

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC EMERGENCY DOCKET RELATED) CASE NO. 2020-00085
TO THE NOVEL CORONA VIRUS COVID-19)

APACHE GAS TRANSMISSION COMPANY, INC. AND BURKESVILLE GAS COMPANY,
INC.'S JOINT REQUEST FOR DECLARATORY RELIEF

Come now Apache Gas Transmission Company, Inc. (“Apache”) and Burkesville Gas Company, Inc. (“Burkesville”), by counsel, pursuant to the Commission's March 16, 2020 Order in the above-styled docket, and does hereby request a declaration as to the Commission’s jurisdiction and a deviation, pursuant to 807 KAR 5:001 Section 22, respectfully stating as follows:

I. Background

Apache is a Kentucky corporation originally incorporated on April 17, 1997, in good standing, and a public utility as that term is defined in KRS 278.010(3), and, therefore, is subject to the Commission’s jurisdiction. Apache Gas is engaged in the business of furnishing wholesale natural gas services to Burkesville Gas in Cumberland County, Kentucky.

Burkesville Gas is a Kentucky corporation originally incorporated on September 25, 1990, in good standing, and a public utility as that term is defined in KRS 278.010(3), and, therefore, is subject to the Commission’s jurisdiction. Burkesville Gas is engaged in the business of furnishing natural gas services to customers in Cumberland Counties in Kentucky.

In response to the COVID-19 pandemic, The Small Business Administration (“SBA”) was given the authority to make low-interest fixed-rate long-term COVID Economic Injury Disaster Loans (“EIDL”) to help small businesses and other entities overcome the effects of the COVID-

19 pandemic. These loans are directly through SBA unlike the Paycheck Protection Program (“PPP”) loans that are administered by SBA-certified financial institutions. The COVID EIDL program allows SBA to provide money for working capital for small businesses to assist in meeting ordinary and necessary operating expenses already incurred or that will be incurred in the future. Unlike the PPP loans that could be forgiven, the COVID EIDL loans will be paid back. The COVID EIDL loans have a low interest rate of 3.75% and a thirty year payback period. The program is totally administered by SBA, including funding. There has been a narrow window to apply for any federal programs associated with COVID-19 relief and the COVID EIDL loans are no exception. These loans are only available as long as funding is available. If approved, funding can occur in a short period of time, possibly only 5-7 days.

II. Request for Declaratory Relief

Pursuant to KRS 278.300, utilities are generally required to gain Commission approval prior to issuing any securities or evidences of indebtedness. Apache and Burkesville believe that a loan pursuant to this program would constitute an evidence of indebtedness under this statute. However, Apache and Burkesville believe that this particular loan would fall under the exception contained in KRS 278.300(10) and would not require Apache and Burkesville to obtain Commission approval prior to entering into the loan.

The COVID EIDL program is administered, supervised and controlled by the SBA, which is an agency of the United States government. The loans provided through this program are funded by SBA and are not associated with SBA-accredited financial institutions. This fits into the exception to the general requirement to obtain Commission approval prior to entering into an evidence of indebtedness. Specifically, KRS 278.300(10) provides: “This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the

supervision or control of the federal government or any agency thereof....” Because this loan program is under the complete “supervision” and “control” of the SBA, including the funding of the loan proceeds, KRS 278.300(10) provides an exemption and a basis for declaring that the Commission lacks jurisdiction over the loans applied for by Apache and Burkesville.

Although Apache and Burkesville believe these loans are an exception to the requirement of Commission approval, due to the size of the two loans, Apache and Burkesville felt the need to seek Commission confirmation that approval is not required. Between the two companies, the loan proceeds could total a combined approximate amount of \$600,000 with an ability to apply for additional amount of up to \$1,500,000 if needed to complete the project. Apache and Burkesville intend to use the loan proceeds to assist in expanding its gas pipeline to the Cumberland/Clinton County line. This would provide natural gas service to portions of Cumberland County that currently do not have natural gas service which could possibly aid in economic development opportunities in the future. Apache and Burkesville would file an Application for a Certificate of Public Convenience and Necessity if the COVID EIDL loans are awarded and prior to any work beginning on the construction.

In light of the foregoing, Apache and Burkesville respectfully request the following declaratory relief that Apache and Burkesville do not need Commission approval to enter into loans issued under the COVID EIDL program administered and funded by SBA. Moreover, based upon the time constraints involved with the funding being available on a first-come-first-served basis, Apache and Burkesville respectfully request that the Commission grant it declaratory relief as expeditiously as possible. Also due to the quick turnaround time for the COVID EIDL program, Apache and Burkesville request that if the loan applications for Apache and Burkesville are approved by the SBA prior to the Commission issuing an Order on this Motion, that Apache and

Burkesville be allowed to accept the funds, place them into an escrow account, and await the Commission's decision. If the Commission disagrees with Apache and Burkesville, Apache and Burkesville would leave the funds in escrow, file an application for approval under KRS 278.300 and await a Commission decision prior to removing the funds from escrow.

III. Request for Deviation

Pursuant to 807 KAR 5:001, Section 19, a request for declaratory relief is required to be filed as an application. However, as set forth above, the opportunity to obtain these funds is limited and only available until funds run out. Therefore, time is of the essence for obtaining declaratory relief. As this program arises directly out of the federal government's response to the COVID-19 pandemic and the Commission has opened this docket for the express purpose of addressing various issues related to said pandemic as they arise, Apache and Burkesville respectfully request a deviation to file this request for declaratory relief as a motion rather than as a separately docketed application for declaratory relief under 807 KAR 5:001, Sections 14 and 19.

WHEREFORE, on the basis of the foregoing, Apache and Burkesville respectfully request the Commission to:

- (1) Declare that Apache and Burkesville do not need Commission approval under KRS 278.300 prior to entering into any loans, notes or other obligations under the COVID EIDL program in light of the statutory exception set forth in KRS 278.300(10);
- (2) Make such declaration on an expedited basis;
- (3) Grant a deviation from 807 KAR 5:001, Section 19, to allow Apache and Burkesville to file this request for declaratory relief as a motion rather than as a new application;
and
- (4) Award any other relief to which Apache and Burkesville may be entitled.

Done this 11th day of March, 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This will certify that the foregoing document was filed via the Commission's electronic filing system today; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding and pursuant to prior Commission orders, no paper copies of this filing will be made.



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Company, Inc., and Burkesville Gas
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