



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 30, 2022

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Westover Property Management Company, L.P.
d/b/a Westover Companies
Docket No. C-2022-3030251
I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's Prehearing Conference Memorandum in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer', is written over a light blue horizontal line.

Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522
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Enclosures

cc: Hon. Christopher P. Pell, Deputy Chief ALJ (*via e-mail only*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via e-mail only*)
Kayla L. Rost, Prosecutor, I&E (*via e-mail only*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030251
	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

**PREHEARING CONFERENCE MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

Pursuant to the Prehearing Conference Order that was issued on September 12, 2022 and Section 5.222(d)(1) of the Commission’s regulations, 52 Pa. Code § 5.222(d)(1), the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Conference Memorandum in the above-captioned proceeding in advance of the Initial Call-In Telephonic Prehearing Conference scheduled for October 5, 2022.

I. BACKGROUND

A. I&E Complaint Proceeding

I&E commenced this action on January 3, 2022 by filing a Formal Complaint (“Complaint”) alleging that Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) failed to comply with the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* (“Act 127”), and Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1-192.1015, since Act 127 became effective

in 2012. I&E alleges that Westover operates master meter systems at numerous apartment complexes owned by Westover in Pennsylvania where Westover purchases metered gas from a natural gas public utility for resale to its tenants through a gas distribution pipeline system that is owned and maintained by Westover. Master meter systems, as defined in 49 CFR § 191.3, have been subject to pipeline safety regulation since June 4, 1984.¹ Pennsylvania, through I&E, assumed enforcement responsibilities related to compliance with Federal pipeline safety regulations concerning master meter systems when Act 127 became effective on February 21, 2012.²

The I&E Safety Division first became aware of Westover’s master meters systems when pipeline safety inspectors visited a Westover property on May 22, 2018 and May 23, 2018 in response to a natural gas leak and service outage reported by PECO Gas. After ensuring that the leak was properly repaired and service restored, 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, thereby rendering them subject to Commission regulation through Act 127. The I&E Safety Division concluded that Westover operates “master meter systems” as defined in 49 CFR § 191.3 at a number of its apartment complexes in Pennsylvania.

After multiple failed attempts to entice Westover’s compliance with the Federal pipeline safety regulations, I&E filed the instant Complaint. The Complaint alleges violations of Act 127 with respect to annual reporting requirements and payment of

¹ 49 CFR Part 191, *Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports*, Amdt. 191.5; Docket OPS-49 (Final Rule of the Materials Transportation Bureau entered April 27, 1984).

² 58 P.S. §§ 801.302, 801.501.

assessments, as well as compliance with various Federal pipeline safety regulations set forth in 49 CFR Part 192.

In the Complaint, I&E requests that Westover pay a civil penalty in the amount of \$200,000, complete and file annual Act 127 reports, pay assessments based on the pipeline mileage reported in the Act 127 reports, fully comply with the applicable sections of 49 CFR Part 192, and cooperate with the I&E Safety Division. I&E hereby incorporates its Complaint by reference pursuant to 52 Pa. Code § 1.33.

I&E's Complaint was served on Westover by Secretarial Letter dated January 5, 2022. In response to I&E's Complaint, Westover filed an Answer and New Matter on January 25, 2022. On February 14, 2022, I&E filed a Reply to Westover's New Matter, which generally denied the material averments raised in the New Matter.

The parties have been engaging in discovery, which has resulted in various discovery disputes. On February 22, 2022, Westover filed a letter requesting an unopposed extension of time until March 2, 2022, to file a Motion to Compel concerning Westover's Set I Interrogatories and Requests for Production of Documents.

On March 2, 2022, Westover filed a Motion to Compel requesting that I&E's Objections to Westover's Set I Interrogatories and Requests for Production of Documents be dismissed and that I&E be compelled to produce information in response to two interrogatories. Prior to the filing of Westover's March 2, 2022 Motion to Compel, the parties conferred on February 18, 2022 and February 25, 2022, and informally resolved the majority of the issues. On March 7, 2022, I&E filed an Answer in Opposition to Westover's Motion to Compel.

On March 9, 2022, Westover filed an unopposed Petition for Protective Order.

On April 11, 2022, Westover filed a Motion to Dismiss Objections and Compel Answers in response to I&E's production of a privilege log that was submitted in response to Westover's Set I Interrogatories and Requests for Production of Documents, and requested that I&E produce 28 documents that I&E asserts are privileged. On April 18, 2022, I&E filed an Answer in Opposition to Westover's Motion to Dismiss.

On April 21, 2022, I&E filed a Motion to Compel seeking to dismiss Westover's Objections that it submitted in response to 32 out of the 39 interrogatories propounded by I&E in I&E's Set I Interrogatories and Requests for Production of Documents. Prior to the filing of I&E's April 21, 2022 Motion to Compel, the parties conferred on April 8, 2022 in an unsuccessful attempt to informally resolve the issues. Westover filed an Answer to I&E's Motion to Compel on April 26, 2022.

By Initial Call-In Telephonic Prehearing Conference Notice dated August 29, 2022, a prehearing conference is scheduled in this matter for October 5, 2022, and a Prehearing Conference Order was issued on September 12, 2022.

B. Westover Petition for Declaratory Order Proceeding

On December 13, 2021, Westover filed a Petition for Declaratory Order at Docket No. P-2021-3030002, seeking a declaration from the Commission that Westover is not subject to Act 127. On January 3, 2022, I&E filed an Answer in Opposition to the Petition, arguing that the Commission should utilize its discretion to issue a Declaratory Order that determines that Westover is a pipeline operator subject to Act 127. I&E

argued that there were no material facts in dispute and the matter involved a question of law.

On May 16, 2022, Westover filed an Amended Petition for Declaratory Order, which presented facts concerning the specifics of Westover's master meter systems. On June 6, 2022, I&E filed proprietary and non-proprietary versions of its Answer in Opposition to Westover's Amended Petition for Declaratory Order, which disputed some of the factual averments raised by Westover.

By Order entered August 25, 2022, the Commission consolidated Westover's Petition for Declaratory Order with the above-captioned I&E Complaint proceeding and assigned this matter to the Office of Administrative Law Judge ("OALJ") for resolution of the disputed facts and issuance of a Recommended Decision.

I&E files this Prehearing Memorandum in preparation for the Initial Call-In Telephonic Prehearing Conference, pursuant to 52 Pa. Code § 5.222(d)(1) and presiding Deputy Chief Administrative Law Judge ("DCALJ") Christopher P. Pell's Prehearing Conference Order dated September 12, 2022.

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Service List and Distribution List

The following I&E prosecutors should be entered on the service list for I&E:

Stephanie M. Wimer
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B. Presently Identified Issues

I&E deems the question central to the disposition of this matter to be whether Westover is operating as a pipeline operator subject to Act 127 in its operation of master meter systems at apartment complexes in Pennsylvania.

Sub-issues include the following: (1) reviewing the specifics of each of the master meter systems at the Westover apartment complexes identified in I&E's Complaint to illustrate how they fit within the definition of "master meter system" at 49 CFR § 191.3; and

(2) the appropriate remedy that should be imposed, which I&E avers should consist of the imposition of a civil penalty pursuant to 58 P.S. § 801.502, payment of assessments pursuant to 58 P.S. § 801.503, and a direction to comply with the Act 127 reporting requirements and the safety standards set forth in Chapter 192 of the Federal pipeline safety regulations.

C. I&E Witnesses

I&E expects to present the testimony of the following witness:

1. Elena Bozhko
Fixed Utility Valuation Engineer – 2
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3416

I&E anticipates that Ms. Bozhko will testify about the I&E Safety Division investigation of the May 22 and May 23, 2018 natural gas leak and subsequent service outage at Westover’s Jamestown Village Apartments.

2. Scott Orr
Fixed Utility Valuation Engineer – 2
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3416

I&E anticipates that Mr. Orr will testify about his inspections of the master meter systems at the various apartment complexes identified in I&E’s Complaint, which occurred subsequent to the investigation of the May 2018 natural gas leak. It is expected that Mr. Orr will also testify about the I&E Safety Division’s attempts to bring Westover into compliance with Act 127 and the Federal pipeline safety regulations prior to the initiation of the instant Complaint proceeding.

I&E expects that Mr. Orr’s testimony will lend support to the relief in the form of the civil penalty I&E seeks, as well as I&E’s request that Westover be directed to comply with Act 127 and Part 192 of the Federal pipeline safety regulations.

I&E reserves the right to call other witnesses as necessary to address any issues that have been or are later raised during the course of this proceeding and will identify such additional witnesses within a reasonable period of time prior to the commencement of the evidentiary hearing.

D. Proposed Litigation Schedule

The parties conferred and have agreed upon the following proposed litigation schedule:

<u>Date</u>	<u>Event</u>
February 22, 2023	Written Direct Testimony Due (all parties)
April 7, 2023	Written Rebuttal Testimony Due (all parties)
April 28, 2023	Outline for Oral Surrebuttal Testimony Due (all parties); Oral Surrebuttal Testimony to be Presented at the Evidentiary Hearing
Week of May 1, 2023	Evidentiary Hearing (2 days)
40 Days after Evidentiary Hearing Concludes	Main Briefs Due (all parties)
20 Days after Deadline to file Main Briefs	Reply Briefs Due (all parties)

I&E requests two (2) days for the evidentiary hearing in this matter.

E. Statement Regarding Possible Settlement of Case

I&E and Westover have engaged in preliminary settlement discussions. However, the parties dispute a basic, threshold issue, which is subject matter jurisdiction. Absent a recognition from Westover that systems in Pennsylvania meeting the definition of “master meter system” at 49 CFR § 191.3 are subject to the Federal pipeline safety regulations through Act 127, I&E is not optimistic that a settlement can occur.

F. Discovery

I&E continues to conduct discovery. I&E does not propose any modifications to the Commission’s discovery regulations at 52 Pa. Code §§ 5.321-5.372. Additionally, an unopposed Petition for Protective Order has already been filed.

Respectfully submitted,



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Senior Prosecutor
PA Attorney ID No. 207522

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Date: September 30, 2022

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
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	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by Electronic Mail:

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Dated: September 30, 2022