

Decision No. R23-0404

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0643GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO FRONT RANGE MOBILE HOME ON JANUARY 4, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
FINDING THAT FRONT RANGE MOBILE HOME HAS
COMPLETED ALTERNATIVE ENFORCEMENT
REQUIREMENTS, WAIVING RESPONSE TIME,
GRANTING MOTION, ASSESSING CIVIL PENALTY,
AND CLOSING PROCEEDING**

Mailed Date: June 14, 2023

I. PROCEDURAL BACKGROUND

1. On January 4, 2022, the Staff of the Public Utilities Commission's (Staff) initiated this proceeding by issuing its Notice of Probable Violation (NPV) to Registered Agent Solutions, doing business as Front Range Mobile Home Park (Font Range)¹. 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 \$450,000.² The NPV enumerates 13 violations, including one violation of

¹ The NPV was incorrectly addressed to "Registered Agent Solutions Db: Front Range Mobile Home Park." As explained in Front Range's Unopposed Motion to Accept Filing Out of Time, filed March 17, 2022, Registered Agent Solutions is the registered agent for, and does not control, Front Range. Front Range is the trade name of KMC56, LLC.

² See NPV at 1-2.

4 CCR 723-4953³ and twelve violations of the *Code of Federal Regulations* (CFR) of the following provisions: 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 192.739, 49 CFR 192.743, 49 CFR 192.747, 49 CFR 192. 49 CFR 192.1015.⁴

2. In lieu of civil penalties, the NPV offers Front Range the option of pursuing “alternative enforcement” to address the alleged violations. Under the alternative enforcement provisions, Front Range 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].”⁵

3. On March 17, 2022, Front Range filed its Unopposed Motion to Accept Filing Out of Time (Motion to Accept Out of Time Filing).

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

5. On April 1, 2022, Front Range filed its response to the NPV (Response to NPV), wherein Front Range admitted each of the 13 violations listed in the NPV and elected to seek alternative enforcement with respect to each of the violations enumerated in the NPV.⁶

6. On April 13, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

7. By Decision No. R22-0259-I, issued April 27, 2023, the ALJ granted the Motion to Accept Out of Time Filing.

³ This statutory provision was in effect at the time of the alleged violation but has since been recodified.

⁴ See NPV at 2.

⁵ *Id* at 3.

⁶ Response to NPV at 3-9.

8. By Decision No. R22-0276-I, issued May 4, 2023, the ALJ required Staff to file periodic status reports until the NPV has been resolved.

9. On May 1, 2023, Staff's Fourth Status Report was filed by Staff. In the Fourth Status Report, Staff indicated that Front Range had agreed to take the following remedial actions:

1. Perform inspections on a no more than a 12-month period on all 13 items listed above;
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.

10. Staff further indicated that on March 22, 2023, it performed an inspection of Front Range, and Front Range received "received no unsatisfactory remarks."⁷

11. On June 8, 2023, Trial Staff's Motion for a Commission Order Finding Front Range 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 Front Range's property on March 22, 2023 demonstrated that Front Range has "fulfilled its obligations and completed the Alternative Enforcement."⁸ Based on this, Staff is requesting that the Commission enter an order: "(1) finding that Respondent completed the alternative enforcement requirements in lieu of \$445,000 of the calculated penalty as contemplated by Rule 11504; (2) ordering respondent to pay a penalty of \$5,000 to the state treasury; and (3) closing this proceeding."⁹ The Motion to Close further states that Front Range

⁷ Staff's Fourth Status Report at 1.

⁸ Motion to Close at 3.

⁹ Motion to Close at 3.

seeks to waive response time to the Motion to Close pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

12. 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

13. The Respondent in this matter is KMC56, LLC, also known as Front Range.¹⁰

14. 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 Front Range 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.¹¹

15. Front Range elected to admit each of the violations and proceed with the alternative enforcement requirements that was offered by the PSP Chief, rather than admitting each of the violations and paying each civil penalty, requesting an offer in compromise, or disputing Staff's allegations.¹²

16. On March 22, 2023, PSP inspected Front Range's records pertaining to its natural gas system.¹³ In conducting the inspection, a Staff inspector used the PSP's Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Front Range remedied the

¹⁰ See *supra*, Footnote 1.

¹¹ See NPV at 3.

¹² See Response to NPV at 3-9.

¹³ See Affidavit of Pipeline Safety Chief Casey Hensley, attached as Attachment A to the Motion to Close, at 1.

violations identified in the NPV. The Report form used in PSP's inspection of Front Range is kept by the PSP in its ordinary course of business.¹⁴

17. Front Range received either "satisfactory" or "not applicable" remarks for every line item identified in the Report.¹⁵ Front Range did not receive any "unsatisfactory" marks, thus remedying all of the violations noted in the NPV.¹⁶

18. While this matter was pending, on March 14, and March 14, 2023, Front Range timely filed two annual reports, showing that Front Range adopted programmatic changes in response to the NPV.

19. The ALJ finds that Front Range satisfactorily completed the PSP Chief's alternative enforcement requirements.

20. According to § 40-7-117(2)(c), C.R.S.:

The extent to which the violator agrees to spend, in lieu of payment of part of the civil penalty, a specified dollar amount on commission-approved measures to reduce the overall risk to pipeline system safety or integrity; except that the amount of the penalty payable to the commission shall be no less than five thousand dollars.

21. According to Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1:

The Commission may impose a civil penalty, when provided by law. The Commission will consider any evidence concerning some or all of the following factors:

- I. the nature, circumstances, and gravity of the violation;
- II. the degree of the respondent's culpability;
- III. the respondent's history of prior offenses;
- IV. the respondent's ability to pay;

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.*

- V. any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- VI. the effect on the respondent's ability to continue in business;
- VII. the size of the respondent's business; and
- VIII. such other factors as equity and fairness may require.

22. According to Rule 11501(a)(VI) of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 CCR 723-11:

as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety...

23. The Motion to Close is unopposed. Front Range admitted each of the violations enumerated in the NPV. Front Range timely and satisfactorily adopted programmatic changes in response to the NPV and completed the alternative enforcement requirements posed by Staff. Pursuant to § 40-7-117(2)(c), C.R.S., the minimum civil penalty amount that may be imposed on Front Range is \$5,000. Based on the above, and consistent with the factors enumerated in Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ finds that a civil penalty in the amount of \$5,000 against is appropriate and reasonable. Therefore, a civil penalty of \$5,000 will be imposed on Front Range for the 12 statutory violations enumerated in the NPV, as ordered below.

24. Consistent with Rule 11501(a)(VI) of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 CCR 723-11, and as requested by Staff in the Motion to Close, no penalty will be imposed on Front Range in connection with Front Range's violation of 4 CCR 723-4953¹⁷.

¹⁷ See *supra*, Footnote 3.

25. Given Front Range's position noted in the Motion to Close, and because the Motion to Close is unopposed, response time to the Motion to close will be waived, as ordered below.

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

27. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

28. Response time to Trial Staff's Motion for a Commission Order Finding Front Range has Satisfied its Alternative Enforcement Obligations Under Rule 11504 and Closing this Proceeding (Motion to Close), filed June 8, 2023 is waived.

29. The Motion to Close is granted, consistent with the discussion above.

30. Respondent KMC56, LLC, also known as Front Range Mobile Home Park (Font Range), is assessed a civil penalty of \$5,000.00.

31. Not later than 20 days following the date of the issuance of a final Commission decision in this Proceeding, Font Range shall pay to the Commission the civil penalty assessed by this Recommended Decision.

32. Front Range may make payment to the Commission in person by the due date. If Respondent submits a payment by U.S. mail, the payment must be made by money order or check and must be received by the Commission not later than the due date.

33. Proceeding No. 21N-0643GPS is closed.

34. 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.

35. 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.

36. 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 that reads "Rebecca E. White".

Rebecca E. White,
Director