

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF APACHE GAS TRANSMISSION)
COMPANY, INC. FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY AUTHORIZING THE)
IMPLEMENTATION OF A PIPELINE REPLACEMENT) CASE NO.
PROGRAM, APPROVAL OF FINANCING PURSUANT) 2017-00168
TO KRS 278.300 AND APPLICATION OF APACHE GAS)
TRANSMISSION COMPANY, INC. AND BURKESVILLE)
GAS COMPANY, INC. FOR APPROVAL OF A GAS)
PIPELINE REPLACEMENT SURCHARGE AND TARIFF)

ORDER

On April 14, 2017, Apache Gas Transmission Company, Inc. ("Apache") and Burkesville Gas Company, Inc. ("Burkesville"), jointly filed an application requesting a Certificate of Public Convenience and Necessity ("CPCN") authorizing Apache to: 1) implement a pipeline replacement program ("PRP"); 2) to repair and replace existing natural gas pipelines and for approval of financing related to the PRP; and 3) establish a PRP tariff and surcharge pursuant to KRS 278.509. The application also contains a request by Burkesville for authority to establish a PRP tariff and surcharge. Apache and Burkesville filed responses to two Commission Staff requests for information. There are no intervenors in this proceeding. The case now stands submitted for a decision based on the record.

Background

Apache owns and operates a natural gas pipeline that transports gas to Burkesville. Apache is a utility subject to the Commission's jurisdiction under KRS

278.010(3)(c). Burkesville owns and operates a natural gas distribution system and is a utility subject to the Commission's jurisdiction under KRS 278.010(3)(b).

In January 2014, the Commission's Division of Inspections conducted an inspection of the Apache system and noted in its 2014 Inspection Report¹ that four areas were in need of repair. Since the 2014 Inspection Report, Apache has repaired two of the four areas noted in the report. Apache states that the remaining two areas in need of repair are located in difficult to access areas, contain a large amount of rock, and are on a steep grade, which makes them more costly and difficult to repair.² Due to the cost of repairing the two remaining sections, Apache proposes to implement a PRP to provide for their replacement. Apache estimates the PRP will cost approximately \$130,000³, and the funding will initially be obtained through a bank loan. Apache will bill the PRP surcharge to Burkesville, who will then charge its end-use customers. Apache estimates it will charge Burkesville approximately \$10,740 per year for 12 years for the PRP surcharge. Burkesville proposes to recover that amount through a \$3.00 per month surcharge for its residential customers and a \$3.50 per month surcharge for its commercial customers. The amounts collected from customers are to be used to repay the bank loan.

¹ The 2014 Inspection Report is attached as an appendix to this Order.

² Application at ¶8.

³ Application, tab F. The total cost includes repairing the two remaining sections identified in the 2014 Inspection report, as well as a section at a third location where the pipeline has become exposed due to soil erosion. In Apache's response to Commission Staff's First Request for Information, Item 1.b.2., Apache stated that any additional replacement project with a cost greater than \$5,000 would be included for recovery in the PRP.

Discussion

The Commission's standard of review for a request for a CPCN is well settled. No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.⁴ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁵

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁶

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."⁷ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁸ Selection of a

⁴ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable here.

⁵ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

⁶ *Id.* at 890.

⁷ *Id.*

⁸ See Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁹ All relevant factors must be balanced.¹⁰ Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Apache has established there is a need to replace pipeline on its system, and that it is reasonable to implement a PRP tariff and surcharge pursuant to KRS 278.509 to recover the cost of the pipeline replacement. The Commission further finds that Burkesville has no need of a PRP tariff and surcharge because it is not proposing to replace pipeline. It is proposing only to pass through a cost related to its purchase of gas.

Recovery of Apache PRP Surcharge

In response to Commission Staff's First Request for Information, ("Staff's First Request") Item 7, Apache and Burkesville stated that they had not considered using Burkesville's Gas Cost Adjustment ("GCA") mechanism to pass through to its customers the PRP surcharge from Apache, and that they did not "anticipate any significant changes to the GCA that would make this a less attractive option."¹¹ Since only Apache will be replacing pipeline and directly incurring costs for the replacement of pipeline, the Commission finds that the appropriate method for Burkesville to recover the surcharge amounts from its customers is through Burkesville's GCA mechanism. When Apache bills Burkesville for pipeline transportation service, it should include the \$10,740 monthly

⁹ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order.

¹⁰ See Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

¹¹ Apache and Burkesville's response to Staff's First Request, Item 7.

PRP surcharge amount on that bill. Likewise, when Burkesville bills its customers, it should include the \$3.00 monthly charge per residential customer and the \$3.50 monthly charge per commercial customer on its bills.

Financing

On July 24, 2017, Apache filed a supplemental response to Staff's First Request indicating that it was having difficulty acquiring financing for its PRP due to Burkesville's negative net worth. To date, Apache has not secured financing for its PRP, and therefore has not been able to submit terms of that financing. The application in this matter included a request by Apache for approval of financing related to the PRP pursuant to KRS 278.300, and because Apache has thus far been unable to secure financing, the Commission is unable to rule on Apache's request for approval of financing at this time. The Commission encourages Apache to use any reasonable methods available to it to secure financing for the PRP, and to resubmit the financing portion of this application after securing an offer for financing.

Escrow Account

In recognition of the difficulties encountered by Apache in obtaining financing to fund the three pipeline replacement projects identified in the application, the Commission will approve Apache's PRP tariff to be effective on the date of this Order. However, in order to ensure that funds collected from customers through Apache's PRP surcharge are only used to repay funds that were borrowed for pipeline replacement, the Commission will require Apache to deposit all PRP surcharge revenues in an interest-bearing escrow account from which no funds may be withdrawn until the Commission approves Apache's financing for the replacement of pipeline. Furthermore, the

Commission will require Apache to submit the monthly bank statements showing all transactions on the account at the time Burkesville files its quarterly GCA application.

IT IS THEREFORE ORDERED that:

1. Apache's request for a CPCN to replace pipeline on its system, and to implement a PRP tariff and surcharge is granted on the condition that Apache submit the terms of any financing obtained for Commission approval pursuant to KRS 278.300.

2. Burkesville's request for a PRP surcharge and tariff is denied.

3. Apache shall establish a separate interest-bearing escrow account into which all PRP revenue shall be deposited and from which no withdrawals shall be made until the Commission approves Apache's financing for the replacement of pipeline. Apache shall submit its monthly bank statements when Burkesville files its quarterly GCA applications.

4. Apache shall file within 30 days of the date of this Order a copy of the escrow agreement establishing the escrow account for deposit of all PRP surcharge revenue.

5. Within 20 days of the date of this Order, Apache shall file, using the Commission's electronic Tariff Filing System, a copy of its PRP tariff as approved by this Order. The PRP tariff should also state that Apache will file its annual PRP applications no later than April 30 each year.

6. Within 20 days of the date of this Order, Burkesville shall file, using the Commission's electronic Tariff Filing System, an amended GCA tariff setting out the revisions necessary to implement the \$3.00 per residential customer per month and \$3.50 per commercial customer per month charges to be collected for 12 years.

7. Apache shall file within 45 days of the date of this Order a status report detailing its efforts to obtain financing for its PRP.

8. This case shall remain open for 90 days from the date of this Order to afford Apache additional time to file the terms of the financing for the PRP.

9. Apache shall, no later than 90 days after the completion of the Project, file with the Commission a statement of the actual costs of the construction.

10. Apache shall file a copy of the "as-built" drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the plans and specifications within 60 days of substantial completion of the construction certified herein.

11. Apache shall require the construction to be inspected under the general supervision of a professional engineer licensed to practice in the Commonwealth of Kentucky in civil or mechanical engineering to ensure that the construction work is done in accordance with the drawings and specifications and in conformity with the best practices of the construction trades involved in the project.

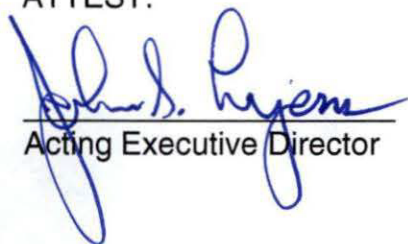
12. Apache shall notify the Commission one week prior to the actual start of construction and at the 50 percent completion point.

13. Any documents filed pursuant to ordering paragraphs 4, 7, 9, 10, and 12 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED
AUG 29 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Acting Executive Director

Case No. 2017-00168

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2017-00168 DATED **AUG 29 2017**

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

UTILITY INSPECTION REPORT

Report Date: 1/13/2014

Report Number: Apache Gas 010714

BRIEF

Inspector: Joel Grugin
Inspection Date: 1/7/2014
Type of Inspection: Periodic Regulatory Compliance Inspection

Type of Facility: Intrastate
Name of Utility: Apache Gas Transmission Co., Inc.
Location of Facility: Burkesville, KY
Purpose of Inspection: Periodic inspection of an intrastate operators facilities and management practices to verify compliance with federal and state pipeline safety regulations.
Applicable Regulations 49 CFR Part 191, 192, 199, and KAR 5:022.

INSPECTION

Description of Utility: 21 total miles of main.3 miles of coated steel with the rest being high density plastic
Number of Customers: 1
Area of Operation: Metcalf and Cumberland counties
Supply Source: Texas Eastern Pipeline
Distribution Description: The 3 miles of steel has an MAOP of 300 PSIG. and the 18 miles of steel has an MAOP of 100 PSIG. There are approximately 40 residential customers served off this pipeline. All gas is odorized.
Workforce Summary: No employees. (2) Burkesville gas employees maintain and operate this system.
Utility Reps in Insp: Tom Shirey
Date of Last Inspection:
DTR from Last Insp: 0
DTRs not Cleared: 0

Summary of items and facilities Inspected:

The Operating and Maintenance, Emergency, Damage Prevention, Operator Qualification, Drug and Alcohol, and Public Awareness Plans were reviewed during the office visit. Also inspected were records pertaining to leakage surveys and repairs, valve inspections, patrolling, corrosion control, and odorant verification tests. The field portion consisted of inspecting valves, line markers, and right of way areas.

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

UTILITY INSPECTION REPORT

Report Date: 1/13/2014

Report Number: Apache Gas 010714

FINDINGS

- 1 Apache Gas Transmission Co., Inc. had no records to indicate that the 8 valves in the system had been inspected.
 - 2 Apache Gas Transmission Co., Inc. had no welding procedures.
 - 3 Apache Gas Transmission Co., Inc. has 4 separate sections of plastic 3 inch main in different locations that are exposed to the atmosphere.
-

RECOMMENDATIONS

Apache Gas Transmission Co., Inc. should take action to correct the cited deficiencies in a timely manner with priority given to the exposed sections of main..

ADDITIONAL INSPECTOR COMMENTS

This was the first inspection of Apache gas. This pipeline had always been included in the Burkesville gas system in the past. It was not known to us that they were actually 2 separate systems, Apache being a intrastate transmission company and Burkesville gas being a private distribution company. The 4 exposed sections of plastic main were actually discovered during the 8/27/2013 inspection of Burkesville Gas, but since they were located on the Apache system they were not cited then.

The 4 exposures are in remote class 1 areas with no immediate danger to any buildings or public right of ways. The 5 pictures taken 1/7/2014 and listed as attachment "A" in this report of the Cliff Norris section reflect to me that possibly the line in this area was never backfilled after initial installation in 1983 .

The 2 pictures listed as attachment" B" in the report is of the Spoon Branch section that was taken by me during the Burkesville gas inspection conducted 8/27/2013. It appears that in these pictures that the cover has just eroded off the mains here.

The principal owner and president of Apache Gas Transmission Co., Inc. Mr. Tom Shirey was aware of the exposures and met with commission staff Leah Faulkner, Jason Brangers and Ron Handziak on July 1, 2013. Subsequently a letter was then sent to Jeff Derouen and received July 8, 2013 listed as attachment "C" outlining some proposals concerning the replacement and cost recovery of the 4 sections of exposed main.

I have only visited 2 of the 4 exposure sites 1 during the Burkesville inspection in August and the other on 1/7/2014, due to extreme weather conditions during the inspection (-5 degrees that morning) along with the remoteness and extreme slopes we were unable to get to the other sites.

Attachment "D" of the report is a 2 page description that I received by email from Tom Shirey briefly describing and naming the 4 exposure sites. Note: that the numbers are not in sequence and that there is a 5th listed site also named "Doug Lewis section C". This site section is covered properly however it is a 3 inch section of main that is in between two sections of 6 inch main. This is causing a throughput restriction and he felt like it should be replaced at this time also provided funds are available after correcting the 4 line exposures.

Attachment "E" of the report is commission staff opinion 2013-009 which is a response to Tom Shirey's letter attachment "C".

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

UTILITY INSPECTION REPORT

Report Date: 1/13/2014

Report Number: Apache Gas 010714

Submitted by



Joel Grugin

Utility Regulatory and Safety Investigator III

Report Number: Apache Gas 010714
DTR Number: 1

Due Date: 8/11/2014

Deficiency Tracking Report

Deficiency Detail

Utility	Date of Investigation	Investigator
Apache Gas Transmission Co., Inc.	1/7/2014	Joel Grugin

Regulation

49 CFR Part 192.745 Valve maintenance: Transmission lines.

Deficiency:

Apache Gas Transmission Co., Inc. had no records to indicate that the 8 valves in the system had been inspected.

If Repeat Deficiency, Date of Last DTR

Response (attach additional pages as necessary)

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

Response Provided By _____

Response Date _____

Signature _____

Report Number: Apache Gas 010714
DTR Number: 2

Due Date: 8/11/2014

Deficiency Tracking Report

Deficiency Detail

Utility	Date of Investigation	Investigator
Apache Gas Transmission Co., Inc.	1/7/2014	Joel Grugin

Regulation

49 CFR Part 192.225. Welding Procedures.

Deficiency:

Apache Gas Transmission Co., Inc. had no welding procedures.

If Repeat Deficiency, Date of Last DTR:

Response (attach additional pages as necessary)

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

Response Provided By: _____

Response Date: _____

Signature _____

Report Number: Apache Gas 010714
DTR Number: 3

Due Date: 8/11/2014

Deficiency Tracking Report

Deficiency Detail

Utility	Date of Investigation	Investigator
Apache Gas Transmission Co., Inc.	1/7/2014	Joel Grugin

Regulation

49 CFR Part 192.321 Installation of plastic pipe...Plastic pipe must be installed below ground level unless otherwise permitted by paragraph (g) of this section...

Deficiency:

Apache Gas Transmission Co., Inc. has 4 separate sections of plastic 3 inch main in different locations that are exposed to the atmosphere.

If Repeat Deficiency, Date of Last DTR.

Response (attach additional pages as necessary)

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

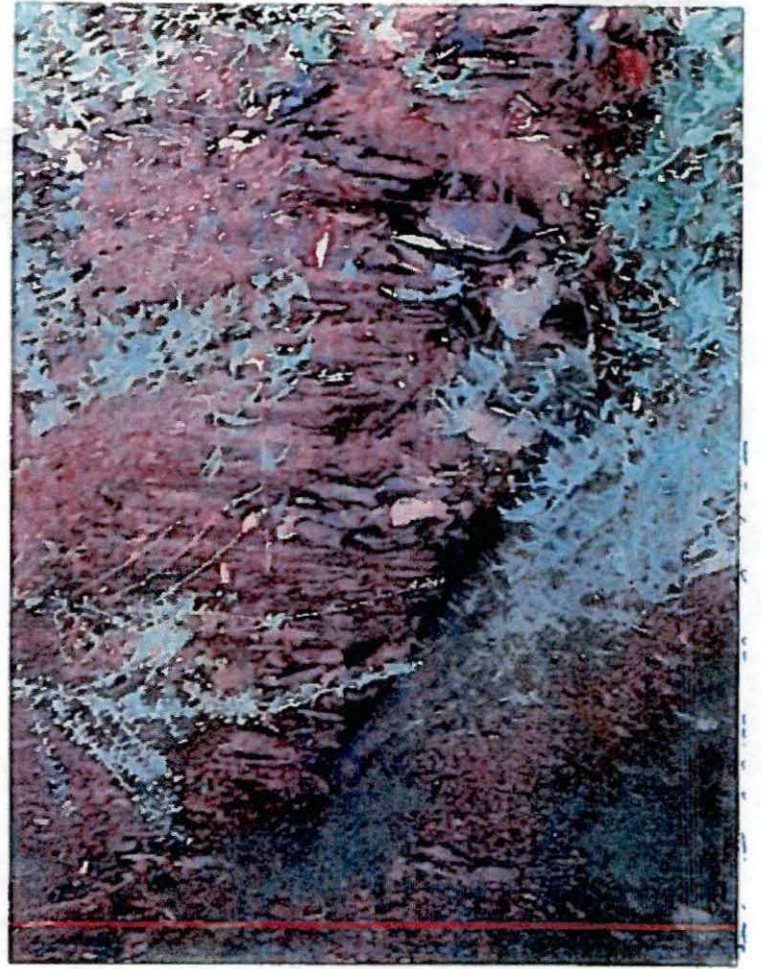
Response Provided By

Response Date

Signature







Attachment "C" 10/1/13

Apache Gas Transmission Company, Inc.

a Kentucky Corporation

Business Mailing Address
P.O. Box, Emory, Texas 75440
Telephone (903) 274-4322 - eFax (888) 823-7417

July 8, 2013

Via USPS Priority and Email

Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
2110 Sower Blvd.
Frankfort, Kentucky 40602

RECEIVED

JUL 08 2013

**PUBLIC SERVICE
COMMISSION**

Re: Burkesville Gas Company, Inc. ("BGC") and Apache Gas Transmission Company, Inc. ("Apache") and the proposed main replacement project

Mr. Derouen,

On July 1, 2013 I met with Staff members Leah Faulkner, Jason Brangers and Ron Handziak concerning a matter relating to referenced matter.

As a brief background, Apache is a Kentucky Corporation that owns the 21-mile intra state natural gas transmission line from the Texas Interconnect in Metcalf County, Kentucky to the Burkesville City Gate near Burkesville, Kentucky. Currently Apache's only customer is BGC. For ratemaking purposes, it has been determined by the commission that Apache was a Kentucky utility. In 2007 (case # 2007-00354) Apache filed an Application for Rate Adjustment before the Public Service Commission for small utilities pursuant to KAR 5:076.

Currently there is a need to replace four (4) certain sections of main transmission line due to natural erosion. This transmission line is the only line that supplies natural gas to the City of Burkesville. We have become aware of the KRS 278.509 recovery of costs for investment in natural gas pipeline replacement program and would like to proceed with this method for recovering the cost of this proposed project. The following are some details about the proposed main replacement project.

1. Preliminary cost estimates provided by Martin Contracting, Inc. indicate that the total main replacement project will cost less than \$70,000.
2. Apache is responsible for maintaining 21 miles of natural gas pipeline and the total amount of mains that needs to be replaced due to erosion is 0.4947 miles or about 2.36% of total 21 mile transmission line.
3. The mains that needs to be replaced is an area that is a steeper grade and has a higher rock content than Apache or BGC is directly able to accommodate.

I have a few questions relating to this matter.

1. Since Apache has been considered a Kentucky Utility for ratemaking purposes in the past, will Apache be permitted to recovery of costs for investment in natural gas pipeline replacement under KRS 278.509?
2. Will Apache be required to apply for a certificate of public convenience and necessity ("CPCN") from the Commission prior to constructing improvements?

Attachment 'C' 2011

3. In an effort to keep cost down, since we are proposing to replace existing mains line with the same or larger mains and with the same or greater operating limits as is currently installed, can this main replacement be done in the ordinary course of business and not require the services of an engineer?
4. Additionally, in an effort to keep cost down, is recovery of costs for investment in natural gas pipeline replacement program under KRS 278.509 something we can apply for directly without the services of an attorney?

Thank you for your consideration in this matter. I would like to express appreciation to Leah Faulkner, Jason Brangers and Ron Handziak that were very helpful and informative. If you have any questions please let me know.

Sincerely,



Tom Shirey
President
Apache Gas Transmission Company, Inc.

Apache Gas Transmission Company, Inc. Main Improvement Program | 2013

The following is a brief description of main transmission line that should be re-covered due to natural erosion with the exception of the Doug Lewis Section C. On June 28, 2013 Burkesville Gas Company, Inc. personnel and Arnold Gentry of Martin Contracting, Inc. went to this section to determine grade and estimate rock content. The lat-long readings were taken with a Garman GPS on 10-31-2013.

1. Cliff Norris Section

This section is currently a 6" main that should be re-covered. Arnold Gentry estimated the grade to be 30% to 35%. This section goes up a hill on one side and down the other. During periods of dry weather, there is good access to the bottom of both sides of the hill and reasonable access to the top from one side of the hill. Arnold Gentry estimates the rock content to be approximately 95%. The total distance of this section on both sides of the hill is a total of about 991' in length.

Starting point bottom of the hill: N36° 49.596 and W 085° 32.051

Point at top of the hill: N36° 49.513 and W 085° 32.001

Point other side of the hill where pipe is not visible: N36° 49.617 and W 085° 31.975

We will discuss with landowner if we can purchase dirt in order to re-cover the pipe that is now exposed. Also, there is a local excavation company that may be willing to assist us in recovering this section.

The following is a brief description of three sections of main transmission line that should be replaced due to natural erosion. On June 28, 2013, Burkesville Gas Company, Inc. personnel went with Arnold Gentry of Martin Contracting, Inc. to each of these sections to determine grade and estimate rock content. The lat-long readings were taken from a Garman GPS on 10-30-2013 and 10-31-2013.

1. Spoon Branch Section

This section is currently a 3" main that will be replaced with 6" main. Arnold Gentry estimates this section to be 75% rock and the grade to be much less than the Cliff Norris Section. This section is 851' long plus an estimated additional 100' to allow sufficient room for the new line to be reconnected to the old line. Additionally, there may be some trees that will need to be removed along the right of way to allow for sufficient room for equipment access to install the new main. During periods of dry weather, there is good access to the bottom and top of the hill.

Starting point where pipe becomes visible: N36° 50.628 and W 085° 28.439

Point where pipe is not visible: N36° 50.663 and W 085° 28.335

2. Doug Lewis Section A (the section to the right when approaching barn)

This section is currently a 3" main that should be replaced with 6" main and is approximately 170' long. Arnold Gentry estimates 100% rock but, said it was shale and should not be very difficult to cut through and the grade to be much less than the Cliff Norris Section. During periods of dry weather, there is good access to the top and bottom of this section.

Starting point where pipe becomes visible: N36° 50.044 and W 085° 26.465

Point where pipe is not visible: N36° 49.991 and W 085° 26.484

3. **Doug Lewis Section B** (the section to the left when approaching barn)

This section is currently a 3" main that should be replaced with 6" main and is approximately 600' long and the grade to be much less than the Cliff Norris Section. Arnold Gentry estimates this section to be 50% rock but, said it was also shale and should not be very difficult to cut through. During periods of dry weather, there is good access to the top and bottom of the hill.

Starting point where pipe becomes visible: N36° 50.329 and W 085° 26.649

Point where pipe is not visible: N36° 50.374 and W 085° 26.665

4. **Doug Lewis Section C** (the main between Doug Lewis Section A and B) This section is approximately 2,000' of main transmission line that is not uncovered but, is between Doug Lewis A and B. It is currently a 3" plastic line. If the Doug Lewis sections A and B were replaced and Doug Lewis C were not replaced with 6" plastic, there would be 2,000 feet of 3 plastic "sandwiched" between two sections of 6" plastic. Eventually all the remaining 3" plastic pipe on the Apache transmission line should be replaced with 6" anyway so, we would like to replace this 2,000 feet at the same time On June 28, 2013 Arnold Gentry of Martin Contracting, Inc. estimated this section to be a 0% grade and a 20% rock content. The rock appears to be shale. During periods of dry weather, there is good access to this section. The lat-long readings were taken from a Garman GPS on 10-31-2013.

Starting point of Doug Lewis C: N36° 50.044 and W 085° 26.465

Point where pipe is not visible: N36° 50.374 and W 085° 26.665

The Burkesville Gas Company personnel is able and, qualified to replace this section of main. However, there will be cost including but not limited to pipe and supplies that should be included in the Main Replace Program's project costs.



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
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Frankfort, Kentucky 40602-0615
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Fax: (502) 564-3460
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Linda Breathitt
Commissioner

August 29, 2013

Mr. Tom Shirey
President
Apache Gas Transmission Company, Inc.
2718 Wesley Street
Greenville, TX 75401

Re: Apache Gas Transmission Company, Inc. **PSC STAFF OPINION 2013-009**
Request for an Advisory Opinion

Dear Mr. Shirey:

Commission Staff acknowledges receipt of your July 8, 2013 letter in which you request an opinion concerning a gas transmission line replacement project proposed by Apache Gas Transmission Company, Inc. ("Apache"). This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter, Commission Staff understands the facts as follows:

Apache is a Kentucky Corporation that owns a 21-mile intrastate natural gas transmission line that extends from Metcalf County, Kentucky to Burkesville, Kentucky. Apache's only customer is Burkesville Gas Company, Inc. ("BGC") in Burkesville, Kentucky. The Commission has previously treated Apache as a utility for rate making purposes in Apache's 2007 application for an adjustment of rates pursuant to the alternative rate filing procedure in case number 2007-00354. Apache states that it presently needs to replace 0.4947 miles of natural gas pipeline at a cost of approximately \$70,000.¹

¹ Apache has since provided a revised cost estimate of the project in the range of \$117,925 to \$190,530. E-mail from Tom Shirey, President, Apache Gas Transmission Company, Inc. to Leah Faulkner, Manager, Kentucky Public Service Commission (Aug. 7, 2013). Attached as Exhibit A.

Mr. Shirey
August 29, 2013
Page 2

You pose four questions to the Commission. First, whether Apache will be permitted to recover the costs of the aforesaid project pursuant to KRS 278.509; second, whether a Certificate of Public Convenience and Necessity ("CPCN") will be required for the project; third, whether the project would be deemed to be in the ordinary course of business and, therefore, not require the employment of a project engineer; and fourth, whether Apache may submit an application to the Commission for recovery, absent the services of an attorney.

KRS 278.509 permits a regulated utility to recover the costs of its "investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility." The expenses may only be recovered upon a finding by the Commission that the costs are "fair, just and reasonable."²

Pursuant to KRS 278.010(3), utility service includes "[t]he transporting or conveying of gas . . . by pipeline to or for the public, for compensation." In instances wherein an otherwise non-regulated entity sells gas to an affiliated regulated utility, the unregulated business will also be deemed a utility "to the extent necessary to ensure that the rates charged the utility and ultimately to the consumer are just and reasonable." KRS 278.274(3)(b). Companies are affiliated when "[o]ne or more of the owners control or have the right to control the business affairs of all affected companies."³

The statutory provision permitting recovery of costs for investments in natural gas pipeline replacement programs is explicitly limited to regulated utilities. As defined by KRS 278.010, a regulated utility is an entity that performs an enumerated service, such as the transportation of gas, to the public and for compensation. An entity provides service to or for the public when it offers to or is willing to serve all individuals to the extent of the available facilities.⁴

Apache and BGC have common principals controlling the operations of both companies.⁵ They are considered sister companies.⁶ Therefore, Apache is deemed to

² KRS 278.509.

³ KRS 278.274(3)(a).

⁴ Case No. 89-322, *The Application of Electric Energy, Inc. for a Certificate of Convenience and Necessity to Construct a Power Transmission* (Ky. PSC Nov. 1, 1989).

⁵ *Annual Report of Burkesville Gas Company, Inc. to the Public Service Commission* for the calendar year ended December 31, 2011 at 1.

⁶ Case No. 2007-00354, *Application of Apache Gas Transmission Company, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Dec. 21, 2007).

Mr. Shirey
August 29, 2013
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be affiliated with BGC.⁷ As a result, Apache is subject to the Commission's jurisdiction to ensure the rates it charges to BGC, as an affiliate, are just and reasonable to the extent authorized by KRS 278.274.

As Apache is treated as a utility under KRS 278.010 in regard to the rates it charges, Apache may avail itself of the rate recovery mechanisms devised by the legislature to include KRS 278.509, which provides for the recovery of investments in pipeline replacement programs not otherwise recovered through existing rates. Upon submission of an application for rate recovery, as provided for by both KRS 278.274 and KRS 278.509, the Commission is charged with determining whether the rate recovery is fair, just and reasonable.

As to the second and third questions posed, KRS 278.020(1) provides that:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010 except . . . ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

The Commission has adopted a regulation, 807 KAR 5:001, Section 15(3), which defines "ordinary extensions" that do not require a CPCN as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

A CPCN is required prior to a regulated utility commencing construction on a project that is not within the ordinary course of business.⁸ A project is *per se* not within

⁷ KRS 278.274(3)(b).

⁸ KRS 278.020(1); 807 KAR 5:001 Section 15(3).

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the ordinary course of business when it will result in increased charges to customers, and here Apache intends to propose a contemporaneous request to pass on the project's costs through an increase in rates or assessment of a surcharge.⁹ Moreover, the rate recovery mechanism in KRS 278.509 is contingent upon a finding by the Commission that the project is necessary and that the corresponding rate assessment is just and reasonable. Absent an examination of the underlying construction to ascertain whether the proposed project is necessary and reasonable, the Commission would be stymied in attempting to assess the propriety of the requested rate increase in conjunction with KRS 278.509. Accordingly, the construction project coupled with a simultaneous rate increase, as proposed by Apache, requires a CPCN.

Commission regulations also require applications for CPCNs to include descriptions of the need and manner for which the proposed project will be constructed.¹⁰ Reports, drawings and plans submitted to the Commission must be signed by a Licensed Professional Engineer and bear the engineer's stamp or seal.¹¹ A professional engineer must be engaged in all projects that require a CPCN, regardless of whether the project entails new construction or replacement of existing facilities. Therefore, the services of an engineer would be required for the proposed main replacement project as a requirement of the application for a CPCN.

Finally, the practice of law is broadly defined by Kentucky Supreme Court Rule 3.020, which states:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities or business relations of one requiring the services.

The practice of law includes representation of a party before a state administrative agency.¹² The Commission has required that those representing the interests of others must be licensed attorneys. The Commission has previously held:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the

⁹ 807 KAR 5:001 Section 15(3).

¹⁰ 807 KAR 5:001 Section 15(2).

¹¹ KRS 322.340.

¹² *Kentucky State Bar Association v. Henry Vogt Machine Co.*, 416 S.W.2d 727, 728 (Ky. 1967).

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Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.¹³

Practice before the Commission by the representative of a corporation necessarily requires retainer of an attorney.¹⁴ Commission regulations preclude a person, other than an attorney, from filing papers on behalf of another person in the course of a formal proceeding, which includes applications for a CPCN under KRS 278.020 and rate recovery pursuant to KRS 278.509.¹⁵ The papers must also be signed and filed by an attorney.¹⁶ A person is defined to include a corporation, thereby precluding a non-attorney from filing papers on behalf of a corporation.¹⁷ Furthermore, an appearance before the Commission in the course of a formal hearing constitutes the practice of law. Consequently, the services of an attorney licensed in the Commonwealth of Kentucky will be required for Apache to proceed with the proposed applications.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Virginia Gregg or Jonathan Beyer, Commission counsel at (502) 564-3940.

Sincerely,



Jeff Derpau
Executive Director

¹³ Case No. 2004-00348, *Howard B. Keen v. Carroll County Water District* (PSC Ky. Oct. 15, 2004) (citing Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. PSC June 15, 1981)).

¹⁴ *Vogt Machine*, 416 S.W.2d at 728.

¹⁵ 807 KAR 5:001 Section 4(4).

¹⁶ *Id.*

¹⁷ KRS 278.010(3).

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