

Decision No. C24-0172

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 GRANTING, IN PART, AND
DENYING, IN PART, APPLICATIONS FOR REHEARING,
REARGUMENT, OR RECONSIDERATION OF DECISION
NO. C24-0058 AND ADOPTING RULES**

Mailed Date: March 19, 2024

Adopted Date: March 13, 2024

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission addresses the Applications for Rehearing, Reargument, or Reconsideration of Decision No. C24-0058 (RRR) filed pursuant to § 40-6-114, C.R.S., on February 20, 2024, by rulemaking participants Public Service Company of Colorado (Public Service) and Colorado Springs Utilities (Springs Utilities).

2. As discussed below, we maintain reporting expectations for actual or estimated volume of any reported gas leak, but agree to modify the rule to permit a narrative explaining any estimated volumetric calculations, or for the operator to provide its associated reasoning if no estimate could be made with sufficient accuracy. We also continue to recognize the Commission's need to provide transparency and reporting as appropriate to sister agencies, but clarify that appropriate Commission rules aimed at addressing state emission goals and other agency rules, including those from the Air Pollution Control Division, will necessarily spearhead emission reduction targets and related considerations.

3. The revised adopted rules are provided, in their entirety, in legislative format (*i.e.*, strikeout/underline) as Attachment A to this Decision, and in final format as Attachment B to this Decision. These attachments are publicly 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

B. Background

4. On November 9, 2022, the Commission commenced this rulemaking by issuing a Notice of Proposed Rulemaking (NOPR)¹, which established deadlines for comments and

¹ Decision No. C22-0701.

response comments, scheduled a public comment hearing to be held on January 19, 2023, and referred this proceeding to an Administrative Law Judge (ALJ).

5. After receiving initial and responsive comments from rulemaking participants, ALJ Farley held public comment hearings and fielded multiple rounds of public comments. After robust public participation, the ALJ issued his Recommended Decision on November 8, 2023.²

6. Between November 27 and November 29, 2023, nine different rulemaking participants³ each filed exceptions to the Recommended Decision. Several parties also submitted responses to the filed exceptions.

7. On January 29, 2024, after reviewing the record and considering the many exceptions and responses to the Recommended Decision, the Commission issued its decision addressing the exceptions in Decision No. C24-0058 (Exceptions Decision). Through the rules proposed for adoption modifying the Commission's Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* 723-11 (Gas Pipeline Safety Rules) through the Recommended Decision, as modified and further explained in the Exceptions Decision, the Commission's rules updated in this proceeding further increase transparency regarding pipeline leak and annual reporting, in addition to doubling the Commission's fining authority thresholds, consistent with Senate Bill (SB) 21-108 and updated federal regulations. In addition, the Commission directed further stakeholder outreach to continue improvements to the Commission's rules and processes, in particular with regard to advanced leak detection.⁴

² Decision No. R23-0744, issued November 8, 2023 (Recommended Decision). The Recommended Decision provides procedural and related background information regarding this rulemaking.

³ The participants filing exceptions included: Public Service Company of Colorado, the Colorado Oil & Gas Association, Colorado Springs, Mark and Julie Nygren, Colorado National Gas, Inc., Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy, Atmos Energy Corporation, the Office of Utility Consumer Advocate, and the Southern Ute Indian Tribal Nation with Red Cedar Gathering Company.

⁴ Exceptions Decision at ¶¶4, 25-26, and 74.

8. Public Service and Springs Utilities are the sole participants to file applications for RRR of the Commission's Exceptions Decision. The two operators raise similar requests regarding proposed rules concerning leak volume estimations in addition to alleged uncertainty with respect to correlation between gas pipeline safety reporting requirements and emission reductions considerations.

C. Volumetric Reporting Requirements

1. Arguments Raised in Rehearing, Reargument, or Reconsideration

9. In their Applications for RRR, Public Service and Springs Utilities assert that accurately measuring the volume of a gas leak quantitatively is difficult given current technologies and industry-wide practices. Because of this difficulty, the two applicants argue that the Commission should strike proposed rules that require owner operators to annually report the volume of each leak, measured in millions of cubic feet.

10. Specifically, Public Service claims that operators cannot accurately determine leak volume because of the difficulties in assessing both the duration of a leak (*i.e.*, when the leak started) and the rate at which a leak occurs.⁵ Public Service asserts that measuring the "duration" of a leak is problematic because operators generally do not know when a leak began with sufficient certainty to assess how long the pipeline has been leaking.⁶ Public Service states that it only surveys approximately 33 percent of its pipeline system annually and that its surveys are not designed to identify when a leak started, to quantify leak rates, or to determine the duration of a leak.⁷ Public Service also notes that even if it could determine the duration of a leak, it still would not be able to accurately measure the volume of gas lost because leaks may not have linear rates

⁵ Public Service Application for RRR at 3.

⁶ *Id.*

⁷ *Id.* at 3-4.

of progression. Public Service therefore argues that it is impossible for it to comply with proposed Rule 11100(e)(I)(I) and argues that the rule should be stricken to avoid protracted disputes regarding enforcement actions against operators who do not comply with the Rule.⁸ Springs Utilities similarly argues that the Commission should strike the volumetric reporting requirements because any quantitative leak volume reporting would be a rough estimate at best.⁹ It states that volumetric measuring technologies and calculations lack accuracy and emphasizes that knowing the volume of a leak is not as important as knowing the location and cause of the leak.¹⁰

2. Findings and Conclusions

11. Consistent with the discussion below, we grant, in part, and deny, in part the RRR applications regarding the volumetric reporting requirements of the proposed rules. We recognize the operators' concerns regarding potentially inaccurate leak volume estimates and understand that providing accurate and useful estimates may be difficult in certain circumstances. However, we disagree with the operators' claim that these current uncertainties require the removal of reporting estimates and related information altogether. Estimated information, for example, may be useful in assisting investigators in determining the magnitude of a leak in addition to potentially helping the Commission make informed decisions regarding future use of advanced leak detection technologies. The Commission is committed to receiving robust reporting information that can further improve gas pipeline safety throughout the state. Volumetric reporting is one of several data points that will give the Commission as detailed and robust an understanding of the operators' pipeline systems as possible.

⁸ *Id.* at 5.

⁹ Springs Utilities Application for RRR at 2.

¹⁰ *Id.*

12. We find it appropriate to modify proposed Rule 11100(e)(I)(I) to give operators the discretion to provide quantitative estimates, when possible, but also qualitative reasoning explaining the estimates provided or explaining why estimates could not be made with necessary accuracy. This allowance gives proper weight to the operators' concerns while furthering the Commission's pipeline safety reporting goals. To that end we modify Rule 11100(e)(I)(I) as follows:

- (I) the volume of each leak, measured in millions of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation, if available, and narrative explanation of its calculations and regarding its estimation; and

13. We deny RRR requests that ask to strike the volumetric reporting rules, or to wholly excuse operators from complying with the volumetric reporting rules. We are not persuaded by Public Service's or Springs Utilities' arguments seeking to strike these rules entirely. Difficulty in identifying leak volumes is not a compelling reason to wholly exclude the operators from providing vital leak-related information to the Commission.

D. Emissions Reductions and Sister Agency Information Sharing

1. Arguments Raised on Rehearing, Reargument, and Reconsideration

14. Public Service and Springs Utilities each claim that the rules noting potential environmental ramifications of gas pipeline leaks are not sufficiently related to pipeline safety and therefore should not be included in this rulemaking. While both operators raise this issue, they raise it regarding distinct rules. Springs Utilities claims that Rule 11100(e)(I)(I) – referenced above - concerns the environmental rather than the safety ramifications of leaks and that therefore

it is misplaced in these rules.¹¹ Public Service, on the other hand, specifically argues that Rule 11000(e)(III) and Rules 11100(f)(I) and (II) are misplaced in this proceeding.¹²

15. Both operators argue that environmental and emissions goals and ramifications are not the focus of the Gas Pipeline Safety Rules and therefore the rules referencing leak volume and emissions should be removed entirely. Public Service further claims that it is unclear how the leaked gas volume estimates compiled pursuant to Rule 11100(e)(III) would interact and could potentially conflict with the verification workbook processes in the Clean Heat Rules.¹³ Public Service also contends that it is unclear how the Commission will use the leak volume and emissions data collected by the Commission under these rules and raises concerns with the Commission engaging in interagency data sharing in coordination with Commission sister agencies such as the Air Pollution Control Division and the Energy and Carbon Management Commission (ECMC).¹⁴

2. Findings and Conclusions

16. Consistent with the discussion below, we grant, in part, and deny, in part, the RRR applications regarding rules concerning emissions reductions and interagency information sharing. We recognize that aspects of state regulation, including the Commission's own Clean Heat Rules and sister agency regulations at the Air Pollution Control Division and ECMC, among other regulations, appropriately and directly address and guide the state towards its emission reduction goals. However, we disagree and are unpersuaded by the operators' contentions that this shared oversight of emission reduction goals justifies removing the reporting requirements entirely, or otherwise prohibits the Commission from sharing potentially pertinent information with the

¹¹ Springs Utilities Application for RRR at 2.

¹² Public Service Application for RRR at 6-7.

¹³ Rules 4725(a) and 4731(a)(I)(D) of the Rules Regulating Gas Utilities, 4 CCR 723-4 (2023).

¹⁴ Public Service Application for RRR at 6-7.

appropriate state or federal counterparts. Moreover, the Commission is empowered by statute to engage in exactly this kind of interagency cooperation.¹⁵ We find that it is clear under these rules that reported leak information may be provided to sister agencies with tangential jurisdiction and that this information sharing is in line with the Commission's pipeline safety goals.

17. We also recognize that the appropriate agency processes and further review would be needed whenever the Commission engages in interagency information sharing. The rules here do not indicate otherwise and in no way circumvent important state regulations regarding emissions required by this Commission and its counterparts. With that in mind, we find that Rule 11100(e)(III) should be modified to clarify that the Commission may use the leak volume and emissions estimates provided by operators to both the Commission and its sister agencies, but that it is not compelled to do so. Rule 11100(e)(III) is revised as follows:

(III) The Commission ~~must~~may 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.

18. We therefore grant the operators' RRR applications to the extent that they seek clarity regarding the Commission's interagency cooperation. Particularly given our decision to permit further narrative and clarity in estimated reporting regarding the volume of leaked gas reported, reporting referred to sister agencies can of course be considered in context. Reported leak information alone is just one of many data points that can assist in better understanding system concerns as a whole. Agency and other appropriate processes would necessarily be followed should reporting lead to further inquiry.

¹⁵ Sections 40-2-115(1)(a) and (b), C.R.S., which authorizes the Commission's natural gas pipeline safety authority, also expressly authorize the Commission to cooperate with other agencies regarding its jurisdictional duties. Pursuant to these sections, the Commission is directed to confer and exchange information with either state or federal agencies in its enforcement of its authority under Title 40.

19. We remain unpersuaded that the sharing of information is inappropriate or confusing and deny any requests to strike entirely or otherwise excuse the operators from complying with the volumetric reporting requirements. The rules appropriately recognize that transparent and robust reporting is needed, and note that there might be related, but separate, concerns regarding emissions reductions or environmental ramifications that may need appropriate follow up.

E. Conclusion

20. The statutory authority for the rules adopted by this Decision is found at §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S.

21. Through this Decision we make two modifications to the proposed pipeline safety rules. We modify Rule 11100(e)(I)(I) to give operators the discretion to provide qualitative narrative support regarding required leak volume estimates where it is difficult or impossible to achieve accurate measurements. We also modify Rule 11100(e)(III) to clarify that the Commission may, but does not have to, share leak and emissions information collected under these rules with its sister agencies. In addressing the operators' concerns, the improved reporting rules remain clear in their effort to further bolster collecting robust and transparent information for gas pipeline safety regulation, and that the Commission will continue that effort, including in ongoing and future rulemakings.

22. In light of our decision to grant, in part, Public Service and Springs Utilities' applications for RRR, we adopt the rule revisions shown in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) attached to this Decision, consistent with the discussion above.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration filed by Public Service Company of Colorado (Public Service) on February 20, 2024, is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration filed by Colorado Springs Utilities (Springs Utilities) on February 20, 2024, is granted, in part, and denied, in part, consistent with the discussion above.

3. The Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 *Code Of Colorado Regulations* 723-11, contained in legislative format in Attachment A to this Decision and final format in Attachment B to this Decision, are adopted. The attachments are publicly 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

4. Subject to a filing of a further 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.

5. 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.

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

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 13, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners