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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).

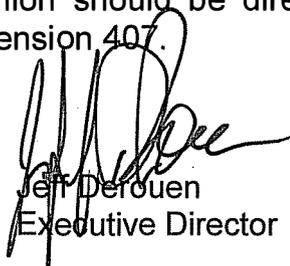
² Case No. 2010-00468, *Joint Application of Navitas KY NG, LLC and GASCO Distribution Systems, Inc. for Approval of an Acquisition of Ownership and Control of Gas Utility Systems* (Ky. PSC Feb. 11, 2011). The Commission approved the transfer of the Gasco Albany assets to Navitas KY. Although Item No. 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).