



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

Bp8# 2246921

May 8, 2012

Rosemary Chiavetta  
Pa. Public Utility Commission  
2<sup>nd</sup> Floor, 400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission, Law Bureau Prosecutory  
Staff v. Kelly Fink, Claude Joseph Fink, Jr., Claude J. Fink and  
Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company;  
Docket No. C-2011-2246921

Dear Secretary Chiavetta:

Enclosed please find an original and three copies of the Motion to Compel in the  
above-captioned proceeding. As evidenced by the enclosed certificate of service, all  
parties have been served as indicated.

If you have any further questions regarding this matter, please contact me  
at 717-783-3459.

Sincerely,

Heidi Wushinske  
Assistant Counsel

Enclosures

cc: As per Certificate of Service  
Terrence J. Buda, Assistant Counsel

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :  
 :  
 v. :  
 :  
 Kelly Fink, Claude Joseph Fink, Jr., :  
 Claude J. Fink, and Lois A. :  
 Fink, individually and jointly, :  
 t/d/b/a Fink Gas Company :

Docket No. C-2011-2246921

**RECEIVED**

MAY - 8 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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**COMPLAINANT PENNSYLVANIA PUBLIC UTILITY COMMISSION LAW  
BUREAU PROSECUTORY STAFF'S MOTION TO COMPEL**

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TO THE HONORABLE KATRINA L. DUNDERDALE:

AND NOW, this 8<sup>th</sup> day of May 2012, comes the Pennsylvania Public Utility Commission's (Commission) Law Bureau Prosecutory Staff (Prosecutory Staff) by its counsel, and pursuant to Rules 5.103 and 5.342(g) of the Commission's regulations requests that the Honorable Katrina L. Dunderdale dismiss Respondent Kelly Fink's objections to Prosecutory Staff's interrogatories and compel that the interrogatories be answered:

- In its Objections, Respondent declined to answer Prosecutory Staff's Interrogatories Nos. 5, 6, 7, 8, 11, 12, 16, 24, 25, 26, and 28.
- Prosecutory Staff asserts that the information sought is within the scope of the permissible discovery, as defined by 52 Pa. C.S. § 5.321(c).
- The information sought in the interrogatories at issue is relevant to the subject matter involved in the pending action.

1. The parties to this proceeding are Law Bureau Prosecutory Staff, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Kelly Fink, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company (Respondents). Fink Gas Company maintains its principle place of business at 153 Camp Road, Cowansville, PA 16218.

2. On April 23, 2012, Prosecutory Staff served its Interrogatories (Set 2) upon Respondent.

3. On May 3, 2012, Respondent sent Prosecutory Staff, via e-mail, objections to Prosecutory Staff's Interrogatories Set 2.

4. Respondent objects to Prosecutory Staff's Interrogatories Nos. 5, 6, 7, 8, 11, 12, 16, 24, 25, 26, and 28, arguing that each of the above interrogatories are "irrelevant to the subject matter involved in the pending matter." Respondent contends that the pending matter "relates to declaring Respondent as a public utility."

5. Prosecutory Staff contends that the scope of the pending matter is not limited merely to Respondent's public utility status and that interrogatories at issue are relevant to the subject matter involved in the pending action. Prosecutory Staff will address each of Respondent's objections below.

6. Respondent objects to Prosecutory Staff's Interrogatory 5, (Does Fink Gas Company expect to sell some or all of its gas rights if allowed by the Commission to abandon service), claiming that it is "irrelevant to the subject matter involved in the pending matter." Respondent contends that the pending matter "relates to declaring

Respondent as a public utility.” Respondent’s contention that this matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility’s loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter’s Committee v. Pa. PUC*, 170 Pa. Superior Ct. 596, 88 A.2d 420 (1952). Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300; 66 Pa. PUC 29 (January 7, 1988). Prosecutory Staff’s Interrogatory 5 seeks to gain information regarding the utility’s loss and ability to contribute to the cost of conversion. A potential sale of Respondent’s gas rights is relevant to determining its potential loss and ability to contribute to the cost of conversion. Furthermore, Prosecutory Staff also requests that the Commission order Respondents not to sell or transfer any assets used to provide public utility gas service and grant such other relief as the Commission deems just and reasonable (Complaint Paragraph Nos. 28 and 30). Therefore, Respondent should be compelled to respond to Interrogatory 5.

7. Respondent next alleges that Prosecutory Staff’s Interrogatory 6 (Please describe all assets, real and personal, and bank accounts of Kelly Fink, Claude Joseph Fink Jr. and the Fink Gas Company) is “irrelevant to the subject matter involved in the pending matter.” Respondent contends that the pending matter “relates to declaring

Respondent as a public utility.” Respondent’s contention that this matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility’s loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter’s Committee v. Pa. PUC*, 88 A.2d 420.

Moreover, there is precedent for the utility contributing to the cost of conversion.

*See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff’s Interrogatory 6 seeks to gain information regarding the utility’s loss and ability to contribute to the cost of conversion. The assets available to Respondent are certainly relevant to Respondent’s potential loss and its ability to contribute to the cost of conversion. Furthermore, Prosecutory Staff also requests that the Commission order Respondents not to sell or transfer any assets used to provide public utility gas service and grant such other relief as the Commission deems just and reasonable (Complaint Paragraph Nos. 28 and 30). Therefore, Respondent should be compelled to respond to Interrogatory 6.

8. Respondent also objects to Interrogatory 7 (Please list all assets and the values of those assets listed in answer to question No. 6) on the basis that it is “irrelevant to the subject matter involved in the pending matter.” Respondent contends that the pending matter “relates to declaring Respondent as a public utility.” Respondent’s contention that the matter involved in the pending action is limited to determining

whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility's loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter's Committee v. Pa. PUC*, 88 A.2d 420. Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff's Interrogatory 7 seeks to gain information regarding the utility's loss and ability to contribute to the cost of conversion. Respondent's assets are relevant to determining its loss and ability to contribute to alternative service. Furthermore, Prosecutory Staff also requests that the Commission order Respondents not to sell or transfer any assets used to provide public utility gas service and grant such other relief as the Commission deems just and reasonable (Complaint Paragraph Nos. 28 and 30). Therefore, Respondent should be compelled to respond to Interrogatory 7.

9. Respondent argues that Interrogatory 8 (Please list all assets, personal and corporate, which can be utilized by Fink Gas Company to apply towards contributions to their customer's alternative fuel source) is objectionable because it is "irrelevant to the subject matter involved in the pending matter." Respondent contends that the pending matter "relates to declaring Respondent as a public utility." Respondent's contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the

pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility's loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter's Committee v. Pa. PUC*, 88 A.2d 420. Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff's Interrogatory 8 seeks to gain information regarding the utility's loss and ability to contribute to the cost of conversion. Respondent's assets are relevant to determining its loss and ability to contribute to alternative service. Furthermore, Prosecutory Staff also requests that the Commission order Respondents not to sell or transfer any assets used to provide public utility gas service and grant such other relief as the Commission deems just and reasonable (Complaint Paragraph Nos. 28 and 30). Therefore, Respondent should be compelled to respond to Interrogatory 8.

10. Respondent also objects to Interrogatory 11 (Does Fink Gas Company Plan to continue to sell wholesale gas if allowed to abandon its service to residential customers) on the basis that it is "irrelevant to the subject matter involved in the pending matter." Respondent contends that the pending matter "relates to declaring Respondent as a public utility." Respondent's contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could,

based on the record, include abandonment. Therefore, issues of balancing the utility's loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter's Committee v. Pa. PUC*, 88 A.2d 420. Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff's Interrogatory 11 seeks to gain information regarding the utility's loss and ability to contribute to the cost of conversion, and its plans for the system. Respondent's assets are relevant to determining its loss and ability to contribute to alternative service. Furthermore, even if Respondent is found to be non-jurisdictional, it is subject to the Federal Pipeline Safety Act, and we would have jurisdiction over safety of the system under Act 127. Therefore, Respondent should be compelled to respond to Interrogatory 11.

11. Respondent contends that Interrogatory 12 (Does Fink Gas Company anticipate abandoning any of its wells if it is allowed to abandon residential gas service) is "irrelevant to the subject matter involved in the pending matter." Respondent contends that the pending matter "relates to declaring Respondent as a public utility." Respondent's contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. The Commission has the power to place conditions upon an



abandonment, especially those intended to further the public health, safety and welfare. The Commission may place conditions on abandonment, such as directing that a utility abandons and deactivates its facilities in accordance with the federal regulations codified at 49 CFR § 192.727 and, if applicable, the Pennsylvania regulations codified at 58 P.S. § 513 (Plugging gas wells penetrating workable coal seams), and at 58 P.S. § 601,204 (Inactive status), § 601.206 (Wellsite restoration), § 601.210 (Plugging requirements). *See., Leechburg Gas Co.* at 7. Therefore, Respondent should be compelled to respond to Interrogatory 12.

12. Respondent declined to answer Interrogatory 16 (For 2011, please provide the amount of revenue received for wholesale gas service). Respondent argues that this interrogatory is “irrelevant to the subject matter involved in the pending matter.” Respondent contends that the pending matter “relates to declaring Respondent as a public utility.” Respondent’s contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility’s loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter’s Committee v. Pa. PUC*, 88 A.2d 420. Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff’s

Interrogatory 16 seeks to gain information regarding the financial viability of Fink Gas and its principles. Respondent's financial viability is relevant to determining its loss and ability to contribute to alternative service. Therefore, Respondent should be compelled to respond to Interrogatory 16.

13. Respondent argues that Interrogatory 25 (Please identify who owns 153 Camp Road, Cowansville, Pa 16218. If Kelly Fink or Claude Joseph Fink, Jr. has an ownership interest in 153 Camp Road, Cowansville, PA 16218, please describe that interest and provide a copy of the deed and mortgage, and estimate how much equity each has in the property) is "irrelevant to the subject matter involved in the pending matter." Respondent contends that the pending matter "relates to declaring Respondent as a public utility." Respondent's contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility's loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter's Committee v. Pa. PUC*, 88 A.2d 420. Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff's Interrogatory 25 seeks to gain information regarding the utility's ability to contribute to the cost of conversion. Respondent's assets are relevant to determining its

ability to contribute to alternative service. Therefore, Respondent should be compelled to respond to Interrogatory 25.

14. Respondent next objects to Interrogatory 26 (Please explain the marital status of Kelly Fink and Claude Joseph Fink, Jr. If the Finks are divorced, has there been a distribution of assets? If so, please provide a copy of that distribution of assets).

Respondent argues that this interrogatory is “irrelevant to the subject matter involved in the pending matter.” Respondent contends that the pending matter “relates to declaring Respondent as a public utility.” Respondent’s contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility’s loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter’s Committee v. Pa. PUC*, 88 A.2d 420.

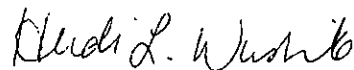
Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff’s Interrogatory 26 seeks to gain information regarding the ability of the utility and its individual owners, to contribute to the cost of conversion.

Respondent’s assets are relevant to determining its ability to contribute to alternative service. Furthermore, the financial viability of Fink Gas and its principles is relevant to determining alternate service contributions. Therefore, Respondent should be compelled to respond to Interrogatory 26.

15. Respondent objects to Interrogatory 28 (Attached is an email that I received from Attorney Jason Lewis who was, but is no longer representing Claude Joseph Fink, Jr. The email indicates that Shell (assuming Shell Oil Company) was possibly going to include deep gas lease rights owned by Fink Gas Company in a block and that a contract was signed. Please provide a copy of that contract and provide information with respect to the negotiations and any explanation why, apparently, the deal was not consummated.) Respondent alleges that this interrogatory is “irrelevant to the subject matter involved in the pending matter.” Respondent contends that the pending matter “relates to declaring Respondent as a public utility.” Respondent’s contention that the matter involved in the pending action is limited to determining whether or not Respondent is a public utility is incorrect. The scope of the pending action also includes a determination of what action the Commission should take with respect to Fink Gas Company and its system, which could, based on the record, include abandonment. Therefore, issues of balancing the utility’s loss with the hardship on the public and availability of alternative service are certainly relevant. *See, e.g., Commuter’s Committee v. Pa. PUC*, 88 A.2d 420. Moreover, there is precedent for the utility contributing to the cost of conversion. *See, e.g., Application of Leechburg Gas Company to Abandon Service*, 1988 Pa. PUC Lexis 300. Prosecutory Staff’s Interrogatory 28 seeks to gain information regarding the utility’s potential losses and ability to contribute to the cost of conversion. Respondent’s assets and future assets from the sale of system or its gas rights are relevant to determining its ability to contribute to alternative service. Therefore, Respondent should be compelled to respond to Interrogatory 28.

WHEREFORE, for the reasons stated above, Prosecutory Staff urges this Honorable Administrative Law Judge to dismiss Respondent's objections to Prosecutory Staff's Interrogatories (Set 2) Nos. 5, 6, 7, 8, 11, 12, 16, 24, 25, 26, and 28, and compel Respondent to respond to Prosecutory Staff's Interrogatories (Set 2) Nos. 5, 6, 7, 8, 11, 12, 16, 24, 25, 26, and 28.

Respectfully submitted,



Heidi L. Wushinske  
Assistant Counsel  
Attorney ID No. 93792

Terrence J. Buda  
Assistant Counsel

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**Date: May 8, 2012**

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**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

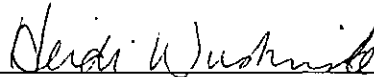
**Notification by first class mail addressed as follows:**

HONORABLE KATRINA L  
DUNDERDALE  
ADMINISTRATIVE LAW JUDGE  
PA PUBLIC UTILITY COMMISSION  
SUITE 220 PIATT PLACE  
301 FIFTH AVENUE  
PITTSBURGH PA 15222

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