

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23N-0135GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO COLORADO NATURAL GAS, INC. ON MARCH 20, 2023.

**RECOMMENDED DECISION FINDING THAT
COLORADO NATURAL GAS INC HAS SATISFIED ITS
ALTERNATIVE ENFORCEMENT OBLIGATIONS,
APPROVING UNOPPOSED SETTLEMENT AGREEMENT,
ASSESSING CIVIL PENALTY, AND CLOSING
PROCEEDING**

Issued Date: February 10, 2025

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I. STATEMENT

A. Background

1. On March 20, 2023, the Staff of the Public Utilities Commission (“Staff”) initiated this matter by issuing its Notice of Probable Violation (“NPV”) to Colorado Natural Gas, Inc. (“CNG” or “Respondent”). The NPV assesses civil penalties, calculated in accordance with § 40-7-117, C.R.S. and Rule 11501 of the Rules Regulating Pipeline Operators and Gas Pipeline

Safety, 4 *Code of Colorado Regulations* (CCR) 723-11, totaling \$1,483,250.00.¹ The NPV enumerates forty violations of the following provisions of the Code of Federal Regulations: two violations of 49 C.F.R. 192.1007(a)(3), three violations of 49 C.F.R. 192.1007(a), three violations of 49 C.F.R. 192.1007(b), seven violations of 49 C.F.R. 1007(c), five violations of 49 C.F.R. 192.1007(d), nine violations of 49 C.F.R. 192.1007(e), six violations of 49 C.F.R. 192.1007(f), two violations of 49 C.F.R. 192.1007(g), two violations of 49 C.F.R. 1001, and one violation of 49 C.F.R. 192.1005.²

2. On April 19, 2023, CNG's NPV Response Letter ("Response") was filed. In its Response, CNG agrees that its current Distribution Integrity Management Program ("DIMP") should be improved but does not agree that its current program is not in compliance with the requirements of 49 C.F.R. Section 19 Subpart P.³ CNG also asserts that the NPV appears to be factually incorrect regarding the assertions of a lack of documentation and efforts on the part of CNG to improve its DIMP.⁴ CNG has explained for each violation and how the information has been provided to the Pipeline Safety Program ("PSP") Staff.⁵ CNG intends to continue discussions with Staff in an effort to move forward toward resolution of the issues raised in the NPV without a hearing.⁶

3. On March 20, 2024, the Commission referred this proceeding to an Administrative Law Judge ("ALJ") by minute entry.

4. By Decision No. R24-0313-I, issued on May 7, 2024, Staff was ordered to file status reports as to progress in resolving the violations identified in the NPV and expectations

¹ See NPV at 1-4.

² *Id.*

³ See Response at 2.

⁴ *Id.*

⁵ See Attachments 1-5 to Response.

⁶ See Response at 1.

regarding the filing of evidence of resolution and a motion to dismiss (or otherwise dispose of the proceeding). The first of these reports was ordered to be filed by August 1, 2024, with subsequent quarterly reports filed on or before November 1, 2024, and thereafter, until further order or evidence of resolution and a motion to dismiss (or otherwise dispose of the proceeding) was filed.

5. On August 1, 2024, Staff filed its Status Report. In the Status Report, Staff advised that it periodically confers with CNG and per ongoing discussions with CNG, Staff and CNG continue to engage in dialogue regarding resolution of the matter.⁷ Staff also advised that another status report would be filed by November 1, 2024.⁸

6. By Decision No. R24-0807-I, issued on November 12, 2024, Staff was ordered to show cause by written submission on or before November 22, 2024, why the NPV initiating this proceeding should not be dismissed due to Staff's failure to file the required Status Report.

7. On November 14, 2024, Staff filed its Response to the Interim Order to Show Cause, its Second Quarterly Status Report, and its Unopposed Motion to Submit the Status Report after the Deadline ("Response to Show Cause"). In its Response to Show Cause, Staff explains that Counsel for both parties have accelerated their respective efforts to reach an amicable resolution to the highly complex NPV and engaged in lengthy and numerous meetings with their clients and with each other to resolve this proceeding.⁹ Staff advises that settlement negotiations continue to the present and request permission to file a settlement agreement along with a motion to approve it on or before December 3, 2024.¹⁰ The parties agree to file a joint status report on or

⁷ See Status Report at 2.

⁸ *Id.*

⁹ See Response to Show Cause at 2.

¹⁰ *Id.*

before December 13, 2024 if they are unable to file the settlement documents by December 3, 2024.¹¹

8. By Decision No. R24-0849-I, issued on November 20, 2024, Staff's Unopposed Motion to Submit the Status Report After the Deadline was granted, the Status Report filed on November 14, 2024, was accepted, and the Order to Show Cause issued in Decision No. R24-0807-I was satisfied. Decision No. R24-0849-I also required the next status report to be filed no later than February 1, 2025.

9. On January 22, 2025, Staff filed its Joint Unopposed Motion to Approve Settlement Agreement and for a Waiver of Response Time ("Unopposed Motion"). The Unopposed Motion states that the Settling Parties agree:

- a. CNG satisfied the first and second requirements of the NPV Compliance Directive, and thus, the Settling Parties may negotiate a civil penalty reduction, as permitted in the Alternative Enforcement provision.
- b. CNG satisfied the first and second NPV Alternative Enforcement provisions, and thus, the civil penalties may be even further reduced by a negotiated percentage.
- c. CNG's satisfaction of the Compliance Directive and the Alternative Enforcement enables the Settling Parties to reduce the civil penalty by a negotiated amount or percentage.
- d. Trial Staff will neither seek civil penalties nor a judgment for violations 1 through 12 and 14 through 40.
- e. Respondent shall pay \$60,000 within 10 business days of a final Commission decision in this proceeding.
- f. To achieve resolution of this proceeding, Respondent and Trial Staff negotiated and agreed to the \$60,000 civil penalty associated with violation number 13, noting that although the Respondent had a risk model at the time of the violation, the Respondent and Trial Staff agree it was a rudimentary tool that needed improvement and that the Respondent has since replaced that model with a comprehensive risk model.

¹¹ *Id.*

- g. If Respondent fails to timely make payment required under this Settlement Agreement, Respondent shall be liable for the full penalty amount of \$1,483,250 less any payments made, which shall be due immediately.
 - h. Respondent agreed to take the following measures to improve its gas distribution system:
 - i. CNG began piloting Advanced Leak Detection (“ALD”) using a Picarro mobile unit in April of 2024;
 - ii. CNG personnel have been trained on the use of the Picarro system and are running a simulation of the system in anticipation of going live with compliance surveys in 2025;
 - iii. CNG has implemented an ALD Technology Survey through the implementation of Picarro;
 - iv. CNG has implemented a stricter repair program for leaks on its system by repairing all leaks as they are found as a standard practice; and
 - v. CNG has implemented a probabilistic risk model program to identify threats as part of its DIMP.
 - vi. However, these measures are not in lieu of a penalty and nothing in this settlement agreement shall affect the recoverability associated with any of these measures.¹²
10. The Settling Parties agree that the Settlement Agreement represents a just and reasonable result and comports with the public interest because:
- a. Respondent fully implemented a permanent final DIMP by May 2023, confirmed by Trial Staff, ahead of the Compliance Directive’s January 1, 2024 deadline to implement a temporary DIMP and the Alternative Enforcement’s June 1, 2024 deadline to fully implement a permanent final DIMP;
 - b. The NPV’s plain language of the Compliance Directive read in concert with the Alternative Enforcement provision permits a negotiated reduction in the civil penalty on the NPV;
 - c. The cost of litigation and possibility of significant civil penalty costs to Respondent if this matter proceeded to a fully litigated hearing in lieu of devoting these same funds to safety programs;
 - d. Respondent has agreed to take additional measures (see paragraph 15 above) which it would not be obligated to take if the NPV were fully litigated;

¹²See Unopposed Motion at 3-5.

- e. There is a mutual recognition by Trial Staff and Respondent as to the time requirements and costs inherent in fully litigating the NPV to both themselves and to the Commission; and
- f. There is the possibility the Commission could determine Trial Staff could not meet its burden of proof at hearing on violations 1 through 12 and 13 through 40.¹³

11. The Settling Parties further agree the Settlement Agreement satisfies the requirements of Commission Rule 11508 for Consent Stipulations as follows because in the Settlement Agreement:

- a. Rule 11508(b)(I): CNG admits to the facts regarding violation number 13;
- b. Rule 11508(b)(II): CNG expressly waives further procedural steps, including (without limitation) its right to a hearing; its right to seek judicial review, or otherwise to challenge or to contest the validity of the consent stipulation; and its right to seek judicial review of the Commission order accepting the consent stipulation;¹⁴
- c. Rule 11508(b)(III): CNG acknowledges the NPV may be used to construe the terms of the Settlement Agreement; and
- d. Rule 11508(b)(IV): the only action CNG must take under the Agreement is to pay \$60,000 within 10 business days of a final Commission decision.¹⁵

12. Finally, the requested relief being unopposed, Staff requests that the Commission waive response time pursuant to Commission Rule 1308(c) and enter an order approving the Settlement Agreement without modification.¹⁶

II. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

13. Rule 11504(a)(VI), 4 CCR 723-11, permits the Pipeline Safety Program (“PSP”) Chief (“PSP Chief”) to “offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part.”

¹³ *Id.* at 6-7.

¹⁴ The Unopposed Motion states that Trial Staff and CNG agree that CNG does not waive the provisions in Rule 11508(b)(II) if the Commission modifies the consent stipulation.

¹⁵ *See* Unopposed Motion at 7-8.

¹⁶ *Id.* at 8.

14. Here, each violation in the NPV involves missing or inadequate documentation and inadequate processes and procedures by CNG. In their Response, CNG agrees that its current DIMP should be improved but argues against the assertions in the NPV regarding lack of documentation and efforts on the part of the CNG to improve its DIMP.¹⁷ CNG notes that they have made significant progress in its DIMP, particularly in the last several years by initiating a DIMP steering committee and operating company-level subcommittees in 2020, which meet regularly to discuss specific DIMP threats and to solicit field input.¹⁸ CNG also notes that it has implemented a Facility Integrity Tracker (“FIT”) that tracks Facility Integrity Conditions (“FIC”) for each operating company, including CNG, and provides a direct line of communication from the field, and these tracking and reporting applications have been used by CNG since 2019, with “dashboarding” added in 2021.¹⁹ CNG further notes that it has solicited bids for a new DIMP risk model in January 2022, and as a result, CNG has begun working with JANA²⁰ on creating a Qualitative Risk Model (“QRM”) that is expected to be in place by the end of 2023.²¹

15. The Settling Parties agreed the ultimate objective of the resolution to this NPV is the improved safety of CNG’s distribution system for the benefit of customers and their communities, and to that end, the Settling Parties agreed to continue working together wherever possible on safety programs related to the Company’s plans.²²

16. The requested relief being unopposed, it is appropriate that response time be waived.

¹⁷ See Response at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ JANA is the product that CNG is using to develop its DIMP Qualitative Risk Model.

²¹ *Id.*

²² See Unopposed Motion at 5-6.

17. The ALJ concludes that Respondent has satisfactorily completed the PSP Chief's alternative enforcement requirements.

18. According to § 40-7-117(2)(c), C.R.S.:

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; except that the amount of the penalty payable to the commission shall be no less than five thousand dollars.

19. According to Rule 1302(b) of the Rules of Practice and Procedure, 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.

20. According to Rule 11501(a)(VI) of the Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 CCR 723-11:

as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety...

21. The Unopposed Motion was filed by Staff and is unopposed by CNG. By electing to proceed with alternative enforcement, CNG has agreed to take additional measures which it would not be obligated to take if the NPV were fully litigated. Settling Parties agree there is a possibility the Commission could determine Staff could not meet its burden of proof at hearing on violations 1 through 12 and 13 through 40. CNG admitted to the facts regarding violation number 13. Based on the above, and consistent with Rule 11508(b)(IV), the ALJ finds that the only further action CNG must take under the Settlement Agreement is to pay \$60,000 within 10 business days of a final Commission decision. Therefore, a civil penalty of \$60,000 will be assessed against CNG, as ordered below.

22. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, this Proceeding may be processed under the modified procedure without a formal hearing.

23. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. Staff's Joint Unopposed Motion to Approve Settlement Agreement is granted, consistent with the discussion above.

2. Respondent, Colorado Natural Gas, Inc. ("CNG"), is assessed a civil penalty of \$60,000, inclusive of any applicable surcharge.

3. CNG must make payment to the Commission, in person or by mail, no later than 10 business days following the date of a final Commission decision in this Proceeding. If CNG submits a payment by U.S. Mail, the payment must be made by money order or check and must be received at the Commission not later than the due date.

4. The Order to file future reports in accordance with Decision No. R24-0849-I, issued on November 20, 2024, is vacated.

5. Proceeding No. 23N-0135GPS 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director