

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement**

v.

**Westover Property Management Company,
L.P.**

**Public Meeting of January 8, 2025
3030251-OSA**

**Docket Nos. C-2022-3030251
P-2021-3030002**

**JOINT STATEMENT OF COMMISSIONER RALPH V. YANORA AND
COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Westover Property Management Company, L.P. d/b/a Westover Companies (Westover), filed on November 20, 2023, to the Recommended Decision of Deputy Chief Administrative Law Judge Christopher P. Pell (ALJ Pell). This consolidated proceeding consists of the Westover Amended Petition for Declaratory Order seeking a Commission order to resolve whether Westover is subject to Act 127 of 2011, the Gas and Hazardous Liquids Pipeline Act (Act 127), and the Complaint proceeding subsequently initiated by I&E on January 3, 2022, alleging Westover is in violation of Act 127.

We do not believe that the Commission's Bureau of Investigation and Enforcement (BIE) has satisfied its burden of proof that Act 127 preempts the field of the gas safety provisions of the Uniform Construction Code. Similarly, the BIE legal conclusions regarding single structure interior gas piping do not reach the required evidentiary threshold to establish Commission jurisdiction over the interior piping of all such structures in the Commonwealth. As a responsible regulator, the Commission is obligated to avoid stakeholder and enforcement confusion over how the Commission applies its enforcement jurisdiction under Act 127 and how that jurisdiction may interact with the regulatory mandates of other agencies.

Westover Exception No. 2 illustrates that an overly broad interpretation of Act 127 may conflict with the Construction Code and the International Fuel Gas Code, as adopted under regulations of the Pennsylvania Department of Labor and Industry. Westover Exc. At 9-11. We do not agree with Westover that this potential conflict would categorically exempt master meter distribution systems from Act 127 jurisdiction. Nevertheless, the Commission should not make unilateral, and therefore unformed, decisions involving the overlapping or parallel jurisdiction of other Commonwealth agencies and governmental subdivisions. Nowhere is this more important than safe natural gas transportation and delivery to the public. Responsible governance requires that we work to avoid regulatory conflicts and confusion. A careful and considered approach also avoids endangering public safety through the inadvertent creation of regulatory blind spots endemic to situations of overlapping enforcement or permitting jurisdiction. It is possible that the adoption of the federal gas safety law under Act 127 preempted some aspects of the Uniform Construction Code. However, all stakeholders,

affected agencies, and government subdivisions are entitled to due process and the rational development of regulatory responsibilities under our enforcement of Act 127.

Rather than adopting either of the all-or-nothing positions presented here, we would rather the Commission further develop its Implementation Order of Act 127 of 2011. The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators – Jurisdiction over Class 1 Transmission at Docket No. M-2012-2282031 (June 7, 2012 Act 127 Final Order). The Commission could better define the contours of Commission enforcement of Act 127 in alignment with the enforcement and inspection obligations of other agencies and political subdivisions. This should include all affected gas distribution stakeholders including Pennsylvania landlord associations, the Pennsylvania Department of Labor and Industry and affected political subdivisions. The Pipeline and Hazardous Materials Safety Administration (PHMSA) should also be afforded notice and invited to participate. The goal of all this being the development of a cogent and functional gas safety inspection and enforcement regime for the Commonwealth.

We believe that current Commission jurisdiction over master meter systems under Act 127 unquestionably extends to behind-the-meter buried and above ground piping to include piping rising above grade to connect buried piping with interior building piping. That is, the definable area that establishes a master meter system includes buried gas distribution lines and above-grade piping used to transport gas from a master meter to end-use customers terminating at a point where that piping connects with the interior piping of served structures.

The unanswered question: when, if ever, does Commission jurisdiction extend to the internal gas distribution system of a single structure? We believe the Commission should have jurisdiction over the gas piping of multi-tenant apartment buildings using individual gas meters within each leaseholder premises. Nevertheless, additional complication may arise involving interior, as opposed to exterior, meter manifolds. Another consideration is whether a multi-structure distribution network is constructed in series. That is, where distribution for a downstream structure is integrated into the internal structure of an upstream building. BIE enforcement personnel should have guidance on how to approach these fact-based inquiries.

The Commission's June 7, 2012 Act 127 Final Order and related materials do not discuss single structure master meter systems in any detail. Regarding single structure interior gas piping in this proceeding, we believe limited jurisdiction under Act 127 may be appropriate and consistent with PHMSA opinions on this issue:

[The PHMSA Office of Pipeline Safety] policy is that the term “master meter system” applies only to gas distribution systems serving multiple buildings. It does not apply to gas distribution systems consisting entirely or primarily of interior piping located within a single building. Such systems, however, may be referred to as master meter systems by local utilities and utility regulators for rate purposes, as well as by some state gas pipeline safety regulators for safety regulation purposes.

Master meter systems consisting entirely or primarily of interior piping located within a single building are excluded by the OPS from its definition because

...such systems do not resemble the kinds of distribution systems to which Congress intended the Natural Gas Pipeline Safety Act to apply because of the absence of any significant amount of underground or external piping serving more than one building.

Exc. at 15-16 (citing Westover Exhibit PQ-33 at 5).

This PHMSA opinion provides that single structure gas distribution systems “may” be referred to as master meter systems by local utilities and utility regulators for rate purposes, as well as by some state gas pipeline safety regulators for safety regulation purposes. No reasonable reader can assert that this language is mandatory or directive such that federal law establishes that every such structure qualifies as a jurisdictional master meter system. To the contrary, a reasonable regulator would conclude that this opinion recognizes some general single structure exclusion, but that exceptions may exist (e.g., an exception like the single structure distribution system of 2016 Mall of America PHMSA Interpretation cited throughout the record -- one utilizing meters at the fuel line connection to each end-use customer within the structure). Taken together, these materials show that the Commission has the discretion to engage in a more granular analysis than that advocated by BIE.

To that end, we do not agree with the ALJ’s four-part test to determine which systems are considered jurisdictional master meter systems:

- (1) that there must be a pipeline distribution system within, but not limited to a definable area, such as an apartment complex;
- (2) that the operator must purchase gas from an outside source for resale;
- (3) that the pipeline distribution system supplies the ultimate consumer; and
- (4) that the ultimate consumer purchases the gas either through a meter or by other means, such as rent.

R.D. at 98-99, 109. We believe this formulation too broad given the plain language of the opinion letters contained and the record below. Under this formulation, nearly all behind-the-meter gas delivery systems are Act 127 jurisdictional. PHMSA opinion letters are not so broad. Similarly, we do not find persuasive the argument that enforcement difficulty validates a rule that could arguably include nearly all single meter multi-tenant situations involving natural gas as a fuel. I&E Main Brief at 44-45. This is not to say that Commission jurisdiction could never reach such a system. Rather, we believe the Commission is obligated to clearly define how such jurisdiction might arise prior to taking enforcement action. It has not done so.

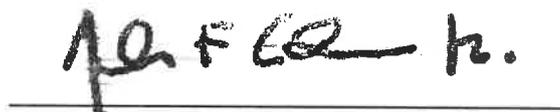
The above test is both an after-the-fact justification and insufficient to parse the possible array of service configurations that would trigger jurisdiction or exempt an individual structure from Act 127 jurisdiction. The Commission can and should better define those instances with clarity before declaring that all such structures are under its jurisdiction as BIE recommends.

Regarding Westover Exception No. 3, we agree with Westover that the elements of the definition of a master meter system are not satisfied where Westover uses gas to generate heat and hot water for its tenants who are not the ultimate customer. However, instances where Westover apartment complexes fall into the “hybrid” category require a more nuanced analysis, e.g., where Westover both uses gas to supply heat and hot water to tenants and provides gas for other tenant uses. Indeed, hybrid systems are not exempted from Commission jurisdiction in their entirety by virtue of some hybrid use. We believe these hybrid systems jurisdictional only to the extent that they employ master meter external distribution service and in-premises metered service to end use customers.

The Commission should consider how it might approach its overall Act 127 jurisdiction regarding interior piping before making sweeping conclusions based on how Westover has configured its buildings. We believe a more granular analysis would better reflect the expectations of PHMSA and Act 127 given the practicalities of how gas distribution systems are designed, constructed, and used in service. We also believe a more nuanced analysis would also be consistent with the current expectations of the Commonwealth’s enforcement of the Construction Code and the International Fuel Gas Code, as adopted under regulations of the Pennsylvania Department of Labor and Industry.



Ralph V. Yanora
Commissioner



John F. Coleman, Jr.
Commissioner

January 8, 2025
Date