

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0491GPS

IN THE MATTER OF THE PROPOSED RULES REGULATING PIPELINE OPERATORS
AND GAS PIPELINE SAFETY, 4 CODE OF COLORADO REGULATIONS 723-11.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ADOPTING RULES**

Mailed Date: November 8, 2023

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I. PROCEDURAL BACKGROUND

1. On November 9, 2022, the Colorado Public Utilities Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Pipeline Operators and Gas Pipeline Safety.¹ The NOPR proposed significant changes to the aforementioned rules, described those changes in detail and the justification therefor, attached the Rules in legislative (*i.e.*, ~~strikeout~~/underline) format and in a clean version, to establish deadlines of December 12, 2022 and January 3, 2023 for initial comments and response comments concerning the proposed rules, respectively, and scheduled a remote hearing for January 19, 2023 at 9:00 a.m. for oral comments regarding the proposed rules. The NOPR also referred this proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. The American Petroleum Institute (API), Atmos Energy Corporation (Atmos), Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), Colorado Natural Gas, Inc. (CNG), Colorado Oil and Gas Association (COGA), Public Service Company of Colorado (Public Service), the Southern Ute Indian Tribe and Red Cedar Gathering Company, and the Office of the Utility Consumer Advocate (UCA) filed initial comments. API, Atmos, Public Service, and the UCA filed response comments.

3. At 9:00 a.m. on January 19, 2023, the ALJ held the hearing noticed in the NOPR. The ALJ discussed the proposed rules and the initial and response comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ ordered

¹ Decision No. C22-0701.

another round of comments by February 9, 2023 addressing: (a) the current status of the Order Addressing the Designation of Sensitive Security Information issued by the Transportation Security Administration on November 12, 2008 (TSA's SSI Order); (b) whether the TSA's SSI Order applies to the Colorado Oil and Gas Conservation Committee (COGCC) and specifically to Rule 1101.e of the COGCC's Flowline Regulations; and (c) whether the TSA's SSI Order applies to the Commission and specifically its Rules Regulating Pipeline Operators and Gas Pipeline Safety. The ALJ also continued the remote public comment hearing to May 2, 2023, at 9:00 a.m.

4. The ALJ issued Decision No. R23-0054-I on January 24, 2023, that memorialized the decisions made at the January 19, 2023 remote public comment hearing.

5. On May 2, 2023, at 9:00 a.m., the ALJ held the continued hearing. The ALJ discussed the proposed rules and the written and oral comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ ordered another round of comments due by June 16, 2023 and response comments due by June 23, 2023 addressing: (a) the comments submitted by Mark and Julie Nygren (Nygrens) on May 1, 2023; (b) the definition of "advanced leak detection technology" that participants in the rulemaking stated would be included in rules that would be proposed by the Pipeline Safety Trust and the Pipeline and Hazardous Materials Safety Administration (PHMSA) in relatively short order; (c) if the Commission concludes that it must make publicly available a GIS mapping tool containing pipeline information at the 1:6,000 scale, what actions can be taken to mitigate or eliminate the risk that bad actors can use the provided information to undertake improper action; and (d) the other questions raised at the May 2, 2023 continued remote public comment hearing. The ALJ also continued the remote public comment hearing to June 29, 2023, at 11:30 a.m.

6. On May 4, 2023, PHMSA issued its Notice of Proposed Rulemaking proposing amendments to the Federal pipeline safety regulations, including a proposed rule addressing an “Advanced Leak Detection Program” that included a proposed standard that advanced leak detection technology would have to satisfy.²

7. The ALJ issued Decision No. R23-0328-I on May 17, 2023, that memorialized the decisions made at the May 2, 2023 continued remote public comment hearing.

8. At 11:30 a.m. on June 29, 2023, the ALJ held the second continued hearing. The ALJ discussed the proposed rules and the written and oral comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ ordered another round of comments due by July 13, 2023, and response comments due by July 27, 2023, focusing on rule amendments that the Colorado Energy Office (CEO) stated it would propose in its July 13, 2023 comments, and any other issues raised in this proceeding.

9. The ALJ issued Decision No. R23-0453-I on July 13, 2023, that memorialized the decisions made at the June 29, 2023 second continued remote public comment hearing.

10. During the Commissioners’ Weekly Meeting on August 2, 2023, Dr. Pam Fischhaber, who is the Deputy Director of Public Safety Sections and Interim Deputy Director of Fixed Utilities Sections, announced that the Commission intends to engage in a stakeholder process in advance of opening a new rulemaking that will address the rapid development of Advanced Leak Detection Technology (ALDT) and Commission requirements for its use by operators within Colorado.

² See Nygrens’ Comment on PUC Rulemaking, Attach. 1 at 1 (filed on June 12, 2023).

11. At 11:30 a.m. on August 3, 2023, the ALJ held the third continued remote public comment hearing. The ALJ discussed with the participants the new rule changes proposed by CEO. At the conclusion of the hearing, the ALJ adjourned the hearing.

II. STATUTORY BACKGROUND

12. Governor Jared Polis signed Senate Bill (SB) 21-108, which amended Title 40 of the Colorado Revised Statutes, on July 6, 2021. The legislative declaration of SB 21-108 states:

- (1) The general assembly finds and determines that:
 - (a) Due to recent innovations in extraction technology leading to ample supplies and reduced prices for natural gas, the number of households and businesses in Colorado that receive natural gas service is at an all-time high;
 - (b) At the same time, the pace of expansion of natural gas infrastructure has stressed the capacity of skilled installation and maintenance personnel and in many cases outstripped the ability of the public utilities commission's gas pipeline safety section to keep up with vital safety inspections and enforcement of applicable rules and standards, with regard not only to new installations but also to older pipelines that continue to age but are working harder than ever;
 - (c) An issue of special concern in Colorado is the juxtaposition of new gas wells and gathering lines with tracts of new homes, often in close proximity. This raises the stakes of potential mishaps and adds urgency to the need for sound and comprehensive application of common-sense safety measures in the gas industry; and
 - (d) Leaks in natural gas gathering and distribution pipelines pose safety risks and environmental harm due to methane emissions that contribute to near-term climate change and other hydrocarbon emissions that pose a threat to public health and safety.
- (2) Therefore, the general assembly declares that the purpose of this act is to appropriately strengthen and streamline Colorado's laws governing gas pipeline safety to meet these emerging challenges.

13. SB 21-108 amended § 40-2-115(1), C.R.S. by adding the following provisions:

- (d)

- (I) The commission shall adopt pipeline safety rules that incorporate the most current federal requirements under 49 cfr 191, 192,193, and 199, as applicable, to maintain minimum standards for gas pipeline safety.
- (II) The commission's gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to:
 - (A) Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities;
 - (B) Reduction of the risks posed by abandoned gas pipelines;
 - (C) Mapping of all pipelines within the commission's jurisdiction. For this purpose the commission may incorporate information from any existing flowline maps or other maps prepared by the oil and gas conservation commission and showing pipelines subject to the jurisdiction of that agency. The public utilities commission's mapping requirements for pipelines within its jurisdiction must incorporate the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e.
 - (D) Increased frequency of inspections of all pipelines within the commission's jurisdiction;
 - (E) Use of advanced leak detection technology to meet the need for pipeline safety and protection of the environment;
 - (F) Expansion of annual reporting requirements for pipeline operators; and
 - (G) Requirements for commission investigation of specific types of pipeline damage and pursuit of appropriate civil remedies for such damage.

14. Rule 1101.e of the Colorado Oil and Gas Conservation Commission, which is referenced in § 40-2-115(d)(II)(C), C.R.S., states:

1101.e. Disclosure of Form 44 Data.

- (1) The Director will make Geographic Information System (GIS) data for off-location flowlines, crude oil transfer lines, and produced water transfer systems available through a publicly accessible online map viewer. Line attributes available to the public through

the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.

- (2) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the local government all Geographic Information System (GIS) data submitted through Flowline Reports, Form 44s, for all off-location flowlines, crude oil transfer lines and produced water transfer systems. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
- (3) Except as provided in parts (1) and (2), above, the Commission will keep all such Geographic Information System (GIS) data confidential to the extent allowed by the Colorado Open Records Act.

15. The foregoing statutory changes contained in SB 21-108 went into effect on July 6, 2021.

III. APPROACH

16. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment, or every nuance of every comment.

IV. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Rules 11001(a), 11100(d), & 11103(a)(VII) – Advanced Leak Detection Technology

1. NOPR

17. In the NOPR, the Commission proposed the following rules addressing Advanced Leak Detection Technology (ALDT):

11001. Definitions.

....

- (a) “Advanced Leak Detection Technology” is included in the definition of “New and novel technologies,” which means any products, designs, materials, testing, construction, inspection, or operational procedures that are not addressed in 49 CFR parts 192, 193, or 195, due to technology or design advances and innovation for new construction. Technologies that are addressed in consensus standards that are incorporated by reference into parts 192, 193, and 195 are not “new or novel technologies.”³

11100. Submission of Reports and Notices – General

....

- (d) All advanced leak detection technologies being used and their descriptions. If advanced leak detection technology is not being used, an explanation describing why should be provided.⁴

11103. Submission of Annual Reports.

- (a) On or before March 15 of each year:

....

- (VII) Each operator shall submit a list of advanced leak detection technology and their descriptions according to paragraph 11100(d).⁵

18. In support of these proposed rules, the Commission stated that:

Under § 40-2-115(1)(d)(II)(E), C.R.S., the Commission’s rules must address the use of advanced leak detection technology to meet the need for pipeline safety and protection of the environment. By requiring a list and description of all advanced leak detection technology, the Commission can better assess whether and how such detection technology is being applied and enable PSP staff to take appropriate action if improvements can be made.⁶

³ NOPR, Attach. A at 1 (Proposed Rule 11001(a)).

⁴ NOPR, Attach. A at 10 (Proposed Rule 11100(d)).

⁵ NOPR, Attach. A at 11 (Proposed Rule 11103(d)).

⁶ NOPR at 9 (¶ 31).

2. Comments

a. Public Service

19. Public Service proposes to eliminate the definition of “advanced leak detection technology.”⁷ Public Service also proposes the following modifications to the Commission’s proposed rules regarding reporting of ALDT (with underlining indicating additions and strikethrough showing deletions):

11100. Submission of Reports and Notices – General

....

- (d) Operators shall identify and describe ~~All~~ all ~~advanced~~ leak detection technologies, including advanced leak detection technology, being used ~~and their descriptions~~. If advanced leak detection technology is ~~not~~ being used, an explanation describing why should be provided.⁸

11103. Submission of Annual Reports.

- (a) On or before March ~~15~~ 31 of each year each operator shall file with the Commission the following annual reports in the designated miscellaneous proceeding opened as a repository for annual reports. The annual reports shall be filed in accordance with subparagraph 1204(a)(III) of the Commission’s Rules of Practice and Procedure:

....

- (VII) Each operator shall submit the information required by ~~a list of advanced leak detection technology and their descriptions according to~~ paragraph 11100(d).⁹

20. As justification, Public Service states that “‘advanced leak detection technology’ is developing and being discussed in various regulatory contexts” and pointed to: (a) a recently

⁷ Initial Comments of Public Service at 11-13 (filed on December 12, 2022).

⁸ Reply Comments of Public Service, Attach. A at 1 (Rule 11000(d)), 10 (Rule 11100(d)) (filed on January 3, 2023).

⁹ *Id.* at 10 (Rule 11100(d)), 11 (Rule 11103(a)(VII)).

enacted rulemaking by the Pipeline and Hazardous Materials Safety Administration (PHMSA); (b) a recently-enacted Commission rule requiring utilities to identify and report on use of advanced leak detection in its annual Gas Infrastructure Plan;¹⁰ and (c) another recently-enacted rule allowing a utility to “petition the Commission as part of its application to approve a clean heat plan . . . to adjust its baseline emissions based on empirical data of distribution system methane leakage emissions” measured by “advanced leak detection technologies and approaches, consistent with directives from the Air Pollution Control Division or the Commission” and “the utility continues to use advanced leak detection technologies and approaches for all future measurement years.”¹¹ Public Service concludes that “[g]iven the fluidity of ALDT, developing PHMSA rules, and already-required reporting under the Commission’s Gas Infrastructure Planning rules, it is premature to do more than meet the statutory requirement in the Pipeline Safety Rules at this time.”¹²

21. Public Service thus advocates for adopting its proposed rules shown above and deferring the implementation of any rules addressing ALDT until PHMSA has completed its rulemaking. According to Public Service, the only statutory requirement is that the Commission, in its Pipeline Safety Rules, “address use of advanced leak detection technology, nothing more.”¹³ For this reason, “the Commission can reasonably defer defining the term until after the final PHMSA rules are issued.”¹⁴ Public Service concludes that adopting its rule will satisfy the

¹⁰ Initial Comments of Public Service at 12 (filed on December 12, 2022) (citing Commission Rule 4553(d)(III)).

¹¹ *Id.* (citing Commission Rule 4527(a)(1)).

¹² *Id.* at 13.

¹³ *Id.* at 12 (citing the changes in SB 21-108 to § 40-2-115(1)(d)(II)(E), C.R.S.).

¹⁴ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 6 (filed on June 16, 2023).

SB 21-108’s requirement to “address . . . [the] [u]se of advanced leak detection technology to meet the need for pipeline safety and protection of the environment,” and deferring the adoption of a comprehensive rule on ADLT until the conclusion of the PHMSA rulemaking will “promote administrative efficiency and prudent use of the Commission’s and participants’ resources.”¹⁵

22. Atmos and Black Hills support Public Service’s proposed changes to Rules 11100 and 11103.¹⁶ “CNG agrees with PSCo and [Black Hills] that it would be premature for the Commission to enact rules prior to the completion of the PHMSA rulemaking.”¹⁷ API and Colorado Springs Utilities have not expressly advocated for the adoption of Public Service’s foregoing proposal, but have recommended deferring the adoption of rules addressing ALDT until the conclusion of the PHMSA rulemaking.¹⁸

b. Nygrens’ Proposal

23. The Nygrens propose a definition of ALDT within a broader Advanced Leak Detection Program (ADLP), as follows:

11000. Submission of Reports and Notices – General

. . . .

- (d) Advanced Leak Detection Program (ADLP). Beginning March 16, 2024, and on an annual basis thereafter, each operator must submit and follow a written ALDP. The ALDP will be submitted to the PSP as part of the

¹⁵ *Id.* at 5.

¹⁶ Transcript of June 29, 2023 Remote Public Comment Hearing at 162, 171.

¹⁷ Reply Comments of CNG at 3 (filed on June 23, 2023).

¹⁸ API’s Additional Comments at 2 (filed on June 16, 2023) (“API Colorado recommends the Commission delay a decision until PHMSA’s rulemaking is complete. Colorado could potentially adopt the federal terms on this subject, saving all parties significant time and resources, or simply incorporate them by reference.”); Colorado Springs’ Utilities Response Comments in Compliance with Decision No. R23-0328-I at 2 (filed on June 23, 2023) (“Springs Utilities joins in the recommendations of Public Service Company of Colorado (‘Public Service’) and Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy (‘Black Hills Energy’) (as well as other participants expressing a similar position) that the Commission defer promulgating rules addressing or defining advanced leak detection technologies, leak repairs, and leak reporting.”).

annual report, enforceable under Rule 11100, and will be reviewed by PSP to ensure that it includes the following elements:

- (I) Leak detection equipment.
 - (A) The ALDP must include a list of leak detection equipment used in operator leakage surveys, pinpointing leak locations, and investigating leaks.
 - (B) Leak detection equipment used for leakage surveys, pinpointing leak locations, investigating, and inspecting leaks must have a minimum sensitivity of 5 parts per million for each gas being surveyed. The operator must validate the sensitivity of this equipment before using the device in a leakage survey by testing with a known concentration of gas.
 - (C) Leak detection equipment must be selected based on a documented analysis considering, at a minimum, the state of commercially available leak detection technologies and practices, the size and configuration of the pipeline system, and system operating parameters and environment. At a minimum, operators must analyze the effectiveness of the following technologies for their systems:
 - (i) The use of handheld leak detection equipment capable of detecting and locating all leaks of 5 parts per million or more when measured within 5 feet of the pipeline or within a wall to-wall paved area, in conjunction with locating equipment to verify the tools are sampling the area within 5 feet of the buried pipeline. The procedure must include sampling the atmosphere near cracks, vaults, or any other surface feature where gas could migrate;
 - (ii) Periodic surveys performed with leak detection equipment mounted on mobile, aerial, or satellite-based platforms that, in conjunction with confirmation by hand-held equipment, is capable of detecting and pinpointing all leaks of 5 parts per million or more when measured within 5 feet of the pipeline, or within a wall-to-wall paved area;
 - (iii) Periodic surveys performed with optical, infrared, or laser-based leak detection equipment that can sample or inspect the area within 5 feet of the pipeline, or within a wall-to-wall paved area, capable of detecting and pinpointing all leaks of 5 parts per million or more;

- (iv) Continuous monitoring for leaks via stationary sensors, pressure monitoring, or other means that provide alarms or alerts and that, in conjunction with confirmation by hand-held equipment, is capable of detecting and pinpointing all leaks of 5 parts per million or more when measured within 5 feet of the pipeline, or within a wall-to-wall paved area; and
 - (v) Systematic use of other commercially available technology capable of detecting and pinpointing all leaks producing a reading of 5 parts per million or more within 5 feet of the pipeline, or within a wall-to-wall paved area.
- (II) Leak detection practices. At a minimum, an operator must have and follow written procedures for:
 - (A) Performing leakage surveys. Operators must have written procedures for performing leakage surveys using each selected leak detection technology as described in (I). The procedures must define environmental and operational conditions for which each leak detection technology is and is not permissible. The operator's procedures must follow the leak detection equipment manufacturer's instructions for survey methods and allowable environmental and operational parameters.
 - (B) Pinpointing and investigating leaks. The location of the source of each leak indication on an onshore pipeline or any portion of an offshore pipeline above the waterline must be pinpointed and investigated with handheld leak detection equipment. Leak indications on offshore pipelines below the waterline may be pinpointed with human senses.
 - (C) Validating performance. Operators must have procedures validating that leak detection equipment meets the requirement of paragraph (I)(B) of this section. The operator must have procedures for validating the sensitivity of the equipment before initial use by testing with a known concentration of gas and at the required offset conditions of 5 feet. Records validating equipment performance must be maintained for five years after the date the device is no longer used by the operator.
 - (D) Maintaining and calibrating leak detection equipment. At a minimum, procedures must follow the equipment manufacturer's instructions for calibration and maintenance. Leak detection equipment must be

recalibrated or replaced following any indication of malfunction. Records validating equipment calibration and failures indicating recalibration is necessary must be maintained for 5 years after the date the individual device is retired by the operator.

- (III) Leakage survey frequency. Leakage survey frequency must be sufficient to detect all leaks that have a sufficient release rate to produce a reading of 5 parts per million or more of gas when measured from a distance of 5 feet or less from the pipeline, or within a wall-to-wall paved area, but may be no less frequent than required in 49 C.F.R. §§ 192.706 and 192.723. Less sensitive equipment, challenging survey conditions, or facilities known to leak based on their material, design, or past operating and maintenance history may require more frequent surveys to detect leaks consistent with paragraph (IV) of this section.
- (IV) Annual evaluation and improvement. The ALDP must include procedures and records showing the operator is meeting all of the program requirements.
 - (A) The operator must evaluate the ALDP at least once each calendar year as a part of its annual report.
 - (B) The operator must make changes to any program elements necessary to locate and eliminate leaks and minimize releases of gas.
 - (C) When considering changes to program elements, operators must analyze, at a minimum, the performance of the leak detection equipment used, the adequacy of the leakage survey procedures, advances in leak detection technologies and practices, the number of leaks that are initially detected by the public, the number of leaks and incidents, and estimated emissions from leaks detected pursuant to this section.
 - (D) The operator must document any improvements necessary and how they have been addressed in the updated ALDP.

24. The Nygrens' proposed ALDT Rules are based on the proposed rules released by PHMSA on May 4, 2023.¹⁹ The Nygrens state that “[t]he only changes [they] have proposed from the draft PHMSA rules are to require annual updating of the advanced leak detection programs (the PHMSA rules encourage annual updating but allow updates every 15 months) and elimination of ‘alternative advanced leak detection performance standards’ for natural gas transmission lines and natural gas lines in Class 1 or Class 2 locations.”²⁰ Under federal law, a Class 1 location has ten (10) or fewer buildings intended for human occupancy within 660 feet of “any continuous 1-mile (1.6 kilometers) length of pipeline.”²¹ A Class 2 location has “more than 10 but fewer than 46 buildings intended for human occupancy.”²²

25. PHMSA proposes such “alternative advanced leak detection performance standards” for Class 1 and 2 locations “because of the comparatively low emissions from natural gas transmission pipeline leaks (relative to other gas transmission pipeline facilities such as compressor stations), comparatively lower potential safety risks to persons or property in remote areas, and the continued development of methane leak detection technologies.”²³ PHMSA further proposes that, to satisfy its alternative advanced leak detection performance standards, “[t]he operator must demonstrate . . . that the alternative performance standard is consistent with pipeline safety and equivalent to the performance standard in § 192.763(b) with respect to

¹⁹ See Nygrens' Letter, Attach. A at 1 (filed on June 12, 2023) (“PHMSA issued this Notice of Proposed Rulemaking on May 4, 2023”); Nygrens' Comment on PUC Rulemaking at 3 (filed on June 12, 2023) (“The Nygrens urge the PUC to adopt the proposed PHMSA advanced leak detection technology program rules with some exceptions that are noted below.”).

²⁰ Nygrens' Comment on PUC Rulemaking at 4 (filed on June 12, 2023).

²¹ 49 C.F.R. § 192.5(b)(1)(ii).

²² *Id.* at § 192.5(b)(2).

²³ Nygrens' Comment on PUC Rulemaking, Exhibit 1 at 149 (filed on June 12, 2023).

reducing greenhouse gas emissions and other environmental hazards.”²⁴ As justification for the alternative standards, PHMSA states that the “flexibility” provided thereby “can promote emerging technologies where they may be most effective.”²⁵

26. The Nygrens oppose the “alternative standards” for Class 1 and 2 locations because they disagree with “the notion that rural areas, and rural residents, are somehow deserving of less protection than areas with greater density.”²⁶ The Nygrens state that their property that was significantly impacted by a “produced natural gas pipeline leak”²⁷ is within a Class 2 location.²⁸ The Nygrens believe that “[t]he devastation [they] experienced is a direct result of federal and state policies that ignored or minimized the threat posed by pipelines in rural areas of Colorado.”²⁹

27. The following support the Nygrens’ foregoing proposal: Kate Burke, Senior Assistant County Attorney Boulder County; Danee Brouillard, Director of Strategic Initiatives and Governmental Affairs City and County of Broomfield; Greg Dean, Oil & Gas Administrator, Community & Economic Development Department Adams County; Matthew Lafferty, Principal Planner Larimer County; David Frank, Energy & Environment Program Specialist Town of Erie; Dr Rosemarie Russo, Sustainability Manager, City of Commerce City; Jeffrey S. Moore, P.G., Manager, Energy & Environment Division City of Aurora; Gwen Lachelt, Founder and

²⁴ *Id.*

²⁵ *Id.*

²⁶ Nygrens’ Comment on PUC Rulemaking at 4 (filed on June 12, 2023)

²⁷ Nygrens’ Notice of Participation at 1 (filed on April 3, 2023).

²⁸ *Id.* at 4 n.8.

²⁹ *Id.* at 4. See Nygrens’ Comment on PUC Rulemaking, Exhibit E (filed on May 1, 2023).

Executive Director Western Leaders Network; Jacob Smith, Executive Director Colorado Communities for Climate Action; Micah Parkin, Founder and Executive Director, 350 Colorado; Andrew Forkes-Gudmundson, Senior Manager for State Legislative and Regulatory Affairs Earthworks; Emily Hornback, Executive Director Western Colorado Alliance; Natasha Léger, Executive Director Citizens for a Healthy Community; John Magnino, Senior Government Affairs Director Conservation Colorado; Scott Simmons, Chapter Lead Climate Reality Project of Northern Colorado; Kevin Cross, Convener Colorado Coalition for a Livable Climate; Ramesh Bhatt, Chair of the Conservation Committee Colorado Sierra Club; Paul Culnan, Senior Policy Analyst Empower Our Future; Jeff Hart, Co-Founder Save EPA; Leslie Glustrom, Senior Policy Advisor Clean Energy Action (Nygrens Consensus Group).

c. CNG

28. CNG recommends requiring each operator to submit an application requesting approval of an ALDT “Plan” developed by the operator.³⁰ However, CNG does not believe that such a requirement should be imposed by rule. Through the Commission’s application process, each ALDT Plan would be “considered individually and on its own merits in a way that best fits each individual utility.”³¹

29. As support for its proposal, CNG emphasizes that each utility is different in terms of resources, service territory, and infrastructure. As a result, each utility (and its ratepayers) has a different ability to afford the use of ALDT, and the different service territories and

³⁰ Response Comments of CNG at 2 (filed on June 16, 2023).

³¹ *Id.*

infrastructure of utilities may require different levels and types of ALDT. According to CNG, “as Colorado’s smallest gas utility, there are substantial differences in manpower and resources that may make accomplishing the requirements described in the plan recommendation more difficult than for some of the larger utilities. Additionally, the rural nature of CNG’s service areas may create differences in the implementation of ALD.”³² For this reason, “CNG believes there is good cause for the Commission to consider the plans in a forum focused on the characteristics of each utility.”³³

d. API

30. API recommends delaying adoption of ALDT rules until PHMSA’s rulemaking is complete for two reasons. First, such an approach would be more efficient. Second, implementing rules before the PHMSA rulemaking is complete could lead to conflicts between the Commission’s and PHMSA’s rules. As SB 21-108 requires the Commission’s rules to “incorporate the most current federal requirements under 49 CRR 191, 192, 193, and 199 as applicable, to maintain minimum standards for gas pipeline safety,” any conflicts between the Commission’s and PHMSA’s rules could violate SB 21-108.³⁴

3. Analysis

31. The participants have developed a good preliminary record on ALDT and its required use by operators in Colorado. As summarized above, there is a broad spectrum of comments and proposals. The record also reflects that the development of ALDT, including a definition of what ALDT even is and the requirements for the use of ALDT by operators that can

³² *Id.* at 2-3.

³³ *Id.* at 3.

³⁴ API’s Additional Comments at 2 (filed on June 16, 2023).

reasonably be imposed without imposing unsustainable costs, is in an early stage. This is underscored by the fact that PHMSA is in the midst of a rulemaking that seeks to create ALDT rules, including a first-time definition of ALDT.

32. The ALJ has reviewed PHMSA's draft rules. The ALJ believes that those draft rules are a good first step. For example, the ALJ believes that a functional definition of ALDT based on the result that ALDT must achieve like the one proposed in PHMSA's draft rules is the best way to define a complex and evolving technology. Specifically, PHMSA proposed § 192.763 specifies that any ALDT employed by an operator "used for leakage surveys, pinpointing leak locations, investigating, and inspecting leaks must have a minimum sensitivity of five (5) parts per million for each gas being surveyed." As the technology develops further, it may be possible to decrease the minimum sensitivity.

33. The use of Advanced Leak Detection Programs (ALDPs) developed by each operator employing elements defined and required by PHMSA is also a good conceptual start. Such an approach allows each operator to tailor their program to match the needs and resources of the operator, which is a recognition of the indisputable fact that each operator possesses different infrastructure, different resources, and thus different ALDT requirements to provide safe and reliable service. The ALJ believes that, following the promulgation of ALDT and ALDP rules, it may be appropriate for the Commission to review and approve at least the first ALDPs proposed by operators to ensure that operators understand and apply the Commission's ALDT and ALDP rules consistent with the Commission's intentions.

34. The ALJ understands and appreciates the Nygrens' concern regarding the use of "alternative advanced leak detection performance standards" for more rural areas of Colorado. As noted above, PHMSA has proposed that operators may use such "alternative advanced leak

detection performance standards” for Class 1 and 2 locations “because of the comparatively low emissions from natural gas transmission pipeline leaks (relative to other gas transmission pipeline facilities such as compressor stations), comparatively lower potential safety risks to persons or property in remote areas, and the continued development of methane leak detection technologies.”³⁵ Such an alternative standard can only be employed if “[t]he operator [] demonstrate[s] . . . that the alternative performance standard is consistent with pipeline safety and equivalent to the performance standard in § 192.763(b) with respect to reducing greenhouse gas emissions and other environmental hazards.”³⁶

35. The Nygrens are certainly correct that rural areas and residents are not entitled to less protection from pipeline leaks than their fellow Coloradans that live in more urban locations. However, as noted above, PHMSA has proposed that such alternative standards can only be used if “[t]he operator [] demonstrate[s] . . . that the alternative performance standard is consistent with pipeline safety and equivalent to the performance standard in § 192.763(b) with respect to reducing greenhouse gas emissions and other environmental hazards.”³⁷ Further, utilities are required to not only provide safe and reliable service, but to do so at just and reasonable rates.³⁸ As a result, if it is true that there are comparatively lower safety risks to persons and property and emissions from gas pipeline leaks in rural versus urban areas, then the allocation of limited resources based on degree of risk to mitigate overall risk may justify the use of different ALDT standards in rural versus urban areas.

³⁵ Nygrens’ Comment on PUC Rulemaking, Exhibit 1 at 149 (filed on June 12, 2023).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.; *Cottrell v. City & County of Denver*, 636 P.2d 703, 711 (Colo. 1981) (“A primary purpose of [utility] regulation is to ensure that the rates charged are not excessive or unjustly discriminatory.”).

36. In any event, given the relatively early stage of ALDT technology development and the PHMSA ALDT rulemaking processes, the fact that PHMSA's ALDT rules will be the first of their kind when finalized, the likelihood that PHMSA's final rules will differ significantly from the currently-issued draft rules as a result of the rulemaking process, and the Commission's commitment to engage in a stakeholder process in advance of opening a new rulemaking that will address ALDT and its use by operators within Colorado, the ALJ finds and concludes that it would be more efficient to decline to adopt any ALDT rules at this time. Adopting Commission rules at this time carries with it a significant risk of inefficiency, as it is likely that such rules will need to be amended significantly once the final PHMSA ALDT rules issue. Forcing operators to prepare for compliance with one set of ALDT rules that may change substantially when PHMSA's ALDT rulemaking concludes would potentially result in the waste of operator resources. Moreover, the promised future ALDT rulemaking by the Commission will have a far more substantial record on ALDT that will be generated as PHMSA's ALDT rulemaking progresses. Accordingly, based on the foregoing, the ALJ finds and concludes that it is not in the public interest to adopt ALDT rules at this time.

37. Based on the foregoing, the ALJ will reject the Commission's Proposed Rules 11001(a) and 11100(d). The ALJ will move Proposed Rule 11100(d), which requires operators to submit a list of ALDT they are using at the time of the report and, if none, an explanation of why they are not using ALDT, to Rule 11103(a)(VII). The definition of ALDT to be used for purposes of this reporting requirement is the definition used by PHMSA at the time of the report. Such reporting will give the Commission an understanding of operators' use of ALDT that may inform future Commission rulemaking(s) addressing ALDT.

B. Rule 11001(xx) – Definition of “Records”**1. Statutory Background**

38. Section 40-2-115(1)(d)(II)(A), C.R.S. states:

(II) The commission’s gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to:

A. Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities.

2. NOPR

39. In the NOPR, the Commission proposed the following definition of “Records”:

11001. Definitions.

....

(xx) “Records” means all recorded information, regardless of form or characteristics, made or received by a federal agency under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the information value of data in them; and does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes; or duplicate copies of records preserved only for convenience. For purposes of this rule, the term “recorded information” includes all traditional forms of records, regardless of physical form or characteristics, information created, manipulated, communicated, or stored in digital or electronic form. The Archivist’s determination whether recorded information, regardless of whether it exists in physical, digital, or electronic form, is a record as defined in subsection (a) shall be binding on all federal agencies as defined in 44 U.S.C. Section 3301.³⁹

³⁹ NOPR, Attach. A at 5 (Proposed Rule 11001(xx)).

40. As justification, the Commission stated that this definition was added “in support of the requirement for § 40-2-115(1)(d)(II)(A), C.R.S.,” which “requires increased availability of records for Pipeline Safety Program inspectors in the field for all field activities.”⁴⁰

3. Comments

41. Black Hills, Public Service, CNG, and API note that the proposed definition is the same as the definition in 44 U.S.C. § 3301. All cite to the language in the proposed rule and 44 U.S.C. § 3301 that the definition applies to records “made or received by a federal agency under federal law” or “activities of the Federal Government.” To the extent it applies to the Commission’s “records,” it is overbroad.⁴¹ Public Service further states that where “records” are referenced elsewhere in the rules, the meaning is clear.⁴² Black Hills and Public Service agree that the definition of “records” is unnecessary and should be deleted.⁴³ API requests that “the Commission staff re-evaluate the definition to provide one that better reflects the Commission’s work and its jurisdiction”⁴⁴ or delete the definition.⁴⁵ CNG proposes the following alternative definition:

“Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records may include, but are not limited to, functions, policies, decisions, procedures, operations, or other activities of the utility.⁴⁶

⁴⁰ NOPR at 6 (¶ 19).

⁴¹ Black Hills’ Initial Comments at 3-4 (filed on December 12, 2022); Public Service’s Initial Comments at 16 (filed on December 12, 2022); CNG’s Initial Comments at 3 (filed on December 12, 2022); API’s Initial Comments at 3 (filed on December 12, 2022).

⁴² Public Service’s Initial Comments at 16 (filed on December 12, 2022).

⁴³ Black Hills’ Initial Comments at 3-4 (filed on December 12, 2022); Public Service’s Initial Comments at 16 (filed on December 12, 2022).

⁴⁴ API’s Initial Comments at 3 (filed on December 12, 2022).

⁴⁵ API’s Response Comments at 4 (filed on January 3, 2023).

⁴⁶ CNG’s Initial Comments at 3 (filed on December 12, 2022).

4. Analysis

42. 44 U.S.C. § 3301 applies to the disposal of records by the federal government. The ALJ agrees that it has limited application to the Commission or the operators and utilities it regulates. As a result, the ALJ will adopt the following, which is based on the definition proposed by CNG:

“Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.

C. Rule 11001(eee) – Definition of “Transportation of Gas”

1. NOPR

43. The NOPR provides the following definition of “Transportation of Gas:”

Rule 11001. Definitions

. . . .

(eee) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.⁴⁷

2. Comments

44. API and Public Service assert that the language should be deleted because the Commission’s jurisdiction is limited to the intrastate transportation of natural gas.⁴⁸

⁴⁷ NOPR, Attach. A at 6 (Proposed Rule 11001(eee)).

⁴⁸ API’s Initial Comments at 1,3 (filed on December 12, 2022); Public Service’s Reply Comments at 14-15 (filed on January 3, 2023).

3. Analysis

45. The ALJ agrees with the comments and will delete the reference to “in or affecting interstate or foreign commerce.”

D. Rule 11008(e) – Incorporation by Reference of NPMS Operator Standards Manual

1. NOPR

46. In the NOPR, the Commission proposed the following subpart of Rule 11008:

11008. Incorporation by Reference.

....

- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.

2. Comments

47. Public Service states that it is concerned about the proposed incorporation because “the NPMS data requirements and mapping standards may create potential areas of conflict with certain provisions of the Commission’s Pipeline Safety Rules, especially rules that incorporate regulations from the COGCC.”⁴⁹ As support, Public Service cites two examples of possible conflicts, without stating or otherwise establishing actual conflicts.⁵⁰ Nevertheless, Public Service recommends deleting the proposed incorporation of the NPMS Operator Standards Manual.

48. API asserts that guidance/clarification should be provided about: (a) the extent to which the manual will be incorporated, whether it be the manual in its entirety or specific

⁴⁹ Public Service’s Initial Comments at 17 (filed on December 12, 2022).

⁵⁰ *Id.*

portions”; and (b) the manual's application to single states and its relation to Colorado-specific rules.”⁵¹

3. Analysis

49. The ALJ finds and concludes that Proposed Rule 11008(e) shall be retained. The arguments of Public Service and API are insufficiently compelling to justify omitting the incorporation into the Commission’s rules of the 2017 updated version of the NPMS Operator Standards Manual.

E. Rule 11013(b) – Qualifications and Verifiable Credentials

1. NOPR

50. In the NOPR, the Commission proposed the following regarding qualifications and verifiable credentials:

11013. Inspections and Investigations.

....

- (b) Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site.

As justification, the Commission stated that SB 21-108 requires verifiable credentials to be available on site “when requested by a Pipeline Safety Program Inspector.”⁵²

2. Comments

51. Public Service contends that SB 21-108 does not require occupational qualifications or verifiable credentials to be available on-site. Public Service states that it has the capability to provide occupational qualifications on site, but not verifiable credentials. In

⁵¹ API’s February 18, 2022 Letter at 1-2 (filed on December 12, 2022).

⁵² NOPR at 7 (¶ 25).

addition, it does not know whether employees or contractors have the capability to provide both their occupational qualifications and verifiable credentials on site. Based on the foregoing, Public Service requests the proposed rule to be revised as follows (with underlining indicating additions and strikethrough showing deletions):

- (b) Operator qualifications ~~and verifiable credentials~~ for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site. Other verifiable credentials may be provided later by request if they cannot be provided on site.⁵³

52. Similarly, API states that the assumption that all operators have the capacity to have operator qualifications and verifiable credentials available on site is questionable. API echoes Public Service’s request to allow verifiable credentials to be available off site upon request but extends the request to occupational qualifications as well.⁵⁴

53. CNG requests clarification of “qualifications” because “there is a fairly wide spectrum as to what may be considered . . . qualifications.” CNG suggests changing the proposed rule to “for activities that require a license or other certification necessary to perform such activities, all construction, inspection, and repair personnel shall provide such license or certification on-site.”⁵⁵

54. Finally, COGA requests clarification that ““qualifications and verifiable credentials’ refers to those qualifications that are determined by each operator to be required for construction, inspection or repair projects on regulated pipelines (not Type R) or that are otherwise required under Subpart N of Part 192.”⁵⁶

⁵³ Public Service’s Initial Comments at 18 (filed on December 12, 2022).

⁵⁴ API’s Initial Comments at 2-3 (filed on December 12, 2022).

⁵⁵ CNG’s Initial Comments at 3-4 (filed on December 12, 2022).

⁵⁶ COGA’s Initial Comments at 3 (filed on December 12, 2022).

3. Analysis

55. SB 21-108, codified at § 40-2-115(1)(d)(II)(A), C.R.S. states that “[t]he commission’s gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to: (A) Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities.” On its face, § 40-2-115(1)(d)(II)(A), C.R.S. does not require “qualifications and verifiable credentials” to be available at the site of pipeline construction, inspection, and repair activities. No participant has stated that federal law requires “qualifications and verifiable credentials” to be available on-site, and the ALJ is unaware of any such requirement.

56. The purpose of the “verifiable credentials” requirement is to allow pipeline safety inspectors to confirm that personnel on a site engaging in pipeline construction, inspection, and repair activities are who they say they are and that the personnel are authorized by an operator to be onsite engaging in those activities. Given their importance and destructive capability, pipelines can be the target of individuals or groups with nefarious intentions and actions taken to achieve their nefarious intentions can appear to be pipeline construction, inspection, and repair activities. As a result, it is important that a pipeline safety inspector be able to verify that individuals working on a pipeline site are authorized by an operator to be there.

57. Similarly, the ALJ interprets the purpose of the “qualifications” requirement is to allow pipeline safety inspectors to be able to confirm that an individual or group have the requisite qualifications to undertake the specific pipeline construction, inspection, and/or repair activities in which they are engaged.

58. The ALJ finds and concludes that it is less important to have the qualifications of an individual or group available on-site than the verifiable credentials of that individual or group.

As a result, the ALJ will amend the proposed rule as follows:

- (b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site.

The ALJ understands and appreciates that providing credentials for all personnel, and particularly for contractors, to be carried on-site may be difficult for smaller operators. As a result, the ALJ recommends a measure of flexibility in applying this rule. For example, requiring all personnel to carry government-issued identification and providing a phone number and the identity of an employee that an inspector can call to verify that on-site personnel are authorized by the operator to be on-site and perform certain work would satisfy the goal of the rule.

F. Rule 11100(c) – GIS Pipeline Reporting and Mapping

1. Background

59. Section 40-2-115(1)(d)(II)(C), C.R.S., which was promulgated in Senate Bill 21-108 (SB 21-108), states:

- (II) The commission's gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to:
 - (C) Mapping of all pipelines within the commission's jurisdiction. For this purpose the commission may incorporate information from any existing flowline maps or other maps prepared by the oil and gas conservation commission and showing pipelines subject to the jurisdiction of that agency. The public utilities commission's mapping requirements for pipelines within its jurisdiction must incorporate the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e.

Rule 1101.e of the Colorado Oil and Gas Conservation Commission states:

- (1) The Director will make Geographic Information System (GIS) data for off-location flowlines, crude oil transfer lines, and produced water transfer systems available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.
- (2) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the local government all Geographic Information System (GIS) data submitted through Flowline Reports, Form 44s, for all off-location flowlines, crude oil transfer lines and produced water transfer systems. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
- (3) Except as provided in parts (1) and (2), above, the Commission will keep all such Geographic Information System (GIS) data confidential to the extent allowed by the Colorado Open Records Act.

2. NOPR

60. In the NOPR, the Commission proposed the following regarding pipeline mapping:

Rule 11001

....

- (l) "Geographic Information Systems (GIS)" means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth's surface.

....

- (n) "Inactive/Idle" means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume

of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.

11100. Submission of Reports and Notices - General.

. . . .

- (c) Geographic Information System (GIS) data shall be submitted to the PSP and shall include assets as defined in paragraph 11001(mm) as pipeline facilities and/or pipeline systems. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.

. . . .

- (II) Data specifications. In addition to the data requirements listed in the National Pipeline Mapping System (NPMS) Operator Standards Manual, the state of Colorado also has the following data requirements:

- (A) the maximum allowable operating pressure;
- (B) testing pressure;
- (C) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
- (D) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA);
- (E) identify as HCA/MCA on each segment for class location, as applicable; and
- (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727.

- (III) Disclosure of GIS data.

- (A) The PSP Chief will make GIS data for transmission and distribution pipeline systems available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.

- (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the local government all GIS data for all transmission, distribution or gathering systems. The local government may only reproduce or public data that the Commission makes publicly available through its website. A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
- (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.

61. In support of this proposal, the Commission stated:

The proposed rule includes language consistent with the GIS rules within the current Colorado Oil and Gas Conservation Commission (COGCC) rule 2 CCR 404-1, Rule 1101.e. For efficiencies between agencies, PSP hopes to merge its data with that of the COGCC. Specifically, § 40-2-115(1)(d)(II)(C), C.R.S., includes that the commission “may incorporate information from any existing flowline maps or other maps prepared by [COGCC] and showing pipelines subject to the jurisdiction of that agency.” The security rules included in this section have been adjusted to apply to the jurisdictional pipelines the Pipeline Safety Program regulates and to the data this Commission collects. We ask stakeholders to comment that the similar language, based on COGCC’s rules, is an efficient and effective way to create efficiencies and consistencies between agencies and protect sensitive information.

3. Comments

a. Public Service

(1) Comments Regarding Commission’s Proposed Rule

62. Public Service raises four primary concerns with the Commission’s proposed rules.

63. First, Public Service states that disclosure of the information listed in the Commission’s proposed rule raises serious security concerns. Specifically, Public Service cites the 2020 Biennial National Strategy for Transportation Security (NSTS) (NSTS Report), which states that “[p]rotecting vital supply chain infrastructure of pipeline operations is critical to national security and commerce.”⁵⁷ Public Service also cites federal law establishing that information concerning at least transmission and distribution pipelines is “critical energy/electric infrastructure information” (CEII). 18 C.F.R. § 388.113 states:

- (2) Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:
 - (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
 - (ii) Could be useful to a person in planning an attack on critical infrastructure;
 - (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
 - (iv) Does not simply give the general location of the critical infrastructure.

....

- (4) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

64. According to Public Service, “the Commission’s [proposed] rules would appear to provide public access to sensitive infrastructure information with limited protections,”⁵⁸ thereby making the publicly available map containing the information “an attractive target for acts of

⁵⁷ Joint Supplemental Comments at 3 (filed on February 9, 2023).

⁵⁸ *Id.* at 5. API, Atmos, Black Hills, CNG, Colorado Springs Utilities, and COGA share this concern.

terrorism.”⁵⁹ Public Service believes that the most “sensitive infrastructure information” is the maximum allowable operating pressure, test pressure, nominal diameter, and HCA/MCA of pipelines because “these attributes may indicate the importance of the pipeline or possible consequences to public safety.”⁶⁰

65. Second, Public Service contends providing the information in proposed Rule 11100(c)(II) below a 1:24,000 scale would exacerbate the security concerns.⁶¹ According to Public Service, a 1:6,000 scale would provide the location of pipelines with too much precision. Thus, the detailed characteristics of pipelines required by Proposed Rule 11100(c)(II) coupled with the 1:6,000 scale map required by Rule 11100(c)(III) would provide a roadmap to the location of the most critical pipeline infrastructure and/or the pipeline infrastructure that, if attacked, would cause the greatest possible damage.⁶²

66. Third, Public Service further contends that “an online map viewer with publicly available natural gas pipeline attributes at a 1:6,000 scale would conflict with federal law.”⁶³ Specifically, Public Service contends that the Commission cannot provide a publicly available map below the 1:24,000 scale of the publicly available NPMS. According to Public Service, “the 1:6,000 scale in the COGCC’S rule” does not violate federal law because it “is limited to the COGCC’s jurisdictional flowlines, crude oil transfer lines, and produced water transfer

⁵⁹ Public Service’s Initial Comments at 7 (filed on December 12, 2022).

⁶⁰ Public Service’s Comments in Response to Decision No. R23-0328-I at 19 (filed on June 16, 2023).

⁶¹ Public Service’s Comments in Response to Decision No. R23-0328-I at 12 -13 (filed on June 16, 2023).

⁶² *Id.* at 12-13, 19.

⁶³ *Id.* at 15.

systems.”⁶⁴ If the Commission nevertheless makes publicly available a map at 1:6,000 scale, “the viewable information must be very limited.”⁶⁵

67. Fourth, Public Service states that it has not tracked and collected all of the GIS data required in Proposed 11100(c)(II).⁶⁶ Public Service, has “2,070 miles of transmission . . . , 25,311 miles of distribution main, and approximately 1,187,000 distribution services.”⁶⁷ According to Public Service,

[c]ollecting a number of the proposed attributes may be near impossible, involve significant lead times, or require system and process improvements - which could be very costly - to capture data and activity. . . . It could take decades and potentially hundreds of millions of dollars to comply with the distribution [maximum allowable operating pressure] and testing pressure requirements alone.⁶⁸

Public Service’s primary cost-based concerns relate to the pipe description attributes, description of corrosion protection, HCA/MCA status, and characterization as abandoned versus inactive. Public Service either has some of this data but it is not in its GIS system (test pressure, standard dimension ratio, corrosion protection description, and HCA/MCA), or does not have the data (pipe material for older pipelines, coating for older pipelines, inactive status). Public Service does have data concerning active and abandoned pipelines, but does not have data concerning “inactive/idle” pipelines.⁶⁹ According to Public Service, “[n]atural gas pipelines [] either have an ‘active’ or ‘abandoned’ status pursuant to PHSMA.”⁷⁰

⁶⁴ *Id.* at 17-18.

⁶⁵ *Id.* at 19.

⁶⁶ *Id.* at 8.

⁶⁷ *Id.* at 8-9

⁶⁸ *Id.* at 8.

⁶⁹ Public Service’s Initial Comments at 14-15 (filed on December 12, 2022); Transcript of 5/2/2023 Continued Public Comment Hearing at 12-35.

⁷⁰ Public Service’s Initial Comments at 14 (filed on December 12, 2022).

(2) Public Service's Proposed Revisions

68. Public Service proposes the following modifications to the Commission's proposed rules regarding GIS pipeline data and mapping (with underlining indicating additions and strikethrough showing deletions):

Rule 11001. Definitions

....

(n) ~~“Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.~~

Rule 11100. Submission of Reports and Notices – General

....

(c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP ~~and shall include assets as defined in paragraph 11001(mm) as pipeline facilities and/or pipeline systems.~~ GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.

- (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically upon reaching consensus with the affected operators regarding the changes. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
- (II) Data specifications. The following data attributes for Transmission, Distribution, and Gathering pipelines shall be submitted to the extent available: ~~In addition to the data requirements listed in the National Pipeline Mapping System (NPMS) Operator Standards Manual, the state of Colorado also has the following data requirements:~~
 - (A) ~~the maximum allowable operating pressure~~ Spatial location of the pipeline;

- (B) ~~testing pressure~~Operator;
 - (C) ~~the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material)~~Fluid type;
 - (D) ~~description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA)~~Designation of pipeline as Transmission, Distribution, or Gathering; and
 - (E) ~~identify as HCA/MCA on each segment for class location, as applicable; and~~For Transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator.
 - (F) ~~abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727.~~
- (III) Disclosure of GIS data.
- (A) The PSP Chief will make GIS data for transmission,~~and distribution, and gathering~~ pipelines ~~systems~~available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location of pipelines, operator, and fluid type, ~~pipe material type, and pipe size~~. Online map viewer data only will be available at scales greater than or equal to ~~1:6,000~~ 1:24,000. ~~Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.~~
 - (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will ~~provide to allow~~ the local government to view in the Commission's offices all the GIS data for mapping all transmission, distribution or gathering ~~systems~~ pipelines within the Commission's jurisdiction. The local government may only reproduce or publicly publish data that the Commission makes publicly available through its website. ~~A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.~~
 - (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential

pursuant to ~~to the extent allowed by~~ the Colorado Open Records Act and applicable federal law.

- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5- 104.5, C.R.S.⁷¹

69. Public Service argues that § 40-2-115(1)(d)(II)(C), C.R.S. does not require that any particular pipeline attributes be included in the Commission's publicly available map of pipelines.⁷² Instead, it merely requires that the Commission employ "the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e." According to Public Service, its proposed revisions provide sufficient information to the public, do not create a roadmap for terrorists to cause significant damage to our utility infrastructure, and comply with § 40-2-115(1)(d)(II)(C), C.R.S.

70. Public Service asserts that the pipeline attributes it proposes to provide to the Commission in its proposed revisions to Rule 11100(c)(I) are the same as those it provides to the National Pipeline Mapping System (NPMS). As a result, the data already exists and providing it to the Commission would not be prohibitively expensive. Public Service also believes that providing its recommended information for the Commission's publicly available map would not create significant security concerns provided the map is limited to 1:24,000 scale, which, as noted above, is the scale limitation on the NPMS map.

⁷¹ Public Service's Reply Comments, Attach. A at 2, 9-10 (filed on January 3, 2023).

⁷² Public Service's Reply Comments at 10-12 (filed on January 3, 2023).

71. Atmos and Black Hills support Public Service’s proposed changes to Rule 11100.⁷³

b. Representative Story

72. Representative Story makes two primary points. First, Representative Story states that SB21-108 requires all pipelines within the jurisdiction of the PUC to be mapped, and for those maps to be publicly shared at a 1:6,000 scale. According to Representative Story,

It is broadly understood that the handling and use of oil and gas requires significant safety measures due to the highly flammable and explosive nature of the fuel. This is a clear and present danger at all times. There are now, and always have been, additional risks that nefarious actions could cause catastrophic outcomes, even without additional mapping available to communities and local governments. Providing pipeline mapping at the scale of 1:6,000 for communities and local governments allows for better planning and knowledge for informed decision making. The benefits of mapping access far outweigh the additional minimal risk of nefarious actions because of the access to this mapping, over the current knowledge of oil and gas infrastructure that is in clear view.⁷⁴

73. Second, Representative Story asserts that the Commission must institute the same “confidentiality, security and public access limitations” as the Colorado Oil and Gas Conservation Commission, which is now known as the Colorado Energy & Carbon Management Commission.⁷⁵

⁷³ Transcript of January 19, 2023 Public Comment Hearing at 15-16. *See also* Comments of Black Hills to Decision No. R23-0328-I at 4 (filed on June 16, 2023) (“If maps are provided at the 1:6,000 scale, each layer that is added to that map increases the likelihood that bad actors could utilize that information to cause a catastrophic event. As an example, providing information on the pressures of the natural gas pipelines in specific locations would allow bad actors to target areas that might result in the greatest number of casualties.”).

⁷⁴ Comments of Representative Story at 2 (filed on August 3, 2023).

⁷⁵ *Id.*

c. Nygrens' Consensus Group

74. The Nygrens support the NOPR's language in proposed Rules 11100(c)(I) & (II). The Nygrens propose the following change to the Commission's proposed Rule 11100(c)(III) (with underlining indicating additions and strikethrough showing deletions):

(III) Disclosure of GIS data.

(A) The PSP Chief will make GIS data for all pipeline systems within its jurisdiction ~~transmission and distribution pipeline systems~~ available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.⁷⁶

The Nygrens propose this change because SB 21-108 requires "mapping of all pipelines within the jurisdiction of the PUC."⁷⁷ The proposed change thus follows the exact language of SB 21-108 as codified at § 40-2-115(1)(d)(II)(C), C.R.S.⁷⁸

75. Finally, the Nygrens believe that the rules should not mandate the public disclosure of pipeline pressures, but that pipelines pressures and higher resolution maps should be available to local governments, provided both are treated as confidential.⁷⁹

d. API

76. API states that the date required by Proposed Rule 11100(c)(II) "does not exist for older pipelines" and requiring operators to collect the data "would add not appreciable benefit to

⁷⁶ Nygrens' Consensus Position on the PUC Rulemaking (filed on July 28, 2023), Attach. at 1.

⁷⁷ *Id.* at 2.

⁷⁸ § 40-2-115(1)(d)(II)(C), C.R.S.

⁷⁹ Nygrens' Comment on PUC Rulemaking at 5-6 (filed on June 12, 2023); Nygrens' Consensus Position on the PUC Rulemaking at 2 (filed on July 28, 2023).

safety.”⁸⁰ “API Colorado urges the Commission to align its rules respecting the data attributes of gathering lines and pipelines to those enumerated by the Oil and Gas Conservation Commission and PHMSA Part 192.”⁸¹

77. As to Proposed Rule 11100(c)(III), API states that “[d]isclosure by the PSP staff of detailed GIS data poses significant security and public health concerns.”⁸² API recommends that the rules “provide that PSP staff may not disclose GIS data to any local government unless and until that local government has entered into an agreement to maintain the GIS data as confidential.”⁸³ API also recommends that Rule 11100(c)(II) “follow the National Pipeline Mapping System federal reporting requirements.”⁸⁴ However, API recognizes that “the Commission does not have the discretion to set confidentiality, security, and public access provisions or limitations on the scale of publicly available images that diverge from those explicitly established by the General Assembly. The Commission must adhere to the clearly stated legislative direction in this regard.”⁸⁵

e. Pipeline Safety Trust

78. The Pipeline Safety Trust supports Proposed Rule 11100(c) because “[r]equiring operators to provide GIS data on the gas pipeline infrastructure in Colorado will promote a more informed public and safer communities.”⁸⁶

⁸⁰ API’s Responsive Comments at 5 (filed on January 3, 2023).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 6.

⁸⁵ API’s Comment at 1 (filed on June 16, 2023).

⁸⁶ Comment in Support of Proceeding No. 22R-0491GPS at 2 (filed on April 21, 2023).

4. Analysis

79. The ALJ concludes that a compromise between the positions of Public Service and the Nygrens is in the public interest. The Nygrens are correct that supplying as much information as possible regarding pipelines to the public is of paramount importance. Such information can be used to mitigate damage from leaks and to make informed decisions about major life decisions such as where to rent or purchase a residence. However, Public Service and the other operators are also correct that information regarding pipeline infrastructure can be used for improper purposes, including terrorism. The following changes will be implemented:

Rule 11100

. . . .

- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for Transmission, Distribution, and Gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator;
 - (C) fluid type;
 - (D) designation of pipeline as Transmission, Distribution, or Gathering;
 - (E) for Transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator.

- (F) the maximum allowable operating pressure;
 - (G) the testing pressure;
 - (H) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (I) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and identify as HCA/MCA on each segment for class location, as applicable; and
 - (J) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727.
- (III) Disclosure of GIS data.
- (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(E) available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.
 - (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(F)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
 - (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential pursuant to the Colorado Open Records Act and applicable federal law.

- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5- 104.5, C.R.S.⁸⁷

80. Rule 11100(c)(II) includes the data identified by the Commission in the NOPR and the data proposed by Public Service. However, operators will only be required to submit the data to the Commission to the extent it is available. The record reflects that the operators who participated in this proceeding do not possess all of the information specified in Rule 11100(c)(II), at least not in GIS data form. The record further reflects that the cost of acquiring the data so that it could be submitted as GIS data is unknown, but likely significant. As a result, the Rules will not impose the potentially costly obligation on operators of collecting data that they do not currently have. The ALJ reminds operators that they have a duty to operate their pipelines in a safe manner and they should be actively collecting all information necessary for them to do so.

81. Rule 11100(c)(III) specifies that information regarding pipelines available through the online map is limited to the data proposed by Public Service. In addition, the online map will be available at a scale of 1:6,000 because that is the scale of the online map provided by the Colorado Energy & Carbon Management Commission (CECMC) of “off-location flowlines, crude oil transfer lines, and produced water transfer systems.” The adopted rule employs the same language from CECMC’s Rule 1100.e allowing: (a) the remainder of the pipeline data supplied by operators to be disclosed to local governments, who may further share the additional information provided it is treated as confidential and not reproduced or published; and (b) spatial data for individual property parcels to be viewed at the Commission’s office at less than a 1:6,000 scale.

⁸⁷ Public Service’s Reply Comments, Attach. A at 10 (filed on January 3, 2023).

82. As noted above, § 40-2-115(1)(d)(II)(C), C.R.S. requires the Commission’s online map to “incorporate the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e.” The ALJ concludes that the adopted language above complies with § 40-2-115(1)(d)(II)(C), C.R.S. but also mitigates as much as reasonably possible the risk of publicly disclosing information that could put pipeline infrastructure and public security at risk.

G. Rule 11100(e) – Leak Reporting

83. The NOPR did not propose any rule changes addressing leak reporting.

1. Comments

a. Nygrens’ Consensus Group

84. The Nygrens propose the following leak reporting requirements:

Rule 11100. Submission of Reports and Notices – General.

(e) Annual Leak Report.

(I) Beginning March 16, 2024, and on an annual basis thereafter, each operator must submit a report to the commission that includes:

(A) The total number of known leaks in pipelines owned by the operator as of January 1st of the year the report is submitted;

(B) The total number of hazardous leaks eliminated or repaired during the previous one-year period ending December 31st;

(C) The total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;

(D) The total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted.

(E) The approximate date and location of each leak from the gas pipeline system detected by the operator;

- (F) The type of pipe and facility that was leaking;
 - (G) The method(s) used to detect each leak;
 - (H) The approximate date and location of each leak caused by third-party excavation or other causes not attributable to the normal operation or inspection practices of the operator;
 - (I) The volume of each leak, measured in carbon dioxide equivalents and thousands of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation;
 - (J) Whether the identified cause of each leak was from: Corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes; and
 - (K) The estimated market value of lost gas and the methodology used to measure the loss of gas.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: Corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes.
- (III) The commission must use the data reported by operators under this section, as well as other data reported by operators to the commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The commission may request additional information.
- (f) Disclosure of Leak Detection Data
- (I) By March 31, 2024, and on an annual basis thereafter, the commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By March 31, 2024, and on an annual basis thereafter, the commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this section.

85. The Nygrens' proposal is based on a Washington state statute.⁸⁸ As support for their proposal, the Nygrens state that annual leak reporting is essential "to better understand what pipelines may need to be replaced and what technologies are most useful in detecting leaks."⁸⁹ According to the Nygrens, "PHMSA and the PUC currently only require reporting of 'incidents' that either kill one or more people, cause a personal injury resulting in hospitalization, cause property damage of more than \$122,000, or 'unintentionally' releases 3 MMCF of natural gas (enough natural gas to serve 17,000 homes for a day)."⁹⁰ The Nygrens contend that such reporting requirements are insufficient to allow the Commission's Pipeline Safety Program to: (a) "adequately protect public health, safety, welfare of disproportionately impacted communities"; and (b) "quantify methane releases so the state can meet Colorado's greenhouse gas targets."⁹¹ Finally, the Nygrens assert that "[r]eporting of all leaks is already required in other states such as Washington, New York, New Jersey, and Texas"⁹² and Colorado should follow suit.

86. The Nygrens' Consensus Group supports the Nygrens' proposal.

b. Public Service and Black Hills

87. Public Service states that PHMSA's rulemaking will propose "annual reporting on discovered leaks and related to emission reporting."⁹³ For this reason, Public Service and Black Hills request that the issue of leak reporting be deferred until PHMSA's current rulemaking is

⁸⁸ Nygrens' Comment on PUC Rulemaking at 7-8 (filed on May 1, 2023) (citing Wash. Rev. Code § 81.88.160 (2021)).

⁸⁹ Nygrens' Comment on PUC Rulemaking at 5 (filed on June 12, 2023).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Nygrens' Consensus Position on the PUC Rulemaking at 3 (filed on July 28, 2023).

⁹³ Public Service's Comments in Response to Interim Decision No. R23-0328-I at 9 (filed on June 16, 2023).

completed.⁹⁴ Public Service also has not researched the “Commission’s authority or the wisdom of promulgating reporting rules that mirror another state statute or whether the Washington statute conflicts with federal law.”⁹⁵ For this additional reason, Public Service recommends deferring consideration of a Commission rule addressing leak reporting.

c. Atmos and CNG

88. Both Atmos and CNG stated that they are not opposed to annual leak reporting. Atmos positively cited the annual leak reporting rules of the Railroad Commission of Texas that require leak reports “that include a list of all leaks identified and repaired on the operator’s pipeline facilities, and the number of unrepaired leaks remaining on the operator’s system by leak grade.”⁹⁶ According to Atmos, the rules require the following information for each repaired leak: (a) leak location; (b) facility type; (c) leak classification; (d) pipe size; (e) pipe type; (f) leak cause; and (g) leak repair method.⁹⁷ “Atmos [] recommends that [leak] reports be required on an annual basis if adopted in Colorado.”⁹⁸

89. CNG states that Commission Rule 11103(a)(II) and (V) already require the annual filing of PHMSA “7100.1-1 reports” that are “are large, comprehensive forms that include the reporting of leaks.”⁹⁹ Specifically,

Parts C and D of the 7100 Distribution System report lists the number of leaks discovered, eliminated, and repaired, and the determined cause. Part M of the

⁹⁴ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 9 (filed on June 16, 2023); Black Hills Comments to Decision No. R23-0328-I at 3 (filed on June 16, 2023).

⁹⁵ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 9-10 (filed on June 16, 2023).

⁹⁶ Atmos’ Additional Comments at 3 (filed on June 16, 2023).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ CNG’s Response Comments at 4 (filed on June 16, 2023).

7100 Transmission report lists the number of leaks discovered and the determined cause.

Pursuant to the Pipeline Safety Rule 11201 (b), 4 CCR 723-11, CNG provides an annual Damage Report that is filed each March 15 and summarizes excavation damages by date and their root causes. With that filing, CNG also provides the Utility Notification Center of Colorado (UNCC) Locate Summary Activity Sheet that provides an even greater level of detail about damage incidents by month.

. . . .

CNG . . . currently submits emissions reports to the Environmental Protection Agency (EPA) through the Greenhouse Gas Reporting Program (GHGRP) for 40 CFR Part 98 Subpart W (related to methane) and Subpart NN (related to Carbon Dioxide). This annual report is also provided to the Air Quality Control Division (AQCD) within the Colorado Department of Public Health and Environment (CDPHE). This is public information that may be shared by the AQCD to any other state agency through existing channels.

The foregoing discussion demonstrates that much of what [the Nygrens are] proposing in proposed Rule 11100(e) is already being produced to a large extent through reports being submitted to the Commission.¹⁰⁰

CNG nevertheless concedes that the Nygrens' "recommendations in proposed Rule 11100(e)(III) . . . are valuable for consideration."¹⁰¹ If the Commission adopts some form of annual leak reporting, CNG recommends that "the Commission require gas utilities provide a general narrative discussion for each leak identified in the PHMSA Form 7100 that is submitted to the Commission each March 15."¹⁰² Such a narrative According to CNG, such a format "would allow flexibility based on the nature of the leak, its root cause, and other factors."¹⁰³

2. Analysis

90. The ALJ finds that the leak reporting proposed by the Nygrens is in the public interest. Accordingly, the Nygrens' Proposed Rules 11100(d) & (e) will be adopted. The ALJ

¹⁰⁰ *Id.* at 4-6.

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

¹⁰³ *Id.*

understands that the PHMSA rulemaking may address leak reporting. If so, and the direction of the PHMSA rulemaking on leak reporting appears to conflict with the rules here, operators may seek a waiver of these rules in 2024 to give the Commission time to address any such conflicts in a rulemaking. The ALJ does not place weight on Public Service’s request that the Commission hold off on implementing leak reporting rules because Public Service did not analyze whether “the Washington statute conflicts with federal law”¹⁰⁴ Public Service had more than enough time to conduct the analysis. Based on the foregoing, the ALJ finds and concludes that the Nygrens’ proposed Rule 11100(e) is in the public interest and shall be adopted.

H. Rule 11100(f) – Gas Infrastructure Planning Maps

1. Background

91. Proceeding No. 21R-0449G was a rulemaking that addressed, among other things, Gas Infrastructure Planning Rules at 4 CCR 723-4-4550 *et seq.*, on October 1, 2021.¹⁰⁵ CEO participated in that proceeding and proposed that the Commission adopt a rule within the Gas Infrastructure Planning Rules that system maps with type and age of pipe be required as part of gas infrastructure plans and clean heat plans for the purpose of facilitating the Commission’s review and understanding of NPA analysis. As justification, CEO stated that a system-wide understanding of the locations and ages of pipes will help the Commission consider where new gas infrastructure investments are prudent based on age of existing infrastructure, where new gas infrastructure may be imprudent due to the feasibility of cost-effective DSM and electrification measures, and where strategic gas decommissioning may be possible.

¹⁰⁴ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 9-10 (filed on June 16, 2023).

¹⁰⁵ Decision No. C21-0610.

92. In Decision No. C22-0760, the Commission adopted new and amended rules that issued on December 1, 2022, but declined to adopt CEO's proposed rule. In so doing, the Commission stated that "[t]he utilities have indicated they do not have such information for their entire systems or that it would require a significant effort to compile. The Commission agrees such information requirements, if applied across the system, would require significant effort,"¹⁰⁶

93. Subsequently, the Commission issued Decision No. C23-0117 on February 24, 2023 that addressed, among other things, CEO's Application for Rehearing, Reargument, and Reconsideration (RRR) of Decision No. C22-0760. In its RRR Application, CEO argued that the Commission should reverse its decision not to adopt CEO's proposed rule. The Commission declined to do so, reiterating that "[w]e do not have the record before us to implement mapping requirements to show age or type of pipe in this proceeding."¹⁰⁷ However, the Commission also stated:

The Commission recently issued a NOPR in 22R-0491GPS to implement SB 21-108; this proceeding is before an administrative law judge. . . . CEO or others may consider providing relevant comments in the pipeline docket 22R-0491GPS, where the Commission is considering implementing similar requirements. Accordingly, we deny CEO's request at this juncture. However, the Commission expects that general and specific improvements in a utility's mapping capabilities, including the comprehension of pipeline material and age, due to separate GPS proceedings pursuant to 22R-0491GPS, or other efforts, should reasonably be incorporated into the utility's subsequent GIP filing in order to further the broad goals of the GIP process.¹⁰⁸

94. On June 16, 2023, CEO stated in this proceeding that it planned to propose a rule

¹⁰⁶ Decision No. C22-0760 at 90-91 (¶ 207).

¹⁰⁷ Decision No. C23-0117 at 33 (¶ 88).

¹⁰⁸ *Id.*

equivalent to the rule it proposed in Proceeding No. 21R-0449G. CEO reiterated this point at the second continued remote public comment hearing on June 29, 2023. As a result of CEO's intention to file a proposed rule, the ALJ continued the public comment hearing and set a schedule for further written comments.

95. On July 12, 2023, CEO filed its Rule Proposal, which was then discussed at the third continued public comment hearing on August 3, 2023.

2. Comments

a. CEO

96. CEO proposes the following rule language:

11100. Submission of Reports and Notices – General.

....

- (f) Any operator that is an investor-owned gas utility must provide in a Gas Infrastructure Plan, or as otherwise directed by the Commission, a map showing system-wide locations, ages, and materials or types of distribution system pipes, consistent with 49 CFR 191 and section 40-2-115(1)(d). As part of the filing, the investor-owned gas utility must also provide information about pipes that may need to be upgraded or replaced within ten years after the date that the utility files the plan, unless otherwise ordered by the Commission.
- (I) Any investor-owned gas utility may designate any map or associated information provided pursuant to rule 11100(f) as containing critical infrastructure information and request extraordinary protections subject to Commission rules 1100-1103. Except that any critical infrastructure information given highly confidential protection under rule 1103 must be available to all state agencies that are interveners in the proceeding, subject to the approved nondisclosure agreement.¹⁰⁹

¹⁰⁹ CEO's Rule Proposal Comments at 3 (filed on July 12, 2023).

97. CEO states that its proposed rule is required by § 40-3.2-104.4(3), C.R.S., which became effective on August 7, 2023. Section 40-3.2-104.4(3), C.R.S. does not define “critical infrastructure information” or “critical infrastructure facilities or systems.” While FERC has defined both terms, CEO argues against adopting these definitions because they are “overly broad” and could limit parties access to the information.¹¹⁰

98. Section 40-3.2-104.4(3)(c), C.R.S. requires the Commission to:

ensure that the content of the map provided to the commission and sharing procedures are in compliance with the parameters related to critical infrastructure reporting standards of the California Institute for Energy and Environment, or its successor organization, and the safety and system integrity standards of the American Petroleum Institute, or its successor organization.

However, neither the referenced “critical infrastructure reporting standards” nor the “safety and system integrity standards” are a part of the record in this rulemaking. Both Public Service and CEO conducted searches for them without success. The representative for API participating at the August 3, 2023 second continued remote public comment hearing stated that she believed API has safety and system integrity standards.¹¹¹

99. CEO believes that its proposed rule language should be added as standalone subsection (f), and not to subsection (c)(II), in Rule 11100. The requirements of § 40-3.2-104.4(3), C.R.S. apply to investor-owned utilities. In contrast, Proposed Rule 11100(c)(II) applies to operators. While there is overlap between the two, CEO believes that the requirements for investor-owned utilities and operators should be kept separate for the sake of clarity.¹¹²

¹¹⁰ *Id.* at 9.

¹¹¹ Transcript of August 3, 2023 Second Continued Remote Public Comment Hearing at 39-41.

¹¹² *Id.* at 7-8.

b. Public Service

100. Public Service does not support CEO's proposed language for four primary reasons. First, Public Service asserts that CEO's proposed language is not within the scope of this rulemaking. Specifically, the NOPR in this rulemaking "proposed no amendments to the GIP rules and no requirement that GIP mapping or filing information be included in the Gas Pipeline Safety rules."¹¹³ As evidence of the lack of notice, Public Service states that "there were large number of participants who were involved in the Gas Infrastructure Planning rulemaking that are not involved in the instant rulemaking."¹¹⁴ Public Service concludes that "CEO's proposed Rule 11100(d) exceeds the notice in the NOPR of the subject-matter of this rulemaking, violates the notice requirements of the APA, improperly broadens the scope of this rulemaking, and should be rejected."¹¹⁵

101. Second, Public Service argues that if the subject matter of CEO's proposed rule is promulgated into a Commission, rule, it should be done so within the Commission's Gas Infrastructure Planning Rules that are part of the Rules Regulating Gas Utilities, not in the Gas Pipeline Safety Rules. While the former apply to planning capital investment by gas distribution utilities, the latter focus on the safety of gas pipeline facilities.¹¹⁶ Public Service concludes that "the subject matter [of CEO's proposed rule] more appropriately fits within the Commission's Rules Regulating Gas Utilities and specifically the Gas Infrastructure Planning Rules, as opposed to the Gas Pipeline Safety Rules."¹¹⁷

¹¹³ Public Service's Reply to CEO's Comment at 9 (filed on July 27, 2023).

¹¹⁴ *Id.* at 5-6.

¹¹⁵ *Id.* at 10.

¹¹⁶ Public Service's Reply to CEO's Comment at 5 (filed on July 27, 2023).

¹¹⁷ *Id.*

102. Third, Public Service notes that the Commission’s statement in Decision No. C23-0117 was not a directive that CEO’s proposed rule be addressed in this rulemaking. Instead, the Commission stated that CEO and others “may consider providing relevant comments” in this proceeding. Public Service asserts that this language does not require either CEO to request the implementation of its proposed rule in this proceeding, or the ALJ to do so.¹¹⁸

103. Fourth, CEO waited almost four months after the issuance of Decision No. C23-0117 to inform the ALJ that it planned to request the addition of the mapping proposal in this proceeding that the Commission declined to adopt in the Gas Planning Rulemaking (Proceeding No. 21R-0449G). Another almost four weeks elapsed before CEO proposed its rule language, which was approximately three weeks before the final public comment hearing. Public Service recommends that the ALJ decline to consider CEO’s proposed rule at this late juncture in this rulemaking.¹¹⁹

c. API, Atmos, and Black Hills

104. API, Atmos, and Black Hills do not support CEO’s proposal. Atmos agrees with Public Service that CEO’s proposed rule should be promulgated, if at all, in the Gas Infrastructure Planning rules, not in the Pipeline Safety Rules.¹²⁰ API argues that CEO’s proposal should be rejected because it “could be outside the scope of this proceeding, which may lead to the joinder of additional stakeholders and delays in completing this rulemaking.”¹²¹ And, Black Hills asserts that “[t]he Commission should not attempt to shoehorn in this rulemaking changes

¹¹⁸ *Id.* at 7-8.

¹¹⁹ *Id.* at 6-8.

¹²⁰ Atmos’ Post-Hearing Comments at 1-2 (filed on July 27, 2023).

¹²¹ API’s Responsive Comments at 1-2 (filed on July 14, 2023).

that are not fully developed, conflict with the statutory basis for this rulemaking, and are not intended to strengthen gas pipeline safety.”¹²²

d. CNG

105. CNG believes that CEO’s proposal does not provide sufficient protection to the maps and the information contained therein that the proposed rule requires the investor-owned gas utilities to provide to the Commission. CNG thus proposes a “compromise solution” to address that problem in which

attributes identified by CEO including age and type of pipe be provided in a list in a document separate from a map, without specifying location in a way that could be used by bad actors. For example, the Company could provide the number of miles of pipe, including the age, type and material, by service territory and perhaps by county, municipality, or other border designation so long as the attributes cannot be attributed to specific locations.¹²³

Otherwise, CNG states that CEO should “pursue its policy objectives [] in the litigated GIP proceedings for each utility.”¹²⁴

3. Analysis

106. The ALJ declines to adopt CEO’s proposed Rule 11100(f). CEO made its proposal far too late in this rulemaking for it to receive the attention it needs. As in Proceeding No. 21R-0449G, there is an insufficient record in this proceeding to support CEO’s proposed rule, particularly given the investor-owned utilities’ statements in this proceeding that they do not have the types and ages of pipe for their entire pipeline systems and that it would require

¹²² Black Hills’ Response Comments at 3 (filed on July 27, 2023).

¹²³ Reply Comments of CNG at 6 (filed on July 27, 2023).

¹²⁴ *Id.*

significant time and resources to compile. Further, Public Service has raised a serious question as to whether CEO's proposal is beyond the scope of the notice in this proceeding. This conclusion is reinforced by the fact, as stated by Public Service, "there were large number of participants who were involved in the Gas Infrastructure Planning rulemaking that are not involved in the instant rulemaking."¹²⁵ Based on the foregoing, CEO's proposed Rule 11100(f) will not be adopted.

I. Rule 11504(c)(II)(C) – Mitigation of Civil Penalty

1. NOPR

107. In the NOPR, the Commission proposed to add the following:

Rule 11504. Notice of Probable Violation.

....

- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.

....

- (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:

....

- (C) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
 - (i) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (ii) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied; and

¹²⁵ Public Service's Reply to CEO's Comment at 5-6 (filed on July 27, 2023).

- (iii) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000.

2. Comments

108. Public Service proposes to add the following to the list of mitigating factors at Rule 11504(c)(II)(C): “whether or not the violation was self-reported by the operator.”¹²⁶ Public Service states that this proposed change is supported by public policy, which encourages legal provisions that incentivize self-reporting of violations. It is also supported by the facts that; (a) self-reporting “protects the public from continuing or hidden probable violations representing moderate to severe risks to public safety;” (c) penalty reduction in the presence of self-reporting is not mandatory because “the Commission will retain the discretion to reduce that penalty if it finds advance notice reduced the risk to public safety or pipeline integrity; and “ (c) the proposed change is “consistent with Federal Energy Regulatory Commission’s Penalty Guidelines and PHMSA’s assessment considerations under 29 C.F.R. 190.225.”¹²⁷

3. Analysis

109. The ALJ will adopt Public Service’s proposed change. Self-reporting is in the public interest for the reasons stated by Public Service. In addition, the fact that a reduction in penalty in the presence of self-reporting is not mandatory is important. The Commission will maintain its discretion to reduce the penalty or not depending on consideration of all factors. Accordingly, Public Service’s proposed language will be adopted.

¹²⁶ Public Service’s Initial Comments at 20 (filed on December 12, 2022).

¹²⁷ *Id.* at 20-21.

110. The ALJ will move Proposed Rule 11504(c)(II)(C) to Rule 11504(f). The plain language of the Proposed Rule indicates that it does not apply solely to offers of compromise by operators. Instead, the Proposed Rule states that the Commission's discretion to reduce a civil penalty based on the factors listed applies to "[a]ny civil penalty authorized by this rule." Accordingly, Proposed Rule 11504(c)(II)(C) is better placed as Rule 11504(f).

111. Pursuant to the provisions of § 40-6-109, C.R.S., the ALJ recommends that the Commission adopt the attached rules.

V. ORDER

A. The Commission Orders That:

1. The Rules Regulating Pipeline Operators and Gas Pipeline Safety attached to this Recommended Decision are adopted.

2. The rules in redline legislative format (showing changes to current rules) are attached to this Recommended Decision as Attachment A. The rules in final format are attached to this Recommended Decision as Attachment B. They are also available in the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0491GPS

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 made available to all parties in the proceeding, 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. Response time to any exceptions that may be filed is shortened to ten (10) days.

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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

Rebecca E. White,
Director