



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

April 18, 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 Dismiss Objections and Compel Answers**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Answer of the Bureau of Investigation and Enforcement to the Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents 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'.

Stephanie M. Wimer  
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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	:	

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**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT  
TO THE MOTION TO DISMISS OBJECTIONS AND  
COMPEL ANSWERS TO INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS OF  
WESTOVER PROPERTY MANAGEMENT COMPANY, L.P.  
d/b/a WESTOVER COMPANIES**

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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 Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (“Motion”) of Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover”). For the reasons set forth herein, Westover’s Motion is both procedurally improper and substantively incorrect. Westover did not communicate with I&E about its dispute prior to filing the instant Motion.

1. Admitted in part and denied in part. It is admitted that I&E filed the Formal Complaint (“Complaint”) that initiated this proceeding on January 3, 2022, and that the Secretary’s Bureau served the Complaint on January 5, 2022. I&E is without

sufficient information or knowledge to form a belief as to the Secretary's Bureau method of service and the same is therefore denied. Any implication that Westover's Petition for Declaratory Order constitutes a good faith attempt to resolve legal issues rather than improperly avoiding I&E's investigation and evading lawful regulation is denied.

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 in part and denied in part. It is admitted that I&E and Westover attempted to negotiate a resolution of the discovery dispute and that Westover sought an extension of time to complete the negotiations. Westover's characterization of the Commission's regulation at 52 Pa. Code § 5.342(g) is denied. It is specifically denied that Section 5.342(g) "generally" requires a party to file a motion to compel within ten days of service of an objection to discovery. Section 5.342(g) unambiguously requires a party to file a Motion to Compel within ten days of service of an objection to interrogatories. It further provides that "[t]he motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10

days of service of the objection, the objected to interrogatory will be deemed withdrawn.”

52 Pa. Code § 5.342(g).

7. Admitted.

8. Admitted.

**A. Interrogatories and Requests for Production of Documents**

9. Admitted. By way of further answer, on February 10, 2022, I&E objected to Westover Set I, Nos. 22 and 23. I&E and Westover amicably resolved the discovery dispute related to Westover Set I, Nos. 22 and 23, and Westover did not include Westover’s Set I, Nos. 22 and 23 in its Motion to Compel filed on March 2, 2022. Pursuant to 52 Pa. Code § 5.342(g), Westover is precluded from compelling the production of the information sought in Westover Set I, Nos. 22 and 23 as any attempt to compel this information is now untimely. *See also Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order entered December 19, 2019) (finding, in pertinent part, that the moving party must include the interrogatory being objected to and the actual objection to the interrogatory in a motion to compel).

10. Admitted. By way of further answer, I&E objected to Westover’s Set I, No. 24 as being overly broad, unduly burdensome, and seeking the production of privileged information. Westover did not include Westover’s Set I, No. 24 in its Motion to Compel filed on March 2, 2022. Pursuant to 52 Pa. Code § 5.342(g), Westover is precluded from now challenging I&E’s objection to Westover’s Set I, No. 24 on the grounds that the Interrogatory is overly broad and unduly burdensome. *See also Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order entered December

19, 2019), *supra*. Additionally, to support its claim that the information sought constitutes privileged information, on March 30, 2022, I&E provided to Westover a 51-page privilege log that provided the specific privilege designation(s) pertaining to each document sought.

11. Admitted in part and denied in part. It is admitted that Westover's Set I included the definition of "Document" that appears in Paragraph 11. It is denied that it is appropriate to compel I&E to produce the Documents set forth in Westover Set I, No. 24.

**B. Applicable Commission Regulations**

12. Admitted. By way of further answer, 52 Pa. Code § 5.321(c) speaks for itself.

13. Admitted. By way of further answer, 52 Pa. Code § 5.361(a)(2) speaks for itself. On February 10, 2022, I&E objected to Westover's Set I, No. 24 as being, *inter alia*, overly broad and unduly burdensome. Westover did not challenge I&E's objection to Westover Set I, No. 24 in Westover's March 2, 2022 Motion to Compel. Accordingly, pursuant to 52 Pa. Code § 5.342(g), Westover is precluded from now challenging I&E's objection to Westover's Set I, No. 24 on these grounds. *See also Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order entered December 19, 2019), *supra*.

**C. I&E's Answer to Westover's Set I, No. 24**

14. Admitted. By way of further answer, 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)).

15. Admitted in part and denied in part. It is admitted that I&E claimed that certain documents in its privilege log are not subject to discovery based on the deliberative process/governmental privilege and that other documents in the privilege log are protected from discovery by the deliberative process/governmental privilege as well as other privileges such as the attorney-client privilege and/or the attorney work product doctrine. It is denied that compelling I&E to produce 28 documents that asserted the deliberative process/governmental privilege is appropriate.

**D. Westover is Precluded from Challenging I&E’s Claim that Westover’s Set I, No. 24 is Overly Broad and Unduly Burdensome**

16. Denied. I&E is without information or belief to know whether Westover designed its Set I, No. 24 as a “catch-all” question. It is further denied that Westover’s Set I, No. 24 is reasonably calculated to lead to the discovery of admissible evidence as it seeks all Documents in I&E’s possession without any specificity, qualification, or limitation. By way of further response, Westover is prohibited from now challenging I&E’s objection to Westover Set I, No. 24 on the grounds that the Interrogatory is overly broad and unduly burdensome as Westover failed to include Westover Set I, No. 24 in its March 2, 2022 Motion to Compel. *See* 52 Pa. Code § 5.342(g); *Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order entered December 19, 2019),

*supra*. Moreover, Westover admits that it seeks Documents in I&E's possession that informed I&E's decision to file a complaint against Westover. The Commission has determined that a staff report of a natural gas incident that was prepared for internal use to determine if official action should be taken against a jurisdictional entity is protected by the deliberative process privilege. *Re John M. DiDonato*, Docket No. P-900480 (Order entered December 19, 1990).

17. Denied. At this late juncture, Westover is prohibited from challenging I&E's objection to Westover Set I, No. 24 on the grounds that the Interrogatory is overly broad and unduly burdensome as Westover failed to include Westover Set I, No. 24 in its March 2, 2022 Motion to Compel. *See* 52 Pa. Code § 5.342(g); *Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order entered December 19, 2019), *supra*.

**E. The Documents in I&E's Possession regarding Westover Contain Privileged Investigative Information Protected from Disclosure by the Deliberative Process/Governmental Privilege**

18. 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.

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 answer, the deliberative process privilege, sometimes referred to as the governmental, executive or law enforcement privilege, protects documents that, if disclosed, would "seriously hamper the function of government or contravene the public interest." *Van Hine v. Dep't of State of the Commonwealth of Pa.*, 856 A.2d 204, 208

(Pa. Cmwlth. 2004). The deliberative process privilege benefits the public, and not the officials who assert the privilege. *Commonwealth of Pa. v. Vartan*, 733 A.2d 1258, 1264 (Pa. 1999) citing *Hamilton v. Verdow*, 414 A.2d 914, 924 (Court of Appeals of Md.). 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. v. Department of the Army of the United States*, 55 F.3d 827, 854 (3d Cir. 1995)). The deliberative process is recognized in the Right-to-Know Law at 65 P.S. § 67.708(b)(10)(i)(A) and protects:

[t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to . . . contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

*Id.* The concept behind the deliberative process/governmental privilege protection is that by guaranteeing confidentiality, the government will receive more candid advice, recommendations, and opinions, resulting in better decisions for society as a whole.

20. 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 answer, the Commission has accepted claims that information is protected by the deliberative process privilege without a showing that the head of the Commission personally reviewed the information and without an accompanying affidavit. *See Pa.*



*Pub. Util. Comm'n v. West Penn Power Co.*, Docket No. R-901609 *et seq.* (Order entered July 20, 1990) (protecting from disclosure confidential internal staff reports prepared by the Bureau of Audits and the Law Bureau under the deliberative process privilege); *Re John M. DiDonato*, Docket No. P-900480 (Order entered December 19, 1990) (protecting staff's investigative report that was prepared for internal use to determine if official action should be taken against a jurisdictional utility with respect to a natural gas explosion); *Andrezeski et al. v. Pennsylvania Electric Company*, Docket No. M-870172C001 *et seq.* (Order entered September 27, 1989) (protecting from disclosure a confidential internal staff report prepared by the Bureau of Audits).

21. Admitted in part and denied in part. It is admitted that I&E provided a privilege log without an affidavit. It is denied that producing an affidavit is necessary. There is no Commission regulation that requires a party to produce an affidavit when claiming any privilege in a matter related to discovery, including the deliberative process/governmental privilege. *Contra*, 52 Pa. Code § 5.482(a), which requires a party to provide an affidavit upon a motion for disqualification of a presiding officer, and 52 Pa. Code § 5.102(c), which requires a party to base a motion for summary judgment on supporting affidavits, among other items. Moreover, I&E's privilege log describes why the sought-after documents constitute privileged information. Should the presiding Administrative Law Judge determine that an affidavit is necessary to support a claim of privilege, then I&E requests the opportunity to provide an affidavit.

22. Admitted in part and denied in part. It is admitted that the Chairman of the Public Utility Commission did not personally review the documents in dispute. It is

denied that the Chairman's review is necessary or appropriate. I&E incorporates its answers to Paragraph 20, *supra*.

23. Denied. In its objections to Westover's Set I, No. 24, I&E explained that the sought-after documents in I&E's possession concerning Westover contain confidential deliberations of law and reflect opinions, recommendations or advice. Requiring I&E to disclose the thought processes of the I&E Safety Division developed during pipeline safety investigations would compromise the frank exchange of opinions and ideas that the deliberative process/governmental privilege protects.

24. Denied. The referenced inspection report prepared by Mr. Orr was placed in I&E's file and contains an inspection summary and his recommendations for internal use to determine if official action should be taken against Westover, just as was the case in *Re John M. DiDonato*, Docket No. P-900480 (Order entered December 19, 1990). Although Mr. Orr's inspection report was not specifically prepared or sent to any single individual, it is readily available and accessible to applicable I&E personnel.

25. Denied. Disclosure of the Documents referenced as deliberative process/governmental privilege set forth in I&E's privilege log would seriously hamper I&E Safety Division pipeline safety inspectors from candidly communicating about inspection findings and results, evaluating inspections, and internally proposing a course of action. It is not in the public interest to force the I&E Safety Division to publicly share its confidential investigative files. Indeed, such information is protected from disclosure when a Right-to-Know request is filed seeking the same. *See* 65 P.S. § 67.708(b)(17) (exempting a requester from accessing records of an agency relating to a noncriminal

investigation including investigative materials, notes, correspondence and reports). The instant matter is similar to *Commonwealth of Pa. v. Commonwealth of Pa., Pa. Pub. Util. Comm'n*, 331 A.2d 598 (Pa. Cmwlth. 1975) in that it involves staff reports that analyze and recommend governmental positions. Such reports were protected from disclosure.

26. 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.

27. 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.

28. Denied. Several of the factors referenced in Westover's Paragraph 27 support protecting I&E Documents from disclosure. For example, compelling the I&E Safety Division to disclose confidential investigative Documents will chill the I&E Safety Division's ability to internally deliberate in a candid manner. The I&E Safety Division's pipeline safety program, which is federally funded, depends on the frank discussion and opinions of its pipeline safety engineers to effectively evaluate the complex scheme of Federal pipeline safety regulations and pipeline systems that are inspected. Moreover, I&E's Complaint was brought in good faith and in the interests of a noble pursuit – protecting public safety. Westover is free to engage its own pipeline safety experts to examine Westover's master meter systems in relation to the Federal pipeline safety regulations.

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. It is specifically denied that the Documents that I&E has identified as being privileged

pursuant to the deliberative process/governmental privilege are factual rather than evaluative.

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. It is specifically denied that Westover will be deprived of due process if it does not obtain privileged information. It is also denied that the instant proceeding involves or is analogous to a criminal matter.

31. 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 answer, protecting the I&E Safety Division's investigative Documents from disclosure is in the public interest for the reasons articulated herein.

32. 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.

**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 Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents.

Respectfully submitted,



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

Kayla L. Rost  
Prosecutor  
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Michael L. Swindler  
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Date: April 18, 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: April 18, 2022



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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  
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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:<sup>1</sup>**

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*Counsel for Westover Property  
Management Company, L.P.  
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Dated: April 18, 2022

<sup>1</sup> 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).