**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

: C-2022-3030251 v. : P-2021-3030002

:

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Westover Property Management Company, L.P. :

**INTERIM ORDER DENYING 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 – SET IV, NOS. 1 AND 2**

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 October 6, 2022, I issued Prehearing Order #1, establishing the litigation schedule for this proceeding.

On January 19, 2023, I&E inspected Westover’s Gladstone Towers apartment complex.

On January 30, 2023, Westover served its Interrogatories and Requests for Production of Documents – Set IV on I&E.

On February 9, 2023, I&E filed its Objections to Westover Interrogatories Nos. 1 and 2 in Set IV.

On February 21, 2023, 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 – Set IV, Nos. 1 and 2 (Motion to Compel).

On February 27, 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 (Answer).

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 January 19, 2023, I&E inspected Westover’s Gladstone Towers 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 and Jonathan Nase, Esq. During the inspection, a gas odor was detected near meters located outside of an apartment building, and I&E personnel called PECO personnel to the scene while Westover called its contractors, Miller Brothers and Health Consultants, to the scene. After investigation, two leaks were found in above-ground piping on Westover’s side of the meter within approximately four feet of the meter. A third leak was found on PECO’s relief valve near the leaks on Westover’s piping. Gas service to building occupants was turned off, repairs were made by both PECO and Westover, and gas service was restored to building occupants.

On January 30, 2023, Westover served its Interrogatories and Requests for Production of Documents – Set IV on I&E.

On February 9, 2023, I&E filed its Objections to Westover Interrogatories Nos. 1 and 2 in Set IV. As it pertains to Westover’s February 21, 2023 Motion to Compel, I&E objected to Westover Set IV, Nos. 1 and 2, which read as follows:

Westover Set IV, No. 1: Please provide copies of all documents in the possession of I&E regarding the gas leak at Gladstone Towers on January 19 and 20, 2023 and the activities of PECO, Westover, and Westover’s contractors in response to the leak.

Westover Set IV, No. 2: Please identify and describe all communications between I&E personnel and PECO personnel regarding the gas leak at Gladstone Towers on January 19 and 20, 2023 and the activities of PECO, Westover, and Westover’s contractors in response to the leak.

On February 21, 2023, 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 – Set IV, Nos. 1 and 2. Westover argued that these interrogatories arise out of I&E’s inspections of Westover’s Gladstone Towers apartment complex on January 19, 2023.

Regarding Westover Interrogatory Set IV, No. 1, Westover requested that I overrule I&E’s objection and compel I&E to respond for the same reasons that I overruled similar objections in my January 18, 2023 Interim Order Granting in Part and Denying in Part the Motion to Compel filed by Westover Property Management Company, L.P. (January 18, 2023 Interim Order). Westover noted that in the January 18, 2023 Interim Order, I found that reports filed by the NGDC regarding its activities at the site could contain information that supports or contradicts I&E’s claim that Westover’s gas facilities do not comply with applicable federal regulations. Westover asserts that in this instance, considering the proximity of PECO’s facilities to Westover’s facilities, it is possible that reports filed by PECO, or communications between I&E and PECO, contain observations or descriptions of Westover’s facilities located above ground and in plain sight only a few feet from PECO’s facilities. Westover further asserts that, unlike the January 18, 2023 Interim Order, I&E did not allege that the NGDC failed to file reports with the Commission, nor did I&E allege that the NGDC did not communicate with I&E personnel.

Additionally, Westover notes that I&E claims that any documents or communications relating to PECO’s activities are protected from disclosure by the attorney-client and deliberative process privileges. Westover argues that neither of those privileges apply to documents that PECO filed with the Commission, or comments that PECO personnel made to I&E personnel. Westover asserts that NGDCs are regulated by the Commission and are not clients of I&E and they are not part of I&E. Westover further asserts that I&E has not alleged that it is conducting an informal investigation of PECO in connection with this incident, and that I&E should be directed to reply to the question fully and completely.

Lastly, Westover argues that I should reject any argument from I&E that the requested documents contain confidential and proprietary information, the release of which could be used for terroristic purposes. Westover notes that it is not going to sabotage gas facilities located on its own property. Westover further argues that documents filed with I&E by PECO, or communications by PECO personnel to I&E personnel, are not protected by 52 Pa.Code § 5.323(a) because PECO is not a representative of I&E. Lastly, Westover argues that I&E lacks standing to assert that documents filed by PECO, or communications made by PECO personnel, contain information that is confidential or proprietary to PECO.

On February 27, 2023, I&E filed its Answer to Westover’s February 21, 2023 Motion. I&E maintained that it does not currently possess any documentation, except for the documents already provided in response to Interrogatory 1, as it relates to the activities of PECO. I&E indicated that PECO has not filed or provided any reports related to the natural gas leak. I&E maintains that it provided the only materials in its possession that were responsive to Westover’s request, and that the dispute to Set IV, No. 1 should be resolved. Regarding Set IV, No. 2, I&E maintains that it provided information responsive to Westover’s request. As such, 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.

Separately, I&E noted that the nature of I&E’s investigations are confidential and 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, I&E indicated that 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. I&E further indicated that if any documentation were to exist at this time, or at any time in the future, it would relate solely to PECO’s activities and compliance with state and federal gas safety regulations, not Westover’s, and that PECO is not a party to this proceeding and is unable to assert any privileges or protections on its own behalf. Moreover, I&E asserted the attorney-client privilege, the deliberative process privilege, and the Right to Know Law to prevent disclosure of documents and communications related to any investigation into PECO.

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).

I agree with Westover that if PECO did actually file any reports or communicate with I&E regarding what transpired at Gladstone Towers Apartments on January 19, 2023, 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 it already provided the only materials in its possession that were responsive to Westover’s Interrogatory Set IV, No. 1, and that it provided information responsive to Westover’s request in Interrogatory Set IV, No. 2. I have no reason to doubt that I&E provided full responses to Westover’s Interrogatories, Set IV, Nos. 1 and 2. Accordingly, Westover’s Motion to Compel is denied.

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 – Set IV, Nos. 1 and 2 is denied.

Date: March 20, 2023

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***Updated 02/17/23*

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