

Decision No. R23-0426

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0639GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO CAMPION ACADEMY ON DECEMBER 30, 2021.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
FINDING CAMPION ACADEMY HAS COMPLETED
THE ALTERNATIVE ENFORCEMENT REQUIREMENTS
AND CLOSING PROCEEDING**

Mailed Date: June 23, 2023

I. STATEMENT

1. On December 30, 2021, the Staff (Staff) of the Public Utilities Commission (PUC or Commission) initiated this matter by issuing its Notice of Probable Violation (NPV) to Campion Academy (Campion). The civil penalties, calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the COPUC Gas Pipeline Safety Rules, 4 *Code of Colorado Regulations* (CCR) 723-11, included a total civil penalty of \$300,000.00 for seven enumerated violations. Violation 1 alleged a violation of Rule 4953, 4 CCR 723-11¹ (no or inadequate record provided for annual review for O&M, DIMP, OQ, or Emergency Plan). The remaining six violations asserted noncompliance with the following provisions of the *Code of Federal Regulations*:

- Violation 2: 49 *Code of Federal Regulations* (CFR) 192.463 & 465 (no or inadequate record provided for Annual CP testing);

¹ This provision was in effect at the time of the alleged violation but has since been recodified.

- Violation 3: 49 CFR 192.605(a) (no or inadequate record provided for annual O&M review and update);
- Violation 4: 49 CFR 192.615 (no or inadequate record provided for annual Emergency Plan review);
- Violation 5: 49 CFR 192.625 (no or inadequate record provided for annual odor testing);
- Violation 6: 49 CFR 192.801 (no or inadequate record provided for the staff and contractor OQ certifications); and
- Violation 7: 49 CFR 192.1015 (no or inadequate record provided for annual MMO DIMP updates).²

2. In lieu of incurring the civil penalty, the NPV offered Campion the option of pursuing “alternative enforcement” to address the alleged violations. Under the “alternative enforcement” provisions, Campion could

Utilize the services of Qualified Contractors or Qualified personnel on Your staff to remedy the violations in accordance with the Compliance Directive requirements and deadlines set forth below. Failure to comply with the Compliance Directive using services of Qualified Contractors or Qualified personnel on Your staff may result in civil penalties being assessed against You.³

3. On January 21, 2022, Campion filed a Response to the NPV addressing the merits of each of the allegations in the NPV.⁴ In its Response, Campion stated that, in response to a July 2015 inspection and August 2015 warning letter, it contracted “with Pinedale Natural Gas for certain DOT tasks such as CP testing and leak survey.”⁵ It further noted that it did not “have record of in-person visits or correspondence by PUC from Nov[ember] [20]15 until March 2020.”⁶ Campion concluded by stating that it had “met every step of the plan outlined in [its]

² Notice of Probable Violation (NPV), Dec. 30, 2021, p. 2.

³ *Id.*; see also Rule 11504(a)(VI), 4 *Colorado Code of Regulations* (CCR) 723-11.

⁴ Operator’s Response to NPV, letter from Dean Helm, VP Finance, Campion Academy, to Casey Hensley, Colorado PUC, Jan. 21, 2022, pp. 2-3.

⁵ *Id.*, p. 1.

⁶ *Id.*

September 10, 2015, response to Chief Molloy.” It therefore requested that the PUC consider dismissal of all seven violations outlined in the NPV, as well as the penalty.⁷

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

5. On April 20, 2022, Staff filed a Notice of Satisfactory Progress notifying the Commission that Campion had been working in good faith with Staff to resolve any outstanding issues, and that Staff believed that an inspection at the end of 2022 would reveal that Campion had addressed and resolved all remaining issues and violations.

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

7. On January 6, 2023, Staff filed a Status Report on Progress advising that, in early 2022, Staff had “determined that probable violations 1, 3, 4, and 6 were satisfactorily addressed.” Staff therefore “informally removed” the civil penalties related to those items.⁸ It further reported that in December 2022, Campion provided documentation showing that “all probable violations, except for violation 7, ha[d] been fully addressed.”⁹

8. Staff also advised that an inspection of Campion’s property was scheduled later in January 2023, and that Staff had “a reasonable, good faith basis to believe that Respondent [Campion] will have remedied all probable violations by that time.” If true, Staff indicated its intent to dismiss the remaining civil penalties.¹⁰

⁷ *Id.*, p. 4.

⁸ Status Report on Progress, Jan. 6, 2023, p. 1.

⁹ *Id.*, pp. 1-2.

¹⁰ *Id.*, p. 2.

9. On March 15, 2023, Staff filed a Motion for a Commission Order Finding that Campion Academy Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and Closing this Proceeding (Motion to Close). However, Staff subsequently withdrew the Motion to Close.¹¹

10. On May 8, 2023, Staff renewed its motion to close this Proceeding by filing an Unopposed Motion for a Commission Order Finding Campion Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding (Unopposed Motion to Close). In the Unopposed Motion to Close, Staff represents that the Pipeline Safety Program (PSP) performed an inspection of Campion's facility on February 21, 2023, and that, as a result of the inspection, Staff concluded that Campion has "achieved compliance and through doing so completed the Alternative Enforcement which qualifies them for the maximum dismissal of penalties."¹²

11. Staff therefore requests that the Commission enter an order: (1) finding that Campion has completed the alternative enforcement in lieu of payment of \$295,000 of the \$300,000 civil penalty; (2) ordering Campion to pay a \$5,000 penalty to the State Treasury; and (3) closing this Proceeding.

12. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

¹¹ See Notice of Withdrawal of Staff's Motion to Close Proceeding Dated March 15, 2023, Pursuant to Rule 1309, April 11, 2023.

¹² Unopposed Motion for a Commission Order Finding Campion Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding (Unopposed Motion to Close), May 8, 2023, ¶ 5, p. 2.

II. FACTS

13. On March 31, 2022, Champion submitted an update to its response to the NPV. Champion noted that it was “at the point” at which civil penalties for violations 1, 3, 4, and 6 had been resolved and the civil penalties assessed for those four violations had been removed. It stated that it was in the process of addressing the issues raised by violations 2, 5, and 7.¹³ It further expressed that it believed it had taken steps to fully address the violations and outlined a plan for future testing and reporting to ensure Champion complied with the applicable regulations in the future.¹⁴

14. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC’s PSP, on February 21, 2023, PSP inspected Champion’s property and records pertaining to its natural gas system.¹⁵

15. To complete the inspection, an investigator used the PSP’s Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Champion had remedied the violations identified in the December 2021 NPV. The Report form used in PSP’s inspection of Champion is “one kept by the PSP in the ordinary course of the PSP’s business.”¹⁶

¹³ Letter from Dean Helm, VP Finance, Champion Academy, to Casey Hensley, PE, Colo. PUC, Mar. 31, 2022, p. 3. Although the penultimate paragraph of Mr. Helm’s letter states that “civil penalties are removed for #1-3-5-6 and still open for NPV #2-4-7,” this appears to be a typographical error. In his discussion of each violation, Mr. Helm indicates that the civil penalty for violation “NPV #4” had been “removed” and outlines the steps Champion had taken to address violation “NPV #5.” In addition, Staff’s January 6, 2023, Status Report explained that Staff had “determined that probable violations 1, 3, 4, and 6 were satisfactorily addressed.” The ALJ therefore infers that in concluding his March 31, 2022, letter to Ms. Hensley, Mr. Helm intended to state that civil penalties had already been removed for violations 1, 3, 4, and 6, but were still open for violations 2, 5, and 7.

¹⁴ Letter from Dean Helm, VP Finance, Champion Academy, to Casey Hensley, PE, Colo. PUC, Mar. 31, 2022, pp. 1-3.

¹⁵ See Affidavit of Pipeline Chief Casey Hensley, Mar. 8, 2023, Attachment A to Staff’s Unopposed Motion to Close, p. 1.

¹⁶ *Id.*

16. In her Affidavit, PSP Chief Hensley represents that Campion received either “satisfactory” or “not applicable” remarks for every line item on the PUC’s inspection report. Campion received no “unsatisfactory” marks.¹⁷ A copy of the Report is attached to Ms. Hensley’s Affidavit.¹⁸ PSP Chief Hensley concludes that in her “professional opinion . . . Campion has remedied the violations contained in the December 30, 2021, NPV.”¹⁹

17. Having successfully passed the February 21, 2023, inspection, Staff represents that Campion has completed the alternative enforcement requirements in lieu of the \$300,000 civil penalty.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

18. The requested relief being uncontested, the proceeding may now be processed under the modified procedure, pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, without a formal hearing.

19. To provide consistency and specificity, civil penalties in the NPV are calculated in accordance with Rule 11501(d) 4 CCR 723-11. However, Rule 11504(a)(VI), 4 CCR 723-11, permits the PSP Chief to “offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part.”

20. § 40-7-117(2), C.R.S., authorizes the Commission to reduce a civil penalty “based on consideration of objective metrics and factors set forth in the rules.” However, even when the

¹⁷ *Id.*

¹⁸ *Id.*, pp. 3-6.

¹⁹ *Id.*, p. 1.

PSP Chief authorizes a reduction in the civil penalty, “the amount of the penalty payable to the [C]ommission shall be no less than five thousand dollars.”²⁰

21. Here, PSP Chief Hensley offered Champion the opportunity to remedy its violations and take corrective actions in lieu of paying the full civil penalty of \$300,000.²¹ Staff and Champion agreed that four of the seven enumerated violations (violations 1, 3, 4, and 6) should be dismissed, but that Champion would have to take corrective action to avoid paying civil penalties for the remaining violations.²² Champion elected to pursue alternative enforcement by correcting the remaining violations listed in the NPV.²³

22. It is found that Champion successfully completed the alternative enforcement and remedied all of the violations identified in the NPV. As alternative enforcement was offered in lieu of the civil penalty, the undersigned ALJ finds that Champion is not liable for \$295,000 of the \$300,000 civil penalty calculated in the NPV.

23. In accordance with § 40-7-117(2)(c), Champion must pay the minimum penalty amount of \$5,000.

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

²⁰ § 40-7-117(2)(c), C.R.S.

²¹ See NPV, p. 2.

²² See Status Report on Progress, Jan. 6, 2023, p. 1.

²³ See Champion’s Response to NPV, Jan. 21, 2022; Champion’s Update to its Response to NPV, Letter from Dean Helm, VP Finance, Champion Academy, to Casey Hensley, PE, Colo. PUC, Mar. 31, 2022

IV. ORDER**A. It Is Ordered That:**

1. Trial Staff's Unopposed Motion for a Commission Order Finding Campion Academy 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. A civil penalty in the amount of five thousand dollars (\$5,000) is assessed against Campion Academy, for violations 2, 5, and 7 identified in the December 30, 2021, Notice of Probable Violation.

3. Proceeding No. 21N-0639GPS 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director