

Decision 24-05-007 May 9, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Crimson California Pipeline L.P.
(PLC-26) for Authority to Increase
Rates for Its Crude Oil Pipeline
Services (SOUTHERN CALIFORNIA).

Application 22-06-017

And Related Matter.

Application 22-03-013

**DECISION GRANTING CRIMSON CALIFORNIA PIPELINE,
L.P. AUTHORITY TO INCREASE RATES ON ITS SOUTHERN
CALIFORNIA PIPELINE AND DENYING REQUEST TO
CREATE AN AB 864 MEMORANDUM
ACCOUNT AND SURCHARGE**

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Summary

This decision authorizes Crimson California Pipeline, L.P. to increase the rates charged for the intrastate transportation of crude oil on its Southern California pipeline network by 22.31% above the rates in effect prior to August 1, 2022. We further authorize the retroactive charge and collection of the difference between rates billed and the approved rate beginning January 1, 2023.

We deny Crimson's requests for a memorandum account to track Assembly Bill 864 implementation costs and a surcharge to recover those costs.

Applications (A.) 22-06-017 and A.22-03-013 are closed.

1. Background

Crimson California Pipeline, L.P. (Crimson or Applicant) is a California limited partnership authorized to do business in the State of California as a pipeline corporation as defined by Public Utilities (Pub. Util.) Code Section 228. Crimson is a limited partnership with its principal place of business located in the city of Long Beach. Crimson's general partner is Crimson Pipeline, LLC, which is wholly owned by Crimson Midstream Operating, LLC. Crimson Midstream Operating, LLC is wholly owned by Crimson Midstream Holdings, LLC, a privately held company.

Crimson owns and operates a network of six common carrier crude oil pipeline systems in Southern California. The systems total approximately 300 miles of pipeline connecting various producing oil fields in the Los Angeles Basin to refineries in Los Angeles. Its systems include crude oil pipelines and related infrastructure.

1.1. The Applications

1.1.1. Application (A.) A.22-03-013

On March 15, 2022, Crimson filed A.22-03-013. The application seeks authorization to establish a memorandum account to track costs and expenses incurred by Crimson in complying with Assembly Bill (AB) 864 and authority to impose a surcharge to recover AB 864 expenses.

AB 864 was adopted to improve protections for environmental and ecologically sensitive areas in coastal zones from spills of hazardous liquids. Crimson conducted risk modeling to determine improvements required to comply with AB 864. The total estimated cost of required improvements is \$8.555 million. Crimson projects that a \$0.14 per barrel surcharge on its Southern California system would recover that cost over a three-year period. Crimson requested that the surcharge be made retroactive to April 1, 2020.

On April 21, 2022, Phillips 66 Company (Phillips 66) protested A.22-03-013. The protest contends that Crimson's requested memorandum account, including the retroactivity provision, and surcharge are not consistent with the Commission's policy and practice regarding memorandum accounts and surcharges. It further argues that AB 864 expenses could have been addressed in Crimson's previous general rate increase applications. Crimson filed a reply to the protest on May 2, 2022.

1.1.2. A.22-06-017

On June 30, 2022, Crimson filed A.22-06-017, seeking to increase each of its individual rates on its Southern California system by 10%, from an average of \$0.7653 per barrel to \$0.8418 per barrel, effective August 1, 2022. Crimson also filed Advice Letter 50-O, seeking to implement the 10% increase August 1, 2022, subject to refund based upon the final rate approved in

A.22-06-017.¹ Advice Letter 50-O was approved, and the 10% interim rate increase took effect August 1, 2022.

On August 5, 2022, Phillips 66 protested the application on the grounds that the evidence is insufficient to substantiate the requested increase, that Crimson's costs are inflated, and that some of the basis for the increase is duplicative of the costs addressed in A.22-03-013. Crimson filed a reply on August 15, 2023.

On August 26, 2022, Crimson filed an amendment to A.22-06-017. The amendment adjusted the requested rate increase from 10% to 34.9%. On September 26, 2022, Phillips 66 protested the amendment. Crimson filed a reply to the protest on October 6, 2022.

On December 13, 2022, Crimson filed a second amendment to the application seeking authorization to establish a memorandum account to record the difference between existing rates and the final rates approved by the Commission, beginning January 1, 2023. Crimson also filed a motion for interim rate relief in addition to the 10% authorized by Advice Letter 50-O. Phillips 66 protested the amendment on the grounds that it was untimely and incomplete. Phillips 66 opposed the motion for interim rate relief.

On March 13, 2023, the assigned Administrative Law Judge (ALJ) denied the motion for interim rate relief.

1.2. Procedural Background

On March 21, 2023, a Scoping Memo and Ruling was issued. The Scoping Memo and Ruling ordered A.22-03-013 and A.22-06-017 consolidated for all

¹ Pub. Util. Code Section 455.3 authorizes oil pipelines to increase rates on an interim basis by up to 10%, subject to refund, while the Commission considers an application to increase rates.

purposes. Evidentiary hearings were held in July 2023. This matter was submitted on October 9, 2023 upon the submission of closing/reply briefs.

2. Standard of Review

The applicant bears the burden of proof. That burden requires that it establish by a preponderance of the evidence that its rate increase or proposed surcharge is just and reasonable and that the ratemaking mechanisms are fair. That burden is met when the weight of evidence in support of the application has more convincing force than the evidence to the contrary. (Decision (D.) 20-11-026 at 11.)

3. Issues Before the Commission

The Scoping Memo and Ruling identified the following issues for consideration in this proceeding:

1. Whether Crimson's request to recover AB 864-related costs via a surcharge on existing rates is just and reasonable.
2. Whether Crimson is entitled to recover AB 864-related costs and, if so, what costs should Crimson be allowed to recover.
3. Whether Crimson's AB 864-related costs were caused by an event of an exceptional nature that is not under Crimson's control.
4. Whether Crimson's AB 864-related costs could have been reasonably foreseen in Crimson's rate increase filings in June 2020 and June 2021.
5. Whether the Commission should authorize Crimson's request to establish a memorandum account to track and a surcharge to recover AB 864-related costs and, if so, what the effective date of the memorandum account should be.
6. Whether A.22-06-017 recovers costs for which Crimson is

seeking a surcharge and memorandum account treatment.

7. Whether Crimson is seeking a surcharge and memorandum account treatment for costs that should be included in A.22-06-017.
8. Whether Crimson's projected operations and maintenance costs are reasonable, and if not, what level is reasonable.
9. Whether Crimson's projected rate base is reasonable and, if not, what level is reasonable.
10. Whether Crimson's proposed cost of capital, including capital structure, cost of debt, and return on equity, is reasonable and, if not, what values are reasonable.
11. Whether Crimson's projected throughput is reasonable and, if not, what level is reasonable.
12. Impacts on environmental and social justice (ESJ) communities, including the extent to which the requested authority impacts achievement of any of the nine goals of the Commission's ESJ Action Plan.

4. AB 864 Memorandum Account and Surcharge

Crimson requests authority to establish a memorandum account to track AB 864 compliance costs. It also requests the authority to impose a \$0.14 per barrel surcharge over a three-year period to recover the cost of capital improvements required by AB 864. The parties do not dispute that AB 864 improvements are expected to cost \$8.55 million, though they disagree on the number of years required to complete the improvements.

As we address in greater detail below, Crimson faces significant financial challenges. In approving Crimson's 2020 and 2021 rate increase applications (D.22-10-009 and D.22-12-034), we observed that Crimson's requested

10% increase for each year was just and reasonable. We also observed that the projected rates of return and return on equity were significantly below those previously authorized in protested applications. Given these circumstances, we cannot fault Crimson for seeking to reduce the risk and cost of safety improvements. However, Crimson's financial situation is an insufficient basis to deviate from our standards for ratesetting. In reaching these conclusions we do not dispute that Crimson is entitled to recover the cost of AB 864 safety improvements. It is how Crimson will recover those costs that we address.

Crimson's proposed approach is inconsistent with our use of memorandum accounts and surcharges. As Phillips 66 correctly observes, we have approved memorandum accounts to track certain expenses which we then review in a subsequent rate case for inclusion in rates. We utilize a memorandum account to allow just compensation for uncertain expenses to avoid retroactive ratemaking. Here, the parties generally agree about the cost of AB 864 compliance. The element of uncertainty is not present, obviating the need for a memorandum account. Crimson's request for a memorandum account to track AB 864 expenses is contrary to our practice and is accordingly denied.

Crimson's request for a surcharge is equally inconsistent with our approach to the recovery of capital improvements. Capital improvements are an element of rate base and should be addressed via ratesetting. Crimson's proposed surcharge is essentially an effort to require its ratepayers to act as financiers for the entire project. Shippers must pay their share of transportation costs, including the costs related to capital improvements and asset depreciation. We will not require that they front the cost of improvements.

5. Appropriate Level of Operating Expenses For Inclusion in the Cost of Service

Crimson proposes total operating expenses of \$25,111,147. Phillips 66 disputes Crimson's proposal, arguing instead for a total of \$24,060,028. Figure 6 reflects Crimson's proposed operating expenses and the amounts disputed by Phillips 66.

Figure 6

Analysis Section	Operating Expense	Crimson	Phillips 66
6.1	Regulatory Compliance	\$1,020,339	\$716,917
6.2	Right of Way	\$2,137,053	\$2,298,539
6.3	Insurance	\$1,733,259	\$1,953,614
6.4	Salaries and Wages	\$6,791,612	\$6,421,599
6.4.1	Bonus Expense	\$888,174	\$923,078
6.5	Asset Maintenance	\$3,207,511	\$2,284,124
6.6	Legal	\$965,356	\$1,216,928
6.7	Rate Case Litigation	\$750,000/year normalized over a 5-year period	\$507,663
Total		\$25,111,147	\$24,060,028

The contested figures are largely a reflection of the parties' disagreement over test period adjustments to the operating expenses. The parties agree that the base year is the 12-months ending May 31, 2022 and that the test year is the 12-months ending May 31, 2023. The disputes center on the different methods used by the parties' experts in addressing the test period adjustments. Phillips 66 couches these differences as questions of law. We conclude, however, that the disputes are questions of fact that require our weighing of the expert testimony

presented by each side. As addressed below, we find that Crimson's approach to the base and test period is reasonable and supported by the evidence.

5.1. Regulatory Compliance Expenses

Crimson seeks approval of \$1,020,339 in regulatory compliance costs. Crimson's application initially sought \$804,325 in regulatory compliance costs. However, Crimson increased the amount to reflect actual data gathered during the base and test period through March 2023. Crimson's evidence established that regulatory compliance costs, such as annual fees due to the Office of the State Fire Marshal and AB 864 compliance, have increased. Crimson's witnesses and evidence support the reasonableness of its proposed figures.

Phillips 66 disputes that amount, proposing instead \$716,917. Its expert, Mr. Tolleth, opines regulatory compliance costs have historically spiked and fallen in an irregular pattern due to emergencies or specific compliance needs. Instead of using the base and test period expenses through March 2023, Mr. Tolleth utilizes historical data over several years, including a portion of the test period, to reach his conclusion.

The record does not support Mr. Tolleth's assertion that the regulatory costs have risen and fallen in an irregular pattern such that his historical averaging method is applicable. While Phillips 66 argues that Crimson "cherry picks" data to support its proposed costs, the record supports a similar conclusion regarding Phillips 66's cost proposal. We are unpersuaded by the argument that averaging cost data to include some portion of the test period, as Mr. Tolleth does, is a more reliable or accurate method than Crimson's, which considers more of the test period.

The evidence demonstrates a consistent increase in total regulatory compliance costs year over year. Crimson has identified ongoing compliance cost increases which support its figures. We find that the testimony and evidence provided by Crimson establishes, by a preponderance of the evidence, the reasonableness of its proposed regulatory compliance costs. We adopt a cost of \$1,020,339 for regulatory compliance.

5.2. Right of Way Expense

Crimson seeks \$2,137,053 in right-of-way expense for its cost of service, based upon costs it incurred during the 12-month period ending March 2023. Crimson's proposal is less than the \$2,298,539 proposed by Phillips 66. Crimson originally proposed a right-of-way expense of \$2,478,578, including a \$180,039 test period adjustment to account for a right-of-way fee dispute. Phillips 66 disputed the test period adjustment due to uncertainty regarding the outcome of the right-of-way dispute. Crimson settled the right-of-way dispute before the evidentiary hearing.

Crimson subsequently adjusted its right-of-way expense based upon its incurred costs during the 12-months ending March 2023, which also reflects the settlement. Crimson's proposed estimate is reasonable. We accept that adjustment and adopt \$2,137,053 as the right-of-way expense.

5.3. Insurance Expense

Crimson proposes \$1,733,259 based upon actual insurance expense it incurred during the 12-months ending March 2023. Phillips 66 recommends \$1,953,614. Phillips 66's number reflects the base period level agreed upon by the parties, rather than the updated figure Crimson submitted which reflects a portion of the test period.

Consistent with our findings above, we find that Crimson's methodology is reasonable and supported by the record. We adopt a proposed insurance expense of \$1,733,259 which is reasonable based upon the record.

5.4. Salaries & Wages

Crimson recommends salaries and wages costs of \$6,791,612. Crimson originally sought \$6,889,713 based upon an actual base period expense of \$5.9 million and a test period adjustment of \$971,000 for increased staffing and employee salary increases. During the 12-months ending March 2023, Crimson's staffing levels did not increase as projected. Effective March 12, 2023, Crimson implemented a 6% merit-based salary increase. Crimson's \$6.791 million proposal reflects the reduced staffing and a test period adjustment to account for the wage increase.

Phillips 66 disputes \$477,117 in general and administrative bonus expenses attributed to Account 500, recommending a total salary and wage cost of \$6,412,598. As we resolve the question of bonuses in Crimson's favor below and find Crimson's salary and wages projections reasonable, we adopt Crimson's amended salaries and wages cost of \$6,791,612.

5.4.1 General & Administrative Bonuses

Crimson's expert Dr. Webb initially recommended a Test Period bonus level of \$795,466. That number was later revised to \$888,174 to reflect actual bonus expenses during the 12-months ending March 31, 2023 plus a Test Period adjustment of \$166,361. Phillips 66 only contests the General & Administrative Bonus figure, recommending not more than \$318,349. Phillips 66 proposes to use historical data for the period 2017 to 2020 to determine bonus expenses.

Phillips 66 also proposes to exclude Crimson's stock-based executive bonus program. (Phillips 66 Opening Brief at 51.) Phillips 66 misconstrues our

past decisions on stock-based executive incentives. We have consistently held that these programs are evaluated based upon benefit to ratepayers. (see D.15-11-021 at 266, D.19-05-020 at 188 finding that an electric utility had failed to establish a stock-based incentive aligned with ratepayer interest.) The interests of Crimson's ratepayers, large multinational oil companies, differ greatly from the ratepayer-consumers of water, electricity, and natural gas service. We find that Crimson's purpose for establishing the stock-based incentive program benefits ratepayers by improving Crimson's ability to recruit and retain managers and executives in a complex and declining industry. We also find that it benefits the people of the State of California and our complex, fragile environment by ensuring that oil pipelines are operated in a manner that promotes compliance with safety standards.

Crimson presented testimony and evidence that undermines the accuracy of a historical average. Crimson cut bonuses in half in 2019, underwent various ownership and management changes, and deferred bonus payments that skewed the accuracy of a historical average. We find Crimson's calculations credible and its proposed cost reasonable. We find that the stock-based bonus program is reasonable. We accept Crimson's bonus expense of \$888,174.

5.5. Asset Maintenance Expense

Crimson recommends an asset maintenance expense of \$3,207,511 based upon its actual asset maintenance expenses during the 12-month period ending March 2023, plus a Test Period adjustment of \$1,082,149 to reflect expense increases for projects planned for the test period. Phillips 66 recommends an asset maintenance expense of \$2,284,124 based upon an average of Crimson's asset maintenance expenses for the period 2017-2021.

Crimson presented evidence of increasing regulatory obligations creating expenses that did not exist during the 2017-2021 period. In Crimson's prior rate case, D.20-11-026, we rejected the shipper's proposal to utilize historical averages to determine asset maintenance costs.

Crimson's rationale for calculating its asset maintenance expense in this application is reasonable. We adopt an asset maintenance expense of \$3,207,511.

5.6. Legal Expense

Crimson proposes legal expense of \$965,356, which reflects its actual legal expense for the 12-month period ending March 2023, minus rate-case litigation expense. Phillips 66 argues for a non-rate case litigation legal expense of \$1,216,928, based upon legal expense during the base period. The difference between the recommendations again reflects the parties' differing use of base and test period data. Consistent with our findings above, we find that Crimson's methodology is reasonable and adopt the \$965,356 legal expense.

5.7. Rate Case Litigation Expense

Crimson seeks \$750,000 to recover rate case litigation expense, based upon a cost of \$3.75 million amortized over five years. The request and methodology are the same as those which were approved in D.20-11-026. Phillips 66 opposes inclusion of rate case litigation expense on the grounds that they do not "further the objective of safe and reliable service at just and reasonable rates." (Phillips 66 Opening Brief at 71.)

We disagree. Rate case litigation expenses are necessary to establish reasonable rates and are expenses which we have approved in the past.

In the alternative, Phillips 66 proposes a rate case litigation expense of \$507,663, reflecting \$157,663 in actual base period litigation costs plus a \$350,000 test period adjustment. Phillips 66 argues that the burden of proof that this

element of the expense requires is proof beyond a reasonable doubt; that is, so long as Phillips 66 raises a reasonable doubt about Crimson's methodology that Crimson is unable to overcome, we must rule against Crimson. Proof beyond a reasonable doubt is the highest standard of proof in our legal system, reserved for criminal matters in which individual liberty is in jeopardy. The Commission recognizes the propriety of a preponderance of evidence standard in utility rate-setting. We decline to depart from that historically rooted practice here.

We find, by a preponderance of the evidence, that Crimson's methodology and figures are reasonable and adopt a rate case litigation expense of \$750,000.

5.8. Overall Operating Expense Level

Based upon the foregoing, we adopt a total operating expense of \$25,111,147. Figure 6.8 summarizes our findings on the disputed costs and the total operating expense level.

Figure 5.8

Analysis Section	Operating Expense	Adopted
6.1	Regulatory Compliance	\$1,020,339
6.2	Right of Way	\$2,137,053
6.3	Insurance	\$1,733,259
6.4	Salaries and Wages	\$6,791,612
6.4.1	Bonus Expense	\$888,174
6.5	Asset Maintenance	\$3,207,511
6.6	Legal	\$965,356
6.7	Rate Case Litigation	\$750,000/year normalized over a 5-year period
Total		\$25,111,147

Based upon the foregoing, we adopt Crimson's proposed operating expense of \$25,111,147.

6. Rate Base

Crimson proposes a total rate base -- reflecting historical/base period and test period adjustments --- of \$54,223,566.² Phillips 66 disputes several elements of Crimson's proposal, reducing the total rate base to \$43,499,515. Figure 7 reflects the proposed figures and disputed elements.

Figure 6

Historical/Base Period	Crimson	Phillips 66
Historical Rate Base	\$33.1 million	\$33.1 million
AFE 70797&70864	Include \$1.975 million	Exclude all costs
2019 THUMS 10-Inch Transfer (Cardinal System)	Include \$5,282,796 in Costs Associated with the Asset Transfer	Exclude all costs, or reduce to \$3,507,987 to reflect depreciation
Test Period		
AFE 70774	Include \$6,173,786	Exclude all costs
Total Rate Base	\$54,223,566	\$43,499,515 if AFE 70774 is excluded; or, \$47,007,502 if AFE 70774 is included and depreciated

The parties agree that, per D.20-11-026, the total gross carrier property in service (CPIS) and accumulated depreciation balances at the end of 2015 were \$33.1 million.

² Crimson proposed an alternative figure of \$53,877,380 if an AB 864 memorandum account and surcharge were granted. As we have denied those requests in Section 4 above, we address Crimson's proposal that includes AB 864 costs.

Crimson originally proposed an additional \$2.6 million for its AFE 70051 project facilities. The parties agree that this amount should not be included in the rate base as the costs were reimbursed by a third party. There is a dispute as to Crimson's ability to seek recovery in future proceedings related to unreimbursed costs associated with the project. As Crimson is not currently seeking recovery related to AFE 70051, we need not, and do not, address what Crimson may or may not seek in a future rate case.

6.1. Standard for Inclusion of Capital Expenditures in Rate Base

In D.20-11-026, we applied a three-step process for determining the rate base of assets acquired by Crimson. The first step is to determine when and by whom the assets were initially placed into public service. We then determine the rate base value of the assets at the time they were placed into public service. Finally, we adjust the rate base value by adding capital expenses incurred to place the assets into service and maintain them, and by subtracting annual depreciation charges.

6.1.1 70797 and 70864

The dispute over AFE 70797 and AFE 70864 centers on the first question, i.e., when were the assets placed in public service? In December 2018, Crimson purchased the two pipeline segments identified as AFE 70797 from Chevron. At the time of purchase, one segment was idle and the other active. Crimson made the first segment available to shippers upon purchase. AFE 70864 involved construction activities necessary to activate the idle segment, which were completed in July 2020. The segment was made available to shippers at that time. Phillips 66 contends that the pipeline segments have not been placed in public service because, to date, no oil shippers have utilized the segments.

The question before us is whether an asset made available for public service, but unused by the public, has been placed in public service for purposes of inclusion in rate base. The parties agree that the applicable standard for determining whether the assets have been placed in public service such that they may be included in rate base is the “used and useful” standard, as described in our decisions D.12-06-040 and D.18-12-021, involving assets of water utilities.

In D.84-09-089,³ we addressed the “used and useful” principle, noting that utility property must actually be in use and providing service in order to be included in a utility’s rate base. In each of the water utility proceedings cited by the parties, we addressed assets held in back-up, reserve, or other status by the utility. The water utility, and not its customers, was responsible for determining the status of the asset. The utility made the determination to idle the asset, to hold it as backup or emergency reserve, or to discontinue use of the asset. The ratepayers had no influence over the usefulness of the asset.

The pipeline segments in question here are fully available for customer use. There is no dispute that the assets are useful to shippers. Phillips 66 argues that because shippers have not yet elected to utilize the pipeline segments, Crimson is not entitled to include the pipeline in its rate base. We disagree. For purposes of evaluating pipeline assets, shipping volumes are but one factor to consider. Other factors include the length of time that the segment has been available and unused, why shippers have not utilized the segment, and how quickly the asset may be put to use by a shipper. Where the facts suggest that the segment has gone unused for a significant period of time or the pipeline segment

³ 16 CPUC.2d 205, 228, 1984 Cal. PUC LEXIS 1013, 71-72.

is not readily available to meet shippers' demand, an asset is less likely to satisfy the used and useful standard.

In the present case we find that the pipeline segments in question are readily available to meet the demand of shippers and have been for a reasonably short period of time. Accordingly, we find AFE 70797 and 70864 satisfy the used and useful standard and are appropriate for inclusion in rate base.

6.1.2 THUMS 10-Inch Assets Transferred To Crimson from Cardinal Pipeline

In 2019, Cardinal Pipeline transferred its THUMS 10-inch pipeline systems (Cardinal System) to Crimson. The Cardinal System operated as a proprietary system prior to the asset transfer. It was not placed into service as a public utility until its acquisition by Crimson. Crimson seeks to value the Cardinal System based upon its value at the time of acquisition minus depreciation from that date. Phillips 66 contests inclusion of the Cardinal System on procedural grounds. If its procedural arguments are rejected, Phillips 66 argues that the value of the Cardinal System should be depreciated from 2010, when it initially came into service for Cardinal.

Phillips 66 argues that the Cardinal System was not addressed until Crimson filed rebuttal testimony and that it should be excluded based upon our past decisions excluding from consideration items raised for the first time on rebuttal. Phillips 66 is correct that in the past we have imposed exclusion as a remedy against applicants who "sandbag" protestants by waiting until rebuttal to raise items for consideration. However, exclusion is a remedy of last resort. Our procedural rules and processes are intended to promote a fair process. Nothing in the record suggests Phillips 66 was denied the ability to fully evaluate the Cardinal System, to present testimony and evidence on the subject, or to

present direct or cross-examination testimony on the subject. Phillips 66 made no prehearing motions to exclude or limit the use of the Cardinal System information prior to the evidentiary hearing and it did not request additional time or leave to file additional testimony on the subject. In fact, Phillips 66 presented testimony evaluating and contesting Crimson's treatment of the Cardinal System. Crimson's inclusion of detailed information about the Cardinal System in rebuttal was appropriate. Phillips 66 is not denied a fair proceeding by our considering it.

Crimson recommended a cost value of \$5.3 million for the Cardinal System, reflecting the cost at the time the asset was placed into public service minus depreciation from that date (2019). Phillips 66 argues that the Cardinal System should be depreciated by an additional \$1.77 million for the period 2010-2019. Both sides point to our decision in D.20-11-026 as support for their position. In that decision, we evaluated for rate base purposes the value of two systems purchased by Crimson. Each system had been used in private service by its prior owners before its sale to Crimson. At the time of the transfer, each system had been idled for several years. The systems remained idled for a period of years before Crimson placed them in public service. We concluded that the value of the systems was based upon their purchase price. We did not include depreciation for the period of time during which the assets were idled by Crimson.

Notably, D.20-11-026 involved a sale by a third party to Crimson. The sale of an asset from one party to another inherently accounts for depreciation. The purchaser of a used car does not pay the original sticker price, they factor mileage, wear and tear, damage, etc. into a fair cost. By utilizing the purchase price, our decision in D.20-11-026 necessarily accounted for the depreciation from

initial construction to the date of sale. We did not depreciate the assets between the purchase and dedication to public service because the systems were idled. In doing so, we did not, as Crimson's testimony suggests, create a special rule for accounting for depreciation of assets converted from private to public use.

Crimson's \$5.3 million recommended valuation reflects the purchase price of the Cardinal System in 2010, plus the capital improvements by Cardinal prior to the transfer to Crimson, minus depreciation since 2019 when the system entered public service. The system was in operation by Cardinal as a private system until its transfer to Crimson in 2019. Between 2010 and 2019 the Cardinal System was not idle. Accordingly, its value depreciated. The system was transferred by Cardinal to its sister company Crimson. There was no purchase. Unlike the assets addressed in D.20-11-026, there was no intervening event that accounted for the depreciation from the 2010 purchase price plus improvements. The record is clear that the assets depreciated in value during the period of use by Cardinal. Accordingly, we reduce the rate base of the Cardinal System by \$1.77 million to reflect the 2010-2019 depreciation.

6.2. Test Period Adjustments to the Rate Base

The parties agree on each of Crimson's proposed test period adjustments to Rate Base with the exception of \$6.173 million associated with AFE 70774, the Ventura Pipeline Consolidation Project. Crimson expects annual cost savings once the project becomes operational.

The Ventura Pipeline Consolidation was expected to be completed within the test period. The original completion date of December 2022 was delayed due to unforeseen factors, including increases in the required electrical work and unexpected weather conditions. Crimson expected the project would be

completed in the third quarter of 2023. Crimson's witnesses acknowledged, however, that they were not certain when the project would be completed. Crimson points to D.18-12-021 as support for including the unfinished project in rate base. Phillips 66 argues that the project's completion date is speculative as is the final cost of the project and expected annual savings. Phillips 66 argues that the project should be deferred for consideration in Application (A.) 23-06-022, Crimson's application to raise rates effective August 1, 2023.

As noted above, "used and useful" is our standard for inclusion in rate base. In D.18-12-021 we addressed used and useful in the context of a Class A water utility's general rate case. Class A water utilities, unlike oil pipeline corporations, file General Rate Cases on a three-year cycle in accordance with statute and the Commission's plan for water utility rate cases. In D.18-12-021, we allowed certain assets to be included in rate base where we found they were likely to be used and useful during the three-year cycle for which rates were being set. In that decision we also disallowed another asset because we could not determine when it would return to service.

Here, there is no dispute that the asset was not used and useful at the time the record was closed in this proceeding. We are not setting rates on a three-year cycle, and a new rate application was pending prior to the closure of the record in this proceeding. Rather than speculate as to when the project will become used and useful, we defer consideration of the project costs and savings to A.23-06-022. Accordingly, we do not include the AFE 70774 test period adjustment of \$6.173 million.

6.3. Total Rate Base

We establish a total rate base of \$46,274,971, reflecting the total historical/base rate and test period adjustments requested by Crimson minus the

\$1.77 million depreciation of the Cardinal System and the \$6.173 million AFE 70774 project. Figure 6.3 summarizes the rate base calculation.

Figure 6.3

Historical/Base Period	Decision	Reduction to Crimson's Proposed \$54,223,566 Total Rate
AFE 70797&70864	Include \$1.975 million	\$0.00
2019 THUMS 10-Inch Transfer (Cardinal System)	Reduced the proposed value to reflect depreciation	\$1,774,809
Test Period		
AFE 70774	Exclude all costs and defer for consideration in A.23-06-022	\$6,173,786
Total Rate Base	Reduce Proposed Total Rate Base by \$7,948,595	\$46,274,971

7. Cost of Capital

7.1. Capital Structure and Cost of Debt

In D.20-11-026, we approved a 60% equity, 40% debt capital structure for Crimson and an 8.8% cost of debt. Crimson proposes the same capital structure and cost of debt in this proceeding. Phillips 66 opposes Crimson's proposal, arguing for 55% equity, 45% debt capital, and a 6.99% cost of debt.

Phillips 66's proposed capital structure is rooted in its expert Mr. Upton's opinion of the relationship between Crimson's parent, CMO, and the minority owner of CMO, CorEnergy. His opinion was contradicted by Crimson's expert, Dr. Webb. Two primary considerations define the evaluation of expert testimony: (1) the qualifications of the expert (training, experience) and, (2) the facts upon which the opinion is based. The opinion of an expert with the highest academic credentials and extensive experience in a particular field may be rejected where

the facts upon which the opinion is based are not established to the satisfaction of the trier of fact.⁴

Mr. Upton's opinion was based upon several facts that were not established by the evidence. His opinion was supported by three factual conclusions: (1) That CorEnergy is the parent company of CMO; (2) That Crimson has benefitted from CorEnergy's debt; and (3) That Crimson has access to additional debt through CorEnergy.

CorEnergy is a minority owner of CMO and not the parent company. In D.22-12-032, we rejected CorEnergy's application to assume exclusive control of Crimson, leaving John Grier in exclusive control. The facts established by a preponderance of the evidence that Crimson did not benefit from CorEnergy's debt. Crimson could not access CorEnergy's debt. CorEnergy cannot provide additional funding to CMO/Crimson because it would require CorEnergy to assume an increased ownership stake in CMO. CorEnergy cannot assume a larger ownership stake without assuming a controlling interest, in violation of D.22-12-032.

Mr. Upton's use of CorEnergy's capital structure and cost of debt to reduce Crimson's cost of debt and alter its capital structure is based upon facts that have been disproven. Accordingly, his opinion must be rejected. Dr. Webb's proposal on behalf of Crimson is reasonable, particularly in light of our previous decision. We adopt a capital structure of 60% equity and 40% debt and an 8.8% cost of debt.

⁴ See *Jennings v. Palomar Pomerado Hospital* (2003) 114 Cal.App.4th 1108, 1117 "... an expert's opinion based on assumptions of fact without evidentiary support...has no evidentiary value... [citations omitted].

7.2. Return on Equity

Crimson proposes a return on equity (ROE) of 12.45%. 11.45% of Crimson's proposal is developed based upon an evaluation of the investment returns at other companies. Dr. Webb utilized methodology for developing the group of comparison companies and an evaluation of the returns their investors receive on their investment that we approved in D.20-11-026 and D.22-10-009. Mr. Upton utilized different methods to develop a different group of proxy companies. Mr. Upton's selection resulted in a significantly lower ROE recommendation, 9.59%.

We observe that a 9.59% ROE is significantly lower than the 11.2% approved in D.20-11-026. We are not persuaded by Mr. Upton's testimony that investment in Crimson is a significantly lower risk to investors. We find that Dr. Webb's rationale for his proxy group is sound and approve the 11.45% ROE derived therefrom.

Crimson requests an additional 1% in ROE as a "risk adder." Crimson argues that it faces greater risk than the companies in the proxy group, justifying an enhanced investment return. Crimson points to three factors in support of its position: (1) That it transports crude oil through populated and environmentally sensitive areas while the proxy group primarily transports products through uninhabited areas; (2) California state policy promotes a long-term decline in crude oil production while many proxy group members have no California operations; (3) Crimson has more commercial risk due to a lack of long-term contracts to provide a guaranteed revenue stream.

Crimson's request for a similar risk adder of 3.5% was rejected in D.20-11-026 on the grounds that it was subjective and unsupported by a calculation that analytically justifies the adder amount chosen. While Crimson

has endeavored to provide more analysis to justify the proposed figure, we find that the proposed risk adder continues to reflect a subjective analysis of risk claims rather than quantifiable analysis. Accordingly, we do not approve the 1% risk adder and fix Crimson's ROE at 11.45%.

7.3. Weighted Average Cost of Capital

Crimson proposes a weighted average cost of capital of 10.99%, based upon a 60% equity/40% debt capital structure, an 8.8% cost of debt, and a return on equity of 12.45%. Phillips 66 recommends a weighted average cost of capital of 8.42%, based upon its proposed 55% equity/45% debt capital structure, a 6.99% cost of debt, and a 9.59% return on equity. As discussed above, we do not adopt Phillips 66's proposed capital structure, cost of debt, or return on equity. We have reduced Crimson's proposed return on equity by 1% but have otherwise adopted its proposal. Accordingly, we adopt a weighted average cost of capital of 10.39%.

8. Revenue Credits

8.1. Pipeline Loss Allowance Revenue Credit

Crimson applies a 0.25% pipeline loss allowance (PLA) to compensate for losses that occur while transporting shippers' oil via its systems. Those losses may be attributable to a number of causes. Actual losses in shipping can be less than the 0.25% estimated PLA. When that happens, Crimson sells the excess crude oil on the market. The revenue from those sales is credited against Crimson's costs.

Calculating the PLA revenue credit requires estimating the volume of crude oil Crimson will sell and the market price for those sales. Estimating a higher volume and/or sale price will result in a larger PLA revenue credit and vice versa. Crimson proposes two PLA revenue credit figures based upon

projected declines in shipping volumes: \$6 million if volumes decline by 11.53% and \$6.5 million if volumes decline by 4%. Phillips 66 proposes a PLA revenue credit of \$7,944,863. The difference between the proposals lies in the methodology used to determine volumes and market prices.

Calculating volumes is complicated by an outage at the Beta Offshore Station during portions of the base and test period. The outage resulted in temporarily reduced transportation volumes beginning October 2021 and continuing through April 2023. Beta production resumed in late April 2023 and shipping resumed.

Crimson's 4% reflects actual test period volumes through the end of May 2023, including actual volumes shipped from the Beta Station after it resumed production. We find this number to be more reliable than the 11.53% decline projection Crimson offers, which adds projections through April 2024 to the test period numbers. We also find it to be more reliable than Phillips 66's proposal, which relies upon calendar year 2022 transportation volume and then adds 12 months of Beta production at an assumed 4,500 barrels per day. Accordingly, we adopt a \$6.5 million PLA Revenue Credit.

8.2. Commission Tariff 109 Revenue Credit

Crimson and Phillips 66 propose different amounts for the Commission Tariff 109 Revenue Credit. The differences reflect the differences in their approaches to determining transportation volumes. Crimson proposes a credit of \$644,303 based upon its 4% volume decline model. As explained above, we accept that model and therefore adopt a Tariff 109 Revenue Credit of \$644,303.

8.3. Non-Transportation Revenue Credit

Crimson and Phillips 66 agree that Crimson receives other non-transportation revenues that should be credited against its cost of transportation. As is the case with the PLA and Tariff 109 Revenue Credits, the parties offer different proposals based upon their different methods of calculating transportation volume. As we have adopted Crimson's 4% volume decline model, we accept Crimson's proposed \$256,266 non-transportation revenue credit based upon that model.

8.4. Total Revenue Credits

Based upon the foregoing, Crimson's total revenue credits are fixed at \$7.4 million.

9. Transportation Volume and Revenue

As addressed in section 9.1 above, Crimson proposes several alternative transportation models, ranging from a projected decline in transportation volumes of 4% to 11.53%. Phillips 66 urges us to adopt higher transportation volumes. For the reasons explained in section 9.1, we adopt Crimson's 4% decline proposal, for a total shipping volume of 26,838,880 barrels.

10. Test Period Cost of Service and Rate

We have made significant adjustments to Crimson's proposed cost of service. Those include reducing the total rate base by \$7.948 million and reducing the weighted cost of capital. We have not adopted Crimson's proposed 11% shipping volume decline. We have rejected the proposed AB 864 memorandum account and surcharge requested in A.23-03-013, but we have included AB 864 costs in the total cost of service. For the reasons outlined above, we have otherwise accepted Crimson's proposal, and the rationale underlying it, as reasonable and appropriate. Accordingly, we find that the appropriate Test

Period Cost of Service for Crimson's SoCal system is \$25,199,167. This results in a 22.31% rate increase over rates effective prior to August 1, 2022.

11. Retroactive Charge and Collection

Pub. Util. Code Section 455.3, subdivision (b)(5) allows the Commission to authorize retroactive charges and collection of the difference between the 10% interim rate increase and the final rate increase. Crimson's shippers, including Phillips 66, are entitled to protest and vigorously challenge rate increase proposals. The Commission is committed to ensuring that all parties are afforded full and robust opportunities to disagree. We also recognize that, unlike other regulated utilities, interim rates for oil pipeline corporations are subject to statutory limits. Oil pipelines are not subject to rate cycles that provide other utilities full adjudication of their proposed rates prior to the proposed effective date. Robust consideration of the protest in this proceeding should not result in a windfall to shippers or loss to Crimson. Accordingly, we find it appropriate to authorize Crimson to retroactively charge and collect rates.

Crimson's application initially proposed a 10% rate increase effective August 1, 2022, the full amount of the interim rates that took effect on August 1, 2022. Crimson proposed a substantially higher rate increase only after Phillips 66's protest was filed. Crimson has proposed that retroactive charges be authorized effective January 1, 2023. We find that date appropriate and authorize Crimson to charge and collect the difference between the collected rates and the approved rates retroactive to January 1, 2023.

12. Environmental and Social Justice

The Commission first adopted an Environmental and Social Justice Action Plan (ESJ Action Plan) in 2019. We adopted an updated ESJ Action Plan in April 2022. The ESJ Action Plan establishes nine goals related to health and safety,

consumer protection, program benefits, and enforcement in all of the sectors regulated by the Commission.

The overarching purpose of the ESJ Action Plan is to improve environmental and social justice for disadvantaged communities, Tribal lands, and low-income households (ESJ Communities). The Commission recognizes that historically ESJ Communities have been disproportionately harmed by environmental damage. It also recognizes the need to ensure that those communities are not overly burdened by the cost of efforts to improve and protect our environment.

The approved rate includes funding to implement AB 864, new environmental standards aimed at mitigating and preventing environmental damage from pipeline breaches. Unlike the cost of environmental protection in other regulated sectors, the direct cost of AB 864 measures will not be borne by individual ratepayers. The costs will be paid by the shippers utilizing the oil pipelines. We find that enhanced environmental protection, with no direct cost to ESJ Communities, advances the goals of the ESJ Action Plan.

13. Interim Rate Relief

On December 13, 2022, Crimson filed a motion seeking interim rate relief. In a March 13, 2023 ruling, the Administrative Law Judge denied the request. We affirm that denial. Pub. Util. Code Section 455.3 provides authority for oil pipeline corporations to impose interim rate increases while the Commission considers an application for a permanent rate increase. Unlike other utilities, oil pipelines are entitled to an interim rate increase of up to 10% per 12-month period, subject to 30 days' notice to shippers and the Commission. The Commission's authority regarding the interim increase is limited to requiring a delay of up to 30 days beyond the required notice period. The interim increase is

subject to refund upon the Commission's final determination of the rate increase application. Uniquely, the statute also allows the Commission to authorize retroactive collection of the difference between the final approved rate and the interim rate.

Section 455.3 is clear in exempting oil pipeline corporations from any other statutory or regulatory scheme available to other classes of utilities seeking interim rate relief while a rate increase is pending. We recognize that Crimson has advanced similar requests for interim and/or emergency rate relief in other proceedings (*see* A.16-03-009 et al. and A.22-07-015 et al.). Absent a change to the statutory scheme, we consider this matter settled and direct oil pipeline corporations to proceed accordingly.

14. Civility

In 2009, the State Bar of California issued a civility toolbox for attorneys. The toolbox was the culmination of several years' work by the Bar and the Attorney Civility Task Force. The toolbox includes Civility Guidelines adopted by the State Bar Board of Governors. Effective in 2014, the California Supreme Court amended the oath of admission for new attorneys to include a commitment to dignity, courtesy, and integrity (Cal. Rules Ct. 9.7.) While not mandatory for California attorneys, the Civility Guidelines set forth the standards of behavior expected of members of the legal profession.

We recognize that not all attorneys appearing before the Commission are regulated by the California bar and that some parties are represented by non-attorneys. Nevertheless, we fully endorse the Civility Guidelines as the expected standard of behavior for those appearing before us.

We are concerned when counsel uses hyperbolic language to attack an opponent or their arguments. Here we do not highlight specific uncivil or

discourteous comments in the various briefs and pleadings filed in this proceeding. We do note that the briefing in this proceeding at times was hyperbolic and unnecessarily aggressive. We caution against such language and encourage counsel to take note of those instances where we have ruled against a party on points where such language was used.

15. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No member of the public submitted comments to the Docket Card.

16. Procedural Matters

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

Counsel filed several motions requesting authorization to file briefs under seal. Each party filed motions to file confidential versions of their opening and reply briefs. Crimson requested to file a confidential version of its September 11, 2023 motion for leave to late file its closing brief and its October 25, 2023 motion to strike. On August 10, 2023 the parties filed a joint stipulation that included a list of all exhibits received in evidence. That list is incorporated by reference. It identifies some exhibits as Privileged or “HC Protected” (Highly Confidential). Portions of the hearing were held in a confidential session. The transcript for those sessions has been marked as confidential. “Highly Confidential” or Privileged testimony was also filed.

The have requested that portions of their comments on the proposed decision be received under seal.

The parties represent that the briefs, motions, exhibits, transcripts and comments described above include sensitive information, the disclosure of which could place either or both of the parties at an unfair business disadvantage. Accordingly, the documents are ordered sealed and shall remain confidential.

17. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Jacob L. Rambo in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 23, 2024 by Crimson and Phillips 66, and reply comments were filed on April 29, 2024 by Crimson and Phillips 66.

On April 23, 2024, Phillips 66 also filed a motion to set aside the proposed decision in order to reopen the record for the purpose of taking official notice. We resolve Phillips 66's motion in paragraph 16 above and note that the motion is untimely and that the issue was thoroughly addressed during the evidentiary hearings, in written testimony, and in briefing.

Phillips 66 comments restate factual and legal arguments it made during the briefing stage. The decision reflects our review and determination of those arguments.

Crimson's opening comments support the proposed decision with two requested modifications. Crimson asks that Conclusion of Law 5 be modified to allow it to collect interest on the authorized retroactive charges. Crimson asks that Ordering Paragraph 5 be modified to require that Crimson file an Advice Letter detailing the process for billing and collecting the retroactive rate relief

authorized by this decision. Phillips 66 objects to the authorization of interest on the grounds that Crimson did not address interest on the retroactive charges until it's filed its opening comments.

We agree with Phillips 66 that, based upon the particular procedural facts of this proceeding, interest on the retroactive charges is not appropriate. Parties seeking authorization to impose retroactive charges under Pub. Util. Code Section 455.3 must, at a reasonable time prior to the close of the record, address every element of its retroactive charge request, including whether the applicant seeks to collect interest on the retroactive charge.

Ordering Paragraph 5 has been modified to reflect the additional Advice Letter requirements proposed by Crimson.

18. Assignment of Proceeding

Matthew Baker is the assigned Commissioner and Jacob L. Rambo and Patricia Miles are the co-assigned ALJs in this proceeding.

Findings of Fact

1. Crimson owns and operates a network of common carrier crude oil pipeline systems in Southern California through which it provides transportation service for crude oil for shippers, including Phillips 66.
2. Crimson anticipates incurring significant costs to improve its system in order to comply with AB 864.
3. The volumes shipped on Crimson's system are anticipated to decrease by approximately 4% for a total of 26,838,880 barrels transported.
4. Crimson's operating costs are \$25,111,147.
5. Crimson's rate base is \$46,274,971.
6. Crimson is entitled to a weighted average cost of capital of 10.39%.
7. Crimson's revenue credit is \$7,400,569.

8. A rate increase advances the goals of the ESJ Action Plan 2.0 by improving environmental protection without direct cost to ESJ Communities.

9. Confidential versions of the parties' opening and reply briefs, the motion for leave to file a late brief, motion to strike, confidential portions of the hearing transcript, privileged and highly confidential protected exhibits, confidential testimony, confidential portions of the comments and reply comments could place either or both parties at a significant business disadvantage if disclosed.

Conclusions of Law

1. A memorandum account and surcharge to track and recover AB 864 related costs is inconsistent with Commission policy and practice.

2. The shipping volumes, operating expenses, rate base, weighted cost of capital, and revenue credits applied above are reasonable and supported by a preponderance of the evidence.

3. A total rate increase of 22.31% above the rates in effect prior to August 1, 2022 is reasonable, supported by a preponderance of the evidence, and necessary to ensure Crimson achieves a reasonable rate of return.

4. Pub. Util. Code Section 455.3 is the exclusive authority for granting interim rates to oil pipeline corporations while an application to increase rates is pending.

5. Collection of the difference between the rates charged and collected and the rate authorized beginning January 1, 2023 is reasonable.

6. The confidential versions of the parties' opening and reply briefs, the motion for leave to file a late brief, motion to strike, confidential portions of the hearing transcript, privileged and highly confidential protected exhibits, confidential testimony, and confidential portions of the comments and reply comments should remain confidential and held under seal.

O R D E R

IT IS ORDERED that:

1. Crimson California Pipeline, L.P. is authorized to increase rates by 22.31 percent above the rates in effect prior to August 1, 2022.
2. Crimson California Pipeline, L.P. is authorized to retroactively charge and collect the difference between the rates charged and collected beginning January 1, 2023 and the rates approved in this proceeding.
3. Crimson's request for a memorandum account to track Assembly Bill (AB) 864 implementation costs and a surcharge to recover AB 864 costs is denied.
4. The confidential versions of the parties' opening and reply briefs, the September 11, 2023 motion for leave to file a late brief, the October 23, 2023 motion to strike, those portions of the hearing transcript marked confidential, those evidentiary exhibits marked privileged and/or highly confidential protected, written testimony marked confidential, and the confidential portions of the comments and reply comments shall be held under seal for a period of three years from the date of this decision. During this three-year period this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If either Crimson California Pipeline, L.P., or Phillips 66 Company believes that it is necessary for this information to remain under seal for longer than three years, it may file a motion showing good cause for extending this order. Such motion shall be filed no later than 30 days before the expiration of this order.
5. Crimson California Pipeline, L.P. shall file an Advice Letter detailing the revised tariffs approved by this decision and an Advice Letter detailing the

process for billing and collecting the retroactive rate charges approved in
Ordering Paragraph 2 within 30 days of the issuance of this decision.

6. Application 22-06-017 and Application 22-03-013 are closed.

This order is effective today.

Dated May 9, 2024, at Sacramento, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

MATTHEW BAKER

Commissioners