

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

* * * *

IN THE MATTER OF THE NOTICE OF)
PROBABLE VIOLATION ISSUED TO PUBLIC) PROCEEDING NO. 22N-0396GPS
SERVICE COMPANY OF COLORADO)
)

UNOPPOSED COMPREHENSIVE SETTLEMENT AGREEMENT

CONTENTS

I. INTRODUCTION AND IDENTIFICATION OF PARTIES 1

II. BACKGROUND INFORMATION 2

III. COMPANY OBLIGATIONS 3

 a. Risk Analysis Model Shall Be Provided to Staff 3

 b. Quarterly Reports..... 4

 c. Final Report 4

 d. Act on Audit Findings 4

 e. Payment of \$5,000 Penalty..... 4

IV. SCOPE AND ACTIVITIES FOR AUDITOR..... 4

V. REVISION OF SCOPE OF WORK..... 6

VI. GENERAL PROVISIONS..... 6

I. Introduction and Identification of Parties

This Unopposed Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”) is filed on behalf of Public Service Company of Colorado (“Public Service” or the “Company”) and Trial Staff of the Commission (“Staff”), (each a “Settling Party” and collectively the “Settling Parties”), pursuant to Rule 1408 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

This Settlement Agreement is intended to resolve all issues raised by the Settling Parties in this Proceeding with respect to this Notice of Probable Violation filed on September 12, 2022. The Settling Parties agree that the Commission should approve the following terms and conditions of the Unopposed Comprehensive Settlement Agreement:

II. Background Information

The Settling Parties agree that the Company's Operator Qualification (OQ) plans must comply with Title 49 CFR Part 192, Subpart N – Qualification of Pipeline Personnel (§ 192.801 - § 192.809) which establishes the minimum requirements for the qualification of individuals performing identified covered tasks while operating and maintaining pipeline facilities. These regulations require all individuals who operate and maintain pipeline facilities “be qualified to operate and maintain the pipeline facilities” and have “the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits.”

With respect to training, 49 CFR 192.805(h) states after December 16, 2004, the written OQ Program shall include provisions to “... provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.”

The Company uses The American Society of Mechanical Engineers B31Q Pipeline Personnel Qualification standard as the framework for developing its OQ Plan. This framework identifies over 150 tasks¹ in pipeline safety and integrity. The Company

¹ Some of these tasks do not apply to work conducted on Company systems.

conducted an internal analysis of its contractors and OQ tasks and determined that the Company has utilized 27 contract companies performing 81 OQ tasks within Colorado.

In order to determine the extent of problems with the Company's OQ Program that led to the issuance of the NPV in this proceeding, the Settling Parties agree that the public interest would be served by requiring the Company to engage a third-party auditor to assess the OQ Plan and contractors' compliance with the OQ Plan. The Settling Parties agree that the Audit will generally cover the following areas: (1) assess whether OQ certifications are current for Company and its contractors, (2) assess whether OQ tasks identified are completed by OQ certified resources, and (3) assess whether Company's OQ Plan and training program is current and up to date. The Scope of the Third-Party audit is explained in more detail in Section III

III. Company Obligations

a. Risk Analysis Model Shall Be Provided to Staff

In order to guide the scope and activities for the third-party auditor, the Company has conducted a detailed review of Contractors performing tasks requiring operator qualification within its Colorado service territory. Company personnel analyzed the data and developed a risk-based model for each task performed by a Contractor based on the ASME B31.Q Difficulty and Importance scales, number of employees, and number and grouping of tasks. One of the conclusions of this analysis was that the Company has utilized 27 contract companies performing 81 OQ tasks within Colorado as mentioned above. The Company shall provide this Risk Analysis Model to Staff. Company shall meet with Staff at Staff's request to discuss the Risk Analysis Model and, if deemed necessary by Staff, Company shall make reasonable and practicable adjustments to the modeling parameters before using the Model to determine audit samples.

b. Quarterly Reports

The Company will file quarterly reports into Proceeding No. 22N-0396GPS until a final report is filed. The first quarterly report will be due 90 days after a Commission Decision approving this settlement.

c. Final Report

The Company will file the final audit report referenced in Section IV(2)(j) below into Proceeding No. 22N-0396GPS on or before June 1, 2024.

d. Act on Audit Findings

The Company will review the ratings/findings from the audit and develop corrective actions to address any deficiencies with the Contractor(s) and Company. Company Internal Audit will schedule a follow up audit to verify deficiencies are corrected. Company will file a draft report on how and when it will address deficiencies discovered during the Audit into Proceeding No. 22N-0396GPS no later than August 31, 2024.

e. Payment of \$5,000 Penalty

Company shall pay a penalty of \$5,000 to the general fund as the minimum allowable penalty pursuant to C.R.S. § 40-7-117(2)(c).

IV. Scope and Activities for Auditor

1. The Auditor selected by Company shall meet the following Requirements:
 - a. Have experience with auditing operator qualifications and training programs for utility work; and
 - b. Have full awareness of the type of operations in the contract scope of work.
2. The Settling Parties agree upon the following Scope and Activities for Auditor:

- a. Review the Company's Pipeline Compliance and Standards (PC&S) Manual for compliance with 49 CFR 192.805(h).
- b. Review the Company Operator Qualification Plan to assess compliance with Title 49 CFR Part 192 Subpart N.
- c. Review and perform a risk-based audit assessment of the Company and Contractor training materials provided as part of the OQ Plan. This assessment shall include training provided within the Energy WorldNet (EWN),² and any additional Company and Contractor training.
- d. Assess the procedure for updating the OQ Plan as new standards become available.
- e. Validate the risk analysis model provided in Section II and utilize the model to prioritize which Contractors, tasks, and employees will be audited. Company will consult with Staff to select on-site evaluations based on the Risk Analysis Model to be provided pursuant to Section III(a) above.
- f. Obtain confirmations from a sample of Contractors that they are following the Company's OQ Plan and that their personnel receive "training, as appropriate."
- g. Validate training records uploaded into the EWN database for accuracy.
- h. Perform a limited sample of on-site evaluations of Contractors, as determined in paragraph (e), to assess the adequacy of in-person training.

² In January 2021, Company transitioned to a new Learning Content Management System (LCMS) provided by Energy World Net (EWN). The transition moved all Company employees, Contractors, and Subcontractors to the OQ Plan and the associated EWN LCMS.

This evaluation will ensure that all reporting requirements are met as listed in Section IV(2)(i).

- i. Provide progress reports to allow Company to meet reporting requirements listed in Section III(b).
- j. Provide a full audit report to allow Company to meet reporting requirements listed in Section III(c).
- k. Coordinate a review meeting with Auditor, Contractor(s), and the Company upon request of the Company.

V. Revision of Scope of Work

The Settling Parties agree that this Scope of Work (SOW) may need to be revisited to accommodate additional scope. As such, Company, with Agreement of Staff, may change the scope and timing of this SOW through an amendment in the event of extraordinary circumstances.

VI. General Provisions

1. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

2. The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.

3. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

4. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

5. The Settling Parties agree to use good faith efforts to support all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

6. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

7. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement.

8. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

9. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each

Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 21st day of April, 2023.

Agreed on behalf of:

PUBLIC SERVICE COMPANY OF COLORADO

By: /s/ Luke Litteken
Luke Litteken
Senior Vice President, Gas
Xcel Energy Services, Inc.

Approved as to form:

**ATTORNEY FOR PUBLIC SERVICE COMPANY OF
COLORADO**

By: /s/ Christopher M. Irby
Christopher M. Irby, #35778
Assistant General Counsel
Xcel Energy Services, Inc.

Agreed on behalf of:

**TRIAL STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION**

By: /s/ Casey Hensley
Casey Hensley, P.E.
Programs, Enforcement, and Risk Engineer
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202

Approved as to form by:

PHILIP J. WEISER
Attorney General

/s/ Kristine A. K. Roach

Kristine A. K. Roach, #53909*

Assistant Attorney General

Paul J. Kyed, #37814*

First Assistant Attorney General

Revenue and Utilities Section

*Attorneys for Trial Staff of the Public Utilities
Commission*

Ralph L. Carr Colorado Judicial Center

1300 Broadway, 8th Floor

Denver, Colorado 80203

Telephone: (720) 508-6365 (Roach)

Telephone: (720) 508-6332 (Kyed)

Email: Kristine.Roach@coag.gov

Email: Paul.Kyed@coag.gov

*Counsel of Record