BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF POTENTIAL VIOLATIONS OF 26 *DEL. ADMIN. C.* §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO UDEL HOLDINGS, LLC[1] (OPENED JUNE 26, 2014)	))))))	PSC DOCKET NO. 401-14

ORDER NO. 8689

AND NOW, this 16th day of December, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has qualified for federal certification to operate a state pipeline safety compliance program under 49 U.S.C. §60105(a) and has the authority under 26 *Del. C.* §821 to make and enforce rules required by the federal National Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601);[2] and

WHEREAS, the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, to order remedial actions and to impose civil penalties, where appropriate; and

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[1] This caption has been updated to reflect the full and correct legal name of the Operator.

[2] In addition, 26 *Del. C.* §821 provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* §802(11).

WHEREAS, UDEL Holdings, LLC, a Delaware limited liability company d/b/a Studio Green ("UDEL"), is an "Operator" as set forth in 26 *Del. C.* §§821 and 802(11)[3] and in 26 *Del. Admin. C.* §8001-1.0 in that UDEL acts as an operator of a buried pipeline facility used in the transportation of natural gas within the State of Delaware and therefore falls within the Commission's intrastate gas pipeline transportation jurisdiction; and

WHEREAS, as part of the duties of a certified state pipeline safety compliance program, Mr. Robert Schaefgen, a member of the Commission Staff ("Staff") and a pipeline safety inspector, performed a standard inspection on May 29, 2014, of the records and facilities for the property otherwise known as "Studio Green," located in Newark, Delaware ("Studio Green"); and

WHEREAS, counsel to UDEL has confirmed with Staff that UDEL is the owner of Studio Green and is therefore the Operator of the property based on Delaware laws and regulations and federal laws and regulations; and

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[3] 26 *Del. C.* §802(11) defines an "underground pipeline facility operator" as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the "Natural Gas Pipeline Safety Act of 1968" and the "Hazardous Liquid Pipeline Safety Act of 1979." See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§60101 through 60128.

WHEREAS, Mr. Schaefgen prepared a written report which noted that UDEL[4] had failed to conduct a leak survey with leak detector equipment within the past 63 months for Studio Green; and

WHEREAS, UDEL's failure to conduct a leak survey with leak detector equipment within the past 63 months represents a potential violation of 49 C.F.R. §192.723(b)(2);[5] and

WHEREAS, UDEL's failure to conduct a leak survey with leak detector equipment within the past 63 months also represents a potential violation of 49 C.F.R. §192.605(a);[6] and

WHEREAS, based on Mr. Schaefgen's written report and findings dated May 29, 2014, Mr. Gerald D. Platt, Program Manager of the Pipeline Safety Program for the State of Delaware, sent on June 26, 2014, a written letter of the Notice of Potential Violations ("NOPV") to both the manager of Studio Green and to Century Campus Housing Management, L.P. c/o its Delaware

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[4] Mr. Schaefgen listed "Campus Living Villages USA" as the Operator for the inspection location, but based on information provided to Staff at a later date, the legal entity that owns the property (and is the Operator) is UDEL Holdings, LLC.

[5] 47 C.F.R. §192.723(b)(2) provides, in pertinent part, as follows: "A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months...."

[6] 49 C.F.R. §192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and provides, in pertinent part, as follows: "Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

registered agent.[7] A copy of the NOPV that Staff sent to both the manager of Studio Green and to Century Campus Housing Management, L.P. c/o its Delaware registered agent is attached as **Exhibit "A"**; and

WHEREAS, the NOPV recommended that UDEL take certain remedial actions,[8] set certain due dates for such actions, and recommended civil penalties of $1,200.00;[9] and

WHEREAS, the NOPV also stated that additional penalties could be imposed on UDEL for any additional violations found in any ensuing investigations or hearings; and

WHEREAS, as of July 31, 2014, which was beyond the 30-day deadline set forth in the NOPV, UDEL had failed to resolve the issues set forth in the NOPV. Hence, Staff again contacted the General Manager of Studio Green and was told that UDEL was going to conduct the required inspection and "make the necessary repairs on the property;" and

WHEREAS, UDEL and Staff subsequently entered into settlement negotiations and agreed to resolve certain potential violations in this proceeding and proposed civil penalties by

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[7] A property record search led Staff to conclude that Century Campus Housing Management, L.P. was the owner of the premises upon which Studio Green is located; however, Staff subsequently confirmed with counsel to UDEL that it is, in fact, the owner and Operator of the premises. The Delaware registered agent for UDEL is the same company as the one used by Century Campus Housing Management, L.P.

[8] Staff recommended that within 30 days, UDEL conduct a leakage survey with leak detector equipment of the entire pipeline distribution system, provide the results of that survey to Staff, and repair any leaks found immediately.

[9] Staff recommended that the Commission impose civil penalties on UDEL in the amount of $1,000.00 for the potential violation of 49 C.F.R. §192.723(b)(2) and $200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was $1,200.00.

entering into a consent agreement (the "Proposed Consent Agreement"), which is attached as **Exhibit "B"**; and

WHEREAS, Staff and UDEL agreed that the Proposed Consent Agreement would be subject to the Commission's review and final approval; and

WHEREAS, pursuant to 26 *Del. Admin. C.* §8001-7.1.2, UDEL has agreed to pay, ***within 20 days*** of the date of the final Commission Order on this matter, a civil penalty in the amount of $1,200.00 ($1,000.00 for one potential violation of 49 C.F.R. §192.723(b)(2) and $200.00 for one potential violation of 49 C.F.R. §192.605(a)); and

WHEREAS, Staff and UDEL believe that resolving the issues discussed in this Order through a negotiated compromise, without the need for a formal evidentiary hearing, will serve the interests of the public; and

WHEREAS, the Parties assert that this settlement yields a reasonable result; and

WHERAS, the Parties state that the civil penalties agreed to in the Proposed Consent Agreement are within the bounds of the allowable civil penalty amounts based on circumstances unique to UDEL and that this settlement will avoid further administrative and hearing costs for the specific matters that are being resolved by this settlement;

NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. Pursuant to 26 Del. C. §512(c),[10] the Commission finds that the Proposed Consent Agreement, which is attached as **Exhibit "B"**, is in the public interest for the reasons set forth above and therefore approves such agreement in full.

2. For the reasons set forth above and pursuant to 26 *Del. Admin. C.* §8001-7.1.2, 49 U.S.C. 60122(a), and subpart B of Part 190 of the Federal Regulations, the Commission assesses a civil penalty against UDEL in the amount of $1,200.00. Such penalty is due and payable within twenty days of the date of this Order.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

_____
Chair

_____
Commissioner

_____
Commissioner

[10] 26 *Del. C.* §512(c) provides that the Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements whether or not such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolutions to be in the public interest.

_____
Commissioner

_____
Commissioner

ATTEST:

_____
Secretary

EXHIBIT "A"

Copy of Written Notice of Potential Violations of 26 *Del. Admin. C.* §8001 dated July 26, 2014, from the Program Manager of the Pipeline Safety Program for the State of Delaware to the Manager of Studio Green and to Century Campus Housing Management, L.P. c/o The Corporation Trust Company[11]

[11] Staff did not learn of the full and correct legal name of the Operator until after entering into negotiations to resolve the alleged pipeline safety violations. The Corporation Trust Company is also the Delaware registered agent for UDEL, and UDEL does not dispute that it received actual notice of the NOPV.

401-14

STATE OF DELAWARE
PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

June 26, 2014

Studio Green
Kristina Norris, Director of Operations
91 Thorn Lane, Suite 2
Newark, DE 19711

Century Campus Housing Management, L.P.
c/o The Corporation Trust Company as Delaware Registered Agent
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

RE: Written Notice of Potential Violation (NOPV) of 26 Del. Admin. C. §8001 at Studio Green

Dear Ms. Norris:

It is the understanding of the Staff of the Delaware Public Service Commission (the "Commission") that you represent Studio Green (the "Property"). Thus, this letter serves as notice to Century Campus Housing Management, L.P. of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, **26 *Del. Admin. C.* §8001** (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, Title 49, U.S. Code of Federal Regulations, Parts 190-193 and 198-199.

On May 29, 2014, Mr. Robert Schaefgen, a member of the Commission Staff, inspected the natural gas distribution facilities and related records at the Property. Mr. Schaefgen noted the following:

1. Studio Green failed to conduct a leak survey with leak detector equipment within the past 63 months.

   This is a potential violation of **49 C.F.R. §192.723(b)(2)** which states the following: *"A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months..."*

   This is also a potential violation of **49 C.F.R. §192.605(a)** which states the following: *"General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency*

response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

The Commission is authorized by the Regulations to impose civil penalties for violations. These potential violations are concerning due to other events that have occurred at the Property. In 2011, there was difficulty in retrieving records for valve exercising, and the records were only presented after the NOPV was delivered. Also, there had been no public awareness message sent out at that time. During the May 29, 2014 inspection, the results of the most recent sniff test were reported as "nil". This indicates that the sniff test was conducted as a means to find leaks, as opposed to the intended purpose of ensuring that an odorant is present in the natural gas. All of this indicates a lackadaisical approach and a lack of appropriate training with regards to natural gas pipeline safety, and this is concerning. Therefore, Commission Staff is recommending that the Commission impose a civil penalty of $1000.0 for the potential violation of **49 C.F.R. §192.723(b)(2)** and impose a civil penalty of $200.00 for the potential violation of **49 C.F.R. §192.605(a)**. Thus, the total amount of recommended civil penalties is $1200.00. Additional penalties may also be imposed for any additional violations found in any ensuing investigations or hearings. In addition, Commission Staff is recommending the following remedial action:

1. Within 30 days, conduct a leakage survey with leak detector equipment of the entire pipeline distribution system and provide the results of that survey to Commission Staff. Any leaks found should be repaired immediately.

The Commission Staff is referring this matter to the Commission for a formal hearing so that the Commission can rule on this matter. A docket will be opened for this matter, and a notice of a hearing date will be sent to the Operator as soon as possible. If you have questions, please don't hesitate to contact me at 302-736-7526 or Mr. Robert Schaefgen at 302-762-7513.

Sincerely,

Gerald D. Platt, Program Manager

Enclosure: Copy of Violation Report for 5/29/14

cc: Julie Donoghue, Deputy Attorney General
Robert Schaefgen, Engineer III

UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
GAS PIPELINE SAFETY VIOLATION REPORT

1. Inspector Name	2. Date of Inspection	3. CPF #					
Robert Schaefgen	05/29/14						

4. Pipeline Operator/Owner
campus living villages usa

5a. Headquarters Address	5b. Telephone No.
1001 Fannin, Suite 1350, Houston, TX 77002	(972) 625-1595

6. Inspection Location	7. Inspection Unit
studio green (for students)	No. 1 of 14

8. Portion of System Inspected (Describe location & facility)

9. Nature and Size of Operator

9a. Type of Operator

_____ LNG (interstate)
_____ LNG (Intrastate)
_____ LPG
__X__ Master Meter
_____ Other Distribution
_____ Gathering
_____ Transmission (interstate)
_____ Transmission (intrastate)

9b. Type of Pipe in System Inspected

_____ Cast Iron
_____ Steel
__X__ Plastic
_____ Other -

9c. Size of Operator (No. of Miles/Customers/Storage Capacity 0.58 miles/ /0

10. **Nature of Probable Violations** (Check as many as applicable)

____ 1. Problem in Design/Materials
____ 2. Problem in Construction
____ 3. Welding or Joining
____ 4. Problem in LNG Equipment
____ 5. Test Requirements or MAOP Qualification
____ 6. Corrosion Control
____ 7. Pressure Control
__X__ 8. Other Maintenance/Monitoring
____ 9. Personnel Qualifications & Training
____ 10. Fire Protection
____ 11. Security
____ 12. Anti-Drug Program
____ 13. Other Operations
____ 14. Reporting Requirements
____ 15. Other _____
____ 16. Inadequate/No Procedures

____ A. Construction
____ B. Corrosion Control
____ C. Operations
____ D. Training
____ E. Maintenance

Revised 12/3/08

Violation No. 1

☐ **Violated:** 192.605 (a) Procedural Manual for Operations , Maintenance, and Emergencies

11b. Summarize what the regulation requires that operator did not do:
Operator did not follow their manual of written procedures for conducting Operations and maintenance Activities, specifically the leak survey interval not exceeding 5 years,3 months.

12. Provide detailed information about violation:
Operator did not perform their leak survey within 5 years, not to exceed 63 months.

13. Public and/or environmental concerns in area of violation:
By not having performed a leak survey within the required time interval, operator could be exposing residents (UD students) to possibility of a leak which could migrate into a building causing a fire or explosion.

14a. Person Interviewed: Kristina Norris **Title:** General Manager

14b. Comments of person interviewed: Kristina Norris said that they had contacted Guardian Companies, the company that had installed the plastic gas distribution company back in July, 2008 and was told that they did not perform leak surveys on gas distribution systems anymore. Guardian said they needed to locate a company that would perform the leak survey.

Continuation Sheet
Violation No. 2

11a. CFR ☐ Violated: 192.723(b)(2) Distribution systems: Leakage surveys.

11b. Summarize what the regulation requires that operator did not do:
A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, **but at least once every 5 calendar years at intervals not exceeding 63 months**

12. Provide detailed information about the violation:
Operator stated that last year they contacted Guardian Companies (the contractor that had installed the gas distribution system in July, 2008 and were informed that they did not perform leak surveys on Master Meter gas distribution systems and to find one that did. Operator states that they tried to locate another company to perform the leak survey without success.

13. Public and/or environmental concerns in area of violation:
By not having performed a leak survey within the required time interval, operator could be exposing residents (UD students) to possibility of a leak which could migrate into a building causing a fire or explosion.

14a. Person Interviewed: Kristina Norris **Title:** General Manager

14b. Comments of person interviewed: Kristina Norris said that they had contacted Guardian Companies, the company that had installed the plastic gas distribution company back in July, 2008 and was told that they did not perform leak surveys on gas distribution systems anymore. Guardian said they needed to locate a company that would perform the leak survey

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Pipeline Safety Regulations Part 192	OPS/PHMSA	

16. Inspector's Signature: Robert Schaefgen

Date: 06/26/14

17. Compliance History

Date	Place	Describe Violation/ Noncompliance	CPF No. Date WL	Outcome

18. Gravity of Offense

19. Degree of Culpability

Fair

20. Ability to Continue in Business

Fair

21. Ability to Pay

Good

22. Good Faith in Attempting to Achieve Compliance

Fair

23a. Proposed Remedy

_____ Warning Letter

_X____ Civil Penalty: Recommended Amount $ _____

_____ Compliance Order

_____ Hazardous Facility Order

_____ Notice of Amendment of O&M Plan

23b. Analysis of Proposed Remedy

24. Regional Director's Signature: Date:

_____ _____

U.S. Department of Transportation
Office of Pipeline Safety
Eastern Region

EXHIBIT TAB

Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness

Investigator

Name Title

EXHIBIT "B"

Proposed Consent Agreement Fully Executed by the Program Manager of the Pipeline Safety Program for the State of Delaware/Commission Staff and UDEL Holdings, LLC

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF POTENTIAL VIOLATIONS OF 26 *DEL. ADMIN. C.* §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO UDEL HOLDINGS, LLC[1] (OPENED JUNE 26, 2014)	)))))	PSC DOCKET NO. 401-14

RECEIVED
2014 NOV 21 PM 1:38
DELAWARE P.S.C.

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 20 day of November, 2014, between UDEL Holdings, LLC, a Delaware limited liability company d/b/a Studio Green ("UDEL"), and the Delaware Public Service Commission Staff ("Staff").

WHEREAS, UDEL is a Delaware limited liability company with registered offices located at 1209 Orange Street, Wilmington, DE 19801 and with a registered agent listed as The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801; and

WHEREAS, UDEL is an "Operator" as set forth in 26 *Del. C.* §802(11)[2] and 26 *Del. Admin. C.* §8001-1.0[3] in that such company acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

WHEREAS, the Delaware Public Service Commission (the "Commission") has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. §60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

WHEREAS, 26 *Del. C.* §821 provides, in pertinent part, that the Commission "shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)….;"[4] and

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[1] This caption has been updated to reflect the full and correct legal name of the Operator.

[2] 26 *Del. C.* §802(11) defines an "underground pipeline facility operator" as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the "Natural Gas Pipeline Safety Act of 1968" and the "Hazardous Liquid Pipeline Safety Act of 1979." See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§60101 through 60128.

[3] Under 26 *Del. Admin. C.* §8001-1.0, an "Operator" means an "underground pipeline facility operator" as defined in 26 *Del. C.* §802(11).

[4] 26 *Del. C.* §821 further provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* §802(11).

WHEREAS, as part of its duties as a certified state pipeline safety compliance program, Mr. Robert Schaefgen, a member of Staff and pipeline safety inspector, performed a standard inspection on May 29, 2014, of the records and facilities for the property otherwise known as "Studio Green," located in Newark, Delaware ("Studio Green"); and

WHEREAS, Mr. Schaefgen prepared a written report which noted that UDEL[5] had failed to conduct a leak survey with leak detector equipment within the past 63 months for Studio Green; and

WHEREAS, UDEL's failure to conduct a leak survey with leak detector equipment within the past 63 months represents a potential violation of 49 C.F.R. §192.723(b)(2);[6] and

WHEREAS, UDEL's failure to conduct a leak survey with leak detector equipment within the past 63 months also represents a potential violation of 49 C.F.R. §192.605(a);[7] and

WHEREAS, based on Mr. Schaefgen's written report and findings dated May 29, 2014, Mr. Gerald D. Platt, Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to both the manager of Studio Green and to Century Campus Housing Management, L.P. c/o The Corporation Trust Company as the Delaware registered agent on June 26, 2014.[8] A copy of the NOPV that Staff sent to both the manager of Studio Green and to Century Campus Housing Management, L.P. is attached as **Exhibit "A"**; and

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to order remedial actions and to impose civil penalties. The NOPV further indicated Staff's concerns regarding previous events that had occurred at the Studio Green property, all of which had indicated a lackadaisical approach to, and a lack of appropriate training regarding, natural gas pipeline safety. Therefore, Staff recommended that the Commission impose a civil penalty of $1,000.00 for the potential violation of 49 C.F.R. §192.723(b)(2) and impose a civil penalty of

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[5] Mr. Schaefgen listed "Campus Living Villages USA" as the Operator for the inspection location, but based on information provided to Staff at a later date, the legal entity that owns the property (and is the Operator) is UDEL Holdings, LLC.

[6] 47 C.F.R. §192.723(b)(2) provides, in pertinent part, as follows: "A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months...."

[7] 49 C.F.R. §192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and provides, in pertinent part, as follows: "Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

[8] A property record search led Staff to conclude that Century Campus Housing Management, L.P. was the owner of the premises upon which Studio Green is located; however, Staff subsequently confirmed with counsel to UDEL that it is, in fact, the owner and Operator of the premises.

$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was $1,200.00; and

WHEREAS, Staff also recommended the following remedial action: That within 30 days, UDEL conduct a leakage survey with leak detector equipment of the entire pipeline distribution system, provide the results of that survey to Staff, and repair any leaks found immediately; and

WHEREAS, on July 8, 2014, the General Manager of Studio Green responded to the NOPV by sending Staff a letter stating that the company was "aware of the property's required inspection due to existing violations" and that they were in contact with Choptank Excavation "to make necessary repairs on the property;" and

WHEREAS, as of July 31, 2014, which was beyond the 30-day deadline set forth in the NOPV, UDEL had failed to resolve the issues set forth in the NOPV. Hence, Staff again contacted the General Manager of Studio Green and was told that the company was going to conduct the required inspection and "make the necessary repairs on the property;" and

WHEREAS, UDEL and Staff entered into settlement negotiations and hereby propose to resolve all of the issues in this proceeding without recourse to a formal administrative hearing by entering into this Proposed Consent Agreement under the terms and conditions set forth herein; and

WHEREAS, counsel to UDEL has confirmed with Staff that UDEL is the owner of the premises otherwise known as Studio Green and is therefore the Operator of the property based on Delaware laws and regulations and federal laws and regulations; and

WHEREAS, UDEL has been informed that it is entitled to an administrative hearing and to be represented by counsel but has decided to waive its right to an administrative hearing;

NOW, THEREFORE, upon the mutual consent and agreement of UDEL and Staff (individually, a "Party," and collectively, the "Parties"), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

1. The Parties have conferred and have agreed to enter into this Proposed Consent Agreement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Proposed Consent Agreement will be presented to the Commission for the Commission's final approval.

2. UDEL waives its right to an administrative evidentiary hearing for this proceeding and makes such waiver as a free and voluntary act.

3. UDEL states it fully understands all of the violations alleged by Staff, the facts relating to above-referenced potential violations, and all of the consequences of its consent to this Proposed Consent Agreement.

4. UDEL admits to all of the facts as set forth above and admits that it failed to conduct a leak survey with leak detector equipment within the past 63 months, which represents a potential violation of both 49 C.F.R. §192.723(b)(2) and 49 C.F.R. §192.605(a).

5. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, UDEL agrees to pay a civil penalty in the amount of $1,200.00 within 20 days of the date of a final Commission order that approves this Proposed Consent Agreement. This sum is the total of a civil penalty in the amount of $1,000.00 for one violation of 49 C.F.R. §192.723(b)(2) and a civil penalty in the amount of $200.00 for one violation of 49 C.F.R. §192.605(a). Pursuant to 26 *Del. C.* §116(b)(2), these civil penalties will be payable to and deposited into the General Fund of the State of Delaware.

6. If UDEL fails to pay the sum of $1,200.00 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, UDEL agrees that it shall pay interest at the current annual rate in accordance with 31 U.S.C. §3717, 31 C.F.R. §901.9, and 49 C.F.R. §89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

7. Pursuant to 26 *Del. Admin. C.* §8001-7.1.3, Staff already requested that within 30 days of the date of the NOPV, UDEL conduct a leakage survey with leak detector equipment of the entire pipeline distribution system, provide the results of that survey to Staff, and repair any leaks found immediately. Because UDEL has fulfilled these directives, Staff does not request that UDEL take any additional corrective actions regarding the alleged failure to conduct a leak survey with leak detector equipment within the past 63 months.

8. The terms of this Proposed Consent Agreement are binding upon UDEL, its successors and assigns, and may be admitted into evidence in any judicial or administrative proceeding that may be required against UDEL in order to enforce its terms.

9. This finding of violations will be considered a prior offense in any subsequent enforcement action against UDEL.

10. Nothing in this Proposed Consent Agreement affects or relieves UDEL of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. §60101, et seq., and the regulations and administrative orders issued thereunder. Nothing in this Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against UDEL pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

11. No change, amendment, or modification to this Proposed Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

12. If Staff or the Commission fails to act on any one or more defaults by UDEL, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare UDEL in default and to take such action as may be permitted by this Proposed Consent Agreement or by law.

13. This agreement shall survive UDEL and be enforceable against its successors or assigns.

14. The provisions of this Proposed Consent Agreement are not severable.

15. The Parties agree that this Proposed Consent Agreement may be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

16. This Proposed Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval of this Proposed Consent Agreement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

17. The Parties may enforce this Proposed Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

18. If a Court grants a legal challenge to the Commission's approval of this Proposed Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Consent Agreement, or if some other legal bar has the same effect, then this Proposed Consent Agreement is voidable upon written notice by either Party to the other Party.

19. This Proposed Consent Agreement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Proposed Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Proposed Consent Agreement. This Proposed Consent Agreement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

20. This Proposed Consent Agreement contains all of the terms and conditions agreed to by the Parties and constitutes the final agreement between UDEL and Staff.

21. This Proposed Consent Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will make their best efforts to support this Proposed Consent Agreement and to secure its approval by the Commission.

22. It is expressly understood and agreed that this Proposed Consent Agreement constitutes a negotiated resolution of the issues in this proceeding.

23. Each of the undersigned representatives of the Parties certifies that he or she is fully and legally authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

24. This Proposed Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Proposed Consent Agreement by facsimile transmission or by e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. UDEL agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

[SIGNATURE PAGE TO FOLLOW]

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: Gerald D. Platt Date: 11/21/14

Printed Name: GERALD D. PLATT

Title: Pipeline Safety Program Manager

UDEL HOLDINGS, LLC,
a Delaware limited liability company

By: _____ Date: 11/20/2014

Printed Name: Troy Bayham

Title: Vice President