

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0637GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO
RIDGEWOOD MOBILE HOME PARK ON DECEMBER 30, 2021.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
FINDING RIDGEWOOD MHP 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 Thomas Niederkofler, Ridgewood Park Lakewood, LLC, doing business as Ridgewood Mobile Home Park (Ridgewood MHP or Respondent). 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 Ridgewood MHP the option of pursuing “alternative enforcement” to address the alleged violations. Under the “alternative enforcement” provisions, Ridgewood MHP 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 3, 2022, Ridgewood MHP filed a Response to the NPV addressing the merits of each of the allegations in the NPV.⁴ In its Response, Ridgewood MHP chose to “Admit and Elect Alternative Enforcement” for Violations 1, 6, 7, 8, 9, and 12.⁵ It selected “Request Offer in Compromise” for each of the remaining violations, Violations 2, 3, 4, 5, 10, 11, 13, and 14.⁶ It also provided an “Index” summarizing its response to each alleged violation and the documents it had offered in support of its response.⁷

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 November 23, 2022, Staff filed a Notice of Conferral, Statement of Alternative Enforcement Terms, and Status Report (Notice of Conferral) notifying the Commission that Staff and Ridgewood MHP agreed to the following terms and compliance directives. To resolve Violations 1, 6, 7, 8, 9, and 12, Ridgewood MHP would pursue the alternative enforcement

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

⁴ Ridgewood Park Lakewood, LLC, DBA: Ridgewood Mobile Home Park Response to NPV, filed Feb. 3, 2022.

⁵ *Id.*, pp. 3-9.

⁶ *Id.*, pp. 3-9.

⁷ Index of Violations, Responses, and Applicable Documents, filed Feb. 3, 2022.

option by which it agreed to utilize the services of a “Qualified Contractor or Qualified personnel” to remedy the violations, and further agreed to a compliance directive requiring it to:

- “Perform inspections on a no more than a 12-month period on all 11 items listed above;”
- Repair or address “[a]ny additional areas of noncompliance . . . within 12 months of discovery;”
- Submit “the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and”
- Include in its “Annual Report . . . updates on all 11 items listed above.”⁸

7. Staff’s Notice of Conferral further advised the Commission that in its February 2, 2022 Response to the NPV, Ridgewood MHP “admitted to 7 violations, and agreed to the alternative enforcement instructions contained in the NPV.”⁹ Staff noted that for the remaining seven violations, Ridgewood MHP “requested an offer in compromise and provided supporting documentation.”¹⁰ Staff reached out to Ridgewood MHP on November 10, 2022, “to remind it of its obligations arising from the alternative enforcement requirements.”¹¹ Ridgewood MHP confirmed that it understood its obligations.¹² Thereafter, on November 22, 2022, the Commission’s Pipeline Safety Chief reviewed documents Ridgewood MHP provided, including “invoices from a qualified contractor indicating that Respondent has completed the requirements of the Alternative Enforcement.”¹³ The Pipeline Safety Chief concluded that Ridgewood MHP had made “substantial, if not complete, progress on remedying all violations from the NPV.”¹⁴ The Notice of Conferral further stated that Staff was scheduled to inspect Ridgewood MHP’s property “in the first quarter of 2023” and would evaluate at that time whether Ridgewood MHP

⁸ Notice of Conferral, Statement of Compromise Terms, and Status Report (Notice of Conferral), Nov. 23, 2022, p. 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at p. 3.

¹² *Id.*

¹³ *Id.* at 3.

had complied with the Alternative Enforcement.¹⁵ If the inspection confirmed that Ridgewood MHP had satisfied the Alternative Enforcement, Staff would then request that this Proceeding be closed.¹⁶

8. On February 28, 2023, Staff filed a Second Status Report advising that it had “reviewed the documentation provided to the Commission by the Respondent and Staff has a good faith basis to believe that Respondent has successfully completed the alternative enforcement.”¹⁷ Staff scheduled an inspection of the property for the following day — March 1, 2023 — and would then evaluate whether Ridgewood MHP had come into compliance and completed all provisions required under the alternative enforcement.¹⁸ If the inspection confirmed that all the violations had been remedied, Staff advised that it would notify the Commission and request that this matter be closed.¹⁹

9. On April 10, 2023, Staff filed a Motion for a Commission Order Finding that Ridgewood Mobile Home Park Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and Closing this Proceeding (Motion to Close). However, Staff subsequently withdrew the Motion to Close.²⁰

10. On November 10, 2023, Staff renewed its motion and filed an Unopposed Motion for a Commission Order Finding that Ridgewood Mobile Home Park Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, p. 3.

¹⁷ Staff’s Second Status Report, Feb. 28, 2023, p. 1.

¹⁸ *Id.*

¹⁹ *Id.* at pp. 1-2.

²⁰ See Notice of Withdrawal of Staff’s Motion to Close Proceeding Dated April 10, 2023, Pursuant to Rule 1309, filed April 11, 2023.

Penalties, and Closing This Proceeding (Unopposed Motion to Close).²¹ In the Unopposed Motion to Close, Staff represents that, on November 22, 2023, the Pipeline Safety Chief reviewed documents Ridgewood MHP provided “which included invoices from a qualified contractor indicating that Respondent has completed the requirements of the Alternative Enforcement.”²² Subsequently, on February 20, 2023, the Pipeline Safety Program (PSP) performed an inspection of Ridgewood MHP’s facility. Based on that inspection Staff has now concluded that Ridgewood MHP “has fulfilled its obligations and completed the Alternative Enforcement.”²³

11. Staff therefore requests that the Commission enter an order: (1) finding that Ridgewood MHP has completed the alternative enforcement in lieu of payment of \$495,000 of the \$500,000 civil penalty; (2) ordering Ridgewood MHP to pay a \$5,000 penalty to the State Treasury; and (3) closing this Proceeding.

12. 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

13. In its February 3, 2022 Response to NPV, Ridgewood MHP admitted to six of the 14 violations Staff asserted against it and elected alternative enforcement (violations 1, 6, 7, 8, 9, and 12). It selected “Request Offer in Compromise” for each of the remaining eight violations (violations 2, 3, 4, 5, 10, 11, 13, and 14).²⁴

²¹ Unopposed Motion for a Commission Order Finding Ridgewood Mobile Home Park Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding (Unopposed Motion to Close), Nov. 10, 2023

²² *Id.* at ¶ 4, p. 2.

²³ *Id.* at ¶ 5, p. 2.

²⁴ Ridgewood Mobile Home Park’s Response to NPV, Feb. 3, 2022, pp. 2-9.

14. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC's PSP, on February 20, 2023, PSP inspected Ridgewood MHP's records pertaining to its natural gas system.²⁵

15. To complete the inspection, an investigator used the PSP's Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Ridgewood MHP had remedied the violations identified in the December 30, 2021 NPV. The Report form used in PSP's inspection of Ridgewood MHP is "one kept by the PSP in the ordinary course of the PSP's business."²⁶

16. In her Affidavit, PSP Chief Hensley represents that Ridgewood MHP received either "satisfactory" or "not applicable" remarks for every line item on the PUC's inspection report.²⁷ A copy of the Report is attached to Ms. Hensley's Affidavit.²⁸ PSP Chief Hensley concludes that in her "professional opinion . . . Ridgewood MHP has remedied the violations contained in the December 30, 2021 NPV. As such, it has completed the Alternative Enforcement actions contained in the NPV."²⁹ 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."³⁰

17. Having successfully passed the PSP inspection, Staff represents that Ridgewood MHP has completed the alternative enforcement requirements in lieu of payment of \$495,000 of the \$500,000 civil penalty.

²⁵ See Affidavit of Pipeline Chief Casey Hensley, Nov. 1, 2023, Attachment A to Staff's Unopposed Motion to Close, p. 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, pp. 3-6.

²⁹ *Id.*, p. 1.

³⁰ *Id.*

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

18. 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.

19. 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.”

20. § 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 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.”³¹

21. Here, PSP Chief Hensley offered Ridgewood MHP the opportunity to remedy its violations and take corrective actions in lieu of paying the full civil penalty of \$500,000.³² Ridgewood MHP elected to pursue alternative enforcement to correct six of the 14 alleged violations listed in the NPV and requested that it be offered a compromise with respect to the remaining violations.³³

22. It is found that Ridgewood MHP 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 Ridgewood MHP is not liable for \$495,000 of the \$500,000 civil penalty calculated in the NPV.

³¹ § 40-7-117(2)(c), C.R.S.

³² See NPV, p. 2.

³³ See Ridgewood MHP’s Response to NPV, pp. 2-9.

23. In accordance with § 40-7-117(2)(c), Ridgewood MHP must pay the minimum penalty amount of \$5,000.

24. 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 Ridgewood Mobile Home Park (Ridgewood MHP) 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.

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

3. Ridgewood MHP 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-0637GPS 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