**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 IN PART**

**AND DENYING IN PART THE MOTION TO COMPEL**

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

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, the Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint against Westover Property Management Company, L.P. d/b/a Westover Companies 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 November 15, 2022, I&E inspected Westover’s Woodland Plaza apartment complex.

On December 5, 2022, Westover served its Interrogatories and Requests for Production of Documents – Set III on I&E.

On December 15, 2022, I&E filed its Objections to Westover Interrogatories – Set III.

On December 27, 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 (Motion to Compel). In its Motion to Compel, Westover requested that I direct I&E to answer Westover’s Interrogatories and Requests for the Production of Documents – Set III, Nos. 1-3.

On January 3, 2023, 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.

The Motion to Compel filed by Westover 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)).

On November 15, 2022, I&E conducted an inspection Westover’s Woodland Plaza apartment complex. Present on behalf of I&E were Scott Orr, Terri Cooper-Smith and Kayla Rost, Esq. Present on behalf of Westover were Peter Quercetti, Dave Archembault, and Jonathan Nase, Esq. During the inspection of Woodland Plaza buildings, Mr. Orr contacted UGI Gas to report a gas leak at the meter outside of Woodland Plaza buildings K and J. Shortly thereafter, UGI personnel reported to the Woodland Plaza apartment complex to address the reported leak.

On December 5, 2022, Westover served its Interrogatories and Requests for Production of Documents – Set III on I&E.

On December 15, 2022, I&E filed its Objections to Westover Interrogatories – Set III. As it pertains to Westover’s December 27, 2022 Motion to Compel, I&E objected to Westover Set III, Nos. 1-3, which read as follows:

Westover Set III, No. 1: Please provide copies of all documents in the possession of I&E Regarding UGI’s activities at Woodland Plaza Apartments on November 15, 2022.

Westover Set III, No. 2: Please identify and describe all Communications between Scott Orr and UGI personnel at or regarding Woodland Plaza Apartments on November 15, 2022.

Westover Set III, No. 3: a. What is a “Grade 3 Emergency?” Please provide a citation for this definition.

b. What occurred at Woodland Plaza on November 15, 2022 that was a “Grade C Emergency?”

On December 27, 2022, Westover filed a Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents. Westover maintained that I should overrule I&E’s Objections and direct I&E to answer Interrogatories Set III, 1-3. Westover argued that these interrogatories arise out of I&E’s inspections of Westover’s Woodland Plaza apartment complex on November 15, 2022. During this inspection, while I&E representatives were inspecting UGI’s and Westover’s gas facilities at buildings E and F, Scott Orr from I&E contacted UGI to report a gas leak outside of buildings K and J, resulting in four or five UGI vehicles appearing on site at Woodland Plaza. The UGI personnel inspected the meters and related UGI facilities outside buildings K, J and H and found leaks at these meters. Westover indicated that UGI did not find any additional leaks on other meters and related UGI facilities. UGI personnel addressed the leaks before leaving the scene.

Regarding Westover Interrogatory Set III, No. 1, Westover requested that I overrule I&E’s objection and compel I&E to respond because the request is not unclear or overly broad, and because I&E personnel observed UGI’s activities at Woodland Plaza and talked to UGI’s personnel at the site. Westover further argued that 52 Pa.Code § 5.321(c) allows the discovery of information that “appears reasonably calculated to lead to the discovery of admissible evidence,” and that if UGI filed reports with I&E regarding UGI’s activities at Woodland Plaza on November 15, 2022, those reports could contain information that supports or contradicts I&E’s claims that Westover’s gas facilities do not comply with applicable federal pipeline regulations, and would be admissible evidence in this proceeding. Moreover, Westover argued that these reports could identify other sources of information regarding Westover’s gas system at this complex leading to the discovery of additional admissible evidence. Additionally, Westover argued that I&E called UGI to the scene without Westover’s knowledge or consent, and that I&E should not be permitted to use UGI as an agent to conduct discovery on its behalf and then hide that discovery from Westover until the hearing. Lastly, Westover argued that if any documents indicate that the leaks were on Westover’s side of the meters, it is in the interest of public safety for I&E to turn those documents over to Westover so Westover can take all necessary action to address the leaks.

Regarding Westover Interrogatory Set III, No. 2, Westover requested that I overrule I&E’s objection, again pursuant to 52 Pa.Code § 5.321(c), noting that it is possible that during conversation UGI personnel might have said something to Mr. Orr that supports or contradicts I&E’s claim that Westover’s gas facilities do not comply with applicable federal regulations, or might have identified other sources of information about Westover’s gas facilities, and if so, those statements or other sources of information may be admissible evidence in this proceeding. Additionally, Westover argued that Mr. Orr might have said something to UGI personnel that is inconsistent with other statements he has made, which UGI would use to impeach his testimony. Lastly, Westover argued that UGI should not be able to use UGI as an agent to conduct discovery on its behalf and then hide that evidence from Westover until the hearing.

Regarding Westover Interrogatory Set III, No. 3, Westover requested that I overrule I&E’s objection, again pursuant to 52 Pa.Code § 5.321(c), noting that, at the time of the reported gas leak on November 15, 2022, Mr. Orr used these terms to refer to the gas leak. Westover argued that Interrogatory No. 3 requests information that would be relevant and admissible to show Mr. Orr’s credibility as a witness who is knowledgeable of applicable pipeline laws and regulations.

On January 3, 2023, I&E filed its Answer to Westover’s December 27, 2022 Motion. Regarding Westover Interrogatory Set III, No. 1, I&E maintained that no information relating to UGI’s response to the gas leak has any bearing on whether the Woodland Plaza Apartment complex is a master meter system subject to the Commission’s jurisdiction, which is the subject of this proceeding. Moreover, I&E argued that Westover erroneously assumed that UGI filed reports with I&E relating to its response to the gas leaks, and that were such a report to exist, it is not related to the subject matter of the Complaint. Additionally, I&E denied that it would act unethically and hide relevant information and then introduce it at the hearing. Regarding Westover’s public safety argument and the need to promptly take all necessary action, I&E asserted that this argument is disingenuous since Westover didn’t serve this round of interrogatories on I&E until approximately 20 days after the gas leak was discovered during the site visit.

Regarding Westover Interrogatory Set III, No. 2, I&E maintained that UGI was at Woodland Plaza in response to an odor of gas, that Westover made an erroneous assumption that UGI would discuss Westover’s pipeline facilities with Mr. Orr, and that communications, if any, between Mr. Orr and UGI are not relevant to the pending proceeding nor would they be calculated to lead to the discovery of admissible evidence. Additionally, I&E maintained that Mr. Orr’s communications with UGI consisted of reporting the gas odor and confirming that UGI was going to remediate the immediate safety concern presented and specifically denied that Mr. Orr discussed the instant legal proceeding with the UGI personnel. Moreover, I&E specifically denied that it called UGI to report the gas leak for purposes of using UGI as an agent.

Regarding Westover Interrogatory Set III, No. 3, I&E specifically denied that Mr. Orr advised or represented to Westover personnel that the situation at Woodland Plaza Apartments was a “Grade 3 Emergency” or “Grade C Emergency.” I&E asserted that a natural gas distribution company’s classification of gas leaks is not federally or state defined but rather based upon a company’s internal procedures, and as such, has no bearing on Mr. Orr’s credibility as a witness.

As previously noted, Commission regulations regarding discovery provide that:

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)(emphasis added).

I agree with Westover that if UGI did actually file any reports with I&E regarding UGI’s activities at Woodland Plaza on November 15, 2022, those reports could contain information that supports or contradicts I&E’s claim that Westover’s gas facilities do not comply with applicable federal pipeline regulations. However, I&E indicated in its Answer to Westover’s Motion that “Westover erroneously assumes that UGI filed reports with I&E relating to its response to the gas leaks and that these alleged reports may contain information related to Westover’s compliance with federal pipeline regulations.” I have no reason to doubt I&E’s indication that UGI did not file any reports with I&E regarding UGI’s response to the reported gas leak on November 15, 2022. Since I&E is not in possession of any such report, there is nothing to compel, and I must deny Westover’s Motion in this regard.

Regarding Westover Interrogatory, Set III, No. 2, the interrogatory deals with communications between Mr. Orr and UGI regarding a reported gas leak during the site visit on November 15, 2022. Since one of the issues to be addressed here is whether Westover violated Act 127 and Part 192 of the federal pipeline safety regulations, I agree with Westover that these discussions might have some bearing on I&E’s claim that Westover’s gas facilities do not comply with applicable federal regulations, and that Interrogatory 2 is reasonably calculated to lead to the discovery of admissible evidence. Accordingly, I will grant Westover’s Motion and direct I&E to provide a response to Westover Interrogatory, Set III, No. 2.

Similarly, regarding Westover Interrogatory, Set III, No. 3, to the extent that Mr. Orr can explain a “Grade 3 Emergency” and a “Grade C Emergency,” he should do so, since that may also have some bearing on I&E’s claim that Westover’s gas facilities do not comply with applicable federal regulations. If Mr. Orr is unable to explain these terms, I&E can so indicate in the response.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the 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 is granted in part and denied in part.
2. That I&E is directed to provide responses to Westover Interrogatories, Set III, Nos. 2 and 3 within twenty days from the date of issuance of this Order.
3. That the motion of Westover is denied in all other respects.

Date: January 18, 2023 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Westover Property Management Company, L.P.

Docket Number C-2022-3030251, P-2021-3030002

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