**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

: P-2021-3030002 v. : C-2022-3030251

:

:

Westover Property Management Company, L.P. :

**CORRECTED**

**PREHEARING ORDER #1**

On December 13, 2021, Westover Property Management Company, L.P. d/b/a Westover Companies (Westover) filed a Petition for Declaratory Order pursuant to 66 Pa. C.S. § 331(f) and 52 Pa. Code § 5.42 to resolve an actual case and controversy regarding whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 et seq. (Act 127). The Petition was docketed at P-2021-3030002.

On January 3, 2022, the Pennsylvania Public Utility Commission’s (Commission) Bureau of Investigation and Enforcement (I&E) filed its Answer of the Bureau of Investigation and Enforcement in Opposition to the Petition for Declaratory Order of Westover Property Management Company, L.P. d/b/a Westover Companies.

Also on January 3, 2022, I&E filed a formal Complaint against Westover Property Management Company, L.P. d/b/a Westover Companies (Westover) alleging violations of Act 127, and Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1-192.1015. The Complaint was docketed at C-2022-3030251.

On January 25, 2022, Westover filed its Answer and New Matter of Westover Property Management Company, L.P. d/b/a Westover Companies.

On January 31, 2022, Westover served its Interrogatories and Requests for Production of Documents, Set I, on I&E.

On February 10, 2022, I&E served its formal Objections to the Interrogatories of Westover.

On February 14, 2022, I&E filed its Reply of the Bureau of Investigation and Enforcement to the New Matter of Westover Property Management Company, L.P. d/b/a Westover Companies.

On February 22, 2022, Westover filed with the Commission, on Westover’s and I&E’s behalf, an Agreement to Extend Discovery Deadlines. In the agreement, Westover indicated that the parties were in negotiations to resolve their discovery dispute and required additional time. Accordingly, Westover and I&E agreed that the deadline for Westover to file a Motion to Compel was extended until the close of business on Wednesday, March 2, 2022.

On March 2, 2022, Westover filed its Motion of Westover Property Management Company, L.P. d/b/a Westover Companies to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (Westover Motion to Compel #1).

On March 7, 2022, I&E filed its Answer of the Bureau of Investigation and Enforcement to the Motion to Compel of Westover Property Management Company, L.P. d/b/a Westover Companies (I&E Answer to Westover Motion to Compel #1).

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

On March 30, 2022, I&E served its Interrogatories and Requests for Production of Documents – Set I, on Westover.

On April 11, 2022, Westover filed its Motion of Westover Property Management Company, L.P. d/b/a Westover Companies to Dismiss objections and Compel Answers to Interrogatories and Requests for Production of Documents (Westover Motion to Compel #2).

Also on April 11, 2022, Westover filed its Objections of Westover Property Management Company, L.P. d/b/a Westover Companies to the Interrogatories and Requests for the Production of Documents – Set 1, Propounded by the Bureau of Investigation and Enforcement.

On April 18, 2022, I&E filed its Answer of the Bureau of Investigation and Enforcement to the Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents of Westover Property Management Company, L.P. d/b/a Westover Companies (I&E Answer to Westover Motion to Compel #2).

On April 21, 2022, I&E filed its Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (I&E Motion to Compel).

On April 26, 2022, Westover filed its Answer of Westover Property Management Company, L.P. d/b/a Westover Companies to the Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answer to Interrogatories and Requests for Production of Documents (Westover Answer to I&E Motion to Compel).

On May 16, 2022, Westover filed an Amended Petition of Westover Companies for Declaratory Order.

On June 6, 2022, I&E filed its Answer of the Bureau of Investigation and Enforcement in Opposition to the Amended Petition for Declaratory Order of Westover Property Management Company, L.P. d/b/a Westover Companies.

By Order entered on August 25, 2022, the Commission ordered: that pursuant to 52 Pa.Code § 5.81, Westover’s Petition for Declaratory Order is consolidated with the Complaint proceeding at Docket No. C-2022-3030251; and that the matter be assigned to the Office of Administrative Law Judge (OALJ) 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.

By Initial Call-In Telephonic Prehearing Conference Notice dated August 29, 2022, an Initial Call-In Telephonic Prehearing Conference was scheduled for October 5, 2022, and the matters at Docket Nos. P-2021-3030002 and C-2022-3030251 were assigned to me.

The Call-In Telephonic Prehearing Conference was held as scheduled on October 5, 2022. Counsel for I&E and Westover participated. This order sets forth the procedural matters addressed at the prehearing conference.

THEREFORE,

IT IS ORDERED:

1. That service upon I&E shall be made on Ms. Wimer and Ms. Rost. Service upon Respondent Westover shall be made on Mr. Zambito and Mr. Nase.
2. That my informal e-mail distribution list for the active parties in this proceeding is as follows. Any changes or corrections should be communicated to me, via e-mail, as soon as possible. Please include my legal assistant, Athena Delvillar, on anything you send to me.

|  |  |  |
| --- | --- | --- |
| **Party** | **Counsel** | **e-mail** |
|  |  |  |
| I&E | Stephanie M. Wimer | [stwimer@pa.gov](mailto:stwimer@pa.gov) |
| I&E | Kayla L. Rost | [karost@pa.gov](mailto:karost@pa.gov) |
|  |  |  |
| Westover | David P. Zambito | [dzambito@cozen.com](mailto:dzambito@cozen.com) |
| Westover | Jonathan P. Nase | [jnase@cozen.com](mailto:jnase@cozen.com) |
|  |  |  |
| ALJ | ALJ Pell | [cpell@pa.gov](mailto:cpell@pa.gov) |
| ALJ | Athena Delvillar | [sdelvillar@pa.gov](mailto:sdelvillar@pa.gov) |

1. That the above parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on me. The above parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses.
2. That the following schedule is adopted:

All Parties’ Direct Testimony February 22, 2023 All Parties’ Rebuttal Testimony April 7, 2023

Oral Surrebuttal Outlines April 28, 2023

Hearings May 3-4, 2023

Main briefs[[1]](#footnote-1) June 13, 2023

Reply briefs[[2]](#footnote-2) July 3, 2023

1. That the May 3-4, 2023, evidentiary hearings will be held in-person in Philadelphia. The initial day will commence at 10:00 a.m.; the subsequent day may start at 9:00 a.m. Parties will complete the daily witness listing and cross-examination grid as directed.
2. That **Confidential Security Information** (**CSI**) as defined by 35 P.S. § 2141 et seq. **should not be transmitted by email or other electronic means**. The parties are to avoid introducing CSI into the record and should develop alternative means, such as joint stipulations or redaction when proposing testimony or exhibits. If there is no other alternative to establish a material fact other than by CSI, the parties are to contact the presiding ALJ immediately and in advance of any submission, or the evidentiary hearing.
3. That any motions with respect to, or objections to, written testimony must be presented in writing no later than three days prior to the day that the witness sponsoring that testimony is scheduled to testify. Answers to such motions or objections may be filed within three days or sooner if circumstances warrant. Oral motions, other than for good cause, shall not be accepted.
4. That all parties shall comply with the provisions of 52 Pa.Code § 5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
5. The parties shall conduct discovery pursuant to 52 Pa.Code §§ 5.321-5.373. The parties should cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require my participation to resolve. All motions to compel shall contain a certification by counsel setting forth the specific actions the parties have undertaken to resolve their discovery disputes informally. If a motion to compel does not contain this certification, I shall contact the parties and direct them to resolve the matter informally and provide the certification if they are unsuccessful. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.
6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.
7. That the evidentiary hearings in this matter constitute formal legal proceedings and we will conduct them in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That parties intending to subpoena witnesses for the evidentiary hearings shall review the procedures established in 52 Pa.Code § 5.421 and shall submit any written application to me sufficiently in advance of the evidentiary hearing dates so that the other parties will have the required ten (10) days’ notice to answer or object, and so that the party requesting the subpoena shall have enough time to receive the subpoena and serve it.
9. In accordance with the schedule set forth above, main briefs and reply briefs must be served on all parties and the ALJ no later than 4:30 p.m. on the date listed. Service can be made electronically.[[3]](#footnote-3)
10. That an original copy of all briefs must be filed with the Secretary, in accordance with 52 Pa. Code § 5.502(b). 52 Pa. Code § 5.501(e) requires that “[b]riefs shall be as concise as possible.”
11. That all briefs shall comply with the requirements of 52 Pa. Code §§ 5.501 and 5.502, and in addition to the mandatory contents set forth in 52 Pa. Code § 5.501(a), all main briefs, regardless of length, must contain:
12. A table of contents;
13. A history of the proceeding;
14. A discussion;
15. Proposed findings of fact (with record citations to transcript pages or exhibits where supporting evidence appears);
16. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and

F. Proposed ordering paragraphs specifically identifying the relief sought.

1. That if a party does not file a reply brief, I will assume that the party does not dispute the assertions, contentions or arguments made by the other party in their main brief. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other party’s assertions, contentions or arguments.
2. That any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by permission for good cause.
3. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).
4. That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. If a settlement is reached, a joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on the presiding officer.
5. That the parties shall comply with the procedural rules and regulations discussed herein.

Date: October 6, 2022 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Westover Property Management Company, L.P.

Docket Number C-2022-3030251, P-2021-3030002

SERVICE LIST

Stephanie M. Wimer, Esq.

[stwimer@pa.gov](mailto:stwimer@pa.gov)

Kayla L. Rost, Esq.

[karost@pa.gov](mailto:karost@pa.gov)

Pennsylvania Public Utility Commission

Bureau of Investigation and Enforcement

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

David P. Zambito, Esq.

[dzambito@cozen.com](mailto:dzambito@cozen.com)

Jonathan P. Nase, Esq.

[jnase@cozen.com](mailto:jnase@cozen.com)

Cozen O’Conner

17 North Second Street, Suite 1410

Harrisburg, PA 17101

*Counsel for Westover Property*

*Management Company, L.P.*

1. Forty days after the conclusion of the Evidentiary Hearing. [↑](#footnote-ref-1)
2. Twenty days after the deadline for Main Briefs. [↑](#footnote-ref-2)
3. Parties are directed to e-mail me a copy of their as-filed briefs in a WORD-formatted document in addition to ADOBE or other compatible PDF format. The format of the briefs served electronically on the parties may be as requested by the parties. [↑](#footnote-ref-3)