

Decision No. C20-0917

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0703GPS

IN THE MATTER OF THE PROPOSED RULES REGULATING PIPELINE OPERATORS
AND GAS PIPELINE SAFETY, 4 CODE OF COLORADO REGULATIONS 723-11.

**COMMISSION DECISION GRANTING EXCEPTIONS TO
DECISION NO. R20-0768 AND ADOPTING RULES**

Mailed Date: December 28, 2020

Adopted Date: December 16, 2020

I. BY THE COMMISSION

A. Statement

1. On December 9, 2019, the Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Pipeline Operators and Gas Pipeline Safety (Pipeline Safety Rules), moving the Pipeline Safety Rules from their present location within the Gas Utilities and Pipeline Operator Rules at 4 *Code of Colorado Regulations* (CCR), 723-4, to a new, standalone Part 11, 4 CCR 723-11 (New Pipeline Safety Rules). The matter was assigned to an Administrative Law Judge (ALJ), who issued his Recommended Decision No. R20-0768 on November 4, 2020 (Recommended Decision), after receiving significant public comment, including consideration of proposed rule revisions from stakeholder workshops and public comment hearings, and recommends the Commission adopt New Pipeline Safety Rules as attached to the Recommended Decision.

2. Through this Decision, as discussed below, we grant the narrow exceptions to the Recommended Decision filed on November 24, 2020, by Public Service Company of Colorado (Public Service). With the limited revisions proposed by Public Service included, we adopt the

New Pipeline Safety Rules that significantly alter Commission processes to better ensure public access and transparency to Pipeline Safety Program (PSP) information and processes initiated before the Commission. We commend Commission Staff and participating stakeholders that furthered this rulemaking and the Commission's continued coordination with both federal and state agencies with the singular goal of ongoing improvements in pipeline safety.

B. Background

3. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-1-103, 40-2-108, 40-2-112, 40-2-115, 40-3-110, 40-4-109, 40-6-108, and 40-7-117, C.R.S.

4. As discussed in the NOPR, this Commission conducts its PSP activities primarily under §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S. In particular, § 40-2-115, C.R.S., provides authority permitting the Commission to enter into cooperative agreements with federal agencies, directs the Commission to coordinate with state and federal agencies, and authorizes the Commission to adopt and create rules to administer and enforce the Natural Gas Pipeline Act found at 49 U.S.C. §§ 60101 *et seq.*

5. Collectively, the federal code and state statutes are provided to establish and govern regulations and standards for the safe transportation of hazardous gases by intrastate pipeline in Colorado. The PSP works in direct concert with federal regulation and administrations, and specifically the Pipeline Hazardous Materials Safety Administration (PHMSA), which includes the Office of Pipeline Safety (OPS) that regulates both hazardous gas and hazardous liquid transportation pipelines. Federal statutes and regulations, 49 *Code of Federal Regulations* (CFR) 190-99, prescribe minimum pipeline safety standards for pipeline transportation of natural gas and hazardous liquids. PHMSA-OPS oversee interstate pipelines. Under the Natural Gas Pipeline Safety Act, PHMSA provides for state oversight of intrastate regulation and enforcement. States are responsible for intrastate pipelines via interagency

agreements with PHMSA. In Colorado, the authority provided in § 40-2-115, C.R.S., enables the Commission, through its PSP, to enter into cooperative agreements with PHMSA such that it is certified to oversee intrastate pipeline transportation, as set out in statute.

6. The Commission rules regarding pipeline safety, therefore, incorporate federal standards, in addition to enabling ongoing coordination with both federal and state agencies.¹

7. Current Pipeline Safety Rules were last updated in 2011, primarily revising the existing Pipeline Safety Rules to adopt amended safety rules promulgated by the U.S. Department of Transportation, 49 U.S.C. § 60105 *et seq.*, as of October 1, 2010.² Nearly a decade later, we proposed that technical updates, in addition to rule revisions for clarity and consistency, are appropriate and are included in proposed revisions. However, the primary purpose of this rulemaking is to include in rule revisions, application of more public, clear, and transparent processes concerning the Commission's PSP.

8. Traditionally, and under current Pipeline Safety Rules, the Commission authorized the PSP Chief to act on behalf of the Commission. Current rules appropriately set out verification of intrastate gas pipeline operator compliance, including enforcement and civil penalty authorities. While designation of these duties to the PSP Chief has provided efficiencies and effective regulation in the past, as discussed in the NOPR, current Commission Staff, including the PSP Chief, recognized an ongoing interest and public awareness warranting review of the processes used before this Commission. Consistent with staff suggestions, our rules aimed at adding transparency and Commissioner engagement throughout the PSP processes, including notices of proposed violations, civil penalty assessments, and reporting, in addition to adding

¹ As discussed in the NOPR, authority over distinct aspects of pipeline regulations are also provided to other state agencies and commissions; *i.e.*, excavation damage regulations prescribed in § 9-1.5-101, *et seq.*, the Colorado Oil and Gas Conservation Commission under § 34-60-103, *et seq.*, and environmental regulations including those considered by the Colorado Department of Public Health and Environment. *See* Decision No. C19-0983, at ¶42.

² *See* Proceeding No. 11R-364GPS.

clarity for the public and stakeholders on any Commission actions regarding pipeline safety that are necessary.

9. Therefore, through the NOPR, we provided proposed rule revisions that significantly alter and aim to improve upon pipeline safety oversight, both substantively and administratively, at the Commission. The proposed rules also continued the Commission's ongoing commitment to added transparency, while maintaining regulatory efficiencies and continued improvement of the pipeline safety practices of the Commission's PSP. In addition, the proposed rules recognized and fostered inter-agency coordination given the necessary cooperation with PHMSA, in addition to other federal and state agencies.

10. Through its NOPR, the Commission scheduled a public comment hearing, requested comments from interested stakeholders, including in furthering the Commission's stated goals. The matter was referred this matter to an ALJ for recommended decision. From approximately late February through May of 2020, the assigned ALJ solicited comments from participants, including public comment hearings and accommodating stakeholder workshop processes led by the PSP Chief.³ From this robust process, the ALJ crafted his Recommended Decision, recommending that the Commission adopt New Pipeline Safety Rules in this proceeding, which culminated from the input of dozens of stakeholder participants and furthered the Commission's interests stated in the NOPR of significantly revising and improving the PSP processes.

11. On November 24, 2020, Public Service filed exceptions to the Recommended Decision seeking minor revisions to the proposed Rule 11011, 4 CCR 723-11. Public Service

³ See Recommended Decision, at ¶¶ 3-11.

requests clarification regarding the circumstances under which PHMSA is required to review a Commission-approved rule waiver under the proposed rule.

12. Specifically, proposed Rule 11011 sets forth the requirements for requesting a non-emergency waiver or variance from any of the New Pipeline Safety Rules, including requests for waiver from the standards in 49 C.F.R. Part 192 that are incorporated by reference into the rules. As noted in the exceptions, Rule 11011 of the New Pipeline Safety Rules includes substantial changes to the process for requesting waiver. The rule outlines the process to obtain PHMSA review of any such Commission decision interpreting federal regulations, or granting such regulations that are incorporated into Commission rules. Within the updated process, decisions from an ALJ or the Commission granting a waiver from a federal regulation pursuant to Rule 11011 must be an interim decision. As the ALJ noted, including in the rule that the Commission's granting of requested waiver interpreting federal rules incorporated into the Commission's regulations aims to ensure that, during the pendency of any PHMSA review process, parties to the Commission proceedings are not required to file exceptions; rehearing, reargument, or reconsideration; or for judicial review.

13. Public Service states its appreciation for the goal of judicial efficiencies in Rule 11011 while PHMSA review is pending, but notes that no such review is necessary from PHMSA for waivers under 49 C.F.R. Part 192.1013 to alter the frequency of periodic inspections and tests on the basis of an engineering analysis and risk assessment. Public Service therefore requests that the Commission include minor revisions to Rule 11011 to recognize this exception to the general rule, and maintain that any Commission decision granting any such waiver be final (not an interim) decision.

14. No responses to Public Service’s exceptions were filed, and no other requests for modification to the New Pipeline Safety Rules were filed.

C. Findings and Conclusions

15. Through 49 C.F.R. part 192.1013, PHMSA review is explicitly not required. Regarding deviations from the frequency of periodic inspections and tests on the basis of an engineering analysis and risk assessment, 49 C.F.R. part 192.1013(b) clearly states:

The applicable oversight agency may accept the proposal on its own authority, with or without conditions and limitation, on a showing that the operator’s proposal, which includes the adjusted interval, will provide an equal or greater overall level of safety.

16. Based on this clear language, we agree that the proposed changes in the exceptions are reasonable. The minor requested revisions proposed by Public are appropriate, and therefore, we grant the exceptions.

17. We adopt the New Pipeline Safety Rules with the proposed revisions granted in this Decision. In doing so, we commend the PSP Chief and stakeholder participants to this proceeding that assisted in furthering the Commission’s ongoing efforts to improve upon PSP processes and rules. The resulting rules align with the intentions stated in the NOPR, and provide processes to accommodate public hearings and petition determinations, while at the same time fostering the federal and state cooperation that is required and critical to pipeline safety regulation in Colorado.

18. Public Service’s proposed changes are included in the updated New Pipeline Safety Rules adopted by, and attached to, this decision as a new Part 11, 4 CCR, 723-11. With the minor revisions included through this Decision, we adopt the Recommended Decision, including the remainder of the New Pipeline Safety Rules provided in the new 4 CCR 723-11 and revisions

to 4 CCR 723-4 that remove the Pipeline Safety Rules from the Gas Utilities and Pipeline Operator Rules.⁴

II. **ORDER**

A. **The Commission Orders That:**

1. The exceptions to Decision No. R20-0768 filed on November 24, 2020, by Public Service Company of Colorado, are granted, consistent with the discussion above.

2. The Rules Regulating Pipeline Operators and Gas Pipeline Safety, attached to this Decision are adopted, as are the revisions to the Gas Utilities and Pipeline Operator Rules.

3. The Gas Utilities and Pipeline Operator Rules at 4 *Code of Colorado Regulations* (CCR) 723-4, are attached in legislative *i.e.*, strikeout/underline format (Attachment A) and final format (Attachment B) to this Decision. The Rules Regarding Pipeline Operators and Gas Pipeline Safety, 4 CCR 723-11, are attached in final format (Attachment C) to this Decision. The attachments are also available in the Commission's E-Filing system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0703GPS

4. Subject to filing of an 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. 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.

⁴ Attachments A and B of the Recommended Decision provide the redline legislative format and final format, respectively, of the changes removing the Pipeline Safety Rules from 4 CCR 723-4, into a new Part 11, 4 CCR 723-11, and are reattached to this decision adopting final rules.

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 16, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners