

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23N-0232GPS

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO BLACK HILLS
COLORADO GAS, INC. ON MAY 9, 2023

**RECOMMENDED DECISION APPROVING UNOPPOSED
SETTLEMENT AGREEMENT, ASSESSING CIVIL
PENALTY, AND CLOSING PROCEEDING**

Issued Date: June 12, 2025

I. STATEMENT

A. Background

1. On May 11, 2023, the Staff of the Public Utilities Commission (“Staff”) initiated this matter by issuing its Notice of Probable Violation (“NPV”) to Black Hills Colorado Gas, Inc. (“Black Hills” 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 \$130,000.00.¹ The NPV enumerates seven violations of the following provisions of the Code of Federal Regulations: one violation of 49 C.F.R. 192.613(a); one violation of 49 C.F.R. 192.553(b); two violations of 49 C.F.R. 192.553(b); one violation of 49 C.F.R. 192.605(a); one violation of 49 C.F.R. 192.605(a) and (b); and one violation of 49 C.F.R. 192.605(a), (e), and 192.615(a).

2. On June 12, 2023, Black Hills filed its Response to Notice of Probable Violation (“Response”) and supporting attachments with the Public Utilities Commission (“Commission”),

¹ See NPV at 1-4.

requesting settlement and objecting to the allegations in the NPV.² Black Hills contends that the proposed violations should be dismissed and the combined \$130,000 fine for the seven violations be eliminated.³ Black Hills stated it would continue discussions with Staff in an effort to reach either a dismissal of the violations set forth in the NPV or a reduction of the proposed civil penalty.⁴

3. On October 5, 2023, Staff filed its Entry of Appearance.

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

5. By Decision No. R24-0314-I, issued May 7, 2024, Staff was ordered to file status reports as to progress in resolving the violations identified in the NPV and expectations 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.

6. In the Status Report filed on August 1, 2024, Staff stated that Staff and Black Hills agreed to discuss resolution of this proceeding on August 21, 2024, and Staff would file another status report by November 1, 2024.⁵

7. On November 1, 2024, Staff filed its Second Status Report. In the Second Status Report, Staff stated that Staff and Black Hills had met that day to discuss possible settlement of this proceeding and are committed to continuing discussions; Staff anticipated either filing a settlement agreement or a pleading to proceed with litigation by February 3, 2025.⁶

² Response at 3-18.

³ *Id.*

⁴ *Id.* at 19.

⁵ *See* Status Report at 1.

⁶ *See* Second Status Report at 1.

8. On February 3, 2025, Staff filed its Third Status Report. In the Third Status Report, Staff advised that Staff and Black Hills have had multiple meetings and client conferrals since the Second Status Report, have discussed possible settlement of the proceeding in detail, and wish to continue doing so.⁷ Staff once again stated that the parties anticipate filing a settlement agreement or a pleading to proceed with litigation on or before May 1, 2025.⁸

9. On May 1, 2025, Staff filed its Fourth Status Report. In the Fourth Status Report, Staff advised they have had multiple meetings and client conferrals since the Third Status Report and have discussed possible settlement of the proceeding in detail; the parties are scheduled to meet again on May 2, 2025.⁹ Staff once again stated that the parties anticipate filing a settlement agreement or a pleading to proceed with litigation on or before August 1, 2025.¹⁰

10. On June 3, 2025, Staff filed the Joint Unopposed Motion to Approve Settlement Agreement and for a Waiver of Response Time (“Unopposed Motion”). The Unopposed Motion stated that the Settling Parties agree:

- a. The statements contained in the initial paragraph and paragraph 51 of Black Hills’ Response constitute, under Rule 11504(c)(II), a request by Black Hills for the Commission to consider an offer in compromise to the NPV through the joint filing of a stipulation and settlement agreement pursuant to Rule 11508 resolving the allegations in the NPV.
- b. Regarding Violation No. 1:
 - i. While Staff could make a plausible argument that the November 11, 2022, outage on the Morgan Hill System resulted in public endangerment (and thus justify an impact factor 10 for the violation) if this proceeding was fully litigated, the Commission may not agree circumstances warrant an impact factor 10 and/or could reduce the civil penalty via the factors in Rule 11504(f).

⁷ See Third Status Report at 1.

⁸ *Id.*

⁹ See Fourth Status Report at 1.

¹⁰ *Id.*

- ii. The parties also agree that Black Hills could have acted more expeditiously to address the capacity issue it identified in February 2022. If it had done so, the November 11, 2022, outage would not have occurred.
 - iii. The parties also agree that both Rule 11504(f)(III) and § 40-7-117(2)(c) C.R.S. are consistent with a \$5,000 total civil penalty in this proceeding.
- c. Staff will neither seek civil penalties nor a judgment for violations 2 through 7.
- d. Black Hills shall pay the \$5,000 penalty within seven calendar days of a final Commission decision in this proceeding.
- e. The \$5,000 civil penalty shall not be included in Black Hills' rate base and accordingly shall not be an allowable expense for rate-making purposes.
- f. If Black Hills fails to timely make payment required under the Settlement Agreement, Black Hills shall be liable for the full penalty amount of \$130,000 less any payments made, which shall be done immediately.
- g. Black Hills agreed to take the following measures to improve its gas distribution system and recordkeeping practices in light of the November 11, 2022, Morgan Hill System outage:
 - i. Black Hills will, going forward, complete its uprate plan documentation within seven business days following completion of all uprate procedures;
 - ii. Black Hills will, going forward, accurately date and store its pressure charts; and
 - iii. Black Hills will endeavor to expedite processes and responses concerning system reliability following cold weather system analysis that determines system reliability risks.
 - iv. 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.¹¹

11. The Settling Parties agree that the Settlement Agreement, attached to this Decision as Appendix A, represents a just and reasonable result and comports with the public interest because:

¹¹ See Unopposed Motion at 2-6.

- a. Black Hills ultimately addressed the under-pressurization issues after the November 11, 2022, outage on the Morgan Hill System in a manner making it unlikely a similar under-pressurization incident will occur in that location in the foreseeable future;
- b. Black Hills has agreed to take additional measures which it would not be obligated to take if the NPV were fully litigated;
- c. There is mutual recognition by Staff and Black Hills as to the time requirements and costs inherent in fully litigating the NPV to both themselves and the Commission; and
- d. There is a possibility the Commission could determine Staff could not meet its burden at hearing on the violations at issue in the NPV.¹²

12. 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): Black Hills admits to the facts articulated in paragraph 9 of the Settlement Agreement regarding violation 1;
- b. Rule 11508(b)(II): Black Hills 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;
- c. Rule 11508(b)(III): Black Hills acknowledges the NPV may be used to construe the terms of the Settlement Agreement; and
- d. Rule 11508(b)(IV): the only action Black Hills must take under the Agreement is contained paragraph 20 of the Settlement Agreement, and the deadline to do so also appears in paragraph 20.¹³

13. Finally, the requested relief being joint and 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.¹⁴

¹² *Id.* at 7.

¹³ *Id.* at 7-8.

¹⁴ *Id.* at 8-9.

II. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

14. The operator and Pipeline Safety Program (“PSP”) Chief (“PSP Chief”) jointly filed a stipulation and settlement agreement pursuant to Rules 11504(c)(II)(B) and 11507, resolving the allegations in the NPV for the Commission’s consideration.

15. Here, each violation in the NPV involves missing or inadequate documentation and inadequate processes and procedures by Black Hills. In their Response, for Violation No. 1, Black Hills objects to the assertion that they (a) took undue risk regarding the possibility of an outage; (b) created an unsafe condition; or (c) failed to act in a prudent manner once the event was realized.¹⁵ They also contend that the referenced pipeline safety regulation 49 CFR § 192.613(a)—Continuing surveillance—is not applicable as a violation for the Morgan Hills outage, as it does not expressly reference outage risk and simply required Black Hills to have a procedure for continuing surveillance.¹⁶ Black Hills states that, with the benefit of hindsight, they would have accelerated the Morgan Hills uprate projects had it known that abnormally cold weather would occur, but contends that it acted reasonably and with sound managerial judgment in balancing the growth of its customers, responsibility to contain costs for customers, the expansion of its Morgan Hill gas distribution system, and the actual calculated risk of an outage.¹⁷ For Violation Nos. 2 through 7, Black Hills argues that the NPV appears to be factually incorrect regarding its assertions of a lack of documentation, efforts, and following safe procedures on the part of Black Hills.¹⁸

16. The Settling Parties agree the ultimate objective of the resolution to this NPV is the improved safety of Black Hills’ distribution system for the benefit of customers and their

¹⁵ See Response at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 7-17.

communities, and to that end, the Settling Parties agree to continue working together wherever possible on safety programs related to Black Hills' plans.¹⁹

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

18. Approval of the settlement will not have a precedential effect upon other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); and *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

19. To be acceptable, the Settlement Agreement must be clear, understandable, and administratively enforceable. The Settlement Agreement meets those requirements. The Parties' agreement provides sufficient support to demonstrate that the Settlement Agreement should be accepted.

20. The ALJ finds good cause to approve the Settlement Agreement and grant the Joint Motion. Respondent acknowledges and admits liability for Violation no. 1. The Settlement Agreement proposes a fair and timely resolution of the issues in this proceeding. Black Hills ultimately provided information sought by Trial Staff. Actions taken pursuant to the Settlement Agreement will improve Black Hill's gas distribution system and recordkeeping practices. The parties have established by a preponderance of the evidence that the Settlement Agreement is just and reasonable and should be approved by the Commission without modification. It is in the public interest to conserve valuable resources by adopting the Settlement Agreement. The ALJ believes that the reduced civil penalty negotiated will motivate Respondent to remain in compliance with Commission rules and regulations in the future.

¹⁹ See Unopposed Motion at 6.

21. 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.

22. The Unopposed Motion was filed by Staff jointly with Black Hills. Through the settlement agreement, Black Hills 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 nos. 2 through 7. Black Hills admitted to the facts regarding Violation no. 1. Based on the above, and consistent with Rule 11508(b)(IV), a civil penalty of \$5,000 will be assessed against Black Hills, as ordered below.

23. 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.

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

III. ORDER

A. The Commission Orders That:

1. Response time to Staff of the Public Utilities Commission's Joint Unopposed Motion to Approve Settlement Agreement and for a Waiver of Response Time is waived and the motion is granted, consistent with the discussion above.

2. The Unanimous Comprehensive Settlement Agreement, attached to this Recommended Decision as Appendix A and incorporated herein by reference, is approved without modification. All parties shall comply with the terms of the agreement.

3. Respondent, Black Hills Colorado Gas, Inc. ("Black Hills"), is assessed a civil penalty, inclusive of any applicable surcharge, in the amount of \$5,000 for one violation of 49 C.F.R. 192.613(a).

4. Black Hills must make full payment to the Commission, in person or by mail, no later than seven business days following the date of a final Commission decision in this Proceeding. If Black Hills 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.

5. The Order to file future reports in accordance with Decision No. R24-0314-I, issued on May 7, 2024, is vacated.

6. Proceeding No. 23N-0232GPS is closed.

7. 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.

8. 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.
9. 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

Rebecca E. White,
Director