COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NAVITAS KY NG, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR ITS PIPELINE CONSTRUCTION WORK PLAN IN CLINTON COUNTY, KENTUCKY	))))	CASE NO. 2014-00027

ORDER

On January 29, 2014, Navitas KY NG, LLC ("Navitas") tendered an application for a Certificate of Public Convenience and Necessity ("CPCN'"), pursuant to KRS 278.020 and 807 KAR 5:001, for the construction of a new 6-inch pipeline to transport natural gas from its existing Albany, Kentucky, distribution system natural gas pipeline to the Keystone Foods ("Keystone") chicken processing plant located at 2294 KY Hwy, 90 East, Albany, in Clinton County, Kentucky ("Keystone Project"). Navitas was notified by letter dated February 10, 2014, that its Application was deficient in that it did not comply with the provisions of 807 KAR 5:001, Sections 15(2)(b), (c) and (d). On February 25, 2014, and May 9, 2014, Navitas responded with additional information. On May 16, 2014, Navitas was notified by letter that its Application was still deficient and that it was again rejected for filing. On June 2, 2014, Navitas cured the remaining deficiencies, and by letter dated June 4, 2014, the Commission accepted the Application for filing as of June 2, 2014. There were no requests for intervention.

On June 10, 2014, Commission Staff ("Staff") met with representatives of Navitas and Keystone in a telephonic Informal Conference ("IC") in order to clarify information provided in the Application. The matter now stands submitted for a decision. For the reasons stated below, the Commission will grant Navitas's request for a CPCN.

BACKGROUND

Navitas is a Kentucky limited liability company with its principal place of business located in Costa Mesa, California.[1] In 2011, Navitas received Commission approval to acquire and operate the Gasco Distribution System, Inc. ("Gasco") natural gas utility system providing service in Albany, Clinton County, Kentucky.[2] It distributes and sells natural gas to approximately 125 residential, agricultural, and industrial customers,[3] and pursuant to KRS 278.010(3), is a utility regulated by the Commission.

With its Application, Navitas filed a Transportation Agreement ("Agreement") with Keystone to construct the pipeline for the Keystone Project in exchange for Keystone's commitment to pre-pay $724,000 of the total $1.6 million estimated cost of the project. Navitas states that there has been little or no opposition to the Keystone Project, and that prior to filing its Application it met with Albany and Clinton County officials to discuss and obtain their support for the pipeline project.

ANALYSIS

Navitas provided maps, drawings, plans, and bid specifications certified by Bell Engineering of Lexington, Kentucky, with its Application and stated that the construction contractor would be Operator Qualified Certified as a condition of bidding on the

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[1] Application at 1.

[2] *See* 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).

[3] Application at 1-2.

project.[4] Cleary Construction, Inc. of Tompkinsville, Kentucky ("Cleary") was chosen for the project.[5] Navitas states that Cleary has been involved in earlier road widening projects in the Clinton County area, and performed work for Navitas's highway relocation.[6] Navitas confirmed that the capacity of the proposed line is not intended to provide 100 percent of Keystone's energy needs, because Keystone currently uses a mixture of biogas manufactured from its production waste, along with propane and natural gas.[7] The calculations completed by Bell Engineering[8] indicate that 20,000 cubic feet per hour ("cfh") can be provided to Keystone with the proposed project while maintaining adequate pressures for all users in their system. Bell Engineering stated that the maximum desired demand load for Keystone is 81,700 cfh.

The project includes the construction of approximately 7.5 miles of 6-inch polyethylene gas main, meeting requirements of Title 49 Pipeline Safety Act, from Albany, Kentucky, city gate (located on Dawson Street between Allen Street and Dalton Road) north along US 127 and KY 90 to the Keystone processing plant. Navitas obtained a Right-of-Way Encroachment Permit from Kentucky Transportation Cabinet, District 8, for all proposed construction within the state rights-of-way. Navitas stated at the IC that all necessary private easements have been obtained.

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[4] *Id.* at 4.

[5] Contract 594-14-1 Natural Gas Line Extensions Certified as a true and complete tabulation of all bids received by Navitas Utility on May 1, 2014, for the titled project, Bell Engineering.

[6] *See* Case No. 2012-00114, *Application of Navitas KY NG, LLC for an Order Granting the Issuance of a Certificate of Public Convenience and Necessity* (Ky. PSC May 11, 2012); *See also* Informal Conference Memo (June 16, 2014).

[7] Informal Conference Memo (June 16, 2014).

[8] Application, Phase 2 Study and Final Report by Bell Engineering.

The Agreement pursuant to which Navitas will deliver gas to Keystone provides for an initial term of 20 years, with automatic one-year renewals thereafter. Keystone will make a transportation fee pre-payment of $724,000 to Navitas in three installments, with their timing specified in the Agreement. The pre-payment will be paid back to Keystone through a 50 percent discount to Navitas's $3.62 per Mcf tariffed commercial rate. The resulting $1.81 per Mcf transportation rate was calculated to extinguish the pre-payment after Navitas has delivered 400,000 Mcf to Keystone. Navitas informed staff during the IC that it estimates that deliveries to Keystone will average 100,000 Mcf per year. The Agreement includes a commitment from Keystone that its volumes will not be less than 3,000 Mcf monthly or 36,000 Mcf annually. After the $724,000 pre-payment is extinguished through the 50 percent discount, Keystone will then be charged the full tariffed rate. With regard to the natural gas to be delivered to Keystone, Navitas states that it will be supplying Keystone's gas at the same Gas Cost Adjustment rate as all other customers.[9]

Navitas will be the owner and operator of the pipeline upon its completion. It estimates the total cost of an additional employee to operate the pipeline following the completion of construction to be approximately $100,000.[10]

Based on information in the Application, and as confirmed by Navitas at the IC, Navitas will finance the project with a short-term construction loan during the build out of the pipeline. Thereafter it will roll the construction loan into what it refers to as a "take-

[9] Informal Conference Memo (June 16, 2014).

[10] Application at 4.

out" loan. With a planned 20-year term, the "take-out" loan will represent long-term financing which will require Commission approval pursuant to KRS 278.300.[11]

LEGAL STANDARDS

Navitas's request for approval of the Keystone Project, including its construction of a new pipeline, is pursuant to KRS 278.020(1), which provides, in relevant part, that:

> 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 services enumerated in KRS 278.010 . . . and 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.

807 KAR 5:001, Section 15(2), provides in part:

> New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:
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> (a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity.

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.[12]

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[11] According to Navitas's Application, this financing structure received Commission approval during its acquisition of the Gasco assets in 2011 in Case No. 2010-00468. However, this is incorrect as ordering paragraph 5 of the Commission's Order in that case stated, "The scope of Commission approval herein shall not be construed to include accounting or ratemaking implications. . . nor does it represent approval of any indebtedness Navitas KY may have incurred."

[12] *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

"Need" requires:

> [a] showing of a substantial inadequacy of existing service involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.
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> . . .
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> The inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.[13]

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."[14] To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all alternatives has been performed.[15] Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.[16]

The Commission finds that Navitas's request for a CPCN for construction of the Keystone Project does not duplicate any existing facilities and is necessary in order for

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[13] *Id.* at 890.

[14] *Id.*

[15] *See* Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

[16] *See Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d, 175 (Ky. 1965). *See also* Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

Navitas to have the ability to transport and sell natural gas to Keystone for its processing plant. Based upon the record and being otherwise sufficiently advised, the Commission finds that a CPCN for construction of the pipeline should be approved and that, no later than 90 days after the completion of the project, Navitas should file with the Commission a statement of the actual costs of the construction. Prior to incurring any long-term financing related to this project, pursuant to KRS 278.300, Navitas is required to seek Commission approval.

IT IS THEREFORE ORDERED that:

1. Navitas is granted a CPCN for the construction project set forth in the Application.

2. The Agreement between Navitas and Keystone is reasonable and is approved.

3. Navitas shall, no later than 90 days after the completion of the project, file with the Commission a statement of the actual costs of the construction.

4. Navitas shall not incur any long-term indebtedness associated with this project without applying to the Commission for approval pursuant to KRS 278.300.

5. Any documents filed pursuant to ordering paragraph 3 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED
JUN 2 0 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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