

Decision No. R23-0759

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22N-0396GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO PUBLIC
SERVICE COMPANY OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
APPROVING SETTLEMENT AND CLOSING
PROCEEDING**

Mailed Date: November 15, 2023

I. STATEMENT

1. On September 12, 2022, the Staff of the Public Utilities Commission (Staff) initiated this matter by issuing its Notice of Probable Violation (NPV) to Public Service Company of Colorado (Public Service). The civil penalty, calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 CCR 723-11, included a total civil penalty of \$86,956.52 for one violation of 49 C.F.R. § 192.805(h), plus an additional 15 percent surcharge required by § 24-34-108, C.R.S., for a total \$100,000.00.¹

2. On September 14, 2022, Staff filed its Entry of Appearance.

3. On October 12, 2022, Public Service filed its Response Letter to the NPV fully addressing the merits of the allegations in the NPV. Public Service requested the Commission consider an Offer in Compromise to resolve the violation listed in the NPV and requested

communication with Staff. On April 21, 2023, Public Service and Staff conferred, negotiated, and reached terms for the settlement of the violation listed in the NPV and all other issues that could have been raised in this matter.

4. On August 9, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

5. On April 21, 2023, Public Service filed an Unopposed Motion to Approve Comprehensive Settlement Agreement and for Waiver of Response Time (Unopposed Motion). All parties to this proceeding support approval of the Unopposed Comprehensive Settlement Agreement (Settlement Agreement) filed with the Unopposed Motion.

6. In the Settlement Agreement, attached to this Decision as Appendix A, Public Service agreed to: (a) pay a civil penalty of \$5,000; (b) engage a third-party auditor to assess Public Service's Occupational Qualification (OQ) Plan and contractors' compliance with the OQ Plan; (c) develop corrective actions to address any deficiencies identified therein; (d) schedule a follow-up audit to verify deficiencies have been corrected; (e) file a draft report on how and when it will address deficiencies discovered during the audit into Proceeding No. 22N-0396GPS no later than August 31, 2024; and (f) provide to Staff a risk-analysis model developed by Public Service that analyzes each task performed by a contractor based on the ASME B31.Q Difficulty and Importance scales, number of employees, and number and grouping of tasks.

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

¹ The NPV only specified the total penalty without identifying the penalty versus surcharge portion. However, because the statute applies to the amount of each surcharge collected, the NPV will be construed as provided herein. § 24-34-108, C.R.S.

II. FACTS

8. On October 12, 2022, Public Service provided a written explanation to the Pipeline Safety Program (PSP) Chief regarding the violation alleged in the NPV.

9. On March 21, 2023, Public Service and Staff agreed to a settlement in principle that led to the filing of the Unopposed Motion.

10. In its written response to the NPV, Public Service noted that it self-reported the violation that a technician employed by a third-party contractor (Sitewise) had falsified cathodic protection (CP) readings. Public Service also self-disclosed its concern that there were other Sitewise technicians subject to an internal investigation. During the meeting with Staff, Public Service presented a remediation plan to address any other potential falsifications that may be present with the remaining five Sitewise technicians. The remediation plan included the following steps: (a) Terminate two Sitewise CP technicians; one based on evidence of falsified reads; the other based on incomplete or inadequate work product; (b) suspend the occupational qualifications for two additional technicians based on work product; (c) train and re-qualify the two suspended technicians and provide refresher training for the final three technicians; (d) Sitewise to reinstate their QA program with NACE certified supervisor (Sitewise had contracted with a technician from another CP vendor, Qualcorr, to act as their supervisor for the remaining 2022 work); (e) Sitewise to perform rework for reads performed by four technicians in 2022; (f) Public Service would re-bid CP work starting in 2023 to include CP1 NACE qualifications for all technicians; and (g) Public Service would contract with independent third-party inspectors (E2) to spot check every CP technician twice per month.

III. SETTLEMENT AGREEMENT

11. The Settling Parties agree that the penalty of \$5,000 is appropriate, given the violation of 49 C.F.R. § 192.805(h), the circumstances surrounding the violation, and Public Service's self-reporting.

12. An Impact Factor of one is appropriate given (a) that Public Service promptly communicated with all stakeholders, as reflected in its written response to the NPV filed on October 12, 2022; and (b) the violation did not result in "public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity."²

IV. FINDINGS, DISCUSSION, AND CONCLUSIONS

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

14. Approval of the settlement will not have a precedential effect upon other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); and *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

15. The Settlement Agreement resolves all matters that were raised, or could have been raised, relating to the issues specifically identified and addressed in this proceeding. It was reached in the spirit of compromise and in consideration of the hazards of litigation.

² Impact categories are defined at Rule 11500(b) as: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

16. The Commission encourages parties to settle their differences in contested proceedings. Rule 1408, 4 CCR 723-1. Approval of the settlement reached will minimize expenses of litigation and promote administrative efficiency.

17. Respondent admits liability to the violations alleged in the NPV.

18. To provide consistency and specificity, civil penalties in the NPV are calculated in accordance with Rule 11501(d). However, nothing in the rule prohibits the Commission from calculating and/or assessing a civil penalty in a different manner during a formal hearing process. Rule 11501(h), 4 CCR 723-11.

19. The operator and the PSP Chief jointly filed a stipulation and settlement agreement pursuant to Rules 11504(c)(II)(B) and 11507, resolving the allegations in the NPV for the Commission's consideration.

20. It is found and concluded that the Settlement Agreement proposes a fair and timely resolution of the issues in this proceeding. The parties have established by a preponderance of the evidence that the Settlement Agreement is just and reasonable and should be approved by the Commission without modification.

21. Pursuant to § 40-6-109., C.R.S., the Administrative Law Judge recommends that the Commission enter the following Order.

V. ORDER**A. It Is Ordered That:**

1. The Unopposed Motion to Approve Comprehensive Settlement Agreement and for Waiver of Response Time filed by Public Service Company of Colorado (Public Service) on April 21, 2023, is granted, consistent with the discussion above.

2. The Unopposed Comprehensive Settlement Agreement, attached to this Recommended Decision as Appendix A and incorporated herein by reference, is approved without modification. All parties shall comply with the terms of the agreement.

3. Public Service is assessed a penalty of penalty \$ 5,000.00, inclusive of all applicable surcharges, for the violation discussed and found above.

4. Not later than 15 days following the date of the final Commission decision issued in this Proceeding, Public Service shall pay to the Commission the civil penalties and the surcharge assessed by this Recommended Decision.

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

6. Proceeding No. 22N-0396GPS is closed.

7. 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.

8. 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.

9. 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 FARLEY

Administrative Law Judge

Rebecca E. White,
Director