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March 21, 2012

VIA FEDERAL EXPRESS

Public Service Commission
Attn: Linda Faulkner
211 Sower Blvd.
Frankfort, Kentucky 40602-0615

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MAR 22 2012

**PUBLIC SERVICE
COMMISSION**

**RE: Filing of Application Granting Issuance of a Certificate of Public
Convenience and Necessity to Navitas KY NG, LLC**

Dear Ms. Faulkner:

Enclosed please find an original and twelve (12) copies of Navitas KY NG, LLC's Application for an Order Granting the Issuance of a Certificate of Public Convenience and Necessity for filing with the Kentucky Public Service Commission.

Please date stamp the extra copy and return it to me for our records in the enclosed self-addressed FedEx mailer. Thank you.

Sincerely yours,

Mari Jo M. Casey
Mari Jo M. Casey
Paralegal

MJC/cl

Enclosures

cc: Klint W. Alexander, Esq.
Kathy Kunc, Esq.
Jack Conway, Esq.
Helen Helton, Esq.

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MAR 22 2012

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

APPLICATION OF NAVITAS KY NG,)
LLC FOR AN ORDER GRANTING)
THE ISSUANCE OF A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY)

Docket No. _____

APPLICATION

COMES NOW, Applicant Navitas KY NG, LLC (“Navitas”), by and through counsel, and hereby requests an order by the Public Service Commission (the “Commission”) granting the issuance of a certificate of public convenience and necessity (CPCN) to Navitas pursuant to KRS 278.020 and 807 KAR 5:001. In support of this Application, Navitas shows unto the Commission as follows:

1. Navitas is a Kentucky limited liability company with its principal place of business located at 3186-D Airway Avenue, Costa Mesa, California 92626. Navitas is in the business of distributing and selling natural gas to residential, agricultural and industrial customers in Albany, Clinton County, Kentucky. At present, Navitas has approximately 125 customers in Kentucky. Its utility operations and its rates, services, practices, and charges in connection therewith are subject to general regulation by the Commission.

2. The Commission has jurisdiction over this matter pursuant to KRS 278.010 *et seq.*, 807 KAR 5:001.

3. In February 2011, the Commission entered an Order approving the transfer of control and authority of Gasco Distribution Systems, Inc.’s gas utility system

to Navitas, Kentucky, including its authority to provide utility services deriving from its Certificate of Public Convenience and Necessity, in Albany, Kentucky.

4. This request of a new CPCN is in connection with the HWY 127 Albany bypass project and the relocation of the natural gas distribution lines serving Albany, Kentucky. Kentucky Transportation Cabinet (KTC) projects: 8-260.01, 0.02, and 0.10, together comprise the bypass work.

5. On March 15, 2011 and May 18, 2011, the KTC notified Navitas that natural gas pipeline facilities potentially existed in the selected right-of-way of bypass projects 0.10 and 0.02, respectively.

6. With the approval of the KTC, Navitas hired Bell Engineering of Lexington, KY to study the issue and make a recommendation with regard to the relocation work.

7. In accordance with the regulations covering the relocations of the natural gas distribution lines, the KTC is responsible for the cost of relocating facilities from private ROW, and Navitas is responsible for relocating facilities from public ROW.

8. On February 16, 2012 the pipe relocation projects were competitively bid.

9. Subsequent to the bid, the estimated cost of the projects was determined to be approximately \$437,000. Navitas is responsible for paying approximately \$60,000 of the total estimated cost.

10. The potential impact of this project per Navitas customer is approximately \$480 of net plant.

11. Prior to the filing of this Application, Navitas requested an Opinion from the PSC Staff as to whether a CPCN would be required pursuant to KRS 278.020 and 807

KAR 5:001. The PSC Staff concluded that “because the cost of the By-pass project will affect [Navitas’] customer rates”, the “project is not in the ordinary course of business and a CPCN is required.” The PSC’s Staff Opinion No. 2012-008 is incorporated in this filing as **Exhibit A**.

12. As the highway projects associated with the bypass are underway, the KTC is most anxious to proceed with the awarding of the pipeline relocation projects as quickly as possible.

WHEREFORE, Navitas respectfully requests the Commission to issue an Order:

1. Granting the issuance of a certificate of public convenience and necessity (CPCN) to Navitas in connection with the By-pass project pursuant to KRS 278.020 and 807 KAR 5:001; and
2. Granting such other relief as the Commission may determine to be fair, just and equitable in the premises.

Dated this the 21st day of March, 2012.

Respectfully submitted,



Klint W. Alexander (#88343)
Wyatt, Tarrant & Combs, LLP
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- and -

Ron Comingdeer, OBA#1835
Mary Kathryn Kunc, OBA#15907
Ron Comingdeer & Associates
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Counsel for Petitioner
Navitas KY NG LLC

VERIFICATION OF NAVITAS KY NG, LLC

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Thomas Hartline, Secretary of Navitas KY NG, LLC, being duly sworn according to law, makes oath and affirm that I have read the foregoing documentation, know the contents thereof, and that the same is true and correct to the best of my knowledge, information and belief.

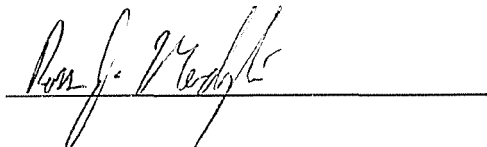


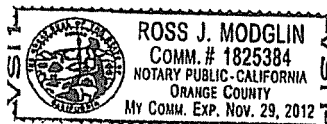
THOMAS HARTLINE

Subscribed and sworn to me on this 21st day of March, 2012, by Thomas Hartline, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public Signature

Notary Public Seal





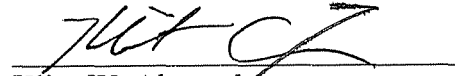
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of March, 2012, a true and correct copy of the foregoing instrument was deposited in the United States Mail, with postage prepaid, and addressed to the following:

Jack Conway, Esq.
Office of the Attorney General
Capitol Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601-3449

Helen Helton, Esq.
Division of General Counsel
Public Service Commission
Commonwealth of Kentucky
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40601


Klint W. Alexander



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

March 8, 2012

Thomas Hartline
Navitas Utility Corporation
3186-D Airway Avenue
Costa Mesa, CA 92626

PSC STAFF OPINION 2012-008

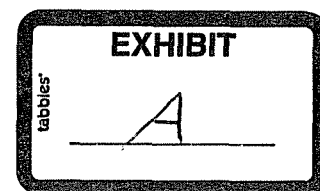
Re: Navitas KY NG, LLC
Staff Opinion Request
Need for Certificate of Public Convenience and Necessity

Dear Mr. Hartline:

Commission Staff is in receipt of your letter sent on behalf of Navitas KY NG, LLC ("Navitas") dated February 21, 2012, which is referenced as a "follow-up to Anita Mitchell letter of June 8, 2011." In your February 21, 2012 letter you request an assessment of whether Navitas' relocation of gas lines involved in the completion of the Kentucky Transportation Cabinet ("KTC") Highway 127 Albany By-Pass project ("By-Pass project") can be considered in the ordinary course of business or if a certificate of public convenience and necessity ("CPCN") from the Commission is required prior to beginning work on the project. Navitas is concerned as to the impact on the customer, due to the increase in rate base per customer, and additionally is concerned about the financial impact on an entity as small as Navitas.

In determining whether a project is in the ordinary course of business, KRS 278.020(1) provides, in relevant part, as follows:

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 (emphasis added).

807 KAR 5:001, Section 9(3) provides as follows:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will 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 area in which the utility renders service or contiguous thereto, 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 (emphasis added).

Whether a given project is considered "in the ordinary course of business" is fact specific and is examined in the context of several factors, including (1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; (2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the utility in question; and (3) whether the rates will increase as a result of the construction.

The details of the By-Pass project, as you have outlined, include three phases as follows:¹

Item No.	Length of Pipe	Estimated Cost	Party Responsible
860.01	4000 LF	\$150,000	Gasco ² (paid by KTC)
860.02	4000 LF	\$250,000	Navitas/KTC
860.10	8000 LF	\$350,000	KTC

¹ Letter from Thomas Hartline, Navitas KY to Anita Mitchell, Staff Attorney, Public Service Commission (June 8, 2011).

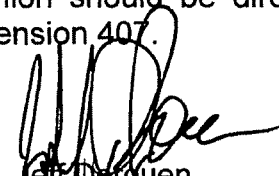
² Case No. 2010-00468, *Joint Application of Navitas KY NG, LLC and GASCO Distribution Systems, Inc. for Approval of an Acquisition of Ownership and Control of Gas Utility Systems* (Ky. PSC Feb. 11, 2011). The Commission approved the transfer of the Gasco Albany assets to Navitas KY. Although Item No. 860.01 was the responsibility of GASCO, due to GASCO's bankruptcy and the time constraints faced by the Commonwealth of Kentucky at the time, KTC elected to pay GASCO's cost.

Your initial estimate of Navitas' share of the cost for Item No. 860.02 was in excess of \$100,000, "or more than \$1000 for each and every one of the customers on gas system in Albany," because the existing pipeline was located in the public right of way.³

Based on recent correspondence from Bell Engineering to KTC,⁴ which you have provided and which includes an "Engineer's Opinion of Probable Construction Cost," Navitas has revised its estimate of costs that it will be required to share with KTC in order to complete the last two sections of the By-Pass project.⁵ Given Navitas' customer base of approximately 145, including 88 residential customers and 57 commercial and industrial customers,⁶ you calculate that "[T]he minimum impact per customer is estimated to be on the order of \$500 of new net plant."⁷ Navitas will be responsible for a significant portion of the cost and include an estimate of \$65,273.27 for Item No. 08-260.02 and \$3,395.89 for Item No. 08-260.10.

The limited issue addressed in this opinion is whether the By-Pass project is in the ordinary course of business or whether a CPCN is required. Because of Navitas' expectation that the cost of the By-Pass project will affect its customer rates, Commission Staff's opinion is that this project is not in the ordinary course of business and a CPCN is required.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Virginia W. Gregg, staff attorney, at (502) 564-3940, extension 407.



Jeff Derouen
Executive Director

³ Letter from Thomas Hartline, Navitas KY to Anita Mitchell, Staff Attorney, Public Service Commission (Jun 8, 2011).

⁴ Letter from Carroll R. Ramey, Assoc., Assist. Project Manager, Bell Engineering, to Morgan Wilson, District Utility Agent, Kentucky Transportation Cabinet (Jan. 24, 2012).

⁵ Id.

⁶ Annual Report of GASCO Distribution Systems, Inc. to the Kentucky Public Service Commission for the Year ended December 31, 2009 at 11.

⁷ Letter from Thomas Hartline, Navitas Utility Corporation, to Jeff Derouen, Executive Director, Kentucky Public Service Commission (Feb. 21, 2012).