**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 GRANTING THE MOTION OF**

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

**TO COMPEL ENTRY FOR INSPECTION**

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 May 16, 2022, Westover filed an Amended Petition of Westover Companies for Declaratory Order.

By Order entered on August 25, 2022, the Commission ordered that pursuant to 52 Pa.Code § 5.81, Westover’s Petition for Declaratory Order is consolidated with the Complaint proceeding at Docket No. C-2022-3030251, and that the matter be assigned to the Office of Administrative Law Judge (OALJ) for resolution of the disputed material facts and legal issues in the ongoing controversy at Docket No. C-2022-3030251 and issuance of a recommended decision.

By Initial Call-In Telephonic Prehearing Conference Notice dated August 29, 2022, an Initial Call-In Telephonic Prehearing Conference was scheduled for October 5, 2022, and the matters at Docket Nos. P-2021-3030002 and C-2022-3030251 were assigned to me.

On October 3, 2022, I&E served its Requests for Entry for Inspection on Westover.

On October 13, 2022, Westover served its Answers and Conditions of Westover Property Management Company L.P. d/b/a Westover Companies to the Requests for Entry for Inspection of the Bureau of Investigation and Enforcement.

On October 24, 2022, I&E filed its Motion of the Bureau of Investigation and Enforcement to Compel Entry for Inspection (Motion).

On October 31, 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 Compel Entry for Inspection.

I&E’s Motion is ready for disposition. For the reasons discussed below, the Motion will be granted.

DISCUSSION

I&E filed a Motion to allow I&E access to inspect the natural gas pipeline facilities at properties owned and maintained by Westover.

As a preliminary matter, it is well settled that Commission regulations allow parties the opportunity to conduct 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. 52 Pa.Code § 5.321(c). It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. *Id.* Discovery is not permitted, however, if it: is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden, or expense; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the deponent, a party or witness. 52 Pa.Code § 5.361(a); *see also*, *City of Pittsburgh v. Pa.P.U.C*., 526 A.2d 1243 (Pa.Cmwlth 1987), *alloc. denied*, 538 A.2d 880 (Pa. 1988).

I&E’s Motion pertains specifically to Section 5.349 of the Commission’s discovery regulations. This section provides, in pertinent part:

**§ 5.349. Requests for documents, entry for inspection and other purposes.**

 (a)  A party may serve on another party a request for either of the following:

   (1)  To produce and permit the party making the request, or someone acting on the party’s behalf, to inspect and copy designated documents—including writings, drawings, graphs, charts, photographs, computer records and other compilations of data from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form—or to inspect a copy, test or sample tangible things which constitute or contain matters within the scope of § §  5.321(b), 5.323 and 5.324 (relating to scope; hearing preparation material; and discovery of expert testimony) and which are in the possession, custody or control of the party upon whom the request is served.

   (2)  To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of § §  5.321(b), 5.323 and 5.324.

 (b)  As an alternative to permission to inspect and copy, and if requested by the party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party’s expense. Regulated utilities shall provide copies of requested materials to Commission staff, which includes the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

 (c)  The request must set forth the items to be inspected either by individual item or by category, describe items and categories with reasonable particularity, and specify a reasonable time, place and manner of making the inspection and performing the related acts.

52 Pa. Code § 5.349(a)-(c).

In its Motion, I&E asserted that in order to explore Westover’s defenses that its pipeline facilities are not jurisdictional, it requested full and complete access to inspect those facilities, including interior access, aside from entering occupied apartments. I&E maintained that it should be permitted to inspect interior piping to determine whether such piping is used in the distribution of gas to Westover’s tenants. I&E noted that in certain instances, Westover is either limiting I&E’s access to just the exterior of an apartment complex,[[1]](#footnote-1) or to the exterior of the apartment complex and each boiler room.[[2]](#footnote-2) I&E argued that it should be permitted to inspect all interior piping except for piping located in occupied apartments. I&E further argued that these inspections are relevant and reasonably calculated to lead to admissible evidence.

In its Answer, Westover argued that it granted I&E’s request for access to inspect the identified apartment complexes, subject to the following conditions: that I&E personnel will be accompanied at all times by representatives of Westover, including counsel; that if photographs are taken, Westover will be provided with a copy of each photograph; that I&E personnel will be granted unrestricted access to outdoor areas at all identified apartment complexes; that at some of the identified apartment complexes, I&E personnel will be granted access to boiler rooms, but at other apartment complexes, I&E personnel will not be permitted any access inside the apartment buildings; and that I&E personnel will not be granted access to occupied apartments at any apartment complexes.

Westover amended its restriction on access to now allow I&E access to the boiler room at each of the identified apartment buildings that has one, including three it previously denied access.[[3]](#footnote-3) Westover asserted that this will allow I&E to verify that Westover consumes all of the gas and that the gas line ends in the boiler room. Westover argued that I&E’s request for access to other interior spaces at these three apartment complexes should be denied. For these three buildings, Westover maintained that since it has granted I&E access to the boiler room to verify that Westover uses all of the gas, and that the gas line ends in the boiler room, it would cause unreasonable annoyance, oppression, burden or expense to Westover, in violation of 52 Pa. Code § 5.361(a)(2), to allow I&E personnel to roam around its buildings searching for pipeline facilities that are not there, and that I&E does not claim are there.

Regarding the remaining apartment buildings, Westover noted that it has admitted reselling some or all of the gas to tenants, and that I&E has not disputed this averment. Westover maintained that since this fact is not in dispute, an inspection to confirm this fact would not lead to admissible evidence. Therefore, Westover argued that I&E’s request for access to interior areas of Westover’s apartment buildings (other than the boiler room) should be denied on the ground that it would cause unreasonable annoyance, oppression, burden, or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2).

Moreover, Westover indicated that, with the exception of gas facilities in boiler rooms, virtually all of the gas facilities inside Westover’s apartment buildings are under floors or within walls and cannot be inspected without ripping up floors or cutting holes in walls. Noting that there are no provisions in the Commission’s discovery rules permitting a party to damage or destroy another party’s property in order to conduct discovery, Westover requested that if I&E’s Motion is granted, then I&E should be limited to inspecting facilities that are in plain sight and not be permitted to cut holes in walls or ceilings, or to rip up floors.

Lastly, Westover indicated that it has granted I&E unrestricted access to the exterior of its buildings so that I&E can determine that Westover’s systems are located entirely within, and are limited to, Westover’s apartment complexes, and as such, are not jurisdictional master meter systems pursuant to 49 CFR § 191.3. Under these circumstances, Westover asserted that I&E’s request for unrestricted access to the interior of Westover’s buildings would cause unreasonable annoyance, oppression, burden, or expense to Westover in violation of 52 Pa. Code § 5.361(a)(2). Accordingly, Westover requested that its conditions, restricting I&E’s personnel’s access to areas outside Westover’s apartment buildings and the boiler rooms (if any) of each of the identified apartment complexes, be affirmed.

Although I&E only addressed full access to Westover facilities in its Motion, Westover argued that each of its conditions was reasonable. As I also find these other conditions to be reasonable (accompaniment by Westover personnel, provide Westover copies of any photos taken during the inspection, and access not permitted to occupied apartments), I will not address these conditions.

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 address whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act as well as 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. Therefore, I do find that I&E must be permitted access to the interior areas of the apartment complexes to inspect the interior piping. I agree with I&E that inspection of interior piping at these apartment complexes, except for piping located in occupied apartments, is relevant and reasonably calculated to lead to admissible evidence that will assist the Commission in determining whether Westover is subject to the Gas and Hazardous Liquids Pipelines Act, and if so, whether Westover is in compliance with the Act. Accordingly, I&E must be granted access to all locations where Westover natural gas pipeline facilities are present in the apartment complexes identified in I&E’s Requests for Entry for Inspection, including boiler rooms, basements, storage areas, crawl spaces, or any other interior location, with the exception of occupied apartments.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of the Bureau of Investigation and Enforcement to Compel Entry for Inspection filed by I&E on October 24, 2022 is granted.
2. That I&E is permitted access to all locations where Westover natural gas pipeline facilities are present in the apartment complexes identified in I&E’s Requests for Entry for Inspection, including boiler rooms, basements, storage areas, crawl spaces, or any other interior location, with the exception of occupied apartments.
3. That the remaining conditions imposed by Westover are reasonable and are to be followed during I&E’s entry for inspection.

Date: November 8, 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. Woodland Plaza, Black Hawk Apartments, Concord Court Apartments, Lansdale Village Apartments, and Park Court Apartments. [↑](#footnote-ref-1)
2. Mill Creek Village II Apartments, Country Manor Apartments, and Paoli Place Apartments. [↑](#footnote-ref-2)
3. Black Hawk Apartments, Concord Court Apartments, and Lansdale Village Apartments. [↑](#footnote-ref-3)