

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ANNUAL PIPELINE)	CASE NO.
REPLACEMENT PROGRAM FILING OF APACHE)	2024-00167
GAS TRANSMISSION COMPANY, INC.)	

ORDER

On May 31, 2024, Apache Gas Transmission Co., Inc. (Apache), filed its annual status report for its Pipeline Replacement Program (PRP) stating that it has completed all the projects previously approved for inclusion in the PRP and proposing no change in the PRP rate, but it requested approval to include additional projects in the PRP and indicated that inclusion of those projects may necessitate an increase in the PRP rate in future filings. There are no intervenors, and Apache responded to three requests for information. The matter is now submitted to the Commission for a decision based upon the evidentiary record.

LEGAL STANDARD

KRS 278.509 allows a utility to record costs for investment in natural gas pipeline replacement programs that are not recovered in existing rates, provided that the Commission determines the costs are fair, just and reasonable. Similarly, in accordance with KRS 278.030, the Commission must determine whether the rates are fair, just and reasonable.¹

¹ KRS 278.030; *Pub. Serv. Comm'n v. Com. ex rel. Conway*, 342 S.W.3d 373, 377 (Ky. 2010).

BACKGROUND

Apache's PRP was approved in Case No. 2017-00168 to fund certain replacements and repairs to Apache's existing natural gas pipelines necessary to correct issues identified by the Commission's Division of Inspections.² In that case, the Commission granted approval to begin recovering fixed PRP amounts of \$3.00 per residential customer and \$3.50 per commercial customer, through the local gas distribution company that is Apache's sole customer, to pay the debt service on two loans that financed the approved projects.³ The Commission, by Order entered on December 21, 2017, authorized Apache to obtain two loans from the Kentucky Highlands Investment Corporation.⁴ The first approved loan was for \$50,000 and carries a 7.5 percent interest rate, with a term of 72 months.⁵ The second loan approved was for \$100,000, has a 7.5 percent interest rate, and has a term of 120 months.⁶

In Case No. 2018-00106,⁷ Apache filed an application to revise its PRP rates as the prior approved changes did not provide sufficient funds to cover the debt service of

² Case No. 2017-00168, *Application of Apache Gas Transmission Company, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Implementation of a Pipeline Replacement Program, Approval of Financing Pursuant 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* (Ky. PSC Aug. 29, 2017), Order.

³ Case No. 2017-00168, Aug. 29, 2017 Order at ordering paragraph 6.

⁴ Case No. 2017-00168, Dec. 21, 2017 Order at 1-2; POST Case File, Apache Gas Transmission Company, Inc. Loan Information Pursuant to Commission Order (filed Mar. 14, 2018); and POST Case File, Apache Gas Transmission Company, Inc. Loan Information Pursuant to Commission Order (filed May 15, 2019).

⁵ Case No. 2017-00168, Dec. 21, 2017 Order at 1-2.

⁶ Case No. 2017-00168, Dec. 21, 2017 Order at 1-2.

⁷ Case No. 2018-00106, *Application of Apache Gas Transmission Company, Inc., Annual Pipeline Replacement Program Filing to Approve New Pipeline Replacement Surcharge Rates Beginning with May 1, 2018 Billing Cycle* (Ky. PSC Apr. 17, 2018).

the yet to be closed second loan.⁸ The Commission approved an additional \$0.29 per Mcf volumetric charge to generate sufficient revenues to cover the debt service of the second loan.⁹ The Commission required that revenue from the PRP rates be held in escrow and used to repay the loans used for the approved PRP projects.¹⁰

In Case No. 2019-00032,¹¹ the Commission authorized Apache to include repairs to its Marrowbone Creek pipeline to Apache's PRP program. Apache did not request approval of additional financing because the total costs of the project were not known.¹² There was no change in the surcharge at that time.¹³

In Case No. 2020-00067,¹⁴ Apache reported that it had completed all approved projects, including the Marrowbone Creek project.¹⁵ Apache stated that it would need additional funding to cover the remaining costs of the PRP work.¹⁶ Apache did not seek a rate adjustment in Case No. 2020-00067 but stated that approval would be requested for any necessary increase in the PRP rate when Apache finalized and sought approval

⁸ Case No. 2018-00106, Application at 1 (filed Mar. 14, 2018).

⁹ Case No. 2018-00106, (Ky. PSC Apr. 17, 2018), Order at 2.

¹⁰ See Case No. 2017-00168, Aug. 29, 2017 Order at 5-6; Case No. 2018-00106, Apr. 17, 2018 Order at 2.

¹¹ Case No. 2019-00032, *Electronic Annual Pipeline Replacement Program Filing of Apache Gas Transmission Company, Inc.* (Ky. PSC Apr. 29, 2019), Order at 3-4.

¹² Case No. 2019-00032, Apache's Response to Commission Staff's First Request for Information (filed Apr. 18, 2019), Item 1.

¹³ Case No. 2019-00032, (Ky. PSC Apr. 29, 2019), Order at 3.

¹⁴ Case No. 2020-00067, *Adjustment of the Pipeline Replacement Program Rider of Apache Gas Transmission Company, Inc.* (Ky. PSC Mar. 26, 2020).

¹⁵ Case No. 2020-00067, Application at 4-5.

¹⁶ Case No. 2020-00067, Application at 1-2.

for financing.¹⁷ The Commission did not make any changes to the mechanism in that case.¹⁸

In Case No. 2021-00120,¹⁹ Apache notified the Commission that the Small Business Administration (SBA) was making payments on Apache's outstanding PRP loans.²⁰ Apache reported that, with the SBA funding, the funds collected through the PRP surcharge were adequate to cover the debt service on the approved loans and a portion of the costs of the Marrowbone Creek Project.²¹ Apache indicated that an increase in the PRP could be needed to pay the remaining costs of the Marrowbone Creek project but did not seek an increase at that time.²² In that case, the Commission did not make any changes but noted that any request to increase or decrease to the PRP fee as the result of additional financing or subsequent to a change in the terms of the current financing would be considered in a separate proceeding.²³

In Case No. 2022-00057,²⁴ Apache stated that the SBA covered its loan payments from February 2020 through June 2020 and from February 2021 through June 2021, which allowed Apache to meet its PRP obligations, and again Apache did not propose a

¹⁷ Case No. 2020-00067, Application at 1-2.

¹⁸ Case No. 2020-00067, (Ky. PSC Mar. 26, 2020), Order at 2.

¹⁹ Case No. 2021-00120, *Electronic Annual Pipeline Replacement Program Filing of Apache Gas Transmission Company, Inc.* (Ky. PSC May 24, 2021).

²⁰ Case No. 2021-00120, Application at 1.

²¹ Case No. 2021-00120, Application at 1.

²² Case No. 2021-00120, Application at 1.

²³ Case No. 2021-00120, (Ky. PSC May 24, 2021), Order at 2.

²⁴ Case No. 2022-00057, *Electronic Annual Pipeline Replacement Program Filing of Apache Gas Transmission Company, Inc.* (Ky. PSC Aug. 11, 2022), Order *citing* Application at 1.

change in its PRP rate. The Commission, once again, approved and continued the PRP without change.²⁵

In Case No. 2023-00124,²⁶ Apache stated that the PRP rates collected in 2022 were short of the amount needed to cover the debt service for the calendar year 2022, and that a separate filing for authorization to increase the PRP rate would be made.²⁷

In this case, Apache stated that it has completed all projects currently approved to be included in its PRP, including the Marrowbone Creek project that was approved in Case No. 2019-00032.²⁸ Apache stated its annual revenue to cover debt service for 2023 was lower than expected because of warmer weather.²⁹ To alleviate this shortage of revenue, Apache borrowed funds totaling \$3,900 from Burkesville Gas Company, Inc. (Burkesville) from August to November to be deposited into an escrow account.³⁰ Despite the reported insufficient revenue in 2023, Apache projected that it would have sufficient revenue in 2024 to pay its debt service with no changes to its PRP surcharge rates because it had recently paid off one SBA loan and its service area experienced a cold January, resulting in higher gas sales.³¹

²⁵ Case No. 2022-00057, (Ky. PSC Aug. 11, 2022), Order.

²⁶ Case No. 2023-00124, *Electronic Annual Pipeline Replacement Program Filing of Apache Gas Transmission Company, Inc.*, Annual Report Filing for PRP at 2 (filed Apr. 21, 2023).

²⁷ No separate filings requesting authorization to increase the PRP rate were made.

²⁸ Case No. 2024-00167, *Electronic Annual Pipeline Replacement Program Filing of Apache Gas Transmission Company, Inc.* (2024 Annual PRP Report) (filed May 31, 2024), at unnumbered page 1.

²⁹ 2024 Annual PRP Report at unnumbered page 2.

³⁰ 2024 Annual PRP Report at unnumbered page 2.

³¹ 2024 Annual PRP Report at unnumbered page 2.

Apache requested to use excess PRP funds for additional projects that it stated are small and can be completed in the ordinary course of business.³² Apache identified around 25,344 feet of 3-inch mains that need to be replaced with 6-inch mains and requested that they be included in the PRP and for the costs to be recovered through the current PRP surcharge.³³ Apache proposed replacing these pipes with high-density black yellow stripe 6-inch pipe since they are the oldest sections of pipe in the system.³⁴ Apache stated that there is approximately a combined 28 feet of exposed or partially exposed pipeline contained within the 25,000 feet stretch that needs to be replaced.³⁵ According to the application, since the pipe is plastic, there is no risk of corrosion, but the lengths should still be mitigated during the replacement project.³⁶ Furthermore, Apache stated that the full extent of inadequately buried 3-inch pipe is unknown without excavation.³⁷ A PinPointR GPR Cart (Impulse Radar) was ordered and should help determine the pipe's depth without the need for tracer wire or excavation.³⁸

Apache proposed to replace the approximately 25,000 feet of pipe in sections. Apache stated that it could replace around 3,000 feet of pipe by 2029 and that it would then replace approximately 1,000 feet every year proceeding 2029 until the project is

³² 2024 Annual PRP Report at unnumbered page 2.

³³ 2024 Annual PRP Report at unnumbered page 2.

³⁴ 2024 Annual PRP Report at unnumbered page 2.

³⁵ Apache's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Oct. 11, 2024), Item 2.

³⁶ 2024 Annual PRP Report at unnumbered page 2.

³⁷ Apache's Response to Commission Staff's Second Request, Item 2.

³⁸ Apache's Response to Commission Staff's Second Request, Item 2.

completed around 2050.³⁹ Apache received estimates for the materials needed to replace a 1,000 foot section and provided the purported lowest bid.⁴⁰ Apache originally estimated that the project would cost \$13,933 per 1,000 feet of replacement, with the materials estimated at \$9,933 and another \$4,000 in labor.⁴¹ However, Apache later updated these estimates in its response to Commission Staff's First Request for Information (Staff's First Request) to include \$11,297.53 in material and assumed the labor costs would match, totaling \$22,595.06 per 1,000 feet.⁴²

Based on the estimates Apache received for the new construction and its estimated collections from the PRP rate, Apache claimed it could replace approximately 750 feet of the 3-inch mains each year without increasing the PRP rates.⁴³ However, Apache stated, after it determines the extent to which PRP collections exceed the debt service on its remaining PRP loans, it may request the Commission to increase the number of feet to be replaced each year, or to increase the PRP surcharge to replace the remaining 3-inch mains on a faster timeline.⁴⁴

Apache asserted that it intends to perform the replacement project with Burkesville employees and will not need to hire a contractor, which would allow Apache to complete the project in the ordinary course of business without causing any financial strains on the

³⁹ Apache's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Aug. 16, 2024), Item 4d.

⁴⁰ 2024 Annual PRP, Exhibit A.

⁴¹ 2024 Annual PRP Report at unnumbered page 2.

⁴² Apache's Response to Commission Staff's First Request, Item 4d.

⁴³ 2024 Annual PRP Report at unnumbered page 2.

⁴⁴ 2024 Annual Report at unnumbered page 2 and 3.

company.⁴⁵ Apache proposed no increase to the PRP rate in this filing, but alluded to a future request for an increase of \$1 to the PRP rate and \$0.10 increase to the PRP per Mcf rate in order to shorten the project timeline.⁴⁶

DISCUSSION

First, the Commission finds that Apache's proposed plan to include approximately 25,344 feet of pipeline replacement in the PRP should be denied at this time. In 2023, Apache collected \$20,233.45 from the PRP rate and its monthly PRP debt obligations consisted of \$2,054.71, or \$24,656.52 annually.⁴⁷ As stated above, Apache explained that there was a shortfall of \$3,900 due to warmer weather resulting in fewer sales, so it borrowed additional funds from Burkesville in order to make the monthly loan payments. However, Apache stated that it paid off one SBA loan on March 20, 2024, leaving its debt obligation going forward as \$1,187.02 monthly or \$14,244.24 annually.⁴⁸ Assuming Apache collects the same annual PRP amount it collected in 2023 from PRP rates, \$20,233.45, in 2024 and proceeding years, it would have an annual surplus of \$5,989.21 in its PRP escrow account. Apache's most recent estimate of \$22,595.06 for 1,000 feet of newly installed pipe far exceeds that estimated annual surplus from PRP rates. Further, even if Apache did not have the "shortfall" it had in 2023 and it collected \$24,656 its previous debt service, it would have a significant annual shortfall in collections for the

⁴⁵ 2024 Annual Report at unnumbered page 2.

⁴⁶ Apache's Response to Commission Staff's First Request, Item 4d.

⁴⁷ 2024 Annual PRP Report Exhibit 2023_Apache_PRP_Revenue_Summary.

⁴⁸ 2024 Annual PRP Report Exhibit 2023_Apache_PRP_Revenue_Summary and Apache's Response to Commission Staff's First Request, Item 3.

next three years whether it sought to construct 1,000 feet per year or 750 feet per year.⁴⁹ Thus, Apache would likely need to increase its PRP rate, at least in the short term, to complete the project, and Apache has provided no explanation for how the costs would be recovered in PRP rates.

Further, the Commission notes that, consistent with the ratemaking principle that costs should be allocated to the cost-causer,⁵⁰ most other pipeline replacement mechanisms calculate the mechanisms' rates in a manner that primarily allows for the recovery of a return on the net plant in service associated with the PRP investment and the depreciation of the PRP investment over the life of the assets.⁵¹ Apache's current PRP rate, on the other hand, was calculated with the intent of covering debt service payments for loans taken out for the PRP projects such that the cost of the projects were effectively expensed to customers over the life of the loans with overcollections held in escrow to cover future PRP costs or to reduce future PRP rates. This mechanism, which was implemented, in part, to facilitate Apache's ability to obtain loans for needed repairs, does not match the recovery of costs as closely to the useful life of the assets as compared to other PRP mechanisms for utilities with greater access to capital. With

⁴⁹ If it collected \$24,656 per year and had debt service payments of \$14,244 per year, it would have a surplus of about \$10,412 per year. Thus, Apache would be about \$12,183 per year short of its estimated cost of 1,000 feet per year, and assuming a pro-rata reduction of estimated costs, it would be about \$6,534 short of the estimated cost of replacing 750 feet per year.

⁵⁰ Case No. 2002-00169, *Application of Kentucky Power Company d/b/a American Electric Power for Approval of an Amended Compliance Plan for Purposes of Recovering the Costs of New and Additional Pollution Control Facilities and to Amend its Environmental Cost Recovery Surcharge Tariff* (Ky. PSC Mar. 31, 2003), Order.

⁵¹ See, e.g. Case No. 2023-00231, *Electronic Application of Atmos Energy Corporation for PRP Rider Rates Beginning October 1, 2023*, (Ky. PSC Sept. 29, 2023), Order.

limited exceptions, the Commission does not generally allow for the immediate expensing and recovery of capital projects through the PRP.

Here, while it does not appear that there will be sufficient funds to do so at the current PRP rate, as noted above, Apache appears to be proposing to cover the full capital cost of its proposed pipeline replacement project each year through collections from the PRP rate, which would generally be inconsistent with ratemaking principles. Further, to the extent that Apache plans to finance the project and propose to recalculate the PRP rate based on the addition of the debt service of that additional loan in the same manner as it calculated the rate based on the debt service of previous loans, Apache has not made that intent clear or provided any information regarding the expected terms and conditions of such a loan or the period over which the cost of the project would be expensed to customers. Apache also notes some safety issues with portions of the pipeline it is proposing to replace but is not clear whether or how Apache intends to prioritize the replacement of those sections. Without such information, the Commission is unable to find that Apache's proposal to include the proposed project in the PRP is reasonable. Thus, the Commission finds that Apache's proposal to include the project to replace the 25,344 feet of pipeline in the PRP should be denied at this time.

The Commission notes that Apache's proposal to replace the 25,344 feet of pipeline may be reasonable, and it may be appropriate to include the costs in the PRP, particularly as it relates to the remediation of pipe that is not properly covered. However, more information regarding the nature of the project, how the project will be funded, and how the project will be included in the PRP rate is required before the Commission can make a determination regarding whether the cost of the project should be included in the

PRP. As such, should Apache wish to include the replacement of the 25,344 feet of pipeline in the PRP, it should request permission to include the project in the PRP in a future annual PRP filing or in a separate application. However, nothing in this order should be construed as prohibiting Apache from making repairs necessary to maintain the safety of its system and seeking authority to recover those costs through a future rate change.

Second, while the Commission is currently denying Apache's request to include the additional proposed project in its PRP, the Commission still finds it reasonable that Apache's PRP continue at its current rate. Apache's collections from the PRP rate were approved to cover debt service payments for loans funding PRP projects, and Apache still has an outstanding loan with Kentucky Highlands Investment Corporation that it entered into on May 9, 2010, with an original principal amount of \$100,000 and a term of 120 months, resulting in a maturity date of April 1, 2029. Apache will still be required to make debt service payments on that loan in the amount of about \$14,244.24 annually for several years, and as discussed below, Apache is reimbursing Burkesville for debt service payments it was unable to make with PRP funds in 2023 due to a shortfall. As such, collections pursuant to the PRP rate are not likely to exceed Apache's debt service payments in any material amount, and to the extent that they do, Apache must continue placing any excess PRP funds in its escrow account. Therefore, the Commission finds that Apache's PRP rate continues to be reasonable for this PRP year.

Third, the Commission finds that Apache's request to reimburse Burkesville using PRP funds in the amount of \$3,900 is approved. The Commission previously approved

Apache entering into and paying the loans through the PRP surcharge and finds that the reimbursement is permitted as it uses the funds as intended.

Fourth, as discussed above, the Commission has monitored Apache's PRP surcharge since it was approved in Case No. 2017-00168, however, in reviewing Apache's tariff currently on file with the Commission, it does not reflect the *nunc pro tunc* Order entered on August 31, 2017,⁵² which instructed Apache to remove the amount "\$10,740" from the tariff language so that the tariff reads, "When Apache bills Burkesville for pipeline transportation service, it should include the PRP surcharge amount on that bill."⁵³ The Commission has reviewed the filings and accounting of the PRP in each subsequent case and it does not appear that Apache has been collecting a rate different from what the Commission has approved, and notes that Burkesville Gas's tariff⁵⁴ accurately reflects the surcharge assessed to its customers. However, in order for Apache's tariff to correctly reflect its monthly transactions with Burkesville, consistent with the Commission's orders, and to ensure compliance with KRS 278.160, the Commission finds that Apache shall file an updated tariff consistent with the Commission's *nunc pro tunc* Order issued on August 31, 2017, in Case No. 2017-00168.

Lastly, in reviewing Apache's annual PRP filing, the Commission reviewed the Operation, Maintenance and Transportation Agreement entered on November 17, 1997, between Apache and Burkesville Gas that is currently on file with the Commission, which expired on November 17, 2017. To reflect the current business agreement between

⁵² Case No. 2017-00168, Aug. 31, 2017 Order.

⁵³ Case No. 2017-00168, Aug. 31, 2017 Order.

⁵⁴ TFS2018-00106, (Ky. PSC Oct. 11, 2019), the tariff was accepted for filing by the Commission on Nov. 10, 2019.

Apache and Burkesville Gas, the Commission finds that Apache should file with the Commission an updated and valid contract between Apache and Burkesville.

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that Apache's request to include the project to replace the approximately 25,344 feet of pipeline in the PRP is denied at this time. The reimbursement of \$3,900 to Burkesville is approved, and Apache should continue to charge the surcharges consistent with the final Orders in Case No. 2017-00168 and Case No. 2018-00106. Furthermore, Apache should file an updated tariff and provide the current Operation, Maintenance and Transportation Agreement with Burkesville.

IT IS THEREFORE ORDERED that:

1. Apache's request to include the project replacing the proposed 25,344 feet of pipeline in the PRP is denied.
2. Apache shall continue to collect its previously approved PRP rate subject to the escrow terms contained in the final Orders in Case No. 2017-00168 and Case No. 2018-00106.
3. Apache shall refund the borrowed amount totaling \$3,900 to Burkesville Gas Company from excess funds in the escrow account. Any additional excess funds from the PRP rate shall remain in the escrow account until a request to use the funding has been granted or until the Commission orders otherwise.
4. Apache shall continue to file cost supports as required in Case No. 2022-00057.
5. Apache shall file its next annual PRP application with the Commission no later than June 1, 2025.

6. In the 2025 annual PRP filing, Apache shall include a status update of its exposed or inadequately buried 3-inch pipeline referenced in Apache's response to Staff's Second Request, Item 2, and separately provide the Mcf usage charges from the residential and commercial charges.

7. If Apache wishes to submit another request to include the project replacing the 25,344 feet of pipeline in the PRP, it shall provide the estimated expenses for the proposed project along with contracts, bids, the useful life of the replacement pipe, project updates, labor updates, and specific details on how the project will be funded and impact the PRP rate.

8. Within 20 days of the date of this Order, Apache shall file with the Commission, using the Commission's electronic Tariff Filing System, its revised PRP tariff that corrects the issues identified herein.

9. Within 20 days of the date of this Order, Apache shall file with the Commission, using the Commission's electronic Tariff Filing System, the current contract between Apache and Burkesville.


10. This case is closed and removed from Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman

Commissioner



Commissioner

ATTEST:

 *AP*

Executive Director

ENTERED
MAR 31 2025 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

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