



September 30, 2022

VIA E-FILING

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. Westover Property Management Company, L.P.; Docket Nos. C-2022-3030251 and
P-2020-3018499**

**Prehearing Conference Memorandum of Westover Property Management Company,
L.P., d/b/a Westover Companies**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Prehearing Conference Memorandum of Westover Property Management Company, L.P., d/b/a Westover Companies, in the above-referenced matter. Copies have been served as shown on the enclosed certificate of service.

Please contact me if you have any question or concern. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water
Company*

DPZ/kmg
Enclosure

cc: Deputy Chief Administrative Law Judge Christopher P. Pell
Per Certificate of Service
Peter Quercetti
Alexander Stefanelli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket Nos. C-2022-3030251 P-2020-3018499
	:	
Westover Property Management Company, L.P. d/b/a Westover Companies	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of September, 2022 served a true copy of the foregoing **Prehearing Conference Memorandum of Westover Property Management Company, L.P. d/b/a Westover Companies**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

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David P. Zambito, Esq.
Counsel for *Westover Property Management Company, L.P. d/b/a Westover Companies*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Christopher P. Pell**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket Nos. C-2022-3030251
v.	:	P-2020-3018499
	:	
Westover Property Management Company, L.P.	:	

**PREHEARING CONFERENCE MEMORANDUM OF
WESTOVER PROPERTY MANAGEMENT COMPANY, L.P
D/B/A WESTOVER COMPANIES**

AND NOW COMES, Westover Property Management Company, L.P., d/b/a Westover Companies (“Westover”), by and through its counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.222(d)(1) and the Prehearing Conference Order issued by Deputy Chief Administrative Law Judge Christopher P. Pell (the “ALJ”), to file this Prehearing Conference Memorandum in the above-captioned matter, and states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

1. This consolidated proceeding involves a Petition for Declaratory Order (“Petition”) filed by Westover and a Formal Complaint (“Complaint”) filed by the Bureau of Investigation and Enforcement (“I&E”).

A. Westover’s Petition for Declaratory Order

2. Westover owns/operates forty-eight apartment complexes in the Commonwealth that use natural gas for heating, cooking and/or hot water.

3. On December 14, 2021, Westover filed its Petition asking the Pennsylvania Public Utility Commission (“Commission”) to declare that Westover is not a pipeline operator subject to the Gas and Hazardous Liquids Pipeline Act, 58 P.S. § 801.101 *et seq.* (“Act 127”) because none of its gas systems is a “master meter system” as defined in the federal pipeline safety laws. Westover also asked that its registration as a pipeline operator be declared null and void.

4. On January 4, 2022, I&E filed its Answer in Opposition to the Petition asking the Commission to deny the Petition, deem Westover to be a pipeline operator subject to Act 127, and direct Westover to immediately comply with all applicable laws and regulations related to public safety.

5. On May 17, 2022, Westover filed an Amended Petition for Declaratory Order (“Amended Petition”). The Amended Petition described key differences in the gas systems located at different apartment complexes owned/operated by Westover. Nevertheless, the Amended Petition continued to request that the Commission declare that all of Westover’s systems are not subject to Act 127 and that Westover’s registration with the Commission as an Act 127 pipeline operator is null and void.

6. On June 8, 2022, I&E filed its Answer in Opposition to the Amended Petition, asking the Commission to deny the Amended Petition, deem Westover to be a pipeline operator subject to Act 127, and direct Westover to comply with all applicable laws and regulations related to public safety. In the alternative, I&E asked the Commission to determine that there are outstanding issues of fact, and to defer those factual issues to the Complaint proceeding.

7. On August 25, 2022, the Commission issued an Order on the Amended Petition. The Commission found that material facts remained in dispute, requiring an evidentiary hearing. It consolidated the Amended Petition with the Complaint and assigned the matter to the Office of

Administrative Law Judge for evidentiary proceedings and the issuance of a recommended decision.

B. I&E’s Complaint

8. On January 5, 2022, the Secretary’s Bureau served Westover with the Complaint, alleging violations of Act 127 and Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1 – 192.1015, at seventeen apartment complexes in the Commonwealth. Among other things, I&E requested that the Commission impose a civil penalty of \$200,000, and order Westover to pay assessments for pipelines that were in operation during each calendar year from 2012 -2019.

9. On January 25, 2022, Westover filed its Answer and New Matter. Westover described the gas system at each relevant apartment complex and argued that none of those systems constitutes a “master meter system” as defined in the federal pipeline safety laws. Westover also argued that no civil penalty is warranted pursuant to 52 Pa. Code § 69.1201 (“Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations”).

10. I&E filed its Reply to New Matter on February 14, 2022.

11. On August 29, 2022, the Commission issued its Initial Call-in Telephone Prehearing Conference Notice scheduling a Prehearing Conference for October 5, 2022.

12. On September 12, 2022, the Commission issued the ALJ’s Prehearing Conference Order.

II. COUNSEL

13. Counsel for Westover are:

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III. SERVICE OF DOCUMENTS

14. Westover's attorneys are authorized to accept service on behalf of Westover in this proceeding. Westover requests that hard copies of documents be served on Attorney Zambito at the address listed above. Westover agrees to receive service of documents electronically in this proceeding and requests that all listed counsel for Westover receive electronic service.

IV. ISSUES

15. Is each apartment complex involved in this case a master meter system. To meet the definition of a "master meter system" in the Federal pipeline safety laws, each system must satisfy all four of the following tests:

A. Does the apartment complex have a pipeline system for distributing gas within, but not limited to, a definable area, such as an apartment complex?

B. Is Westover the operator of the pipeline system? An "operator" is defined as a "person who engages in the transportation of gas." 49 CRF § 191.3. The "transportation of gas" is defined as "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in or affecting interstate or foreign commerce."

C. Does Westover purchase metered gas from an outside source?

D. Does Westover resell that gas to the ultimate consumer through a gas distribution pipeline system? The ultimate consumer must purchase the gas from Westover directly through a meter or by other means (such as by rents).

16. Does the Commission lack jurisdiction over the Westover systems pursuant to the dormant Commerce Clause?

17. Is Westover's registration as a pipeline operator null and void?

18. Did Westover fail to submit annual reports that are required by Act 127 for the calendar years 2012-2020?

19. Did Westover fail to pay an appropriate assessment to the Commission based on its total regulated intrastate distribution pipeline miles for the calendar years 2012-2019?

20. Did Westover violate the following federal pipeline safety regulations?:
49 CFR § 603(a)(b)
49 CFR § 192.605(a)-(e)
49 CFR § 192.615(a)-(c)
49 CFR § 192.625(f)(1)-(2)
49 CFR §§ 192.805(a)(i) and 192-809(a)(e)
49 CFR § 192 807(a)-(b)

21. Did Westover prohibit I&E's Safety Division from inspecting Westover's records, procedures and facilities?

22. Should the Commission assess a total civil penalty of \$200,000?

V. WITNESSES AND EVIDENCE

23. Counsel for Westover expects to call the following witnesses and provide their testimony:

a. Peter Quercetti

Mr. Quercetti is Vice President of Operations Management for Westover. His business address is 550 American Avenue, Suite 1, King of Prussia, PA 19406 and his business phone

number is (610) 337-3994. Mr. Quercetti will testify regarding the structure and operation of the gas facilities at Westover's apartment complexes, safety measures taken by Westover at its apartment complexes, Westover's mistaken registration as a pipeline operator, Westover's other mistaken filings with and payments to the Commission, I&E's investigation of Westover, Westover's response to I&E's investigation, the conduct of I&E's pipeline safety investigators with respect to Westover, Westover's interaction with former Commission employees who are now marketing and providing consulting services to property owners such as Westover on Commission regulation of pipeline safety, Westover's efforts to have local natural gas distribution companies assume ownership of certain Westover pipeline assets, the lack of Commission efforts to educate property owners such as Westover on pipeline safety issues in the decade since the enactment of Act 127, and the potential number of property owners who would become subject to Commission jurisdiction under Act 127 if I&E's positions on Act 127 jurisdiction are now adopted.

b. Alexander Stefanelli

Mr. Stefanelli is Chief Financial Officer for Westover. His business address is 550 American Avenue, Suite 1, King of Prussia, PA 19406 and his business phone number is (610) 337-3994. Without duplicating testimony, Mr. Stefanelli will testify regarding the same topics as Mr. Quercetti.

24. Westover reserves the right to present additional witnesses and will provide timely notice to the ALJ and parties of any additional witnesses. Specifically, Westover may present additional witnesses in response to the Direct Testimony of I&E. However, such witnesses cannot be identified until I&E files its testimony and the issues raised in that testimony have been evaluated.

VI. DISCOVERY

25. There is no statutory or regulatory deadline in these proceedings. Consequently, the Commission's general rules of practice and procedure should govern discovery.

26. Westover and I&E have already served discovery requests. The following discovery motions remain pending:

a. Westover's March 2, 2022 Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for the Production of Documents, to which I&E filed an Answer on March 9, 2022;

b. Westover's April 11, 2022 Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for the Production of Documents, to which I&E filed an Answer on April 20, 2022; and

c. I&E's April 21, 2022 Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for the Production of Documents, to which Westover filed an Answer on April 26, 2022.

VII. PROTECTIVE ORDER

27. On March 9, 2022, Westover filed a Petition for Protective Order. That Petition is not opposed by I&E. That Petition remains pending.

VIII. SETTLEMENT AND MEDIATION

28. Westover is open to and available for settlement discussions to resolve this proceeding.

29. Westover is open to the use of the Commission's mediation program.

IX. PROCEDURAL SCHEDULE

30. Westover has discussed the procedural schedule with counsel for I&E, and believes the parties have agreed to the following schedule:

Prehearing Conference	October 5, 2022
Submittal of Written Direct Testimony by all Parties	February 22, 2023
Submittal of Written Rebuttal Testimony by all Parties	April 7, 2023
Outlines of Oral Surrebuttal Testimony due	April 28, 2023
Evidentiary Hearings with Oral Surrebuttal	Week of May 1, 2023 (2 days)
Filing of Main Briefs	40 days after Conclusion of the Evidentiary Hearing
Filing of Reply Briefs	20 days after Main Briefs are filed

Respectfully submitted,



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Dated: September 30, 2022