

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23N-0630GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO PUBLIC SERVICE COMPANY OF COLORADO ON DECEMBER 29, 2023.

**RECOMMENDED DECISION
FINDING THAT PUBLIC SERVICE COMPANY OF
COLORADO HAS SATISFIED ITS ALTERNATIVE
ENFORCEMENT OBLIGATIONS, ASSESSING CIVIL
PENALTY, AND CLOSING PROCEEDING**

Issued Date: June 27, 2024

I. STATEMENT

A. Background

1. On December 29, 2023, the Staff of the Public Utilities Commission (“Staff”) initiated this matter by issuing its Notice of Probable Violation (“NPV”) to Public Service Company of Colorado (“Public Service” 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 \$120,000.00.¹ The NPV enumerates five violations of the following provisions of the Code of Federal Regulations: 49 C.F.R. 192.453, 49 C.F.R. 192.491(c), 49 C.F.R. 192.709(a), and two violations of 49 C.F.R. 192.739(a)(2).²

2. On February 1, 2024, Public Service’s NPV Response Letter (“Response”) was filed. In its Response, Public Service explained for each violation the work Public Service has

¹ See NPV at 1-2.

² *Id.* at 2.

done to address the violation and requested that the Commission's Gas Pipeline Safety section deem their remedial actions sufficient to address the alleged violations consistent with Commission Rules 11504(a)(VI) and 11504(c)(II)(A), 4 CCR 723-11.³ Public Service also asks that their remedial decisions and actions taken be considered from imposing the recommended civil penalty to providing cooperation credit, and requests that the Commission eliminate or significantly reduce the total civil penalty.⁴

3. On March 20, 2024, the Commission referred this proceeding to an Administrative Law Judge ("ALJ") by minute entry.

4. By Decision No. R24-0315-I, issued May 8, 2024, Staff was ordered to file status reports as to progress in resolving the violations identified in the NPV and expectations regarding the filing of evidence of resolution and a motion to dismiss (or otherwise dispose of the proceeding). The first of these reports was ordered to be filed by August 1, 2024, with subsequent reports filed on or before November 1, 2024, February 1, 2025, etc. until further order or evidence of resolution and a motion to dismiss (or otherwise dispose of the proceeding) was filed.

5. On June 14, 2024, Trial Staff's Unopposed Motion for a Commission Order Finding Public Service Company of Colorado has Satisfied its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding was filed ("Unopposed Motion"). In the Unopposed Motion, Staff states that they reviewed Public Service's Response, which they determined provided sufficient detail regarding remedial actions taken to address the documentation requirements in the NPV violations, and noted that the Response demonstrated steps taken to ensure oversight of proper documentation consistent

³ See Response at 2-4.

⁴ *Id.* at 4.

with Commission rules.⁵ In light of the Response and the accompanying documentation to verify Public Service's actions and ensure proper documentation methods going forward, Staff interprets Public Service's actions as consistent with alternative enforcement pursuant to Rule 11504.⁶

6. The Unopposed Motion points to § 40-7-117, C.R.S., passed after the Commission enacted rules on alternative enforcement, mandating that even if an operator completes alternative enforcement, it remains subject to a mandatory minimum penalty of \$5,000. Therefore, Staff correctly opines that the Commission is prohibited from assessing a civil penalty amount less than the statutory minimum.⁷ Staff notes that the parties have discussed the minimum penalties imposed by § 40-7-117, C.R.S. and states that Public Service agreed to pay \$5,000 in penalties as a lump sum for its period of noncompliance prior to the issuance of the NPV.⁸

7. Finally, the requested relief being unopposed, Staff requests that the Commission waive response time and enter an order: (1) finding that Public Service completed alternative enforcement requirements in lieu of \$120,000 of the calculated penalty as contemplated by Rule 11504; (2) ordering Public Service to pay \$5,000 to the State Treasury; and (3) closing this Proceeding.⁹

II. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

8. Rule 11504(a)(VI), 4 CCR 723-11, permits the 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."

⁵ Unopposed Motion at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 3.

⁹ *Id.*

9. Here, each violation in the NPV involves missing or inadequate documentation from Public Service.¹⁰ In their Response, Public Service addressed efforts they have made to improve or implement documentation to address these violations, including various software updates and modernization and collaboratively working with the Commission to address concerns.¹¹ Public Service notes they have already undertaken significant remedial actions to address the Commission's concerns about the quality of their recordkeeping, and these actions, over several years, have resulted in substantial investments in procedures, technology, and people to improve Public Service's documentation.¹²

10. As stated above, Staff has reviewed both the Response and the steps taken by Public Service to ensure oversight of proper documentation consistent with Commission rules.¹³ Staff also reviewed accompanying documentation to verify Public Service's actions and ensure proper documentation methods going forward, and thus interprets Public Service's actions as consistent with alternative enforcement pursuant to Rule 11504.¹⁴

11. The requested relief being unopposed, it is appropriate that response time be waived.

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

13. According to § 40-7-117(2)(c), 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.

¹⁰ See NPV at 2.

¹¹ See Response at 2-4.

¹² *Id.* at 4.

¹³ Unopposed Motion at 2.

¹⁴ *Id.*

14. According to Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 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 the 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.

15. According to Rule 11501(a)(VI) of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 CCR 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...

16. The Unopposed Motion was filed by Staff and is unopposed by Public Service. By electing to proceed with alternative enforcement, Public Service admitted each of the violations enumerated in the NPV. Public Service adopted changes in response to the NPV and completed alternative enforcement requirements as approved by Staff. Pursuant to § 40-7-117(2)(c), C.R.S., the minimum civil penalty amount that may be imposed on Public Service is \$5,000. Public Service is aware of this minimum civil penalty and has agreed to pay \$5,000 in penalties as a lump sum for its period of noncompliance prior to the issuance of the NPV.¹⁵ Based on the above, and consistent with the factors enumerated in Rule 1302(b) of the Rules and Practice and Procedure, 4 CCR 723-1, the ALJ finds that a civil penalty in the amount of \$5,000 is appropriate and

¹⁵ Unopposed Motion at 4.

reasonable. Therefore, a civil penalty of \$5,000 will be assessed against Public Service, as ordered below.

17. 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.

18. 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. Response time to Trial Staff's Unopposed Motion for a Commission Order Finding Public Service Company of Colorado has Satisfied its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding is waived and the motion is granted, consistent with the discussion above.

2. Respondent, Public Service Company of Colorado, is assessed a civil penalty of \$5,000, inclusive of any applicable surcharge.

3. Public Service must make payment to the Commission, in person or by mail, no later than 30 days following the date of the final Commission decision issued in this Proceeding. If Public Service submits a payment by U.S. mail, the payment must be made by money order or check and must be received at the Commission not later than the due date.

4. The Order to file future reports in accordance with Decision No. R24-0315-I, issued May 8, 2024, is vacated.

5. Proceeding No. 23N-0630GPS is closed.

6. 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.

7. 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.

8. 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



G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director