

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0635GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO LONG'S
TRAILER COURT ON DECEMBER 30, 2021.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
FINDING LONG'S TRAILER COURT HAS SATISFIED
THE ALTERNATIVE ENFORCEMENT REQUIREMENTS,
ORDERING PAYMENT OF \$5,000 IN PENALTIES,
AND CLOSING PROCEEDING**

Mailed Date: February 12, 2024

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I. STATEMENT

1. On December 30, 2021, the Trial Staff (Staff) of the Public Utilities Commission (PUC or Commission) initiated this matter by issuing its Notice of Probable Violation (NPV) to Ikrom Suvanovich Mamatmuminov, Horizon Dreamworks, LLC, doing business as Long's Trailer Court (Long's Trailer Court), located in Cortez, Colorado. The civil penalties,

calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the COPUC Gas Pipeline Safety Rules, 4 *Code of Colorado Regulations* (CCR) 723-11, included a total civil penalty of \$500,000.00 for fourteen enumerated violations. Violation 1 alleged a violation of Rule 4953, 4 CCR 723-11¹ (no or inadequate record provided for annual review for O&M, DIMP, OQ, or Emergency Plan). The remaining thirteen violations asserted noncompliance with the following provisions of the *Code of Federal Regulations*:

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

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

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

2. In lieu of incurring the civil penalty, the NPV offered Long's Trailer Court the option of pursuing "alternative enforcement" to address the alleged violations. Under the "alternative enforcement" provisions, Long's Trailer Court could

Utilize the services of Qualified Contractors or Qualified personnel on Your staff to remedy the violations in accordance with the Compliance Directive requirements and deadlines set forth below. Failure to comply with the Compliance Directive using services of Qualified Contractors or Qualified personnel on Your staff may result in civil penalties being assessed against You.³

3. On February 14, 2022, Long's Trailer Court filed a Response to the NPV addressing the merits of each of the allegations in the NPV.⁴ In its Response, Long's Trailer Court selected "Request Offer in Compromise" for each of the fourteen violations.⁵

4. On March 24, 2022, Staff filed its Entry of Appearance.

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

6. On January 13, 2023, Staff filed a Notice of Conferral, Statement of Compromise Terms, and Status Report (Notice of Conferral) notifying the Commission that Staff and Long's Trailer Court agreed to the following terms and compliance directives. To resolve the violations, Long's Trailer Court would pursue the alternative enforcement option by which it agreed to a compliance directive requiring it to:

- "Perform inspections on a no more than a 12-month period on all 14 items listed above;"
- Repair or address "[a]ny additional areas of noncompliance . . . within 12 months of discovery;"

³ *Id.*; see also Rule 11504(a)(VI), 4 *Colorado Code of Regulations* (CCR) 723-11.

⁴ Horizon Dreamworks, LLC, DBA Long's Trailer Court's Response to NPV, filed Feb. 14, 2022.

⁵ *Id.*, pp. 3-9.

- Submit “the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and”
- Include in its “Annual Report . . . updates on all 14 items listed above.”⁶

7. Staff’s Notice of Conferral further advised the Commission that on February 8, 2022, Long’s Trailer Court “uploaded numerous records from the years 2017-2021 into this proceeding;” on February 14, 2022, Long’s Trailer Court filed its response to the NPV; and on February 17, 2022, Long’s Trailer Court “uploaded records for 2022.”⁷ However, in spring 2022, when the Pipeline Safety Chief reviewed the documents Long’s Trailer Court had filed, she “determined that none of the records demonstrated compliance in those years.”⁸ Staff further reported that thereafter, on January 12, 2023, Long’s Trailer Court provided the Pipeline Safety Chief “with documentation detailing the work the Qualified contractor ha[d] done to date which addresses all of the violations.”⁹ It further stated that Staff was scheduled to inspect Long’s Trailer Court’s property “in the first quarter of 2023” and would evaluate at that time whether Long’s Trailer Court had complied with the Alternative Enforcement.¹⁰ If, as Staff reasonably believed, the inspection confirmed that Long’s Trailer Court had satisfied the Alternative Enforcement, Staff would then request that this Proceeding be closed.¹¹

8. On April 13, 2023, Staff filed a Second Status Report advising that Long’s Trailer Court had previously “agreed that it would remedy all violations as permitted in the alternative enforcement option.”¹² After Staff reached out to Long’s Trailer Court in December 2022 “to remind it that remedying all violations as contemplated in the alternative enforcement

⁶ Notice of Conferral, Statement of Compromise Terms, and Status Report (Notice of Conferral), Jan. 13, 2023, p. 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*, p. 3.

¹² Staff’s Second Status Report, Apr. 13, 2023, p. 1.

requirements was required for Staff to resolve the NPV.”¹³ Long’s Trailer Court subsequently provided “documentation detailing the work the Qualified contractor had done to date which addresses all of the violations.”¹⁴ Staff scheduled an inspection of the property in the weeks following the submission of its April 13, 2023 Status Report, and indicated that it had “a reasonable, good faith basis to believe that Respondent ha[d] satisfied the requirements for Alternative Enforcement.”¹⁵ If, as Staff believed, the inspection confirmed that all the violations had been remedied, Staff advised that it would notify the Commission and request that settlement be approved.¹⁶

9. On September 28, 2023, Staff filed an Unopposed Motion for a Commission Order Finding that Long’s Trailer Court Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 and Closing This Proceeding (Unopposed Motion to Close).¹⁷ In the Unopposed Motion to Close, Staff represents that the Pipeline Safety Program (PSP) performed an inspection of Long’s Trailer Court’s facility on June 26, 2023, and that Staff has now concluded that Long’s Trailer Court “has completed the requirements for alternative enforcement.”¹⁸ Staff noted that the June 26, 2023 inspection revealed that Respondent had not registered with the 811 system, but that in August 2023, Staff confirmed Respondent had remedied that issue as well.

10. Staff therefore requests that the Commission enter an order: (1) finding that Long’s Trailer Court has completed the alternative enforcement in lieu of payment of \$495,000

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Unopposed Motion for a Commission Order Finding Long’s Trailer Court Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding (Unopposed Motion to Close), Sept. 28, 2023, ¶ 11, p. 3.

¹⁸ *Id.* at ¶ 6, p. 2.

of the \$500,000 civil penalty; (2) ordering Long's Trailer Court to pay a \$5,000 penalty to the State Treasury; and (3) closing this Proceeding.

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

II. FACTS

12. In its February 14, 2022 Response to NPV, Long's Trailer Court admitted the fourteen violations Staff asserted against it, acknowledged that the regulations applied to it, and elected "Request Offer in Compromise" to resolve the specific violations alleged against it.¹⁹

13. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC's PSP, on June 26, 2023, PSP inspected Long's Trailer Court's property and records pertaining to its natural gas system.²⁰

14. To complete the inspection, an investigator used the PSP's Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Long's Trailer Court had remedied the violations identified in the December 30, 2021 NPV. The Report form used in PSP's inspection of Long's Trailer Court is "one kept by the PSP in the ordinary course of the PSP's business."²¹

15. In her Affidavit, PSP Chief Hensley represents that Long's Trailer Court received either "satisfactory" or "not applicable" remarks for every line item on the PUC's inspection report, but one.²² The single "unsatisfactory" mark for "failure to register with 811", was easily remedied."²³ Long's Trailer Court "followed up with achieving compliance on that item in

¹⁹ Long's Trailer Court's Response to NPV, Feb. 14, 2022, pp. 2-9.

²⁰ See Affidavit of Pipeline Chief Casey Hensley, Sept. 23, 2023, Attachment A to Staff's Unopposed Motion to Close, p. 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*

August 2023.”²⁴ A copy of the Report is attached to Ms. Hensley’s Affidavit.²⁵ PSP Chief Hensley concludes that in her “professional opinion . . . Long’s Trailer Court has remedied the violations contained in the December 30, 2021 NPV. As such, it has completed the Alternative Enforcement actions contained in the NPV.”²⁶ In conclusion, she opines that “dismissal of \$495,000 of the proposed total calculated penalty and assessment of the statutory minimum penalty of \$5,000 is reasonable and in the public interest.”²⁷

16. Having successfully passed the June 26, 2022 inspection, Staff represents that Long’s Trailer Court has completed the alternative enforcement requirements in lieu \$495,000 of the \$500,000 civil penalty.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

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

18. To provide consistency and specificity, civil penalties in the NPV are calculated in accordance with Rule 11501(d) 4 CCR 723-11. However, Rule 11504(a)(VI), 4 CCR 723-11, permits the PSP Chief to “offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part.”

19. § 40-7-117(2), C.R.S., authorizes the Commission to reduce a civil penalty “based on consideration of objective metrics and factors set forth in the rules.” However, even when the

²⁴ *Id.*

²⁵ *Id.*, pp. 3-6.

²⁶ *Id.*, p. 1.

²⁷ *Id.*

PSP Chief authorizes a reduction in the civil penalty, “the amount of the penalty payable to the [C]ommission shall be no less than five thousand dollars.”²⁸

20. Here, PSP Chief Hensley offered Long’s Trailer Court the opportunity to remedy its violations and take corrective actions in lieu of paying the full civil penalty of \$500,000.²⁹ Long’s Trailer Court elected to pursue alternative enforcement to correct all of the violations listed in the NPV.³⁰

21. It is found that Long’s Trailer Court successfully completed the alternative enforcement and remedied all of the violations identified in the NPV. As alternative enforcement was offered in lieu of the civil penalty, the undersigned ALJ finds that Long’s Trailer Court is not liable for \$495,000 of the \$500,000 civil penalty calculated in the NPV.

22. In accordance with § 40-7-117(2)(c), Long’s Trailer Court must pay the minimum penalty amount of \$5,000.

23. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following Order.

IV. ORDER

A. It Is Ordered That:

1. Trial Staff’s Unopposed Motion for a Commission Order Finding Long’s Trailer Court Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding, is granted, consistent with the discussion above.

²⁸ § 40-7-117(2)(c), C.R.S.

²⁹ See NPV, p. 2.

³⁰ See Long’s Trailer Court’s Response to NPV, pp. 2-9.

2. A civil penalty in the amount of five thousand dollars (\$5,000) is assessed against Long's Trailer Court for violations identified in the December 30, 2021, Notice of Probable Violation.

3. Long's Trailer Court shall pay the five thousand dollars (\$5,000) civil penalty into the State Treasury within thirty (30) days of this decision becoming a final decision of the Commission.

4. Proceeding No. 21N-0635GPS is closed.

5. 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.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director