



Barrow Utilities and Electric Cooperative, Inc.

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February 25, 2024

Dustin Hubbard
Director, Western Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
12300 W. Dakota Ave., Suite 110
Lakewood, Colorado 80228

Subject: Response to Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, Case #CPF 5-2023-046-NOPV

Dear Mr. Hubbard:

Barrow Utilities & Electric Coop., Inc. ("BUECI") provides the following response to the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") December 27, 2023 Notice of Probable Violation ("NPV"), Proposed Civil Penalty, and Proposed Compliance Order (Case #CPF 5-2023-046-NOPV).

I. Response to Notice of Probable Violation

A. Contested Allegations

BUECI contests the allegations to the extent that they address facilities which BUECI does not operate. Items 16 and 20 reference the NARL PRV station. Item 9 possibly references the NARL PRV station, although not explicitly. BUECI does not operate the NARL PRV station.

Item 16 states that the signage at the NARL PRV station building did not contain the operators name and had an outdated phone number, and that "BUECI is the current operator for the NARL PRV station."¹ Item 20 stated that the NARL PRV station was one of the stations identified as having extinguished fire extinguishers, and that therefore BUECI was in violation of § 192.751.² However, BUECI is not the current operator the NARL PRV station. *See Attachment 1*, Tri-Lateral Agreement for NARL Gas and Electric Utility Property and Operation at 2, ¶ 4.1.

To the extent that the allegations address facilities or property that BUECI does not operate, BUECI contests these allegations. Further, to the extent that the suggested

¹ Page 14 of NPV.

² Page 17 of NPV.

corrections for Warning Items or the Proposed Compliance Order would require BUECI to take action regarding facilities or property that BUECI does not operate, BUECI requests that these provisions be modified. Specifically, BUECI requests that the remedial actions referenced in Item N (signage) be modified to clarify that its requirements do not apply to the NARL PRV station. Additionally, BUECI requests that the proposed correction of "Warning Items" on page 19 of the NPV be modified to clarify that it does not apply to corrections regarding the NARL PRV station.

B. Proposed Modifications to Specific Requirements in Proposed Compliance Order

BUECI appreciates PHMSA's assistance as BUECI works towards remediating the probable violations noted in the December 27, 2023 NPV. BUECI is eager to rectify the issues identified in as expeditious yet complete manner as possible. As such, BUECI has already commenced addressing the requirements listed in the Proposed Compliance Order. For instance:

- Regarding **Item A** of the proposed compliance order, on December 27, 2023, BUECI filed an amended 2021 annual report which includes all 45 locates for that year. *See* Report #2021403-55017.
- Regarding **Item B**, BUECI has commenced the process of replacing wood pipeline supports with steel supports. *See Attachment 2.*
- Regarding **Item C**, Fusion procedures are located in the Operations Maintenance and Emergency Manual (**Attachment 3**). BUECI is adding McElroy Fusion procedures into the OM&E.
- BUECI has made progress regarding documentation of inspector qualifications in **Item D**.
- Regarding **Item E**, on February 7, 2024, Herman Reich and Leu Unutoa with BUECI met with Tom Caraway, Director of Maintenance for Ilisagvik College, to discuss adding adequate ventilation for the metering and service-regulator box.
- Regarding **Item F**, BUECI is in discussions with a contractor regarding cleaning and coating indicated instances of active atmospheric corrosion, as well as discussions about adequate timelines for such.
- Regarding **Item G**, BUECI has attached current gas composition records as **Attachment 4**.
- Regarding **Items H through K**, BUECI has made progress towards completing, but not yet completed, the requirements in the Proposed Compliance Order.
- Regarding **Item L**, BUECI contacted Dispatch Supervisor with the North Slope Borough Police Department in December 2023 and is planning to meet with entities in 2024.
- Regarding **Item M**, BUECI is working to order two Odorator 2s, and intends to have a calibration schedule with alternating calibration dates for each of the two new Odorators. BUECI has reviewed the procedure with the crew on 9/4/2023, and has removed the chart that did not pertain to the Bacharach odorometer. BUECI has commenced using the correct Form G10 from the OEM.
- BUECI has also commenced, but not completed, addressing **Items N through S**.

Further, BUECI is working to address the three warning items identified at page 19 of the NPV. For instance, BUECI has ordered new fire extinguishers for its PRV stations (**Item 20**).

In the process of addressing the NPV and Proposed Compliance Order, BUECI has identified the following warranted modifications to the Proposed Compliance Order:

- **All items:** Any explicit or implicit references to, or requirements regarding, the NARL PRV station should be removed (see discussion in (A) above);
- **Item F:** BUECI is working with a paint contractor to address this issue expeditiously. **Attachment 5.** However, after discussions with the contractor, BUECI has determined that additional time will be required to ensure completion of the task, due to weather and access issues. BUECI operates in an environment where there is approximately three months of summer. Winter is cold and dark.³ Even during the short summer, precipitation (even snow) and incredibly saturated ground conditions can create unexpected changes to scheduling an item such as coating.

A modification of the deadline to complete **Item F**, extending it from 365 days from the date of the Final Order to **730 days from the date of the final order**, will ensure that there is adequate time for BUECI to complete the item in light of BUECI's unique location and operational conditions.

- **Item S:** BUECI has commenced addressing Item S and identified that it will need additional time to review, and revise as necessary, the DIMP manual. This item is one which requires more time than other NPV items requiring documentation or procedural updates. BUECI's natural gas division has four (4) employees, and serves approximately 1,391 member/owners. In addition to addressing the NPV, BUECI is working to carefully and thoroughly address the Notice of Amendment issued the same day. Further, I have been in my position as General Manager less than three years, and the Natural Gas Superintendent has been with BUECI since July 2023. BUECI believes a modification of the deadline from 90 days to **270 days** is warranted and adequate in order to robustly complete this item.

C. Proposed Mitigation of the Proposed Civil Penalties

BUECI believes that under an assessment pursuant to 49 C.F.R. § 190.225, PHMSA should reduce the proposed penalties to \$0 based on the below considerations:

- There has been no documented adverse impact on the environment (Section 190.225(a)(1));
- There is no evidence that these were bad faith violations. In fact, BUECI has already made significant progress in its good faith response to achieve compliance with the proposed compliance order. See (B) above. BUECI has also taken steps to address

³ Temperatures range from -56F to 78F, the daily low temperature is below freezing 324 days of the year. Prevailing winds are easterly and average 12 MPH. The sun does not set between May 10th and August 2nd each summer, and does not rise between November 18th and January 24th each winter.

warning items 9, 15, & 20 from the NPV. *See* (B) above. These efforts manifest the extent to which BUECI takes these violations seriously and wishes to correct them thoroughly and expeditiously (Section 190.225(a)(2), (Section 190.225(a)(4));

- BUECI does not have any recent history of prior offenses. According to the PHMSA online database, the most recent NPV case opened in 1998⁴ (Section 190.225(a)(3));

In addition to the factors above, PHMSA should reduce penalties for violation **items 5 and 6** to **\$0** because BUECI obtained no economic benefit from the violation, and because BUECI is a small, nonprofit utility cooperative (Section 190.225(b)(1) (PHMSA may consider “the economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages”) and Section 190.225(b)(2) (PHMSA may consider “[s]uch other matters as justice may require”).

BUECI did not commit the violations willfully or with the intent to gain a profit advantage. As such, civil penalties are not required for deterrence. Further, BUECI is a small nonprofit utility cooperative,⁵ which means its customers are also cooperative owner/members. Economic impacts to BUECI resulting from penalties will also impact the owners/customers. The proposed civil penalty will create additional financial impact to BUECI and its customers on top of the necessary, but unanticipated, costs of ensuring appropriate and correct remediation measures for the violations. The additional financial impact of fines will have no added benefit of future deterrence, however, as there was no bad faith, and as the required compliance provides enough of a deterrent effect to a good faith operator such as BUECI.

BUECI believes it would benefit its customers/members more to eliminate the proposed fines so that BUECI may focus its financial and staff resources on addressing compliance in order to prevent future issues or violations.

II. Conclusion

Please contact me with any questions or if you have difficulty opening any attachments.

Sincerely,

Barrow Utilities & Electric Coop., Inc.



Timothy W. Russell,
General Manager

⁴ Available at <https://primis.phmsa.dot.gov/enforcement-data/operators/>.

⁵ *See* AS 10.25 (Alaska Electric and Telephone Cooperative Act).