

Decision No. R23-0429

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0633GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO DENVER
CASCADE MANAGEMENT COMPANY ON DECEMBER 30, 2021.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
FINDING DENVER CASCADE MANAGEMENT
COMPANY HAS COMPLETED
THE ALTERNATIVE ENFORCEMENT REQUIREMENTS,
GRANTING MOTION,
ASSESSING \$5,000 CIVIL PENALTY,
AND CLOSING PROCEEDING**

Mailed Date: June 29, 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 Denver Cascade Management Company (Denver Cascade). 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 \$490,000.00 for fourteen 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 thirteen violations asserted noncompliance with the following provisions of the *Code of Federal Regulations*:

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

- Violation 2: 49 *Code of Federal Regulations* (CFR) 192.463 & 465 (no or inadequate record provided for Annual CP testing);
- Violation 3: 49 CFR 192.465 (no or inadequate record provided for immediate leak repairs);
- Violation 4: 49 CFR 192.605 (no or inadequate record provided for annual equipment calibrations);
- Violation 5: 49 CFR 192.605 (no or inadequate record provided for system map(s));
- Violation 6: 49 CFR 192.605(a) (no or inadequate record provided for annual O&M review and update);
- Violation 7: 49 CFR 192.615 (no or inadequate record provided for annual Emergency Plan review);
- Violation 8: 49 CFR 192.625 (no or inadequate record provided for annual odor testing);
- Violation 9: 49 CFR 192.646 (no or inadequate record provided for public awareness flyers);
- Violation 10: 49 CFR 192.723 (no or inadequate record provided for Leak Surveys (5 years or less));
- Violation 11: 49 CFR 192.739 & 743 (no or inadequate record provided for the annual regulators and reliefs inspection and maintenance);
- Violation 12: 49 CFR 192.747 (no or inadequate record provided for the annual emergency valve operation and maintenance);
- Violation 13: 49 CFR 192.801 (no or inadequate record provided for the staff and contractor OQ certifications);
- Violation 14: 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 Denver Cascade the option of pursuing “alternative enforcement” to address the alleged violations. Under the “alternative enforcement” provisions, Denver Cascade 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

² Notice of Probable Violation (NPV), Dec. 30, 2021, pp. 2-3.

Qualified Contractors or Qualified personnel on Your staff may result in civil penalties being assessed against You.³

3. On January 24, 2022, Denver Cascade filed a Response to the NPV addressing the merits of each of the allegations in the NPV.⁴ In its Response, Denver Cascade admitted each of the fourteen violations listed in the NPV and elected to seek alternative enforcement with respect to each of the violations.⁵

4. On March 24, 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. The Proceeding was subsequently assigned to the undersigned ALJ.

6. By Decision No. R22-0653-I, issued October 25, 2022, the ALJ required Staff to file periodic status reports until the NPV has been resolved.

7. On November 23, 2022, Staff filed a Notice of Conferral, Statement of Alternative Enforcement Terms, and Status Report (Notice of Conferral) notifying the Commission that Staff and Denver Cascade agreed to the following terms and compliance directives. To resolve the violations, Denver Cascade would pursue the alternative enforcement option by which it agreed to a compliance directive requiring it to:

- “Perform inspections on . . . no more than a 12-month period on all 14 items listed above;”
- Repair or address “[a]ny additional areas of noncompliance . . . within 12 months of discovery;”
- “Submi[t] . . . the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and”

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

⁴ Denver Cascade Management Company Response to NPV, Jan. 24, 2022.

⁵ *Id.*, pp. 3-9.

- Include in its “Annual Report . . . updates on all 14 items listed above.”⁶

8. Staff’s Notice of Conferral further advised the Commission that on November 15, 2022, Denver Cascade provided the PUC’s Pipeline Safety Chief “with an invoice from a qualified contractor demonstrating that the contractor completed the necessary services to remedy the violations.”⁷ It further stated that Staff was scheduled to inspect Denver Cascade’s property “in the first quarter of 2023” and would evaluate at that time whether Denver Cascade had complied with the Alternative Enforcement.⁸ If, as Staff reasonably believed, the inspection confirmed that Denver Cascade had satisfied the Alternative Enforcement, Staff would then request that this Proceeding be dismissed.⁹

9. On February 24, 2023, Staff filed a Second Status Report advising that it had “a reasonable, good faith basis to believe that Denver Cascade . . . [had] completed the work required to satisfy the alternative enforcement.”¹⁰ In addition, Staff advised that it would inspect Denver Cascade’s “property before the period for compliance expires on March 14, 2023.”¹¹ If the inspection confirmed that all the violations had been remedied, Staff advised that it would request that this Proceeding be closed.¹²

10. On March 13, 2023, Staff filed a Motion for a Commission Order Finding that Denver Cascade Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504 and

⁶ Notice of Conferral, Statement of Compromise Terms, and Status Report (Notice of Conferral), Jan. 23, 2023, p. 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*, p. 3.

¹⁰ Staff’s Second Status Report, Feb. 24, 2023, p. 1.

¹¹ *Id.*

¹² *Id.*

Closing this Proceeding (Motion to Close). However, Staff subsequently withdrew the Motion to Close.¹³

11. On May 25, 2023, Staff renewed its motion to close this Proceeding by filing an Unopposed Motion for a Commission Order Finding Denver Cascade Management Company 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 Commission’s Pipeline Safety Program (PSP) performed an inspection of Denver Cascade’s facility on December 7, 2022, and that, as a result of the inspection, Staff concluded that Denver Cascade “has fulfilled its obligations and completed the Alternative Enforcement.”¹⁴

12. Staff therefore requests that the Commission enter an order: (1) finding that Denver Cascade has completed the Alternative Enforcement in lieu of payment of \$485,000 of the \$490,000 civil penalty; (2) ordering Denver Cascade to pay a \$5,000 penalty to the State Treasury; and (3) closing this Proceeding.

13. 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.

¹³ See Notice of Withdrawal of Staff’s Motion to Close Proceeding Dated March 13, 2023, Pursuant to Rule 1309, April 11, 2023.

¹⁴ Unopposed Motion for a Commission Order Finding Denver Cascade Management Company 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 25, 2023, ¶ 7, p. 3.

II. FACTS

14. In its January 24, 2022 Response to NPV, Denver Cascade admitted the fourteen violations Staff asserted against it, acknowledged that the regulations applied to it, and elected “Alternative Enforcement” to resolve the specific violations alleged against it.¹⁵

15. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC’s PSP, on December 7, 2022, PSP inspected Denver Cascade’s property and records pertaining to its natural gas system.¹⁶

16. To complete the inspection, an investigator used the PSP’s Standard Inspection Report of a Small Operator Unit form (Report) to determine whether Denver Cascade had remedied the violations identified in the December 30, 2021 NPV. The Report form used in PSP’s inspection of Denver Cascade is “one kept by the PSP in the ordinary course of the PSP’s business.”¹⁷

17. In her Affidavit, PSP Chief Hensley represents that Denver Cascade received either “satisfactory” or “not applicable” remarks for every line item on the PUC’s inspection report. Denver Cascade received no “unsatisfactory” marks.¹⁸ A copy of the Report is attached to Ms. Hensley’s Affidavit.¹⁹ PSP Chief Hensley concludes that in her “professional opinion . . . Denver Cascade Management has remedied the violations contained in the . . . NPV.”²⁰

¹⁵ Denver Cascade’s Response to NPV, Jan. 24, 2022, pp. 2-9.

¹⁶ See Affidavit of Pipeline Chief Casey Hensley, Mar. 8, 2023, Attachment A to Staff’s Unopposed Motion to Close, p. 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, pp. 3-6.

²⁰ *Id.*, p. 1.

18. Having successfully passed the December 7, 2022 inspection, Staff represents that Denver Cascade has completed the Alternative Enforcement requirements in lieu of the \$490,000 civil penalty.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

19. The Respondent in this Proceeding is Denver Cascade Management Company (Denver Cascade).

20. 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” in the NPV.

21. Pursuant to Rule 1302(b), 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.

22. § 40-7-117(2), C.R.S., authorizes the Commission to reduce a civil penalty for a gas pipeline safety violation “based on consideration of objective metrics and factors set forth in the rules.” The metrics and factors to be considered must include:

- (a) An evaluation of the severity of the violation, in terms of its actual or potential effect on public safety or pipeline system integrity;
- (b) The extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied; and
- (c) 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.²¹

However, even when the PSP Chief or the Commission 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.”²²

23. Here, PSP Chief Hensley offered Denver Cascade the opportunity to remedy its violations and take corrective actions in lieu of paying the full civil penalty of \$490,000.²³ Denver Cascade elected to pursue Alternative Enforcement to correct all of the violations listed in the NPV rather than paying a civil penalty for each violation.²⁴

24. On December 7, 2022, PSP inspected Denver Cascade’s property to assess whether the gas pipeline safety violations set out in the NPV had been corrected. PSP determined that Denver Cascade had corrected the violations. The inspection concluded that, for

²¹ § 40-7-117(2), C.R.S.

²² § 40-7-117(2)(c), C.R.S.

²³ See NPV, p. 2.

²⁴ See Denver Cascade’s Response to NPV, pp. 2-9.

each line item listed on the report form, Denver Cascade had either satisfactorily met the requirements of the specific line item or that the line item was inapplicable.²⁵

25. The fourteen violations alleged in the NPV stemmed from Denver Cascade's admitted failure to adequately maintain or update their records. The inspection report confirms that, as of December 7, 2022, Denver Cascade was properly monitoring and maintaining its gas pipeline system, as well as ensuring that its record-keeping adequately documented the status and maintenance of its system.

26. Denver Cascade admitted each of the violations alleged in the NPV. It is found that Denver Cascade successfully completed the Alternative Enforcement, remedied all of the violations identified in the NPV, and has timely and satisfactorily adopted programmatic changes in response to the NPV. As Alternative Enforcement was offered in lieu of the civil penalty, the undersigned ALJ finds that Denver Cascade is not liable for \$485,000 of the \$490,000 civil penalty calculated in the NPV.

27. In accordance with § 40-7-117(2)(c), Denver Cascade must pay the minimum penalty amount of \$5,000. The ALJ finds that a civil penalty in the amount of \$5,000 is appropriate and reasonable. Therefore, a civil penalty of \$5,000 will be imposed on Denver Cascade for the fourteen statutory and regulatory violations enumerated in the NPV, as ordered below.

28. The Motion to Close is unopposed. 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.

²⁵ See Affidavit of Pipeline Chief Casey Hensley, Mar. 8, 2023, Attachment A to Staff's Unopposed Motion to Close, p. 1.

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

IV. ORDER

A. It Is Ordered That:

1. Trial Staff's Unopposed Motion for a Commission Order Finding Denver Cascade Management Company 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 Denver Cascade Management Company for the violations identified in the December 30, 2021 Notice of Probable Violation.

3. Denver Cascade Management Company shall pay the five thousand dollars (\$5,000) civil penalty to the Commission within thirty (30) days of this decision becoming a final decision of the Commission.

4. Denver Cascade may pay the penalty in person at the Commission's offices by the due date. Alternatively, Denver Cascade may make payment to the Commission by U.S. Mail, but if payment is mailed, the payment must be made by money order or check and must be received by the Commission no later than the date due.

5. Proceeding No. 21N-0633GPS 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

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

Rebecca E. White,
Director