

January 6, 2011

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

RECEIVED
JAN 10 2011
PUBLIC SERVICE
COMMISSION

**RE: 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
Case No.: 2010-00468**

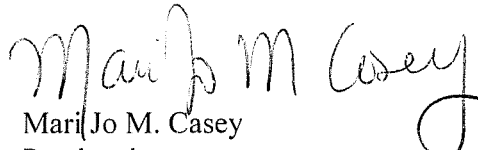
Dear Ms. Faulkner:

Enclosed is an original and eleven copies of a First Supplement to Exhibit F of the Joint Application filed with the Kentucky Public Service Commission on December 2, 2010, which consists of an Order Approving Transfer of Control and Approving Transfer of Franchise Agreements and Financing Transactions entered in the case pending in Tennessee filed by Navitas TN NG, LLC, a sister company of Navitas KY NG, LLC and referenced in Exhibit F.

We have also enclosed a self-addressed and postage paid return envelope for you to return a file stamped copy of the First Supplement to Exhibit F to me for our files.

Please contact me if you have any questions.

Sincerely yours,


Mari Jo M. Casey
Paralegal

MJC/cl
Enclosures

cc: Jack Conway, Esq.
Helen Helton, Esq.
Richard Collier, Esq.

45410393.1

RECEIVED

JAN 10 2011

PUBLIC SERVICE
COMMISSION

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

December 30, 2010

JOINT PETITION OF NAVITAS TN NG, LLC AND)	
GASCO DISTRIBUTION SYSTEMS, INC. FOR)	
APPROVAL OF A TRANSFER OF CONTROL)	DOCKET NO.
AND AUTHORITY OF GAS UTILITY SYSTEMS)	10-00220
OF GASCO DISTRIBUTION SYSTEMS, INC.,)	
CHAPTER 11 DEBTOR IN POSSESSION)	

ORDER APPROVING TRANSFER OF CONTROL AND APPROVING TRANSFER OF
FRANCHISE AGREEMENTS AND FINANCING TRANSACTIONS

This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a specially scheduled Authority Conference held on December 20, 2010 for consideration of the *Joint Petition* and the *Amendment to the Joint Petition ("Amendment")* filed on November 17, 2010 and December 10, 2010, respectively, of Navitas TN NG, LLC ("Navitas") and Gasco Distribution Systems, Inc. ("Gasco") (collectively, the "Petitioners"). The Petitioners seek Authority approval of: (1) the transfer of control of gas utility systems of Gasco to provide retail gas utility services in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky¹ deriving from the Certificate of Public Convenience and Necessity issued by the Authority's predecessor, the Tennessee Public Service Commission and related orders, approvals, and actions of the Authority of its predecessor; (2) the transfer of franchise agreements including the agreements between Gasco and the City of Byrdstown, Gasco and Pickett

¹ By Order of the Public Service Commission Commonwealth of Kentucky, dated August 13, 1990, Gasco Distribution Systems, Inc.'s service to Kentucky residents in Kentucky Hill and Black Oak in Whitley County, Kentucky is effective under the jurisdiction of the Authority, as part of the Jellico Distribution System.

County and Gasco and the City of Jellico, to provide utility services in Jellico, Byrdstown, and Pickett County, Tennessee and (3) the financing arrangements of Navitas.

THE JOINT PETITION

According to the *Joint Petition*, Gasco owns and operates the natural gas distribution systems known as 1) the Jellico System located in Campbell County, Tennessee and Whitley County, Kentucky; 2) the Byrdstown System located in Pickett County, Tennessee; 3) the Fentress System located in Fentress County, Tennessee, and 4) the Albany System located in Clinton County, Kentucky. On June 1, 2009, Gasco filed for Chapter 11 bankruptcy protection – Case No. 09-056171 - in the United States Bankruptcy Court (“Bankruptcy Court”) for the Southern District of Ohio, Eastern Division. Gasco has been operating as a Debtor in Possession since that time.

By Agreement dated July 9, 2010 and amended on October 14, 2010, Gasco agreed to sell, and Navitas Assets, LLC (“NALLC”) agreed to purchase the assets in Gasco’s gas utility system subject to the approval of the Authority and to the Bankruptcy Court’s approval. On October 21, 2010, the Bankruptcy Court entered an Order authorizing and approving NALLC’s bid to acquire the Jellico System, the Byrdstown System, the Fentress System, and the Albany, Kentucky System. A Corporate Resolution of NALLC assigned all rights and privileges under the Asset Purchase Agreement to Navitas.

According to the *Joint Petition*, NALLC and Navitas Utility Corporation (“NUC”) are sister entities. NALLC is a holding company created to retain certain energy assets. Navitas is a Tennessee Limited Liability Company. NALLC is the parent company of Navitas and the Fort Cobb Fuel Authority, LLC (“FCFA”), a regulated natural gas utility in Oklahoma. NUC is an operating entity primarily engaged in providing necessary support services for the operations of NALLC. According to the *Joint Petition*, the Navitas companies have the requisite managerial and technical

expertise to own and operate the existing Gasco Utility Systems.² The Petitioners state that (1) NALLC, the parent company of Navitas, owns and operates Fort Cobb Fuel Authority, a regulated natural gas utility in Oklahoma serving over 4,000 customers; (2) NALLC is familiar with federal and state utility regulations and has worked with the Oklahoma Corporation Commission and the Federal Energy Regulatory Commission (FERC); and (3) Navitas expects to retain the current employees of Gasco to continue servicing the system.³

The *Joint Petition* states that NALLC has the requisite financial stability to operate the purchased Gasco system.⁴ To support this statement, NALLC submitted copies of its 2009 Federal and State Income Tax Returns and Independent Auditor's Report.⁵

As stated in the *Joint Petition*, Navitas initially intends to adopt the current tariffs on file for Gasco and will abide by all TRA Rules.⁶ Navitas, however, recognizes that the current tariff rates may not be adequate to produce a fair and reasonable return and has indicated that it intends to file a rate case to increase rates in the future.

THE AMENDMENT TO THE JOINT PETITION

In December 2009, the owners of NALLC secured a USDA B&I Rural Development loan for the purpose of acquiring natural gas properties, such as the Gasco properties located in Tennessee. When the loan was approved, a \$1.5 million acquisition line was put in place for future use. Navitas intends to draw down \$610,500 to pay for the Gasco properties located in Tennessee. A requirement of the loan documents is that all properties, including the Gasco properties, purchased with loan funds are pledged as security for the loan. Additionally, the owners, Mr. Richard Varner and Mr. Thomas Hartline, are guarantors for the loan.

² *Joint Petition*, p. 4.

³ *Id.* at 7.

⁴ *Id.* at 6.

⁵ *Id.* at Confidential Exhibit I.

⁶ *Id.* at 7-8.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Regarding the proposed financing transaction, Tenn. Code Ann. § 65-4-109 (2004) provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

Based on the assertions in the *Joint Petition*, the panel found that Navitas has the necessary technical, financial and managerial resources to own and operate Gasco. Navitas' parent company owns another gas company and is familiar with federal and state utility regulations, and Navitas intends to keep Gasco's current employees to continue to service the system. In addition, the record indicates that Navitas has the financial stability to successfully operate the Gasco system. This transaction furthers the public interest because it will allow continuity of service for the Gasco customers. Based on the record and these findings, the panel voted unanimously to approve the transfer of Gasco to Navitas pursuant to Tenn. Code Ann. § 65-4-113. As a part of its approval of

the transfer of Gasco to Navitas, the panel approved the Petitioners' request for the assignment or transfer of Gasco's franchise agreements.⁷

In addition, the panel voted unanimously to approve the financing transaction described in the *Amendment* pursuant to Tennessee Code Annotated § 65-4-109 based on the following findings:

(1) this financing transaction is subject to Authority approval pursuant to Tennessee Code Annotated § 65-4-109;

(2) the transaction is being made in accordance with the laws enforceable by this agency; and

(3) the transaction is in the public interest because it will facilitate the purchase of the Gasco properties.

The panel also voted unanimously to approve the existing Gasco base rates as requested by Navitas. Further, the panel found that the approval of the *Joint Petition* does not prejudice the regulatory accounting treatment resulting from Navitas' acquisition of Gasco as described in the *Joint Petition*.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* of Navitas TN NG, LLC and Gasco Distribution Systems, Inc. for approval of the transfer of control and authority from Gasco Distribution Systems, Inc. to Navitas TN NG, LLC, including its authority to provide utility services deriving from its Certificate of Public Convenience and Necessity in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky, and related orders, approvals and actions of the Authority or its predecessor, as required by Tenn. Code Ann. § 65-4-113, through the acquisition of

⁷ In support of the request in the *Joint Petition* for TRA approval of the assignment or transfer of franchise agreements from Gasco to Navitas, Navitas secured documentation from the respective political subdivisions expressing their approval or nonobjection to the assignments or transfers of these franchises. On December 8, 2010, the Authority received a joint letter from The Town of Byrdstown and Pickett County stating that those entities consent to the request of Navitas for the assignment of the franchise agreements. On December 9, 2010, the Mayor of City of Jellico filed a letter confirming Jellico's consent to the request for transfer of the franchise agreement from Gasco to Navitas.

ownership and control of the Gasco Utility Systems of Gasco Distribution Systems, Inc. by Navitas TN NG, LLC is approved.

2. The assignments of certain franchise agreements to Navitas TN NG, LLC, including the agreements between Gasco Distribution Systems, Inc. and the City of Byrdstown, Gasco and Pickett County and Gasco and the City of Jellico, to provide utility services in Jellico, Byrdstown, and Pickett County, Tennessee pursuant to Tenn. Code Ann. § 65-4-107 and the Byrdstown Natural Gas Franchise Ordinance of 2000, are approved pursuant to Tenn. Code Ann. § 65-4-113.

3. The financing arrangements as described in the *Amendment to the Joint Petition* and discussed herein are approved. Navitas TN NG, LLC is authorized to draw down \$610,500 on its existing USDA B&I Rural Development loan to pay for the Gasco Distribution Systems, Inc. properties located in Tennessee, and Navitas TN NG, LLC is further authorized to pledge those properties as security on that loan as required by the terms of that loan.

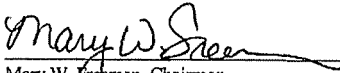
4. The authorization and approval given hereby shall not be used by any party, including but not limited to, any lending party for the purpose of inferring an analysis or assessment of the risks involved.

5. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.

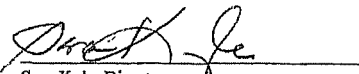
6. The existing Gasco Distribution Systems, Inc. base rates are approved as requested by Navitas TN NG, LLC.

7. The Tennessee Regulatory Authority's approval of the *Joint Petition* does not prejudice the regulatory accounting treatment resulting from Navitas TN NG, LLC's acquisition of Gasco Distribution Systems, Inc. as described in the *Joint Petition*.

8. Navitas TN NG, LLC shall file with the Tennessee Regulatory Authority a copy of any future orders of the Kentucky Public Service Commission that are entered regarding the Whitley County, Kentucky customers.


Mary W. Fryman, Chairman


Eddie Roberson, Director


Sara Kyle, Director