

Decision No. R23-0506

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22N-0201GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO PINONS OF
TURKEY CANON RANCH ON MAY 17, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
FINDING THAT PINONS OF TURKEY CANON RANCH
HAS SATISFIED ITS ALTERNATIVE ENFORCEMENT
OBLIGATIONS, ASSESSING CIVIL PENALTY,
AND CLOSING PROCEEDING**

Mailed Date: August 1, 2023

I. PROCEDURAL BACKGROUND

1. On May 13, 2022, the Staff of the Public Utilities Commission (Staff) initiated this proceeding by issuing its Notice of Probable Violation (NPV) to Pinons of Turkey Canon Ranch HOA (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 \$540,000.00.¹ The NPV enumerates 14 violations, including one violation of 4 CCR 723-4953² and thirteen violations of the *Code of Federal Regulations* (CFR) of the following provisions: 49 CFR 192.11, 49 CFR 192.463,

¹ See NPV at 1-3.

² This statutory provision was in effect at the time of the alleged violation but has since been recodified.

49 CFR 192.465, 49 CFR 192.605, 49 CFR 192.605(a), 49 CFR 192.615, 49 CFR 192.646, and 49 CFR 192.739, 49 CFR 192.743, 49 CFR 192.747, 49 CFR 192.801, 49 CFR 192. 1015.³

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].”⁴

3. On May 31, 2022, Pinons of Turkey Canon Ranch HOA Response to Notice of Violation with the Public Utilities Commission (Response) was filed by Respondent. Respondent opted to “Admit and Pay” and “Admit and Elect Alternative Enforcement” for each of the violations in the NPV.⁵

4. On June 13, 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 R22-0657-I, issued October 25, 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.

7. On November 23, 2022, Notice of Conferral, Statement of Alternative Enforcement Terms, and Status Report (Notice of Conferral) was filed by Staff. In the Notice of Conferral, Staff

³ See NPV at 2-3.

⁴ *Id.* at 3.

⁵ See Response at 1-9. Each page of the Response was submitted by Respondent as a separate filing. The page number of each page of the Response are identified on the header of each page.

indicated that the compliance directive required the Respondent to take the following remedial actions:

1. Perform inspections on a no more than a 12-month period on all 14 items listed in the NPV;
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 14 items listed in the NPV.⁶

Staff indicated that timely satisfaction of the terms of both the alternative enforcement and compliance directive provisions will constitute a satisfactory resolution of the NPV.⁷ Staff further indicated that on November 21, 2022 the Pipeline Safety Chief reviewed the Respondent's documentation and determined that most of the violations have been remedied, and that the Respondent is actively working towards full compliance.⁸

8. On February 24, 2023, Staff's Second Status Report (Second Status Report) was filed by Staff. In the Second Status Report, Staff state that it inspected Respondent and Respondent has completed their alternative enforcement requirements, and that Staff planned to file a motion to close this Proceeding with evidence of resolution⁹

9. On April 28, 2023, Staff's Status Report on Progress Toward Settlement in Principle (Status Report on Progress) was filed by Staff. According to the Status Report on Progress: Respondent has fulfilled its obligations and completed the Alternative Enforcement, but, pursuant to § 40-7-117(2)(c), C.R.S., Respondent is nonetheless subject to a is subject to a mandatory

⁶ Notice of Conferral at 1-2.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ Staff's Second Status Report at 1.

minimum \$5,000 civil penalty; according to Respondent’s Homeowners Association (HOA) bylaws, Respondent’s payment of \$5,000 must be approved by a quorum of Respondent’s HOA members; the HOA’s executive board only has discretion to approve expenses up to \$1,000 without the need for quorum approval; Respondent operates on an annual budget cycle; most of Respondent’s HOA members pay their dues annually; Respondents’ HOA members will discuss the payment of the civil penalty to be assessed herein during Respondent’s upcoming semi-annual HOA meeting on June 4, 2023; and Staff will renew discussions with Respondent after Respondent’s upcoming semi-annual HOA meeting and anticipates filing a settlement agreement thereafter.¹⁰

10. On June 22, 2023, Joint Motion for a Commission Order Finding Pinons of Turkey Canon Ranch Has Satisfied its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding (Joint Motion to Close Proceeding) was filed by Staff and Respondent. In the Joint Motion to Close Proceeding, Respondent and Staff request the Commission “approve a payment plan due to the unusual financial structure of an HOA and Respondent’s expeditious performance of all its obligations under the alternative enforcement.”¹¹ The proposed payment plan is as follows:

- a. Following a final Commission Decision granting the Joint Motion, provided such decision becomes final prior to November 20, 2023, Respondent will pay \$1,000 towards the minimum statutory penalty within 30 days of the Decision’s mailed date. Respondent will pay the remaining \$4,000 balance on or before February 29, 2024 to allow it time to collect dues from members including a grace period for late payments.

¹⁰ Status Report on Progress at 2.

¹¹ See Joint Motion to Close Proceeding at 4.

- b. Should a final Commission Decision granting the Joint Motion occur after November 20, 2023, Respondent will pay the entire \$5,000 balance on or before February 29, 2024.¹²

The parties state that the payment plan is reasonable and in the public interest and requests that the Commission approve it along the terms outlined above.¹³

II. FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS

11. 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.¹⁴

12. Respondent elected to admit each of the violations and proceed with the alternative enforcement requirements that was 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.¹⁵

13. On February 21, 2023, the PSP inspected Respondent’s records pertaining to its 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.¹⁶ Respondent “received ‘satisfactory’ remarks on

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ *See* NPV at 3.

¹⁵ *See* Response at 1-9.

¹⁶ *See* Affidavit of Pipeline Safety Chief Casey Hensley, attached as Attachment A to the Motion to Close Proceeding at 1.

every line item,” thus remedying all of the violations noted in the NPV.¹⁷ Staff concluded that Respondent fulfilled its obligations and completed the Alternative Enforcement.¹⁸

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

15. 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.

16. 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.

17. 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...

¹⁷ *Id.*

¹⁸ *See* Joint Motion at 3.

18. The Motion to Close was jointly filed by the parties. Respondent admitted each of the violations enumerated in the NPV. Respondent expeditiously and satisfactorily adopted changes in response to the NPV and completed the alternative enforcement requirements posed by Staff. 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 is appropriate and reasonable. Therefore, a civil penalty of \$5,000 will be assessed against Respondent, as ordered below.

19. Given Respondent's unique corporate structure and financial requirements, the ALJ finds that the parties' request for Respondent to pay its civil penalty herein pursuant to a payment plan is appropriate and reasonable. Therefore, the parties' requested payment plan for the civil penalty assessed herein will be granted as ordered below.¹⁹

20. 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.

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

¹⁹ This Recommended Decision requires Respondent to make a \$1,000 payment towards Respondent's \$5,000 civil penalty assessed herein within ten days of the issuance of a Commission decision in this Proceeding. The parties' requested payment plan requires Respondent to make a \$1,000 payment withing 30 days of the mailed date of this Decision, assuming the mailed date of this Recommended Decision is not later than November 20, 2023. Pursuant to Rule 1505(a) of the Rules of Practice and Procedure, 4 CCR 723-1, unless exceptions are filed, a recommended decision becomes a decision of the Commission 20 days after the mailed date of the recommended decision. Therefore, unless exceptions to this Recommended Decision are filed, the requirement herein for Respondent to make a 1,000 payment within ten days of the issuance of a Commission decision t is consistent with the parties' requested payment plan.

III. ORDER

A. The Commission Orders that:

1. The Joint Motion for a Commission Order Finding Pinons of Turkey Canon Ranch 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. Respondent, Pinons of Turkey Canon Ranch HOA (Respondent), is assessed a civil penalty of \$5,000.00 (Civil Penalty), inclusive of any applicable surcharge.

3. Not later than ten days following the date of the entry of a final Commission decision in this Proceeding, Respondent shall pay \$1,000 of the Civil Penalty within 30 days of this Decision's mailed date. Respondent shall pay the remaining \$4,000 balance of the Civil Penalty on or before February 29, 2024.

4. Respondent 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.

5. Proceeding No. 22N-0201GPS 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

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director