybrid of gas service where Westover both consumes some of the gas it purchases to provide heat and/or hot water, and distributes some of the gas to building occupants/tenants for their personal use. Regarding the portions of Westover's systems that involve facilities for the resale and supply of gas to building occupants as the ultimate consumer, Westover reiterated its argument that such systems fail to meet the definition of a "master meter system" because the portions of the systems supplying gas to occupants are located within and limited to the apartment complex or apartment building. However, the ALJ reinforced his recommendation that the Commission reject Westover's position that Westover's system being "within and limited to a defined area" precluded the system from being a "master meter system." R.D. at 77-78.

(3) Who is the Ultimate Consumer of Gas Service at the Apartment Complexes Identified in the Joint Stipulation?

The ALJ noted I&E's assertions that Westover's tenants are the ultimate consumers of gas service, and regardless of whether Westover consumes all gas and provides heat and hot water to tenants, Westover uses some gas for a central heater/and or hot water system which distributes heat and/or hot water to tenants and provides the

[13] PHMSA Letter of Interpretation to Rhode Island Division of Public Utilities & Carriers, PI-03-0101 (February 14, 2003) (attached in Appendix D in Westover Main Brief; also Westover Exhibit PQ-6); PHMSA Letter of Interpretation to James H. Collins (October 24, 1973) (Westover Exhibit PQ-7).

remainder of the gas to tenants, or Westover distributes gas to tenants for their sole usage. I&E argued that in each of these scenarios, the gas is consumed for the exclusive benefit of, and use by, Westover's tenants. The ALJ disagreed with I&E in this instance. R.D. at 78-80, 83.

The ALJ noted that the last sentence of the definition of "master meter system" specifically provides that "[t]he gas distribution pipeline system supplies the ultimate consumer who either purchase[s] the gas directly through a meter or by other means, such as by rents." Additionally, the ALJ agreed with Westover that a plain reading of the definition requires that gas be distributed through the pipeline system to the ultimate consumer. According to the ALJ, if Westover consumes all of the gas to provide heat and/or hot water, then pursuant to the definition of a "master meter system," Westover is the ultimate consumer of the gas. Therefore, the ALJ concluded, if Westover is the ultimate consumer of the gas and consumes all of the gas at an apartment complex, then by definition, that Westover system is not a "master meter system." The ALJ noted that this approach is consistent with a PHMSA interpretation letter issued in 2020 which states as follows:

> [i]n previous interpretations, PHMSA has stated that an entity would not meet the definition of a master meter system if it were only "using gas delivered through its pipeline to provide heat or hot water to its buildings." 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 other, 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.[14]

[14] PHMSA Letter of Interpretation to Cal Farley's Boys Ranch, PI-19-0002 (February 6, 2020) (attached in Appendix D to I&E Main Brief).

However, and in accordance with this PHMSA interpretation letter, the ALJ continued that for those Westover systems where Westover consumes some of the gas to provide heat and/or hot water but provides the remainder of gas to building occupants, then the building occupants are ultimate consumers of the gas they use, satisfying the "ultimate consumer" element of the definition of "master meter system." R.D. at 83-84.

The ALJ acknowledged that Paoli Place Apartments presents a mixed scenario. Specifically, at the Paoli Place North - Buildings A-K and Paoli Place South, Buildings E-H, Westover supplies gas to the ultimate consumers, the occupants/tenants. However, at Paoli Place North, Buildings L-R and Paoli Place South, Buildings A-D, Westover itself is the ultimate consumer of gas. Thus, the ALJ disagreed with I&E's "all or nothing approach" to Paoli Place apartments. The ALJ recommended that the Commission reject I&E's argument that it would be unconscionable for the Commission to regulate only a portion or a select number of residential buildings, while not regulating the remainder of the buildings. According to the ALJ, to regulate all four of these building groups would be an overextension of Commission authority, since doing so would result in Westover being regulated for systems where it, and not the occupant/tenant, is the ultimate consumer. Instead, the ALJ determined that in accordance with the aforementioned PHMSA letter, only for those systems at the Paoli Place Apartments where Westover provides gas to consumers, *i.e.* the occupants/tenants, is Westover engaged in the distribution of gas and may be subject to Act 127 for those complexes. R.D. at 84.

Accordingly, upon review of the record, the ALJ determined that Westover purchases gas for resale through a distribution system and supplies it to an ultimate consumer, *i.e.* the occupants/tenants, at the following apartment complexes:

- Carlisle Park Apartments (gas used for heating and cooking);[15]
- Country Manor Apartments (some gas distributed to building occupants for cooking);[16]
- Fox Run Apartments (occupants use gas for heat);[17]
- Gladstone Towers Apartments (gas distributed to each unit for heating, cooking, and running dryers);[18]
- Hillcrest Apartments (gas piped to each unit to service a gas-run furnace);[19]
- Jamestown Village (piped to a submeter in each unit);[20]
- Lansdowne Towers (gas used by building occupants for heating and coin-operated dryers);[21]
- Main Line Berwyn (building occupants use gas for heating and cooking);[22]
- Mill Creek I (building occupants use gas for cooking);[23]
- Mill Creek II (building occupants use gas for cooking);[24]

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15 *See*, R.D. at 8, Findings of Fact 11 and 13.

16 *See*, R.D. at 10, Finding of Fact 24.

17 *See*, R.D. at 11, Finding of Fact 30.

18 *See*, R.D. at 11, Finding of Fact 37.

19 *See*, R.D. at 12, Finding of Fact 41.

20 *See*, R.D. at 45, Finding of Fact 45.

21 *See*, R.D. at 14, Finding of Fact 53.

22 *See*, R.D. at 59, Finding of Fact 59.

23 *See*, R.D. at 15, Finding of Fact 64.

24 *See*, R.D. at 16, Finding of Fact 69.

- Norriton East (building occupants use gas for cooking and coin-operated dryers);[25]
- Oak Forrest (building occupants use gas for cooking);[26]
- Paoli Place North, Buildings A-K(building occupants use gas for cooking, heating, or hot water);[27]
- Paoli Place South, Buildings E-H (building occupants use gas for cooking);[28]
- Park Court (building occupants use gas for cooking, heating, and coin-operated dryers);[29]
- Valley Stream (building occupants use gas for cooking, heating, and dryers);[30] and
- Woodland Plaza (building occupants use gas for cooking).[31]

R.D. at 84-85.

The ALJ found that, with the exception of Jamestown Village, Lansdowne Towers, and Main Line Berwyn, Paoli Place North Buildings A-K, Park Court, and Woodland Plaza, Westover bills the occupants at the above-referenced apartment complexes through rents.[32] At Jamestown Village, Lansdowne Towers, Main Line Berwyn, and Paoli Place North Buildings A-K, the ALJ noted that Westover bills the tenants based upon an actual meter reading from a sub-meter.[33] At Park Court and

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25 *See*, R.D. at 16, Finding of Fact 74.

26 *See*, R.D. at 17, Finding of Fact 79.

27 *See*, R.D. at 18, Finding of Fact 85.

28 *See*, R.D. at 19, Finding of Fact 97.

29 *See*, R.D. at 20, Finding of Fact 102.

30 *See*, R.D. at 21, Finding of Fact 107.

31 *See*, R.D. at 22, Finding of Fact 112.

32 *See*, R.D. at 8-21, Findings of Fact 14, 26, 31, 38, 43, 65, 70, 75, 80, 98, and 108.

33 *See*, R.D. at 13-18, Findings of Fact 47, 55, 60, 86.

Woodland Plaza, the ALJ explained that Westover bills the building occupants based upon an allocated basis related to the square footage of the unit.[34] R.D. at 86.

Furthermore, the ALJ determined that Westover does *not* purchase gas for resale or supply gas to tenants and is the ultimate consumer of gas at the following apartment complexes:

- Black Hawk Apartments;[35]
- Concord Court Apartments;[36]
- Lansdale Village;[37]
- Paoli Place North, Buildings L-R;[38] and
- Paoli Place South, Buildings A-D.[39]

The ALJ noted that with the exception of Paoli Place North, Buildings L-R, at the other three apartment complexes, Westover consumes the gas and supplies the tenants with heat and hot water. The ALJ explained that, at Paoli Place North, Buildings L-R, PECO bills the building occupants based upon an actual meter reading.[40] Westover does not purchase gas at this apartment complex. Additionally, at Paoli Place South, Buildings A-D, PECO bills the building occupants for the gas that they consume based upon an actual meter reading for gas used for cooking.[41] R.D. at 86-87.

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[34] *See*, R.D. at 20-22, Findings of Fact 103, 113.

[35] *See*, R.D. at 8, Finding of Fact 7.

[36] *See*, R.D. at 9, Finding of Fact 18.

[37] *See*, R.D. at 13, Finding of Fact 50.

[38] *See*, R.D. at 19, Finding of Fact 90.

[39] *See*, R.D. at 19, Finding of Fact 94. Although Westover uses some gas to provide heat and hot water and is the ultimate consumer in that regard, PECO Energy Company (PECO) bills building occupants directly for the remainder of gas they use.

[40] *See*, R.D. at 19, Finding of Fact 90.

[41] *See*, R.D. at 19, Finding of Fact 94.

(4) Does a Natural Gas System that is Exclusively or Primarily Comprised of Interior Piping Satisfy the Definition of a Master Meter System?

The ALJ noted that there is nothing in the definitions of master meter system, pipeline, pipeline facility, or pipeline operator that can be construed to indicate that the existence of only interior piping negates a determination that a system constitutes a "master meter system." R.D at 95.

The ALJ stated that Westover urged the Commission to adhere to a statement made by the Secretary of Transportation in the *2002 Report*, *supra*, regarding the interpretation of PHSMA's Office of Pipeline Safety as to what constitutes a "master meter system." In that report, the Secretary of Transportation indicated that the Office of Pipeline Safety's policy was that the term "master meter system" applies only to gas distribution systems serving multiple buildings, and that it does not apply to gas distribution systems consisting entirely, or primarily of, interior piping located within a single building.[42] However, the ALJ stressed that it is also important to note that the Secretary of Transportation further advised that "[s]uch systems, however, may be referred to as master meter systems by local utilities and utility regulators for rate purposes, as well as by some state gas pipeline safety regulators for safety regulation purposes."[43] Therefore, the ALJ found that, as noted by I&E, while the policy in 2002 may have been to exclude some "master meter systems" from Federal regulation, this policy did not affect a state's ability to regulate those "master meter systems" for safety purposes. R.D. at 87-91.

Moreover, the ALJ noted the statements of both Westover and I&E that PHMSA has since issued interpretation letters where it has moved away from its stance that 49 C.F.R. § 191.3 implicitly excludes systems that are primarily, or exclusively,

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42 *2002 Report* at 5.

43 *Id.* at 6.

comprised of interior piping within a single building. In a 2020 letter to the Michigan Public Service Commission, referencing the prior interpretation letter regarding the Mall of America, PHMSA advised that "[a]s the Mall of America interpretation stated, gas pipelines inside buildings may be regulated where the gas piping is being used by the gas pipeline operator to transport gas to several businesses who are the ultimate consumers of the gas."[44] Regardless of this acknowledged change in interpretation, the ALJ noted that Westover urged that the better approach is the prior approach, *i.e.* that gas systems that are primarily, or exclusively, comprised of interior piping within a single building are not master meter systems. The ALJ reasoned that this interpretation would ignore PHMSA's evolved approach to identifying "master meter systems."

Accordingly, the ALJ agreed with I&E that a natural gas system that is exclusively, or primarily, comprised of interior piping satisfies the definition of a "master meter system." R.D. at 95-96.

After examining the four elements necessary to satisfy the definition of a "master meter system" the ALJ addressed two additional dispositive questions, Numbers 5 and 6, on what may constitute a "master meter system" subject to Commission jurisdiction. These questions were: (5) [w]hether 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?; and, (6) [w]hether any of Westover's systems distribute gas "affecting interstate commerce"? We address them in turn.

[44] PHMSA Letter of Interpretation to Michigan Public Service Commission dated September 21, 2020 (attached to Westover's Amended Petition as Appendix 8) (*PHMSA 2020 Letter*).

(5) Under What circumstances Does a Natural Gas System Which Includes a Sub-Meter Owned by the Apartment Complex Satisfy the Definition of a "Master Meter System"?

The ALJ noted that as discussed, *infra.*, there are several elements that must be met for a system to be considered a "master meter system." Specifically, the following elements must be present: (1) a pipeline distribution system within, but not limited, to a "definable area", such as an apartment complex; (2) the operator must purchase gas from an outside source for resale; (3) the pipeline distribution system supplies the ultimate consumer; and lastly, (4) the ultimate consumer purchases the gas either through a meter or by other means, such as rent. Based on his previous conclusions, the ALJ found that the existence of an apartment-complex-owned and actively-used sub-meter, where the apartment complex actively supplies the ultimate consumer, who either purchases gas directly through a meter or by other means, such as rents, is dispositive evidence of a "master meter system." R.D. at 98-99.

(6) At Which Properties (if any) Does Westover Distribute Gas "in or Affecting Interstate Commerce"?

Finally, the ALJ addressed the issue of any affect on interstate commerce by virtue of Westover's supply of gas to its apartment complexes. The ALJ noted Westover's argument that these systems fail to meet the definition of a "master meter system" because the portions of the system that are used to resell and supply gas to building occupants are not "in or affecting interstate or foreign commerce." The ALJ found this argument to be similarly unpersuasive, as discussed in more detail, below.

The ALJ stated that, as noted by Westover, at each of Westover's complexes identified in the Joint Stipulation, with the exception of Paoli Place – North (Buildings L-R), an NGDC delivers gas to Westover on its properties, located in Pennsylvania. Furthermore, the ALJ noted that for those complexes where Westover supplies gas to the ultimate consumer, the properties themselves are within Pennsylvania

and the act of supplying gas occurs within Pennsylvania. While the ALJ stated that he understood Westover's argument that Westover's purchases of the gas, and distribution of gas to customers, all of which takes place in Pennsylvania, does not affect interstate commerce, the ALJ did not find that argument persuasive for several reasons. R.D. at 107.

First, the ALJ noted that PHMSA issued a letter of interpretation addressing this very issue. Specifically, the letter was in response to an inquiry concerning the applicability of the Federal pipeline safety laws to a line approximately ten miles long and crossing various public and private rights-of-way and supplying only one customer, a public utility owned generating station.[45] In the *PHSMA 1971 Letter*, Acting Director of Pipeline Safety advised, as follows:

> It is our view, based on the legislative history of the Act, that even though the operation may be entirely within one state there is no question but that every element of a gas gathering, transmission and distribution line is moving gas, which is either in or affects interstate commerce.[46]

The ALJ stated that as previously noted, while this is not controlling, the language of the letter is certainly persuasive. R.D. at 107-08.

In addition to PHMSA guidance, and as noted by I&E, the ALJ stated that it is significant and persuasive that the Commission is already regulating "master meter systems" located entirely within the state of Pennsylvania. Namely, the ALJ cited to the Commission's decision in *Pa. PUC v. Brookhaven MHP Management LLC*, Docket No. C-2017-2613983 (Opinion and Order entered August 23, 2018) (*Brookhaven*). In

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45 PHMSA Letter of Interpretation to Mr. J.J. Lambdin, Professional Engineer, dated March 16, 1971 (attached to I&E's Answer in Opposition to Westover's Petition for Declaratory Order as Attachment C). (*PHMSA 1971 Letter*).

46 *Id.*

Brookhaven, the Commission approved a settlement between I&E and the respondents. In that case, I&E filed a Complaint alleging that the respondents failed to file an Initial Registration Form in 2012 to register with the Commission as pipeline operators and failed to file Pennsylvania Pipeline Operator Annual Registration Forms to report total intrastate regulated transmission, distribution, and gathering pipeline miles for the transportation of gas and hazardous liquids during the 2012, 2013, 2014, and 2015 calendar years, as required by the Pipeline Act. I&E further alleged that the respondents failed to pay assessments to the Commission for the 2015-2016 and 2016-2017 fiscal years because they did not report their total regulated distribution pipeline miles that were in operation during the 2014 and 2015 calendar years. R.D. at 108.

The ALJ continued that although he recognized that *Brookhaven* resulted in a settlement, what is of significance for the purposes of this case is the physical location of the respondents and their facilities. Each of the respondents in *Brookhaven* operated mobile home parks located entirely within York County, Pennsylvania. Although each of these mobile home parks and their pipelines were located entirely within Pennsylvania, the Commission approved the terms of the settlement. Thus, the ALJ concluded, if the Commission believed that these mobile home parks were not subject to Act 127 because they did not affect interstate commerce, it is unlikely that the Commission would have approved the settlement. R.D. 108-09.

The ALJ further noted that, as in *Brookhaven*, Westover's facilities are located entirely within Pennsylvania. In light of *Brookhaven*, as well as the aforementioned PHMSA interpretation letter, the ALJ agreed with I&E that even though the operation of Westover's gas facilities may occur entirely within Pennsylvania, every element of gas gathering, transmission, and distribution line is moving gas which is either in or affecting interstate commerce. R.D. at 109.

Therefore, based upon the ALJ's analysis of the six sub questions, the ALJ recommended that the Commission resolve the second overarching question to conclude that the Commission retains jurisdiction under Act 127 over some, but not all, of Westover's apartment complexes. The ALJ recommended that the Commission find that certain properties constituted "master meter systems" within the definition under 49 C.F.R. § 191.3, and certain properties did not. The ALJ reasoned that the elements for a system to be considered a master meter system are: (1) that there must be a pipeline distribution system within, but not limited to a definable area, such as an apartment complex; (2) that the operator must purchase gas from an outside source for resale; (3) that the pipeline distribution system supplies the ultimate consumer; and (4) that the ultimate consumer purchases the gas either through a meter or by other means, such as rent. Accordingly, the ALJ found that the existence of an apartment complex owned and actively used submeter, where the complex actively supplies the ultimate consumer who either purchases gas directly through a meter or other means, such as rents, is dispositive of a "master meter system." R.D. at 98-99, 109.

For the properties that the ALJ determined did not meet the definition of "master meter systems" the ALJ recommended that the Commission find that Westover is not a pipeline operator as defined by 52 P.S. § 801.102 and that certain Westover systems are "master meter systems" as defined by 49 C.F.R. § 191.3 and thus not subject to Act 127. R.D. at 110.

Therefore, the ALJ recommended that the Commission conclude that it retained jurisdiction under Act 127 to regulate the following properties of apartment complexes (jurisdictional apartment complexes):

a. Carlisle Park Apartments;
b. County Manor Apartments;
c. Fox Run Apartments;

d. Gladstone Towers Apartments;
e. Hillcrest Apartments;
f. Jamestown Village;
g. Lansdowne Towers;
h. Main Line Berwyn;
i. Mill Creek I;
j. Mill Creek II;
k. Norriton East;
l. Oak Forest;
m. Paoli Place North, Buildings A-K;
n. Paoli Place South, Buildings E-H;
o. Park Court;
p. Valley Stream, and
q. Woodland Plaza.

R.D. at 109.

The ALJ also recommended that the Commission conclude that it did not retain jurisdiction under Act 127 to regulate the following properties:

r. Paoli Place – South Valley Townhomes;
s. Willow Run;
t. Black Hawk Apartments;
u. Concord Court Apartments;
v. Lansdale Village;
w. Paoli Place North, Buildings L-R; and
x. Paoli Place South, Buildings A-D.

R.D. at 110.

The ALJ explained that based on his recommendation that the Commission find that several Westover apartment complexes are master meter systems, as defined by 49 C.F.R. § 191.3, and that they are subject to Act 127, he also recommends that the Commission sustain I&E's Complaint as it relates to these jurisdictional apartment complexes. Additionally, the ALJ agreed with the Parties that, as set forth in Paragraph No. 7 of the Settlement, no civil penalty should be imposed on Westover. R.D. at 110.

C. Exceptions and Replies

1. Westover's Exceptions

Westover asserts three Exceptions to the ALJ's Recommended Decision. The first Exception pertains to the Recommended Decision's ordering paragraphs, which Westover asserts conflict with specific provisions of the Partial Settlement, which was ostensibly recommended to be approved without modification. Westover's second and third Exceptions dispute the ultimate question of the Commission's Act 127 jurisdiction over Westover's properties, challenging the findings that Act 127 applies to apartment complexes located downstream from an NGDC, and that any of Westover's systems qualify as "master meter systems" as defined in 49 C.F.R. § 191.3. These Exceptions are discussed, in detail, below.

In its Exception No. 1, Westover asserts that the Recommended Decision's Ordering Paragraphs establish dates for Westover's compliance with actions directed in those paragraphs, which conflict with the language of the Partial Settlement, which the ALJ then recommended be approved without modification. Specifically, in Ordering Paragraphs Nos. 7-10 of the Recommended Decision, Westover asserts that the dates establishing Westover's compliance duties should only commence upon the date on which the Commission's or court's order in this proceeding becomes final and unappealable. Exc. at 5-7.

In its Exception No. 2, Westover argues that it was error for the ALJ to find that Act 127 applies to gas systems, such as Westover's, at apartment complexes located downstream from a NGDC. Westover asserts that if its systems are found to be "master meter systems" subject to the Commission's jurisdiction under Act 127, then Act 127 irreconcilably conflicts with the Construction Code[47] and the International Fuel Gas Code,[48] as adopted under regulations of the Pennsylvania Department of Labor and Industry (L&I). Westover argues that the Pennsylvania General Assembly did not intend to give the regulation of fuel gas piping at buildings, including apartment complexes, to the Commission. Rather, Westover asserts that the legislature's intention was to assign jurisdiction of such gas piping to local municipalities and L&I. Exc. at 8-9.

Westover further argues that as a matter of statutory construction, Act 127 should not be read to supersede the jurisdictional provisions of the Construction Code. Westover asserts that because the Construction Code has an express exception for one-family dwellings, but does not contain a similar expressly stated exception for apartment complexes, apartment complexes remain governed by the jurisdiction established under the Construction Code. Westover also argues that because the Construction Code was the earlier legislation which manifests a clear intention to establish jurisdiction over Westover's systems in local municipalities and L&I, the later legislation, Act 127, should not be read to establish Commission jurisdiction, absent an expressly stated intention to prevail over the Construction Code. Exc. at 9-10.

Westover also excepts to the ALJ's finding that the Construction Code and Act 127 do not conflict, based upon the finding that Federal pipeline safety regulations, made applicable under Act 127, preempt the Construction Code. Westover interprets the ALJ's finding as a ruling that the Construction Code is unconstitutional based upon

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47 35 P.S. §§ 7210.101 *et seq.*

48 35 P.S. § 7210.301; 34 Pa. Code §403.21(a)(4).

federal preemption grounds and asserts that the ALJ's finding exceeded the scope of the Commission's authority in so finding. Westover also excepts to the ALJ's finding under 1 Pa.C.S. § 1936 (pertaining to irreconcilable statutes passed by different General Assemblies), that if any irreconcilable conflict exists between the Construction Code and Act 127, Act 127 should prevail. Exc. at 10-11 (citing R.D. at 58).

Westover argues that the Commission should modify the Recommended Decision by finding that if any of Westover's properties are "master meter systems" Westover's systems are regulated under the Construction Code, and not subject to Commission jurisdiction under Act 127. Exc. at 8-13.

In its Exception No. 3, Westover argues, *inter alia*, that as a matter of law, Westover's gas systems are not "master meter systems," as contemplated under pipeline safety laws, because Westover's systems do not satisfy the elements of the test for what constitutes a "master meter system," as analyzed in the Recommended Decision. As noted by Westover:

> These elements of the test of a "master meter system" form the basis for the Recommended Decision's resolution of the Litigated Issues posed by the Parties. Those issues are:
>
> 1. Are Westover's gas facilities limited to the apartment complex?
> 2. Does Westover purchase gas for resale through a distribution system and supply it to the ultimate consumer?
> 3. Who is the ultimate consumer of the gas service at the apartment complexes identified in the Joint Stipulation of Facts?
> 4. Does a natural gas system that is exclusively or primarily comprised of interior piping satisfy the definition of "master meter system?"
> 5. Under what circumstances does a natural gas system which includes a submeter owned by the apartment

complex satisfy the definition of a "master meter system?"

6. At which properties (if any) does Westover distribute gas "in or affecting interstate or foreign commerce?"

Exc. at 13-14.

Westover submits that because none of its systems satisfy every element of the "master meter system," none of Westover's systems are subject to the Commission's jurisdiction under Act 127 as a pipeline operator. *Id.* Westover asserts that the six litigated issues regarding the elements of what constitutes a "master meter system" require the conclusion that Westover's systems do not satisfy the criteria for a "master meter system." Exc. at 14-34.

Westover, in its Exception No. 3, addresses, in detail, its objections to the ALJ's findings regarding the six litigated sub-issues regarding whether the natural gas system at any apartment complex identified in the Joint Stipulation of Facts is a "master meter system." Westover's objections to the ALJs' findings under each sub-issue are presented below.

- **3.(1). Are Westover's Gas Facilities limited to the Apartment Complex?**

As to the first litigated issue, Westover excepts to the ALJ's finding that a single apartment building can be a "definable area." Rather, Westover asserts that its properties, *i.e.*, a single apartment building, neither constitute a "definable area" nor are they "within, but not limited to," such a "definable area". Regarding what constitutes a "definable area," initially, Westover argues that the ALJ's reliance upon the *2002 Report* of the United States Secretary of Transportation was misplaced. Westover argues that a full reading of the *2002 Report* requires the conclusion that a single apartment building

cannot constitute a "definable area." Westover contends the Recommended Decision overlooks a relevant and extended discussion in the *2002 Report*. Exc. at 15.

> The *2002 Report* provides as follows:
>
> > [The PHMSA Office of Pipeline Safety] policy is that the term "master meter system" applies only to gas distribution systems serving multiple buildings. It does not apply to gas distribution systems consisting entirely or primarily of interior piping located within a single building.[15] Such systems, however, may be referred to as master meter systems by local utilities and utility regulators for rate purposes, as well as by some state gas pipeline safety regulators for safety regulation purposes.
> >
> > Master meter systems consisting entirely or primarily of interior piping located within a single building are excluded by the OPS from its definition because
> >
> > > …such systems do not resemble the kinds of distribution systems to which Congress intended the Natural Gas Pipeline Safety Act to apply because of the absence of any significant amount of underground or external piping serving more than one building.
>
> In essence, the OPS regards such systems in the same way it regards the piping at a large commercial building or industrial plant.
>
> ---
>
> [15] See U.S. DOT, "RSPA Responses to NAPSR Resolutions," pp. 115 - 116 (Note: NAPSR is the National Association of Pipeline Safety Representatives), which states, in part, that
>
> > Even though the present definition of "master meter system" does not refer specifically to the existence of exterior piping serving multiple buildings, the reference to a 'pipeline system for distributing gas within … a mobile home park, housing project, or apartment complex' must involve the distribution of

> gas through exterior or underground pipelines to more than one building. The phrase regarding exterior piping serving multiple buildings was not considered essential since the use of exterior or underground pipelines to distribute gas to more than one building is implicit in the language of the definition.
>
> This is a continuation of the policy adopted by the OPS prior to the publication of the regulatory definition of a master meter system. [See OPS Advisory Bulletin 73-10, October 1973, or the May 1973 letter from Joseph Caldwell, then Director of OPS, to Wayne Carlson, Public Service Commission of Utah.]

Exc. at 15-16 (citing Westover Exhibit PQ-33 at 5 (note omitted)). Westover argues that the ALJ's reliance upon PHMSA interpretation letters is incorrect as they are generally not applicable and should not have precedential value. Specifically, Westover cites language from the *PHMSA 2020 Letter*, as follows:

> 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.

Exc. at 16.

Westover further argues that 49 C.F.R. § 191.3 has not changed since 2002, and PHMSA's revised interpretation has remained unchanged, and thus, the revised interpretation is entitled to little deference. Westover's position is that an agency's interpretation of a relevant regulatory provision, such as the *PHMSA 2020*

Letter, which, Westover insists conflicts with the agency's earlier interpretation, is entitled to less deference. Exc. at 15-17 (citing *PHMSA 2020 Letter*; *I.N.S. v. Cardozo-Fonesca*, 480 U.S. 421, 446 n.30 (1987)). Therefore, Westover argues that the Commission should find that "definable area" does not include a single apartment building. Exc. at 18.

Next, as to whether Westover's systems are "within, but not limited to" a "definable area", Westover argues, *inter alia*, that because every Westover system is located entirely on Westover's property, the systems are, in fact, "limited to" the Westover properties. Westover remains of the opinion that, pursuant to the rules of statutory construction, giving the words their plain meaning, the requirement that a system be "within, but not limited to" a "definable area", necessitates that the system be partly within, and partly outside, the "definable area" of the apartment complex. Therefore, Westover avers that the ALJ's reading of the language "within, but not limited to, a definable area" to include systems located entirely within an apartment complex is contrary to the plain meaning of 49 C.F.R. § 191.3. Exc. at 18-19.

Westover again asserts that the ALJ improperly relied upon the *PHMSA 2020 Letter* for guidance to conclude that a single apartment building is a place where a "master meter system" may exist. Westover argues that where the PHMSA *2020 Letter* does not address the specific language at issue in the definition regarding systems which are "within, but not limited to" a definable area, the interpretation should not be afforded deference. Exc. at 20 (citing R.D. at 67).

Finally, Westover asserts that because no Westover system is "within but not limited to" a "definable area," the Commission should modify the Recommended Decision and find that none of Westover's systems are "master meter systems." Exc. at 22.

3.(2). Does Westover Purchase Gas for Resale Through a Distribution System and Supply It To the Ultimate Consumer?

Next, Westover explains that it does not except to the ALJ's conclusion that where Westover consumes all the gas at its property and does not supply any of it to the occupants of its buildings, the property does not qualify as a "master meter system." Exc. at 22-23.

3.(3). Who Is the Ultimate Consumer of the Gas at The Apartment Complexes Identified in the Stipulation?

As to the third litigated issue of the test of a "master meter system," that the pipeline system must supply gas to the ultimate consumer, Westover asserts that the ALJ erred by concluding that for certain "hybrid" systems in which Westover consumes some of the gas, but distributes the remainder of the gas to building occupants, the entire property nevertheless constitutes a "master meter system." Exc. at 23-24 (citing R.D. at 77-78). Westover argues, *inter alia*, that the Commission should modify the Recommended Decision to reflect that in the "hybrid" scenario, the portion of the gas consumption that is utilized by Westover does not satisfy the elements of a "master meter system," and is, therefore, beyond the scope of the Commission's jurisdiction. Exc. at 24.

3.(4). Does a Natural Gas System That Is Exclusively Or Primarily Comprised Of Interior Piping Satisfy the Definition of "Master Meter System"?

As to the fourth litigated issue, Westover asserts, *inter alia*, that because Westover's gas distribution pipeline system is comprised exclusively or primarily of interior piping, it cannot constitute a master meter system. In addition, Westover asserts that the Commission should reject the ALJ's recommendation to conclude that because

49 C.F.R. § 191.3 does not explicitly exempt systems that are comprised exclusively or primarily of interior piping, the Commission may conclude that Westover's systems constitute "master meter systems." Westover contends that the Commission should follow the explicit language of 49 C.F.R. § 191.3. Further, Westover asserts that Westover's gas systems do not meet the definition of "master meter systems" because Westover does not distribute gas "in or affecting interstate commerce." Westover argues that the Commission should rule as a matter of law that Act 127 does not apply to the owner/operator of an apartment complex, where the complexes purchase gas from a Commission-regulated public utility and resell it to consumers. Exc. at 25-30.

3.(5). Under what circumstances does a natural gas system which includes a submeter owned by the apartment complex satisfy the definition of a "master meter system?"

Next, Westover excepts to the ALJ's finding that the existence of an apartment complex owned and actively used submeter where an apartment complex actively supplies the ultimate consumer who either purchases gas directly through a meter or other means, such as rent, is dispositive of a "master meter system." Westover asserts the following: (1) that there is no need for the Commission to establish a simple rule of evidence that encapsulates 49 C.F.R. § 191.3; (2) that the rules must encapsulate all of the elements of the test of a "master meter system," if the Commission establishes a rule of evidence, noting that the Recommended Decisions does not; and (3) that the Commission should not adopt a rule of evidence that fails to give effect to every word in 49 C.F.R. § 191.3. Exc. at 30-31.

3.(6). At Which Properties (If Any) Does Westover Distribute Gas "In or Affecting or Foreign Commerce?"

Finally, Westover excepts to the finding in the Recommended Decision that its systems are engaged in or affect interstate or foreign commerce as a matter of law.

Westover contends that in order for the Commission to find that it is an operator of a "master meter system," it must find that the system is engaged in the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in or affecting interstate or foreign commerce in accordance with the definition set forth in 49 C.F.R. § 191.3, and that the finding must be based on substantial evidence. Westover asserts that the result is inconsistent with both federal and state rules of construction, that I&E introduced no evidence to demonstrate that any of Westover's systems are engaged in or affect interstate or foreign commerce, and that the Recommended Decision made too much of the Commission's approval of the Settlement in *Brookhaven*. As such, Westover insists that the Commission should modify the Recommended Decision by finding that none of Westover's systems are engaged in or affect interstate or foreign commerce. Exc. at 31-34.

2. I&E's Replies to Exceptions

In its Replies, I&E submits that the Commission should grant Westover's Exception No. 1 as it relates to modifying the Ordering Paragraphs to be consistent with the Joint Petition for Partial Settlement, and that it should deny Westover's Exception Nos. 2 and 3(1)- (6).

Regarding Westover's Exception No. 1, I&E agrees that the ALJ's recommended Ordering Paragraphs alter the Parties' stipulated language of the Ordering Paragraphs contained in the Partial Settlement. Therefore, I&E asserts that the Commission should grant Westover's Exception No. 1 and modify the language of Ordering Paragraphs 7-10 of the Recommended Decision to be consistent with the terms of the Partial Settlement. R. Exc. at 2-3.

In its Replies to Westover's Exception No. 2, I&E submits that the ALJ correctly found that Act 127 applies to gas systems at apartment complexes located

downstream from a NGDC. I&E argues that Westover's Exception No. 2 reiterates its argument regarding the General Assembly's intent that jurisdiction of fuel gas piping at buildings be retained by local municipalities and the L&I, under the Construction Code and the International Fuel Gas Code, and that, therefore, Act 127 impermissibly conflicts with such legislation. R. Exc. at 3.

I&E submits that Westover's statutory construction arguments were thoroughly reviewed and rejected in the Recommended Decision. According to I&E, the tenet of federal preemption dictates that Act 127, which adopts the federal pipeline safety laws, supersedes any conflicting state law which contradicts the purposes and objectives found in the federal Pipeline Safety Act. Thus, I&E argues that, as noted by the ALJ, the rules of statutory constructions dictate that the more recent enactment of the terms of Act 127, in 2011, prevail over the Construction Code, which was adopted in 1999. Finally, I&E asserts that the ALJ's analysis refutes Westover's argument that the General Assembly intended that Act 127 pertain only to Marcellus Shale, noting that the General Assembly drafted Act 127 to adopt Federal safety laws beyond the scope of Marcellus Shale concerns. R. Exc. at 3-4 (citing R.D. at 58-59). Accordingly, I&E asserts that the ALJ correctly found that Act 127 applies to gas systems at apartment complexes located downstream from a NGDC. R. Exc. at 4.

In its Replies to Westover's Exception No. 3, I&E asserts that the ALJ correctly found that some of Westover's gas systems are "master meter systems" as defined in 49 C.F.R. § 191.3, and that Westover is a pipeline operator subject to the Commission's jurisdiction under Act 127. As to Westover's objections to the ALJ's findings regarding the six litigated sub-issues, I&E asserts that: 3.(1). Westover's gas facilities are located within, but not limited to, a definable area; 3.(2). Westover purchases gas for resale through a distribution system and supplies it to the ultimate consumer; 3.(4). a natural gas system that is exclusively or primarily comprised of interior piping satisfies the definition of a master meter system; 3.(5). an apartment

complex which owns and actively uses a submeter, and which supplies the ultimate consumer who either purchases gas directly or through other means, such as rents, is dispositive of a master meter system; and, 3.(6). Westover distributes gas "in or affecting interstate commerce." R. Exc. at 4-8. I&E's replies to Westover's objections are presented, in detail, below.[49]

3.(1). Westover's Gas Facilities are Located within, but not Limited to, a Definable Area.

I&E notes that Westover argues that a single apartment building is not a definable area and that the Recommended Decision's reliance on the PHMSA interpretation letters is misguided. I&E contends, however, that Westover actually provides the citation which supports the conclusion reached by the Recommended Decision on the issue. Specifically, I&E submits that the *2002 Report*, referenced in the Recommended Decision, stated that those systems which consist entirely or primarily of interior piping located within a single building may be referred to as a "master meter system" by local utilities and utility regulators for rate purposes, and "by some state gas pipeline safety regulators for *safety regulation purposes*." R. Exc. at 4-5 (citing *2002 Report*, emphasis added by I&E). Thus, contends that 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, I&E asserts that PHMSA interpretations issued since the *2002 Report* show that the policy has evolved since 2002. R. Exc. at 5.

Furthermore, I&E contends that the ALJ correctly found Westover's interpretation of "within, but not limited to, a definable area" as illogical and not

[49] At the outset, we note that the below numbering used by I&E in its Replies is not identical to the numbering provided in Westover's Exceptions, as I&E is only addressing those sections to which Westover excepted.

consistent with the plain reading of the definition of a master meter system.[50] R. Exc. at 5. I&E argues that "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. *Id.* (citing Merriam-Webster Dictionary, https://www.merriam- webster.com/dictionary/within.) I&E reasons that the phrase "within, but not limited to" is a common idiomatic expression included in contacts or statutes/regulations which means that the definition is applicable to the examples cited and other uncited examples which are similar in purpose. In addition, I&E asserts that the placement of the commas and order of the words further supports this common understanding: *i.e.* within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex. Thus, I&E reasons, the distribution system must be within a definable area, but is not limited to the examples provided. Accordingly, I&E avers the ALJ's finding that seventeen (17) of Westover's apartment complexes are located within a definable area should not be disturbed. R. Exc. at 5-6.

3.(2). Westover Purchases Gas for Resale through a Distribution System and Supplies it to the Ultimate Consumer.

I&E argues that, although Westover states that it excepts to the ALJ's finding that the hybrid gas systems are "master meter systems," Westover fails to provide any reasoning or argument to support this Exception. Specifically, I&E notes that the ALJ explained that, in accordance with PHMSA interpretation letters, the definition of "master meter system" is met where Westover consumes some of the gas and provides the remainder to the tenants, because the tenants are the ultimate consumers of the gas.

[50] I&E argues that, notably, PHMSA has issued interpretations finding an apartment complex, a housing development, and a mall complex to be master meter systems. R. Exc. at 5, n.14 (citing PHMSA Interpretation PI-11-0014 (March 27, 2012) and (August 27, 2012); PHMSA Interpretation PI-01-0113 (June 25, 2001); PHMSA Interpretation PI-16-0012 (December 6, 2016)).

R. Exc. at 6 (citing R.D. at 83-84). Therefore, I&E insists that the Commission should not modify the Recommended Decision on this sub-issue. R. Exc. at 6.

3.(4). A Natural Gas System that is Exclusively or Primarily Comprised of Interior Piping Satisfies the Definition of a Master Meter System.[51]

In response to Westover's position that gas piping located exclusively or primarily interiorly does not satisfy the definition of a "master meter system," I&E asserts that the ALJ correctly found that Westover's arguments were unpersuasive and were notably contradictory to the plain language of the definitions of "master meter system," pipeline, pipeline facility, or pipeline operator, which do not limit the application of or exclude interior piping. R. Exc. at 6 (citing R.D. at 95). I&E also points out that both I&E and Westover acknowledged that PHMSA interpretation letters have been issued since the *2002 Report*, which have transitioned away from the stance or policy that 49 CFR Section 191.3 implicitly excludes systems that are primarily or exclusively comprised of interior piping within a single building. R. Exc. at 6-7 (citing R.D. at 96).

In addition, I&E submits that Westover's references to other states support the Recommended Decision's holding. More specifically, I&E argues that while Westover cites Ohio, Maryland, and New Jersey law to support its argument that those states exclude piping in a building, and thus Pennsylvania should follow suit, Westover fails to recognize that those states have specific code or regulatory provisions which limit the applicably of a "master meter system" rather than utilizing the definition found in the Federal safety laws. Thus, according to I&E, if Ohio, Maryland, and New Jersey have enacted definitions or code sections which exclude or limit certain gas facilities from the definition of a "master meter system" in that state, then the logical result is that the

[51] We note that I&E's Replies do not address I&E's Exception No. 3.(3).

federal definition of a "master meter system" includes those gas systems located within a building. Therefore, I&E asserts the ALJ's findings related to interior piping in a single building should not be disturbed. R. Exc. at 7.

3.(5). An Apartment Complex which Owns and Actively Uses a Submeter, and which Supplies the Ultimate Consumer Who Either Purchases Gas Directly or Through Other Means, Such as Rents, is Dispositive of a Master Meter System.

As to the fifth litigated sub-issue, I&E asserts that Westover's argument that the ALJ incorrectly established a simple rule to determine whether a gas system is a "master meter system," over-simplifies the ALJ's decision. In this regard, I&E argues that, contrary to Westover's assertion that the ALJ created a "simple rule," the ALJ's analysis recognized the need to satisfy several elements for a gas system to constitute a "master meter system," and then addressed each of those elements. R. Exc. at 7 (citing R.D. at 98-99). Based upon the requisite elements of a "master meter system," I&E asserts that the ALJ correctly determined that the existence of an apartment complex owned and actively using sub-meters, where the apartment complexes supply the ultimate customer who either purchases gas directly through a meter or by other means, such as rents, is dispositive of a "master meter system." R. Exc. at 8 (citing R.D. at 99). Thus, I&E concludes that the ALJ correctly applied each element of the definition of a "master meter system" in finding that the given properties satisfy the definition. R. Exc. at 8.

3.(6). Westover Distributes Gas In or Affecting Interstate or Foreign Commerce

Next, I&E avers that the ALJ correctly found that Westover's gas facilities affect interstate commerce. I&E rejects Westover's argument that the Recommended Decision went "too far" by following the Commission's approval of the settlement in *Brookhaven*. I&E notes that while settlements generally are not precedential, the fact that

the Commission approved the settlement is an implicit acknowledgement that the Commission retained jurisdiction over the gas system. R. Exc. at 8 (citing *Pa. PUC, Bureau of Investigation and Enforcement v. East Dunkard Water Authority*, Docket No. C-2021-3027615 (Opinion and Order entered November 1, 2023) (Commission rejected settlement for lack of Commission jurisdiction)).

I&E further asserts that, despite Westover's attempts to disparage the weight of PHMSA interpretations, the law and regulations, as articulated and explained in I&E's Main Brief[52] and Reply Brief,[53] support a finding that there is no question that every element of gas, whether it is by a gathering, a transmission line, and/or a distribution line is moving gas, is in or affecting interstate commerce. Accordingly, I&E assets that the ALJ properly found that Westover distributes gas in or affecting interstate or foreign commerce. R. Exc. at 8.

D. Disposition

At the outset we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

[52] I&E Main Brief, at 47-50.

[53] I&E Reply Brief, at 14-16.

1. Disposition of the Joint Petition for Settlement

As previously noted, the ALJ weighed the positions of the Parties in support of the Partial Settlement and concluded that the Partial Settlement is in the public interest. Consequently, the ALJ recommended that the Commission adopt the rationale of the Parties and approve the Partial Settlement as in the public interest. R.D. at 39-46.

On review of the record in this proceeding, the Partial Settlement, and the Recommended Decision, we find that the Partial Settlement is in the public interest and is supported by substantial evidence. As previously noted, it is the policy of the Commission to promote settlements. A partial settlement may significantly reduce the time, effort, and expense of litigating a case. The Partial Settlement in this proceeding results from the compromises of the Parties. In our view, given the inherent unpredictability of the outcome of a fully contested proceeding, the benefits to amicably resolving the disputed facts through the Partial Settlement outweigh the risks and expenditures of additional litigation. *See* I&E Statement in Support at 4.

As the ALJ noted, the Partial Settlement resolved more of the procedural issues in this proceeding than the substantive issues. Nonetheless, we concur with the ALJ that the presentation of the stipulated facts represented a significant step towards resolution of these matters. As such, the Partial Settlement provides regulatory certainty with respect to the disposition of issues, which benefits all parties. Among other things, we note the following:

> 1. The Partial Settlement significantly limits the issues in this proceeding, which reduces litigation expenses for the Joint Petitioners and promotes administrative economy for the Commission. Partial Settlement at ¶6; *See also* Westover Statement in Support at 4-5.

2. Westover voluntarily agreed to implement certain safety measures at its systems during the pendency of this proceeding, which promotes public safety. Partial Settlement at ¶8.

3. The Partial Settlement contained provisions to bring Westover into compliance with the law in the event that a final, unappealable Commission or appellate court order determines that (1) Act 127 applies to the owner/operator of an apartment complex with natural gas facilities downstream from an NGDC, and (2) at least one Westover system is a "master meter system" as defined in 49 C.F.R. § 191.3.[54] Partial Settlement at ¶11; *See also* Westover Statement in Support at 4-5.

4. The Partial Settlement sought to avoid future litigation between the Joint Petitioners regarding similar issues at other Westover owned or operated apartment complexes or commercial properties. Partial Settlement ¶12.

Based on the above, and as more fully set forth in the Parties' Statements in Support,[55] we agree with the ALJ's conclusion that the provisions of the Partial Settlement are in the public interest. Accordingly, we shall adopt the ALJ's recommendation to approve the Partial Settlement, without modification.

2. Disposition of Westover's Exceptions

Upon review of the record in this proceeding, the ALJ's Recommended Decision, and the positions of the Parties, we shall grant Westover's Exception No. 1, as it relates to modifying the Ordering Paragraphs of the Recommended Decision to be

[54] As discussed in Section II.D.2 and Section III, *infra*, we shall adopt the recommendation of the ALJ that determines both of these questions in the affirmative.

[55] As previously noted, see R.D. at 39-45 for a summary of the Parties' Statements in Support.

consistent with the Joint Petition for Partial Settlement, and shall deny Westover's Exception Nos. 2 and 3(1)-(6), as discussed more fully below.

Regarding Westover's Exception No. 1, we agree with the Parties that the ALJ's recommended Ordering Paragraph Nos. 7-10 are inconsistent with the Parties' stipulated language of the ordering paragraphs contained in the Partial Settlement. Therefore, we shall grant Westover's Exception No. 1 and modify the language of Ordering Paragraphs 7-10[56] of the Recommended Decision to be consistent with the terms of the Partial Settlement. Specifically, the relevant Ordering Paragraphs shall state that the dates of Westover's compliance obligations commence upon "the date on which the Commission's or court's order in this proceeding becomes final and unappealable."

Regarding Westover's Exception No. 2, we shall deny this Exception. We agree with I&E that the ALJ correctly found that Act 127 applies to gas systems at apartment complexes located downstream from an NGDC. In our view, the ALJ thoroughly reviewed, and properly recommended that the Commission reject, Westover's argument regarding the Pennsylvania General Assembly's purported intent that jurisdiction of fuel gas piping at buildings be retained by local municipalities and L&I under the Construction Code and the International Fuel Gas Code, and that, therefore, Act 127 impermissibly conflicts with such legislation.

We find Westover's statutory construction arguments to be without merit. We agree that the tenet of federal preemption dictates that Act 127, which adopts the federal pipeline safety laws, supersedes any conflicting state law which contradicts the purposes and objectives found in the Federal pipeline safety laws. Further, as noted by the ALJ, the rules of statutory constructions dictate that the more recent enactment of Act 127, in 2011, prevail over the Construction Code, which was adopted in 1999.

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[56] R.D. at 116-17.

Finally, we adopt the ALJ's analysis, which refutes Westover's argument that the General Assembly intended that Act 127 pertain only to the movement of Marcellus Shale gas, noting that the General Assembly drafted Act 127 to adopt Federal safety laws beyond the scope of Marcellus Shale gas flow concerns. R.D. at 58-59.

Accordingly, we conclude that the ALJ correctly found that Act 127 applies to gas systems at apartment complexes located downstream from an NGDC. Therefore, we shall deny Westover's Exception No. 2.

Finally, regarding Westover's Exception No. 3, we shall deny the Exception. In its Exception No. 3, Westover takes issue with each adverse determination reached by the ALJ in the analysis of the six sub-issues addressed in the Recommended Decision.[57] Westover reiterates its arguments presented before the ALJ as the basis for the Commission to reject the ALJ's recommendations on each point. Westover simply reiterates its argument that none of its systems satisfy every element of the "master meter system," as defined by the Federal pipeline safety laws and regulations, and therefore, none of Westover's systems can be classified as a "pipeline operator" as defined in Act 127. Therefore, Westover asserts that the Commission lacks jurisdiction to regulate any of Westover's systems. We disagree.

Westover argues that the ALJ erred in concluding that a gas system in an apartment building was a "master meter system" both because the ALJ was persuaded by PHMSA Letters of interpretation finding so, and due to Westover's contrary plain reading of the language of 49 C.F.R. § 191.3. However, the ALJ relied, not only upon the several PHMSA Letters of interpretation but also upon the persuasive weight of the

[57] As previously noted, Westover does not find fault with the ALJ's conclusion that ,where Westover consumes all the gas at its property and does not supply any of it to the occupants of its buildings, the property does not qualify as a "master meter system." Exc. at 22-23.

2002 Report to Congress on the issue. *See* R.D. at 67 (citing *2002 Report* at 5). Further, the ALJ noted that, while not controlling, Act 127 itself applies to apartment buildings as well as apartment complexes. R.D. at 67.

We find that the ALJ did not err either in his reliance upon PHMSA Letters of Interpretation as persuasive guidance on how to apply each element of the definition of "master meter system," or as to the plain meaning of 49 C.F.R. § 191.3. Specifically, we agree with the ALJ's recommendation that:

> "within, but not limited to, a definable area such as …an apartment complex" [with the language of 49 CFR § 191.3] means that the distribution system must be within a definable area but not limited to the list of other examples provided in Section 191.3.

R.D. at 67.

Regarding the question, whether Westover purchases gas for resale through a distribution system and supplies it to the ultimate consumer, we agree with the ALJ's recommendation to find that Westover's apartment complexes satisfy this aspect of the definition of "master meter system" in some, but not all, of its apartment complexes. Namely, we agree with the ALJ that in those systems where Westover uses gas to generate heat and hot water for the tenants, Westover is not supplying gas to the ultimate consumer. However, to the extent Westover takes Exception to the ALJ's determination that in those apartment complexes in which Westover supplies gas to its tenants who are the ultimate consumer and who pay Westover for the gas, we reject the Exception. In such cases, Westover is supplying gas and its systems satisfy this element of the definition of a "master meter system."

We also reject Westover's Exception No. 3 to the extent it argues that the ALJ erred in concluding that the Westover apartment complexes which fall into the

"hybrid" category, *e.g.*, where Westover both uses gas to supply heat and hot water to tenants and provides gas to tenants for use as the ultimate consumer, also fall under Commission jurisdiction as satisfying the definition of a "master meter system". Westover argues that where the Commission has concluded it lacks jurisdiction over part of the system (the part providing heat and hot water), it is an error to then assert jurisdiction over any part of the system. We reject Westover's arguments. Westover's "hybrid" apartment complexes fall under the Commission's jurisdiction due to the characteristics of the system, which satisfy the definition of "master meter system." R.D. at 77-78. The existence of other system characteristics in no way removes the system from satisfying the definition of "master meter system."

To the extent Westover's Exception No. 3 disagrees with the ALJ's recommendation that the Commission conclude that a natural gas system which is exclusively or primarily comprised of interior piping satisfies the definition of a "master meter system," we shall deny the Exception. We adopt the ALJ's rationale, based in part upon the observation that nothing in the definition of "master meter system" in 49 C.F.R. § 191.3, or in the definition of "pipeline," "pipeline facility" or "pipeline operator" suggests that an exclusively interior pipeline system does not fall within the definition of "master meter system." We are also persuaded, like the ALJ, based upon the persuasive weight of the *PHMSA 2020 Letter* on the subject explaining PHMSA's evolved approach to what qualifies as a "master meter system." *See* R.D. at 96 (citing *PHMSA 2020 Letter*). Although Westover urges that this Commission not "defer" to PHMSA's current interpretation, our reliance on the PHMSA interpretation as guidance is not a matter of affording deference to PHMSA, whose Letters of Interpretation are not binding, but rather is a matter of drawing a reasoned conclusion from the language of 49 C.F.R. § 191.3 and what is in the interest of public safety.

In Westover's Exception No. 3, Westover argues that the ALJ erred by creating a "simple rule of evidence" by finding that:

> the existence of an apartment complex owned and the existence of an apartment complex owned and actively used submeter, where the apartment complex actively supplies the ultimate consumer who either purchases gas directly through a meter or other means, such as rents, is dispositive of a master meter system.

Westover Exc. at 30 (citing R.D. at 99).

However, Westover's argument omits the fact that the ALJ's conclusion was carefully drawn based upon the requirements of 49 C.F.R. § 191.3, in reliance upon the terms of what satisfies the definition of a "master meter system," stating:

> There must be a pipeline distribution system within, but not limited to a definable area, such as an apartment complex. The operator must purchase gas from an outside source for resale. The pipeline distribution system supplies the ultimate consumer. Lastly, the ultimate consumer purchases the gas either through a meter or by other means, such as rent.

See, R.D. at 30 (citing 49 C.F.R. § 191.3). Therefore, the ALJ's conclusion was in reliance upon all the elements of what meets the definition of a "master meter system" in the given factual circumstances and did not create a "simple rule of evidence" as argued by Westover. Consequently, Westover's argument on this issue is rejected.

To the extent Westover's Exception No. 3 asserts that it was an error for the ALJ to recommend that the Commission conclude that Westover met the 49 C.F.R. § 191.3 definition of an "operator of a master meter system" based upon satisfying the requirement of the "gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in or affecting interstate or foreign commerce," we shall deny the Exception.

Westover specifically excepts to the ALJ's recommended finding that:

> even though the operation of Westover's gas facilities may occur entirely within Pennsylvania, every element of gas gathering, transmission and distribution line is moving gas which is either in or affecting interstate commerce.

Exc. at 32 (citing R.D. at 109). Westover argues that the ALJ's recommendation was based upon an improper reliance upon the Commission's prior Opinion and Order in *Brookhaven*. In *Brookhaven* the Commission determined that the gas systems at the mobile home parks in question constituted master meter systems. Westover excepts to the ALJ's reasoning that, where the Commission has already determined that it retains jurisdiction of the gas systems entirely contained in a mobile home park, *i.e.,* an entirely intrastate system, it logically follows that the Commission would exercise jurisdiction over the Westover systems, which are also entirely intrastate. Westover, therefore, excepts to the conclusion that the Westover systems satisfy the master meter system requirement of being "*in or affecting interstate or foreign commerce*."

We disagree with Westover's reasoning and shall adopt the ALJ's reasoning and conclusion that Westover's systems, although the facilities are located entirely intrastate, the systems are engaged in the gas gathering, transmission and distribution line which is moving gas, which is either in or affecting interstate commerce.

Based on the forgoing, we shall grant Westover's Exception No. 1 and deny Westover's Exception Nos. 2 and 3 and adopt the Recommended Decision, as modified.

III. Conclusion

Based on our review of the well-reasoned Recommended Decision of the ALJ, the Exceptions and Replies thereto, the positions of the Parties, and the applicable law, we shall grant Westover's Exceptions, in part, and deny them in part, modify

Ordering Paragraphs 7-10 of the Recommended Decision to be consistent with the language in the Partial Settlement, and approve the Partial Settlement, without modification, as in the public interest. We shall further find that certain Westover apartment complexes specified by this Opinion and Order are subject to the Commission's jurisdiction under the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101-801.1101 (Act 127), and are "master meter systems" as defined by 49 C.F.R. § 191.3, consistent with the Opinion and Order. Thus, we also find that Westover is an operator of a "master meter system."; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed on November 20, 2023, by Westover Property Management Company, L.P. d/b/a Westover Companies to the Recommended Decision of Deputy Chief Administrative Law Judge Christopher P. Pell, issued on October 21, 2023, at Docket Nos. C-2022-3030251 and P-2021-3030002, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Recommended Decision of Deputy Chief Administrative Law Judge Christopher P. Pell, issued on October 21, 2023, at Docket Nos. C-2022-3030251 and P-2021-3030002, is modified, consistent with this Opinion and Order.

3. That the Joint Petition for Partial Settlement filed on June 13, 2023, by the Bureau of Investigation and Enforcement on behalf of the Bureau of Investigation and Enforcement and Westover Property Management Company, L.P. d/b/a Westover Companies is approved, without modification, as in the public interest.

4. That if a final unappealable Commission or court order on the litigated issues determines that: (i) Act 127 does not apply to the owner or operator of an

apartment complex which owns or operates natural gas facilities located downstream from an NGDC, or (ii) none of the apartment complexes identified on the Joint Stipulation of Facts is a "master meter system," as defined in 49 C.F.R. § 191.3, then Westover's obligations under Paragraph 8 of the Partial Settlement shall cease immediately and Westover shall have no obligation to comply with the requirements of Act 127 or the Federal pipeline safety laws with regard to the apartment complexes identified in the Joint Stipulation of Facts.

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

a. Carlisle Park Apartments;
b. County Manor Apartments;
c. Fox Run Apartments;
d. Gladstone Towers Apartments;
e. Hillcrest Apartments;
f. Jamestown Village;
g. Lansdowne Towers;
h. Main Line Berwyn;
i. Mill Creek I;
j. Mill Creek II;
k. Norriton East;
l. Oak Forest;
m. Paoli Place North, Buildings A-K;
n. Paoli Place South, Buildings E-H;
o. Park Court;
p. Valley Stream, and
q. Woodland Plaza.

6. That the following 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;

c. Black Hawk Apartments;
d. Concord Court Apartments;
e. Lansdale Village;
f. Paoli Place North, Buildings L-R; and
g. Paoli Place South, Buildings A-D.

7. That Westover Property Management Company, L.P. d/b/a Westover Companies is not ordered to pay a civil penalty in this matter.

8. That for the gas systems determined to be "master meter systems," within sixty (60) days of the date of a final, unappealable Commission or court Order, Westover Property Management Company, L.P. d/b/a Westover Companies be directed to draft and provide its implementation plan to become compliant with 49 C.F.R. Part 192 and Act 127 to the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section for review.

9. That for the gas systems determined to be "master meter systems," Westover Property Management Company, L.P. d/b/a Westover Companies and the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section be directed to meet and discuss the implementation plan to reach an agreement on a reasonable timeframe, not to exceed four (4) years from the date of a final, unappealable Commission or court Order in this matter, for Westover to become compliant with Part 192 and Act 127.

10. That for the gas systems determined to be "master meter systems," within one hundred twenty (120) days of the date of a final, unappealable Commission or court Order, Westover Property Management Company, L.P. d/b/a Westover Companies be directed to provide its procedural manual for operations, maintenance, and emergencies to the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section for review.

11. That, within thirty (30) days of the date of a final, unappealable Commission or court Order, Westover Property Management Company, L.P. d/b/a Westover Companies be directed to 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.

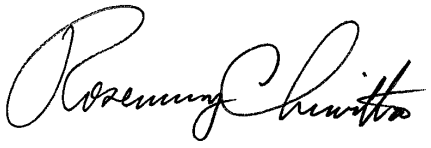
12. That for the gas systems determined to be master meter systems, Westover Property Management Company, L.P. d/b/a Westover Companies be directed to submit timely reports to the Commission pursuant to Section 801.503(d), 58 P.S. § 801.503(d), as an Act 127 pipeline operator on an annual basis.

13. That for the gas systems determined to be master meter systems, Westover Property Management Company, L.P. d/b/a Westover Companies be directed to timely file and pay annual assessments pursuant to Section 801.503(b), 58 P.S. § 801.503(b).

14. That the matter at Docket No. P-2021-3030002 be marked closed.

15. That upon the Secretary of the Commission receiving written notice from Westover Property Management Company, L.P. d/b/a Westover Companies that the compliance filings, outlined in Ordering Paragraph Nos. 8-11 above, were timely filed and deemed acceptable by the Commission's Bureau of Investigation and Enforcement Pipeline Safety Section, the Formal Complaint at Docket No. C-2022-3030251 shall be deemed satisfied and marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 8, 2025

ORDER ENTERED: January 8, 2025