



November 9, 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 Leave to File a Brief Response to the Bureau of Investigation and Enforcement's Material Question, and for Expedited Ruling on this Petition

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 that the Commission shorten the time period for the Bureau of Investigation and Enforcement to file an Answer to this Petition, and that the Commission expeditiously rule on this Petition after the Answer is filed, due to the deadline for Commission action on Westover's Petition for Interlocutory Review (filed on October 28, 2022).** 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 *Westover Property Management Company, L.P. d/b/a Westover Companies*

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 9th day of November, 2022 served the foregoing **Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for Leave to File a Brief Response to the Bureau of Investigation and Enforcement’s Material Question, and for Expedited Ruling on this Petition**, 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.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
stwimer@pa.gov
karost@pa.gov



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

VERIFICATION

I, Alexander Stefanelli, 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: 11/9/2022

Alex 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	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.61(a), you are hereby notified that, unless otherwise ordered by the Pennsylvania Public Utility Commission, you have twenty (20) days from the service of the enclosed Petition of Westover Property Management Company, L.P. d/b/a Westover Companies for Leave to File a Brief Response to the Bureau of Investigation and Enforcement’s Material Question and for Expedited Ruling (“Petition”) to file an Answer to the Petition. Your failure to answer will allow the Commission to rule on the Petition without a response from you, thereby requiring no other proof. All pleadings, such as an Answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel for Westover, and where applicable the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

David P. Zambito, Esq. (PA ID #80017)
Jonathan P. Nase, Esq. (PA ID #44003)
Cozen O’Connor
17 North Second St., Suite 1410
Harrisburg, PA 17101



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Dated: November 9, 2022

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

**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	:	

**PETITION OF WESTOVER PROPERTY MANAGEMENT COMPANY, L.P.
D/B/A WESTOVER COMPANIES FOR LEAVE TO FILE A BRIEF RESPONSE TO
THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S MATERIAL
QUESTION, AND FOR EXPEDITED RULING ON THIS PETITION**

AND NOW COMES Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”) pursuant to 52 Pa. Code § 5.61, to file this “Petition for Leave to File a Brief Response to the Bureau of Investigation and Enforcement’s Material Question, and for Expedited Ruling on this Petition” (the “Petition”). On October 28, 2022, Westover filed a “Petition for Interlocutory Review and Answer to Material Questions and for Immediate Stay of Proceedings” (the “Petition for Interlocutory Review”), in which Westover asked the Commission to answer two Material Questions. The Bureau of Investigation and Enforcement (“I&E”) did not file a Petition for Interlocutory Review.

In its Brief in Opposition to Westover’s Petition for Interlocutory Review, I&E argued that the Pennsylvania Public Utility Commission (“Commission”) should not answer the Material Questions posed by Westover. Instead, I&E asked the Commission to answer a different Material Question, which was not in the Petition for Interlocutory Review.

Westover does not object to the Commission’s consideration of the Material Question posed by I&E. However, Westover had no notice of the new Material Question that I&E asked

the Commission to address. Consequently, Westover did not have an opportunity to address that question in its Brief in Support of the Petition for Interlocutory Review. Due process requires that Westover be given an opportunity to be heard on that new Material Question.¹

To preserve Westover's due process rights, Westover respectfully requests that it be permitted to file a brief response to I&E's Material Question within five business days of entry of the Commission's Order granting this Motion. Due to the limited time frame for the Commission to issue a decision on a Petition for Interlocutory Order, Westover respectfully requests that the Commission give I&E three days to respond to this Motion, and that the Commission expeditiously enter an order granting it.

In support whereof, Westover avers as follows:

I. Request for Opportunity to File a Brief Response to I&E's Material Question

It is well established that due process requires notice and opportunity to be heard. *Pessalano v. Zoning Bd. of Adjustment of City of Pittsburgh*, 632 A.2d 1090, 1092 (Pa. Cmwlth. 1993). Westover had no notice that the Commission would be asked to address the Material Question posed in I&E'S Brief in Opposition to the Petition for Interlocutory Review. Westover therefore had no opportunity to address I&E's Material Question in its Brief in Support of the Petition for Interlocutory Review. The Commission's procedural regulations do not provide Westover with an opportunity to respond to I&E's Material Question. However, the Commission has authority pursuant to 52 Pa. Code § 5.41 to grant this Petition to provide Westover with an opportunity to file a brief response to the Material Question.

If Westover is provided with an opportunity to address the Material Question, it will argue that the Commission should not address the jurisdictional question posed by I&E's Material

¹ *East Rockhill Tp. v. Pa. Pub. Util. Comm'n*, 540 A.2d 600, 605 (Pa. Cmwlth. 1988).

Question in a vacuum. The Commission should, in order to avoid rendering an overly broad decision, consider that there are different types of gas pipeline systems at apartment complexes and that, despite I&E’s contention to the contrary, all types do not qualify as “master meter” systems. If Westover is given an opportunity to respond to I&E’s Material Question, it will present legal arguments (including a discussion of relevant United States Pipeline and Hazardous Materials Safety Administration (“PHMSA”) opinion letters) to demonstrate that apartment complexes – such as certain complexes owned by Westover – are not regulated by the Federal pipeline safety laws and regulations.² At these complexes, the apartment complex owner or operator takes gas from a Commission-regulated natural gas distribution company (“NGDC”) at a meter on the outside of an apartment building and distributes that gas to tenants through purely internal piping. Westover will argue and present legal authority to demonstrate that the Federal pipeline safety laws and regulations do not apply to such a gas system.

II. Timing and Page Limit for Westover’s Response

In order to preserve Westover’s constitutional right to due process, Westover respectfully requests that the Commission grant this Petition and give Westover five business days to file a response to I&E’s Material Question. Westover’s response will be not more than five pages in length.

² See **Attachment 1**, PHMSA opinion letter PI-76-0114, stating

A system which involves interior piping only (i.e., underground or exterior pipelines are not used to distribute gas) is not a master meter system subject to 49 CFR Part 192. The legislative history of the Natural Gas Pipeline Safety Act of 1968, under which 49 CFR Part 192 is issued, indicates that in authorizing the safety regulation of the distribution of gas by pipelines, Congress had in mind those distribution systems which are primarily located outside. Thus, interior piping is only subject to regulation when it is included in an operator’s system which is otherwise located outside.

III. Request for Shortened Answer Period and Expedited Ruling

Pursuant to 52 Pa. Code § 5.303(a), the Commission must issue a decision on Westover's Petition for Interlocutory Review by November 28, 2022, unless it extends the period for considering that filing. Normally, the period for filing an answer to a petition is 20 days. 52 Pa. Code § 5.61(a). To permit the Commission to issue a timely decision on the Petition for Interlocutory Review, Westover respectfully requests that the Commission direct I&E to file an Answer to this Petition within three days, and that the Commission expeditiously issue a decision on this Petition after receiving I&E's Answer.

IV. Request for Relief

WHEREFORE, for the foregoing reasons, Westover respectfully requests that the Commission:

- a. Direct I&E to file an Answer to this Petition within three days;
- b. After receiving I&E's Answer, expeditiously grant this Petition, and allow

Westover to file a brief response to I&E's Material Question.

Respectfully submitted,



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Date: November 9, 2022