

Decision No. C24-0058

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.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO DECISION NO. R23-0744 AND ADOPTING RULES**

Mailed Date: January 29, 2024
Adopted Date: January 17, 2024

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the exceptions filed to Recommended Decision No. R23-0744, issued November 8, 2023, by Administrative Law Judge (ALJ) Conor F. Farley (Recommended Decision) that adopts amendments to the Commission’s Rules Regulating

Pipeline Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* (CCR) 723-11 (Proposed Rules).

2. The Commission opened this proceeding through its Notice of Proposed Rulemaking (NOPR) issued November 9, 2022,¹ to amend the Rules Regulating Pipeline Operators and Gas Pipeline Safety (Pipeline Safety Rules) to: (1) address the legislative declaration and rule changes outlined in Senate Bill 21-108 (SB21-108), which strengthen and streamline Colorado's laws governing gas pipeline safety to meet emerging challenges in Colorado; (2) to update rules to incorporate the May 16, 2022 and October 5, 2022 effective changes in 49 C.F.R Parts 190-199; and (3) to incorporate the changes in § 9-1.5-105, C.R.S., the update of Utility Notification Center Of Colorado (UNCC/Colorado 811) membership requirements. In addition, the proposed rules revise typographic and inadvertent errors.

3. The Proposed Rules represent an affirmative and essential step forward in the Commission's goal to increase pipeline safety across Colorado. Proposed Rules build on rules adopted by this Commission in 2020, effective in 2021, which significantly altered the Commission's processes to better ensure public access and transparency to Pipeline Safety Information and processes (2021 GPS Rules).² With these Proposed Rules, the Commission further increases transparency regarding pipeline leak and annual reporting, in addition to doubling the Commission's fining authority thresholds, consistent with SB21-108 and updated

¹ Decision No. C22-0701, issued November 9, 2022.

² See, e.g., Decision No. C20-0917, issued December 28, 2020, in Proceeding No. 19R-0703GPS.

federal regulations. The Proposed Rules also clarify and make ongoing improvements to the 2021 GPS Rules.³

3. In addition to doubling the Commission's fining authority from a maximum of penalties issued of one million dollars to two million dollars,⁴ these Proposed Rules require industry-operators to, among other things, submit detailed information and annual reports to the Commission regarding pipeline leaks, and to provide the Commission with detailed mapping data. Improvements provided in the Proposed Rules are instrumental in the Commission's effort to enhance pipeline safety and will provide critical information for the Commission's pipeline monitoring and inspection activities.

4. Consistent with the discussion below, we address exceptions, including to clarify required reporting information and timelines. The Commission remains committed to continuous improvements in pipeline safety oversight and transparency, while maintaining regulatory efficiencies and improvements of the Commission's Pipeline Safety Program. While the Proposed Rules do not include explicit definition requirements at this time for Advanced Leak Detection Technology (ALDT), given recently initiated federal rulemaking considerations, Staff of the Colorado Public Utilities Commission (Staff) is directed to continue its stakeholder outreach that began last year regarding ALDT and further improvements to the rules to bring

³ Following the issuance of the NOPR, the Commission received helpful and necessary feedback via state audit in July of 2023 regarding its pipeline safety program that was critical of record retention practices and the lack of fining. See, Colorado Office of the State Auditor, Gas Pipeline Safety Program, Performance Audit 2256P (2023), <https://leg.colorado.gov/audits/gas-pipeline-safety-program>. The Commission continues to address these concerns and has received feedback from the United States Pipeline and Hazardous Materials Safety Administration (PHMSA) that it is appropriately pursuing its state authority. In addition, the Commission continues to emphasize that it is currently engaging in stakeholder outreach regarding Advanced Leak Detection Technology. As discussed further in this Decision, the Commission intends to bring forward a subsequent notice of proposed rulemaking that, among other continuous improvements, will address Advance Leak Detection Technology following stakeholder input.

⁴ As included in the NOPR maximum penalties increased consistent with changes made in SB21-108, § 40-7-117, C.R.S.

forward an anticipated follow-on rulemaking. We continue to encourage robust participation from the public and stakeholders to help move rulemaking efforts forward expeditiously.⁵

B. Background

5. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-1-103, 40-2-108, 40-2-112, 40-2-115, 40-3-110, 40-4-109, 40-6-108, and 40-7-117, C.R.S.

6. This Commission conducts its Pipeline Safety Program activities primarily under §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S. In particular, § 40-2-115, C.R.S. allows the Commission to enter into cooperative agreements with federal agencies, directs the Commission to coordinate with state and federal agencies, and authorizes the Commission to adopt and create rules to administer and enforce the Natural Gas Pipeline Act found at 49 U.S.C. §§ 60101, *et seq.*

7. On November 9, 2022, the Commission commenced this rulemaking through its NOPR,⁶ which established deadlines for comments and response comments, scheduled a public comment hearing to be held on January 19, 2023, and referred this proceeding to an ALJ.

8. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled remote public comment hearing on January 19, 2023. Based on the input of the participants at the hearing, the ALJ ordered another round of comments by February 9, 2023, addressing specific issues and continued the remote public comment hearing to May 2, 2023.⁷ On May 2, 2023, the ALJ held the continued hearing, and again ordered another round of comments due by June 16, 2023.⁸

⁵ To participate in stakeholder outreach efforts regarding further improved revisions to the Gas Pipeline Safety Rules, contact Pipeline Safety Program Manager, Casey Hensley at casey.hensley@state.co.gov.

⁶ Decision No. C22-0701, issued November 9, 2022.

⁷ Decision No. R23-0054-I, issued January 24, 2023.

⁸ Decision No. R23-0328-I, issued May 17, 2023.

9. Concurrent with the ongoing receipt of public comments in this proceeding, on May 18, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published its Notice of Proposed Rulemaking proposing amendments to the Federal pipeline safety regulations, including a proposed rule addressing an “Advanced Leak Detection Program” that provided a proposed standard that advanced leak detection technology would have to satisfy.⁹

10. On June 29, 2023, the ALJ held the continued remote public comment 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, 2023.¹⁰

11. During the Commissioners’ Weekly Meeting on August 2, 2023, separate from ongoing comment processes in this proceeding, Dr. Pam Fischhaber, 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. Dr. Fischhaber noted that Staff would engage in ongoing stakeholder processes, with the intent of bringing forward proposed rules as early as calendar-year 2024.

12. On August 3, 2023, the ALJ held the continued remote public comment hearing regarding the NOPR and rule proposals in this proceeding. The ALJ discussed with the participants the new rule changes proposed by CEO. At the conclusion of the August 3, 2023 public comment hearing, the ALJ adjourned the hearing.

13. On November 8, 2023, the ALJ issued his Recommended Decision.

⁹ Pipeline Safety: Gas Pipeline Leak Detection and Repair, 88 FR 31890, (proposed May 18, 2023) (to be codified at 49 CFR Parts 191, 192, and 193), <https://www.federalregister.gov/d/2023-09918>.

¹⁰ Decision No. R23-0453-I, issued July 13, 2023.

14. Between November 27 and November 29, 2023, Public Service Company of Colorado (Public Service), the Colorado Oil & Gas Association (COGA), Colorado Springs Utilities (Springs Utilities), Mark and Julie Nygren (the Nygrens), Colorado National Gas, Inc. (CNG), Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy (collectively Black Hills), Atmos Energy Corporation (Atmos Energy), the Office of Utility Consumer Advocate (UCA), and the Southern Ute Indian Tribal Nation with Red Cedar Gathering Company (collectively Tribal Nation), each filed limited exceptions to the Recommended Decision. Several parties also submitted responses to the filed exceptions.

15. As discussed below, we address exceptions to clarify reporting requirements, and adopt the Proposed Rules with modifications as discussed. Where modifications are not made, we otherwise adopt the Recommended Decision, including its recommendation for Proposed Rules that significantly increase reporting and double filing thresholds.

C. Exceptions to Recommended Decision Proposed Pipeline Safety Rules

1. Tribal Nation Sovereignty

16. In response to the NOPR, the Southern Ute Indian Tribal Nation and Red Cedar Gathering Company (jointly referred to as the “Tribal Nation”) filed a comment in which it expressed concern with the state legislature and Commission’s lack of engagement with the Tribal Nation regarding the implementation of SB21-108 and these proposed rules. Specifically, the Tribal Nation raised the issue that, without proper engagement, the Commission could be at risk of exceeding its jurisdiction by attempting to regulate pipeline safety on Tribal Nation lands. This issue was not addressed in the Recommended Decision and as such, the Tribal Nation filed an exception.

a. Exception

17. In its exceptions filed November 28, 2023, the Tribal Nation expresses concern that by not expressly addressing their comments in the Recommended Decision, the ruling could be construed to overstep the Commission's jurisdiction over the Tribal Nation's land. The Tribal Nation requests that the Commission acknowledge that the NOPR does not expand the Commission's jurisdiction over pipeline operations located wholly within the Tribal Nation's reservation. The Tribal Nation also requested that the Commission work with the Tribal Nation "in a cooperative manner" to review the jurisdictional question.

18. The Tribal Nation additionally requested that the Commission stay the Recommended Decision to the extent it could be construed to apply to pipelines on the Tribal Nation's land.

b. Findings and Conclusions

19. We grant the Tribal Nation's exceptions to clearly and unequivocally confirm that the NOPR and the Proposed Rules do not expand Commission jurisdiction over sovereign nations. The Proposed Rules in no way expand Commission jurisdiction over Tribal Nation land. The Commission recognizes tribal sovereignty in the area of pipeline safety and remains committed to working cooperatively with the Tribal Nation.

20. Commission rules cannot impose or expand Commission jurisdiction over Tribal Nation lands. Therefore, there is no need to stay the implementation of the Proposed Rules, applicable to operators in Colorado, that significantly move reporting and fining abilities forward in the state. The Tribal Nation's request to stay the application of the recommended decision as to Tribal Nation pipelines is denied as moot. Additionally, no rules or other changes are needed to offer ongoing conversations with Staff and federal counterparts if requested by the Tribal

Nation. The Commission welcomes the opportunity to coordinate with the Tribal Nation on any question or issue related to pipeline safety, as appropriate. However, through this Decision in granting the Tribal Nation's exceptions, we make it explicit that the Commission's updated rules are not expanding the Colorado Commission's jurisdiction to tribal lands, nor could they apply to or infringe on tribal sovereignty.

2. Rules 11001(a) and 11100(d) – Advanced Leak Detection Technology

21. The NOPR proposed rules defining “advanced leak detection technology” (ALDT) and requiring operators to submit all ALDT being used as part of annual reporting requirements. However, considering the PHMSA rulemaking that issued in May of 2023 during the pendency of this rulemaking and statements in August of 2023 that Commission Staff would pursue expansive state ALDT stakeholder processes, the Recommended Decision rejected the Commission's proposed rules regarding ALDT. The ALJ reasoned that ALDT technology is in an early developmental stage and, importantly, that the PHMSA ALDT rulemaking processes are currently ongoing.

22. The ALJ therefore expressed concern that PHMSA's final rules would differ significantly from the Commission's proposed rules which could result in inefficiencies wherein operators would be forced to comply with two sets of rules. Additionally, the ALJ noted that a future ALDT rulemaking by the Commission would have a more robust record developed as PHMSA's rulemaking progresses.

a. Exceptions and Responses

23. The Nygrens filed exceptions to the Recommended Decision arguing that it was improper to rely on the federal rulemaking and requesting that the Commission affirmatively set

a rulemaking beginning no later than February 15, 2024, to address the use of ALDT and timely repairs of leaks.

24. Industry-operator participants including Public Service, Springs Utilities, CNG, and Atmos Energy filed responses opposing the Nygrens' exceptions and supporting the ALJ's decision regarding ALDT. Industry-operators argued that the Commission should wait to promulgate ALDT rules until PHMSA completes its rulemaking process in which it will address and define ALDT before beginning its own rulemaking process which, industry argues, could result in conflicting state and federal rules.

b. Findings and Conclusions

25. We understand and acknowledge the concerns raised by the Nygrens, but we agree with the ALJ that given the recently-opened PHMSA rulemaking and state ALDT stakeholder processes that could be more expansive than considerations here, adopting a definition in these rules is premature. The annual leak reporting requirements contained in the Proposed Rules as modified in our rulings on exceptions provide important public safety information and benefits. Even without defining ALDT here, the rules make clear the expectation that regulated operators must provide robust information on the technology, processes, and safety implementations used to ensure safety, including through leak detection.

26. Importantly, the Commission is also currently engaged in stakeholder outreach regarding ALDT concurrent with PHMSA's rulemaking processes. Implementing rule updates through this proceeding to increase the information provided, and at the same time pursuing continued improvements to the rules in the near term after further public and stakeholder discussions, strikes the appropriate balance and allows us to best align future updates with federal changes as those processes develop. However, we disagree with the ALJ that a follow-on

rulemaking regarding ALDT will necessarily wait until the PHMSA processes are complete. While we decline to set a date certain as requested here, the Commission has full discretion to bring forward rule proposals as it deems appropriate following stakeholder outreach. The exceptions on this point are therefore denied with that clarification and given the understanding that operators will provide fulsome reporting going forward.

3. Rule 11008(e) – Incorporation by Reference

27. Rule 11008(e) incorporates by reference the National Pipeline Mapping System (NPMS) Operator Standards Manual, updated October 2017, to outline standards that will apply to the mapping efforts required by SB21-108. Public Service initially raised a concern about this incorporation in its comment¹¹ because it was concerned that the NPMS data requirements and mapping standards could create confusion or conflict with the Commission's rules. American Petroleum Institute of Colorado (API Colorado) also raised the issue in its comment and requested that the Commission issue guidance or a clarification about the extent to which the manual would be incorporated. The ALJ did not find either argument to be persuasive and retained the incorporation in the Recommended Decision.

a. Exceptions

28. Springs Utilities raises the issue of incorporation by reference of the NPMS Standards Manual in its exceptions. Springs Utilities argues that the inclusion of the manual creates confusion and possible conflict with the GIS data submission requirements of Rule 11000.

¹¹ Public Service's Initial Comment at p. 17, filed December 12, 2022.

b. Findings and Conclusion

29. We are unconvinced by the argument that the incorporation by reference of the NPMS Standards Manual creates any real possibility of confusion for industry-operators and therefore deny this exception. Springs Utilities' exception is unsupported and does not point to anything in the manual or Proposed Rules which would cause confusion. We find that the information and standards contained in the NPMS manual are important for operator reference and accountability. We find that any "possible conflict" with GIS scaling or other data submissions between the Proposed Rules and the manual are clearly governed by the more specific state rules.

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

30. Proposed Rule 11013(b) gives the Pipeline Safety Program the authority to require personnel engaged in pipeline construction, inspection, and repair activities to provide verifiable credentials, on site, when requested by a Pipeline Safety Program Inspector. In their comments, industry-operators raised concerns about how the rule would be interpreted because the operators may not have the ability to provide verifiable credentials on site. The ALJ found that it was more important to have "verifiable credentials" available on site rather than "qualifications." The ALJ therefore amended the rule to require verifiable credentials to be provided on site but allowed for operator qualifications to be provided at a different time and location if they could not be provided on site. Industry-operators raised issues with the new language in their exceptions.

a. Exceptions

31. In its exception Springs Utilities asserts that the rule should be amended to include language requiring verifiable credentials to be provided in the form of "government

issued identification,” and to include an additional sentence which would specify that provision of an office phone number and point of contact would ensure compliance with the rule.

32. CNG also filed an exception arguing that the rule was vague as it applies to smaller operators.¹² CNG proposed language which it argues creates greater flexibility for smaller operators by allowing personnel to provide government-issued identification and a phone number to inspectors in lieu of a license or certification.

b. Findings and Conclusions

33. We find that the rule, as modified by the Recommended Decision, allows for workforce flexibility, including for a person who does not have government issued identification but is otherwise authorized to be on the worksite. We find that limiting verifiable credentials to “government issued identification” as requested by the operators, limits the flexibility intended by this rule. We therefore deny the requests proposed.

34. However, we find that additional language can better clarify participant concerns regarding flexibility for smaller operators, as requested by CNG. Thus, Rule 11013(b) shall include the following language: “Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site, including that the qualifications can be provided through an office phone number and point of contact.”

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

35. As proposed in the NOPR, Proposed Rule 11100(c) provides for the development of GIS data within the context of the Pipeline Safety Program. This data will be used to develop a risk-based inspection program, so that the Pipeline Safety Program can perform more targeted

¹² Colorado Natural Gas, Inc.’s Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at p. 3.

and efficient inspections throughout Colorado. Rule 11100(c)(II) specifies the data that industry-operators are required to submit to the Commission.

36. The Recommended Decision adopted Proposed Rule 11100(c)(II) but modified the rule to only require industry-operators to submit the required data to the extent that the data was available. This modification was based on the record which demonstrated that operators may not possess all the information specified in the rule.¹³

37. The Recommended Decision also requires operators to publish specific information regarding pipelines available through online maps. The Recommended Decision limited the required information to that proposed by Public Service and set the scale of the online map at 1:6,000 or greater based on the map proved by the Colorado Energy & Carbon Management Commission.¹⁴

a. Exceptions

38. The Nygrens argue that the language of proposed Rule 11100(c)(II) which states that the GIS data submitted by operators must include certain enumerated data attributes “to the extent available,” creates a loophole by which industry-operators may submit incomplete data or none.¹⁵ The Nygrens therefore argued that the Rule should be modified to remove the phrase. In response to the Nygrens, Public Service urges the Commission to keep the “to the extent available” language which the Company cited as a realistic “public interest compromise.”¹⁶ Springs Utilities also responded to the Nygrens and argued that the plain language of

¹³ Decision No. R23-0744, issued November 28, 2023, at ¶ 80.

¹⁴ Decision No. R23-0744, issued November 28, 2023, at ¶ 81.

¹⁵ Mark and Julie Nygren’s Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at pp. 3-6.

¹⁶ Public Service Company of Colorado’s Response to Exceptions to Recommended Decision No. R23-0744, filed December 8, 2023, at pp. 4-8.

§ 40-2-115(1)(d)(II)(C) requires submittal of current GIS systems but does not require that the submittal include each of the rule's enumerated data attributes.

39. Springs Utilities, CNG, Atmos Energy, and Black Hills each raised concerns regarding the 1:6,000 scale for the GIS data submission requirement and proposed changing the scale to 1:24,000. The industry-operators cited potential security threats such as terrorism as a reason for changing the scale to 1:24,000.¹⁷ Black Hills raised four key concerns regarding 1:6,000 mapping details being available to the public: (1) GIS data will be available through a publicly accessible online map viewer at scales equal to 1:6,000; (2) any person may view the data at scales less than 1:6,000 at the Commission's office; (3) local governments may share more specific data in-person than that which the Commission makes publicly-available; and (4) the confidentiality of GIS data is subject to the Colorado Open Records Act. CNG echoed the general sentiment of the industry-operator concerns and added that requiring a 1:24,000 scale would align the rule with the NPMS and PHMSA standards.

40. The Nygrens expressed support for the 1:6,000 mapping scale and emphasized that SB21-108 requires the Commission to use the same scale as used by the ECMC.¹⁸

b. Findings and Conclusions

41. We agree with the Nygrens that the 1:6,000 scale is consistent with the scale used by other state agencies, and is consistent with the intent of these rules to provide the agency with robust and detailed pipeline data.¹⁹ However, the Commission takes seriously the concerns raised by industry-operators regarding the potential security threat that could be created by

¹⁷ See Colorado Springs Utility's Exception filed November 28, 2023, at p. 2; Colorado Natural Gas's Exception filed November 28, 2023, at pp. 4-5; Black Hills Colorado Gas, Inc.'s Exception filed November 28, 2023, at p. 3.

¹⁸ Mark and Julie Nygren's Response to Exceptions filed December 8, 2023, at p. 11.

¹⁹ §40-2-115(d)(II)(C), C.R.S., requires the Commission to use the same scale as the Colorado Energy and Carbon Management Commission.

having too detailed pipeline data available to the public in some circumstances. We therefore continue to require industry-operators to submit GIS data to the Commission in a 1:6,000 scale or greater; however, operators may provide detailed mapping confidentially so long as they also provide a public version at a more appropriate scale. Therefore, and consistent with the Commission's Rules of Practice and Procedure, operators may provide a public and a confidential version or otherwise avail themselves of the Commission's long-standing confidentiality rules if they believe critical infrastructure would be too exposed in a public document. If confidential filings are made or otherwise sought, the public version should include GIS information and mapping, but can be at a more appropriate scale. Rule 11100(c)(III)(A) is therefore modified to clarify that it permits confidential filings consistent with this Decision.²⁰

42. We also maintain the language in Proposed Rule 11100(c)(II) "to the extent available." We are unpersuaded that this language creates a "loophole." It is in the public interest for the Commission to collect robust reporting information through rules of general applicability without the need for numerous and significant filings or waivers from the operators as expectations change on the information collected. GIS systems and operations differ. Inclusion of the language provides flexibility for smaller operators that may not yet have access to some of the enumerated information. At the same time, industry-operators cannot circumvent the rules' data submission requirements. In the event investigators determine that information was available but not reported, operators could be found in violation of the Commission's rules. We continue to expect robust reporting. For any excluded information, operators should be prepared to explain and support why the enumerated data attributes are unavailable.

²⁰ Subpart B of the Proposed Rule already includes confidentiality agreements that must be executed for additional GIS data sought by local governments from the Commission in any information it maintains.

6. Rules 11100(e)/11103(e) – Timing of Initial and Subsequent Leak Report and Disclosure of GIS Data Submittals

43. Proposed Rules 11100(e) and 11103(a)(VI) of the Recommended Decision require operators to submit annual leak reports and GIS data, respectively, on or before June 15, 2024, and March 15 of each year thereafter.

a. Exceptions

44. Industry-operators filed exceptions to the filing deadlines arguing that they were unworkable given new data submission requirements. Industry-operators asserted that reporting for 2023-2024 was too difficult because operators have not had time to collect and maintain information required under the recommended rule, and that operators should be given a reasonable opportunity to develop, validate, and cybersecurity test their GIS data files. Industry-operators also argued that requiring a mid-month filing (March 15) was unworkable because it overlapped with the PHMSA reporting requirement deadline.

45. Springs Utilities specifically filed an exception regarding Proposed Rule 11103(a)(VI) arguing that instead of a June 15, 2024 deadline, operators should be given a reasonable opportunity to develop, validate, and cybersecurity test their GIS data files. Springs Utilities proposed March 2025 as an alternative submittal date for its GIS Data.

46. The Nygrens, in their response, state they agree that a March 2025 filing deadline is acceptable.

b. Findings and Conclusions

47. We grant the industry-operator exceptions regarding the timing of leak report and GIS data submittals, in part. Because rules adopted through this proceeding are likely to be effective in early 2024, we agree that the current filing deadline of June 15, 2024, may not be

workable for industry-operators who are adjusting to new filing requirements. Given the proximity of the filing deadline to the promulgation of these rules, we find that moving the deadline to 2025 will give industry-operators sufficient time to collect the data required by the Recommended Decision. We emphasize that with this timing implemented, industry-operators should have no excuse to exclude all available information required, and we fully expect fulsome reports that comport with the robust data requirements of the adopted rules.

48. We therefore modify Rule 11100(e) regarding leak reporting and corresponding Rule 11103 filing deadlines before the Commission regarding leak detection technologies and GIS data to begin on March 31, 2025, and to occur on March 31 every year thereafter. We recognize that PHMSA is currently engaged in a rulemaking process, however we find that the March 31, 2025 deadline gives industry-operators sufficient notice of what information they are required to provide and will prepare them to comply with the Commission's rules as well as PHMSA's requirements.²¹ Commission timelines for providing disclosure of data annually is updated to correspond with the revised timeframe, and included as June 1 of each year starting in 2025.²²

7. Rule 11100(e) – Annual Leak Reporting and Substantive Requirements

49. The Recommended Decision adopted language proposed by the Nygrens which requires industry-operators operators in Colorado to submit robust reports that provide an annual tally of: (A) the total number of known leaks; (B) the total number of hazardous leaks and (C)

²¹ For clarity, and as revised in the rule updates, PHMSA form filing deadlines remain on required March 15 annual timelines, included in Proposed Rule 11103(a); however, GIS data and listed leak detection technology information shall be provided to the Commission under modified Rule 11103, as indicated in the revised paragraph (b) as updated to begin March 31, 2025.

²² Because the Commission revises the proposed rules to make clear that confidential information could be provided in annual operator filings, receiving reports by March 31 with public disclosures by June 1 each year best ensures that Staff can provide appropriate versions of reported information publicly. See revised Proposed Rule 11100(f).

non-hazardous leaks eliminated or repaired; (D) the total number of leaks scheduled for repair in the next year; (E) the total number of leaks scheduled for repair in the next year; (F) the approximate date and location of each leak detection by the operator; (G) the type of pipe and facility that was leaking; (H) the methods used to detect each leak; (I) the volume of each leak; (J) the identified cause of the leak; and (K) the estimated market value of lost gas. The Recommended Decision declined to go further to include specific ALDT definition language, but opined that the scope of the reporting requirements established here were appropriate in the interim before federal rules on advanced leak detection technology conclude.²³

a. Exceptions

50. COGA, Public Service, Springs Utilities, and Black Hills filed exceptions in which they argued that the annual leak reporting requirements should be delayed on the state level until PHMSA establishes federal standards. The exceptions contend that the proposed requirements may not be compatible with forthcoming PHMSA federal standards.²⁴

51. COGA, Public Service, CNG, and Springs Utilities argue that the Commission must ensure that state rules are compatible with PHMSA federal regulations, which is impossible until the federal rulemaking is concluded and because: (1) annual leak reporting in the rule for “hazardous and non-hazardous leaks” is not defined; (2) reporting from March 2023 through March 2024 is impossible because operators have not had time to collect and maintain information required under the recommended rule; and (3) reporting from March 2023 is “likely retroactive” with respect to reporting on transactions that have already passed.

²³ Decision No. R23-0744, issued November 28, 2023, at ¶ 21.

²⁴ See Black Hills’ Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at pp. 6-7; Colorado Oil & Gas Association’s Exceptions to Recommended Decision No. R23-0744, filed November 29, 2023, at pp. 2-4; Colorado Springs Utilities’ Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at p. 3-4; Public Service’s Exceptions at pp. 6-11.

52. COGA also requests a clarification that, because the ALJ declined to adopt a definition of Advanced Leak Detection Technology in Rule 11100(d), the rule should instead require reporting on the definition used by PHMSA at the time of the report. Springs Utilities also points out this error in cross-reference.

53. Springs Utilities also argues that implementation of annual leak reporting be deferred until a standardized reporting form is developed to assist with uniform information. The utility argues that deferring to adopt rules until federal rules are established is preferred to the Recommended Decision's suggested waiver option for 2024 reporting that "opens the door for non-uniform application of the leak detection reporting requirement" in the coming year as federal rules develop.

54. Springs Utilities agrees with COGA that the reporting for March 2024 would be a burdensome and retroactive requirement. It instead requests that the applicable rules be prospective in collection and reporting, such that first reports would be due in March 2026 based on 2025 data so that operators can develop and implement data collection and procedures. Public Service similarly requests that initial reports not be filed until March 2025 at the earliest.

55. Springs Utilities and Public Service²⁵ also argue that volume and market data is problematic, claiming measurement of leaks would require unnecessary excavations, and that market value data is unrelated to pipeline safety. In sum, the utility recommends that leak detection reporting be "[held] off" in this proceeding.

56. If the Commission is not satisfied with removing the annual reporting entirely, Public Service, Atmos Energy, and CNG propose some revisions, including modifying portions

²⁵ Public Service Exceptions, at pp. 11-13.

of the rules to remove ambiguity; removing subparts (I) and (K),²⁶ and adding clarity to the rules, including an initial reporting to be due in March 2025 as noted above.²⁷

57. In their Response, the Nygrens proposed a variety of modifications to the leak reporting requirements intended to make the requirements more workable for industry-operators.²⁸

b. Findings and Conclusions

58. Consistent with the discussion below, we grant, in part, and deny, in part, the exceptions regarding the substantive annual leak reporting requirements. We find that certain modifications are required to clarify the requirements and make them workable for industry-operators. Specifically, we grant the exceptions requesting that the Commission remove subsection 11100(e)(I)(K). This subsection was proposed to require operators to include the market value of gas lost due to leaks. We agree with industry-operators that this subsection relates to financial ramifications and is not pertinent to the other requirements contained in subsection (e).

59. We deny striking any other requirement, but make modifications to the rules consistent with those outlined below in Rule 11100(e)(I)

- (a) – Clarify that operators are to report the total number of *pending* leaks, *excluding those repaired*. We find that the Commission needs to monitor pending leaks. At this time, we will not require information on leaks that are quickly and appropriately resolved.
- (b) – Clarify that the definition used for “hazardous leaks” is the definition used by DOT F7100.1-1 reporting instructions. We are unconvinced that this is unclear to the industry and these reporting instructions are incorporated by

²⁶ Colorado Natural Gas, Inc.’s Exceptions to Recommended Decision No. R23-0744, filed on November 28, 2023, at p. 2; Atmos Energy’s Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at pp. 2-5.

²⁷ Public Service Exceptions, at pp. 15-20.

²⁸ See Nygren’s Response to Exceptions, Ex. 1.

reference, but including the reference within this rule may provide additional clarification.

- (d) – Clarify that operators’ reporting of the number of scheduled leak repairs does not prevent operators from prioritizing newly identified leaks. We adopt Public Service’s clarification, which ensures operators do not think they are prevented from addressing more serious safety situations simply because of previously-filed reports.
- (e) – Clarify that the approximate date and time of *identified* leaks which were identified through leak survey and pending as of January 1 are required to be reported. We find that this clarification will provide necessary certainty for industry-operators. This clarification aligns the requirement with existing leak reporting processes and narrows the requirement to make it workable.
- (f) – Clarify that the report must include the material type of pipe that was leaking for repaired leaks. We find that it is important for the Commission to be informed regarding the material type of pipe. However, we agree with Public Service that this language makes the requirement clearer because the type of pipe would be unknown if the leak was “pending.”
- (g) – Clarify that the report must include the *leak survey* method used to detect each pending leak. We find that this added information will help investigators better understand how information was collected and identified for pending leaks, which may need continued follow up from the Commission’s pipeline safety program team.
- (h) – Continue to require the approximate date and location of each leak caused by third-party excavation, but remove “or other causes not attributable to the normal operation or inspection practices of the operator.” We agree with Public Service that normal operations and inspections do not cause leaks and therefore this language is not necessary. Additionally, we find that if more information is required regarding the cause of the leak, subsection (J), which requires reporting on leaks due to “incorrect operations,” should provide the relevant information.
- (i) – Clarify that the leak volume is to be measured in millions of cubic feet rather than carbon dioxide equivalents. We find that although CO2 considerations in utility and other regulations are important, the measurement above for millions of cubic feet provides a clearer and more direct reporting standard for purposes of these rules at this time.
- (j) – Add “incorrect operations” to the list of identifiable causes which operators must report on; and clarify that reporting of identifiable causes is required for repaired leaks. We agree with both the Nygrens and Public Service that this is a necessary change to bring the rule into alignment with the Department of Transportation Gas Distribution Annual Reporting requirements.

60. We deny all exceptions related to delaying the implementation of these rules until federal rules are fully adopted. We find that the required reporting information is clear and not in conflict with current federal requirements. Under federal statute, states may adopt additional and even more stringent safety measures if they are not incompatible with federal requirements.²⁹ Regarding any inconsistencies with the ongoing updates in federal reporting rules, the Commission's rules as recommended and revised above are in no way *incompatible* with federal reporting. The Commission will certainly be committed to making updates once federal rules are finalized, but the Commission is not required to halt all reporting efforts while federal requirements are in flux.

61. By expanding leak reporting requirements, the Commission is complying with and promoting the intent of SB21-108 to strengthen Colorado's laws governing gas pipeline safety. SB21-108 explicitly states that the pace of expansion of natural gas infrastructure has "outstripped" the Commission's ability to keep up with vital safety inspections. This statutory imperative – aimed at promoting and protecting public health and safety – necessarily requires the Commission to act quickly and affirmatively. The arguments requesting that the Commission delay this rulemaking until the federal process is completed directly contravene the state statutory directives and neglect the need for rapid expansion of pipeline safety requirements.

62. We also deny exceptions asking for delayed implementation until a standardized reporting form is developed. Commission Staff may develop a form as a courtesy to help industry-operators comply with the reporting requirements, but industry-operators are expected to submit a robust reporting document regardless of the existence of a standard form.

²⁹ 49 U.S.C. § 60104(c). See also *Regular Route Common Carrier Conf. of Colorado Motor Carriers Ass'n v. Pub. Utilities Comm'n of State of Colo.*, 761 P.2d 737, 743 (Colo. 1988) ("Rules adopted pursuant to a statutory rulemaking proceeding are presumed valid...").

8. Rules 11103(a)(I) and (II) and (IV) – Submission of Annual Reports

63. Rule 11103(a)(I) requires operators to file an annual report with the Commission for the preceding calendar year. Rule 11103(a)(II) requires operators of distribution pipeline systems to file annual reports with PHMSA using PHMSA's 7100.1-1 reporting form. Rule 11103(a)(IV) requires operators of specified gathering systems to file annual reports with PHMSA using PHMSA's F 7100.2-1 reporting form.

a. Exceptions

64. UCA, in its exceptions, argues that Rules are vague regarding which reports are required to be filed and when they are required to be filed, and that Rule 111003(a)(I) is specifically unclear because it does not state what type of annual report filings are to be made or the content of such filings. UCA goes on to argue that Proposed Rules 11103(a)(II) and (IV) should be modified to require industry-operators to file PHMSA's federal reporting forms with the Commission, in addition to PHMSA. Specifically, UCA requests that the Commission open a repository proceeding specifically for the filing of such reports on an annual basis.

65. CNG agrees with UCA that the Rules are unclear regarding when the Commission reports are to be filed and when the PHMSA reports are to be filed. However, CNG disagrees with UCA regarding its proposed modification and states that neither the existing rule nor the proposed rule require that PHMSA reporting files be filed with the Commission.

66. Public Service argues that UCA's proposed modification will unnecessarily burden the Commission because it will be required to open annual repository dockets and will additionally burden the Colorado operators for redundant future annual reporting requirements with this Commission at the same time annual reports are filed with PHMSA.

b. Findings and Conclusions

67. We find unpersuasive UCA's arguments regarding filing PHMSA annual reports with the Commission. We agree with Public Service that duplicative reporting will unnecessarily burden the Commission and its staff. PHMSA Annual Reports are publicly accessible on PHMSA's website which renders UCA's request unnecessary because a duplicate filing requirement would not accomplish UCA's goals of making the reports readily accessible.

68. We also find that Rule 11103(a)(I) should be removed as it is inconsistent with the Commission's electronic filing system.

9. Typographic Corrections

69. The Recommended Decision modified Proposed Rule 11103(a)(IV) to read: "Each operator of a transmission or Type A or Type B or Type C gathering system (i.e., ~~excepting~~ accepting Type R as defined in 49 CFR 191.3~~rural-gathering~~), shall submit the aAnnual rReport (PHMSA F 7100.2-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>."

70. No participant has filed an exception to the modification made by the Recommended Decision. However, we find that the modification is unclear and should be modified to make clear that Type R gathering lines are required to submit annual reports to PHMSA. This is required under federal regulations which were promulgated shortly after the NOPR was issued in June 2022.³⁰ We revise to require that Type A, B, C, *and* R gathering lines be included in the annual reporting requirement, consistent with federal directives. The federal standards also require that Type R reporting be filed using a distinct form. Therefore, the Rule should include both type 7100.2-1 and 2.3 form references for clarity. These revisions remove

³⁰ 49 CFR 191.17

the ambiguity created by the Recommended Decision's modification and align the rules with the federal requirements.

71. We adopt the following revised language, consistent with 49 CFR 191.17

(IV) each operator of a transmission or ~~Type A or Type B or Type C~~ gathering line (i.e., ~~accepting Type R as defined in 49 CFR 191.3 Types A, B, C, and R~~), shall submit the Annual Report (PHMSA F 7100.2-1 ~~or PHMSA F 7100.2-3, as appropriate~~) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>; and

72. In addition, Proposed Rule 11103, as modified by the Recommended Decision, makes a cross reference to Rule 11100(d) regarding submission of ALDT being used by operators. However, Rule 11100(d) no longer relates to ALDT. We therefore modify to cross reference 11100(e) for clarity. Rule 11100(e) lists the data that industry-operators are required to submit in their annual leak reports. Under the rule, operators are required to include the method used to detect each leak. This is therefore an appropriate cross reference for Rule 11103 because advanced leak detection technology may be a method used by operators to detect leaks.

10. Conclusion and Stakeholder Process Direction

73. As modified by our determinations on exceptions through this Decision, we otherwise adopt the Recommended Decision and the Proposed Rules. Importantly, these rules significantly increase the Commission's fining threshold calculations in line with increased state and federal amounts. In addition, these rules move the Commission forward by enhancing reporting requirements and continuing to impart the expectation on industry-operators to collect and provide necessary data.

74. As we move forward with implementation of the Proposed Rules as revised here, we recognize that ongoing technological and process updates will continue to be needed. Consistent with our emphasis in 2023, Staff shall continue stakeholder engagement with the aim

of bringing forward additional proposed rules. These rules will address ALDT requirements and definitions, and we encourage further improvements to the rules that were significantly updated in 2021, and again through this proceeding. We also encourage staff and public stakeholders to explore ongoing reporting improvements, which include encouraging self-reporting of issues with reduced or removed fining amounts to better maintain safety updates. Stakeholder processes on the state level should continue to consider federal updates that are ongoing. However, we reiterate that this Commission will determine an appropriate time to move forward with further improvements to the Gas Pipeline Safety Rules, which may be before federal processes are fully complete.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R23-0744, filed by the Southern Ute Indian Tribal Nation and Red Cedar Gathering Company (Tribal Nation) on November 28, 2023, are granted, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R23-0744, filed by Public Service Company of Colorado (Public Service) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R23-0744, filed by Mark and Julie Nygren (the Nygrens) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R23-0744, filed by Black Hills Colorado Gas Inc. (Black Hills) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

5. The exceptions to Recommended Decision No. R23-0744, filed by the Office of the Utility Consumer Advocate (UCA) on November 27, 2023, are granted in part, and denied in part, consistent with the discussion above.

6. The exceptions to Recommended Decision No. R23-0744, filed by Atmos Energy Corporation (Atmos Energy) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

7. The exceptions to Recommended Decision No. R23-0744, filed by Colorado Springs Utility (Springs Utilities) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

8. The exceptions to Recommended Decision No. R23-0744, filed by Colorado Natural Gas, Inc. (CNG) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

9. The exceptions to Recommended Decision No. R23-0744, filed by Colorado Oil & Gas Association (COGA) on November 29, 2023, are granted in part, and denied in part, consistent with the discussion above.

10. The adopted rules are available through 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

11. The Commission adopts the Rules Regulating Pipeline Operators And Gas Pipeline Safety, 4 *Code Of Colorado Regulations* 723-11, recommended by the Administrative Law Judge in Recommended Decision No. R23-0744, in their entirety, except for the modifications identified in this Decision and shown in redline in Attachment A, and in final format in Attachment B to this Decision.

12. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

13. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

14. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 17, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners