

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 25, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Petition of Westover Property Management
Company, L.P. d/b/a Westover Companies for a
Declaratory Order Regarding the Applicability of
the Gas and Hazardous Liquids Pipeline Act

P-2021-3030002
C-2022-3030251

ORDER

BY THE COMMISSION:

Before the Commission is the Amended Petition of Westover Property Management Company, L.P. d/b/a Westover Companies (Westover or Company), filed before the Pennsylvania Public Utility Commission (Commission) on May 13, 2022, and served on the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA). Through its Amended Petition, Westover seeks a Declaratory Order by the Commission to resolve whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* (Act 127).

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

(Order Entered April 9, 2008). Because material facts remain in dispute, an evidentiary hearing is necessary to resolve these outstanding issues¹ and, for the reasons set forth below, the Commission shall consolidate this Petition with the Complaint proceedings at Docket No. C-2022-3030251 and assign the Petition to the Office of Administrative Law Judge (OALJ) for evidentiary proceedings and a recommended decision.

THE PETITION

In its original Petition, filed December 13, 2021, Westover asserted that it owns several apartment complexes in Pennsylvania. In each complex, Westover purchases gas at a point in Pennsylvania from a Commission-regulated natural gas distribution company (NGDC) and distributes it to the tenants in the complex, charging them for the gas through a meter or rents in compliance with the requirements of 66 Pa. C.S. § 1313 (regarding “Price upon resale of public utility services”). *Petition for Declaratory Order of Westover Property Management Company, L.P. d/b/a Westover Companies*, Docket No. P-2021-3030002 (Petition at ¶ 2). Westover also asserted that all of Westover’s facilities are located on Westover’s property, and all of Westover’s natural gas customers rent their premises from Westover. (Petition at ¶ 11).

In its Amended Petition, however, Westover alleges significantly different facts to support its assertion that none of its systems qualify as master meter systems. Specifically, at Westover’s Willow Run Apartments, residents use natural gas for heat and cooking (residents use electricity to make hot water) and pay the NGDC directly. (Amended Petition at ¶ 23).

At Paoli Place Apartments, (North Buildings L-R and South Valley Townhomes), the NGDC delivers gas to a meter on the apartment building and each apartment has a submeter to calculate the gas bill. Residents consume the gas for heat and hot water and

¹ *Dee Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593 (Pa. Cmwlth. 2003).

cook with electricity. They pay the NGDC directly for the gas used. (Amended Petition at ¶ 25).

At the Lansdale Apartments, Concord Court, and Black Hawk Apartments, the NGDC delivers gas to a meter on the apartment building, Westover consumes all the gas in its central boiler, and provides heat and hot water to residents. Tenants use electricity for cooking; they do not consume natural gas at all. (Amended Petition at ¶ 27).

At the Woodland Plaza, Country Manor, Norriton East and Paoli Place (Paoli South) Apartments, the NGDC delivers gas to a meter on the apartment building, Westover consumes most of the gas in its central boiler to provide heat and hot water to residents, but residents use gas for cooking. (Amended Petition at ¶ 33). Westover argues that these systems are not master meter systems because the systems are located entirely within a single building, and because these systems do not distribute gas “in or affecting interstate commerce.” (Amended Petition at ¶ 34 and 37).

At the Fox Run and Paoli Place (North Buildings A-K) Apartments, an NGDC meter is located on the building and there is a submeter at each apartment that measures the gas each resident uses for heating. Westover consumes the gas for heating water and supplies hot water to residents. Residents cook with electricity. (Amended Petition at ¶ 41). Westover argues that these systems are not master meter systems because the systems are located entirely within a single building, and because these systems do not distribute gas “in or affecting interstate commerce.” (Amended Petition at ¶ 42 and 43).

At the Mill Creek Village Apartments I and Oak Forest Apartments, the NGDC delivers gas to an apartment complex meter. The gas is piped to buildings, where most of the gas is consumed by Westover’s central boiler to produce heat and hot water. A small amount of gas is used by residents for cooking. (Amended Petition at ¶ 45). Westover argues that these systems are not master meter systems because the systems are located

entirely within the apartment complex, and because these systems do not distribute gas “in or affecting interstate commerce.” (Amended Petition at ¶ 46 and 47).

At the Gladstone Towers, Main Line Berwyn, and Lansdowne Towers Apartments, the NGDC delivers gas to an apartment complex meter. Underground service lines take the gas from that meter to each individual apartment, which has a submeter. Residents consume gas for heat at all of these apartment complexes. At the Gladstone Towers Apartments, they also consume gas for cooking, and at the Main Line Berwyn Apartments, they consume gas for hot water and cooking as well as heating. (Amended Petition at ¶ 49). Westover argues that these systems are not master meter systems because the systems are located entirely within the apartment complex, and because these systems do not distribute gas “in or affecting interstate commerce.” (Amended Petition at ¶ 50 and 51).

At the Hillcrest Apartments and Valley Stream Apartments, the NGDC delivers gas to an apartment complex meter. Underground service lines then connect the meter to each building in the complex seriatim, and to each apartment. At both of these complexes, residents use gas for heat, but at the Hillcrest Apartments, some residents also use gas for hot water, whereas at the Valley Stream Apartments, some residents use gas for both heat and cooking. (Amended Petition at ¶ 53). Westover argues that these systems are not master meter systems because the systems are located entirely within the apartment complex, and because these systems do not distribute gas “in or affecting interstate commerce.” (Amended Petition at ¶ 54 and 55).

Lastly, at the Park Court Apartments the NGDC has two meters in the apartment complex. A service line connects each meter to a building in the complex. Residents use the gas for heating and cooking. (Amended Petition at ¶ 57). Westover argues that these systems are not master meter systems because the systems are located entirely within the

apartment complex, and because these systems do not distribute gas “in or affecting interstate commerce.” (Amended Petition at ¶ 58 and 59).

Westover petitions the Commission for a declaratory order seeking to resolve the controversy that the Company’s natural gas services are not subject to the Commission’s jurisdiction under Act 127 as a “pipeline operator” operating a “master meter system” and that compliance with the Federal pipeline safety laws is not required.

ANSWER

On June 6, 2022 I&E filed an Answer in opposition to the Amended Petition requesting that the Commission deny Westover’s Amended Petition and issue a Declaratory Order that conclusively determines Westover to be a pipeline operator subject to Act 127, or in the alternative, if material facts are determined to be at issue, the matter be referred to the OALJ for resolution with the pending Formal Complaint.² *I&E Answer to Amended Petition*, Docket No. P-2021-3030002 (Answer at 1).

With respect to the Willow Run Apartments and the allegations made in the Amended Petition at Paragraph 23, I&E’s Answer states, “Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and the same are therefore denied and proof thereof is demanded in the Complaint proceeding.” (Answer to Amended Petition at ¶ 23). I&E’s Answer to the allegations in the Amended Petition at Paragraph 25 is the same. *Id.* at ¶ 25. Denials similar to Paragraphs 23 and 25 are found throughout I&E’s answer with respect to each of Westover’s allegations cited above.

² With its Answer to Westover’s original Petition, filed January 3, 2022, I&E concurrently filed 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 CFR §§ 192.1-192.1015.

In response to the allegations in the Amended Petition at Paragraph 27, I&E denies Westover's allegations regarding the Lansdale Apartments, Concord Court, and Black Hawk Apartments, stating:

Tenants consume gas from the central boiler for heating purposes and tenants purchase this gas through rent paid to Westover. I&E Exhibit 2 and I&E Exhibit 3 contain lease agreements for Lansdale Apartments and Concord Court, respectively. Section II in each of these lease agreements states that the “[u]tility service provider will bill Owner and then the resident portion will be allocated based on the square footage of your unit and/or square footage of your unit and the number of persons residing in your unit.” With regard to Black Hawk Apartments, Westover's Appendix 5 of the Amended Petition provides that natural gas is included in the rental charge. Therefore, the tenants at Lansdale Apartments, Concord Court, and Black Hawk Apartments are the ultimate consumers of the gas who purchase the gas from Westover through rent.

(Answer to Amended Petition at ¶ 27).

DISCUSSION

The Commission may, in its discretion, issue a declaratory order to terminate a controversy or remove uncertainty. 66 Pa. C.S. § 331(f). A declaratory order should be issued only when there is no outstanding issue of fact. Declaratory orders are adjudications and result in a binding order when final.³ The Commission's decision must be supported by substantial evidence in the record; more than a mere trace of evidence or a suspicion of the existence of a fact ought to be established.⁴ As the proponent of an order, Westover has the burden of proof⁵ which must be shown by a preponderance of the evidence.⁶

³ *Professional Paramedical Services, Inc. v. Pa. Pub. Util. Comm'*, 525 A.2d 1274, 1276 (Pa. Cmwlth. 1987).

⁴ *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

⁵ 66 Pa. C.S. § 332(a)

⁶ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

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.

Since this Petition and the above-referenced Formal Complaint proceeding involve the same law and material issues of fact, namely the nature of Westover's operations, the Commission's jurisdiction over Westover's properties, and Westover's status as a master meter operator, we find that it is reasonable and prudent to consolidate these proceedings in accordance with 52 Pa. Code § 5.81. Pursuant to Section 5.81 of our regulations, "[t]he Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." 52 Pa. Code §5.81.⁷

CONCLUSION

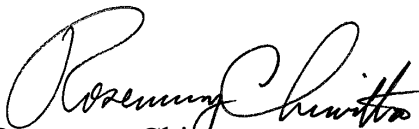
For the reasons stated above, the Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for a declaratory order is consolidated with the Complaint proceeding at Docket No. C-2022-3030251 and assigned to the Office of the Administrative Law Judge for resolution of the disputed material facts and legal issues in the ongoing controversy at Docket No. C-2022-3030251; **THEREFORE**,

⁷ See also Petition of PPL Electric Utilities Corporation for Waiver of the Standard Interconnection Agreement Form; Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standard Interconnection Application Forms, 2020 PA. PUC LEXIS 545, *4 (Pa. P.U.C. October 8, 2020).

IT IS ORDERED:

1. That the Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for Declaratory Order is consolidated with the Complaint proceeding at Docket No. C-2022-3030251 pursuant to 52 Pa. Code §5.81.
2. 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.
3. That a copy of this order be served upon Westover Property Management Company, L.P. d/b/a Westover Companies, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.
4. That a copy of this Order be placed at Docket No. P-2021-3030002.

BY THE COMMISSION


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2022

ORDER ENTERED: August 25, 2022