



October 28, 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-2021-3030002

Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for Review and Answer to Material Questions and for Immediate Stay of Proceeding

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the above-referenced Petition. **Please note that the Petition includes a request for an immediate stay of this proceeding pending disposition of the Petition. Westover Property Management Company, L.P. d/b/a Westover Companies respectfully requests that the Commission expedite disposition of this request.**

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
Enclosures

cc: Deputy Chief Administrative Law Judge Christopher P. Pell
ra-OSA@pa.gov
Per Certificate of Service
Peter Quercetti
Alexander Stefanelli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket Nos. C-2022-3030251
v.	:	P-2021-3030002
	:	
Westover Property Management Company, L.P.	:	
d/b/a Westover Companies	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of October, 2022 served the foregoing **Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for Review and Answer to Material Questions and for Immediate Stay of Proceeding**, 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

Stephanie M. Wimer, Esq.
Kayla L. Rost, Esq.
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David P. Zambito, Esq.
Counsel for *Westover Property Management Company, L.P. d/b/a Westover Companies*

VERIFICATION

I, Alexander Stefaulli, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 10/27/22

Alexander Stefaulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket Nos. C-2022-3030251
v.	:	P-2021-3030002
	:	
Westover Property Management Company, L.P.	:	

**PETITION OF WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A
WESTOVER COMPANIES FOR REVIEW AND ANSWER TO MATERIAL
QUESTIONS AND FOR IMMEDIATE STAY OF PROCEEDING**

AND NOW COMES, Westover Property Management Company, L.P., d/b/a Westover Companies (“Westover”), pursuant to 52 Pa. Code § 5.302, to file this Petition for Review and Answer to Material Questions (“Petition”). The Material Questions presented are:

1. Do Westover’s apartment complexes meet the definition of a “master meter system” in 49 CFR § 191.3 where: Westover takes delivery of the natural gas from a state-regulated natural gas distribution company (“NGDC”) on the grounds of the apartment complex in Pennsylvania, consumes some of the gas, and resells the remainder exclusively to tenants in the apartment complex in Pennsylvania?
2. Does the Gas and Hazardous Liquids Pipelines Act (“Act 127”) apply to Westover’s apartment complexes, considering the facts in question #1?

Westover respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) answer both Material Questions in the negative.

Westover also respectfully requests that the Commission immediately stay this proceeding pending an order on this Petition. Deputy Chief Administrative Law Judge Christopher P. Pell (the “ALJ”) has ordered¹ Westover to answer extensive discovery (by November 14, 2022)

¹ Interim Order Addressing Motions to Compel Filed by Westover Property Management Company, L.P. and the Bureau of Investigation and Enforcement (issued October 25, 2022) (the “Interim Order”).

pertaining to whether Westover has complied with Federal pipeline safety laws.² Westover asks that the Commission determine the threshold jurisdictional question before the parties litigate any remaining issues.

This consolidated proceeding involves Westover's Petition for Declaratory Order asking the Commission to find that Westover is not subject to Act 127, and the Bureau of Investigation and Enforcement' ("I&E's") Complaint alleging that Westover violated Act 127. 52 Pa. Code § 5.302 allows a party to seek interlocutory review of and answer to a material question that has arisen or is likely to arise. Interlocutory review will expedite the conduct of this proceeding by resolving several potentially dispositive questions. If the Commission would find that Westover does not own/operate a "master meter system" as defined in 49 CFR § 191.3, or that Act 127 does not apply to an apartment complex that takes gas from an NGDC and resells it to consumers, the Commission would lack jurisdiction over Westover's gas facilities and these cases could be concluded. Even if these cases are not concluded, this proceeding would be expedited because the number of issues to be litigated could be substantially reduced by a Commission order on the Material Questions.³ Otherwise, the parties and the Commission will need to devote substantial resources litigating these cases based on the specific facts concerning each Westover apartment complex. The Material Questions present purely legal issues involving no disputed material facts.

Westover submits that its gas systems are not "master meter systems" to the extent that Westover consumes the gas that Westover purchases. To the extent that Westover resells the gas

² Act 127 defines the "Federal pipeline safety laws" as: "The provisions of 49 U.S.C. Ch. 601 (relating to safety), the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989), the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, 116 Stat. 2985) and the regulations promulgated under the acts." 58 P.S. § 801.102 ("Definitions").

³ I&E's complaint identified seventeen Westover apartment complexes as "master meter systems." To the extent that Westover's gas facilities are different at these apartment complexes, the parties must litigate the facts and law pertaining to each apartment complex. If the Commission would address the Material Questions, the proceedings could be expedited by resolving the parties' controversy with regard to some or all of these apartment complexes.

to end-users, Westover's systems are not "master meter systems" because: (1) Westover's equipment and facilities are located entirely within its apartment complexes and only serve tenants in its apartment complexes; and (2) Westover is not the "operator" of a pipeline system because an operator engages in the "transportation of gas," which is defined as "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in or affecting interstate or foreign commerce." 49 CFR § 191.3. Westover's systems do not purchase, sell or transport gas "in or affecting" interstate commerce.

Moreover, Act 127 was not intended to apply to apartment complexes that take gas from a Commission-regulated public utility (which is explicitly excluded from the definition of a "pipeline operator" in Act 127) and resells it to the ultimate consumer (who is also explicitly excluded from the definition of a "pipeline operator" in Act 127).⁴

WHEREFORE, for the reasons set forth above, Westover respectfully requests that the Commission grant an immediate stay of this proceeding, grant interlocutory review, and answer the Material Questions in the negative.

Respectfully submitted,



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Date: October 28, 2022

⁴ The Pennsylvania Legislature could have granted jurisdiction to the Commission to regulate apartment complexes, but did not do so. As an agency created by the General Assembly, the Commission only has the power given to it by the General Assembly, either explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).