

Decision No. R23-0335

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0644GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO LAKESIDE COTTAGES ON JANUARY 4, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
FINDING LAKESIDE COTTAGES HAS SATISFIED
ALTERNATIVE ENFORCEMENT OBLIGATIONS AND
CLOSING PROCEEDING**

Mailed Date: May 19, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision grants Colorado Public Utilities Commission Staff's (Staff) Motion for a Commission Order Finding Lakeside Cottages Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and Closing This Proceeding (Motion) filed on April 10, 2023, makes the relevant findings, and closes this Proceeding.

B. Procedural History

2. Staff initiated this matter on January 4, 2022, by filing the Notice of Probable Violation (NPV) against Lakeside Cottages (Lakeside). The NPV alleges 14 counts of violations of the Rules Regulating Gas Pipeline Operators and Gas Pipeline Safety, found at 4 *Code of Colorado Regulations* (CCR) 723-11 against Lakeside.

3. On March 25, 2022, Staff filed a Notice of Non-Response Creating a Contested Proceeding to Be Set for Hearing Under Rule 11504 and Notice Pursuant to Rule 1007 (Notice). The Notice indicates that Lakeside did not respond to the NPV within the required 30-day time period, and therefore, by operation of Rule 11504(d), 4 CCR 723-11, this Proceeding is deemed opposed and should be scheduled for a hearing.¹

4. On April 12, 2022, Staff filed an Unopposed Motion to Stay Proceeding and Motion for Variance from the Requirements of Rule 11504” (Unopposed Motion).

5. On April 13, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition.

6. On April 28, 2022, the ALJ granted the Unopposed Motion.² In doing so, the ALJ temporarily stayed this Proceeding through May 4, 2022; established May 4, 2022 as the deadline for Lakeside to file a response to the NPV; automatically stayed this Proceeding if Lakeside files its response by May 4, 2022; required Staff to file status reports every 90 days after May 4, 2022 (if the automatic stay goes into effect); and waived Rule 11504, 4 CCR 723-11 as necessary to effectuate the relief granted.

7. On April 29, 2022, Lakeside filed a Response to Notice of Violation (Response) with attachments. The Response admits all 14 counts alleged in the NPV and elects alternative enforcement offered through the NPV.³

8. On July 11, 2022, Lakeside filed an Annual Report.

¹ Notice at 2.

² Decision No. R22-0254-I at 3-4(mailed April 28, 2022).

³ Response at 5-18.

9. On August 2, 2022, Staff filed its first Status Report (First Report). The First Report states that Staff has reviewed the Response and attachments and concludes that the records Lakeside provided demonstrate that it is working toward compliance and is likely to complete alternative enforcement by the second quarter of 2023.⁴ The First Report explains that the alternative enforcement includes using qualified contractors or personnel to remedy the NPV violations consistent with the compliance directive.⁵ The compliance directive, in turn, requires annual inspections, repair or remediation of additional non-compliance areas within 12 months of discovery, and annual reporting that includes updates specific to the NPV violations.⁶

10. The First Report explains that Lakeside has entered into a Technical Service Agreement with Black Hills Colorado Gas, Inc., for repair and remediation of the issues identified in the NPV, and any others that are identified.⁷ It also explains that since Lakeside is a seasonal lodging enterprise, it is likely that a “close out” inspection will be scheduled during the off-season in the first quarter of 2023 to accommodate Lakeside’s business.⁸

11. On October 31, 2022, Staff filed a Second Status Report (Second Report). The Second Report states that Staff is scheduled to inspect Lakeside’s property during “this quarter” for a separate federal requirement and will evaluate Lakeside’s compliance with the alternative enforcement at that time.⁹ Staff promises to notify the Commission and request that this matter be dismissed if the results of that evaluation indicate that Lakeside has complied with the

⁴ First Report at 1.

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ Second Report at 1.

alternative enforcement.¹⁰ If not, Staff will file another status report by January 30, 2023 and conduct another inspection during the second quarter of 2023.¹¹

12. On November 7, 2022, Lakeside filed another Annual Report.

13. On January 30, 2023, Staff filed a Third Status Report (Third Report). The Third Report states that Staff inspected Lakeside's property and determined that Lakeside completed its alternative enforcement.¹² Staff states that it will file a motion to close this Proceeding with supporting documentation by February 28, 2023.¹³

14. On April 10, 2023, Staff filed the Motion with an attachment.

II. FINDINGS AND CONCLUSIONS

15. The Motion explains that the agreed-upon alternative enforcement required Lakeside to perform inspections on a no more than a 12-month period on all 14 items listed in the NPV; repair any additional areas of noncompliance within 12 months of discovery; submit the annual report required by Rule 11103, 4 CCR 723-11; and include updates on all 14 items in the NPV in the annual report.¹⁴ Staff states that completing these actions substitute the civil penalty assessed in the NPV, and that under Rule 11509(c)(I), 4 CCR 723-11, an NPV can be satisfied through a civil penalty or the successful completion of alternative enforcement.¹⁵

16. The Motion states that after accepting alternative enforcement, Lakeside contracted with Black Hills Energy (Black Hills) to manage its system; undertook substantial remodeling; completed and appropriately documented all required testing, repairs and reporting;

¹⁰ *Id.*

¹¹ *Id.*

¹² Third Report at 1.

¹³ *Id.*

¹⁴ Motion at 1-2.

and participated in a Staff inspection which took place on January 25, 2023.¹⁶ The Motion states that except for one item, the Staff inspector recorded satisfactory or not applicable remarks on the inspection.¹⁷ During the inspection, Staff also learned that after Lakeside’s renovation, it now has 9 units taking service on its system, which makes it a “de minimis gas system” per Rule 11203(b)(I), 4 CCR 723-11.¹⁸ Staff explains that de minimis gas systems are exempt from the Pipeline Operators and Gas Pipeline Safety Rules and 48 CFR Part 192 (with limited exceptions), and that as a result, Lakeside is not required to comply with the one item for which it received an unsatisfactory inspection result.¹⁹ Staff adds that it is satisfied that Lakeside is now safely operating its system.²⁰

17. Based on the foregoing, Staff asks that the Commission find that Lakeside completed the alternative enforcement requirements in lieu of the proposed \$500,000 civil penalty as contemplated by Rule 11504; that Lakeside is a de minimum gas system as defined by Commission rules; and close this Proceeding.²¹

18. Lakeside did not respond to the Motion, rendering it unopposed.²² Since the Motion is unopposed, no hearing is requested or required, and there are sufficient facts in the record, the ALJ will process this Proceeding under a modified procedure without a hearing.²³

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² Rule 1400(b) and (d), of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

²³ *See* § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1

19. Under Rule 11001(e), 4 CCR 723-11, a de minimis gas system is a non-utility underground pipeline system used to transport and distribute natural gas to less than ten customers within a definable private area, and that does not cross a public right-of-way. And, per Rule 11203(b)(I), unless otherwise specified by rule, de minimis gas systems are exempt from the Commission's Gas Pipeline Safety Rules and 49 CFR Part 192 (incorporated into the Commission's Rules).

20. The ALJ finds that the Motion and supporting Affidavit establish that Lakeside is a de minimis gas system since it provides service to fewer than 10 units; that Lakeside substantially completed the alternative enforcement requirements; and that because Lakeside is a de minimis gas system, it is not required to satisfy the one requirement that did not pass inspection. Based on the foregoing and the record, the ALJ concludes that this Proceeding has been fully resolved given Lakeside's compliance with the alternative enforcement and its status as a de minimis gas system and should be closed.

21. Consistent with § 40-6-109, C.R.S., the ALJ transmits the record and recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. Colorado Public Utilities Commission Staff's (Staff) Motion for a Commission Order Finding Lakeside Cottages Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and Closing This Proceeding filed on April 10, 2023, is granted, consistent with the above discussion.

2. No civil penalty is assessed against Lakeside Cottages (Lakeside) for the violations identified in the January 4, 2022 Notice of Probable Violation.

3. Proceeding No. 21N-0644GPS is closed.

4. 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.

5. 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.

6. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director