**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

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

:

:

Westover Property Management Company, L.P. :

**INTERIM ORDER DENYING THE MOTION FOR SUMMARY JUDGMENT**

**FILED BY WESTOVER PROPERTY MANAGEMENT COMPANY, L.P.**

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).

On January 3, 2022, the Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint against Westover Property Management Company, L.P. d/b/a Westover Companies 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 May 16, 2022, Westover filed an Amended Petition of Westover Companies for Declaratory Order.

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.

On October 6, 2022, I issued Prehearing Order #1, establishing the litigation schedule for this proceeding.

On October 7, 2022, I issued Prehearing Order #2, granting Westover’s Petition for Protective Order filed on Mach 9, 2022.

On October 25, 2022, I issued my Interim Order Addressing Motions to Compel Filed by Westover Property Management Company, L.P. and the Bureau of Investigation and Enforcement.

On October 28, 2022, Westover filed its 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.

On November 8, 2022, I issued my Interim Order Granting the Motion of the Bureau of Investigation and Enforcement to Compel Entry for Inspection.

By Order entered November 22, 2022, the Commission Ordered that the Petition for Interlocutory Review and Answer to Material Questions and for Immediate Stay of Proceeding filed on October 28, 2022 by Westover be not answered, and that the matter be returned to me.

On December 5, 2022, I issued my Interim Order Granting Westover’s Petition for Leave to Withdraw the Motion of Westover Property Management Company, L.P. D/B/A Westover Companies for an Extension of Time to Answer Some of the Interrogatories Propounded by the Bureau of Investigation and Enforcement, Set I.

On January 18, 2023, I issued my Interim Order Granting in Part and Denying in Part the Motion to Compel Filed by Westover Property Management Company, L.P.

On February 10, 2023, Westover filed its Motion for Summary Judgment by Westover Property Management Company L.P. D/B/A Westover Companies (Motion for Summary Judgment or Motion). In its Motion, Westover asserted that there are no material facts in dispute in this case. Westover further asserted that all of the systems operated by Westover are located entirely within the apartment complexes or commercial properties operated by Westover, and that none of these systems satisfies the definition of a “master meter system” set out in 49 CFR § 191.3. Westover argues that their systems are not regulated pursuant to the Federal pipeline safety laws, and are not regulated by the Commission pursuant to Act 127. Westover requested that I grant the Motion, dismiss I&E’s Complaint, grant Westover’s amended Petition for Declaratory Order, and declare that none of Westover’s systems are subject to Act 127, and also that Westover’s registration at Docket No. A-2021-3028141 is null and void.

On March 2, 2023, I&E filed its Answer in Opposition of the Bureau of Investigation and Enforcement to the Motion for Summary Judgment of Westover Property Management Company, L.P., d/b/a Westover Companies (Answer). In its Answer, I&E asserted that Westover’s Motion should be denied because genuine issues of material facts and law exist.

Westover’s Motion for Summary Judgment will be addressed below.

DISCUSSION

The Commission’s regulations at 52 Pa. Code § 5.102(d)(1) set forth the standard of review for summary judgment motions:

(1) *Standard for grant or denial on all counts*. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answer to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code § 5.102(d)(1).

When deciding on a motion for summary judgment, all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thompson Coal Co. v. Pike Coal Co.,* 488 Pa. 198, 412 A.2d 466 (1979). However, once a motion for summary judgment is properly made and supported, it is generally accepted that the nonmoving party may not simply rest upon the mere allegations or denials of its pleading, but must set forth facts showing that there is a genuine issue for trial. *Fiffick v. GAF Corporation,* 603 A.2d 208 (Pa. Super. 1991) (Discussing the Pennsylvania Rules of Civil Procedure); *Anderson v. Liberty Lobby, Inc., Inc.,* 477 U.S. 242 (1986) (Discussing the Federal Rules of Civil Procedure)*.*

Westover submits that there is no dispute of material facts in this case. Westover asserts that all of the systems operated by Westover are located entirely within the apartment complexes or commercial properties operated by Westover. Westover requests a determination that none of the natural gas systems involved in this case are “master meter systems” as defined in 49 C.F.R. § 191.3. Westover maintains that these systems are not regulated pursuant to the Federal pipeline safety laws, and are not regulated by the Commission pursuant to Act 127.

The Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq*. (Act 127) provides that “[t]he provisions of this act shall apply only to pipelines, pipeline operators or pipeline facilities regulated under Federal pipeline safety laws.” 58 P.S. § 801.103.

Westover maintains that it is not a “pipeline operator” subject to Commission jurisdiction pursuant to Act 127. Act 127 defines a “pipeline operator” as follows:

A person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws. The term does not include a public utility or an ultimate consumer who owns a service line on his real property.

58 P.S. § 801.102

Additionally, Westover maintains that none of its systems satisfy the definition of a “master meter system” in 49 C.F.R. § 191.3. Federal Pipeline Safety Laws define a “master meter system” as follows:

Master Meter System means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents*.*

49 C.F.R. § 191.3. Westover submits that none of its systems satisfy the definition of a “master meter system” because each system is located entirely within the definable area of Westover’s apartment complexes or commercial properties. Westover avers that the phrase “within, but not limited to, a definable area, such as . . . an apartment complex” means that a gas system must be partly within, and partly outside, the apartment complex in order to be a “master meter system.”

I&E responds that Westover meets the definition of a “master meter system” because its gas facilities are located entirely within a definable area, i.e., the apartment complex. I&E disagrees that the definition of “master meter system” requires the gas facilities to be located partly within and partly outside the apartment complex. I&E maintains that the plain language of the definition states that the gas system must be located within a definable area, such as an apartment complex. Additionally, I&E argues that Westover’s need to argue the merits of its position based on principles of statutory construction exemplifies that summary judgment is not appropriate here.

Upon review of Westover’s Motion and I&E’s Answer, I cannot conclude that Westover is entitled to judgment as a matter of law. I am not persuaded by Westover’s position that a gas system must be partly within and partly outside the apartment complex in order to satisfy the definition of a “master meter system.” Since a dispute exists regarding the proper interpretation of the definition of a “master meter system,” I cannot grant judgment in favor of Westover.

Accordingly, Westover’s Motion for Summary Judgment is denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Summary Judgment filed by Westover Property Management Company D/B/A Westover Companies at docket numbers P-2021-3030002 and C-2022-3030251 is denied.

Date: April 18, 2023 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

**C-2022-3030251 - BUREAU OF INVESTIGATION AND ENFORCEMENT V. WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A WESTOVER COMPANIES***Updated 02/17/23*

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