



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 14, 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 Nos. C-2022-3030251; P-2021-3030002
**I&E Answer in Opposition to Petition for Leave to File a Response to
Material Question**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Answer of the Bureau of Investigation and Enforcement ("I&E") in Opposition to the Petition for Leave to file a Response to I&E's Material Question of Westover Property Management Company, L.P. d/b/a Westover Companies with regard to the above-referenced matter.

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

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

Sincerely,

Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
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Enclosures

cc: Per Certificate of Service
Hon. Christopher P. Pell, OALJ-Philadelphia (*via email*)
Athena Delvillar, OALJ Legal Assistant (*via email*)
Office of Special Assistants (*via email* - ra-OSA@pa.gov)
Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email*)
Kayla L. Rost, I&E Prosecutor (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO
THE PETITION FOR LEAVE OF
WESTOVER PROPERTY MANAGEMENT COMPANY, L.P.,
d/b/a WESTOVER COMPANIES
TO FILE A RESPONSE
TO MATERIAL QUESTION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.61(a) and (e), and files this Answer in Opposition to the Petition for Leave of Westover Property Management Company, L.P., d/b/a Westover Companies (“Westover”) to file an additional pleading responsive to the counterstatement of the Material Question posed by I&E¹ in its Brief in Opposition to Westover’s Petition for Review and Answer to Material Questions. For the reasons stated herein, Westover’s Petition for Leave, which was filed on November 9, 2022, should be denied as it seeks to introduce an extra pleading outside the bounds of the Commission’s regulations that consists of no more than a

¹ Westover’s pleading is hereinafter referred to as “Petition for Leave.”

transparent attempt to present supplemental argument beyond the original 15-page limit² for an issue that Westover already addressed in its Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding (“Petition for Review”).

A. WESTOVER HAD NOTICE OF THE ISSUE BRIEFED BY I&E SINCE WESTOVER RAISED THE VERY SAME ISSUE IN ITS PETITION FOR REVIEW

On October 28, 2022, Westover filed a Petition for Review that presented the following Material Questions:

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 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 Act 127 apply to Westover’s apartment complexes, considering the facts in question #1?

On November 7, 2022, I&E filed a Brief in Opposition to Westover’s Petition for Review which correctly asserted that Westover’s Material Questions impermissibly present issues of disputed material facts. I&E argued that the question of whether Westover operates a master meter system, as defined in 49 CFR § 191.3, at each of its apartment complexes is a factually intensive inquiry that must be examined on a case-by-case basis.³ I&E also averred that Westover’s Material Questions raise the issue of whether it is the “ultimate consumer” of the gas it transports, which is another factual issue.⁴ I&E argued that such factual issues are the subject of on-going discovery and a ruling on the merits of the questions as posed by Westover prior to the scheduled evidentiary hearing would be premature.⁵ Therefore, I&E asserted that the

² 52 Pa. Code § 5.302(b).

³ I&E Brief in Opposition to Petition for Review and Answer to Material Questions at 10.

⁴ *Id.*

⁵ *Id.*

Commission should decline to answer Westover’s Material Questions.⁶

In its Brief in Opposition to Westover’s Petition for Review, I&E presented the following counterstatement of the Material Questions:

Do the Federal pipeline safety laws and regulations, as adopted by Act 127, include the regulation of intrastate natural gas master meter systems operated at apartment complexes?⁷

I&E’s counter-statement of the Material Question squarely addresses the threshold legal question of jurisdiction that Westover raised in its Petition for Review. Westover alleged as follows:

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.

Westover Petition for Review at 3.

Westover asserts that it is not subject to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101, *et seq.* (“Act 127”), because it does not engage in the “transportation of gas.” Since Westover raised the issue of whether it engages in the “transportation of gas” affecting interstate or foreign commerce, it was unquestionably placed on notice and provided with the opportunity to debate the issue in its brief. I&E’s Material Question, as counter-stated, properly focuses on this purely legal question concerning the “transportation of gas,” as set forth at 58 P.S. § 801.102, which Westover raised itself. Indeed, Westover briefed this issue at length on page 7 of its Brief in Support of its Petition for Review. To now provide the opportunity to present additional argument on the same issue, as sought by Westover, simply contravenes the Commission’s regulations concerning Petition for Interlocutory Review at 52 Pa. Code § 5.302

⁶ *Id.*

⁷ I&E Brief in Opposition to Petition for Review and Answer to Material Questions at 11.

and would unfairly and improperly allow Westover to present extra arguments that it should have originally included.

B. RESOLUTION OF I&E’S MATERIAL QUESTION IS APPROPRIATE WITHOUT FURTHER INPUT FROM WESTOVER

Throughout the course of this proceeding, Westover has repeatedly maintained that it is not subject to Act 127 or the Federal pipeline safety laws and regulations, which are adopted by Act 127,⁸ because Westover does not engage in the transportation of gas “in or affecting interstate commerce.”⁹ Accordingly, the counter-statement of the Material Question posed by I&E seeks a ruling only on whether master meter systems operated at apartment complexes are subject to Act 127. A ruling on this purely legal issue would not be in a vacuum, as Westover asserts. Rather, a ruling on the counter-statement of the Material Question posed by I&E would expedite the proceeding by providing legal certainty over the threshold issue of the Commission’s jurisdiction over master meter systems at apartment complexes for pipeline safety purposes, which Westover has raised.

Moreover, such a ruling would not automatically render Westover’s natural gas systems to automatically be deemed “master meter systems” pursuant to 49 CFR § 191.3. A determination of whether the systems operated by Westover at its apartment complexes fit within the definition of “master meter system” is a factually intensive inquiry that must be decided on a case-by-case basis. This is evidenced by the fact that I&E has scheduled inspections to visit several Westover systems between November 15 and 18, 2022 to examine the configuration of Westover’s pipeline facilities.

⁸ 58 P.S. § 801.302.

⁹ Westover’s Answer to I&E’s Complaint at ¶ 7; Westover’s Amended Petition for Declaratory Order at ¶¶ 36-40, 41-44, 46-48, 50-52, 54-56, 58-60, and 67; Westover’s Prehearing Conference Memorandum at ¶ 15(B); and Westover’s Petition for Review at 3.

Westover even acknowledges in its Petition for Relief that there are different types of gas pipeline systems at apartment complexes.¹⁰ However, Westover's request in its Petition for Leave to present additional argument on these factual differences illustrates Westover's misunderstanding of the interlocutory review process, which cannot involve questions of disputed facts.¹¹

C. TIMING OF I&E'S ANSWER AND A COMMISSION RULING CONCERNING THE PETITION FOR LEAVE

I&E has elected to expedite the filing of this Answer in Opposition to Westover's Petition for Leave so as not to complicate the Commission's responsibility to meet the current deadline of November 28, 2022 to issue a decision on Westover's Petition for Review.¹² However, I&E asserts that it is, in fact, not necessary for the Commission to expedite a ruling on Westover's Petition for Leave. Rather, the Commission should incorporate the denial of Westover's Petition for Leave in its resolution of Westover's Petition for Review.

Alternatively, should the Commission provide Westover with the opportunity to file an additional response to I&E's Material Question, I&E requests that it also be afforded the opportunity to file a reply to Westover's additional response. In such case, I&E would abide by Westover's requested page limitation of five (5) pages.

¹⁰ Westover Petition for Relief at 3.

¹¹ *Saucon Creek Associates, Inc. v. Borough of Hellertown*, 69 Pa. P.U.C. 467, Docket No. C-882119, (Order entered April 28, 1989).

¹² 52 Pa. Code § 5.303(a).

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Leave filed by Westover Property Management Company, L.P. d/b/a Westover Companies.

Respectfully submitted,



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Date: November 14, 2022

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Complainant	:	
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	:	P-2021-3030002
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).

Service by Electronic Mail:

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Dated: November 14, 2022