

Decision No. R23-0420

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0636GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO GOLDEN HILLS MANUFACTURED HOUSING COMMUNITY, LLC ON DECEMBER 30, 2021.

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

Mailed Date: June 23, 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 Blue Sky Communities, LLC, doing business as Golden Hills Mobile Home Park. A Deed of Trust recorded November 22, 2021, and filed with the Commission on February 7, 2022, later established Golden Hills Manufactured Housing Community, LLC, (Golden Hills) as the owner of the property.

2. The civil penalties assessed in the NPV, 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 \$490,000.00 for fourteen enumerated violations. The enumerated violations include Violation 1, asserting a violation of 4 CCR

723-4953 (no or inadequate record provided for annual reviews)¹ and thirteen violations of the *Code of Federal Regulations*, including the following:

- Violation 2: 49 *Code of Federal Regulations* (CFR) 192.463 & 465 (no or inadequate record provided for Annual CP testing);
- Violation 3: 49 CFR 192.465 (no or inadequate record provided for immediate leak repairs);
- Violation 4: 49 CFR 192.605 (no or inadequate record provided for annual equipment calibrations);
- Violation 5: 49 CFR 192.605 (no or inadequate record provided for system map(s));
- Violation 6: 49 CFR 192.605(a) (no or inadequate record provided for annual O&M review and update);
- Violation 7: 49 CFR 192.615 (no or inadequate record provided for annual Emergency Plan review);
- Violation 8: 49 CFR 192.625 (no or inadequate record provided for annual odor testing);
- Violation 9: 49 CFR 192.646 (no or inadequate record provided for public awareness flyers);
- Violation 10: 49 CFR 192.723 (no or inadequate record provided for Leak Surveys (5 years or less));
- Violation 11: 49 CFR 192.739 & 743 (no or inadequate record provided for the annual regulators and reliefs inspection and maintenance);
- Violation 12: 49 CFR 192.747 (no or inadequate record provided for the annual emergency valve operation and maintenance);
- Violation 13: 49 CFR 192.801 (no or inadequate record provided for the staff and contractor OQ certifications);
- Violation 14: 49 CFR 192.1015 (no or inadequate record provided for annual MMO DIMP updates).²

3. In lieu of incurring the civil penalty, the NPV offered Golden Hills the option of pursuing “alternative enforcement” to address the alleged violations. Under the “alternative

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

² Notice of Probable Violation (NPV), Dec. 30, 2021, pp. 2-3.

enforcement” provisions, Golden Hills could take the following actions instead of paying the full penalty amount:

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. Failure to comply with the Compliance Directive using services of Qualified Contractors or Qualified personnel on Your staff may result in civil penalties being assessed against You.³

4. Golden Hills filed a Response to the NPV fully addressing the merits of the allegations in the NPV on January 19, 2022. In its Response, Golden Hills admitted each of the fourteen alleged violations and elected to seek “alternative enforcement” for each of the alleged violations. However, it also stated in its Response that it had recently sold the property, would provide documentation of its efforts to correct the issues, but was consequently “unable and unwilling to commit to future filings.”⁴

5. On January 28, 2022, Golden Hills’ new owner filed an Operator’s Response to the NPV altering Golden Hills’ responses. In particular, Bruce Davis, acting on behalf of Golden Hills’ new owners, indicated that Golden Hills “Request[ed an] Offer in Compromise” in response to each of the fourteen alleged violations.

6. On March 24, 2022, Trial Staff for the Commission filed its Entry of Appearance in this Proceeding.

7. On August 31, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry. The Proceeding was subsequently assigned to the undersigned ALJ.

³ NPV, p. 3; *see also* Rule 11504(a)(VI), 4 CCR 723-11.

⁴ Golden Hills’ Response to NPV, Jan. 19, 2022, p. 10.

8. On January 13, 2023, Trial Staff filed a Notice of Conferral, Statement of Compromise Terms, and Status Report (Notice of Conferral). Trial Staff advised that pursuant to the compromise it reached with Golden Hills, the Commission’s “Pipeline Safety Chief agreed to remove penalties for violations 2, 4, 5, 10, and 13.”⁵ In addition, Golden Hills and Staff agreed to the following terms and compliance directives. To resolve the remaining violations, Golden Hills would pursue the alternative enforcement option by which it agreed to a compliance directive requiring it to:

- “Perform inspections on . . . no more than a 12-month period on all 14 items listed above;”
- Repair or address “[a]ny additional areas of noncompliance . . . within 12 months of discovery;”
- “Submi[t] . . . the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and”
- Include in its “Annual Report . . . updates on all 14 items listed above.”⁶

9. Staff further advised that although it had dismissed violations 2, 4, 5, 10, and 13 and determined that no penalty should be assessed for those violations, it had advised Golden Hills that in order to address the remaining violations, which amounted to \$350,000 in civil penalties, Golden Hills “would need to complete the alternative enforcement to have those penalties dismissed.”⁷

10. According to the Notice of Conferral, on December 22, 2022, Golden Hills provided the Pipeline Safety Chief “with multiple invoices from a qualified contractor

⁵ Notice of Conferral, Statement of Compromise Terms, and Status Report (Notice of Conferral), Jan. 13, 2023, p. 1.

⁶ *Id.*, p. 2.

⁷ *Id.*, p. 3.

demonstrating that the contractor completed the necessary services to remedy all the violations, except 9 and 14 which are currently in progress.”⁸

11. Finally, the Notice of Conferral advised that Commission Staff would be conducting an inspection “in the first quarter of 2023” to determine whether Golden Hills had completed its alternative enforcement obligations.⁹

12. On May 1, 2023, Staff filed an Unopposed Motion for a Commission Order Finding Golden Hills Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding (Motion to Close). In the Motion to Close, Staff represents that the inspection occurred on March 2, 2023, and that, as a result of the inspection, Staff concluded that Golden Hills “has fulfilled its obligations and completed the Alternative Enforcement.”¹⁰

13. Staff therefore requests that the Commission enter an order finding that Golden Hills has completed the alternative enforcement in lieu of the \$350,000 civil penalty, ordering Golden Hills to pay a \$5,000 penalty “to the state treasury,” and closing this Proceeding.

14. 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

15. In the Operator’s Response to NPV filed by Golden Hills’ new owner, Golden Hills Manufactured Housing Community, LLC, on January 28, 2022, Golden Hills

⁸ *Id.*

⁹ *Id.*

¹⁰ Staff’s Unopposed Motion for a Commission Order Finding Golden Hills Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding (Motion to Close), May 1, 2023, ¶ 9, p. 3.

acknowledged the violations allegedly committed by it and its predecessor, the regulations applicable to it, and requested an “Offer in Compromise” to address the specific violations alleged against it.

16. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC’s Pipeline Safety Program (PSP), on March 2, 2023, PSP inspected Golden Hills’ property and records pertaining to its natural gas system.¹¹

17. To complete the inspection, an investigator used the PSP’s Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Golden Hills had remedied the violations identified in the December 2021 NPV. The Report form used in PSP’s inspection of Golden Hills is “one kept by the PSP in the ordinary course of the” PSP’s business.¹²

18. In her Affidavit, PSP Chief Hensley represents that Golden Hills received either “satisfactory” or “not applicable” remarks for every line item on the PUC’s inspection report. Golden Hills received no “unsatisfactory” marks.¹³ A copy of the Report is attached to Ms. Hensley’s Affidavit.¹⁴ PSP Chief Hensley concludes that in her “professional opinion . . . Golden Hills has remedied the violations contained in the December 30, 2021, NPV. As such, it has completed the Alternative Enforcement actions contained in the NPV, and dismissal of the penalty . . . is reasonable and in the public interest.”¹⁵ *Id.*

¹¹ Affidavit of Pipeline Chief Casey Hensley, March 8, 2023, p. 1, Attachment A to Staff’s Motion to Close.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, pp. 3-6.

¹⁵ *Id.*, pp. 1-2.

19. Having successfully passed the March 2, 2023, inspection, Staff represents that Golden Hills has completed the alternative enforcement requirements in lieu of the full civil penalty.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

20. 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.

21. 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.”

22. § 40-7-117(2), C.R.S., authorizes the Commission to reduce a civil penalty “based on consideration of objective metrics and factors set forth in the rules.” However, even when the PSP Chief authorizes a reduction in the civil penalty, “the amount of the penalty payable to the [C]ommission shall be no less than five thousand dollars.”¹⁶

23. Here, PSP Chief Hensley offered Golden Hills the opportunity to remedy its violations and take corrective actions in lieu of paying the full penalty of \$490,000.¹⁷ Staff and Golden Hills agreed that five of the enumerated violations (violations 2, 4, 5, 10, and 13) should be dismissed, but Golden Hills would have to take corrective action to avoid paying penalties

¹⁶ § 40-7-117(2)(c), C.R.S.

¹⁷ See NPV, p. 3.

totaling \$350,000 for the remaining violations.¹⁸ Golden Hills elected to pursue alternative enforcement by correcting the violations listed in the NPV.¹⁹

24. It is found that Golden Hills successfully completed the alternative enforcement and remedied all of the remaining violations identified in the NPV. As alternative enforcement was offered in lieu of the civil penalty, the undersigned ALJ finds that Golden Hills is not liable for the \$350,000 civil penalty described in the Notice of Conferral.

24. In accordance with § 40-7-117(2)(c), Golden Hills must nonetheless pay the minimum penalty amount of \$5,000.

25. 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 Unopposed Motion for a Commission Order Finding Golden Hills Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding, is granted, consistent with the discussion above.

2. A civil penalty in the amount of five thousand dollars (\$5,000) is assessed against Golden Hills Manufactured Housing Community, LLC, for violations 1, 3, 6, 7, 8, 9, 11, 12, and 14 identified in the December 30, 2021, Notice of Probable Violation.

3. Proceeding No. 21N-0636GPS is closed.

¹⁸ See Notice of Conferral, p. 3.

¹⁹ See Operator's Response to NPV, pp. 3-9.

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

Rebecca E. White,
Director