COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PURCHASED GAS ADJUSTMENT FILING OF NAVITAS KY NG, LLC	))	CASE NO. 2019-00241

ORDER

On July 8, 2019, Navitas KY NG, LLC (Navitas) filed its quarterly gas cost recovery (GCR) rate application setting forth revised GCR rates to be effective during the August through October billing quarter. Navitas proposed two options for calculating the GCR rate based on two gas transportation charges from interstate pipeline owner, B&W Pipeline LLC (B&W): (1) the volumetric rates approved by the Tennessee Regulatory Authority (TRA), which regulates B&W's intrastate pipeline located in Tennessee; and (2) the volumetric rates approved by the Federal Energy Regulatory Commission (FERC), which regulates B&W's interstate pipeline. After one round of discovery, the Commission entered an Order on August 6, 2019, authorizing Navitas to implement on an interim basis subject to refund the GCR rate that included the higher transportation rate which was approved by FERC. Also in the August 6, 2019 Order, the Commission kept the case open to investigate whether the TRA-approved rate or the FERC-approved rate should be used in the GCR calculation. The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), is an intervenor in this proceeding. The matter now stands submitted for a decision based on the written record.

BACKGROUND

After Navitas filed the GCR application, B&W filed multiple public comments addressing the rate proceeding before the TRA that established intrastate rates and four FERC cases that granted B&W a certificate of limited jurisdiction to sell or transport gas in interstate commerce (Certificate), approved B&W's interstate rates, designated Navitas's natural gas facilities that cross the Kentucky-Tennessee border as a local distribution company (LDC), and denied Navitas's request for rehearing of the order approving B&W's interstate rates. Navitas responded to one round of discovery, filed a response to one of B&W's public comments as directed by the Commission, filed a copy of its request for rehearing of B&W's interstate rates that was filed with FERC, and filed a copy of a motion filed with the Tennessee Public Utility Commission, formerly known as TRA, to investigate B&W's proposal to charge an interstate rate for service in Tennessee.

In brief, Navitas asserted that the TRA rate should apply because FERC designated Navitas as an LDC and that the federal law that established FERC's jurisdiction over interstate gas pipelines does not apply to LDC's. Navitas further asserted that FERC rates are not applicable to Navitas because B&W's pipeline connects to Navitas's facility that is physically located in Tennessee, and therefore should not be deemed an interstate pipeline charging interstate rates because the pipeline never crosses the border into Kentucky. In its public comments, B&W asserted that Navitas is misconstruing federal law because there is no conflict between the FERC determination that Navitas is an LDC and FERC's determination that B&W is an interstate pipeline that is approved to charge interstate rates to Navitas. The Attorney General, in comments filed in this proceeding, argued that the TRA rate should be applied because the TRA proceeding was fully litigated in contrast to the FERC decision, which approved interstate rates pursuant to a settlement agreement, and because B&W's FERC rate includes costs that TRA rejected.

DISCUSSION

Navitas frames the issue remaining in this proceeding–whether the FERC or TRA rate should be used in calculating Navitas's GCR rate–as a jurisdictional issue in which the Commission should determine that TRA jurisdiction trumps FERC jurisdiction. Navitas implicitly asserted that FERC incorrectly determined that B&W's pipeline is an interstate pipeline.

We first note that on June 15, 2017, FERC issued two orders. The first granted Navitas's application to be considered an LDC;[1] the second granted B&W a Certificate to serve Navitas. According to FERC's decision that B&W operates a FERC jurisdictional interstate pipeline, B&W's pipeline is located entirely within Tennessee and that TRA required B&W to apply for a Certificate because three-fourths of the gas transported on B&W's system is delivered to a meter in Tennessee to Navitas, which transports the gas across the Tennessee-Kentucky line to customers in Kentucky.[2] The remaining one-fourth of the gas on B&W's system is consumed in Tennessee.[3] FERC's decision that Navitas is an LDC states that the Navitas facilities that straddle the Kentucky-Tennessee border are used exclusively for local distribution to Navitas's Kentucky customers and that Navitas receives gas from B&W at its facility on the Tennessee side of the border in order

[1] FERC Docket No. CP17-171-000, Navitas KY NG, LLC, 159 FERC ¶ 62,298 (FERC June 15, 2017); FERC Docket No. CP17-78-000, B&W Pipeline, LLC, 159 FERC ¶ 62,295 (FERC June 15, 2017).

[2] FERC Docket No. CP17-78-000 at 2.

[3] *Id.*

to provide utility service to Navitas's customers in Kentucky.[4] From these cases it is clear that Navitas is B&W's only customer that purchases gas transportation service for the consumption of gas outside of Tennessee and that the facts that Navitas argued established intrastate jurisdiction are the same facts that FERC relied upon in finding interstate jurisdiction.

We also note that the record reflects that Navitas had actual knowledge of both B&W's Certificate and rate cases before FERC, but failed to intervene. Navitas filed a request for rehearing of FERC's rate decision, which FERC denied because "at no point during the two years that this docket was open – during which time the Commission issued three notices inviting interventions – did Navitas seek to intervene."[5] In the order denying rehearing, FERC noted, *sua sponte*, that Navitas presented a misapprehension of law that FERC felt necessary to clarify. Specifically, FERC stated that Navitas's status as a LDC is not affected by FERC's determination regarding an "unrelated pipeline's settlement filings," namely B&W's interstate rates.[6]

The Commission acknowledges the Attorney General's comments supporting the Navitas request to include the lower TRA transportation rate in calculating the GCR rate. The Attorney General asserts that, since B&W is not a party to this case, the comments it has filed should not be given any evidentiary weight and that B&W appears to have engaged in forum shopping to avail itself of the more generous transportation rate established by FERC. As the Commission noted previously, public comments do not

---

[4] FERC Docket No. CP17-171-000 at 2.

[5] FERC Docket No. PR17-54-0002, B&W Pipeline, LLC, 168 FERC ¶ 61,143 (FERC Sept. 4, 2019) at 3.

[6] *Id.*

typically carry the same evidentiary weight as evidence submitted under oath, but public comments often affect the Commission's decisions.[7] For example, public comments led the Commission to engage in further discovery in one case that resulted in the Commission discontinuing an economic development rider and, in another case, requiring a utility to mitigate the visual impact of a solar facility.[8]

Based upon the case record and being otherwise sufficiently advised, the Commission finds that the FERC-approved transportation rate should be applied in calculating Navitas's GCR rate for the billing quarter ended October 2019 and all future GCR quarterly billings until B&W elects to accept a state-regulated rate. As determined by FERC, the B&W pipeline that serves Navitas is an interstate pipeline and subject to FERC-approved rates. In doing so, the Commission declines to make a finding that conflicts with FERC's jurisdictional authority over the B&W pipeline that serves Navitas. The Commission is not the proper forum to relitigate a decision of whether a pipeline located in Tennessee is intrastate or interstate. FERC, and not the Commission, is the proper forum for Navitas to bring its argument that FERC's finding is incorrect and the B&W is not an interstate pipeline.

On August 6, 2019, the Commission issued an order that authorized Navitas to implement the FERC-approved GCR rate on an interim basis subject to refund effective

---

[7] Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act* (Ky. PSC Sept. 4, 2019), Order at 3.

[8] *See* Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief* (Ky. PSC Jan. 18, 2018); Case No. 2016-00274, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of an Optional Solar Share Program Rider* (Ky. PSC Oct. 24, 2016), Informal Conference Memo at 2; Case No. 2016-00274 (Nov. 4, 2016), Order at 12–13.

August 7, 2019. The Commission also ordered that if the interim GCR rate is found to be improperly calculated due to spreadsheet errors including, but not limited to, rounding errors, misuse of functions, or improper cell reference, the difference between interim GCR rate and corrected GCR rate should also be refunded to its customers by Navitas. After reviewing the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Navitas's interim rate report includes revised rates designed to pass on to its customers its expected change in gas costs.

2. Navitas's interim report sets out an Expected Gas Cost (EGC) of $7.7163 per Mcf. Navitas used the incorrect 12-month sales and purchases in the calculation of its EGC. Navitas's report sets out a sales volume for the 12 months ended April 30, 2019, to be 97,284 Mcf. After reviewing the report, it was found that a monthly average had been used instead of actual sales made per month. A better representation of Navitas's sales volume was found to be 115,809 Mcf. Fixing the sales volume also corrected Navitas's total forecasted cost for the 12 months from a reported $750,670.74 to a corrected $753,059.06. Correcting this produces an EGC of $6.5026 per Mcf.

3. Navitas's interim report sets out no Refund Adjustment.

4. Navitas's interim report sets out a current quarter Actual Cost Adjustment (ACA) of $.3828 per Mcf. Navitas used the incorrect 12-month sales and purchases in the calculation of its current quarter ACA. In calculating the B&W transportation amount based on the FERC rate for its current quarter ACA, Navitas erroneously used the incorrect sum total for the allocation amount. Correcting this produces a current quarter ACA of $.0961 per Mcf and a total ACA of $1.0433 per Mcf.

5. Navitas's interim report sets out a current quarter Balance Adjustment (BA) of ($.0128) per Mcf. Navitas used the incorrect 12-month sales amount in the calculation of its current quarter BA. Correcting this produces a current quarter BA of ($.0149) per Mcf and a total BA of ($.1103) per Mcf.

6. Navitas's corrected FERC-approved GCR rate is $7.4356 per Mcf, which is a decrease of $1.5024 per Mcf from the previously approved interim rate of $8.9381 per Mcf.

7. On January 9, 2020, Navitas filed its proposed GCR rate report to be effective February 1, 2019, for the 12-month reporting period ended October 31, 2019. From the sales given in that report, gas for usage in August, September, October 2019, are 6,925 Mcf, 4,629 Mcf, and 5,670 Mcf respectively, and the difference between the Interim GCR and the Corrected GCR rate, the Commission has found the amount over-recovered by Navitas from August 7, 2019, through October 31, 2019, to be $25,877.17.[9] Due to the Actual Adjustment in Case No. 2020-00012,[10] truing up the actual cost of gas for usage in August, September, October 2019, the Commission finds that the amount for recovery should be included as a separate line item on the actual adjustment schedule and should subtract from the amount to any actual adjustment calculated in that case.

---

[9] The $25,877.17 over collection is the difference in the amount collected during the August, September, October 2019 billing cycle and the amount that should have been collected. Gas usage of 6,925 Mcf, 4,629 Mcf, plus 5,670 Mcf by each month respectively, equals a total billed usage of 17,224 Mcf. The interim rate of $8.9381 per Mcf multiplied by the 17,224 usage equals $153,948.11 collected. The corrected rate of $7.4356 per Mcf multiplied by the 17,224 Mcf usage equal the 128,070.95 that should have been collected. The difference between the two totals equals the over collected amount of $25,877.17.

[10] Case No. 2020-00012, *Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (filed Jan. 9, 2020), Navitas GCR report.

8. In this and previous GCR reports, Navitas has made repeated errors and omissions that impact timely and accurate processing of its filings. The Commission finds that Navitas should conduct a careful and thorough review of its procedures and processes to minimize any potential errors in its future GCR reports. Continued failure to minimize errors in future filings may adversely affect the timely processing of Navitas's GCR reports and may result in an investigation.

9. Navitas has repeatedly failed to provide at least 30 days' notice in this and in previous GCR reports pursuant to its Gas Cost Recovery Clause Tariff. The Commission finds that Navitas must file its future GCR reports in a timely and consistent manner. Failure to comply with the timing requirements of its Tariff may result in an investigation.

10. Navitas's future GCR rate reports should include an electronic version containing the supporting calculations used to compute the GCR in Excel spreadsheet format with all formulas intact and unprotected, and with all columns and rows accessible.

IT IS THEREFORE ORDERED that:

1. Navitas shall use the FERC approved rate in future calculations of its GCR rate report.

2. Navitas shall include the $25,877.17 over-recovery in the actual adjustment component of its current GCR rate report in Case No. 2020-00012 as stated in finding paragraph 7.

3. Navitas shall, in all future GCR rate reports, file an electronic version of its GCR rate report containing the supporting calculations used to compute the GCR in Excel

spreadsheet format with all formulas intact and unprotected, and with all columns and rows accessible.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED

JAN 14 2020

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Gwen R. Pinson

Executive Director

*Joseph M Irwin
Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626

*Justin M. McNeil
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626