

Decision No. R24-0103

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0645GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO ROCKY MOUNTAIN MHP, LLC DOING BUSINESS AS PLEASANT VIEW MHP ON JANUARY 4, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
FINDING THAT PLEASANT VIEW MOUNTAIN ESTATES
HAS SATISFIED ITS ALTERNATIVE ENFORCEMENT
OBLIGATIONS, ASSESSING CIVIL PENALTY, AND
CLOSING PROCEEDING**

Mailed Date: February 15, 2023

I. PROCEDURAL BACKGROUND

1. On January 4, 2022, the Staff of the Public Utilities Commission (Staff) initiated this proceeding by issuing its Notice of Probable Violation (NPV) to Rocky Mountain MHP, LLC, Dba: Pleasant View MHP (Pleasant View) (Pleasant View or Respondent). The NPV assesses civil penalties, calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* (CCR) 723-11, totaling \$400,000.00.¹ The NPV enumerates 12 violations of the *Code of Federal Regulations* (CFR) of the following provisions: 49 CFR 192.463, 49 CFR 192.465, 49 CFR 192.605, 49 CFR 192.605(a), 49 CFR 192.615, 49 CFR 192.625, 49 CFR 192.646, 49 CFR 192.723, 49 CFR 192.739, 49 CFR 192.743, 49 CFR 192.747, and 49 CFR 192.801.²

¹ NPV at 1-2.

² *Id.* at 2.

2. In lieu of civil penalties, the NPV offers Respondent the option of pursuing “alternative enforcement” to address the alleged violations. Under the alternative enforcement provisions, Respondent could “[u]tilize the services of Qualified...Contractors or Qualified personnel on [its] staff to remedy the violations in accordance with the Compliance Directive requirements and deadlines set forth [in the NPV];”³ or the option pursuing an offer in compromise to the NPV, whereby:

a. [Respondent] may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or

b. [Respondent] and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule 11507, resolving the allegations in the NPV for the Commission’s consideration.⁴

3. On January 27, 2022, Pleasant View submitted its responses⁵ to the NPV (Response). Respondent opted for a “Request Offer in Compromise” for ten of the violations alleged in the NPV, and “Admit and Alternative Elect Enforcement,” for two of the violations in the NPV.⁶

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

5. On August 31, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

6. By Decision No. R22-0698-I, issued November 9, 2022, the ALJ ordered Staff to confer with Respondent, file the terms for Alternative Enforcement for Respondent, and file quarterly status reports until the NPV has been resolved.

³ *Id.* at 3.

⁴ *Id.* at 4.

⁵ Pleasant View filed 12 separate untitled responses, each addressing one of the violations alleged in the NPV.

⁶ Response at 1.

7. On November 23, 2022, the Notice of Conferral, Statement of Alternative Enforcement Terms, And Status Report (First Status Report) was filed by Staff. In the First Status Report, Staff indicated that through conferral with Staff, Respondent was offered alternative enforcement as a compromise, which Respondent accepted. Respondent further agreed to take the following remedial actions:

1. Perform inspections on a no more than a 12-month period on all 12 items listed above;
2. Any additional areas of noncompliance must be repaired or addressed within 12 months of discovery;
3. Submission of the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and
4. Annual Report must include updates on all 12 items listed above.⁷

Staff indicated that On November 21, 2022 the Pipeline Safety Chief reviewed the invoices from a qualified contractor provided by Respondent which demonstrate that Respondent took the necessary steps to remedy the violations alleged in the NPV.⁸ Staff further indicated that it was scheduled to inspect the Respondent's property in the first quarter of 2023 to evaluate Respondent's compliance with the alternative enforcement. Staff further stated that it had a reasonable, good-faith basis to believe that Respondent had satisfied the requirements for alternative enforcement in lieu of civil penalties.⁹

8. On February 28, 2023, Staff's Second Status Report (Second Status Report) was filed by Staff. In the Second Status Report, Staff stated that it planned to inspect Respondent's property before Respondent's time for compliance expired on March 15, 2023.¹⁰

⁷ First Status Report at 1-2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ Second Status Report at 1.

9. On May 30, 2023, Staff's Third Status Report (Third Status Report) was filed by Staff. In the Third Status Report, Staff stated they intend to inspect the Respondent's property in the near-term, but has not yet finalized a date with Respondent.¹¹

10. On August 28, 2023, Staff's Fourth Status Report (Fourth Status Report) was filed by Staff. In the Fourth Status Report, Staff states that Respondent has substantially completed the alternative enforcement; however, one item — the verification of the odorization of gas — was deemed "unsatisfactory" by Staff, due to Respondent's mistaken understanding that Xcel Energy would performing said verification.¹² Staff further stated that upon receiving from Respondent confirmation of odorization testing, Staff would consider the alternative enforcement complete.¹³

11. On January 5, 2024, Trial Staff's Motion for a Commission Order Finding Rocky Mountain MHP Has Satisfied its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding (Motion to Close Proceeding) and Attachment A, Affidavit of Pipeline Safety Chief Casey Hensley (Affidavit) were filed by Staff. In the Motion to Close Proceeding, Staff states that Staff attempted, unsuccessfully, to confer with Respondent regarding the Motion to Close Proceeding.¹⁴ Staff states that it concludes that Respondent has fulfilled its obligations and completed the Alternative Enforcement including remedying the additional noncompliance by its installation of cathodic protection.¹⁵ The Motion to Close Proceeding further states that Respondent has agreed to pay \$5,000 in penalties as a lump sum for its period of non-compliance prior to the issuance of the NPV.¹⁶ In the Affidavit, Pipeline Safety Chief Casey Hensley (PSP Chief) states that the dismissal

¹¹ Staff's Third Status Report at 2.

¹² Staff's Fourth Status Report at 1.

¹³ *Id.*

¹⁴ Motion to Close Proceeding at 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

of \$395,000 of the proposed total calculated penalty and assessment of the statutory minimum penalty of \$5,000 is reasonable and in the public interest.¹⁷

12. On January 29, 2024, the Commission received a \$5,000 payment from Respondent.¹⁸

II. FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS

13. Rule 11504(a)(VI), 4 CCR 723-11, permits the Commission's Pipeline Safety Program (PSP) Chief (PSP Chief) to "offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part." Here, the NPV, which was issued by the Pipeline Safety Program, offered Respondent the opportunity to admit the alleged violations and pursue alternative enforcement in lieu of admitting and paying the civil penalty associated with each alleged violation.¹⁹

14. Respondent elected to proceed with the alternative enforcement requirements that were offered by the PSP, rather than admitting each of the violations and paying each civil penalty, requesting an offer in compromise, or disputing Staff's allegations.²⁰

15. On March 13, 2023, the PSP inspected the records of Pleasant View's natural gas system. In conducting the inspection, PSP Chief used the PSP's Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Respondent remedied the violations identified in the NPV. The Report form used in PSP's inspection of Respondent is kept by the PSP in its ordinary course of business.²¹ Respondent received "satisfactory" or "not applicable" remarks on every line item, except one. The sole unsatisfactory item was remedied by Respondent

¹⁷ *Id.* at 2-3.

¹⁸ See receipt for payment filed by Staff on January 29, 2024.

¹⁹ NPV at 4.

²⁰ See Response and First Status Report at 1.

²¹ See *id.*

on May 25, 2023, when Respondent successfully completed an odorant test.²² In the affidavit, the PSP chief concludes that “Pleasant View has remedied the violations contained in the [NPV],... completed the Alternative Enforcement Actions contained in the [NPV],... and dismissal of the penalty amount of \$395,000 is reasonable and in the public interest.”²³

16. The ALJ concludes that Respondent has satisfactorily completed the PSP Chief’s alternative enforcement requirements.

17. According to § 40-7-117(2)(2), C.R.S.:

The extent to which the violator agrees to spend, in lieu of payment of part of the civil penalty, a specified dollar amount on commission-approved measures to reduce the overall risk to pipeline system safety or integrity; except that the amount of the penalty payable to the commission shall be no less than five thousand dollars.

18. According to Rule 1302(b) of the Rules of Practice and Procedure, 4 CFR 723-1:

The Commission may impose a civil penalty, when provided by law. The Commission will consider any evidence concerning some or all of the following factors:

- I. the nature, circumstances, and gravity of the violation;
- II. the degree of the respondent's culpability;
- III. the respondent's history of prior offenses;
- IV. the respondent's ability to pay;
- V. any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- VI. the effect on respondent's ability to continue in business;
- VII. the size of the respondent's business; and
- VIII. such other factors as equity and fairness may require.

19. According to Rule 11501 (a)(VI) of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4CCR 723-11:

as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety...

²² See *id.*

²³ *Id.*

20. In the Response and its correspondence with Staff, Respondent admitted each of the violations enumerated in the NPV. Respondent expeditiously and satisfactorily adopted changes in response to the NPV, completed the alternative enforcement requirements as posed by Staff, and made a payment to the Commission in the amount of \$5,000. Pursuant to § 40-7-117(2)(c), C.R.S., the minimum civil penalty amount that may be imposed on Respondent is \$5,000. Based on the above, and consistent with the factors enumerated in Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ finds that a civil penalty in the amount of \$5,000 against Pleasant View is appropriate and reasonable. Therefore, a civil penalty of \$5,000 will be assessed against Respondent, as ordered below.

21. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, this Proceeding may be processed under the modified procedure without a formal hearing.

22. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. Trial Staff's Motion for a Commission Order Finding Rocky Mountain MHP Has Satisfied its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding, consistent with the discussion above.

2. Respondent, Rocky Mountain MHP, LLC, Dba: Pleasant View MHP (Pleasant View) (Pleasant View or Respondent), is assessed a civil penalty of \$5,000.00 (Civil Penalty), inclusive of any applicable surcharge.

3. Receipt of the Civil Penalty from Respondent is acknowledged.

4. Not later than 30 days following the date of the issuance of a final Commission decision in this Proceeding, Pleasant View shall pay to the Commission the Civil Penalty assessed by this Recommended Decision.²⁴

5. Pleasant View may make payment to the Commission in person by the due date. If Respondent submits a payment by U.S. mail, the payment must be made by money order or check and must be received by the Commission not later than the due date.²⁵

6. Proceeding No. 21N-0645GPS is closed.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be 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 within 20 days after service, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

²⁴ The ALJ acknowledges that Respondent has made a \$5,000 payment to the Commission on or about January 29, 2024. However, the record is unclear as to whether the funds for Respondent's \$5,000 payment were certified. Should Respondent's check bounce, Respondent would be bound by Paragraphs No. 4 and 5 of this Ordering section.

²⁵ See *supra*, footnote 24.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director