

Decision No. R23-0089

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0628GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO YMCA OF
THE ROCKIES ON DECEMBER 30, 2021.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
FINDING YMCA HAS COMPLETED THE ALTERNATIVE
ENFORCEMENT REQUIREMENTS
AND CLOSING PROCEEDING**

Mailed Date: February 9, 2023

I. STATEMENT

1. On December 30, 2021, the Staff (Staff) of the Public Utilities Commission (PUC or Commission) initiated this matter by issuing its Notice of Probable Violation (NPV) to YMCA of the Rockies (YMCA). The civil penalties, calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the COPUC Gas Pipeline Safety Rules, 4 *Code of Colorado Regulations* (CCR) 723-11, included a total civil penalty of \$500,000.00 for fourteen enumerated violations. The enumerated violations included one violation of 4 CCR 723-4953¹ and thirteen violations of the *Code of Federal Regulations*, including the following regulatory provisions:

- 49 *Code of Federal Regulations* (CFR) 192.463
- 49 CFR 192.465

¹ This provision was in effect at the time of the alleged violation but has since been recodified.

- 49 CFR 192.605
- 49 CFR 192.615
- 49 CFR 192.625
- 49 CFR 192.646
- 49 CFR 192.723
- 49 CFR 192.739
- 49 CFR 192.743
- 49 CFR 192.747
- 49 CFR 192.801
- 49 CFR 192.1015

2. In lieu of incurring the civil penalty, the NPV offered YMCA the option of pursuing “alternative enforcement” to address the alleged violations. Under the “alternative enforcement” provisions, YMCA could “Utilize the services of Qualified Contractors or Qualified personnel on Your staff to remedy the violations in accordance with the Compliance Directive requirements and deadlines set forth below.” *See* Rule 11504(a)(VI), 4 CCR 723-11.

3. YMCA filed a Response to the NPV fully addressing the merits of the allegations in the NPV on January 19, 2022, and, on February 4, 2022, amended its Response. In its Response, YMCA admitted each of the fourteen alleged violations and elected to seek “alternative enforcement” for each of the alleged violations.

4. On March 24, 2022, Staff filed its Entry of Appearance.

5. On August 31, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

6. On November 17, 2022, Staff filed a Notice of Conferral, Statement of Alternative Enforcement Terms, and Status Report. In this filing, Staff advised that YMCA had agreed to a compliance directive requiring it to:

- Perform inspections on . . . no more than a twelve-month period on all fourteen itemized violations listed in the NPV;
- Repair or address any additional areas of noncompliance within twelve months of discovery;
- Submit Annual Reports pursuant to Rule 11103, 4 CCR 723-11; and
- Include updates on all fourteen itemized violations in its Annual Report.

7. Staff further advised that an inspection of YMCA's facilities to confirm compliance with the agreement and corrective action related to each alleged violation was scheduled to occur on November 29, 2022.

8. On January 13, 2023, Staff filed a Motion for a Commission Order Finding that YMCA Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and Closing this Proceeding (Motion to Close). In the Motion to Close, Staff represents that the inspection occurred as scheduled on November 29, 2022, and that, as a result of the inspection, Staff concluded that YMCA "has fulfilled its obligations and completed the Alternative Enforcement."

9. Staff therefore requests that the Commission enter an order finding that YMCA has completed the alternative enforcement in lieu of the \$500,000 civil penalty and closing this Proceeding.

10. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FACTS

11. On March 3, 2022, YMCA provided an annual report summarizing the regulations applicable to it, and, in an attachment, detailing the steps it would take to remedy the alleged violations.

12. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC's Pipeline Safety Program (PSP), on November 29, 2022, PSP inspected YMCA's property and records pertaining to its natural gas system. *See* Affidavit of Pipeline Chief Casey Hensley, Attachment A to Staff's Motion to Close.

13. To complete the inspection, an investigator used the PSP's Standard Inspection Report of a Small Operator Unit form (Report) to determine whether YMCA had remedied the violations identified in the December 2021 NPV. The Report form used in PSP's inspection of YMCA is "one kept by the PSP in the ordinary course of the" PSP's business.

14. In his Affidavit, PSP Chief Hensley represents that YMCA received either "satisfactory" or "not applicable" remarks for every line item on the PUC's inspection report. YMCA received no "unsatisfactory" marks. *Id.* A copy of the Report is attached to Mr. Hensley's Affidavit. PSP Chief Hensley concludes that in his "professional opinion . . . YMCA has remedied the violations contained in the December 30, 2021, NPV." *Id.*

15. Having successfully passed the November 29, 2022, inspection, Staff represents that YMCA has completed the alternative enforcement requirements in lieu of the \$500,000 civil penalty.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

16. The requested relief being uncontested, the proceeding may now be processed under the modified procedure, pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, without a formal hearing.

17. To provide consistency and specificity, civil penalties in the NPV are calculated in accordance with Rule 11501(d) 4 CCR 723-11. However, Rule 11504(a)(VI), 4 CCR 723-11, permits the PSP Chief to “offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part.”

18. Here, PSP Chief Hensley offered YMCA the opportunity to remedy its violations and take corrective actions in lieu of paying the \$500,000 civil penalty. *See* NPV. YMCA elected to pursue alternative enforcement by correcting the violations listed in the NPV. *See* YMCA’s Response to NPV.

19. It is found that YMCA successfully completed the alternative enforcement and remedied all of the violations identified in the NPV. As alternative enforcement was offered in lieu of the civil penalty, the undersigned ALJ finds that YMCA is not liable for the \$500,000 civil penalty calculated in the NPV.

20. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following Order.

IV. ORDER

A. It Is Ordered That:

1. Trial Staff’s Motion for a Commission Order Finding YMCA Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and Closing This Proceeding, is granted, consistent with the discussion above.

2. No civil penalty is assessed against YMCA of the Rockies for the violations identified in the December 30, 2021, Notice of Probable Violation.

3. Proceeding No. 21N-0628GPS is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director