

Decision No. R23-0230

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0647GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO SALIDA HOUSING AUTHORITY ON JANAUARY 5, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
FINDING THAT SALIDA HOUSING AUTHORITY HAS
COMPLETED THE ALTERNATIVE ENFORCEMENT
REQUIREMENTS
AND CLOSING PROCEEDING**

Mailed Date: April 4, 2023

I. PROCEDURAL BACKGROUND

1. On January 5, 2022, the Staff of the Public Utilities Commission's (Staff) initiated this proceeding by issuing its Notice of Probable Violation (NPV) to the Salida Housing Authority (Salida Authority). The NPV assesses civil penalties, calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* (CCR) 723-11, totaling \$350,000.¹ The NPV enumerates 11 violations, including one violation of 4 CCR 723-4953² and ten violations of the *Code of Federal Regulations* (CFR) of the following provisions: 49 CFR 192.463, 49 CFR 192.465, 49 CFR 192.605, 49 CFR 192.615, 49 CFR 192.625, 49 CFR 192.646, 49 CFR 192.723, and 49 CFR 192.1015.³

¹ See NPV at 1-2.

² This statutory provision was in effect at the time of the alleged violation but has since been recodified.

³ See NPV at 2.

2. In lieu of civil penalties, the NPV offers the Salida Authority the option of pursuing “alternative enforcement” to address the alleged violations. Under the alternative enforcement provisions, the Salida Authority could “[u]tilize the services of Qualified... Contractors or Qualified personnel on [its] staff to remedy the violations in accordance with the Compliance Directive requirements and deadlines set forth [in the NPV].”⁴

3. On February 2, 2022, the Salida Authority filed its response to the NPV (Response to NPV), wherein the Salida Authority admitted each of the 11 violations listed in the NPV and elected to seek alternative enforcement with respect to each of the violations enumerated in the NPV.⁵

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. By Interim Decision No. R22-0656-I, issued October 25, 2023, the ALJ Required the parties to confer, and Staff to file the terms for alternative enforcement and quarterly status reports.

7. On November 23, 2022, Staff filed its Notice of Conferral, Statement of Alternative Enforcement Terms, and Status Report (Statement of Enforcement Terms). In the Statement of Enforcement Terms, Staff indicated that the Salida Authority had agreed to take the following remedial actions:

1. Perform inspections on a no more than a 12-month period on all 11 items listed above;

⁴ *Id* at 3.

⁵ Response to NPV at 3-8.

2. Any additional areas of noncompliance must be repaired or addressed within 12 months of discovery;
3. Submission of the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and
4. Annual Report must include updates on all 11 items listed above.

Staff further indicated that it would inspect the Salida Authority's property in the first quarter of 2023 to evaluate the Salida Authority's compliance with the alternative enforcement terms.

8. On March 13, 2023, Trial Staff's Motion for a Commission Order Finding Salida Housing Authority has Satisfied its Alternative Enforcement Obligations Under Rule 11504 and Closing This Proceeding (Motion to Close) was filed by the Staff. In the Motion to Close, Staff states that the inspection of the Salida Authority's property on March 2, 2023, demonstrated that the Salida Authority has "completed the alternative enforcement requirements in lieu of the \$350,000 penalty" and that Staff "... requests that this Proceeding be closed."⁶

9. 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. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

10. Rule 11504(a)(VI), 4 CCR 723-11, permits the Commission's Pipeline Safety Program (PSP) Chief (PSP Chief) to "offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part." Here, the NPV, which was issued by the PSP Chief, offered the Salida Authority the opportunity to admit the alleged violations and pursue alternative enforcement in lieu of admitting and paying the civil penalty associated with each alleged violation.⁷

⁶ Motion to Close at 3.

⁷ See NPV at 3.

11. The Salida Authority elected to proceed with the alternative enforcement requirements offered by the PSP Chief, in lieu of admitting each of the violations and paying each civil penalty, requesting an offer in compromise, or disputing Staff's allegations.⁸

12. On March 2, 2023, PSP inspected the Salida Authority's records pertaining to its natural gas system.⁹ In conducting the inspection, a Staff inspector used the PSP's Standard Inspection Report of a Small Operator Unit form (Report) to determine whether the Salida Authority remedied the violations identified in the NPV. The Report form used in PSP's inspection of the Salida Authority is kept by the PSP in its ordinary course of business.¹⁰

13. The Salida Authority received either "satisfactory" or "not applicable" remarks for every line item identified in the Report.¹¹ The Salida Authority did not receive any "unsatisfactory" marks, thus remedying all of the violations noted in the NPV.¹²

14. The ALJ finds that the Salida Authority satisfactorily completed the PSP Chief's alternative enforcement requirements, and no civil penalty will be imposed for the 11 violations enumerated in the NPV.

15. The Motion to Close is unopposed. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, this Proceeding may now be processed under the modified procedure without a formal hearing.

⁸ See Response to NPV at 3-8.

⁹ See Affidavit of Pipeline Safety Chief Casey Hensley, attached as Attachment A to the Motion to Close, at 3.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

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

III. ORDER

A. The Commission Orders That:

1. Staff's Motion for a Commission Order Finding Salida Housing Authority (Salida Authority) has Satisfied its Alternative Enforcement Obligations Under Rule 11504 and Closing This Proceeding, filed March 13, 2023, is granted, consistent with the discussion above.

2. Proceeding No. 21N-0647GPS is closed.

3. 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.

4. 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.

5. 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

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

G. Harris Adams,
Interim Director