

Decision No. R22-0685

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

PROCEEDING NO. 22N-0261GPS

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IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION ISSUED TO ATMOS ENERGY ON JUNE 2022.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
G. HARRIS ADAMS  
APPROVING SETTLEMENT AND CLOSING  
PROCEEDING**

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Mailed Date: November 7, 2022

**I. STATEMENT**

1. On June 10, 2022, the Staff of the Public Utilities Commission (Staff) initiated this matter by issuing its Notice of Probable Violation (NPV) to Atmos Energy (Atmos). The civil penalties, calculated in accordance with § 40-7-117 C.R.S. and Rule 11501 of the COPUC Gas Pipeline Safety Rules, 4 CCR 723-11, included a total civil penalty of \$43,478.26.00 for one violation of Rule 11102, 4 CCR 723-11, plus an additional 15 percent surcharge required by § 24-34-108, C.R.S., for a total \$50,000.00.<sup>1</sup>

2. On June 13, 2022, Staff filed its Entry of Appearance.

3. On July 8, 2022, Atmos filed its Response Letter to the NPV fully addressing the merits of the allegations in the NPV. Atmos requested an Offer in Compromise to resolve the violation listed in the NPV and requested communication with Staff. On August 26, 2022, Atmos

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<sup>1</sup> The NPV only specified the total penalty without identifying the penalty versus surcharge portion. However, because the statute applies to the amount of each surcharge collected, the NPV will be construed as provided herein. § 24-34-108, C.R.S.

and Staff conferred, negotiated, and reached terms for the settlement of the violation listed in the NPV and all other issues that could have been raised in this matter.

4. On August 31, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

5. On September 1, 2022, Atmos filed its Unopposed Joint Motion for Approval of Comprehensive Stipulation and Settlement Agreement (Settlement Agreement) and for Waiver of Response Time. All parties to this proceeding support approval of the Settlement Agreement filed with the motion.

6. In the Settlement Agreement, attached to this Decision as Appendix A, Atmos agreed to pay a civil penalty of \$5,000 within 15 days of the approval of the Settlement Agreement; inform and train its Colorado employees involved in gas operations of the Commission's rules, and update its training and written processes, thereby resolving all issues in this matter.

7. 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**

8. On June 17, 2022, the Company provided a written explanation to the Pipeline Safety Program (PSP) Chief regarding Atmos Energy's failure to report the Event to the Colorado Pipeline Emergency line within the required two hours.

9. On August 26, 2022, Atmos Energy and Trial Staff Counsel agreed to a settlement in principle that led to the filing of the Unopposed Joint Motion for Approval of Comprehensive Stipulation and Settlement Agreement.

10. In its written response to the NPV, filed on July 8, 2022, Atmos Energy provided the same written explanation from June 17, 2022. Atmos Energy's team responsible for Pipeline Safety participated in the proceedings establishing the changes to the Rules Regulating Pipeline Operators and Gas Pipeline Safety effective January 2021, and subsequently reviewed those rules for incorporation of changes into our practices, processes, and procedures. However, after the rule was implemented, the team failed to reflect in its practices, processes, or procedures the addition of certain pipeline events that now require notification through the hotline number, including the requirement to notify the hotline for service outages of 100 customers or more.

11. The Company personnel involved in responding to the gas service outage affecting the town of Eaton, CO did not participate in those proceedings, relied upon their past practice and experience for contacting the Commission about outages, and did not comply with the Commission's current Pipeline Safety Rules by contacting the hotline number.

12. Atmos Energy deeply regrets this oversight, as it was inconsistent with ongoing diligent efforts to provide prompt and thorough communications to all stakeholders.

13. Atmos Energy subsequently took appropriate action to update training and written processes, as further detailed in the explanation provided.

### **III. SETTLEMENT AGREEMENT**

14. Staff and Atmos agree that the base violation of \$5,000 is appropriate, given the Company's failure to timely report the Event to the Colorado Pipeline Emergency line as required by 4 CCR 723-11102(b).

15. An Impact Factor of one is appropriate for the Company's failure to timely report the Event to the Colorado Pipeline Emergency line, given (a) that the Company did diligently strive to provide prompt and thorough communications to all stakeholders, as reflected in its

written response to the NPV filed on July 8, 2022 and (b) the violation of failing to timely report the Event to the Colorado Pipeline Emergency Line did not result in “public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity.”<sup>2</sup>

16. The Company agrees to pay a civil penalty of five thousand dollars in full within 15 business days of the Commission’s approval of the Agreement.

#### IV. FINDINGS, DISCUSSION, AND CONCLUSIONS

17. 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 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, without a formal hearing.

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. The Settlement Agreement resolves all matters that were raised, or could have been raised, relating to the issues specifically identified and addressed in this proceeding. It was reached in the spirit of compromise and in consideration of the hazards of litigation.

20. The Commission encourages parties to settle their differences in contested proceedings. Rule 1408, 4 CCR 723-1. Approval of the settlement reached will minimize expenses of litigation and promote administrative efficiency.

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<sup>2</sup> Impact categories are defined at Rule 11500(b) as: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

21. Respondent admits liability to all violations contained in the NPV.

22. To provide consistency and specificity, civil penalties in the NPV are calculated in accordance with Rule 11501(d). However, nothing in the rule prohibits the Commission from calculating and/or assessing a civil penalty in a different manner during a formal hearing process. Rule 11501(h).

23. The operator and the 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.

24. It is found and concluded that the settlement agreement proposes a fair and timely resolution of the issues in this proceeding. 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.

25. Pursuant to § 40-6-109., C.R.S., the Administrative Law Judge recommends that the Commission enter the following Order.

**V. ORDER**

**A. The Commission Orders That:**

1. The Unopposed Joint Motion for Approval of Comprehensive Stipulation and Settlement Agreement and for Waiver of Response Time filed by Atmos Energy (Atmos) on September 1, 2022, is granted, consistent with the discussion above.

2. The Comprehensive Stipulation and 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. Atmos is assessed a penalty of penalty \$ 4347.83, plus an additional 15 percent surcharge in the amount of \$652.17, for the violation discussed and found above, totaling \$5,000.00.

4. Not later than 15 days following the date of the final Commission decision issued in this Proceeding, Atmos shall pay to the Commission the civil penalties and the surcharge assessed by this Recommended Decision.

5. Atmos may make payment to the Commission in person by the due date. If Respondent submits a payment by U.S. mail, the payment must be made by money order or check and must be received by the Commission not later than the due date.

6. Proceeding No. 22N-0261GPS 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

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director