



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

February 27, 2023

**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 Nos. C-2022-3030251; P-2021-3030002  
**I&E's Answer to Motion to Dismiss Objections and Compel Answers - Set IV**

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 that reads 'Kayla L. Rost'.

Kayla L. Rost  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 322768  
(717) 787-1888  
[karost@pa.gov](mailto:karost@pa.gov)

KLR/ac  
Enclosures

cc: Per Certificate of Service (*via email*)  
Hon. Christopher P. Pell, OALJ-Philadelphia (*via email*)  
Athena Delvillar, OALJ Legal Assistant (*via email*)  
Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email*)  
Scott B. Granger, Prosecutor (*via email*)  
Gina L. Miller, Prosecutor (*via email*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket Nos. C-2022-3030251
	:	P-2021-3030002
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 should be denied.

**I. Procedural History**

**A. Westover’s Petition for Declaratory Order**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

**B. I&E’s Complaint**

5. 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. By way of further response, the Complaint speaks for itself. I&E is without sufficient information or knowledge to form a belief as to the Secretary’s Bureau’s method of service and the same is therefore denied.

6. Admitted.
7. Admitted.
8. Admitted.

**C. Westover’s Interrogatories Set IV**

9. Admitted.
10. Admitted.

11. Admitted. By way of further response, although I&E was certainly willing to pursue a resolution of the discovery dispute, Westover’s proposal would have resulted in the disclosure of privileged, confidential communications and documents (due to the fact that parties are subject to a continuing obligation to provide discovery) related to an informal investigation, which I&E could not accept.

The nature of I&E's investigations are confidential, and thus I&E can only state that it is addressing any safety concerns with PECO and will investigate as appropriate.

## II. Legal Standards

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

13. Admitted in part, denied in part. To the extent that the averment contained in this paragraph is consistent with the cited cases, it is admitted. To the extent that it is not consistent with the cited cases, it is denied. By way of further response, *Pa. Pub. Util. Comm'n v. the Peoples Natural Gas Company*, 62 Pa. PUC 56 (Aug. 26, 1986), involves the material question of whether an ALJ's decision to strike a portion of an expert witness's testimony based on *res judicata* is contrary to the law and established **ratemaking** policy of the Commission. Specifically, the Commission found:

“that the relevancy test should be liberally applied when considering discovery requests. While we do not intend to pronounce a rule for widespread application, nor make a policy pronouncement, we will state that in our view historical data is almost always relevant to what has, or is occurring during the period under examination, be it a recent historic period, or a future estimated period.”

*Pa. Pub. Util. Comm'n v. the Peoples Natural Gas Company*, 62 Pa. PUC 56 (Aug. 26, 1986)(emphasis added in original). *Pa. Pub. Util Comm'n v. Equitable Gas Company*, 61 Pa. PUC 468 (May 16, 1986), also involves the question of discovering historical data in the context of a Section 1307 rate proceeding.

14. Admitted. By way of further response, 52 Pa. Code § 5.361 speaks for itself.

### **III. The ALJ Should Deny Westover's Motion to Dismiss I&E's Objections**

#### **A. Background**

15. Admitted in part, denied in part. It is admitted that I&E requested the visual inspection of Gladstone Towers Apartment complex as a form of discovery. I&E is without sufficient information or knowledge to form a belief as to the circumstances on which the basis of Set IV, Interrogatories No. 1-2 arose, so allegations of same are denied. It is also denied that the visual inspection occurred on January 19, 2023. Rather, the visual inspection of Gladstone Towers Apartments occurred on January 18, 2023.

16. Admitted.

17. Admitted.

18. Admitted in part, denied in part. It is admitted that I&E personnel detected the odor of gas near the gas facilities. I&E is without sufficient information or knowledge to form a belief as to Westover contacting its contractors, and the same is therefore denied.

19. Admitted in part, denied in part. It is admitted that multiple leaks were discovered, but denied that only two of those were on Westover's side of the meter. By way of further response, a total of four (4) leaks were found on Westover's side of the meter.

#### **B. I&E Should Not be Compelled to Answer Interrogatories 1-2**

20. Admitted.

21. Admitted

22. Admitted in part, denied in part. It is admitted only that I&E objected to

Interrogatories No. 1 and 2. By way of further response, I&E's Objections to Interrogatories 1 and 2 speak for themselves and any interpretation, quotation, or characterization is therefore denied.

23. Denied. The averment states a request for relief to which no response is required. To the extent a response is deemed to be required, it is denied.

a. Denied. The averment sets forth a conclusion and request for relief to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, I&E currently does not possess any documentation, except for the documents already provided in response to Interrogatory 1, as it relates to the activities of PECO. Specifically, PECO has not filed or provided any reports related to the natural gas leak. However, the nature of I&E's investigations are confidential, and thus I&E can only state that it is addressing any safety concerns with PECO and will investigate as appropriate. Noting a party's continuing obligation to supplement and respond to discovery requests, if PECO were to provide documentation in the future, the documentation and communications related to PECO's response to the odor detected at Gladstone Towers Apartments on January 18, 2023 would be protected from disclosure since they would be the product of an informal investigation. If any documentation were to exist at this time, or at any time in the future, it would solely relate to PECO's activities and compliance with state and federal gas safety regulations, not Westover's. Notably, PECO is not a party to this proceeding and is unable to assert any privileges or protections on its own behalf.

Moreover, the attorney-client privilege prohibits compelling a client to disclose confidential communications. 42 Pa.C.S. § 5928. The privilege requires the existence of a relationship in which an attorney is acting in his or her professional capacity as a lawyer, notably when there has been a professional consultation with an attorney who acts or advises as such. *Okum v. Commonwealth of Pa.*, 465 A.2d 1324, 1325 (Pa. Cmwlth. 1983) (citing *In re Fogg's Estate*, 94 A. 453 (Pa. 1915)); *Okum*, 465 A.2d at 1325 (citing *Alexander v. Queen*, 97 A. 1063 (Pa. 1916)).

The deliberative process privilege permits the government to withhold documents containing “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.” *Redland Soccer Club, Inc. v. Department of the Army of the United States*, 55 F.3d 827, 853 (3d Cir. 1995), citing *In re Grand Jury*, 821 F.2d 946, 959 (3d Cir. 1987). The purpose for the privilege is to allow the free exchange of ideas and information within government agencies. See, e.g., *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Schell v. United States Dept. of Health and Human Services*, 843 F.2d 933 (6th Cir. 1988); *Times Mirror Co. v. Superior Court of Sacramento County*, 53 Cal. 3d 1325 (Cal. 1991). The Commission has adopted the deliberative process privilege. *Pa. PUC v. West Penn Power Company*, Docket No. R-901609, (Order entered July 20, 1990). The Commission has determined that a request to obtain records from the former Gas Safety Division of the Bureau of Safety and Compliance sought information protected by the deliberative process privilege. *Re John M. DiDonato*, Docket No. P-

900480 (Order entered December 19, 1990). Such investigative records included a staff report that was prepared for internal Commission use to determine whether official action should be taken against a jurisdictional utility with respect to a natural gas explosion. *Id.* Consequently, disclosure of Pipeline Safety's investigative materials and documentation, which includes communications, is also protected by the deliberative process privilege.

Additionally, Pipeline Safety's investigative documents would not be disclosed or discoverable under the Right to Know Law. 65 P.S. § 67.708(b)(17)(ii). Specifically, the Right to Know Law excludes the non-criminal record of any agency which includes investigative materials, notes, correspondence, and reports. 65 P.S. § 67.708(b)(17)(ii). Thus, documentation and communications related to I&E's informal investigations are protected and, in this matter, are not reasonably calculated to lead to the discovery of admissible evidence as PECO's potential compliance has no bearing on Westover's compliance.

b. Denied. By way of further response, see Answer to Paragraph 23(a). As stated above, the nature of I&E's informal investigation are confidential, and thus I&E is unable to admit or deny whether an informal investigation of PECO has been initiated. Moreover, PECO is not a party to this proceeding, and any documentation or communications relating to its response to the natural gas leak has no bearing on Westover's compliance.

c. Denied. By way of further response, see Answer to Paragraph 23(a). By way of further response, in light of I&E's position as the enforcement arm of the Commission and the bureau responsible for safety,



I&E is charged with a higher level of responsibility to ensure confidentiality and the protection of the information related to the assets of the utilities under the Commission's jurisdiction. I&E would be unable to continue its mission if it chose to ignore a utility's confidential or confidential security information designation or was required to release such information to third-parties without the consent of the utility. Moreover, requiring I&E to provide any reports that natural gas distribution companies provide as part of a natural gas leak response would cause a chilling effect, and utilities would not be willing to discuss the incident or exchange information with I&E for fear it would be subject to discovery in an unrelated matter such as this.

#### **IV. I&E's Answer to Set IV, Nos. 1 and 2**

Westover filed its Motion to Compel at approximately 1:30 p.m. on February 21, 2023; therefore, it did not have the opportunity to consider I&E's supplemental response to Set IV, Nos. 1-2, which I&E provided later in the afternoon on February 21, 2023. I&E filed a certificate of service of its answers on the same date. Significantly, in a good faith effort to provide responses to Westover while simultaneously preserving its valid objection against providing protected investigative materials, I&E provided additional information to Westover. More specifically, as it related to Set IV, No. 1, I&E preserved its objection but it also provided the only materials in its possession that were responsive to Westover's request. Accordingly, the dispute to Set IV, No. 1 should be resolved. Finally, with respect to Set IV, No. 2, I&E preserved its objection, but it also provided information responsive to Westover's request. Accordingly, I&E avers that Westover's Motion to Compel should now be moot as I&E has provided responses and there is nothing further to be resolved through the discovery process.

**V. Conclusion**

**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,



Kayla L. Rost  
Prosecutor  
PA Attorney ID No. 322768

Scott B. Granger  
Prosecutor  
PA Attorney ID No. 63641

Gina L. Miller  
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Date: February 27, 2023

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d/b/a Westover Companies	:	
Respondent	:	

**VERIFICATION**

I, Scott Orr, Fixed Utility Valuation Engineer – 3, 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: February 27, 2023



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Scott Orr  
Fixed Utility Valuation Engineer – 3  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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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:**

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Dated: February 27, 2023