

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21N-0640GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO SOUTH PARK MOBILE HOME ON DECEMBER 30, 2021.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
FINDING SOUTH PARK MOBILE HOME HAS SATISFIED
THE ALTERNATIVE ENFORCEMENT REQUIREMENTS,
ORDERING PAYMENT OF \$5,000 IN PENALTIES,
AND CLOSING PROCEEDING**

Mailed Date: February 13, 2024

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I. STATEMENT

1. On December 30, 2021, the Trial Staff (Staff) of the Public Utilities Commission (PUC or Commission) initiated this matter by issuing its Notice of Probable Violation (NPV) to Armando Flocchini, South Federal Park Associates, doing business as South Park Mobile Home Community (South Park or Respondent), now known as Ridgeline at River Run Mobile Home

Park¹. 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. for 14 enumerated violations. Violation 1 alleged a violation of Rule 4953, 4 CCR 723-11² (no or inadequate record provided for annual review for O&M, DIMP, OQ, or Emergency Plan) and assessed \$50,000 in civil penalties. The remaining thirteen 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), assessing \$50,000 in civil penalties;
- Violation 3: 49 CFR 192.465 (no or inadequate record provided for immediate leak repairs), assessing \$10,000 in civil penalties;
- Violation 4: 49 CFR 192.605 (no or inadequate record provided for annual equipment calibrations), assessing \$50,000 in civil penalties;
- Violation 5: 49 CFR 192.605 (no or inadequate record provided for system map(s)), assessing \$10,000 in civil penalties;
- Violation 6: 49 CFR 192.605(a) (no or inadequate record provided for annual O&M review and update), assessing \$50,000 in civil penalties;
- Violation 7: 49 CFR 192.615 (no or inadequate record provided for annual Emergency Plan review), assessing \$50,000 in civil penalties;
- Violation 8: 49 CFR 192.625 (no or inadequate record provided for annual odor testing), assessing \$50,000 in civil penalties;
- Violation 9: 49 CFR 192.646 (no or inadequate record provided for public awareness flyers), assessing \$10,000 in civil penalties;
- Violation 10: 49 CFR 192.723 (no or inadequate record provided for Leak Surveys (5 years or less)), assessing \$10,000 in civil penalties;
- Violation 11: 49 CFR 192.739 & 743 (no or inadequate record provided for the annual regulators and reliefs inspection and maintenance), assessing \$50,000 in civil penalties;

¹ Trial Staff advises that the entity that is the subject of this NPV has changed its name and is now known as Ridgeline at River Run Mobile Home Park. See Trial Staff's Unopposed Motion for a Commission Order Finding South Park Mobile Home Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing this Proceeding (Unopposed Motion to Close), filed Nov. 13, 2023, at p. 1; see also Affidavit of Pipeline Safety Chief Casey Hensley, p. 1, Attachment A to Unopposed Motion to Close. For purposes of this decision and to minimize the potential for confusion with the Commission's caption and Staff's pleadings, Ridgeline at River Run Mobile Home Park will be referred to herein as South Park Mobile Home or South Park.

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

- Violation 12: 49 CFR 192.747 (no or inadequate record provided for the annual emergency valve operation and maintenance), assessing \$50,000 in civil penalties;
- Violation 13: 49 CFR 192.801 (no or inadequate record provided for the staff and contractor OQ certifications), assessing \$10,000 in civil penalties;
- Violation 14: 49 CFR 192.1015 (no or inadequate record provided for annual MMO DIMP updates), assessing \$40,000 in civil penalties.³

2. In lieu of incurring the civil penalty, the NPV offered South Park the option of pursuing “alternative enforcement” to address the alleged violations. Under the “alternative enforcement” provisions, South Park 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.⁴

3. On February 1, 2022, the former owner of South Federal Park Associates submitted a letter, dated January 28, 2022, to the Commission’s Pipeline Safety Chief responding to the NPV.⁵ The letter stated that “the Park has been sold in mid-2021 and is under new management.” Consequently, the gas pipelines in questions were in the possession of the new owners. In its Response, South Park selected “Request Offer in Compromise” for each of the fourteen alleged violations.⁶ South Park’s letter also discussed its response to each of the alleged violations and described the documents South Park was submitting with the letter demonstrating the extent to which it had complied with the Commission’s directives to address the violations.⁷

4. On March 24, 2022, Commission Trial Staff (Staff) filed its Entry of Appearance.

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

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

⁵ South Park Mobile Home Community letter of response to NPV, dated Jan. 28, 2022, filed Feb. 1, 2022.

⁶ *Id.* at pp. 10-16.

⁷ *Id.* at pp. 2-6.

5. On April 5, 2022, South Park submitted a second letter, this one dated March 31, 2022, to the Commission's Pipeline Safety Chief, Casey Hensley.⁸ The letter, submitted by the purchaser and new owner of South Park, Cabrillo Management, states that it is in response to the Commission's "March 15th Offer in Compromise to the former owners."⁹ It continues by setting out a proposed plan "to address the remaining NPVs in the following ways, and believe this plan will be compliant with DOT standards."¹⁰ The letter then details the work to be done to address each of the 14 violations alleged in the NPV.¹¹

6. On April 20, 2022, Staff filed a Notice of Satisfactory Progress (Notice of Progress) notifying the Commission that Staff was "satisfied with the progress that has been made so far and expects that the regularly scheduled inspection will reveal that all violations have been resolved by the end of 2022."¹² Staff noted that if "no issues are discovered at this annual inspection," it would move to dismiss the proceeding.¹³

7. 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.

8. Subsequently, on January 6, 2023, April 6, 2023, and July 6, 2023, Staff filed Status Reports with the Commission advising the latter of Respondent's progress.

9. The first Status Report, filed January 6, 2023, attached a summary of South Park's plan to address each of the enumerated violations.¹⁴ Staff reported that it "performed a courtesy audit" of South Park's documentation and facilities "and determined that all of the requirements

⁸ South Park Mobile Home & RV Park Response to PUC Offer of Compromise List, filed Apr. 5, 2022.

⁹ *Id.* at p. 1.

¹⁰ *Id.*

¹¹ *Id.* at pp. 1-5.

¹² Notice of Satisfactory Progress, file Apr. 20, 2022.

¹³ *Id.*

¹⁴ Status Report on Progress, Attachment A, filed Jan. 6, 2023.

for the offer in compromise were not yet complete.”¹⁵ Staff indicated that a final inspection would be performed “at the end of 2022 or first quarter of 2023.”¹⁶ Staff further reported that in December 2022, South Park provided it with “documentation demonstrating that all probable violations, except for violation 14, have been duly addressed.”¹⁷ Staff expressed that it had “a reasonable, good faith basis to believe that Respondent will have remedied all probable violations” by the inspection scheduled for the first quarter of 2023.¹⁸ If, as Staff believed, the inspection revealed that all violations had been remedied, Staff represented that it would request that this proceeding be closed.¹⁹

10. Staff’s Second Status Report, filed April 6, 2023, indicated that Staff had “audited the Respondent on February 16, 2023,” but had identified an “unsatisfactory condition regarding” South Park’s O&M Manual, and enumerated four deficiencies in South Park’s O&M Manual.²⁰ Staff noted, though, that “[a]ll other violations in the NPV have been remedied.”²¹ Staff expressed its optimism that South Park would successfully remedy the remaining deficiencies and that the proceeding would subsequently be closed.²²

11. In its Third Status Report, Staff reported that on May 18, 2023, South Park had submitted a new O&M Manual, but that “one additional problem was identified.”²³ The issue was minor, though, and Staff indicated that it would be “simple to remedy.”²⁴ In particular, Staff noted that the O&M Manual “does not state a requirement for a pressure test that would be compliant with federal regulation,” but that, because South Park had previously provided

¹⁵ *Id.* at p. 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Staff’s Second Status Report, p. 2, filed Apr. 6, 2023.

²¹ *Id.* at p. 2.

²² *Id.*

²³ Staff’s Third Status Report, p. 1, filed July 6, 2023.

²⁴ *Id.*

compliant pressure tests, Staff was “satisfied that the system is safe and this is merely a clerical error which can be quickly corrected.”²⁵ Staff indicated that “as soon as” it “confirms the correction to the O&M Manual . . . [it] will consider this a successful completion of work to warrant the dismissal of all civil penalties in the NPV, except for the statutory minimum.”²⁶

12. On November 13, 2023, Staff filed an Unopposed Motion for a Commission Order Finding that South Park Mobile Home Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding (Unopposed Motion to Close).²⁷ In the Unopposed Motion to Close, Staff represents that, on September 20, 2023, the Pipeline Safety Program (PSP) inspected South Park’s natural gas system records.²⁸ Staff notes that the South Park had completed all the requirements of the Compliance Directive it reached with Staff.²⁹ The Compliance Directive required South Park to:

- “Perform inspections on a no more than a 12-month period on all 11 items listed above;”
- Repair or address “[a]ny additional areas of noncompliance . . . within 12 months of discovery;”
- Submit “the Annual Report as per COPUC Gas Pipeline Safety Rule 4 CCR 723-11103; and”
- Include in its “Annual Report . . . updates on all 11 items listed above.”³⁰

Based on Staff’s inspection of South Park’s records, Staff has now concluded that South Park “has completed the requirements for alternative enforcement.”³¹

13. Staff therefore requests that the Commission enter an order: (1) finding that South Park has completed the alternative enforcement in lieu of payment of \$485,000 of the \$490,000

²⁵ *Id.*

²⁶ *Id.* at p. 2.

²⁷ Unopposed Motion for a Commission Order Finding South Park Mobile Home Has Satisfied Its Alternative Enforcement Obligations Under Rule 11504, Ordering Payment of \$5,000 in Penalties, and Closing This Proceeding (Unopposed Motion to Close), Nov. 13, 2023

²⁸ *Id.* at ¶ 5, p. 2.

²⁹ *Id.* at ¶ 10, p. 3.

³⁰ *Id.* at ¶ 8, p. 2.

³¹ *Id.* at ¶ 10, p. 3.

civil penalty; (2) ordering South Park to pay a \$5,000 penalty to the State Treasury; and (3) closing this Proceeding.

14. 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.

II. FACTS

15. In its January 28, 2022 letter submitted in response to the NPV, which was filed with the Commission on February 1, 2022, South Park selected “Request Offer in Compromise” for each of 14 violations.³²

16. As described in the Affidavit of Casey Hensley, Pipeline Safety Chief for the PUC’s PSP, on February 16, 2023, PSP inspected South Park’s records pertaining to its natural gas system.³³

17. To conduct the inspection, an investigator used the PSP’s Standard Inspection Report of a Small Operator Unit form (Report) to determine whether South Park had remedied the violations identified in the December 30, 2021 NPV. The Report form used in PSP’s inspection of South Park is “one kept by the PSP in the ordinary course of the PSP’s business.”³⁴

18. The February 26, 2023 investigation uncovered “two unsatisfactory remarks pertaining to compliance with 49 C.F.R. 192.801 and 192.805.”³⁵ The PSP discussed these unsatisfactory findings with South Park “and informed them what was required to achieve compliance.”³⁶

³² South Park Mobile Home Community’s letter in response to NPV, dated Jan. 28, 2022, filed Feb. 1, 2022, pp. 10-16.

³³ See Affidavit of Pipeline Chief Casey Hensley, Nov. 1, 2023, Attachment A to Staff’s Unopposed Motion to Close, p. 1.

³⁴ *Id.*

³⁵ *Id.* at p. 1.

³⁶ *Id.*

19. PSP conducted an additional compliance inspection on September 20, 2023.³⁷ In her Affidavit, PSP Chief Hensley represents that South Park received either “satisfactory” or “not applicable” remarks for every line item on the PUC’s report during the September 20, 2023, and no unsatisfactory items were discovered during this inspection.³⁸ A copy of the Report is attached to Ms. Hensley’s Affidavit.³⁹

20. PSP Chief Hensley concludes that in her “professional opinion . . . [South Park] has remedied the violations contained in the December 30, 2021 NPV. As such, it has completed the Alternative Enforcement actions contained in the NPV.”⁴⁰ In conclusion, she opines that “dismissal of \$485,000 of the proposed total calculated penalty and assessment of the statutory minimum penalty of \$5,000 is reasonable and in the public interest.”⁴¹

21. Having successfully passed the PSP inspection, Staff represents that South Park has completed the alternative enforcement requirements in lieu \$485,000 of the \$490,000 civil penalty.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

22. 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.

23. 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,

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*, pp. 3-7.

⁴⁰ *Id.*, p. 1.

⁴¹ *Id.*

permits the PSP Chief to “offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part.”

24. § 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 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.”⁴²

25. Here, PSP Chief Hensley offered South Park the opportunity to remedy its violations and take corrective actions in lieu of paying the full civil penalty of \$490,000.⁴³ South Park requested an offer in compromise from Staff to address and correct the fourteen alleged violations listed in the NPV.⁴⁴

26. It is found that South Park 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 South Park 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), South Park must pay the minimum penalty amount of \$5,000.

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

⁴² § 40-7-117(2)(c), C.R.S.

⁴³ See NPV, p. 2.

⁴⁴ See South Park’s letter in response to NPV, pp. 10—16.

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

1. Trial Staff's Unopposed Motion for a Commission Order Finding South Park Mobile Home 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 South Park for violations identified in the December 30, 2021, Notice of Probable Violation.

3. South Park shall pay the five thousand dollars (\$5,000) civil penalty into the State Treasury within thirty (30) days of this decision becoming a final decision of the Commission.

4. Proceeding No. 21N-0640GPS is closed.

5. 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.

6. 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.

7. 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