



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 7, 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 No. C-2022-3030251
I&E Answer to Motion to Compel

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Answer of the Bureau of Investigation and Enforcement to the Motion to Compel of Westover Property Management Company, L.P. d/b/a Westover Companies with regard to the above-referenced proceeding.

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,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer', is written over a light blue horizontal line.

Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522
(717) 772-8839
stwimer@pa.gov

SMW/ac
Enclosures

cc: Per Certificate of Service
Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email*)
Kayla L. Rost, I&E Prosecutor (*via email*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030251
	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

**ANSWER OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT TO THE MOTION TO COMPEL OF
WESTOVER PROPERTY MANAGEMENT COMPANY,
L.P. d/b/a WESTOVER COMPANIES**

Pursuant to 52 Pa. Code § 5.342(g)(1), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, files this Answer to the Motion to Compel of Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”), which seeks to compel I&E responses to Westover’s Interrogatories and Requests for Production of Documents, Set I (“Set 1 Interrogatories”). I&E also objects to producing a privilege log as defined within Westover’s instructions to its Set I Interrogatories. In support thereof, I&E avers as follows:

I. INTRODUCTION

On January 3, 2022, I&E filed a Formal Complaint (“Complaint”) against Westover alleging violations of the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* (“Act 127”), and Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1-192.1015.

Westover owns and/or maintains approximately thirty-four (34) apartment complexes in Pennsylvania. At some of these apartment complex locations, Westover operates a master meter system where it purchases metered gas from a natural gas distribution company (“NGDC”) for resale to its tenants through a gas distribution pipeline system that is owned and maintained by Westover. Accordingly, I&E avers that Westover operates master meter systems, which are defined in the Federal pipeline safety regulations as:

. . . 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 CFR § 191.3 (emphasis added).

I&E avers that Westover’s operation of such master meter systems renders it to be a “pipeline operator” as that term is defined under Act 127 in that it “owns or operates equipment or facilities in this Commonwealth for the transportation of gas . . . by pipeline or pipeline facility regulated under Federal pipeline safety laws.” 58 P.S. § 801.102.

I&E alleges that Westover failed to register as a “pipeline operator” pursuant to Act 127, pay annual assessments mandated by Act 127, follow Federal pipeline safety regulations related to natural gas, and failed to comply with the I&E Safety Division’s investigation of its pipeline facilities. For relief, I&E seeks a civil penalty in the amount of \$200,000, a directive that Westover be required to file Act 127 reports and pay Act 127 assessments, a directive that Westover be required to comply with Part 192 of the Federal pipeline safety regulations and Act 127, and a directive that Westover be required to cooperate with the I&E Safety Division during all inspections.

In its January 25, 2022 Answer and New Matter, Westover **admits** purchasing gas from NGDCs, transporting the gas, and selling it to tenants residing in its apartment complexes.¹ Devoid of legitimate defenses, Westover's claims are full of red herrings, including a baseless claim of discriminatory or selective prosecution,² which is the crux of the instant discovery dispute.

On January 31, 2022, Westover served its Set I Interrogatories upon I&E in which it propounded fifty-two (52) Interrogatories and Requests for Production of Documents, some with multiple subparts.

On February 10, 2022, I&E served its Objections to Westover's Set I Interrogatories.

On February 14, 2022, I&E filed a Reply to the New Matter raised by Westover.

On February 22, 2022, I&E timely served Westover with responses to Westover's Set I Interrogatories in which there was no dispute.

Also on February 22, 2022, Westover filed a letter advising the Commission that Westover and I&E required additional time to resolve their discovery dispute and had agreed to extend the deadline for Westover to file any motion to compel until March 2, 2022.

On March 2, 2022, Westover filed the instant Motion to Compel seeking that I&E be directed to: (1) produce non-privileged documents in response to Set I Interrogatories, Nos. 5 and 40; and (2) produce privilege logs in response to Set I Interrogatories, Nos. 5 and 40.

Westover's Set I Interrogatories Nos. 5 and 40 seek privileged information about I&E's investigations concerning entities operating other master meter systems, the production of which would not result in information leading to a meritorious Westover

¹ See Paragraph 7 of Westover's January 25, 2022 Answer and New Matter.

² See Paragraph 62 of Westover's January 25, 2022 Answer and New Matter.

defense. The Office of Administrative Law Judge and this Honorable Commission should not be distracted by Westover's misleading arguments, nor should I&E be required to expend time and resources answering burdensome interrogatories or producing cumbersome privilege logs for Westover's frivolous fishing expedition.

II. LEGAL STANDARD

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Relevant evidence is “that which, tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable.” *Commonwealth v. Scott*, 389 A.2d 79, 82 (Pa. 1978). In order to determine relevance, it must first be determined if the inference sought to be raised by the evidence bears upon the issue in the case, and second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Commonwealth v. Stewart*, 336 A.2d 282, 284 (Pa. 1975). Irrelevant or immaterial evidence is not admissible. 66 Pa.C.S. § 332(b). The Commission has excluded evidence on the basis that the evidence is not relevant to the scope of the proceeding. *See e.g., Investigation of the Philadelphia Area Taxicab Self-Insurance Program*, Docket No. I-880081, 1989 Pa. PUC LEXIS 206, (Order entered December 22, 1989) (excluding evidence that was “not germane to the limited scope of the investigation”).

The Commission's regulations place limitations on the scope of discovery. Discovery that would cause unreasonable burden or expense or require an unreasonable investigation by a party is not permitted. 52 Pa. Code § 5.361(a)(2), (4). “The law is [] clear that the Commission has the right to limit discovery that would place an unreasonable burden upon a

participant in litigation.” *Application of Newtown Artesian Water Company and Indian Rock Water Company*, Docket No. A-212070, 1990 Pa. PUC LEXIS 83 (June 20, 1990) (citing *City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243, 1249-50 (Pa. Cmwlth. 1987)).

In addition, discovery that relates to a matter which is privileged is not permitted. 66 Pa.C.S. § 333(d); 52 Pa. Code § 5.361(a)(3). Interrogatories that seek legal interpretations, legal strategy, and information that is protected by attorney-client privilege are impermissible. *See, e.g. Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket Nos. R-2011-2232243, *et al.* 2011 Pa. PUC LEXIS 1523 (July 21, 2011) (interrogatories requesting privileged attorney-client communications, attorney work product, or an attorney’s mental impressions, analyses, or assessments as to legal matters are impermissible). Furthermore, the Commission’s regulations prohibit the disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research, or legal theories. 52 Pa. Code § 5.323(a).

The deliberative process privilege permits the government to withhold documents containing “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.” *Commonwealth of Pa. v. Vartan*, 733 A.2d 1258, 1263 (Pa. 1999) (citing *Redland Soccer Club, Inc. v. Department of the Army of the United States*, 55 F.3d 827, 853 (3d Cir. 1995)). The purpose for the privilege is to allow the free exchange of ideas and information within government agencies. *Vartan*, 733 A.2d at 1264. The privilege recognizes that if governmental agencies were “forced to operate in a fishbowl, the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer.” *Id.* (citing *Redland Soccer Club, Inc.*, 55 F.3d at 854). The Commission has adopted the deliberative process privilege. *Pa. PUC v. West Penn Power*

Company, Docket No. R-901609, (Order entered July 20, 1990). The Commission has determined that a request to obtain records from the former Gas Safety Division of the Bureau of Safety and Compliance sought information protected by the deliberative process privilege. *Re John M. DiDonato*, Docket No. P-900480 (Order entered December 19, 1990). Such investigative records included a staff report that was prepared for internal Commission use to determine whether official action should be taken against a jurisdictional utility with respect to a natural gas explosion. *Id.*

Furthermore, documents prepared for or used by the Commission during the course of an investigation, whether prepared by an employee of the Commission or other person who is not an employee of the Commission, that contain trade secrets, proprietary information, or information, which, if released, could be used for criminal or terroristic purposes, are not subject to disclosure. 66 Pa.C.S. § 335(d).

III. ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted. By way of further answer, Westover's Set I Interrogatories contained fifty-two (52) requests, some with multiple subparts, that sought an abundance of information that exceeded the scope of discovery or was proposed in apparent bad faith.

5. Admitted. By way of further, given the unreasonableness of Westover's Set I Interrogatories, I&E filed Objections, either fully or partially, to twenty-four (24) of the fifty-two (52) requests.

6. Admitted.

7. Admitted.

A. Set I, Interrogatories, No. 5

8. Denied. I&E denies the averments in this paragraph as characterizations of a written document that speaks for itself.

9. Admitted, in part and denied, in part. I&E denies the averments in this paragraph as characterizations of a written document that speaks for itself. I&E admits that it objected to Set I Interrogatories, No. 5 as seeking privileged information. By way of further answer, I&E also objected to Set I Interrogatories, No. 5 on the grounds that production of such information would cause an unreasonable burden as the information is not discoverable or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

10. Denied. I&E denies the averments in this paragraph as characterizations of a written document that speaks for itself. By way of further response, production of a privilege log in response to Set I Interrogatories, No. 5 would create an unreasonable burden as the information is not relevant or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

11. Denied. I&E denies the averments in this paragraph as characterizations of a written document that speaks for itself. By way of further response, production of a privilege log in response to Set I Interrogatories, No. 5 would create an unreasonable burden as the information is not relevant or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

12. Admitted, in part and denied, in part. It is admitted that I&E did not produce a privilege log. I&E denies the averments in this paragraph as characterizations of I&E's assertions in a written document that speaks for itself. By way of further response, production of a privilege log in response to Set I Interrogatories, No. 5 would create an unreasonable burden as the information is not relevant or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

13. Denied. Documents pertaining to I&E investigations of other master meter systems are not relevant to the instant proceeding and are not subject to disclosure pursuant to 66 Pa.C.S. § 335(d). Accordingly, production of a privilege log would create an unreasonable burden on I&E. *See* I&E's response to Paragraph 19, *infra*.

14. Admitted, in part and denied, in part. It is admitted that I&E investigative records related to master meter systems contain maps depicting the location of piping and reveal pipeline operating pressure, the release of which could be used for criminal or terroristic purposes. I&E denies the averments in this paragraph as characterizations of I&E's assertions in a written document that speaks for itself.

15. Denied. Documents pertaining to I&E investigations of other master meter systems are not relevant to the instant proceeding and are not subject to disclosure pursuant to 66 Pa.C.S. § 335(d). Accordingly, production of a privilege log would create an unreasonable burden on I&E. *See* I&E's response to Paragraph 19, *infra*.

16. Denied. I&E is without sufficient information or knowledge to form a belief regarding the averments in the paragraph related to Westover's "expectations" and the same are therefore denied.

17. Admitted, in part and denied, in part. It is admitted that I&E asserted that production of the documents sought in Set I Interrogatories, No. 5 "would cause an unreasonable burden, especially when those documents are not subject to public disclosure." Any characterization of I&E's averments in this paragraph is denied.

18. Denied. By way of further response, Westover is not entitled to the information sought in its Set I Interrogatories, No. 5, as the investigative information is irrelevant, privileged, and not subject to disclosure pursuant to 66 Pa.C.S. § 335(d). Accordingly, compilation of a privilege log is unduly burdensome on I&E for the reasons described in greater detail in response to Paragraph 19, *infra*.

19. The averments in this paragraph set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further response, the information sought in Westover's Set I, No. 5 exceeds the permissible scope of discovery in that it does not bear upon a relevant issue in the case. 52 Pa. Code § 5.321(c); *Commonwealth v. Stewart*, 336 A.2d 282, 284 (Pa. 1975). Westover's baseless claim of selective prosecution is a red herring that will not lead to a legitimate defense of I&E's allegations that Westover is in violation of Act 127 and the Federal pipeline safety regulations. Any probative value of the information sought, which I&E denies exists, is not outweighed by the sound law and policy that fiercely protects the confidentiality of I&E investigations that have not otherwise been released to the public such as through a complaint proceeding or settlement agreement. Indeed, the General Assembly recognized

the sensitivity of investigative records in 66 Pa.C.S. § 335(d), which only permits their release if such documents were utilized or relied upon by the Commission in rendering final decisions. Releasing investigative documents not relied upon the Commission, such as what is requested in Westover's Set I, No. 5, would result in a chilling effect on the subjects of I&E investigations from freely cooperating with I&E. Essentially, production of these documents would force I&E to operate in a fishbowl, an undesirable result that the Pennsylvania Supreme Court recognized in *Commonwealth of Pa. v. Vartan*, 733 A.2d 1258 (Pa. 1999). Moreover, production of a privilege log in response to Westover's Set I, No. 5, is unduly burdensome as the request seeks irrelevant information that is beyond the scope of discovery and not otherwise subject to disclosure or release under 66 Pa.C.S. § 335(d).

B. Set I, Interrogatories, No. 40

20. Denied. I&E denies the averments in this paragraph as characterizations of written documents that speak for itself. By way of further response, documents pertaining to I&E investigations and other I&E records related to apartment complexes that may or may not be operating master meter systems are not relevant to the instant proceeding. *See* I&E's response to Paragraph 29, *infra*.

21. Admitted, in part and denied, in part. I&E denies the averments in this paragraph as characterizations of a written document that speaks for itself. I&E admits that it objected to Set I Interrogatories, No. 40 as seeking privileged information. By way of further answer, I&E also objected to Set I Interrogatories, No. 40 on the grounds that production of such information would cause an unreasonable burden as the information is not discoverable or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

22. Denied. I&E denies the averments in this paragraph as characterizations of a

written document that speaks for itself. By way of further response, production of a privilege log in response to Set I Interrogatories, No. 40 would create an unreasonable burden as the information is not relevant or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

23. Admitted, in part and denied, in part. It is admitted that I&E did not produce a privilege log. I&E denies the averments in this paragraph as characterizations of I&E's assertions in a written document that speaks for itself. By way of further response, production of a privilege log in response to Set I Interrogatories, No. 40 would create an unreasonable burden as the information is not relevant or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

24. Denied. I&E records of apartment complexes that I&E believes operate master meter systems are not relevant to the instant proceeding and are not subject to disclosure pursuant to 66 Pa.C.S. § 335(d). Accordingly, production of a privilege log would create an unreasonable burden on I&E. *See* I&E's response to Paragraph 29, *infra*.

25. Admitted, in part and denied, in part. It is admitted that I&E investigative records related to master meter systems at apartment complexes contain maps depicting the location of piping and reveal pipeline operating pressure, the release of which could be used for criminal or terroristic purposes. I&E denies the averments in this paragraph as characterizations of I&E's assertions in a written document that speaks for itself.

26. Denied. Documents pertaining to I&E records and investigations of other apartment complexes that may or may not be operating master meter systems are not relevant to the instant proceeding and are not subject to disclosure pursuant to 66 Pa.C.S. § 335(d). Accordingly, production of a privilege log would create an unreasonable burden on I&E. *See* I&E's response to Paragraph 29, *infra*.

27. Admitted, in part and denied, in part. It is admitted that I&E asserted that production of the documents sought in Set I Interrogatories, No. 40 "would cause an unreasonable burden, especially when those documents are not subject to public disclosure." Any characterization of I&E's averments in this paragraph is denied.

28. Denied. By way of further response, Westover is not entitled to the information requested in its Set I Interrogatories, No. 40, as the investigative information is irrelevant, privileged, and not subject to disclosure pursuant to 66 Pa.C.S. § 335(d). Accordingly, compilation of a privilege log is unduly burdensome on I&E for the reasons described in greater detail in response to Paragraph 29, *infra*.

29. The averments in this paragraph set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further response, the information sought in Westover's Set I, No. 40 exceeds the permissible scope of discovery in that it does not bear upon a relevant issue in the case. 52 Pa. Code § 5.321(c); *Commonwealth v. Stewart*, 336 A.2d 282, 284 (Pa. 1975). Westover's baseless claim of selective prosecution is a red herring that will not lead to a legitimate defense of I&E's allegations that Westover is in violation of Act 127 and the Federal pipeline safety regulations. Any probative value of the information sought, which I&E denies exists, is not outweighed by the sound law and policy that fiercely protects the confidentiality of

I&E investigations that have not otherwise been released to the public such as through a complaint proceeding or settlement agreement. Indeed, the General Assembly recognized the sensitivity of investigative records in 66 Pa.C.S. § 335(d), which only permits their release if such documents were utilized or relied upon by the Commission in rendering final decisions. Releasing investigative documents not relied upon the Commission, such as what is requested in Westover's Set I, No. 40, would result in a chilling effect on the subjects of I&E investigations from freely cooperating with I&E. Essentially, production of these documents would force I&E to operate in a fishbowl, an undesirable result that the Pennsylvania Supreme Court recognized in *Commonwealth of Pa. v. Vartan*, 733 A.2d 1258 (Pa. 1999). Moreover, production of a privilege log in response to Westover's Set I, No. 40, is unduly burdensome as the request seeks irrelevant information that is beyond the scope of discovery and not otherwise subject to disclosure or release under 66 Pa.C.S. § 335(d).

30. The averments in this paragraph set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further response, the information sought in Westover's Set I, No. 40 exceeds the permissible scope of discovery in that it does not bear upon a relevant issue in the case. 52 Pa. Code § 5.321(c). This matter does not involve any other master meter system besides the systems operated by Westover. In addition, 52 Pa. Code 69.1201(c)(8) provides as follows: “[t]he amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.” The plain language of Section 69.1201(c)(8) demonstrates that the factor of deterrence relates to the utility or entity that is the subject of the proceeding and not an industry-wide basis, given that the size of the utility or entity is considered.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the presiding Administrative Law Judge deny Westover's Motion to Compel.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
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Date: March 7, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030251
	:	
Westover Property Management Company,	:	
L.P. d/b/a Westover Companies	:	
Respondent	:	

VERIFICATION

I, Scott Orr, Fixed Utility Valuation Engineer – 2, in the Bureau of Investigation and Enforcement’s Safety Division, hereby state that the facts above set forth 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: March 7, 2022



Scott Orr
Fixed Utility Valuation Engineer – 2
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030251
	:	
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:¹

David P. Zambito, Esq.
Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
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*Counsel for Westover Property
Management Company, L.P.
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Stephanie M. Wimer
Senior Prosecutor
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(717) 772-8839
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Dated: March 7, 2022

¹ See *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021) (permitting electronic service by Commission staff on parties).