**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 ADDRESSING MOTIONS TO COMPEL**

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

**AND THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

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, I&E filed a formal Complaint against Westover Property Management Company, L.P. d/b/a Westover Companies (Westover) 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 January 31, 2022, Westover served its Interrogatories and Requests for Production of Documents, Set I, on I&E.

On February 10, 2022, I&E served its formal Objections to the Interrogatories of Westover.

On February 22, 2022, Westover filed with the Commission, on both Westover’s and I&E’s behalf, an Agreement to Extend Discovery Deadlines. In the agreement, Westover indicated that the parties entered negotiations to resolve their discovery dispute and required additional time. Accordingly, Westover and I&E agreed that the deadline for Westover to file a Motion to Compel was extended until the close of business on Wednesday, March 2, 2022.

On March 2, 2022, Westover filed its Motion of Westover Property Management Company, L.P. d/b/a Westover Companies to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (Westover Motion to Compel #1).

On March 7, 2022, I&E filed its 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 (I&E Answer to Westover Motion to Compel #1).

On March 30, 2022, I&E served its Interrogatories and Requests for Production of Documents – Set I.

On April 11, 2022, Westover filed its Motion of Westover Property Management Company, L.P. d/b/a Westover Companies to Dismiss objections and Compel Answer to Interrogatories and Requests for Production of Documents (Westover Motion to Compel #2).

Also on April 11, 2022, Westover served its Objections of Westover Property Management Company, L.P. d/b/a Westover Companies to the Interrogatories and Requests for the Production of Documents – Set 1, Propounded by the Bureau of Investigation and Enforcement.

On April 18, 2022, I&E filed its 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 (I&E Answer to Westover Motion to Compel #2).

On April 21, 2022, I&E filed its Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (I&E Motion to Compel).

On April 26, 2022, Westover filed its Answer of Westover Property Management Company, L.P. D/B/A Westover Companies to the Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answer to Interrogatories and Requests for Production of Documents (Westover Answer to I&E’s Motion to Compel).

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.

The Call-In Telephonic Prehearing Conference was held as scheduled on October 5, 2022. Counsel for I&E and Westover participated. During the Prehearing Conference, Counsel for I&E and Westover advised that they have not been able to resolve their discovery issues in the months following their respective Motions to Compel and asked that I make a determination on their Motions.

The Motions to Compel filed by Westover and the Motion to Compel filed by I&E will be addressed below.

DISCUSSION

The Commission’s rules provide that “parties are encouraged to exchange information on an informal basis.” 52 Pa. Code § 5.322. The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

**§ 5.321. Scope.**

(c)  *Scope*. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. PUC 56 (August 26, 1986); and *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. PUC 468 (May 16, 1986).

Section 5.361 of the Commission’s regulations, however, provides various limitations on the scope of discovery:

**§ 5.361. Limitation of scope of discovery and deposition.**

 (a)  Discovery or deposition is not permitted which:

  (1)  Is sought in bad faith.

   (2)  Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

   (3)  Relates to matter which is privileged.

   (4)  Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a). “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).

Discovery “may not include 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 § 3.323(a). The Pennsylvania Supreme Court has held:

As has been observed, the work product protection supports our judicial system, based on the adversarial process by allowing counsel privacy to develop ideas, test theories, and explore strategies in support of the client’s interest, without fear that the documents in which the ideas, theories and strategies are written will be revealed to the opposing counsel. Allowing counsel to document legal theories without concern of disclosure encourages better representation of clients, which in turn benefits justice.

*Barrick v. Holy Spirit Hosp. of the Sisters of Christian Charity,* 625 Pa. 301, 312-13, 91 A.3d 680, 686 (2014).

Requests for legal theories and conclusions are not allowed. *See, e.g.*, *City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Cmwlth. 1971) ("’Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.’") (quoting *American Car & Foundry Company v. Alexandria Water Company*, 70 A. 867, 869 (Pa. Super. 1908)).

**Westover’s March 2, 2022 Motion to Dismiss Objections and Compel Answers**

On January 31, 2022, Westover served its Interrogatories and Requests for Production of Documents – Set I (Westover Set I) on I&E.

On February 10, 2022, I&E filed its timely Objections to certain interrogatories and requests for production of documents in Set I. As it pertains to the March 2, 2022 Motion to Compel, I&E objected to Westover Set I, Nos. 5 and 40, which read as follows:

Westover Set I, No. 5: Provide copies of any Documents pertaining to Informal Investigations by I&E of alleged operators of master meter systems, in which the Informal Investigation was closed without a settlement agreement and without I&E filing a Formal Complaint.

Westover Set I, No. 40: Reference I&E’s Answer to Westover’s Petition page 7: “The issuance of such a Declaratory Order would send a clear message not only to Westover but also to similarly situated pipeline operators that have not yet registered with the Commission that master meter systems are, without question, subject to the Commission’s safety oversight.” Does I&E believe that any other apartment complex in Pennsylvania operates a “master meter system,” even though it is not registered as a “pipeline operator” pursuant to Act 127? If so:

1. Identify each such apartment complex;
2. Explain why I&E believes that each such apartment complex operates a “master meter system;”
3. Explain all efforts taken by I&E to encourage each such apartment complex to comply with Act 127; and
4. Identify any informal investigations or complaints instituted against any such apartment complex.

On March 2, 2022,[[1]](#footnote-1) Westover filed a Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (March 2, 2022 Motion to Compel). Westover referenced the parties’ negotiations to resolve their discovery disputes and advised that their negotiations resolved their discovery dispute as to all issues other than Westover’s Interrogatories Set I, Nos. 5 and 40. Regarding Interrogatory Nos. 5 and 40, Westover referenced the instructions to Set I at ¶¶ 7, 18, and 19 and argued that I&E did not provide a privilege log, that it merely asserted that certain unidentified documents are privileged. Westover maintains that without a privilege log, neither Westover or the Presiding Officer can evaluate I&E’s claim that the withheld documents are privileged. Additionally, Westover notes that I&E provides no explanation of why the production of a privilege log would cause an unreasonable burden, nor does it explain why the production of any relevant non-privileged documents would cause an unreasonable burden. Accordingly, Westover requests that I direct I&E to produce any non-privileged documents responsive to Westover Interrogatory Nos. 5 and 40. Westover further requests that I direct I&E to produce privilege logs responsive to Westover Set I, Nos. 5 and 40 which: identify each document claimed to be privileged; state the date of each such document; identify the author, preparer, or signer of each such document; identify every person to whom each such document was distributed; indicate the nature and subject matter of each such document; and state the basis on which each such document is claimed to be privileged.

On March 7, 2022, I&E filed its Answer to Westover’s March 2, 2022 Motion. I&E maintains that 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 defense. I&E further maintains that 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 pursuant to 66 Pa.C.S. § 335(d). Lastly, I&E asserts that production of a privilege log in response to Westover Set I Interrogatories, Nos. 5 and 40 would create an unreasonable burden as the information is not relevant or subject to disclosure pursuant to 66 Pa.C.S. § 335(d).

The information Westover seeks through its Interrogatories Set I, Nos. 5 & 40, constitutes a request for privileged information regarding I&E’s investigations and assessments of alleged master meter operators and apartment complexes, other than Westover, that are not even related to this proceeding. These interrogatories seek information beyond the scope of this proceeding that I&E cannot rely upon in its prosecution of its case against Westover. Moreover, Westover has not shown that obtaining this privileged information is reasonably calculated to lead to the discovery of admissible evidence.

Accordingly, Westover’s March 2, 2022 Motion to Compel answers to interrogatories 5 and 40 is denied.

**Westover’s April 11, 2022 Motion to Dismiss Objections and Compel Answers to Interrogatory No. 24**

On February 10, 2022, I&E filed its timely Objections to certain interrogatories and requests for production of documents in Westover Set I. In addition to Set I, Nos. 5 and 40, which I addressed in the previous section, I&E also objected to Set I, No. 24, which reads as follows:

Westover Set I, No. 24: Provide copies of any other Documents in I&E’s possession regarding Westover.

On March 30, 2022, I&E served a 51-page Privilege Log[[2]](#footnote-2) pertaining to Set I, No. 24. I&E’s Privilege Log indicated that 28 documents are privileged based on the deliberative process/governmental privilege.

On April 11, 2022, Westover filed its Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (April 11, 2022 Motion to Compel). In the April 11, 2022 Motion to Compel, Westover indicated that it is only seeking the 28 documents that I&E withheld based solely on the deliberative process/governmental privilege. Westover argued that I&E’s claims that Westover Set I, No. 24 is overly broad and unduly burdensome should be rejected. Moreover, Westover argued that I&E’s claim that the 28 disputed documents are protected by the deliberative process/governmental privilege should be rejected.

On April 18, 2022, I&E filed its 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 (I&E Answer to Westover Motion to Compel #2). In I&E’s Answer to Westover’s Motion Compel #2, I&E maintained that Westover is precluded from challenging I&E’s claim that Westover’s Set I, No. 24 is overly broad and unduly burdensome because, pursuant to 52 Pa. Code § 5.342(g), Westover failed to include Westover Set I, No. 24 in its March 2, 2022 Motion to Compel. Moreover, I&E asserted that the documents in its possession regarding Westover contain privileged investigative information protected from disclosure by the Deliberative Process/Governmental Privilege.

Westover’s request for the production of 28 documents requested in No. 24 is denied because Westover failed to timely file its motion to compel. The Commission’s regulation on motions to compel provide, in pertinent part, that:

[w]ithin 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The 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).

In this instance, Westover served its Interrogatories on I&E on January 31, 2022 and I&E filed with the Commission’s Secretary a Certificate of Service indicating its Objections to several of these Interrogatories, including Set I, No. 24, on February 10, 2022. Pursuant to Commission regulations, any motion to compel by Westover was due on February 22, 2022.[[3]](#footnote-3) However, on February 22, 2022, Westover filed with the Commission’s Secretary, on behalf of both parties, a letter indicating: that the parties were negotiating a resolution to their discovery dispute; that the parties needed additional time; and that the parties agreed that the deadline for Westover to file a Motion to Compel was extended until the close of business on Wednesday, March 2, 2022.

As previously noted, Westover filed its Motion to Compel on March 2, 2022 advising that the parties negotiations resolved their discovery disputes as to all issues other than Westover’s Interrogatories Set I, Nos. 5 and 40. Westover made no mention of the ongoing discussions regarding Westover Set I, No. 24. Moreover, at no time did Westover file anything else with the Commission advising that the parties were still trying to resolve this discovery dispute and that more time was needed.

Pursuant to 52 Pa. Code § 5.342(g), if a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn. It is clear that the parties were attempting to amicably resolve their discovery dispute and agreed to move the due date for a motion to compel until March 2, 2022. However, once that date passed without Westover filing a motion to compel a response to Westover Set I, No. 24, or even another letter advising the Commission that the parties had again agreed to an extension, then pursuant to 52 Pa. Code § 5.342(g), Westover’s Interrogatory Set I, No. 24 must be deemed withdrawn. Moreover, I&E’s provision of the privilege log in this instance is, in and of itself, sufficient to warrant denying Westover’s Motion.

Accordingly, Westover’s April 11, 2022 Motion to Compel is denied.

**I&E’s April 21, 2022 Motion to Dismiss Objections and Compel Answers**

On March 30, 2022, I&E served its Interrogatories and Requests for Production of Documents – Set I (I&E Set I) on Westover.

On April 11, 2022, Westover filed its timely Objections of Westover Property Management Company, L.P. d/b/a Westover Companies to the Interrogatories and Requests for the Production of Documents – Set I, Propounded by the Bureau of Investigation and Enforcement. Westover objected to I&E’s Set I Interrogatories, Nos. 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39, which read as follows:

I&E Set I, No. 6: Other than the cases referenced in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint, indicate the names of each apartment complex in Pennsylvania where Westover purchases metered gas from a natural gas distribution company and distributes gas to Westover’s tenants who either purchase the gas directly through a meter or by other means such as rents.

I&E Set I, No. 7: For each of the apartment complexes identified in response to I&E Set I, No. 6, describe the type of pipeline facilities that Westover operates in its distribution of gas to tenants.

I&E Set I, No. 8: For each of the apartment complexes identified in response to I&E Set I, No. 6, describe the precise configuration of Westover’s pipeline facilities, starting with a description of where and how they connect to the natural gas distribution company meter and where and how they distribute gas to tenants.

I&E Set I, No. 9: For each of the apartment complexes identified in response to I&E Set I, No. 6, provide copies of any and all sample lease agreements, contracts, and/or other communications from January 1, 2021 to the present time describing the terms and conditions of Westover’s distribution of gas to tenants.

I&E Set I, No. 10: Indicate whether Westover distributes gas in Pennsylvania to tenants other than those residing in apartments or complexes, where Westover tenants purchase gas from Westover either directly through or by other means, such as by rents. If answered affirmatively, identify the name and address of each location.

I&E Set I, No. 11: For each location identified in response to I&E Set I, No. 10, describe the type of pipeline facilities that Westover operates in its distribution of gas to tenants.

I&E Set I, No. 12: For each location identified in response to I&E Set I, No. 10, describe the precise configuration of Westover’s pipeline facilities, starting with a description of where and how they connect to the natural gas distribution company meter and where and how they distribute gas to the tenants.

I&E Set I, No. 13: For each location identified in response to I&E Set I, No. 10, provide copies of any and all sample lease agreements, contracts, and/or other communications from January 1, 2021 to the present time describing the terms and conditions of Westover’s distribution of gas to tenants.

I&E Set I, No. 16: From February 20, 2012 to the present time, indicate whether Westover became aware of or reported any suspected natural gas leaks at the apartment complexes referenced in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and at the non-residential locations identified in response to I&E Set I, No. 10, above. If answered affirmatively, provide the following information for each natural gas leak:

a. The date that Westover became aware of or reported the leak;

b. The location of the leak;

c. Whether Westover reported the leak to a natural gas distribution company;

d. The name of the natural gas distribution company where Westover reported the leak;

e. The cause of the leak;

f. A description of the repairs made; and

g. Whether an outage of natural gas service occurred resulting from the leak.

I&E Set I, No. 17: From February 20, 2012 to the present time, provide a copy of any and all reports prepared by consultants retained by Westover concerning Westover’s pipeline facilities at the apartment complexes referenced in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint, and in response to I&E Set I, No. 6, above, and at the nonresidential locations identified in response to I&E Set I, No. 10, above.

I&E Set I, No. 18: Provide any and all maps and/or other records in Westover’s possession depicting pipeline facilities at the apartment complexes referenced in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint, the locations identified in response to I&E Set I, No. 6, above, the non-residential locations identified in response to I&E Set I, No. 10, above, and at the following locations:

a. Park Court

b. Oak Forest

c. Woodland Plaza

d. Mill Creek

e. Country Manor

f. Fox Run

g. Main Line Berwyn

h. Black Hawk

i. Paoli Place

j. Concord Court

k. Gladstone Towers

l. Hillcrest

m. Lansdowne Towers

n. Lansdale Village

o. Norriton East

p. Valley Stream

q. Willow Run

I&E Set I, No. 19: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for the non-residential locations identified in response to I&E Set I, No. 10, above, provide the following information concerning Westover’s pipeline facilities:

a. The type of material of the pipe, i.e., plastic or steel;

b. The date of manufacture;

c. The date of installation;

d. The length of pipeline segments that transport gas from the natural gas distribution company meter to the tenant;

e. For steel pipeline facilities, the type of weld joints and methods of welding;

f. The outer diameter of all piping;

g. The wall thickness of any steel piping; and

h. The standard dimensional ratio of any plastic piping.

I&E Set I, No. 20: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint, and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, provide any and all records to demonstrate that Westover’s pipeline facilities were installed free of defects.

I&E Set I, No. 21: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, list the locations of all squeeze offs and the dates when squeeze offs were performed.

I&E Set I, No. 22: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, list the location of all end caps and specify the type of each end cap.

I&E Set I, No. 23: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, provide the following information related to valves:

a. The location of each valve;

b. The make and model of each valve;

c. The maximum service pressure of each valve;

d. The size of a key for each valve;

e. Records, including dates, to demonstrate the last three (3) inspection cycles of all valves;

f. Pressure test records of shell testing of each valve;

g. Records to illustrate pressure testing after the installation of each valve; and

h. Records of each valve’s operation after the final pressure test.

I&E Set I, No. 24: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, identify the location of all steel service lines operating at less than 100 pounds per square inch (“p.s.i.”).

I&E Set I, No. 25: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, identify the location of all plastic service lines installed below ground level. For each plastic service line installed below ground level, indicate:

a. the location of all service risers;

b. the length of all risers; and

c. the material type for each riser.

I&E Set I, No. 26: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above, identify:

a. the locations of all excess flow valves;

b. the make and model of each excess flow valve;

c. the date of installation of each excess flow valve; and

d. the manufacturers’ written specifications for testing each type of valve.

I&E Set I, No. 27: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above provide:

a. the locations of all manual service line shut-off valves;

b. the date of installation of each manual service line shut-off valve;

c. the make and model of each manual service line shut-off valve;

d. the type of connection of each manual service line shut-off valve to the main line piping;

e. the scheduled maintenance of each manual service line shut-off valve as set forth in the valve manufacturer’s specification; and

f. maintenance records for each manual service line shut-off valve for the last three (3) cycles.

I&E Set I, No. 28: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, above provide the following information related to corrosion control:

a. all documents demonstrating corrosion control maintenance for the last five (5) years;

b. the location of all anodes;

c. whether any master meter system is subject to interference currents;

d. whether each master meter system is rectified;

e. whether each master meter system has any foreign bonds;

f. all documents illustrating external corrosion control examinations of buried pipelines for the last five (5) years; and

g. all records of atmospheric corrosion control monitoring and maintenance conducted for the last three (3) cycles.

I&E Set I, No. 29: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, provide test records for all pressure tests conducted on Westover’s pipeline facilities for the past five (5) years and indicate:

a. the test pressure;

b. the duration of the test;

c. the name of the person who conducted the test;

d. the test medium used;

e. all pressure charts and tables;

f. documents showing elevation variations; and

g. an identification of any leaks or failures discovered.

I&E Set I, No. 30: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, identify all repairs made over the past five (5) years. For each repair, identify:

a. what was replaced, repaired, or removed from service;

b. the date of each repair;

c. the method of each repair;

d. the person who completed the repair;

e. the procedure used to make the repair;

f. the reason for the repair; and

g. the location and description of any leaks discovered.

I&E Set I, No. 31: If any of the repairs provided in response to I&E Set I, No. 30 resulted in pipe replacement, identify and provide:

a. the material of the new pipe;

b. the length of the new pipe;

c. the types of coupling methods used;

d. all lists of equipment used to install the new pipe;

e. whether pressure tests were performed on the new pipe; and

f. if pressure tests were performed on the new pipe, indicate the duration and type of medium of the pressure tests and provide all pressure test reports.

I&E Set I, No. 32: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, provide all patrolling records for any patrols conducted on each master meter system for the last three (3) cycles.

I&E Set I, No. 33: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, provide all records of any leak surveys conducted for the last three (3) cycles for each master meter systems.

I&E Set I, No. 34: For each leak survey provided in response to I&E Set I, No. 33, above, indicate the type of equipment used.

I&E Set I, No. 35: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, provide all records for any abandoned or deactivated pipeline facilities for each master meter system.

I&E Set I, No. 36: For each instance of abandonment or deactivation provided in response to I&E Set I, No. 35, above, indicate:

a. how each line was purged;

b. how Westover complied with the requirements set forth in 49 CFR § 192.727; and

c. all records related to each instance of abandonment and deactivation.

I&E Set I, No. 37: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, provide all records related to emergency valve maintenance and emergency valve inspections for the past three (3) cycles.

I&E Set I, No. 38: For each instance of emergency valve maintenance or emergency valve inspection provided in response to I&E Set I, No. 37, above, indicate:

a. the date of the maintenance or inspection; and

b. the valve identification number.

I&E Set I, No. 39: For each of the apartment complexes identified in Paragraph 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint and in response to I&E Set I, No. 6, above, and for each of the non-residential locations identified in response to I&E Set I, No. 10, provide the following information related to operator qualification:

a. all lists of covered tasks;

b. all operator qualification records for Westover employees or Westover contractors who perform a covered task;

c. the dates in which each Westover employee or Westover contractor was qualified to perform the covered task; and

d. all lists of abnormal operating conditions for each covered task.

On April 21, 2022, I&E filed its Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (I&E Motion to Compel). In I&E’s Motion to Compel, I&E maintains that its Set I Interrogatories are relevant to the pending action and relate to I&E’s allegations. I&E asserts that its interrogatories were designed so that I&E may discover the identity of Westover’s master meter systems in Pennsylvania, the type of facilities that Westover operates, the manner in which tenants purchase the natural gas, the duration in which Westover has operated master meter systems, the occurrence of natural gas leaks on Westover’s pipeline facilities, and Westover’s compliance with specific sections of Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1-192.1015. I&E maintains that knowing the specific pipeline configuration of each of Westover’s master meter systems is especially crucial as each system must be evaluated on a case-by-case basis to determine whether it is jurisdictional.

Additionally, I&E asserted: that responses to each of the requests in I&E’s Set I are essential for I&E to support its claim that Westover is operating as an unregulated natural gas master meter system and to enforce compliance with the Federal pipeline safety regulations, as adopted by Act 127; that I&E’s claims are not limited to the legal question of Commission jurisdiction over Westover’s facilities; and that the allegations set forth in I&E’s Complaint raised factual issues related to Westover’s compliance with Federal pipeline safety regulations as it relates to Westover’s pipeline facilities and records.

I&E also argues that I&E’s Set I Interrogatories, Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 also seek to discover information about apartment complexes named in I&E’s Complaint and discussed in Paragraphs 7(B) and 7(C) of Westover’s Answer to I&E’s Complaint. I&E asserts that obtaining information related to specific apartment complexes averred in I&E’s Complaint and discussed by Westover is relevant and discoverable.

I&E further asserts that its Set I Interrogatories are reasonable and sought in good faith. I&E maintains that its Set I Interrogatories were narrowly tailored to discover information about specific aspects of Westover’s master meter systems, information I&E argues it was precluded from discovering due to Westover’s non-cooperative stance during the I&E Safety Division’s investigation. I&E maintains that there is not a single Interrogatory that does not relate to a non-pipeline safety matter.

Additionally, I&E maintains that records maintained by pipeline operators describe the details sought in I&E’s Set I Interrogatories. If those records are not in Westover’s possession or Westover does not otherwise know the responses to I&E’s Set I Interrogatories after conducting a reasonable investigation, then indicating that Westover is without knowledge to answer the discovery requests is an acceptable response. I&E explains that it is not demanding that Westover conduct an unreasonable investigation by uncovering pipe that is buried behind walls or beneath floors. I&E further explains that it is not demanding that Westover contact prior owners of the master meter systems to gather information responsive to I&E’s Set I Interrogatories.

Regarding Westover’s Objection that I&E is seeking information from February 20, 2012 to the present, it is I&E’s position that it is entitled to know whether Westover complied with Act 127 since the time that Act 127 became effective. I&E notes that it is not seeking a civil penalty for Westover’s alleged failure to comply with Act 127 more than three (3) years ago as such action would exceed the statute of limitations at 66 Pa.C.S. § 3314(a) as it applies to civil penalties under 66 Pa.C.S. § 3301(c). I&E maintains, however, that there is no limitation in Act 127 for the duration in time in which I&E may seek the filing of an Act 127 registration form or a related Act 127 assessment fee. The filing of a form and payment of a registration fee is not a civil penalty or forfeiture, especially when Westover was most likely obligated to file registration forms and pay Act 127 assessments on an annual basis since Act 127 became effective. Additionally, Westover has not identified a statute of limitations that applies to the non-civil penalty provisions of Act 127.

On April 26, 2022, Westover filed its Answer of Westover Property Management Company, L.P. D/B/A Westover Companies to the Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (Westover’s Answer to I&E’s Motion to Compel). In the Answer, Westover maintained that I&E’s Motion to Compel should be denied as procedurally improper because I&E failed to provide specific responses to each of Westover’s Objections and instead made sweeping assertions based on broad-brush characterizations of its Interrogatories. Westover asserted that, as 52 Pa. Code § 5.342(c) requires specificity when objecting to an interrogatory, a motion to compel should also be specific, describing pertinent law, facts, and circumstances purporting to support the request to overrule each objection. Westover further asserted that, pursuant to 52 Pa. Code § 5.321 (c), I&E should be required to demonstrate specifically why each Interrogatory is reasonably calculated to lead to the discovery of admissible evidence.

Additionally, Westover asserted that I&E’s interrogatories would cause unreasonable oppression, burden or expense in violation of 52 Pa. Code § 5.361(a)(2). Westover argued that, regarding Interrogatories 16 and 17, requesting information over a ten-year period would cause unreasonable oppression, burden, or expense. Moreover, Westover concluded that if I&E’s Motion to Compel is granted, Interrogatories 19-39, including all of its subparts, would require Westover to answer 1,258 Interrogatories pertaining to the 17 systems named in the Complaint, plus an additional 2,294 Interrogatories pertaining to the systems not named in the Complaint, for a total of 3,550 Interrogatories.

Westover also asserted that the threshold issue in this case is whether Westover’s Systems need to comply with the federal pipeline safety laws in the first place. Westover indicated that even I&E conceded that it does not have the information necessary to determine whether any of Westover’s systems are jurisdictional. Accordingly, Westover maintained that for any system that is not jurisdictional, the dozens of interrogatories relating to compliance with the federal pipeline safety laws are not only unreasonably oppressive and burdensome, they are not reasonably calculated to lead to the discovery of admissible evidence, and so are beyond the permissible scope of discovery.

Lastly, Westover argued that many of I&E’s Interrogatories violate 52 Pa. Code § 5.321(c) which requires that information sought in discovery should be reasonably calculated to lead to the discovery of admissible evidence. Noting that I&E contended that this objection should be overruled because each of its Interrogatories requests information essential for I&E to support the claims in its Complaint, Westover asserted that such a generalized assertion is insufficient to overcome a specific objection to a specific interrogatory.

I agree with Westover that the threshold issue in this case is whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act. This is the issue raised by Westover in its December 13, 2021 Petition for Declaratory Order and May 16, 2022 Amended Petition. However, pursuant to the Commission’s Order entered on August 25, 2022 in which Westover’s Petition for Declaratory Order was consolidated with I&E’s January 3, 2022 Complaint, I must also address the issues raised by I&E in its January 3, 2022 Complaint, which allege Westover’s violations of Act 127, and Part 192 of the Federal pipeline safety regulations. Due to the Commission’s August 25, 2022 Order consolidating these matters, I am not persuaded by Westover’s argument that for any system that is not jurisdictional the dozens of interrogatories relating to compliance with the federal pipeline safety laws are unreasonably burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of permissible discovery. Responses to these interrogatories will assist the Commission in determining whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act. Moreover, if it is determined that Westover does fall under the Commission’s jurisdiction, this information may further assist in determining if Westover was in compliance with the Act.

I am also not persuaded by Westover’s argument that I&E’s Motion to Compel should be denied as procedurally improper because I&E failed to provide specific responses to each of Westover’s Objections. While Westover is correct that Commission regulations at 52 Pa. Code § 5.342(c) require specificity when objecting to an interrogatory, Commission regulations regarding motions to compel have no such requirement. As previously noted, the Commission’s regulation on motions to compel provide, in pertinent part, that:

[w]ithin 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The 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). While added detail may be beneficial to the presiding officer charged with deciding the dispute, lack of specificity is not a fatal flaw.

However, this does not mean that I find all of Westgate’s arguments to be unpersuasive. First, I agree with Westover that requesting information over a ten-year period would cause unreasonable oppression, burden, or expense in violation of 52 Pa.Code § 5.361(a)(2). It is important to note that the Public Utility code prohibits prosecutions for violations occurring more than three years before a complaint is filed:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part*, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose*, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a) (emphasis added). While it has yet to be determined if the Commission has jurisdiction over Westover, and if the Commission does have jurisdiction, whether Westover is in violation of Act 127, this provision places a limitation on how far back the Commission may look at Westover’s systems. I&E’s argument that there is no limitation in Act 127 for the duration of time in which I&E may seek the filing of an Act 127 registration form or a related Act 127 fee is not persuasive in overcoming the three-year limitation set out in 66 Pa.C.S. § 3314(a). Anything that occurred prior to that date would be irrelevant to this proceeding. In this instance, the Commission may only look back three years prior to the date that I&E filed the Complaint, or January 3, 2019.

Moreover, I agree with Westover that Interrogatories not related to the specific apartment complexes identified in I&E’s Complaint and addressed by Westover in its Answer and Amended Petition are beyond the scope of this proceeding. Accordingly, I&E’s Motion to Compel will only be granted to the extent it seeks answers to interrogatories related to the apartment complexes specifically identified in I&E’s Complaint and addressed by Westover in its Answer and Amended Petition. If, following a reasonable investigation, Westover determines that information in response to an interrogatory is not available, then Westover can advise I&E of its investigation and its inability to obtain the requested information.

Accordingly, I will grant I&E’s Motion to Compel in part and deny it in part. I&E’s Motion to Compel is granted in that Westover is directed to provide responses to I&E’s Interrogatories for apartment complexes specifically identified by I&E in their Complaint and addressed by Westover in its Answer and Amended Petition. I&E’s Motion to Compel is denied in that Westover is not required to provide responses related to apartment complexes not specifically identified in the aforementioned filings. Moreover, in accordance with 66 Pa.C.S. § 3314(a), for I&E Set I, Nos. 16 and 17, Westover is directed to provide information in response to these interrogatories for anything that occurred between January 3, 2019, and the present.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents filed by Westover on March 2, 2022 is denied.
2. That the Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents filed by Westover on April 11, 2022 is denied.
3. That the Motion of the Bureau of Investigation and Enforcement to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents filed by I&E on April 21, 2022 is granted in part and denied in part.
4. That Westover is directed to provide responses to I&E Interrogatories Set I, Nos. 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 consistent with the discussion herein within twenty days from the date of issuance of this Order.

Date: October 25, 2022 /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  
  
P-2021-3030002 - PETITION OF WESTOVER PROPERTY MANAGEMENT COMPANY, L.P. D/B/A WESTOVER COMPANIES FOR A DECLARATORY ORDER REGARDING THE APPLICABILITY OF THE GAS AND HAZARDOUS LIQUIDS PIPELINE ACT***Updated 10/05/22*

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1. As previously noted, on February 22, 2022, Westover filed with the Commission, on both Westover’s and I&E’s behalf, an Agreement to Extend Discovery Deadlines. In the agreement, Westover indicated that the parties had entered negotiations to resolve their discovery dispute and required additional time. Accordingly, Westover and I&E agreed that the deadline for Westover to file a Motion to Compel was extended until the close of business on Wednesday, March 2, 2022. [↑](#footnote-ref-1)
2. Westover indicated in its April 11, 2022 Motion to Compel that, in an attempt to resolve their discovery dispute, the parties agreed that I&E would have thirty days to provide a privilege log of documents that it claimed were privileged. [↑](#footnote-ref-2)
3. Monday, February 21, 2022 was the President’s Day holiday. Commission offices were closed on that date. [↑](#footnote-ref-3)